



النهضة العربية للديمقراطية والتنمية
Arab Renaissance for Democracy & Development

The Question of Palestine



Rethinking solutions for Palestinian refugees: A much-needed paradigm shift and an opportunity towards its realization

Francesca P. Albanese & Lex Takkenberg



September
2021

This paper was republished upon permission of Oxford University Press,
Refugee Study Center, who first published it in the Working Papers Series in May 2021.



ARDD

النهضة العربية للديمقراطية والتنمية
Arab Renaissance for Democracy & Development

**Rethinking solutions for Palestinian refugees:
A much-needed paradigm shift and an
opportunity towards its realization**

Francesca P. Albanese & Lex Takkenberg

September 2021

Contents

About the authors	3
Background to the paper	3
1. Introduction	5
2. Seventy years of displacement	7
3. Past approaches to resolve the Palestinian refugee question	10
4. Rethinking solutions for Palestinian refugees	14
4.1. Components of any solution	14
4.2. A much-needed paradigm shift	15
5. The NYD and GCR: a new opportunity for Palestinian refugees	18
6. What a Comprehensive Framework for Palestinian refugees may look like	22
6.1. Legal framework	22
6.2 Addressing root causes	23
<i>The past</i>	24
<i>The present and the meaning of self-determination</i>	24
6.3 Durable solutions	25
<i>Return</i>	25
<i>Local integration & resettlement</i>	27
6.4. Restitution and compensation	28
<i>Role of the UN</i>	30
<i>The Palestinians</i>	32
<i>Host States</i>	33
7. Concluding remarks	34

About the authors

[Francesca P. Albanese](#) is an international lawyer, and currently the Coordinator of the Question of Palestine Programme hosted by Jordan-based organization Arab Renaissance for Democracy and Development (ARDD). She is an Affiliate Scholar at the International Study of International Migration (ISIM), Georgetown University and a Visiting Scholar, at the Issam Fares Institute for Public Studies Policies and International Affairs, American University of Beirut. She is an international lawyer. For 15 years, she has worked in the field of human rights and refugee protection, particularly in the Arab world: with the Department of Legal Affairs of UNRWA, UN agency for Palestinian refugees, the Office of the High Commissioner for Human Rights, the European Union, the UN Development Programme, and various NGOs. Albanese received her LL.B (Hons.) at Pisa University, and her LL.M (Human Rights) at SOAS University. She is currently pursuing her PhD in International Refugee Law with a critical legal analysis of protracted refugee situations, at the School of Law of the University of Amsterdam.

[Dr. Lex Takkenberg](#) is a freelance lecturer, researcher and consultant with Project20s and currently works as Senior Advisor with ARDD. He worked with UNRWA from 1989 until late 2019, most recently as the first Chief of its Ethics Office. Prior to that, he held positions including UNRWA's General Counsel, (agency-wide) Director of Operations, and (Deputy) Field Director in Gaza and Syria. Before joining UNRWA, he was the Legal Officer of the Dutch Refugee Council for six years. A law graduate from the University of Amsterdam, he obtained a Doctorate in International Law from the University of Nijmegen, the Netherlands.

Background to the paper

This paper is largely adapted from the authors' recently published book: [Palestinian Refugees in International Law](#) (2nd edn., Oxford University Press, 2020), and in particular its final chapter. After discussing origins, evolution and legal tenets of the Palestinian refugee question, this chapter discusses the quest for just and durable solutions. In the first edition of the book, the subject was discussed – naively in hindsight – against the backdrop of the Middle East Peace Process, initiated with the Madrid Conference in 1991 and the Oslo Accords (1993-1995), that is, as one of a number of 'permanent status issues' to be resolved in negotiations between Israel and the PLO. This reflected the expectation that a solution to the Palestinian refugee question would be found in the context of the establishment of a Palestinian state. At the time of researching and writing the second edition, the peace process was on life support and, in spite of the increased international recognition of the 'State of Palestine', in view of the ongoing Israeli occupation of Gaza, the West Bank, including East Jerusalem, the prospect of the emergence of a sovereign, independent Palestinian state was more remote than ever.

Where does this leave the refugees and a resolution of their plight? Reflecting on the various attempts at and discourse around resolving the Palestinian refugee issue since the late 1940s, and especially since Madrid and Oslo, culminating in the Trump Administration's attempts at obliterating the refugee issue altogether, prompted the authors to propose a fundamental paradigm shift in the way solutions for Palestinian refugees are approached. It is this paradigm shift, and new opportunities towards realizing it, taking advantage of the 2016 New York Declaration on Refugees and Migrants and the 2018 Global Compact on Refugees, as well as new insights

with respect to the refugees' historic rights and claims, that are at the centre of this paper.

An earlier version of the paper, written by one of its authors (FA), with extraordinary support of retired senior UNHCR official, Nicholas Morris, was discussed during a workshop of Palestinian and international experts in Jordan in October 2019, organized by the Arab Renaissance for Democracy and Development (ARDD).¹ The workshop confirmed the need for more discussion on the approach proposed by the authors, including related opportunities and risks. The current paper is an updated version of the workshop's background document, taking into account the feedback participants provided as well as other insights. Its content remains the sole responsibility of the authors and does not necessarily reflect the views of the participants of the workshop or ARDD, nor does it reflect the views of Oxford University's Refugee Studies Centre. It aims to provoke further discussions about the possibilities and practicalities of advancing a rights-based discourse on solutions for Palestinian refugees with a central role for the refugees, host countries, under the auspices of the United Nations.

Abstract

The authors believe that the current state of affairs with respect to the Palestinian refugee question requires a fundamental rupture with the political approaches so far pursued amounting to a fundamental paradigm shift. This would hinge on a necessary liberation of the debate from the political stalemate, a more purposeful involvement of the UN, supported by a multi-stakeholder process –hinging first and foremost on the refugees themselves –, a greater emphasis on international law and related obligations towards the rights of the refugees, and, finally, a move away from the 'politics of suffering' that has held many refugees hostage over the decades.

The authors suggest that the 2016 New York Declaration on Refugees and Migrants provides a new opportunity to reengage the UN with respect to solutions for Palestinian refugees, for firmly placing this within an international law framework, and for pursuing solutions for Palestinian refugees more holistically. Guided by the Declaration, they propose the elements of a Comprehensive Response Framework for Palestinian Refugees as well as the route towards its development.

Acknowledgements

The author would like to thank Damian Lilly who kindly provided comments on an initial draft of this working paper as well as various members of the Global Network on the Question of Palestine who commented on an earlier paper fleshing out some of the same ideas, in particular Terry Rempel, Mouin Rabbani, Ingrid Jaradat and Jalal Al-Husseini.

¹ Workshop on the occasion of the Second Annual Meeting of its Global Expert Network on the Question of Palestine, entitled: 'Palestinian Refugees: Is there the need for a new approach to solutions: beyond the 70-year-old impasse?', Amman, 20-22 October 2019. The final report can be accessed at: <https://ardd-jo.org/Publications/palestinian-refugees-is-there-the-need-for-a-new-approach>.

1. Introduction

The plight of the Palestinian refugees², originating from the violent events that accompanied the birth of the State of Israel in 1947/1949, has remained unresolved for over seventy years, longer than any other mass displacement since the Second World War. As of 1948, Israel's adamant refusal to allow the refugees to return to their homes, as demanded by the refugees, required by international law and urged by the United Nations (UN), has made other durable solutions (local integration and resettlement) largely politically unfeasible.

The nature and scope of violations of human rights law and humanitarian law committed by Israel against the Palestinians under military occupation has for a long time overshadowed the humanitarian conditions and precarity experienced by many Palestinian refugees in the Middle East and elsewhere. Yet, since the 1970s, Palestinian refugees have experienced an increasingly precarious status and living conditions in places where they had found refuge or residence; over 700,000 have been forcibly displaced following vindictive policies against them or simply turmoil and conflict in Gulf countries, Libya, Iraq and Syria. The numbers of Palestinian refugees displaced from the Middle East and seeking protection in Europe, the Americas, Asia and the Asia Pacific show that the question has long ceased to be a crisis confined to the Near or Middle East alone. And yet the imperative to solve it, remains muted.

The legal and political context of the search for a just and lasting resolution of the Palestinian refugee question is highly complex. There are divergent narratives about its origins and how it should be resolved. In January 2020, after years of stagnation of the bilateral negotiations between Israelis and the Palestinians (1991-2014), the U.S. and Israel heralded the Trump Administration's *Peace To Prosperity – A Vision to Improve the Lives of the Palestinian and Israeli People*.³ More commonly referred to as the 'Deal of the Century', the plan represented an absolute low point with respect to U.S. engagement with the Israeli-Palestinian conflict. While allowing for further Israeli annexation of land in the West Bank and furthering the isolation of the Gaza Strip, the plan, if implemented, would obliterate *tout court* the Palestinian refugee question. With the departure of Trump following the November 2020 election, the plan appears to have been shelved. It remains to be seen what new steps, if any, the new U.S. administration may take with respect to Israeli-Palestinian peace.

Meanwhile the Palestinian political leadership, internally divided and increasingly detached from its popular basis, including the refugees, announced and then cancelled the first presidential and legislative elections in 15 years and has announced a yet tentative initiative for a new UN-led peace conference to be held sometime in 2021. Arab states do not constitute a unified front in support of the Palestinians and their commitment to solve the Israeli-Palestinian conflict has largely remained rhetorical, with some of them progressively shifting towards support

² The term 'Palestinian refugees' is used in this paper to refer to all Palestinians who were displaced in 1948 and 1967 from the whole territory of the former British Mandate Palestine and their descendants. In UN resolutions they are referred to as 'Palestine refugees' and '1967 displaced' respectively.

³ <https://www.whitehouse.gov/peacetoprosperity/>.

for Israeli positions, as manifested most clearly by those having entered so called ‘normalization’ agreements with Israel in 2020.⁴ Most of the international community, while continuing to recite the ‘two-state-state’ mantra, appears to persistently ignore that this political solution is becoming less feasible with every day that passes, owing to the demographic, political and (il) legal transformation that Israel is forcing upon the occupied Palestinian territory.

The authors believe that the current state of affairs requires a dramatic departure from the discourse around solutions of the refugee question as it has evolved over the past seventy years, and in particular since the start of the Middle East Peace Process (MEPP). A fundamental paradigm shift is needed in the way solutions for Palestinian refugees are approached. Firstly, the UN – primarily through the UN organizations responsible for the refugees, UNRWA and UNHCR – must reassume responsibility for the pursuit of solutions for Palestinian refugees, like it ultimately does for other refugee crises, including large and protracted ones. Since ‘Oslo’ the Palestinian refugee issue has been dominated by the asymmetry of power between the parties on top of political expedience that has prevailed over the interest of the refugees. This situation must be brought to an end. Secondly, and as an extension of the first point: like with all other refugee situations, international law must once again (as it was conceived in 1948)⁵ be the framework and ‘lighthouse’ for resolving the various aspects of the Palestinian refugee question: the issue of refugee status as well as moral, material, individual and collective justice.

A third element of the proposed paradigm shift is an extension of the first two and addresses the long-held belief that pursuing solutions for Palestinian refugees more holistically would undermine their rights and claims towards Israel, and as such jeopardize the Palestinian cause. Based on original research, the authors make it abundantly clear that this is not the case at all. As will be elaborated below, the rights to return and to restitution and compensation flow from the historic injustice accompanying the birth of the refugee issue, and these have only become stronger with the passing of time and the further advancement of international law. Therefore, Palestinian refugees and their political advocates should not fear pursuing solutions more closely aligned with the global international refugee regime, as many individual Palestinian refugees have done over the years and others demand.

In recent years, as the number of forcibly displaced persons worldwide continued to rise (which in 2015/2016 led to the largest refugee numbers arriving to Europe since the Second World War), the figure of refugees caught in protracted refugee situations became the absolute majority of the overall refugee count. This prompted the international community to commit to take pragmatic responses to address root causes and offer result-oriented pragmatic responses to large refugee crises, informed by international law and the needs of both refugees and host

4 On 13 August 2020, the United Arab Emirates and Bahrain signed separate declarations with Israel, subsequently formalized in bilateral treaties dated 15 September 2020 and 11 September 2020 respectively, collectively referred to as the [Abraham Accords](#). This was followed by a similar agreement between Israel and Sudan on 23 October 2020 and between Israel and Morocco on 22 December 2020.

5 UN General Assembly resolution 194(III) of 1948 established a scheme for durable solutions for Palestinian refugees, through the return of those willing to so and the compensation for those choosing to resettle elsewhere, in line with provisions of international human rights law, affirmed principles of state responsibility for international wrongful acts and principles to protect from statelessness. This is further discussed in the working paper.

communities. The 2016 New York Declaration on Refugees and Migrants (NYD)⁶ and its Comprehensive Refugee Response Framework (CRRF), as well as the 2018 Global Compact for Refugees (GCR),⁷ represent the most authoritative articulation of this resolve. The significance these instruments could have for Palestinian refugees is yet to be explored. The authors believe that the NYD and the GCR, and the political consensus they represent, offer an opportunity to pursue the above paradigm shift and as such to advance just and durable solutions for Palestinian refugees, starting with those elements of the refugee question that are not dependent on an overall settlement with Israel.

The authors have no illusion that international law, per se, in the absence of political will, does not offer a panacea to the decade-long unresolved Palestinian refugee situation. At the same time the NYD, CRRF and GCR provide powerful levers to move beyond the current stalemate with respect to the Palestinian refugee question and the wider Israeli-Palestinian conflict. Bringing the Palestinian refugee question to the centre of the debate, instead of considering it peripheral to its resolution, would not only improve the lives and prospects of the refugees but could also have a positive impact on the prospects for a durable peace and the delivery of justice to the Palestinians.

This paper explains this ‘new’ opportunity and what seizing it could involve, in terms of both content and process. After this introduction, Section 2 briefly describes the origin and development of the Palestinian refugee question while Section 3 summarizes the political attempts at solving it from 1948 onwards. Section 4 discusses the need for the above mentioned ‘paradigm shift’ and Section 5 starts to explore, in general, to what extent the NYD and GCR could represent a concrete opportunity for Palestinian refugees. Section 6 further develops this idea with practical examples of how these instruments resonate and could translate into a Comprehensive Response Framework for Palestinian Refugees (CRF-PR); it particularly articulates what should be its constitutive elements, in terms of legal framework, need for addressing the ‘root causes’, advancing solutions to end the refugee status as well as restitution and compensation. The section also points to some procedural elements of the framework, including the actors that should be involved and their roles. Section 7 includes some concluding observations.

2. Seventy years of displacement

The violence accompanying the creation of Israel in 1948 led to some 750,000 inhabitants of Palestine becoming stateless refugees. More than two-thirds of Palestine’s native Arab population, 80 per cent of whom were from present day Israel, were uprooted, often through outright expulsion. They found refuge in the Gaza Strip and West Bank, including East Jerusalem – the parts of Mandate Palestine that had not become part of the State of Israel – and in neighbouring countries, primarily Jordan, Lebanon, and Syria, with small numbers of refugees in Egypt and Iraq. Since 1950, UNRWA⁸ has provided the refugees living there with support and assistance

6 UN doc A/RES/71/1 (19 September 2016).

7 UN doc A/ RES/ 73/ 151 (17 December 2018).

8 The UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), established by UNGA res. 302 (IV) of 8 December 1949. UNRWA’s area of operation comprises Jordan, Lebanon, Syria, the West Bank including East Jerusalem, and the Gaza Strip.

through education, health care, employment, relief and social services, and increasingly with a measure of protection, pending a political solution to their plight. Meanwhile the UNCCP,⁹ the UN entity that had been created to settle the Question of Palestine, including the refugee question, became effectively defunct from the mid-1960s onwards, in face of the impossibility of advancing negotiations between Israel and the Arab states (see section 3, below).

While Palestinian Arabs/Palestinians had lost their homeland, property, land and their livelihoods, and had no state of their own, the Jews who were in Palestine – most of whom had moved from Europe following political Zionism – became citizens of Israel after it became a state in 1948. So did the approximately 150,000 non-Jewish Palestinians who remained in Israel, albeit with an increasingly second-class status and significant deprivations. The international community assumed that there would be an early solution for the refugees. The UN General Assembly, in resolution 194 of 11 December 1948, paragraph 11, resolved 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.’

It soon became clear that no such early resolution of the refugee question was forthcoming. Expulsions of Palestinians from their homes in the newly established State of Israel continued and Israel enacted laws and took other measures to prevent refugee return and dispose of their properties. By depriving the refugees of the opportunity to return and choose whether to live in Israel as citizens, Israel retroactively denationalized over two-thirds of the British Mandate Palestinian Arab population, who had been Ottoman citizens until 1923 and British Mandate Palestine citizens from 1925.¹⁰

During the June 1967 Six-day War between Israel and neighbouring states, Israel occupied the remaining land that was once part of Mandate Palestine, as well as the Golan Heights (from Syria) and the Sinai Peninsula (from Egypt). This provoked a second mass exodus: some 400,000 Palestinians, including some 150,000 refugees from 1948, were displaced from the Gaza Strip and West Bank as well as from the Golan Heights. The great majority sought refuge in neighbouring countries, notably Jordan.¹¹

The Security Council called upon Israel to facilitate the return of those inhabitants who had fled the occupied Palestinian territory (oPt) since the outbreak of the hostilities.¹² The Council emphasized “the inadmissibility of the acquisition of territory by war”; affirmed that the Charter

9 The UN Conciliation Commission for Palestine (UNCCP) was created in 1948 by General Assembly resolution 194 (III).

10 Qafisheh, M., ‘Genesis of citizenship in Palestine and Israel: Palestinian nationality during the period 1917–1925’, *Journal of the History of International Law* 11. 1 (2009).

11 Those who fled for the first time in 1967 were called the “1967 displaced persons”. While their plight was similar to that of the 1948 refugees, their status was seen as different. Between 1949 and 1950 Jordan had extended its parliamentary franchise and citizenship to the inhabitants of the West Bank (including the refugees) with the ‘unification’ of the banks of the River Jordan. Hence the Palestinians whose first displacement was from the West Bank to the East Bank in 1967 were considered to be displaced within Jordan.

12 UNSC res. 237 of 14 June 1967.

principles required the establishment of a just and lasting peace which should include the withdrawal “of Israel armed forces from territories occupied in the recent conflict”; and affirmed the necessity of “a just settlement of the refugee problem”.¹³ However, Israel barred return and took measures to seize the property of West Bank residents who were outside the area on 7 June 1967 or left thereafter. The order authorizing this remains in force.¹⁴ The subsequent policies of Israel, including the revocation of residency rights in the oPt, have continued to cause displacement of Palestinians.

While disputing that the West Bank and Gaza¹⁵ are occupied territory under international humanitarian law (IHL),¹⁶ “Israel has undertaken to comply with the humanitarian provisions of the Law of Occupation in its administration of the territories.”¹⁷ Four days after the end of the war, the Israeli Government requested that UNRWA “continue its assistance to the Palestine refugees, with the full co-operation of the Israel authorities, in the West Bank and Gaza Strip areas”.¹⁸ Rather than facilitating UNRWA in what was effectively the discharge of a responsibility of Israel under IHL, some of Israel’s actions have effectively obstructed UNRWA’s assistance to the refugees.

Today, of the 13 million Palestinians worldwide, over half are refugees from 1948 or their descendants. The number of those displaced in 1967 and their descendants is disputed but may be around one million. Since 1967, hundreds of thousands of Palestinians have been forced into secondary or tertiary displacement, both as a result of Israeli actions in the oPt and as a result of tensions, poverty, discrimination and conflict in countries in the Middle East and North Africa. As of the 1970s, about 700,000 have been cumulatively forced to flee the Arab world, largely as a consequence of a precarious legal status, amidst unrest, instability, discrimination and often overt persecution.¹⁹ Today, some two million Palestinian refugees are estimated to reside outside UNRWA’s area of operation; of these, some 900,000 are elsewhere in the Arab region, some 300,000 each in Europe and the Americas,²⁰ and some tens of thousands still further afield.²¹

For many Palestinian refugees, displacement has become a fact of life rather than something exceptional. Not only are they not allowed to return to their original ‘homes’ and lands within Israel as recommended by resolution 194, on the basis of international law as it stood in 1948,

13 UNSC res. 242 of 22 November 1967.

14 Military Order 58 Concerning State Property (Judea & Samaria) (1967).

15 While Israel withdrew its presence from Gaza in 2005, the total control it maintains, including on the entry and exit of people and goods, is characteristic of a continuing occupation.

16 In its resolutions, the Security Council has repeatedly called on Israel to discharge its obligations as the Occupying Power under IHL. In its advisory opinion of 9 July 2004, the International Court of Justice found that the Fourth Geneva Conventions is applicable to the Palestinian territories occupied by Israel in 1967.

17 “Israel’s settlements – their conformity with international law”, Israel Ministry of Foreign Affairs, 1 December 1996. Israel has not defined which provisions of international humanitarian law it considers humanitarian.

18 Exchange of letters between UNRWA and Israel, 14 June 1967.

19 There was significant displacement from Jordan in 1970-1, Lebanon from 1975-90 (100,000), Kuwait in 1990-1 (350,000), Libya in 1994-5 (15,000-30,000), Iraq from 2003 (50,000), and Syria from 2011 (120,000).

20 The estimate for the Americas covers the period since 1948. In addition, there are some 700,000 Palestinians in the Americas who migrated before that date or are descendants of those who did.

21 The different ways countries record Palestinians, or in some cases fail to record them, mean that some may be statistically invisible.

but many of them have not been able to integrate fully and enjoy all fundamental human rights in their host countries. While significant numbers acquired Jordanian citizenship, and small numbers may have acquired the citizenship of countries further afield, the majority of Palestinian refugees remain stateless.

3. Past approaches to resolve the Palestinian refugee question

From the start, the United Nations, mainly through UNCCP, sought to resolve the problem of the refugees through the return to the newly created State of Israel of those willing to live at peace within the newly established state and the provision of compensation for those choosing not to return. When peace proved unattainable in the short term, mechanisms to provide immediate assistance and relief to the refugees were required and UNRWA was created. UNRWA's mandate was ancillary to that of UNCCP;²² it focused on provision of assistance and relief to the refugees, as well as on implementing works programmes that would help the refugees access livelihoods in the region, as proposed by the UNCCP's Economic Survey Mission.²³ These work programmes were confronted with suspicion by host countries and the refugees alike, who saw them as surreptitious attempts to impose solutions, other than return, upon the refugees, and were consequently abandoned by the mid-1950s. Since then, UNRWA did not further pursue durable solutions beyond technical support for UNCCP's work.

Initial United States' pressure on Israel to readmit about 400,000 refugees (a figure lowered to 250,000 and then 100,000) was not sustained. Israel's offer to annex Gaza and absorb its 200,000 refugees was soon retracted. Since then no state or coalition of states has effectively pressured or challenged Israel on the refugee issue, either bilaterally or through multilateral channels. While remaining nominally committed to voluntary repatriation of the refugees, the United Nations (and especially Western member states) progressively embraced the idea that other solutions would have to resolve the Palestinian refugee question. Unlike other large refugee crises, the Security Council has not extended political or practical support for the realization of durable solutions for Palestinian refugees beyond affirmation of the necessity of achieving a just settlement.²⁴

22 The first preambular paragraph of UNGA res. 302 creating UNRWA affirmed "in particular the provisions of paragraph 11 of [UNGA res 194]" (i.e. the right of return, or to be resettled elsewhere, and to compensation). Operative paragraph 5 of resolution 302 recognized that "without prejudice to the provisions of paragraph 11 of General Assembly resolution 194 ... continued assistance for the relief of Palestine refugees is necessary".

23 Background and operations are summarised in *First Interim Report of the United Nations Economic Survey Mission for the Middle East*, appended to UNCCP, *Final Report of the United Nations Economic Survey Mission for the Middle East, Part I (The Final Report and Appendices) and Part II (The Technical Supplement)*, UN doc. A/ AC.25/ 6, New York, 1949.

24 In particular, unlike in the case of Iraq, Bosnia and Herzegovina, Kosovo, and East Timor, the UN Security Council has not taken firm action to ensure implementation of the right of Palestinian refugees to safely return to their original homes. Even for those displaced in 1967, the Council has never gone beyond a generic affirmation of the return of the displaced in the context of a just solution of the conflict.

Since 1948, the refugees from Palestine have been considered internationally recognized refugees (similar to the ‘statutory refugees’ defined in Article 1A(I) of the 1951 Convention Relating to the Status of Refugees [hereinafter 1951 Convention]). However, for the Arab states, the refugees from Palestine were a unique international responsibility, a problem created by the failure of the United Nations to realize Palestinian self-determination at the end of the British Mandate. UNCCP and UNRWA were seen as the expression of that responsibility and the Arab states successfully argued that the Statute of UNHCR should exclude Palestinian refugees; also they were better suited than UNHCR to deal with the specific problems (and rights) of the Palestinian refugees. Paragraph 7(c) of the Statute provides that the competence of UNHCR does not extend to a person receiving assistance or protection from other UN organs or agencies (i.e. UNCCP and UNRWA). The first paragraph of Article 1D of the 1951 Convention makes a similar exemption to that in the UNHCR Statute. The second paragraph of Article 1D provides that if such assistance and protection should cease for any reason but still be needed, the persons affected would ipso facto be entitled to benefits of the Convention.²⁵ This means that when outside UNRWA’s area of operations, Palestinian refugees in need of protection and assistance are the responsibility of UNHCR.

In this way the drafters sought to ensure no duplication between the role and competence of different UN agencies dealing with refugees but rather, continuity of protection.²⁶ As such the UNHCR Statute and the 1951 Convention were not intended to leave Palestinian refugees ‘without rights’; Palestinian refugees would fall under the purview of UNHCR and the benefit of the 1951 Convention in case the primary system for their support, made of UNCCP and UNRWA, would cease to operate.

The UNCCP was unable to advance the return of the refugees and, owing to the impossibility to reconcile Israeli and Arab demands on the issue, progressively ceased its peace-making efforts. From the mid-1950s until the mid-1960s it concentrated on collecting Palestinian property records with a view to restitution and compensation when this became possible.²⁷ Once the UNCCP completed its work on these records in the mid-1960s, it suspended its operations, which left the UNCCP as effectively inoperative ever since. It nominally continues to exist, and every year produces a resolution acknowledging the lack of any progress on the implementation of resolution 194.

UNRWA’s work programmes implied that, without jeopardizing their right of return (and the claims for justice at large), a significant number of Palestinian refugees would be integrated in host countries or resettled in other countries in the region through labour intensive public work programmes subsidized and overseen by the agency. Both Arab countries and the refugees by and large opposed this, seeing it as an unacceptable distraction from pressure for an early return of the refugees. They insisted that priority be given to a durable political solution that met Palestinian refugees’ rights. They therefore resisted anything that suggested that exile would be prolonged: there was to be no permanent accommodation, integration or – with the exception

25 On the applicability of article 1D to Palestinian refugees see *UNHCR Guidelines on International Protection No. 13* (20 December 2017).

26 See *UNHCR Guidelines on International Protection No. 13*, para 9.

27 Fischbach, M.R., *Records of dispossession: Palestinian refugee property and the Arab-Israeli conflict*, Columbia University Press (2003).

of Jordan²⁸— acquisition of citizenship in the host countries. The injustice that had befallen the refugees, epitomized by the conditions in the official and unofficial refugee camps in UNRWA's area of operations, remained visible and current. This progressively constrained the refugees' opportunities for self-reliance and development, contributing to their marginalization both within host societies and as part of a Palestinian polity, unable to influence its political destiny. While many escaped such fate by seeking better opportunities in countries where they managed to secure a stable status (in Europe and North America), in much of the Arab world the experience of many Palestinian refugees continued to be characterized by precarity and politicization, with refugee treatment improving or deteriorating depending on individuals' countries' relationship with the Palestine Liberation Organization (PLO).

Years of Palestinian resistance and mobilization, during which the PLO had attempted to advance the cause of the Palestinian people through the 'liberation of the historical homeland', did not succeed in advancing the rights of the refugees. A dramatic shift took place in the early 1990s, when the PLO's leadership agreed to enter formal peace negotiations with Israel. In the peace initiatives that began with the Madrid Conference in 1991, a solution for the refugees was not explicitly framed around return and the related parameters of international law (the legal principles underpinning paragraph 11 of resolution 194). Priority was given to self-determination and the realization of an independent Palestinian state in the West Bank and Gaza. Palestinians were led to believe that this would represent the homeland for the Palestinians, as Israel was for the Jews. Palestinians struggled to negotiate the refugee question: persuading Israel to accept even a symbolic return of some refugees and to recognize that a historical injustice had been done to the Palestinian people proved extremely challenging, largely because of the asymmetry of power between the negotiating parties. The Oslo Accords of 1993, 1994 and 1995, and the further administrative and political fragmentation of the Palestinian territory they initiated, enhanced the separation of Palestinians in the West Bank and Gaza, and of their interests, both from each other and from those of the diaspora. With respect to refugees, negotiations never went beyond compensation and 'normalization' of life and refugee camps in neighbouring countries, which is what both refugees and host countries had rejected as an imposition, since the early days of Palestinian's forced displacement.

As initial optimism generated by the Madrid Conference faded and disillusionment with the Oslo Accords set in, those refugees, who might have accepted some sacrifice of their right of return to modern-day Israel in exchange for their own state, came to realise the extent of the obstacles in the way of the creation of that state. Refugees resented the shift of international focus from the PLO, as the advocate of the 'Palestinian people' (including, and primarily, the refugees and those in the diaspora), to the Palestinian Authority (the PLO's self-rule authority in the oPt) and, later, the Government of Palestine (GOP). The latter have been increasingly perceived as focused on self-determination and their own power and functions in the occupied territory at the expense of the aspirations of the Palestinian people, including the refugees dispersed in the four corners of the world.

28 Between 1949 and 1950 Jordan had extended its parliamentary franchise and citizenship to the inhabitants of the West Bank (including the refugees) with the 'unification' of the banks of the River Jordan (i.e. it had annexed the West Bank).

Further formal and informal peace negotiations between Israelis and Palestinians, particularly Camp David (2000) and Taba (2001), were equally indecisive, though minimal concrete discussions on the refugee question were held. While unsuccessful, negotiations in Taba initially allowed, for the first time within the framework of the negotiations, discussions of the origins of the refugee problem, with a limited opening towards admission of responsibility for the plight of the refugees among some Israeli officials, with language acceptable to both parties. However, no agreement was reached, and Israel has since continued to refuse to admit any responsibility for the injustice caused to the Palestinians and the refugees in particular.

Since the 2000s, the rise of the right in Israel has changed the situation profoundly. With the increased divide between the peoples in Israel and the oPt in the aftermath of the second *intifada*, the subsequent encroachment of the occupation and settlement expansion on land due to become the Palestinian state, the growing influence of Israeli right-wing parties with an increasingly settler-dominated political agenda, and increased support for a consolidation of sovereignty over the West Bank, including East Jerusalem, the prospects for a solution of the refugee issue in a bilateral context have never been bleaker.²⁹

Meanwhile the international community has continued to sustain the notion of the two-state solution, financed the Palestinian Authority, and coped with the consequences of ongoing ‘conflict’ in the oPt. The World Bank estimates that donors, the great majority Western, spent over USD 37 billion in aid and assistance in the Gaza Strip and the West Bank from 1993 to 2017. This aid has had only a limited impact on improvements of the overall living conditions of the Palestinians and still less on progress towards the establishment of a fully independent Palestinian state. Conversely, such period has seen an increase in human rights violations and discriminatory measures against the Palestinians, continuing encroachment by Israel on the West Bank and East Jerusalem, including through construction of the Wall, a blockade that has further isolated Gaza, and the destruction by Israel of homes, other buildings, and vital infrastructure, some of whose restoration these donors have had to fund. A number of Israel’s violations of international law in the occupied Palestinian territory create obligations for redress on all states, but these remain unfulfilled.

In conclusion, while being recognized as an international and specifically a UN responsibility since the late 1940s, achieving a solution for the refugee question has been increasingly treated as a regional issue, and finally as a bilateral “permanent status issue” to be resolved between Israelis and Palestinians. At each stage of this evolution, the balance of power has shifted further in Israel’s favour. Meanwhile, in many respects, the international community has increasingly treated the Palestinian question as a humanitarian issue to be managed, rather than an injustice to be remedied through political means in accordance with legal principles.

²⁹ The most right-wing parties do not recognize the Palestinians as a people with a right to self-determination and a home in Palestine. Though they may be willing to abide by previous agreements (signed by the Labour government), their interpretation of these agreements differs substantially and they have, at various points, expressed an interest in renegotiating or abrogating components of existing agreements that move Palestinians towards achieving their national rights.

As Israel continues to expand into the occupied Palestinian territory and the United States seeks to impose Israel's terms on the Palestinians, a meaningful and balanced peace process is likely to remain stalled.

4. Rethinking solutions for Palestinian refugees

4.1. Components of any solution

Solutions have been found to other highly complex refugee problems. The international response has typically been multidimensional, addressing refugee status created as a result of displacement, its material consequences (damage or loss of property and loss of income), and the moral, psychological and immaterial loss and damage that may have marked it. While no experience has so far proven ideal or pain-free, the international community's efforts in addressing large refugee crises as part of political solutions reflects the centrality that refugees, and their rights, have in ensuring durable peace.³⁰

Ending refugee status, allowing the individual to rebuild his or her life in safety and dignity, is the goal of the international legal regime for refugees. This can be achieved through voluntary repatriation, once the conditions that caused the flight no longer exist, or assimilation in new communities, either through local integration in the country of first refuge or resettlement in a third country. However, while the right to return to one's country is internationally recognized under human rights law,³¹ there is no corresponding obligation on states to locally integrate or to resettle refugees.³² All the more: neither does local integration nor resettlement foreclose return to the country of origin. The three solutions are not mutually exclusive. Also, durable solution (i.e. cessation of refugee status) does not automatically resolve related issues, such as loss of property or other claims vis-à-vis the country of origin.

Restitution and compensation as remedies to redress wrongful acts are firmly established in international law.³³ They are generally considered within the broader frame of reparations, as a way to address the material consequences of international wrongdoing, but also including aspects that transcend physical loss and damage.

The importance of restoring accountability and redressing immaterial aspects connected with displacement, such as the splintering of one people's social fabric and collective identity, is increasingly acknowledged. Societies emerging from violent conflicts involving mass human rights abuses have explored measures commonly known as transitional justice, a response to

30 Numerous UNSC resolutions from the 1990s, have addressed the rights of the refugees massively displaced in the context of hostilities. (Primarily to 'safe return to their homes'), e.g. in Iraq, Afghanistan, Bosnia and Herzegovina, East Timor, Cyprus, Kosovo, and Central America, to name a few. Cf Long, K., *The point of no return: Refugees, rights, and repatriation*, Oxford: Oxford University Press (2013).

31 F. Albanese and L. Takkenberg, *Palestinian Refugees in International Law*, OUP, 2020, Ch. VI, Sect. 3.

32 International Covenant on Civil and Political Rights, 16 December 1966 (entry into force 23 March 1976), UNTS, vol. 999, 171, art. 12.

33 Cf UN Sub- Commission on the Promotion and Protection of Human Rights, Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms: final report submitted by Van Boven, T., Special Rapporteur, 2 July 1993, E/ CN.4/ Sub.2/ 1993/ 8.

large-scale or systematic violations of human rights that aims to recognize the harm done to victims and to prevent a recurrence. Where there are conflicting narratives, measures that establish and acknowledge the facts may help to advance a solution.

4.2. A much-needed paradigm shift

The impasse at solving the Palestinian refugee question, and the discourse around it, since the late 1940s, and especially since Madrid and Oslo, culminating in the Trump Administration's attempts at effectively obliterating Israel's responsibilities towards the refugee issue altogether, call for a fundamental paradigm shift in the approach to solutions for Palestinian refugees. This paradigm shift consists of three main elements:

- Firstly, the UN must reassume responsibility for the pursuit of solutions for Palestinian refugees, as it is ultimately mandated to do for other refugee crises, including large and protracted ones.
- Second, and as an extension of the previous element, like with all other refugee situations, international law must once again be the framework and 'lighthouse' for resolving the various unresolved aspects of the Palestinian refugee question: the issue of refugee status but also the moral, material, individual and collective aspects.
- The third element of the proposed paradigm shift is an extension of this and focuses on the Palestinian refugees themselves, as well as on Palestinian and Arab politicians. There has been a long-held belief that pursuing solutions for Palestinian refugees more holistically – not just return but also local integration and resettlement – would undermine their rights and claims towards Israel, and as such jeopardize the Palestinian cause. In other words, that Palestinian refugees who 'accept' local integration (in host countries) or resettlement (in third countries) would forego their right to return. Based on original research, the authors make it abundantly clear that this is not the case at all.³⁴ The remainder of this section elaborates on the elements of the proposed paradigm shift in greater detail.

The search for solutions for Palestinian refugees must be moved from the essentially bilateral approach of the last decades, namely the Oslo Accords parameters, back to the multilateral arena of the United Nations. The United Nations (namely UNRWA, along with UNHCR) should assume the role with respect to the Palestinian refugee question that the organization (i.e. UNHCR) plays for other refugees, taking the lead in the development of a long-term strategy towards a comprehensive solution in accordance with international law. This has a special meaning considering the role that the United Nations and its predecessor, the League of Nations, have played in the Question of Palestine as of 1922 (when the League sanctioned the British mandate of Palestine to realize Palestinians' self-determination), and the creation of the Palestinian refugee problem as a consequence of the partition of the territory of British Mandate

³⁴ Albanese & Takkenberg, 2020, Ch. 1, Sect. 3.

Palestine as of 1947 between an indigenous Arab majority and a Jewish minority made primarily of immigrants from Europe.³⁵ Since the de facto demise of UNCCP, that responsibility has been discharged through UNRWA, which however had interpreted its mandate as excluding the pursuit of solutions, as this had been the responsibility of UNCCP (see section 6.5, below). As such, since the mid-1960, the refugees under UNRWA's mandate have been the only category of forced displaced without an institution actively pursuing solutions to their unresolved situation.³⁶ UNRWA's mission has become increasingly unsustainable owing to the lack of political progress, amidst growing numbers of refugees, in a region ravaged by conflict and instability, with half of its beneficiaries are under Israeli occupation, those in Gaza under blockade; and being exposed to continuous political attacks against its mission by Israel and the US, among others.³⁷ This has distracted from the fact that the Palestinian refugee question is a political issue to be solved in line with international norms; something humanitarian assistance cannot replace.

A *super partes* role of the United Nations is a necessary if not sufficient condition for reducing the power imbalance between Israelis and Palestinians. Expecting the UN to play a greater role in support of the resolution of the Palestinian Question does not mean side-lining the political players. While respecting the political role and leadership of the latter, the current state of affairs is that of an impasse where Israel advances its political plan by force, the Palestinian leadership has limited power to resist, and Arab and others' support is hijacked by political considerations. Eventually who bears the brunt are the refugees and the Palestinian people at large, hence the United Nations should intervene to stimulate a healthier, principled dialogue and process, giving a leading role to the Palestinian leadership in concert with hosts (or other countries hosting large numbers of Palestinian refugees) and with the agreement of refugees themselves. This could give the United Nations – and UNRWA in particular – the leeway to move beyond the current stalemate.

In parallel with the above, the discourse on solutions must move beyond the current constraints of politics, and refocus on the rights of the Palestinian refugees that remain unfulfilled. The international legal framework provides for the restoration of both individual and collective rights and for solutions that are just and lasting. The relevance of such framework has often been subordinated to political considerations. An effective political process (and strategy) will have to bring international law back into the frame of reference to solve the Palestinian refugee question and include checks and balances so that it is not the politics which define the content of the law but existing law that shapes the contents of politics.³⁸

35 This is with reference to the role that the United Nations played in the Question of Palestine (Partition of Palestine as per UNGA Resolution 181 of November 1947) and the consequences of the disposition of Palestine's territory in igniting the hostilities (1947-49) that resulted in the displacement of most of the Arab inhabitants of Palestine.

36 Theoretically, the UN Special Coordinator for the Middle East Peace Process, established in 1994, can be argued to have inherited the UNCCP's mandate with respect to the Palestinian refugee issue, but in practice this has not materialized.

37 Albanese, F., 'UNRWA and Palestine refugees: New assaults, new challenges', *Current Issues In Depth*, Washington, D.C.: Institute for Palestine Studies, 2018.

38 Dajani, O.M., 'Shadow or shade: The roles of international law in Palestinian– Israeli peace talks', *Yale Journal of International Law* 32 (2007) 61.

Compared to other refugee situations, the Palestinian refugee question presents unique characteristics: the homeland that the refugees were forced to leave behind in 1948 and/or were never allowed to return to no longer exists as a political and administrative entity; the root causes of their displacement remain unaddressed; and displacement from and dispossession in the territory that Israel occupied in 1967 continues unabated. These elements are of fundamental importance to the Palestinian case. This uniqueness overshadows that in other respects the problems faced by Palestinian refugees may not be markedly different from those faced by other refugees worldwide, almost two-thirds of whom also find themselves in a protracted exile and often without respect of their basic rights on a daily basis (sometimes including their right to self-determination like the Sahrawi or the Tibetans). Overstating Palestinian ‘uniqueness’ carries the risk of making it plunge into exceptionalism, namely, to underplay, or steer inquiry away from, ways in which they are similar to other refugee situations, and implying that universal principles are inapplicable to them. Therefore, discussing protection and solutions for Palestinian refugees against a framework made of relevant UN resolutions, as well as general human rights law and refugee law and practice in particular, plays an important role in overcoming the impasse.

Another important shift is therefore necessary, away from what Nell Gabiam calls the “politics of suffering”, that is the belief that has been prevalent among many in the Arab world, including Arab states and refugees, that in order to assert and maintain their right to return, the refugees must continue to live in substandard conditions, without advancement of rights and a clear residential status in host countries, still less naturalization or resettlement.³⁹ The historic rights of Palestinian refugees (to self-determination and return, which includes restitution and compensation) are not conditioned by which durable solution may be preferred and/or attainable for individual refugees. Israeli archives and other sources confirm that the mass expulsion of much of Palestine’s Arab population as of early 1948, their subsequent mass denationalization, dispossession, and denial of refugee return, were sustained by Israel’s interest and design: that of realizing as much as possible a Jewish (only) state.⁴⁰ According to relevant norms of international (humanitarian) law in force *at the time* – which had just been reaffirmed by the International Military tribunals – these facts amount to crimes against humanity and war crimes, triggering not only individual criminal responsibility but also the duty upon Israel to provide remedies to the victims.⁴¹ Contrary to common Israeli belief, Arab states’ involvement in the 1948-1949 war – in response to and in defence of the mass exodus of the Arab population – does not exonerate Israel from this responsibility. These irrefutable facts and state of the law in 1948 explain the United Nation’s response to the refugee question.⁴²

39 Gabiam, N., *The politics of suffering: Syria’s Palestinian refugee camps*, Bloomington, IN: Indiana University Press, 2016.

40 Morris, B., *The birth of the Palestinian refugee problem, 1947-1949* Cambridge: Cambridge University Press (1987).

41 It was unequivocal that by 1948 (1) forced displacement and mass expulsions were unlawful and could constitute war crimes and crimes against humanity as per the Tokyo and Nuremberg War Crimes Charters and trials; (2) beyond individual criminal responsibility, internationally wrongful acts trigger the duty of the responsible state to make reparations, including, in the case of unlawful forced displacement and mass expulsions, in the form of return, restitution (of property still existing) and compensation (for property destroyed in the fighting), under an established principle of international law as confirmed in 1928 by the PICJ in the *Chorzow factory* case.

42 It was Count Bernadotte, the UN Mediator and former (deputy) president of the Swedish Red Cross – as such intimately familiar with the laws and customs of war – who first asserted that the refugees had the right to return, restitution and compensation. After his assassination by a Zionist extremist and following considerable

These rights and related claims have only become stronger with the passing of time and the further advancement of international law (see section 6.5, below). However, they have not been advanced by decades of suffering and their realisation should not be at the expense of other fundamental freedoms and rights. Nor should other rights be realised at the expense of the refugees historic rights.

The three aspects of the above paradigm shift, needed to re-centre discussions concerning solutions on the rights of Palestinian refugees, are interwoven and interdependent. Overcoming the “politics of suffering” in the way Palestinian refugee issues are approached is central to the discussion of an approach based on international law and sustained by renewed multilateralism.

These reflections are offered realizing full well that the current state of affairs holds little prospect for an early resolution of the Palestinian refugee question. However, the need for a shift of mind-set and approach does not need to await a more positive outlook of the underlying ‘conflict’. Rather it provides a new framework for analysis and advocacy that centres on the refugees instead of marginalizing them. While such a framework would not replace the parallel demand for the realization of self-determination or the political discourse about the Israeli-Palestinian conflict more generally, it would reframe it around legal principles and solutions that may at present be within reach. Doing so may even help break the broader political impasse, by means of centring the solution on the rights and role of the refugees.

5. The NYD and GCR: a new opportunity for Palestinian refugees

What could break the political impasse and provoke the above paradigm shift? The longevity, complexity and the apparent intractability of the Palestinian refugee question make no excuse for the lack of resolve with respect to addressing their protection situation and lack of discussion around solutions. The current reality demands it to be discussed more, not less. Instead, the discourse around Palestinian refugees continues to be dominated by its humanitarian dimension: the state of their human development and the institutional mandate to support this, namely how to make UNRWA survive another financial crisis. The discourse with respect to UNRWA’s mandate, operations and near continuous financial perils is totally devoid of any mention of solutions, in stark contrast with the discourse with respect to other refugee situations and UNHCR, where assistance, protection and the pursuit of solutions are pursued in conjunction. While continued humanitarian assistance is utterly necessary for the majority of Palestinian refugees in UNRWA’s area of operations, especially since the turn of the century and the socio-political and economic downward spiral that it meant to the whole region, humanitarian aid is not a substitute for political action.

Like any uprooted individuals, Palestinian refugees must be allowed to rebuild their lives in a sustainable manner, in safety and dignity, and have their fundamental rights respected. Comparative experiences from Asia (after the Indo-China war), Central America, Iraq, East Timor and various countries in Africa (from Angola to Mozambique) suggest that solutions to complex,

deliberation, the UN General Assembly in late 1948 adopted resolution 194 (III), which, affirming *and applying existing law at the time*, i.a. stipulated that the refugees were entitled to return to their original homes (i.e. restitution) or to resettlement elsewhere with respect to those not willing to return, as well as compensation.

protracted refugee problems, can be found through a combination of the application of legal principles and political negotiation. In resolving complex crises the international response is typically multidimensional, addressing: first, the refugee status created by the original displacement – through a combination of voluntary choices of voluntary repatriation, local integration or resettlement; second, the material consequences of the displacement (damage or loss of property or loss of income) – through restitution and/or compensation; and, third, the moral and psychological loss and damage that may have affected both individuals and the community as a whole – through various forms of reparations. This wealth of experience and related lessons learnt have gradually shaped the current approach to resolving large and complex refugee crises, as most recently articulated by the adoption of the NYD and the GCR.

5.1. NYD and GCR at a glance

In recent years, the debate around the need for more effective humanitarian management and political resolve with respect to large refugee and migrant influxes has led to reconsideration of both burden-sharing and concerted and principled political action around the sustainable resolution of these crises. Triggered by the European refugee crisis in 2015, an important initiative emerged aimed at reaffirming the international refugee regime. The initiative resulted in the 2016 New York Declaration for Refugees and Migrants (NYD), which was adopted unanimously by the 193 member states of the United Nations. This was followed by the adoption of the 2018 Global Compact on Refugees (GCR) that the NYD called for. Both the NYD and the GCR make reference to and annex a template for a Comprehensive Refugee Response Framework (CRRF). A CRRF is envisaged “for each situation involving large movements of refugees, including in protracted situations.”⁴³ The section of the CRRF headed “Durable solutions” begins: “We recognize that millions of refugees around the world at present have no access to timely and durable solutions”.⁴⁴ The Declaration invited UNHCR to prepare “a global compact on refugees, based on the comprehensive refugee response framework”.⁴⁵ The resulting Global Compact, of which the CRRF is an integral part, was adopted by the UN General Assembly plenary on 17 December 2018.⁴⁶ The NYD and the GCR reaffirm the central role of international law and the importance of a multi-stakeholder approach in resolving refugee problems while recommending more predictable and comprehensive responses to refugee crises. They also set up procedures to promote and strengthen international responsibility sharing.

The two documents represent an important high-level commitment to more predictable and comprehensive responses to refugee crises hinging on the central role of the rights of the refugees and responsibility – burden-sharing. Their cardinal principles for solutions for refugees include: the importance of preventing and resolving conflict and addressing the root causes that give rise to large refugee movements; the importance of respect for international law; and the need for a multi-stakeholder approach, involving national and international actors, governmental and non-governmental. Neither these nor the principles the documents set out are new; what is new is the emphasis on a holistic and comprehensive approach, and the fact both the NYD

43 NYD Annex I, para 4.

44 NYD, Annex I, para 9.

45 NYD para 19.

46 UN doc A/RES/73/151 (17 December 2018).

and GCR endorse action to “promote durable solutions, particularly in protracted refugee situations, with a focus on sustainable and timely return in safety and dignity.”⁴⁷

Rather than a one size fits all, the CRRF ‘template’ appended to the NYD and GCR incorporates a set of principles upon which CRRFs for specific refugee situations can be drafted. So far, more than a dozen CRRFs (or elements thereof) have been developed in various regions of the world.⁴⁸ The experience so far suggests that each CRRF reflects the specificities of the refugee situation it addresses. The CRRF’s nature is twofold: it is a legal document, to the extent it refers to legal commitments and obligations of various stakeholders, but it is also political as it helps form, structure and advance the political will needed to get out of a political impasse. This is critical as ultimately it will be the various political actors and stakeholders who will work to define the content of the CRRF. Proper information about the CRRF, the opportunities it offers and the risks it may carry is indispensable, especially among refugees and host states.

5.2. Relevance for Palestinian refugees

Are these instruments and developments of relevance for Palestinian refugees? To start with, nothing in the text of either the NYD or the GCR excludes Palestinian refugees from their ambit. In fact, the texts make clear that they are applicable to all refugees. Moreover, the NYD contains two references to UNRWA, and thereby refers indirectly to Palestinian refugees: the first in the context of overcoming funding shortfalls for refugees, and the second (in the CRRF) in the context of durable solutions. In addition, the GCR refers to UNRWA as a stakeholder in the context of education for refugees.⁴⁹

Because the NYD and GCR apply to Palestinian refugees, they provide a UN-sanctioned – with the broadest possible endorsement by the international community⁵⁰ – opportunity for the elaboration of such a response for Palestinian refugees. As already noted, the CRRF template, adopted by all UN member states, is an integral part of both the NYD and the GCR. As such it directs the development of a comprehensive response framework for Palestinian refugees (CRF-PR) within the overall framework already endorsed unanimously by all 193 UN member states.

One immediate reason for a positive response to the question at the beginning of this section is that it would counter the prevailing approach, Oslo being the most emblematic, whereby a resolution of the refugee situation depends exclusively on political negotiations between the Israelis and Palestinians as per the parameters of the MEPP. Given that the refugee question involves more stakeholders than Israelis and Palestinians, the 20-year hiatus in formal negotiations, lack of progress resulting from various ‘second-track’ initiatives that have been advanced by

⁴⁷ NYD, para 75. See also GC, para 85.

⁴⁸ <https://www.unhcr.org/comprehensive-refugee-response-framework-crrf.html>

⁴⁹ Worthy of note is also that the consultations leading to the adoption of the NYD were led by Karen AbuZayd, former Commissioner-General of UNRWA, on behest of the High Commissioner for Refugees, Filippo Grandi, who prior to taking up his current position, was Ms. AbuZayd’s successor as Commissioner-General of UNRWA.

⁵⁰ Two countries, the USA and Hungary, voted against the GC when it was adopted on 13 November 2018, but the reasons they gave for their vote are not relevant to the new approach.

non-governmental stakeholders in the region and globally, and the continuing vacuum of accountability of Israel, whose security plans and concerns as well as territorial ambitions over the territory slated to become the Palestinian state remain unchallenged, it is time for the UN to regain the initiative and consider anew how to achieve and enforce a solution to the refugee question.

Development of a CRF-PR has the potential to do exactly that and return the refugee question into the realm of the UN, primarily by bringing the refugees, and their agency to the fore. Given the CRRF's emphasis on process and multi-stakeholder approach in particular to resolve refugee situations, it would initiate a fresh and less polarized exploration of solutions, including measures to support "mobilization of political will, a broadened base of support, and arrangements that facilitate more equitable, sustained and predictable contributions among States and other relevant stakeholders".⁵¹ It would not underplay or eliminate the focus on the territorial dispute and the need to resolve that and the fundamental right to self-determination of the Palestinian people, but turn the pyramid, shifting the primary focus from it (and its lack of resolve), to the people at the heart of the conflict and their unmet rights.

Like any approaches, the one proposed in this paper does not come without risks and limitations. Both opportunities and challenges are explored below.

Of direct relevance for Palestinian refugees is the provision in the NYD that solutions (i.e. voluntary repatriation) "should not necessarily be conditioned on the accomplishment of political solutions in the country of origin".⁵² This does not mean that whatever happens in Israel and what Israel does is not relevant; however, the process can be started without Israel's initial involvement, in the hope that the changed dynamics will eventually prompt it to come along.

As previously indicated, each CRRF reflects the context and the specificities of the problem it addresses. It is meant to provide a framework, including a set of principles, upon which agreements can be drafted. The framework builds upon and refers to other legal instruments. Negotiations by the concerned stakeholders will determine the appropriate content for each refugee situation it aims to solve. This ipso facto applies to the Palestinian refugee question. This is to be very well understood, as insufficient preparatory work, including awareness among relevant parties, and proper discussion, including full consideration of opportunities, costs and risks, may carry risks. That is why significant preparatory (legal) work and advocacy, among Palestinians and host states in particular, is critical. There should be a proper understanding of what both the NYD and the GCR may entail for Palestinian refugees and what the development of a CRF-PR can (and cannot) deliver, depending on the political forces it encounters. It should be emphasized that the *development* of the CRF-PR – the consultations, research, and actions the process entails – is at least as important as the *content* of the final CRF-PR that is eventually adopted, and the former will to a great extent determine the latter. Similar to the development of the GCR, it is suggested that the development of a CRF-PR follow a reiterative process, with a number of drafts circulated for comment, discussed through multiple rounds of consultations with all relevant political and other stakeholders including, importantly, the refugees themselves (see section 6.5, below).

⁵¹ Global Compact, para 7.

⁵² NYD, para 75.

6. What a Comprehensive Framework for Palestinian refugees may look like

The idea of a comprehensive framework for Palestinian refugees is not entirely new. Ideas of a comprehensive plan of action (CPA) for Palestinian refugees, to be modelled on the CPAs that were employed to resolve refugee crises in various areas of the world as of the 1970s, combining “*some* voluntary return, *a good deal* of integration in current places of asylum, and *perhaps* a significant degree of resettlement in third countries”,⁵³ the latter facilitated by UNHCR and IOM, have been advanced in the past. However, in the context of the MEPP, the Palestinian refugee question has always been a ‘deal-blocker’, which therefore had to be compromised.⁵⁴ These earlier proposals focused on what was considered ‘feasible’ within the political space, with the result that key principles – the rights to return and restitution as enshrined in international law, as affirmed by the many UN resolutions on the question of the Palestinian refugees – were neither discussed nor reflected in the outcomes. In practice: rights were effectively denied because their realization was deemed unfeasible. The proposed discourse towards a CRF-PR would rearrange the elements at stake and any proposal for a new approach would have to bridge the gap between the principled and the practical. This is exactly the approach advanced by the NYD and the GCR.

This section highlights some of the indispensable elements of a CRF-PR, including a number of elements addressing the specificities of the Palestinian refugee situation. These includes the reaffirmation of the rights of Palestinian refugees under applicable provisions of international law, this will function as the ‘principled lighthouse’ of the framework, articulating not only the applicable norms (i.e. right of return, and what it means after more than seven decades after the original displacement, right to self-determination, but also civic, cultural, economic, political and social rights Palestinian refugees have and rights to be protected in situations of armed conflict and occupation), but also their implications (i.e. what each right means for refugees, numerous decades after their original displacement). A CRF-PR should furthermore address the root causes of the refugees’ displacement (historical injustice) and their collective rights (self-determination), as well as the lack of durable solutions (choice to return, integrate or resettle elsewhere), the legal, material, and moral implications (issues of status and reparation) and the treatment they should enjoy as refugees in a protracted refugee situation (fundamental rights and protection). The remainder of this section discusses some of these key elements of a possible CRF-PR.

6.1. Legal framework

The question of the rights of the Palestinian refugees is often contested and made subordinate to political considerations. To remedy this, the CRF-PR should first and foremost reaffirm the relevant legal framework, comprised of applicable norms of international law, as affirmed in relevant UN resolutions (e.g. UNGA res 194 of 1948). A reaffirmation of the various rights

53 Helton, A.C., ‘End of exile: Practical solutions to the Palestinian refugee question. Israel and the Palestinian Refugees’, *Fordham International Law Journal*, 28.5 (2004), 1332.

54 *Ibid.*, 1327.

Palestinian refugees enjoy under international law would help bring clarity of the status applicable, collectively and individually to Palestinian refugees, as refugees, often stateless persons, at times internally displaced, and protected in situations of armed conflict and occupation, and as human beings. The meaning and implications of the historic rights and treaty-based human rights, as well as the rights they have as refugees (i.e. to international protection including durable solutions) would be set out comprehensively. This will help counter the denial of the legal foundation of Palestinian refugees' historic rights, including the most controversial one: the right to return.

As discussed earlier, the rights to return and to restitution and compensation flow from the historic injustices accompanying the birth of the refugee issue; these have only become stronger with the passing of time and the further advancement of international law.⁵⁵ General Assembly resolution 194 *affirmed* the rights of return, restitution and compensation which formed part of positive international law in 1948. International experience shows that there are a variety of practical ways to satisfy the right of return, without infringing others' rights (such as the rights of 'secondary occupants'), and the CRF-PR should offer a comprehensive recollection of what is applicable to Palestinian refugees.

The CRF-PR should also spell out which rights Palestinian refugees have acquired over time, especially those that have been denied often for political reasons. A prime example applicable to a large number of Palestinian refugees is the impossibility for them to apply for citizenship in many of the places where they reside in the Middle East. Arab states have prevented, by law and policy, Palestinian refugees from acquiring citizenship in the name of the preservation of their right to return.⁵⁶ The CRF-PR will help 'actualize' the meaning of each right in the context of the Palestinians as a people as well as where Palestinian refugees live. This will have an impact both on their daily protection and quest for durable solutions.

6.2 Addressing root causes

The NYD and the GCR underscore the importance of addressing the 'root causes' of large movements of refugees through multiple efforts including 'peaceful resolution of conflict', 'the promotion of the rule of law at the national and international levels and the protection of human rights.'⁵⁷ The development of the CRF-PR could provide a setting to initiate a public discussion on the root causes of the Palestinian refugee question: the still to be addressed original forced displacement and dispossession. This would include both its origins, constituting elements and evolution (the past), as well as the broader context of the unresolved dispute between Israel and the Palestinians (the present). Both discussions are of primary importance in a context in which principled solutions on highly sensitive topics must be found, and at a moment where the very facts that are the origin of Palestinian refugees' displacement are questioned. The politicization

55 International Human Rights Law affords protection of the right to freely leave and return to one's country, cf art 13 of the Universal Declaration of Human Rights, and article 12 of the International Convention on Civil and Political Rights. Particularly relevant is the Human Rights Committee's General Comment n 27 on Freedom of Movement (1999).

56 The plight of statelessness is particularly serious for Palestinians displaced from the Palestinian territory (primarily Gaza) in 1967: most of them went to Jordan which never allowed them to acquire citizenship, unlike those displaced in 1947/1948.

57 NYD, Annex 1, para 11.

and polarization of the ‘historic narratives’ around the Palestinian displacement and dispossession in both 1947-1949 and 1967, have obscured the origins of the Palestinian displacement in the public discourse, affected the parties’ ability to compromise, and influenced how the issue is perceived internationally.⁵⁸ That is why ‘dealing with the past’ is a priority and should be an essential component of the framework. The issue has interconnected legal, moral and political components.

The past

Dealing with the past is normally a post-conflict measure to rebuild societal trust and promote reconciliation. For the Palestinians, the root causes of their displacement and plight have a daily impact on their life as individuals and as a polity. An official establishment of the historical facts that are at the origins of their displacement and loss of homeland is needed now, as a necessary pre-condition for advancing solutions.⁵⁹

The CRF-PR should provide for the establishment of an objective historical perspective of the origins of Palestinian displacement and their appraisal under international law. This should include an objective historical account of the origins of Palestinian displacement, including its constituent elements, causes and evolution, through the voice of those affected (victims) and beyond (perpetrators). This would help the Palestinians express with their own voice the frustration of the long-experienced denial of their existence as a people, and the tragedy that had befallen them, but also what they have achieved as a people, through resistance and resilience. Setting out the historical facts may also help address and correct misperceptions around Palestinian refugees, including within Arab countries. It would also help Israelis move forward, as the culture of denial of the past affects them in a different way. This account should also clarify the facts of related displacements of Jewish and other refugees within the region (too often (mis)used by Israel as a counterclaim to the question of the Palestinian refugees).

The present and the meaning of self-determination

For a CRF-PR to succeed, it will have to be coupled with and address the issue of self-determination alongside or parallel with the refugee issue, even if the two are pursued separately. The two issues are fundamentally interlinked, and it is difficult to see how one can be addressed in the absence of the other without great detriment to Palestinians as a people and as refugees. The most effective way to realize Palestinian self-determination is to end Israel’s occupation in the territory slated to become the Palestinian state. As experience demonstrates, Palestinians may be ready to accept a compromise, but not if that perpetuates the denial of their rights and various forms of related injustice. This also applies to those Arab countries, who have, to different extents, provided support to the refugees. This underlines the importance of a rights-based ap

58 In 2018, the debate around Palestinian refugees prompted by the US Administration’s decision to defund UNRWA, among others, demonstrated a limited appreciation of the historical context in which the Palestinian refugee question originated, which is necessary to appreciate Palestinian claims. Cf. Albanese, F., *Current Issues in Depth: UNRWA and Palestine refugee rights: New assaults, new challenges*, Washington, DC: Institute for Palestine Studies, 2018, 6.

59 NYD, para 64 contains a commitment to “address the root causes of such crisis situations and to prevent or resolve conflict by peaceful means” and to “work in every way possible for the peaceful settlement of disputes, the prevention of conflict and the achievement of the long-term political solutions required”.

proach to the way the framework is conceived and implemented. The continuing fragmentation of the occupied Palestinian territory and marginalization of the Palestinians, particularly its youth, and the hope and promise it holds, are obstacles to both working towards an overall political solution and the realization of just and durable solutions for the refugees. From the perspective of the refugees, the denial of self-determination is a barrier to durable solutions for those (e.g. the ‘1967 displaced’) who might wish to settle in a Palestinian state in the West Bank, East Jerusalem, Gaza Strip, once it is established. For those, bringing an end to protracted military occupation is only going to be a step toward unblocking durable solutions. However, while an independent, fully sovereign, and viable Palestinian state may provide (many of) the refugees with a new ‘homeland’, its creation would not by itself realize all the rights of the refugees who were displaced as of 1947, such as their rights to return, restitution, and compensation.

6.3 Durable solutions

Addressing the Palestinian refugee question within the framework of international law means aligning the search for solutions with international refugee law and practice. A combination of the durable solutions has helped resolve other protracted refugee situations and could help do so for Palestinian refugees. As discussed earlier, there has been a long-held belief that pursuing solutions for Palestinian refugees more holistically would undermine their rights and claims towards Israel, and as such jeopardize the Palestinian cause, which is not the case at all. Accordingly, Palestinian refugees and their political advocates should not fear pursuing solutions more closely aligned with the global international refugee regime, as many individual Palestinian refugees have done over the years and others demand. This would in fact be a way to empower the refugees, improve their life and enable them to impact/influence their political future.

The country that the Palestinian refugees were forced to leave behind in 1948 no longer exists as a political and administrative entity; the root causes of their exile remain unaddressed; and Palestinian displacement and dispossession in the territory that Israel occupied in 1967 continues. These elements are of such fundamental importance that it is not always appreciated that in other respects the problems faced by Palestinian refugees have not been markedly different from those faced by other refugees, over three-quarters of whom also find themselves in a protracted exile and often without respect of their basic rights. One critical difference is the extent to which solutions acceptable to one party are perceived as existential threats by the other party.

Both the NYD and the GC set out measures to support repatriation, local integration and resettlement.

Return

Both the NYD and GC endorse action to “promote durable solutions, particularly in protracted refugee situations, with a focus on sustainable and timely return in safety and dignity.”⁶⁰ The CRRF “reaffirm[s] the primary goal of bringing about conditions that would help refugees to return in safety and dignity”.⁶¹ The focus on this must find reflection in the CRF-PR. The right

⁶⁰ NYD, para 75. See also GC, para 85.

⁶¹ NYD, Annex 1, para 11.

of return to modern-day Israel is grounded in international law as it stood prior to 1948, and as it has consolidated over time.⁶² In addition to being a legal right of the refugees, it is also the cornerstone of the history, collective memory and identity for all Palestinians. Israel is adamant that it bears no responsibility for what happened to the Palestinians in 1948, that their flight was an outcome of war, and that no right of return to modern-day Israel exists for Palestinian refugees. Israel fears that such return would bring about the demise of Israel as a 'Jewish' state, and that a solution for the refugees' plight must therefore be found elsewhere.⁶³ Concomitantly, by its actions in the occupied Palestinian territory, Israel has also prevented Palestinians from realizing their right to self-determination through a state of their own, and thereby prevented the solutions that would allow. The return of the refugees to their homes in Israel would not have been then, and need not be today, at the expense of the fundamental rights of Israel's inhabitants.⁶⁴ At the same time, the claim that return should not be possible cannot be maintained on the ground of protecting a demographic majority, which runs against the cardinal human rights principle of non-discrimination.

The fact that there are practical and political obstacles to allowing Palestinians to return to Israel (even though their return would not be at the expense of Israeli nationals and their safety) does not undermine the importance of this right and the need to find ways to realize it. As highly unlikely it is that Israel will ever be favourable to allow Palestinian refugees to return to Israel *en masse*, it is similarly unlikely that all Palestinian refugees would want to pursue such a solution. What is of critical importance is that the opportunity of return is not taken off the table from the outset, and that ways for it to be realized be explored. This is all the more important as with the creeping annexation of further parts of the West Bank and East Jerusalem, the two-state-solution seems as out of reach as ever, obliterating the opportunity for the Palestinian refugees willing to 'return' to a Palestinian state, to do so.

As a number of surveys have revealed, not all refugees want to return to modern-day Israel. Many have rebuilt their life in host countries or other places, while maintaining a deep attachment to the concepts of 'homeland' and 'return'. Including for new generations of refugees, the right of return is an essential part of their identity, and it means first and foremost ensuring Israel's accountability for the lack of realization of such right (and other injustices inflicted upon the Palestinian people), as well as the right to choose where to go and to live in dignity today. While they demand 'return to Palestine', the notion of Palestine is used to refer to either the future Palestinian state in the West Bank and Gaza, or pre-1948 Palestine. While the decision to

62 The legal foundation in international law of the (1948) Palestinian refugees' right of return to their homes in modern day Israel stems from (1) The 1907 Hague Convention and Regulations, which constitutes customary international law as of 1937 and based on which forced displacement and mass expulsions were found to constitute war crimes and crimes against humanity (as per the Tokyo and Nuremberg War Crimes Charters and trials); (2) the state obligation to make reparation for internationally wrongful acts in the form of restitution (of property still existing) and compensation (for property destroyed in the fighting), as confirmed in the PCIJ's Chorzow factory case (1928). This is the legal framework that UNGA resolution 194 of 1948 affirmed in paragraph 11, as per the drafting history of resolution 194.

63 It is relevant that also Israel's treatment of its non-Jewish citizens has been found discriminatory and in breach of international law. Cf B'Tselem's position paper "A regime of Jewish supremacy from the Jordan River to the Mediterranean Sea: This is apartheid" (January 2021); Human Rights Watch Report 'A Threshold has been crossed: Israeli Authorities and the Crimes of Apartheid and Persecution' (April 2021).

64 Res. 194 affirmed the right of return for those "wishing to return to their homes and live at peace with their neighbours".

confer Israeli citizenship depends upon Israel's sovereign decision, Israel should return all possessions that belonged to the refugees to their original owners, even if the refugees do not or cannot physically return. One important aspect of this debate is that it cannot continue to take place in two silos, between lawyers, affirming or denying the existence of this right, and politicians, discarding such right because of its impracticalities. First and foremost, the refugees themselves should be involved and be given a chance to express their views.

Local integration & resettlement

Palestinian refugees in host countries may have acquired a right of continued residency deriving from factors such as their status (especially in Jordan), exceptionally lengthy stay, de facto integration, marriage, and business activity. Many of those of the third and fourth generation, while continuing to see return to Palestine as part of their national identity (and struggle for holding Israel to account), have established close family, social, cultural and economic links with their countries of refuge. Many have attained, or have the capacity to attain, a considerable degree of socio-economic integration. If these refugees express a wish to remain in their host country, they should be supported to give that legal effect. Resolution 194 also acknowledges the rights of "those not wishing to return", and this should be explored. The Resolution refers to "resettlement" which in the Palestinian context includes support to pursue local integration (which was also one of the underlying premises of UNRWA's establishment). This would resolve the precarity of further displacement which, tragically, has been a dominant feature in the life of many Palestinian refugees, whatever their socio-economic status.

Unlike voluntary repatriation, which is based on a legal obligation under international human rights law for the state of origin to allow return of those unlawfully displaced (and of their descendants), the decision to grant asylum and thereby locally integrate refugees or accept them for resettlement in third countries is a matter for individual states' sovereign decision. However, all states have an obligation to confer nationality on children under their jurisdiction who would otherwise be stateless, as is the case for many Palestinian exiles.⁶⁵ Measures to address the enduring statelessness of many Palestinians should be an important component of the CRF-PR, as this is a significant element of Palestinian continuous displacement.⁶⁶

The authors argue that permanent settlement, including naturalization, does not jeopardize the refugees' right of return either as entitlement to restitution of the possessions the refugees left behind in 1948 and subsequent displacements, or as compensation and the right 'to enter and return' to anyone's own country. This is confirmed by authoritative interpretation of the Human Rights Committee, the monitoring body of the ICCPR, in its commentary on article 12. To reassure the refugees in this respect, the CRF-PR should provide for the preservation and consolidation of documentary evidence of their historic claims in a secure UN-administered central record (see next Section). This is important to prevent the political dangers that would potentially arise, especially in the current context where 'UNRWA critics' continue to argue that those with citizenship are not refugees, do not have a right to return and should not be assisted by an international organization. The risk to 'liquidate' the refugee issue by resolving the status of the refugees should be firmly averted by spelling out clearly the provisions for the acquisition of citizenship under the CRF-PR.

⁶⁵ The most important source is the Convention on the Rights of the Child, art 7.

⁶⁶ The NYD recognizes that "statelessness can be a root cause of forced displacement and that forced displacement, in turn, can lead to statelessness." NYD, para 72.

The fact that citizenship has been the subject of historical ‘baggage’ – in having been proposed over and again as a way to ‘liquidate’ the refugee issue – should be debunked. While citizenship may not be a necessary protection tool for Palestinian refugees who have been displaced temporarily by conflict (e.g. Iraq and Syria), it would certainly make a difference for those in countries where they are forced to flee after decades of regular residence (as it is the case in Arab countries like in the Arab Peninsula).

The GCR recognises that “some host countries may elect to provide other local solutions to refugees. Such solutions may entail interim legal stay, including to facilitate the appropriate economic, social and cultural inclusion of refugees, and are provided without prejudice to eventual durable solutions that may become available.”⁶⁷

The CRF-PR should give each refugee confidence to pursue whatever solution suits their current circumstances. 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.”⁶⁸ 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 available.

In order to make this a plausible argument situated in a context in which good faith has been completely lacking’, the political discourse around the Palestinian refugee issue is to be reinvigorated by positive discussions, alternative to the stagnation that has dominated the last two decades.

6.4. Restitution and compensation

The CRF-PR will have to address the important issue of restitution and compensation, on which there has been no progress in practice. According to a 2008 study, loss of privately owned rural and urban land, holy places, employment and livelihoods, personal property, and moveable assets, as well as businesses and the Arab share of state- owned land, would give rise to compensation owed to Palestinians of USD 3.3 billion in 1948, corresponding to USD 330 billion in 2019.⁶⁹ Yet, Palestinians have always rejected blanket compensation, and claim their right to return as well as restitution of such properties left behind that remain.

⁶⁷ GC, para 100.

⁶⁸ UNHCR, ‘The State of the World Refugees’, see ch. 5 on ‘Protracted refugee situations: The search for practical solutions’, 117.

⁶⁹ This figure is obtained by applying the average US annual compound interest to the estimate of USD 310 billion in 2008 provided by Senechal, T. J., ‘Valuation of Palestinian refugee losses’, PLO Negotiations Support Unit (NSU), 18 June 2008, 17– 40, <http://www.ajtransparency.com/files/2767.pdf>. See also Senechal, T. J., Hillal L., The value of 1948 Palestinian refugee material damages: An estimate based on international standards, in Bryen , R., El- Rifai , R., (ed.), *Compensation to Palestinian Refugees and the Search for Palestinian - Israeli Peace*, London : Pluto Press (2013).

Measures to enable the restitution of property are identified in the NYD as one of the conditions that would help refugees return in safety and dignity,⁷⁰ but these measures are not conditional on physical return. So far technical work has been conditional upon the realization of the right to self-determination and Palestinian statehood; while this remains poignant the question of restitution and compensation should not be held hostage of the ongoing lack of realization of full Palestinian sovereignty.

The work of the UNCCP (1950s-1964) and discussions on restitution and compensation in the context of the MEPP have highlighted the challenges of identifying and evaluating Palestinian property that has been transformed, absorbed into Israel's economy, and classified and reclassified under a variety of Israeli laws.⁷¹ The situation is complicated by the rights that secondary occupants can claim, while taking into account the principle that *ex iniuria ius non oritur*, according to which one cannot claim rights on the ground of an unlawful act.

The lesson of the important precedent of compensation for Jewish victims of atrocities in Europe before and during the Second World War is that the passage of time and legal and political barriers, while significant constraints, have not been insurmountable obstacles. They need not be so in the Palestinian case, and the practical challenges should not prevent further exploration of what principled solutions may be feasible. The extent of the material depredation suffered by the refugees and other Palestinians is such that progress on this will be important for the economic viability of a Palestinian state. A key takeaway of Jewish restitution claims, besides the technicalities, is that a favourable political environment and balance of power is needed to advance the underpinning rights.

While substantive progress on individual return and compensation will depend on the degree of Israel's participation in the CRF-PR, and on wider political progress, the framework should determine the legal ramifications and charter a possible way forward. Linking the UNCCP records, which contain the most accurate data available on former properties, with those of UNRWA and with other records, combined with access to Israeli and other historical archives, would advance the prospect of restitution when possible and compensation where it is not. The CRF-PR should provide for the preservation and consolidation of documentary evidence of the refugees' historic claims in a secure UN-administered central record. This would not only prepare the ground for future reparations; if Palestinian refugees and their (political) representatives feel sufficiently reassured that their rights are in 'safe' UN hands, the political symbolism in maintaining the status quo with respect to UNRWA service provision would gradually diminish, paving the way for a reconsideration of the agency's *modus operandi*.

6.5 Development of the framework: a multi-stakeholder approach

Who needs to be involved in developing a CRF-PR? Both the NYD and GC emphasize the importance of a multi-stakeholder approach in responding to large refugee situations, involving

⁷⁰ NYD, Annex I, para 11 (e).

⁷¹ Property restitution is also referred to in para 11 of the CRRF as part of the measures to address the root causes of displacement and allow voluntary return in safety and dignity.

national and international actors, governmental and non-governmental.⁷² In the Palestinian case, this would require the mobilization of a wide and diverse front of supporters of the framework, including the UN, host countries (both in UNRWA's area of operations and other countries that host significant numbers of Palestinian refugees), donors, and civil society. The Palestinian political leadership and the refugees must have a central and leading role in this process. The commitment of all these stakeholders to the framework is essential for its success. Effort must be made to involve Israel and Israeli civil society in the elaboration of the CRF-PR.

The process should entail consultation at the national, regional and international levels, structured engagement with refugees, and exploring the feasibility of various solutions and other measures. Section 2 of the GCR sets out "Arrangements to support a comprehensive response to a specific refugee situation". These cover the national level, the possible activation of a 'Support Platform', which "would enable context-specific support for refugees and concerned host countries and communities", and regional and sub-regional approaches and mechanisms, which may "play an important role in comprehensive responses."⁷³ Past comprehensive responses have also demonstrated the value of regional cooperation in addressing refugee situations in a manner which encompasses the political dimensions of causes."⁷⁴

Role of the UN

The NYD provides that "The comprehensive refugee response framework will be developed and initiated by [UNHCR], in close coordination with relevant States, including host countries, and involving other relevant United Nations entities, for each situation involving large movements of refugees."⁷⁵ UNHCR has already gained significant experience with the development and roll-out of CRRFs, which began before the adoption of the GCR.

In the case of Palestinian refugees, given the respective responsibilities of UNRWA and UNHCR under their complementary mandates – responsible for Palestinian refugees inside and outside of UNRWA's area of operations respectively⁷⁶ – it would be logical for both agencies to agree on a common strategy for creating a single CRF-PR.⁷⁷ Cooperation between UNRWA and UNHCR has strengthened considerably in recent years and the added value of this partnership would be significant. Based on an overarching strategy, each agency would develop and implement the part of the CRF-PR 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, coordinate their actions, and support implementation.

72 NYD, para. 69, makes reference specifically to 'national and local authorities, international organizations, international financial institutions, civil society partners (including faith-based organizations, diaspora organizations and academia), the private sector, the media and refugees themselves'. CRRF, para 2, GC, para 33-44.

73 Cf. D. Lilly, *Palestinian refugee and the Global Compact on Refugees*, RSC Working Paper, 2021, 21.

74 Global Compact paras 23 and 28.

75 NYD Annex, I para 2.

76 See *UNHCR Guidelines on International Protection No. 13* (20 December 2017), which cover the applicability of Article 1D to Palestinian refugees.

77 The NYD makes reference to UNRWA in para 86 and Annex I, para 13.

By embarking on the development of a CRF-PR, possibly triggered through member states' encouragement, primarily representatives of the State of Palestine, UNRWA would be operating under the general mandate that the United Nations has conferred on it to assist and protect Palestinian refugees. This mandate cannot be read as stemming only from the founding resolution of UNRWA, as the agency has assumed other, broader functions over time (as we argue elsewhere, time is ripe for UNRWA to develop a Note on its Mandate, as UNHCR has done in 2013: this would clarify what UNRWA can and cannot do in support of Palestinian refugees). In particular, it is often argued, including by the agency itself, that it does not have the mandate to pursue durable solutions, as this was uniquely given to the UNCCP; that other actors are responsible for this, and that its role is purely apolitical.⁷⁸ In fact, so far, little academic consideration has been given to UNRWA's durable solutions mandate.⁷⁹

While other actors, the PLO first and foremost, are important players, Palestinian refugees need and deserve, as other refugees, an independent international entity engaged not only in supporting their human development but, importantly, equally in upholding their inalienable rights, including to return, restitution and compensation, as well as facilitating such other durable solutions the refugees may want to pursue. This is all the more justified by the fact that the UNCCP, i.e. the other part of the international regime set up for Palestine refugees in 1948 (notably mandated to find a political solution to the Question of Palestine, including the refugee issue), has *de facto* ceased operations in 1964, with the mandate formally continuing to exist to the present moment. The NYD provides for a further argument for UNRWA to reinterpret its mandate to incorporate the pursuit of durable solutions; by doing so, the authors believe that the agency would not exceed its mandate, but this would rather be an extension of its role in protecting the rights of Palestinian refugees. The General Assembly, on the occasion of the discussion of UNRWA's annual reports, would take note of this development, offering as an endorsement thereof. Pursuing this direction is all the more pertinent in light of the near permanent financial crisis faced by the agency, which calls for a new direction.

78 This important limitation of UNRWA's mandate is discussed by BADIL, *Closing protection gaps: Handbook on protection of Palestinian refugees in states signatories to the 1951 Refugee Convention*, 3rd edn., 2015; Akram, S., 'UNRWA and Palestinian refugees' in Fiddian-Qasbiyeh, E., Gil Loescher, Katy Long, and Nando Sigona, eds. *The Oxford handbook of refugee and forced migration studies*, . OUP, Oxford, (2014); Morris, N. (2009). Towards a protection strategy for UNRWA, *Refugee Survey Quarterly*, 28(2-3), (2009) 550-560. Others propose to overcome this interpretation by virtue of the evolutionary nature of UNRWA's mandate who expands in response to refugees' needs. Custer, Jr., S., United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA): Protection and assistance to Palestine refugees, in Akram, S., Dumper, M., Lynk, M., Scobble, I. (eds.), *International law and the Israeli-Palestinian conflict*, London : Routledge, 2011, 45– 68, 51. The argument that UNHCR should take over this (and much of UNRWA's) function is made by Lindsay J. G., *Fixing UNRWA: Repairing the UN's troubled system of aid to Palestinian refugees*, Washington, DC: Washington Institute for Near East Policy (2009). Contra Goddard, B., 'UNHCR and the international protection of Palestinian refugees', *Refugee Survey Quarterly* 28 (2009) 508.

79 Some scholars argue that rather than, given its role and unique stand both in the international community and vis-à-vis refugees, UNRWA could play an important role in the context of durable solutions. The authors do not envisage UNRWA playing a proactive role though. Hilal, L., 'Peace Prospects and Implications for UNRWA's Future: An International Law Perspective', *Refugee Survey Quarterly*, 28(2-3) (2009), 607-622; Takkenberg, L., 'The search for durable solutions for Palestinian refugees: A role for UNRWA?', *In Israel and the Palestinian refugees* (pp. 373-386). Springer, Berlin, Heidelberg (2007).

A greater involvement of the UN will be critical to the development of a CRF-PR – and the pursuit of durable solutions as part thereof – operating under the auspices of multilateralism as a guarantor of an even-handed process. This does not mean that the process should be top-down; this would not be the right way to proceed and would not succeed politically. Also, while designing the role of the UN in the process, addressing existing shortcomings in both UNHCR and UNRWA to ensure more effective refugee participation are critical so that risks associated with the embarking on a participatory process of this scale and importance should be recognized and addressed upfront.

The process needs to commence with a comprehensive mapping of the various stakeholders and their interests and constraints as well as an analysis of their respective power and influence. In view of the fact that an existing UN General Assembly mandate exists, initiating the development of a CRF-PR could start through informal consultations between UNRWA, UNHCR, UN Secretary-General and the Palestinian Representative at the UN. As the process moves forward, obstacles will undoubtedly arise, including push back from certain member states and/or other stakeholders. And yet, the CRF-PR is not a peace treaty but rather a road map towards making practical progress towards gradually untangling and resolving aspects of the Palestinian refugee question. As such it should be possible to make incremental progress even if not all stakeholders are on board at the same time.

The Palestinians

The multi-stakeholder approach called for in the NYD should mobilize a varied range of relevant actors, first and foremost the Palestinians. For a CRF-PR to have political ‘currency’, the call for it will have to emerge from Palestinians through their own voices and through their agency. The degree of ownership of the process, and whether the development of the CRF-PR is amenable to participation, will determine the success of the endeavour.

Engagement of Palestinian authorities (PLO/PA/GOP), Palestinian grassroots organizations, and refugees in the diaspora should take place in parallel. A by-product of the development of the CRF-PR would be a wider platform for Palestinian refugees and their voices, which in turn could help their political leadership represent them more effectively. The indicators to date, and critical literature, appear to be rather negative about participation, in the sense of substantive engagement in decision-making processes. However, it should not be assumed that political stakeholders will create space for meaningful refugee participation. They did not during Oslo; there were consultations at times, e.g., Refugee Working Group missions, but the leaders involved effectively cherry-picked what they liked while turning a deaf ear to the things they felt were ‘political’, like the right to return. The platforms and spaces that refugees themselves created for participation were not accepted by political actors. Hence in the pursuit of a CRF-PR, the UN will have to make sure that the various segments of the Palestinian community, particularly the refugees and other Palestinians in the diaspora, often excluded, are meaningfully represented.

Extensive consultation with, and input from the refugees will be required. The refugees themselves, especially the youth, have the highest stake of all the stakeholders and their support is a necessary if not sufficient condition if the new opportunity offered by the NYD is to be fully seized. Developing a CRF-PR in a participatory way means capturing visions of the various

generations in exile, including with respect to how they see their future and how the challenges they face as Palestinian refugees today should be addressed. For it to happen, surveying and ensuring participation of the Palestinian refugee population and the global diaspora must be given priority. In developing the new approach, the Palestine refugee grassroots organizations, and youth organizations in particular,⁸⁰ would provide an important complement to the Palestinian political leadership (the PLO/PA/GOP).

It will be necessary to engage Palestinians from around the world, including academia, the private sector, and the world of art and culture. Community organizations at all levels would have an important role in provoking and capturing the debate. Lessons learned from the development of the GCR as well as other CRRFs should inform the process.

Host States

The CRF-PR presents a new opportunity for host states – Arab states and other states with a large Palestinian concentration in particular – to advance coordinated solutions for Palestinian refugees. The concerns and proposals of host states should inform the CRF-PR. Their engagement will also be essential to encourage and facilitate refugee participation. The CRF-PR should recognize the extent of the host states' support to the Palestinian refugees, acknowledge the challenges these states have faced, and offer solutions to overcome them. Engaging Arab states on their own contribution to solutions may also lead them to take a stronger stand than in the past with Israel in support of the rights of Palestinian refugees under international law. Of course, preparatory to this should be a discussion regarding the costs and benefits for hosts to cooperate; this is an issue that has become increasingly contentious since the adoption of the Oslo Accords.

The CRF-PR would have to engage host states in a way that recognizes their support to the Palestinian refugees, acknowledges the challenges they have faced and offers solutions to overcome them. Most Palestinian refugees in Jordan are Jordanian citizens and as such formally integrated, and in (pre-war) Syria most have been de jure integrated as well. Some host states may continue to oppose any local integration of the Palestinian refugees, whatever the prospects of return. Other countries may consider fully integrating the refugees they host who so wish, if this is within the framework of a comprehensive solution, where a country's past contribution is acknowledged, and the solution is accompanied by activation of the burden-sharing support mechanisms foreseen in the GCR.

Israel

As previously mentioned, effort must be made to involve Israel and Israeli civil society in the elaboration of the CRF-PR. The political and public opinion climate in Israel and the prominent role of Israel's backers in preventing holding Israel to account will make this difficult, but the new approach is mandated by resolutions that Israel supported at the United Nations. Difficulties in securing Israel's engagement should not prevent actions on the CRF-PR's development.

⁸⁰ The grassroots organizations formed during the years of the peace process to advocate for respect of Palestinian refugee rights.

Others

Other stakeholders to be involved include the US and Europe – in a more balanced role, reflecting the shifting popular mood on the Question of Palestine – as well as regional actors, e.g. Kuwait, Jordan (not only as a host state), Qatar and Turkey, as well as relevant states in Africa (e.g. South Africa), Latin America (e.g. Chile), and other states historically interested in supporting principled and mutually acceptable solutions between Israelis and Palestinians. Other potential stakeholders include the World Bank, given their increasing involvement on the issue of displaced people; the Organization of Islamic States, to mobilize actors who support the cause of Palestinian refugees; as well as entities such the UN Committee on the Exercise of the Inalienable Rights of the Palestinian People, to raise awareness and reach out to various constituencies world-wide, and the IOM, which will be necessary to help UNRWA and UNHCR track Palestinian dispersal around the world.

7. Concluding remarks

The achievement of just and durable solutions for the Palestinian refugee question presents many challenges. Prominent among these are: the assumption of its intimate intractability; the perception that any progress on the refugee issue is impossible without an overall settlement of the broader Israeli–Palestinian conflict, of which the issue of refugees remains one of the ‘final status issues’; and the position of key stakeholders. The current situation is such that even if negotiations eventually resume, the asymmetry of power between Israelis and Palestinians, unless counter-balanced by international actors, will make it difficult to achieve a just, let alone sustainable, resolution. That resolution will not be possible without addressing the unfulfilled rights of the Palestinian refugees. Meanwhile, the refugees remain mired in a situation characterized by increasing precarity and continuing denial of their human rights.

Ensuring respect for international law provisions governing the resolution of refugee problems, as informed by international practice, is key to ensure effective protection and progress towards just and durable solutions for Palestinian refugees, as for all refugees. The rights Palestinian refugees should enjoy are firmly grounded in international law and their realization is not solely conditioned on a solution to the conflict between Israel and the Palestinians, though any lasting solution to that conflict must include a just and durable solution for the Palestinian refugees. Respect for international law, and human rights law in particular, is essential if the international community is finally to meet its responsibilities towards Palestinian refugees. The New York Declaration and the Global Compact are an important global blueprint for solutions and responsibility-sharing. They offer an opportunity to envisage a new approach by the United Nations to redressing the plight of Palestinian refugees.

One could argue that the UN has reaffirmed Palestinian rights for decades, but solutions have not been found and the situation of the refugees has arguably deteriorated, especially over the last thirty years. What makes the CRF-PR different? The authors believe that while the situation on the ground has worsened, and US complacency has certainly emboldened right-wing led Israeli politics, there is much more widespread criticism of Israeli policies and practices, including from the Jewish diaspora and civil society around the world. The development of a CRF-PR could be viewed as ‘an architecture to reenergize discourse in support of unmet Pales-

tinian refugee rights.⁸¹ The MEPP has negatively affected host countries' interest in the Palestinian refugees, splintered the Palestinian polity, and fragmented what remains of a front for support. The CRF-PR has the potential to generate discussion and awareness; it would shift political attention towards the refugees and would create important momentum to 'federate' and advocate jointly for a just and durable solution of the refugee question. The framework would rest on a solid foundation, addressing the unfulfilled rights of Palestinian refugees in the context of applicable UN resolutions and provisions of international law that reaffirm them. To date, political considerations have been overriding and the rights of the refugees have been at best a secondary concern. Giving proper weight to a rights-based approach, centred on the refugees, and advancing the development of a CRF-PR through a multi-stakeholder platform under the aegis of the United Nations, has the potential to break the impasse.

Key will be to enlist Palestinian support, not only from the political leadership but, importantly, also from the diaspora, academia, and grassroots organizations, including Palestinian youth. The role of host countries and burden- and responsibility-sharing feature prominently in the NYD and GCR. The new approach recognizes that the reactions and support of the Arab states that have hosted the refugees since 1948 will be critical. The approach also does not underestimate the need to involve Israel (most likely, Israeli civil society at first), while recognizing political realities: it rather aims to shake the ground and pave the way towards ending a status quo from which Israel seems to have had little incentive to depart.

The development of a CRF-PR would reenergize support for the realization of the unmet rights of Palestinian refugees. It would build on existing opportunities and resources and promote just and durable solutions in line with international law, solutions which take into account the aspirations and problems faced by Palestinian refugees, reflecting their different situations. The CRF-PR would be able to build on the wealth of knowledge, studies, practical proposals and debate concerning durable solutions, reparations, restitution and compensation produced over the years, and notably in connection with official and unofficial negotiations.

In conclusion, seizing the opportunity afforded by the NYD and GCR will be difficult and face many challenges. But doing nothing whilst the situation of the refugees continues to deteriorate and UNRWA's financial situation becomes less and less sustainable carries greater risks. The successful development of a CRF-PR, reaffirming the historical rights of the Palestinian refugees, seeking practical ways for materialization of such rights, while also allowing solutions that are at present possible to be realized, would give the refugees a more secure present and a more hopeful future. It would support them to advancing their search for justice and accountability and in playing an active role in a platform that they have long been denied.





81 ARDD Workshop 2019, final report.



ARDD

النهضة العربية للديمقراطية والتنمية
Arab Renaissance for Democracy & Development

P.O.Box: 930560
Amman11193 Jordan
Tel: +962 6 46 17 277
Fax: +962 6 46 17 278
www.ardd-jo.org

   ar_renaissance
 ArabRenaissance