

60 Years of Universal Human Rights – 60 Years of *Nakba*
Palestinian Refugee Rights and International Law Today

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The Nakba: Memory, Reality and Beyond

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by

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I. Note of Introduction¹

In the fall of 1948, as the Palestinian *Nakba* continued to unfold, the United Nations was drafting a universal declaration of human rights at the Palais de Chaillot in Paris. Describing the Palestinian refugee crisis from Beirut, the UN's director of relief compared the situation to one in which some "100,000,000 destitute Americans" would suddenly have to rely on "outside help".² In light of the news from Palestine, the Saudi representative told fellow diplomats that, "It would be useless for the Committee to devote its time to the drafting of a declaration of human rights, while at the same time allowing thousands of human beings to perish".³ The committee agreed and decided to devote part of its time to develop a plan to address the immediate needs of the refugees in the Middle East.

The Palestinian refugee crisis continued to occupy the minds of those drafting the human rights declaration throughout the remaining months of 1948 and eventually led to "significant changes" in the declaration itself.⁴ Wrapping up discussion on the right to leave any country, including one's own, the UN committee approved a Lebanese motion to "strengthen" that right by adding "the assurance of the right to return".⁵ On 10 December 1948, the General Assembly put its stamp of approval on the *Universal Declaration of Human Rights*. The following day, the Assembly adopted Resolution 194 on the Palestinian refugees:

Resolv[ing] that the refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or the authorities responsible.⁶

Member states that voted in favor of the resolution, characterized it as a "practical and realistic"⁷ solution to the conflict. Israel and the Arab states disagreed. Israeli officials held that the best solution for the refugees was to resettle them in the Arab states where they had found refuge during the war. For Arab officials, the solution lay in their return and in Israeli withdrawal from Palestinian land it had acquired by force.

Sixty years later, the debate continues over what constitutes a practical and realistic solution to the conflict between the state of Israel and the Palestinian people, and, in particular, the situation of Palestinian refugees. 2008 marks the 60th anniversary of the Palestinian *Nakba*. It also marks 60

¹ This section is based on the introduction to *Rights in Principle, Rights in Practice: Revisiting the Role of International Law in Crafting Durable Solutions for Palestinian Refugees*, Terry Rempel (ed), BADIL Resource Center, forthcoming.

² 'UN relief supplies on way to Palestine refugee camps', United Nations Press Release, PAL/322, Oct. 1, 1948.

³ Mr Baroody (Saudi Arabia), UN GAOR, 3rd Sess., 3rd Comm., 109th Mtg., Oct. 20, 1948, 209. Baroody would later be instrumental in drafting provisions covering the status of Palestinian refugees under the 1951 Convention Relating to the Status of Refugees.

⁴ Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2001), 153.

⁵ Mr Azkoul (Lebanon), UN GAOR, 3rd Sess., 3rd Comm., 120th Mtg., Nov. 2, 1948, 316. 33 members endorsed the amendment and 8 abstained.

⁶ See, GA Res. 194 (III), UN GAOR, 3rd Sess., UN Doc. A/RES/194 (1948). See also, UNCCP, *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 (1950).

⁷ See, e.g., Mr Hood (Australia), UN GAOR, 3rd Sess., 184th Plenary Mtg., Dec. 11, 1948, 936. See also, comments of Mr McNeil (United Kingdom) referring to the resolution as a 'reasonable, just and workable solution'. *Id.*, 948. The resolution was adopted by a vote of 35 to 15 with 8 abstentions.

years since the adoption of the Universal Declaration of Human Rights, which is celebrated by the United Nations under the slogan 'Dignity and Justice for All of Us'. That includes Palestinian refugees.

Palestinian refugees who were so intimately present in the minds of the drafters of the Universal Declaration of Human Rights, however, have seen neither dignity nor justice. They have rather continued to live in circumstances which they describe as the *ongoing Nakba*, i.e., a situation where the homeland is destroyed and all return and reparation denied by the state of Israel, and where protracted refugee-hood is compounded with statelessness. The *ongoing Nakba* also stands for the repeated frustration of the efforts of hundreds of thousand refugee families to regain personal security and stability, and a political role in shaping their future, in the West Bank and Gaza Strip, Lebanon, Jordan, Syria, Egypt, the Arab Gulf and other places of exile. It stands for the devastating experience of repeated forced displacement from/in host countries, most recently in Iraq and Lebanon - with nowhere to go, and the fact that Israel has displaced more Palestinians in Israel and the 1967 Occupied Palestinian Territory (OPT) every year since the *Nakba* of 60 years ago. Israel's siege and collective punishment since 2007 of the Palestinian population in the Gaza Strip, most of them 1948 refugees, has been termed a "prelude to genocide"⁸ and added a new dimension to the *ongoing Nakba* of the Palestinian people.

Hisham* is a Palestinian refugee. During the Nakba of 1948, his parents were forced to flee their home and country, Palestine, that became part of the state of Israel. Their search for shelter and safety led them to Egypt. Hisham was born in Egypt, but lived there only the first three months of his life, as his family moved on to Saudi Arabia, where work promised stability and a future. Hisham grew up in Saudi Arabia, where Palestinians – like other foreigners – can only temporary residency linked to employment. After the 1991 Gulf War, accompanied by large-scale eviction of Palestinians from the Arab Gulf countries, Hisham moved on to Europe and arrived in Sweden. Four years later, he married a Russian woman. The couple had two children, a one-year-old son and a newborn baby-girl. when they applied for asylum in Sweden. The Swedish authorities denied their application and decided to deport his wife to Russia via Finland. His little son was to be deported to Finland, despite the parents' wish to keep the boy with the father in Sweden. Hisham was instructed to return to Saudi Arabia. The Swedish authorities discovered subsequently that it was impossible to deport the Palestinian father, because he had no right to enter Saudi Arabia under Saudi law and no other state would accept him. In 2004, the Swedish Refugee Ombudsman submitted a complaint to the European Court of Human Rights in Strasbourg on their behalf. By 2005, the family continued to live in Sweden without legal status awaiting the outcome of their case in court.⁹

In the course of 60 years, and expressed in numbers, Palestinians have become the largest and longest standing case of displaced persons. By mid-2007, approximately 70 percent of the Palestinian people (10.1 million) were (descendants of) refugees or internally displaced persons (IDP), including:¹⁰

- 6 million refugees of 1948
- 950,000 refugees of 1967
- 338,000 IDP inside Israel (i.e., one quarter of Israel's Palestinian citizens)
- 115,000 IDP in the OPT from 1967 to 2007.

⁸ See, for example, Prof. Richard Falk, University of Princeton, appointed UN Special Rapporteur on Human Rights in the OPT in 2008; see for example: electronicintifada.net, 21 January 2008; also: www.transnational.org/Area_MiddleEast/2007/Falk_PalestineGenocide.html

⁹ * Real name protected for privacy. From: *Closing Protection Gaps. Handbook on Protection of Palestinian Refugees in States Signatories of the 1951 Refugee Convention*. BADIL, 2005; p. 223.

¹⁰ See: *Survey of Palestinian Refugees and Internally Displaced Persons 2006-2007*. BADIL, 2007; Chapter One. All figures are estimates.

By 2008, it is estimated that at least 266,442 Palestinians in 78 communities in the OPT are currently at risk of being displaced.¹¹ In the Gaza Strip, Israeli military operations caused the temporary forced displacement of over 50,000 – mainly Palestinian refugees - between 2000 and 2004 alone.¹²

Resolving the conflict over Palestine/Israel, including the plight of the Palestinian refugees, has become, in the words of international law expert and the former UN Special Rapporteur for Human Rights in the Occupied Palestinian Territory, a test par excellence for the commitment of the West to the basic rights and fundamental freedoms codified in international law.

Human rights in Palestine have been on the agenda of the United Nations for 60 years; and more particularly for the past 40 years since the occupation of East Jerusalem, the West Bank and the Gaza Strip in 1967. [...] There are other regimes, particularly in the developing world, that suppress human rights, but there is no other case of a Western-affiliated regime that denies self-determination and human rights to a developing people and that has done so for so long. This explains why the OPT has become a test for the West, a test by which its commitment to human rights is to be judged. If the West fails this test, it can hardly expect the developing world to address human rights violations seriously in its own countries, and the West appears to be failing this test. [...] If the West, which has hitherto led the promotion of human rights throughout the world, cannot demonstrate a real commitment to the human rights of the Palestinian people, the international human rights movement, which can claim to be the greatest achievement of the international community of the past 60 years, will be endangered and placed in jeopardy.¹³

II. Law and Politics – Why has the Palestinian refugee question remained unsolved? Why do Palestinian refugees lack effective protection?

1. Root Causes: Israel's regime over the Palestinian people has remained a regime of apartheid, colonization and belligerent occupation with the purpose to oppress, dispossess and displace Palestinians.¹⁴

The sources of Israel's regime are found in the racist ideology of late 19th century European colonialism which was adopted by the dominant stream of the Zionist movement (World Zionist Organization, Jewish Agency, Jewish National Fund, a.o.) in order to justify and recruit political support for its colonial project of an exclusive Jewish state in Palestine (i.e. in the area of current Israel and the OPT). Thus, secular political Zionism translated ancient religious-spiritual notions of Jews as “a chosen people” and of “Eretz Israel” into an aggressive and racist, political colonial program, which - based on the doctrine that Jews were a nation in political terms with superior claims to Palestine - called to “redeem” Palestine, which was declared to be “a land without people.”¹⁵

¹¹ Palestinian grassroots Anti-Apartheid Campaign, Ma’an Development Center, *Threatened Villages: Palestinian population centres between isolation and expulsion*: www.stopthewall.org/downloads/pdf/ThreatenedvillagesFS.pdf

¹² Human Rights Watch, *Razing Rafah: Mass House Demolitions in the Gaza Strip*, October 2004.

¹³ UNHRC. *Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967, John Dugard*, Commission on Human Rights, 4th Sess., Item 2 of the Provisional Agenda, UN Doc. A/HRC/4/17 (2007), para. 63.

¹⁴ From: “United Against Apartheid, Colonialism and Occupation. Dignity and Justice for the Palestinian People”: Palestinian civil society's strategic position paper for the Durban Review Conference; BNC, October 2008.

¹⁵ Such religious-spiritual notions were shared by Jews for thousands of years, but it took European colonialism to

Realization of this racist project was pursued with the support of Western imperial powers (especially Britain and the United States) and later the United Nations, through a policy and practice of colonization and population transfer (“ethnic cleansing”) whose main features were the massive settlement of Jewish immigrants in Palestine and the transfer of a majority of the indigenous Arab population.¹⁶ The Zionist project of planned ethnic cleansing started well before the break of the armed conflict of 1948¹⁷, but it was mainly accomplished during and in the guise of that armed conflict: 750,000 – 900,000 indigenous Palestinians were forcibly displaced and some 500 Palestinian communities depopulated by Zionist militias and – as of 15 May 1948 – by the army of the State of Israel, in order to make space for the new state on 78 percent of pre-war Palestine.

The State of Israel has inherited and institutionalized the racist ideology and practice of the early Zionist movement. Since 1948, Israeli legislators and governments, in conjunction with the Zionist organizations and their subsidiaries, have established and developed a regime of institutionalized racial discrimination that caters to the interest and advantage of the dominant group (see below) and maintains the inferior status of the indigenous Palestinian people and oppresses them systematically:

- Racial discrimination against the indigenous Palestinian people was formalized and institutionalized through the creation by law of a “Jewish nationality”, which is distinct from Israeli citizenship; no “Israeli” nationality exists. The 1950 *Law of Return* is an effective nationality law, because it entitles all Jews and Jews only to the rights of nationals, namely the right to enter “*Eretz Israel*” (Israel and the OPT) and immediately enjoy full legal and political rights. “Jewish nationality” under the *Law of Return* is extraterritorial in contravention of international public law norms pertaining to nationality.¹⁸ It includes Jewish citizens of other countries, irrespective of whether they wish to be part of the collective of “Jewish nationals”, and excludes “non-Jews” (i.e., Palestinians) from nationality rights in Israel.¹⁹
- The 1952 *Citizenship Law*²⁰ was passed in order to regulate the acquisition of Israeli

translate these into a political movement. Non-European Jews did not start such a movement. Like other colonial movements, religious concepts were exploited for this purpose.

¹⁶ Unlike other colonial enterprises which pursued the exploitation of indigenous labor, the purpose of Zionist settler-colonialism has been to reduce the need for the indigenous Palestinians and to get rid of them. See for example: Nur Masalha, *Expulsion of Palestinians: The Concept of 'Transfer' in Zionist Political Thought, 1882 – 1948*. Institute for Palestine Studies, 1992; and, Ilan Pappé, *The Ethnic Cleansing of Palestine*. Oneworld Publications, 2006.

¹⁷ Armed conflict between Zionist militias and local Palestinian forces had started immediately after the UN had recommended to partition Palestine in November 1947 (UN General Assembly Resolution 181); approximately 300,000 Palestinians were already displaced by the time the State of Israel was declared and international armed conflict started in May 1948. See: BADIL *Survey of Palestinian Refugees and IDPs 2006-2007*, Chapter 1.

¹⁸ Thus, for example, former Israeli Prime Minister Golda Meir explained: “the frontier [of Israel] is where Jews live, not where there is a line on the map.” In: Sou'ad A. Dajani, *Ruling Palestine: A History of the Legally Sanctioned Jewish-Israeli Seizure of Land and Housing in Palestine*, Center on Housing Rights and Evictions (COHRE) and BADIL, 2005, p.72.

¹⁹ Palestinians are not expressly identified as a racial/national group in laws and public documents of the State of Israel. Palestinians are designated by the term “persons outside the scope of the Law of Return” in Israel's laws. Other designations used by the administration, Israel's Central Bureau of Statistics and the official media are “minorities” or “Arabs”. Such designations reflect the denial of Palestinians as a national group and serve to hide the discriminatory character of Israeli laws and policies. For detailed legal analysis see, for example: W. Mallison, “The Zionist-Israel juridical claims to constitute ‘the Jewish people’ nationality entity and to confer membership in it. Appraisal in public international law”, 32 *George Washington Law Review*, 1964, pp 983 – 1075; also: Roselle Tekiner, “Race and the Issue of National Identity in Israel”, *Journal of Middle East Studies*, 23 (1991), 39 – 55; and, Adalah, “Institutionalized Discrimination Against Palestinian Citizens of Israel”, Report to 2001 WCAR, Durban, August/September 2001.

²⁰ In the official Israeli translation, this 1952 Law is wrongly entitled “Law of Nationality.”

citizenship by Jews and non-Jews. This legal framework has created a discriminatory two-tier legal system whereby Jews hold nationality and citizenship, while the remaining indigenous Palestinian citizens hold only citizenship.²¹ Under Israeli law the status of Jewish nationality is accompanied with first-class rights and benefits which are not granted to Palestinian citizens.

- Return of Palestinian refugees and IDPs has been prevented by means of force and legislation on racist grounds, i.e. simply because they are not Jews: Palestinian refugees were excluded from entitlement to citizenship in the State of Israel under the 1952 *Citizenship Law*. They were “denationalized” and turned into stateless refugees in violation of the law of state succession. Land and other property of these refugees and IDPs have been confiscated by the State of Israel, and approximately 500 depopulated Palestinian villages were destroyed in an operation termed “cleaning the landscape” that lasted until the 1960.²² The approximately 150,000 Palestinians who remained in Israel after the 1948 Nakba were placed under a military regime (1948 – 1966) similar to the regime currently in place in the OPT.

Since 1967 the state of Israel has extended its colonial apartheid regime to the OPT in the guise of belligerent occupation:

- Parts of the occupied West Bank, including eastern Jerusalem, were annexed immediately after the 1967 war in violation of international law, and revocation of the permanent resident status of Palestinian inhabitants of the city is ongoing under Israel's civil law.
- In particular since the 1993 Oslo Accords, Israeli domestic (civil and criminal) law has been applied to Jewish civilians (“nationals”) and colonies²³ in the remaining OPT, while a repressive military regime²⁴ governs the IHL protected Palestinian population living under occupation. This two-tier legal system has institutionalized racial discrimination against the Palestinian population in the OPT and served as the engine of Jewish colonization of the remaining territory (22 percent) of historic Palestine, denial of return of the 1967 refugees, and further transfer of the indigenous Palestinian population in the guise of protracted military occupation.²⁵ As observed by independent UN experts and human rights mechanisms, Israel's occupation regime shows many of the extreme forms of oppression that are the features of apartheid, including, among others, segregation, murder (extra-judicial killings, “targeted assassinations”), torture or cruel inhuman treatment (incl. house demolition), arbitrary arrest and illegal imprisonment, and deliberate imposition of living conditions calculated/likely to cause physical destruction in

²¹ Roselle Tekiner, "Race and the Issue of National Identity in Israel".

²² Aron Shai, “The Fate of Abandoned Arab Villages in Israel, 1965 -1969” in: History and Memory, Vol. 18, issue #2 (Fall 2006), University of Indiana Press. See also: Meron Benvenisti, *Sacred Landscape: the Buried History of the Holy Land*, Berkeley: The University of California Press, 2000; Walid Khalidi, “Why Did the Palestinians Leave, Revisited.” *Journal of Palestine Studies*, 134:2 (1995); Slaman Abu Sitta, *Atlas of Palestine 1948*, Palestine Land Society, December 2004; Ilan Pappé, *The Ethnic Cleaning of Palestine*.

²³ **The Israeli Parliament has issued legislation which extends Israeli law to the OPT as a matter of extraterritorial jurisdiction**, for example: *Emergency Regulations (Offense Committed in Israeli-Held Areas) Ordinance*, the *Knesset Election Law of 1969*, the *Income Tax Ordinance of 1978*, the *Value Added Tax of 1978*, a.o. Palestinian courts still rendered judgments against Jewish settlers under civil and criminal law prior to the 1993 Oslo Accords, the jurisdiction of Israeli. **Under the Oslo Accords and subsequent interim agreements between Israel and the PLO, however, jurisdiction over Jewish persons and settlements in the OPT was granted to the State of Israel and its courts in violation of international law**. Since then the scope of extension of Israeli law into the OPT has increased massively.

²⁴ A regime based on a myriad of Israeli military orders and remnants of Ottoman, British, Jordanian and Egyptian law and regulations.

²⁵ Historical records confirm that the 1967 occupation, including establishment of the military government there, was premeditated with the aim to “complete the unfinished business of 1948”. See, for example: Tom Segev, *1967. Israel, the War, and the Year that Transformed the Middle East*, Metropolitan Books, 2007, p. 458.

whole or in part.²⁶

2. The Divorce of law and justice from politics and peacemaking: Western diplomacy has been complicit in Palestinian displacement for over six decades and prevented rights-based durable solutions and reparation.

Prior to 1948, protection from arbitrary forced displacement and the rights of displaced persons were enshrined in or derived from customary international law that regulated the relations of states.

- Under the *Law of Nations* the status of residents of an area or country shall not be affected by the succession of states; habitual residents, including those displaced during state succession, are to be granted the nationality of the successor state.
- Under the *Hague Regulations concerning the Laws and Customs of War on Land* (1907) which applies to situations of armed conflict and became known later as international humanitarian law (IHL), arbitrary interference in life and property, including looting and expulsions, of civilians was prohibited, and belligerent states were responsible for the acts of their armed forces and liable to pay compensation.

A turning point for refugee rights came with the close of WWII, the fall of the Nazi regime and the establishment of the United Nations, when new international law was codified to strengthen the rights of people and the obligations of states towards the person.

- The *Charter of the United Nations* (1945) prohibits acquisition of territory by force and affirms the right of peoples to self-determination.
- The *Universal Declaration of Human Rights* (1948) codified a set of fundamental human rights which are held by all people, including refugees. These rights include the right to be treated equal under the law, the rights to own property and establish a family, the right to a nationality, freedom of movement and residency in one's country and the right to return to it, and the right to an effective remedy for acts violating such fundamental rights.
- The *Fourth Geneva Convention* (1949) and its additional *Protocol* of 1967 strengthened the obligation of parties in armed conflict to protect the fundamental human rights of civilians. Under modern international humanitarian law, individual or mass forcible transfer of civilians by the occupying power are prohibited, while civilians temporarily evacuated for reasons of security or military necessity must be permitted to return as soon as hostilities in the respective area have ceased. Grave breaches of the Convention were defined as war crimes.

The powerful Western alliance of states, winners of WWII, were the engine of modern international human rights and humanitarian law and the establishment of the United Nations. The same states set up the *International Military Tribunal* (Nuremberg, 1945 -1949), which punished the perpetrators of the atrocities committed under the Nazi regime and led to the adoption of principles (1950) that set standards for modern definitions of war crimes and crimes against humanity, accountability of perpetrators and the right of victims to remedy and reparation.

While deeply involved in the concurrent crisis in the Middle East, the same powerful Western states, the United Nations and modern international law, however, failed their test in Palestine and betrayed the Palestinian people. Zionist colonization and Israel's population transfer were endorsed for the sake of perceived strategic interests in the region:

²⁶ See for example, UN Special Rapporteur, Prof. John Dugard: *Human Rights Situation in Palestine and other Occupied Arab Territories*, A/HRC/4/17 (29 January 2008); A/HRC/7/17 (21 January 2008).

- In 1947, the United Nations takes up the "Question of Palestine" in order to determine the future status of the territory after the withdrawal of the British Mandate. Requests by Arab states to discuss independence of Palestine as a possible option are rejected, as well as their requests for an advisory opinion from the International Court of Justice (ICJ). The UN General Assembly rather appoints a Special Committee (UNSCOP) to formulate recommendations. The majority of the Committee members – all Western states and their allies - support the partition of Palestine into two states, one Arab and the other Jewish, although they concede that,

"[w]ith regard to the principle of self-determination, [...] it was not applied to Palestine, obviously because of the intention to make possible the creation of a Jewish National Home there. Actually, it may well be said that the Jewish National Home and the *sui generis* Mandate for Palestine run counter to that principle."²⁷

- On 29 November 1947, the UN General Assembly adopts Resolution 181 recommending the partition of Palestine into two states, one Arab and one Jewish, and an international regime for Jerusalem, against the express wishes of the indigenous Palestinian population and Arab states in the region. Although Jews constitute less than one-third of the population and own no more than 7% of the land, the proposed Jewish state is allotted 56% of Palestine; almost half of the population of the proposed Jewish state consists of Palestinian Arabs. Partition is adopted irrespective of the prescient warnings of the minority of UN member states that:
- "Future peace and order in Palestine and the Near East generally will be vitally affected by the nature of the solution decided upon for the Palestine question. In this regard, it is important to avoid an acceleration of the separatism which now characterizes the relations of Arabs and Jews in the Near East, and to avoid laying the foundations of a dangerous irredentism there, which would be the inevitable consequences of partition in whatever form. [...] Partition both in principle and in substance can only be regarded as an anti-Arab solution. The Federal State, however, cannot be described as an anti-Jewish solution. To the contrary, it will best serve the interests of both Arabs and Jews."²⁸
- 11 May 1949 - the UN General Assembly resolves that "Israel is a peace-loving State which accepts the obligations contained in the Charter and is able and willing to carry out those obligations" and approves Israel's membership in the United Nations without conditions.²⁹

For the purpose of the United Nations and its dominant members states, Palestine and the Palestinian people had thus disappeared. True, UN member states had affirmed earlier on, in UN General Assembly Resolution 194 (December 1948), the right of Palestinian refugees to return to their homes, repossess their properties and receive compensation for damages, but Palestinians had by then "become an indistinct mass of refugees – not a nation, not a political entity, only a problem, and not a major one at that."³⁰ Subsequent UN-led peace efforts in Lausanne and Paris in the early 1950s failed to bring about a peace agreement between Israel and Arab states and refugee return, mainly because the United States and its allies lacked political will to pressure Israel to respect international law and UN Resolution 194.

²⁷ Report of the UN Special Committee on Palestine, *The Question of Palestine*. UN Doc. A/364, 3 September 1947, paragraph 176.

²⁸ *ibid*, Chapter VII Recommendations (III), paragraphs 10 and 11.

²⁹ A/RES/273 (III) of 11 May 1949.

³⁰ Kathleen Christisson, *Perceptions of Palestine. Their Influence on U.S. Middle East Policy*: University of Californian Press, 1999; p. 94.

The same policy pattern has prevailed since then. Although, for example, a UN Security Council resolution of 1967 resolved that Palestinians displaced as a result of the 1967 Arab-Israeli war should be permitted to return (SCR 237) and the General Assembly affirmed in 1974 that the Palestinian people holds inalienable rights to self-determination and refugee return (A/Res/3236), no serious efforts have been undertaken to enforce such resolutions. Since 2004, the advisory opinion of the International Court of Justice, which requires that Israel dismantle its illegal Wall in the OPT and grant reparation to the victims, has been met with the same attitude.

Recent US-led international peace efforts, in particular since the 1990s, have undermined – rather than protected – the rights of displaced Palestinians, in particular the right to return as part of voluntary durable solutions and reparation. In this politically-driving paradigm, international law is handled as an impediment, rather than a tool for peacemaking. Law is replaced by the notion of the “needs of the parties” that must be addressed, and Israel’s “need for a Jewish state” provides the frame in which the solution for Palestinian refugees must be accommodated. In this politically-driven approach, Palestinian refugees and their right to return to their homes and properties are an “obstacle” to peace, and the notion of peace is divorced from law and justice.³¹

3. “The Protection and Accountability Gap”: Western states' complicity with Israel's regime of apartheid, colonization and occupation undermines effective application of existing instruments and mechanisms of international human rights, humanitarian and criminal law.

Based on the recognition of the fact that, in practice, human rights are meaningful only if they are respected and implemented by states, numerous additional legal instruments and mechanisms have been developed since the 1960s, in order to improve state practice:

- International human rights conventions, such as the *Convention on the Elimination of Racial Discrimination* (1965), the *Covenant on Civil and Political Rights* (1966), the *Covenant on Social, Economic and Cultural Rights* (1966), the *Convention on the Elimination of Discrimination against Women* (1979), the *Convention against Torture* (1984) and the *Convention on the Rights of the Child* (1989), oblige states to abstain from all discrimination on grounds of nationality, ethnicity, political opinion, religion or gender, prohibit the forcible displacement of persons, and provide effective remedies to refugees and displaced persons, including return to their homes, repossession of property and compensation.
- New guidelines were adopted by UN member states, such as the *Guiding Principles on Internal Displacement* (1998), the *Guiding Principles on Housing and Property Restitution of Refugees and Displaced Persons* (2005), and the *Guiding Principles on the Right to a Remedy and Reparation* for victims of gross violations of international human rights and humanitarian law (2005).
- Prosecution of war crimes and crimes against humanity, including forcible population transfer (“ethnic cleansing”) were strengthened through the *Convention on the Prevention and Punishment of the Crime of Genocide* (1948), the *Convention on the Prevention and Punishment of the Crime of Apartheid* (1973) and the *Rome Statute* of the International Criminal Court (2002).

Although people worldwide continue to suffer forcible displacement, in particular in the context of new armed conflicts, and although many states remain reluctant to meet their legal obligations,

³¹ From: *Rights in Principle, Rights in Practice: Revisiting the Role of International Law in Crafting Durable Solutions for Palestinian Refugees*, Terry Rempel (ed), BADIL Resource Center, forthcoming.

millions of refugees and displaced persons have benefited from these new standards. International efforts at resolving refugee crises have been guided by them, and millions of refugees and displaced persons – from Afghanistan, the Balkans, Central America, East Timor, Rwanda and elsewhere - have returned home and obtained – albeit often only partial – remedy, such as housing and property restitution and rehabilitation. In some cases, tribunals were established, mainly as a result of the diplomatic and economic pressure of powerful Western states, in order to prosecute the perpetrators of international crimes and give strength to the rights and claims of the victims.

Palestinian refugees, however, have benefited from these new international instruments and mechanisms only in theory, but not in practice. With “Middle East peacemaking” led by the United States and its allies outside the framework of the United Nations and with the UN Security Council dominated by the same players, the United Nations has become a "house divided" over Israel and the Palestinian people.

Human rights bodies of the General Assembly and the Assembly itself have repeatedly affirmed the right of Palestinian refugees to return to their homes and properties and denounced Israel's violations of human rights and humanitarian law.

- Since 1998, for example, the Committee reviewing Israel's performance under the *Covenant on Economic, Social and Cultural Rights* (CESCR) has noted with grave concern that Israeli laws (1950 Law of Return, 1952 Citizenship Law, 1952 Status Law/World Zionist Organization) constitute an “institutionalized form of discrimination” where persons of “Jewish nationality” under Israeli law receive exclusive preferential treatment, while Palestinian land and property are systematically confiscated at a large-scale and Palestinian refugees are prevented from returning to their land of birth.³²
- In 2007, the Committee reviewing Israel's performance under *Convention on the Elimination of Racial Discrimination* (CERD) characterized as “segregation” Israeli policies in all areas under its effective control (Israel and the OPT), which “amount to racial discrimination and change the demographic composition of the country.”³³
- All human rights treaty committees and UN Special Rapporteurs have raised concerns about Israel's systematic failure to comply with its obligation to apply human rights treaties to the Palestinian population in the OPT,³⁴ and reports of the UN *Special Rapporteur on Human Rights in the OPT* have alerted the United Nations to the fact that Israel's protracted military occupation is not a "normal" (legal) form of occupation, i.e., an interim measure that maintains law and order in a territory following armed conflict, but rather the “regime of a colonizing power under the guise of occupation which includes many of the worst features of apartheid.”³⁵

Such findings, however, are ignored by Western states, and Israel is not held accountable under human rights, humanitarian or criminal law. No displaced Palestinian has seen adequate and effective reparation.

Moreover, Palestinian refugees, like all other refugees, are entitled to assistance and protection by

³² E/C.12/1/Add.27 of 4 December 1998 and E/C.12/1/Add.90, paras. 12–16 (2003).

³³ CERD/C/ISR/CO/13

³⁴ See: A/HRC/WG.6/3/ISR/2 of 15 September 2008. The Government of Israel regularly refuses to submit or discuss information concerning the OPT based on its unique interpretation that it has no obligations under human rights treaties there, despite its effective control of the territory.

³⁵ UN Special Rapporteur, Prof. John Dugard: *Human Rights Situation in Palestine and other Occupied Arab Territories*, A/HRC/4/17 (29 January 2008); A/HRC/7/17 (21 January 2008).

the international refugee regime. Confronted with the massive displacement of civilians as a result of WWII, the international community had recognized that refugees and stateless persons are particularly vulnerable to human rights violations, because - unlike citizens – they often lack the protection of their government.

- Under the 1951 *Refugee Convention* and the 1954 *Stateless Convention*, refugees and stateless persons have a right, and states are under an obligation to assist and protect the fundamental human rights of these vulnerable groups of persons. “Refoulement”, i.e. forced return/deportation of a refugee to a country where s/he is likely to face persecution is prohibited under all circumstances. The United Nations, moreover, committed to provide international assistance and protection through the Office of UN High Commissioner for Refugees (UNHCR), in particular where states fail to meet their obligations.
- Based on international human rights conventions and UN guidelines, the UNHCR developed rights-based standards for best practice in refugee assistance and protection, which includes the search for durable solutions. Repatriation, combined with restitution, compensation and rehabilitation, has been identified as the preferred durable solution for refugees over host country integration and resettlement in third states. The principle of voluntariness (refugee choice) is to guide the search for durable solutions, while refugee participation is to be encouraged throughout assistance and protection operations.

Palestinian refugees, however, have remained largely excluded from the benefits of the international refugee regime. Relevant UNHCR guidelines³⁶ remain ignored, and - although Palestinian refugees are entitled to these benefits - states, asylum authorities and courts do not apply these conventions to Palestinian refugees or interpret them in ways that prevent their access to protection as refugees or stateless persons.³⁷ Thus, Palestinian refugees continue to be displaced and deported from host states – and with no country to go to – they tend to become stranded between borders, in transit sections of airports or detention centers, or left in a legal limbo in countries where they have no legal status and rights. As Palestinian refugee's right to return home is considered "politically sensitive", no international agency is mandated or willing to advocate for their preferred durable solution.

In the OPT, the international humanitarian and human rights community has recently recognized the ongoing forced displacement of Palestinians by Israel as a matter of concern. Humanitarian efforts by a multitude of humanitarian actors, UN agencies and NGOs, however, have focused on immediate emergency aid. Lacking the political backing of the Western diplomatic community, international agencies are unable to prevent or reverse the forcible displacement of Palestinians.

III. What Can be Done to Protect and Promote the Rights of Palestinian Refugees?

In the absence of political will among powerful states to advance rights-based political solutions and ensure that Palestinian refugees receive effective assistance and protection, Palestinians have protected their rights largely by themselves, including the right to return home. The "wider international community", i.e. civil society actors including churches, unions and associations

³⁶ See: 2002 UNHCR Note on the Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees.

³⁷ A survey of 23 countries revealed three different approaches and eight different interpretations of the applicability of the 1951 Refugee Convention to Palestinian refugees, all of which result in the exclusion of Palestinian refugees from the protection they are entitled to. See: Closing Protection Gaps. Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention. BADIL (2005), chapter six.

worldwide, have been called upon by Palestinian civil society and human rights experts, to support a strategic effort aimed to “make international law work” and restore justice and dignity for the Palestinian people, in particular Palestinian refugees.

Civil Society, NGOs and the private sector, including the media, worldwide are called upon to:³⁸

1. Sustain and develop public awareness-raising about Israel's criminal regime of apartheid, colonialism and occupation; promote and support the struggle of the entire Palestinian people in historic Palestine (OPT and Israel) and in exile, until we achieve our rights to self-determination, justice and return, and equality as individuals and as a people. For the media to support this effort.
2. Sustain and develop the global Campaign for Boycott, Divestment and Sanctions against Israel (BDS) based on the 2005 Palestinian civil society call. We call in particular upon the trade union movement, professional unions and associations, churches and the NGO sector to undertake practical measures which isolate Israel's colonial apartheid regime and support the Palestinian people.
3. Build pressure on states, the United Nations and the private sector to suspend cooperation with Israel and to inspect and investigate its compliance with international law and UN resolutions.
4. For independent human rights organizations and legal experts to continue their legal efforts for the punishment of perpetrators of international crimes against the Palestinian people and for accountability of the State of Israel and those complicit in such crimes. We urge you to explore new legal strategies whereby Zionist organizations, foreign companies and governments that collaborate with Israel's regime can be held accountable in court, including the European Human Rights Court.
5. For scholars, experts and civil society to continue to study and expose the facts, causes and consequences of past and current wrongs and crimes committed by the State of Israel, Zionist organizations and their allies and to undertake activities that promote accountability and reparations, and restore honor and dignity to the Palestinian victims.

³⁸ From: “United Against Apartheid, Colonialism and Occupation. Dignity and Justice for the Palestinian People”: Palestinian civil society's strategic position paper for the Durban Review Conference; BNC, October 2008.