

International Response to Palestinian Displacement'

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Introduction

The case of the Palestinian refugees is the largest and longest-standing unresolved refugee case in the world today. There are about 6.8 million Palestinian refugees and 400,000 internally displaced persons, representing 70 percent of the total Palestinian population worldwide.² Nearly all Palestinians are stateless and without an adequate form of protection from the United Nations, host countries or an occupying power. Palestinians are also facing ongoing displacement in the occupied Palestinian territories and Israel because of Israel's occupation and colonial policies and in some host countries because of occupation and war such as in Iraq and Lebanon.³ The ongoing displacement, dispossession and denial of the right to self-determination of the Palestinian, has led the UN Special Rapporteur to the Occupied Palestinian Territories, John Dugard, to call the Palestinians an "endangered people."⁴

These displacements have led to complex and multiple categories and statuses, e.g. Palestine refugee, Palestinian refugees, 1967 displaced persons, internal refugees, internally displaced persons, displaced refugees, and stateless persons. These statuses also change as cease-fire lines and boundaries continue to fluctuate, in 2006 as undefined and subject to conflict as ever. Moreover, in many cases, Palestinians have been displaced more than once and can thus theoretically carry more than one status.

This article attempts to provide an assessment of the role of the international community, particularly the United Nations, in responding to Palestinian displacement, since 1948. In doing so, it argues that despite the multiple statuses held by displaced Palestinians, the international community has failed to provide the necessary protection to Palestinian refugees and internally displaced persons (IDPs). It also argues that the failure of the international community and relevant UN agencies to implement international law is the result of political constraints, which by the mid-1950s had already prevented the search for a durable solution based on the right of return and restitution of refugees. Failure to implement international law at an early stage also determined future, or the lack thereof, responses to Palestinian displacement.

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² There is no reliable and comprehensive data on the number of Palestinian refugees and internally displaced persons. The figures calculated by Badil are estimates and should be regarded as indicative. For more information, see *Survey of Palestinian Refugees and Internally Displaced Persons, 2004-2005*, Bethlehem: Badil Resource Center for Palestinian Residency and Refugee Rights, May 2006, chapter 2.

³ Palestinian refugees are currently being displaced in occupied Iraq. Recent Palestine Liberation Organization (PLO) statistics estimate that 536 Palestinian refugees have been killed in Iraq since the US-led invasion and occupation of Iraq in March 2003. See "More than 500 Palestinians killed in Iraq", *UPI*, Gaza, 17 January 2007.

⁴ Statement to the Human Rights Council by Prof. Dugard, Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Second Session of the Human Rights Council, Geneva, 26 September 2006.

This article is divided into two main sections. The first section examines the responses of the international community to different waves of Palestinian refugees, while the second section analyzes the international response to internally displaced persons in Israel and the occupied Palestinian territories.

I. International Response to Palestinian Refugees

This section reviews the response of the international community to Palestinian displacement and argues that the international response failed because of the inability or unwillingness of the United Nations and the superpowers to implement international law and relevant UN Resolutions. Indeed, since the demise of the UN Conciliation Commission for Palestine at the beginning of the 1950s, no effective mechanism has been established to provide for the protection of Palestinian refugees, particularly for the search of a durable solution based on the right to return, restitution and compensation as enshrined in UN General Assembly Resolution 194.

a. The Partition of Palestine and 1948 Refugees

After the collapse of the Ottoman Empire, Great Britain obtained the mandate over Palestine.⁵ The British Mandate (1922-1948) was to lead to the creation of an independent Palestinian state based on the Covenant of the League of Nations and the Treaty of Sèvres.⁶ In 1920, the Treaty of Sèvres between the Allied Powers and Turkey affirmed that Palestine “be provisionally recognised as an independent State subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone.”⁷ The Mandate for Palestine, however, also aimed to facilitate the colonization of the country through Jewish immigration in order to secure “the establishment in Palestine of a national home for the Jewish people” according to the political commitment of the British Government set out in the Balfour Declaration.⁸ Thus the contradiction between the expressed goal of the Mandate; the creation of an independent state of Palestine for all its citizens on the territory of Mandate Palestine and the establishment of a Jewish national home within or on that same territory. This

⁵ In 1919, Allied Powers met in Paris to determine the status of those non-self-governing territories that had been part of the former Ottoman Empire. Member states of the League of Nations decided to establish a “Mandate System” to facilitate the independence of these territories “according to the stage of development of the people.” Article 22 of the Covenant of the League of Nations, 28 June 1919. In 1920, the League of Nations entrusted the temporary administration (“Mandate”) of Palestine to Great Britain, a “Class A” Mandate or closest to independence.

⁶ The Mandate of Palestine is based on Article 22 of the Covenant of the League of Nations, which stipulates that “certain communities formerly belonging to the Turkish empire have reached a stage of development where their existence as independent nations can be provisionally recognized subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone.” Article 22 of the Covenant of the League of Nations, 28 June 1919. The Balfour Declaration is reprinted in *Survey of Palestine, Vol. I*. Prepared in December 1945 and January 1946 for the Information of the Anglo-American Committee of Inquiry. Reprinted in full with permission from Her Majesty’s Stationery Office. Washington, DC: Institute for Palestine Studies, 1991, p. 1. For more information, see *Survey of Palestinian Refugees and Internally Displaced Persons*, supra note 2, chapter 1.

⁷ The Treaty of Peace Between the Allied and Associated Powers and Turkey, signed at Sèvres, 10 August 1920, Part II, Section VII, Art. 94.

⁸ See Arthur James Balfour, ‘Balfour Declaration’, 2 November 1917.

contradiction also raises questions as to the legality of the British Mandate because it aimed to establish a Jewish home through immigration and colonization to the detriment of Palestine's peoples' right to self-determination.

In 1947, amid ongoing conflict and the changed post-war context, Great Britain decided to end its Mandate over Palestine and transfer the question of Palestine to the United Nations. The UN Charter provided for independence, i.e. a state of Palestine, or a 'Temporary Trusteeship' in the eventuality of the termination of a Mandate. But the UN General Assembly decided otherwise and appointed a special committee to formulate recommendations on the future status of Palestine. The majority of the members of the UN Special Committee on Palestine recommended the creation of two states in Palestine to meet "the claims and aspirations of both parties" while others favored a federal state "to ensure equal rights for both Arabs and Jews in their common state."⁹

Following the recommendation of the UN Special Committee, the UN General Assembly adopted Resolution 181 proposing a 'Plan of Partition with Economic Union'.¹⁰ Israel declared independence on 14 May 1948 over the territory of *Eretz-Israel*; a state much greater than the territory allocated to the Jewish state by Resolution 181.¹¹ Immediately after, war broke out between Arab states and Israel. Between November 1947 and the Armistice of 1949, an estimated 750,000 Palestinians were displaced.¹² More than half of the total Palestinian population, estimated at 1.3 million in 1946, was displaced and 500 villages were depopulated and destroyed.¹³ Israel took over the homes, properties and lands of the refugees. The dispossession and displacement of Palestinians is referred to as the *Nakba*; literally the Catastrophe. There are today around 6 million 1948 Palestinian refugees.¹⁴

⁹ Report of the UN Special Committee on Palestine, *The Question of Palestine*. UN Doc. A/364, 31 August 1947. For more information, see *Survey of Palestinian Refugees and Internally Displaced Persons*, supra note 2, chapter 1.

¹⁰ The Partition plan was adopted by 33 in favor, 10 abstentions and 13 against (Afghanistan, Cuba, Egypt, Greece, India, Iran, Iraq, Lebanon, Pakistan, Saudi Arabia, Syria, Turkey, Yemen). See UNGA Resolution 181. 29 November 1947.

¹¹ The 1948 Declaration of Independence of Israel states: "Accordingly we, Members of the People's Council, Representatives of the Jewish Community of Eretz-Israel and of the Zionist Movement, are here assembled on the day of the termination of the British Mandate over Eretz-Israel and, by virtue of our natural and historic right and on the strength of the resolution of the United Nations General Assembly, hereby declare that establishment of a Jewish state in Eretz-Israel, to be known as the State of Israel." *Eretz-Israel* is a territory that includes Mandate Palestine as well as parts of Jordan, Lebanon, Syria and Egypt. In fact, the borders of the state of Israel have not yet been delimited. Declaration of Establishment of State of Israel 14 May 1948, Published in the *Official Gazette*, No. 1, 14 May, 1948.

¹² *Final Report of the United Nations Survey Mission for the Middle East (Part I)*. UN Doc. A/AC.25/6 citing a figure of 750,000 refugees. The total number of refugees reaches around 900,000 if the number of persons who lost their livelihood but not their homes is added.

¹³ By 1946, the estimated population of Palestine by 1946 was 1,952,920, including 583,327 Jews. See Salman Abu-Sitta, *Atlas of Palestine 1948*, London: Palestine Land Society, p. 11. For a register of villages depopulated during this period, see Salman Abu-Sitta, *The Palestinian Nakba 1948, Register; The Register of Depopulated Localities in Palestine*. London: Palestinian Return Centre, 2001.

¹⁴ The common figure for 1948 Palestinian refugees is 4.3 million based on UNRWA registered refugee population, however, there are up to 1.7 million Palestinian refugees who did not register with UNRWA because they did not meet the 'Palestine refugee' definition, were outside UNRWA's areas of operation or were not in need of relief assistance. For more information, see *Survey of Palestinian Refugees and Internally Displaced Persons*, supra note 2, chapter 2, p.48-49.

The first international response to Palestinian displacement took place as a result of the 1948 *Nakba*.¹⁵ The UN General Assembly established the position of UN Mediator for Palestine in May 1948, whose mandate was to provide the necessary services to the population, promote a peaceful solution to the future of Palestine and cooperate with the Truce Commission for Palestine, as well as to invite other UN agencies and international organizations to provide assistance to the population.¹⁶ The General Assembly, with the help of the Mediator, first created the UN Relief for Palestine Refugees (UNRPR) in November 1948 whereby international organizations such as the International Committee of the Red Cross (ICRC) and the American Friends Services Committee (AFSC) undertook relief activities between December 1948 and August 1949.¹⁷ During the same period, in December 1948, the UN General Assembly passed Resolution 194(III) stating that “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.”¹⁸

The international community eventually replaced the work of the Mediator and the UNRPR by two different UN agencies to provide protection and assistance to Palestinian refugees: The UN Conciliation Committee for Palestine (UNCCP) and the United Nations Relief and Work Agency in the Near East (UNRWA). The first, the UN Conciliation Committee for Palestine (hereinafter UNCCP or Commission), was established in December 1948 as part of Resolution 194 to “take steps to assist the governments and authorities concerned to achieve a final settlement of all questions outstanding between them” and “facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees.”¹⁹ The UNCCP was comprised of representatives of the United States, France and Turkey. In 1950, General Assembly Resolution 394(V) authorized the UNCCP to “continue consultations with the parties concerned regarding measures for the *protection of the rights*, property and interests of the refugees.”²⁰ The UNCCP thus had an express mandate to facilitate a settlement of all outstanding questions between the parties and protect the rights of Palestinian refugees, among them the right of return, property restitution and compensation.

¹⁵ Palestinians displaced prior to the 1948 *Nakba* are not recognized as refugees although many were displaced during the British Mandate. Under the British Mandate, Palestinians were recognized as citizens in the 1925 *Citizenship Order*, although thousands of Palestinians were excluded because they were outside the country. Estimates vary, but between 25,000 and 50,000 Palestinians were unable to obtain citizenship because they were abroad. Most of them reside in Latin America. *Palestine Royal Commission Report*, Cmd. 5479. London: HMSO, 1937, p. 331. For a description of the problem facing Bethlehem families, see Adnan A. Musallam, *Developments in Politics, Society, Press and Thought in Bethlehem in the British Era 1917-1948*. Bethlehem: WIAM – Palestinian Conflict Resolution Center, 2002.

During the British Mandate, between 30,000 and 40,000 Palestinians were expelled or deported from Palestine, especially during the 'Great Revolt' (1936-1939) because of Palestinian opposition to the Zionist colonization of Palestine and decreasing availability of land for Palestinians. Based on an average family size of six persons, an estimated 30,000 Palestinians were affected. Rony Gabbay, *A Political Study of the Arab-Jewish Conflict: The Arab Refugee Problem (A Case Study)*. Geneva: Librairie E. Droz, and Paris, Librairie Minard, 1959, p. 66.

¹⁶ See UNGA Resolution 186 (s-2), 14 May 1948.

¹⁷ See Lex Takkenberg, *The Status of Palestinian Refugees in International Law*, Oxford; Clarendon Press Oxford, 1998, p. 25.

¹⁸ UNGA Resolution 194(III), 11 December 1948.

¹⁹ *Ibid.*

²⁰ Emphasis added. UNGA Resolution 394(V), 14 December 1950, A/RES/394(V), para. 2(c).

In 1949, the UNCCP created two technical bodies: the Technical Committee to study different aspects of the refugee problem such as the number of refugees, their origin and living conditions and the Economic Survey Mission (hereinafter, the Mission) to “examine the economic situation of the countries” affected by the conflict, and develop a structure to facilitate relief, resettlement and economic development.²¹ Both committees had as their stated objectives to help the implementation of Resolution 194 and to improve living conditions of the refugees. To this end, the Mission recommended to the UNCCP to “facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation [...] in order to reintegrate the refugees into the economic life of the area on a self-sustaining basis within a minimum period of time.”²² Although the concept of reintegration was meant to allow for both repatriation and resettlement, it was primarily conceived as a form of local integration, i.e. resettlement, in Arab host countries. Through resettlement and compensation, the Mission thus recommended a politically expedient and practicable solution. Soon after, UN General Assembly Resolution 302 established the second UN agency, the UN Relief and Work Agency in the Near East (UNRWA) “to carry out in collaboration with local governments the direct relief and works programmes as recommended by the Economic Survey Mission.”²³ UNRWA's activities thus focused on economic development and self-reliance.

In 1949, the UNCCP organized a peace conference in Lausanne to elaborate a final and comprehensive peace agreement, including territorial questions, Jerusalem and the refugee issue. Arab delegates argued that Israel had to unconditionally recognize the right of Palestinian refugees to return to their homes and receive indemnity as enshrined in Resolution 194 prior to entering the negotiations.²⁴ The Commission considered it had a specific mandate in relation to the refugee question and was willing to press Israel to accept the principles laid down in Resolution 194.²⁵ Israel for its part refused to accept the principles enshrined in Resolution 194, i.e. the right of return, and wanted the refugee question to be negotiated as part of the overall peace settlement.²⁶ As such, Israel said it could accept up to 100,000 refugees as part of the peace agreement, but

²¹ United Nations Conciliation Commission for Palestine. Terms of Reference of the Technical Committee on Refugees, A/AC.25/Com.Tech/1, 14 June 1949.

See also Terry Rempel, “The United Nations Conciliation Commission for Palestine, Protection, and a Durable Solution for Palestinian Refugees,” Information & Discussion Brief Issue No. 5, Bethlehem: BADIL Resource Center, June 2000.

²² United Nations Conciliation Commission for Palestine, Fourth Progress Report, 22 September 1949, A/992, Annex 1 in Harish Parvathaneni, “UNRWA's Role in Protecting Palestine Refugees”. Working Paper No. 9, Bethlehem: Badil Resource Center for Palestinian Residency and Refugee Rights, December 2004, p. 6, fn.25.

²³ UNRWA was also mandated “to consult with the interested Near Eastern Governments concerning measures to be taken by them preparatory to the time when international assistance for relief and works projects is no longer available.” UNGA Resolution 302 (IV), 8 December 1949.

²⁴ United Nations Conciliation Commission for Palestine, Second Progress Report, A/838, 19 April 1949, part I, para.4. United Nations Conciliation Commission for Palestine, “Stand taken by the Governments of the Arab States and the Government of Israel with regard to the task entrusted to the Conciliation Commission by the General Assembly”, Working paper, W/1, 1 March 1949, p.2, para. B(1).

²⁵ United Nations Conciliation Commission for Palestine, “Stand taken by the Governments of the Arab States and the Government of Israel with regard to the task entrusted to the Conciliation Commission by the General Assembly”, Working paper, *ibid*, p. 11.

²⁶ See United Nations General Progress Report and Supplementary Report of the United Nations Conciliation Commission for Palestine, Covering the period from 11 December 1949 to 23 October 1950, A/1367/Rev.1, 23 October 1950, Chapter 3.

reserved the right to resettle the repatriated refugees in specific locations of its choosing.²⁷ Both the UNCCP and the Arab representatives found the Israeli proposal unsatisfactory. The Arab delegations requested the immediate return of all refugees originating from territory allotted to the Palestinians under the UN Partition Plan, but Israel refused.²⁸ The Commission then submitted a memorandum to lay the basis for the resolution of the refugee question in which “the solution of the refugee problem should be sought in the repatriation of refugees in Israel-controlled territory and in the resettlement in Arab countries or in the area of Palestine not under Israel control of those not repatriated.”²⁹ Arab delegates agreed to negotiate on this basis, but the Israeli delegates argued they would only discuss the proposal if “the solution of the refugee problem was to be sought primarily in resettlement in Arab territories.”³⁰ In other terms, Arab states and the Commission agreed that the choice was between “repatriation and compensation for damages suffered, on the one hand, or no return and compensation for all property left behind, on the other” while Israel argued that “the desirability of achieving demographic homogeneity in order to avoid minority problems was the principle which should govern, the process of repatriation.”³¹ According to the Commission, Israel's position was due to its “unwillingness to relinquish the land that belonged to the refugees.”³²

In 1951, a second conference was organized in Paris where Israel argued that security, political and economic concerns made the return of refugees impossible. It argued that “the integration of the refugees in the national life of Israel was incompatible with present realities.”³³ Arab states continued to argue that “there could be no limitation on the return of the refugees” linking Israel's recognition of the right of return of Palestinian refugees to peace in the Middle East.³⁴ The UNCCP continued to envisage both the repatriation of refugees in Israel and integration in Arab countries as a solution to the refugee question.³⁵ The Commission however argued that since conditions have considerably changed in Israel since 1948, the repatriation of refugees would have to consider “...the possibilities of the integration of the returning refugees into the national life of Israel.”³⁶ Hence, the Commission added the integration potential of the refugees as a condition to the number of Palestinian refugees eligible to return. Moreover, due to the incompatibility of the positions taken by the parties, the UNCCP believed that although straying from the letter of Resolution 194, the parties had “...to depart from their original positions in order to make possible practical and realistic arrangements towards the solution of the refugee problem.”³⁷ The Commission called upon the parties

²⁷ See *ibid*, para. 20.

²⁸ See *ibid*, para. 22.

²⁹ See *ibid*, para. 23(a).

³⁰ See *ibid*, para. 27.

³¹ United Nations Conciliation Commission for Palestine, Analysis of Paragraph 11 of the General Assembly's Resolution of 11 December 1948, Part One, A/AC.25/W.45, 15 May 1950, Principle 2.

³² United Nations Conciliation Commission for Palestine, 'The Refugee Problem in Concrete Terms', Working paper, A/AC.25/W/3, 17 March 1949, section IV, para. D(3).

³³ United Nations General Progress Report and Supplementary Report of the United Nations Conciliation Commission for Palestine, Covering the period from 23 January to 19 November 1951, A/1985, 20 November 1951, para. 64.

³⁴ *Ibid*, para. 70.

³⁵ *Ibid*, para. 21.

³⁶ *Ibid*, paras. 29-33.

³⁷ *Ibid*, para. 34.

The UNCCP stated that “Nothing in the instructions given to the Commission states that in this undertaking it is obligated to comply to the letter with the terms of the preceding subparagraph of

to compromise on some of their earlier position in order to make “practical and realistic arrangements towards the solution of the refugee problem.”³⁸

The UNCCP, however, soon proved unsuccessful in its aim to repatriate and provide restitution and compensation to Palestinian refugees. Probably as a result of the failure of the parties to reach a compromise at the Paris conference, the Commission concluded in 1951 that it had “been unable to make substantial progress in the task given to it by the General Assembly of assisting the parties to the Palestine dispute towards a final settlement of all questions outstanding between them.” It also stated that:

“the present unwillingness of the parties fully to implement the General Assembly resolutions under which the Commission is operating, as well as the changes which have occurred in Palestine during the past three years, have made it impossible for the Commission to carry out its mandate.”³⁹

As a result, in 1952 the General Assembly passed a resolution stipulating it considered that “the governments concerned have the primary responsibility for reaching a settlement of their outstanding differences in conformity with the resolutions of the General Assembly on Palestine.”⁴⁰

Increasingly aware of the divide between the parties, in 1952 the UNCCP decided to concentrate its efforts on getting compensation, release refugee bank accounts held in Israel and assess the value of Palestinian refugee property.⁴¹ In this endeavor, the UNCCP created an Office for the Identification and Valuation of Arab Refugee Property which, by 1964, had identified, valued and compiled information on refugee properties.⁴² The efforts of the Commission thus shifted towards what it defined as “the progressive elimination of the problems which continue to separate the parties.”⁴³ By the mid-1950s, however, the UNCCP had ceased to provide protection and to actively search for a durable solution, because “no formal specific request from the parties” had been made and the UNCCP also felt it had no opportunity to change the attitudes of the parties.⁴⁴

The Commission recognized that the situation envisaged by the General Assembly at

paragraph 11, e.g., that it is compelled to facilitate the granting of permission to return for all refugees wishing to do so.” *Supra* note 31, Principle 2.

³⁸ United Nations Conciliation Commission for Palestine, Historical Survey of Efforts of the United Nations Conciliation Commission for Palestine to Secure the Implementation of Paragraph 11 of the General Assembly Resolution 194 (III), A/AC.25/W.81/Rev.2, 2 October 1961, para. 90.

³⁹ *Supra* note 33, paras. 79 and 87. See Harish Parvathaneni, *supra* note 22, p.15.

⁴⁰ UNGA Resolution 512(VI), 26 January 1952.

⁴¹ “The Conciliation Commission, having examined the situation as it presented itself following the adoption of the above resolution, concluded that the most promising way in which it could lend its assistance to the parties would be by further efforts to solve the questions of compensation for the Palestine refugees and the release of bank accounts blocked in Israel. It will be recalled that at last year's conference in Paris a certain area of agreement had emerged from the general negotiations and that further progress seemed possible on these two specific questions. The Commission therefore determined to concentrate its attention on these problems.” United Nations Conciliation Commission for Palestine, Twelfth Progress Report, from 1 May 1952 to 7 October 1952, A/2216, 8 October 1952, paras. 2-3.

⁴² See Lex Takkenberg, *supra* note 17 p. 27-28.

⁴³ *Supra* note 41, para. 4.

⁴⁴ United Nations Conciliation Commission for Palestine, Fourteenth Progress Report, from 31 December 1953 to 31 December 1954, A/2897 3, March 1955, para. 1.

the time when the Commission assumed its functions in 1948 “was far from the realities of the problem” which in fact required the active participation of the governments involved; a participation that was not forthcoming primarily due to Israel's intransigence on the question of repatriation and Arab states' insistence that discussion were to be held “strictly and exclusively” with the goal of implementing Resolution 194(III).⁴⁵ The mandate of the UNCCP may in fact have proved problematic from the start as it included part of the mandate of the UN Mediator to find a peaceful solution to the question of Palestine and the search for a durable solution of the refugees, namely repatriation and compensation. As Terry Rempel argues,

“this dual mandate, in effect, placed the Commission in a conflict of interest, making it difficult, if not impossible to protect and promote the specific rights of the refugees. Pursuit of the specific guidelines on refugees, given Israel's opposition to repatriation, placed a seemingly insurmountable obstacle in the way of the Commission's broader mandate to achieve a resolution of all outstanding issues. Pursuit of a comprehensive settlement of all outstanding issues, on the other hand, necessitated a certain amount of critical compromise of the specific mandate for the refugees.”⁴⁶

Today, the UNCCP only exists on paper; it has no budget, no staff. The secretary of the UNCCP is a staff member of the UN Department of Political Affairs which publishes a one page annual report stating “it has nothing new to report.”⁴⁷ The reasons for the demise of the UNCCP are unclear. The political deadlock and the UNCCP's inability to fulfill its mandate are certainly contributing factors, but it may also be that some states perceived its work on the refugee question as an obstacle to an overall peace agreement and instead preferred to support UNRWA, who at the time was perceived as a purely humanitarian organization willing to implement 'practical' solutions; an approach considered faster and easier than political negotiations. In other words, the question remains as to whether states and the UN tried to by-pass the implementation of Resolution 194 by shifting the responsibility for Palestinian refugees from UNCCP to UNRWA in order to reach what was believed would be an expedient political solution and this, at the expense of Palestinian refugee rights.⁴⁸

After the dissolution of the UNCCP, UNRWA continued to provide humanitarian assistance to Palestinian refugees. International powers had hoped that economic projects as envisaged by the Economic Survey Mission (ESM) would encourage

⁴⁵ United Nations Conciliation Commission for Palestine, Historical Survey of Efforts of the United Nations Conciliation Commission for Palestine to Secure the Implementation of Paragraph 11 of the General Assembly Resolution 194 (III), A/AC.25/W.81/Rev.2, 2 October 1961, para. 39.

Report of the Commissioner General of the United Nations Relief and Work Agency for Palestine Refugees in the Near East, Twenty-first progress report of the United Nations Conciliation Commission for Palestine, 8 December 1962-31 October 1963, A/5545, 1 November 1963.

See also Badil Resource Center, “The United Nations Conciliation Commission for Palestine and a Durable Solution for Palestine Refugees,” working paper prepared for UN Conference on Palestine Refugees, 26-27 April 2000, p.3.

⁴⁶ See Terry Rempel, *supra* note 21.

⁴⁷ Report of the United Nations Conciliation Commission for Palestine, 60th Report, A/61/172, 21 July 2006.

⁴⁸ Perhaps an indication of such trend is the fact that as of 1960, UNCCP progress report were incorporated into the Report of the Commissioner General of the United Nations Relief and Work Agency for Palestine Refugees in the Near East.

refugees to integrate in host countries.⁴⁹ But due to strained financial resources and strong opposition from Arab states and refugees,⁵⁰ UNRWA soon redirected expenditures towards relief rather than resettlement plans.⁵¹ In 1959, the UN Secretary-General reached the conclusion that “no reintegration [i.e., resettlement] would be satisfactory, or even possible, were it to be brought about by forcing people into new positions against their will.”⁵² Hence, although UNRWA was created to implement resettlement programs based on the Mission, it soon shifted its activities towards the provision of health care, education, relief and social services.

UNRWA also registers Palestinian refugees in need of humanitarian assistance and provides them with identity cards. Based on UNRWA's working definition, registered refugees are called ‘Palestine refugees.’⁵³ There are today around 6 million 1948 Palestinian refugees of which 4,375,000 million are registered with UNRWA.⁵⁴ UNRWA registration is administrative and does not aim to register all those displaced in 1948, but only those in need of assistance. There is no systematic registration of Palestinian refugees; statistics are only available for 1948 Palestinian refugees registered with UNRWA.⁵⁵ Despite the partiality of UNRWA's database, it is today the only reliable and updated source of information on the number of 1948 Palestinian refugees. It has come to represent the quantifiable proof that Palestinian refugees still exist.

Palestinians displaced during the 1948 Nakba and 1967 War are recognized as *prima facie* refugees and are *ipso facto* entitled to refugee status; hence no individual refugee status determination under Article 1A of the *1951 Convention relating to the Status of*

⁴⁹ During the initial six years of its operations, while providing relief, primary health care and education services, UNRWA initiated four types of programmes aimed at reintegrating the refugees into the economic life of the region: (1) “Work Relief”, i.e., small scale training and employment creation; (2) “Works Projects”, i.e., medium-sized public sector government-controlled projects such as road-building and tree-planting aimed at employment creation; (3) assistance to and subsidization for small numbers of Palestine refugees willing to resettle in places such as Argentina, Brazil, Bolivia, Canada, Columbia, Chile, Egypt, Honduras, Iran, Iraq, Kuwait, Libya, Qatar, Sierra Leone, Saudi Arabia, the United States, Venezuela, Germany and Yemen; (4) large scale regional development projects with regional governments.

⁵⁰ Refugees refused to cooperate, wrote letters of protest and organized demonstrations against economic development/reintegration projects.

⁵¹ See UNGA Resolution 614 (VII), 6 November 1952.

⁵² Proposals for the Continuation of United Nations Assistance to Palestine Refugees, Document Submitted by the Secretary-General. UN Doc. A/4121, 15 June 1959, para. 17.

⁵³ ‘Palestine refugee’ is the working definition of 1948 Palestinian refugees registered with the UNRWA. It serves to distinguish UNRWA registered refugees from non-registered refugees. According to UNRWA, Palestine refugees “shall mean any person whose normal place of residence was Palestine during the period 1 June 1946 to 15 May 1948 and who lost both home and means of livelihood as a result of the 1948 conflict.” “Consolidated Registration Instructions” (CRI), 1 January, 1993, Annex 2, para. 2.13.

⁵⁴ UNRWA, Figures as of 31 March 2006. Available at: <http://www.un.org/unrwa/publications/index.html>

⁵⁵ It should be noted that UNRWA's database is not statistically valid as reporting is voluntary. UNRWA collects statistics for internal management purposes and to facilitate certification of refugees' eligibility to receive education, health, and relief and social services. New information on births, deaths and change in place of residence is recorded only when a refugee requests the updating of a family registration card issued by the Agency. UNRWA does not carry out a census, house-to-house survey, or any other means to ascertain whether the place of residence is the actual place of residence; refugees will normally report births, deaths and marriages when they obtain a service from the Agency.

Refugees is necessary. Like all refugees, they are entitled to protection and assistance; however, since the demise of the UNCCP, Palestinian refugees only receive assistance in UNRWA area of operations, while practice elsewhere is inconsistent. Indeed, no Palestinian refugee in UNRWA areas of operation has received protection, particularly the search for a durable solution according to their right to return since the mid-1950s. Based on Article 1D of the *1951 Convention*, the responsibility to protect Palestinian refugees falls with the UN High Commissioner for Refugees (UNHCR). Indeed, Article 1D, a clause specifically included for Palestinian refugees, stipulates that the Convention shall not apply to those receiving “protection or assistance” but Article 1D paragraph 2 stipulates,

“when such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Convention [i.e. protection and assistance].”⁵⁶

UNHCR’s position is that if a “person is outside UNRWA's area of operations [i.e. Gaza Strip, West Bank, Syria, Lebanon and Jordan], he or she no longer enjoys the protection or assistance of UNRWA and therefore falls within paragraph 2 of Article 1D ...Such a person is automatically entitled to the benefits of the 1951 Convention and falls within the competence of UNHCR.”⁵⁷ Hence UNHCR only recognizes it has a mandate to provide protection to 1948 and 1967 Palestinian refugees outside UNRWA's area of operations. Palestinians displaced who are neither 1948 or 1967 refugees, are outside UNRWA's area of operations, and are considered refugees based on Article 1A of the *1951 Convention*, thus falling within the mandate of UNHCR.

b. Inter-war Refugees

Between 1949 and 1966, Palestinians continued to be displaced within the territory of Israel and across borders but were not eligible for the protection and assistance mechanisms developed for 1948 Palestinian refugees, i.e. UNCCP and UNRWA. Palestinians who were displaced within or outside Israel were often part of Israel's plan to reshape the demographic composition of the country. No international response was organized to assist and protect those displaced after 1949. There are no exact figures on the number of displaced Palestinians and it is difficult to retrace and compile information pertaining to displacement during the inter-war period, but it is likely that tens of thousands of Palestinians were displaced.⁵⁸

Palestinians displaced outside the borders of Israel and UNRWA's area of operations (i.e. Gaza Strip, West Bank, Syria, Lebanon and Jordan) at the time were not allowed to apply for refugee status because of the *1951 Convention relating to the Status of Refugees* restrictive geographical and temporal limitations, which were abrogated under the *1967 Protocol relating to the Status of Refugees*.⁵⁹ Since 1967, however, and in

⁵⁶ *Convention relating to the Status of Refugees*, 21 July 1951, Article 1D.

⁵⁷ “Note on the Applicability of Article 1D of the 1951 Convention Relating to the Status of Refugees to Palestinian Refugees.” Office of the United Nations High Commissioner for Refugees (UNHCR), October 2002, para. 7.

⁵⁸ For more information on displacement during this period, see *Survey of Palestinian Refugees and Internally Displaced Persons*, *supra* note 2, pp.15-20.

⁵⁹ *Protocol relating to the Status of Refugees*, 4 October 1967, Article 1.

states that have ratified the *1967 Protocol*, Palestinians displaced during this period are entitled to apply for individual refugee status determination under Article 1A of the *1951 Convention* and are eligible to protection and assistance by the UN High Commissioner for Refugees (UNHCR). Those displaced in Israel and UNRWA's area of operations, however, are generally not covered by the UNHCR and thus not eligible to assistance and protection from the Agency.

c. 1967 Refugees

The second massive wave of displacement of Palestinians after 1948 occurred during the second Arab-Israeli War in June 1967. During the War, Israel occupied the West Bank, including eastern Jerusalem and the Gaza Strip.⁶⁰ The War led to the displacement of about 430,000 Palestinians, including 193,500 Palestinian refugees and 240,000 non-refugee residents of the Gaza Strip and West Bank.⁶¹ There are today 834,000 Palestinian refugees displaced for the first time in 1967.⁶² The UN Security Council passed Resolution 237 in June 1967 calling upon Israel "... to facilitate the return of those inhabitants who have fled the areas since the outbreak of hostilities" and again, in November 1967, affirming the necessity of "achieving a just settlement of the refugee question."⁶³ By 1967, UNCCP had ceased to function and UNRWA was only given a limited mandate,

"to provide humanitarian assistance, *as far as practicable*, on an *emergency basis* and as a *temporary measure*, to other persons in the area who are at present displaced and are in serious need of immediate assistance as a result of the recent hostilities." [Emphasis added]⁶⁴

These new refugees were labeled 'displaced persons' because they had mainly moved from the West Bank, then controlled by Jordan, to another part of Jordan.⁶⁵ Until Jordan relinquished its claim to the West Bank in 1988, the refugees were thus called 'displaced persons' despite the fact that 1967 refugees are *prima facie* refugees like 1948 refugees. UNHCR did not provide protection because the area where most 1967 refugees fled was in 'UNRWA's area of operations.

d. Post-1967 Refugees

⁶⁰ Israel illegally annexed eastern Jerusalem and declared Jerusalem the unified capital of Israel in a series of administrative order and laws since 1967. The United Nations "considers that all legislative and administrative measures and actions taken by Israel [...] which tend to change the character of Jerusalem are invalid and cannot change that status." UNSC Resolution 252, 21 May 1968.

⁶¹ Lex Takkenberg, *supra* note 17, p. 17.

⁶² See *Survey of Palestinian Refugees and Internally Displaced Persons*, *supra* note 2, pp.21,48.

⁶³ UNSC Resolution 237, S/RES/237 (1967), 14 June 1967 and UNSC Resolution 242, 22 November 1967.

⁶⁴ UNGA Resolution 2252 (ES-V), 4 July 1967.

⁶⁵ Jordan claimed sovereignty over the West Bank between 1949 and 1988. Although the UN did not recognize Jordan's sovereignty and annexation of the West Bank, it employed term 'Displaced Persons'. The term 'displaced persons' was also used in the negotiations during the Madrid-Oslo peace process (1993-2001).

Since 1967, Israel has occupied the West Bank, including eastern Jerusalem, and the Gaza Strip. There is no exact figure as to the number of Palestinians who left the West Bank and Gaza Strip after 1967, but as a result of Israel's 1967 population census, whereby all those present in the territory of the West Bank and Gaza Strip were registered under the Israeli-controlled population registry, many lost their residency rights. For instance, around 60,000 Palestinians outside the occupied territories became refugee *sur place* as a result of the census, and more than 6,500 persons have been deported from the occupied Palestinian territories and over 100,000 persons have lost their residency rights since 1967.⁶⁶ Israel has since 1967 controlled the population registry of Palestinians in the occupied West Bank and Gaza Strip. Palestinians not registered in the registry cannot have an identity card. Identity cards are an administrative document allowing Palestinians to reside in the occupied Palestinian territories; in fact, until 1995, residents of the occupied Palestinian territories, including refugees, were considered 'resident alien' by the occupying power, but since the Oslo peace process Palestinians holding the ID cards are recognized as 'legal residents' of the occupied Palestinian territories. Palestinians in the occupied Palestinian territories are also considered protected persons under international humanitarian law, i.e., laws of war. No distinction is made between residents of the occupied territories and refugees.⁶⁷

The international response to post-1967 displaced has been practically inexistent, mainly because displacement has spread over 40 years and on a lower scale.⁶⁸ Palestinians who are not 1948 or 1967 refugees and fleeing persecution or who have lost their residency rights in the occupied Palestinian territories and who are unable or unwilling to return are entitled to apply for refugee status based on Article 1A of the 1951 Convention. UNHCR is currently providing assistance and protection to 350,000 Palestinian refugees of concern to UNHCR although it is unclear whether these are 1948, 1967 or other refugees because UNHCR statistics do not make a distinction between the various categories of Palestinian refugees.⁶⁹ The absence of a UN agency working for the implementation of the right of return, restitution and compensation is the main, and probably the most severe, protection gap afflicting Palestinian refugees today.⁷⁰

Over the years, however, UNRWA's role has evolved to include a limited number of protection activities and at the request of the UN General Assembly, UNRWA provides

⁶⁶ Tayseer Amro, "Displaced Persons: Categories and Numbers Used by the Palestinian Delegation [to the Quadripartite Committee] (not including spouses and descendants)." *Article 74*, No. 14, 1995, Table 5. Jerusalem: BADIL/Alternative Information Center for Palestinian Residency and Refugee Rights and "Confiscation of Jerusalem ID Cards, 1967-1998," *Eviction from Jerusalem, Restitution and the Protection of Palestinian Rights*. Bethlehem: BADIL Resource Center, 1999, p. 19, Table III. cited in *Survey of Palestinian Refugees and Internally Displaced Persons*, *supra* note 2, pp. 22, 53.

⁶⁷ Residents registered in the Israeli population registry in occupied eastern Jerusalem hold blue ID cards; in the West Bank green ID cards; and, in the Gaza Strip orange ID cards.

⁶⁸ Some estimates believe that as many as 20,000 Palestinians a year may have left the occupied Palestinian territories between 1967 and 1986. George F. Kossaifi, *The Palestinian Refugees and the Right of Return*. Washington, DC: The Center for Policy Analysis on Palestine, 1996, p. 8.

⁶⁹ The majority of Palestinian refugees of concern to UNHCR reside in Saudi Arabia, Egypt, Iraq, and Libya. *Survey of Palestinian Refugees and Internally Displaced Persons*, *supra* note 2, p.50.

⁷⁰ For more information on the protection gap and the responsibility of the UNHCR towards Palestinian refugees, see Elna Sondergaard, *Closing Protection Gaps, Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, Bethlehem: Badil Resource Center for Palestinian Residency and Refugee Rights, August 2005.

emergency assistance to those displaced as a result of subsequent hostilities.⁷¹ After Israel's 1982 invasion of Lebanon and the massacre of Sabra and Shatila refugee camps for instance, the UN General Assembly requested UNRWA "to undertake effective measures to guarantee the safety and security and the legal and human rights of the Palestinian refugees in the occupied territories."⁷² However, UNRWA's protection capacity is limited; it can not provide physical or legal protection to Palestinian refugees, except under limited circumstances, but can offer protection by way of assistance and publicity through monitoring and reporting.

During the first *Intifada* (1987-1993) UNRWA engaged in more active protection activities through the creation of the Refugee Affairs Officer (RAO) program in the occupied Palestinian territories, where for instance, it provided legal assistance for family reunification requests. The program had for goals "(1) to facilitate "UNRWA operations in the difficult prevailing circumstances" of the *intifada*; and (2) to provide "a degree of passive protection for the refugee population."⁷³ The Guidelines of the program however stated that "UNRWA has no power to enforce the rights of the refugees, and RAOs must not make physical contact or engage in heated arguments with the Israeli security forces."⁷⁴ The RAO's passive protection mandate led Harish Parvathaneni, the chief of the policy analysis unit of UNRWA, to conclude that although the programme "constitutes the most expansive protection mechanism ever instituted by the Agency ... it was unable to bridge the protection gap in relation to Palestine refugees in the OPT."⁷⁵ The programme ended in the Gaza Strip and the West Bank in 1994 and 1996 respectively as a result of the Madrid-Oslo peace process and the establishment of the Palestinian Authority. The first *Intifada* highlighted the need for a solution to the Palestinian-Israeli conflict, including the refugee question, and contributed to the reactivation of international negotiation efforts.

During the Madrid-Oslo peace process (1991-2001) the 1948 refugee issue was left to the final status negotiations, which failed at Camp David in 2000 when neither the United States, which hosted the talks, nor Israel were willing to contemplate a solution to the refugee question based on international law and UN Resolution 194. During the mid-1990s, when it became clear to refugees that they were excluded from the talks, refugee communities throughout the region organized popular committees to discuss and develop strategies for a just and lasting solution to their plight based on international law. This process led to increased awareness among both the international and Palestinian community of the rights and demands of the refugees. Refugee committees still call upon the maintenance of UNRWA as a symbol of the special status of Palestinian refugees and work to ensure that negotiators will not compromise their right of return, restitution and compensation in future peace-talks. Finally, they advocated for a rights-based approach to a solution to the refugee question as stipulated in UN Resolution 194 and UN Security Council Resolution 237.

The failure of the Oslo process triggered the second *Intifada* (2001-to date). UNRWA created the Operation Support Officers (OSO) programme, whose mandate is similar to

⁷¹ UNGA Resolution A/RES/54/71, 18 February 2000, para. 3 and UNGA Resolution A/RES/58/95, 17 December 2003.

⁷² *Supra* note 66.

⁷³ RAO Guidelines, 3rd ed., 15 March 1989, p. 2 cited in Harish Parvathaneni, *supra* note 22, p.17.

⁷⁴ Harish Parvathaneni, *ibid*, p.18.

⁷⁵ *Ibid*, pp. 17,18.

the Refugee Affairs Officer (RAO) programme, but whose protection-related activities have been far more limited. The goal of the OSO programme is “to assist in alleviating the adverse effects that the restrictions imposed by Israeli authorities [are] having upon the Agency's provision of humanitarian services.”⁷⁶ Support officers are responsible for monitoring and reporting on “the living conditions of Palestine refugees and other persons of concern to UNRWA,” “access to humanitarian services from UNRWA” and “problems that affect the human dignity, physical safety, welfare and protection of Palestine refugees and other persons of concern to UNRWA.” They are also responsible for inspecting “UNRWA's property and facilities, to ensure that they are used only as intended” and remind the refugee population “that the misuse of the Agency's facilities compromises its operations and harms the interests of the Palestinian refugees.”⁷⁷ Despite an explicit protection role, the OSO program has mainly focused on monitoring UNRWA installations and properties.⁷⁸

More recently, and since its first donor conference in 2004, *Meeting the Humanitarian Needs of the Palestine Refugees in the Near East*, UNRWA has taken a rights-based approach to its activities and appointed a senior protection and policy adviser. UNRWA has also argued that it has a protection mandate and has initiated work on the protection of refugee children based on the Convention on the Rights of the Child. Most protection efforts are however limited to reporting and monitoring and do not include physical and legal protection nor the search for a durable solution.

The latest international effort aimed at paving the way for a solution to the conflict, the performance-based *Road Map to a Permanent Two-State Solution*, was endorsed by the United Nations, the United States, Russia and the European Union. The *Road Map* calls for “an agreed, just, fair and realistic solution” to the refugee question, but does not define what is meant by these terms. It calls for negotiations on final status issues, including refugees, on the basis of Security Council resolutions 242 (1967), 338 (1973), 1397 (2002), and 1515 (2003), the Oslo peace process, the principle of land for peace, previous agreements, and the initiative of Saudi Crown Prince Abdullah.⁷⁹ The basis for negotiations in the *Road Map* makes no mention of 1948 Palestinian refugees, of their right of return or even of UN Security Council 237 calling for the return of 1967 refugees, although the Saudi initiative does make reference to Resolution 194.

II. International Response to Palestinian Internally Displaced Persons

This section aims to present the international response to internal displacement in Israel and in the 1967 occupied Palestinian territories. It argues that since the responsibility for 1948 refugees in Israel's territory was transferred from UNRWA to Israel in 1952, no

⁷⁶ Report of the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, 1 July 2000-30 June 2001, A/56/13, 18 October 2001, para.150.

⁷⁷ Operations Support Officer, job description, May 2006. Available at: <http://www.reliefweb.int/rw/res.nsf/db900SID/OCHA-6NXEJ9?OpenDocument&rc=3&cc=pse>

⁷⁸ The limited protection activities of the programme may be imputable to the increasing attacks against UNRWA as a partial organization having linked with resistant groups or fighters. Hence support officers spend the majority of their time monitoring UNRWA's installations to ensure that they are not being used by armed groups.

⁷⁹ Letter dated 19 May 2004 from the Secretary-General to the President of the Security Council, Annex, Quartet Statement, New York, 4 May 2004, UNSC S/2004/421, 24 May 2004.

organized or coordinated response has followed within Israel or in the OPT. The international community, namely states party to the conflict and the UN, does not officially recognize the problem of internal displacement in Israel and the OPT nor are they willing to interfere with Israeli authorities on behalf of Palestinian internally displaced.⁸⁰ Yet, both internally displaced persons (IDP) groups are increasing in numbers due to Israeli measures aimed at altering the demographic composition of Israel and the OPT, affecting Palestinian 1948 refugees and non-refugees alike.

Hence, as a general rule, Palestinian IDPs "... lack effective national and international protection in relation to protection from displacement, respect for basic human rights during displacement, provision of humanitarian assistance, and the search for durable solutions, including the right of return and housing and property restitution."⁸¹ The lack of a comprehensive data and registration system for IDPs also impedes the development of an effective international response. Thus the protection gap continues to grow today.

The use of the IDP category is nevertheless relatively new to both Palestinians displaced in Israel and in the occupied Palestinian territories. It emerged among Palestinians in Israel in the 1990s and in the OPT by 2000. The IDP category is also difficult to apply in the context of the Israeli-Palestinian conflict because statuses overlap and international borders are still undefined. For instance, what should be the relevant geographical reference to distinguish IDPs in Israel from IDPs in the OPT: Mandate Palestine, 1949 Armistice Line, or Israel, which has illegally annexed East Jerusalem? For the purpose of this paper, the 1949 Armistice Line, or Green Line, is the boundary used to distinguish IDPs in Israel from IDPs in the OPT.

This section will first examine the response to Palestinian IDPs in Israel and then to Palestinian IDPs in the occupied Palestinian territories.

a.IDPs in Israel

There are today 1.2 million Palestinian citizens of Israel, close to one fifth of the population of Israel, of which about 345,000 are 1948 internally displaced persons.⁸² There are probably over 400,000 internally displaced Palestinians in Israel, the majority of whom are 1948 refugees.⁸³ Internal displacement has been ongoing since 1948 and

⁸⁰ See Karine Mac Allister, Ingrid Jaradat and Elodie Guego, "Displaced by the Wall, Pilot Project on Forced Displacement Caused by the Construction of the West Bank Wall and its Associated Regime in the Occupied Palestinian Territories," Bethlehem: Badil Resource Center for Palestinian Residency and Refugee Rights and The Norwegian Refugee Council/Internal Displacement Monitoring Centre, September 2006, p. 23.

⁸¹ "Internally Displaced Palestinians, International Protection and Durable Solutions," Bethlehem: Badil Information & Discussion Brief, Issue No.9, November 2002, p.23.

⁸² See *Survey of Palestinian Refugees and Internally Displaced Persons*, *supra* note 2, chapter 2, figure 2.1.

⁸³ It is difficult to know how many Palestinians have been displaced within Israel because until recently, no organization was monitoring the situation of the displaced. Estimates vary between 250,000 to 350,000 persons for 1948 IDPs. See The Association for the Defense of the Internally Displaced Persons (ADRID) on the website of Ittijah, the Union of Arab Community Based Organizations. Available at: <http://www.ittijah.org/member/interndisplaced.html>. Badil estimates that there are around 345,000 IDPs in Israel. Data is derived from initial registration figures from UNRWA in *Report of the Director of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, UN Doc. A/1905, 30 June 1951. See *Survey of Palestinian*

the exact number of post-1948 IDPs is unknown.⁸⁴

More recently, 'urban development plans' for the benefit of the Israeli-Jewish population in the Galilee and the Naqab (Negev) are causing the forcible displacement of Palestinian communities.⁸⁵ These displacees, many of whom are Bedouins in the Naqab, are victims of house demolitions and land confiscations.⁸⁶

There are thus two types of IDPs in Israel:

1. 1948 IDPs in Israel who were displaced as a result of the *Nakba*;
2. Post-1948 IDPs in Israel who were displaced as a result of house demolitions and land confiscations.

Internally displaced Palestinians holding Israeli citizenship cannot return to their villages and homes of origin or repossess title to their property. Already in 1949, Arab states warned of "...the complete absence of security for the Arabs in areas under Israeli control, a lack of those guarantees provided for on behalf of minorities under the Partition Plan, as well as the measures taken by the Israeli Government to block the bank accounts of the refugees and to liquidate their real and personal property, and, in particular, the Israeli absentee law."⁸⁷

Most Palestinians displaced during the 1948 War, including those displaced within what became the state of Israel, are registered with UNRWA. Thus, at the onset all those displaced were considered 'refugees'.⁸⁸ Israel, however, wanted to erase the refugee

Refugees and Internally Displaced Persons, supra note 2, p.69, Annex 2.1.

⁸⁴ Palestinians internally displaced after 1948 are conservatively estimated at 75,000 persons. *Supra* note 83.

⁸⁵ See Arab Association for Human Rights, 'Bedouins in the Negev, fact sheet, available online at: <http://www.arabhra.org/factsheets/factsheet3.htm> and the Regional Council for the Unrecognized Villages in the Negev.

⁸⁶ In November 2004 for instance, Prime Minister Ariel Sharon decided to create an emergency plan to "save the outlying areas" in the Naqab (Negev) and Galilee. The plan is intended to increase land held by the Jewish population and ensure a Jewish majority in the Naqab (Negev) and Galilee. See Mada al-Carmel, The Arab Center for Applied Social Research, *Israel and the Palestinian Minority 2004*, Sultany, Nimer, (ed.), Mada's Third Annual Political Monitoring Report, pp.41-42 in *Survey of Palestinian Refugees and Internally Displaced Persons, supra note 2, p. 28.*

⁸⁷ United Nations Conciliation Commission for Palestine, Second Progress Report, A/838, 19 April 1949, part I, para.5.

⁸⁸ Refugees we defined under Article 1:

Are to be considered as refugees under paragraph 11 of the General Assembly resolution of 11 December 1948 persons of Arab origin who, after 29 November 1947, left territory at present under the control of the Israel authorities and who were Palestinian citizens at that date. Are also to be considered as refugees under the said paragraph stateless persons of Arab origin who after 29 November 1947 left the aforementioned territory where they had been settled up to that date. Persons who have resumed their original nationality or who have acquired the nationality of a country in which they have racial ties with majority of the population are not covered by the provisions of the above paragraphs of this Article. It is understood that the majority of the said population should not be an Arab majority.

Article 2:

The following shall be considered as covered by the provisions of Article 1 above: 1. Persons of Arab origin who left the said territory after 6 August 1924 and before 29 November 1947 and who at that latter date were Palestinian citizens; 2. Persons of Arab origin who left the territory in question before 6 August 1924 and who, having opted for Palestinian citizenship, retained that citizenship up to 29 November 1947, Articles 1-2. United Nations Conciliation Commission for Palestine, Addendum to Definition of a "Refugee" Under paragraph 11 of the General Assembly Resolution of 11 December

problem from within its territory in order to prevent the return of refugees to their homes and villages of origin. In 1952, Israel suggested to UNRWA that it would take over responsibility for Palestinian refugees within its territory. Under financial pressure and seeking resettlement opportunities, UNRWA accepted and ceased to operate in Israel. UNRWA also let the files of Palestinian refugees located within Israel and who had registered for assistance become dormant.⁸⁹ As soon as UNRWA withdrew, Israel declared that “the refugee problem had ceased to exist.”⁹⁰ Israel had hoped that with time, 1948 refugees in Israel would integrate locally and cease to demand their right to return to their homes, restitution of their properties and compensation. By ceasing to operate in Israel and ‘freezing’ the names of the refugees on UNRWA’s files, Palestinian refugees in Israel became isolated from the broader Palestinian refugee question. Hence, by 1952 Palestinian refugees who remained within Israel *de facto* ceased to be considered refugees and perceived as part of the ‘Palestinian refugee question’ by the United Nations and the international community. Although never officially amended, the case of Palestinian refugees in Israel was considered closed by the international community and Israel.

Israel’s desire to defuse the refugee question may also explain why in 1952 it granted citizenship to some 150,000 Palestinians who had remained within Israel’s territory, including 30,000 internally displaced persons, under its *1952 Citizenship and Entry into Israel Law*.⁹¹ This law resulted in the official de-nationalization of all Palestinians located outside the territory of Israel at the time the law was promulgated (1952), hence, excluding Palestinian refugees from their right to citizenship as enshrined upon the law of state succession.⁹² Moreover, although physically present, 1948 internally

1948, W/61/Add.1 29 May 1951.

In Palestine, citizenship was governed by the Palestine Citizenship Order of 24 July 1925, amended by various successive orders. The amended text of the Order of 24 July 1925 is worded as follows: “Turkish citizens habitually resident in the territory of Palestine upon the 6th day of August 1924 2 shall become Palestinian citizens.” United Nations Conciliation Commission for Palestine, Definition of a “Refugee” under Paragraph 11 of the General Assembly Resolution of 11 December 1948, A/AC.25/W/61, 9 April 1951, sections A and D.

⁸⁹ Although officially deleted from UNRWA’s register, UNRWA has informed Badil Resource Center that they have preserved the names of the refugees located in Israel in their archives.

⁹⁰ For more information, see Hilel Cohen, “How has Israel Dealt with the Internally Displaced?”, *al Majdal*, No. 30-31, Bethlehem, Summer-Fall 2006, pp. 25-26.

⁹¹ Former citizens of the Palestine Mandate of Arab origin could only qualify for Israeli nationality (citizenship) under the *1952 Citizenship Law* if they met the following criteria under Section 3:

a) A person who immediately before the establishment of the State, was a Palestinian citizen and who does not become an Israel national under Section 2, shall become an Israel national with effect from the day of the establishment of the State if:

1) he was registered on the 4th Adar, 5712 (March 1, 1952) as an inhabitant under the Registration of Inhabitants Ordinance, 5709-1949; and

2) he is an inhabitant of Israel on the day of the coming into force of this Law; and

3) he was in Israel, or in an area which became Israel territory after the establishment of the State to the day of the coming into force of this Law, or entered Israel legally during that period. *Citizenship Law, 5712/1952, 93 Official Gazette 22 (1952).*

⁹² "Under the law of state succession, when territory undergoes a change of sovereignty, the law of state succession requires that inhabitants (commonly referred to as "habitual residents") of the geographical territory coming under new sovereignty be offered nationality by the new state." See Gail J. Boling, “The 1948 Palestinian Refugees and the Individual Right of Return, An International Law Analysis,” Bethlehem: Badil Resource Center for Palestinian Residency and Refugee Rights, Legal Paper, January 2001, p.17.

The 1952 Citizenship and Entry into Israel Law also violates UNGA Resolution 181, which stipulates that “Citizenship. Palestinian citizens residing in Palestine outside the City of Jerusalem, as well as Arabs and Jews who, not holding Palestinian citizenship, reside in Palestine outside the

displaced Palestinians, who are citizens of Israel, are considered absent regarding their right to pre-1948 properties under the *1950 Absentees' Property Law*. They are thus considered 'present-absentees' by Israeli authorities.⁹³ The withdrawal of UNRWA and the consequent marginalization of the question of 1948 Palestinian refugees in Israel led to a serious protection gap resulting from Israel's unwillingness to find a durable solution based on the rights of the refugees/IDPs.

Despite their marginalization from the broader refugee question, 1948 refugees in Israel preserved their identity and continue to consider themselves as 'displaced', 'uprooted' or 'internal refugees'. Israel for its part considers them 'present-absentee' under its absentee law. 1948 refugees in Israel thus have multiples labels. None have yet been provided protection.

The use of the term IDP to define 1948 refugees in Israel only came recently, in the mid-1990s, and after meetings and research were undertaken by non-governmental organizations (NGO). IDP is a term more commonly used by the NGO community than the Palestinian refugee community in Israel, who still loosely define itself as 'uprooted', 'internal refugees' and 'displaced'. In fact, the categorization of 1948 refugees in Israel as internally displaced persons also came as a result of what Hillel Cohen and others consider a *renaissance* among the internally displaced in Israel, which in 1995 led to the establishment of the Association for the Defense of the Rights of the Internally Displaced in Israel (ADRID). The *renaissance* is, in significant part, in response to the Oslo process, whereby those internally displaced in Israel were excluded from the overall 'refugee question' by the negotiators of the Palestine Liberation Organization

City of Jerusalem shall, upon the recognition of independence, become citizens of the State in which they are resident and enjoy full civil and political rights." See *supra* note 10, Chapter 3(1).

⁹³ Palestinian lands were transferred to the Custodian of Absentees' Property base on the *1950 Absentee Property Law* and is now held by the state of Israel and the Jewish National Fund and administered by the Israel Land Authority (ILA).

Article I (b) of the *Absentee Property Law* defines "absentee" as follows:

"(b) 'absentee' means —

(1) A person who, at any time during the period between the 16th Kislev, 5708 (29 November, 1947) and the day on which a declaration is published, under section 9(d) of the Law and Administration Ordinance, (5708—1948), that the state of emergency declared by the Provisional Council of State on the 10th of Iyar, 5708 (19th May, 1948) has ceased to exist, was the legal owner of any property situated in the area of Israel or enjoyed or held it, whether by himself or through another, and who, at any time during the said period —

(i) Was a national or citizen of the Lebanon, Egypt, Syria, Saudi—Arabia, Trans—Jordan, Iraq or the Yemen, or

(ii) Was in one of these countries or in any part of Palestine outside the area of Israel or

(iii) Was a Palestinian citizen and left his ordinary place of residence in Palestine

(a) for a place outside Palestine before the 27th Av 5708 (1st September, 1948); or

(b) for a place in Palestine held at the time by forces which sought to prevent the establishing of the State of Israel or which fought against it after its establishment;

(2) A body of persons which, at any time during the period specified in paragraph (1), was a legal owner of any property situated in the area of Israel or enjoyed or held such property whether by itself or through another, and all the members, partners, shareholders directors or managers of which are absentees within the meaning of paragraph (1), or the management of the business of which is otherwise decisively controlled by such absentees, or all the capital of which is in the hands of such absentees;"

Sefer Hahukim [Laws of Israel], 1950, at 86. For more information, see Usama Halabi, "Israel's Land Laws as a Legal-Political Tool, Confiscating and Appropriating Palestinian Arab Lands and Creating Physical and Legal Barriers in order to Prevent Future Property Restitution", Working Paper No.7, Bethlehem: Badil Resource Center For Palestinian Residency and Refugee Rights, December 2004, pp.4-5.

(PLO), who they felt had abandoned them in the negotiations and accepted the Israeli position that the IDP issue was an internal Israeli affair. IDP communities in Israel, which see themselves as an inherent part of the overall Palestinian refugee question have since actively advocated for the inclusion of their rights within the Palestinian refugee question and negotiations, including the search for a durable solution based on international law and Resolution 194. The international community and parties to the conflict have yet to recognize that although living within Israel, IDP communities are still displaced and dispossessed and in need of international protection and a durable solution.⁹⁴

b.IDPs in the occupied Palestinian territories

The IDP category in the OPT is relatively new and the population it is estimated at 57,000 persons.⁹⁵ Most IDPs were displaced as a result of the 1967 War, land confiscations, house demolitions, military operations, revocation of residency rights in occupied eastern Jerusalem, and more recently, the construction of the Wall and its associated regime in the West Bank. These displacements affect both Palestinian refugees and non-refugee residents of the occupied territories. Thus two types of IDPs exist in the OPT:

1. 1967 IDPs in the OPT displaced as a result of the 1967 War;
2. Post-1967 IDPs in the OPT displaced as a result of measures undertaken by the occupying power.

Israel, the occupying power and the displacement-inducing authority is unwilling to provide assistance and protection to IDPs. The Palestinian Authority is only able to provide limited assistance and protection, mainly through monitoring and reporting and does not have the capacity to implement a durable solution. The United Nations has not

⁹⁴ UNHCR operates in Israel since 2002, but is not, as a general rule, taking on cases involving Palestinian refugees or internally displaced persons.

⁹⁵ The estimate includes persons internally displaced during the 1967 war from destroyed Palestinian villages in the occupied Palestinian territories (10,000 persons). This figure is upgraded by the average annual growth rate of the refugee population (3.5%). *Supra* note 83. This number also includes 11,461 persons who were displaced by the Wall as of July 2004. See *Survey on the Impact of the Expansion and Annexation Wall on the Palestinian Localities that the Wall Passed Through*, March 2004, Ramallah: Palestinian Central Bureau of Statistics, 2004, p. 6. The number of IDPs includes the 15,000 persons displaced by June 2005 as a result of the Wall and its associated regime. See *Survey on the Impact of the Expansion and Annexation Wall on the Socio-Economic Conditions of Palestinian Localities which the Wall Passes Through*, June 2005, Ramallah: Palestinian Central Bureau of Statistics, September 2005, p. 10. The figure also includes the demolition of 198 houses in 2005, leaving approximately 1,208 persons homeless, based on an average rate of 6.1 persons per household in both the occupied West Bank and the Gaza Strip. Data compiled from *Monthly Summary of Israeli Violations*, March 2005, June 2005, September 2005 and December 2005, Ramallah: Palestinian Monitoring Group, Negotiations Affairs of the Palestinian Liberation Organization. For the average household size, see Palestinian Central Bureau of Statistics, *Statistical Abstract of Palestine, No.(5)*, Ramallah, Palestinian National Authority, November 2004, p. 223. Finally, this number includes the refugees in the occupied Gaza Strip who were still homeless and displaced as of June 2005 as a result of the demolition of their shelters since the beginning of the *intifada*, which UNRWA estimates at 16,000 persons. See *Report of the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, 1 July 2004-30 June 2005. UN GAOR, Sixtieth Session, Supp. No. 13 (A/60/13), 2005 para. 214, p. 51 cited in *Survey of Palestinian Refugees and Internally Displaced Persons*, *supra* note 2, p. 69, Annex 2.1.

recognized internal displacement as a problem nor the applicability of the internally displaced category to the occupied Palestinian territories and has thus not developed any coordinated response based on the recently developed UN Collaborative Response to situations of internal displacement. Some UN Agencies however do provide humanitarian assistance to Palestinians, which likely include internally displaced Palestinians. UNRWA for instance provides emergency assistance to displaced Palestinians, particularly to Palestinian refugees whose homes have been damaged or demolished in the Gaza Strip.⁹⁶ For the first time also a Humanitarian Coordinator has been appointed to the occupied Palestinian territories and could help develop an action plan and a coordinated response to internal displacement within the occupied territories. UN agencies and international organizations working in the OPT are able to address the issue of internal displacement, but whether they are willing and able to protect internally displaced Palestinians and those vulnerable to displacement, as well as search for a durable solution, is questionable.

There is however an increasing need to recognize, respond to and prevent displacement in the OPT. In the occupied West Bank for instance, the Wall and its associated regime, under construction by Israel since 2002, is the latest cause of displacement among Palestinians.⁹⁷ As early as 2003, John Dugard, the UN Special Rapporteur on the Situation of Human Rights in the Palestinian Territories occupied since 1967 warned that the Wall and its regime were "...likely to lead to a new generation of refugees or internally displaced persons."⁹⁸ The International Court of Justice in its advisory opinion the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* in July 2004 reached a similar conclusion and stated that

"...a significant number of Palestinians have already been compelled by the construction of the wall and its associated regime to depart from certain areas, a process that will continue as more of the wall is built, that construction, coupled with the establishment of the Israeli settlements [...] is tending to alter the demographic composition of the [occupied Palestinian territories]."⁹⁹

Moreover, during Israel's military operations code-named 'Summer Rains' in June-July 2006 in the Gaza Strip, over 5,100 1948 Palestinian refugees were displaced for a second or third time, highlighting once more the vulnerability of Palestinian refugees and the need to find a rights-based approach to the question of Palestinian displacement.¹⁰⁰

⁹⁶ The UN Office for the Coordination of Humanitarian Affairs (OCHA) estimates that the military operation in the Gaza Strip in June-July 2006 has created at least 5,100 internally displaced persons of which 3,400 were sheltered at UNRWA schools in Rafah and Jabalia. See UNOCHA, Humanitarian Update on the oPt, June/July 2006. Available at: <http://www.reliefweb.int/library/documents/2006/ocha-opt-31jul2.pdf> and Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967, Human Rights Council, Second session, A/HRC/2/5, 5 September 2006, para. 22.

⁹⁷ For more information on displacement as a result of the Wall see *supra* note 82.

⁹⁸ 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, Commission on Human Rights, Sixtieth Session, E/CN.4/2004/6, 8 September 2003, p. 1.

⁹⁹ International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004, para. 133.

¹⁰⁰ UN Office for the Coordination of Humanitarian Affairs (OCHA) cited in "A Prison for Palestinians", *al Majdal*, Issue No. 30-31, Bethlehem: Badil Resource Center, Summer-Fall 2006, p. 13.

Conclusion

By 1952, the international response to both Palestinian refugees and internally displaced persons had already been determined. Failed peace initiatives in Lausanne (1949) and Paris (1951), the rapid demise of the UNCCP as of 1952, the transfer of responsibility for 1948 refugees in territory controlled by Israel from UNRWA to Israel (1952), and the *1952 Citizenship and Entry into Israel Law* – the *de facto* denationalization of 1948 Palestinian refugees outside Israel - had already shaped future responses to Palestinian displacement. These responses were to be characterized by a lack of protection of refugee and IDP rights and a rights-based approach to the refugee question in the negotiations.

The unwillingness of the United Nations and great powers to enforce relevant UN resolutions and international law has thus led to an increasingly mitigated response to Palestinian displacement. These responses have evolved from the provision of protection and assistance to 1948 refugees to limited emergency assistance on a humanitarian basis to 1967 refugees and post-1967 displaced, and more recently to no response at all. The response of the international community to Palestinian displacement has thus gradually moved away from the system developed by the international refugee regime.

Recent international initiatives, i.e., the Oslo process and the Road Map, calling for a 'just and realistic solution' to the refugee question are also characterized by a lack of a rights-based approach, particularly the search for a durable solution based on UN General Assembly Resolution 194 and UN Security Council Resolution 237. More precisely, the question of the right of return and restitution of Palestinian refugees has been sidelined from the negotiations, to the detriment of the rights of Palestinian refugees and IDPs.

At the heart of the international response lies its failure to address the root cause of Palestinian displacement affecting 1948, 1967 and subsequent refugees as well as IDPs, namely, Israel's historical policy of population transfer. Without addressing Palestinian displacement as part of an overall Israeli policy of population transfer aimed at colonizing Palestinian land and impeding the right to self-determination of the Palestinian people, the international community fails to take a rights-based approach to conflict resolution, and ultimately, perpetuates the conflict and the plight of Palestinian refugees and internally displaced Palestinians. As Harish Parvathaneni puts it,

The questions that must be posed in the context of the Palestine refugees are: Has the international community through the Security Council demonstrated sufficient will and support in bringing about conciliation or in militarily intervening with respect to the protection of Palestine refugees, deeming the issue a threat to international peace and security? Have the parties to the conflict demonstrated sufficient political will to address the issues of refugee protection and durable solutions? In short, the answer to each of the above must be “no”.¹⁰¹

¹⁰¹ Harish Parvathaneni, *supra* note 22, p.19.

Under heavy political pressure, the United Nations has failed to meet its obligations to protect Palestinian refugees and internally displaced persons and find a durable solution to their plight based on international law. The question is then, how to reinforce the capacity of international organizations, precisely the United Nations, and states to resist political pressure and uphold refugee and IDP rights?

The solution may lie in developing a rights-based approach to the conflict. Such approach entails a recognition of the rights of all parties; respect for the principles of accountability, justice and the rule of law; and, participation of the parties concerned. Achievement of the rights of all parties to the conflict should be the aim of negotiations undertaken by international organizations and states. Priority should be given to the rights and participation of the victims of human rights and humanitarian law, such as the right to a remedy and reparation of the refugees and the internally displaced. To ensure that all parties are part of the discussion and consultation process, information must be provided in a transparent manner. Victims must also organize themselves and actively advocate for their rights.

In this sense, the Madrid-Oslo process, despite its failure in 2001, had at least one positive consequence; it brought back the refugee and IDP question on the international agenda and provoked refugee and IDP communities to organize themselves and advocate for their rights. More recently also some new though small Israeli Jewish initiatives have advocated for the right of return of Palestinian refugees and IDPs. The effects of this popular movement cannot be overlooked, as it has revived the movement for return, property restitution and compensation and awareness of the *Nakba* both locally and internationally. It has also highlighted the ongoing and repeated nature of displacement suffered by Palestinians. Popular refugee and IDP movements also serve to hold to accountable politicians inclined to exclude the refugee and IDP issue from future negotiations. In short, refugee community and civil society initiatives have become a vector of the search for a durable solution based on international law and UN Resolution 194. Hence, until the United Nations is willing and able to defend the right of return, restitution and compensation of Palestinians, much of the protection for the rights of Palestinian refugees and internally displaced Palestinians is thus today undertaken by the refugees and IDPs themselves.