

**Seeking justice:  
The role of international protection and reparations for  
Palestinian refugees**

An Essay Presented

by

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to

The Committee on Degrees in Social Studies

in partial fulfillment of the requirements

for a degree with honors

of Bachelor of Arts

Harvard College

March 2011

### **Abstract**

*In this thesis, I describe how mainstream discourse on the plight of Palestinian refugees has privileged the debate surrounding the right of return and compensation rather than broader conceptions of justice. The international community has focused on the short-term humanitarian needs of these refugees while leaving considerations of collective justice to the conflict's state parties. I argue that there must be recognition of the individual right to justice, specifically to claim reparation. Furthermore, I make a case that the United Nations, according to the international law doctrine of protection, has an obligation to work towards restoring the agency of Palestinian refugees.*

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## **List of acronyms**

ESM	Economic Survey Mission
GA	General Assembly
ICJ	International Court of Justice
IHL	International Humanitarian Law
IHRL	International Human Rights Law
IRL	International Refugee Law
PA	Palestinian Authority
PLO	Palestinian Liberation Organization
PSR	Palestinian Center for Policy and Survey Research
R2P	Responsibility to Protect
UN	United Nations
UNCCP	United Nations Conciliation Commission for Palestine
UNHCR	United Nations High Commissioner for Refugees
URPR	United Nations Relief for Palestine Refugees
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East

## Introduction

The world's largest and longest-standing refugee crisis is that of the Palestinian refugees. In popular discourse, three damaging assumptions are held about this community. First, it is widely believed that the term the "right of return" describes full and holistic justice for the refugees. Second, it is assumed that justice for the refugees as individuals must be linked to collective justice for Palestinians as a community. Third, it is thought that the role of the international community is to provide humanitarian assistance, rather than to facilitate just, long-term solutions for individual Palestinian refugees outside of a final peace settlement. While scholarship on Palestinian refugees provides more nuanced views on these issues, the effect of the assumptions remains evident. Much has been written about the refugees' place in the peace process, but the ability, or lack thereof, of the international community to help attain individual solutions has been given surprisingly little attention. And, while the legal basis for the refugees' right to return has been examined at length, little work has been done on other options for justice and empowerment.<sup>1</sup> It is important to understand the history and background of these misleading assumptions, as they have led to serious deficits in the protection currently provided to Palestinian refugees by the international community.

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<sup>1</sup> The work of Michael Fischbach and Susan Akram provide notable exceptions. In Records of Dispossession: Palestinian Refugee Property and the Arab-Israeli Conflict (Columbia University Press: New York, 2003), Fischbach provides a detailed account of the UN's early efforts to protect refugees' property rights. In International Law and the Israeli-Palestinian Conflict: A Rights-Based Approach to Middle East (Routledge: New York, 2011), Susan Akram looks closely at a refugees' rights as an individual under international law.

### The origin and centrality of the right of return

On 29 November 1947, the General Assembly (GA) of the United Nations (UN) adopted the Partition Plan for Palestine. The Plan was intended to establish Jewish and Palestinian states in what was then British Mandate Palestine. Jewish representatives accepted the plan, while the Palestinians and larger Arab community rejected it. As the British withdrew from the area, war began. In the violence that followed, Israeli forces took control of two of the country's three major cities and 77 percent of its territory.<sup>2</sup> During the hostilities, hundreds of thousands of Palestinians fled their homes.<sup>3</sup> In 1949, the UN estimated that about 726,000 Palestinian refugees, or 80 percent of the Palestinian residents of the area that became the state of Israel, had been forcibly displaced. About one-third fled to the West Bank, another third to the Gaza Strip and the last third to Jordan, Syria, Lebanon and further afield.<sup>4</sup>

This original outflow of Palestinians was the birth of the current Palestinian refugee problem.<sup>5</sup> In combination with the military defeat by the

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<sup>2</sup> Rashid Khalidi, *Observations on the Right of Return*, Journal of Palestine Studies, Vol. 21.2 (1992), 30.

<sup>3</sup> *Historical Survey of Efforts of the UN Conciliation Commission for Palestine to Secure the Implementation of Paragraph 11 of GA Resolution 194 (III): The Question of Compensation*, UN Working Paper Prepared by the Secretariat (A/AC.25/W/81/Rev.2), 2 October 1961, p. 12 – 15.

<sup>4</sup> "Palestinian Refugees: An Overview." Palestinian Refugee Research Net (PRRN). Accessed 14 February 2011. <http://prrn.mcgill.ca/background/index.htm>

<sup>5</sup> There are numerous problems regarding the term "Palestinian refugee." UNRWA's working definition refers to the Palestinians displaced from their homes in 1948 who remain eligible for UNRWA services by continuing to live within its five fields of operation, namely Syria, Jordan, Lebanon the West Bank and the Gaza Strip. There are three main problems with this definition. First, a second wave of Palestinians was displaced in 1967. Second, not all refugees avail themselves of UNRWA's services. Third, there are a number of refugees who live outside the immediate region, having settled in the Gulf States, Europe, the United States and elsewhere. In 2011, it was estimated that there was about seven million Palestinian refugees in the world, with about 4.8 million registered with UNRWA. In total, Palestinian refugees comprise approximately three-quarters of the entire Palestinian population, numbered at around 10 million; For more on

Israelis, the population displacement became known as “al-nakba,” or “the catastrophe” in Arabic. Al-Nakba is central to the Palestinians’ notion of a shared identity. The loss of country and home has generally been seen as an injustice suffered collectively by the Palestinian people. Since the time of their expulsion, Palestinians have demanded the right to return on both popular and political levels.<sup>6</sup>

On 11 December 1948, the UN gave the right to return international legitimacy with the adoption of resolution 194 (III).<sup>7</sup> In paragraph 11, the resolution stated:

“[The General Assembly] *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.”

Resolution 194 is often referred to as the legal basis of the Palestinian refugees’ right of return.<sup>8</sup> The resolution has been reiterated every year since its adoption, winning the support of almost every member of the UN, excluding Israel.<sup>9</sup> Despite this codification, however, the right of return has been understood and referred to in a multitude of different ways over the past 60 years in popular, political and literary rhetoric.

the discussion of defining the term “Palestinian refugee,” see Lex Takkenberg, The Status of Palestinian Refugees in International Law (Clarendon Press: Oxford, 1998).

<sup>6</sup> Khalidi, 30.

<sup>7</sup> *Palestine: Progress Report of the United Nations Mediator*, UN General Assembly Resolution 194 (III) (A/RES/194 (III)), 11 December 1948.

<sup>8</sup> The right of a refugee to return to their homes is also laid down in Article 13 of the Universal Declaration of Human Rights and other foundational human rights documents.

<sup>9</sup> Susan Akram, *Palestinian Refugee Rights: Part One — Failure Under International Law*, The Center for Policy Analysis on Palestine or The Jerusalem Fund, Information Brief No. 44 (2000).



Return quickly became a rallying cry for the collective Palestinian community. It broadly refers to the idea that Palestinians must be allowed to reclaim the houses and land that was taken from them in 1948 for the injustice they suffered to be corrected. The need to return to a specific area remains strongly embedded in popular Palestinian consciousness. Numerous NGOs have sprung up around the concept of return, organizing trips to abandoned villages, leading research projects on potentially realistic possibilities of return and running projects with refugees aimed at sustaining the collective memory. Every refugee I spoke with during my time in the West Bank could tell me the village they, their parents or their grandparents had fled in 1948 and nostalgic images of former lands abounded in the refugee communities. “Return” continues to be equated with full and ideal justice in the popular rhetoric.<sup>10</sup>

Compensation has frequently been presented as a possible “alternative” to return. Israel has expressed openness to paying compensation to refugees in the past,<sup>11</sup> and some have suggested that this would be a sufficient offering of justice based on resolution 194. Many refugees, however, equate compensation with trading economic incentives for political rights, in effect simply selling one’s lands to Israel. Refugees have generally argued that compensation is insufficient, as it does not include the moral recognition of the refugees’ rights and historic

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<sup>10</sup> Khalidi, 31-2.

<sup>11</sup> *The United Nations Conciliation Commission for Palestine*, Note by the Chairmen of the Committee on the Exercise of the Inalienable Rights of the Palestinian People (A/AC.183/4), 12 May 1976, p. 51.

claims inherent in the now powerfully symbolic right of return.<sup>12</sup> In addition, resolution 194 states that the refugees are meant to *choose* between the two justice options of return and compensation. Offering compensation alone does not provide the necessary right to choose.

Yet, while Palestinians have vehemently demanded the right of return, Israel has denied the legitimacy of that right with similar vehemence. The stalemate between the parties on the right of return has become one of the most contentious points in discussions of the conflict and a stumbling block in talks about eventual settlement of the “refugee question.” While resolution 194 was meant to provide a basis for a just and rights-based solution for Palestinian refugees, the divergent positions of both sides has often meant that conversations stall before meaningful discussion can begin. As the years passed, the individual right codified in law began to be treated as a concept that could be defined in the context of negotiations, a question for the collective Palestinian community, rather than a choice for the individual refugee.

#### Defining an individual’s right

Immediately following the 1948 hostilities, the UN created the UN Conciliation Commission for Palestine (UNCCP) to facilitate peace talks. Since no body yet represented the Palestinians directly, these early discussions were held between Israel and the principal Arab states of Egypt, Lebanon, Syria and Jordan (“the Arab states”). Both Israel and the Arab states were relatively

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<sup>12</sup> “Questions and Answers: The 60 Year Nakba Campaign,” Badil Resource Center for Palestinian Refugee and Residency Rights, Accessed 14 February 2011. <http://www.badil.org/en/resources-for-visitors-journalists-a-activists>

intransigent on the question of return. The Arab states believed that the right of return had to be accepted and recognized by Israel as the condition sine qua non for any viable peace. Israel responded that it could not recognize the right, as it believed return of the refugees would threaten its stability and security. After three years of intensive efforts, the UNCCP announced it could make no further progress due to the unwillingness of the parties to compromise. The GA declared that primary responsibility for achieving a settlement would be left to the state parties.<sup>13</sup> This decision meant that the only international institution explicitly mandated to protect the refugees' rights, the UNCCP, was now effectively defunct. The ability to define the rights of the refugees was left explicitly to the negotiating table and to the state parties.

The Arab states remained the de facto spokesmen for the refugees in discussions with Israel until the recognition of the Palestinian Liberation Organization (PLO) by the UN in 1974. It was not until 1991 at the Madrid Peace Conference, and particularly after the 1993 Oslo Accords, however, that the PLO truly took center-stage in ongoing peace talks.<sup>14</sup> Yet, despite the passage of 60 years, the Israelis and Palestinians continue to hold mutually opposed positions on a surface level regarding the question of justice for refugees. Recognition of the right of return remains one of the central Palestinian demands, while Israel continues to reject basing any solution on resolution 194.<sup>15</sup>

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<sup>13</sup> A full analysis of the UNCCP's efforts regarding the refugees will be provided in Chapter 2.

<sup>14</sup> A multilateral track for negotiations was established in Madrid, including talks between the Arab states, Israel and the Palestinians concerning issues of common interest, including that of refugees. These talks stalled and did not resume, however, after the second Palestinian Intifada in 2000; "Palestinian Refugees: An Overview," Palestinian Refugee Research Net (PRRN).

<sup>15</sup> "Palestinian Refugees: An Overview," Palestinian Refugee Research Net (PRRN).

Documents that have emerged from recent negotiations, however, make clear that both Israel and the PLO are looking for compromise on the refugee question. Plans put forward at Camp David, Taba and Annapolis share similar features, including the majority of “return” to be to the area that will become the Palestinian state, rather than to refugees’ 1948 homes in Israel proper, a limited number of refugees to return to Israel for “humanitarian reasons” and compensation to be paid through an international mechanism. The Palestinians have also pushed for Israel’s symbolic acknowledgment of the right of return, but Israel has denied responsibility for the refugees’ plight and has offered only to acknowledge the fact that the refugees have suffered.<sup>16</sup> While the details of each plan have varied, none has provided much room for the inclusion of refugee voices in proposals concerning their futures.<sup>17</sup>

While compromise is promising in the context of negotiations, it is troubling when discussing individual rights. The right of return and, more broadly, the refugees’ right to justice for their sixty-year displacement, has become a negotiating chip, treated similarly to the questions of water distribution, division of Jerusalem or state security. In essence, the refugees are asked to wait until a collective solution is reached for their rights to be delivered. The wait, however, has lasted 63 years. It has become increasingly clear that through the

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<sup>16</sup> Israel generally argues that the plight of the Palestinian refugees was either brought upon themselves in their refusal to move on and to begin new lives or by the Arab states through instilling false hopes of return into the refugees and refusing to let them integrate into their countries.

<sup>17</sup> “Palestinian Refugees: An Overview,” Palestinian Refugee Research Net (PRRN).

PLO's compromises, the refugees' individual right to justice is likely to be abrogated in the name of collective demands.

#### The current international assistance regime

Since their displacement, the international community has treated Palestinian refugees as "unique". The United Nations High Commissioner for Refugees (UNHCR) provides for the majority of the world's refugees. UNHCR's focus has been on providing immediate assistance as it helps individual refugees regain a country's citizenship through one of three "durable solutions." These solutions include voluntary repatriation (return to one's home country), local integration (permanently settling in the refugee's current host country), and resettlement (gaining citizenship to a third country).<sup>18</sup> UNHCR also has a "protection" mandate, obligating it to help ensure that the refugees' individual rights under international humanitarian law (IHL), international human rights law (IHRL) and international refugee law (IRL) are respected and observed.<sup>19</sup> Provision of justice to the refugees is not a requirement of the solutions offered.

Palestinian refugees do not fall under the purview of UNHCR. Rather, the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) provides essential services, such as health care and primary education, to the some 4.8 million refugees spread across Syria, Jordan, Lebanon, the West

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<sup>18</sup> "Durable Solutions," UNHCR.org, Accessed 12 January 2011.  
<http://www.unhcr.org/pages/49c3646cf8.html>

<sup>19</sup> Lance Bartholomeusz, *The Mandate of UNRWA at Sixty*, *Refugee Survey Quarterly*, Vol.28.2-3, 2010, p. 466.

Bank and Gaza Strip. Over a third of these refugees continue to live in camps and many remain dependent on UNRWA for their livelihoods.<sup>20</sup>

Two reasons are generally given for keeping treatment of Palestinians distinct from treatment of the majority of the world's refugees. The first argues that adherence to the right of return means the three durable solutions usually sought by UNHCR are unavailable to Palestinians.<sup>21</sup> The Arab states and Palestinian refugees have generally refused to consider local integration or resettlement, believing this would be tantamount to renouncing the refugees' right of return.<sup>22</sup> Solutions that do not incorporate considerations of justice have been seen as unacceptable. Voluntary repatriation is also not viable. Israel fears the effect reintegration of Palestinians would have on its security and is concerned about dilution of Israel's Jewish character.<sup>23</sup>

The second explanation argues that Palestinian refugees were meant to be the beneficiaries of a heightened protection regime. By dividing their care between UNRWA and the UNCCP, the refugees were to be provided with specialized humanitarian and political assistance. UNRWA would meet the refugees' immediate needs, while the UNCCP would facilitate and advocate for long-term solutions. The UNCCP was to provide a form of protection specific to the Palestinian case, different than that provided by UNHCR. Yet, the protection

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<sup>20</sup> "UNRWA: An Overview," UNRWA.org, Accessed 12 February 2011. <http://unrwa.org/etemplate.php?id=85>

<sup>21</sup> Jalal al-Husseini, *UNRWA and the Palestinian Nation-Building Process*, *Journal of Palestine Studies*, Vol. 29.2 (2000), 51-2; "Setting The Record Straight," UNRWA publication, Accessed 12 January 2011. <http://www.un.org/unrwa/allegations/index.html>

<sup>22</sup> In 1959 the Arab League issued a decree that, in order to preserve their identity, Palestinians, should not be given citizenship in other Arab countries. This decree still stands; Bronwen Manby, *Citizenship Law in Africa: A Comparative Study*, *Open Society Institute* (2010), 7 and 51.

<sup>23</sup> Ilter Turkmen, *UNRWA forty-five years later*, *United Nations Chronicle*, Vol. 33.1 (1996), 86.

regime failed, and the treatment of Palestinian refugees as a distinct case has become more detrimental than beneficial. Without the availability of long-term solutions, with the UNCCP now obsolete and UNRWA and UNHCR still separate, there is no international agency currently mandated to seek durable solutions for Palestinian refugees or to protect their rights under IHRL and IHL, including their right to justice.<sup>24</sup> While UNRWA has dedicated itself to providing immediate relief and developing the “human potential” of the refugees, it has kept itself separate from any discussions concerning their futures.

### Reconceiving the place of the Palestinian refugee

Positioning the discussion of justice and long-term solutions for Palestinian refugees on the premise that they are “unique” has narrowed the options available to them. Currently, the debate has privileged their rights as Palestinians first, their rights as refugees second and their rights as individuals third. A reversal of this order is necessary to ensure that Palestinian refugees are fully accorded the rights due to them. This reversal involves two necessary reconceptions of the place of the Palestinian refugee.

The first reconception reminds that collective justice for the Palestinian community and individual justice for a Palestinian refugee are not mutually exclusive. In fact, they can and must be separated. While the question of justice for the *collective* Palestinian community can be debated at the negotiating table, the question of individual justice for the refugees cannot. Rights are not a chip to be traded. The second reconception involves remembering that a refugee is an

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<sup>24</sup> Akram, *Palestinian Refugee Rights: Part One — Failure Under International Law*.

*individual*. As a victim of a human rights violation, specifically forced displacement, there are an array of rights due to Palestinian refugees under IHRL and IHL. This second reconception allows the debate on justice for Palestinian refugees to move beyond the highly charged resolution 194 and the right of return into the broader realm of the individual right to redress and reparations.

In the following chapters, I demonstrate the necessity of these two reconceptions by exploring the history of humanitarian and political aid provided to Palestinian refugees through the UN over the past sixty years. The need to increase the protection provided to Palestinian refugees becomes increasingly clear. To do so, the international community must take four specific steps. These include bringing refugee voices into the dialogue concerning their futures, educating the refugees as to their rights under international law, empowering them to make claims for themselves in internationally consequential fora, and bringing the questions of perpetrators, guilt, burden bearing and reparations into discussions concerning refugee outflows and their solutions. Individual reparations packages serve to explore how these four steps of dialogue, education, empowerment and debate broadening could occur.

#### Methodology and overview

My thesis is a product of mixed methodology. In my first chapter, I use theory from the transitional justice field to explore the meaning of justice and reparations following mass human rights violations. I then use international law, including conventions, UN resolutions and official UNRWA and UNHCR documents, to examine the international community's role and obligation in



providing “protection” to refugees. I also look at the overlap between IRL, IHRL and IHL to examine current practice regarding individual reparations for victims of human rights violations.

In my second chapter, I take a historical approach, primarily using archives of the UNCCP accessed during my summer internship with UNRWA to reconstruct the role of the UN in providing protection to Palestinian refugees. Much of my understanding of UNRWA’s protection role – past, present and future – is informed by my time with the agency and the access I had to meetings, minutes, reports and conversations with senior staff members.

In my third chapter, I take an ethnographic approach to facilitate the inclusion of refugee voices into a work that is ultimately about their conceptions of justice and appropriate redress. This past January, I spent 16 days in the West Bank, where my thesis advisor was undertaking his own fieldwork. I conducted 14 in-depth interviews with a representative sample of refugees, including men and women ranging in age from 18 to 85. The majority of the interviews took place in Dheisheh refugee camp in Bethlehem. Several were with refugees who lived in other areas of the West Bank or in Bethlehem city. Most of the interviews took place in English, but some were conducted in Arabic, as I have training in the language. In addition, my thesis advisor, fluent in Arabic, accompanied me to the interviews and occasionally provided brief translations if necessary for clarity. These interviews are not meant to represent the collective voice of the refugees, but rather to demonstrate the individuality and diversity of opinion present in the community.

In my final chapter, I conduct discourse analysis, looking at current events, various media sources and academic writings to describe the present position of Palestinian refugees. I finish the thesis by outlining some practical possibilities open to UNRWA to increase its protection role and to empower the refugees using the four steps outlined above. This discussion is framed using the lens of the individual right to seek reparations.

Throughout my thesis, I use theoretical, historical and legal approaches to describe the need to include the voices of refugees in discussions of their future. I also put this argument into practice by including my conversations with refugees and their articulation of what they seek in justice, representation, advocacy and healing. The refugees I interviewed were eloquent, thoughtful and aware of the complexities of their current position. I am grateful for their willingness to provide me insight into their world.

### Conclusion

In a conflict involving infractions on both sides, long-standing grievances and contradictory historical narratives, establishing guilt and liability is incredibly complex. I recognize the competing claims on both sides and make no attempt to deliver a conclusive statement on the conflict writ large. Rather, I have focused specifically on the crime of forced displacement and the necessity of a response.

Israel disputes its liability in the refugees' displacement in 1948. Mainstream Israeli historiography tends to explain the exodus as having been the product of fear, voluntary emigration and responses to instructions from Arab

leaders to leave the area.<sup>25</sup> It may be the case that Israel was not involved in the flight of some Palestinians. It is beyond the scope of this work to define and identify which Palestinians were victims of forced displacement due to Israeli policies and actions and which were not. Rather, the purpose of this work is to argue that the international community must take up these questions, beginning the long process of examining guilt and liability in order to appropriately protect victims who need justice to heal. The complexity of the question does not justify ignoring it.

There is compelling evidence that a majority of Palestinians who left their homes in 1948 were victims of forced displacement at the hands of the Israeli state. A number of historians, most notably Benny Morris in *The Birth of the Palestinian Refugee Problem, 1947-1949*, Ilan Pappé in the *Ethnic Cleansing of Palestine* and Michael Palumbo in *The Palestinian Catastrophe: The 1948 Expulsion of a People from Their Homeland*, have meticulously documented the forced expulsion of Palestinians from their homes by Israeli military forces. These historians draw from a trove of evidence, including Israeli government archives released in the 1980s, UN documents and American and European governmental records.<sup>26</sup> My thesis focuses on the necessity of providing justice to this majority of Palestinians.

Reparations are put forward not as a “compromise” form of justice in

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<sup>25</sup> *The Refugee Question: An Attempt to Examine Different Aspects and Dimensions*, Roundtable discussion held between Dr. Adnan Abdelrazek, Mr. Saeb Bamyia, Brigadier General Israela Oron and Dr. Arie Arnon on 16 February 2009, moderated by Benjamin Pogrund of the Palestine-Israel Journal, *Palestine-Israel Journal of Politics, Economics and Culture*, Vol. 15.4/16.1 (2009), 103 – 104.

<sup>26</sup> In Morris’s *1948 and After*, one IDF intelligence report is cited that concludes that 70% of the Palestinian exodus was caused by Israeli forces and “Jewish dissidents.”

relation to an ideal of “return,” but rather as an avenue to begin meaningful discussion beyond the rhetoric as to how refugees understand justice and how they envision their futures. At the heart of justice is the facilitation of agency after years of victimization. The methods to do this will necessarily vary depending upon the individual. For over 60 years, it has been assumed that justice will mean the same thing to millions of Palestinian refugees. This belief can no longer go unchallenged.

While this paper deals specifically with the Palestinian case, many of its critiques have broader applicability for the international humanitarian framework currently providing aid to refugees. In particular, the role of justice in victim healing, the necessity of disassociating the individual need for justice from collective demands and the importance of rights-protection go beyond any particular case.

## Chapter 1: The role of reparations for refugees

*Reparations are not just about money, “not even mostly about money; in fact, money is not even one percent of what reparations is about. Reparation is mostly about making repairs; self-made repairs, on ourselves.”<sup>27</sup>*

In this chapter, I explore the role of the international community in providing individual justice to refugees. I define justice as reparative, focusing on both the moral and material realms of repair that must be addressed in order to restore the agency of victims. Those with agency are “subject,” able to voice, make heard and ultimately assert their desires for their present and future aspirations. Those who lack the ability to assert their will or help control and shape their present and future, who are acted upon, are defined as “object.” Restoring the agency of refugees, or empowerment, consists of educating them as to their rights under international law, as well as assisting them to advocate, access and make claims for themselves in internationally consequential fora. This empowerment falls under the “international protection” duty of humanitarian agencies such as UNHCR and UNRWA.

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<sup>27</sup> Mark Ellis and Elizabeth Hutton, *Policy Implications of World War II Reparations and Restitution as Applied to the Former Yugoslavia*, Berkeley Journal of International Law, Vol. 20:34 (2002), 342, Quoting Brandon Hamber, *Repairing the Irreparable: Dealing with Double-binds of Making Reparations for Crimes of the Past*, Centre for the Study of Violence and Reconciliation, Johannesburg, South Africa (1998), citing Professor Chinweizu, “Reparations and a New Global Order: A Comparative Overview,” Paper presented at the First Pan-American Conference on Reparations, Abuja, Nigeria (1993).

Reparations offer one potential option for humanitarian agencies to begin the process of empowerment. Reparations claims for the crime of forced displacement address both the material and the moral realms of repair and highlight the need to create linkages between IRL, IHRL and IHL.<sup>28</sup> Further, reparations remind of the need to bring the questions of perpetrators, guilt and burden bearing into discussions concerning refugee outflows<sup>29</sup> and their solutions. In short, reparations remind that many refugees are victims of a specific crime and thus require justice, both individual and collective.

### Justice

#### *The relationship between victims and perpetrators*

In an instance of crime, there is often a perpetrator on the one hand and a victim on the other. Yet, the assumption of a black and white dichotomy between victims and perpetrators during conflicts in which a moral gray zone blurs the lines has been criticized, particularly where there was structural violence preceding conflict. However, while victims of one crime can certainly be perpetrators of another, in the case of each specific crime (here forced displacement), there will necessarily be a victim and a perpetrator. Justice must be

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28 The Rule of Law in Armed Conflicts Project, an initiative of the Geneva Academy of International Humanitarian Law and Human Rights, defines **international refugee law (IRL)** as a set of rules and procedures that aims to protect those seeking asylum from persecution as well as those recognized as refugees under the relevant international instruments. **International humanitarian law (IHL)** is a set of rules and procedures that regulate the conduct of warfare, including the protection of civilians. **International human rights law (IHRL)** refers to those rights granted to all humans, regardless of nationality, race, religion, etc. Treaty law comprises the bulk of IHRL, establishing rights that are legally binding and subject to monitoring and accountability mechanisms; “The Rule of Law in Armed Conflicts Project,” The Geneva Academy of International Humanitarian Law and Human Rights, Accessed 3 January 2011. [www.adh-geneve.ch/RULAC/index.php](http://www.adh-geneve.ch/RULAC/index.php)

<sup>29</sup> Refugee outflows refer to mass movements of refugees away from their home country, usually as a result of conflict.

pursued for each crime independently.<sup>30</sup>

The perpetrator of a crime is necessarily subject, carrying out and responsible for the action, while the victim is object, the being acted upon. The act of wrongdoing injures the victim. Forced to submit, she loses her personal agency and is defined by her relationship to the perpetrator. Frantz Fanon discusses the objectifying effects of crime at length in *The Wretched of the Earth*. While writing in the Algerian context, Fanon's analysis of the effect of objectification on the individual and the necessity of a response transcends the particular case. As Fanon writes, the victim is "made to feel inferior, but by no means convinced of his inferiority... the [victim] is a persecuted man who is forever dreaming of becoming the persecutor."<sup>31</sup> The objectification of the victim becomes embedded over time, and "shame and fear warp their character and dislocate their personality."<sup>32</sup> Fanon writes that violence alone can overcome the psychological and social damage of this objectification.<sup>33</sup> For individuals, "violence is a cleansing force. It rids the [victim] of their inferiority complex, of their passive and despairing attitude. It emboldens them, and restores their self-confidence."<sup>34</sup> According to Sartre, the violence of resistance is "man reconstructing himself."<sup>35</sup> Yet, violence is destructive. While it may restore the

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<sup>30</sup> Rosalind Shaw and Lars Waldorf, *Introduction: Localizing Transitional Justice*, Localizing Transitional Justice: Interventions and Priorities After Mass Violence, Ed. Rosalind Shaw and Lars Waldorf, with Pierre Hazan, Stanford University Press: Stanford, 2010, 8, 10.

<sup>31</sup> Frantz Fanon, *The Wretched of the Earth*, Trans. Richard Philcox, Grove Press: New York, 2004, 16.

<sup>32</sup> Jean-Paul Sartre, *Preface*, *The Wretched of the Earth*, Frantz Fanon, Trans. Richard Philcox, Grove Press: New York, 2004, l.

<sup>33</sup> Fanon, 96.

<sup>34</sup> Fanon, 51

<sup>35</sup> Sartre, lv.

agency of the original victim, it also often creates new ones.

Experience has shown that violence is not the only path to restoration of the victim. Organized and structured justice can play a role similar to vengeance in restoring a victim's agency and status as subject, in other words "healing" the victim from the original objectification of the crime.<sup>36</sup> In current human rights language, this phenomenon is described in terms of the degradation of human beings that has occurred during mass violence and the need to restore their "human dignity."<sup>37</sup> Establishing a legal order and response, either through punishment or forgiveness, provides alternatives to violence by working to correct the imbalanced relationship between victims and perpetrators.<sup>38</sup> By transferring responsibility for apportioning blame to a public body, vengeance on the part of the victim can be avoided.<sup>39</sup> This healing through justice helps to restore the victim's agency, bring closure and end the cycles of violence and distrust that characterize many conflict-prone societies.<sup>40</sup>

The term *justice*, however, is hotly contested. The debate on its definition has played out in theory and practice for millennia, but the term generally includes considerations of guilt, responsibility and accountability.<sup>41</sup> The transitional justice field, which is concerned with sustaining peace and stability in

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<sup>36</sup> Martha Minow, *Between Vengeance and Forgiveness*, Beacon Press: Boston, 1998, 11-13.

<sup>37</sup> Minow, 1.

<sup>38</sup> Elizabeth Kiss, *Moral Ambition Within and Beyond Political Constraints: Reflections on Restorative Justice*, *Truth v. Justice: The Morality of Truth Commissions*, Ed. Robert Rotberg & Dennis Thompson, Princeton University Press: Princeton, 2000, 83.

<sup>39</sup> Minow, 11-12.

<sup>40</sup> Shaw, 3.

<sup>41</sup> Minow, 9.



societies following conflict,<sup>42</sup> offers an appropriate lens for the discussion of justice in the context of mass human rights violations. In the rich literature of the field,<sup>43</sup> two broad conceptions of justice have generally been described, alternately focusing on retribution and restoration.<sup>44</sup> Both conceptions attempt to correct the imbalance between victims and perpetrators.

### ***Retributive justice: justice as punishment***

Retributive justice emphasizes punishment of the perpetrator.<sup>45</sup> It works to make the perpetrator an object by taking away their agency, either through death, physical imprisonment or payment. This stems from the notion that matching a crime with like punishment can equalize the relationship between victims and perpetrators.<sup>46</sup> According to Elizabeth Kiss, “doing justice to the past and to its victims entails holding those who committed abuses accountable. Accountability... evokes the idea of legal prosecution and punishment.”<sup>47</sup> Hugo Grotius, one of the founding fathers of international law, explains that punishment is necessary “to defend the honor or the authority of him who was hurt by the offence so that the failure to punish may not cause his degradation.”<sup>48</sup> The ideal of

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<sup>42</sup> *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, Report of the Secretary-General, UN Security Council (S/2004/616), 23 August 2004, 3; Harvey Weinstein, Laurel Fletcher, Patrick Vinck, and Phuong Pham, *Stay the Hand of Justice: Whose Priorities Take Priority?*, Localizing Transitional Justice: Interventions and Priorities After Mass Violence, Ed. Rosalind Shaw and Lars Waldorf, with Pierre Hazan, Stanford University Press: Stanford 2010, 32-33.

<sup>43</sup> See Ruti Teitel’s Transitional Justice (Oxford University Press: Oxford, 2000) for a full discussion on the evolution of the transitional justice field and the various conceptions of justice that have been debated and pursued over the past twenty years.

<sup>44</sup> Minow, 93.

<sup>45</sup> Weinstein, 32-33.

<sup>46</sup> Minow, 10-11.

<sup>47</sup> Kiss, 74.

<sup>48</sup> Hannah Arendt, Eichmann in Jerusalem: A Report on the Banality of Evil, Penguin Books: New York, 1994, 102.

equal dignity of all persons that infuses retributive justice requires a community to respond to the perpetrator's "false message that the victim is less worthy or valuable than the wrongdoer; through retribution, the community reasserts the victim's value by inflicting a publicly visible defeat on the wrongdoer."<sup>49</sup> By stating that the perpetrator's actions were wrong, the court, and society by extension, is placing guilt on the perpetrator and away from the victim.<sup>50</sup> The logic is that by making the perpetrator object, the victim will necessarily become subject once again.<sup>51</sup>

International law has traditionally focused on retributive justice.<sup>52</sup> Beginning with the Nuremberg trials following WWII and extending to the establishment of the International Criminal Court in 2002, prosecutions have been increasingly institutionalized as justice measures in the international forum.<sup>53</sup> This approach, however, has limitations. Retributive justice is focused on the past and is perpetrator-centric. In its zeal for punishment, retributive justice can overlook victims' needs beyond vengeance.<sup>54</sup> Taking away the agency of the perpetrator does not necessarily restore agency to the victim. It merely diminishes another. In logic too similar to the flawed rationale of vengeance, retributive justice victimizes the perpetrator in an attempt to restore the subjectivity of the victim.<sup>55</sup> Restorative justice attempts to correct for these weaknesses, focusing on the victim and looking towards the future.

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<sup>49</sup> Minow, 12, paraphrasing philosopher Jean Hampton.

<sup>50</sup> Kiss, 79; Minow, 12.

<sup>51</sup> Kiss, 79; Minow, 12.

<sup>52</sup> Ellis and Hutton, 342-3.

<sup>53</sup> Weinstein, 32-34.

<sup>54</sup> Weinstein, 34.

<sup>55</sup> Minow, 13.

### ***Restorative justice: justice as truth and recognition***

Restorative justice has been the recent focus of the international community, actualized in the truth commissions that are becoming the norm in transitional justice frameworks.<sup>56</sup> Restorative justice is focused not so much on punishment as on “correcting imbalances and restoring broken relationships.”<sup>57</sup> It recognizes the common humanity of both perpetrators and victims, emphasizing communication, connection and forgiveness over punishment and legal action.<sup>58</sup> Restorative justice is importantly victim-centric and focuses on recognition and respect, attempting to help victims move beyond anger and a sense of powerlessness.<sup>59</sup>

Yet, the actualization of recent restorative justice frameworks has exhibited significant limitations. The focus is on the reconciliation of victims and perpetrators through the power of forgiveness. While reconciliation and forgiveness certainly have value, they cannot be at the cost of justice for the victims. Imposed forgiveness only serves to enhance a victim’s lack of control.<sup>60</sup> In addition, mechanisms to establish “truth,” understood as the construction of a new historical narrative that takes victims’ accounts into consideration, are given primacy.<sup>61</sup> Academics and practitioners in favor of restorative justice tend to argue that through wider society’s recognition of the truth of what happened, the

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<sup>56</sup> Priscilla Hayner, Unspeakable Truth: Facing the Challenge of Truth Commissions, Routledge: New York, 2002, 5; Weinstein, 35.

<sup>57</sup> Kiss, 69.

<sup>58</sup> Minow, 92.

<sup>59</sup> Minow, 92.

<sup>60</sup> Minow, 21 – 24, 92.

<sup>61</sup> Kiss, 69.

victim's dignity will be restored.<sup>62</sup> Yet, acknowledgment of the harm the victim has undergone and recognition of their place as a rights-bearing subject are two very different things. It is possible to *pity* a victim for the pain they have suffered but to continue to view them only as an object in need of charity and direction.

***Reparative justice: addressing the moral and material realms of repair***

The language used to describe justice is intrinsically important to implementation. Using terms such as “dignity” rather than “agency” allows the obscuration of the holistic repair that should be the ideal of justice. Restoring a victim's status as subject involves moral and material repairs. The emphasis of justice mechanisms must be reconceived to *explicitly* focus on reparative justice, working to help victims move past a sense of powerlessness.<sup>63</sup>

Reparative justice emphasizes repair in two realms, the moral and the material.<sup>64</sup> In the moral realm, like restorative justice, repair relates to the restoration of dignity for victims. This restoration should include the quest for truth, the empowerment of victims' to express themselves, to be heard and the facilitation of a greater role for victims in decisions regarding their future.<sup>65</sup> Yet, as Frantz Fanon writes, providing only moral repair “does not fool us and it

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<sup>62</sup> Kiss, 73.

<sup>63</sup> Minow, 92.

<sup>64</sup> Teitel, 125.

<sup>65</sup> The failure to address the disconnect between international legal norms and conceptions of justice and local priorities following conflicts has been the focus of recent transitional justice literature. To correct for this, researchers and policymakers have increasingly begun to conduct surveys of people affected by conflict in order to determine what they hope to see in justice mechanisms. Studies have revealed wide differences in conceptions of justice and desires for post-conflict frameworks based on people's identity group, country, culture, experience of violence, prior engagement with “the other side,” beliefs in retributive justice and length of the conflict. Recognizing this variance in victims' wants is important in order to avoid diminishing their agency by prescribing an ill-fitting justice scheme. One way to avoid this is to empower victims to make claims for themselves and to play a role in defining the justice they feel must be delivered; Shaw, 3 - 4; Weinstein, 31 - 47; Kiss, 82.

doesn't feed us." He argues that economic empowerment is important for victims as they try to move past their previous objectification.<sup>66</sup> And the material realm of repair does have an intrinsically important role in dispelling a victim's sense of powerlessness by allowing them to focus on matters beyond livelihood and survival.<sup>67</sup> Reparations packages, if tailored to the individual, are one of the most promising tools for providing holistic justice that addresses the moral and material realms of repair, both necessary to restore the agency of victims.

### Reparations

#### ***The right to redress under IHRL and IHL***

Historically, reparations referred to war damages paid by vanquished states to victors. After WWII, there was an important shift in focus from states to individuals. While traditional reparations packages were paid to states, a number of countries also offered monetary reparations to victims of war atrocities and their families.<sup>68</sup> Over the past 50 years, the individual right to reparation and redress has mirrored the rise of the individual as a rights-holding subject under IHRL and IHL.<sup>69</sup> In IHRL, the right to a remedy for victims can be found in article 8 of the Universal Declaration of Human Rights, article 2 of the International Covenant on Civil and Political Rights, as well as within more specific treaties and regional human rights documents. In IHL, the right to a remedy is outlined in article 3 of Convention IV of the Hague Conventions, article

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<sup>66</sup> Fanon, 58.

<sup>67</sup> Minow, 93; Hayner, 183.

<sup>68</sup> Ellis and Hutton, 345.

<sup>69</sup> An analysis on the evolution of the individual right to reparation is also found in Neil Kritz's Transitional Justice (United States Institute of Peace: Washington, DC, 1995); Teitel, 119; Ellis and Hutton, 343.

91 of the Protocol Additional to the Geneva Conventions and articles 68 and 75 of the Rome Statute of the International Criminal Court.<sup>70</sup>

On 21 March 2006, the GA adopted a foundational document outlining customary international law on reparations for victims. The *UN Basic Principles on the Right to a Remedy and Reparation for Victims* is meant to identify mechanisms for the implementation of existing legal obligations under IHRL and IHL.<sup>71</sup> The *Basic Principles* note the UN's belief that adopting a victim-oriented perspective to violations of IHRL and IHL can help reaffirm the international commitment to the principles of accountability, justice and the rule of law.<sup>72</sup> The *Basic Principles* go on to define a "victim" as any person who has individually or collectively suffered harm due to a gross violation of IHRL and/or a serious violation of IHL. By their nature, both violations constitute an affront to human dignity.<sup>73</sup> The *Basic Principles* promise victims equal and effective access to justice, adequate, effective and prompt reparation for harm suffered and access to relevant information concerning violations and reparations mechanisms.<sup>74</sup> The *Basic Principles* go on to define and outline the five central aspects of reparations packages.

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<sup>70</sup> *United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, UN General Assembly Resolution 60/147 (A/RES/60/147), 16 December 2005, Preamble.

<sup>71</sup> *UN Basic Principles on the Right to a Remedy*, Preamble.

<sup>72</sup> *UN Basic Principles on the Right to a Remedy*, Preamble.

<sup>73</sup> *UN Basic Principles on the Right to a Remedy*, p. 8 – 9.

<sup>74</sup> *UN Basic Principles on the Right to a Remedy*, p. 11.

### ***The five aspects of reparations: moral and material repairs***

The five general components of reparations packages outlined in the *Basic Principles* – restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition – are meant to address both the moral and material realms of repair.<sup>75</sup> Reparations packages are often creative in the ways in which they combine individual and communal healing mechanisms, symbolic gestures and monetary aid.<sup>76</sup> This creative combination must be specific to the harm done and the victims being repaid, and can be extremely important in determining whether reparation is accepted or rejected by victims.

Restitution and compensation focus specifically on material loss. Restitution aims to re-establish, to the extent possible, the situation that existed prior to the human rights violation, including returning property and restoring citizenship and important freedoms. Where restitution is impossible, compensation aims to provide monetary payment for any damage resulting from the wrongful act. Compensation includes any financially assessable damage, including loss of profits, as well as interest on the sum owed.<sup>77</sup> Both restitution and compensation are important, but even restitution cannot restore the environment from which an object was taken.<sup>78</sup> Rehabilitation thus focuses on the material and economic harm caused by the wrong done. It recognizes that these losses include more than the material items taken. Rehabilitation generally covers

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<sup>75</sup> *UN Basic Principles on the Right to a Remedy*, p. 7.

<sup>76</sup> Hayner, 183.

<sup>77</sup> *UN Basic Principles on the Right to a Remedy*, p. 7-9.

<sup>78</sup> Minow, 108.

services that may be required to restore the dignity and reputation of a victim, such as health care, psychosocial and legal support and university stipends.<sup>79</sup>

The last two components of general reparations packages, guarantees of non-repetition and satisfaction, focus on the moral realm of repair. A guarantee of non-repetition asks the perpetrator to acknowledge that the initial act was wrong and will not be repeated. Satisfaction often involves explicit apologies on behalf of perpetrators to victims and is meant to ensure that victims *feel* they are receiving justice.<sup>80</sup> In addition, reparations can offer moral repair through their symbolic strength. The process of seeking reparations – even token monetary gestures – can often have cathartic effects and provides opportunities for a sense of recognition on behalf of the victims.<sup>81</sup> Reparations provide a cause for which victims can advocate and a specific right to which to lay claim.<sup>82</sup>

Reparations offer a justice that falls between the vengeance embedded in retributive schemes and the forgiveness advocated for in restorative frameworks.<sup>83</sup> Reparations, if coming from the perpetrator, also serve a similar function to punishment,<sup>84</sup> taking away some of the perpetrator's control by forcing them to pay.<sup>85</sup> Reparations also offer the victim acknowledgment on behalf of the

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<sup>79</sup> Ellis and Hutton, 344; Hayner, 171; Teitel, 146.

<sup>80</sup> *UN Basic Principles on the Right to a Remedy*, p. 7-9.

<sup>81</sup> For example, the Truth and Reconciliation Commission of South Africa was consistently surprised by the modest amounts asked for by victims in terms of reparations. Yet, the fulfillment of these humble requests was incredibly powerful – offering acknowledgment, closure, vindication and a connection between victims and perpetrators; Minow, 106; Ellis and Hutton, 344; Hayner, 171 – 172.

<sup>82</sup> Fanon, 219-220; Minow, 93.

<sup>83</sup> Minow, 106.

<sup>84</sup> Minow, 93, 103, 112; Hayner, 173; Teitel, 127.

<sup>85</sup> For example, one daughter of a Chilean victim describes the reparations checks with, “Every time a check arrives, it’s a recognition of the crime. After so many years of denial, month by month, it’s a recognition that we were right.” Another says that the checks represent “recognition



community,<sup>86</sup> helping to wipe away the shame of being objectified, restore them to an equal status in greater society and provide the ability to begin their lives anew.<sup>87</sup>

Reparations hold great promise for refugees in particular. When an individual is designated as a refugee, they are often reduced to a “bare life.” The concept of “bare life,” as described by Giorgio Agamben, refers to the reduction of people to a state of mere existence, an existence “marked by a condition of pre-political absolute victimhood” that “exists in tension with the attempts to produce political beings found in the struggles of individuals.”<sup>88</sup> The current international assistance regime providing to refugees has unintentionally contributed to the creation and maintenance of a bare and victimhood life for refugees.

### Refugees

#### ***Objectification, depoliticization and homogenization of the refugee***

The global governance structures that currently deal with refugee outflows have developed over the past 60 years.<sup>89</sup> While important work is being done in terms of providing immediate assistance and working towards finding durable solutions, humanitarian agencies, as well as the international media, often objectify, depoliticize and homogenize those designated as refugees.<sup>90</sup> Refugees

from the state of its own guilt.” Others consider the checks blood money and distasteful. A human rights advocate in Argentina claimed, “Life doesn’t have a price. The reparations only buy your conscience and sell your blood. The president is likely to say to us, ‘You cannot talk, we paid you’”; Hayner, 173 - 178.

<sup>86</sup> Teitel, 126-127.

<sup>87</sup> Teitel, 126-127.

<sup>88</sup> Shaw and Lars Waldorf, 8, quoting Agamben.

<sup>89</sup> “History of UNHCR,” UNHCR.org, Accessed 12 December 2010.

<http://www.unhcr.org/pages/49c3646cbc.html>

<sup>90</sup> Malkki's piece is a wonderful exposition on the importance of empowering refugees by giving them a voice in their individual and collective futures. She looks specifically at the case of Hutu

are often treated as a category unto themselves, as passive recipients of aid in need only of assistance, rather than as individuals with unique histories and the right to redress.<sup>91</sup>

Refugees are often silenced during their experience as a refugee.<sup>92</sup> Civil society, in particular the international media, often depoliticize the refugee category, portraying refugees as “pure victims” rather than specific persons, a “miserable sea of humanity” where no person has a name or face.<sup>93</sup> Images of refugees, generally focused on the flight and the camps, are prevalent in the international realm, while individual refugee testimony is not. This renders the refugees mute.<sup>94</sup> An ahistorical, universal humanitarian object is constructed by projecting the idea of the refugee as a member of a homogenous, helpless group in need only of humanitarian aid. The onlooker may pity this construction, this image of “bare” humanity, but does not conceive of the refugee as subject and agent in their own future.<sup>95</sup> The vast differences and individualities present in any community, including a refugee one, are forgotten, and it is often assumed that refugees are passively following the dictates of politicians who claim to represent them.<sup>96</sup>

Humanitarian interventions tend to further this objectification in their tendency to ignore the specific histories, political and economic conditions and

refugees from Burundi living in Tanzania; Liisa Malkki, *Speechless Emissaries: Refugees, Humanitarianism, and Dehistoricization*, Culture Anthropology, Vol. 11.3 (1996), 378.

<sup>91</sup> Malkki, *Speechless Emissaries*, 378.

<sup>92</sup> Malkki, *Speechless Emissaries*, 378.

<sup>93</sup> Malkki, *Speechless Emissaries*, 378.

<sup>94</sup> Malkki, *Speechless Emissaries*, 377- 378, 386-387.

<sup>95</sup> Malkki, *Speechless Emissaries*, 386 – 389.

<sup>96</sup> Malkki, *Speechless Emissaries*, 394.

contexts of each individual refugee.<sup>97</sup> According to the mandates of most agencies, they are meant to be nonpolitical and “strictly humanitarian.”<sup>98</sup> The refugees are treated in the context of their present condition, provided with healthcare and other essential services, then assessed based on their needs and vulnerabilities. They are then resettled or returned home depending on the situation. Humanitarian agency interventions with countries of origin tend to remain limited to assessing whether the situation is safe and conducive to a dignified return.<sup>99</sup> Reparations, justice and civil and political rights remain largely outside of these discussions.

While UNHCR places primary emphasis on including refugees’ opinions in the facilitation of long-term solutions,<sup>100</sup> the refugees remain objects until resettled. The prevailing idea is that finding a durable solution and providing a refugee with citizenship is the most important goal. While not disputing the merits of this goal, I do dispute the assumption that refugees must wait until they gain a nationality and national protection to access rights and recourses to justice. Otherwise, until a durable solution is found, refugees are tied to the provision of aid from the international community, powerless to direct their futures and often stripped of the authority to give “credible narrative evidence or testimony about their own condition in politically and institutionally consequential fora.”<sup>101</sup>

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<sup>97</sup> Liisa Malkki, *Refugees and Exile: From “Refugee Studies” to the National Order of Things*, *Annual Review of Anthropology*, Vol. 24 (1995), 496; Malkki, *Speechless Emissaries*, 378, 386-387.

<sup>98</sup> Malkki, *Refugees and Exile*, 505-6.

<sup>99</sup> “Protection,” UNHCR.org, Accessed 12 December 2010.  
<http://www.unhcr.org/pages/49c3646cc8.html>

<sup>100</sup> “Durable Solutions,” UNHCR.org.

<sup>101</sup> Malkki, *Speechless Emissaries*, 378.

In situations of protracted displacement, the damage can be even greater. While UNHCR and UNRWA were not designed to provide long-term relief and protection to refugee populations, there are a number of refugee groups that have been displaced for decades, with the 30-year plight of Afghan refugees and the 60-year plight of the Palestinians particularly striking. In protracted displacement situations, there are serious deficits in democratic participation and procedural due process for refugees.<sup>102</sup> It also becomes increasingly clear that questions of the individual refugee's broader human rights under IHRL and IHL cannot be put off until citizenship has been gained. Their rights as individuals should not be abrogated in the wait for a solution that may never come. The international community must rethink its absolute focus on only the political needs of refugees in regards to their future. Rather, it is necessary to bring the need for fulfillment in the present into focus, remembering the importance of the provision of the right to justice and of civil and political rights to refugees while they remain under the protection of UNHCR or UNRWA. Some of these deficits stem from the fact that refugees tend to be treated as subjects of IRL alone, which focuses on humanitarian needs, rather than as individuals with standing under IHRL and IHL.

### *A victim of forced displacement*

According to IRL, a refugee is defined as a person who:

Owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is

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<sup>102</sup> Susan Rimmer, *Refugees, Internally displaced persons and the "responsibility to protect," UNHCR New Issues in Refugee Research*, Research Paper No. 185 (2010), 9.

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.<sup>103</sup>

The definition comes from the 1951 UN Convention Relating to the Status of Refugees and its 1967 protocol, the key documents in the IRL regime.<sup>104</sup> Regional conventions in Africa and Latin America have expanded this concept to include those who have fled war or other widespread violence in their home countries.<sup>105</sup> The 1951 Convention designates UNHCR as responsible for the care of any individual defined as a refugee.

However, according to Article 1(d), the Convention will not apply to:

Persons who are at present receiving from organs or agencies of the UN other than the UN 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 GA of the UN, these persons shall ipso facto be entitled to the benefits of this Convention.<sup>106</sup>

Palestinian refugees were already under the care of UNRWA in 1951.<sup>107</sup> They remain under UNRWA's care today and are thereby excluded from the general IRL regime. The definition of a Palestinian refugee was left to UNRWA, who designates any person "whose normal place of residence was Palestine between

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<sup>103</sup> Article 1, *1951 Convention Relating to the Status of Refugees and its 1967 Protocol*.

<sup>104</sup> Article 1, *1951 Convention Relating to the Status of Refugees and its 1967 Protocol*.

<sup>105</sup> Guy S. Goodwin-Gill, *Convention and Protocol Relating to the Status of Refugees*, UN Audiovisual Library of International Law (2008), 6 – 8.

<sup>106</sup> Article 1 (d), *1951 Convention Relating to the Status of Refugees and its 1967 Protocol*.

<sup>107</sup> Takkenberg, 54 – 58; Introduction from the High Commissioner of UNHCR, *1951 Convention Relating to the Status of Refugee and its 1967 Protocol*, 2007, 7.

June 1946 and May 1948, who lost both their homes and means of livelihood as a result of the 1948 Arab-Israeli conflict” as a Palestinian refugee.<sup>108</sup>

The preamble of the 1951 Convention refers to the “social and humanitarian nature of the problem of refugees.”<sup>109</sup> This phrasing highlights the problematic nature of both the UNRWA and UNHCR definitions. The definitions consider refugees as in need of humanitarian assistance, rather than of advocacy and representation as individual victims of a specific crime, e.g. forced displacement. In fact, the international community has tended to create a false dichotomy between human rights and refugee issues. Until the 1990s, human rights and refugees were largely handled as separate questions in the international field.<sup>110</sup> Forced displacement was often not referred to as a human rights problem and UN bodies rarely explored the linkages between causes of refugee outflows and possible solutions.<sup>111</sup> The development of a more holistic approach has begun to surface over the past twenty years, although there is still much progress to be made.

A reconception of the refugee that emphasizes the crime suffered and the right to claim reparations would remind the international community that most refugee outflows involve a perpetrator and thus require reparative justice. I classify a refugee as *any individual who is a victim of forced displacement and*

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<sup>108</sup> Takkenberg, 77.

<sup>109</sup> Preamble, *1951 Convention Relating to the Status of Refugees and its 1967 Protocol*; Goodwin-Gill, 6 – 8.

<sup>110</sup> Maria Stavropoulou, *Displacement and Human Rights: Reflections on UN Practice*, Human Rights Quarterly, Volume 20.3 (1998), 515-6.

<sup>111</sup> Stavropoulou, 515 - 6.

*continues to lack national protection.*<sup>112</sup> Under international law, forced displacement constitutes a gross violation of human rights. The key factors in forced displacement are within the term itself – the use of force and the displacement of peoples.<sup>113</sup> Forced displacement, according to articles 7 and 8 of the Statute of the International Criminal Court, constitutes a crime against humanity and a war crime. It refers to expulsion or other coercive acts that force residents to leave the area in which they are lawfully present, without grounds permitted under international law. The 1949 Geneva Conventions also prohibit individual or mass forcible transfers of civilians. According to the 1977 Additional Protocol to the Geneva Conventions, “Civilians shall not be compelled to leave their own territory for reasons connected with the conflict.”

The definition I provide is meant to use the term “refugee” as a legal classification describing a group of diverse individuals who have been subjected to the same type of crime.<sup>114</sup> It is not meant to further embed the idea of a refugee as a “pure victim,”<sup>115</sup> but rather to move the refugee beyond the protection of IRL and into the broader realms of IHRL and IHL. As seen, these broader bodies of law promise the right to redress, remedy and reparation, all of which could go a long way to restoring the agency that is stripped from refugees during the initial crime and their subsequent objectification under the international assistance

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<sup>112</sup> National protection generally refers to the normal guarantees governments provide their citizens regarding basic human rights and physical security, including travel documents and legal advocacy in international fora; “Protection,” UNHCR.org.

<sup>113</sup> Stavropoulou, 519.

<sup>114</sup> While this would exclude refugee groups caused by natural disasters, these groups are fundamentally different and require different forms of assistance and healing than those who were forced to flee due to the actions of specific perpetrators.

<sup>115</sup> Malkki, *Refugees and Exile*, 511, 513.

regime.<sup>116</sup> While there are certainly practical and philosophical difficulties in implementing reparations schemes, they also hold great promise for refugees who are victims of forced and protracted displacement. The Palestinian case provides an appropriate basis for a discussion of the major concerns often raised against reparations packages, including the “monetizing” of harm, the difficulties presented by the passage of time and the idea that reparations represent an “end of claims” for the individual and the collective.

### *Competing concerns and the Palestinian case*

Critics of compensation schemes claim that they can risk overemphasizing the monetary value or material loss of a situation that included destroying lives and hopes.<sup>117</sup> They explain that even returning a house after it was taken does not make up for the length of displacement.<sup>118</sup> Particularly in the Palestinian case, when the justice choices have been presented as between return or compensation, compensation has tended to be seen amongst Palestinians as a renouncement of a right in favor of economic incentives.

While providing only payment for material losses ignores the psychological and social effects of crime, complete reparations packages, in their unique combination of the five different components, offer *both* moral and material repair. Reparations are meant to address the harm done to the victim in a holistic way, physically, emotionally, and in terms of loss of opportunities. In short, reparations provide victims important tools to take control of their own

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<sup>116</sup> *UN Basic Principles on the Right to a Remedy*, p. 11.

<sup>117</sup> Minow, 93.

<sup>118</sup> Minow, 104- 108.



lives and include the *acknowledgment* of the wrong done. It is this that separates reparations from simple compensation and is central to the reparative justice offered victims.

There is often competition between the benefit of having the perpetrator pay and the desire to have full and comprehensive reparations packages. Delivering complete reparations packages to victims after mass human rights violations often involves considerable amounts of money.<sup>119</sup> If perpetrators alone pay, they can often make only small token gestures to victims. However, if reparations come from a third party that the victims do not hold responsible, the central idea of compensatory justice – that the wrongdoer pay the victim – is forsaken. This can be incredibly troubling to victims, diminishing the symbolic power of reparations.<sup>120</sup>

Yet, while this might lessen the clarity of the justice provided, it does not extinguish it. The material repairs that come with compensation and the societal acknowledgment involved in payment and in broader reparations packages still restore the victim's agency outside of their relationship to the perpetrator. In fact, many reparations programs paid to victims in transitional mechanisms come not from perpetrators but from successive regimes.<sup>121</sup> Compromises could be struck between these competing moral and material realms. There could be a scheme whereby the perpetrator pays the cost of rehabilitation and a third party pays

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<sup>119</sup> Minow, 104; Hayner, 171.

<sup>120</sup> For example, after World War II, many Japanese comfort women refused reparations from private sources because they claimed the Japanese government was guilty and had to be held accountable; Ellis and Hutton, 344.

<sup>121</sup> Teitel, 146.

compensation. The third party “pays” for the goods, acknowledging the victim has a right to redress. The perpetrator is “paying” for the wrong they did through rehabilitation. In the end, a balance must be struck between symbolic payment and providing substantial material redress.

The second concern raised is that of the passage of time. Particularly in the Palestinian case, it is argued that the passage of time has allowed for “new facts on the ground to be established” as many of the original perpetrators and victims pass away.<sup>122</sup> This raises the question of intergenerational justice. Is a successor generation as culpable as the original in terms of payments? As Teitel argues, the passage of time without the provision of justice only increases the obligation of a successor state to make good on damages.<sup>123</sup> There are benefits for both victims and perpetrators, as justice helps to correct the historic imbalance and allows states to restore some of the moral capital lost through past violations.<sup>124</sup>

The question of time is particularly germane when dealing with land seizure and highlights the tension between providing idealized justice to the original victims and avoiding creating new victims.<sup>125</sup> As the philosopher Jeremy Waldron points out, returning land to original owners after a significant period of time has passed would involve a series of new injustices. The current owners, while profiting from the original crime, were not necessarily involved in the decision-making. Removing their land would cause new feelings of pain and

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<sup>122</sup> Teitel, 139 – 140.

<sup>123</sup> Teitel, 142.

<sup>124</sup> Teitel, 139 – 140.

<sup>125</sup> Teitel, 139.

loss.<sup>126</sup> In the Palestinian case, the necessity of displacing new residents of formerly Palestinian lands has often been cited as one of the reasons “return” would be impossible.

While the passage of time increases the acceptability of symbolic acts of reparations,<sup>127</sup> there are also important and realistic possibilities for return to Israel. In 1998, according to demographic analysis by Dr. Salman Abu Sitta, 78% of the Jewish population lived in 15% of Israel. Put another way, Israel’s population is concentrated in and around pre-1948 Jewish land, namely a few large cities. The vast majority of remaining land is left empty, dedicated to national parks or used by a small percentage of rural Jews. This remaining 85% of the land is largely the area left by Palestinian refugees in 1948.<sup>128</sup> According to the CIA World Fact Book, 92% of the Israeli population resided in urban centers in 2008.<sup>129</sup> If return were allowed, Palestinians would largely be moving back to this open, mostly uninhabited, agricultural land.<sup>130</sup> While displacing new residents of abandoned land to facilitate return raises philosophical questions as to the burden of guilt for beneficiaries, in the Palestinian case, there are many likely cases where return would not necessarily include new displacement.

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<sup>126</sup> Minow, 108-110, quoting philosopher Jeremy Waldron; Teitel, 139-140.

<sup>127</sup> Minow advocates that in the case of a society that has benefitted from the illegal seizure of lands from indigenous people, a tax be spread across the entire society. The tax would be meant to spread the burden more fairly and force the landowners to acknowledge that they are benefitting from areas illegally seized; Minow, 1081 Teitel, 140.

<sup>128</sup> Dr. Salman Abu Sitta, *Palestine Right Of Return, Sacred, Legal, and Possible*, Palestine Return Center, London (1999), Accessed on 26 January 2011. <http://www.plands.org/books/book%2002-b.html>

<sup>129</sup> *People of Israel*, CIA World Fact Book, Accessed on 26 January 2011. <https://www.cia.gov/library/publications/the-world-factbook/geos/is.html>

<sup>130</sup> This theme came up repeatedly in my interviews, with refugees remarking on the insult that they could not return when their towns were now just “parks.” In one particularly powerful moment, a Palestinian refugee took us around his old village, pointing out among the trees where his house had been, where his uncle had lived, where he had played and from where he had fled.

While the third concern, that reparations represent an “end of claims,” will be more fully explored in Chapter 4, I will touch upon it here. There is a fear that once reparations are paid, the actions of the past will no longer be discussed.<sup>131</sup> An important distinction must be made between individual and collective justice. When mass violations have occurred to individuals because of their membership in a group, two entities have been wronged – the individual and the group.<sup>132</sup> Both entities deserve a distinct form of justice. Individual justice refers to ways in which to restore the individual’s place as subject through material and moral repairs. Each individual victim has dealt with a specific crime and is due individual redress.<sup>133</sup> Collective justice refers to the wrong that was committed against the larger group. The collective psyche, similar to the individual psyche, requires a justice that restores the injured group’s equality with the perpetrator group.

There is a troubling tendency to homogenize victims and forget that, despite their status as “victim,” they remain individual human beings.<sup>134</sup> The images of justice will vary significantly for each individual – some will argue for retribution, for trials, for accountability. Others will forgive, simply ask for truth and be prepared to move on. Some may focus on financial redress and others psychological healing. These various wishes must each be respected and considered.<sup>135</sup> Attempting to establish a “just solution” for a group without taking

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<sup>131</sup> Minow, 93.

<sup>132</sup> Teitel, 127 – 128.

<sup>133</sup> Teitel, 127 -128, 146 – 147.

<sup>134</sup> Minow, 20

<sup>135</sup> Minow, 4.

into account the diverse individuals that comprise that group is also a failure of justice.<sup>136</sup> It continues to objectify victims and ignore their individual agency. The forms and methods of repair necessary in collective justice are distinct from those used in individual justice. Individual justice is the focus of this thesis.

Reparations could represent an end of claims on behalf of the individual, but they by no means represent an end of claims on behalf of the collective. In fact, providing individual justice can be an important first step in the quest for communal justice. Empowered through individual justice, victims have the potential to become stronger advocates for the larger group. In addition, through reparations, the regime that pays is offering “a primary symbol of discontinuity with the past.” Payment of redress is a signal that a society acknowledges the wrong that occurred and is ready to move past it.<sup>137</sup> This can build trust and signal a willingness on behalf of both parties to come to a solution.

Successful reparations schemes in the past have dealt with the incredibly challenging questions of payment, time elapsed and the end of claims and still played important functions in healing and reconciliation. The most sweeping reparations package to date was paid by Germany to victims of the Holocaust. Tens of billions of dollars of individual and communal redress has been provided over the past sixty years to victims represented by civil society organizations and to the new state of Israel.<sup>138</sup> Germany was not under any well-defined

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<sup>136</sup> Minow, 17 – 20, 24.

<sup>137</sup> Teitel, 147.

<sup>138</sup> Teitel, 122 – 123; Hayner, 180; See Christian Pross, Paying for the Past: The Struggle over Reparations for Surviving Victims of the Nazi Terror (Trans. Belinda Cooper, Johns Hopkins University Press: Baltimore, 1998), for a full account of the Nazi reparations program. The program is also covered at length in Neil Kritz’s Transitional Justice.

international legal obligation to pay these reparations, but believed they would help restore some of the state's moral capital and bring credibility in the eyes of the international community. While victim' groups recognized that monies received were not erasing the wrongs that had occurred, many saw it as an economic necessity, particularly for refugees who were resettling to Israel.<sup>139</sup>

The German example helped spur the international movement for the provision of reparations for mass violations of human rights and provides a precedent on successorship of victims' rights, or the continued payment of reparations to victims' heirs, even after a victim has passed away.<sup>140</sup> Other reparations programs have been implemented across the globe and have helped, at least in part, to begin the process of healing.<sup>141</sup> The question, then, is not whether reparations hold promise for refugees, in particular Palestinians, but rather how to implement and achieve them. There remain significant hurdles for refugees wishing to access justice.

### ***Loss of access to justice in the absence of a state***

According to the *Basic Principles on the Right to a Remedy*, justice is meant to be sought through an individual's state. The *Basic Principles* ask states to disseminate information about available remedies and to provide all means of assistance to victims seeking access to justice.<sup>142</sup> Reparations are also supposed to

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<sup>139</sup> Teitel, 124.

<sup>140</sup> When possible, reparations went to heirs, but when entire villages had been wiped out, reparations were also paid to special victim representative bodies; Teitel, 143.

<sup>141</sup> For example, it took four decades, but the US government eventually paid reparations to victims of the Japanese internment during World War II who were still living and Brazil implemented a program whereby the families of around 135 disappeared people received USD 100,000 each; Hayner, 180.

<sup>142</sup> *UN Basic Principles on the Right to a Remedy*, p. 12.

be delivered through the state, either as payment for harm suffered at the hands of the state or in the interim period when the true perpetrator can be identified and held accountable. The *Basic Principles* recommend the setting up of national programs for reparation and assistance to victims and that states ensure that domestic legislation is in line with international norms and that judgments mandating reparations payments are enforced.<sup>143</sup>

Refugees are unable to benefit from these actions. While they fall under the category of victims of gross violations of human rights as discussed above, they are unable to achieve any of the rights to redress outlined in the *Basic Principles* because they lack a nationality. Yet, citizenship is never stated as a necessary condition for reparations or recourse to justice.<sup>144</sup> According to the *Basic Principles*, this leaves refugees with rights but without any means of implementing them.<sup>145</sup> The two humanitarian agencies that provide for refugees – UNHCR and UNRWA – are uniquely placed to advocate for justice for refugees and to help refugees access fora to make their claims heard. Specifically, UNHCR and UNRWA have a duty to further establish the linkages between IRL, IHRL and IHL, and to ensure that refugees are provided the rights due to them as both refugees *and* as individuals. In international parlance, the term for this is “protection.”

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<sup>143</sup> *UN Basic Principles on the Right to a Remedy*, p. 15 -18.

<sup>144</sup> *UN Basic Principles on the Right to a Remedy*.

<sup>145</sup> *UN Basic Principles on the Right to a Remedy*, Preamble.

### *The meaning of “protection”*

The Responsibility to Protect doctrine (R2P) states that the international community has a duty to intervene to protect individuals whose states are unwilling or unable to protect them from the most egregious crimes under international law, including genocide, ethnic cleansing, war crimes and crimes against humanity.<sup>146</sup> According to the definition given above, refugees require protection, as they are victims of forced displacement and lack national protection.<sup>147</sup>

In addition, R2P emphasizes the need to prevent conflict. The international community has perceived a link between the forced movement of peoples, the attendant human rights violations and instability.<sup>148</sup> Refugees are often seen as a threat to international peace and security.<sup>149</sup> The most recent report of UN Secretary-General Ban Ki-Moon on R2P states that mainstreaming the protection of refugees and the internally displaced into the priorities of UN agencies would help further the R2P doctrine.<sup>150</sup> In the humanitarian field, protection refers to “all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and spirit of the relevant bodies of law.”<sup>151</sup> The

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<sup>146</sup> *Implementing the Responsibility to Protect, Report of the Secretary-General to the General Assembly*, UN General Assembly (A/63/677), 12 January 2009, p. 1; Rimmer, *Refugees and the “responsibility to protect,”* 1; As stated previously, according to international law, forced displacement is a crime against humanity and a war crime.

<sup>147</sup> Nicholas Morris, *What protection means for UNRWA in concept and practice*, UNRWA Consultant’s Report, 31 March 2008, 2.

<sup>148</sup> Rimmer, *Refugees and the “responsibility to protect,”* 7.

<sup>149</sup> Rimmer, *Refugees and the “responsibility to protect,”* 2 - 3.

<sup>150</sup> Rimmer, *Refugees and the “responsibility to protect,”* 7.

<sup>151</sup> This definition was most recently enunciated by the Inter-Agency Standing Committee, which brings together a broad range of UN and non-UN humanitarian actors. The definition has been developed since the 1990s in workshops led by the International Red Cross. It is currently the



exclusion of Palestinian refugees from the 1951 Convention was meant to afford them a heightened protection regime, but this system faltered over the years and has left them without effective international legal protection through UNRWA or otherwise.<sup>152</sup> I look at the history of this protection failure in the next chapter.

### Conclusion

Some argue that providing closure through justice is an impossible ideal. According to Kirsten Campbell, “justice remains the event yet to come.”<sup>153</sup> However, the many mechanisms developed to deliver justice share one thing in common: “they depart from doing nothing.”<sup>154</sup> As Martha Minow writes, “Dwelling in the frozen space of inability and incapacity is unacceptable, unresponsive to victims, unavailing to the waiting future.”<sup>155</sup> No response will be adequate, but inaction would mean that perpetrators prevailed in paralyzing justice.<sup>156</sup>

The current designation of an individual as a “refugee” maintains, rather than dispels, their status as victim and object. Under the R2P doctrine, the burden lies upon the international community, particularly UNHCR and UNRWA, to ensure that justice is delivered to refugees. The international community must re-think its approach to refugees, including opening avenues for legal redress for the crimes that made them refugees in the first place. Protection, after all, does not mean merely enabling individuals to live a “bare life,” waiting for a solution until

most widely accepted definition of protection within the international humanitarian community; Bartholomeusz, 466.

<sup>152</sup> Akram, *Palestinian Refugee Rights: Part One — Failure Under International Law*.

<sup>153</sup> Weinstein, 37, quoting Kirsten Campbell(2001), 6.

<sup>154</sup> Minow, 4.

<sup>155</sup> Minow, 4

<sup>156</sup> Minow, 5.

they can live a better future. Protection means developing and providing for a person as a human being in the here and now. It means ensuring that their rights, under any body of law, including their right to justice, are met, guaranteed and can be implemented. Refugees are as entitled to this fulfillment as any citizen.

Reparations are only one form of victim-centric justice. I consider them the most promising in the Palestinian context. For despite the difficulties, individual reparations could offer a chance for settlement to those refugees who choose them, instead of remaining stuck – physically and figuratively – in camps and towns awaiting decisions to be made for them regarding a solution.

## Chapter 2: International efforts towards justice

*“Compensation to refugees of the Palestine conflict has always been envisaged by the UN as an integral part of the solution of the refugee question.”<sup>157</sup>*

Over the past sixty years, the UN has played a central role in the lives of Palestinian refugees. In this chapter, I examine three aspects of the UN’s failure to bring justice to Palestinian refugees, particularly their undermining of the refugee as an individual subject, as a political subject, and as a victim with the right to full reparations. In other words, the UN has not recognized the diversity of desires among the refugees, has neglected the right of the individual to participate in determinations on their future, and has defined justice too narrowly, focusing on material concerns rather than moral ones. Despite plans to the contrary, the UN has not provided Palestinians with the “protection” due to them.

These failures are seen most clearly in the early negotiations led by the UNCCP, a body consisting of three member-states, later named as France, Turkey and the United States, between the Arab states and Israel in the interest of reaching a final peace settlement.<sup>158</sup> The rights of the Palestinian refugees as individuals were gradually abrogated as the UNCCP, or “the commission,” began to focus more fully on achieving reconciliation among the concerned states, rather than protecting the rights of individual Palestinians who had been displaced.

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<sup>157</sup> *Historical Survey of Efforts*, p. 4.

<sup>158</sup> UN General Assembly Resolution 194 (III), 11 December 1948.

The refugees' rights were more fully undermined when the UNCCP declared it could no longer fulfill its mandate and left care of the refugees to UNRWA alone. UNRWA was focused explicitly on humanitarian assistance, rather than on the broader questions of delivering justice, achieving long-term solutions or protecting the political rights of the refugees to inclusion in discussions concerning their future. Finally, throughout negotiations, the refugees' right to justice was interpreted narrowly by the UNCCP, and by the larger UN system, with the debate predominantly focusing on property rights and compensation while ignoring questions of acknowledgment for the suffering caused by the refugees' displacement. In the remainder of this chapter, I provide a historical overview of the early attempts of the UN to play a role in providing justice to Palestinian refugees and their eventual failure to deliver adequate protection.

### Resolution 194 (III)

#### *Adoption*

On 20 May 1948, in an attempt to stem the violence following the Partition Plan for Palestine and the Israeli declaration of independence, the UN appointed Count Folke Bernadotte as UN Mediator in Palestine.<sup>159</sup> Bernadotte had much to say about the Palestine refugees in his initial reports. He argued that the UN had a role to play in guaranteeing them justice by protecting their right to choose their fate, through asserting Israel's liability and by helping facilitate reparations payments. He emphasized the refugees' "*unconditional* right to make

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<sup>159</sup> *Historical Survey of Efforts*, p. 16.

a free choice on whether to return to their homes or to be compensated for property lost.”<sup>160</sup> He believed, “It would be an offence against the principles of elemental justice if these innocent victims of the conflict were denied the right to return to their homes”<sup>161</sup> and declared that “the liability of the Provisional Government of Israel to restore private property to its Arab owners and to indemnify those owners for property wantonly destroyed is clear,” irrespective of any claim it might make against the Arab States for war damages.<sup>162</sup> Finally, Bernadotte argued that simple compensation was not enough, but that assistance with economic and social rehabilitation must be provided in order to account for the disturbance the hostilities and flight had caused in the refugees’ lives.<sup>163</sup>

Based on these and other recommendations, the GA adopted resolution 194 (III) on 11 December 1948.<sup>164</sup> The resolution established the UNCCP, asking the commission to assume the functions of the UN Mediator in Palestine and to help facilitate negotiations between the parties in the interest of reaching a final settlement.<sup>165</sup> The commission was given quite specific instructions on the question of refugees in paragraph 11 of resolution 194.<sup>166</sup> The paragraph stated:

“[The GA] *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

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<sup>160</sup> *Historical Survey of Efforts*, p. 16; *Progress Report of the UN Mediator on Palestine*, General Assembly, Official Records: Third Session, Supplement No. 11 (A/648), 16 September 1948, Paris, Section V, p. 8.

<sup>161</sup> *Progress Report of the UN Mediator on Palestine*, Section V, pp 6.

<sup>162</sup> *Progress Report of the UN Mediator on Palestine*, Section V, pp 7 [Emphasis added].

<sup>163</sup> *Progress Report of the UN Mediator on Palestine*, Part Three: Assistance to Refugees, p. 7.

<sup>164</sup> UN General Assembly Resolution 194 (III), 11 December 1948.

<sup>165</sup> UN General Assembly Resolution 194 (III), 11 December 1948.

<sup>166</sup> UN General Assembly Resolution 194 (III), 11 December 1948.

property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible.”

The commission was mandated “to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation.” They were also asked to “maintain close relations with the Director of the UN Relief for Palestine Refugees (URPR),” a pre-cursor to UNRWA.<sup>167</sup> While the URPR addressed the daily need of the refugees, the UNCCP was to find a political solution. The agencies were meant to work in concert, providing complementary, yet equally necessary, forms of protection to the refugees. As will be shown in the last section of this chapter however, this goal has not been realized.

### ***Major Contentions***

Paragraph 11 of resolution 194 is most often referred to as the basis of the Palestinian refugees’ right of return, the belief that the international community has pledged that one day the refugees will be able to move back to their ancestral homes.<sup>168</sup> The paragraph has taken on a central role in the debate on just solutions for the refugees. Two main areas of contention generally arise in discussions on both the state and individual level, focusing on the refugee’s right to choose whether to return or not and the exact meaning of compensation.

The paragraph states that those refugees wishing to return and to live at peace with their neighbors should be permitted to do so. Upon first read, this clause seems to state that it is up to the individual to determine whether or not

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<sup>167</sup> UN General Assembly Resolution 194 (III), 11 December 1948.

<sup>168</sup> Paul McAnn, *The Role of UNRWA and the Palestine Refugees*, Palestine-Israel Journal of Politics, Economics and Culture, Vol. 15, No. 4 (2009), 83 – 89.

they wish to return. The Arab states and Palestinians have historically read the text this way, asserting that refugees have an unconditional right to choose. Israel claims, however, that the statement places a condition on the refugees' right to return, specifically on their willingness to live at peace with their neighbors. The debate continues today.

Second are questions regarding the meaning of compensation - to whom will it be paid and for how much? The debate tends to focus on whether the paragraph offers return and compensation or return or compensation. In the early debates in the GA and within the UNCCP, it soon became clear that the international community was favoring an "or" reading of the text. According to the UNCCP's logic, while the refugees remained outside the borders of Israel, compensation for property lost remained an international issue that could fall under the commission's purview. Once the refugees returned, their property claims would have to go through the relevant state authorities. The issue would be between the new Israeli citizen and the Israeli government.<sup>169</sup> The "or" reading of the text remains largely dominant in the international arena today, while the "and" reading remains prevalent among refugee communities and advocates.

While there has been much debate on the international level regarding these questions, there has been little discussion about justice options beyond return or compensation. This is largely due to the immense weight placed on

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<sup>169</sup> *The Compensation Question*, Dossier Prepared by the UN Secretariat at the request of the United Nations Conciliation Commission for Palestine (A/AC.25/W.80), 8 March 1955, 16 – 17; For a further elucidation of the commission's logic, please see the aforementioned document or *Compensation to Refugees for Loss of Or Damage to Property to be Made Good Under Principles of International Law or in Equity: Annex II to A/AC.25/W/81/Rev.2 of 2 October 1961*, UN Working Paper prepared by the Secretariat in October 1949.

resolution 194. Rather than drawing off broader international law and its guarantees of rights for victims of human rights violations, the debate has centered around the idea that “justice” for Palestinian refugees can and must be based on resolution 194. Below, I outline the UNCCP’s numerous attempts to find a solution based on this single and contentious resolution.

### Providing immediate relief and exchanging initial views

#### ***Establishing UNRWA***

On 23 August 1949, the UNCCP established the Economic Survey Mission (ESM). The ESM was asked to ascertain the facts on the ground, verify the number of refugees, examine the economic situation in the affected countries, recommend a program to overcome the economic dislocation created by the recent hostilities and to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees, as well as the payment of compensation.<sup>170</sup> When the ESM returned from the region, it noted that some 726,000 Palestinians had been displaced from their homes and were facing extreme hardship. The ESM recommended the establishment of an organization to replace the URPR that would address the refugees’ immediate needs.<sup>171</sup>

On 8 December 1949, the GA responded to these recommendations and established UNRWA. The agency, asked to deal with the relief, resettlement and rehabilitation of the refugees, was given a slightly wider purview than the old

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<sup>170</sup> *Fourth Progress Report of the UN Conciliation Commission for Palestine* (for the period 9 June to 15 September 1949 inclusive) (A/992), 22 September 1949, Section C, p. 28; Annex 1: Terms of Reference of the Economic Survey Mission, *Fourth Progress Report of the UN Conciliation Commission for Palestine* (for the period 9 June to 15 September 1949 inclusive) (A/992), 22 September 1949.

<sup>171</sup> McAnn, 83 – 89.



URPR, but was still meant to work in concert with the UNCCP, offering immediate assistance while the UNCCP searched for long-term solutions.<sup>172</sup> As UNRWA began to provide relief to the refugees, the UNCCP began to focus more fully on attempting to bring the parties to the conflict – on the one side Israel and on the other side the Arab states<sup>173</sup> – to the table for meaningful discussions. The refugee question quickly took the lead in terms of urgency and difficulty of resolution.

### *Exchanging views on initial positions in Tel Aviv and Beirut*

The commission began dealing with two mutually opposed positions. The Arab states argued that Israel must accept, as the condition sine qua non for discussions, the right of refugees to return to their homes as expressed in resolution 194.<sup>174</sup> Israel was unwilling to accept this injunction and was further unprepared to negotiate on any point, including that of refugees, separately and outside the framework of a general settlement.<sup>175</sup> In an effort to bridge this impasse, the UNCCP held a series of separate talks in Beirut and Tel Aviv between March and April 1949.<sup>176</sup>

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<sup>172</sup> *Assistance to Palestine Refugee*, UN General Assembly Resolution 302 (IV) (A/RES/302 (IV)), 8 December 1949; *Relation between the Conciliation Commission and UNRWA*, Analysis of Relevant Texts of Assembly Resolutions, Working Paper Prepared by the UN Secretariat (W.57), 20 January 20, 1951, 3.

<sup>173</sup> The principal Arab states included Egypt, Jordan, Lebanon and Syria. As a group they were often considered one party to the conflict, as they had fought together against Israel during the war and usually, but not always, held the same position during negotiations. When I use the terms “the parties to the conflict” or “both parties,” I am referring to Israel on the one side, and the Arab states on the other.

<sup>174</sup> *Second Progress Report of the UN Conciliation Commission for Palestine* (A/838), 19 April 1949, p. 13.

<sup>175</sup> *Second Progress Report*, p. 8.

<sup>176</sup> *Second Progress Report*, p. 8.

In these initial talks, it was the UNCCP that was most committed to representing the concerns of the individual refugee. While Israel and the Arab states tended to embrace solutions based either on return or resettlement, the commission emphasized the diversity of desires that would likely appear among the refugees. In the case of return, the UNCCP believed the refugees “must be fully informed of the conditions under which they are to return; in particular, of the obligations they might incur as well as of the rights that would be guaranteed to them.”<sup>177</sup> For those choosing not to return, the Commission asked the Arab states to consider resettlement. While in Beirut, the UNCCP also met with representatives of committees of the refugees. In their progress reports to the GA, the commission noted that more consultations such as these would be required in the future to determine who preferred to return to Israel and who would rather be resettled. The commission believed this determination would “probably be the most delicate and difficult task of all.”<sup>178</sup>

The governments involved had other considerations in mind. In Tel Aviv, David Ben Gurion, the Prime Minister of Israel in 1949, called attention to the condition in paragraph 11 that refugees who wished to return to their homes must be prepared to “live in peace with their neighbours.” In his view, this meant that return was contingent on the establishment of peace. He made clear that Israel considered the real solution to be in resettlement to the Arab states, but did not exclude the possibility of repatriation of a limited number of refugees.<sup>179</sup> In

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<sup>177</sup> *Second Progress Report*, p. 10.

<sup>178</sup> *Second Progress Report*, p. 14.

<sup>179</sup> *Second Progress Report*, part II.

Beirut, the Arab states called the commission's attention to steps Israel had taken that created a de facto situation in which application of the principle of return would be difficult, if not impossible. They pointed to the absence of security for Arabs in areas under Israeli control and the measures taken by the Israeli government to block the bank accounts of refugees and to liquidate their real and personal property.<sup>180</sup>

Some progress was made, however. While the Arab states were unanimous in declaring their belief that the refugee question should be given absolute priority for humanitarian and political reasons, they relinquished their insistence that it be dealt with prior to the opening of any discussions with Israel.<sup>181</sup> This concession allowed the UNCCP to begin formulating plans to gather the various delegations in one neutral city.

#### Assessing the parties' positions and the situation on the ground

##### ***Shuttle diplomacy in Lausanne***

The UNCCP chose Lausanne, Switzerland to hold further talks, meeting separately with the delegations of the Arab states and Israel beginning on 27 April 1949.<sup>182</sup> The Commission also continued to hold meetings with representatives of the refugees, including members of the Congress of Refugees of Ramallah and of the Jaffa and District Inhabitants Committee.<sup>183</sup> In order to establish a baseline for discussions, the UNCCP submitted a statement to both Israel and the Arab states,

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<sup>180</sup> *Second Progress Report*, p. 26.

<sup>181</sup> *Second Progress Report*, p. 5.

<sup>182</sup> *Third Progress Report of the UN Conciliation Commission for Palestine* (for the period from 9 April to 8 June 1949) (A/927), 14 June 1949, p. 1.

<sup>183</sup> *Third Progress Report*, p. 12.

which became known as the Protocol of 12 May 1949. The document referenced respect for the refugees' rights and the preservation of their property and attached a map of Palestine showing the territory attributed to the Arab and Jewish states by the 1947 UN Partition Plan.<sup>184</sup>

The Arab states and Israel signed the protocol. They then worked from the map to make specific proposals. Both the Arab states and Israel tied the receipt of added territory from the other party to their willingness to accept refugees. The Israeli government declared itself willing to accept the Arab inhabitants of Gaza as citizens of Israel, including the refugees living there, if the territory was given to Israel. This acceptance would be further contingent upon the receipt of international aid for refugee resettlement.<sup>185</sup> The Arabs states declared that refugees uprooted from land meant to be Arab according to the Partition Plan, but currently under Israeli control, should be able to return immediately and that this land should be turned over to the Arab states.<sup>186</sup> Neither delegation accepted the other's proposal.

On 28 July, during the second phase of discussions, Israel communicated that it would be willing to discuss the refugee question first.<sup>187</sup> On 3 August, Israel said it would be prepared to work towards solving the refugee problem provided "considerations affecting the security and the economy of the State" were taken into account.<sup>188</sup> Israel proposed the repatriation of about 100,000

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<sup>184</sup> *Third Progress Report*, Annex A: Protocol of 12 May 1949.

<sup>185</sup> *Third Progress Report*, p. 16.

<sup>186</sup> The areas included Western Galilee, the area of Lydda, Ramle and Beersheba, Jaffa, Jerusalem and the coast line north of Gaza; *Third Progress Report*, p. 17.

<sup>187</sup> *Fourth Progress Report*, p. 7.

<sup>188</sup> *Fourth Progress Report*, p. 9.

refugees in addition to the Arab population existing within the State at the end of the hostilities, including refugees who had already returned. This would increase the Arab population in Israel to a maximum of 250,000. The Israeli delegate explained that the returning refugees would be settled in areas where “they would not come in contact with possible enemies of Israel” and that Israel would resettle them in specific locations “in order to ensure that their reinstallation would fit into the general plan of Israel’s economic development.”<sup>189</sup>

The commission considered these proposals unsatisfactory, and chose to forgo including them in the official exchange of views but to communicate them unofficially to the Arab states. The Arab states said the proposals were contrary to the principles found in resolution 194 and the Protocol of 12 May 1949. They most hotly contested the idea that settlement of the refugees would be made conditional on economic and strategic considerations.<sup>190</sup> Yet, on 15 August 1949, the Arab states called for “compensation in kind” for the refugees who might not return and suggested that this “indemnification” take the form of territorial compensations for states that accepted refugees.<sup>191</sup> While the Arab states were generally more vocal in calling for justice for the refugees, the linking of states’ interests to solutions was increasing on both sides during the ongoing diplomatic tête-à-tête between the Arab states and Israel.

In an effort to break the continuing impasse, the UNCCP asked the delegations to sign a declaration that stated that the solution of the refugee

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<sup>189</sup> *Fourth Progress Report*, p. 9.

<sup>190</sup> *Fourth Progress Report*, p. 10.

<sup>191</sup> *Fourth Progress Report*, p. 10.

question “should be sought in the repatriation of refugees in Israeli-controlled territory, and in the resettlement of those not repatriated in Arab countries or in the zone of Palestine not under Israeli control.” Repatriation and resettlement would be accompanied by technical and financial aid from the international community. The commission also asked the governments involved to provide an estimate of the number of refugees they would be ready to accept and informed them that it hoped to send an economic survey mission to the region to establish the facts on the ground, including the number of refugees, their locations, needs and the possibility of beginning large-scale public works projects in the region.<sup>192</sup>

In their responses, both Israel and the Arab states reiterated their earlier positions. Jordan and Syria, however, expressed for the first time that they would be able to receive, “in conjunction with the recommendations of the Economic Mission, such refugees as might not return to their homes.” The UNCCP took this as a positive sign that Jordan and Syria were open to the possibility of at least some resettlement of refugees within their borders. Egypt and Lebanon said it would be difficult to contemplate resettlement of refugees in their territories, drawing attention to their already densely populated states and lack of available arable land. They did declare, however, that with border adjustments and technical and financial international aid, they would be willing to study the question again.<sup>193</sup> Israel stated it would only sign such a declaration if it were made more precise, saying, “the solution of the refugee problem was to be sought

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<sup>192</sup> *Fourth Progress Report*, p. 11; *Fourth Progress Report*, Annex I: Terms of Reference of the Economic Survey Mission.

<sup>193</sup> *Fourth Progress Report*, p. 12 -16.

primarily in resettlement in Arab territories...and that international financial assistance...should also extend to the resettlement of Jewish refugees from Arab-controlled areas of Palestine.”<sup>194</sup> After receiving these responses, the UNCCP informed Israel and the Arab states that it would await the conclusions of the economic mission before offering its own suggestions on the refugee problem.<sup>195</sup> The mission had departed for Beirut, where it would establish its headquarters in 1949.<sup>196</sup>

### *The “technical” question of compensation*

While the macro negotiations between the states focused largely on the refugees’ right of return, the commission had not forgotten the need to preserve their properties. In Lausanne, the UNCCP had created a general committee that examined, with the Arab states and Israel, some of the more micro questions regarding refugees’ properties. The Arab states and Israel had not been able to come to agreements on even these smaller issues.<sup>197</sup> This failure, in addition to the failure to produce direct negotiations, worried the GA.

In order to spur the parties and the UNCCP towards further progress, the Assembly passed resolution 394 (V) on 14 December 1950.<sup>198</sup> The resolution

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<sup>194</sup> *Fourth Progress Report*, p. 17-18; A number of the Arab states, including Mandate Palestine, were home to Jewish communities prior to 1948. After the end of hostilities between the Arab states and Israel, the areas that are now the West Bank and Gaza Strip fell under Jordanian and Egyptian control, respectively. A number of Jews that had lived in these areas prior to the war moved into what became the state of Israel. It is likely that a number of these Jews may have been considered refugees. In the case of Jews who were forcibly displaced during the war, justice would also be necessary and the international community would have a role in providing this justice; Fischbach, *Records of Dispossession*, 164 – 187.

<sup>195</sup> *Fourth Progress Report*, p. 19.

<sup>196</sup> *Fourth Progress Report*, p. 19.

<sup>197</sup> *Fourth Progress Report*, p. 21 -27.

<sup>198</sup> *United Nations Relief and Works Agency for Palestine Refugees in the Near East*, UN General Assembly Resolution 394 (V), A/RES/394 (V), 14 December 1950.

noted the urgency of the refugee question, again asked the governments to seek an agreement and directed the commission to establish a Refugee Office in the interim. This office was asked to “make such arrangements as it may consider necessary for the assessment and payment of compensation,”<sup>199</sup> to work to implement the “other objectives of paragraph 11” and to continue consultations with the parties “regarding measures for the protection of the rights, property and interests of the refugees.”<sup>200</sup> As the parties were unwilling to take action, the UN decided to provide the UNCCP with broader powers and a more specific mandate regarding the protection necessary for the refugees.

The Refugee Office was completed on 22 May 1951 and set up in Jerusalem. Upon the arrival of the director, Mr. Holger Andersen, the office (including a legal expert, economic expert and land specialist) began to hold discussions with the five concerned governments, as well as representatives of the refugees and various experts on Arab property and assets. Following these consultations, the office began to formulate practical proposals for the solution of the refugee question.<sup>201</sup> They submitted these findings to the UNCCP, including

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<sup>199</sup> At the time, various ideas were floated as to the source of compensation. Some argued that Israel should be held fully liable, but it was generally assumed that some sort of international mechanism would be set-up to facilitate payment, accepting voluntary donations from the international community. The UNCCP suggested that individual payments be made through a UN trustee, as Israel would only be able to pay its full debt over a protracted number of years, and this would be useless to the refugees; *Progress Report of the UN Conciliation Commission for Palestine (for the period from 23 January to 19 November 1951)*, General Assembly Official Records: Sixth Session, Supplement No. 18 (A/1985), 20 November 1951, Paris, p. 41 – 42.

<sup>200</sup> UN General Assembly Resolution 394 (V), 14 December 1950.

<sup>201</sup> *UNCCP Progress Report (for the period from 23 January to 19 November 1951)*, p.8.



an extensive valuation project and a global figure on the amount owed in total to the Arab refugees in terms of compensation.<sup>202</sup>

On the basis of the Refugee Office's findings, the UNCCP decided to invite the Arab states and Israel to a conference in Paris beginning on 10 September 1951, stating that it had made significant technical progress on the refugee question and was prepared to offer concrete proposals to the parties.<sup>203</sup> All of the governments accepted the invitation. The conference, held between September and November 1951, was to be the commission's final and most serious attempt to facilitate an agreement between the parties.<sup>204</sup>

#### 1951 Paris Conference

##### ***Proposals based on "fairness and realism"***

At the initial meetings, the commission emphasized to the parties that it had kept two primary considerations in mind when formulating its proposals: fairness and realism. Considerations of justice were noticeably absent. In an effort to break the stalemate, the UNCCP had worked to incorporate the governments' views, the dictates of the GA, and the political, social and economic realities of the dispute. For the UNCCP, the Palestine question could only be solved in a "fair and realistic spirit of give-and-take," with the issues considered holistically.<sup>205</sup> Based on these considerations, the commission presented a set of five proposals to the

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<sup>202</sup> UNCCP Progress Report (for the period from 23 January to 19 November 1951), p. 8; For a full examination of the "technical" question of the refugees' abandoned land, including methods of identification and valuation, see Sami Hadawi's Palestinian Rights and Losses in 1948: A Comprehensive Study (Saqi Books: London, 1988).

<sup>203</sup> UNCCP Progress Report (for the period from 23 January to 19 November 1951), p. 10, 13.

<sup>204</sup> UNCCP Progress Report (for the period from 23 January to 19 November 1951), p. 14.

<sup>205</sup> UNCCP Progress Report (for the period from 23 January to 19 November 1951), p. 17-22.

parties which they believed comprised a balanced whole.<sup>206</sup> The UNCCP suggested:

1. The mutual cancellation of war claims;
2. That Israel “agree to the repatriation of a specified number of Arab refugees in categories which can be integrated-into the economy of the State of Israel and who wish to return and live in peace with their neighbours;”
3. That Israel accept the obligation to pay compensation for property abandoned by the refugees not repatriated, based upon an evaluation arrived at by the Refugee Office. A payment plan, “taking into consideration the Government of Israel’s ability to pay,” would be set up by a UN trustee, who would then handle the payment of individual claims;
4. That the concerned governments agree to mutually release all blocked bank accounts; and
5. That the existing armistice agreements be revised.<sup>207</sup>

The UNCCP explained the logic behind these proposals to the parties. The commission advocated the mutual cancellation of war claims because it believed any attempt to go back to the origin of the conflict to determine the responsibility for the hostilities would be a step backwards. The UNCCP asked the parties to let go of demands for justice for the past in order to achieve peace in the present.<sup>208</sup> Neither Israel nor the Arab states was able to accept this forgetting of guilt. In their responses, both made lengthy statements about the other side’s responsibility for the conflict, and the subsequent need to hold them liable.<sup>209</sup>

Regarding a solution for the refugees, the UNCCP declared that any framework must take into account three consideration: the refugees’ choice, their

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<sup>206</sup> *UNCCP Progress Report (for the period from 23 January to 19 November 1951)*, p. 23 – 25.

<sup>207</sup> For more information, see: *Comprehensive Proposals submitted by the Conciliation Commission to the Delegation of Israel and to the Delegations of Egypt, Jordan, Lebanon and Syria (A/AC.25/IS.68)*, 17 September 1951.

<sup>208</sup> *UNCCP Progress Report (for the period from 23 January to 19 November 1951)*, p. 26 – 27.

<sup>209</sup> Israel could not accept the mutual cancellation of war claims, believing the Arab States were the aggressors. The Arab States also opposed the cancellation, asserting the Mandatory Power, Jewish terrorists and the UN were responsible for the conflict; *UNCCP Progress Report (for the period from 23 January to 19 November 1951)*, p. 63, 69.

expressed intention to live at peace with their neighbors and the “possibilities of the integration of the returning refugees into the national life of Israel.”<sup>210</sup> The commission drew attention to the increasing difficulties presented to return by the passage of time and that the refugees must have “full knowledge” of the conditions of their return, including the obligations they would be under as citizens of Israel.<sup>211</sup> In addition, Israel must be given concrete figures to work with in order to integrate repatriating refugees into its economy. The state would be allowed to specify a certain number of refugees that could return and be able to settle the refugees outside of their original homes.<sup>212</sup> The UNCCP noted that, while their proposal might depart from the “strict letter” of resolution 194, a solution could only be found if both parties were willing to “make practical and realistic arrangements” that kept the “best interests of the refugees in mind.”<sup>213</sup> Yet, according to these proposals, the “best interests of the refugees” included further conditions to their right to justice and preferenced state concerns over individual claims.

While conditioning the right of return, the UNCCP made strong claims for refugee compensation. As noted earlier, in 1951 the Refugee Office had developed an estimate of the value of both the immovable and movable property abandoned by Arab refugees. They released these figures at the Paris Conference. In terms of immovable property, the Office estimated that Arab refugees had

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<sup>210</sup> *UNCCP Progress Report (for the period from 23 January to 19 November 1951)*, p. 33.

<sup>211</sup> They noted in particular the difficulties presented by the occupation of many of the refugees’ homes and the changes in the land that had occurred through development; *UNCCP Progress Report (for the period from 23 January to 19 November 1951)*, p. 30.

<sup>212</sup> *UNCCP Progress Report (for the period from 23 January to 19 November 1951)*, p. 32.

<sup>213</sup> *UNCCP Progress Report (for the period from 23 January to 19 November 1951)*, p. 34.

abandoned about 16,324 square kilometers of land.<sup>214</sup> The total value of the land was about 100 million Palestinian pounds (£P), equivalent to 100 million pounds sterling.<sup>215</sup> Movable property was harder to value, so the Refugee Office used three different methods, producing an estimate of about £P20,000,000.<sup>216</sup> In total, the global figure owed for the loss of property to Arab refugees was around £P120,000,000.<sup>217</sup> The commission declared that the total figure constituted a debt by the government of Israel to the refugees.<sup>218</sup> As a first step, they asked Israel to obligate itself to pay compensation to those refugees not repatriating. After securing this commitment, the UNCCP suggested that individual payments be made through a UN trustee, as Israel would only be able to pay its full debt over a protracted number of years, which would be of limited use to the refugees.<sup>219</sup>

The UNCCP further emphasized the need for the mutual and immediate release of blocked bank accounts in Israel and the Arab states. The commission

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<sup>214</sup> The office used the land's value on 29 November 1947, the date of the Partition and the last date when land prices were relatively stable, to produce their estimate; For more information, please see: *Evaluation of abandoned Arab property in Israel: Annex A to the Progress Report of the UN Conciliation Commission for Palestine (for the period from 23 January to 19 November 1951)*, GA Official Records: Sixth Session, Supplement No. 18, A/1985, 20 November 1951, Paris.

<sup>215</sup> *UNCCP Progress Report (for the period from 23 January to 19 November 1951)*, p. 36.

<sup>216</sup> The three methods included using a percentage of the value of the abandoned Arab immovable property, applying percentages used at the time of the Turkish-Greek exchange of populations, which provided convenient parallels and using a percentage (40%) of the national income of the Arab population of Palestine under the British Mandate. The results of each of these methods approximated each other very closely; *UNCCP Progress Report (for the period from 23 January to 19 November 1951)*, p. 38 – 39.

<sup>217</sup> *UNCCP Progress Report (for the period from 23 January to 19 November 1951)*, p. 40.

<sup>218</sup> The UNCCP noted that the question of the estimated value of the proportion of movable property which the refugees were able to take with them and of the value of those categories of movable property which do not lend themselves to global evaluation remained subjects for further examination between the parties concerned; *UNCCP Progress Report (for the period from 23 January to 19 November 1951)*, p. 41.

<sup>219</sup> *UNCCP Progress Report (for the period from 23 January to 19 November 1951)*, p. 41 – 42.

noted that unfreezing these accounts would likely contribute substantially to the wellbeing of the refugees.<sup>220</sup> As the identity of the owners and the amounts of each account were readily available, the commission believed there was no reason to hold negotiations on the issue.<sup>221</sup> Only on the matter of these accounts was the UNCCP able to secure agreement for cooperation from both Israel and the Arab states.<sup>222</sup>

The commission's proposals and explanations in Paris demonstrate the gradual shift in the UN's focus. Although the UNCCP began by promoting the refugees' right to choose, they eventually responded to the intransigence of the states and attempted to base solutions on political concerns and practicality. Questions of justice were seen as an obstacle to peace. In contrast, the replies of Israel and the Arab states to these proposals kept the demands of justice central. Israel, however, conflated justice with reciprocity, tying the response to the specific crime of displacement with other global and historical demands. The Arab states responded strongly in favor of the rights of the individual refugee, but continued to interpret justice within the relatively narrow dictates of resolution 194.

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<sup>220</sup> *UNCCP Progress Report (for the period from 23 January to 19 November 1951)*, p. 43.

<sup>221</sup> *UNCCP Progress Report (for the period from 23 January to 19 November 1951)*, p. 44.

<sup>222</sup> By 1960, the UNCCP was notified by Israel that the unfreezing of all accounts had been completed or was in its final stages of progress; *The UN Conciliation Commission for Palestine*, p. 68; Appendix I to the UNCCP Progress Report (for the period from 23 January to 19 November 1951), *Comments of the Delegation of Israel Concerning the Questions Raised in the Statement Made By the Chairman of the Conciliation Commission on 26 October 1951*, Summary Record of a Meeting held on 14 December 1951, p. 4; Appendix II to the UNCCP Progress Report (for the period from 23 January to 19 November 1951), *Comments of the Arab Delegation Concerning the Questions Raised in the Statement Made By the Chairman of the Conciliation Commission on 24 October 1951*, Summary Record of a Meeting held on 14 December 1951, Point 3 of the Egyptian Delegate's reply.

### *Jewish refugees and flawed interpretations of justice*

The Israeli government moved in Paris to redefine justice as reciprocity, attempting to make any response to the Arab refugees dependent upon a response to the competing claims of Jews who had emigrated to Israel. Prior to 1948, a number of the Arab states, including Mandate Palestine, were home to several hundred thousand Jews. Generally, these communities were well off and integrated into local economies and societies. With the rise of Zionism, there was an increase in persecution of these communities, despite the fact that most were not involved in the Zionist movement and had been living in the Middle East for generations. Israel took on the role of “protector” of these Jews. As Jews from the Middle East began immigrating to Israel, some of their assets were frozen.<sup>223</sup> In the UNCCP-led talks in Lausanne, Israel argued it would only release the blocked Palestinian accounts if the Arab states released the frozen Jewish assets in equal proportion. The proposal failed, however, as the amount of the accounts frozen by the Arab states was too small for reciprocal action.<sup>224</sup> This was to foreshadow the arguments put forward in Paris.

In Paris, Israel continued to argue that an equal exchange of population and property had occurred. While Israel received Jewish immigrants and absorbed Palestinian property, the surrounding Arab states received Palestinians and absorbed Jewish property. Israel claimed that responsibility for the Palestinian refugees’ rehabilitation lay with the Arab states, as Israel had already made “a positive contribution” towards solving the problems of population movements

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<sup>223</sup> Fischbach, *Records of Dispossession*, 164 – 187.

<sup>224</sup> *The UN Conciliation Commission for Palestine*, p. 47.

caused by the Arab-Israel war by welcoming some 200,000 Jews from Middle Eastern countries.<sup>225</sup> While Israel re-affirmed in Paris that it was willing to pay compensation to the Arab refugees, it tied this payment to reciprocal gestures on the part of the Arab states. Specifically, Israel informed the commission that Iraq had enacted legislation calling for the seizure of property of Iraqi Jews immigrating to Israel, and that the value of this property would be taken into account when deciding on the settlement of compensation for Arab property.<sup>226</sup>

Israel's responses to the UNCCP proposals were failures of justice and reciprocal equity. The ESM had reported the existence of about 750,000 Arab refugees. Israel claimed to have welcomed 200,000 Jews. Later attempts to ascertain the amount of property lost by Jews immigrating to Israel delivered similarly unequal numbers.<sup>227</sup> In short, the numbers involved in this "equal exchange" were far from equitable. More broadly, justice does not call for tit-for-tat exchanges, as they lead to cycles of vengeance and retribution. Justice demands responses to specific acts of wrongdoing.

This is not to say that Jewish victims of persecution do not deserve justice. While it remains a question as to how many of the Jewish residents of the Arab states were forcibly displaced or willingly emigrated, in some cases, particularly from areas of Mandate Palestine that fell under Arab control, it is likely that a number of Jews should be considered refugees. These Jews, similarly victims of

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<sup>225</sup> Appendix I to the UNCCP Progress Report (for the period from 23 January to 19 November 1951), Point 2.

<sup>226</sup> *UNCCP Progress Report (for the period from 23 January to 19 November 1951)*, p. 65; Appendix I to the UNCCP Progress Report (for the period from 23 January to 19 November 1951), Point 3.

<sup>227</sup> Fischbach, 175-177.

forced displacement, deserve justice and protection. Yet, the existence of Jewish refugees does not negate the Palestinian refugees' right to justice. Rather, any individual who was a victim of forced displacement, Jew, Palestinian or otherwise, must be addressed specifically and provided justice by holding the particular perpetrator of the displacement accountable. The arguments I put forward regarding justice, reparations and protection are applicable to both Palestinians and Jews. In Paris, however, no refugee was accorded justice.

### ***The narrow justice framework of resolution 194***

The Arab states strongly opposed the proposals the UNCCP presented in Paris, reminding of the need to respect the refugees' individual rights. They argued that there could be no limitations on the refugees' return and that the "practical" stance adopted by the commission was "tantamount to rewarding the policy of *fait accompli*" practiced by Israel, which should be condemned by the UN and the civilized world.<sup>228</sup> They noted the similarity between the current UNCCP proposal and that put forward by Israel in Lausanne, which had been rejected by both the commission and the Arab states. In their opinion, the UNCCP had failed in its mandate to safeguard the rights and interests of the refugees, had gone against the dictates of resolution 194, had "sanctioned a flagrant injustice" and "had disregarded a right confirmed by the Declaration of Human Rights" in their proposals.<sup>229</sup>

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<sup>228</sup> Appendix II to the *UNCCP Progress Report (for the period from 23 January to 19 November 1951)*, Point 2 of the Egyptian Delegate's Reply.

<sup>229</sup> Appendix II to the *UNCCP Progress Report (for the period from 23 January to 19 November 1951)*, Point 2 of the Egyptian Delegate's Reply; *UNCCP Progress Report (for the period from 23 January to 19 November 1951)*, p. 70.



The Arab states favored involving the individual refugees in discussions concerning their future. The Egyptian delegate reminded that resolution 194 made the return of the refugees “dependent only on their own wishes, freely expressed. There is no suggestion, whatsoever...of restricting the refugees’ absolute right to their homes.”<sup>230</sup> He suggested the UNCCP lead “an immediate census of the refugees who wish to be repatriated,” including offering his government’s assistance in the venture.<sup>231</sup> Regarding compensation, the Arab states believed the UN shared responsibility with Israel for payment. In their view, restricting compensation by Israel’s ability to pay would be an abridgment of the refugees’ rights. Depriving them of their homeland *and* their property would be “contrary to the demands of the most elementary justice.”<sup>232</sup> The Arab states argued that the refugees should be represented at all points in the compensation procedure, that there should be an appeals process and that all payments should be made to individuals.<sup>233</sup>

Yet, the Arab states’ proposals remained limited in their conception of a just solution. The Arab states tended to assume that most refugees wanted to return. The Egyptian delegate referred to a general survey as a “census of the refugees who wish to be repatriated,” ignoring the possibility that some would

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<sup>230</sup> Appendix II to the *UNCCP Progress Report (for the period from 23 January to 19 November 1951)*, Point 2 of the Egyptian Delegate’s Reply.

<sup>231</sup> Appendix II to the *UNCCP Progress Report (for the period from 23 January to 19 November 1951)*, Point 2 of the Egyptian Delegate’s Reply; *UNCCP Progress Report (for the period from 23 January to 19 November 1951)*, p. 70.

<sup>232</sup> Appendix II to the *UNCCP Progress Report (for the period from 23 January to 19 November 1951)*, Point 3 of the Egyptian Delegate’s Reply.

<sup>233</sup> Appendix II to the *UNCCP Progress Report (for the period from 23 January to 19 November 1951)*, Point 3 of the Egyptian Delegate’s Reply.

choose resettlement.<sup>234</sup> Further, the Arab states remained insistent that resolution 194 provided the necessary framework for a solution. The resolution focused only on the refugees' material rights, specifically to compensation or return, while ignoring the victims' need of moral repair, as would be included in holistic reparations packages through symbolic measures or apologies. While resolution 194 provided a legal basis for discussions, the Arab states failed to take the opportunity in Paris to widen the debate regarding justice for the refugees by putting forward alternative, more comprehensive plans.

### ***Ending the conference and the conciliation process***

The UNCCP decided to end the conference on 10 August 1951 after hearing these responses. In its following progress report to the GA, the UNCCP noted that over the three years of its existence it had made three large efforts to facilitate a compromise. Each effort had failed.<sup>235</sup> The commission concluded that the unwillingness of the parties to implement the relevant GA resolutions and the changes that had occurred in Palestine over the past three years made it impossible for it to carry out its mandate.<sup>236</sup> In short, the commission was declaring that it could do nothing further to advocate for the refugees on the political front or to achieve a solution.

After considering this report, the GA adopted resolution 512 (VI) of 26 January 1952.<sup>237</sup> For the first time, the resolution stated that the UN considered

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<sup>234</sup> Appendix II to the *UNCCP Progress Report (for the period from 23 January to 19 November 1951)*, Point 2 of the Egyptian Delegate's Reply.

<sup>235</sup> *UNCCP Progress Report (for the period from 23 January to 19 November 1951)*, p. 79.

<sup>236</sup> *UNCCP Progress Report (for the period from 23 January to 19 November 1951)*, p. 88.

<sup>237</sup> *United Nations Relief and Works Agency for Palestine Refugees in the Near East*, UN General Assembly Resolution 512 (Vi) (A/RES/512 (VI)), 26 January 1952.

the concerned governments *primarily responsible* for reaching a settlement. The UNCCP was asked to remain available to assist the governments, to undertake programs or facilitate discussion upon request, but was no longer asked to spearhead the effort.<sup>238</sup> This decision paved the way for progress on the technical fronts of identification and valuation of Arab property, but it also meant the external pressure placed on the states to reach an agreement was removed. Without the UNCCP advocating on behalf of the refugees and helping to provide frameworks for solutions, the Arab states and Israel were allowed to maintain their fiercely opposed positions with little pushback from the international community.

Progress outside the peace process: technical and moral

***Documenting individual ownership***

In 1952, the commission began the arduous process of converting the global compensation figure presented in Paris the prior year into compensation values for individual refugees.<sup>239</sup> The commission set up an Office for the Identification and Valuation of Arab Refugee Property in New York, later expanding to a sub-office in Jerusalem. Using documents largely secured from the United Kingdom, the Office began processing the extensive available files in order to establish comprehensive lists of individual ownership in 1947 in former Mandate Palestine.<sup>240</sup> Identification focused on preparing separate records for

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<sup>238</sup> UN General Assembly Resolution 512 (Vi), 26 January 1952.

<sup>239</sup> *Historical Survey of Efforts*, p. 42.

<sup>240</sup> *Historical Survey of Efforts*, p. 44.

each Arab individual<sup>241</sup> that had owned land in Israel in order to establish a record of holdings that could be used as a basis for verification of claims to ownership in any compensation process. The office then evaluated each holding based on its market value on 29 November 1947.<sup>242</sup> By 1961, the identification work was “virtually complete,” with some 450,000 records of properties completed.<sup>243</sup>

In view of this progress, the commission decided to appoint a special representative in 1961 to travel to the Middle East and explore the current views of the parties regarding paragraph 11 of resolution 194. On 21 August, an American, Joseph Johnson, was chosen for the job.<sup>244</sup> Johnson travelled to the region twice, meeting with heads of state and representatives of the refugees.<sup>245</sup>

### *Johnson’s plan*

In his first public report released on 13 October 1961, Johnson stated that he saw no immediate prospect for a solution to the refugee problem. He recommended further work, especially as the parties had declared themselves willing to consider the possibility of a step-by-step process to solving the refugee question outside of larger peace talks.<sup>246</sup> Johnson was reappointed in March 1962, and travelled back to the Middle East to continue his efforts.<sup>247</sup> On 31 August

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<sup>241</sup> Individuals included partnerships, companies and cooperative societies. The Office also documented land held by the State and Jewish and other non-Arab individuals. The Office did not distinguish between properties held by refugees and non-refugees, as it was outside the scope of its resources; *Historical Survey of Efforts*, p. 44.

<sup>242</sup> *Historical Survey of Efforts*, p. 49.

<sup>243</sup> *Historical Survey of Efforts*, p. 51.

<sup>244</sup> *The UN Conciliation Commission for Palestine*, p. 70.

<sup>245</sup> *The UN Conciliation Commission for Palestine*, p. 70.

<sup>246</sup> Addendum 1 to the Report of the Director of the UN Relief and Works Agency for Palestine Refugees in the Near East, *Remarks by the Special Representative Mr. Joseph E. Johnson in the Nineteenth progress report of the UN Conciliation Commission for Palestine* (A/4921/Add. 1), 13 October 1961, p. 54.

<sup>247</sup> *The UN Conciliation Commission for Palestine*, p. 70 – 71.

1962, Johnson submitted a detailed plan to the UNCCP outlining his recommendations for a solution of the refugee question to be led under the aegis of the UN.<sup>248</sup>

Johnson's plan was simple, yet also the first time a UN representative had advocated a truly individual approach to the refugee question. First, Johnson stated that the survey of the refugees, which had been recommended sporadically over the past 10 years, take place immediately. He asked that simple questionnaires be sent to individuals, asking them to detail their preference for repatriation or compensation and resettlement.<sup>249</sup> After receiving these initial results, UN officials were to consult with Israel and the Arab states on the possibilities open to each refugee, as well as to figure out how much compensation each refugee might be entitled to receive.<sup>250</sup> After these consultations, the officials were to fully inform each refugee of the realistic possibilities open to them. The refugee would then be given the chance to make a definitive statement of preference. The UN was to assist in implementing, as far as possible, the refugee's wish.<sup>251</sup> Upon return or resettlement, Johnson suggested that a "reintegration allowance," around USD 250/person, also be given to refugees for the disturbance caused in their lives by displacement.<sup>252</sup>

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<sup>248</sup> *Summary Record of the Three Hundred and Fifty-First Meeting (Closed) of the UN Conciliation Commission for Palestine (A/AC.25/Sr.351)*, New York, Meeting held on 4 September 1962, p. 2.

<sup>249</sup> "The Johnson Plan," *Proposals for the Implementation of Paragraph 11 of UN GA Resolution 194 (III) of 11 December 1948*, Accessed on 31 August 2010, p. 4 -5.

<http://unispal.un.org/UNISPAL.NSF/0/A59E74CA3C3D7E2C852575D2004DD6F0>

<sup>250</sup> "The Johnson Plan," p. 6 - 8.

<sup>251</sup> "The Johnson Plan," p. 9 - 21.

<sup>252</sup> "The Johnson Plan," p. 13 - 16.

Johnson's plan did not go so far as to call for complete reparations packages for individual refugees. While he paid significant attention to the material realm of repair, he largely bypassed the moral realm of repair. Johnson recognized that not providing justice to the refugees might result in "psychological obstacles," specifically noting that many refugees were loathe to accept compensation from Israel, seeing it as a renouncement of their birthrights. In order to overcome this challenge, Johnson suggested that old Arab lands in Israel go to repatriating Arabs as much as possible. He believed other Arabs would then be more willing to accept compensation, knowing they were not "selling" their lands to Israel.<sup>253</sup> The power of apologies or acknowledgment of guilt was not addressed. In fact, although Israel was asked to make a substantial contribution to any compensation scheme, the majority of funds were meant to come from a special UN fund, supported by voluntary contributions from member states.<sup>254</sup> Johnson's proposal, while making substantial progress, was still limited by its reliance on resolution 194.

Upon receipt of his plan, the UNCCP thanked Johnson for his work, but did not go so far as to endorse his proposals. Rather, the commission requested that Johnson keep his recommendations confidential. They asked that he transmit his proposals to the concerned governments privately and explain to them that the UNCCP was still studying the report.<sup>255</sup> Over the next five months, it became clear that the Arab states and Israel were not prepared to accept his plan. On 31

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<sup>253</sup> "The Johnson Plan," p. 19.

<sup>254</sup> "The Johnson Plan," p. 15.

<sup>255</sup> *Summary Record of the Three Hundred and Fifty-First Meeting*, p. 14 -15.

January 1963, Johnson resigned, noting both compelling personal reasons and the rejection of his proposal.<sup>256</sup>

Johnson had, for the first time, put forward a plan for solving the refugee question outside of general peace negotiations. He believed that disaggregating the collective question and finding solutions one refugee at a time was the only way to tackle the massive practical constraints imposed by the intransigence of the concerned governments.<sup>257</sup> Johnson argued for breaking the status quo, where the refugees remained largely in limbo, by empowering the refugees to make their own decisions regarding their futures after full disclosure of the possibilities open to them. Despite this, the UNCCP decided not to officially endorse or publish Johnson's plan.<sup>258</sup> Rather, the commission limited itself in its twentieth progress report to stating its intent "to carry forward its initiative on this question."<sup>259</sup> Johnson was the first and last special representative the UNCCP was to appoint.

The commission refocused on the identification and valuation project, which they declared officially complete on 11 May 1964.<sup>260</sup> In a significant decision, the UNCCP chose not to release the information obtained or documents prepared, to the refugees or otherwise.<sup>261</sup> To date, individual refugees have still

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<sup>256</sup> Letter from Dr. Johnson to Mr. Asiroglu, attached to "Special Representative of Conciliation Commission Resigns," *UN Press Services: Office of Public Information* (PAL/925), 1 February 1963, p. 2 – 3; *The UN Conciliation Commission for Palestine*, p. 70

<sup>257</sup> "The Johnson Plan," p. 1 – 2.

<sup>258</sup> Letter from Dr. Johnson to Mr. Asiroglu, p. 2.

<sup>259</sup> Letter from Dr. Johnson to Mr. Asiroglu, p. 2.

<sup>260</sup> The Commission noted that the validity of the valuation project would "remain unimpaired" even if some of the difficulties it had encountered were not overcome. According to the UNCCP, "Each identification and valuation of a parcel is justifiable in itself"; *Historical Survey of Efforts*, p. 51 – 52.

<sup>261</sup> It was only in 1973 that the Commission agreed to provide the interested parties with copies of the land registers, identification of property parcels with valuation figures and an index of owners'

not been provided with either the documentation or the identification and valuation figures concerning the property previously owned by them and their families.<sup>262</sup> The documents prepared in 1964 remain in New York City, locked in the UN archives.<sup>263</sup> The completion of the project signaled the end of all major UNCCP activities. Yet, while the commission may have metaphorically “thrown in the towel,” the refugees remained, and continue to remain, in daily need. Justice has yet to be delivered and continues to be delayed indefinitely.

### ***The centrality of UNRWA and the protection gap***

UNRWA continued to provide necessary humanitarian assistance and the agency’s importance become directly linked to its longevity. Originally mandated to last for three years, UNRWA has now been in existence for over sixty. After the three generations that followed the original 750,000 refugees, as well as the successive waves of Palestinians displaced by subsequent crises, UNRWA is now responsible for over 4.8 million registered Palestinian refugees, nearly half of them under 20 years of age.<sup>264</sup>

Similar to a state, UNRWA has invested deeply in the welfare of a single group of beneficiaries and has played a significant role in the development of this group's conception of a shared identity. The organization is the main provider of basic services for Palestinian refugees, including food, education, healthcare, relief, employment, social services and housing in Jordan, Syria, Lebanon, the

names after receiving formal requests, as long as they kept the information confidential. Egypt, Jordan and the PLO were subsequently provided copies; *Historical Survey of Efforts*, p. 51 – 52.

<sup>262</sup> Fischbach, *Records of Dispossession*, 307 – 312.

<sup>263</sup> Fischbach, *Records of Dispossession*, 307 – 312.

<sup>264</sup> Delinda Hanley, *UNRWA at 60: The U.N. and Palestinian Refugees*, Washington Report on Middle East Affairs, Vol. 28.5 (2009), 61.



West Bank and the Gaza Strip.<sup>265</sup> Through their registration systems, school culture and repository of refugees' experiences, UNRWA has helped sustain the idea of a "Palestinian people."<sup>266</sup> Yet, despite UNRWA's vast scope, unique history and incredible impact, the organization cannot go beyond its mandate.

As described earlier, UNRWA's mandate was meant to be complementary to that of the UNCCP. UNRWA was designated as the caretaker agency, developing the human potential of the refugees, while the UNCCP was to search for political solutions. UNRWA was never meant to work alone, its mandate too limited to provide the holistic protection the refugees require. This protection gap has not been corrected. The UNCCP remains a subsidiary body of the UN and continues to hold the political protection mandate for Palestinian refugees, despite the fact that it is now a defunct entity not even present in the dialogue. Its work has been reduced to the annual release of its required report to the GA, each only a few sentences long. In 2010, the UNCCP merely stated, "it has nothing new to report," a minimalist declaration attached as an annex to the much longer document detailing the humanitarian activities undertaken by UNRWA on behalf of the Palestinian refugees that year.<sup>267</sup>

### Conclusion

The history of the UN's protection of Palestinian refugees has failed in three main areas. First, the UNCCP and the international community began as the staunchest advocates of the individual refugee's rights. This advocacy was slowly

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<sup>265</sup> McCann, 86; "About UNRWA," UNRWA.org, Accessed 5 September 2010. [www.unrwa.org](http://www.unrwa.org)

<sup>266</sup> Al-Husseini, 54.

<sup>267</sup> Annex to a note by the Secretary General: *Sixty-fourth report of the UN Conciliation Commission for Palestine* (A/65/225), 5 August 2010.

eroded by the UNCCP's attempt to facilitate a solution based on practical grounds. At no point were the refugees explicitly approached to determine their preferences on solutions.

Second, by allowing the only agency responsible for advocating for the political rights of the refugees to become defunct, the refugees' interests defaulted to the strictly humanitarian concerns represented by UNRWA. This remains the case, with the political futures of the refugees left to the negotiating table and the state parties. The refugees remain waiting in the limbo in which they have been stuck since 1949.

Third, while the UN has always taken the refugees' property rights very seriously, discussions of broader conceptions of justice have largely been overlooked. For the commission, for Israel and for the Arab states, the question of "justice" became a question of interpreting resolution 194. This resolution focused predominantly on property rights, and was adopted soon after the refugees' initial displacement. Making justice a choice between return or compensation ignores the moral realm of repair required after crime and the continued victimization of the refugees throughout their protracted displacement. This limited view of justice has led many refugees to see the options offered as no justice at all. I discuss the current debate in the Palestinian refugee community on these issues in the following chapter.

### Chapter 3: The right to choose

*“The refugees are sick of being the quintessential  
refugee question for all of these years.  
They just want to live and to be allowed to live.”*  
– Laila, a Palestinian refugee

Considering it important to include refugee voices in a work that is ultimately about the need for empowerment and inclusion, I conducted 14 in-depth interviews this past January with male and female refugees ranging in age from 18 to 85. While a few of these interviews were with non-camp refugees, the majority was conducted with residents of Dheisheh refugee camp in Bethlehem. Dheisheh, like other Palestinian camps, began as a series of tents spread out on open land, but today looks like another section of Bethlehem city. Conditions are generally worse for camp refugees due to poor socio-economic conditions, high population density and inadequate basic infrastructure such as roads and sewers. About one-third of the refugees registered with UNRWA, or about 1.4 million Palestinians, still live in refugee camps.<sup>268</sup>

It is generally assumed that refugees, whether living in camps or outside of them, are committed to real and physical return to the piece of land their families fled in 1948. Initially, every refugee I interviewed told me, that if given

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<sup>268</sup> The other two-thirds of the registered refugees live in and around the cities and towns in the West Bank, Gaza Strip, Syria, Lebanon and Egypt. All of UNRWA's services are available to both camp and non-camp refugees. It should also be noted that the refugees in camps do not *own* the land on which their shelters are built, but instead have the right to use the land as a residence; “Where UNRWA works,” UNRWA.org, Accessed 4 February 2011. <http://unrwa.org/etemplate.php?id=41>

the option, they would return. Each interviewee clearly described the circumstances and specific date they, their parents or their grandparents fled their original village. They spoke of how happy life had been there, how many *dunums*<sup>269</sup> they had owned and how much they wished to go back. They interpreted resolution 194 as an unconditional right that included return *and* compensation. The refugees also often noted the need for reparations for the 63 years of suffering they and their families had undergone.

Digging deeper, I asked the refugees what they understood as “justice” and “the right of return,” what must be included in “compensation” and how many refugees they believed would return if given the choice. We discussed their ideas on representation and advocacy and whether or not they believed there were avenues through which they could make their voices heard. Their responses included a diversity of opinions, desires and understandings of the phrases framing the discussion in the public sphere. They were logical, rational and realistic in their considerations of the refugees’ options, present and future and, while this was a small sampling, it was clear that different individuals had different goals and expectations. The community of refugees was a heterogeneous group of individuals that needed to be communicated with in order to understand how best they can be served.<sup>270</sup>

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<sup>269</sup> A dunum, roughly equivalent to 0.25 acres, was the unit used by the Ottoman Empire to measure land. The measurement is still used in Israel and Palestine today.

<sup>270</sup> When referring to the “refugee community,” I refer to those refugees who are registered with UNRWA. As mentioned in footnote 5, this definition is somewhat contentious, as there are a number of Palestinians in the diaspora not registered with UNRWA who would consider themselves refugees, even if they hold citizenship of another state. In fact, almost every Palestinian I met and spoke with identified themselves as a “refugee,” despite that many did not hold the UNRWA registration card and would not “technically” be considered a refugee under

My findings from these interviews cover four major themes – return, justice, objectification and representation. First, while the return to a physical piece of land and the attraction of a possibly romanticized past remains central in the rhetoric, the refugees clearly understand the complexities of the current situation and the various requirements and impediments for making return viable or desirable. Second, while the right of return is equated with justice, it is more about the right to make the choice than the actual return. The refugees repeatedly spoke of the insult of being continually objectified by decisions being made for them. For many, being granted the right of return was equated with being recognized as a human being with justifiable demands. Third, there was continual frustration at being perceived as victims and constantly being restricted in terms of movement, ability to make change and to be heard. Lastly, views on representation varied, but the majority of the refugees felt no one currently represented them. While some gave examples of different ways in which the refugees could advocate for themselves, most believed there were limited opportunities available to share the reality of their experience and to make their stories heard. In short, the refugees were not a group of suffering carbon copies, but rather a varied community of individuals. As a community, there were common concerns born of shared experiences and as individuals, there was a diverse array of understandings of their rights, desires and dreams. In the

international law. The definition of a “Palestinian refugee” is a point of contention for negotiators and those laying out proposals for just solutions. It is outside the scope of this thesis to discuss the many gradations and considerations that would have to be taken into account when defining who is considered a “Palestinian refugee” eligible for reparations.

following sections, I will discuss the complexities that emerged regarding the refugees' relationship to and understanding of their rights.

### Considering the right of return

The right of return has evolved into a collective ideal in the Palestinian nationalist movement. Laila, a proud 35-year-old refugee with two master's degrees, spoke of the effect of the popular rhetoric, saying, "For refugees, it is difficult to say 'I do not want to go back,' unless they've thought about it and done the research as I have. Even I have a problem advocating for my own beliefs. People think you're crazy if you tell them you do not want to go back... But, some, when they talk to me, they tell me, 'Yes, I do not really want to go back either.'" She warned me that in my interviews, people would not want to "take the risk" of telling me they would not return, for many would assume that I, as a white American Harvard student, had influence.

This reminded me of advice I received last year from Kimberly Theidon, a Harvard anthropology professor who has done extensive ethnographic research. She told me that in anthropological work concerning sensitive topics, what interviewees say about others is occasionally more telling than what they are willing to say about themselves. In order to break beyond the popular rhetoric and examine the factors the refugees' were considering when thinking about the practical possibility of return, I asked each interviewee, if given the choice, which refugees they believed would return, which would not return and why. Their answers were interesting for two reasons. First, they reveal many factors, the most often cited being age and current economic situation, that the refugees

believe influence the desire and desirability of return. In their considerations, the refugees were calculating the “opportunity cost” associated with return. Second, rather than viewing the acceptance of compensation as a betrayal or acceptance of defeat, the refugees were respectful of individuals who prefer options other than return. In general, the refugees expressed understanding and emphasized that it was not return that was of paramount importance, but rather the right of each individual to choose the option they most desired.

The most often cited factor influencing the desire to return was age. Abed, a 60-year old refugee struggling with cancer, told me that his father still tells him, “The sun in my village is better than this sun. Life there is better.” Abed believed the older generation had a community in their old villages, a life which they still dreamt of. This idea that return would include the reconstruction of the community of the original village was pervasive. The older generation often cited the desire to be “together again” as a reason for their adherence to return. Abed thought that the younger generation, which had a relationship with the city of Bethlehem and the community in the camp, might not understand the right of return. Abed’s wife Amani said the older people would return because they “know every inch of their land... But, the young people...they would not want to go back to live an agricultural life.” She argued that, although opportunities were limited for Palestinians, cities were at least thought to offer a bit more promise for education and employment than rural areas. Amani believed young people would choose to remain in the cities.

Nimer, a 30-year-old refugee who had been educated abroad, also pointed to the difference in generations as a deciding factor on who would return. He said, “I think almost 80% of refugees will not return. Especially the new generation will not return because it would be so difficult to start a new life there. It’d be leaving again... Even me, I am modern, I cannot imagine myself returning to my original village to ride around on a donkey and to farm.” He gestured as he said this, finding the idea of himself living an agricultural life preposterous. He believed that it would mostly be the older and second generation that returned, “those who have a direct connection and contact with the land.” As Nimer put it, “The old generation was taken away from their roots...the new generation has roots here.” Nimer, Abed and Amani all considered connection to the land and the community to be the paramount consideration when a refugee was debating return. For the older generation who had a connection to the land, return was incredibly important. For the younger generation, which had a new community in the camp and a lifestyle far removed from the agricultural one of their grandparents, return seemed to make much less sense.

Other refugees cited economic factors as among the most important considerations influencing the desire to return. As Abed put it,

“Many families in America or Jordan or Syria wouldn’t come back because they have bought land or a building. But all the people in the camps would return. If someone were in a good economic situation, they wouldn’t come back. For example, my grandfather had 1000 dunums, but now there are 2000 people in the family. Now, if I go back, I would have ½ a dunum. Why would I go back?”

Like Abed, Suhayl, a 30-year-old refugee from a camp near Jerusalem, believed that those who have a new life to hold on to, like those in the Gulf States, Europe



or Jordan, would not return. He thought that those who are poor, like the refugees in Lebanon, or those who have much to gain, like those who had large land holdings in Palestine before 1948, would likely come back. Ibrahim, a 23-year old refugee, thought similarly, saying, “It is hard to live here for the young generation, to build a house here. There is no space. So, why not go back to our original village?”

The calculation of the opportunity cost of return was also made clear by Kareem, a 60-year-old refugee with a mustache to be envied. Kareem associated the likelihood of return with current place of residence. He believed some of the refugees in Syria and Jordan would return, all of those in the refugee camps in Lebanon and in the West Bank would return but that refugees in America, as well as refugees who lived in new houses in cities, would not come back if given the option. Abed, Suhayl, Ibrahim and Kareem appeared to believe that refugees living in poor conditions now, particularly those in the camps, would choose return as an opportunity for improvement, while those well established in their current places of residence would stay where they were.

Laila was the only refugee I spoke with who considered how refugees’ might react *after* their return and the realistic possibility that life in their original village would not be as expected. Laila explained that for many of the refugees in the camps or for young men without opportunities in their present situation, return could represent an opportunity for change and progress. But, she noted, the tendency in history is for “the minimum of the minimum of the minimum” of refugees to return and stay, for “when they find out it is just another lousy place to

live – they’ll leave... because they realize – excuse me – it is just trading one shithole for another.” Laila believed that if given the choice, many refugees would choose resettlement in Canada or Europe, because they believed it would offer them greater chances of success. Laila also noted that women, “the only brave creatures in this place,” “will choose settlement, will choose not to leave where they are. Because women want to be settled and coming back is another leaving. It is another displacement. Maybe you have memories, stories, connections, but this doesn’t change the fact that it is a new community, it is a change, an uprooting.”

While the answers and reasoning differed, the common theme was the simple desire to be given the chance to have a good life. Laila, always eloquent, said, if you “give [a refugee] the option for another life – more prosperity – they will choose that. Why would they not choose that? Nobody wants to be a fighter all of their lives. Nobody can be. It is a burden. Everyone wants a normal life. Maybe they are not saying it, but they want it.” With piercing directness, Rawiyah, an 86-year-old grandmother, asked me, “What choice? We have not been given this choice.” For, despite all the calculations being made, the refugees have not been given the option of return or assisted resettlement.

#### Justice as choice

When asked how they understood the concept of justice, many interviewees immediately referenced going back to their homes and lands. In other words, justice and the right of return were often seen as synonymous. However, when asked to define the right of return, there was a pervasive belief

that the right, more than being about any specific piece of land, was about choice. Interviewees repeatedly spoke of freedom, equality and the recognition of the right to make decisions when talking about justice and the right of return. While emphasis varied, justice was generally understood as the recognition of the refugees' right to choose their own future and fate.

Mahmud, a 50-year-old refugee, described justice as “to go back to my own town, to have my rights, to be free, to not be occupied, to live as a normal human being.” For Suhayl, justice was “to have freedom, to have what you want to see in the world – equality, safety, security, humanity.” Regarding the right of return, Nimer said, it “is nothing more than a choice... It is just to give me my right, to not ignore it, to recognize that I have that right.” When Laila talked about the right, she said, “It is being given the right to choose, and then everyone else getting out of it. If I go back, if I do not go back, if I go back sometimes, if I do not go back at all – you have nothing to do with it. I cannot approve any settlement that doesn't give me my right of return... And I will not go back – but I need you to acknowledge it.” To Kareem, “No one can take a decision for the refugees. You must ask every individual if they would like to go back to their home or not. I have to choose.” And, according to Ibrahim, the right of return “means to get the chance to choose a simple thing for any human being – to choose what to do. It is not for me or Abu Mazen<sup>271</sup> to decide, but for every person to choose what to do... The right to return is related to freedom.”

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<sup>271</sup> Abu Mazen is another name used to refer to Mahmud Abbas, Chairman of the PLO and President of the Palestinian Authority. The Palestinian Authority is the administrative body that

In these conversations, freedom was often tied to the ability to make decisions. Respect was granted to whatever a person decided. The vast majority of refugees I spoke with said that if another Palestinian were to choose compensation over return, it would be their prerogative. The important thing was that they were given the option. The right of return was about dispelling the “humiliation” that came with being a refugee. As Suhayl said to me, “Compensation would be to give a refugee a nationality. It is for the humiliation. For he is a refugee. Do you know the meaning of refugee? It means having to stay at each border for 10-12 hours, for security checks... because you are a refugee.” Other interviewees described feeling guilty for “letting” the Israelis take their land so long ago. Some talked about the embarrassment of having to constantly wait for UNRWA to provide services. Most discussed the feeling of being restricted, the wish that they could move more easily, travel, see the sea. In short, by recognizing the refugees’ right to *choose* whether to return or not, to choose their future, the right of return meant restoring the refugees’ agency, more than restoring their land. It meant dispelling the refugees’ status as victim.

#### Victimhood life

There was often a very explicit frustration with the “victimhood life” forced upon the refugees. Laila declared, “Justice is the realization of one’s rights. It is... whatever you decided upon that was mine and that you did not have the right to decide, that you acted upon, that you decided without and against my will – it is for you to undo that.” She went on to describe the suffering she has

governs the areas of the West Bank under full Palestinian control. The PA is comprised of several Palestinian parties, but is ultimately accountable to the PLO.

undergone as a refugee and how tied that is to being forced to be a victim. She said:

“My problem wasn’t losing people. I never thought dying for a good cause is something we should regret. Dying is a natural thing – we can deal with that. What is not natural, what is abnormal and unfair – is this victimhood life. I am not a victim. I do not want to be a victim. I want a different a life. I want a life where I think about legislation or women’s programs or policies. Or... not think at all, to just watch TV, maybe even go on safaris. I just want to be able to decide where I go... My whole life I haven’t been able to decide. I couldn’t even decide what I studied. I wanted to study law – but I couldn’t – because there were no law schools here and no money to go anywhere else. They decided my life from Day 1. For this, I cannot forgive. I couldn’t do what I wanted, I still cannot do what I want.”

Kareem was frustrated more by the continual *perception* of the refugees as victims. As a member of the camp’s popular committee, an elected refugee organization that works in the community and with UNRWA in order to improve services, Kareem works to organize and educate the residents of the camp, particularly the youth, as to their rights and heritage. He explained, “We do not want to organize people to cry. If you are crying all the time, you are never achieving anything. You need to do something. So many people have this idea that everyone in the camp is crying all the time. I hate that idea. We are strong. We work hard. We have responsibility.” He took immense pride in the work the popular committee has undertaken. As he put it, “We need to be more serious in life, in this life, to change things.” Kareem went on to describe various projects the refugees had undertaken and the different opportunities available to continue making progress.

Kareem and Laila were not the only people I spoke with who believed it necessary for the refugees to advocate for themselves. Some interviewees pointed

to the possibilities presented by TV, advertisements and newspapers. Others talked about sit-ins and demonstrations. Still others said it rested upon the shoulders of foreigners who came to visit and saw and heard the stories to spread awareness of what was happening to the Palestinian refugees. Many expressed the belief that a large part of the problem was the greater global community's ignorance of their suffering, the silence in which their pain was veiled. If their story were told, they believed change would follow. As Malak, a cheerful 21-year-old, said, "If we had good responsible people on all sides, then all the world will hear our voices. But, unfortunately, we do not have that now." Malak, as others had before her, expressed disappointment in the Palestinian leadership that currently claimed, but she believed was failing, to represent the refugees.

### Representation

Ideas on representation varied. While two young men thought the PLO represented the Palestinian refugees, the majority felt no one currently represented them. Some expressed frustration at the PLO as an authority they saw as illegitimate and largely corrupt, pointing to the division between the West Bank and Gaza and the lack of progress in negotiations related to the refugees' plight. A number of refugees also expressed the belief that the PLO was gaining from the current situation. They argued that the PLO leveraged the refugees and the right of return in negotiations with Israel for concessions in other arenas. As Nimer put it, "I am not a citizen here. I am not allowed to vote. How do these people represent me if I do not elect them? The PLO is imposed on us. They are using the refugees to make a lot of money, as a negotiation chip. No one can represent

Palestinian refugees, except Palestinian refugees.” Ibrahim echoed the belief that the PLO was using the refugees for their own gain. He said, “At the negotiating table, we are not getting anything – The PLO uses us to get money. They use us as a chip in international meetings. If not, why do they not make us citizens?<sup>272</sup> Why do they keep the camps like this?” While Ibrahim and Nimer were more condemnatory of the PLO than most, the majority of the refugees I spoke with felt that the PLO had lost touch with the needs and demands of the refugee community.

The refugees’ perceptions of the international community were complex and varied. Abed said the international community was not the refugees’ representative, as they “give a hand to the PA but do not reach out to the people.” On the other hand, two young women believed UNRWA represented them “because they help all the people in the camp.” Nimer claimed he was “against UNRWA” because “UNRWA is not meant to help the Palestinian refugees get their rights – it is just to support them – to give them services and to help them find alternative work... This is not what I want. I do not want the international community to give me things. I just want them to put pressure on Israel to give us our rights...I do not want food, aid, clinics... we can solve our problems on our own. We just need the political support.” Laila disagreed. She believed that if UNRWA were to expand its protection mandate to include resettlement and compensation, it “would be a suicide mission” and “UNRWA would disappear in

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<sup>272</sup> The PA has the power to issue Palestinian passports to residents of the occupied Palestinian territories. These passports are recognized as legitimate travel documents by most countries. In addition, Ibrahim could be referring to the fact that refugees have restricted voting rights in Palestinian Authority elections.

a “minimum of one week.” She claimed it would be seen by the refugees as a renouncement of the right of return and an attempt to try to solve the problem without leadership from the Palestinian community.

The refugees had different views on who legitimately represented them, if anyone at all, and how best to ensure their views were heard by the international community. Laila argued that it was up to the refugees to advocate for themselves, they just had to become better at presenting themselves. Laila thought the most effective way for refugees to “bring themselves to the front of the battle and to bring themselves to the negotiating table” would be to come up with alternative, concrete plans, “to step out seriously from our victim role and to present a plan for ourselves.” She claimed the international community had been able to avoid taking action by saying they had to plan for the refugees.<sup>273</sup> The majority of my interviewees agreed with Laila in some way, believing that the voice of the individual Palestinian is currently muffled and often ignored in favor of the self-serving interest of other, more powerful parties.

### Conclusion

As I held a map depicting the town as it had been in 1947,<sup>274</sup> Yasser explained how he had fled when he was 7 years old. He remembered – he said he would always remember – the names of his teachers, the location of his house, of his uncle’s house and where they had played as children. He said he shared his

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<sup>273</sup> Laila put forward another very interesting idea for advocacy. She declared that the best way to fight could be learned from the Sheikh Jarrah story, where the Israeli courts ruled that because Jews had owned lands in 1929, they had the right to kick out the Palestinian family living on these lands in 2010. Laila believed that, “if Palestinians were smart,” every Palestinian with an Israeli ID and standing in Israeli courts would start to bring claims for the restitution of their land based on the precedence set by the Sheikh Jarrah ruling.

<sup>274</sup> A photo of the map of Yasser’s town is included in the *Selected photos* appendix.



story because he wanted us to know that, just as stories never fade, rights never disappear. Yasser stopped speaking for a moment; his hands were shaking, his lips trembling and tears sliding down his face. This man, now 70, recalled the town he had loved with overwhelming emotion. To Yasser, return is not an idea, a concept or a symbol. Returning home represents justice and truth and fairness. Return means allowing him to rebuild a house where a park now stands and stones remain. He has not lost hope. He looks forward to welcoming us again into his rebuilt home, this time offering us tea and smiles, rather than tales of hope and waiting.

The idea and importance of real and physical return is still pervasive. Palestinian refugees have worked to shape and maintain a collective memory centered on a possibly romanticized past. In the camp I visited in Bethlehem, the children had painted two telling murals on the walls.<sup>275</sup> One, deeper into the camp, showed a beautiful countryside with the sun shining down on rolling green hills. Each cloud contained the name of a village that a family had fled from in 1948. The second mural, at the front of the camp, depicted UN resolution 194, written in Arabic and English in clear black script. The border showed the names of those same towns. Above the painting was a key, symbolizing the keys many Palestinians still carry to their old homes.

Depicting only these examples of attachment to the past, however, would be an injustice to the complexity of Palestinian refugees' relationship with their past, present and future. In the conversations I had, it became very clear that many

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<sup>275</sup> Photos of the two murals are included in the *Selected photos* appendix.

of the refugees, despite their attachment to the land they had lost, also understood the complexities of the current situation and the practical challenges to implementing return.

I saw that memory and commitment to the community did not have to be tied with suffering or refugee status. Ibrahim told me his close friend, with whom he had grown up in the camp, had recently gone to Sweden and asked for Swedish nationality because he thought this would provide him a better life. Ibrahim did not resent his friend's decision, because, as he put it, "he will not forget." What was important to Ibrahim was that his friend remembered that he was a Palestinian and a part of this community that had suffered an injustice. This is not an isolated case. Many Palestinians have citizenship in other countries and some of the refugees I spoke with were petitioning for citizenship rights in European states. Passports provide a guaranteed lessening of restriction on a person's movement and an increase in the opportunities available to them. Passports do not mean a person ceases to consider themselves a Palestinian, or even a refugee. It was clear that a person's commitment to "the Palestinian cause" depended on much more than the word on their identity card that followed "nationality."

My interviews were conducted in a very small geographic area. The Palestinian refugee community today has an immensely varied demography. There are over 4.8 million Palestinian refugees eligible for UNRWA services living in Syria, Jordan, Lebanon, the West Bank and Gaza. The refugees' rights depend upon the territory in which they reside. The 467,000 refugees in Syria have been granted the same rights and privileges as Syrians, except for

citizenship. In Jordan, there remain about 1.9 million registered Palestinian refugees, the vast majority of whom have been given full Jordanian citizenship. The 422,000 refugees in Lebanon are the most disenfranchised. They are denied most social and civil rights, including access to a number of employments, and rely almost entirely on UNRWA to provide services. In Gaza, 1.1 million of the 1.5 million residents are UNRWA-registered refugees. Gaza is one of the most densely populated places on earth and the socio-economic situation is extremely poor. In the West Bank, there are about 771,000 refugees, a quarter of which still live in refugee camps.<sup>276</sup> The individuals I spoke with expressed a range of ideas, conceptions and wants regarding return, justice, objectification and representation. The views of the broader community could only present more diversity.

Yet, there are common themes. Most of the refugees I interviewed believed that renouncement by others of their right of return would be the utmost insult, tantamount to pronouncing that the refugees' rights can be denied or negotiated away. Making a decision on the right without offering the refugees a choice would further embed the victimization they have suffered throughout their lives. For those like Yasser, return meant moving back to their original homes. For others, the right was less about land and more about acknowledgment and recognition of the rights due to them as individuals and refugees. They wished for the facilitation of agency and to be heard by the international community. In the following chapter, I will explore how the refugees' voices have been ignored in

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<sup>276</sup> "Where UNRWA works," UNRWA.org.

the collective effort to achieve justice through a peace settlement. The role the international community, in particular UNRWA, can and should play in providing the refugees protection and ensuring that their demands are heard becomes increasingly clear.

## Chapter 4: The detriment of waiting for collective justice

*“There are of course different ways to advocate.  
One of them would be for UNRWA to tell our voice outside,  
because they are responsible for us.”*  
— Yasmeeen, a Palestinian refugee

Through decades of alternating conflict and negotiations, the discussion of Palestinian refugees has gradually shifted to focus on the collective cause, rather than the individual need for justice. UN resolutions, which initially concentrated on the individual rights of the refugees, shifted emphasis to the collective right to self-determination in the 1970s.<sup>277</sup> In addition, the definition and implementation of a “just solution” and the right of return was left to the PLO and Israel to decide. In the most recent negotiations, the individual right to justice has often been forgotten, subsumed and compromised in the attempt to achieve collective justice. Individuals have waited, hoping they would receive justice when and if the collective received justice. Yet, collective and individual justice are not mutually exclusive. The Palestinian collective right to self-determination must be separated from each refugees’ individual right to reparations.<sup>278</sup> Further, the UN has a duty to increase the refugees’ agency to advocate and make claims for individual justice in internationally consequential fora.

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<sup>277</sup> Akram, *Palestinian Refugee Rights: Part One — Failure Under International Law*

<sup>278</sup> Reparations, as stated in Chapter 1, include restitution (including the restoration of citizenship), compensation, rehabilitation, guarantees of non-repetition and satisfaction.

After the failure of the UNCCP, Palestinians were left without an effective agency specifically mandated to provide them international legal protection.<sup>279</sup> They have lacked the benefit of the advocacy and interventions that the majority of the world's refugees receive from UNHCR.<sup>280</sup> While UNRWA has worked over the past few years to adopt some of UNHCR's best practices in regards to protection, the agency must increase its protection role *beyond* that of UNHCR's. Reparations provide a useful lens into some practical first steps UNRWA could take in order to empower and better protect Palestinian refugees.

#### The failure of states

#### ***The danger of “peace talks” to the individual***

Sixty years after the war, the major parties to the conflict have yet to achieve peace, despite repeated attempts to do so.<sup>281</sup> Initially, it was thought that the question of the refugees should be given priority for humanitarian and political reasons.<sup>282</sup> This thinking was reversed in the 1993 Oslo Peace Accords. The refugee question was declared a “final status” issue, to be decided in the context of negotiations after other intermediate and less difficult concerns had been addressed.<sup>283</sup> While the PLO and Israel took confidence-building measures

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<sup>279</sup> While another UN agency, the Office of the United Nations Special Coordinator for the Middle East Peace Process (UNSCO), was established in 1994 following the signing of the Oslo Accords, the agency is weak, largely inactive and lacks a specific mandate on refugees.

<sup>280</sup> Akram, *Palestinian Refugee Rights: Part One — Failure Under International Law*.

<sup>281</sup> See Michael Fischbach, The Peace Process and Palestinian Refugee Claims: Addressing Claims for Property Compensation and Restitution (United States Institute of Peace Press: Washington, DC, 2006) and Don Peretz, Palestinians, Refugees and the Middle East Peace Process (United States Institute of Peace Press: Washington, DC, 1993) for a discussion of the place of the Palestinian refugee in the peace process.

<sup>282</sup> See Chapter 2.

<sup>283</sup> “Refugees in the Middle East Process,” Palestine Refugee Research Net (PRRN), Accessed on 22 January 2011. [http://prrn.mcgill.ca/background/background\\_refugees.htm](http://prrn.mcgill.ca/background/background_refugees.htm).

to ensure a better environment for negotiations, the refugees were told to continue waiting.<sup>284</sup>

In the latest round of negotiations under the Obama administration, discussions between Israel and the PLO focused primarily on borders and security, with little attention given to the refugee issue. Plans concerning the refugees, however, were put forward at Camp David in 2000, at Taba in 2001 and at Annapolis in 2007. While the details varied, the plans generally included a symbolic number of returnees to Israel, usually about 100,000, the establishment of an international mechanism to facilitate compensation and the resettlement of the majority of Palestinian refugees, or their return to a new state of Palestine.<sup>285</sup> In each round of talks, Israel refused to acknowledge the right of return or their liability in the displacement of the Palestinian refugees.<sup>286</sup>

A dispute between Jordan and the PLO highlights some of the most troubling aspects of these proposals. In late 2008, Jordan approached the PLO with concerns about proposals that had been put forward by both Israel and the PLO regarding refugees. The two parties had largely agreed on an outline for an “international mechanism,” empowered to provide only financial compensation, to act as the sole forum for handling refugee claims. The Jordanian government felt that the enactment of this plan could compromise Jordan’s and the refugees’ individual rights to seek full remedies under international law. On 19-20

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<sup>284</sup> Refugees have historically not been represented in peace talks. Currently, there is no mechanism in place to solicit or respond to the views of Palestinian refugees; Karen AbuZayd, *Palestine refugees in the contemporary context: A view from UNRWA*, Extract from a paper presented at the International Association for the Study of Forced Migration conference, Cairo, January 2008, 54.

<sup>285</sup> “Refugees in the Middle East Process,” Palestine Refugee Research Net (PRRN).

<sup>286</sup> “Refugees in the Middle East Process,” Palestine Refugee Research Net (PRRN).

September 2008, Ziyad Clot, the legal advisor of the PLO, met with Mahmoud Hmoud, the head of the Legal Department of the Jordanian Foreign Ministry, in Amman to discuss the dispute. According to leaked minutes, "Both advisors agreed that it is not in the interest of the PLO or Jordan, nor that of the refugees, to challenge the other party's alleged standing to represent refugees."<sup>287</sup> In the end, the peace talks fell through, and Israel and the PLO are again facing a stalemate.

The dispute highlights three things. First, the international mechanism was empowered to offer refugees only financial compensation for material damages. The moral realm of repair was ignored, as was the refugees' right to choose between return or compensation. Second, the dispute shows that the debate among states over who is the legitimate representative of the Palestinian refugees and has the power to represent them and bring their claims forward continues. In the end, the refugees' rights were abrogated in the name of state interests. Last, and potentially most damaging, the dispute highlights the real danger that, if any final settlement were to include a clause that extinguishes refugee claims when a Palestinian state comes into being, the refugees would have enormous difficulty seeking individual reparations after the signing of the agreement.<sup>288</sup>

### ***Public reactions and the "Palestine Papers"***

While the official position of the Palestinian Authority (PA) on the refugee question was readily available, the concessions and compromises they

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<sup>287</sup> Ali Abunimah, "Jordan, PLO clash on refugee issue," *Al Jazeera English*, 24 January 2011, Accessed 25 January 2011.

<http://english.aljazeera.net/palestinepapers/2011/01/2011124122125339673.html>

<sup>288</sup> Akram, *Palestinian Refugee Rights: Part One — Failure Under International Law*.



were willing to make in the course of negotiations were not widely known, or at least not confirmed, among the Palestinian public until recently. With the late January 2011 release of the “Palestine Papers,” the largest leak of confidential documents in the history of the Israeli-Palestinian conflict by the British *Guardian* and *Al Jazeera*, the public was given an inside look into some of the talks held between Israel and the PA over the last 10 years.<sup>289</sup> In an article entitled “PA selling short on refugees,” *Al Jazeera* reported that the Palestine Papers show that PA negotiators were “prepared to make major concessions on the refugees’ right of return: on the numbers potentially allowed to return to their homes in what is now Israel; on whether refugees would be able to vote on any peace agreement; and on how many would be able to settle in a future Palestinian state.”<sup>290</sup>

The Palestine Papers came as a shock to many Palestinians waiting for justice to be delivered in the form of a final settlement.<sup>291</sup> The reactions have been varied, with those sympathetic to the PA denouncing the papers as a scam and others expressing shock and dismay at what they perceive as nothing less than a

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<sup>289</sup> The Palestine Papers include nearly 1,700 files of diplomatic correspondence, ranging from memos, e-mails, maps, minutes from private meetings, accounts of high level exchanges, strategy papers and power point presentations. They date from 1999 to 2010. *Al Jazeera* and the British *Guardian* released the documents gradually, starting on January 23, 2011; Gregg Carlstrom, “Introducing the Palestine Papers,” *Al Jazeera English*, 23 January 2011, Accessed 25 January 2011. <http://english.aljazeera.net/palestinepapers/2011/01/201112214310263628.html>

<sup>290</sup> Laila Al-Arian, “PA selling short the refugees,” *Al Jazeera English*, 25 January 2011, Accessed 25 January 2011, <http://english.aljazeera.net/palestinepapers/2011/01/2011124123324887267.html>

<sup>291</sup> Shock generally centered on the willingness of the PA to consider a “symbolic number of returnees,” totaling around 100,000, the possibility that refugees would not be able to vote on a peace deal with Israel and that even the nascent Palestinian state would be unable to absorb all the Palestinian refugees; Al-Arian, “PA selling short the refugees.”

betrayal.<sup>292</sup> Regardless, the reaction following the release of the documents shows that a large portion of Palestinian refugees were unaware of and disenfranchised from the discussions concerning their future status.

Leaving the question of refugees' rights as individuals on the negotiation table has served to further objectify them, asking them to wait until their rights are defined and decided by other players. It has allowed an authority the refugees did not elect to seek concessions from Israel by compromising on the refugees' future. While compromise is a necessity in negotiations, it is an injustice when discussing legal rights of individuals. In other recent refugee situations, for example in Bosnia and Kosovo, the collective right to an independent state was separated from the right of individual refugees to put forward claims for repatriation and compensation.<sup>293</sup> In order to achieve both individual and collective justice, a similar approach must be taken in the Palestinian case. To do so, the Palestinian refugees must be provided "protection."

#### International protection

#### ***Expanding the role of UNRWA***

While UNHCR has an explicit mandate to "protect" the majority of the world's refugees, UNRWA does not. Political protection was meant to be provided by the now obsolete UNCCP. Considerations of individual justice highlight the damage of the Palestinian refugee "protection hole," with no international body mandated to protect and advocate for their individual rights. It clarifies the pressing need to increase Palestinian refugees' agency to advocate

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<sup>292</sup> "Refugees in the Middle East Peace Process," Palestinian Refugee Research Net (PRRN).

<sup>293</sup> Akram, *Palestinian Refugee Rights: Part One — Failure Under International Law*.

and make claims for themselves. Rather than reviving the now defunct UNCCP, UNRWA is best situated to take over the role of international protection for the Palestinian refugees, increasing their work to ensure the refugees' human rights are respected and their agency restored so that they can make their demands heard in discussions concerning their futures.

Despite the fact that UNRWA lacks a specific protection mandate, UNRWA has begun to increase its protection role over the past few years. This work has been recognized both within the agency and within the broader UN system.<sup>294</sup> In 2010, the GA noted in the main resolution concerning UNRWA that it was “aware of the valuable work done by the Agency in providing *protection* to the Palestinian people, in particular, Palestine refugees.”<sup>295</sup> The GA had used the same language in resolutions in 2007, 2008 and 2009.<sup>296</sup> In 2010, the GA further expressed “special commendation to the Agency for the essential role that it has played for over sixty years since its establishment in providing vital services for the well-being, human development and *protection* of the Palestine refugees and the amelioration of their plight.”<sup>297</sup> The UN's recognition is significant, and UNRWA has taken it as a confirmation of their protection role and right to undertake protection work.

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<sup>294</sup> Morris, 1.

<sup>295</sup> *Operations of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, UN General Assembly Resolution 65/100 (A/RES/65/100), 10 December 2010, Emphasis added.

<sup>296</sup> Bartholomeusz, 466; For more on the gradual expansion of UNRWA's protection role, see Michael Kagan, *Is there Really a Protection Gap? UNRWA's role vis-à-vis the Palestinian refugees*, *Refugee Survey Quarterly*, Vol. 28.2/3 (2010), 511 – 530 and Michael Kagan, *The (Relative) Decline of Palestinian Exceptionalism and its Consequences for Refugee Studies in the Middle East*, *Journal of Refugee Studies*, Vol. 22.4 (2009), 417 – 438.

<sup>297</sup> UN General Assembly Resolution 65/100, 10 December 2010, Emphasis added.

UNRWA defines protection as ensuring that every refugee feels “assured that his or her rights are being protected, defended and preserved.”<sup>298</sup> According to a report prepared by consultant Nicholas Morris in 2008,<sup>299</sup> protection has four components for UNRWA, two relating to internal agency matters and two regarding external matters. The first external protection component – the right to a just and durable solution – highlights the difference between UNHCR and UNRWA. While UNHCR includes the search for durable solutions in its protection mandate, UNRWA is asked to leave the achievement of solutions to other actors.<sup>300</sup> UNRWA’s role is merely to “highlight the urgent need for that solution and to help ensure that in its elaboration the rights and interests of the refugees are safe-guarded.”<sup>301</sup> Yet, as has been evident, leaving the search for durable solutions for individual Palestinian refugees to other actors has led to the abrogation of the individual right to justice in the name of collective demands.

The second external component Morris takes up is “international protection.” Morris writes that in regards this form of protection, UNRWA can and should continue promoting respect for the rights of the refugees through monitoring violations, offering support and advice to individuals, advocating at all levels, directly or indirectly engaging with host governments and the international community and reporting to bodies whose recommendations are legally binding

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<sup>298</sup> Morris, 2-3, quoting UNRWA’s Interim Programme Strategy 2008 – 2009, 24 September 2007, 1.2.

<sup>299</sup> Nicholas Morris, a retired UNHCR staff member, acted as a consultant for UNRWA for two months in order to examine what protection means for UNRWA in concept and practice.

<sup>300</sup> Morris, 3.

<sup>301</sup> Morris, 3.

and require monitoring.”<sup>302</sup> The consultant specifically recommends that UNRWA make “increased use of the UN human rights system, concentrating on those mechanisms whose findings and observations carry most weight.”<sup>303</sup>

It appears that UNRWA is working to increase its protection role so that it is more similar to the protection work of UNHCR. To highlight the improvements UNRWA is attempting to make, it is necessary to examine UNHCR’s work for refugees. Yet, this strategy is limited. While UNRWA would improve by adopting the best practices of UNHCR, *both* UNHCR and UNRWA need to re-think their protection work in order to ensure that every refugee’s rights are “protected, defended and preserved.”

### *UNHCR’s protection role*

In the Statute of the Office of the High Commissioner for Refugees, it states that UNHCR, “acting under the authority of the GA, shall assume the function of providing international protection... to refugees.”<sup>304</sup> Despite this statutory mandate, UNHCR shied away from human rights work for decades, focusing on “protecting” refugees in the context of humanitarian and nonpolitical work, looking specifically at the rights guaranteed under the 1951 Convention and the principle of non-refoulement.<sup>305</sup> It was only in the 1990s that UNHCR began increasing its dialogue with human rights bodies and IHRL frameworks. It began addressing the Human Rights Commission, increasingly contributing to human

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<sup>302</sup> Morris, 4.

<sup>303</sup> Morris, 4.

<sup>304</sup> Steven Wolfson, *Refugees and Transitional Justice*, Refugee Survey Quarterly, Vol. 24.4 (2005), 55 – 56, quoting the Statute of the Office of the High Commissioner for Refugees.

<sup>305</sup> Stavropoulou, 546.

rights treaty body deliberations<sup>306</sup> and urging its staff to include human rights in their efforts to protect refugees.<sup>307</sup> UNHCR has also promoted the inclusion of human rights in international conferences on refugees and standard setting in the area of forced displacement.<sup>308</sup> These advances have helped pave the way for a greater role for UNHCR in representing and protecting refugees in regards to their human rights. Yet, discussions have tended to focus on monitoring the human rights of refugees while they are refugees, rather than looking at the need for justice for the crime of displacement and the right to reparations.

UNHCR already has experience offering legal protection to refugees, mainly in the context of voluntary repatriation to their country of origin.<sup>309</sup> UNHCR helps identify and remove legal and administrative barriers to return and undertakes rule of law activities in the realm of citizenship, property, amnesties and documentation.<sup>310</sup> In post-conflict and transitional justice settings, UNHCR has played an important role in implementing property restitution schemes and, in some cases, intervening with governments on the refugees' behalf and ensuring

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<sup>306</sup> A human rights treaty is a formal document that imposes binding obligations on the states that ratify the document. The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights make up the core of the international human rights treaties. Over the years, additional treaties have been ratified which take-up more specific human rights violations. The eight principle treaties have a corresponding "treaty body" that consists of committees of independent and impartial experts that oversee the implementation and monitoring of the treaties; "Treaty Bodies," Amnesty International Information Publication, Accessed 12 December 2010.

<http://www.amnesty.org/en/united-nations/treaty-bodies/what-are-treaty-bodies>

<sup>307</sup> Stavropoulou, 546.

<sup>308</sup> Stavropoulou, 546.

<sup>309</sup> Wolfson, 58 – 59; Dr. Susan Harris Rimmer, *Reconceiving refugees and internally displaced persons as transitional justice actors*, UNHCR New Issues in Refugee Research, Research Paper No. 187 (2010), 3.

<sup>310</sup> Wolfson, 58-9.

refugee participation in decisions concerning them.<sup>311</sup> The organization also provides support, both financial and legal, local capacity building, advice on drafting legislation, and help with implementation and enforcement of legislation. In addition, UNHCR leads informational campaigns, offers legal advice to returning refugees and monitors their human rights situation.<sup>312</sup> In short, UNHCR serves in a protection role before, during and throughout the transitional period for refugees returning.

UNHCR's protection mandate does not only extend to those refugees returning to their country of origin. UNHCR has a representative role to play for all refugees, particularly in protracted refugee situations.<sup>313</sup> Yet, while a refugee remains displaced, the agency continues to focus primarily on the rights guaranteed them under the framework of IRL alone, concentrating on issues of non-refoulement,<sup>314</sup> asylum claims and advocating for durable solutions.<sup>315</sup> There is no concentrated focus on empowering refugees to make claims through the use

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<sup>311</sup> In Guatemala in the late 1980s, refugees created a group of representatives to negotiate the terms of their return directly with their government. UNHCR gave the group logistical and other support, despite that the Guatemalan government originally tried to ignore them. An agreement for return was eventually reached between the refugees and the government. Consultation fora and monitoring groups were also established so that the refugees could bring complaints and voice their concerns throughout the return process. The case of the Guatemalan refugees is a success story of refugee participation in voluntary repatriation programs and an example of the assistance that can be offered by the international community through UNHCR or UNRWA; Michael Dumper, *Comparative Perspectives on the Repatriation and Resettlement of Palestinian Refugees: The Cases of Guatemala, Bosnia and Afghanistan, Israel and the Palestinian Refugees*, Ed. Eyal Benvenisti, Chaim Gans, Sari Hanafi, Springer Press: Berlin, 2007, 394- 395.

<sup>312</sup> Wolfson, 58-9.

<sup>313</sup> As discussed in Chapter 1, there is a prevailing idea that refugees must wait until they gain a nationality and national protection to access rights and recourses to justice. In situations of protracted displacement, a refugee may never achieve a nationality; Wolfson, 58-9; Rimmer, *Transitional Justice*, 3.

<sup>314</sup> The principle of non-refoulement, a part of customary international law, prohibits the forcible removal of a person to a country where there is a real risk of persecution. For many refugees, this has come to apply to countries in which they are seeking asylum that wish to return them to the country of origin from which they fled.

<sup>315</sup> "Protection," UNHCR.org.

of IHRL or IHL while they remain refugees, and the discourse on the human rights violations that caused refugee outflows remains largely absent.<sup>316</sup> In addition, while refugees who return have been beneficiaries of restitution schemes, refugees who have resettled have generally not been compensated for property lost. In short, refugees' broader right to reparations has been largely ignored.<sup>317</sup>

***Protection through empowerment: Linking the refugee to IHRL and IHL***

Neither UNHCR nor UNRWA has fully incorporated systems of law beyond IRL into their protection work. Both agencies are uniquely placed to create linkages between IRL, IHRL and IHL to combine humanitarian protection with legal protection and advocacy. Each body of laws, although occasionally overlapping, offers a different set of protections to distinct groups. IRL focuses on protecting those seeking asylum or recognized as refugees, guaranteeing primarily economic and social rights and ensuring that the principle of non-refoulement is respected. IHL outlines the rules of war, including the protections due to civilians during conflict. IHRL entitles each person to a set of rights, a "Bill of Rights" on the international stage.

When recognized as a refugee by UNHCR, an individual gains standing under IRL. Yet, as a victim of forced displacement and as an individual, they also have standing under IHRL and IHL. These broader bodies of law provide one of the only means available to individuals to seek justice while still designated a refugee. IRL does not include the right to redress and reparation for the crime of

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<sup>316</sup> Malkki, *Refugees and Exile*, 518.

<sup>317</sup> Malkki, *Speechless Emissaries*, 390.



forced displacement or any arenas where individuals can bring justice claims. As outlined in the *Basic Principles*, IHRL and IHL protect the right to reparation and, while limited, there are some IHRL and IHL fora where refugees could bring claims.<sup>318</sup> For example, four of the eight core human rights treaties allow individuals to lodge complaints against states for violating their rights.<sup>319</sup>

Both UNHCR and UNRWA have begun to focus on reporting violations through the UN human rights mechanisms. Their concentration, however, has been on monitoring and reporting violations *for* the refugees, rather than on providing refugees with the tools necessary to advocate for *themselves* as subjects under IRL, IHRL and IHL. These efforts do not effectively empower the refugees and, additionally, often ignore questions of justice.

Discussions with refugees as to their rights under IHRL and IHL are noticeably absent from UNRWA's own definition of its protection work, which reads:

“Promoting respect for Palestine refugees’ rights through monitoring, reporting and intervention, delivering services in a manner that promotes and respects the rights of beneficiaries, ensuring that protection needs are addressed in all aspects of programming, policies and procedures and advocating in public statements as well as private interventions with a broad range of interlocutors to promote the protection of refugee rights.”<sup>320</sup>

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<sup>318</sup> “The Rule of Law in Armed Conflicts Project,” [The Geneva Academy of International Humanitarian Law and Human Rights](#).

<sup>319</sup> “The Rule of Law in Armed Conflicts Project,” [The Geneva Academy of International Humanitarian Law and Human Rights](#),

<sup>320</sup> “About UNRWA,” [UNRWA.org](#).

Without empowerment, the fundamental failure of the UN and the involved states over the years to provide the Palestinian refugees the right to *choose* – to return, to stay, to leave, to start again – continues.

The humanitarian assistance and protection that UNHCR and UNRWA currently provide refugees is incredibly important, but remains limited. It does not incorporate the right to justice for these individual victims of forced displacement. Four steps, including dialogue, education, empowerment and debate broadening, are required to increase the protection provided to refugees. A discussion of individual reparations packages can be the basis for exploring how these four steps could occur, as well as demonstrating the importance for humanitarian agencies' to link the three bodies of IRL, IHRL and IHL more fully.

#### Linking reparations and protection

##### ***“Burden bearing”***

The right to reparations provides a basis for discussion of the various ways in which the agencies, particularly UNRWA, could begin to work to restore the refugees' agency. Individual reparative packages hold great promise for refugees. These packages can help refugees overcome the victimization that began with the violation of their human rights and continued through their experience as a refugee due to their objectification under the international assistance regime. Reparations help facilitate agency, particularly through the empowering process of advocating for one's rights.<sup>321</sup> Reparations could help in the acknowledgment

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<sup>321</sup> For more on reparations, see Priscilla Hayner, Unspeakable Truth: Facing the Challenge of Truth Commissions (Routledge: New York, 2002) or Martha Minow, Between Vengeance and Forgiveness (Beacon Press: Boston, 1998).

that refugees are more than mere humans undergoing suffering. They also have “narrative authority, historical agency and political memory.”<sup>322</sup> Practically, reparations can help refugees establish themselves in their new countries or their old ones, easing some of the extreme economic hardship that often accompanies status as a refugee. Finally, as symbols of justice, reparations can be the keys to closure for refugees and their families, especially if they are coming from, and thus holding accountable, the perpetrators of forced displacement.<sup>323</sup> There are even some precedence cases involving reparations for refugees, but they have all been seen in a transitional justice context in societies reconstructing themselves following conflict, rather than through the use of established human rights machinery.<sup>324</sup>

Refugees remain a profound concern in the field of international relations. Mass migrations cause domestic instability, place burdens on states and regions that are often already over-burdened, aggravate interstate tensions and threaten international peace and security.<sup>325</sup> The international community focuses on “burden-sharing,” working towards lessening the tension refugees cause by providing aid. The refugees become further and further dependent on the international community and, by extension, donor governments.<sup>326</sup> There is no

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<sup>322</sup> Malkki, *Speechless Emissaries*, 398.

<sup>323</sup> Rimmer, *Reconceiving refugees as transitional justice actors*, 2.

<sup>324</sup> The truth commissions in Sierra Leone, Guatemala, Peru and Timor-Leste all looked at displacement as a human rights abuse, yet their efforts were ad hoc and constricted. In Guatemala, reparations were given to the displaced for the violations they suffered before, during and because of displacement. In Bosnia, when large numbers of refugees were returning, restitution programs restored actual land, homes and property lost; Rimmer, *Reconceiving refugees and internally displaced persons as transitional justice actors*, 2.

<sup>325</sup> Malkki, *Refugees and Exile*, 504 - 507.

<sup>326</sup> Rimmer, *Refugees and the “responsibility to protect,”* 9.

discussion of holding accountable the states and individuals responsible for causing refugee outflows.<sup>327</sup> By bringing guilt into the discussion, the focus could shift from “burden sharing” to “burden bearing,” with the payment of reparations helping to lay the groundwork for a preventative strategy regarding new refugee outflows.<sup>328</sup>

As stated in Chapter 1, according to the *Basic Principles on the Right to a Remedy*, there are three specific rights under IHRL and IHL promised to victims. First, the *Basic Principles* promise access to relevant information concerning violations and reparation mechanisms. Second, the Principles promote the right to equal and effective access to justice. Third, they promise adequate, effective and prompt reparation for harm suffered.<sup>329</sup> Each right has a set of corresponding practical measures that could be taken in order to empower refugees to make claims for the rights due them both under the *Basic Principles* and more broadly. I will discuss both UNHCR and UNRWA, but focus specifically on the Palestinian case. Of course, there are many ways in which the two agencies could work to restore refugees’ status as subjects. The recommendations represent only one example.

### *Access to relevant information*

To ensure access to information, both UNHCR and UNRWA could lead information and awareness-raising campaigns with the refugees about their rights under IRL, IHRL and IHL, discussing their rights as refugees, as victims of forced

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<sup>327</sup> Rimmer, *Refugees and the “responsibility to protect,”* 8.

<sup>328</sup> Rimmer, *Refugees and the “responsibility to protect,”* 10.

<sup>329</sup> *United Nations Basic Principles on the Right to a Remedy*, p. 11.

displacement and as human beings. More specifically, UNRWA should begin a meaningful dialogue with the refugees as to their desires for the future. Providing refugees' access to full and accurate information regarding their potential claims is an important part of this dialogue. It would also serve to increase the refugees' agency by facilitating the making of informed decisions.

There are two particular sets of documentation to which the refugees should be given access. First are the recently digitized UNRWA records, in particular the "Family Files." In a statement, the UNRWA Commissioner General said the efforts to preserve these files "underscore our commitment to the protection of the refugees we serve."<sup>330</sup> For the refugees, the records contain a wealth of information that could be useful in making claims or decisions regarding their futures. The wide range of archives includes over 16 million refugee records dating back more than 60 years. The records, according to an UNRWA report, contain factual information "that could be relevant in the settlement of the Palestine refugee issue."<sup>331</sup> The records have not been provided to the refugees, and it is unclear as to whether or not refugees would be provided access upon request.

The second set of files the refugees should be provided are those compiled by the UNCCP that relate to them and their families. As noted in Chapter 2, the commission completed an extensive identification and valuation project in 1964,

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<sup>330</sup>"Commissioner-General Closing Remarks Launch of the Refugee Registration Information System," *UNRWA News*, 9 December 2009, Accessed 18 December 2010. <http://unrwa.org/etemplate.php?id=309>

<sup>331</sup> Maher Nasser, *The Palestine Refugee Records Project*. Paper presented at Stocktaking II Conference on Palestinian Refugee Research, Ottawa, 17 – 20 June, 2003, 4.

compiling figures as to the state of individual Palestinian property holdings in 1947.<sup>332</sup> While these records have also been digitized,<sup>333</sup> they have still not been released to the refugees, remaining under lock and key in the UN archives in New York.<sup>334</sup> Practically, as both the UNRWA and UNCCP systems are digitized, it seems a realistic possibility to link the two sets of files. If provided access, this would allow the refugees to use the UNCCP documents to establish their property claims and successive generations to use the UNRWA documents to establish their relation to the original owners of the properties.

Over 50 years ago, UNCCP Special Representative Johnson recommended that the commission begin consultations with the refugees regarding their current position and realistic possibilities for their future. This dialogue, simply intended to ensure that the refugees were fully informed of their rights and options, never began. UNRWA has the ability to begin these consultations for the first time. As laid down in international law, refugees have the right of access to relevant information. The UNCCP and UNRWA files are certainly relevant. To increase their agency, the refugees should be provided the information necessary to make an informed and realistic choice regarding their future. For those who choose, the records could provide the basis for a strong legal claim for reparations.

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<sup>332</sup> *Historical Survey of Efforts*, p. 51 – 52.

<sup>333</sup> The project to preserve and modernize the UNCCP records was completed in 2000; Annex to a note by the Secretary General: *fifty-fourth report of the UN Conciliation Commission for Palestine* (A/55/329), 31 August 2000; For more on the project of transforming the paper files to a computer database including the names of all property owners, location of properties and property, see Michael Fischbach, *The Usefulness of the UNCCP Archives for Palestinian Refugee Compensation/Restitution Claims*, Paper presented at the Stocktaking II Conference on Palestinian Refugee Research, Ottawa, 17-20, June 2003.

<sup>334</sup> *Historical Survey of Efforts*, p. 51 – 52.

### *Equal and effective access to justice*

It is through individual complaints and adjudication that human rights are given real meaning and, quite literally, put into force. By drawing attention to the violations of international norms, individuals can remind of the need for justice. Yet, in the case of individuals lacking citizenship, there are very few avenues available to make claims heard. The human rights treaty bodies offer one potential means for bringing individual complaints in front of a quasi-judicial body, but their promise for refugees remains limited, as they only pertain to specific violations of particular treaties, and no treaty as of yet deals with the crime of forced displacement.<sup>335</sup> For this and other reasons, human rights treaty bodies remain extremely underutilized by refugees.<sup>336</sup>

For Palestinians, the hurdles to accessing justice are even higher. Israel has shielded itself domestically and internationally.<sup>337</sup> While Israel is a signatory to many of the principal human rights conventions, it has submitted reservations that would prevent individual Palestinian legal challenges, refused to submit to

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<sup>335</sup> Stavropoulou, 539; Schwager, 434.

<sup>336</sup> Stavropoulou, 540.

<sup>337</sup> Lawyers have made Palestinian restitution and compensation claims in Israeli courts without success for years. In domestic law, Israel's legal claim to Palestinian property is based on the "laws of absentee property." The law includes in the definition of an "absentee" the vast majority of Palestinians who left their homes, however briefly, as a result of the 1948 conflict. Once defined an "absentee," a Palestinian immediately loses their right of ownership to their property. The sole right, title, and use of all absentee property was given to the Custodian of Absentee Property, to be used for the benefit of Israel. In 1961, the Israel Land Administration (ILA) was created to take over the administration of almost all Palestinian refugee land confiscated under the absentee property laws. The creation of the ILA insulated the state from claims from the original Palestinian landowners of wrongful taking and discriminatory application of the laws, and the ILA, as a "non-state" entity, was able to include regulations on every land transaction that prohibited the transfer of the property to non-Jews. (Similar "restrictive covenants" used by whites in the US to prevent the transfer of land to blacks were declared illegal decades ago). Finally, Israeli legislation declares that the only compensation to be paid in case of challenge by the owners of the "absentee property" is value fixed at 1950 prices, with prohibitions on the restitution of the property; Susan Akram, *Palestinian Refugee Rights: Part Two — Israel's Legal Maneuvers*, The Center for Policy Analysis on Palestine, Information Brief No. 41 (2000).

the jurisdiction of the conventions' enforcement bodies and has not incorporated the treaties' dictates into domestic law.<sup>338</sup> There is currently no meaningful mechanism through which individual Palestinians can challenge past and present violations of human rights.<sup>339</sup>

Yet, international case law is clear that a right must be distinguished from the procedural capacity to exercise that right. An individual, even if unable to exercise their right at the international level, still holds that right.<sup>340</sup> For Palestinians lacking a court through which to bring individual reparations claims, creativity is needed to make their voices heard. As Susan Akram, a Boston University law professor who has extensively studied the legal position of Palestinian refugees, points out, there are a number of different avenues through which Palestinian refugees could attempt to apply pressure for reparations claims. While unable to submit individual complaints, refugees and refugee organizations can and should continue to collect and present evidence to the various human rights treaty bodies on the ongoing violations of their rights every time Israel is due to submit its periodic compliance reports. Palestinians could use advocacy techniques to pressure Europe and those trading with Israel to mandate its compliance with the human rights treaties. Refugees could also advocate for a case to be brought against Israel in the International Court of Justice (ICJ). As only states and, theoretically, international organizations, have standing with the

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<sup>338</sup> Akram, *Palestinian Refugee Rights: Part Two — Israel's Legal Maneuvers*.

<sup>339</sup> Akram, *Palestinian Refugee Rights: Part Two — Israel's Legal Maneuvers*.

<sup>340</sup> This was affirmed by the Permanent Court of International Justice in the *Jurisdiction of the Court of Danzig* case. Similar logic was followed by the International Court of Justice in the *LaGrand* case in 2001; Elke Schwager, *The Right to Compensation for Victims of an Armed Conflict*, Chinese Journal of International Law, Oxford University Press (2005), 419.



ICJ, individuals would have to lobby either UNRWA or a host country to bring claims.<sup>341</sup>

UNHCR and UNRWA do not have the power to establish effective legal mechanisms in which refugees could bring claims. The agencies do, however, have the power to help refugees navigate the complex international fora through which there is potential for making their voices heard. For, through advocacy, the greater need and desire for access to justice mechanisms will be brought to light.

***Adequate, effective and prompt reparation for harm suffered***

Neither UNHCR nor UNRWA can ensure the delivery of adequate reparation. The agencies can, however, facilitate the increased promptness of the process. Advocacy and the attempt to bring legal claims is an important source of pressure to ensure justice delivery. Even failed legal claims allow a form of non-violent protest against the original crime and help indicate gaps in the current legal system. In addition, the advocacy process can be a cathartic and empowering experience for refugees.<sup>342</sup> Both UNHCR and UNRWA have a duty to increase refugees' knowledge of their rights and access to different fora to make their voices heard in order to facilitate the achievement of reparation.

Further, applying this pressure and making publicly known the refugees' knowledge of and attachment to their rights could impact negotiations. It would remind that the individual's rights, as mandated by law, cannot be abrogated in the name of collective appeals or political expediency. If pressure is not applied

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<sup>341</sup> Susan Akram, *Palestinian Refugee Rights: Part Three — Strategies for Change*, The Center for Policy Analysis on Palestine, Information Brief No. 40 (2000).

<sup>342</sup> Akram, *Palestinian Refugee Rights: Part Two — Israel's Legal Maneuvers*.

and claims are not made previous to an agreement being reached, however, there is serious danger that the right and ability to achieve individual justice will be extinguished.<sup>343</sup>

### Conclusion

The refugees are currently waiting for the states to deliver justice, but rights are not easily granted from above. The law must be used to assert and claim rights in order to achieve them. Unable to rely on the PA to deliver individual justice, Palestinian refugees are in absolute need of international legal protection. While UNRWA has increased its protection role over the past few years, its work remains limited. The agency is uniquely placed to restore the agency of Palestinian refugees by increasing their ability to advocate for themselves and make their claims heard for reparations and solutions. UNRWA asserts that it focuses on the “human development” of the refugees. This development must include more than education and healthcare. It must empower the refugees to be subjects again.

Many have pushed back against this “individualizing” of the Palestinian cause, arguing that attempts to “inform the refugees as to their rights” are disguised efforts to make the refugees forget the need for collective justice. Yet, as previously discussed, the emphasis on the collective has often meant the individual right has been ignored. The individual right to reparation and the collective right to self-determination are not mutually exclusive. In fact, advocacy and pressure applied in the pursuit of individual claims could be beneficial to the

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<sup>343</sup> Akram, *Palestinian Refugee Rights: Part Three— Strategies for Change*.

Palestinian collective cause. Achieving individual justice should empower the refugees and allow them to focus more fully and advocate more effectively for the collective. As my interviewees informed me, a Palestinian refugee who achieves individual justice remains a Palestinian.

## **Conclusion**

Following human rights violations, victims require holistic justice in both the moral and material realms of repair. Palestinian refugees have been denied this justice. Their right to reparation has not been delivered by the negotiators, who focus on collective goals, or the international community, which has concentrated on providing short-term humanitarian assistance. Yet, the individual's right to reparation is codified in international law. According to the doctrine of "protection," the agencies that serve refugees have a duty to protect their beneficiaries' rights as refugees and as individuals. These rights, under IHRL and IHL, include reparative justice for the crime of forced displacement.

Palestinian refugees suffer from a protection deficit, with no international agency currently mandated to advocate for their rights. Their exclusion from the general refugee regime embodied by UNHCR was originally meant to afford them greater protection, with the work of UNRWA and the UNCCP kept separate and thus specialized. Yet, the UNCCP has become defunct, currently issuing resolutions each year only a few sentences long, and UNRWA remains mandated only to provide humanitarian assistance. The questions of justice and durable solutions for the refugees have been left to the states.

The refugees remain waiting for individual justice to be delivered in the form of a collective solution. As was made clear in the "Palestine Papers" referenced earlier in this thesis, the Israeli and Palestinian negotiators continue to seek compromises on the refugees' rights. The reactions to the Papers also made clear that the refugees do not wish their rights to be treated as a chip for

negotiations. Compromise is necessary for the achievement of collective goals, yet rights are meant to be guaranteed, not concepts that can be re-defined for political expediency. As the guarantor of international law, the international community has a duty to protect the rights of individuals.

UNRWA is uniquely placed, due to its existing infrastructure and connection with the refugee community, to take the practical steps necessary to ensure that the refugees' rights are being respected. UNRWA has concentrated on the "human development" of the refugees, but holistic human development must also include increasing the agency of the individuals involved. This increase in agency can be achieved using the four steps of dialogue, education, empowerment and debate broadening. UNRWA should start meaningful discussions with the refugees as to their desires regarding the future and more fully educate them about their rights under international law. The agency should also empower the refugees to make claims in internationally consequential fora, including providing access to relevant information, such as UNRWA and UNCCP records. UNRWA can also play a role in broadening the debate past the rhetoric of return towards the wider realms of IHRL and IHL, including the right to reparations. In short, UNRWA is uniquely placed to empower the refugees by ensuring they have the information and tools necessary to advocate for themselves.

#### Diverse individuals

It is often argued that providing justice to the refugees would be impossible. After all, Israel simply could not absorb 4.8 million refugees; it would

mean an end to the state as it is and particularly to its Jewish identity.<sup>344</sup> Nor could the PLO take all the refugees into a budding state of Palestine without threatening the economic development of the new state. These and other similar concerns can make discussion of justice for the refugees incendiary, linked to the notion that “justice” necessarily threatens Israel or a prospective Palestine. While there are practical concerns that must be addressed in order to ensure new injustices are avoided, these arguments tend to rest on the very narrow assumption that justice will mean the same thing, namely return, to the millions of diverse individuals within the Palestinian refugee community.

Justice, rather, is the facilitation of agency to victims; justice is choice. It is true that for some refugees justice will mean waiting for a return to their original lands. For others, it will mean an apology and acknowledgment of their plight. Still others will ask for resettlement and material assistance in starting a new life. The refugees are individual people with a diverse array of hopes, dreams and desires. The first step in providing them justice is to recognize this diversity.

Proof of this “array of wants” exists. A large number of Palestinian refugees have taken it upon themselves to leave the camps, divorce themselves from UNRWA services and move to the Gulf States, Europe, America or further afield. Their reasons are varied, but many have settled, own property and live successful lives. This freedom to move, however, is only available to those with the necessary funds. For many refugees, beginning a new life is an impossibility without assistance from the international community.

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<sup>344</sup> Casey Patrick Reilly, “Refugee Poll Confusion,” *The Palestine Center*, 25 July 2003, Accessed 2 February 2011. <http://www.mediamonitors.net/caseypatrickreilly1.html>

In 2003, the international community, through UNHCR, provided this assistance for the first time. Palestinian refugees residing in Iraq were persecuted in the violence following the war. They tried to flee the country, but became stranded in camps on the Jordanian and Syrian borders. Neither country would allow them to enter. The conditions in the camps were terrible and after years of lobbying on the part of UNHCR, the PLO finally agreed to allow the resettlement of these refugees for humanitarian reasons in 2007.<sup>345</sup> More than a thousand of the Palestinians from Iraq have now been relocated to countries outside the Middle East, including Belgium, Chile, Finland, Italy, Norway, Sweden, Switzerland and the United Kingdom.<sup>346</sup> As one of the relocated refugees said, "I am very happy that this is finally over. We have been waiting for this for such a long time and yet we are anxious about what's next. We have suffered a lot... We just want a place that welcomes us and recognizes us as human beings."<sup>347</sup> While the case of Palestinians from Iraq is unique, it is likely that other refugees wish to end the wait and to find "a place that welcomes [them] and recognizes [them] as human beings" in the present.

The only major poll ever conducted of the refugees on their desires for the future demonstrates the diversity of opinions present in the community. In 2003, the Palestinian Center for Policy and Survey Research (PSR), under the leadership

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<sup>345</sup> As outlined in Chapter 4, Israel is unwilling to recognize the refugees' right of return. Some claim that the refugees remain one of the biggest negotiating chips the PLO has in its repertoire. If the refugees were resettled, the PLO would lose the leverage gained, and the possibility of winning other concessions from Israel, from the continued presence of the refugees.

<sup>346</sup> Dalia Al-Achi, "End of long ordeal for Palestinian refugees as desert camp closes," *UNHCR News Stories*, 1 February 2010, Accessed 4 February 2011. <http://www.unhcr.org/4b67064c6.html>

<sup>347</sup> These refugees are in a particularly good position to make legal claims against Israel for compensation and reparation.

of Dr. Khalil Shikaki, interviewed about 4,000 refugees in Lebanon, Jordan, Syria, the West Bank and Gaza Strip.<sup>348</sup> PSR worked with the PLO in developing and carrying out the survey, asking the refugees their opinions on the options outlined at the Taba negotiations in 2001.<sup>349</sup> About 10% said they would return to Israel proper and become an Israeli citizen, 17% said they would accept compensation and remain in their host country, 2% said they would prefer compensation and resettlement to a European country, the US, Australia or Canada and 54% said they would like to return to the area that would become the new state of Palestine. In their decision-making, refugees tended to primarily factor in economic considerations and familial relationships.<sup>350</sup>

Shikaki's findings provoked fierce reactions. Soon after their release, about a hundred Palestinians stormed the PSR offices, "believing that the right of return was being tampered with."<sup>351</sup> While an extreme reaction, the protestors' fear was valid. Shikaki's findings were quickly picked up by Israeli sources. They began using the poll as "evidence" of the fact that, as many refugees did not actually desire return, the right of return was negotiable.<sup>352</sup>

The commentators failed to distinguish between the right of return and return itself. While only 10% of the refugees said they would return to Israel

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<sup>348</sup> "Results of PSR Refugees' polls in the West Bank/Gaza Strip, Jordan and Lebanon on refugees' preferences and behavior in a Palestinian-Israeli permanent refugee agreement," *PSR Press Release*, 18 July 2003, Accessed 11 February 2011.

<http://www.pcpsr.org/survey/polls/2003/refugeesjune03.html>

<sup>349</sup> At the time, Taba looked likely to provide the framework for an eventual solution.

<sup>350</sup> "Results of PSR Refugees' polls," *PSR Press Release*.

<sup>351</sup> "Palestinian 'Right of Return' Poll Sparks Mob Attack: Interview with Khalil Shikai," *National Public Radio*, 14 July 2003, Accessed 11 February 2011.

<http://www.npr.org/programs/atc/transcripts/2003/jul/030714.shikaki.html>

<sup>352</sup> Reilly, "Refugee Poll Confusion".



proper, 95% of those surveyed declared that the right of return was sacred.<sup>353</sup> This discrepancy is understandable when it is remembered that for many refugees the right of return is more about recognition of the right to choose than any particular place. In Shikaki's poll, the questions were based upon the idea that "each refugee family will be able to choose" among a series of options. The commentators forgot the importance of this initial, unobtrusive clause. The poll and the reaction to it demonstrate that the refugees hold the right of return dear, but that their interest is primarily for recognition as legitimate rights-bearing subjects with a voice.

Pointing out the diversity in the refugee community is not an attempt to validate disregard of the refugees' right to choose. Rather, it is to demonstrate that respect for their rights will not necessarily entail destruction, displacement or harm to others. To the refugees I spoke with, justice was about choice and recognition of their rights, an end to "this victimhood life." For over 60 years, they have been asked to remain waiting while others make decisions for them. Many have taken it upon themselves to start advocating, by making films, telling stories to foreigners, leading tours or educating the next generation. In one instance, a 23-year-old interviewee told me he had written two-thirds of a book that juxtaposed his time in an Israeli prison with his time spent in the prison of the refugee camp. He hoped to publish the book in English and Arabic. These intelligent, educated and eloquent people were frustrated that their voices were not heard, that they were not represented and that they continue to be largely

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<sup>353</sup> Reilly, "Refugee Poll Confusion".

ignored.<sup>354</sup> They ask for empowerment.

While the popular debate tends to emphasize the injustice that has occurred because the refugees have not been given the option of return, it fails to mention that they have, at least for the last few decades, not been given the option of resettlement or local integration either. With their vision of justice assumed and no voice in negotiations, they have been given no choice but to remain waiting.

### Remembering the collective

While I am advocating for the removal of the refugees' rights from the negotiating table, the argument I put forward is not an attempt to disempower the Palestinians as a community. Treatment of the refugees as a collective, voiceless chip that cannot be empowered is a clear injustice to individuals that the current situation perpetuates and preferences. Yet, the refugees' right to reparation is distinct from the Palestinians' collective right to self-determination. Achieving justice on an individual level does not require the refugees to forget their identity as Palestinians or their collective right to justice. Increasing the agency of members of a community should only serve to increase the agency of that community.

Reparations depart from past discourse by allowing the broadening of the debate beyond the overly charged resolution 194 and allowing individuals more agency in determining which justice options are appropriate for them. Reparations

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<sup>354</sup> Education is UNRWA's largest program. The agency operates one of the largest school systems in the Middle East, providing free basic education, as well as scholarships to pursue higher learning to refugees who excel academically. Palestinian refugee students are among the most highly educated in the region; "Education," UNRWA.org, Accessed 27 February 2011. <http://unrwa.org/etemplate.php?id=32>

are not a compromise form of justice in relation to the ideal of return. In fact, restitution, including land, property and citizenship, is the first of the five basic components of reparations.<sup>355</sup> Refugees who believe justice could only be found in physical return to the land lost would be able to advocate for this under the framework of reparations.

Reparations provide more room for meaningful dialogue and practical action, and Palestinian refugees could benefit from the precedence cases regarding reparations for victims of human rights violations.<sup>356</sup> Reparations also provide a promising framework for discussions with the refugees as to how they envision their future beyond the prevailing rhetoric. If an individual refugee were to achieve justice by winning a case for reparations, this would be the end of an individual claim, not the collective claim to the right to a state of Palestine. No refugee, by advocating for their individual rights, would or could give up the Palestinians' collective right to justice.

#### Broadening the debate

The arguments presented in this paper are not specific to the Palestinian case. Palestinian refugees provide a heightened case study illuminating the need for UNHCR and UNRWA to include justice concerns in their protection work, particularly in situations of protracted displacement. The prevailing idea among humanitarian agencies serving refugees is that finding a “durable solution” by providing a refugee with citizenship is the most important goal. This goal is

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<sup>355</sup> See Chapter 1 for more details.

<sup>356</sup> For more on reparations and mass claims precedence cases, see Michael Dumper, *The Issue of Reparations, The Future for Palestinian Refugees: Towards Equity and Peace*, 133 – 156 (Lynne Rienner Publishers: London, 2007).

important, but it comes with the damaging assumption that refugees must wait until they gain a nationality and national protection to access recourse to justice.

As discussed in Chapter 4, Morris differentiates between the protection goals of searching for a just and durable solution and the need to preserve and defend refugee rights. This is a flawed distinction. The refugees have a right to justice in the present, and a solution can only be truly durable if this right is defended and preserved from the time a refugee is displaced. As victims of forced displacement, refugees have the right to redress and reparation. Yet, unable to avail themselves of the protection of a state, most refugees currently have no procedural capacity to exercise this right. It falls to the international community to provide recourse to justice, educating the refugees as to their rights under international law and empowering them to make claims. The pressure created by these claims could serve to highlight the gaps in the current international legal system for refugees seeking justice.

In situations of protracted displacement, the damage done by putting off these questions until citizenship is gained becomes increasingly clear. For some, citizenship may never be achieved. Yet, a refugee is just as entitled as any citizen to justice. The international community must rethink its absolute focus on the justice needs of refugees only in regards their future. Refugees are not passive recipients of aid, but rather rights-bearing subjects with the need for justice and empowerment while under the protection of UNHCR or UNRWA. The international community has the information, resources and knowledge necessary to empower the refugees to make claims for themselves in internationally

consequential fora. Failing to provide these tools is a failure to provide protection.

The Palestinian case provides a particularly striking example of the damage done when the international community fails to provide protection to vulnerable populations who have no other means of claiming the rights due to them. The legal realm provides a space between the “strictly humanitarian” and the “political” through which justice can be claimed. By bringing the questions of perpetrators, guilt and reparations into the debate, the focus of the international community can shift from “burden sharing” to “burden bearing,” holding accountable the states and individuals responsible for the crime of forced displacement. To ensure a proper precedent is set for the future, the volume of the voices of those affected by this conflict must be raised.

## Annex 1: Index of Interviews

	Date	Name	Age	Sex	Location	Language**
1	1/13/ 2011	Mahmud	50	Male	Dheisheh Camp	Arabic
2	1/13/ 2011	Nida	85	Female	Dheisheh Camp	Arabic
3	1/13/ 2011	Abed	60	Male	Dheisheh Camp	Arabic
4	1/13/ 2011	Amani	50	Female	Dheisheh Camp	Arabic
5	1/13/ 2011	Ara	55	Female	Dheisheh Camp	Arabic
6	1/13/ 2011	Rawiyah	86	Female	Dheisheh Camp	Arabic
7	1/13/ 2011	Kareem	60	Male	Dheisheh Camp	English
8	1/15/ 2011	Laila	35	Female	Al Walajeh	English
9	1/15/ 2011	Suhayl	30	Male	Al Walajeh*	English
10	1/16/2011	Nimer	30	Male	Dheisheh Camp*	English
11	1/16/2011	Maher	48	Male	Dheisheh Camp*	English
12	1/16/2011	Ibrahim	22	Male	Dheisheh Camp	English
13	1/16/2011	Malak	20	Female	Dheisheh Camp	English
14	1/16/2011	Yasmeen	18	Female	Dheisheh Camp	English

\* While I spoke with Maher and Nimer in Dheisheh refugee camp, the two men did not reside in the camp, but rather had houses in Bethlehem city. Suhayl was visiting Laila in Al Walajeh. He lived in a refugee camp on the outskirts of Jerusalem.

\*\* I have training in the Arabic language. My thesis advisor, fluent in Arabic, accompanied me to the interviews and occasionally provided brief translations if necessary for clarity.

Each interview lasted approximately one hour.

Dheisheh camp was established in 1949. The original residents of the camp came from 45 villages in the western Jerusalem and Hebron areas. The camp was heavily affected by the second intifada in 2000.

Today, approximately 13,000 registered refugees live in Dheisheh camp. A third of the refugees are unemployed, with opportunities restricted by the inaccessibility of the Israeli labor market. Approximately 60% of the refugees in Dheisheh are under 25 years of age. About 35% are between the ages of 25 and 60, while the remaining 5% are over 60 years old. UNRWA operates two schools, one food distribution center, a health center, a community rehabilitation center and a women's program center in the camp.<sup>1</sup>

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<sup>1</sup> "Dheisheh refugee camp," UNRWA.org, Accessed 2 March 2011.  
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