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FALLING THROUGH THE CRACKS

Legal and practical gaps in Palestinian refugee status

A case study of unrecognized refugees in Lebanon



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Cover photo: Two generations of Palestinian refugees in 1949 (Photo: UNRWA)

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PREFACE

This report sheds light on more obscure areas relating to the civil and legal status of Palestinian refugees. The report manages, within its limited terms of reference, to touch upon wider and more complicated issues regarding the lack of clarity in and the arbitrary nature of regulations that affect the lives and futures of thousands of Palestinian refugees in host Arab states as well as throughout the Diaspora.

The Palestinians lost not only their homes but also their citizenship. The hardship and arbitrary treatment that they face in host societies stems from this very fact. The issue of statelessness, perhaps more than any other factor, has shaped the experience of Palestinians in exile.

The stateless condition of Palestinian refugees should be fully acknowledged and a greater measure of protection should be afforded them. The failure to acquire the status of having a state under the rule of law can have a negative impact on almost all aspects of their lives. The Independent Commission on International Humanitarian Issues (1988) pointed out that ‘the stateless are less protected than refugees.’

Indeed, part of the Palestinian refugees’ hardship may be seen as part of the bigger picture of the state of human rights in the Arab region as a whole and the status of women, minorities, refugees and other vulnerable groups. But Palestinian refugees have to deal with further exclusion and discrimination due to the imposition by some Arab countries of what one may call a ‘legal ghetto’ imposed on Palestinian refugee communities in their midst, under political, demographic or security pretexts.

Even when countries make amendments to the law to allow women to pass their nationality on to their stateless children or when countries allow naturalization of foreigners, Palestinians are either excluded or left in a grey area and in almost total limbo. While the establishment of the State of Israel transformed Palestinians into the largest stateless community in the world, Arab states perpetuate and exacerbate their stateless condition by imposing a

‘legal ghetto’ on Palestinian refugees. In the first instance, Palestinians lose their past, while in the second they also lose their future.

This report identifies flaws and shortcomings in the international protection regime for Palestinian refugees and highlights the lack of any international human rights standards in most host Arab states’ treatment of Palestinian refugees. The report focuses on Palestinians in Lebanon, but also alerts us to the existence of wider, related issues and policies that need to be examined regionally and globally, in terms of their impact on Palestinian refugees. That is why the report rightly calls for further research to be done.

The report is focused, relevant and well timed and should be seen as an appropriate pointer to guide future research work on Palestinian refugees. Frontiers and the research team ought to be congratulated for their efforts.

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Boys in an unofficial camp in Tyre (Sour) in 2003 (Photo: M. Kagan)

1) EXECUTIVE SUMMARY



Refugees in Tyre (Sour) in the 1950s (Photo: UNRWA)

The vast majority of Palestinians today are refugees, and their plight lies at the heart of the Israeli-Palestinian conflict. The mass Palestinian exile began in the 1947-48 Arab-Israeli War when more than 70 percent of the non-Jewish population of Palestine fled or was expelled by Israel. Hundred of thousands more fled from the West Bank and Gaza Strip in the 1967 war. For 57 years, there have been two central pillars of policy toward the Palestinian refugees, both supported by international law, General Assembly resolutions, and Arab League resolutions. First, the refugees must have the right to choose whether they would like to return to their homes and properties, most of which are inside Israel. Second, they should be able to live in dignity so long as no final settlement of the refugee situation has been achieved. Given that no final resolution of the Israeli-Palestinian conflict appears on the immediate horizon, this second objective remains as important as ever.

There has recently been significant attention paid to the Palestinian refugees in Lebanon because the Lebanese Government has inflicted upon them severe social and economic marginalization, rendering them especially dependent on assistance from the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). Among the several hundred thousand refugees in Lebanon, there is a smaller group who are particularly disadvantaged. According to recent estimates by the Danish Refugee Council, around 35,000 refugees lack registration with UNRWA, and therefore

have reduced access to humanitarian assistance (official estimates are of around half this number). These refugees are often referred to as “non-registered” or “non-R.” A smaller group, estimated by the Danish Refugee Council to be around 3,000, lacks both UNRWA registration and identity cards issued by the Lebanese Government and are at risk of arrest if they leave their refugee camps. The predicament facing these refugees – often referred to as “non-ID” Palestinians – was not well understood until very recently. Earlier this year, the Danish Refugee Council documented the extreme social and economic hardships that fall upon this group, following a December 2002 study by the Palestinian Human Rights Organization.

This report is a legal and policy examination of the reasons why some refugees lack UN and government recognition. Although recent research has brought to light the extreme deprivation suffered by non-ID and non-record Palestinians in Lebanon, there is little systematic understanding of how and why people ended up in this situation. This is the first focused legal and policy study examining why some individuals lack recognition due to particular policies or practices. Without understanding the underlying legal and policy gaps, it will be difficult to eliminate the problem. We therefore conducted a small field study and extensive legal and policy analysis in order to better understand the individual circumstances that make a Palestinian refugee likely to be deprived of official recognition and registration.

Broadly speaking, we found three main causes.

First, Palestinian refugee status has been defined in rigid terms that are unable to accommodate the complexity of such a large and long term population displacement. Although most Palestinians in the Middle East probably remain close to where they or their families fled in 1948 or 1967, not all fit this pattern. Some refugees have voluntarily or involuntarily moved on to new countries in a process of secondary migration. Small numbers of Palestinians left their homes in odd years, such as before 1948 or between the 1948 and 1967 wars. They are displaced from their homes by the Arab-Israeli conflict, but lack recognition as Palestinian refugees.

Second, displacement from Palestine did not stop in 1967. The non-recognition problem in Lebanon has been frequently attributed to the turmoil in Jordan in 1970 and the powerful role of the PLO in Lebanon in the 1970s, both of which brought new refugees to Lebanese soil. However, the turmoil in Jordan is not the only cause of post-1967 displacement. We found some refugees in Lebanon who had been displaced from the Gaza Strip or the West Bank between 1968 and 1981. While conflict inside Arab states led to much of the non-recognition problem in Lebanon, the Israeli occupation of the Palestinian Territories is also a contributor. UN General Assembly resolutions calling for clearer recognition of post-1967 refugees have not been fully implemented, putting such people in a state of limbo.

Third, both Lebanon and UNRWA engage in gender discrimination that makes women dependent on men for status, suspends the registration of women who marry unregistered men, and prevents women from passing on their status to their children and husbands. This practice increases the number of unrecognized people with each

generation, and also misses an important opportunity to reduce the problem. In the case of Lebanon, the discrimination is not unique to Palestinians; it extends to Lebanese citizens as well. This form of gender discrimination is a major issue with Lebanon and other governments in the Arab world. While there is no need for Lebanese citizens to acquire Palestinian status by marriage, it is essential that Palestinian men and women who marry other refugees or stateless persons be able to pass on their status equally. Gender discrimination is surprising in the case of the United Nations since the UN is dedicated to promoting human rights. Indeed, UNRWA has now acknowledged the problem, and has made non-specific commitments to correct it.

To some extent, these gaps have their origins in the political turmoil of the Middle East; Palestinians in Lebanon have often thrived or suffered depending on the turbulent and violent fate of the PLO in the country before, during and after the civil war. However, the underlying problem is that Palestinian refugee status is defined today by rules written mainly in the 1950s and 1960s. Many of these rules were written to address immediate problems, and have acquired added importance over time. After so many decades of Palestinian exile, these rules require either amendment or at least flexible interpretation in order to fit the refugees of today. We propose re-assessing both UNRWA's "working definition" of a Palestine refugee, and Lebanon's regulations governing Palestinian refugee status in the country. We also recommend stronger mechanisms for assessing individual circumstances, along with more civil society involvement in advising individual refugees of their rights.

It is important to stress that addressing the non-recognition problem does not require a radical revision of Palestinian refugee policy either internationally or domestically. Most of the policy gaps we identify, both with Lebanon and the UN, are the result of informally adopted regulations that in some cases were never officially published. Because refugee registration policies were often *ad hoc*, they were not necessarily intended to become long term policy. While this policy structure hampers accountability and clarity, it also allows for periodic re-assessment and flexibility. The two pillars of Palestinian refugee policy – return and dignity – remain as current as ever. However, the rigid rules in place today are not in keeping with this spirit and need revision.

Looking specifically at the problem of non-registration by UNRWA, there are roughly four main challenges:

Secondary migration: UNRWA has in practice – though not by any clear rule – prevented Palestinians who move from one country to another from transferring their registrations.

Lack of open registration: Palestinians who initially fled in 1948 and for one reason or another were not registered in UNRWA's first census in Lebanon in the 1950s have difficulty registering for the first time later.

Limits of the “working definition:” UNRWA has progressively revised its “working definition” of a Palestine refugee. The current definition, in place since 1993, leaves out people who fled Palestine before 1948 or between 1949 and 1967. It also leaves in limbo Palestinians who fled in 1967 or later, although the General Assembly has asked UNRWA to assist such people. Post-1967 refugees have at best *de facto* assistance from UNRWA, but do not carry registration cards.

Gender discrimination: To date, UNRWA forces women to be registered with a “head of household,” normally either a father or husband. Women are not able to add spouses to their own UN files, and cannot pass on status to their children. This policy violates human rights law, and exacerbates the problem of non-recognition. UNRWA has tentatively committed itself to consider changing this policy.

One of the complexities of UN refugee status is that there are in fact two relevant agencies: UNRWA, and the UN High Commissioner for Refugees (UNHCR). Under international refugee law as interpreted by UNHCR in 2002, Palestinian refugees should enjoy “continuity of protection.” This principle recognizes that Palestinian refugees were given a unique status in international law, and should be guaranteed continuous protection or assistance from the United Nations. A provision of the 1951 Refugee Convention gives Palestinian refugees automatic protection of UNHCR if their UNRWA assistance ceases for any reasons, allowing Palestinians to fall under UNHCR’s mandate even if they are not fleeing recent persecution.

UNRWA provides only assistance whereas UNHCR promotes legal protection to refugees. One of the problems facing Palestinian refugees today is that there has been no UN agency charged with promoting their legal rights since the demise of the UN Conciliation Commission for Palestine (UNCCP) in the 1950s. UNHCR currently interprets the continuity of protection principle only with reference to refugee status. However, the principle has also been invoked by advocates who argue that the UN should re-invigorate its efforts to protect Palestinian refugee rights in general. We do not address this debate in this report, and discuss continuity of protection only as it is relevant to the registration and recognition of individual refugees.

For direct assistance to individual Palestinian refugees, UNRWA remains the preferable agency for Palestinians in most cases because it operates programs focused on their particular situation. However, both agencies need to examine how to better implement the continuity of protection principle in the Middle East. Most of the unrecognized Palestinians in Lebanon are entitled to UN assistance; today responsibility appears to be diffused between two UN agencies so that some people are left out. Contrary to international refugee law, UNHCR does not step in today when Palestinian refugees in Lebanon are unable to access UNRWA assistance. While we recommend primarily that UNRWA revise its policies in order to include unrecognized refugees, we also stress that the current UNHCR practice in Lebanon and other Middle Eastern

countries of entirely excluding Palestinians is legally untenable and should be re-assessed.

Another complexity facing UNRWA is the fact that the Lebanese Government (as well as other host governments) has in the past resisted changes in UNRWA's registration criteria. Many of the UNRWA registration gaps noted in this study may result mainly from UNRWA attempting to accommodate government demands and restrictions. Because gender discrimination in personal status is common throughout the Middle East, there may be resistance to UNRWA adopting a contradictory policy. Because the number of Palestinians in the country is a sensitive political issue for Lebanon, the government may resist allowing new arrivals to register because it would make the official number of refugees higher (although the people are in fact present regardless). As a UN agency, UNRWA's first obligation must be to international law and to its own mandate. Because of the continuity of protection principle in international refugee law, any Palestinian refugee who is deprived of UNRWA assistance is likely to become a burden on UNHCR. Therefore, we recommend that UNRWA adopt registration policies independent of the Lebanese government, especially when to do otherwise would put UNRWA in violation of human rights law. This is important to protect UNRWA's standing in terms of human rights protection, to promote refugee welfare, and to prevent awkward administrative mandate overlaps between UNRWA and UNHCR.

The technical rules governing the issuing of IDs by the Lebanese government are different from those governing UNRWA registration. The basic cause of government non-recognition of Palestinian refugee status appears to be the fact that Lebanese regulations provided for registration of refugees only until 1962. Although some new arrivals gained identity cards in a 1975 decision by the Minister of Interior, not all did. All of the non-ID refugees we interviewed (or their families) arrived in Lebanon after 1962.

During the 1970s, the non-ID problem was ameliorated by the role of the PLO in the country. The 1969 Cairo Agreement between Lebanon and the PLO required Lebanon to support the PLO's military activities, and guaranteed social and economic rights to Palestinian civilians. The Cairo Agreement combined with the PLO's political and social service roles attracted many Palestinians to the country. Unfortunately, because the Cairo Agreement tied civilian rights to the PLO's armed activities, the refugees' status in the country deteriorated as the PLO was embroiled in the Lebanese civil war after 1975. In 1982, the Israeli invasion of Lebanon forced the PLO from Beirut. In 1987 the Lebanese government abrogated the Cairo Agreement, leaving many post-1962 arrivals with no status in the country.

The resulting Lebanese policy contradicts both international law and Arab League resolutions, both of which require recognition of Palestinians in Lebanon. At a minimum, Lebanon should abide by the basic rule that all people are entitled to recognition before the law. We recommend that Lebanon flexibly apply its registration rules, and revise them as needed, to provide recognition to all Palestinians who reside in Lebanon and have no other country to which they can go.

2) INTRODUCTION

a) Origins of the Palestinian refugee problem



Refugees fleeing Ramle in 1948 (Photo: International Committee of the Red Cross)

Palestinian refugees lie at the heart of the Israeli-Palestinian conflict because establishment of a Jewish state in Palestine involved the mass displacement of native non-Jewish Palestinians. Israel today has a population that is roughly three-quarters Jewish, a demographic advantage that exists only because most of the native non-Jewish population of the country was forced out through military actions that bear striking resemblance to “ethnic cleansing” in more recent conflicts in the Balkans.

Throughout the last 100 years, a series of momentous political and military events shaped the future of Palestine; not once were the citizens of Palestine asked to make a democratic choice about the future of their country. The seeds of the current Israeli-Palestinian conflict were planted in the final years of the Ottoman Empire, which ruled over Palestine until World War I.¹ Under Ottoman authority, Palestine was a mainly rural area divided into several smaller government units, each called sanjaq.² In the late 19th Century, the first Zionist colonists began arriving in Palestine, part of a movement

¹ This historical summary is based on ILAN PAPPE, A HISTORY OF MODERN PALESTINE (2004).

² Beginning in 1864, the modern territory of Palestine was divided into the Sanjaq of Acre, the Sanjaq of Balqa’ (Nablus), and the Sanjaq of Jerusalem.

fed both by European anti-Semitism and colonial disregard for indigenous peoples. From their first large scale arrivals in 1882 until 1917, the Zionist settlers established a small number of towns, and began purchasing land.

In November 1917, the British Government issued the Balfour Declaration declaring tentative support for the Zionist goal of establishing a “national home for the Jewish people ... it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine.” One month later the British army conquered Jerusalem, ending the Ottoman era in the country. At that time, Palestine had a population of around 800,000, including just 60,000 Jews.

In 1920, the League of Nations gave Britain a mandate over Palestine, which meant that Palestine was a nominally sovereign country which Britain was entrusted to aid in developing toward full political independence. The League’s mandate explicitly endorsed the Balfour Declaration and the establishment of a separate Jewish agency to manage Jewish affairs in the country. It also endorsed Jewish immigration for the purpose of building a Jewish national home. No similar provisions were made for non-Jews. In 1929, the country was torn by widespread riots killing hundreds (both Jews and Arabs). These riots led to the first of several mandate-era commissions of inquiry, known as the Shaw Commission, which recommended a suspension of the Balfour Declaration and limitations on Jewish immigration and land purchases. The next year British Prime Minister Ramsay MacDonald reaffirmed his government’s commitment to the original League of Nations mandate. Continued Zionist settlement led to a new and more violent revolt in 1936, followed by the 1937 Peel Commission.

The Peel Commission represented the first official recommendation that Palestine should be partitioned into two states, one Jewish and one Arab (to be annexed to TransJordan). The plan failed to stop the violence in Palestine and was abandoned by Britain in 1938. The Peel Commission considered that partition might require a forced population transfer because Jews were a minority in the country, but this was not included as an official recommendation. Transfer (meaning the expulsion of non-Jews) was also discussed among Zionist leaders and intellectuals in the 1930s.³ In 1939, a new British White Paper promised new limits on Jewish immigration.

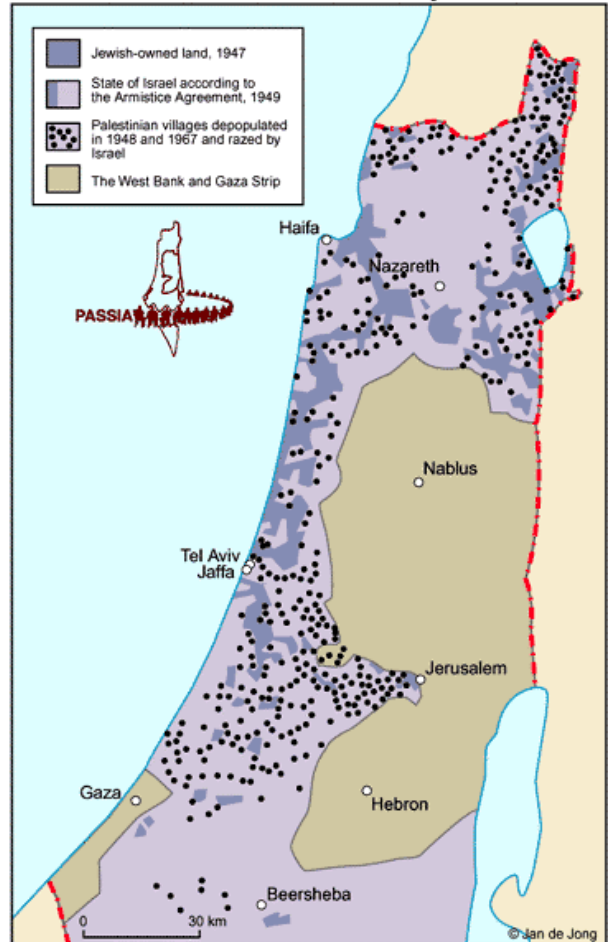
Many of the Arab leaders of the 1936-37 revolt were sent into exile, while the Jewish *Yishuv* (pre-state community in Palestine) was able to develop increasingly well organized “self-defense” militias. After World War II, violence continued in Palestine; attacks (mainly by Jewish militias) claimed an increasing number of British lives. In 1946, the Anglo-American Commission recommended that Palestine be constituted as a single bi-national state, a plan that (like those before it) failed to win political support. In February 1947, Britain announced its plan to withdraw in 1948, and asked the United Nations to find a solution.

³ See NUR MASALHA, *THE POLITICS OF DENIAL: ISRAEL AND THE PALESTINIAN REFUGEE PROBLEM* 17-26 (2003).

Landownership in Palestine and the UN Partition Plan, 1947



Palestinian Villages Depopulated in 1948 and 1967, and Razed by Israel



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Maps re-printed courtesy of Palestinian Academic Society for the Study of International Affairs (www.passia.org)

In 1947, Palestine was a majority-Arab country. There were around 650,000 Jews and about 1.25 million Arabs.⁴ The UN appointed an expert commission, which recommended partition of the country. In a non-binding resolution, the UN General Assembly endorsed the recommendation on 29 November 1947 (Resolution 181). (General Assembly resolutions, unlike Security Council resolutions, are not binding.) The UN-proposed Jewish state would have had a Jewish majority of only around 55 percent. The vast majority of the land was either held by the state or by Arabs; less than 10 percent was owned by Jews. The partition recommendation was rejected by the Arab leadership, and violence began to escalate almost immediately. With the political rejection of the partition recommendation, the UN Security Council continued to look for other political solutions in 1948. In March 1948 the United States proposed a new UN trusteeship over Palestine. However, by then events had been overtaken by war.

From December 1947 until the end of the British Mandate on 14 May 1948, the Palestine conflict was mainly a civil war fought between Jewish and Arab militias and irregular fighters. On 15 May 1948, with the Palestinian militias nearly defeated, the regular armies of Jordan, Syria, Egypt and Iraq intervened, along with irregular militias from other Arab states. By the end of the war, the Arab side had lost around 78 percent of Palestine. Israel was admitted to membership in the United Nations in 1949. Israel placed the Arabs who remained inside the country under ethnically-defined military rule until the late 1960s, and confiscated the property of all displaced non-Jews.

By the end of the 1948 war, between 700,000 and 800,000 Arab Palestinians had been displaced from their homeland. Palestinians have always insisted they were expelled in an organized violent campaign of ethnic cleansing. In addition to their long recorded personal histories, recent work by Israeli historians based primarily on Israeli military archives has generally confirmed the Palestinian account. Debate continues among historians about whether the refugee flight was part of a systematic plan by Israeli/Zionist leaders, but there appears little debate among serious historians that military attack, fear of military attack, repeated massacres, and in many cases forced expulsions were the main causes of the refugee exodus.⁵

According to Benny Morris, whose history of the refugee flight remains the most detailed, the first Palestinian village to be entirely emptied and destroyed by Hagana (Zionist militia) attack was Abu Suqir in January 1948.⁶ Hagana soldiers, seeking to retaliate for an attack on a Zionist militia patrol, had orders to “destroy the well ... destroy the village completely, kill all the adult males, and destroy the reinforcements

⁴ BENNY MORRIS, *THE BIRTH OF THE PALESTINIAN REFUGEE PROBLEM REVISITED* 14, 18(2003).

⁵ *See e.g.*, MASALHA, *supra* note 3, MORRIS, *supra* note 4, PAPPE *supra* note 1.

⁶ MORRIS, *supra* note 4, at 76-77.

that arrive.”⁷ The village inhabitants, fearing an attack, fled in advance; no one was left to be killed when the attacking militia arrived.⁸

For Lebanon, the most important expulsions occurred in the North of the country; we will briefly provide illustrative examples of what happened in that region. The residents of Tiberias, fearing military defeat, fled in convoys during a British-organized truce in April 1948.⁹ Arab flight from Haifa began in December 1947, but culminated on 21-22 April when the British evacuated the city and the Haganah launched a multi-pronged attack.¹⁰ Fear spread after the 9 April Deir Yassin massacre near Jerusalem, hastening the flight of Palestinians from Haifa and several neighboring villages.¹¹ On 1 May, the Haganah’s elite Palmach unit conquered Ein al-Zeitun and Biriyya near Safad. According to Morris, “While some of Ein al-Zeitun’s inhabitants fled during the mortaring, many women, children and old men stayed put and were rounded up and expelled, with shots fired over their heads to speed them on their way.”¹² Safad, Beisan, and Acre were all conquered by the Haganah in the first half of 1948, leading most of their Arab residents to flee.

These early flights and expulsions were followed later in 1948 by an Israeli effort to consolidate military victory and conquer more territory. In October, “Operation Hiram” attacked areas of the Upper Galilee, which at this time was housing many refugees already displaced from elsewhere. According to Morris,

Of the area’s estimated 50,000-60,000 population (locals and refugees before 18 October), more than half ended up in Lebanon. ... Repeatedly during the operation, Northern Front ordered the units to issue strict prohibitions against looting. No such prohibitions were issued regarding expulsions (or, for that matter, the killing of civilians and POWs.). ... In general, the units along the Lebanese border made sure that the refugee columns continued on their way to Lebanon and often prevented with live fire any attempt to return to Israeli territory. And in the interior of the Galilee, the IDF made sure that villages that had been depopulated would stay empty.¹³

As these examples illustrate, 1948 saw the worst of the ethnic cleansing of Palestine. But forced displacement has not been limited to that year. In the June 1967 Arab-Israeli war, when Israel occupied the Gaza Strip and the West Bank (in addition to the Golan Heights and the Sinai Peninsula), several hundred thousand more

⁷ *Id.* at 77, quoting military command record in Israeli military archives.

⁸ *Id.*

⁹ *Id.* note at 184-185.

¹⁰ *Id.* note at 186-211.

¹¹ *Id.* note at 208.

¹² *Id.* note at 222.

¹³ *Id.* note at 473, 483, 474, 483.

Palestinians¹⁴ were forced from their homes.¹⁵ In addition, smaller numbers of Palestinians became exiles between 1948 and 1967, or were outside Palestine and were unable to return.¹⁶ These phenomena complicate Palestinian refugee status, as we explore in this study.

b) The plight of Palestinians without recognition in Lebanon

Before 1948, Palestinians were citizens of a state that under the League of Nations was a sovereign country under British tutelage. After 1948, most had not only lost their homes but had also been effectively de-nationalized by Israel. With most of Palestine under Israeli control, and the rest in Jordanian or Egyptian hands, hundreds of thousands of Palestinians became suddenly stateless. Statelessness has been one of the core hardships that have defined the Palestinian experience ever since.

At the end of 1948, the United Nations called on Israel to allow the refugees to return to their homes in General Assembly Resolution 194; Israel refused.¹⁷ Today, the refugees number in the millions. The deadlock over their right of return remains the most sensitive and difficult issue in the Israeli-Palestinian peace process. Having remained in limbo for 57 years, and with no immediate prospect for a final resolution of the conflict, helping these refugees live a dignified life with basic civil, political, social and economic rights remains a high priority.

Palestinians in exile are spread around the world, but the largest concentrations are in Arab states and the occupied Palestinian territories. Their status, rights, and living conditions vary from country to country, but conditions in Lebanon are generally considered to be among the worst and have attracted increasing attention from human rights monitors in recent years.¹⁸ The main concerns have been about discrimination against Palestinians in terms of social and economic rights. The International Federation

¹⁴ Estimates range from 200,000 to 400,000. Around 95,000 of the people displaced in 1967 were in fact already refugees from 1948.

¹⁵ Report of the Secretary-General under General Assembly Resolution 2252 (ES-V) and Security Council Resolution 237 (1967), UN Doc. A/6797 (1967).

¹⁶ There are also Palestinians who were forced from their homes in 1948, but remained in territory that became part of the State of Israel; most are today citizens of Israel, but have not been allowed to return to their homes. They are often referred to as “internally displaced” Palestinians.

¹⁷ For a more complete analysis of the legal basis for the right to return, See John Quigley, *Displaced Palestinians and a Right of Return*, 39 HARV. INT’L L. J. 171 (1998); Gail Boling, *The 1948 Palestinian Refugees and the Individual Right of Return: An International Law Analysis*, Badil Resource Center for Palestinian Residency and Refugee Rights (January 2001).

¹⁸ See Amnesty International, *Lebanon: Economic And Social Rights Of Palestinian Refugees: Submission To The Committee On The Elimination Of Racial Discrimination*, MDE 18/017/2003 (2003); International Federation for Human Rights (FIDH), *Les réfugiés palestiniens : discriminations systématiques et désintérêt total de la communauté internationale*. (2003); Euro-Mediterranean Human Rights Network (EMHRN), *Palestinian refugees in Lebanon and Jordan* (2001).

for Human Rights (FIDH) stated: “Palestinian refugees in Lebanon are in a situation of extreme social, economic and political exclusion.”¹⁹ The European Parliament has noted “serious concern about the difficult situation of 300,000 (sic) Palestinian refugees in Lebanon.”²⁰ In 2004, the UN Committee on the Elimination on Racial Discrimination expressed concern about measures restricting the social and economic rights of Palestinians, and urged Lebanon “to remove all legislative provisions and change policies that have a discriminatory effect on the Palestinian population in comparison with other non-citizens.”²¹ In June 2005, Lebanon’s outgoing Labor Minister announced that most Palestinians in the country would be allowed to obtain work permits for manual and clerical labor, but not for professional positions.²²

Most Palestinians in Lebanon have identity cards issued by the Lebanese government, which eases their basic freedom of movement. Restrictions on the right to work, education, healthcare and property leave Palestinians highly dependent on the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), which provides assistance but has limited resources in the face of vast needs. The 12 official Palestinian refugee camps that exist in Lebanon today are under the *de facto* control of armed Palestinian militias; they are often surrounded by Lebanese army positions that control entry and exit, but the Lebanese government in general does not exert its authority inside the camps. These camps are on occasion the scene of violence between Palestinian factions vying for control. Israeli fighter jets occasionally fly over the camps in mock bombing raids, spreading panic amid the residents. There are also some isolated unofficial settlements of refugees around the country that do not receive direct UNRWA assistance and are outside the borders of the official camps.

The marginalization of Palestinian refugees in Lebanon is normally explained, though not justified, by the Lebanese fear of *tawtin* (implantation) of the refugees. While there is a near-Arab consensus that the right to return must be the foundation of any solution of the refugee issue, resistance to local integration of the refugees is especially strong in Lebanon. There are usually three related reasons given for this. First, Lebanon is small country struggling with its own internal instability and interference from outside powers. Second, Lebanese politics has been shaped by a delicate power balance between the various Muslim, Christian, Druze and other sects who populate the country. Integration of mainly Sunni Muslim Palestinians would disrupt the demographics of the country. Third, Palestinian political and military groups played a substantial role in the lead up to and the course of the 1975-1991 civil war, especially until the Palestine Liberation Organization (PLO)’s expulsion from the country in 1982. Indeed, as this report will explain, the legal status of Palestinians in Lebanon has often been tied to the

¹⁹ FIDH, *supra* note 18, at 16.

²⁰ Resolution of January 16, 2003. The most frequently cited figure for the number of Palestinians in Lebanon is approximately 400,000, based on UN estimates. However, it is not known whether this estimate is accurate and up-to-date.

²¹ CERD/C/64/CO/3 para. 12, 64th session (28 April 2004)

²² Rym Ghazal, *Lebanon to let Palestinians obtain work permits*, THE DAILY STAR (28 June 2005).

political fortunes of the PLO. None of these factors can be justifications for Lebanon violating international or domestic law vis-à-vis Palestinians. While Lebanon is on sound legal ground to oppose permanent local integration and to insist on the right of return, this cannot explain the severity of discrimination against refugees.

While several human rights reports have explored in detail the general discrimination against Palestinian refugees, these reports have noted the existence of a sub-group who are in fact worse off than the rest. These are Palestinian refugees who live in Lebanon either without identity cards from UNRWA but registered solely with the Lebanese authorities (non-registered or non-R) or without registration with both UNRWA and the Lebanese authorities (non-ID).²³

Those who lack both forms of registration, often called “non-ID Palestinians,” are essentially rendered illegal aliens in Lebanon. They are subject to arrest if they leave the refugee camps and cannot obtain documents to travel abroad. Those denied UNRWA registration, called “non-registered” or “non-R” are deprived of regular access to the subsistence, education and health services that UNRWA provides to other refugees in the country. (UNRWA does allow non-R Palestinians *de facto* access to some services on an informal basis.)

The Danish Refugee Council recently published a report on the situation of non-ID Palestinians in Lebanon.²⁴ The Danish Refugee Council report indicated that around 3,000 refugees in Lebanon lack both government identification and UNRWA registration. It summarized their situation:

Undocumented refugees are faced with restrictions of movement, lack of access to UNRWA services and poor health care. More worryingly, in addition to these difficulties, the second generation faces obstacles in graduating from school, getting married, owning property and generally taking part in ordinary legal and social life activities.

Because they lack official registration means that there is no official authority that tracks their numbers. It is usually assumed that there are more non-R refugees than non-ID Palestinian refugees, though the latter faces the most severe hardships.

²³ See EMHRN, *supra* note 18, at 17; Amnesty International, *supra* note 18, at 2-3; FIDH, *supra* note 18, at 17; US COMMITTEE FOR REFUGEES, WORLD REFUGEE SURVEY 2003.

²⁴ Danish Refugee Council, Survey Report on the Situation of Non-ID Palestinian Refugees in Lebanon (March 2005).

c) Purpose of this study

This report is an investigation into why and how some Palestinian refugees have ended up in a non-ID or non-R situation. The Danish Refugee Council report cited above explored in depth the effect that lack of identification has on people's livelihood and welfare. Yet, there has been no in depth examination as to why people end up in this predicament in the first place. It is commonly assumed, for instance, that non-ID and non-R refugees left Palestine after 1948 and therefore were not registered with UNRWA, or arrived in Lebanon in the 1970s when the PLO in Lebanon was at its most active, and were denied government ID cards. But these explanations do not provide answers to the most important questions for actually repairing this gap in refugee protection. It has not been known whether the non-ID/non-R problem was a result of a gap in law and policy (in which case there may be a need to reform the law), or rather a result of incorrect application of existing laws.

The Danish Refugee Council report includes a number of recommendations for the UN, Lebanon, or other governments, but there has been relatively little analysis of the actual legal obligations incumbent on any of them. In particular, a great deal of ambiguity surrounds the responsibilities of two relevant UN agencies: UNRWA and the UN High Commissioner for Refugees (UNHCR). One of the findings of this study is that non-registration with the UN results from a complex range of circumstances, but appears to reflect to a large extent a problem in implementation rather than a gap in the actual policy or law. In some cases, UN agencies in Lebanon have failed to apply either the UNRWA working definition of a Palestine refugee, or failed to implement provisions of international refugee law. In other cases, UNRWA discriminates against women in the registration of Palestine refugees.

Correcting these problems requires a highly specific understanding of how individuals end up without recognition as Palestine refugees, and an analysis of how existing law and policy ought to apply to their cases. Our study examines the impact of gaps in Palestinian refugee status on individuals. However, ambiguities about Palestinian refugee status impact discussion of Palestinian refugee issues at a macro level as well. As the Bethlehem-based Badil Resource Center has noted,

Available data on the Palestinian refugee and displaced population is characterized by uneven quality and uncertainty primarily due to the absence of a comprehensive registration system, frequent migration for political and economic reasons, and the lack of a uniform definition of a Palestine refugee.²⁵

²⁵ Badil.org, "Facts and Figures," <http://www.badil.org/Refugees/facts&figures.htm> (last checked 26 June 2005).

This study combines field research and legal analysis to provide answers to these questions, and thus to begin to provide detailed answers as to how to fill gaps in the system so that refugees will not be denied the recognition and assistance to which they are entitled.

d) Methodology and profile of interview subjects

The research behind this report took place on two parallel tracks between January and June 2005.

One track involved legal research. It began with a preliminary survey of relevant international and Lebanese legal instruments affecting the recognition of Palestinian refugee status, which was then used to inform the design of a questionnaire for the field study. The legal research then involved an in-depth analysis of relevant international refugee and human rights norms, UN resolutions and guidelines, Arab League resolutions, and Lebanese law and regulations. Preliminary field study results led to supplemental legal research into issues that were not initially foreseen.

The field study began with the design and testing of a questionnaire to solicit information about how a person or his or her family arrived in Lebanon and relevant data for determining a Palestinian refugee status. The questionnaire is included in the appendix to this report. A pilot study was conducted to test the reliability of the questionnaire. Eight interviews were used to check the comprehension of the questions and modifications were made where required.

Interviewers with intimate familiarity with the refugee camps were appointed and trained to both select and conduct interviews. Working both in our Beirut office and in refugee camps, we interviewed 155 Palestinians resident in Lebanon who lacked recognition with Lebanese authorities and/or UNRWA. Respondents lived in Ein el Helweh camp (Sidon), Burj el Barajneh (Beirut), El Badawi camp (North Lebanon), Shatila camp (Beirut), Al-Bared camp (North Lebanon), and Mieh-and-Mieh camp (south Lebanon). After eliminating 7 questionnaires due to ambiguous and inconsistent responses, the survey sample concluded with 148 valid questionnaires.

The field research was not intended to produce a representative sample of the non-ID or non-registered population in Lebanon. Thus, the study cannot be generalized to describe the demographic profile of the population. Two limits of our sampling are immediately obvious. First, the majority of our sample (114 of 148 interviewees) lacked both Lebanese government recognition and UNRWA registration (non-IDs). Only 34 had government IDs but still lacked UNRWA registration (non-R refugees).

This breakdown does not reflect the actual proportions of the non-ID and non-R phenomena. According to the Danish Refugee Council report, there are around 3,000 Non-ID refugees in Lebanon, and 30,000 to 35,000 non-R refugees in Lebanon. Although

official estimates are of around half this number, the assumed non-ID to non-R ratio is nevertheless the reverse proportion of our sample. Since non-ID refugees also lack UN registration, interviewing them allows us to examine the gaps in both government and UN policies.

Second, we interviewed only 14 women out of 148 total respondents. While our data is sufficient to show the effects of gender discrimination (which we discuss in the body of the report), it may underestimate the scope of the problem.

Our field study was intended only to identify particular problems, not to determine how widespread they might be. Our aim was to identify systematic gaps that prevent refugee recognition, and our research was designed to illustrate the range of individual circumstances that obstruct either government or UN recognition. This report should be taken as an indication of the variety of circumstances that create the non-ID/non-registered problem. However, while we identify specific gaps in the system, we cannot say how many people are affected by each specific gap. In this sense it was primarily a qualitative, rather quantitative study.

A major obstacle to conducting this research was that refugees were in some cases reluctant to be interviewed. The political tensions surrounding the Palestinian refugee situation in general and in Lebanon in particular created apprehension around questions of nationality and citizenship status. Although our researchers were trained to explain that interviews were anonymous and intended solely to increase understanding of the refugees' problem, some subjects were skeptical of our motivations.

Most refugees today are descendants of the original 1948 refugees, and in some cases their knowledge of that original place of residence in Palestine or date of displacement was vague. In addition to these obstacles, many of the legal issues involved were quite technical and subject to different understandings of technical terms. For instance, the question of nationality can sometimes confuse the question of Palestinian identity with later registration, residency, or citizenship status acquired in another country. We attempted to overcome these obstacles by first training interviewers to provide a common definition of terms, and second by asking multiple questions related to single legal criteria, allowing us to identify and correct discrepancies before data entry.

Overview of interviewee profile

Total number of interviewees	148
Number lacking both government and UN recognition (non-ID)	114 (4 female)
Number lacking only UN recognition (non-R)	34 (10 female)
Female interviewees total	14

3) PALESTINIAN REFUGEES IN INTERNATIONAL LAW

a) Early UN approaches to the Palestinian refugee problem



Nahr Al Bared camp in Lebanon in 1951 (Photo: UNRWA)

The Palestinian refugees of 1948 were effectively the last large group of refugees to have their international legal status prescribed by the “criterion of ethnic or territorial origin, coupled with a stipulation that the applicant not enjoy *de jure* national protection.”²⁶ Their status is defined specifically by nationality, with a specialized agency set up to care only for them. This had been the predominant system of refugee protection under the League of Nations for Russians, Greeks and Armenians and Germans, but began to fade just before World War II and with the advent of the 1951 Convention relating to the status of Refugees.²⁷ This Convention, along with its 1967 Protocol, established an open-ended definition of refugee status that can apply to any refugee situation into the future. Palestinian refugee status is subject to some confusion today in part because the refugee crisis began at an ambiguous moment in the development of modern refugee law.

In the late 1940s, special arrangements were made for Palestinian refugees largely because the United Nations took substantial responsibility for attempting to resolve their

²⁶ JAMES C. HATHAWAY, *THE LAW OF REFUGEE STATUS* 4 (1992).

²⁷ Convention relating to the status of Refugees article 42, 189 U.N.T.S. 150, entered into force April 22, 1954 (hereafter “1951 Convention” or “Refugee Convention.”). See HATHAWAY, *supra* note 26, at 5-10.

problem.²⁸ The UN's attention to the refugee problem began in 1948 with the appointment of Count Folke Bernadotte as UN Mediator for Palestine. In reports to the Security Council on 1 August 1948 and 16 September 1948 Bernadotte called for a re-affirmation of the refugees' right to return to their homes.²⁹ His recommendations became the basis for General Assembly Resolution 194 (III) of 1948.³⁰

Resolution 194 is today remembered mainly for its paragraph 11, which endorses the right to return:

Resolves that 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 the loss of or damage to property which, under principles of international law or equity, should be made good by the Governments or authorities responsible.

Resolution 194 also established the UN Palestine Conciliation Commission for Palestine (UNCCP), whose purpose was

To assist the governments and authorities concerned to achieve a final settlement of all questions outstanding between them ... [and] to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation.

The UNCCP's mandate was aimed at a final and just resolution to the Israeli-Palestinian conflict, including the refugee problem.

The UN also began in 1948 to take interim measures to provide emergency assistance to the refugees. In July 1948, Bernadotte set up a 60-day emergency Disaster Relief Project (UNDRP) to coordinate aid to the refugees.³¹ On 19 November 1948, in Resolution 212, the General Assembly re-organized these efforts by establishing the UN Relief for Palestine Refugees (UNRPR), which was essentially a fund to receive donations for humanitarian aid. In the first year of the Palestinian exile, humanitarian assistance was provided mainly by secondary groups such as the International Committee of the Red Cross, funded in part by the UNRPR. A year later, on 8 December 1949, these efforts were consolidated by General Assembly Resolution 302(IV), which established the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). By the 1950s, UNCCP had shifted its focus away from finding a durable solution to the

²⁸ In 1950, a Lebanese delegate to the UN said that the Palestinian exodus was "the direct result of a decision taken by the United Nations ... [and] a direct responsibility on the part of the United Nations." GAOR, 5th Session 328th Meeting, 27 November 1950, para. 47 (Mr. Azkoul of Lebanon).

²⁹ UN doc. A/168, 14, 18.

³⁰ See LEX TAKKENBERG, *THE STATUS OF PALESTINIAN REFUGEES IN INTERNATIONAL LAW* 22-23 (1998).

³¹ *Id.* at 23.

Palestinian refugee problem and toward promoting the economic subsistence of the refugees in exile. UNCCP is essentially defunct today, though it continues to exist on paper.³²

Meanwhile, the international community undertook a parallel process of re-writing international refugee law. The first act in this process was the Statute of the Office of the United Nations High Commissioner for Refugees (UNHCR), which was passed by the General Assembly on 14 December 1950. This was followed by the 1951 Refugee Convention and the 1967 Protocol to the Refugee Convention. These documents form the backbone of the international refugee regime today. They form an important safety net for Palestinian refugees who are not assisted by UNRWA.

This report is concerned only with the issue of refugee status and recognition, especially of the minority of Palestinians in Lebanon who are currently unrecognized. However, we note that a number of scholars and advocates argue that there is a general protection gap facing all Palestinians which should lead to a re-assessment of the respective roles of UNHCR and UNRWA. As Susan Akram has observed, “[W]ith UNCCP’s protection mandate emasculated, they are left without protection mechanisms or guarantees to which all other refugees in the world are entitled.”³³ In this report, we seek only to deal with the issue of individuals who lack registration as Palestinian refugees; we do not address the more general problem of this protection gap.

b) Palestinians in the context of modern refugee law

States in the Middle East in general and Lebanon in particular have not established their own asylum systems. By default, this makes UN agencies especially central for refugee policy in the region. Lebanon in particular is not a party to the 1951 Convention relating to the status of Refugees, and places heavy restrictions on the rights of Palestinians in the country. As a result, protection and assistance for refugees depends heavily on the mandates of UNRWA and UNHCR, rather than on the government.

Today, Palestinian refugees in Lebanon depend extensively on UNRWA for assistance. However, both UNRWA and UNHCR could conceivably have relevance for Palestinians in different circumstances. For Palestinian refugees, the two agencies have reciprocal mandates; UNHCR’s mandate over Palestinian refugees is defined with reference to UNRWA’s mandate. Thus, although UNRWA was never charged formally with defining refugee status (its mandate is only to provide relief and assistance), its

³² Harish Parvathaneni, *UNRWA’s Role in Protecting Palestine Refugees* 15, Badil Resource Center Working Paper No. 9 (December 2004).

³³ Susan M. Akram, *Reinterpreting Palestinian Refugee Rights Under International Law*, in *PALESTINIAN REFUGEES: THE RIGHT OF RETURN* 172 (Nasser Aruri, ed) (2001). For more information about the protection gap, see the Badil Resource Center’s website, <http://www.badil.org/Protection/Protection-Gap.htm>.

criteria acquire added legal importance via the backdoor of the UNHCR mandate. The following discussion will set out the legal mandate of each agency.

UNRWA was established in 1949, before the 1951 Refugee Convention. In 1950, UNHCR's general mandate was drafted with the Palestinian situation in mind, though the drafters could not have imagined that the Palestinian exile would endure as it has for more than 57 years. UNHCR's mandate included a provision (paragraph 7C) to prevent an overlap between UNHCR's and UNRWA's work by providing that UNHCR's mandate would not include any refugee who was already receiving protection or assistance from another UN agency.

Neither the UNHCR mandate nor the 1951 Convention contain the words Palestine or Palestinian; Palestinian refugees are not excluded from their *protection per se*. Rather, any person of any nationality can seek protection according to the normal refugee definition, *unless* they receive protection or assistance from another UN agency such as UNRWA.

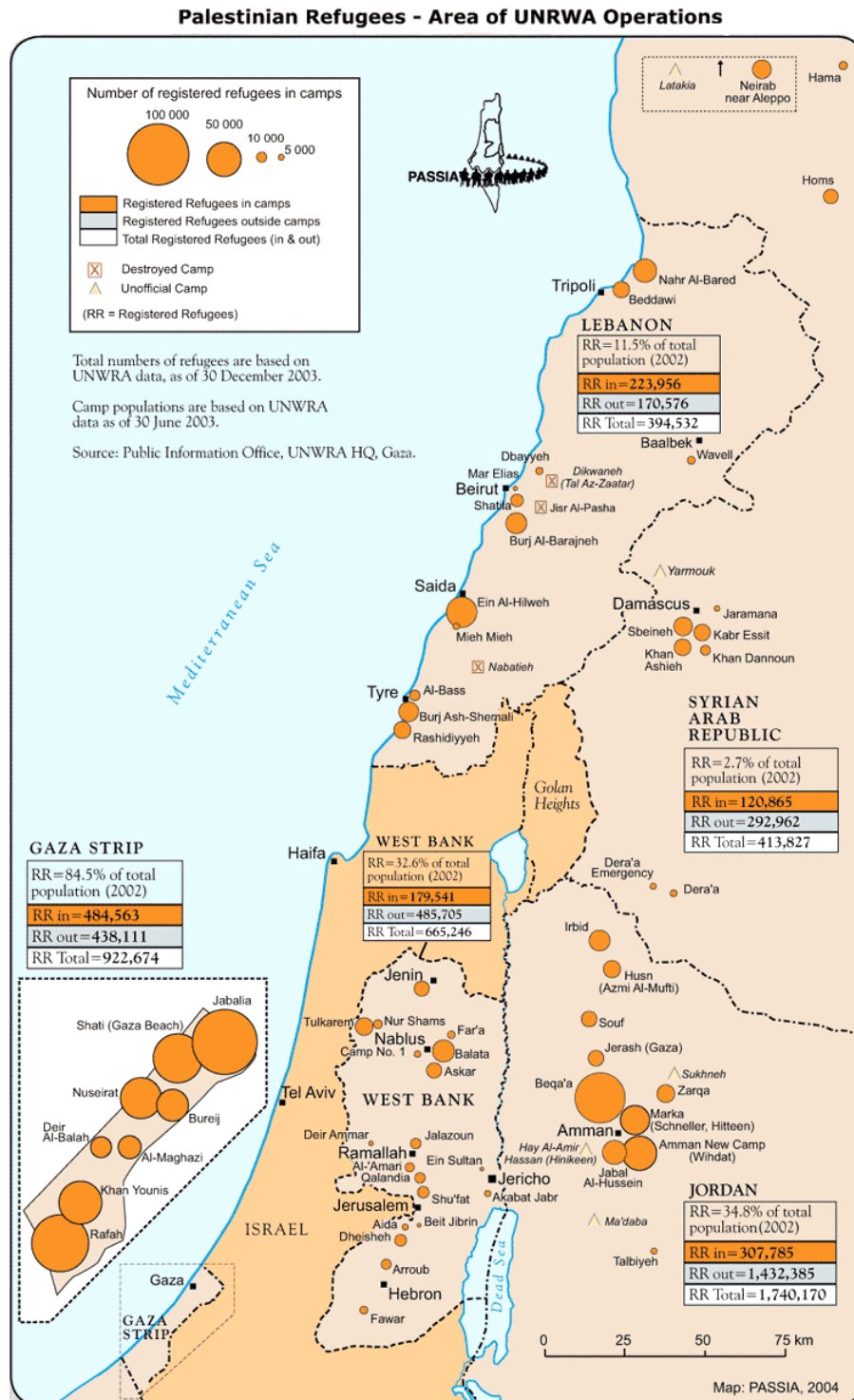
Any across the board exclusion of Palestinians from UNHCR's mandate would discriminate against them for their nationality. International law emphatically prohibits discrimination in matters of refugee protection. The Refugee Convention's article 3 provides: "The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin." No state may enter a reservation to waive this provision. There are no exceptions in the Convention to this bar on discrimination by country of origin. The prohibition on discrimination is one of the cardinal principles of international law, enshrined in the Universal Declaration of Human Rights,³⁴ the International Bill of Rights,³⁵ and recognized as a pre-emptory (*jus cogens*) norm of international law.³⁶

³⁴ G.A. Res. 217A (III), U.N. Doc A/810 at 71 (1948).

³⁵ International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force Jan. 3, 1976; International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976.

³⁶ See IAN BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 546-549 (6th ed. 2003).

Frontiers Association
FALLING THROUGH THE CRACKS



Map re-printed courtesy of Palestinian Academic Society for the Study of International Affairs
 (www.passia.org)

4) “NON-R” PALESTINIANS (DENIAL OF REGISTRATION BY THE UNITED NATIONS)

UNRWA REGISTRATION CARD		رقم التسجيل الدولي		رقم التسجيل الوطني		رقم التسجيل الوطني							
REGISTRATION NO.	AREA	RESIDENTIAL CENTRE	DATE OF ISSUE	ORIGIN	HEAD OF FAMILY & FAMILY NAMES	S.M.C. DATA	NAT. ID. NO.						
125356	NABLUS	CAMP NO. 1	07/97	30131	MAHMOUD								
RANK	FIRST NAME	SEX	RELAT.	D.O.B.	M CODE	DATE	RANK	FIRST NAME	SEX	RELAT.	D.O.B.	M CODE	DATE
01	AMNEH	F	HMF	0129	97	0797							
02	AMAL	F	MFB	1255	97	0797							
03	URAMA	M	BSO	1258	97	0797							
04	BASEM	M	BSO	1260	97	0797							
05	IMAN	F	BDA	0162	97	0797							
06	BAZENA	F	BDA	1066	97	0797							
07	MAYSARA	M	BSO	0671	97	0797							

Sample UNRWA registration card

For Palestinian refugees, normal access to UN humanitarian services requires registration with UNRWA; in theory, a non-registered person will be denied access to school, medicine and other services. It should be noted that UNRWA’s policies on access to services allow for a certain amount of flexibility that makes it difficult to draw bright lines as to who does and does not have access. One source of ambiguity concerns refugees displaced by the 1967 Arab-Israeli War, which is dealt with in a separate chapter. Another source of ambiguity is a recent change by UNRWA that informally extends some services to non-R Palestinians, at least in theory.

UNRWA’s policy toward non-R Palestinians is currently under review. At least informally, some unregistered Palestinians are able to access UNRWA services, but such *de facto* practices do not address the more systematic problem of status, and do not appear sufficient to provide reliable access to all who should be eligible. The recent Danish Refugee Council report noted:

An unexpected finding of this survey was that though UNRWA claims to have provided broader access to its services for non-registered refugees since the beginning of 2004, very few beneficiaries seem to be aware of this possibility. In order to clarify this issue, we interviewed UNRWA, which confirmed that non-registered refugees can have access to services and also be included on the UNRWA “hardship case” list. The refugee community does not appear to be fully aware of this possible extension of services to them.

As the following analysis will explain, a high degree of flexibility has been built into UNRWA’s mandate from the beginning. This might be an asset given the open-ended nature of UNRWA’s mission. However, flexibility can also produce ambiguity and confusion. There needs to be more clarity about who is actually eligible; one of the recommendations in this report is that UNRWA should consider revising its working definition of a Palestine refugee, to more clearly include people who may already *de facto* have access to UNRWA services.

It should be noted that UNRWA’s registration criteria were originally intended only to determine eligibility for relief assistance, not to define refugee status. UNRWA registration has acquired importance over time as a marker of refugee status. Legally, this occurred in part because the UNHCR mandate and the 1951 Convention implicitly invoke eligibility for UNRWA assistance as a criterion for refugee status. But, more generally, UNRWA eligibility has acquired importance by default, given that there is no other central mechanism for defining Palestinian refugee status.

One of the dilemmas facing UNRWA is the problem of government resistance. To some extent, problematic policies have been initiated or continued in order to satisfy the demands of host governments or donor states. Up to now, UNRWA has taken a very cautious approach, and has generally been unwilling to extend formal registration to individuals over the objections of host governments. This is one apparent reason for the fact, as we describe below, that refugees have difficulty transferring their registration to Lebanon and it appears to be a reason for continuing gender persecution in UNRWA registration policies.

We argue that UN agencies have a responsibility to set a model to follow for governments, and have mandates independent of domestic legal and political constraints. Therefore it is important that UNRWA take independent decisions and adopt consistent and clear policies that can be justified without a diffusion of responsibility between governments and the UN. Second, as we will explain, international law is already clear that Palestinian refugees are entitled to a continuity of protection and assistance, and that there can be no legitimate discrimination against women in personal or nationality status. Therefore, while states do sometimes violate human rights law, UNRWA has a solid legal foundation upon which to base reforms, even if governments object. We argue that UNRWA has a higher duty to uphold human rights than it has to heed the wishes of host governments.

a) UNRWA's mandate and the "working definition"

UNRWA's mandate³⁷ is unusual in the modern era of refugee law for three reasons. First, UNRWA is dedicated to only one group of refugees. As noted above, this was normal before World War II but has become an anomaly in modern refugee law. Second, UNRWA's mandate is only to provide "direct relief and works programmes"³⁸ to Palestinian refugees, not to protect them or to promote a solution to their problem. By contrast, UNHCR has a mandate to promote protection. Third – and most important for present purposes – the General Assembly did not give UNRWA an explicit definition of its beneficiaries. Unlike UNHCR, UNRWA has been left to itself to define the term "Palestine refugee."

In 1948, the General Assembly had proposed a tentative definition:

Persons of Arab origin who, after 29 November 1947, left territory at present under the control of the Israel authorities and who were Palestinian citizens at that date.³⁹

This definition was never used to define eligibility for UNRWA assistance, however. It would have excluded those who had acquired the nationality of "a country in which they have racial ties with the majority of the population," a reference to Palestinians who acquired nationality in neighboring states.⁴⁰ It also excluded people who left Palestine before 1947 but were unable to return.

When the UNHCR Statute and 1951 Refugee Convention were drafted, the operative UNRWA definition was the one the agency used in its first census: "[A Palestine refugee is] a needy person, who, as a result of the war in Palestine, has lost his

³⁷ G.A. Res. 302 (IV) (8 December 1949).

³⁸ G.A. Res. 302(IV)

³⁹ Addendum to the Definition of a "Refugee" Under Paragraph 11 of General Assembly Resolution of 11 December 1948 (Prepared by the Legal Advisor), UN Doc. W/61/Add.1, 29 May 1951, art. 1. The term "of Arab origin" was defined in art. 3 as "persons belonging to the Palestine Arab community and to those who are considered or who considered themselves as belonging to that community."

⁴⁰ *Id.* Article 2 added the category of persons of Arab origin who left the territory after 6 August 1947 and before 29 November 1947, but who were Palestinian citizens on 29 November 1947 (art. 2.1), as well as those who had left before 6 August 1947, and retained their Palestinian citizenship up to 29 November 1947 (art. 2.2).

home and his means of livelihood."⁴¹ A new UNRWA definition of a Palestine refugee emerged in 1952: "A Palestine refugee is a person whose normal residence was Palestine for a minimum period of two years preceding the outbreak of the conflict in 1948 and who, as a result of this conflict has lost both his home and his means of livelihood."⁴²

In 1993, UNRWA changed its basic definition to the one in use today:

[Palestine refugee] shall mean any person whose normal place of residence was Palestine during the period 1 June 1946 to 15 May 1948 and who lost both home and means of livelihood as a result of the 1948 conflict.⁴³

This definition omitted the reference to "persons of Arab origin" in the 1948 General Assembly proposal, and opened the possibility of including stateless persons who had been residents of Palestine. It nevertheless continued the exclusion of people who left Palestine before the Arab Israel-War.

The UNRWA definition also added an economic element (loss of livelihood) that is unique in international refugee law; other international refugee definitions make no reference to economic losses as a criterion for refugee status. Our study did not produce evidence indicating how many people were excluded by this requirement. UNRWA's purpose was not to create a comprehensive definition of a Palestinian refugees; its goal was simply to define eligibility to receive humanitarian assistance. Yet, because there is no other clear definition, UNRWA's working definition has acquired added *de facto* importance, and its anomalous nature can lead to unforeseen problems.

Today, most Palestinian refugees are the children or grandchildren of the original 1948 refugees. UNRWA's mandate over descendents of original refugees was not explicit until 1982, when the General Assembly asked UNRWA to issue identity cards to "all Palestine refugees and their descendents."⁴⁴ However, as we explain below in our discussion of the continuity of protection principle, UNRWA began registering newborn children almost immediately after 1948. Therefore, for most refugees today, refugee status is defined by the original registration obtained by their fathers or grandfathers.

Secondary migration

The UNRWA working definition does not require a Palestinian refugee to stay in one country after his or her flight from Palestine. In our sample of 148 unrecognized

⁴¹ UNRWA, Assistance to Palestine Refugees: Interim Report of the Director of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, UN doc. A/1451,Rev.1, para. 15.

⁴² UNRWA, Operational Instruction No. 104 (18 February 1952), *See also* TAKKENBERG, *supra* note 30, at 72.

⁴³ Consolidated Registration Instructions (1 January 1993) para. 2.13 *cited in* TAKKENBERG, *supra* note 30, at 77.

⁴⁴ G.A. Res.37/120 I (16 December 1982).

Palestinians in Lebanon, at least 68 (almost half) were previously registered with UNRWA in another country, 20 of those in Jordan, 18 in Gaza, 9 in the West Bank, 12 in Syria and 9 in Lebanon. Of the 34 who have Lebanese government recognition but no UNRWA status, 15 fled Palestine in 1948 but first settled another country where UNRWA operates before arriving in Lebanon. All of these territories are area where UNRWA operates.

The working definition is rooted squarely in the past, focused on displacement in the 1948 conflict. As a result, there is no textual reason in law why a refugee's status should be affected by relocating from one UNRWA country of operations to another. The norm recognized by the UNHCR Executive Committee is for refugee status to have effect across borders.⁴⁵ There is also no textual reason why a Palestinian refugee who first lived outside UNRWA's areas of operation (i.e. Egypt, the Gulf States, or a western country) could not later move to Lebanon, Syria, Jordan or the occupied Palestinian territories and claim UNRWA eligibility.

Yet, secondary migration appears to be the biggest single cause of non-R status with UNRWA. As the Danish Refugee Council report on Non-ID Palestinians indicates, some secondary migrants came to Lebanon from Jordan following the Black September conflict in 1970 between the Jordanian Government and the PLO. Others came from Syria and the occupied Palestinian territories.

The problem for these refugees is not the law or policy *per se*. Having already been registered by UNRWA in another country, they meet the working definition and should be recognized as Palestine refugees. The problem is that UNRWA in practice, heeding objections from the Lebanese government, generally does not permit them to transfer their registration to Lebanon, even if they are not able to return to their first host country. For example, in one case, a man displaced from Beersheba in 1948 was registered with UNRWA in Gaza, but then was displaced again in 1967. He reports that he and his son have repeatedly tried to transfer their registrations to Lebanon, without success. Although such people are in fact present in Lebanon, the Lebanese government objects to any measure that would increase the official count of Palestinians in the country. Heeding this resistance, UNRWA refuses to transfer their registration.

Inability to register for the first time

A slightly different but related problem in UNRWA registration concerns Palestinians who lost their homes and livelihoods in 1948, but who fled initially outside UNRWA's operations area, such as to Iraq, other Persian Gulf states and Egypt. In some

⁴⁵ See UNHCR Executive Committee Conclusion No. 12, Extraterritorial Effect on the Determination of Refugee Status (1978) ("Recognized ... that refugee status as determined in one Contracting State should only be called into question by another Contracting State in exceptional cases.").

cases, especially in the Gulf region, the refugees did not have a permanent status and relied upon temporary work permits instead. The following examples were found in our survey:

- One man's father worked as a driver for a diplomat and followed his employer to Iraq. When they later migrated to an UNRWA country, they were not able to register as Palestine refugees even though they met the criteria of the working definition.
- Another person was 10-years-old when he and his parents fled the fighting in Haifa in 1948. They fled first to Jenin in the West Bank, but then fled again when Israeli forces attacked Jenin. At the urging of an Iraqi military officer (the Iraqi army had intervened in Palestine), they went to Iraq. They were never registered with UNRWA and cannot register today in Lebanon.
- Another man, from Tulkaram in the West Bank, was only two-years-old in 1948. His family fled to Iraq during the war to join his sister who was married to an Iraqi soldier. Thus they cannot register with UNRWA.

For much of its history, UNRWA required refugees to have first fled to a country of UNRWA operations, declining assistance to Palestinians who only later reached a UNRWA site. In 1993, UNRWA eliminated that requirement, though a refugee still must show residence in Palestine from 1946 to 1948 and loss of home and livelihood.⁴⁶ Descendants of a never registered father are allowed to register if they can show their father would have been eligible.⁴⁷ As with secondary migrants, it is a problem of implementation, not actual policy. Lebanon's objection to increasing the official count of refugees in the country hinders UNRWA registration for first time registrants much like secondary migrants.

Another problem appears to be that UNRWA's first census of Palestinian refugees missed some people. We encountered two refugees who said their fathers had been in Jordan in 1948 but were not registered, and one in Syria whose father had a similar problem. Some refugees in Lebanon apparently failed to register with UNRWA for a variety of highly particular reasons. For example:

- A man from the Haifa district of Palestine was displaced to Lebanon in 1948 as a child. Orphaned at age 7, he was never registered in UNRWA's first census in Lebanon for reasons he does not know. When he tried to register later, he said that UNRWA asked him for his first registration record, which he could not produce. He is now recognized by the Lebanese government, but he has no status with UNRWA.

⁴⁶ Christine M. Cervenak, *Promoting inequality: Gender-based discrimination in the UNRWA's approach to Palestine refugee status*, 16 HUMAN RIGHTS QUARTERLY 300 (1994).

⁴⁷ *Id.*

- Another interviewee said his father had been a political prisoner in Lebanon in the late 1940s. When he later tried to register with UNRWA, he was told that he could not prove that he had fled Palestine in 1948.
- Another said that his father did not register with the UN at first because he had fought against the British in Palestine. He was afraid that UN registration would make it easier for him to be captured by the British government.

Gender discrimination



Palestinian woman in Lebanon in 1950 (Photo: UNRWA)

A major reason for Palestinians losing UNRWA registration, especially for women and children, is UNRWA's policy of using a patriarchal/patrilineal family definition as the basis for its registration system. UNRWA normally registers refugees by family via registration cards that are held by "heads of families" (normally men). Married women are normally transferred from their fathers' cards onto their husbands' cards. Further, a female Palestinian refugee who marries a non-refugee or a non-UNRWA-registered refugee) has her UNRWA status frozen for the duration of her marriage, and can only recover it in the case of divorce or death of her spouse. In such situations they do not lose their UNRWA registration, but UNRWA puts them in a suspended status (MNR, married to non-registered) that prevents their receiving assistance. Moreover,

children automatically take on the same status as their father and are thus not registered with UNRWA.

As one study of the UNRWA policy, published by Christine M. Cervenak in 1994, explains:

The fact that UNRWA-registered women married to unregistered non-refugee men are not eligible for UNRWA assistance unless divorced or widowed, and that their children may not be registered with UNRWA, is rarely mentioned in UNRWA publications and reports. However, it is clearly described in UNRWA's operational guidelines. ... [T]he MNR and her children lose eligibility for the vast network of UNRWA maternal and child health services, including rations for pregnant and nursing women, basic health services, and heavily subsidized hospitalization. In terms of welfare assistance, they are not eligible for rations, case assistance, blankets and clothes, shelter rehabilitation, self-support projects, or UNRWA casework. ... [They are also ineligible for] elementary and preparatory education, vocational, technical, and teacher training, and university scholarships.⁴⁸

According to the Euro-Mediterranean Human Rights Network, “many women prefer not to declare their marriages so that they can live under less wretched conditions; they register their children as their brothers and sisters.”⁴⁹ We similarly found cases of married women who remained on their fathers’ registration files. Some registered their children as the sons and daughters of their registered brothers or sisters in order to secure them access to education and healthcare.

UNRWA has acknowledged that this policy is in need of re-assessment, although at time of writing it has not been actually revoked. UNRWA’s annual report for 2003-2004 stated:

These rules are a throwback to an era when various elements of personal law tended to favour male lineage. Since then, however, these norms have shifted considerably. ... Furthermore, the Agency is of the opinion that the continued application of its registration rules is unfair and unfounded, as the status of refugees should not be based on such considerations and discrimination between males married to non-refugees vs. females married to non-refugees is unjustified. ... As a result, the Agency has decided to undertake a review of these procedures with a view to enabling descendants of female refugees married to non-refugees to register with UNRWA.

⁴⁸ Cervenak, *supra* note 46.

⁴⁹ EMHRN, *supra* note 18, at 14.

As the following discussion sets out in more detail, we concur with UNRWA's own assessment of the problems posed by current practice. Its commitment to review the policy is welcome, but should be followed by a concrete change.

Of the 14 women interviewed for this study, we found 10 who were married to non-registered or non-ID Palestinian men (five were married to non-ID men, and five were married to non-registered men). However, the full scope of the problem can be seen better through the interviews with men. Of the 116 married men, 82 (71%) were married to Palestinian women previously registered with UNRWA (73 being registered in Lebanon). Forty per cent of these wives (33) lost their UNRWA status on marriage. The other sixty percent managed to maintain their UNRWA registration by remaining in their parents' files rather than transferring to their husbands' following the normal practice. In 19 of these cases the husbands did not know or were not willing to say how their wives maintained their UN status. Only 16 (20%) of the Palestinian wives had never been registered with UNRWA.

There is clearly a need for more complete research into the fates of non-R women Palestinians. However, the information above gives an indication of the severe impact of gender discrimination practices by UNRWA. A significant number of women's access to humanitarian services is jeopardized by their marriages. Their children also are likely to be deprived of UN registration, since only the father is permitted to pass on the status. This practice not only creates new non-registered refugees, but also misses an important opportunity to reduce the problem. If UNRWA not only allowed women to keep their registration regardless of marriage but also to add their spouses to their files, at least 82 (71%) of the 116 non-R and non-ID married men who we interviewed would be able to obtain UNRWA registration, without any other change in UN policy toward Palestinian refugees.

As an example, we interviewed a Palestinian man who had no UNRWA registration because his father had fled from Jericho in the West Bank in 1967 (1967 displaced persons have an ambiguous status with UNRWA, as we discuss later). His wife is Palestinian and is registered with UNRWA because she is the daughter of 1948 refugees who came directly to Lebanon. Neither he nor their three children can get UNRWA registration; he told us that he is afraid of being arrested if he seeks Lebanese government status, and that he has no Lebanese birth certificate even though he was born in Lebanon in 1975. If UNRWA eliminated its gender distinction, the entire family would be registered, at least with the UN. Under the current policy, the father and the three children lack UNRWA status, and his wife's registration has been put in jeopardy.⁵⁰

In another case, a young man was born in 1987 in Lebanon to an UNRWA-registered mother and a father who was displaced from the Gaza Strip in 1967. Because he cannot get UNRWA status through his mother or father (who is not registered), his parents attempted to have him registered on an uncle's file. This failed, and he lacks UN status today.

⁵⁰ We found one other couple with no children in an identical situation.

UNRWA is permitted by law to reassess a family's need for assistance. Marriage might make a person less needy in some personal circumstances, but in international law, women and men have an equal status, and women have the right to maintain and pass on their nationality and civil status independently of their husbands. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)⁵¹ article 9 sets the international law standard:

1. State Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

2. State Parties shall grant women equal rights with men with respect to the nationality of their children.

These rules contain no exceptions. Any provision that treats mothers and fathers differently in terms of passing on their status to their children, or changes a woman's nationality status as a result of marriage, is illegal. As the Committee on the Elimination of All Forms of Discrimination against Women has explained,

Nationality is critical to full participation in society. In general, States confer nationality on those who are born in that country. Nationality can also be acquired by reason of settlement or granted for humanitarian reasons such as statelessness. Without status as nationals or citizens, women are deprived of the right to vote or to stand for public office and may be denied access to public benefits and a choice of residence. Nationality should be capable of change by an adult woman and should not be arbitrarily removed because of marriage or dissolution of marriage or because her husband or father changes his nationality.⁵²

The Committee reiterated these principles in 2005.⁵³ While these provisions of human rights law are directed mainly at states, they should also bind UN agencies given that promoting human rights is one of the organization's primary purposes.

Two general explanations have been offered for the continuation of the discrimination.⁵⁴ The first is practical. The underlying assumption behind the UNRWA policy is that a non-R man will have another (likely Arab) nationality, and could pass on citizenship to his family so that women would "follow their husbands." This

⁵¹ G.A. Res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force Sept. 3, 1981.

⁵² General Recommendation No. 21 para. 6 (13th session, 1994).

⁵³ Concluding Comments: Algeria paras. 25-26, CEDAW/C/DZA/CC/2 (10-28 January 2005).

⁵⁴ See generally Cervenak, *supra* note 46; TAKKENBERG, *supra* note 30 at 81.

explanation deprives women of autonomy, and is also empirically false when men are themselves unregistered refugees who have no other nationality to extend to their wives and children. The second explanation is that UNRWA is attempting to respect Arab patriarchal norms. This approach would put a UN agency in conflict with human rights law, with other UN bodies that are charged with eliminating discrimination against women, and with Arab human rights organizations that have been campaigning in recent years to reform their countries' nationality laws.

The Arab League Council of Ministers 1954 Agreement on Citizenship prescribed the gender discriminatory provisions evident in UNRWA practice as well as in Lebanese law.⁵⁵ This agreement endorses the Arab practice of passing citizenship only through the father, except in cases of illegitimacy.⁵⁶ Regarding married women, the Arab League agreement provides:

An Arab woman acquires the citizenship of her Arab husband and drops her previous citizenship unless her marriage contract specified that she keeps her citizenship, or unless she make an announcement within six months of the date of the marriage certificate.

If the husband's government withdrew the wife's new citizenship, in accordance with the laws prevailing in the husband's country, the wife can regain her previous citizenship.

If the husband is stateless, an Arab woman's citizenship is not dropped as a result of her marriage to him.⁵⁷

A woman may also re-acquire her original citizenship if her marriage is annulled or ends in divorce.⁵⁸

These laws are also in violation of international human rights law and should be revised; they should have no legal force on the UN. UN agencies cannot legitimately contravene international law, even if local legislation violates it. For example, UN agencies do not recognize Israel's self-declared "annexation" of East Jerusalem because it is illegal in international law, even though it has been accepted by Israeli domestic law. By the same principle, UNRWA should follow international human rights law in its registration practices, not local legislation.

The gender discrimination in UNRWA's registration policy has been known for some time, but it has never been corrected. As Cervenak's study explains:

⁵⁵ /RES/776(S21) The Agreement

⁵⁶ *Id.* article 5.

⁵⁷ *Id.* article 2.

⁵⁸ *Id.* article 3.

These elements of UNRWA's working definition are not found in any General Assembly resolution, but have been brought to the attention of the General Assembly through the Annual Reports of the UNRWA Commission-General and so are viewed by UNRWA as tacitly approved by the General Assembly. This gender discrimination against refugee women married to unregistered non-refugee men -- women designated as "MNRs" by UNRWA -- was first described in an UNRWA annual report in 1965.⁵⁹

UNRWA's policy was more easily explained in the 1950s, when international human rights law was still in its early years. For example, the 1947 UN partition recommendation for Palestine (General Assembly Resolution 181) recommended that women and children have their nationality determined by their husbands and fathers. However, Cervenak notes that UNRWA actually stiffened the discrimination in 1993, when it eliminated previous exceptions for children of divorced or widowed women.⁶⁰

The silence of the General Assembly may be a sign of political neglect, but it is not a legal sanction for UNRWA to violate a major international human rights convention. The continuation of UNRWA's policy toward women should be understood as a product of the fact that the UN structure does not include judiciary mechanisms that would hold implementing agencies accountable to well-established principles of international law.

Gaps in the UNRWA definition

Around half of our interviewees had never been registered with UNRWA, in any country. While in some cases this was a result of secondary migration, in others it was caused by the limits of UNRWA's working definition. The main group of Palestinian refugees excluded from the UNRWA definition are those who fled from the West Bank or Gaza Strip during or after the 1967 Arab-Israeli war. Since they did not lose their homes as a result of the 1948 conflict, they fell outside the UNRWA mandate. Because of their unique position with both the Lebanese Government and the UN, this situation will be discussed in a separate chapter of this report.

A further gap in the UNRWA definition is its restrictive definition of a Palestinian. One of our respondents reported that his family left Palestine in 1936 (the year of a major Palestinian revolt), but was then unable to return after 1948. Though they were citizens of Palestine, they were not resident after 1946 as required by the definition. As a result this

⁵⁹ Cervenak, *supra* note 46.

⁶⁰ *Id.*

person was not registered with UNRWA, and remains stateless nearly 70 years after his family left Palestine.

Another gap is the definition's exclusive focus on 1948. Although 1948 generated the large bulk of the Palestinian refugee population, displacement did not end with the end of the war. In our sample, 12 Palestinians reported that their families' first migration out of Palestine was between 1949 and 1966. Given that the Arab-Israeli conflict continued throughout the last 57 years, it is not surprising that there was later displacement. Indeed, Israel destroyed a number of Palestinian villages after the end of the 1948 war and expelled some of their residents across the border.⁶¹ However, in other cases the original reason for migration appears to have been economic, though the people became trapped abroad after the 1967 war. For example:

- A man from Tulkaram in the West Bank, born in 1945, left to Kuwait for work in 1962 when the West Bank was under Jordanian control. Unable to return home after the 1967 war, he moved to Jordan in 1968. In 1970 he came to Lebanon to join the PLO. He has no registration with either UNRWA or the Lebanese Government, but his wife is registered with UNRWA.
- A man from Nablus (also in the West Bank) moved with his mother in 1966 (when he was five-years-old) to Kuwait, where his father was working. He came to Lebanon to join the PLO in 1977; his wife is registered with UNRWA but he has status with neither UNRWA nor the Lebanese Government.
- A man born in 1949 near Tulkaram in the West Bank went to Kuwait to work in 1965, but could not return because of Israeli occupation after 1967. He went to Jordan in 1968, and then to Yemen. He arrived in Lebanon in 1970 or 1971. He has status in Lebanon with neither UNRWA nor the Lebanese Government.

UNRWA's definition does not accommodate these realities; essentially, UNRWA's mandate extends only to Palestinians who were displaced in two periods: 1948 and (*de facto*) since 1967. This temporal limitation appears to contradict the overall purpose of protecting people displaced by the Israeli-Palestinian conflict and by the Arab-Israeli wars. Although UNRWA was not given a mandate to define Palestinian refugee status, its definition has tremendous impact on individual livelihoods and is often the only international legal recognition of refugee status available to Palestinians. Given that UNRWA has been asked to assist post-1967 refugees, there appears to be no reason to limit UNRWA assistance to 1948 refugees. We recommend that UNRWA assist any Palestinian displaced from their homeland since 1948.

The original responsibility for this inflexibility appears to lie with UNRWA donor states, not with UNRWA itself. In the 1950s, UNRWA donors insisted that the agency

⁶¹ According to Benny Morris: "In the weeks and months after the termination of hostilities, the Israeli authorities adopted a policy of clearing the new borders of Arab communities. Some were transferred inland, to Israeli Arab villages in the interior; others were expelled across the border." MORRIS, *supra* note 4, at 505.

restrict its work to the "needy" refugees who had lost their homes and who were originally included in the agency's first working definition. UNRWA was hence unable to help a range of Palestinians who had been affected by the conflict, such as farmers who had been cut off from their land and city residents who had lost their trade or business.⁶² UNRWA has cautioned that its working definition is "less than comprehensive" and covered neither all displaced people nor all needy persons from Palestine.⁶³

b) UNHCR mandate and the continuity of protection principle

The UN system includes, at least in theory, a safety net for Palestinian refugees who fall through gaps in UNRWA policy and/or practice: the UN High Commissioner for Refugees (UNHCR) is responsible for promoting refugee protection in general, and operates in nearly every country in the Middle East, mainly dealing with non-Palestinians. UNHCR also has a mandate over Palestinians when UNRWA assistance is lost, but this is not implemented in the Middle East. We note here that there is an ongoing debate about whether UNHCR should take more responsibility for promoting the protection of Palestinian refugees, filling the void left by the UNCCP. However, we focus solely on the questions of recognizing refugee status.

For UNHCR, refugees are defined primarily by article 1(A)2 of the 1951 Convention relating to the status of Refugees:

Any person who ...owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

The criteria of article 1(A)2 would be difficult for many Palestinian refugees in Lebanon to meet. Most Palestinian refugees are stateless, and Lebanon is their country of habitual residence. Therefore most Palestinian refugees cannot meet the basic alienage requirement.

However, in 1953, the General Assembly called on UNHCR to "concern himself" with "certain groups of refugees within the High Commissioner's mandate ... for whom

⁶² Cervenak, *supra* note 46.

⁶³ Quoted in Cervenak, *supra* note 46.

no satisfactory arrangements have yet been made.”⁶⁴ UNHCR has an additional, though more ambiguous, mandate to assist and protect stateless persons, a factor that could in theory be extremely important for Palestinians. The 1954 Convention Relating to the Status of Stateless Persons defines a stateless person as “a person who is not considered as a national by any State under the operation of its law.”⁶⁵ Since Palestine is not yet a state, most Palestinians who have no other nationality meet this definition.⁶⁶ The 1961 Convention on the Reduction of Statelessness⁶⁷ provides for a UN body to receive and adjudicate applications from stateless persons.⁶⁸ The General Assembly has asked UNHCR to undertake this mandate.⁶⁹ Regrettably, UNHCR has not clarified exactly how it carries out this mandate,⁷⁰ especially in countries like Lebanon that have not ratified either of the statelessness conventions.

Despite these initial technical complexities, the central instrument determining UNHCR involvement with Palestinian refugees in Lebanon is the Refugee Convention’s article 1D:⁷¹

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.

UNHCR’s statute contains an analogous provision in paragraph 7C, as does the 1954 Statelessness Convention in article 1, paragraph 2. This provision removed Palestinians receiving UNRWA assistance from UNHCR’s mandate and creates a separation between Palestinian and non-Palestinian refugees in countries like Lebanon. But, as we will see, it is not a complete exclusion. Instead, Article 1D was intended to provide a special status to Palestinians, and to guarantee them a continuity of protection.

⁶⁴ G.A. Res. 728 (VIII).

⁶⁵ Article 1(1), 360 U.N.T.S. 117, entered into force June 6, 1960.

⁶⁶ See TAKKENBERG, *supra* note 30, at 178-185.

⁶⁷ 989 U.N.T.S. 175, entered into force Dec. 13, 1975.

⁶⁸ *Id.* article 11.

⁶⁹ G.A. Res. 3275 (XXIX) of 10 December 1974; See also G.A. Res. 31/36 of 30 November 1976 (extending UNHCR’s mandate vis-à-vis stateless persons).

⁷⁰ See TAKKENBERG, *supra* note 30, at 187-188.

⁷¹ The 1954 Convention on the Reduction of Statelessness contains an analogous exclusion in its article 1, para. 2 (“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 so long as they are receiving such protection or assistance.”) See TAKKENBERG, *supra* note 30, at 188-190.

The separation of non-Palestinian refugee protection from Palestinian refugee assistance has been a basic foundation of refugee policy in the Middle East since the 1950s. For non-Palestinian refugees, protection and assistance depends heavily on UNHCR and on third country resettlement because Middle Eastern host states take very little action on behalf of refugees. In Egypt, Jordan, Lebanon, and Syria, refugee policy follows a similar pattern. Asylum-seekers apply to UNHCR offices for refugee status determination through procedures that are often under-resourced and faulted for lack of procedural safeguards. Recognized refugees can remain in the country for only limited periods. UNHCR is expected to resettle or repatriate refugees, rather than allow their local integration.

Article 1D stemmed from the unusual role of the UN in the partition of Palestine by virtue of UN General Assembly Resolution 181 of 1947.⁷² During the drafting of the Convention, a number of delegates emphasized the importance of continuous protection for Palestine refugees.⁷³ A review of the drafting history of the UNHCR Statute and the 1951 Refugee Convention by the leading scholar Lex Takkenberg has illustrated that the state delegates expressed "almost general consensus that the Palestinian refugees were genuine refugees."⁷⁴ Only the Israeli delegate objected to this position.⁷⁵ UNHCR has noted that the Palestinian refugees have a special status in international law because their refugee character "was never in dispute. ... Palestinian refugees are presumed to be in need of international protection and, in certain circumstances, will automatically fall within the Convention."⁷⁶ Scholars have noted that article 1D is not a simple exclusion clause. It contains both an exclusion and an inclusion provision. As Professors Goodwin-Gill and Akram have documented, the Convention's drafters wanted to ensure the continuity of protection of Palestinian refugees.⁷⁷

The fact that Article 1D, as well as paragraph 7C in UNHCR's statute, falls in the section for exclusion clauses is a textual anomaly that is most likely explained by confusion in the drafting process.⁷⁸ The actual discussions of the delegates who drafted the convention make clear that Palestinians were subject to "deferred inclusion" not complete exclusion.⁷⁹ The two sentences of Article 1D provide first for the exclusion, and then the automatic *inclusion* of Palestinian refugees. Under the second sentence, a Palestinian refugee could be included in the refugee definition *ipso facto*, or

⁷² GAOR, Fifth Session, 328th Meeting, 27 November 1950, para. 47 (Mr. Azkoul, Lebanon); See also UNHCR Intervener at paras *Id.* 33-34, 37.

⁷³ UNHCR, Skeleton Argument on Behalf of the Intervener, *Amer Mohammed El-Ali v. Secretary of State for the Home Department*, Court of Appeal (United Kingdom) C/2002/0751 at para. 37, noting comments on the UN's responsibility for the refugees by the delegates of Saudi Arabia, Canada, New Zealand, Mexico, and Egypt.

⁷⁴ TAKKENBERG, *supra* note 30, at 65.

⁷⁵ at 66.

⁷⁶ UNHCR, Skeleton Argument, *supra* note 73, at paras. 59, 60.

⁷⁷ Susan M. Akram and Guy S. Goodwin-Gill, Brief Amicus Curie, US Department of Justice Board of Immigration Appeals (undated), at 3, 10.

⁷⁸ TAKKENBERG, *supra* note 30, at 67.

⁷⁹ *Id.* at 66-67.

automatically, even if they do not have a well-founded fear of persecution and even if they are not outside their country of habitual residence. This simultaneously prevents overlaps between UNHCR and UNRWA's mandates, while providing a continuity of protection. In fact, UNHCR routinely provides assistance to groups of Palestinians in countries where UNRWA does not operate, such as Iraq, Libya, and Egypt.

UNHCR's statute contains only the first sentence, the exclusion provision. It lacks the second sentence providing for continuity of protection. However, the 1951 Convention and subsequent General Assembly resolutions effectively revised UNHCR's mandate.⁸⁰ For example, the 1950 UNHCR statute does not include any reference to persecution for reason of membership in a particular social group, a concept that was added later in the 1951 Convention. Yet UNHCR considers refugees persecuted under this ground to fall within its mandate.⁸¹ Hence, for present purposes, the text that matters is Article 1D of the Refugee Convention.

In the early 1950s, UNHCR and UNRWA were somewhat confused about how their respective mandates should intersect. In 1954, the two agencies agreed to a joint press release which stated:

As far as the United Nations is concerned, and without prejudice to the responsibility of individual governments, the material welfare of Palestine refugees in the Near East is the exclusive responsibility of UNRWA, whereas the protection interests of those refugees as regards compensation and repatriation is the concern of the Palestine Conciliation Commission. The mandate of the High Commissioner does not extend to them.⁸²

Under this original interpretation, UNHCR avoided any responsibility for Palestinians in the Middle East. As this study will show in the following sections below, this position represented a misreading of international law, and has been superseded by more recent positions taken by UNHCR.

In 2002, UNHCR modified its interpretation of the relationship between UNHCR and UNRWA in order to prevent any gaps in assistance or protection to Palestinians and endorsed the continuity of protection principle:

⁸⁰ See Volker Turk, *The role of UNHCR in the development of international refugee law*, in REFUGEE RIGHTS AND REALITIES 153-155 (Frances Nicholson and Patrick Twomey eds.) (1999) ("In consequence, the 1950 Statute no longer encompasses the entire mandate of UNHCR. ... It is therefore necessary to make a distinction between the original 1950 Statute and the UNHCR Statute in the broad sense, which constitutes UNHCR's present mandate. ... UNHCR's legal foundation transcends, consequently, the immediate framework of UN law and has also some basis in international refugee and human rights law.")

⁸¹ UNHCR, Guidelines on International Protection: Membership in a particular social group within the context of Article 1(A)(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, HCR/GIP/02/02 (7 May 2002).

⁸² TAKKENBERG *supra* note 30, at 305.

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The 1951 Convention [] avoids overlapping competencies between UNRWA and UNHCR, but also, in conjunction with UNHCR's Statute, ensures the *continuity of protection* and assistance of Palestinians refugees as necessary.⁸³

The Refugee Convention drafters' intention was to separate Palestinian refugees from the UNHCR mandate in order to afford them extra attention, not less. As Takkenberg explains:

The primary concern of the Arab states was that the Palestinian refugees were not included in the mandate of UNHCR, but that they would remain the responsibility of special United Nations attention. This concern was based on political rather than legal considerations. ... [T]he main concern in this respect was that the prospect of returning to their homes would be negatively affected if they were included in the mandate of UNHCR.⁸⁴

In this framework, most Palestinian refugees are, in theory, assured of continuous protection or assistance from the United Nations until the resolution of the Palestinian refugee problem. The only question in most cases will be which UN agency has responsibility to provide protection or assistance. In cases where Palestinians do not fall under the UNRWA mandate, and they should be eligible to apply for refugee status under the same criteria as any other refugee.

Although in theory UNHCR and UNRWA's complimentary mandates should produce a continuity of protection or assistance for Palestinian refugees, the confusion surrounding the agencies' mandates can result in a diffusion of bureaucratic responsibility. Takkenberg noted that "a number of individuals [] have been shuffled between UNHCR and UNRWA offices, each considering the other as the appropriate agency for handling Palestinian refugee cases."⁸⁵ Because of this enduring confusion, it is important to explore in more detail the intersections of UNRWA and UNHCR mandates.

⁸³ UNHCR, Note on the Applicability of Article 1D of the 1951 Convention relating to the status of Refugees at para. 2, <http://domino.un.org/unispal.nsf/0/68c845adcf3671a85256c85005a4592?OpenDocument> (10 October 2002)(emphasis added).

⁸⁴ TAKKENBERG, *supra* note 30, at 66.

⁸⁵ Randa Farah, *The Marginalization of Palestinian Refugees*, in PROBLEMS OF PROTECTION: THE UNHCR, REFUGEES AND HUMAN RIGHTS 155, 166, N. Steiner, M. Gibney and G. Loescher eds. (2003)

Who is affected by article 1D?

The first question in applying the continuity of protection principle is to decide who falls under the first sentence of article 1D. In other words, who is “at present receiving” assistance from UNRWA?

UNHCR has considered that any person who falls within the definition of a Palestine refugee as used in General Assembly Resolutions or UNRWA’s working definition should be considered to fall within Article 1D. This includes people displaced from the parts of Palestine that became Israel and who have been unable to return there, as well as people displaced in 1967 or subsequently.⁸⁶

UNRWA operates in Jordan, Lebanon, Syria, and the Israeli-occupied Palestinian territories (West Bank, Jerusalem and Gaza Strip). Therefore, inside Lebanon UNHCR would consider a refugee to be excluded from its mandate by article 1D “if the person concerned ... is registered, or is eligible to be registered, with UNRWA.”⁸⁷ However, UNHCR also recognizes that “not all Palestine refugees residing in UNRWA’s area of operations are registered with UNRWA.”⁸⁸ UNHCR therefore stresses that “the question whether a Palestinian is registered, or is eligible to be registered, with UNRWA will need to be determined individually. In cases where this is unclear, further information can be sought from UNRWA.”⁸⁹ In a similar vein, Australian courts have reasoned that article 1D might apply outside UNRWA countries of operations “provided a Palestinian outside the Middle East can, on return to that area, obtain UNRWA protection (sic).”⁹⁰

One group clearly exempt from article 1D are Palestinians displaced between 1949 and 1966. As we have seen, these Palestinians, at least technically, do not fall under UNRWA’s working definition or *de facto* mandate. That means these Palestinians could in theory apply to UNHCR under the normal refugee definition, but as noted this definition may not fit their unique circumstances. However, UNHCR could still provide them protection and assistance, acting under the General Assembly’s 1953 request to protect certain groups for whom no other satisfactory arrangements have been made.⁹¹ It remains ambiguous whether a Palestinian refugee who settled originally outside UNRWA’s area of operations and then moves to Lebanon would fall under article 1D.

Another problem of interpretation surrounding article 1D concerns the question of descendents of the original Palestine refugees. Most Palestinian refugees today were not alive in 1948. Normally, Palestine refugee status is presumed to include these later generations of refugees as well. However, a UK court has held that article 1D applies only to people who were already receiving UNRWA assistance when the Refugee

⁸⁶ UNHCR Note, *supra* note 83, at para. 3, citing G.A. Res. 2252 (ES-V) of 4 July 1967.

⁸⁷ *Id.* at para. 6.

⁸⁸ *Id.* at FN 16.

⁸⁹ *Id.* at para. 13.

⁹⁰ *Abu-Loughod v. Minister for Immigration & Multicultural Affairs* [2002] FCA 133.

⁹¹ GA Res 728 (VIII).

Convention was completed in 1951.⁹² The English Court of Appeal concluded that “at present” refers to 28 July 1951 when the Convention was finalized.⁹³ Under this interpretation, the vast majority of today’s UNRWA refugees would be entirely unaffected by article 1D, and would be treated like any other asylum-seeker. The English Court gave two reasons for its holding. First, the court reasoned that if subsequent generations are included, then “persons ‘who are at present receiving [assistance]’ no longer means what it says; it includes also persons who later receive such assistance.”⁹⁴ Second, the court noted that at the time of the Convention, refugee status under the 1951 Convention applied only to people fleeing events occurring before 1951 (this restriction was eliminated by the 1967 refugee protocol).⁹⁵

Were the UK position to be adopted, article 1D would essentially become irrelevant as the original 1948 refugees die out. This would complicate one of the objectives of article 1D: to avoid an overlap in responsibilities between UNHCR and UNRWA. UNHCR might suddenly have a responsibility to assess the cases of hundreds of thousand, or millions, of Palestinians around the Middle East.

The English decision is exceptional, and likely in error. Most leading scholars as well as the German Federal Administrative Court have concluded that “at present” refers to UNRWA because it existed in 1951, but not only to people who were alive in 1951.⁹⁶ An Australian Court reasoned that the drafting history of the Refugee Convention indicated that article 1D applied only to *categories* of refugees that existed in 1951, but that new people could be added to the class of Palestine refugees.⁹⁷ “The words do no more than describe a class of community of persons. So long as a class of persons continues to exist article 1D will continue to have operation.”⁹⁸

It is true that UNRWA's mandate over descendents of original refugees was not explicit until 1982, when the General Assembly asked UNRWA to issue identity cards to "all Palestine refugees and their descendents," including families displaced in both 1948 and 1967.⁹⁹ However, it seems that the UK court may have been factually wrong in assuming that UNRWA did not in actuality assist new generations of refugees as early as 1951. An UNRWA report issued at that time indicated that the agency was already assisting "infants under one year."¹⁰⁰ Also, while it is true that the 1951 Convention was

⁹² Amer Mohamed el-Ali v. Secretary of State for the Home Department [2003] 1 WLR 95 (26 July 2002) (affirming judgment by the Immigration Appeal Tribunal available at www.iaa.gov.uk/el_ali.pdf).

⁹³ *Id.*; Daraz v Secretary of State for the Home Department, [2002] EWCA Civ 1103, [2003] 1 WLR 95, para. 29

⁹⁴ El Ali, *supra* note 92, at 33

⁹⁵ *Id.*

⁹⁶ El-Ali, *supra* note 92, at 29-32.

⁹⁷ Minister for Immigration and Multicultural Affairs. V. WABQ [2002] FCAFC 329, at. 46-47.

⁹⁸ *Id.*

⁹⁹ G.A. Res.37/120 I (16 December 1982).

¹⁰⁰ The UNRWA director's Annual Report for 1951-1952 stated that UNRWA's registered refugees included "infants under one year." Hence, it seems even in 1951 UNRWA was already assisting Palestinian refugee descendants who were not alive in 1948 and who were born in exile.

originally retroactive only, excluding future refugees until 1967, UNHCR's mandate was open-ended from the beginning.

The holding in the English case also conflicts with UNHCR policy. UNHCR informed a British court that, in its view, "the meaning of Article 1D was not frozen in time"¹⁰¹ and endorsed UNRWA's working definition "which has been accepted by the UN General Assembly and endorsed through the support of States."¹⁰² UNHCR has noted that the drafters of the 1951 Convention recommended states take measures to protect refugee family unity, and that the majority of states have done so. Normally, "if the head of a family meets the criteria of the definition, his dependants are normally granted refugee status according to the principle of family unity."¹⁰³ This can happen when children flee with their parents, when a family is reunified later,¹⁰⁴ or, when children are born later. Any other policy would threaten the basic family unity between parents and children.¹⁰⁵ UNHCR operates refugee camps in protracted refugee situations around the world, much like UNRWA. In such situations UNHCR normally provides assistance and promotes protection for children as well as adults, and continues to do so as younger generations grow.

Where the unity of a refugee's family is destroyed by divorce, separation or death, dependants, who have been granted refugee status on the basis of family unity, will retain such refugee status unless they fall within the terms of a cessation clause; or if they do not have reasons other than those of personal convenience for wishing to retain refugee status; or if they themselves no longer wish to be considered as refugees.¹⁰⁶

When the older generation dies, UNHCR provides that the surviving family members will normally carry on as refugees until the circumstances change.

This describes the situation of most Palestinian refugees in Lebanon. No cessation clauses have applied to Palestinian refugees, except for those that have found rights equivalent to citizenship in Lebanon or some other country. Most Palestinians have no option but to remain refugees. For this reason, UNRWA's practice is equivalent to UNHCR's in terms of the descendants of the original refugees.

¹⁰¹ UNHCR Skeleton Argument, *supra* note 73, at para. 10.

¹⁰² UNHCR Skeleton Argument, *supra* note 73, at para. 13.

¹⁰³ UNHCR, HANDBOOK ON PROCEDURES AND CRITERIA FOR DETERMINING REFUGEE STATUS UNDER THE 1951 CONVENTION AND THE 1967 PROTOCOL RELATING TO THE STATUS OF REFUGEES para. 184 (1979)

¹⁰⁴ UNHCR HANDBOOK, *supra* note 103, at para. 186

¹⁰⁵ See Convention on the Rights of the Child arts. 5, 9, 10, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force Sept. 2, 1990.

¹⁰⁶ UNHCR HANDBOOK, *supra* note 103, at para. 187.

When does article 1D lead to UNHCR protection?

If someone was or should be included in the UNRWA mandate but is for some reason not registered with UNRWA, they may benefit from the inclusion clause of article 1D. Article 1D's second sentence provides for "*ipso facto*" protection whenever UNRWA assistance ceases "for any reason." The plain meaning of "*ipso facto*" is automatic protection.¹⁰⁷ This means that any Palestine refugee who falls under article 1D's second sentence will automatically fall under the UNHCR/Convention refugee definition. The broad phrase "for any reason" indicates that a range of circumstances can lead to the invocation of this provision. UNHCR's position is that as soon as an UNRWA refugee leaves UNRWA's areas of operation, he or she ceases to be assisted by UNRWA, and is *ipso facto* a Convention refugee.¹⁰⁸

The *ipso facto* clause is important because it implements the continuity of protection principle. In asylum cases when Palestinians leave UNRWA operation areas to seek protection in third countries, the key issue is not refugee status *per se*, but what UNHCR calls "returnability." Refugee status on its own does not prevent a person's deportation. Rather, states are prohibited by the principle of *non-refoulement* from forcibly returning a refugee to any territory where his or her life or freedom would be in danger.¹⁰⁹ UNHCR argues that a person falling under Article 1D's second sentence may still be returned to an UNRWA area, unless he faces a serious threat to his or her safety or freedom there.¹¹⁰ Germany takes a similar approach.¹¹¹ This would be the case if a Palestinian refugee living in a Lebanese refugee camp sought asylum in Germany, but had no fear of persecution in Lebanon. Germany would be required to recognize his refugee status, but could still return him or her to Lebanon.

In a submission to a British court, UNHCR envisioned two scenarios where a Palestinian refugee who has left UNRWA area of operations can avail themselves of UNHCR protection:

First, if the person is unable to return to UNRWA's area of operations in a legal manner because the authorities of the country concerned refuse readmission or to renew his or her travel document, then the second paragraph of Article 1D would be applicable. The person concerned would *ipso facto* qualify for the benefits of the 1951 Convention, that is, without any further examination of the grounds under Article 1A.

¹⁰⁷ El-Ali, *supra* note 92, at para. 49 ("these words mean that any person to whom they apply is to be treated as a refugee.")

¹⁰⁸ UNHCR Note, *supra* note 83, at para. 7.

¹⁰⁹ 1951 Refugee Convention, *supra* note 27, article 33(1).

¹¹⁰ UNHCR Note, *supra* note 83, para. 8.

¹¹¹ TAKKENBERG, *supra* note 30, at 110-111.

Secondly, if it is feasible for the person to return, it is then necessary to examine the reasons why he or she left. If the individual is unwilling to return because of threats to his or her life or freedom, or other compelling protection-related reasons, he or she would again *ipso facto* benefit from the Convention's entitlements in accordance with the second paragraph of Article 1D.¹¹²

UNHCR suggested that protection or assistance by UNRWA may be considered to have ceased in any of the following (non-exhaustive) list of circumstances

1. Where UNRWA itself has been wound up and no longer exists.
2. Where military occupation or activities have physically interrupted UNRWA's provision of services.
3. Where an individual entitled to protection or assistance under UNRWA's mandate has been expelled or refused permission to return to UNRWA's area of operations.
4. Where an individual entitled to protection or assistance under UNRWA's mandate is effectively unable to avail him or herself of protection or assistance in UNRWA's area of operations.¹¹³

Returnability is not a central question inside Lebanon, because UNRWA is active in the country. But the underlying issue of whether the person could actually access UNRWA assistance is a central question because refugee law seeks to ensure continuity of protection while avoiding overlapping agency responsibility. As UNHCR stated to the British court in the quotation above, automatic protection should extend to "an individual entitled to protection or assistance under UNRWA's mandate is "effectively unable to avail him or herself of protection or assistance in UNRWA's area of operations." Under the continuity of protection principle, a Palestinian refugee in Lebanon who meets the criteria of UNRWA's working definition is entitled to assistance by either UNRWA or UNHCR. The default choice is UNRWA, but if UNRWA's assistance ceases for any reason, he or she falls under UNHCR's responsibility. UNHCR should act as a safety net for UNRWA, providing assistance to any Palestine refugee to whom UNRWA for whatever reasons fails to register. UNHCR can avoid this responsibility only by arguing that the person fails to meet the criteria of Palestine refugee status, or by persuading UNRWA to provide assistance.

¹¹² UNHCR, Skeleton Argument, *supra* note 73, at paras. 102-103.

¹¹³ UNHCR, Skeleton Argument, *supra* note 73, Annex, para. 20 (emphasis added).

Applying continuity of protection in Lebanon

UNHCR first embraced the continuity of protection principle in 2002, but it has not been visibly applied in Lebanon, nor throughout much of the Middle East. In theory, UNHCR today has a legal obligation to provide assistance to Palestinians who have lost UNRWA assistance and cannot re-obtain it because of UNRWA or government policies that either contradict UNRWA's mandate and working definition or human rights norms. This includes Palestinians who came to Lebanon via secondary migration and women who lost UNRWA registration due to marriage.

Though obligatory in the law, UNHCR assistance is not necessarily preferable to UNRWA. In much of the Middle East, and in Lebanon specifically, the protection that UNHCR can offer refugees is limited by government resistance to the concept of asylum. In Lebanon protection for refugees relies on a 2003 Memorandum of Understanding with the Lebanese Directorate of General Security in which UNHCR is committed to seek resettlement abroad for all refugees. This would likely be anathema for most Palestinians, who await a resolution of the Israeli-Palestinian conflict and their right to return. Other than resettlement, UNHCR assistance would be limited by UNHCR's limited budget. Assistance to non-R Palestinians could quickly double or triple UNHCR's population of concern in Lebanon. Administratively, it would seem to make little sense for such Palestinians to be dealt with by UNHCR when similar services are already being provided by UNRWA.

The underlying principle is that civilians displaced by the Israeli-Palestinian conflict should be able to rely on the United Nations for assistance. The only question is which UN agency should be involved. It makes most sense for UNRWA to be the primary agency for Palestinians displaced by the Arab-Israeli conflict. However, rather than allow responsibility to be diffused, UNRWA and UNHCR should work together to implement the continuity of protection principle. UNHCR has a mandate and an institutional interest to urge UNRWA to include all eligible Palestinians so that UNHCR does not have to act as a safety net. The refugees need an agency to which they can turn that will hear their claims and ensure that they enjoy the protection to which they are entitled. In the conclusion of this report we make recommendations as to how to apply these principles in practice.

However, there is one small group of Palestinians who should logically fall within UNHCR's purview rather than UNRWA. These are Palestinians who flee new human rights violations, and have a present well-founded fear of persecution if returned either to their country of origin or habitual residence. Such asylum-seekers would be in a situation much like any other refugee who seeks UNHCR protection and assistance, and (since UNRWA has only an assistance mandate) cannot get protection from any other UN agency. Several of our interviewees reported having moved to Lebanon for fear of security forces or human rights violations in other countries. We did not investigate these cases or interview people in sufficient depth to reach a conclusion about whether they

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would be able to substantiate a well-founded fear of persecution, as required by the Convention refugee definition. Nevertheless, such cases warrant full assessment. UNHCR's doors should always be open to receiving applications from such asylum-seekers.

In short, we reach three main conclusions about the respective responsibilities of UNRWA and UNHCR. First, UNHCR is obligated to provide protection to any Palestinian within UNRWA's mandate who becomes unable to access UNRWA assistance. Second, although UNHCR has legal obligations to fill gaps left by UNRWA, it would be preferable to correct weaknesses in UNRWA's registration system so as to avoid transferring responsibility to UNHCR. Third, an exception must be made for any Palestinian refugees who flee their countries of residence due to a current well-founded fear of persecution. Such cases must be assessed by UNHCR as for any other asylum-seeker.



An alley in Borj al-Barajneh camp (Photo: M. Zeidan 2005).

5) “NON-ID” PALESTINIANS (DENIAL OF RECOGNITION BY LEBANESE AUTHORITIES)

The previous section of this report dealt with the problem of Palestinian refugees denied registration with the UN, a problem that effectively reduces their access to the humanitarian assistance on which Palestinians in Lebanon depend. This section deals with a smaller but even more acute problem: denial of recognition by both UNRWA and the Lebanese authorities. Refugees in Lebanon denied government recognition lack identity cards issued by the Lebanese Directorate of General Security, and are usually called “non-ID Palestinians.” In practice, all non-ID refugees also lack UN status; their presence in the country is literally not recognized by any authority and they cannot access UNRWA services. This lack of status means that, in addition to being denied UN services, they are essentially illegal migrants in Lebanon. If they move outside Palestinian refugee camps, they are subject to arrest. The recently published Danish Refugee Council Report estimated that there are 3,000 people in this situation in Lebanon.

In terms of domestic law, the non-ID problem results in part from the inadequacy of Lebanese regulations to clearly define which Palestinians are eligible for registration. It also reflects the fact that Lebanese policy has failed to accommodate the reality that Palestinians continued to be displaced from Palestine after 1948, and also continue to migrate from other countries. Part of the problem also results from Lebanon’s patriarchal/patrilineal system of determining personal status, which discriminates against women.

However, Lebanon’s legal system places a premium on international law, prioritizing it over domestic Lebanese legislation. According to article 2 of the Lebanese Civil Code of Procedure, judges have a duty to apply international law and conventions. In the event of a conflict between international and local laws, article 2 calls on judges to apply the international treaty. Lebanon’s Constitution provides:

Lebanon is Arab in its identity and in its association. It is a founding and active member of the League of Arab States and abides by its pacts and covenants. Lebanon is also a founding and active member of the United Nations Organization and abides by its covenants and by the Universal Declaration of Human Rights. The Government shall embody these principles in all fields and areas without exception. *(unofficial translation)*

Hence Lebanon's legal system should comply with two intersecting sources of international authority: International law, and Arab League resolutions. In keeping with the Lebanese hierarchy of legal authority, this section will first address principles of international law that affect registration of Palestinian refugees, then Arab League resolutions and pacts, followed finally by Lebanese domestic regulations.

a) Sample Palestinian identity papers issued by the Lebanese Government



جری الإحصاء مع: لیم

الإسم والشهرة: میتھ سہیل

إسم الأب: محمد

إسم الام وشهرتها: هدى جبر

تاريخ ميلاد: 1980 دي قلم

المذهب: قلم


المرتبة: معلمة

محل الإقامة: بيروت

الوضع العائلي: متزوج أعزب

معلومات عن الزوج (ة)

الإسم والشهرة	النسبة
1	أحمد
2	فاطمة
3	محمد
4	هدى





جری الإحصاء مع: محمد

الإسم والشهرة: محمود

إسم الأب: محمد

إسم الأم وشهرتها: محمد

تاريخ ومحل الولادة: ١٩٦٩ - دمشق - صيدا

المنصب: صالح

المرتبة:

محل الإقامة: مدلون

الوضع العائلي: متزوج أمرب

معلومات عن الزوج (ة)

الإسم والشهرة	تاريخ ومحل الولادة	الجنسية
١		
٢		
٣		
٤		

b) The right to recognition in international law

In international law, states may make distinctions between citizens and non-citizens, with two key limitations.¹¹⁴ First, while states may discriminate in general in the way they bestow nationality, they may not single out “any particular nationality” for harsh treatment.¹¹⁵ Hence, Lebanon may not put Palestinians at any greater disadvantage than any other nationality in seeking to become citizens of Lebanon. Second, while the Convention on the Elimination of Racial Discrimination permits discrimination between citizens and non-citizens, it does not allow for any rights violations that are prohibited by any other treaty.¹¹⁶

For Palestinians without government registration, the focal issue is the right to recognition before the law. The International Covenant on Civil and Political Rights,¹¹⁷ article 16, guarantees: “Everyone shall have the right to recognition before the law.”¹¹⁸ By use of the word “everyone” this provision applies to all people, not only citizens.¹¹⁹ As the UN Human Rights Committee has explained,

In general, the rights set forth in the Covenant apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness. Thus, the general rule is that each one of the rights of the Covenant must be guaranteed without discrimination between citizens and aliens.¹²⁰

Lebanon must recognize everyone on its territory, even in times of public emergency.¹²¹ These fundamental rules should prevent a situation in which people are in fact living in Lebanon and have no other place where they can go, but their presence and residence in the country is not officially acknowledged.

¹¹⁴ International Convention on the Elimination of All Forms of Racial Discrimination (CERD) article 1 para. 2, 660 U.N.T.S. 195, *entered into force* Jan. 4, 1969.

¹¹⁵ *Id.*, article 1 para. 3.

¹¹⁶ Committee on the Elimination of Racial Discrimination, General Recommendation XI paras. 2-3, 42nd Session (1993).

¹¹⁷ *supra* note 35.

¹¹⁸ This right corresponds to article 6 of the Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc A/810 at 71 (1948).

¹¹⁹ Compare Article 25 (“Every citizen shall have the right and the opportunity ... to take part in the conduct of public affairs.”)

¹²⁰ Committee on Human Rights, General Comment No. 15. paras. 1-2, 27th session (1986).

¹²¹ ICCPR, *supra* note 35, at article 4(2).

c) Arab League resolutions and pacts

The right to recognition before the law has been implicitly recognized through Arab League resolutions. Much like international refugee law, Arab League resolutions have sought to give Palestinians a specially protected status by which to enjoy human dignity without endangering either the individual right to return or the Palestinian right to self-determination. Unfortunately, while the Arab League has endorsed some useful standards, lack of political consensus has prevented their complete implementation.

In terms of treatment of Palestinian refugees, Arab League resolutions could be said to have passed through three phases. The first phase lasted from the 1950s until 1969, and was marked by a serious effort to set universal standards for all Arab states to protect the rights of Palestinians in exile. In the second phase, from 1969 to the mid-1980s, the Arab League de-emphasized universal standards, and focused on bilateral negotiations between the PLO and individual states. The third phase began in the late 1980s and is marked by a flexible approach that emphasizes state sovereignty and allows effectively different standards in different states.

1950s-1969: Standard-setting

From the 1950s until the late 1960s, the Arab League passed a series of resolutions and agreements that in form appeared much like human rights resolutions and sought to prescribe minimum standards for the treatment of Palestinians in Arab states. This phase continued past the Israeli-occupation of the West Bank and Gaza Strip in 1967, but ended when tension in Lebanon eroded political consensus.

In 1952, the Council of Arab States adopted a resolution concerning the issue of a single travel documents to Palestinian refugees. The resolution was in effect an approval of an earlier Political Committee resolution which stated that dispersed families ought to be allowed to be reunited according to the residence of the head of the family:

The Political Committee resolved to agree to the recommendation put forward by the Permanent Palestinian Committee, to the effect that dispersed Palestinian families be allowed to reunite in the current place of residence of the provider/head of the family.¹²²

¹²² League of Arab States Council (LASC), Dispersed Palestinian Families and the Issue of United Travel Documents to Refugees, LASC/RES/424(S16), 14 September 1952.

The resolution also considered that the issue of a single travel document to Palestinian refugees in no way diminishes their rights, but is merely a means to facilitate movement and travel, a signal that governments already expected secondary migration to be an issue. Implicitly the idea of a single travel documents would implement an underlying right of all Palestinian refugees to have their identities recognized and formally acknowledged.

The issue of a unified travel document issued to Palestinian refugees upon request was addressed again in 1954, when the member states of the Arab League resolved to issue temporary travel documents to Palestinians residing on their land or under their jurisdiction, in the case where they had not acquired an Arab nationality.¹²³ The resolution stated clearly that the possession of this travel document did not commit member states to which a refugee is traveling to grant residence, nor did it withdraw the right of the refugee to return to the country where the document was issued.¹²⁴ The resolution further stated that each government could apply its own regulations concerning application procedures, validity, renewal, extension and fees, so long as they do not contradict the regulations contained in the resolution itself.¹²⁵ The resolution asserted that the bearers of the documents were to be treated in their host country on par with all other foreign Arab residents in member states, concerning visas and residency.¹²⁶ A further resolution in 1955 exempted Palestinian refugees from paying visa fees and renewals on their travel documents,¹²⁷ and another established the principle according to which Palestinian refugees could choose the Arab state that would issue these passports.¹²⁸

A critical principle established early on in Arab League resolutions was that obtaining legal recognition, and even citizenship, in a host state should not negate Palestinian refugee identity. In 1959, the League's Council of Ministers called on member states to "consider with compassion the possibilities of securing employment opportunities for Palestinian refugees residing in their lands" while requiring that they keep their Palestinian nationality.¹²⁹ In 1970 the League emphasized that acquisition of a second nationality did not necessarily nullify Palestinian nationality or refugee status and should "not be used as a justification for canceling the names off Palestinian refugee records."¹³⁰ It should be noted that nationality is a somewhat broader concepts than

¹²³ LASC Council, Unified Travel Documents to Palestinian Refugees, LASC/RES/714/(S20) 2 January 1954, art. 1.

¹²⁴ *Id.* art. 3.

¹²⁵ *Id.* art. 4.

¹²⁶ *Id.* art. 6.

¹²⁷ LASC, Exempting Palestinian Refugees from Paying Visa Fees and Passport Renewal Fees, LASC/RES/715(S20), 27 January 1955.

¹²⁸ LASC, Offering Palestinian Refugees in the Diaspora Unified Travel Documents, LASC/RES/1033(S24), 14 October 1955.

¹²⁹ LASC, Granting the Nationality of Some Arab States to Palestinian Refugees, LASC/RES/1547(S31), 9 March 1959.

¹³⁰ LASC, Acquisition of Citizenship does not Void Beneficiaries from Emergency Relief Lists, LASC/RES/2600(S53), 11 March 1970.

citizenship; nationality can signify national origin and identity, while citizenship requires a sovereign government. As a result, a person can have Palestinian nationality, and nevertheless be stateless (i.e. lacking citizenship).

The most important Arab League instrument governing treatment of Palestinians is the 1965 Casablanca Protocol for the Treatment of Palestinians in Arab States, in which the Arab League agreed on a series of principles which would govern the status of Palestinians in member states.¹³¹ The Casablanca Protocol established five key principles for Palestinians currently residing in member states:

- (1) right of employment on par with nationals,
- (2) right to leave and return the country of current residence,
- (3) right to enter and depart other member states, for a set period determined by the authorities and only for the purpose they entered,
- (4) right to be given and renew, upon request, travel documents, and
- (5) right of equal treatment in member states on par with nationals regarding visa and residency applications.

The standards adopted during this historical period have never been revoked by the Arab League, and are therefore still relevant. However, as we will see, the standards set during this early phase have been progressively de-emphasized and subjected to ambiguous amendments that considerably weaken their utility.

1969-1983: Negotiations with the PLO

Lebanon's tense relationship with the Palestine Liberation Organization undermined the Casablanca Protocol almost immediately and focused Arab League attention on resolving political conflict. This led to a new approach in Arab League resolutions: An emphasis on the PLO as an agent of protection for the rights of Palestinian refugees in exile. Whereas the key document in the standard setting phases was the Casablanca Protocol, the central document in this second phase was the 1969 Cairo Agreement between Lebanon and the PLO. The focus on the PLO continued in Arab League Resolutions until the final years of the Lebanese civil war.

From the start, Lebanon had adopted an ambiguous approach to the Casablanca Protocol. While signing the document, Lebanon entered reservations to all of its articles. Lebanon declared that Palestinians in the country were already granted the right of employment, and the right to keep their Palestinian nationality "in accordance with

¹³¹ League of Arab States, Protocol for the Treatment of Palestinians in Arab States, 11 September 1965, Casablanca [Casablanca Protocol].

prevailing social and economic conditions in the Republic of Lebanon.” Lebanon stated that the right to leave and return to the country would be implemented “on equal terms with Lebanese citizens and in accordance with the laws and regulations in operation.” Lebanon stated that Palestinians wishing to enter must obtain an entry visa issued by the appropriate authorities. Regarding the Casablanca Protocol’s requirements for travel documents and equal treatment in visas and residency, Lebanon entered reservations without giving any explanation. Hence, contrary to its Constitution, Lebanon effectively avoided being held to the single most important Arab League pact protecting the civil, political, social and economic rights of Palestinian refugees in host states.

In September 1969, the Arab League called on the PLO to establish bi-lateral contacts with member states to secure the refugees’ residency, travel and employment rights.¹³² This represented an effective shift away from the universal standard of the Casablanca Protocol. Instead, at least until the 1980s, Arab League resolutions emphasized bilateral negotiations between states and the PLO to secure refugee rights.¹³³ The Arab League has never rescinded the Casablanca Protocol, and it repeatedly stressed that negotiations with the PLO should aim to implement it.¹³⁴ But the emphasis shifted clearly to bilateral negotiations, rather than clear standards; the Casablanca Protocol was sometimes not even mentioned in League resolutions dealing with the status of Palestinian refugees in Arab host states.

The key legal event in this phase occurred in November 1969 with the Egyptian-mediated Cairo Agreement between the PLO and Lebanon. Politically, the Cairo Agreement was significant as an attempt to resolve a political crisis by establishing a clear foundation for the PLO’s presence in Lebanon. Its preamble stated:

[R]elations between Lebanon and the Palestinian revolution must always be conducted on the bases of confidence, frankness, and positive cooperation for the benefit of Lebanon and the Palestinian revolution and within the framework of Lebanon's sovereignty and security.

The Cairo Agreement is usually remembered for safeguarding the PLO’s military operations and for requiring military coordination between the PLO and the Lebanese army, an arrangement which contributed to the outbreak of Lebanese Civil War. However, the agreement also contained critical protections for civilian Palestinian life in Lebanon. It guaranteed “the right to work, residence, and movement for Palestinians currently residing in Lebanon,” and authorized the Palestinians to form “local committees composed of Palestinians in the camps to care for the interests of Palestinians residing in these camps in cooperation with the local Lebanese authorities.” Although the text referred only to Palestinians “currently residing” in Lebanon, its benefits were applied to

¹³² LASC/RES/2550(S52)

¹³³ See LASC/RES/2669 (1970), LASC/RES/3180 (1974), LASC/RES/3807 (1979), LASC/RES/3906 (1980), LASC/RES/4239 (1983).

¹³⁴ See LASC/RES/3743 (1978), LASC/RES/4243 (1983), LASC/RES/4332 (1984).

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refugees who arrived after 1969 because the PLO issued its own identity cards, including to refugees who entered Lebanon illegally. As our research and others have found, many non-ID and non-record Palestinians arrived in Lebanon in the 1970s.

For a brief period, Palestinians enjoyed an improved position inside Lebanon under the auspices of the Cairo Agreement and the PLO. However, the Cairo Agreement linked Palestinian civilian rights in Lebanon to the PLO's military operations. As the civil war shattered the delicate relationship between the PLO and the Lebanese government, Palestinian civilians were soon left with little protection. In 1976, after the outbreak of the Lebanese Civil War, a Six-Member Arab Summit in Riyadh voted to "guarantee" the implementation of the Cairo Agreement, in exchange to the PLO's commitment to honor Lebanese sovereignty and to "not interfere with Lebanon's internal affairs."¹³⁵



Ein el Helwa camp in Sidon, Lebanon in 1982 during the Israeli invasion. (Photos: UNRWA).

¹³⁵ LASC/RES/3457 (16-18 October 1976).

1984-Present: Deference to state sovereignty

In the 1980s, after the PLO was forced by the Israeli invasion to leave Lebanon, the Arab League gradually stopped issuing resolutions emphasizing bilateral relations with the PLO as a means of protecting Palestinians. The shift was initially quite subtle. In 1984, the Arab League Council resolved that the “Palestine Liberation Organization and the General Secretariat contact Arab states to discuss the implementation of the Protocol for the Treatment of Palestinians in Arab states [Casablanca Protocol].”¹³⁶ Just a year earlier, the Council had asked the Secretariat to facilitate the PLO’s “mission in making bilateral contacts with concerned authorities.”¹³⁷ This dual mention of the PLO along with the League Secretariat may have been meant to bolster the PLO’s role, but it also meant that the PLO was no longer the exclusive representative of the refugees’ interests. From 1985 to 1988 the Arab League mandated a “joint delegation” that included the PLO and the Arab League Secretariat to promote the implementation of the Casablanca Protocol.¹³⁸

The symbolic re-emergence of the Casablanca Protocol, which had not always been mentioned in Arab League resolutions during the 1970s, did not improve the actual rights enjoyed by Palestinian refugees. In fact, the shift in Arab League focus occurred as the Palestinian position in Lebanon eroded in the final years of the civil war. On 21 May 1987, the Lebanese Chamber of Deputies passed a resolution declaring the Cairo Agreement “null and void as if it had never existed.” This effectively rolled back Palestinians’ rights in Lebanon to their pre-1969 status, without accounting for the fact that many new Palestinians had arrived in the interim period. In 1991, the Arab League Council issued a resolution which simultaneously re-affirmed and weakened the Casablanca Protocol.¹³⁹ At the suggestion of Saudi Arabia, the Arab League stated that states should implement the Protocol “in accordance with the laws in force in each state.”¹⁴⁰ This is a highly ambiguous formulation, especially when domestic regulations violate the terms of the Protocol. As a result, while the Casablanca Protocol remains in force in theory, in fact the Arab League has weakened it by deferring to the sovereign laws of each state.

¹³⁶ LASC/RES/4332(S81).

¹³⁷ LASC/RES/4243 (1983).

¹³⁸ LASC/RES4426 (1985), LASC/RES4617(S86) (1986) and LASC/RES/4644(S87) (1987); LASC/RES/4770(S89) (1988).

¹³⁹ LASC/RES/5093(S96).

¹⁴⁰ *Id.*

d) Registration of Palestinians in Lebanese law

Lebanon has imposed strict restrictions on the social and economic livelihoods of nearly all Palestinian refugees in the country, as noted in the introduction to this report. Until very recently, an array of rules effectively prohibited Palestinians from working in a long list of professions, excluded them from social security, and restricted the right to own property. Lebanon appears to be in the process of revising and reducing these restrictions just as this report was in its final stages of revision. At the end of June 2005, the Lebanese government announced that it would begin issuing work permits to Palestinians for manual (non-professional) jobs. At time of writing, it is not known how extensive these reforms will be, nor how they will be implemented.

Non-ID Palestinians cannot move freely around the country because they lack a Lebanese identity card; not only can they not easily leave the country because they may not have travel documents, they are treated similarly to illegal immigrants in Lebanon. They are safe from arrest only inside refugee camps because the camps are not administered by Lebanese authorities. The reason why some Palestinians fell into the especially severe category relates to the complicated nature of Lebanese regulation of refugee registration dating back to the 1950s.

Lebanon's domestic regulation of Palestinian refugee status is based on rules adopted in the 1950s and 1960s. From 1969 to 1987, these rules were effectively superseded by the Cairo Agreement, but appear to have returned to the forefront after 1987 when the government declared the Agreement null and void.

The first government intervention into the regulation of Palestinian refugees was in 1950. Decree No. 2867 of 1950 set out the organization of the Ministry of Interior, including the Department of Palestinian Refugees.¹⁴¹ The Department had responsibility to consider family reunification requests,¹⁴² exemptions from tax duties for those coming on the basis of family reunification,¹⁴³ coordinating with UNRWA in the provision of social and medical services,¹⁴⁴ providing permits for changing residence from one camp to another,¹⁴⁵ and considering requests for the correction of any records and cards.¹⁴⁶

Legislative Decree 927 of March 31, 1959 defined the Refugee Department's roles in more detail. Decree 927's first article provides for the following functions:

1. Contacting the International Relief Agency in Lebanon to ensure relief, shelter, education, and health and social services for the refugees.

¹⁴¹ Decree No. 2867 art. 2, Organization of the Ministry of Interior, Promulgated 16 December 1959.

¹⁴² *Id.*, art. 26 (1).

¹⁴³ *Id.*, art. 26(2).

¹⁴⁴ *Id.*, art. 26 (4).

¹⁴⁵ *Id.*, art. 26 (5).

¹⁴⁶ *Id.*, art. 26(8).

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2. Receiving applications for obtainment of passports for departure from Lebanon, the study of these applications, submission of comments and subsequent transfer to the relevant departments of the Public Security.
3. Registering personal documents relating to birth, marriage, divorce, marriage annulment, change of residence, and change of sect or religion, following confirmation of validity as per the relevant stipulations in Articles 2, 3, 4, 7, 9, 13, 14, 15, 17, 22, 23, 27, 28, 30, 31, 41, and 42 of the Law Governing Registration of Personal Documents, dated 7 December 1951.
4. Approving applications for the reunion of dispersed families as per the texts and directives of the Arab League and after consultation with the Armistice Commission.
5. Approving, in the case of incoming persons from Palestine for purposes of family reunification, as per the stipulations of the previous item, exemption from customs duties on their personal or household belongings.
6. Designating the localities of the camps and undertaking transactions for lease or ownership of properties required for them.
7. Allocating permits allowing transfer of residence from one camp to another where circumstances so dictate in the estimation of the Department.
8. Transferring residency of refugees from one camp to another where security considerations so require.
9. Approving applications for marriage submitted by any male or female refugee residing in Lebanon seeking marriage with a refugee from another Arab country.
10. Approving transfer of frozen or incoming funds to beneficiary refugees by way of the Bank of Syria and Lebanon.
11. Rectifying errors that inadvertently occur in personal identification cards regarding names, identities and ages of the refugees

The 1959 decree continues to provide the primary legal framework regulating the status of Palestinian refugees in Lebanon. Rather than recognize specific rights of the refugees, it allocates to the Ministry of Interior substantial executive discretion, at least when read in isolation. It requires the Department to maintain contacts with aid agencies such as UNRWA, but does not specify any particular obligations to facilitate their work

or contribute to refugee well being. Paragraph 8 appears to give the Department the authority to unilaterally relocate a refugee from one camp to another based on unspecified security considerations.

Many of the 1959 provisions lack clear definitions and criteria. For instance, it instructs the Department to receive applications for passports. While refugees who were already registered with UNRWA and/or the government were eligible for these passports, it is not clear if any other Palestinians might be able to receive them. With regard to several key aspects of life – family reunion, freedom of movement from one camp to another, marriage to a refugee in a different country, transferring assets, and rectifying errors in registration – the Decree gives the Department the authority to approve a necessary permit, but does not define when such approval should be granted. As a result, it is unclear whether the 1959 Decree recognizes that the refugees have rights that the Ministry of Interior should facilitate, or whether it gives the Ministry unrestricted authority to regulate nearly all aspects of refugee life in Lebanon.

The 1959 Decree left undefined who could register as a Palestinian refugee in Lebanon. This gap was addressed to an extent by the Minister of Interior's Ordinance No. 319 of August 2, 1962. Article 4 of this ordinance called for Palestinians in Lebanon to present themselves to the General Directorate of the Surete Generale before the end of September 1962, to regularize their status and receive either temporary or permanent residency cards that included name, family name, place and date of birth, nationality in Lebanon and the identification papers of dependents below age 15.¹⁴⁷ The ordinance provided for the regularization of residence for

foreigners who do not carry documentation from their countries of origin, and reside in Lebanon on the basis of resident cards issued by the Directorate of the Surete Generale, or identity cards issued by the General Directorate of the Department of Affairs of the Palestinian Refugees in Lebanon.

Like the 1959 decree, the text of this order is less than clear. On one reading, it appears to allow Palestinians (i.e. foreigners who do not have documentation from their own country) to obtain residency cards from either the Department of Surete Generale, or from the Directorate of Political Affairs and Refugees at the Ministry of Interior. But, read another way, it provides an entirely circular definition of who can reside legally in Lebanon that relies entirely on executive discretion. On this reading, a Palestinian refugee can reside in Lebanon only if the Lebanese Government grants a residency card, and there is no provision defining to whom the government must grant such a card. In addition, the 1962 order required regularization by September 1962; it did not apply to refugees who arrived in Lebanon after September 1962.

¹⁴⁷ *Id.*, arts. 2, 4.

Just months before the Cairo Agreement in 1969, the Ministry of Interior issued decision No. 132 of 20 September 1969, regulating the presence of foreigners in Lebanon. All foreigners staying more than three weeks in Lebanon were required to present themselves within the fourth week to the General Security in order to register their place of residence. This decision on its face did not apply to Palestinians residing in Lebanon on the basis of a card granted by the Director General of Palestinian Refugee Affairs. But as noted by independent researcher Souheil Al Natour,¹⁴⁸ it effectively only exempted two categories of Palestinians:

- Those who are legally resident in Lebanon. They were registered after 1948 at the beginning of the 1950s by the Red Cross and UNRWA. Their names are registered with the Ministry of Interior under the Department of Refugees and the Department of the General Security.
- Those, who not fitting into the first category, legalized their status in Lebanon following Ministry of Interior's decisions no. 319 of 2 August 1962, and 136 of 1969, or on the basis of family reunification under the department of Palestinians affairs in conformity with its directives

Despite the ambiguity surrounding the registration of Palestinian refugees in Lebanese law, there are two areas where Lebanon's regulations provide some clarity. The first is registration of personal documents and civil status. Paragraph 3 of the 1959 regulation requires the refugee affairs office to register such documents in accordance with legislation governing the civil status for Lebanese citizens.

The second area of clarity concerns the issuing of travel documents, at least for registered Palestinians. Until 1999, this was an area of substantial ambiguity. Refugees registered with the Ministry of Interior are eligible for a "Document de voyage pour les réfugiés palestiniens." The 1962 Law of Entry and Exit, article 19, allowed the Department of Surete Generale to grant a *laisser passer* to foreigners who hold no other travel document and who have either an undetermined nationality or citizenship of a state with no representative in Lebanon. These provisions would include unregistered Palestinians, but the *laisser passer* documents normally only permit travel out of Lebanon, not re-entry. In September 1995, the Lebanese government adopted a decision requiring entry and exit visas for all Palestinians, even those carrying Lebanese travel documents.¹⁴⁹ From 1994 to 1999, Lebanon required Palestinians to apply for entry and exit permits in order to travel abroad. However, since 1999 the Lebanese Government has not required exit or re-entry visa for Palestinians with government identity cards. Yet, as the International Federation for Human Rights (FIDH) reported in 2003 "the precedent of

¹⁴⁸ Suheil Natour is a jurist and director of the Human Rights Protection Center, Interviewed April 2005.

¹⁴⁹ Decree No. 478; United Press International, *Palestinians protest Lebanon visa rule* (13 December 1995).

this order discourages both Palestinian refugees to go abroad, and other State Administrations to grant them visas.”

e) Practical reasons for the non-ID problem

The practical effect of the Lebanese regulations as they stand today is that Palestinians who arrived in Lebanon after 1962 are vulnerable to be excluded from government recognition. In our field research, we found no non-ID Palestinians who had arrived (or whose family had arrived) earlier than 1962. The 1962 cut-off date is the central obstacle to government recognition. If these Palestinians are to gain status in Lebanon, this problem will have to be corrected.

As past reports on this problem have noted, many of the non-ID Palestinians in Lebanon arrived in the late 1960s and 1970s and enjoyed the benefits of the Cairo Agreement. This is usually attributed to the turmoil in other Arab states (especially Jordan), and by the attraction of the PLO’s growing role in Lebanon. Our research confirms this in part. Of the 114 respondents in our field study who lacked government recognition, three arrived in 1968 and 1969 and 51 arrived in the 1970s. Of these, 11 came from Jordan, two from Syria, and three from Egypt. We found 66 Palestinians in this category who said they or their fathers had come to Lebanon to join the Palestinian resistance.

However, we found that the non-ID recognition problem has more complex causes than originally thought. Our field research revealed that some of the non-ID Palestinians were displaced from the occupied Palestinian territories after 1967, not from Jordan or any other Arab state. In our sample of 114 non-ID Palestinians, 12 left the West Bank or Gaza Strip between 1968 to 1981. While the vast majority of displacement from Palestine occurred in 1948 and 1967, Israeli policies continued to lead people to become exiles more recently. More research is needed into this phenomena.

f) Gaps between Lebanese law and Lebanese responsibilities

The general discrimination against all Palestinian refugees in Lebanon has been explored in other reports.¹⁵⁰ In 2004, the UN Committee on the Elimination of Racial Discrimination expressed concern about these measures, and urged Lebanon “to remove all legislative provisions and change policies that have a discriminatory effect on the Palestinian population in comparison with other non-citizens.”¹⁵¹ For the purposes of

¹⁵⁰ See Amnesty International, *supra* note 18; FIDH, *supra* note 18; EMHRN, *supra* note 18.

¹⁵¹ CERD/C/64/CO/3 para. 12, 64th session (28 April 2004)

this study, the key issue is registration with the Lebanese Government. Registration determines whether a Palestinian will be treated as a refugee with access to travel documents and the right to residence in Lebanon, or as an illegal migrant subject to Ordinance No. 319 of August 2, 1962.

The problem for unregistered Palestinians is not that Lebanese rules and regulations explicitly conflict with international law or Arab League regulations. The problem is that the Lebanese rules are highly ambiguous, and rely extensively on administrative discretion. Lebanese laws specifically provide for residency documents to be issued to refugees who were registered in the 1950s with UNRWA or the Red Cross, and for those who regularized their status by September 1962. But the Lebanese rules do not actually prohibit the Ministry of Interior from registering Palestinians who arrived after 1962. The Ministry of Interior's Decision 132 of 1969, which regulates the status of foreigners in Lebanon, exempts Palestinians registered with the Department of Surete Generale, or the Refugee Department. Nothing prevents these departments from registering a post-1962 Palestinian arrival, but such Palestinians have been excluded *de facto*.

Lebanese law provides for international law and Arab League resolutions to trump domestic regulations. In this case, since Lebanese law is ambiguous, it would only be necessary for gaps in Lebanese regulations to be interpreted in order to comply with international and Arab standards. Although in 1991 the Arab League made the Casablanca Protocol subject to domestic law, there is nothing preventing the use of international law and the Casablanca Protocol to supplement gaps in Lebanese rules. International law provides every person, regardless of nationality, the right to recognition. The Casablanca Protocol provides rights to any Palestinian resident in an Arab state. Lebanese regulations are ambiguous as to the status of "foreigners who do not carry documentation from their countries of origin" but who arrived after September 1962. The *de facto* gap could be resolved simply by the Ministry of Interior registering any Palestinian present in Lebanon who cannot return to any other state.

As a final note, gender discrimination is a major issue with the Lebanese Government as well as with the United Nations because Lebanese nationality can only be passed through the father. This rule extends to all Lebanese, not just Palestinians. We found two unrecognized Palestinians who were married to Lebanese women; their children will be stateless Palestinians. This discrimination also means that children of non-ID fathers may be deprived of status, even if their mothers have Lebanese IDs. In 2005 the UN Committee on the Elimination of Discrimination Against Women asked Lebanon to explain what steps it is taking to end this violation of international human rights law.¹⁵² In reply, Lebanon noted that it had entered a reservation to article 8 of the Convention, and did not specify any plans to change its policy.¹⁵³ This discrimination remains a major problem in Lebanon, and throughout most of the Arab world.

¹⁵² CEDAW/PSWG/2005/II/CRP.1/Add.8 (9 February 2005)

¹⁵³ CEDAW/PSWG/2005/II/CRP.2/Add.8 (18 March 2005)

6) 1967 DISPLACED PERSONS: LEBANESE AND UN AMBIGUITY



Refugees fleeing the Palestinian territories in 1967 (Photo: UNRWA)

With both UN and Lebanese authorities, Palestinians displaced from the 1967 Israeli-occupied Palestinian territories (West Bank and Gaza Strip) are subject to a uniquely ambiguous legal arrangement.

After the 1967 war, the General Assembly expanded UNRWA's mandate "as a temporary measure to other persons in the area who are at present displaced and are in serious need of immediate assistance as a result of the recent hostilities."¹⁵⁴ This measure led to the *de facto* inclusion within UNRWA's mandate of Palestinians displaced in 1967, but it did not add them to UNRWA's definition of a Palestine refugee.¹⁵⁵ Palestinian refugees from 1967 continue to be assisted by UNRWA, but are still not part of its formal working definition.¹⁵⁶

The UN General Assembly requested in a 1982 resolution that UNRWA "issue identification cards to all Palestine refugees and their descendants, irrespective of

¹⁵⁴ G.A. Res. 2252 (ES-V) (4 July 1967).

¹⁵⁵ It should be noted that many who fled from the West Bank to the East Bank (Jordan) were registered with the Jordan as internally displaced (Jordan had annexed the West Bank, so in Jordanian eyes they had not crossed an international border). TAKKENBERG, *supra* note 30, at 83. UNRWA provides material aid to these Palestinians, but has not registered them. *Id.*

¹⁵⁶ TAKKENBERG, *supra* note 30, at 82.

whether they are recipients or not of rations and services from the Agency, as well as to all displaced persons and to those who have been prevented from returning to their home as a result of the 1967 hostilities, and their descendants".¹⁵⁷ This has been reiterated again in further resolutions, but has never been fully implemented.¹⁵⁸ As a result, post-1967 refugees occupy an ambiguous position vis-à-vis the UN. In 2001, the General Assembly endorsed UNRWA efforts to

continue to provide humanitarian assistance, as far as practicable, on an emergency basis and as a temporary measure, to persons in the area who are currently displaced and in serious need of continued assistance as a result of the June 1967 *and subsequent hostilities*.¹⁵⁹

This text should have facilitated registration for most Palestinians displaced since 1967.

To be clear, this problem should only apply to displaced Palestinians whose pre-1948 homes were in the West Bank or the Gaza Strip. In our sample, there were 28 people whose first migration was in 1967, but another 27 for whom 1967 was actually a secondary migration. Those who were originally from inside territory controlled by Israel after the 1949 armistice agreements and who were refugees in the West Bank or Gaza before being displaced again should be considered to be 1948 refugees who fall within the working definition, but who came to Lebanon via a secondary migration.

Palestinians displaced in 1967 fall into the same gap in Lebanese regulations as all other post-1962 Palestinians, although in theory Arab League resolutions should have alleviated their situation. Palestinians from the West Bank are generally issued limited Jordanian passport which permit them to travel, but not to reside in Jordan. In 1968, the Arab League addressed the problem of Palestinians from the Gaza Strip who fled or were stranded abroad after the 1967 war. The League's Conference of Supervisors of Palestinian Refugee Affairs in Host States declined to ask Jordan to issue them permanent passports. Instead, the League asked Egypt, the former military government of Gaza, to issue and renew their passports, and called on other Arab states to "be committed to accepting these documents and facilitating means for employment, transport and residency to Palestinian brothers, in accordance with the Casablanca Protocol."¹⁶⁰ Hence, while Egypt and Jordan remain responsible for issuing travel documents to people displaced from the Gaza Strip and West Bank, Lebanon should grant 1967 refugees residency. This has generally not happened. We found 18 Palestinians displaced for the first time in 1967 who lack Lebanese government recognition and residency permits. We found one person who had Lebanese residency, but not UNRWA status.

¹⁵⁷ G.A. Res., A/RES/37/120(I), (16 December 1982) (Special Identification Cards to All Palestine Refugees).

¹⁵⁸ G.A. Res. 43/57(E) (6 December 1988) (Palestine Refugees in the Palestinian Territory Occupied by Israel since 1967)

¹⁵⁹ G.A. Res. 56/54 (10 December 2001). *See also* G.A. Res. 59/118 (15 December 2004) (emphasis added).

¹⁶⁰ LASC/RES/2455(S50).

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For the purpose of finding a durable solution to the refugee problem, there is good reason to keep the 1948 and 1967 populations distinct. For 1967 displaced people, the right of return would be to their homes in the Occupied Palestinian Territories, while the 1948 refugees are seeking to return to homes inside the Green Line, in land recognized *de facto* by international law as Israeli sovereign territory. However, this difference does not explain why the 1967 refugees should remain in such an ambiguous position, especially in light of the General Assembly's request¹⁶¹ that UNRWA issue them identity cards to provide them assistance.



A child in Borj al-Barajneh camp (Photo: M. Zeidan 2005).

¹⁶¹ G.A. Res. 56/54 (10 December 2001). *See also* G.A. Res. 59/118 (15 December 2004).

7) RESPONSIBILITIES OF OTHER GOVERNMENTS

The problem of unrecognized Palestinians in Lebanon has come to light only in the last few years, but it may not be unique to Lebanon. While a number of the gaps in Palestinians refugee status identified in this paper are specific to Lebanon, others are not. UN policies in particular are likely to extend to other countries; other Arab states may have adopted registration systems that, like Lebanon's, excluded some displaced Palestinians. A Dutch Government report estimated that there are around 40,000 to 50,000 Palestinians residing in Syria who are not registered with either the Syrian Government or UNRWA, and hence possess neither Syrian identity cards nor UNRWA documents.¹⁶² We found a few cases of non-ID Palestinians who came to Lebanon from Syria who said they had not had any legal status in Syria. As a result, further research should be conducted in other Arab states to determine the scope of the unrecognized Palestinian refugee problem, and identify its causes.

Further work may also be needed to determine whether other states may offer solutions to the unrecognized refugees in Lebanon. Notwithstanding Lebanon's obligations, some of the non-ID Palestinians have – at least on paper – connections to other Arab countries which in theory might be potential host states for them. However, this possibility requires substantial caution. It involves an intersection of international and Arab League norms with domestic laws and regulations in several countries. Governments may not reliably implement the legal obligations that exist on paper; relocation to another country must be actually available before it can be considered. The fact that another host state may be available would not justify Lebanon forcing a new displacement on the refugees. Return to another Arab state may be an important option for individuals to consider, but it is unlikely to be a panacea for most of the unrecognized refugees in Lebanon.

The following discussion will highlight issues relevant to three major Arab countries or territories from which unrecognized Palestinians in Lebanon came – Egypt, Jordan and the occupied Palestinian territories. However, this is only an introductory discussion, and it does not discuss countries such as Iraq about which less is known. More research needs to be done in this area, as well as in some cases provision of individualized legal aid.

¹⁶² Council of the European Union, Netherlands Delegation, Country report on Palestinians in Syria, Brussels, 22 March 2002, RefWorld 2004, at 45.

a) Egypt

In 1968, the Arab League attempted to resolve the issue of travel documents for Palestinians displaced from Gaza in 1967. As noted above, the League asked Egypt, the former military government of Gaza, to issue and re-new their passports, and called on other Arab states to “be committed to accepting these documents and facilitating means for employment, transport and residency to Palestinian brothers, in accordance with the Casablanca Protocol.”¹⁶³ However, this resolution mainly addressed competing claims by Jordan to represent the interests of the Palestinians people; it may be superseded by later resolutions that gave pre-eminence to the PLO. In any case, the resolution only requires Egypt to renew travel documents. It does not necessarily entitle people to return to Egypt.

There are other reasons why transfer to Egypt would not appear to be a viable solution. Chief among these is the fact that Palestinians in Egypt suffer social and economic marginalization very similar to those in Lebanon, although they are smaller in number and in proportion to the general population. In 1948, Egypt set up interim camps near Cairo and major Egyptian cities, but after the 1949 armistice relocated many Palestinians to the Gaza Strip, which was under Egyptian military government until June 1967. Until the late 1970s Palestinians inside Egypt enjoyed a relatively privileged status, treated on par with nationals in most social and economic fields. Law 66 of 1962 permitted Palestinians to work in government and public sector jobs. However, after the Camp David accords, President Anwar Sadat issued Executive Decrees Nos. 47 and 48 of 1978, which downgraded Palestinians to the status of foreigners, meaning that they cannot work without permits and are excluded from an array of social and educational services.¹⁶⁴

Another problem with return to Egypt is that holding pre-1967 Egyptian-issued documents does not necessarily entitle a Palestinian to a status in Egypt. In general, Palestinian refugees in Egypt have renewable residence permits. Those who were displaced in 1948 or the 1956 Suez War generally have 5-year permits, while those displaced in 1967 have 3-year permits.¹⁶⁵ However, this does not necessarily apply to Palestinians in Lebanon who have Egyptian-issued identity documents. Egypt never claimed to annex Gaza; from 1949 to 1967 the Gaza Strip was legally occupied by Egypt and under military government. It was not part of sovereign Egyptian territory. As a result, the status and rights accorded to Palestinians in Egypt are not necessarily the same

¹⁶³ LASC/RES/2455(S50).

¹⁶⁴ Oroub El Abed, *The Palestinians in Egypt: An Investigation of Livelihoods and Coping Strategies -- Executive Summary* at 5-6, 8-11, American University in Cairo Forced Migration and Refugee Studies Program (September 2003) (available at <http://www.aucegypt.edu/academic/fmrs/Reports/EnglishReport.pdf>).

¹⁶⁵ *Id.* at 14.

as those from the Gaza Strip, who had documents issued by Egyptian military authorities. Native Gazans, as well as refugees from inside the Green Line who lived in Gaza from 1948 to 1967, do not necessarily have a right to go to Egypt. Their right to return would be to Palestine/Israel, and depends on admission by the Palestinian Authority and (more importantly) by Israel, which continues to control access in and out of the occupied territories.

We found Palestinians in Lebanon who fell into this ambiguity. One man, born in Lebanon in 1982 to a Syrian mother and Palestinian father (but lacking a Lebanese birth certificate) had an Egyptian document from Gaza. Contrary to the 1968 Arab League resolution, he had been able to renew it through Egyptian authorities. His father, from Nabi Rubin in Palestine, had fled to Gaza in 1948, and then to Jordan in 1967. He came to Lebanon via Syria in 1970.

b) Jordan

In September 1970, less than a year after the signing of the Cairo Agreement between Lebanon and the PLO, King Hussein declared martial law and engaged the Jordanian army in full scale warfare with Palestinian militias associated with the PLO and Yasser Arafat's Fatah movement. A ceasefire went into effect at the end of the month; Palestinian fighters were driven out of their last strongholds in 1971. Casualties from "Black September" are estimated at between 5,000 and 25,000, including civilians.¹⁶⁶ Many Palestinians fled to Lebanon, where the PLO was at the height of its strength in the early 1970s and where the Cairo Agreement guaranteed them basic rights.

This migration from Jordan produced a significant percentage of the unrecognized (non-ID and non-R) refugees in Lebanon. A number of the refugees we interviewed for this study possess Jordanian documents. Since Jordan had granted citizenship to Palestinians, return to Jordan appears on paper to be a possible solution for them, but this appears unlikely to be a real option in practice. According to art. 3(2) of Jordan's 1954 citizenship law, Jordanian citizenship is granted to all non-Jews who had Palestinian nationality before May 15, 1948 and were living in the Hashemite kingdom between December 20, 1949 and February 16, 1954.¹⁶⁷ This law excluded Palestinians who arrived after 1954, in particular those displaced from Gaza in 1967.¹⁶⁸

¹⁶⁶ Oroub El Abed, *FMO Research Guide: Palestinian Refugees in Jordan* (February 2004) (available at www.forcedmigration.org/guides/fmo025/title.htm).

¹⁶⁷ Jordan Law No. 6 of 1954, Citizenship Law, Promulgated January 1, 1954.

¹⁶⁸ TAKKENBERG, *supra* note 30, at 156.

The citizenship law foresees specific circumstances under which Jordanian nationality can be lost: first, entering the military service of a foreign State without permission from the Jordanian Council of Ministers and refusing to leave when asked, entering the civil service of a foreign states and refusing to leave when asked, entering the service of an enemy state, and committing or attempting to commit an act deemed to endanger the peace and security of Jordan.¹⁶⁹ More research needs to be done on the status of these Palestinians in Jordanian law today. It is not known, for instance, whether all of those who fled were ever formally denationalized. Many who came to Lebanon were not actually fighters, but were family members of people in the PLO or Fatah. Jordan may still have obligations to at least some of these refugees.

In some cases, Jordanian authorities appear to have arbitrarily de-nationalized some people who had nothing to do with the Black September unrest. We found one case in which a man from Ramallah, then under Jordanian control, left for Lebanon voluntarily in 1965. He remained in Lebanon until 1970, when the Jordanian embassy in Beirut abruptly refused to renew his passport. Since then he has been essentially stateless, and has no registration in any country.

Another complexity involving Jordan concerns travel documents issued to Palestinians in the West Bank. Unlike Egypt in Gaza, Jordan annexed the West Bank (including Jerusalem) in 1950, and treated the territory as part of Kingdom of Jordan. In addition to their violent conflict inside Jordan in 1970, Jordan and the PLO were long rivals for the right to represent the Palestinians of the West Bank. Until 1988, Jordan continued to claim the West Bank as its own, a position that conflicted with the PLO's efforts to lead the Palestinian cause.

On 31 July 1988, King Hussein changed this policy in a speech renouncing any Jordanian claims to the West Bank. The King's speech was not followed by a formal law or decree, but it was treated as such by the Jordanian government.¹⁷⁰ Palestinians who reside east of the Jordan River continue to be considered Jordanian citizens. Those in the West Bank often carry two-year Jordanian passports (as opposed to five-year passports given to Jordanian citizens). They can enter Jordan for only 30 days, and Jordanian authorities have grown increasingly strict about issuing such travel documents to Palestinians in areas under Palestinian Authority control. The Palestinian Authority now issues its own travel documents, which are slowly replacing Jordanian documents.

¹⁶⁹ *Id.*, art. 18.

¹⁷⁰ See TAKKENBERG, *supra* note 30, at 156-157.

c) Occupied Palestinian Territories (Israel/Palestinian Authority)

There are two groups of Palestinian refugees in Lebanon who have a connection with the West Bank and Gaza Strip. The first group are those whose families lived in the West Bank or Gaza before 1948, and who hence were not displaced in 1948. The second group are those who were displaced from inside the Green Line (territory that became Israel), and who were refugees in the West Bank or Gaza before migrating a second time to Lebanon. For the first group, return to the West Bank or Gaza would represent a final solution of their refugee problem because they would be returning to their home region. For the second, only return to their pre-1948 homes (now inside Israel) would represent a full right of return.

Currently, Israel continues to control all access in and out of the occupied territories. The question of return for either of these groups of refugees is hence subject to negotiations between Israel and the Palestinians. The article XII of the 1993 Declaration of Principles on Interim Self-Government Arrangements between Israel and the PLO provided for a joint Palestinian, Israeli, Egyptian and Jordanian committee to negotiate "the modalities of admission of persons displaced from the West Bank and Gaza Strip in 1967, together with necessary measures to prevent disruption and disorder." During the 1990s some refugees from the occupied territories were permitted to return there, but the process has stalled. The General Assembly recently expressed concern that arrangements for the return of 1967 displaced persons to the occupied territories have not been implemented more than 10 years after the original agreement.¹⁷¹

¹⁷¹ G.A. Res. 59/118 (15 December 2004).

8) RECOMMENDATIONS

Based on our legal and policy analysis and field study, we offer the following recommendations aimed at remedying the problem of unrecognized Palestinians refugees. Our recommendations are limited to this narrow problem; we do not address general problems facing all Palestinian refugees in Lebanon or elsewhere. We specifically do not address the need to expand international protection generally for Palestinians in exile. Nor do we address the need to finally implement the right of return so that the Palestinian refugee problem can finally be resolved rather than continue to grow. Our silence on these issues reflects the limited focus of this report, and does not minimize their paramount importance.

Recommendations for the United Nations

Soon after the beginning of the Palestinian refugee problem, the UN General Assembly signaled its intention to provide assistance to all of the refugees displaced by the Arab-Israeli conflict. In essence, the UN's purpose was to assist any person who was either a citizen or a habitual resident of Palestine before 1948, and who lost his or her home as a result of the Arab-Israeli conflict. This assistance was in essence an interim measure to maintain the refugees in conditions of dignity until they can return home. To a large extent, this has been accomplished through the work of UNRWA. Yet, after 57 years some displaced Palestinians are not receiving the intended assistance. A re-assessment of how the UN delivers this assistance is therefore called for, and it is encouraging that UNRWA is currently re-assessing its registration policies.

We make the following recommendations:

- **Convene a forum** with representatives of UNRWA, UNHCR, major donor and host states, and interested non-governmental organizations to discuss means of implementing the principle of continuity of protection for Palestine refugees in exile. This forum should re-assess the current mandates of UNRWA and UNHCR, and make recommendations for improved operating guidelines or if necessary new General Assembly resolutions that would clarify their role. This forum would be dedicated solely to improving interim protection and assistance of Palestinian refugees until a final resolution of the conflict; it would not discuss or re-assess the right of return or any other durable solution to the refugee problem.

- **Re-assess UNRWA's working definition** with an aim of ensuring that all Palestinians displaced by the Arab-Israeli conflict since 1948 are covered. UNRWA should consider more clearly include people who currently have *de facto* access to services, and more clearly communicate its eligibility criteria to the public.
- **Re-assess UNRWA registration practices**. Without changing any established policy or definition, UNRWA could substantially reduce the non-R problem by allowing Palestinians who meet the existing working definition to register whenever they come to reside in an UNRWA area of operations, and allow those previously registered to transfer their registrations to their current place of residence. Given the long duration of the Arab-Israeli conflict, secondary migration should be expected and accommodated by UNRWA practices
- **Ensure compliance with human rights standards against gender discrimination**. UNRWA should carry out its commitment to re-assess and amend any policy or practice that is not compatible with international human rights law, with particular attention to gender discrimination. Although UNRWA may re-assess a family's assistance needs when family composition changes and need not register spouses who are already citizens of Lebanon, a woman's Palestine refugee status should not be suspended when she marries, and should be passed on equally by men and women. In the interest of family unity, UNRWA should consider allowing registered Palestinian women to add non-R spouses to their files. This is already standard practice for other refugees at UNHCR offices around the world.

We also recommend that UNRWA and UNHCR consider actions that would reduce the problem of displaced Palestinians without UN registration:

- **Improved UNHCR implementation of continuity of protection**. Although UNHCR issued a clear policy statement on protection of Palestinian refugees in 2002, its offices in the Middle East and in Lebanon specifically are often closed to Palestinians. While UNRWA remains the primary agency for Palestinian refugees, UNHCR's doors should always be open to receive applications from Palestinians who may fall under UNHCR's mandate, especially if they are fleeing a present well-founded fear of persecution.
- **Establish a UNHCR-UNRWA liaison office for Palestinian refugees**. In law and in UN policy, UNRWA and UNHCR have intersecting mandates that in theory should provide seamless protection and assistance to Palestinians. However, institutionally the agencies remain highly separate, making it more likely that a refugee who should enjoy continuous protection will instead fall

through a system of diffuse responsibility. UNHCR and UNRWA do hold periodic joint meetings, but this is not sufficient to resolve individual cases and implement the continuity of protection principle. We recommend that the UN establish a liaison office to which any individual Palestinian can submit an application for assistance if he or she lacks registration with either UNRWA or UNHCR. The office, which should be administratively accessible to individuals throughout the Middle East, would promptly determine whether the individual is eligible for continuous protection and assistance, and then assign the person to the proper agency. In general, UNRWA should remain the primary agency for people displaced by the Arab-Israeli conflict. UNHCR's doors should be open to providing protection to people fleeing current persecution in their countries of residence, and to refugees who are unable for some reason to access UNRWA assistance.

Lebanon should not resist or obstruct UNRWA's efforts to re-assess its registration policies to correct existing gaps and gender discrimination. We stress that UN agencies must be primarily accountable to human rights law, to their own mandates, and to their beneficiaries. While UN agencies such as UNRWA are undoubtedly subject to pressure by host governments, they also must serve as models of best practice. UNRWA should not leave Palestinians unregistered simply because Lebanon or other governments resist registering them.

Recommendations for the Government of Lebanon

Lebanon's current regulations applicable to Palestinian refugees are highly ambiguous, and are not adequate to regulate a large and long-term refugee situation. Lebanon should engage in a full scale revision of its practices relating to Palestinian refugees and should enact clear laws and regulations in order to bring its policy into compliance with international norms and to allow refugees a dignified existence until a final solution to their problem is found. Lebanon is not obligated to be a permanent home for Palestinians, but it is obligated to allow Palestinians to live in dignity and with basic human rights until they can return home. These two positions – insistence on the right of return and on dignified life in exile – are both supported by international law and reflect Arab League resolutions dating back to the 1950s. With regard to the specific problem of non-ID Palestinians, Lebanon should consider several steps.

Lebanon's administrative authorities should interpret existing regulations flexibly so as not to provide basic human rights to people who have lived for long periods in Lebanon and have no other country to which they are permitted to return today. Although Lebanon's explicit regulations only allow recognition of refugees who were in

the country in 1962, they do not prohibit the government from also recognizing refugee status of other Palestinians. Palestinians who arrived in Lebanon after 1962 should receive government recognition and identification if they cannot be safely repatriated to any other country.

Lebanon's abrogation of the Cairo Agreement should not have *ex post facto* effect, and Lebanon should distinguish Palestinian civilians from Palestinian armed organizations. While it is understandable that Lebanon would not want to continue an arrangement that had grave implications for its security, it also must recognize that the Cairo Agreement and its protections of Palestinian civilians were legally in force from 1969 to 1987. Palestinians who arrived in Lebanon during this period were doing so in good faith, relying on the policy and practice of the time. Lebanon should therefore give particular consideration to regularizing the status of Palestinians who arrived before 1987.

Recommendations for other governments in the region

Displacement from Palestine continued after 1967, resulting in more Palestinians living in exile, and more living in Lebanon without recognition. While this report has not focused on conditions inside the occupied territories, the fact that people continued to leave deserves concern. It is imperative that the international community ensure that Israel cease all actions that continue the displacement and exile of Palestinians, and hence deepen the Israeli-Palestinian conflict.

Jordan should give favorable consideration to allowing the return of at least some of the Palestinians displaced from the Kingdom in 1970-71. While Jordan is entitled to take measures to protect its national security, it seems unlikely some 35 years later that most of the displaced families still pose a threat.

Other governments should similarly consider allowing the return of Palestinian refugees who migrated for various reasons to Lebanon. Such options should not be forced on refugees, but can help to alleviate the problem for some individuals. Israel has particular obligations, first and foremost to recognize the right of return, but also to continue the already agreed coordination with the Palestinian Authority to allow Palestinians displaced from the occupied territories to return there.

Recommendations for the League of Arab States

In the 1950s and 1960s, Arab League played an important role in setting universal standards for the treatment of Palestinian refugees in Arab countries. Unfortunately, lack

of political will prevented the full implementation of these standards, while the political turmoil of the 1970s shifted emphasis in other directions.

The Arab League should play an important role in filling gaps in Palestinian refugee system by returning to the role of standard setting. In particular, the League should reaffirm the Casablanca Protocol, and call for its full implementation by all Arab governments. The League should also call on member governments to facilitate the work of UNRWA and UNHCR in providing assistance to Palestinian refugees. Finally, the Arab League should bring its resolutions regarding the capacity of women to pass on nationality to their children into line with international human rights law.

Recommendations for civil society

Civil society groups should continue advocating the rights of Palestinian refugees to live in dignity, with full civil, political, social and economic rights until they finally can enjoy their right to return home. This should include urging both government and UN agencies to reform their policies and practices to ensure that no Palestinian refugees are deprived of the recognition to which they are entitled.

More research should be conducted into the problem of refugee non-recognition, including research in countries other than Lebanon. This problem has only recently come to light in Lebanon, but it may exist in other countries as well. Though conditions in Lebanon are especially severe, and the political history particularly volatile, many of the gaps identified in this study may exist elsewhere. Also, this study should help to refine future research.

Individual legal advice programs for Palestinians should be developed and expanded. The non-recognition of Palestinian refugees results, primarily, from the fact that after 57 years of displacement not all of the refugees fit a standard mold. As a result of secondary migrations, marriages and displacement patterns that differ from the presumed norms, some Palestinians are missing the recognition that they ought to receive. While Palestinians normally receive refugee status on a group basis, these cases often involve highly individual circumstances and require individual attention. Legal advice programs would go hand in hand with a growing movement toward expanding the use of law both to protect Palestinians in exile and to promote their right of return.

The European Union and other governments

Governments that provide funding to UNRWA and UNHCR should encourage both agencies to create mechanisms to prevent Palestinian refugees from being deprived of registration and recognition. Donor states should insist that human rights guarantees

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against gender discrimination be implemented in UN agency policies, and can play an important role in facilitating inter-agency dialogue where necessary.

The European Union has a particularly important role to play in dialogue with Lebanon and other Middle Eastern states because of its Association agreements and close economic relations. The European Union should urge Lebanon and other states to adopt flexible registration regulations for Palestinian refugees, and to allow re-entry of Palestinians who previously resided in their territory.

9) KEY LEGAL TEXTS

a) General Assembly Resolution 194(III) (1948)

The General Assembly,

Having considered further the situation in Palestine,

1. *Expresses* its deep appreciation of the progress achieved through the good offices of the late United Nations Mediator in promoting a peaceful adjustment of the future situation of Palestine, for which cause he sacrificed his life; and

Extends its thanks to the Acting Mediator and his staff for their continued efforts and devotion to duty in Palestine;

2. *Establishes* a Conciliation Commission consisting of three States members of the United Nations which shall have the following functions:

(a) To assume, in so far as it considers necessary in existing circumstances, the functions given to the United Nations Mediator on Palestine by resolution 186 (S-2) of the General Assembly of 14 May 1948;

(b) To carry out the specific functions and directives given to it by the present resolution and such additional functions and directives as may be given to it by the General Assembly or by the Security Council;

(c) To undertake, upon the request of the Security Council, any of the functions now assigned to the United Nations Mediator on Palestine or to the United Nations Truce Commission by resolutions of the Security Council; upon such request to the Conciliation Commission by the Security Council with respect to all the remaining functions of the United Nations Mediator on Palestine under Security Council resolutions, the office of the Mediator shall be terminated;

3. *Decides* that a Committee of the Assembly, consisting of China, France, the Union of Soviet Socialist Republics, the United Kingdom and the United States of America, shall present, before the end of the first part of the present session of the General Assembly, for the approval of the Assembly, a proposal concerning the names of the three States

which will constitute the Conciliation Commission;

4. *Requests* the Commission to begin its functions at once, with a view to the establishment of contact between the parties themselves and the Commission at the earliest possible date;

5. *Calls upon* the Governments and authorities concerned to extend the scope of the negotiations provided for in the Security Council's resolution of 16 November 1948 ^{1/} and to seek agreement by negotiations conducted either with the Conciliation Commission or directly, with a view to the final settlement of all questions outstanding between them;

6. *Instructs* the Conciliation Commission to take steps to assist the Governments and authorities concerned to achieve a final settlement of all questions outstanding between them;

7. *Resolves* that the Holy Places - including Nazareth - religious buildings and sites in Palestine should be protected and free access to them assured, in accordance with existing rights and historical practice; that arrangements to this end should be under effective United Nations supervision; that the United Nations Conciliation Commission, in presenting to the fourth regular session of the General Assembly its detailed proposals for a permanent international regime for the territory of Jerusalem, should include recommendations concerning the Holy Places in that territory; that with regard to the Holy Places in the rest of Palestine the Commission should call upon the political authorities of the areas concerned to give appropriate formal guarantees as to the protection of the Holy Places and access to them; and that these undertakings should be presented to the General Assembly for approval;

8. *Resolves* that, in view of its association with three world religions, the Jerusalem area, including the present municipality of Jerusalem plus the surrounding villages and towns, the most eastern of which shall be Abu Dis; the most southern, Bethlehem; the most western, Ein Karim (including also the built-up area of Motsa); and the most northern, Shu'fat, should be accorded special and separate treatment from the rest of Palestine and should be placed under effective United Nations control;

Requests the Security Council to take further steps to ensure the demilitarization of Jerusalem at the earliest possible date;

Instructs the Conciliation Commission to present to the fourth regular session of the General Assembly detailed proposals for a permanent international regime for the Jerusalem area which will provide for the maximum local autonomy for distinctive groups consistent with the special international status of the Jerusalem area;

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The Conciliation Commission is authorized to appoint a United Nations representative, who shall co-operate with the local authorities with respect to the interim administration of the Jerusalem area;

9. *Resolves* that, pending agreement on more detailed arrangements among the Governments and authorities concerned, the freest possible access to Jerusalem by road, rail or air should be accorded to all inhabitants of Palestine;

Instructs the Conciliation Commission to report immediately to the Security Council, for appropriate action by that organ, any attempt by any party to impede such access;

10. *Instructs* the Conciliation Commission to seek arrangements among the Governments and authorities concerned which will facilitate the economic development of the area, including arrangements for access to ports and airfields and the use of transportation and communication facilities;

11. *Resolves* 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 authorities responsible;

Instructs the Conciliation Commission to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation, and to maintain close relations with the Director of the United Nations Relief for Palestine Refugees and, through him, with the appropriate organs and agencies of the United Nations;

12. *Authorizes* the Conciliation Commission to appoint such subsidiary bodies and to employ such technical experts, acting under its authority, as it may find necessary for the effective discharge of its functions and responsibilities under the present resolution;

The Conciliation Commission will have its official headquarters at Jerusalem. The authorities responsible for maintaining order in Jerusalem will be responsible for taking all measures necessary to ensure the security of the Commission. The Secretary-General will provide a limited number of guards to the protection of the staff and premises of the Commission;

13. *Instructs* the Conciliation Commission to render progress reports periodically to the Secretary-General for transmission to the Security Council and to the Members of the United Nations;

14. *Calls upon* all Governments and authorities concerned to co-operate with the Conciliation Commission and to take all possible steps to assist in the implementation of the present resolution;

15. *Requests* the Secretary-General to provide the necessary staff and facilities and to make appropriate arrangements to provide the necessary funds required in carrying out the terms of the present resolution.

11 December 1948

b) General Assembly Resolution 302 (IV) (1949)

The General Assembly

Recalling its resolutions 212 (III) 2/ of 19 November 1948 and 194 (III) 3/ of 11 December 1948, affirming in particular the provisions of paragraph 11 of the latter resolutions,

Having examined with appreciation the first interim report 4/ of the United Nations Economic Survey Mission for the Middle East and the report 5/ of the Secretary-General on assistance to Palestine refugees,

1. *Expresses* its appreciation to the Governments which have generously responded to the appeal embodied in its resolution 212 (III), and to the appeal of the Secretary-General, to contribute in kind or in funds to the alleviation of the conditions of starvation and distress among the Palestine refugees;

2. *Expresses* also its gratitude to the International Committee of the Red Cross, to the League of Red Cross Societies and to the American Friends Service Committee for the contribution they have made to this humanitarian cause by discharging, in the face of

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great difficulties, the responsibility they voluntarily assumed for the distribution of relief supplies and the general care of the refugees; and welcomes the assurance they have given the Secretary-General that they will continue their co-operation with the United Nations until the end of March 1950 on a mutually acceptable basis;

3. *Commends* the United Nations International Children's Emergency Fund for the important contribution which it has made towards the United Nations programme of assistance; and commends those specialized agencies which have rendered assistance in their respective fields, in particular the World Health Organization, the United Nations Educational, Scientific and Cultural Organization and the International Refugee Organization;

4. *Expresses* its thanks to the numerous religious, charitable and humanitarian organizations which have materially assisted in bringing relief to Palestine refugees;

5. *Recognizes* that, without prejudice to the provisions of paragraph 11 of General Assembly resolution 194 (III) of 11 December 1948, continued assistance for the relief of the Palestine refugees is necessary to prevent conditions of starvation and distress among them and to further conditions of peace and stability, and that constructive measures should be undertaken at an early date with a view to the termination of international assistance for relief;

6. *Considers* that, subject to the provisions of paragraph 9(d) of the present resolution, the equivalent of approximately \$33,700,000 will be required for direct relief and works programmes for the period 1 January to 31 December 1950 of which the equivalent of \$20,200,000 is required for direct relief and \$13,500,000 for works programmes; that the equivalent of approximately \$21,200,000 will be required for works programmes from 1 January to 30 June 1951, all inclusive of administrative expenses; and that direct relief should be terminated not later than 31 December 1950 unless otherwise determined by the General Assembly at its fifth regular session;

7. *Establishes* the United Nations Relief and Works Agency for Palestine Refugees in the Near East:

(a) To carry out in collaboration with local governments the direct relief and works programmes as recommended by the Economic Survey Mission;

(b) To consult with the interested Near Eastern Governments concerning measures to be taken by them preparatory to the time when international assistance for relief and works projects is no longer available;

8. *Establishes* an Advisory Commission consisting of representatives of France, Turkey,

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the United Kingdom of Great Britain and Northern Ireland and the United States of America, with power to add not more than three additional members from contributing Governments, to advise and assist the Director of the United Nations Relief and Works Agency for Palestine Refugees in the Near East in the execution of the programme; the Director and the Advisory Commission shall consult with each near Eastern Government concerned in the selection, planning and execution of projects;

9. *Requests* the Secretary-General to appoint the Director of the United Nations Relief and Works Agency for Palestine Refugees in the Near East in consultation with the Governments represented on the Advisory Commission;

(a) The Director shall be the chief executive officer of the United Nations Relief and Works Agency for Palestine Refugees in the Near East responsible to the General Assembly for the operation of the programme;

(b) The Director shall select and appoint his staff in accordance with general arrangements made in agreement with the Secretary-General, including such of the staff rules and regulations of the United Nations as the Director and the Secretary-General shall agree are applicable, and to the extent possible utilize the facilities and assistance of the Secretary-General;

(c) The Director shall, in consultation with the Secretary-General and the Advisory Committee on Administrative and Budgetary Questions, establish financial regulations for the United Nations Relief and Works Agency for Palestine Refugees in the Near East;

(d) Subject to the financial regulations established pursuant to clause (c) of the present paragraph, the Director, in consultation with the Advisory Commission, shall apportion available funds between direct relief and works projects in their discretion, in the event that the estimates in paragraph 6 require revision;

10. *Requests* the Director to convene the Advisory Commission at the earliest practicable date for the purpose of developing plans for the organization and administration of the programme, and of adopting rules of procedure;

11. *Continues* the United Nations Relief for Palestine Refugees as established under General Assembly resolution 212 (III) until 1 April 1950, or until such date thereafter as the transfer referred to in paragraph 12 is affected, and requests the Secretary-General in consultation with the operating agencies to continue the endeavour to reduce the numbers of rations by progressive stages in the light of the findings and recommendations of the Economic Survey Mission;

12. *Instructs* the Secretary-General to transfer to the United Nations Relief and Works

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Agency for Palestine Refugees in the Near East the assets and liabilities of the United Nations Relief for Palestine Refugees by 1 April 1950, or at such date as may be agreed by him and the Director of the United Nations Relief and Works Agency for Palestine Refugees in the Near East;

13. *Urges* all Members of the United Nations and non-members to make voluntary contributions in funds or in kind to ensure that the amount of supplies and funds required is obtained for each period of the programme as set out in paragraph 6; contributions in funds may be made in currencies other than the United States dollar in so far as the programme can be carried out in such currencies;

14. *Authorizes* the Secretary-General, in consultation with the Advisory Committee on Administrative and Budgetary Questions, to advance funds deemed to be available for this purpose and not exceeding \$5,000,000 from the Working Capital Fund to finance operations pursuant to the present resolution, such sum to be repaid not later than 31 December 1950 from the voluntary governmental contributions requested under paragraph 13 above;

15. *Authorizes* the Secretary-General, in consultation with the Advisory Committee on Administrative and Budgetary Questions, to negotiate with the International Refugee Organization for an interest-free loan in an amount not to exceed the equivalent of \$2,800,000 to finance the programme subject to mutually satisfactory conditions for repayment;

16. *Authorizes* the Secretary-General to continue the Special Fund established under General Assembly resolution 212 (III) and to make withdrawals therefrom for the operation of the United Nations Relief for Palestine Refugees and, upon the request of the Director, for the operations of the United Nations Relief and Works Agency for Palestine Refugees in the Near East;

17. *Calls upon* the Governments concerned to accord to the United Nations Relief and Works Agency for Palestine Refugees in the Near East the privileges, immunities, exemptions and facilities which have been granted to the United Nations Relief for Palestine Refugees, together with all other privileges, immunities, exemptions and facilities necessary for the fulfilment of its functions;

18. *Urges* the United Nations International Children's Emergency Fund, the International Refugee Organization, the World Health Organization, the United Nations Educational, Scientific and Cultural Organization, the Food and Agriculture Organization and other appropriate agencies and private groups and organizations, in consultation with the Director of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, to furnish assistance within the framework of the programme;

19. *Requests* the Director of the United Nations Relief and Works Agency for Palestine Refugees in the Near East:

(a) To appoint a representative to attend the meeting of the Technical Assistance Board as observer so that the technical assistance activities of the United Nations Relief and Works Agency for Palestine Refugees in the Near East may be co-ordinated with the technical assistance programmes of the United Nations and specialized agencies referred to in Economic and Social Council resolution 222 (IX) A 6/ of 15 August 1949;

(b) To place at the disposal of the Technical Assistance Board full information concerning any technical assistance work which may be done by the United Nations Relief and Works Agency for Palestine Refugees in the Near East, in order that it may be included in the reports submitted by the Technical Assistance Board to the Technical Assistance committee of the Economic and Social Council;

20. *Directs* the United Nations Relief and Works Agency for Palestine Refugees in the Near East to consult with the United Nations Conciliation Commission for Palestine in the best interests of their respective tasks, with particular reference to paragraph 11 of General Assembly resolution 194 (III) of 11 December 1948;

21. *Requests* the Director to submit to the General Assembly of the United Nations an annual report on the work of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, including an audit of funds, and invites him to submit to the Secretary-General such other reports as the United Nations Relief and Works Agency for Palestine Refugees in the Near East may wish to bring to the attention of Members of the United Nations, or its appropriate organs;

22. *Instructs* the United Nations Conciliation Commission for Palestine to transmit the final report of the Economic Survey Mission, with such comments as it may wish to make, to the Secretary-General for transmission to the Members of the United Nations and to the United Nations Relief and Works Agency for Palestine Refugees in the Near East.

8 December 1949

c) General Assembly Resolution 2252 (ES-V) (1967)

The General Assembly,

Considering the urgent need to alleviate the suffering inflicted on civilians and on prisoners of war as a result of the recent hostilities in the Middle East,

1. *Welcomes with great satisfaction* Security Council resolution 237 (1967) of 14 June 1967, whereby the Council:

(a) Considered the urgent need to spare the civil populations and the prisoners of war in the area of conflict in the Middle East additional sufferings;

(b) Considered that essential and inalienable human rights should be respected even during the vicissitudes of war;

(c) Considered that all the obligations of the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949 1/ should be complied with by the parties involved in the conflict;

(d) Called upon the Government of Israel to ensure the safety, welfare and security of the inhabitants of the areas where military operations had taken place and to facilitate the return of those inhabitants who had fled the areas since the outbreak of hostilities;

(e) Recommended to the Governments concerned the scrupulous respect of the humanitarian principles governing the treatment of prisoners of war and the protection of civilian persons in time of war, contained in the Geneva Conventions of 12 August 1949,2/

(f) Requested the Secretary-General to follow the effective implementation of the resolution and to report to the Security Council;

2. *Notes with gratitude and satisfaction* and endorses the appeal made by the President of the General Assembly on 26 June 1967;3/

3. *Notes with gratification* the work undertaken by the International Committee of the Red Cross, the league of Red Cross Societies and other voluntary organizations to provide humanitarian assistance to civilians;

4. *Notes further with gratification* the assistance which the United Nations Children's Fund is providing to women and children in the area;

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5. *Commends* the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East for his efforts to continue the activities of the Agency in the present situation with respect to all persons coming within his mandate;
6. *Endorses*, bearing in mind the objectives of the above-mentioned Security Council resolution, the efforts of the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East to provide humanitarian assistance, as far as practicable, on an emergency basis and as a temporary measure, to other persons in the area who are at present displaced and are in serious need of immediate assistance as a result of the recent hostilities;
7. *Welcomes* the close co-operation of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, and of the other organizations concerned, for the purpose of co-ordinating assistance;
8. *Calls upon* all the member States concerned to facilitate the transport of supplies to all areas in which assistance is being rendered;
9. *Appeals* to all Governments, as well as organizations and individuals, to make special contributions for the above purposes to the United Nations Relief and Works Agency for Palestine Refugees in the Near East and also to the other intergovernmental and non-IDal organizations concerned;
10. *Requests* the Secretary-General, in consultation with the Commissioner- General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, to report urgently to the General Assembly on the needs arising under paragraphs 5 and 6 above;
11. *Further requests* the Secretary-General to follow the effective implementation of the present resolution and to report thereon to the General Assembly.

4 July 1967

d) UNRWA's "working definition"

[Palestine refugee] shall mean any person whose normal place of residence was Palestine during the period 1 June 1946 to 15 May 1948 and who lost both home and means of livelihood as a result of the 1948 conflict.

Consolidated Registration Instructions (1 January 1993)

e) Convention relating to the status of refugees

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.

f) Convention on the Elimination of Discrimination against Women

Article 9

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

g) League of Arab States Casablanca Protocol (1965)

Protocol for the Treatment of Palestinians in Arab States

On the basis of the Charter of the League of Arab States and its special annex pertaining to Palestine, and of the LAS Council resolution concerning the Palestinian issue, and, in particular, of the Special resolution pertaining to safeguarding Palestinian existence,

The Council of Foreign Ministers of Member states agreed, in its meeting in Casablanca on 10 September 1965, upon the following regulations, and called upon member states to take the necessary measures to put them into the sphere of implementation:

- (1) Whilst retaining their Palestinian nationality, Palestinians currently residing in the land of have the right of employment on par with its citizens.
- (2) Palestinians residing at the moment in in accordance with the dictates of their interests, have the right to leave and return to this state.
- (3) Palestinians residing in other Arab states have the right to enter the land of and to depart from it, in accordance with their interests. Their right of entry only gives them the right to stay for the permitted period and for the purpose they entered for, so long as the authorities do not agree to the contrary.
- (4) Palestinians who are at the moment in, as well as those who were residing and left to the Diaspora, are given, upon request, valid travel documents. The concerned authorities must, wherever they be, issue these documents or renew them without delay.
- (5) Bearers of these travel documents residing in LAS states receive the same treatment as all other LAS state citizens, regarding visa, and residency applications.

11 September 1965

h) 1969 Cairo Agreement (Lebanon & PLO)

Between the Republic of Lebanon and the Palestine Liberation Organization

In consonance with the bonds of brotherhood and common destiny, relations between Lebanon and the Palestinian revolution must always be conducted on the bases of confidence, frankness, and positive cooperation for the benefit of Lebanon and the Palestinian revolution and within the framework of Lebanon's sovereignty and security. The two delegations agreed on the following principles and measures:

The Palestinian Presence

It was agreed to reorganize the Palestinian presence in Lebanon on the following bases:

1. The right to work, residence, and movement for Palestinians currently residing in Lebanon;
2. The formation of local committees composed of Palestinians in the camps to care for the interests of Palestinians residing in these camps in cooperation with the local Lebanese authorities within the framework of Lebanese sovereignty;
3. The establishment of posts of the Palestinian Armed Struggle [PASC] inside the camps for the purpose of cooperation with the local committees to ensure good relations with the Lebanese authorities. These posts shall undertake the task of regulating and determining the presence of arms in the camps within the framework of Lebanese security and the interests of the Palestinian revolution;
4. Palestinians resident in Lebanon are to be permitted to participate in the Palestinian revolution through the Armed Struggle and in accordance with the principles of the sovereignty and security of Lebanon.

Commando Activity

It was agreed to facilitate commando activity by means of:

1. Facilitating the passage of commandos and specifying points of passage and reconnaissance in the border areas;
2. Safeguarding the road to the 'Arqub region;
3. The Armed Struggle shall undertake to control the conduct of all the members of its organizations and [to ensure] their non-interference in Lebanese affairs;

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4. Establishing a joint command control of the Armed Struggle and the Lebanese Army;
5. Ending the propaganda campaigns by both sides;
6. Conducting a census of Armed Struggle personnel in Lebanon by their command.
7. Appointing Armed Struggle representatives at Lebanese Army headquarters to participate in the resolution of all emergency matters;
8. Studying the distribution of all suitable points of concentration in border areas which will be agreed with the Lebanese Army command;
9. Regulating the entry, exit, and circulation of Armed Struggle personnel;
10. Removal of the Jiyrun base.
11. The Lebanese Army shall facilitate the operation of medical, evacuation, and supply centers for commando activity;
12. Releasing detained personnel and confiscated arms;
13. It is understood that the Lebanese authorities, both civil and military, shall continue to exercise all their prerogatives and responsibilities in all areas of Lebanon in all circumstances;
14. The two delegations affirm that the Palestinian armed struggle is in the interest of Lebanon as well as in that of the Palestinian revolution and all Arabs;
15. This agreement shall remain Top Secret and for the eyes of the commands only.

For the Lebanese delegation
Emile Bustani

For the Palestinian delegation
Yasir Arafat

10) APPENDIX

a) Glossary of terms

Gaza Strip – A small coastal strip of Palestinian land that was controlled by Egypt until 1967. Around 80 percent of its current residents are refugees from inside Israel.

Green Line – This is the common term for the armistice lines drawn between Israel and its neighbors in 1949. Although never formally designated as a final border, the Green Line acquired *de facto* legal importance after the 1967 war and Security Council Resolution 242 because it separates Israeli territory from the occupied Palestinian territories (West Bank and Gaza Strip). The Green Line is especially important in Jerusalem, where it divides the city between the portion controlled by Israel in 1949 and the portion that is still occupied territory (Arab East Jerusalem).

Israel/Israeli territory – This report uses the terms “Israel” and “Israeli territory” to refer to the territory inside the Green Line which was under Israeli control following the 1949 armistice agreements that ended the first Arab-Israeli war. It does not include the Gaza Strip or the West Bank (including Arab East Jerusalem), which Israel has occupied since the 1967 Arab-Israeli War. In international law, Israel has obtained at least *de facto* recognition as a sovereign state, and is a member of the United Nations. However, the fact that Israel is legally a sovereign country does not pre-determine its demographic or constitutional composition, and does not in any way preclude the return of Palestinian refugees.

MNR – AN UNRWA administrative term for “married to non-registered.” MNR designation refers to UNRWA-registered women who marry men who are not registered with the UN. The women then have their status suspended, and their children are not registered at all.

Non-registered or Non-R Palestinians – Most Palestinian refugees in Lebanon are registered with UNRWA. This group is not able to register with UNRWA in Lebanon, which deprives them of essential assistance with food, medicine, and education. NGO estimates are that there are 35,000 non-R registered Palestinians in Lebanon.

Non-ID Palestinians – This group of Palestinians lack both UN registration and Lebanese government identification. In addition to being deprived of UNRWA services, they are unable to move freely around the country and have a status similar to illegal

migrants even though they often have no other country to which they can go. The Danish Refugee Council has estimated there to be approximate 3000 Palestinian refugees in Lebanon without government identification.

Occupied Palestinian Territories – This term refers to all parts of Palestine that were under Jordanian or Egyptian rule after 1949 but fell to Israeli control in 1967. It includes the Gaza Strip and the West Bank.

UNCCP – The UN Conciliation Commission for Palestine was established by the UN General Assembly in 1948 in an attempt to resolve the Israeli-Palestinian conflict. It was originally given the mandate of protecting the rights of Palestinian refugees, but it is today effectively defunct, leaving what some advocates call a “protection gap” for Palestinian refugees.

UNHCR – The Office of the UN High Commissioner for Refugees was established in 1950 and is mandated to promote the protection of refugees around the world. In the Middle East, UNHCR is the primary actor in refugee policy toward non-Palestinians and it maintains an office in Beirut. According to international refugee law, UNHCR should ensure “continuity of protection” for Palestinian refugees who lose UNRWA assistance.

UNRWA – The UN Relief and Works Agency for Palestine Refugees in the Near East was established in 1949 in order to provide assistance to Palestinian refugees until their situation is resolved. In Lebanon, Palestinians are especially dependent on UNRWA assistance because of social and economic restrictions imposed by the Lebanese Government.

UNRWA “area of operations” – UNRWA works in Lebanon, Syria, Jordan, and the Occupied Palestinian Territories. These countries are sometimes called its area of operations.

West Bank – The land west of the Jordan River that was controlled by Jordan from 1949 until 1967 is usually called the “West Bank.” Jordan claimed to have annexed the West Bank, though few states recognized the annexation. Until the 1980s, the residents of the West Bank were considered Jordanian citizens. Today, many residents still carry Jordanian travel documents, but are not citizens of Jordan and are not permitted to reside in Jordan.

Working definition – The UN General Assembly did not give UNRWA a precise definition of its beneficiaries. UNRWA has therefore developed and periodically revised a “working definition” of a Palestine refugee. The current definition was published in 1993 and is printed in the appendix of this report.

b) Selected bibliography

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Randa Farah, *The Marginalization of Palestinian Refugees*, in Problems of Protection: The UNHCR, Refugees and Human Rights, N. Steiner, M. Gibney and G. Loescher eds. (2003)

c) Useful Websites

UN refugee agencies

UN High Commissioner for Refugees (UNHCR)
www.unhcr.ch

UN Relief and Works Agency for Palestine Refugees in the Near East
www.unrwa.org

For information on how the United Nations makes decisions on refugee status:

RSDWatch
www.rsdwatch.org

Information on UN human rights bodies

UN High Commissioner for Human Rights
www.unhchr.ch

Palestinian-specific refugee rights

Badil Resource Center for Palestinian Residency and Refugee Rights
www.badil.org

General human rights organizations

Amnesty International
www.amnesty.org

Human Rights Watch
www.hrw.org

International Federation for Human Rights (FIDH)
www.fidh.org

Euro-Mediterranean Human Rights Network (EMHRN)
www.euromedrights.net/

d) Interview subjects' origins in Palestine

Village and city origins in Palestine

Abu Gosh	1
Achwaa	1
Acre	2
Ain Ghazal	1
Ain Qiniya	1
Ajami	1
al Abisiya	1
al Dahiria	1
al Hawla	1
al Khalisa	1
al Khisas	2
al Ramleh	1
al Tabigha	1
al Yazour	1
Amqa	1
Amwas	1
Anin	2
Ariha City	1
Awr Tahta	1
Bani Sheila	1
Barqa	1
Baysan	2
Beersheba	5
Beersheba city	1
Beit Dajn	2
Beit Itab	1
Beit Liqia	1
Beit Mrin	1
Bitá	1
Bshit	1
Chwayqa	1
Deir al Balah	1
Deir Ghusun	1
Deir Qasi	1
Deir Tarif	1
Gaza	9
Gaza City	3
Haifa	5
Hamama	1
Hawla	1

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Hittin	3
Iraq al Manshiyya	1
Jab'a	3
Jabal Abu Guneim	1
Jabalia	1
Jaffa	7
Jaouneh	1
Jenin	2
Jerusalem	3
Kafr Jammal	1
Kafr Sabt	1
Kaukab	1
Khan Younes	1
Lod	1
Lubiya	1
Majdal	2
Manshi	1
Manshiya	1
Maqar	1
Masmiya	1
Naama	1
Nabi Rubin	3
Nablus	2
Nablus City	1
Naser el Din	1
Qabalan	2
Qafin	1
Qaitieh/ Hawla	1
Qalqiliya	1
Qannir	1
Rafah	3
Rafat	1
Rantis	1
Ras Ahmar	1
Sa'sa'	1
Safouriya	1
Sakanet Darwich	1
Salama	3
Samagh	1
Silfin	1
Suqrir	1
Tabaraya City	1
Tabarya	1
Tarqouqia	1
Tarshiha	1
Topas	5
Tulkarm	5

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Waara Sawda	1
Wadi al Hawareth	2
Yabna	1
Zahiriya	1
Zar'in	1
Zita	1
Zouk	1
Total	148

District origins in Palestine

Acre District	5
al Ramleh District	7
Baysan District	2
Tabaraya District	11
Haifa District	12
Jenin District	8
Tulkarm District	13
Jaffa District	15
West Jerusalem	3
Hebron District	2
Safad District	12
Beersheba District	6
Gaza District	26
Nablus District	13
Ramallah District	5
Nazareth District	2
West Bank District	1
Jerusalem	3
East Jerusalem	2
Total	148

e) Field study questionnaire

TRANSLATION; ALL INTERVIEWS WERE CONDUCTED IN ARABIC

Date:

Interviewer:

Interviewee

Geographical Location:

Contact Address:

Consent :

FRONTIERS (RUWAD IN ARABIC)

**QUESTIONNAIRE
NON-ID PALESTINIAN RESEARCH**

I. Personal Profile

1. Date of Birth:
2. Place of Birth:
3. Place of birth registration
4. Nationality: (of origin)
5. Marital Status: (married, single, widow, divorced, separated, etc.):.....

If married (or ever married), give

- Date of Marriage
- Place of Marriage
- Where is Marriage Registered? (which authorities)
- Number of Children:

6. Do you have I.D. documents? Yes/No

If no, why not? _____

If yes, What type of documents do you have? (eg. Official identity or registration certificates, Lebanese government ID, Jordanian Passport, etc)

- 1)
- 2)
- 3)

II. Family Profile

(Please indicate nationality as "Mandate Palestine," Jordan, Lebanon, none, etc. A question on 'citizenship' follows later)

- 7. Mother's nationality:----- Deceased
d/K
- 8. Father's nationality: Deceased d/K
- 9. Spouse's nationality: Deceased
 d/K
- 10. Paternal grandfather's nationality: Deceased
d/K
- 11. Paternal grandmother's nationality: Deceased
d/K
- 12. Maternal grandfather's nationality: Deceased d/K
- 13. Maternal grandmother's nationality: Deceased d/K
- 14. Nationality of brothers: Deceased d/K
- 15. Nationality of sisters: Deceased d/K

- 16. Are any of your immediate relatives (especially spouses)
citizens of another country? ((Please note that the following questions

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are important and answering them truthfully will not have anything to do with your current or future refugee status or right of return.

(If you need more space, please use a separate sheet of paper)

	No them there?	Yes/Which country?	Could you join there?
Spouse			y/n
Children			y/n
Parents			y/n
Grandparents			y/n
Brothers			y/n
Sisters			y/n

17. Have you ever sought citizenship in any country? Yes/No
 (including Jordan/West Bank)

If no, go to 20

If yes, give details:

	When?	Country?	Did you acquire it?	Did not acquire it?

18. If yes, Is your citizenship status still valid today? Yes/No

19. Are you able to go back to the country where you have
 citizenship? Yes/No

If no, why not? Explain:

If yes, why do you not go back there? Explain

20. If you have children, where were your children born?

Child Certificate	Country	Where registered (which country registered)	Type of Birth Hospital certificate, etc.

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- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.

21. Are the following immediate family members in Lebanon now?
(if you need more space, please use a separate sheet of paper)

	Yes	No/Where do they live?
--	-----	---------------------------

Spouse
Children
Parents
Grandparents
Brothers
Sisters

III. Situation Pre 1948

22. Was your family permanent home in Palestine between 1 June 1946 to May 1948?

Yourself was?	Yes/No	If no, which country
Parents	Yes/No	
Grandparents	Yes/No	

23. What is the exact place of residence of your family in Palestine? Name of town/village:

24. For how long did you live in Palestine before 1 June 1946?
Yourself since d/k
Parents
Grandparents

IV. Expulsion Phase (reasons and sequence of displacement since leaving Palestine)

25. Were you living in Palestine before you became a refugee?
Yourself Yes/No
Spouse Yes/No
Parents Yes/No
Grandparents Yes/No

26. If no, were you living abroad between 1 June 1946 – May 1948 and were unable to return to Palestine? (For Status ask if Permanent Residence, Temporary Residence, Student, etc)

	Where?	When?	Status?
Yourself			
Spouse			
Children			
Parents			
Grandparents			

27. Did you flee immediately out of the country, or were you first internally displaced?

Internally displaced
Left Immediately

If left Immediately (go to 31)

28. If internally displaced, describe the circumstances: (what happened that led you leave and how did you leave?)

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Yourself	-----	-----
Parents	-----	-----
Grandparents	-----	-----

29. If internally displaced, where did you go?

Place: From/To Period: From/To

Status?

Yourself

Parents

Grandparents

30. What happened that led to your leaving Palestine after internal displacement?

(Please describe the personal circumstances)

Yourself

Parents

Grandparents

31. If you went directly out of the country, describe the circumstances: (what happened that led you leave and how did you leave?)

Yourself

Parents

Grandparents

32. If you went directly out of the country, when and how did you leave? (on foot, bus, etc)

When? How?

Yourself

Spouse

Parents

Grandparents

33. If you went directly out of the country, to what country did you flee initially?

Place refugee?)	How long for?	Status (eg.
--------------------	---------------	-------------

Yourself
Parents
Grandparents

34. Did any of your family members flee the country after you fled?
Give details:

Family Member	When	Where to?	Why?
---------------	------	-----------	------

1.
2.
3.
4.
5.

35. Is any member of your family still in Palestine?

Who?	Where?	Status?
------	--------	---------

V. Means of Livelihoods

36. What was the means of livelihood before leaving Palestine? Give details

Yourself
Parents
Grandparents

37. Did you lose this means of livelihood when you left Palestine?

Yourself	yes/no	Explain
----------	--------	---------

Parents
Grandparents

38. Do you have documents to show this? Yes/No

If Yes, What type of document is it?

VI. Place of Exile

(Family and Personal History in other countries since expulsion. if you need more space, please use a separate sheet of paper)

39. When did you arrive in Lebanon?

Yourself
Spouse
Children
Parents
Grandparents

40. In what country have you or your parents or your family lived since originally being forced into exile? For each person of the family we need complete itinerary of places lived since they or their family left Palestine.

	Country:	How long for?	Status:
Yourself	-----	-----	-----
Spouse	-----	-----	-----
Parents	-----	-----	-----
Grandparents	-----	-----	-----

41. Under what circumstances did you arrive in Lebanon - by choice or force? (from countries other than Palestine), please explain:

42. What other countries were you able to choose from? Explain:

43. Do you live in a camp now? Yes/No

If yes, which camp?

For how long?

44. If not currently in a camp, have you lived in a camp before? Yes/No

If yes, which camp/s?

For how long?

45. Have you traveled abroad since arriving in Lebanon? Yes/No

If yes, please give details:

Where? How Long For? Reason

VII. Legal Status

UNRWA

46. Were you or your parents ever registered with UNRWA?

Yes/No

If no, go to 49.

47. If yes, when and where did you become registered?

(Note to Interviewer: if male interviewee says 'no', but female spouse is 'yes' ask what has happened regarding her and her children's refugee status when they married)

	When?	Where?	Services Received?
Yourself	-----	-----	-----

Spouse	-----	-----	-----

Parents	-----	-----	-----

Grandparents	-----	-----	-----

48. Do you still have UNRWA status? Yes/No
Yourself
Spouse
Children
Parents
Grandparents

If no, when and how did you lose it? Please Explain:
(e.g. Moving from one country to another, getting married, etc.)

- Yourself
Spouse
Children
Parents
Grandparents

Did you take steps to re-acquire it? Yes/no

49. If not registered with UNRWA, why not?
(e.g. did you try? Give details: when, how, what happened)
Yourself
Spouse
Children
Parents
Grandparents

50. What is the status of your children with UNRWA?

51. If your children's status is different, explain why:

Lebanese Government

52. Are you registered with the Lebanese authorities?

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Yourself	Yes/No
Spouse	
Children	
Parents	
Grandparents	

If yes, move to question 54

53. If no, did you try to register? Yes/No

If yes, give details: when, how, what happened?

If no, why not?

54. If you are registered, what is your legal status?
(e.g. ID card, type of residency, other...)

Date of Registration	Status	Benefits
----------------------	--------	----------

55. Under what objective circumstance you were registered? (decree, humanitarian, etc.)

56. Are you still registered with the Lebanese authorities? Yes/No

PLO

57. Are you registered with the PLO?

(We need to know whether you were holding ID papers from the PLOC as an organization & not if you were a member of a PLO faction)

Yourself	Yes/No	<u>If Yes</u> , When?
Spouse	Yes/No	<u>If Yes</u> , When?
Children	Yes/No	<u>If Yes</u> , When?
Parents	Yes/No	<u>If Yes</u> , When?
Grandparents	Yes/No_	<u>If Yes</u> , When?

UNHCR

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58. Did you ever tried to contact UNHCR in Lebanon?

Yes/No

If no, why not? Explain

If yes, when and what happened?

59. Describe in your own words how life has been for you and your family without registration or recognition of refugee status or citizenship:

60. How do you see the appropriate solution to your problem (optional)

About Frontiers (Ruwad) Association

Frontiers (Ruwad) is a non-profit and apolitical non-governmental organization based in Lebanon. Frontiers aims at enhancing and consolidating the human rights culture embodied in the International Bill of Rights and in the Lebanese Constitution on both the individual and collective levels; safeguarding and defending fundamental rights and public freedom of individuals and groups without discrimination; and seeking to be a center for building capacities in order to achieve sustainable human development.

FR became a non-governmental organization in 2004. It currently has two main operating programs: migration and developing a civic responsibility culture.

FR was founded by a group of Lebanese human rights activists who had been active on refugee issues through the Ad-Hoc Committee in Support of Refugees and Asylum-seekers (ACSRA) (1999-2002)and for one year with a civil company called Frontiers Center (2003). Building on this history, part of FR's mandate is to defend and advocate and on behalf of refugees and asylum-seekers. FR is developing a professional quality refugee rights program. Its staff and partners are trained and advised by experts with experience in international refugee law and legal aid development, and includes counselors with backgrounds in law and social sciences.

At present, FR's main activities in the refugee arena include legal aid and counseling of refugees and asylum seekers and other vulnerable migrant groups; research and publication on pertinent refugee issues in Lebanon; information dissemination and raising awareness; empowerment of refugees; and networking at international and national level.

FRONTIERS

رواد

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A Palestinian refugee woman in 1950 (Photo: UNRWA)