

# **The Status of Palestinian Refugees and Stateless Persons in Europe**

*Briefing Paper*

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## Preface

Palestinian refugees are one of the largest and longest standing refugee populations in the world today. Approximately one in three refugees worldwide is Palestinian. Of the estimated 6 million Palestinian refugees and displaced persons more than 200,000 currently reside in Europe.

At present there is considerable confusion and conflicting interpretations within and among European states about the status of Palestinian refugees in Europe. Among the immediate unresolved, but critical, questions are whether Palestinian refugees are entitled to international protection under the *1951 Convention Relating to the Status of Refugees*, the *1954 Convention Relating to the Status of Stateless Persons*, or the *1961 Convention on the Reduction of Statelessness*. Moreover, in contrast to the usual framework applied by European states in searching for durable solutions for refugees, there are conflicting approaches to the framework for a durable solution for Palestinian refugees.

This briefing paper provides a short overview of the status of Palestinian refugees and stateless persons in Europe. The paper contains an introduction, four primary sections, and concluding observations. The introduction provides a short overview of the status of Palestinian refugees and stateless persons in international law. The first section provides an overview of Palestinian refugees and stateless persons in Europe. The second section reviews the conflicting interpretations within and among European states about the status of Palestinian refugees and stateless persons. The third section summarizes the interpretation of UNHCR concerning the status of Palestinian refugees under relevant international instruments. The final section addresses the issue of durable solutions for Palestinian refugees and stateless persons in Europe as a sub-group of the larger global Palestinian refugee population. Recommendations are addressed in the concluding observations.

*It is important to keep in mind that the issues relating to international protection and the search for durable solutions addressed in this briefing paper concerning Palestinian refugees and stateless persons in Europe are similar to the issues faced by the larger Palestinian refugee population.*

**NOTE: For detailed analysis of the status of Palestinian refugees in international refugee law, please refer to Lex Takkenberg, *The Status of Palestinian Refugees in International Law*. Oxford: Oxford University Press, 1998; and Susan M. Akram and Guy Goodwin-Gill, *Brief Amicus Curiae*, Board of Immigration Appeals, Falls Church, Va., published in 11 *Palestine Yearbook of International Law* (2001-2002).**

## Introduction

Between 1948 and 1951 the United Nations established a special protection regime for Palestinian refugees displaced/expelled during the 1948 conflict and war in Mandate Palestine. This unique regime is comprised to two bodies: the UN Conciliation Commission for Palestine (UNCCP) with a *protection* mandate, and the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) with an *assistance* mandate.

Palestinian refugees also have a unique status under international refugee law. International refugee law includes special provisions that only apply to Palestinian refugees. (International law relating to statelessness also includes special provisions for stateless Palestinians.) Palestinians as a group or category of refugees are covered by the *1951 Refugee Convention Relating to the Status of Refugees* in Article 1D.

This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance. When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall *ipso facto* be entitled to the benefits of this Convention.

According to Article 1D, Palestinian refugees are automatically entitled to the benefits of the 1951 Refugee Convention when protection *or* assistance from the special regime (comprised of the UNCCP and UNRWA) has ceased for any reason, without the position of the refugees being definitively settled in accordance with relevant resolutions of the UN General Assembly. The pre-eminent resolution relevant to Palestinian refugees is UN General Assembly Resolution 194(III), 11 December 1948. The individualized refugee definition contained in Article 1A(2) of the 1951 Refugee Convention was not intended to apply to Palestinian refugees.

The UNCCP ceased to provide protection for Palestinian refugees in the mid-1950s thus triggering the inclusion provision of Article 1D, bringing Palestinian refugees within the scope of the 1951 Refugee Convention. For numerous historical and political reasons, however, the majority of Palestinian refugees remain outside the international protection system afforded by international refugee law, and by the agencies responsible for implementation of refugee protection. No other international body assumed full responsibility for the provision of comprehensive protection to this refugee population UNHCR does not have an explicit mandate to provide protection for Palestinian refugees. The 1950 UNHCR Statute (Article 7C) does not contain an inclusion clause similar to Article 1D, due to the fact that the Statute was drafted and adopted prior to the 1951 Refugee Convention.

The implications of this protection gap for Palestinians is evident in both aspects of refugee protection: in day to day security and human rights protection, and in the search for durable solutions.

## 1. Overview of Palestinian Refugees and Stateless Persons in Europe

### a. Estimated population:

It is estimated that there are more than 200,000 Palestinian refugees and stateless persons currently residing in Europe (PCBS 2000). The exact number of Palestinian refugees in Europe, however, is unknown. Most states do not include Palestinians as a separate ethnic or national group in population censi. Statistical information often categorizes Palestinians as 'other Middle East.' Estimates for the number of 1948 refugees residing in individual European states are therefore incomplete and inconsistent. Partial estimates include: Germany (30,000-80,000); Denmark (20,000); UK (15,000); Sweden (9,000); and France (3,000) (Issa 2000; Shiblak 2000a). Palestinian refugees in Europe comprise approximately 3.5 percent of the global Palestinian refugee and displaced population (*See Annex 1 for the estimated global Palestinian refugee population*).

### b. Circumstances of arrival:

The majority of Palestinian refugees began to arrive in Europe during the 1960s and after in search of employment (especially from Lebanon) as well as refuge from the combined effects of Israel's military occupation of the West Bank, eastern Jerusalem, and Gaza Strip in 1967, and subsequent invasion of Lebanon in the 1980s. Few Palestinian refugees found refuge in Europe as a direct result of the 1948 conflict and war in Palestine and the establishment of the state of Israel (Shiblak 2000b). The onset of the *al-Aqsa intifada* in September 2000 has witnessed a new wave of Palestinian asylum claims in Europe.

### c. Categories:

There are three primary categories of Palestinian refugees and stateless persons in Europe. These include: (i) 1948 'Palestine refugees'; (ii) 1967 Palestinian refugees (often referred to as 'displaced persons'); and, (iii) Palestinian refugees displaced from the 1967 occupied territories who are in Europe due to revocation or residency, deportation or owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, and are unable or, owing to such fear, are unwilling to return. The actual number of refugees in each category is unknown due to reasons already cited (*See 1.a above*). (*For further explanation of the categories of Palestinian refugees and displaced persons see Annex 2*).

## 2. Interpretations within and Among European States about the Status of Palestinian Refugees and Stateless Persons

### a. Interpretations:

Most European states either do not recognize or incorporate Article 1D into domestic law or interpret the Article incorrectly. Austria and Switzerland, for example, do not recognize Article 1D; Palestinian claims are determined under Article 1A(2). There are

several different interpretations of Article 1D most of which revolve around whether or not a Palestinian refugee is outside the area of UNRWA operations and the concomitant circumstances that led the refugee to leave an area where UNRWA provides assistance. Among those states that recognize Article 1D, Germany applies 1D but interprets it in a variety of inconsistent ways. Two recent cases in the UK reached entirely different conclusions on the applicability of Article 1D to Palestinian refugees. Many states, moreover, categorize Palestinian refugees as having “unknown” or “indeterminate” status, rather than stateless persons. (*For a detailed analysis of European case law concerning the status of Palestinian refugees, see Takkenberg and Akram and Goodwin-Gill cited above*)

b. The ‘Protection Gap’:

The result of these differing interpretations of the status of Palestinian refugees and stateless persons is that they have been overwhelmingly placed outside the international protection system afforded by international instruments, creating what is referred to as a ‘protection gap’. The majority of Palestinians in Europe are stateless holders of refugee travel documents. Palestinians for the most part have difficulty when they apply for political asylum, residence based on family reunification, or other related protections that are available to other refugees in the world. Many remain in European states without recognized legal status, without work permits, and without the basic essentials to live in freedom and dignity. Stateless Palestinian refugees who are denied rights under the 1961 Statelessness Convention are unable to obtain, for example, travel documents, appropriate asylum or residence processing, and employment authorization.

A further result of the differing interpretations of the status of Palestinian refugees and stateless persons is that they have also been placed outside the protection system of agencies responsible for implementation of refugee/stateless person protections. Palestinian refugees were afforded a special protection regime comprised of two bodies: the UN Conciliation Commission for Palestine (UNCCP), which had a protection mandate; and, the United Nations Relief and Works Agency for Palestine Refugees (UNRWA), which has an assistance mandate. The UNCCP ceased to provide protection in the early 1950s. In the event that protection or assistance ceased for any reason, Palestinian refugees were to be automatically included (Article 1D) as ‘Convention refugees.’ Today, no international agency or body has an explicit mandate to provide international protection to Palestinian refugees. (*For details on UNHCR and Palestinian refugees see 3 below*)

### **3. UNHCR Interpretation Concerning the Status of Palestinian Refugees under Relevant Instruments**

a. Intepretation:

The United Nations High Commissioner for Refugees (UNHCR) has applied differing and often inconsistent interpretations of whether Palestinian refugees are refugees or

stateless persons under the meaning of the 1951 Refugee Convention and the statelessness conventions, and what protections or benefits they are entitled to receive. UNHCR's longstanding interpretation of the 1951 Refugee Convention as excluding Palestinian refugees (especially refugees residing in UNRWA areas of operation) has been based on the understanding that protection or assistance for Palestinian refugees was provided by the UN Relief and Works Agency (UNRWA). This interpretation did not distinguish between the protection mandate accorded to UN Conciliation Commission for Palestine (UNCCP) and the assistance mandate of UNRWA. (*For a detailed analysis of UNHCR policy concerning the status of Palestinian refugees, see Takkenberg and Akram and Goodwin-Gill cited above*)

In 2002, UNHCR launched a first initiative to address the protection gap in the special protection regime for Palestinian refugees. UNHCR's newly revised interpretation recognizes that Article 1D also functions as an inclusion clause. According to the new interpretation 1948 and 1967 Palestinian refugees do not need to prove individual persecution in order to be protected under the 1951 Refugee Convention. Such persons do not need to prove that they are outside areas of UNRWA operation *involuntarily*. Descendants of 1948 and 1967 refugees are also entitled to protection under the 1951 Refugee Convention, even if such descendants have never lived in an area of UNRWA operations. Proof of well-founded fear of persecution (Article 1A.2) is required, however, for Palestinians from the 1967 occupied territories claiming refugee status after 1967 due to circumstances other than those relating to the 1967 war. (*See attached document, "UNHCR Note on the Applicability of Article 1D of the 1951 Convention Relating to the Status of Refugees to Palestinian Refugees"*)

b. The 'Protection Gap':

The revised UNHCR interpretation on the applicability of Article 1D to Palestinian refugees essentially brings most Palestinian refugees in Europe within the scope of the 1951 Refugee Convention with one key exception – female refugees married to non-refugees registered with UNRWA. The revised interpretation does not critically reflect or comment on UNRWA's policy of refugee registration according to descendants of the male line in the context of principles on non-discrimination and gender equality otherwise promoted by the United Nations. The revised interpretation, moreover, does not provide clear legal analysis on the status of stateless Palestinians in Europe who are not considered refugees.

The revised interpretation, however, still leaves the vast majority of Palestinian refugees outside the international protection system afforded by international instruments relating to refugees and stateless persons, and those agencies responsible for implementation of refugee/stateless person protections. As mentioned, the revised interpretation also does not provide clear legal analysis on the status of stateless Palestinians. Moreover, UNHCR continues to use the phrase "protection or assistance" solely in relation to UNRWA without explicit reference to the protection mandate of the UNCCP. UNRWA only has an assistance mandate with limited protection options. The UNCCP ceased to provide effective protection in the early 1950s. As a result, the revised interpretation does not

contribute to resolving the important question of which Agency is responsible for the protection of the majority of Palestinian refugees who reside in UNRWA areas of operation. (*For a longer analysis, see Annex 3*) UNHCR does not have an explicit mandate to provide protection for Palestinian refugees due to the exclusion clause (Article 7C) in its 1950 Statute.

#### **4. Durable Solutions for Palestinian Refugees and Stateless Persons in Europe**

##### **a. Interpretation:**

International law and practice provides a set a guiding principles for the crafting of durable solutions for refugees. Durable solutions include voluntary repatriation, voluntary host country integration, and voluntary third country resettlement. Housing, land and property restitution is considered an essential element of durable solutions. The right of refugees to return to their homes and repossess their homes, lands and properties is based in several bodies of international law, including the law of nations, international human rights law, international humanitarian law, and international refugee law. (*For further analysis of the right of return, see Gail Boling, The 1948 Palestinian Refugees and the Individual Right of Return published by BADIL; on housing and property restitution, see Housing and Property Restitution for Refugees and Internally Displaced Persons published by the Centre on Housing Rights and Evictions*)

Current European positions for durable solutions for Palestinian refugees are inconsistent with legal norms applied in other refugee cases. Generally, the European Union has not issued specific declarations on durable solutions for Palestinian refugees. The only document explicitly recognizing the right of Palestinian refugees to choose to return to their homes is a 1973 document known as the ‘Schuman Paper’, which was never published due to reservations by several European states. Council of Europe Resolution 1156 (1998), which states, *inter alia*, that the Palestinian refugee issue must be resolved primarily through resettlement is inconsistent with international law and relevant resolutions concerning other refugees, including Resolution 1357 (1998) relevant to refugees and displaced persons in Bosnia and Herzegovina, and Resolution 1406 (1999) relevant to refugees and displaced persons in Croatia. Resolution 1156 (1998), moreover, would appear to contradict the aims of the Council of Europe to protect human rights, pluralist democracy and the rule of law. (*On durable solutions for Palestinian refugees and international law, see further Concluding Observations of UN Human Rights Treaty Committees, and position papers by Amnesty International and Human Rights Watch reproduced in Annex 4*)

##### **b. The ‘Protection Gap’:**

In addition to the implications of the ‘protection gap’ for the day-to-day protection of Palestinian refugees and stateless persons as summarized above (*See 2.b*), the consequences of this gap may be even more profound for the search for durable solutions. Palestinian refugees are effectively placed outside the international protection system

afforded by a wide variety of instruments, including international human rights law, international humanitarian law, international refugee law, and UNHCR Executive Committee Conclusions that provide the framework for durable solutions in all other refugee cases. This protection gap threatens to underwrite mass placement and institutionalize exile.

Additionally Palestinian refugees are denied access to an international body mandated to search for and facilitate implementation of durable solutions. Since the cessation of UNCCP protection in the early 1950s, there is no recognized international body or mechanism with an explicit mandate to search for durable solutions for Palestinian refugees. As mentioned, UNHCR does not intercede to protect Palestinian refugees due to the exclusion clause (Article 7C) in its Statute. Thus, unlike all other refugees there is no international body to assert the rights of Palestinian refugees to return, obtain restitution and compensation; facilitate access to international fora to advance and assert these rights; and safeguard and promote their individual as well as collective claims in the context of a negotiated peace plan.



## **Concluding Observations**

While Palestinian refugees find themselves in a deplorable situation within the Arab states, and in a devastating situation in the West Bank and Gaza, they are not assured the minimal protections available to other refugees seeking protection in Europe. This remains true at a time when there appears to be no durable solution in the foreseeable future for the plight of Palestinian refugees through any political processes. Palestinians will thus continue to be among the most vulnerable of refugee populations, and will require coordinated efforts to ensure that they receive international protection until their situation is resolved in accordance with international law.

Unfortunately, the issue of the status of Palestinians as refugees or stateless persons, the extent to which their rights are governed by the above instruments, and the framework for durable solutions, has become highly politicized. It has thus been extremely difficult to address this issue within the usual legal and humanitarian framework usually applied to refugee issues in Europe.

BADIL Resource Center therefore recommends that the Council of Europe:

*Promote*, in consultation with the Migration, and the Legal and Human Rights Commission, the necessary initiatives to survey existing consultative and legal bodies to obtain hard data on definitions, status and numbers of Palestinian refugees in the EC states (See 1 above);

*Organize* a European-wide symposium to address the legal status and situation of Palestinian refugees and stateless persons in Europe (See 2 above);

*Invite* all relevant UN, EC state and regional bodies to discuss and coordinate their approach to the status of Palestinian refugees and stateless persons, as well as the framework for durable solutions for their plight. (See 3 above).

*Convene* such discussions with the focus of ensuring that Palestinian refugees and stateless persons receive the maximum international protection available under the relevant international instruments until their situation is resolved in accordance with international law (See 4 above).

BADIL would further recommend that the Council of Europe:

*Review* previous recommendations on Palestinian refugees in light of international human rights law and the European Convention on Human Rights. (See Annex 4 below for relevant provisions)

### **References**

Mahmoud Issa, *Palestinians in Scandinavia: Statistics, socio-cultural and Integrational problems*. Oxford – Refugee Studies Center (May 2000).

PCBS, 2000. *Palestinian Population: A proposed count for mid-Year 2000*. Ramallah, Palestine, and Central Bureau of Statistics and Natural Resources, Damascus.

Abbas Shiblak (2000a), “Palestinian Refugee Communities in Europe, An Overview,” Workshop on Palestinian Refugee Communities in Europe, St. Anthony’s College, University of Oxford.

Abbas Shiblak (2000b), “Palestinian refugees in Europe, Challenges of Adaptation and Identity,” Summary Report of Workshop on Palestinian Refugee Communities in Europe, St. Anthony’s College, University of Oxford, 5-6 May, 2000

### **Further References**

For further information on Palestinian refugees, international protection and durable solutions, please refer to BADIL publications archived on the BADIL website, <http://www.badil.org> and related internet links.

## Annex I

## Estimated\* Global Palestinian Refugee and Displaced Population

Year	1948 Refugees		1967 Refugees	Post-1967 Refugees	1948 IDPs	1967 IDPs
	Registered Refugees	Non-registered Refugees				
1950	914,000	257,021	-	-	(32,302)**	-
1955	905,986	305,260	-	-	39,680	-
1960	1,120,889	362,553	-	-	48,742	-
1965	1,280,823	430,599	-	-	59,875	-
1970	1,425,219	511,417	266,092	63,000	73,550	n/a
1975	1,632,707	607,403	316,034	168,000	90,349	n/a
1980	1,844,318	721,404	375,349	273,000	110,984	n/a
1985	2,093,545	856,802	445,797	378,000	136,333	n/a
1990	2,668,595	1,017,611	529,467	483,000	167,470	n/a
1995	3,172,641	1,208,603	628,841	588,000	205,720	n/a
2000	3,737,494	1,435,441	746,866	693,000	252,706	n/a
2001	3,926,787	1,485,692	773,006	714,000	263,320	20,000

\* All figures are estimates, except for 'Registered Refugees.'

\*\* A significant number of internally displaced Palestinians received assistance from UNRWA until the Agency turned over responsibilities for the internally displaced to Israel in 1952. The bracketed population estimate indicates that many of the internally displaced were likely included in the UNRWA registration numbers.

**Sources:** 1948 registered refugees – UNRWA; 1948 non-registered refugees – Derived from *The Palestinian Nakba 1948, The Register of Depopulated Localities in Palestine*. London: The Palestinian Return Centre, 1998, and the average annual growth rate of the Palestinian refugee population; 1948 internally displaced persons – 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 and average annual growth rate of the Palestinian population inside Israel between 1950 and 2001. The figure does not include Palestinians internally displaced after 1948 inside Israel, including a large number of Bedouin. If the latter are included the figure may exceed 300,000; 1967 first time displaced refugees – Derived from *Report of the Secretary General under General Assembly Resolution 2252 (EX-V) and Security Council Resolution 237 (1967)*, UN Doc. A/6797, 15 September 1967 and the average annual growth rate of the Palestinian population. The figures does not include 1948 refugees displaced for a second time in 1967; Post-1967 refugees – Derived from George F. Kossaifi, *The Palestinian Refugees and the Right of Return*. Washington, DC: The Center for Policy Analysis on Palestine, 1996. Kossaifi examines annual forced migration from the 1967 occupied territories. It should be noted that the figure does not account for potential returns; 1967 IDPs – Derived from estimates of current internal displacement during the *al-Aqsa Intifada*. 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.

## **Annex 2**

### **Categories of Palestinian Refugees and Displaced Persons**

#### **1. 1948 Palestinian Refugees [‘Palestine refugees’]**

Includes two primary categories of Palestinians displaced in during the 1948 conflict and war in Mandate Palestine: those registered for assistance with the UN Relief and Works Agency (UNRWA), and those not registered with UNRWA. UNRWA refers to these refugees as ‘Palestine refugees.’ This category comprises the majority of the Palestinian refugee population.

#### **2. 1967 Palestinian Refugees [‘Displaced persons’]**

Includes those Palestinians displaced for the first time from the West Bank and Gaza Strip during the 1967 war. This category of refugees is often referred to as ‘displaced persons’ due to the fact that at the time of their displacement the West Bank was under the control of Jordan. Palestinians were therefore displaced from an area under the control of Jordan to Jordan proper – i.e., they did not cross an ‘international’ border.

#### **3. Post-1967 Palestinian Refugees [‘New refugees’]**

Includes those Palestinians displaced from the 1967 occupied Palestinian territories after 1967 due to revocation of residency, deportation or owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, and are unable or, owing to such fear, are unwilling to return. This category may be referred to as ‘new refugees’.

#### **4. 1948 Internally Displaced Palestinians**

Includes Palestinians who were displaced during the 1948 conflict and war in Mandate Palestine and remained within the territory that became the state of Israel. Also includes a sub-group of internally displaced Palestinians who were displaced after 1948 due to expropriation of land, house demolition, and internal transfer.

#### **5. 1967 Internally Displaced Palestinians**

Includes Palestinians who were displaced during the 1967 war but remained within the occupied West Bank and Gaza Strip. Also includes a sub-group of internally displaced Palestinians who were displaced after 1948 due to expropriation of land, house demolition, and internal transfer.

### Annex 3

#### **BADIL Comment on the UNHCR Note (2002) on the Applicability of Article 1D of the 1951 Convention Relating to the Status of Refugees to Palestinian Refugees (November 2002)**

#### **The Revised UNHCR Interpretation of the Status of Palestinian Refugees under the 1951 Convention Relating to the Status of Palestinian Refugees**

UNHCR's revised interpretation of the status of Palestinian refugees under the 1951 Refugee Convention was completed and published in September 2002.

##### *Positive Aspects*

1. The revised interpretation addresses all categories of Palestinian refugees and one category of internally displaced Palestinians. The interpretation explicitly lists three categories of Palestinian refugees falling within the scope of the 1951 Convention.

a) "Palestine refugees" within the sense of UN General Assembly Resolution 194 (1948), who were displaced from that part of Palestine which became Israel and who have been unable to return there. This category implicitly includes 1948 internally displaced Palestinians in Israel. The implications of this interpretation will require additional clarification. Many of the norms relating to the status of refugees in international refugee law guarantee equal treatment only with aliens in the country of refuge. They might, therefore, not be applicable to internally displaced Palestinians, citizens of Israel.

b) "Displaced Persons" within the sense of UN General Assembly Resolution 2252 (ES-V) of 4 July 1967, who have been unable to return to the Palestinian territories occupied by Israel since 1967.

c) "Palestinian refugees", who are neither 1948 refugees nor 1967 displaced persons, and are outside the Palestinian territories occupied by Israel since 1967 and unable, or unwilling, to return there owing to a well-founded fear of persecution.

2. UNHCR's revised interpretation recognizes that Article 1D (second sentence) also functions as an "inclusion clause." Previous reference to Article 1D in the UNHCR Handbook (Chapter IV – Exclusion Clauses) treated it only as an exclusion clause. 1948 refugees (category "a") and 1967 refugees (category "b") are "Convention refugees" simply due to the fact that they belong to one of these groups (group refugee definition). UNHCR recognizes that members of this group do not need to prove individual persecution in order to be protected under the 1951 Refugee Convention. Proof of well-founded fear of persecution (Article 1A of the Convention; individual refugee definition) is required, however, for Palestinians from the 1967 occupied territories claiming refugee status (category "c"). The revised UNHCR interpretation should facilitate the

harmonization and handling of protection requests submitted by Palestinian refugees/displaced persons to domestic state authorities.

3. The revised interpretation states that 1948 refugees (category “a”) and 1967 refugees (category “b”) are protected by the 1951 Convention as long as they reside outside the area of UNRWA operations. Based on Article 1D (paragraph 2) such persons do not need to prove that they are outside that area *involuntarily*. This interpretation should contribute to ending the controversy over the “returnability” in domestic immigration services and courts of Palestinians otherwise eligible for protection under the 1951 Convention.

4. The revised interpretation explicitly recognizes descendants of 1948 refugees (category “a”) and 1967 refugees (category “b”) are entitled to protection under the 1951 Convention, even if such descendants have never lived in an area of UNRWA operations. UNHCR thus affirms the refugee status and protection rights of Palestinians refugees and displaced persons as applied in previous UN resolutions and practice of UN agencies (e.g. UNRWA).

#### *Negative Aspects*

1. The major shortcoming of UNCHR’s revised interpretation, from the perspective of Palestinian refugees in need of protection, is the absence of a clear interpretation of the language “protection or assistance” in reference to the special UN regime for Palestinian refugees. The revised interpretation continues to use the phrase “protection or assistance” solely in relation to UNRWA without explicit reference to the protection mandate of the UNCCP even though both UN agencies existed at the time of the drafting of the 1951 Refugee Convention. UNRWA only has an assistance mandate with limited protection options. While the interpretation states that neither the UN General Assembly nor any subsequent UN resolution has specifically limited the scope of UNRWA’s mandate, it is equally true, with self-evident results, that neither the General Assembly nor any subsequent UN resolution specifically expanded the scope of UNRWA’s mandate to provide comprehensive protection to Palestinian refugees. The fact that the United Nations set-up a specific protection agency for Palestinian refugees (UNCCP), which ceased to provide effective protection in the early 1950s, is addressed only in a footnote. As a result, the revised interpretation does not contribute to resolving the important question of: “Which agency is responsible for the provision of international protection to Palestinian refugees?”

2. The application of cessation clauses 1C, 1E, 1F under the 1951 Refugee Convention to 1948 refugees (category “a”) and 1967 refugees (category “b”) is especially problematic. Cessation clause 1E provides that protection under the 1951 Convention does not apply to persons who have obtained nationality/citizenship rights in another country. This interpretation disregards the fact that Palestine refugees and displaced persons are Convention refugees under Article 1D, which provides that protection by the Convention will cease only if “the position of such persons is definitely settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations,” i.e. implementation of a definite solution in accordance with UN General Assembly

Resolution 194. The revised interpretation is therefore inconsistent with the language and intent of the 1951 Convention itself. This interpretation could have dangerous political implications for Palestinian refugees who have obtained permanent residency/citizenship elsewhere, while still wishing to exercise their rights (return, restitution, compensation) in the context of a durable solution of the Palestinian refugee question.

3. The revised interpretation does not provide clear legal analysis on the status of Palestinian refugees as “stateless persons.” The lack of clarity on this matter has negative implications concerning additional provisions for international protection under 1961 Convention on the Reduction of Statelessness.

4. The revised interpretation, which includes detailed information about UNRWA criteria and standards of refugee registration, does not critically reflect or comment on UNRWA’s policy of refugee registration according to descendants of the male line. Registration according to male lineage violates principles on non-discrimination and gender equality otherwise promoted by the United Nations.

**Annex 4****UN Human Rights Treaty Committee Concluding Observations Re: Palestinian Refugees and Displaced Persons (excerpts)****Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel. 4/12/98.****UN Doc. E/C.12/1/Add.27, 4 December 1998.**

11. The Committee notes with grave concern that the Status Law of 1952 authorizes the World Zionist Organization/ Jewish Agency and its subsidiaries including the Jewish National Fund to control most of the land in Israel, since these institutions are chartered to benefit Jews exclusively. Despite the fact that the institutions are chartered under private law, the State of Israel nevertheless has a decisive influence on their policies and thus remains responsible for their activities. A State Party cannot divest itself of its obligations under the Covenant by privatizing governmental functions. The Committee takes the view that large-scale and systematic confiscation of Palestinian land and property by the State and the transfer of that property to these agencies, constitute an institutionalized form of discrimination because these agencies by definition would deny the use of these properties by non-Jews. Thus, these practices constitute a breach of Israel's obligations under the Covenant.

13. The Committee notes with concern that the Law of Return, which permits any Jew from anywhere in the World to immigrate and thereby virtually automatically enjoy residence and obtain citizenship in Israel, discriminates against Palestinians in the diaspora upon whom the Government of Israel has imposed restrictive requirements that make it almost impossible to return to their land of birth.

25. The Committee expresses its concern over the plight of an estimated 200,000 uprooted "present absentees" who are Palestinian Arab citizens of Israel, most of whom were forced to leave their villages during the 1948 war on the understanding that they would be allowed to return after the war by the Government of Israel. Although a few have been given back their property, the vast majority continue to be displaced and dispossessed within the State because their lands were confiscated and not returned to them.

35. The Committee urges the State Party to review the status of its relationship with the World Zionist Organization/ Jewish Agency and its subsidiaries including the Jewish National Fund with a view to remedy problems identified in para 11 above.

36. In order to ensure the respect for article 1(2) of the Covenant and to ensure the equality of treatment and non-discrimination, the Committee strongly recommends a review of re-entry policies for Palestinians who wish to re-establish domicile in their homeland, with a view to bring such policies to a level comparable to the Law of Return as applied to Jews.



**Concluding Observations of the Committee on the Elimination of Discrimination: Israel. 30/03/98.**

**UN Doc. CERD/C/304/Add.45, 30 March 1998.**

18. The right of many Palestinians to return and possess their homes in Israel is currently denied. The State Party should give high priority to remedying this situation. Those who cannot re-possess their homes should be entitled to compensation.

**Concluding Observations of the Human Rights Committee: Israel. 18/08/98.**

**UN Doc. CCPR/C/79/Add.93, 18 August 1998.**

22. While acknowledging the security concerns that have led to restrictions on movement, the Committee notes with regret the continued impediments posed on movements, which affects mostly Palestinians travelling in and between East Jerusalem, the Gaza Strip and the West Bank, and which have grave consequences affecting nearly all areas of Palestinian life. The Committee considers this to raise serious issues under article 12. In regard to persons in these areas, the Committee urges Israel to respect the right to freedom of movement provided for under article 12, including the right to return to one's country.

25. The Committee is also concerned that the Israel Lands Administration (ILA), responsible for the management of 93% of land in Israel, includes no Arab members and that while the ILA has leased or transferred land for the development of Jewish towns and settlements, few Arab localities have been established in this way until recent years. The Committee recommends that urgent steps be taken to overcome the considerable inequality and discrimination which remains in regard to land and housing.

## Human Rights Watch Policy on the Right of Return

*For a more detailed analysis of this statement, including **bold** text, see the website of Human Rights Watch, [www.hrw.org](http://www.hrw.org)*

Human Rights Watch has long defended the right of **refugees** and exiles to return to their homes. We have upheld this right both when international borders were settled - Guatemala, El Salvador, Honduras, Malawi, Burma, Mauritania - and when they were in dispute - Bosnia, Croatia, Kosovo, East Timor, Ethiopia/Eritrea. Human Rights Watch similarly urges that this right be recognized for all displaced people in the Middle East, regardless of religion or nationality. In the case of the Middle East peace agreement currently being negotiated, the agreement should recognize this right for Palestinian refugees and exiles from territory located in what is now Israel or in what is likely to be a future state of Palestine. Recognition should accord with the following principles: The right is held not only by those who fled a territory initially but also by their descendants, so long as they have maintained **appropriate links** with the relevant territory. The right persists even when sovereignty over the territory is contested or has changed hands. If a former home no longer exists or is occupied by an innocent third party, return should be permitted to the vicinity of the former home.

As in the case of all displaced people, those unable to return to a former home because it is occupied or has been destroyed, or those who have lost property, are entitled to compensation. However, compensation is not a substitute for the **right to return** to the vicinity of a former home should that be one's choice.

All nations should assist in finding durable solutions to refugee problems. Ideally, this consists of giving each displaced person three options: local integration, third-country resettlement, and voluntary repatriation. In the Middle East context, **countries where Palestinians now reside** should offer them the option of full local integration. Palestinian families, many having lived in these countries for more than fifty years, have built lives there which they should be granted the option of continuing to lead. Similarly, the international community should be generous in offering the possibility of third-country resettlement to those who might desire it, and in providing aid to assist the permanent settlement of those who choose to remain in the region as well as those who choose to exercise their right to return. Neither the options of local integration and third-country resettlement, nor their absence, should extinguish the right to return; their humanitarian purpose is to allow individual Palestinians to select during a specified period among several choices for ending their refugee status.

Like all rights, the right to return binds governments. No government can violate this right. Only individuals may elect not to exercise it. The **parties** currently involved in negotiating a Middle East peace agreement should focus on implementing the right to return and facilitating the options of local integration and third-country resettlement. They should not waive individuals' right to return.

The international community has a duty to ensure that claims of a right to return are resolved fairly, that individual holders of the right are permitted freely and in an informed manner to choose whether to exercise it, and that returns proceed in a gradual and orderly manner. Governments' legitimate security concerns should be met consistently with these principles and other **internationally recognized human rights**.

## **The Right to Return: The Case of the Palestinians Amnesty International Policy Statement**

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### **Amnesty International's position on forcible exile and the right to return**

1. In line with international law, Amnesty International opposes forcible exile -- when a government forces individuals to leave their own country on account of their political, religious or other conscientiously held beliefs or by reason of their ethnic origin, sex, colour, language, national or social origin, economic status, birth, or other status, and then prohibits their return, or, if they are already outside their own country, prevents them from returning for the same reasons. Amnesty International also opposes deportation from territories under military occupation in all cases.

2. Accordingly, Amnesty International calls for the recognition of the right of those who are forcibly exiled to return to their country. The right to return to one's own country is based in international law and is the most obvious way to redress the situation of those who are in exile. Amnesty International advocates the right to return regardless of the circumstances in which people have been exiled, whether, for example, it was the result of a decision relating to an individual or the product of mass expulsions, as in the practice of "ethnic cleansing".

3. Among the key human rights principles enshrined in the Universal Declaration of Human Rights is the right to return. Article 13 of the UDHR states: "Everyone has the right to leave any country, including his own, and to return to his country."

4. The International Covenant on Civil and Political Rights (ICCPR), the treaty which gives legal force to many of the rights proclaimed in the UDHR, codifies the right to return, stating in Article 12.4: "No one shall be arbitrarily deprived of the right to enter his own country."

5. The Human Rights Committee, which monitors implementation of the ICCPR, has given authoritative interpretation to the meaning of the phrase "own country", which clarifies who is entitled to exercise the right to return. The Committee asserts that the right applies even in relation to disputed territories, or territories that have changed hands. In General Comment 27 (1999, paragraph 20) the Human Rights Committee determined:

"The scope of 'his own country' is broader than the concept 'country of his nationality'. It is not limited to nationality in a formal sense, that is, nationality acquired at birth or by conferral; it embraces, at the very least, an individual who, because of his or her special ties to or claims in relation to a given country, cannot be considered to be a mere alien. This would be the case, for example, of nationals of a country who have there been stripped of their nationality in violation of international law, and of individuals whose

country of nationality has been incorporated in or transferred to another national entity, whose nationality is being denied them."

6. Amnesty International believes that the right to return applies not just to those who were directly expelled and their immediate families, but also to those of their descendants who have maintained what the Human Rights Committee calls "close and enduring connections" with the area. Lasting connections between individuals and territory may exist independently of the formal determination of nationality (or lack thereof) held by the individuals. General Comment 27 (paragraph 19) explains that:

"The right of a person to enter his or her own country recognizes the special relationship of a person to that country... It includes not only the right to return after having left one's own country; it may also entitle a person to come to the country for the first time if he or she was born outside the country (for example, if that country is the person's State of nationality)."

7. International law provides a standard for measuring the existence of a "close and enduring connection" between a person and his or her "own country" through a set of criteria established by the International Court of Justice in 1955. In the landmark *Nottebohm* case, which focused on the determination of nationality, the Court held that "genuine" and "effective" links between an individual and a state were based on "... a social fact of attachment, a genuine connection of existence, interests and sentiments..." The Court also noted that: "Different factors are taken into consideration, and their importance will vary from one case to the next: there is the habitual residence of the individual concerned but also the centre of his interests, his family ties, his participation in public life, attachment shown by him for a given country and inculcated in his children, etc." Other criteria suggested by the Court include cultural traditions, way of life, activities, and intentions for the near future. The criteria established by the Court are likewise appropriate when determining a person's "own country" in that they are regarded as a standard measure of the effective existence of ties between the individual and the State.

8. Amnesty International supports the return of exiles to their own homes or the vicinity of their own homes, where this is feasible. The rights of innocent third parties who may be living in the homes or on the lands of the exiles, should also be taken into account. Exiles who choose not to return are entitled to compensation for lost property; those returning should also be compensated for lost property.

9. Amnesty International recognizes that the resolution of protracted conflicts involving the displacement of populations may require durable solutions alternative to the exercise of the right to return, such as integration into the host country and resettlement in a third country. However, the decision to exercise the right to return or to avail themselves of alternative solutions must be the free and informed decision of the individuals concerned. The right to return is an individual human right, and as such should not be used as a bargaining chip by any of the parties involved in negotiating a settlement.

10. Amnesty International has supported the right to return of people from countries in all regions of the world, including Bhutan, Bosnia-Herzegovina, Croatia, East Timor, El Salvador, Guatemala, Kosovo, and Rwanda.

### **The case of the Palestinians**

11. With regard to the specific issue of Palestinian exiles, Amnesty International believes that durable solutions respectful of their human rights must be made available to them in any final peace agreement. Their right to return has been recognized by the United Nations since UN General Assembly Resolution 194 (III) of 11 December 1948, which states:

"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 authorities responsible."

12. The right of Palestinians to return continues to be recognised by authoritative bodies within the UN system for the protection of human rights. In March 1998 the Committee on the Elimination of Racial Discrimination examined the report presented by Israel. In its Concluding Observations (see Israel. 30/03/98, CERD/C/304/Add.45) the CERD was unequivocal about the obligations of Israel in relation to the right to return of the Palestinians. It stated:

"The right of many Palestinians to return and possess their homes in Israel is currently denied. The State party should give high priority to remedying this situation. Those who cannot repossess their homes should be entitled to compensation."

13. The UN General Assembly in Resolution A/RES/51/129 of December 1996 affirms that "Palestinian Arab refugees are entitled to their property and to the income derived therefrom, in conformity with the principles of justice and equity". It "requests the Secretary-General to take all appropriate steps... for the protection of Arab property, assets and property rights in Israel and to preserve and modernize the existing records." Regarding Palestinians in exile since the 1967 war, the General Assembly resolved in Resolution A/RES/52/59 of December 1997 that it: "Reaffirms the right of all persons displaced as a result of the June 1967 and subsequent hostilities to return to their homes or former places of residence in the territories occupied by Israel since 1967."

14. Any peace agreement reached should resolve the issue of the Palestinian diaspora through means that respect and protect individual human rights. Amnesty International recognises that there are other considerations that must be addressed in the negotiations -- the security concerns of both sides, for instance -- but these issues must be resolved within a framework that does not sacrifice individual human rights to political expediency.

15. Accordingly, Amnesty International calls for Palestinians who fled or were expelled

from Israel, the West Bank or Gaza Strip, along with those of their descendants who have maintained genuine links with the area, to be able to exercise their right to return. Palestinians who were expelled from what is now Israel, and then from the West Bank or Gaza Strip, may be able to show that they have genuine links to both places. If so, they should be free to choose between returning to Israel, the West Bank or Gaza Strip.

16. Palestinians who have genuine links to Israel, the West Bank or Gaza Strip, but who are currently living in other host states, may also have genuine links to their host state. This should not diminish or reduce their right to return to Israel, the West Bank or Gaza Strip.

17. However, not all Palestinian exiles will want to return to their "own country", and those who wish to remain in their host countries -- or in the West Bank or Gaza Strip -- should be offered the option of full local integration. The international community should also make available to Palestinian exiles the option of third-country resettlement. Whatever solution the individuals choose should be entirely voluntary, and under no circumstances should they be coerced into making a particular choice.

18. Where possible, Palestinians should be able to return to their original home or lands. If this is not possible -- because they no longer exist, have been converted to other uses, or because of a valid competing claim -- they should be allowed to return to the vicinity of their original home.

19. Palestinians who choose not to exercise their right to return should receive compensation for lost property, in accordance with principles of international law. Those returning should likewise be compensated for any lost property.

20. Amnesty International calls on all parties to the negotiations to agree terms for the establishment of an independent, international body which, inter alia, will oversee the implementation of the return process, set criteria for individual claims, examine and determine claims and disputes, and establish a process for awarding compensation.

21. Amnesty International calls on the international community to provide all necessary assistance, including funding, for the implementation of such a return program.

22. The same principles apply to Israeli citizens who were once citizens of Arab or other countries and who fled or were expelled from such countries. If they have maintained genuine links with such countries and wish to return, they should be allowed to do so. They should also be entitled to compensation for any lost property.