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**UNHCR, Palestinian Refugees, and Durable Solutions**

Terry M. Rempel, Coordinator of Research and Information, BADIL

*BADIL-Briefs* aim to support the Palestinian-Arab and international debate about strategies for promotion of Palestinian refugees' right of return, restitution, and compensation in the framework of a just and durable solution of the Palestinian/Arab - Israeli conflict.

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**Background**

Brief No. 7 is one of a series of three BADIL Briefs (5-7), which examine the special regime (See Brief No. 1) established by the United Nations to provide international protection and assistance for Palestinian refugees and promote durable solutions based on the provisions of UN General Assembly Resolution 194 (III), 11 December 1948 and international law. Briefs 5 and 6 provide an overview of the UN Conciliation Commission for Palestine (UNCCP) and the UN Relief and Works Agency for Palestine Refugees (UNRWA).

This Brief provides an overview of the UNHCR vis-à-vis Palestinian refugees. The Brief examines the unique and complex relationship between UNHCR and Palestinian refugees as set forth in the 1950 Statute of the UNHCR and the *1951 Convention Relating to the Status of Refugees* and raises questions about a UNHCR role concerning international protection and the search for and implementation of durable solutions for Palestinian refugees based on a review of UNHCR's mandate, operational experience, and political environment.

*This Brief was prepared by Terry Rempel, Coordinator of Research and Information, BADIL Resource Center; Research Fellow, School of Historical, Political and Sociological Studies, Exeter University. Brief No. 7 was prepared in consultation with BADIL partners and independent experts.*

**Introduction**

Between 1948 and 1949 the United Nations General Assembly accorded mandates to two separate UN agencies to provide international *protection* (including *durable solutions*) and *assistance* to Palestinian refugees.<sup>[i]</sup> This unique regime is comprised of the UN Conciliation Commission for Palestine (UNCCP), and the UN Relief and Works Agency for Palestine Refugees (UNRWA).

The UNCCP was established under paragraph 2 of UN General Assembly Resolution 194 (III), 11 December 1948. The complex mandate of the Commission included provision of protection for *all* refugees and displaced persons in Palestine and facilitation of durable solutions as delineated in paragraph 11 of the resolution (i.e., return, restitution, and compensation based on individual refugee choice).<sup>[ii]</sup> UNRWA was established one year later under UN General Assembly Resolution 302 (IV), 8 December 1949 as a successor to the multi-agency relief operation in Palestine to provide assistance for those refugees in need without prejudice to and pending implementation of UN Resolution 194.<sup>[iii]</sup>

Palestinian refugees also have a unique and complex relationship to a third UN agency - the Office of the UN High Commissioner for Refugees (UNHCR). The UNHCR was established as a temporary agency under General Assembly Resolution 319 (IV), 3 December 1949, to provide international protection and seek permanent solutions for refugees. Generally, UNHCR has a mandate to provide international protection and search for durable solutions for refugees worldwide, including persons defined as 'Convention refugees' under the *1951 Convention Relating to the Status of Refugees* (Refugee Convention).<sup>[iv]</sup>

According to special provisions set forth in Article 1D of the 1951 Refugee Convention<sup>[vi]</sup>, Palestinian refugees are entitled to the benefits of the Convention (i.e., considered as 'Convention Refugees') when protection or assistance from other organs or agencies of the United Nations has ceased for any reason, without the position of the refugees being definitively settled in accordance with relevant resolutions of the UN General Assembly.<sup>[vii]</sup>

UNCCP protection collapsed in the mid-1950s.<sup>[viii]</sup> Neither the UNHCR nor any other international agency, however, explicitly stepped in to completely fill the subsequent *gap* created by the cessation of comprehensive international protection for Palestinian refugees. This may be explained by a variety of factors addressed below, including legal anomalies, agency mandates, as well as political and economic constraints, which together have militated against an effective institutional response to the protection gap for Palestinian refugees. Today, UNHCR protection vis-à-vis Palestinian refugees is characterized by a limited degree of protection for a limited number of refugees based on geographical restrictions and subject to the cessation and exclusion clauses in the 1950 Statute of the UNHCR (UNHCR Statute)<sup>[ix]</sup> and the 1951 Refugee Convention. UNRWA does not have an explicit protection mandate for Palestinian refugees.

The collapse of UNCCP protection, limited intervention by the UNHCR, and lack of an explicit UNRWA protection mandate, has resulted in severe gaps in international protection for Palestinian refugees. No international agency is currently recognized by the international community as having an explicit mandate to systematically work for the realization of the basic human rights of all Palestinian refugees and search for and implement durable solutions consistent with international law as affirmed in UN General Assembly Resolution 194(III). Partial and inconsistent application of the 1951 Refugee Convention, which delineates the rights of refugees and concomitant obligations of states generally, by state and non-state actors<sup>[x]</sup>, varies according to geographical area. For many Palestinian refugees, it is unclear what rights are subject to international protection, under what conditions refugees may access international protection, and to whom to turn to for international protection.

Practically this anomaly means that most of the more than five million Palestinian refugees, or nearly one-third of the world's total refugee population, do not have systematic access to international protection. The protection gap is evident in all areas where Palestinian refugees reside in exile today, with the situation most severe in Lebanon and in the 1967 occupied West Bank (including eastern Jerusalem) and Gaza Strip.<sup>[xi]</sup> Palestinian refugees face varying degrees of arbitrary restrictions on the realization of basic human rights, including, for example, freedom of movement, the right to the highest attainable standard of physical and mental health, the right to education, the right to an adequate standard of living, and the right to work, as well as access to durable solutions.

The absence of international protection over such a long period of time is particularly disturbing given the fact that the United Nations has identified and expressed concern about the international protection gap for at least several decades. In 1982, for example, the UN General Assembly adopted Resolution 37/120 J (16 December 1982) in which it called upon the UN Secretary-General in consultation with 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." This resolution was reaffirmed annually through 1993.

The UN Joint Inspection Unit (JIU), which carried out a comprehensive review of UNRWA's organization, budget, and operations in 1982, was more explicit. "[The] JIU is convinced that this anomalous situation should not and need not continue. It believes that the problem of protection requires region wide consideration and that innovative and acceptable measures that could be applied wherever and whenever warranted should be sought. Humanitarian considerations should prevail over any political or bureaucratic obstacles."<sup>[xii]</sup> The JIU further recommended joint consultations between UNHCR and UNRWA to address the problem.

The UNHCR has also acknowledged the existence of the problem. Following the massacre of several thousand Palestinian refugees in Beirut in September 1982 by Israeli-allied Phalangist militiamen, the UNHCR Executive Committee, the advisory body to the High Commissioner, “expressed the hope that measures would be taken to protect refugees against such attacks and to aid the victims.”<sup>[xii]</sup> During the late 1980s and the early 1990s in the context of the first Palestinian uprising (*intifada*) in the 1967 occupied territories, the UNHCR issued numerous executive committee conclusions that “[e]xpressed concern about the lack of adequate international protection for various groups of refugees in different parts of the world, *including a large number of Palestinians*, and hoped that efforts would be undertaken within the United Nations system to address their protection needs.”<sup>[xiii]</sup> [Italics added] These conclusions, in addition to recommendations from the UN General Assembly, ceased following the commencement of the Oslo process (the framework for Palestinian-Israeli political negotiations) in 1993, despite the continued gap in both national and international protection for Palestinian refugees.<sup>[xiv]</sup>

In March 2001, the UN Commission on Human Rights, Human Rights Inquiry Commission - established pursuant to UN Security Council Resolution S-5/1, 19 October 2000, to investigate violations of human rights and humanitarian law in the 1967 occupied Palestinian territories after beginning of the *al-Aqsa intifada* in September 2000 - once again called attention to the severe gap in international protection for Palestinian refugees. “There is, first of all, the anomalous status of Palestinian refugees due to their exclusion from the protective mechanisms and responsibility of the United Nations High Commissioner for Refugees (UNHCR). *No other refugee community in the world is so excluded.*”<sup>[xv]</sup> [Italics added]

Despite seemingly widespread recognition of the severe gap in international protection for Palestinian refugees no remedy has been forthcoming. While UNRWA continues to play an important role through the provision of services that guarantee basic economic, social, and cultural rights – i.e., “relief protection<sup>[xvi]</sup>” – as well as the deployment of special monitoring officers<sup>[xvii]</sup> during the first and second Palestinian uprisings (*intifada*) in the 1967 occupied Palestinian territories, the Agency’s humanitarian assistance programs are not in themselves a guarantee of comprehensive protection. As mentioned, UNRWA itself *does not* have an explicit mandate to provide comprehensive international protection to Palestinian refugees, including durable solutions protection.

The severe gap in international protection is an obstacle to the realization of fundamental human rights and freedoms for Palestinian refugees in their current areas of exile, as well as the fundamental human rights associated with durable solutions (i.e., return, real property restitution, compensation). The remainder of this brief examines a potential protection role for UNHCR vis-à-vis Palestinian refugees based on a review of its mandate, operational experience, and political environment. The Brief concludes with some basic recommendations concerning the UNHCR, Palestinian refugees, and durable solutions.

## Mandate

The UN General Assembly established the UNHCR to: 1) provide international protection, and 2) to seek permanent solutions for the problem of refugees. Paragraph 8 of the UNHCR Statute delineates nine components of the Agency's mandate, including promoting the conclusion and ratification of international conventions for the protection of refugees; promoting any measures calculated to improve the situation of refugees and to reduce the number requiring protection; and, assisting governmental and private efforts to promote voluntary repatriation or assimilation of refugees within new national communities.<sup>[xviii]</sup> Paragraphs 6 and 7 delineate those persons falling within or excluded from the mandate of the UNHCR.<sup>[xix]</sup>

Over the course of its fifty-year history, UNHCR has displayed a flexible approach towards refugee protection and the search for durable solutions in keeping with the humanitarian nature of its mandate. This has led to the "expansion" of UNHCR's mandate to encompass new categories of refugees and new approaches to refugee protection and durable solutions. Flexibility is built into the UNHCR Statute. According to paragraph 3, both the UN General Assembly and the Economic and Social Council (ECOSOC) may issue specific policy directives to the High Commissioner that expand or exceed the statutory provisions of the Agency's mandate.<sup>[xx]</sup>

In 1956, for example, the UN General Assembly instructed the UNHCR to provide protection for refugees who had fled Hungary after the Soviet suppression of the 1956 uprising.<sup>[xxi]</sup> UNHCR review of the drafting history of the 1951 Refugee Convention (then limited to persons who became refugees as a result of events occurring *before* 1 January 1951<sup>[xxii]</sup>), resulted in a legal interpretation recognizing Hungarian refugees as 'Convention refugees' and the extension of the rights and concomitant obligations of states thereto.<sup>[xxiii]</sup> Several years later the General Assembly authorized the High Commissioner "to use his good offices in the transmission of contributions for the assistance of refugees 'who do not come within the competence of the United Nations.'"<sup>[xxiv]</sup> In 1972, ECOSOC directed the UNHCR for the first time to extend rehabilitation and assistance programs to *internally displaced persons*.<sup>[xxv]</sup> In the late 1980s and 1990s the UNHCR began to work more extensively with *returnees* to ensure the sustainability of the return process.

UNHCR's approach to refugee protection and the search for durable solutions, moreover, has shifted increasingly from a primary focus on the country of asylum to the country of origin. The shift is related to a growing realization, dating back to the 1970s, that "the post-[world war II] Western emphasis on integration in new communities as the normal solution no longer corresponded with the predominant realities elsewhere"<sup>[xxvi]</sup>, state imposed restrictions, particularly in western industrialized countries, that prevent refugees from seeking refuge abroad<sup>[xxvii]</sup>, and an increasing awareness of the importance in addressing root causes of refugee flows. Throughout the 1980s and after UNHCR began to develop more detailed protection policies that emphasized voluntary repatriation as the most durable solution to refugee problems.<sup>[xxviii]</sup>

In contrast, UNHCR has adopted a *restrictive* approach towards international protection and the search for durable solutions for Palestinian refugees. The restrictive approach is related to a number of factors, including: 1) limitations imposed by UNHCR's Statute; 2) incorrect interpretation of the cessation and exclusion clauses in the 1951 Refugee Convention; and, 3) ambiguity concerning the special regime for Palestinian refugees. The restrictive approach towards international protection and the search for durable solutions for Palestinian refugees is also related, as addressed in the following section, to financial and other practical concerns stemming from the potential inclusion of millions of additional refugees with the mandate of UNHCR as well as internal and external political constraints related to the nature of the Palestinian refugee issue.

UNHCR does not have an explicit mandate to provide international protection and search for durable solutions for all Palestinian refugees. The UNHCR Statute (Paragraph 7C) does not contain an inclusion clause similar to the second sentence of Article 1D of the 1951 Refugee Convention, primarily due to the fact that the 1950 Statute was drafted and adopted prior to the Convention. According

to the Statute, the competence of the High Commissioner shall not apply to a person: “Who continues to receive from other organs or agencies of the United Nations protection *or* assistance.” Palestinian refugees receiving assistance from UNRWA are thus deemed to fall outside the mandate of UNHCR according to UNHCR’s interpretation of Paragraph 7C.<sup>[xxix]</sup>

While paragraph 7C does not accord UNHCR an explicit mandate to provide international protection for Palestinian refugees, UNHCR policy fails to account for the fact that the national authorities in the primary areas of exile currently do not provide comprehensive protection of Palestinian refugees’ basic human rights on a day to day basis. Nor does the policy take into account the fact that the majority of Palestinian refugees do not have access to international protection. UNHCR policy may be explained, in part, by a failure to accurately differentiate between the protection mandate (accorded to the UNCCP) and the assistance mandate (accorded to UNRWA) for Palestinian refugees.

Paragraph 143 of the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status (UNHCR Handbook) states, for example, that “it will be noted that UNRWA operates only in certain areas of the Middle East, and it is only there that its protection or assistance are given.” [Emphasis added] The Handbook incorrectly credits UNRWA with dual mandate for protection and assistance as well as a single assistance mandate. The UNHCR Handbook contradicts earlier UNHCR memos relative to Palestinian refugees that indicate a clear understanding of the division of international protection and assistance between the UNCCP and UNRWA. In response to confusion raised by a prospective visit of the High Commissioner to refugee camps in Lebanon in the mid-1950s, for example, a joint UNRWA-UNHCR press statement was released to provide clarification.

*As far as the United Nations is concerned, and without prejudice to the responsibility of individual governments, the material welfare of Palestine refugees in the Near East is the exclusive responsibility of UNRWA, whereas the protection of the interests of those refugees as regards compensation and repatriation is the concern of the Palestine Conciliation Commission.*<sup>[xxxi]</sup>  
[Emphasis added]

Despite the absence of an inclusion clause in Paragraph 7C, however, UNHCR considers Paragraph 7C to include an implicit protection mandate for a limited number of Palestinian refugees. According to Paragraph 143 of the UNHCR Handbook, “a refugee from Palestine who finds himself outside [the area of UNRWA operations] does not enjoy the assistance mentioned and may be considered for determination of his refugee status under the criteria of the 1951 Convention.”<sup>[xxxii]</sup>

The number of Palestinian refugees who may qualify for protection under UNHCR’s narrow definition of its mandate, however, is further limited by incorrect application of cessation and exclusion clauses in the 1951 Refugee Convention.<sup>[xxxiii]</sup> Unlike other persons considered as refugees under the 1951 Refugee Convention, the only exclusion and cessation clause applicable to Palestinian refugees is Article 1D. The only criterion for the cessation of refugee status for Palestinian refugees is the definitive settlement of the Palestinian refugee issue in accordance with relevant resolutions adopted by the UN General Assembly – i.e., implementation of UN Resolution 194(III).<sup>[xxxiii]</sup>

The practical effect of UNHCR policy towards Palestinian refugees is that the *de facto* trigger for the provision of international protection for the majority of Palestinian refugees (i.e., those refugees living in UNRWA areas of operation) is the cessation of material assistance rather than the cessation of national and international protection. The intent and purpose of Article 1D, however, is to ensure comprehensive international protection and assistance for Palestinian refugees until their situation is resolved according to relevant UN General Assembly resolutions.

## **Operational Experience**

UNHCR has developed a wealth of operational experience over five decades of providing protection and seeking durable solutions for refugees worldwide. That experience has broadened with the expansion of UNHCR's mandate as described above. The range of UNHCR experience in providing protection and seeking durable solutions has expanded from asylum and resettlement assistance, to the provision of health, education and social services, delivery of special programs for vulnerable groups (e.g. women, children, and the elderly), special emphasis on the environment and HIV/AIDS, mass repatriation operations, human rights monitoring, property protection including restitution, community development and institutional capacity building to ensure a durable reintegration of returnees, and large-scale relief operations together with the coordination of UN and other international humanitarian assistance efforts.

During the early years of its mandate UNHCR operations focused predominantly on the provision of legal assistance in countries of asylum and facilitation of resettlement of refugees. In 1951, for example, UNHCR set up a pilot project, funded by the Ford Foundation, to facilitate local integration of WWII refugees in European countries. By the 1960s and 1970s, mass refugee flows in Africa and Asia exacerbated by ongoing conflict and the lack of secure conditions to facilitate durable solutions in both the countries of asylum and origin led to the first of many large-scale UNHCR humanitarian assistance programs. During this period, the UN requested the UNHCR, for the first time, to act as the 'Focal Point' or lead agency for the coordination of all UN assistance in a refugee crisis. The UN later appointed the UNHCR as lead agency for the coordination of humanitarian assistance in the former Yugoslavia following the outbreak of war in the early 1990s.

With the onset of several mass repatriation movements in the 1990s, the UNHCR took on a series of new roles that included coordination of reintegration assistance and monitoring the status of returnees. UNHCR also began to focus more on the developmental needs of returnees in order to ensure sustainable return. In Guatemala, for example, UNHCR and the UN Development Program (UNDP) implemented Quick Impact Projects (QIPs), micro-projects aimed at creating income generating opportunities for returnees. The increasing number of refugees choosing to return to their homes of origin in the 1990s also necessitated greater UNHCR involvement in issues related to the regularization of citizenship and residency status as well as access to land and housing. In the former Soviet Republics, UNHCR, together with the Commission (Organization) on Security and Cooperation in Europe (OSCE) brought together various political actors in the context of a region-wide conference to find solutions to issues of displacement, including harmonization of citizenship and residency law in respect to the rights of displaced persons in the former Soviet Republics.

The increasingly wide range of activities associated with refugee protection and the search for durable solutions has necessitated a greater emphasis on partnership between UNHCR, non-governmental and governmental agencies, and other international organizations. The task of providing protection and facilitating durable solutions for refugees is simply too large for any one agency. The number of institutional partners working together with UNHCR to provide protection and assistance to refugees has grown to over 500 non-governmental organizations. In Bosnia, for example, the UNHCR program consists of more than 250 staff and 30 implementing partners, including 24 non-governmental organizations, two

international agencies and four government ministries.<sup>[xxxiv]</sup> The complex nature and overlapping interests associated with mass displacement has also witnessed increased involvement of non-traditional partners such as the North Atlantic Treaty Organization (NATO), the Organization for Security and Cooperation in Europe (OSCE), the Commonwealth of Independent States (CIS), the Organization of African Unity (OAU) ('African Union'), and the World Bank. Over five decades UNHCR has grown from an agency with 33 staff and a budget of US\$ 300,000 to an organization with an estimated 5,000 staff and an annual budget of nearly US\$ 1 billion.

Given the restrictive approach towards protection and the search for durable solutions for Palestinian refugees, UNHCR's direct operational experience in relation to Palestinian refugees is generally limited to: assistance concerning travel documents; renewal of registration cards for refugees outside the area of UNRWA operations; and, facilitation of interim solutions for Palestinian refugees in cases of forced departure. After the Palestine Liberation Organization (PLO) was forced to leave Lebanon in 1982, for example, UNHCR intervened with the Lebanese authorities on behalf of Palestinian refugees who had experienced difficulty in obtaining the renewal of Lebanese travel documents. During the Gulf War at the beginning of the 1990s, the Agency extended protection services and provided material assistance for several hundred thousand Palestinian refugees in the Gulf States confronted with detention and forced departure. Between 1995 and 1997 UNHCR provided assistance to Palestinian refugees stranded on the Libyan-Egyptian border after being expelled from Libya in 1995. The refugees, primarily ex-Gazans had lost their residency in their former host countries and had nowhere else to go until 1997 when Libyan authorities allowed them back into the country.

UNHCR's operational experience in relation to Palestinian refugees is also limited geographically. As mentioned above, UNHCR protection for Palestinian refugees is limited to areas *outside* the five fields of UNRWA operations (i.e., West Bank, Gaza Strip, Jordan, Lebanon, and Syria). Concern has been expressed within the Agency about opening up the UNHCR's doors to a large number of additional refugees. According to a former Deputy Director of International Protection of UNHCR, this concern resulted "in an amendment to the original policy statement [being] issued to the effect that Palestinian refugees who were outside UNRWA's area of operations were not to be considered *automatically* as refugees within the UNHCR mandate but should be examined and dealt with in the same manner as other cases of individuals claiming UNHCR mandate status."<sup>[xxxv]</sup> The inclusion of Palestinian refugees in the five areas of UNRWA operations (including non-registered refugees) alone, within the mandate of the UNHCR, would increase the total population of concern (i.e., Convention refugees, internally displaced, and returnees) to the Agency in the region by more than 10 fold. Applying the same increase to UNHCR's budget for the region would necessitate an additional US\$ 150 million in voluntary contributions.<sup>[xxxvi]</sup>

UNHCR's restrictive approach towards Palestinian refugees also means that the refugee agency has fewer institutional partners active in the provision of protection and search for durable solutions for Palestinian refugees. Regionally, UNHCR has partnered with member states of the League of Arab States and other institutions from 1984 onward in a joint drafting process for a regional declaration on the rights of refugees and displaced persons, now known as the 'Cairo

Declaration.<sup>[xxxvii]</sup> The Declaration reaffirms that refugees are entitled to return to their country of origin (Article 1) and urges Arab states, which have not yet acceded to the 1951 Refugee Convention and its 1967 Protocol to do so.<sup>[xxxviii]</sup> Moreover, the Declaration recognizes the absence of and need for international protection for Palestinian refugees (Preamble, Paragraph 6). Article 9 states that the Arab League “[s]trongly emphasizes the need to ensure international protection for Palestinian refugees by competent international organizations and, in particular, by the United Nations, without in any way prejudicing the inalienable rights of the Palestinian people, especially their right to repatriation and self-determination.” Protection activities are further limited by the fact that most Arab states where the majority of Palestinian refugees have sought refuge are not signatories to the 1951 Refugee Convention. In general, UNHCR does not intervene to protect Palestinian refugees through negotiated agreements with Arab states that are not signatories to the 1951 Refugee Convention.<sup>[xxxix]</sup> Israel, which is a signatory to the 1951 Refugee Convention, has derogated from key articles of the Convention that negatively affect Palestinian refugees.<sup>[xl]</sup>

## Political Environment

According to Paragraph 2 of the UNHCR Statute, “The work of the High Commissioner shall be of an entirely nonpolitical character.” State interests, donor country pressures, and gradual or sudden shifts in international relations, however, all have an impact and interfere in varying degrees with UNHCR’s mandate and operations. The very nature of refugee protection and durable solutions, moreover, often requires UNHCR to function as a political actor.

During the early years of UNHCR’s existence economic imperatives in western Europe, which was facing a labor shortage following WWII, coupled with political opposition from western governments to international efforts to repatriate refugees (particularly those from the former Soviet bloc countries) led to a primary focus on resettlement as the most durable solution for existing refugee problems.<sup>[xli]</sup> Western state interests dovetailed with the wishes of many refugees who, for both economic and political reasons, did not wish to return to their countries of origin. In contrast, changes in the international system in the late 1980s and 1990s, including the end of the Cold War and several regional conflicts created the opportunity for many refugees to return to their homes of origin. The cessation of conditions which had led to mass displacement and prevented refugees from returning to their homes of origin in safety and dignity was accompanied by a growing reluctance of Western industrialized states to grant asylum to large numbers of refugees. Together these factors generated a greater focus on voluntary repatriation. UNHCR funds targeted towards repatriation-related activities, for example, increased from an average of just 2 percent of the organization’s total budget prior to 1984 to some 14 percent in the period 1990-1997.<sup>[xlii]</sup>

The UNHCR has also been the subject of more direct or calculated political interference. According to some analysts, UNHCR activities have been manipulated or exploited by states as a means of achieving either expressed or covert political objectives. In Bosnia, for example, it has been argued that UNHCR’s initial humanitarian operations provided a convenient substitute for more effective, political intervention in the conflict. Moreover, some observers have suggested that UNHCR became a major instrument for the generalized Western policy of ‘containment’ of refugee and humanitarian problems.<sup>[xliii]</sup> Under pressure from states that refused to open their borders to refugees and states of asylum seeking the early return of refugees, UNHCR was forced to grapple with practices, such as ‘safe zones’, and ‘safe return’ (as opposed to voluntary return), which many regarded as inconsistent with UNHCR’s protection mandate.<sup>[xliv]</sup> In Kosovo, on the other hand, the international community marginalized UNHCR’s humanitarian operation in order to provide a more palatable *raison d’être* (i.e., humanitarian assistance) for NATO’s military intervention.<sup>[xlv]</sup>

The lack of an autonomous resource leaves the UNHCR open to political interference.<sup>[xlvi]</sup> UNHCR, like UNRWA, is dependent on voluntary contributions for



the majority of its funding, with the remaining funds coming from the UN's regular budget. The international community may authorize or request UNHCR to undertake specific programs, but there is no guarantee that such programs will receive the necessary voluntary contributions to cover expenditures. During the late 1970s and early 1980s, for example, UNHCR humanitarian operations shifted away from 'care and maintenance' programs, in part, due to reluctance on the part of donors to maintain and/or increase overseas expenditures.<sup>[xlvii]</sup> In the 1990s, the UN had to plead and beg international donors repeatedly for funds to help reintegrate Afghan returnees. While the United States, UNHCR's largest state donor, spent some US\$ 2 billion on military aid to Afghans fighting the Soviet-allied regime in Afghanistan in the 1980s it found only US\$ 14 million in cash for aid for 4.5 million Afghan refugees in 1992.<sup>[xlviii]</sup>

Aside from external political interference, the very nature of refugee protection and durable solutions often requires UNHCR to function as a political actor. "The difficulty arises," notes one commentator, "when UNHCR protection, motivated by concern for certain individuals in dire straits, impacts 'who governs' or contradicts the general nature of governance, or is linked to military coercion."<sup>[xlix]</sup> To protect housing and property rights of refugees and displaced persons in Bosnia, for example, UNHCR – including partners such as the Office of the High Representative, the UN Mission in Bosnia-Herzegovina, and the OSCE – has supported the repeal of discriminatory property law and sanctions against public officials violating housing and property restitution procedures.<sup>[l]</sup> The latter has included the removal of elected officials from office.

UNHCR's restrictive approach towards Palestinian refugees also appears to be colored by political interference. From the beginning of its operations, "[t]he competence of the High Commissioner in political issues surrounding the Palestinian question [was] thought incompatible with the proclaimed non-political character of UNHCR's work."<sup>[li]</sup> The UNHCR, Arab and western states, the Palestine Liberation Organization (PLO), along with Palestinian refugees themselves have all expressed varying degrees of opposition to greater UNHCR involvement in the Palestinian refugee case at various points over the past five decades.

Since the drafting of the 1951 Refugee Convention, numerous Arab states, particularly those that host large numbers of Palestinian refugees, have been concerned that if Palestinian refugees "would become submerged [in the general protection regime they] would be relegated to a position of minor importance."<sup>[lii]</sup> Arab states have also expressed concern that in the context of continued Israeli opposition to the return of the refugees, UNHCR and donor states may push for a more "pragmatic" approach to durable solutions focused primarily on resettlement. More recently, some Israeli officials and commentators have suggested that UNHCR should replace UNRWA, in part, because it is thought, incorrectly, that significant numbers of Palestinian refugees registered with UNRWA who have acquired a second nationality (primarily in Jordan) would no longer be considered refugees.<sup>[liii]</sup>

The potential for political interference is heightened due to the lack of an autonomous resource base. Historically, Arab states have expressed concern that

UNHCR intervention in the Palestinian refugee case would result in the redirection of donor contributions from UNRWA to UNHCR accompanied by the devolution or erosion and termination of UNRWA's mandate for the provision of assistance for Palestinian refugees prior to an agreement on and implementation of a durable solution based on UN Resolution 194(III). UNHCR expenditures per refugee currently comprise half that of UNRWA. This concern must be viewed within the context of Israel's long held position that UNRWA has prolonged the Palestinian refugee 'problem' and therefore should be phased out as soon as possible.<sup>[liv]</sup>

The facilitation of durable solutions consistent with the terms set forth in UN Resolution 194(III) may also be viewed as highly political (but no more political, for example, than the return of refugees and displaced persons in Bosnia) because it would inevitably impact the general nature of governance in Israel. Facilitation of voluntary repatriation of Palestinian refugees *to their homes* would challenge Israel's definition of itself as a 'Jewish state.' This definition is based upon the principle that Jews form the majority of the state and a preferential legal status for Jews, particularly in relation to citizenship and land ownership.<sup>[lvi]</sup> The ongoing political sensitivity vis-à-vis UNHCR and Palestinian refugees was reflected in initial concerns expressed regarding the first visit of a UN High Commissioner for Refugees to Israel in May 2000 just prior to the commencement of final status negotiations between Israel and the Palestine Liberation Organization (PLO) at Camp David. Speaking to an Israeli Jewish audience at Ben-Gurion University, the High Commissioner first "express[ed] the hope that, as in other situations of forced displacement, the Palestinian refugee problem [...] be resolved in a humane manner which takes into account *the wishes and hopes of millions of people, including those who want to return.*" [Italics added] The High Commissioner then went on to note that the humane solution she referred to must also take into account Israel's security and "specific identity."<sup>[lvii]</sup> While recognizing the right of Palestinian refugees to return to their homes, the Commissioner also alluded to the apparent acceptability of arbitrary and discriminatory restrictions on the exercise of Palestinian refugee rights, including an apparent reference (i.e., "specific identity") to Israel's definition of itself as a Jewish state rather than a state of all of its citizens. UNHCR has opposed such arbitrary and discriminatory restrictions in other refugee cases such as Kosovo, Bosnia, and Rwanda.

## Conclusion

The severe gap in international protection for Palestinian refugees requires urgent legal reappraisal and related institutional remedies. While UNHCR may provide an immediate 'address' to fill the gaps in international protection for Palestinian refugees, three primary issues must be resolved: clarification of mandate (including UN Resolution 194), identification of the value-added components UNHCR's operational experience would bring to the Palestinian refugee case, and consideration of potential political problems.

Currently, UNHCR does not have an explicit *mandate* to provide international protection and seek durable solutions for all Palestinian refugees. The technical aspects of triggering UNHCR intervention, if and when necessary, are least problematic. While Paragraph 7C of the UNHCR Statute does not contain an inclusion clause similar to Article 1D of the 1951 Refugee Convention, both the UN General Assembly and ECOSOC could issue policy directives to the High Commissioner, as they have done in other cases, that would bring Palestinian refugees within the scope of the UNHCR Statute. More problematic are issues related to inter-agency jurisdiction (e.g., UNRWA) and clarification of the constraints on an expanded UNHCR mandate imposed by UN Resolution 194(III) (i.e., criteria for the cessation of refugee status and restrictions on resettlement).

UNHCR, UNRWA and other UN agencies should establish a coordination mechanism or secretariat for the exchange of documents, information, data and reports regarding their respective policies and operations. Such a mechanism would assist in the identification of specific gaps (short-term and durable solutions) in the international protection regime for Palestinian refugees. Palestinian institutions – official and civil society – should engage UNHCR and other UN officials in a meaningful discussion regarding Resolution 194(III) in order to clarify the specific framework for durable solutions applicable to the Palestinian case and the status of Palestinian refugees under the 1951 Refugee Convention.

UNHCR's *operational experience* in the Palestinian case is limited. At present the Agency only provides services to a fraction of the Palestinian refugee population. Indicators of UNHCR effectiveness in other refugee cases – including, knowledge of the people's concerned, strong field presence, ability to mobilize financial resources, and an established working relationship with local NGOs through its field presence – all rank low in the Palestinian refugee case. UNHCR infrastructure in the region where the majority of Palestinian refugees reside in exile, moreover, is relatively small compared to other UN agencies such as UNRWA. At the same time, UNHCR does have a long history of providing international protection and facilitating durable solutions, experience which may be useful in the Palestinian case.

Given the lack of specific operational experience vis-à-vis Palestinian refugees, but broad experience with regard to refugees generally, potential expansion of UNHCR's mandate should be considered within the context of a value-added formula. In other words, in what areas can UNHCR's operational experience serve to fill in current protection gaps and/or enhance operational activities of existing agencies (such as UNRWA) involved with Palestinian refugees? The same value-added formula should be applied in relation to the search and implementation of durable solutions. UNHCR, UNRWA, Palestinian institutions – official and civil society – and Arab host states should establish a mechanism for discussion and debate about the pros and cons of expanding UNHCR's mandate in the Palestinian refugee case with the aim of finding comprehensive solutions to the gap in international protection.

Finally, careful consideration must be given to the *political environment* in which UNHCR operates. While mandate and operational experience are technical issues that can be addressed in a relatively straightforward manner, the clearest and most accurate interpretation of mandate and division of roles can go awry due to untoward political influence, particularly given the already highly politicized nature of the Palestinian refugee issue. What are the potential implications of UNHCR intervention in light of the fact that Israel as well as the United States, UNHCR's largest state donor, remain opposed to durable solutions for Palestinian refugees as set forth in UN Resolution 194(III) and international law (i.e., right of return and housing and property restitution)? Can UNHCR intervention be effective, moreover, in the absence of sufficient support from Arab states? Would UNHCR intervention engender political pressure to dismantle UNRWA?

The absence of a resolution to any one of these issues could have negative consequences not only for Palestinian refugees, but also for other refugees who seek and require the international protection afforded by the UNHCR.

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<sup>[ii]</sup> International protection involves the direct protection of refugees' human rights on a day-to-day basis, and the search for and implementation of durable solutions. International assistance involves a range of activities that meet the basic needs of refugees including food, shelter, health and education. Certain assistance activities may also be considered to have protection functions. See, note 16 below. Durable solutions include repatriation, host country integration, and third country resettlement. Housing and property restitution is among the rights associated with refugee repatriation. The primary principle governing each of the three solutions is voluntariness or refugee choice. Among the three solutions, only repatriation or return is a recognized right under international law.

<sup>[iii]</sup> For more information about the UNCCP, see, BADIL Information & Discussion Brief No. 5, *The United Nations Conciliation Commission for Palestine, Protection, and a Durable Solution for Palestinian Refugees*, (June 2000). The UNCCP mandate also includes specific provisions for resolution of the issue of Jerusalem as well as a mandate to resolve all outstanding issues between the parties. For more on durable solutions set forth in UN General Assembly Resolution 194(III), see, BADIL Occasional Bulletin No. 11, *The Meaning of UN General Assembly Resolution 194(III), 11 December 1948 (The Right of Return)* (April 2002).

<sup>[iv]</sup> For more information about UNRWA, see BADIL Information & Discussion Brief No. 6, *The UN Relief and Works Agency (UNRWA) and a Durable Solution for Palestinian Refugees* (July 2000). Also see the UNRWA website, <http://www.unrwa.org>.

<sup>[v]</sup> Convention relating to the Status of Refugees, 189 U.N.T.S. 150, entered into force April 20, 1954.

<sup>[vi]</sup> Article 1D states: "This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance. When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall *ipso facto* be entitled to the benefits of this Convention." Analysis of the status of Palestinian refugees under the 1951 Refugee Convention is based on Lex Takkenberg, *The Status of Palestinian Refugees in International Law*. Oxford: Oxford University Press, 1998; and, Susan M. Akram and Guy Goodwin-Gill, *Brief Amicus Curaie*, Board of Immigration Appeals, Falls Church Virginia, published in 11/12 *Palestine Yearbook of International Law*, 2000/2001.

<sup>[vii]</sup> Article 1D addressed the factual circumstances of Palestinian displacement which preceded both the establishment of the UNHCR and the adoption of the 1951 *Convention Relating to the Status of Refugees*; concerns about the institutional longevity of the special regime for Palestinian refugees; bureaucratic concerns over institutional redundancy; political and economic apprehension among Arab and western states about the potential impact of integrating Palestinian refugees into the new global refugee regime; the realization that the primary protection issue facing Palestinian refugees, unlike most refugees at the time, was not *refoulement*, but rather the inability to exercise their basic right to return to their homes of origin; and, the belief that Palestinian refugees should receive protection and assistance until their situation is resolved in accordance with relevant UN General Assembly resolutions, the primary resolution being UNGA 194(III), 11 December 1948.

<sup>[viii]</sup> The decision by the UN General Assembly to merge the role of international protection for the refugees with the larger task of Arab-Israeli conciliation ultimately compromised the ability of the UNCCP to protect the rights of the refugees and promote the durable solution set forth in Resolution 194. Moreover, when the United Nations established the UNCCP in 1948 it was assumed that the refugees would return to their places of origin within a short period of time. The Commission, therefore, was not provided with the machinery or with the resources to provide protection and facilitate durable solutions over an extended period of time.

<sup>[ix]</sup> Statute of the Office of the United Nations High Commissioner for Refugees, GA Resolution 428 (V), Annex, 5 UN GAOR Supp. (No. 20) at 46, UN Doc. A/1775 (1950).

<sup>[x]</sup> For an overview of state practice concerning interpretation of Article 1D of the 1951 Refugee Convention, see, Takkenberg; and, Akram and Goodwin-Gill.

<sup>[xi]</sup> For a summary of the legal, social, economic and political conditions of Palestinian refugees in exile, see, BADIL survey of Palestinian refugees (forthcoming 2002). Also see, Takkenberg, pp. 149-171; Marie-Louise Weighill, "Palestinians in Exile: Legal, Geographical and Statistical Aspects," *The Palestinian Exodus, 1948-1998*, Ghada Karmi & Eugene Cotran (eds.). London: Ithaca Press, 1999, pp. 7-36.

<sup>[xii]</sup> The JIU was established to address management and budgeting issues, development coordination, inter-organization coordination and evaluation of policies and methods. Takkenberg, pp. 283-84.

<sup>[xiii]</sup> UNHCR Executive Committee Conclusion No. 27 (XXXIII) – 1982, "Military Attacks on Refugee Camps and Settlements in Southern Africa and Elsewhere."

<sup>[xiv]</sup> ExComm. Conclusion No. 46 (XXXVIII) – 1987. See also, ExComm. Conclusion No. 50 (XXXIX) – 1988; ExComm. Conclusion No. 55 (XL) – 1989; ExComm. General Conclusion on International Protection (XLI) – 1990; ExComm. General Conclusion on International Protection (XLII) – 1991; ExComm. Conclusion No. 68 (XLIII) – 1992; ExComm. Conclusion No. 71 (XLIV) – 1993.

<sup>[xv]</sup> The cessation of UNHCR conclusions and General Assembly resolutions may be attributed to at least two factors. First, following the beginning of the Oslo process, the United States attempted to keep the Palestinian-Israeli conflict off the United Nations agenda. The US considered UN resolutions on the matter as unhelpful and prejudicial to the political process. Secondly, there may have been the assumption that the Palestinian Authority, established under the Oslo process, would fill the gap in national protection, at least for Palestinian refugees in the 1967 occupied territories. Recent reports by the UN Commission on Human Rights, Human Rights Inquiry Commission and the UN Special Rapporteur on the Situation of Human Rights in the Territories Occupied by Israel Since 1967, however, provide legal analysis which clearly rejects the notion that the Palestinian Authority is able to provide the protection afforded by a sovereign state. *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. A/56/440*, 4 October 2001; *Report of the Human Rights Inquiry Commission* at 33-35. UN Doc. E/CN.4/2001/121, March 2000.

<sup>[xvi]</sup> The commission was established on 2 January 2001 and visited Israel and the occupied Palestinian territories between 10-18 February 2001. Ibid.

<sup>[xvii]</sup> David Forsythe, *UNHCR's Mandate: The Politics of Being Non-Political*. Working Paper No. 33. Geneva: UNHCR (March 2001), p. 6. See also, Takkenberg, p. 280.

<sup>[xviii]</sup> During the first *intifada*, for example, UNRWA provided limited protection for refugees through the Refugee Affairs Officer (RAO) program. During the second *intifada* UNRWA has deployed Operations Support Officer (OSO) teams to facilitate emergency field operations.

<sup>[xix]</sup> Other roles include promoting the admission of refugees, not excluding those in the most destitute categories, to the territories of States; endeavoring to obtain permission for refugees to transfer their assets and especially those necessary for their resettlement; obtaining from governments information concerning the number and conditions of refugees in their territories and the laws and regulations concerning them; keeping in close touch with the governments and inter-governmental organizations concerned; establishing contact in such manner as he may think best with private organizations dealing with refugee questions; and, facilitating the co-ordination of the efforts of private organizations concerned with the welfare of refugees.

<sup>[xx]</sup> According to the UNHCR Statute, mandate refugees include: 1) any person considered to be a refugee under earlier treaties or arrangements; 2) refugees resulting from the events occurring before 1 January 1951, who are outside their country of origin and unable or unwilling to avail themselves of its protection owing to well-founded fear of being persecuted or for reasons other than personal convenience; and 3) any person who is outside the country of his origin and is unable or unwilling to avail himself of the protection of the government of the country of his nationality or return to the country of his former habitual residence because he has or had well-founded fear of persecution by reason of his race, religion, nationality or political opinion.

<sup>[xxi]</sup> The Executive Committee of the High Commissioner's Program, established in 1957, exercises a similar role. Guy Goodwin-Gill, *The Refugee in International Law*. 2<sup>nd</sup> Edition. Oxford: Clarendon Press, 1996, p. 9.

[xcxi] UN General Assembly Resolution 1006 (ES-11), 9 November 1956.

[xcxii] The 1967 Protocol Relating to the Status of Refugees, 606 U.N.T.S 267 removed time limitations present in the 1951 Refugee Convention.

[xcxiii] A legal explanation is summarized in *The State of the World's Refugees, Fifty Years of Humanitarian Action*. Geneva: UNHCR (2000), pp. 30-31.

[xcxiv] For further details about the extension of the UNHCR mandate see Goodwin-Gill, pp. 9-10. *See also, The State of the World's Refugees* (2000), pp. 33-35.

[xcv] ECOSOC Resolution 1655 (LII), 1 June 1972. The mandate of the UNHCR vis-à-vis internally displaced persons was further clarified by subsequent conclusions issued by the UNHCR Executive Committee. *See, e.g.,* UNHCR Executive Committee Conclusion 75 XLV – Internally Displaced Persons (1994). Today internally displaced persons account for one-quarter of all refugees and others 'of concern' to the UNHCR. For more on the expansion of the UNHCR mandate to cover internally displaced persons see, Goodwin-Gill, pp. 11-14.

[xcvi] G.J.L. Coles, "Solutions to the Problem of Refugees and the Protection of Refugees: A Background Study," paper prepared for roundtable on durable solutions and the protection of refugees convened by UNHCR and the International Institute of Humanitarian Law, 1989. Cited in *The State of the World's Refugees* (2000), p. 71. The change was also related to a greater focus on individual rights with developments in human rights law as well as the mass character of refugee flows in the 1990s.

[xcvii] The reluctance of primarily western industrialized states to grant asylum to large numbers of refugees also led to the development of temporary protection. According to a review of UNHCR's protection mandate, "[t]hese schemes had both benefits and drawbacks. They allowed civilians to enter a country speedily and with a minimum of red tape, but since there were no binding universal standards that apply to temporary protection, the rights accorded to asylum seekers were often fewer in number and less generous in scope than those provide for under the [1951 Refugee] Convention. In addition, beneficiaries were usually granted only 'temporary' residence, as the term implies, and governments could end their protection arrangements at their own discretion." UNHCR website, <http://www.unhcr.ch/1951convention/index.html>.

[xcviii] *See, e.g.,* Executive Committee Conclusion No. 18 (XXXI) 1980, *Voluntary Repatriation*; Executive Committee Conclusion No. 40 (XXIX), 1985, *Voluntary Repatriation*. UNHCR has referred to the emphasis on voluntary repatriation as a "new proactive, homeland oriented and holistic approach." *State of the World's Refugees*. Geneva: UNHCR, 1995. UNHCR also began to develop more detailed protection positions on voluntary repatriation as well as the specific protection issues with women and children who continue to constitute the majority of the refugee population.

[xcix] According to a 1967 UNHCR memo, "Under Paragraph 7 (c) the competence of the High Commissioner shall not extend to a persons 'Who continues to receive from other organs or agencies of the United Nations protection or assistance.'" Takkenberg, p. 306.

[c] Press release No. 4-22/54, 29 January 1954. Cited in Takkenberg, p. 305.

[cxii] UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status*, paragraph 143 (1992 edition). More recently, *see, Draft Report of the Twentieth Mtg. Of the Standing Committee* (12-14 March 2001), Executive Committee of the High Commissioner Programme, Standing Committee, 21<sup>st</sup> Mtg., UN Doc. EC/51/SC/CRP.10, paragraph 22.

[cxiii] Paragraph 143 of the UNHCR Handbook states: "It should normally be sufficient to establish that the circumstances which originally made him qualify for *protection of assistance* from UNRWA still persist and that he has neither ceased to be a refugee under one of the cessation clauses nor is excluded from the application of the Convention under one of the exclusion clauses."

[cxiiii] For a discussion of the phrase "definitively" settled, *see*, Akram and Goodwin-Gill, p. 61.

<sup>[xcxiv]</sup> Implementing partners include the Federal Ministry for Social Affairs, the Ministry for Civil Affairs and Communications, the Ministry for Human Rights and Refugees, the Ministry for Refugees of the Republika Srpska, the International Organization for Migration, United Nations Volunteers, the American Refugee Committee, Catholic Relief Services, the Danish Refugee Council, Save the Children Fund, among others. *UNHCR Global Report 2000, Bosnia-Herzegovina*.

<sup>[xcv]</sup> Interview with I. Jackson, 16 March 1992, cited in Takkenberg, p. 306.

<sup>[xcvi]</sup> The figure is based on UNHCR's 2002 program budget for the Middle East.

<sup>[xcvii]</sup> Declaration on the Protection of Refugees and Displaced Persons in the Arab World, 19 November 1992 (Cairo).

<sup>[xcviii]</sup> Of the 21 members of the League of Arab States, only 8 (all of whom have minimal numbers of Palestinian refugees) have acceded to the 1951 Refugee Convention.

<sup>[xcix]</sup> "UNHCR has entered into scores of such 'memoranda of understanding' or 'memoranda of agreement' with non-Refugee Convention states to protect the rights of refugees and displaced persons and promote human rights guarantees in many areas of the world." Susan M. Akram and Terry Rempel, "Recommendations for Durable Solutions for Palestinian Refugees: A Challenge to the Oslo Framework," 11/12 *Palestine Yearbook of International Law*, 2000/2001. The Agency has signed a Memorandum of Understanding with Jordan and as of the end of 2001 was in the process of negotiating memoranda with Syria and Lebanon.

<sup>[cx]</sup> This includes Article 8 under which "Contracting States shall not apply such [extraordinary] measures [against the person, property or interests] to a refugee who is formally a national of the said State solely on account of such nationality"; Article 12 on Personal Status; and, Article 28 on Travel Documents, which is to be subject to the limitations which result from Section 6 of Israel's 1952 Passport Law.

<sup>[cxii]</sup> B.S. Chimni, *From Resettlement to Involuntary Repatriation: Towards A Critical History of Durable Solutions to Refugee Problems*. Working Paper No. 2. UNHCR (May 1999), p. 4. Nevertheless, the UNHCR was able to facilitate repatriation of some refugees choosing to return to the Soviet bloc. See, e.g., the description of UNHCR activities in Hungary in late 1950s in, *The State of the World's Refugees* (2000), pp. 26-35.

<sup>[cxiii]</sup> Jeff Crisp, Mind the Gap! UNHCR, Humanitarian Assistance and the Development Process. UNHCR Working Paper No. 43 (May 2001), p. 6.

<sup>[cxiiii]</sup> Forsythe, pp. 5-6.

<sup>[cxv]</sup> To some observers UNHCR protection has become "increasingly pragmatic – to do the best in difficult circumstances and to implement the least bad options – and not chiefly to uphold universal principles." Gil Loescher, "UNHCR and the Erosion of Refugee Protection," 10 *Forced Migration Review* (April 2001), p. 29. According to one commentator, "UNHCR officials concede [that] the decision to promote repatriation is based not only on the refugees' preference but more fundamentally on UNHCR's objective assessment of whether life is better at home relative to life in the camps." Michael Barnett, "UNHCR and the Ethics of Repatriation," 10 *Forced Migration Review* (April 2001), p. 34.

<sup>[cxvi]</sup> *Ibid*, p. 29.

<sup>[cxvii]</sup> Loescher, p. 28.

<sup>[cxviii]</sup> Crisp, p. 2.

<sup>[cxix]</sup> B.S. Chimni, "The Meaning of Words and the Role of UNHCR in Voluntary Repatriation," 5 *International Journal of Refugee Law* 3 (1993), p. 443.

<sup>[cxx]</sup> Forsythe, p. 2.

<sup>[ii]</sup> For a comprehensive overview, see, Lynn Hastings, "Implementation of the Property Legislation in Bosnia-Herzegovina," *Implementation of the Property Legislation in Bosnia-Herzegovina*, 37 *Stanford Journal of International Law* 221(2001): pp. 221-254.

<sup>[iii]</sup> Goodwin-Gill (1996), p. 91, referring to discussion within the Social Committee of ECOSOC; cf. UN Doc. E/AC.7/SR.172 cited in Takkenberg, p. 305.

<sup>[iv]</sup> U.N. GAOR, 3d Comm., 5<sup>th</sup> Sess., 328<sup>th</sup> mtg., para. 52, 55 cited in Akram and Rempel.

<sup>[v]</sup> See note 33 above and accompanying text for a discussion of the cessation of refugee status for Palestinian refugees under international refugee law.

<sup>[vi]</sup> For the most recent formulation see the Israeli response to the Palestinian Position paper on refugees at the last round of final status negotiations between the PLO and Israel in Taba, Egypt (January 2001). The response is archived on the BADIL website.

<sup>[vii]</sup> See the majority decision in Ben Shalom vs. Central Election Committee, 43 P.D. IV 221 (1988) in 25 *Israel Law Review* 219 (1991) cited in *Legal Violations of Arab Minority Rights in Israel*. Shfaram: Adalah, The Legal Center for Arab Minority Rights in Israel, 1998, pp. 44-45. For commentary on the discriminatory character of the preferred legal status, see 1998 'Concluding Observations' of various UN human rights treaty monitoring committees, including the Committee on the Elimination of All Forms of Racial Discrimination, the Committee on Social, Economic and Cultural Rights, and the Committee on Civil and Political Rights. Committee observations are archived on the website of the Office of the High Commissioner for Human Rights, <http://www.unhchr.ch>.

<sup>[viii]</sup> Lecture by Mrs Sadako Ogata, United Nations High Commissioner for Refugees, at Ben Gurion University, "The Current Problems of Refugee Populations," Beer Sheva, Israel, 23 May 2000. See, the UNHCR website, <http://www.unhcr.ch>. [last visited 20/06/00].