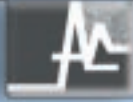
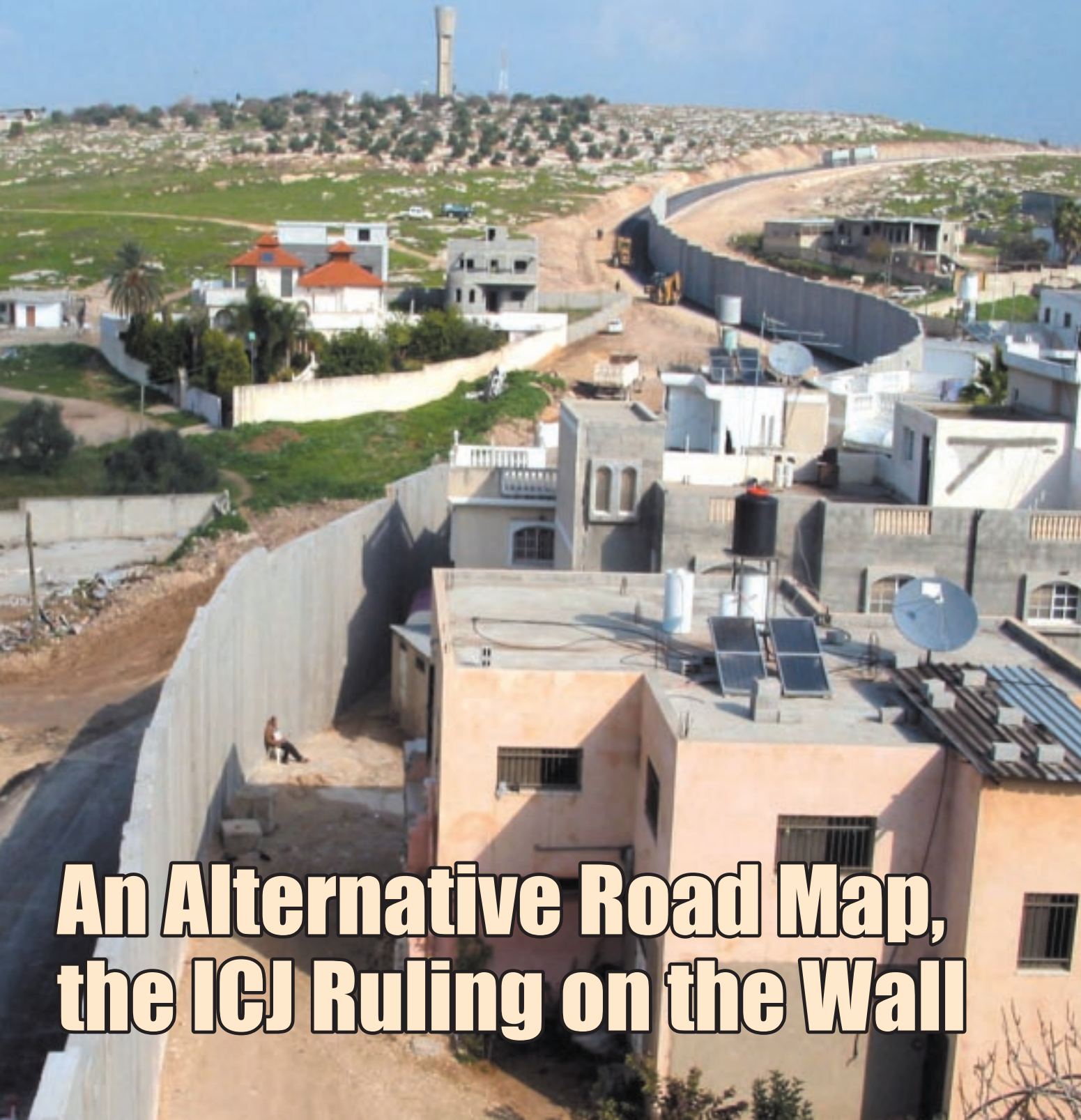


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Issue No. 23 - September 2004

a quarterly magazine of
BADIL Resource Center for Palestinian Residency & Refugee Rights



**An Alternative Road Map,
the ICJ Ruling on the Wall**

BADIL aims to provide a resource pool of alternative, critical and progressive information and analysis on the question of Palestinian refugees in our quest to achieve a just and lasting solution for exiled Palestinians based on the right of return

BADIL was established in January 1998 and is registered with the Palestinian Authority and legally owned by the refugee community represented by a General Assembly composed of activists in Palestinian national institutions and refugee community organizations.

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The ICJ Advisory Opinion on the Wall *An Alternative Road Map*



Israel's construction of the separation wall in the occupied Palestinian territories and its associated regime are contrary to international law. In a non-binding advisory opinion delivered on 9 July 2004, the International Court of Justice (ICJ), the principal judicial organ of the United Nations, said Israel must cease construction of the wall and dismantle sections located in the occupied territories forthwith; repeal or render ineffective all related legislative and regulatory acts; compensate for damage caused; and, return Palestinian property or provide compensation if restitution is not possible.

Turning to the obligations of other states, the ICJ recommended that they should neither recognize the wall nor provide aid or assistance to maintain the circumstances created by its construction; prevent any impediment, created by the wall's construction, to the exercise of the right of the Palestinian people to self-determination; and, ensure Israel's compliance with international humanitarian law. It called on the UN to consider what further action was needed to end

the illegal situation caused by the wall's construction.

An Alternative to Oslo

The ICJ advisory opinion, one of the most important legal opinions on the question of Palestine and international peace and security in the region since the United Nations assumed responsibility for the future of the country in 1947, presents a clear alternative to the status quo – i.e., the Oslo process, the international

Road Map, the Sharon disengagement plan, and, the April 2004 US letter of assurance to Israel. International law provides the foundation for this alternative.

The legal opinion rendered by the ICJ lays out the 'driving rules' or universal standards for resolving the conflict. All parties are bound to adhere to these standards. In the event that the parties fail to do so, the Court also rendered its views on appropriate enforcement measures. Both the UN and states may take action, consistent with the Charter of the United Nations, to ensure compliance with international law.

The opinion also provides a 'road map' for a comprehensive and negotiated solution to the conflict. First, the process must provide for the establishment of an independent Palestinian state. The Court reaffirmed the right of the Palestinian people to self-determination. Second, the Israeli occupation, construction of colonies and the wall in the occupied territories must cease forthwith. Conquest and annexation of territory by force breach international law. And, third, Israel must provide remedies to Palestinians whose basic rights have been violated by the construction of the wall and its associated regime. The primary remedy is restitution.

The Court reaffirmed these principles in the context of the construction of the separation wall in the 1967 occupied territories. But the legal principles apply equally to Palestinian refugees and displaced persons. Refugees must be free to exercise their individual right to self-determination – i.e., voluntary return. Under

international law Israel has a responsibility to restitute and compensate all persons displaced as a result of conquest and annexation, whether it be through the construction of the wall or other means.

A Way Forward

The ICJ advisory opinion provides the international community with a clear framework for a comprehensive, just and durable peace. It is up to the Palestinian people and international civil society to transform the legal ruling into an effective tool for ending the conflict. The

United States opposed the ICJ decision and will not adopt measures to enforce compliance. The EU officially remains committed to a policy of 'constructive engagement' with Israel.

The international solidarity movement played a critical role in bringing an end to the apartheid regime in South Africa. The long-range impact of the ICJ opinion will similarly depend on

the ability of civil society actors, Palestinian, Israeli, and others, to effectively use it as a tool for mobilization, advocacy and action. Academic, consumer, cultural, and sports boycotts, divestment and a campaign for sanctions by states must all be considered.

The implications of the status quo are apparent for all to see. More land confiscation, more settlements, more house demolitions, more casualties, a wall which will prevent the emergence of an independent Palestinian state, more refugees and internally displaced persons, and the entrenchment of an apartheid-like system of control across the West Bank and Gaza Strip.

'The situation in the Occupied Palestinian Territory (OPT) is characterized by serious violations of general international law, of human rights law and of international humanitarian law. It is not helpful to suggest that a solution can be found to the conflict in the region by ignoring norms of international law. A sustainable peace in the region must take place within the framework of international law and relevant resolutions of the United Nations.'

John Dugard, UN Special Rapporteur on the situation of human rights in the Palestinian territory occupied by Israel since 1967, August 2004

Palestinian Refugees Discuss Need for a European Lobby, at the Annual Meeting of the Right of Return Confederation in Europe

Palestinian refugees in Europe must build new relationships with their European neighbors in order to strengthen claims for return and restitution. Refugees in Europe should examine how to use European courts and the media to advance refugee rights. This was one of the major conclusions of the Palestinian Right of Return Confederation in Europe, which held its annual meeting in Rotterdam, Holland, 24-26 September 2004.

Dr. Mahmoud Issa, a researcher with the Danish Refugee Council and the Coordinator of the Confederation said that the Confederation, the global Right of Return Coalition, and the Right of Return committees in Europe all play an important role in the overall campaign for the right of return, but these structures and the campaign itself need to be developed more.

Delegates discussed the types of structures needed to run the Confederation, mechanisms to expand it, and membership criteria. Members agreed to establish an Executive Committee to monitor implementation of the Confederation's decisions and activities. Elected delegates to the Confederation's Executive Committee include Dr. Mahmoud Issa (Coordinator), Right of Return Committee – Denmark; Dr. Ayed Ahmad, Right of Return

Committee (Sweden); and Muhammad Tirawi, Right of Return Committee – Germany.

Dr. Asa'ad Abdel Rahman, former head of PLO Department of Refugee Affairs, who attended the meeting as a guest, spoke about the need to unite all the various right of return campaigns in field. Reviewing the developments of the refugee problem since 1948, through Camp David talks in the summer of 2000, and until the second intifada, Abdel Rahman encouraged Confederation members to stand against all the attempts to extinguish the right of return for the Palestinian refugees.

Some 25 delegates from eight delegations from different European countries attended the meeting. The Confederation was formally established in Berlin, Germany in April 2003, and aims to raise public awareness in Europe about Palestinian refugees, including protection and durable solution rights, and lobby European policy makers.

Delegates also sent a letter of support to the Palestinian President, Yasser Arafat, for his positions related to the establishment of a Palestinian state with Jerusalem as its capital, in addition to the right of return of all Palestinian refugees to their homes of origin.

Wiping Away the Traces, Zochrot asks Interior Ministry to Stop Lifta Development

by Ron Wilkinson

By the end of the 1948 Arab-Israeli war, some three quarters of a million Palestinians had been uprooted and become refugees in what was left of Arab-held Palestine or neighbouring countries. Most of them were from small villages, some 500 villages, which today are parts of Israeli Jewish communities, empty and abandoned, planted with trees and crops or paved

over as parks. Plans were even made to turn a mosque on the seafront of Tel Aviv into a shopping centre. Today there is little trace of a vibrant Palestinian life which once filled these communities.

Israel continues to erase the memory of Palestinian residency and land ownership in historic Palestine.



The remains of the Palestinian village of Lifta. © Tineka D'haese Oxfam Solidarite

The latest example is the village of Lifta, five kilometres from the centre of Jerusalem. The plan for Lifta is to build a residential neighbourhood and commercial area on lands that held an Arab Palestinian village until 1948. Lifta was built on a steep hill on the edge of the Jerusalem-Jaffa highway.

Zochrot, the Jewish-Israeli organization, founded in 2002, which promotes recognition of the Palestinian Nakba by Israel and its residents and the acceptance of Israel's role in the creation of the Palestinian refugees, has filed an objection against the plan with the Israeli Ministry of Interior's Regional Committee for Building.

Lifta pre-1948

The village had a mosque, a few shops, a school for girls founded in 1945, an elementary boys school, two coffee house and a social club. Lifta had strong economic ties with Jerusalem where its farmers

marketed their grain, vegetables and fruit.

Today the village's Arab residents are gone. Lifta is a Jewish suburb of Jerusalem. The first shots were fired against the village by the Jewish para-military organization Haganah in 1947. One of the coffee houses was attacked on 28 December with a toll of six killed and seven wounded.

Population (1944-45)	2,250
Land ownership (dunums*)	7,780 (Arab) 756 (Jewish) 207 (public)
1,044 dunums was devoted to cereal grains and 3,248 dunums to olives.	
*One dunum is 1,000 square meters.	

Most Arab residents then fled from the town to Jerusalem, other cities in the West Bank and further a field. By 7 February 1948, David Ben-Gurion later Israel's first prime minister expressed his satisfaction with the emptying of the village.

Houses on the eastern edge of the town were demolished in January 1948. Ruins of some houses and the mosque remain. Other homes were restored by Jewish residents who began moving in after the clearing out of Palestinian Arab residents.



Refugees visit the depopulated village of Lifta, 2000 © BADIL

Village partly repopulated by Jews

When Jews began moving into some of the homes of refugees from Lifta and many of the other 500 destroyed villages, historical events were presented in a way to make it appear that the Palestinian residents had freely and willingly abandoned their villages, says Zochrot. “This physical and cultural reconstruction of the past obscures the reality of the pain and the depth of the Palestinian refugee problem which stands as the primary obstacle to reconciliation between the two nations.”

In its petition to the Ministry of the Interior, Zochrot says: “The houses of Lifta, some of them badly damaged, are still standing. Although many of the village structures are in ruins, they remain a monument to the war of 1948 in which most of the Arab villages were conquered and their residents became refugees.” The new construction, says Zochrot, “will erase the significance of the village as an important memorial site to its refugees, some of them living in the Jerusalem area”.

Palestinian refugee issue ignored

The existence of the plan to build a new neighbourhood in Lifta, says Zochrot, ignores the Palestinian refugee problem that resulted from the expulsion in 1948. “It rejects, in practice, the right of refugees to return to their homes according to international legal principles and basic human rights. The State of Israel is obligated, by its acceptance to the United Nations in May 1949, to carry out Resolution 194 recognizing the right of refugees to return. Any reconstruction and repopulation of the village by Jews will exacerbate the future difficulties of resolving the problem of the Palestinian refugees.”

It asked the Ministry to reject the proposed building plan and leave the remains of the village as they are. In addition, it asks for the preservation of the cemetery and the Lifta mosque. It also notes that the planners did not try to contact the refugees from Lifta who could help by providing information for the preservation work. Zochrot offered to locate them, “the legal and true owners of the land” to assist with preservation.

Disrespect to original residents

The transformation of the village center into a commercial and residential area, Zochrot says, is particularly disrespectful. “[T]hey exploit the aesthetic nature of Arab buildings and roads, [while] they fail to acknowledge the individuals who built, inhabited and made use of these structures. The plan to construct a synagogue in the area, emphasizes the fact that this plan, as others before it, aims to Judaize the area and not (as alleged) to preserve it, [and] must be cancelled.”

Zochrot suggests maintaining the village as a memorial site that will educate the public about the history of 1948 as long as Palestinian refugees are unable to return. Such education is a precondition for bringing about reconciliation between the two peoples. When sites are preserved, there is a requirement to prepare a document on the preservation. This, says Zochrot, should include the Palestinian history of the village, in order to recognize the Palestinian history in the area.

The current planning document on access and parking for residents’ cars may be rational from the planning perspective but “in practice it prevents the refugees of Lifta from visiting their village. Carrying out this aspect of the plan will further impair the relationship between the refugees and their village”.

Zochrot notes that the remains of the village of Bir’im in the Galilee are part of the Bara’m National Park which visitors may visit if they pay a fee. Internally displaced Palestinians from Bir’im are exempted from the entry fee and can visit their village freely.

Zochrot activities

Since its founding, Zochrot has engaged in a number of activities to recognize the Palestinian Arab past of what is now Israel. This included erecting signs in al-Majdal (now Asheklon) and other Palestinian towns with the original street names of the town, obtaining recognition by Tel Aviv University of the original builders and owners of its club house and the land on which the university is built and general awareness-raising among the Jewish Israeli public of the real history of the country. The organization also regularly organizes visits to destroyed and depopulated Palestinian villages throughout the country.

Further reading:

Jerusalem 1948-The Arab Neighbourhoods and their Fate in the War, Salim Tamari (ed.). 2nd Revised Edition. Jerusalem: Institute of Jerusalem Studies and BADIL Resource Center, 2002. The book includes a number of references to Lifta.

All that Remains: The Palestinian Villages Occupied and Depopulated by Israel in 1948. Walid Khalidi (ed.). Washington, DC: Institute for Palestine Studies, 1992.

Interview with Zochrot founder Eitan Bronstein, ‘Palestinian and Israeli Debate about the Nakba and the Right of Return,’ *al-Majdal*, Issue 19, pp. 20-22, September 2003.

Zochrot says the building of houses in Lifta will show Arabs that Jews do not understand or respect Arab history and the Arab tragedy. They will see that Jews are not willing to preserve the “memory of the Arab past in this country”. The building plan in Lifta, says Zochrot, will erase the existing traces of this village.

It concludes its objection to the building plan by asking that the plan not be carried out and that the remains of the village be left “as they are.”

The Lifta Society, which includes refugees from the village, has also filed an objection to the building plan.

For more information on Zochrot, contact: info@nakhainhebrew.org or eytanb@netvision.net.il. Also see the Zochrot website: www.nakhainhebrew.org.

Ron Wilkinson is a media consultant for BADIL.

Upcoming Events

5th Annual Meeting, Palestine Right-of-Return Coalition

Hosted by Oxfam Solidarity, Ghent, 6-11 October 2004

Delegates of some one dozen community-based Palestinian ROR organizations and initiatives, members of the global Coalition, will hold their 5th annual meeting in order to finalize the Coalition's by-laws and debate about priorities of a common advocacy agenda.

3rd Annual Meeting, BADIL Legal Support Network (LSN)

Hosted by Oxfam Solidarity, Ghent, 7-10 October 2004

International and local experts supporting BADIL's legal advocacy program will convene for a third time to review, plan and coordinate ongoing research and advocacy projects. A joint session of legal experts and the Palestine ROR Coalition will debate ways and means required for a more effective combination of legal advocacy work and broad public campaigning for rights-based durable solutions for Palestinian refugees.

Benefit Concert Featuring Primal Scream and Spiritualized

Brixton Academy, London, 16 October 2004

Primal Scream and Spiritualized will be performing a benefit concert for the HOPING Foundation at the Brixton Academy on 16 October 2004. They will be joined on stage by a special guest star and they are expecting to sell out the 5,000 capacity venue. Bella Freud has designed a tee shirt exclusively for the charity that will be on sale for the first time at the concert and on this website from mid-October.

For more information contact:

hopingfoundation@aol.com. Also visit the HOPING website: www.hopingfoundation.org.

3rd BADIL Fact Finding Visit to Cyprus

Hosted by Index, second half of November 2004

Following two earlier fact finding visits to Bosnia-Herzegovina (2002) and South Africa (2003), the last

of this series of three visits will study issues of refugee return and housing and property restitution in Cyprus. The BADIL delegation, composed of experts and Palestinian right of return activists, will be hosted by Index, a Cypriote NGO involved in evaluation of the causes for the failure of the UN Peace Plan in Cyprus. The one-week program will include field visits and meetings with UN staff, Cypriote officials and civil society organizations in both parts of the island.

Dual Occupations: From the Rule of Force to the Rule of Law in US Middle East Policy

Conference Sponsored by MIT Arab Students Organization and the Trans-Arab Institute, Cambridge, MA, 6 November 2004

Panel topics include: Fear and Unilateralism: The Foundations of US Imperial Goals, The International Court of Justice Decision on Israel's Separation Wall: A Case Study in the Applicability of International Law, and Divestment, Boycotts and Campus Activism. The keynote speaker for the conference is Noam Chomsky, Professor of Linguistics, MIT. The conference will also include a number of workshops to discuss strategies for action.

For further information contact Elaine Hagopian, echagop@aol.com or Nancy Murray, Numurray@comcast.net.

Palestinian Refugees – Realities and Perspectives

Study Day organized by Fachstelle OeME Bern in cooperation with the Swiss Forum for Human Rights in Israel and Palestine, Bern, Switzerland, 20 November 2004

The situation of Palestinian refugees in exile, legal and political perspectives on their right of return as well as possible ways for Switzerland to contribute to a just and durable solution of their plight will be debated by activist and expert guests from Palestine, Israel, Lebanon, Syria and Switzerland.

For further information and registration, please contact, oeme@refbejuso.ch.

Resisting Israeli Apartheid, Strategies and Principles

International Conference on Palestine, SOAS, London, 5 December 2004

Panel topics include: Isolating Apartheid: Divestment, Sanctions, Boycott, Isolating Apartheid: Scope and Principles, and, Isolating Apartheid: Strategies and Actions. The keynote speaker is Tom Paulin, Oxford University, UK.

Sponsored by Mr. A.M. Al-Qattan, SOAS Palestine Society, Palestine Solidarity Committee (UK), Palestinian Campaign for the Academic and Cultural Boycott of Israel, The British Committee for the Universities of Palestine, Academics for Justice, al-Awda (US and UK), Pittsburgh Palestine Solidarity Committee, BoycottIsraeliGoods.org, and the Middle East Crisis Committee. For more information contact the SOAS Palestine Society, palsoc@soas.ac.uk.

The Right of Return of the Palestinian Refugees in One State for All its Citizens

Sponsored by the Mouvement Justice pour la Palestine, Paris, 13-14 November 2004

Topics include: The creation of the Israeli State/The Nakba for the Palestinian people, discrimination against Jews of Arab origin in Israel, the political question of return for Israel, the situation of Palestinian refugees in Lebanon, Syria, Jordan, the OPTs, and elsewhere in the world, internally displaced Palestinians, the political question of return for the Palestinian, the question of confiscated goods, the coalition of Palestinian return communities, and the position of Palestinian prisoners.

For more information contact, justicepalestine@hotmail.com, or visit the Mouvement Justice pour la Palestine website, www.justice-palestine.org.

NGOs Urge Governments, UN to Tackle Lack of Protection for Palestinian Refugees

Governments usually guarantee protection for their citizens: basic human rights and physical security but Palestinians have no state or international body to provide for their protection. A group of non-governmental organizations, in a statement to the UNHCR Executive Committee meeting in Geneva 4-8 October, drew attention to the “continuing plight of millions of forcibly displaced Palestinians”.

If citizens of a country become refugees, their safety net is gone. The United Nations High Commissioner for Refugees has a mandate to help governments protect refugees, protection that lasts until a viable and lasting solution to their predicament is found. The preferred solution is voluntary repatriation in safety and dignity.

But Palestinian refugees who are both homeless and stateless with none of the legal protections of citizenship in a country have been excluded from this protection regime. Protection includes promotion of human rights, issuing of identity papers and travel documents and providing for freedom of movement

and access to employment, basic housing, welfare, education and other governmental services.

At this year’s meeting of the UNHCR Executive Committee, a group of NGOs, that included BADIL, jointly presented a statement on protection. While reaffirming that protection is the primary responsibility of States, they drew attention to “the ongoing plight of millions of forcibly displaced Palestinian. Their situation is unique amongst forcibly displaced persons, as millions of them fall into a protection gap with no access to any form of international protection.”

The NGO submission called on the UNHCR and governments to ensure protection under the 1951 Convention to Palestinian asylum-seekers, in light of Article 1D of the Convention/“We also support efforts of the Council of Europe and a growing number of states to give effect to this recommendation.”

The UNHCR Executive Committee is made up of 66 countries which meets every autumn to review and approve UNHCR

programs and budgets and advise on refugee protection matters.

In a paper presented to an NGO consultation before the UNHCR Executive Committee, BADIL reported on its initiatives in the area of protection which included bringing together international experts and agencies to review the 'protection gap' relating to Palestinian refugees.

BADIL recommended that countries which have not incorporated Article ID of the refugee convention into national legislation should do so; Palestinian refugees should, at minimum, be recognized as refugees vis-à-vis Israel under Article ID as recommended by UNHCR and the Council of Europe; countries should grant them a complementary form of protection which entitles them to formal legal status and basic civil rights; and Palestinian refugees must not be returned to countries in which there is no guarantee of effective protection.

BADIL also called on the international community and the United Nations to continue its search for durable solutions for their situation. International assistance, protection and the search

for durable solutions consistent with international law and relevant UN resolutions, said BADIL, are part of a continuum and should not be seen in isolation.

European NGOs and the European Council on Refugees and Exiles (ECRE), said BADIL, should encourage the Council of Europe to follow up on its 2003 recommendations which included the holding of an international conference dedicated solely to the question of Palestinian refugees. Such a conference would provide a platform for an in-depth study by states, the UN and NGOs of current protection gaps as well as concrete and concerted efforts to remedy such gaps.

The NGO consultations, held before the annual UNHCR Executive Committee meeting attracted some 200 non-governmental organizations. The consultations were held in Geneva 28-30 September.

See Documents in this issue for a copy of the BADIL memo submitted to the NGO Consultations.

Upcoming Anniversaries

29 November 2004 – International Day of Solidarity with the Palestinian People

The Committee on the Exercise of the Inalienable Rights of the Palestinian People encourages all civil society organizations to demonstrate their solidarity with the Palestinian people on 29 November 2004. This could include the organization of local events, meetings, exhibits or other solidarity activities. Observance of the Solidarity Day will be held at the UN Headquarters in New York, and at United Nations Offices at Geneva and Vienna.

For more information about events and for UN assistance with documentation and other informational material on the observance contact the Division for Palestinian Rights, dprngo@un.org.

11 December 2004 – 56th Anniversary of UN Resolution 194(III)

All around the world refugees and displaced persons have the basic right to return to their homes of origin following the cessation of conflict. BADIL encourages civil society organizations to observe the anniversary of UN General Assembly Resolution 194(III). The Resolution reaffirms the right of all persons displaced as a result of conflict and war in Palestine in 1948 to return to their homes of origin. Israel's membership in the United Nations was also conditioned on the implementation of this resolution.

For more information and materials contact BADIL: info@badil.org.

Ways Forward: Fourth BADIL Expert Seminar Examines Local Initiatives for Resolving the Palestinian Refugee Issue

BADIL



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Palestinian, Israeli and international civil society must play an important role in resolving the Palestinian refugee issue in particular, and the Palestinian-Israeli conflict in general, according to participants in the fourth seminar of the 2003-2004 BADIL Expert Forum for the Promotion of a Rights-based Approach to the Palestinian refugee question.

A successful civil society campaign must allow room for diverse methods and tools to address different actors. Boycotts, divestment, and sanctions, however, are the only tools that could successfully remove the obstacles that stand in the way of a just solution to the conflict. Legal analysis can provide a framework for action. The overall objective of a campaign – two states or one state – needs clarification within civil society.

The final seminar was based on the assumption that an alternative model for just and durable peace between Jewish Israeli society and the Palestinian people must be built on recognition of Israeli responsibility for the forced displacement and dispossession of the Palestinian people, recognition of basic human rights, and implementation of related remedies (return, housing and property restitution, compensation)

in accordance with international law and best practice.

The seminar aimed to clarify principles and concrete initiatives for the promotion of rights-based durable solutions for Palestinian refugees in Palestine/Israel; and identify actors and agenda for follow-up. In particular, the seminar examined how civil society, including Jewish-Israeli civil society, could play a key role in building and promoting such a rights-based approach, if concrete and practical initiatives are developed and implemented in a systematic fashion.

The fourth and final seminar of the expert series was held in Haifa, 1-4 July 2004, in cooperation with the Emil Touma Institute for Israeli and Palestinian Studies (ETI) and the Association for the Defense of the Rights of the Internally Displaced (ADRID). The seminar was sponsored by ICCO and Stichting Vluchteling (Netherlands). More than thirty local and international experts and activists participated in the discussions.

Stocktaking and Analysis

Session one provided a basic legal framework for subsequent discussions about different approaches to peacemaking and current civil society initiatives. Two contrasting but complimentary approaches were presented by legal experts residing in the region. Gail J. Boling, a senior researcher at Birzeit University, Institute of Law, spoke about state and individual responsibility to remedy violations against Palestinian refugees and internally displaced persons.

Two main problems arise in establishing state and individual responsibility for violations of international law that occurred in 1948. Under international law one must apply the law in force at the time of violation (intertemporal doctrine). The problem for Palestinians is that major violations occurred before the development of human rights law. One can use the current body of law, however, if one is able to establish that the original violation has been ongoing (continuing violation doctrine).

The second problem is the absence of a court with procedural jurisdiction. Most Palestinian refugees do not have access to Israeli courts, individuals cannot file petitions at the International Court of Justice (ICJ), while the newly-established International Criminal Court (ICC) does not accept petitions for violations that occurred before the court came into being. Palestinians can raise claims against Israeli violations, however, under UN human rights treaty mechanisms. They can also invoke universal jurisdiction under the grave breaches regime established under the Fourth Geneva Convention.

While Palestinian refugees thus do not yet have a directly accessible legal forum for claims against Israel, the law is steadily becoming stronger. The 2001 UN Draft Articles on Responsibility of States for International Wrongful Acts, for example, sets standards for what states may/must do, if a violation of international law by their actions can be established. The Articles provide for responsibility of the successor state for actions of paramilitaries that preceded its establishment; recognize 'continuing violations'; and require states



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to make reparations (restitution, compensation, satisfaction) where a violation has been proven. These Articles have been endorsed by the UN General Assembly, but have not yet been codified as a treaty.

An alternative but complimentary legal approach, presented by Michael Kagan, a refugee lawyer based in the region, focused on the question of whether or not the rights of citizens of Israel conflict with the right of Palestinian refugees to return to their homes. This analysis could shift discussion about refugee rights away from the current collective/demographic argument (where Jewish-Israeli and Palestinian refugee rights are mutually exclusive) towards a more technical, and less frightening, debate over possible solutions to

conflicting rights of individuals in specific circumstances.

Four sets of conflicting rights/claims were identified and examined under international law: (1) the Jewish collective/national right to exercise the right to self-determination in 1948 by establishing a 'Jewish state' in Palestine; (2) the Jewish-Israeli collective right to maintain a 'Jewish state' today, even if a right to establish such state did not exist in 1948; (3) the individual right of Jewish Israelis to housing and property; and, (4) the right of the state of Israel to avoid intolerable political, social and economic disruption by denying return and restitution to Palestinian refugees.

According to Kagan's initial research, individual rights of Jewish Israelis to housing and property are more strongly protected than collective claims for a Jewish state. There is no evidence that international law permitted the violation of collective (self-determination) and individual (residency and property) rights of Arab Palestinians for the sake of collective Jewish rights. While states are allowed under international law to determine who their citizens are, Israel is also a successor state of Mandatory Palestine and denationalization (by means of Israel's nationality law) is expressly prohibited.

Long term residents and private investors do have protected property rights ('acquired rights') under common law. Restitution to original owners of property could be blocked if it caused disproportionate hardship to the current owner. In the case of *Broniowski vs. Poland*, the European Court of Human Rights supported the argument of Poland that 80,000 restitution claims would threaten national stability and order. Israel could argue the same against massive Palestinian restitution claims. Poland was not the original perpetrator (the land was confiscated by the former Soviet Union). In the case of Israel, there is direct responsibility and obligation. The scope of housing and property rights also depends upon the question of whether property was purchased/rented in good faith. Israel did not acquire Palestinian refugee property through a regular commercial dispute between bona fide purchasers/users. While Palestinian refugee rights to restitution have not weakened over time, individual Jewish Israelis may have acquired certain rights to property.

Participants also discussed how Zionist para-statal organizations ('national institutions'), such as the World Zionist Organization (WZO), the Jewish Agency (JA), and the Jewish National Fund (JNF), function as perpetrators of institutionalized discrimination in Israel. These institutions operate as tax-exempt charitable organizations around the world. In addition to the state of Israel, they must also be held responsible for violations against Palestinian refugees. The UN Committee on Economic, Social and Cultural Rights has called on Israel to end the special status of these organizations under Israeli law.

New and Evolving Approaches to Conflict Resolution

New and evolving approaches to conflict resolution and their relevance for Palestine-Israel were examined in the second session. Transitional justice deals with responses by governments and civil society to past and present human rights abuses during transitions from war to peace and from dictatorship to democracy, although it has also been used in situations that are not typical cases of transition. This includes the African American demand for reparations for slavery, the tribunal for women sexually abused by Japanese forces during WWII, and the ongoing truth commission concerning the 1979 massacre in Greensboro, USA. Mechanisms can be judicial or non-judicial, based on models of retributive or non-retributive (restorative) justice, including war crimes tribunals, truth commissions, legal and institutional reform, museums of memory, etc.

Jessico Nevo from Bat Shalom, who recently completed a degree in Transitional Justice,

summarized various arguments for and against the relevance of transitional justice in the Palestinian-Israeli context. On the one hand some argue that the Zionist-Palestinian conflict is unique; the effectiveness of restorative justice is grounded in the discontinuity of the ruling political regime which has not happened; these mechanisms apply better to situations of a former dictatorship or totalitarian regime; the process is effective if taken on as official initiatives involving a government; they can only be effective when the beneficiary, i.e., Israeli Jews, realize that 'something is wrong'; and, the situation in Palestine-Israel is far from being a situation of post-conflict or transition.

At the same time, however, some elements of transitional justice can be – and in fact already are – employed, irrespective of the fact that Palestine-Israel is not in a post-conflict situation. Nevo argued that the feeling that 'something is wrong' – essential as a starting point for transitional justice is found among some sectors of Jewish-Israeli civil society – e.g., conscientious objectors and Zochrot. Efforts should focus on two objectives: a demand for an official commission of inquiry to investigate the 1948 state policies related to the creation of the Palestinian refugee question; and, a civil strategy of transitional truth telling/dealing with the past, hearing the stories of the victims and testimonies of perpetrators and thus enabling a process of acknowledgement, recognition of responsibility, and expression of apology.

Celia McKeon from Conciliation Resources, a London-based NGO that supports civil society organizations working to bring about transition from conflict situations, provided an overview of



public participation in peace process. The right to political participation is enshrined in international human rights law. In practice, however, public participation is often deferred in top-down and elite pact-making approaches to negotiations, which is the dominant paradigm for peacemaking. International intervention by means of pre-set peace plans usually hinders public participation, while offering capacity building for local communities encourages participation.

Comparative study of public participation in six peace processes (South Africa, Northern Ireland, Guatemala, Philippines, Mali and Colombia) demonstrates that people's participation makes an important contribution to the process: it facilitates inclusion of a large number of actors and issues; allows deliberations about the root causes and development of the conflict; improves transparency of negotiations; and, employs unique local capacities and resources for conflict resolution – all factors which contribute to the sustainability of a settlement.

Modes of public participation include: (1) representative: delegates to negotiations are selected from a wide spectrum of public constituencies. This requires a well developed



Zochrot sign posting for the school in the destroyed village of Um az-Zeinat © Zochrot

multi-party system, a legitimate procedure for selecting delegates, and understanding that agreement cannot be reached by two parties alone; (2) consultative: civil society organizations discuss possible solutions and issue recommendations to official negotiators. Recommendations are not binding and may not be taken into consideration; and, (3) direct: usually limited to local conflicts. Change starts locally within civil society. Agreements reached can then be taken into consideration by official negotiators.

Existing Civil Society Initiatives in Palestine-Israel

The final session focused on three existing civil society initiatives working to build participation and rights-based solutions for Palestinian refugees. Civitas aims to help Palestinians rebuild civic

structures in refugee camps and exile communities. “We have democracy – we don’t need to import it, but we need to rebuild our structures,” said Karma Nabulsi, director of the project.

Civic structures are the foundation of democracy. They include associations, unions, societies, political parties and movements, etc. When the Palestinian leadership moved to Gaza Strip and West Bank in the 1990s to oversee the building of a Palestinian state, it led to a situation in which the majority of the Palestinian people, who were residing in exile (mostly as refugees), were excluded from the political process. Palestinian refugees became seen as an obstacle to peace and the process was structured to exclude them.

Under the project Palestinian exile communities

everywhere will assess tools and mechanisms needed for communication with their leadership – i.e., the PLO – and compile lists of issues they would like to raise. Findings will be processed in a central database. A report to donors will include a request for funding of identified tools and structures. A second report will go to the PLO. This report will basically say: ‘Here are your people, here are their issues. You need to talk to them.’ Activities among the Palestinian exile will be accompanied by seminars and workshops aimed at educating academics and policy makers about the Palestinian refugee question which they have very much ignored so far.

Eitan Bronstein provided an overview of the working of Zochrot, which focuses on awareness-raising about the Palestinian Nakba and refugee question among Jewish-Israeli society. Born in Argentina, he came to live in a kibbutz not far from the West Bank city of Tulkarem. “As children, we loved to play in a place called Qaqun, a hill with some remains of what I knew then to be a crusader fortress. A few years ago, while searching the internet for 1948 depopulated Palestinian villages, I checked the district of Tulkarem and saw the name ‘Qaqun’. I clicked on it and was shocked and offended. This was my childhood, what did it have to do with Palestinians?”

“This click of the mouse opened a whole world for me: Qaqun was a Palestinian village until 1948, with some 2,000 people, and there was even an important battle between the Iraqi army and Zionist forces. This ‘click’ is in a sense what Zochrot is all about, i.e. to open the story of the Nakba for Jewish people in Israel.” For two and a half years,

Zochrot has been posting signs in 1948 depopulated Palestinian communities. Israeli Jews are invited to join guided visits in order to learn about the Nakba. Sign posting brings back the Palestinian space, causes disorder in the Jewish space, and raises the question of belonging to space.

Zochrot also attempts to protect sites of Palestinian memory. In the Galilee, a group of residents of Moshav Ya’ad, members of Zochrot, and former Palestinian residents of the depopulated village of Mi’ar presented coordinated legal objections to the expansion of the moshav that would cover the central area of the village, including its graveyard. The regional planning council eventually agreed to leave open space by removing 12 planned houses. The organization also facilitates discussion between displaced Palestinians from a particular village with Jewish Israelis living on its land today in order to deal with what happened in 1948, and see how to change space and bring about change that allows a better life for all.

In May 2004, seven members of Kibbutz Bar’am in the Galilee and five people from the depopulated village of Bir’im formed a group to talk about a local approach to resolving the problem of displacement from the village. Einat Luzati and Shlomit Kafri, members of Kibbutz Bar’am in the Galilee, and Nahida Zahra, a second-generation internally displaced Palestinian from Bir’im talked about the experience. The first meeting of the group focused on what happened in the past; the second on options for the future.

During the third meeting of the group, the group produced a list of basic principles for a solution,

including the re-establishment of the village, compensation for built-up areas and land cultivated by the kibbutz and for those choosing not to return, return of both internally displaced and refugees from Bir'im, and joint efforts to prevent further confiscation of land. Based on these principles, displaced persons from Bir'im displaced would be restituted of some 10,000 dunums of land, while 2,000 dunums would remain with Kibbutz Bar'am, Kibbutz Sasa, and Moshav Dovev. The Israeli government had previously offered to lease (not return) 600 dunums of land.

Future activities may include an exhibition about the circumstances of depopulation and destruction of Bir'im and Israeli polices preventing the return of its residents; a summer camp for the children of both communities; a meeting for Bir'im displaced with the Secretary of Kibbutz Bar'am; posting of signs in the village and cleaning of village paths; a meeting between members of Kibbutz Dovev and displaced people from the village of Sa'sa; public memorial events to commemorate the history of Bir'im; awareness-raising about the plan to rebuild the village; and a film about the second and third generation of both communities.

The final presentation focused on the role of boycotts, divestment and sanctions. Ilan Pappé, professor of history at Haifa University, reminded participants that these types of campaigns against the Israeli occupation are not new. At the same time, it was assumed that the end of the occupation would create the necessary conditions for ending the conflict, including a solution for Palestinian refugees. "Today we face the paradox

of a so-called two state solution without an end to occupation," explained Pappé.

"We must understand that occupation will end only after, or simultaneously with, de-Zionization." This means fusing together the struggle to end the occupation and the struggle for return. The Israeli peace camp failed to end the occupation; the anti-wall movement will not stop the wall; and, the sacks of flour of Tayyush will not stop Palestinians from starving. Education about the Nakba and restitution is necessary and should be linked to reconciliation, but no one should fool him/herself that this will fundamentally alter Israel's nature. Boycotts, divestment and a campaign for sanctions must therefore be an important part of the new struggle.

Pappé argued that the one-state solution must be transformed into a relevant political agenda, in Israel, in the 1967 occupied territories, in the camps in Lebanon, among Palestinian exile communities in Detroit, and everywhere. The task is to transform an intellectual discourse or exercise into a concrete platform. The call for boycotts, divestment and sanctions will cut all lines with Zionist Jewish society. But it is important to remember that no power from within can change the current reality, neither from within Jewish society, nor from within Palestinian society in the 1967 occupied territories.

For a more detailed summary see the BADIL website: www.badil.org/Campaign/Expert_Forum/Haifa/expert-forum-haifa.htm

The Wall, the International Court and the Palestinian People's Right to Self-Determination

by Victor Kattan



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On Friday 9 July, the International Court of Justice rendered an Advisory Opinion on the following question:

“What are the legal consequences arising from the construction of the wall being built by Israel, the occupying power, in the occupied Palestinian territory, including in and around East Jerusalem, as described in the report of the Secretary-General, considering the rules and principles of international law, including the Fourth Geneva Convention of 1949, and relevant Security Council and General Assembly resolutions?”¹

The Court unanimously held that it had jurisdiction to pursue the matter and by a 14-1 majority held that the wall was contrary to international law; that Israel is under an obligation to terminate its breaches of international law and to cease construction of the

wall. It also held by a 14-1 majority that Israel is under an obligation to make reparation for all damage caused by the construction of the wall and by a 13-2 majority that all states “are under an obligation not to recognize the illegal situation resulting from the construc-

tion of the wall and not to render aid or assistance in maintaining the situation ...” By a 14-1 majority the Court held that the U.N., the General Assembly and the Security Council should consider what further action is required to bring to an end the illegal situation resulting from the construction of the wall.²

The International Court’s decision was greeted with dismay, anger, shock and frustration by Israel. A senior aide to Israel’s Prime Minister, Ranan Gissin, was quoted by the BBC as saying that the International Court’s advisory opinion will find its place in “the garbage can of history”.³ Certain sections of Israeli society, in particular the military, contested the applicability of international law to the “war on terror” and as Tanya Reinhart noted in an article she published in the Hebrew press “a battle is being waged in the world today over the status of international law”.⁴ Israel’s former Prime Minister, Binyamin Netanyahu, wrote in the *New York Times* that “Israel will never sacrifice Jewish life on the debased altar of ‘international justice’”.⁵ He said that the Court’s decision made a mockery of Israel’s right to defend itself and avowed that his government would ignore it.

On Tuesday, 20 July, the General Assembly passed Resolution ES-10/L.18/Rev.1 acknowledging the International Court’s Advisory Opinion and demanded that Israel comply with its legal obligations as identified in the opinion. This resolution was adopted

by 150 states, including the 25 member EU bloc, with 6 against and 10 abstaining. The resolution can be reconvened at any moment in order for its implementation to be assessed. It sets up a U.N. register of the damage caused to all natural and legal persons as well as inviting Switzerland to report on Israel’s compliance with the Fourth Geneva Convention of 1949. This resolution is very significant due to the size of the vote, the strong language used, and because it is based on an Advisory Opinion by the world’s highest judicial body. Israel vowed to press on with the construction of the wall despite the passing of this resolution.

It is common knowledge that an Advisory Opinion is non-binding. However this does not necessarily mean that Israel can afford to ignore it altogether. For the Court observed that the obligations violated by Israel include certain obligations *erga omnes*. These obligations are concerned with the enforcement of norms of international law a violation of which is deemed to be an offence against all members of the international community. The Court had previously indicated in the *Barcelona Traction* case (1970) that these obligations are by their very nature the concern of all states which can be held to have a legal interest in their protection. The obligations *erga omnes* violated by Israel are the obligations to respect the right of the Palestinian people to self-determination, and certain of its obligations under international humanitarian law.

Already the Advisory Opinion is causing Israel problems. A request to the World Bank to upgrade Palestinian roads could be rejected because this would be contrary to the International Court's Opinion which prohibits "aid or assistance" to Israel. In many respects current Israeli policies towards the Palestinians in the light of the Court's Advisory Opinion bare the hallmarks of apartheid as Amira Hass noted in an article she published in Ha'aretz.⁶ Although prolonged military occupation in Palestine and apartheid in South Africa are two different systems of repression they nevertheless share certain similar characteristics. From 1949 to 1971, the case of South West Africa (now Namibia) engaged the Court's attention. This resulted in four Advisory Opinions (1950, 1955, 1956 and 1971) and two Judgements (1962 and 1966). What was at issue in these Advisory Opinions and Judgements was the status of South West Africa - though at the heart of the matter was apartheid.

From 1949 to 1962 South Africa did its best to thwart the supervisory role assigned to the General Assembly and just like Israel it ignored the Court's Advisory Opinion(s).⁷ But by the 1960s with many new African states now members of the U.N. - a new idea took root - to explore the possibility of contentious litigation through a binding Judgment from the International Court of Justice. However South West Africa was not a State in the 1960s (Namibia did not attain independence until 1990) and it therefore had to rely on Ethiopia and Liberia to bring

the case to court on its behalf. In 1966, "the white mans court" held that Ethiopia and Liberia were not entitled to receive judgement on the merits of the case since they had not "established any legal right or interest appertaining to them in the subject matter" of the claims.⁸ This Judgement came as a surprise to many and it is generally thought that were it not for the death of Judge Badawi, the illness of Judge Bustamante and the withdrawal of Judge Zafrullah Khan, the outcome might have been very different.

This raises an interesting question. What conclusion would the Court reach today were a similar case to reach its docket by an interested party - say Jordan? Failure by the Security Council to act might lead to gridlock and force the Palestinians down the same path as the Namibians in the 1960s to explore the possibility of contentious litigation. Article 42 of the International Law Commission's Draft Articles on State Responsibility (2001) allow an injured State to invoke the responsibility of another State if the obligation breached is owed to that state, a group of States or to the international community as a whole.⁹ The International Court found that the obligations breached by Israel are obligations erga omnes which by their very definition are obligations owed to the international community. Failure by the Security Council to bring the illegal situation arising from the construction of the wall to an end may leave the Palestinians little choice but to pursue this option. Alternatively, the Palestinians could seek another Advisory

Opinion from the Court and seek to further isolate Israel in the U.N.

In the last Advisory Opinion which would take place on the status of South West Africa (1971), the Court found that South Africa's continued presence in Namibia was illegal and that it was obliged to withdraw its administration immediately from Namibia. All states were legally obliged to refrain from acts which might have implied recognition of the South Africa's illegal occupation of Namibia. The Prime Minister of South Africa who was at the time, Mr. B.J. Vorster, responded by attacking the integrity of the Court. He alleged that the Court's opinion would not stand up to juridical analysis and that it had been "packed" for the proceedings.¹⁰ There are many similarities between Palestine and Namibia: both were formerly mandated territory, both cases were politically charged, and they both provoked a similar reaction from their occupiers. They also both touched upon the issue of self-determination, an issue that would also be addressed in the Court's Advisory Opinion in Western Sahara (1973) and in its Judgement on East Timor (1995).

The difference this time around is that the Court went slightly further in its advisory opinion on the Wall (2004) by saying that it is for all states, while respecting the U.N. Charter and international law, "to see to it that any impediment, resulting from the construction of the wall, to the exercise of the Palestinian people of its right to self-

determination is brought to an end." Although the Court did not explicitly spell out what exactly it is the international community must do - it is clear that whatever the international community decides to do - it must bring to an end the illegal situation resulting from the construction of the wall. The Court concluded by saying, "[i]llegal actions and unilateral decisions have been taken on all sides" which was a swipe at President George W. Bush's and Prime Minister Ariel Sharon's unilateral decision and exchange of letters in April to do away with all previous U.N. resolutions on the status of settlements in the West Bank and U.N. resolutions on the plight of the Palestinian refugees.¹¹

In the Court's view, the tragic situation brought about by the construction of the wall can only end "through implementation in good faith of all relevant Security Council resolutions, in particular resolutions 242 (1967) and 338 (1973)." The Court went on to say that, "the "Roadmap" approved by Security Council resolution 1515 (2003) represents the most recent of efforts to be encouraged with a view to achieving as soon as possible, on the basis of international law, a negotiated solution to the outstanding problems and the establishment of a Palestinian state, existing side by side with Israel and its other neighbours, with peace and security for all in the region." It might be added that the operative paragraph of Security Council resolution 1515 refers to "an

independent and viable Palestinian state.” It is difficult to see this coming to fruition if the present Israeli government is able to act with impunity.

For a summary of the ICJ advisory opinion see, “International Court Rules against Israel’s wall. 1. Findings 2. Recommendations 3. Jurisdiction of the Court,” BADIL Bulletin No. 20 (July 2004). For a complete version of the opinion visit the ICJ website: www.icj-cij.org.

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Notes:

- 1 See U.N.G.A. resolution ES-10/14 (A/ES-10/L.16), 8 December 2003.
- 2 The Advisory Opinion can be read in full along with the Separate Opinions of various Judges at the International Court of Justice’s web site at <http://www.icj-cij.org>.
- 3 “Parties Split on Barrier Ruling” BBC News, 9 July 2004.
- 4 Tanya Reinhart, “From the Hague to Mas’ha,” *Yediot*

Aharonot, 15 July 2004 (Hebrew). This article can be viewed in English in the *electronic intifada*.

- 5 Binyamin Netanyahu, “It’s a fence, and there’s nothing illegal about it,” *NYT*, reprinted in the *International Herald Tribune*, 14 July 2004.
- 6 See Amira Hass, “Donating to Apartheid,” *Ha’aretz*, 8 September 2004.
- 7 For a brief overview see Michla Pomerance, “The ICJ and South West Africa (Namibia): A Retrospective Legal / Political Assessment,” 12 *Leiden Journal of International Law* (1999), at 425 – 436. Pomerance is Emilio von Hofmannsthal Professor of International Law at the Hebrew University of Jerusalem.
- 8 See Rosalyn Higgins, “The International Court and South West Africa,” 42 *International Affairs* (1966), at 573 – 599. Rosalyn Higgins is currently a Judge at the International Court of Justice and participated in the Advisory Opinion on the construction of a wall in Occupied Palestinian Territory.
- 9 See Ian Brownlie, *Basic Documents in International Law*. Oxford: Oxford University Press, 2002, at 300 - 310.
- 10 For Further reading see John Dugard, “Namibia (South West Africa): The Court’s Opinion, South Africa’s Response, and Prospects for the Future,” 11 *Columbia Journal of Transnational Law* (1972), at 14 – 49. John Dugard is currently Professor of International Law at Leiden University in the Netherlands and is U.N. Special Rapportuer for Human Rights in the Occupied Palestinian Territories.
- 11 See Victor Kattan, “George W. Bush, Ariel Sharon, ‘Unilateral Declarations’ and International Law,” *Electronic Intifada*, 28 April 2004.

Are They Really New Refugees? The Hidden Reality Behind the Wall

by Terry Rempel



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In September 2003, the UN Special Rapporteur on the situation of human rights in the occupied territories warned that the construction of the separation ('apartheid') wall in the West Bank is creating a new generation of refugees and displaced persons.¹ The UN and local non-governmental organizations estimate that nearly a quarter of a million Palestinians will be affected by phase one of the wall in the northern West Bank.² This number is likely to more than double as the wall snakes around Jerusalem and winds its way down through the southern West Bank.

The wall is generally viewed as another tool of Israel's ongoing military occupation. Bringing down the wall has become a symbol for ending that occupation. The request by the UN General Assembly to the International Court of Justice (ICJ) in 2003 for an advisory opinion about the legal consequences of the wall and the subsequent ruling of the court six months later are also limited to the 1967 occupied Palestinian territories. There is, however, another hidden reality, which brings into question the very assumption that the wall is only about the occupation.

Who are the newly displaced?

Approximately two-thirds of those affected in some degree by phase one of the wall are non-refugee Palestinians. The remaining third are 1948 refugees – i.e., those Palestinians who were displaced from their homes and villages and sought temporary refuge in parts of Palestine that did not become part of the state of Israel.

Phase one, which runs from Salem checkpoint in the northwest Jenin district, through Tulkarem and Qalqilya governorates, to Masha village in the Salfit

area, created nine so-called enclaves – i.e., areas isolated by the wall. This includes five enclaves west of the wall with 14 communities and four enclaves immediately east of the wall. The UN estimates that another 33 communities further to the east will be affected in some way due to the loss of land, irrigation networks, and infrastructure.

More than 220,000 people will be affected in some degree by phase one of the wall. Approximately six percent (13,636 persons) are located in enclaves west of the wall of whom 1,870 are 1948 refugees. Sixty-three percent (138,593 persons) are located in enclaves on the east side of the wall. This includes 67,250 1948 refugees. The population of other affected communities is 69,019 (31 percent) of whom 7,355 are 1948 refugees.

Of those persons who have been affected in some way by the wall – i.e., inability to access lands, businesses, schools, clinics and hospitals, and maintain family ties – the Palestinian Central Bureau of Statistics (PCBS) estimates that more than 2,000 households or nearly 12,000 persons had been displaced from localities that the wall passes through. According to the mayor of Qalqilya, 4,000 people have left the city because of the wall. Not all persons, however, are physically displaced by the direct construction of the wall.

Refugees or internally displaced persons

At first glance, it would seem that Palestinians who have been displaced in the West Bank as a result of the wall are internally displaced persons. The defining characteristic of internally displaced persons is that they have not crossed an internationally recognized border. While the international community does not recognize the route of the wall as an international border between Israel and a future Palestinian state, the question that

has to be asked is whether the wall creates a de facto border that, in effect, creates refugees rather than internally displaced persons.

Israel has argued that the wall is temporary in nature designed solely for security reasons. UN observers question this premise. Commenting on the wall one year ago (September 2003), UN Special Rapporteur John Dugard observed that, “the Wall has all the features of a permanent structure. [Emphasis added] The fact that it will incorporate half of the settler population in the West Bank and East Jerusalem suggests that it is designed to further entrench the position of the settlers. The evidence strongly suggests that Israel is determined to create facts on the ground amounting to de facto annexation.”³

This permanent structure includes walls and fences, gates and crossing points monitored by Israeli soldiers, and a permit system under which all Palestinians residing in so-called enclaves or wishing to enter such enclaves require special permission from the Israeli military administration. Israelis do not require permits to enter these zones. According to UN reports, Israeli soldiers while explaining new procedures for entry into enclaves in the northern part of the West Bank have, on several occasions, referred to these enclaves as ‘Israel.’⁴

In short, the wall appears to have all the trappings of a de facto border between Israel and the West Bank. Palestinians residing in the nine enclaves created by phase one of the wall have a special residency status that is different from Palestinians living in other areas of the West Bank. Those Palestinians who are physically displaced from these enclaves and those who live outside the enclaves but are unable to access their lands would appear in practice to be refugees rather than IDPs.

While the first have, in effect, ‘crossed a border’, the latter case it is the ‘border’ that has crossed the refugees. The determination of whether Palestinians displaced by the wall are refugees or IDPs is important insofar as it determines the relevant protection regime and mechanism. Refugees fall within the provisions of the 1951 Convention Relating to the Status of Refugees. UNHCR is mandated to protect Convention refugees. Due to the unique circumstances of the Palestinian refugee issue, and the interpretation of UNHCR’s mandate in UNRWA’s area of operations, however, there is no mechanism to provide protection to refugees in the West Bank, including those displaced by the wall.

Internally displaced persons do not fall within the scope of the 1951 Refugee Convention. There is no convention that sets out the rights of IDPs and concomitant obligations of states, although the non-binding 1998 Guiding Principles on Internally Displaced Persons do provide universal guidelines for IDP protection. Unresolved issues of UN mandate and institutional responsibility for internal displacement, however, continue to hamper effective provision of international protection of IDPs. No single agency is recognized as having an explicit mandate to provide international protection for

internally displaced persons.

Occupation or ethnic cleansing?

What is little known about those communities affected by the wall is that, in addition to refugee and non-refugee Palestinians, they also include Palestinians who lost land and means of livelihood in 1948 (i.e., village lands fell on the ‘Israeli’ side of the 1949 Armistice Line or ‘Green Line’) but were not displaced from their homes and villages, persons displaced internally as a result of the 1967 war, and villages who have lost land to Israeli colonies over the past 37 years. In other words, this is not the first time that many of those affected by the wall have lost their land and means of livelihood.

Approximately one-third of those villages affected by the first phase of the wall were separated from large parts of their lands by the 1949 Armistice Line. This includes three villages located in enclaves west of the wall, five villages in enclaves on the east side of the wall, and another 13 villages that are not (yet) enclosed by the wall, but will lose land and suffer other damages as a result of the construction of the wall. At least one locality experienced major internal displacement in 1967 and most have lost land to Israeli colonies.

Estimated Land Lost in 1948-49, Villages affected by Phase One of the Wall			
	Non-Refugee	Refugee Families	Land Lost in 1948-49 (dunums*)
Jenin			
Barta'a Sharqiya	3,404	150	9,435
Rumane	3,186	313	9,740
Anin	3,514	54	3,730
Zububa	2,007	243	11,746
Tannik	1,035	34	27,306
Zabda	785	19	360
Total	13,931	831	62,317

Tulkarem			
Baqa ash-Sharqiya	3,869	140	36
Nazlat 'Isa	2,366	50	17
Faroun	3,016	80	2,429
Qaffin	8,263	107	13,060
Deir al-Ghusun	8,942	117	12,932
'Attil	9,831	330	108
'Ilar	6,503	70	154
Zeita	2,971	120	4,767
Kafr Jammal	2,415	21	5,589
Kafr Sur	1,185	12	2,059
Total	49,361	1,047	41,151
Qalqilya			
Qalqilya	41,616	3,900	16,107
Hable	5,725	44	4,159
Kafr Thulth	4,062	27	1,450
Jayyus	3,078	23	58
Falameya	658	5	7
Total	55,139	3,999	21,781
Grand Total	118,431	5,859	125,249

Sources: "Palestine Arab Town and Village Lands outside the Territory Occupied by Israel under the General Armistice Agreements of 1949," Appendix V, in Sami Hadawi, *Palestinian Rights and Losses in 1948*. London: Saqi Books, 1988, pp. 224-228; The Impact of the First Phase of the Barrier on UNRWA-Registered Refugees.

* One dunums = 1,000 sq. meters.

Of those villages that lost land in 1948 and are affected by the wall, there are 118,431 persons of whom 5,859 are refugee families. In other words, more than fifty percent of Palestinians affected by the wall are from villages that already lost land to Israel due to the location of the 1949 Armistice Lines.

This hidden reality challenges the underlying assumption that the wall is only about the Israeli occupation of the West Bank. In reality, the wall must be seen as part of a systematic process that has pushed more than half of the Palestinian people outside of their historic homeland, leaving another twenty percent displaced inside Israel and the 1967 occupied Palestinian territories. One has to ask exactly who is pushing who into the proverbial sea.

In his most recent report to the Commission on Human Rights, John Dugard clearly spelled out three objectives of Israel's separation wall: (1) to incorporate settlers within Israel; (2) to confiscate Palestinian land; and, (3) to encourage an exodus of Palestinians by denying them access to their land and water resources and by restricting their freedom of movement.⁵ These three objective describe Zionist policy towards Palestinians since the movement decided to establish a Jewish state in Palestine more than a century ago.

This fact is often missed by those who campaign against the construction of the wall. Understanding this hidden reality raises the question of whether it is really possible to bring down

the wall and end the occupation without addressing the very nature of Israel itself.

Terry Rempel is coordinator of information and research at BADIL.

Notes

1 Report of the Special Rapporteur of the Commission on Human Rights, John Dugard, on the situation of human rights in the Palestinian territories occupied by Israel since 1967, submitted in accordance with Commission resolution 1993/2 A, E/CN.4/2004/6, 8 September

2003.

2 See, generally, reports of the UN Relief and Works Agency for Palestine Refugees (UNRWA), available at, <http://www.un.org/unrwa/emergency/barrier/index.html>, and the UN Office for the Coordination of Humanitarian Affairs, available at, <http://www.reliefweb.int/hic-opt/>.

3 See note 3 above.

4 See UNRWA impact reports, note 2 above.

5 Report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in the Palestinian territories occupied by Israel since 1967, UN Doc. A/59/256, 12 August 2004, para. 17.

Refugee Children: The Ideal Does not Match the Reality

by Ron Wilkinson



UNRWA school in al-Amari refugee camp, 2003 © Tineke D'haese Oxfam Solidarite

Under international law, children, especially refugee children, are guaranteed rights, protection and humanitarian assistance. How does the ideal match reality?

Some 370 children are in Israeli prisons, thousands have had their homes demolished in the past year by Israeli military action, education and health care are being degraded. Children have suffered long-term disabilities as a result of violent actions by the authorities, Palestinian

children have even been used as human shields to allow Israeli jeeps to enter a Palestinian area. The practice was supposed to end with new regulations in January 2003 but the Israeli army continued to use it. In September 2004, the Israeli High Court asked the Government of

Israel to reply to charges that troops still use human shields.

To begin with, Palestine refugees within UNRWA's area of operations have been specifically excluded from the global refugee protection regime as outlined in the 1951 Convention relating to the Status of Refugees. Even so, Palestinian refugee children are entitled to much broader

protection of their rights as children but they do not get it despite the Convention on the Rights of the Child (CRC), UN special sessions on children, resolutions of the UN Security Council and reports by various UN Special Rapporteurs on the Occupied Palestinian Territories.

Education

Children have the rights to quality education. In its area of operations, UNRWA provides basic education for some 488,000 Palestinian refugee children. But Palestinian children, refugees and non-refugees alike, especially in the occupied territories face:

- restriction on free movement to reach school, delays at checkpoints, closure of schools, building of the wall preventing children from going

directly the shortest way from home to school;
- lost days, teachers unable to get to school;
- children shot/killed in UNRWA schools or on

the way to school. The most recent incident happened on 22 September when 10-year-old Rhagad al-Assar from Khan Younis, Gaza Strip died after being shot at her UNRWA school desk by an Israeli Defence Force bullet on 7 September.

International laws /conventions/guidelines applying to children

- UN Convention on the Rights of the Child (CRC)
- UN Standard Minimum Rules for Administration of Juvenile Justice
- UN Rules for the Protection of Juveniles Deprive of their liberty
- Geneva Convention relative to the Protection of Civilian Persons In Time of War (4th Geneva Convention)
- Refugee Children: Guidelines on Protection and Care (UNHCR)

UNRWA Commissioner-General Peter Hansen said in reaction: "On countless occasions I have called upon the Israeli authorities to respect their obligations under the CRC and under International Humanitarian Law in general, and to stop firing on the schools, fearing that innocent

schoolchildren would inevitably be killed. Now it has happened. It is a tragic and senseless death. We have all failed to protect this child. Such killings must stop."¹

Palestinian Refugee Children, International Protection and Durable Solutions

A new information and discussion brief forthcoming from BADIL. The brief examines relevant international law and gaps concerning protection of Palestinian refugee children and the search for durable solutions. The brief is part of a series examining vulnerable sectors of the Palestinian refugee community.

Research by Renata Capella

Health care

Children have the right to adequate health care. Palestinian refugee children in areas where UNRWA operates in most cases can get to agency clinics and health centres but hundreds are wounded by gunfire, most have been subjected to violence or seen close family and

friends subjected to violence. They need both mental and physical health care.

Studies by Save the Children, the UN and others have shown that while health care provided by UNRWA eliminated many childhood illnesses, over 44 per cent of children aged 6-59 months in Gaza and a similar number in West Bank, for example are malnourished or suffering from serious diseases brought on by an inadequate diet.

Palestinian refugee children are under significant psycho-social strain from the general quality of their lives and frequent exposure to violence and threats of violence which leads to widespread feelings of insecurity among children in Gaza and the West Bank. In Jordan, Lebanon and Syria children are affected by poverty, exposure to discrimination, overcrowded living conditions and limited access to both higher education and recreation possibilities.

In the Occupied Territories, almost 700 Palestinian minors were killed by Israel security forces between December 1987 and July 2003, 25 killed by Israeli civilians in the same period.

Workshop focuses on refugee children

In June, UNRWA convened a meeting of governments and NGOs in Geneva to discuss the future of the Agency and highlight ways to strengthen the capacity of UNRWA to respond to Palestinian refugee needs.

The meeting included a one-day workshop on "Promoting the Well-being of the Palestine

Refugee Child." UNRWA provides more than 600 schools for Palestinian refugee children in its areas of operation, 6 vocational teacher training centers, a network of health care centres and basic food assistance to some 4.1 million refugees in Jordan, Lebanon, Syria, the occupied Gaza Strip and West Bank.

In addition, the Agency often has to provide emergency assistance as currently in the West Bank and Gaza where it is providing additional foodstuffs to most refugees, psycho-social care to children, makeup classes to help continue children's education and emergency health care for injured and wounded refugees.

Recommendations from the meeting included a review of the fulfillment of the rights of Palestinian refugee children, advocacy to promote awareness of the CRC and other elements of international humanitarian and human rights law, particularly as they relate to children and improvement of education and health care for children, including mental health and rehabilitation of the disabled.

For the background papers on the Geneva meeting, see UNRWA's web site: www.unrwa.org.

Ron Wilkinson is a media consultant for BADIL.

Notes

- 1 For further information on the current problems of educating Palestinian refugee children, see al-Majdal No. 22 of June 2004: "Another right denied. Demotivation and discontinuity mark education under occupation".

When All Families are Potential Terrorists: Israel Extends Law Banning Family Reunification

All Palestinians support the resistance against Israel's illegal military occupation. All Palestinians are therefore potential terrorists says the state of Israel. Palestinians from the West Bank and Gaza Strip who marry Palestinians inside Israel are therefore banned from living together in Israel.

On 18 July 2004, the Israeli government voted in favor of a six-month extension to the "Nationality and Entry into Israel Law (Temporary Order) – 2003." In accordance with Article 5 of the law, the Israeli Knesset must approve an extension of the law. The Knesset did so on 21 July by a majority vote of 60 to 29.

The law prohibits the granting of any residency or citizenship status to Palestinians from the occupied territories who are married to Israeli citizens, thereby banning family reunification. The law was enacted by the Knesset, as a temporary order for one year on 31 July 2003, and affects thousands of families, comprised of tens of thousands of individuals.

Seven petitions have been submitted and are currently pending before Israel's Supreme

Count against the law. The Court has joined these petitions for hearings and decision. The Court rejected the petitioner's request for an injunction to freeze the implementation of the law while the case is pending. The Court, however, has issued an order nisi and injunctions preventing the deportation of three of the petitioners pending a final ruling on the petition.

The UN Committee on the Elimination of All Forms of Racial Discrimination has called (Decision 1[63]) on Israel to revoke the law. The Committee reiterated this request (Decision 2[65]) at its 65th Session in August 2004. The Committee also reminded Israel that it had failed to submit a report on compliance with the Convention for the 65th Session, despite the fact that the 10th, 11th, 12th, and 13th periodic reports from 1998 to 2004 were overdue. The Committee requested Israel to file a report no later than 31 December 2004.

Based on reports by Adalah – the Center for Arab Minority Rights in Israel. For ongoing information visit the Adalah website: www.adalah.org.

UN Special Rapporteur Calls for Legal Actions Against Destruction of Palestinian Property, Disengagement from Gaza will Not End Israel's Occupation

Excerpts from the Report of the Special Rapporteur of the Commission on Human Rights, John Dugard, on the situation of human rights in the Palestinian territories occupied by Israel since 1967, submitted in accordance with Commission resolution 1993/2 A, 12 August 2004

According to UNRWA's records, from the beginning of the second intifada to 30 June 2004, a total of 2,272 shelters accommodating 4,072 families (21,453 persons) had been completely demolished or damaged beyond repair in the Gaza Strip during Israeli military activities. Of them, 1886 shelters accommodated 3338 refugee families (17,831 persons). Out of this group, 2,771 families (15,198 persons) were identified as being eligible for assistance under the Agency's re-housing scheme. Of those already identified as eligible, 2,094 families (11,231 persons) are refugees residing in Rafah.

Following a recent visit to the 1967 occupied Palestinian territories, UN Special Rapporteur John Dugard called for legal action against persons responsible for the massive demolition of Palestinian homes.

"The Special Rapporteur visited Block "O", the Brazil Quarter and the Tel Es Sultan neighbourhood of Rafah in the wake of Operation Rainbow carried out by the IDF in May 2004 and met with families that had been rendered homeless in the exercise. In Operation Rainbow, 43 persons were killed, including 8 who were killed in a peaceful demonstration on 19 May. From 18 to 24 May, a total of 167 buildings were destroyed or rendered uninhabitable. These buildings housed 379 families (2,066 individuals). These demolitions occurred during one of the worst months in Rafah's recent history. During May, 298 buildings, housing 710 families (3,800 individuals), were demolished in Rafah. Since the start of the intifada in September 2000, 1,497 buildings have been demolished in Rafah, affecting over 15,000 people. The Special Rapporteur was appalled at the evidence of wanton destruction inflicted upon Rafah. The Special Rapporteur is mindful of article 53 of the Fourth Geneva Convention which provides that any destruction by the occupying Power of personal property is prohibited except when such destruction is rendered absolutely necessary by military operations and that failure to comply with this prohibition constitutes a grave breach in terms of article 147 of the Fourth Geneva Convention requiring prosecution of the offenders. The time has come for the international community to identify those responsible for this savage destruction of property and to take the necessary legal action against them." [Emphasis added]

Dugard also commented on Israel's claim that disengagement from the Gaza Strip will end Israel's 37 year occupation.

"Israel sees the political advantages in withdrawing from Gaza. In particular, it claims that it would no longer be categorized as an occupying Power in the territory subject to the Fourth Geneva Convention. In reality, however, Israel does not plan to relinquish its grasp on the Gaza Strip. It plans to maintain its authority by controlling

Gaza's borders, territorial sea and airspace. That Israel intends to retain ultimate control over Gaza is clear from the Israeli disengagement plan of April 2004. This disengagement plan states in respect of Gaza, inter alia, that "The State of Israel will supervise and maintain the external land envelope, have exclusive control of the air space of Gaza and continue to carry out military activity in the Gaza Strip's maritime space. ... The State of Israel will continue to maintain a military presence along the border line between the Gaza Strip and Egypt (the Philadelphi route). This presence is a vital security need. In certain places a physical broadening of the area in which this military activity is carried out may be required." Another means of control that is being contemplated is the installation of high-tech listening devices in major buildings in the Gaza Strip in order to enable the Israeli authorities to monitor communications. This means that Israel will remain an occupying Power under international law. The test for application of the legal regime of occupation is not whether the occupying Power fails to exercise effective control over the territory, but whether it has the ability to exercise such power, a principle confirmed by the United States Military Tribunal in *In re List and others* (The Hostages Case) of 1948. It is essential that the international community take cognizance of the nature of Israel's proposed withdrawal and of its continuing obligations under the Fourth Geneva Convention."

Report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in the Palestinian territories occupied by Israel since 1967, UN Doc. A/59/256, 12 August 2004.

Canada Wages War on Refugees: Palestinian Refugees Fight Back

by Hazem Jamjoum

We demand that the Right of Return be fulfilled. Until then, Palestinian refugees in the diaspora and internally displaced Palestinians need to be granted full economic, political and social rights.

From the Beirut Declaration 19 September 2004

Since declaring its bloody 'war on terror', the United States has not only changed its own immigration policies and procedures, but Canada's as well. Canada's new Immigration and Refugee Protection Act (2002) initiated an all out war on immigrants and refugees in this country. The main victims of this war have been poor people, specifically those from Arab and Muslim countries.

The two main weapons used by the Canadian state are incarceration and deportation. The new laws allow border officials to throw anyone in jail who they 'suspect' will not show up to their refugee hearing. This

means that these officials have full discretion in making the decision about who to imprison.

Even if you are not in jail, the refugee determination process is full of systemic obstacles that make it difficult for refugees to protect themselves against deportation. The Board Members (judges) are politically appointed by the ruling party in parliament which means that they are not necessarily the most expert at this field of the law. This is repeatedly demonstrated in shameful written decisions rejecting refugee claims. Were they not used in the context of justifying a human rights violation, these decisions



Demonstrations in Montreal against deportation of Palestinian refugees, 2004 © Darren Ell

would have been laughable in light of their confused and often ridiculous content. It used to be that two Board Members would preside over a refugee claim. The new law removes one of them, and in return offers an appeals process. The appeals process was never instituted, and now a refugee claimant's life is in the hands of one political appointee.

After losing a refugee claim, options become very limited. The claimant can apply to have their deportation stopped on the grounds that they face a high risk of being harmed if deported. This application is called a Pre-Removal Risk Assessment, and only a tiny minority of them is successful (around 3-4%). A further option is the Humanitarian and Compassionate application which is an appeal to the Immigration Minister to grant status on the basis that the person would face unusual, excessive, or undeserved hardship if forced to apply for status from elsewhere.

One of the first organized struggles against this immigration system came after Canada hosted the 2002 G8 summit and committed to the New Partnership for Africa's Development (NEPAD). As part of its agreements with Algeria, the Canadian state agreed to lift a moratorium that had stopped deportations to Algeria. Overnight, over a thousand Algerians were slated for deportation. Algerian refugees, particularly in Montreal, set up the Committee of Non-Status Algerians and set out to pressure the government to stop deporting members of their community. It was a long and hard fight that peaked with the occupation of then Immigration Minister Denis Coderre's office on 30 May 2003 following his refusal to meet with the refugees. The occupation was brutally suppressed; many of the men were beaten up and tasered on their necks, backs, torsos and genitals. One man was bashed on the head with the butt of a taser gun, leaving a large gash on his

forehead. Another man lost a tooth as a result of being punched in the face by a police officer. This brutality was followed by several deportations that reached their climax with the deportation order for one of the committee's leading organizers, Mohamed Cherfi, who took sanctuary in a Catholic church in Quebec City on 18 February 2004. Police raided the church on the grounds of a criminal charge they had laid against him, arrested him, dropped the criminal charge, and deported him to the United States.

The Algerian committee's political campaign was quite successful, however, as the government created a special procedure for Algerians living in Quebec to remain in Canada. Algerians in the rest of the country, however, remained under the risk of deportation. The Algerians' struggle empowered many other communities to take action, especially the Palestinian refugees in Montreal.

Palestinian refugees are specifically targeted by the Canadian refugee determination process. Every successful Palestinian refugee claim or risk assessment is, in a sense, an indictment of Israel's abuse of Palestinian human rights. As such, the politics of Canada's benevolence towards Israel enters the courtroom, and the fact that the Board Members are political appointees plays a major role. People working on the legal front in the battle to stop the deportation of Palestinian refugees have also noted that Palestinian cases tend to be sent to particular Board Members who develop reputations for denying Palestinians refugee status.

Out of this context emerged the Coalition against

the Deportation of Palestinian Refugees in February 2003. It started off with a very small group of refugees who wanted to take their struggle for status beyond the courtroom and into the political arena. The Coalition grew, and political activists joined the refugees in their organizing. Its demands are that the Canadian government must:

1. Immediately stop the deportations of Palestinian refugee claimants; and
2. Grant them permanent residency on Humanitarian and Compassionate grounds.

The Coalition has received over 140 endorsements for their demands from various groups in Canada and other countries.

There are two sides to the Coalition's organizing. The first is the legal battle to ensure that the refugees' applications to the Immigrant and Refugee Board (IRB) are properly filed, particularly the Humanitarian and Compassionate applications which are the basis of the second demand. The second is the political campaign which has taken many forms. Members of the Coalition and their allies hold a spirited weekly picket in front of the IRB offices in Montreal. They have also created networks with various groups, particularly immigrant and refugee rights activist groups. They are part of a larger coalition of self-organized migrants called Solidarity Across Borders, which includes the Action Committee of Non-Status Algerians, the Pakistani Action Committee Against Racial Profiling, Colombianos Unidos, the Support Committee for Basque Political Prisoners, the Kurdish Institute of Montreal, and the South Asian Women's Community Center. The Coalition has also organized larger demonstrations to push for their

demands, the latest of which was on September 18 and drew over 1,000 demonstrators.

Another aspect of the political campaign is the awareness raising work done by the Coalition. This work educates people on the racism of the Canadian refugee determination system, the plight of Palestinian refugees, and particularly the misery and brutality of life in the refugee camps in Palestine and Lebanon to which they may be deported. Politicians and members of parliament were sent an information package entitled *Stateless and Deported*, which was prepared by members of the Coalition, and some Parliamentarians raised the issue of deporting Palestinians in the Parliament itself.

The Coalition has now branched out to other cities in Canada such as Toronto and Vancouver to the point where there is a national campaign around the demands. This was a very important step in light of the Algerian committee's experience in which Algerians outside Quebec were not protected by the Montreal-centered campaign. Much of the work in these other cities, alongside the arduous legal work, revolves around trying to get Palestinian communities that live there to help in applying pressure on the government to accept the campaign's demands. The need for political mobilization is becoming increasingly important as the deportation dates for many of these refugees are just around the corner.

Deportation is a violation of a person's human rights. The main difference between this violation and others is that it is largely not recognized as such by international law. The dominant view of state

sovereignty is still one that allows states to discriminate with regards to who is legally allowed to be within the state's territory, even if that means sending someone to face such brutality as Israeli state terrorism. The victims of such a system are almost always the most defenseless: poor people and people against whom there is much racism. These 'illegal' human beings have very few options when the apparatus of the state aims to deport them, either they submit or they hide in fear. A stark example is that of Nabih, Khalil and Therese Ayoub (ages 69, 67 and 62 respectively) who have taken sanctuary in Montreal's Notre-Dame-de-Grâce church since January of this year so as not to be deported back to Ein El Helweh refugee camp in Lebanon. But as we have seen from the story of Mohammed Cherfi, even the age old tradition of church sanctuary can be violated by the state. The importance of initiatives like the Coalition becomes all the more clear upon understanding that the injustices of such a system can be eliminated only when people band together and fight back.

For more information contact, The Coalition Against the Deportation of Palestinian Refugees, C/O QPIRG McGill, 3647 University Street, 3rd Floor, Montreal (Quebec) H3A 2B3, <http://refugees.resist.ca/>, E-mail: refugees@riseup.net, Telephone: (514)591.3171, Fax: (514)398-8976.

Hazem Jamjoum is a member of the Toronto section of the Coalition Against the Deportation of Palestinian Refugees, as well as Al-Awda – The Palestine Right of Return Coalition and Sumoud: A Political Prisoners Working Group.

Donors Fail to Ante Up, Emergency and Regular Assistance Programs Suffer



A Palestinian girl holds onto her tent that has become her home after destruction in Rafah, Gaza, 2004 © UNRWA

By the end of June 2004, UNRWA had received only 47 percent of its total requirements as set out in its two Emergency Appeals for 2003 and only 27 percent of its total requirements set out in the Emergency Appeal for 2004.

The Agency was again forced to reprogram its emergency assistance in both the West Bank and Gaza, with the primary focus being placed on most critical forms of intervention: food assistance, direct employment and cash assistance. A number of vital projects in primary health, education, infrastructure work and shelter reconstruction and repair were not implemented as a result, producing growing dissatisfaction within the refugee community.

Due to funding shortfalls in the Gaza Strip, the

direct hire program offered 819 fewer contracts from April to June than in January to March. UNRWA continues to support 40 percent of nutritional requirements to refugees under this program – a third less than the Agency standard of 60 percent nutritional requirements which UNRWA supplies to those families enrolled in its Special Hardship Case program. At the end of March the remedial assistance program to students in Gaza was also discontinued because of lack of funding.

Facts & Figures – Emergency Assistance in the OPTs

Since UNRWA launched its emergency program in late 2000,

- close to 5 million work days have been generated under the Direct Hire Program;
- six schools, 130 individual classrooms and eight specialist classrooms have been constructed in the Gaza Strip under the Indirect Hire program;
- 434 shelters for Special Hardship Case families identified as priorities for reconstruction were rehabilitated because of their poor condition;
- more than 3.8 million food parcels have been distributed;
- 1,698 tents, 113,427 blankets and 4,604 kitchen kits have been distributed to Palestine refugees in the West Bank and Gaza Strip;
- 12,035 shelters have been repaired across all camps in the West Bank.

Humanitarian Access Continues to Suffer

Israeli incursions into UNRWA installations during the first half of 2004 continued unabated, with the continued harassment of Agency staff and beneficiaries. In Balata refugee camp in the

northern West Bank, for example, Israeli soldiers used an UNRWA ambulance as cover during confrontations with residents of the camp. In the past Israel has lodged unsubstantiated claims that armed Palestinians have used UNRWA vehicles.

“To remain relevant, and to stay on the cutting edge, humanitarian and development organizations ... need three things: high quality staff, the right supporting environment and adequate funding. Speaking for my Agency, I can tell you that ... for many years now – we have rarely had the third.”

UNRWA Commissioner General Peter Hansen, Opening Remarks, Geneva Conference, 7-8 June 2004-10-18

UNRWA’s Jenin Camp Reconstruction Project was also suspended on two occasions during the period after incidents where staff members came under fire from armed Palestinians. In another incident, the Israeli military requisitioned the UNRWA compound in Tulkarem camp, forcibly detaining about 200 women and children overnight in the building, together with 10 UNRWA staff members.

Between April and June 2004, 80 incidents were recorded in the West Bank where access

“I have already been forced to relocate almost all the Agency’s international staff due to the repeated instances where measures taken by Israeli Authorities have put the lives of my staff at risk. Liaison and coordination are increasingly futile exercises in diplomatic nicety which do not produce reasonable or even rational solutions. Both the freedom of movement of UNRWA’s staff and their safety (for which the Israeli authorities are responsible) need to be respected in full”.

UNRWA Commissioner General Peter Hansen, September 2004

was denied, affecting 527 UNRWA staff members. In addition, vehicles were delayed in 253 cases, affecting 1,158 staff members. Two incidents were recorded where staff members were detained at checkpoints. As a result, the Agency lost more than 4,534 working hours. In both the West Bank and Gaza Strip, restrictions on the movement of people and goods continue to hinder UNRWA operations.

The educational process was particularly affected by the curfews and closures regime. A total of 150 school days were lost due to these reasons. In addition, over 2,000 teacher days were lost, i.e. an average of 20 teachers per day, constituting 1 percent of the teaching staff and representing a cost of US\$50,000 to the Agency. In addition, 117 instructors' days were lost at the three Vocational Training Centres, at a total cost of US\$4,446 to the Agency. Construction of the wall/fence continued to disrupt education in the villages of

Biddo, Qatanneh, Beit Surik, Beit Inan, and Ramadin.

In late August, the Israeli military barred UNRWA Commissioner General Peter Hansen and an Under-Secretary from leaving the Gaza Strip to carry out responsibilities in the West Bank. Additional restrictions on UNRWA staff were imposed in September, affecting movement in and out of the West Bank and Gaza Strip.

In Memoriam

Between 29 September 2000 and 30 September 2004, 3,298 Palestinians, including 23 inside Israel, have been killed by Israeli security forces. (PRCS)

Between 29 September 2000 and 30 September 2004, 635 Israeli civilians and 290 members of the Israeli security forces were killed. (B'tselem)

The names of those Palestinians killed between 15 May and 30 September 2004 were not available at press time.

Anniversary of the 1982 Sabra and Shatila Massacre, Voices of the Survivors

Excerpts from the Complaint Against Ariel Sharon, lodged in Belgium, 18 June 2001



Survivors of the Sabra and Shatila massacre, 1982 © UNRWA

On 15-16 September 1982, right-wing Lebanese allies of Israel's occupation forces headed by then Minister of Defense Ariel Sharon, entered the Beirut refugee camps of Sabra and Shatila under the eyes of Israeli military forces and slaughtered several thousand Palestinian refugees. Over the past two decades, the massacre of Sabra and Shatila has come to symbolize Palestinian suffering rooted in mass forced displacement, military occupation, the demand for investigation and remedy of gross human rights violations, and the denial of the right to self-determination and the right of refugees to return to their homes and properties. The following recollections are from the war crimes case against Ariel Sharon that began in 2001. For more information about the history of the case visit the Indict Sharon website (www.indictsharon.net).

Samiha Abbas Hijazi

Madame Abbas Hijazi lost her daughter, her son-in-law, her daughter's godmother and other loved ones.

On Thursday, there was shelling when the Israelis came, then

it got worse so we went down into the shelter. (...) We learned on Friday that there had been a massacre. I went to my neighbours' house. I saw our neighbour Mustapha Al Habarat; he was injured and lying in a bath of his own blood. His wife and children were dead. We took him to the Gaza hospital and then we fled. When things had calmed down, I came back and searched for my daughter and my husband for four days. I spent four days looking for them through all the dead bodies. I found Zeinab dead, her face burnt. Her husband had been cut in two and had no head. I took them and buried them.

Wadha Hassan as-Sabeq

Mrs as-Sabeq lost two sons (aged 16 and 19), a brother and about 15 other relatives.

We were at home on Friday 17 September; the neighbours came and they started to say: "Israel has come in, go to the Israelis, they are taking papers and stamping them." We went out to surrender ourselves to the Israelis. When we got there,

the tanks and the Israeli soldiers were there, but we were surprised to see that they had Lebanese forces with them. They took the men and left us women and children together. When they took the children and all the men from me, they said to us, "Go to the Sports Centre," and they took us there. They left us there until 7pm, then they told us, "Go to Fakhani and don't go back to your house," then they started firing shells and bullets at us. On one side there were some men who had been arrested; they took them and we have never found out what happened to them. To this day we know nothing about what happened to them; they just disappeared.

Nadima Yousef Said Nasser

Mrs Said Nasser lost her husband, her father-in-law, three of her husband's nephews and five other relatives.

It was Thursday. Suddenly the street was deserted. My mother went to the neighbours' house, and the shelling started. About 10 families were gathered at the neighbours' house. A little while later, a woman came in from the Irsan quarter. She shouted, "They've killed Hassan's wife!" She was carrying her children and shouting that it was a massacre. I picked up one of my twin daughters, who was a year old, went to my husband and said, "They say that there's a massacre." He replied, "Don't be silly." I took one of my daughters and gave him the other one, but the shelling got stronger and we went back to the

neighbours' shelter. The shelter was full of women, men and children; a woman from Tel Al Zaater was crying, saying, "This is what happened at Tel Al Zaater." A little later, I went out of the shelter, and I saw armed men who were putting the men against the walls. I saw a neighbour; they tore open her stomach. Some woman came out of the house opposite and started waving her scarf around, saying, "We must give ourselves up." Suddenly I heard my sister shouting, "They've cut his throat!" I thought that my parents had been killed. I rushed to see them, carrying my daughter. They killed my sister's husband in front of me. I went up, I saw them shooting at the men. They killed them all. I fled. My other daughter stayed with her father. The armed men left, taking with them the men from the shelter. My husband was among them. On entering the camp a Lebanese woman came; she had seen my husband holding my daughter. She had seen how my husband had been killed by a Phalangist: with the blow of an axe to his head. My daughter was covered in blood. The man gave her to the Lebanese woman, who came back to the camp and gave her to some relatives of mine. I fled to Gaza hospital. When they entered the hospital, I escaped once again.

The full complaint is available at,

<http://www.indictsharon.net/cmptENft.pdf>.

Resources

Forthcoming BADIL Publications

Survey of Palestinian Refugees and Internally Displaced Palestinians 2003

The Survey provides basic historic and current information on Palestinian refugees and internally displaced persons. The Survey includes 6 chapters covering the historical circumstances of Palestinian displacement, population, legal status, socio-economic profile, international protection and assistance, and durable solutions.

Available in English and Arabic. 200 pages. ISSN 1728-1679.

For advance orders contact, admin@badil.org

Palestinian Refugee Children, International Protection and Durable Solutions.

BADIL Information & Discussion Brief No. 10 (2004).

To order contact, admin@badil.org.

Information Packet on Palestinian Refugees

The packet includes a short summary of the popular campaign for Palestinian refugee rights and a brief history of the Palestinian refugee issue, a poster, and a set of postcards.

To order contact, admin@badil.org.

Selected BADIL Publications

Proceedings of the Fourth Annual Meeting of the Global Palestine Right of Return Coalition

Includes working papers submitted to the fourth annual meeting of the Global Palestine Right of Return Coalition held in London, November 2003. The publication also includes a summary of discussions and debate as well as the final statement issued by the Coalition. Arabic with the

final statement issued by the Coalition. Arabic with English summaries.

For orders contact, admin@badil.org.

BADIL Expert Forum Working Papers

A complete list of all working papers commissioned for the BADIL Expert Forum on Palestinian Refugees is available on the BADIL website. Papers address the relationship between international law and peacemaking, housing and property restitution for refugees, international protection, and obstacles to implementation of durable solutions for Palestinian refugees.

See, http://www.badil.org/Campaign/Expert_Forum.htm

“Experiencing the Right of Return, Palestinian Refugees Visit Bosnia”

This 20 video documents a study visit of a delegation of Palestinian refugees to Bosnia-Herzegovina in June 2002. The delegation, comprised of refugees from Palestine/Israel, Lebanon, Jordan, Syria, and Europe traveled to Bosnia in order to understand: What was done and how? What didn't work and why? What are the lessons for Palestinians and their struggle for the implementation of the right of return and real property restitution?

To order contact, admin@badil.org. Available in English and Arabic.

Al-Quds 1948: al-ahya' al-'arabiyah wa-masiruha fi harb 1948

Salim Tamari (ed.). Published by BADIL Resource Center and the Institute for Palestine Studies, 2002. ISBN 9953-9001-9-1.

To order contact IPS-Beirut, ipsbrt@cyberia.net.lb, or www.palestine-studies.org.

BADIL Hebrew Language Packet/The Right of Return
The Packet includes: Main Reader, 'Palestinian Refugees:' overview of the issue and demands of Palestinian refugees; law and principles guiding solutions to refugee problems; answers to frequently asked questions; obstacles to be tackled by a law- and rights-based solution (24 pages); Legal Brief, national Law Analysis' (16 pages); Executive Summary, 'The

Right of Return:' Report of the Joint British Parliamentary Commission of Inquiry into Refugee Choice (28 pages; translation from the English original published in London, March 2002); Readers' feedback sheet and background information about BADIL Resource Center for Palestinian Residency and Refugee Rights.

The BADIL Hebrew-language Information Packet is available for NIS 30. For postal orders inside Israel, please send a check to Andalus Publishers, PO Box 53036, Tel Aviv 61530 (andalus@andalus.co.il).

New from Other NGOs and Publishers

Children of Palestine: Narrating Forced Migration in the Middle East

Dawn Chatty and Lewando Hundt (eds.)

Oxford: Berghahn Press, 2004

To order visit the Berghahn website,

www.berghahnbooks.com.

By All Means Possible, Destruction by the State of Crops of Bedouin Citizens in the Naqab (Negev) by Aerial Spraying with Chemicals

Report by the Arab Human Rights Association, Nazareth (July 2004)

57 pages.

Available at, <http://www.arabhra.org/>

[NaqabReport_English.pdf](#).

Families Torn Apart by Discriminatory Policies

Report by Amnesty International

Available at, [web.amnesty.org/library/index/](http://web.amnesty.org/library/index/engmde150632004)

[engmde150632004](#).

1. Closing the Gaps: Between Protection and Durable Solutions, Inter-Agency and NGO Efforts to Make the International Refugee Regime Relevant for Palestinian Refugees, A Memorandum Prepared by BADIL Resource Center for the UNHCR Pre-ExCom NGO Consultations, Geneva, 28-30 September 2004.
2. Statement by NGOs Presented to the 55th Session of the UNHCR Executive Committee of the High Commissioner's Program, Geneva, 4-8 October 2004.

1. Closing the Gaps: Between Protection and Durable Solutions, Inter-Agency and NGO Efforts to Make the International Refugee Regime Relevant for Palestinian Refugees

A Memorandum Prepared by BADIL Resource Center for the UNHCR Pre-Excom NGO Consultations, Geneva, Switzerland, 28-30 September 2004

The Palestinian refugee issue is the largest and one of the oldest unresolved refugee problems worldwide. At the end of 2003 it is estimated¹ that two-thirds of the Palestinian people worldwide are refugees. This includes: (a) 5.3 million refugees and their descendents who were displaced in 1948 – 4.1 million of whom ('Palestine refugees') are registered with the United Nations Relief and Works Agency for Palestine Refugees (UNRWA) for assistance; (b) approximately 780,000 refugees ('displaced persons') and their descendents from the West Bank—including eastern Jerusalem—and the Gaza Strip displaced for the first time in 1967; and, (c) approximately 750,000 Palestinian refugees and their descendents from the 1967 occupied territories who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, are outside the 1967 occupied Palestinian territories and are unable (due to revocation of residency status, deportation, denial of family reunification, etc.) or, owing to such fear, unwilling to return there.

It is our opinion that where host states are unable or unwilling to provide adequate protection consistent with relevant international and regional instruments, all of these individuals should be receiving protection from the international community, including in those

jurisdictions² where UNRWA operates under an "assistance" mandate.

While there is an international consensus about the principles to be implemented in the framework of a durable solution of the Palestinian refugee problem (see, in particular, UN General Assembly Resolution 194/III (1948) calling for voluntary return, restitution of properties, and compensation and UN Security Council Resolution 237 (1967) calling upon the Government of Israel to facilitate the return of those inhabitants of the West Bank and Gaza Strip who fled the hostilities), those Palestinian refugees wishing to do so have been unable to exercise a choice to return voluntarily to their homes of origin in safety and dignity. The Government of Israel opposes the return of refugees displaced in 1948 due to the ethnic, national and religious origins of the refugees and for security reasons. Israel's protracted military occupation of the West Bank and Gaza Strip prevents the return of refugees displaced in 1967 and after to their homes of origin.

Due to specific political circumstances and legal interpretations (i.e. exclusion of Palestinian refugees from protection under the 1951 Convention Relating to the Status of Refugees) Palestinian refugees lack access to international mechanisms of rights protection available for all other refugee populations. Major reasons for the current protection gaps are: (a) lack of political support (political will) for a rights-based permanent solution by the parties to the conflict and members of the UN

Security Council, especially permanent members of the Security Council; (b) states signatories to the 1951 Convention Relating to the Status of Refugees have not integrated Article 1D into domestic legislation and/or have not yet adopted interpretations of Article 1D that would provide protection; (c) limitations of the regional human/refugee rights regime in the Arab world; some Arab states signatories of the 1965 Casablanca Protocol, do not, in practice, implement its provisions; and, (e) the negative impact of regional and international politics on the ability of the PLO to provide effective diplomatic intervention and protection for Palestinian refugees. This 'protection gap' is significant, both with regard to the protection of Palestinian refugee rights in the context of a future durable solution to the Israeli-Palestinian conflict, and with regard to the protection of immediate economic, social, cultural, civil and political rights, as well as physical protection, in the context of exile.

BADIL Recommendations to the 2004 Pre-ExCom Meeting

Four years ago BADIL Resource Center, in conjunction with Palestinian and international experts and agencies, launched an initiative aimed at reviewing the current 'protection gap' concerning Palestinian refugees in the search for remedies to: (a) re-affirm, within the specific framework of UNGA Resolution 194/III and UNSC Resolution 237, existing international law and standards applicable to all other refugee groups; and (b) provide the basis for the application of international mechanisms of refugee rights protection to the Palestinian refugee case. BADIL considers the current Pre-ExCom Meeting to be a unique opportunity to broaden and deepen our dialogue with expert partners.

Positive developments since 2000 towards rectification of the current 'protection gap' concerning Palestinian refugees include: (a) UNHCR's revised interpretation of the status of Palestinian refugees under Article 1D of

the 1951 Convention Relating to the Status of Refugees (see, 'Note on the Applicability of Article 1D of the 1951 Convention Relating to the Status of Refugees to Palestinian Refugees'); (b) increased co-ordination between UNHCR and UNRWA based on existing mandates in addressing the protection problems faced by Palestinian refugees; and, (c) recommendations by the Council of Europe (Parliamentary Resolution 1338, 25 June 2003) calling upon member states to review their policies in respect of Palestinian asylum seekers, with a view to effectively implementing UNHCR's new guidelines on the applicability of the 1951 Refugee Convention to Palestinian refugees and recommending harmonization of Council of Europe member states' policies in this respect; calling upon member states to ensure that where Palestinian refugees are legally recognized, they should be entitled to all benefits of socio-economic rights, including family reunion, normally accorded to recognized refugees in these member states; initiate the organization of an international conference devoted entirely to the question of Palestinian refugees; and recommending that member states include information on Palestinian origin in statistics concerning asylum seekers and refugees.

Specifically, BADIL asks participants at this Meeting to consider the following recommendations:

Countries which have not yet incorporated Article 1D into national legislation should do so in accordance with their international obligations. Palestinian refugees should be recognized as refugees under Article 1D as recommended by UNHCR and the Council of Europe. Countries which do not recognize Palestinian refugees as such should at least grant them a complementary form of protection which entitles them to a formal legal status and basic civil rights. Palestinian refugees should not be returned to countries in which there is no guarantee of effective protection.

UNHCR should continue efforts to enhance legal protection available to Palestinian refugees, including further clarification on the issue of ‘returnability’. UNHCR, UNRWA and other UN agencies, as well as NGOs and refugee community organizations, should continue with a sense of urgency the constructive debate about principles and mechanisms, which could enhance the scope and quality of international protection for Palestinian refugees. Such debate must establish exactly the scope and magnitude of the protection gaps faced by Palestinian refugees and tackle the question of how and by whom the protection gaps should be closed.

UNHCR, UNRWA and other UN agencies, as well as NGOs and refugee community organizations, should work together with states members of the Arab League to strengthen regional instruments and related mechanisms for monitoring protection of refugees as part of a wider effort to close the gap between protection and durable solutions for Palestinian refugees, in particular, and refugees in the Arab world in general. Further development of regional instruments to address the specific nature of mass displacement in the Arab world should be viewed as part of a concerted effort to lay the groundwork for national authorities to accede to the 1951 Convention Relating to the Status of Refugees and the statelessness conventions.

International assistance, protection and the search for durable solutions consistent with international law and relevant UN resolutions are part of a continuum and should not be seen in isolation. While addressing the immediate ‘protection gap’ relative to Palestinian refugees, the United Nations and the international community should engage in parallel efforts to ensure that Palestinian refugees have access to durable solutions to their plight based on international law, including the right to voluntarily return to their homes of origin in safety and dignity.

European NGOs, including the European Council on Refugees and Exiles (ECRE), should encourage the Council of Europe to follow-up on its 2003 recommendations, in particular organization in 2005 of an international conference dedicated entirely to the question of Palestinian refugees. Such a conference would provide the appropriate platform for an in-depth study by state, UN, and NGO actors, of current protection gaps as well as concrete and concerted efforts for their remedy.

Notes

- 1 There is no single authoritative source for the global Palestinian refugee population. The figures reflect estimates according to the best available sources. Figures are therefore indicative rather than conclusive. The figure does not include internally displaced Palestinians who do not fall within the scope of the 1951 Convention Relating to the Status of Refugees. Many of the same protection issues affecting Palestinian refugees, however, also affect internally displaced Palestinians, particularly those residing in the 1967 occupied territories.
- 2 UNRWA provides assistance to registered Palestine refugees in the West Bank, Gaza Strip, Jordan, Lebanon, and Syria.

2. Statement by NGOs Presented to the 55th Session of the UNHCR Executive Committee of the High Commissioner’s Program, Geneva, 4-8 October 2004.

Agenda Item 6 (i)

International Protection

NGO Submission

Mr. Chairman,

This statement has been drafted, and is delivered, on behalf of a wide range of NGOs.

During the June Standing Committee, NGOs expressed the view that the Note on International Protection provides a “health check” on the state of protection of refugees and others of

concern to UNHCR. The Note this year gave attention to the broad scope of protection and also focused on the protection partnerships between NGOs and UNHCR that can greatly enhance refugee protection. We are pleased to see the commitments to protection partnerships moving forward.

Instead of commenting on this year's draft Conclusions, NGOs would like to express our appreciation for the Draft Decision on Working Methods of the Executive Committee of the High Commissioner's Programme and its Standing Committee, including on NGO Observer participation in the work of the Committees and the role that NGOs should be able to play in the EXCOM Conclusions process next year. We look forward to being able to bring our direct experience of working with refugees to the table in order to contribute to the Conclusions that can help to improve refugee protection.

Responsibility-Sharing and Ensuring the Fulfilment of Refugee Rights

We are very much aware of the disproportionate burdens borne by developing countries hosting large populations of refugees and asylum-seekers. Wealthier states should play a greater role in responsibility-sharing by more generously supporting developing countries in ensuring that refugees enjoy the rights granted by the 1951 Convention and other international human rights instruments. We are particularly concerned by the current lack of basic rights seen in many refugee situations, resulting in, inter alia, the inadequate provision of food rations, education, health care, shelter, as well as the denial of the right to earn a livelihood. We note, in this respect, that in South Africa, despite considerable socio-economic challenges for South Africans, asylum-seekers are able to work and attend school while their applications are being considered.

Palestinians

NGOs reaffirm that protection is the primary responsibility of states. NGOs wish to draw the Executive Committee's attention to the ongoing plight of millions of forcibly displaced Palestinians. Their situation is unique amongst forcibly displaced persons, as millions of them fall into a protection gap with no access to any form of international protection. In this regard, we call upon UNHCR and governments to ensure protection under the 1951 Convention to Palestinian asylum-seekers, in light of Article 1D.1 We also support efforts of the Council of Europe² and a growing number of states to give effect to this recommendation.

Resettlement

NGOs concur with UNHCR's recognition that there are multiple dimensions in finding a durable solution and we welcome some states' efforts to grant permanent residence to refugees. NGOs also support UNHCR's recommendation that resettlement be more strategically addressed and we call for the initiation of consultations on the determination of caseloads so that the Multilateral Framework of Understandings on Resettlement can be implemented. The work done by this strand of the Convention Plus process must be seized upon as a means of seeking durable solutions for some groups of refugees.

Detention

Of grave concern to us is the increased use of detention in order to deny entry and asylum, including by countries such as Canada, the US, and Australia. This year's Note on International Protection delineates UNHCR's concern at state policies of arbitrary and/or widespread detention of asylum-seekers. The practice of detaining refugees and asylum-seekers, including as a deterrence measure,

is another worrying indication that effective protection remains out of the reach of many persons entitled to international protection. While UNHCR guidelines state explicitly that in the view of UNHCR, the detention of asylum-seekers is “inherently undesirable” and that “[a]s a general principle asylum-seekers should not be detained,” state practice is considerably different in many places in the world. The rights to liberty and freedom from arbitrary detention have been a core element of formal human rights standards since they were enshrined in Articles 3 and 9 of the 1948 Universal Declaration of Human Rights. Subsequent international standards, notably the International Covenant on Civil and Political Rights, recognise that the right to liberty is linked to freedom from arbitrary detention. Detention as a policy tool undermines the 1951 Convention, particularly its Article 31, and EXCOM Conclusion 44.

Refugee Status Determination

Further, while recognising the important role played by UNHCR in asylum determination procedures in many countries worldwide, NGOs have concerns that some of UNHCR’s refugee status determination (RSD) practices in some countries in Africa, the Middle East, and Asia do not always meet the standards of fairness to which UNHCR urges states to adhere. This includes the use of secret evidence; failure to provide reasons for rejection to unsuccessful applicants; the lack of independent appeals processes; denial of the right to legal counsel; and the use of untrained interpreters. NGOs feel UNHCR’s role in RSD can potentially compromise the organisation’s mandate to protect refugees and reiterate that refugee status determination is the responsibility of states. UNHCR should not see its role in RSD as a substitute for government-run procedures. UNHCR

should make it a priority that governments take over these activities and build their capacity to do so. We call on UNHCR to initiate public consultations on the new draft refugee status determination procedures.

Statelessness

Statelessness remains a problem that is so invisible that even the approximate number of stateless persons is not known. What is known is that many stateless persons face daily obstacles to the enjoyment of their human rights because they do not come within the state protection system. We call on EXCOM to encourage those states that are not yet parties to ratify either or both the relevant Conventions on statelessness (the 1954 Convention on the Reduction of Stateless and the 1961 Convention relating to the Status of Stateless Persons). All states should ensure that they have mechanisms in place to enable them to apply these Conventions, including to identify stateless persons on their territory and to seek assistance from UNHCR where they need help in doing so. UNHCR should also take a more active role in assisting states to establish appropriate arrangements to identify and address statelessness, as well as to resolve individual cases, with particular attention to the problems faced by stateless women and girls.

Protection Partnerships

NGOs highlight the importance of protection partnerships, which enhance the protection of refugees and asylum-seekers when UNHCR and NGOs work together. This partnership is as important in the sphere of advocacy, as it is in the operational arena. UNHCR’s recent directive to all Representatives to hold regular protection consultations with all relevant NGOs is a particularly welcome step. We look forward to seeing this directive implemented on the ground and hope that UNHCR

will be sensitive to the challenges facing many NGOs and refugee advocates in countries with a problematic record of upholding the basic rights of its citizens and others on its territory, such as the right to freedom of association and expression. We also call on UNHCR to closely monitor, together with NGOs in the context of protection partnerships, that all states hosting refugees comply with the provisions of the 1951 Refugee Convention.

The Importance of Information

Finally, we would like to reiterate the importance the NGO community attaches to receiving information on countries of origin, as well as relevant

guidelines from UNHCR. This information is a crucial part of delivering protection and we rely on regular public domain updates that are made accessible both through UNHCR's website and RefWorld CDROMs.

Thank you.

Notes:

- 1 Note on the Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian refugees, UNHCR, October 2001.
- 2 Council of Europe Parliamentary Assembly, Situation of Palestinian Refugees, Recommendations 1612 (2003).

About the meaning of al-Majdal

al-Majdal is an Aramaic word meaning fortress. The town was known as Majdal Jad during the Canaanite period for the god of luck. Located in the south of Palestine, al-Majdal was a thriving Palestinian city with some 11,496 residents on the eve of the 1948 war. Majdalawis produced a wide variety of crops including oranges, grapes, olives and vegetables. Palestinian residents of the town owned 43,680 dunums of land. The town itself was built on 1,346 dunums.

The town of al-Majdal suffered heavy air and sea attacks during the latter half of the 1948 war in Palestine. Israeli military operations (Operation Yoav, also known as “10 Plagues”) aimed to secure control over the south of Palestine and force out the predominant Palestinian population. By November 1948, more than three-quarters of the city’s residents had fled to the Gaza Strip. Israel subsequently approved the resettlement of 3,000 Jews in Palestinian refugee homes in the town. In late 1949 Israel began to drive out the remaining Palestinian population using a combination of military force and administrative measures. The process was completed by 1951. Israel continues to employ similar measures in the 1967 occupied West Bank, including eastern Jerusalem, and the Gaza Strip.

Palestinian refugees from al-Majdal now number over 71,000 persons. Like millions of other Palestinian refugees, Majdalawis are not allowed to return to their homes of origin. Israel opposes the return of the refugees due to their ethnic, national and religion origin. al-Majdal, BADIL’s quarterly magazine, reports about and promotes initiatives aimed at achieving durable solutions for Palestinian refugees and displaced persons based on international law and relevant resolutions of the United Nations.



Remnants of AL-Majdal / Asqalan
Source: www.palestineremembered.com

Remember

11 December 2004

57th Anniversary of UN Resolution 194 – The Right of Return

UNGA Resolution 194(III), Paragraph 11

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

Instructs the Conciliation Commission to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation, and to maintain close relations with the Director of the United Nations Relief for Palestine Refugees and, through him, with the appropriate organs and agencies of the United Nations;

al-Majdal is a quarterly magazine of BADIL Resource Center that aims to raise public awareness and support for a just solution to Palestinian residency and refugee issues.

