

# **International Law and Durable Solutions for IDPs**

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## Introduction\*

Internally displaced persons (IDPs) comprise the largest group of displaced persons around the world today. Of an estimated 40 million displaced persons worldwide some two-thirds are IDPs. The internally displaced are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, and violations of human rights. The defining characteristic of internally displaced persons is that they have not cross an internationally recognized border.<sup>1</sup> The overwhelming majority of IDPs are members of minority groups. They are also predominantly women, children, and the poor.

Internal displacement is difficult to conceptualize in the context of the Palestinian/Arab-Israeli conflict, which is rooted in the ongoing struggle over control of land and sovereignty thereon. In the course of the more than fifty-year old conflict, wars and military occupation have frequently changed cease-fire lines and *de facto* borders. Where are the international borders, which delineate the difference between refugees and

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\* This paper is based on BADIL Information & Discussion Brief No. 9, *Internally Displaced Palestinians, International Protection & Durable Solutions* (November 2002) and current research by the author concerning the drafting history of UN General Assembly Resolution 194 and comparative studies of durable solutions for refugees. International law analysis is largely drawn from Walter Kalin's analysis of the *Guiding Principles on Internal Displacement*; two recent studies by Gail J. Boling: *The 1948 Palestinian Refugees and the Individual Right of Return: An International Law Analysis*. Bethlehem: BADIL Resource Center for Palestinian Residency & Refugee Rights (January 2001); and, "'Absentees' Property' Laws and Israel's Confiscation of Palestinian Property: A Violation of UN General Assembly Resolution 194 and International Law," 11 *Palestine Yearbook of International Law* 73 (2000/2001); and, ongoing joint research by the author and Susan M. Akram, Associate Professor, Boston University School of Law.

<sup>1</sup> The 1998 *Guiding Principles on Internal Displacement* (hereinafter '*Guiding Principles*') define internally displaced persons as, "persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border." *UN Guiding Principles on Internal Displacement. Addendum to: Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission resolution 1997/39, UN Doc. E/CN.4/1998/53/Add.2, 11 February 1998.*

internally displaced persons? What is the relevant entity – i.e., Mandate Palestine, Israel, the 1967 occupied Palestinian territories? Concepts like "Palestinian minority" and "internally displaced Palestinians" can only be applied pragmatically in order to describe the phenomenon of internal displacement in a specific period of time.<sup>2</sup>

A pragmatic categorization of internally displaced Palestinians under current (post-Oslo) conditions includes four primary groups. The largest group of Palestinian IDPs (*'1948 Internally Displaced Palestinians'*) is located inside Israel and were originally displaced and dispossessed of their homes and lands during the 1948 war.<sup>3</sup> A second and smaller group (*'Post-1948 Internally Displaced Palestinians'*) consists of those Palestinians inside Israel who have been displaced since 1948 due, primarily, land expropriation, forced sedentarization, house demolition, and other forms of internal transfer. A third category (*'1967 Internally Displaced Palestinians'*) is comprised of those Palestinians displaced within the West Bank, including eastern Jerusalem, and the Gaza Strip during the 1967 war.<sup>4</sup> The fourth category (*'Post-1967 Internally Displaced Palestinians'*) of internally displaced Palestinians are those Palestinians displaced within the occupied West Bank, eastern Jerusalem, and Gaza Strip after 1967 due to land expropriation, house demolition, revocation of residency rights in Jerusalem, and other forms of internal transfer.

Root causes of internal displacement are not dissimilar to factors leading to refugee flows. These include competition for scarce land and water resources, inequitable ownership and access to land, religious/ethnic conflict, colonization/decolonization,

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<sup>2</sup> The case of Palestinians displaced from western to eastern Jerusalem in 1948 provides one example of the problem of status determination. Historically, this specific group of displaced Palestinians is considered refugees. Some are registered with the UN Relief and Works Agency for Palestine Refugees (UNRWA). What are the internationally recognized borders for determining whether displaced Palestinian Jerusalemites are refugees or IDPs? The 1948 municipal boundaries of the city; the international zone delineated under UN General Assembly Resolution 181 (*'Partition Plan'*); the 1949 armistice line in the city (*'Green line'*); or the expanded boundaries of a *'unified'* city delineated by Israel after 1967?

<sup>3</sup> Israel refers to these internally displaced as *'present-absentees'* – i.e., they are present physically but absent in relation to their homes and lands of origin.

<sup>4</sup> For the purpose of this paper, this category excludes 1967 Palestinian refugees who are often referred to as *'1967 displaced persons'* due to the fact that at the time of their displacement the West Bank was under Jordanian control – i.e., they did not cross an *'international border'* by seeking shelter, mainly in Jordan.

irredentism and secessionist movements, and armed conflict. Protracted armed conflict in Angola, Sudan, and the Democratic Republic of Congo (DRC), for example, generated some 10 million IDPs.<sup>5</sup> Internal displacement in Burma, Sri Lanka, the Philippines, and Indonesia is primarily related to secessionist movements. Conflict over the control of territory rich in resources and extreme economic disparities have led to mass internal displacement in many parts of Central America. Root causes of internal displacement in the Middle East include ethno-national conflict, competition over ownership and control of land and resources, foreign/military occupation, and colonization.

The exponential increase in the global IDP population in recent decades has focused greater international attention on internally displaced persons.<sup>6</sup> It is estimated that there are some 25 million internally displaced persons in the world today. Over the past three decades, the total IDP population has increased five-fold.<sup>7</sup> The majority of internally displaced persons are located in Africa, which has a total IDP population of some 13.5 million – i.e., over 50 percent of the global IDP population. There are an estimated 4.6 million IDPs in Asia and the Pacific, 3.3 million in Europe, 2.2 million in Latin America, and some 1.5 million IDPs in the Middle East.<sup>8</sup> Arab states with large IDP populations include Iraq (700,000), Syria and Lebanon (300,000 each).<sup>9</sup> The Middle East is one of the few regions where the total refugee population exceeds that of IDPs. The countries with the largest IDP populations include Angola (4.1 million), Sudan (4.0 million), the Democratic Republic of Congo (2.2 million), and Colombia (2.1 million).<sup>10</sup>

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<sup>5</sup> Norwegian Refugee Council and the Global IDP Project, *Internally Displaced People, A Global Survey*. 2<sup>nd</sup> Edition. London: Earthscan Publications Limited, 2002, p. 25.

<sup>6</sup> For estimates of the IDP population in 48 countries *see*, Annex – Estimated Global IDP Population, December 2002.

<sup>7</sup> *Ibid.*, p. 4. The figure is from the global IDP Database established in 1999. The database, which is funded by the Norwegian Refugee Council, includes country profiles and source documents. Data is derived from governments, NGOs, the United Nations, the US Committee on Refugees (one of the earliest sources of information on IDPs worldwide), and other sources. The database is accessible through the internet at: <http://www.idproject.org>.

<sup>8</sup> All figures as of mid-2002 as estimated by the Global IDP Database. *Ibid.*

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

As with other groups of IDPs worldwide, internal displacement in 1948 Palestine/Israel and the 1967 occupied Palestinian territories (OPTs) is characterized by a lack of comprehensive and systematic data. There is no registration system for internally displaced Palestinians.<sup>11</sup> Official data on the current status of Palestinians inside these areas of historic Mandate Palestine does not distinguish between internally displaced Palestinians and the general Palestinian population. Data on Palestinian IDPs is therefore characterized by uneven quality and uncertainty and is derived largely from historical documents, news reports, and human rights documentation.

Estimates of the total Palestinian IDP population inside 1948 Palestine/Israel and in the 1967 occupied Palestinian territories vary according to source, available data, and applicable definition of internally displaced persons. There are approximately 270,000 1948 internally displaced Palestinians who comprise around one-quarter of the total Palestinian population inside Israel.<sup>12</sup> There are few estimates for the remaining three categories of internally displaced Palestinians. Conservative estimates are as follows: 75,000 Palestinians internally displaced in Israel after 1948<sup>13</sup>; 10,000 1967 internally

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<sup>11</sup> Early registration and census information exists for 1948 internally displaced Palestinians. Internally displaced Palestinians requiring assistance were originally registered with the UN Relief and Works Agency for Palestine Refugees (UNRWA). Initial registration files for 1948 IDPs include 6 boxes consisting of 11,304 family cards and 5,155 correction cards. Each card contains the names, ages, sex, occupation, past address, and 'distribution center' to which the family was attached. Salim Tamari and Elia Zureik, "UNRWA Archives on Palestinian Refugees," *Reinterpreting the Historical Record, The Uses of Palestinian Refugee Archives for Social Science Research and Policy Analysis*. Salim Tamari and Elia Zureik (eds.) Jerusalem: Institute of Jerusalem Studies and Institute for Palestine Studies, 2001, pp. 44-45.

<sup>12</sup> Derived from initial registration figures from UNRWA in *Report of the Director of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, UN Doc. A/1905, 30 June 1951. Registration figures are upgraded to 2002 based on the average annual growth rate of the Palestinian population inside 1948 Palestine/Israel. For further estimates see, Wakim Wakim, "laj'iun fil watan, alohadirun al-gha'ibun fi isra'ill", [Refugees in the Homeland, Present Absentees in Israel] 45/46 *Majallat al-Dirasat al-Filastiniyah* (Winter/Spring 2001); *Profile of Internal Displacement: Israel. Compilation of information available in the Global IDP Database of the Norwegian Refugee Council (as of 14 January 2002)*. Geneva: Norwegian Refugee Council/Global IDP Project, 2002; and, Hillel Cohen, *The Present Absentees: Palestinian Refugees in Israel Since 1948*. [Hebrew] Institute for Israeli-Arab Studies, Jerusalem (2000).

<sup>13</sup> The majority is Bedouin forced off of large tracts of land in the Naqab and living in 'unrecognized villages' or concentrated into so-called development towns. The remaining displaced persons include other Palestinians who were transferred by the government during the late 1940s and early 1950s; Palestinians displaced by land expropriation; and Palestinians displaced as a result of house demolition. It is unclear

displaced Palestinians<sup>14</sup>; and, some 150,000 Palestinians displaced internally in the West Bank, eastern Jerusalem, and the Gaza Strip after 1967.<sup>15</sup> The total IDP population inside 1948 Palestine/Israel and the 1967 occupied Palestinian territories may be more than 450,000 persons.

Increased international attention for the welfare of internally displaced persons is also driven by the absence of national protection. National authorities, which have the primary responsibility to protect and seek durable solutions for IDPs within their borders, often lack the resources and/or political will to do so, particularly when internal displacement is a result of competition over control of land and resources or ethno-national conflict. International protection is required when national authorities fail to provide adequate protection of IDPs within their borders.<sup>16</sup> The international community, however, often fails to adequately respond to the protection needs of internally displaced persons due to

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how many affected families have not been able to return to their homes of origin and remain displaced. *Also see, Profile of Internal Displacement: Israel, supra* note 3.

<sup>14</sup> The majority are persons displaced internally from the villages of Imwas, Yalu, Beit Nuba, Beit Marsam, Beit 'Awa, Habla and Jifliq, as well as from the city of Qalqilya and the old city of Jerusalem, including the entire Mughrabi quarter. It is unclear how many affected families remain internally displaced.

<sup>15</sup> This figure includes persons deprived of residency status in eastern Jerusalem and Palestinians displaced as a result of land expropriation and house demolition. It is unclear how many affected families have not been able to return to their homes of origin and remain displaced. According to the Palestinian Central Bureau of Statistics, an estimated 56,000 Palestinians were forced to change residence during the first 7 months of the second Palestinian *intifada* due to the proximity of their homes to Israeli military checkpoints and Israeli colonies (i.e., settlements). Palestinian Central Bureau of Statistics, 2001. *Impact of the Israeli Measures. Survey on the Well-being of the Palestinian Children, Women, and the Palestinian Households*, June 2001. In addition, some 80,000 Palestinians have been rendered homeless. United Nations, *Humanitarian Action Plan of Action 2003. Occupied Palestinian Territory*. Geneva and New York, November 2002. *Also see, Profile of Internal Displacement: Palestinian Territories: Compilation of the Information available in the Global IDP Database of the Norwegian Refugee Council (as of 13 November 2002)*. Geneva: Norwegian Refugee Council/Global IDP Project, 2002.

<sup>16</sup> International protection involves the direct protection of human rights on a day-to-day basis, and the search for and implementation of durable solutions. Durable solutions include voluntary return (i.e., right of return) and voluntary resettlement. Housing and property restitution is among the rights associated with return. Only return and restitution are recognized as rights under international law. Day-to-day protection of IDPs is beyond the scope of this paper. For a brief overview of day-to-day protection needs of Palestinian IDPs see, Terry Rempel, *Internally Displaced Palestinians, International Protection and Durable Solutions*. Information & Discussion Brief No. 9. Bethlehem: BADIL Resource Center for Palestinian Residency & Refugee Rights (November 2002). For a general overview of day-to-day protection of IDPs see, the *1998 Guiding Principles, supra* note 1. For a comparative overview see, *Internally Displaced People, A Global Survey, supra* note 5. *Also see, David A. Korn, Exodus within Borders, An Introduction to the Crisis of Internal Displacement*. Washington, DC: Brookings Institution Press, 1999.

unresolved issues of UN mandate and institutional responsibility for IDPs; the lack of a binding legal instrument that delineates the rights of IDPs and the concomitant obligations of signatory states; and, overriding concerns about sovereignty and non-interference in the internal affairs of states.

Over the past decade, the international community has attempted to address institutional and legal gaps concerning IDP protection, including durable solutions, through a collaborative inter-agency approach bringing together resources and expertise of key UN agencies and other international actors. The UN also adopted a set of universal principles on internal displacement. The 1998 *Guiding Principles on Internal Displacement* ('*Guiding Principles*')<sup>17</sup> identifies rights and guarantees relevant to the protection of persons from forced displacement; protection during displacement; provision of humanitarian assistance; as well as protection during return or resettlement and reintegration.

This paper examines durable solutions for Palestinian IDPs in the context of relevant UN resolutions and the 1998 *Guiding Principles*. The first part provides a short overview of the specific framework for durable solutions for Palestinian IDPs set forth in relevant UN resolutions. The second part of the paper provides an overview of durable solutions for IDPs as delineated by the 1998 *Guiding Principles* and comparative practice. The third section of the paper examines mechanisms for implementation of durable solutions. The conclusion provides some practical recommendations to raise awareness about the legal framework and requirements for crafting durable solutions for Palestinian IDPs.

## **Durable Solutions for Internally Displaced Palestinians**

The framework for durable solutions for Palestinian IDPs is set forth in international law and relevant UN resolutions. UN General Assembly Resolution 194(III), 11 December

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<sup>17</sup> *Supra* note 1. For an annotated analysis of *The Guiding Principles on Internal Displacement*, see, Walter Kalin, *Guiding Principles on Internal Displacement, Annotations*. Studies in Transnational Legal Policy No. 32. Washington, DC: The American Society of International Law and the Brookings Institution Project on Internal Displacement, 2000.

1948, delineates the framework for durable solutions for 1948 internally displaced Palestinians.<sup>18</sup> Under operative paragraph 11, the General Assembly,

*Resolves* that refugees wishing to return to their homes and live at peace with their neighbors 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 of Authorities responsible.

*Instructs* the Conciliation Commission to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation.

According to the Secretariat of the UN Conciliation Commission for Palestine (UNCCP)<sup>19</sup>, “the term ‘refugees’ referred to all refugees, irrespective of race or nationality, provided they had been displaced from their homes in Palestine. [...] *This would include Arabs in Israel who have been shifted from their normal places of residence.*”<sup>20</sup> [Emphasis added]

UN Security Council Resolution 93, 18 May 1951, addresses the specific situation of displaced Palestinians from the northern demilitarized zone and calls for their return.<sup>21</sup>

The operative paragraph of the resolution,

*Decides* that Arab civilians who have been removed from the demilitarized zone by the Government of Israel should be permitted to return forthwith to their homes and that the Mixed Armistice Commission should supervise their return and rehabilitation in a manner to be determined by the Commission.

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<sup>18</sup> G.A. Res. 194(III)(11 December 1948), U.N. Doc. A/810, at 21 (1948).

<sup>19</sup> *Infra* note 8 and accompanying text.

<sup>20</sup> United Nations Conciliation Commission for Palestine, *Analysis of paragraph 11 of the General Assembly’s Resolution of 11 December 1948*. Working Paper prepared by the Secretariat. UN Doc. A/AC.25/W.45, 15 May 1950.

<sup>21</sup> S.C. Res. 93 (18 May 1951). Resolution 93 applies to some ten Palestinian villages with a refugee population of 23,100. Approximately 20 percent are internally displaced Palestinians and primarily reside in the village of Sh’ab. Salman Abu Sitta, “Exiled After the Nakba, Palestinian Refugees from the Demilitarized Zones (1949-1956), *al-Majdal*, Issue 4 (March 1999), pp. 20-21.

UN Security Council Resolution 237, 14 June 1967, addresses the general problem of war-related displacement in 1967 and affirms that persons who fled as a result of hostilities should be permitted to return.<sup>22</sup> Operative paragraph 1,

*Calls upon* the Government of Israel to ensure the safety, welfare and security of the inhabitants of the areas where military operations have taken place and to facilitate the return of those inhabitants who have fled the areas since the outbreak of hostilities.

Presumably this would include Palestinians displaced within the West Bank, including eastern Jerusalem, and the Gaza Strip during the 1967 war. UN resolutions do not specifically address durable solutions for other categories of Palestinian IDPs.<sup>23</sup> The remainder of this section examines the framework for durable solutions set forth in Resolution 194, due to the comprehensive nature of the framework set forth in the resolution.

Resolution 194 affirms three separate rights – i.e., right of return, right to housing and property restitution, and the right to compensation – and two distinct solutions (i.e., return, restitution and compensation *or* resettlement, restitution and compensation) governed by the principle of individual choice.<sup>24</sup> The resolution sets forth a clear *hierarchy of solutions*. Paragraph 11(a) delineates the specific rights and the primary durable solution for Palestinian refugees and IDPs. The General Assembly, “[r]esolves that refugees [and IDPs] wishing to return to their homes and live at peace with their

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<sup>22</sup> S.C. Res. 237 (14 June 1967). For further analysis of related UN General Assembly resolutions see, W. Thomas Mallison and Sally V. Mallison, *An International Law Analysis of the Major United Nations Resolutions Concerning the Palestine Question*. Study Prepared and Published at the Request of the Committee on the Exercise of the Inalienable Rights of the Palestinian People. New York: United Nations, 1979, pp. 33-37.

<sup>23</sup> The status of post-1967 IDPs in the 1967 occupied Palestinian territories may be addressed indirectly by other UN resolutions concerning Israeli practices in these territories. See, e.g., Commission on Human Rights Resolution No. 10 (XXVI) (23 March 1970) and subsequent resolutions adopted by the Commission on Human Rights. For a complete list see, *United Nations Resolution on Palestinian and the Arab-Israeli Conflict*. Five Volumes. Washington, DC: Institute for Palestine Studies.

neighbors should be permitted to do so at the earliest practicable date, and that compensation should be paid ... for loss of or damage to property...” In other words, the *primary* durable solution for Palestinians displaced in 1948 is return, housing and property restitution, and compensation for loss of or damage to property. Resolution 194 *does not* “resolve” that Palestinian refugees and IDPs should be resettled.

Refugees and IDPs who choose not to exercise the rights set forth in paragraph 11(a), however, may opt for resettlement, as well as housing and property restitution, and compensation. Paragraph 11(b) thus “instructs” the UN Conciliation Commission for Palestine (UNCCP), the body mandated to facilitate implementation of durable solutions for displaced Palestinians, to facilitate the resettlement of those refugees and IDPs choosing not to return and the payment of compensation. In other words, the sole trigger for the resettlement of Palestinians displaced in 1948 is the voluntary choice of the refugee/IDP not to return to his or her place of origin.

General Assembly Resolution 194 affirms the right of Palestinian refugees and IDPs to return to their *homes of origin*. The UN Mediator in Palestine, whose recommendations formed the basis of Resolution 194, explicitly noted that the right of return should be *affirmed* (rather than recognized) by the United Nations.<sup>25</sup> Correspondence and reports of the UN Mediator repeatedly affirm the right of Palestinian refugees/IDPs to return to their homes as a remedy to the involuntary character of their displacement.<sup>26</sup> According to the US Representative to the United Nations, Resolution 194, paragraph 11, “endorsed a generally recognized principle and provided a means for implementing that

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<sup>24</sup> *Analysis of paragraph 11 of the General Assembly’s Resolution of 11 December 1948, supra* note 19. This framework is essentially consistent with that set forth in international law as examined in the second part of this paper. See *infra*, notes 39 to 80 and accompanying text.

<sup>25</sup> Part One, Section VIII, 4(i), *Progress Report of the UN Mediator on Palestine*, 3<sup>rd</sup> Sess., Suppl. No. 11, U.N. Doc. A/648 (1948), cited in Susan M. Akram and Terry Rempel, “Recommendations for Durable Solutions for Palestinian Refugees: A Challenge to the Oslo Framework,” 11 *Palestine Yearbook of International Law* 73 (2000/2001).

<sup>26</sup> See, e.g., *Text of Suggestions Presented by the United Nations Mediator on Palestine to the Two Parties on 28 June 1948*. UN Doc. S/863, 3 July 1948; Cablegram dated 12 August 1948 from the United Nations Mediator to the Secretary General Concerning the Observance of the Truce in Jerusalem, UN Doc. S/961, 12 August 1948.

principle...”<sup>27</sup> The General Assembly clearly meant the return of each refugee/IDP to “his[her] house or lodging and not to his[her] homeland.”<sup>28</sup> The Assembly rejected two separate amendments that referred in more general terms to the return of refugees/IDPs to “the areas from which they have come.”<sup>29</sup>

General Assembly Resolution 194 also affirms the right of displaced Palestinians to housing and property restitution. According to the UNCCP Secretariat, “[The] underlying principle of paragraph 11, sub-paragraph 1, ... is that the Palestine refugees shall be permitted ... to return to their homes *and be reinstated in the possession of the property which they previously held.*”<sup>30</sup> [Emphasis added] The right to housing and property restitution in Resolution 194 should also be read in light of the UN Mediator’s earlier communiqués to the UN Security Council.<sup>31</sup> The aim of the Mediator’s recommendations was to provide legal remedy for widespread violations of Palestinian property rights. “There have been numerous reports from reliable sources of large-scale pillaging and plundering, and of instances of destruction of villages without apparent necessity,” wrote the UN Mediator. “It would be an offence against the principles of elemental justice if these innocent victims of the conflict were denied the right to return *to their homes...*”<sup>32</sup> [Emphasis added] It is also clear from the phrasing “to their homes” that the United

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<sup>27</sup> United Nations Conciliation Commission for Palestine, *Historical Survey of Efforts of the United Nations Conciliation Commission for Palestine to Secure the Implementation of Paragraph 11 of General Assembly Resolution 194(III), Question of Compensation*. Working Paper Prepared by the Secretariat. UN Doc. AC.25/W.81/Rev.2, 2 October 1961. This was subsequently reflected in early US policy on the issue of Palestinian refugees. See, e.g., *Policy Paper Prepared in the Department of State, Palestine Refugees, Secret*, Washington, D.C., 15 March 1949, reproduced, in part, in Donald Neff, *Fallen Pillars, US Policy towards Palestine and Israel since 1945*. Washington, DC: Institute for Palestine Studies, 1995, pp. 233-41.

<sup>28</sup> *Analysis of paragraph 11 of the General Assembly’s Resolution of 11 December 1948*, *supra* note 19.

<sup>29</sup> *Ibid.*

<sup>30</sup> United Nations Conciliation Commission for Palestine, *Historical Precedents for Restitution of Property or Payment of Compensation to Refugees*, Working Paper Prepared by the Secretariat, UN Doc. W/41, 18 March 1950.

<sup>31</sup> In June 1948, for example, the Mediator wrote that the residents of Palestine should be permitted both to return to their homes without restriction, and to regain possession of their property. *Text of Suggestions Presented by the United Nations Mediator on Palestine to the Two Parties on 28 June 1948*, *supra* note 25. The mass displacement and its aftermath, which Bernadotte witnessed during his time as Mediator, probably influenced the recommendations. “The exodus of Palestinian Arabs resulted from panic created by fighting in their communities, by rumors concerning real or alleged acts of terrorism or expulsion,” wrote the Mediator. *Progress Report of the UN Mediator on Palestine*, *supra* note 24.

Nations General Assembly intended to affirm the right of Palestinian refugees and IDPs to housing and property restitution. If the General Assembly had not intended to affirm the right of refugees/IDPs to housing and property restitution, it is likely that the broader language referring to the places from which they came would have remained.<sup>33</sup>

UN Resolution 194 affirms at least *two* types of compensation: (1) payment to refugees/IDPs not choosing to return to their homes; and, (2) payment for the loss of or damage to (movable and immovable) property.<sup>34</sup> The General Assembly rejected draft resolutions and amendments that did not include provisions for (2) payment for the loss of or damage to property.<sup>35</sup> The right to compensation applies to *all refugees and IDPs*, irrespective of whether they choose to exercise their right of return.<sup>36</sup> Paragraph 11 reflected the recommendations of the UN Mediator in Palestine who called upon the United Nations to affirm the “payment of adequate compensation for the property of those choosing not to return.”<sup>37</sup> By substitution of the phrase “loss of or damage to property which under principles of international law or in equity should be made good” during the drafting process, the General Assembly indicated that it did not wish to

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<sup>32</sup> *Ibid.*

<sup>33</sup> *Supra* note 28.

<sup>34</sup> *Compensation for the Property of Non-Returning Refugees*. Excerpts from a Memorandum Prepared by the Legal Adviser to the Economic Survey Mission, November 1949, and *Compensation to Returning Refugees*. Excerpts from a Memorandum Prepared by the Legal Adviser to the Economic Survey Mission, November 1949. The memorandums are annexed to *Question of Compensation*, *supra* note 26. United Nations Conciliation Commission for Palestine, *Compensation to Refugees for Loss of or Damage to Property to be Made Good Under Principles of International Law or in Equity*. Working Paper Prepared by the Secretariat in October 1949. UN Doc. W/30, 31 October 1949. *Also see, Question of Compensation*. On the question of war damages *see*, United Nations Conciliation Commission for Palestine, *Compensation to Refugees and the Question of War Damages*. Working Paper Prepared by the Secretariat. UN Doc. W/50, 4 August 1950.

<sup>35</sup> *Compensation to Refugees for Loss of or Damage to Property to be Made Good Under Principles of International Law or in Equity*, *supra* note 33.

<sup>36</sup> *Compensation for the Property of Non-Returning Refugees*, and *Compensation to Returning Refugees*, *supra* note 33.

<sup>37</sup> *Progress Report of the UN Mediator on Palestine*, *supra* note 24. Compensation also aimed to provide a remedy to “large-scale looting, pillaging and plundering, and of instances of destruction of villages without apparent military necessity.” “The liability of the Government of Israel ... to indemnify those owners for property wantonly destroyed,” stated the Mediator, “is clear, irrespective of any indemnities which the Provisional Government may claim from the Arab States.”

arbitrarily limit claims to compensation for losses and damages.<sup>38</sup> The reference to international law was also included specifically to address the claims of those refugees choosing to exercise their right of return in the event that domestic law in the new state of Israel would not provide equal protection for the right to compensation for Palestinian refugees choosing to return to their homes.<sup>39</sup>

## **International Law and Durable Solutions for IDPs**

The *Guiding Principles on Internal Displacement* set forth the specific framework for durable solutions for internally displaced persons.<sup>40</sup> The *Guiding Principles* restate already recognized rights under international human rights and humanitarian law and their applicability to internally displaced persons. The international community opted for a set of ‘guiding principles’ rather than an international convention in order to circumvent state concerns about sovereignty and ensure greater international acceptance.<sup>41</sup>

The *Guiding Principles* elaborate the right of IDPs and obligation of national and international authorities to facilitate durable solutions. According to Principle 28(1),

Competent authorities have the primary duty and responsibility to established conditions, as well as provide the means, to allow internally

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<sup>38</sup> *Compensation to Refugees for Loss of or Damage to Property to be Made Good Under Principles of International Law or in Equity*, *supra* note 33. A broader set of claims may include compensation for human capital losses and psychological suffering. For example, the UNCCP Secretariat indicated that “It would perhaps be useful also to assemble documentation on measures taken concerning German property in Israel, and on the way in which the Israeli Government has obtained reparations and compensation from the German government for Jews who were the victims of persecution in the Reich.” United Nations Conciliation Commission for Palestine, *Note on the Problem of Compensation*. Working Paper Drafted by the Secretariat of the Commission at Jerusalem. UN Doc. A/AC/25/W.53, 13 September 1950.

<sup>39</sup> *Compensation to Returning Refugees*, *supra* note 33.

<sup>40</sup> *Guiding Principles on Internal Displacement*, *supra* note 1. *Also see*, Commission on Human Rights, Sub-Commission Resolution 1998/26, 26 August 1998. Operative paragraph 1 “*Reaffirms* the right of all refugees, as defined in relevant international legal instruments, and internally displaced persons to return to their homes and places of habitual residence in their country and/or place of origin, should they so wish.” Operative paragraph 2 “*Reaffirms also* the universal applicability of the right to adequate housing, the right to freedom of movement and the right to privacy and respect for the home, and the particular importance of these rights for returning refugees and internally displaced persons wishing to return to their homes and places of habitual residence.”

<sup>41</sup> *Exodus Within Borders, An Introduction to the Crisis of Internal Displacement*, *supra* note 15, p. 90.

displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. Such authorities shall endeavour to facilitate the reintegration of returned or resettled internally displaced persons.<sup>42</sup>

The right of IDPs to voluntarily return to their homes of origin in safety and dignity is based in several bodies of international law. The right of return is a customary norm of international human rights law.<sup>43</sup> It is anchored in numerous international conventions, including the Universal Declaration of Human Rights (Article 13(2)), the International Covenant on Civil and Political Rights (Article 12(4)), and the International Covenant on the Elimination of All Forms of Racial Discrimination (Article 5(d)(ii)).<sup>44</sup> It is also found in an array of regional human rights treaties, including the American Convention on Human Rights (Article 22(5)), the African Charter on Human and People's Rights (Article 12(2)), and the Fourth Protocol of the European Convention on Human Rights.<sup>45</sup>

The right of IDPs to return to their homes of origin is also based in international humanitarian law. The Hague Regulations annexed to the 1907 Hague Convention (IV) Respecting the Laws and Customs of War on Land and the four Geneva Conventions of 1949, and particularly the Fourth Convention, contain explicit provisions affirming the

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<sup>42</sup> Principle 28(1), *Guiding Principles*, *supra* note 1.

<sup>43</sup> For detailed discussions *see*, W.T. Mallison and S. Mallison, "The Right of Return," 9 *Journal of Palestine Studies* 125 (1980); Kathleen Lawand, "The Right of Return of Palestinians in International Law," 8 *International Journal of Refugee Law* 4 (1996); J. Quigley, "Family Reunion and the Right to Return to Occupied Territory," 6 *Georgetown Immigration Law Journal* 223; *The Right to Return of the Palestinian People* (New York, 1978); U.N. Doc. ST/SG/SER.F/2. Cited in *Recommendations for Durable Solutions for Palestinian Refugees: A Challenge to the Oslo Framework*, *supra* note 24. *Also see*, *The 1948 Palestinian Refugees and the Individual Right of Return: An International Law Analysis*, *supra* note 39.

<sup>44</sup> For a more detailed analysis of these instruments *see*, *The 1948 Palestinian Refugees and the Individual Right of Return: An International Law Analysis*, *supra* note 39, pp. 36-42. *Also see*, Vienna Declaration and Programme of Action of the World Conference on Human Rights, held at Vienna, 14-25 June 1993, UN Doc. A/CONF.157/23, Part I, para. 23, emphasizing the importance of "finding lasting solutions to questions related to internally displaced persons including their voluntary and safe return and rehabilitation." *Guiding Principles on Internal Displacement, Annotations*, *supra* note 16, at note 325, p. 230.

<sup>45</sup> *Guiding Principles on Internal Displacement, Annotations*, *supra* note 16, p. 69. *Also see*, *Recommendations for Durable Solutions for Palestinian Refugees: A Challenge to the Oslo Framework*, *supra* note 39,

right of displaced persons to return to their homes following the cessation of hostilities.<sup>46</sup> Deportation and forcible population transfer are considered grave breaches under Article 147 of the Fourth Geneva Convention.<sup>47</sup> Willful delay in the repatriation of civilians is considered a grave breach under Article 85(4)(b) of Protocol I.<sup>48</sup>

The right to return is also found in international refugee law and state practice. While the 1951 Convention Relating to the Status of Refugees does not contain express language delineating durable solutions, the right of return is implicit in the obligatory norm of *non-refoulement*.<sup>49</sup> Voluntary return “follows directly from the principle of *non-refoulement*: the involuntary return of refugees would in practice amount to *refoulement*.”<sup>50</sup> Under the 1950 Statute of the UNHCR (Articles 2(c)(d)(e)), governments are called upon to cooperate with the UNHCR by admitting refugees to their territories as a first line of protection, assisting in efforts to promote the voluntary repatriation of refugees, and their assimilation.<sup>51</sup> Of the three durable solutions (i.e., return, host country integration, and

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<sup>46</sup> This includes Article 43 and Article 20 of the Hague Regulations, and Article 4, Article 6(4), Article 45, Article 46, Article 49, Article 134, Article 147 and Article 158(3) of the Fourth Geneva Convention. For more detailed analysis see, *The 1948 Palestinian Refugees and the Individual Right of Return: An International Law Analysis*, supra note 39, pp. 28-35. Also see, *Recommendations for Durable Solutions for Palestinian Refugees: A Challenge to the Oslo Framework*, supra note 39.

<sup>47</sup> *The 1948 Palestinian Refugees and the Individual Right of Return: An International Law Analysis*, supra note 39, p. 34.

<sup>48</sup> *Guiding Principles on Internal Displacement, Annotations*, supra note 16, p. 70.

<sup>49</sup> The 1951 Convention Relating to the Status of Refugees does not cover IDPs, however, “refugee law, by analogy, can be useful in proposing rules and establishing guidelines to protect the needs of the internally displaced.” *Ibid*, p. 99.

<sup>50</sup> Office of the United Nations High Commissioner for Refugees, *Handbook, Voluntary Repatriation: International Protection* (1996). Refworld CD Rom, January 1998, 5<sup>th</sup> Edition. *Recommendations for Durable Solutions for Palestinian Refugees: A Challenge to the Oslo Framework*, supra note 24.

<sup>51</sup> 1950 Statute of the Office of the UN High Commissioner for Refugees (UNHCR). G.A. Res. 428(V), 14 December 1950. Under Article 8(c), the High Commissioner for Refugees is likewise authorized to seek permanent solutions for the problem of refugees by assisting governments and private organizations to facilitate voluntary repatriation of refugees. The UNHCR does not have a direct mandate to provide protection and seek durable solutions for IDPs, however, according to operative paragraph 3 of the UNHCR Statute, 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 UNHCR’s mandate. 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. As Kalin notes, “UNHCR policy has direct application in those situations where UNHCR is directly authorized to protect and assist internally displaced persons.” *Guiding Principles on Internal Displacement, Annotations*, supra note 16, p. 99. The UNHCR has set forth specific criteria for

third country resettlement) UNHCR considers voluntary repatriation to be the most appropriate solution.<sup>52</sup> Recent peace agreements that affirm the right of IDPs to return to their homes following the cessation of hostilities include: the *Quadripartite Agreement on Voluntary Return of Refugees and Displaced Persons in Georgia/Abkhazia*<sup>53</sup>, the *Agreement on Resettlement of the Population Groups by the Armed Conflict in Guatemala*<sup>54</sup>, the *General Peace Agreement for Mozambique (Protocol III)*<sup>55</sup>, the *General Framework Agreement for Peace in Bosnia and Herzegovina*<sup>56</sup>, the *Interim Agreement for Peace and Self-Government in Kosovo*<sup>57</sup>, and the *Agreement on a Comprehensive Political Settlement of the Cambodia Conflict*<sup>58</sup>.

The *Guiding Principles* further affirm the right of internally displaced persons to housing and property restitution. According to Principle 29,

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involvement with IDPs. See, Executive Committee of the High Commissioner's Programme, *Note on International Protection* (submitted by the High Commissioner), UN Doc. A/AC.96/815, 31 August 1993. For additional references see, *Guiding Principles on Internal Displacement, Annotations, supra* note 16, p. 99, notes 57-58.

<sup>52</sup> Executive Committee Conclusion No. 18 (XXXI) 1980, *Voluntary Repatriation*; Executive Committee Conclusion No. 40 (XXIX) 1985, *Voluntary Repatriation*.

<sup>53</sup> *Quadripartite Agreement on Voluntary Return of Refugees and Displaced Persons in Georgia/Abkhazia* (4 April 1994). Under operative paragraph 3(a) "Displaced persons/refugees have the right to return voluntarily to their places of origin or residence irrespective of their ethnic, social or political affiliation under conditions of complete safety, freedom and dignity;"

<sup>54</sup> *Agreement on Resettlement of the Population Groups by the Armed Conflict in Guatemala* (17 June 1994). Under part one, operative paragraph 1 "Uprooted population groups have the right to reside and live freely in Guatemalan territory. Accordingly, the Government of the Republic undertakes to ensure that conditions exist which permit and guarantee the voluntary return of uprooted persons to their places of origin or to the place of their choice, in conditions of dignity and safety."

<sup>55</sup> *General Peace Agreement for Mozambique (Protocol III)* (12 March 1992). Under part IV, operative paragraph (a) "The parties undertake to co-operate in the repatriation and reintegration of Mozambican refugees and displaced persons in the national territory and the social integration of war-disabled."

<sup>56</sup> *General Framework Agreement for Peace in Bosnia and Herzegovina* (14 December 1995). Under chapter one, article I, operative paragraph 1, "All refugees and displaced persons have the right freely to return to their homes of origin."

<sup>57</sup> *Interim Agreement for Peace and Self-Government in Kosovo* (13 February 1999). Under article II, operative paragraph 3, "the Parties recognize that all persons have the right to return to their homes. The Parties shall take all measures necessary to readmit returning persons to Kosovo."

<sup>58</sup> *Agreement on a Comprehensive Political Settlement of the Cambodia Conflict* (23 October 1991). Under part V, article 20, operative paragraph 1, "Cambodian refugees and displaced persons, located outside Cambodia, shall have the right to return to Cambodia and to live in safety, security and dignity, free from intimidation or coercion of any kind."

Competent authorities have the duty and responsibility to assist returned or resettled internally displaced persons with recovery, to the extent possible, of the property and possessions they left behind or were dispossessed of upon their displacement. When recovery of such property and possession is not possible, competent authorities shall assist these persons in obtaining appropriate compensation or other forms of just reparation or shall themselves provide such recompense.<sup>59</sup>

The right to property is anchored in numerous bodies of international law. The right to property is a fundamental human right under customary international law.<sup>60</sup> This right is found in the Universal Declaration of Human Rights (Article 17), the International Covenant on Economic, Social and Cultural Rights (Articles 1(2), 2(2), 11(1), 25); and the International Covenant on Civil and Political Rights (Article 5(d)(ii)).<sup>61</sup> It is also found in regional human rights treaties, including the American Convention of Human Rights (Article 21), the African Charter on Human and People's Rights (Articles 14 and 21(2)), and Protocol 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 1).<sup>62</sup>

The right to private property is also anchored in international humanitarian law. The Hague Regulations (Articles 23 and 25) contain a general prohibition against the destruction or seizure of the enemy's property, unless imperatively required by military

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<sup>59</sup> Principle 29, *Guiding Principles*, *supra* note 1.

<sup>60</sup> International Law Association, Committee on the Enforcement of Human Rights Law, Final Report on the Status of the Universal Declaration of Human Rights in National and International Law, *International Law Association, report of the Sixty-Sixth Conference*, 525, 544-549 (Buenos Aires, 1994). Cited in *Recommendations for Durable Solutions for Palestinian Refugees: A Challenge to the Oslo Framework*, *supra* note 24.

<sup>61</sup> For a more detailed analysis, see Gail J. Boling, "Absentees' Property' Laws and Israel's Confiscation of Palestinian Property: A Violation of UN General Assembly Resolution 194 and International Law," 11 *Palestine Yearbook of International Law* 73 (2000/2001). Also see, *Housing and Property Restitution for Refugees and Internally Displaced Persons: International, Regional and National Legal Resources*. Geneva: COHRE – Centre on Housing Rights and Evictions (May 2001); and, *Recommendations for Durable Solutions for Palestinian Refugees: A Challenge to the Oslo Framework*, *supra* note 24.

<sup>62</sup> *Housing and Property Restitution for Refugees and Internally Displaced Persons: International, Regional and National Legal Resources*. Geneva: COHRE – Centre on Housing Rights and Evictions (May 2001); and, *Recommendations for Durable Solutions for Palestinian Refugees: A Challenge to the Oslo Framework*, *supra* note 24. Also see, *Guiding Principles on Internal Displacement, Annotations*, *supra* note 16, p. 164.

necessity.<sup>63</sup> During hostilities and/or occupation, pillage of a town or place is prohibited (Articles 28 and 47).<sup>64</sup> The Hague Regulations (Article 46) also prohibit confiscation of private property by the occupying power.<sup>65</sup> The Fourth Geneva Convention (Article 53) prohibits any destruction of real or personal property by the Occupying Power, regardless of whether this property is owned by private persons individually or collectively, or belongs to the State, to another public authority or to social or cooperative organizations, with the sole exception where destruction is absolutely necessary by military operations.<sup>66</sup> The Fourth Geneva Convention (Article 33) also proscribes pillage and reprisals against property belonging to protected persons.<sup>67</sup>

The right to restitution is the corollary of the right to own property. Restitution is the applicable remedy whenever property has been taken illegally (as determined by international law standards) by a government or with official governmental sanction.<sup>68</sup>

“There is a trend in general human rights law, in favor of the right to restitution for the property of compensation for its loss. Regional human rights tribunals have consistently ordered compensation for victims of human rights violations in the European and Inter-

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<sup>63</sup> *Guiding Principles on Internal Displacement, Annotations, supra* note 16, p. 165. *Also see*, “‘Absentees’ Property’ Laws and Israel’s Confiscation of Palestinian Property: A Violation of UN General Assembly Resolution 194 and International Law,” *supra* note 61; and, *Recommendations for Durable Solutions for Palestinian Refugees: A Challenge to the Oslo Framework, supra* note 24.

<sup>64</sup> *Ibid.*

<sup>65</sup> *Ibid.*

<sup>66</sup> *Ibid.*

<sup>67</sup> *Ibid.*

<sup>68</sup> According to Boling, “Under international law, a doctrine exists known as the ‘Doctrine of Acquired Rights.’ This doctrine – which has solid pedigree in the jurisprudence of the Permanent Court of International Justice (as well as an even longer and equally solid pedigree in the jurisprudence of the U.S. Supreme Court) – holds that private property ownership remains unchanged despite any change in sovereignty over the territory in which the property is situated. Therefore, private property can never be ‘conquered’ by a government through war. International law is clear that private property can only be acquired through uncoerced purchase in arms-length transactions, or through governmental expropriation in procedurally adequate ‘eminent domain-type’ proceedings. For governmental expropriation to be deemed legal, fair and full compensation must be paid at the date of taking and the confiscation must be for a valid public purpose.” Gail J. Boling, Letter to the Department of State (dated 8 January 2002), Re: For the 2001 Country Report on Israel: Israel’s Massive, Ongoing Land Confiscation Practices Constitute “A Consistent Pattern of Gross Violations of Internationally Recognized Human Rights” Triggering the Aid Termination Provisions of the U.S. Foreign Assistance Act. [On file with BADIL]. *Also see*, “‘Absentees’ Property’ Laws and Israel’s Confiscation of Palestinian Property: A Violation of UN General Assembly Resolution 194 and International Law,” *supra* note 61.

American systems.”<sup>69</sup> States, moreover, have an obligation to pay compensation for breaches of their obligations under international humanitarian law (Hague Convention, Article 3; Fourth Geneva Convention, Article 148; and, Protocol I, Article 91).<sup>70</sup> “Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly,” is considered a grave breach the Fourth Convention (Article 147).<sup>71</sup> Under this provision, destruction of property protected under the Convention subjects the perpetrators to prosecution under universal jurisdiction.

Finally, the right to housing and property restitution is anchored in international refugee law. According to the UNHCR, the principles that govern durable solutions include “respect for private property and freedom of abode.”<sup>72</sup> In 2001 the UNHCR issued an explicit policy memorandum delineating policy on housing and property restitution for refugees and displaced persons.<sup>73</sup> According to the memorandum (paragraph 2) “the right to adequate housing has developed to extend to the right not to be arbitrarily deprived of housing and property in the first place. As corollary to this, refugees have the right to return not only to their countries of origin but also to recover the homes from which they were previously evicted (restitution.”<sup>74</sup> The right of refugees and IDPs to housing and property restitution is also affirmed in numerous peace agreements. These include: the *Quadripartite Agreement on Voluntary Return of Refugees and Displaced Persons* in

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<sup>69</sup> *Guiding Principles on Internal Displacement, Annotations, supra* note 16, note 368, p. 233.

<sup>70</sup> *Ibid*, p. 73. This prohibition is elaborated in article 59 of Protocol I, which provides special protection against attack for non-defended localities. Similar protection is accorded by article 60 of Protocol I to demilitarized zones. *Ibid*, p. 165.

<sup>71</sup> *Ibid*, p. 166.

<sup>72</sup> Office of the United Nations High Commissioner for Refugees (UNHCR). *Note on Voluntary Repatriation of Refugees*, submitted to the Regional Conference on Assistance to Refugees, Returnees and Displaced Persons in the Great Lakes Region. Addressing the 55<sup>th</sup> Session of the UN Commission on Human Rights (24 March 1999), UNHCR High Commissioner Sadako Ogata stated “[The] UNHCR recognizes the value of a clear legal framework that has equitable mechanisms to resolve issues such as restitution or compensation [which] will be crucial to the sustainable return of displaced people and central to any plan to heal the scars of communities riven by conflict.” Cited in “Recommendations for Durable Solutions for Palestinian Refugees: A Challenge to the Oslo Framework,” *supra* note 24.

<sup>73</sup> Office of the United Nations High Commissioner for Refugees (UNHCR). *Inter-Office Memorandum No. 104/2001*, 28 November 2001, *Field Office Memorandum No. 101/2001*, 28 November 2001.

<sup>74</sup> *Ibid*.

Georgia/Abkhazia<sup>75</sup>, the *Agreement on Resettlement of the Population Groups by the Armed Conflict in Guatemala*<sup>76</sup>, the *General Peace Agreement for Mozambique* (Protocol III)<sup>77</sup>, the *General Agreement for Peace in Bosnia and Herzegovina*<sup>78</sup>, the *Interim Agreement for Peace and Self-Government in Kosovo*<sup>79</sup>, and the *Agreement on a Comprehensive Political Settlement of the Cambodia Conflict*<sup>80</sup>.

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<sup>75</sup> *Quadripartite Agreement on Voluntary Return of Refugees and Displaced Persons in Georgia/Abkhazia* (4 April 1994). Under operative paragraph 3(g) “Returnees shall, upon return, get back movable and immovable properties they left behind and should be helped to do so, or to receive whenever possible an appropriate compensation for their lost properties if return of property appears not feasible. The Commission mentioned in paragraph 5 below will established a mechanism for such claims. Such compensation should be worked out in the framework of the reconstruction/rehabilitation programmes to be established with a financial assistance through the United Nations Voluntary Fund”

<sup>76</sup> *Agreement on Resettlement of the Population Groups by the Armed Conflict in Guatemala* (17 June 1994). Under part II, operative paragraph 8 “An essential element of the resettlement process is legal security in the holding (*inter alia*, the use, ownership and possession) of land. In that regard, the Parties recognize the existence of a general problem which particularly affects the uprooted population. One of the principle manifestations of legal insecurity is the difficulty of producing evidence of landholding rights. This situation stems, *inter alia*, from problems concerning registration, the disappearance of the files of the Instituto de Transformaci n Agraria (INTA), the institutional weakness of specialized bodies and municipalities; the existence of rights based on customary systems for the holding and surveying of land; the existence of secondary occupants or the annulment or rights on the basis of the improper application of provisions concerning voluntary abandonment.” According to operative paragraph 9 “In the particular case of abandonment of land as a result of armed conflict, the Government undertakes to revise and promote legal provisions to ensure that such an act is not considered to be voluntary abandonment, and to ratify the inalienable nature of landholding rights. In this context, it shall promote the return of land to the original holders and/or shall seek adequate compensatory solutions.”

<sup>77</sup> *General Peace Agreement for Mozambique* (Protocol III) (12 March 1992). Under par IV, operative paragraph (e) “Mozambican refugees and displaced persons shall be guaranteed restitution of property owned by them which is still in existence and the right to take legal action to secure the return of such property from individuals in possession of it.”

<sup>78</sup> *General Framework Agreement for Peace in Bosnia and Herzegovina* (14 December 1995). Under chapter one, article I, operative paragraph 1, “They shall have the right to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any property that cannot be restored to them.”

<sup>79</sup> *Interim Agreement for Peace and Self-Government in Kosovo* (13 February 1999). Under article II, “All persons shall have the right to reoccupy their real property, assert their occupancy rights in state-owned property, and recover their other property and personal possessions.”

<sup>80</sup> *Agreement on a Comprehensive Political Settlement of the Cambodia Conflict* (23 October 1991). Under Annex 4, part II, operative paragraph 4, “There must be full respect for the human rights and fundamental freedoms of all Cambodians, including those of the repatriated refugees and displaced persons, [...] These rights would include, *inter alia*, [...] the right to property.”

## Mechanisms for Implementing Durable Solutions for IDPs

National authorities have the primary responsibility for the protection of the basic rights of internally displaced persons within their borders (*Guiding Principles*, Principle 3.1).<sup>81</sup> This principle “reflects the generally recognized principle of sovereignty which as contained, *inter alia*, in Article 2(7) UN Charter, prohibits intervention in matters that are essentially within the domestic jurisdiction of any state.”<sup>82</sup> The right of internally displaced persons to request and receive protection and humanitarian assistance is the corollary of the state’s duty to provide protection and assistance to IDPs. According to Principle 3.2 of the *Guiding Principles*,

Internally displaced persons have the right to request and to receive protection and humanitarian assistance from these authorities. They shall not be persecuted or punished for making such a request.<sup>83</sup>

International protection is often required when national authorities are either unwilling or unable to protect the basic rights of internally displaced persons. Unresolved issues of UN mandate and institutional responsibility for internal displacement continue to hamper effective provision of international protection of IDPs.<sup>84</sup> No single agency is recognized as having an explicit mandate to provide international protection for internally displaced persons. State concerns about sovereignty and non-interference in internal state affairs have further impeded international efforts to resolve the problem of providing protection for IDPs. International agencies that do provide some level of protection to internally displaced are at times reluctant to do so fearing it would damage relations with government authorities and impair humanitarian programs.<sup>85</sup>

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<sup>81</sup> Principle 3.1, *Guiding Principles*, *supra* note 1.

<sup>82</sup> *Guiding Principles on Internal Displacement, Annotations*, *supra* note 16, note 368, p. 10.

<sup>83</sup> Principle 3.2, *Guiding Principles*.

<sup>84</sup> For a critical overview see, *Exodus within Borders, An Introduction to the Crisis of Internal Displacement*, *supra* note 15, pp. 49-66. Also see, The Internal Displacement Unit, UN Office for the Coordination of Humanitarian Affairs, website, <http://www.reliefweb.int/idp/>.

<sup>85</sup> *Exodus within Borders, An Introduction to the Crisis of Internal Displacement*, *supra* note 15, p. 36, 38, and 50-51.

In the absence of a single agency mandated to provide protection to internally displaced various UN agencies and other international humanitarian organizations have provided some form of protection on a case-by-case basis worldwide. This includes the Office of the UN High Commissioner for Refugees (UNHCR), the UN Development Program (UNDP), the United Nation's Children's Fund (UNICEF), the World Health Organization (WHO), and the Office of the UN High Commissioner for Human Rights (UNHCHR).<sup>86</sup> In 1990 the UNDP was delegated responsibility for coordination of relief programs for IDPs.<sup>87</sup> The UNHCR, however, has historically borne the brunt of most aid and protection to internally displaced persons. UNHCR does not have an explicit mandate to provide protection and assistance to IDPs, however, the Agency may carry out expanded functions by request of the UN Secretary General and the UN General Assembly.<sup>88</sup>

International opposition to the establishment of a new agency with a specific mandate for internally displaced and opposition to the inclusion of IDPs within the mandate of existing agencies has led to a so-called collaborative approach to international protection and assistance for the internally displaced. In 1992 the UN Commission on Human Rights requested the Secretary General to appoint a special representative for internally displaced persons.<sup>89</sup> The Special Representative focused, in particular, on the development of a doctrine specifically tailored to the needs of the internally displaced

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<sup>86</sup> For a general overview of the role of these agencies in providing international protection and searching for durable solutions for internally displaced persons see, *Exodus within Borders, An Introduction to the Crisis of Internal Displacement*, supra note 15, pp. 34-48.

<sup>87</sup> G.A. Res. 44/136 (27 February 1990).

<sup>88</sup> *Supra* note 51. For example, UNHCR has been delegated the responsibility for assisting the displaced in countries such as Sierra Leone, Angola and Azerbaijan and more recently in Bosnia-Herzegovina. *Exodus within Borders, An Introduction to the Crisis of Internal Displacement*, supra note 15, p. 35. The Palestinian IDP case appears to be somewhat unique in relation to the UNHCR mandate. According to UNHCR's revised interpretation of the status of Palestinian refugees under the 1951 Convention Relating to the Status of Refugees, 1948 internally displaced Palestinians appear to be considered as *prima facie* Convention refugees. The implications of this interpretation require additional clarification as many of the norms relating to the status of refugees in international law do not provide the same degree of protection as generally accorded by a state to its nationals. See, *Note on the Applicability of Article 1D of the 1951 Convention Relating to the Status of Refugees to the Palestinian Refugees*. UNHCR (October 2002).

<sup>89</sup> For more details on the office of the special representative for internally displaced persons see, <http://www.unhcr.ch/html/menu2/7/b/midp.htm>.

resulting in the adoption of the *Guiding Principles on Internal Displacement*.<sup>90</sup> In 1994 the UN emergency relief coordinator (ERC), created to promote a more rapid and coherent response to all emergency situations, was formally designated as ‘reference point’ for requests for assistance and protection in situations of internal displacement.<sup>91</sup> The preliminary outcome of the international debate on the UN responsibilities towards IDPs was the establishment in 2001 of a small unit within the UN Office for the Coordination of Humanitarian Affairs (OCHA).<sup>92</sup> The Unit is staffed with personnel seconded from the major humanitarian UN agencies and the NGO community and is tasked with providing expertise, training and guidance to humanitarian agencies working in IDP crises.

No single agency has an explicit mandate to provide international protection and seek durable solutions for internally displaced Palestinians in Israel and the 1967 occupied territories. The UN Conciliation Commission for Palestine (UNCCP)<sup>93</sup>, which has a protection mandate for 1948 Palestinian refugees *and* 1948 internally displaced Palestinians, ceased to provide effective international protection in the early 1950s.<sup>94</sup>

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<sup>90</sup> *Supra* note 1.

<sup>91</sup> For more on the emergency relief coordinator *see*, [http://www.reliefweb.int/ocha\\_ol/USG%20Speeches/Index.html](http://www.reliefweb.int/ocha_ol/USG%20Speeches/Index.html).

<sup>92</sup> *Supra* note 84.

<sup>93</sup> The UNCCP, comprised of the United States, France, and Turkey, was established under UN General Assembly Resolution 194(III) to assist the governments and authorities concerned to achieve a final settlement of the Palestine question, and to provide protection and promote a durable solution for displaced Palestinians. For an overview of the role of the UNCCP *see*, Terry Rempel, *The United Nations Conciliation Commission for Palestine, Protection, and Durable Solution for Palestinian Refugees*. Information & Discussion Brief No. 5. Bethlehem: BADIL Resource Center for Palestinian Refugees & Residency Rights (June 2000). For more detailed analysis *see*, David P. Forsythe, *United Nations Peacemaking, The Conciliation Commission for Palestine*. Baltimore: The Johns Hopkins University Press and the Middle East Institute, 1972; and, Neil Caplan, *Futile Diplomacy, The United Nations, the Great Powers and Middle East Peacemaking 1948-1954*. London: Frank Cass & Co. Ltd., 1997.

<sup>94</sup> The Committee noted that the conditions for return assumed under Resolution 194 had changed in the intervening years since the adoption of the resolution. In other words, the refugees were being made to pay the consequences for Israel’s obstruction. In the early 1960s, a special representative, Joseph E. Johnson, was appointed by the UNCCP to try to promote a solution to the refugee issue. Defining the fundamental considerations for durable solutions, Johnson noted that the primary focus should be on the refugees as set down in General Assembly Resolution 194. Numerous meetings were held with senior government officials in the region but no progress was made towards durable solutions for the refugees. *UNCCP 19<sup>th</sup> Progress Report*, UN Doc. A/4921 and Add.1, 13 October 1961. *UNCCP 21<sup>st</sup> Progress Report*, UN Doc. A/5545, 1 November 1963.

During the early years of operation, the UNCCP attempted to facilitate the return of Palestinian refugees displaced in 1948 primarily through intervention with Israel and preliminary technical work required to craft the return operation.<sup>95</sup> Without prejudice to the right of all refugees to return, the Commission also attempted to promote the safe return of specific groups, including divided families and religious officials.<sup>96</sup> The Commission also established a second “technical” track of mixed working committees, composed of Arab and Israeli representatives and chaired by individual UNCCP members to advance agreement on the return of refugees who owned citrus groves, along with the required laborers, in order to prevent crop loss and reduce the number of persons requiring humanitarian assistance.<sup>97</sup>

The UNCCP also attempted to facilitate restitution of refugee property through calls for reform of Israeli property laws, intervention with relevant authorities, and actual documentation of Palestinian property inside the borders of the new state of Israel. The Commission called upon Israel to abrogate discriminatory legislation, including the 1950 Absentees’ Property Law, used to confiscate refugee property.<sup>98</sup> The Commission also requested Israel to suspend all measures of requisition and occupation of Palestinian Arab

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<sup>95</sup> One of the first steps taken by the Commission was to gather basic information about the refugees (including places of origin, professional and occupational background, and living conditions), and the policies and political positions of Arab host countries and Israel. In June 1949 the Commission established a Technical Committee to investigate methods for determining refugee choices and collect information related to return, as well as resettlement, rehabilitation and compensation. The Technical Committee visited camps in Jericho, Hebron, Bethlehem, Homs, Gourard, Wavell, Anjar, and five camps in Gaza to ascertain the wishes and opinions of the refugees. Members of the Committee also consulted with experts from the American University of Beirut, former Mandate officials and other personalities in the Middle East. *See, UNCCP 3rd Progress Report*, UN Doc. A/927, 21 June 1949. The final report of the Technical Committee appears as Annex 4 to *General Progress Report and Supplementary Report of the UNCCP*, UN Doc. A/1367/Rev.1, 23 October 1951.

<sup>96</sup> *UNCCP 4th Progress Report*, UN Doc. A/922, 22 September 1949. *UNCCP 6th Progress Report*, UN Doc. 1/1255, 29 May 1950. *General Progress Report and Supplementary Report of the UNCCP*, *supra* note 95.

<sup>97</sup> *Ibid.* A small number of refugees from the villages of ‘Abasan and Khirbet Ikhza’ were permitted to cultivate their land in territory held by Israel with the creation of a special zone. In addition, a small number of refugees were permitted to rejoin families inside Israel, particularly where the breadwinner remained inside the country. In December and January 1949, for example, a total of some 800 dependents from Lebanon and Jordan rejoined their families in Israel. On 14 February of the same year, 115 persons from Gaza crossed into Israel. These refugees were regarded, however, as new immigrants rather than returnees.

<sup>98</sup> *UNCCP 4th Progress Report*, *supra* note 96.

homes, and to unfreeze *waqf* (property endowed for religious purposes under Islamic law) property.<sup>99</sup> Israel ignored these requests. The Commission attempted to secure immediate housing and property restitution for especially vulnerable groups of refugees without prejudice to refugee property claims in general.<sup>100</sup> In order to establish a comprehensive record of individual Palestinian Arab property to verify individual property claims the UNCCP conducted a global and individual identification of Palestinian property was conducted based on British mandate records.<sup>101</sup> The Commission itself and several independent experts note that the UNCCP records are problematic in several areas<sup>102</sup>, however, the records provide the most comprehensive database of Palestinian refugee and IDP property to date.<sup>103</sup>

UNRWA, the International Committee of the Red Cross (ICRC), UNDP, and other UN agencies provide case-by-case assistance to Palestinian IDPs in the 1967 occupied Palestinian territories, but there is no single international agency with an explicit mandate to provide comprehensive protection and search for durable solutions for Palestinian IDPs.

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<sup>99</sup> *Ibid.*

<sup>100</sup> This included, for example, immediate property restitution for owners of citrus groves. *UNCCP 3<sup>rd</sup> Progress Report*, *supra* note 95. *UNCCP 6<sup>th</sup> Progress Report*, *supra* note 96. *General Progress Report and Supplementary Report of the UNCCP*, *supra* note 95.

<sup>101</sup> In 1950, the Commission established a sub-office ('Refugee Office') to identify property ownership inside Israel and examine various interim measures by which refugees could derive income from their properties. Documents consulted included the microphotographs of registers of title supplemented by the original registers when the microfilm was missing or defective; Registers of Deeds; Tax Distribution Lists and, failing these, taxpayers' registers; Field Valuation Sheets, and, failing these, valuation lists and taxpayers' registers; schedule of rights (in respect of blocks for which no registers of title had been prepared); parcel classification schedules; land registrars' returns of depositions; and, village maps and block plans. Forms (RP/1) were prepared for each parcel owned by Arabs, including partnerships, companies, and cooperative societies. Separate forms (RP/3) were prepared for land owned by the state (including land let to Palestinian Arabs), other public authorities (i.e., religious bodies), Jews, and other non-Arab individuals. The UNCCP property database contains some 453,000 records documenting around 1.5 million individual holdings and is archived at the United Nations. *UNCCP 16<sup>th</sup> Progress Report*, UN Doc. A/3835, 18 June 1958. *Also see*, Sami Hadawi, *Palestinian Rights and Losses in 1948, A Comprehensive Study*. London: Saqi Books, 1988. Adnan Abdelrazek, "Modernizing the Refugee Land Records: Advantages and Pitfalls," *Reinterpreting the Historical Record, The uses of Palestinian Refugee Archives for Social Science Research and Policy Analysis*. Salim Tamari & Elia Zureik (eds.) Jerusalem: Institute of Jerusalem Studies/Institute of Palestine Studies, 2001, pp. 173-181.

<sup>102</sup> *See, e.g., Palestinian Rights and Losses in 1948, supra* note 101.

## Conclusion

This paper has provided a brief overview of the framework for durable solutions for internally displaced Palestinians under relevant UN resolutions and international law. While each case of displacement is unique, there is no reason why the same principles governing durable solutions for other IDP populations around the world – i.e., voluntary return, housing and property restitution, and compensation – should not also be applied in crafting durable solutions for internally displaced Palestinians. Palestinian IDPs, however, are subject to multiple forms of marginalization. As with other IDPs worldwide, they experience general marginalization due to the shortcomings in the institutional setup and legal framework for international protection of IDPs. Internally displaced Palestinians inside Israel are further marginalized as members of a non-Jewish minority in a ‘Jewish state.’ Internally displaced Palestinians in the 1967 occupied Palestinian territories are further marginalized by Israel’s illegal and protracted occupation and the absence of a state that is obligated, able, and willing to provide national protection. Generally, Palestinian IDPs have been marginalized due to the exclusion of the issue of internally displaced persons from the Oslo/post-Oslo political process.

Given the degree to which Palestinian IDPs (and refugees) have been marginalized from the legal framework governing durable solutions for displaced persons worldwide, effective implementation of relevant principles of international law obviously requires an effective political strategy. The remaining part of this paper attempts to draw some concluding observations on possible strategies.

Awareness-Raising and Advocacy Using the *Guiding Principles*: The *Guiding Principles on Internal Displacement* are a useful tool, not only because they delineate the specific rights of IDPs, but also because they can be used as a tool for education/awareness-raising and lobbying national authorities and international actors. The specific value of using the *Guiding Principles* in the Palestinian case is that they provide an avenue to

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<sup>103</sup> More recent studies that attempt to compensate for errors in the UNCCP records, for example, estimate the total amount of refugee land at 17,178 sq. km. Salman Abu Sitta, *The Palestinian Right to Return*:

address Palestinian displacement in the context of the universal principles that apply to all other IDPs worldwide. The IDP Database Project<sup>104</sup>, in collaboration with the Office of the Special Representative to the Secretary General on Internal Displacement, and the Office of the High Commissioner for Human Rights, has developed a series of five *training modules* targeting national authorities, non-governmental organizations, UN staff and IDPs themselves.<sup>105</sup> The modules are based around a series of short lectures, extensive group exercises, group discussions, and plenary sessions.<sup>106</sup> Using the modules, workshop participants are provided with an introduction and background to the *Guiding Principles* as well as their legal background and standing, detailed analysis of protection provisions relevant to the specific country situation of IDPs themselves, discussion of regional application of the *Guiding Principles*, and concrete measures for better implementation at the national and regional level.<sup>107</sup> Palestinian IDP associations and initiatives should consider inviting the Global IDP Project to hold training workshops in 1948 Palestine/Israel. The *Guiding Principles*, which are available in Arabic, should be disseminated widely; they should also be translated into Hebrew.

The *Guiding Principles* could also be used as a framework to encourage UN agencies (including the UNHCR, UNRWA, UNHCHR, and the UN Internal Displacement Unit-OCHA), based on the inter-agency collaborative approach established by the United Nations in response to IDPs worldwide, to initiate inter-agency discussions to determine the most effective approach to day-to-day protection for internally displaced Palestinians (in addition to externally displaced refugees). In particular, these agencies should closely monitor the status of IDPs in any future agreements between the PLO and Israel. Durable

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*Sacred, Legal and Possible*. 2<sup>nd</sup> Revised Edition. London: The Palestinian Return Centre, 1999, p. 17.

<sup>104</sup> *Supra* note 6.

<sup>105</sup> The modules can be downloaded from the Internal Displacement Unit, UN Office for the Coordination of Humanitarian Affairs, *supra* note 83.

<sup>106</sup> Previous workshop reports are available at the website of the the Internal Displacement Unit, UN Office for the Coordination of Humanitarian Affairs, *supra* note 83.

<sup>107</sup> *Internally Displaced People, A Global Survey*, *supra* note 5. Since the first workshop, held in Uganda in 1999, the Global IDP Project has organized more than 12 workshops across Africa, Asia, the former Soviet Union and Latin America. Specialized sessions could include the government's IDP policy, advocacy possibilities when the *Guiding Principles* are not adhered to, review of relevant national legislation, and ways of implementing protection activities.

solutions, including the right of return, and housing and property restitution, for Palestinian IDPs should be addressed within same international legal framework and mechanisms as Palestinian refugees and all other refugee and IDP cases worldwide.<sup>108</sup>

Information and Dissemination: Information on the current status of Palestinian IDPs, including the number of IDPs, housing and property claims, and issues related to day-to-day protection needs (i.e., housing, employment, etc.) is characterized by uneven quality and uncertainty. International and local human rights NGOs should address the specific situation of internally displaced Palestinians, as a particularly vulnerable category of the Palestinian people. This includes systematic documentation of human rights violations, education, health, employment status, and other socio-economic indicators specific to IDPs. Special attention should focus on arbitrary deprivation of property. Local NGOs and IDP associations should also spear-head efforts, in coordination with international organizations, for the establishment of a comprehensive registration system for internally displaced persons, followed by a comprehensive field survey on the current status of IDPs. International organizations should provide political, capacity building, and financial support to IDP associations and initiatives working to raise awareness and lobbying for durable solutions for internally displaced Palestinians.

An interesting example of a potentially effective information tool is the *Database of Bhutanese Refugees* prepared by the Association of Human Rights Activities in Bhutan.<sup>109</sup> The database provides documentary evidence on Bhutanese refugees, including identification documents, land titles, history of displacement, and current location.<sup>110</sup> Using a digital version of the database as a lobby tool, Bhutanese refugees are seeking verification of their claims of Bhutanese origin and nationality according to

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<sup>108</sup> Critical attention should be given to peace plans and proposals that suggest to solve the Palestinian refugee question on the expense of the right to return and property restitution of Palestinian citizens, including IDPs in Israel, e.g. "land swaps" and refugee resettlement on IDP lands.

<sup>109</sup> *Database of Bhutanese Refugees*, Part I, Documented and Produced by the Association of Human Rights Activists (AHURA), Bhutan (March 2000).

<sup>110</sup> Part I of the database covers the status of approximately half of the total estimated Bhutanese refugee population of 90,000.

accepted norms of international law, and demanding early repatriation to their homes in Bhutan with guarantees of full restitution of their property.<sup>111</sup>

Networking with other IDP Associations and Initiatives: The Bhutanese project raises a third element of strategy, which is networking. Palestinian IDPs are among millions of internally displaced persons worldwide struggling to return to their homes of origin. While the experience of each IDP case is unique, individual aspects of the Palestinian IDP experience, from expulsion, land expropriation, house demolition, absence of domestic legal remedies, etc, are similar to the experience of other IDPs. Palestinian IDPs should examine the possibility of establishing links with IDP associations and initiatives in other countries in order to learn and transmit experience in awareness-raising and lobbying, and to engage in collective efforts for the realization of IDP rights, including return and housing and property restitution. In Guatemala, for example, displaced persons formed a National Council for the Displaced in 1989 to assist families in obtaining land and housing. The Guatemalan case is particularly interesting due to the degree to which refugees and IDPs themselves negotiated the terms of return and restitution directly with the Guatemalan government. Other examples of IDP self-participation include the Coalition for Return, a multi-ethnic movement of displaced persons established in Bosnia-Herzegovina in 1996, and the displaced associations established in Peru in the early 1990s with a membership of some 45,000 person.<sup>112</sup> In addition to providing basic information about the global problem of internal displacement, and training for IDPs, national authorities and others on the *Guiding Principles*, the Global IDP Project should also consider mechanisms to facilitate partnerships between IDP associations and initiatives worldwide.

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<sup>111</sup> *Ibid.*

<sup>112</sup> For more details *see*, the Global IDP Database *supra* note 6.

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