



PROTECTION

Preface

Protection encompasses all activities aimed at obtaining full respect for the human rights of refugees and IDPs, including the search for a durable solution to their plight. Durable solutions to refugee flows include repatriation, integration in a host-country, and resettlement in a third state. Of these three solutions, only repatriation is based on a recognized right under international law, namely the right to return. Durable solutions for the plight of IDPs are similar, yet since IDPs do not cross borders, these solutions are sought within their country. The key principle governing these solutions is that they involve voluntariness, that is, well-informed, free and individual choice by refugees and IDPs.

Under international law, states are the primary party obliged to provide protection for persons under their sovereignty or jurisdiction. States whose policies and practices constitute gross violations of international human rights law and serious violations of international humanitarian law that lead to the forcible displacement of such persons, per definition, violate their legal obligation to protect and must offer effective remedies and reparations.

The state of Israel that has caused - and continues to cause - massive forced displacement of Palestinians, is a state that has failed to meet its protection obligations. By refusing to permit the return of displaced Palestinians and provide housing and property restitution and compensation, the state of Israel also denies them durable solutions and reparations. Israel thereby violates three main bodies of international law: the law of nations as applicable to state succession, humanitarian law, and human rights law, including customary refugee law - each of which requires Israel to refrain from displacing Palestinians and to respect and protect the rights of Palestinian refugees and IDPs to return, housing and property restitution and compensation. Moreover, Israel has persistently ignored UN resolutions which affirm these rights, including UNGA Resolution 194 (1948) and UNSC Resolution 237 (1967).

International protection comes in to play when states are unable or unwilling to provide effective protection. However in the case of Israel and the Palestinian people, states and the United Nations have lacked the political will to hold Israel accountable to its legal obligations and protect and promote the fundamental rights of the Palestinian people, in particular the right to self-determination and the right of displaced Palestinian to return to their homes and properties. No UN agency, including UNRWA and UNHCR, considers itself as holding a mandate to promote rights-based durable solutions for all Palestinian refugees, and no single agency is currently mandated to protect Palestinian IDPs in Israel and the OPT.

The protection obligations of state hosts of Palestinian refugees are enshrined in the 1951 Refugee Convention. However, Arab states, where the majority of Palestinian refugees reside, are not signatories to the Convention. Protection provided under Arab regional instruments is inconsistent and does not meet international standards, giving rise to secondary forcible displacement of Palestinian refugees in and from these states. In countries that are signatory to the 1951 Refugee Convention, most Palestinians are denied effective protection because national authorities and courts do not (properly) apply the Convention (Article 1D) to them.

Numerous UN mechanisms, organs and agencies, as well as international and local organizations and NGOs have been engaged in humanitarian assistance and protection of Palestinians, in particular in the OPT. Since 2008, an Inter-Agency Forced Displacement Working Group currently led by OCHA which was formed under the auspices of the Protection Cluster Working Group in the OPT, has undertaken to protect Palestinians from, during and after displacement, in line with the UN Guiding Principles on Internal Displacement. These efforts, however, have so far resulted mainly in short term emergency aid, which is not complemented by effective intermediate and long-term responses. Limited and non-confrontational protection activities have neither resulted in durable solutions nor prevented new forced displacement of Palestinians.

3.1 Protection of Refugees and IDPs: Background

According to the International Committee of the Red Cross (ICRC), protection encompasses:

“All activities, aimed at obtaining full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law (*i.e.*, human rights law, international humanitarian law and refugee law.)”¹

States bear the primary duty and responsibility to protect their citizens. When governments are unwilling or unable to do so, individuals may suffer such serious violations of their rights that they are forced to leave their homes to seek safety in another place *within* their own country (internal displacement) or in *another country* (refugee situation). When the state’s actions are the cause of forcible and arbitrary population displacement, the state is, by definition, not providing the protection required by international law. The state is rather committing an “internationally wrongful act” that triggers a legal obligation to make reparation.²

Victims of forcible and arbitrary displacement lack the protection of their country. The responsibility of the international community and international protection therefore comes into play to ensure that their basic rights are respected.³ International human rights law governs their rights as *individuals*.⁴ In situations of armed conflict, international humanitarian law provides additional protection. Displaced persons who are *refugees* are entitled to protection under a third (partially overlapping) body of law, *i.e.*, international refugee law.

The international legal regime for the protection of refugees is enshrined in the 1951 *Convention Relating to the Status of Refugees* (“*Refugee Convention*”), its 1967 *Protocol*, and the 1950 *Statute of the Office of the UNHCR* (“*UNHCR Statute*”) governing the rights of refugees and state obligations towards them.⁵ International protection of refugees encompasses day-to-day protection aimed at obtaining full respect for their rights as refugees and ensuring them a dignified life, as well as efforts to achieve long-term durable solutions. UNHCR is the principal international body mandated to assist host states providing protection for refugees worldwide and to supervise the implementation of the *Refugee Convention* and *1967 Protocol* in host countries. UNHCR’s mandate to represent refugees includes intervening with states on their behalf and seeking durable solutions for their plight.

In general, IDPs who remain under the domestic jurisdiction of their country have many of the same protection rights and needs as refugees, but since they have not crossed an international border they do not fall within the scope of the *Refugee Convention* and its *Protocol*.⁶ Unlike refugees, no single binding international instrument is exclusively devoted to the protection of IDPs, and identification as an IDP does not confer legal status under international law. The first comprehensive attempt to define IDP protection is contained in the *1998 Guiding Principles on Internal Displacement*,⁷ which although not binding *per se*, reflects and is consistent with principles of international human rights and humanitarian law and refugee law that *are* binding.⁸

In situations where refugees are again displaced in their country of refuge or asylum, such persons retain their legal status as refugees. However, it is “appropriate to apply the Guiding Principles by analogy to the extent that applicable refugee law does not address their *displacement-related needs*.”⁹

The *Guiding Principles* set forth the rights and standards relevant for the protection of IDPs in *all* phases of displacement (before, during and after). These include the rights to liberty and security of person, freedom of movement, protection from arbitrary displacement, provision of an adequate standard of living, property rights, education, respect for the family, as well as the search for durable solutions. The *Guiding Principles* make clear that “national authorities have the primary duty and responsibility to provide protection [...] to IDPs within their jurisdiction.”¹⁰

Because no UN agency has an explicit mandate for IDPs, the UN system has repeatedly taken responsibility for protecting and assisting IDPs on an *ad hoc* basis.¹¹ Beginning in the early 1970s, UNHCR has periodically provided aid and engaged in protection activities for IDPs when such involvement could contribute to the search for solutions to a refugee problem and there was a direct link between refugees and IDPs,¹² or upon the request from the UNGA or UNSG.¹³ By the end of 2006, however, UNHCR redefined its policy and criteria for engagement in IDP situations based on the recommendation of the UN Secretary General who affirmed that UNHCR “must reposition itself to provide protection and assistance to displaced persons in need, regardless of whether they have crossed an international border.”¹⁴ More recently, UN agencies and international organizations have established an inter-agency collaborative approach to improve the response to humanitarian needs of IDPs and coordinate protection activities.

Whereas host countries are usually willing to accept international assistance when unable or unwilling to assist refugees present in their territory with their own resources, states that cause forcible displacement are less likely to accept international intervention to protect displaced persons, in particular IDPs. According to principles of sovereignty and non-intervention, the UN is not allowed to interfere in a state’s internal affairs without the state’s consent, unless intervention is warranted under Chapter VII of the 1945 *Charter of the UN*.¹⁵



Villagers from the destroyed village of Beit Natif return to their village on a day trip from Dheisha refugee camp, 2000. Such visits are now impossible due to Israeli military movement restrictions. (© BADIL)

With the development of international human rights law, however, application of the principle of non-intervention has been relaxed where strict adherence would impede the protection of populations threatened by acts of their own government. Human rights law contemplates, therefore, that the “protection of the individual’s human rights can no longer be considered as a domestic matter.”¹⁶ In this context it has been argued that, “[a] massive violation of human rights as evidenced by the number of IDPs should always be interpreted as a threat to international peace and security [which justifies external intervention] even in the absence of transboundary effects such as refugee flows.”¹⁷ Therefore, when the state is *unwilling* to protect displaced persons and denies international access to them, international intervention without the state’s consent can be activated under Chapter VII of the 1945 *Charter of the UN* in order to “compensate for the resulting vacuum of responsibility.”¹⁸

3.1.1 Durable Solutions

A core component of international refugee protection is the search for durable solutions that allow the restoration of their human rights on a permanent basis. The three durable solutions promoted by UNHCR are repatriation, local integration in the host country or resettlement in a third country.¹⁹ All durable solutions are driven by the pivotal principle of refugee choice.²⁰ Among the three durable solutions promoted by UNHCR,²¹ “voluntary repatriation in safety and dignity, based on the fundamental right to return to one’s home and country, is recognized both in principle and in state practice as the most appropriate solution to refugee flows.”²² Repatriation “implies the restoration of national protection (to obviate the need for international protection.)”²³ Thus, the right of return is a critical component of the refugee protection regime.²⁴

Protection for IDPs also ultimately entails ensuring a durable solution to their predicament.²⁶ National authorities have the primary duty and responsibility to protect and ensure that IDPs have access to a durable solution

Voluntary Repatriation

Voluntary return, which is based on *well-informed, free and individual choice*, is the cornerstone of protection with respect to the repatriation of refugees. The principle of voluntariness means that states should not take measures that push the return of displaced persons to their country of origin and/or former place of residence, but also means that refugees should not be prevented from returning.²⁵

UNHCR observes that whether a refugee is able to exercise voluntary choice will depend both on conditions in the host country and the country of origin. Concerning the former, a refugee may be coerced into returning by measures in a host state that deny rights guaranteed by the *Refugee Convention*. Concerning the latter, a refugee may be prevented from safe return by measures taken by the country of origin, such as denial of essential services, failure to guarantee safety, or discrimination through laws or policies carried out by the state itself or by other groups.

of their choice, whether return to the place of former residence, local integration at the site of displacement, or resettlement in a third location within the country.²⁷ The right of IDPs to make informed and voluntary choices among these three solutions is the cornerstone of the *Guiding Principles on Internal Displacement*, and their choices must be guaranteed.²⁸ In order to achieve a durable solution, former IDPs should be allowed to remain and fully (re)integrate at the location of their choice.²⁹ Durable solutions include the establishment of long-term safety and security, restitution of or compensation for lost property, and an environment that restores the life of the former IDP to normal economic and social conditions, including access to basic services and non-discrimination.³⁰

All durable solutions for refugees and IDPs include housing and property restitution, as well as compensation for damages and losses. According to UNHCR Executive Committee Conclusion No. 101, for example, “all returning refugees should have the right to have restored to them or be compensated for any housing, land or property of which they were deprived in an illegal, discriminatory or arbitrary manner before or during exile.”³⁵ The *Guiding Principles on Internal Displacement* provides for the same rights in the case of internal displacement.³⁶ Provisions for property restitution appear in most major peace agreements incorporating durable solutions for refugees and displaced persons in the last 20 years.³⁷ Claims for repatriation, property restitution, as well as compensation for damage and loss, are independently-grounded in general international law, humanitarian, and human rights law principles, regardless of any specific refugee law provisions or state practice. (*see below*)

3.1.2. Full Reparation

Under the *Law of State Responsibility*, states responsible for the commission of an internationally wrongful act must provide reparation. Successor governments remain bound by the responsibility incurred by predecessor governments. “Reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed.”³⁸ Full reparation includes restitution, compensation and satisfaction, rehabilitation and guarantees of non-repetition, as required by the circumstances.³⁹



A UNHCR official assessing refugee claims in Bosnia, 2002
(© BADIL)

Successful (Re)integration of IDPs

Both general and specific considerations should be taken into account in determining when displacement ends.³¹ *General criteria* address the political context (including the nature of the conflict and settlement prospects), respect for human rights, and the overall socio-economic situation.³² *Specific criteria* encompass the profile of the internally displaced population; conditions of return; prospects of property restitution; job opportunities; physical safety; access to basic living standards; and other indicators of successful (re)integration.³³ ‘Successful reintegration’ includes legal, social and economic (re)integration.³⁴

In 2006, the UNGA adopted the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, which although not binding, incorporate accepted norms under international law.⁴⁰ The *Basic Principles and Guidelines* do not entail new obligations but identify mechanisms, modalities and procedures for the implementation of existing legal obligations under international human rights and humanitarian law.⁴¹

Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law

Restitution should, whenever possible, restore the victim to the original situation before the gross violation of international human rights law or serious violation of international humanitarian law occurred. Restitution includes, as appropriate: restoration of liberty; enjoyment of human rights, identity, family life and citizenship; return to one's place of residence; return of property; and restoration of employment.

Compensation should be provided for any economically assessable damage (as appropriate and proportional to the gravity of the violation and the circumstances of each case) resulting from gross violation of international human rights law and serious violation of international humanitarian law, such as:

- (a) Physical or mental harm;
- (b) Lost opportunities, including employment, education and social benefits;
- (c) Material damages and loss of earnings, including loss of earning potential;
- (d) Moral damage;
- (e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.

Rehabilitation should include medical and psychological care, as well as legal and social services.

Satisfaction should include, where applicable, any or all of the following:

- (a) Effective measures aimed at the cessation of continuing violations;
- (b) Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim's relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations;
- (c) The search for the whereabouts of the disappeared, for the identities of any abducted children, and for the bodies of those killed, and assistance in the recovery, identification and reburial of the bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities;
- (d) An official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim;
- (e) Public apology, including acknowledgement of the facts and acceptance of responsibility;
- (f) Judicial and administrative sanctions against persons liable for the violations;
- (g) Commemorations and tributes to the victims;
- (h) Inclusion of an accurate account of the violations that occurred under international human rights law and international humanitarian law in training and educational materials at all levels.

Guarantees of non-repetition should include, where applicable, any or all of the following measures, which will also contribute to prevention:

- (a) Ensuring effective civilian control of military and security forces;
- (b) Ensuring that all civilian and military proceedings abide by international standards of due process, fairness and impartiality;
- (c) Strengthening the independence of the judiciary;
- (d) Protecting persons in the legal, medical and health-care professions, the media and other related professions, and human rights defenders;
- (e) Providing, on a priority and continued basis, human rights and international humanitarian law education to all sectors of society, alongside training for law enforcement officials and military and security forces;
- (f) Promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as by economic enterprises;
- (g) Promoting mechanisms for preventing and monitoring social conflicts and their resolution;
- (h) Reviewing and reforming laws contributing to or allowing gross violations of international human rights law and serious violations of international humanitarian law.

Source: UNGA Resolution A/RES/60/147, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, 21 March, 2006.

3.2 Israel's Failure to Protect Palestinians

3.2.1 Israel's Legal Obligations

The state of Israel has displaced and dispossessed the majority of the Palestinian population over a period of more than six decades. Therefore, Israel, by definition, is not providing Palestinians with the protection required by international law. Israel's legal obligations apply in the entire territory over which it has sovereignty or exercises jurisdiction, that is, Israel and OPT. In the OPT, the Palestinian Authority (PA) has protection responsibilities towards the Palestinian population but its ability to protect is constrained by the Israeli Occupying Power, which exercises effective control over both the West Bank and the Gaza Strip.⁴² Israel, as the Occupying Power, continues therefore to hold the primary obligation to protect the Palestinian civilian population, including displaced persons.

Israel has legal obligations towards the Palestinians in Israel and the OPT. It is required under international law to respect, protect and fulfill the rights of Palestinians.⁴³ It should refrain from forcibly and arbitrarily displacing the Palestinian population. Israel also has a legal obligation to prevent non-state actors from displacing Palestinians and must carry-out appropriate criminal investigations, and provide effective remedy when such cases occur. Moreover, Israel must ensure basic rights and provide displaced populations with food, water, shelter and health services.⁴⁴

Under the Law on State Responsibility, Israel, as a new state, is also responsible for the conduct of Zionist militias during its establishment and is required to provide reparations for the consequences of wrongful acts committed by them.⁴⁵

Based on the above, Israel must, *inter alia*, end all forced displacement of Palestinians. Israel must ensure that Palestinian refugees have access to durable solutions by facilitating voluntary repatriation "in safety and dignity without any fear of harassment, discrimination, arbitrary detention, physical threat or prosecution [...], and provide guarantees and/or amnesties to this effect." In accordance with the *Guiding Principles on Internal Displacement*, Israel also must provide for the basic rights and needs of Palestinian IDPs and facilitate durable solutions of their choice, whether this be return to the place of former residence, local integration at the site of displacement, or resettlement in a third location within the country, as well as successful (re)integration. Furthermore, Israel should assume responsibility for the elimination of the root causes of displacement and take all measures to ensure protection of returnees.⁴⁶ It also must provide full reparations to all Palestinian victims of gross violations of international human rights law and serious violations of international humanitarian law, including forcibly displaced Palestinians.

I. The Right to Return

The right to return of all Palestinian refugees and IDPs is guaranteed in three main bodies of international law: the law of nationality as applied upon state succession; humanitarian law, and human rights law, including customary refugee law. In each of these bodies of law, the right of return is found both as a rule of customary law and codified in international treaties.

Law of State Succession and Law of Nationality - A state has wide discretion in the matter of granting or denying nationality under international law principles of nationality and state succession. However, both customary and treaty law impose limitations on how a successor state, may treat the population found on its territory. When territory undergoes a change of sovereignty, the habitual residents of the geographical territory "follow the change of sovereignty in matters of nationality",⁴⁷ *whether or not they were physically present* within this geographical area on the actual date of the change of sovereignty.⁴⁸ This principle has at least three aspects: "[T]hat all habitual residents found on the territory of the successor state must be granted the nationality of the new state; that a successor state may not arbitrarily denationalize, or expel, persons found on its territory; and that residents of

the territory expelled during conflict are absolutely entitled to return to their places of habitual residence.⁴⁹ The principle against arbitrary denationalization is also a customary rule,⁵⁰ and codified in human rights treaties.⁵¹ Thus, the habitual residents must not be denied the right to retain or acquire the nationality of the successor state on discriminatory bases.

The 2005 *Pinheiro Principles on Housing and Property Restitution for Refugees and Displaced Persons* (Pinheiro Principles) clearly affirm that the return of refugees and displaced persons “cannot be abridged under conditions of State succession, nor can it be subject to arbitrary or unlawful time limitations.”⁵²

As a successor state in the territory of Mandate Palestine,⁵³ Israel is bound by the law of state succession and law of nationality. It has an obligation to permit the return of all 1948 Palestinian refugees, habitual residents in the territory in which Israel was established and grant them Israeli citizenship. Israel’s requirement under the 1952 *Citizenship Law*, that Palestinians must have been *physically present* inside what became Israel’s national borders within specific period of time mentioned in the law to be entitled to citizenship, is in violation of international law and must be reformed.

International Humanitarian Law (IHL) - The 1907 *Hague Convention (IV) Respecting the Laws and Customs of War on Land*, and its annexed *Regulations*,⁵⁴ the *Charter of the International Military Tribunal*,⁵⁵ and the *Fourth Geneva Convention*⁵⁶ protect civilians during armed conflict and occupation. IHL explicitly prohibits (individual and mass) transfer and deportation outside of occupied territories, and strictly limits the circumstances under which a civilian population may be temporarily transferred.⁵⁷ It also categorically requires that persons forced from their homes due to hostilities have the right to repatriate as soon as hostilities, or the reason for their displacement, have ceased.⁵⁸ The unlawful deportation and forcible transfer of protected persons is considered a “grave breach” under Article 147 *Fourth Geneva Convention* and a war crime under customary international law and the *Rome Statute of the International Criminal Court*.⁵⁹ Moreover, deportation and forcible transfer of a population constitutes a crime against humanity if it is knowingly committed as part of a widespread or systematic attack directed against any civilian population.⁶⁰

Israel is bound by customary international humanitarian law, including the *Hague Regulations*,⁶¹ as well as the *Fourth Geneva Convention* to which it is a party. The mass expulsion of Palestinians during the armed conflicts of 1947 – 1949 and 1967, as well as subsequent forced displacement of Palestinians in and from the OPT, combined with Israel’s persistent obstruction of return of forcibly displaced Palestinians to their places of habitual residence in Israel or the OPT, constitutes a grave breach of international humanitarian law. International legal consensus affirms the applicability of the *Fourth Geneva Convention* in the OPT.⁶² Israel has a legal obligation to permit the return of all 1948 and 1967 displaced Palestinians (refugees and IDPs). Under IHL, Israel also has an obligation to protect the Palestinian civilian population, so that people can remain in their homes and communities in the OPT. Israel must permit the return of all IDPs and displaced persons in/from the OPT as soon as hostilities have ceased in the vicinity of their communities.

International Human Rights Law - The right of return is a customary norm of international human rights law and is explicitly affirmed in many instruments, including the *Universal Declaration of Rights*,⁶³ the *International Covenant on Civil and Political Rights* (ICCPR), and the *Convention on the Elimination of All Forms of Racial Discrimination* (CERD). Denial of return on discriminatory grounds, such as race, nationality or ethnic origin, is arbitrary and expressly prohibited under international human rights law. For instance, Article 12(4) of the ICCPR, notes that “no one shall be arbitrarily deprived of the right to enter his own country.”⁶⁴ Under CERD, states have a legal obligation to “prohibit and eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, [...] or national or ethnic origin, to equality before law” in the enjoyment of the right to leave one’s country and to return to it.⁶⁵

Israel has ratified six core international human rights conventions, including the ICCPR and CERD and is bound by them.⁶⁶ Israel is obliged to respect international human rights law throughout the entire territory over which it has sovereignty or jurisdiction. International legal consensus affirms the applicability of international human rights law in the OPT.⁶⁷ Israel has a legal obligation to respect, protect and promote the right of all displaced

Palestinians (refugees and IDPs) to return to their respective place of habitual residence in Israel or the OPT, and to refrain from discriminatory policies and practices that result in more arbitrary forced displacement of Palestinians from their homes and homeland.⁶⁸



A Palestinian refugee in Ein el Hilwe refugee camp, Lebanon, holds the key to his original home. (© Tinaeke d'Haese / BADIL)

II. The Rights to Restitution and Compensation

Under international law, all Palestinian refugees and IDPs have a right to housing and property restitution and compensation, based on legal protections of private property rights and the right to remedy for illegal governmental appropriation of private property.⁶⁹

The Primacy of Restitution - The Permanent Court of International Justice (PCIJ) distinguished in 1928 between “legal” governmental takings of private property, found to have been conducted in conformity with international law, and “illegal” takings, found to have violated international law. The Court ruled that restitution in kind is the preferred remedy for illegal takings of private property and that financial payment (i.e., compensation) must be made for the full value of the property if restitution in kind is not possible, as well as for losses and damages incurred. Compensation refers to a monetary payment for harm suffered. Compensation should be used as a substitute or alternative to restitution in kind only when restitution is not practically possible, or when the injured party knowingly and voluntarily accepts compensation in lieu of restitution.

The primacy of restitution is reflected in the 2006 *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian law*, as well as in legal instruments guiding international protection of refugees and IDPs. In 1992, for example, the International Law Commission adopted the *Declaration of Principles of International Law on Compensation to Refugees*. According to UNHCR Executive Committee Conclusion No. 101, which affirms the right of refugees and displaced persons to housing and property restitution “where property cannot be restored, returning refugees should be justly and adequately compensated by the country of origin.”⁷⁰ The *Guiding Principles on Internal Displacement* affirm the right to restitution, stating that “when recovery of such property

and possessions is not possible, competent authorities shall provide or assist [IDPs] in obtaining appropriate compensation or another form of just reparation.”⁷¹ The same is affirmed in the 2005 *Pinheiro Principles*. The latter also states that: “[t]he right to restitution exists as a distinct right, and is prejudiced neither by the actual return nor the non-return of refugees and displaced persons entitled to housing, land and property restitution.”⁷²

Private property rights are protected and the right to compensation is regulated under several bodies of international law:

Under the law of nations relevant to state succession, the customary doctrine of “Acquired Rights” requires that the private property of individuals in the territory undergoing the change in sovereignty be respected by the successor state in all cases.⁷³ Under the law of nations relevant to **expropriation**, private property may not be confiscated by governments unless the expropriation is (1) for a public purpose; (2) non-discriminatory; (3) in compliance with due process (e.g., allowing the property owner to protest the proposed confiscation if it is not being done for a valid purpose); and (4) appropriate compensation (or substitute property of equal value) is paid to the owner in exchange for the property.⁷⁴

The law of nations on state succession and expropriation was applied in UNGA Resolution 181 (the UN Partition Plan for Palestine) of 1947, which addressed the rights of minorities in both the proposed Jewish and Arab states. In addition to the requirement to grant citizenship to the respective minorities residing on their territory, the UNGA prohibited the states-to-be from expropriating lands owned by any Arab in the Jewish state and vice versa, except for public purpose. “[I]n all cases of expropriation full compensation as fixed by the Supreme Court shall be paid previous to disposition.”⁷⁵ Israel as a successor state in 1948, violated its legal obligation by massive expropriation - on discriminatory grounds, without due process or appropriate compensation - of private Palestinian property, in particular from 1948 refugees and IDPs. Israel is under the obligation to provide housing and property restitution and compensation to Palestinian owners as part of full reparation.

International Humanitarian Law - The *Hague Regulations* contain at least 16 articles providing strong protections of private property during war. Destruction of private property without military necessity, (Article 23), attack or bombardment of civilian towns, villages and dwellings (Article 25), and pillage (Article 28) are prohibited in all cases. Permanent confiscation of private property following the termination of warfare is explicitly prohibited (Article 46).⁷⁶ These private property protections are incorporated in the *Fourth Geneva Convention* (Articles 33 and 53). Article 147 defines the “extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly,” as a “grave breach.”

States have an obligation to pay compensation for breaches of their obligations in accordance with the *Hague Convention* (Article 3). Its *Regulations* provide for an individual's right to demand compensation for losses sustained in cases of violations.⁷⁷

Israel is bound by the customary law codified in the *Hague Convention and Regulations*, as well as the *Fourth Geneva Convention*. Israel's extensive destruction and appropriation of Palestinian property, not justified by military necessity and carried out unlawfully and wantonly, as well as massive attacks and bombardments of Palestinian civilian areas, are likely to amount to war crimes in numerous cases. Israel has an obligation to halt unlawful destruction and appropriation of Palestinian property in the OPT, return unlawfully taken property to its Palestinian owners, including 1948 and 1967 refugees and IDPs, and provide an adequate and effective mechanism whereby Palestinian civilians in the OPT can submit claims for compensation for losses sustained as a result of Israel's IHL violations.

International Human Rights Law – Property dispossession and destruction are violations of the right to property. Article 17 of the *Universal Declaration of Human Rights* provides that “everyone has the right to own property alone as well as in association with others [...] No one shall be arbitrarily deprived of his property.” The ICCPR protects residences from arbitrary or unlawful interference with one's home (Article 17) and in times of emergency, it bans discrimination that is “solely” based on prohibited grounds (Article 4). ICESCR protects the right to adequate housing (Article 11(1)).⁷⁸ CERD prohibits racial discrimination in the enjoyment of the right to own property (Article 5(d)(v)). These provisions amount to protection from arbitrary or discriminatory evictions from one's home or discriminatory deprivation of property.⁷⁹ Moreover, it is a basic principle that every violation of a right must have an effective remedy as guaranteed in Article 8 of *Universal Declaration of Human Rights*; Article 2(3) of the ICCPR and Article 6 of CERD. In this regard it has been noted that “all ...refugees and displaced persons have, after their return to their homes of origin, the right to have restored to them property of which they were deprived in the course of the conflict and to be compensated appropriately for any such property that cannot be restored to them.”⁸⁰

Israel is bound by international human rights law in the entire territory over which it has sovereignty or jurisdiction (Israel and OPT). Israel has a legal obligation to respect, protect and promote the property rights of all Palestinians, including refugees and IDPs, and restore to them their unlawfully confiscated property and compensate them when property cannot be restored. Israel is also obliged to refrain from discriminatory distribution or confiscation of Palestinian property in Israel and the OPT.

3.2.2 UN Resolutions Affirming Israel's Obligations

For six decades, the UN has been affirming the right of displaced Palestinians to return to their homes of origin and repossess their homes and properties. The UNGA first affirmed the rights of all persons displaced in 1948 in its Resolution 194(III) of 11 December 1948,⁸¹ which states:

“[T]hat the refugees wishing to return to their homes and live at peace with their neighbors should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible.”
(Paragraph 11(a))

UNGA Resolution 194(III) delineates voluntary repatriation/return as the primary durable solution for 1948 displaced Palestinians (refugees and IDPs), and affirms their rights to return, housing and property restitution, and compensation for losses or damages. The Resolution also states that those who do not wish to exercise their right of return may opt for resettlement, as well as property restitution and compensation.⁸²



Palestinian refugee property up for sale in Haifa, 2009 (© Adalah)

The UN General Assembly intended to confer upon individual refugees the “right of exercising a free choice as to their future.”⁸³ According to the UN Mediator in Palestine, the “unconditional right [of refugees] to make a free choice should be fully respected.”⁸⁴ Furthermore, “the verb ‘choose’ indicates that the UNGA assumed that [...] all the refugees would be given a free choice as to whether they wished to return home.”⁸⁵ The Resolution affirmed the right of refugees to return to their *homes of origin*, clearly indicating the return of each refugee to “his house or lodging and not to his homeland.”⁸⁶ In order for refugees to make a free choice, the UN recognized that they would need to be “fully informed of the conditions under which they would return.”⁸⁷

UNGA Resolution 194(III) also affirmed the principle of *safe* return and Israel’s obligation “to ensure the peace of

the returning refugees and protect them from any elements seeking to disturb that peace.”⁸⁸ The Resolution also provides a general timetable for the implementation of the return of refugees. The debate during the drafting process of the resolution indicates that the General Assembly “agreed that the refugees should be allowed to return when *stable conditions were established*. It would appear indisputable that such conditions were established by the signing of the four Armistice Agreements.”⁸⁹ The General Assembly rejected an amendment that included the phrase, “after the proclamation of peace between the contending parties in Palestine, including the Arab States.”⁹⁰

Whereas resolutions of the UN General Assembly are not binding *per se*, Resolution 194(III) “endorsed a generally recognized principle and provided a means for implementing that principle.”⁹¹ By 1948, protection of private property, the rights to restitution and compensation, and the right of refugees and displaced persons to return to their places of origin had already assumed customary status in international law.⁹²

Following the 1967 war, the UN, including the Security Council (UNSC) whose resolutions are binding upon Israel, called repeatedly for the immediate return of Palestinians displaced in the war. The UNSC in its Resolution 237 called upon the parties “to [...] facilitate the return of those inhabitants who have fled the areas since the outbreak of hostilities.”⁹³ The UN General Assembly explicitly called upon Israel to “take *effective* and *immediate* steps for the return without delay” of those Palestinian refugees who fled the areas since the 1967 war.⁹⁴ In 2008, the UNGA reaffirmed “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.”⁹⁵ UN Security Council and General Assembly resolutions have also affirmed and called for the right of return for those Palestinians who find themselves in refugee-like situations due to expulsion, deportation, and denial of residency rights to return to their places of origin.⁹⁶

The UN has affirmed the right of Palestinian refugees and IDPs to restitution and compensation not only in UNGA Resolution 194(III), but also in numerous subsequent resolutions.⁹⁷

3.2.3 Ongoing Forcible Displacement of Palestinians

In practice, Israel has failed to respect and meet its obligations under international law, including UN resolutions, and continues forcible displacement of Palestinians.

Israel, for example, blocks the return of 1948 Palestinian refugees to their homes of origin by means of discriminatory legislation that violates international law. For instance, the 1950 *Law of Return* entitles all Jews, and Jews only, to enter “*Eretz Yisrael*” (Israel and the OPT) even if they have never been in Israel before. The 1952 *Citizenship Law* denationalized the 1948 Palestinian refugees and denied them their right to return on an arbitrary and discriminatory basis.⁹⁸

Israel’s failure to respect its obligations as a successor state resulted in the systematic and gross violation of the rights of return, property, restitution and compensation of the 1948 Palestinian refugees and of Palestinians who remained in the territory that became Israel in 1948, particularly IDPs. Israel prevented the return of the 1948 Palestinian IDPs to their homes and properties through the arbitrary restriction of their freedom of movement by the military government (1948 – 1966) and a policy of declaring private and communal Palestinian land as “closed areas.” IDPs were pressured by the government to integrate in Palestinian communities where they had found refuge or resettle in other Palestinian communities called “shelter villages.”⁹⁹ In the localities where they were concentrated, Palestinian IDPs were given priority in leasing “abandoned” lands, i.e. the property of other displaced Palestinians. In some localities, houses were built for IDPs on the condition that they sign a document renouncing their property rights in their communities of origin.¹⁰⁰ Israel thereby implemented a policy of *forced* integration or resettlement which does not constitute a durable solution under international law.

Israel adopted laws that “legalize” and facilitate the illegal governmental taking of private Palestinian

land and other property. In 1950, the Knesset adopted the *Absentees' Property Law*, pursuant to which all properties owned by those classified as “absentees” (external refugees) and “present absentees” (internal refugees) were taken and possessed by the Custodian for Absentees' Property, ostensibly for guardianship of the properties until a political solution for the absentees was reached.¹⁰¹ The law empowered the Custodian to sell land only to the Development Authority, established by the 1950 *Development Authority (Transfer of Property) Law*. The Development Authority was authorized to sell land only to the state and the Jewish National Fund (JNF). In this capacity, the Development Authority served as an intermediary body to channel illegally expropriated Palestinian land to the JNF which acquires property in Israel “for the purpose of settling Jews on such lands and properties.”¹⁰² This statutory scheme is the cornerstone of the Israeli legal machinery facilitating the expropriation and relocation of Palestinian-owned land to primarily Jewish ownership in the aftermath of 1948.¹⁰³ (See also Chapter One, 1.1.3)

On 3 August 2009, the Knesset adopted a new land reform law – *Israel Land Administration (ILA) Law* - that legalizes the privatization of the ownership of Palestinian property that was illegally taken by Israel. This law retroactively legitimizes the ILA's sale of absentee property, which includes property of refugees and IDPs. Thus, for instance, 96 such tenders were issued in 2007, 106 in 2008 and 80 by June 2009.¹⁰⁴ The new law has repercussions on the exercise of the right of Palestinian refugees and IDPs to restitution and violates their property rights, in contravention of international humanitarian and human rights law.



Internally displaced Palestinians use an UNRWA school as a temporary shelter during the Israeli military assault against the occupied Gaza Strip (© UNRWA)

Since 1967, Israel controls all movement across the borders of the OPT, including the PA administered areas, and has prevented the return of the 1967 Palestinian refugees to their homes and properties.¹⁰⁵ In violation of international humanitarian law, Israel has built a new Palestinian population register based on its 1967 census in the OPT, and all persons not registered in the census have been treated as “non-legal residents” and denied the right to return. Until today, Israel retains the authority to make the final determination on permanent residency in the OPT. Israel has implemented policies of arbitrary revocation of resident status and denial of family reunification which are illegal under international humanitarian and human rights law. (See also Chapter One, 1.2.4)

Arbitrary Displacement

Factors determining when displacement is 'arbitrary' and, hence, illegal, include:

- (a) When it is based on policies of apartheid, "ethnic cleansing" or similar practices aimed at/or resulting in altering the ethnic, religious or racial composition of the affected population;
- (b) In situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand;
- (c) In cases of large-scale development projects, which are not justified by compelling and overriding public interests;
- (d) In cases of disasters, unless the safety and health of those affected requires their evacuation; and
- (e) When it is used as a collective punishment.

Source: Principle 6 of the Guiding Principles on Internal Displacement

Contemporary arbitrary displacement of Palestinians by Israel is induced by a set of policies and practices, including: excessive and indiscriminate use of force; deportation, detention and torture; arbitrary home demolition and forced eviction; attacks and harassment by non-state actors; revocation of residency rights; closure and segregation; unlawful land confiscation and distribution; and, settler implantation and "judaization" (See Chapter One, 1.2.1 – 1.2.7). Separately and combined, these policies and practices constitute gross violations of international human rights law and serious violations of international humanitarian law.

During "Operation Cast Lead", for example, Israel committed gross violations of its international law obligations, including wanton killing and destruction of Palestinian public and private property,¹⁰⁶ and the failure to protect and accommodate non-combatant Palestinian civilians seeking to escape from the ongoing war zone. Given its small size, dense population and the absence of natural or man-made shelters, the entire Gaza Strip became a war zone, and leaving it "was the only way to remove oneself to a position of safety."¹⁰⁷ Israel, however, deliberately denied Palestinian civilians the option to seek safety outside the zone of conflict;¹⁰⁸ it implemented an "unprecedented belligerent policy," refusing to allow the entire civilian population of the Gaza Strip to leave the war zone by closing all crossings from Israel, with few exceptions.¹⁰⁹



Palestinian children stand on the remains of an Israeli missile
(© Mahmoud Zanoun / BADIL)

The transfer into the OPT of parts of Israel's own civilian population (Jewish settlers) constitutes a violation of international humanitarian law.¹¹⁰ Already in 1980, the UN Security Council described "Israel's policies and practices of settling parts of its population and new immigrants in the OPT as a flagrant violation of the *Fourth Geneva Convention*."¹¹¹ The ICJ affirmed in 2004 that Israel's policies and practices of establishing settlements in the OPT are a breach of international humanitarian law.¹¹² According to the *Rome Statute*, settler implantation is a war crime.¹¹³

The failure of Israeli authorities to protect Palestinians from racist attacks by Jewish settlers in the OPT constitutes, among others, a violation of Israel's obligations under the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT).¹¹⁴

Inside Israel and in occupied East Jerusalem, forcible displacement of Palestinians is induced; *inter alia*, in the

guise of “development projects” that violate general international law standards relevant to expropriation, as well as those spelled out in the human rights treaties to which Israel is a party.¹¹⁵ Israel fails to provide a compelling and overriding public interest to justify forcible displacement for the purpose of development. Moreover, Israel does not seek the free and informed consent of the population affected, and does not provide any form of adequate alternative accommodation, compensation or effective remedy, as required under international law.¹¹⁶

Thus, for example, in 2007 the *UN Committee on the Elimination of Racial Discrimination* noted with concern that Israel did not inquire into possible alternatives to the relocation of Palestinian Bedouin communities in the Naqab to special townships. The Committee called upon Israel to consider the “recognition of these villages and the recognition of the rights of the Bedouins to own, develop, control and use their communal lands, territories and resources traditionally owned or otherwise inhabited or used by them,”¹¹⁷ as a possible alternative to relocation. The Committee also stated that the “lack of basic services provided to the Bedouin in the Naqab may in practice force them to relocate to the planned towns.”¹¹⁸ It urged Israel to consult with the inhabitants of these villages, and to obtain the free and informed consent of affected communities prior to such relocation.¹¹⁹

For more than 60 years, Israel has failed to provide reparations to the Palestinian refugees and IDPs, which by itself constitutes a blatant violation of international law.¹²⁰ Moreover, “the current constitutional structure and legislation in Israel leaves little room, if any, for Palestinians to seek compensation for damage or loss incurred [...] during Israeli military operations.”¹²¹ Israel’s *Civil Wrongs Act* (with amendments of 2001, 2002 and 2005) limits to two months the time period in which claims can be made and gives immunity to the state against claims by subjects of enemy states or members of “terrorist organizations.”¹²²

Israel has so far failed to establish accountability mechanisms for law-based, independent, transparent and accessible investigations of breaches of international human rights and humanitarian law and ignored related international calls and recommendations.¹²³ It is Israel’s position that it has no obligation to open criminal investigations for actions taken against Palestinians during armed conflict. Such investigations are, therefore, the exception and not the rule. For instance, between October 2000 and December 2007, Israeli security forces killed over 2,000 Palestinians who did not participate in hostilities. However, only 270 criminal investigations were carried out, resulting in merely 31 indictments.¹²⁴ Israel applies the same policy when the alleged violation amounts to war crimes and crimes against humanity.



Palestinian women wait at an Israeli checkpoint to enter Jerusalem, Ramadan 2008
(© Anne Paq / BADIL)

Israel’s forcible displacement and dispossession of Palestinians constitute grave breaches of the *Fourth Geneva Convention* and a war crime under customary international law and the *Rome Statute*.¹²⁵

The displacement and dispossession of Palestinians has been induced by unlawful policies and practices of the State of Israel over a period of six decades, with widespread impact affecting millions of Palestinians for the purpose of changing the demographic composition of the country. All this amounts to a crime against humanity because the forcible transfer of the Palestinian population (ethnic cleansing), is committed with Israel’s knowledge “as part of a widespread or systematic attack against the civilian population.”¹²⁶

3.3 International Protection of Palestinian Refugees and IDPs

In light of Israel's failure to protect and its policy of population transfer, the international community has an obligation to protect the fundamental rights of the Palestinian people, in particular the right to self-determination and the right of Palestinian refugees and IDPs to return to their homes and properties.¹²⁷ The international community, through the United Nations, has largely failed to meet its obligations towards the Palestinian people for reasons primarily related to the lack of political will among powerful western states. (See *Chapter Five*) Gaps in international protection have also resulted from the particular interpretation and application of international protection instruments and mechanisms to Palestinian refugees and IDPs.

3.3.1 International Protection Gaps

3.3.1.1 The Case of Palestinian Refugees

The *Refugee Convention* and the *UNHCR Statute* single out Palestinian refugees for exceptional treatment. Article 1D of the *Refugee Convention* states:

“This Convention shall not apply to persons who are at present receiving from organs or agencies of the UN other than the UNHCR protection or assistance.

When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the [UNGA], these persons shall *ipso facto* be entitled to the benefits of this Convention.”

According to paragraph 7 of the *UNHCR Statute*:

“The competence of the High Commissioner...shall not extend to a person: ...(c) Who continues to receive from other organs or agencies of the UN protection or assistance.”

At the time the *Convention* and *Statute* were adopted, Palestinian refugees were already covered by a separate international protection and assistance regime embodied in the United Nations Conciliation Commission for Palestine (UNCCP) and UNRWA, which were established to work in parallel, providing protection and assistance to Palestinian refugees respectively in a comprehensive manner.¹²⁸



A destroyed building in Burj el Barajneh camp, Lebanon. (© Courtesy of al Najda Association)

The UNCCP was established by UNGA Resolution 194(III) and mandated to provide essential protection and facilitate durable solutions for the 1948 Palestinian refugees (including IDPs), mainly through repatriation and compensation, and to facilitate a solution to all outstanding issues of the conflict. UNRWA, on the other hand, was established to provide assistance to the basic quotidian needs of Palestinian refugees, such as shelter, food and clothing, in the Agency's five areas of operation: Syria, Lebanon, Jordan, the West Bank and the Gaza Strip.¹²⁹ While UNRWA's mandate was extended to encompass 1967 Palestinian refugees and displaced persons,¹³⁰ UNCCP's protection mandate was never expanded to include any category apart from Palestinians displaced as a result of the 1948 war.

UNCCP failed to achieve progress towards a peace agreement between Israel and Arab states and repatriation of the 1948 Palestinian refugees. By the mid-1950s, UNCCP had ceased to

provide Palestinian refugees with the basic international protection afforded to all other refugees. The Commission reached the conclusion that it was unable to fulfill its mandate due to the lack of international political will to facilitate solutions for Palestinian refugees consistent with UNGA Resolution 194(III) and international law.¹³¹ Although it was never officially abolished, it ceased to make a substantial contribution towards the implementation of its protection mandate in the early 1950s.¹³² Under the specific terms of its assistance mandate, UNRWA was not equipped to take over the protection role of the UNCCP,¹³³ and no replacement mechanism was established to fill the subsequent protection gap for 1948 Palestinian refugees.

At present, UNRWA and UNHCR cooperate by dividing their roles along geographic lines.¹³⁴ The current division of tasks is based on UNHCR's 2002 interpretation of Article 1D of the *Refugee Convention* as meaning that 1948 and 1967 Palestinian refugees who reside in UNRWA's area of operation are excluded from the benefits of the *Refugee Convention* and the mandate of UNHCR because "protection or assistance" is provided for them by UNRWA which has the primary mandate for this refugee population. Once such a refugee leaves or is outside UNRWA's area of operation, s/he automatically falls under the *Refugee Convention* and within the competence of UNHCR.¹³⁵



Al Tanf refugee camp for Palestinians who fled Iraq, the Syrian-Iraqi border
(© Courtesy of the UNHCR)

The above interpretation ignores that "protection has ceased" for Palestinian refugees because UNCCP failed to fulfill its protection mandate in the 1950s, and that:

"Article 1D's function was to ensure that if for some reason either of these agencies failed to exercise its role before a final resolution of the refugee situation, that agency's function was to be transferred to the UNHCR and the *Refugee Convention* would fully and immediately apply without preconditions to the Palestinian refugees. That is what 'protection or assistance' and the *ipso facto* language of Article 1D requires [whether or not they individually qualify as refugees with a well-founded fear of persecution.]"¹³⁶

As for Palestinians who are neither 1948 nor 1967 refugees, but who are outside Israel or the OPT and unable or unwilling to return there due to a well-founded fear of persecution, it is UNHCR's position that such persons are within its competence and may qualify for refugee status and the benefits of the *Refugee Convention* based on refugee status determination under Article 1A(2).¹³⁷

The lack of UNCCP protection, the limited protection of UNHCR afforded to Palestinian refugees outside UNRWA's area of operation, and the lack of a full-fledged and explicit protection mandate for UNRWA, has resulted in a severe international "protection gap" for Palestinian refugees. No international agency is currently recognized as having a mandate to intervene on behalf of Palestinian refugees to represent their interests in international fora, or to protect their human rights against infringement by states, or to facilitate and promote rights-based durable solutions to their refugee situation. Palestinian refugees are rendered without the protection mechanisms or guarantees which are accorded to all other refugees worldwide.¹³⁸

3.3.1.2 The Case of Palestinian IDPs

1948 Palestinian IDPs were initially included in the respective protection and assistance operations of UNCCP and UNRWA. In 1952, however, Israel indicated that it would take on responsibility towards the displaced Palestinians



Israeli checkpoint, Bethlehem (© Anne Paq / BADIL)

in its territory. In response, UNRWA transferred its IDP files to the Israeli government and ceased its services for them.¹³⁹ Although no durable solution has been found to their plight, 1948 Palestinian IDPs in Israel are no longer a matter of international attention and policy, and no longer considered of concern to international humanitarian assistance or protection efforts.

No UN agency is primarily responsible for offering protection to Palestinian IDPs in the OPT since 1967. Most international agencies operating in the OPT either lack a protection mandate, or undertake limited and non-confrontational protection activities.¹⁴⁰ The first-line response to displacement in the OPT is provided by ICRC and UNRWA in the form of emergency assistance, which is not complemented by adequate intermediate and long-term assistance responses. No focused interventions are implemented to prevent forced displacement. Moreover, the current responses do not include a search for durable solutions as set forth in the *Guiding Principles on Internal Displacement*.¹⁴¹ In an effort to address these weaknesses, and as a result of

collective efforts of local and international organizations, an Inter-Agency Displacement Working Group (DWG) currently led by OCHA, was formed in early 2008. (See Section 3.5.7)

Palestinians, Statelessness and Protection

Whereas the Refugee Convention is the primary instrument for the protection of Palestinians persons who are stateless refugees,¹⁴² two international instruments are relevant to their protection as stateless persons, whether *de jure* or *de facto* – i.e., as a matter of law or in practical effect. These are the 1954 *Convention Relating to the Status of Stateless Persons (Convention on Stateless Persons)* and the 1961 *Convention on the Reduction of Statelessness (Convention on Statelessness)*.¹⁴³ These two instruments, however, have limited reach as few states have ratified them.¹⁴⁴

The *Convention on Stateless Persons* provides stateless persons with benefits similar to those provided to refugees by the *Refugee Convention* and affirms that the fundamental rights of stateless persons must be protected. The *Convention on Statelessness* creates a framework to reduce as much as possible or eliminate and prevent the phenomenon of statelessness. It provides that persons must not be deprived of a nationality unless for stated exceptions, and it categorically prohibits the denial of nationality on grounds of race, religion or political opinion.

In order to obtain the benefits of the *Convention on Stateless Persons*, a person must be determined to be “stateless”, that is, “a person who is not considered a national by any state under the operation of its law.”¹⁴⁵ This definition of “stateless person” is considered customary international law and therefore binding even on states that are not party to either convention.¹⁴⁶ The *Convention on Statelessness* adopts the same definition but recommends that also “persons who are stateless *de facto* should as far as possible be treated as stateless *de jure* to enable them to acquire an effective nationality.”¹⁴⁷

During the British Mandate (1922 – 1947), the inhabitants of Palestine were not considered British citizens, although they could invoke British diplomatic protection. They rather held a distinct Palestinian citizenship with internationally

recognized British-issued Palestine passports.¹⁴⁸ Israel's 1952 *Citizenship Law* repealed the *Palestine Citizenship Orders* (1925–42) retroactively and provided that former citizens of Palestine of Arab origin were eligible for Israeli citizenship only under a series of restrictive conditions that effectively disqualified and denationalized the 1948 Palestinian refugees.¹⁴⁹ Arab countries of refuge, with the exception of Jordan, “have consistently rejected local integration and citizenship as a solution to a problem which, in their view, can only be resolved by repatriation and self-determination. With limited exceptions, Palestinian refugees have not been granted (and for the most part have not sought) citizenship in [other] countries of refuge.”¹⁵⁰ Thus, “in addition to having become refugees they, therefore, became stateless lacking a nationality and even the Palestine Mandate citizenship that had previously provided some basic protection.”¹⁵¹

Despite the recognition accorded by some states to the entity of “Palestine”, and despite the UN’s recognition of the PLO as the legitimate representative of the Palestinian people, Palestinian refugees are considered stateless persons under international law.¹⁵² Today more than half of the Palestinian people are considered *de jure* or *de facto* stateless persons.

The *Convention on Stateless Persons* and the *Convention on Statelessness* are relevant to: (1) Palestinians who are stateless refugees and unable to obtain the benefits of the *Refugee Convention*; and, (2) Palestinians who are not refugees but have remained stateless. However, the *Convention on Stateless Persons*, like the *Refugee Convention*, does not apply to “persons who are at present receiving from organs or agencies of the UN other than the UNHCR, protection or assistance so long as they are receiving such protection or assistance.”¹⁵³ Therefore, countries signatories to the *Convention on Stateless Persons* often assume that Palestinian asylum seekers are not covered by the terms of this Convention, although such a general assumption is incorrect (see discussion on Article 1D of the *Refugee Convention* above). Moreover, most Arab states in which the majority of refugees reside are not signatories to the *Convention on Stateless Persons*.

Through a series of resolutions beginning in 1994, the UN General Assembly mandated UNHCR to prevent and reduce statelessness around the world and protect the rights of stateless persons.¹⁵⁴ UNHCR, however, excludes stateless Palestinians, whether refugees or not, from its activities and documentation concerning statelessness and stateless persons.

3.3.2 Protection Obligations of Host Countries and Countries of Asylum

Recognition of refugee status under the 1951 *Refugee Convention* triggers significant state obligations towards the person, such as the provision of residency rights, freedom of movement, the right to work, access to humanitarian assistance, housing, property ownership and education, as well as the right to identity papers, travel documents and social security. The *Refugee Convention* requires as a minimum standard that these rights be guaranteed at least at the same level as for other foreigners.¹⁵⁵

One of the essential state obligations incorporated in the *Refugee Convention* is that of *non-refoulement*, namely the obligation on states to not expel or return refugees to a territory where his/her life or freedom would be at risk for reasons of race, religion, nationality, membership of a particular social group, or political opinion.¹⁵⁶ The prohibition against *refoulement* forms part of customary law and therefore applies to all states, irrespective of whether they are signatories to the *Refugee Convention*.¹⁵⁷ With the principle of *non-refoulement* as the starting point, some of the most important concerns of UNHCR are: (1) the prevention of return of refugees to a country or territory where their life or liberty would be threatened; (2) access to a fair procedure for the determination of refugee status; (3) the granting of asylum; and (4) the prevention of arbitrary expulsion.¹⁵⁸

While it is incumbent on countries of origin to respect the right to return and readmit refugees, first countries of refuge and/or third countries must comply with the prohibition of *non-refoulement*; they are not obligated to offer *local integration* or *resettlement* opportunities to refugees as part of durable solutions. Rather, such offers are part of a complex interplay of international solidarity and burden-sharing and are regulated by governmental foreign policies and domestic laws.¹⁵⁹ Two aspects are, however, crucial for these solutions to be durable: a country’s offer of integration and a refugee’s voluntary choice.

Local integration has no formal definition under refugee law. UNHCR defines local integration as:

[T]he grant of a legal status, temporary but renewable, or permanent residence status, access to civil, socio-economic and cultural rights and, to a certain degree, political rights, as well as a viable economic situation, availability of affordable housing and access to land, as well as receptive attitudes within the host community.¹⁶⁰

Resettlement is the voluntary relocation of refugees to a safe third country that offers such an option. It is recognized not only as a vital form of protection, which meets “the special needs of individual refugees whose life, liberty, safety, health or other fundamental rights are at risk in the country where they sought refuge.”¹⁶¹ The decision to resettle is made with the consent of the refugee, the UNHCR, and the receiving country in situations where the physical and legal protection of the refugee is at risk and no alternative is available, or when it is considered the optimal solution for the refugee.¹⁶² Resettlement is the least common durable solution.

3.3.3 Protection in Arab Host States

More than half of all Palestinian refugees reside in Arab host states. Jordan, Syria, Lebanon, Egypt and Saudi Arabia and other Gulf countries host the majority of Palestinian refugees in the Arab region. (*See Chapter Two*)

Most Arab states in the Middle East and North Africa where the majority of Palestinian refugees reside are not party to the 1951 *Refugee Convention*¹⁶³ and its 1967 *Protocol*, or either of the two conventions on statelessness.¹⁶⁴ Arab host states are nonetheless obliged to protect Palestinian refugees in accordance with the international standards set by the human rights conventions they are party to, and under customary international law. Arab host states largely fail to meet this obligation. The level of protection provided to Palestinian refugees under Arab regional and national instruments and mechanisms is significantly less than that provided to other refugees internationally and regionally elsewhere in the world.¹⁶⁵



Children in Burj el-Shemali camp, Lebanon (© Stefan Christoff)

3.3.3.1 Instruments and Standards of the League of Arab States

A new *Arab Charter on Human Rights*¹⁶⁶ came into force in 2008, but there is still no regional refugee convention.¹⁶⁷ The 1969 *Convention Governing Specific Aspects of Refugee Problems in Africa* of the *Organization of African Unity (OAU)*, which is applicable to African-Arab states, includes provisions for residency, travel documents and voluntary repatriation.¹⁶⁸ However, few Palestinian refugees reside in OAU Convention signatory states.¹⁶⁹

Outside the global framework of the *Refugee Convention*, the League of Arab States (LAS)¹⁷⁰ has provided a form of temporary protection to Palestinian refugees in member states for more than six decades. The 1965 *Protocol on the Treatment of Palestinians (Casablanca Protocol)* is the primary LAS instrument governing the status and treatment of Palestinian refugees in Arab states. Under the *Casablanca Protocol*, Palestinians have the right to employment on par with citizens of the host country,¹⁷¹ the right to leave and enter host states,¹⁷² freedom of movement,¹⁷³ the right to a travel document,¹⁷⁴ and the right to the same treatment as LAS citizens with regard to visas and residency applications.¹⁷⁵ While the *Casablanca Protocol* is narrower in scope than the *Refugee Convention*, some of its provisions grant greater rights in theory than those set out in that Convention.¹⁷⁶ In the area of self-employment and employment in the liberal professions, the *Casablanca Protocol* provides for the same treatment as citizens, whereas the *Refugee Convention* only provides for treatment as favorable as possible, and not less than that accorded to resident aliens. The *Refugee Convention* provides for freedom of movement within the host country, whereas the *Casablanca Protocol* also provides for freedom of movement between Arab states. The *Casablanca Protocol*, however, is not binding and not all LAS member states are signatories. Jordan, Syria, Algeria, Iraq, Yemen and Sudan have all ratified the *Casablanca Protocol*,¹⁷⁷ while Egypt has effectively withdrawn from it.¹⁷⁸ Kuwait, Libya and Lebanon have endorsed the *Casablanca Protocol*, but with reservations¹⁷⁹ and Saudi Arabia, Morocco and Tunisia are not signatories.

Other LAS resolutions have addressed the reunification of divided families,¹⁸⁰ and the issuance of a standard travel document.¹⁸¹ No uniform identity paper or travel document, however, has ever been designed or issued by the LAS. Travel documents are issued by individual state members. In 1970, the LAS Supervisors Conference adopted Resolution 2600, stating that the acquisition of another nationality would not trigger the cessation of refugee status in LAS member states. In 1982, the LAS adopted Special Resolution 8 stipulating that travel documents issued to Palestinians should be granted in the same manner as national passports are issued to citizens. However, neither the *Casablanca Protocol* nor LAS Resolutions include provisions for protection of adequate housing, access to public education, property ownership, or social security.¹⁸²

With regard to international protection and assistance, the LAS has emphasized the importance of continued international support for UNRWA as an indicator of international responsibility for the Palestinian refugee issue. Arab states advocated the exclusion of the Palestinian refugees from the *Refugee Convention* and from UNHCR's mandate primarily because they were concerned that, if included under the UNHCR mandate, Palestinian refugees "would become submerged [within other categories of refugees] and would be relegated to a position of minor importance."¹⁸³ Cooperation has remained close between UNRWA and the LAS.¹⁸⁴ UNHCR and the LAS pursue efforts, both at a bilateral level and within the framework of the UN system, to strengthen their cooperation in areas related to refugees and global humanitarian issues of common concern.¹⁸⁵

3.3.3.2 Protection in Practice

The *LAS Supervisors Conference* has concluded that implementation of LAS standards for treatment of Palestinians in member states is poor, and routinely violates the *Casablanca Protocol* in letter and spirit.¹⁸⁶ LAS monitoring and enforcement initiatives have not produced significant or lasting improvements. Adherence to LAS standards has decreased, particularly since 1991, when, in response to the PLO's support of the Iraqi invasion of Kuwait, the LAS recommended that the "rules in force in each state" govern the application of the *Casablanca Protocol*.¹⁸⁷

Protection accorded to Palestinian refugees in Egypt, Iraq, Lebanon, Libya, Kuwait and other Gulf states, in particular, is very partial, discriminatory and inconsistent with regional and international standards.

Many factors have contributed to the very limited, partial and inconsistent protection accorded by Arab host countries, and to the further deterioration of the situation of Palestinian refugees, in particular since the Madrid-Oslo process. These include: the failure of Arab diplomatic and military efforts since 1947 to prevent or reverse Israel's establishment in Palestine by force, including the mass displacement of Palestinians, and the ongoing conflict with Israel; the sustained political pressure from powerful western states to offer solutions for Palestinian refugees (integration, resettlement) in Arab territory despite Israel's refusal to repatriate those who wish to return; undemocratic Arab systems of governance that fail to respect human rights and pass legislation protecting citizens and refugees,¹⁸⁸ but rather adopt laws and decrees driven by national or regional interests that treat refugees as a political tool and a matter of "national security;" the disengagement of international donors and humanitarian and development agencies from Palestinian refugees in Arab host countries; and, the weakness of the PLO as a representative body able to protect vulnerable Palestinians in Arab host countries.¹⁸⁹

I. The Right not to be Expelled (Non-Refoulement)

Arab host states have frequently violated the principle of *non-refoulement*, either by expelling Palestinian refugees to the frontiers of territory where their lives and freedoms are threatened, or by denying entry to Palestinian refugees fleeing persecution from another host state. Examples include the expulsion from **Jordan** after the 1970 clashes with the PLO, mass expulsion from **Gulf states** following the Iraqi invasion of Kuwait, expulsions from and cancellation of residency rights in **Libya** as a protest against the Oslo Accords, and Palestinian refugees fleeing **Iraq** subsequent to the U.S.-led occupation in 2003 and the growing sectarian violence carried out by the Iraqi government and other armed groups.

The failure of Arab states to admit Palestinian refugees fleeing persecution has resulted in repeated and protracted emergencies in which large numbers of Palestinian refugees were stranded on borders between countries in the region or deported. For instance, **Egypt** refused to admit Palestinian refugees expelled from the Gulf states into its territory, including those with Egyptian travel documents. Instead, Egyptian authorities detained the refugees and removed them to Sudan.¹⁹⁰ In addition, Arab states such as **Syria** and **Jordan** have refused to admit Palestinian refugees fleeing Iraq. (They have admitted Iraqi citizens, however). At the end of 2008, there were over 2,600 Palestinians who remained stranded in Al-Tanf camp in the no-man's land on the Iraqi - Syrian border, and in Al Waleed camp on the Iraqi side of the border.¹⁹¹ It is reported that Syrian security forces increasingly deport Palestinian refugees from Iraq who are detained in Damascus without valid visa to the Al-Tanf camp.¹⁹² (*See also Chapter One, 1.3*)

The PLO and Refugee & IDP Protection

In 1974, the UN reaffirmed the rights of the Palestinian people to self-determination, independence and sovereignty, and the right of the Palestinian refugees to return to their homes and properties.¹⁹³ The PLO was recognized as the legitimate representative of the Palestinian people and granted permanent observer status in the UN on this basis.

Although not a state party, historically the PLO has provided some protection for Palestinian refugees in Arab host countries through diplomatic intervention and political pressure on state authorities, and by offering access to health care, education and employment in its broad network of economic and service institutions. Recent PLO protection efforts include interventions on behalf of the Palestinian refugees in Iraq. When U.S.-led sanctions triggered a humanitarian crisis in Iraq in the 1990s, the PLO approached UNRWA, UNHCR and other international organizations about the possibility of UNRWA registering Palestinian refugees in Iraq in order to improve the level of assistance. Since 2003, the PLO has called upon the U.S. (as an Occupying Power) and the Iraqi government to protect Palestinians in Iraq. It offered to take Palestinian refugees from Iraq into the OPT, but Israel denied entry to them. In 2008, the PLO reached a tripartite humanitarian relocation agreement with UNHCR and the Sudanese government as a temporary solution for the plight of the Palestinian refugees who fled Baghdad and have remained stranded in the borders areas between Iraq and Syria.¹⁹⁴

Protection by the PLO, however, has been susceptible to political developments in host countries. Thus for instance, the 1969 *Cairo Agreement* regulated the status and freedom of the PLO in Lebanon and provided substantial protection to Palestinian refugees. In 1982 however, the PLO was forced to leave Lebanon for Tunis as part of a U.S.-brokered cease-fire agreement with Israel, leaving behind Palestinian refugees with no physical and political protection. Two weeks after their departure, thousands of Palestinian refugees were massacred at the Sabra and Shatila refugee camps by right-wing Christian militias operating with Israeli protection. During the late 1970s, and again in the 1980s, relations between Egypt and the PLO deteriorated, leaving Palestinians with less effective protection in that country as well.

Since the mid-1990s, the PLO has been unable to provide effective protection for Palestinian refugees in exile: the Oslo peace process resulted in the relocation of the PLO from exile to the OPT by 1994. There, the organization merged *de facto* with the PA, invested its resources mainly in state building, and neglected PLO institutions outside the OPT.

II. Rights to Residency, Travel Documents and Freedom of Movement

The *Refugee Convention*,¹⁹⁵ the *ICCPR*,¹⁹⁶ and the *Casablanca Protocol*¹⁹⁷ guarantee the right to freedom of movement, residence and travel documents within a host country. Nevertheless, in most Arab states, such rights are usually linked to citizenship.¹⁹⁸ Few Palestinian refugees have acquired citizenship in Arab host states (with the exception of Jordan) and instead have been issued an array of travel documents with various regulations and restrictions that do not confer freedom of movement and secure residency status.¹⁹⁹ Dual citizenship is generally not recognized by LAS member states.

In **Jordan**, 1948 Palestinian refugees and their descendants were granted Jordanian citizenship in 1954 conditioned upon a future permanent solution in the region.²⁰⁰ As citizens, they hold passports valid for five years and enjoy the right to vote and full access to services.²⁰¹ When a new wave of Palestinian refugees arrived to Jordan from the Jordan-annexed West Bank during the 1967 war, Jordan did not register them because they held Jordanian citizenship and were considered IDPs.²⁰² 1967 Palestinian refugees who arrived to Jordan from the Gaza Strip, however, were not entitled to citizenship. They were granted a temporary (two-year) Jordanian passport, which is in effect an international travel document (*laissez-passer*)²⁰³ with a two-year permit to stay, and a blue crossing card²⁰⁴ for travel to Palestine. In 1988 Jordan renounced its claims to the Palestinian West Bank. In the context of administrative severance, the Jordanian citizenship of West Bank Palestinian became invalid and they became stateless. They were issued “green cards” for entry and temporary visits in Jordan, and their regular Jordanian passports were also replaced by temporary ones. Palestinians citizens of Jordan and living in Jordan at the time of administrative severance in 1988 were issued “yellow cards” for crossing into the West Bank. Palestinian citizens of Jordan who also hold identity or travel documents issued by Israeli or Palestinian authorities are likely to have their yellow crossing cards replaced by green ones when they renew their Jordanian passports, i.e. a procedure that amounts to revocation of citizenship. The Jordanian authorities have argued that this procedure is part of Jordan’s disengagement from the West Bank and a response to Israel’s policy of cleansing the land from its indigenous inhabitants.²⁰⁵ Between March and June 2008, the Jordanian authorities replaced hundreds of yellow cards with green cards.²⁰⁶

Palestinian refugees in **Egypt**²⁰⁷ are subject to five categories of residency permits depending on whether the head of household (or the original entrant) arrived before or after 1967. The duration of these permits varies according to category. Renewal of residency permits is contingent on the reason for remaining in Egypt, such as education, marriage to an Egyptian, or licensed work or business partnership with Egyptians. The majority of Palestinian refugees in Egypt work in the informal sector and face difficulties in obtaining or renewing their residency permits. There are two types of “Egyptian Travel Documents for Palestinian Refugees”: (1) a travel document issued for five years on the basis of a valid residence permit; and (2) a travel document valid for travel only, but granting no right of residency in Egypt.²⁰⁸ Palestinian refugees may lose their entry and residency rights in Egypt if they stay abroad longer than six months, unless they have a special authorization for employment or education abroad. In such cases, a one-year return visa may be granted by the Egyptian authorities.

In **Lebanon**, Palestinian refugees hold the legal status of foreigners; only a small number of refugees have acquired citizenship.²⁰⁹ Palestinian refugees who are registered with both UNRWA and the Department of Political Affairs and Refugees (DPAR) hold permanent residency cards and travel documents valid for five years. Those who are registered only with DPAR are issued the same residency card, but a different travel document (*laissez-passer*), which is valid for one year and renewable up to three times. According to a 1957 decree, Palestinian refugees registered with DPAR and living outside refugee camps can freely change their place of residence, but camp residents have to apply for permits to move to other camps.²¹⁰ Refugees who are not registered either with UNRWA or DPAR (also known as undocumented or non-ID Palestinians) are not entitled to either residency or travel documents, and are considered to be residing illegally in Lebanon.²¹¹ Non-ID Palestinians face restrictions on movement, and lack access to fundamental rights. In January 2008, the Lebanese government and the PLO reached an agreement that grants legal status to non-ID holding Palestinians.²¹² The right to residency and travel of Palestinian refugees in Lebanon is subject to arbitrary change, depending on political context. In 1995, for example, Lebanese authorities required Palestinian refugees to obtain exit and re-entry permits.²¹³ This requirement was lifted four years later, and visa restrictions were eased. Nonetheless, Palestinian refugees are reluctant to go abroad for fear that a new revision may suddenly require a return visa to Lebanon.²¹⁴ Moreover, other states are reluctant to grant them visas, as their ability to return to Lebanon is uncertain.

Palestinian refugees living in **Syria** have almost the same rights and duties as Syrian citizens, apart from citizenship and political participation.²¹⁵ Palestinian refugees in Syria may acquire Syrian citizenship if they are women married to Syrian men, or receive special dispensation from the Ministry of the Interior.²¹⁶ Palestinians in Syria are granted travel documents valid for six years, like Syrian passports, which enable their holders to enter Syria without a visa.²¹⁷ Palestinians also have freedom of movement in all parts of Syria.²¹⁸

Palestinian refugees in **Iraq** were protected by successive governments and enjoyed relatively high standards of treatment consistent with LAS resolutions, particularly the *Casablanca Protocol*.²¹⁹ They enjoyed many of the same rights as Iraqi citizens²²⁰ and were issued five-year travel documents. However, “since the nineties, the Iraqi travel document for Palestinians has been useless for travel to Arab countries; it has no value and no one recognizes it.”²²¹ The situation of Palestinians in Iraq changed drastically after the U.S.-led occupation in 2003, with Iraq becoming a country of flight rather than refuge.²²² New types of residency permits were required, which had to be renewed through a difficult and



Children at the al-Waleed refugee camp on the Iraq-Syria border
(© Courtesy of IRIN)

humiliating process on a two-month basis.²²³ Moreover, a 2006 law prevents Palestinians from obtaining citizenship.²²⁴ More recently, special ID cards were given to over 10,000 Palestinian refugees in Iraq, formally recognizing them for the first time as legal refugees.²²⁵

Palestinians usually reach **Gulf states** from their first place of refuge in one of the Arab states bordering historic Palestine.²²⁶ The number of Palestinians residing in the Gulf states has fluctuated greatly, mainly as a result of political and military crises, in particular the 1991 Gulf war.²²⁷ Palestinians in the Gulf, and especially in **Kuwait**, are considered migrant workers, and their residency status is related to employment status. All foreigners have to leave the country upon termination of their employment. Return to the first country of refuge is often impossible for Palestinians who, in their absence, are likely to have lost their residency status.²²⁸ Since 2002, Arab citizens or residents from non-Gulf Cooperation Council states, including Palestinian refugees, have not been allowed to stay in Kuwait for more than three months.²²⁹ Although subject to the same regulations as foreigners, Palestinian

refugees in **Saudi Arabia** “have been slowly and silently moving from the status of expatriate [*sic.*] to something else, to a new category with a more favorable treatment that still does not exist in the local legislation.”²³⁰

Libya has proven an unstable host state with regard to Palestinian residency rights.²³¹ Prior to 1994, Palestinians generally enjoyed the same residency rights as Libyan nationals, although many Palestinians had to live in specially designated areas. As a protest against the 1993 Oslo peace process, the Libyan government expelled Palestinians from its territory, causing a humanitarian crisis on its border and a political crisis with Egypt. The crisis was resolved in 1998 following international intervention. Expelled Palestinians were eventually readmitted, but residency rights have not been reinstated to their previous level. During 2008, UNHCR reported an increase in the number of refugee applications in Libya, of which the majority were Palestinians, Iraqis, and Somalis.²³²

III. The Right to Work

Implementation of the *Casablanca Protocol* with respect to the right to employment on par with nationals is subject to numerous restrictions. Most Palestinian refugees in **Syria** and **Jordan** have the right to employment on par with host state nationals.²³³ Exceptions are refugees who arrived in **Syria** after 10 July, 1956, who are not allowed to occupy civil posts in government,²³⁴ and 1967 Palestinian refugees from the Gaza Strip in **Jordan**, who do not have full access to employment.²³⁵

Kuwait does not grant Palestinian refugees the same right to employment as other foreigners and does not meet the standards set for employment under the *Casablanca Protocol*. Non-Kuwaitis are not permitted to join professional associations, and Palestinian refugees are excluded from equal employment rights in private business with Kuwaiti citizens.²³⁶

Lebanon does not follow the *Casablanca Protocol*, and access to work is more restricted for Palestinian refugees than for other foreigners.²³⁷ The right to work is granted to foreigners based on three conditions which are difficult to meet for Palestinian refugees: a work permit, which is hard to obtain;²³⁸ national preference; and reciprocity.²³⁹ Between 1969 and 1987, Palestinian refugees were entitled to work under the 1969 *Cairo Agreement* between the PLO and the Lebanese government. The Agreement was abrogated in 1987.²⁴⁰ Until today, Palestinians are barred from several skilled professions in Lebanon, such as engineering, pharmacy, medicine and law.²⁴¹ Entry into professional associations and employment is based on the individual having held Lebanese nationality for a minimum of ten years, or being a national of a state with reciprocity.²⁴² Unlike Lebanese citizens, employed Palestinians do not have access to social security benefits.²⁴³ These Lebanese laws violate the *International Covenant on Economic, Social and Cultural Rights*, which was ratified by Lebanon in 1997, especially Article 6, guaranteeing “the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts.”

In **Egypt**, Palestinian refugees were entitled to equal treatment as nationals until 1978, when all laws granting them equal treatment were abrogated.²⁴⁴ Palestinian refugees now have the right to employment on par with other foreigners. Foreigners wishing to practice a profession must obtain a permit from the Ministry of Labor and a valid residence permit.²⁴⁵ Furthermore, a ten percent quota for foreigners in the private sector has been introduced in order to reduce competition with the national labor force.²⁴⁶ Because they are difficult to obtain, only a small number of Palestinians have work permits. Therefore, most Palestinian refugees work in the informal sector, creating their own employment options or working in small-scale enterprises. Employment in the public sector is based on reciprocal rights for Egyptian nationals in the foreigner’s state of citizenship.²⁴⁷ Due to the fact that most Palestinian refugees in Egypt are stateless, there is no possibility of reciprocal agreements, and therefore no possibility of public sector employment.

IV. The Right to Education

Most Arab host states provide Palestinian refugees with access to public elementary, secondary and college or university education.²⁴⁸ Access may be restricted as a result of limited space for foreigners, including Palestinian refugees, or because of financial or political reasons.



Woman in al Tanf refugee camp, on the Iraqi-Syrian border, 2009 (© CPT)

In **Syria**, Palestinian refugee students have full access to all public educational facilities on par with Syrian citizens, free of charge.²⁴⁹ In **Jordan**, Palestinian refugees with full citizenship or permanent residency have full access to all public facilities. On the other hand, 1967 Palestinian refugees from Gaza, as well as Palestinians from the West Bank holding temporary Jordanian passports must compete for limited places in Jordanian universities reserved for Arab foreigners (a five percent quota since 1986),²⁵⁰ pay fees required for foreigners, and have a "clean" security record.²⁵¹

Access to education has varied greatly over the years in **Egypt** where "Palestinians remained at the mercy of shifts in government policy and public opinion triggered by external events in which they had no role."²⁵² Between 1952 and 1978, Palestinian refugees were treated as Egyptian nationals, and were offered free public education at all levels.²⁵³ Following a ministerial decision in 1978, Palestinian access to

free education and universities became subject to evolving restrictions and exemptions. Palestinian students, with the exception of those whose parents worked for the PLO and the Administrative Office of the Governor of Gaza, were transferred from public to private schools,²⁵⁴ and most Palestinian refugees were required to pay the same increased fees as foreigners.²⁵⁵ In 1983 and 1984, Palestinians were banned from studying at the faculties of medicine, engineering, pharmacology, journalism, economics and political science.²⁵⁶ These restrictions on academic studies were removed in 1995.²⁵⁷

In 1992, the government limited the number of foreign students to ten percent of the total student body.²⁵⁸ Yet, at the same time and coinciding with the Declaration of Principles between Israel and the PLO, a ministerial decision facilitated access to higher education for specific categories of Palestinians, including the children of PLO and public sector employees and reduced their university tuition to ten percent of the full amount.²⁵⁹ Nevertheless, the reduced fee is still a considerable sum for most Palestinians living in Egypt. In 2000, in the wake of the second *Intifada* (which triggered enormous support for the Palestinians among Egyptians), a reduction of 50 percent of university fees was granted to those who did not fall under the 90 percent exemption.²⁶⁰

In **Lebanon**, children of Palestinian refugees face discrimination in education. The government does not provide education to Palestinian refugees, who rely on UNRWA schooling.²⁶¹ Access to high school and post secondary education is severely restricted, because UNRWA operates only a small number of high schools and vocational training centers at the post-secondary level.²⁶² Many Palestinian children reportedly leave school at an early age to help earn income for their families.

In **Kuwait**, Palestinian refugees and other foreigners were treated on par with nationals until 1965, when the

government limited the number of non-Kuwaitis in public schools to 25 percent. The PLO was later given permission to operate its own schools with teachers, buildings and furnishings supplied by the Ministry of Education. The program included 22 schools and lasted until 1976, when they were closed for financial and political reasons, and the students were incorporated into public schools. In the 1980s, due to overcrowding, the government decided that only children of foreigners who had been in Kuwait since 1 January, 1963 would be permitted to register in public schools. Others were urged to enroll in private schools, and the government subsequently subsidized the cost of up to half the tuition for children affected by this ruling. At the higher education level, there are also limited places available for foreigners in Kuwait.²⁶³

V. The Right to Health

Palestinian refugees in **Lebanon** are not offered public health services. “It is not uncommon for Lebanese hospitals to deny emergency services to Palestinian refugees.”²⁶⁴ UNRWA, the Red Cross and Red Crescent and other NGOs have assumed health care responsibility, but the quality of service is substandard.²⁶⁵ In **Syria**, on the other hand, public medical consultation for Palestinian refugees is free of charge, and treatment in government hospitals costs, on average, three times less than at private hospitals.²⁶⁶

No regulations limit Palestinian access to health care in **Egypt**. Different types of health facilities are available to the Palestinian community, such as public hospitals; the Palestinian Hospital (run by the PLO-affiliated Palestinian Red Crescent Society); and charitable and private clinics. Generally, medical services for minor medical needs are affordable and adequate. Palestinians pay only modest fees for treatment in public hospitals on par with Egyptian nationals. On the other hand, Palestinians who are employed by the Egyptian government receive free medical treatment.²⁶⁷

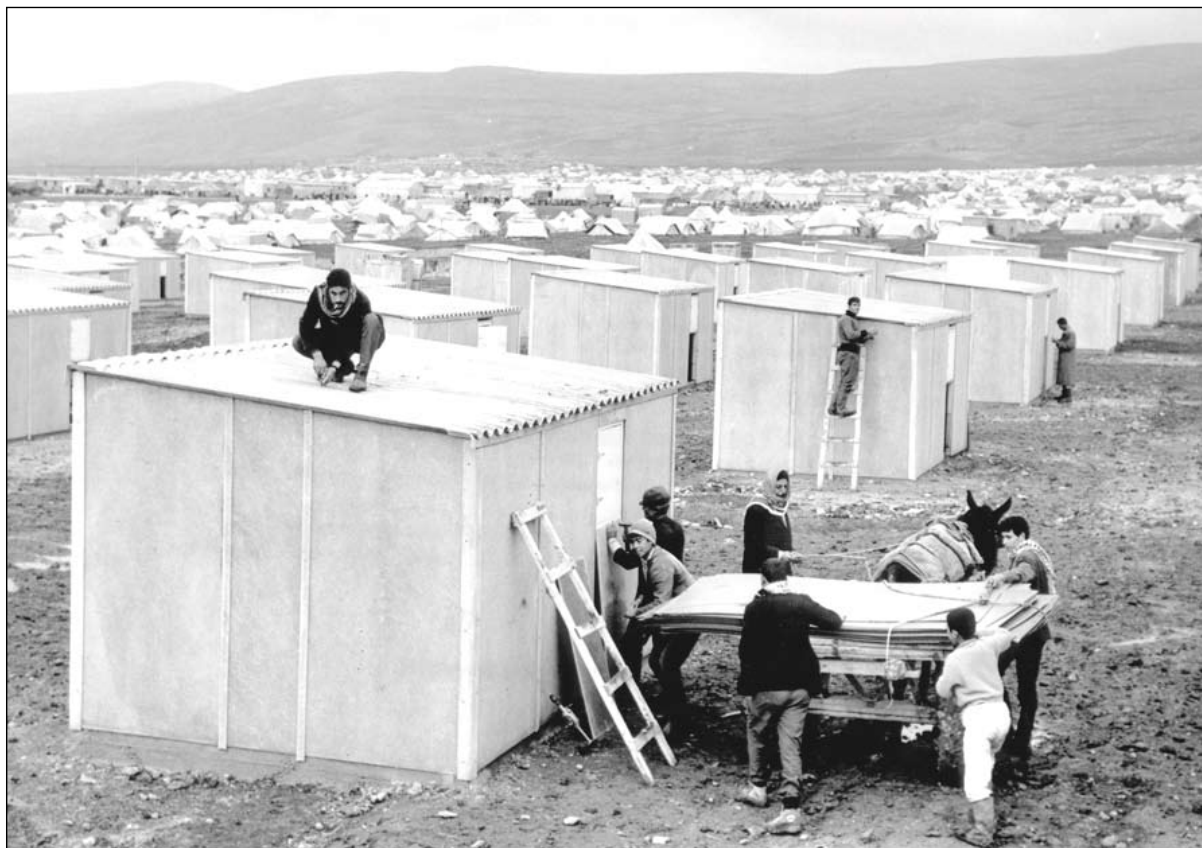
VI. The Right to Property

The *Casablanca Protocol* does not address the right to property. In most Arab host states except Jordan, Palestinian refugees do not have rights to own property on par with host state nationals.²⁶⁸ Palestinians in **Jordan** have the right to own property unless they are holders of temporary passports. With temporary passports they can own property only if they find a local Jordanian partner and request the approval of a ministerial council.²⁶⁹ Thus, for instance, many 1967 Palestinian refugees from the Gaza Strip are not permitted to own, rent or sell immovable property without government permission.²⁷⁰ The situation in **Iraq** has deteriorated since the beginning of the U.S.-led war in 2003, and many Palestinians have been expelled from their homes, and had their property confiscated.²⁷¹

In **Lebanon**, a 2001 law prohibits ownership of real estate for non-Lebanese without “nationality of a recognized state”, or anyone whose property is contrary to the provision of the constitution relating to naturalization.”²⁷² This law is aimed specifically at Palestinians refugees, who are the only foreigners without the “nationality of a recognized state.” Under this law, Palestinian refugees are not permitted to own or register real estate, and cannot even pass on to their heirs previously owned property.²⁷³

In **Syria**, refugees may not own arable land; however they may acquire a single home provided that they are registered with the General Authority for Palestine Arab Refugees (GAPAR). Palestinian refugees in **Egypt** have the same limited right to own immovable property as other foreigners.²⁷⁴ Foreigners are barred from owning agricultural or fertile land in **Egypt**.²⁷⁵

In **Kuwait**, stateless Palestinian refugees are not permitted to own immovable property, whereas citizens of other Arab states may own only a single piece of real estate, with government approval and subject to reciprocal treatment. The owner must have resided in Kuwait for a minimum of ten years, possess sufficient income and hold a clean security record.²⁷⁶



Baqa'a refugee camp, Jordan 1950s. (© UNRWA)

3.3.4 Protection in State Signatories to the 1951 Refugee Convention

More than 700,000 displaced Palestinians reside outside the Arab region in Europe, the Americas and elsewhere. (See *Chapter Two*) Most of them are Palestinian refugees who were unable to obtain effective protection in or suffered renewed forced displacement from Arab host countries.

Most states in Europe and the Americas, with the exception of the United States,²⁷⁷ are party to the 1951 *Refugee Convention* and the 1967 *Protocol*, and some states are also signatories of the 1954 *Convention on Stateless Persons* and/or the 1961 *Convention on Statelessness*, but most of them fail to accord Palestinian refugees the protection they are entitled to under these international instruments.

I. The Right to Status and Benefits under the 1951 Refugee Convention

Unlike other refugees, 1948 and 1967 Palestinian refugees are not only affected by the increasingly restrictive national and regional asylum systems in Europe, North America and elsewhere. They also face additional and particular discrimination: Palestinian refugees of 1948 and 1967 are entitled to Convention refugee status and benefits by virtue of the inclusion clause in Article 1D. (See *above*, 3.3.1.1) They should be recognized as refugees upon their arrival to states outside UNRWA's area of operation which are signatories to the *Refugee Convention*, and no additional refugee status determination is required there. Nevertheless, most Palestinian refugees seeking asylum in these countries are denied refugee status and do not enjoy the protection guaranteed under the *Refugee Convention*, because national authorities and courts do not apply or misinterpret Article 1D of the *Refugee Convention*.

A country survey conducted in 2005²⁷⁸ showed that only few countries, among them **Hungary** and **Finland**, applied UNHCR's interpretation of Article 1D and conferred in some cases refugee status according to it.²⁷⁹

Many countries had not incorporated Article 1D into their national asylum legislation (e.g., **Canada** and the **U.S.**) or did not apply Article 1D in national asylum practice (e.g., **Austria, Belgium** and **Switzerland**).²⁸⁰

Other countries applied Article 1D, but interpreted the meaning of its exclusion and inclusion clauses incorrectly. National authorities in these countries have adopted at least eight different interpretations of Article 1D,²⁸¹ concluding that Palestinian refugees are entitled to the status and benefits of the *Refugee Convention* only if:

- They have not “voluntarily relinquished” UNRWA assistance (**Germany**);²⁸²
- UNRWA ceases its functions (**Denmark** and **France**);²⁸³
- They are unable to return to their country of former habitual residence due to a well-founded fear of persecution in that country and cannot invoke UNRWA protection there (**Netherlands**);²⁸⁴
- They come from the West Bank and Gaza Strip, where they lack the protection of a state (**Norway**);²⁸⁵
- They have already obtained a permanent residency permit (**Sweden**).²⁸⁶

In some countries, Article 1D is interpreted as not having an inclusion clause that automatically confers the benefits of the 1951 *Refugee Convention* to Palestinian refugees once protection or assistance from a UN organ other than the UNHCR has ceased. In these countries Article 1D is interpreted as a provision that excludes Palestinian refugees from the scope of the Convention. Palestinian refugees in those countries may, however, qualify under Article 1A(2) of the Convention, if:

- They were born after 28 July, 1951 and were not assisted by UNRWA on that date (**UK**);²⁸⁷
- UNCCP has ceased its protection activities (**Australia**; no determination has been made as to whether this is in fact the case);²⁸⁸
- UNRWA ceases its functions (**New Zealand**, although they may also qualify at present).²⁸⁹

In practice, all these interpretations lead to the same outcome: asylum claims submitted by Palestinian refugees are assessed according to the criteria set out in Article 1A(2) and/or other criteria such as protection on humanitarian grounds. Thus, as a result of the particular interpretations adopted by national authorities and courts, 1948 and 1967 Palestinian refugees have not derived any rights and benefits from the primary provision of the *Refugee Convention* relevant to their case - Article 1D - beyond the “right” not to be excluded from applying for asylum.²⁹⁰

Most Palestinian refugees fail to obtain Convention refugee status under Article 1A(2) because the latter is based on a criteria that does not fit this particular group of refugees. Alternative mechanisms, such as protection under the *Convention on Stateless Persons* and complementary forms of protection, are not available for most Palestinian refugees. Few countries possess a specialized procedure designed for examining an applicant’s claim of statelessness.²⁹¹ In countries where statelessness claims are examined, little practice has developed with regard to recognition of Palestinians as stateless persons.²⁹² In **Belgium, France, Germany** and **Spain**, some Palestinians have been recognized as stateless persons and granted the benefits of the *Convention on*



A Palestinian woman who fled Iraq, and who received UNHCR refugee status, was refused entrance in Greece, 2009.
(© Courtesy of Noborder Lesbos / UNHCR)

*Stateless Persons.*²⁹³ In **Poland, Spain and Sweden**, Palestinians from the OPT may be granted legal status on humanitarian grounds, including residence permits and a set of defined rights.²⁹⁴

Many Palestinian refugees whose request for asylum has been rejected remain trapped in a legal limbo without rights, in particular in **Austria, Belgium, France, Germany, Switzerland, Sweden** and the **U.K.** Rejected asylum seekers who are not granted a complementary form of protection are usually requested to leave the country. Palestinian refugees who are stateless persons, however, have no country to go to. National authorities attempting to “return” or remove them often fail to find a state that will allow them to (re-)enter their territory.

II. The Right Not to Be Expelled (non-refoulement) or Arbitrarily Detained

In **Australia, Spain, Sweden** and the **U.S.**, rejected asylum seekers may be kept in detention until deportation to the country of habitual residence can be enforced. In Spain, such detention may never exceed 40 days; in Australia and the U.S., persons, including children, may be held in custody indefinitely. Stateless Palestinian asylum seekers are particularly at risk of arbitrary detention, because they often cannot be deported anywhere.

Turkey, which has ratified the 1951 Refugee Convention but not the 1967 Protocol extending its application to non-European refugees, does not recognize the refugee status of non-European refugees, including Palestinians. Palestinian refugees cannot, therefore, request asylum in Turkey. If found in Turkey, they are detained. If they cannot be deported, they are released with a document (“Article 23 Document”) valid for two to three months and indicating that they must leave within this period. If the refugee is again intercepted by the Turkish authorities after the prescribed period, s/he will be detained once more and eventually released with the same document. Palestinian refugees fleeing Iraq, for example, have been affected by the lack of access to asylum in Turkey.

3.3.5 Protection through International Organs, Agencies and Organizations

As a result of the gaps existing in the international protection regime, there is no international agency currently mandated to protect and promote the full panoply of rights of Palestinian refugees and IDPs, or search for durable solutions, or represent their rights and interests in peace negotiations. (*See above, 3.3.1*) A number of international organs, agencies and organizations, however, have provided a limited degree of protection for Palestinian refugees and IDPs. International accountability mechanisms have yet to become effective for ending Israeli impunity for violations of international law and ensuring adequate reparations for Palestinian victims.

3.3.5.1 The UN Conciliation Commission for Palestine (UNCCP)

UNCCP was established under UNGA Resolution 194(III) in 1948 to take over the work of the UN Mediator on Palestine,²⁹⁵ provide international protection to all persons displaced during the 1948 war, and “facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees.” Thus, the UNCCP mandate included protecting the rights of Palestinian refugees, among them the right of return, property restitution and compensation.²⁹⁶ In addition, UNCCP was mandated “to assist the governments and authorities concerned to achieve a final settlement of all questions outstanding between them.”

During its early years of operation, UNCCP intervened with Israel for the safe return of specific groups based on humanitarian considerations and achieved reunification in Israel of several hundred separated Palestinian families. UNCCP established several subsidiary bodies, including a Technical Committee and an Economic Survey Mission, to investigate and recommend measures that might be taken to safeguard the rights, including property rights of the refugees.

The UNCCP called upon Israel to abrogate discriminatory legislation, including the 1950 Absentees' Property Law, and requested that Israel suspend all measures of requisition and occupation of Palestinian Arab homes, and unfreeze *waqf* property (property endowed for religious purposes under Islamic law). These requests were ignored. The Commission also worked with Israeli officials to facilitate refugee access to blocked savings accounts and assets in banks inside Israel. However, the Israeli government and the Israeli Custodian of Absentees' Property retained a significant proportion of the monetary value of accounts and assets through the imposition of taxes and administration fees. An initiative to identify Palestinian property, both globally and individually, was conducted based on British mandate records.²⁹⁷ The UNCCP records still provide the most comprehensive database of Palestinian refugee property to date. (*See Chapter One*)

By the early 1950s however, UNCCP reached the conclusion that it was unable to fulfill its mandate.²⁹⁸ The ability of UNCCP to protect and promote the legal rights of the refugees was compromised by its particular mandate which required it to merge refugee protection with the larger task of Arab-Israeli conciliation, and by lack of international political will. The rights affirmed in UNGA Resolution 194(III) were often deferred in light of what the Commission came to view as the "practicalities on the ground," i.e., Israel's opposition to the return of the refugees.²⁹⁹ The Commission noted that the situation envisaged by the UNGA in 1948 "was far from the realities of the problem."³⁰⁰ As a result, the Commission took the view that the governments concerned were primarily responsible for the settlement of their outstanding differences, including the plight of the refugees.³⁰¹

By the mid-1950s, UNCCP ceased to provide protection and actively search for a durable solution.³⁰² Thus, "within four years of its formation, the UNCCP devolved from an agency charged with the 'protection of the rights, property and interests of the refugees' to little more than a symbol of UN concern for the unresolved aspects of the Arab-Israeli conflict."³⁰³ No such organ was established subsequently by the United Nations for the protection of the 1967 Palestinian refugees or IDPs displaced in the OPT. Today, the Commission is no longer active.³⁰⁴ Every year, the UNCCP publishes a one-page annual report stating "it has nothing new to report."³⁰⁵

3.3.5.2 The UN Relief and Works Agency for Palestine Refugees (UNRWA)

UNRWA is the lead international agency mandated to assist 1948 Palestinian refugees in five geographical areas of operations (**Syria, Lebanon, Jordan, the West Bank and the Gaza Strip**). From 1968 onwards, UNRWA's mandate has been expanded to include the provision of humanitarian assistance, on an emergency basis, also to persons displaced as a result of the 1967 Arab-Israeli war and subsequent hostilities. The Agency does not have an *explicit* mandate to protect or promote durable solutions for Palestinian refugees.

UNRWA was established in 1949 to complement the work of the UNCCP by providing relief to the Palestinian refugees.³⁰⁶ Based on the expectation that the plight of the refugees would soon be resolved in accordance with the framework set forth in UNGA Resolution 194(III), UNRWA was accorded a short-term mandate³⁰⁷ which has been extended on a regular basis by the UN General Assembly due to the lack of durable solutions for Palestinian refugees.

Although UNRWA is not mandated to promote durable solutions, powerful western governments and donors hoped until the end of the 1950s, that economic development projects implemented through UNRWA would encourage Palestinian refugees to integrate in Arab host countries or resettle in third countries. During the initial six years of its operations, under the recommendations of the UNCCP's *Economic Survey Mission*, UNRWA initiated programs aimed at reintegrating (resettling) refugees into the economic life of the region.³⁰⁸ Yet, due to strained financial resources and strong opposition of Arab states and refugees to *de facto* resettlement,³⁰⁹ UNRWA soon redirected expenditures towards the provision of health care, education, relief and social services rather than integration and resettlement plans.³¹⁰ In 1959, the UN Secretary-General reached the conclusion that "no reintegration would be satisfactory, or even possible, were it to be brought about by forcing people into new positions against their will."³¹¹



Refugees fleeing an Israeli military attack and relocating themselves at an UNRWA operated school, Gaza 2009. (© Sami Abu Salem)

At present, it is UNRWA's position that a just and durable solution to the refugee question lies with the parties to the conflict and other political actors, and as a humanitarian and human development agency, UNRWA's role is limited in this matter.³¹² UNRWA perceives that its role in this regard is "to highlight the urgent need for that solution and to help ensure that in its elaboration the rights and interests of the refugees are safeguarded."³¹³ The Agency also acknowledges that "a just and durable solution is the key to the enjoyment of national protection and the realization of other rights."³¹⁴

Lacking an explicit protection mandate, UNRWA provides limited protection, which is inherent in the Agency's operational work, while maintaining its identity as "a public service organization."³¹⁵ UNRWA maintains the only existing database of 1948 Palestinian refugees and issues them registration cards. Although unsystematic, partial and not statistically valid, UNRWA's database includes invaluable information about 4.7

million refugees and their families, i.e. approximately 75 percent of the entire population of 1948 Palestinian refugees. (See also *Chapter Two*) The Agency's general assistance and emergency response during humanitarian crises guarantee basic economic and social rights. Limited protection is also provided through monitoring, reporting and intervention, sometimes in cooperation with the UNHCR.³¹⁶

Following Israel's occupation of the West Bank and the Gaza Strip in 1967, then UNRWA Commissioner-General Lawrence Michelmore approached the UN Under-Secretary-General seeking international protection for Palestinian refugees in the OPT. The initiative failed to attract sufficient support at the UN, based on the view that Israel would oppose a protection initiative. In 1968, UNRWA's mandate was expanded to include the provision of humanitarian assistance, on an emergency basis, also to persons displaced as a result of the 1967 Arab-Israeli war.³¹⁷

UNRWA's protection role was again expanded following the massacre in the Palestinian refugee camps of Sabra and Shatila in 1982. A UN resolution entitled "Protection of Palestine Refugees" stipulated that UNRWA, in consultation with the UNSG, should "undertake effective measures to guarantee the safety and security and the legal and human rights of the Palestinian refugees in the occupied [Lebanese] territory."³¹⁸ Similar resolutions in 1983, 1988 and 1993 reiterated the need for UNRWA to continue its efforts in preserving the security and human rights of the Palestinian refugees in territory under Israeli occupation since 1967.³¹⁹

During the first *Intifada* (1987–1993), UNRWA protection activities increased following UNSC Resolution 605, which called upon the UNSG to assess the situation and to present to the UNSC "recommendations on ways and means for ensuring the safety and protection of the Palestinian civilians under Israeli occupation."³²⁰ UNRWA was requested by the UNSG to enhance its "general assistance" capacity through the addition "of international staff" in the OPT to intervene with the authorities of the Israeli Occupying Power in an effort to provide "passive protection."³²¹

UNRWA thus established the *Refugee Affairs Officer Program* (RAOP) in the OPT to provide protection through monitoring, reporting, and a limited degree of intervention. By the beginning of the 1990s, the RAOP included a legal aid scheme that aimed at helping “refugees deal with a range of problems of life under occupation.”³²² This included “sustained follow-up in cases of deaths, injuries and harassment; bureaucratic difficulties in obtaining various permits; discrimination in access to courts of law, welfare benefits, etc.; travel restrictions; and various forms of collective punishment.”³²³ UNRWA has also offered legal advice and assistance to refugees applying for family reunification. The RAOP was eventually phased out, first in the occupied Gaza Strip (1994), and then in the occupied West Bank (1996), following the redeployment of the Israeli military and establishment of the Palestinian Authority. Although the RAOP “constitutes the most expansive protection mechanism ever instituted by UNRWA it was unable to bridge the protection gap in relation to Palestine refugees in the OPT.”³²⁴

In 2000, UNRWA once again began providing emergency assistance in response to the humanitarian crisis in the OPT resulting from Israel’s attempt to suppress the second Palestinian *Intifada* through military force. The *Operation Support Officers Program* (OSOP) has a mandate similar to that of RAOP, but its protection-related activities are far more limited. The goal of the OSOP is “to assist in alleviating the adverse effects that the restrictions imposed by Israeli authorities [are] having upon the Agency’s provision of humanitarian services.”³²⁵ OSOP officers also monitor and report on “the living conditions of Palestine refugees”, and problems that affect the human dignity, physical safety, welfare and protection of Palestine refugees and other persons of concern to UNRWA. The OSOP thereby provides a measure of protection to refugees, including multiply displaced refugees in the OPT and Lebanon.³²⁶



The destruction of UNRWA's main food storage warehouse in Gaza City, during Israel's 2008-9 military assault. (© UNRWA)

Encouraged by its first donor conference in 2004, UNRWA has included a rights-based approach to its operations. It has appointed a senior protection and policy advisor to study ways in which UNRWA could increase its protection work for Palestinian refugees, in particular refugee children, based on the *Convention on the Rights of the Child* (CRC).³²⁷ UNRWA has expressed its intention to continue developing a “protection strategy which focuses on clarifying the actions, rights and legal precepts that are germane to UNRWA’s mandate and to the Agency’s specific operational context [...] to maximize the points of intersection between the human development and human rights paradigm.”³²⁸

Today, UNRWA is part of the Protection Cluster Working Group in the OPT and Lebanon. Nevertheless, the Agency's protection activities have remained limited in terms of substance and geography, and what was reported about UNRWA's capacity to protect Palestinian refugees during humanitarian crisis in the early 1980s still largely applies today: "The only means at the disposal of [UNRWA] is [...] to report, to warn and to make representations to the authorities responsible."³²⁹

3.3.5.3 The Office of the UN High Commissioner for Refugees (UNHCR)

UNHCR was established in 1950 and is the primary international body mandated to provide assistance and protection, including the search for durable solutions, to refugees worldwide. UNHCR's mandate is not limited to refugees under the 1951 *Refugee Convention* and its 1967 *Protocol*, but also covers refugees defined in the *Cartagena Declaration* and *OAU Convention*,³³⁰ returnees, stateless persons, and IDPs.³³¹

UNHCR recognizes 1948 and 1967 Palestinian refugees outside UNRWA's area of operation as *prima facie* Convention refugees under Article 1D of the 1951 *Refugee Convention*. In other words, these refugees are within the Agency's competence and do not need to prove individual persecution under Article 1A(2) to enjoy the protection under the Convention. Also within the Agency's competence are Palestinians who are neither 1948 nor 1967 refugees and who are recognized as Convention refugees under Article 1A(2) on grounds of a well founded fear of persecution.³³² UNHCR does not consider 1948 and 1967 Palestinian refugees who reside in the area of UNRWA operations as falling within its mandate.

UNHCR recognizes the protection gap faced by 1948 and 1967 Palestinian refugees in the area of UNRWA operation, and has issued several calls to remedy the problem. During the late 1980s and the early 1990s, in the context of the first Palestinian *Intifada* in the OPT, the UNHCR issued numerous Executive Committee conclusions that "[e]xpressed concern about the lack of adequate international protection for various groups of refugees in different parts of the world, including a large number of Palestinians, and hoped that efforts would be undertaken within the United Nations system to address their protection needs."³³³

UNHCR does not recognize Palestinian IDPs as a population of concern and does not take a role in protecting them. UNHCR has recently taken a greater role in IDP protection by leading the global Protection Cluster Working Group and multi-agency protection work for conflict-induced IDPs at the country level.³³⁴



UNHCR provides tents to Palestinian refugees, al Tanf refugee camp on the Syrian-Iraqi border. (© UNHCR)

Although equipped with an explicit mandate to promote durable solutions for refugees worldwide, UNHCR holds that it has no such mandate for Palestinian refugees. It is UNHCR's position that a just and durable solution to the refugee question lies with the parties to the conflict and other political actors, and as a humanitarian agency, its role is limited in this matter.³³⁵

As a result of this approach UNHCR extends a minimal level of protection to Palestinian refugees living outside UNRWA areas of operation,³³⁶ including assistance with travel documents, renewal of UNRWA registration cards, facilitation of interim solutions for Palestinian refugees in cases of forced departure from Arab host countries, legal aid for stranded Palestinian refugees seeking asylum, and advice to states on the interpretation and application of the *Refugee Convention*. In Libya and Egypt, for example, UNHCR provides individual assistance to some destitute Palestinians.³³⁷ At the end of 2008, UNHCR had registered 342,681 Palestinian refugees and asylum-seekers falling within its mandate.³³⁸ The agency was thus providing assistance and protection to no more than five percent of the total Palestinian refugee population worldwide.

UNHCR and UNRWA cooperate and exchange information to resolve problems faced by Palestinian refugees, particularly since the U.S.-led invasion and occupation of Iraq.³³⁹

After the PLO was forced to leave Lebanon in 1982, for example, UNHCR intervened with the Lebanese authorities on behalf of Palestinian refugees who were experiencing difficulty in obtaining the renewal of Lebanese travel documents. In the 1990–1991 Gulf war, UNHCR extended its protection and assistance to several hundred thousand Palestinian refugees in the Gulf countries, who were subject to detention and expulsion. Between 1995 and 1997, UNHCR (jointly with UNRWA) provided assistance to Palestinian refugees stranded on the Libyan-Egyptian border after their expulsion from Libya, and intervened for a satisfactory solution.³⁴⁰

Since the U.S.-led war and occupation of Iraq in 2003, UNHCR has provided humanitarian assistance and protection to Palestinian refugees stranded in camps in Iraq and on the borders with Syria and Jordan.³⁴¹ UNHCR has made numerous appeals expressing strong concern, and urgently calling for at least a temporary solution for these Palestinian refugees “who are persecuted inside Iraq and have nowhere to go.”³⁴² UNHCR has approached the Israeli authorities to ask them to allow Palestinian refugees fleeing Iraq to enter the OPT. The PA has been willing to welcome the refugees, but Israel, which controls the borders, has refused to discuss this option. UNHCR has also tried to facilitate the entry of such refugees into Jordan and Syria, and to find relocation opportunities in other host states. In 2008, UNHCR reached a tripartite humanitarian relocation agreement with the PLO and the Sudanese government as a temporary solution. According to the agreement, Palestinian refugees stranded in the camps in Iraq and on the borders with Syria will be voluntarily relocated to Sudan, where they are entitled to protection under the *Refugee Convention* and its *Protocol* as well as the *Casablanca Protocol*.³⁴³ In June 2009 UNHCR reached an agreement to bring 1,350 Palestinian refugees from Iraq for resettlement in the U.S., through the U.S. government Refugee Admissions Program.³⁴⁴ UNHCR also succeeded in securing protection under the *Refugee Convention* for small numbers in European (Iceland, Norway, Sweden) and Latin American countries (Brazil, Chile), and continues to look for other countries that might accept Palestinian refugees fleeing Iraq.

During the 2008/2009 Israeli military assault on the Gaza Strip (“Operation Cast Lead”), UNHCR called for strict adherence to humanitarian principles, including respect for the universal rights of those fleeing war to seek safety in other states. The High Commissioner urged “that all borders and access routes concerned should be kept open and safe, and Palestinians endeavoring to leave Gaza should not be prevented from doing so.”³⁴⁵

3.3.5.4. The Committee on the Exercise of the Inalienable Rights of the Palestinian People

On 10 November 1975, the UN General Assembly passed resolution 3376 (XXX) establishing the Committee on the Exercise of the Inalienable Rights of the Palestinian People.³⁴⁶ The Committee was tasked with making recommendations to the General Assembly and creating a program of implementation designed to enable the

Palestinian people to exercise its rights, as stipulated in resolution 3236 (XXIX) of 22 November 1974 – rights defined as: the right of the Palestinian people to self-determination without external interference; the right to national independence and sovereignty; and the right of Palestinians to return to their homes and property, from which they had been displaced and uprooted.

The Committee's first report included *inter alia* recommendations to the Security Council for a two-phase plan for the return of Palestinians to their homes and property. It also expressed the view that the UN had the historical duty to render all assistance necessary to promote the economic development and prosperity of the future Palestinian entity. Assisted in its work by the Division for Palestinian Rights,³⁴⁷ the Committee's early activity saw cooperation with a wide network of NGOs and other civil society institutions working on the question of Palestine. Among its achievements were winning recognition of 29 November as the International Day of Solidarity with the Palestinian People, and preparatory work on the International Conference on the Question of Palestine, held in Geneva in 1983. However following the signing of the Declaration of Principles in 1993, the Committee has failed to take a proactive stance on trying to secure Palestinian rights, and essentially shadowed the Palestinian Authority's positions in its negotiations with Israel, including most recently, support for the continued diplomatic efforts of the Quartet, the Road Map, the Arab Peace Initiative, and the Annapolis Conference.



A session of the Committee on the Exercise of the Inalienable Rights of the Palestinian People, at the UN. (© Courtesy of the UN)

3.3.5.5 UN Human Rights Mechanisms

I. The Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and other Arabs of the Occupied Territories

The Special Committee is an inter-governmental organ established in 1968 to investigate Israeli practices affecting the human rights of the population of the occupied territories as a result of the hostilities of June 1967, namely the OPT and the Syrian Golan Heights.³⁴⁸ The population under the Special Committee's mandate includes 1948 Palestinian refugees and IDPs residing in the

OPT, as well as 1967 Palestinian refugees inside and outside the OPT. The Special Committee reports to the General Assembly. Committee members gather testimonies of victims and experts in the region, but have been denied entry into the OPT by Israel.

In its 2008 report, the Special Committee,

- stressed that the lack of protection of civilians and the escalation of violence were significant factors in the deteriorating human rights situation in the OPT;³⁴⁹
- called upon the UNGA to “[u]rgently consider all means at its disposal to fulfill its responsibilities regarding all aspects of the question of Palestine until it is resolved in conformity with relevant UN resolutions and the norms of international law and until the inalienable rights of the Palestinian people are fully realized.”³⁵⁰

Since 2007, the Special Committee has urged the UN Security Council to consider “sanctions against Israel if it persists in paying no attention to its international legal obligations.”³⁵¹

II. The UN Human Rights Council (HRC)

The HRC is an inter-governmental body which was established in 2006 to replace the UN Commission on Human Rights. The mandate of the HRC is to strengthen the promotion and protection of human rights around

the globe, including addressing situations of human rights violations and making appropriate recommendations.³⁵² The human rights of all displaced Palestinians fall under the HRC's mandate.

Sessions and Resolutions - The HRC regularly discusses human rights violations in the OPT under Agenda Item 7 of its regular sessions. In addition, the Council holds special sessions when needed to address urgent matters. Since 2006, the Council has held several special sessions on Israel's military operations in the OPT. In 2009, – in light of “Operation Cast Lead” against the occupied Gaza Strip – the HRC held a special session and,

- called upon Israel to end its occupation of all Palestinian lands since 1967;³⁵³
- called for immediate international protection of the Palestinian people in the OPT in compliance with international humanitarian and human rights law;³⁵⁴
- decided to dispatch an urgent independent international fact-finding mission (the “Goldstone Commission”) to investigate all violations of international humanitarian law by Israel against the Palestinian people throughout the OPT, particularly in the occupied Gaza Strip;³⁵⁵
- requested the Office of the UN High Commissioner for Human Rights (OHCHR) to monitor and report on the violations of human rights of the Palestinian people by the Occupying Power, Israel. This was an expansion of the mandate of the OHCHR field office in the OPT, which was initially established to strengthen the interaction between UN human rights mechanisms, the PA, and Palestinian civil society.³⁵⁶

Universal Periodic Review (UPR) - The UPR is a newly-established mechanism whereby states review the human rights situations in all UN member states and issue recommendations.³⁵⁷ In 2008, the HRC undertook the first UPR of Israel, including its human rights performance as Occupying Power in the OPT. It resulted in more than 50 recommendations, including calls upon Israel to:

- recognize and respect the right of the Palestinian people to self-determination and their right to establish an independent sovereign Palestinian State;³⁵⁸
- respect the right of Palestinian refugees to return to their homelands and to be compensated for losses and damages incurred, and to retrieve their properties in accordance with relevant UN resolutions and international law;³⁵⁹
- Cease actions that alter the demographic situation of the OPT;³⁶⁰ end all illegal settlement activities in the OPT; immediately cease the destruction of Palestinian homes;³⁶¹ and refrain from evicting Palestinian residents from their homes in Jerusalem;³⁶²
- Ensure the protection and welfare of the civilians in the OPT.³⁶³



Justice Richard Goldstone, head of the UN fact-finding mission investigating Israel's military campaign against Gaza in 2008/2009. (© Courtesy of aljazeera.net)

UN Special Procedures - The HRC continues to work closely with the UN Special Procedures established by the Commission on Human Rights. "Special procedures" are those mechanisms established to examine, monitor, advise and publicly report on human rights situations in specific countries or territories – known as *country mandates* – or on major phenomena of human rights violations worldwide – known as *thematic mandates*. The mandate holders are independent experts who can carry out country visits to examine the situation of human rights at the national level and subsequently issue mission reports containing their findings and recommendations.³⁶⁴

The *Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967* was appointed in 1993 to investigate and report on Israel's violations of international human rights and humanitarian law in the OPT until the end of the Israeli occupation.³⁶⁵ Since 2003, the Special Rapporteur has *inter alia*,

- warned that Israel's Wall and associated regime were "likely to lead to a new generation of refugees or internally displaced persons;"³⁶⁶
- addressed the "de-Palestinisation of Jerusalem" and "the emergence of a new wave of internally displaced persons;"³⁶⁷
- concluded that Israel implements colonization and apartheid as part of its occupation and called for a second ICJ advisory opinion to examine the legal consequences of Israel's occupation that includes elements of colonialism and apartheid;³⁶⁸
- recommended that the parties (to the Annapolis peace process) negotiate within a "normative framework, with the guiding norms to be found in international law, particularly international humanitarian law and human rights law, the Advisory Opinion of the ICJ, and UNSC resolutions. Negotiations on issues such as boundaries, settlements, East Jerusalem, the return of refugees and the isolation of Gaza should be informed by such norms and not by political horse-trading."³⁶⁹
- In 2008, the newly-appointed Special Rapporteur Richard Falk noted that the "UN should explore its own responsibility with respect to the well being of the Palestinians living under unlawful conditions of occupation."³⁷⁰ He has since been denied entry to the OPT by Israel.



A white phosphorous shell explodes at a UN school in Gaza where hundreds of refugees were taking shelter from the Israeli winter attack on Gaza 2008/2009. (© UNRWA)

Several thematic mandate holders have examined the situation of human rights in Israel and the OPT.³⁷¹ The *Special Rapporteur on Adequate Housing*, for instance, noted that "essentially, the institutions, laws and practices that Israel has developed to dispossess the Palestinians (now Israeli citizens) inside its 1948 border (the Green Line) have been applied with comparable effect in the areas occupied since 1967."³⁷² The dispossession of Palestinian communities is widely interpreted as a reflection

of Israel's systematic policy of "depopulation and demographic manipulation by way of expulsion, destruction of homes and villages."³⁷³

In a combined report following Israel's "Operation Cast Lead" in 2009,³⁷⁴ nine thematic mandate holders and the Special Rapporteur on the OPT,

- emphasized that the "protection of civilians requires immediate action by all parties and the international community;"³⁷⁵
- recalled the "obligation of States to cooperate to bring to an end through lawful means any serious breach of an obligation arising from a peremptory norm of general international law", and reiterated "the obligation of all States to ensure respect for the provisions of international humanitarian law;"³⁷⁶
- addressed the renewed mass forced displacement of Palestinians and affirmed that, "Palestinian refugees who suffered secondary displacement inside Gaza retain all rights under international law, including the

right of return as reaffirmed by the UNGA in its resolution 194. Israel, as occupying power, and the PA must address the specific assistance and protection needs of all recently displaced persons, whether they are internally displaced in the sense of the description provided by the Guiding Principles on Internal Displacement or secondary displaced Palestinian refugees.”³⁷⁷

Complaint Procedure - The Complaint Procedure was established to address consistent patterns of gross and reliably attested violations of all human rights and fundamental freedoms occurring in any part of the world and under any circumstances. It allows individuals and organizations to bring complaints about such violations to the attention of the HRC; however, it has not yet proven effective for Palestinians.³⁷⁸

III. UN Human Rights Treaty-Based Bodies

The human rights treaty-based bodies are the committees of independent experts that monitor the implementation of UN human rights treaties by State parties. Treaty-based bodies have made a substantive contribution to the development of soft law relevant to human rights and state obligations, and have made recommendations pertaining to Palestinian refugees and IDP.

With regard to **Israel**, the *Committee on Social, Economic and Cultural Rights* (CSECR) has expressed concern since 1998 about “the status of ‘Jewish nationality’, which is a ground for exclusive preferential treatment for persons of Jewish nationality under the Israeli *Law of Return*, granting them automatic citizenship and financial government benefits, thus resulting in practice in discriminatory treatment against non-Jews, in particular Palestinian refugees.”³⁷⁹

The *Committee on the Elimination of Racial Discrimination* (CERD) in 2007 raised concern about Israel’s policy of segregation and apartheid,³⁸⁰ and recommended, *inter alia*, that Israel,

- “assure equality in the right to return to one’s country and in the possession of property;”³⁸¹
- halt the demolition of Palestinian properties, in particular in East Jerusalem, and respect property rights irrespective of the nationality or ethnicity of the owner;³⁸²
- increase its efforts to protect Palestinians against persistent violence by Jewish settlers in the OPT, and investigate all such incidents in a transparent, independent and prompt manner, prosecute and sentence the perpetrators, and offer redress for Palestinian victims.³⁸³

With regard to **Lebanon**, CERD has urged the State to take measures to improve the situation of Palestinian refugees, and “at a minimum to remove all legislative provisions and change policies that have a discriminatory effect on the Palestinian population in comparison with other non-citizens.”³⁸⁴

Similarly, in 2006, the *Committee on the Rights of the Child* (CRC) expressed concern about “the persistent *de facto* discrimination faced [...] by Palestinian refugee children” in Lebanon, noting that “the protection of refugee children, including Palestinian children, [has] not been sufficiently addressed.”³⁸⁵ In 2007, the *Committee on the Elimination of Discrimination against Women* (CEDAW) noted that refugee and IDP women and girls in Lebanon remain in vulnerable and marginalized situations, in particular with regard to access to education, employment, health and housing. The Committee also expressed concern that Lebanon has not enacted laws or regulations relating to the status of refugees, adversely affecting women refugees. The State was urged to adopt laws and regulations on the status of refugees in line with international standards, in order to ensure protection for refugee women and children.³⁸⁶

With regard to **Jordan**, CRC has acknowledged the high number of Palestinian refugees and the increasing number of Iraqi refugees and asylum-seekers in Jordan, and expressed concern at the absence of a legal framework for the protection of refugee and asylum-seeking children. The Committee also recommended that Jordan strengthen its collaboration with UNHCR and UNRWA.³⁸⁷

IV. Office of the UN High Commissioner for Human Rights (OHCHR)

In 1996, a stand-alone office was established in the OPT (OHCHR-OPT), with the mandate to strengthen the relationship and interaction between UN human rights mechanisms, the PA, and Palestinian civil society. Assistance with the work of the High Commissioner for Human Rights pertaining to human rights violations by Israel in the OPT was provided on an *ad hoc* basis. In 2009, following Israel's military operation in the Gaza Strip ("Operation Cast Lead"), the HRC explicitly requested OHCHR-OPT to also monitor and report on the violations of human rights of the Palestinian people by the Israeli Occupying Power.³⁸⁸ For this purpose, the HRC has undertaken to strengthen the field presence of OHCHR in the OPT, particularly in the occupied Gaza Strip.

3.3.5.6 UN Office for the Coordination of Humanitarian Affairs in the OPT (OCHA-OPT)

OCHA-OPT was established in late 2000 in response to the deteriorating humanitarian situation in the OPT caused by Israel's military operations and closures. OCHA-OPT aims to improve humanitarian aid and assistance by enhancing coordination between agencies to ensure effective distribution of humanitarian assistance, monitoring, documentation and reporting.

In 2007, the Displacement and Protection Support Section (DPSS) was established in Geneva to provide technical assistance towards a predictable, systematic and collaborative response to internal displacement situations based on the work of OCHA's former Inter-Agency Internal Displacement. In 2008, DPSS provided strategic guidance on protection and displacement to OCHA-OPT, in particular its Protection Cluster Working Group. DPSS, however, is a small department and provides support to all OCHA field offices. Therefore, the primary responsibility for developing an effective response to forced displacement has remained with the field offices, including in the OPT.

In 2008 and 2009, OCHA continued to monitor the humanitarian situation, and to identify emerging trends and changing policies of the Israeli Occupying Power, as well as human rights/protection violations. OCHA-OPT took on the lead of the Displacement Working Group (DWG) and collects, analyzes and disseminates information related to forced displacement in the OPT.

3.3.5.7 The Inter-Agency Displacement Working Group in the OPT (DWG)

The DWG was formed in early 2008 as a result of collective efforts of local and international organizations, in order to raise awareness of the phenomenon of internal displacement in the OPT and develop a protection response in accordance with international standards, in particular the *Guiding Principles on Internal Displacement*. The DWG is currently led by OCHA and operates as part of the Protection Cluster Working Group. The latter aims to improve the protection of the Palestinian civilian population in the OPT through a range of preventive, responsive and remedial activities.³⁸⁹ UN agencies, Palestinian and Israeli NGOs, and donors are members of the DWG which cooperates with ICRC. The DWG's "longer-term initiatives include documenting and monitoring the situation with a view to improving advocacy efforts to mitigate and stop forced displacement, address vulnerabilities during a displacement event, and search for a durable solution."³⁹⁰

By 2009, the DWG had made some progress in terms of raising awareness about Palestinian IDPs and coordinating humanitarian response efforts. Nevertheless, prevention of forced displacement and protection of those at risk have remained inadequate and ineffective. Whereas a medium to long-term response should be implemented with the aim to restore the dignity and ensure adequate living conditions through reparation, restitution and rehabilitation of IDPs,³⁹¹ in practice, the response usually ends when the emergency phase ends.³⁹²

3.3.5.8 International Committee of the Red Cross (ICRC)

The ICRC has a mandate to operate in armed conflict and is responsible for the promotion and respect of humanitarian law. The *Geneva Conventions* task the ICRC with visiting prisoners, organizing relief operations, reuniting separated families and similar humanitarian activities. As a neutral intermediary, the ICRC provides protection and assistance to all victims of armed conflict, including IDPs who are “first and foremost civilians, and as such protected by international humanitarian law.”³⁹³ In general, the ICRC provides protection and assistance to displaced persons consistent with its mandate and capacities, and to the extent the relevant authorities or the security conditions allow.³⁹⁴

Within the above mandate, the ICRC intervened on behalf of Palestinian refugees, following the mass displacement in 1948, and again in 1967. Since 1967, the ICRC has maintained a permanent presence in the OPT.

Under international humanitarian law, the parties to a conflict may appoint a “Protecting Power.” No Protecting Power has been appointed for the OPT. An offer by the ICRC to act as a substitute Protecting Power in the OPT was rejected by Israel. Therefore, ICRC protection is limited to the extent of Israel’s willingness to co-operate. In the 1990s, and in response to the Madrid-Oslo process, the ICRC changed its definition of the status of the West Bank and Gaza Strip from “occupied Palestinian territory” to “occupied territory and autonomous territory.” The ICRC, however, continues to consider the *Fourth Geneva Convention* applicable to the entire West Bank and Gaza Strip, including the “A” areas.³⁹⁵

ICRC maintains that “the occupier must not interfere with the original economic and social structures, organization, legal system or demography.”³⁹⁶ The ICRC has publicly expressed concern regarding “the destruction or expropriation of Palestinian property and land and the forced displacement and isolation of Palestinian communities” as a result of the construction of the Wall and its regime.³⁹⁷ In general, however, while seeking to protect those who are uprooted and to promote their return wherever appropriate, the ICRC favors a “confidential dialogue” with the parties to the conflict.³⁹⁸ Along this vein, the ICRC carries out a range of activities to promote better protection of the civilian population in the OPT, including activities related to family reunification, detention and deportation, expropriation of land and home demolition. In 2007, the dialogue with Israel focused on occupied eastern Jerusalem, where Palestinians suffered as a result of the Jewish settlements, the Wall, or revocation of residency status.³⁹⁹ In 2008, ICRC represented 1,600 cases before Israeli authorities regarding the adverse impact of Israeli policies and practices, notably movement restrictions, settlement expansion, settler violence, construction of the Wall, and the impact of military operations.⁴⁰⁰



ICRC field workers taking testimonies after Israel's military assault on Gaza, 2008/2009
(© T. Domaniczky / ICRC)

The ICRC also provides emergency aid (such as relief and hygiene kits, food parcels, water distribution and rehabilitation projects) aimed at improving the situation of the victims, including those whose homes are demolished. The ICRC coordinates its activities with UN agencies and other organizations in the field,⁴⁰¹ and it follows the work of the Protection Cluster Working Group and the inter-agency Displacement Working Group as an observer.

3.3.5.9 Accountability Mechanisms

I. The International Court of Justice

Of major importance for displaced Palestinians is the fact that the International Court of Justice in its 2004 Advisory Opinion ruled that it was incumbent upon Israel to make reparation for all damage caused by its unlawful acts: "Israel is [...] under an obligation to return the land, orchards, olive groves and other immovable property seized from any natural or legal person for purposes of construction of the Wall in the [OPT]." ⁴⁰² The Court also underscored Israel's "obligation to compensate, in accordance with the applicable rules of international law, all natural or legal persons having suffered any form of material damage as a result of the Wall's construction." ⁴⁰³ The Court recommended to the United Nations to "consider what further action is required to bring to an end the illegal situation resulting from the construction of the Wall and the associated regime." ⁴⁰⁴ The ICJ also affirmed the responsibility of the international community and states "not to recognize the illegal situation resulting from the construction of the wall and not to render assistance in

maintaining the situation created by such construction."



The Judges of the International Court of Justice in The Hague preparing to give their ruling on 9 July, 2004. (© Courtesy of stopthewall.org)

II. UN Register of Damage caused by the Construction of the Wall in the OPT

On 20 July, 2004, the UN General Assembly adopted a resolution calling upon Israel and all UN member states to comply with the ICJ Advisory Opinion. The Resolution also instructed the UN Secretary General to establish a register of damages caused to all natural or legal persons concerned. ⁴⁰⁵ In early 2005, UN Secretary General Kofi Annan clarified that the registry "is not a compensation commission or claims-resolution facility, nor is it a judicial or quasi-judicial body" but "a technical, fact-finding process of listing or recording the fact and type of

damage caused as a result of the construction of the Wall." ⁴⁰⁶

On 15 December, 2006, the UNGA established the UN Register of Damage caused by the Construction of the Wall in the OPT (UNRoD), to "serve as a record, in documentary form, of the damage caused to all natural and legal persons concerned as a result of the construction of the wall by Israel, the Occupying Power, in the OPT, including in and around East Jerusalem." ⁴⁰⁷ UNRoD thus falls short of the ICJ's recommendation that reparation be made to the victims for damages caused by the Wall. The Register, which has remained the only measure endorsed by the UN towards the implementation of the ICJ Opinion, has received little political support and financial resources. ⁴⁰⁸ Israel has refused to cooperate with the office of UNRoD. ⁴⁰⁹ A pilot project for registration of damages began in November 2008 in the northern West Bank, while numerous concerns raised by local and international organizations have remained unresolved. ⁴¹⁰

III. International Criminal Tribunals and the International Criminal Court

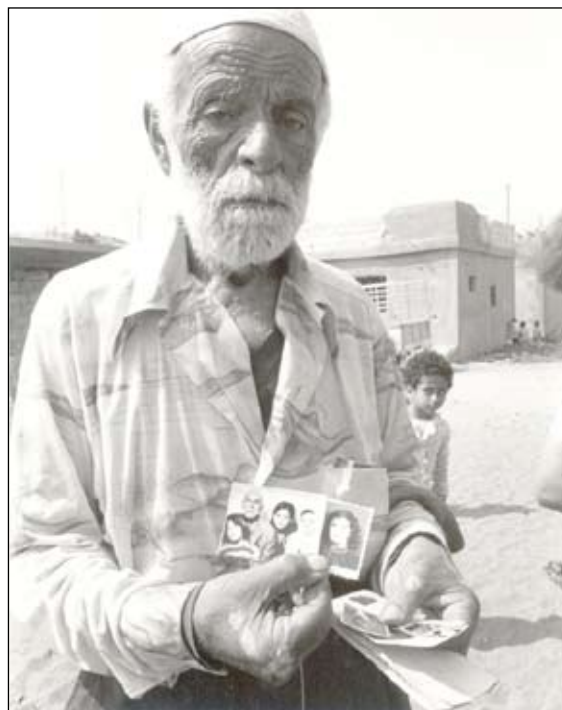
The UN Security Council can establish an *ad hoc* international tribunal to prosecute war crimes and crimes against humanity perpetrated in Israel and the OPT, as it did in the 1990s regarding the former Yugoslavia and Rwanda. Whether

such an initiative would also be within the authority of the UN General Assembly is unresolved.⁴¹¹ Israel is not a party to the *Rome Statute* and thus the International Criminal Court (ICC) does not have jurisdiction in its territory. However, the UN Security Council, acting under Chapter VII of the UN Charter, can refer a situation to the ICC, as it has done in the case of Sudan. Yet, all such moves would likely be vetoed in the Security Council by the U.S.

In response to Israel's military assault "Operation Cast Lead", a Palestinian request was brought before the ICC prosecutor to investigate whether international crimes had been committed in Palestinian territory (OPT), and the Palestinian Authority declared that it accepts the ICC's jurisdiction for international crimes committed in its territory. The unresolved question remains, whether Palestine can be considered a "state" for this purpose, because only states can be party to the *Rome Statute* or declare acceptance of ICC jurisdiction.⁴¹²

IV. Universal Jurisdiction

States signatories of the *Geneva Conventions* have an obligation to prosecute in their territory persons committing any of the "grave breaches" regardless to his or her nationality and should make appropriate domestic legislation for this purpose. Similar provisions for universal jurisdiction are included in other international treaties, such as CAT and the *International Convention on the Suppression and Punishment of the Crime of Apartheid*.⁴¹³



Palestinian man from Shatilla camp who lost 8 members of his family in the 1982 Sabra and Shatilla massacre. (© UNRWA)

Where appropriate domestic law is in place, courts can exercise jurisdiction over gross violations of international human rights law and serious violations of international humanitarian law, regardless of where they were committed, and often without the state having a connection to the perpetrator or the victim. These domestic universal jurisdiction statutes can cover crimes committed during armed conflict, including crimes committed or authorized by the highest political and military levels of government.⁴¹⁴ In some countries, universal jurisdiction can also be invoked under domestic civil law, such as in the U.S., where lawsuits can be filed for civil redress (e.g. compensation) under the *Alien Tort Claims Act* (ATCA) and the *Torture Victims Protection Act* (TVPA).

Based on universal jurisdiction, domestic courts have prosecuted numerous suspects of international crimes in Rwanda, Sierra Leone, Liberia, as well as Palestinians and other Arab or Muslim defendants. In no case, however, have such efforts succeeded to hold Israeli defendants accountable. Since 2002, numerous lawsuits have been brought against Israeli officials and military, as well as against foreign companies accused of aiding and abetting international crimes, in numerous countries, including Belgium, Canada, Germany, New Zealand, Spain, and the U.K. So far, none of these cases has been granted a substantial hearing, because – due to political pressure and bias – courts have dismissed them at an early stage on procedural grounds.⁴¹⁵

Endnotes

- 1 "Third Workshop on Protection", background paper, (ICRC, 7 January 1999). See also: Sylvie Giossi Caverzasio (ed), *Strengthening Protection in War – A Search for Professional Standards*, Geneva: ICRC (2001). The Inter-Agency Standing Committee (IASC) has borrowed this definition in its policy paper on the protection of internally displaced persons. IASC, *Protection of Internally Displaced Persons*, (New York, December 1999), p.3-5.
- 2 See the Law of State Responsibility which is reflected to a large extent in the *International Law Commission's Draft Articles on Responsibility of States for international Wrongful Act*, which were commended to the governments in UNGAR 56/83 in 2001. Antonio Cassese, *International Law* (London, 6th edition, 2004), p.244 and 262.
- 3 UNHCR, *Refugee Protection: A Guide to International Refugee Law*, (Geneva, December 2001), p.8.
- 4 *Ibid*, p.18.
- 5 *Convention Relating to the Status of Refugees*, 28 July 1951, 189 UNTS 137, effective 22 April 1954. *Protocol Relating to the Status of Refugees*, adopted 31 January 1967, 19 UST 6223, 606 UNTS 267 (entered into force 4 October 1967). *Statute of the Office of the UNHCR*, G.A. 428(v), U.N. GAOR, 5th Sess., Annex, U.N. Doc. A/1775 (1950).
- 6 UNHCR, (December 2001), op.cit., p.11.
- 7 UN Doc. E/CN.4/1998/53/Add.2/1998.
- 8 IASC, *Protection of Internally Displaced Persons*, policy paper, (New York, December 1999), p.5.
- 9 Emphasis added, Brookings Institute, *Protecting Internally Displaced Persons: A Manual for Law and Policymakers*, October 2008, p.13.
- 10 Principle 1 of the *Guiding Principles*. This obligation is based on existing international law, including of international human rights law and international humanitarian law in situation of armed conflict, Brookings, *Protecting Internally Displaced Persons: A Manual for Law and Policymakers*, October 2008, p.13.
- 11 "UNHCR and the Guiding Principles", Khassim Diagne and Hannah Entwisle, *Forced Migration Review*, December 2008, p.33.
- 12 Phuong, Catherine *The International Protection of Internally Displaced Persons*, (Cambridge University Press, 2004), p.85.
- 13 Article 9 of the *UNHCR Statute*. See also UNHCR, *Internally Displaced Persons: The Role of the UNHCR*, EC/50/SC/INF.2, 20 July 2000. For a description of these operations, see UNHCR, *UNHCR's Operational Experience*, 3-15. UNHCR, *Protecting Refugees and the Role of UNHCR 2007 -2008*, p.20.
- 14 Norwegian Refugee Council and Internal Displacement Monitoring Centre, *Internal Displacement, Global Overview of Trends and Developments in 2006*, April 2007, p. 19.
- 15 See in this regard the *Declaration on Principles of International Law Concerning Friendly relations and Cooperation Among States in Accordance with the Charter of the UN*, GA Res. 2625 (XXV), 24 October 1970.
- 16 *Ibid*, p.214.
- 17 Mass displacement, whether external or internal, constitutes strong evidence of grave human crisis. *Ibid*, p.208 – 209.
- 18 Phuong, C. op. cit. (2004), p.208.
- 19 UNHCR, *Agenda for Protection*, (Geneva, October 2003), p.74.
- 20 Susan M. Akram and Terry Rempel, "Temporary Protection as an Instrument for Implementing the Right of Return for Palestinian Refugees", *Boston University International Law Journal*, Vol. 22:1 (2004), p. 6.
- 21 See Conclusion on International Protection 2001, supra note 19, at paras. (j)-(k); see also Conclusions on International Protection, UNHCR ExCom, No. 67 (XLII), paras. (g)(1991).
- 22 See Conclusion on Voluntary Repatriation, UNHCR ExCom, No. 40 (XXIX) (1985); Conclusion on Voluntary Repatriation, UNHCR ExCom, No. 18 (XXXI) (1980). "Safety" is defined as "legal safety (such as amnesties or public assurances of personal safety, integrity, non-discrimination, and freedom from fear of persecution or punishment upon return), physical security and material security (access to land or means of livelihood)." *Dignity* means that returning refugees "are not arbitrarily separated from family members and that they are treated with respect and full acceptance by their national authorities, including the full restoration of their rights." UNHCR, *Handbook on Voluntary Repatriation: International Protection* (Geneva, 1996) Chapter 2.
- 23 UNHCR, *Handbook for Repatriation and Reintegration Activities*, (Geneva, May 2004), p.36 and 42.
- 24 Akram S., Rempel, T. (2004), op. cit., p. 67.
- 25 UNHCR, *Handbook on Voluntary Repatriation: International Protection*, 1996, p. 10.
- 26 The Brookings Institute, *When Displacement Ends: A Framework for Durable Solutions*, June 2007, p.3.
- 27 The latter two options are termed "resettlement" by the *Guiding Principles on Internal Displacement*. Principle 28. See also The Brookings Institute, *When Displacement Ends: A Framework for Durable Solutions*, June 2007, p.8. Guillermo Bettocchi and Raquel Freitas, "A UNHCR Perspective", *Forced Migration Review*, Vol.17, May 2003, p.13 – 14.
- 28 Principle 28 of the *Guiding Principles on Internal Displacement*. Brookings Institute, *When Displacement Ends: A Framework for Durable Solutions*, June 2007, p. 5, 8 and 9; also Brookings Institute, *Protecting Internally Displaced Persons: A Manual for Law and Policymakers*, October 2008, p.36.
- 29 Brookings Institute, *Protecting Internally Displaced Persons: A Manual for Law and Policymakers*, October 2008, p.36. In this regard see also Bettocchi G., Freitas, R. (2003), op. cit. p.13 – 14.
- 30 Brookings Institute, (June 2007) op. cit., p.8; Brookings Institute, (October 2008), op.cit. p.36; Bettocchi G., Freitas, R. (2003) op. cit., p.13 – 14
- 31 Bettocchi, G., Freitas, R. (2003), op. cit., p.13.
- 32 *Ibid*, p.13.
- 33 Due to the volatile nature of internal displacement, an assessment of the specific needs of IDPs is necessary because they may have different material and non-material requirements other than those of refugees. *Ibid*, p.13 – 14.
- 34 While legal (re)integration includes "land and property rights, or compensation; protection against forcible return; non discrimination and [...] free movement", social (re)integration, encompasses the "right to participate fully and equally in public affairs...and have equal access to public services." Economic (re)integration, on the other hand, includes "access to employment; self-sufficiency; capacity for achieving viable livelihoods through agricultural production, gainful employment and/or small businesses." *Ibid*, p.13 – 14.

- 35 *Legal Safety Issues in the Context of Voluntary Repatriation of Refugees*, UNHCR Executive Committee No. 101 (LV), 2004.
- 36 Principle 29.
- 37 Akram S. and Rempel, T. (2004), op. cit., p. 86. See, e.g., the Dayton Peace Agreement, Annex 7: Agreement on Refugees and Displaced Persons, 14 Dec. 1995 (Art. 1(1) provides that refugees "shall have the right to have restored to them property of which they were deprived in the course of hostilities...and to be compensated for any property that cannot be restored to them"); General Peace Agreement for Mozambique, Protocol III, 12 March 1992, IV, Return of Mozambican Refugees and Displaced Persons and their Social Reintegration (Art. (e) provides that "Mozambican refugees and displaced persons shall be guaranteed restitution of property owned by them which is still in existence and the right to take legal action to secure the return of such property from individuals in possession of it.") *Ibid*.
- 38 *Factory at Chorzów*, Merits, Judgment No. 13, 1928, PCIJ, Series A, No. 17, at 47.
- 39 UNGA Resolution A/RES/60/147, 21 March 2006.
- 40 *Ibid*.
- 41 *Basic Principles and Guidelines on the Right to a Remedy and Reparation*, Preamble.
- 42 The implementation of the "Disengagement Plan" in September 2005, raised questions regarding the continued status of the Gaza Strip as occupied territory, especially after the withdrawal of the Israeli army forces from Gaza. International humanitarian law adopts a pragmatic definition of occupation, that is, the effective (actual) control over a territory by a foreign military force. "Effective control" is understood as an effective military control coupled with an effective administrative control (Article 42 of the *Hague Regulations* and Article 6 of the *Fourth Geneva Convention*). The ending of occupation is equally pragmatic. According to international humanitarian law, occupation ends when the Occupying Power no longer exercises effective military control over the occupied territory and does not apply government authorities there. The presence of land troops has traditionally been a requirement to identify a territory as occupied. However, the test of 'effective control' should, in light of modern technology and new means of maintaining control, take into account all kinds of control exercised over a territory, both military control and control over civilian life. Despite the withdrawal of military troops in 2005, there are ongoing as well as new measures of Israeli military and administrative control in the Gaza Strip, which amount to 'effective control.' Therefore, the withdrawal of Israeli troops alone does not turn the occupied territory into unoccupied." The facts on the ground define the legal status of the territory. Israel maintains its effective control over the Gaza Strip by different means, such as control over air space, sea space and the international borders." Diakonia, *Does international humanitarian law apply to the Gaza Strip after the withdrawal?* 14 January 2009, www.diakonia.se/sa/node.asp?node=842. Nevertheless, the Israeli High Court of Justice ruled that Israel is not in "effective control" of the Gaza Strip and accepted the State's assertion that Israel's duties towards the Gaza population is limited to the prevention of a humanitarian crisis - a position which denies the Palestinian population in Gaza the protection it is entitled to under international human rights and humanitarian law. H.C. 9132/07, *Jaber Al-Bayouni v. The Prime Minister*, High Court of Justice (30 January 2008).
- 43 Brookings Institute, *Protecting Internally Displaced Persons: A Manual for Law and Policymakers*, October 2008, p.13.
- 44 CESCR, *General Comment 7 on the right to adequate housing (Art.11.1): forced evictions*, 20 May 1997.
- 45 Article 10 of the *International Law Commission's Draft Articles on Responsibility of States for International Wrongful Act*, reads as follows:
 "1. The conduct of an insurrectional movement which becomes the new government of a State shall be considered an act of that state under international law.
 2. The conduct of a movement, insurrectional or other, which succeeds in establishing a new state in part of the territory under its administration, shall be considered an act of the new state under international law.
 3. This article is without prejudice to the attribution to a State if any conduct, however related to that of the movement concerned, which is to be considered an act of that State by virtue of..."
 Pre-1948 Zionist militias were an organized movement that achieved its aims and formed a new state in part of the Mandate Palestine. It is an accepted rule that this new state could not avoid responsibility for conduct earlier committed by it. See in this regard Crawford, James *International Law Commission's Draft Articles on Responsibility of States for International Wrongful Act: Introduction, Text and Commentaries*, (Cambridge University Press, 2002), p.116-118.
- 46 UNHCR, *Voluntary Repatriation: International Protection Handbook* (1996), Ch.2.
- 47 Ian Brownlie, *The Relations of Nationality in Public International Law*, 39 *British Y.B. Int'l L.* (1963) 284, 320.
- 48 Gail Boling, *The 1948 Palestinian Refugees and the Individual right of Return An International Law Analysis*, Badil, 2007, p.30.
- 49 Akram S., Rempel, T. (2004), op. cit., p.69, also Ian Brownlie (1963), op. cit., p.284.
- 50 Akram S., Rempel, T. (2004), op. cit., p.69.. See also Articles 15-16 of *Nationality of Natural Persons in Relation to the Succession of States*, UNGA Res. A/RES/55/153, 12 December 2002.
- 51 *International Covenant on Civil and Political Rights*, UNGA Resolution 2200 A (XXI) of 16 December 1966, *Convention on the Elimination of All Forms of Racial Discrimination*, UNGA Resolution 2106 A (XX) of 21 December 1965, *Convention on the Rights of the Child*, UNGA Resolution 44/25 of 20 November 1989; *Universal Declaration on Human Rights*, UNGA Resolution 217 A (III) of 10 December 1948, *Declaration on the Human Rights of Individuals Who are not Nationals of the Country in Which They Live*, UNGA Resolution 40/144 of 13 December 1985.
- 52 *The Pinheiro Principles (Principles on Housing and Property Restitution for Refugees and Displaced Persons)*, E/CN.4/Sub.2/2005/17, 28 June 2005, Principle 10(2).
- 53 "State succession occurs when one state (the "predecessor" state) is followed in the international administration of a geographical territory by another state (the "successor" state). [...] In the case of the Palestinian refugees, the predecessor state was the embryonic state of Palestine for which under international law, the British Mandate for Palestine constituted at most only a "stand-in," "custodian" or "guarantor." The successor state for part of the territory of Mandate Palestine was Israel." Boling, G., (2007), op. cit. p.25-26
- 54 *Hague Convention (IV) Respecting the Laws and Customs of War on Land* and its annex: *Regulations Concerning the Laws and Customs of War on Land*, The Hague, 18 October 1907. The ICJ also held that *Hague Regulations* constitute customary norms. ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion (ICJ's Advisory Opinion on the Wall), 9 July 2004, para.89. Article 43 of the *Hague Regulations* states the rule that belligerent occupants – because their presence is temporary – must let the local population continue its normal existence with a minimum of interference. This implies the right of protected persons to remain or return to their places of habitual residence. Boling, G.(2007), op. cit., p. 40-50.
- 55 See, *Charter of the International Military Tribunal, Annexed to the London Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis*, 1945, reproduced in D. Schindler & J. Toman (eds.), *The Laws of Armed Conflict* 911 (3d ed. 1988).

- 56 The *Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, August 12, 1949, 75 U.N.T.S. 287.
- 57 Arts. 45, 49 and 147 of the *Fourth Geneva Convention*.
- 58 Arts. 45, 49 and 134 of the *Fourth Geneva Convention*.
- 59 The *International Criminal Tribunal for the Former Yugoslavia* has reaffirmed that forced displacements are crimes punishable under customary international law, *The Prosecutor v. Krnojelac*, IT-97-25, *Trial Chamber Judgment* of 15 March 2002. See also Articles 8(2)(a) and 8(2)(b)(viii) of the *Rome Statute*, UN doc. A/CONF.183/9 dated 17 July 1998, came into effect on 1 July 2002.
- 60 Article.7(1)(d) of the *Rome Statute*.
- 61 Although Israel was not (and is not today) a party to the *Hague Convention*, it is bound by its regulations, because by World War II, the Hague Regulations' provisions had become binding customary norms so that violations could be considered prosecutable war crimes. Kagan M., "Restitution as a Remedy for Refugee Property Claims in the Israeli-Palestinian Conflict", *Florida Journal of International Law*, Vol.19 (2007), p.421, 445; see also Yoram Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict* (2004).
- 62 Israel argues that Jordan's annexation of the West Bank and Egyptian control of the Gaza Strip prior to the 1967 war never received international recognition. Therefore, they do not meet the requirements for application of the provisions of the *Fourth Geneva Convention* based on *occupation of a territory of a High Contracting Party* because there was no legitimate sovereign of the Palestinian Territory prior to 1967. Israel argues that the OPT is not occupied but rather "disputed" territory and that it applies the "humanitarian provisions" of the conventions as a matter of *de facto* policy. See in this regard Yehuda Zvi Blum, "The Missing Reversioner: Reflections on the Status of Judea and Samaria", 3 *Israel Law Review* 279 (1968). This argument was explicitly rejected by the ICJ. ICJ's Advisory Opinion on the Wall, para.94 – 95.
- 63 Article 13(2) states that "everyone has the right to leave any country, including his own, and to return to his country."
- 64 In this regard see also Art. 2(1) of ICCPR and Human Rights Committee, *General Comment No. 27: Freedom of Movement* (Art.12), 2 November 1999, CCPR/C/21/Rev.1/Add.9.
- 65 Arts. 5(d)(i) and 5(d)(ii) of CERD, UNGA Resolution 2106 A (XX) of 21 December 1965.
- 66 The other instruments that Israel is party to are: 1966 *International Covenant on Economic, Social and Cultural Rights* (ICESCR), UNGA Resolution 2200 A(XXI) of 16 December 1966; 1979 *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), UNGA Resolution 34/180 of 18 December 1979; 1984 *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT), UNGA Resolution 39/46 of 10 December 1984; and 1989 *Convention on the Rights of the Child* (CRC).
- 67 ICJ's *Advisory Opinion on the Wall*, paras.102-113.
- 68 See in this regard Art.17(1) of the ICCPR, which complements the right not to be forcibly evicted without adequate protection and recognizes, *inter alia*, the right to be protected against "arbitrary or unlawful interference" with one's home. Also: Art.11(1) of ICESCR, and CESCR, *General Comment no. 7: the Right to Adequate Housing* (Art.11(1): *Forced Eviction*, 20 May 1997.
- 69 For legal analysis on this topic, see: Badil, "Follow-up Information to the Committee for Economic, Social and Cultural Rights Regarding the Committee's 1988 Concluding Observations Regarding Israel's Serious Breaches of its Obligations under ICESCR" for the 13 November 2000 Convening of the Committee, p. 28 - 32.
- 70 UNHCR, *Legal Safety Issues in the Context of Voluntary Repatriation of Refugees*, Executive Committee No. 101 (LV), 2004.
- 71 Principle 29.
- 72 *Principles on Housing and Property Restitution for Refugees and Displaced Persons* (Pinheiro Principles), Principle 2.2.
- 73 See: Certain Questions Relating to Settlers of German Origin in the Territory Ceded by Germany to Poland; 1923, P.C.I.J. (ser B) No. 6 (Sept. 10); quoted in: BADIL Follow-up Information to CESCR, 2000, p. 31.
- 74 See, for example, Dolzer R., *Expropriation and Nationalization*, *Encyclopedia of Public International Law*, Vol.II, Rudolf Bernhardt ed., North-Holland 1985, p.322.
- 75 UNGA Resolution 181(II), A/RES/181(II), 29 November 1947. See also Lena El-Malak, "Reparation for Palestinian Refugees", *Forced Migration Review* 26, August 2006, p.46.
- 76 The International Military Tribunal at Nuremberg was the first to address the confiscation of property following the end of fighting in the Second World War. In *U.S. v. Alfred Krupp et al.*, the tribunal ruled that such confiscation of property and its subsequent acquisition by the Krupp firm constituted a violation of Article 46 of the *Hague Regulation*. International Military Tribunal at Nuremberg, *U.S. v. Alfred Krupp et al.* cited in *How Does Law Protect in War? Cases, document and teaching materials on contemporary practice in international humanitarian law*, 2nd ed., Vol.2 (ICRC, 2006), p. 1030; and Adalah's letter addressed to the Attorney General on Tenders for selling absentees' property administered by Amidar, 19 May 2009 (on file at BADIL).
- 77 See Articles 41, 53 and 54.
- 78 See also CESCR, *General Comment no. 7: the Right to Adequate Housing* (Art.11(1): *Forced Eviction*, 20 May 1997.
- 79 Kagan M. (2007), op. cit., p.458.
- 80 CERD, *General Recommendation no.22: On Article 5 and Refugees and Displaced Persons* (1996), para.2(c).
- 81 UNGA Resolution 194(III), UN Doc. A/910, at 21, 11 December 1948.
- 82 Paragraph 11(b) of UNGA resolution 194.
- 83 UNCCP, *Analysis of Paragraph 11 of the UNGA Resolution of 11 December 1948*. UN Doc. W/45, 15 May 1950.
- 84 *Progress Report of the UN Mediator on Palestine*, submitted to the UNSG for Transmission to the Members of the UN. UN GAOR, 3rd Sess., Supp. No. 11, UN Doc. A/648, 16 September 1948, Part One: The Mediation Effort, V. Refugees, para. 8.
- 85 *Letter and Memorandum dated 22 November 1949. Concerning Compensation*, received by the Chairman of the Conciliation Commission from Gordon R. Clapp, Chairman, UN Economic Survey Mission for the Middle East. UN Doc. W/32, 19 January 1950.
- 86 The Assembly rejected two separate amendments that referred in more general terms to the return of refugees to "the areas from which they have come. UNCCP, *Analysis of Paragraph 11 of the UNGA Resolution of 11 December 1948*. UN Doc. W/45, 15 May 1950.
- 87 UNCCP, *Analysis of Paragraph 11 of UNGA Resolution of 11 December 1948*. UN Doc. W/45, 15 May 1950.
- 88 *Ibid.*
- 89 *Ibid.*
- 90 *Ibid.*
- 91 *Compensation to Refugees for Loss of or Damage to Property to be Made Good Under Principles of International Law or in Equity*. UN Doc. W/30, 31 October 1949, para. 8.

- 92 *Ibid.* For more see: Mallison, W. Thomas and Sally V. Mallison, *An International Law Analysis of the Major United Nations Resolutions Concerning the Palestine Question*. United Nations, New York, 1979, p. 31. UN Doc. ST/SG/SER.F/4. Also see Zedalis, R. J., "Right to Return: A Closer Look," 6 *Georgetown Immigration Law Journal* 413, 1992, pp. 507–508. Generally, see *A Study on Statelessness*, United Nations Department of Social Affairs, UN Doc. E/1112, UN Sales Pub. 1949. XIV.2, August 1949.
- 93 UNSC Resolution, S/RES/237 (1967), 14 June 1967. The Security Council did not call for the return of displaced Palestinians prior to 1967, with the exception of UNSC 93 (18 May 1951) which called upon Israel to permit the return of Arab villagers in the demilitarized zone near the border with Syria.
- 94 UNGA Resolution 2252 (ES-V) of 4 July 1967, and Resolution 2452 A (XXIII) of 19 December 1968.
- 95 UNGA Resolution 63/92, *Persons displaced as a result of the June 1967 War and subsequent hostilities*, ARES/63/92, 18 December 2008, para.1.
- 96 On deportation, see, e.g., UNSC Resolution 799 (1992), 18 December 1992; UNSC Resolution 726 (1992), 6 January 1992; UNSC Resolution 694 (1991), 24 May 1991; UNSC Resolution 641 (1989), 30 August 1989; UNSC Resolution 636 (1989), 6 July 1989; UNSC Resolution 608 (1988), 14 January 1988; UNSC Resolution 607 (1988) 5 January 1988; and UNGA Resolution 34/29, 16 November 1979.
- 97 See, for example: UNGA Res. 3236(XXIX), *Question of Palestine Recognizing the Rights of the Palestinian People*, 22 November 1974; UNGA Resolution 36/146 of 16 December 1981; UNGA Resolution 61/115, *Palestine refugees' properties and their revenues*, A/RES/61/115 of 15 January 2007; UNGA Res., *Palestine refugees' properties and their revenues*, A/RES/62/105 of 10 January 2008; UNGA Resolution 63/64, *Palestine refugees' properties and their revenues*, 18 December 2008.
- 98 CESCR, *Concluding Observations on Israel*, E/C.12/1/Add. 90, May 23, 2003, para.18.
- 99 Cohen H., "Land, memory and identity: the Palestinian Internal Refugees in Israel", *Refuge*, 1 February 2003.
- 100 Report of the Authority for Settling Arab Refugees, 1 August 1950, from Central Zionist Archives, filr KKL 5/18875 cited in Cohen H. (2003), op. cit..
- 101 Article 1 of the *Absentee Property Law* defines "absentee" as a person who, at any time after 29 November 1947 (the date of the UNGA resolution 181 to partition Palestine), had been: (a) A national or citizen of the Lebanon, Egypt, Syria, Saudi Arabia, Trans-Jordan, Iraq or the Yemen, or (b) in any of these countries or in any part of Palestine outside the area of Israel, or (c) Palestinian citizen and left his ordinary place of residence in Palestine who abandoned his or her normal place of residents, either for a place outside Palestine before 1 September 1948; or for a place in Palestine held at the time by forces which sought to prevent the establishment of the State of Israel or which fought against it after its establishment. Technically, this included all Palestinians who vacated their homes during the war, regardless of whether the returned and who are known the "present absentees" and are legal citizens of Israel. Forman G., and Kedar A. S., "From Arab to 'Israel Lands': the Legal Dispossession of the Palestinians displaced by the Israel in the wake of 1948", *Environment and Planning D: Society and Space* Vol.22 (2004), p.809-830, 815.
- 102 See: ILA Law (1960) and the 1961 Memorandum between the ILA and the JNF. See also: Forman G., and Kedar A. S. (2004), op. cit., p.818; and Adalah, "Land Controlled by Jewish National Fund for Jews Only", Press Release, 29 July 2007
- 103 Forman G., Kedar, A., (2004), op. cit., p.818.
- 104 *Adalah to Attorney General and Custodian of Absentee Property: Israel's Sale of Palestinian Refugee Property Violated Israeli and International Law*, Press Release, of 22 June 2009).
- 105 Since Israel's withdrawal of troops and decolonization of the Gaza Strip in 2005, Israeli border police are not physically present at the Rafah border crossing to Egypt. Israeli border police, however, controlled entry of persons into the Gaza Strip via video cameras and communicated its decisions to E.U. police officers present at the site. Since the summer of 2007, the Rafah border crossing has been closed for most of the time.
- 106 The most comprehensive study of "Cast Lead" can be found in the *Report of the United Nations Fact Finding Mission on the Gaza Conflict*, Human Rights Council, Twelfth session, A/HRC/12/48, 15 September, 2009. Also see "White Flag Deaths: Killings of Palestinian civilians during Operation Cast Lead, Human Rights Watch, 13 August, 2009; "Investigation of Fatalities in Operation Cast Lead" B'Tselem 9 September, 2009; "Israel/Gaza: "Operation Cast Lead" 22 days of Death and Destruction", Amnesty International, MDE 15/015/2009, 2 July, 2009.
- 107 Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, *Human Rights Situation in Palestine and other Occupied Arab Territories*, A/HRC/10/20, 17 March 2009, para.19-24.
- 108 Only a tiny fraction of the population were able to seek refuge in UNRWA shelters that were made available on an emergency basis. But in many situations these shelters were not treated as sanctuaries by the Israeli armed forces during Operation Cast Lead.
- 109 Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Prof. Falk R., *Human Rights Situation in Palestine and other Occupied Arab Territories*, A/HRC/10/20, Advanced Unedited Version as of 17 March 2009, para.18.
- 110 Paragraph 6 of Article 49 of the *Fourth Geneva Convention*. The 1907 *Hague Regulations Respecting the Laws and Customs of War on Land* (Articles 43 46 52 55), implicitly prohibited the demographic transformation of an occupied territory by designating the Occupying Power as an interim administrator and usufructuary, with no greater power over the territories than to protect and beneficially manage them until their eventual return to the new sovereign government. Susan M. Akram and Michael Lynk, "The Arab-Israel Conflict," in *Max Planck Encyclopedia of Public International Law* (Oxford University Press, forthcoming).
- 111 UNSC resolution 465 (1980) of 1 March 1980. See also the UNSC Resolutions 446 (1979) of 22 March 1979 and 452 (1979) of 20 July 1979.
- 112 *ICJ's Advisory Opinion on the Wall*, para.120.
- 113 Article 8(2)(b)(viii)
- 114 Article 16 of CAT and Article 7 of the ICCPR. See also *Dzemajl v. Yugoslavia*, Communication No.1612000/, U.N. Doc. CAT/C/29/D/1612002(2000/); also *Concluding Observations on the initial report of Slovakia*, CAT A/5644/ (2001), para.104; *Concluding Observations on the second periodic report of the Czech Republic*, CAT A/5644/ (2001) para.113; and HRC, *General Comment No.31, Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, CCPR/C21/Rev.1/Add.13, May 26, 2004, para. 8.
- 115 Article 11(1) of the ICESCR; and CESCR's *General Comment 7 on The right to adequate housing (Art. 11.1): forced evictions*, 20 May 1997; 5(d)(iii) of CERD; and Articles 2 and 17(1) of the ICCPR.

- 116 See for instance Article 11(1) CESC, *General Comment 7 on The right to adequate housing (Art.11.1): forced evictions*, para.11-13 and 20; Articles 2 and 17(1) ICCPR; and Principle 7 of the *Guiding Principles on Internal Displacement*.
- 117 CERD, *Concluding Observations on Israel*, CERD/C/ISR/CO/13, 14 June 2007, para.25.
- 118 *Ibid*, para.25.
- 119 *Ibid*, para.25.
- 120 Lena El-Malak, "Reparations for Palestinian Refugees", *Forced Migration Review* 26, August 2006, p.46.
- 121 Goldstone Report, A/HRC/12/48, p. 520, para 1670.
- 122 The Jerusalem Magistrate's Court, for example, held that an air strike is clearly an act of war "that the legislator intended to make immune to prosecution" even when the plaintiffs showed that the victim was a civilian standing on the roof of his house. *Odeh et al. v. The State of Israel*, case No. C/007798/04, June 2009, cited in Goldstone Report, A/HRC/12/48, p. 519, para 1669.
- 123 See for instance, human rights violations emanating from Israeli military attacks and incursions in the Occupied Palestinian Territory, particularly in the occupied Gaza Strip, *Report of the High Commissioner for Human Rights on the implementation of resolution S-6/1, A/ HRC/7/76*, 14 March 2008, para.58. Also see "Adalah's Official Position Regarding the Or Commission of Inquiry Report: Despite Many Reservations, the Report is an Important Document and its Recommendations Should be Implemented Immediately" Adalah, 4 September, 2003; "The Price of Internal Legal Opposition to Human Rights Abuses" Michael Sfard *Journal of Human Rights Practice* Vol 1, Number 1, March 2009, pp. 37-50; OCHA, "Unprotected: Israeli settler violence against Palestinian civilians and their property", *Special Focus*, December 2008; Benvenisti E., and Shaham, D., "Facially Neutral Discrimination And The Israeli Supreme Court", *International Law And Politics*, Vol. 36 pp.677-716; Yesh Din, "Investigating IDF offenses against Palestinians: Yesh Din's Monitoring of MAOA Squad", *Data Sheet no. 4*, October 2009; Cohen B., "Democracy and the Mis-Rule of Law: The Israeli Legal System's Failure to Prevent Torture in the Occupied Territories", *Indiana International & Comparative Law Review*, 2001. 12, p.75-105; Clark L. M., "Israel's High Court of Justice Ruling on the General Security Service Use of 'Moderate Physical Pressure': An End to the Sanctioned Use of Torture?", *Indiana International & Comparative Law Review* 2000, 11, p.145-182; Yesh Din, *A Semblance of Law: Law enforcement Upon Israeli Civilians in the West Bank*, June 2006; Human Rights Watch, "Promoting Impunity: The Israeli Military's Failure to Investigate Wrongdoing", June 2005 Vol. 17, No. 7(E); Khoury-Bisharat H., "Israel and the Culture of Impunity", Adalah's Newsletter, Volume 37, June 2007; Weill S., "Israel's Culture of Impunity", *Le Monde Diplomatique*, September 2009.
- 124 Montell J., "Introduction: Accountability in Israel – What European NGOs Need to Know", *Palestine/Israel: Making Monitoring Work: (Re-) Enforcing International Law in Europe, Conference Report*, Diakonia, May 2009, p.7.
- 125 Article 147 of the *Fourth Geneva Convention*, Articles 8(2)(a) and 8(2)(b)(viii) of the *Rome Statute*. The *International Criminal Tribunal for the Former Yugoslavia* has reaffirmed that forced displacements are crimes punishable under customary international law, *The Prosecutor v. Krnojelac*, IT-97-25, *Trial Chamber Judgment* of 15 March 2002.
- 126 Article 7(1)(d) of the *Rome Statute*. "forcible transfer of population" is defined by the Statute as "forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law." Article 7(2)(d).
- 127 "The General Assembly [...] Recalling its relevant resolutions which affirm the right of the Palestinian people to self-determination, 1. *Reaffirms* the inalienable rights of the Palestinian people in Palestine, including: (a) The right to self-determination without external interference; (b) The right to national independence and sovereignty; 2. *Reaffirms also* 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..." UNGA Resolution 3236 (22 November 1974) A/RES/3236 (XXIX)
- 128 A number of the Arab states had strong objections against including Palestinian refugees in the *Refugee Convention* as well as under the mandate of UNHCR. The Arab governments' primary concern was that when included under the mandate of UNHCR the Palestinian refugees "would become submerged [with other refugee groups] and would be relegated to a position of minor importance", and that the prospect of their repatriation would be negatively affected if they were included in UNHCR's mandate. GAOR, 5th session, 3rd comment, 328th meeting, para.52. Therefore, the Arab states advocated that the Palestinian refugees should remain the responsibility of special UN attention, namely UNRWA and UNCCP. Consequently, the Arab states proposed an amendment to exclude the Palestinian refugees from the mandate of UNHCR. UN doc. A/C.3/L.128. Furthermore "consideration regarding continued funding by Western donors of the massive relief operation on behalf of the Palestinian refugees is likely to have played a major role." The Arab states were in a position that countries, which had supported the division of Palestine and the establishment of the state of Israel, "should continue to foot the assistance bill for the Palestinian refugees." Takkenberg, *Lex op. cit.* (1998), p.66. Israel and Zionist organizations advocated for the UN decision to exclude the Palestinian refugees from the International Refugee Organization, which was the body that assisted Jewish refugees in Europe following World War II. The former were keen to prevent anyone from making any possible association or even comparison between the two cases. Ilan Pappé, *The Ethnic Cleansing of Palestine*, (Oxford Press, October 2006), p. 235-236.
- 129 UNGA Resolution 194(III), UN Doc. A/910, at 21, 11 December 1948. See also Susan M. Akram, "Reinterpreting Palestinian Refugee Rights under International Law", Naseer Aruri (ed.) *Palestinian Refugees: The Right of Return* (London, 2001), p.165, 169.
- 130 UNGA 2252(ES-V) of 4 July 1967. Despite the above UNRWA has never revised its working definition for "Palestine refugees" although it provides assistance to 1967 Palestinian refugees in accordance with UNGA resolutions.
- 131 *UNCCP 19th Progress Report*, UN Doc.A/4921 and Add.1, 13 October 1961; *UNCCP, 21st Progress Report*, UN Doc. UN Doc. A/5545, 1 November 1963.
- 132 Susan M. Akram and Guy Goodwin-Gill, *Brief Amicus Curiae to the United States Department of Justice Executive Office for Immigration Review*, 2001, p.9.
- 133 *Ibid*, p.9
- 134 See, for example: *The United Nations and Palestinian Refugees*, UNRWA HQ, Gaza, 2007.
- 135 UNHCR, Note on the Applicability of Article 1D of the Convention Relating to the Status of Refugees to Palestinian Refugees, 2002, p.2.
- 136 Akram S., "Reinterpreting Palestinian Refugee Rights under International Law", Naseer Aruri (ed.) *Palestinian Refugees: The Right of Return* (2001), p.165, 174; Akram S. and Goodwin-Gill G. (2001), *op. cit.*, p.31. The Convention-definition in Article 1A(2) was never intended to apply to Palestinian refugees for several reasons: "First, as UN delegates involved with drafting the Refugee Convention pointed out: '[T]he obstacle to their repatriation was not dissatisfaction with their homeland, but the fact that a Member of the

- UN was preventing their return.' Second, Palestinians as an entire group had already suffered persecution by virtue of their massive expulsion from their homeland for one or more of the grounds enumerated in the definition. Thus, they were given special recognition as a group, or category, and not subject to the individualized refugee definition. The delegates dealt with the Palestinians as *de facto* refugees, referring in a general way to those who were defined by the relief agencies at the time (UNCCP and UNRWA) but not limiting the term 'refugee' to those Palestinians who were in need of relief. Although they did not define them as such, the delegates were referring to Palestinian refugees as persons normally residing in Palestine before 15 May 1948, who lost their homes or livelihood as a result of the 1948 conflict. Akram, S., (2001), op. cit., p.167.
- 137 UNHCR, *Note on the Applicability of Article 1D of the 1951 Convention relating to the Status of refugees to Palestinian refugees*, October 2002, p.2. 1A(2) of the *Refugee Convention* defines "refugee" as follows: "Owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."
- 138 Akram S. (2001), op. cit., p.165, 172 .
- 139 UNRWA's mandate, however, has not been amended to exclude the Palestinian IDPs of 1948. Thus, in legal terms, the Agency could resume its jurisdiction over these IDPs for purposes of providing humanitarian assistance.
- 140 Karine Mac Allister., "No Strategy of Vision that Aims to End Internal Displacement", *Al-majdal*, No.39/40 Autumn 2008/Winter 2009, p. 60.
- 141 Save the Children UK et. al., *Broken Homes: Addressing the Impact of House Demolitions on Palestinian Children & Families*, 15 June 2009, p.34.
- 142 The *Refugee Convention* is the primary instrument for the protection of stateless persons who are also refugees. Since Palestinian refugees may not be recognized as "refugees" under the Refugee Convention, the Convention on Stateless Persons should be applied where possible in order to ensure basic protection. See *Closing Protection Gaps: Handbook on Protection of Palestinian Refugee in States Signatories to the 1951 Refugee Convention*, BADIL, August 2005.
- 143 *Convention on the Reduction of Statelessness* (Convention on Statelessness), 30 August 1961, 989 UNTS 175; *Convention Relating to the Status of Stateless Persons* (Convention on Stateless Persons), 28 September 1954, 360 UNTS 117.
- 144 As of October 2008, 63 States are party to the 1954 *Convention on Stateless Persons*. Of the Arab States, only Algeria, Libya and Tunisia are parties. Israel is party to the Convention too. As of October 2008, only 35 states have ratified the 1961 *Convention on Statelessness*. Of these, only two are Arab states – Libya and Tunisia. Israel is a signatory but has not ratified the convention.
- 145 Article 1 of the *Convention relating to the Stateless Persons*.
- 146 Akram, S. (2001), op. cit. p.165, p.170; and Guy Goodwin-Gill, *The Refugee in International Law*, 2nd ed. (Oxford University Press, 1998), p.243-246.
- 147 Article 1 of the *Convention on the Reduction of Statelessness*.
- 148 Palestinian Citizenship Order in Council, 1925, S.R. & O., no. 25. See Anis Kassim, *Legal Systems and Developments in Palestine*, 1 PALESTINE Y.B. INT'L L. 19 (1984) (concerning laws under British occupation of Palestine). See also G.A. Res. 181 (III), U.N. GAOR, 128th Plen. Mtg., 1st Sess., U.N. Doc. A/64 (1947) (noting the limited trusteeship of the Mandate under the League of Nations).
- 149 Akram, S., Rempel, T., (2004), op. cit., p.68.
- 150 Goodwin-Gill, G. (1998), op. cit., p.243-244.
- 151 Takkenberg, L.(1998), op. cit., p.53.
- 152 In light of pending further peace negotiations, "the status of Palestine as a state in the sense of international law (having a permanent population, a defined territory, government and the capacity to enter into relations with other states, including full membership of international organizations) remains undetermined." Guy Goodwin-Gill, *The Refugee in International Law*, 2nd ed. (Oxford: Oxford University Press, 1998), p.244, footnote 200. See also Article 1 of 1933 *Montevideo Convention on Rights and Duties of States*, 165 LNTS 19; 28 AJIL Supp.(1934). Stateless persons who are also refugees are covered by the *Refugee Convention*, and Article 1A(2) definition has a separate analysis for refugees who are stateless. However, as described previously most Palestinian refugees are excluded from the *Refugee Convention*, or the analysis of Article 1A(2) is applied to them rather than the second paragraph of Article 1D, "which results in widespread loss or denial of legal protection." Akram, S. (2001), op. cit., p.165, p.170, and footnote 41.
- 153 Article 1 of the 1954 *Convention on Stateless Persons*.
- 154 Twenty years earlier, the UNGA had asked UNHCR to provide assistance to individuals under the 1961 *Convention on the Reduction of Statelessness*: www.unhcr.org/pages/49c3646c16a.html.
- 155 See articles 7(1) and 5, 6, 13, 18, 19, 21, 22(2), and 26.
- 156 Article 33 of the 1951 *Refugee Convention* prescribes that no refugee should be returned to any country where his or her life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group, or political opinion. This provision constitutes one of the basic articles of the 1951 *Refugee Convention*, to which no reservations are permitted. The principle of *non-refoulement* is broader than Article 33, and also encompasses *non-refoulement* prohibitions deriving from human rights obligations, including Article 3 of CAT and Article 7 of ICCPR.
- 157 Report of the UNHCR, para.22-3, UN Doc.E/1985/62(1985), see also Deborah Perluss and Joan F. Hartman, "Temporary Refuge: Emergence of a Customary Norm", 26 *Virginia Journal of International Law* (1986), p.551.
- 158 Goodwin-Gill, G. (1998), op. cit., p.230 – 231.
- 159 Neither general international law nor treaty law obliges any state to accord durable solutions. Some consider such development as undesirable, "as tending to relieve the country of origin of its responsibility to establish the conditions permitting return, while also 'institutionalizing' exile at the expense of human rights." Guy Goodwin-Gill, *The Refugee in International Law*, 2nd ed. (Oxford: Oxford University Press, 1998), p.268.
- 160 UNHCR, *Resettlement Handbook*, November 2004, Chapter 2, p. 8.
- 161 *Ibid*, Chapter 2, p.2. See also UNHCR, *Framework for Durable Solutions for Refugees and Persons of Concern*. Core Group on Durable Solutions, Geneva, May 2003.
- 162 *Ibid*, Chapter 1, p. 3.

- 163 Algeria, Djibouti, Egypt, Mauritania, Morocco, Somalia, Sudan, Tunisia and Yemen are signatories but host only small numbers of Palestinian refugees.
- 164 Algeria, Djibouti, Egypt, Mauritania, Morocco, Somalia, Sudan, Tunisia and Yemen are signatories to the *Refugee Convention* but host only small numbers of Palestinian refugees. Algeria, Libya, and Tunisia have ratified the 1965 *Convention on the Status of Stateless Persons*. Libya and Tunisia have ratified the 1961 *Convention on the Reduction of Statelessness*. Ratification information available at www.unhcr.org last visited on 21 May 2009.
- 165 With regard to the comparison with other regional instruments see Akram S., and Rempel, S., (2004), op. cit., p.1 – 162.
- 166 *League of Arab States, Arab Charter on Human Rights*, 22 May 2004, reprinted in 12 Int'l Hum. Rts. Rep. 893 (2005), entered into force March 15, 2008. A copy can be viewed here: <http://www1.umn.edu/humanrts/instrree/loas2005.html?msource=UNWDEC19001&tr=y&cauid=3337655>
- 167 In 1992, the LAS adopted the *Declaration on the Protection of Refugees and Displaced Persons in the Arab World* ("Cairo Declaration"), which emphasizes the need to ensure international protection for Palestinian refugees, encourages Arab states that have not done so to accede to the *Refugee Convention*, and calls upon Arab states to provide the LAS with relevant information concerning the status of Palestinian refugees in host countries. *Declaration on the Protection of Refugees and Displaced Persons in the Arab World*, The Group of Arab Experts, meeting in Cairo from 16–19 November 1992 at the Fourth Arab Seminar on Asylum and Refugee Law in the Arab World, organized by the International Institute of Humanitarian Law in collaboration with the Faculty of Law of Cairo University, under the sponsorship of the UNHCR.
- 168 *Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU Convention)*, effective 20 June 1974, 10 September 1969, 1001 UNTS 1945, Article 1.
- 169 These states include Algeria, Egypt, Libya, Sudan, Mauritania, and Tunisia. According to UNHCR statistical reports, there are 4,000 self-sufficient Palestinian refugees in Algeria receiving no assistance from UNHCR (2006). In Egypt, there are 70,174 (2008); in Libya 8,873 refugees (2005).
- 170 22 Arab states are members of the LAS: Algeria, Bahrain, the Comoros Islands, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Palestine, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, the United Arab Emirates, and Yemen. See Khadija Elmadmad, *An Arab Convention on Forced Migration: Desirability and Possibilities*, 3 INT'L J. REFUGEE L. 461, 466 (1991).
- 171 *Casablanca Protocol*, Article 1. "Whilst retaining their Palestinian nationality, Palestinians currently residing in the land of [...] have the right to employment on par with its citizens."
- 172 *Ibid*, Article 2. "Palestinians residing at the moment in [...] in accordance with the dictates of their interests, have the right to leave and return to this state. Their right of entry only gives them the right to stay for the permitted period and for the purpose they entered for, so long as the authorities do not agree to the contrary."
- 173 *Ibid*, Article 3. "Palestinians residing in other Arab states have the right to enter the land of [...] and to depart from it, in accordance with their interests. Their right of entry only gives them the right to stay for the permitted period and for the purpose they entered for, so long as the authorities do not agree to the contrary."
- 174 *Ibid*, Article 4. "Palestinians who are at the moment in [...] as well as those who were residing and left to the Diaspora, are given, upon request, valid travel documents. The concerned authorities must, wherever they be, issue these documents or review them without delay."
- 175 *Ibid*, Article 5.
- 176 Akram, S., Rempel, T. (2004), op. cit. p.1 – 162.
- 177 *Ibid*, p.1 – 162, 114.
- 178 Refugee Studies Center, *Developing DFID's Policy Approach to Refugees and Internally Displaced*, February 2005.
- 179 Kuwait reserves the right to interpret Article 1 of the Protocol as excluding the right to conduct "private business" on par with Kuwaiti citizens. Lebanon reserves the right to interpret Article 1 of the Protocol in accordance with prevailing social and economic conditions in Lebanon, and the right of Palestinians to maintain their nationality. It further reserves the right to interpret Article 2 with the added phrase "on equal terms with Lebanese citizens and in accordance with the laws and regulations in operation"; and Article 3 with the added phrases "whenever their interests demand it" and "allowing Palestinians into Lebanon is conditional upon their obtaining an entry visa issued by the concerned Lebanese authorities." It has also submitted reservations on Articles 4 and 5. The Lebanese reservations on the five articles of the protocol rendered it void of content Khalil, Asem, "Palestinian Nationality and Citizenship Current Challenges and Future Perspectives", *CARIM Research reports 2007/07*, Robert Schumann Center for Advanced Studies, p.31. Libya submitted reservations to Article 1 "since dealing with Palestinian citizens in Libya is on par with and equal to dealing with other Arab citizens residing in Libya." Abbas Shiblak, *The League of Arab States and Palestinian Refugees' Residency Rights*. Monograph 11. Ramallah: Palestinian Diaspora and Refugee Centre Shaml, 1998, p. 35–36.
- 180 See for example: Resolution 424, 14 September 1952.
- 181 See for instance Resolution 714, 27 January 1952.
- 182 The *Refugee Convention*, on the other hand, guarantees the right to housing (Article 21), public education (Article 22), property ownership (Articles 13-14), freedom of movement (Article 26), and social security (Article 24). Akram S., Rempel, T., (2004), op. cit. p.119.
- 183 Takkenberg, L., (1998) op. cit.
- 184 UNGA, *Cooperation between the UN and the League of Arab States*, UNGA Resolution A/55/401, 21 September 2000.
- 185 *Ibid*.
- 186 "Widening the Protection Gap: The 'Politics of Citizenship' for Palestinian Refugees in Lebanon, 1948 – 2008", Are Knudsen, *Journal of Refugee Studies Vol. 22*, No. 1 (Feb 2009).
- 187 LAS Resolution 5093 (1991).
- 188 Refugee Studies Center, *Developing DFID's Policy Approach to Refugees and Internally Displaced*, February 2005.
- 189 Akram S., Rempel, T. (2004), op. cit. p.1 – 162. Are Knudsen, op. cit. (4 Feb 2009), p.51-72, 67-68; "Arab Protection for Palestinian Refugees" working Paper No.8, November 2004, BADIL
- 190 Oroub El-Abed, *Unprotected Palestinians in Egypt since 1948*, Institute for Palestinian Studies/IDRC 2009, Chapter 2.
- 191 International NGO delegation, "From Fast Death to Slow Death: Palestinian Refugees in Iraq Trapped on the Syria-Iraq Border", *Summary Report*, 20 November 2008.

- 192 United States Department of State, *2008 Country Reports on Human Rights Practices - Syria*, 25 February 2009. Also: Amnesty, *Al-Tanf Camp, Trauma Continues For Palestinian Fleeing Iraq*, April 2008.
- 193 A/Res/3236 of 22 November 1974
- 194 By the end of 2009 this agreement was yet to be implemented. However, some Palestinian refugees went on a “look-and-see” visit to the site in Khartoum to determine if it was a place they would consider being relocated to: www.maannnews.net/en/index.php?opr=ShowDetails&Do=&ID=36390.
- 195 Articles 26 – 28 and 31.
- 196 Article 12.
- 197 Articles 2 – 4.
- 198 Maher Bitar, “Unprotected Among Brothers: Palestinians in the Arab World”, *Refugee Studies Center Working Paper No.44*, January 2008, p.118.
- 199 *Closing Protection Gaps, Handbook on Protection of Palestinian Refugees* BADIL, (2005), p.14.
- 200 *Nationality Law* (No. 6) (1954). Jordanian law, however, does not provide automatic citizenship to Palestinians who took up residency in Jordan after 1954.
- 201 They also have a civil registration number accorded at birth or upon naturalization and family registration book, which registers the civil status of the members of the family. Oroub El-Abed, “Immobile Palestinians: Ongoing plight of Gazans in Jordan”, *Forced Migration Review*, Issues 26 (August 2006), p.17-18, 17. Also Oroub El-Abed, “Palestinian Refugees in Jordan”, FMO Research Guide (2004). Nonetheless, these Palestinians are still denied equal political participation and subject to different forms of discrimination. Abbas Shiblak, “Stateless Palestinians”, *Forced Migration Review* 26, August 2006, p.8-9.
- 202 El-Abed O., (2004), op. cit.. Jordan had annexed the West Bank and ruled there until Israel’s occupation in 1967. In the 1970s the Jordanian government called 1967 Palestinian refugees to register, and 240,000 displaced persons followed the call. BADIL, “Palestinians Displaced”, *Article 74* (12), p. 3.
- 203 Syria, Lebanon, Egypt and some Gulf States are among those who do not honor this temporary travel document. El-Abed, O. (August 2006), op. cit., p.17
- 204 Asem Khalil, “Palestinian Nationality and Citizenship Current Challenges and Future Perspectives”, *CARIM Research reports 2007/07*, Robert Schumann Center for Advanced Studies, p.30. Also El-Abed O., “*Stateless Gazans: Temporary Passports in Jordan*”, unpublished manuscript for SHAML (on file at BADIL); El-Abed, O., (2004) op. cit.
- 205 Khetam Malkawi, “House Panel backs Ministry Procedures on ‘citizenship revocation’”, *The Jordan Times*, 17-18 July 2009.
- 206 *Ibid*.
- 207 Based on: El-Abed O., (2009), op. cit. Chapter 4.
- 208 These documents were issued upon request of the Gazans when Gaza was under Egyptian administration. *Ibid*, Chapter 4.
- 209 This includes mostly Christian Palestinians who were granted citizenship in the 1950s under the presidency of Camille Chamoun to keep the balance between Christians and Muslims in Lebanon. Takkenberg, L., (1998), op. cit., p. 164.
- 210 UNRWA, *Report of the Commissioner-General of UNRWA*, 1 January–31 December 2007, GA official records A/63/13, 31 July 2008, p.11.
- 211 Most of those moved to the country after the Palestinian Liberation Organization’s (PLO) expulsion from Jordan in 1971 and faced increased protection issues after the PLO leadership departed Lebanon in 1982. United States Department of State, *2008 Country Reports on Human Rights Practices - Lebanon*, 25 February 2009.
- 212 The Lebanese Palestinian Dialogue Committee (LPDC) was working with UNRWA to implement the government’s new policy by facilitating the issuance of identification cards to non-ID Palestinians. *Ibid*.
- 213 Order No.478 of the Ministry of Internal Affairs. When Libya expelled Palestinian refugees from its territory in 1995, the Lebanese government passed a decree preventing the 15,000 Libya-based Palestinian refugees with Lebanese residence, along with other Palestinians with Lebanese documents, from returning to Lebanon without a special re-entry visa. As a result, thousands of Palestinian refugees were stranded in airports and at borders. This decision was revoked in January 1999. It is estimated that as many as 100,000 Palestinians were unable to return to Lebanon as a result of this procedure. Jaber Suleiman, *Marginalized Community: The Case of Palestinian Refugees in Lebanon*, United Kingdom: Development Research Centre on Migration Globalization and Poverty, April 2006, p. 15. Takkenberg L.,(1998), op. cit., p.153.
- 214 Lisa Raffonelli, “With Palestine, Against the Palestinians”, *World Refugees Survey* (2004), p.66-73. Also: Asem Khalil, “Palestinian Nationality and Citizenship Current Challenges and Future Perspectives”, *CARIM Research reports 2007/07*, Robert Schumann Center for Advanced Studies, p.31.
- 215 Law 260/1957. See Khalil A.,(2007), op. cit.
- 216 *Nationality Law* (No. 98) (1951).
- 217 Art.20 of Law 1311. Sherifa Shafi, *Palestinian Refugees in Lebanon*, FMO Research Guide (2003).
- 218 *Ibid*.
- 219 Gabriela Wengert and Michelle Alfaro, “Can Palestinian refugees in Iraq find Protection?” *Forced Migration Review* 26, August 2006, p.19. Also: UNHCR, Aide-Memoire, *Protecting Palestinians in Iraq and Seeking Humanitarian Solutions for Those Who Fled the Country*, December 2006,
- 220 Wengert G. and Alfaro M. (2006), op. cit. , p.19.
- 221 Karma Nabulsi, *Palestinian Register: Laying Foundation and Setting Directions*, Civitas project, Nuffield College, University of Oxford (2006), p.86.
- 222 Bitar M., “Unprotected Among Brothers: Palestinians in the Arab World”, *Refugee Studies Center Working paper No.44*, University of Oxford, January 2008, p.20.
- 223 UNHCR, Aide-Memoire, *Protecting Palestinians in Iraq and Seeking Humanitarian Solutions for Those Who Fled the Country*, December 2006.
- 224 United States Department of State, *2008 Country Reports on Human Rights Practices – Iraq*, 25 February 2009.
- 225 “Palestinian Refugees in Iraq get Special IDs”, *The Mideast News Source* (25 August 2008); “Iraq: Some Palestinian Refugees to get Special IDs”, *IRIN* (27 August 2008). Despite the *Political Refugee Act (Law No.51)* adopted in 1971 which envisages the legal basis for the

- provision of asylum for “political or military reasons” the Palestinian refugees were never formally recognized as refugees by successive Iraqi governments. Wengert G. and Alfaro M. (2006), op. cit. p.19
- 226 UNHCR, 2007 *Country Operations Plan, Kingdom of Saudi Arabia and Gulf Countries*, Executive Committee Summary, p. 2–3
- 227 See in this regard: Hallaj M., *The Palestinians and the War in the Gulf*, (Washington, DC: The Center for Policy Analysis on Palestine, February 1991), p. 17
- 228 Palestinians living in the Gulf usually fled their homes and took up residence in one of the neighboring countries of Palestine before relocating to the Gulf region. Palestinian refugees in the Gulf states, including Saudi Arabia, generally hold various types of travel documents: Egyptian, Lebanese, Syrian and Jordanian passports, valid for two years, and Palestinian passports. A few hold Iraqi travel documents. UNHCR, 2007 *Country Operations Plan, Kingdom of Saudi Arabia and Gulf Countries*, Executive Committee Summary, p. 2–3. Many Palestinians residing in the Gulf States with Egyptian travel documents were not able to renew their residence permits. They found themselves in a legal limbo because they had lost their residency rights both in the Gaza Strip (due to their absence during Israel’s 1967 census) and in Egypt (because their temporary residency in Egypt had expired).
- 229 *Nationality Law* (1959) as amended by Decree No. 40 (1987), Statute No. 1 (1982), Decree No. 100 (1980) and Statute No. 30 (1970). Palestinian refugees are eligible for residency, which can only be obtained at the request of a Kuwaiti national through the Ministry of the Interior or the Ministry of Social Affairs and Labor. Brand, Laurie *Palestinians in the Arab World, Institution Building and the Search for State* (NY: Columbia University Press, (1988), p. 113. “Kuwait Restricts Stay of Non-Gulf Co-operation Council Arabs,” 4 *Middle East New Line* 472, 12 December 2002. Under the new regulations, Jordanians, Palestinians, Sudanese and Yemenis are given one-month visas for family visits in Kuwait. These visas may be extended for up to three months. These nationals arriving on business trips are issued one-month non-renewable visas.
- 230 UNHCR, 2007 *Country Operations Plan, Kingdom of Saudi Arabia and Gulf Countries*, Executive Committee Summary, p. 2–3
- 231 Bitar M., (2008) op. cit., p.21
- 232 United States Department of State, 2008 *Country Reports on Human Rights Practices - Libya*, 25 February 2009.
- 233 For Syria, see Law No. 260, 10 July 1956. Refugees in Syria are exempt from legislation that requires civil servants to hold Syrian nationality for at least five years prior to government service (Decree No. 37 [1949]). Also see Law No. 65 (1950), Law No. 119 (1951), Law No. 162 (1952) and Law No. 250 (1952), cited in *Annual Report of the Director of the UNRWA*, covering the period 1 July 1951–30 June 1952. UN GAOR, 7th Sess., Supp. No. 13 (A/2171), 30 June 1952.
- 234 UNRWA, *Report of the Commissioner-General of the UNRWA, 1 January – 31 December 2007*, UN GA official records A/63/13, 31 July 2008, p.12.
- 235 In Jordan, entry to professions is blocked as 1967 Palestinian refugees from the Gaza Strip are not allowed to register with professional societies, unions or to establish their own offices, firms or clinics. Only those with security clearance can gain private sector employment. El-Abed O., (August 2006), p.17.
- 236 Shiblak A., (1998), op. cit., p. 36.
- 237 For an overview of the situation in Lebanon, see Suheil Natour, “The Legal Status of Palestinians in Lebanon,” *Journal of Refugee Studies* 3, 1997.
- 238 Work permits are not required for irregular and poorly paid work in agriculture and construction. See also: Jaber Suleiman, “Legal Issues Governing Palestinians’ Right to Work and Social Security” *Lebanese-Palestinian Dialogue Committee Briefing Note*, 3 April 2008.
- 239 The reciprocity policy provides that the right granted to the nationals of a particular State in Lebanon shall also be granted to the Lebanese nationals living in that state. This policy is included in most of the Lebanese laws relating to foreigners, but it primarily targets the Palestinians whom Lebanon exempts from reciprocity. FIDH, *Investigative International Mission Lebanon, Palestinian Refugees: Systematic Discrimination and Complete Lack of Interest on the Part of the International Community*, No.356 (2 March 2003), p.12-13. With regard to the exemption of refugees from reciprocity see also Article 7 of the 1951 *Refugee Convention*.
- 240 The Cairo Agreement provided administrative autonomy to the Palestinian camps and lifted the ban on employment. Following the war in 1985 – 1987, the agreement was unilaterally repealed by the Lebanese cabinet in 1987. Takkenberg L., (1998), op. cit., p.146.
- 241 Prior to 2005, the Labor Minister barred Palestinians from roughly 70 professions. In 2005, a memorandum was issued which reduced the list to approximately twenty. However, numerous professions, such as engineering, pharmacy, medicine and the law remain off limits. International Crisis Group, “Nurturing Instability: Lebanon’s Palestinians Refugee Camps,” *Middle East Report No.84*, 19 Feb 2009, p.17.
- 242 Law No. 8/79 (1970). Also see Decree No. 1658 (1979), which permits foreigners to practice medicine, pharmacy and engineering if they are nationals of states that apply reciprocal treatment to Lebanese nationals. see Aasheim, Petter, “The Palestinian Refugees and the Right to Work in Lebanon,” A Minor Field Study. Graduate Thesis, Faculty of Law, University of Lund (September 2000). (On file at BADIL.)
- 243 International Crisis Group, “Nurturing Instability: Lebanon’s Palestinians Refugee Camps” *Middle East Report No.84*, 19 Feb 2009, p.16
- 244 Law No. 48 (1978). During the early years of exile in Egypt, Palestinian refugees were forbidden to work, based on the assumption that refugees would soon return to their homes of origin, and because of the serious unemployment situation in Egypt. Egyptian President Gamal Abdel Nasser introduced more favorable employment laws in 1954 and 1962. For further discussion and relevant legislation, see Brand L., (1988), op. cit., p. 52 –53. The present restrictions on employment in professions were put in place after the death of Egyptian President Gamal Abdel Nasser. El-Abed, O.,(2003), op. cit., p. 8.
- 245 Article 27 of Law 37 (1981). One of the conditions to obtain the work permit is that the foreign employee must have a certain qualifications that are needed by the employer (Article 3 of Law 43(1988)). “It is unlikely that Palestinians would have expertise or special qualifications that native Egyptians would not have, [...] because Palestinians who complete university would have obtained the same kind of degrees as their Egyptian class mates.” El-Abed, O., (2009), p.92.
- 246 Certain exceptions are permitted if they serve national interest. See Article 4 of Law 25 (1982), and Law 83 of 1982. Article 27 of Law 37 (1981). Also see El-Abed, O. (2009), op. cit., p.92.
- 247 El-Abed O., (2009), op. cit., p. 91 and 93.
- 248 According to the Arab Ministers of Education, Palestinian students are to be treated the same as children of the host state. Brand L., (1988), op. cit., p. 119.

- 249 Tiltens Å., *Keeping Up: A Brief among the Living Conditions of Palestinian Refugees in Syria*, Fafo 2007, 27.
- 250 El-Abed, O., (August 2006), op. cit., p.17
- 251 Decision No. 28 (1960), El-Abed O., *Stateless Gazans: Temporary Passports in Jordan*, unpublished manuscript (on file at BADIL).
- 252 El-Abed, O. (2009), op. cit., Chapter 2.
- 253 *Ibid.*
- 254 Decree 12, 6 July 1978.
- 255 El-Abed, O. (2009), op. cit. Chapter 5.
- 256 The education restrictions were imposed in 1978, yet were confirmed or expanded periodically. See for instance, decrees 87, 1983 and 75, 1984, which reiterated the Palestinians' foreign status and reaffirmed the ban on their entering technical faculties.
- 257 El-Abed, O., (2003), op. cit. p. 9.
- 258 Decree 394-A (1992). El-Abed, O., (2009), op. cit. Chapter 5.
- 259 Decree 24/722/92 (1992). The exempted categories were as follows: (1) Children of public sector employees; children of Egyptian widows and divorcees, and children of women who have passed Egyptian high schools exams; (2) continuous residents of Egypt – those who were born in Egypt and have completed all levels of basic education in Egyptian schools; (3) students needing financial assistance. El-Abed, O., (2009), op. cit., Chapter 5.
- 260 El-Abed, O., (2009), op. cit. Chapter 5.
- 261 Few Palestinian refugees can afford private schools, which generally offer a better education than state institutions. Natour S., (1997), op. cit., p. 45. Brand L., (1988), op. cit. p. 119–121.
- 262 NRWA operates five secondary schools in Lebanon for Palestinian refugees. Natour S., (1997), op. cit., p. 45. Brand, L.(1988), p. 119–121.
- 263 Ghada Talhami, *Palestinian Refugees: Pawns to Political Actors*, Nova Science Publishers (2003), p. 114-117. See also *Closing Protection Gaps: Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, BADIL, 2005 p. 18-19, and footnote 109.
- 264 Jennifer Ibrahim, "Discrimination against Palestinian Refugees Living in Lebanon", *Palestine-Israel Journal of Politics, Economics and Culture*, Vol.15 No.1 & 2, 2008, p.86.
- 265 International Crisis Group, "Nurturing Instability: Lebanon's Palestinians Refugee Camps", *Middle East Report* No.84, 19 Feb 2009, p.16. See also: Ibrahim, J. (2008), op. cit., p.86.
- 266 Tiltens Å, (2007), op. cit., p.43.
- 267 El-Abed, O. (2009), op. cit., p.114.
- 268 For Jordan, see Law No. 40 (1953) as amended by Law No. 12 (1960), Law No. 20 (1970), Law No. 31 (1977), Law No. 29 (1980) and Law No. 2 (1980). Also see Law No. 25 (1968). Suheil Natour, "The Palestinians in Lebanon: New Restrictions on Property Ownership" (2003), p. 19. (On file at BADIL.) Palestinian refugees who entered Iraq between 1948 and 1950 are excluded from 1994 legislation (Decision No. 23) that annulled all laws allowing foreigners to possess real estate, or to invest in companies inside Iraq (Decision No. 133 [1997]). Jamil Mus'ab, "Palestinian Diaspora in Iraq", paper presented at the conference "Future of Expelled Palestinians," Amman, Jordan, 11–13 September 2000, p. 10; Natour, *ibid*, p. 19.
- 269 El-Abed O., (2004), op. cit.
- 270 Law No. 230 of 1996. Also see Cassation Court Decision No. 1930/1966 (30 March 1997), which confirmed that Palestinian holders of two-year passports were non-Jordanian citizens and could not rent or sell immovable property without a permit from the Ministerial Council.
- 271 UNHCR, *Protecting Palestinians in Iraq and Seeking Humanitarian Solutions for Those Who Fled the Country*, Aide-Memoire, UNHCR Geneva, December 2006, p. 2. In early 2000, the Iraqi government announced that Palestinians who had resided in the country since 1948 would be granted the right to own property in Baghdad. However, many refugees stated that legal restrictions prohibiting them from registering homes, cars or telephone accounts in their own name remained in force. *Flight from Iraq: Attacks on Refugees and other Foreigners and Their Treatment in Jordan*. New York: Human Rights Watch, 2003, p. 18.
- 272 Law no. 296 of 3 April 2001, restricts the law-decree no.11614 of 14 January 1969 according to which foreigners, including the Palestinian refugees, were entitled to acquire real-estate property on a limited scale up to 3,000 m² in Beirut and up to 5,000 m² in the rest of Lebanon. FIDH, *Investigative International Mission Lebanon, Palestinian Refugees: Systematic Discrimination and Complete Lack of Interest on the Part of the International Community*, No.356 (2 March 2003), p.13. Also: Knudsen A., "Widening the Protection Gap: The 'Politics of Citizenship' for Palestinian Refugees in Lebanon, 1948 – 2008", *Journal of Refugee Studies* Vol. 22, No. 1 (4 February 2009). See also: Suleiman J., (April 2006), p. 18
- 273 When a Palestinian refugee dies, his/her property becomes the possession of Lebanese government. Ibrahim J., (2008), op. cit. p.86. See also FIDH, *Investigative International Mission Lebanon, Palestinian Refugees: Systematic Discrimination and Complete Lack of Interest on the Part of the International Community*, No.356 (2 March 2003), p.13, and Knudsen A., "Widening the Protection Gap: The 'Politics of Citizenship' for Palestinian Refugees in Lebanon, 1948 – 2008", *Journal of Refugee Studies* Vol. 22, No. 1 (4 Feb 2009).
- 274 According to the Law No. 56 (1988), subject to the approval of the Ministerial Council the total surface area of the property owned by foreigners must not exceed 3,000 m². El-Abed, O., (2009), Chapter 5.
- 275 See Law No. 104 (1985). Palestinian refugees were originally exempt from legislation barring foreigners from owning agricultural land, Law No. 15 (1963). Thus, the Palestinians were the only foreigners who still owned agricultural land at the time the Law No. 104 (1985) was enacted. Article 1 of this law stipulated that foreign-owned agricultural land would revert to the state within five years. In light of the above, Palestinians had to sell their property within the allotted time span to avoid uncompensated expropriation. It is worth noting that some Palestinians relied on their immovable property as a financial guarantee for renewing their residency every year. El-Abed O., (2009), op. cit., Chapter Five.
- 276 In Kuwait, see Law No. 74 (1979). The property must not exceed 1,000 square meters. Joint ownership with a Kuwaiti citizen is not required in such cases. Natour, S., (2003), op. cit. p. 20.
- 277 The United States is a signatory to the 1967 Protocol only and has not ratified the 1954 Refugee Convention.
- 278 For in-depth research on this matter see BADIL *Handbook* (2005) op cit.
- 279 BADIL *Handbook* (2005) op cit., p.162-167 (Finland), p.187-190 (Hungary).

- 280 This may also include Mexico, Nigeria and South Africa, but the small numbers of cases do not permit assessment of application by national authorities.
- 281 See BADIL, *Handbook* (2005), op. cit., p. 336–343.
- 282 Federal Administrative Court, 1C 42/88 of 4 June 1991. See also Badil, *Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention: Closing Protection Gaps*, August 2005, p.175.
- 283 BADIL, *Handbook* (2005), p.154-157 (Denmark), and p.169-172 (France).
- 284 *Ibid*, p.200-202.
- 285 *Ibid*, p.206 – 207.
- 286 *Ibid*, p.217
- 287 *Ibid*, p.231.
- 288 Federal Court of Australia, *Minister for Immigration and Multicultural Affairs v WABQ* [2002] FCAFC 329, 8 November 2002. See also BADIL, *Handbook* (2005), op. cit., p.282-291.
- 289 The Australian Refugee Status Appeals Authority, Case No.1/92 ReSA, 20 April 1992, the decision is available on the Case Search page of the New Zealand Refugee Law website, www.refugee.org.nz See also BADIL, *Handbook* (2005), op. cit., p. 292 – 297.
- 290 BADIL, *Handbook* (2005), op. cit., p.337.
- 291 *Ibid*, p.346.
- 292 *Ibid*, p.346.
- 293 *Ibid*, p.346.
- 294 *Ibid*.
- 295 UNGA Resolution 194(III), 11 December 1948, para. 2.
- 296 UNGA Resolution 394(V), 14 December 1950, A/RES/394(V), para. 2(c).
- 297 These included microphotographs of registers of title supplemented by the original registers when the microfilm was missing or defective; Registers of Deeds; Tax Distribution Lists and, failing these, taxpayers' registers; Field Valuation Sheets, and, failing these, valuation lists and taxpayers' registers; schedules of rights (in respect of blocks for which no registers of title had been prepared); parcel classification schedules; land registrars' returns of depositions; and village maps and block plans. For a comprehensive study, see Fischbach, Michael, *Records of Dispossession: Palestinian Refugee Property and the Arab-Israeli Conflict*. New York: Columbia University Press, 2003.
- 298 The UNCCP wrote that "the present unwillingness of the parties fully to implement the UNGA resolutions under which the Commission is operating, as well as the changes which have occurred in Palestine during the past three years, have made it impossible for the Commission to carry out its mandate", *UN General Progress Report and Supplementary Report of the UN Conciliation Commission for Palestine, Covering the period from 23 January to 19 November 1951*, A/1985, 20 November 1951, paras. 79 and 87. See Parvathaneni, Harish, "UNRWA's Role in Protecting Palestine Refugees." Working Paper No. 9, Bethlehem: BADIL Resource Center for Palestinian Residency and Refugee Rights, December 2004, p. 15.
- 299 For more details, see Terry Rempel, *The UN Commission for Palestine and a Durable Solution for Palestinian Refugees*. Information and Discussion Brief No. 5. (BADIL Resource Center, 2000).
- 300 UNCCP, *Historical Survey of Efforts of the UN Conciliation Commission for Palestine to Secure the Implementation of Paragraph 11 of the UNGA Resolution 194 (III)*, A/AC.25/W.81/Rev.2, 2 October 1961, para. 39. Report of the Commissioner General of UNRWA, 21st progress report of the UN Conciliation Commission for Palestine, 8 December 1962–31 October 1963, A/5545, 1 November 1963. See also: Terry Rempel, *The UN Conciliation Commission for Palestine and a Durable Solution for Palestinian Refugees*. Information and Discussion Brief No. 5. (BADIL Resource Centre, 2000), p. 3.
- 301 See UNGA Resolution 394(V), 14 December 1950 and UNGA Resolution 512(VI), 26 January 1952. On the reduction in the UNCCP budget, see UNGAOR, 6th Sess., Annexes, Agenda Item 24(a), UN Doc. A/2071 (1952), para. 1.
- 302 UNCCP, Fourteenth Progress Report, from 31 December 1953 to 31 December 1954, A/2897 3, March 1955, para. 1.
- 303 Akram S., Goodwin-Gill, G. (2001) op. cit., p.9.
- 304 The UNGA members still could not agree what changes to make in the UN effort for peacekeeping. The delegate of the United States suggested to not break the *status quo*, and therefore the UNSG recommended a budget in which the UNCCP would be based in the UN Head Quarters in New York with no major expenditures GAOR, 6th session, Annexes, Agenda item 24(a) (A/2072, 24 January 1952), p.1.
- 305 Report of the UNCCP, A/63/317, 20 August 2008.
- 306 *Assistance to Palestine Refugees*, UNGA, A/RES/302(IV), 8 December 1949, para. 7.
- 307 According to Article 6 of Resolution 302(IV), all relief and works operations were to be terminated by the middle of 1951.
- 308 (1) "Work Relief", i.e., small-scale training and employment creation; (2) "Works Projects", i.e., medium-sized public sector government-controlled projects (such as road-building and tree-planting), aimed at creating employment; (3) assistance to and subsidization for small numbers of Palestine refugees willing to resettle in places such as Argentina, Brazil, Bolivia, Canada, Columbia, Chile, Egypt, Honduras, Iran, Iraq, Kuwait, Libya, Qatar, Sierra Leone, Saudi Arabia, the United States, Venezuela, Germany and Yemen; (4) large-scale regional development projects with regional governments.
- 309 Refugees refused to co-operate, wrote letters of protest and organized demonstrations against economic development/integration projects.
- 310 See UNGA Resolution 614 (VII), 6 November 1952.
- 311 Proposals for the Continuation of UN Assistance to Palestine Refugees, Document Submitted by the Secretary-General. UN Doc. A/4121, 15 June 1959, para. 17.
- 312 UNRWA and UNHCR, *The UN and Palestinian Refugees*, January 2007, p. 5; also: UNRWA, *What Protection Means for UNRWA in Concept and Practice* (Consultant's Report), 31 March 2008.
- 313 UNRWA, *What Protection Means for UNRWA in Concept and Practice* (Consultant's Report), 31 March 2008.
- 314 *Ibid*.
- 315 UNRWA, *Budget Plan 2008 – 2009*, July 2007.
- 316 In 1991 following the expulsion of the Palestinian from Kuwait, the then Commissioner-General of UNRWA, affirmed during a meeting with the donors, that the Agency had a responsibility towards Palestinians being "persecuted, hounded, and expelled by the Kuwaiti

- government for supposed support of the Iraqi occupation.” Although UNRWA’s mandate is limited to its five areas of operation, the Commissioner General made it clear that he favored a pragmatic approach: “I consider that the responsibility of UNRWA extends to Palestinians in all parts of the Middle East [including Kuwait]. If ambivalence is allowed to persist in this respect, this can only delay ad hoc UN protection and humanitarian activities.” As a result, UNRWA sent a special mission to Kuwait from July to September 1992 to assess the situation of the remaining Palestinians in Kuwait (UN doc. A/48/13, 7). The mission operated in close cooperation with UNHCR, yet the effects of this mission were limited. Takkenberg L., (1998), op. cit., p.300-301.
- 317 UNGA Resolution, *Provision of Humanitarian Assistance to Palestinian Refugees Displaced during the 1967 Middle East Conflict*, A/RES/2552 (ES-V), 4 July 1967, para.6.
- 318 UNGA Resolution 37/120(A-K), 16 December 1982, Section J, para. 1.
- 319 See UNGA Resolution 38/83 (I), A/RES/38/83(I), 15 December 1983, UNGA Resolution 48/40(H), A/RES/48/40 (A-J), 10 December 1993.
- 320 UN SC Resolution 605, 22 December 1987.
- 321 “From Humanitarian Crisis to Human Development – The Evolution of UNRWA’s Mandate to the Palestine Refugees”, Peter Hansen, Commissioner-General of UNRWA, address to the American University of Cairo, 21 September 2003.
- 322 RAO Guidelines, 3rd ed., 15 March 1989, p.2 cited in Harish Parvathaneni, “UNRWA’s Role in Protecting Palestine Refugees”, *Working Paper No. 9*, (BADIL, December 2004), p. 17.
- 323 *Ibid*, p. 17.
- 324 *Ibid*, p. 17, 18.
- 325 Report of the Commissioner-General of the UNRWA, 1 July 2000 – 30 June 2001, A/56/13, 18 October 2001, para. 150.
- 326 UNRWA, *Report of the Commissioner-General of the UNRWA, 1 January – 31 December 2007*, GA official records A/63/13, 31 July 2008, para.60.
- 327 UNRWA, *Operations of the UNRWA*, UNGA A/RES/60/102, Sixtieth Session, 16 January 2006, para. 6.
- 328 UNRWA, *Budget Plan 2008 – 2009*, July 2007.
- 329 UNRWA, *Report of the Commission General of the UNRWA*, GA Official Records A/38/13 (Supp), 30 June 1983, para.7
- 330 *Cartagena Declaration of Refugees*, 22 November 1984, OAS/Ser.L/V/II.66, doc.10, rev.1. 190.
- 331 UNHCR, *Refugee Protection: A Guide to International Refugee Law*, p.23.
- 332 UNHCR, “Note on the Applicability of Article 1D of the 1951 Convention Relating to the Status of Refugees to Palestinian Refugees.” UNHCR, October 2002.
- 333 Executive Committee Conclusion No. 46 (XXXVIII) – 1987. See also Executive Committee Conclusion No. 50 (XXXIX) – 1988; Executive Committee Conclusion No. 55 (XL) – 1989; Executive Committee General Conclusion on International Protection (XLI) – 1990; Executive Committee General Conclusion on International Protection (XLII) – 1991; Executive Committee Conclusion No. 68 (XLIII) – 1992; and Executive Committee Conclusion No. 71 (XLIV) – 1993. These conclusions ceased after the Oslo process began in 1993, despite the continued protection gap affecting 1948 and 1967 Palestinian refugees.
- 334 In situations of disasters, or protection of civilians affected by conflict (other than IDPs), UN resident representative or humanitarian coordinator, consult closely with UNHCR, UNICEF and OHCHR to decide which agency should assume the cluster lead at the country-level. UNHCR, *Supplementary Appeals for IDPs Programmes 2008*, *UNHCR’s Participation in the Inter-Agency Response to IDP Needs*, January 2008, p. 4. Also see: Inter-Agency, Terms of Reference, IASC Cluster Approach Evaluation 1st Phase, 25 April 2007, footnote 1.
- 335 UNRWA and UNHCR, *The UN and Palestinian Refugees*, January 2007, p. 5.
- 336 Abbas Shibliak, “The Palestinian Refugee Issues: A Palestinian Perspective”, *MENAP Briefing Paper 09/01*, Chatham House, February 2009.
- 337 UNRWA and UNHCR, *The UNRWA and Palestinian Refugees*, January 2007, p.12.
- 338 UNHCR, *2008 Global Trends: Refugees, Asylum Seekers, Returnees, IDP and Stateless Persons*, 10 June 2009. For figures pertaining to 2007, see: *2007 UNHCR Statistical Yearbook*, p.69.
- 339 UNRWA and UNHCR, *The UN and Palestinian Refugees*, January 2007, p. 3.
- 340 Takkenberg L., (1998), op. cit., p. 300-301.
- 341 The lack of information about assistance and protection to Palestinian refugees fleeing Iraq is largely due to the difficulties of gaining accurate data in Iraq at present, as well as financial constraints.
- 342 UNHCR, “Palestinians/Iraq”, summary of what was said by the UNHCR spokesperson at the Palais des Nations briefing in Geneva, 30 January 2007.
- 343 The agreement has not been implemented yet. However, some Palestinian refugees recently went on a “look-and-see” visit to the site in Khartoum to determine if it was a place they would consider being relocated to www.maannnews.net/en/index.php?opr=ShowDetails&D o=&ID=36390.
- 344 “Palestinians from Iraq being Resettled in the U.S.”, Stephen Kauffman, *America.gov*.
- 345 UNHCR chief urges adherence to humanitarian principles in Gaza conflict, *News Stories*, 5 January 2009.
- 346 See: <http://www.un.org/Depts/dpa/qpal/committee.htm>
- 347 The UNGA mandated the establishment of a Special Unit on Palestinian Rights in the United Nations Secretariat to assist the Committee in its work (resolution 32/40 B of 2 December 1977), which was later redesignated as the Division for Palestinian Rights. See: <http://www.un.org/Depts/dpa/qpal/dpr.htm>.
- 348 UNGA, Respect for and implementation of human rights in occupied territories, 19 December 1968, A/RES/2443. In 1972, the GA requested to also investigate allegations concerning the exploitation and looting of the resources of the occupied territories; UNGA Resolution 3005 (XXVII), 15 December 1972.
- 349 Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories, A/63/273, 13 August 2008, para.20.
- 350 *Ibid*, para.119.
- 351 See, for example: Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories, A/63/273, 13 August 2008, para.119.
- 352 UNGA, *Human Rights Council*, A/RES/60/251, 15 March 2006.

- 353 UNHRC, *The Grave Violations of Human Rights in the Occupied Palestinian Territory Particularly due to the recent Israel Military Attack against the Occupied Gaza Strip*, 9th Special Session, A/HRC/S-9/2, 27 January 2009, para.4.
- 354 *Ibid*, para.9.
- 355 *Ibid*, para.14.
- 356 *Ibid*, para.11.
- 357 UNGA, *Human Rights Council*, A/RES/60/251, 15 March 2006, para.5(e).
- 358 UNHRC, *Report of the Working Group on the Universal Periodic Review of Israel (UPR)*, A/HRC/10/76, 8 January 2009, rec.34.
- 359 *Ibid*, rec.51.
- 360 *Ibid*, rec.36.
- 361 *Ibid*, rec.39.
- 362 *Ibid*, rec. 27.
- 363 *Ibid*, rec.38.
- 364 www2.ohchr.org/english/bodies/chr/special/index.htm
- 365 Commission on Human Rights, *Question of the violation of human rights in the occupied Arab territories, including Palestine*, E/CN.4/RES/1993/2 (A+B), 19 February 1993.
- 366 Report of the Special Rapporteur John Dugard, E/CN.4/2004/6, 8 September 2003, p. 1.
- 367 Report of the Special Rapporteur John Dugard, E/CN.4/2006/29, 17 January 2006, p. 5, para. 2.
- 368 "The international community, speaking through the United Nations, has identified three regimes as inimical to human rights - colonialism, apartheid and foreign occupation. Numerous resolutions of the General Assembly of the United Nations testify to this. Israel's occupation of the West Bank, Gaza and East Jerusalem contains elements of all three of these regimes, which is what makes the Occupied Palestinian Territory of special concern to the international community." "Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, John Dugard Implementation Of General Assembly Resolution 60/251 Of 15 March 2006", A/HRC/4/17, 29 January 2007 para 58. "What are the legal consequences of a regime of occupation that has continued for nearly 40 years? Clearly none of the obligations imposed on the occupying Power are reduced as a result of such a prolonged occupation. But what are the legal consequences when such a regime has acquired some of the characteristics of colonialism and apartheid? Does it continue to be a lawful regime? Or does it cease to be a lawful regime, particularly in respect of "measures aimed at the occupants' own interests"? And if this is the position, what are the legal consequences for the occupied people, the occupying Power and third States? Should questions of this kind not be addressed to the International Court of Justice for a further advisory opinion? *Ibid*, para 62
- 369 Report of the Special Rapporteur John Dugard, A/HRC/7/17, 21 January 2008, para.58.
- 370 Report of the Special Rapporteur, Richard Falk, A/63/326, 25 August 2008, p.20.
- 371 See for instance the *Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism*, Martin Scheinin, mission to Israel including visit to the Occupied Palestinian Territory, 16 November 2007, A/HRC/6/17/Add.4; *Report of the Special Rapporteur on freedom of religion or belief*, Asma Jahangir, Mission to Israel and the OPT, 12 January 2009, A/HRC/10/8/Add.2.
- 372 Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination, Miloon Kothari, E/CN.4/2003/5, 10 June 2002, p. 4-5.
- 373 *Ibid*, p. 4-5.
- 374 UNHRC, A/HRC/S-9/2, 27 January 2009, para.12. Subsequent to the UNHRC resolution the following reports were submitted to the Council: (1) Human Rights Council, *Human Rights Situation in Palestine and other occupied Arab Territories, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*, Richard Falk, A/HRC/10/20, 17 March 2009; (2) *Human Rights Situation in Palestine and other occupied Arab Territories, Combined Report of the Special Rapporteur on the right of every one to the enjoyment of the highest attainable standard of physical and mental health and others*, A/HRC/10/22, 17 March 2009.
- 375 *Human Rights Situation in Palestine and Other Occupied Arab Territories, combined report of the Special Rapporteurs*, A/HRC/10/22, 20 March 2009, para. 100.
- 376 *Ibid*, para. 105.
- 377 *Ibid*, para. 87, 88.
- 378 In 2007, BADIL Resource Center and the Centre on Housing Rights and Evictions (COHRE), filed a communication on behalf of a group of displaced individuals of the Palestinian communities of: (1) Kafr Bir'im, forcibly removed from their land in 1948, and (2) Arab As-Subeih, a Bedouin community in the Naqab whose land had been progressively seized by Israeli authorities. Despite the fact that the communication met the admissibility criteria and was initially accepted for review, it was shelved by the Secretariat in June 2008, without providing reasons for the decision.
- 379 CESCR, *Concluding Observations on Israel*, E/C.12/1/Add. 90, 23 May 2003.
- 380 CERD, Seventieth session (19 February-9 March 2007) and Seventy-first session (30 July-17 August 2007) General Assembly Official Records Sixty-second session Supplement No. 18 (A/62/18) paras. 215, 216, 226, 227, 228
- 381 CERD, *Concluding Observations on Israel*, CERD/C/ISR/CO/13, 14 June 2007, para.18.
- 382 *Ibid*, para.35.
- 383 *Ibid*, para.37.
- 384 CERD, *Concluding Observations on Lebanon*, CERD/C/64/CO/3, 28 April 2004, para. 12.
- 385 CRC, *Concluding observations on Lebanon*, CRC/C/LBN/CO/3, 8 June 2006.
- 386 CEDAW, *Concluding Comments on Lebanon*, CEDAW/C/LBN/CO/3, 8 April 2008, paras.40-41.
- 387 CRC, *Concluding Observations on Jordan*, CRC/C/JOR/CO/3, 29 September 2006, para.79-85.
- 388 UNHRC, *The Grave Violations of Human Rights in the Occupied Palestinian Territory Particularly due to the recent Israel Military Attack against the Occupied Gaza Strip*, A/HRC/S-9/2, 27 January 2009, para.11.
- 389 Protection Cluster Working Group of the OPT, *Protection Strategy October 2009 – 2010* (on file at BADIL). The "cluster approach" is an inter-agency refined collaborative approach to address the gaps and strengthen the effectiveness of humanitarian response, through building partnerships amongst UN humanitarian, human rights, and development agencies as well as non-governmental and other international organizations. The cluster approach is supposed to ensure "predictability and accountability in international responses to

- humanitarian emergencies, by clarifying the division of labor among organizations, and better defining their roles and responsibilities within the different sectors of the response.” The global cluster approach aims to fill capacity and response gaps in critical sectors, including protection. www.humanitarianreform.org/humanitarianreform/Default.aspx?tabid=70 In 2006, an Inter-Agency Protection Cluster Working Group (PCWG) led by OHCHR-oPt was established in the OPT.
- 390 Save the Children UK et. al., *Broken Homes: Addressing the Impact of House Demolitions on Palestinian Children & Families*, 15 June 2009, p.34.
- 391 *The Guiding Principles on Internal Displacement*, Principles 28 and 29.
- 392 Karine Mac Allister, “No Strategy of Vision that Aims to End Internal Displacement”, *Al-majdal*, No.39/40 Autumn 2008/Winter 2009, p. 66.
- 393 ICRC, “Internally Displaced Persons: The Mandate and Role of the ICRC”, *International Review of the Red Cross* No.838, p.491-500.
- 394 *Ibid*, p.491-500.
- 395 “Statement by the International Committee of the Red Cross”, Conference of High Contracting Parties to the Fourth Geneva Convention, Geneva, 5 December 2001, para. 2
- 396 ICRC statement sent by e-mail to BADIL, Ref. JER07E3110, ICRC Jerusalem, Wednesday, 9 May 2007.
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- 403 *ICJ’s Advisory Opinion on the Wall*, para. 153.
- 404 *Ibid*, paras. 119–120, 163.
- 405 UNGA Resolution ES-10/15, 20 July 2004. 150 votes in favor and six against (United States, Israel, Australia, Marshall Islands, Micronesia and Palau). Abstaining were Cameroon, Canada, El Salvador, Nauru, Papua New Guinea, the Solomon Islands, Tonga, Uganda, Uruguay and Vanuatu.
- 406 Letter dated 11 January 2005 from the UNSG to the President of the UNGA, UNGA Doc. A/ES-10/294, 13 January 2005, section I, para. 1.
- 407 UNGA Resolution A/ES-10/L.20/Rev.1, 15 December 2006, para. 3.
- 408 COHRE and Stop the Wall, *Rights without Remedy*, July 2008.
- 409 *Ibid*, p.9.
- 410 Letter by the Technical Working Group on the UN Register of Damage (comprising Palestinian and international NGOs) to the UNSG ahead of his visit to the OPT, 24 March 2007 *cited in* COHRE and Stop the Wall, *Rights without Remedy*, p.10.
- 411 *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*, Richard Falk, A/HRC/10/20, 17 March 2009, para.36.
- 412 The *Rome Statute* does not define a state, leaving it to the ICC to make such a determination. Professor John Dugard has made a strong argument that Palestine should be considered a state for the purpose of the Rome Statute. John Dugard, “Take the Case,” *The New York Times*, 23 July 2009.
- 413 The *Geneva Conventions* provide for imperative universal jurisdiction over any person committing any of the grave breaches regardless to his or her nationality, based on actual custody: Article 49 GC I; Article 50 GC II; Article 129 GC III; Article 146 and GC IV. Luc Reydam, *Universal Jurisdiction: International and Municipal Legal Perspectives*, (Oxford, NY 2006). See also Article V of the *International Convention on the Suppression and Punishment of the Crime of Apartheid*, and Article 5 of the CAT.
- 414 *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*, Richard Falk, A/HRC/10/20, 17 March 2009, para.39.
- 415 For an overview and analysis of cases, see, for example, “Litigating Palestine”, *Al-majdal*, no. 41 (Spring-Summer 2009), BADIL Resource Center.

