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of Palestine



The Actuality of the Palestinian Refugee Question: An International Law Perspective

By Francesca P. Albanese and Lex Takkenberg

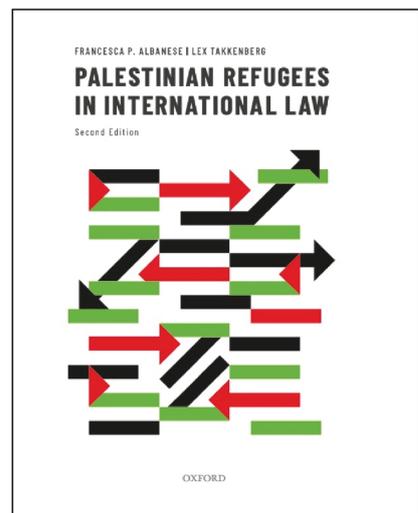


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1. Introduction

In 2018, the unresolved exile of the Palestinian refugees entered its eighth decade, with refugees unto the third or even fourth generation. Nowadays, Palestinian refugees (around 7.5 millions) account for the largest group of refugees globally,¹ the majority of whom are also stateless, caught in the most protracted refugee situation in modern history. Unlike other refugees, their situation and status is often discussed in the realm (and through the lens) of politics instead of on the basis of their rights.² This undermines both their quest for justice and day-by-day protection. In many respects, Palestinians have been the *bête noire* of refugee studies, with some still questioning whether they should be considered ‘genuine’ refugees at all, and therefore whether they deserve the protection that international law offers to refugees. For decades since their original flight, confusion around their status as refugees has made the application of the 1951 Convention Relating to the Status of Refugees (‘1951 Convention’)³ to Palestinian refugees problematic. Also, the relevance of other branches of international law has remained disputed or under-utilized in the case of this particular group. In fact for historical and political reasons, Palestinian refugees enjoy distinctive normative and institutional arrangements *within* the international refugee regime: these arrangements provide for their specific protection as refugees, rather than leaving them unprotected.

Palestinians in general, because they lack a fully sovereign independent state, and refugees in particular, because of the additional issue of their dispersal, make for a difficult constituency to protect. They fall under a myriad of regimes, with different legal statuses and institutional arrangements, and are often discriminated against as Palestinians. Sometime this discrimination is manifest (e.g. ‘positive discrimination’ against Palestinians in Arab countries), sometime it occurs in forms that are obscure and muted; discrimination has frequently been shaped by political circumstances surrounding the Israeli-Palestinian conflict and host countries’ attitude towards the Palestinian leadership, such as the Palestine Liberation Organization (PLO). In situations where Palestinians continue to flee the Middle East, for example in response to the conflict in Iraq or Syria, many face discrimination because of a poor understanding by those adjudicating their requests for asylum, of the historical background to and their current status under international law.

This article discusses the relevance of international law to Palestinian refugees. It argues that international law sets out the rights they have – as refugees, stateless persons, civilians in situations of armed conflict, and simply as human beings – as well as the arrangements put in place for their protection as long as their situation is not resolved. Often forgotten, international law also provides the framework for pursuing the quest for durable solutions, which are the ultimate aim of international protection: achieving a situation in which refugee status comes to an end through restoration (in case of voluntary repatriation to the country of origin) and/or establishment (in case of integration in host countries or resettlement in third countries) of access to national protection by a state that the former refugee can call home. Whilst this represents a cornerstone of the international refugee regime, with respect to Palestinian refugees, since the Oslo Accords (1993-5) the quest for solutions has been dominated by the asymmetry of power

1 The total number of other refugees stuck in protracted refugee situations, and protected by UNHCR, nears 16 million, namely over two thirds of the total 20 million refugees worldwide. UNHCR, Global Trends: Forced Displacement in 2018, 20 June 2019, 22.

2 In this article the term ‘status’ is used as a synonym for ‘legal position’, in other words, as the sum total of the rights, benefits, and obligations due to a certain subject by virtue of rules of law, in this case international law.

3 Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137.

between the parties, on top of political expedience at the expense of the interests of the refugees, while in the process marginalizing the significance of international protection. Against this background, Trump's Deal of the Century marks the lowest point ever with respect to solutions that would take into account the refugees' rights and aspirations. Through this 'Deal', its masterminds have embraced an extreme colonialist agenda, paving the way for further annexation of Palestinian land, doing away with international law and long-standing international consensus with respect to resolving the Question of Palestine, and de facto, obliterating the refugee issue. This reality, the realization that for over seven decades no progress has been made, and the belief that doing nothing is not an option, requires what the authors call a fundamental 'paradigm shift' with respect to protection and to the question of solutions for Palestinian refugees, seizing the opportunities offered by the 2016 New York Declaration on Refugees and Migrants⁴ and the 2018 Global Compact on Refugees.⁵

This paper argues that, while international law is not a panacea for all problems and challenges with respect to the Palestinian refugees' issue, awareness of their rights, status and related vulnerabilities may help turn the tide of politics in favour of the realization of their effective protection. After this introduction (section 1), section 2 clarifies who Palestinian refugees are, dispelling confusion about applicable definitions and institutional arrangements. Section 3 discusses the origins and features of their 'distinctiveness' in the international refugee regime, which is fundamental to clarify their status under international law. Section 4 briefly discusses the relevance of various branches of international law for their protection. Section 5 offers suggestions for renewed consideration of the pursuit of solutions for the Palestinian refugees. Some concluding observations are offered in section 6.

2. Framing the issues: who are the Palestinian refugees?

In recent decades, political decisions and statements, mainly in the US, but also in other, mostly Western states, have increasingly portrayed Palestinian refugees as somewhat not 'legitimate' refugees, different from other internationally recognized refugees.⁶ Criticism of their status is directed, in particular, to the fact that descendants of the refugees displaced from British Mandate Palestine in 1948 maintain their refugee status across generations. These critiques have no foundation in international refugee law and practice, and have contributed to create confusion around who Palestinian refugees are and what they are entitled to.

Palestinian refugees are at large, persons who were displaced in relation to the conflict over Palestine (in 1947/9 and 1967) including their descendants, whose situation is still to be settled in line with relevant UN resolutions (see discussion *infra*). This includes first and foremost the persons (holding British Mandate citizenship since 1925 and Ottoman nationality before that) who were displaced from the territory of British Mandate Palestine subsequently designated as Israel, the West Bank and Gaza Strip

4 UNGA res. A/71/1, adopted on 19 September 2016.

5 Report of the UNHCR to the General Assembly, OR, 73rd Session, suppl. 12. In its resolution adopted on 17 December 2018 (UN doc A/RES/73/151), UNGA affirmed the Global Compact (hereinafter GCR), underscored its importance as an expression of political will, and called upon the international community as a whole to implement it. On the GCR, see Türk, Volker, 'The promise and potential of the Global Compact on Refugees', *International Journal of Refugee Law* 30.4 (2018) 575–83.

6 See for example, US pronouncements on Palestinian refugees reported in Albanese, Francesca P., 'UNRWA and Palestine Refugee Rights: New Assaults, New Challenges', *Current Issues in Depth*, Institute for Palestine Studies (2018), para 21-27.

respectively, to neighbouring countries (Jordan, Lebanon, and Syria), as well as the West Bank and the Gaza Strip, in connection with the creation of the State of Israel in 1947-49 (event also referred to as ‘first Arab-Israeli war’ of 1948).⁷ Small numbers also fled to Egypt and Iraq. In 1948, the UN General Assembly resolved, in resolution 194, paragraph 11,

that the refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for 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.

Yet, in the years surrounding the creation of the State of Israel, despite being willing to return to their ‘homes’, approximately 750,000 Palestine refugees were prevented from doing so by virtue of laws enacted by Israel between 1948-52, which resulted in their denationalization as well as the confiscation and disposition of refugee property that survived the hostilities. Contrary to common belief, resolution 194 did not *create* the right of return for the ‘Arab refugees’ (i.e. Palestinian refugees). It rather limited itself to refer to a right that existed in international law as it stood at the time.⁸ Such right flows from the illegality of the forced displacement, prohibition of the refugee’s repatriation, and acts of violence that were committed against the Arab civilian population of Palestine by Zionist paramilitary and, subsequently, Israeli military forces, as it is well documented, including by Israeli historians.⁹ Well before 1948, disruption of people’s and family life, and arbitrary destruction or seizure of private property during armed hostilities, were considered illegal;¹⁰ pillage, including looting, plunder, or sacking by soldiers, carried out collectively or individually, was absolutely prohibited.¹¹ Violation of these norms resulted in individual criminal responsibility of the perpetrators as well as an obligation on the responsible state to compensate the victims.¹² Deportations and other inhumane acts committed against civilian populations before or during war were considered a “war crime” and a “crime against humanity,” as confirmed by the Charter of the Nuremberg Tribunal as well as the jurisprudence rendered during the War Crimes Trials (1945-46).¹³ This legal framework was common knowledge among the drafters of resolution 194, who limited themselves to *reaffirming* what were considered norms of customary international law.¹⁴ The obligation to make reparations in the form of restitution and compensation that “as far as possible, wipe[s] out all the consequences of the illegal act and re-establish[es] the situation which would, in all probability, have existed if that act had not been committed” had already been established

7 For an historical overview see Kattan, Victor, *From Coexistence to Conquest: International Law and the Origins of the Arab-Israeli Conflict 1891-1949*, Pluto Press (2009).

8 First and foremost, the 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, 18 Oct. 1907.

9 Morris, Benny, *The Birth of the Palestine Refugee Problem, 1947-1949*, Cambridge University Press (1987); Flapan, Simha, *The Birth of Israel: Myths and Realities*, New York: Pantheon (1987).

10 Hague Regulations, *supra* note 8, art. 46 and 23(g) respectively.

11 *Ibid*, artt 28 and 46.

12 Hague Convention, *supra* note 8, art 3.

13 The Nuremberg and Tokyo trials referred to the Hague Conventions as constituting customary international law. See *The Trial of German Major War Criminals: Proceedings of the International Military Tribunal Sitting at Nuremberg, Germany, especially Part 22, judgment, 22nd August, 1946 to 31st August, 1946, 30th September, 1946 and 1st October, 1946* (London: published under the authority of H.M. Attorney-General by His Majesty’s Stationery Office, 1950); and *The Tokyo Major War Crimes Trial: The Judgment, Separate Opinions, Proceedings in Chambers, Appeals and Reviews of the International Military Tribunal for the Far East, Annotated, Compiled and Edited by R. John Pritchard, A Collection in 124 Volumes*, New York: The Edwin Mellon Press (1998).

14 Progress Report of the UN Mediator for Palestine, GAOR, 3rd Sess. Supp. 11, UN Doc. A/648, at Pt. 1, V, paras. 2, 6-8.

as a general principle of international law.¹⁵ The drafting history of resolution 194 (and the authoritative interpretation provided by the United Nations Conciliation Commission for Palestine [UNCCP]) fully supports this argument.¹⁶

Nonetheless, from 1948 onward Israel passed a number of laws and enacted policies that dispossessed the refugees of their properties. Particularly, after enacting a Law of Return in 1950,¹⁷ which encouraged the immigration of Jews from all over the world to the State of Israel, in 1953 Israel also promulgated its Nationality Law.¹⁸ By stipulating conditions that the Palestinian refugees could not fulfil, this law de facto barred them from returning to the land they had been displaced from as ‘Palestine citizens’.

Further mass refugee flows (numbering between 350,000-400,000 souls) from the remainder of the territory of former British Mandate Palestine territory i.e. the West Bank and the Gaza Strip –which had each fallen under Jordanian and Egyptian rule respectively after the armistice agreements they signed with Israel in 1949 – were generated by subsequent conflicts, such as in 1967 (also known as ‘second Arab-Israeli war’), which ended with the Israeli occupation of such territory. These refugees are commonly referred to by the UN as “persons displaced as a result of the June 1967 and subsequent hostilities”, or “1967 displaced” *tout court*, instead of ‘refugees’. Reference to the 1967 refugees as “displaced persons” has also a historical reason: Jordan —to where the majority of these refugees were displaced— considered them internally displaced, since it had annexed the West Bank in the aftermath of the 1948 Arab-Israeli war and considered it an integral part of its territory. Yet, besides this misnomer, they are refugees for the purpose of international law. Also in their case, the General Assembly expressed the need for them to ‘return’ to their homes and a ‘just settlement’ of their question.¹⁹

Since 1948 and 1967 respectively, the Palestinian refugees have not been allowed to return and their situation is still to be resolved in accordance with relevant resolutions of the United Nations (e.g. UNGA resolutions 194 of 1948, 302 of 1949, 2252 of 1967, and UNSC resolution 237 of 1967). These resolutions, all recommending durable solutions for Palestinian refugees – i.e. the return of the refugees willing to do so, or the resettlement elsewhere – have been repeated or recalled hundreds of times by the General Assembly (and the Security Council) and are considered landmarks in the resolution of the Palestinian refugee question. However, neither did UN-led peace negotiations (1949-1952), nor years of Palestinian mobilization (1960-1980s) and direct negotiations with Israel (1990s-2010s) result in the achievement of any durable solutions for the refugees or in any compensation for their losses.²⁰ Israel’s intransigence in considering any significant return of the refugees and the political concerns of the PLO, refugees, Arab host governments and Western states, has made other durable solutions, such as local integration or third country resettlement, also impracticable.

15 Permanent Court of International Justice (PCIJ), Case concerning the factory at Chorzów, Germany v Poland, Judgment, Claim for Indemnity, Merits, Judgment No 13, (1928) PCIJ Series A No 17, ICGJ 255 (PCIJ 1928), 13 Sep. 1928.

16 For example, see UNCCP, Historical Survey of Efforts of the United Nations Conciliation Commission for Palestine to Secure the Implementation of Paragraph 11 of General Assembly [Resolution 194 \(III\)](#), Question Of Compensation, UN doc A/AC.25/W/81/Rev.2, 2 October 1961.

17 Israel: *The Law of Return* 5710-1950, 5 July 1950.

18 Israel: *Nationality Law*, 5712-1952, 14 July 1953.

19 See UNGA Resolution 2252 (ES-V), 4 July 1967, and UNGA Resolution 2452 (XXIII)A, 19 December 1968. See also UNSC Resolution 242 of 22 November 1967.

20 For an overview of the various rounds of negotiations see Brynen, Rex, ‘The past as prelude? Negotiating the Palestinian refugee issue’, Royal Institute of International Affairs (2008); Chiller-Glaus, Michael, *Tackling the intractable: Palestinian refugees and the search for Middle East peace*, Peter Lang (2007).

A tiny minority of the Palestinians who became refugees in 1948 are still alive; most of them, with their children, grand-children and sometimes great-grandchildren, still reside in the countries and territory in which they, or their immediate ancestors, took refuge in 1948 and 1967. Among these refugees, some 5.6 million ‘Palestine refugees’ are registered with the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), in Jordan, Lebanon, and Syria, as well as in the Gaza Strip and the West Bank.²¹ In addition to the UNRWA-registered refugees, there are reportedly about one million non-(UNRWA) registered 1948 refugees and one million 1967 refugees (the latter were never registered as ‘refugees’ with UNRWA, which argues that its mandate only extends to the refugees displaced in 1948).²² Worth of note is that distinction is often drawn between ‘Palestine’ and ‘Palestinian’ refugees, where the former refers to refugees under UNRWA’s mandate (see UNRWA definition, *infra*) and the latter refers to refugees of Palestinian origin—hence the term is both wider and narrower than ‘Palestine refugees’. In UNHCR’s interpretation of article 1D of the 1951 Convention, the term ‘Palestinian refugee’ is used indistinctively to refer to Palestine refugees and 1967 displaced persons,²³ and so it is used in this article.

Since the 1950s, increasing numbers have migrated to other countries in the Arab world and, following instability, poverty, discrimination and often persecution in that region, in smaller numbers, to Europe and the Americas and progressively further afield, including the Asia Pacific and Africa.²⁴ Nowadays there are about 7.5 million Palestinian refugees (mainly from 1948 or 1967) dispersed in the Arab region and beyond, on top of 4.5 million Palestinians, of whom half are 1948 refugees, in occupied Palestine. Their status and documentation often make many of them, especially outside UNRWA’s area of operation, statistically invisible, which makes their dispersal difficult to track.

3. The ‘distinctiveness’ of Palestinian refugees under international law

In many respects the fate and needs of Palestinian refugees are different from that of millions of other displaced from violent conflicts and human rights abuses of recent history. Like others, they have experienced losses, violence, deprivation, fragmentation of individual ties and social fabric, both at the time of the displacement and throughout the exile. Unlike others though, when they became refugees they also lost their homeland, the land that they had called ‘Palestine’ and ‘home’ until then, and that was slated for self-determination since the League of Nations’ Mandate era (1922). Moreover, Palestinians as a people continue to experience violations at the hand of the state that was established on the largest portion of their homeland: Israel. Also, unlike any of the other 20 million refugees worldwide today, they do not automatically fall under the definition of the term “refugee” as stipulated in article 1A[2] of the 1951 Convention, which hinges on a person being outside his or her country of nationality or, if

21 Most of UNRWA registered refugees are in Jordan (2.2 million), the Gaza Strip (1.4 million), the West Bank (840,000), Syria (550,000 prior to the war; after which approx. 120,000 have left the country), and Lebanon (472,000 registered of who less than 200,000 are reportedly still in the country).

22 These figures are in BADIL, *Closing the Protection Gap, Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Convention*, BADIL, 3rd edition (2015), 7. To this count BADIL adds an unknown number of refugees displaced outside of the West Bank, East Jerusalem and the Gaza Strip since 1967.

23 UNHCR, Guidelines on International Protection No. 13: Applicability of Article 1D of the 1951 Convention Relating to the Status of Refugees to Palestinian Refugees, December 2017, HCR/GIP/16/12 [hereinafter ‘UNHCR, GIP 13’], para. 9.

24 Albanese, Francesca P., & Takkenberg, Lex, *Palestinian Refugees I International Law*, Oxford University Press, 2nd ed. (2020), chapter 5 in particular.

stateless, his or her country of former habitual residence, out of “well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group, or political opinion.”²⁵ The reasons for this distinctiveness are rooted in the history of the international refugee regime and the specificities of the Palestinian refugees in it.

In 1949, while the UNHCR Statute²⁶ and the 1951 Convention –which together with the 1967 Protocol cumulatively set out the international protection regime for refugees– were still being drafted, the United Nations had already deliberated how to resolve the question of the refugees from Palestine. This included first and foremost, the General Assembly’s decision to establish the UNCCP (*supra*) with the aim of negotiating a comprehensive solution to the Israeli-Palestine conflict.²⁷ The UNCCP’s tasks included overseeing the resolution of the refugee problem through the return of those willing to live at peace with their (Jewish) neighbours and the provision of compensation for returnees and those not wishing to return alike.²⁸ After several peace conferences under the auspices of the United Nations (UNCCP) in 1949 and 1950, it soon became clear that peace between Israel and the Arab states would prove unattainable in the short term. Among other factors, disagreement around the fate of the refugees (who had to be absorbed in Arab countries, according to Israel, and repatriated to Israel, according to the Arab states) played an important role. In the meantime, mechanisms to provide immediate assistance and relief to the refugees of Palestine were devised: the most lasting of which is UNRWA.²⁹ The nature of UNRWA’s mandate was initially construed to complement that of UNCCP and therefore did not include the pursuit of international protection along the lines of UNHCR. The latter, which was initially set up to find durable solutions for the million refugees from Europe (mainly through local integration) had an explicit legal protection mandate, tailored to the circumstances of the refugees it had to assist, who – unlike Palestinian refugees – needed that their legal status in the ‘host country’ be regularized. Conversely, Palestinian refugees had been granted safe access and needed to be assisted to voluntarily repatriate (this is what the majority of them then demanded), regain control of their possessions left behind in Israel, and meanwhile, be provided with assistance to survive the harsh conditions in the precarious refugee camps where they were scattered. While UNCCP struggled to advance a mutually agreed solution between the parties, UNRWA merely supported that function under UNCCP’s aegis. It partly did so through the implementation of work programmes across the Near East and support to Palestinian refugees migrating across the Arab world for work, in addition to providing continued relief (previously extended by UNRWA’s predecessors).

In hindsight, the creation of UNCCP and UNRWA that today looks so unique, mirrors the *ad hoc* arrangements that characterized the responses to mass displacement of the interwar period.³⁰ Even UNHCR, which is now recognized as the global UN entity dealing with global refugee problems, was at the outset not intended to be universal in scope: it was created to solve the problem of the post Second-

25 See *supra* note 3.

26 Statute of the Office of the United Nations High Commissioner for Refugees, 14 December 1950, Un Doc A/RES/428(V).

27 UN General Assembly, 194 (III). Palestine - Progress Report of the United Nations Mediator, 11 December 1948, A/RES/194.

28 *Ibid.*, para. 11.

29 UN General Assembly Resolution 302 (IV), Assistance to Palestine Refugees, 8 December 1949, A/RES/302.

30 Until the Second World War, refugee crises, while not rare, were typically dealt with through ad hoc treaties and arrangements, implemented under the authority of ad hoc institutions. For example, in response to the Russian and Armenian refugee crises in 1921 and 1924 respectively, a number of arrangements were concluded both at intergovernmental level and under the auspices of the League of Nations. See Goodwin-Gill, Guy, & McAdam, Jane, *The refugee in International Law*, Oxford University Press, 3rd ed. (2007), 421.

World-War refugees (temporal limitation), in Europe (geographic limitation).³¹ It was only with the adoption of the 1967 Protocol that the temporal and geographical limitations were removed. During the drafting of the UNHCR Statute and the 1951 Convention, it was already clear that UNCCP and UNRWA would have different mandates than that of UNHCR, owing to the different context and needs of the respective populations of concern to the respective entities. Unlike most of the (European) Second World War refugees falling under UNHCR's mandate, in 1951 Palestinian refugees had already been admitted into host countries; hence the need for diplomatic or consular protection, or any 'direct intervention' with host countries on their behalf was limited. As such, international protection of Palestinian refugees' rights in the host countries was not a major issue at the beginning of their exile. As discussed below, this would grow with the protracted lack of durable solutions and the increasing politicization of their cause, especially through the rise and consolidation of the PLO.

This is why the drafters of the UNHCR Statute and 1951 Convention (particularly the Arab states among them), while never disputing that Palestinian refugees were proper 'refugees', demanded that they remain 'outside' the scope of these instruments, as responsibility for them had already been entrusted to *ad hoc* UN organizations (UNCCP and UNRWA), which would subject them to the United Nations' special attention and work towards resolving their situation according to the specific circumstances of their flight. This was reflected in article 1D, first sentence, of the 1951 Convention (*infra*). Incidentally, this would also serve the purpose of maintaining the focus on the Palestinian refugee issue as both a humanitarian and political responsibility of the United Nations, resulting from its 1947 proposal to partition Palestine between the Arab (indigenous) majority and the Jewish (largely immigrant) minority and the resulting violence that escalated, as of May 1948, into the first Arab-Israeli war. However, the *travaux préparatoires* of the 1951 Convention in particular (which was adopted at a time when the challenges of achieving peace in Palestine and settling the refugee question had already manifested compared to the drafting of the 1949 UNHCR Statute) indicate that the Palestinian refugees' exclusion from the international refugee regime was only to be *temporary*: it would last as long as they were assisted and protected by UNCCP and UNRWA. This was reflected in the second paragraph of article 1D (*infra*).

In spite of this conditional exclusion of Palestinian refugees from the mandate of UNHCR and the application of the 1951 Convention, the mandates of UNCCP and UNRWA were to deliver international assistance and protection, including solutions, to Palestinian refugees, but in a way that was specific to their case. The *travaux préparatoires* of the UNHCR Statute and the 1951 Convention, as well as other historical records, confirm that, since 1948, 'Palestine refugees' –as the original documents referred to them– were considered internationally recognized refugees (as a group, not as individuals), similar to the so-called Statutory Refugees referred to in article 1[A]1 of the 1951 Convention (i.e. those refugees who predated the entry into force of the 1951 Convention and were recognized as in need of international protection). Because of the UN's responsibility in creating (or not preventing) their exodus, they were recognized as deserving both special UN attention and status.³² The regime devised

31 Holborn, Louise W., *Refugees: A Problem of Our Time*, Metuchen (1975), 31.

32 Unlike other refugees, Palestine refugees were not "the results of action taken contrary to the principles of the United Nations", but "the direct result of a decision taken by the United Nations itself"; as such, they were a "direct responsibility of the United Nations" and "could not be placed in the general category of refugees without betrayal of that responsibility". See statement of the representative of the government of Lebanon GAOR, 5th sess., 3rd comm., 328th mtg., para. 47.

in the UNHCR Statute,³³ the 1951 Convention,³⁴ as well as the 1954 Convention Relating to the Status of Stateless Persons (hereinafter 1954 Convention),³⁵ treated Palestinian refugees as a “*sui generis class of refugees*”,³⁶ in other words a special category within the overall framework of the international refugee regime. This regime is exemplified by article 1D of the 1951 Convention that, consisting of two consecutive sentences, stipulates: This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.

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

In a nutshell, while article 1D first sentence *excludes* from the benefits of the 1951 Convention those refugees who are assisted and protected by other UN agencies (ergo, Palestinian refugees as they were already served by UNCCP and UNRWA), in accordance with the second sentence these refugees fall automatically (i.e. *ipso facto*) under the scope of the 1951 Convention – and the purview of UNHCR – should the alternative UN assistance or protection arrangements (from UNRWA and UNCCP) for them cease for any reasons. Cessation is not only intended as ‘end of the mandate’ or termination of the agency; under such regime the 1951 Convention (as well as the 1954 Convention and UNHCR Statute) apply to Palestine refugees when they find themselves outside of the area of operations of UNRWA and are unable or unwilling to re-avail themselves of UNRWA’s protection for objective reasons.³⁷ By doing so, the intention of the drafters was to ensure ‘continuity of protection’ of these refugees.³⁸

So, unlike other refugees, who derive their status from article 1A(2) of the 1951 Convention, the legal status of Palestinian refugees under international law is rooted in a combination of provisions, primarily article 1D of the 1951 Convention. The latter provision is complemented by the definition of Palestine/Palestinian refugee that was developed during the period 1949-1951 by the Secretariat of the UNCCP (for the purpose of international protection, primarily repatriation),³⁹ and by the working definition elaborated by UNRWA as per its Consolidated Eligibility and Registration Instructions (CERI) primarily for the purpose of administering assistance.⁴⁰ The UNCCP Secretariat initially interpreted the term *refugee* in

33 Paragraph 7 of the UNHCR statute states: “Provided that the competence of the High Commissioner as defined in paragraph 6 above shall not extend to a person: . . . (c) Who continues to receive from other organs or agencies of the United Nations protection or assistance”.

34 CSR51, art 1D.

35 Convention Relating to the Status of Stateless Persons, 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117, Article 1[2].

36 UNHCR, GIP 13, *supra* note 23, para. 6 [emphasis added].

37 This emerges from UNHCR’s interpretation of article 1D and EU jurisprudence. According to the Court of Justice of the European Union (CJEU) in *El-Kott*, the ‘objective reasons’ that may force a Palestinian refugee to leave, or prevent him or her from returning and re-availing him/herself of UNRWA’s assistance or protection, must be ‘reasons beyond his control’ and ‘independent of his volition’. This would occur not only in case of termination of UNRWA’s mandate as a whole (the end of its existence), but also by the agency’s inability to carry out its mission (the end of assistance/protection). Mere absence or voluntary departure from UNRWA’s area of operations – i.e. to study, to work – cannot be sufficient to ensure the benefits of the 1951 Convention, the Court says. Cf *Mostafa Abed El Karem El Kott and Others v. Bevándorlási és Állampolgársági Hivatal* (‘*El Kott*’), C-364/11, CJEU, 19 Dec. 2012, paras. 49, 56, 58 and 61. UNHCR GIP 13, *supra* note 23, para. 19, 27. This is reflective of a broader interpretation that an individual cannot make him/herself a refugee.

38 UNHCR GIP 13, *supra* note 23, paras 6, 12, 17.

39 UNCCP, Summary Record of the Seventeenth Meeting, 27 June 1949, UN. Doc A/AC.25/Com.Gen/SR.17.

40 UNRWA, Consolidated Eligibility and Registration Instructions (CERI), 1 January 2009.

paragraph 11 of UNGA Resolution 194 as applying to all persons, irrespective of race or nationality (Arabs, Jews, and others), who were “displaced” from their homes in Arab Palestine, including Arabs in Israel and Jews in “Arab Palestine.”⁴¹ Subsequently, a study prepared by the UNCCP Principal Legal Adviser, proposed a definition of Palestinian refugees as persons of Arab origin who were Mandate Palestine citizens under the Palestine Citizenship Order of 24 July 1925 and had left Palestine territory, subsequently controlled by Israeli authorities, after 15 May 1948.⁴² This definition, though never further developed and formally adopted, speaks to the debate within, and intentions of, the UNCCP in the early days of its operations.⁴³ As the UNCCP was unable to advance a political solution to the conflict and the pursuit of a resolution of the refugee question became de facto ineffective as of the mid-1960s, UNRWA remained the sole entity responsible for Palestine refugees. Its definition of ‘Palestine refugees’ refers to “persons whose normal place of residence was Palestine during the period 1 June 1946 to 15 May 1948, and who lost both home and means of livelihood as a result of the 1948 conflict”.⁴⁴ UNRWA registers descendants as refugees in line with international law and practice applicable to refugees (and their ‘dependants’) in protracted refugee situations: unlike UNHCR though, UNRWA does not register descendants from female Palestine refugees who are married to non-refugees (which is contrary to international law and practice).⁴⁵

UNRWA’s definition of ‘Palestine refugee’ was developed to determine eligibility for assistance and relief. It did not envisage, per se, to attribute legal status in view of the pursuit of durable solutions. Nonetheless, it has become the most referred to definition when it comes to Palestinian refugees. This definition is not fully reflective of the entire Palestinian refugee population whose situation is still to be settled in line with relevant United Nations resolutions as per article 1D of the 1951 Convention. The UNRWA definition does not include all 1948 refugees (and the loss of both home and livelihood – which some may not have met – are no determinants of refugee status under article 1A of the 1951 Convention), and UNRWA has never exerted a comprehensive mandate to deal with the ‘1967 displaced persons’. UNHCR instead interprets article 1D of the 1951 Convention as applicable to Palestinians who are ‘Palestine refugees’ according to relevant UN resolutions as well as those who were displaced in 1967, and descendants of both.⁴⁶ Palestinian refugees who have originally been displaced at a later stage from the Gaza Strip and the West Bank out of fear of persecution are not considered falling under the scope of article 1D, but rather under 1(A)2 of the 1951 Convention.

The original protection system devised for Palestinian refugees between 1948-1951, which was intended to ensure continuous protection, did not live up to expectations: from the early 1950s, after failing to protect Palestinian refugees though negotiated durable solutions, UNCCP progressively halted its mediation activities and focused on possible compensation of the refugees, before becoming inactive from the mid-1960s onwards. Meanwhile UNRWA, initially set up to build on previous relief efforts while supporting solutions under the auspices of the UNCCP, evolved into a large, active, much debated and often criticized all-purpose agency for ‘Palestine refugees’. So, compared to other refugees, Palestinian

41 UNCCP, analysis of paragraph 11 of the General Assembly’s, Resolution of 11 December 1948, working paper compiled by the Secretariat, UN Doc. A/AC.25/W/45 of 15 May 1950.

42 Definition of a refugee under paragraph 11 of the General Assembly Resolution 194 (III) of 11 December 1948. The note by the Principal Secretary, UN Doc. A/AC.25/W/61, 9 April 1951, must be read in connection with its addendum, 29 May 1951, UN Doc. A/AC.25/W/61/Add.1.

43 See reference in UNHCR GIP 13, *supra* note 23.

44 UNRWA CERL, *supra* note 40, section III, A(1).

45 Albanese (2018), *supra* note 6.

46 UNHCR refers to Palestinians, including descendants, whose position has not been ‘definitively settled in accordance with relevant resolutions of the UN General Assembly’, see UNHCR, GIP 13 *supra* note 23, para. 9.

refugees continue to enjoy a distinctive protection regime, with a key role played by UNRWA, since the de facto demise of UNCCP.

As of the late 1960s and more so since the mid-1980s, UNHCR has become increasingly active in ensuring protection of Palestinian refugees *outside* UNRWA's areas of operations. This was in connection with the secondary and tertiary displacement that Palestinian refugees have experienced following instability, conflict, discrimination and sometimes direct persecution in the Arab world (e.g. in Lebanon during the civil war 1975-1990, in Kuwait and other Gulf countries during and after the first Gulf war of 1990/1991, in Libya following Ghaddafi's protest of the Oslo Accords between Israel and the PLO in 1994/1995, in Iraq following the 2003 war, in Syria following the 2011 war and in occupied Palestine, since 1967 and more incisively from the Second Intifada in 2000, onward). Since the early 2000s, UNHCR and UNRWA have strengthened their partnership to ensure the aforementioned continuity of protection in the spirit of article 1D of the 1951 Convention, in order to minimize protection gaps in the assistance and protection of Palestinian refugees. Accordingly, UNRWA remains uniquely responsible for these refugees within its area of operations and UNHCR has been responsible when they are outside the agency's geographical scope and are unable to avail themselves of UNRWA's protection for objective reasons.⁴⁷

Some scholars and practitioners, including leading Palestinian refugee civil society groups, such as BADIL, argue that such a distinctive regime, which largely excludes Palestinian refugees from the protection purview of UNHCR and the 1951 Convention –especially in countries where UNRWA operates–, has to various extents made them victims of a “protection gap”.⁴⁸ The protection gap argument, as commonly presented, consists of two main elements. The first element points to the lack of compliance by competent authorities (host/asylum states and Israel, including as the occupying power in the occupied Palestinian territory [oPt]) with the relevant international standards to which Palestinian refugees are entitled as refugees, (often) stateless persons, protected persons in situations of armed conflict or occupation, or simply as human beings. This will be discussed in detail in the next section (section 4). The second element concerns the lack of effectiveness of the institutional arrangements set up for Palestinian refugees – UNCCP, UNRWA and UNHCR – in ensuring, to different extents, assistance and protection for Palestinian refugees. This, based on the discussion in this section, can be addressed upfront. It can be argued that despite its limitations, the system to protect Palestinian refugees has evolved in ways that has responded to humanitarian and political challenges on the ground, and also reflected the expanded concepts of protection in the human rights and refugee legal regimes and in humanitarian and development assistance. The main hindrance factor remains the lack of political will to resolve their situation in line with international law. This has been compounded during the years of the Middle East peace process (1991-2000), and as of the Oslo Accords in particular (1993-1995). Since then, while being recognized as an international –and specifically a UN– responsibility since the late 1940s, a solution for the refugees has been increasingly treated as a bilateral matter to be resolved

47 For a complete analysis of the application of article 1D and related jurisprudence, as well as UNRWA-UNHCR protection regime for Palestinian refugees, see Albanese & Takkenberg (2020), *supra* note 24.

48 BADIL, *Closing the Protection Gap: Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, *supra* note 22. The following authors/publications also discuss, to various extents, the protection gap faced by Palestinian refugees: Akram, Susan, & G. S. Goodwin-Gill, “Brief Amicus Curiae on the Status of Palestinian Refugees under International Law”, *The Palestine Yearbook of International Law* 11 (2000): 185-260; Akram, Susan M., “Palestinian refugees and their legal status: rights, politics, and implications for a just solution”, *Journal of Palestine Studies* 31, no. 3 (2002):36-51; Akram, Susan & Rempel, T., ‘Temporary protection as an instrument for implementing the right of return for Palestinian refugees’, *BU Int'l LJ* 22 (2004): 1; Khalil, Asem, ‘The “Protection Gap” and the Palestinian Refugees of the Gaza Strip’, Ibrahim Abu-Lughod Institute of International Studies, Birzeit University Working Paper Series No 2011/10 (2011).

between Israelis and Palestinians. Yet the asymmetry of power between the parties, together with Israel's unresolved territorial ambitions over the territory slated to become the State of Palestine, make any solution to the question of self-determination, and any solution it may allow for the refugees, elusive.

In sum, in 1948 the protection of Palestinian refugees was expected to be a temporary measure, required until a just and durable solution was found and implemented, not something that would continue in semi-perpetuity as a substitute for such a solution. Owing to the failure to find a political solution, measures to protect Palestinian refugees have had to evolve to the most protracted –and politicized– refugee crisis in recent history. As in other protracted refugee situations, the protection vulnerabilities of Palestinians are rooted, first and foremost, in the failure to address the root causes of their plight and find a just and durable solution for them.⁴⁹ The often acute protection threats experienced by Palestinian refugees (and, in the oPt by Palestinians in general) are the result of a lack of compliance with international law by Israel first and foremost and a number of other relevant parties. Effective protection can only be ensured when fundamental rights are respected and fulfilled.

4. Relevance of international law to Palestinian refugees

In a now thirty-year old enquiry with respect to the meaning of protection as referred to in the UNHCR statute, Nash observes that '[p]rotection involves the use of legal tools to secure the rights, the security and the welfare of refugees, but the objective, beyond the immediate needs of refugees, is [a durable] solution'.⁵⁰ This argument touches upon important aspects of the protection situation of Palestinian refugees, seventy years on.

One preliminary observation worth making is that, given the fact that the Palestinian refugee question first arose around 1947/1949 and has spanned over seven decades, the question of intertemporal law –namely 'which of different legal systems prevailing at successive periods [are] to be applied in a particular case'– is of significance.⁵¹ According to this doctrine, while the law cannot apply retroactively, its interpretation cannot be considered 'frozen in time'.⁵² The passage of time has an impact on the

49 For an analysis of protection gaps in protracted refugee situations, see Türk, Volker & Dowd, R., 'Protection gaps', *The Oxford Handbook of Refugee and Forced Migration Studies*, Oxford, Oxford University Press (2014): 278-289.

50 Nash, Alan E., (ed.) *Human rights and the protection of refugees under international law*, Proceedings of a conference held in Montreal, November 29-December 2, 1987, Institute for Research on Public Policy (1988).

51 The intertemporal law doctrine was first elaborated in the Island of Palmas Case related to a territorial dispute over the Island of Palmas between the Netherlands and the US which was heard by the Permanent Court of Arbitration, 2 Reports of International Arbitral Awards, 1928, 831 ('Island of Palmas'). Judge Huber explained that the rule of intertemporal law consists of two branches: the first is that 'a juridical fact must be appreciated in the light of the law contemporary with it, and not of the law in force at the time when a dispute in regard to it arises or falls to be settled' (i.e. non-retroactivity of the law); the second is that 'the existence of the right, in other words its continued manifestation, shall follow the conditions required by the evolution of law' (i.e. continuing violations), Island of Palmas, 1928, 845. The intertemporal law doctrine is further elaborated by the International Law Commission (ILC), see *infra* note 53. International and regional courts have endorsed such doctrine including on human rights issues (i.e. in cases of forced disappearance and some refugees' property claim cases), see *Lovelace v Canada* UN Hum. Rights Comm. No 24/1977, UN Doc CCPR/C/13/D/24/1977, 30 July 1981, para. 7.3; *Loizidou v. Turkey*, 40/1993/435/514, Council of Europe, European Court of Human Rights, 28 Nov. 1996.

52 Boling, Gail J., 'The Question of "Timing" in Evaluating Israel's Duty Under International Law to Repatriate the 1948 Palestinian Refugees' in Benvenisti, E., Gans, C. and Hanafi, S. (eds), *Israel and the Palestinian Refugees*, Heidelberg, New York, Springer (2007): 227-8.

way the law is applied: if the original violation does not cease before the coming into effect of a new legal obligation, that obligation may become relevant to the earlier facts.⁵³ This includes the situation involving an act that already constituted a violation at the time of its commission which – subject to specific conditions – may trigger an additional violation (when a new norm is introduced), and the case involving an act that, not constituting a violation at the time it was committed, may – under certain conditions – become a violation of international law at a later stage (when the norm is introduced). Both scenarios are relevant to the Palestinian refugee situation; in this case the original facts –forced displacement, dispossession, and subsequent denationalization *en masse* around 1948– violated norms existing at the time they occurred, and were never redressed (e.g. by the return of refugees to their homes and payment of compensation) and have, in some forms, continued until the present moment.⁵⁴ Where this is the case, the original violations may then be considered to have acquired a continuous nature; hence, the various human rights and humanitarian law treaties that have entered into force from 1948 onwards have become relevant thereto.⁵⁵ As Boling argues, the intertemporal law and continuing violations doctrines demonstrate that the passage of time corroborates, rather than ‘erodes’ or ‘dilutes’, a violation and the concomitant obligation to provide a remedy, since the law has gained greater strength and clarity over time.⁵⁶

Further, the regime set up for Palestinian refugees under the 1951 Convention, with its conditional exclusion, has often been interpreted by states as if these refugees were fully excluded from the substantive *rights* of the 1951 Convention and, at large, from the international refugee regime as a whole. As a result, Palestinian refugees have frequently been treated as if they lacked ‘legal status’ and protection under international law. As discussed earlier, the distinctiveness of their designation as refugees, does not mean a lack of, or inferior legal status. Notwithstanding the complex regime and the confusion it may cause, Palestinian refugees are as much refugees as others protected by the global international refugee regime. As such they are the subjects of international refugee law, of course with due caveats due to the specificity of their situation. As largely ‘without citizenship’, they are at the same time the subjects of the law relating to stateless persons, in particular the 1954 Convention (*supra*), applicable to *de jure* stateless persons, and the 1961 Convention on the Reduction of Statelessness (‘1961 Convention’). Those in situations of armed conflict or military occupation, in occupied Palestine as well as, at times of hostilities, in Iraq, Lebanon and Syria, are ‘protected persons’ for the purpose of international humanitarian law (IHL); they have been often persecuted because of their Palestinian identity, even though, they should have been protected from attack.⁵⁷ Those who have experienced displacement without crossing an international border are protected as ‘internally displaced persons’, under various norms of IHL and human rights law, as codified in the 1988 the Guiding Principles on

53 See ILC, Articles on Responsibility of States for Internationally Wrongful Acts, 2001, Suppl. No. 10 (A/56/10), art. 13-14(2). After enunciating that ‘[a]n act of a State does not constitute a breach of an international obligation unless the State is bound by the obligation in question at the time the act occurs’ (art. 13) the ILC refers to ‘breach of an international obligation by an act of a State having a continuing character [which] extends over the entire period during which the act continues and remains not in conformity with the international obligation’ (art. 14(2)).

54 *Supra* notes 9–13 and accompanying text.

55 Boling (2007) *supra* note 52, 227-228, 231.

56 *Ibid.*

57 Only when taking part in hostilities i.e. when using weapons in an armed conflict, while gathering intelligence, or while preparing [...] for the hostilities’, civilians may lose the IHL protection for civilian persons, and yet the threshold to demonstrate such an involvement is quite high. Melzer, N, Interpretive guidance on the notion of direct participation in hostilities under international humanitarian law, ICRC, May 2009, 16-7, 51-2.

Internal Displacement.⁵⁸ And finally, as ‘human beings’, Palestinian refugees are the subjects of human rights law, as enshrined by the 1948 Universal Declaration of Human Rights (UDHR)⁵⁹ as well as the 1966 [International Covenant on Civil and Political Rights](#) (ICCPR)⁶⁰ and the 1966 [International Covenant on Economic, Social, and Cultural Rights](#) (ICESCR),⁶¹ which together constitute the foundational *Bill of Rights* of international human rights law, as well as the 1965 [Convention on the Elimination of All Forms of Racial Discrimination](#) (CERD),⁶² the 1979 Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW),⁶³ the 1984 [Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#) (CAT)⁶⁴ and the 1989 Convention on the Rights of the Child (CRC).⁶⁵ This treaty-based system is complemented by human rights declarations, guiding principles and standards, the value of which is on their moral and political force rather than on their binding nature. The international human rights system, with its norms and mechanisms, has particular relevance for Palestinian refugees in countries where they do not benefit from the application of the 1951 Convention. While only few countries in the Middle East and North Africa (MENA) region are party to the 1951 Convention,⁶⁶ international human rights treaties are more widely ratified. By June 2020, all states in the region have ratified the CRC; Israel and most states in the Arab region, with the exception of Saudi Arabia, Qatar, Oman, South Sudan, and the United Arab Emirates have ratified the ICCPR and ICESCR. Israel and all Arab countries except Oman and Sudan (signatory only) have ratified the CAT. Further, Israel and all Arab states, with the exception of South Sudan, have ratified the ICERD. The CEDAW has been ratified by Israel and Arab countries with the exception of Sudan. Other core human rights instruments are also widely ratified.⁶⁷ Following its recognition as a non-member observer state, the State of Palestine has also acceded to the core IHRL treaties including ICCPR, ICESCR, ICERD, CEDAW, CRPD, CAT, and CRC, including its Optional Protocol.⁶⁸

These branches of international law (IHL, IHRL, international refugee law, the law applicable to stateless persons and the principles applicable to internal displacement) collectively constitute the international framework for the protection of Palestinian refugees. This framework is of critical importance in view of the multiplicity of regional and national legal regimes to which Palestinian refugees, as a polity in exile, have been subjected for the past seventy years. The protection that Palestinian refugees should be afforded by this legal architecture has generally not been forthcoming in practice, and their treatment

58 Commission on Human Rights, Report of the Representative of the Secretary-General, Mr Francis M Deng, submitted pursuant to Commission resolution 1997/39, Addendum, ‘Guiding Principles on Internal Displacement’, UN Doc E/CN.4/1998/53/Add.2, 11 Feb. 1998.

59 Universal Declaration of Human Rights, UNGA res. 217 A (III), 10 Dec. 1948.

60 International Covenant on Civil and Political Rights, 16 December 1966 [entry into force on 23 March 1976], UNTS, vol. 999, 171.

61 International Covenant on Economic, Social and Cultural Rights, 16 December 1966 [entry into force 3 January 1976], UNTS, vol. 993, 3.

62 International Convention on the Elimination of All Forms of Racial Discrimination, 21 Dec. 1965) [entry into force on 4 Jan. 1969], UNTS, vol. 660, 195.

63 International Convention on the Elimination of All Forms of Discrimination Against Women, 18 Dec. 1979 [entry into force on 3 Sept. 1981].

64 [Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#), 10 Dec. 1984. [entry into force on 27 June 1987], UNTS, vol. 1465, 85.

65 Convention on the Rights of the Child, 20 Nov. 1989 [entry into force 2 Sep. 1990], UNTS, vol. 1577, 3.

66 In the MENA region, among the states who host significant numbers of Palestinian refugees, Jordan, Lebanon, Libya, Syria, and all of the Gulf States, with the exception of Yemen, have yet to become parties to the 1951 Convention.

67 For example, the Convention on the Rights of Persons with Disabilities (CRPD) has been ratified by all MENA States with the exception of South Sudan, and Lebanon and Libya who are signatories.

68 Prior to this, PLO chairman Yasser Arafat had stated his Government’s commitment to respecting to all international human rights standards, since 1996.

has been inconsistent, often affected by political considerations generally surrounding the PLO and circumstances concerning the question of Palestine. Countries having de jure or de facto jurisdiction over Palestinian refugees have often claimed the non-applicability or the non-relevance to Palestinian refugees of their human rights (or refugee law related) obligations. The most emblematic case is that of the government of Israel, which has traditionally rejected the notion that the Palestinian territory is occupied, on the grounds that the status of the territory is ‘disputed’.⁶⁹ Israel also contends the applicability of IHRL in the oPt, claiming that such obligations are bound to its territory only and do not apply to the extra-territorial actions of a state, nor in a situation of armed conflict.⁷⁰ Against such positions stand the authoritative opinions of the International Court of Justice (ICJ),⁷¹ the Human Rights Committee⁷² and other international bodies:⁷³ all of them argue in favour of the extra-territorial applicability of IHRL and particularly in the oPt, with correlated obligations upon Israel.

Some Arab countries also deny the applicability of international human rights norms to Palestinian refugees on the grounds that their presence is temporary.⁷⁴ In recent years, human rights mechanisms, including treaty bodies, Special Rapporteurs and the Universal Periodic Review of the Human Rights Council, have referred to Palestinian refugees in connection with human rights obligations of a number of host countries. In so doing, these bodies and mechanisms have not only confirmed the applicability of the legal framework but also exposed the dire reality experienced by many Palestinian refugees. The findings have confirmed that Palestinian refugees experience discrimination, limitation or manifest violations of their civil, cultural, economic, political and social rights, largely because of their Palestinian identity, and that they have limited avenues for redress. The human rights situation in the oPt has been particularly scrutinized, including under the Human Rights Council’s standing agenda item on Israel’s practice in the oPt.⁷⁵ In connection with the oPt, UN treaty bodies and Special Rapporteurs alike have on multiple occasions expressed concerns at the impact that prolonged occupation in the West Bank and

69 Although it has undertaken to comply with humanitarian provisions of the Law of Occupation in its administration of the territories, it has not clarified which provisions of international humanitarian law it considers ‘humanitarian’. For example, see Israel Ministry of Foreign Affairs, ‘Israel’s settlements – their conformity with international law’, 1 December 1996.

70 See, for example, Israel’s fourth periodic report under ICCPR of 2014, CCPR/C/ISR/40, para. 47-8. For a sound examination of Israel’s arguments, see Gross, Alan, *The Writing on the Wall: Rethinking the International Law of Occupation*, Cambridge, Cambridge University Press, 2017.

71 In its landmark Advisory Opinion on the West Bank wall, the ICJ held that the legal framework applicable to the oPt, included the HRs, GC(IV) as well as Israel’s human rights obligations under the international bill of rights and the CRC. ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004, *ICJ Reports* 2004, paras. 89, 95, 101, 107-113, 178-181.

72 E.g. HRC, Concluding Observations, Israel, UN Doc CCPR/C/79/Add.93 (1998), para. 10; HRC, Concluding Observations, Israel UN Doc CCPR/CO/78/ISR (2003), para. 11; UN Doc CCPR/C/21/Rev.1/Add.13 (2004), para. 10. This is in line with the HRC’s General Comment no. 31 (80), ‘The nature of the general legal obligation imposed on States Parties to the Covenant’, 26 May 2004, CCPR/C/21/Rev.1/Add.13, para 10.

73 E.g. ICJ, *Legal Consequences of the Construction of a Wall*, *supra* note 71, at 179, para. 111; CAT, Concluding observations of the Committee against Torture, CAT/C/ISR/CO/4, para. 11; Human Rights Council, Report of the United Nations Fact-Finding Mission on the Gaza Conflict (Goldstone report), A/HRC/12/48 25 September 2009, para 303 in particular.

74 The most emblematic case is that of Lebanon, which treats Palestinians who have been in the countries since 1948 as foreigners, allegedly in the name of their right to return. This is also well captured by a statement of the Tunisian Minister of the Interior in 1982: ‘the presence of brother Palestinians is a temporary state, awaiting their return to their homeland. They will not have the status of migrant or that of refugee because they are combatants.’ El-Akhbar Al-Koweitia, 22 Aug. 1982, cit. in Khalil, Asem, ‘Palestinian refugees in Arab states: a rights-based approach’, *Robert Schuman Centre for Advanced Studies CARIM Research Report* 2009/08 (2009):28.

75 This singling out of Israel has led to criticism of bias toward Israel. See Piccone, Ted, ‘5 Myths about the UN Human Rights Council’, *Brooking Institute*, 8 Dec. 2015.

the blockade and military operations in Gaza are having on the basic human rights of civilians, including children, as well as on the civilian infrastructure necessary to their wellbeing.⁷⁶ Some treaty bodies have also noted the failure to implement specific obligations vis-à-vis Palestinian refugees, among other Palestinians, in the oPt.⁷⁷ In the Arab region, treaty bodies have condemned the discrimination against Palestinian refugees, often on the grounds of their Palestinian identity and refugee status, and including in cases where they enjoy nationality (e.g. Jordan, discussed *infra*). In Lebanon, human rights mechanisms have found that the discrimination experienced by three generations of Palestinians has resulted in violations of, among others, the right to an adequate standards of living and adequate housing, the right to food, work, social security, and children rights.⁷⁸ The Committee on Economic, Social and Cultural Rights recommended that Lebanon take steps to improve the situation in refugee camps, contribute to the improvement of living conditions, ease access of Palestinian refugees to employment in the formal economy, and grant social security benefits.⁷⁹ In Jordan, despite the citizenship enjoyed by most Palestinians, they were found to experience discrimination in the enjoyment of their national rights,⁸⁰ with respect to their legal status (such as the impossibility to acquire nationality for children born from non-Jordanian fathers, which is however not unique to the Palestinian case),⁸¹ participation in public professions and life,⁸² and children's standards of living,⁸³ as well as access to employment in the public sector and security forces.⁸⁴ A particular concern was expressed at the arbitrary withdrawal of nationality from Jordanians of Palestinian origin that had occurred in many instances, not on the basis of the law but based on administrative decisions.⁸⁵ Concern was also expressed with regard to the discrimination against Palestinian families and children fleeing the conflict in Syria, including refusal of

76 CCPR/C/ISR/CO/3, 2010; CERD/C/ISR/CO/14-16; CRC/C/ISR/CO/2-4, 4 July 2013. See also [‘Report of the Special Rapporteur on the situation of human rights in the OPT since 1967’](#), 22 Oct. 2018 (A/73/45717); [‘Report of the Special Rapporteur on adequate housing - Mission to the occupied Arab territories and Israel’](#), 24 Dec 2012 (A/HRC/22/46/Add.1); [‘Report of the Special Rapporteur on the situation of human rights in the OPT since 1967’ \(Richard Falk\) \(A/HRC/20/32\)](#); Report of the Secretary-General, ‘Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan’, 26 Aug. 2016, A/71/ 355.

77 Cf. CEDAW/C/ISR/CO/5, 2011, para. 28, para. 50, CESCR, E/C.12/1/Add.69, 31 Aug. 2001, para 13-14.

78 CESCR, ‘Concluding observations on the second periodic report of Lebanon’, UN Doc E/C.12/LBN/CO/2, 24 Oct. 2016, paras. 25-26; CEDAW, ‘Concluding observations on the combined fourth and fifth periodic reports of Lebanon’, UN Doc. CEDAW/C/LBN/CO/4-5, 24 Nov. 2015, para. 40; HRC, ‘Report of the Working Group on the Universal Periodic Review, Lebanon’, UN Doc. A/HRC/31/5, 22 Dec. 2015, paras. 132.16, 132.40, 132. 167, 132.203. 132.211, 132.215.

79 CESCR, ‘Concluding observations on the second periodic report of Lebanon’, UN Doc E/C.12/LBN/CO/2, 24 Oct. 2016, para. 26. The government showed limited openness on the matter and no significant progress has been made to date.

80 CERD/C/JOR/CO/13-17, 4 April 2012, para. 12.

81 With regard to nationality, the Committee on the Rights of the Child (CRC) ‘reiterate[d] its recommendation that the State party review and amend Law No. 6 of 1954 on nationality in order to ensure that a Jordanian mother married to a non-Jordanian man has the right to transmit her nationality to her children equally and without discrimination’, CRC, ‘Concluding observations on the combined fourth and fifth periodic reports of Jordan’, UN Doc CRC/C/JOR/CO/4-5, 08 July 2014, para. 26; CRC, ‘Concluding observations on the combined fourth and fifth periodic reports of Jordan’, UN Doc CRC/C/JOR/CO/4-5, 08 July 2014, para. 15; CERD, Concluding observations on the combined thirteenth to seventeenth periodic reports of Jordan’, UN Doc CERD/C/JOR/CO/13-17, 4 April 2012, para. 12.

82 CERD, Concluding observations on the combined thirteenth to seventeenth periodic reports of Jordan’, UN Doc CERD/C/JOR/CO/13-17, 4 April 2012, para. 13.

83 CRC/C/JOR/CO/4-5, 8 July 2014, para. 50, 52(a).

84 CERD/C/JOR/CO/13-17, 4 April 2012, para. 13.

85 CAT, ‘Concluding observations on the third periodic report of Jordan’, UN Doc CAT/C/JOR/CO/3, 29 Jan. 2016, paras. 16, 24; CAT, ‘Concluding observations on the second periodic report of Jordan’, UN Doc CAT/C/JOR/CO/2, 25 May 2010, para. 24; CRC, ‘Concluding observations on the combined fourth and fifth periodic reports of Jordan’, UN Doc CRC/C/JOR/CO/4-5, 8 July 2014, para. 25, 56. In 2014, CERD expressed concern ‘about reports on the unequal application of the Nationality Law to Palestinian refugees’, CERD/C/JOR/CO/13-17, 4 April 2012, para. 12.

entry, expulsion or deportation.⁸⁶ Palestinian refugees from Syria have often been discriminated against at the border on the ground that they were not part to the conflict and therefore could be protected in Syria. Treaty bodies also raised concerns at Egypt's discriminatory application of the 1951 Convention to Palestinian refugees and the non-recognition of UNHCR's mandate to assist and protect them, on the ground that they fall under UNRWA's mandate.⁸⁷ Incidentally, UNRWA does not operate in Egypt. Previously, the Committee on the Right of the Child had positively noted a policy allowing Egyptian women married to Palestinian men to pass on their nationality to their children, and recommended that this be incorporated into domestic law.⁸⁸ With respect to Iraq, concern was expressed about reports on the unequal application of the Nationality Law to Palestinian refugees;⁸⁹ at allegations that Palestinian refugees had faced violence and abuses;⁹⁰ at the inadequate legal framework to ensure protection of refugees;⁹¹ and at reports of ethnically based violence against Syrian and Palestinian refugees.⁹² With respect to Syria, at the beginning of the ongoing conflict, treaty bodies condemned the upsurge of violence that had targeted Palestinian refugees and resulted in widespread violence and the displacement of thousands, including children,⁹³ and urged Syria "to cease military operations within and outside refugee camps and to provide humanitarian agencies with full access to the refugees."⁹⁴ The conduct of other countries outside the Middle East vis-à-vis Palestinian refugees has also come under treaty bodies' scrutiny. In 2016, the Committee Against Torture intervened with Bulgaria following the rejection of the asylum request of two Palestinian refugees from Lebanon who were reportedly tortured upon their return.⁹⁵

The increasing attention paid by treaty bodies to the treatment of Palestinian refugees in the MENA region and abroad and the resulting recommendations have the potential to influence government policy and practice as well as domestic legislation. This potential has yet to be fully realized. Increased respect for international human rights treaties would markedly improve the situation of Palestinian refugees and respond to their need for their international protection.

86 CRC, 'Concluding observations on the report submitted by Jordan under article 8, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict', UN Doc CRC/C/OPAC/JOR/CO/1, 7 July 2014, paras. 25-26, 55-56; CAT, 'Concluding observations on the third periodic report of Jordan', UN Doc CAT/C/JOR/CO/3, 29 Jan. 2016, para. 13, 14(c).

87 CERD, UN Doc CERD/C/EGY/CO/17-22, 6 Jan. 2016, para. 25(d).

88 CRC, Concluding observations on the consolidated third and fourth periodic reports of Egypt', UN Doc CRC/C/EGY/CO/3-4, 15 July 2011, para. 44.

89 CERD/C/IRQ/CO/15-21, para 17.

90 HRC, 'Concluding observations on the fifth periodic report of Iraq', UN Doc CCPR/C/IRQ/CO/5, 3 Dec. 2015, para. 23.

91 CERD, 'Concluding observations on the combined fifteenth to twenty-first periodic reports of Iraq', UN Doc CERD/C/IRQ/CO/15-21, 22 Sep. 2014, para. 18(a).

92 Ibid., para. 18(b).

93 CRC, 'Concluding observations on the combined third and fourth periodic reports of the Syrian Arab Republic', UN Doc CRC/C/SYR/CO/3-4, 9 Feb. 2012, para. 73.

94 Ibid. para. 75.

95 CAT, 'Concluding observations on the combined fourth and fifth periodic reports of Bulgaria', UN Doc CAT/C/BGR/CO/4-5, Dec. 2011, para. 16(e). For follow up of the case see CAT, 'Sixth periodic reports of States parties due in 2015, Bulgaria', UN Doc CAT/C/BGR/6, 12 Feb. 2016, para. 138.

5. The pursuit of solutions

The ultimate aim of international protection of refugees is to achieve durable solutions that restore access to national protection and thereby result in the end of refugee status. Because of the characteristics of the Palestinian refugee question, a comprehensive, just and durable solution to their plight – and of the Palestinians in general – can only be found within the framework of a just and comprehensive political settlement between Israelis and Palestinians. Years of negotiations – under the auspices of the United Nations first and then within the framework of the Middle East Peace Process– have ended in failure and there is little immediate prospect of success. The decades-long impasse and the prospect that it will continue call for a fundamental paradigm shift in the approach to solutions for Palestinian refugees, comprising of three interrelated elements:⁹⁶

First, proper weight must be given to relevant provisions of international law applicable to Palestinian refugees. Realization of the rights of the refugees must no longer be subordinated to political considerations. As experience demonstrates, Palestinians will not accept a political solution that perpetuates the denial of their rights and various forms of related injustice. This underlines the importance of a rights-based approach to the way any solution is conceived and implemented. This requires therefore that any solution be in line with relevant UN resolutions applicable to this group, as well as provisions stemming from refugee law and practice, IHRL and other relevant branches of international law.

Second, the search for durable solutions for the refugees must move from the bilateral approach that was unsuccessfully pursued since the years of the Oslo Accords, back to the multilateral arena of the United Nations. The United Nations must assume the role with respect to the Palestinian refugee question that it plays for other refugees, especially in protracted refugee situations. This implies taking the lead in launching the development of a long-term strategy towards a comprehensive solution in accordance with international law.

Third, it is necessary to recognise that the historic rights of Palestinian refugees –primarily self-determination and return (not only as voluntary repatriation but also in the form of property restitution)– are not conditioned on which durable solution (resulting in end of refugee status) may be possible. As already discussed, these rights are firmly grounded in international law: their realisation should not be at the expense of other rights, in as much as other rights should not be realised at the expense of the historic rights. These historic rights have not been advanced by decades of suffering; a betterment of individual situations and living conditions of the refugees can also contribute to (further mobilize to) advance historic rights.

A unique opportunity to pursue the proposed paradigm shift is offered by the 2016 New York Declaration on Refugees and Migrants (NYD)⁹⁷ and the 2018 Global Compact on Refugees (GCR),⁹⁸ which address all of the aforementioned elements: they emphasize that the United Nations, primarily through UNHCR, is responsible for the pursuit of solutions to refugee problems; and they reaffirm the central role of international law and the importance of a multi-stakeholder approach in resolving refugee problems through a combination of voluntary repatriation, local integration and resettlement. The novelty of these

⁹⁶ This paradigm shift and the three arguments discussed in this article are fully articulated in see Albanese & Takkenberg (2020), *supra* note 24, chapter 8.

⁹⁷ *Supra* note 4.

⁹⁸ *Supra* note 5.

instruments is not in creating new legal obligations, which they do not do: they limit themselves to reaffirm principles and standards that stem from binding international law, primarily the 1951 Refugee Convention and IHRL. What is new is that the NYD, which was unanimously endorsed by 193 UN member states, and the GCR endorse action to “promote durable solutions, particularly in protracted refugee situations, with a focus on sustainable and timely return in safety and dignity.”⁹⁹ Of direct relevance to Palestinian refugees is the reaffirmation in the NYD and GCR that “voluntary repatriation in conditions of safety and dignity remains the preferred solution in the majority of refugee situations”¹⁰⁰ and that solutions “should not necessarily be conditioned on the accomplishment of political solutions in the country of origin”.¹⁰¹

The NYD and GCR set out a comprehensive refugee response framework (CRRF) which is to be developed “for each situation involving large movements of refugees, including in protracted situations.” So far, 15 CRRFs (or elements thereof) have been developed in various regions of the world. There is no one-size-fits-all CRRF, each must reflect the specifics of the refugee situation it addresses. What is relevant though, is that this can be a way out of the impasse with respect to the Palestinian refugee issue, tailored to the specificity of their situation.

Because the NYD applies to Palestinian refugees,¹⁰² it provides a UN-sanctioned mandate – with the broadest possible endorsement by the international community – for the elaboration of a comprehensive response framework for Palestinian refugees (CRF-PR). In view of the existence of UNRWA as the principal agency for Palestinian refugees, it has not been appropriate for UNHCR to lead the development of a CRF-PR. Similarly, and likely for a number of reasons, including the unprecedented financial crisis ignited by Trump’s decision to defund UNRWA and the uncondusive political context, UNRWA has so far not considered seizing the opportunity. However, given the respective responsibilities of the two agencies, both agencies are in a position to work together with, and agree on a common strategy for triggering the development of a single CRF-PR through a multi-stakeholder process (*infra*). Each agency could then develop and implement the part that covers the Palestinian refugees for which it is responsible. A special coordinator could be appointed jointly by both agencies to ensure the integration of the two parts of the framework.

One may ask in what way the proposed CRF-PR may differ from other initiatives to try to solve the Palestinian refugee question. One could argue that the answer is as much in the process of the development of the framework as it is in the framework itself.

The multi-stakeholder approach called for in the NYD and GCR would mobilize all relevant actors and, importantly, put the Palestinians in the driving seat. Of course, this process should not be expected to materialize ‘out of thin air’: a political process should be activated. This could be a vehicle able to achieve two goals: first, not to have the Palestinian refugee question dying of inertia and second, mobilizing a political platform that could be useful to pursue other goals and political discussions, such as advancing Israel’s accountability and realizing Palestinian self-determination. Surveying and ensuring participation of the Palestinian refugee population and the global Palestinian diaspora must

99 NYD, para 75. See also GC, para 85.

100 Ibid.

101 NYD, para 75, GCR para. 87.

102 There is no explicit exclusion of Palestinian refugees within the NYD, on the contrary, there are explicit references to UNRWA. Therefore there is no reason to believe it does not apply to them.

be given priority. In developing the Framework, the Palestine refugee movement would provide an important complement to the Palestinian political leadership. Efforts must be made to involve elements in Israeli society that are open to this in the elaboration of the framework. Yet, difficulties in securing Israel's formal engagement should not prevent progress on the Framework.

The process would entail consultation at the national, regional and international levels, structured engagement with refugees, and exploring the feasibility of various solutions and other measures. It would have the change to trigger a political dynamic around the specificity of the Palestinian refugee situation and the actualization of the historic rights, based on the wishes of the refugees across generations, but also based on refugee and human rights law and practice. Individual choices would not compromise the residual element of the settlement, which cannot get exhausted by the individual resolution of the refugee status. As discussed in section 2, the right to return to modern-day Israel is grounded in international law as it stood in 1948, and with it the rights to restitution and compensation. The existence of these rights is not dependent on the pursuit of solutions to end refugee status by individual refugees; even where refugee status comes to an end through local integration (in Arab host countries or other countries of asylum) or resettlement (in third countries), the historic rights of the refugees, including their offspring, remain valid.

The work of the UNCCP and past discussions on restitution and compensation have highlighted the challenges of advancing return, restitution and compensation. Identifying and evaluating Palestinian property that has been transformed, absorbed into Israel's economy, and classified and reclassified under a variety of Israeli laws poses critical challenges. The lessons of other important precedents have shown that such challenges are not insurmountable, and the practical challenges should not prevent further exploration in the Palestinian case. In this context, the UNCCP records and their ongoing digitization, with the potential for linkages with the UNRWA registration records, may advance the prospect of restitution when possible, and compensation where it is not.

Beyond the rights of the Palestinian refugees as individuals there are those associated with their being part of the Palestinian people: the right to self-determination. The origins of the Palestinian refugee question are inseparable from the unmet right to self-determination and the discriminatory nature of its continuous denial. The way the quest for self-determination of the Palestinians is resolved (or not), has important implications for Palestinian refugees and determines the extent of the opportunities available for durable solutions. An independent, fully sovereign Palestinian state, established alongside Israel, as was proposed in 1947, discussed since 1991, and accepted as the basis for further negotiations in 2000, has yet to materialize. It is commonly accepted, at least in the discourse of the Middle East Peace Process, that an independent State of Palestine would constitute the primary 'self-determination unit' of the Palestinians as a people, including the refugees, and would help meet the statehood aspirations of the Palestinian people.

The issue of historic justice is a priority for the Palestinians. Dealing with the past is normally a post-conflict measure to rebuild societal trust and promote reconciliation. For the Palestinians it is necessary to address the past now, as it affects many aspects of the current state of affairs between Israelis and Palestinians. The Framework should provide for the establishment of an objective historical account of the origins of Palestinian displacement, including its constituent elements, causes and evolution. While Palestinian oral history, historians and the United Nations have documented the historic events and the

root causes, the facts at the origin of the Palestinian displacement and dispossession remain largely ignored by the public at large and not adequately influential in the political arena. This has contributed to leaving the Palestinian refugee issue unaddressed and feeding the efforts to dismiss the Palestinian refugee question altogether. Approaching the issue of the historical narrative through a comprehensive framework should help the various stakeholders feel part of a positive process where the past is examined in order to move forward. The form of such exercise could draw on the various initiatives for dealing with the past that have taken place through truth commissions; this would allow establishing an official historical account through the voices of those willing to come forward and tell their stories. Refugees from 1948, 1967, or later, displaced in the Arab region, Israeli and Arab officials, and members of the international community should be among those invited to recount their part of the story. Such process would contribute to establishing a sense of justice, public acknowledgement and accountability, and lay the ground for advancing the enjoyment of Palestinian's rights under international law.¹⁰³

The proposed third element of the paradigm shift entails that the other two durable solutions – local integration in host countries and resettlement in third countries– be given further consideration as well. A combination of the durable solutions has helped resolve other protracted refugee situations and could help do so for Palestinian refugees. While an obligation to voluntary repatriation exists upon the country of origin under international law, host states have no obligation to grant asylum or citizenship under international law, although the 1951 Convention is geared towards local integration of refugees and requires states parties to facilitate naturalization. In line with UNHCR's practice, the CRF-PR should emphasize that allowing for local integration of refugees is ultimately a 'sovereign decision and an option to be exercised by States guided by their treaty obligations and human rights principles.' Nonetheless, considering the protracted refugee situation, generations of refugees in host countries may have acquired a right of continued residency, deriving from factors such as their exceptionally lengthy stay, de facto integration, marriage, and business activity.

In cases where neither return nor local integration is feasible, resettlement shall also be considered as an option. As UNHCR indicates, in protracted refugee situations, "lack of progress on repatriation and local integration should not block the possibility of resettlement, even though this will benefit a relatively small number."¹⁰⁴ As noted earlier, resettlement has helped break the impasse of protracted refugee situations. Since Camp David and Taba, resettlement –often opposed by Palestinians and Arab states– has been one of the options suggested for refugees in the context of a negotiated settlement. It is increasingly demanded, especially from refugees who live in difficult situations (i.e. Lebanon) that UNRWA assists refugees willing to be resettled. It would be an important development if UNRWA considered developing its policy and practice with respect to durable solutions more generally, taking into account both the way its mandate has evolved, and the latest evolution with respect to solutions as set out in the NYD. More broadly, the CRF-PR should explore the scope and limitations of resettlement in the Palestinian context, based on the will of the refugees and the resettlement opportunities that may be available.¹⁰⁵

103 Failure to provide effective remedies may corroborate a sense of injustice, trigger further displacement and generally undermine the achievement of durable solutions. See IASC, 2010, 43; Brookings-Bern Project on Internal Displacement, *IASC framework on durable solutions for IDPs*, April 2010, 25–26.

104 UNHCR, 'The State of the World Refugees', see chapter 5 on 'Protracted refugee situations: The search for practical solutions' (2006), 117.

105 Only one per cent of refugees worldwide gets resettled, a trend that has remained unchanged in recent years.

Seizing the opportunity that the existing international refugee regime, including the NYD, offers Palestinian refugees is not going to be an easy process: yet, as the situation of the refugees continues to deteriorate (and disappear from the political agenda of some influential stakeholders), inaction poses greater risks for Palestinian refugees and their quest for justice. International and regional diplomacy need to be mobilized around a concrete plan, and the NYD and GCR offer one.

6. Concluding Observations

Palestinian refugees are legitimate refugees under the international refugee regime. For historical and political reasons, they enjoy distinctive arrangements under such regime. This distinctiveness often creates confusion, leading to misrepresentation and misinterpretation of their legal status, the applicable normative framework, and the role of the international entity mandated to assist and protect them. Such confusion has to a considerable extent affected the protection they enjoy as refugees, at times giving rise to the belief that, as a group, they are excluded from the rights and standards of treatment afforded to other refugees. This has also fed the misconception of Palestinian refugees as *outwith* international law.

Against this background, the paper discussed Palestinian refugee status under international law, as foundational to their entitlement to international protection, including durable solutions and enjoyment of fundamental rights enshrined in various bodies of international law (e.g. human rights and refugee law) on top of the specific entitlements they derive from UN resolutions (return to their homes or resettlement elsewhere, and compensation). It also discussed the extent to which the situation of Palestinian refugees in practice has been marked by a profound disconnect between the relevance of international law (i.e. relevant bodies of it) to their case, and the extent to which these refugees have effectively benefited from it. This has manifested into continuous displacement and dispossession of Palestinians in the West Bank and Gaza; deteriorating living conditions for many of them in the countries where they found initial refuge and where millions of them continue to live in a limbo as stateless persons, without the right to have rights, often exposed to unrest and conflict, and vulnerable to further displacement. The paper underscored that the failure to bring a just resolution to the plight of Palestinian refugees is ultimately attributable to the lack of political will rather than inadequacy of the legal framework and the persistence to treat their plight in political terms, as an outcome of war, a humanitarian crisis, and an issue for negotiation. Pending a durable solution to their plight, their situation would significantly improve if states and regional bodies fully honoured their human rights commitments and obligations towards these refugees, including those stemming from the international refugee regime (when applicable).

With respect to solutions, the paper proposed a new approach and a paradigm shift to the Palestinian refugee question, hinging on the centrality of international law, the United Nations and Palestinian refugees' agency. It acknowledged that the obstacles in moving such vision forward are formidable. However, the death of the two-state solution –which received a further blow by Trump's recently-released 'Deal of the Century'– combined with the complete absence of progress in resolving the Palestinian refugee question, call for new thinking and new approaches. Doing nothing is no longer an option and the NYD provides a powerful new opportunity to the United Nations for redressing the plight of Palestinian refugees. Hopefully this opportunity will be seized before too long.

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