

**Palestinian Refugees and the *al-Aqsa Intifada*:  
The Legal Obligation to Provide International Protection  
and to Work for a Durable Solution**

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The Special Committee to Investigate Israeli Practices  
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## Executive Summary

This following report will attempt to focus more on “*root causes*,” rather than on symptoms, of the present uprising (*al-Aqsa Intifada*) of the Palestinians in the Occupied Palestinian Territories (the “**OPTs**”) against the brutal Israeli military occupation imposed throughout the entire area since 1967. The fundamental premise of this report is that the unresolved status of the Palestinian refugees – including (1) the 1948 refugees; (2) the 1967 refugees; and (3) the “internally displaced” Palestinian citizens of Israel – lies at the very *heart* of the current stalemate deadlocking the Palestinians and the Israelis.

Logically, therefore, successful resolution of the Palestinian refugee issue is a *necessary precondition* for a successful resolution of the overall conflict.

The specific goal of this report is to suggest ways in which the international community, generally, and the United Nations, specifically, can play a useful and more pro-active role in laying the necessary groundwork for resolving this “root cause” lying at the core of the conflict – the predicament of the Palestinian refugees.

As a general principle, it is the responsibility of the international community to craft durable solutions for refugees who, by very definition, are deprived of the “diplomatic protection” of their respective “states of origin,” which either cannot or will not seek to advocate for the refugees’ rights. The responsibility for advocating for refugee rights at the political negotiating table, for example, normally lies with the UN High Commissioner for Refugees (the “**UNHCR**”). Why is neither the UNHCR nor any other UN organ acting on behalf of the international community currently actively involved in advocating for the legal rights of the Palestinian refugees, and most particularly at the negotiating table? Why are standards of international law applicable to refugees being ignored in the purely political (power-brokerage) efforts to force a resolution of this conflict? How can the current situation be changed?

This report will attempt to address some of these “root cause” questions and to suggest some answers. The Special Committee is uniquely positioned to make an important contribution to the groundwork necessary for achieving a resolution of the Palestinian refugee situation that complies with international law.

## I. Introduction: Refugee Demographics in the Occupied Palestinian Territories (50% of the Population)

While we recognize that the mandate of The Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories does include the Golan Heights, our own mandate is limited to the OPTs (i.e., the West Bank, including East Jerusalem, and the Gaza Strip). Therefore, our report will be restricted to addressing only issues of primary relevance to the refugee population of the OPTs.

In the face of ongoing wide-ranging refusal by Israel to cooperate with the United Nations (“UN”) human rights system generally – for example by refusing to issue visas to Special Rapporteurs to conduct their missions to Israel and/or the OPTs, including the Special Rapporteur of the Commission on Human Rights on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967 (formerly Mr. Giorgio Giacomelli) – the resolve and ingenuity of the Special Committee in nevertheless fulfilling its mandate by conducting field missions to countries neighboring Israel is to be highly commended. This is a model that clearly could be followed by other United Nations human rights mechanisms/rapporteurs when faced with Israel’s refusal to receive human rights fact-finding delegations/missions.<sup>1</sup>

It should also be noted here that the Special Committee’s inclusion of humanitarian law in its annual review of Israeli practices in the OPTs is also to be highly commended. As the UN High Commissioner for Human Rights has so aptly noted, human rights law and humanitarian law should be viewed as complementary bodies of law and are not to be considered mutually exclusive.<sup>2</sup> The need for the Special Committee to consider humanitarian law violations is even greater in the current context of the *al-Aqsa Intifada*, in which Israel’s disproportionately punitive military actions have currently reached a level of intensity which is easily classifiable as outright warfare against a civilian population, constituting a blatant and unconscionable violation of humanitarian law (both treaty and customary humanitarian law).

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<sup>1</sup> At the conclusion of a fifth “special session” of the Commission on Human Rights convened in October 2000 to respond to Israel’s massive human rights and humanitarian law violations in the OPTs, the Commission issued resolution S-5/1 (19 October 2000) which, *inter alia* requested 8 Special Rapporteurs to conduct immediate missions to the OPTs and to report back to the Commission. Of the eight so requested, **none** of the Special Rapporteurs ever undertook a country visit to the OPTs. The eight Special Rapporteurs specifically requested to make country visits and to report to the 57<sup>th</sup> annual session of the Commission on Human Rights were: (1) the Special Rapporteur on extrajudicial, summary or arbitrary executions; (2) the Representative of the Secretary-General on internally displaced persons; (3) the Special Rapporteur on the question of torture; (4) the Special Rapporteur on violence against women, its causes and consequences; (5) the Special Rapporteur on religious intolerance; (6) the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; (7) the Special Rapporteur on adequate housing; and (8) the Working Group on Enforced or Involuntary Disappearances.

<sup>2</sup> See, e.g., Office of the High Commissioner for Human Rights, HUMAN RIGHTS: A BASIC HANDBOOK FOR UN STAFF (no date), p. 8 (stating “It is now acknowledged that human rights law and humanitarian law should be viewed in an integrated and holistic manner, where the individual has protection under human rights law at all times, as well as that provided under humanitarian law during period of armed conflict”).

## **Refugees Comprise 50% of the Population of the OPTs**

Refugees currently comprise some 50% of the combined populations of the West Bank (including East Jerusalem) and Gaza Strip. Therefore, the Special Committee would be well within its mandate to consider carefully the status of the Palestinian refugees and to recommend ways in which to implement their legal rights, which are currently being woefully undermined.

The legal rights of the Palestinian refugees – and Israel’s mass-scale violation of them – must be given greater emphasis by the international community, generally, and within the United Nations human rights system more specifically. This is necessary in order to assist Israel to come into compliance with its legal obligations towards the Palestinian refugees under international law.

Israel’s continued longstanding denial that it owes any legal obligation or duty of remedy to the Palestinian refugees is completely unfounded in international law. On the contrary, Israel, as the sole “country of origin” for the vast majority of the Palestinian refugees – specifically, the 1948 refugees, displaced during the 1948 conflict – is the sole state with an obligation to repatriate and readmit them under international law. (Note: For further discussion of the right of return of the 1948 Palestinian refugees, *see* The 1948 Palestinian Refugees and the Individual Right of Return: An International Law Analysis, BADIL: 2001, which is being submitted to the Special Committee concurrently with this report).

## **The Structural Incapacity of the “Oslo Process” to Safeguard Palestinian Refugee Rights**

The “Oslo Process” suffered from a fundamental failure to ground itself in international law. Rather, legal rights – and most importantly for purposes of this discussion, the international law-guaranteed rights of the Palestinian refugees – which should have been held to be inalienable, were instead subjected to political bargaining and negotiation, as if they could somehow be “shaved off” to fit conveniently into a strained political settlement.

For example, while Oslo recognized that a solution to the refugee issue would be negotiated between the parties to an agreement (*see*, Declaration of Principles on Interim Self-Government Arrangements, 13 September 1993, Article 5(3)), the refugee question was nevertheless one of five set aside for so-called final status talks to be concluded no later than May 1999 (deadline later extended to September 1999). More importantly, from the perspective of the refugee question, the accords failed completely to make any reference at all to UN General Assembly Resolution 194, which, as is described more fully in Section III below, is universally recognized to be *the* definitive pronouncement by the international community on the legal rights under international law of the 1948 refugees and the “internally displaced” Palestinians who eventually became citizens of Israel. Therefore, the Oslo process deliberately attempted to sidestep the immutability of the legal rights of the refugees and instead attempted to subject them to political bargaining.

The approach of Oslo, it should be noted, stands in stark contrast to the 1994 peace treaty between Israel and Jordan, for example, under which the refugee issue is

explicitly stated in Article 8 as one to be resolved in accordance with international law. In similar vein, the preambulars to both the Jordan-Israel peace treaty and the Egypt-Israel peace treaty specify that relations between the parties will be conducted in accordance with international law and the UN Charter.

Had the Oslo process been framed squarely within the parameters of international law, similar to the two peace treaties cited, it is highly unlikely that the international law aspects of the refugee question could have been as studiously avoided as they unfortunately have been for the past 8 years. This is the mistake (or deliberate obfuscation) that must be avoided at all costs in the future.

We hereby call upon the Special Committee to do its part to inject the discourse of the internationally guaranteed legal rights of the Palestinian refugees into all future discussions or negotiations over their fate.

## **II. Durable Solutions for Refugees and International Law: Types of Protection**

This section provides an overview of international law applying to refugees generally. The following section (Section III) will examine the special “protection” regime that was established for the Palestinian refugees and how it subsequently collapsed. The collapse of the special protection regime for Palestinian refugees should logically serve to bring them back within the ambit of standard refugee law, applicable to all refugees. Section III will examine whether that has happened or not.

Under international law, refugees and internally displaced persons have a right to international protection and assistance.

### **A. Types of “Protection”**

“Diplomatic” (or legal) “protection” in the context of international refugee law and as distinct from “physical” protection (which is discussed below in Section IV.B) comprises two main components. The first component has a shorter-term perspective. “Shorter-term” protection involves intervention with host states by an official representative of the international community to ensure that basic human rights of the refugees are being respected, e.g., rights related to residency, work, travel, personal status registration, property ownership, education, social welfare, etc. The second component has a longer-term perspective. “Longer-term” protection involves active involvement at the international political level in seeking a lasting, durable solution to the refugee exile predicament, with pro-active advocacy at the negotiating table for implementation of the legal rights of the refugees under international law.

In both cases – “shorter-term” and “longer-term” protection – the international community has recognized and assumed the responsibility for advocating for the legal rights of refugees, since their “states of origin” are by very definition unwilling (or unable) to do so. Specifically, the Office of the UN High Commissioner for Refugees (“UNHCR”) is charged by the international community with the legal responsibility for advocating for the rights of refugees when their “countries of origin” cannot or will not do so.

### **B. Voluntary Repatriation: The Preferred of the Three “Durable Solutions”**

The UNHCR has traditionally promoted three types of “durable solution” for resolving the predicament of exiled refugee communities. These three solutions are: (1) voluntary repatriation to “country of origin”; (2) voluntary host country integration; and (3) voluntary third country resettlement.

Of the three durable solutions, only the first, i.e., voluntary repatriation, is recognized to be a “right” held by refugees under international law. Therefore, the “state of origin” has a corresponding binding obligation under international law to readmit refugees if they should voluntarily choose to return to their homes of origin.

### **C. The Requirement of Refugee “Choice”**

All three durable solutions are premised on the fundamental, underlying principle of “voluntariness” of refugee choice. A refugee, in other words, cannot be “forced” by external pressure to “choose” any of the three available durable solutions against his/her wishes. Voluntariness, then, is the standard by which the “legality” of durable solutions options may be judged, under international law. Solutions that are “involuntary” are universally recognized as being inherently unstable and incapable of leading to a lasting peaceful resolution of a conflict. Recognition of this fact has led to establishment of the rule of voluntariness.

### III. The “Heightened” Protection Regime Established for Palestinian Refugees and Its Subsequent Collapse: The Need for International Protection

This section examines the special protection regime that was established for Palestinian refugees in 1948 pursuant to UN General Assembly Resolution 194. As will be explained, this special regime subsequently collapsed. Therefore, it must be asked whether the Palestinian refugees have come within the ambit of regular refugee law, applicable to all refugees, or whether they are now suffering from a “lowered” standard of protection, or a “protection gap.”

#### A. G.A. Resolution 194

The international law-guaranteed rights of the vast majority of the world’s 5 million Palestinian refugees – including the 1948 refugees and the “internally displaced” Palestinians who eventually became citizens of Israel – have been clearly articulated by the international community since December 1948 in the form of U.N. General Assembly Resolution 194. Paragraph 11(1) of that resolution stated that the General Assembly

*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” (emphasis added).<sup>3</sup>

Resolution 194 unambiguously calls for the right of return for those refugees “*wishing to return to their homes*” (emphasis added). Thus, Resolution 194 clearly reaffirmed the primacy of repatriation as the preferred durable solution for refugees favored by the international community, while at the same time emphasizing the underlying requirement of “voluntariness” and “refugee choice.” Palestinian refugees cannot be forced into a durable solution against their will any more than any other refugee population group can.

Resolution 194 specifically reaffirmed three enumerated and closely interconnected rights of the Palestinian refugees and internally displaced. The first right is the right of return to their homes of origin. The second right is the right to receive restitution of their properties and lands (which properties were later confiscated from the refugees and internally displaced under Israeli domestic laws which violate international law; *see* Section IV, below). Note that Resolution 194 expresses this second right in the language “*return to their homes*” (emphasis added). The third right is the right to receive compensation. For *returning* refugees, the right of compensation applies to property which is factually incapable of being restituted to them (due to damage or destruction). For *non-returning* refugees, the right of compensation applies to all their property losses.

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<sup>3</sup> G.A. Res. 194 (III), U.N. GAOR, 3rd Sess., U.N. Doc. A/810 (1948) (para. 11(1))



As was outlined in Section II, above, the right of return *is* a right held by refugees under international law. Therefore, the “state of origin” (in this case, Israel) has a corresponding binding obligation under international law to readmit the refugees if they so choose to return to their homes of origin. This is the current state of international law and has been so since 1948, when Resolution 194 reaffirmed these rules.

## **B. The “Heightened” Protection Regime Established for Palestinian Refugees**

### **B.1 The UNCCP**

Resolution 194 also established the UN Conciliation Commission for Palestine (“UNCCP”), under Article 2. Among its responsibilities, the UNCCP was to facilitate durable solutions for Palestinian refugees based upon the specific mandate set forth in paragraph 11 of Resolution 194. (For an overview of the UNCCP, *see* BADIL Brief No. 5, submitted to the Special Committee concurrently with this report.)

Thus, the UNCCP was expressly charged with responsibility for providing “longer-term” durable solutions-type protection to the Palestinian refugees, i.e., advocating for their legal rights at the negotiating table while seeking a final settlement of their situation.

Therefore, because a unique UN agency was created specifically to provide “longer-term” durable solutions-type protection services exclusively to the Palestinian refugees, it can be said that a “heightened” protection regime was established for Palestinian refugees. This heightened protection regime (which did not last long) was supplemented by a second UN agency created specifically to provide “assistance” services again exclusively to the Palestinian refugees and to no other refugee group – UNRWA.

### **B.2 UNRWA**

The UNCCP, in turn, recommended the creation of a second “shorter-term” protection-related mechanism, which was established in 1949. This agency, called the United Nations Relief and Works Agency (“UNRWA”), was mandated to provide social welfare type of “assistance” to Palestinian refugees until such time as the UNCCP was able to effectuate an implementable durable solution.

Thus UNRWA was delegated a portion (but not the full range) of “shorter-term” protection functions regarding refugees which the international community normally assumes responsibility for through an official representative (usually, as mentioned in Section II, above, UNHCR).

## **C. The Demise of the UNCCP**

The UNCCP was faced with insurmountable obstacles. The main one, of course, was Israel’s complete refusal to repatriate the 1948 refugees (as well as its refusal to let the 1948 internally displaced Palestinians to return to their properties and lands from

which they had become temporarily displaced during the 1948 conflict, even though they later eventually became citizens of Israel).

Consequently, the UNCCP ceased to function operationally and was reduced to a mere paper entity as early as 1952. While the UNCCP still exists on paper, it has failed completely since 1952 to offer any type of “longer-term” durable solution-type protection services to the Palestinian refugees (or the internally displaced).

#### **D. Article 1D of the 1951 Convention Relating to the Status of Refugees**

Palestinian refugees were incorporated into the 1951 Convention Relating to the status of Refugees (“**1951 Refugee Convention**”) in Article 1D, which is universally recognized to be the “Palestinian clause” drafted expressly to cover their unique and pressing circumstances. Article 1D was drafted in such a way as to initially accommodate the special “heightened” protection regime which had been created for the Palestinian refugees, but also to provide for a “back-up safety net” should that special protection regime cease to exist (as it subsequently did) “for any reason.”

The “temporary exclusion” clause of Article 1(D)(1) serves to preserve the special protection regime for the Palestinian refugees for so long as it exists. In contrast, the back-up safety net, should the special protection regime cease to exist for the Palestinian refugees, is provided for in Article 1(D)(2), which has been termed the “inclusion clause.” Article 1(D)(2) reads as follows:

**Article 1(D)(2):** When such protection **or** assistance has ceased **for any reason**, without the position of such persons [the Palestinian refugees] being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations [the primary one at that time being G.A. Resolution 194], these persons [Palestinian refugees] shall **ipso facto** [i.e., “by that fact alone,” or automatically] be entitled to the benefits of this Convention. (emphasis added)

The back-up “safety net” which Article 1(D)(2) specifically provides for is automatic inclusion of the Palestinian refugees – *as an entire group* – within the scope of the 1951 Refugee Convention should the special protection regime established for them cease to exist, for any reason. Thus, the standard protections of the 1951 Refugee Convention were expressly stated to serve as the minimum threshold “floor” below which the Palestinian refugees were not to be allowed to fall in terms of the level of protection services to be provided them by the international community. It is clear that the 1951 Refugee Convention expressly contemplates a scenario where the Palestinian refugees could (and, if certain triggering events were to occur *would*) fall automatically within the mandate of the UNHCR by virtue of receiving automatic coverage under the 1951 Refugee Convention.

Actually, Article 1(D)(2) specifically enumerates two such “triggering” events, either of which would serve to automatically activate of the back-up safety net coverage of the 1951 Refugee Convention: (1) the demise of the “protection” regime; or (2) the demise of the “assistance” regime. It was clear by use of the word “or” in the phrasing of Article 1(D)(2) that *either* event would suffice to bring the Palestinian refugees – *as an entire group* – automatically within the coverage of the 1951 Refugee Convention.

As has already been noted in the preceding section, the UNCCP has unequivocally “ceased to exist” in terms of its ability to provide protection services to the Palestinian refugees. Thus, the express terms of Article 1(D)(2) have been triggered, and the Palestinian refugees – *as an entire* group – should now be deemed as having come automatically within the scope of the 1951 Refugee Convention. (For a more detailed analysis, *see* BADIL Brief No. 1)

#### **D. Current State of “Limbo”**

Despite the inexorable logic of the preceding argument, the status of the Palestinian refugees under Article 1(D)(2) is widely – and perhaps deliberately – misunderstood.

Perhaps because of the complexity of the problem, and perhaps because of Israel’s uniquely intransigent stance regarding refusal to repatriate the Palestinian refugees, the international community has chosen not to extend long-term durable solution-type protection services to the Palestinian refugees automatically, as Article 1(D)(2) requires. Rather, the international community has instead chosen to maintain a “hands off” approach regarding actively seeking a durable solution to the predicament of the Palestinian refugees. Similarly, there has been no effort made to fill in any of the other shorter-term protection gaps which exist for Palestinian refugees, due to UNRWA’s limited mandate and limited scope of operations.

Thus the sadly ironic – and legally indefensible – situation has arisen that the single largest refugee population group in the world today<sup>4</sup> has experienced a long-term and critically detrimental “protection gap” continuously since 1952.

Unless and until the international community properly reassumes its legal responsibilities towards the Palestinian refugees, they will continue to experience the overwhelming brunt of political and military pressure that continually seeks to marginalize, if not completely obliterate, their rights under international law.

Not only does this represent an egregious failure on the part of the international community to fulfill its legal obligations under international law, is it also unconscionable from a moral standpoint.

Thus it is not surprising that the Final Report of the Commission of Inquiry appointed by the UN Commission on Human Rights to investigate human rights and humanitarian law violations carried out in the West Bank and Gaza Strip during the current “*al-Aqsa Intifada*” (dated 16 March 2001, UN doc. #E/CN.4/2001/121) includes paragraph 129, which reads as follows:

Steps should be taken to apply Article 1D of the 1951 Convention on the Status of Refugees to ensure that a regime of protection under the authority of the United Nations High Commissioner for Refugees is extended to Palestinian refugees, especially those residing in the West Bank and Gaza

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<sup>4</sup> *See, e.g.,* UN High Commissioner for Refugees, THE STATE OF THE WORLD’S REFUGEES (2000) 279 (stating that “the Palestinians are the world’s largest refugee population” even though UNHCR erroneously only counts UNRWA-registered refugees as refugees, thereby seriously underestimate the real size of the population group).

camps. These refugees have been particularly victimized during the Second Intifada, are not now protected by the application of the UNRWA framework, and urgently require international protection on a priority basis.

#### IV. **Identifying Palestinian Refugee Rights Violations: Impact of the *Intifada***

##### A. **Israel's Violation of Palestinian Refugee Rights Preceded (and Largely Provoked) the *al-Aqsa Intifada*:**

Israel's wide-scale and long-standing violations of the rights of the Palestinian refugees and internally displaced *preceded* – and to a great extent actually *provoked* – the current *al-Aqsa Intifada*.

Israel's violations of the rights accorded to Palestinians refugees under human rights and humanitarian law flow from two main “clusters” of policies, which Israel seeks to justify based upon its own internal domestic laws: (1) refusal to readmit the refugees (or to allow the internally displaced to return); and (2) illegal wholesale confiscation of the property of the refugees (and the internally displaced).

##### 1. **Refusal to Readmit**

Israel's refusal to readmit the 1948 Palestinian refugees is openly based upon racial, ethnic, religious and/or political criteria (since Israel avowedly wants to maintain the “ethnic/religious” demographic balance it established illegally during the 1948 war). Therefore, this practice is patently illegal under international law because of the discriminatory grounds upon which it is based.

Following implementation of its policy of refusing readmission, Israel subsequently enacted a Nationality Law in 1952 which purported to “denationalize” the Palestinian refugees. It has based its refusal to readmit upon that law ever since. The 1952 Nationality Law, however, violates international law and cannot be considered binding. (For further discussion, *see* The 1948 Palestinian Refugees and the Individual Right of Return: An International Law Analysis, BADIL: 2001, which is being submitted to the Special Committee concurrently with this report).

Three UN treaty-monitoring bodies found in their respective 1998 reviews of Israel's compliance under their respective treaties that Israel's refusal to readmit was a violation of each of the treaties. Each committee included such findings in its respective Concluding Observations for 1998. (These three committees are: (1) the Human Rights Committee, which monitors the International Covenant on Civil and Political Rights; (2) the Committee on Economic, Social and Cultural Rights, which monitors the International Covenant on Economic, Social and Cultural Rights; and (3) the Committee on the Elimination of All Forms of Racial Discrimination, which monitors the International Covenant on the Elimination of All Forms of Racial Discrimination.)

Following is a list of the bodies of laws which Israel's policy of refusing to readmit the Palestinian refugees violates:

- (i). **Law of Nationality, As Applied upon State Succession:**
  - a. Articles on Nationality of Natural Persons in Relation to Succession of States (drafted by International Law Commission, adopted by the General Assembly);

- b. Customary law prohibition against (mass) denationalization.
- (ii). **Humanitarian Law:**
  - a. Hague Regulations (Articles 20, 43 = general right of return); (Article 46(1) = prohibition against (mass) forcible expulsion);
  - b. Fourth Geneva Convention (Articles 4, 6(4), 158(3) = general right of return); (Articles 45, 49, 147 = prohibition against (mass) forcible expulsion);
  - c. International Military Tribunal, Nuremberg (Articles 6(b) and 6(c));
  - d. Protocol II to the Fourth Geneva Convention (Article 17 = prohibition against (mass) forcible expulsion).
- (iii). **Human Rights Law:**
  - a. Universal Declaration of Human Rights (Article 13(2));
  - b. International Covenant on Civil and Political Rights (Article 12(4));
  - c. International Covenant on the Elimination of All Forms of Racial Discrimination (Article 5(d)(ii)).

## 2. **Property Violations**

Israel's second major violation of the rights of the Palestinian refugees relates to its wholesale confiscation of their land and property. Israel has confiscated the property of the 1948 refugees and internally displaced *en masse* using domestic land confiscation laws that violate international law. These land confiscation laws were applied both without a trace of "due process" safeguards and on blatantly discriminatory grounds. (Each grounds is independently sufficient basis to render an underlying domestic law illegal under international law).

For example, it is completely untenable to argue that there has been "due process" when Israel has completely barred the refugee landowner from reentering the country to contest the taking in a court of law. Or with regard to the situation of the internally displaced, it is similarly untenable to argue that there has been "due process" when despite a successful Israeli High Court ruling holding that the internally displaced *did* have the right to return to their homes of origin, the Israeli Defense Forces nevertheless bombed to complete ruination the very villages where the High Court had just ruled (or was about to rule) that the internally displaced could return. (These are the fact patterns from the famous cases of the villages of Ikrit and Bir'am of the early 1950s.)

It is important to note in this context that over 93% of the land over which Israel currently extends its sovereignty inside the 1949 armistice lines is currently held as "state land," meaning Israel is holding it "in perpetuity" for the "exclusive use by the Jewish people." Such "state land" is not privately owned but rather was illegally acquired through governmental confiscation from private owners (i.e., Palestinian refugees and internally displaced) under Israeli domestic laws that violate international law.

Following is a list of the bodies of international law which are violated by Israel's domestic land confiscation laws which target Palestinian-owned land on a discriminatory basis and fail to ensure "due process" safeguards:

- (i) **Law of Nations & State Succession:**
  - a. Customary law doctrine of “acquired rights” (P.C.I.J., German Settlers advisory opinion, 1923);
  - b. International law of expropriation (P.C.I.J., *Chorzow Factory* (indemnity) case, 1928);
  - c. (Cairo) Declaration of Principles of International Law on Compensation to Refugees.
- (ii) **Humanitarian Law:**
  - a. Hague Regulations (Articles 23(g), 25, 28, 46, 47, 50, 52, 56);
  - b. Fourth Geneva Convention (Articles 147).
- (iii). **Human Rights Law:**
  - a. Universal Declaration of Human Rights (Article 17);
  - b. International Covenant on Economic, Social and Cultural Rights (Articles 1(2), 2(2), 11(1), 25);
  - c. International Covenant on the Elimination of All Forms of Racial Discrimination (Article 5(d)(ii));
  - d. Principles Concerning the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms (adopted by the Commission on Human Rights, Jan. 2000) (Articles 21, 22).

Thus Israel’s refusal to readmit the Palestinian refugees (or to allow the internally displaced to return to their “homes of origin”) combined with the subsequent illegal wholesale confiscation of their property holding comprise the two main clusters of mass-scale rights violations which Israel has practiced systematically against the Palestinian refugees and internally displaced unabated since 1948. From the violation of these two “core” foundational rights of the refugees/internally displaced, a whole host of other rights violations has flowed.

For an example of an extended discussion of the consequences under the International Covenant on Economic, Social and Cultural Rights of Israel’s ongoing violation of the property rights of the refugees/internally displaced, *see* BADIL’s two most recent submissions to the Committee on Economic, Social and Cultural Rights (November 2000 and April 2001), which are being submitted to the Special Committee concurrently with this report.

## **B. *Al-Aqsa Intifada-Related Violations of the Rights of the Refugees:***

In addition to Israel’s long-term mass-scale violation of the right of return and the property rights of the 1948 refugees and internally displaced, which dates back to 1948, Israel is now committing mass-scale violations of the rights of all the Palestinian residents of the OPTs, including the Palestinian refugees resident there (who comprise 50% of the population) in its desperate effort to suppress the *al-Aqsa intifada*.

The following violations demonstrate the need for the international community also to provide *physical* protection to all the Palestinian residents of the OPTs, including the Palestinian refugees. (Physical protection is, therefore, distinct from the *legal* forms of protection that have been discussed above.)

## 1. Refugees As a Vulnerable Group

Palestinian refugees have been strongly affected by Israel's military and economic policies applied in the past four months in order to suppress the Palestinian uprising. Palestinian refugees, especially camp refugees, are a landless, economically marginalized population. Owning no independent means of subsistence, they are completely dependent upon income from employment and labor.

Israel's closure of its labor market to Palestinians, as well as severe restrictions on movement within the OPTs as well as at all the international transit points into/out of the OPTs have reached unprecedented "siege" proportions during the current *intifada*, motivating representatives of even the normally restrained International Committee of the Red Cross to remark publicly that "starvation is imminent" for the most vulnerable sectors of the population. Israel's siege policies have had an especially devastating impact upon refugee families, whose limited savings are rapidly consumed in times of unemployment.

According to the Office of the UN Special Coordinator for the Occupied Territories ("UNSCO"), at least 40 percent of the labor force in the 1967 occupied territories is currently unemployed, causing economic distress to 45.5 percent of the population. The World Bank notes that poverty rate (less than U.S. \$2.1 consumption per person per day) in the West Bank and Gaza Strip has risen by 50 percent since the end of September 2000. The Palestinian Central Bureau of Statistics ("PCBS"), in a July 2001 report, put the poverty rate at 64.9% of Palestinian households (56.6% in the West Bank and 79.9% in the Gaza Strip.) Although exact figures are not yet available it must be assumed that the poverty rate among the refugee population is even higher, since they are the most economically vulnerable segment of the population.

Of the agencies providing humanitarian assistance to attempt to mitigate the poverty crisis, the PCBS reports that UNRWA is providing relief to the highest percentage of families (63.6%), followed by the Palestinian National Authority (6.8%), relatives and friends (6.8%), political parties (3.6%), religious charity (3.5%) and other (the remainder). For the first time since 1982, when general rations were cut, UNRWA has been forced to reinstate rations for 85 percent of the registered refugee population in Gaza and the West Bank. In contrast, prior to the *intifada* less than 8% of the registered refugee population was receiving food assistance from UNRWA. According to UNRWA's seventh *Progress Report* on the status of its Emergency Appeal, covering June 2001, the Agency has distributed 607,227 food parcels in the Gaza Strip to 123,958 families since the *intifada* began in September 2000, reaching over 570,000 persons. In the West Bank, the Agency has distributed over 165,104 food packages since the beginning of the *intifada*.

Additionally, since the start of the *intifada*, UNRWA has distributed selective cash assistance to a total of 3,919 families in the Gaza Strip (for a total figure of \$1,333,486) and to 8,919 families in the West Bank (for a total figure of \$322,937). Cash assistance is given to families in the following groups: those who lost their sole breadwinner; persons who sustained serious injuries and are unable to work; those forced to vacate their homes as a result of Israeli shelling of their areas of residence;



and those with pressing emergency cash requirements which they could not otherwise afford.

Due to their vicinity to Israeli military installations, settlements and by-pass roads, the refugee camps of 'Askar/Nablus, 'Aida and Beit Jibrin/Bethlehem, Aqbat Jaber/Jericho, Shati, Jabalya, Rafah and Khan Younis/Gaza have become regular targets of Israeli attacks by heavy weapons - rockets, shells, 500 mm. and 800 mm. ammunition fired from high-caliber automatic weapons, tanks, and helicopter gunships – in addition to attacks perpetrated by Israeli settlers which have been recorded also in al-Fawwar Camp/Hebron. An attack on Khan Younis refugee camp in the Gaza Strip, in early April (known as “Operation Enjoyable Song”) resulted in the destruction of some 30 refugee shelters, leaving some 50 families homeless. In the early morning hours of 2 May, at least 17 homes were demolished when Israeli tanks and bulldozers entered Brazil quarter, a refugee neighborhood near Rafah Camp in southern Gaza. In both attacks, Palestinian refugees – including children – were killed and injured.

Damage to family homes caused by indiscriminate Israeli shelling are especially large in the densely built-up refugee camps, where makeshift constructions are less resistant to attacks by heavy Israeli ammunition and missiles, and shock and anxiety attacks, especially among the children and elderly, spread among the whole crowded camp population. Approximately 609,000 refugees live on an area of around 20 sq. km (total land allotted to the UNRWA-administered West Bank and Gaza Strip refugee camps), translating into a population density as high as 30,450 refugees per sq.km.

Due to the intensity of bombardment of camps, and the resulting destruction of housing stock, UNRWA has increased provision of resources towards emergency shelter assistance and repair. In its June *Progress Report*, UNRWA reported having identified 376 shelters in Gaza that require reconstruction or repair as a result of Israeli shelling during the *intifada*. In the West Bank, some 1,325 shelters have been identified for shelter assistance and repair. Many of the shelters identified cannot be reconstructed on the same site, due to ongoing Israeli shelling of those areas. Alternative housing sites, therefore, have to be identified. In mid-March, the International Committee of the Red Cross (the “**ICRC**”) started distributing non-food assistance to families whose homes were destroyed by Israeli military forces in the Gaza Strip since October 2000. The ICRC’s House Destruction Relief Programme was intensified and systematized in March to cope with homeless families and to provide them with tents, blankets and other essential household goods.

As noted above in Section III, above, UNRWA does not have the mandate to provide full-scale protection for Palestinian refugees. UNRWA’s current *ad hoc* efforts to fill in this “protection gap” under a new program called the Operations Support Officer (“OSO”) Programme are far below that provided under the Refugee Affairs Officer (RAO) program established during the 1987 *intifada*.

The absence of an international protection mechanism also means that it is difficult, if not impossible, to gather comprehensive, standardized information on the impact of Israel’s violations of human rights on refugees and develop an accurate assessment of protection needs. Given the absence of an international protection agency, the following data on the impact of the *al-Aqsa Intifada* on refugees has been assembled

by BADIL field staff supplemented by material from other non-governmental and governmental agencies. The Palestinian Central Bureau of Statistics (PCBS) has included a category for refugees in its comprehensive survey on the *intifada* and, when complete, will present a more accurate picture on the impact of the *intifada* on Palestinian refugees.

## 2. Damage to Persons: Refugee Martyrs and Injured

According to the Palestine Red Crescent Society (“PRCS”), there have been a total of 563 martyrs, and a staggering 14,842 injured as of 25 July 2001. The Palestinian Central Bureau of Statistics (“PCBS”) breaks down the above figure for martyrs (with a slight discrepancy) to 325 martyrs in the West Bank (including occupied East Jerusalem), and 237 in the Gaza Strip, for a total of 562 deaths as of 25 July 2001. **Based upon BADIL field staff assessments, some 342 of the 562 martyrs to date are refugees, or about 60%.** This figure, however, is probably low, given the fact that the data represents refugees registered with UNRWA.

Using the results of research conducted by BADIL field staff across the West Bank, including occupied East Jerusalem, and the Gaza Strip, Annex 2 to this report lays out this research in a table that breaks down the total number of refugee martyrs by age, gender and place of residence, as of 31 January 2001.

## 3. Damage to Property: Personal, Commercial and Institutional

Using damage assessments for 9 villages, towns and refugee camps in the Bethlehem District collected by BADIL field workers, Annex 3 to this report illustrates the types of property damage incurred by each area as of 16 April 2001. **The total damage to these 9 residential areas in the Bethlehem region is estimated at U.S. \$7,432,496 (of which U.S. \$1,349,238 is incurred in the three refugee camps alone).**

The Palestinian Central Bureau of Statistics states the total damage to West Bank refugee camps as of 8 January 2001 as follows:

1.	Residential Buildings	\$605,402.00
2.	Non-Residential & Infrastructure	\$ 19,004.00

It is worth noting that the above PCBS figures do not reflect damage assessment figures to refugee-owned properties and businesses outside camp boundaries.

Exact figures for refugee property damage in the Gaza Strip are difficult to tally, since more than three-quarters of Gaza’s population are refugees and the area is densely built-up with few clear distinctions between refugee and non-refugee areas. It is a fact however that Israel’s aggression continues to be at its most harsh against refugee persons and property in the Gaza Strip. **PCBS estimates the total value of losses to residential property in Gaza as of 8 January 2001 at US\$3,281,512, with another US\$4,952,630 in damage to non-residential property.** It can be assumed that a large portion of this damage is to refugee property.

## **V. Remediating Palestinian Refugee Rights Violations: The Need for Greater United Nations Intervention**

Palestinian refugees (and internally displaced) today experience a vast array of rights violations at a multitude of levels and aspects of their daily lives. This complex array of rights violations cannot be allowed to continue unabated.

The international community generally, and the United Nations specifically, have a clear obligation to remedy these violations. They also have the legal authority to do so. All that is currently lacking is the political will. That failing can, and must, be remedied as soon as possible.

Following are three categories of issues requiring urgent follow-up action in order to improve the situation of the Palestinian refugees today. We urge the Special Committee to pursue all avenues simultaneously, as all are of urgent importance in remediating the severe erosion of the legal rights of the Palestinian refugees throughout the world.

### **A. Durable Solutions-Type of Protection:**

1. The Special Committee should recommend to the General Assembly in the strongest possible terms the thorough evaluation of the current “protection gap” experienced by Palestinian refugees (and internally displaced) with regard to the effort to seek a durable solution to their predicament based upon principles of international law.

Such a review should include an official evaluation of the collapse of the “heightened” protection regime established for the Palestinian refugees, and a clear assessment of the current array of UN agencies which could be mobilized to help fill that gap – either by acting alone or in conjunction with each other in an inter-agency task force which could be designed to solve the problem. These agencies include the following: UNHCR, UNRWA, UNCCP, the Office of the High Commissioner for Human Rights, and the International Committee of the Red Cross.

### **B. Filling in the “Gaps” in “Shorter-Term” Protection:**

1. The Special Committee should recommend that the General Assembly encourage and financially assist the UNHCR (or an inter-agency task force, as discussed in the preceding recommendation) in identifying all currently existing “gaps” in “shorter-term” protection of Palestinian refugees, wherever situated.
2. The Special Committee should recommend that the General Assembly encourage the UNHCR (or an inter-agency task force, as discussed in the preceding recommendation) to conduct a thorough study of the immigration/asylum procedures of states around the world in order to assist them in coming into conformity with the correct interpretation of Article 1D of the 1951 Refugee Convention.

**C. Physical Protection:**

1. The Special Committee should recommend that the General Assembly call for a physical “protection” presence in the OPTs.
2. The Special Committee should recommend that the General Assembly call for the reactivation of Secretary-General’s periodic (every four months) reporting requirement under Security Council resolution 681 (of 1990).
3. The Special Committee should recommend that the General Assembly call for a reconvening of the High Contracting Parties to the Fourth Geneva Convention to compel Israel’s compliance with that convention under Article 1.
4. The Special Committee should recommend that the General Assembly renew the mandate issued by the Commission on Human Rights in its “Fifth Special Session” convened in October 2000 for all Special Rapporteurs and Special Representatives whose operational mandates are implicated by Israel’s actions in the OPTs to make immediate “country visits” to the OPTs and to file official reports.
5. The Special Committee should recommend that the General Assembly mandate an official G.A. study of appropriate and implementable forms of “physical” protection for the population of the OPTs.

## Annex 1

### Palestinian Refugee Population (31 December 2000)

Place of Refuge	Refugees <sup>1</sup>	Registered Refugees (RR) <sup>2</sup>	RR in Camps
Israel <sup>3</sup>	258,750		
Gaza Strip	820,690 <sup>4</sup>	824,622	452,186
West Bank	699,354	583,009	157,676
Jordan	1,865,856	1,570,192	280,191
Lebanon	437,068	376,472	210,715
Syria	476,610	383,199	111,712
Egypt	43,350		
Saudi Arabia	294,332		
Kuwait	36,818		
Other Gulf	113,098		
Iraq, Libya	79,575		
Other Arab Countries	5,939		
USA	185,378		
Other Countries	236,057		
<b>Grand Total</b>	<b>5,552,875</b>	<b>3,737,494</b>	<b>1,211,480</b>

**Sources:**

*Collection of accurate statistics is difficult due to the absence of a comprehensive registration system and anomalies in the existing registration system. UNRWA registration is based on assistance needs rather than refugee status.*

<sup>1</sup> Refugee Figures: Salman Abu-Sitta, *The Palestinian Nakba, The Register of Depopulated Localities in Palestine*. London: The Palestinian Return Centre, 1998. Updated from 1998 to 2000 based on a 3.5% natural population growth.

<sup>2</sup> *Registered Refugee Figures: Public Information Office, UNRWA HQ-Gaza, 30 June 2000.*

<sup>3</sup> There is no registration system for internally displaced Palestinians inside Israel. The figure used here is based on estimates for 2000 and updated based on a 3.5% natural population growth.

<sup>4</sup> The total number of refugees is based on an average growth rate of 3.5% per annum (see note 3 above). The growth rate in Gaza, however, is higher than the average thus explaining the higher figure for registered refugees in Gaza.

### Refugees (1<sup>st</sup> January 2000)

<b>Region</b>	<b>Refugees</b>
Africa	3,523,250
Asia	4,781,750
Europe	2,608,380
Latin America & Caribbean	61,200
North America	636,300
Oceania	64,500
<i>UNHCR Total</i>	<i>11,675,380</i>
Registered Palestinian Refugees	3,737,494
Total Palestinian Refugees	5,552,875
<b>Total Refugees</b>	<b>17,228,255</b>

### Major Refugee Populations (1999)

<b>Country of Origin</b>	<b>Main Countries of Asylum</b>	<b>Total</b>
Palestine/Israel	West Bank-Gaza, Jordan, Lebanon, Syria	5,552,875
Afghanistan	Iran, Pakistan, India	2,562,000
Iraq	Iran, Saudi Arabia, Syria	572,500
Burundi	Tanzania, D.R. Congo	525,700
Sierra Leone	Guinea, Liberia, Gambia	487,200
Sudan	Uganda, Ethiopia, D.R. Congo, Kenya, C.A.R., Chad	467,700
Somalia	Ethiopia, Kenya, Yemen, Djibouti	451,600
Bosnia-Herzegovina	F.R. Yugoslavia, Croatia, Slovenia	448,700
Angola	Zambia, D.R. Congo, Congo	350,600
Eritrea	Sudan	345,600

## Annex II

### West Bank and Gaza Strip Refugee Martyrs of the *al-Aqsa Intifada* 29 September 2000 – 31 January 2001

Age & Gender Location	Male		Female		Sub- Total	Grand Total
	Under 18	18 & Over	Under 18	18 & Over		
<i>West Bank</i> *						
Northern Districts**	8	27	0	1	36	
Central Districts***	5	15	0	0	20	
Southern Districts****	3	10	0	0	13	
<i>Total</i>	16	52	0	1	69	69
<i>Gaza Strip</i> ^						
Gaza North^^	2	12	0	0		
Gaza City^^^	5	21	0	0		
Gaza Central^^^^	2	10	0	0		
Gaza South^^^^^	7	18	0	0		
<i>Total</i>	16	61	0	0	77	77
					<b>Grand Total</b>	<b>146</b>

\* Figures for 29 September 2000 to 31 December 2000

\*\* Including Nablus, Jenin, Tulkarem and Ramallah

\*\*\* Including Jerusalem and Jericho

\*\*\*\* Including Bethlehem and Hebron

^ Figures for 29 September 2000 to 31 January 2001

^^ Including Jabalyia Camp, And Hay Al-Rimal

^^^ Including Sheikh Radwan, and Beach Camp, and Hay Al-Tufah

^^^^ Including Al-Breij, Deir Al-Balah and Nuseirat camps

^^^^^ Including Rafah, Khan Yunis, and Brazil camps

Source: *BADIL Field Work & Palestine Central Bureau of Statistics*

### Annex III

#### Refugee Property Damage Assessment in US\$ Bethlehem Region (Villages, Towns and Refugee Camps)

(29 September 2000 – 16 April 2001)

Area	Number of Buildings	Value of Loss in U.S. \$
Beit Jala	806	2,920,419
Beit Sahour	256	1,083,099
Bethlehem	72	656,669
Al-Khader	340	996,132
Eastern & western rural areas	182	425,389
'Aida refugee camp	218	1,008,810
'Azza refugee camp	93	264,300
Deheisheh refugee camp	19	76,128
Doha	9	1,890
<b>Total</b>	<b>1,995</b>	<b>7,432,496</b>

(Source: BADIL field workers)

#### Refugee Property Damage Assessment in US\$ Bethlehem Region (Types of Property Damaged)

(29 September 2000 – 16 April 2001)

Kind of Building	Number of Buildings	Value of Loss in U.S. \$
Residential	1,196	3,199,162
Educational	19	50,223
Governmental	3	52,438
Tourism	1	27,654
Medical	3	1,117
Commercial	48	306,787
Religious	8	6,148
Other Institutional	8	34,182
Infrastructure	1	5,600
Vehicles	125	171,708
<b>Total</b>	<b>1,412</b>	<b>3,855,019</b>

(Source: BADIL field workers)