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MYTHS AND REALITIES OF THE PALESTINIAN REFUGEE PROBLEM:

REFRAMING THE RIGHT OF RETURN

*Susan M. Akram**

INTRODUCTION

This year, 2007, marks the fortieth anniversary of the Israeli occupation of the West Bank and Gaza. It is also the sixtieth anniversary of the expulsion of the Palestinian people from their homeland when the Israeli state was declared. The year continues the stalemate punctured by a long series of negotiation processes from Madrid to the failed Oslo interim agreements; the most recent Roadmap offered by the Quartet countries provides no hope for a just and durable peace in the foreseeable future. Meanwhile, the second '*intifada*' [uprising] of 2000, the recent Israeli invasion of Lebanon, the construction of the massive separation Wall, ongoing occupation, land confiscation, oppression and ethnic cleansing of the Palestinian people are reminders of how urgent a just peace is for the people of the region. While the political discourse focuses almost exclusively on the need to combat 'terrorism' as the main cause of the intractability of the problem, the real root causes are ignored or deliberately omitted from the discourse.

One of the root causes of the ongoing conflict is the Palestinian refugee problem. The political power brokers in the Palestinian-Israeli negotiation processes, rather than address the refugee problem, have deliberately excluded it from the framework of negotiations. It is precisely this exclusion and the urgency of the issue that makes it important to clarify, and bring to the forefront, of public discourse. The intractability of the refugee problem, however, is not simply due to an absence of political attention, but also to ambiguous legal standards applicable to the Palestinian case. Palestinians, who have been denied critical aspects of international legal protection, comprise one of the largest and longest-standing refugee, or 'refugee-like' populations in the world—an estimated two in five refugees in the world are Palestinian.¹ Palestinians as a nationally-identifiable population are unique in that they comprise the largest global population of *refugees*, *internally displaced*, and *stateless persons*.

As this essay will discuss, elements of the Palestinian refugee problem are found in numerous mass refugee situations in Africa, Central America, Asia and Europe. What remains unique about the Palestinian refugee problem is the persistent and severe denial of international protection, the lack of access both to a durable solution and to the mechanisms for implementing a durable solution—minimum protection guarantees that are available over time to other refugee

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populations. There are three ways in which Palestinians are measurably worse off than other groups in protracted refugee situations: first, no state or recognized entity is legally required to provide international protection; second, the lack of state or international protection leaves Palestinians with no prospect for durable solution to their plight; and third, there is no access to any enforcement mechanism to implement their rights.² Contributing to the denial of protection to Palestinian refugees is a severe gap in understanding and implementing the key provisions of law applicable to the Palestinian case.

This paper describes the main legal issues underlying the Palestinian refugee question, examining and deconstructing several of the key arguments surrounding the rights and principles involved in the refugee problem. These arguments are broadly described, discussing the actual rights involved in more detail, along with their implications for a just and durable solution to this core aspect of the Middle East conflict.

THE HISTORICAL ROOTS OF THE REFUGEE PROBLEM, AND THEIR RELEVANCE TO LEGAL RIGHTS

The origins of the Palestinian refugee problem can be traced to the interests of powerful western states in the Middle East region during the inter-war and post World War II periods; the efforts to address resettlement of large numbers of Jewish and other refugees and displaced persons after the War; and the Zionist program to create a 'Jewish homeland' in Palestine. Much has been written about each of these contributing factors, but historians and social scientists disagree as to the exact causes of the refugee exodus, and why it has persisted.³

Competing narratives about the origins of the Palestinian refugee problem relate directly to the Israeli position that recognizing Palestinians as refugees imputes a Palestinian 'right' to return that negates a Jewish right of return to Israel. Intrinsically related to this position is the contention that the Partition Resolution was an affirmation by the international community of the establishment of a Jewish state, and that Israel has the right to maintain a state of exclusively Jewish character, or Jewish majority.⁴ Implicit in all of these arguments is a perception that recognizing Palestinian refugees with a concomitant right of return threatens the existence of Israel as a Jewish state.

The conflict's roots are traceable to the birth of the Zionist movement, from which emerged the program to create a 'Jewish national home' in Palestine. The Zionists succeeded in obtaining approval of the Balfour Declaration by the British government, proclaiming that the British government "viewed with favour the establishment in Palestine of a national home for the Jewish people...it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine, or the rights and political status enjoyed by Jews in any other country."⁵

The inconsistent British commitments of, on the one hand, administering Palestine under the post-War League of Nations Mandate for the benefit of its native population and, on the other hand, carrying out the Balfour Declaration commitment to establishing a 'national home for the Jewish people' spelled disaster in Palestine.⁶ These policies laid the foundation for competing claims between the immigrating Jewish community and the native Palestinian population, and fighting broke out between 1922-1948. The Zionist plan was further given purported legitimacy by the passage of the UN General Assembly Partition Resolution, 181 on

November 29, 1947 following Britain's unilateral declaration that it would quit its Mandate.⁷ Facing strenuous opposition by the Arab states and Palestinian leadership, 181 recommended the partition of historic Palestine into two states, one 'Arab' and one 'Jewish'. The Resolution passed 30-17, with 9 abstentions.⁸

The Resolution was a nonbinding recommendation by the General Assembly for a political solution to the British Mandate's termination, the massive outbreak of violence, and the seemingly irreconcilable claims of the communities in Palestine.⁹ The Resolution recommended the establishment of two states, Arab and Jewish, with economic union between them. The 'Jewish' state was to be established in 56% of historic Palestine, benefiting the less than 1/3 of the population which was Jewish that owned no more than 7% of the land; the 'Arab' state was to be established in 44% of Palestine, representing the 95% of the native Palestinian population which owned 93% of the land.¹⁰

Aside from whether the General Assembly had legal authority to recommend partition, let alone confer title to territory held by people unwilling to relinquish their land, 181 did not authorize establishment of an *exclusive* Jewish state. The Jewish area was to have 498,000 Jews and 407,700 Arabs, and the Arab area was to have 10,000 Jews and 725,000 Arabs. Jerusalem was to be an 'international zone,' with 105,000 Arabs and 100,000 Jews.¹¹ Thus, even the Jewish area would have a bare Jewish majority. Among the most important provisions of 181 are those on non-discrimination, which prohibited each state from discriminating on the basis of race, religion or national origin.¹² Neither did 181 authorize transfer of populations from one area to another, although provision was made to protect those who chose to move.¹³ Hence, the General Assembly through Resolution 181 gave no authority for an exclusive Jewish state, as such an action would be in fundamental violation of the UN Charter.

The organized Jewish community proclaimed the Israeli state on May 15, 1948.¹⁴ Following the passage of Resolution 181, and even before the Israeli state was declared, Jewish militias began expelling the non-Jewish population from its self-declared territory, continuing to expand into what was to constitute the Arab state. Months before the declaration of formal hostilities between Israel and the Arab states, armed and well-organized Jewish militias forced one-half of the Palestinian Arab population out of their towns, cities and villages. During the following war, the Zionist militias displaced the disorganized and primarily unarmed Palestinian population in large numbers, using a combination of tactics including armed attacks, massacres, looting, destruction of property, and forced expulsion.¹⁵

The majority of the refugees fled in 1948 under 'Plan Dalet,' the Zionist military plan to expel as many Palestinian Arabs as possible under the guise of necessity of war.¹⁶ One of the earliest documented massacres was in the village of Deir Yassin of April 1948, in which 250 Palestinian men, women and children were killed. Other massacres followed, including nine in October 1948 alone, in which hundreds of Palestinians villagers were killed and thrown in mass graves.¹⁷ The massacres terrorized the Palestinian population, and as more refugees fled or were expelled, Israeli forces systematically destroyed hundreds of villages. Israeli military forces carried out 'shoot to kill' policies to prevent refugees from returning. The Israeli government continued its expulsion policies, both within the cease-fire lines and outside, following the Armistice Agreements of 1949.¹⁸

Immediately following declaration of the state, Israel adopted measures to prevent return, which were incorporated in a plan called "Retroactive Transfer, A Scheme for the Solution of the Arab Question in the State of Israel."¹⁹ Among the

implemented measures were destruction of Palestinian Arab population centers, settlement of Jews in Arab towns and villages, and passage of legislation to prevent refugee return.

Israel also passed a series of laws defining Palestinians who were forcibly removed from their lands or fled as ‘absentees,’ defining their lands as ‘absentee properties’ and then confiscating them.²⁰ Subsequent Israeli legislation converted vast amounts of confiscated properties for the exclusive benefit of Jews, and prohibited restitution of such land to Palestinian Arabs in perpetuity. These measures also extended to Palestinians who remained on their land and became Israeli citizens, depriving them of their properties through the legal fiction that they were ‘present absentees,’ and thus subject to the expropriation laws.²¹

Israel also enacted discriminatory nationality legislation. Prior to the creation of the Israeli state, Palestinians were nationals and citizens of the area known as Palestine under British Mandate, a status legally formalized by Mandate law. Israel’s Nationality Law of 1952 retroactively repealed Palestinian citizenship as recognized under the Mandate, and automatically granted every Jewish immigrant Israeli nationality, but placed such stringent conditions on the eligibility of Palestinian Arabs for Israeli nationality that few could qualify.²²

Through its laws of nationality, citizenship and land regulation, Israel denationalized the majority of Palestinian Arabs from their homeland, permanently expropriated Arab lands, homes and collective properties, creating an entire population of stateless refugees. The intent and effect of these laws was institutionalized preferencing of one group on the basis of ethnicity (‘Jewish nationality’) over another (Arab Palestinians), and legalizing discrimination against the latter.²³ This institutionalized discrimination significantly affected both the creation and maintenance of the Palestinian refugee problem.

Calculations differ as to how many Palestinians became refugees or internally displaced during the 1948-49 conflict, but the best estimates arrive at between 750,000-800,000 refugees, or about 85% of the Palestinian population from what became the state of Israel.²⁴ Today, there are three primary groups of Palestinian refugees. The largest group is Palestinians displaced from their places of origin due to armed conflict and the 1948 war, including refugees who are eligible for assistance from the United Nations Relief and Works Agency for Palestine Refugees (UNRWA) and those who were also displaced in 1948 but were either ineligible for UNRWA assistance or did not register with the agency. The second group of refugees—usually termed ‘displaced persons’—comprises those displaced for the first time from their homes in the territories Israel occupied after the 1967 conflict. The third group includes those who were neither refugees from the 1948 nor the 1967 conflict, but who are outside of Palestine and are being denied the right to return due to Israel’s discriminatory residency, expulsion, and deportation laws.²⁵

There are two additional groups of Palestinians in ‘refugee-like’ condition. The first group comprises those who remained in the ‘recognized borders’ of Israel, who were expelled or forced to flee from their homes during the 1948 conflict or were transferred out of their home areas or otherwise displaced due to expropriation or demolition of their homes. The second group comprises persons who suffered similar Israeli actions within the 1967 occupied territories.

Although the historical record is overwhelming that Palestinian refugees were forcibly expelled as part of a systematic plan to make room for Jews, the opposite contention that they left on their own has no relevance to their main legal

rights as refugees: the right to return, the right to property restitution, and the right to compensation for real or personal property loss.

THE DEFINITION AND STATUS OF PALESTINIAN REFUGEES UNDER INTERNATIONAL LAW

The most important questions human rights and refugee law principles address are whether Palestinians are refugees or stateless persons under the international legal definition of those terms, and if so, what rights states must implement as a consequence of that status; whether they have a right to return to their places of origin, to restitution of property or compensation for losses; and what obligations states have to implement these or other rights in the search for a durable solution.

A. The Problem of Defining a Palestinian Refugee

According to the most recent *Survey on Palestinian Refugees and Internally Displaced Persons*, compiled by Badil Resource Center for Palestinian Residency and Refugee Rights, the global population of 9.7 million Palestinians includes some seven million persons who are refugees or internally displaced. The refugee figure includes 6.8 million of the original 1948 refugee population, of which 4.3 million are registered with the UN Relief and Works Agency for Palestine Refugees (UNRWA) for assistance; 834,000 refugees from the 1967 conflict; another 345,000 of the 1948 population internally displaced within Israel proper; and another 57,000 internally displaced within the 1967 occupied Palestinian territories.²⁶

Approximately 1.3 million Palestinian refugees are residents of 59 official refugee camps scattered throughout the West Bank, Gaza, Jordan, Lebanon and Syria, established and run by UNRWA.²⁷ The majority of residents are 1948 refugees and their descendants, while the rest are 1967 refugees and their descendants. UNRWA also operates another 17 ‘unofficial’ camps to house Palestinian refugees who can no longer be accommodated in the existing official camp locations.²⁸

These categories and figures are challenged by Israeli/Zionist historical and legal narratives, which frequently deny the existence of Palestinian refugees in various formulations: that they abandoned their homes and are not nationals of the state of Israel; that they found refuge in nearby states which are obliged to resettle them; that they have either *de facto* or *de jure* become nationals, citizens or permanent residents of the new states in which they reside, thus no longer having a refugee claim even if they once did; and that they are not ‘refugees’ in any legal sense.²⁹

The status of Palestinians as refugees is complicated because there are multiple definitions of ‘Palestinian refugee.’ The earliest UN discussion on record of how to define Palestinian refugees appears during the drafting of the General Assembly’s Resolution 194, which was passed on 11 December, 1948. Under Resolution 194, the General Assembly established the United Nations Conciliation Commission for Palestine (UNCCP) with a broad mandate to resolve both the conflict and the massive refugee problem; described the refugees for whom the UNCCP would provide ‘international protection;’ and in 194(III) paragraph 11, set out the required legal formula for resolving the refugee problem.³⁰

Although the language of Resolution 194 incorporates no clear definition of ‘Palestinian refugee,’ the UNCCP’s authoritative *Analysis of paragraph 11 of the General Assembly’s Resolution of 11 December 1948*, states that:

[T]he term “refugees” applies to all persons, Arabs, Jews and others who have been displaced from their homes in Palestine. This would include Arabs in Israel who have been shifted from their normal places of residence. It would also include Jews who had their homes in Arab Palestine, such as the inhabitants of the Jewish quarter of the Old City. It would not include Arabs who have lost their lands but not their houses, such as the inhabitants of Tulkarm.³¹

This definition was accepted by the drafters of Resolution 194 to define the entire group of Palestinians entitled to the protection of the international community.³²

As will be discussed below, this definition differs from the universally-adopted definition of ‘refugee’ appearing in the important international instruments, but is consistent with the general legal understanding that a refugee is an individual meeting certain criteria and lacking protection of his/her state of nationality or origin. It is the lack of protection that places the burden on the international community to provide ‘international protection’ for refugees.³³ This concept also underlies international protection of persons who are not recognized nationals of any state as a matter of either law or fact (stateless persons), and persons who are internally displaced when the state of origin or nationality fails to provide protection.³⁴ By including the internally displaced Palestinians who had lost their homes and lands but remained in Israel in this definition, the UN drafters recognized that such individuals, like the ‘refugees,’ were not receiving the protection of the Israeli state.

The definition of ‘Palestine refugee’ for purposes of international protection and UNCCP’s mandate differs from the definition used by UNRWA, the agency providing need-based assistance to refugees. UNRWA coverage extends to registered Palestine refugees residing in its areas of operation in the occupied Palestinian territories, Lebanon, Jordan and the Syrian Arab Republic only.³⁵ UNRWA defines ‘Palestine refugee’ as any person whose “normal place of residence was Palestine during the period 1 June 1946 to 15 May 1948 and who lost both home and means of livelihood as a result of the 1948 conflict.”³⁶ Palestine refugees eligible for UNRWA assistance are mainly persons who fulfill the above definition, and descendants of fathers fulfilling the definition.³⁷ This definition of refugee is restricted to those eligible to receive aid, as it explicitly states that the refugee must have lost both home and means of livelihood to be eligible for registration. In contrast to UNRWA’s needs-based definition, the term “Palestine refugee” in Resolution 194(III)--defining those eligible for refugee repatriation and compensation--has a quite different, and far less restrictive meaning.

The third relevant definition is incorporated in two provisions of the 1951 Convention Relating to the Status of Refugees (Refugee Convention); Articles 1A(2) and 1D. The Article 1A(2) definition, which is referred to as the ‘universal’ definition of refugee due to almost-universal adoption by states, has been widely misunderstood in reference to Palestinians, and in relation to Article 1D’s reference to Palestinians as a category of refugees. This ambiguity is used to support the position that Palestinians are not ‘refugees’ in the universal sense of that term.

Article 1A(2) of the 1951 Refugee Convention incorporates an individualized definition of refugee prohibiting state parties from returning or sending any individual to a state where the refugee risks persecution for reasons of race, religion, political opinion, nationality or social group.³⁸ Article 1D of the Convention has very different definitional criteria, and, without mentioning any particular group, was meant to apply exclusively to Palestinian refugees. Article 1D states that the Refugee 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 [UNHCR] protection or assistance.” Its second sentence states: “when such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with [relevant UN resolutions] these persons shall *ipso facto* be entitled to the benefits of this Convention.”³⁹ Article 1D’s two clauses have been subjected to widely divergent interpretations, with the general result that Palestinians are denied most of the minimum protection guarantees of the Refugee Convention. The most widely-held interpretation is that 1D is an *exclusion* clause, preventing Palestinians from being recognized as refugees since UNRWA is assumed to be providing them with international protection.⁴⁰

Two other provisions apply to Palestinians as subjects of international law: Article 1 of the Stateless Persons Convention, and Paragraph 7(c) of the UNCHR Statute.⁴¹ Both incorporate language similar to the first sentence of Article 1D, thereby precluding extension of UNHCR’s mandate towards Palestinians as refugees, and application of the benefits of the Stateless Persons Convention. This interpretation has had severe consequences for Palestinians seeking benefits as refugees, stateless and displaced persons worldwide. Palestinians have been precluded from many critical aspects of international protection, both in the day-to-day exercise of their human and civil rights, and in their longer-term desire for protection, intervention, and mechanisms for obtaining a durable solution to their condition.

B. The Palestinian ‘Protection Gap’ and its Consequences

Lack of a recognized legal status integrally relates to the deplorable physical and human conditions faced by the majority of Palestinian refugees.. Although conditions on identifiable criteria vary significantly country by country, Palestinians worldwide are measurably worse off on the whole compared to their fellow non-Palestinian refugees or stateless persons.⁴² Conceptually and legally, conditions of Palestinian refugees can be viewed in terms of their day-to-day physical security and human needs and their prospects for realizing and implementing durable solutions to end their stateless status. These two aspects also vary in two global regions: in the Arab states, where the majority of Palestinian refugees are located, and in the non-Arab world.

Physical security, human dignity and basic needs of Palestinian refugees within the Arab world vary dramatically. In the Arab regions where UNRWA operates, registered refugees obtain benefits for basic survival needs. UNRWA administers housing, allots food and clothing rations, establishes and runs primary schools, and operates medical facilities within its mandate.⁴³ Other rights and benefits outside UNRWA’s mandate and within the realm of ‘international protection’ are left to the discretion of the host state, as neither UNHCR nor any other international agency has authority to provide such protection to Palestinians

within the Arab world. Thus, no state or agency has the authority to intervene to protect the refugees' physical security, or to guarantee (or prevent violations of) their core human rights.

Particularly in the Arab world, Palestinian refugees are extremely vulnerable. Most states in the Arab League are not signatories to international instruments guaranteeing the rights of refugees and stateless persons. The most relevant document is the 1965 Casablanca Protocol of the League of Arab States, which requires Arab state signatories to guarantee to Palestinians in their territories the same treatment in employment, freedom of movement between Arab states, granting and renewing travel documents, freedom of residence, and rights to leave and return as they give their own nationals. Compared to provisions of international instruments, like the Refugee Convention, the Casablanca Protocol provides more guarantees in a number of ways.⁴⁴ Nevertheless, the degree to which Arab states comply with these obligations depends primarily on the political environment affecting Palestinians in their territories, rather than on compliance with treaty standards. Generally most Palestinians in Arab states are treated like foreigners, in that they are denied permanent residence status or any security of residence, even if they marry female citizens of the country or have children born in that Arab state. Movement between Arab states is extremely restricted because of lack of travel and residency documents. Employment is restricted in many states, as is housing, access to education beyond primary school, and family reunification. Using these criteria, Palestinians in Lebanon suffer the worst conditions--restricted to overcrowded, substandard, unsanitary, and often dangerous refugee camps. They are denied the right to work in over 60 professions as well as the rights to quality education and family reunification. Palestinians in Syria, on the other hand, enjoy quite favorable conditions in terms of day-to-day rights. Although they are not eligible for Syrian citizenship, they receive most of the same residency, social, education, employment and civil rights as Syrian citizens.⁴⁵

The lack of basic rights has had devastating consequences for refugee/stateless populations. Without security of residence, Palestinians are subjected to repeated expulsion and dispossession. Aside from the expulsions from historic Palestine/Israel and the occupied territories, almost every decade since 1948 has brought mass expulsion of Palestinians from one Arab state or another. Palestinian refugee families have suffered multiple displacements within the Arab world due to lack of access to a nationality or citizenship.⁴⁶

In the non-Arab world, where over 500,000 Palestinian refugees reside, their physical and human condition directly relates to the host state's interpretation of the relevant provisions of refugee and stateless persons instruments. UNHCR has recently formalized its position that in the non-Arab world it may exercise its protection mandate towards Palestinians, depending on the attitude of the host state.⁴⁷ Most states in the Western world are either signatories of the Refugee Convention, one of the two Stateless Persons conventions, or some combination of these instruments. Nevertheless, most states do not apply Article 1D at all, misinterpret it as an exclusion clause, or apply the individualized refugee definition of Article 1A(2).⁴⁸ The result is that Palestinians are unrecognized, either as refugees or stateless persons, in most of the Western world, where they are also vulnerable to multiple displacements due to their 'nonreturnability.' In many cases, Palestinians are subjected to prolonged detention because there is no state of nationality or habitual residence to which they can be returned. Nor do states provide them residence in fulfillment of obligations to reduce statelessness. States

frequently identify Palestinians as being of ‘unknown origin,’ or ‘unclear nationality,’ rather than identifying them as stateless or Palestinian refugees in order to preclude the application of the stateless and refugee conventions.⁴⁹

The legal ‘protection gap’ for Palestinians is most acute in terms of implementing durable solutions. Since Palestinians are considered excluded from the provisions of the major refugee instruments, they are excepted from the norms and mechanisms by which other refugees can realize the right of return and other rights. In contrast to UNHCR’s role as the primary agency working to implement these rights for other refugees and stateless persons, it does not, for the most part, exercise this role for Palestinian rights. Most important, UNHCR does not intervene with the state primarily responsible for causing Palestinians to be refugees and stateless persons—Israel—in seeking implementation of their right of return, the solution preferred by the refugees and the international community in general. UNRWA, having no protection mandate, is excluded from such a role with the effect that the key international mechanisms for implementing refugee return and related rights are unavailable to Palestinians.⁵⁰

THE RIGHTS OF PALESTINIAN REFUGEES, AND STATE OBLIGATIONS TOWARDS THEM UNDER INTERNATIONAL LAW

What refugee rights Palestinians have under international law relates to whether they are considered refugees as a legal matter,—a more complex question than for other refugees. The international legal definition of refugee is, at its core, a determination about who is unable or unwilling to obtain national protection, and deserves the protection of the international community. Under the main international provisions defining refugees and others ‘deserving of international protection,’ Palestinians clearly qualify.

Recent research into the drafting history of the interrelated provisions in the Refugee and Stateless Persons Conventions and the Statute of the UNHCR reveals that interpreting these provisions to exclude Palestinians is incorrect. According to the *travaux préparatoires*, the UN delegates drafting these provisions reached an overwhelming consensus that Palestinian refugees deserved (and required) both protection and assistance for several critical reasons, namely: their large-scale persecution and expulsion as a people; the UN’s complicity in creating the refugee problem; and the consensus already embodied in UN Resolutions that the durable solution for Palestinians was repatriation and not resettlement.⁵¹

The purpose of these provisions was to establish a separate regime specifically to protect Palestinian refugees—manifested in the creation of two UN agencies: the UNCCP and UNRWA—and not to dilute UN’s responsibility towards them. This is why they were not initially included in the resettlement-focused Refugee Convention/UNHCR regime. Article 1D was intended as a *contingent inclusion* clause that would automatically bring all Palestinian refugees under the coverage of the Refugee Convention should either prong of the special regime fail.⁵²

Because the majority of Palestinians are considered outside the Convention’s refugee definition, and are specifically excluded from UNHCR’s mandate by its Statute, they are presumed not to be ‘refugees’ for purposes of eligibility for international protection. But the drafting history of the instruments and the mandates of the agencies relevant to the Palestinians reflect that

international protection was of utmost concern to the UN. Of the two entities established by the UN with responsibilities for the Palestinians, the UNCCP and UNRWA, the former clearly had the UN's attention in its efforts to resolve both the refugee problem and the wider Palestinian-Arab-Israeli conflict. The UNCCP had an indefinite mandate, while UNRWA was initially established for only three years.⁵³ The reasons behind UNCCP's diminished role as the instrument of international protection are not entirely clear, but by 1952, the UNCCP had been reduced to no more than a small office to maintain records of Palestinian refugee property holdings. A partial explanation is that when the UNCCP was unable to implement any aspect of the durable solution required by Resolution 194 the UN determined that UNCCP was no longer able to fulfill its mandate and decimated the agency through a series of budget reductions. Although UNRWA's valuable services have provided subsistence needs for Palestinian refugees for five decades, it is legally constrained from providing the main international protection guarantees to the refugees that could bring their plight closer to a permanent resolution.⁵⁴

Related to the contention that Palestinians are not refugees is the position that they have no legal right to 'return' to Israel that Israel is obligated to respect. Opponents of a Palestinian right to return argue that Palestinians were displaced during a defensive war, that Israel has no obligation to allow them to return since they left voluntarily, that neither international human rights or humanitarian law incorporates a right of return for war refugees, and that even if there were such a right, it applies only to the return of individuals and not to mass return. Opponents also argue that Israel as a successor state had the right to define its 'nationals' to include or exclude any groups it chose and since Palestinians became 'non-nationals' under Israeli law, they had no right to return. Opponents further claim that key UN resolutions such as Resolution 194 are nonbinding, that they do not, in fact, create a right of return, and that even if they did, they condition it on certain factors which have not been met.⁵⁵ Each of the above positions negating a Palestinian right of return has been countered with significant legal authority, analysis, and state practice. Only the key points of these arguments can be summarized here.

First, under humanitarian law, there is no distinction between forcible or non-forcible displacement in guaranteeing war refugees the right of to return after displacement. Critical humanitarian law provisions, such as Article 49 of the Fourth Geneva Convention and Article 43 of the 1907 Hague Regulations, forbid the forcible transfers of individuals or groups of people from territories taken during war, and as requiring their repatriation 'back to their homes' as soon as hostilities have ceased, and as necessitating the restoration of their area to the normal community life existing before the outbreak of conflict. These underlying principles are widely considered binding customary humanitarian law.⁵⁶

Second, human rights provisions underlying the right of refugees or displaced persons to return to their places of origin are found in the Universal Declaration of Human Rights (Art. 13), and the International Covenant on Civil and Political Rights (Art. 12). Other provisions are repeated in many other international and regional human rights instruments. Although there is some contention about whether these provisions oblige a state party to implement return of a non-national of that state, the universal instruments—UDHR and ICCPR—grant a returnee the right to return to his/her precise place of origin regardless of current nationality or citizenship status by deliberately using the term 'right to return to his own country.' instead of 'to the country of his nationality.' Moreover,

these instruments make no distinction between individual or mass return, and the drafting history of their provisions does not indicate that the drafters intended the provisions to apply only to individuals.⁵⁷

Third, such a reading accords with requirements of the law of state succession, a core principle of which is that ‘the population follows the change of sovereignty in matters of nationality;’ thus, the new state must grant nationality to all original inhabitants. Although a state has almost unfettered discretion in defining its citizens and nationals, it cannot violate certain recognized principles of international law, such as by arbitrarily excluding the original inhabitants of the territory it acquires, or defining its citizens/nationals on a discriminatory basis. The principle of non-discrimination is fundamental, found throughout human rights law.⁵⁸ Israel is a party to all the universal rights instruments referenced here, and the Israeli Supreme Court has ruled that the 1907 Hague Regulations are binding on Israel. Moreover, Israel has made no reservations limiting the application of these instruments on the Palestinian right of return.⁵⁹ Thus, Israel’s massive denationalization of Palestinian Arabs on the basis of their national/ethnic origin was prohibited under these principles from the outset, and constitutes a continuing violation of their rights.

Fourth, there are hundreds of both UN General Assembly and Security Council Resolutions dating back more than fifty years affirming and re-affirming the *right of return for refugees* to their homes worldwide.⁶⁰ In every part of the globe, the right of refugees to return to their homes and lands of origin is incorporated in peace treaties and recognized by all states. In fact, the right of return is one of the most, if not the most, widely-implemented and recognized right in refugee law. From state and international practice alone, it is evident that under international law refugee return is the rule, and non-recognition of Palestinian refugees’ right to return is an aberration.⁶¹

The language of Resolution 194, the earliest resolution insisting on Palestinian refugee return, must be understood in light of the state of international law existing at the time, and clarifications made by the UN drafters. The Resolution embodies a three-pronged solution in hierarchical order: return, restitution of properties, and compensation. Paragraph 11 of that Resolution states that:

“The refugees wishing to return to their homes and live at peace with their neighbors should be permitted to do so at the earliest practicable date, and...compensation should be paid for the property of those choosing not to return and for loss or damage to property which, under the principles of international law or in equity, should be made good by the Governments or authorities responsible...[The UN] instructs the Conciliation Commission to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation...”

That this language meant the Palestinian refugees *must* be permitted to return *if they so chose* is made clear both in the intentions of the drafters, as well as in the discussions by the UN delegates when 194 was passed. Paragraph 11 also makes return, restitution, and compensation equally enforceable, according to the refugee’s own choice.⁶²

This reading of 194 is the most consistent with refugee law principles as recognized and implemented by states and international organs. UNHCR implements three forms of durable solution for refugees: return to place of origin,

host country absorption and third-state resettlement. While return is the preferred solution for the overwhelming majority of refugees, UNHCR's implementation of any durable solution is driven by the principle of *refugee choice*. International burden-sharing for refugees is meant to create meaningful and reasonable choice for refugees among safe and voluntary return, absorption, and resettlement--to the extent the latter two options are available in any particular refugee crisis. At the same time, only return is an absolute obligation on states, since no state is required to absorb or resettle a refugee--despite the Refugee Convention's encouragement to do so. In most instances of mass refugee flows since the 1970's, all three options have been available to some degree, and resolutions of mass refugee flows have been most successful when all three were meaningful choices for the refugees themselves. All of these principles have strengthened since 1948 when Resolution 194 was passed, in that implementation and codification of return, restitution and compensation have become more widespread. Until recently, the General Assembly also reaffirmed Resolution 194 annually.⁶³

THE RELEVANCE OF A LEGAL FRAMEWORK FOR SOLUTIONS TO THE REFUGEE PROBLEM

The international community created the 'protection gap' that leaves Palestinians outside the well-recognized framework of human rights applying to other refugees and displaced persons. Lack of clear application of rights standards to Palestinians applies also to the right of return; hence, the position that there is no right of return for Palestinians seems perfectly consistent with the exceptionalist discourse vis-à-vis Palestinian refugees.

Separating political positions from substantive legal rights helps clarify the absurdity of the exceptionalist discourse as a legal matter, and challenges the notion that widely-recognized rights are not also guaranteed to Palestinians. Legal arguments challenging the right of return present a strange dichotomy: on the one hand, such arguments do not challenge the right of return *per se*, but challenge it as it applies to the Palestinian case; on the other hand, they maintain that there is no Palestinian right of return while insisting on a Jewish 'right of return' as the basis for Jewish nationality in Israel. Aside from the question of whether Jews possess a distinct 'nationality,' it is extremely difficult to argue that Jews possess a right to 'return' to Palestine after some 2,000 years while Palestinians cannot exercise such a right after approximately 60 years. Thus, the debate about the source of a Palestinian right of return focuses more on how a Palestinian right of return could be realized without jeopardizing the 'Jewish state' than on whether a right of return for Palestinian refugees exists as a matter of law. This leads to the question of whether there is an internationally recognized 'right' to a Jewish state, and the deconstruction of that concept into underlying legal terms.⁶⁴

Understanding how and why the Palestinian refugee problem was created, the response of the UN and the international community to the problem, and how that was incorporated into rights instruments applicable to Palestinians is critical to insisting upon the selfsame rights standards for Palestinians as all others in protracted refugee situations. Even though it should be clear that Palestinians are entitled to the same rights as others in refugee and refugee-like situations, the instruments and agencies created to apply those rights to them have failed to guarantee them. Where, then, does this leave those concerned with a just solution

to the Palestinian problem and the wider Middle East conflict, in light of the lack of political will to bring it about?

Civil society has a great role to play in redressing the legal and political lacunae applicable to Palestinians: lobbying and other civil initiatives directed at many global players and in the UN must focus on specific demands. A range of strategies have been discussed by commentators and academics, including reviving the broad protection role of the long-defunct UNCCP, or incorporating a specific protection mandate to the assistance role of UNRWA. Specific strategies to ameliorate the Palestinian protection gap have also been proposed, such as the use of boycotts, divestment and sanctions to put pressure on Israel to change its policies and the call for UN intervention through protection forces on the ground.

Since these options have been discussed at length elsewhere, only a few points need be made here. First, any change in specific language or mandate of international instruments or agencies such as UNRWA, UNCCP or UNHCR, will require a UN General Assembly Resolution, the merits of which remain to be debated. Second, because of the complexity of the underlying issues, a great deal of education remains to be done to pursue any of the options—a task which itself faces formidable barriers from the Zionist lobbies and their sympathizers. Third, although there have been some promising international campaigns, such as the ‘Boycott/Divestment/Sanctions (BDS)’ campaign, a truly global civil society campaign for reasserting a framework of international legal rights on behalf of Palestinians has yet to be implemented. Perhaps rather than simply commemorate the ‘anniversaries’ of Palestinian disasters, 2007 may be the year in which such a global campaign for renewed commitment to implementing Palestinian rights becomes reality.

ENDNOTES

A version of this paper appears as the author’s contribution to the *Encyclopedia of the Middle East Conflict*, forthcoming, Lynne Reiner & Sons (Cheryl Rubenberg, ed), and draws on prior published work co-authored with Terry Rempel.

¹ See Badil, *Survey of Palestinian Refugees and Internally Displaced Persons 2004- 2005*, (Bethlehem: Badil, 2006), p. 46. For Badil’s explanation of its refugee calculations, see

<http://www.badil.org/Refugees/facts&figures.htm> (accessed December 10, 2006). See also, Susan Akram and Terry Rempel, “Temporary Protection as an Instrument for Implementing the Right of Return for Palestinian Refugees,” *Boston University International Law Journal*, 22, no. 1, (Spring 2004) p. 7.

² For further explanation of how Palestinians are measurably worse off than other refugees and stateless persons, see Susan M. Akram, “Palestinian Refugees and Their Legal Status: Rights, Politics and Implications for a Just Solution,” *Journal of Palestine Studies* 123, (Spring 2002) p. 36-51.

³ Among the key works on the causes of the Palestinian refugee problem are; Simha Flapan, *The Birth of Israel: Myths and Realities* (New York: Pantheon, 1988); Benny Morris, *The Birth of the Palestinian Refugee Problem 1947-1949* (New York: Cambridge University Press, 1987).

⁴ The claims that the ‘Jewish people’ are an internationally-recognized ‘nationality’ entitled to self-determination is analyzed (and refuted on legal grounds) in W.T. Mallison, “The Zionist-Israel Juridical Claims to Constitute ‘The Jewish People’ Nationality Entity and to Confer Membership in It,” *George Washington Law Review* 32, (1964), p. 983.

⁵ For a detailed analysis of the Balfour Declaration and its legality, see Mallison, “The Balfour Declaration: An Appraisal in International Law,” in *The Transformation of Palestine*, ed. Ibrahim Abu-Lughod, (Evanston: Northwestern University Press, 1971) p. 61; W.T. Mallison and Sally V. Mallison, “The Juridical Bases for Palestinian Self-Determination,” *The Palestine Yearbook of International Law* 1. (1984).

- ⁶ For the text of the Mandate of July 24, 1922, see UN Special Committee on Palestine [UNSCOP], *Report to the General Assembly*, U.N. GAOR, 2d Sess. Supp. No. 11, at 18-22. U.N. Doc. A/364 Add.1 (9 Sept. 1947).
- ⁷ Future Government of Palestine G.A. Res. 181(II), U.N. GAOR, 2d Sess., 128th plen. mtg., at 131-32 (29 Nov. 1947).
- ⁸ For the text and voting on the resolution, see *ibid.*; for background on passage of UNGA Res. 181, see Mallison and Mallison, *An International Law Analysis of the Major United Nations Resolutions Concerning the Palestine Question*, UN Doc. ST/SG/SER.F/4 (1979), p. 9-17.
- ⁹ John Quigley, *The Case for Palestine: an International Law Perspective* (Durham, Duke University Press, 2005), p. 37.
- ¹⁰ See Report of the UN Special Committee on Palestine [UNSCOP Palestine Report], *General Assembly Official Records*, 2d Sess, Supplement No. 11, September 3, 1947, UN Doc. A/364, vol. I, p. 35.
- ¹¹ See UNSCOP Palestine Report, *ibid.* Chapter VI, Recommendations (II).
- ¹² G.A. Res. 181, Part III C 12(a), at 149.
- ¹³ G.A. Res. 181, Part 1B (8), at 134.
- ¹⁴ For the Declaration of the State of Israel of 14 May 1948, see *Israel's Written Constitution: Verbatim English Translations of the Declaration of Independence and of the Basic Laws* (3rd ed. Haifa: Aryeh-Greenfield-A.G. Publications, 1999).
- ¹⁵ See Morris, *The Birth of the Palestinian Refugee Problem*; see Ilan Pappé, *The Ethnic Cleansing of Palestine*, (Oxford: Oneworld Publications, 2006); see also Salman Abu Sitta, *The Palestinian Nakba 1948: The Register of Depopulated Localities in Palestine* (London: Palestinian Return Center 2001).
- ¹⁶ Morris first revealed the existence of 'Plan Dalet' and the 'Transfer Committee' comprising the key Jewish leaders who organized the expulsion, see, Morris, *The Birth of the Palestinian Refugee Problem*. See also Walid Khalidi, "Plan Dalet: Master Plan for the Conquest of Palestine," *Journal of Palestine Studies*, 28, (1988) p. 1; and Ilan Pappé's, *Ethnic Cleansing*.
- ¹⁷ For a thorough description of Israeli massacres of Palestinian populations, based on a wide range of sources, see Abu Sitta, *The Palestinian Nakba*. For the most complete assessment of the Deir Yassin massacre, see Daniel McGowan and Matthew C. Hogan, *The Saga of the Deir Yassin: Massacre, Revisionism and Reality* (Geneva: Deir Yassin Remembered, 1999).
- ¹⁸ Benny Morris, *Israel's Border Wars 1949-1956* (Oxford: Clarendon Press, 1993).
- ¹⁹ This plan was submitted to then-Prime Minister of Israel, David Ben-Gurion, in a 3-page memorandum drafted by one of the key proponents of mass 'transfer' of the Palestinian population, Joseph Weitz. The plan was adopted by Ben-Gurion as a means to solve the 'Palestinian problem.' See Morris, *The Birth of the Palestinian Refugee Problem*, p. 136.
- ²⁰ Hussein Abu Hussein and Fiona McKay, *Access Denied: Palestinian Access to Land in Israel* (London: Zed Books, 2003); George Bisharat, "Land, Law and Legitimacy in Israel and the Occupied Territories," *American University Law Review*, 43, (1994), p. 467.
- ²¹ Jeremy Forman & Alexandre Kedar, "From Arab land to 'Israel Lands': the Legal Dispossession of the Palestinians displaced by Israel in the Wake of 1948," *Environment and Planning D: Society and Space* 22, no. 6 (2004), p.809-830.
- ²² See Anis Kassim, "Legal Systems and Developments in Palestine," *Palestine Yearbook of International Law*, 1, (1984) p. 19. For the text of Israel's nationality law, see 1952 Nationality Law, 5712/1952, 93 Official Gazette 22 (1952).
- ²³ For examples of UN reports that Israel's systematic discrimination against Palestinians grossly violates its international treaty obligations, see Concluding Observations on the Covenant on Social, Economic, and Cultural Rights, 31st to 33rd Meetings, 17-18 November 1998; see Concluding Observations on the Elimination of All Forms of Racial Discrimination, 52nd Session, 2-20 March 1998; see also, Concluding Observations on the Covenant on Civil and Political Rights, 63rd Session, 15-16 July 1998.
- ²⁴ See figures cited in *Final Report of the United Nations Survey Mission for the Middle East*, UN Doc. A/AC.25/6; Janet Abu-Lughod, "The Demographic Transformation of Palestine," in Ibrahim Abu-Lughod (ed.), *The Transformation of Palestine* (Evanston: Northwestern University Press, 1971), p. 159.
- ²⁵ Badil Resource Center, *Survey*, p. 47.
- ²⁶ See *ibid* and Table 2.1, p. 47.
- ²⁷ UNRWA's figures give its registered refugee populations as of December, 2005 as 1,795,326 in Jordan; 401,071 in Lebanon; 426,919 in Syria; 690,988 in the West Bank, 969,588 in Gaza. See Badil, *Survey*, p. 48. UNRWA statistics reflect only those Palestinians defined as 'refugees' who voluntarily register with the agency in order to obtain need-based relief assistance. The majority of Palestinian refugees, as the numbers reflect, do not live in camps. See Badil *Survey*, p. 63.

²⁸ Badil, *Survey*, p. 57.

²⁹ For these arguments, see, for example, Ruth Lapidoth, “The Right of Return in International Law, with Special Reference to the Palestinian Refugees,” *Israel Yearbook of Human Rights* 16, (Tel Aviv: Tel Aviv University, 1986) and Donna Arzot, *Refugees Into Citizens: Palestinians and the end of the Arab-Israeli Conflict* (New York, Council on Foreign Relations Press, 1997).

³⁰ GA Res. 194, U.N. GAOR, 3d Sess., Resolutions at 21, U.N. Doc. A/810 (1948). See *Progress Report of the United Nations Mediator on Palestine*, submitted to the Secretary General for Transmission to the Members of the United Nations, UN GAOR, 3rd Sess., supp. No. 11, UN Doc. A/648, 16 September 1948, Part One: The Mediation Effort, V. Refugees, para. 8; see also UNCCP, *Analysis of Paragraph 11 of the General Assembly’s Resolution of 11 December 1948*. U.N. Doc. W/45, 15 May 1950.

³¹ *Ibid*, *Analysis of Paragraph 11*.

³² See *Addendum to Definition of a “Refugee”* under paragraph 11 of General Assembly Resolution of 11 December 1948 (prepared by the Legal Advisor), UN Doc. W/61/Add.1, (29 May 1951).

³³ On the nature of international protection as a substitute for national protection for refugees, see generally, Guy Goodwin-Gill, *The Refugee in International Law* (2d ed., New York: Oxford University Press, 1996).

³⁴ See Guy Goodwin-Gill, *International Law and the Movement of Persons Between States* (Oxford: Clarendon Press, 1978), p. 46-9.

³⁵ See UNGA Res. 302 (IV), U.N. Doc. A/1251 at 23 (1949).

³⁶ See UNRWA Consolidated Registration and Eligibility Instructions (CRI), 1 Jan. 1993, para. 2.13. For discussion of changes in the UNRWA definition of Palestine refugee, see Lex Takkenberg, *The Status of Palestinian Refugees in International Law* (New York: Oxford University Press, 1998), p. 68-83.

³⁷ See UNRWA (CRI); see also *Report of the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, 1 July 2003-30 June 2004, UN GAOR, Sixtieth Session, Supp. No. 13 (A/59/13), 2005 para. 67, p. 19.

³⁸ Geneva Convention Relating to the Status of Refugees, 189 UNTS 137 (July 28, 1951), art. 1A(2).

³⁹ *ibid*, art.1D

⁴⁰ For a review of interpretations given to this provision, see Badil Resource Center for Palestinian Residency and Refugee Rights, *Closing Protection Gaps: Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention (1D Handbook)*; see also Susan M. Akram and Guy Goodwin-Gill, “Brief Amicus Curiae,” *Palestine Yearbook of International Law* 11, (2000-2001) p. 187.

⁴¹ See Convention Relating to the Status of Stateless Persons, (1954 Convention), Sept. 1954, 360 UNTS 117, art. 1; see also Statute of the Office of the United Nations High Commissioner for Refugees (UNHCR Statute), G.A. Res. 428 (V), UN GAOR, 5th Sess., U.N. Doc. A/1775 (1950), at para. 7(c).

⁴² See Akram, “Palestinian Refugees and Their Legal Status.”

⁴³ See *Assistance to Palestine Refugees*, UNGA, A/RES/60/100, Sixtieth Session, 16 January 2006. On UNRWAs assistance functions in policy and practice, see Badil *Survey*, chapter 4.

⁴⁴ For a detailed description of the Arab state parties to the relevant human rights conventions, and a comparison of guarantees under these conventions and the Casablanca Protocol, see Akram and Rempel, “Temporary Protection,” p. 6-8, 28-30.

⁴⁵ For a thorough review of the treatment of Palestinian refugees in the Arab host states, see *ibid*.

⁴⁶ For an overview of Palestinian displacement from 1948 until today including those listed here, see Badil, *Survey*, 32, chapter 1, *Historical Overview*, and sources cited.

⁴⁷ See UNHCR *Note on the Applicability of Article 1D of the 1951 Convention Relating to the Status of Refugees to Palestinian Refugees*, Office of the United Nations High Commissioner for Refugees (UNHCR) (October 2002), available at www.unhcr.org.

⁴⁸ For a thorough empirical study and description of state and international interpretations, see Badil, *1D Handbook*.

⁴⁹ *Ibid*. See also Akram and Rempel, “Temporary Protection.”

⁵⁰ For further comparison of UNHCR and UNRWA’s roles in the Palestinian case, and a comparison with other mass refugee flows, see Susan M. Akram and Terry Rempel, “Recommendations for Durable Solutions for Palestinian Refugees: A Challenge to the Oslo Framework”, *Palestine Yearbook of International Law* 11, (2000/01) p. 1.

⁵¹ For a thorough discussion of the drafting history of Article 1D and the drafters’ intentions in the special provisions regarding Palestinians as refugees and stateless persons, see Takkenberg, *Palestinian Refugees*, p. 86-123. See also Akram and Rempel, “Durable Solutions.”

⁵² See Akram and Goodwin-Gill, “Brief Amicus Curiae.”

⁵³ See texts of Resolutions establishing UNCCP and UNRWA, notes 39 and 44, respectively.

⁵⁴ For a thorough history of the UNCCP, see Michael R. Fischbach, *Records of Dispossession: Palestinian Refugee Property and the Arab-Israeli Conflict* (New York, Columbia University Press, 2003); for a thorough history of UNRWA, see Benjamin Schiff, *Refugees Unto the Third Generation: UN Aid to Palestinians* (Syracuse: Syracuse University, 1995).

⁵⁵ See legal arguments cited in note 38; see also Yoav Tadmor, "The Palestinian Refugees of 1948: the Right to Compensation and Return," *Temple International and Comparative Law Journal* 8, no. 2, (Fall 1994); see also, Lewis Saideman, "Do Palestinian Refugees Have a Right to Return to Israel? An Examination of the Scope of and Limitations on the Right of Return," *Virginia Journal of International Law* 44 (Spring 2004)

⁵⁶ See John Quigley, "Displaced Palestinians and a Right of Return," *Harvard International Law Journal*, 39, no. 1 (1998); see also Gail J. Boling, *The 1948 Palestinians and the Individual Right of Return: An International Law Analysis*, (Bethlehem: Badil Resource Center, Jan. 2001); Eric Rosand, "The Right to Return under International Law Following Mass Dislocation: The Bosnia Precedent?" *Michigan Journal of International Law* 19, (Summer 1998), p. 1091

⁵⁷ See Kathleen Lawand, "The Right to Return of Palestinians Under International Law," *International Journal of Refugee Law* 8, no. 4, (1996) p. 532; Takkenberg, *Palestinian Refugees*, p. 232-250.

⁵⁸ See Convention on the Elimination of All Forms of Discrimination, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46 article 5(d).

⁵⁹ See Boling, *Individual Right of Return*.

⁶⁰ For a review and lists of UN Resolutions affirming the right of return of refugees, and Palestinian refugees specifically, see Akram and Rempel, "Durable Solutions," p. 52-53; and Akram and Rempel, "Temporary Protection," p. 18.

⁶¹ For a list of return/repatriation provisions in peace and other agreements worldwide, see Akram and Rempel, "Durable Solutions," p. 54-55.

⁶² See *Analysis of Paragraph 11*, note 39.

⁶³ G.A. Res. 2535 B(XXIV), U.N. GAOR, 24th Sess., Supp. No. 30, at 25-6, U.N. Doc. A/7630 (1970); see also G.A. Res. 3236 (XXIX), U.N. GAOR., 29th Sess., Supp. No. 30, at 78 (1974) (reaffirming the right of Palestinian people to self-determination and the right of refugees to return to their homes). Since then, the U. N. has reaffirmed annually the right of the Palestinian people to self-determination and to return to their homes of origin.

⁶⁴ See note 5. For an excellent discussion of the ramifications of the recognition and maintenance of a Jewish state as a political entity today, see Virginia Tilley, *A One State Solution* (Ann Arbor, The University of Michigan Press, 2006).