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Physical Protection for Refugee Populated Areas

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

Since the beginning of the *al-Aqsa Intifada* in September 2000, Palestinian refugee camps in the West Bank and in the Gaza Strip have been attacked repeatedly by Israeli military forces. Palestinian refugee camps are particularly vulnerable due to the presence of nearby Israeli military installations and settlements, the location of refugee camps near border areas with Israel, and the location of several camps (Aroub, Kalandia, and Jalazon) in so-called "Area C" (i.e., full Israeli control) of the West Bank. Damages to refugee shelters by indiscriminate as well as targeted military attacks are especially severe in the densely built-up refugee camps where makeshift constructions are less resistant to attacks by heavy ammunition and weaponry.

This bulletin provides a brief overview of historical, legal and protection issues concerning Palestinian refugee-populated areas.

Historical Background

Palestinian refugee camps in the West Bank and Gaza Strip have become frequent targets of Israeli military forces since the outset of the *al-Aqsa Intifada* in late September 2000. Refugee camps have been attacked with helicopter gunships, tanks, and high-caliber automatic weapons. By the first week in January 2001, damage to refugee camps and property was estimated to be over US\$10 million (See BADIL Submission to the UN Commission on Human Rights Inquiry). As of 31 March 2001, nearly 250 refugee shelters in Gaza, damaged as a result of Israeli shelling, had been identified by UNRWA for repair and reconstruction. In the West Bank, 424 refugee families had received assistance from UNRWA to repair shelters damaged by Israeli shelling. (UNRWA Fourth Progress Report, 1/2/01-31/3/01)

Since the beginning of April 2001, Israeli military forces have launched several particularly brutal attacks on refugee camps in the southern Gaza Strip. On the night of 10 April, Israeli military forces entered Khan Yunis refugee camp with tanks, firing heavy artillery shells, heavy and medium caliber bullets. The camp is adjacent to Israeli military installations and Israeli settlements. During the Israeli attack, code-named "Operation Enjoyable Song", 30 refugee shelters and their contents were demolished. More than 50 families were left homeless by the attack, two Palestinians were killed and 27 were injured. In the early morning hours of 2 May, the Israeli military entered the Brazil quarter located near Rafah camp in the southern Gaza Strip, again backed by tanks and bulldozers. Eighteen refugee homes were destroyed, one Palestinian resident of the camp was killed with more than a dozen others injured by shrapnel, including several children.

These are not the first attacks on Palestinian refugee camps. In August 1953, Israel's current Prime Minister Ariel Sharon led an attack on Bureij refugee camp in the Gaza Strip. Fifteen refugees were killed in the attack. In July 1967, Israeli military forces destroyed some 142 rooms in Rafah camp. Some of the refugee shelters destroyed in the attack were blown up in the middle of the night with refugees inside. Excavation in the camp later revealed 15 bodies buried together and 8 others in individual graves. In the latter part of the same year, Israel demolished refugee shelters in Bureij, Neseirat and Jabalia refugee camps in Gaza.

In early 1970 Israel began demolishing refugee shelters in Gaza refugee camps as part of a so-called security operation led by Ariel Sharon to widen roads in the camps. Shimon Peres stated that the demolitions were part of a plan to resettle 20 percent of the refugees in Gaza

with their “half-consent.” When the demolitions finally stopped in late 1971 surveys located more than 900 families who needed shelter assistance. According to UN General Assembly resolution 2792 (XXVI) C, some 15,000 refugees were displaced due to the demolition of shelters in Gaza refugee camps. Among those displaced, were refugees who became stranded when Israel withdrew from the Sinai following the Camp David peace agreement in 1979. The last of these refugee families were only recently finally able to return to the Gaza Strip. Part of the displaced refugees build new shelters for their families in what came to be called the “Brazil quarter” next to Rafah camp.

In September 1982, several thousand Palestinian refugees – men, women, and children – were brutally slaughtered in the camps of Sabra and Shatila/Beirut by Lebanese Christian Phalangist forces allied with Israel, while Israeli forces looked on and prevented refugees from fleeing the camps. When Israel finally ordered the withdrawal of Lebanese allied-forces the camps had been destroyed and several thousand refugees had either been slaughtered or had disappeared. Ariel Sharon was found indirectly responsible for the massacre by an Israeli commission of inquiry.

During the first *intifada* that began in December 1987, Palestinian refugee camps were once again subject to attack by Israeli military forces. A 1988 report by the UN Secretary-General (S/19443) noted that those most acutely affected were residents of the refugee camps, particularly those in the Gaza Strip. The Secretary-General concluded that Israel had used disproportionate force in quelling Palestinian demonstrations. During the second week of March 1988 alone, UNRWA reported to the media that more than 400 Palestinian refugees had been injured by Israeli military forces in the Gaza Strip.

International Law

Attacks on refugee camps and refugee-populated areas violate international humanitarian, human rights and refugee law. Under the Fourth Geneva Conventions and the two Protocols to the Conventions, the Parties to a conflict, including the Occupying Power, must ensure respect for and protection of the civilian population.

Attacks on civilians, including refugees, are expressly prohibited (Article 51, Protocol I; Article 13, Protocol II). Destruction of real or personal property by the Occupying Power is also expressly prohibited (Article 53, Fourth Geneva Convention). Destruction of objects indispensable to the survival of the civilian population is prohibited (Article 54, Protocol I; Article 14, Protocol II). It is important to note that the presence of an individual combatant within a civilian population, including refugee camps, does not deprive the population of its civilian status (Article 50, Protocol I).

Attacks on refugee camps also violate a host of basic rights protected under international human rights law. This includes those rights set forth in the International Covenant on Social, Economic, and Cultural Rights, such as the right to an adequate standard of living (Article 11) and the right to the highest attainable standard of physical and mental health (Article 12), among others. (See BADIL Report to the Committee on Economic, Social and Cultural Rights, 23 April 2001 for details).

Finally, attacks on refugee camps violate principles set forth in international refugee law. These principles have been elucidated in several Conclusions issued by the Executive Committee of the Office of the UN High Commissioner for Refugees. The Conclusions include No. 27 (XXXIII), adopted in 1982 in the aftermath of the Sabra and Shatila massacre, No. 32 (XXXIV) 1983, No. 45 (XXXVII) 1986, No. 48 (XXXVIII) 1987, and No. 72 (XLIV) 1993. Attacks on refugee camps, which are considered to have an exclusively civilian and humanitarian character, are unlawful. States are called upon to investigate violations of the personal security of refugees and institute criminal prosecution against all perpetrators of such violations. States and international bodies are called upon to provide effective physical protection to refugees.

International Protection and the United Nations

Over the past several decades, the UN has attempted to address the issue of international protection for Palestinian refugees. In 1967, for example, then Commissioner-General of UNRWA, Laurance Michelmore, approached the UN Under-Secretary General to raise the issue of international protection forces for Palestinian refugees. The issue was raised at a time when Israel was demolishing refugee shelters in the Gaza Strip and in the West Bank. The initiative failed to advance protection based on the Under-Secretary General's view that any new measures would be opposed by Israel.

In 1982, the UN Joint Inspection Unit, which was carrying out a comprehensive review of UNRWA, made specific note of the lack of international protection for Palestinian refugees and called for immediate measures to rectify the problem, further noting that humanitarian considerations should prevail over any political or bureaucratic obstacles. In December of the same year, the UN General Assembly adopted Resolution 37/120 J "Protection of Palestine Refugees" in which it called upon the UN Secretary-General in consultation with UNRWA "to take effective measures to guarantee the safety and security and the legal and human rights of the Palestinian refugees in the occupied territories." The United States voted against the resolution. The issue of physical protection for Palestinian refugees in southern Lebanon was also brought to the attention of members of the UN Security Council by the Commissioner-General of UNRWA.

In December 1987 the UN Security Council once again revisited the issue of protection for Palestinian refugees in the context of first *intifada*. Security Council Resolution 605 called upon the Secretary-General to submit recommendations on "ways and means for ensuring the safety and protection of Palestinian civilians under Israeli occupation." The United States abstained on the resolution.

In his follow-up report (S/19443), the Secretary-General examined four types of protection – physical, legal, general assistance and protection by the media. The report concluded that the answer to protection lay in ending Israel's occupation, which was the root source of insecurity. Physical protection was deemed to be problematic as the deployment of protection forces was conditioned on Israel's consent. The Secretary-General noted that a degree of legal protection and protection by assistance was provided by the International Committee of the Red Cross (ICRC) and UNRWA.

The report specifically suggested that UNRWA add additional international staff to provide a degree of protection through monitoring, reporting and a limited degree of intervention; consideration of the appointment of a UN ombudsman for the occupied territories; and, that the High Contracting Parties to the Fourth Geneva Conventions use all means at their disposal to persuade Israel to respect the Convention in all circumstances. The recommendations to UNRWA evolved into the Refugee Affairs Officer Program, which existed in the West Bank and Gaza Strip until the early 1990s.

In 1990 the UN Security Council drafted a resolution (S/21919) to establish a commission of inquiry into the ways and means to protect Palestinians in the occupied territories, including refugees, after an attack on Palestinian workers in the Israeli town of Reshon Lezion and Israel's bloody suppression of subsequent Palestinian demonstrations. The United States vetoed the initiative. Later in the year, the UN Security Council (Resolution 672) requested the Secretary-General to send a mission to the region to investigate ways and means for protecting Palestinian civilians following the killing of 20 Palestinians by Israeli forces at the Haram ash-Sharif in the Old City of Jerusalem. Israel refused to receive the mission and it was never sent.

In his follow-up report (S/21929), the Secretary General suggested that the Security Council call for a meeting of the High Contracting Parties to the Fourth Geneva Conventions to discuss possible measures for the protection of Palestinian civilians, including refugees. The Security Council subsequently adopted resolution 681, which expressly provided the Secretary-General with a mandate to monitor the situation of Palestinians under Israeli

occupation and submit a report to the General Assembly every four months. The first report (S/22472) was submitted in April 1991 but the initiative was discontinued, following interventions from the US, which argued that the action might “interfere” with beginning of the Madrid(Oslo) process.

Following the outbreak of the *al-Aqsa Intifada* the UN General Assembly (Resolution A/ES-10/L.6) and Security Council (Resolution 1322) adopted resolutions calling upon Israel to respect the Fourth Geneva Convention relative to the protection of Palestinian civilians. In December 2000 a draft resolution of the deployment of a UN military and police observer force in the occupied territories failed to acquire sufficient votes due to pressure from the United States which opposed the resolution. A second draft resolution (S/2001/270), which affirmed the readiness of the Security Council to establish an appropriate mechanism to protect Palestinian civilians, based on consultations with the parties, was vetoed by the United States in March 2001. The veto was cast at the same time that the UN Commission on Human Rights, Commission of Inquiry (E/CN.4/2001/121) had recommended that an adequate and effective international presence should be established in the occupied territories to monitor and regularly report on compliance by all parties with human rights and humanitarian law.

Conclusion

The recent brutal attacks on Palestinian refugee camps in the Gaza Strip provide more than sufficient evidence of the urgent need for physical protection for Palestinian refugees. This is particularly so, if these attacks are viewed within the context of a long history of Israeli attacks on Palestinian refugee camps.

At minimum, the UN Secretary-General should begin to monitor and observe the situation in the occupied Palestinian territories and submit a report to the UN General Assembly every four months on ways and means for the protection of Palestinian civilians under Israeli occupation as required by UN Security Council Resolution 681 (1990).

Secondly, the United Nations must respond immediately to the recommendations submitted by the UN Commission on Human Rights, Commission of Inquiry. The March Report of the Commission explicitly recommended that an adequate and effective international presence needs to be established in the occupied Palestinian territories to monitor and regularly report on compliance with human rights and humanitarian law and ensure full protection of the human rights of the people of the occupied territories.

Finally, the High Contracting Parties to the Fourth Geneva Convention must immediately convene in order to establish an international mechanism for the protection of Palestinians in the occupied territories, including refugees, and to decide on measures, individual and collective, to ensure Israel’s compliance with its obligations under the Fourth Geneva Conventions.