

UNRWA area of operations

Oxford Public International Law

Dedication

From: Palestinian Refugees in International Law (2nd Edition)
Francesca P. Albanese, Lex Takkenberg

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(p. v) To Giordano, Leila and Max,
the winds which blow my sails.
And to Floriano, who left us too early - FA
To Leyla, Guido, Wouter and Suzanne,
thank you for your love and inspiration - LT
And to the Palestinian refugees, those who are no longer with us, and those who are still
longing for justice.(p. vi)

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Foreword

Karen AbuZayd

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I am particularly pleased and grateful to have the opportunity to contribute the foreword to Francesca Albanese's and Lex Takkenberg's new and greatly expanded volume on *Palestinian Refugees in International Law*. I believe this is a masterful portrayal of the history of, and injustices visited upon, Palestinian refugees. The author's fair and objective assessments provide a necessary corrective to the misinformation surrounding the subject. The book brings back memories of my time working for UNRWA, based in Gaza, from 2000 to 2010, many of which I had suppressed, and reading it moved me to renewed anger and tears. It reminded me of how we arrived at today's impasse, with perhaps less hope for a just resolution than at any previous time. So many options have been tried and failed. Some failed as a result of bad faith while others failed because fine words were not matched by resolute action.

The holistic approach adopted by the authors allows them to consider the relevance of various branches of law over time, and to show the importance of their relationship. This gives legal context to the violations experienced by Palestine refugees over the last seventy years.

Additionally, for the first time the situation of Palestine refugees across all five continents is examined. The many different challenges they experience are described, as are the problems as a result of differences in the application of the relevant different international instruments, often leading to confusion and variations in documentation and status, sometimes even within the same jurisdiction.

The authors explain how international law can identify and could correct the injustices faced by Palestinian refugees. They examine the roles and cooperation between the United Nations High Commissioner for Refugees (UNHCR) and United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), and how international refugee law and practice have evolved in ways that allow better – if far from assured – day-to-day protection. They describe how UNRWA has enhanced its efforts to protect Palestinian

refugee rights in its area of operations and the increasing engagement of UNHCR elsewhere.

The book highlights the potential significance of the New York Declaration on Refugees and Migrants adopted in 2016 by all UN member states, which sets out a new global framework for protection and solutions for all refugees, including those in protracted exile. These developments give hope for progress towards solutions for refugees, and such progress could help overcome some of the many obstacles that have prevented the realization of a free Palestine.

The book provides a cohesive image of a nation in exile, and fragmented by exile, where the realities of that experience are a constant challenge to legal categories and common assumptions. It shows that Palestinian refugees are distinct not only because of their special place within the international refugee regime but, and fundamentally, because they are – the book quotes Edward Said – ‘orphans of a homeland’, which one day existed but no longer exists, except across the million pieces and fragments of their exile. As a consequence, for them, ‘being refugees’ has a meaning that goes beyond legal status and the need for international protection.

(p. viii) The authors show that while Palestinian refugees are often described as a homogenous group, this is not the case. The only common element across continents, generations, and socio-economic strata are the ‘Palestinian’ identity and the sense of loss attached to it, as a collective trauma. The authors challenge the perception that the refugees are just passive recipients of international assistance, languishing in refugee camps while waiting for a solution to their plight. They show that, though indeed the refugees are not masters of their own fate, they have contributed significantly to the search for justice, through political and legal activism from the level of their grassroots organizations to the role of the Palestine Liberation Organization (PLO) in the United Nations (UN).

Setting the legal narrative in its historical context allows the authors to powerfully capture not only the thousand shades of injustice experienced by Palestinians but also the resilience and steadfastness that Palestinian men and women have demonstrated over decades of adversity and multiple displacements. The move of hundreds of thousands of Palestinians from their original host countries to all corners of the world, as documented herein, and their continuing demands for justice, well illustrate this resilience.

This book is in a sense a tale of both fragmentation and opportunity. It brings together many different strands – legal, historical, political – and sets out the related facts objectively. The result shows not just the many opportunities that have been missed but also that there are opportunities still to be seized. This is notably the case in the final chapter, in which the authors advocate for a fundamental paradigm shift in the approach to solutions for Palestinian refugees. The quest for a just and durable solution must, they argue, be placed firmly within the parameters of international law and practice, and moved from the essentially bilateral approach of the last decades back to the multi-lateral arena of the UN. As the authors explain, the New York Declaration and the 2018 Global Compact on Refugees call for a new approach that could address the plight of Palestinian refugees, one that is in accordance with international law and that can finally discharge the responsibilities engaged by the international community since 1948.

These proposals merit serious consideration by all those concerned with the unresolved plight of the Palestinian refugees, and this book should make an important contribution to its resolution.

Karen AbuZayd,

September 2019

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Preface

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The Story of 'PRIL'

The first edition of this book opened with 'The Story of Rula', an account of the life of a second-generation Palestinian refugee in early 1990s, post-Iraqi-invasion Kuwait, along with that of her family, experiencing first-hand the ordeal of being a stateless refugee, even though Kuwait, the country where she was born and raised, had long been welcoming to the many Palestinians who had moved there to pursue economic opportunities. It was a powerful introduction to the plight of Palestinian refugees and the legal and other challenges they often experience. In similar vein, we have decided to start this second edition with a personal story, albeit of a different order.

As Victor Kattan observes in the preface to his *From coexistence to conquest*, international lawyers often refrain from 'writing about themselves', perhaps as it may be thought to affect the objectivity of their scholarship. Like Kattan, we are not persuaded that this should be the rule in all situations, especially when one is writing on such a politically (and emotionally) loaded subject. The reader may be curious to know about the authors, their background, what prompted them to engage in their research and what it entailed, professionally and at the human level. In this spirit, we begin the book with the story of 'PRIL' (formerly 'SPRIL'), the nickname we have used to refer to the evolving manuscript, representing the acronym of its title: *(The Status of) Palestinian Refugees in International Law*. The new edition omits the 'S' as what it covers is much more than questions pertaining to legal status.

The story of PRIL starts on a cold morning in late November 2012. Francesca Albanese, an international lawyer then in her mid-thirties, was expecting her first much-wanted baby. After having worked for almost a decade for the United Nations (including UNRWA's Department of Legal Affairs, located in occupied East Jerusalem) she had just left Palestine to follow her husband, Max, to Washington, D.C., where he had recently started a new job with the World Bank. She left Palestine, but Palestine, the Palestinians, and their struggle for justice had clearly not left her heart. This was the feeling inhabiting her when a former colleague, Lex Takkenberg - a long-term international staff member of UNRWA (during the past decade, the agency's first chief ethics officer) - called her on Skype and told her, with his typical Dutch directness: 'I have been thinking of updating the book I wrote about

Palestinian refugees almost twenty years ago, and unlike the first edition, I don't want to do this on my own. I believe – and others think so, too – that you would make a perfect co-author'.

'Why on earth me?' Francesca asked him in response, to which the answer was: 'Because not only does it need a good lawyer, but someone who knows and understands the history of the Palestinian refugee question; someone who must be ready to draw from different approaches and sources, and who is also good at networking and consultation, as much has happened and been written since the first edition was published, with many more engaged on the issue than twenty years ago. Last but not least, this project needs someone who has her heart in the right place, with a deep-rooted belief in the need for justice for the Palestinian refugees.'

(p. x) Francesca knew Lex' book well from her LLM studies at SOAS, as well as from the preparation for her interview for the post of Legal Officer with UNRWA. She thought that, while showing its age, it remained a seminal work; hence, and without hesitation, she politely declined. While appreciating his consideration, she did not believe that she could contribute much, especially as she had no idea how to write a book. She also somewhat feared that embarking on research on a matter on which she had deeply-held personal views, could compromise her objectivity.

All the more, she wanted to enjoy 'full-time' motherhood, with which, however, she was done within six-months of giving birth to Leila – a gorgeous six-year-old at the time this manuscript is being finalized!

It took two wars in blockaded Gaza, in 2012 and 2014, the continuous encroachment of the occupation in the West Bank, and the realization first-hand of the often toxic, misleading, and largely misinformed discourse on Palestine in the US (to which Francesca was exposed during her time in Washington, D.C.) to slowly but steadily convince herself to reconsider Lex's offer. In August 2014 Lex, after reading an op-ed Francesca had recently written about the war in Gaza, called her again: 'So, you are still thinking of Palestine, aren't you? Would you like to co-author the second edition of my book? I would be delighted if you were willing to consider being the lead author.' This time Francesca committed to re-read the book and give it further thought. And this is when she realized that she was ready to see for herself why international law, particularly in the case of Palestine, appears 'closer to power than to justice', as Victor Kattan argues, and how to make the case that its subordination to considerations of political expedience or geopolitical convenience can and should be undone.

Three weeks later, in his office in Amman, Lex was reviewing Francesca's proposal for a second edition: a rationale aimed at building on the new developments on the ground as well as in law and practice, and on the wealth of legal literature that had meanwhile germinated on many aspects of the refugee question; and a new structure that would better serve discussion of various legal topics, presented in a historical fashion. Also, a fundamental feature of the new edition would be an entirely rewritten final chapter on solutions. The first edition, reflective of the – in retrospect naïve – enthusiasm generated by the Oslo process, did not discuss the implications of the right of return as a legal right, and took for granted that it would be the object of compromise. 'While compromise may eventually be the choice of the refugees for various reasons' – Francesca argued – 'we should not shy away from presenting return as what it is: a legal right. This is what a legal text is expected to do; the world out there is full of politicians, diplomats, and political scientists that can ponder the politics of the matter.'

Lex agreed. By January 2015, Oxford University Press had enthusiastically agreed to publish a second, expanded edition. UNRWA would have to be a crucial partner, not only because it was Lex's employer until the end of 2019, but also because new research, including into the agency's archives and the evolution of UNRWA policies, was warranted. UNHCR's support, which had been important to the research for the first edition, was even more critical for the new edition. This was especially so, given the dispersal of Palestinian refugees outside UNRWA's area of operations, which had quietly started in the 1950s, and significantly increased following turmoil in the region in the late 1960s, early 1980s, early 1990s, and from the 2000s to present. The crucial support of both agencies was secured and maintained throughout the project.

(p. xi) One last concern remained: Francesca – who since 2014 had returned to work full time – would need some funding to enable her to work full-time on the book, secure support for a part-time research assistant, undertake field trips, pay for academic subscriptions, and so on. Among several potential donors, Swiss Development Cooperation was the most forthcoming. At that point, what remained to be secured was the access and support that would ensure that the new edition would indeed be the ultimate study on Palestinian refugees in international law, a solid legal reference, both in substance and methodology. The Institute for the Study of International Migration (ISIM) at Georgetown University and the Issam Fares Institute at the American University of Beirut both generously offered Francesca affiliate status, thus giving her access to libraries and other academic resources, as well as to a range of academic expertise, which was much needed given that her legal career had hitherto been largely that of a 'practitioner'.

An informal advisory group comprised of some twenty-five experts on the Palestinian refugee question was established, with individuals drawn from various disciplines (history, political science, specific juridical studies such as IHL, refugee law, law of nationality and statelessness, human rights law), as well as from various parts of the world, and particularly UNRWA's area of operations. This included a number of former and current UNRWA and UNHCR staff. This group proved of great value, providing general advice as well as specific input on various parts of the book. Feedback from both this group, and the publisher, encouraged the authors to consider writing a broader and more analytical book that would encompass the 'wholeness' of the Palestinian refugee experience, including reference to the depth and complexity of the root-causes of the original displacement and their continuing relevance. These had become more mainstream after the first edition, but also somewhat obfuscated by the two-state solution debate and the shift of focus to the 'pre-1967' borders of the (future independent) state of Palestine.

It was felt this broader horizon should include an expanded country analysis, going beyond the Arab region – reflecting the sense Francesca had in 2014 that the frontiers of the Palestinian diaspora had grown much larger than commonly believed – and which existing literature had not yet captured in a comprehensive fashion. It should also cover the relevance of the human rights framework and of a holistic international law approach for Palestinian refugees; the need to discuss solutions in a principled way; and to address the past and deal with it in a comprehensive fashion. The project now appeared to have taken on a life of its own.

By late 2015, Francesca had relocated again, this time following her husband to Indonesia, and was expecting their second child. This location allowed her to also study, first-hand, the situation of Palestinian refugees in South East Asia, and to establish a partnership with the Middle East Institute at the National University of Singapore. It was there where her new friend, Victor Kattan, opened doors to cooperation in support of her research.

With the contract with the publishers and financial support secured, in the first months of 2016 the authors identified several part-time research assistants, primarily to assist with the authors' survey of Palestinian refugees worldwide. The survey was prepared in consultation with a number of practitioners, primarily Palestinian refugee grassroots organization BADIL, and disseminated mainly through the 'good offices' of UNHCR to the various countries outside UNRWA's area of operations where Palestinian refugees could be found. The survey aimed to gather updated information on arrival, status, and treatment of Palestinian refugees in each country. It also sought to collect information on case law and practice (p. xii) concerning protection and solutions relevant to Palestinian refugees. While coordinating the research team during the first half of 2016, Francesca also conducted a number of semi-structured interviews with relevant stakeholders in the Middle East, Switzerland, the US, as well as with Palestinians in the diaspora. Old and new friends joined in support of the project at this time, becoming regular 'ports of call' for PRIL's authors along their journey. The shape and shades that the new manuscript would contain were reflected in the expanded research outline that the authors submitted to the publishers in the second quarter of 2016. Only a few weeks later, Francesca's and Max' second child, Giordano - now a lively and entertaining three-year-old boy - was born.

The bulk of the manuscript was written between autumn 2016 and late 2018. Painstaking review was undertaken after each draft chapter (or sections of it) had been circulated for comments to a defined set of lawyers, relevant experts, and field practitioners. Progressively, the distinctiveness of the new book emerged and it became increasingly detached from the first edition, finding its own identity as a new book built on the foundation of the original work. The completion of the manuscript took another year, during which two somewhat related, and critical, events occurred.

First, Trump's decisions to cut most of (in 2018) and then the entire (from 2019) US financial contribution to UNRWA for political reasons triggered renewed attention and discussion around the still-unresolved question of the Palestinian refugees and UNRWA. Both authors, who by then were known to be working closely on the issue, were involved in discussions concerning the Palestinian refugees as 'legitimate' or 'genuine' refugees under international law; evidence of which was being questioned by politically motivated attacks emanating in the main from Israel and the US. A Network of Experts on the Question of Palestine, under the auspices of the Jordanian NGO, Arab Renaissance for Democracy and Development (ARDD), commenced its reflections during a workshop held in October 2018 on 'Palestinian refugees under threat: Towards a strategic response'. The workshop prompted a fresh consideration of solutions for Palestinian refugees. Most of this reflection helped the authors to reconsider their approach to solutions (after which Chapter VIII, which had just been completed, was entirely re-written). Second, increased attacks against UNRWA made the agency understandably more sensitive about the book and its content, especially as one of the authors was required to obtain permission prior to submitting the manuscript for publication. While this never compromised the academic independence of the authors, it delayed the editing and publication process.

An important development shaping the book in its final form was the authors' encounter with former UNHCR official Nicholas Morris. In 2008, Morris had helped UNRWA conceptualize its approach to protection. After being asked to review the draft 'protection chapter' (Chapter VII) in late 2017, Morris offered to review the manuscript in its entirety. In 2018, the authors took him up on his offer and he read the full manuscript, as well as successive drafts of a number of chapters. He provided strategic advice on what to cut, what to underscore, and how to make sure that the language supported the compelling legal analysis the book contained. Morris was particularly instrumental in recognizing and helping the authors seize the opportunity offered by the 2016 New York Declaration to suggest, in Chapter VIII, ways to overcome the impasse with respect to solutions for Palestinian refugees. At a critical time, Morris' support was offered with a grace, care, and

intellectual integrity that reflects a shared commitment to the justice that many in the Middle East, and the Palestinian refugees in particular, have been denied for decades. This was also the time that (p. xiii) former UNRWA Commissioner-General, Karen AbuZayd, who had already commented on several draft chapters in previous years, got closer to the project, providing valuable insights and agreeing to contribute the foreword.

The story of PRIL is much more than the chronology of how a book came to be. It is the story of the belief that international law should be the compass for protection and solutions for Palestinian refugees, and that justice for Palestine and Palestinians will ultimately prevail.

Jakarta/Vienna,

December 2019(p. xiv)

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Writing a book is in many ways a journey of the soul. In our case, it lasted four years and was upheld by enthusiasm, determination, and a sense of continuous learning, despite the occasional exhaustion and despair. The journey brought us into new places, enabled us to engage with a great many old and new colleagues and friends, and impacted – and ultimately changed – our lives in the process. A book is rarely the outcome of the work of the author(s) alone, reflecting as it does the input by the many who share their expertise and experiences with the author(s). In our case, the individuals and organizations who have extended their support, providing advice, resources, or other assistance, are many, and we thank them all.

We begin by thanking the Swiss Development Cooperation, and particularly Veronique Bourquin (for making the introduction) and Giulia Pianigiani (for helping us obtain a two-year grant funding part of the research over the period 2016–2017). Among other institutions, a debt of gratitude goes to the Institute for the Study of International Migration (ISIM) at Georgetown University, for welcoming Francesca as an Affiliate Scholar. This allowed her access to its enormous wealth of resources, including the University Library and its online platform (which proved precious as most of the research was carried out remotely). The Issam Fares Institute for Public Policy and International Affairs at the American University of Beirut also deserves our gratitude for offering a base for Francesca in the Near East to carry out her initial field research in 2016. Between 2017 and 2018, the Middle East Institute of the National University of Singapore offered an excellent platform for Francesca to engage with other researchers on various areas of international law.

We are most grateful to UNRWA and UNHCR, who granted us full cooperation and access to a wealth of resources, and who never spared their support, through their staff in various country and field offices and positions, in answering questions, discussing ideas, and reading draft chapters. At UNRWA, we are grateful to the former Commissioner-General, Pierre Krähenbühl, and Saahir Lone in the Executive Office, for facilitating the research, as well as to colleagues from the Department of Legal Affairs for their meticulous revisions of the various iterations of the manuscript. Our particular gratitude goes to Michael Schoiswohl, Principal Legal Officer, whose friendship and solid knowledge of international law was an invaluable resource, even when we disagreed either on legal interpretations or political opportunity. At UNHCR, we were very lucky to be able to count on the support of

Volker Türk, who facilitated our interaction with relevant offices and staffers who helped us to carry out our survey and improve elements of the research, and who remained available to share his invaluable experience and knowledge of the international refugee regime in law and practice, and discuss relevant issues, such as our approach to solutions. We are also greatly indebted to the Department of International Protection, and particularly to Madeline Garlick and Carole Dahan for their invaluable advice on important questions related to UNHCR's work, particularly around international protection and 'article 1D', and for coordinating input from field offices on the status and treatment of Palestinian refugees worldwide. We also thank George Ghikas, who helped us develop and circulate the (p. xvi) questionnaires for our survey to UNHCR field offices worldwide, and we are grateful to Els Jellema and others in UNHCR who supported our research.

Many scholars offered us advice both on general questions and on the various draft chapters. Many helped us navigate the enormous wealth of information and knowledge on the Palestinian refugee question, and at the same time encouraged us to think broader and laterally in developing our own legal thinking. Among them, Jalal Al Husseini and Terry Rempel stand out; not only did they share with us their vast knowledge of UNRWA and Palestinian refugees respectively, but they also meticulously reviewed many of the draft chapters. Our cooperation with Jalal and Terry over the years evolved into an intense and enriching exchange that has helped – we hope – all of us building on each other's findings and thoughts. Essentially, their influence on this manuscript goes beyond what an acknowledgement can express.

Similarly enriching have been exchanges with extraordinary lawyers such as Anis Kassim, Ardi Imseis, and Victor Kattan. While the comments they provided on different parts of the manuscript were invaluable, our access to their extensive knowledge of the Question of Palestine, its history, geo-political implications, and legal underpinning, at any time was a unique privilege. Other lawyers who deserve our gratitude for commenting on draft chapters, or sections thereof, are Asem Khalil, Alice Edwards, Beth Ferris, Isabelle Mihoubi, Brenda Goddard, Catriona Drew, Charmain Mohamed, Christian Curtis, Denise Hauser, David Cantor, Eric Mongelard, Ingo Venzke, John Quigley, Madeleine Foster, Margherita D'Ascanio, Marjolene Zieck, Maryellen Fuellerton, Massimo Frigo, Mutaz Qafisheh, Omar Shehabi, and Peter Nicholaus Seline Trevisaut, Sharhabeel Al Zaeem, Sulini Sarugaser, Susan Martin, and Susannah Graham. Their input is appreciated tremendously, no matter the painstaking review and further work it often triggered.

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On Palestinian refugees outside UNRWA's area of operations, we are also indebted to many UNHCR colleagues, at headquarters and various country offices, whose names were not systematically shared with us, as well as to Abbas Shiblack, Ricardo Fal Dutra Santos, and, for specific country input, Trish Cameroon (Australia and Indonesia), Inaas Slimi (Netherlands), and Safia Jobara (Switzerland).

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Also, in the first part of 2016, we enrolled a number of short-term research assistants for specific purposes: Jinan Al Bastaki, then PhD candidate at SOAS, and Elisa Mosler, then Masters graduate from Georgetown University, helped collect and analyse the data of the survey of Palestinian refugees in the Arab region, and in the Americas, Africa, Asia-Pacific, and Europe, respectively; Rania Muhareb, then intern at the OHCHR Geneva, helped us research international law developments, particularly case law and practice in the field of human rights; Anna Ressler helped us develop the mapping of durable solutions of relevance for Palestinian refugees. After the end of their assignments, Elisa also helped carry out research in the field of protection, and Rania, who had meanwhile become legal researcher at Al-Haq, never spared her support to our ongoing work. We are particularly impressed by the commitment of Jinan Al Bastaki; even after she took up a position of Assistant Professor of International Law at the United Arab Emirates University, she remained committed to the book project and never spared her support, including through the endless series of research-related tasks that finalization of the manuscript entailed.

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cover that captures – quoting Karen AbuZayd in the Foreword – the mix of ‘fragmentation and opportunity’ that our book aims to convey.

We are most grateful to Karen AbuZayd, former UNRWA Commissioner General, for reading the manuscript, providing strategic input with respect to the protection and durable (p. xviii) solutions chapters, and for contributing a beautiful foreword. With her impassionate critique and her undivided support, Karen has been the perfect godmother of this book.

Words cannot express our wholehearted gratitude towards Nicholas Morris, who made himself available to read through the last drafts of the manuscript, often more than once, and offer important comments of both content and style, particularly with respect to Chapter VII and Chapter VIII. We often reached out to him at time when he was busy with other commitments; even during holidays, he replied to our many emails and made sure that his reassuring presence was felt.

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Our admiration is finally due to the Palestinian refugees about whose legal status and broader relationship with international law we were privileged to learn and write. Your extraordinary resilience and your belief in the justice of your cause has been a tremendous and constant source of inspiration throughout this project. It is to you to whom we ultimately dedicate this book in the hope that its content may contribute in some modest way to the quest for a just and durable solution of your plight and address its multiple layers of injustice.

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CAT, Concluding observations on the combined fourth and fifth periodic reports of Bulgaria, UN Doc CAT/C/BGR/CO/4-5, 14 December 2011 389n515

CAT, Concluding observations on the third periodic report of Jordan, UN Doc CAT/C/JOR/CO/3, 29 January 2016 173-76nn.351-352, 207n216, 389n512

CAT, Sixth periodic reports of States parties due in 2015, Bulgaria, UN Doc CAT/C/BGR/6, 12 February 2016 173-76n361

CAT, Concluding observations on the initial report of Lebanon, UN Doc CAT/C/LBN/CO/1, 30 May 2017 389n514

Human Rights Committee (CCPR)

CCPR, Concluding observations on the initial report of Israel, UN Doc CCPR/C/79/Add.93, 18 August 1998 173-76n339

CCPR, General Comment No 27: Article 12 (Freedom of Movement), UN Doc CCPR/C/21/Rev.1/Add.9, 2 November 1999 364-65n306

CCPR, Concluding observations on the second periodic report of Israel, UN Doc CCPR/CO/78/ISR, 5 August 2003 173-76n339

CCPR, General Comment No 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc CCPR/C/21/Rev.1/Add.13, 26 May 2004 172-73n328, 173-76n339

CCPR, Concluding observations on the third periodic report of Israel, UN Doc CCPR/C/ISR/CO/3, 3 September 2010 173-76n342

CCPR, Concluding observations on the fourth periodic report of Israel, UN Doc CCPR/C/ISR/CO/4, 21 November 2014 147-48n150

CCPR, Concluding observations on the fifth periodic report of Iraq, UN Doc CCPR/C/IRQ/CO/5, 3 Dec 2015 173-76n355, 389n513

CCPR, Concluding observations on the on the third periodic report of Lebanon, UN Doc CCPR/C/LBN/CO/3, 9 May 2018 173-76n345

Committee on the Elimination of Discrimination against Women (CEDAW)

CEDAW, Concluding observations on the fourth and fifth reports of Israel, UN Doc CEDAW/C/ISR/CO/5, 5 April 2011 173-76n343

CEDAW, Concluding observations on the combined fourth and fifth periodic reports of Lebanon, UN Doc CEDAW/C/LBN/CO/4-5, 24 November 2015 173-76n344, 380-81n432

CEDAW, General recommendation No 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, UN Doc CEDAW/C/GC/32, 14 November 2014 166-67n287, 172n321, 389n508, 389n511

Committee on the Elimination of Racial Discrimination (CERD)

CERD, Concluding observations on the fourteenth to sixteenth periodic reports of Israel, UN Doc CERD/C/ISR/CO/14-16, 9 March 2012 173-76n342

CERD, Concluding observations on the thirteenth to seventeenth periodic reports of Jordan, UN Doc CERD/C/JOR/CO/13-17, 4 April 2012 173-76nn346-348, 173-76nn350-51

CERD, Concluding observations on the combined fifteenth to twenty-first periodic reports of Iraq, UN Doc CERD/C/IRQ/CO/15-21, 22 September 2014 173-76n355, 173-76n357

CERD, Concluding observations on the combined seventeenth to twenty-second periodic reports of Egypt, UN Doc CERD/C/EGY/CO/17-22, 6 January 2016 173-76n353, 380n432

CERD, Concluding observations on the eighteenth to twenty-second periodic reports of Lebanon, UN Doc CERD/C/LBN/CO/18-22, 5 October 2016 173-76n345

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CESCR, Consideration of reports submitted by States Parties under Articles 16 and 17 of the Covenant, Concluding observations of the Committee on Economic, Social and Cultural Rights, Israel, UN Doc E/C.12/1/Add.69, 31 August 2001 173-76n343

CESCR, Concluding observations on the second periodic report of Lebanon, UN Doc E/C.12/LBN/CO/2, 24 October 2016 173-76nn.344-345

Committee on the Rights of the Child (CRC)

CRC, Concluding observations on the consolidated third and fourth periodic reports of Egypt, UN Doc CRC/C/EGY/CO/3-4, 15 July 2011 173-76n354

CRC, Concluding observations on the combined third and fourth periodic reports of the Syrian Arab Republic, UN Doc CRC/C/SYR/CO/3-4, 9 February 2012 173-76n359

CRC, Concluding observations on the second to fourth periodic reports of Israel, UN Doc CRC/C/ISR/CO/2-4, 4 July 2013 173-76n342

CRC, Concluding observations on the report submitted by Jordan under article 8, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, UN Doc CRC/C/OPAC/JOR/CO/1, 7 July 2014 173-76n352, 389n512

CRC, Concluding observations on the combined fourth and fifth periodic reports of Jordan, UN Doc CRC/C/JOR/CO/4-5, 8 July 2014 173-76n347, 173-76n349, 173-76n351, 207n217

CRC, Concluding observations on the combined fourth and fifth periodic report of Lebanon, UN Doc CRC/C/LBN/CO/4-5, 22 June 2017 380-81n432

Human Rights Council (HRC) including Independent Inquiries and Investigations

Lebanon

Report of the Commission of Inquiry on Lebanon pursuant to Human Rights Council Resolution S-2/1, 23 November 2006, UN Doc. A/HRC/3/2 144n120

Report of the Working Group on the Universal Periodic Review, Lebanon, UN Doc A/HRC/31/5, 22 December 2015 173-76n344, 380-81n432

Libya

Investigation by the Office of the UN High Commissioner for Human Rights on Libya: detailed findings' 15 February 2016, A/HRC/31/47 144n120

Syria

Report of the Commission of Inquiry on the Syrian Arab Republic', A/HRC/36/5511, August 2016 143n116, 143n120

Report of the Independent International Commission of Inquiry on the Syrian Arab Republic', 9 August 2018 A/HRC/39/65 144n120, 383n458

Occupied Palestinian territory

Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967, UN doc. A/HRC/4/1729, January 2007 140n89

Report of the United Nations Fact-Finding Mission on the Gaza Conflict, 25 September 2009, A/HRC/12/48 144n120, 173-76n340

Report of the detailed findings of the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1, 24 June 2015, A/HRC/29/CRP.4 141-42n105, 144n120, 145nn.128-129

Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, A/HRC/31/73, 11 January 2016 141-42n105, 144n120, 145nn128-129

Report of the Secretary-General, Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the Occupied Syrian Golan, HRC/31/43, 20 January 2016 141nn.93-94, 177-78n378(p. xxxiii)

Report of the United Nations High Commissioner for Human Rights on the implementation of Human Rights Council resolutions S-9/1 and S-12/1: Addendum-Implementation of the recommendations contained in the reports of the independent commission of inquiry on the 2014. Gaza conflict and of the United Nations Fact-Finding Mission on the Gaza Conflict, 7 March 2016, A/HRC/31/40/Add.1 141-42n105

Report of the detailed findings of the independent international Commission of inquiry on the protests in the Occupied Palestinian Territory, 18 March 2019, A/HRC/40/CRP.2 141-42n106, 382-83n451

Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, A/72/556, 23 October 2017 142n107

Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, A/73/45717, 22 October 2018 139n84, 243-44

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Table of Treaties and Other Instruments

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In addition to relevant international and regional treaties and other instruments, some of the most significant United Nations resolutions of relevance to Palestinian refugees are included in the following lists, divided by international and regional treaties/instruments respectively. Peace agreements are also listed. The full text of instruments marked with an asterisk can be found in the Annexes.

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1907 Hague Convention on the Laws and Customs of War on Land (Convention IV & annexed Regulations) 130

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1922 British Mandate for Palestine 22–23, 67, 156–58, 231–32, 482–83n277

1923 Treaty of Lausanne 23n53, 156nn217–218, 159–60n233, 356n246

1928 Arrangement relating to the Legal Status of Russian and Armenian Refugees 70n12, 70n14

1922 Inter-governmental Arrangements (Russian and Armenian Refugees) 70n12

1924 League of Nations, Inter-governmental Arrangements (Russian and Armenian Refugees) 70n12

1930 Convention Concerning Certain Questions Relating to the Conflict of Nationality Laws 151–52n170, 151–52n172, 161–62nn247–248

1933 Convention relating to the International Status of Refugees League of Nations 70n12

1933 Montevideo Convention on Rights and Duties of States 299–300

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1946 UNGA res. 62 (I): Constitution of the International Refugee Organization 70n12, 72n32, 74n49

1947 1947 UNGA res. 181 (II): Partition Plan for Palestine 28, 159n229, 160–61, 329, 331–33, 402–3

1947 1947 UNGA res. 104 (S-l): Granting a hearing to the Jewish Agency for Palestine 27n93

1947 1947 UNGA res. 105 (S-l): Granting a hearing to the Arab Higher Committee 27n93

1947 1948 UNGA res. 212 (III): Assistance to Palestine refugees (Establishment of UNRPR) 39–40

1948 UNGA res. 217 A 1948(III): Universal Declaration of Human Rights 101, 151–52, 167, 170–71, 189, 296n195, 352–53, 359, 364–65, 401–2

1948 *UNGA res.194 (III): Establishing UNCCP and resolving that the refugees should be permitted to return to their homes and or compensated in case of relocation 41, 43n216, 44–45, 46, 48, 49n261, 57–58, 77–78, 82, 83–84n120, 85, 90, 102, 147n143, 169–70, 171n314, 199–200n144, 204–5, 342–43n142, 343–44, 345, 346–61, 397, 398–400n6, 402–3, 435n239, 439n253, 459–60, 460n122, 472, 477n247, 489n318

1949 UNGA res. 273 (III): Admission of Israel to membership in the United Nations 160–61n245, 333n62

1949 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field 130, 144–45, 364n300

1949 Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea 130, 144–45, 364n300

1949 Geneva Convention relative to the Treatment of Prisoners of War 130, 144–45, 364n300

1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War 130, 132–33, 133–34n50, 136–37, 140, 141, 144–45, 149, 364, 389n507(p. xxxvi)

1949 *UNGA res. 302 (IV): Establishing UNRWA 44–45, 77–78n74, 77–78n76, 169–70n302, 379–80n422, 409, 477n247

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1950 UNGA res. 394 (V): Directing UNCCP to establish a Refugee Office 46, 403-4n33

1950 UNGA res. 428 (V): Statute of the Office of the United Nations High Commissioner for Refugees 72n27, 81n97, 124-25

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1961 Convention on the Reduction of Statelessness 76n61, 151-52, 153-54, 393-95

1962 UNGA res. 1803 (XVII): Permanent Sovereignty over Natural Resources 333-34n70

1963 Protocol No. 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms 274n31

1965 International Convention on the Elimination of All Forms of Racial Discrimination 154n207, 170-71, 172n318, 173, 173-76nn346-353, 173-76n355, 173-76n357, 331n48, 333-34n67, 364n302, 367-68, 370n358, 376n397, 379n415, 380-81n432, 382n441, 393-95n539

1966 UNGA res. 2131 (XX): Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty 333-34n71

1966 International Covenant on Civil and Political Rights 101n232, 103n253, 154n207, 170-73, 296n195, 325n1, 326n7, 334, 339, 364-69, 370n358, 373n382, 385-86, 389n508, 390, 393-95nn539-540, 487n306

1966 International Covenant on Economic, Social and Cultural Rights 103n253, 170-71, 173, 194n96, 325n1, 326-27n7, 334-35, 339, 378-79, 380-82, 383, 384n464, 385, 390n516

1967 Protocol relating to the Status of Refugees 72, 107-8, 120-21n375, 186-87n19, 274, 320n364, 447-48n20

1967 UNGA res. 2253: Measures taken by Israel to change the status of the City of Jerusalem 51n277, 234-35n483

1967 UNRWA-Syria Exchange of Notes 195n102

1967 UNRWA-Israel Exchange of Letters Constituting a Provisional Agreement Concerning Assistance to Palestine Refugees (Comay-Michelmore Agreement) 195n102

1967 UNGA res. 2252 (ES-V): Humanitarian assistance in the 1967 war (endorsing UNRWA's efforts to provide humanitarian assistance to other displaced persons in the area) 51n277, 104, 169-70n302, 409n71, 411n85

1967 UNGA res. 2253 (ES-V): Condemning Israel's measures to change the status of Jerusalem as null and void 51n277, 234-35n481

1967 UNGA res. 2254: deplored Israel's failure to abide by UNGA res 2253 51n277, 234-35n481

1967 *UNSC res. 242: Stating the principles of a just and lasting peace in the Middle East 51, 55, 57, 138, 234-35n481, 338, 361, 459-60, 477n247, 477-78n249

1967 UNSC res. 237: Calling return of newly displaced persons 51n277, 102, 169-70n302, 199-200n144, 361n281, 397, 411, 435n239, 477n247

1969 Vienna Convention on the Law of Treaties 108-9n286, 166-67n286

1970 UNGA res. 2625 (XXV): Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. 326-27n7, 335(p. xxxvii)

1974 UNGA res. 3274 (XXIX): Requesting UNHCR provisionally to undertake the functions foreseen in article 11 of the 1961 Convention on the Reduction of Statelessness 76n61, 154n203

1974 UNGA res. 3236: Recognizing the right of the Palestinian people to self-determination and the right of return 325-26n5, 337n95

1974 UNGA res. 3237: Observer status for the PLO 337n97

1977 Protocol I, additional to the 1949 Geneva Conventions, and relating to Victims of International Armed Conflicts 130

1977 Protocol II, additional to the 1949 Geneva Conventions, and relating to Victims of Non-international Armed Conflicts 130

1979 Convention on the Elimination of All Forms of Discrimination Against Women 103n253, 154n207, 171n312, 173, 376n397, 379n415, 381-82n440, 384n462, 385-86n480, 388n539, 390n516

1982 UNGA res 37/120 on UNRWA (first time reference to 'Protection of Palestine refugees') 114, 412, 413-14

1987 UNSC res. 605: on the Humanitarian Situation in the oPt 415, 418n128, 422-23

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- 1990 UNSC res.681 on the Humanitarian Situation in the oPt 422-23
- 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 154n207, 393-95n539
- 1992 Peace Agreement for Mozambique 369n348, 456n93
- 1993 UNRWA - Consolidated Eligibility Instructions 99n216, 103n250
- 1994 UNRWA-PLO Exchange of Letters Constituting an Agreement 195n102
- 1996 UNRWA-Palestinian Authority Agreement regarding the Location of UNRWA Headquarters in the West Bank and Gaza Strip Area 195-96n103
- 1999 UNGA res S-10/6, recommending that the High Contracting Parties convene a conference on measures to enforce the Fourth Geneva Convention in the oPt 416n152
- 2000 Optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict 173-76n352, 389n512
- 2006 Convention on the Rights of Persons with Disabilities 154n207, 173n335, 393-95n539
- 2009 UNRWA Consolidated Eligibility and Registration Instructions 90-105, 104-5n266
- 2012 UNGA 67/19 Status of Palestine in the United Nations (upgrading Palestine to non-member observer state status in the United Nations General Assembly) 162-64n268, 339n113, 340-41n128
- 2016 UNGA res 71/93: on the renewal of UNRWA mandate until June 2020 102n242, 429
- 2016 UNGA res. 71/174: On the Economic Costs of the Israeli Occupation for the Palestinian People 339n120
- 2016 UNSC res 2334: ending Israeli settlement building in the occupied Palestinian territory 141n95, 234-35n485
- 2018 UNGA res 73/255: on the Permanent Sovereignty Over Natural Resources in oPt and Golan 49n264
- 2018 UNGA res 73/94, Operations of the UNRWA United Nations Relief and Works Agency for Palestine Refugees in the Near East, 7 December 2018 97n204, 102n243
- 2019 UNGA res 74/83, Assistance to Palestine refugees, 13 December 2019 84-85n123, 102n242, 429n204

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- 1969 Organization of American States (OAS), American Convention on Human Rights 101n233, 154n207, 364-65n313, 376n397, 393-95n539

- 1984 The Cartagena Declaration on Refugees and the Protection of People Fleeing Armed Conflict and Other Situations of Violence in Latin America 166–67n285
- 1987 Esquipulas II Accords (CIREFCA) 456n93(p. xxxviii)
- 2004 Mexico Declaration and Plan of Action to Strengthen International Protection of Refugees in Latin America 303–4n240

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- 1969 Organization of African Union (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa 320
- 1981 African Charter on Human and Peoples' Rights ('Banjul Charter') 101n233, 364–65n313
- 1990 African Charter on the Rights and Welfare of the Child 154n207, 376n397, 379n539
- 2003 Protocol to the African Charter on the Rights of Women in Africa 154n207, 379n539
- 2009 Convention for the Protection and Assistance of Internally Displaced Persons in Africa ('Kampala Convention') 177n374

Asia Pacific

- 1966 Bangkok Principles on the Status and Treatment of Refugees 166–67n285, 193–94n87, 312, 364–65n313

Europe

- 1959 European Agreement on the Abolition of Visas for Refugees 274n32
- 1980 European Agreement on Transfer of Responsibility for Refugees 274n32
- 1990 Dublin Convention Determining the State Responsible for Examining Applications for Asylum lodged in one of the Member States of the European Communities 274–75
- 1992 Treaty of Maastricht (Treaty on the European Union) 107n276, 274–75
- 1995 General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Accords) 369n348, 456n93
- 1997 Amsterdam Treaty mending the Treaty on European Union, the Treaties establishing the European Communities 274–75n35
- 1997 European Convention on Nationality 154n207, 393–95n539
- 1998 CoE, C.ttee of Ministers, The Right of Rejected Asylum Seekers to an Effective Remedy Against Decisions on Expulsion in the Context of Article 3 of the European Convention on Human Rights [Rec(98)13] 274n32
- 1999 Establishment of Common European Asylum System (CEAS) 274–75n35

2000 European Refugee Fund 274-75n35

2001 Minimum Standards for Giving Temporary Protection in the Event of a Mass Influx of Displaced Persons and on Measures Promoting a Balance of Efforts Between Member States in Receiving such Persons and Bearing the Consequences Thereof [Directive 2001/55/EC] 274-75n36

2003 Right to Family Reunification [Directive 2003/86/EC] 274-75n37

2004 Minimum Standards for the Qualification of Third-Country Nationals or Stateless Persons as Refugees or as Persons Otherwise Need International Protection and the Content of the Protection Granted [Qualification Directive 2004/83/EC] 109-11n294, 109-11n297, 112, 112-13n315, 115-16n331, 166-67n285, 274n28, 274-77, 279-80, 288-89nn139-140, 299, 301-2n224

2005 CoE, C.ttee of Ministers, Exclusion From Refugee Status in the Context of Article 1 F of the Convention Relating to the Status of Refugees [Rec(2005)6] 274n32

2007 Treaty of Lisbon amending the constitutional basis of the European Union 274-75n38

2011 Standards for the Qualification of Third-Country Nationals or Stateless Persons as Beneficiaries of International Protection, for a Uniform Status for Refugees or for Persons Eligible for Subsidiary Protection, and for the Content of the Protection Granted (recast), [Directive 2011/95/EU] 109-11n297, 274-75n39

2013 Common procedures for granting and withdrawing international protection (recast) [Directive 2013/32/EU] 109-11n297, 274-75n40

2013 Standards for the reception of applicants for international protection (recast) [Directive 2013/33/EU] 274-75n41

2013 Dublin III- Establishment of criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person [Regulation (EU) No 604/2013 regulation CoEU] 274-75n42

(p. xxxix) Middle East and North Africa

Note: A representative list of League of Arab States resolutions dealing with Palestinian refugees and Palestinians generally, as well as the text of the Casablanca Protocol and several relevant League of Arab States resolutions, is included in Annex II.

1945 Charter of the League of Arab States 185-86n16

1949 Egypt-Israel Armistice Agreement 33n134, 35, 136

1949 Lebanon-Israel Armistice Agreement 33n134, 35, 136

1949 Jordan-Israel Armistice Agreement 33n134, 35, 136

1949 Syria-Israel Armistice Agreement 33n134, 35, 136

1965 *Protocol for the Treatment of Palestinians in Arab States (Casablanca Protocol) 123-24, 166-67n285, 168-69, 170, 184-85, 186-94, 207-8n222, 222-23n374, 244,

- 245–46, 250, 258, 261–62n728, 265, 267–68, 320n367, 380, 384, 385–86, 426n183, 433, 435, 458–59n111, 476, 500–1
- 1969 PLO–Lebanon Cairo Agreement 187–88n36, 209–10
- 1978 Egypt–Israel Camp David Frameworks for Peace = Camp David Accords 466n159, 492
- 1979 Egypt–Israel Peace Treaty 136n61, 471–72
- 1990 Egypt–Israel Agreed Plan for the Relocation of Canada District Inhabitants to the Region of the Gaza Strip 245n566
- 1994 Jordan– Israel Peace Treaty (Wadi ‘Araba) 59, 59n328, 136, 202–3, 471–72
- 1994 Arab Convention on Regulating Status of Refugees in the Arab Countries 166–67n285, 194
- 1994 Arab Charter on Human Rights 154n207, 185n13, 194, 351n539
- 1992 Declaration on the Protection of Refugees and Displaced Persons in the Arab World 193–94
- 1993 Israel–PLO Declaration of Principles on Interim Self-Government Arrangements = Oslo Agreement 2–3, 58, 59, 137–38, 147–48, 162–64, 188n38, 232, 234–35, 240, 338–39, 340–41, 420, 438, 444, 466, 467–68, 469, 471–72, 475
- 1994 Memorandum of Understanding on the Establishment of a Temporary International Presence in Hebron 420
- 1994 Israel–PLO Agreement on the Gaza Strip and the Jericho Area (Cairo Agreement) 58, 162–64n262
- 1994 Jordan–Israel Peace Treaty 59, 136, 202–3, 471–72
- 1995 Israel–PLO Interim Agreement on the West Bank and the Gaza Strip (Oslo II Agreement) 58, 138n72, 147–48n153

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AALCO

Asian–African Legal Consultative Organization

ACHR

Arab Charter on Human Rights

AFSC

American Friends Service Committee

AGPS

Action Group for Palestinians of Syria

AIDA

Asylum Information database

AMA

Agreement on Movement and Access

AMIF

Asylum Migration and Integration Fund

ANERA

American Near East Refugee Aid

APCUK

Association of Palestinian Communities in the UK

ARA

access restricted area

CALL

Council for Alien Law Litigation (Belgium)

CAT

Committee Against Torture

CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

CCPR

Human Rights Committee

CEAS

Common European Asylum System

CED

Committee on Enforced Disappearances

CEDAW

Convention on the Elimination of all Forms of Discrimination Against Women

CERD

Convention on the Elimination of All Forms of Racial Discrimination

CERI

Consolidated Eligibility and Registration Instructions

CESCR

Committee on Economic, Social and Cultural Rights

CGRS

Commissioner General for Refugees and Stateless persons (Belgium)

CIA

Central Intelligence Agency

CIL

Customary International Law

CJEU

Court of Justice of the European Union

CMW

Committee on Migrant Workers

CoE

Council of Europe

CoEU

Council of the European Union

CoI

Commission of Inquiry

COR

Commissioner for Refugees

CPA

Comprehensive Plan of Action

CRC

Committee on the Rights of the Child

CRC

Convention on the Rights of the Child

CRI

Consolidated Registration Instructions

CRPD

Convention on the Rights of Persons with Disabilities

CRRF

Comprehensive Refugee Response Framework

CRF-PR

Comprehensive response framework for Palestinian refugees

CSR51

1951 Convention relating to the Status of Refugees

DFLP

Democratic Front for the Liberation of Palestine

DGMM

Turkish Department General for Migration Management

DORA

Department of Refugees Affairs (Palestine)

DMZ

Demilitarized zone

DoP

Declaration of Principles

(p. xlii) DPA

Department for Palestinian Affairs (Arab League; Jordan)

DPAR

Direktorat of Political Affairs and Refugees (Lebanon)

DPRA

Department of Palestinian Refugees Affairs (Lebanon)

DRC

Danish Refugee Council

ECHR

European Convention on Human Rights

ECOSOC

United Nations Economic and Social Council

ECRE

European Council on Refugees and Exiles

ECtHR

European Court of Human Rights

ELENA

European Legal Network on Asylum

EMLOT

Extraordinary Measures in Lebanon and the oPt

EMOT

Extraordinary Measures in the oPt

EONU

United Nations Observer State

EPA

Expanded Program of Assistance

ERF

European Refugee Fund

ESM

Economic Survey Mission

EU

European Union

FAO

Food and Agriculture Organization of the United Nations

FI

Fatah al-Islam

Frontex

European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union

GAPAR

General Administration for Palestine Arab Refugees (Syria)

GBV

gender-based violence

GCC

Gulf Cooperation Council

GDGS

General Directorate of General Security/Sûrité Général (Lebanon)

GOP

Government of Palestine

GUPS

General Union of Palestinian Students

GUPW

General Union of Palestinian Workers

IAC

International Armed Conflict

IASC

Inter-Agency Standing Committee

ICAD

Israeli Coalition Against House Demolitions

ICCPR

International Covenant on Civil and Political Rights

ICESCR

International Covenant on Economic, Social, and Cultural Rights

ICG

International Crisis Group

ICJ

International Court of Justice
ICRC
International Committee of the Red Cross
ICTJ
International Center for Transnational Justice
IDF
Israel Defense Forces
IDMC
Internal Displacement Monitoring Centre
IDP
Internally displaced person
IHL
international humanitarian law
IHR
International human rights
IHRL
international human rights law
IHRS
International Human Rights System
IMT
International Military Tribunal
IOM
International Organization for Migration
IRL
International Refugee Law
IRO
International Refugee Organization
ISIS
Islamic State
IZL
Irgun Zvai Leumi
JIU
Joint Inspection Unit (United Nations)

(p. xliii) LAS

League of Arab States

LASC

League of Arab States Council

LASCAMI

Council of Arab Ministers of the Interior

LoN

League of Nations

LPDC

Lebanese Palestinian Dialogue Committee

LRCS

League of Red Cross Societies

MENA

Middle East and North Africa

MEPP

Middle East Peace Process

MNR

Married to Non-Refugees

MoMD

Iraqi Ministry of Migration and Displacement

MTS

Medium Term Strategy

NARA

National Archives and Records Administration

NGO

non-governmental organization

NIAC

Non-International Armed Conflict

NYD

New York Declaration

OAU

Organization of African Unity

OPERA

French Office for the Protection of Refugees and Stateless Persons

OHCHR

Office of the High Commissioner for Human Rights

oPt

Occupied Palestinian Territory

OSO

Operations Support Officer

PA

Palestinian Authority

PARI

Palestine Arab Refugee Institution

PCBS

Palestinian Central Bureau of Statistics

PCIJ

Permanent Court of International Justice

PCRA

Permanent Committee for Refugee Affairs

PDS

public food distribution system

PFLP

Popular Front for the Liberation of Palestine

PIJ

Palestinian Islamic Jihad

PIP

Peace Implementation Programme

PLA

Palestinian Liberation Army

PLO

Palestine Liberation Organization

PNC

Palestinian National Council

PRS

Palestinian refugees from Syria

RAA

Refugee Affairs Assistant

RAF

Red Army Faction

RAO

Refugee Affairs Officer

RCC

Revolutionary Command Council

RSD

Refugee status determination

RWG

Multilateral Working Group on Refugees

SBA

Sovereign Base Area

SHAML

Palestinian Diaspora and Refugee Centre

SHEV

Safe Haven Enterprise Visa

SIC

Special Identification Card

SPT

Subcommittee on Prevention of Torture

TDPRs

travel documents for Palestinian refugees

TFEU

Treaty on the Functioning of the European Union

TIPH

Temporary International Presence in Hebron

TPV

Temporary Protection Visa

TRNC

Turkish Republic of Northern Cyprus

TVA

Tennessee Valley Authority

(p. xliv) UAR

United Arab Republic

UDHR

Universal Declaration of Human Rights

UN

United Nations

UNCCP

United Nations Conciliation Commission for Palestine

UNDRP

United Nations Disaster Relief Project

UNEF

United Nations Command for an Emergency International Force

UNESCO

United Nations Educational and Scientific Organization

UNFPA

United Nations Population Fund

UNGA

United Nations General Assembly

UNHCR

United Nations High Commissioner for Refugees

UNICEF

United Nations Children's Fund

UNISPAL

United Nations Information System on the Question of Palestine

UNKRA

United Nations Korean Reconstruction Agency

UNRoD

United Nations Register of Damage Caused by the Construction of the Wall in the Occupied Palestinian Territory

UNRPR

United Nations Relief for Palestine Refugees

UNRRA

United Nations Relief and Rehabilitation Administration
UNRWA
United Nations Relief and Works Agency for Palestine Refugees in the Near East
UNSC
United Nations Security Council
UNSCO
UN Special Coordinator for the Middle East Peace Process
UNSCOP
UN Special Committee on Palestine
WFP
World Food Programme
WHO
World Health Organization

Oxford Public International Law

Introduction to the Question of Palestinian Refugees and the Second Edition

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Francesca P. Albanese, Lex Takkenberg

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(p. 1) Introduction to the Question of Palestinian Refugees and the Second Edition

1. The Palestinian Refugee Question at a Glance and the Rationale for a New, Expanded Edition

It is difficult to find a book about Palestinian refugees that does not begin by referring to them as the largest and most enduring group of forced displaced of the post-Second World War era, or as the largest (often unaccounted for) group of stateless persons in the world. In 1948, Palestine as it existed until then – an Ottoman province first and then an entity slated for self-determination under the British Mandate – was wiped off the map, as the State of Israel was proclaimed over most of its territory. A tiny minority of the 750,000 Palestinians who became refugees in 1948 are still alive; most of them and their children, grand-children, and sometimes great-grandchildren still reside in the countries and territory in which they, or their immediate ancestors, took refuge in 1948 and during subsequent displacements (e.g. 1967 Arab-Israeli war).¹ Today, out of over thirteen million Palestinians globally, about eight million are refugees.² Among those, 5.5 million are registered as ‘Palestine refugees’ with the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) in Jordan, Lebanon, and Syria, as well as in the Gaza Strip and the West Bank.³ Over time, increasing numbers have migrated to other countries in the Arab world and, following instability, poverty, discrimination and often persecution in that region, in smaller numbers, to Europe and the Americas and progressively further afield. This study estimates that currently some 1.5 million Palestinians are dispersed outside Arab countries, across the four corners of the world. Their status and documentation make them often statistically invisible, as a result of which their dispersal is difficult to track.

The experiences and situations of Palestinian refugees are varied and diverse, and they do not constitute a homogeneous group. But the millions of this dispersed polity (p. 2) remain connected by a common identity based on a historical reality that the Palestinian American scholar Edward Said summed up as follows: 'behind every Palestinian there is a great general fact: that he once – and not so long ago – lived in a land of his own called Palestine, which is now no longer his homeland.'⁴ This intimately defines and links all Palestinians, whatever their age and status. Its meaning goes beyond legal status and the need for international protection; it means being an 'orphan' of the homeland that existed in 1948 but is no more. For that homeland, Palestinians have fought and perished, mobilized in arms and advocacy, resorted to armed struggle and political battle, including within the United Nations (UN), for the recognition of their rights, including to exist and be recognized as a people.

Meanwhile, the physical and political fragmentation that has befallen the Palestinian people, including the refugees, the multiplicity of normative legal frameworks and the different actors who are responsible for them, have become key features of their experience. Their identity splintered and multiplied across the 'hyphenation' that their dispersal has *de facto* or *de jure* resulted in: Palestinian-Jordanian, Palestinian-Syrian, Palestinian-American, Palestinian-Iraqi, and so on.⁵ And for those whose long-term residence in host countries has not resulted in protection through citizenship (the majority of them in fact), precarity of, or lack of clarity around, their status has increased vulnerability and perpetuated the condition of displacement. The flight of over seven hundred thousands Palestinians from Arab countries since the late 1960s, and the challenges many of them have experienced in seeking asylum anew, such as those fleeing from Iraq and Syria in recent years, bear testament to this.

When Lex Takkenberg's *The Status of Palestinian Refugees in International Law* was first published in 1998, there was relatively little legal literature dealing with this group of refugees, who were considered the *bête noir* of refugee studies.⁶ The book was the first to comprehensively analyse various legal aspects of the Palestinian refugee question and to set out their distinct status in international law. The first edition, written in the wake of the Oslo breakthrough, reflected the optimism that accompanied the establishment of limited Palestinian autonomy in the Gaza Strip and the West Bank, and the expectation of the establishment of an independent Palestinian state towards the end of the five-year interim period. In hindsight, that optimism was unfounded. Almost every development since the conclusion of the Oslo Accords (1993–1995) has adversely affected Palestinians, including refugees. These developments include: their marginalization in and subsequent collapse of the peace process after numerous rounds of unsuccessful negotiations; the progressive encroachment of the Israeli occupation on Palestinian territory foreseen to be part of the Palestinian state and its progressive fragmentation; the internecine divide between Fatah and Hamas which followed the rise of the latter; and the rise of violence against the Palestinians in the occupied Palestinian territory (hereinafter oPt), comprised of the West (p. 3) Bank, including East Jerusalem, and the Gaza Strip, as well as in Iraq, Libya, and Syria, causing further displacement.

One of the most visible recent developments affecting the refugees has been the change in approach of the US, which is no longer perceived nor claims to act even-handedly in its engagement with Israel and the Palestinians. Since late 2017, the Trump administration has taken a number of unprecedented measures, including recognition of Jerusalem as Israel's capital and related thereto the relocation of the US embassy from Tel Aviv to Jerusalem, the defunding of UNRWA, the cancellation of other US aid for Palestinians, and a significant scaling down of diplomatic ties with the PLO and the Palestinian Authority/Government of Palestine. These measures have contributed to a new wave of confrontations between Palestinian protestors and the Israeli army, primarily in Gaza, in which hundreds of Palestinian refugees and other Palestinians have been killed and many more injured in the

context of what is commonly known as 'The Great March of Return'. This latest crisis has once again highlighted the dangers inherent in the failure to find a just solution to the question of the Palestinian refugees. In this regard, it has also helped create momentum to 'revive' discussions around the Palestinian refugee issue, its root causes, and the reasons behind the lack of solutions to their plight. Amid the challenges, a number of developments that have occurred over the last two decades represent important opportunities.

First, unlike twenty years ago, there is now greater awareness of the Palestinian refugee question. The increase in academic and expert studies on the subject, particularly in the wake of the Middle East peace process (MEPP),⁷ has contributed to addressing the lacuna in knowledge relevant to both specific aspects of the refugee issue as well as the quest for solutions. An important contribution to this wealth of knowledge has come from the grassroots 'movement' of Palestinian refugees that has developed, during and in the aftermath of the Israeli-Palestinian peace negotiations, in UNRWA's area of operations and beyond.⁸

Second, in recent years the importance of an international-law-centred and rights-based discourse concerning the question of Palestine has gained traction. In 2004, the International Court of Justice delivered a seminal advisory opinion on the wall/barrier constructed by Israel on large portions of the West Bank that authoritatively elucidated the international legal framework applicable to the Israeli occupation, including with reference to Palestinian self-determination.⁹ Israeli policies and practices in the Gaza Strip and the West Bank, including those affecting Palestinian refugees, have come under scrutiny by international human rights bodies and UN fact-finding missions and commissions of inquiry, such as the one that generated the 'Goldstone Report' in 2009, and the most recent (p. 4) report on demonstrations held in Gaza in 2018.¹⁰ Not only have those bodies contributed to advancing the interpretation of international law with reference to Palestinian issues, but also they have identified violations meriting investigation and potentially attracting individual criminal liability. Valuable contributions have been made over the years by the Special Rapporteurs on the Human Rights situation in the oPt. The upgrade of the PLO's status to non-Member Observer State within the United Nations in 2012, which enabled Palestine to join the International Criminal Court (ICC) in 2015, has focused attention on the relevance of international criminal law with respect to the Palestinian question, including the refugee issue. At the time of writing, the Office of the Prosecutor of the ICC is conducting a preliminary assessment to determine the court's competence in the oPt. Meanwhile, the work of international human rights mechanisms, such as UN treaty bodies and thematic rapporteurs, has further exposed violations of basic rights of Palestinian refugees, including outside the oPt.

Third, there is greater awareness of protection vulnerabilities of Palestinian refugees and a clear resolve to make international protection of Palestinian refugees a reality. Since 2002, UNHCR has issued a number of interpretative notes on the application of Article 1D of the 1951 Refugee Convention ('the 1951 Convention') to Palestinian refugees outside UNRWA's area of operations. Two judgments of the Court of Justice of the European Union, in 2010 (*Bolbol*) and 2012 (*El Kott*), clarified important aspects of the application of Article 1D in the European region, unfortunately without removing all ambiguity. Some ground-breaking national jurisprudence has reflected a shift towards a better understanding of the Palestinian refugee condition. The latest interpretative note, issued by UNHCR in December 2017, and the most comprehensive to date, is expected to lead to greater coherence and clarity in the application of the 1951 Convention to Palestinian refugees and asylum seekers. For its part, since the turn of the century, UNRWA has significantly enhanced its efforts to protect the rights of Palestinian refugees living in its area of operations. The two agencies have also entered into a strategic partnership in order to achieve 'continuity of protection' of Palestinian refugees, wherever they reside. Still unexplored by the two agencies is how the New York Declaration on Refugees and Migrants of 2016, the

Comprehensive Refugee Response Framework annexed thereto, and the follow-up Global Compact on Refugees of 2018, constituting a new, globally-endorsed, framework for protection and solutions for *all* refugees, may be used to the benefit of Palestinian refugees.

The large body of research over the past two decades has greatly enriched the discourse on the subject, including through detailed examination of specific aspects of the Palestinian refugee question (for example, their distinctive regime and associated ‘protection gap’,¹¹ their inalienable rights, primarily return; and the intractability of their case within the peace process) and focusing on their situation in the countries where UNRWA operates (like Jordan, where most Palestinians enjoy citizenship, and Lebanon, where the treatment given to Palestinians is inferior to other foreigners) as well as in countries where their status and treatment has abruptly changed following political shifts (such as post-1978 Egypt, post-1990 Kuwait, post-2003 Iraq, and post-2011 Syria).

(p. 5) The new book draws on both this research¹² and an analysis of the above-noted developments, and aims to provide a comprehensive overview of the Palestinian refugee question, from the origins of the exodus to the current dispersal across five continents. It examines how relevant norms have been used, misused, or simply misunderstood, rather than recognized as the essential framework for both protection and the quest for just and durable solutions for Palestinian refugees. The hope is that the new edition will contribute to correcting this path and to advancing solutions in line with international law.

2. Scope and Structure of the New Edition

The book offers a comprehensive overview of the Palestinian refugee question in international law, including its historical origins and evolution, the special arrangements the UN put in place for them, the status and treatment the refugees enjoy in the various countries to which they fled, and the extent to which international law is relevant to their protection and the pursuit of solutions. The study shows the extent of divergence between principles and rules that govern the status of refugees and stateless persons, as well as humanitarian and human rights norms, and the fate of this particular group. The study acknowledges that current realities of the prevalent political climate give little grounds for optimism. However, at the same time it identifies opportunities that are as yet untapped, and suggests an approach that has the potential to bring the problem more clearly within the proper legal context and the global refugee regime, and as such also closer to a ‘just’ solution to the Palestinian refugees’ plight.

The second edition – essentially a new book building on the foundations of the first edition – has eight chapters and is divided into three parts. A reader familiar with the first edition will notice that, in addition to significant new material, the structure of the new edition has been altered in order to allow a more holistic discussion of key topics and enhance readability. Given the variety of topics covered, significant cross-referencing is provided (in addition to the index) so as to facilitate specific consultations for those who may not read the book in its entirety or who use it as a reference with respect to specific aspects of the Palestinian refugee issue.

Part One (Chapters I-III) focuses on the historical and legal foundations of the Palestinian refugee question. Chapter I traces its history, discussing the main events that, under Ottoman and then British rule, created the conditions that, as of 1947, enabled the mass displacement and dispossession of a large part of the Arab population of Mandate Palestine. It discusses how, from 1948 onwards, the Palestinian refugee question has been negotiated, both under UN auspices and, as of the 1990s, directly between Israelis and Palestinians. This historical account is crucial to understanding how international law was (meant to be) central to early attempts at resolving the refugee issue, and how it subsequently became effectively side-lined. The chapter also identifies some elements of continuity between the

original displacement (in 1948 and 1967) and the current situation of Palestinians in the oPt.

(p. 6) Chapter II analyses holistically the distinct normative and institutional regime applicable to Palestinian refugees, including the complementary mandates and roles of the United Nations Conciliation Commission for Palestine (UNCCP), UNRWA, and the United Nations High Commissioner for Refugees (UNHCR). It discusses both the genesis and meaning of Article 1D of the 1951 Convention, the provision specifically included with the Palestinian refugees in mind, including its recent interpretation and application. It shows how the special arrangements for this group of refugees, put in place due to the circumstances of their displacement, were meant to ensure continuity of protection. It also discusses early definitions of 'Palestine refugees' (for the purpose of repatriation) under United Nations General Assembly resolution 194(III) of 1948 (hereinafter 'resolution 194') and provides a detailed historical account of the evolution of UNRWA's working definition and registration of 'Palestine refugees' (for the purpose of administering relief and other services) including descendants of the original refugees. In doing so, it refutes the argument that the UNRWA refugee definition and registration policy run against international refugee law and practice.

Chapter III further elaborates the legal foundations of the Palestinian refugee question, reviewing their status under various branches of international law, as refugees, stateless persons, civilians protected under international humanitarian law, internally displaced persons, or, simply, as human beings entitled to human rights. Unlike in the first edition, the various branches of law are considered together, because while each of them has a specific relevance to Palestinian refugees, it is international law 'as a whole' that, through the interplay of its various branches, provides for effective protection of these refugees. Without downplaying the distinctive features of the Palestinian refugee question, the chapter demonstrates how its 'exceptionalism' (namely, it being treated as different from *any* other refugee question and often *outside* the scope of relevant legal frameworks) has contributed to a lesser standard of protection. This is not an endemic and unchangeable characteristic of it, but rather the result of the relevant stakeholders approaching this question as a matter circumscribed by politics rather than international law.

Part Two (Chapters IV and V) provides an overview of the situation of Palestinian refugees around the world, throughout seventy years of exile. Chapter IV deals with the history, status, and treatment of Palestinian refugees in the Arab world, while Chapter V covers Palestinian refugees in Europe, the Americas, Asia-Pacific, and Africa. Both chapters include an overview of regional frameworks and mechanisms available to Palestinian refugees. Palestinian exile is commonly believed to be a question confined to the Arab world and particularly to the countries and territory where UNRWA operates. This study shows this is not the case, with continuing movements not only within the Arab world, but also towards Europe and the Americas and, in recent years, towards the Asia-Pacific region as well as Africa. It shows how confusion and divergent interpretations of Palestinian refugee status under international law, and the resulting failure to treat Palestinian refugees seeking asylum outside UNRWA's area of operations as internationally recognized refugees under relevant UN resolutions, contribute to further displacement. This part of the book provides the most complete – albeit at times uneven – picture available to date on Palestinians around the world. Lack of data, however, is a significant constraint.¹³ Limited documentation on (p. 7) the Palestinian presence in certain countries, and different interpretations and approaches to the determination of refugee status and statelessness of Palestinians, often within the same country, lead to uneven statistical treatment and, occasionally, statistical 'invisibility' of these refugees. Refugee status of Palestinians often goes unacknowledged and unreported. Outside the Arab world, the variety of categories under which Palestinians are registered, including 'stateless', 'unknown nationality', 'undetermined nationality', nationality of the country of which they hold passports or other

travel documents, or in some cases ‘Palestinian nationality’, add to the unevenness of the data. Beyond statistical ambiguity, this may have protection implications, as the book discusses.

Part Three (Chapters VI–VIII) focuses on international protection and solutions for Palestinian refugees. Chapter VI discusses a number of specific rights and entitlements of Palestinian refugees under international law, including the rights to self-determination, return and compensation – the legal foundations of which are considered in light of pertinent historical sources – as well as a number of civic, cultural, economic, political, and social rights that have become relevant as a result of the protracted nature of Palestinians’ exile. Chapter VI thus complements Chapter III, and together they form the legal *noyeux dur* of the book. These rights and entitlements are discussed separately from the domains of international law that are the subject of Chapter III, because their nature and relevance can be better appreciated after the factual description of the status and treatment of Palestinian refugees around the world in Chapter IV and Chapter V. Chapter VI makes clear that, while in the Arab region UNRWA has been the main provider for the needs of (primarily) ‘Palestine refugees’, the agency by itself cannot ensure the realization of all refugee rights, such as those related to adequate housing and standards of living, freedom of movement, employment, physical integrity and safety, and access to justice. As will be demonstrated, meeting these needs does not undermine the historic rights of the refugees under relevant UN resolutions (i.e. to return and compensation), but rather helps ensure human dignity while a just and lasting solution remains elusive.

Chapter VII addresses the need for international protection of Palestinian refugees, and reflects not only the important policy developments that have occurred within UNRWA and UNHCR to ensure protection of Palestinian refugees, but also the extent to which the strategic partnership between two agencies has made the ‘continuity of protection’ for Palestinian refugees – as envisaged by the drafters of the 1951 Convention – a reality. It also discusses how challenges in delivering effective protection are linked to the protracted lack of durable solutions as well as to limited compliance with international legal obligations by relevant stakeholders.

Chapter VIII focuses on the quest for just and durable solutions. It explores the challenges and opportunities that have emerged through the various attempts at resolving the Palestinian refugee question (or lack of thereof) and how the New York Declaration on Refugees and Migrants offers a compelling complement to the framework articulating the fundamental rights of Palestinian refugees, as stemming primarily from relevant UN resolutions, such as General Assembly resolutions 194 of 1948 and 2256 of 1967. For it to materialize, the authors make the case for a fundamental paradigm shift at three levels. First, the UN must reassume responsibility for solutions for Palestinian refugees. Second, international law must be the framework and guide resolving both refugee status and the moral, material, individual, and collective aspects of the Palestinian refugee question. The framework should centre around relevant UN resolutions, clarifying and advancing their content, (p. 8) in the interest of the refugees as individuals and as a ‘collective’, beyond rhetoric. Third, the belief that securing rights of the refugees, including citizenship, will undermine their rights and claims towards Israel, must be put to rest. The chapter recognizes that for the rights of Palestinian refugees to be realized, the Palestinian community needs to take agency in prompting the aforementioned paradigm shift, and international and regional diplomacy will need to provide support that has hitherto been largely lacking. This ultimately requires a fundamental change in the way Palestinian refugees are seen, not as just the victims of a failed political process, but as rights-holders, entitled, and empowered to shape their own destiny.

3. Methodology

3.1 Research methods and sources

Digital access to countless primary and secondary sources, in addition to archival material in paper form that was not previously accessible, has greatly expanded the wealth of knowledge upon which the authors could rely. Access to essential historical records from 1947 onwards was possible thanks to the United Nations Information System on the Question of Palestine (UNISPAL), an online resource that was established in the 1990s and is maintained by the Division for Palestinian Rights at the UN Secretariat in New York.¹⁴ Relevant scholarly research, reports, and studies on specific aspects of the situation of Palestinian refugees by UN bodies and NGOs are referred to throughout the book, and are included in the extensive bibliography. Legal and other research on the Palestinian diaspora conducted by BADIL¹⁵ and others,¹⁶ was an important starting point for this element of the study. Much of the information on the status and treatment of Palestinian refugees in various countries in the Arab world as well as in Europe, the Americas, Asia-Pacific, and Africa, was obtained through a questionnaire distributed primarily through UNHCR offices worldwide¹⁷ and interviews. Within UNRWA's area of operations the survey was conducted through the support of local lawyers and researchers as well as input from agency personnel.¹⁸ Where information in Chapter IV and Chapter V is not otherwise sourced, it is generally the result of this survey. In collating and analysing the data of the survey, the authors were greatly supported by two research assistants who also ensured access to a variety (p. 9) of primary and secondary sources in multiple languages, including Arabic. The preliminary results of the survey were validated with the help of local legal experts, academics, and practitioners in various countries and regions.

In addition to written sources, information on the position of Palestinian refugees in various regions and countries and on the role of the UN and the MEPP was obtained through some fifty semi-structured interviews with relevant government representatives, academics, UN officials, and local experts. These were conducted by the authors mainly in Jordan, Lebanon, Switzerland, and the West Bank, including East Jerusalem, and the US, between January 2016 and October 2018. Where information in the study is not based on written sources but rather on interviews, this is explicitly stated in footnotes, unless interviewees expressed the wish to remain anonymous.

The fact that both authors have lived in the Middle East, working for UNRWA, has greatly enhanced their understanding of the intricacies of the Palestinian refugee question and has helped accessing sources and contacts relevant for the study. While working on the book, one of the authors lived in North America and the Asia Pacific, which facilitated understanding of and access to relevant sources in those parts of the world.

The authors have greatly benefitted from the advice and wisdom of the members of an informal advisory group with relevant expertise on Palestinian refugees as well as various areas of international law, international relations, political science, statistics, and economics. This has helped the authors frame and articulate concepts across a broad range of sensitive areas.¹⁹ Members of this group were also kind enough to review the various draft chapters.

Between 2016 and 2018, one of the authors (FA) had the opportunity to present a number of the study's findings and 'test' some of its conclusions at seminars and informal workshops in Amman, Beirut, Jerusalem, London, New York, Ramallah, Singapore, and Washington DC. The present volume also reflects the outcome of these exchanges. The book covers developments until early 2019 and was completed by autumn 2019.

3.2 Some remarks on terminology

The discourse around Palestinian refugees is one in which researchers and observers can find themselves ‘captive’ of language. Some of the pertinent terminology has a very specific connotation, and how it is used can be contentious. This is the case with terms like ‘conflict’, ‘diaspora’, ‘indigenous people’, and ‘right to return’ given the emotional meaning and political implications they have for both Israelis and Palestinians, which may distract from their legal meaning. While context and clarification of terminology are provided where necessary in the various chapters, some key terms are widely used and warrant being clarified here. These are ‘asylum seeker’, ‘diaspora’, and ‘Palestinian’ versus ‘Palestine’ refugees.

3.2.1 ‘Asylum seeker’

The term ‘asylum seeker’, as used in this study, refers to any person who has requested to be recognized as a refugee and to be granted asylum, or who wants to make such a request, or (p. 10) whose request has been rejected while an appeal against the rejection is still pending.²⁰ As Palestinian refugees have for the most part been long-term residents of their respective host countries, where reference to Palestinian ‘asylum seekers’ is made, this refers to Palestinian refugees, including descendants of the original refugees, who have been forced into subsequent displacement, seeking protection beyond the countries of initial refuge or later residence (unless otherwise specified).

3.2.2 ‘Diaspora’

Common to the condition of dispersal of other communities, such as Armenians, Irish, Jews, and Greeks – the term ‘diaspora’ (*shatat* in Arabic) has been progressively adopted to refer to the experience of Palestinians in exile.²¹ Peteet and Hanafi emphasize the need for specificity with respect to an appropriate use of this term in the Palestinian case. Normally understood as the dispersal of an ethnic minority with its own identity, language, religion, and/or traditions, progressively integrating away from the homeland,²² the term ‘diaspora’ may not be immediately adaptable to the Palestinian case.²³ Palestinian exile challenges this traditional concept of diaspora: in most of the countries where they reside in the Arab world, Palestinians do not constitute a minority as such, as they share culture, history, language, and religions with the host communities; furthermore, integration and sense of belonging to the host community is not an obvious element of Palestinians’ dispersal; last, but not least, the aspiration to see the rights enshrined in relevant UN General Assembly resolutions, such as resolution 194, materialize is all but forfeited.²⁴ Hence, the term ‘Palestinian diaspora’ is used in this book to describe an exile specific to Palestinians. Particularly in Chapter IV and Chapter V, it refers to a long-term Palestinian presence in given country or area (from the late 1940s through the 1990s), as opposed to the more recent arrivals of Palestinians displaced by the various upheavals in the Arab region since the turn of the century.

3.2.3 ‘Palestine refugees’ vs ‘Palestinian refugees’

A distinction is commonly drawn between ‘Palestine refugees’ and ‘Palestinian refugees’, where, generally, the former refers to refugees under UNRWA’s mandate and the latter to (p. 11) refugees of Palestinian origin.²⁵ ‘Palestine refugees’ at large are persons of different ethnic backgrounds, predominantly Arab,²⁶ who were displaced from British Mandate Palestine (primarily the part that became Israel, although Palestinians were also displaced from the parts that became the West Bank, including East Jerusalem, and the Gaza Strip), to other parts of Mandate Palestine, namely the West Bank and the Gaza Strip, as well as to neighbouring countries, namely Jordan, Lebanon, and Syria, and, in smaller numbers, to Egypt and Iraq, on the occasion of the 1948 Arab-Israeli war. In fact, it is more accurate to locate the original Palestinian displacement in the period from 1947 to 1949, as it frames the beginning of the large-scale unrest in Palestine and the signing of armistices between

Israel and Arab countries. The majority of these refugees and their descendants,²⁷ now well into the third or even fourth generation, are registered as ‘Palestine refugees’ with UNRWA. They are also commonly referred to as ‘1948-refugees’ (*laji’ūn* in Arabic).²⁸ The Palestinians who were displaced for the first time in 1967 (i.e. not ‘1948-refugees’) from the territory corresponding to the remainder of British Mandate Palestine – namely the West Bank, including East Jerusalem, and Gaza Strip – that Israel occupied during the Six-Day War, are commonly referred to as ‘displaced persons’ or ‘1967 refugees’ (*nāzīhūn* in Arabic). Though their fate is similar to that of the 1948 refugees, and they are refugees from an international law standpoint, a different terminology was reserved to them, owing to the status of the land from which they were displaced, as well as the personal status of the persons living there.²⁹ Accordingly, each year, the General Assembly passes a separate annual resolution focusing only on them.³⁰ The General Assembly did not confer on UNRWA a comprehensive mandate to deal with this group, which has consequently received less comprehensive assistance from the agency, which also does not include them in its ‘registered refugee population’.³¹

The term ‘Palestinian refugee’, used in this study, is in one sense narrower and in another broader than that of ‘Palestine refugees’. It is narrower as it only refers to refugees from Palestine of Arab (Palestinian) origin, who were one part (the largest, and the one for whom (p. 12) a solution remains to be found) of the whole displaced population of Palestine in 1947–1949. This explains why early UN resolutions refer to ‘Palestine refugees’, a term which is also reflected in UNRWA’s name. As a consequence, this study uses the term ‘Palestine refugees’ when discussing technical definitions and matters that strictly pertain to UNRWA’s mandate as defined by relevant resolutions of the General Assembly.

The term ‘Palestinian refugee’ is broader than ‘Palestine refugee’ in that it also comprises refugees who were displaced from the territory originally corresponding to the whole of British Mandate Palestine in 1947–1949 in subsequent years (i.e. the 1967 displaced persons). This is in line with UNHCR’s interpretation of Article 1D of the 1951 Convention Relating to the Status of Refugees, which, according to the organization, applies to ‘Palestinian refugees’ – including ‘[1948] Palestine refugees’, ‘[1967] displaced persons’ and descendants of both groups – ‘whose position has not been definitively settled in accordance with relevant resolutions of the UN General Assembly’.³²

The term Palestinian refugees may also cover those who are originally from the Gaza Strip and the West Bank and have become refugees at a later stage.³³

In summary, this study uses ‘Palestinian refugees’ to describe refugees of Palestinian (Arab) origin who were displaced at any time since 1947 from any part of the territory that constituted British Mandate Palestine in 1947 (today Israel, Gaza Strip, and West Bank, including East Jerusalem) and whose position remains to be settled in accordance with relevant UN resolutions. Use of the term ‘refugees’ in a general sense, without the adjective ‘Palestinian’, refers to persons who meet the definition of a refugee under the 1951 Convention.

4. The Aim of the Study

Like the book’s first edition, the aim of the new book is to provide a precise understanding of the legal aspects of the Palestinian refugee problem, its genesis and implications, as well as to show the problems that these refugees have faced, and the nature of their vulnerability – over the decades – and to explain how international law can be deployed to redress their situation. It is understood that at present, as in the past, the Palestinian refugee problem has not been one of lack of legal framework, but rather one of instrumentalization and political inaction vis-à-vis protracted non-implementation of the law. As Victor Kattan argues, the problem in this case ‘is not international law per se but its lack

of enforcement; that in the Middle East international law is closer to power than to justice.'³⁴

While capturing the relevant factual, legal, and political developments, and building on the extensive volume of pertinent literature, this new and significantly expanded book aims to fill in gaps that remain, explore new approaches, and contribute to leading the discourse forward, towards a long overdue improvement of the situation for Palestinian refugees.

(p. 13) While the book may naturally appeal to a public of international lawyers and legal researchers with an interest in the Palestinian refugee question, it aims to be relevant as well for other academics, diplomats, journalists, politicians, and anyone who has an interest in the question of Palestine at large, and Middle East peace-making more generally. It also provides an interesting perspective of how legal, political, and humanitarian responses to forced displacement have evolved over seventy years; this may be relevant to the study of other protracted refugee situations. This book has been written in a way that aims to offer an accessible contextualized reading of the law, also for non-legal experts (hence the brief overview of the various bodies of laws and rights that an informed legal reader may wish to skip), beside allowing its use as a lens to assess key aspects of the Palestinian refugee question.

The authors hope that the analysis and arguments offered will allow the reader a comprehensive appreciation of the Palestinian refugee question and an understanding of the significance of international law for movement beyond the current stalemate. Diplomats called upon to make decisions on behalf of their governments which may affect Palestinian refugees, as well as government officials and lawyers dealing with asylum requests of Palestinians, wherever these are made, and officials of UNRWA, UNHCR, and other UN, international and non-governmental organizations dealing with Palestinian refugees, should find herein helpful guidance on how to approach the Palestinian refugee question and ultimately, how to use international law to enhance protection and improve living conditions of Palestinian refugees.

It is particularly hoped that the book will encourage critical thinking about, and new approaches to, long-overdue solutions to the world's most protracted refugee problem.

Finally, the authors stress that the views expressed in this book are theirs, and are not necessarily shared by the UN, UNHCR, or UNRWA, or anyone who extended support to the writing of the book. The authors are exclusively responsible for such errors and omissions as undoubtedly remain.(p. 14)

Footnotes:

1 These wars mark, respectively, the establishment of the State of Israel on 15 May 1948, an event which is engraved in Palestinian memory as the *Nakba* ('catastrophe' in Arabic) and its occupation of the Gaza Strip and the West Bank, including East Jerusalem, in June 1967, which Palestinians commemorate as the *Naksa* ('setback' in Arabic).

2 The Palestinian Central Bureau of Statistics (PCBS) estimates that there are 13.05 million Palestinians in the world at the end of 2018; geographically, they are distributed as follows: 4.951 million (37.7 per cent) in Palestine (i.e. the Gaza Strip and the West Bank), 1.568 million (twelve per cent) in Israel, 5.850 million (44.8 per cent) in Arab countries, and 717.000 (5.5. per cent) in other countries around the world. See PCBS, *Palestinians at the end of 2018*, Ramallah, 2019.

3 The use of terms 'Palestine refugee' versus 'Palestinian refugee' is clarified in the terminology section, below. In addition to UNRWA-registered refugees (and other registered persons), in 2015 BADIL Resource Centre for Palestinian Residency and Refugee Rights (hereinafter 'BADIL') estimates that there are about one million non-registered 1948 refugees, one million '1967 refugees' (or '1967 displaced persons'), and an unknown

number of refugees who are neither 1948 nor 1967 refugees – primarily displaced outside of the West Bank, East Jerusalem, and the Gaza Strip since 1967. See BADIL, *Closing the protection gap: Handbook on protection of Palestinian refugees in states signatories to the 1951 Convention*, 2nd edn., BADIL, 2015, 7.

4 Said, E. W., *The question of Palestine*, New York: Vintage Books, 1980, 115.

5 The concept of ‘hyphenated citizens’ is discussed in Kassim, A., ‘The Palestinian: From hyphenated to integrated citizens’, *The Palestine Year Book of International Law* 4 (1987) 8.

6 Traditional studies on refugee law have generally not captured the reality of Palestinian refugees because, as Atle Grahl-Madsen vividly articulated, ‘their situation poses so many special and intricate problems that it would be difficult to keep our work within reasonable limits if we should include this category in our study’, Grahl-Madsen, A., *The status of refugees in international law, vol. i, Refugee character*, Leiden: Sijthoff, 1966, 4.

7 The so-called ‘track two’ initiatives associated with the MEPP (see Chapter I, Section 6.2), including workshops, publications, and networking activities, were initiated following the Madrid Conference to support dialogue between academics and others close to the parties. The most significant of these activities have been supported by Canada and the International Development Research Centre (IDRC), which collectively became known as the ‘Ottawa Process’. Others include Harvard University, the Economic Cooperation Foundation, the ‘Minster Lovell’ series of workshops organized by the Royal Institute of International Affairs (Chatham House) in the UK, the Aix Group, and the Geneva Initiative. Brynen, R., ‘Compensation for Palestinian refugees: Law, politics and praxis,’ *Israel Law Review* 51.1 (2018), 29–46, 35, fn 33.

8 Over time, a Palestinian refugee movement, comprised of a number of civil society groups and organizations representing Palestinian refugees, has emerged in response to concerns about the peace process and its limited engagement with refugees. See Chapter VIII, Section 3.4 for additional details.

9 ICJ, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, 9 July 2004. The opinion is further discussed in Chapter VI, Section 3.2.

10 A number of these bodies’ findings are discussed throughout the book, e.g. Chapter III, Section 5.2 and Chapter IV, Section 3.5.

11 The question whether there exists a ‘protection gap’ with respect to Palestinian refugees is discussed in Chapter VII.

12 This research is captured in the extensive bibliography at the end of the book.

13 Efforts to address this include original research, such as the CIVITAS project (see Chapter VI), and improved data collection by UNRWA, UNHCR, and PCBS, as well as a number of NGOs (primarily BADIL).

14 UNGA res 46/74(A-C) of 11 December 1991 on the Division for Palestinian Rights requested ‘a computer-based information system’ that was a precursor to what became UNISPAL. The resolution was in response to a request by the Palestinian delegation, at the time under the Ambassadorship of Dr. Nasser Al-Kidwa. The UNISPAL website can be accessed at: <http://www.un.org/unispal/>.

15 Since 2005, the BADIL has undertaken important research on the status and protection of Palestinian refugees around the world, see, for example, *Closing the protection gap: A handbook on protection of Palestinian refugees* 2015 (earlier ed. 2005, 2011); *Survey of Palestinian refugees and internally displaced persons 2013–2015* (earlier edns. 2002, 2003, 2004–5, 2006–7, 2008–9, 2010–12).

16 Various studies have looked at the Palestinian diaspora in various areas of the world. They are referred to in Chapter IV and Chapter V, as well as in the bibliography.

17 In fact, two questionnaires were distributed depending on whether the country is party or not to the 1951 Convention; about twenty questions were asked concerning arrivals, current presence, numbers, documentation upon arrivals, status, general treatment, including rights enjoyed under various framework, and protection received.

18 Approximately forty replies were received, including some which collated information from different countries (e.g. in sub-regions).

19 The members of the informal advisory group and the interviewees are listed in the acknowledgment, unless they asked to remain anonymous.

20 In this respect, the term ‘asylum’ is a strictly legal notion. It refers to the right of a state to grant asylum to a person. According to UNHCR: ‘The GA has adopted the term in resolutions relating to the High Commissioner since 1981. It can either refer to an individual whose refugee status has not yet been determined by the authorities but whose claim to international protection entitles him or her to a certain protective status on the basis that he or she could be a refugee, or to persons forming part of large-scale influxes of mixed groups in a situation where individual refugee status determination is impractical’. See UNHCR, ‘Note on the Mandate of the High Commissioner for Refugees and his Office’, October 2013.

21 Cf. Khalidi, W. (ed.), *Before their diaspora: A photographic history of the Palestinians, 1876–1948*, Washington, DC: Institute for Palestine Studies, 1984; Schulz, H. L., *The Palestinian diaspora*, Abingdon: Routledge, 2005; Hammer, J., *Palestinians born in exile: Diaspora and the search for a homeland*, Austin, TX: University of Texas Press, 2009. PCBS reports also refer to Palestinians in the ‘diaspora’. Further references are provided in the bibliography.

22 Brah, A., *Cartographies of diaspora: Contesting identities*, Abingdon: Routledge, 2005, cit. in Peteet, J., ‘Problematizing a Palestinian diaspora’, *International Journal of Middle East Studies* 39.4 (2007) 627–46, see text corresponding to (n 3), (n 26), (n 32), and (n 46) in particular.

23 Hanafi, S., Rethinking the Palestinians abroad as a diaspora: The relationships between the diaspora, *Homelands and diasporas: Holy lands and other places*, Redwood City, CA: Stanford University Press, 2005, 97–122. Peteet (n 22).

24 Peteet (n 22), 632–3.

25 The term ‘Palestinians’, in the sense of ‘Palestinian Arabs’ or ‘Arab Palestinians’, generally refers to persons of Arab origin: (1) born or living in the area of Palestine, as constituted during the period of the British Mandate; (2) born or living in the parts of former British Mandate Palestine subsequently designated as Israel, the West Bank, and the Gaza Strip (those living in Israel are commonly referred to as Palestinian/Arab citizens of Israel); (3) who, after 14 May 1948, identified themselves or were classified as Palestinians in censuses or population counts in other countries or areas of the world. See Roof, M. K., Kinsella, K. G, *Palestinian Arab population: 1950 to 1984*, Washington, DC: Center for International Research, 1987, 106.

26 In fact, although the vast majority of these refugees in 1948 were of Arab origin, it comprised individuals of over two dozen other nationalities, including a significant number of Lebanese, Jordanians, Syrians, and smaller numbers of Algerians and Tunisians. These other nationality currently constitute some 1.2 per cent (1.5 in 1998) of UNRWA-registered Palestine refugees (see Chapter II, Section 4.2). About 17,000 Jewish inhabitants of Mandate Palestine were briefly assisted by UNRWA before Israel took responsibility for them. On assistance to Jewish refugees, see UNRWA, *Assistance to Palestine refugees*:

Interim Report of the Director of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, GAOR, 5th sess., suppl. 19, UN doc. A/1451/Rev.1, 5. Further discussed in Chapter II, Section 4.2.

27 Registration of Palestine refugee descendants by UNRWA is discussed in Chapter II, Section 4.2.3.

28 For popular definitions, see Chiller-Glaus M., *Tackling the intractable: Palestinian refugees and the search for Middle East peace*, Bern: Peter Lang, 2007, 82.

29 In 1949, Jordan annexed the West Bank and considered it as part of its territory until 1988. During this period, Jordan treated the West Bank inhabitants as its own citizens. Hence in 1967, Palestinian refugees from the West Bank were considered as 'internally displaced' into (the East Bank of) Jordan. See detailed discussion in Chapter IV, Section 3.2.

30 This was also reflected in relevant UN resolutions which referred to them as '1967 displaced persons' (e.g. UNGA res. 2256 of 1967). The difference can presumably be found in the rationale that at the end of the Israeli occupation the first time displaced from 1967 would return to the West Bank and Gaza.

31 See Chapter I, Section 6.2 and Chapter II, Section 4.2.3.

32 UNHCR, Guidelines on International Protection No. 13: Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees, December 2017, HCR/GIP/16/12, para. 9. See Chapter II, Section 4.3.

33 They do not fall within the scope art.1D of the CSR51 Chapter II, Section 4.3.3 (328).

34 Kattan, V., *From coexistence to conquest: International law and the origins of the Arab-Israeli conflict, 1891–1949*, London: Pluto Press, 2009, 4.

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Part One Historical and Legal Foundations, I A Historical Overview of the Palestinian Refugee Question

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(p. 17) I A Historical Overview of the Palestinian Refugee Question

It is a platitude of historiography that victors in war get away with both the loot and the versions of events – a version that bequeaths not only to their own posterity, but to friends and foes alike.

Walid Khalidi, ‘Revisiting the UNGA Partition Plan’, 1997

1. Introductory Remarks

The plight of the Palestinian refugees is intertwined with the history of that part of the territory comprised between the Mediterranean Sea and the Jordan River known as the southern region of the ‘Land of Canaan’.¹ This land, which was not administratively identified or referred to as ‘Palestine’ until the late Ottoman Empire,² has experienced constant flows of people and changes of rulers over the course of the last two millennia.³ Through various administrative iterations, it has – almost throughout – been part of larger, more powerful regional or global empires, including the Romans (63–330 CE), Byzantine (330–636 CE), the Arabs (636–1099 CE),⁴ the Crusaders (1099–1291), the Mamluks (1291–1516), and the Ottomans (1516–1917).⁵ From 1918 to 1948, this land was under British control.

The events that befell Palestine between 1947 and 1948, i.e. the decision of the United Nations (UN) to partition Palestine and the war that ensued, are defining moments of the Palestinian refugee Question. The roots of that question, however, are to be found in the (p. 18) events that preceded and enabled it,⁶ starting with the socio-political and economic transformation that occurred in Palestine during the Ottoman Empire (1808–1917) – particularly during its last decades – and intensified during the thirty years of the British control over Palestine (1918–1948). It was during this period that political Zionism also laid claim to Palestine.⁷ Further, it has roots in the way the League of Nations first, and the UN after, attempted to resolve the dispute over Palestine: since 1947, every phase in the unfolding crisis has been addressed in reports and resolutions, not only marking historical events, but also, in some cases, shaping them. Much of this has been relevant – even if without resolve – for the Palestinian refugees.

The facts at the origin of the Palestinian refugee question – on which some uninformed commentators and politicians continue to cast doubts, despite Palestinian and modern Israeli historiography finally concurring⁸ – are important for various reasons. Not only do they allow understanding of the origin and nature of the over seventy-year-old claims behind the current stalemate between Israel and the Palestinians, but also they help to identify elements of continuity between the original displacement and dispossession of the Palestinians and the current situation in the occupied Palestinian territory (oPt). In main respects, the train of events that befell the Palestinians as of 1947 has continued beyond 1948, and in many respects, until the present day. An accurate historical account is also crucial to understanding how international law was (meant to be) central to early attempts at resolving the refugee issue and how it remains central today, although it continues to be side-lined. This chapter provides a historical overview of the origins of the Palestinian refugee question (Section 2) and the initial geographic distribution and numbers of refugees and Israeli measures to prevent refugee return (Section 3). It provides a brief overview of the early UN attempts at solving the refugee question (Section 4), and a snapshot of the evolution of the Palestinian exodus (Section 5). It includes a brief overview of subsequent peace initiatives and their relevance to Palestinian refugees (Section 6), followed by conclusions at the end of the chapter (Section 7). The role of the UN in the

Palestinian refugee (p. 19) question and the extent of Palestinian displacement after 1948, briefly referred to in this chapter, are discussed in greater detail later in the book.⁹

2. Prelude to the Palestinian Refugee Question

2.1 Palestine in the cradle of the Ottoman Empire: Days of coexistence

Under the Turks, Palestine was part of the southern region of the Ottoman Empire, together with Syria.¹⁰ At the time, it comprised roughly 600 villages, mainly relying on subsistence agriculture, and a number major cities and urban districts.¹¹ Urban, rural, and nomadic societies were linked to and depended on each other, though urban communities had a significantly dominant position.¹² Its half a million inhabitants were mostly Muslims and Christians, with a Jewish minority that comprised less than ten per cent of the population between 1860 and 1890.¹³ The various communities coexisted in relative harmony, sharing language (Arabic), physical boundaries, and aspects of daily life.¹⁴ While religion was an important regulating force between Muslim, Christian, and Jewish families and communities, society was largely intermingled.¹⁵ At times, this would even extend to basic institutions such as the judiciary system. For example, Christians and Jews would refer land and estate disputes to Muslim courts, as these were better organized.¹⁶

Towards the middle of the nineteenth century, the desire of the Ottoman administration to upgrade itself and rival the rising European influence in the area triggered a profound socio-economic transformation of the Levant.¹⁷ European interest in Palestine, to protect both religious (Christian) sites and minorities, had progressively translated into a growing European presence in the area.¹⁸ Britain, France, and Russia sought influence (p. 20) by becoming formal patrons of different Christian sects in Jerusalem. In 1872 this led the Ottomans to create the separate administrative district (*Senjak*) of Jerusalem, which was directly ruled from Istanbul with the aim to control, or contain, European expansion in Palestine.¹⁹ Ottoman authorities granted privileges and special entitlements, including a favourable entry policy, to nationals from European states.²⁰ Between 1839 and 1876 the Ottoman Empire embarked on an ambitious modernization of the Empire, known as *Tanzimat*, which re-defined its territory, administrative structures, and roles along the model of European states.²¹ Land that had until then been collectively owned was up for privatization and purchase,²² and decision-making was centralized in the hands of new city-centred administrative bodies. In largely rural Palestine economy and society, this translated into disempowering traditional land-owners and structures.²³ The reform also extended Ottoman citizenship to all residents, who became equal subjects in terms of rights and obligations, regardless of their religion or group affiliation.²⁴ This fostered a somewhat sense of unity within a society where some communities, including Christians and Jews, had previously enjoyed a status inferior to Muslims.²⁵

A second factor destined to transform Ottoman Palestine was the advent of political Zionism in Europe, largely in response to European anti-Semitism.²⁶ The leader of the Zionist movement, the Austro-Hungarian journalist Theodor Herzl, proposed that the best way to protect civil, legal, national, and political status, and ensure fair treatment of the Jewish minority in Europe, was by granting them a nation-state.²⁷ According to Herzl, the Jewish homeland could be either in Argentina, or in another part of the world, though preferably Uganda or Palestine.²⁸ The case for a Jewish homeland as a 'safe haven' was particularly persuasive for Jews in Europe, where most of them lived (p. 21) and had long experienced persecution.²⁹ Partly in pursuit of Herzl's idea, the flow of Jews reaching the Holy Land steadily increased from the second half of the nineteenth century onwards.³⁰

Jewish migration to Palestine had existed, though in small numbers, since the fifteenth century, when the Ottoman Sultan Bayazid II welcomed Jews fleeing persecution in Spain and Portugal.³¹ Small numbers of Jewish immigrants continued to arrive and were well received, as Klein observes, given their limited size and lack of apparent political ambitions.³² However, during the Ottoman Empire, the Jewish population in Palestine started to grow at a much higher rate than Christians and Muslims (hereinafter ‘the Arabs’ or ‘Palestinians’³³).³⁴ Unlike pre-existing Jewish communities in Palestine, the Jews who migrated to Palestine as part of the Zionist political project (so-called new ‘Yishuv’)³⁵ did not embrace the concept of ‘Ottoman citizenship’, and made little effort to integrate within the existing, predominantly Muslim Arab, society.³⁶ Their arrival was followed by a process of acquisition and establishment of private properties and businesses, while they boycotted the Arab language, activities, and labour.³⁷ While having some specific connection with Palestine, the Yishuv displayed many of European contemporary attitudes and behaviours towards non-Europeans, similar to what had happened in other colonies established by Europeans. Campos argues that the new situation put strain on the original Palestinian Jews, who found themselves caught between ‘Ottomanism’ (being an ‘equal’ part of the existing system) and political Zionism (being part of the Jewish homeland).³⁸ The progressive separation between the Jews and Arabs of Palestine was an early manifestation, and a result rather than a cause, of the Zionist–Arab conflict.³⁹ Over time the new situation started to elicit resentment among the Arab majority.⁴⁰ With the dismantlement of the Ottoman (p. 22) Empire at the end of First World War, and the new political framework that ensued, tensions between the Arab population and the Yishuv began to surface.

2.2 Palestine in the hands of Britain: Days of destruction, days of revolt

Towards the end of the First World War,⁴¹ even before the Ottoman Empire was formally dismantled, Britain and France began to discuss the post-war settlement in the Levant.⁴² A number of overlapping arrangements were negotiated; three of them, and the conflicting promises they entailed, determined the fate of Palestine.⁴³ The first was the Hussein–McMahon correspondence (1915–1916),⁴⁴ which promised British support for the independence of Arab Palestine in exchange of its people’s support in defeating the Turks during the ongoing war. The second was the Sykes–Picot agreement of 1916,⁴⁵ which – in apparent neglect for the Hussein–McMahon correspondence – disposed that France and Great Britain would recognize an ‘independent Arab State or a Confederation of Arab States’ and Palestine would be placed under international administration. The third was the Balfour Declaration in 1917,⁴⁶ which expressed British support for Zionist aspirations to establish a Jewish national home in Palestine, while safeguarding the ‘civil and religious rights of existing non-Jewish communities’.⁴⁷ The Balfour Declaration was in direct contradiction with both the Hussein–McMahon correspondence and the Sykes–Picot agreement.⁴⁸ Its content was subsequently incorporated in the text of the Palestine Mandate⁴⁹ that the newly formed (p. 23) League of Nations granted to Britain in 1920, and which entered into force in 1923.⁵⁰ This occurred despite Arab protests and initial opposition to the inclusion of the Balfour Declaration in the text of the Mandate among some British Jews, British politicians,⁵¹ the Italians and the French, and the administration of US President Woodrow Wilson’s.⁵²

Through subsequent policies enacted between 1919 and 1948 (particularly the adoption of 1939 ‘White Paper’, discussed later),⁵³ the British authorities in Palestine progressively operationalized the Balfour Declaration,⁵⁴ altering Palestine’s Arab character from demographic, economic, institutional, and security stand-points.⁵⁵

First, Britain facilitated Jewish migration to Palestine and turned hundreds of thousands of Jewish migrants from Europe into Palestine Mandate citizens. This started during the early days of its administration while the inhabitants of Palestine were still *de jure* Ottoman citizens.⁵⁶ In 1922, the British authorities naturalized certain groups of foreign residents, including about 38,000 Jews, the majority of whom had reached Palestine since 1920, so as to enable them to take part in the legislative elections.⁵⁷ The Citizenship Order of 1 August 1925 extended full citizenship rights to all Turkish (Ottoman) subjects habitually resident in Palestine at the time;⁵⁸ this included the original 729,873 Ottoman citizens of Palestine (p. 24) (of whom the large majority were Arabs), the 'naturalized Palestinians' of 1922, and a further 79,368 foreigners, mostly Jews, who had also immigrated to Palestine.⁵⁹ The Order gave Palestine's 'natives' residing abroad nine months within which to exercise their right to opt for Palestinian citizenship.⁶⁰ This time frame made it difficult for those abroad, mostly located in Latin America and Europe, to apply for citizenship; indeed only 500 out of an estimated 40,000–60,000 Palestinians abroad, were able to claim Palestinian citizenship.⁶¹ In 1946, the population of Palestine was estimated to constitute nearly 1,846,000 (including 1,203,000 Arabs, 608,000 Jews, and 35,000 others).⁶² During thirty years of British control over Palestine, the Jewish population grew over thirty per cent (compared to an average ten per cent growth rate during the last twenty years of the Ottoman Empire, which were already marked by increased Jewish immigration). Such a large increase was – as an UNSCOP report concluded – due to immigration,⁶³ and partially, towards the mid-1930s, affected by the arrival of Jewish refugees from Europe.⁶⁴

Second, British policies compounded the undermining of an agrarian social economy that had begun by the urban landowning class and oppressive tax and land-tenure systems during the Ottoman Empire.⁶⁵ Those policies facilitated Jewish settlement and land acquisition from Palestine Arab farmers, after tightening the latter's access to credit.⁶⁶ Various scholars argue that the arrival of literate and skilled immigrants from Europe,⁶⁷ together with increasing inflow of Jewish capital,⁶⁸ made the Jewish economy grow much more (p. 25) rapidly than that of the Palestine Arabs, which accentuated disparities in education, literacy rate, and access to qualified professions.⁶⁹ Discrimination against Palestine Arabs grew, especially as dispossessed peasants (*fellahin*) increasingly moved towards coastal cities, such as Jaffa and Haifa, to look for job opportunities.⁷⁰ The Arab boycott launched in 1936 to challenge these various policies, followed by that of the Arab League in 1945, had no significant impact on the Jewish economy.⁷¹

Third, the British altered the socio-political dynamics of Palestine Arab society, starting with the co-optation of notables and members of the elite and the transformation of 'traditional' institutions, such as the Grand Mufti of Palestine and the Supreme Muslim Council.⁷² In so doing, the British weakened the position of Palestine Arabs who sought to create a national movement with the potential to connect grassroots organizations and the elite around a unified set of anti-colonial national objectives.⁷³ Without effective means of countering both British policies and the Zionist colonial project in Palestine, frustration and resentment grew among Palestine Arabs, until it exploded into several waves of violent popular revolt from the late 1920s onwards.⁷⁴ In addition, while the Jewish communities in Palestine were granted autonomy through their own representative institutions, had a regular army, and were even allowed to have diplomatic representation abroad through the Jewish Agency, Palestine Arabs, when sympathy for them and their struggle increased, were prevented from receiving financial support from other parts of the Arab world.⁷⁵

Fourth, while at different stages the British faced resistance, often armed, from both Jews and Palestine Arabs, the British response more profoundly affected the latter. Early tensions between Palestine Arabs and Jews in the 1870s and 1880s mostly had a private nature, often pertaining to Jewish immigrants' building and planting without permits.⁷⁶ Palestine Arab opposition to the apparent colonization of Palestine evolved into riots from 1921 onwards, with an escalation in 1929.⁷⁷ The Shaw Commission, mandated by the British

government to investigate the incidents, identified the origins of the Palestine Arab resentment in the increased Jewish immigration, Jewish land purchases, and Palestine's Constitutional provisions, which gave preference to the Jews, as well as increased taxation and other measures (p. 26) enacted by the British authorities, both of which were perceived as oppressing the Palestine Arabs.⁷⁸

As European Jewish migration to Palestine increased in response to both Nazi Germany's genocidal policy and oppression and the concomitant restriction placed on Jewish entry by countries such as Great Britain and the US,⁷⁹ there was a rise in intercommunal and anti-British incidents. Between 1936 and 1939, the Palestine Arab masses were in a state of general unrest, with extensive strikes and armed confrontations. The first Palestine Arab guerrillas started operations in the hills around Jenin, signalling the onset of a full-scale revolt, which the British managed to repress only with the use of tanks and aircraft. During this revolt, one-tenth of the Arab adult male population was either killed, imprisoned, wounded, or exiled by the British.⁸⁰ Some 2,000 homes were blown up, crops destroyed, and entire urban districts – such as much of Jaffa's Old City – levelled.⁸¹ While the surviving Arab militants went back to guerrilla warfare, the heavy British repression had undermined Palestine Arabs' ability to resist thereafter. Their leadership had been defeated, the most experienced fighters killed, imprisoned, or exiled, and arms and ammunition had been confiscated.⁸² On the other hand, the British had recruited, armed, and trained Yishuv forces to support the British military.⁸³ This enhanced Yishuv fighting ability proved critical in their subsequent battles against the Palestine Arabs.⁸⁴

Facing a situation on the ground that was growing more intractable by the day, the British government started to change its approach to Palestine, including by reversing some of the more supportive policies it had adopted towards the Yishuv. In 1937, the British appointed the Palestine Royal Commission (informally known as the 'Peel Commission') to investigate the cause of recent turmoil in Palestine. The Commission concluded that 'the underlying causes of the initial disturbances were the desire of the Arabs for national independence and their hatred and fear of the establishment of the Jewish national home'.⁸⁵ The Commission recommended, as a way forward, that Britain terminate its mandate over Palestine and partition it into an Arab and a Jewish state 'with the exception of Jerusalem, Bethlehem, Nazareth, and the Sea of Galilee, which would remain under British control in the form of a mandate so as to ensure free access to the Holy Places'.⁸⁶ This plan, accepted in principle by the Zionists, was firmly rejected by the Arab Higher Committee under the leadership of the Mufti of Jerusalem, Haj Amin al-Husseini. In an attempt to calm the situation, in 1939 the British government, under pressure from the Arabs, introduced a 'White Paper' that suggested drastically reducing the number of new Jewish immigrants into the (p. 27) country.⁸⁷ At the same time, events in Europe and the desire to achieve the promised national homeland for the Jews in Palestine prompted the insurgence of large sections of Yishuv – then organized by paramilitary groups – against the British colonial power. Thus, at the time of the outbreak of the Second World War, a triangular fight existed in Palestine between British security forces, Arab fighters, and Jewish paramilitary groups.⁸⁸

At the end of the Second World War, Jewish attacks against the British increased in frequency and effectiveness, and also targeted Palestine Arabs, in an attempt to hasten the creation of a Jewish state.⁸⁹ The severity of the British response further embittered the local population, making the Mandate increasingly unpopular.⁹⁰ Meanwhile, the trauma of the 'Arab revolt of 1936–1939', the intensity of Jewish paramilitary groups' attacks against the British forces, the related increasing domestic calls on the British to withdraw, the moral-political pressure exerted by the Holocaust and by the growing pro-Zionist American involvement,⁹¹ along with the impossibility for Britain, impoverished and devastated by the

Second World War, to mount a large-scale policing operation on a different continent, all combined to persuade the British government to withdraw from Palestine.

In early 1947, the British ‘returned’ the Mandate to the successor of the organization that had originally granted it: the newly created UN.⁹² A special session of the UN General Assembly, on 28 April 1947,⁹³ established the United Nations Special Committee on Palestine (UNSCOP), made up of eleven member states, with a mandate to investigate all questions relevant to the problem of Palestine and to recommend solutions.⁹⁴

(p. 28) After a three-month investigation throughout the region,⁹⁵ UNSCOP members had reached an agreement about terminating the Mandate, the principle of independence, and the role of the UN.⁹⁶ A majority of the Committee (Canada, Czechoslovakia, Guatemala, Netherlands, Peru, Sweden, and Uruguay) recommended that Palestine be partitioned into three entities linked in an economic union: an Arab state, a Jewish state, and Jerusalem as a *corpus separatum* under the administrative authority of the UN. India, Iran, and Yugoslavia submitted a minority plan proposing an independent federal structure comprising an Arab state and a Jewish state, with Jerusalem as the capital of the federation. Australia, the remaining member of the Committee, abstained from voting.⁹⁷

On 29 November 1947, after an intense two-month-long debate, the General Assembly adopted resolution 181 (II) (hereinafter ‘resolution 181’ or ‘Partition Plan’), recommending the partition of Palestine according to the plan proposed by the majority of UNSCOP with some minor changes.⁹⁸ Resolution 181 called for the termination of the Mandate, the progressive withdrawal of British armed forces, and for the creation of separate Arab and Jewish states not later than 1 October 1948. The plan proposed an Arab state comprising a considerably larger area than today’s West Bank, a significantly elongated L-shaped Gaza Strip, and the land west and northwest of the Sea of Galilee up to the Lebanese border, as well as Jaffa, which was to remain an Arab enclave within the Jewish state.⁹⁹ This corresponded to between forty-three and forty-five per cent of Mandate Palestine (excluding Jerusalem), an area where the majority of the 1.3 million Arabs in Palestine were concentrated. The remainder of Mandate Palestine would become the Jewish state and accommodate almost the entirety of the 650,000 Jews, in addition to an almost equal number of Arabs. Jerusalem, with Bethlehem, would have international status under UN Trusteeship. The land area proposed for the future Jewish state was much higher than the six per cent of Palestine’s territory owned by Jews at the time. According to Kattan, this generous concession to the Jews is explained by the fact that the ‘Great Powers’, many of whom had closed their doors to Jewish refugees fleeing the horrors of the Holocaust, now wished to let them go to Palestine, even though this was not the choice of many of the refugees.¹⁰⁰

The plan received mixed reactions. The Jewish Agency accepted the resolution despite fierce opposition from the Irgun and the Stern group, which were not satisfied with the territorial allocation of the Plan.¹⁰¹ The Arab States and the Arab Higher Committee both rejected the Plan on the grounds that partitioning an overwhelmingly Arab country into two unequal parts, against the will of its majority indigenous population, was seen as (p. 29) a betrayal of the legal and moral obligations towards Palestinian self-determination and independence.¹⁰²

By this time, the total population of Palestine was about two million, close to 1.2 million (sixty per cent) of whom were Muslims, about 650,000 (thirty-two per cent) Jews, and about 150,000 (seven per cent) Christian.¹⁰³

2.3 The last days of the British Mandate: Days of war, days of conquest

The adoption of the Partition Plan accelerated the British withdrawal from Palestine and plunged the country into more unrest. From November 1947, tensions among the inhabitants of Palestine escalated dramatically into what is commonly referred to as a two-phase war: the first phase, from November 1947 until the formal termination of the British Mandate in May 1948, was an internal conflict, with clashes mainly between Yishuv forces and Palestine Arabs within Palestine; the second phase, known as ‘First Arab-Israeli War’, which started immediately after the creation of the State of Israel, was a full-fledged war between Israel and its Arab neighbours, with hostilities that lasted over a year before formal armistice agreements were signed in 1949.¹⁰⁴

In fact the 1947–1949 war can be seen as a culmination of years of conflict with respect to control over Mandate Palestine, and one that involved progressively more participants and larger-scale operations. The war was to have lasting and far-reaching consequences, including the end of Palestine as it had been known until then, and the emergence of one of the largest and most protracted refugee crises of all times. Benny Morris, who offers an unprecedented insight into the military operations and events surrounding the creation of the State of Israel and what he calls ‘the birth of the refugee problem’, refers to the ‘four waves’ of Palestinian exodus between December 1947 and November 1948, as well as expulsions and population transfers that lasted until the early 1950s.¹⁰⁵

The first phase of the war began with commercial strikes and street demonstrations initiated by Palestine Arabs in response to both the Partition Plan and to violent confrontations between Arab and Yishuv groups, with casualties on both sides.¹⁰⁶ The Jewish paramilitary organizations, who were better prepared and armed than the Palestine Arab irregular forces, progressively extended their de facto military control over the territory.¹⁰⁷ Between (p. 30) November 1947 and spring 1948, bloody skirmishes escalated rapidly, with raids, explosions, and intercommunal attacks.¹⁰⁸ During this period, approximately 75,000 Palestine Arabs, mainly from the upper and middle classes, fled their homes in search of safety.¹⁰⁹ This, coupled with the progressive withdrawal of British authority, provoked unrest as school, hospitals, businesses, and offices closed.¹¹⁰ Around the same time, the Arab League decided to form the Arab Liberation Army to help the Palestine Arabs and challenge the implementation of the Partition Plan.¹¹¹

From spring 1948 onwards, the situation further deteriorated. The Haganah, which would become the core of the Israeli military forces, launched a number of military operations on the territory of Mandate Palestine as the British troops withdrew.¹¹² Plan Dalet (also known as ‘Plan D’) adopted in March 1948, was the fourth and most resolute of these strategies. While some see it as allowing the conquest of Palestine and the expulsion of most of its indigenous population,¹¹³ others claim it was a defensive military strategy to protect Jewish communities and territory designated for the Jewish state (as well as areas where Jews were concentrated outside that territory).¹¹⁴ Whatever the intent of Plan D, military operations intensified as of early 1948.¹¹⁵ According to Morris, April 1948 was a turning point for the Arab population of Palestine. Military attacks of Zionist groups against Palestine Arabs intensified.¹¹⁶ Since then, reports of widespread violence and massacres perpetrated against Palestine Arab civilians multiplied.¹¹⁷ The Deir Yassin massacre (9 April 1948), in which (p. 31) over 100 unarmed villagers,¹¹⁸ including women, the elderly, and children, were murdered, some after being subjected to rape and mutilation, profoundly affected Arab consciousness, both within and outside Palestine.¹¹⁹ Not only did the event propel a significant part of the Palestine Arab exodus, with hundreds of thousands fleeing violence (or fear thereof),¹²⁰ but it also strongly reverberated in the regional Arab press and created momentum for Arab action in support of the Palestinians.¹²¹ Morris indicates

that from May the Haganah had adopted the policy to prevent return of the refugees, using live fire if necessary.¹²²

What was befalling the Palestine Arabs stimulated the mobilization of armies from neighbouring Arab countries to join the conflict, even before the official termination of the British mandate and the creation of the State of Israel.¹²³ By Spring 1948, about 5,000 Arab volunteers had reached Palestine in support of the Palestine Arabs; this attempt at support failed.¹²⁴ As the situation deteriorated, the UN Security Council called for the cessation of all military and paramilitary activities in Palestine, and on 23 April it established a Truce Commission to supervise and help bring about a ceasefire.¹²⁵ By early May 1948, several major Palestine Arab cities and villages had fallen in the hands of the Zionist paramilitary groups. According to an internal assessment by the Israeli Defence Forces Intelligence Service Analysis, operations undertaken by the Haganah, the Irgun and Lehi accounted for seventy per cent of the Arab exodus from Palestine.¹²⁶

On 15 May 1948, the day after the British declared the end of the Mandate, the Jewish Agency proclaimed the establishment of the State of Israel and its independence within undefined borders.¹²⁷ In parallel, armies from Egypt, Jordan, and Syria, together with forces from Iraq, prepared to enter Palestine. This is what is generally seen as the beginning of the first Arab–Israeli war, in which Israel claims to have acted in self-defence, to protect the territory assigned to it by the UN Partition Plan and the Jewish people living on it, from Arab aggression. However, historians report that the Lebanese army never crossed the border, the Syrian army only made minor inroads into Palestine, with limited forces, and the Jordanian (p. 32) and Iraqi armies (effectively controlled by the British) never crossed the UN Partition Plan's boundaries into the proposed Jewish state.¹²⁸

Between April and June 1948, a further 250,000–300,000 Palestine Arabs, both from the country's upper- and middle-class families and rural communities, had been forced to flee their homes in the newly declared State of Israel, in search of safety.¹²⁹ Meanwhile, as the situation in Palestine deteriorated,¹³⁰ on 14 May 1948 the General Assembly established the position of United Nations Mediator for Palestine with a mandate to mediate between the parties, to promote a truce, and to look after the security and well-being of the population (see Section 4). Acting in response to the Mediator's recommendations, and amidst ongoing chaos and failed truce attempts, on 11 December 1948, the General Assembly passed resolution 194 (III), which among others pressed for repatriation of the refugees displaced by the hostilities.¹³¹

Meanwhile, the war continued. The situation of the Arab population continued to worsen towards the end of 1948 and in early 1949. Despite intense international pressure in favour of mass repatriation of the refugees,¹³² Israel continued to force more of the Arab population out of the territory it controlled. By early 1949, another approximately 300,000 Palestine Arabs were forced out, together with about 40,000 Bedouin from border areas in the north and desert area in the south.¹³³ Numerous examples of 'outright expulsions' as of spring and summer of 1948 and throughout 1950 have been documented (see n 133).

(p. 33) The war formally ended in March 1949, when armistices between Israel and its Arab neighbours were signed.¹³⁴ By then, Israel was in control of seventy-eight per cent of historic Palestine, significantly more than the fifty-five per cent of the area stipulated for the Jewish state in the plan. The exceptions were the areas that became known as the Gaza Strip and the West Bank, which would eventually fall under the control of Egypt and Jordan, respectively.

By the time the war ended, about 400 Arab villages inside the new State of Israel had been destroyed, often after being evacuated at gunpoint, pillaged, and looted, and eleven urban neighbourhoods had been emptied of their inhabitants.¹³⁵ Arab casualties are estimated at

between 7,000 and 13,000,¹³⁶ and Jewish casualties are estimated at 6,000.¹³⁷ More than half of Palestine's native population had been uprooted, often through outright expulsions.

Israeli officials have traditionally maintained that during the hostilities, the Palestinian population fled on their own accord, following evacuation orders by Arab and Jewish forces. This claim has long proven unfounded.¹³⁸ The Israeli intelligence report of June 1948 that Morris discusses, concludes that the major cause of displacement was direct attacks by Jewish forces.¹³⁹ In September 1948, a report by the UN Mediator indicated that '[t]he exodus of Palestine Arabs resulted from panic created by fighting in their communities, by rumours concerning real or alleged acts of terrorism, or expulsion.'¹⁴⁰

The 'demographic issue' – namely the perceived need to establish and preserve the Jewish character of the new homeland in territory with an Arab majority – had been a pressing (p. 34) issue for the Zionist leadership since the early years of the British Mandate, and remained so notwithstanding the increased Jewish share of Palestine's population.¹⁴¹ Despite British support for the Jewish national project and the waves of migration since the late nineteenth century, at the end of 1947 the Jewish population of Palestine was only one-third of the total.¹⁴² By early 1948, the Zionist leadership realized that they were close to the realization of a Jewish state.¹⁴³ The idea of moving the Arab inhabitants out of Palestine, including by means of expulsion and transfer, had become engrained in the mindset of the Jewish leadership.¹⁴⁴ As early as in the 1930s, the Jewish Agency had established a Population Transfer Committee, which devised schemes to remove the Palestinian population by securing land for them in neighbouring states, or by having Britain remove them.¹⁴⁵ During the 1948 war, several Transfer Committees were set up, by, or in coordination with, the Jewish Agency, and later the Israeli government, to 'facilitate' the exodus.¹⁴⁶

In fact, while in a few areas civilians were urged to evacuate their homes for their safety, most Palestine Arabs were reportedly forced to leave, either by direct Israeli attacks on their cities and villages or due to conditions of extreme insecurity, such as existed following massacres and atrocities in neighbouring areas.¹⁴⁷ Arab Palestinians were often driven out of areas where there was no fighting or where a truce had been declared; they were forced onto buses and trucks and driven to the West Bank or Gaza.¹⁴⁸

In the space of only several decades, the Zionist movement had transformed Herzl's vision of a Jewish nation-state into a political reality. For the Jews, after centuries of intermittent persecution in Europe culminating in the Holocaust, this represented more than the realization of a national aspiration. For the Arab inhabitants of Palestine, this event – which is inscribed in Palestinian collective memory as 'the catastrophe' (*al-Nakba* in (p. 35) Arabic) – represents loss of homeland as it existed until then, and the beginning of dispersal (*shattat* in Arabic) and a quest for self-determination, which, seventy years on, remains unresolved.

As discussed later in the book, the issue of responsibility connected to the origins of Palestinian displacement and dispossession affects questions such as the rights to repatriation, restitution, and compensation, as well as resettlement of the refugees. It cuts across most other aspects of the Israeli-Palestinian conflict and has been a major obstacle to its resolution.

3. Palestinian Dispersal and the Early Years of Israel as the 'Jewish State'

3.1 The refugees from Palestine in figures

When the armistice agreements were signed in 1949, only about fifteen per cent of the close to one million pre-1948 Arab population of Palestine remained in the area that became Israel, constituting the foundation of today's Arab minority in the country.¹⁴⁹ While they became citizens of Israel, the Palestinians in Israel were severely affected by the 1948 events. Deeply marked by the breakup of their original homeland and the dispersal of much of its native population, many of the Palestinians who remained in Israel were internally displaced, forced out of their original homes and lands, to live in designated areas, often in the proximity of their original villages (as such often referred as 'internal refugees' and, for Israel, as 'present absentees').¹⁵⁰ They lived under martial law until 1966 as they were perceived to be a security threat to the State of Israel.¹⁵¹

As for those who became refugees, not only the causes of their exodus but also their numbers have been the subject of dispute between Israel and the Arab states.¹⁵² Two 1949 UN reports, while acknowledging the challenges in providing precise numbers, put the figures between 711,000 and 774,000.¹⁵³ The latter figure included 17,000 Jewish refugees from (p. 36) Mandate Palestine, mostly from the Arab part of Jerusalem, who were later absorbed by the State of Israel.¹⁵⁴

As per their dispersal, the population of the northern part of Palestine (Haifa, Acre, Safad, and Galilee) fled northward into Syria (75,000) and Lebanon (97,000), while refugees from Jaffa and the Gaza and Beersheba districts of the south crowded into the Gaza Strip (200,000); the Arab population of the coastal area of Palestine, including some from Haifa and Jaffa and most Arab inhabitants of Ramleh and Jerusalem districts, fled to the hilly country on the West Bank of the river Jordan (280,000), and to Jordan (70,000).¹⁵⁵ Finally, small numbers of refugees fled to Egypt (12,000) and Iraq (4,000).¹⁵⁶ The figures of refugees continued to fluctuate, as a few refugees were allowed to return for family reunification, while others (e.g. various groups of Bedouin) were forced to leave Israel after the signing of the armistice.¹⁵⁷

The impossibility of having precise data was also acknowledged by the early humanitarian organizations responsible for the initial relief operation – covering the period 30 September 1949 to 30 April 1950 – under the auspices of United Nations Relief for Palestine Refugees (UNRPR): the International Committee of the Red Cross (ICRC), the League of Red Cross Societies (LRCS), and the American Friends Service Committee (AFSC).¹⁵⁸ They recorded 960,000 persons in need of assistance as a consequence of the conflict, not all of whom were refugees.¹⁵⁹

The statistical limitations of the early refugee counts stem from a variety of causes, including: the lack of adequate records of the numbers and locations of the Arab population in Palestine, hampered by the abrupt departure of so many; the fact that no comprehensive census had been held since 1931, a period during which a general population growth was registered in the region; considerable migration from rural areas to the towns for economic reasons (i.e. following loss of land by Arab Palestinians); and finally the presence of a nomadic population (the Bedouin) moving across the lands of the former Ottoman Empire.¹⁶⁰

3.2 Early years of the State of Israel: Preventing refugee return

In June 1948, as Arab Palestinians were finding refuge mostly in makeshift refugee camps in the Gaza Strip, Jordan, Lebanon, Syria, and the West Bank, and in smaller numbers in (p. 37) Egypt and Iraq,¹⁶¹ the Israeli government started to enact measures that would reinforce the Jewish character of the state and prevent the return of the Arab refugees from Palestine (hereinafter 'Palestinian refugees' or 'Palestine refugees' when referring to UN

documents or the refugees including the non-Arab among them). As early as June 1948, the Israeli government decided to bar the refugees' return.¹⁶²

Unlike 17,000 Jews who had also been displaced by the military operations and who were, in most cases, able to return to their homes or – in respect of those displaced from what became Gaza and the West Bank – absorbed by the State of Israel,¹⁶³ together with a small number of Arabs who were allowed to return for family reunification purposes, the approximately 750,000 Palestine Arabs who had been made refugees, as well as many of the internally displaced Palestinians within the newly constituted State of Israel, were accordingly prevented from returning to their homes.

Jewish migration to Israel grew steadily, especially after Israel enacted the Law of Return in 1950,¹⁶⁴ which encouraged the immigration to the country of Jews from around the world.¹⁶⁵ Initially, most were Holocaust survivors from displaced persons camps in Europe, reaching Israel in search of a safe heaven. Over time, arrivals of Jews from Arab and Muslim countries grew. Between 700,000 and one million Jews left Arab countries from 1948 through the 1950s and went to Israel.¹⁶⁶ While some migrated (made '*Aliyah*') to pursue better economic prospects, many fled, often amidst violence and under coercion, from Arab states who had retaliated against their Jewish citizens for the fate that had befallen Palestine and its Arab population, like Egypt or Iraq.¹⁶⁷ Progressively, in the Israeli discourse, the question of the refugees from Palestine (and the solution thereof) became linked to the question of the Jewish refugees from Arab countries.¹⁶⁸

(p. 38) In 1952, Israel promulgated its Nationality Law, which effectively barred the exiled Arab population from returning to the land as nationals.¹⁶⁹ Consequently, over two-thirds of the British Mandate Palestine Arab population¹⁷⁰ who had been Ottoman citizens until 1923 and Palestine Mandate citizens until 1948, were, with this law, retroactively denationalized and made stateless.¹⁷¹ In 1954, Israel passed the 'The Prevention of Infiltration (Offences and Jurisdiction) Law', which criminalized the return of Palestinian refugees and authorized their imprisonment and re-expulsion.¹⁷²

The land, other property, and wealth Palestinians left behind was strategic to the emerging State of Israel. From his account on Palestinian losses in 1948, Fischbach reports:

In the course of their flight, the refugees left behind huge tracts of farmland, tools and animals, shops, factories, houses of worship, homes, financial assets, and personal belongings ... Produce from abandoned fields, orchards, and citrus groves was exported for hard currency. Moveable property was sold. The government even leased abandoned stone quarries and sold cactus fruit from abandoned areas. Beyond this monetary gain, control of the refugees' property allowed Israel and the Jewish Agency to settle as cheaply as possible the hundreds of thousands of new Jewish immigrants who began pouring into Israel after 1948.¹⁷³

Military regulations declaring closed areas and security zones effectively removed the land from its Palestine Arab original owners.¹⁷⁴ Much of both lands and movable and immovable properties were initially put under the authority of the Israeli Custodian of Absentee Property, an office created by Israel in December 1948 to manage the property of absentee Palestinian refugees (including those who later became citizens of Israel, namely the 'present absentees').¹⁷⁵ The Custodian was regarded as the legal holder of all property belonging to absentees and was allowed to sell such properties to a Development Authority. This Authority was initially forbidden to transfer the land it had obtained from the Custodian to others, but then the state started to dispose of land holdings as of 1958, beginning the 'official' expropriation of Palestinian refugee property.

(p. 39) The gap between such properties and their original owners/holders was further widened by the transfer, through ‘purchase agreements’, to the Israeli Development Authority, and subsequently to the Jewish National Fund, for administration.¹⁷⁶ These organs made it impossible for Palestinian refugees, or other internally displaced Palestinians, to be legally restored to their movable and immovable properties. In addition to severing the links between the land and its original owners, Israel progressively transformed the territory in a manner that has been crucial to its economic growth.¹⁷⁷ As Fischbach notes, by 1950, the Custodian had become the largest landlord in Israel; it acquired legal authority, and then identified, and allocated, Palestinian property to incoming Jewish immigrants.¹⁷⁸

In the 1950s, the Absentee Property Laws further consolidated the seizure of ‘absentee’ properties and their transfer to the State of Israel for the near exclusive benefit of the Jewish population. The so-called ‘Absentee property’ played a significant role in making Israel a viable state. Through this system, Israel took over the farms and urban homes of the exiled Palestinians, in which it accommodated Jewish newcomers who had arrived both from Europe and Arab countries.¹⁷⁹ Jewish kibbutzim and agricultural settlements started de facto expropriating land of both refugees and Palestinians who remained in Israel.¹⁸⁰

Cultivable land now held by the state was used by Jewish settlements and individual farmers to grow crops and vegetables; vacant Arab houses were used to accommodate immigrants.¹⁸¹ With time, the remaining abandoned Arab villages were transformed or destroyed, including through the creation of parks and forests, the cultivation and/or conversion of Arab fields, the distribution of Arab land to Jewish settlements, and the establishment of new settlements on abandoned land and sites.

All these measures steadily rendered the possibility of a return of the refugees ever more remote.¹⁸²

4. Early UN Attempts at Resolving the Question of the Palestinian Refugees

4.1 The UN Mediator for Palestine (1948-1949)

The history of UN attempts at solving the question of Palestinian refugees begins on 14 May 1948, with the decision to designate, as mentioned earlier, a UN Mediator for Palestine.¹⁸³ (p. 40) Six days later, Count Folke Bernadotte, a Swedish diplomat and president of the Swedish Red Cross, was appointed to the post. The Mediator’s primary mandate was to conciliate the parties, promote a truce, and attend to the safety and wellbeing of the population of Palestine.¹⁸⁴ Between 14 May and 1 August, as he was trying to mediate the first truce, the Mediator saw the refugee population continuing to grow by the tens of thousands. His attempt to convince Israel to allow a limited number of refugees to return, without prejudice to the return of the others, met with refusal.¹⁸⁵ In July 1948, the Mediator set up a sixty-day UN Disaster Relief Project (UNDRP) to coordinate international governmental and non-governmental aid for the refugees.¹⁸⁶ Lack of funds and other operational challenges pushed the General Assembly to set up the UNRPR, a special fund to finance relief activities implemented by the ICRC, the LRCS, and the AFSC.¹⁸⁷ As the number of refugees displaced by the ongoing military operations in various parts of Israel continued to grow, in his progress report to the Security Council of 16 September 1948 on the issues of refugees, the Mediator wrote:

It is not yet known what the policy of the Provisional Government of Israel with regard to the return of Arab refugees will be when the final terms of settlement are reached. It is, however, undeniable that no settlement can be just and complete if recognition is not accorded to the right of the Arab refugee to return to the home from which he has been dislodged by the hazards and strategy of the armed conflict

between Arabs and Jews in Palestine. The majority of these refugees have come from territory which, under the General Assembly resolution of 29 November, was to be included in the Jewish State. The exodus of Palestine Arabs resulted from panic created by fighting in their communities, by rumours concerning real or alleged acts of terrorism, or expulsion. 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 while Jewish immigrants flow into Palestine, and, indeed, at least offer the threat of permanent replacement of the Arab refugees who have been rooted in the land for centuries.¹⁸⁸

This led the Mediator to recommend that:

The right of the Arab refugees to return to their homes in Jewish-controlled territory at the earliest possible date should be affirmed by the United Nations, and their repatriation, resettlement and economic and social rehabilitation, and payment of adequate compensation for the property of those choosing not to return, should be supervised and assisted by the United Nations.¹⁸⁹

(p. 41) Bernadotte was assassinated by a member of the Zionist paramilitary group Lehi, which opposed his mediation efforts, on 17 September 1948, one day after he submitted the above progress report.

4.2 The UNCCP and early negotiations on the refugee issue (1949-1951)

Following Bernadotte's death, and pursuant to his recommendations, on 11 December 1948, the General Assembly adopted resolution 194 (III) establishing the United Nations Conciliation Commission for Palestine (UNCCP), which took over the main functions of the Mediator, particularly to assist the Governments and authorities concerned to achieve a final settlement of all questions outstanding between them.¹⁹⁰ With regard to the refugees, one of the most pressing outstanding issues,¹⁹¹ 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; *Instructs* the Conciliation Commission to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation, and to maintain close relations with the Director of the United Nations Relief for Palestine Refugees and, through him, with the appropriate organs and agencies of the United Nations.¹⁹²

From the outset, and in addition to working on other aspects of its mandate, the UNCCP - comprised of the US as its chair, as well as France and Turkey - made extensive efforts to advance the implementation of paragraph 11 of resolution 194. Among other initiatives, this included the convening of a number of international conferences.

At the Lausanne Conference (27 April-12 September 1949), the first international summit convened to resolve disputes arising from the 1948 Arab-Israeli War, the focus was on the questions of the refugees and territory. Representatives of Israel, Egypt, Jordan, Lebanon, Syria, and the Arab Higher Committee participated.¹⁹³ Refugee delegations were in attendance as well, without formal representation.¹⁹⁴ The main advocates for the (p. 42) Palestinians, including the refugees, were the Arab States, which refused to interact directly with Israel, forcing the UNCCP to engage in intense and lengthy shuttle diplomacy.¹⁹⁵ The Arab states wanted to negotiate *en bloc* and settle the dispute on the

basis of UN resolutions 181 and 194.¹⁹⁶ They also demanded a halt to Israel's seizure of Palestinian homes and property; freeing of sequestered *waqf* (charitable property); release of Arab bank accounts frozen by Israel; and repatriation of refugee orange grove owners and their workers.¹⁹⁷ They claimed recognition of the areas slated for the State of Palestine under the Partition Plan and the immediate return of the refugees coming from the areas that were conquered by Israel.¹⁹⁸ In turn, Israel wanted to settle all problems at once within the framework of a general settlement, but refused to negotiate with Arab states *en bloc*. As part of an overall settlement of the conflict, Israel was initially willing to accept the return of 100,000 refugees,¹⁹⁹ annex Gaza (which would have implied acquisition of Israeli citizenship to all its 200,000 inhabitants, including the refugees),²⁰⁰ and make a modest financial contribution towards the resolution of the refugee crisis under the guise of compensation for 'abandoned' property (i.e. only a subset of the totality of the losses and damages), if Arab countries accepted to resettle the majority of the refugees.²⁰¹ The UNCCP, and in particular the US government as its chair, expected Israel to repatriate 250,000 refugees, given Israel's acceptance of the UN Partition Plan, which provided for inclusion of a population of over 400,000 Palestine Arabs in the Jewish state.²⁰² In response Israel offered to repatriate approximately 100,000 refugees (in fact 75,000, as 25,000 had already returned to their homes),²⁰³ on condition that their repatriation would be to 'specific places' so as to fit with Israel's security needs and economic development plan, and funded by the international community.²⁰⁴ The proposed annexation of Gaza would have also seen the situation of the refugees residing there resolved.²⁰⁵ The Arab representatives rejected the Israeli proposal, as it was deemed inadequate to meet refugee claims and as the proposed annexation of the Gaza Strip was seen as further 'land grabbing'.²⁰⁶

By August 1949 the Arab states indicated to be in favour of a solution that would repatriate the refugees to Israeli-controlled territory or to the parts of British Mandate Palestine not under Israeli control, and involve the resettlement of those not repatriated in Arab (p. 43) countries.²⁰⁷ Jordan and Syria offered to resettle any refugees unwilling to return and live under Israel's control.²⁰⁸ The Israeli reply confirmed earlier positions and underlined that the preferred solution would be to resettle the refugees in Arab territories – i.e. the Gaza Strip and the West Bank – and in Arab countries. Any financial assistance to aid the refugees should also extend to the resettlement of Jewish refugees from Arab-controlled areas of Palestine.²⁰⁹

The UNCCP convened a second international conference in Geneva (30 January–15 July 1950). No advancement was made as the positions of Israel and the Arab states had become more rigid. The UNCCP held a final round of talks in Paris (13 September–19 November 1951). This time the UNCCP called for resolution of the refugee problem by repatriating some of the refugees to Israel and resettling others in Arab countries.²¹⁰ Both Israel and the Arab states rejected this proposal, citing security, political, and economic considerations (Israel)²¹¹ and the proposed limitations on the number of returnees (the Arab states).²¹²

4.3 The Economic Survey Mission and the establishment of UNRWA

As the Lausanne Conference was winding down and the chances for a rapid repatriation of the refugees began to fade, US officials,²¹³ in their capacity as chair of the UNCCP, decided to try another approach to the question of the refugees, including economic reintegration, resettlement and compensation.²¹⁴ Formally invited by the UNCCP, a delegation headed by Gordon Clapp, then-president of the Tennessee Valley Authority (TVA), visited the Near East in September 1949 to explore whether the United States solution to the drought of the 1930s and 1940s in the Tennessee Valley, a region particularly impacted by the Great Depression, could be replicated in the Jordan Valley and beyond.²¹⁵ The Economic Survey Mission (ESM), as the Clapp Mission was officially known, was charged with examining the economic situation in the countries affected by the hostilities in Palestine and with making recommendations to the UNCCP for an integrated programme which would facilitate the

repatriation, resettlement and reintegration of the refugees in a way that was conducive to peace and stability in the area.²¹⁶

(p. 44) In its interim report, published in November 1949, the ESM offered a positive assessment of the potential for economic development in the Near East, although with significant caveats with respect to the capacity of Arab states with respect to the prospects for interstate cooperation as well as possible resistance from the refugees themselves.²¹⁷ The ESM described the situation in which the refugees found themselves in the following terms:

Why do not the refugees return to their homes and solve their own problem? That is what the great majority of them want to do. They believe, as a matter of right and justice, they should be permitted to return to their homes, their farms and villages, and the coastal cities of Haifa and Jaffa whence many of them came. They are encouraged to believe this remedy open to them because the General Assembly of the United Nations said so in its resolution of 11 December 1948. [...] Most men in their position, given a choice between working in a foreign land or returning to their homes and to conditions understood and experienced from youth, would strain towards their homes, even were they told that, in their absence, conditions had so changed that they would never be happy there again. [...] Even if they were told their houses had been destroyed, they would still claim that the land remained. [...] But, the repatriation of Arab refugees requires political decisions outside the competence of the Economic Survey Mission. Why do not the refugees go somewhere else? [...] The refugees do not take kindly to moving again – unless it be a return to their homes, a prospect they cling to because of the General Assembly's resolution. Moreover, the Arab Governments have made it clear to the Mission that they feel bound to respect the wish of the refugees. Resettlement of the refugees outside of Palestine is a political issue poised against the issue of repatriation, compensation of the refugees and a final territorial settlement. Finally, less congested lands are not available for the settlement of additional population until much money has been spent and work done to make the land suitable for cultivation or for industrial development. In these circumstances, the only immediate constructive step in sight is to give the refugees an opportunity to work where they now are.²¹⁸

According to Schiff, ‘to avoid admitting that “resettlement” had replaced “repatriation” as the goal, the report never used those words, but substituted vaguer concepts, such as the “reintegration of refugees in the Middle Eastern communities” and “rehabilitation of refugees in the Middle Eastern communities” and “rehabilitation of refugees”’.²¹⁹

The ESM recommended the establishment of an agency under the auspices of the UN that should lead the large-scale development effort it envisaged by directing a ‘programme of public works, calculated to improve the productivity of the area’.²²⁰ The agency would also take over the relief effort.²²¹ Countries hosting refugees from Palestine cautiously welcomed Clapp’s mission, although much suspicion and scepticism remained. This was triggered, in part, by the omission of reference to Palestine refugees and UNGA resolution 194 (p. 45) from the initial draft resolution sponsored by the US, France, and Turkey, which incorporated the ESM recommendations. In response to host country and broader Arab criticism, the draft was amended to accommodate these concerns and subsequently adopted without dissent as resolution 302 (IV) on 8 December 1949 called ‘Assistance to Palestine Refugees’.²²² The United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) was established by a vote of 49–0–6. Five communist governments and South Africa abstained. All of the Arab governments and Israel voted in

support of the resolution.²²³ At paragraph 7, resolution 302 established UNRWA, with the mandate to:

- (a) To carry out in collaboration with local governments the direct relief and works programmes as recommended by the Economic Survey Mission;
- (b) To consult with the interested Near Eastern Governments concerning measures to be taken by them preparatory to the time when international assistance for relief and works projects is no longer available.

UNRWA commenced operations on 1 May 1950, focusing on continued relief operations for the nearly one million registered persons (including refugees and other recipients of aid that it inherited from its predecessors), and on the large-scale development schemes envisioned by the ESM.²²⁴ In December 1950, UNRWA was provided with a USD 200 million Reintegration Fund. However, as early as the spring of 1951, agency officials recognized that the expensive projects foreseen were unlikely to resolve the economic difficulties facing the refugees.²²⁵ By 1956, when the Suez Crisis broke out, only some USD 27.5 million of the USD 200 million had been used (most were pledges). From then on, the large-scale development effort was shelved. According to Schiff:

In retrospect, it took a dollop of optimism, or naiveté, to believe that the refugee problem could be solved with these ambitious water schemes. All the ingredients to thwart the plans were present: the states of the region were mutually suspicious; the effort required allocation of a scarce resource over which participating countries were prepared to fight; the [refugees] did not want to be moved, except back to their homes; and the time schedule for success, set by U.S. enthusiasm, was very short. In a pattern later repeated across the Third World, an economic development plan devised by western experts evaporated when exposed to the dry winds of local, economic, political and cultural realities.²²⁶

Meanwhile, the refugees remained in need of international support; hence UNRWA's mandate has been repeatedly extended, mostly for three-year periods.²²⁷

(p. 46) 4.4 UNCCP efforts related to refugee compensation (1950s-1960s)

After the failure of the international conferences and the creation of UNRWA, the UNCCP shifted its approach towards compensation: lost refugee property needed to be identified and valued, and archives had to be consulted and preserved.²²⁸ Israel never implemented its compensation commitment;²²⁹ it raised claims for Jewish property lost during the 1948 war and insisted that all issues of compensation be dealt with at the same time.²³⁰

UNCCP had directed the ESM to look into the matter of compensation for both loss and damage and for the properties of refugees who would choose not to return.²³¹ As discussed, Israel had started to dispose of sequestered refugee property, and Arab delegations to the UN were urging the General Assembly to take action. The result was the adoption of UNGA resolution 394 (IV) of 14 December 1950, which expressly directed a newly established UNCCP Refugee Office to 'make such arrangements as it may consider necessary for the assessment and payment of compensation in pursuance of paragraph 11 of General Assembly resolution 194 (III).'²³² Michael Fischbach, in his monumental study on the UNCCP archives in New York, tracks in detail the evolution and milestones of the UNCCP's work in identifying and valuing refugee property.²³³

4.4.1 The Refugee Office 1952 estimate

The UNCCP Refugee Office began its work in May 1951 in Jerusalem and was tasked to produce a 'Global Estimate' of the overall refugee losses in terms of land left behind and its value, as well as a practical compensation plan for individual refugees.²³⁴ In 1952 the Refugee Office established an overall figure of 120 million British Palestine pounds (approximately USD 4 billion in 2019),²³⁵ which 'constituted a debt by the Government of Israel to the [individual] refugees'.²³⁶ Arab sources rejected the figures as too low, and also contested the process.²³⁷ In September 1952, the Refugee Office released its plan for compensation, consisting of an initial compensation fund of USD 50,000,000. Under the plan, the Israeli Custodian of Absentee Property would turn legal title to the refugees' land over to the fund, from which compensation would be paid to the refugees. To raise the money, the fund would sell title to the land to the Israeli government, the Jewish National Fund, and (p. 47) Jews throughout the world, with Israel to make up any losses.²³⁸ Israel rejected the plan and no further attempt was made at advancing it. Meanwhile, a limited success was achieved in 1952, when the UNCCP concluded an agreement with the government of Israel for 'the complete release of [between 20,000 and 30,000]²³⁹] Arab refugee accounts and safe deposit items blocked in banks in Israel.'²⁴⁰

4.4.2 The 'Technical Office' 1964 estimate

Thereafter, the UNCCP decided to focus on identifying properties owned by Palestinian refugees and, based thereon, on refining its earlier estimate of Palestinian refugee losses, which would be of use in any future compensation process. To this end the Commission established an Office for Identification and Valuation of Arab Refugee Property, better known as the Technical Office, which began work in New York and Jerusalem in May 1952.²⁴¹ Over the following twelve years, the Office worked to identify every parcel of Arab-owned land (i.e. various categories of ownership) in the part of Palestine that had become Israel (excluding the Gaza Strip and the West Bank) and to give it a value.²⁴² The challenges were significant but not insurmountable.²⁴³ By 1961, about 450,000 recorded forms of properties owned by Arab individuals had been prepared.²⁴⁴ By 1964, UNCCP's work was complete.²⁴⁵ In its final report addressed to the UN, the UNCCP stated that it had identified 7,069,091 dunums of Arab-owned land in what became Israel on 14 May 1948.²⁴⁶ It estimated that 43.6 per cent of the total Palestinian population – and 39.6 per cent of the refugees – were landowners; note was taken of the leases and *waqf*.²⁴⁷ Though the figures were never released, records in the UNCCP archives examined by Fischbach reveal that the UNCCP determined the worth of the Arab refugees' privately owned land and of that fraction of the Beersheba district for which it could establish accurate figures was 204,660,250 British Palestine pounds²⁴⁸ (approximately USD 9.6 billion in 2019).²⁴⁹ (p. 48) Incomplete and conservative as they might be, the UNCCP estimates are, according to Fischbach, the most methodologically accurate that have been produced to date.²⁵⁰ The Technical Office also undertook research that was not published, such as the value of communally owned Arab land. The office considered that, beyond land losses, a compensation regime should also consider movable property losses, disturbance allowance (representing the loss of income until a refugee could re-establish himself/herself), ex-gratia payment (of USD 500–1000 per capita, representing a general compensation for 'hardship'), and reintegration costs.²⁵¹

As the work of the Technical Office was winding down in the early 1960s, the UNCCP was called upon to mount one last attempt at direct Arab-Israeli mediation concerning the refugees, having been instructed by the General Assembly during its 15th session to 'make efforts to secure immediate implementation of paragraph 11 of General Assembly resolution 194 (III), which covered both return and compensation, and report thereon not later than October 15, 1961'.²⁵² At the suggestion of the US government, the UNCCP appointed distinguished American diplomat Dr. Joseph E. Johnson as UNCCP special representative in August 1961. After two visits to the region, Johnson submitted his final report to the

UNCCP a year later.²⁵³ Johnson's overall estimate – owned for compensation was USD 1.377 billion in 1962 dollars,²⁵⁴ equivalent to USD 22.975 billion in 2019.²⁵⁵ In essence, the report proposed to give the refugees a choice, via a questionnaire, between repatriation and compensation, and that *all* refugees should receive compensation from a UN fund to be established by the General Assembly. Compensation would be both property-based and in the form of a 'reintegration allowance' (Johnson, like the Technical Office, was aware that more than half of the refugees did not own land).²⁵⁶ Facing a violent Israeli reaction and with no support by the US administration, Johnson resigned one year later.²⁵⁷

The political impasse facing the UNCCP appeared increasingly unresolvable in the foreseeable future. In response, the General Assembly adopted resolutions expressing concern that none of the solutions proposed in resolution 194 had been effected.²⁵⁸ Since 1964, the (p. 49) UNCCP has made no more substantial contributions towards the implementation of paragraph 11 of resolution 194, although it nominally continues to exist.²⁵⁹ In its annual reports to the General Assembly the Commission continues to draw attention to the fact that its efforts to advance matters towards the implementation of resolution 194 (III) depend on substantial changes in the attitudes of the parties.²⁶⁰

5. Subsequent Displacement of Palestinians

In the absence of a political settlement of the Israeli-Palestinian conflict, the refugees have been prevented from returning to their homeland despite their willingness to do so and the UN resolutions demanding this to be allowed.²⁶¹ From the early 1950s onwards, many of these refugees left their countries or areas of first asylum (commonly referred to as 'host countries') in search of better economic opportunities, primarily in the Arab Peninsula or in North Africa, but also, in smaller numbers, in Europe and North America, as did non-refugee Palestinians from the Gaza Strip and the West Bank.²⁶² Subsequently, many refugees were also forced to move on again by conflict or instability in their initial countries of refuge. These further movements of Palestinian refugees are a physical illustration of how geo-political events, the ebbs and floods of the Israeli-Palestinian conflict, other conflicts in the region, and the actions of the Palestinian leadership and Arab rulers alike, have impacted these refugees both individually and collectively, and no place has proven secure for them.²⁶³

5.1 1967 War and the '1967 displaced'

While the displacement in 1948 was the first and largest mass displacement of Palestinians, it was not the only one. The second largest took place in 1967, during and soon after the Six Day War (5–10 June 1967) between Israel and the neighbouring states of Egypt and Syria (then 'the United Arab Republic'), and Jordan, known as 'Second Arab-Israeli War', when Israel captured and occupied the residual land that was once part of Mandate Palestine, namely the West Bank – including East Jerusalem – and the Gaza Strip, as well as the Golan Heights (from Syria) and the Sinai Peninsula (from Egypt). Apart from the Sinai Peninsula, which was returned to Egypt in 1982, the territories Israel invaded in 1967 are still occupied.²⁶⁴

(p. 50) The exact numbers of displaced in 1967 – that historian Benny Morris discusses as among the 'casualties' of the war – are unclear, owing to the chaos generated by the conflict and the large, unexpected displacement itself. Estimates place the figures at 320,000/440,000 who were displaced from the West Bank to the East Bank (Jordan) (half of whom where UNRWA registered refugees);²⁶⁵ over 70,000 refugees from the Gaza Strip – most of them 'second time refugees' – fled into Egypt and through it to other parts of the Arab world (primarily Jordan);²⁶⁶ some 16,000 UNRWA registered Palestine refugees were among the 115,000 or more people displaced from the Golan Heights.²⁶⁷ The report refers to a further 35,000 people who were moved from the Sinai Peninsula to Egypt, and approximately '4000 young men among the registered refugees in Gaza were forced to

leave the Gaza Strip because the Israel authorities believed them to be members of the Palestine Liberation Army.²⁶⁸ Those who fled for the first time in 1967 were called the '1967 displaced persons' (not 'refugees').²⁶⁹ The exact current number of these refugees, including descendants, remains unconfirmed.²⁷⁰

It is unclear how many fled because they were intimidated or forced out by the Israeli troops and how many fled out of fear.²⁷¹ As in 1948–1949, Israel carried out individual deportations and mass evacuations, after demolishing entire Arab towns at the end of the fighting, like Qalqilya, Tulkarem, Imwas, Yalu, Beit Nuba, and Deir Aiyub; some of those were simply out of punishment and retaliation after the fighting had ended.²⁷² Instances of IDF soldiers going around with loudspeakers ordering people to leave to Jordan, as well as of Israeli-organized transportation to drive people out towards Jordan for over a month, are all well documented.²⁷³ An UNRWA report from 1967 says that in the Jericho area, 65,000 (p. 51) persons fled from their homes, and only 7,500 persons remained.²⁷⁴ In addition to the 'element of revenge' for the events of 1948, what may have pushed such destruction among Israeli forces was the thought that this 'would also facilitate Israel's retention of the salient under any future peace settlement'.²⁷⁵ In the occupied eastern part of Jerusalem, as early as 10 June, Morris recounts:²⁷⁶

the Israeli authorities swiftly exploited the shock of war and conquest to destroy the so-called Mughrabi Quarter, a cluster of houses inhabited by Muslims next to the Western Wall in the Old City [...] The result was a large plaza that afforded a place for assembly in front of Judaism's holiest shrine.

In the aftermath of the war, the General Assembly and the Security Council issued numerous resolutions which, among others, had specific provisions concerning the newly displaced Palestinians, including calling upon Israel to 'facilitate the return of those inhabitants who had fled the areas since the outbreak of the hostilities'.²⁷⁷ Security Council resolution 242 of 22 November 1967 affirmed that the UN Charter principles required the establishment of a just and lasting peace which should include the withdrawal 'of Israeli armed forces from territories occupied in the recent conflict' and affirmed the necessity of 'a just settlement of the refugee problem'.²⁷⁸

In practice, despite an early announcement by the Israeli government that 1967 refugees who desired to do so would be allowed, only 14,000 of the 120,000 who applied were actually allowed by Israel back into the West Bank by the beginning of September.²⁷⁹

Since 1967, Israel has enacted a number of military orders that have prevented both the return of the 1967 refugees and reacquisition of property left behind. Almost immediately upon seizing the West Bank, the Israeli army issued Military Order 58, authorizing the seizure of any property held by West Bank residents who were outside the area on 7 June 1967 or who subsequently left. Military Order 58 replicates the Absentees' Property Law of 1950 for the 1967 territories, applying it to territory that Israel merely occupies and over which it has no sovereignty.²⁸⁰ Military Order 58 has a broader scope than the Absentees' (p. 52) Property Law, which only applies to people who left their homes in what became Israel between 1947 and 1948. By this token, the Israeli Custodian of Absentee Property, also took control of the property that had since 1948 been held by the Jordanian Custodian for Enemy Property and put it under the control of the Custodian's authority.²⁸¹ Military Order 58 has no time restrictions and potentially covers any Palestinian who leaves the West Bank: it remains in force.

In December 1968,²⁸² the General Assembly also called for the 'return' of the displaced persons, a call that the Assembly has reiterated in subsequent resolutions.²⁸³ The Oslo peace process triggered negotiations to achieve the return the 1967 displaced persons, as called for by the General Assembly in its resolutions addressing the issue, but after the start

of the second *intifada* in 2000 (see n 370), no further negotiations were held and, as for the 1948 refugees, the plight of these refugees has no end in sight.

5.2 Further shocks until the present

Since 1967 some 700,000 Palestinians have been subject to further displacement from various countries in the Middle East and North Africa, where they had sought refuge or taken up residence from the late 1940s onwards. There was significant displacement from Jordan in 1970–1971 (under 2,000), Lebanon from 1975–1990, Kuwait in 1990–1991, Libya in 1994–1995, Iraq from 2003, and Syria from 2011.²⁸⁴ Today, over two million Palestinians, mostly 1948 or 1967 refugees (including descendants) are estimated to reside outside UNRWA's area of operation; of these, some 900,000 are elsewhere in the Arab region, some 400,000 each in Europe, and around one million in the Americas, and a few thousand still further afield. The numbers of Palestinians who became refugees after conflict-induced forced displacement in the oPt are unknown (Table 1.1).

Following each of the above upheavals, Palestinians have sought protection and better opportunities in Europe and the Americas. In recent years, Europe and America have become less welcoming, with increasing xenophobia towards refugees, especially those from the Middle East.²⁸⁵ As a result, Palestinian refugees have moved further afield in search of a safe haven, including to the Asia-Pacific region and Africa.²⁸⁶(p. 53) (p. 54)

Table 1.1 Palestinian dispersal (population estimates, circa 2018)

Total Worldwide	13,050,000 ^a	Europe	378,296
Middle East	11,323,500	Germany	200,000
West Bank	2,954,000	Sweden	50,000
<i>of which registered refugees</i>	<i>800,000</i>	Denmark	25,000
Gaza Strip	1,961,000	France	20,000
<i>of which registered refugees</i>	<i>1,420,000</i>	Turkey	16,000
East Jerusalem	350,000	United Kingdom	15,685
<i>of which registered refugees</i>	<i>51,000</i>	Netherlands	13,500
Israel	1,568,000	Cyprus	10,000
Jordan (registered refugees)	2,240,000 ^b	Italy	5,000
Syria (registered refugees)	560,000 ^c	Greece	5,000
Lebanon (registered refugees)	475,000 ^d	Spain	5,000
Saudi Arabia	400,000	Norway	3,137
UAE	300,000	Belgium	1,500
Egypt	70,000	Austria	1,151
Libya	57,500	Finland	1,000
Kuwait	50,000	Poland	1,000
libya	50,000	Bulgaria	900
Qatar	50,000	Ireland	500
Bahrain	45,000	Norway	300
Oman	25,000	Netherlands	300
Iraq	10,000	Switzerland	300
Algeria	5,000	Croatia	200
Tunisia	2,000	Portugal	100
Yemen	1,000	Luxembourg	100
Americas	1,152,500	Others	430
Chile	500,000	Asia Pacific	33,700
Honduras	250,000	Australia	30,000
United States	200,000	New Zealand	1,000
El Salvador	85,000	Pakistan	1,000
Brazil	60,000	Malaysia	800
Canada	50,000	Indonesia	500
Argentina	5,000	Thailand	400
Venezuela	2,000	Africa	500
Costa Rica	500	Sudan	300
		Ghana	200

The above figures should be considered with caution and not be regarded as conclusive. Lack or uneven data make Palestinian presence and mobility complex to track.^e The figures provided by PCBS and UNRWA, while being the most reliable, cannot be considered comprehensive demographic data.^f Outside UNRWA's area of operations, the identification of Palestinian 'refugees' (in conformity with the meaning of relevant UN resolutions) gets blurred (lack of precise refugee/asylum seeker/states data and migration statistics). The above figures should, therefore, be considered indicative of Palestinian dispersal, rather than conclusive of the number of Palestinians in the various countries of the world.

^a This is PCBS (2018)'s estimate, which our study approximately confirms.

^b The actual number appears to be much higher as discussed in ch. IV, sec. 3.2.

^c Some 120,000 of those registered with UNRWA in Syria have left the country since the start of the ongoing conflict.

^d This number is significantly higher than the estimated number of Palestinians actually living in Lebanon (see ch IV, sec. 3.3)

^e This largely depends on lack of (accurate data and) harmonization in recording Palestinian presence, see ch. V, sec. 1.

^f UNRWA does not register all Palestinian refugee population, as explained in ch. II, sec. 4.1.1. and 4.2, and ch. VII, sec. 4.

6. Later Peace Initiatives and Their Relevance for Palestinian Refugees

Though the UNCCP failed to achieve a settlement of the conflict, the Palestinian refugee issue has continued to be an important factor in efforts to bring about a peaceful resolution of the Israeli-Palestinian and broader Arab-Israeli conflicts. The Security Council, acting in the aftermath of the Six Day war, and the various peace initiatives and negotiations commencing with the Madrid Peace Conference in 1991, have all tried to address the need for durable solutions to the plight of the refugees. This section offers a brief overview of these various peace-making efforts in that context.²⁸⁷

6.1 The years before the start of the Middle East peace process

During the 1950s and early 1960s the Palestinian refugee question continued to feature prominently in the discourse with respect to the conflict in the Middle East, particularly in connection with the rise of the charismatic Gamal Abdel Nasser as President of Egypt and his Pan-Arab agenda, which made fighting Zionism and liberating Palestine a unifying Arab objective.²⁸⁸ Liberating all of former Mandate Palestine and ensuring the return of the 'displaced'²⁸⁹ was also the goal of the Palestinian political groups that started to emerge in the 1960s in the various countries of exile, partly in response to a perceived lack of international resolve in addressing the Question of Palestine.²⁹⁰ This included Fatah,²⁹¹ the Popular Front for the Liberation of Palestine (PFLP), the Democratic Front for the Liberation of Palestine (DFLP), and other smaller groups. These gradually gathered under the umbrella of the Palestine Liberation Organization (PLO).²⁹² The PLO's highest body, the Palestinian National Council (PNC), has been made up largely of representatives from the global Palestinian diaspora.²⁹³ The PLO enjoyed support from the Arab League and some of its members in particular. This probably explains the lack of success of US attempts during this period to persuade a number of Arab leaders to enter into a peace settlement with Israel, without involving the Palestinians.²⁹⁴

(p. 55) The 1967 war and the Israeli occupation of the Gaza Strip and the West Bank were a turning point in the history of the Palestinian people. The 'defeat' by Israel sent shockwaves through the Arab world, and somewhat accelerated global recognition of the PLO as the 'legitimate representative of the Palestine people'.²⁹⁵ At the height of the Cold War, a majority in the international community came to recognize the PLO as the representative national organization of the Palestinians: it became full member in the League of Arab States, Non-Aligned Movement, and other multinational groupings within the group of Third World states, and was granted observer status at the UN.²⁹⁶ While not abandoning the issue of the refugees' repatriation, the PLO started to put explicit emphasis on the need to achieve self-determination.²⁹⁷ Its discourse gradually shifted from a 'national liberation' movement aimed at overthrowing Israel and returning to the entire territory that was formerly Palestine to a 'national independence' movement accepting the establishment of a Palestinian state alongside Israel,²⁹⁸ most clearly articulated in the 1988 Declaration of Independence of Palestine adopted by the PNC in Algiers. And in parallel, since the 1967

war, the international community's approach to peace-making between Israelis and Palestinians was led by UN Security Council resolution 242 which revolved around the '[w]ithdrawal of Israeli armed forces from territories occupied in the recent conflict' and the '[t]ermination of all claims or states of belligerency and respect for and acknowledgement of the sovereignty, territorial integrity and political independence of every State in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force.²⁹⁹

A new turning point for the Palestinians came with the Camp David peace negotiations between Egypt and Israel, brokered by US President Jimmy Carter, which resulted in the 1978 peace agreement between the two countries. At Camp David the issue of refugees featured high. Egypt's initial position included a proposal to repatriate the Palestinian refugees from 1948 and for compensation to be offered as an alternative to return. This was rejected by Israel, with a counter-offer to accept the return of 150,000 persons displaced during and in the aftermath of the 1967 war, which however came to nothing.³⁰⁰ Eventually Egypt and Israel agreed on peace terms that resolved their bilateral dispute and called for a just solution for the refugees, but without clarifying what this would entail.³⁰¹ Israel's historical goal to negotiate peace with Arab countries separately had been partially achieved.

During the 1970s and 1980s, the PLO and its principal organ, the PNC, focused on seeking the establishment of a Palestinian state in the West Bank, including East Jerusalem, (p. 56) and the Gaza Strip; a willingness to engage in peace talks; and also to explore the option of a possible confederation with Jordan.³⁰² The PLO's assumption was that Israel would progressively withdraw from the Gaza Strip and the West Bank once an international settlement was reached, and that Palestine would be able to establish a state in these areas.³⁰³ The first *intifada*, and the unprecedented international support that it brought to the Palestinians and PLO, gave further impetus to this shift.³⁰⁴ In 1988, the PNC's Declaration of Independence,³⁰⁵ also known as the 'Algiers Declaration', opened up a number of potential compromise solutions in the name of the realization of self-determination. The new political programme embodied by the Algiers Declaration moved away from the idea of total liberation of 'historic Palestine'; while reaffirming the settlement of the question of the Palestinian refugees in accordance with the relevant UN resolutions, it formally endorses Security Council resolutions 242 and 338 and rejected terrorism.³⁰⁶ By doing so, it effectively committed the PLO to the co-existence of Israel and a Palestinian state.³⁰⁷ While reaffirming the importance to settle 'the question of the Palestinian refugees in accordance with the relevant United Nations resolutions' and recalling the right of return, neither the Declaration nor the political programme attached to it articulated how refugee rights could be implemented.³⁰⁸

However, in the following years, the breakup of the Soviet Union, declining Arab support for the PLO from the early 1990s, and Israel's increasing preoccupation with respect to radicalization of Palestinian resistance to the occupation (e.g. the rise of Hamas) contributed to create momentum for renewed negotiations towards a settlement between the Palestinians, Israel, and its Arab neighbours.³⁰⁹

6.2 From Madrid to Oslo and Camp David (1991-2000)

After years of resistance and mobilization, the PLO agreed to enter formal peace negotiations with Israel. The beginning of negotiations between Israel and the PLO in the 1990s marked an important milestone, even though the negotiations did not produce concrete advances with respect to Palestinian refugee rights. From the Madrid Conference in 1991,³¹⁰ (p. 57) where the Palestinians were not allowed to represent themselves,³¹¹ to the Oslo process, which resulted in the mutual recognition of Israel and the PLO and limited Palestinian autonomy in parts of Gaza and the West Bank,³¹² the centrality of the refugee issue among the 'permanent status issues' was manifest, with the PLO emphasizing the

right of the refugees to return at every stage of the peace process. In reality, however, negotiations of the refugee issue focused not so much around whether the refugees (from 1948 and 1967) should return to their homes, but rather as a debate over whether there should be unhampered right of return for all refugees to an independent Palestinian state in the West Bank and Gaza, how to compensate the refugees and normalize the life of those who would stay in neighbouring countries, how to get Israel to accept a symbolic return of some refugees ‘to Israel proper’, and to recognize that a historical injustice had been done to the Palestinian people.³¹³

The Madrid Conference (premised on UNSC resolutions 242 and 338), established a two-track process: bilateral negotiations between Israel and Jordan, Lebanon, Syria, and the Palestinians aiming at resolving the conflicts that had been outstanding since 1949; and multilateral working groups to support the bilateral negotiations, focusing on regional issues such as security, refugees, economy, the environment, and water. The fact that no explicit mention was made of General Assembly resolution 194 is read by some as an implicit PLO abandonment of such resolution, and a renunciation or dilution of the absoluteness of the ‘right of return’, often in the name of statehood in the oPt.³¹⁴ The rights of the refugees, through the peace process, it is argued, have become no longer a top priority for the PLO.³¹⁵

While reference to resolution 242, calling for ‘a just settlement’ of the refugee issue, could be seen as an indirect reference to it, neither the PLO nor any other Arab negotiators seem to have renounced bringing the issue of the right of return of the refugees to the table; the PLO has continued to make reference to resolution 194 at each stage of the ensuing negotiations and beyond.³¹⁶ Whether this was in pursuit of a political outcome or mere rhetoric deserves some detailed discussion.³¹⁷ What is striking, particularly in the bilateral negotiations between Israel and the PLO that Oslo inaugurated (see n 332 and accompanying text), is the asymmetry of power that has made it arguably difficult for the latter to advance discussions around the question of the refugees and their right to return in particular. This was compounded by the lack of coordination between the PLO and Arab states that has (p. 58) characterized their participation in the peace process.³¹⁸ Altogether, this has de facto reduced the right to return to a rhetoric political claim, rather than an articulated political demand.³¹⁹ Meanwhile, while the question of the 1948 refugees remained de facto difficult to approach, the Quadripartite Committee was established within the framework of the Israeli–Palestinian negotiations to deal with the 1967 displaced.³²⁰ These three sets of negotiations are briefly discussed in the remainder of this section.

6.2.1 Bilateral negotiations

In August 1993, after nearly two years and over a dozen formal rounds of bilateral talks hosted by the US Department of State in Washington, DC, news broke of a secret parallel ‘Oslo’ channel that had resulted in a breakthrough in Israeli–Palestinian negotiations.³²¹ A Declaration of Principles on Interim Self-Government Arrangements (DoP) had been agreed to be preceded by the mutual recognition of Israel and the PLO.³²² An exchange of letters between PLO Chairman Arafat and Israeli Prime Minister Rabin, dated 9 September 1993, confirmed the mutual recognition, followed by the signature of the DoP on the White House lawn four days later. The DoP embodied the earlier suggestion of a two-stage process, comprised of a five-year interim period of Palestinian self-rule,³²³ culminating in ‘final status’ negotiations which would deal with ‘Jerusalem, refugees, settlements, security arrangements, borders, relations, and cooperation with other neighbours, and other issues of common interest’.³²⁴ The first step in the implementation of the DoP was the establishment of self-rule in the Gaza Strip and the Jericho area (of the West Bank).³²⁵ The agreement was followed by a 400-page Interim Agreement, extending Palestinian self-rule to the remainder of the West Bank, containing detailed provisions on elections of a

Palestinian Council, on Israeli redeployment in the remainder of the West Bank, and on a range of related issues. This was signed in Washington, DC on 28 September 1995.³²⁶

(p. 59) Another breakthrough had led to the signing of a peace treaty between Israel and Jordan on 26 October 1994, in the framework of the bilateral negotiations Israel was conducting with its Arab neighbours.³²⁷ The agreement makes reference to the issue of the 'refugees and displaced persons', recognizing that the refugees issue 'cannot be fully resolved on the bilateral level' (i.e. by Israel and Jordan), and hence the need to resolve it through bilateral (the permanent status negotiations), quadripartite (the Quadripartite Committee), and multilateral (the Refugee Working Group) fora, as well as through the implementation of 'United Nations programmes and other agreed international economic programmes concerning refugees and displaced persons, including assistance to their settlement.'³²⁸

In 1995, an Israeli ultranationalist assassinated Yitzhak Rabin, the Israeli Prime Minister and one of the architects of the Oslo Accords, causing a major setback for the peace process.³²⁹ No significant progress was made on the refugee issue following the launch of the permanent status negotiations between Israel and the Palestinians at Taba, Egypt, in May 1996.³³⁰ Nor was there progress on the issue in the subsequent negotiations at Wye River in 1998 and at Sharm El-Sheik in 1999.³³¹

In practice, the failure to address the refugee issue within the Madrid framework continued with the Oslo Accords. The Oslo Accords resulted also in a tension among the interests of Palestinians in the West Bank and Gaza from those 'outside', namely the refugees and other Palestinians in the diaspora, who resented that their input was never solicited during the negotiations.³³²

(p. 60) 6.2.2 The Quadripartite Committee

Although not explicitly stated, the term 'refugees' in the DoP refers to the 1948 refugees.³³³ This can be deduced from the fact that the DoP contains a separate provision dealing with the '1967 displaced persons',³³⁴ which includes the establishment of a Continuing Committee (better known as the Quadripartite Committee), comprised of representatives from Egypt, Israel, Jordan, and the Palestinians, to deal with the issue of 1967 displaced persons.³³⁵ As Masalha acutely argues, the distinctive approach to this group of refugees – a misnomer, in fact – had a political explanation: it differentiates those whose goal was return to Israel (the 1948 refugees) and those who were seeking to return only to the West Bank and Gaza (displaced in 1967).³³⁶

At its first meeting in March 1995, the Quadripartite Committee defined the scope of its work and the categories of displaced persons that it would address, but not criteria and procedures for the return of the displaced persons.³³⁷ Israel had accepted in principle the return of the 1967 displaced persons to the territory of the West Bank and Gaza Strip.³³⁸ However, a serious rift emerged on the definition of a 'displaced person'.³³⁹ The Israeli delegates insisted that only those directly affected by the 1967 war be considered, while the other delegates wanted to include those who were absent from the area at the time of the war as well as those who had lost their residency rights since 1967. In 1999 the work of the Quadripartite Committee ended as a result of the effective breakdown of the peace process.³⁴⁰

6.2.3 The Refugee Working Group

The purpose of the multilateral negotiations within the Madrid framework was to facilitate Israeli-Arab relations.³⁴¹ Some forty parties, including a dozen Arab states (notably excluding Lebanon and Syria) and Israel, participated in the work of five working groups that were considered regional in scope and that were seen as essential in establishing and

maintaining peace: refugees; water; environment; regional economic development and human resources; and arms control and regional security.

The Multilateral Working Group on Refugees (RWG) aimed to build confidence ahead of final status negotiations and to address issues with regional implications.³⁴² It was led (p. 61) by Canada and met approximately ten times (including inter-sessional meetings) between 1992 and 1996. The RWG dealt with six issues: data bases,³⁴³ inventory of assistance to Palestinian refugees; human resources, training, job creation, economic and social infrastructure; public health; child welfare; and family reunification. It did not address any issues that could be politically sensitive, such as the right of return, compensation, or other bilateral aspects of the refugee issue, mainly because of Israel's resistance to any 'politicization' of the RWG which, according to Israel, had to keep a purely humanitarian focus.³⁴⁴ Financial, structural, and political challenges also explain the limited results from the RWG.³⁴⁵ Family reunification was seen as one of the means to indirectly engage Israel with respect to refugee return,³⁴⁶ with some limited and temporary success.³⁴⁷

Alongside the official negotiations, from the Madrid conference onwards, a number of so-called second track initiatives attempted to support formal peace-making through research and by providing informal venues for discussion by experts as well as those involved in the negotiations.³⁴⁸

6.2.4 Camp David

The refugee issue returned centre stage in 2000. Early that year, in secret discussions facilitated by Sweden, known as the 'Stockholm track' or 'Stockholm channel', the parties approached the question of acknowledgement of responsibility related to the 1948 events,³⁴⁹ and of compensation through the creation of an international commission, with the submission of claims for 1948 refugees grouped by household. The issue of repatriation remained divisive: while the Palestinians set out four options (return to Israel, 'return' to a Palestinian state, formal integration into the host countries, and third-country resettlement), Israel refused to recognize any Palestinian right of return to Israel, even in principle, stating that, while limited return could be allowed through family reunification or as a humanitarian gesture (but not as a matter of right), other refugees could either 'return' to the Palestinian state or be settled (in host or third countries), with compensation.³⁵⁰ Israel indicated willingness to 'contribute' to an international fund to cover financial issues related to the resolution of the Palestinian refugee problem.³⁵¹ The Stockholm Channel collapsed,³⁵² but negotiations continued, culminating in the 2000 Camp David summit.

(p. 62) At the Camp David summit in July 2000, US President Bill Clinton intended to initiate negotiations on all permanent status issues, including the refugee issue, with the main focus of the discussion on territory, settlements, security, and Jerusalem. The right of return of Palestinian refugees featured as the most challenging among the issues at stake.

In line with the position taken during earlier negotiations, the Palestinians demanded that Israel acknowledge responsibility for the creation of the refugee crisis, the right to return 'in principle' - while implementation would be limited, since most refugees would remain in the host countries or 'return' to a Palestinian state - and its responsibility to pay reparations and compensation to all refugees.³⁵³ Again, the Israeli delegation refused to acknowledge responsibility for the refugee issue, claiming it was instead attributable to the Arabs' reaction to the UN Partition Plan. It refused to accept UNGA resolution 194 and argued that the right to return threatened Israel's demographic balance and insisted on alternatives. The Israeli delegation reiterated willingness to accept return to a future Palestinian state, but not to Israel, except in the context of family reunification (to be determined at the sole discretion of Israel). It accepted that compensation should be paid to the refugees, but from an international, not an Israeli, fund, and that payment of compensation would result in an 'end of claims'. There was no articulation of the

compensation mechanisms,³⁵⁴ even though the US reportedly proposed a financial package of USD 10 billion, in addition to funds it would raise with other members of the international community to compensate Palestinian refugees.³⁵⁵ UNRWA was to be phased out within ten years of the agreement.³⁵⁶ For its part, Israel sought to link the issue of Jewish refugees from Arab states to the Palestinian refugee issue, claiming that they, too, should receive compensation for the abuses and exile inflicted upon them in the aftermath of the creation of the State of Israel.³⁵⁷

Clinton struggled to bring the parties closer to an agreement. Only marginal progress was made by inclusion of a reference to UNGA resolution 194, with mention of a very limited number of refugees returning to Israeli territory (a maximum of 2,000 refugees per year over a five-to-six-year period, totalling 10,000–12,000 refugees),³⁵⁸ and Israel's possible participation in the compensation fund along with other donors.³⁵⁹ The Summit ended without any agreement, an outcome for which the Palestinians have been largely blamed,³⁶⁰ though they had little room for compromise and some have argued that it was unrealistic to expect the Palestinians to accept the demands made on them.³⁶¹ Camp David took place at (p. 63) a time of mounting frustration among Palestinians, and with challenges to the legitimacy of the negotiators. Nearly a decade after the Madrid Conference, no concrete progress had been made with respect of any of the final status issues, while on the ground Palestinian land was being further fragmented, and Palestinian lives been made more precarious, by the ongoing occupation and settlement expansion in the West Bank.

Following the collapse of the Camp David negotiations, in late 2000 Clinton summarized his views on resolving the Israeli–Palestinian conflict in a document that became known as the 'Clinton Parameters'.³⁶² With respect to the refugee issue, Clinton suggested that the Palestinian refugees' right to return to their homeland should be recognized, where 'homeland' meant the territory of the future Palestinian state (i.e. not British Mandate Palestine).³⁶³ Possible 'final homes' for the refugees would include: (1) the State of Palestine, including (2) areas in Israel being transferred to Palestine in the land swap; (3) host countries (rehabilitation); (4) third country (resettlement); and (5) Israel (admission).³⁶⁴ Additionally, the Clinton Parameters called for the establishment of an international commission to oversee the implementation of compensation, resettlement, and rehabilitation for Palestinian refugees. Israel accepted the proposal, though, warned that the US had overestimated Israel's readiness to acknowledge the right to return.³⁶⁵ The Palestinians indicated they would be prepared to show flexibility in regards to the mechanism for implementing the right of return,³⁶⁶ provided that there was clarity on the 'right of return to their original homes' (in Israel) as an option, and on the unhindered return of the refugees to a Palestinian state.³⁶⁷ The Clinton Parameters were temporarily put aside after the election of US President George W. Bush,³⁶⁸ but have been referred to by the subsequent US administration, including by President Obama and Secretary of State John Kerry.

6.3 The peace process on life support (2001-present)

The Clinton Parameters have served as a point of reference for future negotiations, including with respect to the refugee issue. In early 2001 at the peace talks in Taba, Egypt, which took place not long after the start of the second *intifada*,³⁶⁹ one important advancement was (p. 64) registered on the issue of compensation – a topic largely untouched since the UNCCP years. Both parties, which agreed to negotiate on the basis of Security Council resolution 242 as a means to implement General Assembly resolution 194, presented 'non-papers' with the intent of finding a compromise and agreeing on key issues. The Palestinian non-paper focused on refugee property-related claims, including an internationally supervised system for property restitution to returnees (or property of similar value, if the original was unavailable) and compensation for lost property and suffering, as well as compensation to countries for hosting the refugees, and, finally, compensation to the future Palestinian state, including for public lands and buildings

appropriated by the State of Israel.³⁷⁰ While the issue of restitution was not addressed, Israel proposed that an international commission and an international fund be created to gather, verify, and pay individual compensation claims, including both financial and in-kind, for both displacement-related suffering and material loss, and taking into account both individual historic claims and communal economic development.³⁷¹ Provision would be made for a fast track-procedure for compensation for 'refugeehood' in addition to a claim-based procedure for property losses.³⁷² The proposal also inferred that Israel would not insist that its counter-claims for former Jewish refugees from Arab countries were to be included in a bilateral Israeli-Palestinian agreement.³⁷³ The more holistic perspective on compensation, including both moral and material aspects, represented a major shift in positions. Despite considerable progress, the parties continued to disagree on numbers of refugees who could return to Israel, the total value of the compensation (disagreement existed on the compensation for non-material loss and suffering), and Israel's responsibility to fund it. No agreement was reached and time was running out.³⁷⁴

The election of Ariel Sharon as Israeli Prime Minister and the intensification of the *intifada* effectively brought the permanent status negotiations to an end. Subsequent attempts at reviving peace talks had no success. Initiatives such as the Arab League-sponsored Arab Peace Initiative³⁷⁵ as well as the internationally backed 'Roadmap'³⁷⁶ both referred to the resolution of the refugee question in the context of a negotiated settlement between the parties. The Roadmap, which was to lead to full Palestinian statehood by 2005, was accepted by both the Palestinians and Israel, albeit with reservations,³⁷⁷ but has not been implemented.³⁷⁸

(p. 65) Meanwhile, following the collapse of the official negotiations in 2001, a number of civil society initiatives attempted to maintain Israeli-Palestinian dialogue on key permanent status issues.³⁷⁹ The most prominent of these is the so-called Geneva Initiative, secretly initiated in 2003 by former negotiators and officials involved in previous rounds of Israeli-Palestinian negotiations.³⁸⁰ The Geneva Initiative largely reflects previous proposals and understandings developed at the Taba negotiations in 2001 and the Clinton Parameters of December 2000.³⁸¹ Launched at the height of the second *intifada*, this initiative was not well received by the Israeli and Palestinian public, was staunchly rejected by Israel's government, and received only lukewarm support from the PA.

Other attempts at negotiating an end to the conflict, including resolution of the refugee issue, for example, at the peace conference in Annapolis in 2007 and through further bilateral negotiations, have led to no concrete progress.³⁸²

Despite US President Obama's promise during the early days of his first administration to work for a solution to the Israeli-Palestinian conflict, none of the attempts at reviving negotiations was successful.³⁸³ Only two days after taking up office, Obama appointed veteran US Senator George Mitchel, a pivotal figure in the negotiation and conclusion of the Irish Good Friday Agreement, as his Special Envoy for Middle East Peace. Building on his efforts, Secretary of State Hillary Clinton led a brief attempt at direct negotiations in the fall of 2010 that failed to achieve any progress on substantive issues, including the refugee issue. Further attempts made by Secretary of State John Kerry in 2013 and 2014 were also unsuccessful.³⁸⁴

In practice, negotiations have been stalled since Camp David (and Taba), amidst PLO's demands that Israel put a halt to settlement expansion in the West Bank, including East Jerusalem, before it returns to the negotiation table, and Israeli refusal to comply with this demand (Figure 1.1). At a conference in Paris in January 2017 (at which neither the Palestinians nor the Israelis were present), just five days before the inauguration of US President Donald J. Trump, more than seventy countries issued yet another warning that the

two-state solution was under serious threat and urged the Palestinians and Israelis to restart negotiations.



Figure 1.1 Zionist/Israeli controlled land vs land open to Palestinian development, 1917–present.

Source: Visualize Palestine.

At the time of writing, peace appears more elusive than ever.³⁸⁵ While Israel continues to expand into the occupied Palestinian territory and the US seeks to impose Israel's terms (p. 66) on the Palestinians, the peace process is likely to remain stalled. If negotiations do resume, in the current state of affairs, the asymmetry of power between Israelis and Palestinians will make it difficult to achieve a just resolution, i.e. a resolution not possible without addressing the plight of the Palestinian refugees. Meanwhile, the refugees remain mired in a situation characterized by increasing precarity and, for many of them, continuing denial of their human rights.

7. Concluding Observations

The history of Palestine since the late-nineteenth century is of a territory subjected to conflicting interests and, since 1917, to conflicting promises; of two groups, one indigenous and one largely constituted by immigrants, claiming title to the land; of a war that resulted in 'independence' and statehood for one and subjugation, dispossession, exile, and statelessness for the vast majority of the other; of subsequent measures that prevented the return of the displaced (Palestine Arabs) while actively promoting (Jewish) immigration under the guise of 'return'; of an unresolved refugee crisis that has evolved into the largest and most protracted in modern history, punctuated by further conflict and displacement; and of the millions of refugees still trapped in limbo as a result, with – for many – most of their rights seemingly in abeyance.

The events recalled in this chapter demonstrate that no accidental and tragic fate suddenly befell Arab Palestinians in 1948 or in 1967. What happened in Palestine, particularly from the last decades of the Ottoman Empire's existence onwards, was the realization of the Zionist project in Palestine, achieved by means of a well-considered and elaborate strategy, through specific military plans and command orders issued during the war, violence, and outright expulsion in numerous localities, as well as simple fatality, and the adoption of (p. 67) Israeli legislation and related policies to prevent all those who either fled or were expelled from returning after the cessation of hostilities. In 1948, this development would not have been possible without the transformation of the land of Palestine and the status of its inhabitants towards the end of the Ottoman Empire, and the support that the British gave to political Zionism before and during the twenty-plus years of their Mandate over Palestine. The 1967 events can in many respects be seen as a continuation of that plan. By its actions in the occupied Palestinian territory, Israel has also prevented Palestinians from

realizing their right to self-determination and a state of their own, and thereby prevented the realization of other rights connected to statehood.

The fate of Palestine and its inhabitants has been considered an international responsibility since 1922, when the British Government obtained the League of Nations' Mandate over Palestine. It is under the eye of the UN that Palestine became entangled with the question of political Zionism and anti-Semitism in Europe and with a war whose effects last to the present day. Neither the years of Arab advocacy within the UN and Palestinians resistance and mobilization on the ground nor attempted negotiations under the auspices of the UN first, and later between regional actors or directly between Israel and the PLO, have led to any resolution of the conflict and the refugees' plight. Nonetheless, the direct negotiations between Israel and the PLO from the 1990s onwards have revealed the fundamental differences of the parties with respect to the refugee issue. Whereas for the PLO a settlement of the refugee issue should be premised on a recognition of 'what happened in 1948' and the right to return, at least in principle, upon which compromise can be reached on implementation, for Israel an agreement that harbours the recognition of the 'refugee question' as an Israeli responsibility, even in principle, appears unacceptable. It is this seemingly intractable divide that remains at the heart of the Israeli-Palestinian conflict.

With no political settlement, the Palestinian refugee question remains unresolved. Far from being an exceptional state of affairs, displacement has become the natural condition for many Palestinians. Not only are they forbidden to return to what was (and for many still is) their homeland, but also instability and conflict in regions and countries in which they found refuge or otherwise resided continue to cause further onward movement and a general worsening of their situation.

Footnotes:

1 The name of the land (Palestine, Ottoman Palestine) has been referred to in historical records for at least two millennia. The region called 'Palestine' was known among the Greeks (*Palaistinē*) and the Romans (*Palaestina*) and so referenced to throughout Christianity. Kattan, V., *From coexistence to conquest: International law and the origins of the Arab-Israeli conflict, 1891–1949*, London: Pluto Press, 2009, 1.

2 According to Doumani, Palestine as such is not prominent in Ottoman historiography because, administratively, it existed as two and then three separate districts. Doumani, B. Rediscovering Ottoman Palestine: Writing Palestinians into History, cit. in Pappé, I. (ed.) *The Israel/Palestine question: A reader*, Abingdon: Routledge, 1999, 17.

3 Early inhabitants of Palestine were the Canaanites, who date at least to 1500 BCE See *The Cambridge encyclopedia of the Middle East and North Africa*, Cambridge: Cambridge University Press, 1988. Other population groups in Palestine in the second millennium BCE were the Babylonians, Sumerians, Acadians, Phoenicians, Hebrews, and Philistines. The contemporary Palestine Arabs descend from these various peoples, mixed with groups that arrived later. Nutting, A., *The Arabs: A narrative history from Mohammed to the present*, vol. 660, London: Hollis & Carter, 1964. Moscati, S. *The face of the ancient Orient: Near Eastern civilization in pre-classical times*, Mineola, NY: Dover Publications, 2001.

4 During the era of Arab domination, Palestine was divided into two military districts on either side of the river Jordan, the west bank was called *Filastīn*, an adaptation of its Roman name *Palaestina*, while the east bank was known as *Urdun*, the Arabic word for 'Jordan'.

5 According to Doumani, Palestine as such is not prominent in Ottoman historiography because, administratively, it existed as two, and then three, separate districts. Doumani, B., *Rediscovering Ottoman Palestine: Writing Palestinians into history*, cit. in Pappé (n 2).

6 Khalidi, W., 'The Hebrew reconquista of Palestine: From the 1947 United Nations Partition Resolution to the First Zionist Congress of 1897', *Journal of Palestine Studies* 39.1 (2009), 24–42.

7 Ibid.

8 For earlier works on this topic, see Cattan, H., *Palestine, the Arabs & Israel: The search for justice*, London: Longman, 1969; Bassiouni, C., 'The Palestinians: Refugees or a people', *The Catholic World September* (1970) 252, Khalidi, W., (ed.), *From haven to conquest: Readings in Zionism and the Palestine problem until 1948*, Beirut: Institute for Palestine Studies, 1971. Radley, K. R., 'The Palestinian Refugees: The right to return in international law', *American Journal of International Law* 72 (1978) 586. Important sources of information on the subject that merit special mention are the *Journal of Palestine Studies*, published since 1971 by the Institute for Palestine Studies (IPS) in Washington, DC (for several years the Journal has been published by the University of California Press for the IPS and Kuwait University); IPS-specific studies, as well as more recent Palestinian (and Arab and international) historiography, are referred to throughout the book. It is worth noting that, from the late 1980s, a number of Israeli historians ('new historians' or 'revisionists') who were able to access declassified Israeli archives, as well as British and UN archives, and other material, have supported Palestinian and Arab historiography with respect to the origins of the conflict over Palestine. Works by the new historians include: Segev, T., *1949: The first Israelis*, New York: Free Press, 1986; Morris, B., *The birth of the Palestinian refugee problem, 1947–1949*, Cambridge: Cambridge University Press, 1987; Flapan, S., *The birth of Israel: Myths and realities*, New York: Pantheon, 1987; Shlaim, A., *Collusion across the Jordan: King Abdullah, the Zionist Movement, and the partition of Palestine*, New York: Columbia University Press, 1988; Pappé, I., *The making of the Arab-Israeli Conflict, 1947–1951*, London: IB Tauris, 1994; Morris, B., *Israel's border wars*, Oxford: Oxford University Press, 1997; Morris, B., *Righteous victims: A history of the Zionist-Arab conflict, 1881–1999*, New York: Knopf, 1999; Segev, T., *One Palestine, complete: Jews and Arabs under the Palestine Mandate*, New York: Metropolitan Books, 2000; Shlaim, A., *The Iron Wall: Israel and the Arab World*, New York: WW Norton & Company, 2001; Pappé, I., *A history of modern Palestine: One land, two peoples*, Cambridge: Cambridge University Press, 2004; Pappé, I., *The ethnic cleansing of Palestine*, London: Oneworld Publications, 2007.

9 See Chapter II, Chapter IV, Chapter V, and Chapter VI.

10 In the maps of the Ottoman Empire of the nineteenth century the area corresponding to Palestine extended from Rafah (south-east of Gaza) to the Litani River (now in Lebanon), from the sea in the west, to either the Jordan River or slightly east of Amman in the East and the southern desert, or *Naqb* (now Negev in Israel). It did not constitute an administrative unit, until the three Ottoman districts (*sanjaqs*) of Jerusalem, Nablus, and Acre were united at the end of the First World War to constitute Palestine under the British Mandate.

11 Gilmour, D., *Dispossessed: The ordeal of the Palestinians*, London: Sphere Books, 1982, 25.

12 Schölc, A., *Palestine in transformation, 1856–1882: Studies in social, economic, and political development*, Washington, DC: Institute for Palestine Studies, 1993.

13 Estimates of the population in late Ottoman Palestine vary. According to Justin McCarthy, between 1860 and 1890, it was between 411,000 and 553,000. Muslim and Christian Arabs consisted of the largest group and reached eighty-three per cent of the entire population in 1914, with the Jews numbering 60,000. Cf. McCarthy, J., *The population of Palestine*, New York: Columbia University Press, 1990, 8–10, 24. Della Pergola reports that during that period the vast majority of Arabs (around 490,000 in 1890) coexisted with the Jewish population numbering around 43,000, cf. Della Pergola, S., ‘Demographic trends in Israel and Palestine: Prospects and policy implications’, *The American Jewish Year Book*, 103 (2003) 3–68, 11. Kolatt and Gorny offer a somewhat different estimate of the Jewish population, numbering around 80,000–90,000, or about fourteen per cent of the total population. The Jewish population was concentrated in Jerusalem, Safad, Tiberias, and Hebron. Cf. Jacobson, A., ‘The Sephardi Jewish Community in Pre-World War I Jerusalem: Debates in the Hebrew Press’, *Jerusalem Quarterly*, Washington, DC: Institute for Palestine Studies, File 14, 2001, fn 5.

14 For an account of intercommunal relationships in Palestine at the time of the Ottoman Empire, cf. Campos, M., *Ottoman brothers: Muslims, Christians, and Jews in early twentieth-century Palestine*, Stanford: Stanford University Press, 2010; Klein, M., *Lives in common: Arabs and Jews in Jerusalem, Jaffa and Hebron*, Watzman, H. (tr.), New York: Oxford University Press, 2014.

15 Campos (n 14), 26–7.

16 Pappé, I., *A history of modern Palestine: One land, two peoples*, Cambridge: Cambridge University Press, 2nd edn., 2006, 16.

17 Schölch (n 12), 283–4.

18 Ibid.

19 Abu Manneh, B., *The rise of the Sanjak of Jerusalem in the late nineteenth century*, Black Mountain, NC: Turtledove Publishing, 1978; Pappé (n 2), 41–52.

20 This system of favourable treatment and entry facilitated Jewish migration to Palestine from the end of the nineteenth century onwards; cf. Klein (n 14), 32.

21 The broad reform programme (*Tanzimat* literally means ‘ordering’) aimed to modernize various administrations, such as the military and judiciary, as well as taxation and land systems and to eradicate the corruption that had contributed to the Empire’s decline, see Campos (n 14), 33. The reform also aimed at creating greater cohesion among the Empire’s subjects, in their various social and ethnic groups, see Makdisi, U., ‘Ottoman Orientalism’, *The American Historical Review* 107.3 (2002) 768–79, 770.

22 The communal ownership of land was a fundamental institution of rural society in Palestine; it followed a rotational system that would allow owners to cultivate parcels of land in turn (*musha’*). Cf. Pappé (n 16).

23 Schölch (n 12). Ottoman authorities hoped that land sale would benefit the declining local economy by attracting foreign capitals; Gilmour (n 11), 42–4.

24 The Ottoman Law of Nationality passed in 1869 stipulated that Ottoman citizenship, gained at birth or by naturalization, would be universal and equal for all ‘Ottoman residents’. Until that moment, only Muslims had been considered full subjects of the Empire. See Campos (n 14), 78.

25 Shlomo Yellin, a Jewish intellectual of those years captures the mood of the times as follows: ‘The noble Ottoman nation [...] is made up of different groups who live together, who for the sake of the homeland [*vatan*] have shaped themselves into one mass. [...] In the Ottoman Empire the different peoples are equal to one another and it is not lawful to divide according to race; the Turkish, Arab, Armenian, and Jewish elements have mixed one

with the other, and all of them are connected together, moulded into one shape for the holy *vatan*.' Campos (n 14), 2.

26 The term 'Zionism' (from Mount Zion in Jerusalem), as it emerged in the nineteenth century, refers to a heterogeneous group of movements, primarily of Jewish communities in eastern and central Europe that envisaged the reforming of Jewish societies (and old structures within them) in the diaspora and especially in Eastern Europe, and the creation of a spiritual or territorial centre for the Jews, preferably in Palestine. Vital, D., *The origins of Zionism*, Oxford: Clarendon Press, 1975.

27 The ideological foundation of political Zionism was articulated in Herzl, T., *Der Judenstaat (The Jewish State)*, Vienna: Verlags-Buchhandlung, 1897. LeVine, M., Mossberg, M. (eds.), *One land, two states: Israel and Palestine as parallel states*, Berkeley: University of California Press, 2014, 211.

28 Herzl believed that Palestine would be of greater appeal to Jews. Herzl (n 27), 222.

29 The anti-Jewish pogroms that put two million Jews in Eastern Europe into flight between 1881 and 1884 had given impetus to the 'Jewish question', turning Palestine into a natural destination for Jewish people fleeing Europe.

30 Della Pergola (n 13), 11

31 Campos (n 14), 8.

32 Klein (n 14).

33 Technically, until the creation of the State of Israel in 1948, the indigenous Jews of Palestine were also Arab and Palestinian. However, the remainder of the chapter distinguishes between Jews (and *Yishuv* to refer to the Jewish migrants into Palestine) and Arabs for practical reasons only. From 1948 onward, this study will refer to the Arabs of Palestine as 'Palestinians'.

34 See rough estimates of population growth in Palestine during the first century in Della Pergola, S., *Demography in Israel/Palestine: Trends, prospects, policy implications*, Jerusalem: Hebrew University of Jerusalem, Harman Institute of Contemporary Jewry, 2001, 11.

35 *Yishuv* (or 'Old *Yishuv*') are the Jews who lived in the southern provinces of the Ottoman Empire since the exile from Spain (Sephardic Jews) together with other minorities of Ashkenazi and Mizrahi Jewish minorities. They are distinguished from the 'New *Yishuv*', who started to move to Palestine after 1882, see Parfitt, T., *The Jews in Palestine, 1800-1882*, 52, London: Boydell, 1987. According to Kaniel, the new immigrants were called *ha-Yishuv ha-Chadash* and were differentiated from what was known as 'the old community' of *ha-Yishuv ha-Yashan*, see Kaniel, Y., *In transition: The Jews of Eretz Israel in the nineteenth century - between old and new, and between settlement of the Holy Land and Zionism, selected essays*, Machman, D., Bertel, Y. (eds.), Jerusalem: Yad Yitzak Ben Zvi, 2000, 17-30, cit. in Jacobson, A., 'Sephardim, Ashkenazim and the "Arab question" in pre-First World War Palestine: A reading of three Zionist newspapers', *Middle Eastern Studies* 39.2 (2003) 108 and fn 12.

36 Campos (n 14), 217.

37 Gilmour (n 11), 38.

38 Campos (n 14), 28.

39 Ibid.

40 Klein argues that ‘the leaders of the Palestinian public warned that Zionism threatened the character of the country, but they did not see it as concrete threat. They did not perceive European Jews as genuine locals, nor as people under the sponsor of a foreign power [...] They trusted the Ottoman establishment and their representatives who had become part of that establishment to prevent the influx of foreign nationals, even though Ottomans were too weak to withstand the European powers’. Klein (n 14), 35.

41 The title of this section is inspired by a book by Hedges and Sacco on an unrelated topic. Hedges, C., Sacco, J., *Days of destruction, days of revolt*, New York: Nation Books, 2012.

42 The term is commonly used to refer to the historical region of Syria, comprising modern day Israel and Palestine, Lebanon, Jordan, and Iraq, as well as a portion of Egypt (Sinai).

43 For an essential comparative analysis, Khalidi, R. *British policy towards Syria & Palestine, 1906-1914: A study of the antecedents of the Hussein-the [sic] McMahon correspondence, the Sykes-Picot Agreement, and the Balfour Declaration*, London: Ithaca Press, 1980; Kattan, V., ‘Palestine and the secret treaties’, *American Journal of International Law Unbound* 110 (2016) 109-14.

44 Correspondence between the British High Commissioner in Egypt, Sir Henry McMahon, and one of the foremost Arab leaders, Sharif Hussein bin Ali of Mecca, custodian of Islam’s holiest shrines. This was part of a series of letters exchanged during the First World War between the British government and Arab leaders aiming at gathering support against the Turks. The correspondence was only disclosed in 1938 at the height of the Arab uprising of 1936-1939 (n 80), Kattan (n 43), 109-10.

45 The agreement was a secret treaty between France and the United Kingdom, negotiated between 23 November 1915 and 3 January 1916, when British and French diplomats Mark Sykes and François Georges-Picot initialled an agreed memorandum, which was subsequently ratified by the British and French government in an exchange of letters dated 9 and 16 May 1916. For the text see: Yale University – The Avalon Project: The Sykes-Picot Agreement. On the negotiations, see Barr, J., *A line in the sand: Britain, France and the struggle that shaped the Middle East*, London: Simon & Schuster, 2011, ch. 2.

46 The declaration was included in a letter by Lord Arthur Balfour, then the Foreign Secretary in the British wartime cabinet, to Lord Rothschild, the leader of the British Jewish community, for transmission to the Zionist Federation of Great Britain and Ireland. Despite Balfour’s lack of sympathy for the Jewish cause (e.g. in 1905, he was among the proponents of a legal initiative to restrict Jewish immigration to Britain), he was persuaded by Zionist leaders such as Chaim Weizmann, of the convergence of interests of Britain and the Jewish people in Palestine. See Segev (n 8), 39-43.

47 For the full text of the declaration, see UN, *The origins and evolution of the Palestine problem: 1917-1988*, New York: United Nations, 1990, 8.

48 By promising Palestine to the Zionist Federation, the British aimed to secure a British area of influence in a strategic area for the British, while containing French ambitions and influence in the region. Cf. Kattan (n 43), 111.

49 The Mandate system was established after the First World War in accordance with art. 22 of the Covenant of the League of Nations, to deal with ex-Ottoman and ex-German territories. Mandates were classified as A, B, or C, based on what was considered ‘a country’s readiness for self-rule.’ The five occupied Middle East territories (Iraq, Palestine, Trans-Jordan, Syria, and Lebanon) were placed under class A. See also Chapter VI, Section 2.2, for a discussion on the impact of the Mandate on Palestinian self-determination.

50 Mandate for Palestine, signed at London, 24 July 1922. Entry into force in 1923. For the text, see UN, *Origins* (n 47), 86. For further context, see (n 53).

51 On 21 June 1922, the House of Lords passed a motion rejecting the Mandate for Palestine that incorporated the Balfour Declaration because it was in violation of the pledges made by His Majesty's Government to the people of Palestine (McMahon Correspondence of 1915 and the Hogart message delivered in 1918 in Cairo in support of Arab and Palestine's independence). See Kattan (n 43), 109–14.

52 In 1919, President Wilson dispatched Commission of Inquiry to Palestine, the so-called King–Crane Commission, which advised against 'making Palestine into a Jewish State' as it could only happen at the expense of the civil and religious rights of the non-Jewish communities of Palestine. The Commission also warned against the claims by Jewish representatives who 'looked forward to a practically complete dispossession of the non-Jewish inhabitants of Palestine'. Cf. Kattan (n 1), 50.

53 Palestine was under British rule from 1918 to 1948. Although the Mandate over Palestine was declared by Britain in 1920, Britain acquired an international legal basis for its presence in Palestine in July 1922, when the Council of the League of Nations confirmed it and after the Treaty of Lausanne sanctioning the dissolution of the Ottoman Empire and the official separation of Palestine from Turkey (29 September 1923). From 1918 to 1922–1923 (when the Mandate was adopted and ratified), Britain was the occupier of the territory. Kattan (n 1), 117–209. Cf. Qafisheh, M., 'Genesis of citizenship in Palestine and Israel: Palestinian nationality during the period 1917–1925', *Journal of the History of International Law* 11 (2009) 17. On the implications of the White Paper, see (n 87).

54 The Mandate provided for 'political, administrative and economic conditions' to 'secure the establishment of the Jewish national home in Palestine' and the development of 'self-governing institutions' (art. 2); disposed that the mandatory power would cooperate with the 'Zionist organization' 'as a public body' on 'economic, social and other matters' affecting 'the establishment of the Jewish national home and the interests of the Jewish population in Palestine' (art. 4); and provided for the facilitation of 'Jewish immigration' and 'close settlement by Jews on the land' of Palestine (art. 6).

55 See Khalaf, I., 'The effect of socio-economic change on Arab societal collapse in Mandate Palestine', *International Journal of Middle East Studies* 29.1 (1997) 93–112.

56 Qafisheh explains the validity of Ottoman nationality by virtue of the international law rule that occupation or conquest do not provide 'title to the Occupying Power over the occupied territory. This is consistent with international law of war [which] obliges the occupant to respect the laws in force in the country.' Qafisheh (n 53), 10–11 and 26.

57 The Council Election Order referred for the first time to 'Palestinian citizens', namely the 'Turkish subjects habitually resident in the territory of Palestine' at the date of commencement of the Order. This was a practical amendment to the Ottoman Nationality Law of 1869, which was still legally in force as the Treaty between the Allies and Turkey had not yet been signed yet. See Qafisheh (n 53), 17, 23, 26.

58 According to Qafisheh, the Treaty of Lausanne transformed the de facto status of Palestinian nationality into *de jure* existence. Accordingly, the author argues, on 6 August 1924, international law certified the birth of the 'Palestinian people' as distinct from all other peoples. To qualify for Palestinian nationality by virtue of the Treaty, the person had to be a Turkish subject, or citizen, habitually resident in Palestine. So Palestinian citizenship existed both as matter of international law (Treaty of Lausanne) and domestic law (the Palestinian Citizenship Order). Qafisheh (n 53), 31.

59 Ibid., 33–4.

60 Nationality of Palestine's natives residing abroad was addressed by art. 2 of the 1925 Palestinian Citizenship Order. This article, *inter alia*, stated: 'Persons of over eighteen years of age who were born within Palestine and acquired on birth [...] Turkish nationality and on the first day of Aug. 1925, are habitually resident abroad, may acquire Palestinian citizenship by opting in such manner ... subject to the consent of the Government of Palestine which may be granted or withheld in its absolute discretion [...]. This right of option must be exercised within two years of the coming into force of this Order', i.e. between 1 August 1925 and 31 July 1927. However, in November 1925 the British High Commissioner for Palestine decided that the right of option should begin retroactively from 6 August 1924. Thus the effect of the Citizenship Order was to allow only nine months for the exercise of this option. Qafisheh (n 53), 32

61 Qafisheh concludes that, this group of Palestine's natives and their descendants, whose nationality remained unresolved, constituted 'the first generation of Palestinian refugees'. Ibid., 34–5.

62 UNSCOP, 1947, section on 'Population statistics', para. 12.

63 Ibid., para. 15.

64 Between January 1933 and the autumn of 1937, 120,000 German Jews abandoned the Reich, but only one-third of them went to Palestine. Gleizer, D. *Unwelcome exiles: Mexico and the Jewish refugees from Nazism, 1933–1945*, Leiden: Brill, 2013, 16. Some challenge the notion of Jewish refugees from Europe before the Second World War started, because they view the emigration of Jews as being due to a variety of push and pull factors, and that the Jews who left would not describe themselves as 'refugees' per se during that time.

Lavsky, H., *The creation of the German-Jewish diaspora: Interwar German-Jewish immigration to Palestine, the USA, and England*, Berlin: Walter de Gruyter Oldenbrug, 2017. See also Ofer, D., *Escaping the Holocaust: Illegal immigration to the land of Israel, 1939–1944*, New York: Oxford University Press, 1991. However, as Morris notes, the few arrivals of Jews to Palestine between 1941 and 1945 may reflect the Nazi's policy shift towards the Jews, from 'encouraging emigration to initiating mass murder'. Morris, B., *1948: A history of the first Arab-Israeli war*, New Haven, CT: Yale University Press, 2008, 23.

65 Khalaf (n 55).

66 Gilmour (n 11), 42–4. Further, in 1903 the Zionist Congress had set up the Jewish National Fund (*Keren Kayemet Le Israel*) as the institution responsible for the purchase and settlement of land in Palestine; see Jiryis, S., 'The legal structure for the expropriation and absorption of Arab lands in Israel', *Journal of Palestine Studies* 2.4 (1973) 82–104, 82.

67 In 1931, twenty-two per cent of the Palestine Arabs were literate, against an eighty-six per cent of the country's Jewish population. Khalidi, R, *The iron cage: The story of the Palestinian struggle for statehood*, Boston, MA: Beacon Press, 2007, 14.

68 According to the Israeli scholar Zeev Sternhell, cit. in Khalidi (n 67), 41–2, during the 1920s, 'the annual inflow of Jewish capital was on average 41.5 per cent larger than the Jewish net domestic product (NDP) ... Its ratio to NDP did not fall below 33 per cent in any of the pre-World War II years and was kept at about 15 per cent in all but one year since 1941.' By another calculation, Khalidi writes, 'the contributions of American Jews alone to the Zionist project until 1948 totalled well over USD 375 million, a considerable sum when one considers that in the 1930s the average national income of the Jewish sector of the economy was USD 75 million. For a Jewish population that was less than two hundred

thousand in 1930, and that by 1948 had barely reached six hundred thousand, these were phenomenal absolute, relative, and per capita rates of capital inflow.'

69 Khalidi (n 67), 15–16.

70 Gilmour (n 11), 46. *Histadrut*, the first Jewish trade union, advocated for the exclusion of Arab workers from Jewish business and avoiding trading with Arabs including in menial activities (e.g. buying eggs at the market); cf. David Hacohen, head of the Histadrut and fervent Zionist, in an interview to Haaretz, 1969, in Gilmour (n 11), 47. See also Khalidi (n 67), 14.

71 Sandler, S., 'Territoriality and nation-state formation: The Yishuv and the making of the State of Israel', *Nations and Nationalism* 3.4 (1997) 667–88.

72 Khalidi (n 67), xxviii, 8. See also Kupferschmidt, U. M., *The Supreme Muslim Council: Islam under the British Mandate for Palestine*, Leiden: Brill, 1987.

73 Lesch, A. M., *Arab politics in Palestine, 1917–1939: The frustration of a nationalist movement*, Ithaca: Cornell University Press, 1979.

74 Khalidi (n 67), xxviii.

75 Ibid., 10–11, 21–37.

76 Kattan (n 1), 23, 79.

77 In the Hebron massacre in 1929, sixty-seven Jews were killed while many others fled out of fear of Arab reprisal. Riots also occurred in other religious cities such as Jerusalem and Safed. As a result, 133 Jews and 116 Arabs were killed and 339 Jews and 232 Arabs were wounded, the latter mostly by British police.

78 Kattan (n 1), 87–8.

79 In 1935, over 60,000 Jewish immigrants arrived, as many as the entire Jewish population of Palestine in 1919. Khalidi (n 67), 11.

80 During this period, 3,000–5,000 Arabs were killed, 10,000 wounded, 6,000 imprisoned, and 110 summarily executed. According to official Israeli government figures, Jewish and British casualties for the same period were 517 and around 150, respectively. Thousands were also forced to flee; see Khalidi (n 67), 107–8. See also Hughes, M., 'The banality of brutality: British armed forces and the repression of the Arab revolt in Palestine, 1936–39', *The English Historical Review* 124.507 (2009) 313–54.

81 See also Kattan (n 1), 95.

82 Khalidi (n 67), 108.

83 Ibid., 109.

84 Ibid.

85 UN, Origins (n 47), 48. Also, Barr (n 45), 172–3.

86 Ibid. The plan envisaged population transfers between the Arab and the Jewish states, which were to have special treaty relations with Britain.

87 Accordingly, a total of 75,000 Jewish immigrants were allowed into Palestine over a five-year period, while future numbers would be determined in agreement with the Arabs. The Paper also introduced a bar on land purchase. On the White Paper, see UN, Origins (n 47), 53.

88 From the middle of the Second World War, two anti-British Jewish guerrilla groups, the *Irgun Zvai Leumi* (IZL) and *Lohamei Herut Yisrael* (the 'Stern group'), began attacks against British officials and security forces. Their guerrilla campaign against the British was not openly supported by the Zionist leadership, which formally maintained the symbiotic relationship with the Mandate authorities. Both IZL and the Stern Group received funding

from and were also otherwise supported by France. Following the proclamation of the State of Israel, France became the new state's principal supplier of arms until 1956. Cf. Barr (n 45), ch. 28.

89 The single deadliest Jewish attack against the British occurred in July 1946 when the King David Hotel in Jerusalem, which was serving as the central offices of the British Administration in Palestine, was bombed, killing ninety-one people, fifteen of them Jews. British public opinion was even more inflamed by the hanging of two captured British army sergeants as a reprisal for the execution of convicted Jewish guerrilla members.

90 The British Administration enacted a series of Defence Regulations encompassing 'deportations, house demolitions, mass arrests, curfews, sweeping searches and collective fines', cf. Moffett, M. R., *Perpetual emergency: A legal analysis of Israel's use of the British Defence (Emergency) Regulations, 1945, in the occupied territories*, Al-Haq 6 (1989) 4.

91 In 1945, President Truman asked for the admission of 100,000 Holocaust survivors into Palestine; cf. Louis, W. R., Stookey, R.W. (eds.), *The end of the Palestine Mandate*, Austin, TX: University of Texas Press, 1986, 386.

92 Britain requested that a special session of the General Assembly be called immediately to prepare a preliminary study on the question of Palestine for consideration by the Assembly at its next regular session. That was the first UN involvement on the Palestinian issue since the UN's establishment in 1945; cf. UN, *The United Nations and the question of Palestine*, New York: UN Department of Public Information, 1994, 3.

93 Ibid. Egypt, Iraq, Lebanon, Saudi Arabia, and Syria tried unsuccessfully to include in the special session's agenda an item which would address 'the termination of the Mandate over Palestine and the declaration of its independence'. The Jewish case was presented by the Jewish Agency for Palestine, while the Arab Higher Committee spoke for the Palestine Arabs. See UNGA res. 104 (S-I), 5 May 1947, granting a hearing to the Jewish Agency for Palestine and UNGA res. 105 (S-I), 7 May 1947, granting a hearing to the Arab Higher Committee.

94 UNGA res. 106 (S-I), 15 May 1947; see also UNGA res. 107 (S-I), of the same date. While Jewish organizations cooperated with UNSCOP in its deliberations, the Arab Higher Committee decided not to participate on the grounds that the UN had refused to address the question of independence and failed to separate the issue of Jewish refugees from Europe from the question of Palestine. The natural rights of the Palestine Arabs were self-evident and should be recognized, it maintained, and could not continue to be subject to investigation. Cf. UN, Question of Palestine (n 92), 4.

95 The UNSCOP went to Palestine, Lebanon, Syria, and Transjordan, and also visited the European displaced persons camps, which were packed with Holocaust survivors.

96 Cf. 'Report of the United Nations Special Commission on Palestine', 31 August 1947, GAOR, 2nd sess., suppl. 11, UN doc. A/364, vols. i–iv. See discussion of its impact on Palestinian self-determination, Chapter VI, Section 2.2.

97 UN, Question of Palestine (n 92), 4.

98 UNGA res. 181 (II) was adopted with thirty-three votes in favour, thirteen against, including Iraq, Lebanon, Saudi Arabia, Syria, and Yemen, and ten abstentions; see UN, Question of Palestine (n 92), 5.

99 For a critical appraisal of this resolution, Khalidi, W., 'Revisiting the UNGA partition resolution', *Journal of Palestine Studies* 27 (1997) 1, 5–21.

100 Kattan (n 1), 147.

101 The Zionist leadership endorsed the resolution because it endorsed the principle of Jewish statehood without explicitly accepting the designated territorial disposition. On October 1937, David Ben-Gurion had publicly indicated that the creation of a Jewish state would come in two stages: a fifteen-year period of 'laying the foundations', following by 'expansion', in Teveth, S., *Ben-Gurion and the Palestine Arabs: From peace to war*. New York: Oxford University Press, 1985, 189–90, cit. in Khalidi (n 99), 6–7, fn 5.

102 On the inconsistency of the plan with the objectives of the mandate see Khalidi (n 99), 9, and discussions in Chapter VI, Section 2.2.

103 Bachi, R., *The population of Israel*, Jerusalem: STI, 1977, cit. in Della Pergola (n 13), fn 12.

104 While Israeli officials and traditional historians commonly depict this as a war in which Jewish forces acted in self-defence to resist the 'aggression' by Palestinian resistance first and Arab states later, Palestinian oral account and historiography, as well as more recent Israeli historiography, have long exposed the inaccuracy of such a narrative. See reference to sources at (n 8).

105 Morris, B., *The birth of the Palestinian refugee problem revisited*, Cambridge: Cambridge University Press, 2004. According to Morris, the exodus of Palestine Arabs encompassed: 75,000 in the first wave (December 1947–March 1948); 250,000–300,000 in the second wave (April–June 1948); 100,000 in the third wave (9 July–15 October); and 200,000–230,000 in the fourth wave (October–November 1948). Between 20,000 and 40,000 were further expelled or 'persuaded' to leave in subsequent 'border-clearing' operations.

106 Brewer, S. P., 'Shooting in Jerusalem', *London Times* 22 December 1947, at 4: 'While the Jews are suffering mainly through sniping at their road convoys, the Arabs have lost many lives through Jewish assaults on their villages.'

107 Jewish paramilitary groups had been trained since the Arab riots of 1920–1921, 1929, the 1936–1939 revolt, and the Second World War. Cf. Morris (n 105), 16. By September 1947, the Haganah had '10,489 rifles, 702 light machine-guns, 2,666 submachine guns, 186 medium machine-guns, 672 two-inch mortars and 92 three-inch (76 mm) mortars'. Morris (n 105), 16. They also managed to import heavy and light military equipment from the US and Europe (e.g. Operation Balak). The Palestinians' military equipment was very limited, especially as much of it had been destroyed or confiscated during the 1936–1939 revolt. Cf. Van Creveld, M., *The sword and the olive*, New York: Public Affairs, 1998, 78.

108 Morris, B., *Righteous victims: A history of the Zionist–Arab conflict 1881–1998*, New York: Vintage, 2001, 198.

109 Ibid., 254. This correspond to the 'first wave' of the Palestinian exodus, according to Morris (n 105).

110 Ibid., 255.

111 Cairo Summit of December 1947. However, actual support for the Palestinians failed to materialize; cf. Collins, L., Lapierre, D., *O Jerusalem!*, New York: Simon & Schuster, 1971, 137.

112 According to Khalidi, the Zionist military had devised several plans 'to maintain constant pressure against the Arabs of Palestine' (Plan C) and hold and conquer territory in the wake of the British forces withdrawal (Plan D). Khalidi, W., 'Plan Dalet: Master plan for the conquest of Palestine', *Journal of Palestine Studies* 18.1 (1988) 4–33, 15–16; Pappé, I., *The ethnic cleansing of Palestine*, Oxford: Oneworld Publications, 2006, 43.

113 Khalidi (n 112), 15–16. Pappé (n 112), 86 refers to it as the blueprint for the ethnic cleansing of the Arabs of Palestine.

114 Gelber, Y., *Palestine 1948: War, escape and the emergence of the Palestinian refugee problem*, Brighton: Sussex Academic Press, 2006, 306; Morris challenges the argument that Plan D could have led to the intentional depopulation and destruction of Arab Palestine: ‘Plan D was not a political blueprint for the expulsion of Palestine’s Arabs: it was governed by military considerations and geared to achieving military ends. But, given the nature of the war and the admixture of populations, securing the interior of the Jewish State and its borders in practice meant the depopulation and destruction of the villages that hosted the hostile militias and irregulars’. Morris (n 105), 164.

115 Morris himself argues that ‘that war of conquest was prefigured in Plan Dalet’. Morris (n 64), 118–19. Based on Ben Gurion’s diary, Masalha writes that that Ben-Gurion contemplated the possibility of the ‘compulsory transfer of the Arabs’ and the need to ‘expel Arabs and take their places’ including by force, as early as 1937. David Ben-Gurion, *Zichronot [Memoirs]*, vol. 4 (Tel Aviv: ‘Am ’Oved, 1974), 297–9, cit. in Masalha, N., *The historical roots of the Palestinian refugee question*, in Aruri, N. (ed.), *Palestinian refugees: The right of return*, London: Pluto Press, 2001, 38, fnn 4–5 in particular.

116 Morris (n 108), 197–204, 255; at 205, according to Morris, the arrival of a significant contingent of weapons from Czechoslovakia (about 4,700 rifles and 240 machine guns plus five million rounds of ammunition) transformed the Haganah from a militia into a professional army.

117 Masalha, citing Arieh Yitzhaki, the Israeli historian who served as director of the IDF archives, reports that ‘about ten major massacres (defined as more than 50 victims in each massacre) and about 100 smaller massacres (of individuals or small groups) were committed by Jewish forces in 1948–49’; he reportedly said that ‘[i]n almost every conquered village [...] Zionist forces committed war crimes such as indiscriminate killings, massacres and rapes’. Masalha, *Historical roots* (n 115), 46, also cited in Esber, 2008, 356. Morris counts about twenty massacres committed by Jewish forces and three by Palestine Arabs during the war; see Morris (n 64), 404–6.

118 Morris (n 105), 237. Sources in 1948 reported the numbers of victims to over 200.

119 The Deir Yassin massacre is acknowledged to have been carried out by dissidents of the *Irgun Zvai Leumi* (then commanded by Menachem Begin) and the Stern Gang (then co-commanded by Yitzhak Shamir). Masalha contends that Ben-Gurion’s *Haganah* was fully aware and provided support and supervision to the massacre. Cf. Masalha, *Historical roots* (n 115), 46.

120 Reports of the time suggested 300,000 refugees. UN Mediator for Palestine, *Progress Report*, submitted to the Secretary-General for transmission to the Members of the United Nations in pursuance of paragraph 2, Part II, of UNGA res. 186 (S-2) of the General Assembly of 14 May 1948, GAOR, 3rd sess., suppl. 11 (A/648), Part II, para. 14.

121 Morris (n 108), 209.

122 Ibid., 256.

123 See also political positions of the League of Arab States and its members, Chapter IV, Section 2.1.

124 Morris describes these spontaneous forces as coming from ‘urban slums’ and ‘jails’ in Iraq, Lebanon, and Syria, and while they represented a danger for (Jewish) population of Palestine, they were ‘militarily useless’. Morris (n 105), 34.

125 UNSC res. 727 of 23 April 1948 [S/727]. For the role of the UN in the Palestinian Question, see Section 4.

126 This document was found in the private papers of Aharon Cohen, Director of Mapam in the Hashomer Hatza'ir Archive in Israel. It is officially entitled: 'The Emigration of the Arabs of Palestine in the period 1/12/1947-1/6/1948 (t'nu'at ha'hagira shel arvi' yei eretz yisrael ba't' kufa 1/12/1947-1/6/1948) and is reproduced and analysed by Morris, B., The causes and character of the Arab exodus from Palestine: The Israel Defence Forces Intelligence Service analysis of June 1948, in *1948 and after: Israel and the Palestinians*, Oxford: Clarendon Press, 1990, 69-88, see 72, cit. in Kattan (n 1), 196, fn 182.

127 Israeli 'Declaration of Independence', proclaimed on 14 May 1948, made reference to the UN Partition Plan, although there was no full control of the territory allocated by the Plan. According to Kattan, around those days the British Foreign Office had expressed concern at the situation in Palestine: 'It would be unfair and legally wrong to admit the Jewish State to the United Nations [...] and give it international recognition, while not taking any similar steps for the rest of Palestine', Kattan (n 1), 233.

128 Jordan, in particular, had already privately agreed with the Jewish leadership that it would not attack the Jewish state. Cf. Tal, D., *War in Palestine, 1948: Israeli and Arab strategy and diplomacy*, Abingdon: Routledge, 2004, 153.

129 This is what Morris defines the second wave of the exodus, Morris (n 105), 262. Accordingly, Jewish pressure on the Arab villages of the Coastal Plain, and the Haganah's conquest of parts of Arab Jerusalem and the Jerusalem Corridor, Tiberias, Haifa, the Hula Valley in the Galilee Panhandle, Jaffa and its environs, Beisan, and Safad, prompted the mass exodus urban and rural Palestine Arabs fleeing to the safety of the surrounding Arab states (Lebanon, Syria, Egypt, and Transjordan) and the Arab population centres of Gaza, Nablus, Ramallah, and Hebron (pp. 163-262). Further, Haganah intelligence, referring to the expulsions of this period, stated that 'British withdrawal freed our hands.' See IDF, Intelligence Branch, *The Emigration of the Arabs of Palestine in the Period 1/12/1947-1/6/1948*, 30 June 1948, in Morris, B., 'The causes and character of the Arab exodus from Palestine: The Israel defence forces intelligence branch analysis of June 1948', *Middle Eastern Studies* 22 (1986) 1, 9. Referring to the period following the declaration of statehood, Avenery, a Haganah officer at the time, states that 'the evacuation of Arab civilians had become a war aim', Avneri, U., 'Les refugies arabes, obstacle à la paix', *Le Monde* 9 May 1964, 1, 2.

130 In April 1948, the Security Council called for a special session of the General Assembly, which met from 16 April to 14 May 1948. Cf. UNSC res. 44, 1948, 1 April 1948. See also Section 4.1.

131 In its resolution 194 (III) of 11 December 1948, the General Assembly accepted various recommendations of the Mediator, including those concerning the refugee problem, indicating that refugees willing to leave at peace with their (Jewish) neighbors should be permitted to return, if willing to do so, and be entitled to compensation. For detailed discussion on the rights incorporated in para. 11 of res. 194 (right of return and compensation), see Chapter VI, Section 3.2.2. Furthermore, the General Assembly assigned, through the same resolution, the political aspects of the solution of the refugee problem to a newly established United Nations Conciliation Commission for Palestine (UNCCP). This is further discussed in Section 4.2.

132 This was spearheaded first by the UN Mediator's reports, and, later by the US government as the chair of the UNCCP, see Section 4.

133 This includes the third and fourth waves of Palestinian displacement in 1948. Morris (n 105), 448 and 492. Palestine Arabs were expelled from the Galilee region in 1949, from the Ashkelon area (near the Gaza Strip) in 1950 and from the Negev in 1951. Morris (n 105), 463–536. On the expulsions of the Palestinians carried out from 1949–1959, see also Masalha, *Historical roots* (n 115), 56–9. Emblematic are the widely documented cases of Lydda and Ramle in July 1948, where two large expulsions affected nearly 60,000 Palestinians; according to Masalha, Ben-Gurion and three senior army officers, Yigal Allon, Yitzhak Rabin, and Moshe Dayan, all of whom eventually become prominent Israeli politicians, the former two prime ministers of the State of Israel, were directly involved, with Allon in command of the operation. cf. Masalha, *Historical roots* (n 115), 45.

134 In 1949, Israel signed separate armistices with Egypt (24 February), Lebanon (23 March), Jordan (3 April), and Syria (20 July).

135 Different authors cite different figures of villages depopulated and destroyed in 1948: Morris lists 369; Khalidi lists 418; Abu Sitta adds to the Khalidi and Morris lists, localities that were depopulated in tribal areas in the Beer Sheba District; see Khalidi, W., (ed.), *All that remains: The Palestinian villages occupied and depopulated by Israel in 1948*, Washington, DC: Institute for Palestine Studies, 1992. Abu-Sitta, S., *Palestinian right to return: Sacred, legal and possible*, 2nd edn, London: The Palestinian Return Centre, 1999, 12. Masalha, in his useful comparative analysis of the accounts offered by each of the above authors, reports that, according to Morris, 282 of the 330 evacuated villages (eighty-five per cent) were depopulated as a result of direct Jewish attack. Bombings, outright expulsion, looting, pillaging, as well as massacres of civilian populations, are widely documented. Masalha argues that inhabitants of at least 122 Arab localities were expelled at gunpoint by Jewish forces; 270 localities were evacuated under assault by Jewish troops (the tactic of attacking a locality from two directions, but leaving ‘escapes routes’ was a deliberate method to ensure Arab evacuation); thirty-eight localities were evacuated out of fear of attack or being caught in the cross-fire; forty-nine localities were vacated under the influence of the fall of a neighbouring town; twelve were evacuated as a result of psychological warfare methods, spreading rumours, and whispering campaigns. Summary executions or burning or razing villages, on occasion with people still locked in the houses, are also reported. The author also indicates that, of the 418 depopulated villages reported by Khalidi, seventy per cent were totally destroyed and twenty-two per cent taken by settlers. Masalha (n 115), 49–50.

136 Laurens, H., *La question de Palestine, L'accomplissement des prophéties*, vol. 3, Paris: Fayard, 2007, 341–4.

137 Minority Rights Group, *The Palestinians*, Report No. 24, 5th edn., London: Minority Rights Group, 1984, 4.

138 Childers, who, for the BBC, had monitored Arab radio broadcasts during the Arab-Israeli war, concludes: ‘There was not a single order, or appeal, or suggestion about evacuating from Palestine from any Arab radio station, inside or outside Palestine, in 1948. There is repeated monitored record of Arab appeals, even flat orders, to the civilians of Palestine to stay put.’ See Childers, E., ‘The other exodus’, *The Spectator* (London), 12 May 1961, in Laqueur, W., (ed.), *The Israel/Arab reader: A documentary history of the Middle East conflict*, London: Weidenfeld & Nicolson, 1968, 143–51, 146, cit. in Kattan, V., ‘The nationality of denationalized Palestinians’, *Nordic Journal of International Law* 74 (2005) 67–102, 77, fn 57.

139 According to the report ‘it is possible that at least 55 per cent of the total of the exodus was caused by our [Haganah/IDF] operations and by their influence’. In addition,

'the effects of the operations of dissident Jewish organizations 'directly [caused] some 15 percent ... of the emigration'. Morris (n 129), 9.

140 *Progress Report of the UN Mediator for Palestine*, 16 September 1948, GAOR, 3rd sess., suppl. 11, UN doc. A/648, 14. On the role of the UN Mediator, see Section 4.1.

141 Masalha recounts that between 1940–1941, after touring Arab populated and Jewish settlements in central Palestine, Weitz recorded in his diary: 'The complete evacuation of the country from its [Arab] inhabitants and handing it to the Jewish people is the answer;' and in April 1948 he recorded: 'I made a summary of a list of the Arab villages which in my opinion must be cleared out in order to complete Jewish regions. I also made a summary of the places that have land disputes and must be settled by military means.' Masalha, N., *Expulsion of the Palestinians*, Washington, DC: Institute for Palestine Studies, 1992, 41, On 3 December 1947, Ben-Gurion expressed concern at the stability and strength of a Jewish State with 'only 60 per cent of Jewish majority', see speech in front of the Mapai Center, 3 December 1947, in Pappé, 2007, 250, fn 3 in particular.

142 Pappé, 2006, 29–30.

143 Kattan argues that they perceived the U.S. decision, in March 1948, to withdraw its support for the UN Partition Plan as a threat, and this, as Kattan argues, might have accelerated the expulsion of the Palestine Arabs. Various press reports from that time support this contention. For instance, the correspondent for *The Times* reported that 'in the aftermath of the US announcement in favour of Trusteeship, members of the Jewish Agency threatened to intensify the violence and proclaim a "Hebrew Republic" on 16 May', Kattan (n 1), 190.

144 In December 1947, Ben Gurion, speaking to the Haganah leadership, urged a 'major offensive against the Arabs' and referred to 'transferring the Arab populations with their consent or without', Bar-Zohar, M., *The Armed Prophet: A biography of Ben Gurion*, Englewood Cliffs, NJ: Prentice-Hall, 1968 (cit. in Quigley, 1998, fn 52). When Yitzhak Rabin candidly wrote about this event in his memoirs, a special ministerial committee censored it even though the Israeli military censor had already approved it. Quigley, J., 'Displaced Palestinians and a right of return', *Harvard International Law Journal* 39 (1998) 8, 179–181, 191. Rabin's account, which was subsequently published in *The New York Times* in October 1979 and in the following year in *Ha'olam Hazeh*, was as follows: 'We walked outside, Ben-Gurion accompanying us. Alon repeated his question: 'What is to be done with the population?' [Ben Gurion] waved his hand in a gesture which said: Drive them out! Alon and I held a consultation. I agreed that it was essential to drive the inhabitants out ... The population of Lod (Lydda) did not leave willingly. There was no way of avoiding the use of force and warning shots in order to make the inhabitants march the 10–15 miles to the point where they met up with the Legion', cit. in Kattan (n 1), 192–6.

145 Morris (n 108), 144.

146 Masalha (n 141), 180; Masalha, Historical roots (n 115), 46–7.

147 Abdel Jawad, S., Zionist massacres: The creation of the Palestinian refugee problem in the 1948 War, in Benvenisti, E., Gans, C., Hanafi, S. (eds.), *Israel and the Palestinian refugees*, Heidelberg: Springer, 2007, 59–127.

148 Khalidi (n 67), 4.

149 They are frequently referred to as 'Israeli Arabs' or, as they prefer themselves, 'Palestine Arabs, citizens of Israel'. On this community, see Rouhana, N., *Palestinian citizens in an ethnic Jewish state: Identities in conflict*, New Haven, CT: Yale University Press, 1997; Ghanem, A., *The Palestinian-Arab minority in Israel, 1948–2000: A political study*, Albany,

NY: SUNY Press, 2001; Pappé, I., *The forgotten Palestinians: A history of the Palestinians in Israel*, New Haven, CT: Yale University Press, 2011.

150 Cf. Cohen, H., *The present absentees: The Palestinian refugees in Israel since 1948*, Jerusalem: Institute for Israeli Arab Studies, 2000. Masalha N., Present absentees and indigenous resistance, in Masalha, N. (ed.), *Catastrophe remembered: Palestine, Israel, and the internal refugees, Essays in memory of Edward W. Said, 1935–2003*, London: Zed Books, 2005, 23–55.

151 Pappé (n 149), 20.

152 Arab spokesmen from 1949 onwards spoke of a total of 900,000—one million refugees (Cattan (n 8), 52; Nakhleh, Issa, *Encyclopedia of the Palestine problem*, Intercontinental Books, 1991, vol. i, 4), while Israeli officials in public usually referred to ‘about 520,000’ (Morris (n 8), Appendix I, fn 1). Morris considers that a persuasive estimate would be between 600,000 and 760,000 refugees (also confirmed by the Israeli Government Press Office, which, in 1994, referred to estimates ranging ‘from 540,000 to 720,000’, cf. State of Israel, Government Press Office, October 1994, 4. Also Morris (n 8), 298).

153 The lower figure is in UNCCP, *Report of the Technical Committee on Refugees to the Conciliation Commission*, UN Doc. A/AC.25/3, 7 September 1949, Section III, Letter (A). The higher figure is in the *First Interim Report of the United Nations Economic Survey Mission for the Middle East*, 16 November 1949 UN doc. A/AC.25/4.

154 For figures on Jewish refugee displacement from Palestine in 1947–1948, see *Final Report of the UN Economic Survey Mission for the Middle East*, January 1950), and *United Nations Conciliation Commission for Palestine Final Report of the Economic Survey Mission for the Middle East, Part 1: The Final Report and Appendices*, Lake Success, NY: United Nations, UN doc. A/AC.25/6, 28 December 1949, 18. See also Chapter II, Section 4.2.1.

155 UN Mediator’s Report, Part III.

156 Cf. First Interim Report (n 153), ‘Discussion of findings and recommendations - The Palestine refugees’.

157 See (n 133).

158 UNRPR, *Report by the Secretary-General for the period 30 September 1949–30 April 1950*, New York, 1950, UN doc. A/1452, 21.

159 These figures were later ‘inherited’ by UNRWA. On 30 June 1950, 914,221 refugees were registered with UNRWA, excluding 45,800 persons receiving relief in Israel, who were the responsibility of UNRWA until June 1952. For details, see Chapter II, Section 4.2 on UNRWA early registration rolls.

160 See Thicknesse, S. G., *Arab refugees: A survey of resettlement possibilities*, London: Royal Institute of International Affairs, 1949, Chapter II; Gabbay, R. E., *A political study of the Arab-Jewish conflict: The Arab refugee problem (a case study)*, Geneva: Librairie Droz, 1959, 165; Pinner, W., *How many Arab refugees? A critical study of UNRWA’s statistics and reports*, London: McGibbon and Kee, 1959; Institute for Mediterranean Affairs, *The Palestine Refugee Problem: A New Approach and a Plan for a Solution*, New York: Institute for Mediterranean Affairs, 1958, appendix 5.

161 While the majority of the refugees forced to flee in large numbers after March 1948 ended up in refugee camps, others found refuge in informal areas and towns. Those who had resources to do so, rented private houses, even if temporarily. Details are provided in the historical overview of the country sections in Chapter IV.

162 Morris reports that on 16 June 1948 the Israeli cabinet decided, without a vote, to bar return of the (Arab) refugees; Morris (n 108), 257.

163 Kattan (n 1), 211.

164 *Israel: Law No. 5710-1950, The Law of Return*, 5 July 1950.

165 This law allows any Jew in the world to come to Israel and obtain Israel nationality automatically. The only criterion is that the person is Jewish. Richmond, N. C., 'Israel's Law of Return: Analysis of its evolution and present application,' *Dickinson Journal of International Law* 12 (1993) 95–133. Kattan argues that the Law of Return conflates elements of the laws of immigration (concern the entry of foreign nationals to and from a particular state) with the laws of nationality (establishing the link between the individual and the state). The Law of Return is effectively a blend of immigration and nationality law as it confers nationality automatically on foreign immigrants. Kattan (n 138), fn 86.

166 According to Abu Shakra, of the approximately 700,000 Jews who left Arab and Muslim countries from 1948 through the 1950s, approximately 500,000 went to Israel, with the remainder settling in Europe, the U.S., Canada, and Latin America. Of those Jews who left Arab countries: 115,000–200,000 were from Iraq, 180,000 from Morocco, 60,000–70,000 from Yemen, 35,000 from Libya, 20,000 from Tunisia, 16,500 from Egypt, and 12,000 from Syria and Lebanon; see Abu Shakra, J., *Deconstructing the link: Palestinian refugees and Jewish immigrants from Arab countries*, in Aruri (n 115), 212.

167 Some commentators have advanced the argument that these various movements of refugees (Palestinians towards Arab countries and Jews towards Israel) constitute a 'population exchange' or legitimate 'population transfer'. For the scope of this discussion, the hypothesis that the 'two exoduses' constitute a population exchange has neither factual nor legal support. No agreement sanctioning a population transfer was ever signed between the parties in the Arab-Israeli conflict, and no one ever agreed to the transfer of Palestine Arabs from Palestine. The Partition Plan was a testament against it. This is discussed in Chapter VI, Section 3.1.

168 In August 1948, Israel's first Prime Minister, David Ben-Gurion, laid out Israeli government policy towards the refugees: 'When the Arab states are ready to conclude a peace treaty with Israel this question [of refugees] will come up for constructive solution as part of the general settlement, and with due regard to our counterclaims in respect of the destruction of Jewish life and property, the long-term interest of the Jewish and Arab populations, the stability of the State of Israel and the durability of the basis of peace between it and its neighbours, the actual position and fate of the Jewish communities in the Arab countries, the responsibilities of the Arab governments for their war of aggression and their liability for reparation, will all be relevant in the question whether, to what extent, and under what conditions, the former Arab residents of the territory of Israel should be allowed to return.' State of Israel, October 1994, 4. See also Morris (n 8), 132, 154; Morris (n 108), 320.

169 *Israel: Nationality Law, 5712-1952*, 14 July 1953. This is discussed in Chapter VI, Section 3.4

170 The Arabs who were internally displaced or who remained in situ in Israel did not obtain nationality until 1969.

171 Legal implications of this law are discussed in Chapter III, Section 3.

172 At art. 1, the law defines 'Infiltrator' as 'any person who is not a resident according to section 1 of the Population Registrar Law, 1965, who entered Israel not by way of a border

crossing determined by the Minister of Interior according to section 7 of the Law of Entry into Israel.'

173 Fischbach, M., *Records of dispossession: Palestinian refugee property and the Arab-Israeli conflict*, New York: Columbia University Press, 2003, XXII-XXIII.

174 Between 1948 and 1949, the Jewish leadership introduced emergency ordinances that were later incorporated into, or replaced by laws, such as *The Absentees' Property Law*, 5710-1950, *The Land Acquisition (Validation of Acts and Compensation) Law*, 5713-1953, *Absentees' Property (Eviction) Law*, 5718-1958, *Absentees' Property (Amendment No.3) (Release and Use of Endowment Property) Law*, 5725-1965, *Absentees' Property (Amendment No. 4) (Release and Use of Property of Evangelical Episcopal Church) Law*, 5727-1967, *Absentees' Property (Compensation) Law*, 5733-1973. Cf. Dajani, S. R., *Ruling Palestine: A history of the legally sanctioned Jewish-Israeli seizure of land and housing in Palestine*, Geneva: Centre on Housing Rights and Evictions, May 2005.

175 Fischbach (n 173), 17-40. The role of the Custodian is further discussed in Chapter VI, Section 3.4.

176 Ibid., 68; Rempel, T., 'The Ottawa process: Workshop on compensation and Palestinian refugees', *Journal of Palestine Studies* 29.1 (1999) 44.

177 On how Israel progressively changed the landscape of the land, see Cohen, S. E., *The politics of planting: Israeli-Palestinian competition for control of land in the Jerusalem periphery*, Vol. 236, Chicago, IL: University of Chicago Press, 1993; Amit-Cohen, I., 'Contested landscape and the spirit of place: The case of olive trees and urban neighborhood in Israel'. In 16th ICOMOS General Assembly and International Symposium: 'Finding the spirit of place – between the tangible and the intangible', 29 September-4 October 2008, Quebec, Canada. 1-11.

178 Fischbach (n 173), 28.

179 Ibid.

180 Jiryis (n 66), 83.

181 Of 370 new Jewish settlements established between 1948 and 1953, 350 were located on absentee property. Peretz, D., *Israel and the Palestine Arabs*, Washington, DC: Middle East Institute, 1958.

182 Morris (n 8), 155.

183 UNGA res. 186 (S-2), 14 May 1948 (n 130).

184 UNGA res. 186 (S-2), para. 1. The mandate of the Mediator included: '(a) To use his good offices with the local and community authorities in Palestine to: (i) Arrange for the operation of common services necessary to the safety and well-being of the population of Palestine; (ii) Assure the protection of the Holy Places, religious buildings and sites in Palestine; (iii) Promote a peaceful adjustment of the future situation of Palestine; (b) To co-operate with the Truce Commission for Palestine appointed by the Security Council in its resolution of 23 April 1948.'

185 *Progress Report of the UN Mediator for Palestine*, 16 September 1948, GAOR, 3rd sess., suppl. 11, UN doc. A/648, 14. On the role of the UN Mediator, sec. V, 'Refugees', paras. 4-7.

186 See n 158.

187 UNGA res. 212(III), 19 November 1948. See also note cited above.

188 UN Mediator's Progress Report, sec. V (refugees), para. 6f.

189 Ibid., para. 4.

190 UNGA res. 194 (III), 11 Dec. 1948. The resolution was adopted with thirty-five votes in favour, fifteen against, including Egypt, Iraq, Lebanon, Saudi Arabia, Syria, and Yemen, and ten abstentions.

191 Together with the settlement of the territorial dispute, the demilitarization and access to Jerusalem, and the protection of the Holy places. In parallel, successful truce negotiations were concluded by the Acting Mediator, Ralph Bunche, resulting in conclusion of a number of formal armistice agreements between Israel and its neighbours, see (n 134).

192 UNGA res. 194 (III), 11 December 1948, para. 11. The historical and legal meaning of this provision is further discussed in Chapter II, Section 4.1 and Chapter VI, Section 3.

193 This was the central political organ of the Arab Palestinians in Mandatory Palestine, established in 1936, and comprised of the leaders of Palestinian political parties and Palestine Arab clans. The AHC did not take part on the same level as the Arab states due to UNCCP opposition; the UNCCP offered to meet with the Committee informally as it did with the refugee delegations, which the AHC initially rejected, but later agreed to accept.

194 Negotiations took place mostly through the Arab states. Several refugee delegations including the General Refugee Congress (later renamed the Palestine Arab Refugee Congress) were present. They had little bargaining power and lobbied Arab states to present their demands. Moreover, many of the Palestinian NGOs represented wealthy refugees and thus focused their lobbying efforts on restitution of property and unfreezing of bank accounts. Cf. Fischbach (n 173), 95.

195 Caplan, N., 'A tale of two cities: The Rhodes and Lausanne Conferences, 1949', *Journal of Palestine Studies* 21.3 (1992) 14.

196 UNCCP, letter dated 29 August 1949, UN doc. A/AC.25/AR/17.

197 See joint memorandum submitted by the Arab States to the UNCCP on 18 May 1949.

198 UNCCP, *General Progress Report and Supplementary Report of the United Nations Conciliation Commission for Palestine, Covering the Period from 11 December 1949 to 23 October 1950*, Ch. I, A/1367/Rev. 1.

199 UNCCP, *Historical Survey of Efforts of the [UNCCP] to secure the implementation of paragraph 11 of General Assembly resolution 194 (III), The Question of Reintegration by Repatriation or Resettlement*, Working paper prepared by the Secretariat, UN doc. A/AC.25/W/82/Rev.1, Publ. 03/10/1961. [hereinafter UNCCP, Historical Survey], (iv) Proposal of Israel of 3 August and Memorandum of Arab States of 15 August 1949, para. 22ss. See also Shlaim, A., *The Iron Wall: Israel and the Arab World*, New York: W.W. Norton & Co., 2000, 58.

200 UNCCP, Historical Survey (n 199), para. 12.

201 Ibid., para. 68.

202 Kattan (n 1), 237.

203 Ibid., 228.

204 Proposal of Israel of 3 August 1949 and Memorandum of Arab States of 15 August 1949, Acts of the Lausanne Conference, UNCCP Historical Survey (n 199), para. 22.

205 Caplan (n 195), 25.

206 Ibid., 21-2.

- 207** Arab response to UNCCP memorandum of 15 August, 29 August 1949, UNCCP Historic Survey, para. 29.
- 208** UNCCP Historical Survey (n 199), para. 31.
- 209** Ibid., para. 33.
- 210** UNGA, *Progress Report of the United Nations Conciliation Commission for Palestine, Covering the period from 23 January to 19 November 1951*, Official Records: Sixth Supplement No. 18 (A/1985), 20 November 1951, para. 21. The Commission came to this conclusion because 'The physical conditions [in Israel] ... have changed considerably since 1948' (para. 32).
- 211** UNCCP, Historical Survey (n 199), 'Position of Israel', para. 140 ss.
- 212** Ibid, para. 110 ss.
- 213** As early as August 1949, a State Department briefing book entitled 'The Palestinian Refugee Problem' had been compiled, and it discussed no option other than resettlement. See United States National Archives and Records Administration (NARA), RG 59, Lot File 53D 468. Records of the Bureau of Near Eastern, South Asian and African Affairs; referenced in Fischbach (n 173), 89–90.
- 214** Fischbach (n 173), 100–1.
- 215** The TVA was created in 1933 to provide navigation, flood control, electricity generation, fertilizer manufacturing, and economic development in the Tennessee Valley. Cf. Fischbach (n 173), 103.
- 216** UNCCP, Historical Survey (n 199), para. 37: 'to enable the Governments concerned to further such measures and development programmes as are required to overcome the economic dislocations created by the hostilities; to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation pursuant to the provisions of paragraph 11 of the General Assembly resolution 194 (III), in order to reintegrate the refugees into the economic life of the area on a self-sustaining basis within a minimum period of time; and to promote economic conditions conducive to the maintenance of peace and stability in the area.'
- 217** *First Interim Report of the United Nations Economic Survey Mission for the Middle East*, appended to UNCCP, *Final Report of the United Nations Economic Survey Mission for the Middle East, Part I (The Final Report and Appendices) and Part II (The Technical Supplement)*, UN doc. A/AC.25/6, New York, 1949 ['ESM Report, 1949].
- 218** Ibid., Part I, 14, 19.
- 219** Schiff, B. N., *Refugees unto the Third Generation: UN Aid to Palestinians*, Syracuse, NY: Syracuse University Press, 1995, 20.
- 220** ESM Report, 1949 (n 217), 16.
- 221** Ibid. This came in response to the announcement that the non-governmental agencies that had provided relief to the refugees would be unable to continue the aid operation beyond the spring of 1950.
- 222** UNGA Res. 302 (IV), *Assistance to Palestine Refugees*, 8 December 1949, UN Doc. A/RES/302. As such, UNRWA's mandate was tied to the realization of resolution of the refugee question in line with UNGA resolution 194.
- 223** See Buehrig, E., *The UN and the Palestinian refugees: A study in non-territorial administration*, Bloomington, IN: Indiana University Press, 1971, 36.

224 Interestingly, many of UNRWA's initial international personnel were seconded by the TVA, including its second Director, John Blandford, Jr.

225 Cf. Schiff, 1995, 21

226 Ibid., 37.

227 UNRWA's mandate and role is discussed in greater detail in Chapter II (part of the distinctive regime), Chapter IV (support to Palestinian refugees in its area of operations), Chapter VI (support to Palestinian refugee's rights), and Chapter VII (protection).

228 Fischbach (n 173), 109–11.

229 Fried argues that Israel de facto retracted its proposal to promote compensation payments. Fried, S., 'The refugee issue at the Peace Conferences, 1949–2000.' *Palestine-Israel Journal of Politics, Economics, and Culture* 9.2 (2002) 25–26. Meanwhile, at that point of the Cold War, the US had also shifted attitude, becoming more lenient towards Israel; see Fischbach (n 173), 109–11.

230 The larger claim Israel pressed for arose in relation to the Jewish community from Iraq, and then later, in other Arab states where Jewish communities had experienced violence and retaliation in the aftermath of the 1948 war.

231 While the ESM (n 217) did not address it publicly, an internal memo by Clapp suggested (1) to persuade Israel to delink the issue of compensation to the refugees and that for war damages; (2) to offer lump-sum payment instead of compensation for each piece of property; (3) to appoint a 'Refugee Property Trustee' to estimate the value of refugee land through sampling, administer a trust fund for compensation payment, and recommend how the lump-sum should be paid. Fischbach (n 173), 107–8.

232 UNGAR 394 (V), 14 December 1950, at para. 2.

233 Fischbach (n 173), 117.

234 Ibid.

235 UNCCP, Historical Survey (n 199), paras. 92–4. Immovable property included urban and rural land excluding Jerusalem urban land.

236 Ibid., para. 97.

237 Ibid., paras. 102–4. Process wise, Arab states demanded that the compensation be not limited to financial possibilities of Israel, that refugees be included in the process, and that an appeal procedure be arranged.

238 Fischbach, M. R., 'The United Nations and Palestinian refugee property compensation,' *Journal for Palestine Studies* 31.2 (2002) 34–50, 40 and fn 17.

239 Fischbach (n 173), 196.

240 UNCCP, Historical Survey (n 199), paras. 142–5. The Survey notes that '[b]y 31 August 1956 a total of £2,633,175 of the accounts had been released' (para. 142). According to Fischbach, this was the result of the intense lobby of wealthy Palestinian families who had advocated for such measure to be taken, together with others specific to their interest; by 31 July 1966, £2,802,110 had been released. Fischbach (n 173), 195–209 (207, in particular).

241 UNCCP, Historical Survey (n 199), paras. 111–13.

242 Ibid., paras. 75–6. The programme did not estimate 'moveable goods' (such as household goods, commercial and professional facilities, etc). Value was estimated on the basis of property values in 1946–1947.

243 The incongruences between Ottoman and British record (impossibility to access most of what was in the Israeli Custodian's guard), the fact that the British had registered only twenty per cent of the land, and there were inconsistencies between the registered titles and deeds, are only a few of the problems that the Technical Office faced. Fischbach (n 238), 40-1.

244 UNCCP, UN doc. A/AC.25/W/81/Rev. 2, 1961, para. 134 (2)

245 UNCCP, 22nd Progress Report, UN doc. A/5700, 11 May 1964, para. 1.

246 UNCCP report A/AC.25/W.84, *Working Paper Prepared by the Commission's Land Expert on the Method and Techniques of Identification and Valuation of Arab Refugee Immovable Property Holdings in Israel*, 28 May 1964. According to Fischbach (n 238), 42, 'The dramatic difference between this figure and the 16,323,971 dunums mentioned in [the Refugee Office's] 1951 global estimate can be explained by the fact that the latter figure referred to the total amount of Arab land that 'passed from Arab to Jewish ownership during the fighting in 1947-1948' and thus included, for example, communally held Arab land and the vast Arab holdings in Bersheba, whereas the UNCCP's 1964 figure included only privately owned land and a small fraction of the Bersheba land.'

247 The Technical Office estimated that 348,300 of 904,000 refugees registered with UNRWA - were landowners. Fischbach (n 238), 42. It also took note of the fact that 1.5 per cent of the refugees were not registered with UNRWA for assistance.

248 UNCCP, UN doc. A/AC.25/W.84, cit. in Fischbach (n 238), 42 and fn 27.

249 This figure is calculated on the basis of the 1962 estimate reported in Fischbach of USD 1.125 million, which is then converted to the 2019 figure by using the annual average US interest rate.

250 Other studies have produced different figures. In 1966, Sayigh's estimates included GBP 403,404,000 (for land including citrus, other orchards and crops), GBP 236,800,000 for buildings (homes, business, religious and public buildings), and GBP 112,500,000 (for movable property). Sayigh, Y., *Al-Iqtisad al-Israeli [The Israeli Economy]*, Cairo: Institute of Arab Higher Studies, 1966. In 1998, Kubursi estimates to USD 3 billion (1948), equivalent to USD 294.8 billion at 2008 prices, for refugee losses (including movable and immovable property, capital, and natural resources, and accrued interest). Kubursi, A., Palestinian losses in 1948: Compensation valuations and Israel's ability to pay, study prepared for the Negotiations Support Unit, cit. in Brynen R., El-Rifai, R. (eds.), *Compensation to Palestinian refugees and the search for Palestinian-Israeli peace*, London: Pluto Press, 2013, 10 and fn 14. In 2009, Senechal and Hillal estimate USD 3.4 billion (for rural, urban, religious, and state-owned property, as well as losses of employment, businesses, and moveable assets, based on international compensation standards), see Senechal, T., Hillal, L., The value of 1948 Palestinian refugee material damages: An estimate based on international standards, in Brynen and El-Rifai, 2013, 132-58.

251 Fischbach (n 238), 43.

252 UNGA res. 1604 (XV) of 21 April 1961.

253 Fischbach (n 173), 45-6.

254 Ibid., 45

255 This figure is computed by applying the average annual US interest rate.

256 Fischbach (n 173), 45-6.

257 Ibid.

258 See UNGA res. 916 (X), 1018 (XI), 1191 (XII), 1315 (XIII), 1456 (XIV), and 1604 (XV). In res. 1456 (XIV), however, the Assembly requested the Commission to make further efforts to secure the implementation of paragraph 11 of UNGA res. 194 (III). Res. 1604 (XV) noted with regret that the Commission had not yet been able to report progress on that task and again requested the Commission to make efforts to secure the implementation of para. 11 and report thereon not later than 15 October 1961. See UNCCP, Historical Survey (n 199), 146–7.

259 Since then UNCCP has issued annual reports to the General Assembly, through the Secretary General, indicating that ‘it has nothing new to report since the submission of [its previous] report.’ UNCCP, Annual Report (A/74/332), 26 August 2019.

260 For example, in 1980, the Commission expressed the hope that ‘the situation and related circumstances in the region will improve towards the achievement of a comprehensive, just, and lasting peace in the Middle East, thus enabling it to carry forward its work in accordance with its Mandate as defined by the General Assembly in its resolution 194 (III).’ UNCCP, 34th Annual Report, A/35/474, 23 September 1980, para. 4.

261 UNGA res 194 (III) of 1948 has been reiterated by the General Assembly hundred times, see Chapter VI, Section 3.2.2.

262 Details are provided in Chapters IV and V.

263 Ibid.

264 For a recent resolution on the territories that Israel occupied in 1967, and which are still occupied, see UNGA res. 73/255 of 20 December 2018 (on the Permanent Sovereignty Over Natural Resources in oPt and Golan).

265 The figure of 320,000 for the displaced from the oPt is proposed in Morris (n 108), 328; Masalha, Historical roots (n 115), 61. The higher figures are from Al Husseini, J., Jordan and the Palestinians, in Ababsa, M. (ed.) *Atlas of Jordan: History, territories and society*, Beirut: Presses de l’Ifpo, 2014, 230–45, para. 19. Initial UN figures were lower (200,000) owing to the chaos generated by the large influx and the registration challenges. UNRWA, *Report of the Commissioner-General for 1966–1967*, GAOR, 22nd sess., suppl. 13 (A/6713), para. 30 [hereinafter ‘UNRWA 1967 Report’].

266 See Morris (n 108), 328. See also Segev, T., *1967 Israel: The war and the year that transformed the Middle East*, New York: Metropolitan Books, 2007, 405.

267 UNRWA 1967 Report, para. 39.

268 Ibid., para. 40

269 While their plight was similar to that of the 1948 refugees, their status was seen as different. This is because, the vast majority of them were displaced to modern day Jordan. Between 1949 and 1950 Jordan had extended its parliamentary franchise and citizenship to the inhabitants of the West Bank (including the refugees) with the ‘unification’ of the banks of the River Jordan (i.e. it had annexed the West Bank). Hence, these new refugees from the West Bank to the East Bank were considered to be displaced within Jordan. See also discussions in Introduction, Section 3.2.3, Chapter II, Sections 4.2.3 and 4.3.5, and Chapter IV, Section 3.2.2.

270 During the peace process in the 1990s (see The Quadripartite Committee), Israeli placed the number of displaced Palestinians, including their descendants at 200,000–600,000, while Arab official estimates refer to at 800,000–1,000,000. See proceeding of Quadripartite Committee’s first meeting held in Amman on 7 March 1995. Cf. Tamari, S., *Palestinian Refugee negotiations: From Madrid to Oslo II*, Washington, DC: Institute for Palestine Studies, 1996, 17; also Article 74, Alternative Information Centre/Project for

Palestinian Residency & Refugee Rights, issues of 12 April 1994; 14 December 1995; 15 April 1996. Gazit, S., 'Displaced persons in focus', *JP*, 10 March 1995.

271 The causes of this exodus are discussed by Masalha, Historical roots (n 115), 61-2.

272 Morris writes: 'in several locations Arab houses were deliberately destroyed after the fighting ended. A number of IDF commanders, apparently without cabinet authorization, though most probably with Dayan's approval, tried to repeat the experience of 1948 - to drive Palestinians into exile and demolish their homes'. Morris (n 108), 328.

273 At the Allenby bridge crossing between Jordan and the occupied West Bank, they had to sign a document stating that they were leaving of their own free will. Morris (n 108), 328. However, testimonies of soldiers operating at the bridge those days portray the climate of physical and psychological violence that Palestinians were exposed to. Bregman, A., *Cursed victory: A history of Israel and the occupied territories, 1967 to the present*. London: Pegasus Books, 2015, 19, fn 33.

274 UNRWA 1967 Report (n 265), para. 30.

275 Morris (n 108), 328.

276 Ibid.

277 This identical language was used by UNGA res. 2252, 4 July 1967 [Humanitarian assistance in the 1967 war], A/RES/2252, para. 1d, and UNSC res. 237(1967) of 14 June 1967, para. 1. Another resolution, adopted on the same day, condemns Israel's measures to change the status of Jerusalem as invalid, UNGA res. 2253 [Measures taken by Israel to change the status of the City of Jerusalem], 4 July 1967, A/RES/2253, para. 2. See also UNGA res. 2254 of 14 July 1967 [The Situation in the Middle East], deplored Israel's failure to abide by UNGA res. 2253 (ES-V). See also UNSC res. 233, Six Day War (6 June 1967), Res. 234 Six Day War (7 June 1967), Res. 235 Six Day War (9 June 1967), Res. 236 Six Day War (11 June 1967), Res. 240 (25 October 1967).

278 UNSC res. 242 (1967) of 22 November 1967. This resolution also calls upon all parties to terminate all claims or states of belligerency and respect for and acknowledgment of the sovereignty, territorial integrity and political independence of every State in the area; it calls upon Israel to reciprocate by withdraw its forces from land claimed by other parties in the Six Day war. The content of the rights of the refugees referred to in this resolution, among others, is discussed in Chapter VI, Section 3.4.2.

279 Morris (n 108), 328-9. The deadline of 10 August, then extended to 13 September, may have played a role. After that, only some 'special cases' were allowed back (about 3,000 individuals). The ICRC appealed to the Israeli government, requesting it to extend the time limit to enable all those wishing to return to their homes to do so, but the Israeli government rejected this appeal.

280 Bishara, S., 'Who has the right to steal Palestinian land?', *The Nakba Files* [online], 10 August 2012.

281 Most of this property remains under the Custodian, while some (as in the case of Sheikh Jarrah, see Chapter IV, Section 3.5) has been granted to Jews contesting ownership in court.

282 UNGA res. 2452 (XXIII)A of 19 December 1968.

283 The most recent such resolution is UNGA res. A/RES/73/93 of 18 December 2018, which '1. Reaffirms the right of all persons displaced as a result of the June 1967 and subsequent hostilities *to return to their homes or former places of residence* in the territories occupied by Israel since 1967; 2. Stresses the necessity for an *accelerated return of displaced persons*, and calls for compliance with the mechanism agreed upon by the

parties in article XII of the Declaration of Principles on Interim Self-Government Arrangements of 13 September 1993 on the return of displaced persons' [emphasis added].

284 This includes about 2,000 Palestinians who were forced to leave Jordan, mainly to Lebanon, after military confrontation between armed Palestinians and the Jordanian army (the events of 'Black September') in 1970; about 100,000 Palestinians who left Lebanon, mainly in connection with the civil war (1975–1990) and the Israeli occupation, but also because of the increasingly dire living conditions for Palestinians in the country; over 300,000 Palestinians who left Kuwait during and in the aftermath of the First Gulf war (1991); 15,000 Palestinians who were expelled from Libya in protest against the Oslo process (1995–1996); 45,000 Palestinians who have left Iraq in the context of the unrest that has ravaged the country since 2003; and over 120,000 Palestinians who have left Syria in the context of the war (2011–2018). These events are further elaborated in various country sections in Chapter IV.

285 Human Rights Watch, *World Report 2017*, 2017, [hereinafter HRW 2017 Report], Introduction.

286 See Chapter V.

287 For an overview of the various rounds of negotiations see Brynen, R., *The past as prelude? Negotiating the Palestinian refugee issue*, London: Chatham House, 2008, Chiller-Glaus, M., *Tackling the intractable: Palestinian refugees and the search for Middle East peace*, New York: Peter Lang, 2007.

288 Baumgarten, H., 'The three faces/phases of Palestinian nationalism, 1948–2005', *Journal of Palestine Studies* 34.4 (2005) 27–8.

289 This was first argued by Constantine Zurayk when he coined the term 'Nakba'. Zurayk, C., *Palestine: The meaning of the disaster*, Bayruth: Khayats, 1956.

290 Sayigh, Y., *Armed struggle and the search for state: The Palestinian national movement, 1949–1993*, Oxford: Clarendon Press, 1997, Preface.

291 Fatah was founded in 1959 in Kuwait by Yassir Arafat. 'Fatah' (which means 'the Victory' or 'Opening' in Arabic) is a reverse acronym for 'ḥarākat al-tahrīr al-waṭānī al-Filastīnī', which means 'Palestinian National Liberation Movement'. On the PLO see Hamid, R., 'What is the PLO?', *Journal of Palestine Studies* 4.4 (1975) 94–6.

292 It was established by Ahmad Shuqairy, with the support of members of the Arab League (see Chapter IV, Section 1). Some Palestinians looked at it with suspicion, fearing that it would be used to contain Palestinian nationalism; see Hamid (n 292).

293 Muslih, M., 'Towards coexistence: An analysis of the resolutions of the Palestine National Council', *Journal of Palestine Studies* 19.4 (1990) 5. On the use of the term 'diaspora' in the Palestinian context, see Introduction. Since the advent of the PA and the return of many PLO figures, the PNC now also includes many in the oPt, along with those in the diaspora.

294 For example, the Geneva Conference convened by the US in 1974, where the Palestinians were not invited. Chiller-Glaus (n 287), 142.

295 This recognition occurred at the 12th Session of the PNC in Cairo on 8 June 1974. Cf. Aruri, N., Towards convening a congress of return and self-determination, in Aruri (n 115), 262.

296 Sayigh (n 290), xi.

297 The shift was prompted also by the PLO ousting from both Jordan in 1970 and Lebanon in 1982, which prompted it to intensify its organizational activities in the oPt. See Chapter VI, Sections 2.2 and 2.3.

298 During the 12th session of the PNC, on 8 June 1974, the ‘Provisional Political Programme’ (also called the ‘Ten-Point Programme’) was adopted. The Programme identified the PLO as the sole and legitimate representative of the Palestinian people. It went on to describe the right to self-determination, as linked to liberation. Return, in this context, is an implicit by-product of liberation or perhaps ‘the actual equivalent of liberation.’ See Suleiman, J., *The Palestinian Liberation Organization: From the right of return to Bantustan*, in Aruri (n 115), 95. However, it is noteable that while the right to self-determination was prioritized as central to liberation, actual endorsement of the ‘two-State solution’ as it is understood today occurred in 1988, see Chapter VI, Section 2.

299 As previously discussed, the resolution also called for ‘achieving a just settlement of the refugee problem.’ UNSC res. 242 (1967), 22 November 1967, para. 1.

300 Chiller-Glaus (n 287), 144.

301 Aruri, N., ‘The marginalization of the basic rights of the Palestinian refugees: geopolitics over international law’, *Nexus* 8 (2003) 65.

302 See 16th (1983) and 17th (1984) sessions of the PNC, held in Algiers and Amman, respectively. See also Mohamad, H., ‘The changing meaning of statehood in PLO ideology and practice’, *The Palestine-Israel Journal* 6.2 (1999). Khalidi, R., ‘The Palestinian dilemma: PLO policy after Lebanon’, *Journal of Palestine Studies* 15 (1985) 88–103, 89, 90. Al-Fajr, ‘The PNC: Historical background’, *Journal of Palestine Studies* 16.4 (1987) 152.

303 Sh'un Filastiniyya 108–9 (1986), 82–6, in Klein, M., ‘Between right and realization: The PLO dialectics of “the right of return”’, *Journal of Refugee Studies* 11.1 (1998) 5.

304 So was called the popular and largely non-violent uprising of Palestinians across the West Bank and Gaza that commenced in 1987. Peretz, D. ‘Intifada: The Palestinian uprising’, *Jewish Quarterly* 37.2 (1990) 12–18.

305 PNC, *Wathīqat I'lān al-Istiqlāl al-Filastīnī* (‘Palestinian Declaration of Independence’), Palestinian National Council, 19th Session, Algeria, 15 November 1988. See English version in Hartley, C., Cossali, P., *Survey of Arab-Israeli relations*, London: Routledge, 2004, 401–2. The Declaration of Independence announced ‘the establishment of the State of Palestine in the land of Palestine with its capital Jerusalem’ without specifying where exactly it would be located. This issue is discussed in detail in Chapter VI, Section 2.3.

306 PLO Algiers Program – Palestine National Council Resolution (1988).

307 Sayigh (n 290), 624.

308 The implication of this are discussed in Chapter III, Sections 2.2 and 2.3, and Chapter IV, Section 3.5.3.

309 For a general discussion, see UN, *The Question of Palestine and the United Nations*, 2008, 30.

310 The Peace Conference on the Middle East, Madrid, 30 October–1 November 1991, was called by the United States and the Soviet Union. It initiated a negotiation process that brought the PLO and Israel together, face-to-face, for the first time, even if Syria, Lebanon, and Egypt also participated.

311 Part of Israeli preconditions included that Palestinians would not attend as an independent delegation, but rather as part of a Jordan-Palestinian delegation; see Mansour,

C., 'The Palestinian-Israeli peace negotiations: An overview and assessment', *Journal of Palestine Studies* 22.3 1993, 5-31.

312 The PLO recognized Israel's right to exist and to live in peace and security, and Israel recognized the PLO as the representative of the Palestinian people. See exchange of letters between PLO Chairman Arafat, Israeli Prime Minister Rabin, and Norwegian Foreign Minister Holst, Tunis and Jerusalem, 9 September 1993. For text, see *Journal of Palestine Studies* 89 (1992) 115.

313 Zureik, E., Palestinian refugees and the peace process, Washington, DC: Institute of Palestine Studies, 1996, 119.

314 The rights of the refugees became to be seen as no longer one of the highest priorities for the PLO; see Klein (n 303), 1, 7. Masalha, N., 'The PLO, Resolution 194 and the "right of return": Evolving Palestinian attitudes towards the refugee question from the 1948 Nakba to the Camp David summit of July 2000', *Yearbook of Islamic and Middle Eastern Law Online* 7.1 (2000) 146-9. See also Aruri (n 115), 261-2.

315 Klein (n 303).

316 For example, 'the right of every Palestinian refugee to return home in accordance with UN Resolution 194 (III)' and the establishment of a mechanism to implement this right were the first point of a brief that PLO delegation presented to Camp David on the roots of the refugee problem. See Hanieh, A., 'The Camp David Papers', *Journal of Palestine Studies* 30 (2001) 2, 94. Further, the work of PLO within the UN bears testament to such commitment.

317 Chapter VIII, Section XX.

318 Masalha, 2000, 145-6.

319 A series of internal papers, dated between 1999 and 2010, that were leaked to *Al-Jazeera* in 2011, referred to as 'Palestine Papers', suggested that emphasizing the right of return in the PLO's public discourse was so that the refugees would 'buy into' the proposed agreement, but that actual return would be subject to Israel's absorption capacity. See, for example, Email from Negotiation Support Unit (NSU) to Saeb Erakat: Talking points for meeting with Tal Becker Re: Recognition of refugees' rights (26 March 2008).

320 See The Quadripartite Committee, Section 6.2.2.

321 Unlike the other bilateral negotiations, the negotiations between Israel and the Palestinians were to achieve peace based on a two-staged formula: a five-year interim self-government arrangement, followed by negotiations on so-called 'permanent status' issues.

322 Declaration of Principles on Interim Self-Government Arrangements, signed in Washington, DC, on 13 September 1993 [hereafter 'DoP']. The agreement entered into force on 13 October 1993, at which time both sides held the first meeting of the Gaza Strip and Jericho Area negotiations in Taba, Egypt. Text: *International Legal Materials* 32 (1993) 1525.

323 Agreement on the Gaza Strip and the Jericho Area, signed in Cairo, 4 May 1994, by Israeli Prime Minister Rabin, PLO Chairman Arafat, and witnessed by US Secretary of State Christopher and Russian Foreign Minister Kozyrev. The agreement – hereinafter referred to as the Cairo Agreement – entered into force on the same day. Text: *International Legal Materials* 33 (1994) 622; also in *Journal of Palestine Studies* 92 (1994) 118. Attached to the agreement as integral parts thereof are four annexes and an exchange of letters. Annex I contains the Protocol concerning the Withdrawal of Israeli Military Forces and Security Arrangements. Annex II contains the Protocol concerning Civil Affairs. Annex III contains the Protocol concerning Legal Matters. Annex IV contains the Protocol on Economic Relations, which was signed separately in Paris on 29 April 1994. On the agreement, see

Shehadeh, R., 'Questions of Jurisdiction: A legal analysis of the Gaza-Jericho Agreement', *Journal of Palestine Studies* 92 (1994) 18.

324 DoP (n 322), art. V.

325 (n 323).

326 Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, signed by Israeli Prime Minister Rabin and PLO Chairman Arafat [hereafter 'Oslo II Agreement']. To the main body of the agreement are appended six annexes dealing with: security arrangements, elections, civil affairs (transfer of powers), legal matters, economic relations, and Israeli-Palestinian cooperation. Text: State of Israel, *Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip*, Jerusalem: Ministry of Foreign Affairs, 1995; also *Journal of Palestine Studies* 98 (1996) 123.

327 Treaty of Peace between the Hashemite Kingdom of Jordan and the state of Israel (hereafter 'Jordan-Israel peace treaty'), signed at the Arava border crossing between the two countries, 26 October 1994, by Jordanian Prime Minister Majali, Israeli Prime Minister Rabin, and witnessed by US President Clinton. Attached to the agreement as integral parts thereof are five annexes (on boundary delimitation and demarcation, water-related matters, cooperation in combating crime and drugs, environmental protection, interim measures related to procedures for border crossing points). Text: *International Legal Materials* 34 (1995) 43; also *Journal of Palestine Studies* 94 (1995) 126.

328 This happened through the application of procedural arrangements akin to those in the DoP (n 322), articles V and XII, to Jordan; see Jordan-Israel Peace Treaty (n 327), art. 8. The treaty limits itself to [r]ecognizing the massive human problems caused to both Parties by the conflict in the Middle East, as well as the contribution made by them towards the alleviation of human suffering, the parties will seek to further alleviate those problems arising on a bilateral level'. The Jordanians justified such limitations in order to avoid tensions with the PLO, which had meanwhile been internationally recognized as the political representatives of the Palestinians.

329 Just a few days prior to his assassination, an unofficial draft agreement between negotiators Yossi Beilin and Abu Mazen (Mahmoud Abbas) - referred to as the Beilin-Abu Mazen agreement - was published; it was to serve as the basis for a future Israeli-Palestinian peace treaty. Although the proposal was never endorsed by either the Israeli or the Palestinian governments, some of its compromises informed subsequent negotiations.

330 In accordance with the timetable in the DoP (n 322), 93, art. V, permanent status negotiations were to begin 'not later than the beginning of the third year of the interim period' (on the condition that Israeli forces would have withdrawn from the Gaza Strip and Jericho area by then). The Taba summit reiterated the parties' mutual commitment and intention to proceed towards further permanent status negotiations. See Israel and the PLO, Joint Communiqué on the Permanent Status Negotiations, Taba, Egypt, 5–6 May 1996; Text: *Journal of Palestine Studies* 100 (1996) 139.

331 Both the Wye River Memorandum (1998) and the Sharm el-Sheikh Memorandum (1999), concluded between Israel and the PLO, focused on territorial provisions, release of prisoners, the opening of safe passage between the West Bank and Gaza Strip, and resumption of negotiations on permanent status issues; the latter was followed by a partial release of Palestinian prisoners, opening of the southern safe passage route between the West Bank and Gaza Strip, and further redeployment of Israeli forces from areas of the West Bank. Cf. Tovy, J., 'Negotiating the Palestinian refugees', *Middle East Quarterly* Spring (2003) 39.

332 Aruri (n 115), 260; Massad, J., Return or permanent exile?, in Aruri (n 115), 105.

333 DoP (n 322), art. V.

334 The language on displaced persons is taken from the 1979 Egyptian-Israeli Peace Treaty.

335 DoP (n 322), 93, art. XII, sec. 'Liaison and Cooperation with Jordan and Egypt', stipulated that the parties will, among others, agree on the modalities of admission of persons displaced from the West Bank and Gaza Strip in 1967. On this issue, cf. Tamari (n 270), 17.

336 Masalha (n 314), 127.

337 Tamari (n 270), 17.

338 Klein (n 303), 1, 10.

339 Cf. Tamari (n 270), 18.

340 Brynen (n 287).

341 The multilateral negotiations were monitored by a Steering Committee, which coordinated the meetings and set dates and venues for the various working groups. The Committee comprised the two co-sponsors, the chairpersons – referred to as 'gavel-holders' – of the different multilateral working groups (Canada, the European Union, and Japan), Saudi Arabia (representing the GCC), Tunisia (representing the Union du Maghreb Arabe), plus four of the regional parties (Israel, the PLO, Jordan, and Egypt). Syria and Lebanon have refused to participate. Norway was a member of the Steering Committee since the signing of the DoP.

342 Approximately forty parties have been participating in the work of the Multilateral Working Group on Refugees (RWG), including those represented in the steering group. Cf. Tamārī (n 335), 1–16, 23–35, and Brynen, R., Tansley, J., 'The Refugee Working Group of the Middle East multilateral peace negotiations', *Israel–Palestine Journal* 2.4 (1995) 53, Special Issue: Focus on Refugees; Brynen, R., 'Much ado about nothing? The Refugee Working Group and the perils of multilateral quasi-negotiation', *International Negotiation* 2.2 (1997) 279–302.

343 Under this heading, the RWG sponsored basic data collection and analysis to define the scope of the refugee issue, establish priorities, and assess the impact of choices. This work has included a number of surveys carried out by FAFO. See <http://www.fafo.no>.

344 Brynen and Tansley (n 335), 2, 4.

345 Chiller-Glaus (n 287), 148.

346 Tovy (n 331).

347 In the wake of the Oslo peace process, Yossi Beilin, deputy foreign minister of Israel at the time, agreed to increase annual family reunification licenses and approved more permanent residency permits.

348 The so-called 'Ottawa process' sponsored by the Canadian Government and the Minster Lovell series of workshops organized by Chatham House in the U.K. have proven particularly important in raising awareness on how other experiences of conflict resolution, repatriation, and compensation schemes could feed into Israeli–Palestinian negotiations. This is further discussed in Chapter VIII, Section 2.

349 Parties disagreed on language; Palestinians demanded an explicit recognition of the refugees being a victim of the 1947–1949 war, which Israelis opposed. In preparation of these negotiations, Israel had prepared a draft 'Framework Agreement on Permanent Status', which in effect included the government's position on the refugee issue [hereafter 'Framework Agreement'], art. 6 paras. 71–93. See Sher, G., *The Israeli–Palestinian peace*

negotiations, 1999–2001: Within Reach, London: Routledge, 2006, 247–50. See also Brynen (n 287).

350 Framework Agreement, paras. 73–74, 78–79.

351 Ibid., para. 88.

352 Brynen (n 287), 5–6.

353 Ibid. Summarizing the various positions at the Camp David summit is challenging because most primary source materials have not been made public in addition to the range of draft proposals and of views expressed by the various officials. For these reasons it is difficult to come to conclusive characterizations of the parties' position on the right of return. See Chapter VIII, Section 3.4.

354 Ju'beh, N., 'The Palestinian refugee problem and the final status negotiations: A review of positions', *Palestine-Israel Journal of Politics, Economics, and Culture* 9.2 (2002) 5.

355 See Kubursi, A., 'Palestinian losses in 1948: Calculating refugee compensation', *Palestinian Refugee ResearchNet* [online], Information brief 81, 3 August 2001.

356 Discussions on UNRWA abolishment and transfer of its functions to host countries and PLO had started in the negotiation that begun in the early 1990s.

357 Brynen (n 287), 11.

358 Klein, M., The negotiations for the settlement of the 1948 refugees, in Benvenisti, E., Gans, C., Hanafi, S. (eds.), *Israel and the Palestinian Refugees*, Heidelberg: Springer, 2007, 481.

359 Brynen (n 287), 11.

360 Both American and Israeli officials and commentators accused the Palestinian negotiators of trying to exact Israeli concessions without intending to reach a settlement or put an 'end to the conflict'. See Morris, B., 'Camp David and after: An interview with Ehud Barak', *The New York Review of Books* 49.10 (2002).

361 Finkelstein, N. G., 'The Camp David II negotiations: How Dennis Ross proved the Palestinians aborted the peace process', *Journal of Palestine Studies* 36.2 (2007) 39; Swisher, C. E. *The truth about Camp David: The untold story about the collapse of the Middle East peace process*, New York: Nation Books, 2004.

362 On 23 December 2000, the 'Clinton Parameters' were presented by the President in a speech at the White House before Israeli and Palestinian negotiators.

363 Tovy (n 331).

364 The Parameters suggested that in determining who should be allowed to return to Israel, priority was to be given to the refugee in Lebanon.

365 Ehud Barak reportedly responded that 'no Israeli prime minister will accept even one refugee on the basis of the right of return', quoted in an interview with Shavit, A., 'Continuation of eyes wide shut', *Haaretz*, 4 September 2002.

366 Brynen and El-Rifai (n 250).

367 In response to Clinton's proposal, in a letter from 27 December 2000, Arafat wrote: 'I have a negative experience with the return of displaced Palestinians to the West Bank and Gaza during the Interim Period. Because the modalities remained tied to an Israeli veto, not one refugee was allowed to return through the mechanism of the interim agreement, which

required a quadripartite committee of Egypt, Jordan, Israel and Palestine to decide on their return.' See also Bregman (n 273).

368 Brynen (n 287).

369 Unrest began after the leader of the opposition in Israel, Ariel Sharon visited the Temple Mount/Haram al-Sharif compound in Jerusalem under heavy police escort in September 2000. Protests broke out and at least fifty persons were reported killed and some 1,500 injured, most of them Palestinians, as a result of five days of continuing clashes between Israelis and Palestinians throughout the occupied territory. This was the start of the second *intifada*.

370 Tovy (n 331).

371 Brynen and El-Rifai (n 250), 5.

372 Ibid.

373 Ibid, 6.

374 Both negotiating teams stated that they would have reached an agreement, should they have had more time. Cf. Brynen (n 287), 8.

375 Arab Peace Initiative of 2003, re-endorsed by the Arab League in 2007 and 2017, calls for an end of the occupation, the establishment of a Palestinian state, and a 'just settlement' of the refugee question based on resolution 194.

376 UNSC, letter dated 7 May 2003 from the Secretary-General addressed to the President of the Security Council, UN Doc S/2003/529, 7 May 2007, Annex, A performance-based roadmap to a permanent two-state solution to the Israeli-Palestinian conflict. This initiative was supported by the US, the EU, Russia, and the UN (often referred to as the 'Quartet').

377 Israel requested that both the introductory and final paragraphs be rewritten to include reference to Israel's right to exist as a Jewish state and containing a Palestinian waiver of the right to return to Israel. It stressed that the conclusion of the negotiations should not only mark the end of conflict but the end to all claims.

378 While not substantively addressing the refugee issue, the Roadmap makes no reference to international law or related rights at stake. Welchman, L., The role of international law and human rights in peacemaking and crafting durable solutions for refugees: Comparative comment, in Rempel, T. (ed.), *Rights in principle, rights in practice: Revisiting the role of international law in crafting durable solutions for palestinian refugees*, Bethlehem: BADIL, 2009, 20-1.

379 This includes the 'People's Voice' (2002), the 'Geneva Initiative' (2003), and the 'Aix Group' (2007).

380 Brynen (n 287), 9-10. For the text of the Geneva Accord and information on the initiative, see <http://www.geneva-accord.org>.

381 Ibid., 10.

382 Ibid., 11. The 'Palestine Papers' (n 319) appear to suggest that the principled PLO position on the right of return was modified during the decade that followed the Camp David conference in the hope of facilitating a final agreement with Israel. Stinnett, A. C., 'The right of return: An obstacle on the road to peaceful negotiations between Israel and Palestine', *Inquiries Journal* 4.1 (2012). Retrieved from <http://www.inquiriesjournal.com/a?id=611>.

383 Speech by Barack Obama, Cairo, Egypt on 4 June 2009.

384 Kerry restarted direct peace negotiations between the Palestinians and the Israelis; Hamas did not participate and rejected the assertion by PA President, Mahmoud Abbas, to negotiate on behalf of the Palestinian people. The negotiation collapsed in April 2014; Israel withdrew as a result of the reconciliation between the PA and Hamas.

385 President Trump's recognition of Jerusalem as the Capital of the State of Israel in 2017 and the subsequent relocation of the US embassy from Tel Aviv to Jerusalem in March 2018, followed by the US decision to defund UNRWA and various attempts to dramatically reduce the number of Palestinians formally considered to constitute 'refugees', have further dampened hopes for a just settlement brokered by the US. For an overview, see Albanese, F., 'UNRWA and Palestine refugee rights: New assaults, new challenges', *Current Issues In Depth* 1 (2018) 4.

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(p. 68) II Palestinian Refugees

A Distinctive Normative and Institutional Regime

The existence of the Palestine refugees ... was the direct result of a decision taken by the United Nations itself, with full knowledge of the consequences. The Palestine refugees were therefore a direct responsibility on the part of the United Nations and could not be placed in the general category of refugees without betrayal of that responsibility. Furthermore, the obstacle to their repatriation was not dissatisfaction with their homeland, but the fact that a Member of the United Nations was preventing their return.

UNGA, 3rd Comm., 328th mtg., 27 November 1950, para. 47

1. Introductory Remarks

At the time of publication, the unresolved exile of the Palestinian refugees has entered its eighth decade, with refugees unto the third or even fourth generation.¹ They account for the largest group of refugees globally, the majority of whom are also stateless, and theirs is the most protracted refugee situation in modern history.² For historical and political reasons Palestinian refugees enjoy a distinctive regime made up of specific norms and institutional arrangements different from those for other refugees. This distinctiveness often creates confusion, leading to misrepresentation and misinterpretation of their legal status,³ the applicable normative framework, and the role of the international entity mandated to assist and protect them. Such confusion has to a considerable extent affected the protection they enjoy as refugees, at times giving rise to the belief that, as a group, they are excluded from the rights and standards of treatment afforded to other refugees.

This chapter sets out the foundation of Palestinian refugees' status in international law, as well as the characteristics of their institutional and normative regime. Building on the general international regime created for the protection of refugees, from the interwar period until the drafting and adoption of the Statute of the Office of the UN High Commissioner for Refugees (UNHCR) of 1950 and the *Convention Relating to the Status of Refugees* of (p. 69) 1951 (hereinafter '1951 Convention') (Section 2), Section 3 explores why and how a special regime – made of distinct legal provisions and complementary mandates distributed across a number of different agencies – came into existence for Palestinian refugees, and what its institutional characteristics are. Section 4 examines the normative foundation of the legal status of Palestinian refugees, which many other rights are contingent upon, with special focus on the various definitions in use, and the distinction between 'Palestine' and 'Palestinian' refugees.⁴ Detailed consideration is given to the various definitions and interpretations of the terms Palestine and Palestinian refugee, particularly as used by the United Nations (UN) over time (namely by UNCCP, UNRWA, and UNHCR), as well as to related limitations, challenges, and implications. The specificities of the legal status of Palestinian refugees, particularly in light of Article 1D of the 1951 Refugee Convention as interpreted by UNHCR, will also be clarified. Summary conclusions are offered in Section 5.

2. The Making of the International Refugee Framework

At the time some 750,000 Arab inhabitants of British Mandate Palestine were displaced from the territory of the newly created State of Israel and the remainder of the Mandate territory, the global international refugee regime, as we know it today, was in a *statu nascendi*: the concept of 'refugee' and 'refugee protection' had a different meaning to contemporary understandings.⁵ The massive displacement created by the First and Second World Wars,⁶ as well as the legal and operational responses provided by the international community, progressively shaped the post-war refugee framework.⁷ Until the interwar period (*interbellum*) it was assumed that the state would provide protection to its nationals and long-term residents. The concept of unprotected persons, as persons who do not (or no longer) enjoy the protection of a state, deserving therefore 'diplomatic' protection in another state,⁸ represented an 'international legal dilemma' to be solved.⁹ Its resolution was at the heart of the international refugee framework as it started to develop during the *interbellum*.¹⁰

(p. 70) The new regime came into existence first and foremost to protect the tens of millions of displaced and unprotected persons as a result of the Second World War, the great majority of whom were in Europe.¹¹ These geographic and temporal factors had a significant impact in shaping the scope of the international refugee regime. It was in this context that special arrangements were made for the Palestinian refugees. As the following subsections demonstrate, the distinctiveness of the Palestinian refugee regime has revealed an organic interdependence with, rather than separation from, the general international refugee framework.

2.1 The *interbellum* and Second World War refugee arrangements

Until the Second World War, refugee crises, while not rare, were typically dealt with through ad hoc treaties and arrangements,¹² implemented under the authority of ad hoc institutions.¹³ In 1921, the Council of the League of Nations appointed the first High Commissioner for Russian Refugees (Dr. Fridtjof Nansen) to deal with legal status, relief needs as well as repatriation or resettlement opportunities of about one million Russians scattered throughout Europe, and subsequently with other nationalities left without protection or legal status in Europe (Armenians, Assyrians, Assyro-Chaldaens, Turks).¹⁴ The High Commissioner's functions progressively included services and diplomatic protection normally rendered by consular services to nationals abroad, including determining refugees' identity, civil status, country of origin, and case referrals to relevant authorities to

obtain residence permits, visas and more.¹⁵ After 1930, the League of Nations entrusted these operations and similar services with the Secretary-General first, followed by a succession of ad hoc international bodies: the High Commissioner for Refugees from Germany (1933); the High Commissioner's Office for all refugees (1938); and the Intergovernmental Committee on Refugees (1938).¹⁶

During the Second World War, the Allied Forces set up the United Nations Relief and Rehabilitation Administration (UNRRA, 1943)¹⁷ and subsequently the newly-created United Nations established the International Refugee Organization (IRO, 1946).¹⁸ The (p. 71) UNRRA and IRO, which were established to assist the millions displaced during the Second World War, can be considered the precursor of UNHCR.¹⁹ The IRO, in particular, was mandated to assist persons displaced in the context of the war, with legal and political protection, identification, registration, care and assistance, transport, repatriation and resettlement; it operated until 1952 and succeeded in resettling tens of thousands of refugees.²⁰ Among others, the IRO Constitution offered a general definition of the term refugee.²¹

Until the late 1930s, refugees had been treated as a group or category, and no individualized approach was used to determine who, on a case-by-case basis, deserved the status of refugee. Progressively, the need for a 'more permanent system to protect refugees' started to be recognized. This was primarily dictated by the legal dilemma caused by the lack or denial of state protection;²² that someone was outside his/her country of origin without any state protection was generally sufficient to trigger the status of refugee.²³ As such the origins of international refugee law are linked to the law on state responsibility, the concept of diplomatic protection and the treatment of aliens: as refugees no longer had a state to turn to for diplomatic protection due to persecution, an alternative protection scheme had to be devised.

As the IRO mandate was coming to an end, the international community addressed the need to have a more comprehensive, standardized, response to refugee crises. While many refugees from Europe had been resettled in the United States and other immigration countries under the auspices of the IRO, a significant number remained in limbo. They were left behind for various reasons including the selection criteria used by resettlement states: sometimes because, being highly skilled professionals (e.g. doctors, lawyers), receiving countries feared they would compete too favourably with local inhabitants;²⁴ sometimes because being less wealthy and less well educated, and often sick and with disabilities, these refugees - the vast majority of the 'residual caseload' - proved difficult if not impossible to resettle.²⁵ A solution to the fate of this precarious group, among others, had to be found.²⁶

(p. 72) 2.2 The post-war international refugee framework at a glance

The international refugee framework as we now know it comprises: the Office of the United Nations High Commissioner for Refugees (UNHCR), as the main institution globally responsible for refugees, and its Statute;²⁷ the Convention Relating to the Status of Refugees of 1951 (hereinafter the '1951 Convention'); and the 1967 Protocol Relating to the Status of Refugees (hereinafter the '1967 Protocol'), the latter two constituting the *magna carta* of contemporary international refugee law.²⁸ This system came into existence in an attempt to resolve, first and foremost, the matters left unresolved by the various refugee arrangements discussed in the previous section.²⁹ While they eventually contributed to the emergence of a universal refugee definition and a standardized approach to deal with refugee crises, neither the Statute of UNHCR nor the 1951 Convention were initially conceived as applicable to all refugees worldwide, as they are today.³⁰ At the time the international refugee framework was conceived, different solutions continued to be

proposed for different refugee crises, very much as had been the case during the interwar period.³¹

This was the context in which the regime for the refugee from Palestine emerged; a context in which the universal and standard setting character of the international refugee framework is the outcome of its evolution, rather than its initial purpose. The original framework, at least in its early conceptualization and operationalization, had yet to overcome the ad hoc approach that had characterized the interwar approach to refugee crises. This influenced the regime established for Palestinian refugees.

2.2.1 The normative framework defining a refugee

Similar to pre-war instruments, Article 1A(1) of the 1951 Convention incorporates categories of refugees who had been determined as such by earlier instruments, based on their national origin, the territory they left, and the lack of consular or diplomatic protection by their former home country.³² These refugees are commonly referred to as 'statutory refugees'.³³ By its very nature, the protection provided by this provision was destined to have a set duration, limited to the unprotectedness of the concerned groups of refugees.³⁴

(p. 73) Building on and advancing the contribution of interwar instruments, the 1951 Refugee Convention, in Article 1A(2) added a generic refugee definition which reads:

*[As a result of events occurring before 1 January 1951]*³⁵ refugee is a person who, owing to a 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 unable or, owing to such fear, unwilling to avail himself of the protection of that country.

Those whose refugee status is determined based on this provision are referred to as 'Convention refugees'.³⁶ While this provision is now commonly referred to as the universal refugee definition, it was not initially created to provide protection to every refugee, nor to those resulting in large displacements outside Europe.³⁷

At the time, the aim of the international community (especially western countries) was to find a definitive solution for the residual refugee problem in Europe after the Second World War.³⁸ This caseload included mainly persons who already had refugee status deriving from previous arrangements, treaties (the vast majority being former IRO refugees), who were defined as 'statutory refugees' in Article 1 A(1) of the Convention. Through the inclusion of the language of 'well-founded fear of persecution' in Article 1A(2), the drafters aimed to include also those who were not encompassed by the definition of Article 1A(1), either because they were for whatever reasons not registered by previous refugee agencies (IRO, UNRRA, different HCRs of the League of Nations, etc.) or because they arrived to their asylum countries after the refugee agency responsible for them had ceased to exist. However, as the generic wording in principle opened the door to applicability in future refugee situations, the drafters included the temporal limitation of '[a]s a result of events occurring before 1 January 1951'. The 1951 Convention's drafters may have believed that the problems with the existing caseload would be solved smoothly and subsequently the 'events before 1 January 1951' would become irrelevant. A possible indication of this thinking is the fact that UNHCR was initially established for three years only. On the other hand, they also must have been aware that 'events' prompting refugee crises would occur also after 1 January 1951; hence for UNHCR a mandate was adopted without temporal and geographical limitations.³⁹ As a result of the 1967 Protocol, which lifted the temporal limitation, the date limit in Article 1A(2) has lost its meaning.

Drafters were also cognizant that there could be persons outside the realm of IRO operations who were displaced in other continents.⁴⁰ For example, the ongoing refugee crises in Asia discouraged Western countries from committing to a truly universal refugee (p. 74) protection framework;⁴¹ separate ad hoc arrangements were made for the large outflows created by the India/Pakistan partition (1947)⁴² and the Korean war (1950),⁴³ once again very much in line with *interbellum* thinking. As a result, at the end of intense discussions,⁴⁴ a compromise was reached in the form of Article 1B of the 1951 Convention, which gave the signatories the option of limiting their obligations to 'events occurring in Europe' as opposed to accepting responsibility for refugees irrespective of their origin.⁴⁵ While most European countries ratified the 1951 Convention without any geographical limitations, there were exceptions.⁴⁶

As a consequence, the scope of the 1951 Convention had a number of built-in limitations, namely the temporal limitation in Article 1A(2) and the option of a geographical limitation in Article 1B.⁴⁷ According to its Statute, UNHCR was not subject to the same limitations and its competence extends to refugees irrespective of any temporal or geographic limitations.⁴⁸ After referring to the categories in Article 1A(1) and 1A(2) of the 1951 Convention,⁴⁹ paragraph 6B of the UNHCR Statute defines refugees as:

(p. 75)

[a]ny other person who is outside the country of his nationality, or if he has no nationality, the country of his former habitual residence, because he has or had well-founded fear of persecution by reason of his race, religion, nationality or political opinion and is unable or, because of such fear, is unwilling to avail himself of the protection of the government of the country of his nationality, or, if he has no nationality, to return to the country of his former habitual residence.

Persons who qualify for UNHCR protection under the Statute, regardless of the status of ratification of the 1951 Convention or 1967 Protocol, are usually referred to as 'mandate refugees'.⁵⁰

2.2.2 The institutional framework to protect refugees

Unlike previous arrangements, the new system put the primary obligation towards refugees on states.⁵¹ UNHCR's role was conceived as non-political,⁵² with limited operational capacity,⁵³ mandated first and foremost to 'assume the function of providing international protection ... and of seeking permanent solutions for the problem of refugees'.⁵⁴ A key feature of UNHCR's mandate is international protection, to be achieved through a range of activities listed in UNHCR's Statute,⁵⁵ including by securing admission and non-refoulement of refugees, and seeking permanent solutions to refugee situations such as repatriation and resettlement in third countries.⁵⁶ UNHCR's supervisory role over the application of the 1951 Convention, and its capacity to influence law and policy making, is a unique function within the UN system.⁵⁷ Over time, UNHCR functions have evolved;⁵⁸ in addition to individuals who meet the criteria in its Statute and in the 1951 Convention definition, UNHCR also recognizes as refugees:

[persons] outside their country of origin or habitual residence and unable to return there owing to serious and indiscriminate threats to life, physical integrity or freedom resulting from generalized violence or events seriously disturbing public order.⁵⁹

(p. 76) UNHCR refers to various categories combined as 'persons of concern',⁶⁰ who include refugees, asylum-seekers, returnees and stateless persons,⁶¹ as part of UNHCR's core mandate, as well as internally displaced persons (IDPs).⁶² UNHCR's functions have progressively embraced relief distribution, emergency preparedness, special humanitarian activities, promotion of development for refugees, as well as exercising its 'good offices' as

needed.⁶³ The General Assembly has endorsed this functional expansion, for humanitarian reasons, in situations where the lack of protection would have otherwise created a vacuum.⁶⁴ As discussed in Section 3, this evolution is not dissimilar from what happened to the system serving Palestinian refugees.

3. Palestinian Refugees in the Making of the New Refugee Regime

As the international regime for refugees was under development, reflecting the general concern for the fate of the remaining refugees in Europe, the international community, at the behest of the Arab states and some Western countries, primarily the United States, focused on another particular group of refugees deserving international protection: the Palestinians displaced in connection with the establishment of the State of Israel.⁶⁵ Suddenly deprived of the protection by the government of Mandate Palestine, of which they had citizenship, these refugees were admitted to neighbouring countries on what was expected to be a temporary basis. Citizenship of these countries was generally not available to them; the only major exception was Jordan which in the context of its annexation of the West Bank in 1948, 'extended' Jordanian nationality to Palestinians residing in both the East and West Bank, including the refugees.⁶⁶ Following the establishment of Israel, in addition to having become refugees, most Palestinians also became stateless persons.⁶⁷ Also, compared to the refugees that the drafters of the 1951 Convention primarily may have had in mind – who had left their country of nationality or habitual residence and were unable or unwilling to return due to fear of persecution – Palestinian refugees were not held outside of their original homeland out the fear of persecution. They were generally willing to return to their place of origin but were unable to do so owing to the various measures Israel enacted in the immediate aftermath of their exodus.⁶⁸

(p. 77) These considerations were familiar to the drafters of the international refugee regime, who devoted considerable attention to the question of Palestinian refugees during its elaboration. At the same time, the legacy of the interwar approach to resolving refugee crises through ad hoc arrangements, often on the basis of nationality, influenced the solution that was elaborated for this group of refugees. This is reflected both in the institutional response that the UN elaborated to address the Palestinian refugee question, and in the normative regime that encompassed it.

3.1 Institutional arrangements: UNCCP and UNRWA, and UNHCR

In the span of a few years, the General Assembly undertook various deliberations concerning Palestinian refugees.⁶⁹ By 1949, while the drafting of the 1951 Convention and UNHCR Statute was still being finalized, the General Assembly had already determined how to resolve the Palestine refugee crisis, recommending, first and foremost, the establishment of the UNCCP with the aim of negotiating a solution to the underlying Israeli-Palestinian conflict.⁷⁰ For the UNCCP, the 'refugee mandate' was one element of the broader sphere of its competence. In 1949–1950, the UNCCP made various attempts to repatriate or resettle the refugees and, further, to ensure payment of compensation to them.⁷¹ In addition to the various mediation efforts, UNCCP clarified and conceptualized important issues pertaining to the refugees, such as the definition of who is a refugee from Palestine under UNGA resolution 194, as well as the meaning and implications of terms such as 'those wishing to return', return 'to their homes', 'live at peace with their neighbours', 'should be permitted to do so', and 'at the earliest practicable date' contained in paragraph 11.⁷² Most of these efforts did not have an immediate impact on the refugees, since both peace and the settlement of the refugee question proved unattainable.⁷³ In this context, UNRWA was devised as a comprehensive mechanism to provide relief to the distressed refugees of Palestine, overcoming the difficulties of the early relief organization, as well as promoting the economic integration of the refugees.⁷⁴ Like UNHCR, UNRWA was set up (p. 78) as a subsidiary organ of the General Assembly with a temporary mandate.⁷⁵ The Agency's

establishment was based on the recognition that ‘continued assistance for the relief of the Palestine refugees [was] necessary to prevent conditions of starvation and distress among them and to further conditions of peace and stability’, without prejudice to the efforts of the international community for long-term resolution in line with General Assembly resolution 194, paragraph 11.⁷⁶ In practice, UNRWA was created to take care of the economic welfare and development of the refugees from Palestine while the UNCCP continued to work, among others, towards the long term goals of repatriation, resettlement and compensation. Because UNRWA’s mandate was constructed to complement that of UNCCP, it did not specifically include the pursuit of durable solutions and inferred a complementary role on technical matters instead.⁷⁷

The creation of UNCCP and UNRWA mirrors the ad hoc arrangements that characterized the responses to mass displacement of the interwar period. In this respect, the rationale was not dissimilar from the arrangements that Article 1 of the 1951 Convention envisaged for refugee crises. Both sets of arrangements dealt with a somewhat limited caseload of broadly defined categories, rather than refugees identified by a definition focusing on individual causes of flight (fear of being persecuted and the reason for that fear). During the drafting of the UNHCR Statute and the 1951 Convention, it was already clear that UNCCP and UNRWA would have a different mandate than that of UNHCR, owing to the different context and needs of the respective populations of concern to the respective entities.⁷⁸ Unlike most of the Second World War refugees, in 1951 Palestinian refugees had already been admitted into host countries, thus the need for diplomatic or consular protection, or any ‘direct intervention’ with host countries on their behalf was limited. The international protection of Palestinian refugees’ rights in the host countries, which would grow with the protracted lack of durable solutions and their increasing politicization, was not a major issue.⁷⁹

As such, whilst IRO and UNHCR became responsible for the displaced victims of war and large-scale atrocities in Europe, UNCCP and UNRWA became responsible for the displaced from war and coercion in the Near East.⁸⁰

3.2 Normative setting: Palestinian refugees in the UNHCR Statute and 1951 Convention

The drafting history of the 1951 Convention and the UNHCR Statute, as reflected in the *travaux préparatoires*, provides extraordinary insight into the rationale for a distinctive (p. 79) regime for Palestinian refugees at the time.⁸¹ The drafting process of the two instruments took place in a number of stages. Mostly at the behest of the United States and the Arab States, Palestinian refugees were discussed during three of the main drafting stages.

The subject was raised for the first time in the Ad Hoc Committee on Statelessness and Related Problems, which produced a Draft Convention Relating to the Status of Refugees.⁸² In this context, supporters of a broad refugee definition, namely France and the United Kingdom, were opposed by others, like the United States, who were more in favour of a definition by categories based on the Constitution of the IRO.⁸³ On 26 January 1950, the representative of the United States, who had prepared a draft of the convention, explicitly referred to Palestinian refugees,⁸⁴ proposing to exclude them from the definition of ‘neo-refugees’, primarily to avoid that other groups may claim resettlement, on top of the IRO category.⁸⁵ Eventually the Committee adopted a draft definition article along the lines of the United States proposal, covering three groups of refugees,⁸⁶ without any reference to Palestinian refugees.

The issue of the refugees from Palestine was discussed a second time when the Third Committee of the General Assembly considered the report of the Ad Hoc Committee, (p. 80) in December 1950. The Third Committee considered various drafts submitted to the General Assembly by ECOSOC, including the report of the Ad Hoc Committee,⁸⁷ and two ECOSOC documents containing a definition of the term 'refugee' for inclusion in the planned Convention and the draft Statute of UNHCR.⁸⁸ The draft Statute contained a provision linking the competence of the High Commissioner to the refugee definition to be adopted in the draft Refugee Convention.⁸⁹ As discussion within the Third Committee turned in favour of a broad refugee definition centred on the concept of 'fear of persecution', the delegates of Egypt, Lebanon, and Saudi Arabia, who were determined to maintain the Palestinian refugee question high on the agenda of the UN,⁹⁰ proposed a joint amendment to the refugee definition in the draft Statute.⁹¹ The amendment read as follows: '[t]he present [Statute] shall not apply to persons who are *at present receiving from other organs or agencies of the United Nations protection or assistance*'.⁹² The 'other organs or agencies' were reportedly UNCCP and UNRWA. The Arab delegates justified the amendment on the basis that Palestinian refugees, unlike other refugees, were not outside their country out of fear of persecution but as a result of the decision of the UN to partition Palestine in 1947, and because they were prevented from returning to their homes by a Member State of the United Nations (namely Israel); as such, Palestinian refugees were the 'direct responsibility of the United Nations' and 'could not be placed in the general category of refugees without betrayal of that responsibility'.⁹³ Hence the Arab delegates demanded that pending a proper settlement of the Arab-Israeli conflict, 'Palestine refugees should continue to be granted a "separate and special status"', namely being served by the aforementioned organizations.⁹⁴ The idea behind it was that by keeping Palestinian refugees out of UNHCR's mandate, and within the scope of work of ad hoc organizations such as UNCCP and UNRWA, the UN would maintain special attention on them and on the need to resolve their situation according to their specific needs (i.e. return versus resettlement). In essence, this would also (p. 81) serve the purpose of maintaining full humanitarian and political responsibility of the UN for these refugees, as Arab states and others expected.

The proposed amendments met general approval from the drafters of the Statute.⁹⁵ Considerations regarding continued funding by Western donors of the massive relief operation on behalf of the Palestinian refugees are also likely to have played a major role. Among the Western representatives, France was the most supportive of a differential treatment of Palestinian refugees.⁹⁶

The UNHCR Statute was finally adopted by the Third Committee of the General Assembly on 14 December 1950 without further amendments.⁹⁷ Accordingly, paragraph 7(c), containing a clause in line with the amendment of the Arab states relevant to Palestinian refugees, stipulates that:

[T]he competence of the High Commissioner as defined in paragraph 6 above shall not extend to a person (...) [w]ho continues to receive from other organs or agencies of the United Nations protection or assistance.

Finally, Palestinian refugees were the subject of further extensive debate in July 1951, during the Conference of Plenipotentiaries which completed the drafting of the Refugee Convention. A clause similar to paragraph 7(c) of the Statute, was included by the Third Committee in the draft convention.⁹⁸ Member States agreed that Palestinian refugees were to have a special status and be *excluded* from the arrangements made by the draft convention and the UNHCR Statute. Nonetheless, at the demand of the representative of Egypt, such exclusion at Article 1C of the draft Convention – corresponding to the first sentence of the present Article 1D of the 1951 Convention – was to be considered temporary, and last as long as the existing (separate) arrangements for Palestinian refugees

continued.⁹⁹ Some delegates, as well as the High Commissioner for Refugees who personally participated in the Conference, expressed an understanding that Article 1C, as then drafted, would make the exclusion of Palestinian refugees permanent.¹⁰⁰ In response, in order 'to avoid any misunderstanding as to the interpretation to be placed on paragraph C', the representative of Egypt introduced a further amendment, the text of which is almost identical to the second sentence of the present Article 1D of the 1951 Convention,¹⁰¹ and reads as follows:

(p. 82)

[w]hen 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 United Nations General Assembly, they shall *ipso facto* be entitled to the benefit of this Convention.¹⁰²

According to the Egyptian representative, the object of this amendment was

to make sure that Arab refugees from Palestine, who were still refugees when the organs or agencies of the United Nations at present providing them with protection or assistance ceased to function, would automatically come within the scope of the Convention.¹⁰³

The proposed amendment was reflective of the time and the intention to ensure meaningful protection of these refugees. It was clear that, had the amendment been rejected, as it was noted during the drafting process, 'the refugees it was designed to protect might eventually find themselves deprived of any status whatsoever'.¹⁰⁴ After two years since the beginning of the drafting process – three years from the events that had made most Palestinians refugees – Arab delegates had come to realize that a solution for the Palestinian refugees in line with General Assembly resolution 194 was neither in reach, nor in prospect.¹⁰⁵ This probably motivated the Egyptian representative, and others with him, to support an amendment that envisaged long-term protection for Palestinian refugees, should the ad hoc arrangements made for them ever come to an end. This amendment placed the refugees to which it applies in a position somewhat similar to the statutory refugees referred to in Article 1A(1) of the 1951 Convention, who had been 'qualified or (...) treated as refugees under earlier treaties and arrangements'.¹⁰⁶

In fact this approach was similar to what was done during the interwar period in assigning responsibilities based on nationality (Russians, Greeks and Turks, Spanish, refugees from Nazi Germany, etc.) and, after the Second World War, with responsibility by national group of refugees initially adopted by the new international refugee regime.¹⁰⁷ Indeed, Palestinian refugees were treated as a categorically different group of refugees than those under Article 1A(2), as the resolution of their refugee status was inextricably linked with the broader issue of the Question of Palestine. As the French representative had put it, in earlier discussions, the proposed text provided for 'deferred inclusion' rather than exclusion of Palestinian refugees from the 1951 Convention.¹⁰⁸ The proposed language, referred to as the 'Egyptian amendment' after its proponent, represented an agreed proposal among all the Arab States,¹⁰⁹ and was later adopted by the Conference of Plenipotentiaries on 19 (p. 83) July 1951.¹¹⁰ Article 1C was renumbered as Article 1D and adopted by the Conference on 25 July 1951.¹¹¹

While the final formulation of Article 1D is not 'free from ambiguity',¹¹² the *travaux préparatoires* leave no doubt that the long-term goal of the provision was to ensure continuity of protection for Palestinian refugees in the event that existing arrangements no longer did so. The convoluted formulation of Article 1D (partially mirrored by paragraph 7 of UNHCR Statute¹¹³) reflects both intense political debate and compromise.¹¹⁴ It recognizes that Palestinian refugees are part of the international refugee regime; provides

for their provisional exclusion from the scope of the 1951 Convention in order to secure continuation of a more targeted and tailored protection for them.¹¹⁵ The drafting history indicates that while the drafters conditionally excluded Palestinian refugees from the scope of the obligations under the 1951 Convention, they did not intend to exclude them from international obligations to assist and protect them as refugees. The exclusion was meant to be temporary, as long as the protection or assistance provided by UN agencies other than UNHCR would last.¹¹⁶ This leaves no doubt that, in the mind of the drafters of the UNHCR Statute and the 1951 Convention, the refugees from Palestine had an established refugee status, and that was to be given adequate international protection.

3.3 The ad hoc regime seven decades later

The regime devised for the Palestinians, consisting of ‘alternative protection arrangements’ intended to ensure continuity of protection over time and space, only partially lived up to its expectations.¹¹⁷ UNCCP intervened to protect these refugees by mediating towards a (p. 84) durable solution during its early years, but in 1952, owing to the difficulty in advancing negotiations among the Israelis and the Arab states, the General Assembly cut down the UNCCP budget, allowing it to operate only from New York.¹¹⁸ UNCCP formally continues to exist; however, after concentrating its work on compensation until the mid-1960s, it has been prevented from implementing its mandate since, including vis-à-vis the refugee question.¹¹⁹ While political impasse and defunding gradually turned UNCCP into a mere symbolic landmark in the Palestinians’ quest for justice,¹²⁰ UNRWA continued as the main UN agency serving Palestinian refugees.¹²¹

The relationship between UNRWA, UNHCR, and UNCCP from an international protection standpoint will be discussed in chapter VII, but some preliminary observations on the distinctiveness of the institutional regime for Palestinian refugees, seventy years on, are relevant here. First, the purpose of the ad hoc regime set up for Palestinian refugees was not to last in perpetuity: when it was conceived no one envisaged that the Palestinian refugee issue would remain unresolved for over seven decades. The political stalemate on the Israeli-Palestinian conflict, its protracted nature and the constellation of political interests around it, are the causes of the limited effectiveness of such distinctive regime, rather than its inner lack of functionality per se. Second, over time, the regime set up for Palestinian refugees has evolved towards a greater and more organic integration within the overall refugee protection framework.¹²² This means that UNRWA, created as a temporary organization and expected to provide relief and works programmes that would not be long-term, in the absence of a resolution of the conflict (and of UNCCP) has gradually evolved into a large agency, engaging in a variety of humanitarian, development, and protection activities.¹²³ The functional expansion of UNRWA has occurred through a combination of requests and endorsements by the General Assembly,¹²⁴ and based on the evolving needs of Palestinian refugees, and changes to the situation on the ground. This is not dissimilar to the evolving functions of UNHCR discussed earlier in the chapter, which also had to adapt to the evolving and changing needs of refugees globally, depending on the particular situation they are facing. Furthermore, since the turn of the century there has been greater clarity on what the complementarity of UNRWA’s and UNHCR’s respective mandates means in practice.¹²⁵ This (p. 85) has led to a number of attempts to better protect Palestinian refugees within the spirit of international refugee law. And this is in essence what constitutes the distinctive regime for Palestinian refugees seventy years on.

4. Defining Palestinian Refugees

The regime set up for Palestinian refugees under the 1951 Convention, with their conditional exclusion, has often been interpreted by states as if these refugees were fully excluded from the substantive *rights* of the 1951 Convention. As a result, Palestinian refugees have frequently been treated as if they lacked ‘legal status’ and protection under

international law.¹²⁶ The distinctiveness of their designation as refugees, compared to the criteria in Article 1(A)2 of the Convention, does not mean a lack of, or inferior legal status.

Akram and Goodwin-Gill rightly argue that Palestinian refugees' status and the extent of the protection they are entitled to are determined 'by the interrelationship of Article 1D of the 1951 Refugee Convention; Paragraph 7 of the [UNHCR Statute]; and the refugee definition [used] by [UNRWA].'¹²⁷ The present study argues that in addition to these provisions, relevant UNGA resolutions, such as resolution 194(III) of 1948, are also key to determining who is a Palestinian refugee deserving international protection, as well as the rights that flow from this status. This section discusses each of these provisions and provides an overview of the various definitions of Palestinian and Palestine refugees in use. This aims to explain the origins of these variations in language and concludes that, notwithstanding the confusion they have caused, for the international community Palestinian refugees are as much refugees as others protected by the global international refugee regime.

4.1 General Resolution 194: Defining Palestinian refugees for the purpose of the (early) search for durable solutions

UN General Assembly resolution 194 of 11 December 1948, plays a foundational role in the question of Palestinian refugees.¹²⁸ It is the first UN resolution that refers to the refugees from Palestine as part of the overall effort to solve the conflict and the displacement it had caused. While the resolution does not define the term 'refugee', UNCCP gave considerable attention to the elaboration of 'firm definitions', including of who was a refugee under the terms of the resolution.¹²⁹ The drafting history of resolution 194 reveals that the issue of who was covered (and not covered) by para. 11 was the subject of intense debate; one of the early concerns was the need for a more specific definition. Interestingly, the terms (p. 86) 'Arab refugee', 'Palestinian refugee', and 'refugee' were all used at some point during the three stages of the drafting process. Insights with respect to the various attempts of determining who these refugees were, and how their question was to be dealt with, can be derived from various working documents of the UNCCP between June 1949 and May 1951.

Initially, discussions aimed to draw a line around those who should be repatriated, and tended to go hand in hand with the definition of family membership (i.e. to determine which family members were eligible for repatriation).¹³⁰ It gradually emerged that in UNCCP's initial interpretation of paragraph 11, the term 'refugee' referred to all displaced, namely: all persons, Arabs, Jews and others, who had been displaced from their homes in British Mandate Palestine, including Arabs in Israel who had been shifted from their normal places of residence, and Jews who had their homes in Arab Palestine, such as the inhabitants of the Jewish quarter of the Old City of Jerusalem.¹³¹ So, initially the term refugee was used irrespective of race or nationality, and irrespective of having crossed the borders of the newly established State of Israel or Mandate Palestine, and applied to anyone who had been displaced from their homes in Palestine.¹³² As we will see in the next subsection, UNRWA's approach to defining 'Palestine refugees' would be very similar.

UNCCP's interpretation gradually evolved, mirroring political developments and the deepening political deadlock around these refugees.¹³³ It soon became clear that among the refugees from Palestine, the Jews would be allowed to return to or enter the new State of Israel, but not 'the Arabs' (hereinafter 'Palestinians'). In a study prepared by UNCCP's Principal Secretary in 1951, after consultation with the protection department of UNHCR (hereinafter 'Note of the Principal Secretary' or 'Note' *tout court*),¹³⁴ the necessity of a definition was spelled out in connection with the need to determine eligibility for repatriation and compensation as per resolution 194.¹³⁵ The drafter was cognizant of the need to differentiate between those entitled to the status of refugees for the search of durable solutions and those only entitled to humanitarian assistance.¹³⁶ The latter in practice was not limited to refugees, as destitute host country nationals were also receiving relief.¹³⁷ According to the Note, resolution 194 refers '*broadly speaking* [...] to persons

who left their homes (p. 87) to take refuge in the neighbouring countries as a result of the events which occurred in Palestine from 1947 onwards.¹³⁸ Such definition, sufficient to determine the beneficiaries of assistance or reintegration, ‘could not serve as a basis for the designation of *those persons in whose favour the General Assembly has laid down certain provisions ... [namely] the rights, property and interests of refugees from Palestine in the literal sense*'.¹³⁹ The Note identified among the ‘constituent factors’ to determine who are the refugees from Palestine in such literal sense concepts such as citizenship, ethnic origin, and ancillary elements such as settlement, residence and domicile, where citizenship is considered a prime factor, as opposed to domicile or residence, relevant in the case of stateless persons.¹⁴⁰ It was clear that physical or moral compulsion must be at the origin of the refugee flight and not mere ‘personal convenience’.¹⁴¹ The Note elaborates on citizenship of Palestine, as governed primarily by the Palestine Citizenship Order of 24 July 1925. The Note indicates that those who were Palestinian citizens ‘by right’, because they had exercised the right of option, or had been naturalized, ‘are refugees under paragraph 11 of the resolution of 11 December 1948, if, after 29 November 1947, they left Palestinian territory at present under the control of the Israel authorities, *on condition that they are of Arab origin*'.¹⁴² According to Article 1 of the refugee definition appended to the Note, the following are to be considered refugees under paragraph 11 of resolution 194:

[P]ersons of Arab origin who, after 29 November 1947, left territory at present under the control of the Israel authorities and who were Palestinian citizens at that date. [S]tateless persons of Arab origin who after 29 November 1947 left the aforementioned territory, where they had been settled up to that date.¹⁴³

The Note distinguishes between ‘Arabs (Moslem and Christians)’, ‘Jews’, and ‘Others’, clarifying that the latter were not necessarily to be considered refugees.¹⁴⁴ Concepts such as ‘nationality’ and ‘Arab origin’ are clarified both in the Note of the Principal Secretary and its Addendum:¹⁴⁵ the former is explained as cultural *trait d’union* and differentiated from the legal concept of nationality in international law; the latter is interpreted as applicable to ‘persons belonging to the Palestine Arab community and to those who are considered or (p. 88) who considered themselves as belonging to that community’.¹⁴⁶ As per the definition, both citizens and previously stateless persons who had left ‘territory [which was] under the control of the Israel authorities’ were eligible for refugee status.¹⁴⁷ Included in the definition of refugees are:

Persons of Arab origin who left the said territory after 6 August 1924 and before 29 November 1947 and who at that later date were Palestinian citizens. Persons of Arab origin who left the territory in question before 6 August 1924 and who, having opted for Palestinian citizenship, retained that citizenship up to 29 November 1947.¹⁴⁸

Excluded from the definition are

persons [of non-Arab origin] who have resumed their original nationality or who have acquired the nationality of a country in which they have racial ties with majority of the population are not covered by the provisions of the above paragraphs of this Article. It is understood that the majority of the said population should not be an Arab majority.¹⁴⁹

These were, the Addendum explains, persons *not of Arab origin* (e.g. Greeks or Turks) who acquired another nationality after 29 November 1947, either by resuming their former

nationality or by becoming citizens of another country ‘in which they have racial ties with the majority of the population’.¹⁵⁰

The Note and the Addendum fail to extend protection to the Ottoman Palestinians who were outside Palestine in 1925 and, even though they were eligible to apply for Palestinian citizenship under the Citizenship Order, had not managed to do so owing to time restrictions. The question of ‘Arab origin’, as dealt with in the UNCCP working documents, deserves consideration. The Note mentions that

[a] (...) factor to be taken into consideration in the definition of a refugee concerns the race, religion or political opinions of a person who is obliged to leave his country of origin. Persons falling into the various categories of refugees who have been placed under the protection of the League of Nations and of the United Nations can all be classified as refugees by reason either of their race or religion or of their political opinions. [...] *As regards refugees from Palestine in particular, they were obliged to leave their homes because they were of Arab origin. This fact is not questioned.*¹⁵¹

(p. 89) The emphasis on the identification of Palestinian refugees on ethnic grounds, and the reference to the reason of their flight ‘because they were of Arab origins’ is of great significance. They attribute causation to the refugee situation. This is conceptually not dissimilar to the 1951 Convention, which specifies that refugees are outside of their home countries *because* of a well-founded fear of persecution on specific grounds and as a result of given events. Here the specific events are the unrest and conflict in Palestine since November 1947 and, instead of fear of persecution, the Note makes reference to the fact that the refugees were coerced, by violence or threat thereof, to abandon their homes. The emphasis on the Arab refugees among the other refugee from Palestine (i.e. minorities in it such as Jews, Greeks, Turks, who had or were to resume another nationality) underscores the relevance of referring to Palestinian refugees as the Arab refugees from the territory of British Mandate Palestine.

The Note did not elaborate on persons who might have voluntarily left Palestine for reasons totally unconnected to the Partition Plan or the war that ensued, yet the impossibility of some or all of them to return (also being discussed by the UNCCP and in other venues at the time), made their situation similar to those who had left under duress and were not able to return.

The refugee definition set out in the Note was never elaborated further nor formally adopted by the General Assembly.¹⁵² One explanation could be timing: UNCCP completed its work on the definition by June 1951, and by the time its report to the General Assembly was due (November 1951), the Paris Conference had just concluded and this – with the renewed intransigence of the parties – may have shifted the UNCCP’s focus away from work on a definition. It is also plausible that the work on the definition for the purpose of return may have appeared politically unwelcome for the UNCCP, and especially its American chair, who was fully aware of the increasing difficulties at securing the return of the refugees. With the gradual demise of the UNCCP, under whose auspices the definition had been developed, and the shift of focus within the UN from defining who was entitled to repatriation and compensation, to defining who was entitled to assistance and relief (Section 4.2.1), defining the refugees under paragraph 11 of resolution 194 was no longer pursued.¹⁵³

Nonetheless the UNCCP interpretation – and the debate surrounding it – contains important elements to further appreciate the intentions of the international community vis-à-vis Palestinian refugees in the early days of the elaboration of the international refugee regime. In addition, it supports the argument made earlier that the drafters of the UNHCR Statute and 1951 Convention considered the refugees from Palestine as part of the global refugee

regime that they were elaborating. All the more, this interpretation offers guidance in determining who the refugees under paragraph 11 of resolution 194 are, which is relevant (p. 90) for the purpose of protection of Palestinian refugees outside UNRWA's area of operations (Section 4.3).

4.2 The UNRWA definition of a 'Palestine refugee': Defining (and registration) for the purpose of delivery of services

The most common definition of Palestinian or rather, 'Palestine' refugees (i.e. refugees from British Mandate Palestine), is the definition used by UNRWA, which in its most recent iteration refers to:

persons whose normal place of residence was Palestine during the period 1 June 1946 to 15 May 1948, and who lost both home and means of livelihood as a result of the 1948 conflict.¹⁵⁴

In essence, UNRWA's definition is contained in the 2009 Consolidated Eligibility and Registration Instructions (CERI), which is part of the Agency's regulatory framework, and has been tacitly endorsed by the General Assembly (Section 4.2.1). The CERI definition encompasses 'descendants of Palestine refugee males, including legally adopted children'.¹⁵⁵ Those who meet this definition have been registered as 'Palestine refugees' with UNRWA and are eligible to receive its services.

UNRWA's definition was first developed in the early 1950s for operational purposes, at the behest of major donors, to serve as a basis for the conduct of censuses aimed at deleting 'ineligibles for relief' from the Agency's ration rolls. It was not created for the purpose of defining entitlements under UNGA resolution 194; as described in the previous section, a definition for that purpose was developed by the UNCCP. Nonetheless, UNRWA's definition has acquired a wider significance, both in some of the host countries,¹⁵⁶ and in countries where UNRWA does not operate.¹⁵⁷ In its interpretation of Article 1D, UNHCR refers to the UNRWA definition.

As Section 4.2.1 discusses in detail, UNRWA was initially mandated to assist all persons displaced from Palestine whatever their nationality. Although the vast majority of refugees that have been assisted by UNRWA are Palestinians of Arab origin,¹⁵⁸ some 1.2 per cent of those currently registered include (long-term) resident in Palestine with a different national background, including over three dozen other nationalities, with a significant number of (p. 91) Lebanese, Syrians, and Jordanians and smaller numbers of North Americans, Europeans, and other nationalities from various parts of the Arab world.¹⁵⁹ The count of non-Arab Palestinians included 17,000 Jewish, soon reduced to 3,000, who were assisted by UNRWA until 1952.¹⁶⁰ This focus on refugees from Palestine irrespective of national background resulted in the term 'Palestine refugees', as also reflected in the Agency's name.

The scope of UNRWA's definition suffers from a number of particularities and does not capture the entire group of Palestinian refugees whose situation remains unresolved; among others, it does not include refugee descendants from the female line and, generally, Palestinian refugees who have not lost both home and means of livelihood, who did not seek initial refuge in UNRWA's area of operations, or who did not register, for various reasons, in the early years of UNRWA's operations, and, last but not least, the 1967 displaced (see below).

In recent years, the Agency's refugee definition and registration practices have come under fierce criticism.¹⁶¹ This section explains the origins and scope of UNRWA's definition and contextualizes related criticism from a semantic, historic, and legal standpoint.¹⁶²

4.2.1 A historical account of the development of the UNRWA definition

At the start of its operations on 1 May 1950, UNRWA inherited the registration records from three non-governmental organizations who had, until then, provided relief to the refugees from Palestine.¹⁶³ These reflected the chaotic emergency conditions in which the relief had to be organized in 1948–1949, leading to inflated registration.¹⁶⁴ UNRWA's predecessors (p. 92) had to address the challenge of delimitating the category of relief beneficiaries for the first time. UNRPR, the UN umbrella organization under which the aforementioned relief organizations operated, had not provided guidance on who was to be considered a Palestine refugee and thus eligible for relief.¹⁶⁵ In the course of their emergency relief operation, these voluntary organizations established some basic criteria and even attempted to carry out a census. One of the early definitions, applied by League of the Red Cross Societies, referred to a Palestine refugee as:

Any person who had *permanent residence and principal occupation* in Palestine from which as a result of the Palestine conflict *he has been deprived* and who is *without sufficient resources for basic maintenance* shall be considered a refugee eligible for UNRPR relief.¹⁶⁶

Emphasis was not on context and circumstances of the displacement but on the need for assistance. When UNRWA took over, it was faced with the challenge of determining who was eligible to continue receiving assistance – primarily food rations, hence frequent reference to the registration records as 'ration rolls' – in the process, deleting so-called 'ineligibles' from the significantly inflated rolls, for which censuses were planned.¹⁶⁷ The first definition UNRWA developed for this purpose, probably adopted in 1950,¹⁶⁸ reworded the one in use by the earlier relief providers, and referred to '*a needy person, who, as a result of the war in Palestine, has lost his home and his means of livelihood*'.¹⁶⁹

In 1950–1, at the outset of its operations, UNRWA made a first attempt to carry out a census of the registered population.¹⁷⁰ It focused on criteria to determine eligibility for registration and receipt of assistance, including 'evidence of former residence in Israel-held territory', family composition, type or degree of need, and loss of livelihood for those who had not lost their home.¹⁷¹ This first census led to a reduction of 82,000 persons from the 946,000 original beneficiaries on the relief rolls handed over to the Agency.¹⁷² Further attempts to verify eligibility for assistance were opposed by refugees and host countries alike.¹⁷³ The adoption in late 1950 of General Assembly resolution 393(V), emphasizing reintegration plans and economic projects for the refugees in the region, had made them concerned that the international community was moving towards local integration and resettlement rather than repatriation.¹⁷⁴

(p. 93) Between 1951 and 1952, UNRWA revised its operational definition a number of times, first to exclude mainly Lebanese seasonal workers who worked in Palestine during the harvest season,¹⁷⁵ then to condition the provision of assistance upon the need for it,¹⁷⁶ and finally to establish temporal and physical causality between the condition of refugee and the events which had determined it: the definition was narrowly drawn and excluded some categories of persons who had been displaced as a result of the 1948 conflict.

Eventually it read:

A Palestine refugee is a person whose normal residence was Palestine *for a minimum period of two years preceding the outbreak of the conflict in 1948* and who, as a result of this conflict, has lost both his home and his means of livelihood.¹⁷⁷

The two-year residency requirement was incorporated in the definition presumably in order to facilitate deregistration of non-Palestinian seasonal workers from the ration rolls; long-term non-Palestinian residents of Palestine remained eligible for registration and, if they were in need, for relief.¹⁷⁸

From 1952 onwards, this became the standard working definition of 'Palestine refugee', one that has basically remained unchanged throughout the years. The only further change was that the reference to the 'two year' period was further refined to include specific dates (the period 1 June 1946 to 15 May 1948).¹⁷⁹ The various iterations of the UNRWA working definition were submitted to the General Assembly and have been tacitly endorsed by it.¹⁸⁰

(p. 94) Reference to the requisite of loss of both home and livelihood in UNRWA's working definition was problematic. It left out a large number of persons who had lost either home or livelihood but not both.¹⁸¹ There were also those who were never registered with UNRWA, because they did not meet the ceilings imposed to keep the aid distribution 'within the bounds of the funds available'. Refugees and Arab host governments raised the problem of the so called 'other claimants' excluded from the definition developed by UNRWA or because of the application of the ration ceiling. Other claimants were not only legitimate refugees who had been excluded from UNRWA registration for not meeting the definition's threshold, but also people who, according to the host governments, were deemed as deserving assistance by the international community as a consequence of the conflict but had not been uprooted from the territory controlled by Israel. This category of other claimants included the frontier villagers in Jordan whose livelihood across the border was affected by the armistice line, a number of Gazans and Jerusalemites impoverished by the cut-off of their traditional market in former British Mandate Palestine, and children (mostly, but not only, in Jordan) who had been covered by medical services but were not in the ration rolls.¹⁸² While Arab states wanted them added to the UNRWA ration rolls, the majority of donors opposed this and insisted that any new definition only include what they termed '*bona fides* refugees', contingent on the establishment of an effective system of control.¹⁸³

Unlike the basic UNRWA refugee definition, the question of the 'other claimants' remained contentious.¹⁸⁴ In 1954, UNRWA's mandate was renewed for five years and the UNRWA Director [Commissioner General as of 1962] was instructed to prepare a special study of the problem of the 'other claimants'.¹⁸⁵ The Ad Hoc Political Committee of the General Assembly also discussed the matter, and in 1955 an agreement was reached so that UNRWA would continue to provide assistance to other claimants who were already registered and 'begin as soon as possible to remove the ineligibles from the relief rolls'.¹⁸⁶ Roll rectification was urged in cooperation with the host governments and in connection with technical criteria developed by UNRWA for the 'need' determination.¹⁸⁷

(p. 95) In 1957, UNRWA issued a revised Operational Instruction concerning eligibility,¹⁸⁸ which referred to the 'in need' criterion as well as physical presence of the refugee in one of UNRWA's 'fields' of operations (Jordan, Lebanon, Syria, West Bank and Gaza), loss of home and livelihood and being 'officially and currently registered with UNRWA' as eligibility criteria.¹⁸⁹ The Instruction also provided for the registration of new-born babies, refugees in Egypt, [and the] reinstatement of women married to non-refugees or unregistered refugees who were divorced or widowed.¹⁹⁰

UNRWA internal discussions had meanwhile progressed on the need to differentiate between 'a 'Palestine refugee' ... as a matter of status, and a 'Palestine refugee' eligible for UNRWA assistance'.¹⁹¹ However, this subject did not receive any substantive discussion within the General Assembly, whose main focus with respect to UNRWA remained the

rectification of the ration rolls.¹⁹² During this period the General Assembly started to have other concerns related to peace and stability in the Middle East at large.¹⁹³

Rectification of the registration records remained a priority for UNRWA and some concrete measures were envisaged.¹⁹⁴ In 1960 the agency initiated a programme aimed at 'the removal of the names of the dead, the fraudulent holders of cards, 'mortgaged' and 'bartered' cards, and, ultimately, the revision and application of an income scale as a basis for removing the names of those who had become self-supporting.'¹⁹⁵ While acknowledging that the extent of error known in the existing registration records was 'substantial', UNRWA found that 'counter-balancing features' – such as the ration ceilings maintained in each field area, the lack of registration of a number of genuine refugees and the fact that UNRWA's working definition was narrowly drawn – resulted in 'the volume of the relief dispensed by the Agency ... not be[ing] excessive'.¹⁹⁶

(p. 96) In 1961, within a changed political environment where, following the effective demise of UNCCP, UNRWA de facto remained the only agency responsible for Palestinian refugees, the agency raised the matter of the limitations of its working definition of a refugee, which being 'narrowly drawn' excluded 'substantial numbers of Palestine Arabs ... on the technical grounds that they did not lose their homes and livelihoods'.¹⁹⁷

Until 1970, the General Assembly repeatedly directed the Commissioner-General of UNRWA 'to take such measures, including rectification of the relief rolls, as to assure, in cooperation with the Governments concerned, the most equitable distribution of relief based on need'.¹⁹⁸ UNRWA continued to rectify the rolls, and to encourage Arab governments – Egypt and Jordan in particular – to take care of those who were ineligible for its assistance.¹⁹⁹

In 1982, the General Assembly requested the UN Secretary-General, in cooperation with the Commissioner-General of UNRWA, to issue identification cards to 'all Palestine refugees and their descendants [...] as well as to all displaced persons and to those who have been prevented from returning to their home as a result of the 1967 hostilities, and their descendants'.²⁰⁰ This responded to concerns for the protection of the refugees and would have provided a more accurate determination of refugee numbers. In 1983, the UN Secretary-General reported on the steps that he had taken to implement this resolution and the obstacles preventing this, notably, including a lack of response from the concerned host government authorities.²⁰¹ Host governments and the PLO alike were wary of any change of UNRWA's registration practices, as well as budgetary implications for UNRWA. Various attempts were made over the years and in 1993, the Secretary-General expressed its regret for the inability to comply with the General Assembly request:²⁰²

[w]hile the need for documentation, such as is required in the resolution, is appreciated, the Commissioner-General does not have the means to issue identity cards as such. He will, however, keep the situation under review to see whether appropriate documentation regarding the registration status of individual members of refugee families could be issued.²⁰³

(p. 97) The General Assembly has continued to reiterate its call for the issuance of identification cards to Palestine refugees and their descendants in the Palestinian territory occupied by Israel since 1967.²⁰⁴

UNRWA has amended the CERI from time to time to incorporate policy adjustments and update related procedures in a way that reflects the changed needs of Palestine refugees, but also programmatic, budgetary, and operational considerations. Nonetheless, while eligibility criteria have shifted, the core definition has largely remained unchanged. For example, the CERI issued in 1993 eliminated the requirements of 'need' and initial flight 'to a country within UNRWA's area of operations' in 1948, from registration requirements.²⁰⁵ This modification required UNRWA to apply the definition of a 'Palestine refugee' to

individual cases; as a result, never-before-registered persons were able to register with UNRWA, subject to proof that they meet the terms of the definition.²⁰⁶ In October 2009, the current version of the CERI was issued.²⁰⁷

4.2.2 General considerations with respect to UNRWA registration system and interpretation of the definition of Palestine refugee

Registration system

Historical records suggest that the UNRWA working definition evolved for practical purposes, to determine eligibility for assistance on the basis of need, rather than to create, or complement, a comprehensive normative system. Throughout the Agency's existence, the primary purpose of the UNRWA definition and registration process has remained to identify 'those who are entitled ... [t]o receive the Agency's services'.²⁰⁸ Before delving into the technical aspects of the UNRWA registration practice, some general remarks on the limitations of UNRWA's registration system are appropriate.

UNRWA's registration system never completely overcame the chaotic conditions at the time the agency commenced operations. In between donor pressure to rectify the relief rolls and host country pressure to prevent this, a considerable number of non-refugees continue to be registered under different categories (i.e. not as Palestine refugees).²⁰⁹ Also, UNRWA's registration system continues to not comprise all those who became refugees in 1948 as covered by General Assembly resolution 194. Part of the 1948 refugee population never registered with the agency, such as those who took up residence outside UNRWA's area of operations (e.g. Iraq, Egypt, or other countries), including those who later returned to the agency's area of operations (until 1993); those who had found employment or were otherwise not needy (before 1993) or who, out of pride, did not want to be seen as 'needy' (p. 98) refugees.²¹⁰ Also, UNRWA does not register all those who became refugees in 1967 ('1967 displaced') and who are covered by subsequent UN resolutions (see The 1967 displaced).

Furthermore, host governments have registered 'Palestine refugees' for their own purposes (to maintain official records of refugees entitled to legal residency), in parallel to UNRWA's registration for humanitarian assistance purposes.²¹¹ Should a Palestine refugee move from one UNRWA 'field' to another, he or she continues to be eligible for UNRWA's assistance, while the transfer of his or her UNRWA registration from one country to another requires the consent of the respective host authorities. Generally, Arab host authorities have been reluctant to accept new Palestinian refugees in addition to those recognized as having legal residence in their territory in connection with their original 1948 displacement.²¹² This complex registration status is indicative of the difficulty Palestinian refugees may be facing in terms of acquiring legal status in the country of second or third asylum; at times of upheaval, giving rise to subsequent displacement this affects both the refugees and UNRWA operations.

Interpretation of the UNRWA working definition

The UNRWA working definition of a Palestine refugee, as articulated in the 2009 CERI (more fully discussed in the next section) reads as follows:

[P]ersons whose normal place of residence was Palestine during the period 1 June 1946 to 15 May 1948, and who lost both home and means of livelihood as a result of the 1948 conflict.²¹³

The term 'Palestine' is to be understood as the whole 'territory formerly designated as British Mandate Palestine'.²¹⁴ While the majority of the refugees from Palestine (about 80

per cent) came from modern-day Israel, others were residents of east Jerusalem and other divided cities and villages, or the current West Bank and Gaza Strip.

Although this is not explained in the CERI, the phrase ‘whose normal place of residence was Palestine during the period 1 June 1946 to 15 May 1948’ refers to the town or village where the refugees were residing (including those not being Palestine Mandate citizens), presumably where they had their home or lodging. This is supported by the records of discussions that the UNCCP was having, almost concurrently with the development of UNRWA’s definition.²¹⁵ The two-year residency requirement was incorporated in the definition in order to provide for the cancellation of the registration of ration (p. 99) recipients of non-Palestinian origin – an issue only of theoretical relevance today. It is clear this requirement was not intended to limit the eligibility for registration of former citizens of the British Mandate. Proof of former Mandate citizenship sufficiently establishes their refugee status.

The language ‘as a result of the 1948 conflict’ is meant to include not only Palestinians who left after 15 May 1948, but also those who had left Palestine before 1948, namely after the adoption of the UN Partition Plan of November 1947, as well as those who were temporarily outside Palestine for reasons not related to the conflict (e.g. for work, trade, study or medical treatment), and were unable to return to Palestine as a result of the 1948 conflict. A related question is how long the departure from Palestine may have been delayed in order to be considered as still resulting from the 1948 conflict. According to earlier instructions, a Palestine refugee was only eligible for registration if he had taken ‘direct refuge elsewhere in Palestine (i.e. West Bank and the Gaza Strip), [Jordan], Syria and Lebanon in 1948’.²¹⁶ The only exception were those Palestine refugees who had been registered with UNRWA in Israel and who ‘took refuge in Lebanon, Syria, Jordan and the Gaza Strip before 1 July 1952 and whose names were removed from the ration rolls in Israel’.²¹⁷ In accordance with this interpretation, the members of a number of nomadic tribes – for example those who left the demilitarized border zone between Israel and Syria²¹⁸ as well as those from the Negev²¹⁹ – were not registered with UNRWA although their flight may be seen as a belated result of the 1948 conflict.

4.2.3 The 2009 Consolidated Eligibility and Registration Instructions

The 2009 CERI lists two categories of persons eligible for UNRWA services: those who are formally *registered* in UNRWA’s registration system and are eligible for services,²²⁰ and those who are *not registered* in UNRWA’s registration system other than recorded ‘for services’.²²¹ The first category (persons eligible to be *registered* with UNRWA) comprise two groups: those who meet UNRWA’s Palestine refugee criteria (i.e. 1948 Palestine refugees)²²² and those who do not meet these criteria (i.e. so-called Jerusalem poor and Gaza poor, frontier villagers, compromise cases, Married to Non-refugees (MNR) family members, non-refugee wives, and Khafalah children).²²³ Both groups receive a registration card as proof of both registration and eligibility for services.²²⁴

The second category (persons registered for UNRWA services only) comprise a variety of ‘non-registered person’ groups, including, first and foremost ‘[n]on-registered persons displaced as a result of the 1967 and subsequent hostilities’, who are discussed in detail below; ‘[n]on-registered persons identified by the Commissioner-General as (p. 100) eligible to receive UNRWA services’; ‘[n]on-registered persons who exceptionally receive UNRWA assistance and services under the Agency’s Emergency Programmes in the oPt’; ‘[n]on-registered persons who avail themselves of services provided under the Agency’s Microfinance and Microenterprise Department (MMD)’; ‘[n]on-registered persons who live in refugee camps and communities’; and ‘UNRWA Staff Members and their Family members [who] may have access to Agency services under certain conditions’.²²⁵ In its quarterly Registration Statistical Bulletin, UNRWA reports the total number of registered persons

distinguishing between ‘Palestine refugees’, ‘Other registered persons’, and ‘MNR family members’, without reporting any statistics on the non-registered ‘services only’ categories.

‘Palestine refugees’ (1948)

With regards to persons who meet UNRWA’s Palestine Refugee criteria, the 2009 CERI refers to:²²⁶

[P]ersons whose normal place of residence was Palestine during the period 1 June 1946 to 15 May 1948, and who lost both home and means of livelihood as a result of the 1948 conflict. Palestine Refugees, and descendants of Palestine refugee males, including legally adopted children, are eligible to register for UNRWA services. The Agency accepts new applications from persons who wish to be registered as Palestine Refugees.

These persons are the ‘official Registered Refugee population of the Agency’.²²⁷ Two aspects of this provision deserve consideration as they are often approached as anomalous: the registration of descendants, and the patrilineal model of UNRWA registration.

Descendants

According to the CERI, children born to Palestine (male) refugees are also entitled to be registered with UNRWA as Palestine refugees.²²⁸ Refugee women who marry non-refugees can receive the Agency’s services for themselves and their children, but they cannot register their children as refugees (Female refugees married to non-refugees (MNR)).²²⁹ Critics decry UNRWA’s registration system as inconsistent with the way in which all other refugees in the world are classified: its registration of descendants, critics argue, perpetuates the Palestinian refugee crisis by extending refugee status from one generation to the other without limitation.²³⁰ Such arguments misconstrue international norms and procedures concerning refugee protection. Besides the anachronistic gender bias of the patrilineal model of UNRWA registration, which discriminates against women, UNRWA registration of descendants is in line with international norms and follows international (p. 101) refugee practice in similar situations. A recent position by the UN Secretariat articulates descendants’ retaining refugee status as follows:

Under international law and the principle of family unity, the children of refugees and their descendants are also considered refugees until a durable solution is found. Both UNRWA and UNHCR recognize descendants as refugees on this basis, a practice that has been widely accepted by the international community, including both donors and refugee hosting countries.

Palestine refugees are not distinct from other protracted refugee situations such as those from Afghanistan or Somalia, where there are multiple generations of refugees, considered by UNHCR as refugees and supported as such. Protracted refugee situations are the result of the failure to find political solutions to their underlying political crises.²³¹

Registering descendants is necessary to protect family unity, which is a general principle of both universal²³² and regional international law.²³³ Accordingly, dependent children, including all unmarried children under eighteen years of age, can be granted derivative status if they cannot be recognized as refugees on their own basis.²³⁴ Under its mandate, UNHCR registers refugee descendants (calling them ‘dependants’) until they gain national protection or some other durable solutions and counts them as part of the world refugee population; UNHCR procedures state that, ‘individuals who obtain derivative refugee status enjoy the same rights and entitlements as other recognised refugees and should retain this status notwithstanding the subsequent dissolution of the family through separation, divorce, death, or the fact that the child reaches the age of majority.’²³⁵ In practice, registration of descendants of the original refugees largely happens in protracted refugee

situations, namely those in which ‘refugees find themselves in a long-lasting and intractable state of limbo. Their lives may not be at risk, but their basic rights and essential economic, social, and psychological needs remain unfulfilled after years in exile.’²³⁶ In 2018, UNHCR estimated that 15.9 million refugees, i.e. two-thirds of the worldwide refugee population, are caught in protracted refugee situations with no solution in sight.²³⁷ The various generations born and raised in exile are registered, counted, and protected as refugees by UNHCR.

(p. 102) UNHCR expressly mentions ‘descendants’ of Palestinian refugees as among those falling within the scope of Article 1D of the 1951 Convention, including ‘descendants who were born outside of and who have never resided in UNRWA’s areas of operation, where the criteria for the application of Article 1D are met.²³⁸

Since 1997, UNHCR has cited Palestine refugee population figures in its reports.²³⁹ The General Assembly has approved the practice of registering new births since the beginning of UNRWA’s operations,²⁴⁰ and refers to Palestine refugees in a way that explicitly includes descendants.²⁴¹ It has continuously and routinely encouraged the agency’s work in addressing the needs of the children²⁴² and, since 1982, as indicated earlier, has recommended the issuance of identity cards to Palestinian refugees (from 1948 and 1967) and their descendants.²⁴³ This support would be void of its meaning if UNRWA deprived refugee children of their entitlement to be registered as refugees. The much-debated case of UNRWA registration of Palestine refugees in Jordan (where the majority of the refugees enjoy citizenship²⁴⁴) is an *apparent* anomaly under the international refugee regime; according to Article 1C of the 1951 Convention, acquisition of a new nationality and associated protection triggers cessation of the 1951 Convention protection.²⁴⁵ UNRWA registration of Palestinian refugees in Jordan not only has historical reasons, but also has its own legal explanation. First of all, during the Cold War, the United States, along with other Western powers, strongly supported that Palestine refugees in Jordan maintain refugee status; they feared that having the Kingdom of Jordan assume full responsibility for the exiled Palestinians altogether might destabilize it and made it fall under the influence of the former USSR.²⁴⁶ Hence, at the request of the General Assembly, UNRWA has continued to provide assistance to Palestine refugees in Jordan. Second, the cessation of refugee status under Article 1C of the 1951 Convention implies ending the need for international protection only. As supported by UNHCR, Palestinian refugees who have acquired citizenship maintain the entitlements connected to their distinctive status to the extent their position and their historical claims are yet to be definitively settled within the meaning of relevant UN resolutions (e.g. UNGA res. 194 of 1948, UNGA res. 302 of 1949, UNGA res. 2252 of 1967, and UNSC res. 237 of 1967).²⁴⁷ Furthermore, UNRWA provision of services is not conditioned upon the acquisition of nationality.

(p. 103) Female refugees married to non-refugees (MNR)

The patrilineal model of status derivation in UNRWA’s registration system reflects a gender-biased paradigm.²⁴⁸ It originates from a combination of cultural, political, and socio-economic factors.²⁴⁹ As a result, refugee women married to non-refugees ('MNR' in UNRWA documentation) and their children have been unable to be registered for UNRWA services since the beginning.²⁵⁰ This gender discrimination in UNRWA’s registration system brought criticism to the agency, which in 2006 sought to correct the anomaly.²⁵¹ The attempt was blocked by the host countries, in particular Jordan, who wished to avoid the inevitable increase in the number of the registered Palestine refugees. A compromise was reached, and in 2006 UNRWA amended its rules regarding eligibility for services and made husbands and descendants of women who are registered refugees, including legally adopted children, eligible to receive UNRWA services'.²⁵² Nevertheless, these family members cannot be formally registered as are Palestine refugee descendant through the male line, a

discrimination that should be addressed as a matter of principle and respect for human rights.²⁵³

'Non-(1948) refugees'

This group includes both persons registered with the Agency for the purposes of receiving its services, without counting as part of the 'official registered Palestine refugee population' (e.g. '1967 displaced persons', and persons who are formally registered in UNRWA's registration system and are eligible for services, without being refugees.

'The 1967 displaced'

Despite the fact that the 'displaced as a result of the 1967 and subsequent hostilities' were uprooted from the remainder of the territory of the former Mandate Palestine, and have been unable to return, in circumstances similar to those of the 1948 refugees, they are not referred to or registered by the Agency as 'refugees'.²⁵⁴ Persons in this group may be eligible to receive UNRWA services only.

(p. 104) These persons, it is worth recalling, came to be classified as '1967 displaced' for a number of reasons. Historically, most of these persons were from the West Bank, and were deemed, primarily by Jordan, to have been internally displaced from the West Bank to the East Bank; until 1988 those originally from the West Bank were de facto treated as internally displaced.²⁵⁵ However, Jordan did not accept responsibility for the 1967 displaced from the Gaza Strip, whom it has treated as 'foreigners' ever since. The distinction between Palestinian 'refugees' and 'displaced persons' is also reflected in relevant UN resolutions, for example, General Assembly resolution 2252 (ES-V) of 4 July 1967, which calls for the return of displaced persons from the oPt. Acknowledging UNRWA's efforts to assist these persons, in an emergency session, the General Assembly authorized the Agency to provide assistance to persons not previously falling within its mandate.²⁵⁶ The CERI refers to them as follows:

UNRWA makes its services available to persons in this category in accordance with established practice and/or host country agreement. In resolution 2252 of 4 July 1967 and in other subsequent resolutions, the UN General Assembly has endorsed UNRWA's efforts "to continue to provide humanitarian assistance, as far as practicable, on an emergency basis, and as a temporary measure, to persons in the area *who are currently displaced and in serious need of continued assistance as a result of the June 1967 and subsequent hostilities*". The terms of resolution 2252 were most recently repeated in GA resolution 59/118 of 10 December 2004.²⁵⁷

Notwithstanding slightly different qualifiers, this definition echoes the definition of Palestine refugee, most notably, persons who are displaced and in need. However, unlike for the 1948 refugees, a number of caveats are placed on the assistance to be extended to them: the assistance was to be provided only 'on an emergency basis', as a 'temporary measure' and 'to persons ... in need'. Subsequently, the mandate conferred by the General Assembly to UNRWA for this particular group is not an automatic extension of the agency's original mandate to all the 1967 displaced *tout court*.

Other claimants

As seen earlier, 'other claimants' were brought under UNRWA's assistance framework because the 1948 conflict had affected their livelihood although they had not been 'uprooted' (i.e. they did not lose their home).²⁵⁸ This includes persons who at the time of the original registration did not satisfy all registration criteria, but were determined to have suffered significant loss and/or hardship for reasons related to the 1948 conflict in Palestine. (p. 105) Among them, there are so called 'Jerusalem poor and Gaza poor'²⁵⁹ and other persons in need such as the 'Frontier Villages'²⁶⁰ and 'Compromise Cases'.²⁶¹ With respect to the first two groups, the CERI establishes that descendants of such persons through the male line are eligible to be both registered and receive UNRWA services.

However, UNRWA does not accept new applications from persons wishing to be registered in this category.²⁶² The persons referred to under ‘Compromise Cases’ are registered for services, but descendants are not entitled to services nor are new applications accepted.²⁶³ Also part of this group are ‘MNR family members’²⁶⁴ discussed previously, ‘non-refugee wives’,²⁶⁵ and ‘Khafalah children’.²⁶⁶

4.3 Article 1D of the 1951 Refugee Convention: Defining Palestinian refugees for protection outside UNRWA’s area of operations

As discussed in Section 3, Article 1D of the 1951 Convention is central to the distinctive regime for Palestinian refugees. Article 1D, consisting of two consecutive sentences, stipulates:

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

Article 1D was drafted for the refugees from Palestine ‘as a group’ whose refugee character had already been established by the UN, similar to the statutory refugees referred to in Article 1A(1).²⁶⁷ While in 1949–1951 they were not the only group of refugees served by separate UN arrangements, at present they are.²⁶⁸ Lack of clarity with respect to the (p. 106) interpretation of Article 1D – in particular with regard to exactly which individuals are falling within its scope – has limited the effectiveness of the protection for Palestinian refugees afforded by this provision. Over time, relevant jurisprudence, doctrinal debate, and progressive UNHCR guidance on the interpretation and applicability of Article 1D have led to greater clarity and to an interpretation in line with the drafters’ objectives. In setting out the present interpretation of Article 1D, most of this section focuses on the latest UNHCR guidance on the subject as well as recent jurisprudence. Reference to prior UNHCR positions or historical jurisprudence, extensively covered in the first edition and other works, is kept to a minimum in order to help the reader navigate an already complex subject.²⁶⁹ However, because of the lingering impact of previous interpretations of Article 1D on the status of Palestinian refugees in many countries outside UNRWA’s areas of operation, a summary discussion of earlier debates and interpretation is provided in Section 4.3.1.²⁷⁰

4.3.1 Earlier debate and interpretations

For over fifteen years after the adoption of the Convention, the conditions triggering the application of Article 1D did not arise. In 1948, the presence of the refugees from Palestine was not challenged by the host authorities and communities.²⁷¹ The traditional host states (i.e. the countries neighbouring Israel who received the largest influx of refugees from Palestine, and where UNRWA operates) were politically stable and the Palestinian refugees who left UNRWA’s area of operations in the years immediately after their exile, largely did so for economic reasons. Such migration was predominantly directed to the Gulf countries and North Africa. However, as of 1967, and in particular during the 1980s and 1990s, conflict and instability in the Middle East, including the oPt, Lebanon, Kuwait, and Libya, prompted hundreds of thousands of Palestinians, to flee, primarily towards Europe, North America, and other countries in the region. In addition, the attitude of a number of Arab states towards Palestinian refugees had changed: these refugees often became unwelcome, either to stay or to return to countries of habitual residence after they had fled or migrated to third countries for other reasons.²⁷² The latter was particularly the case for Palestinians who left Lebanon in the context of the civil war, or Kuwait at the time of the Iraqi invasion;

thousands Palestinians were unable to return to their country of former habitual residence or find another country that could ensure their protection. Such crises showed (p. 107) Palestinians the extent to which *de facto* integration in countries of first asylum is not the same as a durable solution. Many Palestinians (mostly refugees from 1948) were suddenly in need of international protection. Due to the confines of its mandate, UNRWA's assistance to Palestinian refugees has not been available outside its area of operations.²⁷³ Under the circumstances, the need to seek protection under the 1951 Convention came to the fore. Article 1D was finally put to a test.

As the first edition of this book highlighted, earlier state practice, case law and scholarship in different states frequently reflected conflicting or simply erroneous interpretations of Article 1D. Domestic policies and early jurisprudence often interpreted Article 1D solely as an exclusion clause, denying the protection of the 1951 Convention to Palestinians who could, at best, apply for recognition under Article 1A(2). Cessation of protection or assistance was envisaged as possible only in connection with a full termination of UNRWA's mandate; Palestinian refugees were rarely found falling automatically under the 1951 Convention whenever they were outside a UNRWA's area of operations. An approach that became common in Europe, including Germany,²⁷⁴ the Netherlands,²⁷⁵ and subsequently by the Council of Ministers of the European Union,²⁷⁶ was to recognize that UNRWA's activities can cease for reasons beyond an individual's control, but to deny the applicability of Article 1D to refugees who had 'voluntarily removed themselves' from UNRWA's area of operations.²⁷⁷ Already at the time of the first edition, European authorities were wary of an interpretation of Article 1D that could offer Palestinian refugees the choice between UNRWA and an alternative protection arrangement, and suggested an interpretation, beyond the letter of the 1951 Convention, which would discourage what they considered as 'unjustified' access to the benefits of the 1951 Convention.²⁷⁸

Misinterpretation and misapplication of Article 1D may have been unintentionally encouraged by an ambiguous formulation of the guidance offered by UNHCR with respect to Palestinian refugees in its *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* (p. 108) of 1992 (hereafter 'UNHCR Handbook'),²⁷⁹ now complemented (and clarified) by more recent guidance.²⁸⁰ While confirming that refugees from Palestine outside UNRWA's area of operations fall under the scope of the 1951 Convention, the Handbook indicates that they 'may be considered for determination of (...) refugee status under the criteria of the 1951 Convention', which may have been interpreted as if Article 1D was merely an exclusion clause,²⁸¹ and that Palestinian refugee's claims needed to be assessed under Article 1A(2), namely vis-à-vis their places of former habitual residence, rather than Israel.

That Article 1D was not solely an exclusion clause was acknowledged for the first time in 1991, in a landmark decision of the German Federal Administrative Court, which stated that Article 1D contains in the first sentence an exclusion, and in the second sentence an inclusion clause in relation to the 1951 Convention.²⁸² The Court concluded that two provisions ought to be read contextually to determine the meaning of 'the Convention shall not apply'; Article 1D second sentence ['Article 1D(2)'] is inseparably linked to the first sentence ['Article 1D(1)'] in that only when the conditions of both sentences are met will the 1951 Convention apply.²⁸³ While the Article 1D(1) temporarily excludes a certain specific category of refugees from the application of the 1951 Convention, Article 1D(2) deals with the duration of the exclusion and with the legal consequences in case the exclusion ceases to apply.²⁸⁴ Hence, the nature of Article 1D could not be more than a 'temporary' exclusion of Palestinian refugees, who would not enjoy the protection of the Convention and UNHCR only as long as they were otherwise protected or assisted. That Article 1D contains both elements of an exclusion and an inclusion clause is the interpretation that over time has become widely accepted.²⁸⁵ It would have prevented a considerable amount of confusion as

to the exact interpretation and application of Article 1D, if the intentions of the drafters – to introduce a special regime for Palestine refugees in order to ensure continuity of protection – had been more explicitly reflected in the text. It is not logical to *include* conditionally a whole category of refugees, similar to Article 1A(1), by way of an exception to an *exclusion* clause. Yet this is exactly what Article 1D does.

Awareness of the correct meaning of Article 1D has increased since the turn of the century, especially through the jurisprudence by the Court of Justice of the European Union (p. 109) (hereinafter ‘CJEU’), and, ultimately, through the guidance provided by UNHCR, in close consultation with UNRWA.²⁸⁶

4.3.2 Recent debate and present interpretation

Since the early 2000s, building on state practice and case law on Palestinian refugees, primarily in Europe, UNHCR has provided long-needed guidance on the interpretation and application of Article 1D, in the form of a number of interpretative notes (issued in 2002, 2009, 2013, and 2017), interventions before courts,²⁸⁷ and other statements.²⁸⁸ The most recent interpretative note, the ‘Guidelines on International Protection No. 13: Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees’²⁸⁹ (‘UNHCR Guidelines on Article 1D’ or simply ‘UNHCR Guidelines’), complements the UNHCR Handbook and other International Protection guidelines and statements, including before courts, and replaces previous interpretative notes on Article 1D.²⁹⁰ Its authoritativeness stemming from the organization’s statutory functions, the Guidelines constitute the essence of UNHCR’s interpretation of Article 1D.²⁹¹

As such, while providing support to national asylum systems and judicial proceedings, UNHCR has progressively defined (and refined) its interpretation of Article 1D, contributing to a reading of the provision in line with the *travaux préparatoires*, and emphasizing the complementary (and non-overlapping) nature of UN agencies’ mandates for Palestinian refugees that was in the mind of the drafters of the 1951 Convention.²⁹² This has progressively overcome the ambiguity of the UNHCR Handbook and helped harmonize the still uneven state practice regarding Article 1D. As a result, greater understanding of the purpose of Article 1D has been observed in a number of countries.²⁹³ In Europe, interpretation of Article 1D has been advanced following two important judgments of the Court of Justice (p. 110) of the European Union (CJEU), namely *Bolbol*²⁹⁴ and *El Kott*,²⁹⁵ of which details are provided throughout this subsection.²⁹⁶ More problematic appears the recent CJEU decision in *Aletho*.²⁹⁷ Despite some limitations, this jurisprudence has advanced the debate concerning the application of Article 1D, resolving some challenges pertaining to the interpretations offered by national courts over the years.²⁹⁸ Through *Bolbol*, and even more so *El Kott*, the CJEU affirmed important general principles, including: Article 1D’s purpose of enduring continuity of protection of Palestinian refugees; its application to Palestinians who became refugees after 1951 (e.g. in 1967);²⁹⁹ recognition of UNRWA as currently ‘the only United Nations organ or agency other than the [UN]HCR’ to which the first paragraph of Article 1D of the 1951 Convention refers;³⁰⁰ the protracted nature of the Palestinian refugee situation;³⁰¹ that it is not only the cessation of UNRWA ‘as an entity’ that can bring about the (p. 111) cessation of the protection or assistance;³⁰² and that, if the alternative protection or assistance of UNRWA is determined to have ceased under Article 1D(2), the Palestinian refugee is to be recognized as entitled ‘as of right’ (*ipso facto*) to the ‘benefits’ of the 1951 Convention (namely the rights set out in Articles 2 to 34),³⁰³ rather than having to apply for recognition of refugee status under Article 1A,³⁰⁴ which requirement would render the alternative regime ‘superfluous’.³⁰⁵ Ultimately, *Bolbol* clarified the requirement of protection and assistance by UN organizations and *El Kott* clarified the significance of whether the individual can re-avail him/herself of assistance/protection for reasons beyond his/her control, together with the personal safety of the individual as a basis for departure from their country of habitual residence.³⁰⁶ While holding potential for the harmonization of asylum policies for Palestinian refugees, the

CJEU failed to provide guidance on practical aspects (i.e. what constitutes an assessment of safety on the ground), and eventually the jurisprudence maintained the position that the recognition of the prior (UNRWA-recognized) refugee status outside of UNRWA's area of operations is dependent on whether the individual is seeking such for reasons beyond his/her control or otherwise. The UNHCR Guidelines of 2017 are partly informed by, and elaborate on, the aforementioned CJEU jurisprudence.

Based on the UNHCR Guidelines and relevant jurisprudence on Article 1D, the remainder of this section discusses the two conditions that a Palestinian must fulfil to qualify for the alternative assistance and protection scheme provided by the 1951 Convention: first, falling within the personal scope of Article 1D(1) – namely being *excluded* from the benefits of the 1951 Convention – and then falling within the functional scope of Article 1D(2) – namely being *included* among those benefitting from the 1951 Convention.

4.3.3 Personal scope of Article 1D: The subject of the alternative protection regime

The personal scope of Article 1D determines when a Palestinian qualifies as a refugee under the special regime envisaged by this provision. In line with the *travaux préparatoires*, UNHCR approaches Palestinian refugees as a 'special class' of refugees under the 1951 Convention.³⁰⁷ The Guidelines identify the following groups of persons falling within the personal scope of Article 1D:

Palestine refugees: Persons who are 'Palestine refugees' within the sense of UN General Assembly Resolution 194 (III) of 11 December 1948 and subsequent UN General Assembly Resolutions and who, as a result of the 1948 Arab-Israeli conflict, were displaced from that part of Mandate Palestine which became Israel, and who have been unable to return there.

Displaced persons: Persons who are 'displaced persons' within the sense of UN General Assembly Resolution 2252 (ES-V) of 4 July 1967 and subsequent UN General Assembly resolutions, and who, as a result of the 1967 conflict, have been displaced from the (p. 112) Palestinian territory occupied by Israel since 1967 and have been unable to return there. It also includes those persons displaced by 'subsequent hostilities'.

Descendants: 'Descendants' refers to all persons born to Palestine refugees or displaced persons, as defined above. Based on principles of gender equality and non-discrimination on the basis of sex, as well as the principle of family unity, these descendants, whether they are descended through the male or female line, would be considered to fall within the purview of Article 1D. This includes descendants who were born outside of and who have never resided in UNRWA's areas of operation, where the criteria for the application of Article 1D are met.³⁰⁸

Only the first group and the second group are discussed in this section, as the situation of their male and female descendants (the third group) was discussed earlier.³⁰⁹

The first group refers to the Palestinians who became refugees in the context of the events that occurred in Palestine in connection with the creation of the State of Israel (1947–1949). Various court judgments have pointed to the existence of UNRWA (since the demise of UNCCP) to define the personal scope of the refugees referred to in Article 1D(1) and concluded that UNRWA is the agency other than UNHCR referred to in the provision.³¹⁰ The UNHCR Guidelines follow this approach and refer to 'Palestinian refugees for whom [UNRWA] was established in order to respond to their situation',³¹¹ setting the ground for a broad interpretation compatible with 'the object and the purpose of Article 1D' and

acknowledging ‘the continuing refugee character of Palestinian refugees ... [and] their entitlement to protection’.³¹² The broader interpretation is articulated as follows:

[a]rticle 1D is clearly intended to cover all Palestinian refugees falling under the mandate of UNRWA, regardless of when, or whether, they are actually registered with that agency, or actually receiving assistance.³¹³

By doing so, UNHCR overcomes the distinction between Palestinian refugees actually registered or eligible to be registered with UNRWA, and between refugees who have availed themselves of UNRWA’s services and those who have not, including refugees who have never set foot in any of UNRWA’s areas of operation.³¹⁴ Even before issuing the 2017 Guidelines, (p. 113) UNHCR had distanced itself from CJEU’s interpretation, in *Bolbol*, that only Palestinians who have ‘actually availed’ themselves of the protection or assistance of UNRWA fall within the scope of Article 1D.³¹⁵ UNHCR convincingly addresses *Bolbol*’s problematic aspect of the ‘being-in-actual-receipt’ approach,³¹⁶ by indicating that removing the possibility to enjoy the benefits of the 1951 Convention to those who are eligible without having used UNRWA services, defies the object and purpose of Article 1D and creates a protection gap for Palestinian refugees ‘whose refugee character is already established’.³¹⁷ Consequently, registration with UNRWA, or possessing UNRWA documentation, is a ‘conclusive, albeit not necessary, proof of falling within the scope of Article 1D first sentence and not a ‘necessary precondition to recognition’.³¹⁸ This argument is all the more valid for the second group falling within the personal scope of Article 1D, discussed further on.

The second group of persons identified by the UNHCR Guidelines are those who were displaced from the West Bank, including East Jerusalem, and the Gaza Strip in 1967, and by subsequent hostilities. As discussed earlier, these persons are not explicitly envisaged as falling under UNRWA (and UNCCP)’s mandate in 1951, and did not become part of the UNRWA-registered refugee population either. However, both context and characteristics of their displacement (being forced to flee their homes and not being allowed to return as a result of the conflict over Palestine, which is still to be settled) make it logical for them to fall under the regime of the 1951 Convention in the same way as those who became refugees in 1948.³¹⁹ This is recognized by *Bolbol*, which – contrary to the line of argument developed by the United Kingdom – reaffirmed the applicability of the 1951 Convention to the 1967 displaced among others by virtue of (1) the 1967 Protocol, which had removed the temporary limitations of the Convention,³²⁰ and (2) relevant General Assembly resolutions, which extended UNRWA’s assistance and protection to them.³²¹ Hence, these persons fall organically within the scope of Article 1D first sentence until, like for the 1948 refugees, their situation is definitely resolved.³²² Through this approach, the Guidelines harmonize the rationale of protecting the entire refugee population generated by the conflict over Palestine over seventy years, pending a settlement in line with UN resolutions.³²³

Bringing clarity in an area that is complex and often misunderstood, the UNHCR Guidelines leave no doubt that the three groups of persons identified in paragraph 8 fall within the scope of Article 1D, regardless of whether they are receiving, or are eligible to receive, or have ever availed themselves of, UNRWA’s assistance or protection.³²⁴ A first observation is that the Guidelines implicitly acknowledge the limitations of the UNRWA (p. 114) registration system – which is *indicative* rather than fully representative of the refugees referred to in General Assembly Resolution 194 – and includes the ‘1967 displaced’ of whom UNRWA keeps ‘due records’ without registration.³²⁵ Along these lines, one important aspect that is not fully explained in the Guidelines (and not obvious to anyone not fully familiar with the genesis of the Palestinian refugee question) is that while UNRWA has insofar been left as the only UN agency dealing with Palestinian refugees, UNCCP (and hence its mandate and the population it was meant to serve) was also in the mind of the drafters of Article 1D. So, the ‘refugees for whom [UNRWA] was established in order to

respond to their situation' [emphasis added] at paragraph 1 of the Guidelines are those falling under the mandate of *both* UNCCP and UNRWA, as both agencies in fact were to respond to the 'same situation'.³²⁶ With reference to the 1948 refugee population, this includes persons who may be excluded from UNRWA's registered Palestine refugee population but who are covered by the definition of Palestine refugees employed by the UNCCP. While it is unclear how many cases can follow in this group, it is important to clarify for any asylum authorities who may not be fully abreast with the genesis and rationale of the regime for Palestinian refugees.

A second observation concerns the UNHCR Guidelines' reference to UN General Assembly resolution 37/120 of 16 December 1982, which extended, even if with a number of caveats, UNRWA's mandate to displaced persons from 'subsequent hostilities'.³²⁷ This provision, which – like General Assembly resolution 2252 (ES'V) of 1967 – is not confined to persons of a specific national background (Palestinians), has led UNRWA to provide assistance, while respecting the caveats, to non-registered persons affected by conflict in the region (e.g. in the oPt on the occasion of the first *intifada* and various wars launched by Israel, and in Lebanon in the aftermath of the Israeli invasion of 1982). The UNHCR Guidelines seem to be premised on the assumption that UNRWA's mandate towards persons affected 'in subsequent hostilities' pertains to Palestinians only, which in practice has not been always the case. In the authors' view, this may require clarification and, should a non-Palestinian affected by hostilities who received UNRWA services claim protection under Article 1D, all the above referred caveats should become part of the assessment, and determine to what extent the assistance and protection provided by UNRWA to non-Palestinians is relevant to the scope of Article 1D.

In addition to the aforementioned groups, the Guidelines also refer to Palestinians originally from the West Bank and Gaza Strip who were never displaced previously; they do not fall within the scope of Article 1D, and their cases can be assessed as other asylum claims based on well-founded fear of persecution under Article 1A(2).³²⁸

4.3.4 Functional scope of Article 1D: The triggers of the alternative protection regime

The functional scope of Article 1D calls for the determination as to *when* a Palestinian refugee falling within the scope of Article 1D(1) deserves the protection of the 1951 (p. 115) Convention, namely when Article 1D(2) is triggered, provided that other exclusion clauses do not apply.³²⁹ This depends on a set of factors and circumstances, namely, the geographic scope of the two agencies and objective reasons justifying a Palestinian refugee being under the mandate of one or another.

Operationally, UNHCR and UNRWA agree that determination of their competence over Palestinian refugees under Article 1D is geographically defined and:

[w]hile UNHCR's mandate is global ... UNRWA has competence in five geographical areas or 'fields' of operation: Jordan, Lebanon, the Syrian Arab Republic, the West Bank (including East Jerusalem) and Gaza. Taken together, these territories constitute UNRWA's areas of operation, in which it provides protection or assistance to a population of over five million Palestinian refugees.³³⁰

Accordingly, Article 1D(2) can only be triggered when Palestinian refugees are outside UNRWA's areas of operations. However, this does not mean that application of Article 1D is *exclusively* dependent on whether the refugee is outside the agency's area of operations.³³¹ For Palestinian refugees to fall within the scope of Article 1D(2), the function of the special arrangements set up under Article 1D for Palestinian refugees needs to be considered. Such arrangements revolve around two words: protection and assistance. Both terms appear twice in the provision and should be read disjunctively.³³² Crucially, these terms are the trigger to the exclusion or inclusion under Article 1D(1) and (2) respectively. In Article

1D(1) the term protection or assistance qualifies the organs originally responsible for Palestinian refugees, whose mission triggers the exclusion from the benefits of the 1951 Convention. In turn, cessation of protection or assistance under Article 1D(2) triggers the inclusion under the 1951 Convention and UNHCR's competence. The UNHCR Guidelines take the position that the two parts of Article 1D 'are to be read jointly and operate sequentially,'³³³ which means that if someone falls within the personal scope of Article 1D(1) discussed previously, he or she will benefit from the protection of the 1951 Convention in case the protection or assistance envisaged at Article 1D – nowadays UNRWA's only – has ceased for any reason.³³⁴ Hence, there is a general presumption that Palestinian refugees under (p. 116) Article 1D(1) receive protection or assistance – as they are eligible for it – whenever they find themselves in one of UNRWA's areas of operation.³³⁵ When outside UNRWA's areas of operation, 'objective reasons' for the Palestinian refugee seeking the protection of the 1951 Convention need to be ascertained. While the reasons for this distribution of competence are clear, it is important that all Palestinian refugees falling under the scope of relevant UN resolutions (and therefore relevant for the scope of Article 1D) are effectively covered by UNRWA's assistance and protection, for a protection gap not to manifest in its area of operations (Chapter VII, Section 4.1).

'Objective reasons' as trigger in theory

In *El Kott* the CJEU elaborates the concept of 'objective reasons' that may force a Palestinian refugee to leave, or prevent him or her from returning and re-availing him/herself of UNRWA's assistance or protection, as 'reasons beyond his control' and 'independent of his volition'.³³⁶ CJEU concluded that mere absence or voluntary departure from UNRWA's area of operations – i.e. to study, to work – cannot be sufficient to ensure the benefits of the 1951 Convention.³³⁷ A refugee cannot refuse to (re-)avail him/herself of the protection or assistance of UNRWA in order to claim the benefits of the 1951 Convention, if no objective reasons subsist.³³⁸ For this, it is necessary to identify the conditions under which UNRWA's assistance may have ceased. *El Kott* indicates that this would occur not only in case of termination of UNRWA's mandate as a whole (the end of its existence), but also by the agency's inability to carry out its mission (the end of assistance/protection).³³⁹ The court concludes that a Palestinian refugee may be forced to leave UNRWA's area of operations if 'his personal safety is at serious risk and if it is impossible for that agency to guarantee that his living conditions in that area will be *commensurate* with the mission entrusted to that agency'.³⁴⁰ In essence, *El Kott* stipulates that under Article 1D, Palestinian refugee's entitlements are neither full nor unconditional: what counts is whether the individual in question, falling under UNRWA's mandate, is no longer under UNRWA's protection or assistance because it has become impossible owing to objective circumstances.³⁴¹ In this judgment, the onus to carry out 'an assessment, on an individual basis' of the objective impossibility of the agency to carry out its mission, is on the 'competent authorities of the [concerned] Member State', presumably those responsible for determining refugee status.³⁴²

While raising an important issue, that of the level of protection enjoyed by the refugees in UNRWA's areas of operations as possible trigger to their flight, the Court fails to elaborate on the meaning of complex matters it raised such as 'living conditions' in UNRWA's (p. 117) areas of operations which have to be 'commensurate' with the 'mission' entrusted to that agency. The first problem is how to identify the mission of the agency. In general, this can be identified with reference to the agency's mandate as subsequently renewed by the General Assembly.³⁴³ A narrow, literal reading would limit it to providing basic education, health services, relief and social services, and emergency assistance and microfinance, where applicable and subject to the availability of funds. Even in the context of a narrow interpretation of UNRWA's mandate, it is not easy to determine what is commensurate with it, especially considering the impact of poverty, marginalization, discrimination, and conflict that often affect Palestinian refugees in UNRWA's area of operations. In addition,

considering how the Agency's mission is adversely affected by, among others, a growing refugee population and shrinking financial resources, it is difficult to imagine how UNRWA can guarantee living conditions commensurate to its mandate, which only makes provision for specific services in a limited number of domains and does not impact all aspects of Palestinian refugees' living conditions.³⁴⁴ The narrower a reading of the mission of the agency, the less likely it is that living conditions could meet this test.³⁴⁵ Meeting this test may be straightforward for a Palestinian refugee who has fled a conflict area where UNRWA has suspended its core services (education, health, relief), but not for others.³⁴⁶ However, a broader interpretation is warranted as to embrace situations where objective reasons exist. In this respect, UNHCR guidance is of great significance.

'Objective reasons' as trigger in practice

The 2017 UNHCR Guidelines clarify when someone who has left UNRWA's area of operations has objective reasons for not re-availing him/herself of UNRWA's protection or assistance. Overcoming a variety of interpretations,³⁴⁷ the Guidelines refer to four possible scenarios that, independent of the refugee's volition,³⁴⁸ can make return or re-availing oneself of UNRWA's protection or assistance impossible, including: (1) termination of the (p. 118) mandate of UNRWA;³⁴⁹ (2) UNRWA's inability to fulfil its protection or assistance mandate; (3) threat to the applicant's life, physical integrity, security or liberty or other serious protection-related reasons; and (4) practical, legal and/or safety barriers preventing an applicant from (re)availing him/herself of the protection or assistance of UNRWA.³⁵⁰

The first scenario would necessitate a resolution of the General Assembly.³⁵¹ The duration of UNRWA's mandate is contingent upon the achievement of a 'just resolution' of the refugee question in line with relevant UN resolutions. As a subsidiary organ of the General Assembly, only the latter may extend, terminate, or alter the Agency's mandate. In the event that the General Assembly would terminate UNRWA's mandate, Palestinian refugees in its area of operations would be automatically entitled to the benefits of the 1951 Convention and fall under UNHCR's mandate (provided none of the other exclusionary or cessation grounds apply). Should Palestinian refugees in UNRWA's area of operations fall under UNHCR's purview, the relevance of international norms and UN resolutions, such as UNGA resolution 194, for these refugees, would remain unchanged.³⁵²

The second scenario, seemingly intended to complement the *El Kott* 'living conditions commensurate with UNRWA mission' test, refers to UNRWA's inability to fulfil its protection or assistance mandate in a certain area or on a field/country-wide basis,³⁵³ to be determined 'for example, by a resolution of the General Assembly, annual reports of UNRWA, statements by UNRWA that it has discontinued its activities, or other evidence brought forward by the applicant'.³⁵⁴ The de facto demise of UNCCP, which continues to exist without being able to advance its mandate, is an example of such a situation.³⁵⁵ While the cessation of UNRWA's activities could be provoked by the 'long-standing and continuing reality of funding deficits', resulting in the 'absence of effective protection and assistance',³⁵⁶ this should result in a continuing inability of the Agency's ability to carry out its functions: the suspension of core or non-core services for a short period of time would not suffice to trigger the inclusionary aspect of Article 1D(2).³⁵⁷

The third scenario refers to threats to the applicant's life, physical integrity, security, or liberty, or other serious protection-related reasons, which may 'compel a Palestinian refugee to leave UNRWA's areas of operation'.³⁵⁸ It refers to situations beyond the refugee's control, such as both group-based threats (e.g. 'armed conflict or other situations of violence, such as civil unrest, widespread insecurity or events seriously disturbing public order') and individualized threats.³⁵⁹ This scenario captures a realistic range of circumstances (p. 119) that Palestinian refugees may face in UNRWA's areas of operations. More importantly, the Guidelines indicate that, while some of these threats may amount to risk of persecution in the sense of Article 1A(2), because Palestinian refugees are 'already recognized by the international community via various UN General Assembly resolutions ...

they are not required to establish individually that their treatment constitutes persecution within the meaning of Article 1A(2) of the 1951 Convention'.³⁶⁰ Rather, they 'clearly' fall within the scope of Article 1D(2).

The fourth scenario refers to barriers of various nature preventing a Palestinian refugee from (re-)availing him/herself of the protection or assistance of UNRWA.³⁶¹ The language in the Guidelines (i.e. the use of suffix *re-*) suggests that this scenario encompasses both cases of a person who *was* in UNRWA's areas of operations (eligible or receiving UNRWA's protection or assistance), as well as someone who has *never* established any connection with any of UNRWA's areas of operation, other than being registered (or eligible to register) through his/her immediate ancestors. Such formulation denotes the intention not to discriminate against, i.e. treat unfavourably, the latter because of their protracted absence from UNRWA's areas of operation.³⁶² As per the UNHCR Guidelines, practical barriers include 'obstacles which prevent access [to] the UNRWA area of operation' (e.g. border closures).³⁶³ Legal barriers may include absence of documentation allowing the refugee to 'travel to, or transit through, or (re) enter and reside in the relevant UNRWA area of operation'.³⁶⁴ Safety or personal security related barriers could include 'dangers *en route*' preventing the applicant from being able to return safely (e.g. 'minefields, factional fighting, shifting battle fronts or the threat of other forms of harassment, violence, or exploitation').³⁶⁵ With respect to the latter set of barriers, UNHCR recommends an assessment of the circumstances on the ground, since the 'feasibility of (re-)avainment cannot be assessed in the abstract'.³⁶⁶ A context-specific assessment based on reliable and updated information is needed, since the situation in the country where UNRWA operates may be 'determinative of the need for 1951 Convention protection'.³⁶⁷

Far from being of hypothetical, the scenarios proposed in the Guidelines reflect the situation of vulnerability and insecurity experienced by many Palestinian refugees in UNRWA's area of operations (e.g. marginalization/discrimination in Lebanon, occupation and settler-related violence in the West Bank, and severe restrictions of basic human rights in blockaded war-torn Gaza and war-torn Syria).³⁶⁸ Although Article 1D focuses on UNRWA functions (whose termination or cessation will trigger application of Article 1D(2)), UNHCR underscores the relevance of the situation in the country where UNRWA operates, as determinant of the need for the 1951 Convention's protection, and therefore the state's responsibilities.³⁶⁹ It is state authorities (or occupying powers), not UNRWA, who ultimately determine the (p. 120) conditions of Palestinian refugees' admittance, stay, residency (and overall protection) in their respective territories.³⁷⁰ These factors have to be considered in assessing whether Palestinian refugees can return, particularly to the occupied Palestinian territory, where Israel determines the entry and movement of the Palestinians, as well as to Lebanon and Syria, where Palestinian refugees face considerable barriers of various nature.³⁷¹

There are many obstacles to the provision of protection and assistance in UNRWA's areas of operation. It is therefore important that the contextual assessment carried out by national asylum authorities includes: (a) an IHL and human-rights-based assessment of the general situation and the threat from violations of fundamental rights against which the Agency cannot provide protection;³⁷² (b) a test to ascertain the likelihood that the host authorities in UNRWA's areas of operation will be able to address the threat and secure safety of the refugee; and (c) an assessment of UNRWA's actual ability to ensure protection and/or assistance in the specific case.³⁷³ In this respect, the country of origin information that UNHCR publishes helps to determine when return may raise protection concerns.³⁷⁴ Countries of asylum also produce similar notes.

The UNHCR Guidelines provide that a Palestinian refugee cannot be returned or relocated to a country or territory where he or she has no previous connection.³⁷⁵ This allows the practical circumstances of Palestinian displacement to be taken into account, such as when the refugee may have been forced to move across UNRWA's areas of operations (e.g. Palestinian refugees from Syria who were present in Lebanon before seeking protection in Europe) or may have moved away from the original host country and established residence and family elsewhere. For example, the latter is the situation of Palestinian refugees who moved to Iraq, Kuwait, and Libya starting in the 1950s and 1960s, and whose children and grandchildren (who often had no connection with the original host country) may then have been forced to leave their country of habitual residence owing to strife and conflict therein. Further, for Article 1D(2) to apply when the refugee can receive protection or assistance from UNRWA 'elsewhere in the same UNRWA area of operation' (e.g. another camp in the same country or territory), other factors must be considered, and an assessment of the barriers to protection and assistance discussed above is necessary.³⁷⁶ Compared to this important advancement, *Aletho* jurisprudence raises some concerns. In considering the admissibility of the asylum request, the Court considers whether a Palestinian refugee who has left UNRWA's area of operations can be returned to either of the 'fields' where the individual had been and receive UNRWA protection and assistance there (i.e. in a 'field' other than that of habitual residence).³⁷⁷ (p. 121) For it, the Court sets three specific criteria: the third country (i.e. country within the agency's area of operation) must (1) agree to readmit the person; (2) recognize the protection and assistance from UNRWA; and (3) support the principle of non-refoulement (para. 143). First, in the specific case considered by the Court, the Palestine refugee from Gaza had only briefly (several weeks) stayed in Jordan pending the obtaining of a tourist visa for Bulgaria, most probably through a transit visa. As Jordan was not the country of habitual residence, the willingness of the refugee to be returned to that country should be assessed and not be simply presumed. Second, although UNRWA operates in Jordan at the request of and with the support of the Jordanian Government, and UNRWA eligibility and registration rules envisage the movement of registered Palestine refugees from one 'field' to another 'field', this requires consent of the government in question and UNRWA cannot transfer the registration from one 'field' to another without explicit approval of the government of the incoming 'field' (i.e. third country) and hence not extend full assistance and protection to that refugee in its absence. Accordingly, inadmissibility due to the existence of a third country where the Palestine refugee could in principle return and receive UNRWA assistance and protection should not be assumed regardless of the specific situation of the refugee and in situations where the new 'field' has not expressly accepted to *take over responsibility* for the refugee, which normally only happens in cases of family reunification. Third, and beyond the specific case *de quo*, *Aletho* leads to assessing the refugee's returnability against any other country where the person may have passed through, and not against the country of habitual residence, as UNHCR's Note on Article 1D recommends. This opens up the possibility of assessing Palestinian refugees against countries/'fields' to which they are not (or no longer) connected. According to this reasoning, a Palestinian refugee from Syria who has passed through Lebanon when they were fleeing the conflict should be excluded from the benefits of the 1951 Convention. While this seems to be reflective of Dublin III rationale, it does not fit the situation of Palestinian refugees under Article 1D.

Another important issue – one not dealt with by CJEU jurisprudence – is the case of Palestinian refugees who left voluntarily – e.g. to study, or to seek employment – and who are unable to return and or (re-)avail themselves of UNRWA's assistance or protection, based on events since they departed (e.g. a conflict or political developments). UNHCR Guidelines fill this gap opening the opportunity for '*sur place* claims'.³⁷⁸ UNHCR advises that should UNRWA's mandate or activities cease while the refugee is outside UNRWA's area of operation, s/he would qualify for 1951 Convention protection under Article 1D.³⁷⁹ Importantly, the Guidelines acknowledge that when a Palestinian has become a refugee *sur*

place as a result of political activities, which may have been undertaken ‘at great personal risk to themselves or their families’, the protection under Article 1D remains valid.³⁸⁰ This has particular relevance as the exercise of the right to political participation faces many barriers in host countries.

(p. 122) That UNHCR does not require Palestinian refugees who meet the requirements of Article 1D to undergo a separate determination under Article 1A(2) is of great importance. This gives meaning to the ‘*ipso facto*’ stipulation in the provision, affording protection to refugees who would otherwise be confronted with a protection gap. So interpreted, Article 1D provides a safety net to Palestinian refugees outside of UNRWA’s area of operations, who are hence deprived of UNRWA assistance or protection.³⁸¹ It is important to underscore that even if the inclusionary aspect of Article 1D applies – and Palestinian refugees enjoy the benefits of the 1951 Convention – other rights they are entitled to, such as those under resolution 194, and related historic claims, remain intact.³⁸²

4.3.5 Applicability of Articles 1C, 1E, or 1F of the 1951 Convention to Palestinian refugees

UNHCR’s interpretation makes clear that Articles 1C, 1E, and 1F of the 1951 Convention apply to Palestinians who qualify as refugees under Article 1D. This set of provisions refer to the circumstances under which Palestinian refugees, and other refugees for that matter, can be deemed to: have ceased being a refugee in the meaning of the 1951 Convention (Article 1C), be no longer in need for international protection (Article 1E), or not deserving international protection (Article 1F).³⁸³

Article 1C

The so-called ‘cessation clauses’ under which a person ceases to be a refugee – embodied in Article 1C(1) to (6) of the 1951 Convention³⁸⁴ – are based on the consideration that international protection should only be granted as long as it is necessary or justified. These clauses may apply in connection with a change in the personal status of the refugee (including voluntary re-availment of national protection, voluntary re-acquisition of the original nationality, acquisition of a new nationality (subject to conditions),³⁸⁵ and voluntary re-establishment in the country where persecution was feared),³⁸⁶ or when the circumstances which justified the need for international protection have ceased to exist’.³⁸⁷ While Article 1C refers to persons falling in the category of Article 1A, in conformity with its object and purpose, this should also be applied to refugees under Article 1D of the 1951 Convention.³⁸⁸ The cessation clause in Article 1C (3), concerning the loss of refugee status following acquisition of a new nationality and the enjoyment of ‘the protection of the (p. 123) country of (...) new nationality’, is of relevance to those UNRWA-registered Palestine refugees who have acquired citizenship; the largest number (over two million) of which are in Jordan,³⁸⁹ while smaller numbers can also be found in Iraq, Kuwait, Lebanon, Saudi Arabia, as well as in other parts of the world. As a result of the acquisition of a new nationality, such persons, while falling under Article 1D, are no longer to be considered entitled to the protection of the 1951 Convention. However, UNHCR clarifies that such interpretation is ‘without prejudice to the meaning of “the Palestinian people”’, as well as to the meaning of the terms ‘refugees’ and ‘displaced persons’ as used in various UN General Assembly and UN Security Council Resolutions’.³⁹⁰ Nominal nationality without protection is not sufficient to trigger cessation under Article 1C.³⁹¹ Also, a Palestinian refugee who has acquired a new nationality may invoke the protection of the 1951 Convention in case of well-founded fear of persecution in his/her country of new nationality; in this case his/her status must be determined in relation to the country of his new nationality under Article 1A(2).³⁹²

Article 1E

Under Article 1E of the 1951 Convention, any refugee who is granted the rights and obligations normally enjoyed by nationals (except nationality) is considered assimilated to that country and, in particular, cannot be expelled or deported.³⁹³ Article 1E was specifically incorporated in the Convention in view of twelve million refugees of German background having arrived in the Federal Republic of Germany in the aftermath of the Second World War, who were recognized as possessing the rights and obligations attaching to German nationality; like Article 1D, Article 1E was drafted in general terms, not excluding application in respect of other categories of refugees.³⁹⁴

UNHCR acknowledges that some Palestinian refugees have been living in countries where they, including their descendants, may 'exercise rights and obligations ordinarily attached to the possession of nationality', which may trigger the application of Article 1E.³⁹⁵ This would have been the case, for instance in pre-2011 war Syria where, since 1949, the Syrian government issued a series of laws placing Palestinian refugees on virtually equal footing with Syrian nationals, with some exceptions on the right to vote, to buy (arable) land, and to own more than one house.³⁹⁶ Article 1E, in principle, could also be relevant for states party to the League of Arab States *Protocol for the Treatment of Palestinians in Arab States ('Casablanca Protocol')*, who have pledged to provide a range of rights on par with (p. 124) their own citizens to Palestinian refugees.³⁹⁷ However, both cases have little if any practical relevance at the moment, given the deterioration of the Palestinian situation in Syria since 2011, and the lack of implementation of the Casablanca Protocol in practice. UNHCR also recommends 'close scrutiny of the situation on the ground prior to applying Article 1E'.³⁹⁸

Article 1F

Persons under Article 1D can be deemed undeserving of the international protection of the 1951 Convention whenever there are 'serious reasons for considering that they have committed acts within the scope of Article 1F of the 1951 Convention',³⁹⁹ namely crimes against peace, a war crime, or a crime against humanity, as defined by international law; a serious non-political crime outside the country of refuge prior to his admission as a refugee, or where an individual has been guilty of acts contrary to the purposes and principles of the UN.⁴⁰⁰ This requires a case-by-case determination.

In conclusion, the cessation and exclusion clauses must be read in conjunction with Article 1D and be restrictively interpreted given the consequences that ensue from cessation or exclusion.

4.4 Paragraph 7(c) of the UNHCR Statute

The competence of the UNHCR is defined at paragraph 6 of its Statute.⁴⁰¹ Paragraph 7(c) of the Statute, which reads similar to Article 1D(1) of the 1951 Convention, limits this competence, in the sense that it shall not extend to a person '[w]ho continues to receive from other organs or agencies of the United Nations protection or assistance'.⁴⁰² As discussed earlier, the provision was drafted largely with Palestinian refugees in mind. It reflects an inter-agency arrangement intended to avoid duplicating and overlapping competencies between different UN bodies over the same group of refugees.⁴⁰³ Unlike Article 1D of the 1951 Convention, the Statute only contains language similar to the exclusion clause; a provision similar to Article 1D(2), which made the exclusion only temporary or simply contingent is missing. This can be explained by the fact that the 'Egyptian amendment' that resulted in Article 1D(2) was only added at a very late stage in the drafting of the 1951 Convention, when the Statute had already been adopted. Also, as Goodwin-Gill and McAdam argue, while political considerations impacted the drafting of both 1951 Convention and UNHCR Statute, the inclusion clause in Article 1D is justified by the nature of the 1951 Convention, (p. 125) which provides for 'continuity of rights and status' instead of 'inter-agency competence' as the UNHCR Statute does.⁴⁰⁴ By 1951, the need to ensure that the exclusion were not permanent and substantive, so to not lessen the

protection for these refugees, has already manifested. In any case, this discussion is now largely superseded by UNHCR's interpretation of its mandate, which clearly extends to Palestinian refugees falling under the scope of Article 1D.⁴⁰⁵

5. Concluding Observations

Palestinian refugees are internationally recognized refugees who are subject to a distinctive institutional and normative regime compared to other refugees around the world. This distinctiveness stems from special arrangements the UN has made for them as of 1948. This includes ad hoc UN agencies mandated to protect and assist Palestinian refugees, namely UNCCP and UNRWA (at present effectively only UNRWA). In the early days of the post-Second World War international refugee regime, such distinctiveness was not unique: ad hoc arrangements had been the response to large refugee crises since the interwar period and had continued to be made as the new regime was evolving.

In the Palestinian case, this arrangement has historical and political roots. In 1949, while the drafting of the 1951 Convention and the UNHCR Statute was still being finalized, the UN had already deliberated that the Palestine refugee question would be the competence of the UNCCP as part of its peace-making efforts in Palestine. In parallel, mechanisms to provide assistance to the distressed refugees were devised: the current and most lasting of which is UNRWA. UNCCP and UNRWA were established as alternatives to UNHCR, for two reasons. Palestinian refugees were considered a political responsibility of the UN, in connection with the latter's role in the partition of Mandate Palestine (UNGA resolution 181 of November 1947), which ignited the hostilities that occurred between 1947–1949 and resulted in the displacement of most of the Arab inhabitants of Palestine. Also, a solution for these refugees was to be found primarily through voluntary repatriation: this made UNCCP and UNRWA look more suitable than UNHCR, whose activities at that time had a significant focus on local integration and resettlement. Article 1D of the 1951 Convention gave effect to this, by conditionally *excluding* Palestinian refugees under UNCCP's and UNRWA's mandate from the benefit of the 1951 Convention, unless UNCCP and UNRWA's protection or assistance would cease; in such case they would automatically enjoy the benefits of the 1951 Convention, in accordance with the principle of continuity of protection.

While the post-Second World War refugee regime became more standardized and harmonized over time, the regime devised for Palestinian refugees, which was foreseen as a temporary measure, became semi-permanent. UNCCP de facto ceased functioning, leaving UNRWA as the primary port of call for Palestinian refugees in its areas of operations. When conditions for Palestinian refugees in the Arab world worsened, after 1967, the 1990s and the 2000s in particular, some were forced to find refuge outside UNRWA's area of operations. This triggered the alternative protection regime envisaged by Article 1D, operationalizing the complementary mandates of UNRWA and UNHCR for Palestinian (p. 126) refugees in order to ensure the continuity of protection envisaged by the drafters of the 1951 Convention. Over time, UNHCR, building on relevant jurisprudence, has provided much needed guidance on important aspects of this regime.

Within this regime, there is no one all-encompassing definition of refugees from Palestine. While attempts to *legally* define who is a refugee from Palestine for the purpose of UNGA resolution 194, paragraph 11, (namely return and compensation) halted with the de facto demise of UNCCP, UNRWA, at the behest of its major donors, has *operationally* (and retroactively) defined who is a 'Palestine refugee' for the purpose of determining (and limiting) those who were eligible for relief. This definition is based on the mandate conferred to UNRWA by the General Assembly and limited to who (among refugees and others) was in need for assistance. In the absence of an official, all encompassing definition that applies to all aspects related to the Palestinian refugee question, the UNRWA definition has acquired meaning and significance going beyond the original purpose. It never intended to be fully inclusive of the population who became refugees in connection with the

establishment of the State of Israel in 1948 (and to whom General Assembly resolution 194 applies), or to create a legal status. However, as this chapter demonstrates, the problem of the lack of an official definition should not be overstated: who the Palestinian refugees are, entitled to international protection in accordance with Article 1D of the 1951 Convention and relevant UN resolutions, is clear.

The consolidation and sophistication of this distinctive regime has been a function of the impossibility to resolve, in a just and durable way, the situation of Palestinian refugees (and hence the failure of the international community in this regard). Its limitations notwithstanding, it lays the foundation for Palestinian refugees' entitlement to international protection, including durable solutions, and enjoyment of fundamental rights enshrined in various bodies of international law, including human rights law and refugee law.

Footnotes:

1 The term 'Palestinian refugees' in this study refers, by and large, to Palestine Arabs (former citizens of British Mandate Palestine) who were expelled or fled at the creation of the State of Israel (1947–1949) and subsequent hostilities (1967) and have not been allowed to return –, including their descendants, whose situation is still to be resolved in line with relevant UN resolutions (from 1948 and 1967). This terminology is discussed in Section 4 and in the Introduction, Section 3.2.3.

2 On protracted refugee situations see Section 3.2.3, under 'Registered Refugees'.

3 The term 'status' is used in this study as a synonym for 'legal position', in other words, as the sum total of the rights, benefits, and obligations due to a certain subject by virtue of rules of law, in this case international law. The word 'status' is employed as it is used in the title of the 1951 Convention, and has since become commonplace in international refugee law.

4 See (n 1). This chapter focuses on definitions provided by the United Nations. Definitions of Palestine/Palestinian refugees provided by others (e.g. PLO/PA) are referred to elsewhere in the book (e.g. Chapters VI and VIII).

5 Protection of Palestinian refugees is discussed in detail in Chapter VII, Section 2 in particular.

6 In 1926, there were over nine million refugees in Europe alone, including large numbers who had been forcibly transferred or exchanged. Marrus, M. R., *The Unwanted: European refugees from the First World War through the Cold War*, Philadelphia, PA: Temple University Press, 2002, 51. Further, in Europe only, there were between forty and sixty-five million forcibly displaced persons post-Second World War, including seventeen million displaced (or forcibly exchanged) within national borders, Orchard, P., The historical development of refugee protection in Europe, in Weinar, A., Bonjour, S., and Zhyznomirska, L. (eds.), *Routledge handbook on the politics of migration in Europe*, New York: Routledge, 2018, 10. Outside of Europe, the largest refugee crises of the immediate post-Second World War period included the fourteen million displaced generated by the partition of British India of 1947, and 700,000 refugees from North Korea into South Korea, of 1950, see below (nn 42, 43, 107).

7 Tuitt, P., Rethinking the refugee concept, in Nicholson, F., Tomey, P. (eds.), *Refugee rights and realities: Evolving international concepts and regimes*, Cambridge: Cambridge University Press, 1999.

8 On the concept of diplomatic protection, see the following section.

- 9** Hathaway, J. C., 'The evolution of refugee status in international law: 1920–1950', *International & Comparative Law Quarterly* 33.2 (1984) 358.
- 10** Cf. Simpson, J. H., *The refugee problem*, London: Oxford University Press, 1939, 229; Weis, P., 'Legal aspects of the Convention of 28 July 1951 relating to the Status of Refugees', *British Yearbook of International Law* 30 (1953) 478, 480; also Grahl-Madsen, A., *The status of refugees in international law*, vol. 1, Leiden: Sijthoff, 1966, 95.
- 11** See (n 6).
- 12** For example, in response to the Russian and Armenian refugee crises in 1921 and 1924, respectively, a number of arrangements were concluded both at intergovernmental level and under the auspices of the League of Nations. Cf. Inter-governmental Arrangements of July 5th, 1922, May 31st, 1924, May 12th, 1926, and June 30th, 1928, cited in Convention relating to the International Status of Refugees League of Nations, of 28 October 1933 LNTS Vol. CLIX No. 3663. Also Conventions of 28 October 1933 and 10 February 1938, Protocol of 14 September 1939 and Constitution of the International Refugee Organization, also referred to in art. 1A(1) of the CSR51. UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, UNTS, vol. 189, 137 (hereinafter CSR51). See also UNHCR, *Conventions, agreements and arrangements concerning refugees adopted before the Second World War*, Geneva: UNHCR, 1980.
- 13** Goodwin-Gill, G., McAdam J., *The refugee in international law*, Oxford: Oxford University Press, 2007, 421.
- 14** Cf. Arrangement relating to the Legal Status of Russian and Armenian Refugees, 30 June 1928, 2005 LNTS 55; *Report by the High Commissioner*, League of Nations Doc. 1927.XIII.3 (1927) 14. See Hathaway (n 9), 354–7.
- 15** Goodwin-Gill and McAdam (n 13), 422.
- 16** Cf. Köfner, G., Nicolaus, P., *Grundlagen des Asylrechts in der Bundesrepublik Deutschland*, München: Matthias-Grünewald, 1986, 171.
- 17** Hathaway (n 9), 371 and fn 261.
- 18** UNGA res. 62(I), 15 December 1946.
- 19** Rystad, G., *The uprooted: Forced migration as an international problem in the post-war era*, vol. 25. Lund: Krieger Pub Co, 1990, 157.
- 20** Holborn, L. W., *Refugees: A problem of our time*, Metuchen, NJ: Scarecrow Press, 1975, 31.
- 21** Sect. A(2) reads 'the term "refugee" also applies to a person [...] who is outside of his country of nationality or former habitual residence, and who, as a result of events subsequent to the outbreak of the Second World War, is unable or unwilling to avail himself of the protection of the Government of his country of nationality or former nationality'. The 'well-founded fear of persecution' is absent from this definition even if 'persecution' was mentioned in the IRO Constitution, cf. Annex, sec. A(3), which speaks of victims of Nazi persecution. Fear of persecution is listed as a valid reason for refusing to return to the country of nationality or habitual residence, as per sec. C(1) of the Annex.
- 22** Hathaway (n 9), 357–8.
- 23** The determination was nevertheless selective and occasionally it was politically motivated. For example, Italian refugees were excluded by the League of Nations' protection mandate in order not to upset Mussolini. See Sjoberg, *The Power and the Persecuted*, cited in Goodwin-Gill and McAdam (n 13), 18, fn 12.

24 Zieck, M. Y., *UNHCR and voluntary repatriation of refugees: A legal analysis*, Leiden: Martinus Nijhoff Publishers, 1997, 58–60, fn 95. See also Zieck, M. Y., *UNHCR's worldwide presence in the field: A legal analysis of UNHCR's cooperation agreements*, Nijmegen: Wolf Legal Publishers, 2006.

25 Marrus, M. R., *The unwanted: European refugees in the twentieth century*, New York: Oxford University Press, 1985, 340–7; Nicolaus, P., 'Das Amt des Hohen Flüchtlingskommissars der Vereinten Nationen und 40 Jahre Genfer Flüchtlingskonvention', *Zeitschrift für Ausländerrecht* 3 (1991) 114–16.

26 Cf. Holborn (n 20).

27 UNGA, Statute of the Office of the United Nations High Commissioner for Refugees, A/RES/428 (V), Annex, UN Doc. A/1775, para. 1 (14 December 1950). On the mandate of UNHCR, see UNHCR, *Note on the Mandate of the High Commissioner for Refugees and his Office*, October 2013.

28 For a brief chronology of the development of the UNHCR Statute and the 1951 Convention, see Takkenberg, L., Tahbaz, C. C. (eds.), *The collected travaux préparatoires of the 1951 Geneva Convention relating to the status of refugees*, 3 vols., Amsterdam: Dutch Refugee Council, 1989, vol. I, 2. This work also contains the text of the working papers used by the various bodies that participated in the drafting of the 1951 Convention.

29 Holborn, L. W., 'The problem of refugees', *Current History (pre-1986)* (1960) 342.

30 Ibid.

31 See Korean and India/Pakistan refugee crises discussed in Section 2.2.1.

32 CSR51, art. 1A(1) stipulates that 'the term "refugee" shall apply to any person who: (1) Has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization'. See also UNHCR (n 12).

33 See UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, December 2011, HCR/1P/4/ENG/REV. 3, paras. 32–3.

34 Grahl-Madsen (n 10), 112–16.

35 This part of the text has been overcome by the 1967 Protocol; see further discussion in the text.

36 UNHCR, *Handbook* (n 33), para. 2.

37 Among the states in favour of a limitation of the application of the CSR51 to European refugees were Italy and the US. The main advocates of the 'universalist' view were the United Kingdom, Belgium, Egypt, Iraq, Israel, Switzerland, Yugoslavia, and the Netherlands. Governments that were less outspoken on the matter included Sweden, Norway, Denmark, the Federal Republic of Germany, and Austria.

38 Orchard (n 6), 12. See also Goodwin-Gill and McAdam (n 13), 19–20.

39 See Loescher, G., *The UNHCR and world politics: A perilous path*, New York: Oxford University Press, 2001, 45.

40 Summ. rec. of the 22nd mtg., 16 July 1951, UN doc. A/CONF.2/SR.22, 6; Takkenberg and Tahbaz (n 28), vol. iii, 406.

41 Davies, S.E., 'The Asian rejection? International refugee law in Asia', *Australian Journal of Politics & History* 52.4 (2006) 569.

42 The UN did not intervene on the large refugee crisis (14 million displaced) generated by the partition of British India, which gave rise to the creation of Bangladesh, India, and Pakistan. Bilateral agreements provided for naturalization or repatriation of the refugees. See Agreement between Pakistan and India, 8 April 1950, 131 UNTS, 3. Also cf. Alexander, H., *New citizens of India*, Bombay: Oxford University Press, 1951, 27–31. Vernant, J., *The refugee in the post-war world*, London: Allen & Unwin, 1953, 740–1.

43 A separate agency set up in 1950, the United Nations Korean Reconstruction Agency (UNKRA), was mandated (among other tasks) to provide relief and assistance to the refugees and homeless in South Korea. By the time it ended operations in 1959, 700,000 refugees and displaced had been helped build (or rebuild/repair) their homes, while the South Korean government offered citizenship to the refugees. Holborn (n 29), 343.

44 The debate on the issue got rather emotional during the twentieth session of the drafting process, when an exchange of words took place between the representatives of France and Belgium of which it was 'agreed ... that it should not be reported in the summary record of the meeting', UN doc. A/CONF.2/SR.20, 11; Takkenberg & Tahbaz (n 28), vol. iii, 390.

45 It was eventually the delegate of the Holy See who 'saved' the conference by introducing the compromise text currently embodied in Article 1B of the Convention. The text of Article 1B is reproduced in (n 47).

46 The exceptions were France, Italy, Luxembourg, Portugal, and the Holy See and Monaco (which still has the geographic limitation). Although the majority of the European States were not in favour of introducing art. 1B(a), it seems that one European State, namely France, was the driving force behind it – the French delegate, advocating for regional instruments and solutions, challenged the inclusion of a universal definition and succeeded by having art. 1B adopted.

47 CSR51, art. 1B reads as follows: '(1) For the purposes of this Convention, the words "events occurring before 1 January 1951" in art. 1, sec. A, shall be understood to mean either: (a) "events occurring in Europe before 1 January 1951" or (b) "events occurring in Europe or elsewhere before 1 January 1951" and each Contracting State shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the purpose of its obligations under this Convention. (2) Any Contracting State which has adopted alternative (a) may at any time extend its obligations by adopting alternative (b) by means of a notification addressed to the Secretary-General of the United Nations.' For the text of the amendment, see UN doc. A/CONF.2/80. For the discussion of the amendment, see summ. rec. of the 23rd mtg., 16 July 1951, UN doc. A/CONF.2/SR.23, 4; Takkenberg & Tahbaz (n 28), vol. iii, 415.

48 In practice, though, because of the limited staff and budget, in its early years UNHCR focused on refugees in Europe, see Goodwin-Gill, G. S., *The international law of refugee protection*, in Fiddian-Qasmiyah, E., Loescher, G., Long, K., Sigona, N. (eds.), *The Oxford handbook of refugee and forced migration studies*, Oxford: Oxford University Press, 2016, 36–47.

49 UNHCR Statute, para. A(i) refers to '[a]ny person who has been considered a refugee under the Arrangements of 12 May 1926 and of 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization'. Para. A(ii) further refers to '[a]ny person who, as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality or political opinion, is outside the country of his nationality and is unable or, owing to such fear or for

reasons other than personal convenience, 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, is unable or, owing to such fear or for reasons other than personal convenience, is unwilling to return to it. Decisions as to eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of the present paragraph.'

50 UNHCR, *Handbook* (n 33), 3, para. 16.

51 With the termination of the IRO, the refugees were to lead independent lives in the countries that had given them shelter. Zieck, *Voluntary repatriation* (n 24), fn 105.

52 UNHCR Statute, para. 2.

53 Its initial budget was USD 300,000. Guest, I., 'The United Nations, the UNHCR, and refugee protection: A non-specialist analysis', *International Journal of Refugee Law* 3 (1991) 590. See also Zieck, *Voluntary repatriation* (n 24), 70.

54 UNHCR Statute, para. 1

55 Ibid., para. 8. UNHCR international protection functions are discussed in greater detail in Chapter VII.

56 Ibid., paras. 1 and 9.

57 Türk, V., 'UNCHR's Supervisory Responsibility', *Revue Quebecoise de droit international* 14 (2001) 135.

58 This is in line with UNHCR Statute, para. 9. See also UNHCR, *Note on the Mandate* (n 27). Also see UNHCR, *A Thematic Compilation of Executive Committee Conclusions*, June 2011, where the pronouncements by the ExCom in relation to the various components of the High Commissioner's practice can be found. For a discussion around its evolution see Loescher (n 39), 33–56. The evolution of UNHCR protection functions is further discussed in Chapter VII, Section 2.2.

59 This group of persons is similar to those categories covered by the refugee definitions incorporated in regional refugee instruments, which provide for broadened refugee definitions to address the specific protection problems of the African and Latin American regions. UN General Assembly, *Note on International Protection*, 7 September 1994, paras. 31–32 A/AC.96/830.

60 UNHCR, *Note on the Mandate* (n 27).

61 Cf. UNHCR Statute, para. 6(A)(II) and CSR51, art. 1(A)(2), both of which specifically refer to stateless persons who meet the refugee criteria; UNGA res. 3274 XXIX and 31/36, pursuant to arts. 11 and 20 of the 1961 Convention on the Reduction of Statelessness, designates UNHCR as the body to examine claims for the application of the Convention.

62 UNHCR does not have a specific mandate to deal with IDPs, but has been authorized by the GA to be involved operationally under certain circumstances through special operations. Cf. UNHCR *Note on the Mandate* (n 27), sec. E.

63 UNHCR, *UNHCR's mandate in relation to assistance to refugees and other people of concern*, 3 June 2015.

64 Goodwin-Gill and McAdam (n 13), 427. Implications of this arguments for the protection of Palestinian refugees are discussed in Chapter VII, Section 2 in particular.

65 As citizens of Mandate Palestine they were entitled to diplomatic protection. See Chapter III, Section 3.2.1.

66 Jordanian citizenship became available to them by an administrative order in 1949 and the by nationality law of 1954. A limited number of (predominantly Christian) 1948 refugees obtained nationality in Lebanon soon after 1948. Questions pertaining to Palestinian citizenship are explored in Chapter III, Section 3.2.2, as well as in country specific sections in Chapter IV and Chapter V.

67 The nationality law Israel enacted did not afford Israeli citizenship to those (Palestinians) who had been displaced outside of the territory it controlled by 1949 and whom it also prevented from returning.

68 *Israel: Nationality Law, 5712-1952*, 14 July 1953. This is discussed in Chapter VI, Section 3.4.3 (n 342). See Bochenksi, F. G., The refugees dilemma, in *The first interim report of the U.N. economic survey (CLAPP) mission for the Middle East (English)*. *Economic department report, no. E72*. Washington DC: World Bank, 1949. Available at: <http://documents.worldbank.org/curated/en/287151468339565206/The-first-interim-report-of-the-U-N-economic-survey-CLAPP-mission-for-the-Middle-East>.

69 Earlier actions taken in 1948 included the appointment of the UN Mediator for Palestine who focused on the refugee problem as part of the overall peace-making in Palestine; the set-up of a sixty-day UNDRP, to coordinate aid to the refugees, then replaced by the UNRPR. See Chapter I, Section 4.

70 UNGA, 194 (III), 1948, para. 2. With reference to the plight of the refugees, the UNCCP's mandate included facilitating return of those willing to live at peace with their (Jewish) neighbours and the provision of compensation for both returnees and those not returning (UNGA res. 194, para. 11).

71 See Chapter I, Section 4. The role of the UNCCP in connection with international protection is discussed in Chapter VII, Section 2.1.

72 UNCCP, 'Analysis of paragraph 11 of the General Assembly's Resolution of 11 December 1948' (Working Paper Compiled by the Secretariat), 15 May 1950, A/AC.25/W/45, *cum corrigendum* of 13 June 1950, A/AC.25/W/45/Corr.2, discussed at Section 4.1.

73 The UNCCP working documents are analysed and referred to in various parts of the book; see Section 4, and Chapter VI, Section 3.2, in particular.

74 UNGA res. 302 (IV), 8 December 1949, adopted with forty-seven votes in favour, none against, and six abstentions (vote not recorded).

75 Similar to UNHCR, UNRWA is established under art. 22 of the UN Charter and derives its mandate directly from the General Assembly (and its resolutions). Unlike for UNHCR, the General Assembly never adopted a statute governing the functioning of UNRWA.

76 UNGA res. 302 (IV), para. 5.

77 This is confirmed by UNCCP working documents such as the *Memorandum on the Relations between the United Nations Relief and Works Agency for Palestine Refugees and the Conciliation Commission (Working Paper Compiled by the Secretariat)* of 31 March 1950.

78 See Section 3.2.

79 This is further discussed in Chapter VII.

80 This is confirmed by the language used by the UNCCP in 1949–1950, which offers parallels and comparison between the legal and political situation of the refugees from Palestine and other previous and present refugee crises. See UNCCP working documents referred to in Section 4.1.

81 These are presented in detail in Chapter II of the first edition of this book, Takkenberg, L., *The Status of Palestinian Refugees in International Law*, Oxford: Oxford University Press, 1998, 49–85, 54–68, and are summarized here. The drafting documents as well as the summary records of the thirty-five meetings of the conference are reproduced in Takkenberg & Tahbaz (n 28), vol. iii. See also UNHCR, *The Refugee Convention, 1951: The Travaux préparatoires analysed with a commentary by Dr. Paul Weis*, Geneva: UNHCR, 1990; Goddard, B., ‘UNHCR and the international protection of Palestinian refugees’, *Refugee Survey Quarterly* 28.2–3 (2009) 483–9.

82 In its res. 8(I) of 12 February 1946 the UN General Assembly referred the problem of refugees and displaced persons to the Economic and Social Council (ECOSOC) for detailed consideration. In its sixth session, ECOSOC responded with resolution 116 (VI) D, requesting the Secretary-General to make a study of statelessness, and to ‘submit recommendations ... as to the desirability of concluding a further convention on this subject’. During its ninth session, ECOSOC considered the Secretary-General’s study. At this stage the problems of refugees and statelessness were considered simultaneously. In response, it adopted res. 248 (IX) establishing an Ad Hoc Committee on Statelessness and Related Problems, and charged it with considering, *inter alia*, ‘the desirability of preparing a revised and consolidated convention relating to the international status of refugees’. The committee met from 16 January to 16 February 1950 at Lake Success, New York, and extensively discussed the problem of the definition of the term ‘refugee’. UN, *A Study of Statelessness*, Lake Success, Department of Social Affairs, 1949, UN doc. E/1112 and E/1112/Add. 1, published as UN sales publ. 1949.XIV.2. The text of part one of the study, entitled ‘Improvement of the Status of Stateless Persons’ is reproduced in Takkenberg & Tahbaz (n 28), vol. i.

83 Cf. ‘Memorandum on the Definition Article of the Preliminary Draft Convention Relating to the Status of Refugees (and Stateless Persons),’ submitted by the representative of the United States. UN doc. E/AC.32/L.4, 18 January 1950.

84 Even if the Palestinian refugees ‘raised a human problem of extreme gravity [...] that problem could not be solved within the framework of the convention, which should in principle apply only to the IRO refugees’. Summ. rec. of the 3rd mtg., 26 January 1950, UN doc. E/AC.32/SR.3, paras. 37–8; Takkenberg & Tahbaz (n 28), vol. i, 165, 405.

85 In addition to the ‘statutory refugees’ presently covered by art. 1A(1) of the 1951 Convention, the draft considered the following categories: (a) German, Austrian, Czechoslovak and Italian refugees. [...]; (b) Spanish refugees. [...]; (c) Neo-refugees. Any person, other than a person of German ethnic origin residing in Germany, or a displaced person as defined in clause 2 of this subparagraph, or *a refugee for whom provision is made in General Assembly resolutions 212 (III) of 19 November 1948 and 302 (IV) of 8 December 1949*, who as a result of events subsequent to the outbreak of the Second World War, is unable or unwilling to avail himself of the protection of the government of his country of nationality or former nationality, and who has not acquired another nationality []. During the discussion of his proposal, the representative of the United States explained that the proposed definition of ‘neo-refugees’ was taken from the IRO Constitution, with the addition of two exceptions which did not appear in the IRO definition: ‘One of them concerned refugees for whom provision had been made separately by res. 212 (III) and 302 (IV) of the General Assembly, namely Palestine refugees’, Summ. rec. of the 5th mtg., 30 January 1950, UN doc. E/AC.32/SR.5, para. 14.

86 These three groups were: ‘refugees who became such “as results of events in Europe after 3 September and before 1 January 1951”’, ‘victims of the Nazi regime or of regimes associated with it and the victims of the Falangist regime in Spain’, (IRO refugees) and ‘any

person who in the period between 4 August 1914 and 3 September 1939 was considered to be a refugee' (statutory refugees).

87 ECOSOC decided to reconvene the Ad Hoc committee. The Ad Hoc Committee reconvened in Geneva from 14 to 25 August 1950 to finalize the drafting process. By that time the name of the committee had been changed to Ad Hoc Committee on Refugees and Stateless Persons in order to reflect more properly the issues that were under discussion 'in order that it may prepare revised drafts (...) in the light of comments of Governments and of specialized agencies ...'. ECOSOC res. 319 (IX) B, 16 August 1950, UN doc. E/1818; Takkenberg & Tahbaz (n 28), vol. ii, 20.

88 That definition was restricted to persons who had become refugees 'as a result of events in Europe before 1 January 1951'.

89 The provision read as follows: 'persons falling under the competence of the High Commissioner's Office for Refugees shall be those defined in Article 1 of the Convention relating to the Status of Refugees as approved by the General Assembly, and such other persons as the General Assembly may from time to time determine'; see ECOSOC report E/1835, 'Provisions for the Functioning of the High Commissioner's Office for Refugees' (18 August 1950).

90 The representative of Saudi Arabia called on the group to avert that the Palestinian refugee question be 'submerged' by other refugee issues and relegated 'to a position of minor importance', cf. GAOR, 5th sess., 3rd comm., 328th mtg., para. 52.

91 UN doc. A/C.3/L.128.

92 Statement of the representative of Lebanon GAOR, 5th sess., 3rd comm., 328th mtg., para. 47 (emphasis added). The representative of Saudi Arabia added that 'To accept a general definition without the clause proposed by the delegations of Egypt and Lebanon, as well as his own, would be to renounce insistence on repatriation.' GAOR, 5th sess., 3rd comm., 328th mtg., para. 52.

93 Ibid. The representative of Lebanon stated that such amendment would not be necessary if the General Assembly decided to adopt a narrow definition of the term 'refugee'. It would, however, be most urgently needed if the General Assembly decided to adopt a broader definition.

94 Statement of the representative of the Kingdom of Saudi Arabia, GAOR, 5th sess., 3rd comm., 328th mtg., 1950, para. 52.

95 See, for example, the statements of the representatives of Turkey and the US, GAOR, 5th sess., 3rd comm., 329th mtg., paras. 11 and 37, respectively. See also GAOR, 5th sess., 3rd comm., 330th mtg., paras. 7-8.

96 For example, see Summ. rec. of the 19th mtg., 13 July 1951, UN doc. A/CONF.2/SR.19, 11; Takkenberg & Tahbaz (n 28), vol. iii, 376. The French delegation, which opposed the inclusion of any refugees from outside Europe in the Convention, advocated for a separate convention for Palestinian refugees, tailored to their specific needs and taking into account that they were already the concern of other UN mechanisms.

97 UNGA, *Statute of the Office of the United Nations High Commissioner for Refugees*, 14 December 1950, UN doc. A/RES/428(V).

98 It was decided, however, that the text of the definition for the draft convention should be merely recommended for consideration to the conference of plenipotentiaries, which the General Assembly had agreed to convene in order to complete the drafting process.

99 The Egyptian government intended to underscore that once the UN assistance ceased the Palestine refugees should automatically enjoy the benefits of the Convention and the institutional arrangements attached to it (i.e. UNHCR's protection). Summ. rec. of the 2nd mtg., 2 July 1951, UN doc. A/CONF.2/SR.2, 22; Takkenberg & Tahbaz (n 28), vol. iii, 209.

100 Representative of the UK, summ. rec. of the 19th mtg., UN doc. A/CONF.2/SR.19, 20; Takkenberg & Tahbaz (n 28), vol. iii, 379. For the view of the High Commissioner, see the summ. rec. of the 21st mtg., UN doc. A/CONF.2/SR.21, 12; Takkenberg & Tahbaz (n 28), vol. iii, 399.

101 Art. 1D is discussed in detail in Section 4.3.

102 Introduced on 3 July 1951, summ. rec. 19th mtg., UN doc. A/CONF.2/SR.19, 20; for the text of the amendment, see UN doc. A/CONF.2/13.

103 Summ. rec. of the 29th mtg., 19 July 1951, UN doc. A/CONF.2/SR.29, 6; Takkenberg & Tahbaz (n 28), vol. iii, 488.

104 See statement of representative of Iraq, summ. records of the 29th meeting, UN doc A/CONF.2/SR.29.

105 Various UNCCP attempts to mediate a solution and implement para. 11 of UNGA res 194 had failed. See Chapter I, Section 4.2.

106 Grahlg-Madsen (n 10), 141.

107 What is different for Palestinians is the solutions agreed upon for the refugee crises that occurred at the same time (automatic citizenship-for Koreans and Indians/Pakistanis crossing from one side of the partition to another, and resettlement with naturalization-for Europeans).

108 Cf. summ. rec. of the 3rd mtg., 3 July 1951, UN doc. A/CONF.2/SR.3, 10.

109 Cf. statement of the representative of Iraq, who also added that '[i]t was obvious that, if the Egyptian amendment was rejected, the refugees it was designed to protect might eventually find themselves deprived of any status whatsoever'. Summ. rec. of the 29th mtg., 19 July 1951, UN doc. A/CONF.2/SR.29, 8; Takkenberg & Tahbaz (n 28), vol. iii, 489.

110 Before the amendment was put to a vote, the representative of France made it clear that the text of the amended draft art. 1C would take effect only for those states that had adopted the wider geographical alternative in the definition of the term 'refugee'. It was adopted by eighteen votes to none, with five abstentions. Summ. rec. of the 29th mtg., 19 July 1951, UN doc. A/CONF.2/SR.23, 9; Takkenberg & Tahbaz (n 28), vol. iii, 490.

111 UN Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, *Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons*, 25 July 1951, A/CONF.2/108/Rev.1. Article 1D is discussed in Section 4.3.

112 Goodwin-Gill and McAdam (n 13), 152.

113 As discussed later (Section 4.3.4), a provision similar to the Egyptian amendment - the present second sentence of art. 1D of CSR51 - was not included in the text of para. 7 of the UNHCR Statute, which had already been approved.

114 During the final sessions of the conference several delegates expressed reservations about the proper order of the various parts of art. 1. Certainly, placing present art. 1D among the clauses that excluded the status of refugee has been the source of significant confusion (see Section 4.3.1 and Section 4.3.2)! However, as the conference came under

considerable pressure to complete the drafting within the time available, there was no time to address the matter.

115 UNGA, 5th sess., OR, 3rd Comm., 344th Meeting, 11 December 1950, paras. 24–5 (Mr. Baroody, Saudi Arabia); para. 28 (Mr. Lesage, Canada); paras. 29–30 (Mr. Davin, New Zealand); para. 39 (Mr. Noriega, Mexico); para. 42 (Mr. Raafat, Egypt), UN doc. A/C.3/SR. 344.

116 Art. 1D's 'exclusion' of internationally recognized refugees from the regime of the 1951 Convention, differs from other exclusion clauses provided by the Convention, e.g. persons undeserving international protection (as per art. 1F) or not in need of international protection (art. 1E), and is contingent upon the provision of protection or assistance by UNRWA. See Section 4.3.

117 Cf. Akram, S., Goodwin-Gill, G., 'Brief amicus curiae on the status of Palestinian refugees under international law', *The Palestine Yearbook of International Law* 11 (2000) 201. The concept of 'continuity of protection' and international protection for Palestinian refugees more generally are discussed in Chapter VII.

118 See GAOR, 6th Sess., Annexes, Agenda Item 24 (a) (A/2072, 24 January 1952), 1.

119 The monumental task of recording the damaged and lost properties of the 1948 refugees, completed by the UNCCP in the 1960s, is discussed in Chapter I, Section 4.4 (historical overview) and Chapter VI, Section 3.2 (legal aspects).

120 By 1951, the UNCCP had informed the General Assembly, and began noting on an annual basis, that it was unable to find a means of achieving progress in the implementation of para. 11 of res. 194 (III). See, UNCCP, Progress Report of the United Nations Conciliation Commission for Palestine, UN Doc. A/1985, 20 November 1951 at paras. 79 and 80 for first report, and more recently, Report of the UNCCP, 13 August 2015, A/70/319, Annex; UN GA res. 69/86.

121 UNRWA's evolving mandate is discussed in Chapter IV, Section 3.1 (overall role in the various areas of operations), Chapter VI, Section 4 (in supporting Palestine refugee rights), and Chapter VII (protection).

122 The evolution of the concept of protection in general, and UNHCR and UNRWA in particular, as well as the increasing exchange and cooperation between UNRWA and UNHCR has progressively made the difference between the two agencies erode. Chapter VII, Section 3.

123 UNRWA's original mandate was for three years, and has been renewed initially for five years and subsequently for three-year terms, ever since by the General Assembly. Last renewal was by UNGA, *Assistance to Palestine refugees*, para. 7, UN doc. A/RES/74/83, of 13 December 2019, which renewed UNRWA's mandate until June 2023. Further discussion on UNRWA's role appears in Chapter IV (general), Chapter VI (contribution to advance Palestinian refugees' rights), Chapter VII (protection), and Chapter VIII (solutions).

124 Bartholomeusz, L., 'The mandate of UNRWA at sixty', *Refugee Survey Quarterly* 28.2–3 (2009) 454–5.

125 Since 2002 the co-responsibility of UNRWA and UNHCR towards Palestinian refugees is acknowledged, largely along the line of a competence *ratione loci*. Cf. UNHCR, *Guidelines on International Protection No. 13: Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees* [hereinafter 'Guidelines on Article 1D'], December 2017, HCR/GIP/16/12, para. 7.

126 As discussed in the introduction (n3), above, the term ‘status’ is used in this context as a synonym for ‘legal position’ to refer to the rights, benefits, and obligations due to a certain subject by virtue of the law, in this case international law.

127 Akram and Goodwin-Gill (n 117), 190.

128 UN Doc. A/RES/194.

129 For example, see recorded statement of Mr. de la Tour du Pin (France), Chairman, UNCCP, summ. rec. of the 17th meeting, 27 June 1949, UN. Doc A/AC.25/Com.Gen/SR.17.

130 Discussions were lengthy and inconclusive, and over the time the definition of family linkages relevant for repatriation overtook that of ‘refugee’, see: UNCCP, summ. rec. of the 24th meeting, 26 July 1949, UN. Doc A/AC.25/Com.Gen/SR.24. UNCCP, summ. rec. of meeting between the General Committee and the Delegation of Israel, 26 July 1949, UN. Doc A/AC.25/Com.Gen/SR.25, summ. rec. of meeting between the General Committee and the Delegations of the Arab States, 6 August 1949, UN. Doc A/AC.25/Com.Gen/SR.29, summ. rec. of the 2nd meeting of the Mixed Technical Committee for Blocked Assets, 26 August 1949, UN. Doc A/AC.25/MCA/SR/2.

131 UNCCP, ‘Analysis of paragraph 11 of the General Assembly’s Resolution of 11 December 1948’, Working Paper Compiled by the Secretariat, UN Doc. A/AC.25/W/45 of 15 May 1950. The Working Paper stipulates that ‘[t]he above interpretation has not been specifically disputed by the parties directly concerned’.

132 Ibid. The definition would not include Arabs who had lost their lands but not their homes, such as the inhabitants of Tulkarm, or of other so-called frontier villages.

133 This conceptual effort took place amidst shuttle diplomacy between Arab governments and Israel, and unsuccessful attempts to advance towards a peaceful settlement of all pending issues, including the return of the refugees.

134 UNCCP, ‘Note by the Principal Secretary, Definition of a “Refugee” under paragraph 11 of the General Assembly’s Resolution of 11 December 1948’ [Note by the Principal Secretary], UN Doc. A/AC.25/W/61 of 9 April 1951. This is to be read in connection with its Addendum of 29 May 1951, UN Doc. A/AC.25/W/61/Add.1.

135 UNCCP, Note by the Principal Secretary.

136 Ibid., 1: ‘[not] all those who are receiving humanitarian assistance are [...] necessarily refugees’. This is to be read in conjunction with the parallel push for UNRWA to contain its rolls, discussed later in this chapter, and records of statement of US and British representatives in UN official meetings, UN docs A/AC.80/SR.23, 97, UN doc. A/AC.80/SR. 15, 57, A/AC.80/SR.19, 75, A/AC.76/SR.32, 145.

137 See Section 4.2.1.

138 UNCCP, Note by the Principal Secretary (emphasis added).

139 Ibid (emphasis added).

140 Ibid. The Note elaborates on being a refugee under UNGA res. 194, and a comparison is made with the general fear-of-persecution based definition employed by the international community at that time. The Note refers to a refugee as ‘a person who has left the territory of a country of which he was a citizen at the time of his departure’.

141 Ibid., ‘Section [A] Citizenship: Article I of the Convention of 10 February 1938 relating to refugees from Germany [...] does not regard as refugees “persons who leave Germany for reasons of purely personal convenience”’.

142 Ibid. (emphasis added).

143 Note of the Principal Secretary and Addendum, art. 1, paras. 1-2.

144 Ibid. According to the note, among the persons of Palestinian citizenship properly speaking who are neither Jews or Arabs, ‘there must be some Moslems and some Christians of various origins (Turkish, Greek, Armenian, etc.)’ of whom less than half were natives of Palestine. The Note suggested that these persons who, at the time of the British census, were placed in the general category of ‘Others’, be considered as minorities and ‘be covered by the provisions laid down on that date by the General Assembly concerning religious and minority rights in Israel’, rather than refugees per se. Also, ‘[a]s regards persons of Arab or other origin-80,355 in 1931—who acquired a foreign citizenship prior to 29 November 1947, the protection of their rights, property and interests falls within the competence of the countries of which they are citizens, and they would consequently not be included in the definition of “refugees” from Palestine.’

145 The Addendum further clarifies the situation of the non-Arab minority – including Greeks, Turks, and Armenians – of Palestine, and who had been placed in the category of ‘Others’ in the 1931 Census.

146 Addendum, art. 3. On the concept of Arab nationality see the Note of the Principal Secretary, sec. B: ‘This idea of “nationality” should, however, not be confused with the concept of nationality in international law, since it implies practice belonging to a specific race or religion and originated in the practice followed in the Ottoman Empire for the differentiation of different minorities within the Empire. It is called “Nationality in the Citizenship”’.

147 Note of the Principal Secretary, Addendum, art. 1, para. 1.

148 Addendum, art. 2.

149 Addendum, art. 1, para. 3.

150 The Addendum indicates that these categories might have indicated ‘a national consciousness other than an Arab national consciousness’ for the 1931 census. Post 1948, this could have led to the resumption of new or previous nationality hence, considered as foreign nationals. Those who had not, continued to be treated as a minority ousted by Israel, hence had to be treated as refugees. In this way, the Addendum sought to address the restrictive character of the Note’s mention of persons of ‘Arab origin’ by recommending that the definition include people who belonged to the Arab community with a different ethnic background.

151 Note of the Principal Secretary, sec. [B] regarding ‘Ethnic origin’ (emphasis added).

152 This has not received much attention, except Akram, S. M., Myths and realities of the Palestinian refugee problem: Reframing the right of return, in Akram, S. M., Dumper, M., Lynk, M., Scobbie, I. (eds.) *International law and the Israeli-Palestinian conflict: A rights-based approach to Middle East peace*, London: Routledge, 2010, 19, and BADIL, *Closing the protection gap: Handbook on protection of Palestinian refugees*, Bethlehem: BADIL, 2015, 462, fn 6. See also reference in UNHCR Revised Note on Article 1D of the 1951 Convention, of 2009 (now replaced by the 2017 UNHCR Guidelines on Article 1D (n 125), see Section 4.3), which refers to the UNCCP’s attempts to interpret the word ‘refugee’ through its various working documents at endnote 2.

153 It is unclear whether the definition may have played a role in delineating the persons in respect of whom the UNCCP Refugee Office determined the property holdings. Fischbach seems to suggest this was not the case. Fischbach, M. R., *Records of dispossession: Palestinian refugee property and the Arab-Israeli conflict*, New York: Columbia University Press, 2003, 249.

154 UNRWA, *Consolidated Eligibility and Registration Instructions (CERI)*, 1 January 2009, sec. III, A(1).

155 Ibid.

156 Specific entitlements associated with meeting UNRWA's definition deserve a case by case discussion, see Section 4.2.3, and Chapter IV Section 3. Goodwin-Gill and McAdam (n 13), 437, cite the case of Lebanon where Palestinians registered with UNRWA qualify for residency permits.

157 Meeting UNRWA's definition and being eligible to receive UNRWA services can be seen as evidence that the person concerned is eligible for protection or assistance from UNRWA (see Section 4.3). Some have argued that UNRWA registration can be used to support refugee claims in the context of a future peace settlement between Israel and the Palestinians, see in Cervenak, C. M., 'Promoting inequality: Gender-based discrimination in UNRWA's approach to Palestine refugee status', *Human Rights Quarterly* 16.2 (1994) 300-74, 336. However, the scope of the UNRWA definition is narrower than that of UNGA res. 194 (III) and does not reflect subsequent GA resolutions, e.g. 2256 (ES) of 1967.

158 UNRWA, 'Assistance to Palestine Refugees: Interim Report of the Director of the United Nations Relief and Works Agency for Palestine Refugees in the Near East', GAOR, 5th sess., suppl. 19, UN doc. A/1451/Rev.1, 5.

159 This percentage was 1.5 at the time of the first edition (n 81). In September 2019 the figure of over 66,000 UNRWA-registered 'Palestine refugees' whose original nationality was non-Palestinian was provided by UNRWA's Relief and Social Service Department. The presence of so many nationalities back in 1948 speaks to the religious, economic, and cultural crossing point of cultures that Palestine was in the nineteenth century.

160 UNRWA provided assistance to refugees inside Israel until 1952. UNRWA's assistance to displaced Jewish children was acknowledged in a poem by Israeli poet Natan Alterman: '... And in your little hand a loaf of wholewheat bread/Which UNWRA (sic!) provided for tomorrow ...'; see Peres, S., *The new Middle East*, New York: Henry Holt and Company, 1993. Also see Schiff, B. N., *Refugees unto the third generation: UN aid to Palestinians*, Syracuse: Syracuse University Press, 1995, 183.

161 In 2018, the US Administration dramatically reduced its contribution to UNRWA, followed by a total defunding of the Agency in 2019, on a number of grounds, including criticism of the Agency's refugee definition and registration practices. Statement by US State Department Spokesperson Heather Nauert, 'On US Assistance to UNRWA,' 31 August 2018. The United States has justified its UNRWA defunding because of UNRWA's definition of 'Palestine refugees' and registration system which – critics argue – by extending status to descendants, purportedly perpetuates, instead of resolving, the refugee crisis. This system, in these critics' view, is contrary to international refugee law and the practice of UNHCR. For a critical appraisal of this matter, see Albanese, F., 'UNRWA and Palestine refugee rights: New assaults, new challenges', *Current Issues in Depth* [online], Washington, DC: Institute for Palestine Studies, November 2018.

162 In the first edition of this book (n 81), pages 68–83 provide a detailed account of the history of UNRWA's definition, which is summarized here. An overview of UNRWA's work and challenges in developing registration criteria, and therefore a definition, is provided in two UNRWA documents: *The Problem of Rectification of the UNRWA relief Rolls*, Working Paper No. 6, July 1962 (hereinafter 'UNRWA Working Paper No. 6'); the second document, which summarizes and refines Working Paper No. 6, is *The Problem of the Rectification of the UNRWA Relief Rolls* (1950–1962), Beirut, UNRWA Reviews, A Background Information Series, Information Paper No. 6, September 1962 (hereinafter referred to as 'UNRWA Information Paper No. 6'). The working paper was made available to the members of the General Assembly (as noted on the front page of the document). Both documents, on file

with the authors, are key to contextualizing the complex problem of the rectification of UNRWA rolls and issues pertaining to the early development of UNRWA's definition of Palestine refugees.

163 These were the International Committee of the Red Cross (ICRC), the League of Red Cross Societies (LRCS), and the American Friends Service Committee (AFSC).

164 UNRWA, Information Paper No. 6, 1962, 4. See also Chapter I regarding the discrepancy between the 726,000 estimated refugees (of whom about 652,000 were considered to be in need) and the 957,000 by 30 April 1950, when UNRPR ended its relief operations.

165 UNRPR offered a coordinating and funding mechanisms and did not intervene on the registration process.

166 League of the Red Cross Societies, 'Report of the Relief Operation on Behalf of the Palestine Refugees Conducted by the Middle East Commission of the League of Red Cross Societies in Conjunction with the United Nations Relief for Palestine Refugees, 1949–1950', Geneva, 1950, 42, cit. in UNRWA, Information Paper No. 6, 1962, Appendix, 1 [emphasis added].

167 For a historical account on the attempted censuses, see Schiff (n 160), 22–4, 55–6.

168 Memorandum of Mr. Leslie Carver, UNRWA Deputy Director, in 1954, referred to in UNRWA Information Paper No. 6, 1961, 17, fn 2.

169 UNRWA, 'Assistance to Palestine Refugees: Interim Report of the Director of the United Nations Relief and Works Agency for Palestine Refugees in the Near East', GAOR, 5th sess., suppl. 19, UN doc.A/1451/Rev.1, see paras. 13–19 and 15 in particular. Also cf. UNRWA, Information Paper No. 6, 1962, 9 and 127 [emphasis added].

170 UNRWA, Information Paper No. 6, 1962, 9.

171 Ibid.

172 Ibid.

173 These efforts continued between 1952 and 1955, with new attempts made until 1958 and new plans proposed in the early 1960s. See UNRWA, Working Paper No. 6.

174 UNGA res. 393 (V), Assistance to Palestine refugees, UN doc. A/RES/393 (V), 2 December 1950, paras. 4–5.

175 In 1951, the adopted definition was: '[a refugee is] a person *normally resident in* Palestine, who has lost his home and his livelihood as a result of the hostilities, and who is in need' [emphasis added] (UNRWA 1951). UNRWA, 'Assistance to Palestine Refugees: Report of the Director of the United Nations Relief and Works Agency for Palestine Refugees in the Near East', GAOR, 6th sess., suppl. 16, UN doc. A/1905, para. 16. The main purpose of the revision was to address the situation of a considerable group of Lebanese – including landowners, farmers, labourers, and servants – who had been living and working in Palestine and who, in 1948, took refuge in their country of origin. The League of Red Crescent Societies, who had originally registered these persons, found it 'impossible to distinguish between those who actually had permanent domicile [in Palestine] and those who merely went there at stated intervals for seasonal work.' It was in an attempt to cancel the ration in respect of the latter category, that the above reference to 'a person normally resident in Palestine' was included.

176 In his annual report for 1951–1952 the Director of UNRWA [Commissioner General since 1962] stated that the term 'registered refugee' referred to: 'all refugees eligible for Agency relief and reintegration services, and includes infants under one year who receive half-rations, plus milk rations; adults who may, because of special circumstances, receive half-rations, and adults and children receiving full rations. Not all refugees are entitled to

Agency assistance; eligibility is *conditional upon need* as well as loss of homes and means of livelihood as a result of the conflict' [emphasis added]. UNRWA, 'Annual Report', 1951–1952, GAOR, 7th sess., supp. 17, UN doc. A/2171, 2, n. 1.

177 [Emphasis added]. This definition was incorporated in UNRWA 'Operational Instruction No. 104', 18 February 1952, an internal instruction on 'Registration of Refugees and their Inscription on or Deletion from the Ration Rolls', para. 4(a).

178 This is inferred by the description of UNRWA efforts to refine the term Palestine refugee and limit the number of 'other claimants' on the rolls (see Other claimants). UNRWA, Working Paper No. 6, 71–2.

179 UNRWA, Information Paper No. 6, 10. See also UNRWA, 'Special Report of the Director and the Advisory Commission of the United Nations Relief and Works Agency for Palestine Refugees in the Near East', GAOR, 9th sess., suppl. 17A, UN doc. A/2717/Add.1, 2.

180 In a Special Report containing proposals for the continuation of UN assistance to Palestine refugees, the then-UN Secretary-General Dag Hammarskjold referred to UNRWA's definition which even though it was not embodied in a General Assembly resolution had been 'stated in various [UNRWA] annual reports and tacitly approved by General Assembly' in the same statement he 'strongly and unreservedly' supported the continuation of UNRWA, pending the 'reintegration of the refugees into the economic life of the Near East either by repatriation or resettlement' under resolution 194 (III). UN doc. A/4121, paras. 4–8. See also summarizing statements of Mr. Labuisse in the Special Political Committee of the UN General Assembly on 29 November 1954, (UN doc. A/AC.76/SR.37, 173–4) and 30 November 1955, UN Doc. A/AC.80/SR.24, 104–5, cit. in UNRWA Working Paper No. 6, 1962, 138.

181 UNRWA, Information Paper No. 6, 3–4. The report places the number of these refugees at around 130,000, including refugees who had lost either home or livelihood but not both, such that about 11,000 nomadic Bedouin and persons who were not been able to register owing to the lack of presence of UNRWA, e.g. 10,000 in Egypt, where UNRWA did not operate.

182 In 1955 the Director of UNRWA presented a special report on the 'other claimants' to relief. UN doc. A/2978/Add.1; see also UNRWA, Information Paper No. 6, 11–2.

183 The US representative was adamant on this issue: 'The purpose of the Agency's function in the relief field would be defeated if these steps were not taken and every effort made *not to exceed the present number of relief recipients*. It was essential that contributions for relief should be used for the persons, particularly children, who were entitled to it'. UN doc. A/AC.76/SR.29, 131. On 23 November 1954, the British representative stated that 'any refugee, whatever his age, who qualified for relief under the specifications applied by the Agency should receive relief and that no one who was not qualified for relief should receive it' See, UN doc. A/AC.76/SR.31, 142. The US representative was even more emphatic when he reverted once more to the matter on 24 November 1954, as he made clear that any redefinition of the refugees eligible for relief should be contingent on the establishment of an effective system of control in order to ensure that the registration rolls should include only refugees proved to be genuinely entitled to relief. Every effort should be made not to exceed the present number of relief recipients. UN doc. A/AC.76/SR.32, 145. In 1955 the representative of the US reiterated the position it had taken a year before: 'The Agency's financial position did not ... warrant an extensive addition to the relief rolls of other persons who were not refugees within the meaning of the definition approved by the General Assembly. The definition should not be amended to widen the scope of the Agency's activities.' UN doc. A/AC.80/SR.23, 97; see also

UN doc. A/AC.80/SR.15, 57. The UK representative took a similar point of view; cf. UN doc, A/AC.80/SR.19, 75.

184 Cf. UNRWA, Information Paper No. 6, 12.

185 UNGA res. 818 (IX), 4 December 1954.

186 UNGA res. 196 (IX), 3 December 1955, cit. in UNRWA, Information Paper No. 6, 12.

187 As to ascertain the need, a system of income scales was introduced as early as 1950, which established the criteria for deciding when refugees became self-supporting and thus ceased to be eligible for relief. The scales provided for a gradual decrease of eligibility for relief as the family income increased, taking into account the family size. Under this classification system, various kinds of registration cards were being used: 'R' cards, entitling to rations and all other UNRWA services; 'E' cards for educational, medical, and miscellaneous services, but no rations; 'M' cards for medical and miscellaneous services, but not rations or general education; and 'N' cards entitling to neither rations nor general education nor health, but still some services (including vocational training, teacher training, and university scholarships) under very specific and restricted circumstances. Cf. UNRWA, Information Paper No. 6, 13 and fn 25.

188 UNRWA Operational Instruction, fn 107, Eligibility for UNRWA Assistance, 10 August 1957.

189 Ibid., paras. (i)-(iv).

190 UNRWA, Working Paper No. 6, 136.

191 Inter-Office Memorandum of Mr. Jamieson, UNRWA Assistant Director for Operations, 'Definition of Refugee to General Counsel', 30 January 1958.

192 In 1959, UNRWA raised attention to an estimate of some 150,000 ineligible names on the relief lists, 100,000 children in Jordan who were not registered, and finally, 317,000 'other claimants'. UN doc. A/SPC/SR.149, 102. The General Assembly decided to extend the UNRWA mandate for another period of three years and to carry out a general review of UNRWA's activities to take place after two years. It further requested Arab host governments to cooperate with UNRWA in rectifying the UNRWA ration rolls. In the discussion which took place, a number of representatives – including those of the US and the UK – again stressed the necessity for rectification of the rolls. On the other hand, the Arab representatives, generally, drew attention to the problem of the 'other claimants' and questioned the allegations of serious inaccuracies in the relief rolls. UNGA res. 1456 (XIV), 9 Dec. 1959. See UNRWA, Information Paper No. 6, 17, and fnn 34 and 35.

193 The Suez Canal crisis in 1956, turbulence in Jordan in 1956 and Syria in 1957, dominated the General Assembly regional discussions of those years. UNRWA Information Paper No. 6, 15.

194 Ibid., 17.

195 Ibid., 20.

196 UNRWA, 'Annual Report of the Director of [UNRWA], 1 July 1960–30 June 1961', UN Doc. A/4861, para. 26. The General Assembly noted the report in UNGA res. 1725 (XVI), 20 December 1961. See UNRWA, Information Paper No. 6, 19–20.

197 UN Doc. A/4861, para. 42.

198 UNGA res. 2672 A (XXV), 8 December 1970. Earlier resolutions not already mentioned include UNGA res. 2052 (XX), 15 December 1965; UNGA, res. 2154 (XXI), 17 November

1966; UNGA res. 2341 A (XXII), 19 December 1967; UNGA res. 2452 B (XXIII), 19 December 1968; and UNGA res. 2535 A (XXIV), 10 December 1969.

199 Between 1960 and 1962 it deleted 55,400 eligibles from its rolls. UNRWA, Information Paper No. 6, 22.

200 UNGA res. 37/120 I [Working Group on the Financing of the United Nations Relief and Works Agency for Palestine Refugees in the Near East], 16 December 1982, adopted with a vote of 106 in favour, sixteen against, and twenty abstentions.

201 UNSG, 'Special Identification cards for all Palestine refugees. Report of the Secretary-General', 12 September 1983, para. 9, UN doc. A/38/382.

202 UNGA res 47/69 E, para. 3.

203 UNSG, Report of the Secretary-General [Palestine refugees in the Palestinian territories, occupied by Israel since 1967], A/48/373, 30 November 1993, para. 13. In the same paragraph, the report notes that '[u]nder an arrangement that has been followed for 40 years, all refugee families registered with UNRWA are in possession of registration cards issued by the Agency. While these cards indicate the number of family members and whether they are eligible for services, *they are not identification cards and have a much more limited purpose*. The Commissioner-General of UNRWA has pointed out that the Agency issues a registration card reflecting data about the refugee family concerned, which is entered on the registration roll at the time of registration.' [emphasis added].

204 The most recent of such resolution is UNGA res. 73/94, Operations of the UNRWA United Nations Relief and Works Agency for Palestine Refugees in the Near East, 7 December 2018, para. 39. For earlier resolutions, see UNGA res. 43/57 of 6 December 1988.

205 This was in response to refugee demands following the Madrid Peace Conference and the adoption of the Declaration of Principles.

206 Although registration of previously unregistered 'Palestine refugees' was theoretically possible also under the old instructions, in practice no such new registrations had taken place for decades; see Cervenak (n 157), 313. Since 1993, UNRWA has approved almost 7,000 new registration applications. There were two major peaks, first in the early 1990s in Syria, and second in the early 2000s in Jordan. It is worth noting that UNRWA considers 'new registrations' only the newly registered 1948 refugees. Once a 1948 refugee is registered, the children, grandchildren, and great-grandchildren are registered as 'descendants' and they are not counted as 'new registrations.'

207 See (n 154).

208 CERI (n 154), Introduction.

209 This includes the so-called Gaza and Jerusalem Poor, Frontier Villagers and third country nationals not meeting the two-year residence requirement, see sec. 4.3.2, below.

210 BADIL, *Handbook*, 2015, 16.

211 CERI (n 154), IV.A(4). See also discussion in Chapter IV, Section 3 in particular, regarding refugee registration and status in each UNRWA area of operations.

212 Significant numbers of UNRWA registered refugees may be habitually resident in one field (e.g. Gaza), even though they are present in another (e.g. Jordan or Syria), where they are not able to be recognized as Palestine refugees with the local authorities (hence they have no status in the country). They are eligible for UNRWA services as the agency considers its mandate towards Palestine refugees wherever they find themselves within its

area of operations. However, the frequent inability to transfer registration to another ‘field’ compounds UNRWA’s capacity to plan and deliver services accordingly.

213 CERI (n 154), sec. III.A.(1).

214 CERI (n 154), Glossary, para. (I). Reference to ‘Israel’ in relation to the definition of Palestine refugee in the CERI was first made in 1959 and stayed only for a brief period.

215 UNCCP, Analysis of Paragraph 11, para. 3, states: ‘[t]here is no doubt that in using this term the General Assembly meant the home of each refugee, i.e. his house or lodging and not his homeland’.

216 CEI, Rev. 7/83, para. 2.1.1.1.

217 Ibid., para. 2.1.1.2.

218 This includes about 2,200 nomadic people who – according to Morris – ‘were induced to leave between 1949 and 1956’. Morris, B., *The birth of the Palestinian refugee problem, 1947–1949*, New York: Cambridge University Press, 1987, 242. See also Chapter IV, Sections 3.4.2–3.4.3.

219 This includes approximately 40,000 Bedouin. Masalha, N., The historical roots of the Palestinian refugee question, in Aruri, N., *Palestinian refugees: The right of return*, London: Pluto Press, 2001, 56–7.

220 CERI (n 154), sec. III.A.

221 Ibid., sec. III.B.

222 Ibid., sec. III. A(1).

223 Ibid., sec. III.A(2).

224 Ibid., sec. III.A.

225 Ibid.

226 Ibid., sec. III.A(1).

227 See reference in CERI (n 154), sec. III.A(2).

228 Ibid., sec. III.A(1).

229 Ibid., sec. III.A (2)4.

230 See Rosen, S. J., ‘Why a special issue on UNRWA?’, *Middle East Quarterly Fall* (2012) 3–10. Lindsay, J. G., ‘Fixing UNRWA: Repairing the UN’s troubled system of aid to Palestinian refugees’, Washington, DC: Washington Institute for Near East Policy [online], 91, 2009; Lindsay, J. G., ‘Reforming UNRWA’, *Middle East Quarterly Fall* (2012) 85–91; Timon Dias, ‘The UNRWA Dilemma, The Gatestone Institute for International Policy’, 17 September 2013. Contra Albanese (n 161).

231 See UN Secretariat (Portal), Global Issues (refugees). Available at <http://www.un.org/en/sections/issues-depth/refugees/index.html>.

232 The unity of the family is universally recognized as the fundamental group unit of society and as entitled to protection and assistance from society and the state. Cf. UDHR arts. 12, 16(3), ICCPR, arts. 17, 23(5), and related Human Rights Committee Gen. Comm. No. 19, 1990; CRC, art. 16. See also the Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, sec. B, [Principle of unity of the family].

233 American Convention on Human Rights, art. 11(2) and art. 23(1); African Charter on Human and Peoples' Rights, art. 18(1); European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 8; European Social Charter, 1996, art. 16.

234 See UNHCR's Refugee Status Determination Procedural Standards - Processing Claims Based on the Right to Family Unity, 2016.

235 UNHCR, Procedural Standards for Refugee Status Determination under UNHCR's Mandate, ch. 5.

236 UNHCR defines a protracted refugee situation as one in which 25,000 or more refugees from the same nationality have been in exile for five consecutive years or more in a given asylum country. UNHCR ExCom, 'Protracted Refugee Situations', 30th meeting of the Standing Committee, EC/54/SC/CRP.14, 10 June 2004, paras. 3, 5.

237 This includes primarily refugees from Afghanistan, Burundi, Sudan, Somalia, Eritrea, DRC, Angola, and Bhutan. For example, like the Palestinians, some have remained in such a situation for decades, like the 2.4 million Afghan refugees stranded for forty years in Iran and Pakistan. UNHCR, Global Trends: Forced displacement in 2018, 20 June 2019, 22.

238 UNHCR, Guidelines on Article 1D (n 125), para. 8.

239 UNHCR, Global Trends: Forced Displacement in 2018, 20 June 2018, 2,4.

240 See *Report of the Director of [UNRWA], 1 July 1953 to 30 June 1954*, UN Doc. A/2717, para. 10, noted by the General Assembly in UNGA Resolution 818 (IX), 4 December 1954; *Report of the Commissioner-General of [UNRWA]*, UN Doc. A/57/13, 27 October 2002, para. 76, considered by the General Assembly in UNGA Resolution 57/121, 11 December 2002.

241 E.g. UNGA res 68/76, 11 December 2013.

242 E.g. UNGA res A/RES/74/83, 13 December 2019, which renews UNRWA mandate until June 2023. (n 123).

243 Last reference is in UNGA res. 73/94, para. 39, see (n 204) of this chapter.

244 Article 3(2) of *Jordanian Law No. 6 of 1954 on Nationality (last amended 1987)*, 1 January 1954, expressly refers to Palestinians.

245 See also subsequent Section 4.3.3–4.3.5.

246 Schiff (n 160), 8–9; Plascov, A., *The Palestinian refugees in Jordan 1948–1957*, Abingdon: Routledge, 2017; see also Schiff, B. N., 'Defunding aid for Palestinian refugees is not a road to peace,' *The Hill* 12 September 2018.

247 UNHCR Guidelines on Article 1D (n 125), 2017, para. 32, states: 'This interpretation of the 1951 Convention is necessarily without prejudice to the meaning of "the Palestine people," as well as to the meaning of the terms "refugees" and "displaced persons" as used in various UNGA and UNSC resolutions.'

248 The origins and ramifications of this discrimination are discussed in Cervenak (n 157), and in the first edition of this book (n 81).

249 According to Cervenak, UNRWA officials who drafted the eligibility rules naturally focused on the family as the basic unit of registration. As they considered the Palestinian family, 'they perceived Palestinian, Arab, and Muslim cultural and legal prescriptions as requiring women and children to follow the man in all aspects of life.' Also, in Lebanon, Jordan, and Syria, the complementary nature of UNRWA assistance to governmental assistance leads to the agency assisting those refugees who do not receive assistance from governmental sources; as children born to a registered refugee woman married to a local resident are entitled to full citizenship rights, and thus to benefits of a similar nature to

those provided by UNRWA, they were not considered in need of the agency's assistance. Cervenak (n 157), 225–9, 347–8.

250 Consolidated Eligibility Instructions 1993, para. 3.1.7.

251 In the CERI of 2006, the MNR category was added (husband and descendants of registered Palestine refugee women are included among those who do not meet UNRWA Palestine refugee criteria but are eligible to register to receive UNRWA services). This was one of the outcomes of the 2004 Geneva Conference, which propelled a number of reforms in UNRWA; see Chapter VII, Section 3.3. In an open letter dated 25 April 2006, the then-Commissioner-General announced an extension of UNRWA eligibility for services (but not the right to pass down 'Registered Refugee' status) to MNR family members, who were defined as the 'husbands and descendants of women who are Registered Refugees and are (or were) married to husbands who are not registered refugees'.

252 See CERI (n 154), sec. III.A(2.4), and Annex 1. Bartholomeusz notes that UNRWA's budget for 2008–2009 provides 'basic subsistence support to family members of registered refugee women married to non-refugee husbands'; as the General Assembly has approved this budget, UNRWA's mandate includes MNR. Cf. Bartholomeusz (n 124), 462.

253 CEDAW, art. 1; ICCPR66, arts. 2(1) and 26; ICESCR66, art. 2(2).

254 CERI (n 154), sec. III.B, 7. Concerns with respect to protection for this group are discussed in Chapter VII, Section 4.1.

255 As mentioned in the Introduction (Section 3.2.3), the 1967 displacement, at least from the West Bank, occurred in the context of Jordan annexation of the latter (followed by 'extension' of Jordanian citizenship in 1949, which was formalized in 1954 with Nationality Law No. 6). They were treated au pair with Jordanian nationals, until 1988. See Chapter IV, Section 3.2.

256 UNGA res. 2252 (ES-V), 4 July 1967. Subsequent resolutions consolidated this mandate. See, for example, UNGA res. 2452 C (XXIII), 19 December 1968; UNGA res. 2535 C (XXIV), 10 December 1969; UNGA res. 2672 B (XXV), 8 December 1970; UNGA res. 2792 B (XXVI), 6 December 1971; etc. On these activities, see UNRWA, 'Annual Report of the Commissioner-General of [UNRWA], covering the period from 1 July 1967 to 30 June 1968'.

257 CERI (n 154), sec. III.B, 7 [emphasis added].

258 Early UN documents had referred to them as 'economic refugees'. See UNRWA Working Paper No. 6 and UNRWA Information Paper No. 6.

259 These were originally persons in need whose normal place of residence until 15 May 1948 was East Jerusalem or Gaza City, who lost his/her work or properties (e.g. land, home, business establishment) and suffered hardship as a result of the 1948 conflict. See CERI (n 154), sec. III, A(2.1) and Glossary, 31.

260 Persons who were originally living in towns or villages along the 1949 armistice lines in the West Bank who lost farming properties or suffered other hardship as a result of the 1948 conflict. CERI (n 154), sec. III, A(2.2), Glossary, 31.

261 Persons of largely Lebanese origin who were working in Palestine but not permanently residing there until 15 May 1948, who suffered loss of livelihood and hardship as a result of the 1948 conflict. CERI (n 154), sec. III, A(2.3), Glossary, 31.

262 Ibid., sec. III, A(2.1) and (2.4).

263 Ibid., A(2.3).

264 Ibid., A(2.4) These are husbands and descendants of women who are Registered Refugees (woman, according to the Glossary, 32) and are (or were) married to husbands who are not registered refugees. The husbands and descendants, including legally adopted children, of these women are eligible to register to receive UNRWA services.

265 CERI (n 154), sec. III, A(2.5) These are women who do not meet UNRWA's criteria for Palestine Refugees and are (or were) married to Registered Refugees. These women are eligible to register to receive UNRWA services.

266 These are children who are receiving parental care from a registered refugee or other registered person, according to the terms of Islamic Khafalah practice (namely a sort of sponsorship). These children are eligible to register to receive UNRWA services during the period of their residence in the household of the Khafalah patron until they reach the age of eighteen years. CERI (n 154), sec. III, A(2.6), Glossary, 32.

267 See Section 3.2.

268 See reference to Korean refugees at (n 45) and (n 107). In the past, there have been some discussions as to whether art. 1D could concurrently refer to categories of refugees other than Palestinians and include a 'prospective protection' for persons protected by other UN bodies. The UNHCR Handbook mentions the UNKRA in relation to art. 1D. Various scholars, including the previous edition of this book, have criticized this approach since Korean war refugees were regarded as citizens in South Korea and hence were outside the scope of the 1951 Convention; see also Grahl-Madsen (n 10), 264, fn 152; Hathaway, J. C., *The Law of Refugee Status*, Toronto, Vancouver, Butterworths, 1991, 208, fn 117.

269 The first edition of this book (n 81), 90–123, contained an extensive coverage of national jurisprudence on art. 1D until 1998 (still captured in the Table of Cases at the beginning of the book). Commentary on art. 1D and related jurisprudence was also offered by Nicolaus, P., Saramo, P., 'Zu den Voraussetzungen und der Anwendbarkeit des Artikels 1 Abschnitt D Satz 2 der Genfer Flüchtlingskonvention', *Zeitschrift für Ausländerrecht und Ausländerpolitik* 2 (1989) 67, and in more recent years: Akram and Goodwin-Gill (n 117), 12; Goddard (n 81), 475–510; see also Qafisheh, M., Azarov, V., Article 1D, in Zimmermann, A. (ed.), *The 1951 Convention relating to the Status of Refugees and its 1967 protocol: A commentary*, Oxford: Oxford University Press, 2011, 537–69. Since 2005, BADIL has carried out ground-breaking research on the interpretation and application of art. 1D, systematically surveying domestic practice and jurisprudence, see BADIL (n 152) (earlier edns. 2005, 2011).

270 This section refers to main regional and national case law, and further analysis on the status of Palestinian refugees at country level appears in Chapter IV (e.g. Section 4.1.3) and Chapter V (Sections 2, 3, and 4).

271 The status and treatment that were granted to Palestinian refugees in each individual country is discussed in Chapter IV, Section 3.

272 Palestinians have faced resentment in Arab countries, often in reaction to positions and actions of the PLO.

273 UNRWA's attempts to deliver protection to Palestinians in Kuwait are discussed in Chapter VII, Section 3.2.3.

274 Bundesverwaltungsgericht (Federal Administrative Court, Germany), 1 C 21/87, 21 Jan. 1992, BVerwGE 89, 296, InfAuslR 7 (1992), 209. The Court focused on the refugee's motive for leaving the UNRWA's area of operations and her or his subsequent behaviour.

275 The Netherlands' Council of State, Judicial Division [Afdeling Rechtspraak, Raad van State] in an unpublished decision of 30 December 1987, No. Ro2.84.1302

276 The Council of Ministers of the European Union in the 1996 Joint Position on the harmonized application of the definition of the term 'refugee' in art. 1 of the 1951 Convention, adopted in March 1996 had interpreted the phrase 'has ceased for any reason' in art. 1D(2), by distinguishing between a Palestinian refugee who is unable to re-avail himself of UNRWA's assistance by returning to its area of operations *for reasons beyond his control* on the one hand, and a Palestinian refugee who 'deliberately removes himself' from UNRWA's assistance by leaving the area without having the possibility of return on the other. It concluded that in the latter case refugee status is in principle to be determined in accordance with art. 1A, while implying that in the former situation the Palestinian refugee concerned is 'automatically covered by' the 1951 Convention by virtue of art. 1D. Accordingly, the Joint Position concluded that 'Any person who deliberately removes himself from the protection and assistance referred to in Article 1D of the Geneva Convention is no longer automatically covered by that Convention. In such cases, refugee status is in principle to be determined in accordance with Article 1A' [emphasis added]. Joint Position of 4 March 1996 defined by the Council of the European Union on the basis of art. K. 3 of the Treaty on European Union on the harmonized application of the definition of the term 'refugee' in Article 1 of the Geneva Convention of 28 July 1951 relating to the status of refugees. Text: *Official Journal*, No. L 063, 13 March 1996. 2.

277 Cf. Nicolaus and Saramo (n 269), 70 and fn. 28.

278 This approach was probably not limited to Palestinian refugees but has been part of a wider discourse questioning the refugee status of persons who might have contributed to become refugees through their own actions, e.g. through 'Republikflucht' or by destroying identity and/or travel documents.

279 Para. 143 of the Handbook states: 'With regard to refugees from Palestine, it will be noted that UNRWA operates only in certain areas of the Middle East, and it is only there that its protection or assistance are given. Thus, a refugee from Palestine who finds himself outside that area does not enjoy the assistance mentioned and *may be considered for determination of his refugee status under the criteria of the 1951 Convention*. It should normally be sufficient to establish that the circumstances which originally made him qualify for protection or assistance from UNRWA still persist and that he has neither ceased to be a refugee under one of the cessation clauses nor is excluded from the application of the Convention under one of the exclusion clauses' [emphasis added].

280 UNHCR Guidelines on Article 1D (n 125), 1.

281 UNCHR Handbook, para. 140: 'The 1951 Convention, in sections D, E, F of Article 1, contains provisions whereby *persons otherwise having the characteristics of refugees*, as defined in Article 1, section A, are excluded from refugee status. Such persons fall into three groups. The first group (Article 1 D) consists of persons already receiving UN protection or assistance; the second group (Article 1 E) deals with persons who are not considered to be in need of international protection; and the third group (Article 1 F) enumerates the categories of persons who are not considered to be deserving of international protection' [emphasis added].

282 Bundesverwaltungsgericht, Urteil vom 4.6.1991 - BVerwG 1 C 42.88 [Federal Administrative Court, decision of 4 June 1991], published in InfAuslR 10/91, 305. For an English abstract, see 4 IJRL 386 (1992).

283 Ibid.

284 This interpretation has been advanced by Nicolaus and Saramo (n 269); Köfner and Nicolaus (n 16), 156; Grahl-Madsen (n 10), 140; Goodwin-Gill, 1996, 91.

285 Grahl-Madsen, (n 10), 263, refers to it as a ‘suspensive clause’; Goodwin-Gill and McAdam (n 13), 153, argue that art. 1D ‘should be seen not so much as an “exclusion” clause,’ but rather as a ‘contingent inclusion clause’.

286 UNHCR Guidelines on Article 1D (n 125), para. 6: ‘[a] broad interpretation is warranted, based on the intention of the parties as expressed in the ordinary meaning of the terms of the treaty, considered in context and in the light of its object and purpose’. Such interpretation reflects greater consideration of the rules of interpretation embodied in the Vienna Convention on the Law of Treaties, in accordance with which the *travaux préparatoires* of the CSR51 and UNHCR Statute are ‘supplementary means of interpretation’. Arts. 31–2, Convention on the Law of Treaties, 23 May 1969.

287 See UNHCR intervention before the Court of Appeal of England and Wales in the case of *Amer Mohammed El-Ali (Appellant) v. Secretary of State for the Home Department (Respondent)*, 26 June 2002, C/2002/0751. El-Ali was the first such type of court intervention on art. 1D. For subsequent interventions see UNHCR Revised Statement on Article 1D of the 1951 Convention in relation to *Bolbol v Bevándorlási és Állampolgársági Hivatal*, C-31/09, CJEU, 17 June 2010, and UNHCR oral intervention before the Court of Justice of the European Union in the case of *El Kott and Others v Hungary*, 15 May 2012, C-364/11. UNHCR written intervention before the Court of Justice of the European Union in the case of *El Kott and Others v Hungary*, 27 October 2011, C-364/11.

288 UNHCR, Note on UNHCR’s Interpretation of Article 1D of the 1951 Convention relating to the Status of Refugees and Article 12(1)(a) of the EU Qualification Directive in the context of Palestinian refugees seeking international protection, May 2013.

289 HCR/GIP/16/12.

290 UNHCR Guidelines on Article 1D (n 125), 1.

291 UNHCR has supervisory responsibility over the application of international norms for the protection of refugees under the UNHCR Statute (para. 8) and the 1951 Convention, which is an integral part of UNHCR’s international protection function and may even constitute a rule of customary international law. See Türk (n 57), 135, 139, 141.

292 UNHCR Guidelines on Article 1D (n 125), para. 7: ‘The second purpose of Article 1D is to avoid duplicating and overlapping competencies between UNHCR and UNRWA. The responsibilities of the two agencies are intended to be complementary.’

293 In 2005, BADIL observed that only Finland, Hungary (in some cases), and, to some degree, Norway, had a correct application of art. 1D. In 2015, BADIL indicates that at least ten European countries (Austria, Belgium, Czech Republic, France, Germany, Hungary, the Netherlands, Norway, Sweden, and the United Kingdom) follow, to some extent, the guidelines featured in UNHCR’s Note of 2013 to grant refugee status to Palestinian applicants.

294 *Bolbol* (n 287). In this case, Ms. Bolbol, a stateless person of Palestinian origin, had left the Gaza Strip for Hungary in January 2007, fleeing the unsafe conditions due to the conflict between Fatah and Hamas. She obtained a residence permit but was denied asylum on the grounds that she had not fled persecution under the terms of the Convention. Ms. Bolbol appealed the denial of asylum under art. 1D, to which art. 12 of the EU Qualification Directive refers. The CJEU concluded that persons who have *actually* availed themselves of UNRWA assistance fall within the scope of the exclusion clause of the 1951 Convention.

Bolbol was found eligible but not having availed herself of UNRWA's services. See European Commission Legal Services, Summary of important judgments, C-31/09.

295 *Mostafa Abed El Karem El Kott and Others v Bevándorlási és Állampolgársági Hivatal ('El Kott')*, C-364/11, CJEU, 19 Dec 2012. The case centred around three refugees from Lebanon (Mr. El Kott, Mr. Radi, and Mr. Ismail) who had claimed asylum in Hungary claiming risks for their safety in their respective camps. Hungary had refused them refugee status. As the cases were referred to the CJEU and joined, the Court decided that cessation of protection or assistance 'for any reason' includes the situation in which a person who, after availing himself of such protection or assistance, ceases to receive it for a reason beyond his control and independent of his volition'. Competent national authorities will have to assess the circumstances which prompted the asylum seeker to leave. CJEU stated that when the cessation of the protection or assistance provided by UNRWA has been ascertained *ipso facto* 'entitled to the benefits of [the] directive' means that that Member State must recognise him as a refugee within the meaning of art. 2(c) of the directive and that person must automatically be granted refugee status, provided that the cessation clauses do not apply. For a summary, see European Database of Asylum Law, CJEU C-364/11.

296 Another significant judgment for the interpretation of art. 1D was rendered by New Zealand Immigration and Protection Tribunal in *AD (Palestine)*, [2015] NZIPT 800693-695, 23 December 2015, ('*AD (Palestine)*').

297 CJEU Preliminary ruling under Article 267 TFEU from the Administrativen sad Sofia-grad (Sofia Administrative Court, Bulgaria), ('*Aletho*'), C-585/16, CJEU, 25 July 2018. This case concerns an UNRWA registered Palestine refugee from Gaza (Ms. Serin Aletho), whose application for asylum in Bulgaria was denied on grounds that she had not proven any risk of persecution under Article 1(A) of the 1951 Refugee Convention. The applicant later appealed this decision to the Administrative Court of Sofia (8 November 2016). The Sofia Administrative Court, doubting whether the asylum application should have rather fallen within the scope of Article 1D of the 1951 Convention, referred, on 18 November 2016, preliminary questions to the Court of Justice on the interpretation of Article 12(1)(a) of the Qualification Directive (Directive 2011/95/EU) and the Procedures Directive (Directive 2013/32/EU). In sum, the Sofia Administrative Court asked whether (1) it is permitted to examine an application for international protection under art. 1A CSR51 (as was done in this case) instead of art. 1D second sentence, where the application is made by a stateless person of Palestinian origin who is registered as a refugee with the UNRWA and who was resident in that agency's area of operations before making that application; (2) a person registered with UNRWA who has fled the Gaza Strip and stayed in Jordan before travelling to the EU must be considered to be sufficiently protected in Jordan with the result that the application must be declared as inadmissible; (3) after the annulment of a decision rejecting an application for international protection, the court may, or must, itself adopt a decision on the application for international protection.

298 Goodwin-Gill, G., BADIL Handbook Preface, 2015, ix-x.

299 In *Bolbol* (n 287), para. 47, CJEU counters a long-held line of argument developed by the UK government, which maintained that only Palestinians who became refugees as a result of the 1948 conflict were to be understood as receiving protection or assistance from UNRWA at the time when the 1951 Convention was concluded. Such position excluded persons displaced following the 1967 hostilities from the scope of art. 1D.

300 *Bolbol* (n 287), para. 44, *El Kott* (n 295), para. 48.

301 *El Kott* (n 295), 54: ‘It is accepted that the position of the persons receiving assistance from UNRWA has not to date been definitely settled, as is apparent, *inter alia*, from paragraphs 1 and 3 of United Nations General Assembly Resolution No. 66/72 of 9 December 2011.’

302 Cessation of protection or assistance can also occur when ‘it is impossible for [UNRWA] to carry out its mission’, in *El Kott* (n 295), para. 56. The implications of this provision are further explained in the remainder of this subsection.

303 *El Kott* (n 295), paras. 70–1; also *AD (Palestine)* (n 296), para. 192.

304 This interpretation is also supported by the French version of art. 1D: ‘*bénéficieront de plein droit du régime de cette convention*’. UNHCR Guidelines on Article 1D (n 125), paras. 30–1.

305 *El Kott* (n 295), para. 73.

306 Perin, M., ‘European and international law and Palestinian refugees: *Bolbol*, *El Kott* and the application of Article 1A of the Geneva Convention’, *UCLJLJ* 3 (2014) 87.

307 UNHCR Guidelines on Article 1D (n 125), para. 6.

308 Ibid., para. 8. Para. 9 stipulates that ‘[f]or the purposes of these Guidelines, the term “Palestinian refugees” is used to encompass “Palestine refugees”, “displaced persons” and “descendants” or one or more of these groups, whose position has not been definitively settled in accordance with relevant resolutions of the UN General Assembly’.

309 See Section 4.2.3.

310 *Bolbol* (n 287), para. 44: ‘[i]t is not in dispute that UNRWA constitutes one of the organs or agencies of the United Nations other than UNHCR which are referred to ... in Article 1D of the Geneva Convention, since it was created in the light of the specific situation of Palestinian refugees receiving protection or assistance from UNRWA ... ’; *El Kott* (n 295), para. 48: ‘It is common ground that UNRWA at present constitutes ... the only United Nations organ or agency other than the HCR which is referred to ... in the first subparagraph of Article 1D of the Geneva Convention’; *AD (Palestine)* (n 296), para. 146: ‘[i]t is beyond doubt that, throughout its drafting history, the personal scope of Article 1D was inherently tied to the existence and conduct of relief operations by UNRWA and Article 1D thus functions in symbiosis with those operations’.

311 UNHCR Guidelines on Article 1D (n 125), para. 1.

312 Ibid., paras. 13–14. A broad approach finds large supports is the doctrine, see Grahl-Madsen (n 10), 95–6, Goodwin-Gill and McAdam (n 13), 157–8; Qafisheh and Azarov (n 269), 154.

313 UNHCR Guidelines on Article 1D (n 125), para. 12.

314 This is the case for the descendants of Palestinian refugees who have taken residence outside of initial host countries, e.g. in Kuwait, Iraq, Libya, and then found themselves forced to flee their country of subsequent residence.

315 UNHCR indicates that ‘[b]y capturing those Palestinians who were *eligible* as well as those who were *receiving* protection or assistance, their continuing refugee character is acknowledged’. UNHCR, ‘Note on UNHCR’s Interpretation of Article 1D of the 1951 Convention relating to the Status of Refugees and Article 12(1)(a) of the EU Qualification Directive in the context of Palestinian refugees seeking international protection’, May 2013, paras. 4 and 13.

316 Also noted in *AD (Palestine)* (n 296), paras. 151–2.

317 UNHCR Guidelines on Article 1D (n 125), para. 14 [emphasis provided in the original].

318 Ibid., para. 42.

319 See also Grah-Madsen (n 10), 265, where the author argues that art. 1D applies 'to persons within the mandate of UNRWA as a class or category, and not to individual persons'.

320 Bolbol (n 287), paras. 47–8.

321 Ibid., para. 45.

322 UNHCR Guidelines on Article 1D (n 125), para. 17.

323 A different approach would also disregard the changes brought about by the 1967 Protocol, and its removal of the temporal limitation of the 1951 Convention; see UNHCR Guidelines on Article 1D (n 125), para. 17.

324 UNHCR Guidelines on Article 1D (n 125), para. 13.

325 Ibid., para. 42.

326 Ibid., para. 8 and fn 17, acknowledge that the term 'Palestine refugees' is not expressly defined by the General Assembly, and refers, without elaborating on it, to the earlier attempts at defining who is a Palestine refugees within the scope of para. 11 of General Assembly res. 194 by the UNCCP (e.g. UN Doc. W/61/Add.1 and UN Doc. A/AC.25/W/61), see Section 4.1.

327 Ibid., fn 20.

328 Ibid., para. 10 and fn 24.

329 Exclusion clauses as per CSR51, arts. 1C, 1E, and 1F are discussed in Section 4.3.5.

330 UNHCR Guidelines on Article 1D, para. 7.

331 It is interesting to see how UNHCR's approach has evolved since 2009, when an earlier note on art. 1D indicated that: 'in moving from inside to outside the UNRWA area of operations and then back again, the person concerned moves back and forth between paragraphs 1 and 2 of Article 1D, irrespective of the reasons for leaving or returning to the UNRWA area'. The interpretation was significantly revised in 2013, with the UNHCR 'Revised Statement on Article 1D of the 1951 Convention Issued in the context of the preliminary ruling reference to the Court of Justice of the European Communities from the Budapest Municipal Court regarding the interpretation of Article 12(1)(a) of the Qualification Directive', 8. The latter, moves to a phrasing that takes into account the cessation of services: 'the phrase "ceased for any reason" in the second paragraph of Article 1D of the 1951 Convention [...] include[s] the following: (i) the termination of UNRWA as an agency; (ii) the discontinuation of UNRWA's activities; or (iii) any objective reason outside the control of the person concerned such that the person is unable to (re-)avail themselves of the protection or assistance of UNRWA.' This is important because, although moving outside UNRWA's area operations does mean moving to art. 1D second sentence (as in the 2009 Note), at present this is not the only criterion to trigger the inclusion clause of art. 1D.

332 UNHCR Guidelines on Article 1D, para. 22(c): UNHCR explicitly states that 'protection or assistance' are alternatives: an applicant is not required to establish that both the protection and the assistance of UNRWA have ceased.

333 UNHCR Guidelines on Article 1D, para. 11.

334 Some see in the de facto cessation of activities of the UNCCP an automatic trigger for UNHCR's competence over Palestinian refugees in UNRWA's area of operations. Akram and Rempel, BADIL, referred to in Chapter VII, Section 2. Neither do UNHCR nor relevant *opinio iuris* support such interpretation, referring to UNRWA as the relevant organization at art. 1D. UNHCR Guidelines on Article 1D, para. 1; *Bolbol* (n 287), para. 44; *El Kott* (n 295), 48; see also, *AD (Palestine)* (n 296), paras. 101–16.

335 UNHCR Note 2009, now superseded by UNHCR Guidelines on Article 1D, was more explicit in this respect: 'If the person concerned is inside UNRWA's area of operations, he or she should be considered as "at present receiving from organs or agencies other than [UNHCR] protection and assistance" within the meaning of paragraph 1 of Article 1D, and hence is excluded from the benefits of the 1951 Convention', para. 7.

336 *El Kott* (n 295), paras. 58 and 61.

337 Ibid., para. 49.

338 UNHCR Guidelines on Article 1D, para. 27. This is reflective of a broader interpretation that an individual cannot make him/herself a refugee.

339 *El Kott* (n 295), para. 56.

340 Ibid., para. 63, 65 [emphasis added]. For a departure from this approach see *Aletho* (n 297), fn 39.

341 In *El Kott* (n 295), the CJEU accepted that in the context of the facts before it, art. 1D(2) applies, cf. para. 65.

342 *El Kott* (n 295), para. 64.

343 UNRWA's mandate includes promoting the well-being and human development of the Palestine refugees, including protection, education, health care, relief and social services, camp infrastructure and improvement, microfinance, and emergency assistance, including in times of armed conflict. See UNGA res. 74/93, which renewed UNRWA's mandate until June 2023 (n 123). See also Secretary-General's Report, 'Operations of the [UNRWA]', 71st sess., agenda item 49, [UNRWA], 30 March 2017, UN Doc. A/71/849.

344 See Chapter VII, Section 4.1, re: UNRWA's mandate and protection challenges.

345 *Aletho* seems to move away from the interpretation of what 'commensurate' would imply. CJEU concludes that an UNRWA registered Palestine refugee is *ipso facto* entitled to the benefits of the [1951 Convention] when, based on an individual assessment, it emerges that his or her personal safety in an UNRWA 'field' of operations (that the person was forced to leave owing circumstances beyond her or his control), is at serious risk and 'it is impossible for UNRWA [...] to guarantee that the living conditions of that individual *would be compatible with its mission*'. *Aletho* (n 297), para. 86 [emphasis added].

346 This could be the case of refugees from UNRWA area of operations where a Palestinian refugee may experience harassment, arrest, and detention, mistreatment from host authorities because of security consideration attached to him/her on the basis of his or her status as a Palestinian refugee.

347 Older jurisprudence referred to in the first edition (n 81) interpreted the phrase that UNRWA should cease to operate *at all* for Palestinians to fall under the scope of the 1951 Convention, such as case law in Australia, the Netherlands, and New Zealand. Others, such as Spain and the Dutch courts until 1990, have interpreted this provision as leading to a virtual automatic recognition as a Convention refugee (without applying the criteria of art. 1A(2)) wherever Palestinian refugees had left UNRWA's areas of operations.

348 The personal circumstances of the applicant are nevertheless relevant to determine whether one of the objective reasons exists, including ‘age, sex, gender, sexual orientation and gender identity, health, disability, civil status, family situation and relationships, social or other vulnerabilities, ethnic, cultural or religious considerations, political and social links and compatibility, language abilities, and any past experiences of serious harm and its psychological effects’; see UNHCR Guidelines on Article 1D, para. 24.

349 UNHCR argues that while the termination of UNRWA’s mandate was the main preoccupation of the drafters of the 1951 Convention, the phrase ‘for any reason’ is sufficiently broad to include circumstances other than the cessation of UNRWA’s mandate. UNHCR Guidelines on Article 1D, para. 21.

350 Ibid., paras. 22–3.

351 Ibid., para. 22(i).

352 Consideration of the decisive role of the host countries, in determining both the extent to which UNHCR can operate and the legal status and residency of the refugees, would continue to be of primary importance. See Albanese (n 161), paras. 15, 68–9.

353 UNHCR Guidelines on Article 1D, para. 22(ii).

354 Ibid.

355 Ibid., fn 43.

356 *AD (Palestine)* (n 296), para. 172.

357 *El Kott* (n 295), para. 56.

358 UNHCR Guidelines on Article 1D, para. 22(iii)(e).

359 The UNHCR Guidelines on Article 1D mention sexual or gender-based violence, torture, inhuman or degrading treatment or punishment, human trafficking and exploitation, forced recruitment, arbitrary arrest or detention, or severe discrimination, including of a nature that hampers the right to earn a livelihood, to access education, or to practice one’s religion.

360 UNHCR Guidelines on Article 1D, para. 22(iii)(d).

361 Ibid., para. 22(iv).

362 Ibid., para. 15.

363 Ibid., para. 22(iv)(g).

364 Ibid., para. 22(iv)(h). While official refusal of (re)admission or the renewal of relevant documents may trigger art. 1D(2), the refugee’s lack of co-operation in acquiring such documents would not trigger art. 1D(2).

365 Ibid., para. 22(iv)(h).

366 Ibid., para. 22(iv)(j).

367 Ibid.

368 The latter two scenarios in particular are particularly relevant in practice as they may form the subject of individual asylum applications, often involving information requested from UNHCR and/or UNRWA.

369 UNHCR Guidelines on Article 1D, para. 22(iv)(j).

370 Ibid.

371 This include restrictions (and often violations) of fundamental human rights, including recognition at birth, freedom of movement, physical and psychological safety, access to essential services or labour market, and choice of residence, to mention a few.

372 It is to note that given the reference in *El Kott* to ‘living conditions’, the rights-based assessment should include consideration of not only life threatening situations where the life or physical security of the person is at risk, but also situations where economic and social rights, e.g. adequate standard of living, are put into question.

373 While UNRWA may not be in a position to publicly state this, bilateral communication can complement this information.

374 Cf. UNHCR, ‘The Situation of Palestinian Refugees in Lebanon’, February 2016; UNHCR, ‘Country of Origin Information on the Situation in the Gaza Strip, Including on Restrictions on Exit and Return’, 23 February 2018.

375 UNHCR Guidelines on Article 1D, para. 25. This is in line with UNHCR, *Guidelines on Article 1D on International Protection No. 4: ‘Internal Flight or Relocation Alternative’ Within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*, 23 July 2003, HCR/GIP/03/04.

376 UNHCR Guidelines on Article 1D, para. 25.

377 *Aletho* (n 297), paras. 137–40.

378 UNHCR Guidelines on Article 1D (n 125), para. 26. *Sur place* claim is the one arising ‘after arrival in the country of asylum, either as a result of the applicant’s activities in the country of asylum or as a consequence of events, which have occurred or are occurring in the applicant’s country of origin since their departure’. See also section on ‘Refugees *sur place*’, in UNHCR Handbook, paras. 94–6.

379 UNHCR Guidelines on Article 1D (n 125), para. 27, indicate that a careful examination of the specific circumstances of the case would be required.

380 *Ibid.*

381 Accordingly, UNHCR’s 2009 Statement on Article 1 D stipulates that ‘no separate determination of well-founded fear in the sense of Article 1A(2) of the Convention is required’.

382 See Chapter VI, particularly Section 2 and Section 3.

383 UNHCR Guidelines on Article 1D (n 125), paras. 29, 32–36.

384 See UNHCR Handbook, paras. 111–39; UNHCR, ‘The Cessation Clauses: Guidelines on their Application’, 26 April 1999. Available at <http://www.refworld.org/docid/3c06138c4.html>, and UNHCR, ‘Guidelines on International Protection No. 3: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees (the “Ceased Circumstances” Clauses)’, 10 February 2003, HCR/GIP/03/03.

385 As discussed earlier (Section 4.2.3), for Palestinians the acquisition of nationality does not equate with cessation of entitlement to UNRWA assistance and loss of entitlement under relevant UN resolutions.

386 UNHCR Handbook, paras. 114, 118–32.

387 *Ibid.*, paras. 115, 133–9.

388 UNHCR Guidelines on Article 1D (n 125), para. 32: ‘Although a literal interpretation of Article 1C, which explicitly references only refugees recognised under “Article 1A” of the 1951 Convention, would render it inapplicable to Article 1D Palestinian refugees, such an interpretation no longer corresponds to the reality that a number of Palestinian refugees

have acquired the nationality and protection of other countries'. See also *AD (Palestine)* (n 296), paras. 203–5.

389 Cf. n. 385.

390 UNHCR Guidelines on Article 1D (n 125), para. 32. So, as recalled earlier, their fundamental rights as enshrined by international norms, particularly international human rights law, and UN resolutions (e.g. UNGA Resolution 194 of 1948, Resolution 302 of 1949, Resolution 2252 of 1967, and UNSC Resolution 237 of 1967) remain valid and applicable.

391 For example, this is the case of Palestinian refugees from Syria who hold Jordanian documents (i.e. the fate of Palestinians involved in the 'Black September' uprising who fled or were expelled from Jordan in the 1970s, see Chapter IV, Section 4) and are under threat of being denationalized by Jordan.

392 Cf. UNHCR Handbook, para. 131.

393 It stipulates that 'the Convention shall not apply to a person who enjoys rights and obligations comparable to the citizens of the country where she or he has taken residence'. See also UNHCR Handbook, paras. 144–6. See UNHCR, 'Note on the Interpretation of Article 1E of the 1951 Convention relating to the Status of Refugees', March 2009. Available at <http://www.refworld.org/pdfid/49c3a3d12.pdf>.

394 Grahl-Madsen (n 10), 270; also Köfner and Nicolaus (n 16), 315.

395 UNHCR Guidelines on Article 1D (n 125), para. 35.

396 See Chapter IV, Section 3.4.

397 Detailed discussion on the League of Arab States and the Casablanca Protocol is in Chapter IV, Section 2.2 and in Chapter VI, Section 4.

398 UNHCR Guidelines on Article 1D (n 125), para. 35; see also Grahl-Madsen (n 10), 270, who argues that a person excluded from refugee status though art. 1E 'must be granted a status which in no respect is inferior to that of a Convention refugee', otherwise the provision may be open to abuse.

399 UNHCR Guidelines on Article 1D (n 125), para. 36.

400 CSR51, art. 1F. See also UNHCR, 'Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees', 4 September 2003, HCR/GIP/03/05; 'Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees', 4 September 2003.

401 UNGA res. 428(V), 'Statute of the Office of the United Nations High Commissioner for Refugees', 14 December 1950, A/RES/428(V),

402 UNHCR Statute, para. 7.

403 UNHCR Guidelines on Article 1D (n 125), para. 7.

404 Goodwin-Gill and McAdam (n 13), 152.

405 UNHCR, *Note on the Mandate* (n 27), fn 15.

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(p. 127) III On the Application of International Law to Palestinian Refugees

A deep-rooted problem at the heart of this conflict has not been the clarity of international law, but the unwillingness of the international community to enforce what it has proclaimed.

Michael Lynk, Special Rapporteur on the Human Rights Situation in the occupied Palestinian territory, 2018.

1. Introductory Remarks

Chapter II demonstrated how the status of Palestinians refugees is rooted in international law. This chapter builds on this by elaborating on how specific areas of international law are relevant as a result of certain ‘qualities’ Palestinian refugees possess: as ‘refugees’ they are the subjects of international refugee law; as largely ‘without a citizenship’, they are the subjects of the law relating to stateless persons; those in situations of armed conflict or military occupation are ‘protected persons’ for the purpose of humanitarian law; those who have experienced displacement without crossing an international border are protected as ‘internally displaced persons’; and, as ‘human beings’, all Palestinian refugees are the subjects of human rights law. This chapter discusses each of these branches of international law in relation to Palestinian refugees, as well as their interplay;¹ collectively they constitute the international framework for the protection of Palestinian refugees. Such framework is of critical importance in view of the multiplicity of regional and national legal regimes to which Palestinian refugees, as a polity in exile, have been subjected for the last seventy years.

As the Palestinian refugee question was born out of armed conflict, and armed struggle and hostilities have punctuated their experience in various countries over this period, the chapter discusses international humanitarian law first in Section 2, which also offers some preliminary considerations on the relevance of international criminal law and how it can contribute indirectly to the protection of Palestinian refugees. Section 3 discusses the question of Palestinian enduring statelessness, a status that is foundational and still the norm, rather than the exception, for most Palestinians, including Palestinian refugees; confusion around the legal implications of Palestinian statehood (which is *in fieri* and held in captivity) has resulted in incomplete or inconsistent classification of asylum requests and an uneven protection, which remains to be remedied. A brief discussion regarding refugee law, (p. 128) building on the exploration of Article 1D of the 1951 Convention in Chapter II, then follows (Section 4). This will be complemented by an examination of the international human rights system (IHRs), which potentially offers a broader scope of protection, especially to Palestinian refugees living in countries that have not ratified the 1951 Convention (Section 5). In view of the features of recent displacements – particularly in the occupied Palestinian territory (oPt) and Syria – the framework protecting internally displaced persons also is considered (Section 6). Each section includes a brief overview of the law, examined *in abstracto* first, and consequently, in relation to Palestinian refugees.

How the interconnectedness of the various areas of law can result in greater protection of Palestinian refugees is highlighted throughout the chapter, as well as in the concluding observations (Section 7). These various areas of law and their interplay constitute the foundation of a number of specific rights and standards of treatment to which Palestinian refugees are entitled. These are discussed in detail in Chapter VI,² after examining the

status and treatment of Palestinian refugees across their dispersal in Chapter IV and Chapter V.

Before the examination of this rich body of law, some preliminary comments are warranted with respect to its applicability over time. Given the fact that the Palestinian refugee question first arose around 1947–1948 and has spanned over seven decades, the question of intertemporal law – namely ‘which of different legal systems prevailing at successive periods [are] to be applied in a particular case’ – is of significance.³ According to this doctrine, while the law cannot apply retroactively, its interpretation cannot be considered ‘frozen in time’.⁴ The passage of time has an impact on the way the law is applied: if the original violation does not cease before the coming into effect of a new legal obligation, that obligation may become relevant to the earlier facts.⁵ This includes the situation involving an act that already constituted a violation at the time of its commission, which – subject to specific conditions – may trigger an additional violation (when a new norm is introduced), and the case involving an act that, not constituting a violation at the time it was committed, may – under (p. 129) certain conditions – become a violation of international law at a later stage (when the norm is introduced). Both scenarios are relevant to the Palestinian refugee situation; in this case the original facts – forced displacement, dispossession, and subsequent denationalization en masse – violated norms existing at the time they occurred, and were never redressed (e.g. by the return of refugees to their homes and payment of compensation) and have, in some forms, continued until the present moment.⁶ Where this is the case, the original violations may then be considered to have acquired a continuous nature; hence, the various human rights and humanitarian law treaties that have entered into force from 1948 onwards have become relevant thereto.⁷ As Boling argues, the intertemporal law and continuing violations doctrines demonstrate that the passage of time corroborates, rather than ‘erodes’ or ‘dilutes’, a violation and the concomitant obligation to provide a remedy, since the law has gained greater strength and clarity over time.⁸

2. International Humanitarian Law

International humanitarian law (IHL) proves to be central to the protection of Palestinian refugees in a multiplicity of ways and contexts. In addition to its historical relevance for the refugees from the territory which was once British Mandate Palestine, IHL has become a relevant legal framework also for Palestinian refugees that have found themselves mired in conflicts in various countries and territories over time. Such conflicts have been a major trigger for further displacement of these refugees. Some authors argue that, if IHL norms protecting civilians were respected, the majority of conflict-related displacement could be avoided in the first place.⁹ The case of the Palestinians supports this argument: the displacement and violations that Palestinian refugees endured since 1947 could have been prevented, sanctioned, and redressed had the law in force at the time been respected. An overview of the law is offered before highlighting some issues that are of particular relevance for Palestinian refugees.

2.1 Overview of the Law

IHL, or *jus in bello* ('law in war' in Latin), is the branch of international law that governs the way in which warfare is conducted, and sets the parameters for those engaged in armed conflict.¹⁰ This set of rules is different from *jus ad bellum* ('law to war'), a distinct body of international law that governs the conditions under which states may resort to war or the use of armed force in general. The reason for this intrinsic separation is that the application of the protection provided by IHL to those affected by hostilities is not dependent on the legality of the resort to force.¹¹

(p. 130) The main treaties codifying norms of IHL,¹² relevant for the scope of this study, are: the 1907 Hague Convention (IV) Respecting the Laws and Customs of War on Land and its Annex: Regulations Concerning the Laws and Customs of War on Land ('Hague Regulations' or 'HR');¹³ the Geneva Conventions for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field; of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea; relative to the Treatment of Prisoners of War; and to the Protection of Civilian Persons in Time of War (1949) – known as 1949 Geneva Conventions ('GC' I-IV);¹⁴ and the 1977 Additional Protocols to the Geneva Conventions ('AP' I-II).¹⁵ The Hague Regulations, GC(IV), and APs, as applicable, as well as relevant customary IHL, is the main reference for this section.¹⁶ The Hague Regulations were found to constitute customary international law at the Nuremberg and Tokyo war crimes trials in 1945 and 1948, respectively.¹⁷ Concerning the GC(IV), at 30 September 2019, there were 196 states parties,¹⁸ including almost all UN member states, and specifically all members of the League of Arab States (LAS), Israel, and the State of Palestine.¹⁹ Over 174 states have signed the AP(I) – but, among the countries relevant to the scope of this study, not Israel – many provisions of which are considered to reflect customary IHL.²⁰

(p. 131) IHL is designed to provide for restraints upon the conduct of military action and in situations of military occupation, so as to protect civilians and those that are *hors de combat*, regardless of which side of the war they find themselves.²¹ Armed conflict should not result in unnecessary harm to individuals not participating in hostilities. This is to be ensured through: the obligation to distinguish between combatants and military objectives on the one hand, and non-combatants, civilians, and civilian objects on the other hand, with direct attacks only permissible on the former (principle of distinction);²² the prohibition against attacks that may result in excessive loss of life or personal or material injury (principle of proportionality);²³ and the obligation to take all feasible measures to avoid or minimize incidental loss of or injury to civilian life and damage to civilian objects (principle of precaution).²⁴ These obligations and prohibition are further enhanced by the premise, known as the 'Martens Clause', underpinning all of IHL's provisions:

Until a more complete code of the laws of war is issued, the High Contracting Parties think it right to declare that in cases not included in the Regulations adopted by them, populations and belligerents remain under the protection and empire of the principles of international law, as they result from the usages established between civilized nations, from the laws of humanity, and the requirements of the public conscience.²⁵

In other words, unwritten principles of humanity should always prevail and the fact that an action is not explicitly prohibited under codified norms of IHL does not mean it is therefore permitted.²⁶ While interpretation of the Martens clause is not without controversy, a broad teleological interpretation of IHL supports the object and purpose of related norms, reflecting the fact that war and occupation – the areas governed by IHL – are distortions of the normal international order of sovereign equality and self-determination of peoples.²⁷

2.1.1 International vs non-international armed conflicts

Relevant to this study is also the distinction in IHL between two categories of armed conflicts, depending on whether the resort to armed force occurs between states (International Armed Conflict, 'IAC') or between governmental authorities and organized armed groups, (p. 132) or between such groups themselves, within a state (Non-International Armed Conflict, 'NIAC').²⁸

IAC occurs when one or more states resort to the use of armed force against another state. Wars of national liberation, in which peoples are fighting against colonial domination, alien occupation, and oppressive regimes in the exercise of their right of self-determination, are classified as IACs, under certain conditions.²⁹ The trigger for an IAC is any use of armed force against the territory or the armed forces of another state, irrespective of whether the latter state fights back, and including any situation in which one state invades another and/or occupies it, even if in the absence of armed resistance.³⁰ IHL rules applicable to the conduct of hostilities in IACs are set out in the Hague Regulations, GCs as well as those AP(I) provisions that constitute customary international law.

NIAC is triggered by ‘protracted armed violence’ reaching a certain level of intensity by government forces and at least one organized non-governmental armed group (or between such groups within a state or across a state’s borders), with violence occurring between the various parties.³¹ The laws applicable in NIAC are less developed than those governing IAC. They include Common Article 3 to the GCs, AP(II), relevant customary international law applicable to NIAC,³² and other applicable IHRL norms (e.g. prohibitions on summary or arbitrary executions, torture, and enforced disappearances),³³ the latter at least for state actors. It is not uncommon that a NIAC may evolve into an IAC.

2.1.2 Occupation

A notion that only exists in the law with respect to IAC, and that is of relevance to this study, is that of occupation, of part or the whole of the territory of a ‘High Contracting Party’, regardless of the resistance in response.³⁴ According to the Hague Regulations,

‘[a t]erritory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.’³⁵

If the occupied territory did not belong to a High Contracting Party, then the law will still apply to an occupation that follows an IAC by virtue of Article 2(1), which states that it shall apply ‘to all cases of declared war or of any other armed conflict which may arise between (p. 133) two or more of the High Contracting Parties, even if the state of war is not recognized by one of them’. In addition to Common Article 3 of the GCs, specific rules in the Hague Regulations (Articles 42–56), GC(IV) (e.g. Articles 27–34 and 47–78, AP(I) and customary international law apply to occupation of a foreign territory. The fundamental premise upon which the body of rules applicable to occupation is built is the preservation of the *status quo* in place before the occupation began. Given its inherently temporary nature, an occupation can only ever be an interim administration, pending, for example, the resumption or exercise of sovereignty by the territory’s local authority (although, as discussed later, the law of occupation does not set a limit to the length of the occupation). In this light, although IHL does recognize the competence of the occupying power to establish laws (by military order),³⁶ that competence has to proceed from the interests of the occupied population. In a situation of occupation, the occupying power is obliged to fulfil its IHL obligations to ensure the welfare of the occupied population, including by maintaining the integrity of the occupied territory,³⁷ respecting public life and safety,³⁸ family honour and rights, the lives of persons, and private property, as well as religious convictions and practice,³⁹ preserving public and civilian property and institutions,⁴⁰ ensuring adequate hygiene and public health standards, and provision of food and medical care to the occupied population, and relief and humanitarian assistance.

On the question is whether occupation requires the physical presence of foreign troops on the soil of the concerned territory, it is generally accepted that the test set down by Article 42 of the Hague Regulations is the extent to which the foreign forces exercise effective control over the land in question. A restrictive interpretation argues that this occurs only once a party to a conflict is in a position to exercise sufficient authority over enemy

territory to enable it to discharge all of the duties imposed by the law of occupation.⁴¹ An alternative ‘functional’ approach proposes that certain elements of the law of occupation may be invoked in situations in which a party to a conflict exercises some level of authority or control within foreign territory.⁴² The functional interpretation seeks to ensure that as many civilians as possible, confronted with (and therefore vulnerable to) foreign troops on their territory, are protected. It is based on the fact that the protections afforded by the Hague Regulations and GC(IV) in particular, cannot be removed by an overly restrictive interpretation of Article 42 and its requirement for actual authority by a hostile army.

As mentioned, IHL does not set out clear criteria to determine when an occupation comes to an end;⁴³ however, occupation is inherently temporary in nature, given (p. 134) that an occupying power does not acquire sovereignty over the occupied territory.⁴⁴ In legal discourse, it is generally accepted that there are a number of ways to identify an end to occupation, including when the foreign troops leave the occupied territory,⁴⁵ or following an act of self-determination by the inhabitants of the occupied territory in connection with withdrawal of foreign forces,⁴⁶ or after a peace treaty is legitimately entered into with the territory’s sovereign authority, or following a UN Security Council resolution announcing an end to the occupation (often following one or more of the above).⁴⁷ In the modern era, it is arguably possible that effective control can still be exercised by a state over a territory without the presence of troops there, for example through modern methods of surveillance, tight security measures, and border controls.⁴⁸ In either instance, even if legality of the occupation has been resolved (e.g. the Security Council declaring the occupation illegal⁴⁹), *jus in bello* continues to apply while the occupying power withdraws its administration and its occupying forces from the territory.⁵⁰

One of the most important developments of recent years is the acknowledgement that in times of armed conflict (IAC and NIAC alike), and throughout an occupation, IHL is not the only source of international law, and IHRL complements IHL.⁵¹

(p. 135) 2.2 Palestinian refugees and IHL

2.2.1 Historical relevance in 1948

The Palestinian refugee question was born out of the conflict that erupted in Mandate Palestine in 1947–1949. At the time, the Hague Regulations applied to Palestine: Turkey, which had sovereignty over Palestine until 1917, had ratified them on 12 June 1907, and so had Britain, which administered Palestine from 1917 until May 1948. The rules embodied in the Regulations had become customary international law much before the forced mass displacement and dispossession of most of the Arab population of Palestine took place.⁵² Based on the Hague Regulations, expulsions and deportation of civilians were listed as war crimes and a crime against humanity under the Charter of the International Military Tribunal.⁵³ Accordingly, deportations and expulsions of civilians in the context of hostilities or military occupation were condemned multiple times by the Nuremberg and Tokyo tribunals as unlawful.⁵⁴ Evacuations followed by foreign settlement and colonization were also considered to constitute war crimes.⁵⁵ As Kattan observes, and not surprisingly in view of the temporal proximity to the Nuremberg war crimes proceedings, both the Jewish Agency and the Provisional Israeli Government (before and after 15 May 1948 respectively) were aware of the status of the law at the time, and concerned with the liability it might entail.⁵⁶ In the summer of 1948, as hundreds of thousands of Palestinians had fled or had been expelled, and others were still being forced out of their homes, the Provisional Government of Israel issued a note that condemned violence against civilians as well as the destruction of towns and villages without military necessity and observed it could lead to

criminal liability.⁵⁷ (p. 136) At that time, reparation was seen as an indispensable consequence of the breach of international law.⁵⁸

In sum, the legal framework in force in 1948, if enforced, would have been sufficient to either prevent or to address Palestinian displacement and dispossession.

2.2.2 Continuous relevance post-1948

In 1949, the cessation of hostilities between Israel and the neighbouring states was formalized in several armistice agreements. These armistices brought about a truce and an end to military hostilities.⁵⁹ However, a continuing state of war, which has gradually transformed into a state amounting to ‘no war, no peace’, has continued between Israel and its Arab neighbours.⁶⁰ Only Egypt and Jordan entered peace treaties with Israel in 1979 and 1994.⁶¹ The Gaza Strip, West Bank, and East Jerusalem (together ‘occupied Palestinian territory’, or ‘oPt’) – where the majority of Palestinian refugees reside – remain in a singular situation of armed conflict, having been under Israel’s occupation since 1967, as well as the theatre of several major armed conflicts and confrontations. Armed conflicts and their aftermaths (IAC and NIAC alike) have also severely impacted other contexts: the civil war in Lebanon (1975–1990), the Iraq wars (1991 and 2003), Israel’s invasion of south of Lebanon (2006), and the conflicts in Libya and Syria (from 2011 onwards). While relevant specifics of these various conflicts are discussed in chapter IV, some general considerations on IHL in these various contexts are offered below.

First, while IHL does not specifically articulate refugee protection, there is no doubt that refugees, aliens and displaced persons caught in hostilities and in enemy hands, but who are not direct participants, are considered part of the protected civilian population. As the status of an area changes, into an ‘occupied territory’ or ‘state party to a conflict’, so the refugees therein acquire the status of ‘protected persons’ under IHL.⁶² Article 4 of GC(IV) stipulates that protected persons are those who, ‘at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or occupying power of which they are not nationals’. Furthermore, some IHL provisions do refer to (and protect) refugees,⁶³ both as nationals of an enemy state,⁶⁴ and (p. 137) as nationals of an occupying state who had previously taken refuge in the territory of the occupied state.⁶⁵ Article 44 of the GC(IV) refers to refugees and stateless persons in a broad sense, as those who ‘do not enjoy the protection of any government’.⁶⁶ Most Palestinian refugees in the above mentioned countries and territories fall in both categories. As such they benefit from the protection provided by IHL in addition to human rights instruments as may be applicable.

Second, when taking direct part in hostilities, refugees, like any persons in such a situation, may no longer be immune from attack and therefore be treated as combatants. However, the threshold to qualify as direct participation is high: (1) the act will have to adversely affect the military operations or military capacity of a party to an armed conflict or, alternatively, to inflict death, injury, or destruction on persons or objects protected against direct attack (threshold of harm); (2) there must be a direct causal link between the act and the harm caused (direct causation); (3) the act must be specifically designed to directly cause the required threshold of harm in support of a party to the conflict and to the detriment of another (belligerent nexus).⁶⁷ The accepted view is that a civilian is considered taking part in hostilities ‘when using weapons in an armed conflict, while gathering intelligence, or while preparing himself for the hostilities’.⁶⁸ Otherwise, civilians taking an indirect part in hostilities continue to enjoy protection from attack.⁶⁹

Some general context-specific observations are also worth making before in-depth discussions of the various situations in the following chapter.⁷⁰

Occupied Palestinian territory (oPt)

The Gaza Strip and the West Bank, including East Jerusalem, have been under Israeli occupation since June 1967. The government of Israel has traditionally rejected the notion – upheld by the international community since 1967 – that the Palestinian territory is occupied, on the grounds that the status of the territory is ‘disputed’; as such, it has undertaken to comply with the humanitarian provisions of the Law of Occupation in its administration of the ‘territories’, though without declaring which provisions of international humanitarian law it considers ‘humanitarian’.⁷¹ The Oslo Accords of 1993, 1994 and 1995 and the (p. 138) unilateral Israeli ‘disengagement’ from Gaza in 2005 have often been used, by Israeli leaders, to further challenge the status of the oPt as occupied.⁷²

When the first edition of this book was published, the Oslo Accords, which were to bring an end to the conflict in the Middle East that started in 1947–1949, were seen as the way to realize Palestinian self-determination and end the occupation. As they established that the final status of territory – together with the substantive issues of the refugees, Jerusalem, settlements, among others – has to be decided in final-status negotiations,⁷³ a solution for the refugees has since become commonly linked to the question of Palestinian statehood.⁷⁴ Meanwhile, as no rules or principles to guide resolution of those issues was expressly referred to in the Accords, other than the quite broad reference to Security Council resolutions 242 (1967) and 338 (1973), the implication appears to be that international law is agnostic on its status pending a final status agreement.⁷⁵ As the remainder of this book discusses, this has had significant implications for the refugees.

No doubt, the Accords created the perception that the occupation had (started to) come to an end; in fact, beyond a limited transfer of authority to the newly-established Palestinian Authority (PA), the Accords did not substantively alter the fact of the occupation. In practice, during an uninterrupted fifty years of enforced military rule in the oPt, the separation of both territory and population of East Jerusalem, the West Bank, and the Gaza Strip has consolidated; as Chapter IV discusses in detail, these have evolved into three separate administrative entities, with different rules and similar challenges (for the Palestinians) of different intensity.⁷⁶

(p. 139) At the international level, the continuous occupation of the oPt – despite the limited authority exerted by the PA in the West Bank and by the de facto authority Hamas in Gaza – is not disputed.⁷⁷ As the occupying power, Israel is bound by IHL obligations in the oPt, as well as international human rights obligations,⁷⁸ as maintained by the International Court of Justice (ICJ),⁷⁹ the international community,⁸⁰ and Israel’s own Supreme Court.⁸¹ The fact that Palestine has incurred its own human rights obligations further to ratification of international human rights treaties does not detract from Israel’s obligations towards the oPt and its population.

As discussed earlier, from an IHL perspective, during an occupation, the integrity of the occupied territory must be preserved, implying that the *status quo ante* must be altered by the occupying power as little as possible.⁸² In this respect, an issue of concern is how Israel has used the military orders to change both the status of the land, which has in turn altered both the landscape and the demography of the oPt, the West Bank and East Jerusalem in particular.⁸³ In fact, the Israeli occupation has increasingly appeared as the vehicle to the continuing establishment of Jewish settlements in the oPt (in the West Bank, including East Jerusalem) and the increasing strangulation of the Gaza Strip.⁸⁴

(p. 140) Preserving the integrity of the territory, as required by Article 49 of the GC(IV), means first and foremost that ‘The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies’.⁸⁵ The provision, as the ICRC Commentary of 1958 notes, ‘provides protected persons with a valuable safeguard’ and was written with the aim to prevent ‘certain Powers [from] transferr[ing] portions of their own population to occupied territory for political and racial reasons or in order ... to colonize

*those territories'; such transfers – the Commentary acknowledges – '[worsen] the economic situation of the native population and [endanger] their separate existence.'*⁸⁶ The same provision also prohibits 'individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not' are prohibited 'regardless of their motive.' The prohibition is clear and absolute and allows no exception unless 'the security of the population or imperative military reasons so demand': protected persons who wish to leave from the occupied territory cannot be prevented from doing so.⁸⁷

The reality in the oPt is 'a complex system of control', made up of physical, legal and bureaucratic barriers that contribute to the continuous displacement of Palestinians, including refugees'.⁸⁸ Such practices are rarely found to be justified under IHL, which has, over time, led the Israeli occupation and its associated regime to come under considerable scrutiny.⁸⁹ In 2004, in its Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, the ICJ concluded, among others that:⁹⁰

The construction of the wall and its associated régime create a 'fait accompli' on the ground that could well become permanent, in which case, and notwithstanding the formal characterization of the wall by Israel, it would be tantamount to *de facto* annexation.

The annexation of territory is strictly prohibited under international law. This prohibition has acquired the status of *jus cogens* norm in international law (i.e. it is considered by (p. 141) the international community as a peremptory principle of law, for which no exception or derogation is allowed).⁹¹ Nonetheless, settlement construction in the West Bank and East Jerusalem has continued, becoming one of the major impediments to the continuation of the peace talks between Israel and the PLO.

The UN Secretary General has warned that a number of the measures enacted by Israel in the oPt may amount to collective punishment,⁹² and constitute a 'coercive environment',⁹³ which violates Israel's obligations under international humanitarian and human rights law.⁹⁴ In 2016, a landmark resolution of the Security Council condemned Israel's settlement activity in the oPt, including East Jerusalem, stating that such activity 'has no legal validity and constitutes a flagrant violation under international law and a major obstacle to the achievement of the two-State solution and a just, lasting and comprehensive peace'.⁹⁵ It demands that Israel stops such activity and fulfil its obligations as an occupying power under the GC(IV),⁹⁶ and calls upon it to end the 'violence against civilians, including acts of terror, as well as all acts of provocation and destruction', and for 'accountability in this regard'.⁹⁷

Furthermore, under IHL the occupying power cannot impose sanctions on the entire occupied population, as this would constitute collective punishment, which is prohibited by Article 33 of GC(IV)⁹⁸ and Article 75(2)(d) of AP(I).⁹⁹ In fact, the Gaza Strip, despite the 2005 unilateral disengagement,¹⁰⁰ has remained under Israel's tight control, especially in the context of the siege (or blockade) imposed on Gaza since 2007, which the United Nations (UN) has qualified as effectively a continuation of the occupation,¹⁰¹ and 'collective punishment'.¹⁰² This functional approach to the occupation is resisted by Israel, as well as (p. 142) by other states that do not wish to accept the label and responsibilities of an occupying power.¹⁰³ Beside the day-to-day instances of occupation (as in the West Bank) and annexation (particularly in East Jerusalem), Israel has also launched three major military attacks on Gaza, in 2008–2009, 2012, and 2014, in connection with rockets fired into Israel by the armed wing of Hamas and other Palestinian armed groups. Levels of human deprivation and material devastation as a result of these actions have been extremely high.¹⁰⁴ The findings of three major independent Commissions of Inquiry (CoI), mandated by the Human Rights Council, have concluded on the disrespect by Israel for a number of IHL provisions and IHRL norms, in the context of often indiscriminate attacks

and excessive use of force, resulting in significant civilian loss and injury, and damage to essential private and public infrastructure.¹⁰⁵ The last CoI investigating Israeli response to the Gaza protesters on the occasion of the ‘Great March of Return’ has also pointed to the excessive use of lethal force used by Israeli snipers.¹⁰⁶

In 2018, in his report to the Human Rights Council, the Special Rapporteur on the situation of human rights in the oPt [Michael Lynk] inferred that Israel’s occupation in the oPt has ‘crossed the ‘ “red line” of legality’ and should therefore be brought to an end.¹⁰⁷ Amidst a documented difficult human rights situation on the ground, which is furthering Palestinian displacement and dispossession, and increasingly explicit calls for annexation of large portions of Area C of the West Bank by Israeli leaders, accountability for Israeli violations of international law in the oPt continues to be lacking.¹⁰⁸

Other areas in the Middle East and North Africa region

The oPt is not the only country where lack of accountability for violations of IHL (as well as human rights) obligations vis-à-vis Palestinian refugees persists. In Lebanon, the civil war beginning in the mid-1970s, Israel’s invasion in 1982, the events known as the ‘War of the Camps’ between 1985–1987, the 2006 war between Israel and Lebanon, and the 2007 conflict in Nahr al-Bared camp, have resulted in the death, injury of thousand Palestinian refugee residents, and in the displacement of hundreds of thousands (one quarter of the Palestinian refugee population in the country at that time).¹⁰⁹ In the context of armed (p. 143) conflict and occupation, protection should have been extended to them, as any other protected persons, applying the principle of distinction, military necessity, and proportionality, including in any case of Palestinians taking active part in the hostilities. In fact, Palestinian refugees have often been embroiled in those conflicts and not enjoyed the protection they were entitled to under IHL, as demonstrated by the Sabra and Chatila massacre of 1982 during the Lebanese civil war and Israeli occupation,¹¹⁰ or the conflict between Israel and Lebanon of 2006, which significantly impacted civilians, including Palestinian refugees.¹¹¹

In Iraq, Palestinians have often been targeted by the military and militia groups during the years of civil war that began in 2003.¹¹² This resulted into displacement of almost the entire Palestinian refugee population residing in the country prior to 2003.¹¹³ In Libya, the conflict that erupted in 2011¹¹⁴ and has continued to ravage the country has significantly worsened the situation of the thousands of Palestinian refugees there.¹¹⁵ Last but not least, the Syria war that followed the 2011 unrest is, to date, the conflict where, outside of the oPt, Palestinian refugees have been most affected by hostilities, including direct attacks on refugee camps, bombing, shelling, and siege.¹¹⁶ The conflict, which originated as a NIAC evolved into a number of NIACs between different armed groups, and government forces. Foreign interference (and then intervention as of 2017) in the Syria conflict raised the question on the adequacy of the classification of the situation in Syria as a solely NIAC.¹¹⁷ As a result of the conflict, about 4,000 Palestinians were reportedly killed, including by torture in detention camps and deliberate starvation.¹¹⁸ Despite a general winding-down of hostilities in Syria in 2018, with the exception of Idlib province, widespread violations and lawlessness continue to affect civilians.¹¹⁹

(p. 144) 2.3 Consequences of breaches of IHL under international criminal law

Some of the effects of the conflicts described above, including on Palestinian refugees, appear to constitute violations of fundamental humanitarian rules applicable in all types of armed conflict, as defined in treaties and also in customary international law.¹²⁰ These

violations may result also in breaches of international criminal law. In 2009, Professor Goldstone wrote:

International criminal law has become a necessary instrument for the enforcement of IHL and IHRL. Criminal proceedings and sanctions have a deterrent function and offer a measure of justice for the victims of violations. The international community increasingly looks to criminal justice as an effective mechanism of accountability and justice in the face of abuse and impunity.¹²¹

International criminal law thus has the potential to contribute to the protection of Palestinian refugees, as discussed below.

The GCs(I-IV) are relevant in this context. They establish a regime of enforcement through the definition of a limited set of specific violations – the ‘grave breaches’¹²² – which are considered particularly serious violations giving rise to specific obligations, and the establishment of a system to provide domestic sanctions,¹²³ reflecting the principle *aut dedere aut judicare* (obliging the High Contracting Parties to extradite or to prosecute the offenders).¹²⁴ The Rome Statute of the International Criminal Court (ICC) covers both grave breaches¹²⁵ and ‘other serious violations of the laws and customs applicable in international (p. 145) armed conflict’.¹²⁶ According to the Statute, such breaches and violations, encompassing crimes against humanity, war crimes, and genocide, may entail individual criminal responsibility.¹²⁷

Individual criminal responsibility occurs when a person commits, attempts, plans or orders the commission of one of these crimes, or otherwise aids, abets, assists or facilitates commission of any of these crimes.¹²⁸ Furthermore, the individual criminal responsibility of ‘commanders and other superiors’ is engaged if they ‘knew or should have known that such acts were being or were about to be committed and failed to take all necessary measures to prevent, punish or report the perpetrators of these acts.’¹²⁹

International criminal law may provide an opportunity to deliver justice and restore dignity to the Palestinians in situations which have hitherto been characterized by serious violations and lack of accountability. Because of the weight it carries in contexts where other effective avenues for justice appear unavailable, brief consideration is also given below to universal jurisdiction. At the time of writing, the ICC is, among others, conducting a preliminary examination of the situation in Palestine, involving allegations against Israeli authorities and military personnel, as well as Palestinian armed groups.

2.3.1 The International Criminal Court

As of December 2018, the Rome Statute had 139 signatories and 123 state parties including the State of Palestine, which acceded to the Rome Statute on 2 January 2015.¹³⁰ Israel signed the Rome Statute on 31 December 2000, but never ratified it.¹³¹ Among the countries which host the largest number of Palestinian refugees outside of the oPt, only Jordan has ratified the Rome Statute.¹³² Of the countries considered in this section, Iraq, Lebanon, Libya, and Syria are not party to the Rome Statute. In a communication to the UN Secretary-General on 28 August 2002, Israel argued that it ‘does not intend to become a party to the treaty. Accordingly, Israel, has no legal obligations arising from its signature on 31 December 2000.’¹³³ Israel’s reluctance to engage with the ICC notwithstanding, the conclusions of the ICC’s preliminary examination are likely to be highly significant.¹³⁴ Because the situation of Palestine is the only one currently relevant to the ICC, this constitutes the focus of the remainder of this section.

(p. 146) As it acceded to the Rome Statute, the PA lodged a declaration under Article 12(3) accepting the jurisdiction of the ICC over alleged crimes committed ‘in the occupied Palestinian territory, including East Jerusalem, since June 13, 2014’.¹³⁵ Palestine’s accession constituted a major legal development in the Israeli-Palestinian conflict. As of the time of writing, the ICC Prosecutor (Fatou Bensouda), is considering issues of jurisdiction,

admissibility and the interests of justice.¹³⁶ Specifically, the Prosecutor is looking at whether the ICC has competence, namely, whether crimes of genocide, crimes against humanity, or war crimes have been committed in Palestine since June 2014. The Prosecutor's 2017 activity report indicated that alleged crimes under consideration include: 1) settlements that Israeli authorities have allegedly been involved in, including settling Israeli civilians onto the territory of the West Bank, including East Jerusalem, forced removal of Palestinians from their homes in the oPt, and 'the purported establishment of an institutionalized regime of systematic discrimination that allegedly deprives Palestinians of a number of their fundamental human rights';¹³⁷ as well as 2) crimes allegedly committed by the Israel Defence Forces (IDF) and Palestinian armed groups during the conflict in Gaza between 7 July and 26 August 2014.¹³⁸ The Prosecutor has clarified that the summary listed is:¹³⁹

without prejudice to any future determinations by the Office regarding the exercise of territorial or personal jurisdiction by the Court ... [or] to the identification of any further alleged crimes which may be made by the Office in the course of its continued analysis.

In the latter context it may be noted that one week after the initial forceful Israeli response to the mass demonstrations that began in Gaza on 30 March 2018, the Prosecutor issued a statement providing, *inter alia*, that '[v]iolence against civilians – in a situation such as the one prevailing in Gaza – could constitute crimes under the Rome Statute of the [ICC], as could the use of civilian presence for the purpose of shielding military activities'.¹⁴⁰ She reminded Israel and any armed Palestinians that the situation in Palestine is under her office's preliminary examination hence 'any new alleged crime committed in the context of the situation in Palestine may be subjected to [that] Office's scrutiny'.¹⁴¹ In 2018, the office of the Prosecutor also announced that preliminary examination has entered phase three out of four: a Pre-Trial Chamber issued a decision concerning the (p. 147) establishment by the ICC Registry of a public information system for affected communities in Palestine, noting that activities will increase if an investigation would indeed ultimately be initiated.¹⁴²

In 2019, the Commission of Inquiry dispatched by the Human Rights Council one year before to investigate alleged violations of IHL and IHRL committed in the oPt, particularly in the context of the military assaults on the large-scale civilian protests that began on 30 March 2018 Gaza Strip,¹⁴³ concluded that, in responding to the protests, Israeli soldiers committed violations of international human rights and humanitarian law, some of which may constitute war crimes or crimes against humanity.¹⁴⁴ Like all previous fact-finding missions and commissions of inquiry, the findings will be relevant to the work of the ICC Prosecutor.

Also, in late 2018 the ICC's Pre-Trial Chamber instructed the Prosecutor to reconsider her earlier decisions not to investigate into the situation of the so-called 'Gaza Flotilla'.¹⁴⁵

Together with a decision on subject matter jurisdiction, the Prosecutor will have to determine whether the case is admissible on complementarity grounds, namely, if relevant national courts are either 'presently investigating or prosecuting the relevant conduct and perpetrators' or have 'already investigated and decided not to prosecute'.¹⁴⁶ Israel states it has launched a number of investigations, and hence it is in compliance with its obligations under international law.¹⁴⁷ An earlier independent CoI had expressed concern at the capacity of Israel to conduct independent, impartial, prompt, transparent, thorough, and effective investigations,¹⁴⁸ owing to a number of 'procedural, structural and substantive shortcomings, which continue to compromise Israel's ability to adequately fulfil its duty to investigate'.¹⁴⁹ Similar concerns were previously raised by international human rights mechanisms.¹⁵⁰ According to an Israeli NGO monitoring the human rights situation in the oPt, since 2005 only three per cent of investigations of ideologically motivated crimes against Palestinians have resulted in a conviction, with only eight per cent of the (p. 148)

investigations having led to indictments.¹⁵¹ At the same time, no investigation or inquiry on alleged crimes committed by Palestinians armed groups, for instance, in the context of the Gaza war(s), appear to have been carried out.¹⁵² As Kattan observes, there is a significant disparity between the law enforcement systems in Israel and Palestine, most notably that, while Israel brings Palestinians from the oPt to trial on criminal charges in Israel (based on martial law), Palestinians, based on the Oslo Accords, are not permitted to judge any Israeli nationals in the West Bank or Gaza courts.¹⁵³

The possible involvement of the ICC in the Israeli-Palestinian conflict may help bring accountability in the Israel/Palestine case. The extent to which justice will be achieved for Palestinian and Israeli civilian victims and their families is not yet clear, but restoring respect of international law is a necessary step to rebuilding trust in basic societal rules and to prevent further violence and abuses. The ICC's consideration of the Palestine situation also has the potential to lead to new advances, including for refugees and displaced persons elsewhere. Recognizing refugees' agency is an important component of the process.¹⁵⁴

2.3.2 The role of national courts, including through universal jurisdiction

Another possible way to ensure accountability over serious violations of IHL and IHRL is through national courts in the exercise of universal jurisdiction. Since the end of the Second World War, some fifteen states have conducted investigations, initiated prosecutions, and completed trials based on universal jurisdiction for international crimes, or made arrests with a view to extraditing the individual(s) concerned to a state seeking to prosecute them.¹⁵⁵ Attempts to bring to justice though universal jurisdiction prominent political figures who have allegedly committed war crimes and crimes against humanity, include Israel's prosecution of Nazi criminals, such as Eichmann in 1961, and Spain's prosecution of South American dictators such as Pinochet. However, a number of prominent prosecutions have been stalled.¹⁵⁶

(p. 149) In the Israeli-Palestinian context, attempts have been made to bring alleged perpetrators to justice through third states' courts on the basis of the principle of universality; so far with limited success.¹⁵⁷ A first case concerns the Sabra and Chatila massacres. The ICC has no jurisdiction over those facts as they occurred almost two decades before the Rome Statute entered into force; hence, national courts constitute the only possible venue to deliver justice to victims.¹⁵⁸ In 2001, a group of 23 Sabra and Chatila survivors – the majority of whom were Palestinian refugees registered with UNRWA – filed a complaint in a Belgian Court against former Prime Minister of Israel Ariel Sharon and other Israeli and Lebanese officials for genocide, crimes against humanity, and grave breaches of GC(IV).¹⁵⁹ The case received much attention but was discontinued when Belgium, allegedly under pressure from the United States, repealed the law on universal jurisdiction in 2003 and introduced a new and more restrictive law on extraterritorial jurisdiction.¹⁶⁰ A second attempt to deliver justice to Palestinians refugees was through arrests warrant issued in the UK against Israeli officials, including Major General (retired) Doron Almog, in relation to the destruction of fifty-nine houses in the Rafah refugee camp on 10 January 2002, and Tzipi Livni over war crimes allegedly committed during Operation Cast Lead (2008–2009). The warrant was subsequently withdrawn when it emerged that former minister Livni had cancelled her plan to visit the UK. At the time of writing, new cases were emerging.¹⁶¹

As these examples show, the principle of universal jurisdiction may face limitations in terms of delivering justice, including as a result of the political ramifications involved.¹⁶² Albeit limited, domestic courts may still have jurisdiction without resorting to universality principles: they can prosecute based on territoriality or the nationality of the perpetrator. Countries can prosecute perpetrators of crimes against Palestinians and Palestine refugees committed in their territory; those that claim jurisdiction over crimes committed abroad by

their nationals can consider prosecuting them, regardless of where the crimes are committed.

3. The Law Regulating Nationality and Statelessness

Another branch of law relevant to the Palestinian refugees since the beginning of their displacement is that regulating nationality and statelessness. Statelessness is the anomalous situation that happens in cases where a person does not acquire a nationality at birth according to the law of any state, or loses the original nationality without acquiring another.¹⁶³ (p. 150) The concepts of 'nationality' and 'citizenship' lie at the heart of the relationship between the individual and the state. While in a legal sense the terms have the same meaning, in a non-legal context nationality is often understood as ethnic belonging.¹⁶⁴ This passage from a UNCCP working document of 1951 reflects on this difference in the context of the Palestinian refugees:

[The] idea of 'nationality' should ... not be confused with the concept of nationality in international law ... since [the former] implies practice [that belongs] to a specific race or religion and originated in the practice followed in the Ottoman Empire for the differentiation of different minorities within the Empire. It is called 'Nationality in the Citizenship'.¹⁶⁵

While acknowledging the relevance of this distinction to the scope of this study, discussion here focuses on the *legal* concept of nationality and citizenship with the terms being used interchangeably.

According to the ICJ, nationality is the principal link between the individual and the state, namely:

[A] legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties. It may be said to constitute the juridical expression of the fact that the individual upon whom it is conferred, either directly by the law or as the result of an act of the authorities, is in fact more closely connected with the population of the State conferring nationality than with that of any other State. Conferred by a State, it only entitles that State to exercise protection vis-à-vis another State, if it constitutes a translation into juridical terms of the individual's connection with the State which has made him its national.¹⁶⁶

The absence of that 'legal bond' is what makes a person stateless, *apatride* or *apolide*, namely, not a national or a citizen of any state under the operation of its law.¹⁶⁷ Under international law, nationality continues to be the prerogative of the state, with a number of exceptions, and the lack of it is an impairing condition, as the stateless person is denied the access to fundamental rights and protection that is available to 'a person under the law'.¹⁶⁸ The international legal framework discussed in this section is essential to address and remedy the impairment caused by the lack of protection as a result of statelessness. This is of critical (p. 151) relevance for Palestinian refugees, who constitute the largest *de jure* stateless population in the world.¹⁶⁹

3.1 Overview of the Law

Nationality has traditionally been seen as a reserved domain of the state within the limits set by international law.¹⁷⁰ Efforts to codify norms concerning nationality resulted in the development of *Draft Articles on Nationality of Natural Persons in Relation to the Succession of States* by the International Law Commission in 1999, which are not yet adopted.¹⁷¹ Attempts to codify specific norms concerning nationality have been undertaken since the late 1920s.¹⁷² States' resistance to interference in determining who their nationals are notwithstanding, the fact that persons without nationality are deprived of any

form of protection was an early concern of the UN, and led to a number of measures and initiatives. The Universal Declaration of Human Rights (UDHR) is the first international instrument that provides that everyone has the right to a nationality and that no one can be arbitrarily deprived of it.¹⁷³ The implication is that while there may not necessarily be a positive duty on states to confer nationality, there is, arguably, 'a negative duty not to create statelessness',¹⁷⁴ and denationalization must be accompanied by strict rules of procedure and should not result in mass statelessness.¹⁷⁵ In March 1948, the UN commissioned a study on statelessness, which was completed one year later.¹⁷⁶ The study gave the term 'stateless persons' a wide meaning by including both persons who are not nationals of any state (*de jure* stateless), such as those who have been deprived of their nationality by their country of origin, as well as those who 'without having been deprived of their nationality no longer enjoy the protection and assistance of their national authorities' (*de facto* stateless). In its first session in 1949, the International Law Commission provisionally listed '[n]ationality, including statelessness', as a topic for codification under international law.¹⁷⁷ In 1950, the item was given priority in the context of the drafting of a convention on the status of refugees, with a draft protocol addressing the status of stateless persons. The adoption of the *Convention Relating to the Status of Refugees* in 1951¹⁷⁸ extended protection to a group of persons who (p. 152) are *de facto* stateless.¹⁷⁹ In order to address the problems of persons who are *de jure* stateless, the UN adopted two further global instruments: the 1954 *Convention Relating to the Status of Stateless Persons* ('1954 Convention'), applicable to *de jure* stateless persons,¹⁸⁰ and the 1961 *Convention on the Reduction of Statelessness* ('1961 Convention'). The two instruments are complementary: the 1954 Convention regulates the standards of treatment for stateless persons, while the purpose of the 1961 Convention is to avoid and reduce situations of statelessness.¹⁸¹

Accession to the 1954 and 1961 Conventions is significantly less than to the 1951 Refugee Convention.¹⁸² At the end of 2019 there were only ninety-four states party to the 1954 Convention and seventy-five to the 1961 Convention, while 146 states were party to the 1951 Convention. This may reflect the reluctance of states to accept limitations to their sovereignty in matters such as the determination of who are their nationals.¹⁸³ The conventions themselves contain certain limitations, as, for example, the fact that many of the rights enumerated in the 1954 Convention are limited to stateless individuals lawfully present within the territory.¹⁸⁴

3.1.1 The 1954 Convention

The purpose of the 1954 Convention is to regulate and improve the status of stateless persons and to assure stateless persons the widest possible exercise of fundamental rights and freedoms.¹⁸⁵ It defines as stateless any 'person who is not considered as a national by any State under the operation of its law'.¹⁸⁶ According to its preamble, stateless persons who are also refugees are covered by the 1951 Convention and consequently the 1954 Convention only applies to other *de jure* stateless persons. Like the 1951 Convention and for the same reasons, although with slightly different wording, Article 1 of the 1954 Convention specifically refers to, and excludes from its application, Palestinian refugees under the mandate of UNRWA (and UNCCP) (Section 3.2).

The 1954 Convention provides a minimum standard of treatment for stateless persons.¹⁸⁷ This protection is similar to that provided to refugees by the 1951 Convention; the (p. 153) two conventions have much in common as both address the consequences of the absence of national protection by states. Unlike the 1951 Convention, the 1954 Convention applies whether or not an individual has crossed an international border,¹⁸⁸ does not contain the principle of *non-refoulement*,¹⁸⁹ does not protect against penalties for illegal entry, and

protects the rights to employment and association to a lesser degree.¹⁹⁰ If the stateless person is also a refugee, the 1951 Refugee Convention applies.¹⁹¹

3.1.2 The 1961 Convention

While the 1954 Convention addresses the effects of existing statelessness, the 1961 Convention was developed to prevent future statelessness through the coordination and harmonization of national laws.¹⁹² According to the 1961 Convention, a state party must grant its nationality to a person born in its territory who would otherwise be stateless at birth.¹⁹³ This may be done either by the operation of law or upon application, subject to conditions stipulated in the Convention. The 1961 Convention seeks to resolve a variety of incidental problems,¹⁹⁴ such as the nationality of children born to female nationals out of wedlock,¹⁹⁵ the nationality of foundlings,¹⁹⁶ and the nationality of those born on board of ships or aircraft.¹⁹⁷ The Convention also seeks to minimize the possibility of loss of nationality resulting in statelessness on the occasion of a change of civil status,¹⁹⁸ including in the case of voluntary acts of the individual, such as renunciation.¹⁹⁹ Deprivation of nationality resulting in statelessness is prohibited in principle, although the Convention provides for some exceptions, including misrepresentation or fraud in acquisition, or disloyalty.²⁰⁰ Deprivation of nationality on racial, ethnic, religious, or political grounds is absolutely prohibited.²⁰¹

(p. 154) One significant added value of the 1961 Convention, compared to the 1954 Convention, is that it requires that the 'Contracting States shall promote the establishment within the framework of the United Nations ... of a body to which a person claiming the benefit of this Convention may apply for the examination of his claim and for assistance in presenting it to the appropriate authority.'²⁰² Over time, UNHCR has progressively been assigned this role.²⁰³ Since 2014, following a series of expert meetings, UNHCR has been engaging in unprecedented advocacy and promotion of efforts to reduce statelessness.²⁰⁴ The role it plays in connection with the protection of Palestinian stateless persons remains limited, however, as discussed later in the book.²⁰⁵

3.1.3 Other international instruments

Although statelessness has traditionally been regarded through the lens of nationality law, it has progressively been considered also as a human rights question.²⁰⁶ Provisions in a number of international and regional human rights instruments, referring to the right to nationality,²⁰⁷ now complement the 1954 and 1961 Conventions.²⁰⁸ By virtue of being the most ratified human rights treaty, CRC, stipulating the state obligation to grant nationality to stateless children born in their territory, extends the corresponding obligations of the 1961 Convention to most of the international community.²⁰⁹ The 1954 Convention remains, however, no less important as it covers matters specific to statelessness that are not addressed elsewhere. These include, notably, the provision of identity papers and travel documents as well as administrative assistance to stateless persons,²¹⁰ and the fact that it does not allow for derogation in times of public emergency and limits the grounds justifying expulsion.²¹¹

(p. 155) 3.2 Relevance of the framework to protect stateless persons for Palestinian refugees

The significance of the above framework for the protection of Palestinian refugees is evident, given that the vast majority of them continue to be deprived of citizenship even after several generations (Section 3.2.2) see below). The 1954 Convention makes indirect reference to them; as already noted, Article 1 of the 1954 Convention stipulates that it shall not apply to:²¹²

persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance so long as they are receiving such protection or assistance.

The intention of the drafters of the 1954 Convention, was not dissimilar to that of the drafters of the UNHCR Statute and 1951 Convention. As discussed in chapter II, at the time the Conventions to protect stateless persons and refugees were being drafted, the UN had already deliberated that UNCCP and UNRWA were competent for the refugees from Palestine (i.e. they would not fall *automatically* within purview of those international conventions).²¹³ Like in the case of the 1951 Convention, the exclusion from the 1954 Convention is to be understood as temporary and conditional on Palestinian refugees receiving protection or assistance from UNRWA. UNHCR notes that, outside UNRWA's area of operations, Palestinian refugees who lodge an application for protection both as refugees and stateless persons, deserve that 'each claim [be] assessed and that both types of status [be] explicitly recognized'.²¹⁴

The framework discussed in the previous subsection may provide an important yet underutilized opportunity for advocacy and legal action to reduce Palestinian statelessness. While acquisition of third state's nationality, upon refugee's request, would end their entitlement to international protection, it does not jeopardize – despite popular belief of the contrary – the 'historic' rights to return and related claims.²¹⁵ However, in the MENA region, only Algeria, Israel, Libya, and Tunisia are party to the 1954 Convention, and only Israel, Libya, and Tunisia are party to the 1961 Convention. The 1954 Convention is relevant for the considerable number of Palestinian refugees residing in Europe, though not all states (p. 156) there are party.²¹⁶ Whether or not they are party to the statelessness conventions, all states, apart from the US, are party to the CRC, which creates an obligation to offer citizenship to persons who are born in their territory who may otherwise be stateless. Palestinians fall in this category.

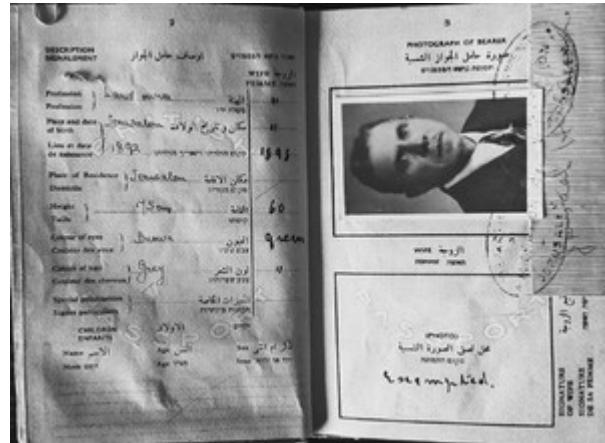
For Palestinian refugees, however, the issue of statelessness is not, and has never been, just a matter of choosing the applicable legal regime. Rather, it is a foundational and often contested element of their status. They *became* stateless persons around the same time as they became refugees, and through the same process. The origins and protracted nature of Palestinian statelessness are examined next.

3.2.1 The origins of Palestinian statelessness

Palestinians, as a people, have not always been stateless. Until the creation of the State of Israel, Palestinians-Arabs and Jews alike – had enjoyed citizenship for at least eighty years, first as 'Turkish nationals' of the Ottoman Empire and then as 'citizens of Palestine', during the British Mandate.²¹⁷ According to the Palestine Citizenship Order of 1925, Palestinian citizens were not British citizens, even though they were subject to British diplomatic protection and held the status of British Protected Persons.²¹⁸ Mandate citizens were entitled to a passport issued by the British Mandate government of Palestine (Figure 3.1); the passport referred to the national status of its holder as 'Palestinian citizen'.²¹⁹



► [View full-sized figure](#)



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Figure 3.1 Image of British Mandate Palestine Passport.

Credit: Jalal Al-Husseini

While scholars are divided about what happened to the Palestine Citizenship Orders at the termination of the British Mandate,²²⁰ such orders arguably remained in force, until the 1952 Israeli Nationality Law retroactively repealed it (with effect to the day of the establishment of the State of Israel).²²¹ This law made Israeli citizenship available by way of (p. 157) (p. 158) 'return,'²²² residence, birth, and naturalization. In brief, it established citizenship by descent for the Jews and by place of birth for all the others. While Jews living in Israel (or Palestine, before 15 May 1945) were recognized as citizens, former Palestine citizens of Arab origin who had remained within its territory between the establishment of the State of Israel and the enactment of the citizenship law, were eligible for Israeli nationality under certain criteria.²²³ Accordingly, the 750,000 Palestinians who had been displaced in 1947–1949, in addition to those who were abroad at the time, were excluded unless they could return lawfully by 1952.²²⁴ As a result, almost the totality of Palestinian refugees were effectively denationalized en masse.

In the remainder of British Mandate territory, the Citizenship Law was not repealed as such: in the West Bank, including East Jerusalem, which Jordan occupied and then annexed, Jordanian citizenship was 'extended' to all the inhabitants of that territory, replacing Palestine Mandate citizenship.²²⁵ Egypt, which only exerted military control over Gaza's inhabitants until 1967, never repealed the Citizenship Order.²²⁶

In Israel, based on the 1952 Nationality Law, the prevailing orientation of early Israeli case law on the matter was that, upon termination of the Mandate, former citizens of Palestine had lost their British Mandate citizenship and would not automatically acquire Israeli nationality.²²⁷ Interestingly though, an earlier decision of the Tel Aviv District Court held that:²²⁸

the point of view according to which there are no Israeli nationals is not compatible with public international law. The prevailing view [based on Oppenheim, Schwarzenberger, and Lauterpacht] is that, in the case of transfer of a portion of the territory of a State to another State, every individual and inhabitants of the ceding State becomes automatically a national of the receiving State [...] If this is the case, is it possible to say that the inhabitants of part of a State which is transformed into an independent State are not *ipso facto* transformed into the nationals of that State? So long as no law has been enacted providing otherwise, my

view is that every individual who, on the date of the establishment of the State of Israel was (p. 159) resident in the territory which today constitute the State of Israel, is also a national of Israel. Any other view must lead to the absurd result of a State without nationals – a phenomenon the existence of which has not yet been observed.

As implied by the Tel Aviv Court, what happened to Palestinian citizenship, and the vast majority of its holders, at the time of the creation of the State of Israel was not in line with international law at the time, as it had also been confirmed by the plan that the UN devised to settle the Question of Palestine (Partition Plan).²²⁹

The end of the British Mandate, which saw only the Jewish state come into being on part of the Mandate territory triggered the application of the law of state succession.²³⁰ The case of Israel, which had succeeded the British Mandate as a sovereign state over part of the Mandate territory, could be considered what Brownlie defines ‘a special competence [i.e. not sovereignty in the proper sense] that is replaced’.²³¹ Under the law of state succession, matters of nationality follow the change of sovereignty.²³² Only a few decades earlier, the Versailles peace treaties following the First World War had dealt with the issue of acquisition of nationality for the inhabitants of new (or newly configured) states in accordance with the same principle.²³³ These treaties recognized the link between the territory and the populations therein, and required the newly created states to extend their nationality to these populations, unless they would choose to move to another state.²³⁴ They also provided for external scrutiny of the relationship between newly established states and those of their inhabitants belonging to a minority ethnic group.²³⁵ These treaties were a departure from the widespread practice of forced expulsion and population transfers of the late nineteenth (p. 160) and early twentieth century, which had caused much tension, abruptly dividing land and peoples according to strict, homogenous ethnic lines.²³⁶ These precedents establish that new states were under an obligation to extend nationality to those formerly habitually resident within the territory, provided that they had not opted otherwise.²³⁷

This was also reflected in the Partition Plan for Palestine, which was premised upon the presence of Jewish individuals in the territory of the Arab state and of Arab individuals in the territory of the Jewish state,²³⁸ and refers to this approach a dozen times. Such Plan envisaged the possibility for Palestinian citizens to become citizens (by means of option) of either an independent Arab state or an independent Jewish one, the two states that were to occupy the territory of which they were formerly citizens.²³⁹ Similarly, and at around the same time, the large number of refugees displaced by the partition of the Indian subcontinent into India and Pakistan were offered the option to return to their original places of residence or obtain new nationality.²⁴⁰

Although Israel has consistently refused to recognize itself as the British Mandate’s successor, and to accept any obligations deriving from that status,²⁴¹ it has kept British Mandate laws (‘Laws of Palestine’) in force, and only repealed them in 1980.²⁴² While this raises the question whether maintaining pre-existing laws in force implies some recognition of legal succession, international obligations cannot be removed by a state’s assertion that it does not have them. Israel’s achievement of statehood was part of a process. The territory in question (p. 161) was not *res nullius*: prior to the British Mandate, Palestine was an integral part of the Ottoman Empire, which for centuries had exercised sovereignty over the territory and its inhabitants. The state of Palestine was embryonic and was expected to become independent at the end of the British Mandate, the status of which was transitional in nature, and the Mandatory had no sovereignty over the territory.²⁴³ Furthermore, Israel’s statehood was the result of a determination by the international community to resolve the situation in Palestine and bring ‘peace and stability to the region’ while satisfying competing claims of its inhabitants.²⁴⁴ By accepting the Partition Plan as the foundation for

its independence, Israel accepted the obligations contained therein.²⁴⁵ So, although Israel had the sovereign right to decide who would be granted its nationality, it did not have the competence to ‘dispose of the population’, whose ‘territorial or local status’ was affected ‘by total or partial succession or transfer of authority’.²⁴⁶

In essence, while a state had the right to determine under domestic law who are its nationals,²⁴⁷ international law constrains the ability to ‘dispose’ of the inhabitants of the territory under their jurisdiction by, for instance, imposing nationality upon them without their assent or denationalizing them en masse. Yet, the latter was the result of the Israeli Nationality Law of 1952. Palestinian Arabs who had been habitually resident, notably as Mandate citizens, in the parts of Palestine that had become Israel should have been offered the option to acquire Israeli citizenship.²⁴⁸ This is true for those who were displaced from the territory that became Israel before 15 May 1948, those who experienced the same fate after 15 May 1948, and those who were outside of Palestine at the time of the war. Instead, the Israeli government only gave this option to those Palestinians who had not been displaced, who became the present ‘Arab minority’ of Israel.²⁴⁹ From the lens of the intertemporal law doctrine, such Israeli obligations may be deemed to have not ceased to exist.²⁵⁰ The extent (p. 162) to which corresponding rights exist not only on those who were illegally deprived of their citizenship but also their descendants should be considered.

3.2.2 The enduring statelessness of Palestinian refugees

The vast majority of Palestinian refugees remain stateless in the meaning of Article 1 of the 1954 Convention as long as they are not considered ‘citizens’ of any state under the operation of its law. Most of them are still in the Arab region, where they were first admitted on a temporary basis around 1948.²⁵¹ The only significant exception is Jordan, which ‘conferred’ its nationality on the majority of the refugees displaced from Palestine around 1948 (now only those registered with UNRWA number around two million);²⁵² these Palestinians are not stateless for the purpose of international law.²⁵³ In the region at large, Arab countries have consistently rejected naturalization and local integration of the Palestinians in order, they argue, to preserve their right of return and national identity.²⁵⁴ For the same reason, Palestinian refugees have been discouraged from advancing naturalization claims out of fear that this would jeopardize their historic claims.²⁵⁵

At present, Palestinians constitute the largest stateless population in the world.²⁵⁶ More than half of the UNRWA registered Palestine refugees, approximately three million (i.e. all except the majority of those in Jordan) have never acquired citizenship of a state, and presumably the majority of the Palestinians around the world are in the same situation. They are nonetheless mostly invisible in global statistics, as neither UNHCR nor states systematically record them as stateless persons.²⁵⁷

The question of Palestinians’ enduring stateless is particularly fraught for two reasons. The first reason is both semantic and substantive: while the term ‘nationality’ is generally used interchangeably with the term ‘citizenship’, in the Arab world in general and in the Palestinian context in particular, citizenship relates to the concept of ‘state’, while nationality is commonly understood as relating to the concept of ‘nation’.²⁵⁸ In this sense, nationality refers to the *ensemble* of shared tradition, culture, and identity.²⁵⁹ As common identity (p. 163) and communal bond, Palestinian nationality has survived Palestinians’ exile, through the diaspora and the enduring attachment to the concept of (lost) historical homeland.²⁶⁰ The second reason is political: the progressive development of Palestinian statehood,²⁶¹ dependent upon the realization of Palestinian self-determination – which is *in fieri* and yet not fully realized owing to the continuing Israeli occupation – has revived, without fully reinstating, the concept of Palestinian citizenship. Established by the Oslo Accords, the PA began to exercise limited state functions that have gradually evolved from population affairs and other civilian matters²⁶² to include diplomatic representation and consular services vis-à-vis Palestinians abroad.²⁶³ Shortly after its establishment, the PA

initiated the drafting a Palestinian Nationality Law;²⁶⁴ the last draft, published in 2011, has not been adopted.²⁶⁵ Qafisheh argues that, while not comparable to the status of citizens of fully sovereign states because of the Israeli occupation, some five million West Bank and Gaza residents (including Palestinian refugees) possessing Palestinian IDs, enjoy de facto citizenship of the State of (p. 164) Palestine.²⁶⁶ As this argument infers, the question of citizenship cannot be resolved independently from the question of independence and sovereignty, and realization of Palestinian self-determination.²⁶⁷ In spite of the 2012 recognition by the UN General Assembly of Palestine as a non-member observer state²⁶⁸ and the exercise of state functions accrued over time, the PA – after 2012 formally referred to as the government of Palestine (GOP) – continues to be unable to function as an independent, sovereign political entity, and to accomplish the basic tasks associated with statehood. The pervasiveness of Israeli occupation in the West Bank and Gaza Strip undermines the PA's/GOP's ability to give meaning to the 'legal bond' that makes a person citizen of a state. While some of the functions that give purpose to that bond exist in case of Palestine, some essential ones, for example, granting entry of persons (both residents and foreigners) to the 'country', and the realization of most of the fundamental rights and freedoms, such as land and property rights, freedom of movement, right to fair trial and right to a remedy, are prevented or severely curtailed. Being in possession of a PA/GOP passport/travel document under the terms of the Oslo Accords does not ensure protection for Palestinian residents of the oPt, many of whom have been deprived of their IDs, deported, or, when outside the territory, not allowed to return by occupying power.²⁶⁹ This may explain why, for the time being, the PA/GOP has not pursued the enactment of a Palestinian citizenship law that, without clear benefits for the Palestinians, could create further confusion and undermine the situation of those in the diaspora.

While de facto citizenship may have a meaning within the perimeters of the State of Palestine's jurisdiction, until the Palestinian people are allowed to enjoy self-determination and the State of Palestine exerts sovereignty jurisdiction over a given territory and citizens, as also manifested by a Citizenship Law, it is premature to argue that Palestinians (including refugees) can be considered 'citizens of the State of Palestine' (hence no longer stateless persons) in the meaning of international law.²⁷⁰ Furthermore, citizenship cannot be presumed for Palestinian refugee residents in the West Bank and Gaza. Only once a Palestine nationality law has been enacted will refugees have the option to choose whether or not to become citizens of the State of Palestine.²⁷¹ In conclusion, unless they enjoy citizenship of a fully sovereign state in accordance with its law, Palestinian refugees in the oPt remain eligible to receive international protection as both refugees and stateless persons.

Outside the Arab region, and especially in Europe, where the highest number of states parties to the 1954 and 1961 Conventions are located, Palestinians have often been (p. 165) recognized to fall under the statelessness framework.²⁷² In the mid-1980s, in connection with developments concerning Palestinian self-determination, a number of European states, including the then-Federal Republic of Germany and Austria, had taken the position – reversed since – that Palestinians were not able to claim the benefits of the 1954 and 1961 Conventions, as their statelessness could not be definitely established.²⁷³ In other European countries, application of the statelessness framework to Palestinian refugees has led to improvement of their status.²⁷⁴ However, the authors' research suggests that the full potential of the protection framework offered by the 1954 and 1961 Convention vis-à-vis Palestinians remains unrealized. First, the approach to identification and recording of Palestinians seeking international protection (as refugees or stateless persons) is far from systematic and coherent.²⁷⁵ National statistics (including with respect to asylum seekers, refugees, and stateless persons) refer to Palestinians in different ways, including within the same country.²⁷⁶ Palestinians are recorded as 'nationals of Palestine', 'Palestinian nationals',²⁷⁷ 'nationals of the state where they habitually reside',²⁷⁸ 'persons of

undetermined or unknown nationality', 'aliens' or similar,²⁷⁹ and occasionally as 'stateless persons',²⁸⁰ even if this only serves statistical purposes, without recognition of a corresponding entitlement to special protection.²⁸¹ Second, a number of states do not recognize an entitlement to international protection with respect to Palestinian refugees from the oPt, as they are deemed citizens of the State of Palestine, a conclusion that, as discussed earlier, is premature. This further indicates that the question as to whether Palestinian self-determination will result in the re-emergence of Palestinian citizenship is already impacting Palestinians beyond the perimeter – i.e. de facto borders – of the oPt.

(p. 166) 4. International Refugee Law

4.1 Overview of the Law

Chapter II discussed the history and scope of the 1951 Convention, which, together with the 1967 Protocol and UNHCR Statute, constitute the *magna carta* of international refugee law (IRL). This section briefly elaborates on a number of elements of IRL that are relevant to Palestinian refugees. This complements and gives meaning to previous discussions regarding Article 1D of the 1951 Convention and paragraph 7 of the UNHCR Statute (Chapter II) and the effective enjoyment of international protection under the refugee regime (Chapter VII and Chapter VIII). Relevant regional instruments applicable in the Arab world, as well as in Africa, the Americas, Asia-Pacific, and Europe, are examined in the next chapters.

A core feature of IRL is that it establishes a universal refugee definition, along with provisions for cessation of, and exclusion from, refugee status;²⁸² rights and obligations of refugees in their country of asylum, including specific rights and standards of treatment of refugees;²⁸³ and, finally, states' obligations, including to cooperate with UNHCR in the exercise of its functions and to facilitate its duty of supervising the application of the Convention.²⁸⁴ The protection offered by the 1951 Convention and 1967 Protocol has been supplemented by regional instruments.²⁸⁵ In Africa and Latin America, these instruments have contributed to broaden the scope of who can be protected as a refugee. Furthermore, organic interplay with other bodies of law, such as IHL and human rights treaties,²⁸⁶ ensure (p. 167) a 'complementary and cumulative protection of refugees, asylum seekers and stateless persons'.²⁸⁷ Parts of IHL constituting customary law, and human rights instruments, which are more widely ratified than the 1951 Convention, extend the scope of the IRL protection regime.²⁸⁸ The complementarity with human rights treaties is particularly significant in situations that are not covered by the 1951 Convention.²⁸⁹ Also, if a particular right found in human rights treaties reiterates a right found in IRL, the inclusion of such a right in both treaties opens the availability of such remedies as may exist under the human rights treaties. In the absence of international judicial mechanisms established under the 1951 Convention and the 1967 Protocol to which refugees and asylum seekers, including Palestinian refugees, can turn, human rights treaty bodies, along with regional human rights course, have become important avenues for redress for refugees and asylum seekers alike, even if the most expansive form of protection is still that provided by regional and domestic courts.²⁹⁰

The relevance of international human rights norms within the international refugee framework is further underscored by the emergence of protection practices alternative to or different from international protection under the 1951 Convention. A case in point is the 'subsidiary protection' that certain states particularly in Europe, afford to a third country national or a stateless person who are found to be not eligible for asylum under the 1951 Convention (Chapter V, Section 2). Subsidiary protection does not allow the person to enjoy the panoply of rights granted through asylum under the 1951 Convention, but simply a

minimum set of rights in the country, including legal stay. Hence, international human rights law continues to evolve in a manner that is relevant to international protection.

In September 2016, the UN General Assembly adopted the New York Declaration for Refugees and Migrants ('New York Declaration'),²⁹¹ and launched intergovernmental negotiations which, in 2018, culminated with the adoption two 'global compacts': one for refugees²⁹² and one for migration.²⁹³ While, as such, a non-binding resolution, like the UDHR, the New York Declaration restates political commitments to ensure the protection and respect for human rights of refugees (and migrants) at a moment where the refugee protection framework is being severely tested by restrictive policies and anti-refugee attitudes, particularly in Western countries. Its relevance and potential for Palestinian refugees, and in particular that of the Comprehensive Refugee Response Framework (CRRF) annexed thereto, is discussed in Chapter VIII concerning solutions.

(p. 168) 4.2 Palestinian refugees and IRL

In many respects, Palestinians have been the *bête noir* of IRL. For decades after their original flight, the application of the 1951 Convention to Palestinian refugees has been problematic. In the Arab region, despite the role that some Arab delegates played in the drafting of the 1951 Convention and the protection of Palestinian refugees that they advocated for therein, most countries, including those with the largest concentrations of Palestinian refugees, are not signatories to the 1951 Convention and/or the 1967 Protocol, nor have they acceded to these instruments at a later date, and hence are not bound by its provisions.²⁹⁴ In the MENA region, only Algeria, Djibouti, Egypt, Iraq, Israel, Morocco, Somalia, Sudan, Tunisia, and Yemen have ratified the 1951 Convention. Jordan, Lebanon, Libya, Syria, and the other countries in the Arab Peninsula are not party to either of the two instruments. Even states parties to the 1951 Convention continue to disregard its application to Palestinian refugees outside the reach of UNRWA. An example is Egypt, where the government effectively prevents UNHCR from extending its services to Palestinian refugees under Article 1D, despite the fact that they are outside UNRWA's area of operation; the Egyptian government does not categorize Palestinians as refugees and instead refers to them as foreigners. Other countries, such as Algeria and Tunisia, have also historically refused to recognize Palestinian refugees as Convention refugees, fearing that this would lead to their local reintegration or resettlement at the expense of their right to return. The 1965 Casablanca Protocol adopted by the LAS, setting out standards of treatment of Palestinian refugees in Arab host states, has to some extent substituted for and/or supplemented the 1951 Convention.²⁹⁵ However, the Protocol's uneven implementation is further evidence of the absence of an adequate refugee framework for Palestinian refugees, making their status almost everywhere (with the exception of Jordan, and Syria before 2011) ambiguous and precarious, and often creating further difficulties in their day-to-day lives. Some countries in the Middle East have progressively turned away Palestinian refugees because of their identity as Palestinians.²⁹⁶ Arab countries are nevertheless bound by the customary international law peremptory principle of *non-refoulement*, discussed in Chapter VI, and are required by IHRL (and IHL, when applicable) to grant Palestinian refugees a number of fundamental rights. Although Israel is party to both the 1951 Convention and the 1967 Protocol, it is unclear whether this has implications for Palestinian refugees.²⁹⁷ And yet, this possibility is of merely theoretical (p. 169) relevance, since the issue of Palestinian refugees vis-à-vis Israel remains political, since these refugees are prevented from entering Israel under Israeli law as it stood in 1948.²⁹⁸

In countries outside the MENA region that have ratified the 1951 Convention, the application of the Convention with respect to Palestinian refugees has not been without challenges, as discussed in Chapter II. For decades, a number of countries have given restrictive interpretations to Article 1D in relation to Palestinian refugees who, after having resided in UNRWA's area of operations or other parts of the MENA region, attempted to seek asylum as refugees in third countries. Failing to recognize them as established

refugees in accordance with Article 1D has limited the protection the 1951 Convention offers to Palestinian refugees. As discussed in Chapter II, a more accurate interpretation of Article 1D in the spirit of the 1951 Convention, encouraged by UNHCR, BADIL, and authoritative scholarship, and increasingly followed by relevant national and regional courts, has started to reverse this trend. Nonetheless, despite important jurisprudential advancements, in a 2015 report about the compliance with Article 1D of the Convention, thirty countries surveyed across Europe, America, Africa, and Oceania revealed at least eleven different interpretations and corresponding practical applications of Article 1D, mainly as a result of limited understanding of the context and meaning of the provision.²⁹⁹ Progressive interpretation does exist; the New Zealand Tribunal decision in *AD Palestine* represents the most interesting case given its appreciation of the root causes of the Palestinian refugee question and the impact of the lack of resolve of those on the current status of Palestinian refugees. Yet in a number of cases, Article 1D continues not to be applied, with Palestinian refugee claims being assessed under Article 1A(2) on the ground of individual persecution.³⁰⁰ It remains to be seen how the recent guidance provided by UNHCR, the most comprehensive so far, will influence state practice.

Despite these problems, the IRL framework remains of importance for Palestinian refugees. Outside UNRWA's area of operations, it is the key to defining their status and determining their eligibility for international protection. In the context of the ongoing occupation of the oPt, cases of Palestinians from the Gaza Strip and West Bank – including 1948 and 1967 refugees – seeking asylum, including outside traditional host countries, have been frequent. Also, since the 1980s, hundreds of thousands have become embroiled in conflicts in the region and been forcibly displaced as a result (e.g. Lebanon in the 1980s, Iraq as of 2003, and Syria since 2011); while fleeing the same conflict as other residents of those countries, they have often been treated differently from such others, owing to legal as well as political barriers.³⁰¹ Without prejudice to the framework established for Palestinian refugees under relevant UN resolutions³⁰² and reflected in Article 1D, IRL norms constitute an (p. 170) important benchmark against which to assess and implement the framework for assistance and international protection for Palestinian refugees.

Key to this is understanding that Palestinian refugees' exclusion from the benefits of the 1951 Convention under Article 1D (for the historical reasons explained in Chapter II) cannot be read as intended to prevent Palestinian refugees from enjoying substantive rights and opportunities that would be available to any other refugees around the world. The intended exclusion from the international refugee regime set up to protect the refugees was primarily from the regime institutionally epitomised by UNHCR (then seen primarily as a mechanism to resettle refugees), and which UNCCP and UNRWA were seen as an adequate and tailored alternative for Palestinian refugees (who were to be primarily allowed to repatriation). The *travaux préparatoires* do not support an interpretation that Palestinian refugees had to be excluded from the *panoply of rights* that the Convention embodies; in fact, to make up for it, the LAS devised a regional framework to ensure day-by-day protection of Palestinian refugees, of which the Casablanca Protocol was to be the outmost expression. However, discrimination and exclusion from substantive rights enshrined in the 1951 Convention is what happens in practice.³⁰³ Further discussions in the remainder of this study articulate the potential that the Convention, and the international refugee regime as a whole, has for Palestinian refugees.

5. International Human Rights Law

5.1 Overview of the Law

IHRL is the core component of the IHRS, namely, the ensemble of norms and mechanisms charged with promoting and protecting human rights. Human rights are inherent to all human beings, whatever their nationality, national or ethnic origin, place of residence, gender, language, religion, or other belief and status, and are laid down in a number of major treaties which, building on the 1948 Universal Declaration of Human Rights (UDHR),³⁰⁴ set out obligations on governments to act in certain ways or to refrain from certain acts towards individuals or groups.³⁰⁵ The major international treaties – that are relevant for this study – include the 1966 International Covenant on Civil and Political Rights (ICCPR)³⁰⁶ and the 1966 International Covenant on Economic, Social, and Cultural Rights (ICESCR).³⁰⁷ These constitute – together with the UDHR – the foundational Bill of Rights of IHRL. Other important treaties within the scope of this study are the 1965 Convention on the Elimination of All Forms of Racial Discrimination (CERD), the 1979 Convention on the Elimination of (p. 171) All Forms of Discrimination Against Women (CEDAW),³⁰⁸ the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)³⁰⁹ and the 1989 Convention on the Rights of the Child (CRC).³¹⁰ The treaty-based system is also complemented by human rights declarations, guiding principles, and standards, the value of which is on their moral and political force, rather than on their binding nature.³¹¹

The second component of the IHRS includes a number of monitoring mechanisms in the UN system, established to advance the promotion and protection of human rights. This includes the treaty bodies, groups of independent experts created under each main human rights treaty to monitor state parties' compliance with treaty obligations,³¹² and UN Charter-based bodies and mechanisms, such as the Human Rights Council and UN Special Rapporteurs.³¹³

Arguably, Palestinian displacement may have influenced some aspects of the IHRS as it was originally conceived. During the drafting process of the UDHR, for example, the Third Committee of the General Assembly heard a number of reports on the situation in Palestine, including presentations by Ralph Bunche (who was Acting Mediator for Palestine after Count Folke Bernadotte's assassination) and Raphael Cilento, head of the UN Disaster Relief Project, on the humanitarian crisis and the implications of the mass exodus.³¹⁴ This may have contributed to shape the provisions concerning freedom of movement at Article 13 (i.e. the right to leave and return to one's own country). Similarly, the features of the protracted Palestinian displacement may have impacted the interpretation of the corresponding right in the ICCPR (art. 12(4)) by the Human Rights Committee.³¹⁵

(p. 172) The IHRS has evolved in parallel with the development of IRL since the end of the Second World War, undergoing major changes over the years, including with reference to the protection of refugees.³¹⁶ Human rights norms and jurisprudence have had a sizable impact on the way IRL concepts are interpreted. Once ratified, human rights treaty obligations may foster a more broad-ranging protection than that under the 1951 Convention. They apply to everyone, by virtue of being present within a certain state, or being subject to its jurisdiction, regardless of whether one is a national of a certain country,³¹⁷ and wherever a state can be said to exercise jurisdiction,³¹⁸ even if it does so extraterritorially.³¹⁹ Certain human rights provisions under the ICCPR constitute customary law, and therefore are applicable even if a state has not acceded to this instrument.³²⁰

Treaty bodies, building on this through their monitoring of and advising on state practice, have contributed to advance the protection of refugees and asylum seekers, as evidenced by a growing number of specific references to refugees and their rights in general comments, recommendations or communications to states.³²¹ These have covered matters such as discrimination based on nationality,³²² the rights of aliens including minors,³²³ those who

were denied refugee status,³²⁴ individuals excluded from the benefits of the 1951 Convention under Article 1F,³²⁵ and, last but not least, *non-refoulement*.³²⁶

It is increasingly recognized that the obligations on states to respect, protect, and fulfil the human rights enshrined in the treaties they have ratified, and to do so without discrimination, extends to refugees and asylum seekers.³²⁷ Human rights apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality, or lack of thereof.³²⁸ Some limitations do exist, as aliens (i.e. non-citizens) do not enjoy full freedom to enter and reside in a territory,³²⁹ and do not enjoy the full political rights enshrined in Article 25 of (p. 173) ICCPR.³³⁰ However, once within the jurisdiction of a state, these instruments require that any person who is not a citizen – including permanent residents, migrants, refugees, asylum seekers, temporary residents, and stateless people – should enjoy, for example, freedom from arbitrary killing, inhuman treatment, slavery, arbitrary arrest, unfair trial, invasions of privacy, refoulement, forced labour, child labour, and violations of humanitarian law.³³¹ They also have the right to marry; protection as minors; peaceful association and assembly; equality; freedom of religion and belief; social, cultural and economic rights; labour rights (for example, as to collective bargaining, workers' compensation, healthy and safe working conditions); and consular protection.³³² Human rights bodies have particularly recognized, with regards to refugees, the right to access to justice, education, adequate housing, food, water, affordable health care, work, and social security schemes.³³³

5.2 Relevance of IHRL for Palestinian refugees

The IHRS, with its norms and mechanisms, has particular relevance for Palestinian refugees in countries where they do not benefit from the application of the 1951 Convention. While only few countries in the MENA region are party to the 1951 Convention,³³⁴ international human rights treaties are more widely ratified. All states in the region have ratified the CRC. The ICCPR and ICESCR have been ratified by all major host countries (Jordan, Lebanon, and Syria), Israel, and most states in the Arab region, with the exception of Saudi Arabia, Qatar, Oman, South Sudan, and the United Arab Emirates. The CAT has been ratified by all countries except Oman and Sudan (signatory only). Israel and all Arab states, with the exception of South Sudan, have ratified the CERD. Other core human rights instruments are also widely ratified.³³⁵ Following its recognition as a non-member observer state, the State of Palestine has also acceded to the core IHRL treaties including ICCPR, ICESCR, CEDAW, CRPD, CERD, CAT, and CRC, including its Optional Protocol.³³⁶

The protection that should be afforded Palestinian refugees by this legal architecture has generally not been forthcoming, and their treatment has been inconsistent, often affected by (p. 174) political considerations and circumstances. Countries having jurisdiction over Palestinian refugees have often claimed the non-applicability or the non-relevance to Palestinian refugees of their human rights obligations. Israel denies having human rights obligations vis-à-vis Palestinians in the oPt, claiming that such obligations are bound to its territory only and do not apply to the extraterritorial actions of a state, nor in a situation of armed conflict.³³⁷ Some Arab countries have denied the applicability of these norms to Palestinian refugees on the grounds that their presence is temporary.³³⁸ Treaty bodies and other human rights mechanisms have challenged these approaches. In the case of Israel, in particular, the applicability of the human rights framework to the oPt has been affirmed multiple times by the Human Rights Committee³³⁹ and other international bodies.³⁴⁰ Over time, human rights mechanisms, including treaty bodies, Special Rapporteurs, and the Universal Periodic Review of the Human Rights Council, have referred to Palestinian refugees in connection with human rights obligations of a number of host countries. In so doing, these bodies and mechanisms have not only confirmed the applicability of the legal framework but also the reality of the situation of the refugees. The findings have confirmed that Palestinian refugees experience discrimination, limitation, or manifest violations of their civil, cultural, economic, political, and social rights, largely because of their Palestinian identity, and that they have limited avenues for redress. The human rights

situation in the oPt has been particularly scrutinized, including under the Human Rights Council's standing agenda item on Israel's practice in the oPt.³⁴¹ In connection with the oPt, treaty bodies and special procedures alike have on multiple occasions expressed concerns at the impact that prolonged occupation in the West Bank and the blockade and military operations in Gaza are having on the basic human rights of civilians, including children, as well as on the civilian infrastructure necessary to their wellbeing.³⁴² Some treaty bodies have also noted the failure to implement specific obligations vis-à-vis Palestinian refugees, among other Palestinians, in the oPt.³⁴³ In the Arab region, the main human rights issue reported by treaty bodies is that of discrimination against Palestinian refugees, often on the grounds of their Palestinian identity and refugee status, and including in cases where they enjoy nationality (Jordan). In Lebanon, human rights mechanisms have found that the discrimination experienced by three generations of Palestinians has resulted in violations of, among others, adequate (p. 175) standards of living, the right to food, work, social security, adequate housing, and children rights.³⁴⁴ CESCR recommendations included that Lebanon take steps to improve the situation in refugee camps, contribute to the improvement of living conditions, ease access of Palestinian refugees to employment in the formal economy, and grant social security benefits.³⁴⁵ In Jordan, despite the citizenship enjoyed by most Palestinian refugees, they were found to experience discrimination in the enjoyment of their national rights,³⁴⁶ with respect to their legal status (such as the impossibility to acquire nationality for children born from non-Jordanian fathers),³⁴⁷ participation in public professions and life,³⁴⁸ children's standards of living,³⁴⁹ as well as access to employment in the public sector and security forces.³⁵⁰ Particular concern was expressed at the arbitrary withdrawal of nationality from Jordanians of Palestinian origin,³⁵¹ and the discrimination against Palestinians families and children fleeing the conflict in Syria, including refusal of entry, expulsion, or deportation.³⁵² Treaty bodies also raised concerns at Egypt's discriminatory application of the 1951 Convention to Palestinian refugees and the non-recognition of UNHCR's mandate to assist and protect them.³⁵³ Previously, the Committee on the CRC had positively noted a policy allowing Egyptian women married to Palestinian men to pass on their nationality to their children, and recommended this be further incorporated into domestic law.³⁵⁴ With respect to Iraq, concern was expressed about reports on the unequal application of the Nationality law to Palestinian refugees,³⁵⁵ at allegations that Palestinian refugees had faced protection issues, including violent attacks,³⁵⁶ at the inadequate legal framework to ensure (p. 176) protection of refugees,³⁵⁷ and at reports of ethnically based violence against both Syrian and Palestinian refugees.³⁵⁸ With respect to Syria, at the beginning of the ongoing conflict, treaty bodies condemned the upsurge of violence that had targeted Palestinian refugees and resulted in widespread violence and the displacement of thousands, including children,³⁵⁹ and urged Syria 'to cease military operations within and outside refugee camps and to provide humanitarian agencies with full access to the refugees.'³⁶⁰ The conduct of other countries vis-à-vis Palestinian refugees has also come under scrutiny. In 2016, CAT intervened with Bulgaria following the rejection of the asylum request of two Palestinian refugees from Lebanon who were reportedly tortured upon their return.³⁶¹

The increasing attention paid by treaty bodies to the treatment of Palestinian refugees in the region and the resulting recommendations has the potential to influence government policy and practice as well as domestic legislation. This potential has yet to be fully realized. Increased respect for international human rights treaties would markedly improve the situation of Palestinian refugees.

6. The Norms Applicable to Internally Displaced Persons

6.1 Overview of the Law

The last two decades of the twentieth century saw a sharp rise in the numbers of persons who were forced to flee their homes but remained within the territory of their own country.³⁶² This trend has continued; overall, there had been a fortyfold increase since the early 1980s.³⁶³ In recognition of the particular vulnerabilities of internally displaced persons (IDPs) and of the need to address these more specifically, in 1998 the UN Commission on Human Rights, precursor of the Human Rights Council, adopted the *Guiding Principles on Internal Displacement* ('Guiding Principles'), largely based on existing norms of IHRL and IHL.³⁶⁴

(p. 177) The Guiding Principles apply during all three stages of displacement: before (prevention), during (protection and assistance), and after (return or resettlement and reintegration).³⁶⁵ Non-discrimination is a central tenet of the Guiding Principles, which prohibit displacement on the basis of 'policies of apartheid', 'ethnic cleansing', or similar practices aimed at/or resulting in altering the ethnic, religious, or racial composition of the affected population and when used as collective punishment.³⁶⁶ Indigenous peoples and groups with a special dependency on and attachment to their ancestral lands are particularly protected.³⁶⁷ Directly relevant to the scope of this study is that under IHRL, the right not to be forcibly displaced is inherent in the right to choose residence, home and privacy, freedom of movement, adequate standard of living and housing, and family life. Under IHL, ordering the displacement of the civilian population is expressly prohibited unless required for their safety or for military necessity, and displaced persons are granted a right to return, should they choose to do so, when the hostilities cease. Moreover, IHL requires states parties to an armed conflict to protect the property left behind by IDPs and to provide satisfactory conditions of shelter, hygiene, health, safety, and nutrition, in addition to ensuring families are not separated during displacement. The two descriptive elements of an IDP are the involuntary character of a person's displacement, and the fact that IDPs do not cross an internationally recognized border.³⁶⁸ Among the specific rights for IDPs enshrined in the Guiding Principles is the right to have identity documents,³⁶⁹ property and possessions left behind protected against destruction and arbitrary and illegal appropriation,³⁷⁰ and voluntary and safe return or resettlement in another part of the country.³⁷¹ When recovery of property and possessions is not possible, IDPs have the right to compensation or reparation.³⁷² IDPs also have other entitlements in terms of durable solutions, including a safe environment, access to documentation, and access to basic necessities of life, services, and livelihood opportunities.³⁷³ Several regional initiatives have built on the Guiding Principles.³⁷⁴

6.2 Palestinian refugees' multiple internal displacements

The IDP framework has become increasingly relevant for Palestinian refugees. As discussed in Chapter I, since 1947 Palestinians have experienced multiple forced displacements as a consequence of conflict, targeted violence, or political pressure.³⁷⁵ While many of the (p. 178) highest-profile displacements have been across international borders, significant Palestinian displacement has also occurred *within* the countries or territories where Palestinian refugees reside. Estimates suggest that between 2011–2016, half a million Palestinian refugees (or ten per cent of the refugee population registered with UNRWA) have either been internally displaced or displaced across borders, mainly as a result of conflict in Syria and the effects of the occupation in the oPt. The forcible displacement of Palestinians in the oPt has a variety of causes, including: conflict; military operations; land confiscation; home demolitions; discriminatory planning and zoning regimes; restrictions on Palestinian movement and access, including the construction of the Barrier; and revocation of residency permits.³⁷⁶ BADIL estimates that at least 250,000 have been displaced only owing to revocation of residency status between 1967 and 2014.³⁷⁷ A report of the Secretary General found that some of the Israeli practices in the oPt create a 'coercive

environment' in relation to specific communities, and could amount to 'individual and mass forcible transfer and forced evictions'.^{378,379} Since 2008, an Inter-Agency Displacement Working Group, led by OCHA,³⁸⁰ has given increased visibility to the phenomenon of forced displacement in the oPt. The group aims to help prevent it or mitigate its impact.

In Syria, in 2016 UNRWA estimated that 280,000 of the original 560,000 Palestinian refugees in the country had been internally displaced by the hostilities, many more than once.³⁸¹ Other Palestinian refugees faced intense sieges, such as that of the Yarmouk camp in 2015.³⁸² UNRWA's annual reports between 2012 and 2017 set out the efforts the agency (p. 179) made to deliver assistance and protection to Palestinian refugees displaced within Syria, and to try and ensure respect of the Guiding Principles.³⁸³ The provisions of the Guiding Principles will have a particular relevance as Palestinian refugees become able to return to their original place of asylum in Syria and as they seek to restore their previous status and situation, pending a durable solution to their original displacement as refugees. At the time the book is written, evidence shows some return of refugees internally displaced within Syria among other Syrians.

7. Concluding Observations

The central premise of this chapter is that the full range of international law is, and was, applicable to the plight of Palestinian refugees. The chapter has shown the historical relevance of international law and its increasing relevance as both the norms of the law and the plight of the refugees have evolved.

International law as it stood in the late 1940s was relevant for [most of] the events surrounding the emergence of the State of Israel and the Palestinian displacement. Neither the displacement nor the dispossession of the Palestinians was permissible under the law of the time, nor was any justification for it accepted in the deliberations of the UN on the question of Palestine. Since 1948, various branches of international law – notably IHL, IHRL, IRL, and the frameworks to address statelessness and prevent internal displacement – have consolidated and evolved in ways that should benefit Palestinian refugees. IRL determines the foundation of the legal status of Palestinians as refugees and the standards of treatment specific to that status; the framework to protect stateless persons may apply where the 1951 Convention does not, and highlight and resolve some of the most pressing issues affecting Palestinian refugees as stateless persons; in countries that are not party to either of these conventions, their standards could still be referred to as benchmarks. IHRL, as the body of international law with the widest application, has the potential to improve significantly the status and conditions of Palestinian refugees; the IDP framework offers further standards for the treatment and protection of displaced Palestinians, including refugees; IHL remains an important, composite protection framework whenever humanity fails; and, finally, international criminal law has the potential to bring accountability and justice in the face of violations and to end impunity.

Although the rights of Palestinian refugees under international law are firmly established, as the next chapters articulate, displacement and dispossession of Palestinians in the West Bank and Gaza has continued; outside the oPt, for many Palestinian refugees, living conditions in the countries where they found initial refuge or subsequently migrated, have progressively worsened; millions of them continue to live in a limbo as stateless persons, without the right to have rights, often exposed to unrest and conflict, and vulnerable to further displacement from the oPt and the region at large. The failure to bring a just resolution to the plight of Palestinian refugees is ultimately attributable to the lack of political (p. 180) will, rather than inadequacy of the legal framework, and the lack of

persistence to treat their plight in political terms, as an outcome of war, a humanitarian crisis, and an issue for negotiation.

The legal framework described in this chapter, taken as a whole, provides adequate regulation and direction to assess and address some of the most striking legal needs of the Palestinian refugees. The corollary of this is that remedies to their situation should be sought through a wider, holistic international law (and human-rights-based) approach that confines and redefines political approaches to Palestinian refugees.

Footnotes:

1 On the interconnectedness among various branches of international law, see UNSC res. 883 of 1998, Protection for humanitarian assistance to refugees and others in conflict situations, S/1998/883, para. 5; also, ICRC, 'Sixty years of the Geneva Conventions: learning from the past to better face the future', Ceremony to celebrate the 60th anniversary of the Geneva Conventions, Address by Jakob Kellenberger, President of the ICRC, Geneva, 12 August 2009.

2 This includes an examination of the rights to return, compensation, self-determination, as well as basic economic, social, and cultural rights (education, health, housing, and work), freedom of movement, right to admission/non-refoulement, rights to family unity, and nationality.

3 The intertemporal law doctrine was first elaborated in the *Island of Palmas Case* related to a territorial dispute over the Island of Palmas (or Miangas) between the Netherlands and the US, which was heard by the Permanent Court of Arbitration, 2 Reports of International Arbitral Awards, 1928, 831 ('Island of Palmas'). Judge Huber explained that the rule of intertemporal law consists of two branches: the first is that 'a juridical fact must be appreciated in the light of the law contemporary with it, and not of the law in force at the time when a dispute in regard to it arises or falls to be settled' (i.e. non-retroactivity of the law); the second is that 'the existence of the right, in other words its continued manifestation, shall follow the conditions required by the evolution of law' (i.e. continuing violations), *Island of Palmas*, 1928, 845. The two branches of intertemporal law work jointly to preserve stability in state relations and at the same time to recognize the evolution in the law regulating these relations, see Elias, T. O., 'The doctrine of intertemporal law', *American Journal of International Law* 74 (1980) 285, 305, and fn 9 in particular. The intertemporal law doctrine is further elaborated by the International Law Commission (ILC), see (n 5). International and regional courts have endorsed such doctrine including on human rights issues (i.e. in cases of forced disappearance and some asylum cases), see *Lovelace v Canada* UN Hum. Rights Comm. No 24/1977, UN Doc CCPR/C/13/D/24/1977, 30 July 1981, para. 7.3; *Loizidou v Turkey*, 40/1993/435/514, Council of Europe, European Court of Human Rights, 28 November 1996, further discussed in Chapter VI, Section 3.4.3.

4 Boling, G. J., The question of "timing" in evaluating Israel's duty under international law to repatriate the 1948 Palestinian refugees, in Benvenisti, E., Gans, C., Hanafi, S. (eds.), *Israel and the Palestinian refugees*, New York: Springer, 2007, 227-8.

5 See ILC, *Draft articles on responsibility of states for internationally wrongful acts*, 2001, suppl. 10 (A/56/10), arts. 13-14(2). After enunciating that '[a]n act of a State does not constitute a breach of an international obligation unless the State is bound by the obligation in question at the time the act occurs' (art. 13) the ILC refers to 'breach of an international obligation by an act of a State having a continuing character [which] extends over the

entire period during which the act continues and remains not in conformity with the international obligation' (art. 14(2)).

6 See Section 2.3, and Chapter VI, Section 3.2.

7 Boling (n 4), 227–8, 231.

8 *Ibid.*

9 Cf. Sassòli, M., Bouvier, A. A., Quintin, A., *How does law protect in war?*, vol I, 3rd edn., Geneva: ICRC, 2011, at 16. Also ICRC, *International Humanitarian Law: Answers to your questions*, Geneva: ICRC, 2015, 70.

10 For a general overview see Sassòli, Bouvier, and Quintin (n 9).

11 Sassòli, M., *Ius ad bellum and ius in bello—The separation between the legality of the use of force and humanitarian rules to be respected in warfare: Crucial or outdated?*, in Schmitt, M., Pejic, J. (eds.), *International law and armed conflict. Exploring the faultlines: Essays in honour of Yoram Dinstein*, Leiden: Martinus Nijhoff Publishers, 2007, 241–64.

12 Full list of treaties that comprise IHL is available on the ICRC website.

13 International Conferences (The Hague), *Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land*, 18 October 1907. One of the purposes for which the First Hague Peace Conference of 1899 was convened was 'the revision of the declaration concerning the laws and customs of war elaborated in 1874 by the Conference of Brussels, and not yet ratified' (Russian circular note of 30 December 1898). The Conference of 1899 succeeded in adopting a Convention on land warfare to which Regulations are annexed. The Convention and the Regulations were revised at the Second International Peace Conference in 1907. The two versions of the Convention and the Regulations differ only slightly from each other. The provisions of the two Conventions on land warfare, like most of the substantive provisions of the Hague Conventions of 1899 and 1907, are considered as embodying rules of customary international law.

14 The text of the four conventions was adopted by the Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of War on 12 August 1949 (entry into force: 21 October 1950. Text: 75 UNTS 31; also in ICRC, *The Geneva Conventions of August 12, 1949*, Geneva: ICRC, 1987).

15 Additional Protocol to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflict ('AP I') and Additional Protocol to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-international Armed Conflicts ('AP II'), both adopted by the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts on 8 June 1977 (entry into force 7 December 1978).

16 The rules and the updated related practice are in ICRC, *Customary International Humanitarian Law, 2005, Volume I: Rules* (hereinafter 'ICRC, Database on customary international humanitarian law (CIL)').

17 See The Trial of German Major War Criminals, Proceedings of the International Military Tribunal (IMT) sitting at Nuremberg, Germany, especially Part 22, Judgment, 22nd to 31st August, 1946, 30th September, 1946 and 1st October, 1946 (London, published under the authority of HM Attorney-General by His Majesty's Stationery Office, 1950; and The Tokyo Major War Crimes Trial, The Judgment, Separate Opinions, Proceedings in Chambers, Appeals and Reviews of the International Military Tribunal for the Far East, Annotated, A Collection in 124 Volumes, compiled and edited by Pritchard, R.J., New York, The Edwin Mellon Press, 1998. Among others, the charters of the two tribunals both listed deportations as being a crime against humanity. For an appraisal, see Kattan, V., *From coexistence to conquest*, London: Pluto Press, 2009, 345, fn 233. See also Henckaerts, J.,

Doswald-Beck, L., *Customary international humanitarian law*, vol. 1, Cambridge: Cambridge University Press, 2005, xxxvi, 1, fn 57.

18 ICRC website, see ‘Treaties, States Parties and Commentaries’, Geneva Conventions of 1949 and Additional Protocols, and their Commentaries.

19 Palestine acceded to GC I-IV and AP I in April 2014 and to AP II and III in January 2015.

20 The 1977 APs have not been universally ratified, but according to a 2005 ICRC study identifying the customary rules of IHL, many of the rules contained therein represent customary law, see ICRC, *Customary international humanitarian law rules*, Cambridge: Cambridge University Press, 2009.

21 Sassòli (n 11), 245.

22 ‘Military objective’ is cumulatively defined by its ‘nature, location, purpose’ or ‘use’ to effectively contribute to ‘military action’ and the fact that its ‘total or partial destruction, capture or neutralization’ would bring a ‘definite military advantage.’ See art. 52(2) AP(I), ICRC, Database on CIL, Rule 9.

23 Arts. 51(5) and 57(2) AP(I). ICRC, Database on CIL, rule 14.

24 Art. 57 AP(I), ICRC, Database on CIL, rules 15–21. This includes, for example that parties to an armed conflict verify that the target is a military objective, there is military necessity and respect for the proportionality requirement (otherwise attack should be suspended); weapons and timing for the attack aim to avoiding or minimizing civilian casualties; advance warnings are issued when feasible.

25 In [Hague] Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, The Hague, 29 July 1899, Introduction.

26 Meron traces the origins of the Martens clause back to the early humanitarian conventions of 1899 up to and including the Geneva Conventions in 1949, which expressly refer to it, and APs in 1977; reference to it can be found in the work of the Nuremberg Tribunals, the International Court of Justice (ICJ) and several human rights bodies, as well as in several influential military manuals. Meron, T., ‘The Martens Clause, principles of humanity and dictates of public conscience’ in *American Journal of International Law*, 94 (2000) 77.

27 Humanitarian lawyers are divided between narrow and wider interpretation of the Martens Clause, see Ticehurst, R., ‘The Martens Clause and the Laws of Armed Conflict’, *International Review of the Red Cross* 317 (1997), accessible through the ICRC website.

28 The distinction is not always one of mutual exclusion, since several different armed conflicts, comprising one or both categories, may be ongoing at the same time and in parallel in any given state. Cf. Bellal, A. (ed.), *The War Report: Armed Conflict in 2017*, Geneva: The Geneva Academy of International Humanitarian Law and Human Rights, 2018, 18–9.

29 AP(I), art. 1, para. 4, and art. 96, para. 3.

30 Common art. 2 to the GCs.

31 ICTY, *Prosecutor v Dusko Tadić (aka ‘Dule’)*, Appeals Chamber, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, IT-94-1, 2 October 1995, para. 70. See also ICRC, ‘How is the term “armed conflict” defined in international humanitarian law?’, Opinion Paper, 17 March 2008.

32 Henckaerts, J. M., 'Study on customary international humanitarian law: A contribution to the understanding and respect for the rule of law in armed conflict', *International Review of the Red Cross*, 87.857 (2005) 175, 187-8.

33 Bellal (n 28), 28.

34 Common art. 2 to the GCs. It should be noted that AP(I) has broadened the application of the rules on occupation to NIACs according to art. 1(4) where they are fought 'against colonial domination, alien occupation, against racist regimes or in the exercise of self-determination.' This application however remains controversial.

35 HR, art. 42.

36 GC(IV), art. 64.

37 Arts. 46, 50, and 56 of the HR and arts. 55, 56, and 59 of GC(IV), which specifically constrain the behaviour of an occupying power in an occupied territory, are of relevance here, as well as the customary fundamental guarantees of art. 75 of AP(I).

38 HR, art. 43.

39 HR, art. 46.

40 HR, art. 56. The property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when state property, shall be treated as private property. All seizure of, destruction or wilful damage done to institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings.

41 See ICRC (Portal), 'Occupation and international humanitarian law: Questions and answers', 4 August 2004.

42 So, for example, advancing troops could be considered bound by the law of occupation already during the invasion phase of hostilities. This is the approach suggested in the ICRC's Commentary to GC(IV).

43 GC(IV), art. 6 approaches the issue in somewhat vague terms: '[i]n the case of occupied territory, the application of the present Convention shall cease one year after the general close of military operations.' 'Military operations' however are not defined. Similarly, art. 3(b) of AP(I) just states that its provisions relating to occupation shall end on the 'termination' of occupation (sic!).

44 Gaeta, P., Clapham, A., Sassòli, M., 'The 1949 Geneva Conventions - A commentary', Oxford: Oxford University Press, 2015, 1594, and Alonso-Maizlish, D., 'When does it end? Problems in the Law of Occupation' in Inter Universitaires Suisses-Eds, *International humanitarian law and the 21st century's conflicts*, Lausanne: Berne, Lugano, 2005, 104.

45 Oppenheim, L., *International law: A treatise, Disputes, war and neutrality*, vol. 2, 7th edn, New York: Longmans Green, 1952, 436 ('Occupation ends when an occupant withdraws from a territory, or is driven out of it'). See also Roberts, A., 'Prolonged military occupation: The Israeli-Occupied Territories 1967-1988', in Playfair, E., *International law and the administration of occupied territories*, Oxford: Oxford University Press, 1992.

46 Roberts, A., 'The end of occupation in Iraq', *The International and Comparative Law Quarterly* 54.1 (2004) 27.

47 This was famously the case for the allied occupation of Iraq in 2004, following UNSC res. 1546 (2004), see Sassòli, M., 'Legislation and Maintenance of Public Order and Civil Life', *European Journal of International Law*, vol. 16, 2005, 661-694, 685, fn 44.

48 Ibid. An occupying power's armed forces may remain on the ground and maintain effective control in the occupied territory after a Security Council resolution ending an occupation, or a peace treaty that has installed an internationally acceptable yet arguably unrepresentative government.

49 In January 1970, the UNSC declared that South Africa's continued presence in Namibia was 'illegal' and stated that South Africa's 'defiant attitude' of earlier decisions of the Security Council 'undermine[d] the authority of the United Nations.' UNSC res. 276 (1970) [The Situation in Namibia]. Subsequently, the UNSC sought an advisory opinion of the ICJ, UNSC res. 284 (1970).

50 Article 6 GC(IV) states that 'the Occupying Power shall be bound, for the duration of the occupation, to the extent that such Power exercises the functions of government in such territory, by the provisions of the following Articles ...'. Article 47 of GC(IV) states that 'Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory.' It is important that the regime which obliges an occupying state to ensure essential services (health, humanitarian assistance) to the population, is not switched off prematurely. Cf. Roberts, 1992, 76.

51 See ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004, *ICJ Reports* 2004, 136, paras. 106–13 [hereinafter 'ICJ Wall Advisory Opinion']; See also ICJ, *Armed Activities in the Territory of the Congo (Democratic Republic of Congo v Uganda)*, 2005 ICJ 116, paras. 178–9, ICJ, Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion of 8 July 1996, *ICJ Reports* 1996, 226, para. 25.

52 They were found constituting customary international law since 1939 at the Nuremberg and Tokyo war crimes tribunals in 1945, see sources (n 17). This legal framework was in the mind of various bodies of the UN who tried, as early as 1948, to resolve the question of the refugees from Palestine, see Chapter VI, Section 3.3.

53 The Charter of the International Military Tribunal (IMT) lists deportations of civilians among both 'war crimes' (art. 6(b)) and 'crimes against humanity' together with murder, extermination, enslavement, and other inhumane acts committed against any civilian population, before or during the war, (art. 6(c)). United Nations, Charter of the International Military Tribunal – Annex to the Agreement for the prosecution and punishment of the major war criminals of the European Axis ('London Agreement'), 8 August 1945. Further, the Charters of both Tribunals list deportations as being a 'crime against humanity'. A fascinating insight into the development of the ITM Charter, especially its catalogue of war crimes and crimes against humanity, including the new concept of 'genocide', is provided by Sands, P, *East West Street*, New York: Vintage Books, 2016.

54 See *Trial of the Major War Criminals before the International Military Tribunal, Nuremberg, 14 November 1945–1 October 1946*, Nuremberg, Germany, 1947, 254–5. See also *Law Reports of Trials of War Criminals Selected and Prepared by the United Nations War Crimes Commission*, I–XV, London, published for the United Nations War Crimes Commission by His Majesty's Stationery Office, 1948. 'Trial of Edward Milch', 20 December 1946–17 April 1947, *ibid.*, VI, 27–66; 'The Krupp Trial', 17 November 1947–30 June 1948, *ibid.*, X, 69–181. See also 'Attorney-General of the Government of Israel v Adolf Eichmann', *International Law Reports* 36 (1961) 5, 8–9 (in particular see counts 3, 5, 8–12 of the

indictment, reciting and characterizing facts of expulsions found to have been carried out or planned by Eichmann as ‘war crimes’ and as ‘crimes against humanity’.

55 Trial of German Major War Criminals, part 22, judgment, 456–7, cit. in Kattan (n 17), 345, fn 234. On this issue, also the same author: ‘At Nuremberg, the Tribunal specifically cited the “evacuation” of the inhabitants of the Crimea and its settlement by Germans and the colonization by Germans of regions in Poland and Russia as being contrary to Article 6(b) of the Charter of the International Military Tribunal’, Kattan (n 17), 203.

56 Ibid., 208ff.

57 An excerpt of the note states: ‘Except in the course of actual fighting, *it is forbidden* to destroy, burn or demolish Arab towns and villages, or to expel Arab inhabitants from their villages, neighbourhoods and towns, or uproot inhabitants from their homes without express permission of an order from the Minister of Defence, in each and every case. Anyone violating this order *will be liable to prosecution.*’ [emphasis added]. Order of Tsvi Ayalon, 6 July 1948, Kibbutz Meuhad Archive (A. Cizling), sec. 9, container 9, file 1. In relation to this order, Kattan argues that the admission that certain acts could amount to ‘crimes’ and needed to be investigated was a ‘tacit recognition’ by the Israeli government that the laws of war applied to the ongoing hostilities and that breaches would engage individual criminal liability. Kattan (n 17), 208 and fn 264.

58 Permanent Court of International Justice (PCIJ), *Case concerning the factory at Chorzów, Germany v Poland*, Judgment, Claim for Indemnity, Merits, Judgment No 13, (1928) PCIJ Series A No 17, ICGJ 255 (PCIJ 1928), 13 September 1928, (hereafter ‘*Chorzów Factory*’), 21.

59 The agreements ‘being dictated exclusively by military, and not political, considerations’ did not prejudice the political positions of any of the parties on the ultimate settlement of the Palestine question; UN, *Origins*, 1990, 141.

60 Mac Ginty R., *No war no peace: The rejuvenation of stalled peace processes and peace accords*, New York: Palgrave Macmillan, 2006.

61 Treaty of Peace, 26 March 1979, Egypt-Israel, text in *International Legal Materials* 18 (1979) 362; Treaty of Peace, 26 October 1994, Jordan-Israel, text in *International Legal Materials* 34 (1995) 43.

62 GC(IV), art. 3, 44; AP(I), art. 73, AP(II), art. 17. On the doctrine, see Bugnion, F., ‘Refugees, internally displaced persons, and international humanitarian law’, *Fordham International Law Journal* 28.5 (2005) 1407. For earlier works on this topic see Maurice, F. de Courten, J., ‘Humanitarian policy and operational activities: ICRC activities for refugees and displaced civilians’ *International Review of the Red Cross* 31.280 (1991) 9, 11, Lavoyer, J. P., ‘Refugees and internally displaced persons: International humanitarian law and the role of the ICRC’, *International Review of the Red Cross* 35.305 (1995) 162.

63 Cf. GC(IV), art. 3 (*persons hors combats*), arts. 4 and 44 (refugees), 70; AP(I), arts. 50, 73; AP(II), art. 17. ICRC Database on CIL, rule 132.

64 GC(IV), art. 44: ‘In applying the measures of control mentioned in the present Convention, the Detaining Power shall not treat as enemy aliens exclusively on the basis of their nationality *de jure* of an enemy State, refugees who do not, in fact, enjoy the protection of any government.’

65 GC(IV), art. 70, para. 2: ‘Nationals of the Occupying Power who, before the outbreak of hostilities, have sought refuge in the territory of the occupied State, shall not be arrested, prosecuted, convicted or deported from the occupied territory, except for offenses committed after the outbreak of hostilities, or for offenses under common law committed before the outbreak of hostilities which, according to the law of the occupied State, would

have justified extradition in time of peace'. Refugees and stateless persons are thus generally able to benefit from the relevant provisions of GC(IV).

66 GC(IV) does not define refugees or stateless persons; what matters is that they do not enjoy the protection of any government (whether having a nationality or not). This understanding is broader than the definition in the 1951 Convention or the 1954 Convention relating to the Status of Stateless Persons. Article 73 of AP(I) confirms the application of protected persons status to stateless persons and refugees irrespective of their nationality and of the party to the conflict in whose power they have fallen; accordingly, for an alien to be considered a refugee, qualifying as a protected person for the purposes of GC(IV), s/he is to be considered as such 'under the relevant international instruments accepted by the Parties concerned or under the national legislation of the State of refuge or State of residence ... before the beginning of hostilities.' This appears to contrast with arts. 44 and 70(2) of GC(IV), which have a broader understanding of the term 'refugee' than in AP(I).

67 See Melzer, N., *Interpretive guidance on the notion of direct participation in hostilities under international humanitarian law*, Geneva: ICRC, May 2009.

68 Ibid., 16–17.

69 Ibid., 51–2.

70 Details concerning the status of the land (in the oPt), as well as the presence, status and treatment of refugees in the countries described in this section is provided in Chapter IV.

71 For example, see Israel Ministry of Foreign Affairs, 'Israel's settlements – their conformity with international law', 1 December 1996.

72 Under these Accords, the West Bank was divided into three zones: Area A (exclusively administered by the Palestinian Authority [PA]), Area B (under PA civil control and joint Israeli-Palestinian security control), and Area C (under full Israeli civil and military control) corresponding to sixty-one per cent of the West Bank. Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (Oslo II), 28 September 1995, [hereinafter 'DoP'], art. XI 3. As per arts. V(1) and VI(1) of the DOP, Israel was to withdraw from Gaza and transfer authority from its military government and Civil Administration to the PA. Some withdrawal operations started as of 1994 but were largely delayed and finally halted with the second *intifada* (2000), when Israel reoccupied many of the areas that had been turned over to Palestinian control. On the Oslo Accords, see: Dajani, B., 'The September 1993 Israeli–PLO Documents: A textual analysis', *Journal of Palestine Studies* 91 (Spring 1994) 5; Shlaim, A., 'The Oslo Accord', *Journal of Palestine Studies* 91 (Spring 1994) 24. Shehadeh, R., *From occupation to interim accords: Israel and the Palestinian territories*, Leiden: Brill, 1997; Watson, G. R., *The Oslo Accords: International law and the Israeli-Palestinian peace agreements*. Oxford: Oxford University Press, 2000; Roy, S., 'Why peace failed: An Oslo autopsy', *Current History, Philadelphia* 101 (2002) 651, 8–16, Rynhold, J., 'The failure of the Oslo Process: Inherently flawed or flawed implementation?', Ramat Gan: BESA Center, Bar-Ilan University, 2008.

73 DoP (n 72), 'Article V, Transitional Period and Permanent Status Negotiations', para. 3 recites as follows: 'It is understood that these negotiations shall cover remaining issues, including: Jerusalem, refugees, settlements, security arrangements, borders, relations and cooperation with other neighbors, and other issues of common interest'. The final status negotiation would start within three years from the end of the first interim period of five years (Ibid., paras. 1–2).

74 This view is largely held among international stakeholders and observers, and does not necessarily represent the view of Palestinians at large and the refugees in particular.

75 Declaration of Principles on Interim Self-Government Arrangements between Israel and the Palestinian Liberation Organization (DoP) (13 September 1993), in Bassiouni, C. (ed.), *Documents on The Arab-Israeli conflict, the Palestinians and the Israeli-Palestinian peace process*, Ardsley, NY: Transnational, 2005, at 890. Worth remembering is that UNSC res. 242 (22 November 1967), UN doc. S/RES/242 calls, among other on Israel to withdraw from territories it occupied in the 1967 conflict (and recalls the inadmissibility of acquisition of territory by war), and UNSC res. 338 (22 October 1973), UN doc S/RES/338, calls for a ceasefire in the 1973 conflict and for the implementation of UNSC res. 242. Resolution 242, and its relevance to the refugees, is discussed in Chapter VI, Section 3.4.2. For a critical appraisal, see Dajani, O. M., Shadow or shade: The Roles of international law in Palestinian-Israeli peace talks', *Yale Journal of International Law* 32 (2007) 61.

76 This is among others in spite of the DOP of 1993 provision (art. IV), that 'The two sides view the West Bank and the Gaza Strip as a single territorial unit, whose integrity will be preserved during the interim period'.

77 ICJ Wall Advisory Opinion (n 51), para 78: 'All these territories [occupied in 1967] (including East Jerusalem) remain occupied territories and Israel has continued to have the status of occupying Power'. The continuous occupation of the Gaza Strip (despite the dismantlement of Israeli settlements in 2005) is by and large confirmed by the General Assembly, the ICRC, and the Prosecutor of the ICC. International Criminal Court, Office of the Prosecutor, Situation on Registered Vessels of the Comoros, Greece and Cambodia, 6 November 2014, art. 53(1) Report, 17; UNGA res. 64/92, to be read jointly, cit. in Commission of Inquiry on the 2014 Gaza Conflict, HRC, Report of the Independent Commission of Inquiry on the 2014 Gaza Conflict, A/HRC/29/52, para. 31, fn 20. Maurer, P., 'Challenges to international humanitarian law: Israel's occupation policy', *International Review of the Red Cross* 94.888 (2012) 1506.

78 Israel rejects such interpretation claiming that only the HRs, together with the 'humanitarian provisions' only of GC(IV) apply to the oPt on a *de facto* basis; see Israel Ministry of Foreign Affairs (n 71). For a sound examination of Israel's arguments, see Gross, A, *The writing on the wall: Rethinking the international law of occupation*, Cambridge: Cambridge University Press, 2017.

79 The ICJ holds that the legal framework applicable to the oPt, includes the HRs, GC(IV) as well as Israel's human rights obligations under the international bill of rights and the CRC. ICJ Wall Advisory Opinion (n 51), paras. 89, 95, 101, 107–13, 178–81.

80 This position has been routinely shared by the UN Secretary General, General Assembly and Human Rights Council. See for example UNGA resolutions 35/122 of 11 December 1980, 56/60 of 10 December 2001, and 58/97 of 9 December 2003. Declaration of Conference of HCPs to GC(IV) 5 December 2001, Geneva. UNSC res. 1544 (2004), which cites Israel's obligations as occupying power in the Palestinian territory. Also UNGA res. 58/292 (2004) affirming 'that the status of Palestinian territory occupied since 1967, including East Jerusalem, remains one of military occupation'; also UNGA res. 62/107 of 17 December 2007 and 63/96 of 18 December 2008, both reaffirming that GC(IV), is applicable to the oPt 'including East Jerusalem, and other Arab territories occupied by Israel since 1967'. See also Report of the UN High Commissioner for Human Rights on the implementation of Human Rights Council Resolution S-9/1 (2009) UN Doc A/HRC/12/37, para. 5. UN Secretary-General, 'Israeli practices affecting the human rights of the

Palestinian people in the Occupied Palestinian Territory, including East Jerusalem', Report of the Secretary-General (2014) UN Doc A/69/347, paras. 4–5.

81 See *Beit Sourik Village Council v Israel* (2004), High Court of Justice 2056/04, 30 June 2004, *Israel Yearbook of Human Rights*, 35 (2005) 340–59, para. 23 (Justice Barak). The Court held that both GC(IV) and the HRs were customary in nature and therefore applied to both the West Bank and Gaza Strip.

82 This premise was reiterated by Jean Pictet (and became known as the ‘normality principle’) and is reflected in the provisions of both the HR and GC(IV).

83 Bisharat, G. E., ‘Land, Law, and Legitimacy in Israel and the Occupied Territories’, *American University Law Review* 43 (1993) 467. Diakonia, ‘Rule of Law, A Hardening of Illegality in Israel and the oPt 2014–2017, Diakonia International Humanitarian Law Resource Centre, December 2017. For a detailed analysis of Israeli military orders in the oPt, see the work of human rights organizations operating in the oPt such as: Al Haq, Adameer, Dikonia, Gisha. See also Ben-Naftali, O., Sfard, M., Viterbo, H., *The ABC of the OPT: A legal lexicon of the Israeli control over the Occupied Palestinian Territory*. Cambridge: Cambridge University Press, 2018.

84 The settlement expansion as of 1967, the construction of the Separation Wall [hereinafter ‘the Wall’) in the West Bank and East Jerusalem as of 2003, increasingly restrictive zoning, planning, movement, and residency regimes for the Palestinians, within a general climate of abuse and harassment towards the Palestinians, is part and parcel of what the UN Office for the Coordination of Humanitarian Affairs in the oPt describe the local reality ‘a complex system of control’, made up of physical, legal, and bureaucratic barriers that contribute to the continuous and continued forced displacement of Palestinians, including refugees’. See UNOCHA (Portal), West Bank. Accessed 30 June 2019. For a recent assessment, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 [Michael Lynk], A/73/45717, 22 October 2018.

85 GC(IV) art. 49(6). ICRC Database on CIL, rule 129, The Act of Displacement. See also *Charter of the International Military Tribunal annexed to the Agreement for the prosecution and punishment of the major war criminals of the European Axis*, 8 August 1945, art. 6(b). The ICRC Commentary of 1958 notes that ‘in this paragraph the meaning of the words “transfer” and “deport” is rather different from that in which they are used in the other paragraphs of Article 49, since they do not refer to the movement of protected persons but to that of nationals of the occupying Power. It would therefore appear to have been more logical ... to have made the clause in question into a separate provision distinct from art. 49, so that the concepts of “deportations” and “transfers” in that Article could have kept throughout the meaning given them in paragraph 1, i.e. the compulsory movement of protected persons from occupied territory’.

86 ICRC Commentary to the GC(VI), art. 49, para. 6 (emphasis added).

87 GC(IV), art. 49(1)–(2), Database on CIL, Rule 129(A), The Act of Displacement.

88 See UNOCHA (n 84).

89 In his report to the Human Rights Council of 2007, John Dugard (the then-Special Rapporteur on the situation of human rights in the Palestinian Territory occupied since 1967) denounced the Israeli system in the oPt as ‘apartheid’. UN Human Rights Council, *Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967*, UN doc. A/HRC/4/1729, January 2007.

90 ICJ, Wall Advisory Opinion (n 51), 179, para. 111. CAT, Concluding observations of the Committee against Torture, CAT/C/ISR/CO/4, para. 121.

91 Hofmann, R., Annexation, in *Max Planck encyclopedia of public international law*, Oxford: Oxford University Press, 2013, paras. 21, 38.

92 UNSG, UN Doc. A/71/364, paras. 23–4.

93 HRC, *Report of the Secretary-General, Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the Occupied Syrian Golan*, HRC/31/43, 20 January 2016, paras. 46, 54, 60. The concept of ‘coercive environment’, resulting from ‘the threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power’, which leaves no other choice but to leave, was developed by the International Criminal Tribunal for the former Yugoslavia. ICTY, *The Prosecutor v Krstić*, IT-98-33, Trial Chamber, Judgment, 2 August 2001, para. 530. ICTY, *The Prosecutor v Stakić*, IT-97-24-A, Appeals Chamber, 22 March 2006, para. 281.

94 HRC, ‘Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the Occupied Syrian Golan’, Report of the Secretary-General, /HRC/31/43, 20 January 2016, para. 68.

95 UNSC res. 2334 (2016) [on cessation of Israeli settlement activities in the oPt, including East Jerusalem], adopted by the Security Council at its 7853rd meeting, 23 December 2016, S/RES/2334 (2016), para. 1.

96 Ibid., preamble.

97 Ibid., para. 6.

98 GC(IV), art. 33 states that ‘no protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation of or terrorism is prohibited.’ The provision applies to protected persons in both own and occupied territory.

99 HR, art. 50 reads as follows: ‘No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible.’

100 On 15 September 2005 Prime Minister Sharon formally announced an end to Israel’s occupation of Gaza to the UN General Assembly. On 22 January 2008, Foreign Minister, Tzipi Livni said: ‘We were there. We left Gaza; the occupation of Gaza is over. Israel got out of Gaza . . . It dismantled its settlements there. No Israeli soldiers were left there after the disengagement’, Israel Ministry of Foreign Affairs (Portal), ‘Speeches by Israeli leaders’.

101 This is manifested through Israel’s control of Gaza’s airspace, maritime areas, and land (e.g. the no-go zone of varying width Israel enforces inside Gaza along the Green Line and access to and from Gaza), as well of Gaza’s monetary system (based on the Israeli currency), customs, construction industry (most of which requires Israel’s approval), and the Palestinian population registry. HRC, Report of the detailed findings of the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1, 24 June 2015, A/HRC/29/CRP.4 (CoI on the 2014 Gaza Conflict), para. 29.

102 A/HRC/28/45, para. 70.

103 Sassòli (n 47), 686.

104 The World Bank, ‘Gaza Economy on the Verge of Collapse’, 21 May 2015.

105 HRC, Report of the United Nations Fact-Finding Mission on the Gaza Conflict, 25 September 2009, A/HRC/12/48; HRC, Report of the detailed findings of the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1, 23 June 2015, A/HRC/29/CRP.4; HRC, Report of the United Nations High Commissioner for Human Rights on the implementation of Human Rights Council resolutions S-9/1 and

S-12/1: Addendum—Implementation of the recommendations contained in the reports of the independent commission of inquiry on the 2014 Gaza conflict and of the United Nations Fact-Finding Mission on the Gaza Conflict, 7 March 2016, A/HRC/31/40/Add.1

106 UNHRC, Report of the detailed findings of the independent international Commission of inquiry on the protests in the Occupied Palestinian Territory, 18 March 2019, A/HRC/40/CRP.2.

107 According to Michael Lynk, the current Special Rapporteur on the situation of human rights in the Palestinian Territory occupied since 1967, based on the analysis of similar cases (the case of Namibia under prolonged alien rule of South Africa), any military occupation, is premised on four features: that it is temporary (e.g. 5–10 years), not indefinite or permanent; run in ‘good faith’, in the best interests of the people under occupation, subject only to justified security concerns; run in line with international law and specific directions issued by the UN; and never results in annexation. Report of the UN Special rapporteur on the Situation of human rights in the Palestinian territories occupied since 1967, UN Doc. A/72/556, 23 October 2017, paras. 15, 18, 42, 47, 51, 58, 63–5.

108 For a comprehensive analysis, see Report of the Special Rapporteur on the Situation of human rights in the Palestinian territories occupied since 1967, UN doc. A/73/45717, 22 October 2018, paras. 19–23, 56.

109 See Chapter IV, Section 3.3.

110 Between 1,000 and 3,500 civilians (mostly Palestinian refugees and Lebanese Shiites) were murdered by a right-wing militia called Phalange, allied to the Israeli Defence Forces (IDF). Fisk, R., *Pity the nation: Lebanon at war*, Oxford: Oxford University Press, 2001, 382–3.

111 UN HRC, ‘Report of the Commission of Inquiry on Lebanon pursuant to Human Rights Council Resolution S-2/1, 2006, UN Doc. A/HRC/3/2, para. 51. According to the Commission, of the 230,000 displaced during this conflict, 16,000 were Palestinian refugees (para. 199).

112 UNHCR, *Update of UNHCR aide-memoire of 2006: Protection considerations for Palestinian refugees in Iraq*, July 2012.

113 In 1996 there were 62,000 Palestinian refugees in Iraq; numbers peaked at 100,000 in 2002, and then declined to around 23,000 in 2005; there were fewer than 7,000 Palestinians by 2017.

114 At the beginning of the conflict in Libya, OHCHR characterized it as a NIAC and found that Common art. 3 to the GCs and AP(II), to which Libya is a state party, are applicable. UN HRC, ‘Investigation by the Office of the UN High Commissioner for Human Rights on Libya: detailed findings’, 2016, UN Doc. A/HRC/31/CRP.3, paras. 21–3.

115 UNHCR, ‘UNHCR Position on Returns to Libya - Update I’, October 2015, para. 20, 23.

116 In August 2012, the independent International Commission of Inquiry (COI) appointed by the Human Rights Council to report on the situation in the Syrian Arab Republic, assessed that a NIAC existed in Syria and that IHL applied [HRC, S-17/1, ‘Situation of human rights in the Syrian Arab Republic’, para. 13]. The COI concluded that only Common art. 3 was applicable to the conflict, in the absence of a ratification of AP(II) by Syria, as well as rules of CIL; HRC, ‘Report of the [COI] on the Syrian Arab Republic’, 11 August 2016, UN DoC A/HRC/33/55, and Report of the [COI] on the Syrian Arab Republic of 8 August 2017, UN Doc A/HRC/36/55.

117 For an early assessment see Arimatsu, L., Choudoury, M., 'The Legal Classification of the Armed Conflicts in Syria, Yemen and Libya', Chatham House, International Law PP 2014/01, March 2014.

118 Already by October 2013, around 1,400 Palestinians were reported missing or to have been kidnapped (these figures include Palestine refugees who were working for UNRWA). By the end of 2016, a total of 17 UNRWA staff had lost their lives owing to the conflict, and many more have been either detained or have gone missing. UNRWA, 'Palestinians from Syria: Syria Needs Analysis', March 2014, 7.

119 UN COI, 'Continued hostilities and lawlessness countrywide render safe and sustainable returns impossible', Geneva, 28 February 2018, press release on the occasion of the launch of the COI periodic report to the HRC.

120 In a number of cases facts and interpretation of relevant rules have been established by commissions of inquiry and fact-finding missions of the UN. See for example on the Gaza wars: HRC, Report of the United Nations Fact-Finding Mission on the Gaza Conflict (Goldstone report), A/HRC/12/48; 25 September 2009, HRC, Report of the detailed findings of the independent commission of inquiry established pursuant to HRC res. S-21/1, 24 June 2015, A/HRC/29/CRP.4 (CoI on the 2014 Gaza Conflict); In Lebanon: Report of the Commission of Inquiry on Lebanon pursuant to Human Rights Council resolution S-2/1, 23 November 2006, A/HRC/3/2; In Syria, latest report available is: HRC, 'Report of the Independent International Commission of Inquiry on the Syrian Arab Republic', 9 August 2018 A/HRC/39/65 (Report of the CoI on Syria, 2018); in Libya, see HRC, 'Investigation by the Office of the United Nations High Commissioner for Human Rights on Libya', Report of the OHCHR, 15 February 2016 A/HRC/31/47.

121 HRC, *Report of the United Nations Fact-Finding Mission on the Gaza Conflict* (Goldstone report), A/HRC/12/48, 25 September 2009, para. 286.

122 Selected norms of the GCs describe what acts constitute grave breaches. GC(IV), art. 147 defines grave breaches as: 'those involving any of the following acts, if committed against persons or property protected by the present Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.' Similar provisions are at GC (I), art. 50, GC(II) art. 51, GC(III), art. 130. See also the expansion of grave breaches under AP(I) arts. 11 and 85.

123 See GC(IV), art. 146, requiring states parties to enact any legislation necessary to provide effective criminal sanctions for persons committing, or ordering to be committed, any of the listed grave breaches and to 'search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts.'

124 Henckaerts, J.M., 'The grave breaches regime as customary international law', *Journal of International Criminal Justice* 7.4 (2009) 683.

125 UN Treaty Collection, Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 01 July 2002) 2187 UNTS 3 (*Rome Statute*), art. 8(2)(a).

126 These include, *inter alia*, violations of Common art. 3 of the GC(I-IV), as well the grave breaches contained in AP(I). These are mostly contained in Rome Statute, art. 8(2)(b). See also art. 4, Statute of the International Criminal Tribunal for Rwanda, and art. 3, Statute of

the Special Court for Sierra Leone. See also ICTY, *Prosecutor v Dusko Tadić*, Decision of 2 October 1995, IT-94-1-AR72.

127 Rome Statute, arts. 5–8.

128 Rome Statute, art. 25, ICTY Statute, art. 7(1), ICTR Statute, art. 6(1). See also ICRC, Database on CIL, rule 151, cit. in A/HRC/29/CRP.4, fn 59.

129 Rome Statute, art. 28, ICTY Statute, art. 7(2), ICTR Statute, art. 6(2). See also ICRC, Database on CIL, rule 152, cit. in A/HRC/29/CRP.4, fn 60.

130 This entered into force on 1 April 2015. See ICC, Situation of Palestine. For a theoretical appraisal see Schabas, W., *Introduction to the International Criminal Court* (3rd edn., Cambridge: Cambridge University Press, 2007), 80ss, and Ronen, Y. Israel, Palestine and the ICC – territory uncharted but not unknown, *Journal of International Criminal Justice* 12.1 (2014): 7–25.

131 Upon signing the treaty, Israel submitted a declaration in which it ‘expressed its deep disappointment and regret at the insertion into the Statute of formulations tailored to meet the political agenda of certain states’ and rejected ‘any attempt to interpret provisions thereof in a politically motivated manner against Israel and its citizens.’ UN Treaty Collection, Rome Statute of the International Criminal Court, ch. XVIII: Penal Matters.

132 Jordan signed the Rome Statute on 7 October 1998 and then deposited its instrument of ratification of the Statute on 11 April 2002.

133 UN Treaty Collection Database (Portal), ch. XVIII: Penal Matters, section 10 (Rome Statute), Israel (fn 4).

134 ICC, Situation of Palestine,

135 Following Operation Cast Lead, in 2009 the PA invoked the ICC’s jurisdiction over crimes in Palestine. The then-ICC Prosecutor Moreno-Ocampo referred the question to the UN Secretary General and the UN General Assembly, inferring that, should the issue of Palestinian statehood be resolved by the ‘competent organs of the United Nations’, his office would consider future allegations of crimes committed in Palestine. In 2012, after being granted observer-state status by the UN General Assembly, the state of Palestine’s capacity to accede to international treaties was acknowledged. In 2012 the new ICC Prosecutor, Fatou Bensouda, declared that while the newly acquired status of the State of Palestine did not retroactively validate the previously invalid 2009 declaration, Palestine could join the Rome Statute.

136 Rome Statute, art. 53(1)

137 Office of the prosecutor (ICC), Report on Preliminary Examination Activities 2017, paras. 59–63.

138 Ibid., paras. 64–6.

139 Ibid., para. 58.

140 Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, regarding the worsening situation in Gaza, 8 April 2018.

141 Ibid.

142 Office of the prosecutor (ICC), Report on Preliminary Examination Activities 2017, paras. 251ff, and 253–4 in particular. See also Decision on Information and Outreach for the Victims of the Situation, ICC-01/18-2, 13 July 2018, para. 12.

143 On 30 March 2018, a non-violent march started at the initiative of Palestinian refugees in besieged Gaza. The march aimed at the separation fence, to draw attention to UNGA res. 194 and to the dire humanitarian situation in Gaza. The idea evolved into a popular movement of Palestinians. See HRC, res. S-28/1.

144 Report of the independent international COI on the protests in the Occupied Palestinian Territory, 25 February 2019, A/HRC/40/74.

145 According to the Pre-Trial Chamber, the prosecutor erred in her conclusions that the Gaza flotilla incident was of insufficient gravity to warrant prosecution and asked her to reconsider the matter without delay. Such decision found that the Prosecutor had failed to make findings on the following points: 1) that the persons likely to be the object of the investigation into the situation could include those who bear the greatest responsibility for the identified crimes; 2) how the scale of the identified crimes can be taken into account for the assessment of the gravity of the identified crimes; 3) correct assessment of the nature of the identified crimes; 4) assessment of the manner of commission of the identified crimes, in particular, with respect to the question whether the identified crimes may have been ‘systematic or resulted from a deliberate plan or policy to attack, kill or injure civilians’; 5) the impact of the identified crimes, including on the people of Gaza subject to the blockade. ICC Pre-Trial Chamber, *Situation on the Registered Vessels of the Union of the Comoros, the Hellenic Republic and the Kingdom of Cambodia*, 15 November 2018, No. ICC-01/13.

146 Rome Statute, art. 17.

147 See Israel Ministry of Foreign Affairs, ‘Israel’s Investigation of Alleged Violations of the Law of Armed Conflict’, 14 June 2015.

148 Independent COI on the 2014 Gaza Conflict, paras. 619–33.

149 Ibid., para. 618.

150 UNHRC, ‘Concluding observations on the fourth periodic report of Israel’, CCPR/C/ISR/CO/4, para. 6 and A/HRC/15/50, paras. 90–95.

151 In 2016, Yesh Din documented 113 incidents of ideologically motivated crimes against Palestinians and their property in the West Bank. In forty-eight of these cases (forty-two per cent), the crime victims told Yesh Din they were not interested in filing a complaint with the Israel Police. This compared to thirty per cent of the victims in cases documented by Yesh Din between 2013 and 2015. See Yesh Din, ‘Data-sheet’ December 2017.

152 In 2015, the CoI noted that while some steps had been taken in the West Bank with preliminary investigations by the Palestinian Independent Investigation Commission, which could lay the ground for prosecution of perpetrators and redress to the victims, no significant progress, beyond commitment, has been registered in Gaza. ‘Independent Commission of Inquiry on the 2014 Gaza Conflict’, paras. 653–7.

153 According to art. 1.2(b) of Annex IV, Protocol Concerning Legal Affairs, Israeli-Palestinian Interim Agreement on the West Bank and Gaza Strip, signed in Washington DC on 28 September 1995 between the State of Israel and the PLO, Israel has sole criminal jurisdiction over ‘offences committed in the Territory by Israelis’. The Territory refers to the West Bank and Gaza Strip. For the text of the Interim Agreement see *International Legal Materials* 36 (1997) 557–649. Cit. in Kattan, V., ‘From Beirut to Brussels: Universal jurisdiction, statelessness and the Sabra and Chatila Massacres’ *Yearbook of Islamic and Middle Eastern Law* 11 (2004–2005) 33, fn 5.

154 On the role of refugees and other displaced persons in criminal justice, see ‘Expert meeting on complementarities between international refugee law, international criminal law and international human rights law’, Arusha, Tanzania, 11–13 April 2011, *International Journal of Refugee Law* 23 (2011) 860–872, para. 56 in particular.

155 These states include: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Israel, Mexico, Netherlands, Senegal, Spain, Switzerland, the United Kingdom, and the United States. On the relevance of universal jurisdiction Higgins, R., *Problems and Process: International Law and How We Use It*, Oxford: Clarendon Press, 1994.

156 In 2000, the UK government decided to deny extradition to Spain of Chilean dictator Augusto Pinochet after holding him for eighteen months, under an international arrest warrant issued by Spanish judge Baltasar Garzón. In 2010, the Center for Constitutional Rights tried to prosecute former US President George W. Bush, first in Switzerland and then in Canada, on behalf of persons tortured in US detention camps in Guantanamo. While Bush cancelled his trip to Switzerland, Canada did not conduct any criminal investigation against Mr. Bush.

157 Kattan (n 153), 11, 34.

158 Ibid. 66, 79.

159 Judgment of the Brussels Court of Appeals, Chambre Des Mises En Accusation, 10 June 2003, reproduced in *Palestine Yearbook of International Law* 12 (2002/2003) 285–8; also in Kattan (n 153), fn 22.

160 On 1 August 2003 Belgium repealed the law on universal jurisdiction, and introduced a new law on extraterritorial jurisdiction similar to or more restrictive than that of most other European countries. However, some cases that had already started continued consideration under the old law. The case, including the reported external pressure exerted by the US, is detailed in Kattan (n 153), fn 24.

161 The most notorious is the request to a Dutch Court to hear a civil suit seeking damages from former Israeli armed forces chief Benny Gantz of September 2019.

162 Azarova, V., Mariniello, T., ‘Why the ICC needs a “Palestine situation” (more than Palestine needs the ICC): On the Court’s potential role(s) in the Israeli-Palestinian context’, *Diritti Umani e Diritto Internazionale* 1 (2017) 115, 3.

163 Weis, P., *Nationality and statelessness in international law*, Germantown: Sijthoff & Noordhoff, 1979, 162. Also, UNHCR, ‘Guidelines on Statelessness No. 1: The definition of “Stateless Person” in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons’, UN Doc HCR/GS/12/01, 20 February 2012, para. 47.

164 Its implications in the Palestinian case are discussed in Section 3.2.2.

165 UNCCP, ‘Definition of a “Refugee” under Paragraph 11 of the General Assembly Resolution of 11 December 1948’, 9 April 1951, A/AC.25/W/61.

166 ICJ, *Nottebohm Case* (second phase), Judgment of 6 April 1955, *ICJ Reports* 1955, 23.

167 Art. 1 of the 1954 Convention Relating to the Status of Stateless Persons, see Goodwin-Gill and McAdam 2007 (n 220), Section 3.1. On the general issue of statelessness and its relationship with the concept of nationality, see Manly, M., Van Waas, L., ‘The state of statelessness research’, *Tilburg Law Review* 19 (2014) 3, 4–5; Stiller, M., ‘Statelessness in international law: A historic overview’, *Deutsch-Amerikanische Juristen-Vereinigung Newsletter* 3 (2012), 94, 94–95; Edwards, A., Van Waas, L. (eds.) *Nationality and statelessness under international law*, Cambridge: Cambridge University Press, 2014; Batchelor, C. A., ‘Statelessness and the problem of resolving nationality status’, *International Journal of Refugee Law* 10.1–2 (1998) 156–82; Batchelor, C. A., ‘Stateless persons: Some gaps in international protection’, *International Journal of Refugee Law* 7

(1995) 232; and last, but not least, the seminal work of Weis (n 163). On issues of Palestinian refugees' nationality, statelessness and protection, see also Goodwin-Gill and McAdam (n 220) 458–61.

168 Batchelor, 'Stateless persons' (n 167), 235.

169 Fullerton, M., 'Comparative perspectives on statelessness and persecution', *University of Kansas Law Review* 63 (2014–2015) 869.

170 Art. 1 of the Convention on Certain Questions relating to the Conflict of Nationality Laws (1930), League of Nations Treaty Series [online] 179, 89. On the issue of the reserved domain of the state on questions of nationality, see IPCJ, Advisory Opinion on the Tunis and Morocco Nationality Decrees, PCIJ, Ser. B, No. 4, 1923, 24.

171 This draft was adopted by the ILC on 3 April 1999 at its 51st session, and submitted to the General Assembly as a part of the Commission's report covering the work of that session, UNGA, UN doc. A/54/10. The report, which also contains commentaries on the draft articles, appears in *Yearbook of the International Law Commission*, 1999, vol. II, part 2.

172 Harvard Law School, 'Research in international law, I. Nationality', *American Journal of International Law*, 23 Suppl (1929). Also see *Convention on Certain Questions Relating to the Conflict of Nationality Laws* ('Nationality Convention'), 1930, which Britain ratified on 6 April 1934, in *Palestine Gazette* 756 Supp. 2 (February 1938) 3, 299, cit. in Qafisheh, M. M. *The international law foundations of Palestinian nationality: A legal examination of Palestinian nationality under the British rule*, vol. 7, Leiden: Brill, 2008, 181, fn 1028.

173 UNGA, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), art. 15.

174 Chan, J. M. M., 'Nationality as a human right', *Human Rights Law Journal* 12 (1991) 11.

175 Cf. Batchelor, 'Stateless persons' (n 167), 238.

176 *A Study of statelessness*, UN doc. E/1112 (1 February 1949); E/1112/Add. 1 (19 May 1949). Part I of the study is reproduced in Takkenberg, A., Tahbaz, C. C., *The Collected Travaux Préparatoires of the 1951 Geneva Convention Relating to the Status of Refugees*, Kent: Dutch Refugee Council, 1989, vol. I, 9–10. UN doc. E/1112, 9.

177 UN doc. A/925, para. 16.

178 For the drafting history of the 1951 Convention, see Chapter II, Section 3.2.

179 The United Nations Economic and Social Council (ECOSOC) decided to establish a committee to work on the definitions and work out solutions; ECOSOC res. 248(IX) B, 8 August 1949. The Ad hoc Committee on Statelessness and related matters held thirty-two meetings in January–February 1950 at Lake Success, and was reconvened in August 1950 in Geneva, changed its name, and held another eleven meetings. Relevant UN documents from this period are collected in Takkenberg and Tahbaz (n 176), 114–422.

180 *Convention Relating to the Status of Stateless Persons* of 28 September 1954, ('1954 Convention'), Preamble (entry into force 6 June 1960), 360 UNTS 117 (No. 5158); also in UNHCR, 1988, 59. Cf. the Preamble of the 1954 Convention.

181 UNHCR, 'Guidelines on Statelessness No. 1' (n 163), para. 1.

182 United Nations Treaty Collection, Status of Treaties: Convention relating to the Status of Stateless Persons, status as at 14 December 2019.

183 Ibid. In general, see Van Wass, L, The UN statelessness conventions, in Edwards and Van Waas (n 167).

184 Fullerton (n 169), 869.

185 Cf. Goodwin-Gill, 1994, 382.

186 1954 Conv., art. 1. See also, UNHCR, 'Guidelines on Statelessness No. 1: The definition of "Stateless Person" in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons', UN Doc HCR/GS/12/01, February 2012, para. 5.

187 The rights the 1954 Convention confers on stateless persons include freedom of religion (art. 4), personal status (art. 12), property (art. 13), access to courts (art. 16(1)), rationing (art. 20), housing rights (art. 21), public education (art. 22) including the right to elementary education (art. 22(1)), employment rights (arts. 17–19), administrative assistance (art. 25), the right to identity papers (art. 27), the right to have issued a travel document (art. 28), where lawfully staying in one's country, the right to be exempted from duties, charges, or taxes at a higher rate than those imposed upon nationals (art. 29), and facilitated naturalisation proceedings (art. 32). The rights of those lawfully in a country include the right to engage in self-employment, freedom of movement, and protection from expulsion. Those lawfully staying in a state party, meaning those who are present on the territory for a longer period, enjoy the right of association, the right to work and to practice a liberal profession, the right to access public housing and public relief, labour and social security rights, and the right to receive travel documents. Finally, those habitually residing in a state party are additionally entitled to the protection of their artistic and intellectual property rights, to access courts, and to legal assistance.

188 UNHCR Expert Meeting, The Concept of Stateless Persons under International Law, Summary Conclusions, Prato, Italy, 27–28 May 2010 ('Prato Conclusions'), para. 4.

189 This is justified on the grounds that such principle was already enshrined in the 1951 Convention, Stiller, 2012, 99.

190 UNHCR recognizes the role played by human rights norms to 'supplement (and complement) the regime set out in the 1954 Convention'. UNHCR, *Handbook on Protection of Stateless Persons under the 1954 Convention Relating to the Status of Stateless Persons*, [UNHCR, Statelessness Handbook] Geneva, 2014, para. 127.

191 UNHCR, Prato Conclusions (n 188), para. 5.

192 UN General Assembly, *Convention on the Reduction of Statelessness*, 30 August 1961, United Nations, Treaty Series, vol. 989, p. 175. The Convention entered into force on 13 December 1975.

193 1961 Convention, art. 1. This is no doubt one of the most significant elements of the 1961 Convention: it imposes a *positive* obligation on states to grant nationality in certain circumstances, in contrast with the essentially negative obligations contained in the conventions adopted under the auspices of the League of Nations.

194 See also Fullerton (n 169), 868.

195 1961 Convention, art. 1(3)

196 Ibid., art. 2, extending the principle of *jus soli* already established in the 1930 Hague Convention.

197 Ibid., art. 3.

198 Ibid., arts. 5 and 6.

199 Ibid., art. 7.

200 Ibid., art. 8.

201 Ibid., art. 9.

202 1961 Convention, art. 11. For an early discussion on this issue see Batchelor, ‘Stateless persons’ (n 167), 252. For a more recent appraisal, see Manly and Van Waas (n 167), 1–2, 3–10. See also UNHCR, ‘Note on the Mandate of the High Commissioner for Refugees and his Office’, October 2013, sec. 8 and fn 8.

203 In its res. 3274 (XXIX) of 10 December 1974, the General Assembly requested UNHCR ‘provisionally to undertake the functions foreseen in the 1961 Convention in accordance with its Article 11 after it comes into force.’ Further guidance was provided in 1995, See ExCom Concl. No. 78 (XLVI) (1995); also UNGA res. 50/152, 21 December 1995, paras. 14–16. UNHCR’s role with respect to statelessness continued to expand following the emergence of mass statelessness after the dissolution of the URSS, Czechoslovakia, and former Yugoslavia, when statelessness was identified as a cause of forced displacement and the General Assembly asked UNHCR to play a stronger role both in the prevention of and reduction of statelessness. Cf. UNGA res. 50/152, 1, UN Doc. A/Res/50/152 (9 February 1996).

204 In 2014 UNHCR launched ‘I Belong’, a global campaign to end statelessness within ten years.

205 Chapter VII, Section 4.1.

206 Manly and Van Waas (n 167), 5.

207 For example, ICCPR, art. 24(3) refers to the right to every child to ‘acquire a nationality’; ICERD, art. 5(d)(iii) requires states to prohibit and eliminate racial discrimination in the enjoyment of the right to a nationality. CEDAW, art. 9 requires states to ‘grant women equal rights with men to acquire, change or retain their nationality’ as well as ‘equal rights with men with respect to the nationality of their children.’ ICMW, art. 29 refers to the right to acquire a nationality to children born to migrant workers; CRPD, art. 18(1)(a) refers to the right of all persons with disabilities the ‘right to acquire and change a nationality’, and art. 18(2) refers to children with disabilities, in particular. At the regional level, the right to acquire a nationality is established at African Charter on the Rights and Welfare of the Child, arts. 6(3) and (4) and Protocol to the African Charter on the Rights of Women in Africa (PRWA), art. 6(g); art. 20 of the American Convention on Human Rights; art. 4 of the European Convention on Nationality; art. 29 of the Arab Charter on Human Rights.

208 UNHCR, Statelessness Handbook (n 190), para. 141.

209 CRC, art. 7, further discussed in Chapter VI, Section 4.8. At the time of writing, all UN member states except the United States had ratified the CRC.

210 For example, art. 27 (travel documents) and art. 28 (right to leave and return). See UNHCR, Statelessness Handbook (n 190), para. 143.

211 Ibid.

212 Art. 1, para. 2(i) of the 1954 Convention stipulates that it shall not apply to ‘persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance so long as they are receiving such protection or assistance’. Also excluded are those ‘recognized by the competent authorities of the country in which they have taken residence as having the rights and obligations ... attached to the possession of the nationality of that country’; as

well as war criminals, serious non-political criminals, and similar cases; see art. 1, para. 2(ii)–(iii).

213 Those arrangements, meant to be temporary, have become the legal foundation of Palestinian refugee and stateless person status under international law. Chapter II, Section 3.2.

214 UNHCR, *Guidelines on International Protection No. 13: Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees*, December 2017, HCR/GIP/16/12 [hereinafter ‘UNHCR Guidelines on Article 1D’], para. 48. This is in line with UNHCR, Statelessness Handbook (n 190), para. 78.

215 Further discussed in Chapter VIII, Section 4.3. On the point of the law, Kassim argues that acquisition of citizenship does not compromise the right to return: ‘There should be no confusion between the right to return and the acquisition of nationality ... A Palestinian refugee who has acquired a Canadian or Australian citizenship did not forgo his right to return to his homeland’. Kassim, A. F., ‘The Palestinian: From hyphenated citizen to integrated citizen’, *Yearbook of Islamic & Middle Eastern Law* 3 (1996) 64, 82.

216 Not all European states are bound by the Convention, though. European states parties are: Belgium, Bosnia and Herzegovina, Denmark, Finland, France, North Macedonia, Germany, Greece, Holy See, Ireland, Italy, Liechtenstein, Luxembourg, the Netherlands, Norway, Sweden, Switzerland, and the United Kingdom.

217 The Ottoman Law of Nationality (9 January 1869), legislated for the first time that Ottoman citizenship, gained at birth or by naturalization, would be universal and equal for all ‘Ottoman residents’ regardless of religion or group affiliation. Ottoman nationality was recognized by other states, and the Empire’s citizens were able to travel abroad using Ottoman passports. On 24 July 1925 Britain enacted the Citizenship Order, which recognized for the first time *de jure* Palestinian citizenship, which had existed de facto from 1918 when Britain occupied Palestine, until 24 July 1923, when the Treaty of Lausanne legally separated Palestine from Turkey. Both the Treaty of Lausanne and the Mandate system conferred international relevance to Palestinian citizenship. See Qafisheh (n 172), and Banko, L., *The invention of Palestinian citizenship, 1918–1947*, Edinburgh: Edinburgh University Press, 2016.

218 See League of Nations Council res. of 22 April 1923, *Official Journal*, 604, quoted in Weis (n 163), 20. In a judicial decision by the English High Court in *R. v Ketter* [1940] 1 KB 787, it was held that the appellant, a native of Palestine born at a time when that territory was under Turkish sovereignty, but holding a passport marked ‘British passport – Palestine’, had not become a British subject by virtue of art. 30 of the Treaty of Lausanne of 24 July 1923 (UKTS, No. 16/1923), nor under the terms of the Mandate agreement of 24 July 1922, since Palestine was not transferred to and, consequently, was not annexed by Great Britain by either the Treaty or the Mandate; cited in Weis (n 163), 18–22. See also Brownlie, I., *Principles of public international law*, Oxford: Oxford University Press, 4th edn., 1990, 395.

219 Palestine Citizenship Order, 1925, arts. 1, 3.

220 In favour of the argument that the termination of the British Mandate led to the end of Palestine citizenship, Goodwin-Gill, G.S., McAdam, J., *The refugee in international law*, Oxford: Oxford University Press, 2007, 459; also, Banko (n 217), 317. Contra Qafisheh, and Quigley, who argue, in different terms, that that Palestinian citizenship was not automatically relinquished; it was repealed by domestic law (in the case of Israel) and changed status (in the case of Jordan and Egypt). Qafisheh, M. M., ‘Who has the right to become a Palestinian citizen? An international law analysis’, *Yearbook of Islamic and Middle Eastern Law Online* 18 (2017) 1, 112–49. Quigley, J., *The statehood of Palestine*:

International law in the Middle East conflict, Cambridge: Cambridge University Press, 2010, 125–30.

221 Nationality Law, 5712/1952, 93 *Official Gazette* 22. Entry into force 14 July 1952. Sect. 18, para. (a), repealed Israeli Law and Administrative Ordinance, 1948, sec. 11, which provided that '[t]he Law which was in force in Palestine on 14 May 1948 will remain in force so far as it is not inconsistent with this Ordinance or other laws to be issued by or under the authority of the Provisional State Council and with such changes as flow from the establishment of the State and its authorities.'

222 The Law provides for the acquisition of Israel nationality by operation of law upon immigration. Sect. 2 of the Law, entitled 'Nationality by Return', provides: '(a) Every *oleh* [i.e., Jewish immigrant] under the Law of Return, 5710–1950, shall become an Israel national'. See Weis (n 163), 114.

223 Sec. 3 of the 1952 Nationality Law sets out the following: (a) A person who, immediately before the establishment of the State, was a Palestinian citizen and who does not become an Israel national under section 2, shall become an Israel national with effect from, the day of the establishment of the State if: (1) he was registered on the 4th Adar, 5712 (1st March 1952) as an inhabitant under the Registration of Inhabitants Ordinance, 5709–1949; and (2) he is an inhabitant of Israel on the day of the coming into force of this Law; and (3) he was in Israel, or in an area which became Israel territory after the establishment of the State to the day of the coming into force of this Law, or entered Israel legally during that period. (b) a person born after the establishment of the State who is an inhabitant of Israel on the day of the coming into force of this Law, and whose father or mother becomes an Israel national under subsection (a), shall become an Israel national with effect from the day of his birth.

224 A limited number of refugees were allowed to return for family reunification purposes.

225 See Chapter IV, Section 3.5.1.

226 According to Qafisheh, Gazans have retained nominal Palestine Mandate citizenship until present. Qafisheh (n 220), 122.

227 Israel Supreme Court, *Hussein v Governor of Acre Prison*, (1952) 6 PD 897, 901; also Tel Aviv District Court, *Oseri v Oseri* (1953) 8 PM 76 at 78.

228 *A.B. v M.B.* 17 ILR 110 (1950), discussed in Kattan, V., 'The nationality of denationalized Palestinians', *Nordic Journal of International Law* 74 (2005) 1, 83–4, fn 89.

229 UNGA res. 181 (II) of 29 November 1947, UN Doc. A/RES/181(II)

230 State succession includes a 'a transfer of territory from one national community to another', 'the replacement of one State by another' O'Connell, D.P., *State Succession in Municipal Law and International Law: Internal Relations*. No. 7. Cambridge UP, 1967. See also Craven, M. C. R., 'The problem of state succession and the identity of states under international law', *European Journal of International Law* 9.1, 1998, 142–162, n 18. Brownlie, I., *Principles of public international law*. 6th ed., Oxford: Oxford University Press, 2003, 627–31, in particular, 631.

231 Brownlie (n 218) 654. Contra, on the ground that Israel did not succeed any 'pre-existing State', since Palestine was never a 'state' in the modern sense. Cf. Kent, A., 'Evaluating the Palestinians' claimed right of return. *University of Pennsylvania Journal of International Law* 34 (2012) 149; Zilbershats, Y., International law and the Palestinian right of return to the State of Israel, in Benvenisti, Gans, and Hanafi (n 4), 191–218.

232 Already in 1950, Oppenheim so argued: ‘the inhabitants of the subjugated and the ceded territory aquir[ed] *ipso facto* by the subjugation or cession the nationality of the State which acquires the territory’, and referring to this rule as being ‘settled by the customary Law of Nations’, see Oppenheim, L., *International Law*, 7th edn., 1948, 598. Also Brownlie (n 230), 627–30. This principle is now widely recognized in literature and practice, see ‘Comment: UNHCR and issues related to nationality’, *Refugee Survey Quarterly* 14.3 (1995) 91, 102, stating that ‘State practice internationally reinforces the rule that, in principle, the population goes with the territory and, therefore, receives nationality corresponding with residency.’

233 At the dissolution of the Austro-Hungarian Empire, new states were carved out of the defeated empire. New state boundaries were established according to majority ethnic lines; substantial minority populations resulted in many of them. See the Treaty of Neuilly (1919), the Rumanian Minorities Treaty (1919), the Treaty of Versailles (1919), the Treaty of St Germain (1919), the Treaty of Trianon (1920), the Treaty of Sèvres (1920), and the Treaty of Lausanne (1923). The Allies were cognizant of the risk for minority populations’ protection; hence nationality provisions were inserted in all treaties to protect minorities. This view is supported by Brownlie, I., *Principles of public international law*, Oxford: Oxford University Press, 1998, 657.

234 Already in 1934 O’Sullivan Molony wrote that ‘in the post-war Peace Treaties the principle of domicile or habitual residence is the criterion most favoured for the acquisition of nationality’. O’Sullivan Molony, W., *Nationality and the peace treaties*, London: George Allen and Unwin, 1934, 85, cited in Kattan (n 228), 91.

235 One of the first problems with these treaties was preventing these States from refusing their nationality to certain categories of persons, on racial, religious or linguistic grounds, despite their links to the territory. See *Advisory Opinion on certain questions arising out of the application of Article 4 of the Polish Minorities Treaty*, 1923 PCIJ (ser. B) No. 7, at 15, cit. in Quigley, J., ‘Displaced Palestinians and a right of return’, *Harvard International Law Journal* 39 (1998), 206, fn 195.

236 Drew, C. J., *Population transfer: The untold story of the international law of self-determination*, PhD Diss, London School of Economics and Political Science, University of London, 2006.

237 On this issue, Brownlie is adamant: ‘the precedent value of such provisions is considerable in view of their uniformity and the international character of the deliberations preceding the signature of these treaties’, Brownlie, I., ‘The relations of nationality in public international law’, 39 *British Yearbook of International Law* (1963) 284, 320–1.

238 According to the Report of UNSCOP of 3 September 1947, ch. 4, Commentary on Partition, the Plan would have had the following demographics (based on 1945 data): The Jewish state would have had 905,000 inhabitants, fifty-five per cent of Jewish (498,000), forty-five per cent of Arabs and others (407,000), and the Arab state would have had 735,000 inhabitants, ninety-nine per cent of predominant Arab population (725,000) and one per cent of Jewish (10,000).

239 UN Partition Plan, ch. II, sec. 3, stipulates that ‘[a]ll persons within the jurisdiction of [each] State shall be entitled to equal protection of the laws’; Chapter III, sec. 1: ‘[...] Persons over the age of eighteen year *may opt*, within one year from the date of recognition of independence of the State *in which they reside*, for citizenship of the other State, providing that no Arab residing in the area of the proposed Arab State shall have the right to opt for citizenship in the proposed Jewish State and no Jew residing in the proposed Jewish State shall have the right to opt for citizenship in the proposed Arab State. The exercise of this right of option will be taken to include the wives and children under eighteen years of age of persons so opting. Arabs residing in the area of the proposed Jewish State and Jews residing in the area of the proposed Arab State who have signed a

notice of intention to opt for citizenship of the other State shall be eligible to vote in the elections to the Constituent Assembly of that State, but not in the elections to the Constituent Assembly of the State in which they reside.' [emphasis added] The differentiation, in the text of the Partition Plan, between Palestinian 'citizens' and 'residents' underscores the intention of the drafters to grant protection to both those who were not already citizens and those who would become citizens of the other state as a minority.

240 In the 1950s, the Israeli representative at the UN invoked the partition of India and Pakistan to justify what had occurred to hundreds of thousands of Palestinians. The representatives of both India and Pakistan objected to Israel using such an example, since following the atrocities that had caused the population outflows, both Pakistan and India 'had taken back a large number of refugees' and nationality was offered to those who had elected not to return. See Quigley, J., 'Repatriation of the displaced Arabs of Palestine: The legal requirement as seen from the United Nations', *Ohio State Public Law Working Paper 60* (2006) 22.

241 Craven notes that among cases of states successions 'very few states have, in practice, refused to apply any of the predecessor states' treaties (the only main exception being Israel)'. This approach is known as 'clean slate' thesis. Craven (n 230), 148–9, and fn 39.

242 Israel, Foundations of Law, 5740-1980, No. 72, passed by the Knesset on 23 July 1980 and published in *Sefer Ha-Chukkim* No. 978, 31 July 1980, 163, in *Laws of the State of Israel: Authorized Translation from the Hebrew, Volume 34*, Government Printer, Jerusalem, Israel (1948–1989), 181.

243 On the question of self-determination, see Chapter VI, Section 2, and Section 2.2 in particular.

244 UNGA res. 181 (II) of 1947, preamble, para. 4.

245 See State of Israel's own undertaking as part of its admission to membership in the UN. UNGA res. 273 (III) of 11 May 1949, Admission of Israel to membership in the United Nations: 'Recalling its resolutions of 29 November 1947 and 11 December 1948 and taking note of the declarations and explanations made by the representative of the Government of Israel [...] Decides that Israel is a peace-loving State which accepts the obligations contained in the Charter and is able and willing to carry out those obligations ...'. [emphasis provided in the original].

246 Brownlie (n 230), 630. Earlier accounts were offered by Harvard Law School, 'Nationality, responsibility of states, territorial waters: Drafts of conventions prepared in anticipation of the First Conference on the Codification of International Law, The Hague, 1930, The Law of Nationality', *American Journal of International Law* 23.13 (1929) 16. Art. 20: '[a] State may not refuse to receive into its territory a person, upon his expulsion by or exclusion from the territory of another State, if such person is a national of the first State or if such person was formerly its national and lost its nationality without having or acquiring the nationality of any other State.' As early as the 1930s–1940s, a number of scholars saw that the nationality of the predecessor state was lost and that of the successor state acquired by the inhabitants of the ceded or annexed territory. Williams, J. F., 'Denationalization', *British Yearbook of International Law* 8 (1927) 45, 61; Mann, F. A., 'The effect of changes of sovereignty upon nationality', *Modern Law Review* 5 (1941–2) 218, 221. See also Boling, G., *The 1948 Palestinian refugees and the individual right of return: An international law analysis*, Bethlehem: BADIL Resource Center, 2007, 43; Kattan (n 228).

247 Art. 1 of the 1930 Convention on Certain Questions relating to the Conflict of Nationality Laws,

248 This is further supported by the ILC Draft Articles on Nationality of Natural Persons in relation to the Succession of States, which provide that, during the period between the state's emergence and enactment of nationality legislation, persons having their habitual residence in the territory are presumed to have acquired the nationality of the new state on the date of succession ILC Draft Articles on Nationality of Natural Persons in relation to the Succession of States, art. 5. The commentary to art. 6 underscores the importance of the principle in art. 5(i)(a) by referring to the long passage of time between Israel's establishment and the adoption of nationality law. League of Nations, *Convention on Certain Questions Relating to the Conflict of Nationality Law*, 13 April 1930, League of Nations, Treaty Series, vol. 179, 89, No. 413. The Protocol was adopted by the 1930 Conference for the Progressive Codification of International Law at The Hague, 12 April 1930.

249 Cf. Darwish, M., Rigby, A., *Palestinians in Israel: Nationality and citizenship*, Peace Research Report, no. 35, Bradford: University of Bradford, 1995.

250 See Section 1.

251 Goodwin-Gill and McAdam, 2007 (n. 220) 459.

252 In 1949 Jordan conferred its nationality on Palestinian residents in both the East Bank (the territory comprising present-day Jordan) and the West Bank, which it annexed to Jordan in 1950. Jordan reversed this approach towards West Bank Palestinians in 1988 when it effectively denationalized an estimated one million Palestinians residing in the West Bank (see Chapter IV, Section 3.2.3). In contrast, Palestinian refugees who came to Jordan from Gaza after the 1967 war (as well as from Iraq post 2003 or Syria post 2011) were not granted citizenship and, owing to a more precarious status, continue to experience severe restrictions of their rights. Arbitrary withdrawal of Jordanian nationality to thousands of persons of Palestinian origin has also occurred in recent years,

253 Palestinian refugees' registration with UNRWA in Jordan has historical reasons: during the Cold War, Western powers supported that Palestine refugees in Jordan maintain refugee status out of fear that the Kingdom of Jordan could be destabilized by assuming full responsibility for the exiled Palestinians altogether.

254 Khalil, A., 'Palestinian nationality and citizenship: Current challenges and future perspectives', European University Institute Robert Schuman Centre for Advanced Studies, *CARIM Research Report*, 2007/7, 5.

255 The implications of the acquisition of a new nationality on the historic rights of the Palestinian refugees, including the right of return, are discussed in Chapter VI.

256 Fullerton, 2014 (n 169), 869. See also Fullerton, M., 'The intersection of statelessness and refugee protection in US asylum policy', *Journal on Migration and Human Security* 2.3 (2014) 144–64, 158; also Shibliak, A., 'Stateless Palestinians', *Forced Migration Review* 26 (2006) 8, 8.

257 This is further discussed in Chapter V, in particular. In 2018, UNHCR estimated the presence of ten million stateless in the world, of which only 3.9 million are covered by UNHCR annual reports. See UNHCR, *Global Trends: Forced Displacement in 2018*, 20 June 2018, 51.

258 Khalil (n 254), 3, fn 3, in particular: 'when we talk of Palestinian nationals and citizens, we are not using synonyms, simply because the two words indicate distinct categories of persons, although they may share points in common. See also UNCCPs' Note on Nationality in the Case of Palestine (n 165).

259 Khalidi, R., *Palestinian identity: The construction of modern national consciousness*, New York: Columbia University Press, 2010.

260 The manifestation of Palestinian identity throughout the diaspora has produced the phenomenon that Kassim calls ‘Palestinian hyphenation’ (i.e. Palestinian-American, Palestinian-Jordanian). Kassim, A. F., ‘The Palestinian: From hyphenated citizen to integrated citizen’, *Yearbook of Islamic & Middle Eastern Law* 3 (1996) 64.

261 Important milestones of Palestinian statehood are the Palestine National Council (PNC)’s declaration of independence in 1988, the mutual recognition of Israel and the PLO of 1993, the Oslo Accords of 1993–1995, the Draft Palestinian Constitution of 2003, the adoption of Basic Law of the Palestine of 2002, and the General Assembly upgrading of the status of Palestine to that of non-member observer state in 2012. The issue of self-determination as a collective right of the Palestinians, including the refugees, is discussed in Chapter VI, Section 2.3.

262 PA received the population registry in respect of the autonomous areas, the power to issue both Palestinian identity cards (IDs), and Palestinian passports/travel documents to Palestinian residents after notifying Israel, and grant permanent residency in the Gaza Strip and the Jericho Area with the prior approval of Israel, see Art. VI(2)(a), Agreement on the Gaza Strip and the Jericho Area, signed in Cairo, 4 May 1994; text: *International Legal Materials* 33 (1994) 622. The PA gradually assumed responsibility for population affairs relating to births, deaths, marriages, addresses, and other civilian matters. Oslo II, Section 27 of Annex I to the Agreement outlines the transfer of powers and responsibilities in the area of ‘Population Registry and Documentation’. See art. 28, para. 7 in particular. For a comprehensive discussion, see Qafisheh (n 220), 126–9.

263 In 2019, 137 states have recognized the State of Palestine, according to the Permanent Observer Mission of the State of Palestine to the United Nations in New York (Portal). Palestinian passport holders are granted entry visas and treated as foreigners from independent states. The opening of embassies and consular services in a number of states, is in line with the accession of Palestine on 2 April 2014 to both Vienna Convention on Diplomatic Relations of 18 April 1961 and Vienna Convention on Consular Relations of 24 April 1963, subsequent to the recognition of Palestine as a state by UNGA on 29 November 2012.

264 The first draft was formulated in 1995; art. 7 defines a Palestinian as anyone who ‘(1) was a holder of Palestinian citizenship (other than Jews) before 15 May 1948; (2) was born to a Palestinian father; (3) was born in Palestine to a Palestinian mother even if the citizenship of the father is not known; (4) was born in Palestine to unknown parents; and (5) was born outside of Palestine to a Palestinian mother and to a father whose nationality was not known – provided that this person opts for Palestinian citizenship within one year after reaching maturity, that he notifies the minister of interior of his intention to become a Palestinian citizen, that he becomes habitually a resident of Palestine, and that the minister does not object to this applicant within one year from the time he receives the notice from the applicant.’

265 Qafisheh, M., ‘Draft Palestinian Nationality Law’ (a draft prepared for the PLO in 2011, Ramallah). The draft bill, prepared by Prof. Qafisheh, was commissioned by the PLO and discussed by PLO officials and selected international scholars and NGO representatives in early 2012. The Draft Law defines who is a Palestinian citizen, how citizenship can be acquired, conditions for naturalization, revocation, and repatriation, citizenship of spouses and children, and situations that can be regarded as full citizenship for certain purposes at the local level, including residency, election, employment, and travelling abroad and re-admission. It refers to Palestinian refugees (art. 14 defines them as ‘[a]ny person who held Palestinian nationality prior to 15 May 1948 who left or [was] forced to leave, at anytime (sic), the area of the mandate Palestine which came under the control of Israel’), including ‘[p]re-1925 Displaced Persons’ (at art. 15: ‘[a]ny person born in the mandate Palestine as an Ottoman subject and was unable to acquire Palestinian nationality upon the enforcement

of the Palestinian Citizenship Order of 24 July 1925, as a result of such person's residence outside the mandate Palestine). The Draft Law, along with a commentary, is on file with the authors.

266 Qafisheh (n 220), 135, 146–7.

267 See discussions re self-determination, including its implications for Palestinian refugees, in Chapter VI, Section 1.3.

268 UNGA res. 67/19, 29 November 2012.

269 Mohammad, J., *Identity card losers*, Ramallah: Palestinian Independent Commission for Citizen's Rights, 1998, 17, in Qafisheh (n 220), fn 36.

270 One could argue that UNHCR implicitly supports this interpretation, as it maintains that despite the relevance of the 2012 UNGA decision to accord Palestine non-member observer state status in the UN, it would be 'premature' to consider that international protection should cease to apply to Palestinian refugees as a consequence of it. UNHCR Guidelines on Article 1D (n 214), para. 33.

271 This is in line with the 2011 Draft Nationality Law. The commentary accompanying the Draft Law indicates that 'some persons should have the right to acquire Palestinian nationality by the operation of law ... [such as the] inhabitants of the West Bank and the Gaza Strip. Others may acquire Palestinian nationality *as a matter of choice* with a view to preserve their acquired rights in the states in which such persons got a status; these include East Jerusalemites if Jerusalem remains under Israeli occupation, Palestinian refugees who acquired nationality of states that ban nationality change, and refugees who fear that the acquisition of Palestinian nationality might undermine their refugee status.' See 2011 Draft Nationality Law, commentary, arts. 14–15 [emphasis added].

272 E.g. Federal Administrative Court, 15 October 1985 [Bverwg 15 Okt. 1985–9 C 38.85], see Goodwin-Gill, 1994, 386, 398, n. 47; ZDWF, 1986, 35, 115. Also Federal Administrative Court, 23 February 1993 [Bundesverwaltungsgertcht, Urteil vom 23.2.1993, Bverwg 1 C 45.90]. In some northern European countries, such as Denmark and Germany, the recognition of Palestinian statelessness was a turning point for the protection of many Palestinians. See Chapter V.

273 For this reason, the German government used to categorize Palestinians in its population statistics as 'persons of undetermined nationality' ['Personen mit ungeklärter Staatsangehörigkeit'] rather than as stateless persons. This practice prompted a legal debate, especially in German courts, which continued for almost a decade until the 23 February 1993 ruling of the Federal Administrative Court [Bundesverwaltungsgertcht, Urteil vom 23.2.1993, Bverwg 1 C 45.90].

274 Evidence is provided in Chapter V.

275 The haphazard system of registering Palestinians seeking international protection often reflects the diverse nature of the documentation held by Palestinian asylum seekers, which may include: PA/GOP Passports/Travel Documents, Palestine Refugee Travel Documents (TDPRs) issued by various Arab states, and/or travel documents or residence permits issued by any other countries of habitual residence. Refugees themselves may provide incomplete information about (or conceal) their Palestinian identity for fear it would bar their protection.

276 Cf. Italy and Spain (n 277), (n 278), (n 279).

277 This is the case in Albania, Bosnia, Spain, Italy, Kosovo, North Macedonia, Montenegro, Netherlands, and Serbia.

278 Spain.

279 This has been the case in Austria, Germany, and Luxemburg. In Spain, at least from 2007, most Palestinian asylum seekers arriving have used passports or travel documents issued by Jordan, Lebanon, Syria, and the PA/GOP.

280 Denmark, Germany, Sweden, UK, and Cyprus. In Sweden, where Palestinian refugees have a long history of reception and high protection rate for Palestinian refugees, they can generally register as 'stateless persons' with the Swedish Migration Board. In the UK, Palestinian refugees are consistently classified as 'stateless', unless they have adopted the nationality of a third country before arrival. In Cyprus, UNRWA-registered Palestinians are considered 'stateless', while those holding PA/GOP documents are registered as 'Occupied Palestinian'.

281 Spain, Canada, and the US. In Spain, Palestinian asylum seekers have been registered by the Spanish Office for Asylum and Refuge in different ways over time, including 'stateless' [this doesn't mean that they were recognized as such legally] then 'from Not Recognized-Palestine' and since 2015 as 'Palestine-EONU' (Palestine-United Nations Observer State). No legal signification can be attributed to this classification.

282 CSR51, art. 1.

283 CSR51 accords rights and entitlements based on the link to the country of refuge, e.g. 1) Being within the jurisdiction of a state (not necessarily within its territory); 2) Presence; 3) Lawful presence; 4) Lawful stay; and 5) Durable residence (none necessarily dependent on acquisition of refugee status). Accordingly, standards of treatment include: 1) Treatment accorded to aliens generally; 2) Most-favoured-nation treatment; and 3) National treatment. Among the first category, the principle of *non-refoulement* is the most important (discussed in Chapter VI, Section 6). Refugees are granted national treatment in respect of a wide range of issues including freedom of religious belief and practice and their right to choose a religious education for their children (art. 4), as regards elementary education (art. 22(1)), artistic and industrial property rights (art. 14), their access to court, legal assistance, and exemption from the *cautio judicatum solvi* (art. 16); their access to rationing where it applies to the entire population (art. 20) and public relief (art. 23), labour legislation, social security (art. 24) and fiscal charges (art. 29). Most-favoured-nation treatment is called for in respect of the right to association and the right to engage in wage-earning employment (arts. 15 and 17, para. 1). The Convention grants refugees the same treatment as aliens generally when it comes to property rights (art. 13), the right to engage in agriculture, industry, handicrafts, and commerce (art. 18), housing rights (art. 21), secondary education (art. 22(2)), and freedom of movement (art. 26). Other specific rights of refugees provided by the 1951 Convention include: recognition of the law of personal status (art. 12); the provision of administrative assistance (art. 25); the issue of identity papers (art. 27); the issue of travel documents (art. 28); the grant of permission to transfer assets (art. 30); exemption from penalties in respect of illegal entry or presence (art. 31); limitations on the liability to expulsion (art. 32); and the facilitation of naturalization (art. 34).

284 CSR51, art. 35. See: Turk, V., UNHCR's supervisory responsibility, Working Paper No. 67, UNHCR, 2002.

285 OAU Convention on Refugees (1995); Cartagena Declaration; Bangkok Principles on the Status and Treatment of Refugees; EU Qualification Directive 2011/95/EU. The LAS has adopted several refugee law instruments including the 1994 Arab Convention Regulating the Status of Refugees in the Arab Countries and the 1965 Protocol on the Treatment of Palestinians ('Casablanca Protocol'). Other regions, like Asia-Pacific and MENA, have not adopted a binding legal framework to protect refugees. Full details of these regional

instruments is provided in Chapter IV, Section 2, and Chapter V, Sections 2.2, 3.2, 4.2, and 5.

286 See also Clark, T., Crépeau, F., ‘Mainstreaming refugee rights – The 1951 Refugee Convention and international human rights law’, *Netherlands Quarterly of Human Rights* 17 (1999) 389. The authors argue that the 1951 Convention ‘is an early human rights treaty’ and ‘an affirmative measure in favour of refugees’, and that on the basis of art. 31(3)(a) of the Vienna Convention on the Law of Treaties those interpreting a treaty are required to take into account the juridical context of agreements into which states parties have subsequently entered, at 391 and 394.

287 CEDAW/C/GC/32, 5 November 2014, para. 9.

288 Art. 5 of the 1951 Convention supports this interpretation as it provides: ‘[n]othing in this Convention shall be deemed to impair any rights and benefits granted by a Contracting State to refugees apart from this Convention.’ See Edwards, A., ‘Human rights, refugees, and the right ‘to enjoy’ asylum’, *International Journal of Refugee Law* 17 (2005) 293, 295.

289 This includes, for instance, right to life, freedom of expression, and protection from torture and inhuman and degrading treatment and the prohibition of slavery, none of which is found in the CSR51.

290 Gorlick, B., ‘Human rights and refugees: Enhancing protection through international human rights law’, *Nordic Journal of International Law* 69.2 (2000) 117, at 118.

291 New York Declaration on Refugees and Migrants, UNGA res. A/71/1 of 19 September 2016, see paras. 77–9 and Annex 1, Comprehensive Refugee Response Framework.

292 Global Compact on Refugees, Report of the UNHCR to the GA, OR, 73rd Session, Suppl. No. 12 (hereinafter GCR). UNGA res. 73/151 of 17 December 2018 affirmed the Compact, underscored its importance as an expression of political will, and called upon the international community as a whole to implement it.

293 Global Compact for Safe, Orderly and Regular Migration, UNGA res. 73/195 of 19 December 2018.

294 As discussed in Chapter II, Section 3, Arab states strongly opposed the inclusion of Palestinian refugees within the general international legal framework *aux pairs* with other refugees – and art. 1D was incorporated to that effect.

295 According to the Protocol, Arab States should grant Palestinians treatment on a par with citizens on matters such as the right to leave and return, issuance of travel documents, and employment, as well as general standards of treatment as citizens of the LAS. For detailed discussion of the Casablanca Protocol, see Chapter IV, Section 2.2.

296 For example, Palestinian refugees fleeing Libya in 1995 were refused entry in Lebanon; Palestinian refugees fleeing the Iraqi war from 2003 onwards have not been accepted in Jordan; Palestinian refugees fleeing the recent Syria war after 2011 have experienced challenges and refusal of entry in Egypt, Lebanon, and Jordan. See Chapter IV.

297 Those in the West Bank and the Gaza Strip, where many Palestinian refugees reside, may be simply excluded (beyond IHL obligations towards refugees, see Section 2), since it appears that ‘territory’ at art. 40 of the 1951 Convention concerns primarily metropolitan territory, not automatically including so-called dependent territories. Cf. Robinson, N., *Convention Relating to the Status of Refugees: Its History, Contents and Interpretation*, New York, Inst. of Jewish Affairs, 1953, 171; also Brownlie (n 218), 74.

- 298** Morris, B. *The birth of the Palestinian refugee problem revisited*, New York: Cambridge University Press, 312–20. See reference to the initial idea of a ‘Retroactive Transfer, A Scheme for the Solution of the Arab Question in the State of Israel’ and the measures that Israel eventually enacted between June and August 1948 to legally bar return of the refugees.
- 299** BADIL, *Closing the protection gap: A handbook on protection of Palestinian refugees*. Bethlehem: BADIL, 2015 (see summary in the Introduction).
- 300** Discussed in Chapter II, Section 4.3.
- 301** As discussed in Chapter IV and Chapter V, while the identity and/or travel documents they carry may create confusion, cases in which they have experienced outright discrimination based on their Palestinian origin (especially in the Arab world) are not uncommon. In recent years, Palestinians, including established refugees, have increasingly found themselves fleeing across the shores of the Mediterranean, as well as towards the Asia-Pacific and Africa in search for safe haven.
- 302** E.g. UNGA resolutions 194 of 1948, 302 of 1949, 2252 of 1967, and UNSC resolution 237 of 1967.
- 303** Such an interpretation is to be reconciled with the provision, at art. 3 of the CSR51, which requires the Contracting States to ‘apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin’.
- 304** Universal Declaration of Human Rights, UNGA res. 217 A (III), 10 December 1948.
- 305** There are nine ‘core’ international human rights instruments and several optional protocols. For an overview, see OHCHR (Portal), ‘Human Rights Treaties’ or ‘Core Instruments’.
- 306** *International Covenant on Civil and Political Rights*, 16 December 1966 (entry into force 23 March 1976), UNTS, vol. 999, 171.
- 307** *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966 (entry into force 3 January 1976), UNTS, vol. 993, 3.
- 308** *Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965 (entry into force 4 January 1969), UNTS, vol. 660, 195; *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979 (entry into force 3 September 1981), UNTS, vol. 1249, 13.
- 309** *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984 (entry into force 27 June 1987), UNTS, vol. 1465, 85.
- 310** *Convention on the Rights of the Child*, 20 November 1989 (entry into force 2 September 1990), UNTS, vol. 1577, 3.
- 311** See, for example, the *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, adopted by the 8th UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August–7 September 1990; and the *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* adopted and proclaimed by UNGA res. 60/147 of 16 December 2005. The latter have been referenced by multiple international, regional, and national bodies, and enjoy wide support, including from Israel, see HRC/29/CRP.4, para. 46; as well as A/HRC/24/42 A/HRC/22/52; at the national level, see: The Turkel Commission: ‘Israel’s Mechanisms for Examining and Investigating Complaints and Claims of Violations of the Laws of Armed Conflict According to International Law’, Second Report of the Public Commission to Examine the Maritime Incident of 31 May 2010, 106. The commission in particular stresses the provision that ‘victims and their representatives should be entitled to

seek and obtain information on the causes leading to their victimization and on the causes and conditions pertaining to the gross violations of international human rights law and serious violations of international humanitarian law and to learn the truth in regard to these violations.'

312 There are ten human rights treaty bodies that monitor implementation of the core international human rights treaties: Human Rights Committee (CCPR), Committee on Economic, Social and Cultural Rights (CESCR), Committee on the Elimination of Racial Discrimination (CERD), Committee on the Elimination of Discrimination against Women (CEDAW), Committee against Torture (CAT), Subcommittee on Prevention of Torture (SPT), Committee on the Rights of the Child (CRC), Committee on Migrant Workers (CMW), Committee on the Rights of Persons with Disabilities (CRPD), the Committee on Enforced Disappearances (CED).

313 For details on the special procedures established under the Human Rights Council, including thematic and country mandates, OHCHR (Portal), Human Rights Council 'Subsidiary Bodies' and 'Special Procedures'.

314 See Third Committee, O.R., 108th meeting, 20 October 1948, 194-8, and 109th meeting, 21 October 1948, 206. See Rempel, T., ' "The right to return": Drafting paragraph 11 of Resolution 194 (III), December 11, 1948', *Polish Yearbook of International Law* (forthcoming).

315 This is further discussed in Chapter VI, Section 3.4.3, with reference to the right of return of Palestinian refugees.

316 Hathaway, J. C., *The rights of refugees under international law*, Cambridge: Cambridge University Press, 2005, 119.

317 A major exception is art. 25 of the ICCPR (n 329), (n 330). Cf. Hathaway (n 316), 120.

318 Cf., ICCPR, art. 2(1); ICERD arts. 3 and 6; CAT, art. 2(1); CRC, art. 2(1), Am. Conv. on Hum. Rights, art. 1(1); ECHR, art. 1.

319 It has been a long-held view of international courts and human rights mechanisms that IHRL treaties apply not only where a state exercises control over a territory or an individual, but also where jurisdiction is exercised beyond the territory of the state. The *travaux préparatoires* of the ICCPR affirm this intention where they provide: '[i]t was thought that a State should not be relieved of its obligations under the covenant to persons who remained within its jurisdiction merely because they were not within its territory.' UNGA, 10th Sess., UN Doc A/2929 (1955), Annexes, Part II, ch. V, at 17, para. 4.

320 These include the prohibition of systemic racial discrimination, genocide, slavery, extrajudicial execution or enforced disappearance, torture, cruel, inhuman, or degrading treatment. On human rights norms having become customary law, see Henkin, L., *International law: Politics and values*, Leiden: Martinus Nijhoff, 1995.

321 See, for example, CEDAW on gender-sensitive interpretation of 'persecution' within the meaning of art. 1A(2) of the 1951 Convention at UN Doc CEDAW/C/GC/32, 5 November 2014, para. 38; CRC on age and gender-sensitive assessment of what constitutes *refoulement*. CRC/GC/2005/6, 1 September 2005, para. 27.

322 CCPR/C/91/D/1463/2006.

323 CCPR/C/112/D/2243/2013, CCPR/C/98/D/1465/2006.

324 CAT/C/53/D/470/2011, CAT/C/53/D/450/2011.

325 CAT/C/48/D/444/2010, CAT/C/52/D/475/2011.

326 CAT/C/39/D/297/2006, CAT/C/49/D/464/2011, CCPR/C/97/D/1442/2005.

327 Cf. ‘In safety and dignity: addressing large movements of refugees and migrants’, Report of the Secretary-General, UN Doc A/70/59, 21 April 2016, para. 64.

328 HRC, General Comment No 15, ‘The Position of Aliens under the Covenant’, 11 April 1986, para. 1. HRC, Gen. Comm. No 24, ‘Issues Relating to Reservations Made upon Ratification or Accession to the Covenant or the Optional Protocols thereto, or in Relation to Declarations under Article 41 of the Covenant’, CCPR/C/21/Rev.1/Add.6, 4 November 1994, para. 12. HRC, Gen. Comm. No 31, ‘Nature of the General Legal Obligation on States Parties to the Covenant’, 2004, CCPR/C/21/Rev.1/Add.13, para. 10.

329 HRC, Gen. Comm. No 15, para. 5.

330 Ibid., para. 2.

331 OHCHR, *The rights of non-citizens*, New York: United Nations, 2006, 5.

332 Ibid.

333 Cf. HRC, Gen. Comm. No. 32 (art. 14, Right to equality before courts and tribunals and to fair trial), 23 August 2007, CESCR, Gen. Comm. No. 7, ‘The Right to Adequate Housing (art. 11, paragraph 1, of the Covenant): Forced evictions’, 20 May 1997, para. 5. CESCR, Gen. Comm. No. 14, ‘The Right to the Highest Attainable Standard of Health (art. 12 of the Covenant)’, E/C.12/2000/4, 11 August 2000, para. 40. CESCR, Gen. Comm. No. 12, ‘The Right to Adequate Food (art. 11 of the Covenant)’, E/C.12/1999/5, 12 May 1999, para. 38. CESCR, Gen. Comm. No. 15, ‘The Right to Water (arts.11 and 12 of the Covenant)’, E/C.12/2002/11, 20 January 2003, para. 16. CESCR, Gen. Comm. No. 18, ‘The Right to Work (art. 6 of the Covenant)’, E/C.12/GC/18, 6 February 2006, para. 12(b). CESCR, Gen. Comm. No. 23, ‘The Right to Just and Favourable Conditions of Work (art. 7 of the Covenant)’, E/C.12/GC/23, 27 April 2016, para. 5. CESCR, Gen. Comm. No. 19, ‘The right to social security (art. 9 of the Covenant)’, E/C.12/GC/19, 4 February 2008, para. 39.

334 In the MENA region, among the states who host significant numbers of Palestinian refugees, Jordan, Lebanon, Libya, Syria, and all of the Gulf States, with the exception of Yemen, have yet to become parties. See Section 4.2.

335 The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) has been ratified by all MENA States, with the exception of Sudan. The Convention on the Rights of Persons with Disabilities (CRPD) has been ratified by all MENA States, with the exception of South Sudan, and Lebanon and Libya, who are signatories.

336 Prior to this, PLO chairman Yasser Arafat had stated his Government’s commitment to respecting to all international human rights standards, since 1996.

337 See, for example, Israel’s fourth periodic report under ICCPR of 2014, CCPR/C/ISR/40, paras. 47–8.

338 This is well captured by a statement of the Tunisian Minister of the Interior in 1982: ‘the presence of brother Palestinians is a temporary state, awaiting their return to their homeland. They will not have the status of migrant or that of refugee because they are combatants.’ El-Akhbar Al-Koweitia, 22 August 1982, cit. in Khalil (n 254), 28.

339 E.g. HRC, Concluding Observations, Israel, UN Doc CCPR/C/79/Add.93 (1998), para. 10; HRC, Concluding Observations, Israel UN Doc CCPR/CO/78/ISR (2003), para. 11; UN Doc CCPR/C/21/Rev.1/Add.13 (2004), para. 10. This is in line with the HRC’s Gen. Comm. no. 31 (80), ‘The nature of the general legal obligation imposed on States Parties to the Covenant’, 26 May 2004, CCPR/C/21/Rev.1/Add.13, para. 10.

340 E.g. ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004, at 179, para. 111; CAT, Concluding observations of the Committee against Torture, CAT/C/ISR/CO/4, para. 11; Human Rights Council, *Report of the United Nations Fact-Finding Mission on the Gaza Conflict* (Goldstone report), A/HRC/12/48, 25 September 2009, para. 303 in particular.

341 This singling out of Israel has led to criticism of bias towards Israel. See Piccone, T., '5 Myths about the UN Human Rights Council', Brooking Institute [online], 8 December 2015.

342 CCPR/C/ISR/CO/3, 2010; CERD/C/ISR/CO/14-16; CRC/C/ISR/CO/2-4, 4 July 2013. See also 'Report of the Special Rapporteur on the situation of HR in the OPT since 1967', 22 October 2018 (A/73/45717); 'Report of the Special Rapporteur on adequate housing - Mission to the occupied Arab territories and Israel', 24 December 2012 (A/HRC/22/46/Add. 1); 'Report of the SR on the situation of HR in the OPT since 1967' (Richard Falk) (A/HRC/20/32).

343 Cf. CEDAW/C/ISR/CO/5, 2011, para. 28, para. 50, CESCR, E/C.12/1/Add.69, 31 August 2001, paras. 13-14.

344 CESCR, 'Concluding observations on the second periodic report of Lebanon', UN Doc E/C.12/LBN/CO/2, 24 October 2016, paras. 25-26; CEDAW, 'Concluding observations on the combined fourth and fifth periodic reports of Lebanon', UN Doc. CEDAW/C/LBN/CO/4-5, 24 November 2015, para. 40; HRC, 'Report of the Working Group on the Universal Periodic Review, Lebanon', UN Doc. A/HRC/31/5, 22 December 2015, paras. 132.16, 132.40, 132.167, 132.203, 132.211, 132.215.

345 CESCR, 'Concluding observations on the second periodic report of Lebanon', UN Doc E/C.12/LBN/CO/2, 24 October 2016, para. 26. The government showed limited openness on the matter and no significant progress has been made to date.

346 CERD/C/JOR/CO/13-17, 4 April 2012, para. 12.

347 With regard to nationality, the CRC 'reiterate[d] its recommendation that the State party review and amend Law No. 6 of 1954 on nationality in order to ensure that a Jordanian mother married to a non-Jordanian man has the right to transmit her nationality to her children equally and without discrimination', CRC, 'Concluding observations on the combined fourth and fifth periodic reports of Jordan', UN Doc CRC/C/JOR/CO/4-5, 8 July 2014, para. 26; CRC, 'Concluding observations on the combined fourth and fifth periodic reports of Jordan', UN Doc CRC/C/JOR/CO/4-5, 8 July 2014, para. 15; CERD, Concluding observations on the combined thirteenth to seventeenth periodic reports of Jordan', UN Doc CERD/C/JOR/CO/13-17, 4 April 2012, para. 12.

348 CERD, Concluding observations on the combined thirteenth to seventeenth periodic reports of Jordan', UN Doc CERD/C/JOR/CO/13-17, 4 April 2012, para. 13.

349 CRC/C/JOR/CO/4-5, 8 July 2014, paras. 50, 52(a).

350 CERD/C/JOR/CO/13-17, 4 April 2012, para. 13.

351 CAT, 'Concluding observations on the third periodic report of Jordan', UN Doc CAT/C/JOR/CO/3, 29 January 2016, paras. 16, 24; CAT, 'Concluding observations on the second periodic report of Jordan', UN Doc CAT/C/JOR/CO/2, 25 May 2010, para. 24; CRC, 'Concluding observations on the combined fourth and fifth periodic reports of Jordan', UN Doc CRC/C/JOR/CO/4-5, 8 July 2014, paras. 25, 56. In 2014, CERD expressed concern 'about reports on the unequal application of the Nationality Law to Palestinian refugees', CERD/C/JOR/CO/13-17, 4 April 2012, para. 12.

352 CRC, ‘Concluding observations on the report submitted by Jordan under Article 8, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict’, UN Doc CRC/C/OPAC/JOR/CO/1, 7 July 2014, paras. 25–6, 55–6; CAT, ‘Concluding observations on the third periodic report of Jordan’, UN Doc CAT/C/JOR/CO/3, 29 January 2016, paras. 13, 14(c).

353 UN Doc CERD/C/EGY/CO/17-22, 6 January 2016, para. 25(d).

354 CRC, Concluding observations on the consolidated third and fourth periodic reports of Egypt’, UN Doc CRC/C/EGY/CO/3-4, 15 July 2011, para. 44.

355 PCERD/C/IRQ/CO/15-21, para. 17.

356 HRC, ‘Concluding observations on the fifth periodic report of Iraq’, UN Doc CCPR/C/IRQ/CO/5, 3 December 2015, para. 23.

357 CERD, ‘Concluding observations on the combined fifteenth to twenty-first periodic reports of Iraq’, UN Doc CERD/C/IRQ/CO/15-21, 22 September 2014, para. 18(a).

358 Ibid., para. 18(b).

359 CRC, ‘Concluding observations on the combined third and fourth periodic reports of the Syrian Arab Republic’, UN Doc CRC/C/SYR/CO/3-4, 9 February 2012, para. 73.

360 Ibid., para. 75.

361 CAT, ‘Concluding observations on the combined fourth and fifth periodic reports of Bulgaria’, UN Doc CAT/C/BGR/CO/4-5, December 2011, para. 16(e). For follow-up of the case, see CAT, ‘Sixth periodic reports of States parties due in 2015, Bulgaria’, UN Doc CAT/C/BGR/6, 12 February 2016, para. 138.

362 The internally displaced can be defined as ‘persons who are forced to flee their homes but remain within the territory of their own country’, OHCHR, Fact Sheet No. 20, Human Rights and Refugees, July 1993, citing ‘Analytical report of the Secretary-General on internally-displaced persons’, UN Doc. E/CN.4/1992/23, 4. See also The Brookings Institution, *Protecting internally displaced persons: A manual for law and policymakers*, Washington, DC: The Brookings Institution/University of Bern Project on Internal Displacement, 2008, 11.

363 Numbers rose from one million in the early 1980s to 27.5 million by 2010 (when IDPs began to outnumber refugees, to 40.8 million, mostly conflict-induced, in 2015. See Internal Displacement Monitoring Centre (IDMC), Global Report on Internal Displacement, May 2016, at 5, 27. Yet, much internal displacement goes ‘unrecorded and is not responded to by governments and the international community’, Human Rights Council, ‘Report of the Special Rapporteur on the human rights of internally displaced persons’, UN Doc A/HRC/32/35, 29 April 2016, para. 58.

364 Commission on Human Rights, Report of the Representative of the Secretary-General, Mr. Francis M Deng, submitted pursuant to Commission resolution 1997/39, Addendum, ‘Guiding Principles on Internal Displacement’, UN Doc E/CN.4/1998/53/Add.2, 11 February 1998, para. 1, 9.

365 Kälin, W., The guiding principles on internal displacement and the search for a universal framework of protection for internally displaced persons, in Chetail, V., Bauloz, C. (eds.), *Research handbook on international law and migration*, Cheltenham: Edward Elgar, 2014, 617.

366 Guiding Principles on Internal Displacement, Principles 6(2)(a) and 6(2)(e).

367 Principle 9.

368 Global Protection Cluster, 'Handbook for the Protection of Internally Displaced Persons', June 2006, at 8.

369 Principle 20(2).

370 Principle 21(3).

371 Principle 28(1).

372 Principle 29(2).

373 IASC, *IASC framework on durable solutions for internally displaced persons*, Washington, DC: The Brookings Institution/University of Bern Project on Internal Displacement, 2010, 1, 2, 5, 36.

374 Convention for the Protection and Assistance of Internally Displaced Persons in Africa ('Kampala Convention') adopted 23 October 2009 (entry into force 6 December 2012); Council of Europe, Recommendation (2006)6 of the Committee of Ministers to member states on internally displaced persons, 5 April 2006, para. 1, et seq.

375 Cf. Abou Samra, D., Zeender, G., 'Can the IDP label be used in Israel/Palestine?' *Forced Migration Review* 26 (2006) 37.

376 It is estimated that between 2011–2016, 1,695 Palestinian refugees were displaced in the West Bank, and 355,000 in Gaza (2014 war), 90,000 of whom remained displaced in 2016. In the West Bank and East Jerusalem, the most at risk continue to be: Palestinians in East Jerusalem, 14,000 of whom had their residency permits revoked since 1967 (see BADIL, 2013–15, 2–7); Palestinians in the Jordan Valley, who numbered 200,000 to 300,000 in 1967 and are now down to around 58,000; Palestinians in Area C, who as a result of Israeli restrictions cannot access seventy per cent of the area; and Palestinians living in the 'seam zones' between the Green Line and the Wall (IDMC, 2015, 11). In the Gaza Strip, after the Israeli disengagement in 2005, Palestinians continued to experience internal displacement as a result, among others, of loss of access to lands, especially in the access restricted areas, and damage or destruction to homes during hostilities or military operations. Three large military operations over the span of five years have caused displacement of about one-fourth of the total population, including 120,000 (2008–2009), 15,000 (2012), and 520,000 (2014), seventy-five per cent of whom are still displaced and in fraught conditions at the time of writing. OCHA, 'In the spotlight: Gaza internally displaced persons', April 2016.

377 BADIL, 'Forced population transfer: The case of Palestine - denial of residency', April 2014, 18. See also BADIL, Survey of Palestinian Refugees and Internally Displaced Persons, BADIL Resource Center, Volume VIII, 2013–2015, 1, 2–7. IDMC, Identifying IDPs in Palestine: New thinking on monitoring internal displacement in the West Bank, IDMC, 2015, 7–8.

378 HRC, 'Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the Occupied Syrian Golan', Report of the Secretary-General, /HRC/31/43, 20 January 2016, paras. 46, 54, 60. The concept of 'coercive environment', resulting from 'the threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power', which leaves no other choice but to leave, was developed by the International Criminal Tribunal for the former Yugoslavia. ICTY, *The Prosecutor v Krstić*, IT-98-33, Trial Chamber, Judgment, 2 August 2001, para. 530. ICTY, *The Prosecutor v Stakić*, IT-97-24-A, Appeals Chamber, 22 March 2006, at para. 281.

379 Human Rights Council (n 378), para. 68. The consequence of such act may constitute grave breaches under ICL and lead to individual criminal responsibility, see Section 2.7.

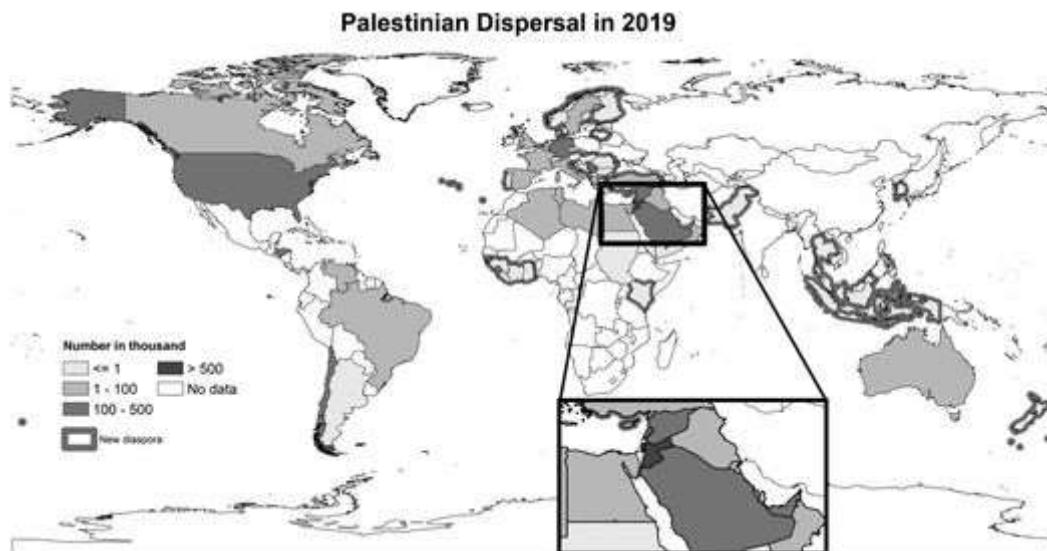
380 IDMC (n 377), 11.

381 This displacement includes 400,000 (280,000 internally and 120,000 over borders) because of the Syrian crisis. UNRWA, '2019 Syria Regional Crisis Emergency Appeal', 2019. That was largely the result of deliberate targeting of civilians and the failure of parties to the conflict to protect them. De Bock, K., 'Palestinian refugees in Syria: An overview', *Al Majdal* 57 (Summer 2015), 'Palestinian Refugees from Syria, Ongoing Nakba, Ongoing Discrimination', 4, 6. See also UNHCR, International Protection Considerations with Regard to People Fleeing the Syrian Arab Republic Update IV, HCR/PC/SYR/01, November 2015, paras. 21-2, 31-2.

382 UN, Report of the Secretary-General on the Implementation of Security Council resolutions 2139 (2014), 2165 (2014) and 2191 (2014), S/2015/651, 20 August 2015, para. 6

383 This includes provision of shelter, humanitarian assistance (cash, food, and non-food items), as well as protection and access to basic services. See UNRWA, *Annual operational report* 2017 (01 January–31 December 2017), 15. Available at https://www.unrwa.org/sites/default/files/content/resources/2017_annual_operational_report_final_lr.pdf.

Palestinian Dispersal in 2019, with its new frontiers highlighted



Credit: Nabil Rizky Ryandiansyah, 2019.

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Part Two Seventy Years of Exile Palestinian Refugees Around the World, IV The Status of Palestinian Refugees in the Middle East and North Africa: Unpacking an Unsettling Solidarity

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(p. 183) IV The Status of Palestinian Refugees in the Middle East and North Africa

Unpacking an Unsettling Solidarity

If I was not a Palestinian when I left Haifa as a child, I am one now. Living in Beirut as a stateless person for most of my growing up years, many of them in a refugee camp, I did not feel I was living among my 'Arab brothers.' I did not feel I was an Arab, a Lebanese or ... a 'southern Syrian.' I was a Palestinian. And that meant I was an outsider, an alien, a refugee, burden.

Fawaz Turki, Palestinian writer¹

1. Introductory Remarks

The vast majority of the Palestinians who became refugees in 1948, continues to live in the places where they initially took refuge: Jordan, Lebanon, Syria, as well as the Gaza Strip and the West Bank. Jordan, Lebanon, and Syria, known as the traditional 'host countries', had no choice but to accept the presence of the refugees, while the United Nations (UN) through the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) and the United Nations Conciliation Commission for Palestine (UNCCP) provided them assistance and attempted to negotiate a political solution. Smaller groups of refugees who had settled in Egypt and Iraq were assisted by local governments, rather than the UN. Difficult living conditions in the host countries prompted thousands of refugees to seek better opportunities not only in the Arabian Peninsula, but also in North Africa. About 11 million Palestinians are estimated to live in the Middle East and North Africa (MENA) region as of 2018.² However, this number needs to be used with caution, given the lack of

systematic recording of Palestinians in each country, as well as the lack of data transparency.³

Arab countries⁴ have generally supported Palestinians, including refugees, in the name of Arab brotherhood and solidarity, but at times also despised them, as a result of political (p. 184) factors and interests.⁵ For example, in Jordan former King Abdullah's aspiration to modernize the East Bank of the Jordan River and re-establish 'Greater Syria'⁶ resulted in the annexation of the West Bank in 1950, and the extension of Jordanian citizenship to Palestinians under its control (refugees and non-refugee alike).⁷ In Lebanon, the Palestinian influx, dominated by Sunni Muslims, was perceived as a threat to the delicate balance between different religious confessions and the related political *status quo*.⁸ In Syria, the Palestinian refugees never constituted more than three per cent of the population and their presence was therefore far less sensitive than in Lebanon. In North Africa and the countries of the Arabian Peninsula, Palestinians were not recognized as refugees as they largely moved there as migrant workers seeking better opportunities, rather than international protection.⁹ Arab rulers generally welcomed them as a much needed work-force and also offered political support to their national cause, but subliminally despised the political message of freedom and emancipation that their 'Palestinian-ness' carried.

With time, Palestinian refugees' identity crystallized as a 'nation-in-exile', but it also became part of the national fabric of some of these countries, not only in Jordan and Lebanon, but also in Egypt, Iraq, and Kuwait. In the national history of some of those countries, Palestinians are somewhat associated with strife and unrest. This, coupled with lack of application of international human rights and refugee laws, as well as a high degree of politicization, has compounded their situation. While socio-economic differences exist across Palestinians in exile, and those who have thrived in host communities are all but rare, the large majority has come to constitute a 'politically, socially, and economically disadvantaged group' that has often experienced poverty, discrimination, and, not infrequently, persecution because of their nationality, including in countries where they were initially well received and either legally or de facto integrated.¹⁰ As a result, pending the quest for a political settlement, many have been forced to move from one country to another, often more than once, finding themselves going from one unstable situation to the next.

This chapter provides an overview of the situation of Palestinian refugees in the MENA region, focusing on both regional and country-specific dynamics. First it presents the general legal framework applicable in the region, through seven decades of the Arab League's (also known as the League of Arab States, or LAS) involvement with Palestinian refugees and its attempts to create a regional protection framework for them, mainly (but not exclusively) through the Casablanca Protocol (Section 2). It then discusses history, legal status, and treatment of Palestinian refugees in specific countries, grouped as follows: Jordan, Lebanon, Syria, the Gaza Strip, and West Bank, where UNRWA operates (Section 3); Egypt and Iraq, host countries with a historically significant presence of Palestinian refugees but (p. 185) where UNRWA does not operate (Section 4); the Arabian Peninsula (Section 5); and North Africa (Section 6).¹¹ Conclusions are offered at the end of the chapter (Section 7).¹²

2. General Legal Framework

2.1 The role of the Arab League (LAS)

Only seven Arab states were fully independent in 1948: Egypt, Iraq, Jordan, Lebanon, Saudi Arabia, Syria, and the former state of North Yemen. It was these seven states that, in 1945, encouraged by Britain, founded the League of Arab States (LAS).¹³ Five of the seven were also founding members of the UN, and were instrumental in establishing the special UN

responsibility towards Palestinian refugees, even if primarily as a corollary of their positions vis-à-vis the Arab-Israeli conflict.¹⁴

In addition to a Permanent Committee on Palestine,¹⁵ the LAS has had since its inception a senior official, the Assistant Secretary-General for Palestinian Affairs, with responsibility to advance discussion and decision-making concerning Palestinian issues within the League.¹⁶ In 1964, the LAS Council (LASC) decided that the League should hold an annual conference of the heads of the government departments of the host countries that deal with Palestinian refugees.¹⁷ The meetings, known as ‘Conferences of the Supervisors of (p. 186) Palestinian Affairs in the Arab Host Countries’, have been held annually in different Arab capitals ever since.¹⁸

Despite the fact that some Arab states were active in the drafting of the international refugee framework, few of them have ratified the 1951 Refugee Convention,¹⁹ while some have ratified relevant regional instruments.²⁰ Nevertheless, the LAS was instrumental in the creation of a regional framework for the protection of basic rights – mostly economic and social rights – of Palestinian refugees, which culminated in the adoption of the 1965 Casablanca Protocol on the Treatment of Palestinians, discussed below.²¹ Arguably, in elaborating this framework, political (and security) considerations were a primary factor, as important as considerations of Arab solidarity; the main preoccupation of the Arab states, as vocally expressed in international fora, was to affirm that Palestinian refugees should be allowed to return to their homes in present-day Israel.²² Hence the Arab states decided that the refugees should not be naturalized, as this was perceived as undermining their claims under General Assembly resolution 194(III) of 1948 (hereinafter ‘resolution 194’). As a consequence, recognition of the economic and social rights of the refugees was seen as key to mitigating the effects of their displacement and reducing the potential for their presence to be a destabilizing factor within the host societies. With the limited accessions to the international refugee and other relevant instruments, the framework created by the LAS has for long been the only one available to Palestinian refugees. For example, between the early 1950s and the end of the 1990s, the LAS adopted some 200 resolutions on a broad range of topics concerning Palestinian refugees,²³ including with a rights-related focus, such as education of children and youth,²⁴ the right of return,²⁵ the protection of Arab properties (p. 187) and possessions in former Mandate Palestine,²⁶ and issues pertaining to Palestinians under Israeli occupation.²⁷ The resolutions that from 1952 onwards called for family reunification of Palestinian refugees²⁸ and the issuance of unified travel documents for Palestinian refugees (TDPR), are particularly important as they laid the foundation of the system that allowed large numbers of Palestinians to travel to the Gulf countries and elsewhere in the region as labour migrants, and to be joined by their families.²⁹ The TDPR, valid for a period of five years (renewable), was originally meant to entitle its holders to the same treatment as the issuing state’s nationals with respect to residency and visas, while being subject to the immigration law of the different member states. It does not give a holder the right of abode in the country of issue.³⁰ A 1954 resolution set the general conditions for the issuance of TDPRs and requested the LAS and its member states to use their good offices to obtain international recognition of the TDPR.³¹ Also in 1954, the LASC unanimously adopted a resolution exempting Palestinian refugees from fees related to the issue of visas and the renewal of TDPRs.³² LAS resolution 1547 of 1959, while calling for member states to be compassionate towards Palestinian refugees, firmly advocated for the preservation of their ‘Palestinian nationality’; a policy that continues to mark the status and living conditions of many Palestinian refugees in the diaspora.³³ In 1964, for the first time there appeared to be disagreement between member states concerning the treatment of Palestinian refugees. Lebanon, Libya, and Saudi Arabia expressed reservations about a

proposed modification of the text in the TDPR, to give holders the right to return to the issuing country without being required to obtain a return visa.³⁴

The rise and recognition of the Palestine Liberation Organization (PLO) in the 1960s led to an advancement of national protection of refugees in the areas of work, education, health care, travel and residency (which became the basis for the Casablanca Protocol). The PLO became progressively engaged with respect to matters concerning status and treatment of Palestinian refugees, both through bilateral contacts with a number of Arab countries³⁵ as (p. 188) well as with the LAS.³⁶ The efforts of the PLO have been endorsed by the LASC on numerous occasions.³⁷

The role played by the PLO in and vis-à-vis various Arab countries, at times expressing dissatisfaction for their approach to the question of Palestine, resulted in a decline of certain Arab countries' support for the PLO.³⁸ However, after years of sensitivities between Arab host states and the Palestinian leadership, in recent years the Conference of Supervisors of Palestinian Affairs in the Arab Host Countries has resumed, affirming the rights of Palestinian refugees (to return, to be compensated, not to be resettled) in addition to expressing the need for growing advocacy around their cause and support for UNRWA.³⁹ Of particular relevance is the call to reconvene the annual meetings of Arab hosts and donor representatives, which used to be held in Amman, Jordan, attended by Arab host countries, the LAS, and all donor countries, as well as the relevant international organizations.⁴⁰

2.2 The Casablanca Protocol and its implementation

In its five articles, the Casablanca Protocol of 1965 consolidated the special regional regime for the treatment of Palestinian refugees as it had evolved in the preceding years.⁴¹ Responding to calls to standardize the treatment of Palestinian refugees, the Protocol regulates critical areas such as the right of work on par with citizens,⁴² the right to leave and to return,⁴³ the issuance of travel documents,⁴⁴ and, more generally, the right to be treated the same as citizens of LAS states.⁴⁵ Deviating from the language used in earlier resolutions, which referred to Palestinian 'refugees', the Protocol refers to 'Palestinians'. The change was apparently the result of a realization that the legal position of non-refugee Palestinians (i.e. persons who were not displaced in 1948 such as those originating from what at present constitutes the occupied Palestinian territory [oPt]) is much the same as that of those who had become refugees in 1948–1949 (i.e. those who sought refuge in a host country and then migrated). Both categories were perceived to be equally in need of the protection provided for in the Protocol.

(p. 189) Article 1 of the Protocol provides for 'national treatment' in respect of the right to engage in economic activities.⁴⁶ In this regard, the Casablanca Protocol is more generous than the 1951 Convention, which, in respect of wage-earning employment, stipulates 'the most favourable treatment accorded to nationals of a foreign country in the same circumstances'.⁴⁷ In respect of self-employment and the practising of liberal professions, even the minimum standard provided for in the Convention applies: in these and a number of other matters refugees should be accorded 'treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances'.⁴⁸ This reflects general eagerness of LAS member states to open their labour markets to Palestinians, as well as recognition of the important role played by the Palestinians in the economic life of a number of countries in the Middle East as of the early 1950s.⁴⁹

Article 2 contains a provision similar to art. 13(2) of the UDHR: 'When their interests so require, Palestinians presently residing in the territory of ... shall have the right to leave the territory of this state and return to it.' Article 3 extends this freedom of movement to the territory of other member states. Accordingly, Palestinians residing in a member state of the LAS have the right to enter and leave the territory of any other member state. In theory, art.

3 of the Protocol would grant Palestinians freedom of movement in the entire territory of the LAS, somewhat similar to that enjoyed by nationals of the member states of the European Union. Also here the Casablanca Protocol is, in principle, more generous than the 1951 Convention.⁵⁰ However, as the article does not contain an entitlement to establish residency,⁵¹ which remains subject to the immigration policies of the various member states, the article loses much of its meaning and in practice has proved to be more a statement of good intent than a hard commitment on the part of the member states.⁵² Most Arab states have not implemented this provision.⁵³

The last two articles deal with the issue of travel documents. Article 4 reiterates the obligation of the member states to provide travel documents to Palestinians residing in their territory. This also applies to Palestinians who previously resided in a member state but who have since emigrated. Although the text of the provision is somewhat ambiguous, it makes clear that the country of first refuge remains primarily responsible for the issue and extension of travel documents, even if the Palestinian concerned has later moved to a third country. In this respect the approach of the Casablanca Protocol differs significantly from that of the 1951 Convention, which provides for the transfer of responsibility in respect of (p. 190) the issue and renewal of travel documents.⁵⁴ The Casablanca Protocol leaves this responsibility primarily with the original host country. Thus, Palestinians who have moved to Gulf states after having originally taken refuge in Jordan, Lebanon, or Syria have largely remained dependent on their country of original refuge for the (re-)issuance and extension of travel documents. This has had negative consequences for the protection of Palestinian refugees, especially at times of crisis.⁵⁵

Finally, art. 5 accords treatment equal to LAS nationals in respect of visas and residency: 'The member states of the Arab League shall accord to the holders of these travel documents the same treatment with respect to visas and residency as is accorded to nationals of Arab League states.' A resolution adopted in December 1982 by the Council of Arab Ministers of the Interior (LASCAMI) further clarified that the bearer of a TDPR 'shall be accorded the same treatment as nationals of the state issuing this document, as regards freedom of residency, work and movement.'⁵⁶ The 1951 Convention does not contain a similar provision, as the issue of entry visa is a matter entirely within the discretion of the contracting states.⁵⁷

As the Protocol was crafted nearly two decades since the Palestinian refugee question emerged, at the height of regional support for the Palestinian cause, it was inspired by the recognition of Palestinian refugee vulnerabilities and the intention to address it. In a number of ways, the Casablanca Protocol has represented an early form of temporary protection for Palestinian refugees applicable pending the quest for durable solutions.⁵⁸ This has been important, taking into consideration the general non-applicability of the international refugee regime in the region. Nonetheless, it presents some significant limitations. First, as Akram and Rempel observe, the Protocol is limited in scope and contains no provision for the protection of fundamental rights such as adequate housing, access to public education, property ownership, or social security.⁵⁹ Second, since it was adopted by a majority decision (during a special summit meeting of the LASC), its content is only binding upon those member states who were willing to accept it, either in full or subject to reservations. While a first group of countries, which included two major hosts, ratified the Protocol without reservations (Algeria, Egypt, Iraq, Jordan, Sudan, Syria, and the Arab Republic of Yemen), a second group deposited instruments of ratification with certain reservations (Kuwait, Lebanon, and Libya),⁶⁰ while a third group did not declare a position (p. 191) (Saudi Arabia and Morocco), and one state (Tunisia) did not attend the meeting and did not clarify its stand. A fifth group was composed of states that joined the LAS after the conclusion of the Protocol (Bahrain, the Comoros Islands, Djibouti,

Mauritania, Oman, Qatar, Somalia, and the United Arab Emirates (UAE)) and have not articulated their position vis-à-vis the Protocol.

Third, over the time, practical challenges and shifts in political circumstances weakened support for the Palestinian refugees, even among states that were initially fully committed to the Casablanca Protocol, e.g. Egypt and Iraq.⁶¹ Compliance has therefore been inconsistent at best.⁶² Problems first arose after the 1967 war, when Israel occupied the Gaza Strip and the West Bank. Hundreds of thousands of displaced Palestinians, including 1948 Palestinian refugees, together with those who were absent from the territory for any reason, lost their right to reside in the Gaza Strip or the West Bank.⁶³ Palestinians from the Gaza Strip – who held Egyptian travel documents (since Egypt had exerted control over the Gaza Strip since 1948) – who had moved to Gulf countries to work or study, soon began to face problems with the Egyptian authorities in having their travel documents renewed or reissued.⁶⁴ In 1968, the LAS requested member states not to issue national passports to Palestinians through their embassies and consulates so as to preserve their Palestinian nationality.⁶⁵ It urged: Egypt to renew or reissue travel documents of displaced Palestinians from Gaza; other Arab states to recognize such documents and to enable their holders to work, reside, and move freely into and out of their respective countries, in accordance with the Casablanca Protocol; and Jordan to provide a Jordanian document to the ‘ex-Gaza’ Palestinian refugees in Jordan who were prevented by Israel from returning to the Gaza Strip.⁶⁶ In response, and under pressure of the LAS, the Jordanian authorities started to issue an ID to ex-Gazans in 1974 (together with temporary passports).⁶⁷ Meanwhile in 1970, the Conference of Supervisors of Palestinian Affairs called for an exemption from the provisions of LAS res. 776 of 1954 – prohibiting citizens of Arab states from acquiring two nationalities – by permitting Palestinians to acquire dual nationality (i.e. on top of Palestinian nationality). The resolution aimed to address political concerns regarding possible implications of the acquisition of Jordanian citizenship on the refugee status of millions of Palestinian refugees.⁶⁸ In 1977, in an apparent attempt to promote its drive for formal statehood, the PLO submitted to the LAS a memorandum on the issuance of Palestinian passports. Members of the LAS did not endorse it, and recommended instead that the PLO ‘should make the necessary contacts with the Arab governments concerning this subject’.⁶⁹ Such contacts did not produce any concrete results and the initiative was (p. 192) aborted, apparently because in the absence of a Palestinian state the proposed ‘passport’ would not add value to the existing TDPRs.

Meanwhile, from 1969 onward, the LAS Conference of Supervisors of Palestinian Affairs studied the implementation of the Casablanca Protocol and the treatment Palestinians in various Arab states, and concluded that the results were far below standard.⁷⁰ Concern was raised at the uneven practice concerning ‘travel, residence and work of Palestinians in the Arab states.’⁷¹ In 1982, the newly instituted LASCAMI adopted, among others, a ‘special resolution on the treatment of Palestinians in the Arab countries’.⁷² The resolution required that the TDPRs be treated as national passports,⁷³ entitling the holder to the same treatment as a national of the issuing state with regard to residency, work and freedom of movement,⁷⁴ and institutionalized coordination with the PLO on the implementation of such measures.⁷⁵ However, indicative of the increasingly political role that some Palestinian refugees (particularly armed resistance groups) were playing in the host countries, the resolution indicated the applicability of national legislation to ‘Palestinian[s] perpetrating a crime in any Arab country’.⁷⁶ Follow up on the implementation of the various resolutions was entrusted to the Secretary-General of LASCAMI.⁷⁷ In 1985 a joint committee consisting of representatives of the PLO, the Secretary-General of the LAS, and the Secretary-General of LASCAMI was to visit all member states and report on the implementation of the Casablanca Protocol and the various resolutions on the treatment of Palestinians in the Arab states.⁷⁸ The committee visited a number of countries with substantial Palestinian populations, including Algeria, Bahrain, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco,

Qatar, Saudi Arabia, Tunisia, and the UAE. Syria stated that it treated the Palestinians on an equal footing with its citizens and therefore did not see the need to receive the delegation. Oman objected to the visit because it claimed not to have any Palestinians. The committee did not visit Djibouti, Mauritania, and Sudan as the numbers of Palestinians in these countries were considered to be very small.⁷⁹ Some of the positive results achieved by the Committee included that several documents concerning the implementation of the Casablanca Protocol and the (p. 193) relaxation of arbitrary measures placed upon Palestinian refugees were signed with a number of the countries visited.⁸⁰ However, despite the written commitments to relax some of the arbitrary measures, the follow-up remained uneven. In 1988, the LAS instructed the Office of the Secretary-General and the PLO to continue to monitor the implementation of the Casablanca Protocol, especially with those states that the joint delegation had not yet visited,⁸¹ and in 1989 called on the ‘remaining states’ to receive the joint delegation so that they could complete their mission.⁸²

Soon the first Gulf war (1990–1991) stood in the way of making further progress in this regard.⁸³ The PLO’s support for Saddam Hussein during the Iraqi invasion of Kuwait in August 1990, which ignited the war, angered the majority of Arab states.⁸⁴ As a result, hopes for further progress in the implementation of the Protocol were dashed and its legal regime was undermined. At the proposal of Saudi Arabia and Kuwait – apparently in retaliation for the PLO’s support of Saddam Hussein – the LASC adopted resolution 5093 of 12 September 1991, which stipulated that the Protocol’s implementation would be subject to ‘the rules and laws in force in each state’.⁸⁵ This amendment started the de facto erosion of the system envisaged in the Casablanca Protocol: while it remained applicable to Palestinian refugees according to resolution 5093, subordinating its implementation to each country’s laws and regulations severely weakened the protection that it should have provided.⁸⁶

2.3 Other regional instruments

There are no other binding regional instruments addressing the status of refugees in MENA,⁸⁷ but a number of non-binding instruments have progressively been adopted. In (p. 194) 1992 a group of Arab experts proposed the Cairo Declaration on the Protection of Refugees and Displaced Persons in the Arab World.⁸⁸ While the Declaration concerned displaced persons in general, it specifically mentioned Palestinian refugees in the preamble, recalling General Assembly resolution 194. The Declaration contains eleven articles, affirming the right to leave and return (art. 1), the principle of non-refoulement (art. 2), calling on the LAS to adopt a Convention relating to refugees (art. 7), calling upon Arab states to provide the LAS with reliable information regarding status and treatment of Palestinian refugees (art. 8) and ensure international protection of the Palestinian refugees, including through full implementation of the Casablanca Protocol (art. 9).

In 2004 the LAS adopted the Arab Charter on Human Rights (ACHR), which came into effect in 2008.⁸⁹ The ACHR entrusts the Arab Human Rights Committee with overseeing its implementation.⁹⁰ The ACHR contains provisions concerning non-discrimination,⁹¹ protection of property,⁹² freedom to leave and enter a country,⁹³ asylum,⁹⁴ and protection of migrant workers.⁹⁵ Some experts note that it departs from international standards in the way it limits rights such as free education and social security to citizens,⁹⁶ and concerning non-discrimination on the ground of gender and religion and prohibition of corporal punishment and capital punishment for children.⁹⁷

In 1994, the LAS adopted the Arab Convention on Regulating the Status of Refugees in the Arab Countries, which never entered into force, as no Arab state, with the exception of Egypt, ratified it.⁹⁸ At the time of writing, consultations on a new version of the Convention are ongoing; its text is not publicly available. Rishmawi and Rashmawi indicate that the draft Convention refers to the Palestinians in two articles: art. 14 encourages states to find durable solutions for refugees (voluntary repatriation, integration, or resettlement) without

prejudice to the right of return, and art. 19 further emphasizes that nothing in the treaty should be interpreted to negatively affect the right of return and compensation of Palestinian refugees.⁹⁹ It appears that the Convention will further set out the right of Palestinian refugees to either return or reside in host countries.¹⁰⁰

(p. 195) 3. Palestinian Refugees in UNRWA's Area of Operations

3.1 The role of UNRWA at a glance

In accordance with its UN General Assembly mandate¹⁰¹ and the bilateral agreements the agency has entered into with the respective host authorities,¹⁰² UNRWA, or *Al Wakala* as the agency is commonly known in the region, provides services across its five 'fields' of operation: the Gaza Strip, Jordan, Lebanon, Syria, and the West Bank (including East Jerusalem).¹⁰³ At present, these services include primary and vocational education, comprehensive primary health care, relief and social services, protection, infrastructure and camp improvement, microfinance, and emergency humanitarian assistance to over five million Palestine refugees.¹⁰⁴

Approximately one-third of the registered 'Palestine refugees' – around 1.5 million individuals – continue to live in fifty-eight 'official camps', while the remainder live in the vicinity of the camps, in or close to major urban settlements, and in rural areas across the country or territory.¹⁰⁵ UNRWA offers services to Palestine refugees irrespective whether they reside in camps or elsewhere.¹⁰⁶ The camps, initially mostly tented cities, have been progressively transformed into rows of concrete block houses that have become often indistinguishable from their surroundings and effectively constitute either urban developments within existing cities or cities themselves.¹⁰⁷ They are the visible manifestation of Palestinian exile.¹⁰⁸ Despite being commonly referred to as 'UNRWA camps', for over forty years UNRWA has not 'run' or administered them.¹⁰⁹ UNRWA has no administrative, (p. 196) police, or law enforcement powers.¹¹⁰ UNRWA has a Camp Services Officer in each camp (with the exception of the Gaza Strip) who acts as a liaison between the agency and the camp community. Each host country and Israel as of 1967 recognize the legal status of UNRWA as well as the privileges and immunities that the Agency and its officials enjoy.¹¹¹

While each host country within UNRWA's area of operations has its own legal and/or administrative regime regulating the refugees' status and treatment, UNRWA has been an important unifying factor, both in reality and perception, with respect to the welfare and identity of the refugees. Despite its temporary mandate and chronically limited resources, in its early days UNRWA made a major contribution to keeping hunger and disease at bay and epidemics under control among millions of destitute refugees living mostly in tents across the region.¹¹² Since the initial emergency that triggered its establishment, UNRWA has evolved and adapted to meet the changing needs of the refugees in an often highly charged political context.¹¹³ From the mid-1950s, as it became clear that no easy solution was in sight and the refugees' needs could not be met by short-term relief, the General Assembly has extended (and gradually expanded) the agency's mandate for subsequent three-year periods, primarily through endorsement of the agency's budget and annual reports. In 1958 and 1959, the General Assembly recommended that the agency increase programmes relating to education, vocational training, and self-support – an emphasis that would become an important blueprint for the agency; these have since become UNRWA core programmes. By delivering quality education to millions of refugees, one generation after another, UNRWA has spread literacy and helped refugees to become 'role models' in educational achievement: by the 1970s, the UNRWA education system was achieving better academic results than host countries' government-run schools.¹¹⁴ This contributed to the emergence of a new middle class that was destined to play a leading role among refugees in the diaspora, as well as to open doors and economic opportunities to Palestinian refugees in

the region.¹¹⁵ Job opportunities provided by UNRWA, against a background of limited other employment opportunities and legal restrictions in most host countries, have contributed to creating an economic power in those countries and the wider Arab world. Through UNRWA unions and associations, Palestinian refugees found a space for dialogue and political mobilization in the refugee camps without precedent in the region.¹¹⁶

From the 1980s, facing the rise of emergencies in the region (Lebanon civil war 1975–1991; *first intifada* in the oPt, 1987) UNRWA engaged more prominently on protection activities beyond its humanitarian mandate (see discussions Chapter VII).

During the first decade of the Middle East Peace Process (MEPP), discussions took place around UNRWA's transfer of its functions to the Palestinian Authority (PA) and host authorities followed by its eventual abolition.¹¹⁷ From 1992 to 2002, UNRWA collaborated (p. 197) with the Office of the UN Special Coordinator for the MEPP (UNSCO) and other specialized agencies of the UN system to contribute to the development of economic and social stability in the oPt. In this context, after the signing of the Declaration of Principles between Israel and the PLO in 1993, UNRWA began implementing a so-called Peace Implementation Programme, which aimed 'to meet Palestine refugee requests for assistance and priorities' during the interim period.¹¹⁸ As the peace process soon turned into pacification without significant changes on the ground for the Palestinian refugees, among other Palestinians, the prospects of UNRWA being wound down subsided. Under donor pressure and in cooperation with host authorities, since 2004 UNRWA has embarked on a reform that centred around human development for Palestinian refugees.¹¹⁹ This has translated into UNRWA's engagement in development activities such as infrastructure, camp improvement, water, and sanitation projects alongside its core programs (education, health, and relief and social services).¹²⁰

With donor support, UNRWA has significantly lifted the financial responsibility from host countries, and is seen by them as having this role.¹²¹ For donors, supporting UNRWA has traditionally been seen as a way to support regional stability.¹²² Various authors argue that, especially owing to its reach into development activities, UNRWA has progressively exerted functions that are proper of state actors,¹²³ unintentionally becoming a quasi-representative for the refugees on the international stage,¹²⁴ or (as Bocco defines it) a 'Blue state' (because of the UN flag) that works as a 'non-territorial administration with non-coercive powers'.¹²⁵ Such a perception of the agency has often prompted the refugees to see UNRWA as connected to their unresolved refugee status, and as evidence of the responsibility of the international community to find a just resolution for them. For example, UNRWA registration of Palestine refugees, including issuance of registration cards, though not intended to have legal or political implications, is often perceived as evidence (and international recognition) of their link to Palestine, underwriting the refugee's historical claims (return, restitution, compensation).¹²⁶

(p. 198) Given the political context and the scope for misunderstandings and unrealistic expectations, it is not surprising that there have been tensions between the agency and the refugees, host countries, and donor community.¹²⁷ The 'embeddedness' of UNRWA in the Palestinian reality, not just as the provider of services to millions of refugees, but also as the employer of more than 30,000 Palestinian refugees (as of 2018), has often been characterized as a point of weakness by Israel and some of the agency's donors and members of the wider international community. These critics have often reproached UNRWA for a pro-Palestinian (and by extension anti-Israeli) bias, and argued for reform of the agency's modus operandi. On the other hand, Palestinians have often felt disappointed and betrayed by the agency, especially in connection with its shrinking resources and consequent service reductions, as well as with UNRWA's limited ability to provide them

much needed protection. ‘A difficult but lasting marriage’, in Al-Husseini’s words, is an appropriate characterization of the relationship between the agency and the refugees.¹²⁸

At the time of writing, the new US policy towards UNRWA and Palestinian refugees has cast uncertainty over the future of both.¹²⁹ While lack of funds has pressured the agency to suspend some emergency relief programmes, including essential food and cash distribution to the poorest of the poor, as well as important protection functions, its mandate is not contingent upon the availability of funds per se. The continuation of UNRWA’s mandate depends on the achievement of a solution to the plight of the refugees, in accordance with relevant UN resolutions and international law: UNRWA will no longer have reason to exist once the position of Palestine refugees is ‘definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations’.¹³⁰

3.2 Jordan

3.2.1 Overview

Jordan has played a critical role in providing refuge for many of the refugees and displaced persons that have historically fled violence and instability in the region.¹³¹ The 2015 census found that of its 9.5 million inhabitants that year, a significant portion was non-Jordanian (2.9 million).¹³² The percentage of the Jordanian population with Palestinian origins has (p. 199) long been the subject of controversy.¹³³ About 2.2 million of the 6.6 million Jordanian nationals¹³⁴ are Palestine refugees registered with UNRWA; this is the largest Palestine refugee group within UNRWA’s area of operations.¹³⁵ However, not all Palestinians in Jordan are registered with UNRWA and, all considered, Jordanian citizens of Palestinian origin (i.e. the 1948 refugees, those displaced from the West Bank in 1967 and their descendants) may constitute over forty per cent of the total population of the Kingdom.¹³⁶ While the vast majority of UNRWA registered refugees enjoy Jordanian citizenship,¹³⁷ about 158,000 are not considered Jordanian citizens: they are former residents of Gaza (so called ‘ex-Gazans’), including descendants, who arrived in Jordan following the 1967 conflict.¹³⁸

Only eighteen per cent of Palestine refugees in Jordan are registered in the ten ‘official’ camps.¹³⁹ UNRWA also provides services to Palestine refugees in three ‘unofficial’ camps.¹⁴⁰ UNRWA’s operations in Jordan have been regulated by an agreement with the government of Jordan of 1951 (amended in 1952).¹⁴¹ The Jordanian government has a Department for Palestinian Affairs (DPA), under the supervision of the Ministry of Foreign Affairs, which is responsible for administrative matters pertaining to Palestinian refugees.¹⁴² Security is the responsibility of the Ministry of Interior. The DPA works closely with UNRWA and supervises the physical infrastructure of all camps.¹⁴³

Because of their unique dual status as refugees and citizens,¹⁴⁴ Jordanians of Palestinian origin have a complex identity and relationship with the state.¹⁴⁵ As nationals, they have (p. 200) been largely treated as part of Jordan’s ‘national project’.¹⁴⁶ This started to vacillate in the 1960s, when a political identity as ‘Palestinian’ became more apparent, in connection with the rise of the Palestinian national movement (see (n 161)–(n162) and accompanying text). This has led to forms of discrimination that are also common to Palestinians in other host countries.¹⁴⁷ As a result, already in 1996, the prominent Palestinian-Jordanian lawyer, Anis Kassim, described the Palestinians in Jordan as ‘hyphenated citizens’.¹⁴⁸

3.2.2 History

Arrivals over time and numbers

Palestinian refugees arrived in Jordan – i.e. the East Bank of the Jordan River – at two main points in time: in 1948 (some 70,000, on top of the 280,000 who were in the West Bank) and 1967 (some 400,000 of whom approximately 190,000 were 1948 refugees).¹⁴⁹ After the ‘unification’ of the East and West Banks under Jordanian rule (i.e. the annexation of the latter), which resulted in the establishment of the new Hashemite Kingdom of Jordan in 1950,¹⁵⁰ Palestinians were about two-thirds of the country’s population.¹⁵¹ Those who

arrived in 1967 are referred to as 'displaced persons' and not 'refugees', as West Bank residents were considered citizens of the Kingdom at the time and hence considered as internally displaced within its territory. However, among the 1967 arrivals were over 50,000 Palestinians from Gaza, including 1948 refugees, who were holders of Egyptian TDPRs (commonly referred to as 'Gazans' or 'ex-Gazans').¹⁵² Smaller numbers came from Lebanon in 1982 at the climax (p. 201) of violence during the Lebanese Civil War (1975–1990). During the lead up to and after the First Gulf War in 1991 over 250,000 Palestinians 'returned' to Jordan after being expelled from Kuwait, where they had lived for several decades.¹⁵³ Limited numbers arrived from the West Bank during the second *Intifada*, as well as relatively few arrivals from Iraq at the time of the Second Gulf War in 2003.¹⁵⁴ Some 20,000 Palestinians have fled into Jordan from Syria since the start of conflict in 2011.¹⁵⁵

Turning points in history

Some initial and some more recent suspicion towards Palestinians in Jordan notwithstanding,¹⁵⁶ Palestinian life in the Kingdom has been generally stable,¹⁵⁷ even if not uneventful. In the early days of the Palestinian displacement, the Jordanian regime at the time viewed Palestinian resettlement in the country favourably because the refugees' possessed higher educational and modern skills that were to positively contribute to state-building efforts. In this atmosphere the refugees were able to access government positions and high-wage occupations and industries early on.¹⁵⁸ This marked the initial period of integration, amid ongoing political controversy and upheaval.¹⁵⁹ One significant exception is represented by the armed confrontation between the Jordanian army and the Palestinian resistance that had been formed, mostly in refugee camps, after the 1967 Israeli occupation of the West Bank and the Gaza Strip. The 1967 displacement had grown the Palestinian population in Jordan by thirty per cent and contributed to the deepening of political tensions in the country between Jordanians of Palestinian and non-Palestinian origin.¹⁶⁰ Around those years Palestinian guerrillas operating in the country began to clash with Jordanian military forces.¹⁶¹ The threat posed to the Hashemite regime and the bombardment it drew from Israel led to attacks by government forces and Bedouin militia on Palestinian camps in 1970–1971. The confrontation, coined 'Black September', resulted in mass deaths (p. 202) and the dispersal of the Palestinian fighters, mostly to Lebanon and Syria.¹⁶² The civil war marked a major turning point for Palestinians in Jordan. After the war, Jordanian authorities embarked on a campaign to remove Palestinian nationalists and their supporters from government and the military and solidify its standing with non-Palestinian (mostly Bedouin) constituents. Systematic discrimination was widely enforced against nationals of Palestinian origin in the public and military spheres.

In the post-civil war period, the PLO emerged as a strong political force. Its proclaiming itself as 'the sole and legitimate representative of the Palestinian people' as of 1974 and was recognized as such by the LAS¹⁶³ – contributed to exacerbate tension. It was an umpteenth measure of dissonance of Palestinian identity within Jordanian society.¹⁶⁴

Another major turning point in Jordan–Palestinian relations took place on 31 July 1988 when, in a televised speech to the nation, then King Hussein of Jordan announced his intention to renounce his claims of sovereignty over the West Bank and sever all 'legal and administrative links between the two banks'.¹⁶⁵ The severance of ties with the West Bank was, in the monarch's words, out of 'respect' for the wish to form an independent Palestinian state expressed by the PLO as 'the sole and legitimate representative of the Palestinian people'.¹⁶⁶ Announcing the disengagement, the King emphasized that those measures would 'concern only the occupied Palestinian land and its people [who] naturally do not relate in any way to the Jordanian citizens of Palestinian origin in the Hashemite Kingdom of Jordan'.¹⁶⁷ The latter, the King stated, 'all have the full rights of citizenship and all its obligations, the same as any other citizen irrespective of his origin'.¹⁶⁸

Notwithstanding the King's reassurances, in practice the 'severance speech' of 1988 accelerated the divide between Jordanians and Palestinians at several levels, from shaping

of separate identities to access to rights, giving more privileges to those of higher social status and proven loyalty to the regime.¹⁶⁹

The new status of the West Bank as being outside Jordan's jurisdiction was reflected in the peace treaty between Jordan and Israel of 1994 ('Wadi Araba Treaty').¹⁷⁰ The treaty had a general reference to displaced persons and refugees.¹⁷¹ The allusion to the permanent (p. 203) (re)settlement of the refugees in Jordan as an outcome of peace, made by Israeli officials and others in the context of the peace process, prompted opposition of Palestinian refugees and Jordanian nationalists alike.¹⁷² Since then, the often-made reference to Jordan as the natural home for the Palestinians has created tension among Jordanians.¹⁷³

3.2.3 Legal status and treatment

Palestinian refugees in Jordan have varying legal statuses depending on where they came from, when they arrived, and the prevailing political situation at the time. Those who arrived in 1948 (from the former Mandate territory) and 1967 (from the West Bank)¹⁷⁴ and took residence in the East Bank of the River Jordan have been considered citizens; the 'ex-Gazans', who arrived in 1967 holding Egyptian TDPRs (including 1948 refugees registered with UNRWA)¹⁷⁵ and other Palestinians who arrived at a later date (e.g. from Iraq or Syria) are considered foreigners.¹⁷⁶

Those from the West Bank, including refugees, who sought residence in Jordan after the 'severance speech' of 1988 are also considered foreigners.¹⁷⁷ Different rights, entitlements, and degrees of political and socio-economic integration are attached to these different statuses.¹⁷⁸

Citizenship for Palestinians in Jordan was first granted in 1949, when an amendment to the British Mandate's 1928 Nationality Law allowed the newly established state to consider as Jordanian citizens both 1948 refugees and original Palestinian residents of the West Bank and East Jerusalem, which were 'administered by the Hashemite Kingdom of Jordan'.¹⁷⁹ As Kassim points out, this law 'imposed' Jordanian citizenship on Palestinians in the West Bank (420,000 indigenous Palestinians and 280,000 refugees) and in the East Bank (70,000 refugees), which occurred before the West Bank was officially 'united' with the East Bank under Jordanian law.¹⁸⁰ In 1954, Jordan's Nationality Law clarified the conditions under which Palestinians – i.e. Arabs with previous 'Palestinian nationality' – may acquire Jordanian citizenship.¹⁸¹ Until 1988, apart from the ex-Gazans, there was no official distinction in status between Palestinians – refugees or otherwise – under Jordanian jurisdiction (p. 204) in the West and East Banks and other Jordanians, and they enjoyed rights and obligations of any citizen. As such, they were entitled to work and to have access to governmental services (free or subsidized) including education, health care, public security, and social services. They were also liable for military service. Benefiting from their formal integration, certain elite Palestinian families ascended to the highest positions in government, becoming generals in the army, cabinet members, and even prime minister. Palestinian businesses prospered, investing in agriculture, industry, trade, and finance; the Arab Bank, the country's largest financial institution, was founded, owned, and managed by Palestinians.¹⁸²

The Nationality Law of 1954 was not extended to any other category of Palestinians, which explains the different status of Palestinian refugees who arrived from Gaza during and after 1967, as well as West Bank residents who migrated to the East Bank after 1988. Although the Law stipulates that Palestinians with Jordanian citizenship are equal under the law, discrimination against Jordanians of Palestinian origin has been reported,¹⁸³ including arbitrary revocations of citizenship. Before 1988, citizenship revocation was selective, on an individual basis and for certain defined reasons, such as 'subversion' (in 1957) and 'disloyalty' (e.g. after Black September in 1970).¹⁸⁴ After 1988, notwithstanding the King's reassurances that Palestinians in the West Bank ('West Bankers') could continue to use their Jordanian passports, many were stripped of their Jordanian citizenship 'virtually'

overnight'.¹⁸⁵ In the view of the Jordanian government, they had become 'Palestinian citizens'.¹⁸⁶

To understand how some Palestinian-Jordanians were affected by such measures while others were not, it is important to understand the colour-coded system of identity documents that Jordan started to introduce for Palestinians living in the West Bank and East Bank as of 1983, further refined after July 1988.¹⁸⁷ Green cards were given to habitual residents of the West Bank (i.e. those who had an Israeli-issued residency permit or, as of 1994, a PA-issued ID and (optionally) a passport/travel document); yellow cards were given to those who were habitual (i.e. permanent) residents of the East Bank, even if they were registered in the West Bank (according to the Israeli census following the 1967 war).¹⁸⁸ Starting in 1992, all Jordanian citizens were given a 'national number' (*raqam waṭanī*), which is (p. 205) necessary to access services such as healthcare and higher education, as well as government jobs.¹⁸⁹ Palestinian refugees who were nationals under the 1954 Nationality Law and were holding a yellow card were given this national number which made them eligible for a five-year passport.¹⁹⁰ Green card holders were not given a national number; since 1988 they are eligible for a 'temporary passport',¹⁹¹ which is effectively a travel document, and which allows its holder to stay in Jordan up to thirty days without a permit.¹⁹² Because green card holders are considered Palestinian (West Bank) citizens, they no longer have the right to reside in Jordan, establish a business, send their children to school, or participate in elections, either as voters or as candidates, and are only allowed to visit Jordan on a temporary basis.¹⁹³ As Jordanian authorities only renew the temporary passport in case its holder is in possession of a valid Israeli residence permit for the West Bank, Palestinians who lost residency in the West Bank as a consequence of Israeli measures have faced problems renewing their temporary passports. After 1988, the treatment of Palestinians residing in the West Bank, including refugees – who had been considered Jordanian citizens until then, without prejudice to their rights under UNGA resolution 194 – has been characterized as en masse denationalization.¹⁹⁴ Legal experts have observed that this occurred de facto, through regulations that were never published in the Official Gazette or otherwise made public, and over which there was no judicial oversight,¹⁹⁵ hence considered contrary to both international and Jordanian law.¹⁹⁶

In addition to a first wave of citizenship revocations post 1988, further revocations occurred in the mid-2000s, when Jordanians of Palestinian origins who were initially issued yellow cards had them replaced with green cards without warning.¹⁹⁷ Thousands were among those affected,¹⁹⁸ and hundreds of thousands were potentially at risk.¹⁹⁹ The reasons for revocations appear to have varied over time; in the 1990s they were linked to processing (p. 206) the disengagement in a more systematic way, whereas in the mid-2000s they appeared to have more of a political motivation (e.g. targeting activists).

As a result, Jordanians of Palestinian origin appear to have a more precarious status than other Jordanians. Various sources underscore that, while being entitled to equal rights and treatment as any Jordanian national, they do in fact experience discrimination in the public sector and are significantly under-represented in the Jordanian civil service, the military, the political system, and higher education.²⁰⁰ Political representation is effectively curtailed: none of the twelve governorates of Jordan is headed by a Jordanian of Palestinian origin, although some have large a concentration of Jordanians of Palestinian origin.²⁰¹

Palestinian refugees who do not enjoy nationality formally hold an inferior legal status. In addition to the West Bankers, the above-mentioned 1967 'ex-Gazans' and their descendants are considered foreigners with permanent residency in Jordan.²⁰² Very few have been able to naturalize.²⁰³ Since 2004, they hold a temporary 'special residency card' (white card),

and are entitled to a two-year travel document, which gives them freedom to travel abroad and access to public services in the country.²⁰⁴

However, they experience limitations in accessing essential services and opportunities in Jordan. For example, they can access public health services and education, but have to pay for it as non-Jordanians.²⁰⁵ Public employment is barred to the ex-Gazans, who are mostly employed in the informal sector. They experience restrictions in obtaining driving licenses (necessary to drive a taxi or a bus), opening bank accounts, and purchasing land.²⁰⁶ In recent years the Jordanian government has eased some of the restrictions on the ex-Gazans access to health care,²⁰⁷ and with respect to property ownership.²⁰⁸ However, it continues to refuse to extend Jordanian nationality to these Palestinians, on the ground that this would amount to resettlement.²⁰⁹

(p. 207) A case apart: The treatment of Palestinian refugees from Syria

At the time of writing there were some over 17,000 Palestinian refugees from Syria in Jordan. The majority of these Palestinians hold both UNRWA registration cards and Syrian-issued (General Authority for Palestinian Arab Refugees, or GAPAR) identity and/or travel documents.²¹⁰ Other Palestinian refugees from Syria include those who have Jordanian passports or other Jordanian identity documents and who may have been expelled after Black September, and their descendants,²¹¹ as well as Palestinians with PA passports/travel documents issued by the PLO mission in Damascus.

While Palestinian refugees fleeing Syria were initially allowed to enter Jordan, since 10 January 2013 – unofficially since 2012 – Jordanian government policy has been to deny admission to Palestinians from Syria.²¹² In practice, only Palestinians who hold Jordanian national documents have been able to enter Jordan from Syria regularly.²¹³ As of 2012, several hundred Palestinians from Syria were placed in ‘Cyber City’, a holding centre which severely restricted people’s movement, requiring a permit to leave the centre;²¹⁴ the centre was closed in October 2016.²¹⁵ Those who entered Jordan irregularly have been residing illegally in the country, facing the risk of arrest, detention, and, potentially, of forced return to Syria. Between 2015 and 2017, about one hundred cases of *refoulement* and forced deportations to Syria were documented, including of children.²¹⁶

According to UNRWA, this group of refugees is extremely vulnerable, owing to the tragic circumstances of their recent flight, as well as the precarious conditions experienced in Jordan, which make them highly dependent on assistance.²¹⁷ It is unclear how the opening of the Naseeb border crossing between Jordan and Syria, as of November 2018, will affect the presence of Palestinian refugees from Syria in Jordan.²¹⁸

3.3 Lebanon

3.3.1 Overview

Lebanon is commonly referred to as the country where conditions for Palestinian refugees are the ‘worst off’ among those hosting them since 1948, and a turbulent history has marked the Palestinian presence in the country.²¹⁹ Among the five UNRWA ‘fields’ of operation, Lebanon has the highest percentage of Palestine refugees living in abject poverty.²²⁰ (p. 208) This is directly linked to the marginalization Palestinians have experienced in Lebanon in the economic and social spheres. Discrimination against Palestinians in Lebanon is institutional and is entrenched in both the Tai’f Constitution and the legal system.²²¹

Over seventy years after their arrival in Lebanon, Palestinian refugees, including descendants, are still considered foreigners and are unable to enjoy many socio-economic and other rights. Due to harsh living conditions and restrictions, more than half of the original population has left Lebanon over the years.²²² The discrepancy between UNRWA-registered Palestine refugees in Lebanon (around 450,000 in 2018), and the estimated number of actual residents (ranging between 175,000 and 280,000) is testimony of an

'exodus within exodus'.²²³ Of those reportedly in the country, between half and two-thirds reside in twelve official Palestine refugee camps located throughout the country and serviced by UNRWA,²²⁴ as well as in a number of informal 'gatherings' scattered around the country.²²⁵ Camps and gatherings are overcrowded, severely underserviced, and generally unhealthy.²²⁶ The Lebanese government does not exercise its authority or enforce its laws in the camps.²²⁷ The lack of an official authority responsible for public services and security creates an unsafe and insecure environment, with various types of violence and few avenues for redress.²²⁸ Since 2011, already overcrowded camps and gatherings have also become home to several thousand Palestinians from Syria as well as Syrian refugees.²²⁹

3.3.2 History

Arrivals over time and numbers

The largest arrival of Palestinians in Lebanon – some 100,000 – dates to 1947–1948.²³⁰ Another group of Palestinians fled Gaza to Lebanon during the Suez Canal crisis in 1956 (p. 209) and the 1967 war.²³¹ Several thousands arrived in Lebanon in the 1970s from Jordan in the wake of Black September,²³² becoming part of the group of undocumented Palestinians in Lebanon. Close to 40,000 fled to Lebanon from war-torn Syria between 2011 and 2016, and some 29,000 were still in the country in January 2019.

Turning points in history

Between 1948 and 1958, Palestinian refugees were generally welcomed in Lebanon, both at the official and popular levels.²³³ They were allowed political and organizational freedom as well as employment opportunities, due to the economic boom in Lebanon at the time.²³⁴ However, unlike the Jordanian and Syrian governments, which, each in its own way, had a policy of integrating the refugees in their respective societies (through naturalization the former, *de facto* the latter), the Lebanese government and political factions alike have firmly opposed and actively prevented Palestinian naturalization (*tawteen*).²³⁵ There is widespread fear in Lebanon that integrating the Palestinians – around ten per cent of the total population – would upset the delicate balance between different confessions and threaten the country's stability.²³⁶ The treatment of Palestinian refugees started to deteriorate when General Fouad Chehab came into power in 1958 and sought to circumscribe the Palestinian presence in Lebanon. Palestinian refugees were marginalized and their political and other activities in the camps restricted.²³⁷ They became the poorest sector in Lebanese society, and the poorest group of Palestinian refugees in Arab countries.²³⁸

After the 1967 War, Palestinian armed groups that had been formed in refugee camps began conducting raids against Israel from the south of Lebanon, to which Israel responded by attacking both civilian and military targets in Lebanon.²³⁹ Lebanon's attempts to crack down on resistance in camps as of 1969 led to the 'camps uprising' against the Lebanese security forces.²⁴⁰ The Cairo Agreement that Lebanon and the PLO signed in 1969, in an attempt to end the uprising, granted Palestinians in Lebanon significant autonomy.²⁴¹ It granted Palestinians the right to residency, movement, work, form local committees in the (p. 210) camps, and manage their own affairs; this positively impacted on the refugees' living conditions, improved through the activation of the refugees' labour force both in the private and public sectors.²⁴² The Cairo Agreement also sanctioned the Palestinians' right to 'take part in the revolution' (i.e. armed struggle against Israel). This allowed Palestinian factions to arm themselves, have a military presence in the South, and granted the refugee camps significant autonomy from the Lebanese Armed Forces, placing them under control of the PLO. In practice this also meant that Palestinian camps were effectively outside Lebanese jurisdiction and under the sole control of competing Palestinian factions, who would occasionally clash. In 1987, this system was dismantled with the abrogation of the Cairo Agreement by the Lebanese parliament.²⁴³ However, Lebanese police and army still do not access many of the camps,²⁴⁴ which have developed complex, *de facto*

extraterritorial, governance, and security structures that are difficult and often sensitive to map; see (n 253) and accompanying text.

Since the early 1970s, Palestinians have been greatly affected by the various armed conflicts in the country. From early 1972, Israel started attacking Palestinian refugee camps in Lebanon, purportedly in response to Palestinian raids into its territory. The protracted civil war in Lebanon (1975–1990) resulted in extraordinary human suffering and caused massive displacement including of Palestinians in the country.²⁴⁵ The 1982 Israeli invasion, the ousting of the PLO, and the ‘War of the Camps’ that ensued (1985–1988)²⁴⁶ led to the internal displacement of over 4,000 refugees,²⁴⁷ and the flight of more than 100,000 Palestinians from Lebanon, many of whom went to the Gulf countries and Europe (particularly Scandinavia and Germany).²⁴⁸ Comparatively more refugees in Lebanon than in Syria and Jordan have relatives abroad, an indication that emigration has been substantial for this refugee group. It is also a sign that more are likely to continue to leave as the situation worsens in Lebanon.²⁴⁹

The civil war gave rise to a deep-rooted and lasting distrust between Palestinian refugees and the Lebanese population.²⁵⁰ Many Maronites hold Palestinians responsible for instability in Lebanon and the civil war in particular.²⁵¹ In the post-war period, Palestinians (p. 211) were excluded from the reconciliation process, despite their part in the civil war. They were also excluded from the 1991 General Amnesty Law: Palestinians who had taken part in the hostilities were jailed or fled, while Lebanese warlords benefited from the amnesty.²⁵² Palestinians continue to be perceived as a threat to both the sovereignty and national identity of Lebanon. Further, despite the abrogation of the Cairo Agreement, there is still an implicit acceptance that the camps are off limits to Lebanese security forces, a ‘space of exception’ in the words of sociologist Sari Hanafi, a de facto extraterritorial zone effectively outside Lebanese jurisdiction.²⁵³ Common criminals and others have frequently sought refuge in the camps, further aggravating the living conditions of camp residents.²⁵⁴ The conflict over Nahr el Bared in 2007 was a dramatic illustration of this and the first instance in decades where the Lebanese army forced its way into the camps.²⁵⁵ Keeping the camps as ‘extraterritorial islands’ outside the scope of the law, has had a crippling effect both on the quality of living of camp dwellers – trapped in perpetual insecurity – and on the image of Palestinians within the Lebanese society.²⁵⁶ Jaber Suleiman, who has conducted extensive research on the situation of Palestinian refugees in Lebanon, observes that dealing with them as a security and humanitarian question contributes to feeding a discourse of Palestinians representing a continuous threat to Lebanese security, which in turn leads to justify their discrimination and non-integration.²⁵⁷

Over the decades, hundreds of thousands of Palestinians have reportedly left Lebanon as the disparity between registered refugees and current residents demonstrates. In addition to the twelve thousand Palestinian refugees who were ‘deregistered’ by the Lebanese authorities in 1982 (when the PLO was ousted from Lebanon and relocated to Tunis), on the ground that they had acquired residency or nationality abroad, and those who were expelled in the 1990s,²⁵⁸ Palestinian refugees have often experienced difficulty in renewing Lebanese travel documents allowing them to return to the country. For example, when Mu’ammar Gaddafi expelled Palestinians from Libya in 1995,²⁵⁹ the Lebanese government introduced regulations preventing Palestinians originally registered in Lebanon from returning without a special re-entry visa issued by the Lebanese mission in the country of (p. 212) residence (it did not apply to those residing in Syria).²⁶⁰ This made return to Lebanon for many Palestinians impossible.²⁶¹ These factors, together with the discrimination and violence that prompted refugees who could do so to seek asylum and better lives in Europe,²⁶² have over time confirmed what anthropologist Rosemary Sayigh refers to as an undeclared Lebanese policy encouraging Palestinian emigration from Lebanon.²⁶³ This situation is compounded by the fact that, since the end of the civil war, and most dramatically since the Oslo process in the 1990s, most countries that used to

grant political asylum to Palestinians from Lebanon in earlier years have stopped doing so.²⁶⁴

In recent years, renewed dialogue between the PLO and the Lebanese authorities – which, in 2005, led to the establishment of the Lebanese-Palestinian Dialogue Committee (LPDC), under the auspices of the Presidency of the Council of Ministers – has attempted to tackle a number of important issues pertaining to legal and humanitarian needs of the Palestinian refugees.²⁶⁵ The LPDC has been instrumental to advance some important issues, such as the protection of undocumented Palestinians in Lebanon (see n 272).²⁶⁶

3.3.3 Legal status and treatment

The treatment of Palestinians in Lebanon largely depends on their arrival and status. Besides those Palestinians – mainly wealthy Christians and others with family connections – who acquired Lebanese citizenship between 1952 and 1958,²⁶⁷ the vast majority of Palestinians in Lebanon remain without citizenship,²⁶⁸ and in a precarious situation. Among these stateless Palestinians, only those registered in Lebanon – and holding a Lebanese ID – according to Lebanese regulations are considered legal residents (see Palestinians with permanent residency (holders of Lebanese IDs)).

Initially registration with UNRWA (and prior to that with the League of Red Cross Societies in 1948) was considered a prerequisite for legal residency of the refugees. Since 1959, registration and civil procedures for Palestinian refugees in Lebanon have been handled by the Department of Political and Refugees Affairs (DPRA), which administers the (p. 213) presence of the refugees and issues civil documentation, including personal IDs, family records and travel documents for Palestinians registered in Lebanon.²⁶⁹ Since 2010, DPRA has been renamed 'Directorate of Political Affairs and Refugees' (DPAR).²⁷⁰

Palestinian refugees in Lebanon are commonly categorized in four groups:²⁷¹ 1) 'Registered' refugees ('Palestine refugees'), who are registered with both UNRWA and the Lebanese authorities; 2) 'Non-Registered' Palestinian refugees, who are registered with the Lebanese authorities but not with UNRWA; 3) Non-identified ('non-ID') Palestinian refugees, who are registered neither with UNRWA nor with the Lebanese authorities (some may, however, be registered with UNRWA in another 'field' of operation); and 4) Palestine refugees from Syria, who have arrived in Lebanon since 2011, who are registered with UNRWA and GAPAR in Syria, but not with the DPRA.²⁷² Ultimately only those registered with DPRA – i.e. Palestinians falling in the first two groups – are considered legally resident, subject to the laws pertaining to foreigners in matters such as employment, acquisition of property, and taxation, often based on condition of reciprocity.²⁷³

Palestinians with permanent residency (holders of Lebanese IDs)

Registered Palestine refugees

Most Palestinians in Lebanon are '1948 refugees', including descendants, and are registered as 'Palestine refugees' with UNRWA.²⁷⁴ As indicated earlier, out of almost half a million, less than half remain in Lebanon.²⁷⁵ They are also registered with DPRA and hold a DPRA-issued 'Identification Card for Palestine Refugee', which officially confirms their legal residence in Lebanon.²⁷⁶

While registration gives Palestine refugees legal residence, a certain freedom of movement within Lebanon and eligibility for a TDPR with a validity of up to five years, in practice, they remain foreigners in the country.²⁷⁷ As foreigners, they experience restrictions, embedded in law and practice, in many areas of life, including with respect to employment, social security, property ownership, and mobility both within (in and out of the camps²⁷⁸) and outside the country,²⁷⁹ as well as access to public services such as housing, education, (p. 214) and health and other rights reserved for Lebanese citizens.²⁸⁰ Palestine refugees are also considered a 'special category of foreigners' not benefitting from specific refugee

rights nor being allowed to naturalize,²⁸¹ and subject to entry and exit controls that are tightened during periods of insecurity.²⁸²

In terms of employment, several laws and decisions by the Ministry of Labour have restricted opportunities for Palestine refugees over the years,²⁸³ though more recent ones, in 2005 and 2010, have brought some improvement.²⁸⁴ As of 2005, Palestine refugees are allowed to work in certain jobs that were previously restricted to Lebanese, except liberal professions that are regulated by internal bylaws that restrict non-Lebanese from practicing them.²⁸⁵ In practice, Palestinian refugees remain barred from practicing thirty-nine professions, among which are all liberal professions such as medicine, law, and engineering,²⁸⁶ and are excluded from commercial and administrative professions²⁸⁷ that do not fall in the list identified by the government.²⁸⁸ With respect to jobs open to them, despite the deductions made from their wages, Palestinian workers have generally enjoyed no social security entitlements.²⁸⁹ Two new laws of 2010 pertaining to social security and labour²⁹⁰ enable Palestine refugees to obtain work permits at no cost and earn social security benefits (such as end-of-service and injury-related indemnity) regardless of the reciprocity condition.²⁹¹ In practice, the application of the laws is uneven.²⁹² According to bylaws in force, some (p. 215) professions are still off limits for Palestine refugees, such as general medicine, dentistry, nursing, midwifery, tourist guide, and some others, and where employment is possible, obtaining a work permit still entails a lengthy process with success dependant on the goodwill of the employer.²⁹³ Even when Palestine refugees are not denied their rights *de jure*, they must still deal with the complexities of the Lebanese system,²⁹⁴ and Lebanese bureaucracy often appears to discriminate against Palestinians.²⁹⁵ As a result, most Palestine refugees in Lebanon reportedly work in menial, low-paying jobs in the informal sector and receive lower salaries than Lebanese nationals.²⁹⁶

Compared to Palestine refugees in other UNRWA ‘fields’ of operation, Lebanon (together with Gaza) has the largest proportion of camp residents. The living conditions in camps are dire.²⁹⁷

Those who do not stay in the camps mostly live in rented accommodation, even though rental rates are unaffordable for many. Those who could afford to buy property were stripped of that ability by a 2001 law, which has largely prevented Palestinian refugees from legally acquiring real property, as well as transferring or bequeathing previously owned property to their heirs.²⁹⁸ Palestinian refugees must therefore rely on informal agreements with Lebanese citizens who buy or keep property bought pre-2001 on their behalf.

In the field of education, Palestinian refugees generally cannot access Lebanese schools and state-run universities, though there is no legal barrier. As a consequence, Lebanon is the only country where UNRWA operates secondary schools (grades 10–12). Most Palestinian refugees complete their elementary, primary, and secondary education in one of sixty-six UNRWA schools. Dropout rates are high as some children seek work in order to help their families. Palestinian refugee illiteracy in Lebanon remains high.²⁹⁹ Access to (p. 216) higher education is further limited for Palestinian refugees because many cannot afford tuition fees.³⁰⁰

As foreigners, Palestinian refugees do not have access to Lebanese public health services and rely mainly on UNRWA for health services, in addition to assistance from charities. Through UNRWA, they can access primary health care, although not all medical services and treatments are possible through UNRWA clinics; UNRWA financially assists refugees with partial cost coverage for treatment in secondary and tertiary health care in UNRWA-contracted hospitals.³⁰¹ UNRWA’s frequent funding shortages hamper its capacity to meet refugees’ demands.³⁰²

Access to justice is also reportedly curtailed for Palestinians in Lebanon, especially those living in camps. They are vulnerable to arbitrary arrest and detention by both state security forces and Palestinian factions, the latter of which operate their own justice system and detention facilities in the refugee camps.³⁰³

The situation of Palestinians in Lebanon has further deteriorated in connection with Lebanon's weakening socio-economic situation and the prolonged Syria crisis.³⁰⁴ Discriminatory laws and policies prevent addressing the poverty that traps two-thirds of this group.³⁰⁵

'Non-Registered' Palestinian refugees

Approximately 35,000 refugees from Mandate Palestine and their descendants (i.e. '1948 refugees'), are not registered with UNRWA in Lebanon.³⁰⁶ They are often referred to as 'NR'.³⁰⁷ Their lack of registration with UNRWA has various causes: they may have not been in need of humanitarian assistance in 1948, and hence not met UNRWA's registration and eligibility criteria; they may have taken refuge outside UNRWA's area of operations in 1948 and moved to Lebanon later on; or they may have arrived to Lebanon not in connection with the 1948 events (e.g. 1967, 1970).³⁰⁸ They are nonetheless registered with the Lebanese authorities and as such they hold the same DPRA-issued Identification Cards issued to registered Palestine refugees.³⁰⁹ The majority of them have a proof of nationality document from the Palestinian embassy in Lebanon. Lebanese authorities treat them similarly to UNRWA-registered refugees, except that their travel document is valid for up to three years instead of five years for those registered with UNRWA. UNRWA began assisting some of these refugees from 2004 onwards on (p. 217) the ground that they are also refugees from Palestine and receive no assistance from the Lebanese authorities.³¹⁰

Palestinians without permanent residency and Lebanese IDs

'Non-ID' refugees

Between 3,000 and 5,000 Palestinians in Lebanon are not registered with Lebanese authorities and therefore considered undocumented.^{311,312} Because they are unregistered, precise and up-to-date numbers are difficult to obtain.³¹³ This non-homogenous group includes: 1) Palestinians in Lebanon since the late 1960s and 1970s who are not registered with either the Lebanese authorities or UNRWA in Lebanon, although they may be registered with UNRWA elsewhere; they may have some form of documentation to prove their Palestinian identity, either from one of UNRWA's 'fields' of operations (e.g. Palestinians holding valid or expired Jordanian IDs, who are unable to return to Jordan or the West Bank if the holder was originally from there prior to 1988; 2) Palestinians from the Gaza Strip with Egyptian TDPRs who are not allowed either to stay in Egypt or to return to Gaza (those who left Gaza before 1967); 3) Palestinians expelled by Israel from the oPt post-1967 and not allowed to return; 4) Palestinians from any Arab country (e.g. Iraq, Egypt) who for various reasons are unable to return there.³¹⁴ As such, these Palestinians fall in the category of '[f]oreign nationals who do not hold identity papers from their country of origin [...], residence cards issued by the General Directorate of General Security [Sûreté Générale] or identity cards issued by [the DPRA].'³¹⁵

Because they lack registration with Lebanese authorities, the Palestinians in this category have no legal status in Lebanon. They face harsher restrictions than Palestinians registered with Lebanese authorities and/or UNRWA in Lebanon, with respect to conducting civil registration procedures (birth, marriage, and death certificates), accessing public services and (formal) employment, freedom of movement inside Lebanon and abroad, and because of their irregular documentation status, they have generally been at risk of arrest and detention.³¹⁶ As a result, many have confined themselves to the camps, out of reach of the

Lebanese authorities.³¹⁷ UNRWA provides Non-IDs with basic services such as primary healthcare and education, despite the fact they are not registered.³¹⁸

Until 1982, when the PLO was ousted from Lebanon, Non-ID Palestinians received assistance and support from the PLO. This included issuing an informal ‘proof of nationality’ card (*watha’iq ithbat jinsiyyeh*) that would facilitate their access to social services and jobs in the refugee camps.³¹⁹ This was a proof of identity only, even though it was recognized by the (p. 218) Lebanese authorities, and gave no entitlement to legal residency. In 2006, the PLO resumed the issuance of ‘proof of nationality’ cards. In 2008, on the basis of an agreement between the Palestinian embassy in Lebanon and the Lebanese General Directorate of General Security (GDGS), the latter started issuing, under certain conditions, Special Identification Cards (SICs) (commonly known as *bitaqat taarif*), which constitute a proof of identity for undocumented Palestinians.³²⁰ In essence, this is equivalent to the PLO issued ‘proof of nationality’ card; while not constituting proof of legal residency, they are meant to give the holder a proof of identity that was recognizable by the Lebanese security apparatus (hence granting the holder freedom of movement). The cards were issued based on information provided by the PLO, valid for one year and renewable, at no cost.³²¹ This operation has not achieved significant results,³²² and is presently on hold.³²³

Since 2011, the Palestinian Embassy, in agreement with the Lebanese authorities, has been providing Non-ID Palestinians with PA passports/travel documents (without national number).³²⁴ Though not sufficient to secure residency or freedom of movement within Lebanon, it provides Non-IDs the opportunity to travel abroad and apply for temporary residence permits in Lebanon.³²⁵

Palestinian refugees from Syria

During the Syria crisis, over 45,000 Palestinian refugees from Syria approached UNRWA in Lebanon for assistance,³²⁶ and 29,000 were still in the country at the end of 2018.³²⁷ Forty per cent of them were reported to be without legal residence in 2016.³²⁸

Palestinian refugees from Syria seeking refuge in Lebanon have experienced increasing difficulties in securing their entry and, once in the country, they often endure poor and unsafe living conditions.³²⁹ At the onset of the conflict in Syria, they were reportedly allowed entry into Lebanon using their Syrian ID cards or TDPRs, provided they had obtained a Syrian exit visa in advance. As of 2013, entry restrictions were imposed.³³⁰ Their stay has (p. 219) been conditional upon obtaining a residence permit,³³¹ which became free of charge in 2017 for those who had arrived before September 2016.³³² Progressively tighter restrictions on the entry of Palestinians into Lebanon have made legal entry extremely difficult. Those who have managed to enter the country have experienced difficulties in maintaining legal residency and accessing civil documentation,³³³ and have faced exploitation and abuse because of their socio-economic vulnerability.³³⁴ While no forced returns to Syria have been documented, between May 2014 and June 2018,³³⁵ cases of non-readmission in Lebanon of Palestinian refugees who had attempted to return to Syria due to the poor living conditions in Lebanon were reported.³³⁶ Because of the severe limitations on employment in Lebanon, Palestinian refugees from Syria are highly vulnerable to poverty and food insecurity and largely dependent on aid.³³⁷

Those who are registered with UNRWA in Syria have access to UNRWA schools, health clinics and other services in Lebanon, representing a twenty per cent increase in the number of beneficiaries served by UNRWA,³³⁸ through limited means.³³⁹ This has given rise to further exploitation of the Palestinian workforce, including of minors.³⁴⁰

Conditions in Lebanon have led to many Palestinian refugees from Syria to attempt the arduous and hazardous journey to Europe, while others have returned to Syria, despite the uncertainty and possible dangers of the evolving situation in the country.

3.4 Syria

3.4.1 Overview

Prior to the Syrian uprising in 2011, Syria was considered one of the safest countries in the region for Palestinian refugees, who were generally well integrated with the host population.³⁴¹ In pre-war Syria, approximately 560,000 Palestine refugees – constituting (p. 220) approximately three per cent of Syria's population – were registered with UNRWA. Many lived in thirteen camps (nine official and four unofficial); Yarmouk, the unofficial camp near Damascus, was the largest, hosting between 160,000–220,000 Palestinian refugees out of a total population of over one million.³⁴² The war has had a devastating impact on the country and its inhabitants, including the Palestinian refugees.³⁴³

3.4.2 History

Arrivals over time and numbers

Palestinians sought refuge in Syria in various waves, primarily in 1948, 1951–1956, and 1967, but also in 1970, 1982, and 2003. It is estimated that 75,000 refugees, mostly from northern Palestine and Jaffa, fled to Syria in 1948.³⁴⁴ Some came by boat while many arrived through Lebanon and Jordan.³⁴⁵

In 1951 and 1956, more Palestinians were expelled to Syria from the demilitarized zones (DMZ) that had been created in Northern Israel and around the Syria-Israeli border under the Syrian-Israeli General Armistice Agreement of July 1949.³⁴⁶ Morris refers to them as 'Syrians', but they do not possess Syrian nationality. The Syrian authorities have registered them as Palestinian refugees.³⁴⁷

A new Palestinian displacement into Syria took place during and in the aftermath of the 1967 war, when 16,000 Palestinian refugees fled into Syria.³⁴⁸ Smaller numbers of Palestinians fled to Syria after the expulsion of the PLO from Jordan in 1970 (precise numbers are not available),³⁴⁹ as well as after expulsions from Lebanon in the 1980s (some thousands).³⁵⁰ Other arrivals were registered following Libya's expulsion of Palestinians (p. 221) in the 1990s (just over 600)³⁵¹ and the US invasion of Iraq in 2003 (4,000–5,000).³⁵² Other Palestinian refugees from Iraq were transferred from a border camp that was later closed.³⁵³

Turning points in history

At the time of the refugees' initial arrival, the country was underpopulated and the new arrivals were seen as an asset for its development.³⁵⁴ Unlike Lebanon and Jordan at the time, Syria was not suffering from unemployment or limited natural resources and the arrival of some 75,000 refugees³⁵⁵ was not perceived as a threat to the economy or social structure of the country.³⁵⁶ This probably explains Syria's original open-border policy towards Arab citizens. In 1949, Prime Minister Husni al-Za'im expressed a willingness to resettle 300,000 Palestinian refugees in Syria as part of an overall resolution of the Arab-Israeli conflict.³⁵⁷ The resettlement proposal went no further, as within five months Za'im was overthrown in a military coup.

Palestinian life in Syria has generally been safe until the 2011 war. The war completely transformed the legal and political landscape in the country for Syrians and Palestinians alike, and many ended up seeking refuge in neighbouring countries.

3.4.3 Legal status and treatment

Palestinian refugees have generally enjoyed unrestricted residency in Syria. However, like in Jordan and Lebanon, the period of arrival determined their status and treatment. Those who arrived between 1948 and 1956 were officially identified as 'Palestine refugees' by GAPAR, a dedicated branch of the government with a mandate to regulate and administer these refugees' presence.³⁵⁸ GAPAR has been the dominant authority with respect to Syria's Palestinian community, especially in the camps, closely monitoring all activities related to the Palestinian refugees and maintaining an active cooperation with UNRWA.³⁵⁹

Apart from 3,500 Palestinians who have obtained Syrian citizenship, most probably before 1948,³⁶⁰ the vast majority remains stateless. Based on their registration status, Palestinian refugees in Syria fall into four categories:

(p. 222)

- 1) Refugees registered with both UNRWA and GAPAR;
- 2) Refugees registered with GAPAR only;
- 3) Refugees registered with UNRWA only;
- 4) Non-registered Palestinians living in Syria.

GAPAR administers matters concerning the Palestine refugee population and it is the registration with GAPAR that officially confers legal status in Syria. This in turn results into treatment on par with Syrian nationals, subject to some restrictions. Registration with UNRWA provides refugees with education, health, and social services.³⁶¹ The first two categories are discussed together, and distinctions are highlighted.

Refugees registered with UNRWA and GAPAR and refugees registered with GAPAR only All Palestinian refugees who took refuge in Syria prior to 1956³⁶² – an estimated eighty-five per cent of the Palestinians in Syria³⁶³ – fall in either the first or second category and as such they have all been registered with GAPAR.³⁶⁴ Palestinian refugees who met UNRWA's definition of Palestine refugees were also simultaneously registered with UNRWA. This is the case for the vast majority of them, even though there are some who are registered with GAPAR only and not UNRWA: these include Palestinians who were expelled by Israel from one of the Demilitarized Zones (DMZ) between Syria and Israel in 1956.³⁶⁵ They were not registered by UNRWA as no new refugees were being registered as of July 1952. They were registered by GAPAR, however, and hence fell into the second category. Members of the two tribes, al-Baqqara and al-Ghaname, who were displaced originally in 1948, subsequently able to return to their original villages in the DMZ under the terms of the Armistice Agreement between Israel and Syria,³⁶⁶ and displaced again in 1956 to Syria, were not registered with UNRWA because their final flight to Syria took place only in 1956, when UNRWA no longer accepted new registrations.³⁶⁷ After the 1991 UNRWA policy shift allowing registration of previously unregistered 1948 refugees, UNRWA eventually opened registration to the members of these tribes.³⁶⁸

Palestine refugees in these two categories – while not having citizenship and voting rights – have historically enjoyed many of the same rights as Syrian citizens. As of 1949, the (p. 223) Syrian government had adopted a series of laws that place Palestinians on virtually equal footing with Syrian nationals.³⁶⁹ The main instrument that gives Palestinians substantial legal rights and protection in Syria 'while preserving their original nationality' is Law 260 of 1956; subsequent laws and administrative regulations have further expanded these rights.³⁷⁰ Accordingly, Palestinian refugees in the first two categories can work, including access to governmental services, except that they 'can only take government jobs based on temporary work contracts'.³⁷¹ They can also own property and businesses, access the same education and universal healthcare as Syrian citizens, travel internationally, and enrol in the army. They do not have the right to buy arable land and to own more than one house,³⁷²

and, last but not least, unlike other persons from Arab countries, they cannot apply for Syrian citizenship.³⁷³

Palestinian refugees registered with GAPAR and possessing provisional residence cards in Syria are entitled to TDPRs valid for six years, which enable them to leave and return to the country without a re-entry visa.³⁷⁴ However, in practice freedom to travel outside the country has depended on political considerations – both domestic and with regard to inter-Arab relations – that have varied over time.³⁷⁵ In pre-war Syria, Palestinians who wanted to leave the country needed the same special authorization that Syrian citizens were required to obtain.

UNRWA-registered Palestine refugees receive elementary and primary level education through UNRWA schools or government schools for those not living in the vicinity of an UNRWA school. Secondary education for most Palestinians has been in Syrian government schools (as in Jordan). Syrian institutes and universities have also been open to Palestinians on an equal basis with Syrians, as were scholarships to study abroad.³⁷⁶

Syria is the only Arab country that has allowed (GAPAR-registered) Palestinians to be part of the Palestinian Liberation Army (PLA), a subsection of the Syrian Army.³⁷⁷ Since the (p. 224) mid-1960s, Palestinians have generally performed their compulsory military service in the PLA, and this continued after 2011.³⁷⁸

In pre-war Syria, political activity could only occur with state approval, even if Palestinian refugees were sometimes granted a relatively autonomous space.³⁷⁹ Palestinians were permitted to form unions affiliated with the PLO, which are represented in the PNC, but these were not very strong as Syrian unions and other Syrian organizations were open to Palestinians, providing an alternative platform for political engagement.³⁸⁰

Refugees registered with UNRWA but not GAPAR

Between 25,000 and 45,000 Palestine refugees registered with UNRWA in other countries have reportedly been living in Syria.³⁸¹ They arrived at different stages, including in 1970 from Jordan, after 1982 from Lebanon, in the 1990s from Libya and Kuwait, and from the occupied Palestinian territory. They do not enjoy the same status as those registered with GAPAR, though they may become registered with GAPAR either by presidential decree or in the case of Palestinian refugee woman marrying GAPAR-registered refugees.³⁸²

Some of them were treated as Arab nationals, with some benefits under the Ba'th regime's pan-Arab ideology.³⁸³ For instance, Legislative Decree No. 29 of 1970 defines 'aliens' as those who are neither Syrians nor Arab nationals,³⁸⁴ and the entry, exit, and residency of Arab nationals is subject to separate regulations issued by the Ministry of Interior.³⁸⁵ Some benefits at the time included visa-free entry and facilitated access to most jobs for Arab nationals (although a work permit was still required).³⁸⁶

As UNRWA-registered Palestine refugees, they are temporarily in Syria (i.e. not as permanent residents) and as such have no official residency permit issued by the Syrian authorities; however, they are allowed to reside legally in the country as long as they are 'registered with the PLO and have a PLO document accepted by the Syrian government'.³⁸⁷ To travel abroad, they need to apply for a PA passport (without number) through the Palestinian (p. 225) Embassy in Syria.³⁸⁸ Temporary residency may be lost in case of absence from the country for more than six months.

This category is eligible for the full-range of UNRWA services,³⁸⁹ while it faces various restrictions in the enjoyment of fundamental rights.³⁹⁰ They do not have access to government health services except for minor interventions, where registration with GAPAR is not checked, and they are restricted in terms of access to employment (e.g. preclusion from accessing government jobs)³⁹¹ and education.³⁹² Palestinian refugees registered with

UNRWA in other countries must pay a fee (USD 2000) to obtain a work permit; however, they may work for UNRWA even if they do not have valid documents.

Non-registered Palestinians living in Syria

Approximately 10,000–15,000 Palestinians are not registered with either UNRWA or GAPAR. The majority of them arrived in the aftermath of the 1967 War from the West Bank and Gaza Strip (first time refugees), others in 2003 from Iraq.³⁹³ Those from the Gaza Strip, who carried Egyptian TDPRs, were treated by Syrian law as foreigners, while those from the West Bank carrying Jordanian passports were considered Arab nationals.³⁹⁴ About 4,000–5,000 Palestinians fled from Iraq in the aftermath of the fall of the regime of Saddam Hussein in 2003,³⁹⁵ they were initially not allowed to stay in Syria, but the policy changed as of 2006.³⁹⁶ Others arrived in the following years triggered by the continuous instability in Iraq, and a number of those could not afford to enter Syria legally.³⁹⁷ This group endures a complex legal and security situation and does not enjoy many basic civil rights.³⁹⁸ They have to register with the Ministry of Interior and periodically renew their temporary residence permits,³⁹⁹ must apply for work permits and are restricted from working in the public sector.⁴⁰⁰ In certain cases, UNRWA has made its services available to unregistered Palestinians in Syria,⁴⁰¹ such as schooling for unregistered children.⁴⁰² Palestinians in this group, especially those from Iraq, have fewer prospects of integration, and have been heavily reliant on international support.⁴⁰³

(p. 226) 3.4.4 The effects of the Syria war on Palestinian refugees

The war that has ravaged Syria since 2011 has not spared the Palestinians in the country. From August 2011, government forces attacked several Palestinian refugee camps as opposition members were suspected to be among the refugees.⁴⁰⁴ Palestinians soon started to face threats from Syrian opposition groups as well.⁴⁰⁵ Some Palestinian armed factions and individuals have reportedly been drawn into the conflict, supporting one party or the other; the Palestinian community at large suffered ‘reprisals and abuse on account of their perceived political opinion’.⁴⁰⁶ Progressively, Palestinian camps and gatherings also became the site of hostilities, attacks, and sieges. While from 2013 onwards, Yarmouk came to epitomize the tragedy of Palestinians trapped in the Syrian conflict,⁴⁰⁷ other refugee camps and gatherings also fell under siege and/or became hard to reach,⁴⁰⁸ were completely or partially destroyed, or became inaccessible to UNRWA.⁴⁰⁹ Since 2011, thousands of Palestinian refugees have reportedly been killed, detained, or are missing.⁴¹⁰ By 2018, seventy per cent of the Palestinian refugees in the country had been forced to leave their homes and become either internally displaced in the country or forced to seek asylum abroad.⁴¹¹ In 2018, about sixty per cent of the 438,000 refugees who reportedly remained in the country had been internally displaced,⁴¹² over 13,000 in hard-to-reach places.⁴¹³ Many, such as those in Aleppo, have been displaced twice or more.⁴¹⁴ Those who remained have experienced high levels of poverty and often challenges to reach out for assistance and protection.⁴¹⁵ Almost all the remaining Palestinian refugee population in Syria (ninety-five per cent) had become wholly dependent on UNRWA.⁴¹⁶ (p. 227) UNRWA facilities have been significantly affected by the conflict, some becoming either unusable or inaccessible as a result of armed attacks.⁴¹⁷

Together with over five million Syrians, some 120,000 Palestinian refugees from Syria reportedly left the country in search of safety between 2011 and 2018.⁴¹⁸ In neighbouring countries, some were forcibly deported, or experienced arrest and detention, and various forms of mistreatment.⁴¹⁹ Generally, difficult living conditions, lack of access to basic services, and of future prospects for their children, prompted many Palestinian refugees, like other refugees from Syria, to attempt to reach Europe, including by boat,⁴²⁰ often at risk to their lives.⁴²¹ Between 2016 and 2018 alone, over ten thousand refugees and asylum seekers died on the journey.⁴²² It is unclear how many Palestinians were among them. However, as neighbouring states have restricted the entry of Palestinian refugees through

border closures or non-admission policies, they have found it progressively more difficult to leave Syria and access safety elsewhere.⁴²³

Since 2016, some Palestinian refugees who had been internally displaced have begun to return to their homes, particularly to Aleppo and Damascus, but significant returns of Palestinian refugees displaced outside Syria have yet to occur.⁴²⁴ While it may be difficult to predict the conditions for Palestinians in Syria once peace fully resumes, the legacy of the war on this community will require consideration and effort to re-establish safety and stability pending a solution to their plight.

3.5 The Gaza Strip and the West Bank, including East Jerusalem (occupied Palestinian territory)

3.5.1 Overview

Out of almost five million Palestinians living in the oPt, over two million are Palestinian refugees (n 2). They constitute one third of the total UNRWA registered population, live in the Gaza Strip (1.2 million) and the West Bank (800,000), including East Jerusalem (330,000), which comprise the occupied Palestinian territory (oPt) (Figure 4.1).(p. 228)



Figure 4.1 The oPt.

Source: OCHA, created in March 2017

In the West Bank, over a quarter of the total refugee population (220,000) live in nineteen official refugee camps, while the others live in rural areas (40,000–60,000, including nomadic Bedouin) and urban settings.⁴²⁵ Palestinian refugee camps typically suffer inadequate (p. 229) and poor sewage and water networks, chronic poverty, unemployment, over-crowding, and subject to Israeli military incursions (see (n 533) and accompanying text).⁴²⁶

There are almost 13,000 refugee residents in Shu'fat camp, the only refugee camp entirely located within the Jerusalem municipal boundaries.⁴²⁷ A similar number of refugee residents live in Qalandia camp, which is located partly in East Jerusalem and partly in the West Bank (the administrative distinction will be explained later).⁴²⁸ Refugees also live in other (East) Jerusalem neighbourhoods.⁴²⁹ In 2014, there were about 2,800 Bedouins in the hilly area to the east of Jerusalem, approximately eighty-five per cent of whom are

refugees.⁴³⁰ Additionally, several tens of thousands of refugees registered with UNRWA in the Gaza Strip reside in the West Bank.⁴³¹

In the Gaza Strip, which has one of the highest population densities in the world (5,250 persons per square kilometre),⁴³² some 1.4 million are Palestine refugees registered with UNRWA, representing eighty-two per cent of the total population of 1.9 million.⁴³³ Since 1948, refugees in Gaza have vastly outnumbered the native inhabitants.⁴³⁴

Unlike other countries where Palestinian refugees reside and UNRWA operates, in the oPt, the status of the land – occupied under international law – together with the dispute over it, greatly impacts the status and treatment of its inhabitants (refugees and non-refugees alike); hence, it is the subject of analysis below.

3.5.2 History

Arrivals over time and numbers

In 1948, the West Bank and the Gaza Strip not only received a large number of refugees (280,000 and 200,000, respectively, equating to about sixty-five per cent of all 1948 refugees), but also lost a number of their habitual inhabitants, who fled to Jordan, Lebanon, and Syria.⁴³⁵ In 1948, when Israel occupied eighty-five per cent of Jerusalem, about 40,000 Palestinians from the western part of the city were displaced to the eastern part, and smaller numbers to the rest of the West Bank and Jordan.⁴³⁶ In the following years, numbers of (p. 230) Palestinian residents of the West Bank and Gaza Strip continued to experience displacement (e.g. Bedouin from the Negev desert within Israel); others emigrated in search of better conditions.⁴³⁷

During and in the aftermath of the 1967 war, about 400,000 Palestinians fled the West Bank and Gaza Strip.⁴³⁸ Approximately half of them were UNRWA-registered refugees who had been initially displaced in 1948.⁴³⁹ Several 1948 refugee camps in the Jordan Valley were almost entirely depopulated.⁴⁴⁰ The flight of refugees did not stop when the war ended.⁴⁴¹ In East Jerusalem, immediately after the war Israeli forces demolished the entire *Magharbeh* quarter of the Old City and evicted its Arab residents.⁴⁴² All those from the West Bank fled to Jordan as did the majority of those from Gaza, after being denied entry by Egypt.⁴⁴³ About 3,000 were allowed by Israel to return to the West Bank.⁴⁴⁴ Meanwhile Israel forced about 4,000 young men from Gaza into Egypt,⁴⁴⁵ and deportation of those Israel considered militants continued in the following years.⁴⁴⁶ After 1967 Israel actively pursued the policy of encouraging Palestinians in general (both 'Israeli Arabs' and hundreds of refugees in Gaza) to leave the oPt; Palestinians were 'encouraged' to emigrate to Latin America and Germany, as well as Canada, the US, and elsewhere.⁴⁴⁷ While it is difficult to determine how many Palestinians left as a result of such policy, over time, displacement of Palestinians from the oPt has continued in connection with Israeli policies and practices enacted in the context of its administration of the oPt, particularly the revocation of residency permits.⁴⁴⁸

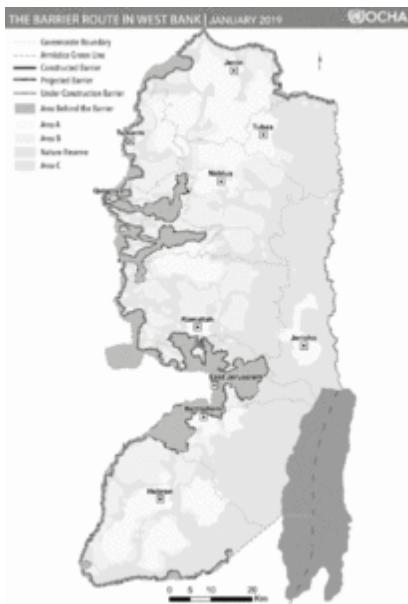
(p. 231) Turning points in history (the status of the land)

From 1948 onwards, the Gaza Strip and the West Bank, including East Jerusalem, have constituted two separate entities and administrative systems. As of 1949, West Bank was formally annexed by Jordan.⁴⁴⁹ Conversely, in the Gaza Strip – almost uninterruptedly until 1967⁴⁵⁰ – Egypt limited itself to exercising military and administrative powers without claiming sovereignty.⁴⁵¹ Egypt also allowed the All-Palestine Government (1948–1959) to form and exist in the Gaza Strip, under the auspices of the LAS, in an attempt to contain the influence of Jordan in Palestine.⁴⁵² In 1962, Egypt passed a Constitutional Order stipulating that Gaza 'was part of Palestine, and Palestinians living there constituted part of the Palestinian national entity'.⁴⁵³

In 1967, both territories were brought under Israeli control. As of then Israel has enforced the longest military rule in modern history over the lands in which the future Palestinian state is due to be established, and the people who inhabit them largely constituted of refugees. Even though constituting one legal and political entity (that of occupied territory), under the Israeli occupation the West Bank and the Gaza Strip have developed a 'separate political and social character'.⁴⁵⁴ This has been enforced, since the very early days of the occupation, through the adoption of different approaches to the Gaza Strip and the West Bank, with different military orders and administrative systems (e.g. ID cards, car plates).⁴⁵⁵

Until 1967, the law of the land at the time was a combination of Ottoman law and British Mandate law and, in the West Bank only, Jordanian law.⁴⁵⁶ Despite Israeli assurances that all laws in force on 7 June 1967 would continue to apply unless they contradicted other proclamations or orders by the Israeli army,⁴⁵⁷ critical changes were made to the law, especially in the West Bank and East Jerusalem.⁴⁵⁸ In 1967, only about a third of the West Bank and East Jerusalem land had been registered.⁴⁵⁹ Soon after occupying the West Bank, the Israeli army issued Military Order 58,⁴⁶⁰ which authorized the seizure of any property held by West Bank residents who were outside the area on 7 June 1967 or who had subsequently left ('the 1967 displaced'). Military Order 58 replicates the original Absentees' Property Law,⁴⁶¹ applying it to territory that Israel has merely occupied and over which it has no sovereignty.⁴⁶² (p. 232) However, its scope is broader: the Absentees' Property Law only applies to people who left their homes in what became Israel between 1947 and 1948, whereas Military Order 58 has no time restriction and potentially covers any Palestinian who leaves the West Bank from its promulgation onwards.⁴⁶³ Bisharat argues that such measures have given Israel 'enormous latitude' to acquire control over Palestinian refugees' private properties after declaring them 'abandoned'.⁴⁶⁴ Control over West Bank land has happened frequently, through an instrumental interpretation – and often in violation – of applicable Ottoman law and British Mandate regulations,⁴⁶⁵ as well as Jordanian law.⁴⁶⁶ Further military orders deepened the separation between Palestinians in the West Bank and their land.⁴⁶⁷

After the signing of the Oslo Accords in 1993–1995 between Israel and the PLO, the process of physical, economic, and socio-political fragmentation of the oPt has continued. While these Accords initiated a process of transferring limited authority to the nascent PA,⁴⁶⁸ and despite progress in the recognition of Palestinian statehood,⁴⁶⁹ Palestinian authorities have generally been unable to run their affairs independently, with Israel retaining significant control on sensitive matters. In fact, the Oslo Accords led to the imposition and consolidation of an Israeli-controlled permit regime governing entry to and exit from the oPt and, gradually, movement within it.⁴⁷⁰ Also, during the first decade of the MEPP, the separation of the West Bank and the Gaza Strip further consolidated; during the second *intifada* and following Israeli 'disengagement' from the Gaza Strip in 2005,⁴⁷¹ the rise of Hamas in Gaza and the internecine war with the PA in the West Bank gave a sort of 'legitimacy' to Israel's continuing (separation) policies in the oPt.⁴⁷²(p. 233)



[► View full-sized figure](#)

Figure 4.2 The Barrier Route in the West Bank.

Source: OCHA, created in January 2019

In the West Bank re-definitions and alterations of the status of the land have continued throughout more than fifty years of occupation.⁴⁷³ Under the Oslo accords, the West Bank was divided into three zones: Area A (under exclusive PA civil and security control), Area B (under PA civil control and joint Israeli-Palestinian security control), and Area C (under (p. 234) full Israeli civil and military control), which collectively correspond to sixty-one per cent of the West Bank. Consequently, throughout Israel's control over Area C, building of Israeli settlements on Palestinian land has accelerated, including through associated measures such as taking control of water and other natural resources, expropriating land and evicting Palestinian residents.⁴⁷⁴ The 'Regularization Law' passed by the Israeli Parliament (*Knesset*) in February 2017, permitting the expropriation of housing built on private Palestinian land in Area C of the West Bank, has taken the process a step further.⁴⁷⁵ The extent to which this situation complies with international law has already been discussed.⁴⁷⁶

In 'East Jerusalem'⁴⁷⁷ the situation is somewhat different: as a final status issue under the Oslo Accords, it is not regulated under that framework.⁴⁷⁸ In 1948, about forty per cent of the land located in the western part of Jerusalem was owned by Palestinians; property left behind by refugees was transferred to the administration of the Israel Land Authority, which has prohibited the transfer of properties to non-Jews.⁴⁷⁹ In 1967, Israel formally extended its law and administration to East Jerusalem and twenty-eight surrounding West Bank Palestinian villages, creating a much-enlarged Jerusalem municipality.⁴⁸⁰ Both the General Assembly and the UN Security Council (UNSC) expressed condemnation and called on Israel to rescind such measures numerous times.⁴⁸¹ Israel proceeded nonetheless with the formal annexation of East Jerusalem in 1980, when it passed the *Basic Law: Jerusalem, Capital of Israel* stipulating that 'Jerusalem, complete and united, is the capital of Israel'.⁴⁸² Once again the UNSC called those measures 'null and void and [to] be rescinded forthwith'⁴⁸³ and called on all UN Member States not to recognize the annexation.⁴⁸⁴ In 2016, the UNSC reaffirmed earlier declarations establishing the illegality of the formal Israeli annexation of East Jerusalem.⁴⁸⁵ Like in other parts of the oPt, and the West Bank in particular, (p. 235) Israeli policy towards Jerusalem has created 'facts on the ground' that have consolidated its sovereignty over the eastern part of the city, affected its

boundaries,⁴⁸⁶ physical landscape,⁴⁸⁷ institutional setting,⁴⁸⁸ and demographic balance,⁴⁸⁹ largely in favour of an ever-expanding Jewish presence.

In the Gaza Strip the situation is also different, and for distinct reasons. Here it is where Israel built its first settlements – partly a resurrection of pre-1948 Jewish settlements – in 1970. Gaza's demography, with its high concentration of refugees in a tiny strip of land, has always represented a security concern for Israel.⁴⁹⁰ This has probably contained Israel's territorial ambitions and prompted the enforcement of a strict martial law for thirty-eight years.⁴⁹¹



► [View full-sized figure](#)

Figure 4.3 The Gaza Strip – areas restricted for Palestinian access.

Source: OCHA, created in August 2016

Further, despite the 2005 unilateral Israeli disengagement from Gaza and the agreement of the same year between Israel and the Palestinians to improve freedom of movement and access between the West Bank and the Gaza Strip,⁴⁹² Israel has retained extensive control over Gaza (Figure 4.3). This control extends over Gaza's airspace and territorial sea, its unilaterally declared (and not internationally recognized) 'borders' (with the exception of Gaza's border with Egypt), the so-called Access Restricted Areas (ARAs) on the land near the Green Line (also referred to as 'exclusion zone', 'no-go zone', or 'buffer zone' of varying width Israel enforces inside Gaza along the Green Line). Israel also controls Gaza's monetary system (based on the Israeli currency), customs, and construction industry (most of which requires Israel's approval). It also maintains the Palestinian population registry in the Gaza Strip, collects Palestinian taxes, and has continued to maintain tight control over access in and out of Gaza, including over any goods entering or exiting the Strip, such as food items and medical supplies. The blockade that Israel has enforced since 2007⁴⁹³ has further institutionalized the different treatment and isolation of Gaza.⁴⁹⁴ The UN (p. 236) Secretary-General characterized the blockade as 'a continuing collective penalty against the population in Gaza'.⁴⁹⁵ Since 2007, Israel has launched three major military attacks on Gaza, in 2008–2009, 2012, and 2014, in connection with rockets fired into Israel by the armed wing of Hamas and other Palestinian armed groups.

In all, the more than five decades of Israeli occupation has further deepened the fragmentation of the land of Palestine that started in 1948, with significant political, economic, and social impact on its inhabitants.⁴⁹⁶ Such fragmentation contributes to prevent full exercise of Palestinian sovereignty and enjoyment of self-determination.⁴⁹⁷

3.5.3 Legal status and treatment

The status of Palestinians refugees, like other residents of the oPt, is far from clear and linear and depends on specific circumstances, including the status of the land, as well as military regulations.⁴⁹⁸ Historically, as the status of the Palestinian territory underwent changes, so (p. 237) did the status of the residents of the West Bank and the Gaza Strip, including those who became refugees from 1948: from British Mandate *citizens* to *stateless persons* in 1948/9 (except for those who became Jordanian citizens),⁴⁹⁹ *protected persons* under international humanitarian law (although Israel does not recognize this status), and then – for the West Bank residents only – *denationalized* anew following the severance of the Jordanian ties with the West Bank in 1988. Unlike Jordan with respect to the West Bank, the Egyptian administration never considered Gaza residents as Egyptian citizens, and continued to treat them as ‘Palestinian citizens’, as it held that the 1925 Palestinian Citizenship Order remained in effect.⁵⁰⁰

In 1967 Israel conducted a census of the newly occupied territories.⁵⁰¹ Those who were present in the Gaza Strip and the West Bank at the time of the census were included in the newly established Israeli population registry of the oPt. Inclusion in the registry implied legal residency and the right to remain in the territory. The census excluded any Palestinian who was not present in the territory at the time, thus excluding those who had fled as a result of the fighting earlier that year. Palestinians who had remained in the oPt were considered by Israel to be ‘non-citizens and foreign residents’ of the occupied territory.⁵⁰² Between 1967 and 1994, Palestinians in the Gaza Strip and West Bank held separate Israeli-issued identity documents.⁵⁰³ Those Palestinians legally resident in the oPt – according to Israeli regulations – receive identity cards: Palestinian Jerusalemites were given a blue identity card denoting their Israeli-issued Jerusalem residency, whereas Palestinians in the other cities of the West Bank are provided with a green identity card and those in Gaza with orange identity cards.⁵⁰⁴ Between 1967 and 1994, West Bank and Gaza Strip residents were considered ‘resident aliens’. They were required to obtain Israeli exit permits to travel abroad. In this period, any resident who left the oPt and overstayed his/her permit risked revocation of residency and associated status. It is estimated that Israel revoked residency of 240,000 Palestinians from the Gaza Strip and the West Bank between 1967 and 1994.⁵⁰⁵ Spouses and children of identity card holders (including those born in Gaza) were forced to apply for family reunification in order to receive residency permits if they did not themselves hold such cards. However, few such applications have been granted, resulting in many Gazan (p. 238) wives and children living in the Strip illegally.⁵⁰⁶ This situation continues even today. Owing to Israeli regulations, Palestinians from Gaza and the West Bank are prevented from acquiring permanent residency status with their families in Israel or East Jerusalem (or even in the West Bank for those from Gaza). They are often left with no choice but to live illegally, at risk of arrest and deportation, as well as loss of residency for their spouses.⁵⁰⁷

As discussed earlier, the emergence of Palestinian statehood is of great significance for the Palestinians, even though, because of the occupation, it does not carry the full benefit of state protection (and Palestinians in the oPt remain stateless for the purpose of international law).⁵⁰⁸ As a result, the identity cards and passports/travel documents issued by the PA since 1995 are administrative documents whose practical value is determined by the Israeli Civil Administration in the oPt.⁵⁰⁹

Although official categorizations do not exist, Palestinian refugees in the oPt may be considered to fall into seven different categories, generally based on the documents they hold and their registration with UNRWA, or the lack thereof.

UNRWA-registered refugees (Gaza Strip and West Bank) with Israeli-recognized status

Approximately 1,420,000 UNRWA-registered Palestine refugees in the oPt hold PA-issued identity documents and travel documents recognized by the Israeli authorities. Such documentation grants its holder (in principle) freedom of movement to enter and leave the Gaza Strip and West Bank, cross internal checkpoints in the West Bank, legal access to employment, and public services, e.g. medical care. In practice, like any Palestinians in the oPt, Palestinian refugees experience restrictions of varying degrees of severity, owing to the occupation and the associated regime.

Palestinian refugees with no Israeli-recognized status (Gaza Strip)

This group of refugees, for whom no precise figures exist, includes both UNRWA-registered refugees (in other 'fields') as well as those not registered with UNRWA. Significantly, they are not recorded in the Israeli-controlled population registry, even though they may hold PA-issued identity cards (without a national number). This group is comprised of Palestinians from different host countries, mostly in the region, who have entered the Gaza Strip either from Egypt or through Israel (Erez crossing) on visit permits that have expired. Their freedom of movement is even more severely restricted compared to the first group.

Non-registered 1948 refugees (West Bank)

Some 40,000–50,000 refugees from 1948 are not registered with UNRWA. The reasons for this lack of registration may include being too late for initial registration, not wanting to register, not being able to provide sufficient documentary evidence, or not able to prove loss of home and livelihood. These refugees receive services via the PA, provided that they have an identity card and travel document.

(p. 239) 1967 refugees (Gaza Strip and West Bank)

This category encompasses Palestinians (including 1948 refugees) who fled the Gaza Strip and West Bank in 1967, and who were not counted in the Israeli census in late 1967 and so lost their right to residency. Some 67,000 of them in the oPt hold PA identity cards.

Palestinian refugees with Israeli permanent residency (East Jerusalem)

In the 1967 Israeli census, Palestinians in Jerusalem, including Palestinian refugees, were given the status of permanent residents of Israel, and hence the West Bank closure regime does not apply to them.⁵¹⁰ They hold Jerusalem identity documents and are entitled to an Israeli *laissez passer* (travel document), but not to an Israeli passport.⁵¹¹

While they formally enjoy greater freedom than the rest of the West Bank or the Gaza Strip residents, they experience nonetheless significant limitations in their enjoyment of human rights. As permanent residents, they pay taxes, can work in Israel, receive medical insurance, and are entitled to social security. However, not only is permanent residency contingent on a set of criteria, but as Palestinians they also experience significant discrimination. Critically, Israeli permanent residency status may be revoked for Palestinians who have gained the citizenship of another state by naturalization (which does not apply to Israelis), or to those who have been granted residency status abroad, or if the Israeli Minister of Interior determines that the resident's so-called 'centre of life' is elsewhere than Jerusalem or Israel.⁵¹² Since March 2018, Israel has employed a new criterion for residency revocation being that of 'breach of allegiance' to the State of Israel.⁵¹³ As a result of the application of these criteria, between 1967 and 2018 more than 14,500 Palestinian residents of East Jerusalem have had their residency revoked.⁵¹⁴ Also, Israeli laws severely restrict both the ability of Palestinians to reside elsewhere than in Jerusalem (e.g. in the West Bank) and to enjoy family reunification; many Palestinian Jerusalemites have been denied the ability to extend permanent resident status to their spouses and children who do not have recognized residency in Jerusalem.⁵¹⁵ Probably in response to increased residency revocations, some 7,000 Palestinian Jerusalemites have

applied for citizenship between 2001 and 2010 (mostly between 2008 and 2010).⁵¹⁶ Only one-third of such applications were approved.⁵¹⁷

(p. 240) Palestinian refugees with Gaza identity documents living in the West Bank

An unconfirmed number of refugees residing in the West Bank hold PA-issued identity cards from Gaza (between 25,000–50,000).⁵¹⁸ Israel generally does not consider the Gaza-born West Bank residents as legal residents of the West Bank. Between 1967 and the mid-1990s, it was relatively easy to travel between the West Bank and Gaza, and hence there are Gazans who grew up, went to school, got married, and/or worked in the West Bank and have remained there ever since.⁵¹⁹ Due to restrictions that Israel imposed following the signing of the Oslo Accords, many Gaza ID card holders feared that if they left the West Bank, Israel may not allow them to come back, as the Gaza Strip was listed as their place of residence and Israel refused to amend their identity documents.⁵²⁰ This was further exacerbated by the coming into force of Military Order 1650 in April of 2010,⁵²¹ which expanded the definition of an infiltrator to ‘a person who is present in the Area and does not lawfully hold a permit’.⁵²² This has left tens of thousands of Palestinians from Gaza liable to be deported.⁵²³ However, following advocacy pressure, Israel changed its policy in October 2012, stating that Palestinians from Gaza who had been living in the West Bank since before September 2005 would not be deported.⁵²⁴

UNRWA-registered Palestine refugees from Syria in the Gaza Strip

About 850 UNRWA-registered Palestine refugees from Syria have reportedly entered in Gaza since 2011 (around 700 were still in the area by 2019). While they are registered with UNRWA and GAPAR in Syria, UNRWA has provided them services as any other registered refugees in Gaza, including access to health and education.

General treatment of the refugees

The above categorizations are important to appreciate the variety of statuses which Palestinians including refugees may have. However, other than the presence of UNRWA for registered Palestine refugees and others receiving its services, there is no critical difference between Palestinian refugees and non-refugees in the oPt. Historically, when the refugees first arrived in 1948, some indigenous West Bank Palestinians refused to give loans to refugees, while some were reluctant to allow intermarriages.⁵²⁵ The situation in Gaza, where the population was almost quadrupled by the arrival of the refugees, was also difficult, though middle- to upper-class refugees who had been able to keep some of their assets were less affected.⁵²⁶ However after 1967, more refugees mixed with town and village residents in high schools, through their jobs, and through membership in political organizations.⁵²⁷ Also, as (p. 241) Bisharat argues, after 1967, the land expropriation by Israel has erased the most significant distinction between refugees and non-refugees: the ownership of land.⁵²⁸

The refugees share a common culture with other Palestinian residents, even though refugees have retained many of the social structures from their villages of origin, view themselves as refugees, and are viewed as refugees by others.⁵²⁹ People continue to differentiate refugees from non-refugees and the refugee camps have often recreated pre-existing social structures. In Palestinian-controlled areas in the West Bank and the Gaza Strip, both refugee and non-refugee Palestinians are subject to, and are governed by, the same PA legal regime, including with respect to participation in elections.⁵³⁰ However, as of 2007, the Gaza Strip is de facto governed by Hamas; various attempts at fostering reconciliation between Hamas and Fatah (which constitutes the dominant force within the PA) has so far brought no significant results and the administration of the Gaza Strip and West Bank remains splintered. In all of the oPt, the PA has not assumed full responsibility

for refugee camps, which remain largely excluded from national contingency planning or planning for natural disasters.

Israeli policies do not differentiate between refugees and other Palestinians living in the oPt. However, Palestinian refugees, as a group, appear to be particularly vulnerable to some of the Israeli practices in the oPt, including because their very existence as refugee is a reminder of the unresolved past.⁵³¹ Also, since the early years of the occupation, the Israeli security forces have considered refugee camps as centres of Palestinian resistance.⁵³²

Hence, camps have been a terrain of military confrontation with and repression by the Israeli army, action heightened during but not limited to the *intifadas*.⁵³³ Also, the impact of forced displacement (including through home demolitions and land confiscation) seems to be more acute for certain refugee communities, especially in the West Bank, including East Jerusalem.

In the West Bank, including East Jerusalem, refugee communities are highly affected by house demolitions carried out by the Israeli occupation authorities.⁵³⁴ This may partly be explained by the physical (or legal) characteristics of their relocation after the 1948 displacement. Most of those who became refugees between 1948 and 1950 relocated to nearby locations, east of the Green Line, thinking they would soon be able return to their abandoned homes and/or lands. This is evident in some of the villages in the western Bethlehem area, where one-third of the population is made up of refugees.⁵³⁵ Since 1967, these areas (p. 242) have been subject to Israeli settlement expansion (i.e. the so-called Gush Etzion Bloc) and were subsequently cut off by the barrier and subjected to further limitations on access. As a result, the Palestinians' freedom of movement has been severely restricted, and their access to schools, health care, livelihood, and employment severely compromised.⁵³⁶ Without livelihoods and means of subsistence, the population living in these areas has become food insecure and highly dependent on aid.⁵³⁷ They are also constantly exposed to violence and harassment from both settlers and the Israeli military.⁵³⁸

Furthermore, refugees often live on land that is not privately owned,⁵³⁹ and that Israel considers as public land.⁵⁴⁰ This is the situation of about 2,800 individuals from herding and pastoral communities living in the area east of Jerusalem known as the 'E1 area' or 'East Jerusalem Periphery',⁵⁴¹ who by 2019 remain under imminent threat of forced displacement. A large part (eighty per cent) of this group are Palestinian Bedouin who were displaced from the Naqab (today's Negev) between 1948 and 1950.⁵⁴² While some of the Bedouin in the area have a *koshan* (ownership papers/land deeds) issued to them by the Jordanian government, most of their claims to land use are based on custom and other informal arrangements, which Israel refuses to recognize.⁵⁴³ There was no transfer of title to property.⁵⁴⁴ Many of these refugees have been evicted numerous times, starting in the 1980s,⁵⁴⁵ and they remain under threat of forcible displacement at the time of writing.

Also, at times Israel does not recognize the title and deeds owned by the refugees. This is the case of another group affected by forced displacement, which includes some of the Palestinians displaced in 1948 from West Jerusalem to the eastern part of the city. During the early 1950s, twenty-eight Palestinian refugee families were granted funds through (p. 243) UNRWA to build homes on land in the Sheikh Jarrah neighbourhood in East Jerusalem provided by the Jordanian Government, on the condition that they relinquished their right to food assistance.⁵⁴⁶ According to the agreement, the families were to pay a nominal rent for three years, after which ownership of the land and the properties would be transferred to them.⁵⁴⁷ Since 2008, these refugee and their descendants have constituted the majority of some 300 Palestinian residents of East Jerusalem who have been facing formal eviction proceedings because they could not exhibit title to the land that Israel recognized.

While Palestinian residents of East Jerusalem – including refugees – suffer from the same issues as residents of the rest of the West Bank, they often experience more severe overcrowding. The Shu'fat refugee camp is dangerously overcrowded as non-refugee Palestinians with Jerusalem identity cards, who are not able to afford the high living costs of Jerusalem, moved into the camp.⁵⁴⁸ The fact that the camp is on the West Bank side of the barrier not only cuts residents off from East Jerusalem but also makes them vulnerable to having their residency status revoked.⁵⁴⁹ As of writing, the Municipality of Jerusalem has announced its intention to extend municipal services to the camp, taking over from UNRWA.⁵⁵⁰

In the Gaza Strip most refugees have Palestinian IDs and are eligible for passports/travel documents for travel outside Gaza, recognized by the Israeli Population Registry. As discussed earlier, unlike other oPt residents, Gaza registered refugees are frequently denied entry to other Arab countries.⁵⁵¹ Thirty-eight years of direct military rule, a crippling blockade currently in its twelfth year, three major military attacks by the Israeli army (2008–2009, 2012, and 2014), compounded by internecine conflict between the authorities in Gaza and Ramallah and their so far insurmountable mistrust, have resulted in massive destruction of physical infrastructure, loss of life, loss of livelihood and economic opportunities, and serious deterioration of the social fabric in the Gaza Strip.⁵⁵² At least thirty per cent of Palestinian refugees in Gaza are in need of psychosocial intervention.⁵⁵³ Levels of human deprivation and material devastation as a result of Israel's actions have been extremely high.⁵⁵⁴

Over time, the Israeli military occupation and its associated practices have come under considerable scrutiny. In his report to the Human Rights Council of 2007, John Dugard (the then-Special Rapporteur on the situation of human rights in the Palestinian Territory occupied since 1967) denounced the Israeli system in the oPt as 'apartheid'.⁵⁵⁵ In 2018, in his report to the Human Rights Council, Michael Lynk (current Special Rapporteur) inferred (p. 244) that Israel's occupation in the oPt has 'crossed the "red line" of legality' and should therefore be brought to an end.

It is unclear how the recent attempts at bringing peace between Israel and the Palestinians (Kushner's initiative) aims to resolve the territorial and political component of the conflict, as well as the fate of the refugees.

4. Arab 'Hosts' Outside the UNRWA Area of Operations

Two other countries received Palestinian refugees in the wake of the 1948 Arab-Israel war, although in smaller numbers: Egypt and Iraq.⁵⁵⁶ While neither form part of UNRWA's area of operations,⁵⁵⁷ Palestinians have an important and tragic history in both countries. Both Egypt and Iraq have their own domestic legislation concerning Palestinian refugees, whose status has varied throughout the years, particularly in response to political changes in the region. Instability following the 2003 US invasion of Iraq and the post-2011 Syrian crisis has caused significant secondary displacement from and to these countries.

4.1 Egypt

4.1.1 Overview

Egypt received over ten thousand Palestinian refugees in 1948. For Palestinians, the reign of Gamal Abdel Nasser (1956–1970) represented the 'golden years' of their stay in the country. From the late 1970s onwards, Egypt has been less welcoming for Palestinians. This is in spite of the prominent role played by Egypt in the Question of Palestine and wider Arab-Israeli conflict, including vocally advocating for the refugees' rights within the UN, and in spite of Egypt being party to the international and regional refugee frameworks,⁵⁵⁸ including, without reservation, the 1965 Casablanca Protocol. Egypt considers Palestinians as refugees according to UN resolutions, but does not recognize them as refugees under the 1951 Convention, nor does it recognize UNHCR's mandate over them, thus preventing

UNHCR from registering and assisting them.⁵⁵⁹ It has also taken a restrictive approach to their protection, including those fleeing conflict in the Gaza Strip and Syria. This negatively affects the approximately 70,000 Palestinian refugees in the country,⁵⁶⁰ the vast majority of whom reportedly live under the poverty line.⁵⁶¹

(p. 245) 4.1.2 History

Arrivals over time and numbers

The majority of Palestinian refugees in Egypt descend from the 7,000–13,000 and 5,000–10,000 refugees who arrived in Egypt in 1948⁵⁶² and 1967,⁵⁶³ respectively. Included in their numbers are: members of armed forces in Gaza and their families, who retreated with the Egyptian army at the time of the *Nakba*,⁵⁶⁴ Palestinians who went to Egypt for education or for work, and were not allowed to go back after the 1967 war; others who were deported to Egypt by Israel,⁵⁶⁵ and some 7,000 refugees who became stranded in Egypt after the re-establishment of the international border between Egypt and the Gaza Strip in 1967. The latter included 4,500 refugees who had been in the Canada Camp (partly located in, and named after, barracks of Canadian peacekeeping forces that formed part of the United Nations Emergency Force – UNEF I),⁵⁶⁶ until it was closed in 1998 after its inhabitants were relocated to Gaza, as well as 2,000 Bedouins originally from the Negev who had found refuge in the Gaza Strip since 1948.⁵⁶⁷ In addition, 6,000 Palestinians from Syria arrived in Egypt between 2011 and 2014, 2,500 of whom were still in the country in 2017. An exact figure of Palestinians in Egypt is hard to ascertain given the lack of an official count and the varied status, changes, births, deaths, arrivals, and departures.⁵⁶⁸

4.1.3 Legal status and treatment

Unlike other 1948 refugees, at the behest of the Egyptian government Palestinian refugees in Egypt were not placed under UNRWA's mandate and were assisted by Egypt directly.⁵⁶⁹ Living conditions were initially difficult for these refugees, but improved significantly under President Gamal Abdel Nasser, who assured favourable treatment of Palestinians as part (p. 246) of Egyptian support for their national struggle. From 1952 to the late 1970s, Palestinians in Egypt enjoyed a treatment akin to Egyptian nationals in most domains and were allowed to work in government and public-sector jobs.⁵⁷⁰ In accordance with the Casablanca Protocol, they were given TDPRs allowing them to leave and enter Egypt. For this reason, many Gazans moved to Egypt in the early 1960s to seek employment, while others used the Egyptian travel documents to move to and work in the Gulf.⁵⁷¹

In 1978, the assassination of the Egyptian Minister of Culture by a Palestinian faction in Egypt, signalled the end of the Palestinians' 'golden years' in Egypt. Since then, policy shifts were accompanied by new legislation which compromised the Casablanca Protocol's implementation. During Anwar Sadat's reign as President of Egypt (1970–1981) the privileges that Palestinians had enjoyed were gradually abolished and Palestinians started to be treated as other foreigners. Palestinians were required to justify their residency in Egypt, and no longer had the same employment rights as Egyptian nationals.⁵⁷² Access to the Egyptian job market became conditional upon an official permission,⁵⁷³ which has been difficult to obtain,⁵⁷⁴ with priority given to nationals.⁵⁷⁵ Palestinians also faced restrictions in accessing public healthcare, schools, and higher education.⁵⁷⁶ In 1988, concessions were introduced for foreigners, including Palestinians, who were married to Egyptian nationals.⁵⁷⁷ In 1992, the restrictions on Palestinian refugee children accessing Egyptian public schools was partially lifted.⁵⁷⁸ Nonetheless, considering that the vast majority of Palestinian refugees in Egypt live below the poverty line, the obstacles to healthcare and education further exacerbate their socio-economic conditions.⁵⁷⁹

At present, Palestinian refugees in Egypt are considered as foreigners, and are therefore subject to laws applicable to aliens generally.⁵⁸⁰ As such, they need a residency permit. Several residency permit categories exist – of different validity – and which one a Palestinian can obtain depends on when they arrived in Egypt.⁵⁸¹ Palestinians who arrived in 1948 are eligible for a renewable five-year permit (with validity extended to ten years upon evidence of ten years of continuous residency in Egypt); residency permits with a validity of three (p. 247) years are issued to those who arrived in 1956,⁵⁸² 1967, and beyond.⁵⁸³ Residency requires a reason to remain in Egypt, such as work or study, and an Egyptian person or institution (school, employer) acting as a guarantor.⁵⁸⁴ Residency permits come with onerous annual fees, which make renewal difficult for the many Palestinians living in poverty.⁵⁸⁵ Penalties for late or non-payment range from fines to deportation.

The Egyptian TDPR system for Palestinians has also evolved since Abdel Nasser's era. Originally, refugees who took refuge in the Gaza Strip or in Egypt, as well as non-refugee Palestinians from the Gaza Strip, were eligible for the TDPR valid for five years.⁵⁸⁶ In more recent years, only Palestinians legally residing in Egypt are eligible for TDPRs, subject to strict rules on maintaining their validity, which may be lost if the holders leave Egypt temporarily and fail to report their absence or fail to renew the TDPR in a timely manner.⁵⁸⁷ This has posed problems for holders of Egyptian TDPRs who left Gaza or Egypt to work in the Arabian Peninsula or elsewhere without returning for a significant period of time. Holding a TDPR does not confer on the holder a right to re-enter the issuing country; thus, Egypt does not consider itself responsible to readmit or admit the holder.⁵⁸⁸ The Gulf crisis in 1990–1991 highlighted the precariousness of the position of Palestinians with Egyptian TDPRs in the Arabian peninsula (particularly Kuwait) and Libya.⁵⁸⁹ In particular, those who had left Gaza before 1967 and who were not included in the Israel census of 1967 faced considerable challenges. Those who had an Israeli entry permit were issued with seventy-two-hour transit visas and escorted from Cairo airport or the border with Libya to the Rafah border crossing with Gaza,⁵⁹⁰ so as to prevent Palestinians from 'illegally' staying in Egypt. Egyptian TDPR holders without an Israeli permit to return to the Gaza Strip, were generally denied both entry and transit visa and subjected to detention if they attempted to enter without a visa. At the same time, it became more difficult for Palestinians already residing in Egypt to renew their residence permits.⁵⁹¹

Discrimination against Palestinians has been apparent in various spheres of life.⁵⁹² Since 2013, discrimination against Palestinians in Egypt has reached a new level owing to the rise in numbers of Palestinian arrivals from Syria.⁵⁹³ At the outset of the conflict in Syria and (p. 248) during El Mursi's presidency (June 2012–July 2013), Syrians and Palestinians from Syria were warmly received in Egypt, and were allowed to enter without a visa. However, since the summer of 2013, social and political upheaval resulted in negative sentiments towards these populations,⁵⁹⁴ and following the ousting of El Mursi, the military imposed restrictions, including the requirement for visa and security clearance.⁵⁹⁵ Those with invalid or expired TDPRs were unable to renew residency permits in Egypt (in practice, even those with valid travel documents faced difficulties in renewing them). Unlike other refugees from Syria – for whom the situation in Egypt has gradually normalized – Palestinians from Syria have experienced restrictions in accessing public services and the formal labour market. Prohibitive restrictions have applied, including on residency and the renewal of Syrian TDPRs. One way for Palestinians from Syria to obtain residency was through registration of their children in private schools. However, in 2017, schools started demanding a residency visa before they would register children, creating an impasse.⁵⁹⁶ High renewal fees and penalties in case of late renewal, as well as restrictions to certain categories, were introduced in connection with renewal of Syrian travel document (e.g. non-renewal of travel documents for young male Syrians who have not completed their

mandatory military service in Syria). Egyptian authorities have detained thousands of refugees from Syria, including Palestinians, for violating the applicable law.⁵⁹⁷

As Egypt does not recognize UNHRC's mandate over Palestinians, it has prevented UNHCR from assisting Palestinian refugees there, including those from Syria.⁵⁹⁸ In such a precarious state, Palestinian refugees from Syria have been at great risk of detention and deportation.⁵⁹⁹ Between 2015 and 2019, UNHCR and UNRWA cooperated in delivering assistance to this vulnerable group.⁶⁰⁰ The difficulties faced by Palestinian refugees from Syria have also renewed attention to the plight of Palestinians who have resided in Egypt for decades, whose protection situation remains in limbo. Many of them not holding valid Egyptian TDPRs live in insecurity, at risk of detention, deportation or expulsion. Many are unable to meet the conditions for residency in Egypt as they are neither married to an Egyptian nor have children enrolled in school, nor have the necessary financial means.⁶⁰¹ This situation is difficult to comprehend, especially given that Egypt ratified the 1951 Refugee Convention.

As of 2019, the situation of Palestinians in Egypt, including those from Syria, is compounded by the sensitivity of the subject, politicization of the situation, and the limited access to verifiable public information available on their comprehensive protection space. (p. 249) Operational limitations of organizations such as UNRWA and UNHCR impact this population further.

4.2 Iraq

4.2.1 Overview

As in Syria, Palestinian refugees in Iraq had long enjoyed stability, particularly during Saddam Hussein's reign (1979–2003). The history of the legal status of Palestinians in Iraq shows a shift from enjoyment of rights almost on par with nationals to unfavourable conditions leading to discrimination and poverty. The dramatic drop in numbers of Palestinians in Iraq reflects this shift.

4.2.2 History

Arrivals over time and numbers

Palestinian refugees came to Iraq in three distinct periods:⁶⁰² after the 1948 Arab-Israeli War, when an estimated 3,000–5,000 Palestinians followed the retreating Iraqi army;⁶⁰³ after the 1967 Six Day War, when unconfirmed numbers of Palestinian refugees came to Iraq from the Gaza Strip and the West Bank via Jordan; and following the 1991 Gulf war, when hundreds of thousands of Palestinians were forced to leave Kuwait and other countries in the Arabian Peninsula, resulting in an unconfirmed number seeking refuge in Iraq. Figures of Palestinian presence in Iraq have been fluctuating, with a population of over 62,000 in 1996. About 35,000 were reportedly in the country until 2002; their numbers then declined to around 23,000 in 2005,⁶⁰⁴ and fewer than 7,000 by 2017.

Turning points in history

Since their early days in Iraq, because of their Sunni identity and identification with a revolutionary cause, Palestinians were (perceived as) close to the Ba'th party, which opened up access to visible political positions and gave them extensive privileges.⁶⁰⁵ This privileged position ended with the fall of Saddam Hussein in 2003, and triggered acts of revenge as had occurred in Kuwait and other Arab countries in the aftermath of the First Gulf War in 1991.⁶⁰⁶

In the 1950s and 1960s, UNRWA had an office in Baghdad which served as a placement centre and as a point of contact with technical assistance experts working on Iraq's economic (p. 250) development schemes.⁶⁰⁷ According to a report by the Palestinian Diaspora and Refugee Centre (SHAM),⁶⁰⁸ Iraq was foreseen as one of UNRWA's 'fields' of operations; however, the Iraqi government opposed this, stating that it would provide relief

to the Palestinian refugees themselves.⁶⁰⁹ In 2004, in response to growing demands that UNRWA intervene on behalf of the tens of thousands Palestinian refugees in Iraq caught up in the hostilities, proposals were made for the agency's mandate in Iraq to be revived through an agreement with the governing authorities.⁶¹⁰ This was opposed by the Iraqi government and the idea was not pursued.

4.3.3 Legal status and treatment

Like many countries in the region, Palestinians in Iraq were afforded different status and treatment depending on their time of arrival in the country.⁶¹¹ Those who arrived in 1948 were initially placed under the responsibility of the Ministry of Defence (1948–1950) until the Department of Palestinian Refugee Affairs was created within the Ministry of Labour and Social Affairs. Although the Palestinians were never formally recognized as refugees by the government, they received favourable treatment in line with key resolutions of the LAS and the Casablanca Protocol.⁶¹²

During the first years, the situation for Palestinian refugees in the country was dire.⁶¹³ The first shelters where Palestinians were placed, including schools, hotels, and other institutions,⁶¹⁴ were considered worse than tents, and were generally unsuitable and overcrowded.⁶¹⁵ The situation improved over the years. From 1970 onwards, the Iraqi government provided new subsidized housing to the refugees,⁶¹⁶ and Palestinians were accommodated in al-Baladiyat, a residential area in Baghdad, as well as in Basra and Mosul.⁶¹⁷ After initially being denied legal residency because they did not have IDs,⁶¹⁸ from 1950 onwards the Iraqi government provided special refugee identity documents for Palestinian refugees that differentiated them from other foreigners as well as, in practice, from Palestinians who arrived after 1958.⁶¹⁹ These documents afforded them almost equal treatment with nationals, but not enjoyment of political rights, nor acquisition of citizenship.⁶²⁰

From 1961 onwards, Palestinian refugees were eligible for the special LAS TDPR. As Iraq has been party to the 1965 Casablanca Protocol without making reservations to any of its (p. 251) provisions, under the Ba'th regime, Palestinians in Iraq enjoyed many of the benefits set out in the Protocol, including the same right to employment as citizens. Palestinians had full access to health, education, and other government services.⁶²¹ However, as a group, their legal status remained somewhat ambiguous. For example, having in 1964 been expressly granted the same treatment as Iraqi citizens with respect to salaries, annual bonuses, vacation, and living allowances,⁶²² by 1969 Palestinians were being treated less favourably with respect to appointments, promotions, and retirement.⁶²³

The Iraqi government had a different attitude towards Palestinians who arrived after the 1967 War. It did not permit them to remain, by invoking LAS resolution 2455, which discouraged Palestinians from leaving their occupied land.⁶²⁴ Thus many stayed in Iraq illegally, unable to register with Iraqi authorities as the previous wave of refugees had;⁶²⁵ this is why there are no official numbers for this group. However, in 1972 visa and residence restrictions for Palestinians without valid travel documents were lifted.⁶²⁶ Between 1980 and 1989 – during the Iran-Iraq War – Palestinians in Iraq were granted the privilege to own property (i.e. one building/apartment and piece of land per individual).⁶²⁷ Compared to those who arrived after the 1967 War, the situation was significantly better for the Palestinians who were forced to leave Kuwait after the First Gulf War, though it appears none of this group remained in the country for long; by 2014 all had gone.⁶²⁸

The international sanctions on Iraq after the 1991 Gulf War caused hardship for the population at large, including the Palestinians.⁶²⁹ Palestinians occasionally experienced restrictions, for example, in renting commercial spaces, travelling abroad, owning private vehicles,⁶³⁰ generally seen as a manifestation of Saddam Hussein's attitude to treat this group with a 'carrot and stick'.⁶³¹ However, overall Palestinians remained close to the Ba'th regime and in September 2001, the now-dissolved Revolutionary Command Council (RCC)

passed Decree no. 202 which stipulated that Palestinians residing in Iraq would be treated as Iraqis in all respects, except with respect to the right to citizenship.⁶³²

With the fall of the Ba'th regime in April 2003, the situation for the Palestinians in Iraq changed dramatically.⁶³³ They became the target of hostility and harassment by segments of the Iraqi population, particularly armed militias, on account of their perceived association with, and preferential treatment enjoyed under, the former regime, as well as their perceived support for Sunni militant groups. Hundreds of Palestinian families were subjected to indiscriminate as well as targeted attacks.⁶³⁴ In this period, many fled Iraq fearing (p. 252) for their lives, mostly to Jordan, where they were assisted by UNHCR.⁶³⁵ In 2004, UNRWA studied their status and concluded that, because the majority came to Iraq in 1948 and 1967, they were *prima facie* eligible for registration with the agency.⁶³⁶

Between 2005 and 2007 a new round of violence against Palestinian refugees erupted and numerous cases of harassment, abuse, discrimination, and human rights violations were reported.⁶³⁷ As a result of this violence, thousands of Palestinians fled Iraq.⁶³⁸ About 1,000 were stranded in 'no man's land'⁶³⁹ in the desert border area between Iraq and Jordan, and in Ruweished camp inside Jordan.

In 2006, the Iraqi parliament passed a new law dealing with Palestinians, stipulating that, 'Iraqi nationality shall not be granted to Palestinians as a guarantee to their right to return to their homeland.'⁶⁴⁰ Palestinians faced obstacles to securing the level of treatment they had enjoyed for many years. In 2008, the Permanent Committee for Refugee Affairs (PCRA) of the Iraqi Ministry of Interior began to register Palestinians residents in Iraq; some 10,500 individuals were registered. When the registration was completed in 2009, the Ministry of Interior issued all registered Palestinians with new ID cards.⁶⁴¹ Differences among the different categories of Palestinians became more apparent; Palestinians who came to Iraq in 1948 were given red ID cards, while those who came in 1967 and thereafter were given yellow ID cards.⁶⁴² Another difference between the Palestinians who arrived in/post-1948 and 1967 is in issuance of travel documents. The former are entitled to Iraqi TDPRs,⁶⁴³ while the latter have to obtain PA passports from the Palestinian Embassy.⁶⁴⁴ After the identity cards were issued in 2009, Palestinians were given access 'to public schools and health facilities, the public food distribution system (PDS) and were able to rent property.'⁶⁴⁵ Despite legal guarantees of equal access to public and private sector employment, Palestinians continued to face job insecurity,⁶⁴⁶ as well as harassment and physical insecurity.⁶⁴⁷

(p. 253) The situation of Palestinians in Iraq deteriorated again with the escalation of violence in the country since 2014 as a result of the advance of Islamic State (commonly referred to as 'ISIS') and the rise of pro-government armed groups fighting it. Hundreds of Palestinians in areas that fell under control of ISIS experienced widespread human rights abuses, as did the Iraqi population at large.⁶⁴⁸ Outside ISIS-controlled areas, Palestinians were also attacked because of their nationality and perceived affiliation with ISIS and other Sunni armed groups.⁶⁴⁹ Access to fair judicial proceedings and state protection was reportedly challenging, given the real or perceived negative attitude of the police towards Palestinians.⁶⁵⁰

Despite improvements in the overall security situation following the military defeat of ISIS, targeted attacks against Palestinians continue to be reported, mainly in Baghdad.⁶⁵¹ Recorded attacks include harassment, threats, arbitrary arrest, and prolonged detention, torture, abduction, extortion, and killing at the hands of both state and non-state actors.⁶⁵² While some of these detainees have been charged under Article 4(1) of the Anti-Terrorism Law, others reportedly remain in detention without charges. Reports describe the routine

use of torture and ill-treatment of persons held for terrorism-related offences during pre-trial detention.⁶⁵³

As a result of the deteriorated security situation and increasing attacks against Palestinians, many of them have continued to flee Iraq.

5. Arabian Peninsula

5.1 Overview

Precise data on the number of Palestinians in the Arabian Peninsula⁶⁵⁴ is not available, with an unofficial count putting the numbers at around 900,000.⁶⁵⁵ Of these, 300,000 to 400,000 (p. 254) are estimated to be living in Saudi Arabia,⁶⁵⁶ 300,000 in the UAE,⁶⁵⁷ 50,000 in Qatar, 40,000 to 50,000 in Bahrain, 50,000 to 80,000 in Kuwait,⁶⁵⁸ and approximately 25,000 in Oman.⁶⁵⁹ Under a thousand are reportedly in Yemen. The lack of reliable numbers for Palestinians in the area and wide discrepancies among the available estimates highlight the need for further research and systematic data collection. While historically a thriving community with members occupying high positions in government ministries, and being able to organize politically for the Palestinian liberation movement, Palestinian long-term presence and relative wealth in the Arabian Peninsula has not been translated into the right to permanent residency or stable protection. Over time, security and political considerations have impacted Palestinians' status and treatment in the region.

Given the interconnectedness of the history of Palestinians in various countries in the region, as well as the similarity of treatment of the refugees (largely as foreigners/immigrants) in these countries - with the exception of Yemen - this section offers a regional analysis and differentiates information and trends across countries as needed. This section refers to 'Gulf countries' when discussion does not concern Yemen.

5.2 History

Because of their 'liberation struggle', Palestinians have historically enjoyed support in the region among rulers and the population at large.⁶⁶⁰ For example, the first fund-raising campaign to support the Palestinian 'revolution' of 1936 was initiated in Kuwait.⁶⁶¹ In the UAE, donations were collected for the Palestinians forced to flee in 1948.⁶⁶² Fatah, one of the major Palestinian political parties, was founded in Kuwait, where five per cent of Palestinian employee salaries was deducted as tax payable to the Palestine National Fund (referred to as 'liberation tax').⁶⁶³ Governments in the region have also historically supported the PLO, both financially and in the diplomatic arena; Saudi Arabia and the UAE were the first Gulf states to recognize it. The events that occurred in Kuwait in the early 1990s, and their tragic impact on the Palestinians, among others, reverberated throughout the peninsula and beyond.

As the Gulf countries began to develop the oil industry in the 1950s, it received flows of migrants in pursuit of economic opportunity. Increasing numbers of Palestinians who had (p. 255) been displaced in 1948 migrated - primarily from Jordan - to the region.⁶⁶⁴ The largest concentration was in Kuwait, where numbers of Palestinian residents rose from a few thousands in the 1950s to over 350,000 in the mid-1980s; this was more than the total number of Palestinians in the remainder of the region.⁶⁶⁵ This number continued to grow and, by 1990, between 350,000 and 400,000 Palestinians resided in Kuwait.⁶⁶⁶

In general, the conditions experienced by the Palestinians and attitudes towards them in the region evolved over time. The early arrivals were largely seeking employment and were generally well received. Rulers in the region valued the contribution of the skills of the Palestinian 'immigrants' in building their economies and institutions. Palestinians worked as teachers, civil servants, engineers, as well as agricultural and unskilled workers.⁶⁶⁷ To

facilitate the entry of foreign workers, countries such as Kuwait signed agreements with other Arab states waiving visa requirements.⁶⁶⁸

As of the 1970s, while the region's booming oil economy and stability continued to be a pull factor, the effect of the 1967 war, as well as the civil wars and instability in both Jordan (1970–1971) and Lebanon (beginning in 1975), prompted new arrivals of Palestinians to the Gulf countries. These new arrivals had grown up in camps, where militancy associated with the Palestinian 'liberation' movement had already had a significant impact both on them and on some of their host countries.⁶⁶⁹ As such, they were perceived as carrying a more evident political orientation than the first arrivals of Palestinians (mostly 1948 refugees).⁶⁷⁰ As a result a 'security approach' to Palestinians became more evident.⁶⁷¹ The PLO's political agenda as a 'liberation movement' touched on issues that were considered sensitive in the Arab world.⁶⁷² The PLO had overtly criticized 'the reactionary Arab regimes' and their affiliation with the West in the oil economy.⁶⁷³ This led to a progressively tighter control over the presence and activities of Palestinians.⁶⁷⁴ By the late 1970s, countries in the region started to discretely limit the Palestinian presence, including by denying renewal of work permits as well as visas for family members.⁶⁷⁵ Nonetheless, the more than (p. 256) half a million Palestinians living in the region by the mid-1980s were generally well integrated, some holding important positions in the education, health, and engineering sectors, including the security sector (e.g. Kuwait), often in ministries or other government departments, securing 'wealth and influence' and significantly helping economic and social development in Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the UAE.⁶⁷⁶ Apart from some occasional resentment among the native population, they had posed no 'direct' security threat to the host governments.⁶⁷⁷

The historical turning point was represented by the Iraqi invasion of Kuwait in 1990 and the First Gulf War in 1991, which fundamentally altered the situation of Palestinians in the region.⁶⁷⁸ At the outset of the crisis, PLO Chairman Yasser Arafat failed to support an LAS resolution that condemned the invasion and that called for Iraq to withdraw its troops and for foreign intervention in Kuwait.⁶⁷⁹ The Kuwaiti government, as well as other governments in the region, perceived this as a 'betrayal', and that 'their Palestinians' had become a 'fifth column'.⁶⁸⁰ During the first months of the Iraqi invasion, the vast majority of foreign workers, including large numbers of Palestinians (approximately 180,000–200,000), left Kuwait, together with a large number of Kuwaitis.⁶⁸¹ Almost overnight, the decades-long positive relationship between the Palestinian community and the Kuwaiti government degenerated into head-on confrontation. Rumours quickly spread that Palestinians had assisted the Iraqis in their assault on the native Kuwaiti population.⁶⁸²

After the liberation of Kuwait, Palestinians were treated as traitors and accused of active collaboration, of not actively opposing the Iraqi invasion, and not boycotting work during the Iraqi occupation.⁶⁸³ Immediately after the war, the Kuwaiti government declared Palestinians 'undesirable' aliens.⁶⁸⁴ About 30,000 Palestinians who were on holiday or otherwise abroad at the beginning of the war were prevented from returning; those who had remained were 'invited' to leave amidst violence against them and other foreigners⁶⁸⁵ (p. 257) and their property.⁶⁸⁶ The Kuwaiti government decided to terminate all foreign employees retroactively from 2 August 1990.⁶⁸⁷ The Ministry of Interior began to issue exit visas to Palestinians in August of 1991, but these could only be obtained once all debts were settled.⁶⁸⁸ By the end of 1991, 70,000 Palestinians remained, and this fell to 35,000 in subsequent months.⁶⁸⁹ As the vast majority of the Palestinians in Kuwait held Jordanian passports, many returned to Jordan.⁶⁹⁰ About 5,000 holders of Egyptian TDPRs who had arrived from the Gaza Strip before 1967, and lost their residency there, faced serious challenges.⁶⁹¹ Unable to return to the Gaza Strip or to enter Egypt, those who had not managed to renew their residence permits had no other options but to stay in the country illegally, or to leave for Iraq.⁶⁹² The pressure on this group mounted after the summer of 1992, when residence permits could no longer be renewed.⁶⁹³ After international pressure,

3,000 of them were given temporary residence permits, but the remaining 2,000 were left in a legal limbo.⁶⁹⁴ Also, many families had been separated and for a number of years were prevented from reuniting in Kuwait.⁶⁹⁵ Reunification was particularly problematic where various members of the same nuclear family held different nationalities and/or travel documents.⁶⁹⁶

Beyond Kuwait, Saudi Arabia also deported nearly 60,000 Palestinians (most of whom held either Iraqi or Jordanian TDPRs) because of their affiliation to the PLO or simply because they were Palestinians, while the UAE cancelled work visas for 500 Palestinians and stopped issuing new ones.⁶⁹⁷ For Palestinians who continued to live and work in the (p. 258) area – as well as for new arrivals either as prospective migrants or as refugees – the environment remained much less favourable than it had been before August 1990.

In all, the real or perceived support of the PLO for Iraq following the Iraqi invasion of Kuwait and during the First Gulf War produced tragic results on many levels. Hundreds of thousands of Palestinians who had worked as teachers, engineers, doctors, bankers, and entrepreneurs all over the region were prompted into new displacement and as such had their lives and families disrupted. Almost overnight, in Haddad's words, 'assets, property, jobs, and incomes were lost ... as were school years, medical records, birth certificates and personal possessions, as well as the all-important remittance payments to Palestinian family members in Palestine and the bordering host states.'⁶⁹⁸ Also, by alienating Kuwait and other countries in the region, the PLO had not only lost an essential lifeline of financial support, but also it contributed to eroding the political and popular sympathy that the Palestinian cause for justice had naturally enjoyed among Arabs, which had only grown stronger during the first *intifada*.⁶⁹⁹ While over time the relationship between the PLO/PA/GOP and governments in the area (Kuwait first and foremost)⁷⁰⁰ has recovered, the strains caused by the war have never fully eased.

5.3 Legal status and treatment

Because most Palestinians (mostly refugees from either 1948 or 1967) moved to the region as migrant workers rather than as refugees seeking protection, questions relating to their refugee status have not received particular consideration in the region until recently.⁷⁰¹ Furthermore, apart from Yemen, none of the countries in the Arabian Peninsula have ratified the 1951 Convention or the 1967 Protocol. While they are signatories to the 1965 Casablanca Protocol, and have historically followed its provisions, as of the 1990s the LAS protection system for Palestinian refugees has had little impact on the treatment of Palestinians in the region.

In practice, Palestinians in the Arabian Peninsula are subject to local immigration rules, as other foreigners. As such, they are required to obtain residency permits through a sponsor, who must be a national of the country concerned. Only a small number of Palestinians were able to naturalize, mainly in the late 1940s and early 1950s. Already restrictive nationality legislation was further tightened for Palestinians in compliance with LAS resolution 1547 (9 March 1959), which urged Arab states not to grant Palestinians citizenship so as to preserve their right to return.⁷⁰² For example, in 2004, the Saudi government amended the nationality law to permit those who had ten years of continuous residency to apply for citizenship, but this excluded Palestinians.⁷⁰³ There are exceptions: cases of Palestinians acquiring (p. 259) citizenship have been documented in Yemen (mainly Palestinian women marrying Yemeni nationals) and pre-1990 Kuwait⁷⁰⁴ (some 2,000 Palestinians were granted citizenship, under the country's nationality law, for services to the state).⁷⁰⁵ However, on occasions, even acquisition of citizenship did not provide full equality. In Kuwait, for

example, a sharp distinction exists between 'original' and naturalized Kuwaitis,⁷⁰⁶ especially with regards to voting.⁷⁰⁷

The little evidence available reveals uneven and occasionally unfavourable conditions for recent arrivals compared to earlier diaspora. Unless they have acquired nationality, their status continues to be that of foreigners, requiring visas and work permits (dependent on sponsorship by employers) for continued stay. While ensuring the relatively free migration of labour to accommodate local needs, governments in the region maintain tight control over entry, residency, and employment, through work and residence permits. Palestinians who do not possess a valid TDPR and have an employer to sponsor them are not eligible for a residence permit. Validity of residence permits is limited to six months post departure (unless a longer period of absence from the country has been pre-authorized, e.g. for the purpose of medical treatment or studies in a third country). If a resident remains outside the country of residence for more than six months, his/her residency permit will be automatically cancelled.

Sympathy towards the Palestinians may at times have led to a more lenient application of some immigration rules, including on deportations and fines in case of violation of laws;⁷⁰⁸ however, no special consideration is given to their needs for international protection. This raises concerns for Palestinians fleeing Iraq and Syria who may not have a sponsor or may lack the necessary documentation from the country of habitual residence that immigration authorities require.⁷⁰⁹ Violation of immigration laws in Gulf countries may hamper a person's entry or stay, and even lead to arrest and deportation. Based on the information available, country specific-observations on the countries where the majority of them reside are drawn below.

5.3.1 Kuwait

Palestinians in Kuwait currently number 50,000, likely more.⁷¹⁰ They are the descendants of Palestinians who arrived after the 1948 and 1967 wars and were allowed to remain in the country after 1991. They may hold (temporary) Jordanian passports as well as Egyptian, Syrian, and Lebanese TDPRs. As long as their residency permit is valid, Palestinians have access to work, public social services, medical care, and education. Palestinian children do not have access to public education, but can access private schools, provided that they have (p. 260) a residency permit. Years after the 1991 events, Palestinians remain the focus of popular hostility and prejudice as well as, occasionally, the particular target of Kuwaiti government policies designed to reduce the numbers of non-Kuwaitis in the country.⁷¹¹

Over time the relationship between the government of Kuwait and the Palestinian leadership has improved,⁷¹² but the strains caused by the war have never fully eased and the size of the Palestinian community in the country has not returned to the pre-1990s level. In 2013, the Palestinian embassy reopened in Kuwait, and in October 2016, a decision by the Deputy Prime Minister and Interior Minister was issued to treat Palestinians holding Palestinian passports like all other Arab residents holding Arab passports, and to allow them to bring their wives and children into the country.⁷¹³ In 2017, the Kuwaiti Education Ministry announced that it would begin to recruit Palestinian teachers.⁷¹⁴ In recent years, Kuwait has also regained its role of vocal advocate for the rights of the Palestinians within the UN.

5.3.2 Saudi Arabia

In Saudi Arabia, Palestinians generally hold Jordanian passports or TDPRs from Egypt, Iraq, Lebanon, the PA, and Syria, and are treated according to the status of those documents vis-à-vis the country of issue.⁷¹⁵ Those who are in the possession of a valid passport or travel document are eligible to obtain a residence permit, enabling them to work.⁷¹⁶ They benefit from the same social services as Saudi nationals and legally residing foreigners, and thus have access to health services as well as public and private education.⁷¹⁷ Historically, Palestinians enjoyed favourable treatment compared to foreigners of other nationalities.⁷¹⁸

Since 2017, Palestinians no longer enjoy preferential treatment with regard to nationalization and are no longer exempted from fees/taxes for dependents.⁷¹⁹ Additionally, at the time of writing, reports have emerged concerning politically motivated arrests and harassment of Palestinians.⁷²⁰

5.3.3 United Arab Emirates

Palestinians currently in the UAE consist mostly of those who fled the 1948 and 1967 wars and their descendants.⁷²¹ They have integrated in the socio-economic fabric of the (p. 261) country even if the majority of them remains without citizenship. In fact, apart from the small number who obtained Emirati citizenship, increasing numbers of Palestinians – those who could afford it, mainly highly skilled middle-class and upper-middle-class – have resolved ‘the vulnerability of their statelessness in the UAE’ by maintaining their residency in the UAE while obtaining citizenship of another country, e.g. Canada or the US, as well as Australia and New Zealand.⁷²² The situation of Palestinians who have arrived in the 2000s from the oPt, Iraq, and, more recently, Syria has been more difficult.⁷²³ They generally hold temporary residence permits, mainly through intervention of the Palestinian consulate. Those able to secure a work permit and employment enjoy stability. However, inability to secure and/or renew their residence and work permits has resulted in a more precarious status and harsher living conditions. Deportations are not uncommon.⁷²⁴ Especially after the Arab uprising, policies towards foreigners’ entry and residency were tightened.⁷²⁵

5.3.4 Yemen

Prior to the outbreak of the conflict in 2014, Yemen represented a safe destination for the fewer than a thousand Palestinians, mostly from Iraq, who had found refuge in the country. They enjoyed a relatively favourable treatment, including legal residence and access to the labour market – as doctors, engineers, teachers, and other medical personnel, as well small business owners – and like other refugees, access to education, health services, and protection, as needed.⁷²⁶ Until the 1990s, the Yemeni government issued TDPRs.⁷²⁷ As for other refugees in Yemen, political rights have been restricted for Palestinians. The ongoing conflict and worsening humanitarian crisis since 2015 have created great hardship and deprivation for everyone in the country, leading to loss of income, jobs, study opportunities, and access to basic rights.

6. North Africa/Maghreb

6.1 Overview

Smaller numbers of Palestinians than in other parts of the Arab region have been hosted by countries in North Africa, also known as *Maghreb*.⁷²⁸ In this area, support to Palestinians in the diaspora has historical roots and is linked in part to political support and solidarity for the Palestinians, and in part to self-interest and the role that highly educated and skilled (p. 262) Palestinians were able to play in the economy of some countries in the region. While larger numbers have been recorded in Libya, in other countries numbers of Palestinians have not exceeded a few thousands. As in the Arabian Peninsula, most Palestinians came for work and were not regarded as refugees.⁷²⁹ Nonetheless, countries like Algeria and Tunisia have historically offered political support to the Palestinians and the PLO; while countries in the region have never been at war with Israel, there has not been peace either.⁷³⁰ Morocco represents somewhat of an exception as it has not had a significant history of support for the Palestinians (i.e. among its rulers, rather than the people), and has – unlike other countries in the Arab world – historically maintained some contacts with Israel.⁷³¹

In recent years, there have been new, if relatively minor, flows of Palestinians into the region, propelled by regime changes, political shifts, and conflicts: post-2003 Iraq, post-2005 oPt, and post-2011 Syria.⁷³² According to UNHCR figures for 2018, around ten

percent of the recent nearly 6,000 arrivals in Melilla – a Spanish enclave on Moroccan soil – were Palestinians from the Gaza Strip and the West Bank.⁷³³

6.2 Algeria

Algeria was the world's first country to allow the establishment of Palestinian diplomatic representation in Algiers in 1962.⁷³⁴ As of 1964 it welcomed Palestinian teachers to help 'Arabize' the education system following the end of French colonialism.⁷³⁵ Nonetheless, many of the approximately 10,000 Palestinians in the country in the early 1990s reportedly left as a result of the conflict that began in 1991 between the Islamic Salvation Front and the Algerian government. A number of 'ex-Gazans' with Egyptian TDPRs experienced difficulty in leaving, as they were no longer able to return to the place where they originally found refuge. Palestinians in Algeria have multiple pathways to obtain Algerian residency (*carte de résidence*). While a significant number of Palestinians have acquired residency or nationality after marrying an Algerian citizen,⁷³⁶ others have done so through their employment.⁷³⁷ It is unclear how many Palestinians have acquired Algerian citizenship. Palestinians have been granted access to education, health care, and employment opportunities in the country on par with Algerian nationals. In 2011, some 4,000 Palestinian asylum (p. 263) seekers/refugees were reportedly residing in Algeria and registered with the Algerian authorities.⁷³⁸ In recent years, data collection on Palestinian refugees/asylum seekers in the country has improved, especially in the context of the arrivals from Syria, but the overall numbers and status of Palestinians in Algeria cannot be determined with accuracy.⁷³⁹

6.3 Libya

6.3.1 Overview

Libya is a prime example of the extent to which the treatment of Palestinian refugees has been influenced by events surrounding the question of Palestine in general, and political shifts and rifts between the host government and the Palestinian leadership in particular. Palestinians in Libya were generally well integrated until the 2011 uprising and subsequent conflict; however, occasional episodes of turmoil and direct actions against Palestinians have caused further forced displacement.

6.3.2 History

Arrivals over times and numbers

Palestinians have arrived in Libya at different points in time; many have also been forced to depart the country on a number of occasions, including in 1995 and 2011. Small numbers arrived through the small-scale resettlement programme initiated by UNRWA in the early 1950s;⁷⁴⁰ at that time, the development of the oil industry required an expanded workforce.⁷⁴¹ A second sizeable group arrived as a result of the 1967 war, mainly from the Gaza Strip. Another relatively large group arrived from Lebanon after the 1982 Israeli occupation and the Sabra and Chatila massacre.⁷⁴² Smaller numbers arrived from Syria and Egypt in subsequent years.⁷⁴³ Libya was reportedly hosting approximately 30,000 Palestinians by the mid-1990s,⁷⁴⁴ and between 50,000 and 70,000, including temporarily (for work or study), at the time of the outbreak of violence in 2011,⁷⁴⁵ some 8,000 of whom were registered as refugees.⁷⁴⁶ Over 6,000 Palestinian refugees and/or asylum seekers were registered by 2019.⁷⁴⁷ This includes Palestinian refugees from Syria as well as Palestinians who came from Egypt after the Egyptian authorities tightened entry restrictions on Palestinians. Many may have used Libya as transit country to Europe.⁷⁴⁸

(p. 264) Turning points in history

During the reign of Colonel Mu'ammar Gaddafi (1969–2011), Libya was a vocal advocate of the Palestinian right to self-determination. However, this has not always translated into protection of the Palestinian refugees in the country who experienced displacement on numerous occasions. The first displacement of Palestinians from Libya occurred in 1971, when after the ousting of King Idris by Gaddafi in 1969, foreigners who had worked for the King, including hundreds of Palestinians, as well as Egyptians and Iraqis, had to leave the country or submit to a Libyan takeover of their assets.⁷⁴⁹ Nonetheless, Libya continued to be an important port of call for Palestinians who were experiencing unemployment or travel and/or work restrictions in traditional host countries.⁷⁵⁰ Accordingly, the numbers of Palestinians in the country continued to grow.⁷⁵¹

The second displacement occurred after the signing of the Oslo Accords, when Gaddafi announced his intention to expel Palestinians residing in the country in order to protest the terms of the MEPP.⁷⁵² Concomitantly, the Libyan economy had started to decline and the need for foreign workers reduced.⁷⁵³ By 1996, between 13,000 and 15,000 Palestinians were forced to leave: some returned to their original host countries 'spontaneously', like the Palestinians from Jordan, while several hundreds were put on ships and sent to Lebanon and Syria.⁷⁵⁴ A number of other Palestinians in Libya had lost residency in their former host countries and had nowhere to go to; this primarily concerned some 1,000 ex-Gazans who had lost residency in the Gaza strip as a result of the Israeli occupation and could not renew their Egyptian TDPRs. As a result, significant numbers of Palestinians got stranded at airports and border crossings. In 1995, hundreds ended up stranded in challenging conditions in a makeshift camp at the Egyptian-Libyan border crossing near Saloum.⁷⁵⁵ Joint UNHCR-UNRWA missions were able to provide some assistance for the stranded Palestinians. Others (765 individuals) were able to travel to Gaza through the Rafah border crossing. Palestinian refugees who were still stranded at the Egyptian-Libyan border by January 1997, were readmitted into Libya. (p. 265) Following the opening its office in Libya, UNHCR registered some 3,281 Palestinian refugees in 1996.⁷⁵⁶

In 2007, Gaddafi once again threatened to expel Palestinian refugees back to Gaza to protest the Saudi peace plan; the threat was not implemented.⁷⁵⁷

With the outbreak of the conflict in 2011, Palestinians were once again displaced. About one hundred students were swiftly evacuated, 300 Palestinians were allowed by Israel into the oPt as a 'humanitarian gesture'.⁷⁵⁸ Some 3,000 Palestinians tried to cross into Egypt, but were denied entry by the Egyptian authorities.⁷⁵⁹ While the situation in Libya continues to be highly unstable, the rise in number of Palestinian asylum seekers in the country reflects the critical conditions of Palestinians in the region.

6.3.3 Legal status and treatment

While Libya has not ratified the 1951 Refugee Convention, it is party to the 1969 OAU Refugee Convention and the 1965 Casablanca Protocol.⁷⁶⁰ Libya initially made a reservation to art. 1 of the Protocol – providing the right to work on par with nationals – rather giving Palestinians employment rights similar to other Arab, not Libyan, nationals. This was reversed in 1989, when Arab citizens were granted the same rights as Libyans, as long as they had a valid residency permit.⁷⁶¹

The first arrivals comprised 1948 refugees, mostly skilled workers and artisans, and their families. They established themselves as civil servants and in the employ of national and foreign companies.⁷⁶² This group represents more than half of the current Palestinian population in Libya. Palestinians have historically not been treated as refugees: they were considered 'Arab citizens residing in Libya',⁷⁶³ and were granted temporary travel documents.⁷⁶⁴ Some of them acquired nationality, even though numbers are difficult to ascertain. Those without Libyan nationality or residency have their travel documents issued

by the countries of former habitual residence (when they expire, they are often unable to renew them).⁷⁶⁵

According to Shibliak, until the expulsion that began after the 1994 announcement by Gaddafi, Libya was one of most liberal countries in the Arab world towards Palestinians in terms of entry, residency, and work.⁷⁶⁶ For decades they were able to enjoy the special (p. 266) treatment Libya traditionally reserved to citizens of Arab states, including the right to stay, work, enter, and leave the country, though subject to security and political considerations. Tens of thousands of Palestinians were employed as teachers, in the oil industry, or in the construction sector,⁷⁶⁷ and qualified for scholarships for their children to complete secondary and tertiary education.⁷⁶⁸ After 1978, Palestinians were also eligible for subsidized housing.⁷⁶⁹ While non-Libyans were generally not allowed to own businesses, exceptions were made for some Iraqis and Palestinians.⁷⁷⁰

Restrictions on Palestinians began after 1994. Parallel to Gaddafi's announcement of the imminent expulsion,⁷⁷¹ Palestinians were removed from the Ministry of Labour's lists of renewable contracts; pre-approved contracts with Palestinians were halted; residency applications by Palestinians were denied (including for renewal); and Palestinians were informed they would be denied entry on return to Libya.⁷⁷² Losing their right to reside legally in Libya, Palestinians also lost other benefits and entitlements, from accessing public health care, to pursuing higher education, to using their vehicle; as a result they became vulnerable to exploitation.⁷⁷³ When Gaddafi invited the Palestinians back in 1997, free health services and education for them were restored, while other refugees would receive health services through UNHCR.⁷⁷⁴

As of the 2000s, requirements on foreign workers to legally work became stricter.⁷⁷⁵ In 2012, the newly elected General National Congress imposed visa restrictions on Syrians and Palestinians, and they were increasingly regarded as unwanted foreigners.⁷⁷⁶ As of 2015, the Libyan government in Tobruk imposed a re-entry ban on Palestinians and Syrians, claiming that both groups were joining Islamist guerrillas who were battling pro-government forces in Benghazi.⁷⁷⁷

The current crisis in the country has caused significant insecurity and a general deterioration of the living standards of all residents, including Palestinians and other refugees. This may foster increased competition between and among refugees, migrants, and nationals, as well as push more individuals to take the dangerous route to Europe.

(p. 267) 6.4 Tunisia

While not a major host of Palestinian refugees, Tunisia has played a significant political role in supporting the struggle for Palestinian self-determination and the PLO. In 1982, when the PLO was expelled from Lebanon, its leadership along with several thousands of followers moved to Tunisia, where the PLO was allowed to set up temporary headquarters.⁷⁷⁸ These followers were mainly 'PLO combatants, PLO staff and their families',⁷⁷⁹ who subsequently moved to the oPt following the signing of the Oslo Accords followed by limited Palestinian self-rule in the 1990s.⁷⁸⁰ Since then, there has not been significant Palestinian presence in Tunisia (primarily Tunis). During their stay in Tunis, the Palestinians enjoyed preferential treatment, equivalent to nationals in most domains, including the right to work; right of entry, exit, and return to Tunisia; and right of residence, including for family members. Limitations existed for property ownership which is subject to the consent of the governor where the property is located, and Palestinians were prohibited from owning agricultural lands.⁷⁸¹ New Palestinian arrivals have been recorded during the Syrian conflict, and were initially not welcomed.⁷⁸² As of 2014, and pending a longer-term solution, Tunisia started to issue renewable thirty-day visas to Palestinians fleeing Syria.⁷⁸³

7. Concluding Observations

The review of the experiences and situation of Palestinian refugees in Arab countries, including UNRWA's area of operations, allows for some general observations. Arab countries' attitudes towards the Palestinian refugees has been marked by the preservation of the Palestinian identity as 'refugees', preventing any forms of naturalization *en masse* (except for Jordan), so as to preserve the 'right of return' based on General Assembly resolution 194, and to avoid providing Israel with an excuse to evade its responsibility in this regard. Meanwhile, Palestinian emigration within the region in the early decades after 1948, mainly towards the Arabian Peninsula and North Africa, provided an important asset in the development of these areas' economies. Hence, pending the implementation of resolution 194, most Arab states committed, at least on paper, to grant Palestinian refugees a number of essential rights, including residency and the right to work on the same footing as citizens of the respective states. The various regional efforts to improve the legal protection of Palestinian refugees, which culminated with the adoption of the Casablanca Protocol, have had a limited impact. In practice, the treatment of Palestinians (rarely protected as 'refugees') has rested on individual states' administrative practices, sometimes laid down in circulars, (p. 268) at times not public, which have been subject to constant change. This has translated into varying statuses and treatment according to the country, and often based on various times of arrival within the same country, or based on shifting political circumstances. The treatment of Palestinians displaced in 1967 (who are refugees under international law but have been treated differently in a number of respects) and the worst treatment experienced virtually everywhere in the region by the 'ex-Gazans' in particular, epitomize this differentiation.

While cases of Palestinians acquiring citizenship in Arab states are not rare - with Jordan standing out for conferring its citizenship to a large group of Palestinians *en masse* - they have been ad hoc and are not well documented. The subject remains sensitive, as it is often perceived as allowing Israel to evade its responsibility towards the refugees. In general, the treatment has ranged from favourable in certain countries and at given times in history (e.g. in Libya and the Arabian Peninsula until the 1990s and in Iraq until 2003), to discriminatory and often degrading in others (such as Lebanon and Egypt after the 1970s, as well as many states on multiple occasions since the 1990s). Such treatment has also reflected self-interest, since Palestinians were largely welcome as qualified work-force at the time it was needed. Political circumstances surrounding the Israeli-Palestinian conflict, as well as shifts in the relations between Arab states and the Palestinian leadership (PLO and PA) have often impacted Arab states' approach to Palestinians. Vindictive policies, often aiming at targeting the PLO, have resulted in the punishment of hundreds of thousands and the ongoing displacement of many more. About 700,000 Palestinians, mostly children and grandchildren of the 1948 refugees, have been cumulatively displaced from Arab countries alone, from the 1970s onward. While the legacy of Palestinian militant resistance in a number of Arab countries cannot be ignored, as a whole, the Palestinian people - and the refugees in particular - have paid the brunt for the political deadlock.

With the situation of Palestinians, including refugees, in the Gaza Strip and West Bank remaining critical and with no end in sight, and the current attempts to discredit the Palestinian refugee question, which may result in further instability in the region, it seems high time for Arab states to finally live up to their proclaimed solidarity vis-a-vis the Palestinians, starting by exploring the needs for and meaning of international protection for Palestinian refugees.

Footnotes:

1 Brand, L. A., *Palestinians in the Arab world: Institution building and the search for state*, New York: Columbia University Press, 1991, 4–5.

2 This includes 4,915 million in the oPt, and 5,850 million elsewhere in the region, Palestinian Central Bureau of Statistics (PCBS), ‘Palestinians at the End of 2018’, December 2018.

3 While data collection is easier in UNRWA’s area of operations, data remains incomplete due to difficulties and errors in the registration of Palestinian refugees, added to the fact that not all Palestinians living abroad are (or are considered) ‘refugees’; PCBS (n 2), Introduction.

4 By ‘Arab countries’, ‘Arab world’, and ‘Arab states’ the authors refer to the member states of the Arab League (LAS), see (n 13). These states generally share a common language of Arabic. The Arab states make up the largest part of the area commonly referred to as MENA.

5 This complex relationship is discussed throughout the chapter.

6 This was the term used at the time of the Ottoman Empire to designate the area comprised of present day Jordan, Israel, Lebanon, Syria, the West Bank, and Gaza Strip.

7 Acquisition of Jordanian citizenship to Palestinians is discussed later in this chapter, Section 3.2. Legal aspects in connection with the relevance of this citizenship for the recognition of Palestinians as refugees of Palestine, are discussed in Chapter II, Section 4.2.3. See also Chapter III, Section 3.2.2..

8 Suleiman, J., Refugees or foreigners: The case of Palestinians in Lebanon, in Grabska, K., Mehta, L. (eds.), *Forced displacement: Why rights matter?* London: Palgrave, 2008, 93–115, 96.

9 This probably explains why, outside UNRWA’s area of operations, they are generally referred as ‘Palestinians’ *tout court*.

10 The quote is from Chatty, D., ‘Palestinian refugee youth: Agency and aspiration’, *Refugee Survey Quarterly* 28.2–3 (2009) 326.

11 No information will be provided on three LAS member states: Djibouti, Mauritania, and Somalia, as no reliable information is available about the reportedly few Palestinians residing there. Sudan is discussed in Chapter V, Section 5.

12 Specific legal issues regarding residency rights, freedom of movement and entitlement to travel documents, access to gainful employment, as well as education and health services are discussed in Chapter VI, Section 4, with a focus on individual rights of Palestinian refugees.

13 Arab nationalism, especially in response to British policies and militant Zionism in Palestine, was the prime factor behind the establishment of the LAS. In response to the Arab call for unity, the British government supported the establishment of a loose association of states. In October 1944, the delegates of the seven Arab states that had already reached independence established the LAS, largely based on British proposals. The LAS Charter was adopted on 22 March 1945. Based in Cairo, the LAS is currently composed of the twenty-two following member states (with the year of joining): Algeria (1962), Bahrain (1971), Comoros (1993), Djibouti (1977), Egypt (founding member; Egypt’s membership was suspended from 1979 till 1990), Iraq (founding member), Jordan (founding member), Kuwait (1961), Lebanon (founding member), Libya (1953), Mauritania (1973), Morocco (1958), Oman (1971), Palestine (founding member), Qatar (1971), Saudi Arabia (founding member), Somalia (1974), Sudan (1956), Syria (founding member), Tunisia (1958), United Arab Emirates (1971), and Yemen (the former Yemen Arab Republic was a

founding member; Yemen People's Democratic Republic joined in 1968). On the LAS, see Hassouna, H. A., *The League of Arab States and regional disputes: A study of Middle East conflicts*, Leiden: Oceana/Sijthoff, 1975; Rishmawi, M., 'The Arab Charter on Human Rights and the League of Arab States: An update', *Human Rights Law Review* 10.1 (2010) 169–78; and MacDonald, R. W., *The League of Arab States: A study in dynamics of regional organization*, Princeton: Princeton University Press, 2015.

14 After unsuccessfully denouncing the effect of British and militant Zionist policies in Palestine since the mid-1930s, Arab states, united in the LAS, denounced the case of Palestine in London and at the UN in 1946–1948. The 'Question of Palestine' was given special recognition in the LAS Charter, and its founding members declared support for the Palestinians during the war of 1948. Their role was instrumental in shaping UN policies towards Palestine (a seat for a representative of Palestine was reserved on the LASC), as well as supporting Palestinian leadership in exile (the LAS played a strategic role supporting the establishment of the PLO in 1964, which soon became the organization's representative of the Palestinian people). 'Palestine' (today 'State of Palestine') has been a full member of the LAS since 1988. A Palestinian representative was also invited (for a long time formally represented by Iraq) during the discussions about UNRWA at the UN in New York. MacDonald (n 13), 85–93.

15 This Committee's role was to advise the LASC (n 14), its legislative body, on matters concerning Palestine.

16 League of Arab States (LAS), Charter of Arab League, 22 March 1945 [hereafter 'LAS Charter'], art. 12. See also annex I of the LAS Charter, 'regarding Palestine'.

17 LASC res. 1946. 31 March 1964.

18 Earlier resolutions, which are further discussed below, had already called for the establishment by the host countries of special government departments or institutions in order to deal with Palestinian refugees; cf. LASC res. 1594, 7 September 1959, and LASC res. 1747, 1 April 1961. See Mehedi, M., 'Le Role de la Ligue des États arabes dans la protection des réfugiés', Communication présentée au séminaire sur 'l'Asile et le Droit des réfugiés dans les pays arabes' organisé par l'Institut International de Droit Humanitaire en coopération avec le Centre d'Études et de Recherche de l'Université de Tunis ainsi que la Société du Croissant-Rouge Tunisien et sous les auspices du Haut Commissariat des Nations-Unies pour les réfugiés et la Ligue des États Arabes', Tunis, 1989, 6.

19 On CSR51, see Chapter II, Section 3 (role of Arab states in defining the regime for Palestinian refugees) and Chapter III, Section 4.2 (discussion of the legal framework in general). Of the LAS states, only Algeria, Djibouti, Egypt, Iraq, Morocco, Somalia, Sudan, and Yemen are party to CSR51 and its 1967 Protocol. See: UNHCR, States Parties to the CSR51 relating to the Status of Refugees and the 1967 Protocol, 2–4 (April 2015).

20 See Section 2.3.

21 The text of the Protocol was adopted on 11 September 1965 during a special summit conference of Arab heads of states, held in Casablanca. The Protocol has become known, and will hereinafter be referred to, as the 'Casablanca Protocol', see Section 2.2.

22 MacDonald (n 13), 90.

23 On the treatment of Palestinian refugees in Arab countries, e.g. LASC res. 1031, *The Issue of Palestinian Refugees*, 14 October 1955; on matters deserving UN attention, e.g. LASC res. 2958, *Recommendations of the 11th Meeting of the Council of Supervisors of Palestinians Affairs*, 13 September 1972; on the importance of raising the Palestinian cause as an independent item to the General Assembly, e.g. LASC res 3171, *Request to Insert the Palestinian Cause in the Agenda of the UN General Assembly*, 4 September 1974; and since 1995, expressing concern around UNRWA's financial situation, e.g. LASC res. 5887, *The*

Financial Situation of the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), 13 September 1999, LASC res. 5883 D, 17 September 1998, LASC res. 5732, 25 March 1998, LASC res. 5680, 21 September 1997, LASC res. 5632, 31 March 1997, LASC res. 5584, 15 September 1996, LASC res. 5541, 21 March 1996, LASC res. 5498, 21 September 1995.

24 Various resolutions on the importance of allocating adequate funds for the education of Palestinian children such as LASC res. 1093, 15 October 1955, LASC res. 1060, 15 October 1955, LASC res. 1265, 25 October 1956. LASC res. 3068, *Establishing a University for Palestinian Students in One of the Arab Countries and Supporting Domestic Educational Institutions in Jerusalem*, 15 September 1973, subsequently dismissed by LASC res. 3148, 13 April 1974., in favour of greater focus on other priority issues centring on Palestinian refugees.

25 E.g. LASC res. 5838 D of 1999.

26 LASC res. 2293, *Arab Lands and Properties in Palestine*, 18 March 1967; LASC res. 2251, *Arab Possessions in Occupied Palestine*, 12 September 1966; LASC res. 1030, *Protecting Palestinian Refugee Property*, 14 October 1955.

27 E.g. LASC res. 5783, 17 September 1998; LAS res. 5729, 25 March 1998; LASC res. 5676, 21 September 1997; LASC res. 5581, 15 September 1996; LASC res. 5492, 21 September 1995; LASC res. 5456, 29 March 1995; LAS res. 5414, 15 September 1994.

28 Family reunification is further discussed in this chapter (e.g. see Kuwait, oPt) and in Chapter VI, Section 4.7.

29 LASC res. 424, 14 September 1952, On Dispersed Palestinian Families and Granting of Unified Travel documents; LASC res. 714, 27 January 1954, Issue of Unified Travel Documents for Palestinian refugees; LASC res. 1033, Granting Palestinian Refugees in the Diaspora a Unified Travel Document, 14 October 1955. Other resolutions on the topic include: LASC res. 1705, Unified Travel Documents for Palestinian Refugees, 07 September 1960; LASC res. 1946, Facilitating Travel and Residency for Palestinian Refugees and Requesting UNRWA to Conduct an Investigation into the Situation of those Receiving Allowances from Them, 31 March 1964; LASC res. 4071, Palestinian Refugee Travel Documents, 9 September 1981; LASC res. 4243, Arrangements for Travel, Residency and Work for Palestinians in Arab States, 31 March 1983; LASC res. 4426, The Treatment of Palestinian and Issuing a Travel Passport Specific to Them, 28 March 1985.

30 In 1960, the LASC decided to amend res. 714 of 27 January 1954 to the effect that from then on, the TDPRs should only be renewed every two years, instead of on an annual basis, cf. LASC res. 1705, 7 September 1960.

31 LASC res. 714, 27 January 1954.

32 LASC res. 715, 27 January 1954. However, this resolution was never properly implemented.

33 LASC res. 1547, Granting the Nationality of Some Arab States to Palestinian Refugees, 9 March 1959. On the use of the term diapora in this context, see Introduction, Section 3.2.2.

34 LASC res. 2019, 3 September 1964. Decisions of the LASC, such as this resolution, may either be taken by unanimity or by regular majority. Majority decisions only bind those member states that accept them. Accordingly, the three above-mentioned states are not bound by the section of the resolutions in respect of which they have expressed reservations.

35 One example is the Cairo Agreement of 3 November 1969 between the PLO and Lebanon, see Section 3.3.2.

36 This was formalized during sessions of the Conference of Supervisors of Palestinian Affairs until 1982 and subsequently during meetings of the LASC; see (n 38).

37 Cf. LASC res. 2669, 15 September 1970; LASC res. 2717, 24 March 1971; LASC res. 2958, 1 September 1972; LASC res. 3180, 4 September 1974; LASC res. 3625, 6 September 1977; LASC res. 3743, 13 September 1978; LASC res. 3807, 25 March 1979; LASC res. 3906, 28 March 1980; LASCAMI res. 8, 15 December 1982; LASC res. 4243, 31 March 1983; LASC res. 4332, 31 March 1984; LASC res. 4426, 28 March 1985; LASC res. 4617, 19 October 1986; LASC res. 4644, 6 April 1987; LASC res. 4704, 22 September 1987; LASC res. 4770, 4 February 1988. For details on these resolutions, see the Table of Treaties and other International Instruments at the beginning of the book.

38 Examples of PLO attitudes that alienated Arab states include the stand that the PLO took on the Iraqi occupation of Kuwait in 1990 (see Kuwait), as well as the implications of the PLO/PA's direct dealing with Israel during the peace process from the Oslo Accords onward; see Chapter VIII, Section 3.4.

39 Report and Recommendations of the Conference of Supervisors of Palestinian Affairs in the Host Arab States (94th Session), 7–11 June 2015, rec. 5.

40 Report and Recommendations of the Conference of Supervisors of Palestinian Affairs in the Host Arab States (95th Session), 6–10 December 2015, rec. 8.

41 LAS, Protocol for the Treatment of Palestinians in Arab States ('Casablanca Protocol'), 11 September 1965.

42 Casablanca Protocol, art. 1.

43 Ibid., arts. 2, 3

44 Ibid., art. 4

45 Ibid., art. 5.

46 Ibid., art. 1: 'While keeping their Palestinian nationality, Palestinians presently residing in the territory of ... shall be accorded the same treatment as regards the right to do business and to be employed as if they were nationals.'

47 CSR51, art. 17.

48 CSR51, arts. 18, 19.

49 This is discussed in Section 5, and Section 6.4 in particular.

50 The CSR51 does not contain similar provisions; while freedom of movement is referred to in art. 26, this only applies to the right to choose one's place of residence and to move freely within the territory of the contracting state. The right to leave the territory of the contracting state seems to be tacitly incorporated in art. 28 of the Convention, which deals with the issuing of travel documents 'for the purpose of travel outside their territory'. Implications are further discussed in Chapter VI, Section 4.5.

51 Article 3 also stipulates that the right to enter 'does not lead to a right of residence, except for the period and purpose specified'.

52 Examples are provided throughout the chapter and discussed synoptically in Chapter VI, Section 4.5.

53 See country-specific discussions, and Section 5 (Kuwait in particular) and Section 6.3 (Libya) in particular.

54 Paragraph 11 of the Schedule attached to the CSR51 stipulates that 'When a refugee has lawfully taken up residency in the territory of another Contracting State, the responsibility for the issue of a new document [...] shall be that of the competent authority of that territory, to which the refugee shall be entitled to apply.'

55 See country-specific discussions later in this chapter, and, in particular, the situation of ex-Gazans in North Africa and Gulf countries.

56 LASCAMI res. 8, 15 December 1982; for the text of the resolution, see annex 3. See also LASCAMI res. 20, 7 December 1983. The role of the LASCAMI is discussed later in this section.

57 Cf. art. 28 and the Schedule attached to the Convention. Paragraph 8 of the Schedule states, for example, that 'The competent authorities of the country to which the refugee desires to proceed shall, if they are prepared to admit him and if a visa is required, affix a visa on the document of which he is the holder'; para. 9 stipulates that the contracting states shall issue transit visas 'to refugees who have obtained visas for a territory of final destination' [emphasis added].

58 Akram S., Rempel, T., 'Temporary protection as an instrument for implementing the right of return for Palestinian refugees', *Boston University International Law Journal* 22.1 (2004) 21–4.

59 Chapter VI, Section 4 elaborates on these and other rights, highlighting where the practice has either been in line or departed from the Casablanca Protocol (and other binding international instruments).

60 States that ratified the Casablanca Protocol with reservations: Kuwait (art. 1), Lebanon (arts. 1–5), Libya (art. 1).

61 Details provided later Section 4.1 (Egypt) and Section 4.2 (Iraq).

62 Shibliak, A., 'Residency status and civil rights of Palestinian refugees in Arab countries', *Journal of Palestine Studies* 25.3 (1996) 39.

63 The occupying power granted this right only to those present during a census carried out shortly after the suspension of hostilities. See Section 3.5.

64 See Section 4.1 (Egypt) and Section 6 (Arab Peninsula).

65 LASC res. 2455 of 1968. On the evolution of the Arab Leagues' position regarding passport to the Palestinians, see LASC res. 1785, Passports Issued by the All-Palestine Government, 19 September 1961. LASC res. 3625, Issuing a Palestinian Passport, 6 September 1977. LASC res. 4332, Issuing Palestinian Passports, 31 March 1984.

66 LASC res. 2455, 3 September 1968.

67 This documentation did not give its holders access to services the same way as citizens, see Section 3.2.3, text accompanying (n 202)–(n 209).

68 LAS res. 2600, 11 March 1970, discussed in Akram and Rempel (n 58), 23, fn. 117.

69 LASC res. 3625, 6 September 1977.

70 The LAS urged adoption and full implementation of CP, without apparent results. LASC res. 2550, Recommendations of the Fifth Conference of the Supervisors of Palestinian Affairs in the Host Arab States, 13 September 1969. In the following years, the LAS invited its members to provide information to the Conference of Supervisors on measures to implement the Casablanca Protocol, and by 1979, only the UAE, Kuwait, and Iraq had responded. Akram and Rempel (n 58), 118, fnn. 553–4.

71 LASC res. 3743, 13 September 1978; also LASC res. 3807, 25 March 1979.

72 LASCAMI res. 8, 15 December 1982.

73 Ibid., para. 1.

74 Ibid., para. 2.

75 Ibid., para. 3. See also LASC res. 4243, Arrangements for Travel, Residency and Work for Palestinians in Arab States, 31 March 1983.

76 LASCAMI res. 8, 15 December 1982. A similar, more generally phrased, provision is included in CSR51, art. 2. LASC res. 4243, 31 March 1983, further endorsed this provision, which was reconfirmed in a number of subsequent LAS resolutions, such as LASCAMI res. 20, 7 December 1983; LASCAMI res. 33, 2 December 1984; LASCAMI res. 51, 5 February 1986; LASCAMI res. 111, 2 December 1987; LASCAMI res. 143, 3 December 1989; LASCAMI res. 166, 2 January 1992.

77 LASCAMI res. 20 of 1983; LASCAMI res. 33 of 1984; LASCAMI res. 51 of 1986. Cf. Rishmawi, M., with Kayyali, S., Saleh, E., *The League of Arab States: Human rights standards and mechanisms: Toward a full civil society engagement—A manual for practitioners*, New York: Open Society Foundations and Cairo Institute for Human Rights Studies, 2015.

78 LASC res. 4426, 28 March 1985.

79 Interview with Dr. Muhammad El-Farra, former Assistant Secretary-General of the Arab League for Palestinian Affairs, Gaza, 20 July 1995, collected at the time of the first edition.

80 While a final report was frequently delayed, the LASC only took note of interim reports; cf. LASC res. 4617, 19 October 1986; LASC res. 4644, 6 April 1987; LASC res. 4704, 22 September 1987; LASC res. 4770, 2 April 1988. See also LASCAMI res. 111, 2 December 1987; LASCAMI res. 143, 3 December 1989.

81 LASC res. 4770, Implementing the Protocol on the Treatment of Palestinians in Arab Countries, 2 April 1988. LASC res. 4809, Ministerial Committee Tasked with Fixing/Improving the Condition of the Palestinian Camps in Lebanon, 4 October 1988.

82 Reports of the Conference of Supervisors of Palestinian Affairs in its 42nd Session (LASC res. 4872 of 1989) and 43rd Session (LASC res 4933).

83 See Section 5 and in particular 5.2 and the Section on Kuwait.

84 At the outset of the crisis, PLO Chairman Yasser Arafat failed to support an LAS resolution calling for condemnation, withdrawal, and foreign intervention in Kuwait. Mattar, P., 'The PLO and the Gulf Crisis,' *Middle East Journal* 48.1 (1994) 32–4.

85 LASC res. 5093 of 1991, para. 7. Report of the Conference of Supervisors of Palestinian Affairs in Host Countries, 12 September 1991. The LASC was to approve the recommendations of the Conference of Supervisors of Palestinian Affairs in the Arab Host Countries (Tunis, 5–12 August 1991). The recommendations included a paragraph on 'The treatment of Palestinians in the Arab states', which in its original form read as follows: '[h]aving taken notice of the memorandum presented by the delegation of Palestine, the Conference expresses the hope that all Arab states, in spirit of brotherhood and solidarity, will seek to abide by the Protocol Relating to the Treatment of Palestinians, and calls upon the Arab states to overcome the negative impact of the Gulf crisis, as regards the implementation of this Protocol in respect of the Palestinian people'. The LASC amended para. 7 by adding the phrase 'in accordance with the rules and laws in force in each state' after the phrase 'Protocol Relating to the Treatment of Palestinians'.

86 Some commentators see this to be an official revocation, if not an amendment of the Protocol. Shibliak (n 62), 42; Knudsen, A., 'Widening the protection gap: The 'politics of citizenship' for Palestinian refugees in Lebanon, 1948–2008', *Journal of Refugee Studies* 22. 1 (2009) 7.

87 Some countries in the region (Algeria, Comoros, Djibouti, Egypt, Libya, Mauritania, Morocco, Somalia, Sudan, and Tunisia) are bound by the 1969 OAU Convention, while some have adopted the 2011 revised Bangkok Principles on the status and treatment of refugees; see Chapter III, Section 4.2.

88 Declaration on the Protection of Refugees and Displaced Persons in the Arab World, 19 November 1992.

89 LAS, Arab Charter on Human Rights, 22 May 2004, reprinted in *International Human Rights Report* 12 (2005) 893, entered into force March 15, 2008 [hereafter 'ACHR'].

90 ACHR, art. 44(1).

91 Ibid., art. 3(1) on the ground of 'race, colour, sex, language, religious belief, opinion, thought, national or social origin, wealth, birth or physical or mental disability'

92 ACHR, art. 18.

93 Ibid., art. 27.

94 Ibid., art. 28.

95 Ibid., art. 34(5).

96 Ibid., art. 41(2) contradicts art. 13 ICESCR and art. 28 CRC, enshrining the right to education, and art. 39(1) of ACHR contradicts ICESCR art. 12. For a critical appraisal see Rishmawi, M., Rashmawi, J., The League of Arab States and the protection of migrants, in Ippolito, F., Trevisanut, S. (eds.), *Migration in the Mediterranean: Mechanisms of international cooperation*, Cambridge: Cambridge University Press, 2015, 68–94, 77.

97 Statement by [Louise Arbour] UN High Commissioner for Human Rights, on the entry into force of the Arab Charter on Human Rights, Geneva, 30 January 2008.

98 LAS, Arab Convention on Regulating Status of Refugees in the Arab Countries, adopted in 1994 and not yet ratified.

99 Rishmawi and Rashmawi (n 96) 76–77.

100 Written correspondence between the authors and LAS, Palestine and the Occupied Arab Territories Section/Sector (*Qirit Filassen wal'Arāā al-'al-'Arabi al-Mul-Murab*), 21 January 2019.

101 UNRWA's mandate as per UNGA res. 302, 8 December 1949 refers to 'Palestine refugees'. UNGA has further mandated UNRWA to provide assistance to other persons affected by conflict in the region, including those commonly referred to as the '1967 displaced persons' (see Chapter II, Section 4.2.3). This section refers to 'Palestine refugees' only with reference to specific UNGA provisions or whenever 1967 persons are explicitly excluded from the discussion; see Introduction, Section 3.2 (terminology). For general discussion about UNRWA's creation and mandate, see Chapter I Section 4.3, Chapter II Section 3, and for a detailed discussion on its protection functions, see Chapter VII.

102 Agreement (with related letter) between UNRWA and Jordan, signed on 14 March and 20 August 1951, filed and recorded by the UN Secretariat on 1 February 1952; Agreement (with related letter) between UNRWA and the Syria Republic, signed on 28 April 1953; Exchange of notes constituting an over-all agreement between UNRWA and Lebanon, 26 November 1954; Exchange of letters constituting a provisional agreement between UNRWA

and Israel, 14 June 1967, registered ex-officio on 31 January 1968; Letter from Yasser Arafat to UNRWA of 24 June 1994.

103 Until 1967, the West Bank was part of UNRWA operations in Jordan. Also, until 1952, UNRWA provided relief to 45,800 persons in Israel. On the early operations and beneficiaries of UNRWA, see Chapter II, Section 4.2 and (n 159)–(n 160) accompanying text in particular. Cf. UNRWA, ‘Where We Work’, accessed 4 November 2018. Available at <http://www.unrwa.org/where-we-work>.

104 Cf. UNRWA Annual Operations Report, 20 June 2019.

105 For a camp to be recognized by UNRWA, there must be an agreement between the host government and UNRWA governing use of the camp. In 2014, comparative figures of camp refugees in UNRWA areas of operations were Gaza: forty-seven per cent, Jordan: seventeen per cent, Lebanon: fifty-three per cent, Syria: twenty-seven per cent, and West Bank: twenty-six per cent; see El-Abed, O. et al, *Listening To Palestinian refugees/displaced persons in Jordan: Perceptions of their political and socio-economic status*, Amman: Al-Quds Center for Political Studies, 12 January 2014.

106 However, official camps receive more services and have an UNRWA Camp Services Officer who acts as a sort of ‘mayor’.

107 Rueff, H., Viaro, A., ‘Palestinian refugee camps: From shelter to habitat’, *Refugee Survey Quarterly* 28.2–3 (2009) 339–59.

108 Cf. Peteet, J. M., *Landscape of hope and despair: Palestinian refugee camps*, Philadelphia, PA: University of Pennsylvania Press, 2005.

109 UNRWA did so at the very beginning of its existence in close cooperation with the host authorities responsible for law and order, including enforcing UNRWA’s shelter regulations. As a result of several factors, including the occupation of Gaza and the West Bank and the rise of Palestinian militancy in the camps, the agency has gradually disengaged and changed its terms of involvement.

110 Nonetheless, UNRWA services—which can include environmental health—have an impact on the camps (e.g. solid waste collection).

111 See (n 102).

112 See Chapter VI, Section 4, for a discussion on UNRWA’s involvement in the realization of a number of basic human rights of the refugees.

113 Al-Husseini, J., ‘UNRWA and the refugees: A difficult but lasting marriage’, *Journal of Palestine Studies* 40.1 (2010) 6–7.

114 Farah, R., ‘Uneasy but necessary: The UNRWA–Palestinian relationship’, *Al-Shabaka*, 30 November 2010.

115 Over time, since the early decades after 1948, hundreds of thousands of Palestinian refugees immigrated to other countries in the region. See Section 5 (Arabian Peninsula) and Section 6 (North Africa).

116 Unions were banned in Egypt and Jordan as of the mid-1950s. Al-Husseini, J., ‘UNRWA and the Palestinian nation-building process’, *Journal of Palestine Studies* 29.2 (2000) 53.

117 Ibid., 51–64.

118 UNGA res. 49/35 [United Nations Relief and Works Agency for Palestine Refugees in the Near East], 23 December 1994, paras. 5 and 10, noting the ‘significant success’ of the Agency’s peace implementation programs.

119 See, e.g. the emphasis on human development in UNRWA, Medium Term Strategy 2012–2016 and 2016–2021.

120 UN Doc. 62/13/Add.1, paras. 58, 67, 72, 75, 79, 82, 86, 87, and 90; cf. UNRWA, Report of the Commissioner-General of (UNRWA), Programme Budget, 2008–2009.

121 Arab states have traditionally refused to assume financial responsibility towards Palestinian refugees. However, as of 2015, Arab states, including associated foundations and funds, together with Arab NGOs, contributed total pledges worth USD 204.6 million to UNRWA (out of a total budget of USD 1,122 M). See UNRWA (Portal) funding trends. Accessed 12 May 2019.

122 Schiff, B. N., *Refugees unto the third generation: UN aid to Palestinians*. Syracuse, NY: Syracuse University Press, 1995, 12.

123 Al-Husseini refers to the concept of ‘functional sovereignty’, while Hanafi refers to UNRWA as ‘phantom sovereign’. See Al-Husseini (n 113), 9, Hanafi, S., UNRWA as a ‘phantom sovereign’: Governance practices in Lebanon, in Hanafi, S., Hilal, L., Takkenberg, L. (eds.), *UNRWA and Palestinian refugees: From relief and works to human development*, London: Routledge, 2014, 143–56. However, this functional evolution is common to other humanitarian agencies, especially in protracted refugee situations; see Slaughter, A., Crisp, J, A surrogate state? The role of UNHCR in protracted refugee situations, Research paper no. 168, Geneva: UNHCR Policy Development and Evaluation Service, 2009, and Kagan, M., ‘We live in a country of UNHCR’: The UN surrogate state and refugee policy in the Middle East, Research paper no. 201, Geneva: UNHCR Policy Development and Evaluation Service, 2011.

124 Al-Husseini (n 116) 51–64.

125 Bocco, R., ‘UNRWA and the Palestinian refugees: A history within history’, *Refugee Survey Quarterly* 28.2–3 (2009) 234.

126 The value of UNRWA registration cards as proof of eligibility for services (while not constituting identification cards) is noted in the Report of the Secretary-General [Palestine refugees in the Palestinian territories, occupied by Israel since 1967], A/48/373, 30 November 1993, para. 13. Various authors discuss the perception of UNRWA registration card among refugees as a political symbol, and the only official documentary evidence of the refugee status and their compensation claims. Plascov, A., *The Palestinian refugees in Jordan, 1948–57*. London: Frank Cass, 1981, 64–5; Al-Husseini, J., Bocco, R., ‘Dynamics of humanitarian aid, local and regional politics: The Palestine refugees as a case study’.

127 Ibid., 11–12.

128 Al-Husseini (n 113).

129 In 2018, the US administration curtailed its entire contribution to UNRWA (an average of USD 360 million annually). Cf. Albanese, F., ‘UNRWA and Palestine refugees: New assaults, new challenges’, *Current Issues In Depth* [online], Washington, DC: Institute for Palestine Studies, 2018.

130 CSR51, art. 1D(2).

131 In addition to hosting Palestinian refugees, Jordan has hosted or been a transit point for refugees from Lebanon due to the civil war (between 1975–1991), Iraq (1991, but only marginally 2003), and Syria (2011–present), as well as Somalis and Sudanese. On the current population of concern, see UNHCR, Jordan Factsheet, January 2019.

132 This includes 1.2 million Syrian refugees and smaller number of Iraqis and Yemenis. The census also counted 634,182 Palestinians without a national ID number (from the oPt and other host countries). See Jordan, Population and Housing Census 2015, Department of Statistics, Amman, February 2016, 14-5.

133 El-Abed (n 105), 12. On numbers and demography, see also Bel-Air, F., *A political demography of the refugee question. Palestinians in Jordan and Lebanon: Between protection, forced return and resettlement*, Technical Report, Migration Policy Centre, CARIM-South Research Report, 2012/02. Florence: European University Institute, 2012.

134 Jordan Census, Population and Housing, 2015, page b. Available at: http://dosweb.dos.gov.jo/censuses/population_housing/census2015/census2015_tables/.

135 This number does not include Palestinian refugees from Syria (PRS) since any transfer of data across various UNRWA field (country) offices, requires government approvals which was not granted with respect to PRS in Jordan.

136 The source of this information, reportedly based on a census carried out by the Government of Jordan, is an official statement from the Jordanian Prime Minister [Ali Abu Al-Ragheb] during a press conference, quoted in *al-Ra'i*, 3 September 2002, in El-Abed et al. (n 105), 12, fn. 5.

137 The question of Palestine refugees registered with UNRWA and holding Jordanian citizenship is explained in Chapter II Section 4.2.3, (n 244)-(n 247) accompanying text. (see also Chapter III, Section 3.2.2), .and further in this chapter (n 144).

138 The situation of ex-Gazans in Jordan is discussed in Section 3.2.3 (n 162) and, in this chapter, Section 3.2.3, (n 202)-(n 209) accompanying text.

139 About 370,000 refugees are registered in the official camps. Figures are from the UNRWA Jordan (Portal) [last visited May 2019].

140 Gatherings of Palestinian refugees in three unofficial camps (Prince Hassan, Sukhneh, and Madaba) were later recognized by the Jordanian government.

141 Memorandum of Understanding between Jordan and UNRWA, 1951/1952, see (n 102), according to which Jordan agreed to contribute 5,000 Jordanian dinars per month for relief and administration purposes, as well as to provide for water and camp sites while UNRWA would pay 500 Jordanian dinars (amended to 1,000 Jordanian dinars in the addendum in 1952) towards costs arising from rents for land occupied by the refugee camps as well as water charges. Jordan would bear the cost for any charges in excess of 500 dinars (art. 4).

142 El-Abed, O., 'Palestinian refugees in Jordan', *Forced Migration Online* 1996.

143 Ibid.

144 As discussed in Chapter II, Section 4.2.3, (n 244)-(n 247) accompanying text, UNRWA registration of Palestine refugees who have Jordanian citizenship has historical and political roots. In essence, the acquisition of citizenship has not relinquished the fundamental rights of the refugees as enshrined by relevant international norms, particularly international human rights law and UN resolutions (e.g. UNGA res. 194 of 1948, res. 302 of 1949, res. 2252 of 1967, and UNSC res. 237 of 1967). Accordingly, Jordanians of Palestinian origins who are registered as Palestine refugees with UNRWA, continue to be eligible for UNRWA services.

145 Brand argues that, alongside Jordanians of Palestinian origin who have integrated and to different extent reconciled their Jordanian and Palestinian identity (mostly middle- and upper-class Jordanians of Palestinian origin), there are those who developed a limited attachment to Jordan. This includes those who had arrived early on or were born in the Arabian Peninsula during the years of the oil boom and were forced to 'return' to Jordan after 1991. It also included refugee camp dwellers who maintained, until 1988 at least, a

deeper connection to Palestine than to Jordan. Brand, L. A., 'Palestinians and Jordanians: A crisis of identity', *Journal of Palestine Studies* 24.4 (1995) 48–50. However, a number of those interviewed by the present authors relate to significant changes brought about in Jordanian society in recent years, with a more tangible nationalism among Jordanians of non-Palestinian descent.

146 Their Palestinian identity was banned 'by royal decree', cf. Al-Husseini and Bocco (n 126), 3. In March 1950, the term 'Palestine' was ordered to be expunged from official documents; instead 'West Bank' would designate the region of Palestine located to the west of the River Jordan controlled by the Jordanian authorities; see El-Abed (n 105), 95.

147 Al-Husseini and Bocco (n 126), 17–18.

148 Kassim, A. F., 'The Palestinian: From hyphenated citizen to integrated citizen', *Yearbook of Islamic and Middle Eastern Law Online* 3.1 (1996) 69.

149 Al-Husseini, J., Jordan and the Palestinians, in Ababsa, M. (ed.) *Atlas of Jordan: History, territories and society*, Beirut: Presses de l'Ippo, vol. 32, 2014, 230–45, para. 19.

150 This was voted for in a Parliament made up of twenty Jordanians of Palestinian origin, and twenty Jordanians. Kassim, A., 'Al-Wad' Al-Qānūnī Fī Al-Urdun: Al-Filaṣṭīnī Fī Al-Urdun', *Jarīdat Haqq Al-'Awda*, 2015, 63. Jordan's annexation of the West Bank and Gaza was strongly criticized by Arab countries and the LAS suspended Jordan's membership over the decision.

151 In 1949, the West Bank had approximately 740,000 inhabitants (including 280,000 refugees), while Transjordan (the East Bank) had about 470,000 inhabitants (including 70,000 refugees). Al-Husseini (n 149), para. 10, recalls the historical events of those years: 'In February 1949, the Kingdom [decided] to naturalize all "Arabs of Palestine" through an amendment to the Passport Act, stipulating that "every Palestinian Arab with Palestinian nationality may obtain a passport". In April 1949, King Abdullah I took on the title of King of the "Hashemite Kingdom of Jordan." Finally, in December 1949, whereas a royal decree brought the social elites from the West Bank of the Jordan River under the jurisdiction of the Ministry of the Interior, a new law confirmed the right of the "Arabs of Palestine" to acquire Jordanian nationality. It also allowed refugees from both banks to vote in the parliamentary elections of April 1950, and it set out the rights and duties of all Jordanian citizens. By 1949, members of the West Bank intelligentsia were regularly appointed to ministerial posts and other important positions in the Jordanian government. This naturalization of Palestinian refugees was intended to be a temporary measure, until the Arab armies regained the lost land and guaranteed the return of refugees to their homes, if they so wished.' By doing so, between 1949 and 1950, the Kingdom had grown to over 1.2 million inhabitants; three times more than the pre-1948 Transjordan population (two-thirds of whom were of Palestinian origin).

152 In 1967, the vast majority of them (47,000) were registered with UNRWA, while the others (8,500 according to, likely inflated, government accounts) were non-registered. About 15,000 of them gathered in the refugee camp of Jerash, where most of them still live with their descendants. See UNRWA, Protection in Jordan, March 2018.

153 Al-Husseini (n 149), para. 19.

154 After initially refusing them entry, Jordan eventually allowed them in and accommodated them in the Ruwaished refugee camp near the Iraqi border on the condition that they would be resettled. Jordan allowed a few wealthy families among them to enter the country and stay. The majority were resettled in Brazil, Canada, and Sudan.

155 According to UNRWA, there were 17,719 Palestinian refugees from Syria in Jordan in January 2019. UNRWA, *Syria Regional Crisis, Emergency Appeal 2019*, 34.

156 In the late 1940s and early 1950s, King Abdullah, and King Hussein after him, viewed indigenous Jordanians as more loyal than the recently uprooted Palestinians. King Abdullah was assassinated in Jerusalem in 1951 by a Palestinian, which led to attacks against refugee camps and a curfew imposed to sedate the violence. Following the assassination, the monarchy tended to prefer non-Palestinian Jordanians for key positions in the state apparatus. Brand (n 145), 48. Ronen Y., 'The assassination of King Abdallah: The first political assassination in Jordan: Did it truly threaten the Hashemite kingdom of Jordan?', *Diplomacy & Statecraft*, 2.1 (2010) 68.

157 Authors' interviews with a number of Jordanians of Palestinian origin suggest that this is particularly true for the Palestinian business and political elite, which easily integrated in Jordanian society, and is less applicable to less-affluent Palestinians, most of whom live in refugee camps and who have not fully integrated within society.

158 Marwan K., Tiltner, A. A. (eds.) *On the margins: Migration and living conditions of Palestinian camp refugees in Jordan*, Oslo: FAFO, 2002.

159 Palestinian displacement within and from Israel continued throughout the 1950s, as did periodic military attacks between Israel and its neighbours. Criticism of the annexation of the West Bank, especially from members of the LAS, continued.

160 Identity politics in Jordan are complex but obscured and largely muted. There are generally three main identities: urban sedentary East Bank Jordanian (many of whom trace their ancestry to other regions or Arab countries); Bedouin rural, and Palestinian.

161 After 1967, Palestinian guerrillas started to conduct paramilitary activities from Jordanian soil, as well as operations abroad, such as plane hijackings. The guerrillas had some Jordanian oppositional backing. This heightened tension with the Jordanian authorities.

162 There were clashes from February 1970 between the Popular Front for the Liberation of Palestine (PFLP) and the Jordanian military. After an early armistice agreement was signed between the government and the PFLP tensions rose again, marked by death and losses on both sides (casualty estimates range from 5,000 to 25,000). On 17 September 1970, the Jordanian army conducted a resolute operation on the Palestinian refugee camps in Amman. This ended Palestinian guerrilla influence in Jordan. As the Jordanian government regained control over its territory, it expelled the PLO together with 1,800–2,000 Palestinians who were accused of having been part of the resistance. Members of their families also left. For more on Black September, see Sayigh, Y., *Armed struggle and the search for state: The Palestinian National Movement, 1949–1993*, Oxford: Clarendon Press, 1997, 147–8, Barari, H., 'Four decades after Black September: A Jordanian perspective', *Civil Wars*, 10.3 (2008) 231–43.

163 LAS, Seventh Arab Summit Resolution on Palestine, Rabat, Morocco, October 1974, adopted unanimously. However, the Jordanian Government did not receive this proclamation and recognition warmly, as it had until then seen itself as the defender of Palestinian rights.

164 Al-Husseini and Bocco (n 126), 12.

165 King Hussein of Jordan's Address to the Nation, 31 July 1988. The English translation of the speech is published in *Journal of Palestine Studies* 69 (Autumn 1988) 279.

166 Ibid.

167 Ibid. For a discussion on the political significance of the ‘severance speech’, see Abu Odeh, A., Delvoie, L. A., ‘Jordanians, Palestinians & the Hashemite kingdom in the Middle East peace process’, *International Journal* 55.4 (2000) 669.

168 Ibid.

169 Al Oudat, M. A., Alshboul, A., ‘“Jordan first”: Tribalism, nationalism and legitimacy of power in Jordan’, *Intellectual Discourse* 18.1 (2010) 76. Abu-Odeh and Delvoie (n 167), 669.

170 Treaty of Peace, 26 October 1994, Israel-Jordan, text in 34 *ILM* 43 (1995). For example, art. 3 refers to the West Bank as ‘territories that came under Israeli military government control in 1967.’

171 In fact, with respect to refugees and displaced persons, art. 8 of the Wadi Araba Treaty underscored the ‘massive human problems caused to both Parties by the conflict in the Middle East and the need to further alleviate those problems at a bilateral level or multilateral level’ (para. 1). This included ‘agreed United Nations programs and other agreed international economic programs concerning refugees and displaced persons, including assistance for their settlement’ (para. 2), cit. in Al-Husseini and Bocco (n 126), 9–10.

172 See discussions in Chapter VIII, Section 3.4 (Arab Stakeholders).

173 Ibid.

174 UNRWA transferred the files of formerly registered refugees but was unable to register first-time displaced persons because Jordan considered them nationals within its territory.

175 After 1967, the Gaza Strip (and Sinai Peninsula) became occupied by Israel and as a result, Egypt was not in a position to allow their return. As of 1968, Jordan legalized ‘ex-Gazans’ stay and facilitated their movement including by issuing them one-year temporary passports, the validity of which was later extended to three years. In the mid-1980s the policy was again changed, and the passports had to be renewed every two years. El-Abed (n 105), 6, 24.

176 Jordanian law distinguishes between foreigners and Arabs, giving ex-Gazans a slightly different status with respect to some laws.

177 El-Abed (n 105), 6.

178 Ibid.

179 Law Additional to the Law of Nationality, No. 56 of 1949, published in the Jordanian Official Gazette of 20 December 1949, No. 1004, 422, amending the Transjordan Nationality Law of 1928.

180 Kassim (n 148), 69. Figures are from the present authors.

181 Law No. 6 of 1954 on Nationality (last amended 1987), 1 January 1954, considers a Jordanian citizen ‘[a]ny person who, not being Jewish, possessed Palestinian nationality before 15 May 1948 and was a regular resident in the Hashemite Kingdom of Jordan between 20 December 1949 and 16 February 1954’.

182 Cf. Peretz, D., *Palestinians, refugees, and the Middle East peace process*, Washington, DC: US Institute of Peace Press, 1993, 48.

183 In an interview with Jordanian newspaper *Al-Dustour*, published on 3, 5, 6, and 7 November 1996, Abu-Odeh, a Jordanian-Palestinian who served as King Abdullah’s advisor, revealed various patterns of discrimination experienced by Palestinians in Jordan. Kassim (n

149), 35, fn 22. Abu-Odeh resigned in 2000 following controversy over his report on discrimination against Jordanians of Palestinian origin.

184 Among those who were suspected to be involved in Black September, those in Jordan were expelled, while those who were abroad were prevented from entry. Plascov, A., *The Palestinian refugees in Jordan, 1948–1957*, Abingdon: Routledge, 48.

185 Kassim (n 148), 65, estimates that the revocations amounted to over a million. Davis estimates that the numbers were in the hundreds of thousands. See Davis, U., *Citizenship and the state: A comparative study of citizenship legislation in Israel, Jordan, Palestine, Syria and Lebanon*, Berkshire: Ithaca Press, 1997, 74. According to a UN study on Palestinian demography, the total number of West Bank Palestinians was between 870,000–1,100,000 in 1987. UNCTAD, Population and Demographic Developments in the West Bank and Gaza Strip until 1990, UNCTAD/ECDC/SEU/1 ['UNCTAD Report on Palestinian Demographics'], 28 June 1994, 21, para. 43.

186 Kassim, A., The Palestinians: From hyphenated to citizenship, in N. A. Butenschon, U. Davis, and M. Hassessian (eds.), *Citizenship and the state in the Middle East: Approaches and applications*, Syracuse, NY: Syracuse University Press, 2000, 201–24, 212.

187 Such system was initially introduced as a way to purportedly monitor, statistically, the impact of Israeli settlements on (and the possible displacement into Jordan of) Palestinians living in the West Bank. Sherab, D., Mapping the legal obstacles Palestinians face in Jordan, Jordan: Arab Renaissance for Democracy and Development (ARDD), May 2015, sec. 3(b).

188 On the population census of the Gaza Strip and West Bank that Israel conducted in 1967, see Section 3.5.

189 Jamjoum, H., 'Palestinian refugees in Jordan and the revocation of citizenship: Interview with Anis F. Kassim', *Al Majdal: Forced Secondary Displacement: Palestinian Refugees in the Gaza Strip, Iraq, Jordan, and Libya* 45 (2010).

190 El-Abed (n 105), 26.

191 The passport can be obtained by presenting the green card, Israel/Palestine issued ID, a document provided by the Jordanian Follow-Up and Inspections Department and, additionally, a security clearance from the Ministry of Interior. Validity was initially two years, extended to five since 1994/5, possibly as a humanitarian gesture towards West Bankers who may struggle to renew their residency permit with Israel authorities.

192 Exceptions can be made for health or family reasons.

193 Kassim (n 186), 213.

194 Kassim (n 148), 65.

195 When this was taken to court, the Jordanian High Court ruled that the severance of administrative ties was an act of state that fell outside of its jurisdiction, and accepted the government's designation that those who lived in the West Bank were 'Palestinian citizens' even in the absence of an independent sovereign state and a Palestinian citizenship law. *Al Kour v Minister of Interior*, Jordanian High Court of Justice, 24 January 1991, 39 *Journal of the Bar Association* 1040. On this issue, see also Kassim (n 148), 74.

196 On how such measures may violate international law, see Chapter III, Section 3. Further, according to arts. 18 and 19 of the Jordanian Nationality Law, a person will lose his or her Jordanian citizenship only if that person serves in a foreign army and refuses to leave that army after being asked to do so by the Jordanian government; serves a hostile state; commits an act against the security of Jordan; or has obtained citizenship under false documents. See Shehadeh, R., *The Declaration of Principles & the legal System in the West*

Bank, Jerusalem: Palestinian Academic Society for the Study of International Affairs (PASSIA), 1994, 13–14.

197 Sherab (n 187), 3(c).

198 Citizenship revocations are handled by the Department of Follow-Up and Inspections and are not subject to judicial oversight. About 2,700 had their nationality arbitrarily withdrawn between 2004 and 2007 only; see Human Rights Watch, *Stateless again: Palestinian-origin Jordanians deprived of their nationality*, 1 February 2010. However, as there is no public record of the numbers of Palestinians who were stripped of their citizenship, the available numbers constitute a conservative estimate. Cf. Jamjoum (n 189).

199 In 2010 Human Rights Watch pointed to 200,000 Palestinian-origin Jordanians who returned to Jordan from Kuwait in 1990–1991 as potentially at risk. HRW (n 198).

200 Blue, K., *Business as usual? Economic reform in Jordan*, Lanham, MD: Lexington Books, 2003; El-Abed (n 105), 26. Identity Centre, 'The 1988 Disengagement Regulations and Their Effects on Identity and Participation in Jordan', Policy Paper series, 2014, 12.

201 This can be explained by the way that electoral districts are determined. For example, the 2001 Electoral Law allocated some electoral districts with high concentrations of Jordanian Palestinians (Amman and Zarqa) fewer seats than were warranted by the size of their electorate. Cf. International Crisis Group, 'The Challenge of Political Reform: Jordanian Democratisation and Regional Instability', 8 October 2003, 17. See also Minority Rights Group International (Portal), 'World Directory of Minorities and Indigenous Peoples – Jordan: Palestinians,' 2008.

202 As discussed earlier, in 1968, to regularize their situation, they were given one-year temporary passports (later extended to two-year validity), which have been renewed ever since. Until 1988, in practice Gazans enjoyed more rights than other foreigners (e.g. working in public sectors as school teachers and in the private sector without work permits) and as such the enforcement of formal policies has varied over time.

203 Cf El-Abed, O., 'Immobile Palestinians: Ongoing plight of Gazans in Jordan', *Forced Migration Review* 26 (2006), 17.

204 El-Abed (n 105), 24. Currently the two-year passport can be converted into a five-year passport after its second renewal and upon payment of a fee (equivalent to USD 285).

205 This primarily concerns fees for higher education; those that are registered with UNRWA have access to agency schools (ten-year mandatory school cycle).

206 Jamjoum, H., 'Palestinian Refugees in Jordan and the Revocation of Citizenship: Interview with Anis F. Kassim', 28 January 2013, cit. in Sherab (n 187), sec. 4.

207 Subsidized rates and free treatment for children under age six were introduced. Instruction No. 11 of the year 2007 on the Treatment of Gazans in Ministry of Health Hospitals and Centres (published in Official Gazette, No. 4827, 16 May 2007, 3,612). 2007 Cabinet Decision (Official Gazette, No. 4827, 16 May 2007, 3,611).

208 In November 2018, Jordanian Prime Minister Omar Razzaz approved the right to ownership of property (flats and lands) for ex-Gazans. The impact of this measure is still to be seen.

209 Vicente Pérez, M., 'Human rights and the righteous: The case of Gaza refugees in Jordan', *The International Journal of Human Rights* 15.7 (2011) 1034.

210 See Section 3.4.3 (Syria).

211 Some of them have been able to renew their Jordanian passports in Damascus, while others have expired and could not be renewed; in other cases, Jordanian citizenship was revoked.

212 Santos, R., 'Palestinian refugees from Syria in Jordan: An overview', *Al-Majdal*, 56 Autumn 2014, 26.

213 UNRWA, Syria Emergency Appeal 2019, 34.

214 Human Rights Watch, *Not welcome: Jordan's treatment of Palestinians escaping Syria*, 7 August 2014, 12. Hassan, H., 'Cyber city in Jordan: The epitome of Palestine refugees' despair and legal limbo', *al-Majdal* 56 (2014) 33.

215 Residents were relocated in Irbid area. US Dept. of State, Bureau of Democracy, Human Rights, and Labor, 'Jordan', Country Reports on Human Rights Practices for 2017, 20.

216 About 120 individuals, including forty-four children, were forcibly returned between 2015 and 2017, the large majorly (sixty-nine) in 2015. Condemnation was expressed by UN Committee Against Torture (CAT), Concluding Observations on the Third Periodic Report of Jordan, 29 January 2016, CAT/C/JOR/CO/3, paras. 13 and 14 (c); UN Committee on the Rights of the Child (CRC), Concluding Observations on the Consolidated Fourth and Fifth Periodic Reports of Jordan, 13 June 2014, CRC/C/JOR/CO/4-5, paras. 55, 56.

217 UNRWA, Syria Emergency Appeal 2019, 34.

218 Ibid.

219 For an overview, see Suleiman (n 8).

220 UNRWA (Portal), 'Where We Work', see reference to Lebanon [Accessed 30 June 2019].

221 Further, when Lebanon signed the Casablanca Protocol of 1965, it did so subject to a reservation, making Palestinians subject to Lebanese laws on foreigners; see Section 3.3.3.

222 For early movements of Palestinian refugees out of Lebanon, see Doraï, M. K., 'Palestinian Emigration from Lebanon to Northern Europe: Refugees, Networks, and Transnational Practices', *Refugee* 21.2 (2003) 23-31.

223 The estimate of 260,000-280,000 is in Chaaban, J., Salti, N., Ghattas, H., Irani, A., Isamil, T., Batlouni, L., 'Survey on the Socioeconomic Status of Palestine Refugees in Lebanon 2015', Report published by the American University of Beirut (AUB) and UNRWA (hereafter AUB/UNRWA Survey), 9. Lower figures (174,422) were provided by the most recent census (controversial as it did not consider all gatherings and Palestinians refugees residing abroad for longer than six months prior to the census) by the Lebanese Palestinian Dialogue Committee (LPDC) and Palestinian Central Bureau of Statistics (PCBS), 'The Population and Housing Census in Palestinian Camps and Gatherings - 2017, Key Findings Report (Population, Buildings and Housing Units)', Beirut: Palestinian Central Bureau of Statistics, January 2018, 21.

224 Camps dwellers' continuous shrinkage may be linked to various reasons including migration.

225 There are at least 150 gatherings not recognized by the authorities, including in the vicinity of officially recognized camps, in proximity to major Lebanese cities or in the Beqaa Valley, see UNRWA, Annual Operational Report, 2017, 12.

226 AUB/UNRWA Survey (n 223).

227 Within the camps ‘authority’ is exerted by the political factions (parties), the Popular Committees (government/governance), and the Security Committees (camp police), see Save the Children, ‘Mapping Child Protection Systems in Place for Palestinian Refugee Children in the Middle East’, August 2011, 14.

228 For example, Ein El Hilweh Camp has experienced violent clashes between non-state armed actors throughout 2016 and into 2017, with deaths, injuries, displacement, and disruption of UNRWA services on several occasions.

229 As of December 2018, 948,849 Syrian refugees in Lebanon were registered with UNHCR, see Operational Portal Refugee Situations, Syria Regional Refugee Response, and about 29,000 Palestinian refugees from Syria were registered with UNRWA (29,000), see UNRWA, Syria Regional Crisis, Emergency Appeal 2019, 1. Details at (Section 3.3.3 accompanying text (n 326)–(n 340)).

230 Figures are in the First Interim Report of the United Nations Economic Survey Mission for the Middle East, 16 November 1949, Letter from the Chairman of the United Nations Conciliation Commission for Palestine to the Secretary-General, New York, 16 November 1949 [ESM Report], Section (C) Geographic distribution. For a historical overview, see Sayigh, R., ‘Palestinians in Lebanon: Harsh present, uncertain future’, *Journal of Palestine Studies* 25.1 (1995) 37.

231 There are no precise figures for these groups of Palestinians, or where they originated from. The Lebanese Ministry of Interior stated unofficially that approximately 1,300 Palestinian refugees arrived between 1968 and 1978, half of whom are believed to be ‘1967 Displaced Persons’; see Shafie, S., ‘Palestinian Refugees in Lebanon’, *Forced Migration online*, 2007.

232 Suleiman, J., ‘Marginalized Community: The Case of Palestinian Refugees in Lebanon’, Development Research Centre on Migration, Globalisation and Poverty, April 2006, 5.

233 Suleiman (n 8), 99–100.

234 Suleiman, J., ‘Trapped by the denial of rights, illusion of statehood: The case of the Palestinian refugees in Lebanon’, *Al-Shabaka* (2012) 3.

235 *Tawteen* means naturalization or obtaining citizenship. *Tawteen* of the Palestinians is forbidden by the Lebanese constitution.

236 Lebanon is divided between its eighteen recognized Christian and Muslim communities, of which the largest are Maronite and Roman Orthodox Christians, and Shia and Sunni Muslims. Palestinian refugees in Lebanon, who are predominantly Sunni Muslim, are seen as a threat to the fragile alliance federating these groups. Said, E. W., ‘The Palestinians in Lebanon: The rights of the victims of the Palestinian-Israeli peace process’, *Columbia Human Rights Law Review* 30 (1998) 320. See also Shafie, S., ‘Palestinian refugees in Lebanon’, *Forced Migration Review* 26 (2007) 13.

237 Ibid., 315.

238 Ibid.

239 El-Khazen, F., *The breakdown of the state in Lebanon, 1967–1976*, Cambridge: Harvard University Press, 2000, 140.

240 Hudson, M. C., ‘The Palestinian factor in the Lebanese civil war’, *Middle East Journal* 32.3 (1978) 263.

241 The Cairo Agreement, or Cairo Accord, was reached on 2 November 1969 between PLO leader Yasser Arafat and Lebanese army commander Emile Bustani. For a critical

appraisal see Brynen, R., *Sanctuary and survival: The PLO in Lebanon*, Boulder, CO: Westview Press, 1990, 192–4, and Suleiman (n 8), 100.

242 From 1970–1982 various industries (such as textile manufacturing and others) were established and expanded in camps and two-thirds of the Palestinian labour force in Lebanon was employed. Hanafi, S., Long, T., 'State of exception in the Palestine refugee camps of Lebanon', *Journal of Refugee Studies* 23.2 (2010) 137.

243 Hijazi, I., 'Lebanese scrap PLO accord, barring bases', *New York Times*, 22 May 1987. See also Suleiman, J., 'The current political, organizational, and security situation in the Palestinian refugee camps of Lebanon', *Journal of Palestine Studies* 29.1 (1999) 67.

244 A major exception is Nahr el-Bared camp where, in 2007 in its fight against militant jihadist movement Fatah al-Islam, the Lebanese army gained full control over the camp, much of which was destroyed in the process.

245 One of the most tragic incidents involving the Palestinians took place on 17 September 1982, when thousands of Palestinian civilians, including women and children, were massacred in the neighbourhood and refugee camp of Sabra and Shatila by Lebanese Christian militias that had entered West Beirut with help from the Israeli occupying forces. On the Lebanese civil war see Fisk, R., *Pity the nation: Lebanon at war*, Oxford, Oxford University Press, 1991.

246 After the ousting of the PLO from Lebanon, the Shiite militia group Amal launched an attack on the refugee camps, purportedly to expel all loyalists to Arafat. The camps were put under siege and it is estimated that up to 2,500 Palestinians were killed. The siege was lifted in January of 1988. This then gave way to a period of intra-Palestinian conflict within the camps. Cf. Stork, 'The War of the Camps, the War of the Hostages', MERIP Reports 133, 1985, 3–7; Suleiman (n 243), 68.

247 Suleiman (n 232), 6.

248 Doraï, 2003, see also Chapter V, Section 2.1.

249 For information on arrivals of Palestinians from Lebanon in Europe, see Chapter V, Section 2.1.

250 Suleiman (n 243), 67.

251 Sayigh (n 230), 45; El-Khazen (n 230), 278.

252 Hanafi and Long (n 242), 145.

253 Hanafi and Long (n 242).

254 Suleiman (n 243), 71–2. For a further appraisal of the conditions of Palestinian refugee camps in Lebanon, see ICG, 'Lebanon's Palestinian Refugee Camps', 19 February 2009, 2–3, 8–20.

255 In 2007, the Nahr al-Bared camp – the second largest camp in Lebanon and home to 31,000 refugees – was completely destroyed and the inhabitants displaced. Fatah al-Islam ('FI'), a group made up of some hundreds of militants from different Arab and Muslim nationalities declared their presence in the camp in late November of 2006. While all the major Palestinian groups rejected their presence, they could not eject them from the camp. In March 2007, there were clashes between Fatah members and FI, but this also failed to remove FI from the camps. Finally, due to a breakdown in security (FI was accused of robbing a bank and then attacking Lebanese army barracks), the Lebanese army cut off electricity and water and began shelling the camp with artillery. Palestinian refugees were stuck there for four days before being allowed to leave. Four hundred civilians died and over 1,000 were injured. See Abboud, S., 'The siege of Nahr al-Bared and the Palestinian refugees in Lebanon', *Arab Studies Quarterly* 31.1–2 (2009) 33–5; Hanafi, S., *Nahr al-Bared refugee camp crisis (Lebanon): socioeconomic impact assessments and recovery plan for*

areas surrounding Nahr al-Bared refugee camp, Beirut: American University of Beirut, 2008.

256 On the availability of protection for Palestinian refugees by the Lebanese authorities, see Danish Immigration Service [DIS], Stateless Palestinian Refugees in Lebanon, Country of Origin Information for Use in the Asylum Determination Process, October 2014 ['Stateless Palestinians in Lebanon 2014'], 7–14.

257 Author [FA] interview with Jaber Suleiman, 12 May 2019.

258 Shibli (n 62), 39.

259 See Section 6.3 (Libya).

260 As of 1995 Palestinian refugees who want to leave Lebanon must first obtain exit/re-entry visas from the Office of Public Security, which are affixed to their travel document or *laissez-passer*. Interior Ministry Decree No. 478 of 1995 Regulating Entry and Exit of Palestinians into and out of Lebanon, art. 1, 3, 4; text *Journal of Palestine Studies* 98 (Winter 1996) 145; also *Al-Hayat*, 23 September 1995.

261 During the 1990s, after numerous representations by both UNRWA and UNHCR, TDPRs started being extended (from one to three years).

262 Doraï (n 222).

263 Cf. Sayigh (n 230), 245–63.

264 Cf. Sayigh, R., 'Palestinian refugees in Lebanon: Implantation, transfer or return?' *Middle East Policy* 8.1 2001, 94.

265 Lebanese Council of Ministers, Ministerial Decision no. 41/2005 of 14 October 2005, followed by Ministerial Decision no. 89/2005 of 25 November 2005.

266 For an appraisal, see Suleiman, J., 'Lebanese-Palestinian Relations: A Political, Human Rights and Security Perspective', Lebanese Palestinian Dialogue Forum/LPDF at the Common Space Initiative/CSI, Policy Dialogues Series: Lebanese-Palestinian Relations No. 5, Beirut, 2017.

267 By 1982 it was estimated that 50,000 Palestinians in Lebanon had acquired citizenship; cf. Adelman, H., Palestinian refugees and the peace process, in Marantz, P., Gross Stein, J. (eds.), *Peace-making in the Middle East: Problems and prospects*, Ottawa: Barnes & Noble, 1985, 110, 118. Dillon, R., 'Der durchschnittliche Palästinaflüchtling', in Rosen, K. (ed.), *Jahrbuch der Deutschen Stiftung der UNO-Flüchtlingshilfe 1987*, Baden-Baden, 1971, 39, mentions the lower figure of 30,000. Cf. also Bierwith, C., *Zum Einbürgernungsanspruch in der Bundesrepublik Deutschland geborener Kinder palästinensischer Eltern*, ZDWF-Schriftenreihe Nr. 43, Bonn, ZDWF, 1990, 117, and Brynen (n 241), 207, fn 12.

268 Reportedly, the only exception are Palestinian refugee women married to Lebanese citizens who are able to obtain citizenship and transmit citizenship to their children. US Department of State, 2014 Country Reports on Human Rights Practices – Lebanon, 25 June 2015 [hereafter 'US Department of State'].

269 The issuance of travel document is done in cooperation with the General Directorate of General Security (GDGS) [*Sûreté Générale*]. The GDGS's involvement reflects the 'security approach' that Lebanon has taken vis-à-vis Palestinians refugees.

270 Lebanon, Ministerial Decree No. 4082/2010.

271 The categorization is offered by Suleiman, J., Undocumented Palestinians in Lebanon (non-ID refugees), Lebanon: Aidoun, 2014, 2–3.

272 Ibid., 12-17.

273 Lebanon, Minister of Interior Ordinance No. 319, 2 August 1962. It details the process for the regularization of residency for Palestinian refugees, in which they are considered to be ‘foreigners who do not carry documentation from their countries of origin, and reside in Lebanon on the basis of [residency] cards issued by the Directorate of Public Security, or identity cards issued by the [DPRA]’. See also (n 291) and accompanying text.

274 Suleiman (n 8), 98.

275 See (n 223).

276 However, it is unclear what categories of Palestinian refugees are entitled to such a card. See Frontiers Association, *Falling through the cracks: Legal and practical gaps in Palestinian refugee status—A case study of unrecognized refugees in Lebanon*, August 2005, 68 (hereafter Frontiers Association).

277 Order 319 of 2 August 1962, [Law Regulating the Status of Foreign Nationals in Lebanon], art. 1., lists the various categories of foreign nationals.

278 For example, DPRA has to approve the transfer of residency for camp resident refugees. Many Palestine refugee camps reportedly face entry and exit controls that are prone to be tightened, particularly during periods of heightened security measures, and which result in restrictions on movement in and out of camps, see US Department of State (n 268).

279 Currently there are no restrictions on mobility and freedom of movement in and out of the country, however the camps in Southern Lebanon (Ein el-Helweh, Mieh Mieh, Rashidyia, Al-Buss, and Burj al-Shamali) are subject to tight control by the Lebanese army and refugees are subject to inspections when moving into and out of the camps.

280 As of 2010, they are entitled to work in jobs stated in the yearly circular issued by the Ministry of Labour and they are entitled to end of service indemnity and free work permit. See (n 291) and accompanying text.

281 Suleiman (n 232), 14.

282 UN Development Group (UNDG), UPR Submission of the UNCT in Lebanon, November 2015, para. 62, see also Joint NGO Submission to the Universal Periodic Review of Lebanon at the 23rd Session of the Working Group on the UPR, November 2015—Human Rights Violations for Palestinian Refugees in Lebanon, 2015 ['UPR Submission'], para. 10.4 and also sec. VI.2.

283 The normative framework regulating foreign (including Palestinian) labour in Lebanon incorporates three restrictive requirements: a (difficult to obtain) work permit from the Ministry of National Economy; reciprocity (which in 2010 was waived for jobs under Lebanese labour law but remains applicable for syndicated jobs) and national preference (Minist. Decree No. 17561 of 1964). As Palestinians have been considered having no ‘state’, the second requirement has affected them severely, barring them from many professions and forms of employment. For an informed discussion, see Sagheeh, N., and Nammour, K., ‘Labor Rights of Palestinian Refugees in Lebanon: Access to Liberal Professions’ (ILO, 2015). For more on Lebanese labour laws with regards to Palestinians, see Al-Nashif, N., El-Khoury, S., *Palestinian Employment in Lebanon—Facts and Challenges: Labour Force Survey among Palestinian refugees living in camps and gatherings in Lebanon*, Geneva: International Labour Organization, 2012.

284 Ibid., 22-3.

285 Ministerial Decision No. 79/1 issued on 7 June 2005 by Mr. Trad Hamadeh, the Minister of Labour at the time, lifted all restrictions on Palestine refugee access to pre-defined occupations (with the exception of the syndicated professions and liberal professions). See LPDC (Portal), ‘Palestine Refugees – responsible parties – section.

286 AUB/UNRWA Survey (n 223), ix. UNRWA puts this figure at thirty-nine; see UNRWA, ‘Employment of Palestine Refugees in Lebanon: An Overview’, 26 October 2017.

287 As per the Ministerial Decision No. 1/289 of 1982, which had also barred Palestinians from seventy commercial and administrative professions. See Yassine, D., and el-Natour, S., ‘The legal status of Palestinian refugees in Lebanon and the demands of adjustment’, Beirut: Human Development Centre and the International Development Research Centre, 2007, 10.

288 Since 2005, ministerial circulars are issued every year specifying restrictions. The last ministerial circular was issued in February 2018.

289 Suleiman, Briefing Note to the LPDC, LPDC portal, 3 April 2008.

290 Laws no. 128 and 129 of 2010, regulating Social Security and Labor Law, respectively.

291 Law no. 128 of 2010 made registered Palestine refugees eligible for end-of-service indemnities (8.5 per cent) provided they hold work permits, but not the sickness and maternity fund, nor the family allowances fund (for which deductions still apply). However, Palestinians are still bound by the full 23.5 per cent contributions, despite the fact that they do not benefit from either the Sickness & Maternity Fund (nine per cent) or the Family Allowances Fund (six per cent). Interview with Carole Mansour, Legal Aid Coordinator in UNRWA Lebanon, 13 February 2019.

292 Khazaal, I., ‘Professions of restricted access for Palestine refugees in Lebanon’, Geneva: UNRWA, 2015.

293 UNDG, UPR Submission (n 282), para. 64. According to the most recent figures given by the LPDC based on the Ministry of Labor statistics, Palestinians could only obtain 729 work permits as of 2016: 113 new ones and 616 renewals, compared to 209,674 work permits granted to foreigners in 2015. The Committee for Lebanese-Palestinian Dialogue, Palestinian refugees in Lebanon: Living reality and the will of progress, in *Palestinian Refugees of Lebanon*, Beirut: Dar Sa’ir Al-Mashreq, 2018 (in Arabic), 84.

294 The work permit requires a labour contract authenticated by a notary, with the ensuing fees of certification, along with documentary evidence related to the employer who, in most cases, is not inclined to present the certificate of registration in the trade register and/or his identification documents. Additionally, while both Ministers proposed the renewal of the work permit every three years, Palestine refugees are still required to renew their work permits on a yearly basis.

295 DIS, Stateless Palestinian Refugees in Lebanon (n 256), 35.

296 UNDG, UPR Submission (n 282); Ibid., 33–6.

297 These camps are largely deemed not to meet basic standards of adequate living, because of generally poor conditions/lack of infrastructure (access of building materials in camps is severely restricted by Lebanese authorities), overcrowding (the area of land allocated to the refugee camps has remained largely unchanged since 1948, despite significant population growth and further refugee arrivals, e.g. from Syria), and general environmental unsafety. AUB/UNRWA Survey (n 223), 7, reports: ‘decaying infrastructure, a dearth of recreational spaces, insufficient access to roads, deteriorated water and sewage treatment systems, contaminated water, and jerry-rigged electrical wires along with open drainage ditches paint a gloomy picture of camps where over 63 per cent of PRL reside.’

See also UN Human Rights Council, Compilation prepared by the OHCHR, Lebanon, 31 August 2015.

298 Law No. 296/2001 amending Presidential Decree of 1969 on the Right to Real Estate Acquisition for Foreigners (the 1969 Decree), art. 1 'No real right of any kind may be acquired by a person who does not have citizenship issued by a recognized state or by any person if such acquisition contradicts the provisions of the Constitution relating to the prohibition of permanent settlement.' See assessment in Hanafi and Long (n 242), 145.

299 Recent figures put it at eight per cent, 11.3 per cent among females, and 4.1 per cent among males. AUB/UNRWA Survey (n 223), 69.

300 US Dept. of State (n 268).

301 UNRWA, 'Reform of UNRWA health programme: A three-year journey 2010–2012', UNRWA, Lebanon Field Office, 2013.

302 Medical Assistance to Palestinians (MAP), Terminal decline? Palestinian refugee health in Lebanon, London: MAP, 2011, <http://bit.ly/1KAwbk7>, and IRIN News, Hidden health crisis facing Palestinian refugees, United Nations Office for the Coordination of Humanitarian Affairs [online], 9 October 2012.

303 US Dept. of State (n 268). Instances of abuse of and ill-treatment of Palestinians in Lebanon and related difficulty to access remedies have been reported by a number of human rights monitors. See Report of the CAT, 51st session (28 October–22 November 2013), 52nd session (28 April–23 May 2014), annex XIII – Summary account of the results of the proceedings concerning the inquiry on Lebanon, A/69/44, See also, Human Rights Watch (HRW), Lebanon: UPR Submission, 1 April 2015.

304 AUB/UNRWA Survey (n 223), 8.

305 Ibid.

306 Suleiman (n 8), 98.

307 Ibid.

308 Ibid. Also AUB/UNRWA Survey (n 223), 23.

309 Ibid.

310 Frontiers Association (n 276), 29.

311 At the time of writing, UNRWA and NRC have commissioned a report by Jalal Al-Husseini and Jaber Suleiman, Evolution of the Palestinian non-IDs' situation and recommendations about actions for improvements (forthcoming). The present authors were given permission to cite the draft study in this book.

312 Suleiman (n 271), 5.

313 In 2009, the PLO had a list of 2,976 non-ID; LPDC (2016), The Palestinian refugee issue in Lebanon – The cost of brotherhood at a time of conflict (in Arabic). The numbers 3,000–5,000 was in a study of the Danish Refugee Council [DRC], 'Survey Report on the Situation of Non-ID Palestinian Refugees—Lebanon,' September 2007, 5–11, 17.

314 This categorization is based on Suleiman (n 271), 5.

315 Art. 1(3), Order 319 Regulating the legal status of foreign nationals in Lebanon, (Lebanon), 2 August 1962 [emphasis added].

316 Frontiers Association (n 276), 15.

317 DRC, 2007 (n 313), 17; Al-Husseini and Suleiman (n 311).

318 US Dept. of State, 2015 (n 268).

319 Prior to 1982 the PLO could also facilitate issuance of ‘passports of convenience’ to Palestinians from various Arab countries to facilitate freedom of movement outside Lebanon (without national numbers, which indicated that they are not citizens of the issuing states). This concerned a limited number of Palestinian refugees (i.e. PLO cadres and or specific cases).

320 SICs are not issued to Palestinian refugees who hold PA passports, Jordanian passports, or Egyptian TDs, regardless of their validity or renewability; see Suleiman (n 271), 8.

321 The PLO office in Beirut requires some form of identification, valid or expired, such as a birth certificate, ID, or travel document and a certificate from the local *mukhtar* (mayor). The PLO reviews and stamps the application to the GDSG. DRC newsletter, Autumn 2008, no.10.

322 Of the more than 1,800 SICs issued to Non-IDs since 2008, only a few remain valid. Failure of persons to renew or apply for these IDs can be attributed to the limited validity, the lack of its widespread formal recognition by Lebanese authorities, the complex application process, and the high rate of rejections. UNDG, UPR Submission (n 282), para. 61.

323 Among others, the GDGS ceased issuing the SICs on the ground of irregularities in the applications received by the PLO. Al-Husseini and Suleiman (n 311), 20.

324 These passports are issued by the PA authorities in Ramallah and sent directly to the PLO Office in Beirut without any requirement for an entry stamp on behalf of the Lebanese authorities. The latter nonetheless recognize those passports. See LPDC, *Toward a unified national policy for the Palestinian refugees and a future vision for the Lebanese Palestinian Dialogue Committee*, 2013, cit. in Al-Husseini and Suleiman (n 311).

325 Al-Husseini and Suleiman (n 311).

326 In 2015, between 42,000 to 45,000 Palestinian refugees from Syria were in Lebanon. ‘UNRWA response and services to PRS in Lebanon’, March–April 2015, 1.

327 UNRWA, Syria Regional Crisis, Emergency Appeal 2019, 1.

328 British Home Office, ‘Country policy and information note Lebanon: Palestinians’, June 2018, 10.

329 UNRWA, ‘Protection in Lebanon’, March 2018.

330 UNRWA, ‘UNRWA response and services to Palestine refugees from Syria (PRS) in Lebanon’, Issue 21, 9 August 2013; Amnesty International, *Left out in the cold: Syrian refugees abandoned by the international community*, 5 December 2014, 16.

331 Renewable three-month residency permit, renewed at no cost for up to twelve months; UNRWA, ‘UNRWA Response and Services to Palestine Refugees from Syria (PRS) in Lebanon’, no. 35 (31 May 2014). However, after twelve months, refugees would have to pay USD 200 per family member to extend; AUB/UNRWA Survey (n 223), 8.

332 UNRWA, ‘Protection Brief: Palestine Refugees Living in Lebanon’, October 2017.

333 Palestinian refugees from Syria are often unable to register births of newborn babies, which results in them lacking documents to prove their relationship to the child and children being prevented from accessing essential services because of a lack of proof of identity, including aid to the family.

334 UNRWA, 'Profiling the vulnerability of Palestine refugees from Syria living in Lebanon', 2015, 6.

335 In May 2014, around forty Palestine refugees from Syria were reportedly arrested at Beirut International Airport after they tried to leave the country with allegedly falsified documents; they were reportedly forcibly returned to Syria.

336 British Home Office, 2018, 10, paras. 2.5.13, 2.5.14.

337 A 2015 survey found that ninety-five per cent of Palestinian refugees from Syria were dependent on UNRWA assistance, including food, shelter, health care, and education. By 2015, these refugees constituted already one of the most vulnerable population segments in Lebanon, with poverty reaching eighty-nine per cent, nine per cent living in extreme poverty, and an estimated 94.5 per cent being food insecure. UNRWA, 'Lack of funds forces UNRWA to suspend cash assistance for housing for Palestine refugees from Syria in Lebanon,' 22 May 2015.

338 UNRWA, '2019 Syria regional crisis emergency appeal', January 2019, 19.

339 Lack of funds has forced UNRWA to cut monthly cash assistance to destitute Palestinian refugee families from Syria, as in (n 337) and (n 338).

340 Ibid. The number of Palestinian refugees from Syria's children attending schools also decreased, with many reportedly working to support their families.

341 For general overview, see Suleiman, J., 'Palestinians in Syria: The past, the present, and looking towards the future', *Institute for Palestine Studies* February 2014 (in Arabic).

342 UNRWA, Palestine refugees from Yarmouk: Background, 2015, 3.

343 See Section 3.4.4 in particular.

344 ESM report 1949 (n 230). Official sources report that Syrian authorities registered around 95,000 refugees in 1949.

345 Al-Mawed, H. S., *The Palestinian refugees in Syria: Their past, present and future*, Ottawa, International Development Research Centre, 1999, 12.

346 Under the Armistice Agreement, three DMZs were created. It was agreed that sovereignty over these areas would be decided in a final peace agreement, cf. art. V, Israeli-Syrian General Armistice Agreement, 20 July 1949, UN doc. S/1353/Rev. 1. However, in 1951, Israel had embarked on irrigation plans that caused new displacement of Palestinians. Tension erupted. Despite UNSC's call for the return of the 'the Arab civilians who have been removed from the demilitarized zone' to their homes (UNSC, S/2517, 18 May 1951), displacement continued and even intensified after the Suez Canal crisis in 1956. Muslih, M. 'The Golan: Israel, Syria, and strategic calculations', *Middle East Journal* 47.4 (1993) 615. Neff, D., 'Israel-Syria: Conflict at the Jordan river, 1949-1967', *Journal of Palestine Studies* 23.4 (1994) 31; Rabinowitz D., S. Khawalde, 'Demilitarized, then dispossessed: The Kirad Bedouins of the Hula Valley in the context of Syrian-Israeli relations', *International Journal of Middle East Studies* 32.4 (2000) 515-24.

347 Morris describes the origins of their flight as follows: 'A last problem remained in the north; that of several clusters of villagers in the Demilitarized Zone (DMZ) along the Israeli-Syrian border whose presence was formally protected by the provisions of the Israeli-Syrian General Armistice Agreement (Article V) of 20 July 1949. For military, economic and agricultural reasons, Israel wanted these Arabs ... numbering about 2,200 in all - to move, or move back to Syria. The military suspected them of helping the Syrians ... By a combination of stick and carrot - economic and police pressure and "petty persecution" and economic incentives - Israel gradually evicted the inhabitants [of those areas', in Morris, B., *The birth of the Palestinian refugee problem revisited*. New York: Cambridge University Press, 2004, 513 It is worth noting that in the first edition of Morris' book (1987) the author

also wrote that ‘these small communities were induced to leave between 1949 and 1956, most of them moved across the Jordan to Syria’ (247).

348 UNRWA, Report of UNRWA Commissioner General, July 1966–30 June 1967, UNGA records, Twenty-Second Session, Supplement No. 13 (A/6713), para. 39.

349 Hammoud, T., ‘The impact of the Syrian Revolution on Palestinian refugees’, *Journal of Palestinian Refugee Studies* 2.2 (2012) 9.

350 UNRWA (Portal), ‘Syria’ [Accessed 19 March 2019].

351 Fiddian-Qasmiyah, E., ‘Invisible refugees and/or overlapping refugeedom? Protecting Sahrawis and Palestinians displaced by the 2011 Libyan uprising’, *International Journal of Refugee Law* 24.2 (2012) 12.

352 Hammoud (n 349) 9.

353 Al-Hardan, A., ‘The right of return movement in Syria: Building a culture of return, mobilizing memories for the return’, *Journal of Palestine Studies* 41. 2 (2012) 64.

354 Peretz (n 182), 66.

355 This constituted three per cent of the population, compared to Jordan and Lebanon, where Palestinians constituted forty and ten per cent of the local population, respectively. Despite various arrivals, the Palestinian population has not grown much beyond that percentage.

356 Cf. Brand, L. A., ‘Palestinians in Syria: The politics of integration’, *Middle East Journal* 42 (1988) 621, 622.

357 Za’im’s proposal was to settle the Palestinians in the Jazirah region to farm the fertile and underpopulated land along the Euphrates River. Cf. Shlaim, A., ‘Husni Az’im and plans to resettle the Palestinian refugees in Syria’, *Journal of Palestine Studies* 60 (Summer 1986) 68. Also, *Ibid.*, 622; Peretz (n 182), 66.

358 The organization was initially named Palestine Arab Refugee Institution (PARI); it was established by Law No.450 (25/1/1949) and affiliated to the Ministry of Interior. In 1958 it was renamed as GAPAR (Decision No. 1130 of 15 September 1958, which amended the previous law) and has been affiliated to the Ministry of Social Affairs.

359 This relationship is regulated by the Agreement (with related letter) between UNRWA and the Syria Republic, signed on 28 April 1953, see details Section 3.1 (n 102).

360 Arzt, D. E. *Refugees into citizens: Palestinians and the end of the Arab-Israeli conflict*, New York: Council on Foreign Relations, 1997, 48.

361 UNRWA, Syria Field Office Strategic Plan 2016–2021, 9.

362 In 1956 Syria adopted Law No 260 (1957), which regulated the legal status of the refugees from former British Mandate Palestine in the country.

363 Canada Immigration and Refugee Board of Canada, ‘Syria: The legal rights and obligations of a Palestinian who has been issued a Syrian travel document, including whether they must report for military service; whether the rights and obligations apply to Palestinians that have resided outside of the country for the majority of their life and only visited it briefly,’ 22 November 2013, SYR104658.E [hereinafter Canada Immigration and Refugee Board Report].

364 UNRWA, ‘The status of Palestinian refugees living in Syria’, 2006 (unpublished), 14

365 Expelled from the DMZ in 1949, they were later allowed to return to their villages, before being displaced again in 1956. Cf. Hammoud, T., Palestinian refugees and the Syrian Revolution, Doha: Arab Center for Research and Policy Studies, 2013, 4.

366 Those refugees who chose not to return to the DMZ were in fact registered with UNRWA from 1950 onwards.

367 Suleiman, J., The Syria UNRWA archives, in Tamari, S., Zureik, E. (eds.), *Reinterpreting the historical record: The uses of Palestinian refugee archives for social sciences research and policy analysis*. Jerusalem: Institute for Jerusalem Studies & Institute for Palestine Studies, 2001, 89–90, 108, fn 1).

368 UNRWA (n 364) 2006.

369 For example, Legislative Decree no. 37 of 1949 exempted Palestinians from a provision of the Civil Servants Act that stipulated that unless one had been a Syrian national for at least five years, one could not serve in the Syrian civil service. Cf. Verman, J., *The refugee in the post-war world*, New Haven, CT: Yale University Press, 1953, 430, and Brand (n 356), 623. UNRWA, Annual Report for the period 1951–2, mentions a series of legislative measures aimed at facilitating the economic integration of Palestinians in Syria; see para. 46.

370 Decree no. 28/1960 (on travel documents for Palestinians in Syria), Law No.1311/1963 (on travel documents and laissez-passer); Citizenship Law No. 276/1969 (exclusion of citizenship to the Palestinians), see (n 475); Law No.45/1975, art. 14 (regulating passports, entry, and exit visa); Ministerial Decision No. 1531 of 6 September 1980, art. 2 (regulating ID cards for Palestinians). Cf. Khalil, A., ‘Palestinian refugees in Arab states: A rights-based approach’, *Euro-Mediterranean Consortium For Applied Research On International Migration Research Report*, Florence: CARIM, 2009, 26–7.

371 Hammoud (n 365), 4.

372 Reeds, L. A. ‘Sixty years in limbo: The duty of host states to integrate Palestinian refugees under customary international law’, *NYU Law Review* 81 (2006) 357, cit. in Khalil (n 370), 6.

373 Art. 6 (c), Legislative Decree 276 – Nationality Law [Syrian Arab Republic], Legislative Decree 276, 24 November 1969, which stipulates that Syrian nationality may be granted to a person who belongs to an Arab country and applies for Syrian citizenship, except Palestinians, in accordance with the earlier Syrian Law 260 and the spirit of 1965 Casablanca Protocol, which Syria has ratified.

374 Law No. 1311 of 2/10/1963, art. 20.

375 In the summer of 1994, reflecting opposition to the Oslo process by Syria and pro-Syria factions within the PLO, Syria for the first time began denying entry to Palestinians from the oPt, and to those holding temporary Jordanian passports .UNRWA (n 364), 42.

376 Brand (n 356).

377 Palestinians are drafted by the Syrian Army recruitment section designated for Palestinians through the ‘Palestinian Branch’. The majority are sent to join the PLA, but the Syrian Army can and regularly does keep recruits, often specialists (e.g. medical staff and engineers).

378 Forced conscription has been one of the reasons for Palestinian men of military age to flee Syria since the start of the 2011 conflict. UNHCR, International Protection

Considerations with regard to people fleeing the Syrian Arab Republic, Update V, 3 November 2017, 66–8.

379 Civil society organizations were allowed depending on political considerations. After 1948, Palestinian refugees formed ‘Palestine’s Sons’ (*Abnā’ Filastīn*), a Palestinian national group focusing on the right of return, and ‘The Heroes of the Return’ (*Abṭāl al-‘Awda*), based in Homs Camp. In 2000, *Aidoun*, a non-partisan Palestinian NGO advocating for the right of return, was established, primarily in reaction to the developments of the Oslo process. Al-Hardan, A., ‘The right of return movement in Syria: Building a culture of return, mobilizing memories for the return’, *Journal of Palestine Studies* 41.2 (2012) 66–7.

380 Brand (n 356), 628.

381 Conservative estimates are from UNRWA (n 364), 16, while higher figures are in Al-Mawed (n 345), 44.

382 UNRWA (n 364), 15.

383 However, those who fled with PLO troops to Syria after Black September and were not able to renew their Jordanian passports are not treated as Arab nationals.

384 Art. 1, Legislative Decree No. 29 of 1970 – The Entry and Exit of Aliens to and from the Syrian Arab Republic and Their Residence Therein, 15 January 1970.

385 Ibid., art. 39. See also Ministerial Order No. 30 of 12 March 2007, concerning the Entry, Stay, and Exit of Arab Nationals, which allows Arab nationals to enter Syria without visa for entry or transit, published in the *Official Journal of the Syrian Arab Republic*, 2007, 880, cit. in Khalil (n 370), 27.

386 Ministry of Social Affairs and Work, Order No. 2040, of 20 Nov. 2005. Cf. Migration Policy Center, ‘Migration Facts: Syria’. European University Institute and Robert Schuman Center for Advanced Studies, April 2013.

387 Ibid., 20–1. The PLO document is an informal identification card (ID) like the one issued for non-ID Palestinians in Lebanon. Like in Lebanon, the document is not a residence permit. It can be obtained by providing evidence of being Palestinian (e.g. a birth certificate).

388 Ibid., 20. Before 2011, a considerable number of these refugees succeeded to register with GAPAR and obtain a Syrian TDPR. Around 2017, this procedure was resumed and thus a second group of those were granted Syrian travel document. Interview with Jaber Suleiman, 3 January 2019.

389 Ibid., 16.

390 Hammoud (n 365), 4.

391 An exception is made for Palestinians who came from Lebanon, who may work for UNRWA, provided they obtain a work permit. UNRWA (n 364), 22.

392 Fees are due for higher education and specialized studies, cf. Ibid., 21–2.

393 Ibid., 23.

394 Hammoud (n 365), 3–4

395 They were not registered with UNRWA, and were undocumented, as UNRWA has never operated in Iraq (except for a brief period in the early 1950s, when it had a ‘placement office’ in Baghdad).

396 Approximately 250 of them were retroactively regularized and housed in al-Hol Camp in the northeast of the country, cf. UNRWA (n 364), 25.

397 Canada Immigration and Refugee Board report (n 363).

398 Ibid. Cf. Hammoud (n 365), 4.

399 Originally valid for ten years, as of 2014 these permits have a validity of between one and three years.

400 Hammoud (n 365), 5.

401 For example, in 2006 it extended its services to Palestinians who were displaced as a result of the 1967 hostilities; see UNRWA (n 364), 26.

402 Ibid.

403 In 2014, UNHCR and UNRWA reached an understanding on each agency's responsibility vis-à-vis Palestinian refugees from Iraq. Some 1,400 Iraqi Palestinian refugees were found falling under UNHCR's mandate, while those under UNRWA's mandate are registered and eligible to receive the agency's services.

404 The first attack was against Latakia camp, home to approximately 10,000 refugees. Cf. 'Syria assault on Latakia drives 5,000 Palestinians from refugee camp', *The Guardian*, 15 August 2011.

405 Palestinian refugees in Dera'a, Homs, Hama, and Latakia were resented by Syrian opposition groups for not 'joining the revolution'. Cf. Erakat, N., 'Palestinian refugees and the Syrian uprising: Filling the protection gap during secondary forced displacement', *International Journal of Refugee Law* 26.4 (2014) 601.

406 UNHCR, (n 378), 66–8.

407 In 2013, a siege was imposed by government forces on Yarmouk camp, causing severe hunger and deprivation. In 2015, extremist groups took hold of over sixty per cent of the camp. UNRWA access was severed and almost 20,000 refugees remained trapped inside the camp. In 2016, only 6,000 of the original Yarmouk residents remained. Cf. UNRWA, 'The Crisis in Yarmouk Camp', July 2016.

408 For example, Khan Eshieh, Muzeireb, and Jillin. UNRWA, '2018 Syria Regional Crisis and Emergency Appeal', 2. Available at: <http://www.unrwa.org/sites/default/files/content/resources/2018_syria_ea_final_web_0.pdf>

409 For example, Ein El-Tal Camp (Aleppo Governorate), Yarmouk Camp (Damascus Governorate), and Dera'a Camp (Dera'a Governorate). Cf. Strickland, P., 'Palestinians trapped in Syria face humanitarian crisis', *Al-Jazeera English* 20 December 2016. Available at <http://www.aljazeera.com/news/2016/12/palestinians-trapped-syria-face-humanitarian-crisis-161220083249763.html>; UNGA, Report of the Commissioner-General of the [UNRWA], 1 January–31 December 2016, 22 May 2017, A/72/13, para. 12.

410 According to the London-based Action Group for Palestinians of Syria (AGPS), as of July 2019 a total of 3,987 Palestinians, including 467 women and 200 children, have been killed since the beginning of the civil war. Most of the Palestinians killed reportedly died as a result of bombardments (1,147), while others were killed as a result of gunshots (942) or torture in detention (474); cf. AGPS, Statistics. Accessed 30 October 2017. Available at <http://bit.ly/2x3T6i2>. See also 'How Syrians are being killed' [online], *The New Humanitarian* (formerly IRIN), 25 July 2016.

411 UNRWA, Syria Regional Crisis and Emergency Appeal 2018, 2.

412 UNRWA, Syria Emergency Appeal 2019, 7.

413 Ibid.

414 Palestinians from Syria: Syria Needs Analysis Project, March 2014, 7.

415 At the time of writing, Palestinian refugees displaced in the northern-eastern provinces of Syria, where Turkey exercises de facto control, have raised concern over the possible impact on their status as ‘Palestine refugees’ registered with the Syrian authorities of what it appears to be a new ID from Turkey, apparently not taking note of their pre-existing refugee status; see Chapter V, Section 2.4.5 (Turkey).

416 In 2016, ninety-five per cent of the population (418,000 individuals) was found to be reliant on UNRWA’s emergency scheme to meet their basic food and shelter needs; see UNRWA, ‘Syria: UNRWA—Humanitarian Snapshot, April 2017’, 18 May 2017.

417 UN General Assembly, Report of the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, 1 January–31 December 2016, 22 May 2017, A/72/13; UNRWA, Syria: ‘UNRWA Operations and Achievements in 2016’, 6 February 2017.

418 UNRWA, ‘Syria Emergency Appeal 2019’. Palestinian refugees have fled Syria and, at the time of writing are still displaced in Lebanon (29,000), Jordan (17,000), Egypt (4,000), Turkey (some 15,000), and Gaza (700), with others having reached Europe, and in smaller number the Asia Pacific and the Americas. The figures from Jordan and Lebanon are from UNRWA. Other figures are authors’ estimates—see respective sections of the book. In 2016, over 362,000 people arrived in Europe by boat; over twenty per cent were from Syria; UNHCR, ‘Mediterranean Situation’, February 2017.

419 Cf. Section 3.2 (Jordan), Section 3.3 (Lebanon), and Section 4.2 (Egypt).

420 This included 59,503 individuals in 2019, 141,475 individuals in 2018, 185,139 in 2017, and over 362,000 in 2016. Over twenty per cent of arrivals were from Syria. See UNHCR (Portal) Mediterranean Situation [last accessed 25 September 2019].

421 In 2016 alone, over 5,000 refugees died on the journey. Cf. UNHCR, ‘Mediterranean Sea: 100 people reported dead yesterday, bringing year total to 5,000’. Accessed 19 March 2017.

422 Ibid.

423 UNGA, Report of the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, 1 January–31 December 2016, 22 May 2017, A/72/13, paras. 14, 18; Amnesty International, Denied Refuge: Palestinians from Syria Seeking Safety in Lebanon, 1 July 2014, 7, 11.

424 At the time of writing (end of 2019), some have started to return, including through initiatives led by the Palestinian Embassy in Damascus. Meanwhile, a number of them, who had voluntarily returned from Europe after cessation of hostilities in Yarmouk refugee camp, were reportedly arrested by Syrian security forces. ‘Syria regime arrests returning Palestinian refugees’, *Middle East Monitor* [online], 18 December 2018. Also, on the situation of Palestinians from Yarmouk Camp displaced in Turkey controller areas of Syria, see Chapter V (n 209)–(n 210) and accompanying text.

425 There are refugees living in gatherings referred to as ‘camps’ but not officially recognized as such (e.g. Birzeit camp, Ein Mesbah Camp, and Selwad camp, new Askar camp and Qadoura camp).

426 UN Country Team occupied Palestinian territory, Common Country Analysis 2016, ‘Leave No One Behind: A Perspective on Vulnerability and Structural Disadvantage in Palestine’, 48–9.

427 This camp was created in 1965 to accommodate 1948 refugees who were displaced from the Jewish Quarter of the Old City of Jerusalem where they had been accommodated. Cf. Benvenisti, M. *Jerusalem: The torn city*, Jerusalem: Isratypeset Ltd, 1976, 70. According to UNRWA, Shu'fat camp residents (including non-refugees) number 24,000. The figures are in UNRWA, 'Emergency Appeal oPt, 2016', 7. Various Israeli Governments have, since the mid-2000s, threatened to place Shu'fat camp outside the Jerusalem boundaries (the route of the barrier places it on the West Bank side).

428 UNRWA, 'Profile: Kalandia Camp', March 2015.

429 This includes Sheikh Jarrah, the Old City, Mount of Olives, Ras al-Amud, and Wadi al-Joz.

430 UN OCHA, 'Area C Vulnerability Profile', 2014, 4.

431 Numbers are unconfirmed, given the precarious status of these refugees in the West Bank; see Section 3.5.3.

432 UNRWA, 'Where We Work - Gaza Strip'. Accessed 12 January 2019.

433 Ibid. About 600,000 of the refugees live in eight refugee camps in the Gaza Strip.

434 The Gaza Strip had 70,000 inhabitants before the refugees' arrival. Butler, L., 'A Gaza chronology, 1948–2008', *Journal of Palestine Studies* 38.3 (2009) 98.

435 According to UNCTAD, in 1947–49 the West Bank lost from 14.4 per cent to 25.5 per cent of its population, and the Gaza Strip lost from forty per cent to 43.5 per cent. UNCTAD, 1994 (n 185), 11, para. 5. See also UNCCP, ESM report 1949 (n 230), section on 'Discussion of Findings and Recommendations, The Palestine Refugees'. While most of the influx in Gaza came in 1948, other refugees were expelled from Israel to the Gaza Strip in March 1949 (about 3,140 people) in contravention of the Armistice Agreement, and from Majdal (about 2,400 people) in 1950, when the town was renamed Ashqelon. Other numbers were displaced from the Negev and North Galilee, see Chapter I, Section 4.

436 Rempel, T., Dispossession and restitution in 1948 Jerusalem, Tamari, S., (ed.), *Jerusalem 1948: The Arab neighbourhoods and their fate in the war*, 2nd revised edn., Washington, DC: The Institute of Jerusalem Studies and BADIL, 2002, 211. Others place the figure of Palestinians displaced from West Jerusalem at 80,000; see Zink, V., 'A quiet transfer: The Judaization of Jerusalem', *Contemporary Arab Affairs* 2.1 (2009) 123.

437 UNCTAD, 1994 (n 185), 11, para. 5.

438 (n 149). Initial UN figures were lower (200,000–250,000) owing to the chaos generated by the large influx and the registration challenges. UNRWA, Report of the Commissioner-General for 1966–1967, GAOR, 22nd Session, suppl. 13 (A/6713), para. 30.

439 Ibid. Chapter I (n 265)–(n 268) and accompanying text.

440 This was the fate of three refugee camps near Jericho; 2,000 of the original 20,000 refugees remained in Ein el-Sultan camp; Masalha, N., *The politics of denial: Israel and the Palestinian refugee problem*, London: Pluto Press, 2003, 200–4. Some 5,000 of an estimated 30,000 remained in Aqbat Jabr camp, whose population rose again to after the Oslo Accords and the withdrawal of Israel from Jericho; UNRWA, 'Profile: Aqbat Jabr Camp', March 2015.

441 Dodd, P., Barakat, H., *River without bridges: A study of the exodus of the 1967, Palestinian Arab refugees*, vol. 10, Beirut: Institute for Palestine Studies, 1968, 5.

442 Dumper, M., 'Israeli settlement in the Old City of Jerusalem', *Journal of Palestine Studies* 21.4 (1992) 32.

443 Dodd and Barakat (n 441), 6.

444 UNRWA, Report of the Commissioner-General for 1966–1967, GAOR, 22nd Sess., Supp. No. 13 (A/6713), para. 36.

445 Masalha, N., *A land without a people: Israel, transfer and the Palestinians 1949–96*, London: Faber and Faber, 1997, 83–4.

446 For example, between 1967 and 1978, over 300 Palestinian guerrilla members who had just been arrested or were serving prison terms were deported from Gaza. Lesch, A. M., ‘Israeli deportation of Palestinians from the West Bank and the Gaza Strip, 1967–1978’, *Journal of Palestine Studies* 8.2 (1979) 103, 110.

447 Segev, T. (J. Cohen, tr.), *1967: Israel, the war, and the year that transformed the Middle East*, New York: Metropolitan Books, 2007, 13: ‘In early 1968, eight months after the war, a small unit of five people began operating in Gaza under the direction of an IDF major. Their job was to encourage the local population to leave. They worked through collaborators who went around the camps promising people money in return for their agreement to go.’ Further, the same author notes that the ‘Central Bureau of Statistics found that in the first six months of 1968, approximately 20,000 people emigrated from the Gaza Strip’, Segev, 15, also 13–17.

448 Numbers of Palestinians who have left as a result of the occupation are hard to ascertain. Only through residency revocation 250,000 Palestinians have been displaced from the oPt between 1967 and 1994 (n 510)–(n 518) and accompanying text.

449 Section 3.2.

450 Israel briefly occupied the Gaza Strip (October 1956–March 1957) during the Suez War and was then forced to withdraw by the US. Cf. Butler (n 434), 100.

451 After the conclusion of the Egyptian-Israeli Armistice Agreement in February 1949 (S/1264) the Gaza Strip was placed under Egyptian military and administrative rule.

452 Egypt, Syria, Lebanon, Iraq, Saudi Arabia, and Yemen are the only countries that recognized it. Cf. MacDonald, (n 13), 89.

453 Butler (n 434), 100.

454 Qafisheh, M., ‘Who has the right to become a Palestinian citizen? An international law analysis’, *Yearbook of Islamic and Middle Eastern Law Online* 18.1 (2017) 121.

455 For a historical overview, see Filiu, J., *Gaza: A history*. Oxford: Oxford University Press, 2014, 125–253 in particular, and Finkelstein, N., *Gaza: An inquest into its martyrdom*, Berkeley, CA: University of California Press, 2018.

456 Egypt only administered Gaza through military orders and never changed the status of the law.

457 Military Order 2, vol. 1, 1967, cit. in Shehadeh, R., ‘The land law of Palestine: An analysis of the definition of state lands’, *Journal of Palestine Studies* 11.2 (1982) 89.

458 This raises issues of compliance with art. 43 of the Hague Regulations, constitutive of customary international law. See Chapter 3, Section 2.1.

459 Shehadeh R., J. Kuttab, ‘The West Bank and the rule of law’, *Al-Haq*, 1980, 61.

460 Military Order No. 58, issued on 23 July 1967. This military order defined ‘absentees’ property’ as ‘property whose legal owner, or whoever is granted the power to control it by law, left the area prior to 7 June 1967 or subsequently’.

461 Absentee Property Law is discussed in Chapter I, Section 3.2.

462 Bishara, S., 'Who has the right to steal Palestinian land?', *The Nakba Files*, 10 August 2016.

463 Ibid.

464 Bisharat, S., 'The 50-year-old military order that could unleash a new wave of land grabs in the West Bank', *The Nakba Files*, 12 October 2016.

465 In 1980, the Israeli government completed a survey of 'state land' in the West Bank, including as such three out of five Ottoman land categories: *miri*, *mawat*, and *matrook*. However, these categories cannot be classified as state land because their purposes are different and they have separate requirements; indeed, a 'public land' category was created by the British Mandate (see 'The Palestine Order in Council', 10 August 1922, art. 2), which only applied to land that was subject to the control of the Government of Palestine through treaty, convention, agreement, or succession. The other two categories are *mulk* land (land that was in private ownership) and *waqf* land (land that was dedicated to a pious purpose and the implied ownership is with God). Israel's categorization of land that is not privately owned as 'state land' has proven instrumental in gaining control of this land through expropriation. On the other hand, *miri* land referred to the cultivable lands and pastures close to the village. Land left for public use (for building roads, etc.) was *matrook* land. All other land falling about a mile and a half away from the village was *mawat* land. None of these categories can be defined as state land, and all land in Palestine at the time of the occupation was under one of these five categories. For more details, see Shehadeh and Kuttab (n 459), 60; Shehadeh (n 457) 93–4.

466 The Constitution of the Hashemite Kingdom of Jordan, art. 11, prohibits expropriation of private property except for public utility and unless fair compensation is paid to the owner.

467 For example, Military Order No. 59 of 31 July 1967, concerning 'State Property' defines 'state property' as any movable or immovable property, which prior to 7 June 1967, belonged to a hostile state or to any arbitration body connected with a hostile state; it stipulated that 'any land not individually registered or registered as the property of the Islamic Waqf, is subject to the designation as state land.' Such land was placed under the Custodian of the Public Property (an institution which was created by virtue of the same Military Order). Furthermore, the definition of state land continued to be refined by further military orders, such as Military Order No. 364 and Military Order No. 1091 of 1984.

468 Since the creation of the PA there have been local services committees in camps which function as local councils. They are functioning under auspices of the PLO Refugee Affairs Department.

469 See discussion on self-determination in Chapter IV, Section 3.3.

470 See Chapter I, Section 6.

471 In 2005 Israel withdrew all military and civilian installation from 'within' the Gaza Strip, but maintained effective control over the territory. See Chapter III, Section 2.2.2.

472 Baconi, T., *Hamas contained: The rise and pacification of Palestinian resistance*, Redwood City, CA: Stanford University Press, 2018.

473 Shehadeh (n 457), 97–8. This appears to be, and has been characterized as, creeping annexation; see Monroe, E., 'The West Bank: Palestinian or Israeli?', *The Middle East Journal* 1977, 397–412; Dajani, O. M., 'Israel's creeping annexation', *American Journal of International Law Unbound* 111 (2017) 51–6. See also the appeal of the Special Rapporteur

on the [oPt] ‘UN human rights expert urges action to stop Israel’s annexation in West Bank’, 24 October 2018.

474 Between 1967 and 2019, 131 government-sanctioned Israeli settlements and 100 ‘outposts’ (both illegal under international law) have been established in the West Bank (not including fifteen settlements built within the expanded boundaries of Jerusalem and settlement enclaves within Hebron); over 620,000 illegal settlers reportedly in occupied Palestinian territory by 16 January 2019. B’tselem (Portal), Statistics, Settlements (accessed 18 May 2019).

475 Israel: Law for the Regulation of Settlement in Judea and Samaria, 5777, 17 February 2017. See also Sedacca, N. ‘Sanctioning land expropriation in the Occupied Palestinian Territory: Israel’s new “Land Regularisation Law”’, *Lawyers for Palestinian Human Rights*, 3 March 2017.

476 See Chapter III, Section 2.2.2. and Section 2.3.

477 Ibid.

478 The 1993 DOP, art. V(3), postponed permanent status negotiations on certain issues, including Jerusalem, refugees, settlements, and borders. See Chapter I, Section 6.

479 Zink (n 436), 124.

480 Law and Administration Ordinance Amendment No. 11 of 1967. This included not only the 6,400 dunams of East Jerusalem—previously ruled by Jordan—but also 65,000 dunams in the West Bank, attaching them to the 38,000 dunams belonging to West Jerusalem; see Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 22 October 2018, UN doc A/73/45717, 74(b), [hereafter SR oPt report], para. 34.

481 UNGA res. 2253 (ES-V), 4 July 1967 (Vote: 99-0-20), paras. 1-2; UNGA res. 2254 (ES-V), 14 July 1967 (Vote: 99-0-18) para. 2. See also UN Secretary-General, ‘Measures taken by Israel to change the status of the City of Jerusalem’, UN Doc A/6753-S/8052, 10 July 1967, para. 3, and UNSC res. 242 of 22 November 1967, which emphasized ‘the inadmissibility of the acquisition of territory by war’ and affirmed that Israel must withdraw from the territories it had occupied. The following year, the UNSC further considered ‘that all legislative and administrative measures and actions taken by Israel, including expropriation of land and properties thereon, which tend to change the legal status of Jerusalem are invalid and cannot change that status’, UNSC res. 252, 21 May 1968, para. 2. See also UNSC res. 267, 3 July 1969, para. 4; UNSC res. 298, 25 September 1971, para. 2.

482 Knesset on the 17th Av, 5740 (30 July 1980). In Israel, ‘Basic Laws’ are constitutional laws of the State of Israel. Gross, A., ‘The politics of rights in Israeli constitutional law’, *Israel Studies*, 3.2 (1998) 80-118.

483 UNSC res. 478, 20 August 1980, para. 3.

484 Ibid., para. 5(a).

485 UNSC res. 2334, 23 December 2016; UNGA res. A/RES/ES-10/19, 21 December 2017.

486 In 2019, the boundaries of Jerusalem appear as stretching to Ramallah in the north and Bethlehem in the south, although densely populated Palestinian areas such as el Ram, Abu Dis, Azariyeh, and Kalandia Camp fall outside of the municipal boundaries. At the time of writing, Israeli attempts to forcibly transfer the Palestinian inhabitants of the eastern area of Jerusalem [commonly known as ‘E-1 area’ or ‘east-Jerusalem periphery’], mostly

Bedouin (1,948 refugees) and other pastoralist communities, are ongoing, see A/HRC/34/39 paras. 40–57.

487 This is done through the construction of Israeli settlements (which de facto encircle the eastern part of the city), the separation wall (the Wall) that cuts through Palestinian densely populated areas, and the creation of Jewish-only areas within Palestinian residential areas (e.g. Silwan, Ras Al Amoud). Between 1967 and 2018, Israel has expropriated over thirty-eight per cent of East Jerusalem's land base for exclusively Israeli settlements and has zoned only fifteen per cent (amounting to 8.5 per cent of Jerusalem as a whole) for the residential needs of Palestinian Jerusalemites. This has created a housing and planning crisis for the Palestinians (only eight per cent of all building permits being issued by the Jerusalem municipality are granted for Palestinian neighbourhoods). SR oPt report (n 480), para. 37.

488 Israel has progressively removed all PA presence in Jerusalem, including by closing down Orient House, the historical building that hosted the PLO headquarters in Jerusalem until the 1990s. Israel has progressively moved a number of its national institutions (including the Ministry of Justice) to the eastern part of the city.

489 Israel's consistent policy since 1967 has been to secure an overwhelming Israeli Jewish majority in Jerusalem targeting a 'demographic balance' of seventy per cent Jewish Israelis and thirty per cent Palestinians in the city, SR oPt report (n 480), para. 37.

490 This resulted into policies aiming to 'encourage' the emigration of Palestinians from Gaza; see Filiu (n 455), 135–6.

491 However, Segev notes that in the aftermath of the 1967 occupation, some Israeli officials suggested to build settlements in the Gaza Strip to counterbalance the demographic growth of the Palestinians, see Segev T., 'The June 1967 War and the Palestinian refugee problem', *Journal of Palestine Studies*, 36.3 (2007) 6–22.

492 The Agreement on Movement and Access (AMA) is an agreement between Israel and the PA, signed on 15 November 2005.

493 A brief legal assessment of the blockade is in Chapter III, Section 2.

494 This is commonly known as the 'quarantining Gaza' policy. The expression 'quarantining' is often used by Israeli officials with regard to Gaza. Aronson, G., 'Issues arising from the implementation of Israel's disengagement from the Gaza Strip', *Journal of Palestine Studies*, 34.4 (2005) 50.

495 Report by the Secretary-General, 'Human rights situation in the Occupied Palestinian Territory, including East Jerusalem', A/HRC/28/45, 5 March 2015, para. 70.

496 This also reflects on how the Gaza Strip and the West Bank, including East Jerusalem, are commonly approached, for example, among international actors, as separate systems involving different analyses and operational interventions. For example, for operational purposes, the majority of humanitarian and development actors in the area, including UNRWA, have two areas of operations in the Gaza Strip and West Bank, respectively; also, separate reports are often produced.

497 Cf. Chapter III, Sections 2.2.2 and 3.2.2. On the impact on the right to self-determination, see Chapter VI, Section 2.3.

498 Also, according to Military Order 1206, passing of an ID is linked to the mother. Even though the provision was later repealed, many lost IDs because of this, cf. Khalil, A., 'Family unification in the Occupied Palestinian Territory', *European University Institute Robert Schuman Centre for Advanced Studies CARIM Analytic & Synthetic Notes* 19 (2009). See also, Khalil, A., 'Irregular migration into and through the Occupied Palestinian Territory',

499 Discussion on how Israel denationalized Palestinian refugees, see Chapter III, Section 3.2.1, and on the nationality of Palestinian refugees in Jordan see Section 3.2.3.

500 Kassim, A., 'The right to unite: The family reunification question in the Occupied Palestinian Territories', *The Palestine Yearbook of International Law* 6.1 (1990/1991) 250.

501 IDF, Census of Population conducted by the Central Bureau of Statistics: West Bank of the Jordan, Gaza Strip and Northern Sinai, Golan Heights, Jerusalem, 1967.

502 Adamczyk, S., 'Undocumented and stateless: The Palestinian Population Registry and access to residency and identity documents in the Gaza Strip', *Norwegian Refugee Council* (2012) 46.

503 Del Sarto, K. A. R., 'The legal fragmentation of Palestine-Israel and European Union policies promoting the rule of law', *Fragmented borders, Interdependence and external relations*, London: Palgrave Macmillan, 2015, 129–54.

504 BADIL, 'Forced population transfer: The case of Palestine denial of residency', Working Paper No. 16, April 2014, 18.

505 Ibid.

506 Goodwin-Gill, G. and Akram, S. M., Foreword to Amicus Brief on the Status of Palestinian Refugees Under International Refugee Law, in Mansour, C. (ed.), *The Palestine Yearbook of International Law*, vol. 11, The Hague: Kluwer Law International, 2000-2001, 185–260, 223.

507 BADIL, Working Paper 16, 2014, 34.

508 See Chapter III, Section 3.2.2 for a discussion of Palestinians enduring statelessness under international law, and also Chapter VI, Section 2.3 (self-determination and statehood).

509 The PA in this respect exerts a sort of delegated authority, while the Israeli Civil Administration decides who can be issued an ID.

510 They are eligible to apply for Israeli citizenship, although many Palestinians initially refused to do so on political grounds, as this would equate with recognizing Israel's annexation of East Jerusalem (see (n 516) and accompanying text for recent developments). Cf. Jefferis, D., 'Institutionalizing statelessness: The revocation of residency rights of Palestinians in East Jerusalem', *International Journal of Refugee Law*, 24.2 (2012) 219.

511 BADIL, 2014 (n 504).

512 For example, in 1988, in *Awad v Prime Minister*, the Israeli High Court stated that Awad, who had East Jerusalem residency and travelled to the US to pursue his studies, had lost his residency as he had acquired US citizenship because, 'Awad's acquisition of US citizenship signified that his "center of life" is no longer [Israel]', regardless of the fact that 'in his heart of hearts he aspired to return to [Israel]', Israeli High Court of Justice, 282/88, *Awad v Minister of Interior*, 5 June 1988 (Awad case), paras. 4 and 15, cit. in Jefferis (n 510), 212.

513 Al-Haq, 'Israel must suspend and repeal recent legislation allowing for the revocation of permanent residency status from Palestinians in Jerusalem for "Breach of Allegiance"', Urgent Appeals, 8 March 2018.

514 SR oPt report (n 480), para. 37.

515 Civic Coalition for Palestinian Rights in Jerusalem, Israel's occupation: 50 years and counting, 2018, cit. in SR oPt report (n 480), 2018, fn 75.

516 BADIL, 2014 (n 504), 21.

517 One-third were denied and one-third were deferred; cf. International Crisis Group, 'Extreme makeover? (II): The withering of Arab Jerusalem', Middle East Report, no. 135 (2012) 22, fn 205.

518 The total number of Palestinians falling in this category is estimated at 50,000, cf. Kuttab, D., 'Why is Jordan refusing entry to Gaza Palestinians?', *Al-Monitor*, 4 September 2016.

519 Loewenstein, J., 'Identity and movement control in the OPT', *Forced Migration* 26 (2006) 25.

520 Ibid.

521 IDF Order No. 1650 'Order regarding Prevention of Infiltration' (Amendment No. 2), 13 October 2009.

522 Ibid., Amendment to Section 1, 1B.

523 OCHA, 'The humanitarian monitor', April 2010, 13; Buttu, D., Fractured lives: Restrictions on residency rights and family reunification in Occupied Palestine, *Norwegian Refugee Council*, 2015, 28-9.

524 HaMoked, 'Every person has the right to travel freely inside his own country: Travel between the West Bank and the Gaza Strip and the Right of Abode', 2013, 13.

525 According to Bisharat, religion played a role in the acceptance of refugees in the West Bank society, with Christian refugees settling in West Bank towns and villages, and also being allowed to acquire land (the first land sold to refugees was to Christian refugees in Ramallah). Bisharat, G. E., 'Displacement and social identity: Palestinian refugees in the West Bank', *The Center for Migration Studies* 11.4 (1994) 174.

526 Ibid., 175.

527 Ibid., 181.

528 Bisharat (n 525).

529 Bisharat, G., Exile to compatriot: Transformations in the social identity of Palestinian refugees in the West Bank, in Gupta, A., Ferguson, J. (eds.), *Culture, power, place: Explorations in critical anthropology*, Durham, NC: Duke University Press, 1997, 214-15.

530 Refugees in Gaza and West Bank participate in legislative and presidential elections and only those in Gaza also participate in local elections.

531 Segev (2007), 6-7 in particular.

532 Peteet, J. M., *Landscape of hope and despair: Palestinian refugee camps*, Philadelphia, PA: University of Pennsylvania Press, 2005, Ch. 5.

533 Refugee camps have often been the direct target of attacks and regular military operations, during which Palestinian refugee youth have been particularly at risk. In 2017, UNRWA documented two IDF incursions per day in refugee camps across the West Bank, which often resulted in fatalities, live ammunition injuries, excessive use of tear gas, property damage, and severe societal stress. UNRWA annual operation report, 2017, 13. See also UN Country Team occupied Palestinian territory, Common Country Analysis 2016.

534 In the oPt there are different reasons for house demolitions, including punitive, due to lack of building permits, and due to zoning/development. In 2016, thirty-seven per cent (613 out of 1,628) of Palestinians who were affected by home demolitions were refugees. UNRWA, ‘Palestine Refugees Displaced by Demolitions’, 2016.

535 In a number of these villages, the refugee population makes up over seventy per cent of the village. The population of Wadi Fuki, Al-Walaje, and Al Battir, west of Bethlehem, for example, comprises ninety-two per cent, seventy-five per cent, and seventy-seven per cent registered refugees, respectively. UNRWA, ‘Western Bethlehem Villages’, 2015.

536 OCHA, ‘Humanitarian Needs Overview 2019’, Dec. 2018

537 UNRWA, ‘Emergency Appeal [oPt] 2019’.

538 A/71/355, paras. 18–20.

539 This is the case particularly around the Jordan Valley, the Dead Sea area, and Hebron, Murphy, R., *Plight of Palestinian Bedouin depicts impact of illegal Israeli occupation and practices in Palestinian territory*, *Al-Haq* (2014) 7.

540 Sayigh, R., ‘The West Bank Bedouin: The new refugees?’, *Al-Majdal* (Spring 2000) 5.

541 The E1 Plan, approved in 1999 (Plan No. 420/4), would run along the Separation Barrier in the area and provide an unbroken stretch of territory from East Jerusalem and the settlement of Ma’ale Adumim, the largest Israeli settlement in the West Bank, leaving it on the ‘Israeli side’ of the barrier and separate from the neighbouring areas of the West Bank, causing further displacement for those who live in the stretch of land between the settlement and Jerusalem. Since 2006, new plans were made by the Israeli Civil Administration to relocate 7,000 Jahalin Bedouins to the village of Abu Dis, near a waste site, in order to further expand Ma’aleh Adumim, cf. B’Tselem, ‘The E1 Plan and its implications for human rights in the West Bank’, 27 November 2013. UN OCHA, ‘Plan progresses to transfer Bedouin communities in central West Bank’, 31 December 2014. A number of structures were demolished in May 2016 in pursuit of this plan. In 2018, a new attempt to relocate this community failed.

542 Israel expelled tens of thousands of Bedouin Palestinians from the Naqab between 1948 and 1950, including Bedouin from the Jahālīn tribe. Pappé, I., *The ethnic cleansing of Palestine*, London: Oneworld Publications, 2006, 193–5. Letter from Jahālīn Bedouin to Israeli Prime Minister Yitzhak Rabin, 31 March 1995, sent by the ‘Arab al-Jahālīn Salamāt Committee through the Chief of the Civil Administration in the West Bank, as reproduced in PASSIA, *Documents on Jerusalem: Volume II*, 2007, 57.

543 The houses, shelters, and the related land in the West Bank they inhabit are generally not owned by the Bedouin refugees, PASSIA, 2007, 57. Rather, plots of land were made available for the use of the refugees pending the quest for a just and durable solution, UNRWA, ‘Observations of UNRWA on punitive demolitions in refugee camps in the West Bank’, 3 April 2016.

544 Ibid.

545 Ibid. In 1999, approximately 700 Palestinian Bedouin living in caves in the Hebron area were evicted by the IDF after the area was declared to be a closed military zone.

546 This includes at least 200 residential units according to Town Plan Scheme 12705, which was submitted to the Jerusalem Local Planning and Building Committee in January 2008. See Margalit, M., *Seizing control of space in East Jerusalem*, Tel Aviv: Sifrei Aliat Gag, 2010, and Amim, I., ‘Evictions and settlement plans in Sheikh Jarrah: The Case of

Shimon HaTzadik' [online], May 2009. Available at <http://www.ir-amim.org.il/en/report/evictions-and-settlement-plans-sheikh-jarrah-case-shimon-hatzadik>.

547 OCHA, 'The Case of Sheikh Jarrah', October 2010.

548 See (n 427).

549 UNRWA, 'Shu'fat Camp' (Portal). Accessed 30 September 2016.

550 Winer, S, 'Jerusalem mayor vows to oust UNRWA from city', *Times of Israel* 30 September 2018.

551 Gazans with Egyptian RDs were stranded in Kuwait after 1990–1991, on the Egyptian–Libyan border when expelled from Libya and denied entry into Egypt in 1995; see Section 4.1 (Egypt) and Section 6.3 (Libya).

552 HRC, Report of the Independent Commission of Inquiry on the 2014 Gaza Conflict, A/HRC/29/52, paras. 20, 24.

553 In 2016 UNRWA's Commissioner-General, Pierre Krähenbühl, described the living conditions in Gaza and the suffering of its people as 'an affront to humanity', see UNRWA, '[oPt] Emergency appeal 2016', iii.

554 The World Bank, 'Gaza Economy on the Verge of Collapse', 21 May 2015.

555 'Report of the Special Rapporteur on the Human Rights situation in the Palestinian territories occupied since 1967', 29 Jan. 2007, UN doc. A/HRC/4.

556 ESM report 1949 (n 230).

557 UNRWA has a small representative office (without protection or assistance functions) in Egypt. UNRWA initially had a small 'placement office' in Baghdad to facilitate resettlement of Palestinian refugee artisans in Iraq, which was subsequently closed.

558 Egypt became party to the CSR51 and 1967 Protocol in 1981. It is also party to the 1969 OAU Refugee Convention, which includes a broader refugee definition, see Chapter III, Section 4.2.

559 UNHCR, 'Submission by the [UNHCR] for Human Rights' Compilation Report – [UPR]: Egypt', March 2014.

560 This figure is an estimate, referred to by Ibid., 6. The first edition of this book estimated between 50,000 and 100,000. The higher estimate of 100,000 is mentioned in Fábos, A. et al, *Counsellors' handbook of resources for refugees and displaced persons*, Cairo: The American University in Cairo (Office of African Studies, Dept. of Economics & Political Science), 1991, 11. Other sources, more recently, have indicated higher numbers, between 70,000 and 160,000, El-Abed, O., *Unprotected: Palestinians in Egypt since 1948*, Washington DC: Institute for Palestine Studies, International Development Research Centre, 2009, 1.

561 El-Abed (n 560).

562 The 1948 lower figures are in the ESM report, 1949, section C., Geographical Distribution of Refugees and of Relief Recipients. No relief recipients were among them. The higher figures are from El-Abed (n 560) 31, fn 27. El-Abed also reports that living conditions were initially harsh and the refugees were encouraged to leave. Indeed, Egypt transferred some thousand refugees to Gaza, so between 2,000–5,000 remained by 1950, El-Abed (n 560), 19; UNHCR, '2005 UNHCR Statistical Yearbook, Country Data Sheet—Egypt', 30 April 2007, 319.

563 Estimated figures from 1967 are in Brand (n 1), 46, and El-Abed (n 560), 32, fn 38. In particular El-Abed notes that in 1967 the exact number was not clear because all those who used to live in Egypt remained and were unable to go back to Gaza.

564 Goodwin-Gill and Akram (n 506), 225.

565 El-Abed, O., 'Palestinian Refugees in Egypt', *Forced Migration Online*, July 2004.

566 The population of 'Canada Camp' was largely dependent on employment in the Gaza Strip as well as in Israel and, therefore, was cut off from its main source of income overnight when the Sinai was returned to Egypt and the international border was re-established. Rafah became a divided town and 'Canada Camp', which until then had been an integral part of Rafah camp, became isolated. A few families were able to move back in 1982 but it took until 1989 before an agreement was finally reached. As the Palestinian refugees in 'Canada Camp' were not allowed to work in Egypt, UNRWA collectively considered the group for relief assistance. UNRWA also provided education, health, and social services in the camp, making it the only refugee population living outside UNRWA's area of operations to benefit from ongoing UNRWA support. Eventually the return took place in the context of the Multilateral Working Group on Refugees, when Canada and Kuwait financed the transfer of several hundred of the remaining families to Gaza. On 'Canada Camp', see Doughty, D., El Aydi, M., *Gaza: Legacy of occupation: A photographer's journey*, West Hartford, CT: Kumarian Press, 1995.

567 These refugees are form the Malalha tribe. Most of them had been in the Rafah/Sinai area during the 1967 census carried out by Israeli and were given Rafah/Sinai (as distinct from Rafah/Gaza) identity cards.

568 Unofficial estimates put the number of Palestinian refugees who moved from Egypt to other countries in the region as high as 45,000 individuals.

569 Egyptian-Israeli General Armistice Agreement, 24 February 1949, UN doc. S/1264/Rev. 1. The government of the time led by Mohammed Najeeb preferred that the refugees were assisted by Egypt directly. Egypt delivered this assistance through the Higher Committee for Palestinian Immigrant Affairs within the Minister of the Interior. This became the 'aid agency' for Palestinian as 'persons who sought refuge in the country between 1948 and 1950.'

570 Egyptian Law No. 66/1962.

571 El-Abed, O., The case of Palestinian refugees—Holders of Egyptian travel documents in Egypt and Jordan, *International conference on Palestinian refugees: Conditions and recent developments*, Jerusalem: Al-Quds University, 2009, 47.

572 Administrative regulations no. 47 and no. 48 of 1978 annulled regulations treating Palestinians as nationals, stipulating that employment of Arab country nationals should be conducted on a reciprocal basis; stateless Palestinians were affected.

573 The basis for this permit regime includes Law No. 137/1981, regulating foreign labour; Decree No. 25/1982 concerning the conditions for issuing work permits for aliens; and Decree No. 657/1989, regulating the procedure for obtaining work permits.

574 El-Abed (n 525).

575 Decree No. 657/1989, art. 11, para. (J). This condition does not apply if the Palestinian refugee has an Egyptian TDPR with a long-term visa (other than for a tourist visit). Cf. Fábos, A. et al. (n 560).

576 Palestinian children are not allowed into government schools and tuition fees for higher education are high. Khalil, A., 'Socioeconomic rights of Palestinian refugees in Arab countries', *International Journal of Refugee Law* 23.4 (2011) 701.

577 Decree No. 43 of 1988.

578 Ministerial Decree No. 284 of 2014, art. 6, lists certain groups of Palestinians who can have access to public schools ('the children of Palestinians working in or retired from Government, public sector or the armed forces can access public schools').

579 Grabska, K., 'Who asked them anyway? Rights, policies and wellbeing of refugees in Egypt', Brighton: Development Research Centre on Migration, Globalisation and Poverty, 2006, 20.

580 Law 89/1960 Relating To The Entry And Stay Of Foreigners And Their Exit From Egypt, 18 March 1960, Official Journal No. 71, dated 24 March 1960, amended by Law No. 49/1968, 1.24/1980, and 100/1983.

581 El-Abed (n 571), 79-80

582 These were, among others, issued to Palestinian refugees residing in the 'Northern Region' (i.e. Syria) during the period of the United Arab Republic (UAR) which was founded in 1958 as a political union between Syria and Egypt. The Union lasted until September 1961, when Syria decided to leave it, though Egypt continued to call itself the United Arab Republic. Cf. Bissio, R. R. (ed.), *Third World guide 1993/94*, Montevideo: Instituto del Tercer Mundo, 1992, 261.

583 El-Abed (n 571), 80.

584 Ibid.

585 The cost to renew residency, as it was amended in March 2017, has risen from 3 USD to 100 and 163 USD for three and five years residency permits, respectively. Fines for failing to renew residency in a timely manner have also been increased to 65 USD for the first three months, with an additional 30 USD for each additional three months thereafter (formerly a one-time fee of 9 USD).

586 Although the documents specifically refer to Palestinian refugees, they have been issued to non-refugee Palestinians as well.

587 El-Abed (n 571), 85.

588 This is the case of Palestinians who had established their families elsewhere after having migrated from Egypt.

589 El-Abed (n 571), 29.

590 Cf. Al-Barbar, M., 'Gaza Palestinians stuck at Cairo airport for many days', *Al-Fajr* 14 October 1991.

591 BADIL, *Handbook on protection of Palestinian refugees*, Bethlehem: BADIL, 2005, 17.

592 Between 2004 and 2011, Egyptian women married to Palestinian men were not allowed to pass on their Egyptian citizenship to their children (unlike other non-Egyptians). Decree No. 12025 of 2004 Concerning Certain Provisions Enforcing Law No. 154 of 2004 on Amendment of Certain Provisions of Law No. 26 of 1975 Concerning the Egyptian Nationality [Egypt]. This discrimination was eventually addressed following protests.

593 Morrison, L., 'Egypt: A desperate refuge for Palestinians fleeing the Syrian conflict', *Al-Majdal*, Palestinian refugees from Syria: Ongoing Nakba, ongoing discrimination, 57

(Summer 2015); Akram S., et al., 'Protecting Syrian refugees: Laws, policies, and global responsibility sharing', *Boston University School of Law* (2014) 84.

594 BADIL, 'Palestinian Refugees from Syria in Egypt: an Overview', Summer 2015.

595 The visa must be applied for at any Egyptian consulate, or in Egypt for family unity purposes.

596 The authors have received information that instructions were given by the Minister of Education to all schools to accept Palestinian refugees from Syria; however, no information is available as to the implementation of these instructions.

597 Morrison (n 593).

598 In 2014, the Egyptian government asked UNHCR not to register some 6,000 Palestinians seeking international protection. Cf. Orchard C., Miller, A., 'Protection in Europe for refugees from Syria', *Oxford Refugee Studies Center, Forced Migration Policy Briefing* (September 2014) 15, Table 1.

599 Because they cannot be registered with the UNHCR, the Egyptian government does not recognize any intervention by UNHCR, e.g. to release detained Palestinian refugees in Egypt. See Rollins, T., 'The Palestinian-Syrian "protection gap": Inside an Egyptian Police Station', *Al-Majdal*, Palestinian refugees from Syria: Ongoing Nakba, ongoing discrimination, 57 (Summer 2015).

600 Through this agreement, UNRWA was allowed to provide medical assistance (primary, secondary, and tertiary care) to all ex-Syria Palestinians registered with the Palestinian Embassy, while other international organizations such as World Food Programme (WFP) and International Committee of the Red Cross (ICRC), through the German Red Crescent, assisted the refugees with vouchers to purchase food and other essential items.

601 Khalil (n 370), 37.

602 Wengert G., Alfaro, M., 'Can Palestinian refugees in Iraq find protection?', *Forced Migration Review* 26 (2006) 19.

603 Vernant (n 369), 393. See also Chatty, D., *Displacement and dispossession in the modern Middle East, The Contemporary Middle East* 5, Cambridge: Cambridge University Press, 2010, 204; Kassim, A., 'The Gulf Cooperation Council: Economic Policies in the Shadow of International Changes', paper presented at the third annual conference of the Centers for Arab Research, 6–8 December 2017, Doha, Qatar, 4 (original Arabic).

604 US Committee for Refugees and Immigrants World Refugee Survey 2009 – Iraq, 17 June 2009; UNHCR, Update of UNHCR Aide-Memoire of 2006, Protection considerations for Palestinian refugees in Iraq, July 2012 [UNHCR Aide Memoire 2012], 2. Discrepancies in numbers may be explained by the fact that not all Palestinians in the country (other than those who had arrived in 1948 and before 1958) were officially recorded. See text accompanying (n 624) and (n 625). Also, a spike in numbers occurred in the early 1990s with the arrivals of Palestinians from Kuwait. See text accompanying (n 628).

605 Castellino J., Cavanaugh, K. A., *Minority rights in the Middle East*, Oxford: Oxford University Press, 2013, 220.

606 See reference to Kuwait in Section 5.

607 UNRWA, *Annual Report*, 1951–1952, 9.

608 Qudsīyah, L., *Palestinian refugees in Iraq*, Ramallah: The Palestinian Refugee and Diaspora Center (SHAML), 1997 (original Arabic).

609 ESM report 1949 (n 230).

610 UNRWA, 'Briefing Note: UNRWA and the Palestinian refugees in Iraq', 2004

611 The 1971 Political Refugee Act does not explicitly exclude Palestinians from its purview. However, in practice, Palestinians were accorded a status nearly on par with citizens based on Revolutionary Command Council (RCC) Decisions.

612 UNHCR, 'Palestinian refugees in Iraq - Applicable legislation', May 2019.

613 Al-Aza'r, M. K., Arab protection for Palestinian refugees, Working Paper No. 8, BADIL, November 2004, 3.

614 Qudsīyah (n 608), 19.

615 Ibid., 32.

616 Ibid., 37.

617 UNHCR Aide Memoire 2012, 2.

618 Residence Act No. 64 of 1938.

619 Law 26, 1961: Travel Documents for Palestinians; and General Passport Law No. 55/1959. Accordingly, any 'Palestinian person who left "his occupied country" in 1948 and arrived to Iraq before 25 Sept 1958' was eligible for this document. See Qudsīyah (n 608), 19-20.

620 Palestinian's access to naturalization is actually restricted under the current Nationality Act (cf. art. 6 (II), Iraqi Nationality Law No. 26 of 2006, Iraqi Official Gazette, Issue 4019, 7 March 2006, No. 26).

621 Wengert and Alfaro (n 602), 19.

622 Ministry of Finance resolution no. 16108 of 1964.

623 Ministry of Finance resolution no. 336 of 1969.

624 LASC res. 2455, Arab League Council's 50th ordinary session, September 1968.

625 Qudsīyah (n 608), 20.

626 Al-Ali, I., Arab legislations toward Palestinian refugees, in *Palestinian refugees in the Arab world: Realities and prospects*, London: Palestinian Return Center, 2015, 78.

627 Such right was enshrined in Law no. 250 of 1980 and RCC Decision no. 936 of 1987, and then suppressed by RCC Decision no. 469 of 1989.

628 Landinfo – Country of Origin Information Centre, 'Palestinians in Iraq', 7 March 2014, 6.

629 After ending the right of Palestinians to own land in 1989, in 1994 Saddam Hussein's government's restricted non-Iraqis—including Palestinians—ability to invest in land, property, and capital. Cf. res. no.23 of 1994.

630 Qudsīyah (n 608), 43-44.

631 Interview with Dr. Anis Kassim, 8 December 2018.

632 RCC decree no. 202 of 2001 Concerning the Treatment of Palestinians, 24 September 2001, art. 1.

633 UNHCR Aide Memoire 2012, 2.

634 Post-2003, treatment of Palestinians in Iraq worsened dramatically. Instances of arbitrary arrest and detention, torture, kidnappings, extra-judicial killings, bombings, and mortar attacks in Palestinian inhabited areas, as well as discrimination, dismissal from employment, denial of education, and forced eviction from government and rented housing were documented in numerous reports; see IILHR, *Iraq's minorities and other vulnerable groups*, May 2013, 119-22; UNHCR Aide Memoire 2012; HRW, *Nowhere to flee: The*

perilous situation of Palestinians in Iraq, 10 September 2006; Amnesty International, *Iraq: Human rights abuses against Palestinian refugees*, 1 October 2007.

635 Legally, it was part of Iraqi territory located between the Iraqi and Jordanian border terminals. Wengert and Alfaro (n 602), 20.

636 UNRWA, ‘Briefing Note: UNRWA and the Palestinian Refugees in Iraq’, 2004.

637 Landinfo (n 628), 9–10; UNHCR Aide Memoire 2012, 5–6, 8–9, Euro-Mid Observer for Human Rights, *Palestinian refugees in Iraq, and whom under threat of deportation back to Iraq*, 2012, 8–9.

638 In one area of Baghdad (Al-Baladiyat) alone, the Palestinian population decreased from 8,000 to 4,000 between 2006–2007.

639 In April 2006, the Syrian government officially stated that it would welcome a group of Palestinians. The entire group of 287 was accommodated in Syria in El Hol Camp, see Wengert and Alfaro (n 602), 20. They were subsequently resettled, see Chapter V, Chile and Brazil.

640 Art. 6 (II), Iraqi Nationality Law No. 26 of 2006, *Iraqi Official Gazette* 4019, 7 March 2006, No. 26

641 UNHCR, Aide Memoire 2012, 4.

642 While the UNHCR Aide Memoire 2012 states that the system was changed granting all Palestinian refugees red cards, Landinfo states that the two-colour system still applies and cites emails in 2014 from both the Iraqi Permanent Committee for Refugee Affairs and the Iraqi Ministry of Migration and Displacement (MoMD). See Landinfo (n 628) fn 23, 11. The registration procedures differ for each group. Because the Iraqi MoMD currently holds records for the Palestinians of 1948, before issuing the red cards, the PCRA verifies the status for individuals in this group by submitting a request to the MoMD. In 2016, it seems that all Palestinians were given red cards.

643 Pursuant to the aforementioned Law No. 26 of 1961, Travel Documents for Palestinians.

644 Landinfo (n 628), 12.

645 UNHCR, Aide Memoire 2012, 5. As of May 2018, Palestinians, like other non-Iraqi nationals, are no longer entitled to receive PDS.

646 US Department of State, Country Reports on Human Rights Practices for 2014: Iraq,’ n.d., 45.

647 UNHCR, Aide Memoire 2012, 7–8.

648 UNHCR information, February 2016. See also, Haaretz, In Iraq, ISIS chases Palestinians from one refugee camp to the next, 15 May 2015.

649 Amnesty International, Iraq: Submission to the UN Human Rights Committee, 9 June 2015, MDE 14/2528/2015, 11. Reports that Palestinians from Gaza had joined ISIS in Iraq further exacerbated perceptions that Palestinians in Iraq may be sympathizing with or supporting ISIS. See, e.g. Ma'an News Agency, Gazan accused of killing Italian activist dies fighting for IS in Iraq, 28 November 2015; Iraqi News, Palestinian member of ISIS killed in Iraq, family raises ISIS flag in Gaza, 26 October 2014; Vocativ, Palestinians flee Gaza to join ISIS in Iraq, 21 August 2014. Alkarama Foundation, Iraq: Enforced disappearance of Palestinian refugee in Baghdad since 8 July 2015, 27 November 2015.

650 UNHCR 2016 Note on Iraq and Landinfo (in Norwegian), Respons Irak: Palestinerne i Bagdad, June 2015, 3,

651 UNHCR, Relevant COI on the Situation of Palestinian Refugees in Baghdad, 30 March 2017.

652 Ibid, 2. Cases of Palestinian refugees who were sentenced on the basis of coerced confessions, including to death, were reported.

653 Ibid.

654 The region comprises Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, the UAE, and Yemen. All except Yemen are members of the Gulf Cooperation Council (GCC).

655 There are no official numbers about Palestinians in the region. The figures offered in this section are an estimate based on available sources (primary and/or secondary) and the author's survey, see Introduction, Methodology. A CIA report released in 2008 estimated about 550,000 Palestinians in the Gulf by 1983, US Central Bureau of Intelligence (CIA), 'Palestinian Presence in the Persian Gulf: An Intelligence Assessment', US State Dept., July 1983, approved for release on 11 August 2008 [hereafter 'CIA report']. Others confirm this estimate referring to 600,000 Palestinians living in the area in 1985, Rouleau E., 'The Palestinian diaspora of the Gulf', MERIP Reports, no. 132, 1985, 14. While population growth would have brought the number up over the ensuing two decades, the flight of hundreds of thousands of Palestinians after the First Gulf War of 1991 – see (n 678) and (n 697) – has probably contributed to keeping numbers low.

656 At the end of 2005, the UNHCR reported 240,015 Palestinian refugees and 212 Palestinian asylum seekers in Saudi Arabia; UNHCR, UNHCR Statistical Yearbook: Saudi Arabia, 2005. In 2009, the previously reported figure of 240,000 Palestinian refugees was removed from UNHCR statistics in the absence of a reliable and accurate figure for Palestinian refugees in Saudi Arabia; UNHCR, UNHCR Statistical Yearbook 2009, 10. In 2017, the US Dept. of State indicated that there were 'between 300,000 and 400,000 Palestinian residents not registered as refugees' in Saudi Arabia; US Dept of State, Country Reports on Human Rights Practices for 2016, 3 March 2017, 35.

657 This figure is discussed in (n 721).

658 The lower figure is from the authors' survey while the higher one is from Hatuqa, D., 'Palestinians reopen Kuwait embassy after two decades', *Al Monitor*, 15 April 2013.

659 Another source refers to Palestinians numbering near 20,500 in Qatar (less than one per cent of the total population), and 2,000 in Bahrain, in addition to 5,000 holders of other nationalities of Palestinian origins. Snoj, J., 'Bahrain's population by nationality', *Bq Magazine*, 24 August 2015.

660 CIA report (n 655), 1-2.

661 Interview with Anis Kassim, 23 November 2018.

662 Almezaini, K., *The UAE and foreign policy: Foreign aid, identities and interests*, Abingdon: Routledge, 2012, 118.

663 CIA report (n 655), 8.

664 Rouleau (n 655), 13.

665 In the mid-1980s, there were about 125,000 Palestinians in Saudi Arabia, 50,000 in the UAE, 25,000 in Qatar, 2,000-3,000 in Oman, and 1,500 in Bahrain. CIA Report (n 655), 2.

666 Le Troquer, Y., al-Oudat, R. H., 'From Kuwait to Jordan: The Palestinians' third exodus', *Journal of Palestine Studies* 28.3 (1999) 37; also Lesch, A. M., No refuge for refugees: The insecure exile of Palestinians in Kuwait, in Lesch, A. M., Lustic, I. S. (eds.),

Exile and return: Predicaments of Palestinians and Jews, Philadelphia, PA: University of Pennsylvania Press, 2005, 168.

667 Ibid., 163.

668 As a result of this open-door policy towards labour immigration, the foreigner population of Kuwait reached forty-five per cent in 1957, doubling between 1949 and 1957. This equated with almost one-third of foreign residents and sixteen per cent of the total population of Kuwait. The policy led to an influx of Palestinians from both the West Bank and Jordan. Cf. Lesch (n 666), 163.

669 See history of Jordan (Section 3.2.2) and Lebanon (Section 3.3.2).

670 CIA report (n 655). A recent study based on archival research reveals how Palestinians have in fact always been seen as a possible destabilizing force requiring ‘controlled inclusion’, e.g. by the British, who maintained a strong influence in the Gulf even after its countries’ independence; cf. Manal, J., *The ‘Other Arab’ and Gulf citizens: Mutual accommodation of Palestinians in the UAE in historical context*, in Babar, Z. (ed.), *Arab migrant communities in the GCC*, Oxford: Oxford University Press, 2017, 111–12.

671 Suspicion over Palestinians’ lack of allegiance to the ‘desert democracy’ increased after 1967 and countries in the region (Kuwait in particular) were already making plans to reduce in the future Palestinians’ workforce and rely more on national capacities that were meanwhile developing. CIA Report (n 655), iii–iv.

672 Haddad, T., ‘Palestinian forced displacement from Kuwait: The overdue accounting’, BADIL, *Majdal*, 44, on ‘Forced secondary displacement: Palestinian refugees in Arab host countries’ (Summer/Autumn 2010).

673 Ibid.

674 Ibid. The same source reports that in 1976, Kuwait ‘shut down the independent Palestinian school system that had been allowed to operate since 1968.’

675 CIA report (n 655).

676 Ibid., iii–iv, 1–3; Rouleau (n 655). See also Brand (n 1). Almezaini, K. S., *The UAE and foreign policy: Foreign aid, identities and interests*, Abingdon: Routledge, 2012.

677 CIA report (n 655), iii.

678 In July of 1990, Saddam Hussein attacked the policy of the Gulf states, in particular Kuwait and the UAE, who he blamed for the fall of oil prices due to their overproduction. He also accused Kuwait of ‘stealing’ oil from the southern section of the Iraq’s oil fields (Rumalla); this was the pretext for the Iraqi invasion of Kuwait.

679 LASC res. 195 of 10 August 1991. For an appraisal of those events, Lesch, A. M. ‘Contrasting reactions to the Persian Gulf Crisis: Egypt, Syria, Jordan, and the Palestinians’, *Middle East Journal* 45.1 (1991) 30–50; Mattar, P., ‘The PLO and the Gulf Crisis’, *Middle East Journal* 48.1 (1994) 32–4.

680 Peretz (n 182), 59.

681 Canada, Immigration and Refugee Board Documentation Centre, 1991, 1.

682 Lesch (n 679), 46–7.

683 In an interview on 23 November 2018, Dr. Anis Kasim, a Palestinian–Jordanian lawyer who lived in Kuwait until the war in 1990, recounted the events: ‘The Iraqi invasion of 1990 came to the then-ruling elite of Kuwait (who was close to Pierre Jumayyel of the Lebanese Phalange, who kept charging and warning the Kuwaitis against the Palestinians) as a golden opportunity to get rid of the Palestinians in Kuwait. [...] Saddam played a dirty role in sending to Kuwait during the invasion period Iraqi Palestinians who were members of the Ba’ath Ruling Party. Those individuals who spoke with Palestinian accent, used to give

Kuwaitis at check points hard time, and the Kuwaitis thought that those Palestinians were Kuwaiti Palestinians. I am not, however, suggesting that some of the Kuwaiti Palestinians did not stand with the Iraqis, but they were few. Another side of the issue is that Kuwaitis expected the Palestinians to act as if they were Kuwaiti nationals. They expected them not to obey the Iraqi army orders, which was risky. They did not realize that Palestinians were there as workers not freedom fighters. The Iraqi army threatened to confiscate the Palestinian end-of-service dues and bank accounts if they resisted the army's orders. The Kuwaitis, on their part, did not give them security to compensate them when Kuwait is free. The Palestinians fell between the "hammer and the anvil".

684 Lesch (n 679), 46-7.

685 Abuses reportedly included extra-judicial killing, torture, arbitrary detention, trials before unfair martial-law tribunals, and deportation. A number of highly publicized cases of serious human rights abuses took place against those who were perceived to have collaborated with Iraq, including the remaining Palestinians, Iraqis, and the *Bidoon* (non-Palestinian stateless residents of Kuwait). See, for example, Hamad, A. A., 'A victory turned sour: Human rights in Kuwait since liberation', New York: Human Rights Watch, September 1991, and various reports and news releases from Amnesty International, e.g. a statement of 19 April 1991 containing the findings of an AI fact-finding visit to Kuwait, AI Index: MDE 17/03/91. See also: US Department of State, *Country report on human rights practices for 1991*, Washington, DC: 1992, 1466.

686 After the war, the Kuwaiti government failed to protect absentee property and on 17 July 1991, it allowed Kuwaiti landlords to remove furniture and other items from rented property that was occupied by foreigners, i.e. belonging to the Palestinians who were not allowed to return. *Sawt al-Kuwait*, 18 July 1991, in HRW, 1991, 54.

687 According to art. 15 of Law No. 17 of 1968, foreigners had up to three months to leave Kuwait once their employment contract was terminated. Non-Kuwaitis were originally given a deadline of 15 November 1991 to renew their residence permits. This deadline was repeatedly extended until the summer of 1992, when it was announced that the deadline would not be extended further and that any foreigners who had not managed to obtain a new permit would have to leave the country. *Sawt al-Kuwait*, 18 July 1991, 47.

688 Lesch (n 666), 172.

689 Ibid.

690 Le Troquer and al-Oudat (n 666). However, not all remained in Jordan; some 2,000 went to the US, while approximately 21,000 immigrated to Canada, Australia, and other Western states; Haddad (n 672).

691 For a comprehensive overview of the problems faced by this group, see: Middle East Watch, 'Nowhere to go: The tragedy of the remaining Palestinian families in Kuwait', New York, October 1991, reproduced in *Polish Yearbook of International Law* 6 (1990/91) 87; also Graham-Brown, S., 'Palestinians in Kuwait: Report on a visit to Kuwait', London: The Refugee Council, 1992.

692 Several hundred individuals left for Sudan and Yemen. Smaller numbers obtained admission to countries such as Australia, Bolivia, Bulgaria, Canada, Sweden, and the US.

693 Extension of the deadline had been the subject of a number of representations by Western embassies as well as by UNHCR and UNRWA. During the summer of 1992, an UNRWA team headed by one of the authors (LT) visited Kuwait in order to collect detailed information on the situation of the remaining Palestinians, in an attempt to contribute towards reaching an appropriate solution for the Palestinians concerned.

694 Lesch (n 666), 172; Office of Asylum Affairs, US State department, Advisory Opinion, November 1998.

695 Arab states generally allow family reunion only in the country of the husband, but Kuwait has been slow in allowing the return of family members of Palestinians who left during the Iraqi invasion. Those unable to renew their residence permit were entirely barred from bringing back their families.

696 See on the issue of separated families Chapter VI, Section 4.7.

697 Canada: Immigration and Refugee Board of Canada, Saudi Arabia: Present treatment of Palestinians in Saudi Arabia, June 1991, and The United Arab Emirates (UAE): Information on the treatment of the Palestinians in the UAE, November 1990/1991.

698 Ibid.

699 See Haddad (n 672), who argues that this created the conditions that left the PLO with no other alternative than accepting the MEPP.

700 See section on Kuwait.

701 Like in other parts of the world, from the turn of the century instability and conflict in Iraq, the oPt, and Syria have prompted a rise in numbers of Palestinians seeking protection in the Arabian Peninsula.

702 CIA report (n 655), 4-5.

703 US Committee for Refugees and Immigrants, *World refugee survey 2009—Saudi Arabia*, 17 June 2009. Cf Jamal, M. A., ‘The “tearing” of citizenship and residency and the “hierarchization” of migrant communities’, *International Migration Review* 49 (2015) 3, 613. LASC resolution 1547 (9 March 1959), see Section 2.1 (n 33).

704 Under the 1959 Kuwaiti Nationality Law, acquisition of citizenship for those who are not born as Kuwaitis is not a matter of right, but one of discretion, see art. 5(4), Kuwaiti Nationality Law, 1959.

705 Lesch (n 679), 164.

706 Even among the group of ‘original’ Kuwaitis there is a distinction between two classes of citizens: those whose ancestors lived in the country before 1922 and those who arrived (or whose parents or grandparents arrived) between 1922 and 1945. Cf. Immigration and Refugee Board Documentation Centre, *The Persian Gulf: The situation of foreign workers*, Ottawa: Immigration and Refugee Board of Canada, 1991, 2, 4.

707 Russell, S., ‘Politics and ideology in migration policy formulation: The case of Kuwait’, *International Migration Review* 23.1 (1989) 24–47, 32.

708 For example, even in instances where a Palestinian commits a crime (which generally triggers deportation), he/she is allowed to remain in the country after serving his/her sentence.

709 In 2017, Kuwait received 136 asylum applications from Palestinians, the majority of which were holders of Iraqi or Syrian TDPRs, with the remainder from Saudi Arabia (twenty-five) and the UAE (thirty-five).

710 See (n 658).

711 For example, the return of Palestinians that left Kuwait after the end of the war with Iraq, including for the purpose of family reunification, remains generally very difficult.

712 In 2005, President Mahmoud Abbas made an official apology to the Kuwaiti rulers and people, which reportedly helped reduce the tension.

713 Prior to that, Palestinians holding a Palestinian document were banned.

714 Toumi, H., 'Kuwait lifts decades-long ban on Palestinian workers', *GulfNews*, 6 February 2017.

715 For example, Palestinians with Egyptian TDPRs are not returned to Egypt, Palestinians with Syrian TDPRs are treated as Syrians, and thus are not forcibly returned to Syria, and Palestinians from Gaza are generally unable to return due to access restrictions.

716 Residency permits are renewed on a regular basis, at the cost of SR 1,000 (USD 266) in 2017. A work permit will be issued at the cost of SR 2,200 (USD 586), upon presentation of a valid residency permit and valid medical insurance (the minimum insurance fees are SR 2000 (USD 533) per family).

717 Alquds University, a special university for Palestinian students, was created in 2002.

718 For example, Palestinians found guilty of a crime are allowed to remain in the country after serving their sentence.

719 Anecdotally, it appears that this forced a number of Palestinians to remain irregularly without access to basic services.

720 Abu Toameh, K., 'The persecution of Palestinians no one mentions', The Gatestone Institute, *International Policy Council*, 23 April 2019.

721 According to Manal (n 670), 118, 119, the commonly accepted figure of 150,000 Palestinians in the UAE only includes those carrying a PA passport (or older Israeli-issued ID cards, and TDPRs issued by Syria and Egypt). It does not reflect the Palestinians who may have obtained citizenship (Emirati or others) as well as the fact that many Jordanian passport holders in the UAE are of Palestinian origin (there were 250,000 in 2018).

722 Ibid., 114.

723 They generally are registered with the Palestinian consulate.

724 In 2009, hundreds of Palestinians from Gaza were deported in response to Hamas' takeover and consolidation of its rule over the Gaza Strip, HRW, 'UAE/Lebanon: Allow Lebanese/Palestinian deportees to appeal', 19 July 2010.

725 Manal (n 670), 123-4.

726 As Yemen is party to the CSR51, Palestinian asylum claims are assessed under art. 1D, with the exception of those with Jordanian nationality, who are assessed in accordance with art. 1A(2). (see Chapter II, Section 4.3).

727 It is unclear why the government stopped issuing these documents and only renews the old ones.

728 The common definition of North Africa also includes Sudan, which, for the purpose of this study, is discussed in Chapter V because it is not part of the regional framework created by the LAS. All these states, with the exception of Libya and Tunisia, have ratified the CSR51, the 1967 Protocol, and apply the 1965 Casablanca Protocol. In fact, Tunisia has not ratified the Protocol but nevertheless applies many of its provisions.

729 This contributes to the difficulty in aggregating precise figures re: Palestinian refugee presence.

730 Laskier, L. M., 'Israel and the Maghreb at the height of the Arab-Israeli Conflict: 1950s-1970s', *Middle East* 4.2 (2000) 96. However, in 1999 Mauritania became the third LAS country after Egypt and Jordan to sign a peace treaty with Israel. In November 2002, Mauritania was the country of resettlement for Abdullah Daoud, the PA's intelligence chief

in Bethlehem, who was exiled from the West Bank by Israel; see Associated Press, 'Last exiled Palestinian leaves Cyprus for Mauritania', *Haaretz*, 25 November 2002.

731 Many years before Ariel Sharon initiated the construction of the Wall in the West Bank, he had advised the King to build a wall in the Western Sahara to contain the conflict and defuse international criticism; see Farah, R. 'Western Sahara and Palestine: Shared refugee experiences', *Forced Migration Review* 16 (2003) 20-3.

732 By 2017, about 400 Palestinian asylum seekers arrived in the region, a large majority from Syria, but also from the oPt, Lebanon, and some from Jordan (non-citizens); 250 in Algeria, about eighty in Morocco, and forty in Tunisia. UNHCR Population Statistics [last accessed 20 May 2019].

733 UNHCR (Portal), Spain: Sea and Land arrivals, 31 December 2018,

734 Taylor, A. R., 'The PLO in Inter-Arab Politics, *Journal of Palestine Studies*, 11.2 (1982) 70-81.

735 Shaath, N., 'High-level Palestinian manpower', *Journal of Palestine Studies*, 1.2 (1972) 89.

736 According to the Algerian Nationality Law No. 1970-86, revised in 2005, Algerian nationality is granted after three years of marriage.

737 The residency card indicates that the person is a Palestinian.

738 'Algeria', *Forced Migration Online*, 2011. Registered refugees are given shelter, enrolled in public schools (for refugee children), and given access to healthcare (UNHCR complements this by supporting medical treatment not covered by the national scheme), UNHCR, Algeria Factsheet', January 2016, 1.

739 In January 2016, there were ninety-eight Palestinians considered 'persons of concern' by UNHCR. In 2019, Palestinians were listed among the first four nationalities present in the country among people of concern, UNHCR, 'Algeria Factsheet 2019', February 2019, 1.

740 Schiff (n 122), 34-5, 39.

741 Smith, P. A., 'The Palestinian diaspora, 1948-1985', *Journal of Palestine Studies* 15.3 (1986) 90-108.

742 The Netherlands: Ministry of Foreign Affairs, 'Libya: Vulnerable Groups, 19 December 2014, 25.

743 Ibid.

744 Fiddian-Qasmiyah (n 351), 271.

745 Ibid., 264, 275. The author notes the discrepancy of figures regarding 'thousands of Palestinians as refugees based in Libya within statistics pertaining to the contemporary conflict, with subsequent implications apropos protection'.

746 Ibid., 275.

747 This includes 4,343 refugees and 1,987 asylum seekers of Palestinian nationality; see UNHCR, 'Libya: Registration fact sheet', January 2019.

748 Lifos - Centre for Country of Origin Information and Analysis, 'Thematic Report: Palestinians & Syrians in Libya' (Swedish Migration Agency, February 23, 2016), quoting UNHCR sources, fn 28.

749 Smith (n 741), 102. Cf. also Otman, W. A., Karlberg, E., *The Libyan economy: Economic diversification and international repositioning*, New York: Springer, 2007, 36.

750 Cf. Shibliak, A., 'A time of hardship and agony: The case of Palestinian refugees in Libya', *Palestine-Israel Journal*, 2.4, Special Issue: Focus on Refugees (1995) 41. Also *Shaml Newsletter*, *Shaml-Palestinian Dispresa & Refugee Centre*, December 1995, 2.

751 There were approximately 5,000 Palestinians in Libya in 1971; 23,759 in 1981; 29,207 by the end of 1992, out of three million native Libyans in the 1980s. Cf. Fiddian-Qasmiyah (n 351), 271.

752 On the occasion of the signing of the Oslo accords between Israel and the Palestinians, Gaddafi stated the following: 'Arafat, the United States, Israel and others declare that the Palestinian cause has been resolved finally and exclusively. This is not true, as there are millions of Palestinian refugees who are still out of their homeland. And as I care about the Palestinian cause, and in order to achieve the best interest of Palestinians, I will expel the thirty thousand Palestinians who currently live in my land, and try to secure their return to Gaza and Jericho.' Interview with Colonel Gaddafi by Ahmad Al-Hauni in *Al Arab*, February 1995. Translation in: Sirhan, B. T., 'The Palestinians in Libya-Testimonies: The Crisis of the Palestinian Community in Libya: Two Years of Suffering', *The Palestine Yearbook of International Law* 9.1 (1996) 363. See also 'The Palestinian Crisis in Libya 1994-1996 (Interview with Professor Bassem Sirhan)', *Al-Majdal*, special issue: Forced secondary displacement: Palestinian refugees in the Gaza Strip, Iraq, Jordan, and Libya 45 (2010).

753 In 1992 and 1993, the UNSC imposed an air and arms embargo and a ban on some oil equipment for Libya in response to Libya's involvement in international terrorism. Sanctions were suspended in April 1999.

754 Syria generally accepted refugees with Syrian travel documents, while Lebanon, after initially accepting Palestinian refugees with valid Lebanese travel documents, closed its ports to any arriving from Libya without a visa, once they realized the scale of the expulsion. See Fisk, R., 'Beirut slams the door to keep "human garbage" out', *The Independent*, 1 October 1995.

755 Sirhan (n 752), 367. For a description of the situation at the camp, see *Shaml, Newsletter*, December 1995, 2-5.

756 UNHCR, '2004 UNHCR Statistical Yearbook Country Data Sheet - Libyan Arab Jamahiriya', 2004, 381. On the establishment of UNHCR in Libya after the First Gulf War, see Sammakia, N., 'Asylum and migration in the Maghreb - Country Fact Sheet: Libya', Euro-Mediterranean Human Rights Network (EMHRN), December 2012, 20.

757 Nahmias, R., 'Libya Threatens to Deport Palestinian Refugees to Gaza', *Ynet News*, 17 March 2007.

758 Lamb, F., 'Libya's Palestinian refugees and the current crisis', *Al-Manar*, 18 July 2011.

759 Al-Azza, N., Al-Orzza, M., 'BADIL Survey of Palestinian Refugees', 2015, 12-13.

760 See Section 2.2 and Section 2.3.

761 Law No. 10 of 1989, concerning the Rights and Duties of Arab Citizens in the Libyan Arab Jamahiriya, *El Jarida El Rasmia*, 9 October 1989, No. 20, 521. Cf. Sammakia (n 758), 19.

762 Lifos (n 748), 8.

763 Fiddian-Qasmiyah (n 351), 273.

764 According to art. 7 of Law No. 4 of 1985 '[b]oth temporary travel documents and travel documents for Palestinians shall be valid for a period of one year from their date of issuance. They shall be renewable twice so that the validity becomes three years from their

date of issuance, provided that a shorter period is not stipulated upon issuance or renewal.' Art. 7, Libya: Law No. (4) of 1985 on travel documents, 19 April 1985.

765 While the Palestinian Embassy in Tripoli is able to issue two-year travel documents to them, they are not granted visas to their countries of former habitual residence. For example, Palestinians who went to Libya from Egypt are unable to return to Egypt to renew their original travel documents.

766 Shibliak (n 750), 41.

767 Between 1973 and 1975, the non-Libyan Arab contribution to the labour force was around eighty-five per cent. Paoletti, E., 'Migration and foreign policy: The case of Libya', *The Journal of North African Studies* 16.2 (2011) 218.

768 Fiddian-Qasmiyah (n 351), 214.

769 Al-Azza and Al-Orzza (n 759), 24.

770 Shibliak (n 750).

771 This occurred in spite of the prohibition to extradite political refugees enshrined in both constitution and the law. Cf. art. 11, *Libya: Constitution Proclamation*, 11 December 1969.

772 This applied even if the person's residency permit was valid and despite the fact that he would still be entitled to receive from the Libyan government certain labour rights and compensation. Sirhan, 1996 (n 752), 365.

773 Shibliak (n 750).

774 HRW, 'Stemming the flow: Abuses against migrants, asylum seekers and refugees', *Human Rights Watch Report* 18.5 (2006) 25.

775 Law No. 2 of 2004, which amended Law No. 6 of 1987, Regulating Entry, Residence and Exit of Foreign Nationals to/from Libya, and requires foreigners to have contracts with employers, proof that Libyans cannot fill the positions, health certificates, and registration with tax authorities, in order to work; see HRW 2006, 81. Law No. 6 of 2007 further tightened the requirements for foreign workers, stipulating that lack of regular work contract leads to deportation, see Paoletti (n 767), 219.

776 Lifos, 2016 (n 748), 5.

777 UNHCR, 'Position on Returns to Libya - Update II', September 2018, para. 16.

778 Under the Habib plan, Palestinians could stay in Tunisia for ten years. Palestinians' residency status was regulated by bilateral arrangements between the PLO and the government of Tunisia. Khalil, 2009 (n 370), 29.

779 In the late 1980s, about 300 PLO members lived in Tunis with their families. About 7,000 Palestinians had arrived from Beirut in 1982, Cowell, A., 'PLO, in Tunis, is shadow of former power', *The New York Times*, 24 June 1987.

780 In 2009, there were almost 1,000 Palestinians with permanent or temporary residency permits in Tunisia. Cf. Khalil, 2009 (n 370), 28.

781 Ibid., 16. Al-Azza and Al-Orzza (n 759), 26.

782 In June 2014, Tunisian authorities deported five Palestinian refugees from Syria to the Algerian border, while thirteen Palestinians from Syria were detained, Action Group for Palestinians of Syria, 'Tunisia deports five Palestinian Syrian detainees at Al Wardaya Syrian Police Station to the Algerian border', *ActionPal*, 5 June 2016.

783 'Tunisia grants 30-day visas to Palestine refugees fleeing Syria', *Maan News Agency*, 24 May 2014.

Oxford Public International Law

Part Two Seventy Years of Exile Palestinian Refugees Around the World, V Palestinian 'Diaspora' in Europe, the Americas, Asia-Pacific, and Africa

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(p. 269) V Palestinian ‘Diaspora’ in Europe, the Americas, Asia-Pacific, and Africa

Article [1D of the 1951 Convention] aims, fundamentally, to ensure continued protection of Palestinians as persons whose refugee character had already been established.

AD (Palestine), New Zealand Immigration and Protection Tribunal, 2015

1. Introductory Remarks

Though the majority of Palestinian refugees from 1948 found refuge in neighbouring Arab countries, over time the protracted nature of the Arab-Israeli conflict, as well as political tensions, discrimination, poverty, persecution, and wars in the Arab region, have spread the Palestinian exile further afield, mainly but not exclusively towards Western countries.¹ In recent years, the increasing dangers experienced by Palestinians in Iraq, the oPt, and Syria, coupled with restrictive asylum policies adopted by most Western countries, have broadened the frontiers of the Palestinian displacement still further. Significant numbers have recently been seeking protection in Eastern Europe, South and South East Asia, the Western Balkans, as well as West Africa and beyond.²

This chapter complements Chapter IV and charts the trajectory of the Palestinian displacement beyond the Middle East and North Africa (MENA) region. It consists of four main sections which, after a brief summary of the historical presence of Palestinians (where applicable), discuss the main features of their status and treatment in (countries in) each region; in Europe (Section 2), the Americas (Section 3), Asia-Pacific (Section 4), and Africa (Section 5). Where relevant, and where the reliability of the data allow, regional and sub-regional discussions are also supported by country-specific analysis.³ The available information, even if scant or patchy in certain regions and countries, has been used so as to portray an overall picture of the current Palestinian dispersal. The authors are cognizant that some parts of the chapter may give more the sense of a ‘catalogue’ than a comprehensive overview, as in Chapter IV. This is particularly the case for countries representing new (p. 270) destinations for Palestinian refugees, by choice or default, which may have more case law (of Palestinians seeking asylum) than documentation of Palestinian presence (including descendants of refugees from 1948 or 1967 who have arrived as ‘migrants’). The choice to present all the information collected, even when minimal (but interesting), reflects the conviction that it is in this overall portrayal, imperfect as it is, that the evolving features of Palestinian dispersal can be seized. Overall, the chapter presents the situation of Palestinian refugees who have been the subject of secondary and tertiary (or more) displacement, offering a global overview of their movements over the decades, highlighting trends where applicable, as well as their status and treatment in various countries and regions. This shows that, while some Palestinian refugees and other Palestinians have ‘migrated’ in search of better opportunities, the main drivers of departure from the Arab region since the 1970s, have been conflict, instability, and sometimes outright persecution.⁴ Because of the lack of resolution of the legal consequences of their original displacement, Palestinian refugees have: (1) long ceased to be an issue confined to the MENA region; (2) experienced increasing discrimination – often connected to the limited (or politicized) understanding of the Question of Palestine – lack of clarity of their status under international law, as well as general difficulties in dealing with their cases as established refugees; and (3) become vulnerable to a condition of continuous

displacement, as evidenced by the movements from Iraq, Lebanon, the oPt, and Syria towards all regions of the world.

This examination of the situation and experiences of Palestinian refugees outside the MENA region builds on, and seeks to expand, the work of others, in particular that of scholars who have mapped the Palestinian diaspora,⁵ and BADIL.⁶ It also reflects the results of the extensive survey undertaken by the authors, and where information in this chapter is not otherwise sourced it is the result of this survey.⁷ Nevertheless, research for this chapter has faced several important constraints. Some of the countries reviewed in this chapter have had little (or generally not fully documented) dealings with Palestinians, both as migrants and as asylum seekers. Much relevant information is lacking and where it exists it is often inconsistent over time within the same country and among countries.⁸ Within a country, different institutions may adopt different interpretations and approaches to the determination of refugee status and statelessness of Palestinians, and these may have changed over time without changes in the law. Where the law has changed, the effects may not be reflected in the available data. This chapter attempts to provide the most complete picture available, but lack of data is a significant limitation.⁹

(p. 271) One explanation for the uneven statistical treatment, and often statistical invisibility, of Palestinian refugees outside the MENA region, is that the majority of them continues to be stateless and the legal status of those from the oPt (and beyond) remains ambiguous. This results in registration under a variety of categories, including 'stateless', 'unknown nationality', 'undetermined nationality', or under the nationality of the country of which they hold passports or other travel documents, or in some cases 'Palestinian nationality'.¹⁰ This not only affects the categorization of claims, but may impact other aspects as well, such as establishing the asylum seekers' Palestinian identity and pre-existing Palestinian refugee status (i.e. as 'Palestine (1948) refugee' or '1967 displaced person'), which is a precondition for triggering the application of Article 1D of the 1951 Convention, when they seek asylum outside UNRWA area of operations.¹¹ As discussed in Chapter IV, Palestinian refugees carry a multitude of identity, registration, and travel documents; this can confuse border or immigration officials, who are used to asylum seekers having a well-established national status. Cases have been reported of European border officials not having recognized Palestinian travel documents issued by countries of former habitual residence such as Egypt, Iraq, and Syria. Where identity documentation is not available, in exceptional cases Palestinian origin may be verified using the applicants' own statements and other documents. Ultimately, the lack of proper data concerning Palestinian dispersal and mobility (as both established refugees, stateless persons, and migrants) makes it difficult to determine Palestinian numbers and protection needs.

In this chapter the term 'diaspora' refers to a long-term Palestinian presence (e.g. from 1940s through the 1990s), in given country or area, as opposed to the more recent arrivals of Palestinians displaced by the various upheavals in the Arab region (i.e. post 2000s).¹² The term 'Palestinian refugee' is used in reference to Palestinians who, prior to their arrival in any of the countries discussed in this chapter, had become refugees as a result of the conflicts of 1948 and 1967 (including their descendants), as discussed in the preceding chapters. Their protracted refugee status reflects the protracted lack of settlement of the question that made them refugees in 1948 and 1967 respectively. The term 'asylum seeker' or 'Palestinian seeking asylum' refers to Palestinians (including established refugees according to relevant UN resolutions) seeking international protection anew (i.e. outside the Arab region). For convenience, in this chapter 'Syrian Palestinians' refers to Palestinian refugees whose previous place of habitual residence was Syria.

(p. 272) 2. Europe: Between Openness and Uncertainty

2.1 A glance at history and trends

The number of Palestinians in Europe has been increasing since the start of the Syrian conflict in 2011.¹³ This increase has been both in countries with a pre-existing Palestinian diaspora and in countries that had no significant prior presence. It is difficult to ascertain precise numbers of recent arrivals of Palestinians (refugees and asylum seekers) in the region for the reasons mentioned earlier. Nevertheless, as most stateless asylum seekers in Europe since 2011 are reportedly from Syria, and in the absence of other stateless refugees from Syria,¹⁴ the number of asylum claims by stateless persons from Syria is a good proxy for the number of claims by Palestinian refugees who have been habitually resident there.¹⁵

The movement of Palestinian refugees to Europe, often in search for protection, is not new. Shibliak differentiates between two main categories of Palestinians in Europe. First, a group of educated and mostly successful professional middle-class Palestinians who arrived in the 1950s, 1960s, and 1970s, mostly to work and study in Europe.¹⁶ Palestinians in this group established themselves in various European countries, including France, Germany, Italy, Spain, and the UK. The second and largest group of Palestinians in Europe arrived across the 1960s to the 1990s from different Arab countries as a result of various periods of unrest in the Middle East.¹⁷ Reliable data on this second group is scarce, although it is estimated that tens of thousands of Palestinian refugees in this category fled to Denmark, Germany, the Netherlands, Norway, and Sweden.¹⁸ Most Palestinian migration to Europe over recent decades has been from Lebanon; in 2006 it plausible that approximately eighty per cent of Palestinian refugees in Europe had come from there.¹⁹ There are also unknown (p. 273) numbers of Palestinian refugees from other conflicts and areas; some arrived in Europe in the wake of the Iraqi invasion of Kuwait in 1990,²⁰ and some from Iraq as a result of the second Gulf War.²¹ Hanafi estimates that the refugee population in this second group constitutes three-quarters of the Palestinian population in Denmark, Norway, and Sweden, and has been characterized by high dependency on social welfare and poor labour market integration.²² Shibliak suggests that while Palestinians who arrived in Europe until the 1990s did not experience particular challenges in obtaining asylum or other forms of residency, and generally integrated without difficulties into the host societies, those who arrived in later years experienced more challenges, both procedurally and socially.²³ This is probably reflective of policy and attitudinal changes in Europe, as demonstrated by experiences in some specific countries, discussed later. Further Palestinian arrivals, mainly from Iraq, the oPt, Lebanon and, in more significant numbers, Syria, have joined this second group in recent years.

The socio-economic divide between these two groups may have resulted in social stratification in Europe, with implications for social integration.²⁴ This conflicts with the common assumption that Palestinians in the diaspora in Europe share broadly the same social and political outlook and representation. Socio-economic stratification may be common to other national groups who have moved or fled to Europe – e.g. Iraqis and Egyptians. However, the marked inconsistency of approach to and legal status of Palestinian refugees across the continent is a characteristic of this group that has become more prominent over time. For example, starting in 2014, in response to the large refugee displacement generated by the war in Syria (combined with continued arrivals of refugees from Afghanistan, Iraq, and Libya), a number of European countries introduced a system that grants certain nationalities expedited or preferential protection procedures ('fast-track processing'), including, sometimes, the *prima facie* recognition of their refugee status.²⁵ These measures grant protection on grounds of a general appreciation of the conditions in a refugee's country of nationality or habitual residence. In practice however, non-Syrian nationals fleeing Syria, including Palestinian refugees, have faced difficulty in benefitting from these accelerated procedures; this includes separating asylum seekers by nationality

for processing, or only granting entry to asylum seekers of certain nationalities, barring entry to others.²⁶ (p. 274) Even within the same European country, non-Syrians fleeing Syria have experienced different treatment, depending on border officers' knowledge and judgment. In the case of Syrian Palestinians, these problems may generally result from difficulties in establishing Palestinian identity and prior Palestinian refugee status. This also includes confusion about the fact that, while being stateless, Palestinian refugees have been living for decades as habitual residents in Syria and other host countries, a concept which is frequently misunderstood by those involved in administering asylum procedures in EU countries. This has made it more difficult for Syrian Palestinians to gain entry and obtain protection.

2.2 Regional legal framework

European countries have all ratified the 1951 Refugee Convention and its 1967 Protocol,²⁷ which are expressly referred to in the regional legal system,²⁸ while some states have yet to accede to the 1954 and 1961 UN Statelessness Conventions.²⁹ In Europe, matters related to refugees and asylum are regulated under the legal frameworks of the European Union (EU) and the Council of Europe (CoE), two separate entities which perform different, yet complementary, roles, and that, to varying degrees, bind respective member states to principles, policies, and legal instruments relating to the status and treatment of refugees and asylum seekers. The CoE is considered the benchmark for human rights, rule of law, and democracy in Europe, and the European Convention on Human Rights (ECHR)³⁰ and the European Court on Human Rights³¹ emanate from it. The CoE regularly intervenes to make sure that the treatment of refugees and asylum seekers is in line with human rights standards and that its member states abide by relevant norms.³² In turn, the EU – among its competences – develops laws that regulate general aspects of migration, freedom of movement, and asylum.³³ Correct interpretation and application of EU law is overseen by the Court of Justice of the European Union (CJEU).³⁴

Since the mid-1980s, EU member states have sought to harmonize their asylum policies and practices. The 1985 Schengen Agreement, the 1990 Dublin Convention, and the 1992 Treaty of Maastricht contain key provisions on migration to and within the EU. Between (p. 275) 1999 and 2005, the EU established a Common European Asylum System (CEAS) and improved the applicable legislative framework.³⁵ Several legislative measures harmonizing common minimum standards related to asylum, including procedures to process and decide asylum applications, and for the treatment of both asylum seekers and refugees, were adopted. This includes a number of directives such as the Temporary Protection Directive (2001), which allowed for a common EU response to a mass influx of displaced persons unable to return to their country of origin; the Family Reunification Directive (2003), applicable to all refugees;³⁶ and the Directive on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons in Need of International Protection (2004), which articulates the content of the protection provided (including subsidiary protection, as complementary and an addition to the protection offered by the 1951 Convention).³⁷

The 2007 Treaty of Lisbon furthered the harmonization of the common policy on asylum, subsidiary protection, and temporary protection, with the aim to offer an appropriate status to any third-country national requiring international protection.³⁸ The most relevant provisions regarding asylum in Europe are contained in the revised Qualification Directive (2011), which clarifies the grounds for granting international protection and establishes what subsidiary protection should be granted to people facing risks of serious harm who do not meet the refugee definition;³⁹ the revised Asylum Procedures Directive (2013), which lays out standards for asylum procedures – including determining the EU member state responsible for examining an individual asylum application – is an important (p. 276) set of provisions, as the 1951 Convention does not cover this area;⁴⁰ the revised Reception Conditions Directive (2013), which ensures humane reception conditions for asylum seekers

across the EU, including with respect to housing, education, and health;⁴¹ and the revised Dublin Regulation (2013), which further elaborates the criteria for determining the EU member state responsible for examining an individual asylum applications.⁴² The Qualification Directive is particularly relevant to Palestinian refugees in Europe as its Article 12 incorporates Article 1D of the 1951 Convention.⁴³

Despite these various measures to harmonize the treatment of refugees, EU member states still maintain different approaches and practices towards status determination and protection. For example, while some EU member states are legally bound by EU legislation, some member states, like the UK and Denmark, have opted out of some of these directives. The case of Palestinian refugees and the variety of EU member states approaches to Article 12 of the 2011 Qualification Directive is illustrative of such persisting lack of a harmonized approach.⁴⁴ Recent CJEU jurisprudence and UNHCR guidance, as discussed in Chapter II, have the potential to improve this and to increase consistency.⁴⁵ For example, (p. 277) CJEU jurisprudence in *Bolbol* and *El Kott* has also impacted relevant practice in Norway, even though the country is not a member of the EU and not bound by CJEU jurisprudence.

2.3 Established diaspora

Palestinian refugees, as well as other Palestinians, have been well established in a number of European countries, notably Denmark, France, Germany, Italy, Sweden, and the UK, with recent events in the Arab region having triggered further arrivals.⁴⁶

2.3.1 Denmark

Denmark is home to an estimated 20,000 Palestinian refugees, most of whom arrived from 1985 onwards from Lebanon, fleeing the civil war and deteriorating conditions in refugee camps there.⁴⁷

In Denmark asylum matters are regulated under the 2013 Aliens Consolidation Act, which partially reflects the 1951 Convention. The Act includes the principles of non-refoulement and of subsidiary protection yet does not make reference to Article 1D (or Articles 1C, 1E, and 1F) of the 1951 Convention. Unlike most EU countries, Denmark has not adopted the 2005 Directive on Asylum Procedures and the 2013 Dublin regulation, and is thus not subject to the common minimum standards with respect to asylum procedures. For a long time, Danish authorities have considered Article 1D to be inapplicable as long as UNRWA continues its operations.⁴⁸ Over time, court cases around Palestinian asylum seekers have focused on the 'country of first asylum' (i.e. the country in which Palestinian refugees were resident prior to seeking asylum in Denmark) and determined whether conditions there were suitable or not, as per Article 1A of the 1951 Convention.⁴⁹ In 2018, the Danish Refugee Appeals Board's Coordination Committee changed the Board's policy in asylum cases regarding stateless Palestinians from UNRWA's area of operations, applying CJEU jurisprudence in *Aletho* 2018.⁵⁰ The policy change allows stateless Palestinians in UNRWA's area of operations 'who have received UNRWA assistance or have been registered by UNRWA, and who have fled the UNRWA area or been prevented from returning' to benefit from the 1951 Convention.⁵¹ As a result of this change, the Danish Refugee Appeals Board has ordered that some 160 asylum applications be reopened and reassessed by the (p. 278) Immigration Service.⁵² Also, asylum applications from stateless Palestinians from Jordan, Lebanon, Syria, and the oPt, who had been granted protected status or temporary protected status, or who have remained in Denmark despite being denied asylum, will be reopened; the Immigration Service will assess on a case-by-case basis whether the change of policy should result in these individuals being granted Convention status.

Danish law offers citizenship to children born in Denmark who would otherwise be stateless, as well as for stateless persons who have lived in Denmark for eight years.⁵³ In 2011, the Ministry of Refugee, Immigration and Integration Affairs refused the citizenship applications of some 500 Palestinian youths born in Denmark, who remained stateless as a result. This was subsequently found to be an error, which the government corrected for the individuals in question.⁵⁴ In late 2011, the government offered residency permits to stateless who had been born in the country, which included many Palestinians.⁵⁵

2.3.2 France

While being a historical destination for Palestinians fleeing the Middle East (particularly Lebanon), the number of Palestinians in France is unclear. They have traditionally represented one of the smallest Arab groups in France, hailing primarily from refugee camps in Lebanon, Jordan or the oPt. A significant increase of Palestinian arrivals has been registered in connection with the Syria conflict, during which France has received over 10,000 asylum seekers from Syria (ten per cent of whom are Palestinians).⁵⁶ Gabiam's study on statelessness among Palestinians in France suggests that the early Palestinian presence in France is well integrated and developed, in contrast with later arrivals, namely those who left the Gaza Strip and the West Bank as a result of the second *intifada* or left the region following the upheavals and wars in the Middle East from 2010 onwards.⁵⁷ In addition to long-term residents who had received protection in France as refugees or stateless persons, Gabiam also refers to some among her interviewees who had been naturalized after 'a significant amount of time'.⁵⁸ It is unclear how many Palestinians have been naturalized in France.

The French law with respect to asylum is based on the 1951 Geneva Convention and the EU asylum framework.⁵⁹ Persons who do not meet the refugee criteria under Article 1(A)2 of the 1951 Convention can apply for subsidiary protection.⁶⁰ When assessing refugee applications, the French Office for the Protection of Refugees and Stateless Persons (OFPRA) also consider cases where *de jure* statelessness exist. BADIL indicates that a number of (p. 279) Palestinians in France have been recognized as stateless persons, and granted ten-year residence permits after three years of residence in the country.⁶¹

Concerning Article 1D, recent jurisprudence aligns with *El Kott* in determining that 'cessation of protection or assistance [provided by a UN agency other than UNHCR] for any reason' in Article 12(1)(a) of the Qualification Directive (which mirrors Article 1D) entitles that person, *ipso facto*, to the benefits of the Directive, i.e. to be granted refugee status in France.⁶²

2.3.3 Germany

There is no accurate record of the number of Palestinians in Germany and the same applies to statistics on naturalization of Palestinians.⁶³ A conservative estimate from 2005 indicated that there were approximately 100,000 Palestinians in the country, most of whom had come from Lebanon during the 1980s and 1990s, half of whom – according to some sources – had received German nationality by the 1990s.⁶⁴ A significant but unquantified number of Palestinians arrived after 2005, and, since 2011, especially from Syria.⁶⁵ Recent figures show a gap between approximately 4,000 and 250,000 (sic!).⁶⁶

Palestinians, including Palestinian refugees, started to arrive in Germany as migrant workers during the 1960s, after Germany and Jordan signed labour agreements which saw hundreds of Palestinians with Jordanian passports migrate to Germany.⁶⁷ Overall, Palestinian immigrants in Germany tend to be younger than those in Scandinavia, and while many worked in low-skill jobs, there was some upward social mobility; some have embarked on studies and/or had high-skilled jobs.⁶⁸ During the Lebanese civil war (1975–1990) tens of thousands of Palestinian refugees fled to mostly former East Germany (and through the 'Berliner Loch' onwards to former West Germany). Some Palestinian refugees arrived in then West Germany after the first *intifada* in 1987, an event which reportedly prompted

German authorities to accept Palestinian asylum requests.⁶⁹ In 2010 it was estimated that eighty per cent of Palestinians living in Germany had arrived from Lebanon.⁷⁰

The German law on asylum contains provisions reflecting Article 1D of the 1951 Convention and Article 12(1)a of the EU Qualification Directive, despite some ambiguity.⁷¹ (p. 280) Application of Article 1D in Germany has been uneven. Some Palestinians were granted asylum on the basis of Article 1D, and there is extensive German case law around this. Decisions that invoke Article 1D in Germany have been based on a landmark 1991 Federal Administrative Court decision,⁷² and most recently on the *El Kott* decision of the CJEU.⁷³ However, not all court decisions made reference to Article 1D. Recent jurisprudence has recognized the *ipso facto* consequence of a cessation of UNRWA protection stating that the eligibility of a Palestine applicant for subsidiary protection flows from the non-availability of UNRWA protection in the respective region.⁷⁴

In the wake of the war in Syria, Palestinian refugees from Syria were generally treated in the same way as Syrian nationals, since Syria was their country of habitual residence, even though inconsistencies have been reported.⁷⁵

During the assessment of asylum requests, responsible authorities also review questions related to statelessness, and when stateless applicants cannot be returned to their country of habitual residence for legal or practical reasons, they may be entitled for a residence permit on this ground. In such cases, Germany's Nationality Act offers stateless persons the opportunity to acquire German citizenship after seven years of legal residence in the country.⁷⁶

An unconfirmed number of Palestinians in Germany are afforded a subsidiary protection status, known as *Duldung*, or 'toleration permit'.⁷⁷ This is usually the case when the application for asylum is rejected and the individuals concerned are not returnable to states of prior habitual residence.⁷⁸ Beneficiaries of *Duldung* status are granted an exceptional (p. 281) permit to remain in Germany under what it is in effect a postponed deportation. While medical care is guaranteed, there are restrictions on freedom of movement and access to higher education, vocational training, and work.⁷⁹ It is questionable whether *Duldung* refugees can be considered as lawfully residing in Germany, a requirement for the enjoyment of some rights, including under the 1954 Convention.⁸⁰

A certain degree of leniency shown towards Palestinians in Germany has shifted over the years, influenced by the unique nature of Germany's relations with Israel, on the one hand, and attitudes towards Palestinians in the country on the other hand. In 1972, after the Munich Olympic Games massacre when a Palestinian commando killed eleven Israeli athletes, West Germany enacted a series of sanctions on Palestinian organizations,⁸¹ and hundreds of Palestinians (not all of whom were members of these organizations) were deported on the grounds that they posed a threat to the internal security of the state.⁸² General security measures, such as increased border security and visa requirements, were taken against all Arabs.⁸³ For the first time, the Palestinian diaspora in Germany came to be linked to 'terrorism', reflecting the fact that German terrorist groups, the Red Army Faction (RAF), and the Revolutionary Cells, were seen as close to the military arm of the Popular Front for the Liberation of Palestine (PFLP).⁸⁴ As time passed, the temporary restrictions on Palestinian activity in Germany were lifted and the deportations were discontinued. As recent years' forced migration flows indicate, Germany continues to represent an important asylum destination for Palestinians fleeing the Middle East.⁸⁵

2.3.4 Italy

Since the 1960s, Italy has offered favourable treatment to Palestinian refugees and the country has historically supported their political cause.⁸⁶ This has probably encouraged the formation of a Palestinian diaspora in the country. Larger numbers of Palestinian refugees

have been arriving in Italy from Syria since the outbreak of conflict there in 2011, with a significant decrease in recent years.⁸⁷

There is no standardized registration procedure for Palestinian refugees, who are recorded in the national asylum registration system either as ‘nationals of Palestine’, nationals of the state where they habitually resided, stateless persons, or as persons of unknown nationality.⁸⁸ Interestingly, Palestinian asylum seekers can be recorded in the asylum registration system as ‘nationals of Palestine’ despite the fact that Italy has not formally recognized the State of Palestine. This applies for those originating from the oPt and for those habitually residing elsewhere in region, therefore capturing ‘nationality’ beyond its strictly legal (p. 282) meaning. Very few Palestinians submit claims for determination of statelessness in Italy.⁸⁹ This may be due to the asylum application process, which is not conducive for consideration of statelessness.⁹⁰

For many years, Italian authorities recognized Palestinian refugees *ipso facto* as Convention refugees without requiring evidence of a well-founded fear of persecution.⁹¹ The Territorial Commissions (the Italian authority responsible for asylum requests) interpreted Article 1D so that physical presence of a Palestinian refugees in Italy (i.e. outside UNRWA’s area of operations) was sufficient ground to grant them *ipso facto* international protection.

Following *El Kott* in 2012, this policy is no longer systematically applied, and reasons for leaving UNRWA’s area of operations, as well as risks or legal and practical difficulties upon return, are increasingly being assessed on a case-by-case basis.⁹² While being reflective of the CJEU’s and UNHCR’s interpretation of Article 1D, this has in practice resulted in a less favourable approach to Palestinians’ asylum claims in Italy. The overall approach to the 1D inclusion clause remains liberal, however, as UNRWA assistance is considered as having ceased, for the purpose of that provision, in the vast majority of circumstances and for different kinds of reasons, including security risks, practical and legal barriers to return, or other protection-related concerns, e.g. inadequate living conditions in refugee camps.

Italy may also offer subsidiary protection to ‘Palestinians nationals’ who are not recognized as refugees under the scope of Article 1D and do not meet the Article 1A(2) threshold.⁹³ This has been the case especially for those originating from the Gaza Strip or the West Bank.

Once recognized as refugees, Palestinians in Italy enjoy the same legal treatment as all other refugees; they have access to social benefits and other rights on an equal footing to Italian citizens. Naturalization options are the same as for other refugees.⁹⁴

Italy has resettled some Palestinian refugees, though with limited success owing to lack of employment opportunities and other factors.⁹⁵

2.3.5 Sweden

Sweden has generally been welcoming towards Palestinians, enabling a large Palestinian diaspora community to develop.⁹⁶ The first Palestinians arrived in Sweden in 1962 as (p. 283) students (and returned to Jordan, Lebanon, and the West Bank on completion of their studies); more came after the unrest in Jordan of the early 1970s, and a larger group, mostly from Lebanon, in the early 1980s.⁹⁷ By 2008, there were some 15,000 Palestinian refugees in Sweden.⁹⁸ Violence in the oPt in 2001–2002 led to an increase in the number of Palestinians seeking asylum in the country, which prompted it to pursue a stricter policy towards granting visa to Palestinians.⁹⁹

Hundreds of Palestinians mainly from Iraq (stranded in Al-Tanf Camp on the Iraqi-Syrian border) were resettled in Sweden in the years 2008–2010, ranking them first among the various nationalities resettled.¹⁰⁰ Like in the rest of Europe, numbers of arrivals have risen between 2015–2017.¹⁰¹ Tucker explains the higher preference for Sweden among the

Syrian Palestinians who fled the war, owing to its favourable naturalization policy, as compared to other European or Arab states.¹⁰²

Most Palestinian refugees in Sweden are registered as stateless persons,¹⁰³ and the former country of residence is not officially recorded, except when they have citizenship in a third country (e.g. Jordan).¹⁰⁴ As most stateless asylum seekers in Sweden are thought to be Palestinian, stateless applicant figures serve as a proxy to estimate the number of Palestinian refugees in the country.¹⁰⁵

Sweden follows the CJEU interpretation of Article 1D and has applied *El Kott* in adjudicating asylum requests of Palestinian refugees from Syria.¹⁰⁶

In 2013 Sweden adopted a policy allowing asylum seekers from Syria, including Palestinians, to be granted permanent residence permits in Sweden and until 2016/2017, the vast majority of applications were granted international protection.¹⁰⁷

2.3.6 United Kingdom

In 2005, estimates of the number of Palestinians in the UK ranged from 20,000–30,000.¹⁰⁸ There is no precise breakdown of how many of these are classified as refugees, or when they arrived in the country.

(p. 284) Palestinian migration to the UK started in the 1940s.¹⁰⁹ A number of Palestinians residing in the UK, mostly students and civil servants working for the British Mandate, became refugees *sur place* as they were prevented from returning to Palestine after the end of the Mandate.¹¹⁰ Due to Commonwealth ties, the UK offered preferential naturalization options to Palestinians until the early 1960s; Palestinians arriving in Britain could exchange their Mandatory Palestine passports for British passports.¹¹¹ No figures are available for how many Palestinians were naturalized through that procedure or have been naturalized since.

There is evidence of Palestinians from relatively wealthy families living in the Gulf moving to the UK much later as students.¹¹² Larger numbers of Palestinians, as in the rest of Europe, arrived after the Lebanese civil war and other unrest in the region. There is also evidence of Palestinians fleeing Iraq to the UK soon after the First Gulf War in 1990–1991, though numbers are unknown.¹¹³ An increase in arrivals of Palestinians in need for protection took place as of 2011, probably as part of the refugees from Syria that the UK agreed to resettle.¹¹⁴

Palestinian refugees from the oPt, as well as from Lebanon and Syria, are classified as stateless persons, unless they have acquired the nationality of a third country. They are either accorded refugee status through the asylum procedure or, where the asylum application fails, they may be granted protection as stateless persons through the statelessness determination procedure.

In adjudicating asylum requests, the application of Article 1D has been inconsistent; court cases have come to different conclusions as to the applicability of Article 1D. For example, in 2002 in *El-Issa*, the Immigration and Asylum Tribunal found that Palestinians automatically benefit from the 1951 Convention when outside the scope of UNRWA's assistance or protection.¹¹⁵ However, other court decisions, such as *El Ali* (2002) gave a more restrictive reading to Article 1D and its *ipso facto* inclusion clause.¹¹⁶ Greater consistency has followed as a result of relevant CJEU jurisprudence, as demonstrated by policy changes¹¹⁷ and court decisions.¹¹⁸ In 2016, the Home Office published a Guidance Note containing a (p. 285) step-by-step guide for asylum officials in the UK to determine applicability of Article 1D with respect to individual Palestinian asylum seekers.¹¹⁹ The instructions emphasize the binding nature of *El Kott* by stating that:

refugees who were previously assisted by UNRWA and who seek asylum outside the area of UNRWA operation are excluded from the scope of the Refugee Convention, unless they can show that UNRWA assistance or protection has ceased for reasons *beyond their control* or independent of their volition.¹²⁰

In this respect the UK's official policy, reflecting the *El Kott* ruling, distances itself from the interpretation by other countries that the words 'ceased for any reason' can only mean termination of UNRWA as an agency.¹²¹ The instructions elaborate substantively on the circumstances that may trigger Article 1D(2),¹²² particularly for Palestinians from Syria.¹²³ Finally, the instructions state that, should an individual be excluded from the application of Article 1D, humanitarian protection can be considered in the alternative.¹²⁴

Against the backdrop of this encouraging legal environment, less than a quarter of the Palestinian applicants for asylum has been granted protection since 2012, the vast majority in the form of subsidiary protection.¹²⁵ At the time the book is finalized, the UK High Court just issued a judicial review of a case brought by Palestinian refugees against a government programme to resettle refugees from Syria,¹²⁶ which allegedly excluded Palestinians from consideration; the Court found that Palestinians' exclusion from the Resettlement Scheme was not justifiable.¹²⁷

(p. 286) 2.4 New destinations and transit routes

As noted in the Introduction, from the beginning of this century, Palestinian dispersal, by choice or default, has spread across new destinations, including in Europe. While numbers may be small and available data is limited and inconclusive, the fact that these countries, altogether, de facto became new 'ports of call' for Palestinians, and are experiencing a range of protection concerns across them, prompts the need to present all the information collected, even when minimal. This may prompt both most needed further research into Palestinian dispersal and better understanding of the protection needs associated with it.

2.4.1 Eastern Europe

Eastern Europe was a destination of study and possibly continued residency for a considerable number of Palestinians during the Cold War period. Hundreds of Palestinians currently in the region—particularly Bulgaria¹²⁸ and Hungary—started to arrive from the late 1950s and through the 1980s and 1990s as students on educational scholarships to pursue higher and/or specialized education, particularly in the fields of medicine and engineering. They had different kinds of legal statuses depending on the country of former habitual residence (e.g. if coming from Syria, Lebanon, or Jordan). Lack of reliable data though does not allow proper discussion of this. As of 2010, Palestinian movements in search of protection towards Bulgaria, the Czech Republic, Hungary, Poland, Romania, and Slovenia started to appear as a more established phenomenon. As elsewhere, there has been an increase in asylum applications from Palestinian refugees as a result of conflict in Iraq, the Gaza Strip, and Syria, while worsening economic conditions have been a factor in the increase of arrivals from Lebanon. These events, coupled with the increasing difficulties in accessing other European countries with a better-established diaspora (e.g. Germany and Sweden), may have contributed to increased numbers in the region.

Numbers for individual countries are difficult to ascertain except for Bulgaria¹²⁹ and Romania¹³⁰. While each country in the region has its own asylum system, certain practices and challenges, as well as practical and political response, have often been similar across countries in the region – more than in other regions – and are therefore discussed together here.

(p. 287) In general, registration of Palestinian applicants is undertaken based on travel or identity documents submitted by them. Where these documents are unavailable, registration is based on verbal declarations in the Czech Republic, Hungary, and Romania. In Bulgaria verification may be supported through documentation that the applicant may have obtained through the Palestinian embassy. Czech authorities have considered an applicant's registration with UNRWA as supporting evidence in cases without valid travel documents.

There are inconsistencies in the way Palestinians are registered across the region. As elsewhere, they may be categorized as nationals of Palestine, stateless persons, or nationals of their country of habitual residence. In Romania, they are registered as either 'Palestinian nationals' or as stateless persons (the majority of stateless persons in the country are Palestinians).¹³¹ Occasionally, stateless Palestinians from countries such as Lebanon and Syria are registered as citizens of those countries. Interestingly, Hungary uses 'Palestinian' under the category of nationality as an ethnic category, instead of denoting citizenship. The country of origin is indicated mainly in reference to the place of birth (e.g. Jordan, Lebanon, Syria). The Hungarian authorities categorize Palestinians from Syria or Lebanon as 'stateless'. Slovenian authorities generally register Palestinians as their country of origin being 'Palestine', but it is unclear whether there are Palestinians among those registered as residents of other countries.

Since 2013, Hungary has not recognized travel documents for Palestinian refugees issued by Syria.¹³² This has prevented a number of Syrian Palestinians from presenting claims in Hungary. Details of the impact of this policy change are unclear and it is not known how many Syrian Palestinians have been affected. However, since 2015 the Hungarian authorities have granted international protection to Palestinians from Gaza, as well as Palestinians from Jordan and Syria who are registered by UNRWA.¹³³

Most Eastern European countries generally follow CJEU jurisprudence on Article 1D, though there are inconsistencies in related practices.¹³⁴ In fact, the CJEU jurisprudence on Article 1D originates from this region: between 2010 and 2018, three courts, two in Hungary and one in Bulgaria, requested a preliminary ruling from the CJEU seeking clarification of their obligations with respect to Palestinian asylum requests.¹³⁵ In general, Palestinians seeking protection under Article 1D need to demonstrate that they have received UNRWA's assistance (and not just demonstrate eligibility for such assistance) and that UNRWA's protection or assistance has ceased for reasons independent of the will of the applicant. This defies the very purpose of Article 1D, as it prevents Palestinian refugees who may have - for their own reasons - never accessed UNRWA protection or assistance, from enjoying the benefits of the 1951 Convention, right when such protection is most needed.¹³⁶ Even in Hungary, where the asylum law stipulates that Article 1D applies to persons who are eligible for UNRWA's assistance and protection and who are outside its area of operations, frequent (p. 288) confusion has been reported as to whether related assessments need to be conducted under Article 1A or 1D.¹³⁷ Similar lack of clarity has recently been observed in Romania, both at administrative and judicial level, with Palestinians' applications being assessed on the basis of the individual circumstances of each case, vis-à-vis Article 1A(2) of the 1951 Convention. Registration with, or assistance from, UNRWA, although verified, does not usually affect the assessment of the asylum claims.

In the region, Palestinians who are denied international protection as refugees or stateless persons may be granted alternative forms of protection. In Romania, this may take the form of a temporary permission to remain, called a 'toleration' permit. Given the difficulties often encountered by the authorities in obtaining travel documents or a (re-) admission agreement from the state to which a Palestinian would be sent or returned, granting 'toleration' or a temporary permission to stay is often the only viable option for such cases. The Czech Republic may also grant subsidiary protection to Palestinians who are denied

refugee status. Eligibility for subsidiary protection depends on the particular circumstances of the individual case. If a Palestinian is denied asylum but cannot be returned to the country of previous habitual residence, a permit to remain for one to six months can be issued.¹³⁸ During this time, the person may legalize his/her stay by finding employment or a study opportunity, or on the basis of family reunification. If the person fails to do so, the permit to remain can be extended, but this status is precarious and does not provide long-term protection.

In Hungary, until recently nearly all persons recognized as stateless persons were Palestinians; the individuals concerned were eligible to apply for subsidiary protection provided that there was no asylum application pending. Under this system, while Palestinians from the oPt and Syria have generally received some form of international protection,¹³⁹ Palestinians from Lebanon have been less successful.¹⁴⁰ There have also been problems with regard to Hungary's application of the Statelessness Convention to Palestinians. Recently, the Hungarian Immigration and Asylum Office started to reject all applications submitted by Palestinians referring to the existence of the State of Palestine based on the 2012 General Assembly resolution granting non-member observer state status to Palestine and Hungary's recognition of Palestine as a state.¹⁴¹ Family reunification in Hungary has also proven (p. 289) restrictive: only lawful residents were eligible to submit a claim.¹⁴² The practice was abolished in 2015 after the Hungarian Constitutional Court declared it unconstitutional.¹⁴³ It is not known how many stateless Palestinian refugees were affected. Criteria for family reunification remain strict nonetheless.¹⁴⁴

2.4.2 Northern Europe

An increased (compared to earlier years) Palestinian presence has been reported in northern European countries such as Finland, Lithuania and Norway. These countries may record Palestinians as nationals of their country of former residency, i.e. Jordan, Lebanon, or Syria, which may result in actual numbers of Palestinians in each country being higher. The majority, registered as coming from Syria, were granted some form of international protection, mostly refugee status, with some qualifying for subsidiary protection.

Finland

The number of Palestinians in Finland is not publicly available.¹⁴⁵ The application of Article 1D in Finland is conditional upon an evaluation of the causes that have led the person to 'voluntarily relinquish' UNRWA's protection.¹⁴⁶ In practice, its application appears inconsistent. Palestinians from Syria were recognized as refugee under Article 1D if they were registered with UNRWA. Asylum requests by Palestinian refugees from Iraq were assessed under Article 1A(2) on account of a well-founded fear of persecution in Iraq. Claims of Palestinians from the Gaza Strip and the West Bank were generally rejected if not supported by credible evidence of persecution or serious harm meeting the requirement of Article 1A(2).¹⁴⁷ The vast majority of applications of Palestinians from Lebanon have been rejected.¹⁴⁸

Lithuania

Numbers of Palestinians in the country have historically been small, with a few dozen arrivals seeking asylum between 2003 and 2007, with some increase in recent years (numbers not confirmed). In line with a general policy of the Migration Department to grant refugee status to asylum seekers from Syria, since 2016 Palestinians from Syria have been granted refugee status on the basis of Article 1A(2).

(p. 290) Norway

Norway registers Palestinians as stateless persons but does not provide further breakdown in its official statistics.¹⁴⁹ However, the country has high recognition rates with respect to

asylum requests by stateless persons.¹⁵⁰ It is known that Palestinians from Iraq and Syria received protection on account of a well-founded fear of persecution if returned.¹⁵¹

Norway represents an interesting case in terms of the application of Article 1D. In 2009, apparently to curb Palestinian arrivals, Norway changed its policy (which had automatically applied Article 1D to Palestinians registered with UNRWA) and introduced an individual assessment under Article 1A(2).¹⁵² BADIL reports that in practice Norway's procedure only partially resembles *El Kott*, as it requires a 'credible claim to refugee protection' (including being prevented from enjoying UNRWA assistance and protection) instead of a well-founded fear of persecution.¹⁵³ Palestinians from Syria have been granted refugee status on the basis of Article 1A(2).¹⁵⁴ However, the change in policy significantly impacted the recognition rate for Palestinian refugees from the oPt, as evident in the number of documented rejections of asylum applications.¹⁵⁵ Norwegian authorities appeared not to have taken into account the generalized violence to which applicants were exposed on the grounds that it did not meet the requirement of individual fear of persecution under Article 1A(2).¹⁵⁶

At the time of writing the Norwegian authorities were considering how to assess protection claims of Palestinians originating from the West Bank and Gaza, following an amendment to the Norwegian Immigration Act introduced on 17 June 2016, aiming to further contain the number of asylum seekers in the country.¹⁵⁷ Implementing the amendment, the Norwegian authorities issued a new Practice Guidance Note regarding the protection needs of Palestinians originating from the West Bank and Gaza. The Note considers that the situation in the West Bank is different than in Gaza. Accordingly, the Norwegian Directorate of Immigration (UDI) is no longer required to undertake a 'reasonableness' analysis when assessing the availability of a so-called internal flight alternative (IFA), which is required for compliance with the 1951 Convention.¹⁵⁸

The UDI underlines in this regard the area's limited size and that the political and administrative structures available cannot provide solutions to the type of problems encountered by the applicants who lodged their claims in Norway. This will have to be determined on a case-by-case basis. With respect to applicants from the West Bank, the UDI has often (p. 291) required them to relocate to areas where they will not be at risk of encountering problems which led to their flight from the West Bank in the first place. However, according to the Practice Guidance Note, caseworkers must undertake a concrete assessment of whether there are strong humanitarian considerations warranting the granting of a residence permit on humanitarian grounds, given the situation the returnees will most likely end up in upon return.

2.4.3 Southern Europe

Countries in Southern Europe have generally experienced increased numbers of arrivals of Palestinian refugees and asylum seekers in recent years, largely owing to the conflict in Syria.¹⁵⁹ Cyprus and Greece, which have received the highest numbers of new arrivals, are located on the main transit route from the Middle East to other parts of Europe.¹⁶⁰ Palestinian refugees, like others, have experienced a range of protection problems in this area.¹⁶¹

Cyprus

Comprehensive numbers of Palestinians in Cyprus are not available, even though figures have been rising dramatically since 2007.¹⁶² Since 2009, the number of registered Palestinian refugees and asylum seekers has ranged between 1,500 and 2,000 per year.¹⁶³ It is unclear how many of these have moved on to other destinations.¹⁶⁴

It appears that a considerable number of Palestinian refugees who apply for asylum in Cyprus hold PA passports and originate from the oPt. Other types of passports or travel documents (TDPRs) have also been recorded, less frequently, including from Jordan, Syria, and Lebanon. Until 2014, Cypriot authorities registered Palestinians under their country of habitual residence. After 2014, UNRWA-registered Palestinians would be registered (p. 292) as 'stateless', while those holding PA documents would be registered as originating from the oPt. As of September 2015, further to a decision on standardization of registration of Palestinian refugees, all Palestinians are registered under oPt, whether or not they are registered with UNRWA.¹⁶⁵ Until December 2014, the Cypriot Asylum Service applied Article 1A(2) to Palestinians, whether or not they were registered with UNRWA or eligible to be registered as such. The vast majority of Palestinian applicants were granted subsidiary protection status. Following large arrivals of UNRWA-registered Syrian Palestinians in late 2014, and presumably, as a result of UNHCR's advocacy, the Asylum Service began to apply Article 1D to confer refugee status to Palestinian refugees from Syria. Since then, Article 1D has also been applied to Palestinian refugees from other UNRWA fields of operations, even if inconsistencies are reported. Applications from UNRWA-registered Palestinian refugees from Lebanon have been generally rejected without adequate consideration of the discrimination, fear of arrest, detention, and mistreatment on return because of illegal exit, and the deteriorating general situation in Palestinian camps, as well as threats to their safety from military and paramilitary groups, reported by applicants. No analysis has taken place of the availability and nature of UNRWA protection or assistance to the refugees. Palestinians from the Gaza Strip and the West Bank who were not registered with UNRWA and not granted refugee status received subsidiary protection due to violence in the oPt to which they were exposed.

In 2011, a group of Iraqi Palestinians had their refugee status terminated. All cases were appealed, and the decisions overturned two years after the appeal process started. Due to the uncertainty and delay in the issuance of the second instance decisions, a considerable number of these persons withdrew their appeals in order to have their travel documents returned to them, which had been retained by the authorities during the asylum process. A significant number of those in this group reportedly secured visas to Indonesia and attempted to reach Australia irregularly, with some reported missing at sea.

In October 2015, eighty Palestinian refugees from Lebanon were among persons who arrived by boat in Akrotiri, one of the 'Sovereign Base Areas' (SBAs) that have remained under British sovereignty since the independence of the Republic of Cyprus in 1960.¹⁶⁶ According to a Memorandum of Understanding between Cyprus and the UK over the SBA, the UK has responsibility for asylum seekers who arrive directly on the bases, while Cyprus has delegated authority to determine their asylum applications on behalf of the SBA. Most Palestinians from Lebanon who were processed by the Republic of Cyprus were refused asylum, save for 'non-ID's' and in cases where other vulnerabilities were found. Some negative decisions remain pending on appeal and/or reopening requests. Some applicants decided to 'voluntarily' withdraw their claim either at first-instance or on appeal and left the SBA and are of unknown whereabouts.¹⁶⁷

(p. 293) Greece

In recent years there have been significant arrivals of Palestinian asylum seekers in Greece, with a spike in numbers as of 2016.¹⁶⁸ While precise numbers are not available, indications are that the majority of registered stateless persons are of Palestinian origin. Various factors may have produced this increase. The intensification of the fighting in and siege of Yarmouk, a Palestinian gathering near Damascus, in 2015, may have contributed to it.¹⁶⁹ As of 2016, some Palestinian refugees were also returned by other European countries because they had transited Greece, while several hundreds of Palestinians have been

rescued at sea by the Greek navy. It is not known how many may have died or drowned in transit before reaching Greece.

There is no information available in English on the Greek government's application and interpretation of Article 1D, or practice regarding Palestinian refugees. There is, however, a fast-track asylum procedure available to refugees fleeing Syria that is open to Palestinians.¹⁷⁰ In 2013, Greece enacted a suspension of returns of Syrian refugees that ensured 'no return' orders could be issued for six months, with the possibility of extension.¹⁷¹ Non-Syrian nationals were not included under this policy, meaning Palestinian refugees were not covered.¹⁷² Furthermore, there are reports suggesting that decisions on detention and return of Palestinian refugees are not necessarily systematic or lawful. UNHCR states that according to official guidance, the Greek Asylum Service 'does not endorse the detention of [Palestinian] asylum seekers ... who present a travel document or identity card'; however, in practice, detention of Syrian Palestinians varies depending on the understanding and interpretation of policy guidance by local police officials.¹⁷³

Portugal

There have been very small numbers of Palestinian arrivals in Portugal in recent years,¹⁷⁴ with evidence suggesting that some may have transited through the country before moving to other European countries.¹⁷⁵ Portugal registers Palestinian asylum seekers under the nationality claimed by the applicant, verified by available documents. However, data reliability is compromised by the fact that Portugal does not officially recognize either the State of Palestine (hence may not have 'Palestinian nationals' from the oPt,) or certain TDPRs (e.g. (p. 294) those issued by Lebanon). There is no indication that Portuguese authorities differentiate between UNRWA-registered and other Palestinians, and this is not typically addressed in refugee interviews. Article 1D has not been invoked in protection decision for Palestinian refugees in Portugal; their cases are considered under Article 1A(2). Of those granted protection, some claimed to have been receiving UNRWA services.

Spain

Spain has received an increasing number of Palestinian asylum seekers since the 2000s, particularly from 2016/2017 onwards.¹⁷⁶ At least from 2007,¹⁷⁷ most Palestinian asylum seekers arriving in Spain have used passports or travel documents issued by Jordan, Lebanon, Syria, and the PA. Palestinian asylum seekers have been registered by the Spanish Office for Asylum and Refuge in different ways over time. Initially they may have been registered as 'stateless',¹⁷⁸ then as 'Not Recognized-Palestine', and finally, since 2015, they are registered as 'Palestine-United Nations Observer State'.

Historically, Spain's policy towards Palestinian refugees and asylum seekers has generally been positive and protection-oriented. Until 2004, all Palestinian asylum seekers were granted at least humanitarian status. Since 2004, Spain started to apply Article 1D to Palestinians registered with UNRWA and some were granted refugee status.¹⁷⁹ As of 2009, Spain's Asylum Law takes into account Article 1D by noting that when UNRWA 'protection or assistance ceases for any reason', unprotected individuals will be protected by Spain's asylum law.¹⁸⁰ Further, under the same Asylum Law, Palestinians may apply for an expedited 'emergency' decision if they are excluded from protection.¹⁸¹ Spain's interpretation of Article 1D has generally been broad, compared to other European countries. However, since 2015 a new interpretation has been used by the Spanish asylum authorities, conforming with the CJEU's decision in *Bolbol*, that interprets Article 1D as requiring that claimants not only be registered with UNRWA, but actually assisted by this agency, and that claimant must have been forced to leave UNRWA's area of operations for safety reasons in order to be granted protection. This new interpretation has resulted in a less-favourable application of Article 1D and more cases have been rejected since.¹⁸² Since then Palestinians from Syria have generally been recognized as refugees under the 1951 Geneva Convention, in view of the prevailing generalized violence in the country. Most

Palestinian from Gaza and the West Bank have been granted subsidiary protection. Applications lodged by Palestinians from Lebanon are usually rejected.

(p. 295) Since 2001, Spain has a stateless-determination procedure in place; however, there are not many statelessness applications by Palestinians given the authorities' positive asylum practice.

2.4.4 The Western Balkans

The unrest that engulfed the Middle East particularly as of 2011 has seen an increasing number of refugees heading towards the so called 'Balkan Route'.¹⁸³ Since then, some presence of Palestinians lodging applications for asylum was reported in Bosnia,¹⁸⁴ Croatia,¹⁸⁵ Kosovo,¹⁸⁶ Montenegro,¹⁸⁷ and North Macedonia.¹⁸⁸ The closure in March 2016 of the Balkan Route, which served mainly as a transit route by migrants and asylum seekers and allowed nationals of Afghanistan, Iraq, and Syria transit to other parts of Europe, has had a major impact.¹⁸⁹ Increased 'irregular entries' were reported in the area, particularly in Croatia and Serbia.¹⁹⁰ Progressively, asylum seekers were denied entry at the borders, physical barriers were erected, and there were well-documented instances of violence towards asylum seekers, who often found themselves trapped in inhumane conditions.¹⁹¹ The closure of this route gradually transformed many of its involved countries in asylum destinations for some, including Palestinians.

The numbers of Palestinians seeking protection in the region rose between 2011 and 2015.¹⁹² While the available information on Palestinian refugees does not allow for conclusive analysis, it allows some observations with respect to the situation of this group in the area. Bosnia is the only Balkan country to which a handful of Palestinians had 'migrated' in earlier years.¹⁹³ They are represented by a long-established Association of Palestinian Diaspora, which has initiated many appeals for support for Palestinians in the oPt. The majority of Palestinians who have arrived recently in the Balkans are from Syria, often having (p. 296) travelled through Jordan, Turkey, and Greece. Some may have sought protection unsuccessfully elsewhere before reaching the Balkans.¹⁹⁴

Bosnia and Herzegovina (hereafter Bosnia), Croatia, Montenegro, and Serbia are party to both the 1951 Convention and the 1967 Protocol, as well as the 1954 Convention and the 1961 Convention. North Macedonia and Slovenia are party to the 1951 Convention and the 1967 Protocol and the 1954 Convention, but not to the 1961 Convention. As Kosovo's status is unresolved and is without formal membership in the United Nations (UN), at present it is not considered party to any international treaty.¹⁹⁵

In general, in the absence of identity documents, the authorities in the region establish nationality for registration purposes, based on self-declaration alone. These countries have no statelessness determination procedure and 'Palestine' may be considered the country of origin of asylum seekers claiming to be 'Palestinian nationals'.¹⁹⁶

Evidence available indicates that Article 1D is not applied to evaluate Palestinian claims. Issues with identity verification and assessment of credibility seem to be at the origin of rejection of asylum applications (e.g. in Montenegro and Kosovo). Like other nationalities, the majority of Palestinians do not consider the Western Balkans region as a final destination and tend to abscond after submitting asylum applications. It is not clear what happens to those whose claims are rejected; they may move on towards Western Europe.

2.4.5 Turkey

Turkey has ratified both the 1951 Convention and the 1967 Protocol. While Palestinian presence in Turkey is not a recent phenomenon, the unrest in neighbouring Syria as of 2011 has significantly increased their numbers.¹⁹⁷ At the end of 2017, Turkey was hosting about 3.8 million refugees.¹⁹⁸ Tentative estimates indicate that 15,000 of these are

Palestinian refugees, but there are no comprehensive numbers since some Palestinians may not have identified themselves as such, due to fear of being rejected.¹⁹⁹

Since the onset of the Syrian crisis in 2011, Turkey has generally maintained an open door policy for refugees, including respect for the principle of *non-refoulement* and unlimited duration of stay in Turkey.²⁰⁰ Turkish emergency response ensured assistance in over (p. 297) twenty camps, which absorbed more than half of the Syrian refugee population and was also open to refugees from Iraq and Afghanistan.

The post-2011 refugee influx may have accelerated the development of Turkey's national refugee protection framework. The Law on Foreigners and International Protection, adopted in 2013 and entered into force in 2014, made provision for temporary protection as a measure to cope with mass influxes.²⁰¹ This was complemented by the Temporary Protection Regulation that was issued at the end of 2014, which provided for temporary protection to anyone coming from Syria, including refugees and stateless persons.²⁰²

According to Turkish officials there has been no difference in the treatment of Palestinian and Syrian refugees.²⁰³ Palestinians seeking international protection, like others from Syria, are granted temporary protection under the previously mentioned provisions (as such they can apply for a residence permit).²⁰⁴ Every person admitted under the temporary protection regime is issued a Temporary Protection ID card by the Turkish Department General for Migration Management (DGMM), which allows for access to basic services and application for a work permit six months after initial registration.

Under considerable pressure by the European Union, in 2016 Turkey agreed to help curb the flow of 'migration' towards Europe (mainly via Greece) by committing to readmit every person arriving irregularly (i.e. by boat, without official permission or passage) to the Greek islands.²⁰⁵ The agreement put further strain on Turkey's reception, assistance and protection capacities.²⁰⁶ Over time, Turkey increased control over the inflow (and outflow) of refugees, and many refugees from Syria were stranded at the border for weeks.²⁰⁷ In 2018, human rights monitors reported that Turkey had halted its registration of Syrian asylum seekers in a number of areas and was deporting them instead.²⁰⁸ It is unclear how many Palestinians have been affected.

At the time of writing, Turkey is reportedly issuing new ID cards to displaced Syrians in the northern and eastern provinces of Syria where Turkey exercises de facto control.²⁰⁹ (p. 298) Palestinian refugees in the areas have raised concern over the new identification system which does not reflect their existing status as 'Palestinian refugees' registered with the Syrian authorities.²¹⁰

2.4.6 Other countries in Western Europe

There are records of Palestinian migration to other countries in Europe, such as Austria, Belgium, Luxembourg, Ireland, the Netherlands, and Switzerland prior to 2003.²¹¹

However, a more significant influx of Palestinians into these countries has been the result of the Syrian conflict.²¹² In general, Syrian Palestinians have been recorded as stateless persons in the aforementioned countries. In Switzerland, they have also been registered as persons 'of Palestinian origin'. It appears that Palestinians from Syria are more likely to receive international protection than those from elsewhere. Despite the unevenness or lack of data on Palestinian presence in these countries, the evidence available on their status and treatment warrants some observations.

Austria

It is unclear how many Palestinians are in Austria – even though estimates range between 1,500 and 5,000 – and how many have applied for asylum or received protection; Palestinians are generally recorded as persons of 'unknown nationality', or 'undetermined nationality', and hence they do not appear as Palestinians in the asylum statistics.²¹³ Prior to 2010, Palestinian asylum claims were assessed under Article 1A(2), but that changed

after the CJEU ruling in *El Kott*. In recent case law, the *El Kott* jurisprudence was applied; accordingly, Austria only applies the Article 1D(2) with regards to individuals previously registered with UNRWA. Palestinians from Syria registered with UNRWA were initially recognized for subsidiary protection, even if a number of decisions were reportedly overturned and *ipso facto* refugee status was granted.²¹⁴ Many Palestinians from Syria were furthermore granted refugee status already in the first instance. In 2018, two important decisions concerning Palestinians from Gaza were taken. First, the Austrian Supreme Administrative Court overturned a decision of the Austrian asylum authority (BFA) in the case of an UNRWA-registered Palestinian from Gaza, holding that *ipso facto* refugee status should have been granted, based on the evidence that the applicant had left UNRWA's area of operations due to reasons outside his control. Second, the Austrian Constitutional Court quashed a court decision where no protection status was granted to an UNRWA-registered family from Gaza, holding that the court did not take into account the dire humanitarian situation as well as relevant questions as regards the granting of refugee status.²¹⁵ (p. 299) One problematic decision dates back to 2014, when in granting an appeal to a Palestinian refugee who had fled Syria in 2008, mainly out of fear of military conscription, the Austrian Constitutional Court concluded that 'the question of cessation of UNRWA's protection and assistance cannot be limited to Syria alone as UNRWA does also operate in Jordan, Lebanon, the Gaza Strip and the West Bank'.²¹⁶ This raises concerns, as it opens up the possibility of returning Palestinian refugees to countries (or UNRWA fields) which they are not connected to, other than for their registration with UNRWA.

Belgium

While comprehensive information on the history and number of Palestinians in Belgium is sparse, UNHCR recorded a jump in the number of Palestinian asylum seekers between 2016 and 2017.²¹⁷ Palestinians seeking protection in Belgium are generally recorded as persons 'without nationality' or of 'undetermined nationality'.

Until 2010 (when the *Bolbol* ruling was issued), asylum applications lodged by Palestinians used to be assessed under Article 1A(2) by both the Office of the Commissioner General for Refugees and Stateless persons (CGRS) and the Council for Alien Law Litigation (CALL), regardless of whether they were registered or eligible to be registered with UNRWA. Article 1D of the CSR51 was simply not applied. Since *El Kott*, Belgian authorities started considering whether return in safety was possible and if so whether the applicant would be able to receive UNRWA services. If the applicant met the condition of having fled because of a risk to personal safety ('persecution' in the sense of Article 1A(2) of the 1951 Convention or 'serious harm' in the sense of Article 15 of the Qualification Directive) and was also unable to receive UNRWA's assistance and protection, Article 1D would apply. As a result, Palestinians from Syria (and until recently from Gaza) were recognized as refugees (as both conditions were met) while Palestinians from Lebanon were generally rejected (unless they could demonstrate risk for their personal safety). Since 2017, it appears that Palestinians from Gaza have not been granted international protection on the grounds that – according to the CGRS – they could return to Gaza through Egypt. After a number of appeals, in which the CALL either annulled or sent back the CGRS decision, refugee status was granted. It is not clear whether Belgian authorities will review their policy, particularly since decision by the Council of State on a new case that was brought to them by the CGRS is pending.

There is also a procedure to determine statelessness and until recently most Palestinians were recognized as stateless persons.²¹⁸ Recent case law has determined that Palestinians (p. 300) from the oPt cannot be automatically considered stateless, given the existence of the State of Palestine.²¹⁹

Ireland

It is unclear how many Palestinians are in Ireland, even though UNHCR records refer to a presence of about 2000 Palestinians (refugees/asylum seekers) between 2001 and 2018.²²⁰ Since 2006, UNHCR has recorded approximately between 100-150 Palestinian refugees and asylum seekers annually.²²¹ This may be explained by the fact that they are generally recorded as nationals of their country of former residency, i.e. Lebanon, Syria, or Jordan. Application of Article 1D is reportedly uneven.

Palestinians in Ireland, while constituting a small community, are politically active and are part of national networks in support of the cause for justice in Palestine. The Republic of Ireland has historically been supportive of the Palestinian national movement.

Luxembourg

There have been relatively few asylum applications from Palestinians in Luxembourg - where they are generally recorded as persons 'without nationality' or of 'undetermined nationality' - and they have generally been successful.²²² Luxembourg applies *El Kott* to Palestinians registered with UNRWA, provided that the refugee has been in actual receipt of UNRWA's assistance, which has ceased for reason beyond the applicant control.

Palestinians denied protection who cannot be returned because of lack of valid documentation often remain in a limbo.

Netherlands

Comprehensive information about arrivals and statistics with respect to Palestinians in the Netherlands is unavailable, though small numbers arrived in the 1950s, 1960s (as labour migrants from the West Bank), and 1980s (mainly from Lebanon after the 1982 Israeli invasion). Since 2010, recognition rates of stateless asylum seekers in the Netherlands have been around one thousand.²²³ It is not clear how many of these stateless asylum seekers are (p. 301) Palestinian, or how exactly their claims were processed. While Palestinians from Syria have been recognized as stateless refugees, the majority of Palestinians from Iraq have been rejected unless they were able to present credible individual grounds for persecution or risk of serious harm.

The Netherlands represents an interesting case in terms of the application of Article 1D. There has been a change in the reasoning of the asylum authorities on the application of Article 1D(2) since *Bolbol* and *El Kott*, and a narrower interpretation of the scope of Article 1D has been followed. First, as per *El Kott*, the claimant must have found him or herself in a situation of insecurity without protection, or UNRWA must have been unable to guarantee safe living conditions, an Article 1A(2)-type of threshold is required.²²⁴ In addition, in accordance with *Bolbol*, the person must have received protection or assistance from UNRWA to qualify under Article 1D(2).²²⁵ Hence, *El Kott* is yet to have a fully positive impact on Palestinians asylum claims in the Netherlands.²²⁶ In practice, if UNRWA's protection has ended for reasons outside the control and will of the applicant, article 1D applies. This has led to Palestinians from Syria and, until recently, from Gaza being recognized as refugees (as both conditions were met) and Palestinians from Lebanon generally being rejected (if they cannot demonstrate that their personal safety is at risk). However, since early 2017, it appears that Palestinians from Gaza have been refused asylum on the grounds that none of the applicants could credibly argue that the protection of UNRWA ended for reasons outside their influence, control and will. As confirmed by the Administrative Jurisdiction Division of the Council of State (the highest Administrative Court in the Netherlands), the immigration authorities are to examine whether an applicant actually received aid and protection by UNRWA and, if so, whether this protection (p. 302) and aid came to an end beyond the influence, control and will of the applicant. According to the 2000 Dutch Aliens Regulations, this is the case if (i) the applicant is forced to leave the area for fear of persecution, or (ii) UNRWA is no longer able to offer aid and protection as referred to in its mandate. The Council of State adds that the applicant should have enjoyed

the aforementioned aid and protection directly or shortly before lodging his or her asylum claim in order for the above policies and legislations to apply.²²⁷

Switzerland

Despite a historical presence of Palestinian diaspora in Switzerland, no comprehensive account exists on such diaspora and the available figures mainly refer to Palestinians seeking international protection in the country.²²⁸

In Switzerland, Palestinians may be categorized in four different ways: (1) according to their last place of residence; (2) as person 'without nationality' (*ohne Nationalität/sans nationalité*) such as those from the oPt; (3) as stateless persons (*staatenlos/apatride*) if officially recognized as such through an ad hoc procedure; or (4) as persons of 'state unknown' (*Staat unbekannt/Etat inconnu*), which implies that doubts about the country of origin exist. This may create statistical uncertainty and make the identification of persons of Palestinian origin in the country challenging.

BADIL reports that many applications in the last decade have been on hold without determination. BADIL has also comprehensively analysed some of the most important refugee status decisions, a significant number of which resulted in rejections.²²⁹

Switzerland does not apply Article 1D(2).²³⁰ A number of recent judgments held that asylum requests from Palestinians have to be examined on a case-by-case basis and that there is no *ipso facto* entitlement to the benefits of the 1951 Convention.²³¹

Until 2014, only persons who had been denied refugee status were permitted to apply for stateless person status. In 2014, the Federal Administrative Tribunal changed this, accepting that refugees had a legal interest in being recognized as stateless persons, especially since stateless persons receive a more favourable residence permit.²³² As of 2019, a revised Foreign Nationals and Integration Act (previously known as the Foreign Nationals Act) sets out legally binding integration requirements for foreign nationals and facilitates access to the Swiss labour market for recognized refugees and provisionally admitted persons.²³³ It is unclear how it will impact Palestinians seeking asylum (or recognition as stateless persons) in the country.

(p. 303) 3. The Americas: From the Cradle of Asylum to the 'Travel Ban'

3.1 A glance at history and trends

There are significant Palestinian communities in the Americas, and it is often difficult to establish whether they moved to the continent as refugees or as immigrants. The entire continent has substantial diaspora links through early Palestinian immigration. The largest diaspora is in Chile (500,000), followed by Honduras (200,000–300,000), the US (200,000), Brazil (60,000), and Canada (50,000). There are also sizable Palestinian diaspora populations in Ecuador, El Salvador, Guatemala, Mexico,²³⁴ and Venezuela. The following sections offer an overview of countries that host significant numbers of Palestinians and in respect of which the authors were able to access reliable data.²³⁵

Various upheavals in the Arab world have provoked a rise in numbers of Palestinians in the Americas. About 3,000 Palestinian refugees and asylum seekers have been recorded between 2011–2007.²³⁶ Like in other regions, these numbers are only indicative and probably underestimate the actual numbers, for reasons discussed earlier. Some of these arrivals have benefitted from the long-established diaspora in the Americas (mostly in the central-southern part of the continent). A number of states in the region have offered

effective temporary solutions in times of crisis, when many refugees, including Palestinians, were critically in need for protection.

3.2 Regional legal framework

Most countries in the region have ratified the main international instruments for the protection of refugees and stateless persons.²³⁷ There are also regional legal instruments for refugees in the Americas, some of which could be seen as favourable to Palestinians. As a reaction to the regional refugee crises of the 1980s, a number of Latin American states adopted the *Cartagena Declaration on Refugees*, which builds on the principles – and expands the refugee definition – of the 1951 Convention and its 1967 Protocol.²³⁸ While non-binding, (p. 304) fifteen countries in the region have incorporated the definition and principles of the Cartagena Declaration into their national refugee frameworks.²³⁹ In 2004, twenty states in Latin America adopted the *Mexican Declaration and Plan of Action for Strengthening International Protection for Refugees in Latin America* ('Mexico Plan').²⁴⁰ This was intended to harmonize refugee status determination processes and refugee protection across the region. Chapter Three of the Mexico Plan calls specifically for durable solutions, including programmes to facilitate self-sufficiency and local integration for resettled refugees, and gave rise to the Regional Solidarity Resettlement Programme, a part of the Mexico Plan that aimed to promote durable solutions for refugees in Latin America.²⁴¹ In 2014, the governments of Latin American and Caribbean states adopted the 'Framework for Cooperation and Regional Solidarity to Strengthen the International Protection of Refugees, Displaced and Stateless Persons in Latin America and the Caribbean'.²⁴² The Framework contains further commitment to uphold 'the highest international and regional protection standards, implement innovative solutions for refugees and displaced persons and end the plight of stateless persons in the region'.²⁴³ The humanitarian components of the Latin America regional framework, which was intended to increase the protection available to refugees in the region, has also been of value to Palestinian refugees/asylum seekers, among others from Arab countries.

Article 1D is generally not applied in the Americas. In North America, it is not part of the national asylum framework of either Canada or the US.²⁴⁴ In Latin America, although the legislation in a number of countries makes reference to Article 1D, no reliable information could be gathered concerning the application of this provision.

3.3 Latin America: Established diaspora, recent trends

Latin America²⁴⁵ boasts a large Palestinian population composed mainly of long-term immigrants who began settling in the second half of the nineteenth century following the modernization of the Ottoman Empire.²⁴⁶ Palestinian arrivals peaked between 1900 and (p. 305) 1930, though exact figures are not available.²⁴⁷ It is estimated that 600,000 migrants from 'Greater Syria' had settled in the Americas by 1914, many of whom were from Palestine.²⁴⁸ Many of them were 'Ottoman nationals' at the time they left Palestine and were denationalized during the British Mandate.²⁴⁹ Of this group, comprising approximately 40,000–60,000 Palestinians, fewer than 500 were able to retrieve their nationality under the British Mandate, while the others became, in the words of Qafisheh, 'the first generation of Palestinian refugees'.²⁵⁰

Integration of Palestinians in the region has generally been smooth. The pre-*Nakba* arrivals of Palestinians were predominantly Christian, and left Ottoman Palestine to escape military conscription or to seek better employment opportunities.²⁵¹ Many were merchants and opted to settle in smaller states such as El Salvador and Honduras to avoid competition with larger and more established Arab communities in larger states such as Argentina.²⁵²

Palestinians became so ubiquitous in the region that an old Chilean proverb says ‘every village in the country has three things: a priest, a policeman, and a Palestinian’.²⁵³

Comparatively small numbers of Palestinians arrived during and in the aftermath of 1948 and 1967. While the majority of displaced Palestinians at the time found refuge within the Middle East, some with connections to the diaspora in Latin America moved there. It appears that in a number of cases, e.g. Mexico and Venezuela, Palestinian refugees have never used traditional asylum procedures, but instead availed of renewable residency permits that were issued on other grounds.²⁵⁴ More recent arrivals of Palestinian refugees, including through humanitarian visa programmes enacted by Argentina, Brazil, and Costa Rica, are thought to make up a small percentage of the Palestinians in Latin America.²⁵⁵

Recently arrived Palestinians in Latin America generally have a different socio-economic and cultural profile than the earlier immigrants to the continent, who were mostly wealthy Christians. With limited financial resources and less strong connections with the diaspora, some of the recent arrivals have had difficulty integrating.

The countries in the remainder of this section are listed by the size of the Palestinian presence.

(p. 306) 3.3.1 Chile

Unofficial sources estimate that Chile hosts a community of approximately 500,000 Palestinians, the largest in Latin America, and the largest outside the Middle East.²⁵⁶ Palestinian migration, mostly comprised of Christians, started between 1900–1914, along with other Arabs; a second wave arrived between 1920–1940; and a final one after the Second World War.²⁵⁷ Despite this large diaspora, the number of later arrivals of Palestinians remained low until recently. Chile was one of the first countries to respond after UNHCR made an international appeal to governments in 2007 to resettle Palestinian refugees from Iraq, who had been stranded at the border with Jordan (Reweished camp) and Syria (Al Tanf camp), as no country in the region would accept them.²⁵⁸ Chile resettled 119 of these refugees in 2008.²⁵⁹ Five years later, most of them were naturalized.²⁶⁰

Palestinians in Chile have been politically active and have established a number of prominent Chilean-Palestinian political institutions, networks, and media organizations.

3.3.2 Honduras

Honduras has a prominent Arab community, including citizens of Palestinian origin (200,000–300,000) accounting for three per cent of the total population.²⁶¹ They largely comprise the descendants of Palestinian migration that started prior to 1926.²⁶² Historically, there has been some tension between native Hondurans and those with Palestinian roots, including some resentment towards the success of a number of ‘Palestinian’ businesses.²⁶³ Baeza also explains the tensions referring to the fact that Palestinians, possibly because of the economic status they held in the country, have traditionally been resistant to political change.²⁶⁴

3.3.3 Brazil

In 2013 there were approximately 60,000 Palestinians in Brazil, mostly members of a well-established diaspora community. Palestinian refugees started to move to Brazil in the late 1950s, and then again after the 1967 War.²⁶⁵ In 2007, Brazil approved the resettlement of some one hundred Palestinian refugees from Iraq who were stranded in Jordan (p. 307) (Reweished camp).²⁶⁶ After receiving housing, schooling, healthcare, and financial support from UNHCR (first two years) and Brazilian organizations (for the next four years), these refugees experienced difficulties entering the labour market and accessing healthcare.²⁶⁷

Among the factors hindering their integration were language and cultural differences, despite support received from established Arab communities, especially in São Paulo.

In 2013, Brazil set up a humanitarian visa programme for those affected by the Syrian conflict, which has recently been extended until 2019.²⁶⁸ This programme, which enables individuals to apply for asylum upon arrival in Brazil, targets individuals with a certain level of economic resources, and those with connections to diaspora communities in the country. This may respond to the need to create better conditions for integration, after the challenges experienced by the Palestinians resettled in 2007. In 2016 Brazil indicated its intention to extend this humanitarian visa programme to Palestinians. In 2018, approximately 9,300 humanitarian visas had been issued, and refugee status has been granted to 348 persons registered as Palestinians and more than 3,400 Syrians.²⁶⁹ It is not known how many of the latter are Palestinians fleeing Syria and it is not clear whether Article 1D played a role in their admission.

3.3.4 Argentina

In October 2014, Argentina initiated a humanitarian visa programme for people affected by the Syrian conflict, including Palestinians.²⁷⁰ However, as of 2018 just 400 of the announced 3,000 visas had been issued.²⁷¹ It is unclear how many Palestinians are in this caseload. The Government of Argentina has developed a scheme to facilitate local integration of those who arrived under the programme and is currently working with UNHCR and the International Organization for Migration (IOM) to strengthen areas such as identification and referral of cases, reception and local integration schemes.²⁷²

3.3.5 Venezuela

Precise numbers of Palestinians in Venezuela are not available, but there is a large Arab diaspora in the country which includes Palestinians. Venezuelan–Palestinian relations are robust and Venezuela has consistently reiterated its political support for the Palestinian cause as demonstrated by the favourable entry policy for Palestinians as of 2013.²⁷³ In 2014, there had been a pledge to resettle a number of orphaned Palestinian children. This was only (p. 308) partially fulfilled, with modest results.²⁷⁴ In 2015, Venezuelan President Maduro pledged to resettle 20,000 Syrian refugees while at the same time reiterating his support for the al-Assad regime.²⁷⁵ This pledge has remained unfulfilled.²⁷⁶ Recent political and economic crises are likely to adversely affect refugees, including any Palestinians in Venezuela, especially those who were already economically vulnerable, as well as aiming to enter Venezuela.²⁷⁷

3.4 North America: Historical ports of call

There are large communities of Palestinians in both Canada and the US. Some established themselves in the nineteenth century, others arrived after the wars in 1948 and 1967, and others arrived following the first and second Gulf Wars. More recent arrivals have followed the various upheavals in the Middle East, and especially after the outbreak of conflict in Syria in 2011. There is no practice regarding the application of Article 1D with respect to Palestinian refugees in Canada and the US, as in both countries no reference to this provision is made in national asylum legislation.

3.4.1 Canada

Canada is host to some 50,000 Palestinians, most of whom arrived throughout the 1980s and 1990s from various countries in the Middle East.²⁷⁸ Since 2003, Canada has registered hundreds of Palestinian refugees and asylum seekers per year.²⁷⁹ While it is unclear from where all the refugees originate, the available information suggests that while in the early

2000s most Palestinian refugees originated from Lebanese refugee camps, after 2011 the majority was from Syria.

Canada has also participated in the UNHCR resettlement programme for Palestinians launched in 2007, taking in forty-six Palestinians from Iraq who had been stranded at the Reweished refugee camp in Jordan.²⁸⁰ More recently, Canada has adopted special measures to offer resettlement to Syrian refugees which also apply to non-Syrian nationals and stateless persons fleeing Syria.²⁸¹ As of 2016, the country had resettled 25,000 refugees from Syria; it is not known how many of these are of Palestinian origin.²⁸²

(p. 309) Depending on their documentation, Palestinian asylum seekers may have been registered as 'Palestinian', 'stateless', or under the country in which they resided before coming to Canada. In the case of Lebanon, for example, the category 'Lebanese' would include both Lebanese nationals and Palestinians who were habitually resident in Lebanon.²⁸³

In Canada, all asylum seekers have their application considered, for both convention refugee status and protected person status, by the Refugee Protection Division of the Immigration and Refugee Board. Palestinian asylum claims have been considered under Article 1A(2) (Article 1D is not incorporated under Canadian law). Nonetheless, a 1994 ruling by Canada's Federal Court made important points in relation to Palestinian refugees seeking asylum in Canada.²⁸⁴ The ruling highlighted that previous registration as a refugee by UNRWA was a relevant fact to be taken into consideration when assessing an asylum claim, even under Article 1A.²⁸⁵ However, in a 2000 case concerning a Palestinian from Egypt, it was ruled that the UNRWA registration card was issued with respect to his grandfather's flight in 1948, and thus did not constitute sufficient ground to grant refugee status to the grandson.²⁸⁶ As with respect to other asylum seekers, Palestinians who are not recognized as refugees can submit a claim to be considered as a person in need of subsidiary protection; it is not clear how many Palestinians have availed of this opportunity. Nonetheless, there is a high acceptance rate (over eighty per cent) with respect to Palestinian asylum requests.

3.4.2 United States

According to various sources, the US hosts approximately 200,000 Palestinians, including both asylum seekers/refugees and immigrants.²⁸⁷ Like other parts of the continent, Palestinian migration to the US began in the early twentieth century when small numbers of Christians arrived escaping military conscription during Ottoman rule.²⁸⁸ Palestinian arrivals in the US grew substantially after the events of 1948 and 1967 and other unrest in the region. The following decades saw conflict-driven arrivals from the Gaza Strip and the West Bank, as well as from several Arab countries, such as Lebanon and Kuwait.²⁸⁹ Other arrivals in this period were seeking employment and better opportunities as immigrants.²⁹⁰ Most Palestinians who immigrated to the US in this period had better qualifications than earlier arrivals, owing to the UNRWA education programme and the increasing number of universities in the Middle East.²⁹¹ Referring to the Palestinians who had relocated to the (p. 310) US prior to the 1980s, Christison argues that 'Palestinian-Americans' have largely adapted well in America and have often become successful members of the society while retaining a remarkable sense of awareness about (and attachment to) their Palestinian identity.²⁹² After the prominent resettlement of about 1,400 Palestinians from Iraq in 2009 (the ones stranded in 'Reweished camp'), there has been limited data on more recent arrivals.²⁹³ It is unclear whether the restrictive policies adopted since 2017 by the US administration (travel bans in particular) have affected Palestinian refugees and asylum seekers.²⁹⁴ While Palestinians were not specifically targeted (as Palestine was never targeted

in the travel bans), Palestinians may be affected to the extent they are passport-holders of nationalities that were targeted in the travel bans.

Although the US has not ratified the 1951 Convention, it is a party to the 1967 Protocol and therefore Article 1 of the Convention applies; the Immigration and Nationality Act incorporates language similar to Article 1A of the 1951 Convention, but not Article 1D. In 1993, in a rare (and dated) pronouncement on the matter, the US General Counsel of the Immigration and Naturalization Service – which is the central legal office of the immigration service – offered an interpretation of Article 1D.²⁹⁵ It indicated that the first paragraph of Article 1D constitutes one of the exclusion clauses in the 1951 Convention, while the second paragraph, instead of being taken as an *ipso facto* inclusion clause, is understood as a nullification of the exclusion clause applicable to Palestinians, provided that they are no longer within UNRWA's area of operations. Thus, rather than receive automatic protection under 1D, Palestinians in the US must fulfil the Article 1A criteria to qualify for asylum.²⁹⁶ Therefore, Palestinian refugees are assessed as to whether they fled due to a well-founded fear of persecution under US law under a definition mirroring that in Article 1A(2) of the 1951 Convention. As discussed in Chapter II (Section 4.3) such an interpretation defies the purpose of the continuity of protection as inferred in Article 1D.

Some individual Palestinians have been designated as 'stateless' by US immigration authorities. However, this status does not afford any legal protection nor is there any immigration benefit tied to being designated as a stateless person as the US is not bound by the 1954 and 1961 statelessness conventions and has no statelessness provisions under domestic law.

Specific groups of Palestinians have been denied refugee status, particularly Palestinians from Gulf States who arrived in the US as students and whose student residence permits expired.²⁹⁷

(p. 311) Attitudes towards persons arriving from Arab countries hardened after 2001. The US has restrictive policies regarding political affiliations and activity that have affected some Palestinian asylum seekers' claims, as well as other groups.²⁹⁸

4. Asia-Pacific: New Frontiers of a Seventy-Year-Long Displacement? (I)

4.1 Overview

Palestinians are a relatively recent arrival in the Asia-Pacific region and constitute a very small part of the almost eight million 'persons of concern' in the region recorded by UNHCR.²⁹⁹ There are no records of Palestinian refugees arriving in the Asia-Pacific region in significant numbers before 2010. Arrivals then began to increase, reaching peak in 2013 before stabilizing. As of July 2017, approximately 2,000 Palestinian refugees and asylum seekers were registered with UNHCR in the region, on top of pre-existing – often larger – communities of Palestinians who had arrived as migrants (see Australia, for example).³⁰⁰

Palestinians have reportedly been seeking protection in various countries in the region, including Australia, Indonesia, Malaysia, Pakistan, South Korea, Sri Lanka,³⁰¹ and Thailand. As in other regions, violence and displacement in the Middle East, in particular in Syria and Iraq, appear to account for most of the increased Palestinian inflow. The generally less welcoming environment in Arab countries as well as in more established destinations (from Europe and North America to the Gulf countries) is probably also a factor. The proximity of Australia to South East Asian countries may constitute a pull factor.

Some countries in the region have relatively favourable visa policies and/or allow asylum seekers to remain in the country temporarily, pending the quest for longer-term solutions, and this may also attract Palestinian refugees seeking to escape dire conditions in the country of residence. For example, Palestinians holding a PA passport/travel document are entitled to a free visa for a one-month stay in Indonesia and Malaysia, and can obtain a visa upon arrival in Cambodia, Laos, and Timor-Leste (East Timor).³⁰² Brunei, Myanmar, the (p. 312) Philippines, Thailand, and Vietnam require a visa before travel which can be issued on a PA passport/travel document that is valid for a minimum of six months beyond the date of arrival. Singapore also grants visa to holders of a PA passport/travel document or Palestinian refugee travel document (online application in advance is required).³⁰³

4.2 Regional framework

Asia is the region with the lowest level of ratification of international instruments related to refugees and stateless person,³⁰⁴ though, after Africa, it has been home to the highest number of refugees since the Second World War.³⁰⁵ The majority of states in the Asian Pacific region are not a party to the 1951 Convention and its 1967 Protocol;³⁰⁶ the only state parties are Australia,³⁰⁷ Cambodia, the Republic of Korea, New Zealand, the Philippines, and Timor-Leste. Both Cambodia and the Philippines have incorporated provisions on asylum in national legislation.³⁰⁸ The vast majority of Asian states have accepted the *Bangkok Principles on the Status and Treatment of Refugees* ('Bangkok Principles').³⁰⁹ Although the Bangkok Principles acknowledge the principles of asylum and *non-refoulement* and regulate the status of refugees, they are of a declaratory, non-binding nature, and in practice the principles and rights enshrined therein are often subordinated to security concerns or political considerations.

Where formal legal frameworks to protect refugees do not exist, state authorities in much of the region make no differentiation between refugees, asylum seekers, and other migrants, treating all as 'illegal immigrants'.³¹⁰ Refugees and asylum seekers who have arrived in these countries irregularly or have overstayed their visas are generally subject to the same penalties for violating immigration laws as undocumented migrants.³¹¹ They might be subject (p. 313) to arrest, detention, and deportation. Such risk may dissuade asylum seekers from contacting UNHCR for fear that so doing may disclose their presence in the country to the authorities.³¹² Prospects for naturalization are very slim. Accordingly, refugees and asylum seekers, including those of Palestinian origin, live difficult lives in limbo on the margins of society and are prone to exploitation and abuse.

In countries that have no asylum system in place, Palestinian asylum seekers generally go through refugee status determination (RSD) by UNHCR; applicability of Article 1D is thus considered. If Article 1D is not applicable, the refugee claim is examined under Article 1A.

4.3 South East Asia

Over the years, Indonesia, Malaysia and Thailand have increasingly received Palestinian refugees and asylum seekers, albeit in very small numbers compared to the size of their populations.³¹³ In each of these countries UNHCR conducts all activities related to the reception, registration, documentation, and RSD. In the region, 'Palestinian' asylum seekers or refugees include persons whose country of origin is recorded as 'Palestine', in addition to persons who have a different country of origin but declared their Palestinian identity in terms of nationality, ethnicity, country of former habitual residence or country of birth. If an individual is recognized as a refugee by UNHCR, this does not necessarily result in a change in their immigration status in the country. UNHCR registration documentation is not always accepted and the lack of a visa or proper residency documents can still lead to arrest and detention and/or deportation by the respective authorities.

4.3.1 Indonesia

In 2008, fewer than 1,000 persons of concern were registered with UNHCR. The following years saw a significant increase that has since somewhat stabilized, with some 14,500 persons of concern registered by the end of 2016.³¹⁴ Between 2012 and 2016, hundreds of Palestinians have been registered with UNHCR in Indonesia each year.³¹⁵ By December 2018, there were approximately 435 Palestinians registered with UNHCR, signalling a decrease compared to the previous years.³¹⁶ The majority of them arrived from Iraq on Iraqi travel documents for Palestinian refugees. While their numbers are not significant, the presence of Palestinians (1948 refugee descendants) who had lived most of their life in Gulf countries, like Saudi Arabia, and were forced to leave as their residency permits or work permits were not renewed, requires attention. The scant protection Indonesia offers to its (p. 314) refugees and asylum seekers, reveals the extent of the expression ‘nowhere to go’ for many stateless Palestinians.

More generally, Indonesia continues to be perceived as a convenient transit country for refugees from around the world, largely because of its relaxed visa-upon-arrival policy for some nationalities. Until 2013, it was relatively easy for refugees and asylum seekers to access boat links from Indonesia to Christmas Island (Australia), a route many chose in order to seek asylum in Australia. This had become a common but dangerous smuggling route: many refugees and asylum seekers reportedly lost their lives on the journey. Since 2013, Australia no longer accepts migrants and refugees arriving on its shores without visas.³¹⁷ Since then, boats carrying migrants and asylum seekers have been intercepted at sea and directed to offshore processing centres in Nauru and Manus Island. It is unclear whether this has decreased transit migration through Indonesia overall; however, as mentioned earlier, there has been an increase in the numbers of refugees and asylum seekers in Indonesia, some of whom may have been dissuaded from travelling on to Australia.

Possibilities for self-reliance for Palestinians, as for other refugees, in Indonesia are limited.³¹⁸ Public services such as health and education are theoretically available, although there are a number of barriers preventing refugees from accessing these services.³¹⁹ The Government authorizes UNHCR to help protect and find solutions for persons seeking international protection.³²⁰ As of December 2016, a presidential regulation ensures that refugees and asylum seekers can access UNHCR services, and allows them to stay temporarily in the country until their refugee status can be confirmed and appropriate solutions can be found for them.³²¹ The impact of this regulation is still to be seen.³²² Meanwhile, to prevent statelessness, UNHCR has been advocating for the Government to improve birth registration procedures generally, and to extend birth registration to the children of refugees and asylum seekers, so far without success.³²³

Persons detained by the Indonesian authorities only become eligible for release to an IOM-run community housing facility if they are recognized as refugees by UNHCR, and provided space is available. In 2015, ninety-five Palestinians were detained by the Indonesian authorities in immigration detention facilities. These facilities are located across the country, which makes access challenging for the purpose of monitoring. Preliminary research shows that the Palestinians who are currently in detention facilities have either been arrested or surrendered themselves to Indonesian authorities owing to the lack of means to (p. 315) support themselves. UNHCR has been able to facilitate the release of some of these individuals on the basis of specific needs, such as those with disabilities and/or those needing urgent medical treatment.

4.3.2 Malaysia

As of January 2019, there were approximately 164,000 persons of concern registered with UNHCR in Malaysia, mostly from Myanmar, Pakistan, Yemen, Somalia, Syria, Sri Lanka, Iraq, and Afghanistan. Of those, some 800 were of Palestinian origin.³²⁴ UNHCR registration records show that among them were holders of PA passports/travel documents, Palestine Refugee Travel Documents (TDPR)³²⁵ issued by Egypt, Kuwait, Lebanon, and Syria, and Jordanian passports.³²⁶ The majority are believed to have come directly from the oPt using PA-issued documents. Malaysia recognizes such documents as well as TDPRs issued by Egypt, Lebanon, Syria, and other Arab host countries. Holders of PA passports/travel documents do not require a visa to enter Malaysia and are issued with a thirty-days 'Visit Pass' on arrival. Holders of travel documents issued by Syria and other Arab host countries need to apply for a visa through Malaysian embassies abroad.

There may be various motivations for asylum seekers/refugees to travel to Malaysia, including employment opportunities in the informal labour market, or on their way to Indonesia, often to attempt onwards travel to Australia. However, refugees and asylum seekers in Malaysia do not have access to public education. Basic healthcare is available in government hospitals and NGO clinics for refugees, and many refugees struggle to pay for healthcare.³²⁷ Concerning the right to work, a welcome exception is represented by the March 2017 admission of Rohingya refugees to work in Malaysia through a scheme with UNHCR.

In the absence of any formal legislative and administrative framework to address refugee matters, the protection regime for refugees and asylum seekers is precarious.³²⁸ Detention of refugees and asylum seekers in immigration centres is common.³²⁹ If an asylum seeker without a valid travel document or visa has his or her claim rejected by UNHCR, he or she may be subjected to arrest for illegal entry or overstay, detention, and/or deportation. Since the end of 2017, immigration detention (for non-Rohingya) for refugees has been prolonged and indefinite, which, exacerbated by deplorable conditions, has led many persons of concern – including some Palestinians – to opt to return to their countries of origin.

(p. 316) 4.3.3 Thailand

In Thailand, as of 2018, there were over half a million persons of concern to UNHCR, including some 383 Palestinians, signalling a marked decrease compared to previous years.³³⁰ Over half of the Palestinians arriving in Thailand prior to 2015 travelled on Syrian TDPRs, and approximately one-third on Iraqi TDPRs. UNHCR has also registered Palestinians from Cyprus, Egypt, Jordan, Kuwait, Lebanon, the oPt, Saudi Arabia, and the United Arab Emirates. The Thai authorities recognize PA passports/TDPRs, though it appears that their holders need to apply for visas in advance.³³¹

The treatment of Palestinian refugees generally does not differ from that of refugees or asylum seekers from other countries; they are all treated as illegal immigrants. As such, they do not have any formal legal, social, or political rights, and are not permitted to work. Refugee children have access to primary education in Thai schools, under the national 'Education for All' policy, which extends to Palestinian refugee children in principle, but language is a substantive barrier to access, particularly for older children.

In Thailand, regardless of UNHCR registration documentation, the lack of a visa or proper residency documents can lead to arrest and prolonged detention for persons of concern. The situation of Palestinians is exacerbated by the fact that they mostly have nowhere to return including because of current resettlement limitations and restrictions.

4.4 Other destinations in the region

Beyond South East Asia, Palestinians have also made their way to Australia, the Republic of Korea, New Zealand, Pakistan, and Sri Lanka.

4.4.1 Australia

The Palestinian community in Australia is estimated at between 20,000 and 30,000, including both members of the Palestinian diaspora and more recent arrivals.³³² While most Palestinians, including those originally displaced in 1948 and 1967, have historically moved to Australia as ‘migrants’, the number of Palestinians seeking asylum in Australia rose in the aftermath of the Syria conflict.³³³ Not all Palestinians were able to lodge an application for protection in Australia and it is unclear what has happened to Palestinians who have not received protection. In Australia, unsuccessful asylum seekers are expected to return to their (p. 317) country of citizenship or habitual residence, and if they do not return voluntarily, Australia seeks to remove them.³³⁴ This may subject some to *refoulement*.

As of 2012, asylum seekers who arrive by boat without a visa are not permitted to enter Australia and are sent to an offshore facility in Papua New Guinea, Nauru, or another state in the region designated by Australia as a regional processing country.³³⁵ In July 2013, this policy was further hardened: those who arrived after July 2013 would not be eligible for admission to Australia at any time; this does not apply to those who were sent to Nauru or Papua New Guinea prior to July 2013. Currently, applicants may seek asylum in the aforementioned regional facilities, and if they are successful they will receive asylum in the state hosting the facility, not Australia.³³⁶ This ‘offshore processing’ – as the current Australian asylum system is commonly referred to – raises numerous concerns, ranging from violation of the principle of *non-refoulement* to the human rights situation in these facilities, the extended period of detention, the risk of harm inside and outside the detention facilities, and denial of essential medical treatment. In a number of ways Australia’s policy violates international law and it has been heavily criticized domestically and by international human rights groups.³³⁷ The combined effect of this policy, as well as the fate of the many refugees being detained, may have dissuaded refugees, including Palestinians, from travelling to Australia.

As of 2014, the asylum procedure in Australia is regulated by the Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act.³³⁸ This Act, which amended the 1958 Migration Act, introduced an amended statutory refugee definition, without reference to the 1951 Convention.³³⁹

In practice, Palestinians, as others in need of protection, who want to seek protection in Australia may apply through the Refugee and Humanitarian Programme.³⁴⁰ This Programme includes separate tracks for those seeking asylum following arrival in Australia (referred to as ‘onshore protection’) and refugees who are outside Australia and in need of resettlement (referred to as ‘offshore resettlement’).³⁴¹ Onshore protection can be sought by student visa holders and those who arrived by boat prior to the offshore processing policy. If approved, the applicant receives a permanent protection visa. If a Palestinian is granted a permanent protection visa, s/he becomes a permanent resident of Australia and is able to acquire Australian citizenship through the same process as other permanent residents. However, the majority of visas are designated for offshore applicants, namely, refugees (p. 318) outside of Australia in need for protection. Most applicants are previously assessed as refugees by UNHCR and are subsequently referred to Australia for resettlement. The offshore resettlement component comprises two categories: the ‘Refugee category’ and the ‘Special Humanitarian Programme category’; the latter allows people in Australia to sponsor close family members in other countries who face human rights abuses. If accepted for resettlement, they are granted one of several other visas (non-protection-related), all of which are also permanent.³⁴² Persons who successfully apply for asylum after arriving without prior authorisation are eligible only for temporary protection

visas. Between 2008 and 2013, 253 Palestinians were resettled in Australia, mostly from Iraq.³⁴³

Worth of note is that Palestinian asylum seekers are considered stateless persons for the purposes of Australian refugee law. This has the effect that their eligibility for international protection is generally determined according to the risk of harm in countries of habitual residence (typically Gaza, West Bank, Lebanon, Iraq, and Syria).³⁴⁴

Prior to the introduction of the 2014 Act, Article 1D was not considered to be relevant to refugee status determination under Australian law.³⁴⁵ In line with Australian Federal Court jurisprudence, Palestinian asylum claims were assessed under Article 1A(2). Currently, such assessment occurs under schedule 5H of the 2014 Act.³⁴⁶ While this may not involve substantive changes in the practice towards Palestinian asylum seekers, the current legal framework, unlike the previous one, makes no reference to the 1951 Convention, whose definition and interpretation directed Australian decision makers in line with its established principles and interpretation (including UNHCR's guidance on Article 1D³⁴⁷).

4.4.2 New Zealand

There are few Palestinians in New Zealand, with no more than tens of asylum applications per year.³⁴⁸ However, data from the 2013 New Zealand census indicates that between 2006 and 2013, the Palestinian population in New Zealand increased by almost thirty per cent.³⁴⁹ Out of the fifty people who lost their life in the mass shooting at Christchurch on 15 March 2019, six were Palestinian refugees: they had arrived from Egypt, Kuwait, Palestine, and Syria.

In New Zealand, Palestinian asylum applications have historically been assessed under Article 1A(2) of the 1951 Convention.³⁵⁰ However, in 2015 the Immigration and (p. 319) Protection Tribunal ruled that Article 1D of the Convention is applicable to Palestinian asylum requests.³⁵¹ Among the various advancements of this judgment, which contains a well-informed articulation of the issues at the origin of the distinctive regime available to Palestinian refugees,³⁵² the New Zealand Tribunal notes that Article 1D establishes an alternative pathway to the benefits of the 1951 Convention,³⁵³ for a *sui generis* class of refugees.³⁵⁴ In contrast with the CJEU decision in *Bolbol*, the Tribunal notes that the 'being-in-actual-receipt' approach is problematic and eviscerates the intentions of the drafters of the 1951 Convention, denying Palestinian refugees recognition of the internationally established status to which they are entitled under the 1951 Convention.³⁵⁵ The ruling applies the provision in line with UNHCR's interpretation and as such sets an important precedent.

4.4.3 Pakistan

A small number of Palestinian refugees is present in Pakistan, with a rise in recent years.³⁵⁶ Most came from the oPt, some others from Egypt and Saudi Arabia, and they have most likely chosen Pakistan because of its geographical proximity, or existing family or network ties in the country.

Palestinian refugees' applications for protection are examined through Article 1D of the 1951 Convention. Palestinians have been given 'Palestinian Origin Cards' issued by the Pakistani authorities, which showed their nationality as Palestinian.³⁵⁷ Palestinians are granted legal residency through the Economic Affairs Division of the government. The Pakistani government offers fifty to sixty places to Palestinians in public universities as part of a yearly education quota for Palestinian nationals, and Palestinian students aged between eighteen and twenty-four years of age may enter Pakistan with valid visas issued through the Economic Affairs Division.

The Pakistani government gives preferential treatment to Afghan refugees, the largest refugee group in the country.³⁵⁸ Like other non-Afghan refugees, Palestinian refugees face some exclusions.

4.4.4 South Korea

From 2011-2018, South Korea received over 45,000 asylum applications, where 936 were granted refugee status and 1,198 persons were granted humanitarian status, mostly Syrians and Yemenis. Among those, the number of Palestinians – some reportedly with UNRWA documents – is very small.³⁵⁹ The circumstances under which these Palestinians reached South Korea are unclear.

(p. 320) Palestinian refugees and asylum seekers, like others in South Korea, have access to public education, but this can be difficult in practice due to the language barrier. Recognized refugees and humanitarian status holders have the right to work. Asylum seekers may only work if their refugee application is still pending six months after their initial application.

5. Africa: New Frontiers of a Seventy-Year-Long Displacement? (II)

There is a small Palestinian presence in various parts of Africa, including Kenya, South Africa, the Sudan, and West Africa. Available data is very limited and does not provide information on either the origin and features of earlier Palestinian arrivals or the characteristics of the current Palestinian presence in the continent.³⁶⁰ In recent years, about 300 Palestinian refugees have been recorded arriving in Sudan,³⁶¹ around fifty in various countries in West Africa,³⁶² and an undetermined number in Kenya and South Africa.³⁶³

In general, Palestinian refugees in Africa are entitled to rights under the 1951 Convention and 1967 Protocol, and the Organization of African Unity (OAU) *Convention Governing Specific Aspects of Refugee Problems in Africa*, which is ratified by all African states except Eritrea.³⁶⁴ However, specific information on historical context, trends of arrivals and general living conditions of Palestinian refugees in the continent, is not available. BADIL's research suggests that Palestinians in Kenya were living with relatives or staying in the country without regular documentation.³⁶⁵ Court cases have so far not helped bring further clarity on the status of the Palestinian community in either Kenya or South Africa.³⁶⁶

A better picture of the situation of Palestinians exists in Sudan. Palestinians in the country are generally registered with the Government's Commissioner for Refugees (COR) in accordance with the 'brothers and sisters principle' under the traditional Arab and Islamic notion of asylum. Those arriving in Sudan came primarily from Syria.³⁶⁷

(p. 321) 6. Concluding Observations

Since the establishment of the State of Israel, members of the Palestinian (refugee) 'diaspora' have progressively found roots on all continents. Palestinians who were abroad at the end of the British Mandate and in 1948 were not allowed to return, effectively becoming the first Palestinian refugees *sur place*. In the 1950s and 1960s, Palestinian refugees moved further afield to Western Europe and the Americas, looking for better life opportunities as well as international protection – an increasing need. The majority of these 'early' arrivals established themselves without major difficulties. However, this has not been the case for the hundreds of thousands of Palestinian refugees who, more recently, and particularly this century, fled poverty, instability, discrimination, persecution, and conflict in the Arab region, notably in the oPt, as well as Iraq, Lebanon, and Syria. They have often fallen through the cracks of the international refugee regime, and being generally less affluent than earlier

refugees, even where they have found protection, have frequently experienced considerable difficulties in integration in various countries of asylum.

Despite important jurisprudential developments in Europe and New Zealand, and, above all, the comprehensive guidelines progressively provided by UNHCR in close cooperation with UNRWA, BADIL reports that, out of thirty countries surveyed across Europe, America, Africa, and Oceania, ‘there are at least eleven different analyses apparent in the different practices’.³⁶⁸ While this chapter has not focused on the application of Article 1D, in its attempt to track the trajectory of Palestinian dispersal, the uneven practice with respect to status determination of Palestinians has emerged. In many jurisdictions such unevenness impacts on the protection to which Palestinian refugees are entitled. In a number of countries, Article 1D of the 1951 Convention continues not to be applied, with claims of Palestinian refugees being assessed under Article 1A(2), downplaying the distinctive regime set up for them under the 1951 Convention. The fact that certain case law deems the availability of UNRWA assistance and protection as sufficient to justify returnability of Palestinian refugees to any country or territory in the agency’s area of operations other than the country of habitual residence to which the refugee has fled (regardless of the plausible lack of bond between the refugee and the former), is cause for concern. Moreover, as the review of state practice in this chapter demonstrates, Palestinian refugees are often statistically invisible.

Countries that offer more robust protection – including through accessible naturalization procedures, e.g. Germany and Sweden – have steadily represented important destinations for Palestinians fleeing various parts of the Middle East in search of safe haven. This indicates that, in the absence of a just and durable solution to the refugee issue at large, those in need of protection seek solutions on their own. However, restrictive asylum policies in the ‘Global North’ (Europe and North America) and Australia, as well as in Saudi Arabia and other Gulf countries, in recent years, may have contributed to an unprecedented rise in numbers of Palestinian refugees seeking sanctuary in new destinations, including the Western Balkans, South East Asia, West Africa, and Sudan, places where ensuring refugee protection may be more challenging (i.e. where no refugee framework exists or living conditions are difficult) or Palestinians may simply have fewer coping mechanisms than in (p. 322) places with a pre-existing Palestinian diaspora (i.e. a number of countries in Europe and the Americas). While the numbers of Palestinian refugees in these countries may not be statistically important, identifying them is necessary for a full assessment of the complex trajectory of Palestinian exile over the past seventy years. The growing presence of Palestinian refugees around the world is a direct result of the failure to find a just solution to their plight. With no such solution in sight, and with continuing instability in the Arab region, the patterns of displacement, dispossession, denial of agency, and vulnerability that have been the lot of generations of Palestinians are likely to continue. As this chapter shows, their plight is exacerbated by the legal uncertainty and confusion that frequently prevents them enjoying the international protection to which they are entitled.

Footnotes:

1 Significant refugee flows have been provoked in connection with the Israeli occupation of the West Bank and Gaza Strip (1967–present), the Lebanese civil war (1975–1990), the First Gulf War (1990–1991), the Iraq war (2003–2011), and, last but not least, the crisis that has engulfed the Middle East and North Africa region since 2010, particularly aggravated by the civil war in Syria (2011–present) and Libya (2014–present).

2 Most of these trends have been described for the first time in this chapter, hence, the lack of secondary sources. In 2017 alone, a total of 110,121 refugees and asylum seekers of Palestinian origin were counted in countries around the world by UNHCR, very likely a significant under-estimate due to data limitations explained in this section. UNHCR Population Statistics [accessed 8 March 2019].

3 In the various sections, countries are presented in alphabetical order, except in the section on Latin America, where they are presented in the order of the size of the Palestinian community in each country.

4 See historical sections in Chapter IV, Section 3.2.2 (Jordan), Section 3.3.2 (Lebanon), Section 5.2 (Arabian Peninsula), Section 6.3.2 (Lybia) and, for more recent history, Section 4.2.2 (Iraq) and Section 3.4.2 (Syria).

5 Various studies are referred to throughout this chapter and also noted in the expanded bibliography in Chapter X.

6 Since 2005, BADIL Resource Center for Palestinian Residency and Refugee Rights ['BADIL'] has undertaken, among others, wide-ranging research on art. 1D of the 1951 Convention, systematically surveying its application at the country level, resulting in *Closing the protection gap: A handbook on protection of Palestinian refugees*, Bethlehem: BADIL, 2005, with updates in 2011 and 2015, which provides the most comprehensive overview of state practice with respect to art. 1D. This chapter builds on BADIL's work, complementing it with further information and analysis.

7 On the methodology, see Introduction, Section 3.1.

8 For example, during the Cold War, Eastern Europe was a destination of study and, occasionally, continued residency for a considerable number of Palestinians looking for better opportunities outside the Arab region. Lack of comprehensive data does not allow proper discussion of this phenomenon.

9 Efforts to address this limitation include improved data collection by UNHCR, UNRWA – including in cooperation with the International Organization on Migrations (IOM) – the Palestinian Central Bureau of Statistics (PCBS) and national asylum systems. Further scholarly research is also needed.

10 For example, in Albania, Bosnia, Italy, the Netherlands, North Macedonia, Romania, Serbia, and Spain, Palestinian asylum seekers may be registered as Palestinian 'nationals'. In Hungary, Indonesia, Malaysia, and Thailand (the last three owing to UNHCR refugee status determination procedures), Palestinians are registered as such on the basis of an ethnic link (rather than the legal link to a country). In Austria, Canada, Germany, Luxembourg, Norway, Romania, and the US they may also be registered as 'stateless' (without this necessarily entailing extension of legal protection as stateless person though) or of 'undetermined nationality' or similar categories in others (like in Belgium and Luxembourg, or a combination of them, like in Switzerland). Often, they are categorized according to their last country of residence. In a number of states (Greece, Netherlands, Romania, Switzerland, and the UK) they may be recorded under more than one category. In some countries, especially in the Arab world (including Sudan), their refugee status is not recorded, and there are often referred as 'brothers' or 'Arab citizens'. For the question of Palestinian statelessness in the context of Palestinian statehood, see Chapter III, Section 3.2.2.

11 See Chapter II, Section 4.3.

12 For the authors' general approach to the term 'diaspora' in the Palestinian context, see Introduction, Section 3.2.

13 As discussed in Chapter IV, Section 3.4.4. in particular, approximately 120,000 Palestinian refugees have fled Syria between 2011 and 2019. Before reaching Europe, many experienced discriminatory policies and practices in other Arab countries. Egypt barred UNHCR from registering Palestinian Syrians, and quite early on Jordan, and subsequently Lebanon, closed their borders to those fleeing conflict-torn Syria, including Palestinians.

14 Asylum seekers from Syria make up the single largest group of asylum seekers in Europe, while approximately three per cent of all asylum seekers in Europe are stateless. Hence, it is estimated that a significant number of them are from Syria, even though no data exists to determine the place of origin of stateless asylum seekers. See McGee, T., 'From Syria to Europe: Experiences of stateless Kurds and Palestinian refugees from Syria seeking protection in Europe', *Institute on Statelessness and Inclusion*, January 2019, 11.

15 Around two-thirds of all stateless persons in Syria are Palestinian refugees. While stateless Kurds in Syria used to constitute a large proportion of stateless persons in Syria, more than 100,000 were able to acquire citizenship in 2013 due to an amendment to the Syrian nationality law in 2011, bringing down the number of stateless Kurds to an estimated 160,000; see McGee (n 14); Palestinian refugees from pre-war Syria, however, were about 550,000 (120,000 of whom were displaced out of Syria, and over 70,000 of whom were estimated to have moved out of the region between 2013 and 2019). Hence, it can be assumed that a significant proportion of stateless persons from Syria are Palestinian. On the situation of Palestinian refugees in Syria, see UNRWA (Portal), 'Where We Work: Syria' [accessed August 30, 2019]. For overall Syrian trends, see UNHCR, Global Trends: Forced Migration in 2017, 19 June 2018. UNHCR, Global Report 2012 – Syrian Arab Republic, 19 June 2013.

16 Shibliak, A. (ed.) *The Palestinian diaspora in Europe: Challenges of dual identity and adaptation*, Ramallah: Institute for Jerusalem Studies/Shaml, 2005, 11.

17 The 1967 War, the 1970 Black September uprising in Jordan, the Lebanese civil war between 1975–1990, including the Israeli invasion of Lebanon, and the Sabra and Chatila massacres in 1982, were main drivers of the outflow.

18 Hanafi, S. Reshaping the geography: Palestinian community networks in Europe and the New Media. Presented at the Second Mediterranean Social and Political Research Meeting, Florence, March 21–25, 2001, Mediterranean Programme, Robert Schuman Centre for Advanced Studies, European University Institute.

19 This is to be read in conjunction with the fact that despite 425,000 Palestinian refugees registered with UNRWA in Lebanon, only 250,000 of them were found to still reside in the country in 2015 (about 170,000 in refugee camps and gatherings), see Chaaban, J., Salti, N., Ghattas, H., Irani, A., Isamil, T., Batlouni, L., 'Survey on the Socioeconomic Status of Palestine Refugees in Lebanon 2015', Report published by the American University of Beirut (AUB) and UNRWA. See also Arar, T. *Palestinians exiled in Europe: Palestinian diaspora or refugees? Ongoing Nakba*, Bethlehem: BADIL Resource Center, 2006, 44.

20 Palestine International Institute, *The Palestinian Community in Germany*, Amman: Palestine International Institute, 2002, 14.

21 Koch, K., Ragab, N. J., 'Mapping and study of the Palestinian diaspora in Germany', Maastricht Graduate School of Governance, 2018.

22 Hanafi, S., 'Reshaping geography: Palestinian community networks in Europe and the new media', *Journal of Ethnic and Migration Studies* 31.3 (2005) 584.

23 Shibliak (n 16), 11.

24 See, in particular, the sections on Germany and the United Kingdom. For example, a 2006 study on British Palestinians found that lower-class Palestinians considered the Association of Palestinian Communities in the UK (APCUK) unrepresentative of them and their needs, while Palestinians with a higher socio-economic status had a better perception of the organization. Loddio, S. *Palestinians in Britain: Shifting relations to locality and community. Nationalism in an age of globalization*, New York City: Harriman Institute, Columbia University, 2006, 4.

25 Asylum Information database (AIDA), 'Accelerated, prioritised and fast-track asylum procedures legal frameworks and practice in Europe', May 2017.

26 In November 2015, only refugees from Afghanistan, Iraq, and Syria were allowed to pass into Balkan and Eastern European countries, causing chaos at the borders, and leaving thousands of refugees, who had been seeking entry into Europe, stranded. See HRW, *EU policies put refugees at risk*, 23 November 2016.

27 UNHCR (Portal), *State Parties to the 1951 Convention relating to the Status of Refugees and/or its 1967 Protocol* [accessed 30 April 2019].

28 The CSR51 is explicitly referred to in art. 78 of the Treaty on the Functioning of the European Union (TFEU), and art. 1D, CSR51, is reflected in art. 12(1)(a) of the Qualification Directive 2004/83/EC (n 37).

29 For an overview, see UNHCR, *Stateless in Europe: Ordinary people in extraordinary circumstances*, March 2018. Further information is provided in country-specific sections in this chapter.

30 The Convention was adopted by the CoE in 1950, which also created the European Court of Human Rights (ECtHR), to ensure states' adherence to the Convention.

31 For example, arts. 2, 3, and 4 of Protocol 4 to the ECHR and art. 1 of Protocol 7. All CoE member states have incorporated or modified the ECHR into national law.

32 See for example CoE, *European Agreement on the Abolition of Visas for Refugees*, 3 September 1960, ETS 031; CoE, *European Agreement on Transfer of Responsibility for Refugees*, 16 October 1980, ETS 107; CoE, Committee of Ministers, *Recommendation No R (98) 13 on the Right of Rejected Asylum Seekers to an Effective Remedy Against Decisions on Expulsion in the Context of Article 3 of the European Convention on Human Rights*, 18 September 1998, Rec(98)13; CoE, Committee of Ministers, *Recommendation Rec(2005) 6 of the Committee of Ministers to Member States on Exclusion From Refugee Status in the Context of Article 1 F of the Convention Relating to the Status of Refugees of 28 July 1951*, 23 March 2005, Rec(2005)6.

33 EU law is based on treaties and secondary law, including directives, regulations, and court decisions, applicable to all member states.

34 The Court, established in 1952, ensures that EU law is harmoniously interpreted and applied across the EU.

35 In 1990, the 'Dublin regime' was established through the Dublin Convention, which came into force in 1997 (and was further modified, see (n 42)). In 1999, in the wake of the 1997 Amsterdam Treaty, which granted the EU more power over countries' asylum procedures, EU member states started work to establish the Common European Asylum System (CEAS), a legal framework setting standards of protection as well as procedures for cooperation among EU member states with respect to asylum. In 2000, the EU set up a European Refugee Fund (ERF) to provide funds for the asylum systems of EU member states. This was replaced in 2014 by the Asylum Migration and Integration Fund (AMIF). Finally, the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex) was established in

2004 to operationally manage the EU's external air, land, and sea borders. Frontex has taken a bigger role in managing asylum seeker arrivals to Europe since 2010.

36 See EU, Council of the European Union (CoEU), *Council Directive 2001/55/EC of 20 July 2001 on Minimum Standards for Giving Temporary Protection in the Event of a Mass Influx of Displaced Persons and on Measures Promoting a Balance of Efforts Between Member States in Receiving such Persons and Bearing the Consequences Thereof*, 7 August 2001, OJ L.212/12-212/23; 7.8.2001, 2001/55/EC; and CoEU, *Council Directive 2003/86/EC of 22 September 2003 on the Right to Family Reunification*, 3 October 2003, OJ L. 251/12-251/18; 3.10.2003, 2003/86/EC.

37 See CoEU, *Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted*, 30 September 2004, OJ L. 304/12-304/23; 30.9.2004, 2004/83/EC. For an appraisal, see UNHCR, Annotated Comments on the EC Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons who otherwise need International Protection and the Content of the Protection granted (OJ L 304/12 of 30.9.2004), January 2005. Also, on the Directive's shortcomings of the Directive with regard to upholding existing international standards (e.g. in relation to the qualifying grounds and the status of individuals under subsidiary protection), see Gil-Bazo, M.T., Refugee status, subsidiary protection, and the right to be granted asylum under EC law, UNHCR Research Paper No. 136, November 2006.

38 Art. 78 of the *Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community*, 13 December 2007, 2007/C 306/01.

39 This revised an early Qualification Directive of 2004 (n 37). EU, CoEU, *Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)*, 20 December 2011, OJ L. 337/9-337/26; 20.12.2011, 2011/95/EU.

40 EU, *Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast)*, 29 June 2013, OJ L. 180/60 -180/95; 29.6.2013, 2013/32/EU.

41 EU, CoEU, *Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection*, 26. This replaced CoEU Directive 2003/9/CE on minimum standards for the reception of asylum seekers.

42 Also referred to as 'Dublin Regulation III', EU, CoEU, *Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)*, 29 June 2013, OJ L. 180/31-180/59. This was part of a reform of the Dublin system, intended to harmonize the asylum application system: an applicant should not submit applications in multiple Member States and the country in which the asylum seeker first applies for asylum is responsible for either accepting or rejecting the claim, and the seeker may not restart the process in another jurisdiction. This applies to all member states except Denmark.

43 On the specificity of the applicability of art. 1D in Europe see also *Note on UNHCR's Interpretation of Article 1D of the 1951 Convention relating to the Status of Refugees and Article 12(1)(a) of the EU Qualification Directive*, 2013. See also UNHCR, *UNHCR's Oral Intervention at the Court of Justice of the European Union*, 2012. For detailed discussion, see Chapter II, Section 4.3.

44 At least eleven European countries apply art. 1D, rather than art. 1A(2) (as was more common prior to 2010), to grant refugee status to Palestinian applicants. This comprises Austria, Belgium, Czech Republic, France, Germany, Hungary, Italy, Netherlands, Norway, Sweden, and the UK. Nonetheless, Germany, Norway, and the Netherlands adopt practices resembling an assessment under art. 1A(2) criteria while it is still unclear how Belgium, Czech Republic, France, Hungary, and Sweden assess Palestinian applicants' 'objective reasons' for leaving their country of habitual residence, and to what extent, if any, such assessment takes into account art. 1A(2). See sections later one and, for a detailed overview on the application of art. 1D in a number of European countries, BADIL (n 6).

45 For the most recent interpretation of art.1D, see UNHCR, *Guidelines on International Protection No. 13: Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees*, HCR/GIP/16/12, December 2017 [hereinafter 'Guidelines on Article 1D']. As discussed in Chapter II, Section 4.3.3, while significantly advancing the interpretation of art. 1D of CRS51, the CJEU in *Bolbol* and *El Kott* has also paved the ground to some confusion (e.g. *Bolbol*'s 'in-receipt' criterion) and not eliminated all ambiguity (e.g. *El Kott*, on what may constitutes assistance 'commensurate' to UNRWA's mandate). Also, in its most recent opinion on the matter (*Aletho 2018*), the Court concluded that the asylum application by an UNRWA-registered Palestine refugee can be deemed inadmissible if the person can benefit from UNRWA's protection in another country where UNRWA operates, which is different from the one in which he or she habitually resides, and that country agrees to admit the person and recognize UNRWA's protection (regardless of the link between the person and the country). While this may be of theoretical relevance (as a traditional host country will hardly admit Palestine refugees registered with UNRWA in other 'Fields') the principle is highly problematic, as it leads to the possibility of returning Palestinian refugees to countries or territories to which they are not connected, other than being registered with UNRWA.

46 These countries are party to both the CSR51 and 1967 Protocol, as well as to the 1954 and 1961 Statelessness Conventions.

47 Doraï, M. K, 'Palestinian emigration from Lebanon to Northern Europe: Refugees, networks and transnational practices', *Refugee* 21.2 (2003) 23. See also MacGuire, B., Lebanese asylum applicants in Denmark, 1985–1988: Political refugees or war emigrants, in Hourani, A., Shehadi, N. (eds.), *The Lebanese in the world: A century of emigration*, London, Centre for Lebanese Studies/I.B. Tauris, 1992; and Issa, M., *Palestinians from Libya in Denmark: Dreams and realities*, Copenhagen: Danish Refugee Council, 1995. See also Palestine International Institute, *The Palestinian Community in Denmark*, Amman: Palestine International Institute, 2005.

48 BADIL (n 6), 114.

49 The most notable court case occurred in 2010, when a stateless Palestinian man was expelled to Syria and separated from his children after committing drug offences. He was detained and tortured in Syria, before making his way to Denmark. The Danish court found that his expulsion did not violate arts. 3 or 8 of the ECHR; this was later confirmed by ECtHR, *M.E. v Denmark*, Application no. 58363/10, 8 July 2014.

50 Network Denmark (Portal), ‘New procedure for stateless Palestinians’, 8 January 2018 (original in Danish), Summary (English): https://nyidanmark.dk/en-GB/News%20Front%20Page/2019/01/Ny_praksis_vedr_statslose_palaestinensere.

51 Ibid.

52 Ibid.

53 Denmark, Consolidated Act on Danish Nationality, Consolidation Act No. 422 of 7 June 2004. Naturalization of stateless persons in Denmark is based on the conditions stipulated in Circular Letter on Naturalization No. 9253 of 6 June 2013. See also Submission by the UNHCR for the [OHCHR]’s Compilation Report Universal Periodic Review, 2nd Cycle, 24th Session, Denmark, June 2015.

54 US Department of State, *2012 country reports on human rights practices – Denmark*, 2013.

55 Ibid.

56 Between 1995 and 2006 the number of Palestinians seeking international protection in France was around eighty per year, increased to approximately 100, 150, and 200 in 2008, 2009, and 2010 respectively, after which the numbers significantly increased every year, reaching 1,012 total refugees and asylum seekers in 2017. This recent increase is likely linked to Palestinians fleeing the Syria conflict. These estimates are rather conservative since no disaggregation is possible by country of habitual residence.

57 Gabiam, N., ‘Citizenship and development: Palestinians in France and the multiple meanings of statelessness’, *Studies in Comparative International Development* 50.4 (2015) 486. See also Palestine International Institute, *The Palestinian Community in France*, Amman: Palestine International Institute, 2007.

58 Ibid.

59 France: *Code de l’entrée et du séjour des étrangers et du droit d’asile (CESEDA)*, 22 February 2005.

60 Ibid., ch. 2.

61 Cour Nationale du Droit d’Asile, France: Décision No. 04020557 et 04020558, 24 mai 2013.

62 Ibid., 3,4. See also BADIL (n 6), 131.

63 Koch and Ragab (n 21).

64 Ghadban R. ‘The Impact of Immigration Policies on Palestinians in Germany’ in Shibliak (n 16), 39.

65 However, Tucker notes that from 2012 to 2016, 698 Syrian Palestinians were granted asylum in Germany. Tucker, J., ‘Why here? Factors influencing Palestinian refugees from Syria in choosing Germany or Sweden as asylum destinations’, *Comparative Migration Studies* 6.1 (2018) 29.

66 These figures are in Koch and Ragab (n 21), 30–1; lower figures are from the German Statistical Office (*Statistisches Bundesamt*) and higher figures are from the Palestinian Mission in Germany. According to Koch and Ragab, ‘the general lack of any additional data severely limits attempts at accurate and detailed comparisons as well as analyses of the Palestinian immigrant population in Germany.’ However, the German Statistical office only includes the numbers of individuals who have entered the country holding PA issued travel documents (i.e. from the oPt). Palestinian nationality/origin – including those who are

naturalized – is not recognized *per se* nor recorded in official statistics; see Ghadban, cit. in Shibliak (n 16), 32, and Seidel and Kleff, cit. in Koch and Ragab (n 21), 30.

67 Shibliak (n 16), 10.

68 Hanafi (n 18), 5.

69 Shibliak, A., ‘Stateless Palestinians’, *Forced Migration Review* 26 (2006) 9.

70 Ghadban, R., Politics of immigration in Germany, cit. in Shibliak (n 16).

71 Federal Republic of Germany, *Asylum Act (AsylVfG) 2008* [Germany], 2 September 2008, sec. 3(3). The provision reads: ‘Nor shall a foreigner be a refugee under subsection 1 if he enjoys the protection or assistance of an organization or institution of the United Nations, with the exception of the United Nations High Commissioner for Refugees under Article 1, Section D of the Convention relating to the status of refugees. Subsections (1) and (2) [legal status in Germany] shall apply if such protection or assistance is no longer provided, without having finally clarified the situation of those affected in accordance with the relevant resolutions of the General Assembly of the United Nations.’ Subsections 1 and 2 of the Asylum Act refer to the criteria for refugee status and could be interpreted by some as warranting a review under art. 1A of the CSR⁵¹.

72 A landmark 1991 Federal Administrative Court case – which stated that art. 1D contains both an exclusion clause (in the first sentence) and an inclusion clause (in the second sentence) – found that art. 1D applies to Palestinian refugees whenever UNRWA assistance or protection has ‘ceased’ (Chapter II, see (n 282)–(n 284) and accompanying text). Further to that, the task of the Federal Office for Migration and Refugees and the courts has been to determine whether the reason for the cessation of protection or assistance of UNRWA was voluntary or due to an external cause (e.g. country prohibiting return). However, where the alien’s choice was the primary factor, cases were evaluated primarily under art. 1A. UNRWA protection or assistance was found to have ‘ceased’ if a Palestinian refugee could not prove that she/he had not ‘voluntarily relinquished such protection or assistance’. In practice, it was difficult for Palestinians to show that they had not voluntarily relinquished UNRWA’s protection, and most Palestinians’ claims were considered under art. 1A rather than under art. 1D². Further, the interpretation of art. 1A has been restrictive with respect to the country of former habitual residence, see Sondergaard, E., *Protection of Palestinian refugees in states signatories to the 1951 Refugee Convention and the 1954 Stateless Convention*. Bethlehem: BADIL Resource Center, 2004. The 1991 decision on art. 1D has been invoked in a number of Palestinian asylum decisions, until 2012 after the *El Kott* decision, see BADIL (n 6), 135.

73 The most recent available case law with respect to Palestinian asylum seekers in Germany, from 2014, shows a court invoking *El Kott* for the first time to *deny* an application where the claimant, from a Lebanese refugee camp, was found to have left an UNRWA field without being forced to do so. Administrative Court of Berlin, Case 34 K 172.11 A, 24 February 2014.

74 See Higher Administrative Court Thüringen, judgment of 5 June 2018 - 3 KO 167/18 (in German).

75 For example, some sources reported different German cities using different procedures to register and process Palestinian asylum seekers from Syria, and asylum officials occasionally confusing ‘nationality’ and ‘country of habitual residence’, thereby causing delays, errors, and variances in the treatment of Palestinian refugees from Syria.

Bolongaro, K. ‘Palestinian Syrians: Twice refugees’, *Al Jazeera* 23 March 2016; Alfarra, J. ‘Palestinians of Syria: Refugees once more’, *Middle East Monitor* 23 June 2016.

76 Federal Republic of Germany, *Nationality Act*, 22 July 1913, Federal Law Gazette III, 102-1), as last amended by art. 3 of the First Act to Amend the Federal Act on Registration and other legislation of 11 October 2016 (Federal Law Gazette I, 2218), 5 February 2009, sec. 10(3).

77 Kadur, M., Foda F., Cycle of isolation: The situation of Palestinian refugee women in Germany, in Shibliak (n 16).

78 Sondergaard (n 72).

79 Kadur and Foda (n 77).

80 Sondergaard (n 72).

81 The 800-member General Union of Palestinian Students (GUPS) and the 1,000-member General Union of Palestinian Workers (GUPW) were banned.

82 Musallam, S., 'Palestinians in West Germany', *Journal of Palestine Studies* 3.3 (1974) 141-4.

83 Ibid.

84 Ibid.

85 Tucker (n 65).

86 Caruso, C., 'Nazionalità indeterminata: Voci della diaspora Palestinese in Italia', *Rubbettino* 130 (2009).

87 While in the years leading up to 2006, Italy saw fewer than sixty Palestinians arriving per year (including refugees and asylum seekers), as of 2007-2008, numbers rose every year, with an average increase of about 100 per year, and reached 916 in 2012, 607 in 2013, 753 in 2014, 794 in 2015, 1,018 in 2016, and 1,188 in 2017; cf. UNHCR, Population statistics, 3 May 2019.

88 The data management system of the Italian Asylum Authority was under review at the time the book was written. On the categorization of 'stateless' Palestinians, see (n 90).

89 There is one available case of determination of statelessness from 2012, where a Palestinian national applied after having served a twenty-five-year-long prison sentence in Italy for terror charges. It is likely the individual turned to a statelessness claim as given his criminal background, other forms of international protection were not available or realistic to him. The result of the application is unknown. See Press Release by the Unione Forense Per La Tutela Dei Diritti Umani, Rome, 11 October 2012.

90 The asylum registration system does not contain a default 'stateless' option for the nationality field and accordingly Palestinian asylum seekers are not recorded as stateless persons upon registration of their claim. Yet, the applicant who wishes to be identified as such has to raise a statelessness claim to the Italian Ministry of Interior or directly to a Court, but lacking a clear advantage, very few do so.

91 BADIL (n 6), 163.

92 Morandi N., Bonetti P., 'Lo status di rifugiato', *Associazione Studi Giuridici sull'Immigrazione*, February 2013.

93 Unsuccessful asylum applicants may receive a two-year renewable residence permit, when 'serious humanitarian reasons' are found, see art. 5.6, Leg. Decree 286/1998 and art. 32.1(b-bis) Leg. Decree 25/2008.

94 There are no accurate numbers of how many Palestinians have been naturalized in Italy.

95 In 2009, Italy resettled a group of 179 Palestinian refugees from the Al-Tanf camp (i.e. displaced from Iraq). This was part of the Italian ‘Resettlement in the South’ project from 2009–2011. The refugees migrated to Sweden before being brought back to Italy. See Elia, A. ‘Palestinian Refugees in south of Italy: Displacement, resistance and solidarity’, *Scientific Annals of the ‘Alexandru Ioan Cuza’ University* 8.2 (2015) 40.

96 Schulz, H. L., *The Palestinian diaspora*, London: Routledge, 2003, 82.

97 Ibid.

98 Doraï (n 47), 24. See also Doraï, M.K., ‘Les parcours migratoires des réfugiés vers la Suède et l’Europe du Nord’, *Revue d’études palestiniennes* 23 (2000) 38–52.

99 In 2001–2002, Sweden denied visas to members of a Ramallah-based theatre group named Al Kasaba, which had been invited to take part in an art festival; the decision was overturned after public outcry. Schulz (n 96), 83.

100 UNHCR, *UNHCR Resettlement Handbook*, Country Chapter - Sweden, September 2014, 3.

101 The following numbers of Palestinians were recorded (both refugees and asylum seekers) in Sweden after 2014: 819 (2015), 1,356 (2016), and 1,425 (2017). Cf. UNHCR ‘Population Statistics’ [accessed 1 May 2019].

102 Tucker (n 65).

103 UNHCR, *Syrian refugees in Europe: What Europe can do to ensure protection and solidarity*, Geneva: United Nations, 2014, 34.

104 See BADIL (n 6), 197, and BADIL (n 6), 21.

105 The number of applications of stateless persons were 1,109 in 2011, 2,289 in 2012, 6,921 in 2013, and 7,863 in 2014. The recent sharp increase is apparently due to Palestinian refugees fleeing Syria. See BADIL (n 6), 197.

106 In 2013, a Palestinian fleeing Syria successfully invoked the *El Kott* precedent, and was granted asylum accordingly. Sweden’s Migration Court of Appeal declared the individual to be eligible for refugee status because he no longer enjoyed UNRWA assistance and could not return to his country of former habitual residence because of concerns for his safety. Migration Court of Appeal: Case UM 1590-13 (26 November 2013). The Court reached similar decisions in other cases in the same year for other Palestinian refugees from Syria. For a commentary see BADIL (n 6), 199. There are also two administrative decisions that both granted a three-year permit to remain in Sweden under Sweden’s alternative protection regime, entitling the Palestinians concerned alien passports, see BADIL (n 6), 200.

107 They were initially granted permanent residence and, following a change of the law, subsidiary protection.

108 Shibliak (n 16), 13, estimates 20,000, and higher estimates are from the author’s survey. This appears to include those who have been naturalized since the latest UK census (2011), which refers to approximately 5,000 Palestinian nationals in the UK; see www.ons.gov.uk/census/2011census/2011ukcensuses/ukcensusesdata.

109 Hanafi (n 22), 584.

110 Shibliak (n 16), 10. On the concept of refugee *sur place*, see Chapter II, Section 4.3.

111 Shibliak (n 16), 10.

112 Hanafi (n 18), 5.

113 Ibid. Many may have been from the hundred of thousand Palestinian displaced from Kuwait, who had first moved to Iraq, making its population rise up. See Chapter IV, (n 608) and (n 624) and accompanying text.

114 The UK has taken in almost 5,000 Syrian refugees since 2011 and agreed to resettle 20,000 more as of 2015—an unknown number of which are Palestinians. Asylum statistics for Palestinians in UK include both refugees and asylum seekers, as follows: 387 in 2011, 455 in 2012, 483 in 2013, 567 in 2014, 594 in 2015, 628 in 2016, and 724 in 2017; cf. UNHCR Population Statistics, 1 May 2019.

115 The case concerned an UNRWA-registered Palestinian refugee from Lebanon who sought asylum in the UK because he feared persecution from the Lebanese authorities as well as other political factions. *Isam El-Issa v Secretary of State for the Home Office*, Immigration and Asylum Tribunal (UK), Appeal No. CC/21836/200, 4 February 2002.

116 In *El-Ali* the Court found that the *ipso facto* clause only applied to the refugees who had been displaced in 1948. See *Amer Mohammed El-Ali v The Secretary of State for the Home Department* and *Daraz v The Secretary of State for the Home Department (The U.N. High Comm'r for Refugees, Intervener)*, 2002, EWCA (Civ).

117 In 2013, the government released an Operational Guidance Note setting out the official approach to art. 1D, confirming that *El Kott* was binding in the UK, and subsequent decisions have taken into account likely treatment on return to a country of earlier residence in recognizing refugee status in the UK. *Operational Guidance Note: Occupied Palestinian Territories* of March 2013, sec. 2.2.24.

118 In 2014, a Palestinian from Egypt who overstayed his visa while in the UK and sought asylum was granted refugee status based on evidence of treatment of Palestinians in Egypt. The Tribunal granted the appellant refugee status, concluding that, 'If returned, he would be at risk of persecution for a Convention reason and treatment contrary to Art 3 of the ECHR.' See *H E-H v The Secretary of State for the Home Department*, 17 January 2014; the case is discussed in BADIL (n 6), 219. (NB: H.E.H. means appellant under an anonymity order).

119 UK Home Office, *Asylum Policy Instruction, Article 1D of the Refugee Convention: Palestinian refugees assisted by the United Nations Relief and Works Agency (UNRWA)*, Published for Home Office staff on 9 May 2016.

120 Ibid., 7 [emphasis added]. '[R]easons beyond their control and independent of their volition' includes 'threats to life, physical integrity or security or freedom, or other serious protection related reasons' and 'practical, legal and/or safety barriers'. These specifications are the same as those featured in UNHCR's Note on Article 1D of 2013. See Chapter II, Section 4.3.

121 See discussion in Chapter II.

122 Home Office, 2016, 9–10. These scenarios include cases in which 'UNRWA continues to provide protection and assistance to Palestinian refugees in the Occupied Territories and in neighbouring countries within its mandate, and an individual must demonstrate that UNRWA protection or assistance has ceased to be accessible. That is likely to be the case for Palestinian refugees from Syria, but each claim must be considered on its individual merits. If that is accepted, no further analysis of protection needs is required. In view of the substantial benefits which automatically accrue from the second paragraph of Article 1D – refugee status under the Refugee Convention (subject to the provisions of Article 1F) – a decision to accept assistance has ceased to be available must be agreed by a senior

caseworker. If it is not accepted that assistance ceased to be available, the claimant is not eligible for refugee status.'

123 Home Office, 2016, 11.

124 Ibid.

125 According to UNHCR data, the number of Palestinian refugees and asylum seekers has steadily increased between 2011 and 2019, with an average thirty per cent refugee status recognition rate until 2016. Which dropped to 20 per cent between 2016 and 2018. UNHCR, UNHCR Population Statistics - Persons of Concern [last access Jan 2018]. To exemplify this: between 2012 and 2019, over a thousand applications for asylum from individuals from the oPt, 257 were granted protection, mostly through asylum (twenty-three per cent of total applications) and about thirty grants of other leave (one per cent of total applications).

126 Vulnerable Person Resettlement Scheme (VPRS) is a programme launched by the UK government in 2014, which aims to resettle 20 000 Syrian refugees from refugee camps in Jordan, Lebanon, Iraq, Egypt, and Turkey over the period from September 2015 to May 2020. See UK Refugee Council (Portal).

127 UK, Turani & Ors v SSHD [2019] EWHC 1586 (Admin). Lawyers acting for four Palestinians living in a refugee camp in Lebanon claimed the UNHCR identification and UK screening deliberately disregarded Palestinian for resettlement. Leigh Day Solicitors (Portal), 'High Court to hear Palestinian refugees' challenge to the Vulnerable Person Resettlement Scheme', May 2019. In Turani & Ors v SSHD the Court determined that the Secretary of State had failed to comply with the equality need listed in the UK Equality Act of 2010, s 149(1)(b) in determining to rely exclusively on UNHCR (which has no mandate over Palestinian refugees in Lebanon or other areas of UNRWA operation) to refer refugees for resettlement in the UK under the Scheme.

128 Palestinians have arrived in Bulgaria since the 1990s and it currently counts a community of 800 persons.

129 A total of sixty-nine applicants were registered as stateless and one was registered from the oPt in 2014–2016. Refugee status was granted to thirteen persons and humanitarian status (subsidiary protection) was given to eight persons. Rejections were issued in six cases, and fifteen were otherwise closed. No decision was issued in respect to the asylum seeker registered from the oPt.

130 About forty Palestinians sought asylum in Romania in 2014–2016. In spite of the low rate of applications in 2015–2016, an increase in the number of asylum applications submitted by stateless persons was observed compared to previous years, most of which were presumably filled by Palestinian refugees from Syria (a total of twenty-five). Of these, thirteen were granted a form of international protection (nine refugee status and four subsidiary protection) either at the administrative or court level, while seventeen persons, including cases who had lodged their application in 2014, had their applications rejected. During the same period, thirty-seven stateless persons were granted a form of international protection and fifteen applications were rejected.

131 As far as stateless persons are concerned, the Romanian authorities do not collect disaggregated data based on the country of former habitual residence.

132 European Council on Refugees and Exiles (ECRE) and Red Cross EU Office, *Disrupted flight: The realities of separated refugee families in the EU*, Brussels: European Council on Refugees and Exiles, 2014, 17.

133 Sometimes refugee status and in some cases subsidiary protection ('tolerated' status) was granted.

134 Since 1999, the requirements under art. 1D in the Czech Republic have been set out in national law. Czech Republic, Act No. 325/1999 Coll. of 1999 on Asylum and Amendment to Act No. 283/1991 Coll., art. 15(3)(a) on the Police of the Czech Republic, as Amended [Asylum Act], 11 November 1999.

135 The first two requested resulted in *Bolbol* (2010) and *El Kott* (2012) decisions, respectively, and the third in *Aletho* (2018). Detailed discussions re art. 1D are in Chapter II, Section 4.3.

136 UNHCR, Guidelines on Article 1D (n 45), para 14. See Section 2.2 and more broadly discussions on art. 1D and relevant CJEU jurisprudence in Chapter II, Section 4.3.

137 Whereas earlier focus was on whether the person's personal safety was at serious risk when protection or assistance from UNRWA ceased, more recently emphasis is placed on the adequacy of UNRWA assistance. See also BADIL (n 6), 146.

138 Act No. 326/1999 Coll., on the Residence of Foreign Nationals in the Territory of the Czech Republic.

139 In the majority of cases where applicants originated from the Gaza Strip, subsidiary protection was granted on the basis of art. 15(c) of the EU Qualification Directive (serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict). The asylum authority generally concluded that as a result of the security situation in the Gaza Strip, the serious threat 'reaches such a high level that substantial grounds are shown for believing that a civilian, returned to the relevant country or, as the case may be, to the relevant region, would, solely on account of his presence on the territory of that country or region, face a real risk of being subject to that threat.'

140 While a number of cases were rejected, some applicants registered with UNRWA, received subsidiary protection on grounds of art. 15(b) of the EU Qualification Directive (torture or inhuman or degrading treatment or punishment of an applicant in the country of origin).

141 There is currently one case pending before the Supreme Court of Hungary to challenge this practice, where the applicant argues that Palestinian statehood does not resolve the situation of Palestinian stateless persons, especially those outside the country, and challenges the decision based on the 'not considered as a national ... under the operation of its law' limb of the definition, particularly focusing on the questions whether there exists a Palestinian law in effect on nationality. At the time of finalizing the manuscript, details of the case had not yet been made public.

142 BADIL (n 6), 150.

143 The 'lawful stay' requirement in the relevant legislation was removed by the legislature. See Hungary, Third Country National Act, sec. 76(1).

144 They include the requirement that all the documents bear an official stamp from the host authorities, proving that they are originals, as well as an official stamp from the Hungarian consulate in the country of residence. All documents have to be translated into English or Hungarian, which is very costly. The decisions made by the Hungarian Asylum authorities are predominantly based on these documents and there is relatively limited opportunity for other ways to prove family relations. Cf. AIDA & ECRE, Hungarian Helsinki Committee, 'Criteria and conditions', published on Asylum Information Database, 2018.

145 UNHCR, UNHCR Population Statistics [last accesses June 2019].

146 BADIL (n 6), 319.

147 The Finnish Immigration Service considers that applicants are able to return to the Gaza Strip through the Rafah border. When there are practical obstacles to return a rejected Palestinian, they are treated the same as the other irregular migrants and are granted residence as foreseen in sec. 51 of the Immigration Act.

148 In one case, a residence permit on compassionate grounds was granted because of serious illness, with the treatment offered by UNRWA in Lebanon considered to be insufficient.

149 BADIL (n 6), 173.

150 Norway received 158 asylum applications received from stateless persons, which includes an unknown number of Palestinians. The recognition rate for stateless persons in Norway stood at 73.5 per cent in 2016.

151 Norwegian Directorate of Immigration, ‘UDI Practice Note on Stateless Palestinians from the West Bank and Gaza (last modified on 29 January 2014) [Norwegian]’, 9 July 2010, PN 2010-029, cit. in BADIL (n 6), 173.

152 Ibid.

153 BADIL (n 6), 177.

154 The UDI Practice Guidance Note on Syria considers that asylum seekers from Syria, including stateless persons such as Palestinians and Kurds, have a well-founded fear of persecution for one or several of the Convention grounds if returned to Syria. They are afforded refugee status according to sec. 28 of the Norwegian Refugee Act, which refers to art. 1A of CSR51.

155 Dropping from forty to sixty per cent to less than ten per cent. BADIL (n 6), 174.

156 Ibid.

157 UNHCR ‘Observations on the proposed amendments to the Norwegian Immigration Act and Regulation: Høring – Endringer i utlendingslovgivningen (Innstramninger II)’, 12 February 2016, paras. 73–5. See also UNHCR, *Guidelines on International Protection No. 4: ‘Internal Flight or Relocation Alternative’ Within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*, 23 July 2003, HCR/GIP/03/04.

158 Ibid. (both documents).

159 Portugal, Spain, and Greece are parties to both the CSR51 and the 1967 Protocol, as well as to both the 1954 Convention and the 1961 Convention. Only Cyprus has to date not acceded any of the instruments to prevent and protect against statelessness.

160 This complicates the data collection.

161 See HRW, *EU/Balkans/Greece: Border Curbs Threaten Rights*, 1 March 2016; HRW, *Greece: Inhumane Conditions at Land Border*, 27 July 2018.

162 For an overview, Officer D., Taki, Y., ‘The Needs of Refugees and the Integration Process in Cyprus’, INDEX: Research & Dialogue, 2013. The report notes that for the tens of thousands of applications received between 2003–2013 (p. 24), out of those designated to receive refugee or subsidiary protection half were Palestinians (p. 26), mostly from Iraq and the oPt (p. 30). Interestingly, the report notes that ‘The dispersal of [stateless persons like the Kurds and the Palestinians] across many state boundaries *does indicate a significant difference with other refugee groups who have been forced out of their settled conditions within a national state with which they may have identified as their own*'; while the Kurds identified themselves as such without specifying a country of origin, many

Palestinians (mainly from Iraq) identified themselves with the country from (p. 31) [emphasis added].

163 There are significant discrepancies between UNHCR and government figures on numbers of individuals of Palestinian origin in the country (e.g. in 2011, for example, these were 1,642 and 664, respectively). UNHCR figures jumped from 479 in 2006 to 1,420 the year after. This figure reached a high of 3,415 in 2010. Further figures recorded were: 1,824 in 2013; 1,790 in 2014, 1,958 in 2015; 2,136 in 2016; 2, and 178 in 2017; UNHCR Population Statistics, 1 May 2019.

164 According to Asylum Service's records, since 2003 some 205 Palestinians have been granted refugee status, 1,440 were given subsidiary protection status, and 148 received humanitarian status, overall representing twenty-six per cent of all persons granted protection status in Cyprus. According to 2016 Asylum Service statistics, forty-seven asylum applications were received from persons recorded as from the 'State of Palestine', of which seventy were granted refugee status, three were given subsidiary protection, and fifty-seven were rejected. Statistics on administrative appeal indicate that 195 appeals were submitted from persons recorded as being from the 'State of Palestine', of which 43 were granted subsidiary protection, and one was rejected. Lack of standardization of registration in early years may render this picture incomplete.

165 There are no detailed statistics as Palestinians have been registered as nationals of their country of former habitual residence in the past, or as stateless persons without indication of their former habitual residence or place of origin. The lack of migration statistics makes it difficult to determine the numbers of persons in need of international protection presently living in Cyprus. It is unclear how many are registered with UNRWA. On the TDPR, see Chapter IV Section 2.1.

166 On the experience of various Palestinian refugees from Lebanon who have got stranded in Akrotiri over time (since 1998) see UNHCR, *Protecting Refugees-Cyprus*, December 2017, 23.

167 On the Memorandum of Understanding between Cyprus and the UK, see (n 167). The two Palestinians who were given international protection remain in the Republic of Cyprus. Of those who remained on the SBA, as their transfer to the Republic was denied due to 'security reasons', the SBA Administration made the final decisions on the asylum claims (in conjunction with the UK Home Office), refusing asylum for the majority of them (save those still pending).

168 UNHCR recorded the following arrivals of Palestinians (asylum seekers and refugees): 276 in 2013, seventy-five in 2014, 110 in 2015, 679 in 2016, and 1,228 in 2017.

169 In 2015 and 2016, many of the registered stateless persons were found to be from Yarmouk. See Chapter IV.

170 Such procedure was used by at least 155 Palestinians in 2015 out of a total of 1,948 asylum applications. AIDA, *Greece Country report*, November 2015, 36. It is unclear whether this procedure makes reference to art. 1D, but most likely, if set up for Syrian refugees, it considers claims under art. 1A.

171 In 2013, Greece assured the ECtHR that no forced returns take place to Syria, Somalia, the State of Palestine, Eritrea, Mauritania, and Myanmar, and that individuals from these countries are released after identification and registration. See 'UNHCR observations on the current asylum system in Greece', December 2014, fn 40.

172 European Council on Refugees and Exiles (ECRE) and European Legal Network on Asylum (ELENA), ‘Information Note on Syrian Asylum Seekers and Refugees in Europe’, November 2013, 79.

173 UNHCR, *Greece as a country of asylum: UNHCR observations on the current situation of asylum in Greece*. Geneva: UNHCR, 2014a, 28.

174 In 2018, seventy Palestinian nationals were recorded as legal residents in Portugal. See Portal of National Statistics in Portugal (Sefstat). Since 2011, Portugal has been receiving some asylum claims from Palestinians – fewer than five per year.

175 Some are known to have cancelled their applications for asylum before receiving a decision.

176 From 2010–2018, there have been 5,071 new asylum applications in Spain lodged by Palestinians. Numbers of Palestinian refugees and asylum seekers spiked in 2014 (645) and 2015 (818), 2016 (1,420), and 2017 (2,175). UNHCR Population Statistics, 8 March 2019.

177 UNHCR started collecting information on Palestinians in Spain in 2007.

178 Note that this doesn’t mean that they were recognized as such legally; that was only the way that some nationalities, not only Palestinians, were registered.

179 In the period 2010–2014, Spain has granted most Palestinians from the oPt asylum seeker refugee status under art. 1D (360 cases) and subsidiary protection to a smaller number not falling under art. 1D (seventy cases). Applicants who could not establish their Palestinian origins were generally granted subsidiary protection.

180 BADIL (n 6), 194.

181 The same law also adheres to the EU Directive on minimum standards on procedures in member states for granting and withdrawing refugee status (2005/85/EC).

182 For example, from 2015 to 2018, 145 cases were rejected based on this restrictive interpretation. In the same period, 235 cases were granted refugee status (most of whom were Palestinians from Syria), and 323 were granted subsidiary protection.

183 The Balkan route went from Turkey via Greece (and to a lesser part via Bulgaria) through Macedonia and Serbia via Hungary, and from autumn 2015 via Croatia and Slovenia, to Austria. See Weber, B., ‘The EU-Turkey refugee deal and the not quite closed Balkan route’, *Friedrich Ebert Stiftung, Dialogue Southeast Europe*, June 2017, 3.

184 There were nine asylum applications by Palestinians from 2010–2015. Four asylum seekers who applied in 2011 had their asylum claims registered with the Government but they were not interviewed as they abandoned their asylum claims and the asylum procedure was terminated. None of the four asylum seekers held any travel or identity documents. In total, eight Palestinians have been recognized as refugees in Bosnia, all under art. 1A(2).

185 From 2010 to November 2016, Croatia had registered 118 Palestinian applicants – all reportedly ‘citizens of Palestine’ – out of whom only one individual was granted subsidiary protection in 2015. However, at the time of writing, only two Palestinian asylum seekers remain in the country, will the others may have left the country before their asylum claims could be adjudicated and the whereabouts are unknown.

186 These numbers peaked in 2010 and 2011, when there were sixty-one and thirty-six applications, respectively.

187 In the period 2006–2016, Montenegro reports thirty-eight asylum applications submitted by Palestinians, including unaccompanied minors.

188 A few dozen Palestinian asylum seekers have been recorded as arriving in Macedonia since 2010, all from Syria. Numbers remain low, and between ten and forty have arrived every year from 2010 to 2014.

189 Reportedly 13,776 interceptions at the Serbian border up to 29 December in 2016; UNHCR, ‘Desperate Journeys: Refugees and migrants entering and crossing Europe via the Mediterranean and Western Balkans routes’, February 2017, 4.

190 Ibid.

191 UNHCR, ‘Refugees and migrants face high risks in winter weather in Europe’, UNHCR Press Briefing, Geneva, 13 February 2017.

192 See (n 182)–(n 189) above.

193 Bosnia represents a statistical exception as a few Palestinians had moved to Bosnia in 2001, 2005, and 2008, including a small number from Gaza and Iraq.

194 Available data suggests that as of the end of 2016, fifty-six Palestinian applicants applied for asylum, while seventeen Palestinians have been intercepted and returned to Greece from Albania (NB: some applicants might have applied for asylum in more than one Western Balkan country). Although no breakdown is available for the majority of these applicants’ origin, some cases of UNRWA registered Palestine refugees from Gaza could be identified.

195 Kosovo’s status is thus regulated under UNSC res. 1244 (1999). Art. 22 of the Constitution of Kosovo lists international human rights instruments that are directly applicable in the country and take precedence over national laws. While neither the CSR51 nor the Statelessness Conventions are among these, the UDHR, the ICCPR, and the CRC, which all contain relevant provisions in relation to asylum and statelessness, are.

196 Statelessness determination procedures were adopted in Montenegro with the 2018 Law on Foreigners.

197 Until 2007, UNHCR had recorded between twenty and eighty Palestinian refugee and asylum seeker populations in Turkey. Numbers have risen since then and reached 1,794 in 2017 (from 2012 to 2013 alone this figure jumped from 422 to 1,053). In 2018, 183 Palestinian International Protection applicants were registered by Turkish Authorities (DGMM) not under Temporary Protection, so their situation was not linked to the Syrian crisis.

198 According to UNHCR Global Report 2017, Annex – Table 1, there are 3,789,320 persons of concern in Turkey.

199 Clementi, A., ‘No way out: The second Nakba of Palestinian refugees from Syria escaping to Turkey’, *Al-Majdal*, Palestinian refugees from Syria: Ongoing Nakba, Ongoing Discrimination, 2.57 (2015).

200 Bidinger, S. et al., *Protecting Syrian refugees: Laws, policies, and global responsibility sharing*, Boston: Boston University School of Law, International Human Rights Clinic, 104.

201 Turkey: Law No. 6458 of 2013 on Foreigners and International Protection, 4 April 2013, sec. 4.

202 Turkey: Regulation No. 29153 on Temporary protection, October 2014. In accordance with art. 91 of the Law No. 6458 on Foreigners and International Protection of April 2013, provisional art. 1 of the Regulation indicates its personal scope; ‘The citizens of the Syrian Arab Republic, stateless persons and refugees who have arrived at or crossed our borders coming from Syrian Arab Republic as part of a mass influx or individually for temporary protection purposes due to the events that have taken place in Syrian Arab Republic since 28 April 2011 shall be covered under temporary protection, even if they have filed an

application for international protection. Individual applications for international protection shall not be processed during the implementation of temporary protection.'

203 Bidinger et al. (n 200), 111-12.

204 Applicants for international protection are assigned a province where they are expected to reside while their case is being considered. Applicants who were granted residence permits are allowed to reside anywhere in Turkey.

205 *EU-Turkey Refugee Agreement*, 18 March 2016. As part of the deal, among others, EU member states would take one Syrian refugee from Turkey for every Syrian returned from the Greek islands.

206 HRW was among the most critical voices against the EU-Turkey deal, particularly taking into consideration the protection needs of asylum seekers and refugees: 'Turkey ratified the 1951 Refugee Convention, but maintained an important geographic limitation that excludes any non-Europeans from full refugee status. Syrian asylum seekers can only benefit from a temporary protection regime in Turkey, allowing them to live there, but not granting them the convention's full protection. They continue to face many obstacles to registration, access to education, employment, and healthcare ... Asylum seekers from other countries, such as Iraq and Afghanistan, do not even have access to temporary protection status in Turkey.' HRW, 'Why the EU-Turkey Migration Deal is No Blueprint', 14 November 2016.

207 HRW, 'Turkey: Mass Deportations of Syrians', 22 March 2018.

208 HRW, 'Turkey Stops Registering Syrian Asylum Seekers New Arrivals Deported, Coerced Back to Syria', 16 July 2018.

209 Balchi, M., 'The potential loss of refugee status for Palestinian-Syrians in Afrin', Atlantic Council, 1 April 2019.

210 Ibid.

211 Hanafi (n 18); Shibliak (n 16).

212 There are no precise data available regarding Palestinians in these countries, including with regard to first countries of entry and last stay in non-European countries. Generally, Italy is the main entry point for asylum applicants in Switzerland, of which the large majority transited through Libya.

213 See, in general (with only brief mention to Palestinians), UNHCR, 'Mapping Statelessness in Austria', June 2017. See also Palestine International Institute, *The Palestinian Community in Austria*, Amman: Palestine International Institute, 2006.

214 Federal Administrative Court (Bundesverwaltungsgericht), *Applicant v Austrian Federal Office for Immigration and Asylum* [W146 2218133] 25 May 2019. Such jurisprudence was further reflected in an internal binding decree by the Austrian asylum authority.

215 Federal Administrative Court (Bundesverwaltungsgericht), 23 January 2018, Ra 2017/18/0274; Federal Constitutional Court (Bundesverfassungsgericht), 24 September 2018, E761/2018.

216 Austria: Federal Administrative Court (Bundesverwaltungsgericht), *Applicant v Austrian Federal Office for Immigration and Asylum* [W170 1420086-1], 24 March 2014. Particularly the court argued that 'the following criteria have to be fulfilled for such relocation to another area of UNRWA's operations to be reasonable: 1) The possibility to live there without any real risk to the right to life and freedom from torture and inhuman or degrading treatment or punishment as well as the imposition of the death penalty; 2) The absence of any threat to the life/physical integrity to the applicant as a civilian resulting from indiscriminate violence due to an armed conflict; 3) The possibility to satisfy one's

basic needs (in particular: nutrition, accommodation and if need be, immediately necessary health care) already in the phase of establishing oneself following the return; and 4) The possibility to reach that area upon return.'

217 Registration included 173 in 2016 and 652 in 2017; UNHCR Population Statistics, 8 March 2019.

218 The exclusive competence to determine statelessness lies within the civil courts. As such this does not provide for all the procedural safeguards and/or a residence permit, thus cannot be considered as a full-fledged statelessness determination procedure in line with international standards. Cf UNHCR, *Handbook on Protection of Stateless Persons under the 1954 Convention Relating to the Status of Stateless Persons*, Geneva, 2014. No temporary-stay permit is granted while the procedure is ongoing and the formal recognition of statelessness does not result in the automatic granting of a residence permit.

219 The Crown Prosecutors of Bruges and Antwerp argued that Palestinians cannot be automatically granted stateless status because Palestine is a state. The tribunals of first instance and the Court of Appeal in Ghent did not follow this approach. An appeal was lodged to the Court of Cassation, which found the reasoning of the Court of Appeal of Ghent contradictory, because it held on the one hand that the question whether Palestine is a state needs to be answered according to the principles of the Montevideo Convention, while on the other hand, stating that recognition by other states is determinative even though the Montevideo Convention excludes recognition as a criterion for statehood. After the ruling of the Court of Cassation [Cass. 23 January 2017, C.16.0325.N], the Courts of Appeal of Ghent [Ghent, 20 April 2017, 2015/AR/1954], Brussels [Ghent, 20 April 2017, 2015/AR/1954] and Antwerp [Ghent, 20 April 2017, 2015/AR/1954] have ruled that Palestine can be considered a state for the purposes of art. 1 of the 1954 Convention, and that the applicants did not succeed in demonstrating that they are not considered as nationals by this state. On the questions of Palestinian 'nationality' and 'citizenship', as well as of the enduring Palestinian statelessness see Chapter III, Section 3.2.2.

220 UNHCR recorded the following numbers of Palestinians (asylum seekers and refugees): 105 between 2001 and 2003, ninety-one in 2004, seventy-three in 2005, 105 in 2006, about 140–150 each year between 2007–2012, and then about 100 per year from 2013 till 2017, with a light spike in 2018 (122); UNHCR Population Statistics, 6 June 2019.

221 UNHCR Population Statistics, 6 June 2019.

222 UNHCR recorded ninety Palestinian refugees/asylum seekers between 2013–2016 [UNHCR Population Statistics, 6 June 2019]. According to government data, in the period 1 January to 31 July 2017, eleven Palestinian asylum seekers were granted refugee status and none was rejected.

223 UNHCR recorded the following numbers of Palestinians (asylum seekers and refugees): around fifty per year in 2009–2011, seventy-five in 2012, 113 in 2013, 164 in 2014, 2,019 in 2015, 194 in 2016 and 2017, respectively, and 201 in 2018; UNHCR Population Statistics, 6 June 2019. Most of them were granted either refugee status or subsidiary protection.

224 Until the 2013 Aliens Circular Law, art. 1D applied when the Palestinian can demonstrate to having fled because his/her 'personal safety was at serious risk' (namely faced 'persecution' in the sense of art. 1A(2) of CSR51 or 'serious harm' in the sense of art. 15 of the Qualification Directive), and can demonstrate that UNRWA is not able to fulfil its assistance and protection mandate; Aliens Circular C1/4.2.2 of 2013. Socio-economic difficulties are not considered to constitute this situation unless they reach the threshold of persecution of serious harm. A 'situation of serious insecurity' was deemed to exist with respect to an individual who had a well-founded fear of risk of execution, torture or inhuman or degrading treatment or punishment or serious and individual threats to life, as

referenced in art. 29(1)(b) of the Aliens Act. See District Court of the Hague, *LJN: BV1713, District Court of The Hague, seat location Amsterdam, AWB 11/2010*. For a more in-depth discussion see BADIL (n 6), 168–9. In 2019, the Ministry of Justice and Security issued a new Guidance Note [hereinafter ‘2019 Guidance Note’] with respect to Palestinians (Werkinstructie Palestijnen, 15 August 2019, WI 2019/12 Palestijnen) providing detailed guidance with respect to: nationality and statelessness; country of origin and country of habitual residence; documentation; UNRWA; and art. 1D. The Note explicitly states that the Netherlands follows Bolbol and El Kott with respect to the interpretation of art. 1D, rather than the interpretation advanced by UNHCR’s Guidelines on Article 1D, as the former are binding on all EU member states.

225 Netherlands, Decision of the State Secretary of Security and Justice of 23 September 2013, Issue WBV 2013/20, Amending the Aliens Act 2000. See also the 2019 Guidance Note (n 225) 24–25.

226 As of 2015 only two court decisions in the Netherlands have explicitly referred to El Kott, and they did not concern Palestinian applications. ‘Rather, those decisions established that the Victims Protection Programme of the International Criminal Court does not constitute “protection or assistance of a UN agency” and, thus, refugees under such protection do not fall under Article 1D’, BADIL (n 6), 170. In recent years, both the District Courts and the Council of State have issued judgments in cases concerning Palestinians from Gaza, focusing on whether the Dutch immigration authorities have sufficiently examined the credibility of the applicant’s claims for asylum (n 228). In most of the cases since early 2017, the courts rule that the immigration authorities sufficiently examined the credibility of the claim for asylum.

227 Administrative Jurisdiction Division Council of State (Netherlands) 19 February 2019 [ECLI:NL:RVS:2019:447 and ECLI:NL:RVS:2019:557].

228 According to UNHCR, asylum applications lodged by Palestinians in Switzerland were in the range of twenty per year in the 1990s, rising to an average of thirty per year in the 2000s, with a sharp increase between 2010–2012, in which they were 205, 218, and 257, respectively. The number of applications dropped as of 2013, for unknown reasons; UNHCR Population Statistics, 1 May 2019. In 2017 asylum applicants (mostly transited from Libya) to Switzerland arrived primarily through Italy. It is difficult to explain these fluctuations, among other reasons because available (governmental) statistics cannot be disaggregated.

229 BADIL (n 6), 205–10.

230 Switzerland is not bound by the jurisprudence of the CJEU (*El Kott/Bolbol*) and maintains that the actual ‘in receipt’ of UNRWA services is determinant for applicability of art. 1D.

231 Switzerland, Court judgment D-737/2016, 7 February 2017, Court judgment D-3550/2015, 13 April 2017.

232 Switzerland, Federal Administrative Tribunal, C-1873/2013, 9 May 2014.

233 Switzerland, Federal Law on Foreigners and Integration, no. 142.20, 1 March 2019.

234 For a historical account see Guzman-Marin, R., Zeraoui, Z., *Arab immigration in Mexico in the nineteenth and twentieth centuries: Assimilation and Arab heritage*, Austin, TX: Instituto Tecnológico de Monterrey and Augustine Press, 2003.

235 No reliable information could be gathered regarding Palestinian diaspora in Mexico and Ecuador, other than it may have followed Arab migration patterns in the region. A few

Palestinians reportedly arrived in Mexico between 2007 and 2018. Ecuador had about fifty Palestinian refugees and asylum seekers by 2018, but no further information is available.

236 The number of Palestinian refugees has increased since the start of 2008 in Argentina, Brazil, Canada, the Caribbean, Colombia, Costa Rica, and the US. There are approximately 555 Palestinian refugees/asylum seekers currently residing in Brazil, 1,283 (including resettled refugees) in Canada, approximately 340 in the US, and 119 in Chile (the vast majority of whom arrived in 2008). Smaller number are in Costa Rica (twenty-five), Peru (forty of whom twenty were recognized before 2009), Argentina (five), Paraguay (ten), Uruguay (one), and Colombia (one). Further details appear later in the chapter.

237 Brazil and Ecuador are parties to both the CSR51 and the 1967 Protocol, as well as the 1954 Convention and 1961 Convention. Canada is a party to both the CSR51 and the 1967 Protocol. It is a party to the 1961 Convention, although not to the 1954 Convention. Chile is a party to both the CSR51 and the 1967 Protocol. It is not a party to the 1954 Convention nor to the 1961 Convention. Mexico is not a party to either the CSR51 or the 1967 Protocol. It is a party to the 1954 Convention, but not the 1961 Convention. Venezuela and the US are not a party to the CSR51, but they are a party to the 1967 Protocol. They are also not a party to either the 1954 or 1961 Conventions.

238 The definition of refugees in the Cartagena Declaration includes ‘persons who have fled their country because their lives, safety or freedom have been threatened by *generalized violence*, foreign aggression, internal conflicts, *massive violation of human rights* or other *circumstances which have seriously disturbed public order*.’ Cartagena Declaration on Refugees, adopted by the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, Cartagena de Indias, Colombia, 22 November 1984’ [emphasis added].

239 This includes Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Paraguay, Perú, Uruguay, and Venezuela.

240 Mexico Declaration and Plan of Action to Strengthen International Protection of Refugees in Latin America, 16 November 2004.

241 UNHCR, ‘The Mexico Plan of Action to Strengthen International Protection of Refugees in Latin America: Main Achievements and Challenges During the Period 2005-2010’.

242 The Framework was adopted in Brasilia, on 3 December 2014, on the 30th anniversary of the Cartagena Declaration, by twenty-eight countries and three territories of Latin America and the Caribbean (Antigua and Barbuda, Argentina, the Bahamas, Barbados, Belize, Bolivia, Brazil, Cayman Islands, Chile, Colombia, Costa Rica, Cuba, Curaçao, El Salvador, Ecuador, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Lucia, Suriname, Trinidad and Tobago, Turks and Caicos Islands, Uruguay, and Venezuela).

243 UNHCR, ‘Latin America and the Caribbean adopt a common roadmap to address new displacement trends and end statelessness within the next decade’.

244 Further details provided in Section 3.4.

245 Under this term the section refers to South and Central America conjunctively.

246 See Chapter I, Section 2.1.

247 Baeza, C., ‘Palestinians in Latin America: Between assimilation and long-distance nationalism’, *Journal of Palestine Studies* 43.2 (2014); Raheb, V., Sisters and brothers in the

diaspora: Palestinian Christians in Latin America, in Raheb, V. (ed.), *Latin Americans with Palestinian roots*, Bethlehem: Diyar Publisher, 2012.

248 See Foroohar, M. 'Palestinians in Central America: From temporary emigrants to a permanent diaspora', *Journal of Palestine Studies* 40.3 (2011).

249 Chapter I, Section 2.2.

250 Chapter I (n 60)–(n 61). Qafisheh, M., 'Genesis of citizenship in Palestine and Israel: Palestinian nationality during the period 1917–1925', *Journal of the History of International Law* 11.1 (2009) 34–5.

251 Baeza attributes this to a new Christian merchant class emerging as a result of 'Holy Land tourism' from Europe to Palestine during this time, and this class expanding activities abroad, and also to a growing fear of discrimination against Christians in the context of Turkish nationalism. Baeza (n 247).

252 Ibid.

253 'Palestinians in Latin America unite "for Palestine"', *Al Jazeera*, 17 January 2017.

254 Mexico grants Palestinian refugees temporary residence permits for non-immigrants, renewable on an annual basis. Recognized refugees can opt for permanent residence and naturalization after a certain period of time. BADIL (n 6), 244.

255 The Humanitarian Resettlement Programme for extra-regional refugees built on the Solidarity Resettlement Programme that emerged from the Mexico Plan (n 240)–(n 241). The Programme, initially designed to help refugees within the region, was then extended extra-regionally so as to enhance the role of the region in international refugee response and protection. See Espinoza, V. M., 'Extra-regional refugee resettlement in South America: The Palestinian experience', *Forced Migration Review* 56 (2017) 47–9.

256 Most of them descend from those who arrived between 1900 and 1930.

257 Levaggi, A., The Palestinian community in South America: The diaspora that was not, in Cruset, M. E. (ed.), *Migration and new international actors: An old phenomenon seen with new eyes*, Newcastle upon Tyne: Cambridge Scholars Publishing, 2011, 39.

258 These camps were intended to be temporary but lasted years, during which the residents had to face harsh desert conditions, from hostile temperatures to difficult access to medical services. See discussion in Chapter IV.

259 This group of refugees had lived in Iraq for years but was stranded in Al Tanf refugee camp in bad conditions, as a result of the conflict after Hussein's deposition. The group consisted of twenty-nine families and two more Iraqi Palestinians arrived for family reunion, for a total of 118 Palestinians.

260 In 2015, sixty-five were naturalized after the required five years of residency.

261 BADIL (n 6), 225.

262 Schulz (n 96), 80. For a detailed history of Palestinians in Honduras, see González, N. L. S., *Dollar, dove, and eagle: One hundred years of Palestinian migration to Honduras*, Ann Arbor: University of Michigan Press, 1992.

263 Early resentment started as a class of rich Palestinians emerged, which was also linked to them often being labelled 'Turcos'. Schulz (n 96), 80.

264 Baeza reports that in the 1980s 'Palestinian industrialists strongly supported the country's "anti-subversion" policy' and 'Honduran businessmen of Palestinian descent [who

were] virulently anti-communist strongly supported the ousting of President Manuel Zelaya in 2009', Baeza (n 247), 63.

265 Hoyle, C., 'Interview: Latin America's dynamic Palestinian communities', *Maan News Agency*, 28 Nov. 2013; Baeza (n 247);

266 Originally, the Brazilian Solidarity Resettlement Program had been intended to benefit refugees from Latin American only, but Brazil opened it up for this case, which represented the biggest group of resettled individuals accepted under the programme. See also BADIL (n 6), 230.

267 Arantes Dominguez, J., Baeninger, R. 'Overview on Palestinians Resettlement in Brazil', Paper presented at the IUSSP 26th International Population Conference, Palais des Congrès, Marrakech, Morocco, 27 September–2 October 2009.

268 Brazil, Normative Resolution no. 25, 2017, published on 18 September 2017, 179.1, 43.

269 Federal Police, available at CONARE's website.

270 Beneficiaries of the programme were invited by sponsors with Argentinian nationality or residing in Argentina and the beneficiaries are persons with Syrian nationality and their families (regardless of their nationality) and persons of Palestinian origin if they were former residents in Syria and received assistance from UNRWA.

271 UNHCR, 'Argentina Factsheet', August 2018.

272 The initial phase, led by the Federal Government, includes orientation upon arrival and Spanish language classes. Responsibility of the second phase of this programme would rest with the provincial authorities.

273 According to the *Resolution Nos. 203° and 154°* of 25 July 2013, citizens from Palestine who wish to travel to Venezuela as tourist do not require entry visa. If any Palestinian citizen wishes to remain more than ninety days in Venezuela, or perform any type of lucrative activity, they must request a visa at Venezuelan diplomatic or consular mission before, which is the same process for any other foreign citizen.

274 Also, there are a number of Palestinian students in Venezuela on government scholarship programmes; 119 out of a planned 1,000 Palestinian students arrived in 2014 to study medicine, some from refugee camps; a few months later, approximately one-third dropped out of the programme and it is unclear whether the programme was continued.

275 Esthimer, M., 'Protecting the forcibly displaced: Latin America's evolving refugee and asylum framework', *Migration Policy Institute* 14 January 2016.

276 Ibid.

277 According to CONARE Venezuela(*Comisión Nacional para los Refugiados*), seven Palestinian persons were recognized as refugees in Venezuela between 2008 and 2015. In August 2018, four people of Palestinian origin tried to seek asylum upon arrival at Caracas airport but they were not allowed to enter due to 'lack of hotel reservation'. These persons were denied access to the asylum procedure and were returned to Turkey, their last country of transit.

278 BADIL (n 6), 249.

279 UNHCR recorded between 200-300 during 2001-2004, after which the number has increased each year up to 249 in 2005, 452 in 2006, up to reach an average of 600-700 per year between 2007-2015. A spike was registered from 2016 to 2018, with yearly picks of 810, 1,043, and 2,188, respectively.

280 These were part of a group of 230 refugees who fled Iraq that included Iranian Kurds and Iraqi asylum seekers. IRIN, 'The inside story on emergencies', 10 October 2006. Available at: <https://www.thenewhumanitarian.org/film/5014/irin-inside-story-emergencies>.

281 Bolongaro (n 75).

282 Ibid.

283 As of 2009, in Canada statistics there is a category for 'Palestinian Authority', which only allows to capture Palestinians from the oPt (Gaza Strip or West Bank).

284 *El-Bahisi v Canada (Minister of Employment and Immigration)*, 1994, 2 FCO, cit. in BADIL (n 6), 251 fn 1388.

285 The Federal Court concluded that, as UNRWA operates only in certain areas of the Middle East and can only offer protection there, any refugee from Palestine outside the area does not enjoy the assistance and may be considered for refugee status determination. Therefore, art. 1D is used as an exclusion clause; Canadian courts have not interpreted art. 1D as an inclusion clause and accordingly the provision is not applicable in Canada.

286 BADIL (n 6), 252.

287 Schulz (n 96) estimates that there were 200,000 in 2003, which is corroborated by most research. That number will have continued to grow. The US 2015 Census counted 118,622; this is likely a conservative estimate, probably justified by the fact that the US only started recording Palestinian as a nationality recently. See US Census Bureau, '2015 American Community Survey 1-Year Estimates - Total Ancestry Reported'. See also Bingham, A., de la Cruz, G. P., 'We the People of Arab Ancestry in the United States', Census 2000 Special Reports, US Census Bureau, March 2005.

288 Schulz (n 96), 43.

289 Those from Kuwait were generally well received and integrated.

290 Kurson, K., Palestinian Americans, in Lehman, J. (ed.), *The Gale encyclopedia of multicultural America*, 2000, 2. Also, BADIL (n 6), 260.

291 Kurson, 2000 (n 290).

292 Christison, K., 'The American experience: Palestinians in the US', *Journal of Palestine Studies* 18.4 (1989) 18-36.

293 UNHCR records a population of Palestinian refugees and asylum seekers numbering between ten and twenty per year until 2015, with a spike that year and in the following period: thirty-eight in 2016; sixty-one in 2017; eighty-one in 2018. On the 2009 resettlement see Jordan, M., 'US agrees to resettle Palestinians displaced by Iraq War', *The Wall Street Journal* 17 July 2009.

294 US Administration Executive Order 13769 of 1 February 2017, *Protecting the Nation from Foreign Terrorist Entry into the United States*, was an executive order by US President Donald J. Trump. Except for the extent to which it was blocked by various courts, it was in effect from 27 January 2017 until 16 March 2017, when it was superseded by Executive Order 13780.

295 BADIL (n 6), 264.

296 Ibid.

297 Ibid., 260-1.

298 Hamas, the Palestinian Liberation Front (PLF), Palestinian Islamic Jihad (PIJ), and the Popular Front for the Liberation of Palestine (PFLP) are considered 'terrorist organizations' in the US, meaning that individuals may be barred from asylum if they have associated with anyone in these organizations. See United States, 'Immigration and Nationality Act' (last

amended in February 2013), sec. 212(a)(3)(B)(vi), US Dept. of State, ‘Foreign Terrorist Organizations’ [accessed 22 January 2015], cit. in BADIL (n 6), 270, fnn 1507–8.

299 These figures include 3.5 million refugees, 1.9 million IDPs, and 1.4 million stateless persons and other persons of concern. The majority of refugees originate from Afghanistan and Myanmar. See UNHCR (Portal), Asia and the Pacific [accessed 1 July 2019].

300 These figures, including both refugees and asylum seekers, are based on UNHCR estimates, see UNHCR Population Statistics, last access 1 July 2019; not every Palestinian is registered with UNHCR in each country, so there are likely more, unregistered, Palestinians in the region. Most Palestinian refugees are male and adult. In addition to those reported as Palestinians (whose country of origin is indicated as Palestine), there are some other Palestinians whose country of origin (against which the refugee claim is assessed) is other than Palestine (mostly Syria and Iraq), for whom no additional statistics are available.

301 In 2016, there were seventeen Palestinians of concern in Sri Lanka, composed of fifteen refugees and two asylum seekers, and from 2011–2016 there have been twenty-six in total. Most of them come from Iraq, and some from Syria. Palestinians are registered as Palestinian nationals in Sri Lanka. UNHCR conducts refugee status determination (RSD) procedures and applies art. 1D to consider Palestinian’s asylum claims.

302 ‘Free visa’ means that a person is allowed to enter the country without a visa for a specified period of time. A ‘visa-upon-arrival’ means that the person needs a visa to enter but can apply for and receive the visa upon requesting at arrival.

303 Cf. Singapore Immigration and Checkpoint Authority (Portal) [accessed 20 May 2017].

304 Chesterman, S., ‘Asia’s ambivalence about international law and institutions: Past, present and future’, *European Journal of International Law* 27 (2017) 945–78.

305 There are 6.3 million refugees in Africa and 4.2 million refugees in Asia. See UNHCR Global Report 2017.

306 Out of twenty-nine states in the region, only ten have signed both the CSR51 and its Protocol: Azerbaijan, Cambodia, China, Japan, Kazakhstan, Korea (South), Kyrgyzstan, Philippines, Tajikistan, and Turkmenistan. Timor-Leste also acceded the CSR51 and its 1967 Protocol in 2003. Only five of these have incorporated the instruments into their domestic law: Japan, Kazakhstan, Korea (South), Kyrgyzstan, and Tajikistan. The authors observe that the explanation here stems from many former USRR countries had to ratify the main human rights instruments as a precondition to recognition by the international community.

307 Australia is a party to the CSR51, the 1967 Protocol, the 1954 Stateless Persons Convention (although not incorporated into domestic law), and the 1961 Statelessness Convention.

308 Philippines, *Department Circular No. 058 - Establishing the Refugees and Stateless Status Determination Procedure*, 18 October 2012; Cambodia, *Sub-Decree No. 224 of 2009, on Procedure for Recognition as a Refugee or Providing Asylum Rights to Foreigners in the Kingdom of Cambodia*, 17 December 2009.

309 They were adopted by the Asian-African Legal Consultative Organization (AALCO) in 1966 and reaffirmed in 1988 and 2001. The Bangkok Principles enlarge the grounds of persecution of the 1951 Convention to include colour, ethnic origin, and gender (art. 1(1)), and recognize the additional man-made causes of refugees flows of the 1969 OAU Convention as applying to anyone fleeing such conditions in their country of origin regardless of individual persecution (art. 1(2)). They further recognize as refugees ‘lawful dependents of a refugee’ (art. 1(4)). Another interesting addition of the Bangkok Principles

is the recognition of the right of return in art. 6(1), in addition to the corollary duty of States to receive any refugee wishing to return to their country of origin.

310 See section on South East Asia.

311 Contrary to art. 31 of the CSR51, which states that ‘States shall not impose penalties, on account of their illegal entry or presence, on refugees who, […] enter or are present in their territory without authorization […]. States shall not apply to the movements of such refugees’ restrictions other than those which are necessary.’ See, also, Goodwin-Gill, G., Article 31 of the 1951 Convention Relating to the Status of Refugees: non-penalization, detention, and protection, in Feller, E., Türk V., Nicholson, F., (eds.) *Refugee protection in international law: UNHCR’s global consultations on international protection*, Cambridge: Cambridge University Press, 2003.

312 According to Davis, this has created some impetus for refugees and asylum seekers in the region to seek protection outside the region in Europe, the US, and Australia. Davies, S. E., ‘The Asian rejection? International refugee law in Asia’, *Australian Journal of Politics & History* 52.4 (2006) 562–75.

313 The South East Asia region covered by UNHCR includes Bangladesh, Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand, East Timor, and Vietnam. This section only covers countries about which reliable information was available.

314 See UNHCR Population Statistics and UNHCR Indonesia, February 2016.

315 Between refugees and asylum seekers, UNHCR recorded the following Palestinians in Indonesia: 218 in 2012, 332 in 2013, 458 in 2014, 532 in 2015, 445 in 2016, 433 in 2017, and 435 in 2018 (the number of yearly arrivals of asylum seekers spiked between 2012 and 2016). Prior to 2012, a total of only sixty-six Palestinians were registered between 1998 and 2011; UNHCR Population Statistics, 1 July 2019.

316 See (n 315).

317 See section on Australia.

318 Preliminary research shows that, unlike other groups, e.g. Afghans, who could rely on ties with fellow nationals (e.g. pre-existing diaspora, established communities), Palestinians are very much left on their own.

319 UNHCR, Indonesia: Factsheet, February 2016.

320 Ibid.

321 Ibid.

322 An interview with a staff member of an NGO providing relief services to refugees revealed that the main challenge in a country like Indonesia, where no legal framework exists and the government does not assume full responsibility for the refugees, is that even private individuals will most likely refrain from helping refugees, as this could be seen as helping foreigners, normally perceived as a ‘security threat’, at the expenses of nationals.

323 Some improvements have been made when it comes to access to birth registration and the issuance of birth certificates. Related to this, the Directorate General of Population and Civil Registry has affirmed the interpretation of art. 4 of 2006 Citizenship Act that any children born in Indonesia from stateless parents are entitled to Indonesian citizenship.

324 Between refugees and asylum seekers, UNHCR recorded the following Palestinians in Malaysia: 757 in 2018, 717 in 2017, 597 in 2016, 640 in 2015, 448 in 2014, 375 in 2013,

379 in 2012, 356 in 2011, 283 in 2010, 200 in 2009, and 143 in 2007. Prior to that, a total of forty-three were registered in 2001–2006.

325 On Palestine refugee travel documents issued by Arab League member states, see Chapter IV, Section 2.1 and Chapter VI, Section 4.5.

326 Among those holding a Jordanian passport there could be West Bank residents whose Jordanian passport (renewable every two years) does not equate to a full national passport, hence the impossibility to reside in Jordan. See Kassim, A, 'The Palestinian: From hyphenated to integrated citizens', *Palestinian Yearbook of International Law* 3 (1996) 64–84.

327 Refugees pay fifty per cent of the foreigners' rate at public health facilities, which is highly unaffordable. While there was a hospitalization insurance available for refugees, the scheme is currently on hold and pending interest from providers to provide coverage due to very high claims rates with insufficient enrolment numbers.

328 UNHCR Malaysia Fact Sheet, August 2015.

329 Ibid.

330 About 250 Palestinians (refugees and asylum seekers) were recorded in 2001–2012, This figure rose to over 600 in 2013 and 2014, and dropped to around 560 in 2015 and 2016, and to 429 in 2017; UNHCR Population Statistics, 1 May 2019.

331 Royal Thai Embassy (Portal), General Visa Information [accessed 1 July 2019].

332 For an account on the Palestinian community in Australia, Tarik, H., *The Palestinians in Australia*, NSW Australian Palestinian Association, 1995.

333 Under the 'Australian resettlement programme' the number of Palestinians was 120 in 2011/12 (out of 1,460), 198 in 2012–2013 (out of 1,175), and twenty-four in 2013–2014 (out of 950) – reflecting the flow of the unrest in the Middle East. UNHCR recorded a total of 401 Palestinian visa applications in 2011–2016, including applications for Temporary Protection Visas (TPVs) and Safe Haven Enterprise Visas (SHEVs), programmes that began in 2015–2016. The overwhelming majority of applications for TPVs and SHEVs in 2015–2017 were made by people who arrived by boat in 2012–2013 and who had previously not been permitted to access the protection visa system: 179 of these were granted, and eighteen were refused.

334 A very significant decision by Australia's highest court involved the lawfulness of the detention of a Palestinian man. The court found that Australian law authorized his detention even though he was stateless and no country would accept him. See *Al-Kateb v Godwin* [2004] HCA 37.

335 In addition, Australia's policy of maritime interceptions and returns, which began in late 2013, has become a physical barrier in addition to a deterrent. UNHCR, 'UNHCR Position: Interception and turn back of boats carrying asylum-seekers', 23 July 2015.

336 Many have been subsequently resettled to the US through a deal between Australia and the US.

337 See, for example, the position of UNHCR: *Australia should not coerce vulnerable people to return to harm*, 4 September 2017, and, *Australia must secure solutions for refugees abandoned on Manus Island*, 22 December 2017. See also HRW, Australia (2018).

338 Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014, No. 135, 2014.

339 Originally, the Migration Act 1958 contained provisions corresponding to arts. 1A and 1F, and 33(2) of the 1951 Convention. Art. 1D was not included and accordingly not automatically applied.

340 For an overview, see Library of Congress (online), ‘Refugee Law and Policy: Australia’ [accessed 30 June 2019]

341 As a matter of policy, many asylum seekers who arrived in Australia by boat in 2012–2013 were not permitted to apply until 2015 or thereafter.

342 See (n 330).

343 Some came from the Al-Hol camp on the Iraq–Syria border.

344 This creates difficulties for ensuring Palestinians are appropriately captured in statistical information.

345 Australian courts interpreted that art. 1D contains an inclusion clause that would automatically confer refugee status upon Palestinian refugees; instead it interpreted it as an exclusion clause only. They further interpreted art. 1D to apply to Palestinian refugees as a group, and since ‘protection’ had ceased with the demise of UNCCP, Palestinian refugees are entitled to the ‘benefits of the Convention’. However, ‘benefits of the Convention’ are interpreted as the right to have refugee claims assessed under art. 1A(2). Minister for Immigration and Multicultural Affairs v. WABQ [2002] FCAFC 329 (Australia), para. 16 in particular. For a discussion about Australian jurisprudence on art. 1D, see Tribunal’s Guide to refugee law (which contains Australia’s position on art. 1D in ch. 7 (Exclusion)).

346 See Australian Department of Home Affairs’ *Refugee Law Guidelines*, of 14 February 2019, which complement the Administrative Appeal Tribunal Guide to Refugee Law, last amended 13 March 2019.

347 See Chapter II, Section 4.3.

348 UNCHR Population Statistics (1 July 2019).

349 In 2006, there were 102 Palestinians in New Zealand, including Palestinian refugees and members of the Palestinian diaspora. As of 2016, New Zealand has resettled a number of Palestinians. Ashton, A., ‘NZ is heaven on earth – refugee’, New Zealand Refugees and Migrants Portal, 26 January 2016.

350 Until 2015, art. 1D was applied to determine whether a Palestinian asylum seeker is entitled to apply for refugee status, which in the affirmative leads to the case being determined under art. 1A. Cf. BADIL (n 6), 28.

351 *AD (Palestine)* [2015], discussed in Chapter II, Section 4.3. Incidentally, in its latest Guidance Note on art. 1D (2017) UNHCR refers to *AD Palestine* to support its interpretation of the provision.

352 *AD (Palestine)* [2015], paras. 87–98, 101–17.

353 Ibid., para. 182.

354 Ibid., para. 136.

355 Ibid., paras. 151–2.

356 Between 1989 and 2003, there were twenty-one UNHCR recognized Palestinian refugees and two Palestinian asylum seekers in Pakistan. As of 31 December 2018, there were about a hundred between asylum seekers and refugees of Palestinian origin recognized by UNHCR.

357 These cards started to be issued in 2007. They were not issued in 2016–2018.

358 This includes preferential treatment vis-à-vis refugee children; birth registration and issuance of birth certificates are only provided to the children of Pakistani nationals or registered Afghan refugees.

359 As of 2016, there were 10 Palestinians refugees, humanitarian status holders or asylum seekers, according to official government data. There are isolated records of small numbers of Palestinians approaching UNHCR, including from Gaza and from Yarmouk camp in Syria.

360 Some information concerning the application of art. 1D in some of this country is in BADIL (n 6), 296–314.

361 As of end of January 2019, 288 Palestinians were registered with UNHCR in Sudan with many of them coming from Syria.

362 Those in West Africa include thirteen in Ghana, one in Senegal, nine in Nigeria, two in Togo, and four in Ivory Coast. Most of these Palestinians arrived in West African countries in 2014, after which there have been few arrivals. Guinea has had steadier – even though small – arrivals (two in 1993, one in 2001, one in 2008, one in 2011, five in 2012, five in 2013, six in 2014, two in 2016, six in 2017, and one in 2019). In 2019, thirty asylum seekers and refugees were registered with UNHCR in West Africa in Ghana, Togo, Ivory Coast, Liberia, and Guinea.

363 The only figures available are those offered by BADIL in 2015, dating from 2003, ten Palestinians had applied for asylum and only five were granted refugee status, while the other five were rejected. BADIL (n 6), 309.

364 UNTC, ‘Status of Treaties: Kenya and Convention Relating to the Status of Refugees’; UNTC, ‘Status of Treaties: Protocol Relating to the Status of Refugees.’ OAU, *Convention Governing the Specific Aspects of Refugee Problems in Africa* (‘OAU Convention’), 10 September 1969, 1001 U.N.T.S. 45.

365 BADIL (n 6), 301–5.

366 According to BADIL, the Refugees Act, 2006, of the State of Kenya, and the 1998 Refugees Act of the State of South Africa, amended in 2008 and 2010, do not incorporate art. 1D; hence, Palestinian refugee claims are assessed under art. 1A(2). BADIL (n 6), 303, 312.

367 Furthermore, Sudan is a signatory to the Casablanca Protocol, which grants Palestinians visa-free access to the country and generally considers Palestinian refugees as Convention refugees under art. 1D.

368 BADIL (n 6), xvii.

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Part Three Protection and Solutions, VI Focusing on Specific Rights

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(p. 325) VI Focusing on Specific Rights

Beyond what is required for immediate survival, refugees need respect for the other fundamental human rights to which all individuals are entitled without discrimination ... [E]very refugee needs a long term solution that will enable him or her to be integrated into society and to lead a normal life as a full-fledged member of a national community.

UNHCR Note on International Protection, para. 9, 1994

1. Introductory Remarks

Previous chapters have shown how politics have conditioned the enjoyment of the rights and entitlements that Palestinians, including refugees, have under international law. While a comprehensive overview of each of these rights is beyond the scope of this study, this chapter focuses on those that are most relevant to the majority of Palestinian refugees under the different bodies of law discussed in general terms in Chapter III, and taking into consideration the status and situations of vulnerability that Palestinian refugees experience in various countries.

Making a distinction common in the field of human rights, this chapter discusses the legal content and applicability to Palestinian refugees of *collective rights*, namely, rights that belong to a people as a 'collective', and *individual rights*, namely rights that belong to human beings as individuals.¹ Under the first category, Section 2 discusses the right of the Palestinian people to self-determination; while not being commonly dealt with in refugee studies, self-determination is of relevance for people who became refugees in the process of their country's acquisition of independence² (which in the Palestinian case was transformation through civil war and secession). This right, and the dispute surrounding it, are foundational to the experience of Palestinians, including the refugees, and to their protracted statelessness.

In the Palestinian case, along with the right to self-determination, the right of return is also commonly perceived as a 'collective right', because of its collective or 'national' dimension.³ (p. 326) Because of its status under international law,⁴ this study will discuss right of return as an individual right, supported by its significant collective dimension. This chapter discusses the individual rights to return (i.e. voluntary repatriation) and to compensation (Section 3); while not exclusively relevant to Palestinian refugees, these rights have a special meaning with respect to this group, as they relate to historic claims based on their original displacement and dispossession as well as on the various efforts to identify a just and lasting solution to their situation.⁵ The section reviews both the early articulation of the rights as applied to Palestinian refugees, as well as the impact of subsequent displacement and the progressive development of both rights.⁶

The chapter then examines individual rights that have become progressively more relevant to Palestinian refugees owing to the unattainability of the first set of individual rights (i.e. return and compensation) resulting in their protracted exile (Section 4). These include a number of socio-economic, political, and refugee-specific rights that have both historical and contemporary relevance to Palestinian refugees and involve a range of duty bearers. The enjoyment of some of these rights (including to education, employment, health, housing, and unity of the family) has been so critical, especially in the traditional host countries, that since the early days of Palestinian displacement they have been at the centre of United Nations' (UN) support for these refugees. Other rights have gained relevance

over time, including in situations of secondary displacement (freedom of movement, *non-refoulement*, and nationality). Some concluding observations will be offered in Section 5.

Read in conjunction with the overview of the general status and treatment of Palestinians in the diaspora, this chapter underscores the need for a comprehensive approach to ensure effective (and continuous) protection of the Palestinian refugees, in line with the provisions of Article 1D of the 1951 Convention.

2. The Collective Dimension of Palestinian Exile in Legal Terms: The Right to Self-determination

2.1 Origins of the right and relevance

Self-determination as the right of all peoples to 'freely determine their political status and freely pursue their economic, social, and cultural development'⁷, constitutes the collective right *par excellence*,⁸ and is an essential principle of contemporary international law.⁹ Its (p. 327) realization is considered an essential condition for the 'effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights'.¹⁰ In this respect, self-determination represents an existential question for all Palestinians, like the right to return for Palestinian refugees, engraved into their identity and collective consciousness. In the moving introduction to his book on Palestinian self-determination, the prominent Palestinian-American scholar Edward Said elaborates on his own role as an advocate for the Palestinian cause in the West, underlying how his role had been, first and foremost

to say that there was a Palestinian people and that, like all others, it had a history, a society, and, most important, a right to self-determination ... it was extremely difficult to make the effort, Golda Meir had set the general tone in 1969 by denying that we existed at all. The first task was to get a place – literally anywhere – to say that we did exist. It hardly needs pointing out, therefore, that speaking about the Palestinian issue in the United States has been a very different thing from discussing it in an Arab newspaper published in either Cairo or Beirut; it was even different and required more primitive rituals of assertion than what Hebrew-language papers in Israel were saying. In North America, one was compelled, almost humiliatingly, to keep to a testimonial level: I am Palestinian, we have a collective identity that while Arab is not only generally Arab but specifically Palestinian, and an attachment to the actual land of Palestine antedates Zionism and Israel. Therefore, so far as writing was concerned, the major goal was getting ourselves the right, or permission, to tell our story.¹¹

While nowadays it is widely accepted that the Palestinian people have the right to self-determination, as also expressed by the General Assembly,¹² controversy exists concerning its relevance to the Palestinians in 1948.¹³ Despite its centrality in a number of revolutions since the eighteenth century,¹⁴ the principle of self-determination has only recently had universal codification, mainly in connection with the post-Second World War decolonization process.

In 1918, in a famous speech to Congress setting out the terms for peace at the end of the First World War, US President Woodrow Wilson made self-determination a cardinal principle in governing territorial change,¹⁵ as well as a goal for post-First World War (p. 328) development.¹⁶ Yet, until the aftermath of the Second World War, the predominant view among Western jurists was that self-determination was a political principle rather than a legal norm,¹⁷ presented as a matter of policy and morality¹⁸ rather than constituting a 'positive rule of the Law of Nations'.¹⁹ In the post-First World War order, still heavily dominated by colonial powers and logic, it is no surprise that the principle of self-determination did not find a place in the Covenant of the League of Nations of 1919, except

in a qualified and geographically limited way.²⁰ Article 22 of the Covenant, which introduced the Mandates system,²¹ constituted a significant landmark for the self-determination of the peoples of the former Ottoman Empire, including the inhabitants of Palestine.²² Article 22 stipulates that:

Certain communities formerly belonging to the Turkish Empire have reached a stage of development where *their existence as independent nations can be provisionally recognized* subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone. The *wishes of these communities* must be a principal consideration in the selection of the Mandatory.²³

Without fully articulating the principle of self-determination, the Covenant gave direct expression to President Wilson's Fourteen Points and his vision for the Middle East.²⁴ The 'certain communities' in Article 22 were those then inhabiting Iraq, Lebanon, Palestine (including modern Jordan and Israel), and Syria. These were classified as 'Class A' Mandates. As Kattan argues, Article 22 provisionally recognized the independence of those territories and peoples as an exception compared to other administered territories.²⁵ As such it approximated to the right of self-determination that later evolved into a universal norm of international law.²⁶ Thus, when the British Mandate began, Palestine – like the other former Ottoman territories – constituted what Crawford calls 'a self-determination unit in international law',²⁷ where its inhabitants were provisionally entitled to exercise their right to (p. 329) self-determination, pending the completion of certain administrative steps under the auspices of the mandatory.²⁸

The Balfour Declaration made its way into the Mandate for Palestine, by stipulating that the Mandatory 'will secure the establishment of the Jewish national home' (Article 2), recognizing the 'Zionist Organization' as the Jewish agency that would act as an official public body for the purpose of advising and cooperating with the mandatory power on matters pertaining to land, Jewish immigration to Palestine (Article 4), and providing that the mandatory power would facilitate Jewish immigration and settlement 'while ensuring that the rights and position of *other sections of the population* are not prejudiced' (Article 6). The Mandate referred to the Arab indigenous communities of Palestine (which constituted ninety per cent of the population at the time) only by negative implication. This, in turn, reflects an original discrepancy between the ideals of the Mandate system and the content of the Palestine Mandate, which soon became apparent to British officials²⁹ and to Lord Balfour himself.³⁰ This original discrepancy and the intrinsic imbalance were never resolved.³¹ In fact, in a report issued on 3 September 1947, the United Nations Special Committee on Palestine (UNSCOP), which was set up to investigate the causes of the conflict in Palestine and propose a solution, effectively sealed the fate of the self-determination of the people of Palestine on the basis of this very discrepancy and imbalance.³² While acknowledging the principle of self-determination of the Class A Mandates,³³ UNSCOP indicated that in Palestine such right belonged to all the inhabitants, Jews and Arab, who, despite the political divisions, were both 'sufficiently advanced to govern themselves independently' and seek a mean to 'effectively express their national aspirations'.³⁴ The denial of such right to one group or the other, UNSCOP concluded, would translate into a 'grave injustice'.³⁵

(p. 330) Like other historical records relevant to the scope of this study, the UNSCOP report offers an insight into the thinking of the time,³⁶ when it appeared natural that a group consisting largely of recent immigrants from Europe³⁷ should have the same rights as a group present on the land for several millennia.³⁸ This recognition of an equal claim to self-determination for a largely non-indigenous group (i.e. as most of the Jews in Palestine by then were immigrants from Europe), constitutes the peculiarity of the Palestinian case compared to other Class A Mandate territories at the time.³⁹ On the other hand, the report

confirms that self-determination was a principle that had received recognition as of the First World War and extended to the Class A Mandates.⁴⁰ The Arab states had frequently denounced the British Mandate for violating Article 22 of the Covenant and invoked ‘the principle *and right* of national self-determination’ of the Palestinians on the ground that, *inter alia*, their wishes had not been a principal consideration of the Mandatory.⁴¹ Issues around self-determination were being given greater prominence at the international level, and in 1945 the UN Charter embraced ‘the principle of equal rights and self-determination of peoples’.⁴² Quigley argues that while not dismantling colonialism, the enunciation of such principle in the Charter indicates emerging limitations with respect to colonial powers,⁴³ not only in their administration of Class A Mandates but also in their administration of the colonies.⁴⁴ The Charter also (p. 331) outlawed the use of force against the territorial integrity or political independence of any state.⁴⁵ However, this provision could not be invoked by peoples directly; in the Westphalian logic that continued to dominate diplomacy at the time, only states and governments were recognized as juridical subjects enjoying international protection.

Eventually, the UNSCOP view prevailed in the General Assembly. In 1947, the UN Partition Plan provided for the ‘future government of Palestine’ to be realized through two contiguous independent states: ‘the Arab State and the Jewish State’.⁴⁶ It thus aimed to resolve the dispute over Palestine, and the conflicting Arab and Jewish peoples’ claims, by aligning statehood and nationhood.⁴⁷ In modern terms, this can be considered as a combination of *external* as well as *internal* self-determination.⁴⁸ The UN Partition Plan created the framework for the inhabitants of Palestine to exert sovereignty and enjoy independence, free from external control (external self-determination),⁴⁹ while also putting in motion the Mandate’s intended realization of the political processes of two functioning states (internal self-determination).⁵⁰ This approach did not lead to the intended peace and stability in Palestine.⁵¹ Similar approaches to prevent or resolve territorial disputes have proven to be fraught with difficulties in a variety of other contexts involving changes in territorial sovereignty as well.⁵²

The Arab states rejected the Partition Plan on the ground that it did not recognize Palestinians’ right of self-determination over the whole of Palestine. Others question (p. 332) the validity of this resolution (as not binding, or as *ultra vires*). Nonetheless, despite the circumscribed authority of the General Assembly to make law,⁵³ on matters concerning mandate and trusteeship⁵⁴ the Assembly has a special competence under the UN Charter that includes modification of the status of a mandate at the initiative of the administering authority.⁵⁵ In the case of the Partition Plan, this authority had been triggered by a ‘request of the mandatory Power’ and resulted in plans ‘for the solution of the problem’ upon the evacuation of the Mandatory Power from Palestine (initially planned for 1 August 1948).⁵⁶

Even though the Partition Plan was not immediately executed, it constitutes a crucial landmark in the history of the Question of Palestine and remains of contemporary relevance in connection with the current status of Palestinian statehood and related challenges. Resolution 181 confirms that the Palestinians had a right to ‘stay’ in Palestine as citizens of the Jewish or the Arab state respectively,⁵⁷ and set out the related political and economic processes.⁵⁸ This is in line with the conception of self-determination at the time, which could translate into full independence as well as into measures for the protection of an ethnic group as a minority within state boundaries.⁵⁹ Resolution 181 acknowledged that (p. 333) most of the inhabitants of Palestine were already ‘citizens’ – of Mandate Palestine – and were distinguished from other residents.⁶⁰

This section supports that the Palestinians’ right to self-determination in Palestine was internationally recognized and accepted even before the codification of the principle of self-determination as a universal right. It is worth noting that Israel committed to the principles of the UN Charter and also referred to resolution 181, in both its Declaration of Independence in 1948⁶¹ and its undertaking on the occasion of its acceptance as a member

of the UN in 1949.⁶² This is of relevance in consideration of the current state of affairs of Palestinian self-determination, discussed in the remainder of this section.⁶³

2.2 Codification of self-determination as a universal right: Relevance for Palestinian refugees

The anti-colonial struggle that spread globally in the late 1950s, in connection with the development of the human rights regime under the auspices of the UN, gave impetus to the codification of self-determination⁶⁴ as a universal right.⁶⁵ The *Declaration on the Granting of Independence to Colonial Countries and Peoples*, adopted by the General Assembly in 1960, established the right to self-determination as means by which peoples would be freed from colonial oppression. In its first two operative paragraphs, the General Assembly characterized the ‘subjection of peoples to alien subjugation, domination and exploitation’ as a ‘denial of fundamental human rights ...contrary to the [UN] Charter ... and ... an impediment to the promotion of World peace and co-operation’ and stated that ‘[a]ll peoples have the right to self-determination: by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development’.⁶⁶ However, the Declaration (p. 334) also reaffirmed the principle that self-determination claims cannot result in ‘the partial or total disruption of the national unity and the territorial integrity of a country [as this would be] incompatible with the purposes and principles of the [UN] Charter’.⁶⁷ In other words, the sovereignty and territorial integrity of existing states (and non-self-governing territories) constitute the limits of the right of self-determination.⁶⁸ This meant that borders imposed by colonial powers could not be challenged.⁶⁹ Further resolutions of the General Assembly contextualized the meaning of the right in relation to sovereignty over natural resources⁷⁰ and the inadmissibility of foreign intervention.⁷¹

This concept was further developed in the first treaty codification of the right of self-determination in 1966, which ‘universalized’ self-determination as a right. Common Article 1 of the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social, and Cultural Rights (ICESCR)⁷² reads as follows:

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter.

The provision expands the language and meaning of self-determination beyond the boundaries of freedom from colonial power – of which independence is not the only possible outcome – and elevates the free will of people to choose their political status and determine their cultural and socio-economic development to the status of right.⁷³ In this sense, the right to self-determination constitutes a foundational norm that informs and complements other general principles of international law, such as state sovereignty, the equality of states, and the equality of peoples within a state.⁷⁴ Alongside the political component of self-determination, the capacity of a people in a sovereign state to choose its own government and govern themselves without interference,⁷⁵ Common Article 1(2) articulates the economic component of self-determination, the collective right to enjoy natural wealth (p. 335) and resources, and enshrines permanent sovereignty over natural resources as

integral to the right to self-determination.⁷⁶ The various components of self-determination are intertwined.⁷⁷ For example, the realization of the political process that characterizes the right to self-determination depends on the existence of a number of elements, including the right to exist – demographically and territorially – as a people, within a given territory, where the people have permanent sovereignty over natural resources and the right to pursue their cultural, economic and social development.⁷⁸ Common Article 1(3), underscoring States' responsibility to realize and respect the right to self-determination, imposes specific obligations on states parties, not only in relation 'to their own peoples but vis-à-vis all peoples which have ... been deprived of the possibility of exercising their right to self-determination'.⁷⁹

On 24 October 1970, the General Assembly passed resolution 2625, adopting what is commonly referred to as the 'Friendly Relations Declaration'.⁸⁰ This resolution established that '[e]very State has the duty to refrain from any forcible action which deprives peoples [...] of their right to self-determination and freedom and independence'.⁸¹ In referring to the principle of self-determination, the General Assembly added that:

[t]he territory of a State shall not be the object of military occupation resulting from the use of force in contravention of the provisions of the Charter. The territory of a State shall not be the object of acquisition by another State resulting from the threat or use of force. No territorial acquisition resulting from the threat or use of force shall be recognized as legal.⁸²

Significantly, the General Assembly reaffirmed the prohibition of the acquisition of territories by conquest, which also constitutes an important pillar of the *jus ad bellum* articulated in Article 2(4) of the UN charter.⁸³ Given the legal character of the matters set out in the resolution, as well as the widespread practice leading to the consensual basis upon which the resolution was passed, it can be understood as an acceptance of the formation of customary international law on the matter. Among colonized nations, this declaration read as the definite call that colonialism would no longer be tolerated as a matter of (p. 336) international law, making self-determination the legitimization of anti-colonial liberation movements.⁸⁴

The adoption of the Declaration represented a ground-breaking development for the Palestinian political movement that had formed across the diaspora, largely as a reaction to the lack of effectiveness of official diplomacy and politics in resolving the Israeli – Palestinian dispute.⁸⁵ These movements had gradually strengthened collaboration under the auspices of the Palestine Liberation Organization (PLO). In 1967, the remainder of Mandatory Palestine's territory, including the part that was annexed by Jordan (the West Bank) and the part that was militarily administered by Egypt (the Gaza Strip) as of 1949, was occupied by Israel. The 1967 War and the subsequent occupation gave a further impetus to the political demands for self-determination that the PLO had started to articulate earlier in the decade.⁸⁶ These had already gained momentum in the wake of the global rise of national liberation movements opposing colonialism and foreign domination.⁸⁷ The Palestinian national movement that had been congregating around the PLO was active both in the refugee camps–organizing unions, providing services, and sourcing employment opportunities to the refugees – and in coordinating with other national liberation movements, such as those in Southern Africa.⁸⁸

In the late 1960s and 1970s, the General Assembly adopted numerous resolutions acknowledging Palestinians' rights 'as a people' under the UN Charter.⁸⁹ After resolution 181 of 1947, resolution 2649 of 30 November 1970 was the first to explicitly recognize the right of the Palestinian people to self-determination.⁹⁰ The resolution expressed particular concern for the peoples of Palestine and South Africa who, because of alien domination, were being denied the right to self-determination.⁹¹ In resolution 2672 C (XXV) of 8 December 1970, the General Assembly declared that recognition of Palestinians' equal

rights and self-determination was 'an indispensable element in the establishment of a just and lasting peace in the Middle East'.⁹² Like in 1947, Palestinian self-determination – in its external dimension, namely, independence from foreign domination – was envisaged as necessary for the resolution of the conflict in Palestine. However, other rights and claims were now to be considered in parallel, as they had their own significance, even if intertwined with the right to self-determination. The most important in this respect was the right to return.⁹³

(p. 337) In resolution 3089 of 7 December 1973, the General Assembly clarified the relationship (and boundaries) between the rights of self-determination and return in the Palestinian context, declaring that not only was the realization of the right to self-determination indispensable for peace but also:

that the enjoyment by the Palestine Arab refugees of their right to return to their homes and property ... is indispensable for the achievement of a just settlement of the refugee problem and for the exercise by the people of Palestine of its right to self-determination.⁹⁴

In 1974 the General Assembly restated the same principle but added the right to 'national independence and sovereignty' to the right of self-determination.⁹⁵ The reference to 'return' of the refugees 'to their homes and property' as separate from the right to self-determination, suggests that the General Assembly continued to envisage the return of the refugees to modern-day Israel as a separate issue from where Palestinian self-determination would be realized.⁹⁶ Meanwhile, none of the General Assembly resolutions on this matter addressed the specific question of where the Palestinian people would realize their self-determination.

In a subsequent resolution adopted in 1974, the General Assembly granted observer status to the PLO.⁹⁷ This marked an important development as it ensured representation of the Palestinian people within the UN. A further development, in 1975, was the General Assembly decision to establish the Committee on the Exercise of the Inalienable Rights of the Palestinian People – commonly known as the Palestinian Rights Committee⁹⁸ – which has worked ever since to maintain the profile of the question of Palestine within the UN.⁹⁹

2.3 Palestinian self-determination: Between occupation and statehood

In 1988, with the adoption of the Declaration of Independence, the PLO proclaimed the establishment of the 'State of Palestine' in a way that symbolized, de facto, a recognition of Israel.¹⁰⁰ While the text of the Declaration referred to self-determination 'in the land of Palestine with its capital at Jerusalem',¹⁰¹ a subsequent decision of the PLO expressed the movement's readiness to limit the exercise of the right to the occupied Palestinian territory (oPt), namely the Gaza Strip and the West Bank, including East Jerusalem.¹⁰² According to (p. 338) Quigley, that choice was not based on what the Palestinian people perceived to be just or legitimate in the exercise of their right to self-determination, but rather on the constraints imposed by the political reality.¹⁰³ That same year, the General Assembly affirmed 'the need to enable the Palestinian people to exercise their sovereignty *over their territory occupied since 1967*'.¹⁰⁴

The 1988 acceptance of the Gaza Strip and the West Bank as the territory for Palestinian self-determination was formalized in 1993 with the mutual recognition of Israel and the PLO and the signing of the Declaration of Principles on Interim Self Government (DOP).¹⁰⁵ The DOP reflected acceptance of UN Security Council resolutions 242 of 1967 and 338 of 1973, concerning the Israeli occupation of the West Bank and Gaza Strip, Golan and the Sinai peninsula in 1967, and the Yom Kippur War of 1973.¹⁰⁶ Resolution 242, considered a landmark in the Israeli – Palestinian conflict, endorses the principle of 'inadmissibility of the acquisition of territory by war' and calls for the withdrawal of Israeli armed forces from

territories occupied in the June 1967 war.¹⁰⁷ The PLO's acceptance of resolution 242 represented an important concession with respect to the allocation of the land of historic Palestine; the territory Israel had occupied in 1967 corresponds to twenty-two per cent of the territory of Mandate Palestine, a significant reduction compared to the forty-five per cent that the Partition Plan had allotted to the prospected Arab state in 1947. There are inherent problems in resolution 242,¹⁰⁸ but the main reason it has not been implemented is a lack of political will.¹⁰⁹

After the signing of the DOP, the newly created Palestinian Authority (PA)¹¹⁰ began to exert a number of state functions in circumscribed areas of the West Bank and Gaza,¹¹¹ including limited legislative, executive, and judiciary functions, deploying security services, running schools, and maintaining relationships with foreign actors and development cooperation agencies, as well as holding legislative and municipal elections.¹¹² Some of these functions could be characterized as manifestations of internal self-determination, taking into (p. 339) account the 'abnormality' of the occupation, which prevents the right to self-determination (independence from foreign domination) from materializing until the process of transfer of authority envisaged under the Oslo Accords is fully finalized.

Following the admission by the UN General Assembly of Palestine as non-member observer state in 2012,¹¹³ the emergence of a State of Palestine has become more apparent.¹¹⁴ At present recognized by 137 states, the State of Palestine has embassies and consular services through its missions and delegations in 133 states; it is also admitted to international fora and organizations and has accessed a number of international treaties.¹¹⁵ However, the ongoing occupation remains the overriding constraint to the realization of full Palestinian sovereignty. Most of the measures taken by Israel in the oPt since the early days of the occupation – e.g. the incorporation of the Arab part of Jerusalem, appropriation of Palestinian (including refugee) property, expansion of illegal settlements, construction of the Wall (which has fragmented and incorporated portions of the West Bank)¹¹⁶ – have created 'facts on the ground' that, coupled with the Israeli control over the lives of the Palestinian population, are in direct conflict with self-determination in the meaning of UNGA resolution 2625 (particularly the external dimension).¹¹⁷ This is evident in recent statements by Israeli politicians and policies, such as those encouraging international recognition of Jerusalem as the 'undivided capital of the state of Israel'.¹¹⁸ Natural resources in the oPt, including agricultural land, mineral resources and water, are largely under Israeli control and used for purposes often conflicting with international law, resulting in exploitation, endangerment, and depletion of Palestinian natural endowments.¹¹⁹ This comes at a dramatic cost to Palestinian livelihoods, economy, and capacity to develop as a people in the meaning of common Article 1 of ICCPR and ICESCR.¹²⁰

In 2004 the ICJ, in its Advisory Opinion on the Wall, confirmed that Israel was in breach of the obligation to respect the right of the Palestinian people to self-determination and certain of its obligations under international humanitarian law as the occupying Power.¹²¹ (p. 340) The court noted that these were obligations *erga omnes*,¹²² requiring all states not to render aid or assistance in maintaining the illegal situation created by the Wall and its associated regime, not to recognize it, and to work to bring it to an end.¹²³ This was the first occasion in which an international court adjudicated questions directly related to the situation in Palestine and set out with clarity the consequences of the violation of *erga omnes* norms in such case.¹²⁴

In practice, the continuing encroachment of the Israeli occupation onto West Bank and East Jerusalem land, and the progressive isolation and separate treatment of the Gaza Strip, with the increasingly apparent renunciation (by Israel) of its commitments to respect the territorial unity of the West Bank and Gaza Strip as stemming from the Oslo Accords, have meant that the prospects for Palestinian self-determination through an autonomous state, contiguous to Israel, have been fading.¹²⁵ Hence, while the exercise of some state functions

and the international recognition of Palestinian statehood are important legal and political developments, they do not appear to advance the material realization of the right to self-determination of the Palestinian people. First, independence is a necessary element for the exercise of external self-determination.¹²⁶ Because of the occupation, the PA has been unable to function as a fully independent political entity, and to accomplish many of the tasks usually associated with the exercise of self-determination.¹²⁷ Second, under international law, including General Assembly resolutions, the right to self-determination is vested with the Palestinian people as a whole, including those who were uprooted in 1948 and 1967.¹²⁸ This includes millions of Palestinians and refugees, most of them living outside the oPt, who, as Karma Nabulsi observes, not only as individuals but also 'as a collective ... have the right to shape their future and be represented as such'.¹²⁹ The Oslo (p. 341) Accords of 1993, 1994, and 1995, and the administrative and political fragmentation they initiated, appear to have enhanced the separation of Palestinians in the West Bank and Gaza, and of their interests, both from each other and from those in the diaspora.

Incidentally, those refugees who might have accepted some sacrifice of their inalienable rights (e.g. the right of return to modern-day Israel) in exchange for their own state, came to understand the extent of the obstacles in the way of the creation of that state. Refugees have progressively resented the shift of international focus from the PLO, as the advocate of the entire Palestinian people (including, and primarily, the diaspora), to the Palestinian Authority (the PLO's executive arm), and, later, the Government of Palestine (GOP), which was increasingly perceived as focused on self-determination and its own power and functions in the oPt at the expense of the aspirations of the refugees.¹³⁰ Consequently, for many Palestinians, participation and representation in the advancement of claims for their inalienable rights have become almost as important as the rights themselves.¹³¹ Attempts at meeting these expectations – e.g. by reforming the PLO or registering the Palestinian diaspora so as to proceed to new PNC elections, as the refugees demand, or formalizing the bond between the Palestinian state and all Palestinians worldwide through an inclusive nationality law¹³² – have not gone far until now. It is difficult to envisage the practical impact of any of these initiatives while there continues to be no end in sight to the Israeli occupation on Palestinian territory, an issue that returns to the first issue, in an endless, and vicious, cycle.

In conclusion, despite the long-recognized relevance of the right to self-determination for the Palestinians, the numerous endorsements by the General Assembly, the expectations raised by the proclamation of independence and successive agreements between Israel and the PLO, and widespread recognition of Palestinian statehood, the full realization of the right to self-determination of the Palestinian people, both politically and economically, and in its external and internal dimensions, remains elusive. Nonetheless, while an independent, fully sovereign, and viable Palestinian state would provide the Palestinians as a people with a new homeland and set an important milestone for the enjoyment of their national sense of identity, its creation would not, by itself, realize all the individual rights of the refugees, including of return, restitution where possible, and compensation. As this study discusses in the final chapter – which elaborates on the political implications of the realization of the Palestinian refugees' rights examined here –right to self-determination (as a collective right) and right of return (as an individual right) in particular, are not mutually exclusive; hence, should a fully independent Palestinian State eventually come to existence in the oPt, this would not, in legal terms, automatically relinquish (or undermine) other rights of the refugees.¹³³

(p. 342) 3. Return and Compensation: Individual Rights Associated with Historic Claims

3.1 Overview

As discussed in Chapter I, the displacement of approximately 750,000 Palestine Arabs, citizens of British Mandate Palestine, was compounded by various acts of the provisional government of the State of Israel: first, a war-time decision to prevent the physical repatriation of the Arab refugees;¹³⁴ second, the destruction of the majority of the villages that were still standing after the refugees had been expelled and/or fled;¹³⁵ third, the legal separation of these refugees from their 'homes' and possession.¹³⁶ It is estimated that between 1947 and 1949 Palestinians left behind a considerable amount of private, public, and collectively owned land, corresponding to ninety-three per cent of Israel's total land area, in addition to other immovable and movable assets, such as bank holdings, buildings, communal assets, as well as private and public infrastructure.¹³⁷ Most of the Arab properties left standing were used to accommodate Jewish immigrants and refugees. As discussed in Chapter I (n 175)–(n 178), the Israeli Custodian of Absentee Property, which took control of Palestinian Arab lands and movable in immovable properties as of 1948 (and in 1967), aimed to sever all ties between any displaced Palestinian and their possessions. Yet, many of the refugees still retain keys, title deeds, photographs, and other documentary evidence proving ties to their original homes or lands. The Palestinian refugee situation is one of the world's largest unresolved set of land and property claims.¹³⁸

The question of the return and compensation of the 1948 refugees (which by default encompasses those displaced in 1967) has received ample attention in the literature.¹³⁹ The right to return, in particular, is a topic fraught with political sensitivities, as it touches (p. 343) on a matter that is perceived as equally existential by Palestinians and Israelis. For many Palestinians, return is the only solution able to adequately redress the injustice of the expulsion and dispossession,¹⁴⁰ to remove the 'stigma of second-class citizenship' imposed on them through exile,¹⁴¹ and to reaffirm their existence 'as a people', a status often denied by successive Israeli governments (and some Western governments) throughout the twentieth century.¹⁴² For many Israelis, the return of those displaced between 1947 and 1949, and their descendants, is often portrayed as a threat of an Arab majority diluting the Jewish character of the State of Israel and, by extension, of its survival as an ethnic majority. The right of return is therefore a Gordian knot that intimately links the two peoples via their past, present, and future.¹⁴³ Because of the passions around the issue, political considerations tend to dominate the legal arguments, with claims crafted to support or serve the interest of one party against the other.

Those who claim that Palestinians have a right to return to their or their families' original homes, and to reclaim the property and possessions which were theirs or their families' in 1948, ground their claims in UN General Assembly resolution 194(III) of 1948 (hereinafter 'resolution 194')¹⁴⁴ as well as the law governing state secession and prohibiting denationalization of a population, human rights norms, and precedent in cases of mass displacement generated by conflicts.¹⁴⁵ Most of these arguments are referred to below.¹⁴⁶ In contrast, those who challenge the right of Palestinian refugees to return, do so on various grounds, spanning from contesting the facts – and even arguing that Palestinian Arabs do not have a right to return because they left their homes on their own accord and not under coercion¹⁴⁷ – to disputing the right's legal (p. 344) foundations.¹⁴⁸ Those who challenge the applicability of the 'right to return' to the Palestinian's original displacement, argue that resolution 194 is not binding and, in addition, that the right to return had neither been codified nor reached the status of a customary norm in 1948.¹⁴⁹ Some also argue that what happened to the Palestinian refugees in 1948 found support in the state practice at the time with respect to 'population exchange', i.e. the transfers of populations from one state to another in the aftermath of the First World War.¹⁵⁰ They note that, following the Arab-Israeli war in 1948, some Arab countries, like Iraq, forced their Jewish population to leave the country.¹⁵¹ While population exchanges or transfers were not uncommon until the Second World War,¹⁵² such an option—coupled with land swaps—had been unsuccessfully

proposed in Palestine (i.e. candidly rejected).¹⁵³ However, Palestinian displacement in 1948 was not comparable to such population exchanges. Unlike the population exchanges of the interwar period, no agreement sanctioning a population transfer was ever signed between the parties in the Arab-Israeli conflict, and no one ever agreed to the transfer of Palestinian Arabs from Palestine.¹⁵⁴ In the case of Palestine, while the Peel Commission of 1936 had contemplated such an option, this was ruled out by General Assembly resolution 181, which instead offered the choice between self-determination in a majority state or, alternatively, minority rights in the other state. In fact, as discussed earlier, the concept of population exchanges as they had evolved during the *interbellum* typically offered the option to the 'exchanged persons' to stay as minority citizens or leave and become another state's ethnic majority; nationality was generally offered by the minority treaties of the interwar period.¹⁵⁵ Furthermore, in 1948 the General Assembly did not sanction a population exchange in Palestine, but rather took a firm stand against Palestinian displacement by calling for the return of the refugees.¹⁵⁶

Others suggest that the situation of Palestinian refugees should be viewed as a question of self-determination rather than the narrower question as to whether there exists a right to return.¹⁵⁷ This last argument appears to neglect the General Assembly's recognition (p. 345) of both the right to self-determination and to return as separate, inalienable rights of the Palestinians.¹⁵⁸

This study finds that most of the literature contesting the existence of the right of return of the Palestinians in 1948 has germinated in the context of the political process between Israel and the Palestinians, which brought the possible political implications of such right to the limelight. Given the sensitivity and complexity of the topic, the remainder of this section attempts to offer an objective legal analysis of the questions of both return and compensation, which are intimately connected in the case of the Palestinian refugees. It is largely based on a historical and contextual reading of relevant international norms, including as interpreted by authoritative international bodies (e.g. the UNCCP Secretariat or the Human Rights Committee). It will look first at the origins, drafting history, and legal significance of resolution 194 (Section 3.2), and then discuss the status of the right of return and compensation in 1948 (Section 3.3). Section 3.4 covers the subsequent normative development of the rights against the backdrop of the continuing displacement of the Palestinian refugees, and Section 3.5 discusses the contemporary challenges to the implementation of those rights. Practical implications of restitution and compensation in the context of the quest for just and durable solutions are examined in the final chapter of the book.¹⁵⁹

3.2 Origin of the question of return and compensation of Palestinian refugees

3.2.1 The report of the UN Mediator for Palestine

The first comprehensive official account of the 1947–1948 Palestinian displacement was offered by Count Folke Bernadotte, the United Nations Mediator for Palestine, in his Progress Report to the United Nations of 16 September 1948 ('Mediator's report').¹⁶⁰ The report describes the Mediator's efforts towards obtaining the agreement of the Provisional Government of Israel for the phased return of the refugees who fled their homes because of war conditions in Jewish-controlled areas of Palestine.¹⁶¹ Early attempts at finding a diplomatic solution had had no effect on the firm stance of the Provisional Government of Israel against the return of the refugees.¹⁶² The report underscored that:

(p. 346)

[t]he *right* of innocent people, uprooted from their homes by the present terror and ravages of war, to return to their homes, should be *affirmed and made effective*, with assurance of adequate compensation for the property of those who may choose not to return.¹⁶³

Reference to the ‘right’ of the refugees to return and be adequately compensated is recurrent in the report,¹⁶⁴ ‘notwithstanding … the views expressed by the Provisional Government of Israel’.¹⁶⁵ The right of return was considered among the ‘basic premises’ for the settlement of the conflict.¹⁶⁶ This often-cited passage of the Mediator’s report continues to resonate for its actuality:

No settlement can be just and complete if recognition is not accorded to the *right* of the Arab refugee to return to the home from which he has been dislodged by the *hazards and strategy* of the armed conflict between Arabs and Jews in Palestine … The exodus of Palestinian Arabs resulted from panic created by fighting in their communities, by rumours concerning real or alleged acts of terrorism, or expulsion. 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* while Jewish immigrants flow into Palestine, and, indeed, at least offer the threat of permanent replacement of the Arab refugees who have been rooted in the land for centuries.¹⁶⁷

Notably, the report specifically refers to the ‘right’ to return and receive adequate compensation, while on other matters it makes reference to less precise legal concepts, e.g. ‘justice’, ‘equity’, and ‘principle[s].¹⁶⁸ Also, the Mediator recommended that those rights be *affirmed* rather than *established*, as a reflection of the prevailing consensus (*opinio juris*) with respect to the applicable norms of international law.

3.2.2 Resolution 194(III) of 1948

The General Assembly accepted Bernadotte’s recommendations by adopting resolution 194,¹⁶⁹ aiming to deal comprehensively with the ongoing conflict in Palestine, including (p. 347) through the establishment of the UN Conciliation Commission for Palestine (UNCCP). Resolution 194 can be seen as complementing the UN Partition Plan, constituting a further attempt to achieve a peaceful resolution of the conflict in former Mandate Palestine by adopting a set of new parameters as well as initiating a renewed mediation effort by three influential UN member states.¹⁷⁰ On the refugee issue, following Israel’s refusal to comply with the Mediator’s request to allow the refugees to return to their homes, in paragraph 11 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 the loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible.

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

Paragraph 11 of resolution 194 contains some differences compared to the language in the UN Mediator's report. First, it added the phrase 'to live at peace with their neighbours', namely Jewish Israelis.¹⁷¹ Historical records suggest that this addition intended to underscore the need to create the conditions for a safe return of the refugees in Israel which, as sovereign state, would be responsible for maintaining conditions of peace, i.e. to protect all persons under its jurisdiction from any elements seeking to disrupt peace.¹⁷² Second, reference to the time of return was changed from 'earliest possible date' to 'earliest practicable date'.¹⁷³ More importantly, the reference to the 'right' of the refugees to return to their homes, was not reproduced as such in paragraph 11. Some commentators interpret this omission as an indication of the merely hortatory nature of the reference to 'return' in resolution 194, rather than creating a binding legal principle.¹⁷⁴ This interpretation does (p. 348) not appear accurate in light of the circumstances under which resolution 194 was adopted, as well as the General Assembly's powers (in general) and intention (in this specific case) to create 'rights', as documented by historical records.

First, resolution 194 was written and adopted in critical circumstances, which explains the choice of words. On 17 September 1948, a day after he had submitted his progress report, Count Bernadotte was assassinated by a member of the Zionist paramilitary group Lehi, which opposed his mediation efforts. As truces failed, military operations and mass evacuations carried out by Israeli forces caused the numbers of displaced Palestinians to grow. Prospects for peace and an immediate solution were uncertain. Both Arab and Israeli delegates' divergent positions, along with increasing pressure from Jewish groups with respect to the role of the US administration, were threatening to erode support for Bernadotte's report. In this volatile context, most of the delegates involved in the drafting of resolution 194 were concerned that lengthy discussion on the text would delay the implementation of the Mediator's recommendations, including a peaceful settlement and the refugees' return. Rather than drafting a bill of rights for the refugees, the drafters aimed to provide a roadmap towards a peaceful settlement of the Israeli-Palestinian conflict. As such, the drafters had to deal comprehensively with a range of sensitive issues, such as the demilitarization of Jerusalem and surrounding areas, the establishment and management of international zones of jurisdiction in and around Jerusalem, the protection of and access to Holy Places, refugees' repatriation, reintegration, and compensation, and the establishment and functioning of a Conciliation Commission mandated to negotiate peace. In contrast to current debates, which place resolution 194 at the centre of the arguments around the right of return, the drafters disagreed on some specific language in Bernadotte's report, but not with its overall assessment, vision for the future in Palestine, and the content of its recommendations.¹⁷⁵ They held different views but had a common goal: to help the parties settle their outstanding differences.¹⁷⁶ Delegates who participated in the drafting process acknowledged that, while the final text was 'not perfect', it 'offered the best prospect of leading to a further stage in the solution of the problem'.¹⁷⁷ In the words of the British representative, the final text of resolution 194 was:

the best answer which many brains and good intentions could produce, and which those who had worked upon it thought most likely to secure adequate authority. What it lacked in precision [...] it would command by its authority, the authority of the United Nations.¹⁷⁸

Second, as an emanation of the General Assembly, resolution 194 should be considered having mandatory effect for three main, interconnected, reasons. Primarily, as discussed earlier, even though the General Assembly is not a 'law-making body' and some challenge its power to 'create' rights *per se*,¹⁷⁹ its decisions and recommendations can have declaratory (p. 349) and normative character, as well as 'empowering effects' that are binding.¹⁸⁰ The latter is the case concerning resolutions setting up or terminating the mandate of UN bodies.¹⁸¹ In this sense, the mandate with which General Assembly

resolution 194 entrusted the UNCCP (and similar mandates of other UN mechanisms operating in Palestine before and after the UNCCP), were certainly empowering and binding for the mandated organizations and those engaging with them. This included the task to facilitate the return of the refugees (or the resettlement of those unwilling to return). Also, General Assembly decisions can have normative value when determining the facts that may lead to legal effects,¹⁸² or when providing ‘evidence important for establishing the existence of a rule or the emergence of an *opinio juris*'.¹⁸³ In such cases, to establish ‘whether this is true of a given General Assembly resolution, it is necessary to look at its content and the conditions of its adoption; it is also necessary to see whether an *opinio juris* exists as to its normative character'.¹⁸⁴ Finally, the General Assembly has a special competence over former Mandate territories (such as Palestine) under the UN Charter.¹⁸⁵ In this context, it is also worth considering that resolution 194 cannot be considered in isolation: it came on the heels of the partition plan, after the report of the UN mediator, and the displacement of people who had the status of protected persons, and all this has to be viewed in the context of the UN’s special responsibility for the territory.

Third, resolution 194 is one of the most widely reaffirmed resolutions in UN history.¹⁸⁶ Resolutions that have been reaffirmed hundreds of times, authoritative legal practitioners argue, confirm long-established international consensus and influencing state practice, and – as is the case with respect to resolution 194 – acquire a legal character.¹⁸⁷ Not only has resolution 194 been repeatedly reaffirmed over many years, but also it has served as a precedent for operationalizing rights through international responses to other refugee crises, offsetting the now-accepted priorities for durable solutions (of which the first two are voluntary repatriation and local integration in the countries of refuge), and the need for economic and social rehabilitation of the refugees and, in this and other specific cases, the payment of compensation, both *in lieu* of restitution and for damages and losses suffered.¹⁸⁸

(p. 350) Fourth, paragraph 11 refers to three distinct and interrelated rights: return, restitution, and compensation. In fact, restitution is not explicit but can be derived from the reference to ‘homes’, which indicates abodes and original possessions of the refugees. These apply to two categories of displaced Palestinians: those who left or were expelled from the territory of what became the State of Israel, and those who were internally displaced within it,¹⁸⁹ and their respective descendants.¹⁹⁰ The drafting history of resolution 194 and a number of working documents prepared by the UNCCP Secretariat, confirm that rather than create rights, the drafters sought to apply relevant *existing* law.¹⁹¹ In light of the applicable law, the General Assembly stipulated that refugees had the ‘right ... to exercise a free choice’ between repatriation and compensation for damages suffered, on the one hand, or no return and compensation for all property left behind, on the other.¹⁹² Repatriation had to be voluntary. This had two corollaries: (1) the choice had to be made ‘in full knowledge of the alternative conditions involved both on the physical and the political plan’, namely, that if they opted to return they would live in Israel and Israel alone would be responsible for law and order (the principle that voluntary repatriation must be an informed choice now underpins all refugee repatriations);¹⁹³ and (2) a safe place had to be found for those not ‘wish[ing] to return’.¹⁹⁴ It was noted that Syria and Jordan had expressed their ‘readiness to resettle those refugees not wishing to return to Israel’.¹⁹⁵ Official records show that, while the General Assembly was open to considering Israeli security concerns,¹⁹⁶ such concerns could not prevail over the right of return of the refugees.¹⁹⁷ In the General Assembly’s initial view, the question was not *whether* the refugees should be repatriated, but rather *when* they should be allowed to do so. In the view of the UNCCP Secretariat, the signing of the four Armistice Agreements ‘indisputably’ indicated that the time had come for the refugees to return to their homes.¹⁹⁸ With respect to the question of *to where* the return should be, the General Assembly referred to ‘the home of each refugee, i.e. his house or lodging and not his homeland’.¹⁹⁹ This is confirmed by the fact that two amendments using the term ‘the areas from which they have come’ were rejected.²⁰⁰ Further

confirmation can be deduced (p. 351) from the provisions for compensation: the refugees not returning are to be compensated for their property, while those returning are to be compensated only for losses and damages, so the latter must be expected to reoccupy their homes.²⁰¹ Israel instead ‘reserved the right to resettle any returning refugees in places other than their original homes and according to Government plans’.²⁰²

Resolution 194 was not the first time the General Assembly had considered the question of compensation. In 1947, resolution 181 had envisaged compensation for properties that may have been expropriated from Palestine Arabs in the context of the establishment of the State of Israel on part of Mandate Palestine territory.²⁰³ In listing the basic premises for an equitable resolution of the conflict, the UN Mediator had recommended that ‘adequate compensation’ be paid to the refugees choosing not to return to their home and that an indemnity be also paid to those owners who had had their properties destroyed during the conflict. In his words, it was clear that the ‘Provisional Government of Israel [was liable] to restore private property to its Arab owners and to *indemnify those owners for property wantonly destroyed*, irrespective of any indemnities which the Provisional Government may claim from the Arab States’.²⁰⁴ In drafting resolution 194, the question of Israel’s liability for the costs of the war caused intense debate.²⁰⁵ This explains the dropping of ‘adequate’ and the reference to ‘principles of international law or in equity’ in the final text of resolution 194.²⁰⁶ Despite divergent opinions on specific issues and nuances, the drafting history of resolution 194 reveals that there was a consensus among the drafters that Israel should bear the cost of the different forms of compensation referred to in paragraph 11. On the content of compensation, resolution 194 affirmed two elements:

- (a) payment of compensation to refugees not choosing to return to their homes; and
- (b) payment of compensation to refugees for loss of or damage to property which under principles international law or in equity should be made good by the Governments or authorities responsible.²⁰⁷

The drafting history of resolution 194 reveals also that a third type of compensation was discussed: compensation claims for ‘ordinary war-damages’.²⁰⁸ After intense discussion, it (p. 352) was decided to omit the related reference and simply endorse ‘a generally recognized principle and provide ... a means for implementing that principle’ instead of delving into the ‘technical question’ of war-related damage and losses, ‘which ... could be dealt with better by the parties concerned’.²⁰⁹ The drafters of resolution 194 did not want to overload paragraph 11, the aim of which was to deal only with the refugees.²¹⁰ War-related claims between Israel and the Arab states could be dealt with separately, and could wait.

In conclusion, the legislative history of resolution 194, paragraph 11, confirms that, among those involved in the drafting of the resolution – apart from Israeli representatives²¹¹ – no one disputed that the refugees had an individual right to choose whether to return to their homes inside the newly established State of Israel or not to return, and to be compensated for their losses arising from the circumstances of their displacement. Rather than intending to create new rights for the refugees, the resolution reaffirmed the existing *opinio juris* reflective of prevailing norms applicable to circumstances in which people had been forcibly displaced *en masse* and that there was an obligation to make reparations (discussed later).²¹² As covered earlier in the book, the applicable norms had been reaffirmed only a few years earlier by the War Crimes Tribunals (with respect to the prohibition of mass displacement) and in 1928 by the PCIJ (with respect to reparations).²¹³ The views of some governments-US and UK *in primis* – on the likelihood and political feasibility of return may

have shifted over time but this has no bearing on what the General Assembly agreed upon in 1948.

Meanwhile, while the UN pressed for repatriation of the Palestinians following the adoption of the resolution 194, between 1949 and 1951, and until 1959, Israel continued to displace parts of the remaining Palestinian population within and outside the territory it controlled.²¹⁴

3.3 Status of the right of return and compensation in 1948

The critics of the right of return of Palestinian refugees often point to the fact that a binding provision explicitly called ‘right to return’ did not exist in 1948.²¹⁵ The concept of everyone (p. 353) being allowed to leave and return to his/her country—critics say—started to be positively codified in December of that year, with the adoption of the morally but not legally binding Universal Declaration of Human Rights (UDHR), adopted one day before the General Assembly adopted resolution 194.²¹⁶ It is relevant that during the drafting process of the UDHR, the Third Committee of the General Assembly heard a number of reports on the situation in Palestine and the implications of the Palestinian mass exodus.²¹⁷ So, one would derive from the critics that, while the Palestinian refugee question may have influenced the drafters of the UDHR, the protection that the Declaration would lay out cannot apply retroactively. This, however, is inaccurate.

Apart from the semantic aspects, the principle that people should be allowed to return ‘to their homes’ has ancient roots and is linked to the broader concept of freedom to leave and return to the territory to which one belongs. One of the earliest references can be found in the Old Testament. According to the so-called Cyrus Cylinder,²¹⁸ the King of Persia allowed the exiled Jewish people to return to Jerusalem to rebuild their Temple and seek restitution and compensation for the property that had been pillaged and confiscated by Nebuchadnezzar during the First Temple’s destruction.²¹⁹ Further expressions of this principle, as a corollary of the freedom of movement, were found in the Magna Carta of 1215, and in the French Constitution of 1791.²²⁰

In the case of the refugees from Palestine, the right of return that the international community *reaffirmed* in resolution 194 derives from a combined application of legal norms in force at that time, which were: (1) the prohibition of deportation and expulsion under the laws and customs of war; and (2) the connected right to have one’s own property and possessions reinstated as a consequence of the obligation to make reparations for an internationally wrongful act (primarily in the form of restitution) under the law of state responsibility.

The origin of the prohibition of deportation and expulsions can be found in the Hague Regulations, discussed in Chapter III, which were found to constitute customary international law by the Nuremberg and Tokyo war crimes tribunals in 1945.²²¹ The Regulations establish that ‘prisoners of war’ (namely persons who are held in custody by a belligerent power during or soon after an armed conflict)²²² are to be repatriated ‘as quickly as possible’ after the conclusion of peace.²²³ If prisoners of war (who could be legitimately ‘held’ away from the territory where hostilities were taking place) have the right to be repatriated at the cessation of hostilities, logic would suggest that such right must exist for civilians (p. 354) who should not have been displaced in the first place. A divergent interpretation would run contrary to a spectrum of obligations established by the Hague Regulations to protect the life and general welfare of the civilian inhabitants of the territory both during and after the hostilities. This includes prohibition to disrupt people’s (family) life and property,²²⁴ and obligation, for those in control of the territory, to ensure public order and safety, while respecting, as much as possible, existing norms.²²⁵ Should this not be the case, the result would be paradoxical: displaced prisoners of war would have a right to return, while other displaced civilians would not.²²⁶ That the Hague Regulations—which is worth remembering, were not intended to be a comprehensive human rights treaty,

but rather minimum rules aiming to minimize human suffering during conflict—implicitly contain a right of return for civilians at the cessation of hostilities, is confirmed by the fact that the Charter of the International Military Tribunal lists deportation of civilians as both a war crime and a crime against humanity,²²⁷ citing Article 46 of the Hague Regulations.²²⁸ As recalled, Nuremberg and Tokyo tribunals concluded that deportations and expulsions of civilians in the context of hostilities or military occupation were unlawful,²²⁹ and in the context of foreign settlement and colonization may qualify as a war crimes.²³⁰ The following passage from the UNCCP Historical Survey confirms that this is the normative framework that the drafters of resolution 194 had in mind in determining the refugee's claims:

From the legislative history of paragraph 11 ... it will appear that *the cases which the Assembly particularly had in mind were those of looting, pillaging and plundering of private property and destruction of property and villages without military necessity.* All such acts are violations of the laws and customs of war on land laid down in the [Hague regulations], the rules of which, as stated in the Nuremberg Judgment ... 'were recognized by all civilized nations and were regarded as being declaratory of the law and customs of war'.²³¹

(p. 355) Provisions that the drafters of resolution 194 considered, include those prohibiting pillage,²³² destruction or seizure of the enemy's property without military necessity,²³³ as well as those protecting private property,²³⁴ and 'property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when State property shall be treated as private property'.²³⁵ Already in 1948, it was clear that the protection of individuals from forced displacement could not be separated from aspects pertaining to the spheres of private and civilian life.

Meanwhile, the law of state responsibility—as it had evolved at the time—stipulated that any internationally wrongful act—i.e. breach of an international obligation by agents of the state—imposes an obligation to provide reparations.²³⁶ The first landmark decision in this respect was rendered by the Permanent Court of International Justice (PCIJ) in 1928 in the *Chorzow factory* case.²³⁷ In this case, the German government had sought reparations on behalf of the German owners of a factory on Polish territory that had been expropriated. In the Court's ruling, state responsibility for the expropriation of alien property resulted in a legal obligation upon Poland to offer restitution or compensation.²³⁸ In its decision, the PCIJ stated first of all that:

It is a principle of international law that the breach of an engagement involves an obligation to make reparation in an adequate form. Reparation therefore is the indispensable complement of a failure to apply a convention and there is no necessity for this to be stated in the convention itself.²³⁹

Importantly, the ruling further stipulates that the right to restitution, together with the right to compensation, constitute general principles of international law:²⁴⁰

The essential principle contained in the actual notion of an illegal act—a principle which seems to be established by international practice and in particular by the decisions of arbitral tribunals—is that *reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed.* Restitution in kind, or, if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear; the award, if need be of (p. 356) damages for loss sustained which would not be covered by restitution in kind or payment in place of

it—such are the principles which should serve to determine the amount of compensation due for an act contrary to international law.²⁴¹

The core principle is that ‘restitution in kind’ is required as a remedy for property unlawfully taken and that compensation is to be paid if restitution is no longer possible.²⁴² The root of the principle can be found in the protection of property, including in context of hostilities, which dates back to the Roman Empire. At that time, judicial remedies existed to ensure restoration of property (lands or buildings) left behind during the flight to escape the war or expropriated coercively.²⁴³ Relevant examples can be found in numerous post-conflict situations since the seventeenth century, including in the context of peace agreements. A list of relevant precedents was prepared by the UNCCP Secretariat in 1950,²⁴⁴ including cases where any property seized and occupied during war should be ‘re-established’ with the original owners.²⁴⁵ The peace treaties concluded following the First World War contain provisions to compensate affected civilians for property lost or confiscated.²⁴⁶ On at least one occasion, the drafters of a peace treaty provided for the return of the refugees to their homes and declared any acts aimed at severing the ties between the refugees and their properties ‘null and void’.²⁴⁷

(p. 357) While the Hague Regulations do not define what ‘property’ is, the protection offered is wide and encompasses private and public property, movable and immovable.²⁴⁸ Also, the concept of ‘public property’ has a wide scope including communal property, such as collectively owned forms of property.²⁴⁹ This is particularly relevant for this study since a significant part of the land of Palestinian Arabs in 1947 was collectively owned.²⁵⁰ The Hague Regulations also stipulate that violation of its norms would result in an obligation to compensate the victims,²⁵¹ and to pay indemnity to individuals who have sustained losses in cases of violations of armistice.²⁵² This progressively evolved into the principle that a state that has violated a legal obligation is required to make reparation, including in appropriate circumstances restitution or compensation for loss or injury.²⁵³ In referring to such provision in the Hague Convention, the UNCCP Historic Survey noted its ‘particular importance’ in the case of Palestinian refugees.²⁵⁴

The most comprehensive and systematic precedent of reparation by a government to groups of victims, including restitution, is that by the Federal Republic of Germany²⁵⁵ and other ‘Axis’ powers (Italy and Japan).²⁵⁶ In the immediate aftermath of the Second World War, a number of international and national laws featured restitution and compensation as a form of redress for the Nazi assault on, and spoliation of, property belonging to Jews.²⁵⁷ As early as 1943,²⁵⁸ sixteen countries signed a commitment to prevent and inhibit the effects of such acts.²⁵⁹ Further, the Agreement signed by Great Britain, France, the US, and USSR of 20 September, 1945, imposed the obligation to make reparations on Germany.²⁶⁰ At the Paris Conference on 21 December 1945, measures were taken for restitution as part of the reparations to the ‘Victims of German Action’, namely the Jews.²⁶¹ Property included not only immovable property but movable property that may have been alienated to third countries.²⁶² Robinson notes that a particular provision was adopted for ‘refugees’ from Nazi Germany and Austria, who could not be ‘returned ... because of prevailing conditions’; they were not to suffer prejudice compared with internal restitution or compensation in Germany.²⁶³ As it appears, the continuous link between the refugees and the property they had left behind was undisputed, and it laid the ground to claims by the refugees based on (p. 358) that link through means other than physical return (i.e. compensation). As stated earlier, the Charter of the International Military Tribunals and related jurisprudence further articulated the illegality of destruction of property, pillage, exploitation and plunder.²⁶⁴ One of the most often cited cases is that of *IG Farben*, in which the accused was found guilty of the war crimes of plunder of public and private property, exploitation ‘against the will and consent of the former owner’, spoliation, and ‘other offences against property’.²⁶⁵ Some of these judgments were instrumental in enabling property restitution to and compensation of Jewish victims of the Holocaust in the following years (see below). All these cases are

important not only because of the concepts and schemes they embody, but also because they denote the extent to which political will can shape the form and content of reparations.²⁶⁶

As early as 1949, the Legal Adviser of the UNCCP's Economic and Survey Mission noted that, under Regulation 29 of the Absentee Property Act (which was subsequently adopted as the Absentee Property Law in 1950), Israel recognized the right to restitution to the returning refugees from Palestine:

The Custodian may release any property of an absentee by issuing a certificate under his hand, stating that the person in respect of whom the property has become property of an absentee has ceased to be an absentee. Where the custodian has issued such a certificate the title to the released property shall revert to such person.²⁶⁷

However, in practice, only a small number of Palestinian refugees were allowed to return, and the provision had very limited application.

As discussed earlier in the book, at the time of their displacement, Palestinians were citizens of Mandate Palestine (after having been Ottoman Citizens before).²⁶⁸ As the successor to Mandate Palestine in respect of the portion of the land it occupied, Israel was prohibited from denationalizing the expelled Palestinians.²⁶⁹ Those who had been expelled or had left the territory which had then become Israel, should have been given the option to acquire Israeli citizenship. The hypothesis of the other refugees becoming citizens of the State of (p. 359) Palestine, to be established side by side to Israel, is of theoretical relevance since after the tumult of the 1947–1949 period, no Arab state emerged out of the ashes of the war.

In conclusion, in elaborating resolution 194, its drafters were fully cognizant of the relevant principles and norms of international law applicable at the time. The resolution was drafted at a momentous time for international law, when the war crimes tribunals were wrapping up their work in the aftermath of the Second World War and the UN General Assembly was in the final stages of drafting the UDHR. Because the General Assembly was not creating new norms but reaffirming the rights of return, restitution and compensation that, as elaborated above, were part of contemporary international law, paragraph 11 of resolution 194 is binding upon Israel.

Some dispute Israel's responsibility with respect to the events of 1947–1949 on the grounds that the conduct of Jewish paramilitary groups cannot be attributed to the State of Israel.²⁷⁰ However, the Hague Convention and Regulations had been binding in Palestine since the time of the British Mandate administration and also applied in Israel (including as customary international law).²⁷¹ Both the British Mandate authority and Jewish Agency (which was internationally recognized through the enactment of the Mandate²⁷²) were aware of and (at least the latter) concerned with the possible consequences of the operations conducted by Jewish groups, which often involved looting, pillaging and expulsion, of the gravity of these 'facts on the ground', and of the attacks and violence against civilians, resulting in massive displacement.²⁷³ While it would be challenging over seventy years after the facts, to establish individual liability for those conducts, this should be taken into serious consideration when assessing the facts at the origin of the Palestinian refugee question and the necessary measures to take to restore justice to the victims. Furthermore, Israel has continued to displace Palestinians from within its territory when it became a state, including outside the context of military operations and after armistice agreements had been signed.²⁷⁴

The drafters of resolution 194, building on the principles underpinning the UN Partition Plan, set out a solution to the Israeli-Palestinian conflict, including of the refugee issue, that was in line with applicable principles and norms of international law, as well as in close alignment with the evolving post-Second World War international order. Since then, lack (p. 360) of political will has frustrated the implementation of the resolution from 1948 onwards. As a result, the rights of the original three-quarters of a million Palestinians—through natural population growth currently close to over six million refugees²⁷⁵—to be repatriated and compensated remain unrealized, along with the right to self-determination of the Palestinian people. This is in spite of legal developments that have occurred from 1948 onwards, particularly in the field of international human right law, which – as the next section demonstrates – further strengthen Palestinians’ legal claims.

Over the past seven decades, the situation which the resolution sought to address has become exponentially more complicated, as a result of political, demographic and other developments as manifested by numerous ‘facts on the ground’, making it ever harder (though neither less legal nor compelling) to envisage a peaceful resolution of the underlying conflict and the plight of the refugees. And yet, as with other historic claims grounded in international law and retaining strong significance for those affected, there is little chance that they will slip into oblivion.

3.4 Post-1948: No return, no compensation, further displacement

3.4.1 Political developments: Advancing Palestinian refugees’ rights through the UNCCP

An overview of attempts at resolving the Palestine refugee question since 1948 is offered in Chapter I. The years following the adoption of resolution 194 saw little tangible progress in the realization of return and compensation of the Palestinian refugees.²⁷⁶ Once it became clear that Israel was adamant in its refusal to allow return of all the refugees, US officials, in their capacity as chair of the UNCCP, began to promote ‘resettlement’ (i.e. local integration) of the refugees in the Arab region. This was also relevant for UNRWA, which was established to continue the relief efforts and to carry out a programme of public works recommended by the Economic Survey Mission.²⁷⁷ In 1952, the General Assembly passed resolution 513 which endorsed a programme proposed by UNRWA and designed to expedite the reintegration of the displaced Palestinians into the economic life of the area, while stipulating that such provisions were without prejudice to paragraph 11 of resolution 194.²⁷⁸ Local integration and resettlement were offered as alternatives to the repatriation that had thus far been blocked.²⁷⁹ In the following years, as it continued to be unable to advance the return of the refugees and the reacquisition of their possessions, the UNCCP concentrated its effort on obtaining compensation for the refugees, with marginal success only on the release of blocked bank accounts of the refugees.²⁸⁰

(p. 361) 3.4.2 Developments on the ground: From 1967 onwards, including the UN response

After the massive displacement of 1947–1949, the 1967 War broadened the scope of the issue of return, as during and following the war, a substantial number of Palestinians became displaced, including many 1948 refugees who were forcibly uprooted for a second time. As discussed in Chapter I, in the aftermath of the war, the General Assembly and the Security Council adopted a number of resolutions, some of which dealt with the right of return of the 1948-refugees separately from those ‘displaced’ as a result of the 1967 conflict. Most of the resolutions passed had general calls upon Israel to ‘facilitate the return of those inhabitants who have fled the areas since the outbreak of hostilities’.²⁸¹

Subsequently, Security Council resolution 242 of 22 November 1967 – which was adopted unanimously – merely affirms ‘the necessity for achieving a just settlement of the refugee problem’ in the framework of a peace settlement.²⁸² It has been argued that the vague reference to the question of Palestinian refugees in resolution 242 – e.g. referring to ‘the

refugee problem', instead to refugees' rights, and to a more ambiguous 'just settlement' without determining what is 'just'²⁸³ – may represent a partial retreat from the commitments vis-à-vis the refugee issue made by resolution 194 in 1948.²⁸⁴ Some commentators argue that the phrase 'just settlement' refers to 'the need to find a practical solution to the problem within the framework of a comprehensive political package which would ensure the existence of Israel, its recognition and defensible borders'.²⁸⁵ Such interpretations are not supported by the drafting history of resolution 242, which in fact indicates that 'just' meant reflective of 'justice', as a literal interpretation would also suggest.²⁸⁶

While the Security Council arguably attached limited consideration to the question of the displaced (and did not recall the question of the 1948 refugees) and focused on the territorial aspects of the dispute, greater emphasis can be found in subsequent resolutions adopted by the General Assembly. In 1968, General Assembly resolution 2452 (XXIII) gave much greater emphasis to the question of the Palestinian refugees, both from 1967 and 1948.²⁸⁷ Section A of the resolution, which dealt with the 1967 displaced persons, recalled Security Council resolution 237 of 14 June 1967, affirmed that the 'plight of the displaced persons' could only be *relieved* by a 'speedy return to their homes and to the camps which they formerly occupied', *required* 'a speedy return', called upon Israel 'to take effective and immediate steps for the return without delay of those inhabitants who have fled the areas (occupied by Israel since the outbreak of hostilities)', and called upon the Security Council to follow up on the implementation of the resolution.²⁸⁸ Section B of the resolution, dealing (p. 362) with the 1948 refugees, continued the tenor of earlier resolutions, relying upon the diplomatic efforts of the UNCCP to obtain implementation of the right of return.²⁸⁹

Yet, in practice, Palestinians have continued to be displaced from the occupied Gaza Strip and West Bank, including East Jerusalem, since 1967. This displacement is not only a consequence of the hostilities, but has also been the result, and intent, of measures and restrictions that Israel has adopted in the oPt over five decades. Israeli measures have resulted into a dramatic change of demography and status of land in the oPt.

3.4.3 Developments in the field of international law

The legal foundation of the rights of the Palestinian refugees that were affirmed in resolution 194 – to be repatriated, to restitution, and to compensation – has since become even stronger through the progressive positive codification of these rights in international law and practice. Several of these rights were further enshrined in various branches of international law as they developed after 1948, particularly international human rights law and international humanitarian law. These developments are relevant to the question of the refugees from Palestine in two ways. First of all, since the original violation (forced displacement and dispossession in 1947–1949) was never redressed (by the return of refugees to their homes) and in fact continued immediately and after 1948, it can be considered of a continuous nature.²⁹⁰ Hence, international law as developed after 1948 acquires a value to the situation of Palestinian refugees and further strengthens the rights that they derived from the law as it stood in 1948, as well as the corresponding obligations of Israel to fulfil, protect, and respect those rights.²⁹¹ In respect of the latter, state responsibility does not diminish with the passing of time. According to the Articles on State Responsibility:

An act does not have a continuing character merely because its effects or consequences extend in time. *It must be the wrongful act as such which continues.* In many cases of internationally wrongful acts, their consequences may be prolonged ... The prolongation of such effects will be relevant, for example, in

determining the amount of compensation payable. They do not, however, entail that the breach itself is a continuing one.²⁹²

In the Palestinian case, what is relevant is not only the persisting effects of the original displacement and dispossession, but also – and relevant for the configuration of a violation of continuing nature – the enduring dispossession of the Palestinian people, and the (p. 363) depredation of their resources. This not only has not relinquished, but during fifty years of occupation, has intensified.

Secondly, while the obligations upon Israel have been further clarified, forced displacement, dispossession and human rights violations against the Palestinians have continued unabated. In this respect, Gail Boling argues that Israel has ‘exposed itself to all the progressive developments of international law that have occurred since the initial breach of the international obligation in 1948’,²⁹³ and likely also contributed to such developments. UN human rights treaty bodies appear to confirm Boling’s conclusion.²⁹⁴

Interestingly, both Israel and the Jewish diaspora have played a significant role in furthering these developments.²⁹⁵ Further to the measures taken between 1943 and 1948 to inhibit dispossession and secure restitution with respect to victims of the Nazi regime, discussed earlier in the chapter, the body of literature on restitution and compensation has grown over the years.²⁹⁶ The post-war reparation schemes for Jewish and other victims of Nazi persecution in Germany and in Austria, Denmark, the Netherlands, and Norway, have provided what Lynk calls ‘the template for the modern international obligation to compensate for unilateral property confiscations and wide-scale human rights abuses’.^{297,298}

The most significant developments since 1948 for Palestinian refugees’ rights of return, restitution, and compensation are that international human rights treaties, mechanisms and jurisprudence have further elaborated substantive and procedural aspects of these rights and offered access to remedies to victims of human rights violations, other than states. An analysis of the evolution of these norms reveals the extent to which, as Rempel and Prettitore observe, ‘the principles elaborated in Resolution 194(III) are remarkably consistent with contemporary norms on housing, property ... land restitution [and compensation] for refugees and displaced persons’.²⁹⁹ The right to compensation covers redress (p. 364) for two different, but interrelated situations: compensation in lieu of restitution as elaborated in *Chorzow factory* and also referred to in resolution 194, and compensation as one of a number of remedies for human rights violations. Both are directly relevant to the case of Palestinian refugees. These developments are discussed below.

Right to return

In 1949, the Geneva Conventions provided further elaboration with respect to the prohibition of deportation and expressly referred to the repatriation of protected persons. In particular, Article 49 of GCIV prohibits

‘[i]ndividual or mass forcible transfers, as well as deportation of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not... regardless of their motive ... All protected persons who may desire to leave the territory at the outset of, or during a conflict, shall be entitled to do so’.³⁰⁰

Articles 146 and 147 of GCIV establish the criminal liability of those committing or ordering to commit grave breaches of the Convention and define ‘unlawful deportation or transfer’ as a grave breach.³⁰¹

Human rights bodies have played an important role in underlining the relevance of these norms for refugees, affirming that states cannot derogate their duty to provide them with an effective remedy.³⁰² Positively codified in other branches of international law, the right to return is relevant in refugee law³⁰³ and constitutes the basis of ‘voluntary repatriation’, as referred to in the UNHCR Statute³⁰⁴ and widely considered the preferred durable solution to refugee problems of present times.³⁰⁵

The most comprehensive contemporary articulation of the right of return is offered by international human rights law. As part of the broader right to freedom of movement, the (p. 365) norm is wider than in other bodies of law, as it is not limited to the context of hostilities and occupation and/or to the possible denial of entry in a destination country on the refugee’s flight trajectory.³⁰⁶ Article 13(2) of the UDHR asserts the right of ‘[e]veryone ... to leave any country, including his own, and to return to his country’.³⁰⁷ In slightly different wording, the right to return has also been incorporated in Article 12 of the ICCPR, dealing with the broader concept of freedom of movement.³⁰⁸ Article 12(4) of the ICCPR stipulates that ‘No one shall be arbitrarily deprived of the right to enter his own country’. As appears from the *travaux préparatoires*,³⁰⁹ the change of language from the formulation in Article 13 of the UDHR – which refers to the right to ‘return’ to one’s country – to the right to ‘enter’ one’s country, broadens the scope of the norm,³¹⁰ in order to include ‘nationals or citizens born outside the country and who have never lived therein’.³¹¹ The right to re-enter one own’s country as part of the freedom of movement is also protected under a variety of international³¹² and regional human rights instruments.³¹³

Article 12(4) of the ICCPR raises a number of interpretational issues relevant to the displacement of the Palestinians. These include, in particular, the meaning of ‘his own country’, who can claim return, what are the entitlements of these rights, and the nature of the concept of arbitrariness. In 1999, the Human Rights Committee provided an authoritative interpretation of some of these matters in its General Comment on Article 12 of the ICCPR.³¹⁴ This, together with the drafting history of the ICCPR and relevant case law, sheds further light on the legal content of the right to return of Palestinian refugees, whose interpretation cannot be considered frozen in time.³¹⁵

(p. 366) First, in the words of the Committee, one’s ‘own country’ is the one to which the person has a ‘special relation’ and a ‘close and enduring connection’.³¹⁶ The concept elaborated by the Human Rights Committee is broader than a formally defined national state, as the link between the individual and the country does not depend on the possession of ‘nationality in a formal sense’ (by birth or conferral).³¹⁷ Historically, among the most prominent supporters of a more fluid interpretation of ‘one’s own country’ were Soviet Jews who,³¹⁸ in the 1970s, invoked such concept to support Soviet Jews’ claims to migrate to Israel.³¹⁹ In its interpretation of Article 12(4), while the right to entry or return to one’s own country can be presumed for nationals of that country as an ‘incidence of citizenship’,³²⁰ it cannot be denied in cases where that formal bond does not exist, but the person has nevertheless ‘special ties to’ or ‘claims in relation to’ a given country that makes the person different from a ‘mere alien’.³²¹ Among the individuals who can claim such right the Committee refers to:

nationals of a country who *have there been stripped of their nationality* in violation of international law, and of individuals *whose country of nationality has been incorporated in or transferred to another national entity, whose nationality is being denied [to] them ...*³²²

(p. 367) The Committee suggests a broad interpretation of the norm so as to also include ‘other categories of long-term residents, including but not limited to stateless persons arbitrarily deprived of the right to acquire the nationality of the country of such residence.³²³ A state party, the Committee indicates, cannot prevent return of persons who have been denationalized and/or expelled to a third country against the law.³²⁴ Concerning

the entitlements conferred by this right, the Committee includes not only the right to return after having left one's own country, but also the possibility to enter the country for the first time if he or she was born outside it (for example, if that country is the person's country of nationality).³²⁵ The protection of Article 12(4) being tied to the effective 'bond' or 'ties' the individual has with the territory, it is irrelevant whether the 'returnee' has ever lived in the country he or she claims as his or her own. The Committee underscores that the right to return is 'of the utmost importance for refugees seeking voluntary repatriation', as it also implies 'prohibition of enforced population transfers or mass expulsions to other countries'.³²⁶ A prohibition of return of those expelled on ethnic grounds may also violate norms prohibiting racial discrimination.³²⁷ By this, the Committee clearly seeks to prevent states from denying entry to individuals who have effective ties with the territory, including when they have been arbitrarily denationalized or expelled.

The Committee's commentary provides an authoritative interpretation. There are divergent opinions on whether 12(4) applies to situations of mass displacement. A number of scholars read the norm as applying only to individuals,³²⁸ not creating a collective right,³²⁹ and not intended to protect groups in the context of mass displacement.³³⁰ However, as Quigley argues, nothing in the *travaux préparatoires* of the ICCPR suggests that the right to return should be suspended during situations of mass exodus.³³¹ Denying the validity of an individual right because it applies to many would lead to a paradoxical result and render the norm purposeless. This is reinforced by the interpretation of Article 5(d)(ii) of CERD by the Committee on the Elimination of Racial Discrimination, which argues that states have an obligation to ensure that '[a]ll refugees and displaced persons have the right to freely return to their homes of origin under conditions of safety'³³² and 'to have restored to them (p. 368) property of which they were deprived in the course of the conflict and to be compensated appropriately for any such property that cannot be restored to them'.³³³

Another important issue addressed by the Human Rights Committee is the criterion of arbitrariness in Article 12(4), asserting that deprivation of the right to enter one's own country should be limited to specific cases established by the law, in line with 'provisions, aims and objectives of the Covenant' and be 'reasonable' in the particular circumstances.³³⁴ This implicitly acknowledges the use of exile as a penal sanction by some states at the time.³³⁵ As Zieck argues, the right is neither absolute nor unlimited; the right can be denied, within the limit of the law, and it may be derogated in time of public emergencies.³³⁶ It is telling, however, that Article 5(d)(ii) of the CERD does not include the condition of arbitrariness contained in Article 12(4) of the ICCPR, meaning that the denial of the right to return to one's country on discriminatory grounds is prohibited under all circumstances.³³⁷

The resonance of the Human Rights Committee's interpretation of Article 12(4) of the ICCPR with the case of the refugees from Palestine, is of particular significance with reference to the recognition of the right of anyone (including refugees and stateless persons) to return to one's country, even if this means entering for the first time, and especially when the individuals concerned were unlawfully or arbitrarily expelled or deprived of their nationality, including on ethnic grounds. Palestinian refugees held British Mandate citizenship until the State of Israel succeeded to the Mandate and denationalized them (after forcing them out of its territory): the arbitrariness of the forced displacement and denationalization constitutes the grounds to claim the right. The recognition of the 'bond' with the (original) country has great relevance for the tens of thousands of first generation refugees still retaining keys to their homes, and for the millions of refugees in the second and third generation who continue to talk about Palestine as their homeland.³³⁸ The Committee's interpretation undisputedly counters the arguments that Palestinians refugees who descend from the original 1948 displaced are not allowed to return because they have never been Israeli nationals, never set foot in Israel or even, left on their own accord and not out of coercion.³³⁹ In fact, this interpretation makes the provision highly

relevant for the descendants of the 1948 and 1967 refugees. Although they may have never set foot in their ancestors' homeland, they inherit their entitlement to enter the land from which they were unlawfully uprooted and prevented from returning (and reacquire property title that were severed), even if the territory has changed into 'another entity'.

Furthermore, the argument that the return of Palestinians endangers the existence of the State of Israel and its self-determination as a Jewish state³⁴⁰ appears to violate Article 5(d) (ii) of ICERD (right to (p. 369) return without discrimination, including on the ground of ethnic origin), which does not allow for derogation. This is relevant in connection with the Israeli Law of Return of 1950³⁴¹ and the Nationality Law of 1952,³⁴² which grant all Jews in the diaspora an automatic right to immigrate to Israel, become Israeli citizens, and settle therein with all of the rights and obligations that appertain thereto. The way the law is construed effectively excludes Palestinians, notably refugees, from its scope.³⁴³ While it is maintained that the Jewish right to return has Biblical roots, one of the main secular arguments justifying the Law of Return and the Nationality Law is that over the centuries, and even today, many countries have persecuted or expelled Jews and refused them citizenship. It is argued that 'these laws are a type of "affirmative action" to afford Jews a chance to take refuge in the one state that will definitely have them'.³⁴⁴ What some scholars call a 'justified exception to the principle of equality' and a form of 'corrective justice',³⁴⁵ is discriminatory to the extent that cannot be justified under international law.³⁴⁶ This is all the more applicable to the Palestinians who had an uninterrupted historical and 'actual territorial connection' with the land that constitute present-day Israel, often supported by legal property deeds.³⁴⁷

During the decades of Palestinian exile, millions of other refugees around the world have returned to their homes, the majority with international assistance.³⁴⁸ Throughout these processes, the right of return has been a key component of international efforts for the resolution of conflicts in Africa, the Americas, Asia, and Europe. Peace agreements and provisions for the return of refugees have been endorsed by numerous Security Council resolutions.³⁴⁹ These efforts recognized that unresolved refugee problems can be a threat to international peace and security.

Right to restitution and compensation

As discussed earlier in the chapter, under the law of state responsibility, a state that violates a legal obligation is required to terminate the violation and to make reparation, including, in appropriate circumstances, restitution or compensation for loss or injury. In its Advisory Opinion on the *Legal Consequences of the Wall* of 2004, the ICJ affirmed the principles (p. 370) embodied in *Chrozow factory* and their application with respect to the construction of the Wall in the oPt:

Israel is accordingly under an obligation to return the land, orchards, olive groves and other immovable property seized from any natural or legal person for purposes of construction of the Wall in the Occupied Palestinian Territory. In the event that such restitution should prove to be materially impossible, Israel has an obligation to compensate the persons in question for the damage suffered. The Court considers that Israel also has an obligation to compensate, in accordance with the applicable rules of international law, all natural or legal persons having suffered any form of material damage as a result of the Wall's construction.³⁵⁰

The Articles on the Responsibility of States for International Wrongful Acts³⁵¹ adopted by the International Law Commission (ILC) in 2001 ('ILC Articles'), have served to codify the law of state responsibility with a measure of progressive development in some areas. The Articles clarify that appropriate forms of reparation may include cessation and non-repetition of the wrongful conduct,³⁵² making full reparation for the injury caused, including any moral and material damage,³⁵³ by means of restitution,³⁵⁴ compensation – i.e.

any financially assessable damage including established loss of profits³⁵⁵ – and satisfaction, in case restitution and compensation are no longer possible.³⁵⁶

Beyond the law of state responsibility, the legal norm of compensation as a distinct component of reparations has found expression in various other bodies of law, including international and regional human rights law and the laws and principles applicable to refugees and displaced persons. Originating from the Hague Convention,³⁵⁷ the right to a remedy for victims of violations of international human rights law is well established.³⁵⁸ It is now recognized that a State's breach of its human rights obligations entails an obligation to provide a timely and effective remedy for the victims of its illegal conduct.³⁵⁹ As Van Boven notes in his ground-breaking study on reparations for human rights violations:

Human Rights envisages essentially the protection of individuals and that State responsibility prevails in their interest. [...] Their object and purpose is the protection of the basic rights of individual human beings, irrespective of their nationality, both against the State of their nationality and all other contracting States. In concluding these human rights treaties, *the States can be deemed to submit themselves to a legal order within which they, for the common good, assume various obligations, not in relation to other States, but towards all individuals within their jurisdiction.*³⁶⁰

(p. 371) The 2005 UN Principles on Housing and Property Restitution for Refugees and Displaced Persons³⁶¹ (hereafter 'Pinheiro Principles', named after the Special Rapporteur who took the lead in their development) have further elaborated the principles of state responsibility for international wrongful acts with regard to refugees and displaced persons, reaffirming the right of refugees and displaced persons to 'repossess housing, land, and/or property of which they were arbitrarily or unlawfully deprived', and recommending compensation in lieu of restitution only when restitution is not physically possible (e.g. the property no longer exists) as determined by an independent, impartial tribunal.³⁶² Restitution is described as a 'distinct right' of the refugees regardless of whether they choose to return or not to return.³⁶³ This corroborates the understanding that return and restitution are two connected, but separate, and certainly not mutually exclusive rights. In post-conflict situations, they are increasingly seen as part of a broad spectrum of remedies aimed at restoring and rehabilitating the broken lives of refugees.

Compensation is the practical aspect without which, according to Lee, 'rights ... are illusory'.³⁶⁴ Compensation in lieu of restitution can be granted for both individual and community losses, for the loss or damage to movable and immovable property, for loss of actual or potential income, moral damages, unjust enrichment, and costs of rehabilitation; generally it should be broad enough to address the violation suffered.³⁶⁵ However, compensation is often contentious in refugee return situations, because of the risk of monetization the state's responsibility for creating refugee flows,³⁶⁶ and generally as it may prevent return.³⁶⁷ One noteworthy exception is the European Court of Human Rights (ECtHR)'s decision in *Loizidou* in which the Court recognized the right to restitution and compensation of a Cypriot refugee for property that had been expropriated by Turkey, after possession had been lost in the context of her flight during the conflict over Cyprus.³⁶⁸ The Court awarded compensation to the claimant as the legal owner of the property, based on market value earnings that could have been realized, moral damages for the loss of property enjoyment, costs, and interest.³⁶⁹

Loizidou significantly resonates with the plight of Palestinian refugees and, while having no legal effects on their claims vis-à-vis Israel, it allows for some consideration on the (p. 372) matter, given its relevance to the situation of many Palestinian refugees. First and foremost, the Court dismissed the objection that the facts had occurred before Turkey's ratification of the ECHR. By doing so, it endorsed the notion of a 'continuing violation' of the law under consideration (European Convention of Human Rights) and its effects on temporal

limitations of the application of relevant norms.³⁷⁰ The Court also dismissed the objection that the claimant's property could not be returned as it had meanwhile been used to rehouse other displaced persons (i.e. displaced Turkish Cypriot refugees in the years following the Turkish intervention in the island in 1974).³⁷¹ The Court maintained that such a justification could not translate into the 'complete negation of the applicant's property rights in the form of a total and continuous denial of access and a purported expropriation without compensation'.³⁷² Because of it, the Court ruled that the claimant was still 'the legal owner of the land', and as such was entitled to reclaim her lands at any time.³⁷³ It indicated that because of the special nature of the norms under consideration – those stemming from a human rights treaty – a contextual assessment was necessary, including the relevance of obligations stemming from other applicable branches of international law (e.g. international humanitarian law (IHL)).³⁷⁴ In recognizing the effects of policies enacted under the exercise of effective control and jurisdiction,³⁷⁵ the Court endorsed the applicant's claim that state responsibility under public international law is not conditioned upon 'evidence of direct involvement' of state actors in violation of relevant norms.³⁷⁶ On this basis, it imputed to Turkey the continuous denial of access to the claimant's property and the ensuing loss of all control over it.³⁷⁷ Finally, the Court rendered its ruling on a question that was deemed to be highly political in nature, not only for the ongoing efforts of the international community to reach a settlement in Cyprus (which some thought could be undermined by a Court decision with far-reaching implications), but also because it touched upon a 'large and complex issue [which would have warranted] normative action and legal reform' rather than a judicial decision.³⁷⁸ In fact, the Court intervened on the question because of the primacy of the interest at stake, as enshrined under the human rights law. In conclusion, as *Loizidou* demonstrates, even in highly political and complex questions, with far-reaching implications and competing juridical claims, respect for human rights should not be subordinated to considerations of political convenience however compelling these may appear to the violator.

3.5 Challenges to the enforcement of Palestinian refugees' rights to return and compensation

Despite the clarity of the legal framework as it existed prior to 1948, which gave meaning to paragraph 11 of resolution 194, and as it has evolved since, Palestinian refugees' rights to (p. 373) return, restitution, and compensation have yet to be realized. Given the origins and characteristics of the Palestinian refugee question, the historical injustice against the first generation of refugees has trickled down and affected generations of refugees (i.e. descendants). Hence, a rights-based solution must take into account this collective and generational dimension. However, challenges of legal and practical nature exist. They include the historical nature of the refugee question, the passage of time, the emergence of rights of secondary occupants,³⁷⁹ the number of potential claimants, legal barriers and technical difficulties in identifying those entitled to return and compensation, as well as in calculating the damages, political controversy, and the lack of a comprehensive settlement of the conflict.³⁸⁰ While practical aspects of those challenges are discussed in Chapter VIII, some general observations are warranted here.

One particularly critical issue is whether the right of return passes down the generations. While some scholars argue in favour of the right to enter one's country 'persisting' across generations,³⁸¹ others indicate that such right is neither absolute nor unlimited and its implementation for future generations become difficult to enforce, especially in cases where refugees do not have the nationality of the country of origin.³⁸² This issue encompasses two aspects: (1) the right of return to one's own country (linked to questions of nationality determined by territoriality), and (2) the right of return to a place from which someone was

displaced (linked to the question of reintegration/restitution). The passage of time may present obstacles in both cases.

In the former, it is argued that, while still existing for first-generation refugees, the right to 'return' to their ancestral places may weaken with time, because of the emergence of other ties and rights of refugees vis-à-vis the country of refuge or habitual residence.³⁸³ However, this is not supported by the Human Rights Committee's interpretation of Article 12(4). As demonstrated by Israeli legislation referred to above³⁸⁴ – which allows any Jew to migrate to Israel by virtue of ethnic/religious affiliation (i.e. being a Jew) – decisions about conferral of citizenship based on ancestral connections may respond to political reasons. This cannot ignore that, according to this law and its underpinning tenets, in the name of the putative biblical link of 'one people' to the land, 'another people' has been forcibly uprooted from that very same land and all their ties to it have been arbitrarily severed. Palestinian refugees have been arbitrarily deprived of any opportunity to re-establish and give meaning to their genuine connection to what they still consider 'their homeland': they have been both deprived of their right to return to their homes as well as of their right (to choose whether) to become Israeli citizens in accordance with Israel's Nationality Law. The unlawfulness of such (p. 374) conduct mitigates the effect of the passage of time, as Palestinian refugees cannot be held responsible for a situation that has consistently been beyond their control. Recognizing the existence of those rights prompts the need for a case-by-case determination of how these rights can be implemented in light of rights that have germinated over time.

In terms of restitution/repossession, the interests of the claimants have to be weighed against those of the rights acquired by secondary occupants.³⁸⁵ Both the Articles on State Responsibility and the Pinheiro Principles protect the rights acquired by secondary occupants/third persons over disputed possessions.³⁸⁶ The 'new' occupants are protected under human rights law: over the passing of time they develop the same attachment and genuine link to the place of those who were forcibly removed from it decades before.³⁸⁷ However, one important aspect to consider is that *ex iniuria jus non oritur*. Hence, such an exception does not apply when the wrongful act has an international character and when the secondary occupant, at the time of entering into the transaction or assuming the disputed rights, may not have acted in good faith and/or may have not had knowledge of the possible claim to restitution.³⁸⁸ The State of Israel (the legal second occupant in the relationship with refugee property) has taken – expropriated, used, alienated – refugee property as of 1948, in modern-day Israel, and as of 1967, in the West Bank and East Jerusalem. International law offers the mechanisms to remedy this situation and, once again, a case-by-case determination (or group determination) will be necessary to determine how to uphold refugees' rights. The case of Palestinian refugees is compounded by the lack of judicial mechanisms to assess possible claims in this regard. The challenges of regaining possession/restitution of the property should factor in the consideration of the *quantum* of the corresponding compensation.

The high number of possible claimants among Palestinian refugees is often discussed as a hindering factor.³⁸⁹ However, given the clarity of the individual rights and the nature of violations involved in the Palestinian case, provision should be made for individual claim in addition to claims *en masse* for groups of individuals.³⁹⁰ This is in line with the practice that has evolved since the Second World War: individual and collective claims are not mutually exclusive, but rather reinforce each other. In fact, these are challenges that are found in other cases of mass displacement, serious human rights violations, and where the passage of time has increased the number of claimants. These issues can be overcome, as it is demonstrated, among others, by the case of the complex reparations to the victims of Nazi persecution, which have entailed multiple claims, actions in different jurisdictions, across and within countries, on different continents, with settlements being achieved often many decades after the violations that gave rise to the claims. Ironically, the Israeli government,

while encouraging millions of Jews from around the world to settle in Israel, pressing for restitution laws to be adopted in post-war Europe, and reaffirming that restitution is the (p. 375) appropriate remedy for wrongful governmentally sanctioned confiscation of Jewish property and damage, has adamantly denied recognition to similar claims by the Palestinians.³⁹¹ Restitution or compensation for confiscated private, collective, and public properties of the Palestinian people, including natural resources, remains an extremely politically fraught issue for Israel.³⁹² As a state that defines itself in law along religious and ethnic bases, Israel sees the return of the original Palestinian refugees and their descendants as an existential threat. While many claims for historical injustices remain unattended (i.e. reparations to indigenous communities worldwide for crimes perpetrated during colonialism and beyond), the very case of the restitution of usurped property during the Nazi Fascism in Europe to Jewish victims of the Holocaust (i.e. their heirs, Jewish communities, or Israel) offers an important lesson. While reparation mechanisms were set up immediately after the Second World War, it was only in the 1990s that claims involving assets held in banks (Swiss accounts), further compensation for property losses, and property remaining in public/state use after the Second World War started to gain traction (and eventually delivered justice to the victims).³⁹³ This gives hope that lack of political support may delay, but not frustrate, the quest for justice for Palestinian refugees.

4. Individual Rights of Palestinian Refugees Affecting Their Daily Lives

Chapter IV and Chapter V demonstrate that, in the case of Palestinian refugees, the enjoyment a number of essential rights has been uneven and often compromised, largely depending on the country where they reside, the time of their arrival, as well as a number of political factors and contingencies.³⁹⁴ Differences can be identified between countries in the Arab world – with important specificities in places where UNRWA operates – and countries outside the Arab world. While the information available in the latter group is more limited compared to Palestinians in the Arab world, some observations can be drawn on the basis of the findings of the aforementioned chapters. For example, in countries that have ratified the 1951 Convention, Palestinian refugees, in case either Article 1D or 1A(2) applies, are generally treated as any other refugees.³⁹⁵ In some countries (e.g. in Latin American countries), Palestinians may enjoy favourable treatment because of their visa situation. However, the situation is more complex when the applicability of the benefits of the 1951 Convention is not recognized (largely because Article 1D is misinterpreted), as this may result in limited (p. 376) or no international protection. Chapter V, and to a lesser extent Chapter IV show a number of practices that are in stark contrast with Article 1D and require correction. In Europe, the frequent recourse to granting subsidiary protection to Palestinian refugees—while being part of a general trend towards refugees—requires to be systematically addressed, given the longevity and ever growing ramifications of the Palestinian refugee situation. In Arab countries that are party to the 1951 Convention, non-recognition of Palestinian refugees as legitimate refugees under the 1951 Convention may require regional policy clarification and recommendations. In countries that are not party to the 1951 Convention (as is the case in a significant number of countries in the Asia Pacific, where a binding regional framework to protect refugees is not (yet) in place), Palestinian refugees' rights – like other refugees – suffer important limitations. In these cases, protection of fundamental rights should be assessed against the human rights treaties that each state is party to.

Legal considerations in this section are of general relevance. However, because of the large concentration and specificity of the situation of Palestinians in the Arab world, particularly those within UNRWA's area of operations, the discussion pertaining to the enjoyment of fundamental economic and social rights focuses on this category, before offering legal observations of a general nature. As Chapter IV infers, in UNRWA's area of operations, the

protection of a number of rights – education, employment, health, and housing – has been largely deferred to the system devised by the UN to assist and protect Palestinian refugees. This has had important repercussions for Palestinian refugees, beyond UNRWA's area of operations, and especially at times of crises. Factors beyond UNRWA's control, such as recurrent financial crises, undermine Palestinian refugee's access to essential services, such as education and health.³⁹⁶ Armed conflict and violence have put increasing pressure on UNRWA's capacity to grant Palestine refugees access to essential services, including by damaging its facilities (schools, clinics) and disrupting its services.

4.1 Education

The right to education is a key right protected by international human rights law.³⁹⁷ Article 26 of the UDHR stipulates:

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
- (p. 377) 2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
3. Parents have a prior right to choose the kind of education that shall be given to their children.

This norm, which encapsulates the fundamental purposes and principles enshrined in Articles 1 and 2 of the UN Charter, is further articulated both in the ICESCR (Article 13), which adds that education shall be directed to the human personality's 'sense of dignity', 'enable all persons to participate effectively in a free society', and promote understanding among all 'ethnic' groups,³⁹⁸ and in the CRC (Articles 28 and 29). As the Committee on Economic and Social Rights notes,

[E]ducation is both a human right in itself and an indispensable means of realizing other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities.³⁹⁹

In its area of operations, UNRWA has been of strategic importance for the realization of the right to education for millions of Palestinian refugees.⁴⁰⁰ In Arab countries outside UNRWA's area of operations, Arab governments have generally supported the realization of the right to education of the Palestinian refugees.⁴⁰¹ Chapter IV discusses how schools, institutions and universities in the Middle East and North Africa (MENA) region have, to a large extent, been open to the Palestinians, allowing them to access governmental schools where UNRWA schools were not available or for further education.⁴⁰² However, this has not been without exceptions and progressive restrictions.⁴⁰³ In UNRWA's area of operations, despite UNRWA's impressive education programme,⁴⁰⁴ the capacity of the agency to deliver 'quality education to Palestine refugee children' has come under increasing pressure due to UNRWA's protracted financial (p. 378) crisis,⁴⁰⁵ the natural growth of the Palestinian refugee population, and circumstances that are beyond UNRWA's control.⁴⁰⁶

Like all human rights, the right to education imposes on states the obligation to respect, protect, and fulfil the right; the latter incorporates obligations both to facilitate and to provide access to the rights.⁴⁰⁷ While under human rights law separate systems exist and the role of the UN is expressly recognized,⁴⁰⁸ particularly in the case of UNRWA, which derives its mandate from the General Assembly, host countries in UNRWA's area of operations are not relieved of their obligations under international law either to deliver essential rights, or to ensure that they are delivered, according to the principles and purpose of Article 26 UDHR and Article 13 of ICESCR. States are under an obligation to prioritize the introduction of compulsory, free primary education for all.⁴⁰⁹ In cases where barriers to access education exist, the states concerned should act to remove them.⁴¹⁰ States remain responsible under international law for ensuring that education is delivered in conformity with the applicable international instruments. For example, failure to take measures to combat discrimination in education, failure to introduce compulsory and free primary education, as well as to ensure progressive realization of secondary and tertiary education, the failure to ensure that private educational institutions conform to 'minimum educational standards' and the lack of protection of educational institutions in times of political tension constitute violations of the right to education.⁴¹¹ While the obligation is direct upon states in cases where UNRWA does not operate, in UNRWA's area of operations states remain responsible to make sure that the agency is enabled to function effectively. The restrictions that a number of countries apply to Palestinian refugees' enjoyment of the right to education – such as in Lebanon, Egypt, or in Jordan vis-à-vis certain groups of Palestinian refugees, like the 'ex-Gazans', or Syrian Palestinians⁴¹² – are inconsistent with Article 13 of the ICESCR and Article 28 of the CRC, which put the obligation on states to make primary education compulsory and free of charge. In the case of Egypt, the restrictions applied to Palestinians contrast not only with the state's obligations under ICESCR and CRC, but also with its obligations under the 1951 Convention, to treat refugees as nationals in accessing primary education.⁴¹³ In the case of Israel, the attacks (p. 379) on education infringe on the duty of the occupying Power to ensure special respect and protection due to children affected by armed conflict.⁴¹⁴

4.2 Employment

The right to work is a fundamental right protected under various international human rights instruments⁴¹⁵ and refugee law.⁴¹⁶ Article 23 of the UDHR stipulates that:

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the *right to form and to join trade unions* for the protection of his interests.⁴¹⁷

The ICESCR further articulates the right to work, referring to it as 'the right of everyone to the opportunity to gain his living by work'⁴¹⁸ and enjoy 'favourable conditions of work'.⁴¹⁹ Because of its empowering nature, the right to work is considered essential to the realization of other human rights as an 'inseparable and inherent part of human dignity', and is intimately connected to the right to an adequate standard of living through decent remuneration.⁴²⁰ The Committee on Economic, Social and Cultural Rights clarifies that the right to work 'contributes at the same time to the survival of the individual and to that of

his/her family, and insofar as work is freely chosen or accepted, to his/her development and recognition within the community.⁴²¹

The importance of ensuring access to dignified work to the Palestinian refugees was paramount to the refugees, as well as to those called to assist them, since the very early days of their exile. In UNRWA's area of operations, promoting refugees' self-reliance has been one of the aims of agency since its early days.⁴²² By offering employment opportunities to (p. 380) refugees in its schools, clinics, and programmes, as well as microfinance loans for small businesses later on, UNRWA has made a significant contribution to the human development of Palestinian refugees, especially given the shortage of jobs and legal restrictions in most host countries.⁴²³ By allowing workers' unions or associations to form, UNRWA also offered space for organization and mobilization of the refugees that had no parallel in the region.⁴²⁴ Progressively, UNRWA sustained the refugees in creating an economic power that benefitted the host countries and the wider Arab region.⁴²⁵ Through its microfinance programme, the agency has also helped tens of thousands of entrepreneurs – both refugees and non-refugees – to expand their businesses.⁴²⁶ Undeniably, Palestinian refugees have been an important workforce in countries where they had, especially in the 1950s and 1960s, generally easy access to job opportunities.⁴²⁷

In recognition of the importance of the right to work and the need to protect it, the Casablanca Protocol provides for 'national treatment' for Palestinians in this domain.⁴²⁸ However, as per the discussion in Chapter IV, such recognition of the Palestinian refugees' right to work, and associated residency, only lasted as long as it met domestic interests.⁴²⁹ Despite generations being born and raised in host countries and long-term residence in other Arab countries, Palestinian refugees have generally been treated as foreign nationals with respect to work regulations.⁴³⁰

The right to work is subject to limitations recognized by ICESCR, such as the progressive realization by the state 'to the maximum of the available resources' (Article 2(2)), and the restrictions due to national security and public order (Article 8(1)). However, restrictions and limitations cannot be imposed on discriminatory grounds, for example, based on someone's nationality.⁴³¹ The findings in this study, as argued in Chapter IV, suggest that Palestinians often experience discrimination because of their identity. Lebanon and Egypt represent the most critical situations for the realization of the right to work of Palestinian refugees, as various human rights bodies have underscored.⁴³² In Lebanon the restrictions are so severe (p. 381) that they can amount to 'constructive expulsion', i.e. forcing refugees to leave.⁴³³ In Egypt, in the post-Sadat era significant employment restrictions were imposed for the Palestinians, most of which are still in place.⁴³⁴ Unlike the major host countries in the region, Egypt is party to the 1951 Convention, which gives refugees the right to wage-earning employment, self-employment, liberal professions,⁴³⁵ and social security.⁴³⁶ Although these rights are not identical to those of nationals, and are subject to the requirement that the refugee is lawfully staying in the territory of the state party, UNHCR considers that stateless persons who are present on the territory for a long period should enjoy them.⁴³⁷

The enjoyment of the right to work of Palestinian refugees – like many other Palestinians – in the oPt is also compromised, albeit not as a result of formal restrictions applied to refugees. Shrinking economic opportunities, destruction of livelihoods, movement restrictions and curtailed enjoyment of natural resources imposed by the occupation and its access regime, both in the settlement and Wall affected areas in the West Bank and in blockaded Gaza, have a detrimental effect on (virtually) all Palestinians in the oPt.⁴³⁸ In the West Bank, Palestinian refugees appear more affected by such measures, more by coincidence than design.⁴³⁹ Consequently, dependence on UNRWA is greater than

elsewhere in UNRWA's area of operations, as reflected in the size of the agency's operations in the Gaza Strip.

Efforts to reduce dependency on humanitarian assistance and promote self-reliance are of prime importance to facilitate refugees' ability to establish independent lives.⁴⁴⁰ While UNRWA plays an important role, only states can create this environment. Like other human rights, the realization of the right to work requires an enabling environment made up of laws, policies, and conditions that meet as a minimum the requirements of Article 6 and Article 7 of ICESCR. This is far from being achieved in most of the countries and territories (p. 382) where Palestinian refugees reside and UNRWA operates (where Jordan and pre-war Syria represent exceptions).

4.3 Health

The right to health is protected in a number of international instruments.⁴⁴¹ Under the UDHR, this is considered a fundamental component of the right to an adequate standard of living (Article 25). The ICESCR stipulates 'the right of everyone to the enjoyment of the highest attainable standard of physical and mental health'.⁴⁴² The Committee on Economic Social and Cultural Rights interprets the right to health, as

an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health.⁴⁴³

Like education, the health situation of Palestinian refugees has been a prime concern and area of intervention for UNRWA.⁴⁴⁴ However, as is the case with respect to education, the capacity of the agency has been under pressure.⁴⁴⁵ In recent years, the rise in the average numbers of patient consultations per medical officer per day (up to ninety) has placed UNRWA health personnel under significant strain, particularly where Palestinian refugees cannot easily access the national system (Lebanon) or the refugees have no other services upon which to rely (Gaza).⁴⁴⁶ The challenging environmental conditions experienced by many Palestinian refugees, especially those in camps, make them vulnerable to psychosocial, remedial learning and health needs.⁴⁴⁷ The situation is particularly critical in situations where the delivery of health care is adversely affected by movement restrictions, such as in the oPt.⁴⁴⁸ The blockade of Gaza has impacted the mental, physical, and environmental health of its residents; led to a 'serious deterioration in the availability and quality of health services',⁴⁴⁹ slowed the rebuilding and full reactivation of the health facilities affected by (p. 383) frequent hostilities; and made scarcity of medicines and lack of functioning medical equipment more acute.⁴⁵⁰ Treating and caring for the thousands of Gazans wounded by Israeli military fire during demonstrations as part of the 'Great March of Return' since March 2018 has put further strain on Gaza's already overloaded health care system.⁴⁵¹

As with respect to the right to education, the role of UNRWA in the delivery of health care does not alter the primary responsibility of states under international law to respect, promote and fulfil the right to health.⁴⁵² State imposed restrictions on the access of Palestinian refugees to health care are inconsistent with Article 12 of the ICESCR which, without requiring that basic health care should be free of charge, 'recognises the right to the enjoyment of the highest attainable standard of physical and mental health', which must be guaranteed to 'everyone', not only citizens.⁴⁵³ By virtue of Articles 2.2 and 3 of the ICESCR, access to health care and the measures that contribute to good health should be granted without discrimination on any grounds.⁴⁵⁴ The prohibition of discrimination, including on the grounds of national origin, birth, or legal status, is a core obligation: states are required to respect, protect, and fulfil the right to health of all people on their territory

or under their effective control, regardless of their migrant, refugee, or other legal status. The simple presence of a person within a state's jurisdiction, whatever that person's status, imposes obligations on that state with regard to the right to health.⁴⁵⁵

Particularly relevant in the case of Palestinian refugees in the Gaza Strip and the West Bank, is that health facilities and services are to be accessible, otherwise the meaning of the provision is lost.⁴⁵⁶ Limiting and restricting Palestinian refugees' access to health care, appears to be in violation of states' obligations under Article 12(1) of the ICESCR.⁴⁵⁷ This is particularly significant in conflict afflicted areas such as Gaza and Syria; in both cases direct and indirect attacks have affected medical personnel, facilities and equipment; and also hampered delivery of 'humanitarian assistance in times of emergency, including assistance to refugees and internally displaced persons'.⁴⁵⁸ The attacks on medical facilities, ambulances and medical personnel may also amount to war crimes.⁴⁵⁹

(p. 384) 4.4 Housing

The right of everyone to adequate housing is protected in the UDHR⁴⁶⁰ and the Committee on Economic, Social and Cultural Rights (CESCR)⁴⁶¹ as part of the right to an adequate standard of living.⁴⁶² The CESCR has provided extensive comment on what the realization of this right entails in practice.⁴⁶³ This includes setting out such requirements as: legal security of tenure, namely, guarantees of legal protection against forced eviction, harassment, and other threats; availability of services, materials, facilities, and infrastructure essential for health, security, comfort, and nutrition (e.g. safe drinking water, energy for cooking, heating, and lighting, sanitation and washing facilities); and housing affordability, accessibility, and habitability, referring to both space and living conditions.⁴⁶⁴

Securing the right, and especially security of tenure, for Palestinian refugees has faced political obstacles. While envisaging granting some protection to Palestinian refugees, neither the Casablanca Protocol⁴⁶⁵ nor any of the Arab League resolutions dealing with Palestinian refugees include provisions for the protection of adequate housing or property ownership.⁴⁶⁶ In fact, the housing situation of Palestinian refugees in host countries has historically been a sensitive issue. Because the refugees' presence has been seen as temporary, any improvement of their living conditions, including housing, has been opposed for many years, including by the refugees themselves, as securing their tenure and other improvements to their habitat were perceived as a step towards permanent settlement (*tawteen*). Hence, while some countries have granted Palestinians the right to own property, this has mostly been subject to restrictions.⁴⁶⁷ Also, the refugee camps have come to epitomize the 'plight of the refugees' and their related right to return, which had both to be kept visible and current. As the time passed and exile became prolonged, the rationale for this became less valid but the approach did not change, impacting generations of refugees.

Under international law, housing rights do not only include security of tenure, but also refer to the general conditions of the habitat and its capacity to be a protective space for the individual and the family.⁴⁶⁸ These standards are far from being met in the refugee camps, which generally remain unhealthy environments with extremely high population densities, inadequate and poor sewage and water supply, and severe overcrowding.⁴⁶⁹ The situation is exponentially worse where there have been major military operations, as is the case in the Gaza Strip,⁴⁷⁰ (p. 385) Lebanon,⁴⁷¹ and Syria,⁴⁷² or in the West Bank in the context of the Israeli occupation.⁴⁷³ Despite UNRWA's efforts to improve those conditions, construction and expansion restrictions imposed by host governments or the occupying Power have hampered these efforts.⁴⁷⁴

Host governments and Israel are responsible for ensuring enjoyment of the right to adequate housing. These include making sure, at a minimum, that legal and administrative obstacles are removed and Palestinian refugee housing is included in national plans, and that camps meet national standards. In the case of Lebanon and Israel, with respect to the oPt, treaty bodies have intervened to recommend the need for competent authorities to

comply with their obligations under Article 11 of ICESCR, and ease the restrictions on and facilitate the movement of building materials into Palestinian refugee camps and contribute to the overall improvement of living conditions in camps.⁴⁷⁵ In the case of Israel, where Palestinians in the West Bank, including refugees, often come under attack by security forces and settlers alike, treaty bodies have recalled that the enjoyment of housing rights should be unfettered and without discrimination, otherwise it would impinge on the full spectrum of civil, cultural, economic, political, and social rights that are connected to it.⁴⁷⁶ Where demolitions and evictions of Palestinian communities have occurred in contexts where IHL applies, for example, in the West Bank, there could be a breach of Article 49(1) of the Fourth Geneva Convention. This would possibly amount to a grave breach under Article 147 of the Fourth Geneva Convention and a war crime under Article 8(2) of the Rome Statute. This is of particular importance given the ICC prosecutor's current consideration of the Palestinian situation.⁴⁷⁷

4.5 Freedom of movement

As discussed earlier,⁴⁷⁸ freedom of movement as an internationally protected norm,⁴⁷⁹ has received significant consideration with respect to Palestinian refugees and other (p. 386) Palestinians.⁴⁸⁰ As for any obligation under the ICCPR, freedom of movement is a right that must be granted (rather than progressively realized) and can only be restricted under specific circumstances.⁴⁸¹ In refugee contexts, the protection afforded by international human rights instruments should allow freedom of movement throughout what Zieck calls the refugee's 'journey', including freedom of movement within the country of asylum (internal) and freedom to leave and return to that country (external).⁴⁸² In addition to the human rights norms, the Casablanca Protocol attempted to regulate both the external⁴⁸³ and internal freedom of movement of Palestinian refugees.⁴⁸⁴ Unlike the UDHR and ICCPR, the Casablanca Protocol does not limit Palestinian refugees' freedom of movement to the territory of a given country, but – in principle – allows Palestinians residing in one member state of the Arab League to enter and leave the territory of any other member state.⁴⁸⁵ The 1982 Arab League decision to encourage and authorize member states to issue Travel Documents for Palestinian Refugees (TDPRs) and to accord the holder the same treatment as the citizens of the issuing state with regard to 'freedom of residence, work and movement', went in this direction. This is broader than the protection afforded by the 1951 Convention, which provides for freedom of movement within the country of asylum.⁴⁸⁶ Such freedom would give Palestinians – including refugees – rights similar to those enjoyed within the European Union by nationals of its member states. However, through a subsequent Arab League resolution of 1991, this right has been subordinated to the national immigration policies the Arab states, losing much of its meaning.⁴⁸⁷ As subsequent practice in most Arab states has confirmed, Article 3 of the Casablanca Protocol was a statement of good intent rather than a commitment on the part of the member states.⁴⁸⁸ The envisaged freedom of movement of Palestinian refugees across Arab countries has effectively fragmented into different national systems, rules and exceptions;⁴⁸⁹ Palestinians' freedom of movement within Arab countries, as well as the occupied Palestinian territory is further curtailed by specific measures.⁴⁹⁰

(p. 387) An overview of the general documentation situation of Palestinian refugees illustrates the complexity of the prevailing situation and how it affects both freedom of movement (inside and outside the territory of the issuing authority) and the right to legal residence.⁴⁹¹ In Jordan, while the majority of Palestinians are nationals, some are not (ex-Gazans and Palestinian refugees from Syria). Those who are not nationals may be legally entitled to stay (which is the case for the ex-Gazans and many Palestinians from Syria); in such cases they are entitled to a temporary passport, which serves various purposes but limits access to areas and services that are exclusively for nationals. In Lebanon, while Palestinian refugees who are registered with Lebanese authorities are eligible for Lebanese travel documents to leave and enter (or re-enter) the country, this right is not automatic, as

authorization has to be given by the General Security services. Most of the non-documented (non-ID) Palestinians in Lebanon and those from Syria in Lebanon since 2011 are not entitled to this document. They experience severe movement restrictions including within the country. In Syria, while the majority of Palestinian refugees obtained Syrian travel documents, later arrivals, such as those who came from Iraq after 2003, are without documentation and have had an unclear status (it is unclear how the situation will evolve when peace returns).⁴⁹² In the oPt, Palestinians, including refugees, may have different documentation according to their place of residence. West Bank residents are entitled to PA IDs, PA passports/travel documents, or temporary Jordanian passports (as green card holders), while Gaza Strip residents can hold PA IDs and PA passports/travel documents (the Egyptian travel documents issued in the past are no longer issued/renewed). Both groups can only travel outside the oPt through Israeli-controlled border crossings if they are registered with the Israeli government (many from Gaza are not).⁴⁹³ Even if they are registered, movement within the oPt is restricted. East Jerusalem residents have an Israeli ID,⁴⁹⁴ can have an Israeli *laissez-passer*, or apply for a Jordanian passport (similar to West Bankers).⁴⁹⁵ They do not hold a PA ID and passport/travel document, which creates an immediate problem if Israel revokes their residency, as they are then undocumented.⁴⁹⁶ In other Arab countries, Palestinian refugees are entitled, in principle, to obtain TDPRs; yet, this is not automatic. In recent years, the PA has conferred on anyone who could prove to be Palestinian a PA passport/travel document issued by the PA in Ramallah.⁴⁹⁷

The lack of a common documentation system leads to confusion both within and outside the Arab region.⁴⁹⁸ In some cases, a visa for a third country is not granted for Palestinian (p. 388) refugees unless their TDPRs are stamped with permission to reside in the country of issue, which Egypt, for example, typically denies. In Tunisia, Palestinian TDPR holders are not allowed entry without prior notification by PLO offices in the country, a condition that is not always easy to meet.⁴⁹⁹ The situation has improved somewhat as, in the post-Oslo period, the PA began to exercise limited state functions including diplomatic representation and consular services vis-à-vis Palestinian residents abroad.⁵⁰⁰ PA passports/travel documents nevertheless have uneven recognition.⁵⁰¹ Sometimes, asylum authorities (particularly in Europe) interpret it as evidence that the holder is protected by the State of Palestine and can therefore be returned there. This also impacts the protection that should be granted to Palestinians as stateless persons. The protection problems faced by Palestinian refugees seeking protection outside the host countries and the oPt is often a symptom of the confusion created by this patchy and often intelligible documentation situation.

4.6 Non-refoulement

Denial of asylum and *refoulement* have not been historical concerns for Palestinian refugees. In 1948, Egypt, Iraq, Jordan, Lebanon, and Syria granted them admission and de facto asylum (which in Jordan evolved into local integration). However, as discussed in Chapter IV and Chapter V, these two issues have become an increasing concern with reference to Palestinian refugees forced into further waves of displacement by violence and instability, primarily in the Arab region.⁵⁰² For example, the Lebanese civil war (1975–1990) and the Iraqi invasion of Kuwait (1991) dramatically changed the situation for hundreds of thousands of Palestinians being forced to leave and/or not allowed to re-enter the country in question.⁵⁰³ Palestinian refugees who had been long-established residents were suddenly (again) in need of international protection and assistance, and Arab states were becoming more reluctant to admit them. Palestinians fleeing Iraq after 2003 and Syria after 2011 in many instances were either denied entry or faced forced return in Egypt, Jordan, and Lebanon, as well as in several countries in Europe.⁵⁰⁴ Faced with refusal of entry or stay in

neighbouring countries, Palestinian refugees from Iraq, the oPt, and Syria have moved, often at great risk, like other refugees to Europe or to more remote destinations.⁵⁰⁵

(p. 389) A cornerstone of refugee law,⁵⁰⁶ an absolute prohibition under IHL,⁵⁰⁷ and established in the international (and regional) human rights system,⁵⁰⁸ the principle of *non-refoulement* has become constitutive of customary international law.⁵⁰⁹ Particularly relevant for Palestinian refugees is that Article 3 of the CAT also prohibits 'secondary *refoulement*', namely to a state that would return the individual to a third state in which he or she may face the risk of torture or ill-treatment.⁵¹⁰ In addition to the CAT, nearly all IHRL treaties contain the principle of *non-refoulement*, most often as part of the prohibition of torture and ill-treatment.⁵¹¹ Various treaty bodies have condemned the alleged *refoulement* of Palestinians by Jordan,⁵¹² Iraq,⁵¹³ Lebanon,⁵¹⁴ and some European countries.⁵¹⁵

(p. 390) 4.7 Unity of the family (family reunification)

Numerous international human right instruments protect the unity of the family.⁵¹⁶ The UDHR states in Article 16 that the 'family is the natural and fundamental group unit of society and is entitled to protection by society and the State'. The same wording is used in Article 23(1) of the ICCPR and Article 17(1) of the same instrument states that 'no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence ...'. The CRC contains the most far-reaching limitation on the separation of children from their families.⁵¹⁷ In refugee law, reunification of separated refugee families is considered an important protection priority.⁵¹⁸ This is because, as the Palestinian refugee case has demonstrated from 1948 onwards across subsequent cycles of displacement, the fragmentation and separation of families is a frequent and tragic consequence of forced displacement.

In 1948, while a limited number of separated Palestinian families were able to reunite by returning 'illegally' to Israel,⁵¹⁹ others reunited by joining loved ones in exile in neighbouring countries.⁵²⁰ Occasionally, Israel used family reunification as an argument to justify the expulsion of Palestinians.⁵²¹ In 1949, responding to international pressure to let the refugees return,⁵²² Israel offered a family reunification scheme as an alternative to accepting the return of a much larger number of refugees.⁵²³ The 1967 war resulted in further family separations and a limited 'family reunion programme' was initiated and facilitated by UNRWA as part of its welfare services, but Israel prevented the repatriation of the hundreds of thousands of newly displaced Palestinians (for many of whom this was a second displacement).⁵²⁴

(p. 391) Separation of Palestinian families has caused additional hardship on top of that resulting from Palestinian exile, with clear manifestations originating in the split between the Gaza Strip and the West Bank throughout the decades of occupation, but also as a result of the conflicts in Jordan (1970), Lebanon (1975–1990), Kuwait (1991), Libya (1994), Iraq (post-2003), and Syria (post-2011).⁵²⁵ In some cases, Palestinians who married nationals of their host country were separated from their spouses.⁵²⁶ The return of the Sinai to Egyptian sovereignty in 1982 also caused the separation of a considerable number of Palestinian refugees, who were stranded on the Egyptian side of the newly re-established border and prevented from re-joining even immediate family members in the Gaza Strip. In limited numbers, family separation occurred in the aftermath of the severance of the links between Jordan and the West Bank in 1988, and more recently as a result of Jordanians of Palestinian origins being stripped of their nationality.⁵²⁷ The expanding occupation of the oPt has created further family separations, including of Palestinians who: (i) are not resident in the oPt and want to join their spouses in the oPt; (ii) are in Gaza and want to join their family in the West Bank or East Jerusalem; (iii) are resident in the West Bank and want to join their family in East Jerusalem; (iv) are East Jerusalemites but have been stripped of their residency; (v) are former residents in the oPt but who, having been abroad for over two years, have lost their right to reside in the oPt; (vi) are from communities encircled by

the Wall; and (vii) have missed the opportunity for various reasons to be registered on the population registry.⁵²⁸ While precise figures are hard to ascertain, only an estimated ten per cent of family reunification applications lodged by Palestinians with Israeli authorities are approved, excluding periods when the issue of permits was completely frozen.⁵²⁹ As a result, many Palestinians are staying illegally with their families after the expiry of the visit permits with which they entered.

Another cause of family separation is the gender discrimination in Arab legislation with respect to nationality and residency of foreigners. For example, Palestinian women married to Arab nationals normally qualify for permanent residence or even citizenship in the country of the husband; their children acquire citizenship. This is not the case for children of a Palestinian father and a mother who is an Arab national, who are thus deprived of the mother's nationality, in breach of article 7 of the CRC (see next section). This may in (p. 392) principle result in family separations, especially in cases of secondary displacement.⁵³⁰ One exception is Egypt, which in 2004 amended its nationality legislation to enable children of Egyptian women married to Palestinians to acquire Egyptian citizenship.⁵³¹

While in the context of the 'Madrid' peace process the Multilateral Working Group on Refugees recognized the importance of family reunion and attempted to find a solution for the large number of Palestinians who had requested to be reunited with their family members in the oPt, eventually a solution is yet to be found.

4.8 The right to enjoy rights (alias: between secure residency and nationality)

The overview of the various rights discussed in the previous subsections suggest that host states have not been indifferent to the needs of the Palestinian refugees. However, while recognizing the essential rights of the refugees, they have often subordinated these rights to political and security considerations, and often effectively abridged them.

In the early days of Palestinian exile, Palestinian refugees were admitted with the expectation that their stay would be temporary. Even as their stay extended, they were generally not granted citizenship of the countries of refuge, Jordan being the exception.⁵³² Maintaining refugee status – e.g. not resorting to resettlement and local integration – was seen as a means of ensuring return to the homeland. Meanwhile, the framework put in place by the Arab League for Palestinians was unable to deliver the protection they needed. Palestinian refugees who have not acquired citizenship of a state, and the implications thereof for their daily life, particularly in times of instability and further displacement, are one important aspect of the ephemeral nature of the protection they have enjoyed. While they have on occasions been treated on par with nationals in many spheres of life, their status has remained precarious and vulnerable to changes in the attitudes and priorities of host governments. Such changes have exposed the limits of the 'exceptionalism' of the Palestinian refugee situation in the Arab world. These have included the discriminatory application of some norms compared to other foreigners and even the non-application of international norms to them (like the 1951 Convention in the case of Egypt). In practice, in a number of countries, while being rhetorically welcome as 'brothers', Palestinian refugees have been treated as second-class foreigners. The status of naturalization of Palestinian refugees bears testament to this discrimination. While cases of naturalized Palestinian refugees are not rare,⁵³³ naturalization (p. 393) legislation and practice in the Arab region largely exclude Palestinians in the name of preserving their right to return.⁵³⁴ The experience of Palestinians enjoying citizenship seem to be limited to those who have the means or the opportunity to afford it. A trend underscored by this study is that increasing numbers of highly skilled middle-class and upper middle-class Palestinians (e.g. from the Arabian Peninsula), appear oriented to resolve the precarity of their status by trying to acquire any citizenship while maintaining their residency (as a foreigner, and not as a stateless) in the country of habitual residence. Another possible trend is that Palestinian

refugees in flight from the Arab world, tend to direct themselves towards countries who have more favourable naturalization policies (such as Sweden and Germany).

Legal status is a major determinant for the enjoyment of other fundamental rights, and can impact residency, freedom of movement, and economic and social opportunities, as well as the enjoyment of other fundamental rights. A legal residency status is necessary for a wide range of activities, including ‘the registration of births and deaths, contracting marriage, obtaining employment, housing, hospital care or rations, qualifying for social benefits, entering educational institutions, or requesting the issuance of official documents and permits’.⁵³⁵ The lack of secure legal status has been recognized as a recurrent protection threat to Palestinian refugees across the region and one that has grown as a consequence of unrest in various countries, most recently, but not least, the Syrian crisis, which has produced a number of refugees in the Arab world, which is second only to the Palestinian exodus. In Syria, Palestinian refugees, among other Syrians, have had difficulty in accessing civil registration offices because of the conflict, in addition to general insecurity and fear of arrest and detention by both government and non-state armed groups. In Lebanon, Palestinian refugees and non-ID Palestinians have also been unable to complete civil procedures such as registering marriages and births.⁵³⁶ In Jordan, not registering births is a growing problem among Palestinian refugees from Syria. This problem will increase the number of non-ID Palestinians and has the potential to impact affected children throughout their lives. Lacking a legal status, they may face movement restrictions, have difficulty in accessing basic services, including education and healthcare, and have difficulty in securing employment.

Various scholars have reflected on legal avenues to overcome the precarious status attached to Palestinian refugees, particularly, but not only, in the Arab region. Some argue in favour of forms of temporary protection,⁵³⁷ while others have articulated the importance of securing protection through acquisition of citizenship.⁵³⁸ The right to a (p. 394) nationality, protected under various international and regional human rights instruments,⁵³⁹ is of particular relevance to most Palestinian refugees, especially those residing in the MENA region, despite related challenges. For example, the lack of a political solution and the impasse created by it, including the non-realization of the Palestinian right to self-determination, has meant that Palestinians at present have no opportunity of obtaining Palestinian citizenship. For those Palestinian refugees interested in acquiring citizenship of countries where they are permanent or otherwise long-term residents, international law only recognizes a positive obligation to grant citizenship to stateless persons with respect to countries that are bound by the 1961 Convention on the Reduction of Statelessness. The CRC, while recognizing that each child has a right to acquire a nationality, and that states parties shall ensure the implementation of this right, ‘in particular where the child would otherwise be stateless’ falls short of a firm obligation on states to grant citizenship to stateless children born on their territory. However, both the CRC and other human rights treaty provisions make it clear that states should apply their nationality legislation, including with respect to applications for naturalization, ‘without discrimination of any kind’.⁵⁴⁰ In addition to these legal challenges, the question of nationality is highly sensitive for Palestinian refugees.⁵⁴¹ It highlights the fact that Palestinians have not yet had an independent state and faces the misperception that acquisition of third-country citizenship would arguably undermine the ‘right to return’. Both concerns warrant examination. First, earlier in the book it was clarified that, while under international law most Palestinian refugees continue to be *de jure* stateless, they, as all Palestinians, constitute a ‘people’, entitled to self-determination. Second, Palestinian refugees who obtain third-country citizenship do not lose their right of return. That right is firmly grounded in international law, based on Palestinian refugees’ historic claims, irrespective of their current residency or national status. These claims are not affected by naturalization, which rather entails the loss of refugee status on the basis of Article 1C (3) of the 1951 Convention as, having

gained access to national protection, there is no longer a need for international protection.⁵⁴² In some cases, naturalization may weaken the link with the original country. For instance, the former state of nationality may subject its former nationals to visa requirements, and it may also mean the loss of a right to settle in the former state of nationality.⁵⁴³ However, this does not apply to the Palestinian refugees, whose homeland has become another state in which they never had the option of obtaining citizenship. (p. 395) Under prevailing circumstances, the chances of Israel offering citizenship to Palestinian refugees remain remote.⁵⁴⁴

5. Concluding Observations

Palestinian dispersal is a complex and ever-changing reality, presenting a variety of protection vulnerabilities. An effective protection response should approach the situation of Palestinian refugees for what it has become: a global issue, and be comprehensive. It should therefore focus on realizing the full panoply of rights these refugees enjoy under various areas of international law.

The discussion in this chapter shows that a number of fundamental rights of the Palestinian refugees are *de facto* in abeyance. This is the case, firstly, with respect to the right of the Palestinian people to self-determination. Despite being firmly established in international law, existing for the Palestinians as part of the League of Nations Mandate system since 1922, being reaffirmed multiple times by the UN, and even recognized by Israel as part of the agreements it reached with the Palestinians in the 1990s, this rights remains unmet, largely because of lack of a solution of the question of Palestine in accordance with international law (including Israel's unresolved territorial ambitions over the West Bank and East Jerusalem). The ICJ 2004 Advisory Opinion on the *Legal Consequences of the Wall* confirmed the *erga omnes* nature of some obligations connected to the realization of the Palestinian right to self-determination and has implications for the international community as a whole. While decisive political action generally remains absent, the ICJ ruling has given legal impetus to hold Israel accountable with respect of its policies and practices towards Palestinians, through international, regional, and national legislative measures, as well as global civil society activism, with the potential of mutual reinforcement.

Similar to the right to self-determination, the rights to return, restitution, and compensation, intimately intertwined in the case of Palestine, were part of international law already in 1948, as reaffirmed by the General Assembly in resolution 194. That legal framework, if respected, would have been sufficient to address, if not prevent, what befell the Palestinian people during the *Naqba*. In 1948, the refugees had the right to return to their homes. Where these were located in what had become Israel, they had the right to choose to become citizens. There was a right to compensation for those choosing not to return or for loss and damage of their properties. Instead, 750,000 refugees were denationalized *en masse*, prevented from returning to their homes and forced into exile. The obligations violated by Israel in 1948, including under international humanitarian law and the law of state responsibility, were further consolidated during subsequent decades through the development of the international human rights system (particularly ICCPR, Article 12(4) and ICERD, Article 5(d)(iii)), as well as international practice related to refugee return elsewhere in the world. Meanwhile the policies and practices of successive Israeli governments have continued to prevent the self-determination of the Palestinian people and the exercise of the rights of the Palestinian refugees to return, restitution, and compensation. Israel has (p. 396) justified its actions by challenging the foundation of these rights and the international community has so far been unable to stop this.

Meanwhile a number of other rights of Palestinian refugees that are fundamental to their survival, dignity, and well-being, especially in the context of their protracted exile, have similarly enjoyed a precarious status or have not been recognized. For the majority of the Palestinian refugees residing in UNRWA's area of operations since 1950, despite the significant contribution that host states have made for Palestinians refugees, there has been a significant transfer of responsibility for delivering rights of the refugees to UNRWA. This has occurred largely in response to the expansion of UNRWA's mandate by the General Assembly, as an overall component of the 'management' of the Palestinian refugee question. This situation, which Kagan calls a 'surrogate system', has presented opportunities for the refugees, but also progressively showed its limitations.⁵⁴⁵

By keeping Palestinian refugees protected from illness and disease, providing them with shelter, and by educating them, supporting their personal development through vocational and technical training, and offering them jobs in its schools, clinics, and in running its programmes, UNRWA has helped the refugees to escape poverty and optimize their human development, acquire skills, pursue an adequate standard of living, and become an active part of and contributor to the host society and beyond. While UNRWA continues to be a critical source of support to secure Palestinian refugees' basic standard of living, the realization of such rights cannot be delegated to a UN agency, as it requires an enabling environment that only states can provide. In many cases, compression of Palestinian rights – and discrimination – has been justified in the name of maintaining the right of return alive. Humanitarian aid cannot become a substitute for political solutions.

This chapter demonstrates that while the right to self-determination, return, and compensation are solidly grounded in international law, they require political support and will to materialize. Meanwhile, recognizing other fundamental rights of the Palestinians as refugees, (often) stateless persons, and or protected persons under IHL, and above all, as human beings, does not undermine the right to return and rather helps ensure human dignity while a just and lasting solution remains pending. These rights will remain an important benchmark for assessing the treatment of Palestinian refugees in the MENA region and beyond, for as long as the more fundamental rights to self-determination, return, restitution, and compensation remain unrealized.

Footnotes:

1 A reflection as to whether human rights might constitute 'collective rights' can be found in UN debates leading up to the adoption of common art. 1 of ICCPR and ICESCR (discussed in Chapter III, Section 5), see Cassese, A., *Self-determination of peoples: A legal reappraisal*, Cambridge: Cambridge University Press, 1995, 53ff. For a doctrinal appraisal of the issue of individual vs collective rights, see Donnelly, J., Human rights, individual rights and collective rights, in Berling, J. et al. (eds.), *Human rights in a pluralist world: Individuals and collectivities*, Westport, CT: Roosevelt Study Centre publication, no. 10, 1990, 39.

2 Burke, R., *Decolonization and the evolution of international human rights*, Philadelphia, PA: University of Pennsylvania Press, 2011; Craven, M., Statehood, self-determination, and recognition, in Evans, M. D. (ed.), *International law*, Oxford: Oxford University Press, 3rd edn., 2010, 203–51.

3 Cf. Lawand, K., 'The right to return of Palestinians in international law', *International Journal of Refugee Law* 8.4 (1996) 541–2.

4 As discussed in Section 3.4.3, international human rights law considers the right of return as an individual right.

5 It is to note that as of 1974, the GA has recognized that both the ‘right to self-determination without external interference’ and ‘the right ... to return to their homes and property from which they have been displaced and uprooted’ as *inalienable rights* of the Palestinian people. UNGA res. 3236 (XXIX), 22 November 1974.

6 Their application with respect to the search for durable solutions will be discussed in Chapter VIII.

7 ICCPR, art. 1; ICESCR, art. 1; UN Charter, art. 1(2); UNGA res. 2625 (XXV), *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations*, UNGA res. 2625 (XXV), 24 October 1970, para. 1; UNGA res. 1514 (XV), *Declaration on the granting of independence to colonial countries and peoples*, UNGA res. 1514 (XV), para. 2, discussed below.

8 On the right to self-determination in general see: Brownlie, I., *Public international law*, New York: Oxford University Press, 4th ed., 1990, 595, Cassese (n 1); Hannum, H., ‘The right of self-determination in the twenty-first century’, *Washington and Lee Law Review* 55 (1998) 773.

9 *East Timor (Portugal v Australia)*, Judgment, ICJ Reports 1995, 102, para. 29.

10 Human Rights Committee [hereafter HRC], Gen. Comm. no. 12, art. 1 (Right to Self-determination), 13 March 1984, para. 1.

11 See Said, E. W., *The Politics of Dispossession, The struggle for Palestinian self-determination 1969–1994*, London: Random House, 1994, xiv.

12 For early reflections on the right of the Palestinian people to self-determination, see Cattan, H., *Palestine, the Arabs and Israel: The search for justice*, London: Longmans, 1969; Bassiouni, M. C., ‘“Self-determination” and the Palestinians’, *American Journal of International Law* 65.4 (1971) 31–40; Collins, J. A., ‘Self-determination in international law: The Palestinians’, *Case Western Reserve Journal of International Law* 12 (1980) 137. For further references, see this section and the bibliography at the end of the book.

13 Rostow, E. V., ‘Palestinian self-determination: Possible futures for the unallocated territories of the Palestine Mandate’, *Yale Studies in World Public Order* 5 (1978) 154; Berliner, M. J. ‘Palestinian Arab self-determination and Israeli settlements on the West Bank: An analysis of their legality under international law’, *Loyola of Los Angeles International & Comparative Law Journal* 8 (1985) 551. Lapidoth, R., ‘Sovereignty in transition’, *Journal of International Affairs* 45.2 (1992) 325–46. Stone, J. *Israel and Palestine: Assault on the Law of Nations*, Baltimore, MD: Johns Hopkins University Press, 1981.

14 The American Declaration of Independence of 1776 and French Revolution of 1789 affirmed the principle that individuals and peoples were not at the mercy of the sovereign and had rights of their own that governments were responsible for. See Cassese (n 1), 11.

15 Ibid., 20.

16 Woodrow Wilson’s Fourteen Points; point V states that ‘[a] free, open-minded, and absolutely impartial adjustment of all colonial claims, based upon a strict observance of the principle that in determining all such questions of sovereignty the interests of the populations concerned must have equal weight with the equitable claims of the government whose title is to be determined’. France and Great Britain rejected this (and other principles) as it ran against the colonial system they had in place. Commentators have subsequently argued that ‘Wilson’s conception of self-determination [...] sought to address those groups of people who were ignored on the international scene’, Dilk, J., ‘Reevaluating

self-determination in a post-colonial world', *Buffalo Human Rights Law Review* 16 (2010) 289, at 292.

17 Cf. Cassese (n 1), 32–3.

18 Cf. Brownlie (n 8), 595.

19 Report of the International Committee of Jurists entrusted by the Council of the League of Nations with the task of giving an *Advisory opinion upon the legal aspects of the Aaland Islands question*, League of Nations Off. J., Spec. Supp. No. 3, October 1920, 5.

20 Cf. Cassese (n 1), 21.

21 See Chapter I, Section 2.2, Chapter III, Section 3.2.1.

22 Kattan, V., *From coexistence to conquest: International law and the origins of the Arab-Israeli conflict, 1891–1949*, London: Pluto Press, 2009, 121.

23 *Covenant of the League of Nations*, 28 April 1919, art. 22 [emphasis added].

24 Wilson's 12th point provided that the other nationalities which were then under Turkish rule should be assured an 'undoubted security of life' and an 'absolutely unmolested opportunity of autonomous development'. In Wilson, W., Fourteen points, *Addresses to Congress*, vol. 8, 1918, 33–36.

25 Kattan (n 22), 138.

26 Ibid., 121–45.

27 Crawford, J., *The creation of states in international law*, Oxford: Oxford University Press, 2007, 428.

28 At the end of each Mandate, all the other Ottoman territories' inhabitants (Egypt, Iraq, Syria, Lebanon, present-day Jordan and the Jewish inhabitants of Palestine) gained statehood except (the Arabs of Palestine, see Chapter I, Section 2.3).

29 Balfour's Private Secretary, Lord Eustace Percy, himself argued: '[i]n Palestine, a country peopled for the most part by an Arab race, whose independence they are equally pledged to recognise and guarantee, a "national home" is to be created for a people whose only connection with that country for 1800 years was one of historic sentiment and religious tradition. *This pledge [the Balfour Declaration] violates all current ideas of self-determination*. It stands isolated and unique among the various phases of settlement'. Percy, E., *The responsibilities of the League*, London: Hodder & Stoughton, 1919, 150, cit. in Kattan (n 22), 118 [emphasis added].

30 In a memorandum to his successor (Lord Curzon), Lord Balfour wrote: 'The contradiction between the letter of the Covenant and the policy of the Allies is even more flagrant in the case of the "independent nation" of Palestine than in the "independent nation" of Syria. For in Palestine we do not propose even to go through the form of consulting the wishes of the present inhabitants of the country, though the American Commission has been going through the form of asking what they are. The four Great Powers are committed to Zionism. And Zionism, be it right or wrong, good or bad, is rooted in age-long tradition, in present needs, in future hopes, of *far profounder import than the desires and prejudices of the 700,000 Arabs who now inhabit that ancient land*. In my opinion that is right. What I have never been able to understand is how it can be harmonized with the [Anglo-French] declaration, the [League of Nations] Covenant, or the instructions to the [King-Crane] Commission of Enquiry'. Balfour's memorandum to the British Foreign Secretary, Curzon, 11 August 1919, Foreign Office No. 371/4183 (1919),

reproduced in Woodward, E. L., Butler, R. (eds.), *Documents on British foreign policy 1919–1939*, London: HMSO, 1952, 345, cit. in Kattan (n 22), 123 [emphasis added].

31 It can be argued that UNGA res. 181 of 1947 was an unsuccessful attempt in that direction. Chapter I (n 98)–(n 102) and accompanying text.

32 Further details on the creation and role of UNSCOP are in Chapter I, Section 2.2, and in particular (n 94)–(n 97) and accompanying text.

33 UNSCOP, Report to the General Assembly ['UNSCOP Report, 1947'], UNGA OR of the 2nd sess., suppl. 11, vol. 1, 3 September 1947, UN Doc A/364, para. 176.

34 UNSCOP Report, 1947, recommendation no. II, 'Independence'.

35 Ibid., Introductory Statement, paras. 2(a), (b).

36 Quigley provides a detailed account of the diplomacy that produced the most important decisions on Palestine, particularly in the mid-1940s, noting how colonial mind-set, bias and stereotypes about race and related superiority, determined members states' position over Palestine (based on their view of Palestine Arabs' 'backwardness' compared to Jews). Quigley, J., *The international diplomacy of Israel's founders*, Cambridge: Cambridge University Press, 2016, 72–80 for the facts discussed in the text.

37 In 1946, the population of Palestine was estimated to constitute nearly 1,846,000 people (including 1,203,000 Arabs, 608,000 Jews, and 35,000 others), see UNSCOP Report, 1947, section on 'Population statistics', para. 12. The Jewish population, which constituted around thirty per cent of the total in 1946, counted around ten percent of the overall population when the British took control over Palestine in 1917. During thirty years of British control in Palestine, the Jewish population had grown to over thirty per cent (in comparison, it had grown at an average ten per cent rate over the last two decades of the Ottoman Empire). UNSCOP noted that while the Arab population growth continued due to births (and reduction of death owing to improved health conditions under the mandate) 'the great increase in the Jewish population [was] due in the main to immigration', see UNSCOP Report, 1947, sec. on 'Population statistics', para. 15].

38 On the origins of the inhabitants of Palestine, see Chapter I, Section 2.1.

39 The fate of Jews in Europe and the need for a sustainable solution to their question was a significant concern for the international community at the time, cf. Chapter I.

40 UNSCOP Report, 1947, para. 176: 'With regard to the principle of self-determination, although international recognition was extended to this principle at the end of the First World War and it was adhered to with regard to the other Arab territories, at the time of the creation of the "A" Mandates, it was not applied to Palestine, *obviously because of the intention to make possible the creation of the Jewish National Home there*. Actually, it may well be said that the Jewish National Home and the *sui generis* Mandate for Palestine run counter to that principle' [first emphasis added].

41 UNSCOP Report, 1947, para. 160. At para. 170, the report refers to an agreed position between the British and the Arabs that the Mandate was 'not free to dispose of Palestine without regard for the wishes and interests of the inhabitants of Palestine, and that [any statements affirming the contrary] must all be taken into account in any attempt to estimate the responsibilities which ... His Majesty's Government have incurred towards those inhabitants'.

42 Art. 1 of the UN Charter states that the second purpose of the UN, after the maintenance of international peace and security, is to 'develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples ...'. The same formula returns in art. 55 of the Charter, which deals with international

economic and social cooperation. Charter of the United Nations, 24 October 1945, 1 UNTS, xvi.

43 Art. 73 of the UN Charter requires colonial powers to regard their control over colonies as a ‘sacred trust’ and to transmit periodic reports regarding their administration of them to the UN.

44 This was confirmed by the ICJ in the *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970)*, 1971 I.C.J. 1, 31 (para. 52) [‘Namibia’]. For a doctrinal appraisal, see Quigley, J., ‘Palestine’s declaration of independence: Self-determination and the right of the Palestinians to statehood’, *Boston University International Law Journal* 7 (1989), 9.

45 UN Charter, art. 2(4).

46 UNGA res. 181 (II) of 1947, 4th preambular paragraph, refers to ‘one which is likely to impair the general welfare and friendly relations among nations’. Resonance with art. 1 of UN Charter language is evident. Further, the concept of the ‘Independent Arab and Jewish States’ is repeated dozen times in the text of the UN Partition Plan, together with a clear determination of the fate of its inhabitants and their rights. This includes the right to citizenship, non-discrimination of any kind between the inhabitants on the grounds of race, religion, language, or sex, and equal protection before the law. See UNGA res. 181 (II), ch. 2 paras. 2-3, and ch. 3.

47 The challenges of identifying populations as ‘peoples’ having the right to self-determination are discussed by Koskenniemi, M., ‘National self-determination today: Problems of legal theory and practice’, 43 *International & Comparative Law Quarterly* 241 (1994). For an alternative perspective: MacCormick, N. (ed.), *Nation and nationalism*, in *Legal right and social democracy: Essays in legal and political philosophy*, Oxford, Oxford University Press, 1982, 247; Miller, D., *On nationality*, Oxford: Clarendon Press, 1995.

48 According to the Human Rights Committee (‘HRC’), self-determination has an internal and external dimension. *External self-determination* is the right of peoples to determine their own political status and to be free of alien domination, including formation of their own independent state; *internal self-determination* refers to people’s entitlement to govern themselves, and requires the existence of certain constitutional and political processes to enable the exercise of the right in practice. HRC, Gen. Comm. no. 12, art. 1 (Right to Self-determination), 13 March 1984, para. 4. See also CERD, General Recommendation No. 21 (The right to self-determination), UN doc A/51/18, Annex VIII at 125 (1996), paras. 4, 6.

49 Expression of external self-determination may take different forms, such as independence, association with other groups in a federal state, or autonomy or assimilation in a unitary (non-federal) state without entailing separation. Accordingly, fulfilment of that right need not, in all circumstances, be ‘external self-determination’ which is limited to decolonization and analogous contexts of foreign domination. Cassese, A., *Political self-determination: Old concepts and new developments*, in Cassese, A. (ed.), *UN Law/fundamental rights: Two topics in international law*, Alphen aan den Rijn: Sijthoff & Noordhoff, 1979, 137.

50 Cassese (n 1), 52, 101. Brownlie (n 8), 595. Pomerance, M., *Self-determination in law and practice: The new doctrine in the United Nations*, The Hague: Martinus Nijhoff Publishers, 1982, 37.

51 UNGA res. 181 (II) of 29 November 1947, its 4th preamble paragraph refers to ‘one which is likely to impair the general welfare and friendly relations among nations’. Resonance with art. 1 of the UN Charter language is evident.

52 Determining who are the people (or group) entitled to exercise self-determination has been cause of conflict in several context, from former Yugoslavia, East Timor, Kashmir, Northern Ireland, Tibet, and Taiwan, as well as Sri Lanka, Eritrea, Somalia, and Sudan. See Cassese (n 1), 205–73; Hannum, H., *Self-determination in the post-colonial era*, in *Self-determination: International perspectives*, London: Palgrave Macmillan, 1996, 12–44; Horowitz, D. L., *Self-determination: Politics, philosophy, and law*, in Shapiro, I., Kymlicka, W. (eds.), *Ethnicity and group rights*, New York: NYU Press, 1997, 421.

53 The *stricto sensu* legislative powers of the UNGA mainly concern ‘organizational’ matters internal to the UN legal order (including semi-external matters such as the budget, or admission, suspension and expulsion of members), see Öberg, M. D., ‘The legal effects of resolutions of the UN Security Council and General Assembly in the jurisprudence of the ICJ’, *European Journal of International Law* 16.5 (2005) 883. On the powers of the UNGA, see Simma, B., Mosler, H., Paulus, A., Chaitidou, E. (eds.), *The charter of the United Nations: A commentary*, vol. 1, Oxford: Oxford University Press, 2002. On the legal authority of UNGA resolutions, see Basak, A., *Decisions of the United Nations organs in the judgments and opinions of the International Court of Justice*, Wrocław: Zakład Narodowy im. Ossolińskich, 1969, 168; Bleicher, S. A. ‘The legal significance of re-citation of General Assembly resolutions’, *American Journal of International Law* 63.3 (1969) 444–5. Sloan, B., *United Nations General Assembly Resolutions in our changing world*, Alphen aan den Rijn: Nijhoff, 1991, 45–47, 68–69. On the power of the UNGA in dispute settlement, see Higgins, R., ‘The development of international law by the political organs of the United Nations’, *Proceedings of the American Society of International Law at its annual meeting*, vol. 59, Cambridge: Cambridge University Press, 1965, 116–24. On the specific competence of the General Assembly vis-à-vis Palestinian inalienable rights, see (n 179)–(n 185).

54 While in *Northern Cameroons*, Preliminary Objection, ICJ Rep (1963) 15, 24, the ICJ could not make a decisive conclusion, in *Namibia* (n 44), para. 105, the ICJ recognizes UNGA’s power to terminate mandates in favour of the existence of such power; see also the argument made by Tanaka J in the dissenting Opinion on the ICJ *South West Africa Case*, ‘South West Africa Case (2nd Phase)’, *Dissenting Opinion of Judge Tanaka*, *ICJ Reports* (1966).

55 ICJ, *Advisory Opinion on the Status of South West Africa*, *ICJ Reports* 1950, 141–2 (p 17–8), reads as follows: ‘Article 7 of the Mandate, in requiring the consent of the Council of the League of Nations for any modification of its terms, brought into operation for this purpose the same organ which was invested with powers of supervision in respect of the administration of the Mandates... those powers of supervision now belong to the General Assembly of the United Nations. On the other hand, Articles 79 and 85 of the Charter require that a Trusteeship Agreement be concluded by the mandatory Power and approved by the General Assembly before the International Trusteeship System may be substituted for the Mandates System. These articles also give the General Assembly authority to approve alterations or amendments of Trusteeship Agreements. *By analogy, it can be inferred that the same procedure is applicable to any modification of the international status of a territory under Mandate which would not have for its purpose the placing of the territory under the Trusteeship System.* This conclusion is strengthened by the action taken by the General Assembly and the attitude adopted by the Union of South Africa which is at present the only existing mandatory Power.’ [Emphasis added].

56 UNGA res. 181 (II) of 1947, sec. A.

57 Ibid., ch. 3.

58 Ibid., see the sections on ‘steps Preparatory to Independence’ and ‘The Economic Union of Palestine’.

59 In 1920, one of the first arbitration cases resolved by the League of Nations (LoN) was about the claims of self-determination of the inhabitants of the Åland Islands (who had claimed independence from Finland in the name of the different ethnicity of most of its inhabitants). Eventually self-determination in the form of secession was denied but international guarantees were given to allow the population to pursue its own culture in the form of autonomy. See LoN, Report of the Committee of Jurists Entrusted by the Council of the League of Nations with the Task of Giving an Advisory Opinion upon the Legal Aspects of the Åaland Islands Question, Official Journal, October 1920.

60 Both Arab and Jews were referred to as ‘citizens’ of Palestine and distinguished from other (non-citizen) residents, see UNGA res. 181, ch. 3(1). This has implications as those who became refugees and were outside the territory of what had become Israel were all denationalized without acquiring citizenship of the successor state (Israel), following its creation, see Chapter III, Section 3.2.1. On the capacity of an UNGA resolution to establish ‘facts’, in the *Case Concerning Military And Paramilitary Activities in and against Nicaragua (Nicaragua v United States Of America)*, [‘Nicaragua case’], merits judgment of 27 June 1986, the ICJ held that ‘in its quest for the truth, it may also take note of ... the resolutions adopted or discussed by [international] organizations, in so far as factually relevant’ (para. 72), cit. in Öberg (n 53), 891.

61 *Israel: The Declaration of the Establishment of the State of Israel*, 14 May 1948.

62 On Israel’s support of the force of the General Assembly’s decisions, see declaration by Mr. Eban, representative of the Government of Israel before the ad hoc Political Committee of the United Nations, on the occasion of the Application of Israel for Admission to Membership in the United Nations (A/818), 45th meeting, 5 May 1949,⁵⁴ ‘The Government of Israel would never be among those who, by depriving General Assembly resolutions of all compelling moral force, would sacrifice the restraints of international law upon the altar of undiluted sovereignty’; UNGA res. 273 (III) of 11 May 1949, Admission of Israel to Membership in the United Nations: ‘Recalling its resolutions of 29 November 1947 3/ and 11 December 1948 4/ and taking note of the declarations and explanations made by the representative of the Government of Israel [...] Decides that Israel is a peace-loving State which accepts the obligations contained in the Charter and is able and willing to carry out those obligations ...’.

63 See in particular Section 2.3.

64 This subsection complements discussion of Palestinian ‘statelessness’ in Chapter III, Section 3.

65 In 1952, UNGA recommended all member states to uphold ‘self-determination of all peoples and nations’, cf. UNGA res. 637 A (VII), 16 December 1952. However, as Cassese (n 1) argues, most of the UN member states at the time objected to the full recognition of self-determination as a human right. Of note is the fact that many of the current members of the UN had not yet reached independence.

66 UNGA res. 1514 (XV), 14 December 1960. The resolution is more an authoritative interpretation of the Charter rather than a recommendation. Since its adoption the Declaration has been frequently referred to in a series of resolutions concerning specific territories, see, e.g. UNGA res. 1573 (XV) of 19 December 1960 re Algeria; UNGA res. 1603 (XV) of 20 April 1961 re Angola, and UNGA res. 1747 (XVI) of 28 June 1962 re Zimbabwe (Rhodesia).

67 UNGA res. 1514 (XV), 14 December 1960, para. 6. This was confirmed by the Committee monitoring the Convention on the CERD, General Recommendation No. 21 (Right to self-determination), para. 6.

68 For the origins of this principle see (n 59) re: the Åland case.

69 Mutua, M., 'Why redraw the map of Africa: A moral and legal inquiry', *Michigan Journal of International Law* 16 (1994) 1113.

70 UNGA res. 1803 (XVII), 14 December 1962, on Permanent Sovereignty over Natural Resources.

71 UNGA res. 2131 (XX), 14 January 1966.

72 On these instruments, see Chapter III, Section 5.1.

73 Cassese (n 1), 53.

74 Brownlie defines it as 'the right of cohesive national groups ("peoples") to choose for themselves'; Brownlie, I., (ed.), *Basic documents on human rights*, 4th edn., Oxford: Clarendon Press, 1995, 595.

75 Cassese also describes it as 'a criterion of democratic legitimization of a State', in Cassese, A., *The human dimension of international law: Selected papers of Antonio Cassese*. Oxford: Oxford University Press, 2008, 76.

76 Scobbie I., Drew, C., 'Self-determination undermined: The case of East Timor', *Leiden Journal of International Law* 9 (1996) 185, 201. See also Drew, C., 'The East Timor story: International law on trial', *European Journal of International Law* 12.4 (2001) 651, 663; AbuShanab, A., 'An environmental approach: The protection of natural resources in the Occupied Palestinian Territory', Al-Haq Briefing Paper, 2017, 12.

77 While intertwined, these elements are often considered in isolation. E.g. the Opinion of the Advocate General of the Council of the European Union, in *Council v Polisario*, C-104/16 P, 13 September 2016, accepts self-determination as peremptory norm and recognises the permanent sovereignty on natural resources as its corollary, but not as peremptory norm itself; cf. para. 294: 'Article 73 of the United Nations Charter and the principle of permanent sovereignty over natural resources have never been regarded as peremptory norms of international law (*jus cogens*) or *erga omnes* obligations.'

78 Scobbie and Drew (n 76), 663.

79 HRC, Gen. Comm. no. 12, art. 1 (Right to Self-determination), 13 March 1984, para. 6. This provision has been further elaborated by the ICJ, which in the *Advisory Opinion Concerning Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, ICJ, 9 July 2004, recognized the *erga omnes* nature of the right to self-determination; see (n 123).

80 UNGA res. 2625 (XXV), Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, 24 October 1970.

81 Ibid., para. 1.

82 Ibid.

83 On *jus ad bello* see Chapter II, Section 2.1, (n 11) accompanying text.

84 Cassese (n 1), 53.

85 The genesis of the PLO is discussed in Chapter IV, Section 2.1 (PLO and the Arab League); its political role vis-à-vis the refugee question is discussed in Chapter VIII, Section 3.4.

86 Initial demands revolved around liberation of all historic Palestine in the name of the self-determination and return of the refugees (The original charter did not refer to 'return' as such [see next section]). See Palestinian National Charter, adopted by the PLO in 1964, art. 17, 21.

87 Cf. Sayigh, Y., *Armed struggle and the search for state: the Palestinian national movement, 1949-1993*, Oxford: Clarendon Press, 1997.

88 Ibid.

89 The first resolution that explicitly recognizes the Palestinians as a people is UNGA res. 2535 (XXIV) B, 10 December 1969. This recognition of legal status has been reaffirmed by all subsequent UNGA resolutions of that deal with the subject. UNGA res. (XXIX), 14 October 1974 provides that 'the Palestinian people is a principal party to the question of Palestine'.

90 UNGA res. 2649 (XXV), The importance of the universal realization of the right of peoples to self-determination and of the speedy granting of independence to colonial countries and peoples for the effective guarantee and observance of human rights, 30 November 1970.

91 Ibid., para. 5.

92 UNGA res. 2672 (XXV) A-D, United Nations Relief and Works Agency for Palestine Refugees in the Near East, 8 December 1970, Part C, paras. 1-2.

93 This is discussed in detail in Section 3.

94 UNGA res. 3089 D (XXVIII), 7 December 1973.

95 UNGA res. 3236 of 22 November 1974.

96 See Mallison, W., Mallison, S. V., 'An International law analysis of the major United Nations Resolutions concerning the Palestine question', United Nations, Department of Public Information, 1979 ['UNDPI Paper 1979'].

97 UNGA res. 3237 (XXIX), Observer status for the Palestine Liberation Organization, 22 November 1974, paras. 1-3.

98 UNGA res. 3376 (XXX), Question of Palestine, 10 November 1975, paras. 3-4.

99 The Committee's recommendations have been repeatedly endorsed by UNGA but have not been acted upon by the Security Council. See, e.g. UNGA res. 31/30, 24 November 1976; UNGA res. 32/40 A, 2 December 1977; UNGA res. 33/28 A, 7 December 1978. On the work of the Committee, see UN, Dept. of Public Information, 'For the Rights of the Palestinians: The Work of the Committee on the Exercise of the Inalienable Rights of the Palestinian People', New York: UN, 1992.

100 General Assembly-Security Council, Letter dated 18 November 1988 from the Permanent Representative of Jordan to the United Nations addressed to the Secretary-General, UN Doc A/43/827-S/20278, 18 November 1988, Annex III, ['Declaration of Independence'].

101 Ibid.

102 Palestine National Council (PNC), Political Communiqué and Palestinian Declaration of Independence of 15 November 1988. The communiqué called for an international conference on the basis of UNSC res. 242. See discussions in Quigley (n 44), 1-3.

103 Quigley J., Self-determination in the Palestine context, in Akram, S., Dumper, M., Lynk, M., Scobbie I., (eds.), *International law and the Israeli-Palestinian conflict: A rights-based approach to Middle East peace*, London: Routledge, 2011, 224.

104 UNGA res. 43/177, Question of Palestine, 15 December 1988, paras. 2-3 [emphasis added]. In the same resolution, the UNGA changed the designation of ‘Palestine Liberation Organization’ to ‘Palestine’.

105 In the DOP, both sides ‘agree that it is time to put an end to decades of confrontation and conflict, recognize their mutual legitimate and political rights, and strive to live in peaceful coexistence and mutual dignity and security and achieve a just, lasting and comprehensive peace settlement and historic reconciliation through the agreed political process’, DOP, 13 September 1993, preambular paragraph.

106 In addition to calling for a cease-fire following the outbreak of the 1973 war, UNSC res. 338 of 22 October 1973, calls for the implementation of UNSC res. 242 in all of its parts. Substantively, res. 338 adds nothing to the text of res. 242.

107 For a legal appraisal of the resolution, see Lynk, M., ‘Conceived in law: The legal foundations of resolution 242’, *Journal of Palestine Studies* 37.1 (2007) 7-23.

108 According to Lynk, ‘[resolution] 242 could never have delivered a lasting settlement and an authentic reconciliation between Israelis and Palestinians as long as its focus was on the consequences of 1967 rather than those of 1948’; see Lynk (n 107), 8.

109 Further details provided in Section 3.

110 Administrative body established by the PLO in 1993 to govern in the West Bank and Gaza. See also Chapter I (history), Chapter III (functions), and Chapter VIII (political evolution).

111 The distribution of authority created by Oslo, including through the zoning of the West Bank in areas A, B, and C, where the Palestinians only exert limited authority, and the separate policy adopted in Gaza, is discussed in Chapter IV, Section 3.5.2, in ‘the status of the land’.

112 DOP, arts. V-VIII.

113 UNGA res. 67/19, Status of Palestine in the United Nations, 29 November 2012, paras. 1-2.

114 Quigley argues that ‘[r]ecognition of a declared state is one stage beyond recognition of a right to a state’, see Quigley (n 44).

115 Following statehood recognition, the State of Palestine acceded to the core IHRL treaties as well as the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Suppression and Punishment of the Crime of Apartheid, The Vienna Convention on Diplomatic Relations, The Vienna Convention on Consular Relations, the UN Convention Against Corruption, and, last but not least, the Rome Statute of the International Criminal Court in 2015. See Chapter III, Section 5), (n 19), (n 130), (n 336).

116 Facts described in Chapter IV and legal analysis in Chapter III.

117 Already in 2004, the facts associated to the Wall and its regime were qualified as potentially tantamount to ‘de facto annexation’ by the ICJ. ICJ, *Legal Consequences of the Wall*, 2004, 52, para. 121.

118 During his premiership, Netanyahu has repeatedly called for the recognition of Jerusalem as the ‘eternal and undivided capital of Israel’, see *Reuter News*, 14 May 2018. At the time of finalizing the manuscript, developments towards annexation of part of the West Bank by Israel have accelerated.

119 UNGA, Note by the Secretary-General on the economic and social repercussions of the Israeli occupation on the living conditions of the Palestinian people in the Occupied Palestinian Territory, including Jerusalem, and the Arab population in the occupied Syrian Golan, 8 May 2015, A/70/82-E/2015/13, paras. 69–83.

120 The economic cost of the Israeli occupation, in terms of exploitation of essential resources for Palestinian economic survival, is largely documented. In a first study of the matter in 2010, the total costs imposed by the Israeli occupation on the Palestinian economy that researchers were able to measure was USD 6.897 billion, equivalent to 84.9 per cent of the total estimated Palestinian GDP. Palestinian Ministry of National Economy and Applied Research Institute-Jerusalem (ARIJ), ‘Bulletin on the economic costs of the Israeli occupation for the occupied Palestinian territory’ September 2011. See also UNGA res. 71/174, Economic Costs of the Israeli Occupation for the Palestinian People, 21 July 2016.

121 ICJ, *Legal Consequences of the Wall* (n 117), 184, para. 122.

122 Ibid., 199, para. 155, notes that the norm constitutes ‘a concern of all states’ and by virtue of the ‘importance of the rights involved, all states can be considered to have a legal interest in their protection’ (the language in quote is from ICJ, *Barcelona Traction, Light and Power Company, Limited, Second Phase, Judgment, ICJ Reports 1970*, 32, para. 33).

123 ICJ, *Legal Consequences of the Wall* (n 117), para. 159 so disposes: ‘Self-determination constituting an *erga omnes* obligation, the Court called upon all states to act so ‘that any impediment ... to the exercise by the Palestinian people of its right to self-determination is brought to an end.’

124 Following the ICJ *Legal Consequences of the Wall* (n 117), in 2007 the United Nations Register of Damage Caused by the Construction of the Wall in the Occupied Palestinian Territory (UNRoD) was established to document the damage caused to all natural and legal persons concerned as a result of the construction of the Wall by Israel in the oPt, including in and around East Jerusalem. See UNGA res. ES-10/17 of 24 January 2007.

125 Faris, H. A., (ed.), *The failure of the two-state solution: The prospects of one state in the Israel-Palestine conflict*, London: IB Tauris, 2013.

126 Crawford, J., *Creation of states in international law*, 2nd edn., Oxford: Oxford University Press, 2006, 62; Shaw, Y. ‘In the Matter of the Jurisdiction of the International Criminal Court with Regard to the Declaration of the Palestinian Authority-Supplementary Opinion’, 2010, 11, para. 25.

127 Still largely applicable is the analysis of the PA functioning offered in Kattan V., ‘The legality of the West Bank wall: Israel’s High Court of Justice v the International Court of Justice’, *Vanderbilt Journal of Transnational Law* 40 (2007) 1425, 1464. For an appraisal of the challenges experienced by the Palestinian government in exercising state functions, see Sayigh, Y., ‘Inducing a failed state in Palestine’, *Survival* 49.3 (2007) 21–6.

128 The Palestinian National Charter of the PLO refers to the Palestinian people as ‘those Arab nationals who, until 1947, normally resided in Palestine regardless of whether they were evicted from it or have stayed there. Anyone born, after that date, of a Palestinian father – whether inside Palestine or outside it – is also a Palestinian’. Given the PLO status of recognized representative of Palestinian people and entrusted with the powers and responsibilities of the Provisional Government of the State of Palestine under UNGA res. 67/19, this can be considered an official identification of the people entitled to self-determination in Palestine.

129 Nabulsi, K., Popular sovereignty, collective rights: Participation and crafting durable solutions for Palestinian refugees, in Rempel, T. (ed.), *Rights in principle, rights in practice: Revisiting the role of international law in crafting durable solutions for Palestinian Refugees*, Bethlehem: BADIL, 2009, 87.

130 In an extraordinary undertaking led by Professor Karma Nabulsi from the University of Oxford, between 2004 and 2006 – known as the ‘Civitas collective research project’ – perceptions of Palestinians in the diaspora were collected with regards to important matters common to Palestinian refugee communities living in exile, in the Middle East, Europe, Americas, Africa, and Asia-Pacific. The research project culminated in a rich report: Nabulsi, K., ‘Palestinians Register - Laying Foundations and Setting Directions: Report of the Civitas Project’, University of Oxford, Nuffield College, 2006 [hereafter ‘Civitas Project’].

131 Civitas Project (n 130), 4.

132 A Palestinian draft nationality law exists but has not been adopted, see Chapter III, Section 3.2.2.

133 See Chapter VIII, Section 4.3.

134 This was subsequently confirmed by the Nationality Law of 1952 which made the return for any non-Jews impossible.

135 As discussed in Chapter I, (n 135), (n 173), (n 179)–(n 181), 400–500 Arab villages and towns were occupied and depopulated. Between 1948 and 1953, 350 of the 370 new Jewish settlements created in Israel were on former Arab property Peretz estimates that by 1954, more than one-third of the Israeli-Jewish population were living on former Arab lands, and an additional 250,000 Israeli Jews, including one-third of the new immigrants, lived in abandoned Arab urban property. In the countryside, where most Palestinians had lived prior to 1948, enormous tracts of citrus, olive, and other cultivable properties were expropriated by Israel and turned over to Jewish agricultural settlements. The transfer of wealth to Israel in the form of Palestinian lands, homes, assets, and property was crucial to Israel’s ability to develop. Agricultural lands were critical to the fledgling Israeli economy. See Peretz, D., *Palestinians, refugees, and the Middles East peace process*, Washington, DC: US Institute of Peace Press, 1993, 66.

136 These include, e.g. the Abandoned Areas Ordinance of 1948, 1 *LSI* 25; the Emergency Regulations Concerning the Cultivation of Waste Lands Regulations of 1949, 2 *LSI* 71 and the Absentees’ Property Law of 1950, 4 *LSI* 68. And in the oPt, Military Order 58, discussed in Chapter IV, Section 5.3.

137 See Tamari, S., Palestinian refugee property claims: Compensation and restitution, in Benvenisti, E., Gans, C., Hanafi, S. (eds.), *Israel and the Palestinian refugees*, New York: Springer, 2007, 310.

138 Unruh, J. D., ‘Humanitarian approaches to conflict and post-conflict legal pluralism in land tenure’, Humanitarian Policy Group, 2007, 53.

139 Among the abundant literature on the right of return of Palestinian refugees (see expanded bibliography), key legal references are offered by: Mallison, W. T. Mallison, S. V., 'The right of return', *Journal of Palestine Studies* 9.3 (1980) 125–36; Quigley, J., 'Displaced Palestinians and a right of return', *Harvard International Law Journal* 39 (1998) 171; Boling, G. J., 'The 1948 Palestinian refugees and the individual right of return: An international law analysis', Bethlehem: BADIL, 2007. On compensation of Palestinian refugees, indispensable readings include Fischbach, M. R., 'The United Nations and Palestinian refugee property compensation', *Journal of Palestine Studies* 31.2 (2002) 34–50. For a legal analysis, see Lynk, S. M., *The right to restitution and compensation in international law and the displaced Palestinians*, in Kattan, V. (ed.), *The Palestine question in international law*, London: British Institute of International and Comparative Law, 2002.

140 Khalidi, R., 'Observations on the right to return', *Journal of Palestine Studies* 21.2 (1992) 29.

141 Peretz (n 135), 72.

142 E.g. Golda Meir, former Israeli prime minister, declared: '[t]here were no such thing as Palestinians. When was there an independent Palestinian people with a Palestinian state? It was either southern Syria before the First World War, and then it was a Palestine including Jordan. It was not as though there was a Palestinian people in Palestine considering itself as a Palestinian people and we came and threw them out and took their country away from them. They did not exist', quoted by the *Sunday Times*, 15 June 1969, and *The Washington Post*, 16 June 1969. Also, at the beginning of the Oslo process in 1992, former Israeli prime minister Shamir reportedly stated that '[t]he term "right of return" is an empty phrase that is utterly meaningless', 'it will never happen, in any way, shape or form. There is only a Jewish "right of return" to the land of Israel.' Shamir made the remarks in response to a US State Department news briefing prior to the first meeting, in Ottawa, of the Multilateral Working Group on Refugees, established as part of the Madrid peace process (see Chapter I, Section 6.2.3). According to the statement, the US continues to support UNGA res. 194 (III), 11 December 1948, in which the right of Palestinian refugees to return to their homes was first recognized. See Makovsky, D., 'Palestinian right of return "will never happen": Shamir', *IP*, 14 May 1992. See also Haberman, C., 'US Comment on Old Issue Inflames Israelis', *New York Times* May 1992, A13. The US soon clarified the reference, announcing that resolution 194 is not part of the framework for the ongoing peace talks; cf. Friedman, T. L., 'US softens on "48 Palestinian issue"', *New York Times* 19 May 1992, A3, A13. In 2017, Avigdor Lieberman, Israel's Defense Minister, declared that no Palestinian [refugee]s will be allowed to settle in the lands they claim within Israeli territory.

143 Said, E. W., *The question of Palestine*, New York: Random House, 1979, 49.

144 Already discussed in Chapter I (historical facts) and Chapter II Section 4 (distinctive legal status of the Palestinian refugees). An analysis of the right of return in UNGA res. 194 (III) is offered in Section 3.3.2.

145 E.g. Mallison and Mallison (n 139); Lawand (n 3), 532–68; Quigley (n 139), 171; Boling (n 139); Akram, S., *Reinterpreting Palestinian refugee rights under international law*, in Aruri, N. (ed.), *Palestinian refugees: The right of return*, London, Pluto Press, 2001, 165–94.

146 See Section 3.3.

147 This is a recurrent argument in various Israeli sources (Chapter I, (n 138)). In a famous address to the General Assembly on the occasion of its consideration of Israel's admission as a member of the UN, the Permanent Representative of Israel [Aubrey Eban] indicated that 'the Government of Israel was earnestly anxious to contribute to the solution of that problem although the problem was not of its making'. See statement by Aubrey Eban to the

General Assembly [Application of Israel for admission to membership in the United Nations (A/818)], UN Doc. A/AC.24/SR.45, 5 May 1949, para. 3 [emphasis added].

148 Radley, K. R., 'The Palestinian refugees: The right to return in international law', *American Journal of International Law* 72.3 (1978) 586–614; Hannum, H., *The right to leave and return in International Law and practice*, vol. 8, Leiden: Martinus Nijhoff Publishers, 1987, in particular 108. See also Zilbershats, Y., International law and the Palestinian right of return to the State of Israel, in Benvenisti, E., Gans, C., Hanafi, S. (eds.), *Israel and the Palestinian refugees*, New York: Springer, 2007, 191–218; Lapidoth, R., The right of return in international law, with special reference to the Palestinian refugees, in Dinstein, Y., Domb, F. (eds.), *The progression of international law*, Leiden: Brill Nijhoff, 2011, 25–44.

149 Zilbershats (n 148), 196–9; Kent, A., 'Evaluating the Palestinians' claimed right of return', *University of Pennsylvania Journal of International Law* 34 (2012) 149.

150 Ibid., 14

151 See Chapter I (n 167).

152 A list of population transfers which occurred in modern times is offered by Kent (n 149). For an appraisal of the legal dimension of population transfers see Drew, C., 'Population transfer: The untold story of the international law of self-determination', PhD thesis, University of London, 2006; Drew, C., et al., *Population transfer: The untold story of self-determination*, Cambridge: Cambridge University Press, 2017.

153 In 1936, the Palestine Royal Commission (Peel Commission) offered population exchange and land swaps as a possible solution for the viability of Jewish and Arab states living side by side. See Chapter I, (n 85)–(n 87) accompanying text.

154 The armistice agreements Israel signed with Egypt, Jordan, Lebanon, and Syria in the first few months of 1949 did not mention any population exchange; Kattan (n 22), 211–12.

155 See details in Chapter III, (n 236)–(n 240). One exception is represented by the ethnic Germans who, in the aftermath of the Second World War, were transferred to Germany from various Eastern European countries in retaliation for the role some of them had played during the Nazi expansion in the region; Drew (n 152).

156 See Section 3.2.2.

157 In a 1988 UN study on the right to leave and to return to one's country, Mubanga-Chipoya suggested that an effective way of dealing with this issue with respect of Palestine refugees should be in the General Assembly under the principle of self-determination; Mubanga-Chipoya, C., 'Analysis of the current trends and development regarding the right to leave any country, and some other rights or considerations arising therefrom', UN doc. E/CN.4 (1988) 54.

158 UNGA res. 3089 D (XXVIII), 7 December 1973, (n 94).

159 Chapter VIII.

160 'Progress Report of The United Nations Mediator on Palestine submitted to the Secretary-General for Transmission to the Members of the United Nations in pursuance of paragraph 2, part II, of Resolution 186 (S-2) of the General Assembly of 14 May 1948, GAOR, 3rd sess., suppl. 11 (A/648) Paris, 1948 [hereafter 'UN Mediator Progress Report']. The report was drafted, with the help of a team of legal and other experts, by the Mediator's principal advisor, Ralph Bunche, who was also the principal author of the UN Partition Plan, the Organization's first peace plan for Palestine, and who would later oversee the negotiation of armistice agreements that ended the 1948 war, which would earn

him the Nobel Peace Prize. See Rempel, T., ‘“The Right to Return”, Drafting Paragraph 11 of Resolution 194 (III), December 11, 1948’, (forthcoming).

161 UN Mediator Progress Report (n 160), 13. On the mandate and mediation efforts of the UN Mediator, see Chapter I, Section 4.1.

162 The Provisional Government of Israel was opposed to a blanket return of the refugees and insisted that even a return ‘on purely humanitarian grounds in disregard [of the] military, political [and] economic aspects might even aggravate [the] problem’. See Cablegram dated 1 August 1948 from the UN Mediator to the Secretary-General Concerning Arab Refugees, UN Department of Public Information, Press Release PAL/236, 5 August 1948.

163 UN Mediator Progress Report (n 160), 16, para. 3(e) [emphasis added]).

164 Ibid., 16, para. 3(e); 17, paras. 5, 6, 7, 8, 21.

165 Ibid., sec. V, para. 5.

166 Ibid., 21, para. 3(e).

167 Ibid., 17, para. 6 [emphasis added].

168 The drafting history of res. 194 (III) reveals that earlier drafts had a more explicit rights-based language; e.g. a draft prepared by the Acting Mediator Ralph Bunche in late September 1948 reads:

11. *Recognizes fully the right* of refugees from the conflict in Palestine to return to their homes at the earliest possible date and to be adequately compensated *for any losses suffered by them as a result of confiscation or destruction of property not resulting from military necessity*, and instructs the Conciliation Commission to assist and supervise the repatriation of such refugees as may choose to exercise this right, and their resettlement [emphasis added];

12. Recognizes that for various reasons numbers of refugees *may not exercise the right to return to their former homes*, and therefore instructs the Conciliation Commission to establish as urgent measures appropriate machinery to study the problem and to take such action as it may deem appropriate to facilitate the resettlement of refugees elsewhere, and to supervise the payment of adequate compensation for the property of those choosing not to return to their homes [emphasis added].

This draft was discussed among relevant UN members (US State Department, British Foreign Cabinet) Paris (Austin) to Secretary of State, October 11, 1948, NARA, 501.BB Palestine/10-1148, cit. in Rempel (n 160). Rempel notes that ‘[t]he UN archives include several undated drafts with the earliest-dated draft prepared more than a week prior to the US delegation forwarding a copy of the Bunche draft to the State Department’.

169 UNGA res.194 (III), 11 December 1948.

170 France (member), Turkey (member), and the US (chair).

171 UNCCP, ‘Historical Survey of Efforts of the United Nations Conciliation Commission for Palestine to Secure the Implementation of Paragraph 11 of General Assembly Resolution 194 (III), Question Of Compensation’, 1961 [Hereinafter ‘UNCCP Historical Survey’], para. 153.

172 UNGA, 3rd Session, OR, 1st Committee, 211th Meeting (24 November 1948) 752. Amendment to the US amendment (UN doc. A/C.1/397) to the draft resolution of the UK (UN doc. A/C.1/394), UN doc. A/C.1/398, 24 November 1948. Of particular note is the comment by the representative of the US during the drafting process of res. 194 that indicated that refugees were not ‘political pawns’, and hence their return could not be

made conditional to the achievement of peace (i.e. a truce, end of hostilities would suffice). See UNCCP Historical Survey (n 171), para. 35. This authoritatively confutes arguments such as in Kramer's, who argues that res. 194 imposes a conditionality: that 'those wishing to live at peace' would significantly limit Palestinians from the possibility of returning. Kramer, T., 'The controversy of a Palestinian right of return to Israel', *Arizona Journal of International & Comparative Law* 18 (2001) 1004-5.

173 The amendment, originally suggested by Guatemala, was probably accepted as a compromise to tone down other amendments proposed by Guatemala that other delegates had strenuously rejected. UNGA, 3rd Session, OR, 184th Plenary Meeting (11 December 1948) 910.

174 Kalman, M., 'The Palestinian right of return in international law - The Israeli perspective' *Nexus* 8 (2003) 43, 55. See also Weiner, J. R., 'The Palestinian refugees' "right to return" and the peace process', *Boston College International and Comparative Law Review* 20.1 (1997) 41. Zilbershats Y., Goren-Amitai, N., 'Return of Palestinian refugees to the State of Israel', Position paper, The Metzilah Center, 2011, 52.

175 Sensitive language was around 'losses' (which would be difficult to estimate) 'not resulting from military necessity'. See Acting Secretary of State (Lovett) to American Embassy (Paris), 13 October 1948, NARA, 501.BB Palestine/10-1348. Foreign Office to United Nations General Assembly, Paris (UK Delegation), 13 October 1948, NA, FO 371/68591 E13257, cit. in Rempel (n 160).

176 UNGA, 3rd Session, OR, 184th Plenary Meeting (11 December 1948) 937.

177 Hood, Australia UNGA, 3rd Session, OR, 184th Plenary Meeting (11 December 1948) 947.

178 McNeill, UK, UNGA, 3rd Session, OR, 184th Plenary Meeting (11 December 1948) 952.

179 The lack of independent authority to create legal obligations has often been cited as evidence of the non-binding nature of the language in para. 11 of res. 194, mostly in studies aiming to deny the existence of a right to return to modern-day Israel of the refugees from Palestine. Cf. Saideman, L., 'Do Palestinian refugees have a right of return to Israel? An examination of the scope of and limitations on the right of return', *Virginia Journal of International Law* 44 (2003-2004) 829, 835; Kalman (n 174), 55, Kent (n 149), 206. For authoritative opinions supporting the contrary see (n 219).

180 This argument, and supporting jurisprudence, is succinctly presented in Öberg (n 53), 890.

181 Basak (n 53)168. On the capacity of the UNGA to set up an international tribunal see *Effects of Awards of Compensation made by the United Nations Administrative Tribunal* [1954] ICJ Rep 47, at 57-8, 67.

182 ICJ, *Nicaragua*, [1986] ICJ Rep. 14, at 44.

183 ICJ, *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, ICJ Rep. 1996 (I), pp. 254-5, para. 70, also referred to in ICJ, *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion*, 25 February 2019, para. 151, also paras. 152-3.

184 Ibid.

185 UN Charter, see art. 77, 79, and 85. See also *South-West Africa Cases; Advisory Opinion Concerning the International Status*, ICJ, 11 July 1950 (n 55).

186 Akram et al. (n 103), 30.

187 Higgins (n 53). Sloan, B., ‘General Assembly resolutions revisited (forty years later)’, *British Yearbook of International Law* 58.1 (1988) 39–150. See also the argument made by Judge Tanaka in his dissenting opinion on the ICJ South West Africa Case. ‘South West Africa Case (Second Phase)’, *Dissenting Opinion of Judge Tanaka, ICJ Reports* (1966). Bleicher, S. A., ‘The legal significance of re-citation of General Assembly resolutions’, *American Journal of International Law* 63.3 (1969) 444–5.

188 Numerous UNSC resolutions from the 1990s, e.g. in Iraq, Afghanistan, Bosnia and Herzegovina, East Timor, Cyprus, Kosovo, and Central America, to name a few, have affirmed the right to ‘safe return to their homes’ of persons displaced in the context of hostilities. Long, K., *The point of no return: Refugees, rights, and repatriation*, Oxford: Oxford University Press, 2013, 72.

189 Analysis of Paragraph 11 of the General Assembly’s Resolution of 11 December 1948, UN doc. A/AC.25/W/45, 15 May 1950 [‘hereinafter Analysis of paragraph 11’].

190 UNCCP, ‘Definition of a ‘Refugee’ under paragraph 11 of the General Assembly’s Resolution of 11 December 1948, Note by the Principal Secretary’, UN doc. A/AC.25/W/61 of 9 April 1951, to be read in connection with its addendum of 29 May 1951, UN doc. A/AC.25/W/61/Add.1 and other UNCCP working papers.

191 Arts. 23, 28, 46, 47, and 56 of the Hague Regulations (HR) were found relevant, see UNCCP, Historical Survey (n 171), Annex III, n (h).

192 UNCCP Analysis of paragraph 11 (n 189), part I, para. 2. Also cited in UNCCP, Historical Survey (n 171), para. 38.

193 Ibid.

194 Ibid.

195 Ibid.

196 Israel firmly opposed a ‘return of Arab refugees before peace had been established’, as it ‘would place the burden of maintaining large internal security forces’ upon it. See UNCCP, Historical Survey (n 171), para. 31.

197 UNCCP Analysis of paragraph 11 (n 189), part I, para. 6 recites: ‘The clear intention of the Assembly was not to make the repatriation of the refugees conditional upon the establishment of a formal peace. In deference to the Israeli arguments the Assembly agreed that the refugees should be allowed to return “when stable conditions had been established.”’ From working documents of the UNCCP between 1948 and 1949 it emerges clearly that family reunification, for instance, was extensively discussed and that security concerns were discussed and occasionally dismissed. For example, see UNGA, General Progress Report and Supp. Report of the UNCCP, Covering the Period from 11 December 1949 to 23 October 1950, Official Records: 5th sess. supp. 18 (A/1367/Rev.1), New York, 1951, paras. 31, 34.

198 UNCCP Analysis of paragraph 11 (n 189), part I, para. 3.

199 Ibid. Israel disputed that the provision referred to the actual homes of the refugees, and ‘maintained that it means *homeland*’; Ibid. [emphasis provided].

200 Ibid.

201 Ibid.

202 Ibid. The document also notes that '[t]he method [proposed by Israel] seems to have been put into effect as regards *certain elements of the Arabs* actually resident in Israel'. It refers to the fact that even Palestinians who had not been displaced in many cases were not allowed to stay in their original homes but forced to resettle in other authorized areas [emphasis added].

203 UNGA res. 181 of 29 November 1947, para. 8, reads as follows: 'No expropriation of land owned by an Arab in the Jewish State (by a Jew in the Arab State) shall be allowed except for public purposes. In all cases of expropriation, full compensation as fixed by the Supreme Court shall be paid previous to dispossession'.

204 UN Mediator Report, 1948, part 1, sec. V, point 7 [emphasis added].

205 Rempel notes that some drafters feared that the reference to compensation for property loss as a consequence of pillage, confiscation and destruction in the context of military operation was too restrictive and suggested language to be broader. Rempel (n 160).

206 The meaning of 'equity' in para. 11 is unclear. According to the UNCCP Historical Survey (n 171), '[t]he records of the discussion before the First Committee and the Plenary Session do not shed any light on the subject. Perhaps the General Assembly intended to indicate that in the settlement of individual claims account should be taken not only of established principles of international law but also of generally accepted principles of equity'. UNCCP, Historical Survey (n 171), Annex III, footnote (c).

207 UNCCP, Compensation to Refugees for Loss of or Damage to Property to be Made Good under Principles of International Law or in Equity (Working Paper prepared by the Secretariat), 31 October 1949, A/AC.25/W/30 [hereinafter 'Working paper on Compensation], para. 2.

208 Ibid., para. 4.

209 See statement of UK representative reported in UNCCP, Working paper on Compensation (n 207), para. 8. Also, paras. 13–14 deal with compensation for war related damage and loss. Para. 14 states: '[c]ompensation claims for ordinary war damages originate in the direct consequences of the military operations ... falls outside the scope of [res. 194] which, on the other hand, does not prejudice the position of the refugees in this respect. It would therefore seem that any action with respect to this category of claims would necessarily have to await the general peace settlement in Palestine'.

210 Ibid.

211 In a letter to the US delegation, Israeli officials complained that 'although making the resolution more non-committal on the question of compensation and claims [the amended text] still establish[ed] the principle of absolute and unrestricted return, and urg[ed] permission for its exercise at the earliest possible date'; Paris (Dulles) to Secretary of State, 27 November 1948, NARA, 501.BB Palestine/11-2748, cit. in Rempel (n 160).

212 See UNCCP Historical Survey (n 171), para. 13.

213 Chapter III, Section 2.2.1.

214 This is the case of the Bedouin in the North and South. In some cases further displacement was within Israeli territory, as with Bedouin consolidation in the Naqab (*Siyaj*), the destruction of northern Galilee villages depopulated in 1948 whose residents remained in Israeli territory, etc.; see Chapter I, (n 133) in particular.

215 Interestingly, the International Law Commission indicates that '[t]he terminology of *breach of an international obligation* of the State is long established and is used to cover both *treaty and non-treaty obligations*.' In its judgment on jurisdiction in the *Chorzów factory* case, the PCIJ used the words 'breach of an engagement'. It employed the same expression in its subsequent judgment on the merits [emphasis added]. International Law Commission *Articles on Responsibility of States for Internationally Wrongful Acts*, Report of the ILC on the Work of its Fifty-third Session, UNGA, OR, 56th Sess. Supp. no. 10, 43, UN doc. A/56/10 November 2001 [hereinafter 'Articles on State Responsibility'], ch. IV.E.1, 36, para. 7.

216 UDHR, art. 13(2) stipulates that 'Everyone has the right to leave any country, including his own, and to *return to his country*' [emphasis added].

217 Presentations were delivered by Ralph Bunche, who was Acting Mediator for Palestine after Conte Folke Bernadotte's assassination, and Raphael Cilento, head of the UN Disaster Relief Project. See recordings of 3rd Committee's 108th meeting, 20 October 1948, 194-8, and 109th meeting, 21 October 1948, 206.

218 The ancient clay cylinder, from the sixth century BCE, was discovered in modern Iraq in 1879. It contains an incised declaration written on it in the name of Persia's Achaemenid king Cyrus the Great. Some biblical scholars see in it evidence of Cyrus' policy of allowing repatriation of the Jewish people following their Babylonian captivity as per the text incised on the Cylinder. See Bickerman, E. J. 'The Edict of Cyrus in Ezra 1', *Journal of Biblical Literature* 65 (1946) 249-75. Shavit, Y., Harshav, B., 'Cyrus King of Persia and the return to Zion: A case of neglected memory', *History and Memory* 2.1 (1990) 51-83.

219 Kattan (n 22), 348, fn 5.

220 Inglés, J. D, 'UN Study of Discrimination in Respect of the Right of Everyone to Leave any Country, Including His Own, and to Return to His Country', Geneva, 1963, UN doc. E/CN.4/Sub.2/220/Rev.1.

221 Chapter III, Section 2.2.1.

222 Hague Regulations ('hereinafter HR'), arts. 4-20.

223 HR, art. 20.

224 HR, art. 46, protects 'the family honour and rights, the lives of persons, and private property'; art. 23(g) prohibits 'destr[uction] or seiz[ure of] the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war'; art. 28 and art. 47 prohibit pillage; art. 56(1) provides that the property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when state property shall be treated as private property.

225 HR, art. 43.

226 Such interpretation appears to be a case in point for the application of the 'Martens Clause', namely the supplementary interpretation tool provided by the Hague Regulations, which stipulates the primacy of the 'laws of humanity ... and ... the dictates of public conscience' every time a rule is not expressly included in the Regulations. See Chapter III, Section 2.1, (n 24)-(n 27) and accompanying text in particular.

227 The Charter of the International Military Tribunal (IMT), art. 6(b)) and art. 6(c)), discussed in Chapter III, Section 2.2.1., (n 54)-(n 56) and accompanying text in particular.

228 See opening statement by Pierre Mounier, assistant prosecutor for the Allies in the criminal prosecution of the Nazi leaders in the IMT at Nuremberg, on 20 November 1945.

229 See *Trial of the Major War Criminals before the International Military Tribunal, Nuremberg, 14 November 1945–1 October 1946*, Nuremberg, Germany, 1947, 254–55. See also *Law Reports of Trials of War Criminals Selected and Prepared by the United Nations War Crimes Commission*, I–XV, London, published for the United Nations War Crimes Commission by His Majesty's Stationery Office, 1948. ‘Trial of Edward Milch’, 20 December 1946–17 April 1947, *ibid.*, VI, 27–66; ‘The Krupp Trial’, 17 November 1947–30 June 1948, *ibid.*, X, 69–181. See also *Attorney-General of the Government of Israel v Adolf Eichmann*, *International Law Reports*, vol. 36, London: Butterworth & Co., 1968, 5, 8–9 (in particular see counts 3, 5, 8–12 of the indictment, reciting and characterizing facts of expulsions found to have been carried out or planned by Eichmann as ‘war crimes’ and as ‘crimes against humanity’).

230 Trial of German Major War Criminals, part 22, judgment, 456–7, cit. in Kattan (n 22), 345, fn 234. On this issue, also the same author: ‘At Nuremberg, the Tribunal specifically cited the “evacuation” of the inhabitants of the Crimea and its settlement by Germans and the colonization by Germans of regions in Poland and Russia as being contrary to Article 6 (b) of the Charter of the International Military Tribunal’, Kattan (n 22), 203.

231 UNCCP, Historical Survey (n 171), Annex II, para. 13 [emphasis added].

232 HR, art. 28 and 47. Cit. in *Ibid.*

233 HR, art. 23(g). Cit. in *Ibid.*

234 HR, art. 46, Cit. in *Ibid.*

235 HR, art. 56, Cit. in *Ibid.*

236 ILC, Articles on State Responsibility (n 215), art. 35, para. 8. This is the main source of reference for state responsibility stemming from internationally wrongful acts. Its commentary includes significant reference to historical jurisprudence.

237 Permanent Court of International Justice (PCIJ), *Case concerning the factory at Chorzów, Germany v Poland*, Judgment, Claim for Indemnity, Merits, Judgment No 13, (1928) PCIJ Series A No 17, ICGJ 255 (PCIJ 1928), 13 September 1928, (hereinafter ‘Chorzow factory’).

238 This ruling was referred to in numerous international judgments and studies. Relevant to this case is ICJ *Legal Consequences of the Wall* (n 117), para. 152. See also UN Sub-Commission on the Promotion and Protection of Human Rights, Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms: final report submitted by Van Boven, T., Special Rapporteur, 2 July 1993, E/CN.4/Sub.2/1993/8 [‘Van Boven report’], para. 33. *Valesquez Rodriguez Case* (Compensatory Damages), 7 Inter-Am. C.H.R. (ser. C) 1989.

239 PCIJ, *Chorzow Factory* (n 237), 21.

240 See also ILC, Articles on State Responsibility (n 215), art. 35 and commentary, 95–8.

241 PCIJ, *Chorzów Factory* (n 237), 124, para. 47 [emphasis added].

242 Either materially or politically.

243 Arangio-Ruiz, V., *Istituzioni di diritto romano*, 14th edn., Napoli, 1960, 157; Pugliese, G., Sitzia, F., Vacca, L., *Istituzioni di diritto romano*, 3rd edn., Torino, 1991, 791; Kaser, M., Hackl, K., *Das römische Zivilprozeßrecht*, 2nd edn., Munich: C. H. Beck, 1996, 637.

244 UNCCP, Historical Precedents for Restitution of Property or Payment of Compensation to Refugees, (Working paper prepared by the Secretariat, Geneva, March 1950), attached to

the UNCCP, Historical Survey (n 171) as Annex I [hereafter ‘Historical Precedents for Restitution and Compensation’].

245 An early example is represented by art. XXI of the Treaty of Nijmegen, signed by Spain and France on 17 September 1678, which provided that

‘All the subjects of the one part as well as the other ... shall be re-established in the Enjoyment of their Honour, Dignities and Benefices of which they were possessed of before the War as well as in all their Effects, Movables and Immovables and Rents upon Lives seized and occupied from the said time as well on the Occasion of the War ... [l]ikewise in their Rights, Actions and Successions fallen to them ... demanding or pretending anything of the Fruits and Revenues coming from the seizing of the said effects, Immovables, Rents and Benefices till the Publication of this present Treaty.’

Art. XVI of The Treaty of London:

‘The Sequestrations which may have been imposed ... on any Property or Hereditary Estates whatsoever, shall be taken off without delay, and the enjoyment of the Property and Estates above mentioned shall be immediately restored to the lawful owners thereof’.

Cit. in UNCCP, Historical Precedents for Restitution and Compensation (n 244), paras. 3-4.

246 See the 1920 Treaty of Neuilly between Greece and Bulgaria, 56, and the 1923 Treaty of Lausanne between Greece and Turkey Convention Respecting Reciprocal Emigration, 27 Nov. 1919, 1 LNTS 68. Convention Respecting the Exchange of Populations, 30 July 1923, 2. The Treaties of Peace, 1919–1923, 653 (1924) cit. in Lynk (n 139), 167–78 and fnn. 56–7. The value of the peace treaty in connection with rules of states succession applicable to nationality is discussed in Chapter III, Section 3.2.1, (n 233)–(n 237).

247 Article 144 of the Peace Treaty with Turkey, signed in Sèvres on 10 August 1920, recites: ‘The Turkish Government solemnly undertakes to facilitate to the greatest possible extent the return to their homes and re-establishment in their businesses of the Turkish subjects of non-Turkish race who have been forcibly driven from their homes by fear of massacre or any other form of pressure since January 1st, 1914. It recognizes that any immovable or movable property of the said Turkish subjects or of the communities to which they belong, which can be recovered, must be restored to them as soon as possible, in whatever hands it may be found. Such property shall be restored free of all charges or servitudes with which it may have been burdened and without compensation of any kind to the present owners or occupiers, subject to any action which they may be able to bring against the persons from whom they derived title’, cit. in UNCCP, Historical Precedents for Restitution and Compensation (n 244), para. 5. The Sèvres Treaty was not ratified by Turkey and was finally replaced by the Treaty of Lausanne of 24 July 1923, which did not contain any clause corresponding to art. 144 of the Sèvres Treaty.

248 D’Ascanio, M., ‘The Notion of Property under International Law’, Paper presented at a seminar organized by the Middle East Institute of the National University of Singapore, 20 November 2017.

249 Ibid.

250 On the legal status of the land in modern-day Gaza Strip and West Bank, see Chapter IV, Section 3.5.2.

251 Hague Convention, art. 3.

- 252** Ibid, art. 41.
- 253** Van Boven report, 19, para. 46, discussed later (n 238).
- 254** UNCCP, Historical Survey (n 171), Annex II (1949) para. 13.
- 255** Schwerin, K., 'German compensation for victims of Nazi persecution', *Northwestern University Law Review* 67.4 (1972) 479–527, 489–91. Partsch, K. J., 'Report of the Maastricht Seminar', 130–45, 133–6.
- 256** Robinson, N., 'Reparations and restitution in international law as affecting Jews', *Jewish Yearbook of International Law* 1 (1948) 186.
- 257** Ibid. Interestingly, the author indicates that main focus of his study will be 'reparations and *restitution arising out of international acts*. The question of compensation will be treated as part of restitution, since compensation has so far found little application in present-day international law' [emphasis added].
- 258** Cf. Inter-Allied Declaration Against Acts of Dispossession Committed in Territories Under Enemy Occupation or Control, Memorandum issued by the Parties to the Declaration) London, 5 January 1943.
- 259** Robinson (n 256), 186.
- 260** Para. 19(a).
- 261** Final Act of the Paris Conference on Reparation, dated 21 December 1945, art. 8, cit. in Robinson (n 256), 191.
- 262** It was stated that restitution from the 'widespread looting of Jews by Germany which had occurred all over Europe' had to happen nationally or internationally, when they had crossed international borders. Ibid., 194.
- 263** Ibid., 193.
- 264** 'Trial of Franz Holstein', 3 February 1947, in *Law Reports of Trials of War Criminals Selected and Prepared by the United Nations War Crimes Commission*, I–XV, published for the United Nations War Crimes Commission by His Majesty's Stationery Office, London, 1948, VIII, 22–33.
- 265** 'The Justice Trial', US Military Tribunal, Nuremberg, 17 February–4 December 1947, *Law Reports of Trials of War Criminals Selected and Prepared by the United Nations War Crimes Commission*, VI, 1–110.
- 266** Implications, challenges, and limitations are discussed in Section 3.5.
- 267** Provisional Government of Israel, Absentee Property Act, cited in a Memorandum prepared by the Legal Adviser to the Economic Survey Mission, Nov. 1949 (hereinafter 'ESM Legal Adviser Memorandum'), in UNCCP Historical Survey (n 171), Annex IV, para. 5. That provision was also reflected in the subsequent Absentee Property Law, 5710–1950, that the State of Israel adopted in 1950. The norm corresponding to Regulations 29 is provision no. 28(a), which reads as follows: 'The Custodian may, in his sole discretion, but subject to the provisions of section 29 [i.e. upon recommendation by special committee to be appointed by the Government], release vested property [i.e. property of any absentees vested in the Custodian under this Law] by certificate under his hand; and as soon as he has done so, that property shall cease to be absentees' property and any right a person had in it immediately before it was vested in the Custodian shall revert to that person or to his successor'. Reference is made to the English translation of the Law by Adalah (Portal).

268 That this was the common understanding in 1949–1949 is confirmed by the ‘ESM Legal Adviser Memorandum’ (n 267), in UNCCP Historical Survey (n 171), Annex III, para. 7. The work of the ESM is discussed in Chapter I, Section 4.3.

269 As amply discussed in Chapter III, Section 3.2.1, the case of Israel, which had succeeded the British Mandate as a sovereign state over part of the Mandate territory, can be seen as ‘a ‘special category’ within the domain of state succession’, in which ‘it is not sovereignty but a *special type of legal competence* which is replaced’, Brownlie (n 8), 654 [emphasis added]. See also Brownlie, I., *Principles of public international law*, 6th edn., Oxford: Oxford University Press, 2003, 630.

270 Kent (n 149).

271 This is fully explained in connection with the general (historic and contemporary) relevance of IHL to the case of Palestinian refugees, in Chapter III, Section 2.1.

272 The continuity between the Jewish leadership from the end of the British Mandate and the early stages of the State of Israel has never been challenged.

273 See Kattan (n 22), 192–202. In particular, on the role played by the Hanagah, the Irgun and Lehi in executing the massacre at Deir Yassin, which was considered in the Draft Parliamentary Question and Answer of the House of Commons submitted to Hector McNeil, the Minister of State. The note states: ‘It now seems clear that members of Hagana [*sic*] co-operated with the terrorist groups in granting them facilities for mounting their attack on Deir Yassin, and the statement of the Jewish Agency issued on the 12th April expressing horror and disgust at the barbarity of the manner in which this action had been carried out by the terrorists is curiously at variance with the ratification by the Zionist General Council meeting in Tel Aviv on the same day of an agreement for co-operation between Hagana and Irgun Zvai Leumi. Units of Hagana have now taken over occupation of Deir Yassin from the members of the terrorist groups who originally attacked the village’; see ‘Situation in Palestine: Terrorist Activity and Fighting between Jews and Arabs. Palestine Outrages, Deir Yassin Massacre’, 15 April 1948, FO 371/68504, cit. in Kattan (n 22), 192, 342, fn 162.

274 Masalha, N., The historical roots of the Palestinian refugee question, in Aruri, N. (ed.), *Palestinian refugees: The right of return*, 2001, 36–67. The author refers to almost 7,000 Palestinians displaced from the Al-Majdal area in 1950 and over 50,000 Bedouins from 1949–1959 (57–63). At p. 56, the author writes that ‘[t]he Arabs of the Negev had been reduced through expulsion and flight from 65,000–95,000, at the end of the British Mandate, to 13,000 by 1951’.

275 According to BADIL, this estimate includes 5.5 million refugees registered with UNRWA and one million that is presumed unregistered.

276 The UNCCP referred to deadlock caused by the irreconcilable demands of the Arab states (demanding an ‘unconditional acceptance by Israel of the right of refugees to be repatriated’) and Israel (unconditional refusal of accepting to repatriate all the refugees, and demand that such issue be discussed as part of the overall settlement). UNCCP, Historical Survey (n 171), para. 86.

277 On UNRWA’s set up, and mandate see Chapter I, Section 4.3, and Chapter IV, Section 3.1; on its protection mandate, see Chapter VII.

278 UNGA res. 513 (VI), 26 January 1952, para. 2.

279 Cf. Mallison and Mallison (n 96), 33.

280 See Chapter I, Section 4.2–Section 4.4. On the UNCCP efforts in advancing the issue of compensation, see Fischbach, M. R., *Records of dispossession: Palestinian refugee*

property and the Arab-Israeli conflict, New York: Columbia University Press 2003. Also, see Chapter I, Section 4.4.1 and Section 4.4.2.

281 See for example UNSC res. 237 (1967), 14 June 1967, para. 1. For context and language of the other UNSC and UNGA resolutions, see Chapter I, Section 5.1.

282 UNSC 242 (1967) para. 2(b).

283 UN Human Rights Council, Human rights situation in Palestine and other occupied Arab territories, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Richard Falk, UN doc. A/HRC/13/53/Rev.1, 7 June 2010, para. 37.

284 Quigley (n 139), 192.

285 Zilbershats and Goren-Amitai (n 174), 58.

286 See contemporary statements supporting this interpretation by British representative Lord Caradon, cf. UNSC, OR, 22nd sess., 1377th mtg., 15 November 1967, 4, UN doc. S/PV. 1377 (1967) and Secretary-General U. Thant, Introduction to the Annual Report of the Secretary-General on the Work of the Organization, 16 June 1966–15 June 1967, UNGA, OR, 22nd sess., suppl. no. IA, 7, UN doc. A/6701I/Add.11 (1967), cit. in Quigley, J., Repatriation of the displaced Arabs of Palestine and the meaning of Security Council Resolution 242, in Cotran, E., Lau, M. (eds.), *Yearbook of Islamic & Middle Eastern Law*, vol. 12 Leiden: Brill, 2007, 11.

287 UNGA res. 2452 A, B, C (XXIII), 19 December 1968.

288 Arguably UNGA res. 2452 A, like res. 194, may have been written upon the ‘assumption’ that ‘the right of return is established and that the central task is to obtain its implementation’, Mallison and Mallison (n 96), 34.

289 UNGA res. 2452 B.

290 Cf. Boling (n 139), 227–8. See further discussion on the intertemporal law doctrine in Chapter III, Section 1. While expulsions, deportations, arbitrary expropriation, and denationalization do not normally fall in the category of continuing violations (while disappearances, for example, do), *Loizidou v Turkey* (n 368) has recognized the continuous violation of Turkey in preventing enjoyment of the right to property of a Cypriot refugee in the context of the non-recognized Turkish occupation of Northern Cyprus. See discussion further on.

291 This is also in line with the ILC’s Articles on State Responsibility (n 215), which support and elaborate upon the intertemporal law doctrine. After enunciating that ‘[a]n act of a State does not constitute a breach of an international obligation unless the State is bound by the obligation in question at the time the act occurs’ the Commission refers to ‘breach of an international obligation by an act of a State *having a continuing character* [which] extends over the entire period during which the act continues and remains not in conformity with the international obligation’, cf. arts. 13 and 14(2). On the intertemporal doctrine and doctrine of continuous violation, see Chapter III Section 1, (n 3)–(n 8) accompanying text.

292 [Emphasis added]. See ILC commentary on art. 14 of Articles on State Responsibility (n 215), 60, para. 6.

293 Boling, G. J., ‘Restitution in international law and applicability to the Palestinian case’, Summary of Presentation, Summary of Proceedings, BADIL Expert Forum, Housing and Property Restitution in Durable Solutions for Palestinian Refugees, Session One, Graduate Institute of Development Studies, Geneva, 3 October 2003, cit. in Rempel, T., Prettitore, P.,

Restitution and compensation for Palestinian refugees and displaced persons: Principles, practical considerations, and compliance, in Akram et al. (n 103), 76.

294 Rempel and Prettitore (n 293), 76.

295 In 1994, Israel Singer, then Secretary-General of the World Jewish Congress and co-chairman of the World Jewish Restitution Organization, stated that '[restitution] is a human right which *every man deserves*'; Israel Singer testifying before the US Congressional Subcommittee on International Organizations and Human Rights, cit. in Rempel and Prettitore (n 293), fn 175; original quote in Weinbaum, L., *Righting an Historic Wrong: Restitution of Jewish Property in Central and East Europe*, Policy Study No. 1, Jerusalem, Institute of the World Jewish Congress, 1995, at 13 [emphasis added]. See also (n 318)–(n 319).

296 For precedents and historical discussions see Offe, C., Bönker, F., 'A forum on restitution', *East European Constitutional Review* 2 (1993) 30; Barkan, E., *The guilt of nations: Restitution and negotiating historical injustices*, Baltimore, MD: JHU Press, 2001. Dean, M., Goschler, C., Ther, P. (eds.), *Robbery and restitution: The conflict over Jewish property in Europe*, vol. 9. New York: Berghahn Books, 2007.

297 The case of Germany is emblematic, and Lynk describes it as follows: 'Following the 1952 *Luxembourg Agreement* between the Federal Republic of Germany, Israel, and the Conference on Jewish Material Claims against Germany, the West German government enacted a series of laws to provide compensation for gross violations of human rights (such as loss of life, loss of health, forced labour, deportation, imprisonment, maltreatment and degradation) and for property losses (including immovable and moveable property, capital, income, securities, mortgages, pensions, copyright and patents) for victims or their heirs. These compensation payments ... [were] payable to Holocaust survivors, both individually and through the state of Israel. The range of compensable claims for Nazi victims has been steadily widened through the decades to include Swiss bank accounts, European insurance policies, looted works of art, and slave labour'. Lynk, S. M., 'The right to restitution and compensation in international law and the displaced Palestinians', *The Palestine Question in International Law* [online] 175–6; reprinted in V. Kattan (ed.), *The Palestine question in international law*, London: The British Institute of International and Comparative Law, 2008

298 Ibid.

299 Rempel and Prettitore (n 293), 72.

300 See Chapter III. Other provisions dealing with the repatriation of persons protected by the four Geneva Conventions include: GCI, art. 5; GCII, art. 6; GCIII, arts. 5, 109–19; GCIV, arts. 6, 36, 134. Such provisions indicate that the Conventions apply until repatriation has taken place. The norms on family reunification (art. 26), and transfer of civilians to other countries (art. 45) similarly protect the right to return to one's country.

301 On the implications of grave breaches see Chapter III, Section 2.3, (n 122)–(n 124) and accompanying text.

302 E.g. in the case of *Jiménez v Colombia*, the petitioner fled Colombia following personal attacks and death threats. He received refugee status in the UK. Based on the evidence that the petitioner's human rights had been violated in Colombia, the Human Rights Committee held that: 'In accordance with article 2, paragraph 3 (a), of the Covenant, the state party is under an obligation to provide Mr. [Jiménez] with an *effective remedy*, including compensation, and to take appropriate measures to protect his security of person and his life *so as to allow him to return to the country*.' HRC, *Jiménez Vaca v Colombia*, Decision of 25 March 2002. See also UN CERD, General Recommendation 22, Article 5 and Refugees

and Displaced Persons, 49th session (1996), UN doc A/51/18, annex VIII, 126, para. 2(a) and (c).

303 Reference to 'return' in CRS51 can be found only in prohibitive terms (art. 32 prohibiting the expulsion of refugees and art. 33 enshrining the principle of *non-refoulement*) or indirect terms (the clauses on cessation of refugee status stipulate that refugee status ceases when a refugee voluntarily returns to the country of origin), CRS51, art. 1C(4), (5) and (6). Responding to the needs of persons who had left their country out of fear of persecution, the 1951 Convention could not offer, as first response, to put these persons back in the place they had fled (hence the insistence on the prohibition of *refoulement* and expulsion in the country of refuge).

304 Para. 8(d) of the UNHCR Statute stipulates that '[t]he High Commissioner shall provide for the protection of refugees falling under the competence of his Office by ... [a]ssisting governmental and private efforts to promote voluntary repatriation'.

305 EXCOM concl. 40 (XXXVI), UNHCR, 1991, 86, reaffirms the significance of its earlier conclusion on voluntary repatriation - EXCOM concl. 18 (XXXI) - 'as reflecting basic principles of international law and practice' reaffirms 'The basic rights of persons to return voluntarily to the country of origin.' Voluntary repatriation is further discussed in Chapter VIII, Section 2.1, together with the other two durable solutions - local integration and resettlement in third countries.

306 HRC, Gen. Comm. no. 27, art. 12 (Freedom of Movement), UN doc. CCPR/C/21/Rev.1/Add.9, 2 November 1999, para. 19.

307 As per UDHR, art. 29, this right is subject to the limitations imposed by the respect of the rights and freedoms of others, as well as by 'morality, public order and the general welfare in a democratic society'.

308 A general introduction of the ICCPR, is offered in Chapter III, Section 5.1.

309 As mentioned earlier, during the drafting of the UDHR, the drafting committee heard the UN Special Mediator on Palestine about the situation of and the challenges experienced by Palestinian refugees. It is not unlikely that some of these challenges may have influenced the drafting of the Declaration.

310 On the right to leave, see Dowty, A., *Closed borders: The contemporary assault on freedom of movement*, New Haven, CT: Yale University Press, 1987.

311 Hannum (n 148).

312 At the international level, the 'Pinheiro Principles' (n 361) stipulate the right of both refugees and IDPs to 'return voluntarily to their former homes, lands or places of habitual residence, in safety and dignity ... based on a free, informed, individual choice' and that return 'cannot be abridged under conditions of State succession, nor can it be subject to arbitrary or unlawful time limitations'. See also the International Convention on the Suppression and Punishment of the Crime of Apartheid (adopted 30 November 1973, entered into force 18 July 1976) 1015 UNTS 243.

313 At the regional level, art. 22(5) of the American Convention on Human Rights stipulates '[n]o one can be expelled from the territory of the state of which he is a national or be deprived of the right to enter it'. Art. 12(2) of the African Charter on Human and Peoples' Rights holds: '[e]very individual shall have the right to leave any country including his own, and to return to his country'. Art. 3(2) of Protocol 4 of the European Convention for the Protection of Human Rights establishes that '[n]o one shall be deprived of the right to enter the territory of the state of which he is a national'. Also of interest are the Principles Concerning Treatment of Refugees ('Bangkok Principles'), according to which, the right to return is a 'natural right' to freely return 'to the State of which [the person] is a national or to the country of his nationality and in this event it shall be the duty of such State or

Country to receive him'. The principle also applies if the person has left or is outside his 'place of habitual residence' owing to foreign domination, external aggression or occupation, and applies to dependents as well. Asian-African Legal Consultative Organization (AALCO), 'Bangkok Principles on the Status and Treatment of Refugees ('Bangkok Principles')', 31 December 1966, arts. VI(1), (2),(4). Full reference of these instruments is provided in the 'regional legal framework' sections of Chapter V.

314 HRC, CCPR Gen. Comm. no. 27: art. 12 (Freedom of Movement), 2 November 1999, CCPR/C/21/Rev.1/Add.9. On art. 12(4) see paras. 19–21.

315 On the drafting history of the ICCPR and relevant case law, see Nowak M., UN Covenant on Civil and Political Rights: CCPR, 112, 2nd edn., 2005.

316 HRC, Gen. Comm. no. 27 (1999), paras. 19–20. See also HRC communication no. 538/1993, *Stewart v Canada*, in which dissenting judges Evatt et al. indicate that 'other factors other than nationality may establish close and enduring connections between a person and a country, connections which may be stronger than those of nationality. The words "his own country" on the face of it invite consideration of such matters as long-standing residence, close personal and family ties and intentions to remain (as well as to the absence of such ties elsewhere)'.

317 Ibid. This approach had already been affirmed by the ICJ in the *Nottebohm* case, in which the Court interpreted the phrase 'own country' as including, together with the place of habitual residence, factors such as 'a genuine link' and 'a close and enduring connection with a given place, being the person's centre of interests, traditions, family ties, participation in public life, attachment shown by him for a given country and inculcated in his children ... [and] his intentions for the near future'. *Nottebohm Case (Liechtenstein v Guatemala); Second Phase*, ICJ, 6 April 1955, 1. Nottebohm was born in Germany in 1881 and moved to Guatemala in 1905. In 1939, after the start of the Second World War, he applied for and received citizenship from Liechtenstein; upon doing so, under German regulations, he forfeited his German nationality. On his return to Guatemala in 1940, he informed the authorities that he had changed nationality. He supported the Allies during the war. In 1943, despite his changed nationality, he was arrested and interned as a German citizen in 1943. He was transferred to the US, where he remained interned until 1946. During this time, Guatemala (which has sided with the Allies during the war) seized all his property and the US government confiscated all his company's assets in the US. Only part of his property was returned to him and later his descendants several decades later. In 1951, the Liechtenstein government, on behalf of Nottebohm, brought a case to the ICJ against Guatemala. Guatemala argued that Nottebohm did not acquire citizenship as per required standards of international law. The ICJ ruled in Guatemala's favour and determined that it was the 'substance' of Nottebohm's links with a given country (Liechtenstein), rather than Liechtenstein's formal grant of citizenship, that was decisive to establish 'his own country'. For a discussion of the principle of the 'effective link' (or effective nationality) and the judgment in *Nottebohm*, see Brownlie (n 8), 407–20. On nationality and statelessness see Chapter III, Section 3.

318 See Knisbacher, M, 'Aliyah of Soviet Jews: Protection of the right of migration under international law', *Harvard International Law Review* 14 (1973) 89.

319 According to the Law of Return enacted by Israel in 1950, all diaspora Jews (i.e. persons of Jewish ancestry with at least one Jewish grandparent, and spouses of Jews), have been granted the right to return to (i.e. immigrate to and settle in) Israel and obtain citizenship *Israel: Law No. 5710-1950, The Law of Return*, 5 July 1950, art. 4A. Also art. 1 establishes that: 'Every Jew has the right to come to this country as an "oleh". 'Aliya' means immigration of Jews. 'Oleh' (plural 'olim') means a Jew immigrating into Israel. As per art. 4B: 'For the purpose of this Law, "Jew" means a person who was born of a Jewish mother or has become converted to Judaism and who is not a member of another religion'. Under this

Law the Israeli government is to facilitate Jewish immigration. Originally, the law applied to Jews only, until a 1970 amendment stated that the rights ‘are also vested in a child and a grandchild of a Jew, the spouse of a Jew, the spouse of a child of a Jew and the spouse of a grandchild of a Jew’. This resulted in several hundreds of thousands of persons fitting the above criteria immigrating to Israel (mainly from the former Soviet Union).

320 Zieck, M., ‘Refugees and the Right to Freedom of Movement: From Flight to Return’, *Michigan Journal of International Law* 39 (2018) 104, 106.

321 HRC, Gen. Comm. no. 27, 1999, para. 20.

322 Ibid. [emphasis added]. See also reference Articles on Nationality in relation to State Secession, art. 15 (non-discrimination) and art. 16 (prohibition on arbitrary treatment)

323 Ibid.

324 Ibid., para. 21. The issue of denationalization, including in the context of state succession is discussed in Chapter III. According to Hannum (n 148), 61, such denationalization has, for centuries, been applied to individuals as a penal sanction. However, it was not until the Russian Revolution and the post-First World War period that mass expulsions and denationalizations for political reasons occurred: ‘Between one and two million persons were deprived of their citizenship by the successful Bolsheviks in the early 1920s; similar measures, although on a less grand scale, were adopted later by the Italian fascists and in Turkey. The objects of this “cleansing” of the national group were political opponents in the Soviet Union, Jews and others in Italy, and Armenians and other ethnic minorities in Turkey. Nazi Germany continued the pattern, although denationalization was not always followed immediately by expulsion.’ See also Lawand (n 3), 554.

325 Ibid.

326 Ibid., para. 19.

327 ICERD, art.5(d)(ii), requires states parties to eliminate racial discrimination in the enjoyment of ‘[t]he right to leave any country, including one’s own, and to return to one’s country’.

328 Hannum (n 148), 59. Contra Nowak, M., *UN covenant on civil and political rights: CCPR commentary*, Arlington: NP Engel, 1993, 220.

329 Lapidoth from the Jerusalem Center for Public Affairs so argues, by citing Stig Jägerskiöld from his 1966 commentary of ICCPR; see Lapidoth (n 148).

330 Zilbershats and Goren-Amitai (n 174), 59.

331 Quigley (n 139), 212.

332 UN CERD, Gen. Recomm. 22, art. 5 on refugees and displaced persons, 49th session (1996), UN doc A/51/18, annex VIII, at 126, para. 2(a).

333 Ibid., para. 2(c).

334 HRC Gen. Comm. no. 27, para. 21.

335 Boling (n 139), 48; Quigley (n 139), 202.

336 See ICCPR, art.4, for general derogations to ICCPR provisions in case of declared state of emergency, and ICCPR, art. 12(3) for specific derogations to freedom of movement. See further Zieck (n 320), 104. However, notably the text of art. 12(3), which contains the derogation clauses, refers to the rights mentioned in the previous two paras., referencing

the right to liberty of movement and the right to leave, and not to the right to return mentioned in art. 12(4).

337 Leal, J., 'Stateless with nowhere to go: A Proposal for Revision of the Right of Return according to the International Covenant on Civil and Political Rights', *George Washington International Law Review* 46 (2013-2014) 677, 698.

338 Nabulsi, K., *Palestinians register: Laying foundations and setting directions: Report of the Civitas Project*, Oxford: University of Oxford, Nuffield College, 2006.

339 Kramer, T., 'The controversy of a Palestinian "right of return" to Israel' *Arizona Journal of International and Comparative Law* 18.3 (2001) 979, 985, and 1008-10.

340 Zilbershats and Goren-Amitai (n 174), 67.

341 Law of Return 5710-1950, 5 July 1950 (n 329), para. 1, 4 *LSI* 114 (1950), as amended by 8 *LSI* 144 (1954), as amended by 24 *LSI* 28 (1970). See also Chapter III, Section 2.2.

342 6 *LSI* 50 (1952), as amended by 34 *LSI* 254 (1980).

343 The provision that to acquire Israeli citizenship, the person was to be a Palestinian (Mandate) citizen who was registered in Israel in 1952 (under the Registration of Inhabitants Ordinance of 1949) and *had been legally in Israel as of 14 May 1949 to the day of enactment of the nationality law*, effectively excluded those who had left or been expelled and also prevented from legally returning before the enactment of the Law. 6 *LSI* 50 (1952), art. 3.

344 Arzt D. E., Zugaib, K., 'Return to the negotiated lands: The likelihood and legality of a population transfer between Israel and a future Palestinian State', *NYU Journal of International Law & Politics* 24 (1992) 1425, fn 72.

345 Zilbershats and Goren-Amitai (n 174), 68.

346 This situation is not limited to the Palestinian context as proven, e.g. by the Council of Europe/Venice Commission pushback to 'de-Russification' citizenship laws enacted as part of 'lustration' programmes by Baltic States in the early 1990s, reaffirming that persons who had been relocated to the Soviet Republics under Soviet rule have human rights and protected interests that a State must respect in the transition from an unlawful regime.

347 Akram, S., Myths and realities of the Palestinian refugee problem: Reframing the right of return, in Akram, S., et al. (n 103), 32.

348 For example: the return of approximately 450,000 Iraqi Kurds to Iraq in 1991; the return of over one million refugees to Mozambique after the conclusion of a peace agreement in 1992; the various regional agreements between 1987 and 1994 that resolved the refugee problems in Central America, allowing over 100,000 to return; the return of over 200,000 refugees to East Timor in 1999; and the provisions for the return of refugees and internally displaced in the General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Peace Agreement), signed in November 1995.

349 In a number of cases of UNSC acting under ch. VI of the UN Charter (e.g. East Timor, Namibia, and Cambodia), or even under ch. VII (e.g. Iraq, Bosnia and Herzegovina, Kosovo, and Afghanistan).

350 ICJ, Advisory Opinion, *Legal Consequences of the Wall* (n 117), para. 153.

351 ILC, Articles on State Responsibility (n 215), 2001.

352 Ibid, art. 30 and commentary, 88-91.

353 Ibid, art. 31 and commentary, 91-4.

- 354** Ibid, art. 35 and commentary 95–9.
- 355** Ibid, art. 36 and commentary 99–105.
- 356** Ibid, art. 37 and commentary 105–7.
- 357** Hague Conv. art. 3, discussed earlier; also AP to GC, art. 91.
- 358** UDHR, art. 8, ICCPR, art. 2(3), ICERD, art. 6, CAT, art. 14, CRC, art. 39. Also ICC Rome Statute, art. 68,75.
- 359** Van Boven report (n 238), para. 45.
- 360** Ibid., 18, para. 45 [emphasis added].
- 361** UNECOSOC, Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, *The Return of Refugees' or Displaced Persons' Property*, Working paper submitted by Mr. Paulo Sergio Pinheiro pursuant to Sub-Commission decision 2001/122, 44th Sess., UN doc. E/CN.4/Sub.2/2002/17 (2002), ['Pinheiro Principles']. These principles reflect widely accepted principles of international human rights, refugee and humanitarian law and related standards.
- 362** Ibid., Principle 2(1)
- 363** Ibid., Principle 2(2).
- 364** Lee, L. T., 'The right to compensation: Refugees and countries of asylum', *American Journal of International Law* 80 (1986) 532, 537, citing Oliver, C. T., Legal remedies and sanction, in Lillich, R. (ed.), *International law of state responsibility for injury to aliens*, Charlottesville, VA: University Press of Virginia, 1983, 61. Arzt and Zugaib (n 344), 1462.
- 365** Rempel and Prettitore (n 293), 74.
- 366** Goodwin-Gill, G. S., McAdam, J., *The refugee in international law*. New York: Oxford University Press, 2007, 489.
- 367** World Bank, Operational Directive 4.30: Involuntary Resettlement, June 1990, cit. in Rempel and Prettitore (n 293), n. 70.
- 368** *Loizidou v Turkey* (Merits and Just Satisfaction, Rep. 1996-VI), Appl. No. 00015318/89. The applicant, Mrs. Titina Loizidou, was a Cypriot refugee who had grown up in northern Cyprus, where she owned land. In 1972, she married and moved with her husband to Nicosia. She contended that since the Turkish invasion of Cyprus in 1974, she had been prevented from returning to her lands (in North Cyprus) and from peacefully enjoying her property.
- 369** This ruling has been a precedent for other claimants in the context of the same conflict. *Cyprus v Turkey* (Application 25781/94) (8 Sep. 1999). Cit. in Lynk (n 103), 174.
- 370** *Loizidou v Turkey* (n 368), para. 41.
- 371** Ibid., para. 64.
- 372** Ibid.
- 373** Ibid., para. 41.
- 374** Ibid., para. 43.
- 375** Ibid., para. 56.
- 376** Ibid., para. 49.
- 377** Ibid., para. 56.
- 378** See dissenting opinion of Jambrek J in *Loizidou*.

379 In this case, the term ‘secondary occupants’ refers to Israelis who have taken possession of Palestinian houses and properties in Israel from 1948 onwards. This is in line with language in the Pinheiro Principles (Principle 17). Instead the Articles on State responsibilities used ‘third party’ (n 215), art. 35. The latter would also fit the case of Palestinian refugees where the secondary occupant is technically the State of Israel’s refugee property administration machinery.

380 See Chapter I for an overview of issues at stake in the negotiations, and also Chapter VIII.

381 Boling (n 139); Akram (n 145).

382 Such right can be denied, within the limit of the law, and it may be derogated in time of public emergencies. See ICCPR, art. 4, for general derogations to ICCPR provisions in case of declared state of emergency, and ICCPR, art. 12(3), for specific derogations to freedom of movement. Also Zieck (n 320), 104. However, notably, the text of art. 12(3), which contains the derogation clauses, refers to the rights mentioned in the previous two paragraphs, referencing the right to liberty of movement and the right to leave, and not to the right to return mentioned in art. 12(4).

383 Zieck (n 320), 109.

384 See (n 366).

385 Pinero Principles, Principles 16–17.

386 Practical implications are discussed in Chapter VIII.

387 Some ECtHR jurisprudence has considered that the claimant’s attachment to the property gets attenuated by the passage of time, as ‘persisting links with the property’ is necessary and after much time has elapsed ‘there can be no realistic expectation of taking up, or resuming, occupation in the absence of such rights see ECtHR. *Demopolous and Others v Turkey* [46113/99], para. 136. However, one can argue that the judgment contain some case specific elements, since the applicant had tried to add more properties to their application to the Court.

388 ILC Articles, art. 35, paras. 9–10.

389 Brynen, R., ‘Compensation for Palestinian refugees: Law, politics and praxis’, *Israel Law Review* 51.1 (2018) 29–46.

390 Chapter VIII discusses how collective and individual claims can be dealt disjunctively.

391 Lee, L. T., ‘The declaration of principles of international law on compensation to refugees: Its significance and implications’, *Journal of Refugee Studies* 6 (1993) 65, 67. The author highlights the relevance of compensation for the development of peaceful and friendly relations between countries. German compensation to Jewish refugees from the Third Reich and to the State of Israel, the author notes, served to heal historical wounds, transforming a relationship marked by hostility between Germans and Jews into one of reconciliation (...).

392 Instances in which Palestinians and Israelis have been involved in discussions on these issues are mentioned Chapter I, Section 7 (e.g. 2000 Taba talks, as well unofficial initiatives undertaken with support of Israeli civil society, such as the Aix Group. See Chatham House, ‘The Palestinian refugee issue: Compensation and implementation mechanisms’, 18–19 December 2013, 2.

393 Beker, A., Laqueur, W., Tydor B. J., *The Holocaust Encyclopedia*, New Haven, CT: Yale University Press, 2001, 556–63.

394 The relationship between the host country and the Palestinian leadership (PLO or PA/GOP) as well as host country's attitude towards the Israeli-Palestinian peace process are two of these factors.

395 Egypt represents a stark exception.

396 Unlike UNHCR, UNRWA's entire budget consists of voluntary contributions by states based on their annual pledges.

397 UDHR, art. 26; CESCR, arts. 13–14 contain the most comprehensive presentation of the right to education in IHRL. See also CRC arts. 22, 23, 28, 29, 40; CEDAW, arts. 5, 10, 14, 16; ICERD, art. 5 and CRPD, art. 24.; see also Committee on Economic Social and Cultural Rights, *General Comment No. 13 (Twenty-first session, 1999) The Right to Education (Article 13 of the Covenant)*, E/C.12/1999/10, 8 December 1999 and CEDAW's *General Recommendation No. 36* (2017) on the right of girls and women to education (CEDAW/C/GC/36). Among the regional instruments, see European Convention for the Protection of Human Rights and Fundamental Freedoms, Protocol 1 of 1952, art. 2; European Social Charter (revised) art. 17.2; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, arts. 13 and 16; and African Charter on the Rights and Welfare of the Child, art. 11.

398 ICESCR, art. 13(1), see also CESCR, Gen. Comm. no. 13, 1999, para. 4.

399 Ibid., para. 1, see also paras. 6–7, referring to the importance of ensuring availability, accessibility (i.e. physical, economic, and without discrimination), acceptability (culturally sensitive), and adaptability (responding to the local needs particularly those of the students) of education services.

400 The most recent UNRWA Medium Term Strategy (MTS) sets the goal of completion of quality, equitable and inclusive basic education by school-age children. UNRWA MTS 2016–2021, strategic objective 2.3.

401 Rosenfeld M., 'From emergency relief assistance to human development and back: UNRWA and the Palestinian refugees, 1950–2009', *Refugee Survey Quarterly* 28.2–3 (2009), 286–317, in particular 308.

402 In practice, though, wherever UNRWA operates, refugees have been attending UNRWA schools for elementary and preparatory education, and enrolled in secondary education in national schools.

403 Countries like Egypt (until the 1980s), Syria, and Iraq (until the 1990s) have offered free access for refugees to public education. Primary and secondary education was free and open to Palestinian children in Bahrain, Kuwait, Libya, Qatar, Saudi Arabia, and the UAE (which also offered scholarships for tertiary education). However, the access given to the refugees has changed in response to political developments, with curtailment, or even denial, of the right to education.

404 At the time of writing, UNRWA enrolls about half a million refugee children, and employs 20,000 teachers in its 695 schools across its area of operations.

405 Jacobson, L. B. (ed.), *Finding means: UNRWA's financial crisis and refugee living conditions, Volume I: socio-economic situation of Palestinian refugees in Jordan, Lebanon, Syria and the West Bank and Gaza Strip*, Oslo: Fafo, 2003, 79.

406 UNRWA, 'Schools on the Frontline: The impact of armed conflict and violence on UNRWA schools and education services', May 2016, 4, fn 38, 6.

407 CESCR, Gen. Comm. no. 13, 1999, para. 46. CEDAW's General Recommendation no. 36 on Education is relevant to States' obligation to fulfil, as the Recommendation elaborates, on (i) the right of access to education; (ii) rights within education; and (iii) the instrumentalization of education for the enjoyment of all human rights through education.

408 Ibid., para. 60.

409 Ibid., para. 51. Based on general comments, and recommendations of treaty bodies, the SDG 4, it is commonly argued that the right to education entails free secondary education, even though it is not formally recognized in the treaty. See CRC Gen. Comm. no. 22 in the context of migration, 4–6; SDG 4 sets out a commitment to 'ensure inclusive and equitable quality education and promote lifelong learning opportunities for all'. The human 'right of everyone to education', also establishes the right to free, compulsory primary education and equitable secondary education for all children, for the full development of human personality and human dignity. Inclusive and equitable education means quality education for all, without discrimination.

410 UNHCR, 'Turn the tide: Refugee education in crises', 2017, 55.

411 These examples are taken from those listed among the 'violations' of the obligations connected to the right to education, see CESCR, Gen. Comm. no. 13, 1999, paras. 58–9.

412 Details are provided in Chapter IV.

413 CSR51, art. 22(1).

414 ICRC, IHL Database, Rule 135, on 'children'.

415 UDHR, art. 23(1); ICESCR, art. 6(1), CEDAW, arts. 11, 13, 14, CERD, arts. 2, 5, CRC, arts. 18(3), 19(1), 31(1), 32), CRDP, art. 8.2(iii), 27. See also CESCR, Gen. Comm. no. 15, The Right to Water (Articles 11 and 12 of the Covenant), UN Doc E/C.12/2002/11, 20 January 2003, para. 16(f).

416 CSR51, art. 17 refers to wage-earning employment and art. 18 to self-employment. Refugees lawfully staying in the territory of a state party are entitled to so-called 'most-favoured-nation' treatment.

417 UDHR, art. 23 [emphasis added].

418 IESCR, art. 6.

419 ICESCR, art. 7 stipulates the right of everyone to just and favourable conditions of work including: (a) Remuneration which provides as a minimum fair wages, equal remuneration and equal pay for equal work, as well as a decent living for themselves and their families in accordance with the provisions of the present Covenant; (b) Safe and healthy working conditions; (c) Equal opportunity for everyone to be promoted according to seniority and competence; (d) Rest, leisure, and remuneration for public holidays.

420 CESCR, Gen. Comm. no. 18, art. 6 of the Covenant (Right to Work), 6 February 2006, E/C.12/GC/18, paras. 1–2.

421 Ibid., para. 1.

422 As part of its attempt to integrate the refugees into the economic life of the region, the ESM envisaged a number of labour-intensive large- and smaller-scale development projects to be implemented – through UNRWA – in the host countries as well as Egypt. UNGA res. 302(IV), 8 December 1949, para. 7. The Economic Survey Mission was established by the UNCCP once repatriation had become unfeasible in the short term. See Chapter I, Section 4.3; see also UNRWA, Special Report of the Director and Advisory Commission of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, UN doc.

A/1905/Add.1, 28 November 1951; also UNRWA, 'Statement of Expenditure for 1951-2/C: Expenditure', UN doc. A/2171, 1 June 1952.

423 Al-Husseini, J., 'UNRWA and the refugees: A difficult but lasting marriage', *Journal of Palestine Studies* 40.1 (2010) 6-26.

424 Unions were banned in Egypt and Jordan as of the mid-1950s. Al-Husseini, J., UNRWA and the Palestinian nation-building process', *Journal of Palestine Studies* 29.2 (2000) 53.

425 Farsoun, S., *Palestine and the Palestinians*, Boulder, CO: Westview Press, 1997; Kodmani-Darwish, B., *La diaspora palestinienne*, Paris: PUF, 1997; Kimmerling, B., Migdal, J. S., *Palestinians: The making of a people*, Cambridge, MA: Harvard University Press, 1994; CIA report, 1983, 2008.

426 Since its establishment in 1991-1992, this programme has issued over 476,000 loans totalling USD 531 million, making it the largest non-bank financial intermediary in the region.

427 See in particular Syria, Jordan, Gulf countries, and Libya.

428 Casablanca Protocol, art. 1, stipulates that Palestinian refugees will 'have the right of employment on a par with citizens'.

429 See discussion concerning the change of visa policies towards the Palestinians as the economic boom started to shrink. Shibliak, A., 'Residency status and civil rights of Palestinian refugees in Arab countries', *Journal of Palestine Studies* 25.3 (1996) 39, 43.

430 Khalil, A., 'Socioeconomic rights of refugees: The case of Palestinian refugees in Egypt, Jordan, Lebanon, and Syria', Cairo: Center for Migration and Refugee Studies Regional Research, 2010, 40.

431 ICESCR, art. 2(2).

432 Lebanon's restrictive work policy and practice towards Palestinian refugees has received international criticism, including from treaty bodies; e.g. UN CEDAW, 'Concluding observations on the combined fourth and fifth periodic reports of Lebanon', UN doc. CEDAW/C/LBN/CO/4-5, 24 November 2015, para. 39; also, during the UPR of Lebanon in late 2015, a number of recommendations were made regarding Palestinian refugees, all of which were noted (neither rejected nor openly endorsed) by the Lebanese government, including those focusing on the discriminatory restrictions on access to the labour market and liberal professions, see UPR, Lebanon, UN doc. A/HRC/31/5, 22 December 2015, see, e.g. paras. 132 and 203. Treaty bodies have expressed concern at Egypt's discriminatory application of the CSR51 to Palestinian refugees, UN Doc CERD/C/EGY/CO/17-22, 6 January 2016, para. 25(d).

433 The author who has inspired this argument refers to 'constructive refoulement'. See Edwards, A. 'Human rights, refugees, and the right "to enjoy" asylum', *International Journal of Refugee Law* 17.2 (2005) 322.

434 Details are provided in Chapter IV, Section 6.3.

435 CSR51, arts. 17, 18, and 19, respectively.

436 Ibid., art. 24.

437 UNHCR, *Handbook on Protection of Stateless Persons under the 1954 Convention Relating to the Status of Stateless Persons*, Geneva, 2014, paras. 136-7.

438 Overall, twenty-seven per cent, incl. forty-two per cent in Gaza and eighteen per cent in the West Bank. Youth unemployment in Gaza is particularly worrying, at fifty-eight per cent and, although nearly eighty per cent of Gaza's residents receive some form of aid,

poverty rates are very high. See also the World Bank, 'Palestine's economic outlook', October 2018.

439 Most of those who became refugees in/around 1948 relocated in proximity to (i.e. east of) the Green Line - for example, in and around Jerusalem, in the Jordan Valley, and south-west Hebron area - thinking they would return to their abandoned homes/lands shortly after. In the part of the territory slated to become Arab Palestine, the encroachment of the occupation has been more tangible. For example, in 2016, thirty-seven per cent (613) of the 1,628 Palestinians displaced by demolitions throughout the West Bank, including East Jerusalem, were Palestine refugees. UNRWA, 'Palestine refugees displaced by demolitions', 16 March 2016.

440 According to UNHCR: 'Refugees who have maintained their independence, retained their skills and developed sustainable livelihoods will be more resilient and better able to overcome future challenges than if they had spent years dependent on humanitarian assistance, whatever solutions are eventually available to them'; UNHCR 'Policy on Alternatives to Camps', 22 July 2014, UNHCR/HCP/2014/9, para. 3.8. See also UNHCR, 'Which side are you on? Discussion paper on UNHCR's policy and practice of incentive payments to refugees', December 2014, PDES/2014/04, as well as the work of the Lutheran World Federation, 'Refugee rights in protracted situations, Conference on rights of refugees in protracted East African crises', Geneva, 28 September 2016.

441 UDHR, art. 25(1), ICESCR, art. 12, CRC, art. 24, CERD, art. 14(b), CEDAW, art. 12, and CRPD, art. 28. See also CESCR Gen. Comm. no. 14: The Right to the Highest Attainable Standard of Health (art. 12), adopted at the 22nd Session of the Committee on Economic, Social and Cultural Rights, on 11 August 2000, UN doc. E/C.12/2000/4.

442 ICESCR, art. 12(1).

443 CESCR, Gen. Comm. no. 14: The Right to the Highest Attainable Standard of Health (art. 12 of the Covenant), 11 August 2000, UN doc. E/C.12/2000/4, para. 2; CESCR's Gen. Comm. no. 22 (2016) on the Right to Sexual and Reproductive Health, UN doc. E/C.12/GC/22, in which it states at para. 11: 'The right to sexual and reproductive health is an integral part of the right of everyone to the highest attainable physical and mental health.' See also CRC's Gen. Comm. no. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24); CEDAW's Gen. Recomm. no. 24 (1999): art. 12 of the Convention (women and health).

444 The most recent UNRWA MTS (2016-2021, strategic objectives 2.2 and 2.5 respectively) sets goals for both individual and environmental health.

445 This includes provision of primary health care, which in 2017 reached over 3.1 million refugees (eight million consultations) through its 143 primary health care facilities; UNRWA annual operational report, 29.

446 Ibid.

447 UNRWA, 'Outline of protection activities', 2016, 9.

448 UNRWA, 'Report of the Director of Health [Health Conditions of, and Assistance to, Palestine Refugees in the Occupied Palestine Territory]', A69/INF/5, 20 May 2016.

449 OCHA (Portal), Health and nutrition assessment, [last access 1 May 2019].

450 OCHA, 'Rise in medical referrals out of Gaza but decline in approval of exit permits', November 2015. OHCHR, 'UN experts say Gaza health care at "breaking point"', 21 June 18; see also SR on health to the GA, ch. IV. Right to mental health framework and people on the move, UN doc. A/73/216.

451 The number of deaths (215) and wounded (18,000) caused by the Israeli response to the ‘Great March of Return’ between 2018 and 2019 (which has not relinquished at the time the manuscript is being finalized) has also further strained Gaza’s health capacity and scarred an entire generation with ‘[p]ermanent, life-changing injuries’. UNHRC, Report of the detailed findings of the independent international Commission of inquiry on the protests in the Occupied Palestinian Territory, 18 March 2019, A/HRC/40/CRP.2, 150–4, 160–73 in particular.

452 CESCR, Gen. Comm. no. 3: The Nature of States Parties’ Obligations (art. 2, para. 1, of the Covenant), 14 December 1990, UN doc. E/1991/23, paras. 3–5.

453 CESCR, Gen. Comm. no. 14, UN doc. HRI/GEN/1/Rev.9 (vol. I), 2000, paras. 12(b) and 50.

454 Ibid., para.18

455 Ibid., para. 43 (a), and CESCR Gen. Comm. no. 20 (2009) on non-discrimination in economic, social, and cultural rights, para. 30.

456 Ibid.

457 See interpretation of ICESCR Gen. Comm. no. 14 (2000), para. 40.

458 For an appraisal of the situation of the impact of the current situation on the right to health in Gaza, see SR oPt, *Situation of human rights in the Palestinian territories occupied since 1967*, UN doc. A/72/43106, para. 8; and WHO, situation reports, occupied Palestinian territory, Gaza 17–31 December 2014. For an appraisal of the impact of the hostilities on the health system, see the Report of the Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, Human Rights Council, 39th session, 10–28 September 2018, distr. 9 August 2018, UN doc. A/HRC/39/65, attacks on the health system are a cross-cutting theme, e.g. paras. 17, 34, 60–1, 66, 101.

459 Rome Statute of the ICC, art. 8. See Report of the Commission of Inquiry on Gaza (2015), para. 464.

460 UDHR, art. 25(1).

461 CESCR, art. 11, see also CESCR Gen. Comm. no. 4: The Right to Adequate Housing (art. 11(1) of the Covenant) Adopted at the 6th Session of the Committee on Economic, Social and Cultural Rights, on 13 December 1991, UN doc. E/1992/23.

462 Also see CEDAW, art. 14(2)(h); CRC, art. 27(3); CRPD, art. 28(1).

463 CESCR, Gen. Comm. no. 4: The Right to Adequate Housing (art. 11 (1) of the Covenant), 13 December 1991, E/1992/23.

464 ICESCR, Gen. Comm. no. 4, 1991, para. 8.

465 League of Arab States, *Protocol for the Treatment of Palestinians in Arab States* (‘Casablanca Protocol’), 11 September 1965, discussed in Chapter IV.

466 Akram S., and T. Rempel, ‘Temporary protection as an instrument for implementing the right of return for Palestinian refugees’, *Boston University International Law Journal* 22 (2004) 119.

467 See Iraq, Kuwait, Syria.

468 CESCR Gen. Comm. no. 4.

469 Baderi, M., Space, temporariness, development and rights, in Hanafi, S., Hilal, L. and Takkenberg, L. (eds.), *UNRWA and Palestinian refugees: From relief and works to human development*, London: Routledge, 2014, 191.

470 In Gaza, the widespread damage to buildings as a result of hostilities in 2009, 2012, and 2014, compounded by the denial of access for building materials required for reconstruction, has exacerbated the already chronic housing problems. UNRWA, Gaza Situation Report No. 122, 10 December 2015. It is estimated that approximately 141,117 Palestine refugee housing units suffered damage, and roughly 22,000 of them were demolished or suffered major damage.

471 AUB, 2015, see also American Near East Refugee Aid (ANERA), ‘What are Palestinian refugee camp conditions like?’, September 2019.

472 By 2014, approximately two-thirds of the Palestine refugee camps in Syria were caught up in the conflict, with large-scale destruction or damage to housing units reported; over 54,000 families have been affected by damaged or destroyed homes. The most extensive damage was reported in Yarmouk, Ein El Tel, Dera'a, Sbeineh, and Jobar. See UNRWA, Palestine Refugees from Yarmouk: background, 2015, 1.

473 In the West Bank, including East Jerusalem, Palestinian refugee housing has been severely affected by home demolitions, including in refugee camps. Israel justifies these on the grounds of infringements of building regulations or as collective punishments. Between 1967 and 2017, Israel reportedly destroyed over 48,000 civilian structures Estimates by the Israeli Coalition Against House Demolitions (ICAD) based on OCHA Portal data, 2017. Accessed 11 February 2019.

474 Rueff, H., Viaro, A., ‘Palestinian refugee camps: from shelter to habitat’, *Refugee Survey Quarterly* 28.2–3 (2009) 339–59, 341.

475 UN CESCR, Concluding observations on the second periodic report of Lebanon, UN doc. E/C.12/LBN/CO/2, 24 October 2016, para. 26. On Israel’s obligations, see OHCHR, Fact Sheet No. 25 (Rev.1), Forced Evictions, 2014, No. 25/Rev.1, 2014, 5–7.

476 OHCHR, Fact Sheet No. 25 (Rev.1), Forced Evictions, 2014, No. 25/Rev.1, 5.

477 Chapter III.

478 Section 3 discusses the relevance of this right in connection with the right of return. Full background is provided in Chapter IV, where the issue of Palestinians travelling outside the traditional host countries (mainly Jordan, Egypt, and Lebanon) is explained in detail.

479 UDHR, art. 13; ICCPR, art. 12, which includes an internal aspect, relating to freedom of movement within a country (art. 12 (1)) and an external aspect comprising freedom of movement between states (the right to leave one’s country (art. 12 (2)), and the right to enter one’s ‘own country’ (art. 12 (4)). Like the Refugee Convention, art. 12 of the ICCPR contains the same principle, including the provision that no restrictions should apply if not on established legal ground, for reasons of national security, public order, health, or morals (art. 12 (3)). Art. 26 of the 1951 Convention provides that states shall afford refugees the right to choose their place of residence within the territory of asylum and to move freely within the state. Meanwhile, art. 28 obliges states parties to issue refugees travel documents permitting them to travel outside the state ‘unless compelling reasons of national security or public order otherwise require.’ Art. 26 provides the right to refugees lawfully in the territory; art. 28 uses the term ‘lawfully staying’.

480 Also see ICCPR Gen. Comm. no. 27 on art. 12; CEDAW, art. 15(4); CRPD, art. 18(1).

481 ICCPR, art. 12(3). According to the HRC (n 10), this article provides for ‘exceptional circumstances’ justifying restrictions determined by ‘national security, public order (*ordre public*), public health or morals and the rights and freedoms of others. To be permissible, restrictions must be provided by law, must be necessary in a democratic society for the

protection of these purposes and must be consistent with all other rights recognized in the Covenant', HRC, Gen. Comm. no. 27, 1999, para. 11.

482 Zieck (n 320), 24.

483 Casablanca Protocol, arts. 3-4.

484 Ibid., art. 5.

485 Art. 3 stipulates that the right to enter 'does not lead to a right of residence, except for the period and purpose specified'.

486 CSR51, art. 26.

487 LAS res. 1593 of 1991.

488 After 1991 only Syria and Jordan remained bound by the Protocol, as Egypt stopped implementing it. Lebanon had already endorsed it with reservations expressed on three articles out of five.

489 As discussed in Chapter IV, Section 2.1, LAS res. 5093 of 1991 weakened respect for the Casablanca Protocol by authorizing 'states to treat Palestinian refugees in accordance with domestic law rather than under the provisions set forth in the Protocol.'

490 The situation of Palestinian refugees in Lebanon and the oPt are particularly dramatic.

491 Details of this synopsis can also be found in the corresponding country sections (under the heading 'legal status and treatment') in Chapter IV.

492 Half of those are under the auspices of UNHCR and the other half under UNRWA's.

493 E.g. Gaza Strip residents, including those displaced in 1967, holding a PA ID but not registered with the Israeli-controlled population registry, experience movement restrictions inside and outside the occupied territory.

494 Most of these persons are residents of the Shu'fat refugee camp. Other West Bank refugees with Jerusalem IDs live in Sheikh Jarrah, the Old City, and other East Jerusalem neighbourhoods.

495 In 2018 Saudi Arabia decided to deny East Jerusalemites, holders of Jordanian temporary passports, to enter its territory. There was no official declaration on this, and people only knew about the decision through travel agencies and the Saudi embassy in Amman.

496 This is e.g. the case for East Jerusalemites who have had their Israeli ID and residency withdrawn based on the ground of protracted absence. They can apply for PA IDs and passports, but cases of the PA refusing to issue them IDs or passports on the ground that they want to protect the East Jerusalem residents from transfer or deportation from Jerusalem, have been reported.

497 The difference between those and the residents of the West Bank who are on the Israeli population registry is that the former's passport does not have a national number and its holders cannot enter the West Bank or the Gaza Strip.

498 See situation of recording Palestinian refugees in Europe discussed in Chapter V, Section 1.

499 Khalil, A., 'Family unification in the Occupied Palestinian Territory', CARIM Analytic and Synthetic Notes no. 2009/19, 40. Available at SSRN: <https://ssrn.com/abstract=1559202>.

500 See Chapter IV, Section 1.

501 See Chapter V.

502 E.g. in Lebanon where the state security apparatus does not enter the camps, the issue of factional or personal violence within camps or the state's refusal/inability to protect Palestinian refugees from factional violence (e.g. *El Kott*, where Hungarian immigration authorities refused the claimant refugee status but did not deport him based on *non-refoulement*).

503 Palestinians who were forced to leave Lebanon in the 1990s included those who had been displaced from Jordan in 1970–1971.

504 In 2017 only, four cases of forcible return, affecting a total of twenty-two individuals (sixteen adults and six children) were documented. In 2016, forcible return affected fourteen Palestinian refugees from Syria (PRS) (eleven adults and three children), compared to a total of 69 (PRS) (thirty-four adults and thirty-five children) in 2015.

505 In 2017 UNHCR observed: 'The routes [refugees] used were fraught with danger, including travel on unseaworthy boats and through scorching deserts. Both refugees and migrants are often separated from family members and face similar risks, such as kidnapping, long periods of detention in extremely poor conditions, physical and sexual abuse, and torture and extortion by smugglers and criminal gangs.' Executive Committee of the High Commissioner's Programme, 'Note on international protection', UN doc. EC/68/SC/CRP.12, 16 June 2017, para. 17.

506 CSR51, art. 3.

507 See GCIV, art. 45(4).

508 At the international level, see ICCPR, art. 7; CAT, art. 3(1); HRC, Gen. Comm. no. 31; HRC, *Chitat v Canada*; HRC, Gen. Comm. no. 20, art. 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment), 10 March 1992, para. 2. Also CEDAW, Gen. Recomm. 32 on the gender-related dimensions of refugee status, asylum, nationality, and statelessness of women, UN doc. CEDAW/C/GC/32, 5 November 2014, para. 17. Finally, art. 16 of the International Convention for the Protection of All Persons from Enforced Disappearance both explicitly prohibits *refoulement* to risk enforced disappearance and recognizes that such a threat may be assessed by 'the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights or of serious violations of international humanitarian law.' At the regional level, see ACHR, art. 22(8); ECtHR, art. 3, and art. 19(2) of the 2000 Charter of Fundamental Rights of the European Union.

509 UNHCR, 'The Principle of Non-Refoulement as a Norm of Customary International Law, Response to the Questions posed to UNHCR by the Federal Constitutional Court of the Federal Republic of Germany in cases 2 BvR 1938/93, 2 BvR 1953/93, 2 BvR 1954/93, Conclusions', para. 7; UNHCR, 'Summary Conclusions on Non-Refoulement', Global Consultations on International Protection, Lisbon Expert Roundtable 3–4 May 2001. See also Goodwin-Gill and McAdam (n 366), 353. Contra Hathaway, J. C., *The rights of refugees under international law*, Cambridge: Cambridge University Press, 2005, 363–4.

510 UN CAT, Gen. Comm. no. 1, Implementation of Article 3 of the Convention in the Context of Article 22 (Refoulement and Communications), UN doc. A/53/44, 21 November 1997, annex IX, para. 2. See also Gillard, E. C., 'There's no place like home: States' obligations in relation to transfers of persons', *International Review of the Red Cross* 90.871 (2008) 703, 712.

511 Art. 7, ICCPR; art. 3, ECHR; art. 13(4), Inter-American Convention to Prevent and Punish Torture. See CEDAW, Gen. Recomm. no. 32, The gender-related dimensions of

refugee status, asylum, nationality and statelessness of women, UN doc. CEDAW/C/GC/32, 5 November 2014, para. 17.

512 In 2014, CAT condemned Jordan's 'policy not to admit Palestinian refugees fleeing the conflict in Syria' and deportations as a result thereof (CAT/C/JOR/CO/3 (CAT, 2016). In the same year, the Committee on the Rights of the Child expressed concern with respect to a number of Palestinian refugee families (including children) affected by the Syria conflict, and 'urge[d] [Jordan] to ensure the full protection of Palestinian children and their families fleeing the Syrian Arab Republic, and to ensure full respect for the fundamental principle of non-refoulement, including non-rejection at frontiers.' Jordan was also called upon to 'ensure full access by all refugee and asylum-seeking children and their families to fair and effective procedures for determining status, without discrimination.' UN CRC, Concluding observations on the report submitted by Jordan under art. 8, para. 1, of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, UN doc. CRC/C/OPAC/JOR/CO/1, 7 July 2014, paras. 25–6.

513 In 2015, with respect to Iraq, the Human Rights Committee expressed concern at allegations of non- refoulement, as well as at the protection issues, including violent attacks (arts. 2, 6, 7 and 13) against Palestinian refugees UN HRCte, Concluding observations on the fifth periodic report of Iraq, UN doc. CCPR/C/IRQ/CO/5, 3 December 2015, para. 23.

514 In 2017, the Committee Against Torture, has expressed concern at the instances of refoulement in Lebanon, especially with regard to Palestinian refugees from Syria, among other refugees. The Committee has recalled the absolute force of the protection from refoulement, regardless of the person's nationality, judicial status or the danger that he or she may pose to society (art. 3).CAT, 2017, CAT/C/LBN/CO/1, para. 52.

515 In December 2011, the Committee against Torture found Bulgaria in violation of art. 3 of the CAT in the cases of Youssef Kayed and Moussa Kamel, two rejected Palestinian asylum seekers who were tortured upon being returned to Lebanon. See UN Committee against Torture, Concluding observations on the combined fourth and fifth periodic reports of Bulgaria, UN doc. CAT/C/BGR/CO/4-5, para. 16(e).

516 UDHR, art. 16; ICCPR, art. 23; CRC, arts. 9–10; ICESCR, art. 10; CEDAW, arts. 9, 11, 16; CRPD, art. 23. See also HRC Gen. Comm. no. 19, Protection of the family, the right to marriage and equality of the spouses (art. 23) (39th session, 1990) 1. In international refugee law, the 1951 Convention does not itself refer to family reunification, but the Final Act of the Conference of Plenipotentiaries at which it was adopted affirms that 'the unity of the family ... is an essential right of the refugee'. Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, 25 July 1951, UN doc. A/CONF.2/108/Rev.1.

517 CRC, art. 9, para. 1, requires that 'States Parties shall ensure that a child shall not be separated from his parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child'. Art. 10, para. 1, explicitly deals with family reunification stipulating that 'In accordance with the obligation of States Parties under Article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner'. Para. 2 of art. 10 further sets out obligations of states in situations in which the child and its parents reside in different countries.

518 UNHCR, 'The "essential right" to family unity of refugees and others in need of international protection in the context of family reunification', January 2018; UNHCR, 'The

right to family life and family unity of refugees and others in need of international protection and the family definition applied', January 2018, 2nd edn.

519 Cf, Morris, B., *The birth of the Palestinian refugee problem, 1947-1949*, Cambridge: Cambridge University Press, 1987, 278.

520 After the conclusion of armistice agreements between Israel and the neighbouring states in 1949 and the establishment of the United Nations Truce Surveillance Organization to supervise their implementation, illegal crossing of the cease-fire lines became much more difficult and, as a result, the informal process of family reunification essentially came to an end.

521 One example is the transfer of the remaining Palestinians of Al Majdal to Gaza during 1950; cf. Morris, *1948 and After: Israel and the Palestinians*, Oxford, Clarendon Press, 1994, 323. UNSC res. 89 (1950), 17 November 1950, condemned the Israeli action.

522 See discussion of the Lausanne conference in 1949, Chapter I, Section 6, (n 193)-(n 209) accompanying text.

523 Morris (n 519), 254, 278.

524 UNRWA, 'Annual Report, 1966–1967', cit. in UNRWA, 1983, 259, 266.

525 Where one spouse is Palestinian and the other Syrian, families fleeing Syria have been separated at the border as a result of Jordan's non-admission policy for Palestinians from Syria, with only the Syrian members of a mixed family allowed to enter Jordan. There are also cases where Palestinian children whose mother is Jordanian and father a Palestine refugee have been denied entry or deported. Cf. HRW, 'Not welcome: Jordan's treatment of Palestinian escaping Syria', August 2014.

526 Ibid. For older accounts, see 'Nowhere to go: The tragedy of the remaining Palestinian families in Kuwait', New York, October 1991, reproduced in 6 *PYIL* 87 (1990/91).

527 See Chapter IV, see Egypt and Jordan history sections.

528 Citizenship and Entry into Israel Law (Temporary Order) 2003, prohibiting Israeli citizens and oPt Palestinian spouses from living together in Israel.

529 Pending the inavailability of official statistics, it is estimated that between 1967 and 1987, out of 140,000 applications (85,000 according to Israeli sources), some 19,000 were accepted, mostly within the first few years of the occupation; only 13,000 applications were approved. Cf. Whittome, C., *The right to unite: The family reunification question in the Palestinian Occupied Territories: Law and practice*, Ramallah, Al-Haq, 1990, 5. During the second *intifada* that started in 2000, Israel suspended family unification applications for Palestinian residents in the OPT and tens of thousands applications were denied or frozen. Between 2000 and January 2005 alone, according to Al-Haq, '120,000 requests for family unification had not been considered by Israel'; About 30,000 were then approved between 2008–2009 when the process was suspended again; Al-Haq, 'Engineering community: Family unification, entry restrictions and other Israeli policies of fragmenting Palestinians', Ramallah: *Al-Haq*, May 2019, 7–10.

530 An unconfirmed number of separated families (Syrian mother, Palestinian father) have occurred at the border with Jordan in the aftermath of the Syrian conflict.

531 El Abed, O., 'The invisible community: Egypt's Palestinians', *Al-Shabaka* 8 June 2011.

532 Goodwin-Gill summarizes his conclusions in respect of the national status of Palestinians as follows: '[j]ust as Israel has denied citizenship to the majority of Palestinian Arabs, the Arab countries of refuge have, for the most part, consistently rejected local integration and citizenship as a solution to a problem which, in their view, can only be resolved by repatriation and self-determination.' See Goodwin-Gill, G. S. Different types of forced migration movements as an international and national problem, in Rystad, G. (ed.),

The Uprooted: Forced migration as an international problem in the post-war era, Lund: Lund University Press, 1990, 15–45.

533 While comprehensive information is not available, individual Palestinians have been naturalized in Lebanon around 1952–1958 (mainly Christians), Iraq, Kuwait, Saudi Arabia, Syria pre-1948, United Arab Emirates, and Yemen, as well as a number of countries in Europe and the Americas. Recent findings – see Chapter IV and Chapter V sections on UAE and German/Sweden, respectively – suggest that Palestinian refugees who can afford or are lucky to find themselves in the situation to apply for third-country citizenship do so; citizenship of any state (including independent of residence) is better than no citizenship at all.

534 LAS res. 1547, 9 March 1959, ch. IV, see CIA assessment, 1983, 4–5. This is the case of Syria and Saudi Arabia, see Chapter IV. In 2004 and 2011, the Egyptian government amended its nationality legislation opening the opportunity to provide citizenship to the children of Egyptian women married to Palestinians.

535 Ex Com of UNHCR, 'Identity Documents for Refugees No. 35 (XXXV)', 18 October 1984, no. 35 (XXXV).

536 Children born to 'non-ID' Palestinian fathers are reportedly often not registered with UNRWA nor do they receive any identity documents from the Lebanese government; they become 'non-IDs' as well. Chapter IV, Section 3.3.3.

537 Akram and Rempel (n 466), 1.

538 Bashir, B., 'On citizenship and citizenship education: A Levantine approach and reimagining Israel/Palestine', *Citizenship Studies* 19.6–7 (2015) 802–19. Khalil, A., 'Palestinian nationality and citizenship: current challenges and future perspectives', Research Report, European University Institute Robert Schuman Centre for Advanced Studies, Florence: CARIM, 2007. Masri, M. 'The implications of the acquisition of a new nationality for the right of return of Palestinian refugees', *Asian Journal of International Law* 5.2 (2015) 356–86.

539 ICCPR, art. 24(3) refers to the right to every child to 'acquire a nationality'; ICERD, art. 5(d)(iii), requires states to prohibit and eliminate racial discrimination in the enjoyment of the right to a nationality. CEDAW, art. 9, requires states to 'grant women equal rights with men to acquire, change or retain their nationality' as well as 'equal rights with men with respect to the nationality of their children'. ICMW, art. 29 refers to the right to acquire a nationality to children born to migrant workers; CRPD, art. 18(1)(a) refers to the right of all persons with disabilities the 'right to acquire and change a nationality' and art. 18(2) refers to children with disabilities in particular. At the regional level, the right to acquire a nationality is established in the African Charter on the Rights and Welfare of the Child, art. 6(3) and (4), and Protocol to the African Charter on the Rights of Women in Africa, art. 6(g); art. 20 of the American Convention on Human Rights; art. 4 of the European Convention on Nationality; art. 29 of the Arab Charter on Human Rights.

540 ICCPR Gen. Comm. no. 17: art. 24 (Rights of the child), 35th session (1989), para. 8.

541 On how 'Palestine citizenship' was lost and Palestinian refugees were denationalized *en masse* by Israel, see Chapter III, Section 3.2.1; distinction is made between the concept of nationality as 'identity' and nationality as 'legal bond to the state' (cf. Section 3.2.2), on which also Khalil (n 499), 3–10.

542 See Chapter III.

543 Masri (n 538).

544 Under international human rights law, they could also ‘return’ to Israel (in the sense of enter for the first time) while having third-country nationality. Their status – of foreigners with legal residence – would have to be regulated by Israeli Law.

545 Kagan, M., ‘“We live in a country of UNHCR”: The UN surrogate state and refugee policy in the Middle East’, The UN Refugee Agency: Policy development & evaluation service research paper no. 201, UNLV William S. Boyd School of Law Legal Studies Research Paper Series, 2011. Available at SSRN: <https://ssrn.com/abstract=1957371>.

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(p. 397) VII Protection of Palestinian Refugees

I wish to call on you to join hands in the building of a world in which less people will be forced to flee, and in which refugees are protected until they can safely return home one day.

Sadako Ogata, United Nations High Commissioner for Refugees, on receiving the Rotary Award for World Understanding, Calgary, 25 June 1996

1. Introductory Remarks

As established refugees under international law, Palestinian refugees are entitled to international protection, and thus to benefit from the norms, procedures, institutional arrangements, and solutions offered by international law for persons who are outside their country of nationality and cannot enjoy that country's protection.

In practice, the protection Palestinian refugees have been enjoying has depended on the country where they found refuge and the prevailing circumstances therein, the interpretation of international law by the host governments (or the occupying Power in the case of the oPt), and, to some extent, the role played by the international bodies mandated to support them. In practice, while some Palestinian refugees may thrive in a number of host societies in the Arab region, various European countries, and the Americas, others – particularly those in politically volatile areas – experience high levels of physical and legal vulnerability, and face various degrees of discrimination and marginalization. As discussed earlier (Chapter II and Chapter III), the fact that some may have acquired citizenship of a state, means that they fall under that state's protection, but this does not infringe on the rights related to their status under relevant UN resolutions (e.g. UNGA res. 194 of 1948, UNGA res. 2252 of 1967, and UNSC res. 237 of 1967).

Chapter II discusses how, compared to other refugees, Palestinian refugees enjoy a distinctive protection regime, with the key role played by United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) (and originally the United Nations Conciliation Commission for Palestine [UNCCP]), not the United Nations High Commissioner for Refugees (UNHCR). This is because – it is worth recalling – when the drafting of the 1951 Convention and UNHCR Statute were being finalized, the United Nations (UN) had already deliberated how to resolve the Palestine refugee question; General Assembly resolution 194 of 1948 had mandated the UNCCP to lead the conflicting parties towards a negotiated settlement, while UNRWA was to support the UNCCP's work, mainly by providing relief to the refugees. Article 1D of the 1951 Convention paved the way for what Akram and Goodwin-Gill call 'alternate protection schemes' involving UNCCP, UNRWA, and UNHCR: UNHCR would be responsible for Palestinian refugees if the assistance and protection offered by UNCCP/UNRWA should cease for any reasons (and outside (p. 398) the Near East).¹ In 1949, UNRWA's mandate aimed to complement that of UNCCP and therefore did not include the pursuit of (the full range of) durable solutions. This system, which was intended to ensure continuous protection, did not live up to expectations: from the early 1950s, after failing to protect Palestinian refugees through a negotiated durable solution, UNCCP progressively halted its mediation activities and focused on possible compensation of the refugees, before becoming inactive from the early 1960s onwards. Meanwhile, although it was initially set up to build on previous relief efforts while a solution under the auspices of the UNCCP was found, UNRWA evolved into a large, active, and much-debated (and often criticized) all-purpose agency for Palestine refugees.²

Over time, UNHCR has become increasingly active in ensuring protection of Palestinian refugees outside UNRWA's areas of operations.

Some scholars and practitioners, including leading Palestinian refugee civil society groups, e.g. BADIL, argue that such a distinctive regime, which largely excludes Palestinian refugees – especially in countries where UNRWA operates – from the protection purview of UNHCR and the 1951 Convention, has to various extents made them victims of a 'protection gap'.³ The protection gap argument, as commonly presented, consists of two main elements. First, a substantive dimension, pointing to the lack of compliance by competent authorities (host/asylum states and Israel, including as the occupying Power) with the relevant international standards to which Palestinian refugees are entitled as refugees, (often) stateless persons, (occasionally) protected persons in situations of armed conflict or occupation, or simply as human beings. The second element concerns the institutional dimension: the role of the UN agencies – UNCCP, UNRWA, and UNHCR – mandated to ensure, to different extents, assistance and protection for Palestinian refugees.⁴ With respect to the specificities of the Palestinian refugee situation, the substantive dimension, is not uncommon to refugees in protracted refugee situations.⁵ This chapter focuses primarily on the institutional dimension of the protection of Palestinian refugees.

Some of the proponents of the 'protection gap' argument point to the *de facto* demise of UNCCP as a development that has prevented Palestinian refugees from enjoying (p. 399) international protection.⁶ This institutional protection gap is ascribed partly to the mandate split between the UNCCP (which had a 'protection mandate', including the power to negotiate solutions) and UNRWA (whose original mandate was confined to 'relief and works' and technical support to the UNCCP) and partly to the difference between UNRWA and UNHCR's mandates. Some argue that UNRWA does not have an explicit protection mandate, as this was uniquely given to the UNCCP. Furthermore, even if UNRWA could deliver some protection functions, the outcome would be inferior to UNHCR doing this, since UNRWA lacks UNHCR's explicit international protection mandate.⁷ Among those who have reflected on the existence of a protection gap for Palestinian refugees,⁸ there is debate between those who argue that UNHCR should take over protection functions vis-à-vis *all* Palestinian refugees, including in UNRWA's area of operations,⁹ and those who challenge both the feasibility and effectiveness of such a change of responsibility.¹⁰ In contrast, another school of thought (reflected by the first edition of this book, and which includes a number of [past and present] senior UNRWA staff) claims that protection is a core element of UNRWA's mandate and work, even in the absence of an explicit mention of the word 'protection' in the mandate provided by the General Assembly in its founding resolution.¹¹ They argue that UNRWA has always carried out a number of the international protection functions set out in para. 8 of the UNHCR Statute,¹² that it has delivered protection through its operational activities, services, and programmes;¹³ and that UNRWA's activities contribute to the realization of basic economic and social rights in a way that is unique in the UN system.¹⁴ Thus, UNRWA provides protection 'through assistance' – which is considered (p. 400) an essential function of protection¹⁵ – and the realization of human rights, as well as directly. Those who hold this position also note that the evolution of the approaches to protection of both UNRWA and UNHCR has progressively harmonized the positions of the two organizations.¹⁶

Both schools of thought have merits and limitations. The 'protection gap' discourse has significantly contributed to highlight the plight of, and the various degrees of discrimination experienced by, Palestinians in UNRWA's area of operations and worldwide. It has also maintained the focus on the original – and still unmet – commitments of the international community towards Palestinian refugees. However, a somewhat static and traditional view of protection, in its institutional dimension, has held back more pragmatic conceptions of protection. Also, it has offered only limited recognition of the complexity of the institutional aspects of the Palestinian refugee regime and the opportunities for new approaches. The

'protection-is-in-all-what-UNRWA does' school of thought has helped raise awareness about the agency's protection functions, bringing a more realistic and articulated picture of the experiences of Palestinian refugees. This has also helped UNRWA to examine critically and further conceptualize its protection work beyond the comparison with UNHCR's mandate and functions and fill the gaps. However, it overstates UNRWA's historic protection awareness and commitment, and its analysis of what protection means to the agency, and how to move it forward remains overly focused on current programmes and services, often without a sufficiently informed assessment of the actual protection needs of Palestinian refugees.¹⁷ Thus, the debate around the institutional dimension of protection of Palestinian refugees has been more focused on the extent to which UNRWA has or lacks the protection mandate of UNHCR,¹⁸ and less on how the current regime has evolved and how, with its strengths and opportunities, it can better serve the interests of Palestinian refugees.

This chapter examines the protection regime for Palestinian refugees. It consists of four sections. After this section's introductory remarks, Section 2 contextualizes the evolution of the protection of Palestinian refugees through the mandates of the agencies dealing with this group and the overall evolution of concepts and definitions of protection in response to circumstances on the ground. In charting the trajectory of the evolution of protection of Palestinian refugees, the concept of protection in this chapter is used without further qualification unless any specific meaning (humanitarian, physical, legal) is intended to be highlighted. Section 3 discusses how the distinctive protection regime for Palestinian refugees has changed in response to events and as a reflection of changing approaches. It then discusses the current status of protection for Palestinian refugees. Section 4 provides some critical reflections on existing challenges and opportunities for different actors to contribute to delivering effective protection to these refugees. Section 5 offers some conclusions.

With its many challenges, duration, characteristics, and limitations, protection of Palestinian refugees can be seen as a function of the ad hoc institutional evolution of the (p. 401) issue. This evolution is itself a function of the stalemate on the Israeli-Palestinian conflict and the ongoing failure to resolve it. By tracing how conceptions of protection have evolved, both globally and for Palestinian refugees, this chapter argues that, although its delivery has been imperfect, adequate protection of Palestinian refugees is possible using current institutional and legal regimes.¹⁹

2. Contextualizing the (Origins of) Protection of Palestinian Refugees

The current institutional protection regime for Palestinian refugees can be better understood by a contextualization of the distinctive regime set up for them and its evolution, as well as the overall evolution of various concepts and definitions of protection.²⁰

2.1 Initial protection needs and tools in perspective

While international protection is central to the post-Second World War refugee system, neither the 1951 Convention nor the UNHCR Statute explicitly defines its meaning.²¹ In turn, neither General Assembly resolution 194 – establishing UNCCP – nor General Assembly resolution 302 – establishing UNRWA – defines the meaning and scope of protection for 'Palestine refugees'. While 'the refugee character of [such] protected constituency was never in dispute', their protection needs were considered as for any other refugees, but with account taken of the specificities of their situation.²² This has two implications.

First, as Chapter II discusses, the need to protect Palestinians as 'refugees' emerged as the international protection regime that we know today was being developed. The years of moral and legal reconstruction in the aftermath of the Second World War saw the establishment of the UN, the first ad hoc international criminal tribunals, the creation of the International Court of Justice, and the drafting of key human rights instruments, including the Universal Declaration of Human Rights, the Convention against Genocide, and the 1949 Geneva Conventions. The international protection system, including the component devised for Palestinian refugees, developed in this context. The international community felt a responsibility towards the millions of distressed Jewish refugees who had survived the horrors of Nazi-Fascism in Europe. At the same time, it was concerned with the fate of the hundreds of thousands of 'Palestine Arabs' who had been displaced in the process of securing a 'national homeland' for the Jews. The inability to solve the tension between these two concerns, combined with the self-interest of Western countries - who opted to solve the (p. 402) Jewish refugee question in Palestine rather than on their own territory - helps explain why for seventy years there has been no just resolution to the plight of the Palestinians.

Second, the context in which Second World War refugees found themselves was different from that of the 1948 Palestinian refugees. For most of the former, a new 'homeland' had to be found as return to the state of nationality was not possible. This was true for the Jews from Germany and Eastern Europe as well as for those who later escaped the former Soviet Union. For them, admission to, and legal residence and basic rights in, another country had to be secured.²³ As a consequence, the core of the international protection mandate originally conferred on UNHCR revolved primarily around legal protection.²⁴ As the primary responsibility to protect the fundamental rights of every person within a given territory lies with the sovereign state having jurisdiction over that territory, effective protection of refugees depends on the government of the country of asylum.²⁵ Consequently, UNHCR's role in providing international protection entails making sure that host/asylum authorities take the necessary steps to protect the refugees within their territory, as well as persons seeking admission at their borders.²⁶ This is part of what are commonly referred to as 'direct' protection functions. These include: protection of the refugee's basic human rights, such as the right not to be expelled or returned to a place where one's life and freedom is threatened (*non-refoulement*); access to a procedure for the determination of refugee status; the grant of asylum and the prevention of expulsion; family reunification; access to education; and the right to work and access to other economic and social rights. In contrast, 'indirect' protection functions aim at creating a conducive national environment for the refugees, through ratification of treaties, adoption of laws and by-laws, and the development of doctrine.²⁷

Unlike most Second World War refugees that UNHCR had to protect, the refugees from Palestine had already been admitted in host countries in the years when the UNHCR Statute and 1951 Convention were being finalized, and were not threatened with expulsion.²⁸ Conjunctively, UNCCP and UNRWA attempted to deliver some of the above-mentioned direct protection functions: the former focused on family reunification and property rights, while the latter on basic economic and social rights, and altogether they attempted to help advance solutions, one politically and the other operationally.

This overview leads to two further observations. The UN did not intentionally split the functions of protection and assistance of Palestinian refugees between different agencies. (p. 403) The institutional regime enshrined by Article 1D of the 1951 Convention was established with General Assembly resolutions 181 and 194 in mind: for the international community, the Palestinian situation was to be resolved quickly, with the return of the Palestinian refugees to their homes or resettlement and compensation of those not willing to return, and the creation of an Arab state side-by-side with the Jewish state. Those involved with the creation of UN Relief for Palestine Refugees (UNRPR), UNCCP, and

UNRWA did not envisage that this solution would be delayed for decades. Because it was delayed, the organizations created for ‘Palestine refugees’ had to evolve. It is relevant that, until the creation of UNHCR, international (i.e. institutional) responses to refugee crises had been ad hoc and situation specific, and that UNHCR itself, while representing a comprehensive approach to refugee problems, was created in response to a specific problem, and with temporal and geographic limitations.²⁹

The differences between the functions of UNHCR and UNCCP were examined in Chapter II. Based on that discussion, it can be argued that the full palette of protection activities as per the UNHCR statute was not vested with UNCCP.³⁰ While UNCCP had protection functions, they were not general but intimately related to the circumstances of the conflict the UNCCP was expected to resolve.³¹ In line with this interpretation, the New Zealand Immigration and Protection Tribunal recently defined UNCCP protection as ‘multidimensional’ in nature, where durable solution functions related to the final settlement of the conflict sit next to ‘a more individualized’ dimension of protection relating to secure property rights.³² The concept of protection in the context of UNCCP’s work was not used with regards to the broad spectrum of refugee rights nor their legal protection.³³ The UNCCP protection mandate centred on finding a durable solution for the refugees (through return or resettlement) as well as restitution and/or compensation. Hence, it had an explicit mandate regarding the quest for a negotiated solution of the conflict, including the refugee question, while other protection functions that soon became crucial to the protection of Palestinian refugees (for example, the equivalent of UNHCR’s supervisory role over the rights of the refugees in host countries) were not part of its competence. Host countries did not see it as a problem to assure those rights themselves and the League of Arab States (LAS) would soon lay the foundation of a regional system aiming to create the space for legal protection of Palestinian refugees in host countries. As a result, the concept of protection in the work of UNCCP did not embrace the full spectrum of refugee rights and their (p. 404) legal protection, but rather specific issues as part of the right to return, and the question of compensation.³⁴

The need to protect the rights of the refugees became more pressing with the stagnation of the negotiation process that the UNCCP was trying to pursue.³⁵ In practice, UNCCP’s work on rights and refugees’ protection never involved the extent of the legal protection envisaged by UNHCR, and the rights of the refugees were referenced primarily as property rights and as those that would emerge through a settlement of the conflict.³⁶ In other words, under the UNCCP mandate, the realization of Palestinian refugees’ rights was something to be achieved through political negotiations, rather than an everyday operational concern. Hence, to the extent it was explicit (i.e. as stated in resolution 194), the protection afforded by UNCCP was different from that offered by UNHCR, and lacked the latter’s combination of diplomatic protection and focus on a panoply of fundamental rights (some of proponents of the protection gap argument often cite this lack as evidence of UNRWA’s inability to deliver protection).³⁷ The protection afforded by UNCCP was also different from the way UNRWA’s mandate has evolved.

2.2 Evolution of the concepts of (international) protection

One aspect that is often overlooked when discussing the protection of Palestinian refugees is the way various notions of ‘protection’ have evolved over seven decades, and how this has affected the practice of protecting Palestinian refugees.

Initially applied to refugees within the domain of the law of aliens and state responsibility, as well as to civilians and soldiers *hors de combat* under international humanitarian law (IHL) in situations of armed conflict, the concept of protection had a specific legal dimension. In the case of refugees, ‘international protection’ implied the extension of legal guarantees to individuals who may not enjoy the protection of their own state (hence, the concept of diplomatic protection was the precursor of the concept of international

protection).³⁸ Since the modern codification of the international refugee regime in the immediate post-Second World War period, the concept of ‘international protection’ applied to refugees has expanded significantly.³⁹ UNHCR was created with a clear legal protection mandate (p. 405) and at the time ‘legal protection’ of refugees equated with what Stevens refers to as the ‘practicalities of refugees’ access to status determination processes as well as to rights and opportunities in countries of asylum’.⁴⁰ As noted earlier, this was not something for which Palestinian refugees in 1948 had an immediate need.

This section argues that current concepts of protection refer to a broad range of activities aimed at obtaining full respect for the rights of the individual in accordance with relevant bodies of international law, taking into account the specific needs of the individual. This suggests that the influence of developments in the fields of human rights law (entailing obligations to respect and fulfil rights, and protect the holder from abuses), and IHL (the needs of protected persons in emergencies) has been part of a natural organic evolution, even if this was never formally recognized in a single universal definition of international protection. Some historical events, particularly from the 1990s, significantly reshaped today’s protection paradigms. The horrors of humanitarian crises during the 1990s, together with the traumatic experience of some UN peace-keeping operations, notably in Bosnia, Rwanda, and Somalia, demonstrated the importance of protecting human rights, empowering individuals, and coordinating humanitarian responses.⁴¹ It also prompted soul-searching within the UN.⁴² Among other developments, this led to the creation of the Inter-Agency Standing Committee (IASC) in 1992 to coordinate humanitarian assistance between UN and non-UN partners.⁴³ Since then, the concept of protection has undergone a major expansion, including through the work of other humanitarian organizations that became involved in the sector.⁴⁴ Humanitarian organizations started mainstreaming protection, with the pivotal contribution of the IASC. The following definition of protection was agreed by the IASC in 1999:

The concept of protection encompasses all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law (that is, human rights law, international humanitarian law and refugee law).⁴⁵

The 2000 report of the Panel on United Nations Peace Operations put protection of civilians in armed conflicts at the centre of peace operations.⁴⁶ This mirrored the evolution of the overall approach to protection in the international community and the increasing emphasis (p. 406) on coordination and action to ensure there were no protection gaps. Mandate-specific concepts of protection employed by the International Committee of the Red Cross (ICRC) and the IASC in the field of armed conflict and humanitarian emergencies, were supported and complemented by the United Nations Population Fund (UNFPA) for gender-related protection, the United Nations Children’s Fund (UNICEF) in the field of child protection, and the World Health Organization (WHO) in the field of health. Further contributions to a broader understanding of protection came from developments within the international human rights system – including the work of the United Nations Treaty Bodies, the Office of the High Commissioner for Human Rights (OHCHR), the UN Human Rights Council (which replaced the Commission on Human Rights in 2006), and its Special Procedures with regard to developments within the international human rights system.⁴⁷

For refugees, international protection has evolved from being a surrogate for consular and diplomatic protection during the interwar period to a system that is inspired and informed by human rights values and principles.⁴⁸ Over time, there has been increased recognition of the link between legal protection and assistance, including of the role of development assistance in addressing refugees’ needs.⁴⁹ As a result, the concept of international protection has come to embrace a broad range of needs that may result from the absence of national protection.⁵⁰ This broader understanding of protection was set out in the High

Commissioner for Refugees 1994 Note on International Protection, which recognized ‘the broad scope of the overall objective of international protection’ and describes the content of international protection as ‘encompassing virtually all the activities undertaken by [UNHCR] on behalf of refugees’.⁵¹ The note elaborates:

As outlined in general terms in the Statute of the Office and demonstrated in the practice of UNHCR, international protection involves seeking – in collaboration with Governments as well as non-governmental organizations (NGOs) – to meet *the whole range of needs that result from the absence of national protection* ... International protection thus begins with securing admission, asylum, and respect for basic human rights, including the principle of non-refoulement, without which the safety and even survival of the refugee is in jeopardy; it ends only with the attainment of a durable solution, ideally through the restoration of protection by the refugee’s own country. It includes promoting the conclusion and supervising the application of international conventions for the protection of refugees at the global and regional level, promoting legislation and other measures at the national, and increasingly regional, level to ensure that refugees are identified and accorded an appropriate status and standard of treatment in their countries of asylum, and ensuring, with and through the national authorities, the safety and well-being of specific refugee groups and individuals in asylum countries. Protection includes ensuring that the special needs of refugee women, particularly victims of violence, and of children, especially those separated from their families, are met. Since the ultimate goal of international protection must be to achieve a satisfactory solution for the refugee, the protection function also includes (p. 407) promoting with governments and with other United Nations and international bodies measures to remove or attenuate the causes of refugee flight so as to establish conditions that would permit refugees to return safely to their homes, and, when this becomes feasible, facilitating, assisting and monitoring the safety of voluntary repatriation. If safe return is not possible, it involves promoting and implementing the other durable solutions of resettlement or local integration.⁵²

This definition clearly reflects the significant evolution of the concept of international protection since the late 1940s.⁵³ The Note put forward a broader definition of international protection, seen as ‘a dynamic and action-oriented function’, encompassing ‘a range of concrete activities, covering both policy and operational concerns’, to be carried out ‘in cooperation with States and other partners, with the goal of enhancing respect for the rights of refugees and resolving their problems’.⁵⁴ Welcomed by the General Assembly, this Note signals the broadened scope of UNHCR’s protection work.⁵⁵ Of interest for this study is that some of the functions the Note describes as indispensable to the delivery of international protection (e.g. material assistance) have always been at the core of UNRWA’s mandate.⁵⁶ Moreover, the concept of international protection embraced by UNHCR as set out in the Note reflects the trends that have seen emphasis on the universality of human rights, the need to align legal frameworks and action to support them with individuals’ protection needs, and a focus on the corresponding obligations of states.

In subsequent years and subsequent refugee crises, the need to balance individual versus group and state rights, and the complexity of global refugee crises, has gradually produced an array of mechanisms for international refugee protection, which have evolved ‘in the face of successive situations of humanitarian necessity’.⁵⁷ In particular, since the 1990s, to face various crises, UNHCR has undertaken operations outside its general protection mandate of persons who find themselves outside of their country of origin and in need of international protection, providing humanitarian assistance in conflict zones, to people fleeing man-made disasters and persons displaced within the border of their own countries (internally displaced persons).⁵⁸ In such cases, Goodwin-Gill and McAdam argue, ‘[t]he

General Assembly has endorsed UNHCR activities for humanitarian reasons, but also essentially because *the lack of protection creates a vacuum*.⁵⁹ Over time, this has reflected on the overall conceptualization of refugee protection and in practical terms, it has also meant an evolution (and expansion) of UNHCR's mandate.

In its contribution to the 2015 World Humanitarian Summit, UNHCR refers to the concept of protection not as a single event, but as the result of a combination of interventions and activities that, informed by international human rights law (IHRL), IHL, and (p. 408) international refugee law, concertedly aim at saving lives, ensuring safety and security, alleviating suffering, and restoring the dignity of affected populations.⁶⁰ The open-endedness of such a concept denotes the need to have a principled, flexible, need-centred, and enabling approach, rather than a narrow, prescriptive one. Once again, it is 'humanitarian necessity' prompted by 'valid reasons involving elements of coercion and compulsion' that determine the need for international protection.⁶¹ Reflecting the UNHCR conceptual elaboration, the 2019 Note on International Protection reaffirms that '[p]rotection in all its facets [...] must remain a priority and central in responding across the entire continuum of displacement, in addressing statelessness and in humanitarian action more generally'.⁶²

In the Palestinian case, as the following section demonstrates, emergencies and humanitarian crises and related requests from the Security Council and General Assembly have not triggered a resurrection of UNCCP's original function, but rather required UNRWA to further expand its protection work.⁶³ This has happened, as Custer notes, 'in spite of the absence of the word 'protection' in UNRWA's founding resolution'.⁶⁴ The evolution (not invention) of UNRWA's protection mandate, like that of other humanitarian agencies, including UNHCR, can be seen, to use Goodwin-Gill and McAdam's concept, as an intervention for humanitarian necessity in situations where otherwise there would be a vacuum.

3. Gradual Evolution of UNRWA's (and early UNHCR) Protection of Palestinian Refugees

Shocks on the ground, starting with the second Arab-Israeli war, and most notably the civil war in Lebanon, the first and second *intifadas* in the oPt, and the general political volatility in the Arab world as of the 2000s, have compounded the plight of Palestinian refugees. In UNRWA's area of operations, the length and changing conditions of refugees' exile demonstrated that assistance is a necessary but not sufficient condition for their protection.⁶⁵ In other parts of the Arab world, as in Kuwait, Libya, and Iraq, Palestinian refugees were reminded of the harsh reality of their protracted situation, and their continuing need for international protection.⁶⁶ In countries that have ratified the 1951 Convention (including Western countries), Palestinian refugees often experienced limitations to their being established refugees entitled to continuity of protection. Changes on the ground, together with substantive and procedural needs (e.g. better preparedness to cope with Palestinian refugees in countries) within and outside UNRWA's area of operations, have gradually prompted an evolution of the protection regime for Palestinian refugees. This section examines that evolution.

(p. 409) 3.1 The 1950s-1980s: Progressive emergence of protection needs of Palestinian refugees

3.1.1 Initial delimitation of UNRWA and UNHCR mandates

As explained earlier, Palestinian refugees were not initially of concern to UNHCR. In addition to Arab opposition to the inclusion of Palestinian refugees in UNHCR's mandate, the highly political context, and the explicitly non-political character of UNHCR's work, may have been a factor in this exclusion.⁶⁷ However, after individual Palestinian refugees began to approach its offices for protection in the early 1950s, UNHCR realized it was necessary

to define the relative competence of UNHCR and UNRWA. Because General Assembly resolution 302 (IV), which had established UNRWA, did not contain any provisions regarding the personal and geographical scope of the agency, UNHCR requested clarification of this from UNRWA. UNRWA was initially unable to provide a clear answer as its definition of a Palestine refugee was evolving throughout the first decade of its existence, and its geographical competence was also subject to modification.⁶⁸ In early 1954, when the High Commissioner for Refugees announced that he would visit Palestinian refugee camps in Lebanon, some confusion arose in the press as to the respective responsibilities of both organizations. A joint press statement was issued confirming that UNHCR's responsibility did not extend to 'Palestine refugees in the Near East', who were the 'exclusive responsibility of UNRWA [and UNCCP]'.⁶⁹ The relative competence of the two organizations did not present a problem until the displacement following the 1967 war, when a number of Palestinians, including 1948 refugees, approached UNHCR offices for protection.⁷⁰ After consulting UNHCR, UNRWA issued a note clarifying its mandate.⁷¹ UNHCR provided copies of UNRWA's note to its branch offices and clarified its own competence.⁷²

(p. 410) 3.1.2 UNRWA between assistance and emergencies

After the de facto demise of UNCCP, UNRWA continued to work for the refugees displaced from Palestine.⁷³ The first edition of this book argued that, by advancing the everyday rights of the refugees through the provision of education, essential health services, work opportunities, and other measures to promote an adequate standard of living, UNRWA has routinely offered a form of protection to Palestinian refugees.⁷⁴ While this protection – including some 'direct protection activities' – has been important, it is only one component of international protection as initially delivered by UNHCR, and does not encompass legal protection as such, nor does it make explicit the durable solutions mandate (that UNRWA has nevertheless attempted to implement, together with UNCCP, in the early years of its mandate).⁷⁵ In the early years of their exile, Palestinian refugees were not only granted (largely de facto) asylum with assurances of *non-refoulement*, but were also granted a number of essential rights – including travel documents and legal residence – that made formal legal protection less relevant. At that time, while UNRWA arguably carried out some traditional international protection functions, that was not – and certainly not perceived to be – the core of its mandate.⁷⁶ UNRWA generally refrained from direct engagement with protection issues of legal or humanitarian nature.⁷⁷

A number of crises led to the expansion of UNRWA's protection functions beyond the realm of the provision of essential services through its core programmes. In 1956, Israel's occupation of the Egyptian-ruled Gaza Strip for nine months following the Suez Canal crisis⁷⁸ exposed the limitations of UNRWA's protection mandate. In addition to considerable disruptions of its operations, this occupation resulted in significant civilian casualties, (p. 411) often during round-up operations, and caused 'anxiety and fear among the refugees'.⁷⁹ UNRWA intervened on behalf of the refugees both directly, by protesting incidents with the Israeli authorities, including the arrest and detention of its staff members and violence against Palestinian civilians, and indirectly, through timely reporting the events to the General Assembly.⁸⁰ UNRWA reported the distress of the refugees and the demand of their leaders (*mukhtars*) 'to convey to the United Nations General Assembly their urgent plea for security and for protection'.⁸¹ Israel denied that the killing of Palestinians had been sanctioned⁸² and lethal violence subsided, but did not cease entirely, during the remainder of the 1956 occupation.⁸³

In June 1967, Israel's occupation of the West Bank and the Gaza Strip prompted international concern for the safety and security of the Palestinians living under that occupation, including the refugees. Security Council resolution 237 of June 1967 expressed concern for the human rights of civilians in the territories occupied by Israel and recommended scrupulous respect for the humanitarian principles contained in the Fourth

Geneva Convention of 1949.⁸⁴ Acting unanimously, the Council called upon the Israeli government to ensure the safety, welfare, and security of the inhabitants of the areas where military operations had taken place, and to facilitate the return of those inhabitants who had fled the areas since the outbreak of the hostilities. Similar concerns were expressed by the General Assembly.⁸⁵ With its wide presence on the ground, UNRWA saw first-hand the need for such protection measures and was at the forefront of efforts to provide emergency assistance to large numbers of Palestinians displaced by the war.⁸⁶

During the events of 'Black September' in Jordan (1970/1971), sustained fighting between the government's army and Palestinian guerrillas (*fedayeen*) in and around refugee camps caused significant fear among refugees and disruption to UNRWA's services.⁸⁷ The approach UNRWA took is rendered in this passage of the agency's annual report to the General Assembly in 1971:

(p. 412)

From past experience with emergency situations, the Agency knew that the most valuable contribution it could make would be to *restore its essential services*. As quickly as possible, therefore, the Jordan Field Office set about restoring the food, medical and health services on which a large part of east Jordan's population – and almost half, and the needier half of the population of Amman – are, to a greater or lesser degree, dependent [...].

These examples indicate that at that time UNRWA's response to such protection challenges was largely through assistance.

Things started to change in the 1980s, with the deterioration of the humanitarian situation in the Middle East, particularly in connection with the civil war that had ravaged Lebanon since 1975 and the 1982 Israeli invasion of Lebanon, and in the oPt, which was into a second decade of Israeli military occupation. In its resolution 37/120 of 1982, the General Assembly expressed its concern at the human suffering caused by the hostilities in the Middle East and the deteriorating situation in Gaza, including at Israeli authorities' persistence 'in their policy of demolishing, on punitive grounds, shelters occupied by refugee families'.⁸⁸ For the first time in the history of Palestinian refugees, resolution 37/120 dedicated a section to the 'Protection of Palestine refugees'.⁸⁹ Therein, the General Assembly:

Deeply distressed at the sufferings of the Palestinians resulting from the Israeli invasion of Lebanon [...] urges the Secretary-General, in consultation with [UNRWA], and pending the withdrawal of Israeli forces from the Palestinian and other Arab territories occupied by Israel since 1967, including Jerusalem, to undertake effective measures to guarantee the safety and security and the legal and human rights of the Palestine refugees in the occupied territories.⁹⁰

The Assembly also requested the Secretary-General, in consultation with UNRWA's Commissioner-General, 'to report to the General Assembly ... on the implementation of the present resolution'.⁹¹ Resolution 37/120 had unprecedented strong language on the protection of Palestine refugees and on the humanitarian functions delivered by UNRWA, which had to continue unfettered. It called upon Israel to release all detained 'Palestine refugees', allow them to return to their camps in Lebanon, allow UNRWA to resume its services in camps,⁹² and requested the Commissioner-General to 'prepare a report on the totality of the damage caused to the Palestine refugees and their property and to the

agency's facilities, as well as those of other international bodies, as a result of the Israeli aggression'.⁹³ Similar resolutions were adopted in subsequent years.⁹⁴

(p. 413) Meanwhile in March 1982, the General Assembly had instructed the United Nations Joint Inspection Unit (JIU) to conduct a review of UNRWA.⁹⁵ Although dealing primarily with UNRWA's finances, the report that JIU submitted in 1983, included a section specifically dealing with 'Protection of refugees'.⁹⁶ The JIU expressed concern at the 'anomalous situation' of Palestinian refugee protection, which it described as follows:

UNRWA's mandate does not exten[d] to the protection of refugees. The Office of the High Commissioner for Refugees, the only United Nations body formally responsible for the protection of refugees, is specifically excluded from a role in the protection of Palestinian refugees.⁹⁷

The report concluded:

JIU is convinced that this anomalous situation should not and need not continue. ... the problem of protection requires regionwide [*sic*] consideration and that innovative and acceptable measures that could be applied wherever and whenever warranted should be sought. Humanitarian considerations should prevail over any political or bureaucratic obstacles. Political aspects are, however, important and have to be taken into account if there is to be a realistic way to provide greater security for the refugees.⁹⁸

The JIU report recommended cooperation between UNRWA and UNHCR in the implementation of General Assembly resolution 37/120 and encouraged consultation between the Secretary-General and UNHCR on ways to achieve that.⁹⁹ In 1984, reversing its earlier opposition to recognition of individual Palestinians as refugees, the Palestine Liberation Organization (PLO) representation to the UN proposed an amendment to UNHCR's Statute that would entitle Palestinian refugees to the same protection as other refugees. This proposal was not accepted for various reasons, including the fear of some states that to involve UNHCR in this way could politicize its role.¹⁰⁰ In retrospect, given the situation of heightened hostilities on the ground and the principal need for physical protection, namely to ensure the physical security and safety of the refugees among other civilians from violations of the Fourth Geneva Convention, it is unclear whether UNHCR could have advanced protection beyond what had been achieved by ICRC and UNRWA.¹⁰¹

(p. 414) Following the adoption of resolution 37/120, the Commissioner-General [Olof Rydbeck] indicated that UNRWA's mandate as conferred by the General Assembly is to provide services to 'Palestine refugees', '*it does not have and should not be given* the functions of a protecting agency in the occupied territories'.¹⁰² UNRWA maintained that the protection of life and property was the responsibility of the occupying Power, and the agency simply lacked 'specific legal authority ... or other means' to take action in such a context.¹⁰³ UNRWA feared that conferral of such an authority would undermine the agency's operational functions to deliver its programs in the fields of education, health, and relief for the refugees in the West Bank and Gaza. UNRWA continued to monitor the situation of Palestinian refugees under Israeli occupation. However, it raised the need for action with the government of Israel and some members of the Security Council to protect refugees, particularly those in the camps in south Lebanon, and voiced its concerns in public statements.¹⁰⁴

This account suggests that, since its early decades and up to the early 1980s, UNRWA increasingly engaged in activities that went beyond the provision of humanitarian assistance and relief, though without appreciating that these activities were a form of protection. Al-Husseini argues that some of those activities – such as medical assistance to the wounded in conflict, the delivery of food, the rebuilding of housing units, and the

payment of cash subsidies, during events such as 'Black September' in Jordan (1970–1971), the Israeli occupation of Gaza in the 1950s as well as the occupation of both Gaza and the West Bank (as of 1967), the various phases of the civil war in Lebanon (1975–1990) – can be seen as 'material protection by default'.¹⁰⁵ However, direct interventions on behalf of the refugees, including successful interventions with authorities to obtain the release of detained staff and refugees (primarily in the oPt), and the mobilization and advocacy undertaken by UNRWA Commissioner-General and senior staff, were more than 'just' protection by default.¹⁰⁶ The function underpinning those activities was increasingly recognized as protection as concepts evolved further.

Progressively, pressure started to mount for UNRWA to upgrade its approach. In 1986, UNRWA started to consider taking a more active role in monitoring respect for human rights of the Palestine refugees in its area of operations and to examine whether it would be appropriate and feasible to develop a more explicit protection role.¹⁰⁷ The start of the first *intifada*, the uprising in the West Bank and the Gaza Strip in late 1987, offered the opportunity to launch new initiatives in this respect.

(p. 415) 3.2 The emergence of a bolder approach to protection of Palestinian refugees: The first *intifada* turning point

A major step forward was made during the first *intifada*, when UNRWA started to implement new protection activities on behalf of the Palestinians affected by actions of the Israeli occupation forces.¹⁰⁸ Immediately following the outbreak of the *intifada*, the agency had taken the initiative to deploy a number of international UNRWA staff whose presence, it was hoped, would provide a measure of protection to the Palestinian refugee population in the Gaza Strip and the West Bank.¹⁰⁹ Several international staff members from the agency's headquarters in Vienna were temporarily deployed for this purpose pending the recruitment of dedicated staff.¹¹⁰

On 22 December 1987, the Security Council adopted resolution 605,¹¹¹ the first of a series of Security Council resolutions on the deteriorating humanitarian situation in the oPt.¹¹² Resolution 605 acknowledged the need for 'the impartial protection of the Palestinian civilian population under Israeli occupation', strongly deplored 'those policies and practices of Israel, the occupying Power, which violate the human rights of the Palestinian people in the occupied territories, and in particular the opening of fire by the Israeli army, resulting in the killing and wounding of defenceless Palestinian civilians',¹¹³ and called 'once again [upon Israel] to abide immediately and scrupulously [by the Fourth Geneva Convention] and to desist forthwith from its policies and practices that are in violation of the provisions of the Convention'. Finally, the resolution requested the Secretary-General to examine the present situation in the occupied territories and submit a report by 20 January 1988 'containing his recommendations on ways and means for ensuring the safety and protection of the Palestinian civilians under Israeli occupation.'¹¹⁴

In order to obtain information needed for the preparation of the report, the Secretary-General dispatched the Under-Secretary-General for Special Political Affairs, Marrack Goulding, to Israel and the oPt between 8 and 17 January 1988. The outcome of that mission, the Secretary-General's report to the Security Council of 21 January 1988 – known as the 'Goulding report' – called for 'increased safety and protection', promotion of the welfare and rights of the Palestinians in the oPt, and more advocacy to address this.¹¹⁵ The report left no doubt that the negotiation of a comprehensive, just, and lasting settlement of the Arab-Israeli conflict was the only acceptable long-term way of ensuring the safety and (p. 416) protection of the Palestinians and the Israelis; anything less was just palliative. Pending the achievement of a comprehensive settlement, the Secretary-General recommended that the international community should make a concerted effort to ensure that Israel fully complied with the Fourth Geneva Convention.¹¹⁶ Without prejudice to the fundamental principle of the responsibility of the occupying Power, the report examined

ways and means that might be available to the international community to help ensure the civilian population's protection. In this regard, the report examined four different concepts of 'protection':

- (a) physical protection, i.e. the provision of armed forces to deter, and if necessary, fight, any threats to the safety of the protected persons;
- (b) legal protection, i.e. intervention with the security and judicial authorities, as well as the political instances, of the occupying Power, by an outside agency, in order to ensure just treatment of an individual or group of individuals;
- (c) a less well-defined form of protection, called in the report 'general assistance', in which an outside agency intervenes with the authorities of the occupying Power to help individuals or groups of individuals to resist violations of their rights (e.g. land confiscations) and to cope with the day-to-day difficulties of life under occupation, such as security restrictions, curfews, harassment, and bureaucratic difficulties;
- (d) a somewhat intangible 'protection' afforded by outside agencies, including especially the international media, whose mere presence and readiness to publish what they observe may have a beneficial effect for all concerned ('protection by publicity').¹¹⁷

This conceptualization was of particular relevance to UNRWA, whose reference with respect to protection had until then primarily been UNHCR's legal protection. The Secretary-General's report noted that, in the oPt, legal protection was provided by ICRC, general assistance by UNRWA and other organizations, and protection by publicity primarily by the media.

On physical protection – namely what the Palestinians, including the refugees, needed and demanded the most¹¹⁸ – the Secretary-General concluded that implementing such a concept presented 'very real difficulties'.¹¹⁹ He recalled that 'to maintain the orderly government of the territory' is the responsibility of the occupying Power.¹²⁰ The Secretary-General added that:

The introduction of other forces into the occupied territories to provide physical protection would thus detract from the occupying Power's responsibilities under the Fourth Geneva Convention.¹²¹

This position, and the report's emphasis on Israel's responsibilities under IHL, could not disguise the fact that it left Palestinians, who for the past twenty years had been denouncing (p. 417) Israel's violations of IHL, without that form of protection which they felt it was the most urgent. However, the position reflected reality; the deployment of a UN force to ensure physical protection would require the consent of Israel, which, Israel had made clear, would not be forthcoming.¹²² The only alternative, enforcement action under chapter VII of the Charter of the United Nations, had no chance of being authorized by the Security Council.¹²³

The consequence of this reality was that the Secretary-General turned to UNRWA – an agency that until then had been largely seen as lacking legal, diplomatic, and humanitarian assistance functions – for the provision of further protection. The Secretary-General considered UNRWA to be best placed to provide additional 'general assistance' needed, owing to its forty years presence on the ground, knowledge of the refugees' problems, and acceptance by both the Israeli authorities and the refugees.¹²⁴ It would be easier, the Secretary-General held, for UNRWA staff 'to gain access to Israeli authorities in emergency situations; and their mere presence at points of confrontation has a significant impact on how the civilian population (including UNRWA Palestinian staff) is treated by the security

forces and helps it psychologically by making it feel less exposed'.¹²⁵ The Secretary-General asked therefore:

... the Commissioner-General of UNRWA to examine the addition to UNRWA establishment in the occupied territories of extra international staff, within UNRWA existing administrative structures, to improve the general assistance provided to the refugee population. It would be for the Commissioner-General to decide the number and location of these additional international staff, in the light of the perceived need and the resources available.¹²⁶

The Secretary-General further noted that:

It seem[s] desirable in present circumstances that, as on certain occasions in the past, the Commissioner-General should be permitted to provide humanitarian assistance as far as practicable, on an emergency basis and as a temporary measure, to *non-refugees* [in Gaza and the West Bank] who are in serious need of assistance because of the recent disturbances.¹²⁷

(p. 418) For the first time, a UN resolution had extended UNRWA's mandate to all Palestinians living under Israeli occupation, even thought under specific circumstances and conditions ('as far as practicable', 'on an emergency basis' and 'as a temporary measure'). Al-Husseini argues that, while resenting the significant limitations of such an approach, Palestinians welcomed both the more explicit recognition of UNRWA's protection mandate by the Security Council and the General Assembly (after an informal exercise of some of such functions for over two decades), and the fact that UNRWA's functions were for the whole of the Palestinian population in the oPt (not only the refugees), which was seen as legitimization of the Palestinian national cause by the UN.¹²⁸

3.2.1 Protection (and safety and security) initiatives, including the Refugee Affairs Officers programme

In response to the Security Council's request, UNRWA took a number of measures. The Secretary-General's report had also asked the Commissioner-General's assistance to propose plans to address the harsh living conditions of the refugees in camps.¹²⁹ In response, in 1988 UNRWA launched an Expanded Program of Assistance (EPA) as well as Extraordinary Measures in the oPt (EMOT), which in 1989 was combined with additional activities for Lebanon and became known as Extraordinary Measures in Lebanon and the oPt (EMLOT). These included emergency expenditures aimed at improving the life of refugees, primarily through shelter rehabilitation and utility infrastructure projects and housing (some in response to destruction during military operations) in the oPt and Lebanon.¹³⁰ These initiatives may have helped UNRWA, for the first time, to venture confidently beyond assistance and relief and deliver an essential protection function without resistance to measures that could be seen as more than temporary.¹³¹

One of the responses to the Secretary-General's call for expansion of UNRWA's 'general assistance' was UNRWA's establishment of new international staff positions of Refugee Affairs Officers (RAOs) and local positions of Refugee Affairs Assistants (RAAs) in the West Bank and Gaza Strip.¹³² Their mission was two-fold: (1) to facilitate 'UNRWA operations in the difficult prevailing circumstances' of the *intifada*; and (2) to provide 'a degree of *passive protection* for the refugee [and, eventually, non-refugee] population'.¹³³ In (p. 419) addition, each of the Gaza and West Bank offices appointed a Legal Officer and a Public Information Officer to support the programme.¹³⁴ The concept of 'passive protection' was a novelty in UNRWA and a precursor of the concept of 'proactive presence' or 'protection by presence' as it became commonly referred to (including by the IASC).¹³⁵ UNRWA saw the RAO programme as an important instrument to provide a measure of protection to Palestinian refugees. Through their official duties,¹³⁶ the RAOs and RAAs facilitated the delivery of

UNRWA's assistance: health, education, and relief and social services. By doing so, they assisted the refugee population in overcoming day-to-day challenges associated with the occupation and the Israeli response to the *intifada*, helping where possible to diffuse tensions and prevent maltreatment of the local population.¹³⁷ For example, the RAOs were among the first to challenge directly the implementation of Israeli defence minister Rabin's notorious 'iron fist' policy.¹³⁸

The agency had finally come to conclude that there should be 'no lacuna' for Palestinian refugees and that Palestinian refugees had to be 'adequately taken care of by UNRWA, not only as regards material needs but also in the field of international protection'.¹³⁹ UNRWA had finally embarked on a bolder and broader approach to protection.¹⁴⁰

Reporting to the Security Council on 31 October 1990, the Secretary-General noted that the addition of extra international staff to UNRWA's establishment in the oPt had 'helped to defuse tense situations, avert maltreatment of vulnerable groups, reduce interference with (p. 420) the movement of ambulances, and facilitate the provision of food and medical aid during curfews'.¹⁴¹ The Israeli authorities objected to the new initiative.¹⁴² Israel complained that the agency, through the RAO programme, was acting outside its mandate¹⁴³ and it frequently accused the RAO and RAA teams of obstructing the army's operations.¹⁴⁴ UNRWA maintained that the RAO programme was an inherent and essential part of UNRWA's operations. In general, UNRWA's emergency measures in the oPt were praised both during several sessions of the General Assembly and in other fora, including by countries supportive of Israel.¹⁴⁵

The additional presence had 'been welcomed by the Palestinians' as they could have some mitigating impact on Israeli practices.¹⁴⁶ Despite its limitations, the RAO programme was more far-reaching than other attempts to establish a protective presence in the oPt such as the Temporary International Presence in Hebron (TIPH).¹⁴⁷

The RAO programme was wound down following the signing of the 1993 Declaration of Principles (DOP) between Israel and the PLO and officially discontinued in the Gaza Strip in 1994 and in the West Bank in 1996, following the redeployment of the Israeli military and establishment of the Palestinian Authority (PA) in the aftermath of the Oslo Accords. In and around UNRWA, the debate swiftly shifted to the agency's need to prepare for an eventual handover in case of the establishment of a Palestinian state (the expected outcome of the five-year interim period set out in the DOP).¹⁴⁸ However, the lessons of the RAO programme were not forgotten, and the concept re-emerged in a somewhat different form in the Operational Support Programme that UNRWA launched following the start of the second *intifada* in 2000 (Section 3.3.1).

(p. 421) 3.2.2 UNRWA as the 'UN's eyes and ears for the application of the Fourth Geneva Convention'

Another important dimension of UNRWA's protection approach, which started to develop in the early 1990s, was its evolving monitoring and reporting capacity through the agency's 'Incident Reporting System'. This enabled UNRWA to provide timely, accurate, and credible information including on casualty statistics, details of armed attacks, weapons and ammunition used, curfews, strikes, house demolitions and sealing, and school closures in affected areas, primarily in the oPt.¹⁴⁹ The system also enabled UNRWA to monitor and provide details on mistreatment and detention of its staff, and incursions into UNRWA premises. The incident reporting system became an important source of information about the situation in the Gaza Strip and the West Bank at a time when there were few other impartial observers on the ground.¹⁵⁰

Following a new escalation of violence in 1990, the need of the Palestinians for protection was again discussed by the Security Council.¹⁵¹ In resolution 681 (1990), adopted unanimously on 20 December 1990, the Security Council requested

the Secretary-General, in co-operation with the [ICRC], to develop further the idea expressed in his report of convening a meeting of the High Contracting Parties^[152] to the Fourth Geneva Convention and to discuss possible measures that might be taken by them under the Convention and for this purpose to invite these parties to submit their views on how the idea could contribute to the goals of the Convention, as well as on other relevant matters, and to report thereon to the Council;

The Security Council also requested the Secretary-General:

to monitor and observe the situation regarding *Palestinian civilians* under Israeli occupation, making new efforts in this regard on an urgent basis, and to utilize and designate or draw upon the *United Nations and other personnel and resources present there in the area* and elsewhere needed to accomplish this task and to keep the Security Council regularly informed.¹⁵³

(p. 422) The nature and impact of this request was unprecedented. The resolution's wording provided another clear indication that UNRWA's initiatives with regard to general assistance and protection did have the support of both the permanent and non-permanent members of the Security Council.¹⁵⁴ For the first time, the international community, through a unanimous Security Council vote, had provided the Secretary-General, and through him UNRWA – the sole large UN presence with significant 'personnel and resources present' on the ground – with an explicit mandate to monitor and observe the situation regarding all 'Palestinian civilians' (not only the refugees) under Israeli occupation, and report directly to the Secretary-General and, through the Secretary-General, to the Security Council. Thus UNRWA officially became what Schiff calls the 'UN's eyes and ears for the application of the Fourth Geneva Convention'.¹⁵⁵ In addition to making use of the information gathered by the RAOs and the Legal Officers, UNRWA appointed Research Officers, one each in the West Bank and the Gaza Strip, to coordinate reporting to the Secretary-General. Based on information provided by UNRWA, the Secretary-General submitted his first report to the Security Council in April 1991.¹⁵⁶ However, no further reports were submitted. In the preparations for the Madrid peace conference of October 1991, the Secretary-General had informally been advised by the United States (US) that continued reporting under resolution 681 (1990) would not be supportive of the peace process.¹⁵⁷

Although the peace process had shifted the attention elsewhere,¹⁵⁸ the UN Security Council (UNSC) resolutions 605/1987 and 681/1990 had enabled UNRWA to further develop its protection activities. In his report for the period 1 July 1990–30 June 1991, the Commissioner-General noted the establishment of a legal aid scheme in the oPt.¹⁵⁹ The scheme had been set up to help Palestinian refugees deal with the problems of life under occupation. Legal aid covered a wide range of issues, including deaths and injuries, collective punishments and harassment, discrimination in access to the courts and welfare benefits, bureaucratic difficulties in obtaining permits, and travel restrictions.¹⁶⁰ In his 1991–1992 report, the Commissioner-General observed that the legal aid programme 'assisted an increasing number of Palestinians who required advice or referral to private lawyers for (p. 423) redress of grievances or for whom the agency's intervention with the occupation authorities might have a positive effect'.¹⁶¹ UNRWA also provided financial assistance to refugees seeking redress through available legal mechanisms.¹⁶² Discussions

and developments within UNRWA as of the early 1990s reflected the gradual shift of approach, from general assistance to broader concepts of protection.¹⁶³

3.2.3 Protection needs of Palestinian refugees outside UNRWA's areas of operations

The deterioration in the situation of Palestinian refugees, highlighted during the Lebanon's civil war and first *intifada* in the oPt, continued to attract attention, including outside UNRWA's area of operations. This probably contributed to allay past concerns that an expanded involvement risked politicizing UNHCR.¹⁶⁴ During the 1987 session of the UNHCR Executive Committee, many delegations condemned attacks against Palestinian refugee camps and expressed the hope that the Executive Committee conclusions on military attacks would be extended to these refugees.¹⁶⁵ In the General Conclusion adopted at the close of the session, the Executive Committee expressed concern about

the lack of adequate international protection for various groups of refugees in different parts of the world, *including a large number of Palestinians*, and hoped that efforts would be undertaken within the United Nations system to address their protection needs.¹⁶⁶

Such concerns were raised again in subsequent years.¹⁶⁷

In fact, since the early 1980s, UNHCR has been stepping up its protection efforts towards Palestinian refugees. The war in Lebanon, which compounded the protection problems faced by Palestinians there, forced many to flee and seek protection outside UNRWA's area of operations. UNHCR started to intervene on behalf of individual Palestinians with the authorities of various countries, with mixed results.¹⁶⁸ In 1984, UNHCR urged Western governments to prevent any forcible return to Lebanon of Palestinian refugees holding Lebanese travel documents. The (p. 424) appeal was generally answered and many Palestinian refugees from Lebanon obtained asylum. Nonetheless, UNHCR intervention in individual cases revealed varying interpretations of the 1951 Convention (Article 1D), especially in Western Europe and North America, which made it difficult for Palestinian refugees to have their refugee status recognized in some countries.¹⁶⁹

The 1990–1991 conflict in the Gulf placed many Palestinian refugees in acute need of international protection. In June 1991, UNRWA Commissioner-General [İlter Türkmen] told a meeting of the agency's major donors that the agency had a responsibility towards Palestinians being persecuted and expelled by the Kuwaiti government for their alleged support of the Iraqi occupation and he favoured a pragmatic approach, including UNRWA's intervention with the Kuwaiti government.¹⁷⁰ UNRWA sent a special mission to Kuwait from July to September 1992 to assess the situation of the remaining Palestinians in that country.¹⁷¹ The mission, which operated in close cooperation with the UNHCR office in Kuwait, carried out a detailed survey of the remaining Palestinians in the country, but did not result in UNRWA's further engagement in the country, owing to Kuwaiti opposition.¹⁷² UNHCR played an active role in extending both material assistance and international protection to the hundreds of thousands displaced as a result of the conflict in the Gulf, including large numbers of Palestinians. UNHCR advocated for improved protection, including release from detention, issuance or extension of residence documents, or permission to remain in the country. UNHCR and UNRWA, in their own capacity, assisted Palestinians to explore possibilities to return to their former countries of asylum.¹⁷³ Many were assisted to 'return' to Jordan, even though, being born in Kuwait, they had no connection with the country, other than holding a Jordanian passport through their parents who had sought refuge in Jordan (or the West Bank) as of 1948–1949.

After the Gulf war the position of the remaining Palestinians in the Gulf States, as well as in several other Arab states, deteriorated rapidly. UNHCR offices in these countries were frequently required to intervene on behalf of Palestinians faced with deportation, detention, or other measures affecting their legal status. In Libya in 1995, after its leader Colonel Ghaddafi ordered the expulsion of the 30,000 resident Palestinians, UNHCR and UNRWA jointly provided assistance to those stranded on the Libyan-Egyptian border until Libyan authorities allowed them to re-enter in 1997,¹⁷⁴ by which time an active cooperation between UNRWA and UNHCR had started to develop.

3.3 Consolidation of the protection regime for Palestinian refugees in the 2000s

During the years of the Middle East peace process (MEPP) that started with Madrid Conference of 1991, international focus shifted away from protection of Palestinians and towards paving the way for a Palestinian state, including UNRWA's phasing out.¹⁷⁵ (p. 425) Meanwhile, as discussed in Chapter IV, the situation of Palestinian refugees in the UNRWA area of operations and the Arab world at large had started to deteriorate. The once-generally welcoming attitude (for solidarity or self-interest) towards Palestinian refugees, seen as Arab citizens and brothers, had begun to be replaced by suspicion and manifest marginalization. At the official level, this change was largely a reaction to the PLO's political stance and manoeuvres. Palestinians refugees, including in places where they had been granted citizenship (Jordan) or permanent residency (the Gulf or Libya) felt threatened by the change of attitude of their hosts. Even before the start of the second *intifada* in 2000, it had become clear that, far from being phased out, UNRWA's services would be needed in the years ahead. Since then, UNRWA's protection mandate has been visibly and significantly strengthened, and the international community has largely endorsed the agency's initiatives in this respect. An increasing number of other actors, including grassroots organizations and UN agencies, mobilized to improve the approach to protecting Palestinians, including refugees. The set-up of Palestinian missions and embassies in the aftermath of the MEPP (which further institutionalized the functions that the PLO had attempted to serve for the Palestinian diaspora in a number of countries), is an important element of this protection.

3.3.1 The beginning of the OSO programme

In response to the escalation of violence in 2000, UNRWA initiated the 'Operations Support Officer Programme' (the OSO Programme),¹⁷⁶ which was established to support the agency's emergency programmes and enhance the effectiveness of the agency's operations.¹⁷⁷ Like the RAO programme, the OSO programme initially operated in Gaza and the West Bank only, though it was later extended to Jordan, Lebanon, and Syria. In addition to safeguarding the neutrality of UNRWA installations and enhancing the integrity of the agency's service provision, the OSOs and their assistants supported UNRWA's protection function.¹⁷⁸ In the West Bank in particular, where there were violent confrontations between the Israel Defense Forces (IDF) and Israeli settlers on the one hand and the Palestinians on the other, the OSO programme increased UNRWA's capacity to document the impact of the occupation and Israeli violations of international law on Palestinian refugees.¹⁷⁹ However, while during the first *intifada* the presence of RAOs at points of confrontation often had an (p. 426) inhibiting effect on the IDF, the level of violence on both sides during the second *intifada* was such that the presence of OSOs could do little to calm the situation.¹⁸⁰

3.3.2 Shift of overall approach

The consolidation of UNRWA's protection activities was prompted by a combination of internal and external factors. Internally, UNRWA's management had developed greater awareness of the strength of UNRWA's capacity and potential.¹⁸¹ The fact that a number of former UNHCR and ICRC staff members had joined UNRWA in the 2000s may have contributed to the institutional development of UNRWA's protection functions and of creative approaches to improve the protection of Palestinian refugees in the agency's area of operations.¹⁸² The 2000s saw both an internal consolidation of UNRWA's expanded approach to protection and an important evolution in its cooperation with UNHCR.

Among the external factors, the lively debate about the 'protection gap' suffered by Palestinian refugees helped draw attention to the inconsistent treatment often experienced by these refugees.¹⁸³ There was an increasing focus on the worsening conditions of Palestinian refugees in the oPt and in a number of Arab host countries, and on the implications of the deadlock in the Israeli-Palestinian peace process. At the same time, grassroots organizations supporting Palestinian refugees were reconsidering their approaches. An example is the work of BADIL, whose initial focus on the right to return gradually expanded to embrace the protection of other rights of Palestinian refugees.¹⁸⁴ Between 2003 and 2004, a series of seminars organized by BADIL offered an opportunity for experts to discuss the protection needs of Palestinian refugees in a holistic manner.¹⁸⁵ The voices of critics and the evolving protection needs of Palestinian refugees on the ground gave impetus to the internal reflection with respect to protection that was taking place at UNRWA (and UNHCR).

These developments were taking place against a background of growing awareness of the international community's responsibility to protect victims of human rights abuses.¹⁸⁶ As discussed in Section 2.2, the overall conception of protection and related international responsibilities was rapidly evolving. In order to respond better to the impact of humanitarian crises on civilian populations, a broader trend in the humanitarian community (p. 427) emerged, embracing protection of fundamental rights as a new sector of activity, one which was henceforth (from the 2000s) included in all humanitarian reform efforts.¹⁸⁷

The evolution of the conception of protection in UNRWA reflected these various global and regional developments. UNRWA gave increasing consideration to how to ensure protection of refugees. The situation on the ground and the pressing humanitarian needs in the oPt for Palestinians, refugees and non-refugees alike, determined an initial focus on the situation in the oPt. There was recognition that UNRWA had, in fact, exercised protection functions beyond those linked to delivery of assistance and relief but that gaps existed and internal awareness with respect to protection had to be strengthened, UNRWA sought UNHCR's guidance on how these might be filled.

In June 2004, UNRWA and the Swiss Government organized a conference in Geneva with the aim of building new partnerships for UNRWA following the start of the second *intifada*, and preparing the agency for future challenges.¹⁸⁸ The UN Secretary-General, in his opening speech at the conference, highlighted several protection concerns of Palestinian refugees that UNRWA had to help address, including increased poverty and violence.¹⁸⁹ The conference led to an ambitious reform agenda for UNRWA, which included further development of its protection functions, a new Organizational Development Process, a major survey of refugee living conditions, followed by programme reforms, primarily in the domains of education and health.¹⁹⁰ In subsequent years the General Assembly acknowledged the agency's role in protecting (i.e. 'addressing') the rights of Palestinian

people, and in particular, Palestine refugees, and in 2007 it reconfirmed such role in respect of children and women.¹⁹¹

3.3.3 The operationalization of protection in UNRWA: A late bloomer?

In 2005, UNRWA announced a commitment to develop an operationally oriented policy framework to address the protection needs of Palestine refugees and other UNRWA beneficiaries.¹⁹² Internal consultations were held within the agency and the post for a Senior Protection Policy Adviser for UNRWA to be funded through the regular budget of the UN was approved by the General Assembly.¹⁹³

In 2008, UNRWA engaged Nicholas Morris, a former senior UNHCR official, to help develop an understanding of what protection meant for UNRWA in its unique operational context and of how it could best become a part of the agency's daily work. In his ground-breaking report, Morris wrote that:

(p. 428)

UNRWA's protection mandate is inherent in the nature of its work: a 'given' ... which does not need justifying. ... Wherever Palestinians are, the failure over generations to find a just and durable solution to their plight determines and conditions their need for protection, as individuals, communities and a nation still without a State. ... *protection is what UNRWA does to safeguard and advance the rights of Palestine refugees and thereby achieve its vision of every refugee 'feeling assured that his or her rights are being protected, defended and preserved.'* Only then can human development be fully assured.¹⁹⁴

Morris' conceptualization of the agency's protection function identified four components of UNRWA's protection efforts for Palestinian refugees.¹⁹⁵ The first component is the promotion of a just and durable solution to the plight of refugees; while achieving this is the responsibility of political actors, UNRWA is responsible to highlight the urgent need for that solution and to help ensure that in its elaboration the rights and interests of the refugees are safeguarded, with particular reference to those areas where UNRWA's long experience with and knowledge of the refugees are relevant. The second component includes, pending a just and durable solution for Palestinian refugees, the provision of international protection, for which the primary responsibility lies with host governments or Israel, as the occupying Power, and Palestinian authorities, while UNRWA maintains responsibility to promote and monitor respect for the rights of refugees. The third component entails direct responsibilities for the delivery of services that are broadly analogous to those of a government's health, education and social welfare authorities; as discussed in Chapter VI, Section 4, the extent of UNRWA's responsibilities vis-a-vis Palestinian refugees in this domain is quite a unique. The fourth component entails ensuring that protection needs are addressed in its own organizational arrangements and staff training.¹⁹⁶

Following Morris' report, protection became a strategic objective for UNRWA and protection came to be seen as a cross-cutting theme within the context of the agency's holistic and multidisciplinary approach to meeting refugee needs and rights. Morris' consultancy drew attention to differences and unevenness in the protection delivered across the agency's area of operations. This largely reflected differing needs, with UNRWA initially more engaged with protection in the oPt than in the other fields, but also reflected different approaches and understandings within UNRWA. UNRWA also faced external difficulties in mainstreaming its protection functions as Morris had recommended. Israel remained opposed to any expansion of its role and some host country authorities had similar concerns. For example, in Jordan the vast majority of UNRWA-registered Palestine

refugees have Jordanian citizenship and extending international protection towards them by UNRWA felt at odds with the bond that links a state to its citizens.¹⁹⁷

(p. 429) Since 2010, through wide internal consultation at all levels in the agency, UNRWA has developed a protection framework, tools, and standards for service delivery.¹⁹⁸ In 2012 a protection policy was adopted that defines protection as 'what UNRWA does to safeguard and advance the rights of Palestine refugees under international law'.¹⁹⁹ However, it was only from 2015 that for the first time, all five field offices have Protection and Neutrality Units, with new teams in Jordan and Syria added to the well-established ones in Gaza, the West Bank, and the one Lebanon.²⁰⁰ In January 2016, a new Protection Division, comprising the protection staff at UNRWA's headquarters, was established in Amman.²⁰¹ In 2018, the agency employed approximately 110 protection-related staff in the various Protection and Neutrality Units across the agency, a total that does not include the hundreds of service delivery frontline staff who are mandated to deal with individual protection cases on a daily basis.²⁰²

In renewing UNRWA's mandate in 2016, the General Assembly recognized:

the acute protection needs of Palestine refugees across the region, and encourage[d] the Agency's efforts to contribute to a coordinated and sustained response in accordance with international law, including the Agency's development of its *protection framework* and function in all field offices, including for child protection.²⁰³

By encouraging the agency's development of its protection framework and function in all field offices, including for child protection, General Assembly resolution 71/93 contains the most explicit affirmation to date of UNRWA's protection mandate.²⁰⁴

UNRWA's Medium Term Strategy (MTS) for 2016–2021 defines protection as:

what the Agency does to safeguard and advance the rights of Palestine refugees, including through the direct provision of services and other activities. Human rights and human development reinforce each other: expanding people's capabilities and protecting their rights go hand in hand.²⁰⁵

(p. 430) UNRWA describes its approach to protection as twofold: 'programmatically (internal dimension) and through private and public advocacy (external dimension').²⁰⁶ Its approach has four complementary components:

- (1) protection in and through UNRWA's service delivery programmes according to minimum protection standards;
- (2) protection programmes that respond to protection threats and promote the resilience of Palestine refugees;
- (3) addressing cases of violence, abuse, neglect, and exploitation of vulnerable groups, including women and children;
- (4) promotion of Palestine refugees' rights under international law, through the monitoring and reporting of violations and by engaging in private and public advocacy.²⁰⁷

The first two components can be considered internal as they pertain to UNRWA's core functions and are significantly – even though not exclusively – within UNRWA's control.²⁰⁸

Both Brailsford and Lilly argue that such functions – which Suleiman calls ‘relief protection’ – contribute to the enjoyment of fundamental rights (e.g. to health, education).²⁰⁹ While the realization of fundamental rights remains the responsibility of host states and the occupying Power, the role played by UNRWA in promoting them and supporting their fulfilment remains critical. A focus on children, women, and, lately, persons with disabilities, has been a feature of the evolution of the General Assembly resolutions that provide the agency its mandate.²¹⁰ UNRWA maintains that its key contribution to Palestine refugees’ protection occurs through its service delivery programmes in the areas of education, health and relief and social services, with the agency also increasingly responding to individual protection cases such as gender-based violence (GBV), child protection, and others.²¹¹ While physical protection is not the direct responsibility of UNRWA (as it is not of any UN agency), at times of emergencies (e.g. in Gaza in 2008–2009, 2012, 2014, and in Syria following the siege of Yarmouk, UNRWA premises, primarily schools,²¹² have become a place of refuge for displaced Palestinian refugees. Over a five-year period between 2011 and 2016, forty-four per cent of all the agency’s schools were directly affected by armed conflict and (p. 431) violence, which caused either physical damage to the schools or disruption of education services.²¹³ UNRWA has provided, in partnership with the Norwegian Refugee Council, legal support to Palestinian refugees. In 2016 this assisted over 10,000 people.²¹⁴ This indicates that when circumstances so require, UNRWA *can* deliver protection functions beyond the perimeter of its regular programmes and services so as to meet the needs of the refugees.

Other international agencies support the protection for Palestinian refugees in UNRWA’s area of operations, and inter-agency cooperation has increased. UNRWA cooperates with UNESCO with respect to education, with WHO with respect to health, with UNICEF with respect to child protection,²¹⁵ with OHCHR both at the operational level and for human rights advocacy, and with OCHA with respect to humanitarian coordination. However, evidence suggest that protection concerns for Palestinian refugees in UNRWA’s area of operations – including matters concerning residency, legal stay, permits to work, as well as instances of arbitrary detention and arrest – are rarely picked up by international actors (n 242).

The third and fourth components identified in the MTS have an important external dimension, as primary responsibility for realizing them lies with the host country authorities and Israel, as the occupying Power. UNRWA’s interventions, which range from responses to specific problems and preventive or remedial action when possible, to action to help create or consolidate a protective environment, seek to support the discharge of this responsibility. UNRWA has a unique role in the realization of Palestinian socio-economic rights, but recognizes that it cannot substitute for state authorities.²¹⁶

UNRWA’s public and private advocacy efforts have taken place at the local, national, regional, and international levels and have included direct dialogue with authorities, raising the awareness of diplomatic, donor, and other communities, and public awareness campaigns. UNRWA Commissioner-Generals, especially since the administration of Karen Koning AbuZayd, who led the agency from 2006–2010, gave a significant boost to protection through advocacy.²¹⁷ Filippo Grandi (2010–2014) and Pierre Krähenbühl (2014–present) have continued and strengthened this function. Their interventions have denounced the ongoing blockade and the general unsustainability of living conditions and the impact of military assaults and Israel’s response to the ‘Great March of Return’ protests in Gaza; the punitive demolitions and the killings of Palestinian refugees, including minors, in the West Bank and East Jerusalem; the clashes involving Palestinians in Lebanon; and the plight of

Palestinian refugees in Syria since the outbreak of conflict there in 2011, including their treatment in neighboring Lebanon and Jordan.²¹⁸

(p. 432) Since 2010, UNRWA has also systematically engaged with the international human rights mechanisms of the UN system, including with treaty bodies, the Human Rights Council and its special procedures (such as the Special Rapporteur on Situation of Human Rights in the oPt and other thematic Special Rapporteurs), as well as the General Assembly human rights mechanisms, such as the Special Committee on Israeli practices. UNRWA has framed relevant protection issues under IHL and IHRL and called for accountability for violations of international law affecting Palestinian refugees.²¹⁹ UNRWA monitoring, reporting and advocacy has focused on urgent protection threats to Palestinian refugees across its area of operations and its private and public advocacy has been relevant for commissions of inquiry and fact-finding missions covering the oPt and Syria. UNRWA has focused its protection resources on direct engagement with responsible duty bearers through private advocacy related to the communities most at risk: the population victims of a man-made humanitarian crisis engendered by the blockade and compounded by military operations in Gaza; the most vulnerable among the Palestinian refugees in Jordan and Lebanon, such as those with an insecure legal status ('ex-Gazans' in Jordan and 'non-IDs' in Lebanon) and to promote safe entry and prevent *refoulement* of Palestinian refugees fleeing the conflict in Syria; the threats of forced displacement; settlers' violence, as well as the impact of the closure regime and other occupation-related policies in the West Bank, including East Jerusalem; the physical protection and access to essential services of the refugees, especially those internally displaced in Syria.²²⁰

This review suggests that UNRWA's present protection functions are the outcome of an evolutionary process that has responded to multiple factors, including the protection challenges faced by Palestinian refugees, the development of the agency's modus operandi and mission for Palestine refugees and the changes that have occurred in the global field of protection. What Brailsford wrote in 2010 remains valid, 'protection takes time to operationalize and that effort in UNRWA is still very much an ongoing process'.²²¹ Determining the extent to which Palestinian refugees in the UNRWA area of operations have benefited from such a bolder (and more self-aware) approach to protection at UNRWA, is an important endeavour that should be prioritized by the agency and its partners.

3.3.4 Enhanced cooperation between UNRWA and UNHCR

From the early 2000s, cooperation between UNRWA and UNHCR has become more strategic and systematic, with a better mutual understanding and an increasing determination to find practical solutions to common problems. External factors were an important motivation: a series of events had highlighted the protection vulnerabilities of Palestinian refugees (p. 433) both inside and outside UNRWA's area of operation. Internally, the increased cooperation was also driven by the vision of senior managers in both organizations.²²²

UNRWA was eager to benefit from UNHCR's insights regarding its protection modus operandi. UNHCR was having more frequent contact with Palestinian refugees outside UNRWA's area and needed a better understanding of their background and of UNRWA. Specific issues included the problems encountered by Palestinian refugees in national asylum systems and domestic courts,²²³ and the aftermath of the 2003 invasion of Iraq. UNRWA offered to intervene in favour of Palestinian refugees displaced from Iraq who were stranded in makeshift camps on the borders with neighbouring countries. The newly installed Iraqi authorities did not accept the offer but were favourable to UNHCR extending protection and assistance to those Palestinians, in cooperation with UNRWA.²²⁴

A more structured cooperation began in early 2004. The initial focus was on a number of pressing issues, including: registration of Palestinian refugees outside UNRWA's areas of operations (though UNHCR's suggestion of a joint mechanism for registration of Palestinian refugees outside UNRWA's areas was not pursued); the return of refugees to UNRWA's areas of operations; and a clear delineation of UNHCR and UNRWA competence. A specific need related to the promotion of a better understanding in national asylum procedures of the scope and interpretation of Article 1D of the 1951 Convention. Through discussion and informal exchanges, the cooperation between the two agencies progressively operationalized the complementary regime of UNRWA and UNHCR that is essential for the continuity of protection for Palestinian refugees, wherever they may be. Discussions around legal standards for Palestinian refugees in the region – where the provisions of the Casablanca Protocol had proved inadequate – illustrated the importance a broader legal framework for a comprehensive approach to Palestinian refugee protection.²²⁵

In 2007 the two agencies issued a joint brochure that set out their respective mandates.²²⁶ The various interpretative notes on Article 1D of the 1951 Convention, issued by UNHCR in recent years, have been prepared in close consultation and cooperation with UNRWA.²²⁷ UNHCR country information and various reports²²⁸ make it clear that UNHCR's mandate extends to Palestinian refugees when outside UNRWA's area of operations, provided they are unable to avail themselves of UNRWA's assistance or protection due to reasons beyond their volition or control.²²⁹ UNHCR recognizes the complementarity of its mandate with that of UNRWA.²³⁰ The current interaction between UNRWA and UNHCR for the (p. 434) protection of Palestinian refugees reflects the operationalization of the distinctive regime that was devised for Palestinian refugees between 1949 and 1951.²³¹

The volatility of the situation of Palestinian refugees in the Arab world, as well as the shifting attitude towards refugees in general in Western countries, has reinforced the need for close cooperation. Since the Arab uprisings in 2010–2011, and in particular as a result of the Syria war, UNRWA and UNHCR have been confronted with new challenges in ensuring the continuity of protection of the Palestinian refugee population.²³² Host countries in the region have generally been reluctant to admit additional Palestinian refugees, while those seeking refuge in countries outside the region have suffered from the limited understanding in some of these countries with respect to the situation of Palestinian refugees and the applicable provisions of refugee law.²³³ Some scholars see the limitations of the ability of both agencies to protect Palestinian refugees in the context of the Syria crisis as further evidence of an institutional protection gap.²³⁴ These limitations are probably better explained by the reality that states often discriminate among different refugees from the same conflict area on the grounds of Palestinian identity. Whatever the strength of international organizations' mandates, as well as their policies and operational arrangements for the protection of refugees, it is the political context that largely determines protection outcomes.

4. Existing Challenges: Space for Opportunities?

In a now thirty-year old enquiry on the meaning of protection within UNHCR statute, Nash observed that '[p]rotection involves the use of legal tools to secure the rights, the security and the welfare of refugees, but the objective, beyond the immediate needs of refugees, is solution'.²³⁵

This argument touches upon important aspects of the protection situation of Palestinian refugees, seventy years on. It has a number of implications, of general relevance, within and outside UNRWA's area of operations, as well as for the cooperation between UNRWA and UNHCR.

(p. 435) 4.1 General observations

As in other protracted refugee situations, the protection vulnerabilities of Palestinians are rooted, first and foremost, in the failure to address the root causes of their plight and find a just and durable solution for them.²³⁶ In the Palestinian case, political factors, also linked to the marked asymmetry of the negotiating parties, and the lack of firm support by states for a principled approach based on international law, have so far prevented the achievement of any durable solutions. This, together with political inaction on the underlying conflict between Israel and the Palestinians, remains the main protection challenge.²³⁷ The continuing violence and material depredation suffered by Palestinians in the oPt mean prospects for an end of the conflict continue to recede. In turn, this severely limits the protection that any UN agency is able to offer: whatever the strength of the mandate and the policies and operational arrangements for the protection of refugees, it is the political context that largely determines outcomes. As durable solutions are pursued – Chapter VIII argues that opportunities do exist – day-by-day protection must continue.²³⁸

The often-acute protection threats experienced by Palestinian refugees (and, in the oPt by Palestinians in general) are the result of a lack of compliance with international law by all relevant parties. Effective protection can only be ensured when fundamental rights are respected and fulfilled. The international regime to protect human beings, including refugees and stateless persons, is founded on the expectation of state compliance with the relevant international and regional legal obligations, which in the case of Palestinians, including the refugees (displaced in both 1948 and 1967), include relevant UN resolutions,²³⁹ but also applicable provisions of IHRL, humanitarian law, and refugee law (of course, taking into account the specificities envisaged under the 1951 Convention for Palestinian refugees) and regional arrangements (the Casablanca Protocol of 1965 and relevant LAS resolutions, as well as regional instruments applicable to other regions, discussed in Chapter V).

Today, the protracted nature of the Palestinian refugee experience exposes them to a socio-political fragmentation – together with a continuing dispersal – that makes them a difficult constituency to protect ‘as a whole’. The distinctive legal regime applicable to Palestinian refugees (including the multiplicity of sources of applicable law), which has often meant uneven or nonexistent application of relevant human rights principles, is a function of the protracted nature of their crisis. However, in addition to these challenges – some common to other refugees in protracted refugee situations – there are also some opportunities. For example, the presence of Palestinian embassies and missions around the world has, on occasions, helped highlight the vulnerabilities of Palestinians and support protection interventions.²⁴⁰ The level of UN interventions on the Palestinian refugee question (resolutions, bodies, actions) is also unique, despite the fact that these interventions have (p. 436) thus far not succeeded in putting an end to the refugees’ plight. While the high level of politicization of the refugee question is a major challenge, the presence of a unique institutional regime, made up of two agencies (UNHCR and UNRWA), represents an opportunity for enhanced protection.

4.1.1 Within UNRWA’s area of operations

Many of the protection problems faced by Palestinian refugees within UNRWA’s area of operations are outside UNRWA’s control, notably the legal systems, policies, and actions (or inaction) of the competent authorities. There are, however, areas where UNRWA could act. First, UNRWA intervenes on a number of issues that the agency identifies, largely through its services and programmes (including the protection audits that the agency has undertaken since 2010), over which it has control. Surveys carried out among Palestinian refugee populations over time, point to protection problems experienced by the refugees that are broader than those identified by UNRWA.²⁴¹ Some of the most recently identified include: lack or insufficiency of humanitarian assistance; lack of equal opportunities and

discrimination on various grounds, including formal discrimination among Palestinian refugees (among 1948, 1967, or other categories); lack of personal security in refugee camps; lack of access to public services in the host country; denial of family reunification (whether in the host country or other states); risk of arbitrary detention and abusive treatment in host countries; non-recognition of refugee status (by the host country); and prevention of freedom of movement by the host country, ranging from refusal to grant travel documents to restrictions on the right to change one's place of residence.²⁴² These are all important issues that constitute significant impediment to enjoy other human rights that the agency may help secure. As the primary responsible agency for (the protection of) Palestinian refugees within the UN family, UNRWA should systematically consider inclusion of protection threats that refugees identify, in its assessments and response strategy.

Mapping of protection needs of the refugees – connected to unfulfilled rights – should then determine what can be addressed by the agency and what falls within the responsibility of other actors. While UNRWA identifies and updates its protection priorities, the above-mentioned surveys point to a broad range of priorities identified by the Palestinian refugee population that require attention. Certain issues are the direct responsibility of states: ensuring fair treatment under the law, access to justice, personal security in the camps, freedom of movement, access to public services, and freedom from discrimination. UNRWA can help support compliance but cannot substitute for states where compliance is lacking. UNRWA does have – and should use – the power to raise certain matters with competent authorities and to intervene to promote the enjoyment of rights and improvement of living conditions of the refugees. Ways to address discrimination among Palestinian refugees (between 1948, 1967, or other categories) could be to encourage the granting of travel documents and the lifting of restrictions on the right to change place of residence, which could be explored through existing programmes and services. Mapping these issues and helping to address them require close coordination with a variety of governmental and non-governmental actors, particularly grassroots organizations working with refugees and in (p. 437) the camps, and other UN agencies, particularly through dedicated staff. Such mobilization is in line with one of UNRWA essential protection functions.

Second, in order to be for Palestinian refugees *inside* its areas of operations what UNHCR is for them *outside* UNRWA's areas of operations (and other refugees elsewhere), a significant protection issue that UNRWA must address is the clarification of its responsibility for *all* Palestinian refugees (from 1948, 1967, and thereafter).²⁴³ As explained in Chapter IV, there are a number of 1948 Palestinians refugees who are not registered with UNRWA, either as refugees or for services only.²⁴⁴ This is the case in Jordan, Lebanon, Syria, the West Bank, and, to a lesser extent, in Gaza. Among the 1948 refugees who would have organically fallen under UNCCP mandate, some did not meet initial requirements for registration with UNRWA or did not have adequate documentary evidence. Some are 1967 refugees ('displaced persons') who, while from an international law standpoint are no different from those were displaced in 1948, are treated differently; they may receive UNRWA services, but are not registered with the agency.²⁴⁵ If not addressed, this constitutes a significant institutional protection gap for Palestinian refugees within UNRWA's area of operations. This matter is not solely within the power of the agency to resolve, as its role and responsibilities are defined by the General Assembly, through the relevant resolutions constituting the agency's mandate. However, it is unclear to what extent the agency has tried to rectify the matter, for example, by bringing to the General Assembly's attention the continuing need for a registration of all Palestinian refugees who should be protected under relevant UN resolutions. Furthermore, as discussed in Chapter II, in 1982 the General Assembly instructed the Secretary-General, in co-operation with UNRWA's Commissioner-General, to issue 'identification cards' to all 1948 and 1967 Palestinian refugees and their descendants, irrespective of their being in receipt of UNRWA services. As the UNCCP remains non-operational, and in the absence of any other

international agency mandated for this group of refugees in UNRWA areas of operation, UNRWA should take steps to ensure that it acts on the 1982 instruction. Lack of refugee registration, identification, and documentation results in a number of protection challenges, from budgeting for them to intervening on their behalf when needed. Registration is also important for solutions.²⁴⁶

UNRWA could take the initiative to develop a Note on its Mandate, along the lines of that developed by UNHCR in 2013, capturing the essence of its work as derived from various General Assembly resolutions, and covering any areas where UNRWA considers action is needed to fill a protection gap. If this highlights a need for clarification in order for UNRWA to better serve the refugees, UNRWA could seek this from the General Assembly.

Third, Palestinian refugees are unfamiliar with the protection system existing today and thus are unable to derive its full benefits. The various surveys carried out by BADIL have shown limited knowledge of UNRWA's protection functions, which many refugees did not see as related to the everyday protection threats they face (e.g. arrest, mistreatment, abuse by the authorities).²⁴⁷

(p. 438) Finally, resource limitations have increasingly stretched UNRWA's protection and assistance capacities. UNRWA has faced periodic budgetary crises since the 1950s as a result of fluctuations in donor contributions and a continuous increase in the number of beneficiaries.²⁴⁸ This crisis deepened in the aftermath of the Oslo Accords, when resources usually devoted to UNRWA were diverted to the PA. Since the early 2000s, emergency and humanitarian crises have significantly affected most areas of UNRWA operations. Political crises and hostilities have had a devastating impact on the socio-economic conditions of the refugees and increased their dependency on UNRWA.²⁴⁹

The shortfall in resources for assistance has had a direct adverse effect on protection. The scope of UNRWA operations and the services offered constitute a form of everyday protection for Palestinian refugees. In turn, an 'assistance gap' can generate a serious 'protection gap'. Crises that require a material response often also increase the need for protection, and in the competition for limited resources life-sustaining assistance is given priority. The budgetary cuts necessitated by the withdrawal of US funding since 2018 have had a greater effect on UNRWA's protection staff and operations than on other sectors.²⁵⁰ Within such a challenging environment, the protection function has been restructured to reflect a core structure in each field of operation that was then brought under the programme budget and supplemented through project funding, but institutional capacity has inevitably been diminished.²⁵¹

4.1.2 Outside UNRWA's area of operations

While sometimes perceived to enjoy better conditions than those in UNRWA's area of operations, Palestinian refugees worldwide are also exposed to a number of protection issues. First, this chapter identified a protection problem linked to the way Palestinian refugees are registered in their country of asylum as well as across their often secondary and tertiary displacement. Lack of migration statistics compound the lack of reliable data about the dispersal of Palestinians, as refugees, stateless persons, or beneficiaries of subsidiary protection. The lack of harmonized registration procedures that allow capturing 'Palestinian (refugee) identity' (i.e. being a 1948 or 1967 refugee, including descendants) has produced the 'invisibility' of many in the Palestinian refugee diaspora: across different registration systems among, and in some cases within, states, their numbers, movements and stories, get muted.²⁵² This may also be a reflection of how Palestinian refugees have been identified and registered (or not registered) by host authorities and UNRWA. Registration for purposes (p. 439) of legal status in a given country is ultimately a state responsibility, but UNHCR has developed some internal 'best practices' for registering Palestinian refugees. An example is the practice of some UNHCR branch offices to recognize 'Palestinian identity', allowing the recording of Palestinian origin where this is

not available from other sources (e.g. in South East Asia). This is an example of how UNHCR is in a position to encourage harmonization of state practice around some basic principles. The continuing growth of the Palestinian dispersal beyond the oPt and the traditional host countries, makes the suggestion for a joint mechanism for registration of Palestinian refugees outside UNRWA's area of operations, as proposed by UNHCR over a decade ago, worth considering.

Second, another issue that UNHCR has tried to address over the years concerns inconsistent interpretation and uneven application of Article 1D of the 1951 Convention. The findings of this study suggest that one of the main problems concerning the recognition of Palestinian refugees' status under Article 1D may stem from an inaccurate or limited understanding of the specific situation of Palestinian refugees as protracted refugees. For example, they may get identified as 'nationals' of a previous host state without them having acquired its citizenship. Those considering their claims may not fully appreciate the original root causes of their displacement (that makes them refugees across generations), or the distinctive protection they enjoy under the 1951 Convention. UNHCR's Note on Article 1D acknowledges that UNRWA does not register all 1948 'Palestine refugees' and only provides services to '1967 displaced persons', and it may be necessary to remind competent authorities - who may not be familiar with the differences of mandates between UNRWA and UNCCP - that the '*refugees for whom [UNRWA] was established in order to respond to their situation*' [emphasis added] at paragraph 1 of the Guidelines are those falling under the mandate of *both* UNCCP and UNRWA, as both agencies were created in response to the same situation.²⁵³ This would help these authorities understand that there are more Palestinian refugees than those defined by UNRWA as falling within its mandate, for example, those who became refugees without losing their livelihood, who are still excluded from UNRWA's refugee population.²⁵⁴

Another issue that requires further consideration by UNHCR is the question of, and approach to, Palestinian statelessness, a phenomenon that often goes unreported.²⁵⁵ This study argues, in line with relevant international law, that those Palestinians who have not acquired the citizenship of a state should (continue to) be considered stateless. A 1997 report by UNHCR mentions statelessness as a compounding factor of Palestinian refugees' vulnerability.²⁵⁶ However, later reports, statelessness statistics, and UNHCR's advocacy campaign (p. 440) to end statelessness have not reflected the situation of millions of stateless Palestinian refugees.²⁵⁷ The ten-year campaign to end statelessness globally, which UNHCR launched in 2014, does not mention Palestinians.²⁵⁸ While UNHCR determines statelessness on a case-by-case basis, and not *en masse*, a clear position on the question of statelessness of Palestinian refugees by UNHCR, the guardian of the 1954 and 1961 Statelessness Conventions, would help national asylum authorities to understand the overall complexity of this constituency's legal status and give it the appropriate level of protection. Given the political dimension of (and confusion around) the question of Palestinian statehood, it is important to have a clear legal acknowledgement that Palestinians are de jure stateless until the day they acquire a citizenship (be it of an independent Palestinian state or of another country).

4.1.3 Consultation and coordination for better protection

While the delivery of protection to Palestinian refugee remains imperfect, better protection - pending the achievement of a just and durable solution to their plight - is possible by using current institutional and legal regimes and fostering new avenues for protection. Strategies can be derived and applied based on international law and practice regulating protection. The norms are well-articulated and developed today, and wider knowledge of

them could help alleviate the hardship posed by protection threats, and be conducive to a more dignified life for Palestinian refugees.

There is a well-recognized need for greater participation of refugees in matters concerning their wellbeing and the realization of their rights. This would be advanced by the establishment of structured consultation mechanisms between UNRWA and refugee grassroots organizations. These would provide an avenue for Palestinian refugees, through the organizations that work in proximity with them, and for the organizations themselves, to voice concerns and propose measures to improve the situation of Palestinian refugees. Mechanisms for them to feed into UNRWA's work and priorities could be set up along the lines of the annual consultations that UNHCR holds with NGOs, for example, in the margins of the annual UNRWA Advisory Committee meetings (comprised of hosts and major donors).

While UNRWA and UNHCR have specific responsibilities for the protection of Palestinian refugees, which in the case of UNHCR represent only a small part of its global mandate, advocacy for the respect of the rights of Palestinian refugees is also a matter for the human rights community at large,²⁵⁹ and a strategy to maximize the contribution of relevant actors in the international community, including within the UN, could benefit Palestinian refugees. The focus should be on concerted action for the realization of the rights of Palestinian refugees and to ensure continuity of protection. There is scope for relevant parts of the UN system and NGOs to promote concerted action to improve the (p. 441) protection of Palestinian refugees through enhanced interventions for their human rights and for improvements in their situation²⁶⁰ Coordination and structured engagement are needed in order to optimize such cooperation, with the elaboration of a comprehensive framework, tackling the various issues experienced by Palestinian refugees and who are the most appropriate actors to address them, deserves serious consideration.

Finally, while the UNRWA–UNHCR partnership in recent years has seen some important developments, both in terms of policy and with respect to action regarding vulnerable refugees, there is the potential for more effective coordinated interventions, including through advocacy for greater respect for international law applicable to refugees at the national and regional level. Importantly, there is also the potential for cooperation to advance the search for just and durable solutions; this is examined in Chapter VIII.

5. Concluding Observations

In 1948 the protection of Palestinian refugees was expected to be a temporary measure required until a just and durable solution was found, not something that would continue in perpetuity as a substitute for such a solution. Measures to protect Palestinians have had to evolve because of the failure to find a political solution to the most protracted – and politicized – refugee crisis in recent history.

After the demise of the UNCCP humanitarian necessity prompted UNRWA to undertake functions that went beyond the assistance and relief of its first years. This trend continued but remained largely reactive, rather than a conscious strategy of the agency. During the years of the first *intifada*, unprecedented support from the Security Council resulted in the strengthening of UNRWA's protection mandate in the oPt. In response to the evident need, and with support from donors, protection was given a higher profile in the organizational reforms initiated by UNRWA in the 2000s. UNRWA's protection functions have been made progressively more explicit by the General Assembly and systematized through UNRWA's own strategies and policies. The level of protection varies depending on the vulnerabilities the agency has identified and the capacities of the agency. Long-standing financial constraints are a particular limitation, made more acute by the 2018 funding crisis.

As Palestinian refugees in need of protection have spread outside UNRWA's area of operations, UNHCR became increasingly involved. Since the mid-2000s, cooperation between UNHCR and UNRWA has become more structured. As awareness of the protection needs of Palestinians has increased, so have the contributions of others, including UN agencies and human rights mechanisms, NGOs, and the Palestinians' own embassies. These developments reflect a profound change: a shift from treating protection of Palestinians as something exceptional and separate from the global regime for refugees to a recognition that their protection is and should be treated as an integral albeit distinct part of that regime.

Despite its limitations, the system to protect Palestinian refugees has evolved in ways that responded to humanitarian and political challenges on the ground and also reflected the (p. 442) expanded concepts of protection in the human rights and refugee legal regimes and in humanitarian and development assistance.

Their continued vulnerability is a result of this failure, rather than a weakness of the protection regime. However, this vulnerability must be reduced to the extent possible absent that political solution, and the regime strengthened, building on the current institutional and legal frameworks and exploring new approaches.

The responsibility for ensuring respect for the rights of Palestinians, as for all refugees, lies with states. Respect of these rights, and a consequent improvement in the daily lives of Palestinians, is the measure of success for protection. The developments described in this and other chapters provide opportunities to increase protection and further broaden institutional support to this end. Pending a resolution of the overall question of the Palestinian refugees, a major improvement in the protection of Palestinians would occur if states and regional bodies fully honoured their commitments and obligations under international law, and, for those state parties to the international refugee regime, the obligations stemming from it. The meaning and full potential of the 'continuity of protection' inferred in Article 1D, is still to be fully explored. For it to materialize, a comprehensive approach to Palestinian refugees, including proper mapping of their dispersal and protection needs, systematization of data, harmonization of registration procedures and strategic planning to make sure that protection needs are met, is critical. The United Nations, through the work of UNRWA and UNHCR, as well as Palestinian authorities have an important role to play to initiate and consolidate such process.

Yet, only a just and durable solution can end, once and for all, the need for international protection of Palestinian refugees. This is the subject of Chapter VIII.

Footnotes:

1 Akram, S., Goodwin-Gill, G. S., 'Brief amicus curiae on the status of Palestinian Refugees under international law', *The Palestine Yearbook of International Law* 11 (2000/2001) 185–260, 201.

2 The distinction between Palestine and Palestinian refugees is discussed earlier (see Introduction, Section 3.2.3). In this chapter, the term 'Palestine refugees' is used only with reference to UNRWA's work, as mandated and referred to by the General Assembly.

3 BADIL, *Closing protection gaps: Handbook on protection of Palestinian refugees in states signatories to the 1951 Refugee Convention*, 3rd edn., Bethlehem: BADIL Resource Center for Palestinian Residency and Refugee Rights, 2015. For a general discussion on 'protection gaps', see (n 5). The following authors/publications also discuss, to various extents, the protection gap faced by Palestinian refugees: Akram and Goodwin-Gill (n 1); Akram, S., 'Palestinian refugees and their legal status: Rights, politics, and implications for a just solution', *Journal of Palestine Studies* 31.3 (2002) 36–51; Akram, S., Rempel, T., 'Temporary protection as an instrument for implementing the right of return for Palestinian refugees',

Boston University International Law Journal 22 (2004) 1; Suleiman, J., *Marginalised community: The case of Palestinian refugees in Lebanon*, Brighton: Development Research Centre on Migration, Globalisation and Poverty, 2006; Gambian, N., 'Negotiating rights: Palestinian refugees and the protection gap', *Anthropological Quarterly* 79 (2006) 717; Khalil, A., 'The "protection gap" and the Palestinian Refugees of the Gaza Strip', *Ibrahim Abu-Lughod Institute of International Studies, Birzeit University Working Paper Series No 2011/11*; Erakat, N., 'Palestinian refugees and the Syrian uprising: Filling the protection gap during secondary forced displacement', *International Journal of Refugee Law* 26.4 (2014) 581–621.

4 An excellent overview is in BADIL (2005).

5 Türk and Dowd write that ' "protection gap" is a term that has generally been used to describe inadequacies in the protection afforded to refugees and other forcibly displaced persons where existing provisions of international law, notably international refugee law, are either not applicable, non-existent, or inadequate in scope, or are not interpreted and/or applied in an appropriate manner'. Türk, V., Dowd, R., 'Protection gaps', *The Oxford handbook of refugee and forced migration studies*, Oxford: Oxford University Press, 2014, 278–89, 280.

6 E.g. Akram and Rempel argue that since UNCCP's demise Palestinian refugees have been deprived of an international agency explicitly mandated to systematically 'work for the realization of the basic human rights of Palestinian refugees' and 'to represent them in furthering their search for a durable solution' in line with UNGA res. 194(III) of December 1948 (hereinafter 'UNGA res.194'); Akram and Rempel (n 3) 63.

7 See, e.g. Ibid.; BADIL (n 3), 34–7.

8 The authors acknowledge that the protection gap debate contains many facets and nuances that are hard to summarize; the chapter focuses on institutional aspects that allow appreciation of the current state of affairs with respect to protection of Palestinian refugees. The lack of compliance by competent authorities with international standards to which Palestinian refugees are entitled, which affects their daily protection pending a durable solution, is discussed in Chapter VI, Section 4.

9 Akram, S., 'Palestinian refugees and their legal status: Rights, politics, and implications for a just solution', *Journal of Palestine Studies* 31 (2002) 36, 47. This argument is also made by Lindsay, J. G., *Fixing UNRWA: Repairing the UN's troubled system of aid to Palestinian refugees*, Washington, DC: Washington Institute for Near East Policy, 2009, 34–6.

10 Goddard argues that as long as UNRWA continues to provide protection or assistance there is no legal basis for such interpretation. Goddard, B., 'UNHCR and the international protection of Palestinian refugees', *Refugee Survey Quarterly* 28 (2009) 508. Kagan also underscores the fact that states, rather than UN agencies, are the main responsible for the long-term protection refugees in protracted situation need. Kagan, M., 'Is there really a protection gap? UNRWA's role vis-à-vis Palestinian refugees', *Refugee Survey Quarterly* 28, 2–3 (2009) 511–30. Custer maintains that other UN bodies, in particular UNRWA (and to a lesser extent OHCHR and UN OCHA), are in fact responsible for the protection of Palestinian refugees. Custer, Jr., S., United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA): Protection and assistance to Palestine refugees, in Akram, S., Dumper, M., Lynk, M., Scobble, I. (eds.), *International law and the Israeli-Palestinian conflict*, London: Routledge, 2011, 45–68, 51.

11 Bartholomeusz, L. 'The mandate of UNRWA at sixty', *Refugee Survey Quarterly* 28.2–3 (2009) 452–74; also, Custer (n 10).

12 Custer argues that with reference to the UNHCR statutory functions as per paragraph 8 of its statute, UNRWA has historically engaged in a number of those, including those at letters (b), (g), (h), and (i). See Custer (n 10), 53.

13 Brailsford, M., Incorporating protection into UNRWA operations, in Hanafi, S., Hilal, L., Takkenberg, L. (eds.), *UNRWA and Palestinian refugees: From relief and works to human development*, Abingdon: Routledge, 2014, 67–89. For a more recent and comprehensive appraisal see Lilly, D., ‘UNRWA’s protection mandate: Closing the “protection gap”’, *International Journal of Refugee Law* 30.3 (2018) 444–73.

14 Bartholomeusz (n 11); Kagan (n 10).

15 The 1994 UNHCR ‘Note on International Protection’ (n 50) indicates that ‘Material assistance is often essential for refugees’ survival’ and is therefore often a condition ‘*sine qua non*’ of international protection [emphasis added].

16 Kagan (n 10). UNRWA and UNHCR, as anticipated in Chapter II Section 3.3 and further discussed here, have increased cooperation in a number of areas, in order to ensure continuity of protection of Palestinian refugees in the spirit of art. 1D of CSR51.

17 It is acknowledged that, as of 2010, UNRWA Protection Division conducts annual participatory, protection ‘audits’ to identify protection gaps and needs in each field of its area of operations. See Section 4.

18 An interesting development in this direction is offered by Lilly (n 13).

19 Aspects pertaining to the search for durable solutions, including vis-à-vis possible limitations of UNRWA’s mandate, are discussed in Chapter VIII.

20 This expands, from a protection standpoint, the discussion of the ‘distinctiveness’ of the regime for Palestinian refugees offered in Chapter II, Section 2–Section 3.

21 Goodwin-Gill argues that while being originated in connection with refugees, ‘[t]he word “protection” has become something of a *term of art*, obscuring the scope of an activity that ought to be fundamentally clear’. Goodwin-Gill, G. S., ‘The language of protection’, *International Journal of Refugee Law*, 1.1 (1989) 6–19, 6. Also, Stevens points out that neither the UNHCR Statute nor the CSR51 define international protection. Stevens, D., ‘What do we mean by protection?’, *International Journal on Minority and Group Rights* 20.2 (2013) 233–62, 234 and 239.

22 The quote is from Goodwin-Gill’s foreword in BADIL (2005), (n 4) VII.

23 Holborn, L., Chartrand, P., Chartrand, R., *Refugees, a problem of our time: The work of the United Nations High Commissioner for Refugees, 1951–1972*, vol. 2, Lanham, MD: Scarecrow Press, 1975.

24 According to Helton, legal protection encompasses ‘entitlements under law and, for effective redress of grievances, mechanisms to vindicate claims in respect of those entitlements’, see Helton, A. C., ‘What is refugee protection’, *International Journal of Refugee Law* 2 (1990) 119. ‘[A]cting under the authority of the General Assembly [UNHCR] shall assume the function of providing international protection, under the auspices of the United Nations, to refugees who fall within the scope of the present Statute ...’, UNHCR, ‘Statute of the Office of the High Commissioner for Refugees’, UNGA res. 428, 14 December 1950, annex, art. 1, see in particular para. 8 of the UNHCR Statute, which sets out in more detail the function of international protection; also UNHCR, *Helping refugees: An introduction to UNHCR*, Geneva: UNCHR, 2001, 6. According to Helton, legal protection encompasses ‘entitlements under law and, for effective redress of grievances, mechanisms to vindicate claims in respect of those entitlements’, see Helton (n 24), 119.

25 See Goodwin-Gill, G. S., McAdam, J., *The refugee in international law*, 3rd edn., Oxford: Oxford University Press, 2007, 426–8, 446–7.

26 Ibid., 447.

27 Ibid., 426–7, fn 35 in particular.

28 As discussed in Chapter IV, the situation was somewhat different for many refugees who fled after 1948, particularly in the context of the 1967 Arab-Israeli war, as well as following subsequent turmoil in the Arab region (Kuwait, Libya, Iraq, Syria); see also Chapter IV, Section 4.6 (*non-refoulement*).

29 As discussed in Chapter II, Section 2.2, the current international refugee regime was not devised with all future refugees in mind, but primarily to resolve the caseload of millions of refugees stuck in Europe. The regime was set up with both temporal and geographic limitations, not so different from interwar arrangements. It was the 1967 protocol that removed those barriers, making the system more truly universal. In this respect, the regime for Palestinian refugees was less distinctive and exceptional than it appears today.

30 Of the international protection functions detailed at para. 8 of the UNHCR Statute, UNCCP exercised those under (c) and (e), namely: '(c) Assisting governmental and private efforts to promote voluntary repatriation or assimilation within new national communities; (e) Endeavouring to obtain permission for refugees to transfer their assets and especially those necessary for their resettlement.'

31 Worth noting is that the General UNGA resolution which established the UNCCP, referred to the refugee situation (para. 11) well after referring to the protection of the 'Holy places' (para. 7), 'Jerusalem and surrounding areas' (para. 8), 'access to Jerusalem' (para. 9), and 'development of the area' (para. 10).

32 *AD (Palestine)*, [2015] NZIPT 800693-695, New Zealand: Immigration and Protection Tribunal, 23 December 2015, para. 103. See Chapter II Section 4.3 for further discussion of this case.

33 Property appears to be at the heart of the protection of the rights of refugees. UNGA res. 394(V), U.N. GAOR, 5th sess., suppl. 20, at 24, UN doc A/1775, 14 December 1950. The resolution mentions 'measures for the protection of the rights, property and interests of the refugees', but does not provide details.

34 As such, the UNCCP has become the official UN custodian of the refugees' property deeds. See Chapter I Section 4.4.

35 UNCCP, 'The question of Compensation for Palestine Refugees, Working paper of the Secretariat', UN doc. A/AC.25/W/33, 25 January 1950; UNCCP, 'Report of Economic Survey Mission on Arab refugees' compensation/Israel's resolution on Jerusalem as capital', 122nd meeting, summ. record, UN doc. A/AC.25/SR.122, 25 January 1950; Mixed Committee Experts on blocked Arab accounts; frontier land cultivation; family reunifications - UNCCP's General Committee 48th mtg. (Geneva), summ. record, A/AC.25/Com.Gen/SR.48, 17 January 1950.

36 This is demonstrated by the language used by the UNCCP in the set-up of the Refugee Office and the activities of both UNCCP and the Refugee Office. See UNCCP, 'General Committee, Report Concerning the Future Activities of the Commission and its Refugee Office under the Resolution of 14 December 1950', UN doc. A/AC.25/Com.Gen/17/Rev.1, 15 March 1951.

37 According to Goodwin-Gill, refugee protection is strictly linked to the ‘widest possible exercise of these fundamental rights and freedoms’ as enshrined in the preamble of the draft 1951 Refugee Convention. Goodwin-Gill (n 21), 8.

38 During the interwar period, the dominant concept was that of diplomatic protection in which a person fleeing persecution in their state of nationality was no longer able to rely on that state for protection and had to be offered protection by another state (within the realm of the law of state responsibility and the law of aliens); cf. Goodwin-Gill (n 21); Goodwin-Gill and McAdam (n 25), 425; See also Chapter II, Section 2.

39 Cf. Türk, V., ‘UNCHR’s supervisory responsibility’, *Revue Quebecoise de droit international*, 14 (2001) 138.

40 Stevens, D., ‘What do we mean by protection?’ *International Journal on Minority and Group Rights*, 20.2 (2013), 233–62, 242.

41 Ferris, E. G., *The politics of protection: The limits of humanitarian action*, Washington DC: Brookings Institution Press, 2011, 26–30; Gabiam N., ‘Social thought and commentary: Negotiating rights: Palestinian refugees and the protection gap’, *Anthropological Quarterly*, October 2006, 717–30, 726.

42 The humanitarian (refugee) crises of the 1990s had challenged traditional humanitarianism by showing that saving lives was not only about distributing aid after catastrophes, but also about promoting human rights. From this idea a form of ‘preventive humanitarianism’ emerged that focused on empowering individuals and protecting rights; cf. Gabiam (n 41), 726.

43 UNGA res. 46/182.

44 Ferris (n 41), see introduction.

45 IASC, ‘Protection of Internally Displaced Persons’, IASC Policy Paper (December 1999). This definition largely draws from the conceptual work of ICRC, which in the 1990s held several workshops on how to enhance the protection of people affected by armed conflict and violence. At the end of these workshops the concept of protection centred on activities aiming at ‘ensuring full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law, i.e. human rights law, international humanitarian law, and refugee law’.

46 General Assembly/Security Council, Report of the Panel on United Nations Peace Operations [‘Brahimi Report’], UN doc. A/55/305 S/2000/809, 21 August 2000.

47 For an overview of the international human rights system, see Chapter III, Section 5.1.

48 Türk (n 39).

49 Goodwin-Gill and McAdam (n 25), 500.

50 UNHCR, Note on International Protection, 7 September 1994, UN. doc. A/AC. 96/830’ [hereinafter, ‘Note on International Protection’], fn. 4. The Note has had a lasting influence on the debates around protection.

51 Ibid., para. 12.

52 Ibid., emphasis added.

53 Cf. Feller, E., ‘The evolution of the international refugee protection regime’, *Journal of Law & Policy* 5 (2001) 129, 131.

54 UN General Assembly, Note on International Protection, 7 July 2000, UN doc. A/AC. 96/930, para. 4.

55 Cf. Türk (n 39).

56 ‘Since material assistance is often essential for refugees’ survival, it can also be a sine qua non of international protection’, Excom Conclusions on Protection of Asylum-Seekers in Situations of Large-Scale Influx, No. 22(XXXII), 1981; also, Excom Conclusions on International Solidarity and Refugee Protection, No. 52 (XXXIX), 1988.

57 Goodwin-Gill (n 21), 7.

58 Goodwin-Gill and McAdam (n 25), 427; *Ibid.*, fn. 38 in particular.

59 *Ibid.* [emphasis added].

60 UNHCR, ‘Placing protection at the centre of humanitarian action: A contribution to the World Humanitarian Summit’, May 2015, 2.

61 Goodwin-Gill and McAdam (n 25), 428.

62 UNHCR ExCom, Standing Committee 75th meeting, 28 May 2019, UN doc. EC/70/SC/CRP.10, 14–5.

63 In parallel, the evolution of protection functions has called upon other actors to deliver it to Palestinians, including refugees; see Section 3.3.3. (n 215) and (n 219) and accompanying text in particular.

64 Custer (n 10), 51.

65 For a broader discussion of the limitations of assistance without protection within the UN, see Ferris (n 41), discussion in ‘Humanitarian Space’, and on how assistance can doubtfully be a substitute for protection, see ch. 4, 174–9.

66 For a historical account, see Chapter IV, Section 4.2 (Iraq), Section 6.3 (Libya), and Section 5.3 (Kuwait), respectively.

67 Goodwin-Gill, G. S., *The refugee in international law*, 2nd edn., Oxford: Oxford University Press, 1996, 91, referring to discussions within the Social Committee of ECOSOC; cf. UN doc. E/AC.7/SR. 172.

68 Chapter II, Section 4.2.1.

69 A joint press statement provided some clarification: ‘As far as the United Nations is concerned, and without prejudice to the responsibility of individual governments, the material welfare of Palestine refugees in the Near East is the exclusive responsibility of UNRWA, whereas the protection of the interests of those refugees as regards compensation and repatriation is the concern of the Palestine Conciliation Commission. The mandate of the High Commissioner does not extend to them.’ Press release No. 4-22/54, 29 January 1954, on file with author [from first edition].

70 As of 1967, the attitude of a number of Arab states towards Palestinian refugees started to shift, and these refugees often became unwelcome, either to stay, or to return in case they had fled. This was mainly a reaction to the PLO’s political stance and resistance activities.

71 ‘Note on UNRWA’s mandate’, 1967, on file with authors (LT) [from first edition]. The note cited UNRWA’s working definition of a ‘Palestine refugee’ and made it clear that the agency’s mandate was limited to those refugees who had taken refuge in Jordan (including the then recently occupied West Bank), Syria, Lebanon, and the Gaza Strip (and in small numbers in Egypt where UNRWA did not have a full-fledged field presence), and therefore did not extend to Palestine refugees throughout the world. The note also mentioned UNGA res. 2252 (ES-V) of 4 July 1967, which had extended UNRWA’s mandate ‘on an emergency basis and as a temporary measure, to other persons in the area who are at present displaced and are in serious need of immediate assistance’ as a result of the 1967 war [emphasis added]. The note made it clear that in addition to the areas where UNRWA had

so far been operating, the agency had extended such emergency assistance to a number of registered 1948-refugees in Egypt (Sinai), who had been displaced from Gaza.

72 Ibid. The note made clear that it was the organization's policy that Palestinians outside UNRWA's area of operations, not falling under any other exclusion or cessation clauses, were *prima facie* to be considered as fulfilling the exclusion provision of the Statute (para. 6) and were therefore of concern to UNHCR.

73 It is worth recalling that UNRWA has not registered and served all 1948 refugees; see Chapter II, Section 4.2.2 (Registration System), see (n 209)–(n 211) and accompanying text in particular. Also discussed later, see Section 4.

74 However, Chapter IV describes how each of the fundamental rights that are essential for an adequate standard of living of the refugee, especially in a protracted refugee situation, and also points to the limitations and risks of relying on a UN agency to deliver rights that are the natural competence of state authorities.

75 The concept of 'direct protection activities' is generally discussed by Goodwin-Gill and McAdam; see Section 2.1 (nn. 25–7) in particular.

76 Custer argues that UNRWA delivered international protection functions in line with paragraph 8 (b), (g), (h), and (i) of the UNHCR Statute. This includes, e.g. the conclusion of bilateral agreements with the various host governments to promote forms of integration through work; the agency has also engaged with host governments regarding the execution of measures aimed to improve the situation of refugees (relief and work programme, education programme, health programme, and later, microfinance); in cooperation with the UNCCP, it has maintained regular contact with the governments and intergovernmental organizations with regard to Palestinian refugees, often facilitating the co-ordination of the efforts of private organizations concerned with the welfare of refugees. Custer (n 10), 53. Through its Placement Offices, attached to the Education Department in each Field Office, UNRWA also facilitated labour migration for Palestinians, mainly to the Gulf states.

77 However, obtaining release of detained refugees (staff members), as UNRWA has routinely done, is a direct engagement.

78 In October 1956, Israel, in cooperation with the British and French Governments, launched a military attack on Egypt, after the escalation of tension that had started with the decision of Egypt to restrict Israeli shipping through the Suez Canal in the early 1950s. British and France vetoed a Security Council resolution on the matter, so it was the General Assembly to call for an immediate ceasefire, the withdrawal of all forces behind the armistice lines and the reopening of the Canal (UNGA res 997 (ES-I)). Further, a number of resolutions, among which UNGA res. 1000 (ES-I), of 5 November 1956 and UNGA res. 1001 (ES-I) of 7 November 1956, established the first peace-keeping operation, the United Nations Command for an Emergency International Force (UNEF), mandated to resolve the crisis. Israel strongly opposed the deployment of UNEF as well as the return of Egyptian forces to Gaza; but such refusal, Filiu writes, 'was reproved as an affront to the UN's authority at the General Assembly session of 24 January 1957' and eventually Israel had to withdraw and accept UNEF's deployment. UNEF units entered temporarily the Gaza Strip only on 6 March 1957 as the withdrawal of Israeli forces began, and remained in the territory until 1967. Filiu, J. P., *Gaza: A history*, Oxford: Oxford University Press, 2014.

79 UN reports account of hundreds of Palestinians, almost all refugees, who were killed by Israeli forces allegedly on the ground of security reasons (about 257 in Khan Younis on 3 Nov. 1956 and over 111 in Rafah refugee camps). UNGA, 'Report of the Director General of UNRWA to the General Assembly' UN doc. A/3212/Add.1, 15 December 1956 ['UNRWA Report to the General Assembly 1956'], sec. II (Effects of Military Operations on Gaza Refugees – Casualties Among Refugees) paras. 23 (Khan Younis) and 24–7 (Rafah).

According to Palestinian sources the death toll among Palestinians in the Gaza Strip in 1956 was higher (between 450–530 in Khan Younis and about 200 in Rafah); *Ibid.*, 103.

80 UNRWA Report to the General Assembly 1956 (n 79), paras. 20–33.

81 The text in quote is at para. 32. Para. 33 of the report reads: ‘The emotions and hazards arising from military operations and from the sudden change in local administration seemed to have made the refugees stranded in the Gaza Strip more conscious than ever of the precariousness of their position, of the total uncertainty of their fate. To the Director, these people were a living reminder of the fact that there could be no real peace in the troubled Near East unless and until a definitive solution of the Palestine problem, based on principles of equity and accepted by all concerned, was agreed upon and put into effect’.

82 *Filiu* (n 78), 100.

83 UNRWA Report to the General Assembly 1956, para. 28 refers to over sixty Palestinians (forty-eight refugees) who died in that period in the context of ‘smaller incidents – some during the fighting, some in connexion with breaches of curfew restrictions, and some accidentally’.

84 UNSC res. 237 (1967), 14 June 1967. In res. 259 (1968), 27 September 1968, the Security Council repeated its concerns, deplored the delay in the implementation of res. 237, and requested the Secretary-General to despatch a special representative urgently to the occupied territories.

85 Cf. UNGA res. 2252 (ES-V), 4 July 1967; UNGA res. 2341 B (XXII), 19 December 1967.

86 UNRWA Annual Report, 1967–1968, 23rd GA, Supp. No 13 (A/7213).

87 UNRWA Annual Report, 1 July 1969–30 June 1970, A/8013, 30 June 1970, para. 23, 158. Most importantly, see UNRWA Annual Report, 1 July 1970–30 June 1971, A/8413, 30 June 1971, para. 15.

88 UNGA, United Nations Relief and Works Agency for Palestine Refugees in the Near East, 16 December 1982, A/RES/37/120 [hereafter UNGA res. 37/120], sec. (J) para. 1, adopted by a vote of 127 in favour, two against, with sixteen abstentions.

89 *Ibid.*, sec. (J).

90 *Ibid.*, para. 1.

91 *Ibid.*, para. 8.

92 *Ibid.*, paras. 2–4.

93 *Ibid.*, para. 7.

94 See, e.g. UNGA res. 38/83 I, 15 December 1983; UNGA res. 39/99 I, 14 December 1984; UNGA res. 40/1651, 16 December 1985; UNGA res. 41/69 I, 3 December 1986; UNGA res. 42/69I, 2 December 1987; UNGA res. 43/57 I, 6 December 1988; UNGA res. 44/47 I, 8 December 1989; UNGA res. 45/73, 11 December 1990; UNGA res. 46/46 I, 9 December 1991.

95 The JIU was requested to carry out a comprehensive review of UNRWA’s ‘organization, budget and operations with a view to assisting the Commissioner-General to make the most effective and economical use of the limited funds available to the Agency’; UNGA decision 36/462, 16 March 1982.

96 JIU, ‘Report on UNRWA’, July 1983, UN doc. JIU/REP/83/8, A/38/143, sec. A, paras. 157–9.

97 *Ibid.*, para. 157.

98 Ibid., para. 158 [emphasis added].

99 Ibid., para. 159. Further to the submission of the JIU report, the Chairman of the JIU, Mr. Vukovic, continued to raise the call for ‘legal and physical protection’ of the Palestinian refugees in Lebanon within the UN; cf. letter of Mr. Vukovic, Chairman of the JIU to the Secretary-General, referred to in an UNRWA memo from UNRWA Commissioner-General to the Director of UNRWA Liaison Office in New York, 5 April 1983, ref. OR 160/12 [hereafter ‘UNRWA Memo ref OR 160/12, 1983’] (on file with the authors).

100 Cf. Takkenberg, L. ‘The protection of Palestine refugees in the territories occupied by Israel’. *International Journal of Refugee Law* 1 (1991) 3, 417, fn 10; also, Goodwin-Gill (n 67), 91.

101 Cf. Kagan (n 10).

102 Memo from Commissioner-General to UNRWA Liaison Office in New York, 5 April 1983, OR 160/12, 1983 (on file with the authors) [emphasis added].

103 Ibid.

104 Cf. ‘UNRWA’s Mandate – Its Competence Concerning the “Protection of Refugees”’, Memorandum by the Department of Legal Affairs, June 1986, 3. Meanwhile UNRWA continued to intervene, bilaterally, with Israel to secure the rights of Palestine refugees, and with the government of the US, the United Kingdom, France, and Italy to support its call for protection of the refugees.

105 The author also refers to the dissatisfaction among the refugees about the perceived often too-lenient attitude of some UNRWA staff towards the occupation, in the name of preserving humanitarian aid; Al-Husseini, J., *The local political dimension of humanitarian assistance: UNRWA within the Palestinian nation-building*, PhD thesis, Institut Universitaire de Hautes Études Internationales, Université de Genève, 2003 [Thèse No. 660], 285–6, 288 (on file with the authors).

106 This is not dissimilar from the protection that other humanitarian organizations such as the OHCHR and UNHCR would normally deliver in similar circumstances.

107 Memo by former UNRWA Legal Adviser [S. Sinha], dated 2 June 1986 (on file with authors).

108 Takkenberg (n 100), cit. in Goodwin-Gill and McAdam (n 25), 438, fn. 97.

109 These staff were precursors to the Refugee Affairs Officers appointed from the middle of 1988 onwards; see Section 3.2.1.

110 During his visit to the oPt, Under-Secretary-General Goulding (see Section 3.2.1) was highly impressed with their ability to play a useful role in the volatile relations between the Israeli military and the Palestinian population since the start of the uprising.

111 UNSC res. 605 (1987), 22 December 1987, UN doc. S/RES/605 (1987).

112 Between December 1987 and May 1990, the Security Council met on several occasions to consider the situation in the oPt and adopted several resolutions specifically on the issue of deportations; see, e.g. UNSC res. 607 (1988), 5 January 1988; UNSC res. 608 (1988), 14 January 1988; UNSC res. 636 (1989), 6 July 1989 and UNSC res. 641 (1989), 30 August 1989. In a statement by the President of the Council on 25 August 1988, UN doc. S/20156, the members of the Security Council declared their grave concern at the continued deterioration of the situation in the oPt since 1967, including Jerusalem.

113 UNSC res. 605 (1987), 22 December 1987, para. 1.

114 Ibid., para. 6.

115 ‘Report submitted to the Security Council by the Secretary-General in accordance with resolution 605 (1987)’, UN doc, S/19443. For a discussion of the report, see Schiff, B. N., *Refugees unto the third generation: UN aid to Palestinians* (Contemporary Issues in the Middle East) Syracuse, NY: Syracuse University Press, 1995, 227.

116 UN doc. S/19443, 1987, para. 51.

117 UN doc. S/19443, 1987, sec. (C), para. 28.

118 The Secretary-General reports that ‘several of the Palestinians consulted by Mr. Goulding, especially in the refugee camps, asked that UN forces should be deployed in the oPt, either to protect the inhabitants against the Israeli security forces or to replace the latter completely in the populated areas’; UN doc. S/19443, para. 29.

119 UN doc. S/19443, 1987, para. 29.

120 Ibid, para. 30.

121 Ibid.

122 The Israeli government partly lifted its objections to an international presence in 1993, when it signed the DOP93; cf. Chapter I, Section 6.2, Chapter II, Section 2.2.2. It is also noted that one of the first UN peacekeeping forces was actually deployed in Gaza during the 1955–1956 Suez crisis (see (n 78)), and lasted until 1967; it did not need Israel’s acquiescence as the Gaza Strip was administered by Egypt at the time.

123 Various attempts to establish a protective presence, mechanism, or force through the UN have been obstructed by the use of the veto of the US in the Security Council at various junctures when such a protective presence has been proposed. An attempt was made further to the massacre in the Ibrahim Mosque in Hebron on 25 February 1994, when an Israeli settler took the life of twenty-nine Palestinian worshippers and injured several hundred others, which resulted in the establishment of the Temporary International Presence in Hebron, see (n 147). A resolution which, *inter alia*, would have established a commission consisting of three members of the Security Council to examine the situation in the oPt and recommend ways and means for ensuring the safety and protection of the Palestinian civilians under Israeli occupation was not adopted owing to the negative vote of the US. Cf. ‘Report submitted to the Security Council by the Secretary-General in accordance with UNSC res. 672 of 31 Oct. 1990, UN doc. S/21919, 7.

124 Ibid., 38.

125 Ibid.

126 UN doc. S/19443, 39.

127 Ibid., para. 41.

128 Al-Husseini (n 105), 292–3. Al-Husseini notes that UNSC res. 605 was mentioned in the political resolution of the 19th Palestinian National Council (PNC) of November 1988, following the Declaration of Independence by the PLO. This would suggest the PLO’s early commitment to achieve a political solution to the Israel–Palestinian conflict.

129 UN doc. S/19443, 13.

130 UNRWA, ‘Financial report and Audited Financial Statements for the Year Ended 31 December 1989 and Report of the Board of Auditors’, UN doc A/45/5/Add.3; see also Takkenberg, L., ‘UNRWA and the Palestinian refugees after sixty years: Some reflections’, *Refugee Survey Quarterly* 28.2 (2009) 3, 256.

131 Schiff argues that this was also due to the general sympathy that Palestinian refugees were enjoying during the first *intifada*; Schiff (n 115), 231.

132 The first edition contains a detailed description of the RAO programme (see duties summarized in (n 136)). The first edition's author (LT) was one of the RAOs employed in the oPt (West Bank) from February 1989–March 1990. For a discussion of the duties and activities of the RAOs, see also Lynk, M., 'Vignettes of Nablus', *Journal of Palestine Studies* 77 (1990) 101; Schiff (n 115), 231; Takkenberg (n 100), 426; Viorst (1989), 20; Williams, A. J., 'UNRWA and the occupied territories', 2 *Journal of Refugee Studies* 156, 159; also Schiff, B. N., 'Between occupier and occupied: UNRWA in the West Bank and the Gaza Strip', *Journal of Palestine Studies* 71 (Spring 1989) 60; Wijewardane, D. S., Protecting Palestinian refugees: The UNRWA experience, in Minear, L., Smith, H. (eds.), *Humanitarian diplomacy: Practitioners and their craft*, New York: United Nations University Press, 2007, 65–83;

133 RAO Guidelines, 3rd edn., 15 March 1989, 2 [emphasis provided].

134 UNRWA, Annual Report, 1989–1990, *GAOR*, 45th sess., suppl. 13, UN doc. A/45/13, 26 [emphasis added]. RAO's official duties are discussed in (n 136).

135 On the concept of proactive presence see Centre for Humanitarian Dialogue, *Proactive presence: Field strategies for civilian protection: Summary*, Geneva: Centre for Humanitarian Dialogue, 2006, 38, also discussed in Ferris (n 41), 274. The study underscores how unarmed international missions, such as human rights monitoring missions, are not merely 'passive': their 'diplomacy, visibility, encouragement and empowerment, convening and bridging, and public advocacy' have the capacity to enhance civilians' protection. On the concept of protection by/through presence see Da Costa, R., 'Beyond presence: Protection interventions on the ground', *Forced Migration Review* 29 (2007) 64.

136 The specific duties of the RAOs included the following: (a) circulating throughout the oPt on a frequent, though unannounced, schedule for the purpose of observing and reporting to the respective Field Office any unusual or abnormal circumstances; (b) visiting agency installations in the oPt and reporting any disruptions in agency operations; (c) visiting camps and other areas under curfew, and reporting to the respective Field Office on any problems affecting the welfare of the population; (d) ascertaining and reporting as accurately as possible the names, ages, refugee status, circumstances, and other appropriate information relating to Palestinians killed or wounded as a result of hostilities in the oPt; (e) liaising with local military governors and civilian administrators of the occupying Power on matters affecting the agency's operations or the welfare of the refugees; and (f) visiting UNRWA staff members detained by the occupying Power.

137 They helped to evacuate the wounded, to reduce interference with ambulances, and to obtain the release of refugee children. They assisted the population as occasion arose, for example, to obtain permits to carry on essential services during curfew periods and to facilitate the movement of essential food and medical supplies to camps and other locations where needed.

138 So was commonly known the policy announced by former defence minister Rabin on 18 January 1988 to curb Palestinian resistance including by 'force, might, and beating'. After the announcement, a series of incidents that provoked international outcry – including the deliberate breaking of arms of Palestinian demonstrators – prompted the army to adjust its orders. See Al-Haq, 'A nation under siege: Al-Haq Annual Report on human rights in the Occupied Palestinian Territories' (report), New York: Al-Haq, 1990, 32.

139 Memo by former Legal Adviser S. Sinha, dated 13 June 1991 (on file with the authors). Al-Husseini argues that such realization was largely the result of the pressure both from eminent personalities and the Security Council. Al-Husseini (n 105), 292.

140 The activities of the RAOs were seen in the context of a wider protection programme, which also included a modest legal aid scheme. Building on the information provided by the RAOs and operations officers, the Legal Officers helped the Field Directors in preparing consolidated reports and in making representations to the Israeli authorities at every level from the local military commander right up to the ministries of defence and foreign affairs. In this context, the Legal Officers frequently investigated allegations of human rights violations and reports of violations of UNRWA's privileges and immunities. They furthermore monitored the treatment of prisoners and attended the trials of arrested UNRWA staff. Cf. Wijewardane (n 132), 81.

141 UN doc. S/21919, 9.

142 Israel rejected the redefinition of UNRWA's mission. Although appreciating increased agency contributions to improve the 'quality of life' in the territories, Israeli officials sought to draw UNRWA's mandate tightly around its traditional humanitarian operations. They rejected applicability of the Fourth Geneva Convention to the territories, viewed 'general assistance' as an inappropriate departure from the mandate, and protested when RAOs did more than tend to agency facilities, monitoring or interfering with Israeli security operations. Schiff (n 115), 251; Wijewardane (n 132), 78-9.

143 Letter of the Permanent Mission of Israel to the United Nations in Vienna to UNRWA's Commissioner-General (November 1989), cited in Friedman, R. I., 'The Palestinian refugees', *The New York Review of Books* 29 March 1990, 36, 42; also, Wijewardane (n 132), 78-9.

144 In this respect the Commissioner-General noted in his 1988-1989 *Annual Report*. 'Aggressive behaviour and physical harassment became more frequent also towards international staff and some were briefly detained during the performance of their official duties.' UNRWA, Annual Report, 1988-1989, GAOR, 44th sess., suppl. 13, UN doc. A/44/13, 3.

145 Such support was expressed, e.g. during a meeting on 11-12 July 1989 in Vienna, attended by twenty-four countries and the European Community, representing the main contributors to UNRWA's budget, and the Arab host states. Cf. Takkenberg (n 100), 430.

146 Al-Husseini reports: '[the IDF] usually waited for the departure of the RAO, evaded their eyes or took advantage of their absence to act. UNRWA's reports, protests, and requests for clarification were, with a few rare exceptions, bared by them. In an effort not to alienate the operational support of these authorities for its operations, UNRWA executives occasionally sought to control the most entrepreneurial RAOs'. Al-Husseini (n 105), 291.

147 The TIHP was established in the aftermath of the killing of twenty-nine Palestinian worshippers and injury of several hundred others in the Mosque of Ibrahim in Hebron by an American-Israeli settler on 25 February 1994 [UNSC res. 904 (1994) of 18 March 1994, UN doc. S/RES/904(1994)]. The presence of the TIPH, which initially consisted of an international contingent of 160 persons, was intended to promote the security and well-being of the Palestinians of Hebron. TIPH was not under UN auspices and was not vested with military or police functions. TIPH personnel were not authorized to interfere in clashes or other incidents, only to report them. It raised Palestinian expectations but had reportedly little positive impact. In January 2019, the Israeli Prime Minister announced that the TIPH's mandate would not be extended.

148 Takkenberg (n 130), 258.

149 Cf. UNGA res. 681/1990. The system, supported by a computerized central database at UNRWA headquarters was established since virtually the beginning of the first *intifada*. It generated casualty statistics on a monthly basis ever since that time. Between the start of the *intifada* and July 1994, when data collection was discontinued following the start of limited self-rule in parts of Gaza and the West Bank, approximately 84,000 casualties, including 1,500 fatalities, were recorded. ‘Casualties in the occupied territory for the period 9 December 1987 to 31 July 1994’, UNRWA, Department of Legal Affairs, October 1994. For a discussion, see Wijewardane (n 132), 78–9.

150 See, for example, Graff, J. A., assisted by Abdolell, M., *Palestinian children & Israeli state violence*, Toronto: The Near East Cultural and Educational Foundation of Canada, 1991, in which UNRWA statistics were used as a major source of information.

151 The issue was again addressed at length by the Security Council following an incident on 20 May 1990, in which an Israeli gunman killed seven Palestinian workers and wounded eleven others at Rishon Lezion in Israel. In the ensuing protest demonstrations, which erupted throughout the occupied territories, seventeen Palestinians were killed and more than 1,000 wounded by Israeli security forces

152 Further to this, UNGA res. S-10/6 of 9 February 1999, recommended that the High Contracting Parties convene a conference on measures to enforce the Convention in the oPt and to ensure respect thereof in accordance with art. 1. A first conference was held in 1999, and a second conference was held in 2014. Both conferences reaffirmed the applicability of the Fourth Geneva Convention to the Occupied Palestinian Territory, including East Jerusalem, and reiterated the need to ensure the full respect of its provisions in that territory. See DG report on protection of Civilians in the oPt, 2018, para. 32.

153 [Emphasis added]. In a separate, non-binding statement by the President, the Security Council agreed that a properly timed and structured international conference should facilitate a lasting peace in the Arab-Israeli conflict.

154 However, in a statement (UN doc. SC/5247) accompanying his vote in favour of UNGA res. 681 (1990), the Perm. Rep. of the US to the UN made it clear that no formal change to UNRWA’s mandate and staffing should be made. The Secretary-General was requested to submit a first progress report to the Security Council by the first week of March 1991. The Secretary-General made it clear that in preparing his report he would be asking the Commissioner-General of UNRWA to take the lead and to ask an appropriate number of his international staff serving in the area to provide the required information.

155 Cf. Schiff (n 115), 269.

156 Report submitted to the Security Council by the Secretary-General in accordance with UNSC res. 681 (1990), 9 April 1991, UN doc. S/22472. Both the Israeli government and the PLO had expressed reservations in respect of the resolution. In his statement to the Security Council at the time of the adoption of res. 681 (1990), the Permanent Rep. of Israel opposed it as unfairly singling out Israel and going beyond previously agreed mandate of the UN personnel in the area. The Alternate Permanent Observer of Palestine expressed the view that res. 681 (1990) represented less than what had been sought and needed in view of the volatile situation in the Middle East in general’. UN doc. S/22472, 14.

157 In view of this peace initiative, the US was of the opinion that the Security Council should suspend its actions in respect of Palestinians under Israeli occupation: ‘Since it is in the interest of all parties for this process to succeed, while this process is actively ongoing, the United States will not support a competing or parallel process in the United Nations

Security Council.' US Letter of Assurances to the Palestinians, 18 October 1991, text in IPS, 1994, 5, 6.

158 See Hilal contribution in Hanafi, Hilal, and Takkenberg (n 13), further discussed in Chapter VIII.

159 UNRWA, *Annual Report*, 1990–1991, GAOR, 46th sess., suppl. 13, UN doc. A/46/13, 24.

160 Cf. Cervenak, C. M., Promoting inequality: Gender-based discrimination in UNRWA's approach to Palestine refugee status, *Human Rights Quarterly* 16 (1994) 300, 324.

161 UNRWA, *Annual Report*, 1991–1992, GAOR, 47th sess., suppl. 13, UN doc. A/47/13, 30.

162 UNRWA, *Annual Report*, 1992–1993, GAOR, 48th sess., suppl. 13, UN doc. A/48/13, 26.

163 UNRWA saw itself as a 'late entrant in the field of protection'. Note of the Meeting of UNRWA General Cabinet, 13 June 1991, para. 3.

164 See (n 67)–(n 69) and corresponding text.

165 Cf. 'Report of the 38th Session of the Executive Committee of the High Commissioner's Programme', Geneva, 22 October 1987, UN doc. A/AC.96/702, para. 53.

166 EXCOM concl. 46 (XXXVIII), 21 October 1987 [emphasis added]. The Israeli representative stated that, 'for obvious reasons, his country was unable to agree to the words 'including a large number of Palestinians' contained in that paragraph'; cf. UN doc. A/AC.96/SR.424, para. 128.

167 See, e.g. EXCOM concl. 50 (XXXIX) of 1988; EXCOM concl. 55 (XL) of 1989; EXCOM concl. 61 (XLI) of 1990; and EXCOM concl. 65 (XLII) of 1991; text in UNHCR, 1991. The last express reference to Palestinians was recorded in the 1992 General Conclusion; see *Report of the 43rd Session of the Executive Committee*, UN doc. A/AC.96/804, 15 October 1992, para. 21. In contrast to its previous practice, Israel raised no objection on this occasion; cf. Goodwin-Gill (n 67), 17, fn. 69. See also EXCOM concl. 109 (LXI) of 2009, UN doc. A/AC.96/1080 which refers to Palestinian refugees in the context of 'Protracted Refugee Situations'.

168 E.g. after the PLO was forced to leave Lebanon in 1982, UNHCR intervened with the Lebanese authorities concerning a number of cases in which Palestinian refugees had experienced difficulty in obtaining the renewal of Lebanese travel documents of which they were holders. The Lebanese authorities indicated that Palestinian refugees registered with UNRWA in Lebanon since 1948 should have no problem in renewing their Lebanese travel documents, while those who arrived in the country at a later date (and not registered with UNRWA) were considered illegal residents for which Lebanon had no responsibility. In practice, even Palestinian refugees who were registered with UNRWA faced difficulties in renewing their travel documents. Cf. Akram and Rempel (n 3), 12.

169 See Chapter II, Section 4.3.

170 Text of former Commissioner-General I. Türkmen's address to the donors' meeting, 5–6 June 1991, quoted in Schiff (n 115), 268, fn 103.

171 The mission was headed by one of the authors (LT). Cf. UN doc. A/48/13, 7.

172 Ibid.

173 Goddard (n 10), 501.

174 Ibid., 502.

175 On Palestinian statehood, see Chapter VI, Section 2.3. On 13 December 1993, UNGA res. 48/40 requested UNRWA to contribute to the economic and social stability of the oPt. Between 1993 and 2000 discussions for UNRWA's phasing out started and UNRWA took a number of measures in this respect, including by implementing its Peace Implementation Programme (PIP). While UNRWA's phasing out remains a recurrent theme among those discussing peace initiatives, it is not considered an option by both Palestinian refugees and Arab host countries outside a settlement of the Palestinian refugee question; cf. Al-Husseini, J., Bocco, R., 'The status of the Palestinian refugees in the near East: The right of return and UNRWA in perspective', *Refugee Survey Quarterly* 28.2-3 (2009) 260-85, 269-70.

176 Report of the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East 1 July 2000-30 June 2001, GAOR, 56th sess. suppl. 13 (A/56/13). For a discussion of the establishment of the OSO programme, see Wijewardane (n 132), 74-6.

177 UN doc. A/56/13, para. 13: 'As part of the programme developed by the Agency to deal with the current emergency, the Agency introduced an operational support officers programme that is designed to assist, to the extent possible, in alleviating the adverse effects the restrictions were having on the provision of humanitarian services'; para. 150: 'enhancing the operational effectiveness of the Agency's ongoing programmes and in facilitating access for Agency personnel, vehicles and commodities'.

178 Lilly (n 13), 15.

179 E.g. see UNRWA Annual report 2018, 12: 'In the West Bank, the programme also facilitated access for Agency staff, vehicles and goods through checkpoints and to areas affected by Israeli military or security operations.'

180 For a brief overview mirroring what occurred to the protection of Palestinian civilians in the 1980s and 1990s and subsequent developments on the ground, see Report of the UNSG, Protection of the Palestinian Civilian Population, UN. Doc. A/ES-10/794, 14 August 2018.

181 Contextually, senior officers in UNRWA were cognizant that some protection-related provisions in UNRWA's founding resolution had not been institutionalized, which had not helped consistency.

182 E.g. Karen AbuZayd and Filippo Grandi, both former long-term senior staff members of UNHCR, joined UNRWA in 2000 and 2005 as Commissioner-General and Deputy Commissioner-General, respectively (Filippo Grandi subsequently became Commissioner-General in 2010). Meanwhile, Mark Brailsford, former senior staff of ICRC and other former ICRC delegates, joined UNRWA to take up protection functions as of the late 2000s (Brailsford was the second UNRWA Senior Protection Coordinator 2009-2014).

183 As it emerges from previous chapters Chapter II-Chapter VI, issues in the interpretation, implementation, and content of relevant legal instruments (CSR51, international human rights treaties and regional arrangements such as the Casablanca Protocol) have resulted in inconsistent application of relevant provisions to Palestinian refugees, undermining the international protection they are entitled to, both in countries that are parties to the CSR51 and countries that are not signatories to the CSR51 but parties to relevant human rights treaties. See Chapter II, Section 4.3.3, Section 4.3.4 and see also examples provided in Chapter VI, Section 4.

184 The shift in BADIL's work so as to focus more holistically on protection appears in the evolution of discussions in *Article 74* (BADIL's first magazine) and *Majdal* (which followed).

The authors are indebted to Terry Rempel for the insights provided with respect to this topic.

185 Seminars were held in Ghent (2003), Geneva (2003), Cairo (2004), and Geneva (2004).

186 (n 42) and accompanying text.

187 Ferris (n 41).

188 The Conference was titled 'Meeting the Humanitarian Needs of Palestine Refugees in the Near East: Building partnership in support of UNRWA', and gathered approximately 120 donor and host countries to help reform UNRWA and build partnerships to support it to meet future challenges.

189 See also UN Secretary-General's message to the Conference: 'Meeting the humanitarian needs of the Palestine Refugees in the Near East: building partnerships in support of UNRWA' [delivered by Peter Hansen, Commissioner-General of UNRWA from 1996–2005].

190 See Bocco, R., 'UNRWA and the Palestinian refugees: A history within history', *Refugee Survey Quarterly: UNRWA and the Palestinian Refugees 60 Years Later* 28.2–3 (2010) 229–52, 244; Takkenberg (n 130), 257.

191 UNGA res. 62/104, 17 December 2007, preambular para. 12; UNGA res. 63/93, 5 December 2008, preambular para. 9, 13; see also Bartholomeusz (n 11), 467.

192 See UNRWA, Report of the Commissioner-General of (UNRWA), 1 January–31 December 2005, UN doc. A/61/13, para. 29; also, UNRWA's 2005–2009 Medium Term Plan, 'A better future for Palestine refugees', 1 January 2005.

193 UNGA res. 62/236, 22 December 2007, para. 109; also, Bartholomeusz (n 11), 467.

194 Morris, N., 'What protection means for UNRWA in concept and practice', para. 8.2, Consultant's Report, 31 March 2008 (hereinafter 'Morris Report'), [emphasis added].

195 The content of Morris consultancy is also presented in Morris, N., 'Towards a protection strategy for UNRWA', *Refugee Survey Quarterly* 28.2–3 (2009) 550–60, in particular 550–1.

196 Morris Report (n 194); Ibid.

197 Cf. Al-Husseini (n 105), 329; Al-Husseini and Bocco (n 175), in particular 273, where the authors argue that, especially in the context of the peace process and direct negotiations between Israel and the Palestinians, 'the Jordanian authorities have sought to strengthen [persons of Palestinian origin's] Jordanian identity by trying to co-opt them within the several nation-wide campaigns they have launched since the early 2000s ("Jordan first", "the National Agenda", and "We are all Jordan") in order to unify the various segments of the country's population [...].'

198 In particular, a 'Tool for Incorporating Minimum Standards on Protection into UNRWA Programming and Service Delivery' was launched in 2010, along with a set of protection standards against which progress is measured through annual 'protection audits'. Between 2010 and 2015 UNRWA developed a gender-based violence (GBV) programme; a disability policy and child protection framework. See UNRWA, Protecting Palestine refugees, 2015.

199 UNRWA, 'Outline of Protection Activities', 2015, 5. As highlighted earlier, such definition clearly echoes ICRC and IASC's definitions of protection.

200 UNGA res. 71/93, 6 December 2016, in OP 19, recognized 'the acute protection needs of Palestine refugees across the region, and encourages the Agency's efforts to contribute to a coordinated and sustained response in accordance with international law, including the

Agency's development of its protection framework and function in all field offices, including for child protection'.

201 Report of the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, 1 January–31 December 2015, A/71/13, 32.

202 Lilly (n 13), 16.

203 UNGA res. 71/93, 22 December 2016, para. 19 [emphasis added].

204 Further discussed at Section 3.4. In the latest resolution that renews UNRWA's mandate (until June 2023), such language does not appear. UNGA, *Assistance to Palestine refugees*, para 7, UN doc. A/RES/74/83, of 13 December 2019.

205 Strategic Outcome 1 indicates that 'Refugees' rights under international law are protected and promoted'; see UNRWA Medium Term Strategy (MTS), 2016–2021, 30.

206 UNRWA MTS 2016–2021, 31.

207 Ibid.

208 This argument can also be found in the Morris Report (n 194), 3–5. Morris mentions the accountability challenges that UNRWA faces, as the body that has direct responsibility to both deliver and monitor services. To solve this, he proposes that UNRWA service delivery be monitored against international protection standards (for example, the Convention on the Rights of the Child) and, where relevant, national standards, and this monitoring should be complemented by periodic outside review.

209 Brailsford (n 13), 182, and Suleiman (n 3). Both are referred to in Lilly (n 13), 16.

210 See also UNGA res. 62/104, 17 December 2007, preambular para. 12; UNGA res. 62/104, 17 December 2007, preambular para. 12.

211 UNRWA Gender Policy (2007), UNRWA Disability Policy (2010), and UNRWA Child Protection Framework (2016). These policy instruments, together with guidelines, tools, and standards, are crucial parts of the operationalization and implementation of UNRWA's protection framework; cf. Lilly (n 13), 18.

212 E.g. in Gaza, approximately ninety UNRWA school buildings were used as emergency shelters for almost 300,000 displaced Palestinians during the summer 2014 conflict. See 'Report of the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, 1 January–31 December 2014', UN doc A/70/13, 11. In Syria, in August 2012, 11,417 Palestinians and Syrians were sheltered in twenty-five UNRWA school buildings and supported by the agency. See 'Report of the Commissioner-General of the United Nations Relief and Works Agency for Palestine refugees in the Near East, 1 January–31 December 2012', GAOR, 68th sess., suppl. 13, 2013.

213 Lilly (n 13), 27; see also (n 150) referring to UNRWA report, 'Schools on the front line: The impact of armed conflict and violence on UNRWA schools and education services' (May 2016).

214 'Report of the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, 1 January–31 December 2016', UN doc. A/72/13, 32, cit. in Lilly (n 13), 29.

215 Morris Report (n 194); see also Custer (n 10), 61.

216 Cf. Kagan, M., 'We Live in a Country of UNHCR': The UN Surrogate State and Refugee Policy in the Middle East, The UN Refugee Agency: Policy Development & Evaluation Service Research Paper, 201, 2011.

217 See, e.g. briefing by UNRWA Commissioner-General AbuZayd to the New Zealand Parliamentary Group, 9 October 2007, cit. in Kagan (n 10), 218, fn. 32.

218 See, e.g. the statement by UNRWA Commissioner-General Grandi: ‘UNRWA deplores death of Palestine refugees [in Lebanon, oPt, and Syrian Golan Heights]’, 16 May 2011, opening session of UNRWA Advisory Commission, 18 November 2013; statement by UNRWA Commissioner-General Grandi: ‘More than half of the Palestine refugee camps in Syria “theatres of war”’, 16 June 2013; briefing by UNRWA Commissioner-General Krähenbühl, to the UN Secretary-General, Ban Ki-moon, on the desperate situation of Palestinian refugees trapped in Yarmouk, 6 April 2015; statement by UNRWA Commissioner-General Krähenbühl, on the worsening global situation for Palestine refugees, at 65th Anniversary UN High-Level Conference, New York, 5 June 2015; statement by UNRWA Commissioner-General Krähenbühl, on the Gaza Strip, 22 May 2018; statement by UNRWA Commissioner-General Krähenbühl, on the critical situation for Palestinian refugees at the time of crisis that resulted from the US withdrawal of financial support to the agency, delivered at UNGA’s 4th Committee, 3rd sess., 24th meeting, 24 October 2018, UN doc. GA/SPD/684.

219 A Policy Framework to ensure effective cooperation with the International Human Rights System (IHRS) was adopted in 2011 to help the agency interact with international human rights mechanisms, benefitting from their standards and providing timely and reliable information on Palestinian refugees’ protection issues. UNRWA Outline of Protection Initiatives, 2010.

220 These are protection needs that emerge from the account this study offers in Chapter IV.

221 Brailsford, M., *Operationalizing protection in UNRWA*, Beirut: Issam Fares Institute, American University of Beirut, 2010.

222 They included not only Karen AbuZayd, former long-term senior staff member of UNHCR, but also Filippo Grandi, who joined UNRWA after decades-long service with UNHCR as AbuZayd’s deputy when she became Commissioner-General and then succeeded her. In UNHCR, Volker Türk and Radhouane Nouicer have been instrumental in institutionalizing cooperation between the two agencies.

223 This included denial of application of art. 1D, non-recognition of Palestinian as refugees under the 1951 Convention including because of erroneous application of the cessation of UNRWA’s mandate clause as per art. 1D(2). See Chapter II, Section 4.3.1.

224 Cf. Bitar, M., ‘Unprotected among brothers: Palestinians in the Arab world’, Oxford: Refugee Studies Centre, 2008, 3, and Goddard (n 10), 502.

225 On the engagement of UNHCR with Arab states and the Arab League, see Goddard (n 10), 203-4.

226 See UNHCR-UNRWA, ‘The United Nations and Palestinian refugees’, January 2007.

227 See Chapter II, Section 4.3, (n 287)-(n 291) in particular.

228 See, e.g. UNHCR, ‘Relevant COI on the Situation of Palestinian Refugees in Baghdad’, 30 March 2017; UNHCR, ‘Country of Origin Information on the Situation in the Gaza Strip, Including on Restrictions on Exit and Return’, 23 February 2018; UNHCR, ‘The Situation of Palestinian Refugees in Lebanon’, 23 February 2016.

229 Chapter II, Section 4.

230 UNHCR, ‘Note on the Mandate of the High Commissioner for Refugees and His Office’, 2013, 3, fn 15: ‘The functions of the High Commissioner for Refugees and UNRWA are complementary: the High Commissioner for Refugees has the global refugee mandate, while UNRWA has a specific mandate over a particular category of refugees residing in five areas of operation (Gaza, West Bank, Lebanon, Jordan and Syria). This complementarity is acknowledged in the Statute, para. 7(c) and also in Art. 1D of the 1951 Convention’ [emphasis added].

231 As discussed in Chapter II, the aim of the second paragraph of art. 1D, CSR1951 (inclusion clause) was to ensure that the Palestinian refugees referred to by relevant UNGA resolutions receive assistance and protection from UNHCR whenever the assistance and protection provided by UNRWA (and UNCCP, for as long as it was operational) has ceased for any reasons. This is operationalized, among others, through regular working-level engagements (at both HQ and Field Offices), as well as on policy matters, formulating responses to inquiries from (asylum) authorities and court proceedings. UNHCR has dedicated focal points located at the MENA office in Amman and Department of International Protection in Geneva for liaison with UNRWA and, more generally, on matters concerning Palestinian refugees.

232 E.g. in Egypt, the government prohibits UNHCR to work for Palestinian refugees, hence any action is to be carried out on a case-by-case and humanitarian basis. See Chapter IV, Section 6.

233 The challenges experienced by the Palestinians escaping Syria are discussed in Chapter IV Section 3.4.4. as well as sections on Egypt, Lebanon, and Jordan in particular; and Chapter V (see reception in Europe in particular).

234 Erekat, N., ‘Palestinian refugees and the Syrian uprising: Filling the protection gap during secondary forced displacement’, *International Journal of Refugee Law* 26.4 (2014) 581–621.

235 Nash, A. E., (ed.) *Human rights and the protection of refugees under international law: Proceedings of a conference held in Montreal, November 29–December 2, 1987*, Montreal: Institute for Research on Public Policy, 1988.

236 For an analysis of protection gaps in protracted refugee situations, see Türk and Dowd, R. (n 5). See also UNHCR, ‘Protracted refugee situations’, 10 June 2004, EC/54/SC/CRP.14, para. 21 in particular.

237 Implications from a durable solutions standpoint are discussed in Chapter VIII.

238 The search for a just and durable solution is discussed in Chapter VIII.

239 E.g. UNGA res. 194 of 1948; UNGA res. 2252 of 1967; UNSC res. 237 of 1967.

240 Palestinian embassies and missions may facilitate contact between the Palestinians (including refugees) and host authorities, including for the issuance of travel documents and protection needs in the country (see the case of Palestinian refugees in Egypt, referred to in Chapter IV). However, the findings of the authors’ research suggest that such function cannot be deemed tantamount to effective diplomatic protection, as it is sporadic, not systematic, and depends on a number of contingent factors.

241 See, e.g. the surveys carried out by BADIL from 2002 to 2015, available on BADIL portal.

242 See BADIL, *Survey of Palestinian Refugees and Internally Displaced Persons 2013–2015*, Bethlehem: BADIL Resource Center for Palestinian Residency and Refugee Rights, 2016, 105.

243 As discussed in Chapter II, Section 4.2, UNRWA's mandate with respect to the 1967 displaced is of a different nature and comprehensiveness compared to 1948 refugees.

244 (n 73) The 1948 refugees who for various reasons did not register may number around one million according to BADIL (n 242), 32.

245 Ibid. According to BADIL, they number around one million also.

246 Global Compact for Refugees, para. 58 (discussed in Chapter VIII).

247 BADIL (n 242), 99–104. The survey reports that one-third of the surveyed Palestinian refugees reported to have 'no knowledge of the concept of Protection of Palestinian refugees, while less than seven per cent of the refugees stated that they had complete knowledge'. The majority of them, though, pointed to UNRWA as responsible for their protection.

248 Fluctuations in financial support and the chronic budget deficit has caused it to slash programmes since the mid-1970s. The funding for the agency has consistently gone up, but so has the number of refugees so the funds remain largely inadequate to meet the needs of increasing numbers of refugees. See Hanafi, Hilal, and Takkenberg (n 13), Introduction.

249 E.g. in Gaza, owing to the blockade, almost half of the population is unemployed and eighty per cent rely on assistance. In Syria, the war and related deprivation made the vast majority of the Palestinian refugee population dependent on aid and largely reliant on UNRWA.

250 In 2018, the UNRWA protection function was significantly impacted by the agency's funding crisis as seventy per cent of protection funding was provided by the US. With the protection budget reduced by half, one-third of protection staff were terminated, and the OSO programme – which had been the front-line of field protection functions – was terminated in January 2019; UNRWA, Annual Operational Report, 2018, 11.

251 Ibid.

252 See Introduction and Chapter V.

253 UNHCR Guidelines, para. 8 and fn.17, acknowledge that the term 'Palestine refugees' is not expressly defined by the General Assembly and refers, without elaborating on it, to the earlier attempts at defining who is a Palestine refugees within the scope of para. 11 of UNGA res. 194(III) by the UNCCP, cf. UN docs. W/61/Add.1 and A/AC.25/W/61.

254 (n 73).

255 This issue, including the sensitivities attached to it in the case of Palestinians is discussed earlier, see Chapter III, Section 3.2.2 (origins), and Chapter VI Section 2.3 and Section 4.8 (legal meaning in the context of self-determination and as an individual right).

256 In 1997, UNHCR *The State of the World's Refugees: A Humanitarian Agenda*, 1997, 11, mentions the Palestinians among the '[e]xiled communities and other uprooted populations [who] are particularly vulnerable to statelessness, especially when their displacement is followed or accompanied by a redrawing of territorial boundaries'. It also noted the problems related to undetermined status and citizenship', and devotes two pages to explain the problems related to Palestinian statelessness in the Middle East. It is telling that the Arabic version of the report was 'pulled back', presumably at the request of some Arab countries, over a text box mentioning Palestinian refugees as the largest stateless group in the world.

257 UNHCR, 'Global Action Plan to End Statelessness', 4 November 2014.

258 Reports of the press conference of the launching the ‘I Belong’ campaign to end statelessness, refer to the then-High Commissioner for Refugees, António Guterres, stating that that the campaign did not take the Palestinians into account, since the UN General Assembly has recognized Palestine as a state, adding that this ‘very specific situation’ required a ‘political solution’, AFP reports cit. in Haaretz, ‘UN Campaign to End Statelessness Jilts Palestinians’, 4 November 2014 [online].

259 Azarov and Qafisheh argue that, in the Palestinian refugee case, for historical reasons and because of the legacy of the UN in Palestine, the UN as a whole has an obligation to protect and assist the refugees and ensure their rights are met in accordance with international law. Qafisheh, M., Azarov, V., Article 1D, in Zimmerman, A., Dörschner, J., Machts, F. (eds.), *The 1951 convention relating to the status of Refugees and its 1967 Protocol: A commentary*, Oxford: Oxford University Press, 2011, 537–70, 556

260 There is great scope for UN agencies to provide Palestinians with protection. This thematic approach to protection could enable different UN agencies and/or other bodies to help UNRWA and UNHCR intervene on behalf of Palestinian refugees where protection gaps in specific areas are identified, and could also enable a greater role for NGOs involved in protection. This includes work with UNICEF on child rights, the WHO, the FAO, and IOM, all of whom have mandates in some way to help those displaced and/or to provide disaster assistance.

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Part Three Protection and Solutions, VIII The Quest for Durable Solutions

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(p. 443) VIII The Quest for Durable Solutions

I shall begin by suggesting why the lawyer thinks the law as fundamental while the diplomat may dismiss it as hardly relevant to the politics of nations. [...]

I should like ... to think beyond the substantive rules of law to the function of law, to the nature of its influence, the opportunities it offers, the limitations it imposes-as well as to understand the limits of its influence in a society of sovereign nations' [...]

Law affords a framework, a pattern, a fabric for international society. ... The law that is made or left unmade reflects the political forces effective in the system.

Louis Henkis, *How nations behave*, 1979, 4-5

1. Introductory Remarks

The Palestinian refugee issue has remained unresolved for over seventy years, longer than any other mass displacement since the Second World War. The response of the international community, through General Assembly resolution 194, assumed that there would be an early solution for the refugees. The demise of the UNCCP, from the mid-1960s, made it clear this had been wishful thinking.¹

The Palestinian refugee question is commonly considered insurmountable. While it is not, it does present many challenges. Israel's adamant refusal (and the international community's tacit acceptance thereof) to allow the return of those displaced in 1948 (and 1967) has made other durable solutions for the refugees (local integration in host countries or resettlement elsewhere) unfeasible. For many Palestinian refugees, displacement has become a fact of life, rather than something exceptional. Not only are they not allowed to return to their original homeland (i.e. the territory corresponding to entirety of then-British Mandate territory), but many of them have not been able to integrate fully and enjoy all fundamental human rights in their host countries. This has contributed to making the discourse around the 'historic rights' of the Palestinian refugees (return and compensation),² and the right of return in particular, one of extremes.³ The Middle East peace process (p. 444) (MEPP) that started in the 1990s raised hopes for a resolution to the plight of the refugees but these were dashed.

Since the Oslo Accords, the refugee question has been treated as a 'final status' issue, and thus one whose resolution is dependent on an overall political settlement. The pursuit of solutions for the refugees has since then become linked to the question of Palestinian statehood, which would resolve the question of Palestinian self-determination, but would not of itself resolve all questions pertaining to the refugees' rights. As Israel continues to expand into the oPt, the prospects for an independent Palestinian state appear to be receding. Political factors and the lack of implementation of a principled approach based on international law have resulted in the stalling of the process.

With the US Administration's apparent intent to impose Israel's terms on the Palestinians at the expense of the rights of the refugees,⁴ the prospects of a durable peace remain elusive. If negotiations do resume, the marked asymmetry of power between Israelis and Palestinians will make it difficult to achieve a resolution that addresses the plight of the Palestinian refugees in a just and durable fashion.

Divergent narratives about the origins of the Palestinian refugee question and 'just' ways to solve it, the shifting political approaches to it - from an international responsibility to an issue to be resolved through negotiation between Israel and the Palestinians, the subsequent marginalization of the refugees and their rights, as well as the enduring impact

of the protracted lack of durable solutions on their daily life, have greatly complicated the search for a just and lasting resolution.

International reactions to the 2018 decision of the US, UNRWA's largest donor, to cut aid to the agency, as well as the 'Great March of Return' in Gaza, focused new attention on the refugee issue, and on whether there might be new opportunities to address it.

As in the West Bank and Gaza, Palestinian refugees elsewhere, particularly in some parts of the Arab world, remain mired in a situation characterized by increasing precarity and, for many, continuing denial of their human rights. This is contributing to the ever-expanding global 'map' of Palestinian displacement, evidence that a resolution of the Palestinian refugee question cannot be delayed indefinitely.

In 2016 the General Assembly adopted the New York Declaration on Refugees and Migrants ('NYD'),⁵ which called for the development of a Global Compact on Refugees ('GC'),⁶ adopted in 2018. Solutions for Palestinian refugees can now be considered in the context of this new global approach by the international community to addressing refugee (p. 445) situations. While the NYC and the GC are new and non-binding, they build on international obligations most states have accepted as well as on the experience and lessons learned in dealing with complex refugee situations.

It is the central premise of this chapter that a just and lasting solution of the Palestinian refugee question must take into account not only the political context, but also established principles and rules of international law, particularly those relevant to the Palestinian case.⁷ One without the other will not result in a sustainable resolution, and it is the latter that has not been largely absent to date. Drawing on the analysis in earlier chapters and considering lessons learned from previous attempts at solving the Palestinian refugee question, as well as international practice from other cases of mass displacement, this chapter examines how solutions for Palestinian refugees could be pursued anew.⁸ It starts with a brief overview of how other cases of mass displacement generated by violent conflict have been dealt with (Section 2). Section 3 places earlier attempts at resolving the Palestinian refugee situation in context, discussing critical elements, including the main stumbling blocks and the various stakeholders' attitudes to peace-making. Proposals for a new approach to solutions for Palestinian refugees follow. These advocate a fundamental paradigm shift that hinges on the primacy of international law and a return to multi-lateralism (Section 4). Finally, Section 5 summarizes the chapter's conclusions.

2. Resolving Complex Refugee Situations

One of the most significant insights from the research and knowledge generated by the various 'track two' initiatives that took place in parallel with multiple rounds of official Israeli-Palestinian negotiations, especially the so-called Ottawa process and the Chatham House discussions on the regional aspects of the Palestinian refugee problem, is that the Palestinian refugee question is not intractable.⁹ Comparative experience shows solutions have been found to other highly complex and unique refugee problems. In conflicts marked by large displacement, including on ethnic and/or sectarian ground – such as those in Indochina (1970s), Central America (1980s), the Balkans and the Great Lake Region (1990s) – people, including refugees, were profoundly affected both as individuals and as a collective.¹⁰ Mass displacements that have occurred since the First World War, and those since the 1990s in particular, have led to the development of practical applications of (p. 446) international law in efforts to redress refugee situations. This has been reflected in academic research and related literature. Evidence from mass displacement as a result of large-scale violent conflicts, marked by systemic human rights violations and limited or no accountability, shows that the international response has typically been multi-dimensional, addressing the personal status created through the displacement (refugee status), its material consequences (damage or loss of property and/or loss of income), and the moral, psychological, immaterial loss and damage that may have marked it. This includes

violations that may have affected the community as a whole, having threatened its existence and challenged its collective identity. A range of solutions exists, associated with specific rights and entitlements, to address each of these dimensions. Measures to bring an end to refugee status include voluntary repatriation, local integration, and resettlement; solutions to property-related claims including restitution and compensation; and measures to address wrongdoing that satisfy immaterial or moral aspects including various forms of reparations.¹¹ While only the first set of solutions are generally referred to as 'durable solutions' to refugee situations, this broader set of measures, taken collectively, can contribute to redressing the various 'fractures' accompanying displacement produced by violent conflicts.

2.1 Ending refugee status through 'durable solutions'

One of the prime consequences of mass displacement that needs resolving is the plight of persons who have been displaced internationally.¹² The longer the time that refugees have to wait for a solution, the greater their vulnerability and the more serious the impact on their lives.¹³ Ending refugee status, allowing the individual to rebuild his or her life in safety and dignity, is the ultimate goal of international protection.¹⁴ The international refugee regime distinguishes two main alternatives to end refugee status: voluntarily return to one's country of origin or assimilation in new communities. The latter encompasses either local integration in the country of first refuge or resettlement in a third state (both ideally culminating in naturalization).¹⁵ All three establish (or re-establish in the case of voluntary repatriation) national protection, formally triggering an end to refugee status. However, while (p. 447) the right to return to one's country is internationally recognized, there is no corresponding obligation on states to locally integrate or to resettle refugees.

Voluntary repatriation requires that the conditions that caused the flight no longer exist; as the GC notes, '*[e]liminating root causes* is the most effective way to achieve solutions'.¹⁶ Hence the feasibility of return ultimately depends on political conditions in, and the will of, the country of origin. Similarly, the prospects for local integration or resettlement are conditioned by political factors and the policies of countries of asylum and resettlement.¹⁷ Whatever the solution, refugees must have a free and informed choice in pursuing it.¹⁸ In accordance with its mandate, UNHCR plays a fundamental role in promoting permanent solutions so that the individuals concerned can rebuild their lives, either returning home in 'safety and dignity' or elsewhere.¹⁹ Historically, resettling refugees who were unable or unwilling to return to the country of origin has often been a solution. Tens of thousands were resettled during the interwar period²⁰ and many hundreds of thousands after the Second World War²¹ and following conflicts in Indochina in the 1970s.²² During the same period, large-scale voluntary repatriation programmes were organized in the context of decolonization.²³ Voluntary repatriation was also an option in various post-conflict situations in the 1980s (Central America) and 1990s (the Balkans, Great Lake region, West Africa, South East Asia). Voluntary repatriation in safety and dignity is often seen as the preferred durable solution,²⁴ not only because it means that the causes of flight have been removed, but also (p. 448) because a return to a familiar culture and life, where family and community resources are likely to be in place to aid refugees' socio-economic reintegration, spares refugees the difficulties of adapting to a new country,²⁵ although this may become less significant in cases of protracted displacement, where practical links with the original 'home community' may have broken.²⁶

When return to the country of origin in safety and dignity is not feasible, at least for the foreseeable future, local integration, eventually though naturalization in the country of first asylum, normally a neighbouring country, is the preferred durable solution.²⁷ This happens when the host country, after granting the refugee a safe haven and enabling him/her to become economically self-sufficient (through access to education, employment, public services, property, freedom of movement, identity papers, the right to family reunification), ultimately grants permanent residence or citizenship.²⁸ Local integration in a country that

shares culture, ethnic, and/or religious background, language, physical and economic conditions with the country of origin, as may be the case with neighbouring countries, has obvious advantages.²⁹ In international law, while everyone has the right to leave and return to their own country, there is no obligation on states to integrate³⁰ and naturalize refugees. However, the 1951 Convention provides that 'Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees'.³¹ In spite of the challenges involved with naturalizing large numbers of refugees, UNHCR notes that this can be the most appropriate option for refugees born in the territory of the host country, who have established close links within the host community or who are stateless, or of undetermined nationality, or at risk of becoming stateless.³²

(p. 449) When a refugee can neither return to their country of origin nor safely remain in the country of first asylum, or where there is no prospect of integration into that country, resettlement provides a third possible solution.³³ While significant resettlement has occurred in recent decades, it is generally considered the durable solution of 'last resort'.³⁴ The decision to resettle a refugee is normally taken only when there is no alternative way to guarantee the legal or physical security of the person concerned.³⁵ While the number of countries offering resettlement opportunities has grown significantly,³⁶ the need for resettlement continues to exceed the number of available places. In 2018 resettlement was a solution for only one per cent of the over twenty million refugees under UNHCR's mandate.³⁷ In protracted refugee situations resettlement may be a solution, as well as the catalyst for local integration for other refugees; in some circumstances, a commitment to resettle refugees may be a condition for their admission into a country of (temporary) asylum.³⁸

Under international human rights law, neither local integration nor resettlement forecloses the possibility that refugees return to their country of origin once this becomes possible.³⁹ Those resettled or locally integrated may gain skills and acquire resources that will facilitate their reintegration should they eventually be able and chose to return to the country of origin.⁴⁰

In recent years, facing increasing numbers of displaced persons⁴¹ and the growing complexities of their situations, the international community has recognized the need to deal with large-scale refugee movements in a comprehensive and more predictable manner. The NYD, unanimously adopted by all 193 members of the United Nations (UN), came at a critical moment in time for millions of refugees and the refugee protection system in general. It and the GC represent an unprecedented high-level commitment to solutions and (p. 450) burden sharing. They re-affirm cardinal principles connected to solutions for refugees, including the importance of preventing and resolving conflict and addressing the root causes that give rise to large refugee movements;⁴² respect for international refugee law, international human rights law, and international humanitarian law to ensure refugee protection;⁴³ and a multi-stakeholder approach, involving national and international actors, governmental and non-governmental, in solving refugee situations.⁴⁴ Further, according to the Declaration 'a comprehensive refugee response should be developed ... *for each situation involving large movements of refugees*' along the lines of the Comprehensive Refugee Response Framework (CRRF) annexed to the Declaration.⁴⁵ The CRRF, which is also an integral part of the Declaration, clarifies that this includes protracted refugee situations⁴⁶ and that each response is to be comprehensive, people-centred, context-specific, and in line with international law and best international practice.⁴⁷ The frameworks are to be initiated and developed primarily by UNHCR through the aforementioned multi-stakeholder approach.⁴⁸ Among the durable solutions, the NYD and CRRF list voluntary repatriation, local solutions, and resettlement and complementary

pathways for admission.⁴⁹ The significance of the CRRF approach for Palestinian refugees is discussed in Section 4.

A number of conclusions can be drawn from comparative experience in the search for durable solutions for refugees and recent international developments. First, the different durable solutions are not mutually exclusive.⁵⁰ Rather, they intersect with and complement each other and can be strategically combined, especially in cases of mass displacement and protracted refugee situations.⁵¹ Second, whenever root causes of the underlying conflict are not addressed and programmes do not encourage self-reliance nor meet immediate needs, prospects for effective return, integration, rehabilitation, recovery, and reconciliation are undermined.⁵² Third, while the achievement of a durable solution means that international protection ‘as refugee’ (i.e. the benefits of the 1951 Convention) is no longer required, and results in cessation of refugee status, this does not automatically resolve related issues, such as loss of property or other claims vis-à-vis the country of origin, or a sense of deracination, loss, and injustice caused by the original forced displacement; these will have to be (p. 451) addressed separately. Finally, durable solutions for refugees whose plight is one aspect of a wider problem may be negotiated as part of a comprehensive settlement of that problem, resulting, for example, in a peace agreement that provides solutions tailored to circumstances of various groups. A political settlement of the wider problem is not a precondition for durable solutions for refugees, but without it these are likely to be more difficult to achieve.

2.2 Solutions to material loss and damage

As discussed in Chapter VI, restitution and compensation are firmly established in international law as remedies to redress wrongful acts.⁵³ International law and practice recommend restitution as the first form of reparation for material losses.⁵⁴ Restoring lost property constitutes the prime mode to repair an international wrongful act because it both materially and symbolically seeks to reverse the consequences of the wrongdoing.⁵⁵ Property restitution is also referred to as part of the measures to address the root causes of displacement and allow voluntary return in safety and dignity.⁵⁶ Restitution has both moral and economic value as it gives the sense of a return to the *status quo ante*, even if limited, and it strengthens socio-economic security.⁵⁷ Therefore, programmes that seek to return housing, land, and property to those who were dispossessed through displacement are of great importance.⁵⁸ The link between restoring the right to housing, land, and property, and the maintenance of peace is well established. After a large-scale displacement, restitution may cover both public and private property, both individually and collectively held. Mechanisms for resolving land disputes are an essential element of the process of reconciliation and reintegration as they can contribute to restoring trust of all parties.

Restitution as a consequence of an internationally wrongful act can take various forms. It may entail material restitution as well as the removal of juridical restrictions to the reacquisition of the property by the legitimate owner.⁵⁹ While restitution is the most logical, legally and morally appropriate approach,⁶⁰ returning to the *status quo ante* may not be possible at all times.⁶¹ Restitution is not required when it has become ‘materially impossible’, or, occasionally, when rights have been acquired by third parties (secondary occupancy).⁶² This (p. 452) exception may not apply when the wrongful act has an international nature and when the third party, at the time of entering into the transaction or assuming the disputed rights, may not have acted in good faith and/or may have had knowledge of the possible claim to restitution.⁶³ This is notably the case when property has been taken in the context of conquest or annexation which, being unlawful under international law, must end. In such situations, restitution is an ancillary component of the cessation of the original unlawful situation.⁶⁴

Relevant to this study is that refugees' claims to return to 'ancestral' lands may be sensitive to the passing of time.⁶⁵ After decades in exile, it is argued, the 'centre of life' moves somewhere else, and while it is understandable for the first generation displaced to have enduring attachment to the ancestral land, this is less likely to be part of the life of someone who has never ever visited those places.⁶⁶ The passage of time may bring transformative changes in peoples' life, and a gradual detachment from the ancestral land and communities, as well as the events that provoked the displacement. As Dumper notes, when dispossession and displacement affect and scatter entire peoples, as in the Palestinian case, where over two-thirds of the entire population were displaced, the attachment to the land as 'centre of life' may continue, not as 'some collective memory that may accrue some mythological elements', but through a web of family connections and interactions that, in the absence of a protective state, play an even greater role in the person's life.⁶⁷

Where displacement and dispossession from what constituted ancestral land took place on discriminatory (such as ethnic) grounds and continues over time - as is the case for Palestinians displaced from the whole territory of Mandate Palestine, including both modern-day Israel and post-1967 West Bank, including East Jerusalem and Gaza - the people's attachment to the ancestral land becomes part of a continuing collective struggle (p. 453) for justice and against discrimination on the grounds of nationality and/or ethnicity. When the violations are continuing the effect of the passage of time is tempered (*ex iniuria ius non oritur*).

With the passage of time, other people may have established their life, for generations, on the property of the dispossessed. This makes restitution in kind problematic. Such restitution may not be possible when dealing with large and protracted refugee communities.⁶⁸ Regional jurisprudence, while recognizing the link of the refugees to their property, protects secondary occupants who have established their centre of life in a place that was once home to someone else for generations.⁶⁹ Restoring an injustice cannot be done through another injustice. Related decisions must be taken on a case-by-case basis and also consider alternative - and combination of - forms of restitution (e.g. exchange of property and land for other of similar value).

When restitution is materially impossible, compensation provides an alternative remedy.⁷⁰ In long-lasting disputes, it may be difficult to establish the chain of responsibility, and determine the *quid* and *quantum* of compensation: who should be responsible for compensation (should second or third generations be accountable for past wrongdoings?), and who should be entitled to be compensated (is any member of the 'victimized community' entitled to compensation?)? International experience from peace settlements in recent decades has clarified the applicable legal framework.⁷¹

Since the 1990s, restitution and compensation have generally been considered within the broader frame of 'reparations' as a way to address the material consequences of international wrongdoing, but also including aspects that transcend physical loss and damage.⁷² Determining the contours, scope, and magnitude of reparations has posed challenges in a number of situations. In addition to the difficulties outlined above are questions of how to calculate personal gain and hold the responsible state (the wrongdoer) or its successor accountable, and whether, instead, reparation should be limited to a formal recognition of the wrong, and involve only symbolic compensation.⁷³ Approaches to solving these problems in post-conflict situations have included *ad hoc* mechanisms in the form of tribunals and quasi-judicial bodies.⁷⁴

(p. 454) Relevant to the case of Palestinian refugees is the Conclusion of UNHCR's Executive Committee recognizing that, in principle,

all returning refugees should have the right to have restored to them or be compensated for any housing, land or property of which they were deprived in an illegal, discriminatory or arbitrary manner before or during exile.⁷⁵

The paragraph also stipulates that any fair and effective restitution mechanism should take into account the situation of secondary occupants of refugees' property and that wherever property cannot be restored, returning refugees should be justly and adequately compensated by the country of origin.⁷⁶

2.3 Restoring collective identity and dignity

Mass displacement is often the result of violent conflict and human rights abuses.⁷⁷ The importance of restoring accountability and redressing immaterial aspects connected with displacement, such as the splintering of social fabric, loss of collective identity, and sense of dignity, is increasingly acknowledged.⁷⁸ Since the 1990s, in cases where retributive justice (justice seeking accountability through trials) was either not possible or not sufficient, societies emerging from violent conflicts involving widespread human rights abuses have explored a number of measures commonly known as 'transitional justice'.⁷⁹ Transitional justice is still a somewhat fluid concept, originating from the experience of societies worldwide that have experienced violent, divisive, and often identity-driven conflicts. Aimed at addressing massive or systematic violations of human rights and the harm done to the victims in a conflict, it is also geared towards preventing a recurrence; redress and prevention are two sides of the same coin.⁸⁰ Measures that may be part of transitional justice include prosecutions of 'eminent perpetrators';⁸¹ establishing the facts and correcting the perpetrators' narratives through various forms of truth telling about the suffering inflicted (public (p. 455) hearings or truth commissions);⁸² reparations programmes that provide a mix of symbolic, moral, and material redress to victims, including official apologies;⁸³ memorialization projects that educate the public and also provide a space for mourning;⁸⁴ and reform of abusive institutions, for example, the police and military,⁸⁵ where these had a role in the abuses. Transitional justice practitioners often refer to 'healing the wounds of the past' (or 'dealing with the past') as an essential element for former enemies, or victims of abuses, to move forward.⁸⁶ For example, measures that allow victims to articulate their trauma and speak about the root causes that triggered the displacement have helped individuals, communities, and countries to move on. Victims of violent and identity-driven conflicts have been able to challenge their marginalization by participating as witnesses, claimants, and leaders pushing for accountability.⁸⁷ Reconciliation is not an event, but a process 'about building relationships of trust and cohesion' at individual, inter-personal, and societal level, both communally and internationally.⁸⁸ As Bradley puts it, 'minimal reconciliation' may help individuals and communities experience non-violent coexistence.⁸⁹ In contexts marked by mass displacement, transitional justice measures can advance what Bradley calls the 'accessibility and quality of durable solutions to displacement'.⁹⁰ For example, where there are conflicting narratives, measures that establish and acknowledge the facts may help to advance a solution, by reducing the 'toxicity' of the relationship between the opposing parties.⁹¹

3. The Quest for Solutions for Palestinian Refugees in Perspective

3.1 Attempts at resolving refugee status

In many respects, the problems Palestinian refugees have faced – finding a safe haven and protection, regularizing their status, being able to carry on as normal a life as possible while pursuing durable solutions – have not been different from those faced by the forty (p. 456) million refugees of the Second World War, and the over twenty million refugees around the world today. The Palestinian case, though, presents some unique critical differences. Of

the original group of 750,000 Palestinian refugees who were displaced in 1948, only a small number is still alive. Unlike the Jews who became citizens of Israel after it became a state in 1948, these Palestinians and those who were displaced in 1967, had lost property, land, and their livelihoods and – together with the millions of descendants and other non-refugee Palestinians – have yet to achieve independent statehood.⁹² Critically different is the extent to which solutions acceptable to one party are perceived as existential threats by the other party, and how this has polarized discussions around any durable solutions. Most importantly, the train of events that befell Palestine and the Palestinians as of 1947 has not ceased: Palestinians in the oPt continue to experience displacement and dispossession as a result of Israeli practices, and their impact on Palestinian territory and demography. This section offers a brief overview of the various attempts at resolving Palestinian refugee status.

In the early days of Palestinian exile, great emphasis was placed on voluntary repatriation. No different from what has occurred in other contexts, voluntary repatriation of the Palestinian refugees was proposed not only as the principal solution to the large-scale exodus, but also as part of the transition to peace, rather than simply the result of it.⁹³ This was the gist of the UN Mediator's report, reiterated in General Assembly resolution 194, and also in the early attempts at mediation by the UNCCP.⁹⁴ However, Israel's initial offer to annex Gaza and absorb its 200,000 refugees was soon retracted. The US pressure on Israel to readmit about 400,000 refugees (a figure lowered to 250,000 and then 100,000) was not sustained as a close American-Israeli partnership developed in the context of the Cold War.⁹⁵ Return to historic Palestine (i.e. primarily modern-day Israel) is a cornerstone of history, collective memory, and identity for the Palestinians, as well as a legal right which Israel adamantly contests in theory and practice. Israel claims to bear no legal responsibility for what happened to the Palestinians in 1948 and hence that no right of return to modern-day Israel exists for Palestinian refugees. In practice, it fears that the return of millions of refugees would bring about the demise of Israel as a 'Jewish' state and that a solution for the refugees' plight must therefore be found elsewhere. At the same time, by its actions in the oPt, Israel has created new refugee crises (i.e. in and as of 1967) while also preventing the Palestinians from realizing their right to self-determination and the solutions that the resulting state would allow, including the return of the refugees willing to settle there.

The prospect and reality of a lack of return to Israel (or to a future State of Palestine) has significantly determined the way in which durable solutions for Palestinian refugees have been pursued. No state or coalition of states has effectively pressured or challenged Israel on the refugee issue, either bilaterally or through multi-lateral channels.⁹⁶ While remaining (p. 457) nominally committed to voluntary repatriation of the refugees, the UN (and especially Western member states) progressively embraced the idea that other solutions would resolve the Palestinian refugee plight.⁹⁷ Arab countries have opposed this, as did the Palestinian refugees, who feared that any such solutions would be a slow process of 'liquidation' of the Palestinian refugee issue.⁹⁸ Lebanon is a case in point, where Palestinian refugees are perceived as a threat and local integration is strongly resisted or simply perceived as an unwelcome imposition.

As in other refugee situations, several durable solution options have in theory always been available to Palestinian refugees; while giving priority to voluntary repatriation, General Assembly resolution 194 refers also to resettlement, which in this context includes both local integration as well as relocation in third countries.⁹⁹ As early as December 1949, the non-feasibility of return in any foreseeable future prompted consideration of other solutions. When deciding to establish UNRWA, the General Assembly implied that, without jeopardizing the right to return, Palestinian refugees should be integrated in host countries or resettled in other countries in the region. Like UNCCP, UNRWA was aware that local integration was seen as an important element of the solution to the plight of Palestinian

refugees. The early large- and smaller-scale work programmes of UNRWA aimed to integrate Palestine refugees into the local economies in the region.¹⁰⁰ The Memorandum of Understanding that UNRWA entered into with Jordan in 1951 refers to 'the reintegration of Palestine refugees within the Kingdom of Jordan, at the request of the refugees concerned', and to the cooperation between the Jordanian Ministry of Development and Reconstruction and UNRWA for the 'consideration and implementation of reintegration and other projects'.¹⁰¹ However, resistance from other Arab countries and host authorities, and refugees alike, forced UNRWA to abandon these efforts.

After having effectively been dormant for decades, both politically and diplomatically, discussions around solutions for the refugees came to the fore in the early 1990s, with the start of the MEPP.¹⁰² During the years of the MEPP, there was renewed consideration of return, even though in practice there seemed to be consensus that the future State of Palestine would be the natural home for the refugees.¹⁰³ The halt of the peace process has left Palestinian refugees in a limbo, with prospects for local integration more distant and effective political support for return close to non-existent.

The perceived impossibility of any return of the refugees contributed, paradoxically, to foreclosure of discussions on the possibility that some of them could integrate elsewhere. This was demonstrated by the fact that, even where they were granted citizenship, as in (p. 458) Jordan, thus ending the need for international protection, recognition of 'Palestine refugees' and their historic rights has continued to be prominent in the official discourse.¹⁰⁴ In the other host countries, the vast majority of Palestinian refugees who arrived in 1948 have enjoyed permanent residency rights but not formal local integration (i.e. naturalization). In the early 1950s, Syria was ready to naturalize Palestinian refugees in its territory. As this encountered opposition from the Arab League, a 'solution' comprising social and economic rights on par with de facto local integration was granted to the refugees. Lebanon, in particular, and Egypt as of the 1980s, have persistently resisted any formal local integration of Palestinian refugees.¹⁰⁵ Various 'solutions' falling short of local integration, for example, in the form of residency rights as migrant workers, have been available to Palestinian refugees elsewhere in the region. However, as covered in Chapter IV, many of those who sought protection in later years, especially after the 1967 war ('1967 displaced'), found themselves without a recognized legal status in their host countries, and their situation continues to be precarious.¹⁰⁶ Furthermore, as the responses of a number of Arab countries to political events since the early 1990s illustrate, solutions short of formal local integration have not provided adequate levels of protection. The recurrent displacement of Palestinians across the Arab world is a reflection of this reality.

Resettlement also remains a sensitive subject. As with local integration, any attempts by the UN to pursue large-scale resettlement have been firmly opposed by Arab states and Palestinians alike.¹⁰⁷ However, in the early years of its operations, UNRWA concluded special agreements with host states focused on improving the situation of the refugees and even provided limited assistance for small numbers of Palestine refugees willing to resettle in third countries.¹⁰⁸ For this purpose, UNRWA had a small-scale resettlement programme for Palestinian artisans in Iraq and Libya during its early years of operations.¹⁰⁹ Dumper defines these efforts to promote small-scale resettlement of Palestinian artisans and workers across the MENA region 'an experimental migration policy'.¹¹⁰ While these efforts were (p. 459) soon abandoned, migration of large numbers of Palestinian refugees from host countries, mainly to the Arabian Peninsula and Libya, continued to occur, with the refugees seeking economic opportunities and better living conditions.¹¹¹ Only recently has opposition to resettlement begun to soften, with an increasing acceptance – dictated by exigency perhaps – that the protection of individual Palestinian refugees through resettlement and the Palestinian struggle for self-determination are not mutually exclusive.¹¹² This shift followed the dramatic deterioration of conditions for Palestinians who had migrated from host countries to other parts of the MENA region. Some

resettlement was offered to vulnerable Palestinians fleeing Kuwait in the early 1990s,¹¹³ Iraq as of 2003,¹¹⁴ and in the wake of the Syria war.¹¹⁵ However, this has been situation specific and limited, rather than a precursor of a wider debate around solutions.

This brief overview demonstrates that, while the full range of durable solutions is, in principle, available to Palestinian refugees, pursuit of any of those has been fraught by political opposition and reservations, and in practice none has proven practicable. Only local solutions – such as local integration in Jordan – and some limited resettlement have been available. The pursuit of durable solutions depends on a multiplicity of factors, including the right conditions in, and the support of, the countries of origin and asylum, the exercise of a free and informed choice by the refugees, and the support of the international community, including to ensure respect of the rights of those involved.¹¹⁶ In the Palestinian case, only the second of these conditions can realistically be met for Palestinian refugees, though a fully informed choice will only be possible when the conditions for durable solutions, including return, are known.

After the General Assembly effectively put the UNCCP to rest as of the mid-1960s, the absence of an organization explicitly mandated to promote durable solutions for Palestine refugees has been an unsettling reality. The Security Council has not extended political or (p. 460) practical support for the realization of a durable solution for Palestinian refugees beyond affirmation of the necessity of achieving a ‘just settlement’.¹¹⁷ Nor have successive UN Special Coordinators for the MEPP been able to advance beyond exhortations and calls for negotiations.¹¹⁸ The ‘Quartet’, the most recent multilateral attempt at supporting the MEPP, has not taken any practical steps to advance a durable solution beyond reiterating the need for ‘an agreed, just, fair, and realistic solution to the refugee problem’ in line with UNSC resolution 242, but without reference to UNGA resolution 194.¹¹⁹ In turn, without the necessary political support, the Palestinian leadership has never been in a position to press for either large-scale return of Palestinians to their former towns and villages nor for other solutions.¹²⁰ In fact, the PLO’s readiness to compromise with Israel, subject to realization of self-determination – recognition of the right of return in principle, as well as adoption of some symbolic measures to restore the dignity of the refugees – has in turn compromised its relationship with both host countries and the refugees.

3.2 Attempts at addressing material aspects of Palestinian exile

As previously discussed,¹²¹ compensation for loss and damage, as well as for property not reclaimed, was at the heart of UN efforts to solve the refugee question.¹²² Don Peretz highlights the magnitude of the compensation issue:¹²³

Few are aware of the extent of abandoned property that Israel has acquired as a result of the 1948 war or of the value of that property. According to the Conciliation Commission, basing its estimates on *Village Statistics* of the former mandatory government, over 80 percent of Israel’s total area of some 20,000 square kilometres, represented abandoned Arab lands, although there was a great deal of ambiguity about the status of that land. [...] Of the [370] new Jewish settlements established between 1948 and 1953, [350] were on former Arab property. [...] The Palestinian Arabs left whole cities like Jaffa, Acre, Lydda, Ramleh, Baysan, Majdal; 388 towns and villages and large parts of 94 other cities and towns, containing nearly a quarter of all the buildings in Israel at that time.

By 1954, more than one-third of the Israeli Jewish population was living on former Arab lands, and an additional 250,000 Israeli Jews, including one-third of the new immigrants, (p. 461) lived in abandoned Arab urban property.¹²⁴ In the countryside, where most Palestinians had lived prior to 1948, large tracts of citrus, olive and other cultivable properties were expropriated by Israel and turned over to Jewish agricultural settlements. These agricultural lands, as well as the acquisition of other Palestinian assets, were critical

to the early development of the Israeli economy.¹²⁵ This provides an indication of the extent and importance of property and assets left behind by the refugees.

Restitution of Palestinian property has received little attention in the political discourse, largely because of Israel's refusal to engage on the subject from 1948 to the present day. Nonetheless, it remains an important issue for Palestinians and a thorny one for the prospect of peace with Israel. Most houses and buildings, entire villages, and neighbourhoods, have been destroyed or transformed, while others still stand, and have – under the custodianship of Israeli authorities¹²⁶ – been occupied and used by Jewish owners. The value of it goes beyond the reacquisition of individual possessions: it has a symbolic meaning that touches the heart of the loss of the homeland called Palestine. This is memorably captured by Sami Hadawi in his assessment of Palestinian losses in 1948:

A homeland is too precious to be assigned a monetary value. The principle cannot be emphasized too strongly. Similarly, no financial compensation can make up for the loss of a homeland. Nor is there any compensation for the loss of human life, the dissolution of families, and the separation of loved ones.¹²⁷

As the legitimate struggle of Israel and numerous Jewish organizations on behalf of Jewish victims of Nazi regime and the Holocaust demonstrates, the moral restoration and the sense of historic justice that lays behind property restitution, cannot be easily forfeited.¹²⁸ Since the early days of the existence of the State of Israel, Israelis and Jewish organizations worldwide have pursued large numbers of international restitution claims on behalf of dispossessed victims of the Holocaust. They have affirmed the importance of restoring the link with usurped property, no matter the legal, practical, and political challenges and the passage of time. It took the Jewish community and Israel over fifty years to develop sufficient political momentum to achieve, since the mid-1990s, the restoration of some lost property to pre-Second World War Jewish owners. Similarly important is restitution in the Palestinian case. The lesson of this important precedent is that passage of time and legal and political barriers (including secondary occupants' opposition, nationalization of Jewish property in Eastern Europe during the Soviet regime, and general national aversion to soul-searching and lack of international support during the Cold war),¹²⁹ while all significant constraints, have proved not to be insurmountable obstacles.

(p. 462) Because of their fundamentally anti-thetical approach to the matter, Palestinian negotiators have typically referred to 'reparations',¹³⁰ whereas Israeli negotiators primarily use the term 'compensation', because the latter excludes material return of property to Palestinian refugees and does not entail an explicit acknowledgement of past wrongdoing (which is why this study refers to 'compensation' not 'reparations' in describing their bilateral negotiations).¹³¹ Israel is particularly sensitive to any suggestion that it created the refugee problem and has been demanding an agreement that would prevent any future claims from the Palestinian side (i.e. 'counter-claims').¹³² Palestinians in general, and refugees in particular, have been fearing that compensation would mean relinquishing their right to return and that with it, Israel would effectively be 'buying' their resettlement elsewhere.

While 'the loss for Palestine' cannot be compensated, over time Israeli and Palestinian negotiating teams have both recognized and to some degree accepted that financial compensation would be required for individual and collective property lost by the refugees.¹³³ Significant disagreement remains on whether restitution should form part of it, which is unacceptable for the Israelis; what form compensation should take; what should be compensated; the number of potential claimants; the methods of calculation; whether compensation should be awarded collectively or individually; whether it should also cover counter-claims from Jews who suffered loss and damage at the hand of Arab states post 1948; and whether it should be an open-ended or end-of-claims formula.¹³⁴ The divide is wide, but the Clinton Parameters, the Taba negotiations, and subsequent formal

negotiations (Annapolis and Kerry initiative) and informal discussions (e.g. Chatham House workshops on the regional aspects of the Palestinian refugee issue)¹³⁵ indicate the potential for common ground on a number of issues: the need to establish an international commission to determine and implement an agreed compensation regime; the establishment of an international fund (comprised of Israeli and other contributions); the need to address material and immaterial losses; and the establishment of different compensation pathways (fast-track and claim-based).¹³⁶ Brynen, who has closely followed the related discussions since the start of the MEPP, points to challenges that remain around a number of issues in addition to those already mentioned. These include compensation for ‘refugeehood’ (namely for suffering experienced because of and through protracted exile, which would allow inclusion of the poorer segments of the refugee community), as well as compensation for the State of Palestine and host countries.¹³⁷ Determining how to identify eligibility (p. 463) for compensation (as refugees) remains a sensitive issue. While UNCCP and UNRWA records provide a solid starting point for the losses of the 1948 refugees, many refugees are not registered with UNRWA (including ‘1967 displaced’),¹³⁸ and not all Palestinian refugees had property deeds.¹³⁹ The likely magnitude of the total amount of compensation, based on international standards and practice, is itself a significant challenge. The UNCCP estimated that Arab refugee-owned land within Israel was worth 204.7 million British Palestinian pounds in 1947, which would be worth around USD nine billion in 2019, or just over USD eighty billion if UNCCP upper estimates of moveable property are included and a three per cent annual real rate of return is applied (after inflation).¹⁴⁰ A 2008 assessment indicated that loss of privately owned rural and urban land, holy places, employment and livelihoods, personal property, and moveable assets, as well as businesses and the Arab share of state-owned land, would give rise to compensation owed to Palestinians of USD 3.3 billion in 1948, corresponding to USD 330 billion in 2019.¹⁴¹ Brynen suggests that this figure may be an upper bound of the claims calculations.¹⁴² Israel and the US have expressed willingness to pay for about ten per cent of this amount.¹⁴³ Of fundamental importance is that appropriation of Palestinian land and property is not merely a painful memory of the past. The dispossession, including by means of land confiscation and destruction of property leading to displacement, continues. Palestinians, including refugees, have so far been unsuccessful in attempts to seek compensation through legal avenues in both Israel and other countries for material and bodily harm or damages incurred as a result of activities by Israeli soldiers and/or settlers since 1967,¹⁴⁴ including through the construction of settlements, the Wall,¹⁴⁵ as well as in (p. 464) the context of violence and human rights abuses often committed by the Israeli army and settlers.¹⁴⁶

With respect to the mechanism for compensation, challenges and opportunities from other comparative experience have also been considered.¹⁴⁷ In between the Camp David and Taba negotiations, Israelis and Palestinians informally examined the workings of the United Nations Compensation Commission (UNCC) that had processed compensation claims and paid compensation for losses and damage suffered as a direct result of Iraq’s 1990–1991 invasion and occupation of Kuwait. The UNCC’s examination of 2.7 million claims and payment of more than \$52 billion to approximately 1.5 million claimants represents an important precedent for the Palestinian case.¹⁴⁸ Yet, whatever the mechanism, Israel has indicated willingness to consider only an ‘end-of-claims’ regime, including claims with a clear ceiling for the total amount of compensation payable.¹⁴⁹

Probably in order not to further complicate matters, discussions to date have not addressed other aspects, such as compensation that may be owed to Palestinians for violations suffered in the context of the post-1967 occupation of the Gaza Strip and the West Bank.¹⁵⁰ In 2010 the Israeli Knesset adopted legislation requiring that any future peace negotiations

include compensation for Jews from Arab countries, potentially reintroducing an obstacle that past Israeli-Palestinian discussions had overcome.¹⁵¹

3.3 Attempts to address the question of ‘moral responsibility’

The Palestinians attach great importance to the need to ‘acknowledge the past’, namely, what Palestinians have endured in the process and as a consequence of the creation of the State of Israel, including the circumstances accompanying their original flight but also the reality endured throughout their exile. This is a highly sensitive issue at both political and societal levels, primarily with respect to Israel, and, to a much lesser extent, to other countries where Palestinians have sought refuge. As a result, some scholars have recommended that (p. 465) with regard to Israel the issue be avoided altogether,¹⁵² while others deem it fundamental for both the Palestinians and Israelis to move forward, including in their dealing with each other.¹⁵³ However, not dissimilar to the sectarian, ethnic-religious conflicts in Northern Ireland, Bosnia and Herzegovina, or in conflicts where one party has been systematically oppressed and dehumanized in a significantly asymmetric relationship (Apartheid South Africa), or where abuses had been inflicted against the indigenous population in a colonial, settler-dominated society,¹⁵⁴ opposing narratives about the origin of the abuses, violence, and ‘conflict’ have become part of the ‘Israeli-Palestinian conflict’ itself (what Bell calls ‘meta-conflict’). This needs to be addressed as it affects the sense of dignity as a people of the group most affected by the conflict and as the way the conflict is perceived affects the solutions that are proposed.¹⁵⁵

Negotiations as part of the MEPP, especially in Taba, offered a glimpse of hope that Israeli and Palestinian positions on the refugee question can be reconciled, and admission of responsibility is possible with language that accommodates both Israeli and Palestinian requirements. What is needed is willingness to move towards peace, and the courage to make difficult choices. Unfortunately, after the opening at the Taba talks, successive Israeli governments have refrained from acknowledging any measures of responsibility out of fear of opening the way to claims from refugees and Arab states, while the PLO, given the asymmetry of power vis-à-vis Israel, could do little to advance discussions. Changes in US policy on the refugee issue have enabled Israel to take a harder line.¹⁵⁶

As already noted, the events at issue are not confined to those in 1948 and its immediate aftermath. Palestinians in the Gaza Strip and the West Bank have continued to experience displacement from the oPt (most notably in 1967) and have endured decades of systemic violence and discriminatory policies and practices at the hand of Israel. This creates a double difficulty. The contribution of acknowledging the past to the delivery of justice is put (p. 466) into question when the wrongs being acknowledged continue, and an official acknowledgement itself is unlikely to be forthcoming under such circumstances.¹⁵⁷

3.4 The refugee question through the eyes of the peacemakers

With differing political characterizations and nuances, the discourse on solutions in the context of the MEPP has largely remained polarized between ‘full return and no return’, with the question of solutions becoming increasingly instrumental (i.e. used as ‘bargaining chip’) rather than central in the search for peace in the Middle East and justice for the refugees.

Achieving a solution for the refugees was recognized as an international and a UN responsibility in the late 1940s. Achieving a two-state solution was seen as the way to realize both Palestinian-Arab and Israeli-Jewish self-determination.¹⁵⁸ With the beginning of the peace process in 1991, solutions for the refugees gradually became treated as a regional and finally as a bilateral matter between Israelis and the Palestinians.¹⁵⁹ None of the peace initiatives that began with the Madrid Conference in 1991 was framed around the refugees and their rights. The Oslo Accords gave priority to self-determination and the realization of an independent Palestinian state in the West Bank and Gaza Strip. Further

peace negotiations between Israel and the Palestinians focused on how to compensate the refugees and normalize the life of those who would stay in neighbouring countries. Twenty-five years after the signing of the Oslo accords, the reality in the oPt leaves little hope for the realization of an independent Palestinian state or of progress towards a just and lasting solution for the refugees. The positions of the various stakeholders have largely determined how the issue of the Palestinian refugees has been framed and approached. They are examined next.

3.4.1 Palestinians, including the refugees

The Palestinians do not present a united front, especially when it comes to peace negotiations and the refugee issue. The fragmentation caused by their exile has resulted in a progressive divergence of interests, visions and aspirations.¹⁶⁰ Nonetheless, the question of the lost homeland – and the connected search for justice – is an element connecting Palestinians across generations and continents, regardless the level of socio-economic integration they may have achieved.¹⁶¹

The official Palestinian political discourse (that of the PLO first, and the PA after 1995) on the refugee issue has changed over time. From being an essential part of the 'liberation of (p. 467) all of Palestine' in the 1960s and early 1970s,¹⁶² thereafter it gradually became a separate quest alongside the claim for self-determination within the 1967 borders.¹⁶³ Acceptance of the two-state solution was a monumental compromise for the PLO, which agreed to forfeit the struggle for the totality of the historic homeland (and even the forty-five per cent of the Mandate territory that the Partition Plan would have accorded to a future Palestinian state), in exchange for territories amounting to twenty-two per cent of historic Palestine, the amount within the pre-June 1967 borders.¹⁶⁴ While the PLO's official position has been that a two-state solution does not foreclose the refugees' right of return, it effectively meant that return would materialize primarily in the State of Palestine.¹⁶⁵ As summed up by Dr. Hanan Ashrawi, a PLO Executive Committee member, the Palestinian leadership requires Israel to: acknowledge the moral responsibility for what occurred to the Palestinians in 1948 (moral aspect); accept to resolve the refugee question according to international law taking into account the rights of all parties, the different options available and the fundamental right of Palestinian refugees to chose (legal aspect); and allow the Palestinians to enjoy their right to self-determination in a Palestinian state within the pre-1967 borders (political aspect).¹⁶⁶

In recent years, the growth of Hamas and its electoral victory in 2006, and the subsequent divide – Hamas ruling Gaza and Fatah the West Bank – have further undermined Palestinian negotiations with Israel.¹⁶⁷ Hamas' lack of compliance (despite several efforts) with the principles for international engagement set by the Quartet, has led it to be seen as one of the stumbling blocks preventing Israel from engaging with the Palestinians.¹⁶⁸ This is in spite of the Islamic party's recently manifested openness to negotiate and compromise in order to improve the status and living conditions of the Palestinians.¹⁶⁹

Refugees, on the other hand, may not always align with the official PLO position. They do not represent a 'monolith' and many difference exist across the diaspora:¹⁷⁰ alongside with the view that full repatriation is sacrosanct and feasible and should be pursued on legal and moral grounds for all refugees,¹⁷¹ others have argued in favour of compromise based on pragmatism.¹⁷² However, faced with the persistent denial of their rights and lack (p. 468) of acknowledgement of the origins of their plight, they generally attach great importance to their right to return as a way to undo the injustices that have befallen them since 1948. As initial optimism generated by the Madrid Conference faded, refugees have increasingly considered and resented the Oslo Accords as a 'trap'. Those who may have accepted sacrificing their right of return to modern-day Israel in exchange for their own state, progressively realized the extent of the challenges and obstacles in the way of realization of that state. From the early 2000s onwards, a legitimacy crisis with respect to the PLO/PA

leadership also developed as a result of refugees' perception of being marginalized within the 'Palestinian cause' for statehood.¹⁷³ This may also have reflected resentment of the perceived shift of international focus from the PLO, as the advocate of the entire Palestinian people (including, and primarily, the diaspora), to the Palestinian Authority, the PLO's self-rule authority in the oPt, which has been increasingly perceived as focused on self-determination (and its power and functions) in the oPt, at the expense of the aspirations of the refugees.¹⁷⁴

One of the central concerns for Palestinian refugees has been to be effectively represented in peace negotiations, through a fair and legitimate process that would consult them about final settlement agreements.¹⁷⁵ Mahmoud Abbas, the President of both the PLO and the PA and a refugee himself, has repeatedly promised that settlement options for refugees would be put to a vote.¹⁷⁶ While many of the Palestinian negotiators are refugees, this has not reassured refugee communities around the world that their views are being taken into consideration, or even sought.¹⁷⁷

Over time, a 'refugee movement', comprised of a number of civil society groups and organizations representing Palestinian refugees, has emerged in response to concerns about the peace process and its limited engagement with refugees. Organizations such as Bethlehem-based BADIL,¹⁷⁸ *Aidoun* in Lebanon and Syria,¹⁷⁹ and other groups participating in *Al Awda*, the Palestine Right to Return Coalition, have been calling for refugees' participation in the quest for durable solutions after decades of exclusion. Meanwhile, a number of attempts have also been made to survey Palestinian refugees and establish their views on durable solutions. These include surveys by the Civitas Project (2004–2006) implemented by Nuffield College at the University of Oxford;¹⁸⁰ BADIL; the Palestine Land Society; and the Palestinian Center for Policy and Survey Research.¹⁸¹ In the absence of any official survey of Palestinian refugees' attitudes, these initiatives provide the best available – if incomplete – indications of the views of the refugees.

(p. 469) Pending a comprehensive survey of their views and preferences, the views that can be derived from reports and studies on the matter can be summarized as follows: their longing for implementation of General Assembly resolution 194 cannot be overstated, as it reflects the persistent demand for justice and recognition (i.e. acceptance) of the inalienable rights of the Palestinians by Israel. Meanwhile improvement of general living conditions and implementation of other fundamental rights is a more recurrent claim.¹⁸²

3.4.2 Israel

In contrast to the Palestinians, the position that Israel presented during the UNCCP conferences a few years after the state's founding has remained largely unchanged. Israel has maintained that it is not morally, legally, or politically responsible for the creation of the refugee issue;¹⁸³ that there will be no restitution of property;¹⁸⁴ that compensation may be included in a future comprehensive peace settlement in the form of a collective fund that would be used for resettlement of the refugees;¹⁸⁵ and that it would never accept an unqualified right of return of Palestinian refugees. In Orit Gal's words, the refugee issue threatens Israel's 'historical narrative, collective identity and founding myths'.¹⁸⁶

Until the turn of the century, Israeli public opinion on the Palestine question was more or less equally divided between the left and the right. The political left generally embraced the idea of Palestinian statehood while the political right remained focused on achieving a 'Greater Israel', comprising the land from the River Jordan to the Mediterranean Sea. The MEPP, which brought the question of Palestinian sovereignty centre stage in Israeli politics, is often interpreted as Israel (left)'s embracement of the idea of a two-state solution.¹⁸⁷ In fact, as Weinberger argues, rather than recognizing Palestinian sovereign rights, the Oslo

Accords served to create an administrative situation that would consolidate Israel's post-1967 presence in the West Bank and Gaza strip.¹⁸⁸

The question of refugees has largely been seen either a 'non-issue' or as one that would somehow solve itself at a later stage of the negotiations.¹⁸⁹ Oslo reflected this position. The various attempts to address the refugee issue, from the Beilin-Abu Mazen Understandings (1995) to the Camp David negotiations (2000), treated it more as a question of form than of substance.¹⁹⁰

The evolving Palestinian discourse on nationality and identity, as well as the importance to Palestinians of an acknowledgment of the past and a redressing of the injustices that they have suffered at and since the creation of the state of Israel, have not registered with the Israeli public. Hence the 'shock' that the peace negotiations at Camp David failed. Much influenced by the way the media presented this failure, Israeli public opinion largely attributed (p. 470) it to the refugee issue and Palestinian insistence on the right to return.¹⁹¹ The public saw this as evidence that the Palestinians were not really interested in peace or Palestinian statehood, as in their view this demand was unrealistic and undermined both Israel's right to exist as a Jewish state and the rationale of a two-state solution.¹⁹² Hence, an issue previously perceived as marginal to the peace process found itself at the centre of Israeli anxiety. The Taba talks reflected this, with a more determined approach to resolving the refugee issue, which was seen as the 'last hurdle to peace'. As a result, while still far apart, at Taba the parties were closer than ever before to reaching agreement on a shared narrative and mechanisms for compensation.¹⁹³

The rise of the right in Israel has changed the situation profoundly. With the increased divide between the peoples in Israel and the oPt in the aftermath of the second *intifada*, the subsequent encroachment of the occupation and settlement expansion on land due to become the Palestinian state, the growing influence of Israeli right wing parties with an increasingly settler-dominated political agenda, and increased support for a consolidation of sovereignty over the West Bank, the prospects for a solution of the refugee issue in a bilateral context have never been bleaker.¹⁹⁴

3.4.3 Arab States

The Arab states have been significantly involved in the Palestinian refugee crisis since its inception. After unsuccessfully attempting to 'protect' Palestine since 1945, and the Palestinians in 1948, they became vocal advocates for the Palestinian cause within the UN.¹⁹⁵ Apart from the solidarity towards the Palestinians, their action was also motivated by strong sentiments against Israel.¹⁹⁶ This is evidenced by the comprehensive economic (and diplomatic) boycott of Israel and non-Israeli companies engaged in trade with Israel, launched by the Arab League in the late 1940s.¹⁹⁷

Separately and collectively, the Arab states have considered Palestinian refugees as constituting an 'international responsibility', and their right to return a 'collective right', deserving to be comprehensively resolved by the UN. While vocally upholding return of the refugees as the only acceptable durable solution, Arab countries appear to have been aware of, and open about - in bilateral discussions if not in public - the very limited feasibility of the return of millions of refugees to homes and villages that no longer exist.¹⁹⁸ As a consequence, during the first decades of Palestinian exile, they appear to have accepted integration of (p. 471) Palestinian refugees, occasionally *de jure* (Jordan, including in the West Bank) or simply *de facto* (Syria, Iraq) ensuring enjoyment of social and economic rights on a par with nationals.¹⁹⁹ This includes countries where refugees had moved as labour migrants (Gulf countries and North Africa).

Over time, while maintaining general sympathy for the Palestinian cause and support for their struggle, Arab countries' support for the refugees has waned. The political role played by the PLO, through its armed resistance, progressively raised security concerns in a number of host countries, where it represented a threat to the state apparatus (Jordan), or moved dangerously outside the reach of the state (Lebanon). The PLO's increasingly progressive agenda did not find favour with Gulf rulers. Further, its increasingly statehood-focused agenda and particularly the bilateral negotiations between Israel and the Palestinians as of the 1990s, progressively resulted in a loss of Arab support.²⁰⁰

Arab states felt that in the pursuit of statehood, the Palestinian refugee question had been gradually marginalized on the PLO's agenda, with it being taken for granted that the refugee question would have to be solved through local integration.²⁰¹ Host countries felt they would thus bear the cost of the peace process between Israel and the Palestinians without having any opportunity to influence it.²⁰² As a consequence, Arab states' policies towards the refugees hardened. Various forms of discrimination against the Palestinian refugees were introduced and there were no longer the prospects for integration that there had been in the first decades of their exile.²⁰³ This also exacerbated concerns over the question of 'Palestinian identity' in Arab countries. In Jordan, for example, where Jordanians of Palestinian origin are about half of the total population,²⁰⁴ their intertwined identity has been perceived as a possible conflict of interests between the Palestinians (and/or the future State of Palestine) and Jordan.²⁰⁵ As a result, even if they enjoy citizenship, Jordanians of Palestinian descent may not feel fully 'absorbed' into the society.²⁰⁶ Israel's insistence that Jordan is the 'natural state' of the Palestinians has routinely heightened tensions in Jordan.²⁰⁷

In recent years, not only has the Arab boycott effectively lapsed, but Arab countries' relations with Israel have progressively flourished.²⁰⁸ The peace treaty between Egypt and Israel (p. 472) in 1978, followed by the Oslo Accords (1993–1995) and the peace treaty between Jordan and Israel (1994) all contributed to a gradual thaw in relations.²⁰⁹ In recent years Gulf countries, Saudi Arabia and the UAE in particular, have established 'extensive – albeit discreet – dealings' with Israel.²¹⁰ So far the 'softening' of Arab positions vis-à-vis Israel has not had a positive impact for the Palestinians including the refugees.²¹¹ No influence appears to have been exerted, either with Israel (for return) or with host and third countries (for other solutions). The Arab League and traditional host countries may have significant influence on the way the refugee question is treated, but the extent to which they are prepared to use this in the refugees' favour is unclear.²¹²

3.4.4 'Western' countries

Western countries have not had and do not have a common position on the question of Palestine. There are, however, some general trends, and there have been common positions at significant junctures, and these are the focus of this section.

European countries and the United States have a history of deep involvement in the question of Palestine. It was under the British Mandate that the question first arose, and under a largely Western European-US dominated international system that the problem has become intractable. Western European and American political resolve helped create the system intended to find solutions for the plight of Palestinian refugees, from the UN Mediator to the UNCCP and UNRWA. Of the fifty-eight UN members states in 1948, thirty-five voted in favour of UNGA resolution 194 establishing the UNCCP and affirming the right of the refugees to return and compensation (including all Western states in the Assembly²¹³), fifteen voted against,²¹⁴ and eight abstained. Subsequent to the adoption of the resolution, the US was named as chair and France and Turkey as the other members of the UNCCP. UNGA resolution 302, creating UNRWA, was adopted on 8 December 1949, by forty-seven votes to none. All of the Arab governments and Israel voted in support of the resolution; South Africa and five former communist states close to the then-USSR

abstained. UNRWA's Directors (subsequently called Commissioners-General)²¹⁵ and their deputies have been either American or European throughout the Agency's existence.²¹⁶

Until it abruptly stopped most of its funding of UNRWA in the course of 2018, the United States had been the agency's largest donor, with contributions ranging from approximately half of UNRWA's budget in the early decades to roughly one-third in later years, with other western states making up most of the remainder. Despite historical sympathy for the Palestinian refugees and significant financial support to the Palestinian refugees primarily, but not uniquely, through UNCCP and UNRWA, political considerations and proximity to Israel have been the major influence on the United States' approach to the Palestinian (p. 473) refugee question. This was already apparent at the time of the UNCCP.²¹⁷ From the outset of the Cold War onwards, the political, economic, and military partnership between Israel and the United States grew ever stronger.²¹⁸ Unquestioning support for Israel has generally been expected of candidates for political office from both main parties in the US, though there are signs that this may no longer be the case among the general public, and in particular among the young. While past administrations declared their approach to be even handed, this is not the case for the current US [President D. Trump's] Administration.²¹⁹

The European approach to the Israeli-Palestinian conflict is more complex because of its history and the relationships that each country has with the two peoples.²²⁰ Despite the region's proximity, until the MEPP started, the European Community was not perceived as an influential actor in the region.²²¹ As Dumper argues, European involvement in political and economic issues of the region was determined by rational self-interest and access to markets, resources and political influence.²²²

Compared to the United States, Europe has generally been more critical of Israel, calling for respect of international humanitarian law, including withdrawal of Israel military forces and a freeze of any settlement activities. In practice, like the United States, its engagement has largely focused on the MEPP and the realization of a two-state solution.²²³ While the North Americans have played a key role in numerous peace initiatives from Camp David I in the 1970s onwards, significant European engagement only began with and in the aftermath of the Madrid Conference.²²⁴ Canada (as the 'gavel-holder'), the European Union, the United States, and Japan took part in the multilateral Refugee Working Group set up by the Madrid Conference (1991–1995). Since then, the European Union, as well as individual European countries, have been active in peace initiatives, including Oslo and the (p. 474) Road Map. Through the decade of the MEPP (1991–2000), and through almost two decades of stalemate thereafter, western countries (including Australia and Canada) have remained staunch supporters of a two-state solution as key to resolving the Israeli-Palestinian dispute.²²⁵ The World Bank estimates that donors, the great majority Western, spent over USD thirty-seven billion in aid and assistance in the Gaza Strip and the West Bank from 1993 to 2017.²²⁶ Despite its volume, this aid, has had only a limited impact on improvements of the overall living conditions of the Palestinians in the oPt and on progress towards the establishment of a viable Palestinian state.²²⁷ In many respects, the Palestinian refugee question (and to some extent the broader Palestinian question) has become a humanitarian issue to be managed, rather than an injustice to be remedied by means of a political solution. The political establishments of most Western countries remain reluctant to confront Israeli policies, although opposition to these policies from civil society is increasing.

4. Towards Just and Durable Solutions for Palestinian Refugees

The achievement of just and durable solutions for Palestinian refugees faces multiple challenges. Prominent among these are: the assumption of its intimate intractability; the perception that any progress on the refugee issue is impossible without an overall settlement of the broader Israeli-Palestinian conflict, of which the issue of refugees remains one of the 'final status issues'); and the position of key stakeholders. Like other studies at

the time, the first edition of the book explored options to resolve the Palestinian refugee question within the context of the MEPP and the expected establishment of a Palestinian state side by side with Israel – a prospect that appears increasingly unrealistic today.

Even if meaningful negotiations were to resume, the asymmetry of power between Israelis and Palestinians, unless counter-balanced by international actors, would make it difficult to achieve a just resolution. Meanwhile, as amply covered in this book, Palestinian refugees remain mired in a situation characterized by increasing precarity and underlying discrimination, one in which they are often denied the enjoyment of their human rights.²²⁸ Yet, as Michael Dumper writes, ‘protracted as it has been, the current situation of Palestinian refugees cannot continue indefinitely’.²²⁹

The decades-long impasse and the prospect that it will likely continue, call for a fundamental paradigm shift in the approach to solutions for Palestinian refugees. First, the discourse on solutions must move beyond the constraints of politics, and focus on the rights of Palestinian refugees that remain unfulfilled.²³⁰ This includes aligning the quest for solutions more closely with international law, including refugee law and practice, and incorporating new insights with respect to approaches to durable solutions for refugees globally.²³¹

(p. 475) Second, the search for solutions must be moved from the essentially bilateral discourse to which it has been relegated by the Oslo Accords onwards, back to the multi-lateral arena of the UN. This is a necessary condition for reducing the power imbalance between Israelis and Palestinians. This will in turn need to be accompanied by a third important shift, away from what Nell Gabiam calls the ‘politics of suffering’, that is, the Palestinian and broader Arab political discourse, and associated popular belief around, and among many, refugees, that living in substandard conditions in refugee camps, without enjoying fundamental rights and dignified living conditions, is necessary to maintain their right to return.²³² The analysis in earlier chapters has shown that the historic rights of Palestinian refugees are firmly grounded in international law, and are not dependent on the choice of one durable solution over the other.²³³ Nor have these rights been advanced by decades of suffering.

The remainder of this section briefly discusses the different elements of this paradigm shift, and the form it could take. Overcoming the politics of suffering in the way Palestinian refugee issues are approached is central to the discussion of the other two main elements of the paradigm shift, underpinning an approach based on international law and on multilateralism. These reflections are offered realizing full well that the current state of affairs holds little prospect for an early resolution of the Palestinian refugee question. However, the adoption of the approach advocated here does not need to await a more positive outlook. Rather it provides a new framework that centres on the refugees instead of marginalizing them. While such a framework would not replace the current political discourse, it would reframe it around legal principles and around the solutions that may already be possible. Doing so may even help break the political impasse.

4.1 Centring solutions around international law

Reference is often made to the ‘state of exception’ of the Palestinian refugee question vis-à-vis international law.²³⁴ The direct negotiations between Israelis and Palestinians have so far failed to reframe and reorient the relationship between them in line with international law. This was probably to avoid, as Weiner argues, ‘complicating an already formidable task and interrupting the momentum of the peace process.’²³⁵ This failure has undermined the prospects for a genuine commitment to a principled approach to the resolution of the conflict.²³⁶ This does not imply that the approach taken by the UN is not in line with

international law, but rather that the conduct of some of its members has not properly reflected its provisions. As Dajani convincingly argues, in conflict situations

[International law] can operate to *shape negotiating parties' bargaining zone*, both disallowing certain outcomes and defining defaults that help each side to identify its own (p. 476) reservation point and assess the credibility of its adversary's. It can serve to *fill in gaps in an agreement*, obviating the need to negotiate, in detail, every aspect of the parties' future relations. As an expression of best practices or by virtue of its objectiveness, it can *provide a standard with which to evaluate the efficacy or fairness of a particular proposal*. And it can *provide legitimacy*, a means of validating proposals (and negotiated outcomes) in the eyes of domestic constituencies and other international actors whose support is critical to the success of an agreement.²³⁷

Sidestepping international law risks jeopardizing peace processes, for example, by disregarding the human rights norms that safeguard the interests of the victimized groups.²³⁸ The Israeli-Palestinian peace process, with its minimal and vague reference to underpinning legal parameters, has become a case in point.²³⁹ During the Oslo Accords the parties could have used mandatory rules of international law to determine their 'bargaining zone' and 'narrow the range of negotiated outcomes' they could reach.²⁴⁰ However they did not do so, either because of strategic thinking (among Israeli negotiators) or lack thereof (Palestinian negotiators).²⁴¹ Even during the Taba talks, when Palestinians demanded Israel's acknowledgment of Palestinians' rights, this was mainly to 'bargain in the shadow of the law'.^{242,243}

The subordination of international law to political and security considerations in the case of Palestinian refugees, extends beyond Israel. In a number of countries, particularly in the Arab world after the 1990s, Palestinian refugees not only have experienced discrimination, but they have also been prevented from asserting their rights, including to pursue solutions other than return. This book has described a number of situations where states may not be in compliance with their obligations to respect, fulfill, and protect the rights of Palestinians residing in territory under their jurisdiction, both under international human rights law and regional commitments (e.g. Casablanca Protocol).²⁴⁴ This has progressively constrained these refugees' opportunities for self-reliance and development. As a result, Palestinian refugees have often been marginalized within host societies, in the process stifling the development of a polity able to influence its political destiny. The consequence is a perpetuation of the cycle of suffering for many Palestinian refugees. Comparative experience demonstrates that refugees who have their rights secured are better able to participate in advocacy, political processes, and the search for solutions. The Palestinian case is no exception.

(p. 477) There is no stronger authority than international law to suggest a way out of the current impasse. The application of legal principles cannot in itself settle the conflict. Yet it is critical in restoring both individual and collective rights, and to achieving solutions that are 'just' and durable.²⁴⁵ A key imperative with respect to the UN's pursuit of a settlement of the Palestinian refugee question is that any solution must be both '*just and durable*'.²⁴⁶ Aligning the Palestinian refugee question with international law will place Palestinian refugees within the international framework for solutions for refugees, both in terms of ending their refugee status and addressing the underlying historical injustice. As discussed in Chapter II, Article 1D of the 1951 Convention envisages that the position of Palestinian refugees must be 'definitively settled in accordance with the relevant resolutions adopted by the General Assembly'.²⁴⁷ Until this happens, the 1951 Convention provides for the international protection of those who need it. Nothing therein prevents the pursuit of solutions when these are possible for some refugees but not for all. Like all other refugees, Palestinians are entitled to durable solutions under international law.²⁴⁸ However, since the

UNCCP halted its negotiations in the early 1950s, no international organization has taken the lead in negotiating solutions for Palestinian refugees. UNRWA's mandate to date has been interpreted as excluding the pursuit of durable solutions, beyond highlighting the need for this. This makes UNRWA apart from UNHCR whose mandate explicitly includes also the pursuit of durable solutions for refugees.

The reference to 'just'²⁴⁹ in the consideration of solutions for Palestinian refugees is an addition to the durable solutions terminology normally used in other refugee situations.²⁵⁰ It covers the acknowledged residual element – i.e. the historic claims associated with the circumstances of the original displacement – that would remain after resolving the status of the refugees through any of the three durable solutions. This underlying injustice would still need to be addressed even when the need for international protection ceases,²⁵¹ for example after naturalization. The determination as to what is 'just' should be made on objective and predictable grounds, in conformity with relevant principles and rules of international law and applicable UN resolutions. This requires addressing (1) the origins of the Palestinian refugees' plight and nature of their losses, (2) the effects of the unresolved territorial conflict, including the prolonged occupation, and (3) the continuous lack of fulfilment of the historic rights of the refugees as stemming from relevant UN resolutions. This is in line with the NYD's affirmation that each refugee response will demonstrate full respect for (p. 478) 'international law and international human rights law and, where applicable, international refugee law and international humanitarian law.'²⁵²

4.2 The Palestinian refugee issue as a 'UN responsibility': Reviving multi-lateralism through a comprehensive framework for Palestinian refugees

The failure of bilateral negotiations to resolve the conflict in the past quarter century strengthens the case for the UN – the guarantor of peace, security and respect for human rights – to reassume the political and diplomatic role with respect to the Palestinian refugees as it does for other refugees. This would imply to take the lead in developing a long-term strategy towards a comprehensive response to their question. Chapter VII has already discussed the need for a comprehensive strategy – led by UNRWA and UNHCR – to ensure protection of Palestinian refugees' rights wherever they are. Strengthening Palestinian refugees' international protection is necessary for immediate improvement of their rights. Yet, by itself it is not sufficient to advance their right to just and durable solutions.

The adoption of the NYD, a high-level commitment at a critical moment for asylum and burden-sharing,²⁵³ calls for the type of comprehensive response that allows the achievement of durable solutions for large refugee crisis. These developments are of great relevance for Palestinian refugees.

While it is recognized that both the NYD, and the GC that followed it, are new instruments, untried and non-binding, they nevertheless command a global consensus and give UNHCR, and to a less explicit degree, UNRWA, directions to pursue in the context of UN engagement on solutions.²⁵⁴ As such the NYD provides directions for a new approach to the Palestinian refugee question.

The development of a comprehensive response framework for Palestinian refugees (hereinafter CRF-PR) would initiate a fresh exploration of solutions, including measures to support 'mobilization of political will, a broadened base of support, and arrangements that facilitate more equitable, sustained and predictable contributions – burden sharing – among States and other relevant stakeholders'.²⁵⁵ This should help the various stakeholders – and the host countries in particular – to see their concerns within a wider and less polarized

context. As Dumper notes, a ‘multi-polar environment’ may strengthen Palestinian refugees’ ability to advance their cause despite the asymmetry in negotiating power.²⁵⁶

The NYD provides that:

[t]he comprehensive refugee response framework will be developed and initiated by the [UNHCR], in close coordination with relevant States, including host countries, and involving other relevant [UN] entities, for each situation involving large movements of refugees.²⁵⁷

(p. 479) Operationally, given the respective responsibilities of UNRWA and UNHCR for Palestinian refugees under their complementary mandates, including their specific responsibilities under the NYD, both agencies should agree a common strategy for creating a single CRF-PR. Then each agency should develop and implement the part of it that covers the Palestinian refugees for which it is responsible. A special coordinator, appointed jointly by both agencies, could ensure the integration of the two parts of the CRF-PR, coordinate their actions, and support implementation. Cooperation between UNRWA and UNHCR has strengthened in recent years and the added value of this partnership would be significant. UNRWA is indispensable to coordinate actions with refugees, Palestinian and host authorities, while UNHCR’s experience in helping seek durable solutions, as well as developing both the GC and other CRRFs will provide much needed guidance. The establishment of the CRF-PR would also address the criticism that the lack of durable solutions for Palestinian refugees can be explained by the lack of an *ad hoc* body mandated to undertake related responsibilities.²⁵⁸

A multi-stakeholder approach, to use the language of the NYD, would mobilize all the relevant actors, including the PLO/PA and the Palestinian diaspora, civil society and grassroots organizations, representatives of the host countries and communities and major donors, other UN agencies, and non-governmental organizations.²⁵⁹ It would also be important to involve Israeli stakeholders (e.g. civil society), in the elaboration of the CRF-PR. However, the political climate and public opinion in Israel and the prominent role of Israel’s backers in the current bilateral approach may make this difficult. Nonetheless, the new approach is mandated by resolutions that Israel supported at the UN. Difficulties in securing Israel’s engagement should not prevent progress on the framework.

The process would entail stakeholder consultation at the national, regional and international levels, structured engagement with refugees and host communities, and exploration of the feasibility of various solutions and other measures. Section 2 of the GC sets out ‘Arrangements to support a comprehensive response to a specific refugee situation.’ These cover the national level, the possible activation of a Support Platform, which ‘would enable context-specific support for refugees and concerned host countries and communities’, and regional and sub-regional approaches and mechanisms. This may ‘play an important role in comprehensive responses. Past comprehensive responses have also demonstrated the value of regional cooperation in addressing refugee situations in a manner which encompasses the political dimensions of causes.’²⁶⁰

The CRF-PR would need to be centered around, and owned by Palestinians. This would require surveying the Palestinian refugee population and the global diaspora and involving them in discussions regarding the various components of the CRF-PR (Section 4.3). Such surveys would offer Palestinian refugees the opportunity to exchange ideas and may even help reduce diaspora communities’ sense of isolation. The ‘refugee movement’ that has taken shape through the work of refugee grassroots organizations over the past twenty years, across the Palestinian diaspora, would play a major role in facilitating such exchanges. This would complement the work of the Palestinian political leadership.²⁶¹ (p. 480) The refugee movement could help link international and regional platforms with Palestinians in the diaspora. In a number of countries with a turbulent or controversial

history with respect to Palestinian refugees, including Kuwait and Lebanon, the relationship between the PLO and the respective governments has somewhat improved in recent years – partly as a result of the positive influence of the refugee movement.²⁶² This development is likely to deepen the exploration of solutions at the country level beyond what was in the past.

The wealth of information on how to solve complex refugee situations in general,²⁶³ and the lessons learned from the various attempts at solving the Palestinian refugee question in particular,²⁶⁴ represent a significant resource. It is important to preserve the rich knowledge gathered through the years of the Israeli-Palestinian peace process.²⁶⁵ Some rounds of negotiations, such as Camp David and Taba, provide valuable insights into what might be achievable and what should not be neglected.²⁶⁶ Research and ideas generated by various civil society, academic, and governmental initiatives since the mid-1990s have examined the feasibility of various options.²⁶⁷ The CRF-PR should secure and build on this invaluable repository of ideas and resources.

4.3 Fundamental elements of a comprehensive response framework for Palestinian refugees

The value of the proposed new approach and its potential effectiveness is premised upon its comprehensiveness. Nothing in this approach suggests that single/individual components should be implemented at the expense of others (e.g. return without local integration, or vice versa). As experience demonstrates, parties in a conflict may be ready to accept compromise, but not one that perpetuates or renews injustice. This applies to both the Palestinians and the Arab countries, who have to a large extent supported the refugees' claims for justice. This underlines the importance of a rights-based approach underpinning the framework's design and implementation. The elements proposed in this section are not exhaustive. Rather, they are what the authors believe should be the minimum essential core of the CRF-PR. Its elaboration should be the outcome of consultations, with representatives (p. 481) of the refugees and diaspora and host countries, first and foremost, but also with Israel and relevant members of the international community.

4.3.1 Adapting the framework to the specificities of the Palestinian situation

The idea of a comprehensive framework for Palestinian refugees is not entirely new. The first edition of the book briefly explored the possibility of a comprehensive plan of action (CPA) for Palestinian refugees, to be modelled on the CPAs that were employed to resolve refugee crises in various areas of the world as of the 1970s.²⁶⁸ Similarly, in an article published posthumously in 2004, Helton put forward ideas that build on comparative international experience to resolve the Palestinian impasse.²⁶⁹ Helton foresaw a plan that would combine *some* voluntary return, *a good deal* of integration in current places of asylum, and *perhaps* a significant degree of resettlement in third countries,²⁷⁰ the latter facilitated by UNHCR and IOM.²⁷¹ In Helton's view, major resettlement countries would come together to discuss how to accommodate Palestinian refugee specificities.²⁷² An essential precondition for success of the plan, according to Helton, was that Israeli and Palestinian negotiators overcome the maximalist positions that had hitherto rendered the refugee issue a 'deal-blocker', and be ready to compromise.²⁷³ In some measure, his proposal reflected the tendency to focus on what is considered feasible, with the result that key principles – the rights to return and restitution as enshrined in international law, including the many UN resolutions on the question of the Palestinian refugees – are neither discussed nor reflected in the outcomes. As a consequence, these rights are effectively denied because their realization is deemed unfeasible. Any proposal for a new approach must bridge the gap between the principle and the practical.

All refugee situations have their own specificities and for Palestinian refugees the political context presents a particular challenge. However, the international community's adoption of the NYD and the GC sets out a practical approach, apt to cover all aspects in the resolution of large-scale refugee problems but one which is not dependent on all being able to be resolved. Like any CRRF, the CRF-PR should be tailored to the circumstances and specific needs of the Palestinian refugees, while drawing on past experiences in resolving seemingly intractable refugee problems.

For Palestinians and host countries, to engage with the CRF-PR, the framework must acknowledge the importance of the moral and political questions attached to 'being (p. 482) Palestinian refugees' and address the origins of their problem (see Section 4.3.2). The inalienable rights of Palestinian refugees and the multiple injustices they have been subject to, must unequivocally be addressed.

4.3.2 Meaning and implications of addressing root causes

The NYD and the GC underscore the importance of addressing the 'root causes' of large movements of refugees and migrants through multiple efforts including 'peaceful resolution of conflict', 'the promotion of the rule of law at the national and international levels and the protection of human rights'.²⁷⁴ The development of the CRF-PR could provide a setting to initiate a public discussion on the root causes of the Palestinian refugee question. This includes both its origins, constituting elements, evolution (the past), as well as the broader context of the unresolved dispute between Israel and the Palestinians (the present). Both discussions are of primary importance in a context in which principled solutions on highly sensitive topics have to be found.

'The past': Legal and moral dimension

The politicization and polarization of the historic narratives have obscured the origins of the Palestinian displacement, affected the parties' ability to compromise,²⁷⁵ and influenced how the issue is perceived internationally.²⁷⁶ That is why 'dealing with the past' is a priority and should be an essential component of the framework. The issue has interconnected legal, moral and political components.

The legal component includes the denial of Palestinians' rights: to stand as a people among independent nations (self-determination), as it was recognized in 1922,²⁷⁷ to enjoy durable solutions as refugees (return, integration or resettlement, based on refugees' choice), and to be afforded remedies under international law (restitution, compensation).²⁷⁸ The right to self-determination remains unrealized. Further, the historical facts surrounding the origins of the Palestinian refugee question, denied by successive Israeli governments throughout the twentieth century,²⁷⁹ have deeply affected the way Palestinians have been able to define themselves, and evolve as a polity. For them, 'being refugees' has a meaning that goes beyond legal status and the need for international protection;²⁸⁰ it means being an 'orphan' of the homeland that existed in 1948 but is no more.²⁸¹ This is deeply engrained in the way the (p. 483) Palestinian refugee 'regime' is construed and explains why, for example, a refugee who becomes a citizen of a state, and thus is no longer in need of international protection, remains a refugee within the meaning of General Assembly resolution 194 until his or her historic rights are fulfilled.²⁸²

In the Palestinian case, the 'dealing with the past', normally a post-conflict measure to rebuild societal trust and promote reconciliation, cannot wait. Measures to help different societal groups either confront or reconcile with their past are necessary now. For the Palestinians this can help restore dignity, enhance their sense of national identity, and allow them to move forward as a people, after enduring decades of violations and abuse.²⁸³

Efforts to address the past in the context of political negotiations have failed, largely because of the opposition of Israel to compromise in this respect.

The CRF-PR could overcome such impasse by establishing a mechanism to set out an objective historical perspective of the origins of Palestinian displacement, including its constituent elements, causes and evolution. While Palestinian oral history, historians and the UN have documented the historic events and the root causes, this narrative is not easily accessible to the public at large. This has contributed to leaving the Palestinian refugee issue unaddressed and feeding the efforts to dismiss the Palestinian refugee question altogether.

The international dimension of this platform may overcome the difficulty of Israel's lack of interest in officially participating, but also take the pressure away from other stakeholders while allowing for a contextualized historical perspective. The incorporation of a regional dimension, for instance, may help overcome the resistance of Arab countries to discuss the presence of Palestinian refugees, their involvement in the national history (including conflict), and the treatment they have received. The treatment of Palestinians in the countries of the region, examined in detail in Chapter IV, has also shaped their collective memory and identity as a people in exile. Events in Lebanon during the civil war, particularly the Sabra and Chatila massacre, probably had the greatest and most lasting impact, but the denial of rights and lack of support in Lebanon and in other countries have caused avoidable suffering and left their mark. Acknowledgement of 'this past' would also be an important step towards improving the treatment of Palestinians in these countries.²⁸⁴ This could also allow discussion of what happened to various ethnic groups in the region around the time of the establishment of the State of Israel, mainly the people of Palestine, but also Jews in Arab countries who suffered displacement and dispossession as a consequence of Arab states' reactions to the *Nakba*.²⁸⁵

Approaching the issue of the historical narrative through a comprehensive framework should help the various stakeholders feel part of a positive process where the past is examined in order to move forward. The form of such exercise could draw on the various (p. 484) initiatives for dealing with the past that have taken place through truth commissions; establishing an official narrative through the voices of those willing to come forward and tell their stories. Refugees from 1948, 1967, or later, displaced in the Arab region,²⁸⁶ Israeli and Arab officials, and members of the international community should be among those invited to recount their part of the story. Such process would contribute to establishing a sense of justice, public acknowledgement and accountability, and lay the ground for advancing the enjoyment of Palestinian's rights under international law.²⁸⁷

The present and the 'broader context'

The framework must acknowledge the 'broader context' of the unfulfilled rights of the Palestinians. The origins of the Palestinian refugee question are inseparable from the unrealized right to self-determination and the discriminatory nature of its continuous denial.²⁸⁸ The way the quest for self-determination of the Palestinians is resolved (or not), has important implications for Palestinian refugees and determines the extent of the opportunities available for durable solutions.

An independent, fully sovereign Palestinian state, established alongside Israel, as was proposed in 1947, discussed since 1991, and accepted as the basis for further negotiations in 2002, has yet to materialize.²⁸⁹ It is commonly accepted, at least in the discourse of the MEPP, that an independent state would constitute the primary 'self-determination unit' of the Palestinians as a people, including the refugees. This would help meet the statehood aspirations of the Palestinian people.²⁹⁰ In their joint Israeli-Palestinian blueprint for a two-state solution, Nusseibeh and Heller argue that the establishment of an independent State of Palestine would 'at all times be to Palestinians what Israel is to the Jewish people – namely, a state for them all, wherever they may be.'²⁹¹ Beside the evocative imagine of a

homeland for all Palestinians, it is worth recalling that the PLO's shift towards a two-state solution was not embraced as the best possible solution, or a solution that met the aspirations of the Palestinian people. Rather it was a major concession, made because it appeared as the only viable option, after – at the time – over four decades of exile and over two decades of military occupation of the Gaza Strip and the West Bank.²⁹²

It would be for the government of an independent and fully sovereign State of Palestine to determine who its nationals are and under what conditions Palestinian nationals in the diaspora, including refugees, would be able to 'return' to the country.²⁹³ According to the (p. 485) draft Palestinian nationality law commissioned by the PLO in 2012,²⁹⁴ the right to become a citizen of Palestine would be granted, *ipso facto*, to all inhabitants of the Gaza Strip and the West Bank, including the refugees residing there, while others, in the diaspora, would be able to apply for Palestinian citizenship.²⁹⁵ The realization of full Palestinian sovereignty would ideally allow refugees to take up residency in the newly established Palestinian state, but also to keep other options open, including the possibility to remain in host countries or return to Israel should Israel's position change.

Within the *realpolitik* of the Israel–Palestinian peace process it has become largely accepted that an independent, fully sovereign and viable Palestinian state would meet the self-determination aspirations of the Palestinian people. Yet, this would not by itself realize all the rights of the refugees under international law, such as return, restitution, and compensation.

The developments during the past two decades suggest that the measures of Israeli control over the oPt have become so far-reaching, entrenched, and difficult to reverse that a viable Palestinian state is now a distant prospect at best.²⁹⁶ Rather, the current reality in the oPt makes the Israeli annexation of whole or parts of the West Bank – although categorically prohibited under international law²⁹⁷ – more likely.²⁹⁸

The CRF-PR may not resolve by itself the issue of Palestinian self-determination, but it must acknowledge its relevance so that decisions regarding solutions for Palestinian refugees are taken, based on principle and not determined solely by the political constraints. Particular consideration must be given to the implications of the *erga omnes* nature of obligations to respect, promote, and fulfil the right to self-determination of the Palestinian people, as well as Israel's obligations under international humanitarian law. Violations of the related norms entail obligations for all states.²⁹⁹ The CRF-PR should provoke discussion (p. 486) on the implications that the lack of realization of Palestinian statehood may have for Palestinian self-determination and propose solutions for the refugees.

Under international law, where self-determination is not realized through the achievement of an independent state, it may give rise to other modalities, including 'minority rights' in the state where a people find themselves.³⁰⁰ Hence, in a 'one-state-by-default' reality, Israel may be faced with demands to recognize self-determination rights of the Palestinian people, including the refugees, within the territory under its effective control.³⁰¹ At the same time, Palestinian refugees outside the oPt would continue to be refugees and stateless persons in need of international protection, and in need of durable solutions.³⁰²

4.3.3 Offering a combination of durable solutions and reparations

The NYD is premised upon the need to 'find long-term and sustainable solutions' to large refugee crises, particularly those in vulnerable situations.³⁰³ UNHCR considers that the various durable solutions are 'complementary in nature and, when applied together, can form a viable and comprehensive strategy for resolving a refugee situation.'³⁰⁴ The different durable solutions are not mutually exclusive and may be considered in combination or sequentially, depending on the political context and wishes of the refugees. Political realities will determine the feasibility of each of the different options, but the provisions of international law and the intentions and choice of the refugees about their future must be given proper weight. This means that the inevitable compromises must recognize that

certain claims build on legal entitlements and obligations and are not merely moral or humanitarian. This is the case in respect of both return and reparations in the forms of restitution and compensation. As Nusseibeh and Heller argued at the beginning of the peace process, reparations must be given a weight that is in inverse proportion to that of the actual return component.³⁰⁵

To resolve the question of refugee status, the CRF-PR should be the platform to explore the complementarity and ‘combinability’ of various durable solutions, as it emerges from the evolution of the relevant General Assembly resolutions and negotiations.

The CRF-PR should clearly set out what ‘voluntary repatriation’ means in the case of the Palestinians displaced in 1948 and 1967. The contours and content of the right of ‘return’ should be articulated in line with both relevant UN resolutions for Palestinian refugees and (p. 487) international and refugee practice. As discussed in Chapter VI, the right of return of the refugees to modern-day Israel is grounded in international law as it stood prior to 1948 and as it has consolidated over time. General Assembly resolution 194 reaffirmed this right. Acceptance of that resolution was a condition for Israel’s admission as a UN member state in 1949. As other competing rights may have emerged since then, international law can also help determine how the various conflicting interests may be reconciled. Resolution 194 affirmed the right of return for those ‘wishing to return to their homes and live at peace with their neighbours’. Satisfaction of the rights of the refugees would not have been then, and would not be today, at the expense of the Jewish inhabitants of Israel. The practical and political obstacles to realizing this right make its recognition no less important.

From a legal perspective, Palestinian refugees should be given an option to voluntarily return (enter, re-enter) to their original homeland and live in safety and dignity in modern-day Israel.³⁰⁶ Israel justifies its categorical rejection of this option on the need to ensure the security and status of Jewish Israelis in a potentially Palestinian-majority state. The resulting ethnically-based majority that Israel is determined to maintain is discriminatory in itself, and cannot be legally upheld, as the analysis in Chapter VI has shown. At the same time, advancing the case for a large-scale movement of millions Palestinian refugees to their or their forebears’ former towns and villages, now largely inhabited by Israelis, has proven difficult for Palestinian negotiators,³⁰⁷ not least because of the lack of the international political support that such an option would require. Such challenges apply also to other protracted refugee situations, where return would (re-)establish legal residency, but would also require the restitution of property and land.

The CRF-PR should require that Israel first and foremost recognize the right of return in principle, as a matter of right, not a humanitarian concession; once recognized, the implementation of the right should be determined on a case-by-case basis and, taking into consideration the refugees’ preferences, be subject to compromise.³⁰⁸ A restitution-based approach to restore property and connected rights of refugees shall be considered, while at the same time taking into account rights acquired by generations of (mostly Israeli) occupants as tenants.³⁰⁹ The collective dimension of such a claim cannot be overestimated. The land Palestinians were forced to leave behind in 1948, but also in 1967, is not only the ground where they have grown oranges and olives for generations, but it is also the place where some of their relatives – the Arab citizens of Israel – may still live, family homes may still stand but are inhabited by others, and where religious sites and cemeteries still are or were. The CRF-PR should recognize that enjoying the right of return to these places may not necessarily mean returning as citizens of Israel, as conferring citizenship remains Israel’s prerogative. A variety of other options also include at least being given the possibility to enter, reunite with relatives, see the homeland, and honour the place where

ancestors (p. 488) were buried. What is of the utmost importance is that refugees be offered an opportunity to choose.

The CRF-PR should determine – and inform the refugees accordingly – that any alternative durable solutions to ‘return to modern-day Israel, including naturalization in the host country or resettlement in third countries, do not jeopardize their historic claims; rather, they should feel confident to pursue solutions that suit their current circumstances.

The CRF-PR should provide for a secure ‘home’ for the refugees’ historic claims. This would imply the preservation and consolidation of documentary evidence of Palestinian losses in a secure UN-administered central record. This would be available to the refugees whenever favourable political conditions to pursue justice arise. The establishment of a mechanism that safeguards such claims is of great importance especially for those pursuing local integration or resettlement.³¹⁰ Timing and mechanisms to access or pursue this should be established under the CRF-PR. As noted above, the case of the Jewish Holocaust survivors, where mechanisms were not conditioned on survival of the Holocaust, and relatives of victims were also able to claim, is an important example of the many forms that justice can take, once the political conditions become conducive.

The CRF-PR would have to engage host states in a way that recognizes their support to the Palestinian refugees, acknowledges the challenges they have faced, and offers solutions to overcome them. While an obligation to voluntary repatriation exists upon the country of origin under international law, host states have no obligation to grant asylum under international law, although the 1951 Convention is geared towards local integration of refugees and requires states parties to facilitate naturalization. In line with UNHCR’s practice, the CRF-PR should emphasize that allowing for local integration of refugees is ultimately a ‘sovereign decision and an option to be exercised by States guided by their treaty obligations and human rights principles.’³¹¹ Nonetheless, considering the protracted refugee situation, generations of refugees in host countries may have acquired a right of continued residency, deriving from factors such as their exceptionally lengthy stay, de facto integration, marriage, and business activity.³¹²

The right to acquire citizenship of a state depends on domestic recognition, as is not prescribed as a matter of international law. However Article 7 of the Convention on the Rights of the Child, referring to the right of the child ‘to acquire a nationality’, stipulates that ‘States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, *in particular where the child would otherwise be stateless.*’³¹³ This should be part of the legal framework underpinning the CRF-PR as most Palestinian refugees continue to be stateless. Many of the third and fourth generation refugees, while continuing to see return to Palestine as part of their national identity, have established close family, social, cultural, and economic (p. 489) links with their countries of refuge. They have attained, or have the capacity to attain, a considerable degree of socio-economic integration. If these refugees expressed a wish to remain in their host country, they should be supported to give that wish legal effect. Scholars have increasingly advocated for naturalization as an effective way to ensure protection of Palestinian refugees.³¹⁴ Some states may continue to oppose any local integration of the Palestinian refugees, even if there is no prospect of return. Other countries may consider fully integrating the refugees they host who so wish, if this happens within the framework of a comprehensive solution, where a country’s past contribution is acknowledged and the solution is accompanied by activation of the burden-sharing support mechanisms foreseen in the GC. The CRF-PR should also engage Arab states who may decide to take a stronger stand vis-à-vis Israel in support of the rights of Palestinian refugees .

A number of Arab states – who have hosted the vast majority of Palestinian refugees for over seventy years – may be unlikely to agree to fully ‘absorb’ the refugees even if there was no realistic possibility of return. This is the case of Lebanon, where Palestinian refugees have often been effectively integrated through marriage and social connections, yet formal integration remains politically unacceptable.³¹⁵ In the context of the CRF-PR, countries where integration can be considered to have occurred with respect to the majority of Palestinian refugees, such as in Jordan (*de jure*) or pre-war Syria (*de facto*), will have a key role in the discussions regarding the future of the Palestinian refugees.³¹⁶ Many Jordanians of Palestinian origins (i.e. UNRWA-registered Palestine refugees who have been naturalized) do not consider themselves ‘fully absorbed’.³¹⁷ While this may sound contradictory, it has historical reasons and must be taken into account in any solution.³¹⁸ Even though a full absorption of the Palestinians as part of Jordan’s social fabric could happen relatively easily, societal and political acceptance among indigenous Jordanians must accompany the process. In Syria, before the civil war that began in 2011, Palestinian refugees were generally well established within society, even though full integration was never pursued because of Syria’s political position, vis-à-vis the conflict and its resolution. The war may have compromised the traditionally strong relationship between the Palestinian refugees and this host country and it is difficult to predict what the new balance will be, once peace and stability return to Syria.

In cases where neither return nor local integration is feasible, resettlement shall also be considered as an option. As UNHCR indicates, in protracted refugee situations, ‘lack of progress on repatriation and local integration should not block the possibility of resettlement, even though this will benefit a relatively small number.’³¹⁹ As noted earlier, resettlement has helped break the impasse of protracted refugee situations. Since Camp David and (p. 490) Taba, resettlement – often opposed by Palestinians and Arab states – has been one of the options suggested for refugees in the context of a negotiated settlement. In recent crises (Iraq, Libya, Syria) resettlement became a necessity but, unlike for nationals fleeing these countries, there has generally been resistance to resettle Palestinian refugees, especially from UNRWA’s areas of operations. While one obvious reason is that Palestinian refugees residing in UNRWA’s area of operations are excluded from the mandate of UNHCR, after the demise of UNCCP no other entity has actively pursued this solution. UNRWA argues that it does not have a mandate for durable solutions and takes the position that as UNHCR only has a mandate over Palestinian refugees outside UNRWA’s area of operations, no durable solutions can effectively be pursued within that area. UNRWA did, however, undertake such activities in the first years of its mandate as well as more recently.³²⁰ The authors believe that UNRWA should consider developing its policy and practice with respect to resettlement (and durable solutions more generally) in light of the historic precedent in discharging its mandate, the way the mandate has evolved, and the latest evolution with respect to solutions as set out in the NYD. More broadly, the CRF-PR should explore the scope and limitations of resettlement in the Palestinian context, based on the will of the refugees and the resettlement opportunities that may be available.³²¹ As part of a comprehensive framework, some third countries that already host significant Palestinian refugee communities may be prepared to accept more.

The CRF-PR should set out how achieving restitution and/or compensation might be advanced. As with the property of Jewish victims of the Holocaust in Europe, Palestinian property that still exists can be identified using available historical records. The work of the UNCCP and discussions on restitution and compensation have highlighted the challenges of identifying and evaluating Palestinian ‘abandoned property’ which has been transformed, absorbed into Israel’s economy, classified, and reclassified under a variety of laws.³²² Practical challenges should not prevent parties from further exploration of what principled solutions may be feasible.³²³ The extent of the material depredation suffered by the refugees and other Palestinians is such that progress in this area will be important for the

economic viability of a Palestinian state. Linking the UNCCP records, which contain the most accurate data available on former properties, with those of UNRWA, combined with access to Israeli records,³²⁴ may advance the prospects for restitution when possible and compensation when it is not.³²⁵ For 1948 refugees, where restitution may (p. 491) not result in the eviction of secondary occupants, a reconnection with the title and value of the property could be re-established. Achieving restitution (and/or compensation) for property taken in the Gaza Strip and the West Bank, including East Jerusalem, since 1967 should be given priority since Israel was ordered by the Security Council to withdraw from the territories it had occupied in 1967, and hence secondary occupants cannot claim rights.³²⁶

The CRF-PR should determine how restitution and compensation schemes can operate, based on the available knowledge and on the needs of the refugees, for example by taking into account the need not to undermine those who have no property deeds. This means to say that compensation, if so demanded or agreed by the refugees, would help defray the costs of return, integration, and resettlement. While substantive progress on compensation under General Assembly resolutions will depend on the degree of Israel's participation in the CRF-PR, and on wider political progress, the framework should contain a clear recognition of the importance of both. In addition it should indicate possible ways forward. Elements of how Palestinian refugees could be compensated for loss and damage experienced, as identified in previous negotiations, should be explored: this includes the need to set up an international mechanism to address the issue of compensation, an international fund as well as possible implementation mechanisms. Political will is crucial to the realization of such mechanism, and the CRF-PR should explore feasibility of such mechanism and fund. Kubursi argues that if compensation were understood to be for individual claims, it could be decoupled from the peace process and be pursued regardless of the larger negotiations.³²⁷ One important issue that the CRF-PR would have to consider is that the estimates that have been circulated to date with regard to individual compensation for Palestinian refugees appear low, especially when compared to that offered by Israel to the settlers who evacuated the Sinai and Gaza.³²⁸ The CRF-PR should cover resourcing for a level of compensation that allows 'addressing grievances and providing closure'.³²⁹ As Brynen also notes, inadequate payments are likely to be perceived by the refugees as 'adding insult to injury',³³⁰ and the CRF-PR should manage expectations in this regard.

The CRF-PR would highlight, advance, and possibly resolve a number of substantive issues related to the Palestinian refugee situation, allowing the realization of feasible solutions. It may not deliver full justice in one fell swoop, but it would start by giving Palestinian refugees a more secure present and a more hopeful future, as well as the voice and the agency that they have been denied to date in their pursuit of justice.

(p. 492) 5. Concluding Observations

Solutions for Palestinian refugees have been sought since May 1948. The work of the General Assembly, the UN Mediator for Palestine, the UNCCP, the Security Council in the aftermath of the Six Day war, Egyptian-Israeli negotiations resulting in the Camp David Accords, and the various peace initiatives and negotiations since the Madrid peace conference in 1991, have all included attempts to find solutions to the plight of the refugees. The principal negotiations – Camp David in 2000 and Taba in 2001 – discussed options for durable solutions and compensation, the first time this had happened since the UNCCP-led negotiations in the late 1940s. However, decades of Arab-Israel and Israeli-Palestinian peace efforts have not succeeded in bringing a resolution of the Palestinian refugee within reach.

Ensuring respect for the international law governing the resolution of refugee problems, as informed by international practice, is the key to progress towards just and durable solutions for Palestinian refugees, as for all refugees. The rights Palestinian refugees should enjoy are firmly grounded in international law and their realization is not solely conditioned on a solution to the conflict between Israel and the Palestinians, though any lasting solution to that conflict must include a just and durable solution for the Palestinian refugees. Respect for international law, and human rights law in particular, is essential if the international community is finally to meet its responsibilities towards Palestinian refugees.

The NYD and the GC are important global blueprints for solutions and responsibility-sharing. They call for a new approach by the UN to redressing the plight of Palestinian refugees. The risk that political actors may choose aspects of it (for example, local integration or resettlement) and ignore others (for example, the right of return) exists; however, the central element of the approach set out in the NYD is its comprehensiveness and coherence, and this should be made a pillar of its underpinning legal and conceptual framework. There may be a greater risk in not challenging, through a principled new approach, those who advocate solutions that ignore the rights of the refugees.

Footnotes:

1 Concomitantly, expulsions continued and Israel enacted laws and took measures to prevent refugee return and to dispose of their property. Palestinian displacement and dispossession have continued under Israeli occupation. See Chapter I, (n 133) and Section 5.1 in particular.

2 The term ‘historic rights’ refers to claims of Palestinian refugees that originate in violations of international law at the time of the 1947–1949 conflict. As discussed in Chapter VI, Section 1, this study distinguishes them from the rights that Palestinian refugees have acquired over time, including as a result of the development of international law (primarily international human rights law).

3 As discussed in Chapter VI, Section 3, the question of return is perceived as ‘existential’ by both Palestinians and Jewish Israelis. Brynen argues that while resonating as a unifying ‘cry for justice’ among Palestinians in exile, and featuring prominently in Palestinian and Arab political discourse, the question of Palestinian refugees’ return (to modern-day Israel) has also remained a not fully articulated claim for long time (at least until the Israel–Palestinian peace process) and as such largely a non-issue for the Israeli public. Cf. Brynen, R., ‘Compensation for Palestinian refugees: Law, politics and praxis,’ *Israel Law Review* 51. 1 (2018) 33–4. An exception that deserves acknowledgement, in addition to the work of Palestinian scholars and organizations, in Israel and in the diaspora, is the contribution of the Israeli NGO, Zochrot, which works to educate the Israeli public about the *nakba* and to demystify the impact that implementing the right of return would have on Israel as a state and on Jewish Israelis.

4 The Trump Administration’s peace initiative, commonly referred to as the ‘deal of the century’, heralded as the ultimate solution to the Palestinian–Israeli conflict, was partly unveiled at the Bahrain conference in June 2019. Elements concerning Palestinian refugees have not been disclosed, yet indications suggest that solutions to their plight will revolve around local integration into host countries. UNRWA’s possible downgrading ahead as part of a solution to the refugee question has also been flagged.

5 UNGA res. A/71/1, adopted on 19 September 2016 (hereinafter NYD).

6 Report of the UNHCR to the General Assembly, OR, 73rd Session, suppl. 12. In its resolution adopted on 17 December 2018 (UN doc A/RES/73/151), UNGA affirmed the Global Compact ('GC'), underscored its importance as an expression of political will, and called upon the international community as a whole to implement it. On the GC, see Turk, V., 'The promise and potential of the Global Compact on Refugees', *International Journal of Refugee Law* 30.4 (2018) 575–83.

7 On the meaning and implication of an approach grounded in international law, see Section 4.1. More broadly, see Introduction and Chapter III.

8 Mindful of Stedman's warning that what has worked in the resolution of one conflict may not work in others, it is nevertheless enlightening to see how similar challenges were overcome (or not) and opportunities seized (or not) in other refugee situations; see Stedman, S., Policy implications, in Stedman, S., Rothchild, D., Cousens, E. (eds.), *Ending civil wars: The implementation of peace agreements*, Boulder, CO: Lynne Rienner, 2002, 633–71, 664.

9 See Chapter I, (n 348) and accompanying text. These various initiatives, including workshops, publications, and networking activities, were initiated in parallel to the formal peace process to support dialogue between the parties and to address knowledge gaps related to the negotiations. The most significant of these activities have been supported by Canada and the International Development Research Centre (IDRC), which collectively became known as the 'Ottawa Process'. Others include Harvard University, the Economic Cooperation Foundation, the Minster Lovell series of workshops organized by the Royal Society for International Affairs (Chatham House) in the UK, the Aix Group, and the Geneva Initiative. Cf. Brynen (n 3), 35, n 33.

10 Cf. Akram, S., Dumper, M., Lynk, M., Scobbie, I., (eds.), *International law and the Israeli-Palestinian conflict: A rights-based approach to Middle East peace*, London: Routledge, 2011, 2–5. Long, K., *The point of no return: Refugees, rights, and repatriation*, Oxford: Oxford University Press, 2013.

11 See Section 2.1–Section 2.3.

12 Cf. UNGA res. 1285, 5 December 1958, also UNGA res. 1502, 5 December 1960, and UNGA res. 2294, 11 December 1967.

13 UNHCR, *Protracted refugee situations: The search for practical solutions*, 2006, 199–220. See also, further on, reference to durable solutions for refugees in protracted situations.

14 UNGA, 'Note on International Protection', 7 September 1994, UN doc. A/AC.96/830, fn 4. The Note has had a lasting influence on the debates around protection. Chapter VII, (n 51)–(n 56) accompanying text.

15 UNHCR Statute, paras. 8(c), refers to 'voluntary repatriation or assimilation within new national communities'; para. 9 refers to UNHCR engaging 'in such activities, including repatriation and resettlement, as the General Assembly may determine, within the limits of the resources placed at his disposal'. In fact, the GC, para. 100, contains a number of progressive elements in exploring nuanced avenues for 'other' local solutions: 'In addition to local integration - where refugees find a durable solution to their plight - some host countries may elect to provide other local solutions to refugees. Such solutions entail interim legal stay, including to facilitate the appropriate economic, social and cultural inclusion of refugees, and are provided without prejudice to eventual durable solutions that may become available. Depending on the context and the needs identified by countries electing to provide other local solutions to refugees, 51 states and relevant stakeholders will contribute resources and expertise, including technical guidance on legal and institutional frameworks that foster the peaceful and productive inclusion of refugees and

the well-being of local communities, and to address issues such as documentation and residence permits'.

16 GC, para. 85 [emphasis added]. See also NYD, paras. 12, 17, 37, and 64.

17 Globally many refugees would like to resettle, but in fact less than one per cent can be resettled on account of a lack of resettlement places. See UNHCR Portal ('Resettlement') and UNHCR, 'Resettlement at a glance (January–December 2018)', 18 April 2019.

18 This is a long-established principle in refugee practice, cf. UNGA res. 1285, 5 Dec. 1958, referring to the need to pursue permanent solutions 'through voluntary repatriation, resettlement or integration, on a purely humanitarian basis and in accordance with the freely expressed wishes of the refugees themselves'. See also UNGA res. 1502, 5 December 1960, and UNGA res. 2294, 11 December 1967. For a more recent restatement of the principle of voluntariness and the role of UNHCR in promoting it, see UNGA res. 49/169 (1994); UNGA res. 52/103 (1997); UNGA res. 56/137 (2001). In addition, see UNHCR, *Handbook: Voluntary repatriation, international protection*, 1996; UNHCR, *Handbook for repatriation and reintegration activities*, 2004; UNHCR, 'Policy Framework and Implementation Strategy, UNHCR's Role in Support of the Return and Reintegration of Displaced Populations', 2008.

19 UNHCR's decades-long experience in promoting durable solutions in line with international standards is captured, together with founding principles and best practices, in the *Voluntary Repatriation Handbook* (n 18) and the *Resettlement Handbook*, respectively (n 20).

20 E.g., an estimated 45,000 Russians who had fled to China as a result of the Russian revolution were resettled to other countries. In the 1930s, a number of international organizations were responsible for third-country resettlement of Jews and other persons who were fleeing Nazi persecution in Germany, including about 60,000 to Mandate Palestine. UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, HCR/1P/4/ENG/REV., 3 December 2011, 47. See also UNHCR, Resettlement Handbook, July 2011 (1st ed. 2004).

21 Between 1947 and 1951, the IRO resettled more than a million persons, predominately outside Europe. Cf. Holborn, L. W., *The International Refugee Organization: a specialized agency of the United Nations, its history and work 1946-1952*, Oxford: Oxford University Press, 1956, 57-8.

22 In the late 1970s, more than 700,000 Indochinese who were displaced during the Indo-Chinese war were resettled in Western countries; cf. UNHCR, *Protracted refugee situations: The search for practical solutions*, 2006, 199-220. However, as indicated above, resettlement figures have decreased dramatically over the years.

23 Large-scale voluntary repatriation took place in Algeria in the 1960s and South Sudan in the early 1970s. In the 1970s, large-scale voluntary repatriation programmes were implemented in Africa, primarily to newly independent countries such as Angola, Mozambique, and Zimbabwe, but also in Asia. The most massive repatriation programme involved refugees returning to Bangladesh after its formation in December 1971: within four months, more than ten million refugees returned to their homes from India.

24 In its 1994 resolution dealing with the Office of the UNHCR, UNGA reiterated that voluntary repatriation, when feasible, is 'the ideal solution to refugee problems'; cf. UNGA res 49/169, 23 December 1994, text in 7 *IJRL* 354, 357 (1995). Also, UNGA res. 72/150, para. 39; ExCom Concl. 90(LII), 2001, (j); 101(LV), 2004; 40(XXXVI), 1985. For subsequent positions, see UNHCR, *Handbook: Voluntary repatriation, international protection*, 1996; UNHCR, *Handbook for repatriation and reintegration activities*, 2004; UNHCR, EXCOM Conclusion 101(LV), on Legal Safety Issues in the Context of Voluntary Repatriation of

Refugees, 2004; UNHCR, 'Policy Framework and Implementation Strategy: UNHCR's Role in Support of the Return and Reintegration of Displaced Populations', 2008. For further reference, see Report of the Secretary-General, *In safety and dignity: Addressing large movements of refugees and migrants*, UN doc. A/70/59, 21 April 2016, para. 84; see also Chimni, B. S., 'Perspectives on voluntary repatriation: A critical note', *International Journal of Refugee Law* 3 (1991) 541; Zieck, M. Y., *UNHCR and voluntary repatriation of refugees*, 1996, Leiden: Martinus Nijhoff Publishers, and Zieck M.Y., 'Voluntary repatriation: Paradigm, pitfalls, progress', *Refugee Survey Quarterly* 23 (2004) 33–54; Goodwin-Gill, G. S., McAdam, J., *The refugee in international law*, New York: Oxford University Press, 2007, 493–6.

25 Forbes Martin, S., *Refugee women*, London: Zed Books Ltd., 1992, 64.

26 This was a concern for the Afghan returnees from Pakistan as of 2016, around half of whom were born in Pakistan; they had no contact or ties with Afghanistan having, together with their families, established a life in Pakistan. Human rights monitors and others report that the Pakistani authorities prevented Afghan refugees from exercising free choice when deciding whether or not to return to their country of origin. Cf. HRW, 'Pakistan: Mass forced returns of Afghan refugees', 2017; also Badalič, V., *The reverse exodus: The forced repatriation of Afghan refugees in Pakistan*, in Badalič, V., *The war against civilians: Victims of the 'war on terror' in Afghanistan and Pakistan*, Cham: Palgrave Macmillan, 2019, 191–212.

27 UNHCR estimates that 1.1 million refugees around the world became citizens in their country of asylum between 2008 and 2018, cf. UNHCR Portal ('Durable Solutions'). In 2018, 62,600 naturalizations of refugees were reported (compared to 73,400 in 2017) in twenty-seven countries. Turkey reported the largest number of naturalizations with 29,000 in 2018, all originating from Syria. Canada reported 18,300 naturalizations of refugees from 162 countries (2,800 from Iraq); cf. UNHCR, 'Global Trends in Forced Displacement 2018', 20 June 2019, 35.

28 UNHCR, Core Group on Durable Solutions, 'Framework for durable solutions for refugees and persons of concern', 2003, 24.

29 Cf. Forbes Martin (n 25), 64.

30 In its 2005 conclusion, the UNHCR ExCom emphasized that local integration was an expression of the 'burden-sharing' of refugee assistance and protection and endorsed UNHCR's assistance and support to host countries and refugees in such an endeavour. UNHCR ExCom, Conclusion on Local Integration, 104(LVI), October 2005, 20.

31 CSR51, art. 34; see also CRC, art. 7, discussed in Chapter VI, Section 4.8.

32 UNHCR (Portal), 10-Point Plan of Action, first published 2007, 186.

33 This 'may be dictated by a variety of factors, including political, economic, and social pressure on the state of first asylum and status and treatment of the refugees', Goodwin-Gill and McAdam (n 24), 499; Troeller, G. G., 'UNHCR resettlement as an instrument of international protection', *International Journal of Refugee Law* 3 (1991), 564; see also UNHCR, Resettlement Handbook (n 20); UNHCR, 'Position Paper on the Strategic Use of Resettlement', 2010; UNHCR, 'The Strategic Use of Resettlement', 2003.

34 UNHCR, 'Resettlement as an Instrument of Protection', 1991, No. 67 (XLII), para. (g). In fact, UNHCR notes that in 2018 only five per cent of global refugee resettlement needs were met. See UNHCR, 'Resettlement at a glance, Jan-Dec 2018' and UNHCR's Press Release of 19 February 2019.

35 UNHCR, Resettlement Handbook (n 20), in particular the resettlement submission categories. Cf. also Goodwin-Gill and McAdam (n 24), 499.

36 UNHCR counted thirty-seven countries in 2016, including Argentina, Australia, Austria, Belarus, Belgium, Brazil, Bulgaria, Canada, Chile, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Iceland, Ireland, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Netherlands, New Zealand, Norway, Portugal, Romania, Spain, Sweden, Switzerland, United Kingdom, United States of America, Uruguay); UNHCR, Frequently Asked Questions about Resettlement from the Resettlement, 5. However, in 2017 UNHCR notes that the growth in resettlement quotas that took place between 2012 and 2016 started to be reversed in 2017 (with the 72,500 submission figures for resettlement were half of those of the previous year). See UNHCR, UNHCR Projected Global Resettlement Needs 2018, June 2017. The decline in resettlement places was accelerated by the change of policy in the US.

37 See UNHCR Portal ('Resettlement'). UNHCR estimated the global resettlement needs by 2018 to be close to 1.2 million persons including resettlement needs of refugees in a protracted situation where resettlement is envisioned over a period of several years. See UNHCR, Projected Global Resettlement Needs 2018, 7.

38 UNHCR, Resettlement Handbook (n 20), 41. E.g., under the Comprehensive Plan of Action for Indo-Chinese refugees, countries in the region allowed some refugees to remain as part of a package deal in which large numbers were resettled outside of the region.

39 Goodwin-Gill and McAdam (n 24), 498.

40 Ibid.

41 According to UNHCR, 70.8 million individuals worldwide were forcibly displaced as a result of persecution, conflict, or generalized violence by the end of 2018. This includes 25.9 million refugees (including 5.5 million UNRWA-registered Palestine refugees); cf. UNHCR, 'Global Trends: Forced Displacement in 2018' (n 27).

42 NYD, para. 65, see also CRRF, para. 11.

43 NYD, para. 66, CRRF, para. 11.

44 Ibid., para. 69, makes reference specifically to 'national and local authorities, international organizations, international financial institutions, civil society partners (including faith-based organizations, diaspora organizations and academia), the private sector, the media and refugees themselves'.

45 NYD, para. 68 [emphasis added].

46 CRRF, para. 4 [emphasis added].

47 Ibid., para. 3. The CRRF also encapsulates the main elements of each framework, see paras. 5–16.

48 NYD, para. 68. Between 2017 and 2018, CRRFs were developed in diverse refugee situations across more than a dozen countries across the Americas (Belize, Costa Rica, Guatemala, Honduras, Mexico, and Panama), Africa (Chad, Djibouti, Ethiopia Kenya, Rwanda, Uganda, and Zambia), and Asia (Afghanistan). UNHCR Portal, 'Comprehensive Refugee Response Framework'.

49 Alongside the three traditional durable solutions, UNHCR has set out an expanded approach aiming to 'afford refugees a wider range of mechanisms for how they may achieve protection and solutions. Complementary pathways help refugees gain access to safe, regulated means of protection and to solutions through work, study, and family reunion opportunities'. Each of these avenues must allow enjoyment of basic rights, through access to national services (such as civil registration, education, justice, and healthcare) as well as

the building of social and cultural ties, on a sustained, legal basis equivalent to that of nationals; see ‘Solutions, UNHCR 10-Point Plan of Action’ (n 32), para. 85.

50 UNHCR ExCom, Conclusion on Local Integration, (n 30).

51 UNHCR ExCom, Conclusion on Protracted Refugee Situations, No. 109 (LXI), 2009.

52 UNHCR, Core Group on Durable Solutions, ‘Framework for Durable Solutions for Refugees and Persons of Concern’, 2003, 114.

53 See detailed discussion in Chapter VI, Section 3.3 and Section 3.4.3.

54 Ibid.

55 See International Law Commission *Articles on Responsibility of States for Internationally Wrongful Acts*, Report of the ILC on the Work of its Fifty-third Session, UNGA, OR, 56th Sess. Supp. no. 10, 43, UN doc. A/56/10 November 2001 [hereinafter ‘Articles on State Responsibility’]. Commentary to art. 35 (3), on the legal primacy of restitution among forms of reparation, justifies the primacy of restitution as follows: ‘... because restitution most closely conforms to the general principle that the responsible State is bound to wipe out the legal and material consequences of its wrongful act by re-establishing the situation that would exist if that act had not been committed, it comes first among the forms of reparation.’

56 CRRF, para. 11(e).

57 Bradley, M., ‘Displacement, transitional justice and reconciliation.’ *Forced Migration Policy Briefing* 9 (2012).

58 UN ECOSOC, Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, *The Return of Refugees’ or Displaced Persons’ Property*, Working paper submitted by Mr. Paulo Sergio Pinheiro pursuant to Sub-Commission decision 2001/122, 44th Sess., UN doc. E/CN.4/Sub.2/2002/17 (2002), [‘Pinheiro Principles’]. See also Chapter III, Section 6.1, and Chapter VI, (n 361) and accompanying text.

59 Articles on State Responsibility (n 55), art. 35, and commentary, 97–8, paras. 4–6, in particular.

60 There are some disagreements about restitution being the most moral approach; cf. Waldron, J., ‘Settlement, return and the Supersession thesis’, *Theoretical Inquiries in Law* 5 (2004) 237.

61 Bradley (n 57), 20.

62 Articles on State Responsibility (n 55), 98, para. 8.

63 Ibid., paras. 9–10. According to para. 9, knowledge of the claim of restitution is a relevant consideration, but not necessarily determinative. Bradley refers to PICJ, *Forests of Central Rhodopia* case, in which third-party rights acquired after Bulgaria’s wrongful eviction of Greek nationals was one of several reasons why restitution was not deemed appropriate. In this case, the Court found that knowledge among third parties of restitution claim must be taken into account in determining ‘whether restitution is materially possible’. This was true in the case. But whether the position of a third party will preclude restitution will depend on the circumstances, including whether the third party at the time of entering into the transaction or assuming the disputed rights was acting in good faith and without notice of the claim to restitution. *Forests of Central Rhodopia* (Greece v Bulgaria), International Arbitration Decision, 29 March 1933.

64 Articles on State Responsibility (n 55), para. 6.

65 Chapter VI, Section 3.5.

66 In assessing the history of white settlers' dealings with the aboriginal peoples of Australia, New Zealand, and North America, Waldron argues how whole peoples became victims of large injustices; being attacked, defrauded, and expropriated. While the injustice may not fade away, Waldron argues, reparation claims such as related to right to return to ancestral lands and possessions may fade, become obsolete or even transform, becoming weaker with the passing of generations (Supersession theory). Waldron, J., 'Superseding historic injustice', *Ethics* 103.1 (1992) 4–28; Waldron, J. 'Settlement, return, and the supersession thesis', *Theoretical Inquiries in Law* 5.2 (2004) 237–68. Contra, Dumper, M., Refugee entitlement and the passing of time: Waldron's Supersession thesis and the Palestinian refugee case sixty-five years on, in Bradley, M. (ed.) *Forced migration, reconciliation and justice*, Montreal: McGill-Queen's University Press, 2014.

67 Further, per Dumper: 'Although for many years, especially between 1948 and 1967, communication was difficult and closely monitored by Israel and the Arab states, the flow of messages, information, and visits has greatly increased. Since 1967, Palestinians from inside Israel were able to visit relatives who were refugees in the camps in the West Bank and Gaza Strip. Similarly, Palestinians from the oPt worked in large numbers inside Israel and were able to reconnect with their families 'inside' or indeed, in some cases, work as day labourers on the land that they previously owned. The re-fragmentation of this Palestinian space through the construction of the wall and barrier around Palestinian areas in the West Bank since 2003, and the isolation of Gaza Strip since 2006, has made this exchange more difficult, but the emergence of email and social networking has provided alternative forms of communication that are breathing new life into attenuated and fractured bonds. Villagers of certain destroyed Palestinian villages who are now spread around historic Palestine, the Middle East, and the world are, for example, now able to maintain links that were undreamed of in 1948'. Dumper (n 66), 14.

68 Benvenisti, M., 'Principles and procedures for compensating refugees: International legal perspectives', Workshop on compensation as part of a comprehensive solution to the Palestinian refugee problem. Ottawa, July 1999, cit. in Dumper (n 66).

69 In practice, refugees' restitution claims have proven difficult. In the case of Northern Cyprus, for instance, despite the Security Council's repeated demands of Turkish withdrawal and declaration that all acts of the Turkish Republic of Northern Cyprus (TRNC) in Northern Cyprus null and void, ECtHR jurisprudence has not been consistent in granting restitution and has considered Turkish settlers assigned Greek Cypriot abandoned property to have legitimate interests in those properties. Chapter VI, Section 3.4.3.

70 See Chapter VI, Section 3.4.3.

71 Wöhler, N., Niebergall, H., *Property restitution and compensation: Practices and experiences of claims programmes*, London: Hammersmith Press, 2008.

72 Cf. UN Sub-Commission on the Promotion and Protection of Human Rights, 'Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms: final report submitted by Van Boven, T., Special Rapporteur, 2 July 1993', E/CN.4/Sub.2/1993/8 ['Van Boven report'].

73 Middle-way approaches, i.e. some compensation albeit not commensurate to the full extent of losses suffered and perhaps not necessarily paid in full to the victims themselves, but rather to some sort of agency on behalf of the state, can also be contemplated. For an overview, see Barkan, E., *The guilt of nations: Restitution and negotiating historical injustices*, Baltimore, MD: Johns Hopkins University Press, 2000; Cowen, T. 'Discounting and Restitution' *Philosophy & Public Affairs* 26.2 (1997) 168–85; Klinov, R., 'Reparations

and rehabilitation of the Palestinian refugees: Analyzing the costs of implementing a form of return', *Palestine-Israel Journal* 9 (2002) 102.

74 UNSC, 'The rule of law and transitional justice in conflict and post-conflict societies: report of the Secretary-General', 2004, S/2004/616.

75 UNHCR ExCom, Concl. on Legal Safety Issues in the Context of Voluntary Repatriation of Refugees (n 24), para. (h). See also ECtHR jurisprudence on Cyprus/TRNC ECtHR, referred to in Chapter VI, (n 368)–(n 378).

76 On this issue, see also Cantor, D. J., 'Restitution, compensation, satisfaction: Transnational reparations and Colombia's victims' law', Geneva: UNHCR Policy Development and Evaluation Service, 2011, 26. Human rights law may in some cases affect the implementation of property restitution, see generally Ronen, Y., *Transition from illegal regimes in international law*, Cambridge: Cambridge University Press, 2011, 78.

77 Apodaca, C., 'Human rights abuses: Precursor to refugee flight?', *Journal of Refugee Studies* 11 (1998): 80. Bayefsky, A. F., Fitzpatrick, J., (eds.), *Human rights and forced displacement*, vol. 4., Leiden: Martinus Nijhoff Publishers, 2000. Bradley (n 57). See also UNHCR 'Global Trends Forced Displacement in 2018' (but also 2017, 2016, and 2015), referring to human rights violations and abuses among the recurrent causes of mass displacement.

78 Rimmer, S. H., 'Reconceiving refugees and internally displaced persons (IDPS) as transitional justice actors', *Contemporary Readings in Law and Social Justice* 2.2 (2010) 163. Duthie, R., 'Transitional justice and displacement.' *International Journal of Transitional Justice* 5.2 (2011) 241–61.

79 The International Center for Transitional Justice (ICTJ) defines transitional justice as follows: 'Transitional justice is a response to systematic or widespread violations of human rights. It seeks recognition for victims and promotion of possibilities for peace, reconciliation and democracy. [It] is not a special form of justice but justice adapted to societies transforming themselves after a period of pervasive human rights abuse. In some cases, these transformations happen suddenly; in others, they may take place over many decades.' Transitional Justice Papers, *What is Transitional Justice?*, ICTJ (Portal).

80 Page, A., (ed.), *Identities in transition: Challenges for transitional justice in divided societies*, Cambridge: Cambridge University Press, 2010, 1–4.

81 Teitel, R. G., *Transitional justice*, Oxford: Oxford University Press, 2000.

82 Hayner, P. B., *Unspeakable truths: Transitional justice and the challenge of truth commissions*, London: Routledge, 2010.

83 Daly, K., Proietti-Scifoni, G., Reparation and restoration, in Tonrey, M. (ed.), *Oxford handbook of crime and criminal justice*, Oxford: Oxford University Press, 2011, 207–53.

84 Light, D., Young, C., Public memory, commemoration, and transitional justice: Reconfiguring the past in public space, in Stan, L. Nedelsky, N., (eds.), *Post-communist transitional justice: Lessons from twenty-five years of experience*, Cambridge: Cambridge University Press, 2015, 233–51.

85 Olsen, T.D., Leigh A.P., Reiter, A.G., 'The justice balance: When transitional justice improves human rights and democracy', *Human Rights Quarterly* 32 (2010) 980.

86 Aukerman, M. J., 'Extraordinary evil, ordinary crime: A framework for understanding transitional justice', *Harvard Human Rights Journal* 15 (2002) 39.

87 No case comes as a fully successful experience. The literature on the cases of Bosnia and Herzegovina, Northern Ireland, and South Africa highlights the ‘cathartic element’ of having personal stories of abuse and suffering publicly acknowledged, as well as the associated frustration. Cf. Mandela, N., *Transitional justice: How emerging democracies reckon with former regimes*, vol. 1. Washington, DC: US Institute of Peace Press, 1995. Moon, C., ‘Prelapsarian state: Forgiveness and reconciliation in transitional justice’, *International Journal for the Semiotics of Law* 17.2 (2004) 185–97. Bell, C., *Human rights, peace agreements and conflict resolution: Negotiating justice in Northern Ireland*, New York: Oxford University Press, 2006.

88 Quinn, J. R., *Reconciliation (s): transitional justice in post-conflict societies*, vol. 6, Montreal: McGill-Queen’s University Press, 2009, 5.

89 Bradley (n 57), 6–7.

90 Ibid., 2–5. See also UNSC, ‘Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies’, S/2004/616, 23 August 2004, 9. See also Duthie (n 78).

91 Minow, M., *Between vengeance and forgiveness: Facing history after genocide and mass violence*, Boston, MA: Beacon Press, 1998; Hayner, P. B. *Unspeakable truths: Confronting state terror and atrocity*, London: Routledge, 2002.

92 About 150,000 Palestinians who were not displaced became citizens of Israel, Chapter I, Section 3.2.

93 E.g., the return of over one million refugees to Mozambique after the conclusion of a peace agreement in 1992; the return of over 100,000 to their countries in Central America in 1995 after the signing of the regional peace agreements (CIREFCA); the return of over 200,000 refugees to East Timor in 1999; and the provisions for the return of refugees and internally displaced in the General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Peace Agreement), signed in November 1995. Not all return processes have been smooth and durable.

94 Chapter I, Section 4.1, Section 4.2.

95 Khalidi, R., *Sowing crisis: The Cold War and American dominance in the Middle East*, Boston, MA: Beacon Press, 2009, 24–5.

96 Al Husseini J., Bocco R., ‘Dynamics of humanitarian aid, local and regional politics: The Palestine refugees as a case study’, SSRN [online], 2009. See also Section 3.4.

97 Chapter I (n. 217) and accompanying text. Dumper, M., The return of Palestinian refugees and displaced persons: The evolution of a European Union policy on the Middle East Peace Process, in Brynen, R., El-Rifai, R. (eds.), *Palestinian refugees: Challenges of repatriation and development*, vol. 59, Ottawa: IDRC, 2007, 78.

98 Chapter I (n. 217)–(n 218) and accompanying text. Also, on the Arab stakeholders’ standpoint, see Section 3.4.3.

99 Dumper, M. (ed.), *Palestinian Refugee Repatriation: Global Perspectives*, London: Routledge, 2006.

100 In executing the recommendations of the ESM, both large-scale and a collection of small development projects were initiated with the aim to gradually trigger larger scale reintegration of the refugees (n 97)–(n 98).

101 Preamble. See also art. IX. The agreement further refers, *inter alia*, to the preferential treatment in accessing relief and work opportunities offered by UNRWA in Jordan (art. III)

and the provision of water and land for the refugees as a Government responsibility (art. IV).

102 Brynen (n 3), 33.

103 Al Husseini and Bocco (n 96), 12.

104 Jordan extended its nationality to the Palestinians residing on its territory (and in the West Bank) from 1949 onwards. In 1950, the Jordanian Parliament stated, ‘Arab rights in Palestine shall be protected. These rights shall be defended with all possible legal means and this unity shall in no way be connected with the final settlement of Palestine’s just cause within the limits of national hopes, Arab cooperation and international justice.’ Jordanian House of Assembly, 24 April 1950, quoted in Scobbie, I., Hibbin, S., ‘The Israel-Palestine Conflict in International Law: Territorial Issues’ Sir Joseph Hotung Programme for Law, Human Rights and Peace Building in the Middle East, School of Oriental and African Studies, University of London, 2009. On the UNRWA registration of Palestine refugees in Jordan, see Chapter II, (n 244)-(n 247) and (n 389)-(n 390).

105 In Lebanon, however, Christians among the refugees were mostly naturalized, see Chapter IV, Section 3.3.

106 Political reasons had eroded the general sympathy towards the cause of Palestinian refugees. Host states were less prone to accept them. Also, it was believed that return of those displaced in 1967 would be more straightforward than the 1948 refugees. See Introduction, Section 3.2.3 (terminology), Chapter II, Sections 4.2.3 and 4.3.3 (definition and status under IRL) and multiple references throughout Chapter IV and Chapter V (history, legal status, and treatment).

107 UNRWA’s infrastructure and work programmes in its area of operations (e.g. cash-for-work programmes) continued for some years, however; see Chapter IV, Section 3.1 and Chapter VI, Section 4.4.

108 This was done with direct involvement of the refugees who were to secure their own visas (e.g. to countries such as Australia, Bolivia, Brazil, British Guiana, Canada, Chile, Colombia, Federal Republic of Germany, France, Honduras, Iran, Ireland, Kenya, Kuwait, Liberia, Libya, Mexico, Morocco, Pakistan, Peru, Qatar, Saudi Arabia, United States, and Venezuela). Information can be found in a number of Annual Reports of the Director of the UNRWA, for example for the periods: 1 July 1954–30 June 1955, at 22; 1 July 1956–30 June 1957, at 26; 1 July 1957–30 June 1958, at 22; 1 July 1958–30 June 1959, at 19–20; and 1 July 1959–30 June 1960, at 10.

109 Schiff, B. N., *Refugees unto the third generation: UN aid to Palestinians*, Syracuse, NY: Syracuse University Press, 1995, 47. See also Waldman, S., *Anglo-American diplomacy and the Palestinian refugee problem, 1948–51*, Basingstoke: Palgrave Macmillan, 2016, 103.

110 Dumper (n 97), 117.

111 This triggered the development of a legal regional framework by the League of Arab States, which culminated with the 1965 Casablanca Protocol. Chapter IV, Section 2.

112 In 2019, hundreds of Palestinians in Lebanon have been demanded resettlement in a number of resettlement countries, including Canada. E.g., see ‘Canadian Embassy in Beirut: Resettlement demands by Palestinian refugees cannot be systematically approved’, Action Group for Palestinians in Syria, 23 August 2019.

113 UNHCR facilitated relocation of approximately 200,000 Palestinians to Jordan. Limited resettlement of a number of vulnerable Palestinian refugees (primarily without valid Jordanian documentation) took place to the US and Canada.

114 Palestinians from Iraq were displaced into Jordan in considerable numbers. Initially denied entry, some 500 were admitted in the semi-closed Ruweished camp close to the Iraqi-Jordanian border, on condition that they be resettled in third countries. An appeal by UNHCR, in coordination with the PLO and UNRWA, resulted in the group eventually being relocated; cf. Goddard, B., 'UNHCR and the international protection of Palestinian refugees', *Refugee Survey Quarterly* 28.2-3 (2009) 483. Some preferred return to Iraq to conditions in the camp. Brazil, Chile, and Sudan agreed to resettled number of refugees, see Chapter V, Section 3.3.1, Section 3.3.3, and Section 5.

115 Latin American states such as Brazil and Argentina started providing 'humanitarian visas' to help resettle refugees from Syria, including Palestinians; the Argentinian plan explicitly seeks to admit UNRWA-registered Palestinians living in Syria to Argentina (see Chapter V, Section 3.3.3 and Section 3.3.4). Most recently, Canada offered resettlement to Syrian refugees and non-Syrian nationals (by 2017, there were almost 22,000 government-assisted refugees, and over 14,000 privately sponsored refugees). See Government of Canada (Portal), '#WelcomeRefugees: Key Figures' 2 December 2015. It is unclear whether any of the resettled refugees from Syria were Palestinians. The Canadian government websites and statistics agency do not provide the breakdown of the ethnic profiles of the resettled refugees from Syria. Government of Canada; Government of Canada, 'Results from the 2016 Census: Syrian refugees who resettled in Canada in 2015 and 2016,' Statistics Canada, 19 December 2018; see Albanese, F., Vidal Mosler, E., 'Palestinians in the Americas: Lands of opportunities untapped?', *Al Majdal: Palestinian Refugees: Multiple Displacements and the Issue of Protection* 59 (2017) 32.

116 Goodwin-Gill and McAdam (n 24), 496.

117 In particular, unlike in the case of Iraq, Bosnia and Herzegovina, Kosovo, and East Timor, the UN Security Council has never taken firm action to ensure implementation of the right of Palestinian refugees to safely return to their original homes. Even for those displaced in 1967, the Council has never gone beyond a generic affirmation of the return of the displaced in the context of a just solution of the conflict.

118 On 20 February 2019, the Coordinator informed the Security Council that the 'prospect of sustainable peace is fading by the day.' Briefing of the UN Special Coordinator for the Middle East Peace Process, Nickolay Mladenov, to the Security Council on the situation in the Middle East, including the Palestinian question, 20 February 2019.

119 UNSC, Letter dated 7 May 2003 from the Secretary-General addressed to the President of the Security Council, UN Doc S/2003/529, 7 May 2007, Annex, A performance-based roadmap to a permanent two-state solution to the Israeli-Palestinian conflict, US Dept. of State (portal, information released online from 20 January 2001).

120 On the specifics of Palestinian position on the issue of return, see Section 3.4.1.

121 Chapter I, Section 4.4. contains a historical overview and Chapter VI, Section 3.3. and Section 3.4.3 contain a legal analysis with respect to restitution and compensation.

122 From the very beginning of the conflict, both through UNGA res. 194 and the initial work of the UNCCP, return and compensation have been closely linked; cf. Chapter VI.

123 Peretz, D., The question of compensation, in CPAP, *Palestinian refugees: Their problem and future - A special report*, Washington, DC: Center for Policy Analysis on Palestine, 1994, 15; also Hadawi, S., *Palestinian rights and losses in 1948: A comprehensive study*, London: Saqi Books, 1988, 189, in particular parts iv and v.

124 Peretz, D., *Palestinians, refugees, and the Middles East peace process*, US Institute of Peace Press, 1993, 66.

125 Chapter I, Section 4.4, especially the description of the work of the UNCCP on the value of ‘abandoned’ Arab property.

126 Ibid.

127 Hadawi (n 123).

128 For an account on the attempts at restoring Jewish property to the legitimate owners (or their heirs), see Beker, A., Laqueur, W., Tydor Baumel, J., *The Holocaust encyclopedia*, New Haven, CT: Yale University Press, 2001, 556–63.

129 Ibid.

130 Interestingly, art. 34 of the ILC Articles on State Responsibility stipulates, under ‘Forms of Reparation’, that ‘[f]ull reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination’.

131 Bryen, R., El-Rifai, R., Introduction, in Bryen, R., El-Rifai, R. (ed.), *Compensation to Palestinian Refugees and the Search for Palestinian - Israeli Peace*, London: Pluto Press, 2013.

132 Gal, O., Compensation for Palestinian refugees: An Israeli Perspective, in Bryen and El-Rifai (n 131), 35ss.

133 E.g., in 1949 Israel proposed a single compensation payment for rural refugee property, undamaged urban property and bank accounts. See excerpts from a press conference held by Mr. Sharett in Washington, DC on 21 March 1949, and correspondence of Dr. Eytan to UNCCP of 6 May 1949 in UNCCP, ‘Historical Survey of Efforts of the United Nations Conciliation Commission for Palestine to Secure the Implementation of Paragraph 11 of General Assembly Resolution 194 (III), Question Of Compensation’, 1961 [hereinafter ‘UNCCP Historical Survey’], ‘Attitude of Israel toward Compensation’, para. 46, as well as paras. 146–7.

134 For a synopsis of the issues at stake, see Brynen (n 3).

135 See Chapter I, Section 6.

136 Brynen (n 3), 35.

137 Ibid., 37–8.

138 See Chapter VII, Section 4.1.1. Common understandings at Taba were that UNRWA registration would be *prima facie* proof of refugee status and that a committee would decide other cases.

139 In 1947, only a minority of Palestinians were landowners and had property deeds. Many refugees who were originally farmers had sold their deeds to larger landowners to avoid paying taxes.

140 Brynen (n 3), 39. The 2019 figures are estimated by applying the average US annual compound interest to the 2016 estimates provided by Brynen (USD 8.6 billion and USD eighty billion, respectively).

141 This figure is obtained by applying the average US annual compound interest to the estimate of USD 310 billion in 2008 provided by Senegal, T. J., ‘Valuation of Palestinian refugee losses’, PLO Negotiations Support Unit (NSU), 18 June 2008, 17–40, <http://www.ajtransparency.com/files/2767.pdf>. See also Senegal, T. J., Hillal L., The value of 1948 Palestinian refugee material damages: An estimate based on international standards, in Brynen and El-Rifai (n 131), 132.

142 Brynen (n 3), 39.

143 At Taba, Israeli officials informally considered contributions of around USD 3–5 billion, while at Camp David, the American officials had proposed an international fund of USD twenty billion; Brynen estimates that it would result in an individual compensation of approximately USD 3,700 per UNRWA-registered refugee: a token amount considering comparative experience. cf. Brynen (n 3), 40.

144 Dudai, R., ‘A model for dealing with the past in the Israeli-Palestinian context’, *International Journal of Transitional Justice*, 1.2 (2007) 249–67, 257: ‘In the past, some of these lawsuits have been successful and compensation has been awarded. As a consequence, the Israeli government made a move to block any further compensation litigation by passing legislation to this effect in 2004. The legislation however was found to be unconstitutional and was overturned by the Israeli Supreme Court in December 2006.’ This ruling, which could have paved the way for hundreds of litigation cases in the near future, has not received further support. In response, Israel has also held Palestinians accountable for violations of international law against Israeli civilians. Dudai also refers to several law suits in Israeli courts by Israelis who were victims or relatives of victims of suicide bombings perpetrated by Palestinians, which resulted in condemnation to pay compensation after which the Israeli government has been holding Palestinian tax revenues as a deposit.

145 UNRoD’s mandate is to serve as a record, in documentary form, of the damage caused to all natural and legal persons concerned as a result of the construction of the Wall by Israel in the oPt, including in and around East Jerusalem. By June 2017, it had received more about 63,000 claims and over one million supporting documents, and decided on about 28,000 of them for its inclusion in the Register. The United Nations Register of Damage resulting from the Wall in the West Bank has been documenting claims for compensation and considering how compensation might be calculated. It has had little impact in the absence of Israeli co-operation political will to implement its recommendations. While Israeli negotiators have demanded a comprehensive arrangement that rules out any further claims thereafter, Palestinians negotiators have prioritized formal accountability and acknowledgment of moral responsibility.

146 Various reports of Special Rapporteurs on the human rights situation in the oPt and a number of Commissions of Inquiry have referred to this damage. See Chapter III.

147 Fischbach, M. R., *The peace process and Palestinian refugee claims: Addressing claims for property compensation and restitution*, Washington, DC: US Institute of Peace Press, 2006; Prettitore, P., Rempel, T., Restitution and compensation for Palestinian refugees and displaced persons: Principles, practical considerations, and compliance, in *International law and the Israeli-Palestinian conflict*, London: Routledge, 2010, 79–122.

148 According to the UNCC website, to date, the Commission had paid out about USD 48.7 million. There remains only one claim that has not been paid in full, with a balance of about \$3.7 billion outstanding. This claim was for production and sales losses as a result of damages to Kuwait’s oil-field assets and represents the largest award by the Commission’s Governing Council. According to Brynen, ‘in order to streamline the process, the UNCC established several categories of claims: those who had been forced to leave Iraq and Kuwait (cat. A); those who had suffered injury or family death (B); personal losses of up to USD 100,000 (C); larger personal claims (D); claims by corporations (E); and claims by governments and international organizations (F). Categories A, B and C were given priority.’ Cf. Brynen (n 3), 41.

149 Brynen and El-Rifai (n 131), 265–266.

150 The issue is also addressed at (n 325).

151 The Law for Preservation of the Rights to Compensation of Jewish Refugees from Arab Countries and Iran, 2010 (Israel), art. 3, in Brynen (n 3), 46. This contradicts an informal understanding that was reached at Taba that Israel would no longer link the compensation claims of Palestinian refugees to Jewish counterclaims, see Chapter I (n 373) accompanying text. In 2016, the US Congress passed non-binding resolutions calling for Jewish refugee compensation to be provided in any comprehensive Arab-Israeli peace agreement.

152 Donna Arzt, e.g., suggests that '[d]iscussion of the refugee question must be forward, not backward-looking, so that age-old battles over fault and causes of dislocation will not be relitigated.' Cf. Arzt, D., *Refugees into citizens: Palestinians and the end of the Arab-Israeli conflict*, New York: Council on Foreign Relations, 1997, 7.

153 Khalidi, R., Toward a solution, in CPAP, *Palestinian refugees: Their problem and future*, Washington, DC: Center for Policy Analysis on Palestine, 1994 24. Ellis argues that Jews themselves need to face the reality that 'Israel is neither innocent nor redemptive and that in its creation and expansion [the Jews] have caused what [they] historically have suffered: a refugee population and a diaspora'. Ellis, M. H., *Ending Auschwitz: The future of Jewish and Christian Life*, Westminster: John Knox Press, 1994, 7. The need to acknowledge the denial and lack of accountability around the *Nakba* is part of an array of 'pre-transitional justice' measures proposed by the Israeli NGO Zochrot. The measures Zochrot proposes include truth seeking and dealing with the past, forms of redress and compensation, institutional reforms, legal practices, prosecution and demand for accountability, as well as civic and informal interventions for the promotion of justice, that the NGO calls 'unofficial truth projects'.

154 Examples of countries that have taken important steps to address past abuses against the respective indigenous populations include Australia and Canada. Cf. Hayner (n 82), 14–15, 72–3. See also Corntassel, J., Holder, C., 'Who's sorry now? Government apologies, truth commissions, and indigenous self-determination in Australia, Canada, Guatemala, and Peru', *Human Rights Review* 9.4 (2008) 465–89.

155 Bell argues that this can happen though offering symbolic gestures such as formal apologies, setting up memorials and commemorative actions, e.g. days of remembrance/atonement, ensuring the non-reoccurrence of past practice through lustration and vetting, cf. Bell, C., *Peace agreements and human rights*, New York: Oxford University Press, 2003, 15, 316.

156 In a 2004 exchange of letters between Bush and Sharon, the former indicates that: 'It seems clear that an agreed, just, fair, and realistic framework for a solution to the Palestinian refugee issue as part of any final status agreement will need to be found through the establishment of a Palestinian state, and the settling of Palestinian refugees there, rather than in Israel'. Letter from US President George W. Bush to Prime Minister Ariel Sharon, Office of the Press Secretary, The White House, 14 April 2004.

157 However, various voices recommend acknowledgement of the historical truth as a means to pave the way towards a negotiated solution. Peled, Y., Rouhana, N. N., *Transitional justice and the right of return of the Palestinian refugees*, *Israel and the Palestinian refugees*, Heidelberg: Springer, 2007, 141–57; Dudai (n 144); Miller, Z., 'Settling with History: A Hybrid Commission of Inquiry for Israel/Palestine', *Harvard Human Rights Journal* 20 (2007) 293; ICG, 'Palestinian Refugees and the Politics of Peacemaking', February 2004.

158 This was the focus of the international community since the passing of UNGA res. 181 of 1947. The PLO finally accepted this solution as of the 1980s.

159 In fact the first shift in this direction happened with the 1978 Camp David agreement between Egypt and Israel, and then more prominently through the negotiations that started at Madrid in 1991. See Chapter I (n 300) accompanying and preceding text.

160 Cf. Ghandour, N., Meeting the needs of Palestinian refugees in Lebanon, in Aruri, N. (ed.), *Palestinian refugees: The right of return*, London: Pluto Press, 2001, 152–64.

161 See reference to Said, 1980 in Introduction (n 5).

162 Klein, M., The negotiations for the Settlement of the 1948 refugees, in Benvenisti, E., Gans, C., Hanafi, S. (eds.), *Israel and the Palestinian refugees*, Berlin: Springer, 2007, 474; Klein, M., 'Between right and realization: The PLO dialectics of the "right of return"' *Journal of Refugee Studies* 11.1 (1998) 1, 2.

163 One possible explanation is that in the wake of the MEPP, Fatah, an exile movement with its origins in the Gulf – which had also lost significant political consensus among Arab states over time – had to learn to engage the local leadership in the oPt. This has probably driven its political agenda to become 'oPt-centric' to the detriment of its relationship to the refugees and wider diaspora. See discussions in Chapter IV.

164 Shibliak, A., *The Palestinian refugee issue: A Palestinian perspective*, Briefing Paper, London: Chatham House, 2009, 6.

165 Klein (n 162), 5.

166 Interview with Dr. Hanan Ashrawi, 11 February 2016, Ramallah PLO Office.

167 Shibliak (n 164), 10.

168 Most notably, in May 2017, Hamas' new charter sought to reframe and limit its use of 'resistance' and the basis for its rejection of the Oslo accords; cf. Hroub, K., 'A 'new Hamas' through its new documents', *Journal of Palestine Studies* 35.4 (2006) 6–27.

169 Ibid.

170 Massad, J., 'Political realists or comprador intelligentsia: Palestinian intellectuals and the national struggle', *Critique: Critical Middle Eastern Studies* 6.11 (1997), 21–35.

171 Cf. Massad, J., Return or permanent exile, in Aruri (n 160), 105–22; Abu Sitta, S., The right of return: Sacred, legal and possible, in Aruri (n 160), 195–207.

172 Cf. Alpher, J., Shikaki, K., 'The Palestinian Refugee Problem and the Right of Return', Working Paper Series, Paper No. 98-7, Weatherhead Centre for International Affairs, Harvard University, May 1998; Arzt (n 152); Nusseibeh, S., Heller, M. A., *No trumpets, no drums: A two-state settlement of the Israeli-Palestinian conflict*, New York: Hill and Wang, 1991.

173 See Chapter VI, Section 2.3.

174 The 'Impact of the Oslo Process on Palestinian Refugees and Exiles' and 'The Development of Civil Society inside the West Bank and Gaza Strip to the Exclusion of the Palestinians outside' are cited as two examples that 'intensified a perceived division between Palestinians inside and outside'. Nabulsi, K., 'Palestinians register - laying foundations and setting directions: Report of the Civitas Project', ['Civitas Project'], University of Oxford, Nuffield College, 2006, 8–9.

175 Shikaki (n 172), 233.

176 Ibid.

177 Aruri, N., Towards convening a congress of return and self-determination, in Aruri (n 160), 263. The fact that most of the negotiators are refugees themselves, has not reflected in systematic consultation with refugee communities around the world.

178 BADIL Resource Centre for Palestinian Residency & Refugee Rights, established in 1998, see: <http://www.badil.org>.

179 *Aidoun Group* Lebanon and Syria was initially established in 1999 and subsequently incorporated as a Lebanese NGO named *Aidoun*, Centre for Refugee Rights, see: <http://www.aidoun.org>.

180 Civitas Project, 2006.

181 PRS, 'Results of PRS Refugee Polls in the West Bank/Gaza Strip, Jordan and Lebanon on Refugees' Preferences and Behavior in a Palestinian-Israeli Permanent Refugee Agreement', 2003.

182 Al Husseini and Bocco (n 96), 20.

183 Pappé, I., Israeli perception of the refugee question, in Aruri (n 160), 71–5.

184 See Lynk, M., 'The right to restitution and compensation in international law and the displaced Palestinians', *Canada's Journal on Refugees* 21.2 (2003).

185 Samy, S., *Reparations to Palestinian refugees: A comparative perspective*, London: Routledge, 2010.

186 Gal, O., Compensation for Palestinian Refugees: an Israeli perspective, in Brynen and El-Rifai (n 131), 35.

187 Ibid.

188 Weinberger, P. E., *Co-opting the PLO: A critical reconstruction of the Oslo Accords, 1993–1995*, Washington, DC: Lexington Books, 2007.

189 Gal, 2013, 37–8.

190 Interestingly, Israel's external negotiating position regarding the refugees has never shifted substantially, indicating the limited variance of opinion among diverse political parties when it comes to engagement with the Palestinians.

191 See, for example, Benny Morris' interview with Ehud Barak 'Camp David and after: An exchange', *The New York Review of Books* 13 June 2002.

192 Aruri (n 160), 263.

193 Nonetheless, the furthest Israel has ever accepted to go is compensation provided in an 'end of all claims' arrangement: participating in the establishment of a compensation fund but only paying a modest part of it.

194 The most right-wing parties do not recognize the Palestinians as a people with a right to self-determination and a home in Palestine. Though they may be willing to abide by previous agreements (signed by the Labour government), their interpretation of these agreements differs substantially and they have, at various points, expressed an interest in renegotiating or abrogating components of existing agreements that move Palestinians towards achieving their national rights.

195 See Chapter IV, Section 2.1 on the role of the LAS on the Palestinian refugee question and Chapter VI, Section 2.2 on the Arab states' role in protecting Palestinian self-determination.

196 In fact, 'fighting Zionism' was one of the *raisons d'être* of the League of Arab States which was founded in 1945. See Chapter IV.

- 197** Turck, N., 'The Arab boycott of Israel', *Foreign Affairs* 55 (1976) 472. Algeria, Morocco, and Tunisia have never enforced the boycott.
- 198** Al-Husseini, J., The Arab States and the refugee issue: A retrospective view, in Benvenisti, E., Ganz, C., Hanafi, S. (eds.), *Israel and the Palestinian refugees*, Heidelberg: Springer, 2007, 435–64.
- 199** The treatment of Palestinian refugees in host and other countries in the MENA region started to deteriorate (beyond the endemic humanitarian challenges) as of the 1960s and 1970s, largely further to the 'politicization' of the refugee cause in the eyes of Arab states and the rise of Palestinian resistance. See Chapter IV for more details.
- 200** Some of these arguments are made by Al Husseini and Bocco (n 96), 4; Al Husseini, J., *Le statut des réfugiés palestiniens au Proche-Orient: Facteur de maintien ou de dissolution de l'identité nationale palestinienne?*, in Al Husseini, J., Signoles, A. (eds.), *Les palestiniens entre état et diaspora, le temps des incertitudes*, Paris: IISMM-Karthala, 2011.
- 201** Ibid.
- 202** Al Husseini and Bocco (n 96), 9.
- 203** Al Husseini (n 200), 23–7.
- 204** This is not reflected in the official figures of the Jordanian population. Chapter IV, Section 3.2.1. Those who carry Jordanian citizenship (about forty-two to forty-three per cent) are part of the Palestinian population in Jordan, which also includes the Gazans and the West Bankers who only hold a temporary passport (without national number) as of 1988. Palestinian non-citizens, such as the ex-Gazans (who arrived in 1967), are treated by the Jordanian government as 'special' foreigners.
- 205** Brand, L., 'Palestinians and Jordanians: A crisis of identity', *Journal of Palestine Studies* 24.4 (1995), 16–17. Al Husseini (n 200).
- 206** Interview with Dr. Anis Kassim, Palestinian-ordanian lawyer. See also Jerusalem Center for Political Studies (JCPS), *Listening to Palestinian refugees/displaced persons In Jordan: Perceptions of their political and socio-economic status*, Jerusalem, 12 January 2014.
- 207** See Shehadi, N., *Palestinian refugees: The regional perspective*, London: Chatham House, 30 April 2009, 5–6.
- 208** Feiler, G., *From boycott to economic cooperation: The political economy of the Arab boycott of Israel*, London: Routledge, 2013.
- 209** Following such developments, in 1994, the Cooperation Council for the Arab States of the Gulf (GCC) ended their participation in the Arab boycott against Israel. Mauritania, which never applied the boycott, established diplomatic relations with Israel in 1999.
- 210** Chatham House, 'Israeli-Palestinian Peacemaking: the Role of the Arab States', Briefing, 30 January 2019.
- 211** In recent years, Kuwait has returned to be vocal about the rights of the refugees, particularly within the UN.
- 212** (n 210).
- 213** European states that voted in favour are Belgium, Denmark, France, Greece, Iceland, Luxembourg, Netherlands, Norway, Sweden, and the United Kingdom. Australia, Canada, New Zealand, and the US also voted in favour.

214 Those against included all six Arab member states, who saw in it a tacit recognition of Israel.

215 The post of UNRWA Director became that of Commissioner General as of 1962. Schiff (n 109), 292.

216 The only exception to date was Commissioner General Ilter Türkman from Turkey, from 1991–1996.

217 As Fischbach notes, based on his unprecedented research on the UNCCP:

[t]he UNCCP efforts were doomed from the start by the ‘red lines’ established by Washington in its concern to remain within parameters acceptable to Israel. Aside from a taboo on anything beyond token repatriation, the United States and Israel wanted any compensation scheme to finance the large-scale resettlement of refugees in the Arab world (which was anathema to the Arabs). But while compensation was ostensibly an acceptable goal, the US-Israeli constraints prevented the UNCCP from moving aggressively even on that issue. Indeed, both UNCCP and American archival documents are replete with evidence revealing the extent to which the Americans ensured that the commission’s policy and initiatives would not cross these lines’,

in Fischbach, M. R., ‘The United Nations and Palestinian refugee property compensation’, *Journal of Palestine Studies* 31.2 (2002), 34–50, 45. Nonetheless, throughout the 1950s the United States also advocated for partial return of the refugees, trying to convince Israelis that the refugee issue would not disappear and remain a thorny challenge.

218 Khalidi (n 95), 25–39.

219 Among others, in internal emails leaked to *Foreign Policy* magazine, Jared Kushner, senior advisor to US President Donald Trump, advocated for a ‘sincere effort to disrupt’ UNRWA. ‘This [agency] perpetuates a status quo, is corrupt, inefficient and doesn’t help peace,’ he wrote. According to the same report, Kushner also pressed Jordan, during a visit to the region in June 2018, to strip its more than two million UNRWA-registered Palestinians of their refugee status so that the Agency could no longer operate there. Cf. ‘Trump and allies seek end to refugee status for millions of Palestinians’, *Foreign Policy* 3 August 2018.

220 Yacobi and Newman argue that Britain and Germany have traditionally used restraint towards Israel: the former because of its role during the years that brought to the establishment of the state, and the latter because of its role in the Holocaust. Other countries, like France, have generally been supportive of Israel since its early days. Yacobi, H., Newman, D., The EU and the Israel-Palestine conflict, in Diez, T., Albert, M., Stetter, S. (eds.), *The European Union and border conflicts: The power of integration and association*, Cambridge: Cambridge University Press, 2008, 180–1.

221 See also Venice Declaration, 1980 and Berlin Declaration, 1997, cit. in Gresh, A., The European Union and refugees question, in Aruri (n 160), 84.

222 Dumper (n 97), 82

223 Yacobi and Newman (n 220), 182–4.

224 Gresh (n 221), 84–6.

225 Yacobi and Newman (n 220), 182–4.

226 Cf. World Bank Net Official Development Assistance and Aid statistics 1993–2017.

227 See the shift in two World Bank reports issued in 1993 and 2004, respectively: World Bank, *Developing the Occupied Territories, an investment in peace: Overview*, 1993; World Bank, *Disengagement, the Palestinian Economy and the Settlements*, World Bank, 2004. See also Shearer, D., *The humanitarian crisis in the occupied Palestinian territory: an overview*, Humanitarian Practice Network, November 2004; Le More, A., Lowe, R., Keating, M. (eds.), *Aid, diplomacy and facts on the ground: The case of Palestine*, London: Chatham House, 2005.

228 Chapter VI, Section 4.

229 Dumper (n 97), 77.

230 Both collective and individual rights are discussed in Chapter VI, see Section 1.

231 This is articulated below.

232 Gabiam, N., *The politics of suffering: Syria's Palestinian refugee camps*, Bloomington, IN: Indiana University Press, 2016.

233 As such Palestinians who have obtained citizenship – in Jordan or elsewhere – have not relinquished their right to return or compensation under international law, international human rights law in particular.

234 A critique to the ‘exceptionalism’ in the approach to the Palestinian refugee question is offered by Kagan, M., ‘The (relative) decline of Palestinian exceptionalism and its consequences for refugee studies in the Middle East’, *Journal of Refugee Studies* 22.4 (2009) 417–38.

235 Weiner, J. R., ‘The Palestinian refugees’ “right to return” and the peace process’, *Boston College International and Comparative Law Review* 20 (1997) 1, 4.

236 Aruri (n 177), 270.

237 Dajani, O. M., ‘Shadow or shade: The roles of international law in Palestinian-Israeli peace talks’, *Yale Journal of International Law* 32 (2007) 61, 116–17 [emphasis added].

238 Rather, it may lead to missing the opportunity to address impunity, rebuilding trust both in the rule of law and among conflicting parties. Bell (n 155), 183–8, 254–8.

239 Declaration of Principles on Interim Self-Government Arrangements between Israel and the Palestinian Liberation Organization [DOP] (13 September 1993), preamble and art. 1 in particular. Cf. Dajani (n 237), 89.

240 Ibid., 87–8.

241 Dennis Ross, the US mediator, in his memoir on the peace process, observes that from at both Madrid and Oslo ‘the Arabs and Palestinians always sought acceptance of their principles while the Israelis always sought recognition of the practicalities. The gaps on the issues bore not just disagreements but very different attitudes about the negotiations, their purpose, and the tactics that should be employed’. Cit. in Dajani (n 237), 92, fn 172. Also, Tilley, V., ‘After Oslo, a paradigm shift? Redefining ‘peoples’, sovereignty and justice in Israel-Palestine.’ *Conflict, Security & Development* 15.5 (2015) 425–53.

242 Dajani (n 237), 99.

243 See also Brynen (n 3), 31.

244 Chapter IV, Chapter V and Chapter VI, Section 4.

245 Bell (n 87).

246 In the context of direct negotiations between Israel and the Palestinians, and as of 2002 more systematically, the discourse around solutions for Palestinian refugees has been informed by such concept. Cf. UNRWA Commissioner General statements and reports as of 2002.

247 E.g. UNGA res. 194 of 1948, UNGA res. 302 of 1949, UNGA res. 2252 of 1967, and UNSC 237 and 242 of 1967, respectively.

248 Such an interpretation would run against the principle of non-discrimination among refugees on the ground of nationality as per CSR51, art. 3.

249 Reference to a 'just' solution of the refugee issue was introduced by UNSC res. 242 of 1967.

250 UNHCR Statute, ch. I, para. 1 states that UNHCR 'shall assume the function of providing international protection, under the auspices of the United Nations, to refugees who fall within the scope of the present Statute and of *seeking permanent solutions* for the problem of refugees by assisting Governments ... to facilitate the voluntary repatriation of such refugees, or their assimilation within new national communities.' [emphasis added]. See also UNHCR), *Durable Solutions and Refugee Protection No. 56 (XL)* - 1989, 13 October 1989.

251 Cf. Akram, S. M., 'Palestinian refugees and their legal status: Rights, politics, and implications for a just solution', *Journal of Palestine Studies* 31.3 (2002) 47-8.

252 NYD, para. 5.

253 See Statement by High Commissioner for Refugees, Filippo Grandi, on the occasion of the adoption of the NYD.

254 NYD, makes reference to UNRWA in para. 86; CRRF, para. 13.

255 GC, para. 7.

256 Dumper, M., 'Future prospects for the Palestinian refugees', *Refugee Survey Quarterly* 28.2-3 (2009) 573.

257 NYD, Annex I, para. 2.

258 See Chapter VII.

259 A multi-stakeholder approach is recommended by the NYD, para. 69, and the CRRF, para. 2.

260 GC, paras. 20-30.

261 The refugee movement, as it has developed during and in the aftermath of the Israeli-Palestinian peace negotiations, represents an existing and flexible platform among Palestinian refugees across various countries, both in the region and beyond, through a network of grassroots community-based and non-governmental organizations. This non-partisan movement has helped refugees articulate and raise concerns and awareness at the regional and international level about the Palestinian refugee question in its wholeness and complexity, making clear that without 'refugee participation, agreements reached between the parties themselves would be neither just nor durable', Rempel, T., 'The Right to Take Part: Refugee Participation in the Negotiation of Durable Solutions', paper presented during a conference on Palestinian refugees in the Arab World organized by Al Jazeera Center for Studies in collaboration with the Palestinian Return Centre, Doha, 14-15 April, 8.

262 Chapter IV, sections on Lebanon and Kuwait.

263 See Section 2. Also, for an assessment of comparative experience with the case of Palestinian refugees see Dumper, M., Comparative perspectives on the repatriation and resettlement of Palestinian refugees: The cases of Guatemala, Bosnia, and Afghanistan, in Benvenisti, E., Gans, C., Hanafi, S., (eds.), *Israel and the Palestinian Refugees*, Heidelberg: Springer, 2007, 387–408.

264 Dumper (n 99); Brynen and El-Rifai (n 97); Brynen and El-Rifai (n 131).

265 See earlier reference to the outcome of the various track-two initiatives.

266 Direct negotiations have shown that parties can gather and discuss topics that for long were taboo in their respective societies, such as return, the conflicting narratives about the origins of the refugee problem, compensation, and resettlement.

267 Brynen (n 3), see reference to Chatham House and Ottawa Process in particular.

268 For an overview, see Helton, A. C., ‘The comprehensive plan of action for Indo-Chinese refugees: An experiment in refugee protection and control’, *New York Law School Journal of Human Rights* 8 (1990) 111 and Bronee, S. A., ‘The history of the comprehensive plan of action’, *International Journal of Refugee Law* 5 (1993) 534.

269 Helton, A. C., ‘End of exile: Practical solutions to the Palestinian refugee question. Israel and the Palestinian Refugees’, *Fordham International Law Journal*, 28.5 (2004) 1325–60. The essay was further reproduced in Benvenisti E., Gans C., Hanafi, S. (eds.) *Israel and the Palestinian refugees*, Beiträge zum ausländischen öffentlichen Recht und Völkerrecht, vol. 189, Berlin: Springer, 2007, 349–71.

270 Helton (n 269), 1332.

271 Ibid., 1342. Helton warns that ‘CPA experiences suggest Palestinian resettlement could be effectuated by UNHCR and IOM, although UNHCR’s refugee mandate is qualitatively different, and founded on the generic refugee concept of a person in flight from persecution’.

272 Ibid., 1344. Taking into account the different definition of Palestinian refugees compared to art. 1A(2) refugees, Helton suggests that ‘if Palestinian refugees are to be resettled in significant numbers, then adjustments would likely have to be made in numerous national legal systems. Potential resettling governments will thus have to review their laws and make any necessary amendments in order to establish new or expanded humanitarian admissions authorities that would cover Palestinians’.

273 Ibid., 1327.

274 NYD, para. 12.

275 Rotberg, R. (ed.), *Israeli and Palestinian narratives of conflict: History’s double helix*, Bloomington, IN: Indiana University Press, 2006, cit. in Dudai (n 144), 253.

276 In 2018, the debate around Palestinian refugees prompted by the US Administration’s decision to defund UNRWA, among others, demonstrated a limited appreciation of the historical context in which the Palestinian refugee question originated, which is necessary to appreciate Palestinian claims. Cf. Albanese, F., *Current Issues in Depth: UNRWA and Palestine refugee rights: New assaults, new challenges*, Washington, DC: Institute for Palestine Studies, 2018, 6.

277 In 1922, the British Mandate in Palestine, under the auspices of the League of Nations, recognized the self-determination of the indigenous inhabitants of Palestine. Historical aspects are discussed in Chapter I, Section 2 and legal analysis is offered in Chapter III, Section 3.2.1.

278 Chapter III Section 3.2.1 (in general) and Chapter VI, Section 2.2 and Section 2.3 (in more specific terms) discuss how Palestinian self-determination has never materialized either in the full territory of historic Palestine, or in the more limited territory left after Israel's establishment, and even in the self-rule areas created by Oslo. Chapter VI, Section 3.2, also discusses historical denial of the right to return and compensation.

279 See Chapter I and Chapter VI, Section 3.1.

280 Cf. Masri, M., 'The implications of the acquisition of a new nationality for the right or return of Palestinian refugees', *Asian Journal of International Law* 5.2 (2015) 356–86

281 See Said, 1980, 115, referred to in the Introduction, (n 5).

282 As discussed in Chapter II, ending refugee status through the pursuit of one of the three durable solutions is considered 'without prejudice to the meaning of 'the Palestinian people', as well as to the meaning of the terms 'refugees' and 'displaced persons' as used in various UNGA and UNSC resolutions'; UNHCR, Guidelines on International Protection No. 13: Applicability of Article 1D of the 1951 Convention Relating to the Status of Refugees to Palestine Refugees, December 2017, HCR/GIP/16/12 ['UNHRC Guidelines on Article 1D'], para. 32.

283 According to Peled and Rouhana, acknowledging the Palestinian narrative of 1948 and some of its main events in particular (i.e. well documented massacres such as Tantura and Deir Yassin), would equate to a recognition of the Palestinians' 'identity' and 'moral worth' within Israeli society. Peled and Rouhana (n 157), 328–9.

284 Cf. Al-Wali, A. H., 'Refugee protection in the Arab world', *International Politics* 148; Al-Aza'r, M. K., *Arab protection for Palestinian refugees*, Bethlehem: BADIL, 2004.

285 This may help appreciate the logic of keeping separate Palestinian claims from Jewish claims (i.e. so-called counter claims).

286 Refugees from 1948 and 1967, rhetorically referred to as distinct groups, have the same rights under international law. See Introduction, Section 3.2.3 text corresponding to (n 30)–(n 34).

287 Failure to provide effective remedies may corroborate a sense of injustice, trigger further displacement and generally undermine the achievement of durable solutions. See IASC, 2010, 43; Brookings-Bern Project on Internal Displacement, *IASC framework on durable solutions for IDPs*, April 2010, 25–26.

288 Chapter VI, Section 3.2 and Section 3.3.

289 See Nusseibeh and Heller (n 172), 53. Also, Whitebeck, J. V., 'No other basis for peace: Palestinian statehood is the only real choice', *JP* 29 November 1994; Friedman, T. L., 'Partition of Palestine: Israelis and Palestinians make history', *New York Times* 9 July 1995; and Gazit, S., 'Name the baby', *JP* 19 July 1995.

290 The challenges of ensuring representation of the entire Palestinian people including the diaspora are discussed in Chapter VI, Section 2.3.

291 Nusseibeh and Heller (n 172), 88.

292 Cf. Al Husseini (n 200).

293 Significant attention has been devoted to the absorption capacity of the Palestinian state, and the measures that could be taken to sustain the local economy and resettlement/return to Palestine, including by using the property (ideally) left behind by evacuation of settlements to accommodate the returning refugees. Cf. Abed, G. T., 'The economic viability of a Palestinian state', *Journal of Palestine Studies* 19.2 (1990) 3–28; Aronson, G., De Jong, J., *Israeli settlements and the Palestinian refugee question: Evaluating the prospects and*

implications of settlement evacuation in the West Bank and Gaza - preliminary analysis, in Brynen and El-Rifai (n 131), 218–28.

294 Qafisheh, M., ‘Draft Palestinian Nationality Law’ (draft prepared for the PLO in 2011, Ramallah), discussed in Chapter III, Section 3.2.2, (n 265)–(n 266) in particular.

295 According to art. 14 of the draft law, may acquire Palestinian nationality as a matter of choice, including with a view to preserve their acquired rights in the country of residence; these include East Jerusalemites, in case Jerusalem remains under Israeli occupation, Palestinian refugees who acquired the nationality of states that ban nationality change, and refugees who fear that the acquisition of Palestinian nationality might undermine their refugee status’; Qafisheh (n 294), 3. However, this would not necessarily guarantee freedom of movement/right to enter Palestine, depending on the negotiated outcome.

296 At the time of writing, Israeli practices to evict Palestinians from their houses in East Jerusalem, hand them over to Israeli settlers, and apprehend Palestinian land in the West Bank continue unabated. Despite some international criticism, measures to stop such practices have been non-existent.

297 Prohibited under international law, the annexation of whole or part of the oPt constitutes an act of aggression, which may trigger the application of ch. VII of the UN Charter by the Security Council. Cf. *Advisory Opinion on Namibia*, at paras. 45–7, 50, 53, and 83. The ongoing investigation by the ICC prosecutor on the situation in the oPt may shed further clarity on the practical implications of the prohibition of annexation for both Israel and third countries whose support Israel enjoys.

298 Israel’s lack of willingness to relinquish control over the West Bank, expressed, *inter alia*, in 2014 by Israeli Prime Minister Netanyahu, has progressively been supported by other political developments in this direction. This includes the Knesset’s adoption of the ‘Regulation Bill’ of February 2017 [Israel, *Law for the Regulation of Settlement in Judea and Samaria*, 5777-2017, available at the Library of Congress (portal)], which regularizes under Israeli domestic law 4,000 illegally built settler homes built on arbitrarily appropriated Palestinian land, and the ‘Nation State Law’ of July 2018 [Basic Law: Israel – The Nation State of the Jewish People, Unofficial Translation provided by Adalah, 25 July 2018], which recognizes the legitimate aspirations of Israel over Judea and Samaria (Israel’s name for the West Bank).

299 Israel has unique obligations vis-à-vis Palestinian self-determination. However, self-determination has also *erga omnes* effects, implying that *all States* have a duty to *respect* such right. Whether this does not involve *general* positive obligations on the part of all States (in the Wall AO the ICJ ‘recalled’ UNGA res. 2625, which speaks of a duty to *promote* self-determination through joint and separate action, but stopped there). In the Wall context, the Court stated that all States must ‘see to it that any impediment, resulting from the construction of the wall, to the exercise by the Palestinian people of its right to self-determination is brought to an end.’ Cf. Chapter VI, Section 3.2.

300 Chapter VI, Section 2.3.

301 For the concept of effective control in the oPt, see Chapter III, Section 2.2. In the words of Palestinian President Mahmoud Abbas ‘if the two-state solution were to be destroyed due to the creation of a one-state reality with two systems ... this would be a failure, and neither you, nor we, will have any other choice but to continue the struggle and demand full, equal rights for all inhabitants of historic Palestine.’ Palestinian President Mahmoud Abbas’ address to UN General Assembly, September 2017, reproduced by Haaretz in full, 20 September 2017.

302 While it is unlikely that this would pave the way to a one-state solution in the short run, it is a scenario that a number of scholars and activists have started to explore as the only remaining viable option, where both Israelis and Palestinians will be in a position to enjoy equal rights. Bisharat, G. E, 'Maximizing rights: The one-state solution to the Palestinian-Israeli conflict', *Global Jurist* 8 (2008) 2; Tilley, V., *The one-state solution: A breakthrough for peace in the Israeli-Palestinian deadlock*, Ann Arbor, MI: University of Michigan Press, 2010; Farsakh, L., 'The one-state solution and the Israeli-Palestinian conflict: Palestinian challenges and prospects', *Middle East Journal* 65.1 (2011) 55-71.

303 NYD, para. 10.

304 UNHCR, *Resettlement Handbook* (n 20), 30.

305 Nusseibeh and Heller (n 172), 95.

306 See the important contribution made by the Human Rights Committee on the right to enter or re-enter one's country as per art. 12(4) of ICCPR, cf. Chapter VI, Section 3.4.3.

307 Cf. Gazit (n 289); Nusseibeh and Heller (n 172), 95; Peretz (n 124), 72, 74.

308 Chapter I, Section 5. Dajani makes the argument that as of 2000, Palestinian negotiators became more assertive regarding specific 'international legal rules [which] entitled the Palestinian people to certain benefits' but also used those as bargaining chip, due to the associated 'willingness to exchange those benefits for others'. Dajani (n 237), 99.

309 See, e.g. Abunimah, A., Hussein I., 'The Palestinian right of return', *Human Rights Brief* 8 (2001) 4, cit. in Helton (n 269), 1349.

310 Those allowed to enjoy their right to return and move to Israel could use national mechanism just as courts. The others could not all realistically rely on the state of new nationality. Cf. limitations on state's invoking responsibility of another state reparations under ILC, Articles on State Responsibilities, art. 48, para. 2 and commentary (12) to that para., requiring that 'a State invoking responsibility under Article 48 and claiming anything more than a declaratory remedy and cessation may be called on to establish that it is acting in the interest of the injured party, and when this is not a state, it can be difficult.'

311 UNHCR, *Conclusion on Local Integration*, (n 30).

312 Cf. Goodwin-Gill, *The Refugee in International Law*, Oxford, Clarendon Press, 1996 (2nd edn.), 278.

313 CRC, art. 7(2) [emphasis provided]. While this provision falls short of a firm obligation on states to grant citizenship to stateless children born on their territory, it makes it clear that states should apply their nationality legislation, including with respect to applications for naturalization, 'without discrimination of any kind'

314 Khalil, A., 'Palestinian nationality and citizenship: current challenges and future perspectives', Research Report, European University Institute Robert Schuman Centre for Advanced Studies, Florence: CARIM, 2007; Khalil, A., 'Palestinian refugees in Arab States: A rights-based approach', Euro-Mediterranean Consortium For Applied Research On International Migration Research Report, Florence: CARIM, 2009. Masri (n 280); see also Chapter VI, Section 4.8.

315 Chapter VI, Section 4.8

316 For the exceptions, see Chapter IV, Section 3.4.

317 Based on multiple conversations with Jordanians of Palestinian origin living in Jordan.

318 In addition to Jordan's position being that citizenship should not be in prejudice of UNGA res. 194, the hardening of the country's position on the refugee issue may also be explained in response to political tensions between Jordan and the Palestinian leadership, as discussed in Section 3.4.3 (Arab states).

319 UNHCR, 'The State of the World Refugees', see ch. 5 on 'Protracted refugee situations: The search for practical solutions', 117.

320 See earlier reference to UNRWA's support to emigration of Palestinian refugees including for resettlement, see (n 108)–(n 110) and accompanying text.

321 As recalled earlier, only one per cent of refugees worldwide gets resettled, a trend that has remained unchanged in recent years (n 37).

322 Much land that was once agricultural has become urban; in many cases where there were once Palestinian Arab farms, orchards, or orange groves, there are now Jewish high-rise apartments or office buildings. Movable property such as vehicles, household goods, farm animals, and personal property has long since disappeared without any record of its [custody or] disposition. Cf. Hadawi (n 123), 55; Peretz (n 123), 18.

323 In fact, as Hilal notes, while it is assumed that there would be reparation for immovable property losses, less explored is whether there would be restitution or compensation for other forms of material property deprivations. Hilal, L., *Implementing a negotiated settlement on the Palestinian refugee question: The international dimensions*, London: Chatham House, 2012, 16.

324 The records of the Custodian of Absentee Property and Development Authority held in the Israeli state archives also contain valuable detailed records of Palestinian refugee holdings. Cf. Nathanson, R., Tzameret-Kertcher, H., 'Israel's Policy Regarding Palestinian Refugee Real Estate Holdings: Israel's State Records', 2013.

325 Property restitution is also referred to in para. 11 of the CRRF as part of the measures to address the root causes of displacement and allow voluntary return in safety and dignity.

326 As discussed in Chapter VI, Section 3.4.3, refugees' restitution claims have proven difficult. In the case of Northern Cyprus, for instance, despite UN Security Council's repeated demands of Turkish withdrawal and declaration that all acts of TRNC in Northern Cyprus null and void, ECtHR jurisprudence has not been consistent in granting restitution and has considered Turkish settlers assigned Greek Cypriot abandoned property to have legitimate interests in those properties.

327 Kubursi, A., Valuing Palestinian losses in today's dollars, in Aruri (n 160), 250.

328 Israel paid over USD one billion to compensate less than 9,000 settlers evacuated from Gaza in 2005, see Brynen (n 3), 40. Earlier, Israeli settlers who had vacated Israeli colonies in the Sinai before it was returned to Egypt received compensation of some USD 250,000 per household. Zureik, *Palestinians*, 122, cit. in Massad (n 171), 114 and fn 54.

329 Chatham House, 'The Palestinian refugee issue: Compensation and implementation mechanisms', 18–19 December 2013, 9, (The Palestinian Refugee Issue), cit. in Brynen (n 3), fn 53.

330 Ibid., 40.

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Annex 1 Selected United Nations Resolutions of Concern to Palestinian Refugees

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(p. 493) Annex 1 Selected United Nations Resolutions of Concern to Palestinian Refugees

Since 1948, hundreds of United Nations resolutions have been adopted that, either directly or indirectly, relate to the position of Palestinian refugees.¹ In this annex the integral text is provided of three of the most significant resolutions on the subject: General Assembly Resolution 194 (III), 11 December 1948; General Assembly Resolution 302 (IV), 8 December 1949; and Security Council Resolution 242 (1967), 22 November 1967.

1. General Assembly Resolution 194 (III), 11 December 1948

[Establishing a UN Conciliation Commission to help solve the Question of Palestine, resolving that Jerusalem should be placed under a permanent international regime, and resolving that the refugees willing to return to their homes, should be permitted to do so.]

The General Assembly,

Having considered further the situation in Palestine,

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

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

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

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

- (b) To carry out the specific functions and directives given to it by the present resolution and such additional functions and directives as may be given to it by the General Assembly or by the Security Council;
- (c) To undertake, upon the request of the Security Council, any of the functions now assigned to the United Nations Mediator on Palestine or to the United Nations Truce Commission by resolutions of the Security Council; upon such request to the Conciliation Commission by the Security Council with respect to all the remaining functions of the United Nations Mediator on Palestine under Security Council resolutions, the office of the Mediator shall be terminated;
3. *Decides* that a Committee of the Assembly, consisting of China, France, the Union of Soviet Socialist Republics, the United Kingdom and the United States of America, shall present, before the end of the first part of the present session of the General Assembly, for the approval of the Assembly, a proposal concerning the names of the three States which will constitute the Conciliation Commission;
4. *Requests* the Commission to begin its functions at once, with a view to the establishment of contact between the parties themselves and the Commission at the earliest possible date;
5. *Calls upon* the Governments and authorities concerned to extend the scope of negotiations provided for in the Security Council's resolution of 16 November 1948 and to seek agreement by negotiations conducted either with the Conciliation Commission or directly, with a view to the final settlement of all questions outstanding between them;
- (p. 494) 6. *Instructs* the Conciliation Commission to take steps to assist the Governments and authorities concerned to achieve a final settlement of all questions outstanding between them;
7. *Resolves* that the Holy Places – including Nazareth – religious buildings and sites in Palestine should be protected and free access to them assured, in accordance with existing rights and historical practice; that arrangements to this end should be under effective United Nations supervision; that the United Nations Conciliation Commission, in presenting to the fourth regular session of the General Assembly its detailed proposals for a permanent international regime for the territory of Jerusalem, should include recommendations concerning the Holy Places in that territory; that with regard to the Holy Places in the rest of Palestine the Commission should call upon the political authorities of the area concerned to give appropriate formal guarantees as to the protection of the Holy Places and access to them; and that these undertakings should be presented to the General Assembly for approval;
8. *Resolves* that, in view of its association with three world religions, the Jerusalem area, including the present municipality of Jerusalem *plus* the surrounding villages and towns, the most eastern of which shall be Abu Dis; the most southern, Bethlehem; the most western, Ein Karim (including also the built-up area of Motza); and the most northern, Shu'fat, should be accorded special and separate treatment from the rest of Palestine and should be placed under effective United Nations control;
- Requests* the Security Council to take further steps to ensure the demilitarization of Jerusalem at the earliest possible date;
- Instructs* the Commission, to present to the fourth regular session of the General Assembly detailed proposals for a permanent international regime for the Jerusalem

area which will provide for the maximum local autonomy for distinctive groups consistent with the special international status of the Jerusalem area;

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

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

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

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

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

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

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

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

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

(p. 495) 14. *Calls upon* all Governments and authorities concerned to co-operate with the Conciliation Commission and to take all possible steps to assist in the implementation of the present resolution;

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

2. General Assembly Resolution 302 (IV), 8 December 1949

[Establishing the United Nations Relief and Works Agency for Palestine Refugees in the Near East, which remains the most important UN agency to uniquely deal with Palestine refugees]

The *General Assembly*,

Recalling its resolutions 212 (III) of 13 November² and 194 (III) of 11 December 1948, affirming in particular the provisions of paragraph 11 of the latter resolution,

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

1. *Expresses* its appreciation to the Governments which have generously responded to the appeal embodied in its resolution 212 (III), and to the appeal of the Secretary-General, to contribute in kind or in funds to the alleviation of the conditions of starvation and distress amongst the Palestine refugees;
2. *Expresses* also its gratitude to the International Committee of the Red Cross, to the League of Red Cross Societies and to the American Friends Service Committee for the contribution they have made to this humanitarian cause by discharging, in the face of great difficulties, the responsibility they voluntarily assumed for the distribution of relief supplies and the general care of the refugees; and welcomes the assurance they have given the Secretary-General that they will continue their cooperation with the United Nations until the end of March 1950 on a mutually acceptable basis;
3. *Commends* the United Nations International Children's Emergency Fund for the important contribution which it has made towards the United Nations programme of assistance; and commends those specialized agencies which have rendered assistance in their respective fields, *in particular* the World Health Organization, the United Nations Educational, Scientific and Cultural Organization and the International Refugee Organization;
4. *Expresses* its thanks to the numerous religious, charitable and humanitarian organizations which have materially assisted in bringing relief to Palestine refugees;
5. *Recognizes* that, without prejudice to the provisions of paragraph 11 of General Assembly resolution 194 (III) of 11 December 1948, continued assistance for the relief of the Palestine refugees is necessary to prevent conditions of starvation and distress among them and to further conditions of peace and stability, and that constructive measures should be undertaken at an early date with a view to the termination of international assistance for relief;
6. *Considers* that, subject to the provisions of paragraph 9 (d) of the present resolution, the equivalent of approximately \$33.7 million will be required for direct relief and works programmes for the period 1 January to 31 December 1950 of which the equivalent of \$20.2 million is required for direct relief and \$13.5 million for works programmes; that the equivalent of approximately \$21.2 million will be required for works programmes from 1 January to 30 June 1951, all inclusive of administrative expenses; and that direct relief should be terminated not later than 31 December 1950 unless otherwise determined by the General Assembly at its fifth regular session;

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

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

(p. 496) (b) To consult with the interested Near Eastern Governments concerning measures to be taken by them preparatory to the time when international assistance for relief and works projects is no longer available;

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

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

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

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

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

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

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

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

12. Instructs the Secretary-General to transfer to the United Nations Relief and Works Agency for Palestine Refugees in the Near East the assets and liabilities of the United Nations Relief for Palestine Refugees by 1 April 1950, or at such date as may

be agreed by him and the Director of the United Nations Relief and Works Agency for Palestine Refugees in the Near East;

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

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

15. *Authorizes* the Secretary-General, in consultation with the Advisory Committee on Administrative and Budgetary Questions, to negotiate with the International Refugee Organization for an interest-free loan in an amount not to exceed the equivalent of \$2.8 million to finance the programme subject to mutually satisfactory conditions for repayment;

(p. 497) 16. *Authorizes* the Secretary-General to continue the Special Fund established under General Assembly resolution 212 (III) and to make withdrawals therefrom for the operation of the United Nations Relief for Palestine Refugees and, upon the request of the Director, for the operations of the United Nations Relief and Agency for Palestine Refugees in the Near East;

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

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

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

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

(b) To place at the disposal of the Technical Assistance Board M1 information concerning any technical assistance work which may be done by the United Nations Relief and Works Agency for Palestine Refugees in the Near East in order that it may be included in the reports submitted by the Technical

Assistance Board to the Technical Assistance Committee of the Economic and Social Council;

20. *Directs* the United Nations Relief and Works Agency for Palestine Refugees in the Near East to consult with the United Nations Conciliation Commission for Palestine in the best interests of their respective tasks, with particular reference to paragraph 11 of General Assembly resolution 194 (III) of 11 December 1948;
21. *Requests* the Director to submit to the General Assembly of the United Nations an annual report on the work of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, including an audit of funds, and invites him to submit to the Secretary-General such other reports as the United Nations Relief and Works Agency for Palestine Refugees in the Near East may wish to bring to the attention of the Members of the United Nations or its appropriate organs;
22. *Instructs* the United Nations Conciliation Commission for Palestine to transmit the final report of the Economic Survey Mission, with such comments as it may wish to make, to the Secretary-General for transmission to the Members of the United Nations and to the United Nations Relief and Works Agency for Palestine Refugees in the Near East.

3. Security Council Resolution 242 (1967), 22 November 1967

[Stating the principles of a just and lasting peace in the Middle East]

The Security Council,

Expressing its continuing concern with the grave situation in the Middle East,

Emphasizing the inadmissibility of the acquisition of territory by war and the need to work for a just and lasting peace in which every State in the area can live in security,

Emphasizing further that all Member States in their acceptance of the Charter of the United Nations have undertaken a commitment to act in accordance with Article 2 of the Charter,

(p. 498)

1. *Affirms* that the fulfilment of Charter principles requires the establishment of a just and lasting peace in the Middle East which should include the application of both the following principles;

- (i) Withdrawal of Israel armed forces from territories occupied in the recent conflict;
 - (ii) Termination of all claims or states of belligerency and respect for and acknowledgement of the sovereignty, territorial integrity and political independence of every State in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force;

2. *Affirms further* the necessity

- (a) For guaranteeing freedom of navigation through international waterways in the area;
 - (b) For achieving a just settlement of the refugee problem;

- (c) For guaranteeing the territorial inviolability and political independence of every State in the area, through measures including the establishment of demilitarized zones;
- 3. *Requests* the Secretary-General to designate a Special Representative to proceed to the Middle East to establish and maintain contacts with the States concerned in order to promote agreement and assist efforts to achieve a peaceful and accepted settlement in accordance with the provisions and principles in this resolution;
- 4. *Requests* the Secretary-General to report to the Security Council on the progress of the efforts of the Special Representative as soon as possible.

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Annex 2 League of Arab States Instruments Concerning Palestinian Refugees and Palestinians in General

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Francesca P. Albanese, Lex Takkenberg

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(p. 499) Annex 2 League of Arab States Instruments Concerning Palestinian Refugees and Palestinians in General

1. League Council Resolution 714, 27 January 1954: Issue of Unified Travel Documents for Palestinian Refugees

The Council decides to approve the following resolution of the Political Committee subject to amendment of Article 6.

The Committee has approved the resolutions and recommendations of the Permanent Committee on Palestine subject to amendment of articles 4 and 5, and paragraph 5 of Article 8. Following is the text of these resolutions as approved by the Political Committee:

The Permanent Committee on Palestine has studied the subject of unified travel documents for Palestinian refugees. After having taken note of the remarks by some Arab states concerning the specimen proposed by the Committee, the Committee has decided as follows:

Article 1: The governments of the League of Arab States have agreed that each government should issue the Palestinian refugees residing in its territory, or falling under its care,² temporary travel documents upon their request and in accordance with the provisions of the following articles unless they have obtained citizenship from one of the states.

Article 2: This document nullifies any other documents which a refugee has and which are invalid for travel to all Arab and foreign countries.

As was the case prior to 1967 in respect of Egypt *vis-à-vis* the Palestinians of Gaza.

Article 3: Subject to the terms of Article 6, this document does not obligate the states to which a refugee has travelled to allow him to reside in their territory, and it does not deprive him of the right to return to the states which have granted it. The bearer of this document is subject to the rules of the residency law in the country where he resides.

Article 4: Each member state shall adopt instructions, in accordance with the provisions of these articles, concerning the procedures of applying for the document, its validity, the formalities pertaining to its renewal and extension, the fees charged for this, and other procedural requirements.

Article 5: This document is valid for five years and shall be extended annually.

Article 6: The member states of the Arab League shall accord to the holders of these travel documents the same treatment with respect to visas and residence as is accorded to their nationals. The member states which have abolished visa requirements shall accord the refugees the same treatment as the nationals of the member states of the League prior to the abolition of the visa requirements.

Article 7: When this document expires outside the country in which it has been issued, it shall be renewed by the competent authorities of the state which issued it.

Article 8: When issuing this unified document the following conditions are to be taken into consideration:

1st: Every government provides the preamble it deems appropriate on the first inside page of the cover and states its standing regulations on the last page of the cover.

2nd: The document consists of 36 pages including 4 pages for renewals.

3rd: The cover is made of flexible plastic and its colour is dark blue.

4th: The document is 15 cm long and 10 cm wide.

5th: Wavelike thin blue lines are printed on the document pages.

6th: Every state uses the foreign language of its choice besides the Arabic language.

7th: The documents on which the issue of the travel document is based are mentioned on the remarks page.

(p. 500) **8th:** Every government will charge fees for the document proportional to its cost. Exemption is to be considered in cases of poverty and need.

Additional recommendations

- A. The phrases 'Place of issue, and date of issue' on page 1 of the specimen travel document for Palestinian refugees are to be omitted as they are included on page 4.
- B. The General-Secretariat and the Arab states endeavour to obtain international recognition for this document.

2. Council of Arab Ministers of the Interior Resolution 8, 15 December 1982: Special Resolution on the Treatment of Palestinians in the Arab Countries

The Council of Arab Ministers of the Interior,

With due regard to the special circumstances in which the straggling Palestinian people live, manifested by their expulsion from their homeland by the Zionist invasion forces,

And with due regard to the fierce social and economic tragedies this people are suffering as a result of being uprooted from their homeland and the theft of their possessions and means of livelihood,

And considering the duty of the Arab states to support the steadfastness of this people inside and outside the occupied territories and to enable it to continue its struggle under the leadership of the PLO until it liberates its country and an independent Palestinian state has been established in its homeland,

Decides:

1. The Travel Document for Palestinian Refugees issued by any Arab country is to be accorded the same treatment as the passport of the citizens of that country.
2. The bearer of a Travel Document for Palestine Refugees shall be accorded the same treatment as nationals of the state issuing this document, as regards freedom of residence, work and movement.
3. Bilateral coordination with the PLO will take place to determine the special measures needed for the implementation of the preceding paragraphs.
4. In the case of a Palestinian perpetrating a crime in any Arab country, the laws of the country of his residence will be applicable.

3. Protocol on the Treatment of Palestinians in the Arab States, 11 September 1965 ('Casablanca Protocol')

The Council of Foreign Ministers of the Members States,

Recalling the Pact of the League of Arab States and its special Annex Regarding Palestine, the resolutions of the Council of the League of Arab States on the question of Palestine and in particular the resolution concerning the preservation of the Palestinian Entity,

Meeting in Casablanca on 10 September 1965,

Has agreed to the following provisions and has called upon the member states to take the necessary measures for their implementation:

1. While keeping their Palestinian nationality, Palestinians presently residing in the territory of... shall be accorded the same treatment as regards the right to do business (work) and to be employed as if they were nationals.
(p. 501)
2. When their interests so require, Palestinians presently residing in the territory of... shall have the right to leave the territory of this state and return to it.
3. Palestinians residing in the territory of other Arab states shall have the right to enter and leave the territory of... when their interests so require. Unless otherwise agreed by the competent authorities, this right to enter does not lead to a right of residence, except for the period and purpose specified.
4. Palestinians residing at present in the territory of..., as well as those who previously resided there prior to having emigrated, shall, upon their request, be provided with valid travel documents. The competent authorities, wherever located, shall issue or renew these documents without delay.

5. The member states of the Arab League shall accord to the holders of these travel documents the same treatment with respect to visas and residence as is accorded to nationals of Arab League states.

Done at Casablanca, 11 September 1965

4. The Positions of Arab States on the Casablanca Protocol

5.1 Arab States which have ratified the Protocol without reservations

- The Hashemite Kingdom of Jordan
- The People's Democratic Republic of Algeria
- The Democratic Republic of Sudan
- The Iraqi Republic
- The Syrian Arab Republic
- The United Arab Republic ¹
- The Yemen Arab Republic ²

5.2 Arab States which have ratified the Protocol with reservations

The State of Kuwait

The State of Kuwait has ratified the Protocol subject to a reservation in respect of its Article 1: 'national treatment' in respect of doing business (work) does not extend to self-employment which is subject to Kuwaiti law.

The Lebanese Republic

The Lebanese Republic has ratified the Protocol subject to reservations in respect of its first three articles:

Article 1: While keeping their Palestinian nationality and to the extent the social and economic conditions in the Lebanese Republic allow for this, Palestinians presently residing there are accorded the right to do business (work) and be employed as if they were nationals.

Article 2: The following is to be added to this article: 'as if they were Lebanese nationals and in accordance with the applicable rules and regulations.'

Article 3: The following sentence is to be added after the first sentence (ending with the words '... when their interests so require.'): 'The right to enter Lebanese territory is conditional on having obtained an entry visa from the competent Lebanese authorities before.'

(p. 502) The Kingdom of Libya

The Kingdom of Libya³ has ratified the Protocol subject to a reservation in respect of Article 1: in respect of the right to do business (work) and to be employed Palestinians shall be accorded the same treatment as the other nationals of Arab states.

5.3 Arab States which have not yet ratified the Protocol

- The Kingdom of Saudi Arabia
- The Kingdom of Morocco

5.4 Arab States which joined the Arab League after the Protocol was signed

The People's Democratic Republic of Yemen (12 December 1367)

The State of Bahrain (11 September 1971)

The State of Qatar (11 September 1971)

Oman (29 September 1971)

The United Arab Emirates (6 December 1971)

The Islamic Republic of Mauritania (26 November 1973)

The Democratic Republic of Somalia (14 February 1974)

Palestine (9 September 1976)

The Republic of Djibouti (4 September 1977)

The Republic of Tunisia did not attend the Summit Conference during which the Casablanca Protocol was adopted and no information regarding its position on the Protocol is available.

5. Representative List of League of Arab States Resolutions Dealing with Palestinian Refugees and Palestinians in General

The list contains resolutions of the League of Arab States Counsel (LASC) and resolutions of the League of Arab States Counsel of Arab Ministers of the Interior (LASCAMI).

1948 LASC res 205: The Palestinian Refugees

1949 LASC res 231: Demanding the Return of Palestinian refugees to their Homes

1950 LASC res: Palestinian Refugee Employees

LASC res 325: The Cooperation of Arab States the UN Agency for the Relief of Palestine Refugees

1951 LASC res 361: Educating the Children of Refugees

LASC res 362: Funding the UN Program for the Relief of Refugees

LASC res 388: Aiding Refugee Families

LASC res 389: The Project of the UN Agency to Improve the Conditions of the Refugees

LASC res 391: The Recommendations of the Palestine Committee to Examine the Issues of the Refugees

LASC res 407: Educating the Children of Refugees

1952 LASC res 424: Dispersed Palestinian Families and Granting Refugees Uniform Travel Documents

LASC res 439: Educating the Children of Palestinian Refugees

LASC res 462: The Palestinian Refugees

LASC res 472: Educating the Children of Refugees

LASC res 475: Liquidating the Funds Existing in the Era of the Committee of Financial Experts and the Higher Committee of Relief for Palestinian Refugees

1953 LASC res 514: Liquidating the Funds Existing in the Era of the Committee of Financial Experts and the Higher Committee of Relief for Palestinian Refugees

LASC res 524: Issuing Uniform Travel Documents for the Refugees

LASC res 525: The Selling of Palestinian Refugee Property in Israel

LASC res 526: Funding the Project of Educating the Children of Refugees (p. 503)

LASC res 544: Issue of Unified Travel Documents for Palestinian refugees

LASC res 576: Arab Possessions in Palestine

1954 LASC res 626: Educating the Children of Refugees

LASC res 705: Report of the Acting Director General of UNRWA

LASC res 708: The Consent of the US Congress for Permits for 2000 Palestinians Refugees to Reside in the US and 4000 Orphans to Reside in the US

*LASC res 714: Issue of Unified Travel Documents for Palestinian refugees

LASC res 715: Exempting Palestinian Refugees from Paying Visa and Passport Renewal Fees

LASC res 731: The Project of Educating the Children of Refugees

LASC res 760: Permitting two thousand Palestinian Refugees to Reside in the United States

LASC res 773: Dissolution of the Committee of Financial Experts and the Higher Committee of Relief for Palestinian Refugees

LASC res 820: The Objection to the Transfer of the Responsibilities of UNRWA to the Arab States

LASC res 862: The Project of Educating the Children of Palestinian Refugees

LASC res 895: Dissolution of the Committee of Financial Experts and the Higher Committee of Relief for Palestinian Refugees

1955 LASC res 914: On Granting the Nationality of Some Arab States to Palestinian Refugees

LASC res 1030: Protecting Palestinian Refugee Property

LASC res 1031: The Issue of Palestinian Refugees

LASC res 1033: Granting Palestinian Refugees in the Diaspora a Unified Travel Document

LASC res 1060: Providing Half a Million Pounds in the Independent Budget to be Spent on the Education the Children of Palestinian Refugees

LASC res 1093: Request for Half a Million Pounds to be Spent on the Education the Children of Palestinian Refugees

1956 LASC res 1119: The Request of Some Refugees to Receive Monetary Allowance Instead of In Kind

LASC res 1212: Decisions and Recommendations of the First Conference on Refugee Affairs in Jerusalem in September 1956

LASC res 1213, Arab Refugees on the Island of Cyprus

LASC res 1265: Increasing the Allocations to Education the Children of Palestinian Refugees

1957 LASC res 1333: The Request of Some Refugees to Receive Monetary Allowance Instead of In Kind

LASC res 1335: Attempts to Sell Arab Property in Occupied Palestine to Jews

LASC res 1412: Forming a New Committee to Manage the Various Funds from the Committee of Financial Experts and the Higher Committee of Relief for Palestinian Refugees

1958 LASC res 1435, Suggestion to Provide Assistance to the Arabs Resident in Occupied Palestine

LASC res 1489: Relief to Palestinian Refugees

LASC res 1502: Displacement of Arab Youth from Occupied Palestine to Neighboring Arab States As a Result of Persecution

1959 LASC res 1547: The Granting of Citizenship to Palestinian Refugees by Some Arab States

LASC res 1550: The Condition of Palestinian Refugees, and the Efforts to Displace Them to Other Countries

LASC res 1593: Report of the Conference of Arab Experts on the Issue of Palestinian Refugees

LASC res 1594: The Palestine Issue

LASC res 1602: Services Provided to the Arab Refugees of Palestine in the Host States

LASC res 1636: Report of the Conference of Arab Experts on the Issue of Palestinian Refugees

1960 LASC res 1650: Aid Provided by the Host Arab States to Palestinian Refugees

LASC res 1705: Unified Travel Documents for Palestinian Refugees

LASC res 1785: Passports Issued by the All-Palestine Government

1963 LASC res 1882: The Insistence of Israeli Authorities to Open an Office to Settle the Compensation Accounts for Whoever Desires from the Palestinian Refugees

1964 LASC res 1946: Facilitating Travel and Residency for Palestinian Refugees and Requesting UNRWA to Conduct an Investigation into the Situation of those Receiving Allowances from Them

LASC res 2019: Recommendations of the Conference of Supervisors of Refugee Affairs in Host States (Damascus, 17-2 June 1964) (p. 504)

LASC res 2020: The Frozen Bank Balances of Refugees in the Banks of Israel and the Fate of the Accounts without Heirs

LASC res 2029: The Migration of Palestinians to Australia

1965 LASC res 2077: Recommendations of the 9th Conference of the Heads of the Organs of Palestine

LASC res 2078: Amending the System of the Organs of Palestine in the Member States

1966 LASC res 2210: Report of the Expert of the UNCCP about the Properties of Palestinian Refugees

LASC res 2240: The Mission of the Committee of Experts of Arab Lands in Occupied Palestine

LASC res 2247: The Issue of Palestine in the Eleventh Session of the UN General Assembly

LASC res 2248: The Arab Position on the Palestine Issue

LASC res 2251: Arab Possessions in Occupied Palestine

LASC res 2293: Arab Lands and Properties in Palestine

LASC res 2294: Suggestions of the Representatives of the Host Arab States in the Consultative Committee of UNRWA

LASC res 2342: Suggestions of the Representatives of the Host Arab States to UNRWA

1968 LASC res 2454: The Report of the General Commissions of UNRWA to the UN General Assembly

LASC res 2455: Recommendations of the Conference of Supervisors of Refugee Affairs in Host States (Beirut, 5-10 Aug 1968)

1969 LASC res 2491: Recommendations of the 4th Conference of the Supervisors of Palestinian Affairs in the Host Arab States

LASC res 2550: Recommendations of the 5th Conference of the Supervisors of Palestinian Affairs in the Host Arab States

1970 LASC res 2600: Recommendations of the Conference of Supervisors of Palestinian Affairs

LASC res 2601: Transferring Refugees from the Gaza Strip

LASC res 2669: Recommendations of the Conference of Supervisors of Palestinian Affairs in the Host Arab States

1971 LASC res 2717: Recommendations of the Conference of Supervisors of Palestinian Affairs in the Host Arab States in its 8th Session

1972 LASC res 2872: Recommendations of the Conference of Supervisors of Palestinian Affairs in the Host Arab States

LASC res 2958: Recommendations of the Conference of Supervisors of Palestinian Affairs in the Host Arab States in its 11th Session

1973 LASC res 3017: Recommendations of the Conference of Supervisors of Palestinian Affairs in the Host Arab States in its 12th Session

LASC res 3068: Establishing a University for Palestinian Students in One of the Arab Countries and Supporting Domestic Educational Institutions in Jerusalem

1974 LASC res 3130: Deficit in the Budget of UNRWA

LASC res 3171: Request to Insert the Palestinian Cause in the Agenda of the UN General Assembly

LASC res 3180: Recommendations of the Conference of Supervisors of Palestinian Affairs in its 13th Session, and the Recommendations of the Representatives of the Host States in the Consultative Committee of UNRWA

1975 LASC res 3238: Recommendations of the Conference of Supervisors of Palestinian Affairs in its 14th Session

LASC res 3337: Recommendations of the Conference of Supervisors of Palestinian Affairs in its 15th Session

- 1976 LASC res 3397: Recommendations of the Conference of Supervisors of Palestinian Affairs in its 16th Session
- 1977 LASC res 3555: Recommendations of the Conference of Supervisors of Palestinian Affairs in its 17th Session
- LASC res 3618: The Palestinian Issue and the Occupied Arab Territories
- LASC res 3625: Issuing a Palestinian Passport
- LASC res 3631: Extending UNRWA [Mandate]
- 1978 LASC res 3695: Recommendations of the Conference of Supervisors of Palestinian Affairs in Arab Host States in its 20th Session
- LASC res 3743: Recommendations of the Conference of Supervisors of Palestinian Affairs in Arab Host States in its 21st Session (p. 505)
- 1979 LASC res 3807: Nominations of the Conference of Supervisors of Palestinian Affairs in its 22nd Session
- LASC res 3812: Symposium on the National Rights of the Palestinian People
- LASC res 3856: Recommendations of the Conference of Supervisors of Palestinian Affairs in Arab Host States in its 23rd Session
- 1980 LASC res 3906: Encouragement of Bilateral Contacts by the PLO Concerning Procedures of Travel, Residence, and Work Pertaining to Palestinians in the Arab States
- LASC res 3958: Request to Support UNRWA
- LASC res 3961: Recommendations of the Conference of Supervisors of Palestinian Affairs in Arab Host States in its 25th Session
- 1981 LASC res 4022: Recommendations of the Conference of Supervisors of Palestinian Affairs
- LASC res 4063: The Dangerous Situation in the Arab Region due to the Barbaric Israeli Bombing of Lebanese Cities and Villages and Palestinian Camps
- LASC res 4071: Palestinian Refugee Travel Documents
- 1982 LASC res 4130: Deficit in the Budget of UNRWA
- *LASCAMI res 8: Special Resolution on the Treatment of Palestinians in the Arab Countries
- 1983 LASC res 4131: The Report of the Conference of Supervisors of Palestinian Affairs in the Host Arab States in its 28th Session
- LASC res 4239: The Condition of Palestinian Refugees in Lebanon in the Aftermath of the Zionist Invasion
- LASC res 4240: The Decision of UNRWA to stop Distributing Relief Allowances to Palestinian refugees in Lebanon
- LASC res 4242: The Recommendations of the Conference of Supervisors of Palestinian Affairs in the 37th Session
- LASC res 4243: Arrangements for Travel, Residency and Work for Palestinians in Arab States
- LASC res 4245: The Recommendations of the Conference of Supervisors of Palestinian Affairs in the Arab Host States in its 30th session

LASC res 4267: Bill for the Statute of the Financial Fund to Rebuild what was Destroyed in the War in Lebanon, from Camps to Residences, and to Help the Palestinian Population in the Occupied Territories

LASCAMI res 20: On the Implementation of Special Council Resolution No. 8, on the Treatment of Palestinians in the Arab Countries

1984 LASC res 4332: Issuing Palestinian Passports

LASC res 4333: The Recommendations of the Conference of Supervisors of Palestinian Affairs in the Arab Host States in its 31st session

LASC res 4383: Report of the Conference of Supervisors of Palestinian Affairs in the Arab Host States in its 33th Session

LASC res 4411: Bill for the Statute of the Financial Fund to Rebuild what was Destroyed in the War in Lebanon, from Camps to Residences, and to Help the Palestinian Population in the Occupied Territories

LASCAMI res 33: On the Implementation of Special Council Resolution No. 8 on the Treatment of Palestinians

1985 LASC res 4426: The Treatment of Palestinian and Issuing a Travel Passport Specific to Them

LASC res 4427: Deficit in the Budget of UNRWA

LASC res 4428: Annual Meeting of Consultative Committee of UNRWA

LASC res 442: Report of the Conference of Supervisors of Palestinian Affairs in its 34th Session

1985 LASC res 4459: Bill for the Statute of the Financial Fund to Rebuild what was Destroyed in the War in Lebanon, from Camps to Residences, and to Help the Palestinian Population in the Occupied Territories

LASC res 4469: Condition of the Palestinian Camps in Beirut

LASC res 4471: Condition of the Palestinian Camps in Beirut

LASC res 4485: Deficit in the Budget of UNRWA

LASC res 4487: Report of the Conference of Supervisors of Palestinian Affairs in its 35th Session (p. 506)

LASC res 4490: The Palestinian Camps in Lebanon

LASC res 4491: Bill for the Statute of the Financial Fund to Rebuild what was Destroyed in the War in Lebanon, from Camps to Residences, and to Help the Palestinian Population in the Occupied Territories

1986 LASCAMI res 51: On the Implementation of resolutions of the Council Resolution, No. 20 and No. 33, on the Treatment of Palestinians in the Arab Countries

LASC res 4617: The Treatment of Palestinians in Arab Host Countries

LASC res 4640: Deficit in the Budget of UNRWA

LASC res 4628: Condition of the Palestinian Camps in Lebanon

LASCAMI res 111: On the Treatment of Palestinians in Arab Countries

LASC res 4630: Condition of the Palestinian Camps in Lebanon

1987 LASC res 4640: Palestinian Camps in Lebanon

LASC res 4644: The Treatment of Palestinians in Arab Countries

LASC res 4645: Increasing the Proportion of Donations from Arab Countries to the Budget of UNRWA

LASC res 4704: The Treatment of Palestinians in Arab Countries

1988 LASC res 4770: Implementing the Protocol on the Treatment of Palestinians in Arab Countries

LASC res 4771: Report of the Conference of Supervisors of Palestinian Affairs in its 40th Session

LASC res 4809: Ministerial Committee Tasked with Fixing/Improving the Condition of the Palestinian Camps in Lebanon

LASC res 4816: Ensuring the Protection of Palestinians and Palestinian Camps in Lebanon

LASC res 4819: Report of the Conference of Supervisors of Palestinian Affairs in its 41st Session

1989 LASC res 4872: Report of the Conference of Supervisors of Palestinian Affairs in its 42nd Session

LASC res 4908: Ministerial Committee Tasked with Improving the Condition of the Palestinian Camps in Lebanon

LASC res 4933: Report of the Conference of Supervisors of Palestinian Affairs in its 43rd Session

LASC res 4934: The pressing need to distribute aid to all Palestinian refugees in the Occupied Territories

1990 LASC res 4989: The financial situation of UNRWA and its effect on its services and the projected financial needs for year 1990

1991 LASC res 5093: Report of the Conference of Supervisors of Palestinian Affairs in its 47th Session

1992 LASC res 5167: Report of the Conference of Supervisors of Palestinian Affairs

LASC res 5219: Report of the Conference of Supervisors of Palestinian Affairs in its 48th Session

1993 LASC res 5278: The financial situation of UNRWA and its effect on its services and the projected financial needs for year 1993

LASC res 5325: Report of the Conference of Supervisors of Palestinian Affairs in its 50th Session

1994 LASC res 5370: Report of the Conference of Supervisors of Palestinian Affairs in its 51th Session

LASC res 5414: The Palestine Issue and the Israeli Occupation of Arab Territories

LASC res 5418: Report of the Conference of Supervisors of Palestinian Affairs in its 52nd Session

1995 LASC res 5456: The Palestine Issue and the Arab-Israeli Conflict

LASC res 5462: The Financial Situation of the [UNRWA]

LASC res 5492: The Palestine Issue and the Israeli Occupation of Arab Territories

LASC res 5496: Report of the Conference of Supervisors of Palestinian Affairs in its 53rd Session

LASC res 5496: The Financial Situation of the [UNRWA]

LASC res 5538: Palestine Refugees in the Near East

1996 LASC res 5540: The Palestine Issue and the Israeli Occupation of Arab Territories

LASCAMI res 143: On the Treatment of Palestinians in Arab Countries

LASC res 5541: The Financial Situation of the [UNRWA]

LASC res 5581: The Palestine Issue and the Israeli Occupation of Arab Territories (p. 507)

LASC res 5583: Report of the Conference of Supervisors of Palestinian Affairs in its 56th Session

LASC res 5584: The Financial Situation of the [UNRWA]

1997 LASC res 5628: The Palestine Issue and the Israeli Occupation of Arab Territories

LASC res 5632: The Palestine Issue and the Israeli Occupation of Arab Territories

LASC res 5676: The Palestine Issue and the Israeli Occupation of Arab Territories

LASC res 5680: The Financial Situation of the [UNRWA]

1998 LASC res 5729: The Palestine Issue and the Israeli Occupation of Arab Territories

LASC res 5732: The Financial Situation of the [UNRWA]

LASC res 5783: The Palestine Issue and the Israeli Occupation of Arab Territories

1999 LASC res 5838: Palestinian Refugees

LASC res 5887: The Financial Situation of the [UNRWA]

2015 Report and Recommendations of the Conference of Supervisors of Palestinian Affairs in its 94th Session

Report and Recommendations of the Conference of Supervisors of Palestinian Affairs in its 95th Session (p. 508)

Footnotes:

- 1** At the time of ratification comprised of Egypt only.
- 2** The former state of North Yemen.
- 3** Libya ratified the Protocol before the revolution of September 1969.

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Bibliography

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The following online resources provide access to a wealth of documentation and information on Palestinian refugees and the Question of Palestine.

BADIL Resource Center <http://www.badil.org/en/>

Institute for Palestine Studies <https://www.palestine-studies.org/>

UNISPAL <https://www.un.org/unispal/data-collection/>

UNRWA <https://www.unrwa.org/>

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