



JUSTICE POSTPONED

Analytical report on

PALESTINIAN REFUGEES

by Thomas Hammarberg



THE SWEDISH INSTITUTE
OF INTERNATIONAL AFFAIRS

COVER IMAGE:

Madleen Kullab, 24, fisher woman in the Gaza Strip. The Mediterranean Sea once provided a livelihood for some 8,000 families in Gaza. Today, with the Israeli-enforced fishing boundary, the industry has all but been annihilated. Fishermen/women can access less than one-third of the fishing areas allocated to them under the Oslo Agreements: only 6 out of 20 nautical miles. Working as a fisherman or woman is also dangerous. The Israeli navy regularly shoots at Palestinian boats that they consider having crossed the agreed fishing zone, sometimes resulting in injuries or death. Madleen Kullab started fishing with her father at just six-years-old. "The sea is my life, my job, my hobby, and the place where I can find myself."

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PREFACE

AT NIGHT, FROM THE SHORES of northern Gaza, one can see the lights from Ashkelon, a nearby Israeli city. Prior to the first Arab-Israeli war in 1948–1949 and the creation of the State of Israel, this place used to be called al-Majdal in Arabic. This is from where the grandfather of the young fisherwoman Madleen Kullab, depicted on the cover of this report, fled 70 years ago.

Like the more than 700,000 Palestinians who took refuge in nearby places, Madleen's grandfather, a fisherman, must have thought that he only needed to seek a temporary haven in Gaza in 1948. But his refugee status became lifelong and was inherited by his descendants.

In the UN system 70 years ago, it was expected that the Palestine refugee situation would be temporary. This was the idea behind the creation of UNRWA, which should provide basic relief for the refugees, pending a permanent solution.

In December 1948 the UN General Assembly adopted Resolution 194 which stated that Palestinian refugees who so wished, should have the right to return to their homes to live in peace with their neighbours, and that others would be compensated for lost property.

But Madleen Kullab and the more than 5 million other Palestinians, who are registered as refugees by UNRWA today, have been denied this right until today. If we add the number of those Palestinians who fled the war in 1967, and their offspring, the refugee community today comprises more than 6 million.

Time is long overdue to find a solution to this problem. Its constant postponement from serious discussions is one reason why past peace talks never led to the necessary endgame. A major obstacle has been the Israeli rejection of the Right of Return for the refugees.

The implementation of this right is nowadays widely understood to be realized essentially within a Palestinian state – and that only a limited number of refugees would have a chance to be reunified with their families within Israel. Compensation and recognition of responsibility do remain as key requests.

Details of a solution must be hammered out in talks between the parties – and with international guidance and support. It must be clear that there is no escape from solving the refugee issue. Individual families, the Palestinian people at large and a troubled region all need it. A just solution is also important for the future of Israel.

The current situation is also one of humanitarian urgency. In the Lebanese society stateless Palestinians continue to be kept at the bottom of the ladder. In Gaza the living conditions are now extremely precarious. From the Syrian killing field Palestinians are driven out to an insecure future.

Addressing this crisis cannot wait for a comprehensive peace agreement to be reached, the current sufferings of the refugees have to be addressed without delay and UNRWA's financial crisis must be solved.

In this report Thomas Hammarberg describes the background to the present crisis, its human consequences, the failure to uphold humanitarian and human rights standards, the political positions of the parties and the failed attempts to promote a peaceful solution. He also defines the key building blocks for a just and lasting solution of this serious humanitarian and political disaster.

We share his view that status quo is not an option. His report and recommendations deserve study and discussions in all circles caring for concrete measures to protect justice.

Mats Karlsson, Director of UI,
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INTRODUCTION

A RESOLUTION AT THE UNITED NATIONS in November 1947 recommended that Palestine would be divided into two parts. The British government had decided to put an end to its colonial role and give up its mandatory authority in the region.¹

Tension increased between the two major population groups in Palestine: the Arabs and the Jews. Incidents of open hostility became more and more frequent and from February 1948 there was a pattern of civil war.

The Jewish groups had welcomed the UN decision while the Arabs were strongly critical. They had two concerns. One was whether Palestine should be divided at all. The other related to how the border had been drawn with a bias in favour of the Jewish side.²

The violence in 1948 against Arab civilians, and the fear it created, ended in a major refugee crisis. About 750.000 people, a large majority of the non-Jewish population, left their homes. Another crisis came with the 1967 war and the ensuing occupation of the West Bank and Gaza. This time around 320.000 individuals were uprooted.³

1 General Assembly resolution 181 of November 1947 ruled that there would be one Jewish state, one Arab state and a special international status for Jerusalem.

2 At the time the population balance between the Arabs and the Jews was two thirds to one third. The land areas were divided so that the Arab state would get 43 per cent and the Jewish state 56 per cent, including the more fertile lowland plains.

3 These estimates are based on various UN reports and writings by individual academic researchers. Israeli representatives have argued that international observers and Palestinians had exaggerated the numbers and mentioned figures closer to 600.000.

Since then there has been a consistent demand from the refugee communities that they should be allowed to return. This has been denied by the Israeli authorities.

International human rights law specifies that there is indeed a right of return to one's country, a right confirmed in a number of UN resolutions. However, international peace talks have not managed to address this problem in a meaningful manner. This particular issue has been repeatedly postponed.

The 1967 refugee crisis has in some contexts been dealt with separately, also in terminology: the refugees have been referred to as "displaced persons". However, their fate was similar and, in fact, about half of them had fled already in 1948.

Today the refugee community, including the descendants, amounts to more than five million people. The memory of the Nakba – the catastrophe – is not only kept alive, it is major aspect of the Palestinian identity. A stable and lasting peace in this region is unlikely if their claims continue to be ignored.

This report is an attempt to clarify the situation for the refugees today and what efforts are being made to respect their human rights. It concludes with recommendations. The report is based on meetings and talks during visits to Israel, the occupied territories, Lebanon and Jordan. The ambition has been to listen to the refugees themselves. Staff members in the UN agency for Palestinians, UNRWA, have generously provided essential information for this study.

PART ONE of the report focuses on the current situation of the refugees and where they are now, including the policies of authorities in the host countries and in the occupied territories. The denial of social and economic rights in Lebanon has created deep misery and systematic discrimination. Palestinian refugees fleeing from the war in Syria are particularly badly treated. The blockade and military interventions into Gaza have had disastrous consequences for refugees (and others) there.

UNRWA is facing a deep financial crisis at the same time as it has to handle gigantic humanitarian needs.

PART 2 focuses on the relevance of international law. It concludes

that the right of return has been wrongfully denied. A background description is given on what we now know about *why* so many refugees left their homeland in 1947–1948 and in 1967.

The text describes the extent to which international law is relevant to the analysis of the Palestinian refugee crisis. The problem has not disappeared with the passing of time.

General Assembly Resolution 194 (III) is still the obvious basis for addressing the situation. There will be a need to explore the genuine preferences among the refugees, wherever they now live and to define how compensation could best be organised, funded and allocated.

PART 3 reviews the several attempts to initiate a meaningful peace process, including the reasons why these have not succeeded.

The different positions of the Palestinians and the Israelis are summarised. There is also a presentation of the Geneva Accord, a proposed final peace agreement put together jointly by independent opinion builders on both sides.

PART 4 concludes the report with twelve concrete recommendations. In summary they reflect two overall messages:

- There is an acute need for a fair, agreed and solid political solution. The parties are obviously unable to reach a just and serious peace agreement themselves. This increases the responsibility of the international community. It has to be recognised that status quo is not an option and that military actions only deepens the conflict.
- The humanitarian crisis must be taken much more seriously. While waiting for the urgently needed peace agreement it is necessary to take effective steps to alleviate the daily suffering of the refugee population in the occupied territories and the neighbor host countries. The present human situation is in itself highly explosive.

PART ONE:

HUMANITARIAN CRISIS

LIFE IN HOST COUNTRIES TODAY: TEMPORARY STAY

Around 750.000 Palestinians fled their towns and villages in 1948. Another wave of refugees of about 320.000 came in connection with the 1967 war, a number of them fleeing for the second time. With descendants the number of Palestinian refugees has now reached more than five million. The majority are in the immediate neighbour countries and in the occupied territories.

In spite of efforts by the UN agency for Palestinians, UNRWA, their life situation is precarious. A majority are living in acute poverty. In Lebanon they have been deprived of basic human rights and are treated as unwelcome “foreigners”.

In Syria the Palestinian refugees have been granted economic and social rights but the war has been devastating for them. They have been displaced under extreme circumstances or forced to flee again to other countries where they have had to face hostility and discriminatory treatment.

In Jordan the 1948 refugees were offered full citizenship and basic human rights. However, refugees coming later from Gaza did not receive the same generous treatment.

Most of the Palestinian refugees are stateless.

Common to the overwhelming majority of the refugees is that they are *not* settled in their present locations, mentally or physically. The quest for return is still a dominant aspect of their lives.

MOST PALESTINIAN REFUGEES are living in the neighboring countries or in the occupied territories. UNRWA has registered more than five million. In Lebanon 480.000; in Syria 560.00; in Jordan 2.1 million; in the West Bank more than 800.000; and in Gaza 1.3 million. Some refugees living in this region have not been registered for various reasons – more on this later in the text.

A number of refugees live in other areas and are therefore not covered by UNRWA. In Iraq more than 10.000 are still reported to

be registered. Furthermore, it is estimated that around 50.000 Palestinian refugees live in Egypt, although they are not recognised as refugees. Another category is the Palestinian families – originally estimated to 150.000 individuals – who managed to stay in what became Israel in May 1948. Those still alive and their descendants are reported to be more than 1.5 million. They are now Israeli citizens but prevented from going to their original home towns or villages.

Moreover, a number of Palestinians, refugees and non-refugees, have migrated from their first host location to other countries in the Middle East and Europe, the Americas and other parts of the world. (This has also affected the reality behind some of the UNRWA statistics; it is estimated that the actual number of the Palestinian refugees in Lebanon in fact is less than 200.000 as a result of people having left over the years).

The focus in this and the next chapter is on the situation for the refugees in the five areas under the UNRWA mandate where their presence is large enough to have considerable impact on the host societies. In Lebanon and Syria their number constitute about ten per cent of the total population and in Jordan about 40 per cent. In the West Bank they are around 30 per cent and in Gaza nearly 70 per cent. More than one quarter of these refugees live in camps.

Conditions differ greatly, also in legal terms. In Lebanon they have been denied social and political rights; in Syria they have social rights but no right to vote; and in Jordan most have been granted citizenship and full political and social rights. In the West Bank and Gaza they still live under the consequences of Israeli occupation or blockade.

The war in Syria has had severe consequences also for the Palestinian refugees. About half of them have been displaced or forced to flee the country.

Lebanon

The situation of the Palestinian refugees in Lebanon was described in a thorough UNRWA survey published 2016, which is still largely up-to-date. It concluded that the refugees “*continue to*

face acute socioeconomic deprivation and legal barriers to their full enjoyment of a broad range of human rights. They have been marginalized and excluded from key aspects of social, political and economic life with no right to own property; severely curtailed access to public services and restrictions regarding specific professions and limited job opportunities”.

According to Lebanese law the Palestinian refugees are *foreigners*. No special consideration is given to the fact that they are stateless, except for the fact that they in most cases are allowed to stay in the country (though without a permanent residence certificate).

For employment they need a work permit. Moreover, a number of specific professions are closed to them, for instance in medicine, pharmacy, legal practice, engineering and public transport. For other jobs they can, according to the law, be employed only if they are not in competition with a Lebanese citizen. Jobs available tend to be in farming and construction work, jobs for which women are not seen as suitable. In the private sector refugees tend to be exploited and paid considerably less than Lebanese workers. The reported unemployment rate among the refugees is very high, constantly around 50 per cent.

Their status as *foreigners* means that they do not have access to Lebanese health care and schooling. It is assumed that these services are to be provided by UNRWA. However, UNRWA's budget crisis has resulted in dramatic cuts. UNRWA schools work in double shifts and have been forced to increase the number of students to up to fifty in each class. The number of scholarships for university level studies has been reduced.

The UNRWA health clinics have had to reduce their services at the same time as the capacity of the Palestinian Red Crescent facilities has been scaled down. Infant mortality is high and diseases frequent. Social services for the most disadvantaged have diminished. It is estimated that more than 70 per cent of the refugees are estimated to live below the poverty line.

A particularly vulnerable group of refugees are the “Non-ID” Palestinians. They arrived in the early 1960's and are estimated to be 3,000 to 5,000. They have no relevant identification document and are not registered with UNRWA or the Lebanese authorities.

Children in these families tend also not to be registered. Though UNRWA is not in a position to formally register them, it provides some health care, education and other services for them. However, their situation is extremely volatile and they risk being arrested and detained as their presence in the country has not been made legal.

Housing is a serious problem for most. About half of the Palestinian refugees live in the 12 recognised camps. In general, the conditions in these are primitive with problems of overcrowding, diseases, sanitation and failing electricity, water and sewage systems.

Government regulations stipulating that the land area of the camps cannot be expanded in spite of the population growth have augmented the problems. Repair work has been prevented through restrictions on bringing cement and other building material into the camps. The approach of the authorities is to avoid any move which might be interpreted as accepting that the camps are developing into permanent structures.

The camps themselves are not administered either by the authorities, or by UNRWA. This responsibility has been left to Palestinian factions, which sometimes are in conflict. This in turn has created great difficulties. The 2016 UNRWA report referred to *“a climate of instability, physical threats, sporadic fighting and limited access to safety and justice”*.

The armed confrontation in Nahr El-Barad between the militant Fatah al-Islam and the Lebanese army in 2007 resulted in the death of 170 soldiers, 220 militants and 47 civilians. Around 30.000 residents had to flee from the camp to avoid the heavy bombardment which destroyed buildings and infrastructure on a massive scale.

The repair and reconstruction work in the camp has been slow and is still not fully completed. In spite of this, a number of former camp residents have returned and several thousand of Palestinian refugees from Syria have also moved in. Infrastructures and services are again overstretched. The Lebanese army keeps tight control of movement to and from the camp.

Severe security problems have affected the situation in other camps as well. There have been fatal confrontations between factions in Ein El-Hillweh, the largest Palestinian refugee camp in Lebanon with a current population of more than 80.000. Schools

and health clinics during one crisis period were occupied and damaged. Also, non-Palestinian extremists have on occasion infiltrated the camp and caused deep unrest.

The authorities have responded by building fences and parts of a wall around the camp. Inside, the situation has deteriorated both because of these tensions and as a consequence of the overcrowding, unemployment and absence of basic services. On top of all this several thousand Palestinian refugees who fled Syria have sought refuge in this camp.

The current hostility towards Palestinian refugees has historic roots going back to the heavy presence of the PLO during the civil war from 1975 until the Israeli invasion and the PLO leadership departure in 1982. The room for a generous attitude towards them has shrunk further with the later reports of security problems in some of the camps and the influx of other refugees.

All Lebanese political parties agree that the Palestinians should not be invited to stay on. They explain this position as consistent with support to the demand by the refugees themselves to return home. However, the position also fits well with other political considerations, not least the perceived need to protect the power sharing balance between the countries' religious groupings.

The refugees themselves have contributed to the notion of a temporary stay; the dream of return has been kept alive. However, they are also aware that Palestinian refugees in other countries have been granted social, economic and even, in some cases, political rights without this being interpreted as jeopardising their right to return. Indeed the treatment they suffer does violate international human rights standards, for instance the UN Convention on the Rights of the Child.

Syria

The political authorities in Syria have had a more open attitude to the Palestinian refugees from the very beginning. Social and economic rights were provided at the same level as for citizens. However, citizenship and connected political rights were not offered as these were understood as undermining the quest for return. Apart from the 1948 refugees UNRWA has also registered sever-

al thousand people who were displaced from the Golan Heights when Israel occupied this area in 1967.

UNRWA has provided a full programme of education, health care and social services in Syria for the more than half a million of Palestinian refugees. Nine official and two unofficial camps were established and have functioned reasonably well.

However, the war has affected the Palestinian refugees particularly badly. Some were recruited to al-Assad's military forces, others were detained or made to disappear. It is estimated that around four thousand Palestinians died in such circumstances.

The Yarmouk unofficial camp in Damascus with nearly 150.000 Palestinian refugees has been under siege for several years, resulting in the displacement of the majority of the population. More than a thousand Palestinians have been killed by Daesh and other extremist forces. Remaining camp residents suffer from lack of food, water and other necessities.

Around 280.000 Palestinians elsewhere in Syria were uprooted and became displaced in various parts of the country, in many cases under very difficult circumstances. In early 2018 UNRWA launched an emergency appeal for 430.000 Palestinian refugees in critical needs of sustained humanitarian assistance.

Jordan

The Kingdom of Jordan has received more Palestinian refugees than any other country. The more than two million registered refugees amount to more than a third of the total population. They have been offered citizenship with the same rights as any other citizen. The only exception has been the Palestinians who came from Gaza in 1967, many of whom are refugees for a second time.

Many Jordanian Palestinians are now well established in all aspects of society. However, they are less represented in politics and the administration than their proportion of the total population. About 18 per cent live in camps serviced by UNRWA (there are ten official and three unofficial camps).

There are signs that the large number of Palestinians in the country has contributed to some unease and has raised concern about the demographic balance in society. This was probably one factor

behind the official decision to restrict the possibilities for Palestinians to be received as refugees from the war in Syria (see below).

UNRWA is running 171 schools for about 120.00 students. Other important programmes are the 25 primary health centers and ten centers for community-based rehabilitation.

Conclusions

Living conditions for the refugees in the host countries should be improved. This in turn will require support from the international community.

A human rights approach requires that the Palestinian refugees in Lebanon be granted economic and social rights, including permanent residence. This step should be facilitated through international support via UNRWA and directly. It should be made clear that this improvement in no way should be regarded as an alternative to the right to return.

There are some groups of refugees who – for different reasons – have not been registered by UNRWA and/or the host countries or have even been unable to obtain identity documents. Their situation is therefore precarious. Although these cases are not many, it is important that their rights be protected.

REFUGEES LIVING UNDER OCCUPATION: WEST BANK AND GAZA

The refugees in the West Bank live under military occupation, denial of human rights, land confiscations and the consequences of an ever growing number of settlers. Gaza has been under siege since 2007 which has created severe difficulties for people to visit and travel, including to the West Bank. The war in 2014, in particular, caused enormous damage to infrastructure and living conditions.

The occupying power has taken no responsibility for education, health care and other services for the Palestinian refugees in the West Bank and Gaza as stipulated in the Fourth Geneva Convention. Also, Israel does not repair infrastructure and compensate for other damages caused by its military interventions in these territories.

Daily life is precarious, especially in Gaza where people are facing a constant humanitarian crisis. The blockade is causing an enforced isolation which has serious consequences including for the economy. In reality, people in the West Bank also face restrictions in their freedom of movement while administrative steps are also taken to make people leave.

West Bank

UNRWA has registered 810.000 persons as refugees in the West Bank. It runs 96 schools for 50.000 students and keeps 43 primary health facilities functioning for the refugees. 19 camps have been established. Around one third of the refugees live in these camps in situations of heavy overcrowding and poor services.

The West Bank has been divided in accordance with the Oslo agreements. Israel keeps total control over what has been desig-

nated as area C, which covers some 60 per cent of the West Bank – which is also the area with the best economic potential. This is where most of the settlements have been developed. Area B is administered by the Israelis and the PA together, with the former in charge of security. Finally, area A is for the PA to rule but in security cooperation with the occupying power.

Special roads have been built for the settlers. Palestinians have no access to some. The entire West Bank is replete with Israeli check-points imposing severe constraints on freedom of movement for the refugees and other Palestinians. The separation wall has added considerably to these problems.

Some of the refugees who have managed to go abroad have not been allowed to return as they had not renewed their Israeli ID card. Family reunification has also been prevented (see efforts by the International Refugee Working Group in chapter on the “Peace Process”).

About 275,000 Palestinians live in the East Jerusalem which was annexed by Israel (along with the Golan Heights) after the 1967 war. The Jordanian government and the Palestinian parties have recommended that they boycott the Israeli elections. They have refused to apply for Israeli citizenship and have faced problems when wanting to travel. More than 14,000 have had their permanent residence status revoked. People owning homes or other properties have in a number of cases had them expropriated.

No secret is made on the Israeli side that Israeli politicians want refugees and other Palestinians on the West Bank to move away. On the Palestinian side there is a perception that this is the real reason behind the intrusive security checks and other constant harassment.

Gaza

In Gaza the majority of the population is recognised as refugees. Of the around 1.9 million inhabitants no less than 1.3 million are registered with UNRWA. The situation for all has been precarious for decades, and is now desperate. The reason is war, isolation and diminishing resources for UNRWA’s services, including in the eight refugee camps.

When Hamas took over the local administration in 2007, following its election victory, Israel imposed a strict land, air and sea blockade which is still not lifted.⁴ The Egyptian government has added to this isolation policy through heavy restrictions on the passage of goods and persons through the border crossing in Rafah. Access to markets and movements of people to and from Gaza have been severely restricted with devastating effect, according to UNRWA reporting in March 2018:

Years of conflict and blockade have left 80 per cent of the population dependent on international assistance. The economy and its capacity to create jobs have been devastated, resulting in the impoverishment and de-deployment of a highly skilled and well-educated society. The average unemployment rate is well over 40 per cent – one of the highest in the world, according to the World Bank. The number of Palestinian refugees relying for food aid has increased from fewer than 80,000 in 2000 to almost one million today.

The three major recent rounds of military hostilities have added to the crisis. In particular the Israeli fifty day operation in 2014 with extremely heavy bombardment from the air and the sea caused enormous damage in loss of life, displacement and destruction of infrastructure. Of the 2,131 killed no less than 501 were children.

These consequences must also be seen in the context of already existing poverty, frustration and anger, vulnerability and political instability as UNRWA stressed in the report:

The compounded effects of the blockade and repeated armed conflicts and violence have also had a less visible but quite profound, psychological impact on the people in Gaza. Among Palestinian refugee children, UNRWA estimates that a minimum of 30 per cent require some form of structured psychosocial inter-

4 The status of Gaza in UN terms is still one of occupation which has relevance for instance in relation to the Fourth Geneva Convention.

vention. Their most common symptoms are: nightmares, eating disorders, intense fear, bed wetting.

Tension between Hamas and the Fatah-dominated Palestinian Authority (PA) increased as a result of the armed confrontation in 2007. The PA leadership decided in April 2017 to stop paying the Israeli government for the transfer of energy to the Gaza strip, thereby causing another crisis for the population. They had now also to cope without electricity for 16 hours a day; a side effect of which was the breakdown of the sewage system.

A series of meetings in Cairo between representatives of the two Palestinian factions had not resolved this and other acute problems between them by the summer of 2018.

When visiting Gaza myself I have noticed the growing despair especially among the younger generation. The staggering unemployment for more than 50 per cent of them, the isolation from the outside world, the constant demonstration of Israeli military superiority, the lack of support from most Arab governments, the political chaos among their own leaders and lack of any promise for their own future and their families' – all of these aspects have created a desperate anger among many younger men and women; it should not be surprising that some have become radicalised.

Conclusions

More than 600.000 thousand Israeli settlers have now moved into the West Bank, including East Jerusalem, with the support of the Israeli government. This is in violation of Security Council resolution 2334 as well as of the Fourth Geneva Convention. The occupation has more and more taken the shape of de facto annexation. The possibility for movement is in reality severely restricted for Palestinians.

The blockade and the repeated military interventions into Gaza have had extremely serious consequences for the population. Civilians, including children, have not been spared. There is no doubt that such warfare undermines prospects for a peace settlement.

WAR IN SYRIA: REFUGEES HAVING TO FLEE ONCE MORE

Palestinian refugees who fled from Syria have not been welcome anywhere. Both Lebanon and Jordan – overwhelmed by the arrivals of other refugees – have introduced radical restrictions to block their entry. Some have been deported back to Syria where war continued.

Others have tried to find a way of reaching Europe, some risking their lives in hazardous boat travels on the Mediterranean. Those who have managed to get there have tended to be faced with a wall of hostility.

The budget crisis of UNRWA has made the situation of these refugees even worse.

A GREAT NUMBER of Palestinian refugees in Syria have become refugees for the second time during the years of devastating war. The exact number is difficult to assess and estimates vary between 120.000 and more than 160.000.

They have headed for Lebanon, Jordan, Turkey, Egypt or European countries. Some have also sought refuge in Gaza. In general, they have been received with much less understanding and support than other refugees coming from Syria.

As close neighbour countries, Lebanon and Jordan have been faced with a heavy burden as recipient of several hundred thousand people arriving from Syria. Both have introduced access restriction, in particular targeting the Palestinians among the refugees. In fact, a great number of the Palestinian refugees have been turned back by force when they tried to cross the border.

Lebanon

The Palestinian refugees who still managed to get through to Lebanon could not register with the United Nations High Commissioner on Refugees, UNHCR, as could other refugees from Syria. They had to turn to UNRWA offices in Lebanon which served around 40.000 of them at the end of 2017. Families have received a monthly subsidy of USD 100 per month for housing and for each person USD 30 for food and clothes. This is not much in today's Lebanon where the cost of living is rising. Also, the newcomers have to pay fees for the three-monthly visa to be able to stay.

A permanent residence permit is not available to them. Furthermore, there is a wide spread fear among them of being deported back to Syria, not least among those who have not been able to pay for the regular visa. Their risk of being caught in a police check-point and arrested is real.

The job market is closed to them. Those who manage to get a job in the informal sector tend to be exploited. When it comes to women the pattern is that they do not get even temporary jobs in the private sector. This situation has in turn created a problem of child labor.

When visiting Lebanon I met single mothers from Syria who had no other choice for the survival of their smaller children and themselves but to allow their young boys to leave the UNRWA school and roam the streets hoping to get a quick job for a few hours. The mothers were deeply agonised about this negative option.

On the whole there is widespread poverty among these refugees from Syria. Without UNRWA their situation would be totally disastrous. The budget crisis for the agency is already making their lives very difficult.

Jordan

The Jordanian authorities decided in January 2013 to ban entry of Palestinian refugees from Syria. More than one hundred Palestinians, including women and children, were deported back to Syria in violation of the principle of "non-refoulement". Even a number of Palestinians with Jordanian passports but living in Syria have been blocked from entering Jordan. Some of those deported

were deprived of their identity documentation before being sent back which created great difficulties for them at government or opposition check-points on the Syrian side.

Refugees with an unclear status have been placed in the special camp at KAP (King Abdullah Park). Among them are around 330 Palestinian refugees who are reported to be in the most precarious circumstances.

Palestinian refugees who had managed to enter Jordan before the restrictions have been kept separate from other refugees from Syria who have the support of UNHCR and were better treated, for instance in relation to the possibilities to enter the job market. The Palestinians coming from Syria have had to rely on support and protection from UNRWA.

UNRWA reported in early 2018 that it had registered around 17.000 Palestinian refugees from Syria, most of them staying in rented accommodation. The Agency has been providing basic health care and education for them. A cash assistance programme has been developed in order to meet other social needs. The idea is that the families themselves should be able to decide on their priorities. The monthly allotment is USD 40 per person with possibilities for some additional support in crisis situations.

As these refugees have little possibility to earn money themselves the cash programme has become important for their very survival. It has been seen as flexible, cost effective and dignified. However, the programme is underfunded and insufficient relative to the needs. UNRWA has reported that no less than 90 per cent of Palestinian refugees from Syria are in a vulnerable situation.

There is a risk that the current budgetary crisis for UNRWA will make it impossible even to maintain the present insufficient support programmes for the Palestinian refugees from Syria.

Gaza

Around one thousand of the Palestinians who fled from Syria are reported to be in Gaza. Several hundreds more reached Gaza but have managed to move on. The conditions in Gaza are difficult for everyone and there is little living space for newcomers. Even UNRWA could not commit itself to provide regular assistance and

the PA and the local authorities have only offered short-term assistance.

Other refugee destinations

Another route tried by fleeing Palestinian refugees has been to **Egypt**, but entry there has required a pre-approved visa. Another problem has been that they have not been allowed to seek the protection of UNHCR in Egypt even though UNRWA does not operate there. Instead they have been told to go to Lebanon or back to Syria. Some have been detained when caught trying to migrate to Europe in smuggler's boats. Others have managed to use such hazardous options.

Seeking asylum in other countries has been extremely complicated due to the difficulties to obtain travel documents. In spite of this, quite a number have managed to reach **Turkey** or **Iraq** and some to find their way to **Europe** along with other refugees from Syria. Among these, many have been registered with UNHCR.

The number of Palestinian refugees who have arrived in Turkey is reported to be around 8.000. Most are now located in the southern provinces not far from the Syrian border. This group also lives in precarious circumstances with limited possibilities to find jobs. The Syrian travel documents they have are not recognized by the Turkish authorities and they are on those grounds treated worse than other refugees from Syria.

Conclusions

Palestinian refugees fleeing from Syria should not be treated less well than other refugees from the war. They should be offered the same protection based on international standards of refugee rights, including the 1951 UN refugee convention and its 1967 protocol.

UNRWA IN REALITY: UNDERFINANCED, UNDERMINED AND OVERWHELMED

The full name of UNRWA is *United Nations Relief and Works Agency for Palestinian refugees in the Near East*. Its main task is to provide assistance and protection for Palestinian refugees within its area of operations to help them reach their full potential in human development. The Agency's services encompass education, health care, relief and social services, micro-finance, camp infrastructure and improvement, and emergency services. UNRWA's status as a temporary body has meant that it has never received the full backing it needed from the international community. Only a small part of its budget is covered from the core UN budget; the larger part is solicited as voluntary contributions from sympathetic member states. This is a major drawback for the key programmes on health care and education, which require long-range planning and competent, permanent staffing. At the same time, UNRWA requires further funding to meet the needs of population growth.

This funding system is also open to political blackmailing with potentially devastating consequences – as illustrated when the US government in early 2018 decreased its contributions radically at a time when further resources were desperately needed.

The emergency situations in Gaza, the West Bank and Syria have created acute funding problems. The response to the appeals for emergency assistance has not been enough. Over one million people in the West Bank and Gaza have in recent times been impoverished by the conflict, violence and restrictions. The need for food assistance, support to reconstruct destroyed homes and even cash assistance has become acute. The war in Syria has been particularly devastating for the Palestinian refugees.

The overwhelming majority of the UNRWA staff is Palestinian. When, one day, the agency can be phased out as a UN body, the experience within its staff will be of utmost importance for the development of the State of Palestine.

UNRWA WAS CREATED 1949 as a temporary body to provide for the basic needs of dispossessed Palestinians until a permanent solution of the crisis had been reached. The understanding was that the refugee problem should be resolved without much delay and that the agency could soon be closed down. In fact, UNRWA was first given funds and authority to carry on relief and work projects for only eighteen months.

Close to seven decades later the agency still exists and plays a crucial role to cover urgent humanitarian needs of a growing number of people. While it had a list of 860.000 recognised refugees in 1951, it now has to care under its mandate for more than five million. About one quarter of them live in camps.

Humanitarian work for the Palestinian refugees started immediately after the Arab-Israeli hostilities of 1948. Emergency assistance was initially provided by international organisations such as the International Committee of the Red Cross, League of Red Cross Societies and the American Friends Service Committee. In November 1948, the United Nations established the United Nations Relief for Palestinian refugees (UNRPR) to extend aid and relief to Palestinian refugees and coordinate efforts of NGOs and other UN bodies.

The next step was taken on 8 December 1949 when the UN General Assembly adopted Resolution 302 (IV) to establish UNRWA as a subsidiary organ of the United Nations. The agency inherited the assets of the UNRPR and took over the registration records of its predecessors. It started field operations in May 1950 and inherited a list of 950.000 persons from its predecessor agencies. The headquarters were established in Beirut where it stayed until 1978.

Definition

The operational definition of a Palestine refugee (this the UNRWA term, not Palestinian)⁵ was decided to be any person whose *“normal place of residence was Palestine during the period of 1 June*

5 Reference to “Palestine” instead of “Palestinian” was to make clear that UNRWA was mandated to support all refugees from Palestine, irrespective of their national/ethnic origin. The Agency has registered refugees from Palestine to some two dozen nationalities. The overwhelming majority are, however, Palestinians.

1946 to 15 May 1948 and who lost both home and means of livelihood as a result of the 1948 conflict”.

Those who fled for a second time as a consequence of the 1967 hostilities have been listed by UNRWA and are serviced like the 1948 refugees within the UNRWA geographic areas. West Bankers who fled for the first time were considered by the Jordanian government as internally displaced and have received support by the authorities in Amman. On an exceptional basis UNRWA was mandated to assist them as well.

Palestinian refugees in Egypt, Iraq, North Africa and the Gulf Arab countries were not listed due to the UNRWA's geographic limits. The displaced Palestinians and their descendants within Israel (estimated to be one fifth of the Israeli Arabs) were originally assisted by UNRWA but this programme was closed in 1951 when the Israeli government took over this responsibility.

There have been some middle-class refugees living outside the camps who have managed without assistance from UNRWA. Others not registered with UNRWA are children of Palestinian women who have married non-Palestinians.

Mandate, staffing and funding

The original mandate for UNRWA was the following:

- It should carry out direct relief and works programmes in collaboration with local governments.
- It should consult with the Near Eastern governments concerning measures to be taken preparatory to the time when international assistance for relief and works projects is no longer available.
- It should plan for the time when relief was no longer needed.

The mandate has been repeatedly renewed by the General Assembly. Exceptional services to refugees and people displaced by the Arab-Israeli conflict in 1967 and subsequent hostilities have

been added to the programme. The present mandate runs until 30 June 2020.

The operational mandate nowadays is to provide relief, human development and protection services to the 1948 Palestinian refugees as well as to persons displaced by the 1967 hostilities. Its area of operation is geographically limited to Jordan, Lebanon, Syria, West Bank and Gaza. The key activities are related to schooling, health care and relief and social services.

Today, more than half a million girls and boys attend the 700 UNRWA schools, with a personnel staff of 22.000. The 150 health clinics deal with 9 million cases annually; more than 3.000 are employed in this sector. About 900 staff members are running the relief and social services programme, which includes providing cash in emergency situations. Forty thousand loans were awarded by the microfinance programme.

As a UN agency UNRWA is unique in that its staff is overwhelmingly recruited among the people it is created to support. There are around 30.000 Palestinian employed while less than 200 of the posts are international.

Funding has not kept pace with the increasing needs of services for the growing number of refugees. This has resulted in a reduction of services. The average annual spending per refugee decreased from USD 200 year 1975 to USD 110 year 2017. This trend has continued.

The very system of funding is problematic. The budget depends largely on voluntary contributions from member states and is not part of the UN assessed contribution system. Only the core international staff posts are financed from the regular UN budget.⁶

The recent emergency situations in Gaza, the West Bank and Syria have created further major capacity problems. The response to the emergency appeals for assistance has not been sufficient. Over one million people in the West Bank and Gaza have in recent times been impoverished by the conflict, violence and restrictions. The situation is similar for the refugees in war torn Syria. The need for food assistance, support to reconstruction of destroyed homes and even cash assistance has become acute.

6 This applies to some other UN humanitarian agencies as well, for instance UNICEF.

Criticism from several directions

Many Palestinians feel that UNRWA is a symbol that their plight remains the responsibility of the international community. Its non-political approach, however, has disappointed those who have felt that “their” Agency should defend their rights more effectively. The bitterness against positions taken by the Security Council and some other UN bodies has tended to be directed also against UNRWA. However, with time the views of the agency have mellowed and criticism has tended to focus more on the shortcomings in its basic services. In fact, Palestinians at large are extremely keen on the continued presence of UNRWA as long as there is no solution to the conflict itself.

Israeli governments have been critical of UNRWA through the years. The mere existence of this agency has obviously been seen as an unwanted reminder of a problem created in connection with the birth of the State of Israel. There has also been criticism against the inclusion of descendants in the definition of a refugee. Furthermore, there has been a perception in Israel that the agency did not promote resettlement in the Arab host countries with sufficient determination – and thereby, at least indirectly, encouraging Palestinians to maintain their demand for a right to return. Some Israeli cabinet members have also argued that the refugee camps have become centers of hatred against Israel.

It is known that Prime Minister Netanyahu has advised the US government to minimise its funding of the agency and recommended that available resources instead be transferred to the Jordanian government. Although recommending that UNRWA be closed, he is also reported to have stressed that international aid be continued to cover humanitarian needs in the West Bank and Gaza. In fact, it is recognized not least by key representatives of the Israeli defense forces that UNRWA today serves the interests of Israel through taking on welfare obligations which normally would be the responsibility of the occupying power and thereby also contributing to making the situation somewhat less explosive.

Crisis upon crisis

In recent times UNRWA has again had to face disasters of enormous magnitude. The military operations in Gaza in 2014 gave UNRWA further burdens; in 2018 the Agency reported that thousands of Palestinian refugee families remained displaced and over fifty thousand homes had yet to be repaired. The continued blockade has caused increased poverty and added to the high rate of unemployment. Close to one million Palestinian refugees were dependent on UNRWA for emergency food assistance.

The war in Syria has victimised the Palestinian refugee community badly. UNRWA has, in spite of the overall disaster, managed to provide life support to the more than 400.000 remaining registered Palestinian refugees. More than 50.000 have sought to escape the hostilities through fleeing to Lebanon or Jordan – where their acute situation has required massive humanitarian assistance in order to prevent further agony. Vulnerable not least are the many families in which women are single parents. It falls largely on them to protect the children and ensure that they can access the schooling options available.

Funding crisis becoming worse

The UNRWA funding crisis has worsened considerably after the election of Donald Trump in the USA. More than ever the US humanitarian assistance is now deeply politicized. Trump has connected the US contribution to UNRWA to the degree of Palestinian support for his political positions. When the Palestinians condemned his decision to move the US embassy to Jerusalem, he responded through cutting contributions to UNRWA. His twitter argument: “We pay the Palestinians HUNDREDS OF MILLIONS OF DOLLARS a year and get no appreciation or respect”.

These cuts were dramatic as the US has over the years provided roughly 30 per cent of the Agency’s overall funding. In 2016 the US government gave more than USD 360 million to UNRWA. In January 2018 the new administration more than halved the first installment of its pledged contribution when signing a check for only USD 60 million rather than the agreed USD 125 million. Subse-

quently it blocked the distribution of USD 45 million in emergency food for Gaza and the West Bank. Some other donors have agreed to pay their dues ahead of time, but the crisis remained unresolved at the time writing.

Faced with this extremely serious funding situation the UNRWA leadership has launched a major fundraising campaign under the name of #DignityisPriceless. In particular they point to the human disaster situations in Syria, the West Bank and Gaza, stressing that *“1,7 million extremely vulnerable refugees rely on regular food and cash assistance”*.

UNRWA Commissioner-General Pierre Krähenbühl underlined that the emergency appeals were not a substitute for an urgently needed political solution to the underlying conflict, but *“fundamental to sustaining the dignity and strength inherent in the Palestinian refugee community”*.

Conclusions

A premature closure of UNRWA would be a serious and dangerous mistake. The programmes of the agency are absolutely essential for the more than five million who benefit from its services. Moreover, a decision to close or scale down these programmes would almost certainly result in a serious political crisis.

As a matter of immediate urgency, the financial crisis imposed on UNRWA has to be resolved. The gaps in the current budgets must be filled. Steps must be taken to ensure a more stable and predictable system of funding the agency for the future.

PART TWO

**INTERNATIONAL LAW
AND THE FAILURE TO
IMPLEMENT**

FACTUAL BACKGROUND: WHY THE REFUGEES ARE REFUGEES

People flee for a reason, so also Palestinians. It is clear that many were subjected to an extremely brutal campaign before and after the establishment of the Israeli state. Methods were used which could be regarded as war crimes or crimes against humanity. The atmosphere of danger and fear increased the number of people leaving.

While academic researchers have delivered facts about the methods used, there has been no serious, effective and agreed official review on what needs to be done in order to address this historic injustice. Murderers and other perpetrators have been treated with impunity.

TWO MAJOR CIRCUMSTANCES caused more than one million Palestinians to flee from their homes. One was the hostilities in 1947–1948 before and after the declaration of the founding of the State of Israel within Palestine. The other was the full-scale war in 1967 followed by the Israeli occupation. The estimated numbers of people fleeing in these cases were approximately 750.000 and 320.00.⁷

Almost none of these refugees has been allowed go back. With their descendants they are now more than five million.

Facts about what really happened to the Palestinians in these circumstances have been controversial and not agreed. However, not least through scholarly research, many essential facts have been unearthed, especially about the events in the late forties.

Findings by some Israeli researchers have been particularly enlightening. Reviews in the late 1980s of declassified documents have produced a better understanding. Benny Morris and other

7 These figures are to some extent questioned by Israeli representatives (see foot note 3).

historians have been able to make clear that Zionist leaders, not least David Ben-Gurion, had concluded that “transfer” of Palestinians was necessary in order to ensure a Jewish majority in Israel. There had been no call from Arab or Palestinian leaders for people to leave (as argued in the Israeli version).⁸ The “new historians” in Israel have concluded that the Palestinians left their homes as a consequence of war actions, expulsion, intimidation and fear.⁹

Commandos of the Irgun and the Stern gang attacked the village Deir Yassin on 9 April 1948. They met initially some resistance which they crashed with extreme violence. More than 100 villagers were killed in the massacre – including women, children and elderly people.¹⁰ Some of those still alive were put on trucks, brought to West Jerusalem and paraded through the streets where they were jeered, spat at and stoned.

The case of Deir Yassin has become well known. However, Benny Morris and other researchers have documented a number of other serious atrocities in villages and towns later in 1948, including murders and mass expulsions. The destruction of villages and towns was thorough and widespread. Morris listed 369 cases, while other researchers concluded that the number of evacuated and destroyed places was even higher.¹¹

None of the perpetrators of these crimes have been held to ac-

8 Sources: Benny Morris, *The Birth of the Palestinian Refugee Problem*; Tom Segev, 1949; Simha Flapan, *The Birth of Israel*; Ilan Pappé, *The Making of the Arab-Israeli Conflict 1957–1951*.

9 Benny Morris has stressed the impact of “the war, of the shelling, shooting, and bombing, and the fears that these generated”. Further, he has concluded that the flight of the Palestinians was also due to their incompetent leadership that failed to prepare properly for the war and left their communities leaderless. (Benny Morris: *Revisiting the Palestinian exodus of 1948* in “The War for Palestine. Rewriting the History of 1948”. Cambridge University Press, 2001).

10 The total number of people killed is disputed. A delegation from the International Red Cross Committee visiting Deir Yassin on 11 April estimated that the total number was more than 200. These observers reported also that women had been raped.

11 Professor Susan Akram refers to information that 530 Palestinian villages were completely or partly destroyed, that homes were dynamited, crops destroyed and towns and villages declared “closed military areas”. (*Palestinian Refugees. The Right of Return*, Pluto Press 2001, page 180).

count, they have benefitted from a total impunity.¹² It has been shown that Haganah, the main military arm of the Jewish community, played an active role in this campaign.

Even in 1967 there were several cases of deliberate destruction of villages. Aerial attacks, large scale detention of male civilians and repeated threats contributed to the mass “transfers” during and after the days of war.

Decision makers in Israel have argued that most actions taken were necessary to protect the security of the country, even with violent means. Though it is true that there were some Palestinian armed activities against the Jewish population, this does not justify the scope and nature of the atrocities committed as militarily necessary.

The conclusion by Benny Morris summarises what is known today about the 1948 background to the refugee crisis:

[T]he refugee problem was caused by attacks by Jewish forces on Arab villages and towns and by the inhabitants’ fear of such attacks, compounded by expulsions, atrocities, and rumors of atrocities – and by the crucial Israeli Cabinet decision in June 1948 to bar a refugee return.¹³

The Palestinians have through the years struggled for the Nakba not to be forgotten. The Israeli reaction regarding memory was described by the respected diplomat and politician Shlomi Ben-Ami¹⁴ in the following manner:¹⁵

The Israelis chose to repress the memory of their war against a dispossessed, autochthonous Palestinian community claiming

12 For such serious crimes there is no statute of limitation possible according to international agreements.

13 Source: the essay mentioned in footnote 6.

14 Shlomo Ben-Ami is a former Israeli Foreign Minister who also took part in several negotiation efforts including at Camp David II.

15 *Scars of War Wounds of Peace. The Israeli-Arab Tragedy*. Weidenfeld & Nicolson. Great Britain 2015.

national rights, and preferred the ethos of the struggle against foreign and supposedly superior invading Arab armies.

Israel as a society also suppressed the memory of its war against the local Palestinians because it could not really come to terms with the fact that its finest Sabras, the heroes of its war for independence and the role models of the new nation, expelled Arabs, committed atrocities against them and dispossessed them. This was like admitting that the noble Jewish dream of statehood was stained for ever by a major injustice committed against the Palestinians and that the Jewish state was born in sin. When the war was over the Palestinian problem practically disappeared from Israeli public discourse; it was conveniently defined as one of “refugees” or “infiltrators”. There was no Israeli-Palestinian conflict, hardly a Palestinian plight. This was submerged into one single issue: the Arab-Israeli conflict.

Conclusions

What happened in 1947–48 is known among Palestinians as Nakba, the catastrophe. The brutalities which triggered the exit and the ban on the possibility of returning have had an extremely deep impact on Palestinians in exile.

It will probably be impossible to reach a peaceful settlement without addressing this issue. Also, continued silence on this aspect of history raises moral questions and will further undermine global respect for international justice.

RIGHT TO INTERNATIONAL PROTECTION: ALSO FOR PALESTINIAN REFUGEES

UNRWA's mandate is focused on humanitarian assistance. However, it also has a protection role, though partly different from the one of the office of the UN High Commissioner for Refugees (UNHCR) which is specifically authorised to work for the implementation of international refugee law.

The 1951 Convention relating to the Status of Refugees says that those supported by other UN agencies (read: UNRWA) are not covered by that treaty.¹⁶ This has been interpreted by some to mean that Palestinians registered with UNRWA would have less internationally agreed rights than other refugees. This unfortunate perception is based on a misunderstanding.

THE 1951 CONVENTION relating to the Status of Refugees has an indirect reference to Palestinian refugees which has been misunderstood or deliberately misrepresented. In article 1D the Convention states that it does not apply to people who are receiving protection and assistance from UN bodies other than UNHCR. It was in fact clear when this formulation was agreed that it did refer to UNRWA not least.

For real understanding it is important to read the second sentence of this article:

When such protection or assistance has ceased for any reason,

16 *The 1951 Convention relating to the Status of Refugees*. Its article 1D states that the convention does "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".

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.

The UNHCR has clarified this in an official handbook:

With regard to refugees from Palestine, it will be noted that UNRWA operates only in certain areas of the Middle East, and it is only there that its protection or assistance are given. Thus, a refugee from Palestine who finds himself outside that area does not enjoy the assistance mentioned and may be considered for determination of his refugee status under the criteria of the 1951 Convention. **It should normally be sufficient to establish that the circumstances which originally made him qualify for protection or assistance from UNRWA still persist and that he has neither ceased to be a refugee under one of the cessation clauses nor is excluded from the application of the Convention under one of the exclusion clauses [emphasis added].**¹⁷

The meaning is that Palestinian refugees should have the same rights as other refugees, irrespective of which UN body had the more direct relation to the individual. The fact the Palestinian refugees outside the five UNRWA fields would have the same protection as all other refugees, speaks for such equal of treatment. This is also in line with the arguments voiced when the relevant documents were drafted and adopted.¹⁸

There is a historic background to this issue. Protection aspects for Palestinian refugees were originally to be covered by another body, the UN Conciliation Commission for Palestine (UNCCP), which was set up in December 1948 through the General Assembly resolution 194. The intention was that this Commission would also take over tasks after the murder of UN envoy Folke Bernadotte a couple of months earlier.

17 *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status*. UNHCR December 2011.

18 Susan Akram. See footnote 9.

UNCCP and UNRWA worked in parallel when UNHCR was established and at the time it was felt that Palestinians already had at least as good legal protection as that which UNHCR could offer. However, UNCCP was gradually undermined and then faded out, without UNRWA's mandate being amended on this aspect. This is one reason for continued misunderstandings.

The real situation today is that UNRWA has activities on protection within its area of competence and that it cooperates with UNHCR to ensure “continuity of protection”. Indeed, this part of the UNRWA programme has gradually been given more priority, which is reflected in its Mid-Term Strategy (2016–2021):

UNRWA contributes to the protection of Palestine refugees through the services it delivers and also through its protection work more broadly in accordance with its mandate. With regard to the situation of Palestine refugees, their protection concerns and the level to which they are in a position to fully enjoy their rights vary across UNRWA fields. Refugees are entitled to international protection that both reflects and aims to respond to their specific situation. Protection refers to all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and spirit of the relevant bodies of law (that is, human rights law, international humanitarian law and refugee law).

In fact, UNHCR and UNRWA have on occasion sought to intervene with governments when Palestinian refugees' lives and fundamental rights have been violated, unfortunately with limited results.¹⁹

Proposals have been made that UNRWA's work might be merged into UNHCR's programme. Considering the differences in expertise and working approach such a marriage would not be easy. However, it should be clarified that Palestinian refugees, connected to UNRWA or not, should have the same protection support as

19 For a thorough analysis of the common efforts to protect the rights of the Palestinian refugees see Lex Takkenberg: *“The Status of Palestinian Refugees in International Law”*. Clarendon Press. Oxford. 1998.

all other refugees. That intention was there from the beginning and should continue to be honoured.

The fact that Palestinian refugees differ from most other refugees in that they do not seek to settle in any other country – but continue to request the right to return – is no reason to deny them the benefit of international refugee rights.

The recognition of protection rights for all Palestinian refugees would of course be in line with international human rights standards which apply to all human beings. Also, the UN refugee conventions should be seen as relevant for them even if the host countries have not ratified these treaties – these should nowadays be understood as being relevant customary law.²⁰

The two UN conventions on *statelessness* are certainly relevant for Palestinian refugees who have no recognised citizenship.²¹ The convention of the Status of Stateless Persons has the same formulation as the 1951 refugee convention that those who have protection and assistance from a UN body other than UNHCR are not covered. Refugees serviced by UNRWA cannot therefore benefit from the treaty. However, there are a significant number of stateless Palestinians in countries where they live that are party to the two conventions on statelessness.

Conclusions

Palestinian refugees have the same right as other refugees to benefit from international norms on protection. This should be respected by the relevant States, including those relating to UNRWA as host country and/or members of the United Nations. Continued cooperation between UNRWA and UNHCR on protection issues is important.

The international community ought to find ways to ensure that the problem of statelessness among Palestinians is given a solution.

20 Lebanon, Syria and Jordan have not ratified the UN refugee treaties.

21 *1954 Convention relating to the Status of Stateless Persons* and the *1961 Convention on the Reduction of Statelessness*.

INTERNATIONAL LAW: IGNORED OR POSTPONED

The right to return to one's homeland is established and recognised as a human right. Palestinian refugees have been denied this right since the beginning of their dispossession.

UN General Assembly resolution 194 (III) adopted in December 1948 mentioned the right of return as well as the right to compensation. No meaningful, thorough discussion in bilateral or international contexts on the implementation of the resolution has taken place.

THE UNIVERSAL DECLARATION OF HUMAN RIGHTS – drafted and adopted by the United Nations in the late 1940s did include the *right to return* as a human right.²² Other international agreements have since confirmed the existence of this right. Among them the International Covenant on Civil and Political Rights (ICCPR).²³ The Fourth Geneva Convention makes clear that civilians, including refugees, in occupied territories also have this right.²⁴

Attempts made to undermine the relevance of these norms in the case of Palestinians have questioned whether the territory which the refugees left really was “*their country*”.

However, the UN committee monitoring the implementation of ICCPR has clarified that the right to return indeed applies also

22 UDHR, article 13,2: “*Everyone has the right to leave any country, including his own, and to return to his country*”

23 ICCPR, article 12.4: “*No one shall be arbitrarily deprived of the right to enter his own country*”.

24 Geneva Convention (IV), article 73.

to disputed territories and territories which have undergone political change:

The scope of 'his own country' is broader than the concept 'country of his nationality'. It is not limited to nationality in a formal sense, that is, nationality acquired at birth or by conferral; it embraces, at the very least, an individual who, because of his or her special ties to or claims in relation to a given country, cannot be considered to be a mere alien. This would be the case, for example, of nationals of a country who have there been stripped of their nationality in violation of international law, and of individuals whose country of nationality has been incorporated in or transferred to another national entity, whose nationality is being denied them.²⁵

Moreover, the Committee has ruled that the holders of this right were not only the original refugees and their families but also their descendants.²⁶

These authoritative interpretations have been mirrored in a number of UN resolutions throughout the years. A General Assembly resolution 1974 reaffirmed *"the inalienable right of the Palestinians to return to their homes and property from which they have been displaced and uprooted, and calls for their return"*. The text also connected this right with the right to self-determination.²⁷

In a resolution in 1997 the General Assembly again stated that it *"Reaffirms the right of all persons displaced as a result of the June 1967 and subsequent hostilities to return to their homes or former places of residence in the territories occupied by Israel since 1967"*.²⁸

Other international law provisions are relevant in the case of Palestinian refugees. The forcible transfer of people during the 1967 war violated International Humanitarian Law (IHL). The

25 ICCPR General Comment 27, paragraph 20.

26 ICCPR General Comment 27, paragraph 19.

27 General Assembly Resolution 3236 (XXIV).

28 General Assembly Resolution A/RES/52/59.

Fourth Geneva Convention spells out the obligations of the occupying power which have been largely ignored by Israel in the West Bank. Humanitarian law norms have also been violated during Israeli military operations in Gaza.

Right to a remedy

A key source in discussions about the right of return for the Palestinians has been the General Assembly resolution 194 (III) from December 1948.²⁹ It stated that the Assembly:

Resolves that the 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 the loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible.

The substance of this resolution has never been accepted by successive Israeli governments. However, its approach has been crucial in international discussions as it confirms the right to return but at the same time provides for compensation as an option if chosen by individual refugees.

However, the resolution met resistance also from the Palestinian side. Within the PLO there was a fear that this text would be interpreted as an indirect recognition of the State of Israel and thereby undermine the basic right of return. It was only with the acceptance of a two-state solution in 1988 that resolution 194 (III) was finally accepted. Indirectly, PLO had with this also recognised that a returning refugee might go to a Palestinian state entity instead of to the current State of Israel.

This created an opening for a more realistic discussion on ways of responding constructively to the resolution in a manner which

29 General Assembly Resolution 194 (III), paragraph 11.

also would involve remedies other than the literal moving back to the original homes. Legal scholars have identified the following possible remedies beyond restitution: compensation, rehabilitation, satisfaction and guarantees of non-repetition.³⁰

Conclusions

The right of return for the Palestinian refugees has been wrongfully denied. This should have been remedied long ago but the passing of time is not an acceptable justification for continued non-action.

The starting point has to be resolution 194 (III). The genuine wishes of the individuals should be explored and respected. Options regarding places of residence as well as level and type of compensation have to be worked out. No real progress will be made on this longstanding crisis issue without a determined involvement of the international community.

The lack of any progress on this issue is a major reason for the continuation of the conflict. Peace is unlikely as long as this injustice remains unresolved.

30 Ata R. Hindi: *Prolonging Short-Term Solutions. Palestinian Refugees in the oPt: Representation, Protection & Assistance*. Contribution to "Ending the political representation of Palestinian refugees in the West Bank and Gaza Strip". Ibrahim Abu Lughod Institute for International Studies, Birzeit.

PART THREE

**PEACEMAKING
ATTEMPTS**

"PEACE PROCESS": REPEATED POSTPONEMENT OF REFUGEE RIGHTS

The Israeli-Palestinian conflict has not been forgotten. Indeed, it has been high on the international agenda for more than seventy years. Repeated attempts have also been made to initiate and pursue a peace process. However, very limited results have been achieved.

The State of Israel now controls a considerably larger area than was outlined by the 1947 UN resolution about dividing Palestine into two parts. These changes have been established not by negotiation but by military force. Today, more than three and a half million Palestinians live under Israeli military control, under occupation or intrusive blockade.³¹ The overwhelming majority has never experienced a day under any other rule.

The repeated wars have step by step created an ever deeper conflict. Efforts by the United Nations and concerned UN member states have failed to break the vicious cycle. The international actors have often lacked the degree of necessary impartiality and political strength or energy to be able to achieve meaningful results. The failure of the "peace process" has tended to further increase the tensions.

The situation of the Palestinian refugees has repeatedly been postponed during negotiations. The issue has been defined as a "Final Status issue" to be put on the agenda at a later stage when a comprehensive, ultimate deal was to be sorted out.

THE FIRST INTERNATIONAL REQUEST that Israel must allow the refugees to return back, came in a report by the UN mediator Count Folke Bernadotte who arrived to the region in June 1948. His report in

31 This figure does not include the around 1.9 million Palestinians living in Israel proper.

September included a demand that Israel should allow those in the Arab population who had fled to come back. The day after the report was issued he was killed.

The murder followed heavy criticism of Bernadotte for being too pro-Palestinian. The US government objected to his report which then was never approved.

UN resolution and establishment of a committee

However, in December 1948 the UN General Assembly adopted resolution 194 (III) which mandated the UN Conciliation Commission on Palestine (UNCCP) and in chapter II suggested a solution to the refugee issue: based on both return and compensation. UNCCP followed up some aspects of Bernadotte's report. In discussions about the refugee issue Israel offered in 1949 to absorb 100.000 returning refugees, a pledge which was never realised.

Resolution 242

After the 1967 Six-Day War the Security Council unanimously adopted the often quoted resolution 242. It demanded a withdrawal of Israeli armed forces from territories occupied in the recent conflict. Further, it requested an end to belligerency between "States concerned" (Israel and the Arab neighbor countries). On refugees the resolution affirmed the necessity for a "just settlement of the refugee problem".

There were at the time conflicting interpretations of aspects in the resolution, but with time both Israel and PLO had accepted that the resolution as a whole could be the basis for future negotiations. Ever since there have been references to resolution 242 in almost all international discussions on the conflict. However, implementation has been missing.

Refugee Working Group within the Madrid process

In 1991 the US government took a major initiative in order to pursue multilateral as well as bilateral consultations to promote peace. This "Madrid Process" faced a number of obstacles from

the very beginning. Israel demanded that PLO should not be invited, with the result that only Palestinian individuals from the West Bank could attend and then under the Jordanian flag.

However, it was possible to establish five multilateral working groups, one of which was to deal with the refugee issue. Again, Israel was reluctant to take part and wanted to limit the scope of the discussions. The governments in Syria and Lebanon decided not to participate at all.

This multilateral working group on refugees (RWG) was chaired by Canada. Other international participants were asked to take on specific topics, for instance France became responsible for the issue of family reunification and Sweden for the situation of the refugee children.

Meetings were held 1992–1996 but concrete results did not emerge. An agreement was reached on a quota for family reunification (the implementation of which was later diluted by Israeli bureaucracy – only a minor part of the applications were approved). The Israeli delegation did not want a discussion of any political aspect of the refugee problem and the Palestinians were critical that the chair prevented exchanges on repatriation.

Still, it could be argued that the very existence of RWG contributed to more awareness of the unresolved problem of the Palestinian refugees. Towards the end of its work a paper was presented by Marc Peron in the Canadian delegation which was never seriously discussed in RWG but is still of some interest. This so called *Vision Paper* was based on consultation with regional parties and it defined “taboos” which must be challenged in order for future discussion to be meaningful.

The paper argues that the refugees must be provided “with options from which they can make a free and informed choice”. This would require more clarity on the concrete substance of the real options. One aspect mentioned relates to the “absorptive capacity” in the future West Bank and Gaza. Parallel to such clarifications it would be necessary to know more about the individual situations and preferences of the refugees. In other words, the paper highlights the need to start preparing a serious implementation phase in the work for the rights of the refugees.

Oslo agreements and their consequences

The work of RWG coincided with the “Oslo Process” and its “Declaration of Principles” (DOP). The stated intention was that the agreement would take force after an interim period of five years. The refugee dimension in the accord related to the “displaced persons” who had been uprooted in connection with the 1967 war, including during the first stage of the occupation. The solution for these people was to be dealt with by a special committee: the Quadripartite Committee on the Displaced Persons (QPCDP). This mechanism would be served by representatives of the two parties plus the governments of Jordan and Egypt.

A major outcome of the Oslo Process was the creation of the Palestinian Authority (PA). This had some implications on the refugee issue. One related to doubts whether there would be the capacity to receive homecoming refugees in areas administered by a Palestinian authority. This aspect was seen as relevant in relation to suggestions that return was possible only to non-Israeli parts of the original Palestine.

The other implication touched on the relationship between the PLO and the PA. In spite of the overlapping leadership between the two, a rift emerging between those in the West Bank and Gaza and those in the diaspora could not be prevented. Leaders in the occupied territories were perceived as more inclined to compromise than the refugees in Lebanon and other host countries.

The QPCDP could not find a way of reaching results on the people displaced in 1967. The procedure allowed for individual cases to be vetted by Israeli authorities, which used its veto power in case after case.

Clinton initiatives

The approach of President Clinton’s Camp David initiative in the year 2000 was basically that the refugee matter should be referred to the final status negotiations. In his parameters on 23 December he did however make a comment: Palestinians had to waive their claim to an unlimited “right of return” to Israel proper. Israel should acknowledge the “moral and material suffering caused to the Palestinian people by the 1948 war”.

Furthermore, Clinton proposed the establishment of an international commission to implement all aspects dealing with refugees as part of a permanent peace agreement. The Palestinian state would accept all refugees wishing to settle in its territory. The remaining refugees would be rehabilitated in their host countries, immigrate to third-party countries, and a limited number could settle in Israel if it agreed to accept them. When this had been achieved both sides would declare that UN resolution 194 had been implemented.

The Clinton “parameters” did influence confidential talks which took place in the Egyptian town of Taba in January 2001 between high level representatives from both the Israeli and the Palestinian side. Both sides published a statement confirming that they had never before been so close to an agreement. However, what was agreed there became redundant as the political scene in Israel changed when Prime Minister Ehud Barak lost the election to Ariel Sharon.

The thinking in Taba survived in the “Geneva Accord” drafted partly by those who had been involved in these talks (see the chapter “Steps towards a Solution”).

The Arab League made a statement at a meeting in Beirut in 2002 which was interpreted as a constructive step towards solution of the conflict. The key point was a suggestion that relations between its members and Israel should be normalised after Israel had withdrawn from areas occupied 1967. On the refugee issue it stated that there should be a just solution based on the UN resolution 194 (III).

The Middle East Quartet was set up in 2002 as a reaction to the increase of violence in the context of the Second Intifada. Members are the UN secretariat, USA, Russia and the EU. The members hold meetings and make statements. The mode of operation is reactive rather than preparing strategic measures to end the conflict. The attempt with the road map ended without result. Although the US played a major role in formulating the document, Prime Minister Sharon had many objections to the text. One was that the right of return should be rejected.

The US State Department under John Kerry made an almost desperate effort in 2013–2014 to get peace talks on track. Nine

months were set aside for high level consultations in order to achieve results. In the end Kerry had to give up and delivered a speech which has been seen as his and President Obama's real thoughts on the actual obstacles to a meaningful peace process.

On the refugee question he had the following to say on what should be done:

Provide for a just, agreed, fair and realistic solution to the Palestinian refugee issue , with international assistance, that includes compensation, options and assistance in finding permanent homes, acknowledgement of suffering and other measures necessary for a comprehensive resolution consistent with two states for two peoples. The plight of many Palestinian refugees is heartbreaking, and all agree their needs must be addressed. As part of a comprehensive resolution, they must be provided with compensation, their suffering must be acknowledged, and there will need to be options and assistance in finding permanent homes. The international community can provide significant support and assistance, including in raising money to help ensure that compensation and other needs of the refugees are met, and many have expressed a willingness to contribute. But there is general recognition that the solution must be consistent with two states for two peoples, and cannot affect the fundamental character of Israel.

Conclusions

There have been repeated requests in UN resolutions to address the refugee issue and work out a just and fair solution worked out to implement the right of return. In earlier international attempts to promote peace talks the tendency was to regard the issue as purely a humanitarian problem. Over time the political dimensions have come more into focus and with that a tendency to postpone the entire issue to “final status” negotiations, thereby leaving aside the very root of the conflict. This has been a major mistake.

The international community has a responsibility for this failure. However, the positions and actions by the parties have not

helped. Israeli officials' total denial of any responsibility for the crisis and the inept response of Palestinian leaders have blocked constructive proposals for solutions.

POSITION OF THE PARTIES: SECURITY VERSUS RIGHTS

“At Camp David, the Palestinians maintained their traditional demand that the right of return be implemented. They demanded that Israel recognise the right of all refugees who so wished to settle in Israel, but to address Israel’s demographic concerns, they promised that the right of return would be implemented via a mechanism agreed upon by both sides, which would try to channel a majority of refugees away from the option of returning to Israel. According to U.S. Secretary of State Madeleine Albright, some of the Palestinian negotiators were willing to privately discuss a limit on the number of refugees who would be allowed to return to Israel. Palestinians who chose to return to Israel would do so gradually, with Israel absorbing 150.000 refugees every year.”

“The Israeli negotiators denied that Israel was responsible for the refugee problem, and were concerned that any right of return would pose a threat to Israel’s Jewish character. In the Israel proposal, a maximum of 100.000 refugees would be allowed to return to Israel on the basis of humanitarian considerations or family reunification. All other people classified as Palestinian refugees would be settled in their present place of habitation, the Palestinian state, or third-party countries. Israel would help fund their resettlement and absorption. An international fund of USD 30 billion would be set up, which Israel would help contribute to, along with other countries, that would register claims for compensation of property lost by Palestinian refugees and make payments within the limits of resources.”

From an official US release after the Camp David talks in December 2000.

THE BOX ABOVE SUMMARISES the position of the two sides – at least as they were understood earlier. The leading Palestinian representatives do feel the obligation to defend the fundamental position and continue to demand full repatriation – while at the same

time letting it be known that they are open to compromises. The Israeli representatives have only offered some minor humanitarian contributions and proposed resettlement in Arab countries.

Palestinian positions

The Oslo agreement to establish a Palestinian Authority in parts of the occupied territory had some consequences on the refugee question. The return of the PLO/PA leadership tended to create a divide between them and the refugees in the diaspora. Among refugees in Lebanon and other host countries there was a feeling of being forgotten as the PLO/PA leaders were busy with state building in cooperation with the Israelis.

The suspicion that the leadership was moving away from the position of full repatriation had started spreading earlier, not least with the PLO's 1988 recognition of Israel and the two-state model. It is not certain that leaders in Ramallah would have support from the diaspora if making compromises on repatriation. Hamas and other Palestinian political parties are likely to be critical. The current leadership of PLO has in reality accepted that full return to their original homes in Israel is a position which is no longer realistic. However, they continue to demand repatriation to somewhere in Palestine (meaning to the future Palestinian state). They insist on compensation for lost properties but also for the pain of enforced exile. That Israel must admit responsibility is still among their demands.

Rashid Khalidi, a widely respected US professor with Palestinian connections, outlined in an article 1994 some crucial components of a solution of the refugee issue.³²

- i. "There must be 'symbolic' rectification to the problem, and this could be accomplished by having Israel acknowledge throughout its institutions (e.g. in the educational system and the military establishment) the injustice done to the Palestinians.

32 Rashid Khalidi: *"Toward a Solution"* in Palestinian Refugees: Their Problems and Future. The Center for Policy Analysis on Palestine, Washington DC. 1994.

- ii. The Israelis must acknowledge in principle that the Palestinians have the right of return, even though it is difficult to implement in practice. In line with this principle, Israel should allow the return to their homes of a few thousand or tens of thousands on a regulated basis.
- iii. Compensation should be paid to all Palestinians not wishing or unable to return to their homes.
- iv. The new state of Palestine will be the state of all Palestinians irrespective of where they live; for the refugees (and others) this means granting citizenship rights in principle to all Palestinians to live in this state and hold its passport.
- v. The citizenship status of the Palestinians in Jordan must be regularized by granting them full citizenship rights as Jordanians or, in the case of a federal arrangement, granting them Palestinian citizenship as citizens of the new Palestinian state. With regard to those in Lebanon (and Syria), a few would be allowed to return to their homes in Israel proper, others should be given Palestinian passports to enable them to travel abroad in search of work, but the majority would have to stay in Lebanon as holders of Palestinian nationality. This would lead to concrete improvements in their civil rights as residents in Lebanon.”

Israeli positions

Israeli representatives have repeatedly stated that Israel has no responsibility for the refugee crisis and its origin. The government has only been willing to receive a limited number of humanitarian cases and to contribute some funding to solutions in other countries. Its opinion has been that the refugees should be reset-

tled in the Arab countries. During some stages of international discussions, Israeli representatives have also agreed that refugees could be received in a future Palestinian state.

Security considerations have certainly had a heavy impact on the Israeli approach. Terrorist attacks against Israeli citizens have strengthened this concern. The other major aspect has been the increased emphasis on the Jewish character of the state.

An argument used earlier, also in the Refugee Working Group, was that they had received Jewish refugees from Iraq and North Africa and that the two migration flows should be seen as balancing one another *quid pro quo*. However, this argument is seldom heard any longer, perhaps for two reasons. It could be understood as an indirect admission of responsibility. Also, this argument did not impress foreign diplomats who felt that this aspect was rather a question between Israel and these Arab countries.

Shlomo Gazit, ex-general and key advisor to the Israeli delegation at the multilateral negotiations, gave a thorough analysis of the Israeli considerations in a report 1994.³³ He underlined that the Israeli position was that 'return' under no circumstances could be provided to the Palestinians. If a small number were allowed to return, the criteria for admission would be purely humanitarian and secondary to Israeli security and the national interest.

However, Gazit suggested that the right of return nevertheless should be recognized in the abstract, though there could, he added, not be any freedom of choice between moving to Israel and to a future Palestinian state.

For the preparation of final status negotiations he requested the following steps:

- vi. Palestinian leadership should issue a 'renunciation' of the right of return.
- vii. UNRWA in the Gaza strip and the West Bank should be dismantled.

33 Shlomo Gazit: "*The Palestinian Refugee Problem*". Jaffee Center for Strategic Studies, Tel-Aviv University, 1994.

viii. The special status of refugees should be abolished.

ix. Refugees living in Gaza and the West Bank should be absorbed and rehabilitated.

He expected that the PA would initiate a law of return which would entitle every Palestinian in the diaspora to return to the new Palestinian entity and obtain citizenship there. Moreover he argued that Israel should issue a 'moral-psychological acknowledgment' recognising the suffering endured by the Palestinians. To avoid the risk that such a move would be misunderstood as accepting culpability, he suggested the statement could be expressed in a UN resolution which also would replace article 11 of resolution 194 (III). He meant that Israel could support such a new resolution.

Changed realities, changed positions

Time has passed since the discussion in the 1990's. Leaders of PLO/PA have signaled that they would be open for other options than a return of refugees to the places they once lived, as long as they could choose between reasonable options. However, the dream and demand for a return home, the real home, is still very much alive in diaspora circles. The issue is therefore very sensitive in inter-Palestinian relations.

The Israeli position has hardened. While Palestinians earlier were requested to recognize the state of Israel, the demand now is that they should recognise also its Jewish character. This is unlikely to happen as such recognition would be understood as a betrayal of the interests of those Palestinians who still live in Israel today.

In fact, efforts are made by the Israeli authorities to encourage Palestinians living in the West Bank, including Jerusalem, to leave. It has become more and more clear that the current government is not seeing the West Bank as part of a future Palestinian state to where refugees could move back to. The prospects for negotiations have changed radically.

At the same time Israeli representatives have gradually managed to influence the narrative on the refugee crisis: advocacy for

the right of return are now increasingly equated to negating Israel's right to exist.

It should be understood that this issue has a traumatic dimension for Israel. Discussion based on the assumption that major misdeeds or worse were committed at the time of the birth of the state is not easy to digest. No country would like its national heroes or former political leaders to be referred to as war criminals. It is therefore not difficult to understand the hesitation to enter into discussion about this part of history, in particular for people whose relatives have suffered the worst atrocities in history. The fact that Israeli scholars have contributed to the exposure of the real facts has not been a consolation.

In spite of enormous military resources and full support from the only superpower, there is still a perception in Israel of being under existential threat. Security is seen among the majority today as justifying an oppressive policy towards Palestinians. The fact that Palestinian political leaders have not managed to prevent and stop individual terrorist attacks against Israelis has clearly underpinned this argument and has had disastrous effects.

Major attitude changes are necessary on both sides. As one informed legal observer once wrote:

The Israelis will eventually have to recognize that they are not entitled to determine the future of the Palestinians. Their right simply does not go that far. Only an agreement between Israeli politicians who subscribe to this vision and the Palestinian counterparts who understand the Israeli fear, will finally be able to resolve the conflict, thus paving the way towards a just and comprehensive solution of the Palestinian refugee problem".³⁴

This was written two decades ago. It is more true than ever.

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

Conclusions

Israel appears to be less open than ever to allow Palestinian refugees back, including to the occupied territories. On the Palestinian side opinions are divided; the present leadership is facing difficulties in getting full support for making compromises.

At the same time it is obvious that a solution to this crisis is absolutely necessary – not only for humanitarian reasons, but also to make possible a meaningful peace process. This requires a well prepared and competent initiative from the international community.

STEPS TOWARDS A SOLUTION: RIGHTS-BASED AND POSSIBLE

One of the more serious attempts to lay the ground for meaningful “final status” negotiations was delivered by the *Geneva Initiative* in a by-partisan, unofficial document outlining a model for a final agreement. One chapter in this “Geneva Accord” suggests a comprehensive agreement on how the refugee question should be resolved. Its proposals reflect the spirit of relevant UN resolutions – including the General Assembly resolution 194 – as well as the vision paper of the Refugee Working Group and President Clinton’s parameters.

AFTER THE FAILURE OF the 2000 Camp David talks and the publication of Clinton’s parameters, representatives from both sides met in Taba to work out a document as model for a mutually agreed peace agreement. Initiators were Yossi Beilin and Yasser Abed Rabbo, both of these prominent politicians had taken part in the 2000 Camp David talks.³⁵

The atmosphere of optimism around this initiative was shaken by the election result in Israel in February 2001. However, some people on both sides continued to meet and founded an organization in order to promote its approach and concrete proposals. In October 2003 they made public their *Geneva Accord* at an event

35 Beilin was Minister of Justice and later Minister of Religion. Abed Rabbo had position as Minister of Culture and Information in the cabinet of the Palestinian Authority.

in this Swiss city. It was widely welcomed on the international scene, including by a number of governments. But the Israeli government, now with Ariel Sharon, was critical as was to some extent the Palestinian leadership. That a group of private individuals – albeit with a background and contacts in leading circles – tried to dictate to the ultimate decision makers how they should make compromises for peace, was seen as improper and much too pretentious.

However, the initiative had some grass root support and financing from outside, which made it possible to build a more structured organisation with an office on both sides. In 2009 it published a new version of the Accord. The refugee issue is of course dealt with in this document.

The chapter on refugees starts with the following statement:

The Parties recognizes that, in the context of two independent states, Palestine and Israel, living side by side in peace, an agreed resolution of the refugee problem is necessary for achieving a just, comprehensive peace between them.

Next, it states that UNGA resolution 194, UNSC resolution 242 and the Arab Peace Initiative represent the basis for resolving the refugee issue.

It appeals to the international community to participate fully in resolution of the refugee problem, including through establishing an International Commission and an International Fund for this purpose.

The solution regarding the future residence for the refugees should build on offering them an informed choice between prepared options. These would be the following:

- x. **State of Palestine.** This option should be the right of all Palestinian refugees and shall be in accordance with the laws of the State of Palestine.
- xi. **Areas in Israel being transferred to Palestine in the land swap, following assumption of Palestinian sov-**

ereignty. This option should also be open for all the refugees.

- xii. **Third countries.** This option shall be at the sovereign discretion of third countries and shall be in accordance with numbers that each country will submit to the International Commission. These numbers shall represent the total number of Palestinian refugees that each country shall accept.
- xiii. **The State of Israel.** This option shall be at the sovereign discretion of Israel and will be in accordance with a number that Israel will submit to the International Commission. This number shall represent the total number of Palestinian refugees that Israel shall accept. As a basis, Israel will consider the average of the total numbers submitted by the different third countries to the International Commission.
- xiv. **Present Host countries.** This option shall be in accordance with the sovereign discretion of the present host countries. Where exercised this shall be in the context of prompt and extensive development and rehabilitation programmes for the refugee communities.

On compensation the Accord stated that *“refugees shall be entitled to compensation for their refugeehood and for loss of property. This shall not prejudice or be prejudiced by the refugee’s permanent place of residence”*. Furthermore, it would be accepted that the agreed Israeli financial contribution would be delivered in “lump sum” to the International Fund and that no other financial claims would be made against Israel.

The Palestinian refugee status would be terminated when the individual refugee’s permanent place of residence had been determined by the International Commission. UNRWA would thereafter be phased out during a five-year period.

Components for a solution

Certainly, the situation on the ground is very different today from what it was in 1948 or 1967. The homes which were left in most cases no longer exist and villages are destroyed. How then could the right of return as stipulated in the UN resolution be fulfilled so many years later? To what extent could the interpretation of this right now be reformulated and adjusted to today's reality – without losing its real essence? The approach of the more moderate actors on both sides has been, as with the Geneva Initiative, to propose various possible options for the refugees to respond to.

The key would of course be the nature of these options and whether any of them would be welcomed in individual cases. What has been proposed includes of Israel to receive some of them (though it is understood that these would be rather few); that a Palestinian state would receive many and grant citizenship also to those who would live outside the country (which raises a number of questions regarding the adjustment capacity of a state built on West Bank and Gaza); and that there would be some form of recognition by Israel of its part of responsibility for the refugee crisis (an idea that Israel so far has rejected); and that compensation should be made available not only for lost property but also for the enforced refugeehood (all of which would require considerable financial resources). Money should also be made available to host countries for integrating refugees.

Even if such a package in theory would be agreed between Israeli and Palestinian representatives (including a large part of the refugee community), there would be severe difficulties to start processes of real implementation. The capacity of absorption by a new Palestinian state would be challenged. There would certainly be a need of a strong international involvement, both diplomatically and financially.

Conclusions

It is often pointed out that the basic elements in a final, sustainable peace agreement are already on the table, but that the political will and ability to move in that direction is missing. This is largely true and Israel has a major part of the responsibility as the

by far strongest party to the conflict. However, the Palestinian political forces have contributed to the continued deadlock by feeding into concerns in Israel about its security.

Most proposals so far have built on the assumption that this security would be guaranteed while the human and national rights of the Palestinians would be protected. However this approach is built on the understanding that there will indeed be a Palestinian state. This assumption can no longer be taken for granted in view of the gradual Israeli annexation of the West Bank and the changed US position on the conflict.

PART FOUR

SUMMARY CONCLUSIONS

RECOMMENDATIONS

THE INTERNATIONAL COMMUNITY must continue to insist on the right of return for the Palestinian refugees. The injustices in past should have been addressed long ago. Time has not healed the wounds and conditions today for the refugees in exile or in the occupied territories are unacceptable. The international community must share the responsibility.

The continued agony of the refugees is the product of the unresolved conflict as a whole. This understanding has fed a perception that there cannot be a genuine solution to the refugee crisis before a comprehensive peace agreement is agreed between Israel and Palestine.

However, the continued postponement of dealing with this problem in fact undermines the prospect of resolving other aspects of the conflict as well. The fate of the refugees is not a side issue, but a main obstacle to the overall peace efforts.

Serious work must be initiated in order to analyse and act upon all the various aspects of the refugee problem. This will require another approach from the international community. There is a need of real determination to develop and operationalise proposals already made in the Geneva Accord and by rational, peace-friendly politicians and scholars mentioned in this report. It must be clear that the international community can no longer accept Israeli government obstructions to meaningful negotiations.

A restart for a political solution has to be combined with prompt and effective measures to address the ongoing humanitarian crisis, including through securing the necessary funding of the

UNRWA programmes. This is a question of justice and humanitarian imperatives. It is clear that failures to meet this challenge will also have dangerous political consequences.

In the spirit of encouraging a meaningful discussion on this issue, twelve recommendations are presented below as a summary and conclusions of this report.

Establishing justice

- The international community must give sufficient priority to the situation of the Palestinian refugees. The continued denial of their rights violates international law and undermines prospects for peace in the region. The international community should no longer agree to the postponement of serious discussion about the refugee issue until a “final status” stage.
- A special International Agency should be established with the task of organizing and ensuring a concrete implementation of the right of return and compensation for the Palestinian refugees. In parallel, an International Fund should be set up in order to secure the necessary funding of this operation. Obviously, these structures should be set up within a United Nations framework and with broad support from member states.
- The General Assembly Resolution 194 (III) is the obvious basis for this endeavor. Refugees should be offered different options on where to settle. These have to be well prepared in order to be realistic and satisfy the needs of the refugees.
- It will be necessary to define how compensation for lost property should best be organised, funded and allocated.

- An offer of compensation for the suffering endured during the enforced exile should be part of the package prepared by the Agency. Israeli recognition of its responsibility will be needed for the process to succeed.
- Governments in current host countries should be invited to actively participate in this process and Member States of the United Nations should be encouraged to contribute to the funding for the solution of this long-standing crisis.

Addressing the acute humanitarian needs

- As a matter of immediate urgency, the financial crisis imposed on UNRWA has to be resolved. The gaps in the current budgets must be filled. Steps should be taken to ensure a more stable and predictable system of funding its programmes for the future.
- UNRWA should be kept going until a just and lasting solution to the demands and needs of the refugees is in place. The mandate and operational undertakings of UNRWA ought to be reformed in certain areas. The perceived protection gap needs to be filled in coordination with UNHCR. Such changes should, however, not be allowed to delay the acute need to ensure full support for the current UNRWA programmes.
- The life situation for the refugees in the occupied territories is extremely precarious, particularly in Gaza. Real efforts must be made to resolve the urgent humanitarian needs without delay. For the longer run it must be realised that the occupation and the blockade are major roots to these disastrous conditions.
- While waiting for a lasting solution to the political

rights of the refugees, their social and economic rights should be respected in the current host countries. The denial of these rights, including residency rights, in Lebanon has to change. For this, international support should be made available.

- There are some groups of refugees who – for different reasons – have not been registered by UNRWA and/or the host countries or have even been unable to obtain identity documents. They are therefore in a most vulnerable situation. Although these cases are not many, it is important that this injustice is urgently addressed.
- Palestinian refugees fleeing from Syria should not be treated less well than other refugees from the war in that country. They should be offered the same protection based on international standards of refugee rights, including the 1951 UN refugee convention and its 1967 protocol.

The Palestinian refugees have been denied their right of return. This injustice should have been corrected long ago. Time has not healed the wounds and conditions today for the refugees in exile or in the occupied territories are totally unacceptable. The international community must take part of the responsibility.

The continued postponement of dealing with the refugee question undermines the prospect of resolving other aspects of the Israeli-Palestinian conflict. The fate of the refugees is not a side issue, it is a major obstacle to the overall peace efforts.

Serious work must be initiated in order to analyse and act upon all aspects of the refugee problem. This will require another approach from the international community. This report highlights constructive, peace-oriented proposal already made. These should be taken seriously, further developed and operationalised – and no longer be obstructed.

A restart for a political solution has to be combined with prompt and effective measures to address the ongoing, devastating humanitarian crisis, including through securing the necessary funding of the UNRWA programs. This is a question of justice and humanitarian duties. It is clear that failures to meet this challenge will also have dangerous political consequences, even beyond the present atmosphere of terror.

ABOUT THE AUTHOR

Thomas Hammarberg is a Swedish diplomat and human rights expert. He represented Sweden in the Refugee Working Group established through the Madrid Peace Process in 1991. In that context he was responsible for addressing the situation of children among the Palestinian refugees and visited refugee camps in Gaza, the West Bank, Jordan, Syria and Lebanon. He has later followed developments in the region in other capacities; as Swedish ambassador on humanitarian issues and Secretary General of the Olof Palme International Center. Earlier he served as Secretary General of Amnesty International and Secretary General of Save the Children (Sweden). He was Council of Europe Commissioner for Human Rights 2006–2012. He is currently an Associate Fellow at the Swedish Institute of International Affairs

