

The Right of Return and the Meaning of Refugee Choice

This Bulletin aims to provide a brief overview of issues related to Palestinian Refugee Rights

Refugee choice, often referred to as voluntariness, is the primary principle governing the right of refugees to return to their homes and the cornerstone of international refugee protection. What exactly does the term “refugee choice” mean and what are the practical steps required to ensure implementation of the principle of refugee choice?

The following Bulletin provides a brief overview of refugee choice as incorporated into UN General Resolution 194(III) affirming the right of Palestinian refugees to return to their homes and receive compensation *and* an overview of refugee choice as interpreted by the Office of the UN High Commissioner for Refugees (UNHCR).

UN Resolution 194 and Refugee Choice

The principle of refugee choice was the foundation for recommendations drafted by the UN Mediator in Palestine, Count Folke Bernadotte, for durable solutions for Palestinian refugees. The recommendations are contained in the Mediator’s September 1948 *Progress Report* to the UN General Assembly. (UN Doc. A/648, 1948). In his report, Bernadotte writes that it was an “unconditional right” of the refugees “to make a *free choice* [which] should be fully respected.” (emphasis added). This language was eventually incorporated into the final version of paragraph 11 of UN Resolution 194, 11 December 1948, in which the General Assembly “Resolve[d] that refugees *wishing* to return to their homes and live a peace with their neighbors *should* be permitted to do so...” (emphasis added).

The emphasis on refugee choice (or the wishes of the refugees) reflected a number of factors. First, recognition of refugee choice – i.e., their voluntary return – was considered by the General Assembly to be appropriate remedy to their *involuntary* departure. Bernadotte touches on this point when he lists the reasons for the “exodus of Palestinian Arabs,” including: “panic created by fighting in their communities, by rumors concerning real or alleged acts of terrorism, or expulsion.” The emphasis on refugee choice in Resolution 194 also reflected post WWII developments in refugee protection. While many of the bodies established in Europe to facilitate solutions for groups of refugees during the first part of the 20th century (such as the Office of the High Commissioner for Russian Refugees and the UN Relief and Rehabilitation Administration) focused on repatriation, it was not until the creation of the International Refugee Organization in 1947 that the international community recognized the principle of *voluntary* repatriation. This came at a time of growing concern in the West about forced repatriation of refugees to countries governed by Communist regimes, and developments in human rights law with its focus on individual rights.

Reviewing the drafting history of Resolution 194, the UN Secretariat confirmed that paragraph 11 “intended to confer upon the refugees as individuals the right of exercising a *free choice* as to their future.” (UN Doc. A/AC.25/W.45, 1950). (emphasis added). The legal advisor to the UN Economic Survey Mission reached the same conclusion: “The verb ‘choose’ indicates that the General Assembly assumed that the principle [i.e., the right of return] would be fully implemented, and that all the refugees would be given a *free choice* as to whether or not they wishes to return home.” (UN Doc. W/32, 1950). (emphasis added).

The UN Conciliation Commission for Palestine (UNCCP), established to provide international protection and facilitate implementation of paragraph 11 also noted in numerous early reports that refugees would require information about the conditions in their places of origin in order

to decide whether they wished to exercise their right of return. The UNCCP also requested members of the Commission's Technical Committee, established in the summer of 1949, to begin examining what kind of mechanism would be necessary to determine the choices of each refugee.

UNHCR and Refugee Choice

Refugee choice or voluntariness is the cornerstone of UNHCR repatriation programs and is dealt with extensively in the Office's 1996 *Handbook on Voluntary Repatriation: International Protection*. The UNHCR notes that refugee choice is affected both by conditions in the host country and by conditions in the country of origin. "Voluntariness means not only the absence of measures which push the refugee to repatriate," states the UNCHR *Handbook*, "but also means that he or she should not be prevented from returning, for example, by dissemination of wrong information or false promises of continued assistance." (emphasis added).

In other words, the denial of basic rights guaranteed under the 1951 Convention Relating to the Status of Refugees and pressure or threats on refugees to leave by interest groups or host country authorities, inhibit refugee choice and potentially render decisions to be less than voluntary. On the other hand, discrimination in domestic legislation and provision of essential services, lack of guarantees for the safety of returnees, and attempts to encourage anti-refugee sentiment among the population in the country of origin, also prevent refugees from making a free choice as to whether they wish to exercise their right of return.

Information is critical to refugee choice. Refugees should be provided with as much information as possible concerning the conditions in their country of origin. Information should be disseminated via, among others, posters and leaflets, oral presentations, videos, refugee information committees, and through counseling by international protection staff and reconnaissance visits by refugee groups to areas of return.

The UNHCR *Handbook* further provides a list of the type of information to be provided to refugees. This includes, for example, a description of the conditions in the country of origin in general, as well as details of the situation in specific area(s) of return, including the level of security. Refugees should be further informed about what type of protection will be provided upon their return in addition to the type of assistance to expect (such as infrastructure rehabilitation projects) and what not to expect. Prior to making choices, refugees should receive a text of guarantees or assurances provided by the government of the country of origin, supplemented by explanations as to their content and scope.

Details about the *repatriation procedure* should also be provided. This includes information on: customs, immigration and health formalities; procedures for bringing personal and communal property; access to land and restitution procedures; registration and documentation for repatriation; the timing and phasing of the repatriation operation; special arrangements for vulnerable groups such as women, children and the elderly; de-registration procedures for assistance, if any; and, procedures and options for those not wishing to repatriate. Refugees should also be aware of how to contact international protection staff in their country of origin in case of protection problems.

Refugee Choice, Peace Agreements, and International Protection

Determination of refugee choice cannot be undertaken prior to a peace agreement, which explicitly recognizes the right of refugees to return to their homes and provides guarantees for the voluntary character of return – i.e., refugee choice. Without guarantees for implementation of the right of return as codified in a peace agreement, refugees cannot make an informed, free choice about whether they wish to return. *In other words, refugee choice cannot precede recognition of the right of return by the country of origin, and provisions for its implementation.*

Numerous recent peace agreements affirm the principle of refugee choice. Article 1 of Annex 7 to the 1995 Dayton Agreement, for example, affirms the right of refugees and displaced

persons from Bosnia-Herzegovina “*freely* to return to their homes of origin.” The parties to the Agreement, moreover, “undertake to create in their territories the political, economic, and social conditions conducive to the *voluntary return* and harmonious reintegration of refugees and displaced persons.” (Art. II). (emphasis added). The “*free will* on the part of each refugee” to exercise their right of return to Rwanda, as another example, is affirmed in article 2 of the 1993 Protocol of Agreement Between the Government of Rwanda and the Rwandese Patriotic Front. (emphasis added).

Further provisions to ensure refugee choice are provided in tripartite agreements between the country of origin, country of asylum and the UNHCR in its role as the international protection agency. The language of Article 7 of the UNHCR’s sample tripartite agreement (annexed to the 1996 *Handbook*) is clear: “The Parties and UNHCR hereby reaffirm that the repatriation of ... Refugees in (country of asylum) shall only take place at their *freely expressed wish* based on their full knowledge of the facts.” Article 8 further states: “The Parties and UNHCR reiterate that the refugees *shall be free* to return to, and settle in, their former places of residence or any other places of their choice with (country of origin).” (emphasis added) The tripartite agreement goes on to describe the mechanism to be established to facilitate the choice of the refugees and the host of requirements already described above.

Once all these agreements are in place, the appropriate conditions for making a free choice exist in the host country and country of origin, and refugees are supplied with adequate information, it is then possible to proceed with the determination of refugee choice. In order to carry out all these procedures there must be an international protection body responsible for the refugees. International protection staff must be assured access to refugees in host countries to verify and facilitate refugee choice and they must have access to the returning refugee population in the country of origin to ensure that the rights of refugees are respected and the obligations of the country of origin fulfilled.

In the case of Palestinian refugees, however, there is no international agency that currently provides international protection. The UN General Assembly originally assigned this role to the UNCCP, however, the mandate of the Commission has been devolved to the point whereby Palestinian refugees have been effectively denied the right to international protection as afforded to all other refugees. *Therefore, a further precondition exists for determining the choice of Palestinian refugees – i.e., the assumption of international protection for Palestinian refugees by the UNHCR* (as provided for in Article 1D of the 1951 Refugee Convention; *again see* BADIL Brief No. 1); *or the creation of a new international protection agency.*

To reiterate,

The principle of voluntariness or refugee choice is the cornerstone of international protection and the search for durable solutions for refugees. UN Resolution 194 affirms the right of Palestinian refugees to choose to return to their homes. Refugee choice must be free and voluntary. In order for refugees to make a free and voluntary choice to return to their homes and places of origin:

- Peace agreements, which recognize the right of refugees to return and provide mechanisms and guarantees for implementation, must be in place prior to the determination of refugee choice. .1
- An international protection body is necessary to verify refugee choice and ensure its implementation through procedures set forth in a tripartite agreement between the host country, the country of origin, and the protection body. .2
- Refugees must not be compelled to leave the host country or prevented from returning to their country of origin. .3
- Refugees must be supplied with information about the conditions in their country of origin, provisions for safety and protection from the authorities in the country of origin, and details about the procedures for repatriation. .4