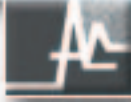


# al majdal



Issue No. 22 - June 2004

a quarterly magazine of  
BADIL Resource Center for Palestinian Residency & Refugee Rights

## The Threat of Disengagement: Can Israel Separate from the Palestinians?



**BADIL** aims to provide a resource pool of alternative, critical and progressive information and analysis on the question of Palestinian refugees in our quest to achieve a just and lasting solution for exiled Palestinians based on the right of return

**BADIL** was established in January 1998 and is registered with the Palestinian Authority and legally owned by the refugee community represented by a General Assembly composed of activists in Palestinian national institutions and refugee community organizations.

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BADIL welcomes comments, criticism, and suggestions for al-Majdal. Please send all correspondence to the editor at [resource@badil.org](mailto:resource@badil.org).

The views expressed by independent writers in this publication do not necessarily reflect the views of BADIL Resource Center.

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## The Threat of Disengagement: Can Israel Separate from the Palestinians?

*What will happen if Israel carries out its plan to 'disengage' from the Gaza Strip and parts of the West Bank? Will the disengagement plan advance a politically-negotiated solution to the conflict? Can Israel really separate from the Palestinians?*

On 6 June 2004 the Israeli cabinet voted in favor of a modified plan for 'disengagement' from the Gaza Strip. The plan calls for the staged evacuation of 17 Jewish colonies in Gaza (4 in the West Bank) and the redeployment of Israeli military forces outside evacuated areas. The American administration hailed the plan as "historic and courageous". The remaining members of the Quartet were more cautious in their response.

### Shifting Discourse

What exactly does disengagement mean? Ariel Sharon's plan speaks neither about 'redeployment' (the term used to describe the relocation of Israeli forces under the Oslo agreements) nor 'withdrawal' as in south Lebanon. No where does the modified disengagement plan (the Israeli cabinet rejected the first draft) speak about ending Israel's 37-year-old illegal military occupation. In short, the plan creates the illusion of political momentum while shifting the political discourse to conceal the reality that even if Israel eventually disengages from Gaza Strip and parts of the West Bank, the occupation will continue.

Speaking before the Security Council on 23 April 2004, UN Special Coordinator for the Middle East Peace Process Terje Roed-Larsen identified two criteria to ascertain whether or not Israel's disengagement from the Gaza Strip would constitute an end of the occupation. First, disengagement should "lead to the consolidation of Palestinian control over its territory and international crossings." Withdrawal should be "full and complete" and "not merely a military redeployment." Secondly, disengagement "should be accompanied by the implementation of other Palestinian and Israeli obligations under the Road Map." The plan provides for neither.

Will the plan revive a political process leading to a negotiated solution of the conflict? Not likely. The plan aims "to bring about a better security, diplomatic, economic and demographic reality" for Israel. There are few tangible benefits for Palestinians. The plan was adopted by the Israeli cabinet (and openly endorsed by the Bush administration) in the absence of negotiations with the elected Palestinian leadership. Israel will retain control over border-crossings, air and sea, and, importantly, the option to carry out military operations in evacuated areas. According to a recent World Bank assessment, disengagement will have "very little impact on the Palestinian economy and Palestinian livelihoods."

### The Paper Trail

Even before the Israeli cabinet had approved the plan, US President George Bush endorsed the idea of disengagement. On 14 April 2004 Bush issued a letter of assurance to Israeli Prime Minister Ariel Sharon reaffirming the US "commitment to Israel's security and well-being as a *Jewish state*." Further departing from official policy, the letter states that "it is unrealistic to expect that the outcome of final status negotiations will be a full and complete return to the armistice lines of 1949" due to the presence of Jewish colonies in the 1967 occupied Palestinian territories. Moreover, Bush proceeded to assure Ariel Sharon that the right of Palestinian refugees to return to their homes of origin inside Israel was, in the words of the Road Map neither "just, fair [nor] realistic" and that a solution would have to be found through the establishment of a Palestinian state.

The paper trail of broken promises and departure from international norms stretches back to the early days of the conflict in Palestine. Many Palestinians condemned the Bush letter as a re-incarnation of

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the 1917 Balfour Declaration, the letter from British Foreign Secretary Arthur Balfour to the Zionist movement endorsing the establishment of a Jewish homeland in Palestine against the wishes of the indigenous population of the country. In 1991 at the beginning of the Madrid-Oslo process the United States issued a letter to the Palestinians clarifying that the US would not support alternative initiatives in the UN Security Council, effectively removing the UN and international law from the peacemaking process.

Administration officials and some analysts publicly argue that the Bush letter merely states what everyone acknowledges in private. The question no one bothers to ask, however, is: Who is 'everyone'? Despite stated support for democratic reform in the Middle East, Bush failed to consult the democratically elected Palestinian leadership. For certain, no one bothered to consult the Palestinian people themselves, least alone the refugees. For many, the Bush letter harkens back to the days when the PLO was still struggling to gain international recognition as the legitimate representative of the Palestinian people and their right to self-determination in their historic homeland.

### **A Clean Break?**

While the Sharon government claims that Israel will no longer be responsible or be seen as occupying Gaza after disengagement, a review of the plan leads to the opposite conclusion. The occupation will continue. The prospect of a Palestinian state appears even more distant. The facts on the ground – the separation/apartheid wall, the marginalization of the Palestinian leadership – lend evidence to this conclusion. The situation of Palestinians inside Israel is no better: two-thirds of Jewish Israelis believe that the government should encourage Palestinian citizens to leave the country; nearly half feel that they should be deprived of the basic democratic right to vote.

In 1996 a handful of American neo-conservatives (many of whom are connected to the Bush administration) advised former Israeli Prime Minister Benjamin Netanyahu to make a *clean break*, forge a new 'peace process' and rebuild Zionism based on "peace through strength." Recommendations included a change in the nature of Israel's relations

with Palestinians (including the right to "hot pursuit" in all Palestinian areas) and "nurturing alternatives to Arafat's grip on Palestinian society." The Sharon disengagement plan fulfills both these requirements.

Disengagement is merely another way of repackaging the occupation and imposing a 'solution' on the Palestinian people acceptable to Zionist Israel. In light of Israel's ongoing military actions in the Gaza Strip, including the massive destruction of refugee shelters in Rafah, the UN Special Rapporteur on Human Rights in the OPTs called on 19 May for military sanctions against Israel similar to those adopted against South Africa in 1977. The Special Rapporteur on the Right to Food subsequently called on Caterpillar Corporation to re-examine its sale of bull-dozers to Israel. On 9 July 2004 the International Court of Justice is expected to give its ruling on the legal consequences of the separation/apartheid wall. These initiatives provide tools for an alternative way forward based on rule of law. Their effectiveness will depend largely on civil society.

In this issue the role of civil society is examined in extensive coverage of the 56<sup>th</sup> anniversary of the Palestinian Nakba, including articles by Palestinian activists, members of the Palestinian leadership, and articles by Israeli Jews active in raising awareness about the Nakba and the right of return. This issue also includes community responses to the Bush letter of assurance to Ariel Sharon. al-Majdal also talks with Diana Buttu, spokesperson for the PLO Negotiations Support Unit, about the current political stalemate and potential ways forward for the Palestinian leadership. The impact Israel's unilateral measures on the ground is discussed in an article on refugee education. Finally, al-Majdal examines the importance of rule of law through two articles: a summary of initial findings concerning the status of Palestinian refugees in host countries outside UNRWA areas of operation, and in an article about likely responses of the International Court of Justice to Israel's construction of the separation/apartheid wall.

# Comments



*"We apologize that we will not be participating in the commemoration of the Nakba because of our new Nakba in Rafah."*



*Caricatures by Naser al-Ja'afari.*

## **Palestinian NGO Consultation for Promotion of a Rights-based Approach to Conflict Resolution**

In April 2004, a number of Palestinian NGOs began a series of consultation workshops to increase efficiency of advocacy efforts for a rights-based solution of the Israeli-Palestinian conflict by means of a unified and clear message. Key topics were identified for debate in a series of nine workshops: Refugees and the Right of Return; Two-state vs. One-state Solution; Palestinian-Israeli Relations; Israel Sanctions and Boycott; Zionism, the Jewish State and the Concept of Apartheid; Occupation, Settlements and the Wall; Resistance, Violence, Terrorism; Jerusalem; and the Future Character of Palestinian Society. Participating NGOs alternate in taking on responsibility for preparing topics, inviting speakers, hosting and reporting.

By June, two workshops had been held with the participation of fifteen local NGOs: Alternative Information Center (AIC), Center for Applied Research in Jerusalem (ARIJ), Alternative Travel Group (ATG), BADIL, Defense for Children International (DCI-Palestine), Golan for Development, International Association of Palestinian Youth, Jadal Cultural Center, Jerusalem Center for Women (JCW), Rapprochement Center, Sanabel Center for Studies (Hebron), Palestinian Conflict Resolution Center (WIAM), YMCA (East Jerusalem and Beit Sahour), and the YWCA. The workshop series was initiated by the Jerusalem Center for Women and BADIL. Participating NGOs have also engaged in preparations for joint participation at the World Social Forum to be held in Porto Allegre, Brazil, in January 2005.

The first workshop (30 April 2004), presented by BADIL, provided an overview of scope of Palestinian displacement and dispossession and refugee rights under international law. The presentation was followed by debate which focused on

the need for an advocacy strategy based on legal principles, irrespective of the lack of international support, and on the importance of broad refugee participation in Palestinian debate, advocacy and policy making. Participants agreed that although implementation of the right of return is an individual right de-linked from the question of political sovereignty, it is difficult to develop a coherent advocacy strategy without addressing the territorial and political framework underlying the envisioned solution of the Israeli-Palestinian conflict (one or two states).

The second workshop (31 May 2004), presented by Golan for Development and AIC/Jadal Cultural Center, focused on the issue of racism inherent in ethnically based national states like Israel, the variation in Palestinian priorities according to geographic location (i.e. – equality: Palestinian citizens of Israel; self-determination and statehood: 1967 OPT; right of return: exile), and the evolution of the two-state solution in Palestinian political thought and program. Subsequent debate focused on the need for an inclusive Palestinian vision, and a two-pronged strategy ('active Sumoud' or steadfastness) which can protect the people on the land and challenge Zionism on the ideological level. Participants agreed that a democratic, one-state framework is a historical demand of the Palestinian people that was replaced by the two-state vision only due to external political pressure. It is a morally and ethically generous offer to Jewish-Israelis and a strategic substitute for the racist model represented by Zionist Israel. A two-state solution will not be rejected by Palestinians if imposed, but cannot provide a durable solution for all, in particular Palestinian citizens of Israel and refugees. Participants also agreed that more and broader debate on this topic must be encouraged among Palestinian civil society.

### **Community Debates/Workshops**

Between January and June 2004 refugee community organizations, in partnership with BADIL, conducted fourteen workshops across the West Bank and Gaza Strip. Some 900 Palestinians participated. Key topics included non-rights based initiatives (e.g. Geneva Accord) versus requirements for rights-based alternatives, as well as international law and mechanisms for property restitution. The majority of these workshops was conducted in the framework of commemorations of the 56<sup>th</sup> anniversary of the Palestinian Nakba. BADIL provided study materials with logistics handled by community organizations. Speakers and moderators were from BADIL (staff, Board, General Assembly) and invited guests from the PLO Refugee Department, the Palestine National Council, the Palestinian Legislative Council and political groups, academics and activists.

## Creating Civic Structures for Palestinian Refugees in Exile

An EU-funded study at the University of Oxford will assess how Palestinian refugee communities living in exile in the Middle East, Europe, and further afield can build civic structures to enable better communication with their political leadership and national representatives.

The project, entitled Civitas, will run over the next 18 months, and will establish the precise types of mechanisms needed by Palestinian refugees outside the West Bank and Gaza in order that they might participate effectively, and contribute democratically, to the shaping of their future.

The first step of the project is the establishment of a database to gather information about the size, location, and structure of Palestinian communities across the world.

In a second stage, each community will run their own needs assessment exercise, where they will determine for themselves which structures they would like in order to engage more effectively with their political leaders – for example by regular newsletters, delegations, monthly meetings, visits, and other means of communication. These will be decided by series of publicly convened debates and deliberations, run over a period of two months, within the communities and refugee camps.

The results of these deliberations will then be brought together in a report whose recommendations will

assist in the incorporation of this large constituency of Palestinians into the peace process between Israelis and Palestinians – an essential precondition for the achievement of a durable peace.

Dr Karma Nabulsi, Director of Civitas, is a Research Fellow at Nuffield College, from where the project will be managed. She said: 'The key point about this project is that it will be run by the Palestinian communities themselves. Democratic structures have to be created from the bottom up for them to hold. This is the lesson which can be learnt from many recent transitions to democratic rule, where consultation and participation have been vital to establish new democracies. The Palestinian case is unique in that the majority of the people are dispossessed and dispersed throughout the world. If you want to build peace, public participation and civic involvement are the cornerstone.'

The project will draw on a range of expertise from across Oxford University. It has been developed in collaboration with the European Commission of External Relations, through a series of reports and workshops run at Nuffield College, the European University Institute, and exile Palestinian communities over the last four years. The final report is due to be published in October 2005.

*For more information visit the Civitas website, [www.civitas-online.org](http://www.civitas-online.org). Email, [civitas@nuf.ox.ac.uk](mailto:civitas@nuf.ox.ac.uk).*

## Annual Return March in the Galilee

Palestinians in Israel commemorate Nakba Day on the day coinciding with Israel's independence according to the Hebrew calendar (27 April). In 2004 the annual return march led to the 1948 depopulated Palestinian village of Endor. All that remains of Endor are the walls of 75 houses abandoned in 1948. It then had a population of some 620 Palestinian Arabs who owned 10,414 dunums of land in the area. The village is well-known in Biblical history. King Saul, the first king of ancient Israel, visited a soothsayer in the village of Endor 3,000 years ago. Endor's former residents and their descendents are among the 260,000 Palestinians internally displaced within Israel. Jewish Israelis joined the march in larger numbers than in the previous year, and, for the first time the event received coverage by Israeli cable and Arab satellite TV stations.



## 2004 Nakba Commemorations

by Muhammad Jaradat

The 56<sup>th</sup> anniversary of the *Nakba* was marked by a substantial increase in quality and quantity of activities, despite hard conditions and insecurity on both sides of the 'Green Line'. Palestinian communities on both sides of the line are facing systematic Israeli state discrimination and military oppression. As a result of active community organizing, the memorial became the most visible event of this kind ever taking place in the 1967 occupied Palestinian territories.

The siege imposed on Yasir Arafat, Chairman of the PLO and the elected President of the Palestinian Authority (PA) does not aim merely to isolate Arafat; it is a war against the legitimate leadership of the Palestinian people and the Palestinian national movement. It aims to weaken the spirit and morale of the Palestinian people until they kneel and accept a solution imposed by Israel and the United States. Under this imposed solution Palestinians are supposed to act as a bridge for normalization between Zionist Israel and the Arab world.

### Zochrot Organizes First March of Return in Tel Aviv-Jaffa



First right of return march in Tel Aviv-Jaffa organized by Zochrot. Photo: Zochrot.

Around 100 participants marched through the streets of Tel Aviv-Jaffa covering a route that formerly connected two Palestinian villages that existed within the city boundaries until 1948. This was the second year the Israeli organization *Zochrot* organized a right of return march on the anniversary of the *Nakba*. The march passed through city streets named after leading Zionist figures, including Jabotinsky, Namir, Weizman and Pinkas. Participants read texts highlighting the role of these figures in the *Nakba*. They also offered to replace the street names with names more suited to a peace-seeking society. Participants called upon the Tel Aviv city council to name streets in the city after the six villages that existed in the area until 1948: Jarisha, Sheikh Muwannis, Jammasin al-Gharbi, Abu Kabir, Salama and Summayl. Symbolic signs were erected to relocate the names of Jammasin and Summayl, telling the history of these villages the deportation of village residents in 1948.

For more information visit the Zochrot website, [www.nakbainhebrew.org](http://www.nakbainhebrew.org).

It seems, however, that Israelis have not been reading the political map well; that is to say, the PLO is and will remain the sole legitimate representative of the Palestinian people and the Palestinian national movement. National liberation movements do not simply transform themselves to serve their occupiers. One of the main lessons of the past three and a half years since the beginning of the second Palestinian intifada is that a people's struggle for a just cause cannot be defeated by prisons, house demolitions, political assassinations, separation walls and other human rights violations. People inevitably find ways to express their resistance and continue activities to maintain the struggle for a just peace that is not just for Palestinians but also for Israelis and the entire region.

Activities for the 56<sup>th</sup> anniversary of the Nakba included workshops and debates in most of the refugee and non-refugee communities across the occupied territories. Topics of discussion and debate included: "Durable Solutions and Refugee Rights"; "Durable Solutions and Property Restitution"; and, "New-Old Initiatives" (e.g., Nusseibeh-Ayalon and the Geneva Accords). These workshops represented a significant shift in the substance and quality of discussions with former workshops focusing mostly on reaffirming refugee rights.

The 2004 Nakba commemoration was launched in late April by an all-Palestine TV awareness-raising campaign. The programming included 1-2 hours of documentary films, live debates, and interviews with Palestinians in exile. The Association for the Defense of the Rights of the Internally Displaced inside Israel held its annual return march in the Galilee on 27 April (see above). More than twenty of the finest Palestinian, Arab, international and Israeli writers contribute to a special

double issue of *Haq al-Awda* distributed as a supplement to the Palestinian daily *al-Ayyam*, the Haifa based daily *al-Ittihad*, and individually outside Palestine/Israel.

Nakba commemorations reached a peak on 15 May with right of return rallies in all districts of the 1967 occupied West Bank and Gaza Strip and in Tel Aviv-Jaffa (See above). In the occupied territories, PLO Chairman Yasir Arafat and PA Prime Minister Ahmed Qurei' designated 15 May as a national day of commemoration. In addition to rallies and marches, the day was marked by 3 minutes of silence at noon followed by Yasir Arafat's address to the people of Palestine in the homeland and in exile. The speech was broadcast live on Palestinian satellite TV, the Voice of Palestine and on Arab satellite channels. The 56<sup>th</sup> Nakba commemorations have witnessed increase in Israeli Jewish activities, including inter-community dialogue over solutions that guarantee refugee rights.

These activities, together with the hundreds of activities conducted by Palestinian communities in exile and international solidarity contributed to raising awareness that the root cause of the conflict is not 'disputed' territory but fundamentally about people's rights, including the right to live in a secure home, and the right of the people themselves to participate in the process of shaping their own future. Slowly, but with confidence in the future, we will march all together, people who believe in justice and peoples rights, towards a peaceful and prosperous Palestine.

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*Muhammad Jaradat is coordinator of the campaign unit at BADIL Resource Center.*



*Palestinian refugees in the Tulkarem area 1948. Photo: ICRC.*

# The Moral Scandal of the Time

by Yahya Yakhlef

The political and social nature of Zionism embraces a particular vision towards the Arab person in general, and the Palestinian person in particular, concerning his/her nature, culture and the existing relationship between this person and his/her homeland. This vision, however, contradicts the entire facts regarding the Arab person's existence; in fact, Zionism and Arab existence stand in total contradiction to each other. This vision provides the fundamental basis for Zionist policy including land expropriation and displacement of people by brutal means, and is derived from mythology and past historical events.

The fundamental nature of Zionist ideology and culture manifests itself in three main ways: racism, aggression and expansionism. By this I mean, racism that considers the other as the enemy, and aggression as a natural consequence of racism which manifests itself through Israel's continuous aggression against the Palestinian people. Finally, by expansionism I mean occupation, displacement and expatriation of the Palestinian people, destruction of villages, new plans for collective displacement (i.e., transfer policies), in addition to Israel's aspirations for additional territory, and the creation of other new tragic realities on ground.

This ideology then must perjure and fabricate historical facts. This is done by advancing the notion of "A land without people" and moving towards the denial of any existing culture for the Palestinian people. It includes altering landmarks and names, and, finally, fabricating lies about the root causes of Palestinian displacement. This leads to the adoption of legislation that renders Palestinians who remain in their homeland into 'absentees' – i.e., present but non-existent.

This fabricated and misleading version of history claims that what happened in Palestine in 1948 was simply an Israeli war of independence. Unlike the Palestinian

claim and recollection events, Israelis claim that the expatriation of Palestinians was basically a liberation and independence for the state of Israel. This ideology relies on a powerful allies such as Britain in the past, and now the United States (the steadfast wall). This is what I call "The Moral Scandal of the Time". The right of Palestinian refugees to return to their homeland is a natural and sacred right. This right is codified in international law; it is not subject to a statute of limitations nor can it be extinguished. Justice cannot be established by denying the rights of others.

*Yahya Yakhlef is the Palestinian Minister of Culture. This editorial originally appeared in Haq al-Awda (May 2004). Translation from Arabic by Rana Mousa.*



*Rally in Deheishe refugee camp, Bethlehem, for the 56<sup>th</sup> anniversary of the Nakba. Photo: BADIL.*

# The Nakba and the Dynamics of the Refugees' Problem

by Husam Khader

Many have written about the Palestinian Nakba as a concept and as a major historical event with severe negative impacts on the economic, social and demographic aspects of the Palestinian situation. The Nakba is not necessarily linked to a specific date, even though is normally associated with 1948. In fact, the Nakba is a complicated historical process: it required prior planning and, at the same time, its consequences remain to this day.

The elements of the Palestinian Nakba first came to light during the late nineteenth century, i.e., since the First Zionist Congress, the Balfour Declaration and subsequent Jewish immigration to Palestine. This was accompanied by Jewish propaganda, including the slogan of Palestine as a land without people. The British Mandate facilitated the creation of a Jewish state and the transfer of Palestinian land through new laws that transformed the landholding system from collective to individual ownership.

This was followed by General Assembly Resolution 181 (partition), massacres against Palestinians executed by Jewish gangs, collective expulsion of around one million Palestinians, the destruction of Palestinian cities and villages, Judaization of the land through the destruction of historical landmarks which emphasize the Palestinian presence on the land for thousands of years. The Nakba continued as a historical event throughout the years carrying within its folds massive hardship, suffering and brutality.

This prolonged pain manifested itself in the loss of land and the presence of the refugee and the refugee camps. The loss of land was a direct result of the Nakba. Land holds a complicated, private, material and symbolic meaning for its owners. The loss of land resulted in the separation of the peasant from his land which led to the destruction of the socio-economic infrastructure based on the land. The peasant thus became unemployed or in the best case scenario performed minor jobs to provide for the family. The Nakba also resulted in the elimination of cultivation as a style of work and means of production for the refugees. It destroyed the economic foundations that supported the extended Palestinian family and it destroyed social relationships and the social hierarchy that revolved around the land.

This prolonged pain also manifested itself in the appearance

of the refugee and the refugee camps as witnesses to the historical catastrophe of the Palestinian people. Revolution, action and resistance emerged from this same pain. Within the streets and neighborhoods of the refugee camps, the Palestinian individual created strategies for his survival and resistance on all levels. The refugee camp and the refugee are definitely among the main results of the Nakba which remain unresolved. Uprooting and dispossession of Palestinians from their land resulted in a new reality. Palestinians became dispersed among several geographical areas, but within six main locations: the 1948 land (internally displaced Palestinians), Lebanon, Syria, Jordan, the West Bank and the Gaza Strip, in addition to other places that are not formally called camps in Egypt and Iraq.

## Isolation

During the early stages of exile, the camp was a focal point replete with a mixture of visions, positions and outlooks for the refugee. The refugee was accused of fleeing but at the same time he was expelled from his land; the refugee was accused of selling the land and at the same time he was uprooted from his land; and, finally, the refugee was perceived as the outcome and the cause for his problem. Refugees suffered from this isolation.

This process was accompanied by continued attempts to further isolate the refugees in order to separate the refugee from his typical picture of the land. A new picture was supposed to replace the old, which is the refugee camp as an alternative to the refugee's original land. The isolation and absence characteristics of this stage was subjected to the Israeli narrative and propaganda concerning what happened in 1948, in addition to the refugees' loss of their land and the accompanying catastrophic economic situation and political oppression and different cultural and social surroundings facing the refugees in their new refugee camps.

## Emergence from Isolation

Refugees have demonstrated an amazing ability to from imposed isolation and the depressing economic and social situations of life in exile. The refugees' collective awareness and conscience helped in maintaining the Palestinian national culture and identity. It also helped in forming, reproducing and developing this identity among refugees especially after the 1967 war. Refugees created new strategies

in order to preserve this identity, such as, prioritizing education in place of the lost land and as a means of survival.

Refugees dealt with education and knowledge as a field of resistance and as a reaction to the prior illiteracy which was a main reason behind the refugee situation. Another strategy was the establishment of the Palestine Liberation Organization which reflected the identity of struggle for Palestinians. This identity would not have emerged in the absence of Fatah and subsequent national resistance groups. This process survived and developed due to the immediate response among the refugees in different camps, especially the second generation of the Nakba.

### **Continued Demand for the Right to Return**

Everything above is really an extended preamble to this article. However, it is a necessary one when addressing the refugees, their Nakba and their rights. The refugees are the owners of this collective conscience which revolves around their right to return and restitution. Refugees today, along with their institutions, have a sacred responsibility in developing their aptitudes, contributing to the demand for their rights, and finally shedding light upon the following:

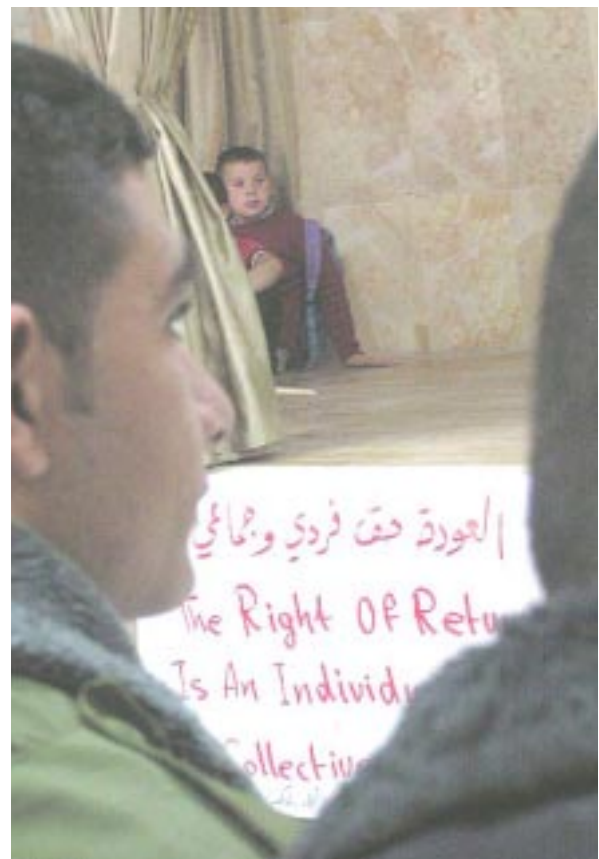
Regardless of the suggested scenarios (e.g., one democratic state) for the Palestinian people, we must not forget our demands. The creation of a Palestinian state does not mean the return of refugees to this state. Actually, refugees should be able to return to their original lands from which they were expelled. Here lies the importance of knowing the legal aspects of the right to return. We should intensify our academic research around this point in particular. All suggested proposals undertaken by joint Israeli-Palestinian politicians and academics must be rejected. These proposals must act as an incentive to adhere to the right to return through organized and effective methods.

The different names and bodies that represent the refugee issue must be unified under one umbrella by the establishment of a network responsible for linking all available efforts, committees and apparatuses. This does not demean previous conventions conducted inside and outside Palestine which acted as a preliminary step towards building a progressive level of unity among all these different bodies. There should be social organizations capable of representing the refugee rights, such as; "Aidoun" committees in Syria and Lebanon, Defending Refugee Rights Committees in the West Bank and the Gaza Strip, the Association for Internally Displaced within the Green Line, the Right to Return Assembly and Coalition in Jordan, the Right to

Return Congress, the Coordination Convention for Committees Defending the Right to Return around the world, al-Awda Center in London, Refugee Committees in Europe and North and South America, BADIL Center and its international campaign, scientific research and comparative studies that express awareness and vitality and ability to benefit from other experiences in the field of restitution, Associations for the Families of Displaced Villages, cultural centers and their leading role in raising awareness and adherence to rights, popular unions for youth and women centers, service committees in refugee camps, executive offices and other bodies and committees that are spread all over the world.

Finally, it is important to emphasize that the position concerning the right to return is the criteria to measure the seriousness of any organization or committee or individual. This right is not subject to bargains, referendums or opinion polls. This right must not be viewed as a trial balloon. Our people must be totally aware, ready and steadfast to confront all attempts to trespass the right to return.

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# The Nakba and the Solution, Accomplishments and Failures of the Popular Movement for Defense of the Right of Return

By Abdullah Hourani

The last few years witnessed enormous popular efforts to defend the right of Palestinian refugees to return to their homes. These efforts included raising awareness about the refugee problem and its importance as a basis for solving the Palestinian problem. These efforts took root in the West Bank, the Gaza Strip and inside the 'Green Line'; among Palestinians in exile whether it be in Arab countries or the US and in European countries, in addition to various international fora.

The popular refugee movement has succeeded in highlighting the importance of the refugee issue and the dangers confronting Palestinian refugees. It has emphasized the importance of Palestinian resistance to preserve and defend their right to return. The movement's efforts also drew the attention of the Palestinian leadership to the people's adherence to this right. This adherence outweighs concern towards the issue of a Palestinian state and Jerusalem. The leadership's concentration state-building and Jerusalem will not weaken the people's commitment to their right to return. The popular movement has an obligation to convince the world that dangers resulting from denying Palestinians their right to return have a great impact on regional stability and global peace and security.

The popular movement for the defense of the right of return resisted all attempts – Palestinian, Israel and international – to distort the right of return. Such distortions included notions of return as return to areas under the control of the Palestinian Authority and return to a future Palestinian state in the West Bank and Gaza Strip. The popular movement emphasized one concept which calls for the return of refugees to a fixed and specific place which is their original lands and properties from which they were displaced in 1948. The movement also emphasized that compensation for loss and suffering over the past fifty-six years is a parallel right and not a substitute for the right of return.

At the same time, the movement has failed to prevent the emergence of enormous dangers facing the right to return, especially with the development of racist, right-wing ideologies and streams within Israeli society,

mounting extremism, the unified Israeli stance against the right of return and Israel's insistence that the Palestinian people and its leadership, Arab states, and the international community recognize Israel as an exclusive Jewish state. The latter demand will make it impossible for Palestinian refugees to exercise their right of return and it will prepare the ground for the expulsion of Palestinians still residing within the 'Green Line.'

The Israeli insistence on denying Palestinians their right to return was manifested in the United State's written guarantees (14 April 2004) to the Israeli Prime Minister. The continued daily aggression and destruction of Palestinian camps in the West Bank and the Gaza Strip are part of Israeli efforts to eradicate the right to return. Israel's policy of destroying camps, carrying out extrajudicial killings, and further displacement of refugees is based on the belief that these camps represent a living example of the survival of the refugee problem and the refugees' persistence to return to their homes.

The popular movement also failed to deter those who conspire against the right to return. This includes certain individuals within the Palestinian leadership who claim to adopt a realistic and objective approach to the issue. We all know that those who initiated the Geneva Accords (or Nusseibeh-Ayalon) are part of the Palestinian leadership, whether from the Executive Committee, the Council of Ministers or the Legislative Council. These bodies did not adopt a strong position in order to stop these attempts to sell the right to return or to hold responsible those who attempt to cede the basic rights of the Palestinian people.

These individuals still enjoy the same positions and continue their efforts in the Arab and international arena to promote their initiative as representatives of the entire Palestinian population without strong objections from the President of the PA, Mr. Yasir Arafat, the Council of Ministers or the Legislative Council. This passive response may be interpreted by Israel, Arab leaders and the international community as readiness to bargain over the right to return. Since 2000 there is a noticeable deterioration in the official position towards the right of return.

The popular movement also failed to make the refugee issue a popular issue in the Arab world. The concept of the right of return is still unclear among wide sectors of the Arab population. This is due, in part, to the focus on Jerusalem and the state, and the leadership's negligence to explain the right of return. It can also be explained by the Arab media which followed in the footsteps of the Palestinian leadership. The absence of PLO institutions in the Arab world, moreover, contributed to the almost complete disconnect between the Palestinian popular movement and its counterparts in the Arab world. These institutions, essential for national liberation, merged prematurely with the administrative organs of the PA, before the PLO had completed its national program, including implementation of the right of return.

An additional factor that explains the lack of success of the popular movement to date is the major deterioration in international support for the Palestinian struggle among non-governmental organizations and solidarity committees in the aftermath of the Oslo agreements. While the second Palestinian intifada has reinvigorated support for Palestinian rights, the right of return remains least advantaged. The lack of attention to the right to return may not be the only reason behind the still limited international support. In the past, the popular

movement limited advocacy efforts to insistence on this right without providing adequate explanations about how this right could be implemented. Additionally, they did not respond to the Israeli claims regarding demographic dangers as a result of the implementation of this right.

The popular movement for the defense of the right of return (after forming a unified and organized structure for such a movement) should put forward a proposal for return based on co-existence with the other and not replacing the other. The proposal must also find a formula that will comfort the other, i.e. the other will not be considered as a minority in the government providing that he abandons practices of racial discrimination, in addition to his adherence to more realistic and democratic concepts. The popular movement must then prepare and educate itself and its citizens on such concepts. This will not be an easy task. It will take ample time and effort to implement.

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March in the Bethlehem area for the 56<sup>th</sup> anniversary of the Nakba.

# The Nakba and the Peacemaking Process

by Ilan Pappé

There is a natural inclination among political scientists, as well as politicians, involved in peacemaking, to look at the past and memory as an obstacle for peace. Liberating oneself from the past is recommended by such people as prerequisite for peace. This view is entrenched in a wider context of reconciliation and mediation policies that emerged in the United States after WWII. This school of thought was based on a business like approach that treats the past as an irrelevant feature in the making of peace. This means the peace makers consider only a contemporary situation – with its balance of power and realities on the ground – as a starting point for a reconciliation process. It also means that even when a blatant failure is registered in such a peace effort, the renewed effort restarts from a similar point of view; namely, one that neglects to take into account the lessons of previous failures. Noam Chomsky who noticed such a tendency in the Middle East peace process concluded that the result was a never-ending ‘peace process’ which was not meant to bring peace, but rather provided jobs and preoccupations for a large group of people belonging to the peace industry.

This philosophy has informed the peace process in Palestine ever since 1948 and in particular after 1967. Before 1967, and in the years following the ethnic cleansing that took place in Palestine, there were very few international efforts to solve the problem. Only in the first two years after the Nakba, there was some energy left in the United Nations that produced a diplomatic effort to pacify the country, which culminated in the convening of a peace conference in Lausanne, Switzerland in the spring 1949. It was a conference based on the UN Resolution 194 which also did not refer to the past as a feature in the making of peace. The events of the present were dramatic enough to draw attention to the refugees as the major issue at hand. In the eyes of the UN mediation body – The Palestine Conciliation Commission – the body that drafted Resolution 194, the unconditional return of the refugees was the basis for peace in Palestine. It avoided totally the colonialist nature of Zionism or the loss of Palestine as a homeland, space and civilization. But at least it dealt directly with

the human tragedy unfolding in Palestine. This was the last time the international effort focused on this issue. Loyal to a concept that disregarded the past and its evils, every peace effort since has been based on the balance of power and the more hidden interests and agenda of the peace makers (in most of the cases American diplomats).

It was in fact mainly the balance of power that determined the nature of the peace proposals. More concretely, it was the Israeli side that produced the common wisdom of the peace efforts; its guidelines formulated by what became known as ‘the peace camp’ in Israel. The essence of the peace proposals were thus programs that catered to that camp, namely the one that presented ostensibly the more moderate face of the Israeli position towards a prospective peace in Palestine.

These guidelines were formulated in a clearer form after 1967 and were born in response to the new geopolitical reality that emerged after the June war. It crystallized in a process that paralleled the internal debate inside Israel between the right wing, the Greater Israel people, and the left wing, the Peace Now movement. After these guidelines were adopted by the American apparatus responsible for shaping US policy in Palestine, they were described with the very positive adjectives such as ‘concessions’, ‘reasonable moves’ and ‘flexible positions’. But these guidelines catered for the internal Israeli scene and as such totally disregarded the Palestinian point of view – of whatever nature and inclination.

The first guideline was that the Israeli-Palestinian conflict began in 1967 and hence the essence of its solution is an agreement that would determine the future status of the West Bank and the Gaza Strip. In other words, as these areas constitute only 22 per cent of Palestine, such a solution is confined to these 22 per cent, over which a compromise should be found according to a business-like approach.

The second guideline is that everything visible in those areas is divisible and that such divisibility is the key for peace. Therefore the peace plans,



including the most recent one (the Road Map), were based on the idea that the area, its people and its natural resources should be divided. No wonder that under such an assumption an Israeli withdrawal from Gaza or 80 per cent of the West Bank was and is seen as warranting the complimentary adjectives mentioned above.

The third guideline is that anything that happened until 1967, including the Nakba and the ethnic cleansing, is not at all negotiable. The implications of this guideline are clear. It removes totally the refugee issue from the peace agenda and moreover treats the Palestinian right of return as a 'non starter'. This position was articulated first in the Israeli official papers prepared for the Camp David summit in the summer of 2000 and later as an American position, in the wake of the Sharon-Bush summit in April 2004.

The last guideline is a total equation between the end of Israeli occupation and the end of the conflict. Diachronically, there were some minor changes in the presentation of this guideline. Ever since 2000, the end of occupation was linked to the creation of an independent Palestinian state. This became part of the guideline since it was accepted by the Israeli peace camp and even by the political center. This seemingly conceptual change within the Zionist polity has very little to do with ideological shifts in Israel, and much more with the slight fluctuations in the local balance of power. Its formulation ensures that the state would be a Bantustan with no independent policies, no territorial integrity, on just half of the West Bank, within huge walls surrounding its fragmented cantons, no viable economic or social infrastructure and no capital. Under such circumstances it was possible to equate the end of occupation with the creation of an independent Palestine. It meant that past chapters in the conflict, among them the formative history of the 1948 ethnic cleansing, were not to be included in the effort for peace and reconciliation.

As noted before, these guidelines fit a more general American outlook on peace making, of which the salient feature is the absence of any reference to past failures in the making of peace. Hence the obvious failures of the peace process in Palestine until today are not an integral part of the contemplation accompanying the next stage in the same process.

The reasons for the total collapse of the Rogers and Yarnig initiatives of 1971, the Kissinger proposals in 1972, the Geneva conferences of 1974 and 1977, the 1979 Camp David initiative, the Oslo accord and all the last gambits are clear. They all stem from the attempt of the peacemakers to remove the ethnic cleansing in 1948 from the peace agenda and absolve Israel from its responsibility for the Nakba. But the absence of a learning process ensures that this obvious reason would not be calculated in the attempt to analyze the failure – the tendency is rather to cast the blame on the Palestinians and depict them as warmongers and intransigent people who do not wish to end the conflict.

What all these guidelines have in common is a consensual Israeli insistence in eliminating the refugee issue and the Nakba from the collective memory of peace making. In other words, the principal victims of the conflict, whose misery and predicament fueled the conflict ever since 1948, are totally absent from the peace agenda.

The reason for this bewildering absence is rooted in



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the political psychology as much as it is caused by the politics of power behind peace making in Palestine. The Israeli position on the conflict and its solution, the one that has determined the peace agenda hitherto, is fed by fears, psychoses and traumas much more than by 'security' interests and concerns which are presented by the Israelis as the basis for their opening gambits in every round of negotiations.

At the heart of that fear is the knowledge that despite years of denial, a peace process that would put the right of return of the refugees at the center of the reconciliation effort would open a Pandora's Box. Out will come inevitable questions about the moral foundations of the Jewish State and the essence of the Zionist project. These would be accompanied by a host of questions relating to restitution rights – from financial compensation to war crimes tribunals. The Truth and Reconciliation Commission in South Africa has shown that there are ways to avoid retributive justice and concentrate on a restorative approach and that the symbolic act of recognition coupled with actions such as the return of the refugees could be enough to cope with the past. In such a case, Israelis and Palestinians do not become

slaves of the past, but rather people who use the past to liberate themselves from the appalling present in which they live. This is guaranteed formula for a successful peace solution.

For this to work, there is a need not to underestimate or ignore the apprehensions of the powerful side in the equilibrium of forces. At the same time, these fears should not be allowed to dominate the peace agenda, as they have until today. It should be part of the overall search for a political structure in Palestine and Israel that could carry the necessary solutions for ending the conflict in the land. But even before this search commences, anyone seriously involved or interested in advancing the peace process should locate the refugees and their rights of return and restitution at the center of a peace process that could only properly begin with the complete end of the Israeli occupation of the West Bank and the Gaza Strip.

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*Palestinian refugees from Ramle, 1948. Photo: ICRC.*

# The Nakba – Something that Did Not Occur (although it had to occur)

by Eitan Bronstein

In March 2004 a commemoration was held near the 'Cinema City' (Herzliya) for the Palestinian village of Ijlil which existed at the site until 1948. Its inhabitants fled upon hearing of massacres committed against Palestinians by Zionist forces in the area. A detailed report about the village, its uprooting and the fate of its refugees, was published in the local paper 'Sharon Times' on the occasion of the memorial. One week later the same paper published a letter to the editor written by a reader who was outraged at the paper for "providing a stage (...) to some Arabs who claim to have once lived on the site of the recently constructed, magnificent Cinema City." An educator working in Natanya was surprised to hear from high school students that, "before the Jews there were the British in the country."

These are two rather incidental examples for the denial of the Palestinian Nakba by Jews in Israel. While it would certainly be possible to find even stronger examples, there appears to be no need for proof of the argument that the Jewish public in Israel denies the occurrence of the Nakba. The Nakba denial is found in the geography and the history taught in schools, on the maps of the country and in the signs marking places on its surface. All of them ignore, almost completely, the event which made possible the establishment of the Jewish State as a state with a Jewish majority and a Palestinian minority, after the majority of the indigenous people of the country were evicted, their properties destroyed and/or confiscated for the benefit of the new state.

How can we understand this denial of the Nakba? Can it be explained in psychological terms as the denial of an event that cannot be comfortably accepted? Could we also say that recognition of the suffering inflicted on the Palestinians would 'remove' Jews in Israel from the status of the ultimate victim which justifies almost each evil action? Or maybe the denial is a result of plain ignorance? There may be various correct explanations for this phenomenon. This article will try to shed light on one aspect of the discourse about the Nakba in Israel (before and after

its establishment).

It will show that the Nakba represents for the Zionist subject an event that cannot possibly have occurred and – at the same time – had to occur. From early on, Zionism ignored the existence of the Arab inhabitants of Palestine. It is, therefore, not possible that some 800,000 persons were ethnically cleansed from the country and that more than 500 Palestinian villages were destroyed. On the other hand, the expulsion of the Palestinian majority from their country was inevitable for Zionism that aimed to establish a Jewish State, i.e. a national home for the Jewish people in the world on a territory ruled by a Jewish majority on the basis of law.

## The Nakba – an event that did not occur

Zionist identity was built from the beginning on a two-fold negation: it negates time and space of the Jews outside Zion, a 'negation of exile' which extends beyond the realm of religion, and it negates time and space of those indigenous to the territory of Zion. The latter is best defined by the well-known statement of Zionist leader Israel Zangwill about, "a people without land returning to a land without people." Attitudes of the leaders and architects of Zionism towards the indigenous inhabitants of 'Zion' were situated between their perception as (temporary) guardians or holders of the land on one end, and their absolute non-existence as a relevant factor on the other extreme. In this aspect, Zionism resembles other colonialist projects.

Edward Said writes in his book 'Orientalism,' that for the Orientalist there is "no trace of Arab individuals with personal histories that can be told (...) The Arab does not create existential depth, not even in semantics" (...) The oriental person is oriental first, and human second." According to the approach of Zionism, a typical orientalist movement, indigenous Arabs of the country exist and live in it, but they are of no importance in the sense of deserving a relationship similar to that shown to 'European humans.' They certainly do not constitute a people or a collective able or interested in realizing

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itself as such, or similar to the Jewish national collective.

If Palestinians do not 'really' exist, as opposed to the 'reality' of Zionist existence, then also their expulsion cannot occur. It is not possible to expel somebody who is not present. According to Zionism, the violent events around 1948 did in fact occur, but only in form of an unavoidable response to the disturbance caused by the 'locals,' who did not accept the establishment of the new entity, the Jewish State. Therefore, what is important to understand, teach and tell about this period is the story of 'liberation' and 'independence' of the Jewish people in its homeland. According to this approach there was certainly no Nakba or tragedy for any other, because the other had never really existed in the land. Hundreds of villages in the coastal areas, in the south and in the center were not expelled; rather 'territorial continuity' was created according to the Haganah's Plan Dalet.

The space is thus 'naturally' Jewish. It must only be realized and transferred to Zionist control. Jewish territorial continuity and Jewish demographic homogeneity in Palestine represent the core of the Zionist project. Therefore, the Zionist subject cannot understand or see the catastrophe inherent in this project, especially since what is involved is the historical realization of an idea that derives its relevance from the Bible and a modern nationalism turned into a religion in many aspects. The Zionist subject cannot see the Nakba or seriously debate its circumstances. It must strip off its inner essence, in order to start to see it as an event that has shaped the space in which Zionism realized itself.

Ever since 1948 the Nakba is dismissed, and must be dismissed, from the consciousness of the Zionist subject, because its existence challenges the basis on which it was built – a people without land for a land without people. Recognition of the Palestinian Nakba signifies the destruction of the ground underneath the feet of this subject which understands itself as autonomous unit. Therefore, any such recognition, or even the attempt to look at this tragedy as something that happened to somebody else here is outrageous and almost incomprehensible. It is possible to recognize that some massacres happened here and there, as a result of local battles and fighting; it is possible to recognize that all Arab armies tried to

destroy us, the subject that wished to form itself. It is impossible, however, to look at the Nakba as a catastrophe committed by this subject in order to form itself, or as a necessary process for the Zionist subject.

### **The Nakba – an event that had to occur**

On the other hand, and paradoxically, the Nakba – the violent expulsion of the inhabitants of the country and the transformation of those remaining into refugees in their homeland, or into second-class citizens – is a necessary event, because it brought about the realization of the ethnically pure, closed and autonomous Zionist subject which builds itself in the framework of a state aimed exclusively for him/her. Without the Nakba, the Zionist subject might have become contaminated intellectually by foreign ideas and practices, such as bi-nationalism, or even physically from living in a space over which s/he does not exert exclusive and absolute control. Benny Morris, for example, describes eloquently how the idea of transfer was found strongly in the heads and writings of Zionist leaders back in the early decades of the 20<sup>th</sup> century, based on the profound understanding that the establishment and existence of the Jewish state will require the eviction of the native inhabitants of Eretz Isra'el.

Morris then proceeds to show that also in the process of the Nakba Zionist leaders decided immediately, and in his opinion rightly so, not to permit the return of the refugees so as not to infringe upon the possibility of the establishment of a Jewish state. The decision then, by the Israeli government, to prevent the return of the Palestinian refugees, clearly indicates that its members were aware of their capability to bring about ethnic cleansing and also justified this indirectly. Some Arab villages had maintained good neighbourly relations with the Jews until 1948 and some intervened on behalf of Arabs to stay in the country, however even this did not help them to remain in their homes. Zionism was not concerned with this village or that, depending on its attitude or behavior towards the new state. Arabs stayed in the country as a result of mercy, and, according to Morris, this was a mistake. The Zionist project had to evict the inhabitants of the country in order to realize itself.

Yosef Weitz, one of the heads of the Jewish National Fund at the time, provides evidence which is surprising in its honesty. He tells of the destruction of the village of Zarnuqa after its inhabitants had been

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expelled, despite of numerous calls by Jews to abstain from their expulsion. He describes how he stood in the village watching the bulldozers destroy the buildings which until recently had housed their inhabitants, feeling nothing. The destruction of Palestinian lives does not cause any doubts or emotional disturbance. He is even surprised about the fact that he feels nothing. As if this destruction was expected and premeditated.

### **The Nakba continues as a non-event and causes anxiety when it appears**

If the basic argument outlined above is correct, it can help explain two processes related to the Nakba, one situated in the reality of the violent conflict, the other in the consciousness of Israeli Jews who become exposed to the Nakba.

The Nakba as an event that did not occur in the past continues to not occur also today. Extra-judicial assassination of Palestinian leaders, confiscation of land, barring of Palestinian farmers from working their land by means of the wall under construction and the denial of their basic human rights are understood by the Zionist subject as means of the war against terrorism and as defensive acts necessary in order to fight the intolerable and illegitimate terror of the Palestinian people, who, according a recent statement by an Israeli leader, are seen as a genetically abnormal species.

If the Nakba never happened, it is impossible that millions of Palestinians today are refugees who demand restitution of their rights. It is also impossible that the Palestinians demand control of at least one fifth of Palestine, because they also had nothing before. In the eyes of the Zionist subject, everything that is happening today is completely disconnected from the historical context of the Nakba. Reference to the past of 1948 is made only in line with the Zionist narrative which holds that, 'just like they did not accept us here in the past (e.g. according to the UN Partition Plan), they continue to try to throw us into the sea also today.'

The above also helps explain the indifference, in Israel, towards the question of Palestinian return. On no other issue related to the conflict is there a similar and broad consensus like the consensus against Palestinian return. As a matter of fact, there is not

even a need to oppose return, because the very discussion of this topic is perceived as an existential threat. It is therefore excluded from the agenda of public debate without meaningful reference.

All Zionist Jewish political parties share this approach, which meets the logic of the argument that the Nakba never happened and results in a situation where the rights of millions of people remain denied until this day. If the Nakba was perceived by the Zionist subject as an event that really took place, there could be some Israelis, at least among the Zionist left, who would realize that some responsibility must be taken by the Israeli side for what happened in 1948. However, if there was no Nakba, there is also nothing to take responsibility for.

Another interesting process related to the denial of the Nakba is what happens to Jewish Israelis who become exposed to it for the first time, whether through activities organized by Zochrot or otherwise. The Jewish Israeli individual experiences the encounter with the Palestinian Nakba as a kind of surprising slap in the face. Suddenly, and without prior warning or preparation (a result of years of denial), s/he is confronted with a tragedy that happened to the Palestinian neighbor, while s/he feels part of the side that had caused it. This creates intolerable feelings of guilt and helplessness.

Guilt may be relatively easy to cope with, because it can be recognized and forgiveness can be requested. If we are ready to really listen to the voice of the Nakba, the major problem, however, is the challenge of all we have grown up with. The Zionist subject stands on somewhat shaky ground. It established itself by means of a violent process that is denied as an event that did not happen. When the ghostly spirit of this process is risen (by Zochrot, for example), it triggers astonishment and anger. If, however, we rise above these emotions towards a more objective perspective of this threatening past, we may be able to find the key to conciliation almost sixty years after the Nakba.

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## with Diana Buttu, PLO Negotiations Support Unit

**BADIL: As confusion appears to prevail on this matter, could you please summarize briefly the official Palestinian negotiating position on the refugee question?**

**Diana Buttu:** During the last round of negotiations at Taba in 2001, as in previous rounds, the PLO's position was that Palestinian refugees have the right to return to their homes. This position is based on international law and international practice. The Palestinian leadership also correctly maintains that Israel should apologize and accept responsibility for the plight of the refugees over the past 56 years due to its refusal to allow the refugees to return. Israel must also provide restitution and compensation to Palestinian refugees, irrespective of whether they exercise their right of return.

Unlike the negotiations at Camp David, at Taba, for the first time there was also discussion about the question of implementation. It is here that there was discussion on providing choices to Palestinians. Four choices were discussed: refugees would be able to choose to go to the Palestinian state, stay where they are in current host states, resettle in third countries like Canada, or return to their homes in Israel. The PLO's position was that refugees must be presented with real choices when implementing the right of return and it is therefore up to the refugees themselves to choose a solution: it is not up to Israel, the Palestinian leadership or the international community to make that decision.

*Do you have any thoughts about why a certain degree of confusion about the position of the PLO on the refugee question continues to prevail?*

I think this confusion is due, in part, to the great number of statements by officials that are in themselves very confusing. President Arafat's opinion piece published in the New York Times in 2002 stating that the PLO understands Israel's demographic concerns and his more recent interview with Ha'aretz in which he recognizes the Jewish character of Israel may contribute to this confusion. Reading these statements, many are left wondering how real choices for the refugees can be given if the PLO recognizes Israel's highly racist "demographic concerns" or the "Jewish character of the state." Confusion also exists due to the participation of former cabinet members in the Geneva Accord. The Accord, while demonstrating that PM Sharon is only interested in a military solution rather than a negotiated solution, raised many concerns, particularly with respect to refugee rights. Under the provisions of the Geneva Accord most refugees would not be able to return simply because they are not Jewish!

In general, the confusion can be attributed to statements that are given in response to political circumstances and political pressure, but to my knowledge there has been no formal renunciation of the right of return. Nevertheless, the positions set out at Taba in 2001 remain the official positions of the PLO.

*Could you shed some light on the scenario that has evolved since the breakdown in negotiations? Do Palestinians 'have a partner' for peace? Where do you feel we are heading given the situation on the ground?*

Palestinians have learned that Israel is not interested in ending the occupation – it is only interested in stealing Palestinian land. The government of Israel, whether it is a Labor or Likud government, does not relate to the Palestinians as an equal partner. Rather, Palestinians are viewed as either "demographic" or "security" threats. The Israeli government will do anything it deems necessary to contain these perceived threats, including building walls, creating ghettos and attempting to "thin out" the Palestinian population.

*Where are we heading? The path already exists: bantustanization, separation of Palestinians between the West Bank and Gaza Strip and isolation of Palestinians within the West Bank through colonies, military checkpoints and, most recently, through the wall. This means that the world in which Palestinians live is ever shrinking.*

The intent of these policies is to erase anything called Palestine. The manner in which the wall path was chosen clearly demonstrates that Israel has complete disregard for the Palestinians. The wall tramples on Palestinians but Israel does not care so long as the "demographic threat" is contained. Israel has even beautified the wall so that when Israelis see it they can pretend that it does not exist, just like they want to believe that Palestine and the Palestinians do not exist. This is not a new policy. Since the advent of political Zionism, the position has been that Palestine is for Jews and for Jews only. Zionism is a political program that ONLY relates to Jews – the indigenous Palestinian population is not factored into the equation. To Zionists, the Palestinians are a pesky fly getting in the way of their lovely picnic of the "project of Israel".

*How does this impact the prospect of a two-state solution to the conflict?*

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The PLO still supports a two-state solution through Palestinian sovereignty over a viable state established on all of the territory occupied by Israel in 1967. Increasingly, however, the Palestinian leadership is realizing that such a state might be a dream, because Israel's activity on the ground is eating up the viable parts of Palestine. The international community, represented by the Quartet and donor states, is ten to fifteen years behind reality in addressing the conflict in Palestine. Unfortunately this has been the situation historically. Only the first intifada made the international community realize that Palestinians want to be free and that the PLO was ready to recognize Israel. This was fourteen years after the PLO had unofficially recognized Israel, an event which had passed unnoticed by the international community. Still, western states, failed to amend their foreign policy to reflect this development.

The two-state solution became official international policy only in the 1990s. However, by then a two-state solution had already become unrealistic because by 1994, there were already more than 200,000 Jewish settlers in the occupied territories and settlements were expanding. In general, the international community continues to approach the conflict based on the assumption that everything can somehow be reversed. There is no real thinking about how to reverse the facts on the ground after thirty-seven years, or fifty-six years if the refugee question is to be included. Their policies are not based in reality.

Two events with major impact on Palestinian lives in the 1967 occupied territories are currently unfolding: the construction of the separation/apartheid wall and the Sharon Plan for disengagement from the Gaza Strip. What do you think will be the outcome and effect of the International Court of Justice (ICJ) ruling on the legal consequences of the construction of the wall and of the possible disengagement from Gaza?

The wall and the Sharon plan are linked. They mask what is really going on in the occupied territories: a few isolated unpopular colonies will be 'exchanged' for large parts of the West Bank. Sharon is looking for gains. The so-called disengagement from Gaza will be presented as a concession and in return he will be demanding a reward – more territory and erasing the right of return. Remarkably, he has even received these rewards (from the US) without evacuating from a single colony – he has only spoken of evacuation and for this he received a prize. Unbelievable! Sharon's talk of "disengagement" is meant to divert attention away from the wall and focus instead on a fictitious plan.

The "disengagement" plan should not be confused with withdrawal and should therefore not be labeled such. Even if Israel goes forward with the plan (which I do not believe), it will

maintain military control over the Gaza Strip. The Fourth Geneva Convention will therefore continue to apply to Gaza regardless of whether or not the colonies and Israel's military presence is removed. The plan will mean that Gaza is one big prison cell, which it already is.

Israel wants to reserve the right to control the airspace, which means control of mobile phones, satellite communication, and air transport. It wants to control the natural resources including water, fish stocks and fuel reserves off the coast. It wants to control border crossings with Egypt and Jordan including entry and exit, which means that it will be able to prevent free export and import of goods. The economy will continue to be besieged and dependent on the Israeli economy.

Israel also wants to reserve the right to invade the Gaza Strip as it wishes. It wants to expand the Philadelphi road along the Egyptian-Rafah border. It wants to reserve the right to continue to demolish homes, which means primarily the homes of refugees. Already, 19,000 Palestinians are homeless in Gaza as a result of Israel's demolition policy. There are no provisions for a territorial link between the Gaza Strip and the West Bank. The plan will have a detrimental impact on a host of basic rights.

In exchange for disengagement, Israel wants to reserve the right to continue construction of the wall in the West Bank and expand colonies. Moreover, it reserves the right to annex several colonies to Israel. Once the wall is complete, over 43 percent of the West Bank will be de facto annexed to Israel leaving only 12 percent of historic Palestine for Palestinians.

The international community has its head in the sand. It has welcomed the disengagement plan simply as a means of getting out of the current political stalemate. It has been pressuring Palestinians to accept the plan, despite the fact that it repeats the failed strategy of Oslo. At the same time, I have doubts that the plan will be implemented. The latest Israeli cabinet decision, in effect, rejected the idea of dismantling colonies.

The ICJ has been asked to rule on the legal consequences of the wall. The General Assembly has already declared that the wall is illegal. Much can emerge from the ICJ ruling, but the impact of the ruling will depend on the will of the international community. The ICJ case against South Africa over Namibia, for example, was instrumental in changing policy towards South Africa. I hope that a similar thing will happen with Israel, but I fear that the international community will fail to exert the same degree of political will.

Many will attempt to undermine the ICJ ruling because it is an advisory opinion. Political will therefore becomes very impor-

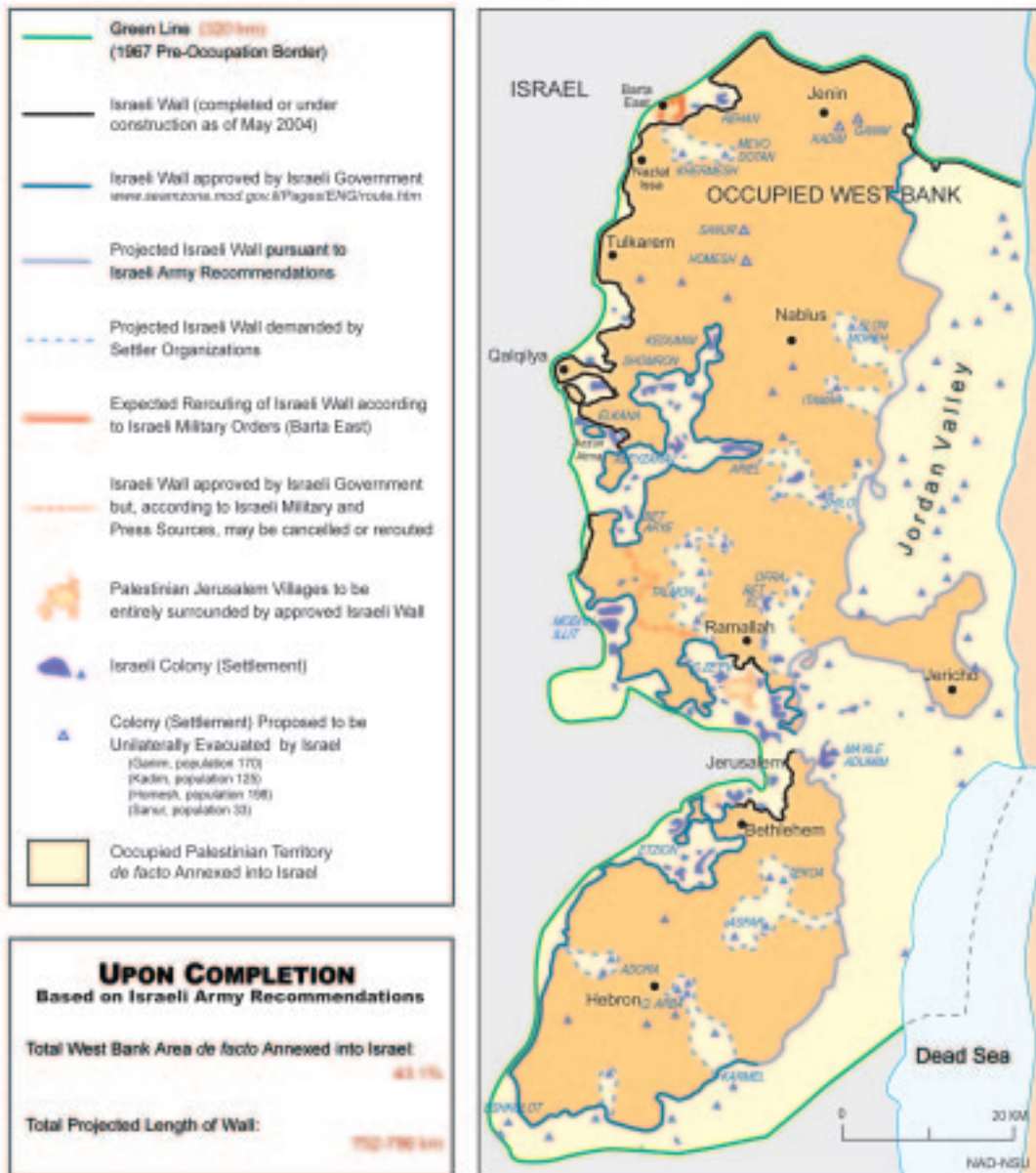
tant. My hope is that a strong statement by the court will force states to realign their foreign policy to reflect the court's decision. I hope that the court rules that states should amend their foreign policies by, for example, ensuring that trade agreements are enforced (particularly with respect to the products coming from the colonies). This is the best-case scenario. In the worst case, the ICJ could rule that the wall is temporary and therefore the court cannot assess its legal consequences. This would be a terrible blow.

*How do you understand the letter of assurances from President Bush to Ariel Sharon? Does the letter represent a substantive shift in US policy?*

Naturally, I was shocked and repulsed by the statements. Upon further reflection, I am of two minds on the letter of assurances. On the one hand it does represent a substantive shift in *stated* foreign policy. On the other hand, on the ground so to speak, it simply reflects a culmination in US foreign policy. For example, the US has officially opposed the construction of colonies in the occupied territories, but practically, it has financed the colonies

## ISRAEL'S WALL: ANOTHER LAND GRAB MAY 2004

Israel's goal in building the wall is twofold: (1) to confiscate Palestinian land in order to facilitate further colony expansion and unilaterally redraw geopolitical borders and (2) to encourage an exodus of Palestinians by denying them the ability to earn a living from their land, by denying them adequate water resources, and by restricting freedom of movement to such extent as to make remaining in their town or village an unviable option.





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and related infrastructure including bypass roads. The US has officially upheld Palestinian refugees' right of return, but practically it has done nothing for its implementation. The letter thus reflects the culmination of fifty-six years of US foreign policy of stating positions without taking action to implement them. The last vestiges of historic Palestine were lost in 1967. Since then the international community has adopted positions about solutions to the conflict, including that of refugees, but in practice it has done nothing to realize those positions.

*How do you understand the US position in relation to the EU?*

The only difference between the US and the EU is that the latter at least continues to state that international law matters, that colonies are illegal and refugees have rights. But this has meant very little in practice. The EU could be enforcing the trade association agreement with Israel, pushing Israel not to construct colonies and pressing for the right of return. Neither the US nor the EU, however, have protected Palestinian rights, not in Palestine, nor in exile.

*In your opinion, what are the basic components of a viable peace process?*

One of the most important things for an effective peace process is the framework. Until now negotiations have been characterized by the absence, rather than presence of law. Palestinians have sought third-party assistance due to the imbalance in power with Israel, but mistakenly looked to the US, which simply adopted Israel's position that might equals right. Palestinians have thus been pressured to be 'practical' and 'realistic' in the face of the balance of power.

Agreements in other conflicts are grounded in international legal principles. In the absence of legal principles, everything in the Palestinian case has become disputed, from the size of the West Bank, whether or not it is occupied, to the colonies and the right of return. During one of the last round of negotiations one of the Palestinian negotiators asked his Israeli counterpart about the basis for a proposed deviation from international law. The Israeli negotiator responded that "Israel will respect international law when the international community forces Israel to do so. Until then, it is me and you alone," he said.

According to these dynamics, Palestinians have been forced to negotiate with the occupying power while they are still under occupation. This is completely different from a situation where Israel would be forced to end the occupation and then negotiate with Palestinians as equal partners. After there is a recognition of basic principles, everything becomes easier to negotiate.

*What do you consider the major obstacles for a more effective role of international law in international efforts*

*at crisis management and peace making? Is there any prospect for change?*

The major obstacle is power-based negotiations combined with the absence of a neutral third party. The US cannot be a so-called honest broker as long as it continues to adopt Israel's positions. The US has been the perfect conflict manager rather than a conflict resolver. I do not see much prospect for change. The US continues to act unilaterally as it is the only superpower. The EU cannot act together, also because of the domestic interests of some member states, particularly Germany, the Netherlands and the UK, with Israel.

Unfortunately I fear that the situation will get worse. International law develops based on the practice of nation states. Changes in how nation states act, including Israel's actions, as far as they are not challenged, could lead to a shift in international practice over time. This is a slippery slope which could lead to the sanctioning of inequality by the international community itself. The situation in Iraq only underlines the sad reality in which the international community is unwilling to do anything to censure the US for the illegal war, despite criticism of the decision to invade Iraq. This is not unlike the position of the international community towards Israel. With the focus on Iraq and so-called democratization of the Middle East, Israel is likely to pressure the US to act against other Arab states in the region. Syria, perhaps, could be the next target. I do not see the focus changing much with the next administration in the US, regardless of whether it is a Republican or Democratic administration.

*What are possible options for the Palestinian leadership? In your opinion what is likely to be done?*

I see four options that hold the potential to capture world attention in a positive way. But they all require a significant shift. First, the Palestinian Authority could simply decide to dissolve itself. This is an option currently discussed in Palestinian academic circles. The argument is the following: under the current circumstances the Palestinian Authority is unable to function so it does not make sense for it to continue to function. It continues to uphold the myth that there are two equal parties to the negotiations. There are not. Such a move would also place the burden of ending the occupation back on Israel and the international community. The Palestinian Authority was set up as a temporary body, but it has become permanent. It was not established to be a security sub-contractor for Israel. Moreover, Israel and the international community have used the Palestinian Authority as a convenient scapegoat for everything that is wrong with the political process. The Palestinian leadership are blamed but it is the Palestinian people that pay the price.

The second option is for the PLO to declare statehood in the

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West Bank and Gaza Strip, including East Jerusalem. This would shift the response of states to the situation on the ground. The international community would no longer be dealing with an occupation but the invasion of another state with all the ensuing consequences.

Finally, the third option would be a move away from the two-state solution towards a single state in all of historic Palestine. Practically, a single already exists. There is a single currency, Israel controls all the borders and is responsible for all major security issues. But it is a 'state' with two classes of people. Israel's policies are making a viable Palestinian state impossible. The struggle would thus shift from a struggle for equal statehood to a struggle for equal citizenship.

Of course, there is a fourth option, and that is crisis management. This is the default option, continue to do what has already been done. Unfortunately, this is probably the most likely option. The international community is simply unwilling to confront Israel and the United States. Instead, it is trying to make Palestinians feel comfortable with the occupation rather than end the occupation. For example, when the Road Map was unveiled, the Palestinian leadership responded to the demands of the US, including the creation of the post of unelected prime minister. In return, PM Abbas received nothing from Israel and no pressure was brought to bear on Israel by either the US or the remainder of the international community. International policy has not adapted to reflect the situation on the ground and I do not have much faith that it will anytime soon. In the end, I believe that it will probably be the people who will change the situation and not some words on a piece of paper.

*What is the Palestinian leadership doing to ensure that basic rights are protected and will be protected in future negotiations?* As far as the negotiations are concerned, if and when there will be negotiations in the future, the PLO still emphasizes the importance of international law for a negotiated solution to the conflict. This includes recognition of the right of return and self-determination. Unfortunately the reality on the ground is changing and it is changing quickly. While Palestinians continue to talk about international law, deals made between the US and Israel without Palestinian participation may undermine these rights. We may be heading backwards to an era when talks are conducted on behalf of the Palestinians, but Palestinians are not participating actively.

I was shocked and dismayed by President Bush's statement of 14 April 2004. It felt as if we had gone back in time. Everyone was talking for the Palestinians and their future but the Palestinians themselves. Now with the disengagement plan for Gaza, it is the

Egyptians and Jordanians that are consulted, but not the Palestinians. It feels like we have gone back in time to the period before November 1974 and President Arafat's first speech to the UN General Assembly which signaled international recognition of the PLO as the representative of the Palestinian people.

Israel and the US continue to view the Palestinian people, and refugees in particular, as some nameless, faceless, amorphous body. I remember at Camp David in 2000, President Clinton was constantly concerned about Israeli public opinion. But when it came to Palestinian public opinion, the mere idea that there was such a thing as a Palestinian public, let alone public opinion, was simply brushed aside. There is an image of President Arafat as a leader with a magic button, who is able to control the Palestinian people. There is a certain degree of racism in this view.

*How would you define the best possible strategy for protecting the rights of Palestinian refugees in the current circumstances?* Immediately and in the short term, the best way to protect the rights of the refugees is for the refugees to protect their own rights. Of course, it is the responsibility of the leadership to protect these rights, but it is also very much up to refugee groups themselves. In the medium and long term refugee rights must be better represented in future negotiations. The fact that refugees lacked presentation beyond the PLO was very detrimental in past negotiations. The PLO had to handle both files, territory and the right of return, while Israel was trying to exchange one for the other and swap rights.

I am not sure about what exactly would be the most appropriate mechanism for additional representation of refugee rights in the future. However, it is obvious that the rights of the refugees, 1967 displaced and internally displaced must be represented more strongly, not because the PLO is incapable but because this is a very serious issue that requires extensive involvement. This could be achieved through the additional involvement of international refugee protection agencies like the UNHCR, or through direct participation of representatives of the refugees and displaced, or maybe even both.

Finally and at all stages, it is extremely important that the voice of the Palestinian exile is heard. Israeli policies over the past fifty-six years have resulted in the scattering of the Palestinian communities. We have Palestinians in Israel, those in the West Bank and Gaza Strip and those in exile. Each group holds and raises different perspectives, priorities and preferences regarding the solution, and each of these groups must be heard clearly.

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*Diana Buttou is a spokesperson for the PLO Negotiations Support Unit. The interview was conducted by BADIL on 22 June 2004.*

## Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention and the 1954 Stateless Convention

by Elna Sondergaard

The 1951 Convention relating to the Status of Refugees (1951 Convention) provides Palestinian refugees seeking protection in third countries with the right to "ipso facto" refugee recognition under certain circumstances (Article 1D). The 1954 Convention relating to the Status of Stateless Persons (1954 Stateless Convention) also provides Palestinian refugees with a right to protection, based on their status as stateless persons. BADIL is currently conducting research on national practice with a view to analysing whether Palestinian refugees are granted those rights. This article presents the initial findings of the ongoing research.

### BADIL Handbook

The findings of BADIL's research on the legal status of Palestinian refugees in third countries and the protection granted or denied by national authorities will be published in the form of a Handbook. The book will serve as a practical guide for both asylum practitioners who are involved in asylum claims submitted by Palestinians, and refugees themselves who are seeking protection in third countries. The information incorporated in the Handbook is being selected based on the practical relevance it has for these two target groups.

The Handbook covers more than 30 non-Arab countries which are signatories to the 1951 Convention and/or the 1954 Stateless Convention, including the United States, Canada, Australia, New Zealand and most countries of Western Europe. Africa, Asia, East Europe and South America will be covered to the extent information has been available. Based on the findings, BADIL will develop practical recommendations for improving implementation of Palestinian refugee rights to protection in third countries.

To date, research has been completed on 20 countries: Australia, Canada, Mexico and United States and 16 European countries: Belgium, Croatia, Denmark, Estonia, Finland, France, Germany, Iceland, Ireland, Latvia, Netherlands, Poland, Portugal, Sweden, Switzerland, United Kingdom. Four of these countries (Croatia, Estonia, Iceland and Portugal) had no Palestinian asylum seekers, and one, Latvia, had only one case leaving 15 countries which have been researched in detail.

### Article 1D of the 1951 Convention

Article 1D refers to Palestinians who became in refugees (*sui generis*) following the creation of the State of Israel in 1948 or the subsequent 1967 Arab-Israeli war, as well as their descendants. Article 1D (see box) contains an exclusion clause (paragraph one) and an inclusion clause (paragraph two). The exclusion clause stipulates that as

#### Article 1D

This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.

When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Convention.

long as the refugees receive protection or assistance from agencies of the United Nations, they shall not fall within the scope of the 1951 Convention. Palestinian refugees who live in UNRWA's area of operations and receive assistance from the Agency are therefore not entitled according to current UNHCR practice to the benefits of the 1951 Convention. The inclusion clause stipulates that once "such protection or assistance has ceased for any

reason", the refugees become entitled to those benefits provided that Article 1C, 1E and 1F (i.e., cessation clauses) are not applicable.

UNHCR has published guidelines on the proper interpretation of Article 1D.<sup>(1)</sup> The Refugee agency noted with regard to the inclusion clause that:

“If, however, the person is outside UNRWA’s area of operations, he or she no longer enjoys the protection or assistance of UNRWA and therefore falls within paragraph 2 of Article 1D, providing of course that Article 1C, 1E and 1F do not apply. Such a person is automatically entitled to the benefits of the 1951 Convention and falls within the competence of UNHCR” (paragraph 7).

UNHCR recognises that Article 1D ensures the continuity of protection of Palestinian refugees by providing them with *ipso facto* or *prima facie* recognition of refugee status once they leave UNRWA’s area of operations provided that Article 1C, 1E and 1F are not applicable. Palestinian refugees do not need to prove individual persecution in order to be protected under the 1951 Convention (i.e., fulfil the criteria set out in Article 1A(2) of the 1951 Convention).<sup>(2)</sup> The Note does not recommend whether national authorities should grant Palestinian refugees protection in their own countries (e.g., in the form of asylum or a complementary form of protection on humanitarian or other grounds) or return them to their country of former habitual residence. That is a matter for the national authorities to decide according to national legislation.

If, however, national authorities decide to return a Palestinian refugee to his or her country of former habitual residence, return should only be carried out if the refugee is ensured “effective protection” in that country. The level of protection available in the country is a matter of assessment by national authorities. According to UNHCR’s guidelines on “effective protection”<sup>(3)</sup>, the following elements, *inter alia*, are critical factors for the appreciation of “effective protection”: the person has no well-founded fear of persecution in the third State on any of the 1951 Convention grounds; there will be respect for fundamental human rights in the third State in accordance with applicable international standards; the third State has explicitly agreed to readmit the person as an asylum-seeker or, as the case may be, a refugee; and, the person has access to means of subsistence sufficient to maintain an adequate standard of living.

If, for example, as it often happens, the country of former habitual residence will not accept to readmit a former Palestinian resident, then he or she should, according to UNHCR, be granted the benefits of the 1951 Convention in the country of asylum.

## National Practice

The following section provides a review of selected national practice. A complete review will be available in the forthcoming Handbook.

**Australia:** Australian authorities and courts have consistently rejected that Article 1D contains an inclusion clause which would automatically confer refugee status upon Palestinian refugees. The second paragraph simply entitles Palestinians to apply for recognition of refugee status under the criteria set out in Article 1A(2) of the 1951 Convention, if they are not excluded to do so by the exclusion clause of Article 1D. The interpretation of that clause has been a source of ongoing debate. The leading case is *Waqb* (November 2002) in which the Full Federal Court (three judges) concluded that Article 1D referred to a *class of persons* and not to *individual* persons. The central issue would therefore not be whether a Palestinian was actually receiving protection or assistance, but rather whether that person was within the *class of persons* to which Article 1D applies, that is to say the *class of persons* who are at present receiving assistance or protection from an agency of the United Nations.

This “class of persons” approach to interpreting Article 1D has been followed by the Refugee Review Tribunal in subsequent cases. The three judges disagreed, however, when it came to determination of when the exclusion clause is no longer applicable (i.e., the wording of the second paragraph “when such protection or assistance has ceased for any reason [ ]”). One judge concluded that given the inability of UNCCP to carry out its mandate, it would be a question whether UNCCP had provided protection at the time of the ratification of the 1951 Convention. The two other judges disagreed by stating that the question to be answered was not whether UNCCP had, as a matter of fact, provided protection, but whether the protection provided by UNCCP had ceased. The implications of cessation of UNCCP’s protection would be that the exclusion clause was not applicable and that the Palestinian asylum seeker therefore would be entitled to apply for asylum. This question was sent back to the Refugee Review Tribunal.<sup>(4)</sup>

Detention is used pending return of unsuccessful asylum seekers to their country of former habitual residence and when asylum seekers enter Australia illegally. A Kuwaiti-born Palestinian asylum seeker, Mr. Aladdin

Sisalem was detained for ten months on the off-shore detention centre on Papua New Guinea's Manus Island. In December 2002, he arrived in Saibai Island in the northern part of Australia, so he was inside the Australian migration zone when he applied for refugee status. According to the authorities, however, he did not properly apply for refugee status while on Australian soil because he did not ask for a form X. They then put him on a plane and sent him off to Manus Island. He was released in June this year and granted a five-year humanitarian visa following a request by UNHCR.

Although Australia has signed and ratified the 1954 Stateless Convention, the convention has not been incorporated into domestic law. So Palestinian refugees enjoy no protection under that convention.

**Denmark:** Palestinians from Lebanon are recognised as refugees in Denmark. The essential question in such cases is whether the applicant can obtain the necessary protection in Lebanon. If the Danish authorities find that Lebanon cannot offer the necessary protection, Denmark is obliged to grant protection and a residence permit to the asylum seeker. According to the practice by the Danish Refugee Board, three criteria have to be fulfilled to establish the necessary level of protection: 1) It should be feasible for the Palestinian refugee to return in a legal manner to Lebanon; 2) His or her future continued stay in Lebanon should be legal; and, 3) The prospects are that the refugee is able to "continue living in peace in such a way that his or her personal integrity is protected".

The Refugee Board has stated that the threshold for establishing that Lebanon cannot offer adequate protection and serve as a "country of first asylum" is in principle lower than the threshold for establishing persecution under Article 1A(2). Moreover, the burden of proof to establish "necessary protection" lies with the Danish authorities, whereas the burden of proof in cases examined under Article 1A lies with the applicant. Palestinians from other countries are recognised as refugees if they fulfil the criteria set out in Article 1A(2).

**Finland:** The leading case on Article 1D is the decision by the Supreme Administrative Court of 31 October 2002.<sup>(5)</sup> The case involved a Palestinian refugee from Lebanon who had been receiving assistance from UNRWA. The Court stated that although the Finnish

Aliens Act does not contain provisions specific for Palestinians, such provisions are contained in the 1951 Convention and they may be applied in an asylum case because Finland is bound by the 1951 Convention. The Court concluded that Article 1D was applicable in the case because the applicant was a stateless Palestinian registered with UNRWA in Lebanon. The Court then analysed whether the applicant could return to Lebanon stating that:

"According to the available information there are no legal obstacles to A's return. Upon return to Lebanon he can benefit further from the possibilities of resorting to the assistance of UNRWA. Therefore it does not follow from the rules of Article 1D that A would in this respect directly, pursuant to Article 1D, enjoy the benefits of the 1951 Geneva Convention".

"[] [T]here have been no such reasons relating to A's security or basic livelihood shown in the case that would hinder him from returning to his country of habitual residence Lebanon. Therefore it cannot be considered in this respect that his possibilities to further receive assistance from UNRWA have ceased as meant in Article 1D paragraph 2. Based on the above mentioned reasons A does not have ipso facto a right to the benefits granted in the 1951 Geneva Convention []."

The Court's argumentation appears to follow UNHCR's guidelines from October 2002, although it would have been more correct to say that the refugee was entitled to the benefits of the 1951 Convention, but that fact did not mean that he could not be returned to Lebanon.

**France:** The French authorities have concluded that Article 1D, second paragraph, is applicable only when UNRWA stops its functions. As long as UNRWA exists, Palestinian refugees may obtain asylum only if they fulfil the criteria of Article 1A(2). Palestinians have been recognised as stateless persons and are granted the benefits of the 1954 Stateless Convention.

**Germany:** There is elaborate case law on Article 1D with a precedent-setting ruling by the Federal Administrative Court in Berlin from 4 June 1991.<sup>(6)</sup> The Court concluded that Article 1D contains an inclusion clause, so that Palestinian refugees may qualify as refugees on the basis of that clause independently of Article 1A(2). However, refugees should not, in the view of the Court, have the option of *voluntarily relinquishing* UNRWA's

regime (“freiwilligen Aufgabe der UNRWA-Betreuung”) and replacing it with the benefits of the 1951 Convention. As Palestinian refugees were primarily referred to UNRWA’s regime, the inclusion clause would not “kick in” if a refugee leaves UNRWA’s area of operations solely with the intention of replacing UNRWA’s assistance with the benefits of the 1951 Convention.

Subsequent jurisprudence has confirmed how difficult

it is for Palestinian refugees to establish that they did not *voluntarily relinquish* UNRWA’s assistance. Due to this restrictive interpretation of Article 1D, few Palestinians have been recognised as refugees on the basis of Article 1D. Most Palestinians only have a chance to be recognised as refugees on the basis of Article 1A(2) of the 1951 Convention. The possibility for Palestinian refugees to be recognised as refugees has been further limited by Federal Court’s restrictive

## Update: Palestinian Refugees in Iraq



*Ruweished refugee camp in no man’s land between Jordan and UNHCR. Photo: UNHCR/A.Van Genderen Stort.*

As Palestinians commemorated the 56<sup>th</sup> anniversary of the Nakba, scores of Palestinian refugees who fled Iraq during the 2003 US-led invasion left UNHCR’s Ruweished refugee camp in eastern Jordan and went back to Baghdad. While UNHCR feels that the conditions in the country are not suitable for return, the Palestinians, including a family of nine, felt that they would be better off in Baghdad than in the refugee camp on the Iraqi border.

“We have now waited so long here that we’d rather return to Iraq and die in freedom than remain in a refugee camp where we have no life amidst snakes, scorpions, scorching heat and penetrating sandstorms,” said 53 year old Nasser Hassan Hussein. “Here our life is sand, our food is sand and our water is sand. After a year I know that there is no solution for us here, even hope cannot be found anymore. It is not fair that finding solutions seems to be so much harder for the Palestinians.”

UNHCR provided Palestinian refugees going back to Baghdad with assistance to cover their travel expenses and several months of rent support. In 2003, UNHCR registered some 23,000 Palestinians in Baghdad, although the refugee agency estimates that the actual number of Palestinian refugees in the city is closer to 35 to 42,000. Approximately 35 families are still living in tents at the Haifa Sports Club in the city. Several hundred Palestinian refugees remain in Ruweished refugee camp on the border with Iraq.

*source: UNHCR*

interpretation of the term “country of former habitual residence” (Article 1A(2)). The Court has concluded that a state ceases to be such a country for a Palestinian asylum seeker if that person is expelled from the country or denied re-entry to the country, unless in the case of denial of re-entry it is based upon reasons related specifically to that person and, hence, not upon general population policies. The consequence is that as there is no country of former habitual residence against which the level of persecution can be assessed, the asylum seeker cannot not be recognised as a refugee.

It often impossible for German authorities to return rejected Palestinian asylum seekers who are stateless because no country would accept them. Such refugees are granted a so-called tolerance permit (“Duldung”). This permit does not convey any real legal status, since it only means that Germany agrees not to implement a deportation order which, nevertheless, remains valid. Legalisation of the stay in Germany for a holder of such a permit is possible under certain circumstances and after prolonged residence in Germany, but such decision is up to the discretion of the authorities. In many cases, the authorities have dismissed requests for legalisation of stay even after years of residence in Germany with the justification that the applicant had not taken sufficient action to overcome the impediments to his or her departure.

Some Palestinians have been recognised as stateless persons and granted the benefits of the 1954 Stateless Convention. However, they have to establish that UNRWA’s assistance is no longer available (Article 1(2)(i)) and that they are staying legally in Germany (Palestinians with toleration permit have faced difficulties fulfilling this condition).

*The Netherlands:* The Minister of Alien Affairs and Integration has issued a circular regarding Palestinian refugees (Aliens circular C1/4.2.2. as amended by circular TBV 2003/11 of 24 April 2003) providing that: “Whenever a Palestinian is no longer present in the mandate area of UNRWA, the exclusion clause of Article 1D of the Refugee Convention ceases to be applicable and the Refugee Convention is again applicable. This however does not mean that a residence permit should automatically be granted. After all, the concerned person is expected to return to this mandate area of the aim of re-invoking the protection of

UNRWA. This will only be different if the alien can make plausible that he cannot return to UNRWA area because he has well-founded fear of persecution within the UNRWA mandate area, and cannot invoke UNRWA protection against that. In that circumstance, the alien can be granted a temporary residence permit for asylum under Article 29 (1) (a) [ ]”. The authorities thus assume that UNRWA has a protection mandate. However, the Court of Appeal has concluded (decision of 2 April 2003) that the authorities should analyse on a case-by-case basis whether UNRWA is capable of providing protection to the refugees.

*Sweden:* Palestinian asylum seekers who are registered with UNRWA cannot justify their claims for asylum under Article 1D because as long as they are asylum seekers their UNRWA assistance is deemed not to have “ceased”. Article 1D becomes applicable once asylum seekers are granted permanent residence permit entitling them to the benefits of the 1951 Convention. Palestinians from Gaza and the West Bank are currently granted residence permit on humanitarian grounds. Palestinians from Lebanon have also been granted residence permit on humanitarian grounds on a case-by-case basis.

Several stateless Palestinians from the Gulf States (many who came from Gaza originally or whose fathers originally came from Gaza), such as Saudi Arabia and the United Arab Emirates, have been denied asylum and requested to return to the country in which they lived before arriving in Sweden. However, according to the authorities in Saudi Arabia and the United Arab Emirates these refugees are not allowed to return if they have stayed longer than six months in Sweden. If they want to return thereafter, they must re-apply for a residence permit which they can only obtain if they have a new “sponsor” (employer). As it is almost impossible for these Palestinians to get a job in their former country of residence while living in Sweden, they are often not able to return. Such people often have to wait years before the authorities would grant them permission to stay in Sweden.

*United Kingdom:* Article 1D is relevant only to persons who were receiving protection or assistance from UNRWA on the date on which the 1951 Convention was signed (28 July 1991). It is not relevant to anyone else, not even to the descendants of people who were receiving such protection or assistance. When Article

1D is applicable, the applicant is excluded from the scope of the 1951 Convention for so long as UNRWA continues to operate and, hence, is excluded from applying for asylum under Article 1A(2). This interpretation of Article 1D was adopted by the Supreme Court of Judicature Court of Appeal (Civil Division) in London on 26 July 2002 (the case of *Amer Muhammad El-Ali v. The Secretary of State for Home Department and Daraz v. The Secretary of State for Home Department*).

## Conclusion

In summary, research shows a strong diversity in interpretation and state practice of the 1951 Convention, largely to the detriment of Palestinian refugees. The new 2002 UNHCR *Note on the Applicability of Article 1D of the 1951 Convention to Palestinian Refugees*<sup>(7)</sup> appears have not (yet) impacted jurisprudence and/or state practice. Once denied asylum, other forms of protection are available for Palestinian refugees in very few countries only and return of Palestinian refugees to countries of former residence becomes a matter for the police. Yet many refugees have nowhere to be returned to. Subsequent legalization of their presence then becomes the major problem, involving lengthy procedures and much hardship for the refugees.

Different protection gaps have been identified in the 15 cases of national practice reviewed for this article (not all cases are included in the above examples):

- The “ipso facto” language of Article 1D is not implemented in any of the countries, apart from Finland.
- Article 1D is interpreted in at least nine different ways by national authorities.
- Article 1D is not incorporated into national legislation in some countries.
- Palestinian refugees are not recognised as refugees unless they fulfil the criteria set out in Article 1A(2), apart from Denmark with regard to Palestinians from Lebanon and Finland.<sup>(8)</sup>
- In at least one country, the possibility for Palestinian refugees to be recognised as refugees has been further limited by a restrictive interpretation of the notion “country of his former habitual residence”.
- If complementary forms of protection are available for Palestinian refugees who are not formally recognised as refugees, these forms of protection are often granted following a political decision.

- In many countries, it is often impossible to return stateless Palestinian refugees who have received a final negative decision because the authorities in the country of former habitual residence will not accept re-entry. As they are stateless persons, they often have nowhere to go.
- In some countries, Palestinians who cannot be returned are granted a form of temporary leave to remain. This does not convey any real legal status, since it only means a temporary suspension of the deportation order which, nevertheless, remains valid. Legalisation of this status is often cumbersome.
- Palestinians have been recognised as stateless persons and granted the benefits of the 1954 Stateless Convention in only few countries.

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## Endnotes

- (1) See, *Note on the Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees* from October 2002, which was analysed by BADIL in *al-Majdal* issues 16&17 March 2003, page 26. The text of the UNHCR Note can be found at BADIL's website: [www.badil.org/Protection/Documents/Protect\\_Docs.htm](http://www.badil.org/Protection/Documents/Protect_Docs.htm).
- (2) For detailed analysis of Article 1D, see, Lex Takkenberg, *The Status of Palestinians in International Law*. Oxford: Oxford University Press, 1998; and Susan Akram and Guy Goodwin-Gill, *Brief Amicus Curiae*, available at BADIL's website: [www.badil.org/Publications/Other/Refugees/amicus.pdf](http://www.badil.org/Publications/Other/Refugees/amicus.pdf).
- (3) See, *Summary Conclusions on the Concept of “Effective Protection” in the Context of Secondary Movements of Refugees and Asylum-Seekers*, Lisbon Expert Roundtable 9 and 10 December 2002, published by Department of International Protection February 2003.
- (4) See, summary of the judgement in *al-Majdal* Issues 16&17, March 2003, page 29.
- (5) Case No. 2770, *Annual Year Book Publication No. KHO 2002*: 69, Diary No. 1866/3/02.
- (6) Bundesverwaltungsgericht, Urteil vom 4.6.1991 – Bverwg 1 C 42.88., published in *InfAuslR* 10/91, 305.
- (7) For a summary of the decision, see *al-Majdal*, issues 16&17, March 2003, page 29.
- (8) In Germany, Palestinians may also be recognised under Article 1D, but due to the courts' restrictive interpretation of Article 1D most Palestinians only have a chance to be recognised as refugees on the basis of Article 1A(2).



# Possible Outcomes of the ICJ Opinion and Some Conclusions

by Susan Akram, Elizabeth Badger and Rasmus Goksor\*



## *Jurisdictional arguments: The ICJ is Unlikely to Decline to Render an Advisory Opinion*

It is highly unlikely that the Court will decline jurisdiction to render the advisory opinion; in fact, it has never refused to render an advisory opinion requested by a UN body. Most recently, the Court has indicated that it has broad competence to issue advisory opinions.<sup>(1)</sup> The only precedent for declining an advisory request is the *Status of Eastern Carelia* case, in which the Permanent Court of International Justice (PCIJ)—the ICJ’s predecessor—found that the consent of the two states directly involved in the dispute was required before it could render the opinion.<sup>(2)</sup> The ICJ has issued advisory opinions in the face of objections based on ‘politicization’;<sup>(3)</sup> that an opinion would be outside the competence of the UN body requesting it;<sup>(4)</sup> that an opinion would add nothing to existing UNGA or UNSC resolutions on the matter;<sup>(5)</sup> that an opinion would not be useful;<sup>(6)</sup> that consent of all parties is required;<sup>(7)</sup> and that an opinion would prejudice ongoing negotiations.<sup>(8)</sup> However, the ICJ has never found an obstacle to rendering an advisory opinion, recently reaffirming that: “There has been no refusal, based on the discretionary power of the Court, to act upon a request for an advisory opinion in the history of the present Court.”<sup>(9)</sup>

Since an opinion on the merits is probable, it remains to examine the possible range of options the Court has before it, and on what issues it is most likely to rule. These options are examined below, in order of the most narrow to the most expansive, with a brief discussion of the Court’s likely concerns in deciding among its options.

## *Arguments on the Merits: The Court May Address a Range of Legal Issues, from the Most Narrow to the Major underlying Issues of the Conflict*

The main argument made by those supporting the Advisory Request concerned the path of the wall: all agreed that if the wall were built solely within Israeli boundaries, there would be no challenge to its legality.<sup>(10)</sup> Thus, should the Court wish to find the most narrow grounds for its opinion, it could address only the route of the wall, to determine the consequences of Israel’s construction outside the boundaries of the 1949 Armistice Agreement. The Court could engage in an analysis of whether the 1949 Armistice Lines are settled under international law, or remain disputed. If the former, the ICJ will likely confirm the UNGA’s claim that Israel’s construction of the wall in its current route is illegal; if the latter, the legality may be less clear, and the

Court may engage in further inquiry on the issue. However, the Court does not need to determine precisely what the Israeli borders are as a matter of international law in order to affirm the illegality of the wall's current path.

Some legal experts on the question conclude that the only *de jure* boundaries were those established under Resolution 181 for the two entities that were to be created in Palestine: for Israel, those were pre-1949 Armistice borders defining the 'Jewish state.'<sup>(11)</sup> The Armistice Agreements of 1949 did not establish new *de jure* boundaries, but recognized the expanded *de facto* boundaries claimed by Israel. These boundaries may have obtained international recognition, by virtue of subsequent Security Council resolutions.<sup>(12)</sup> Other experts dispute the authority of Resolution 181 to establish *de jure* boundaries at all, since the Partition Resolution was a recommendation to the parties to the conflict, thus could not be binding, and in any event violated the terms of the Mandate on Palestine through which the UN was exercising authority over the matter.<sup>(13)</sup> Although there has been no subsequent *de jure* establishment of any final borders within which the Palestinian state recognized by Resolution 181 is to be established, there is both international and UN recognition that Israel is illegally occupying the areas of the West Bank, Gaza and East Jerusalem it seized in 1967.<sup>(14)</sup> These areas remain 'international,' and are recognized as the territorial unit within which Palestinian self-determination will be exercised. Thus, at a minimum, the ICJ could find that Israel is not entitled to take actions which prejudice the well-established legal right of the Palestinian people to exercise self-determination over those areas, actions that prejudice the final status of those territories.

If the Court finds that the 1949 Armistice Line settles the question of the borders, it need not further examine the consequences of the wall, as everything related to its construction will consequently be prohibited as also illegal. In its opinion, the Court may, nevertheless, address the consequences to Palestinians of Israel's actions, and discuss how such actions violate various humanitarian and human rights provisions. However, if the Court believes the borders are not settled, that they remain 'disputed,' then the Court must address whether international humanitarian law and/or human rights law provisions nevertheless constrain Israeli actions in the Palestinian territories; and if so, which provisions apply.

If the ICJ addresses the applicability of IHL in the Occupied Territories it will most likely find both the Hague Regulations of 1907 and the Fourth Geneva Convention of 1949 clearly applicable in the Occupied Territories—both because Israel has agreed that certain provisions of those treaties apply to the territories in some circumstances, and because they have become customary norms and thus universally applicable. Under the Hague Regulations and the Fourth Geneva Convention, the status of the West Bank, Gaza and East Jerusalem as 'occupied,' is a matter of factual inquiry, and the requisite facts exist to establish Israel as 'occupier' and the Palestinians as 'occupied,' or 'protected persons.'<sup>(15)</sup> From this conclusion, the ICJ will examine the main contention put forth by Israel, which is that the wall is necessary protection against suicide bombers entering Israel from the occupied territories, and the Palestinian position that the wall's location is not calculated to prevent suicide bombers as it is not constructed on the Israeli side of the 1949 armistice line. Israel's argument is that if humanitarian or human rights law is applicable, it has the right to protect its people and territory under the principle of "necessity."<sup>(16)</sup>

The ICJ has recently decided a case examining the defense of "necessity." In the *Gabcikovo-Nagymaros Project Case*, the ICJ found that the necessity defense was unavailable even if the state claiming the defense did not cause the danger to itself.<sup>(17)</sup> Whether or not the state 'contributed' to the danger is the test, and as long as the state's actions were a factor in causing the danger, it cannot claim the defense of 'necessity.' Thus, under prior precedent, the Court is unlikely to find that Israel meets the requirements to claim that building the wall is 'necessary' because of the danger of Palestinian suicide bombings.

#### *Additional Considerations and Consequences of an Advisory Opinion in the Context of the Palestine-Israel Conflict*

It is unlikely that the Court will address the additional contentions by the claimants that Israeli actions, in constructing the wall, in the wall regime it has put in place and the consequences, constitute war crimes. The above conclusions alone are sufficient for the Court to address the basic question put forward by the advisory opinion request and confirm, without more, that Israel's construction of the wall in the location it has been constructed, is a violation of international law. Such

conclusion will logically lead to the implication that everything related to the wall's construction—land expropriation, dispossession, denial of IH and HR obligations—will consequently be prohibited as also illegal, without the necessity of examining precisely which actions constitute further violations of law. Moreover, in rendering an advisory opinion, the Court will likely steer clear of opining on issues that could make one of the affected entities vulnerable to criminal prosecution at the fledgling International Criminal Court. The merits of the claim that construction of the wall and the regime that Israel has put in place around it violates international law are very strong, without the need for additional examination of whether they subject Israel to criminal culpability. In fact, Israel's own legal advisors on the case have conceded that the Court is likely to render an opinion unfavorable to Israel.<sup>(18)</sup>

Moreover, the Court is most likely, in a dispute as longstanding, contentious and politically charged as this, to seek a relatively narrow ground for its opinion.<sup>(19)</sup> Israel and its supporters have strenuously argued that this it is inappropriate for the Court to render an opinion in this situation, which should only be decided through political negotiations.<sup>(20)</sup> Thus, the Court will be mindful of charting a fine line between what is likely to be perceived as an overly political opinion from a clearly legal one, and is unlikely to reach issues that are not absolutely essential to a narrow decision.

Nevertheless, the Court will be aware of the ramifications of an advisory opinion in this case, with the clear precedent of its advisory and contentious decisions in the *South West Africa Cases*. In the ongoing tension between the UN and South Africa concerning the Namibia (South West Africa) mandates, the ICJ gave a series of decisions and advisory opinions.<sup>(21)</sup> In 1970, the Security Council adopted a resolution declaring that “the continued presence of the South African authorities in Namibia is illegal, and...consequently all acts taken by the Government of South Africa, on behalf of or concerning Namibia after the termination of the Mandate, are illegal and invalid.”<sup>(22)</sup> The Security Council called on all states to “refrain from any dealings with the Government of South Africa.” When South Africa failed to act in accordance with the UN resolutions, the Security Council sought an advisory opinion from the ICJ on the legal consequences of South Africa's failure to comply.<sup>(23)</sup> The Court's advisory opinion agreed with the UN that “South Africa is under obligation to

withdraw its administration from Namibia immediately...” It further stated that “States members of the United Nations are under obligation...to refrain from any acts and in particular any dealings with the Government of South Africa implying recognition of the s of, or lending support or assistance to, such presence and administration.”<sup>(24)</sup> Commentators claim that the ICJ opinions and rulings in the South Africa cases were important factors in the establishment of sanctions against South Africa.<sup>(25)</sup>

The ICJ's advisory opinions are not binding. However, there is no doubt that what the Court opines in its response to the request for an opinion on the wall will have far-reaching implications for the ongoing Israeli-Palestinian conflict, no matter how narrowly the Court frames its decision.

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## Endnotes

- (1) See, *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, (the Kumaraswamy case)*, Advisory Opinion, 1999 ICJ Reports 62 (Apr. 28, 1999); see also, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 1996 I.C.J. 226 (Jul. 1996)..
- (2) *Status of Eastern Carelia*, Permanent Court of International Justice, Advisory Opinion, 1923 PCIJ Series B, No. 5 (dispute between Finland and Russia when Russia was not a member of the League of Nations, and both states did not concede to PCIJ jurisdiction). For the distinction between competence to render advisory opinions and jurisdiction over contentious cases under the ICJ Statute in comparison to the Statute of the ICJ's predecessor, the Permanent Court of Justice (PCIJ), see Iain Scobbie, *Legal Consequences of the Construction of a wall in the Occupied Palestinian Territory: request for an advisory opinion, An analysis of issues concerning competence and procedure, Hotung Project-Law, Human Rights and Peace Building in the ME—Papers, No. 1*, available at: <[www.soas.ac.uk/lawpeace/mideast](http://www.soas.ac.uk/lawpeace/mideast)> at 5-6. The distinction in the provisions between the two Statutes on this point is one of the main reasons for the PCIJ decision declining to render an advisory opinion in the *Eastern Carelia Advisory Opinion* case, heavily relied on by Israel in claiming the ICJ lacks competence to render an opinion on the wall. See Written Statement of the Government of Israel on Jurisdiction and Propriety, available at <http://www.icj-cij.org/icjwww/idocket/imwpl/imwplframe.htm> (Jan. 30, 2004) [Israel's Written Statement], at 93ff.
- (3) See *Legality of the Threat or Use of Nuclear Weapons*, *supra* note 1.
- (4) See *Legal Consequences for States of the Continued Presence of South*

- Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion [Namibia Advisory Opinion], 1971 I.C.J. 16 (Jun. 1971)..
- (5) See *Western Sahara, Advisory Opinion* [Western Sahara], 1975 I.C.J. 12 (Oct. 1975); *Namibia Advisory opinion*, *supra* note 4.
- (6) See *Legality of the Threat or Use of Nuclear Weapons*, *supra* note 1; see also *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, 2<sup>nd</sup> Phase, Advisory Opinion*, 1950 I.C.J. 221 (Jul. 18, 1950).
- (7) See *Western Sahara*, *supra* note 5; see also, *Applicability of Article VI, Section 22 of the Convention on the Privileges and Immunities of the United Nations (the Mazilu case)*, Advisory Opinion, 1989 I.C.J. Rep. 177; and *Difference relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights (the Cumaraswamy case)*, Advisory Opinion, 1999 I.C.J. Rep. 62.
- (8) See *Legality of the Threat or Use of Nuclear Weapons*, *supra* at note 1.
- (9) See *id.*, at 233, para. 14.
- (10) See Palestine Oral Statement, *Verbatim Record of Proceedings*, CR 2004/1, *Public sitting held on Monday 23 February 2004, at 10 a.m., at the Peace Palace, President Shi presiding (2004)*, available at <<http://www.icj-cij.org/icjwww/idocket/imwp/imwpframe.htm>> at 23; See also Written Statement submitted by Palestine, available at <<http://www.icj-cij.org/icjwww/idocket/imwp/imwpframe.htm>> (Jan. 30, 2004), [Palestine's Written Statement]; Written Statement of the Arab League, available at <<http://www.icj-cij.org/icjwww/idocket/imwp/imwpframe.htm>>.
- (11) See W. Thomas Mallison and Sally V. Mallison, *An International Law analysis of the Major United Nations Resolutions Concerning the Palestine Question*, ST/ST/SER.F/4 (1979) [Mallison, *International Law Analysis*], at 47.
- (12) See S.C. Res. 242, U.N. SCOR, 1382th mtg., U.N. Doc. S/Res/242 (1967) (referring to the requirement that Israel 'withdraw from territories occupied in the recent conflict,' but not referring to withdrawal from territories occupied before 1967). See Mallison, *id.*
- (13) John Quigley, *Palestine's Declaration of Independence: Self-Determination and the Right of the Palestinians to Statehood*, 7 B.U. Int'l. L.J.1 (1989) [Quigley], at 18-21.
- (14) See S.C. Res. 242, *supra* note 176; S.C. Res. 1515, U.N. SCOR, 4862nd mtg., U.N. Doc. S/Res/1515 (2003); G.A. Res. 3236, U.N. GAOR, 29 Sess., Supp. No. 30, U.N. Doc. A/RES/3236 (XXIX) (1974); G.A. Res. 3210, U.N. GAOR, 29 Sess., Supp. No. 30, U.N. Doc. A/RES/3210 (XXIX) (1974).
- (15) See Convention Respecting the Laws and Customs of War on Land, with Annex of Regulations [Hague Regulations], Oct. 18, 1907, 36 Stat 2277, T.S. 539, art. 42; Convention Relative to the Protection of Civilian Persons in Time of War [4th Geneva Convention], Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287, arts. 1, 2(1) and 2(2), 3 and 4. See also International Committee of the Red Cross, *Commentaries to the Conventions* [ICRC Commentary] arts. 1 and 2, available at <http://www.icrc.org/ihl.nsf/COMART?OpenView&Start=1&Count=150&Expand=4#4>.
- (16) Under Art. 25 of the Articles on the Responsibility of States for Internationally Wrongful Acts of the UN's International Law Commission, "necessity" is an extraordinary defense, and is strictly limited. It cannot be invoked if the state's own actions create the situation of danger. The UN Human Rights Committee has noted that Israel itself contributes to suicide bombings through "the illegal occupation of Palestinian territory, the bombing of civilian areas, extrajudicial killings, the disproportionate use of force by the IDF, the demolition of homes, the destruction of infrastructure, mobility restrictions and the daily humiliation of Palestinians..." (Oct. 9, 2002 HRC report). See John Quigley, *The Defense of Necessity in Request for Advisory Opinion in Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (3/7/2004), available at: <[http://www.Frederick K\\_ Cox International Law Center War Crimes Research Portal - Instant Analysis.htm](http://www.Frederick K_ Cox International Law Center War Crimes Research Portal - Instant Analysis.htm)>.
- (17) *Case Concerning the Gabčíkovo-Nagymoros Project (Hungary/ Slovakia)*, ICJ Reports, 1997 (25 Sept. 1997).
- (18) See Ori Nir, *Israel Fears Isolation, Sanctions Over Fence: Slam the Court, Advisers Urge*, Forward, January 9, 2004, available at <[www.forward.com/issues/2004/04.01.09/news1.html](http://www.forward.com/issues/2004/04.01.09/news1.html)>, (citing Alan Dershowitz, one of the advisors to Israel on the wall case, as encouraging Israeli supporters to discredit the court: "The case is a foregone conclusion...Israel's going to lose. The only question is whether it will lose unanimously, and there is a substantial chance it might." He argues that those who support Israel should "be prepared to expose this court for what it really is...it would be insulting to kangaroos to call it a kangaroo court"). Dershowitz's views of the ICJ are not shared by international legal scholars, see *The World Court*, 80 Am. Soc. Int'l. L. Proceedings 201 (1986) (*Remarks of international law experts John R. Stevenson, Lori F. Damrosch, Abraham D. Sofaer, Oscar Schachter, Antony D'Amato*).
- (19) As this article went to press, the Israeli Supreme Court ruled that the route of the wall violated the rights of Palestinians affected by the wall under international humanitarian law, and that a small portion of the wall had to be changed. See, Molly Moore, *Israeli Court Orders Changes in Barrier: Route Through West Bank Found to Violate Palestinians' Rights*, Washington Post, July 1, 2004(A 01), available at: <<http://www.washingtonpost.com/wp-dyn/articles/A16630-2004Jun30.html>>; *Beit Sourik Village Council v. the Government of Israel, Commander of the IDF Forces in the West Bank*, HCJ 2056/04 (Jun. 30, 2004).
- (20) See, for example, Ruth Wedgwood, *The International Court of Justice and the Israeli "Fence,"* available at <[www.benadorassociates.com/article/2222](http://www.benadorassociates.com/article/2222)> (Feb. 23, 2004).
- (21) See *the Namibia Advisory Opinion*, *supra* note 43; See also, *Voting Procedure on Questions relating to Reports and Petitions concerning the Territory of South West Africa*, 1955 ICJ Rep. 67; *Admissibility of Hearings of Petitioners by the Committee on South West Africa, Advisory Opinion*, 1956 I.C.J. 20 (Jun. 1); *International Status of South West Africa, Advisory Opinion*, 1950 I.C.J. 128 (Jul. 11); and the contentious case, *South West Africa (Ethiopia v. South Africa; Liberia v. South Africa), 2<sup>nd</sup> Phase*, 1966 I.C.J. 6 (Jul. 18);
- (22) See S.C. Res. 276, U.N. SCOR, 1527th mtg., U.N. Doc. S/RES/276 (1970).
- (23) The request was: "What are the legal consequences for States of the continued presence of south African in Namibia, notwithstanding Security Council resolutions 276 (1970)?" See *Namibia Advisory Opinion*, *supra* note 4.
- (24) *Namibia Advisory opinion*, *supra* note 4, at 58.
- (25) See, eg, Ernst Klein, *South West Africa/ Namibia (Advisory Opinions and Judgments)* in 2 *Encyclopedia of Public International Law* 260-70 (analyzing the four advisory opinions, two judgments and various orders of the ICJ in the South West Africa/ Namibia matters, and concluding: "Whichever way the South West Africa/Namibia decisions are seen, it is certain that without this judicial basis the legal and political pressure upon South Africa would not have been as strong as it has been..." at p. 269). Israeli officials affirm this view, See Nir, *supra* note 181, (quoting Israeli justice minister Yosef Lapid as saying that the process "will turn Israel into an apartheid-era South Africa..." and that "I am afraid that we will be boycotted in every international forum.")

## Another right denied

### De-motivation and discontinuity mark education under occupation

Going to school is hard enough without being tear gassed, shot at

by Ron Wilkinson



*al-Nour Rehabilitation Centre for the Visually Impaired, Gaza. Photo: Ron Wilkinson.*

The Universal Declaration of Human Rights; the International Covenant on Economic, Social and Cultural Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention on the Rights of the Child; and other international laws and conventions enshrine the right to education. Attainment of this right, however, is being impeded and sometimes denied for lengthy periods of time to young Palestinian refugees.

Clichés and truisms abound when talking about Palestinians and education: one third of the Palestinian population is under 14; Palestinians see education as their only way to a better future; those living in host countries usually do as well or better the local citizens in national examinations; and Palestinians are among the best-educated persons in the Middle East.

But many Palestinian children are falling behind. They are de-motivated and discouraged by the constant interruptions to their education. Children in Lebanon lost months of education during the 1970s and 80s. Children in the Occupied Territories of West Bank and Gaza have been suffering the same fate since the late 1980s.

Palestinians are constantly being told to establish civil society organizations and build a state. To do so, education must play a central role. Schools and universities should be turning out

a corps of educated, professional Palestinians who would be at the forefront of developing governing structures and engaging in a rational dialogue leading to a peaceful solution to the Palestinian-Israeli conflict.

The need and the desire for education exist. But what about the reality, especially today in the occupied West Bank, Gaza Strip and eastern Jerusalem as well as for Palestinian citizens of Israel?

Schools for Palestinian children in Israel are chronically under funded just like other social services for this community which makes up nearly 20 per cent of Israel's population.

In the 1967 occupied territories including eastern Jerusalem, there are more than 2,000 elementary and secondary schools including 264 UNRWA and 256 private schools, 12 universities and a similar number of community colleges and four UNRWA vocational and teacher training centers. While the physical conditions of these educational institutions are not always the best, the facilities exist. Often it is a question of access. Gaza students wishing to attend one of the three UNRWA training centers in the West Bank were, until recently, denied permits to travel to the West Bank for five years. The same has been true for university students from Gaza. Travel within Gaza and West Bank is often difficult or impossible causing missed days and missed examinations.



*An air raid on a Palestinian police base next to the al-Nour Rehabilitation Centre for the Visually Impaired caused heavy damage to the Centre in the spring of 2002. The Centre has been repaired and the children have been able to return to class but the surrounding buildings still loom precariously over the RCVI school yard. UNRWA runs a regular program of elementary education at the Centre plus special programs for visually impaired children and an outreach program throughout the Gaza Strip. It is a school for children with special needs but they, too, have the right to education. The air raid, the damage and ensuing emotional trauma is typical for thousands of other students in the West Bank and Gaza Strip. Photo: Ron Wilkinson.*

Children and young adults attending all levels of schooling in the occupied territories have faced years of interrupted education. It is also important to remember that Palestinian refugee children in Lebanon suffered months and sometimes years of lost schooling because of the civil war in the late 1970s, the 1982 Israeli invasion and its aftermath and the camps war in the mid-1980s. The poor security situation often prevented schools from opening, pupils and teachers were unable to get to schools, refugee communities were bombed and shelled, UNRWA schools were heavily damaged or destroyed and schools were occupied at times by homeless fleeing refugees.

In other host countries in the Middle East such as Jordan and Syria, Palestinians generally are treated on a par with citizens of those countries and have equal access to education plus access to UNRWA schools and training centers. In Egypt, however, there was a major change in the late 1980s. Palestinians had been treated almost as citizens from the time of President Nasser but new regulations forced most Palestinian children to attend private schools and to pay foreign student fees in sterling pounds at universities. Many students were already part way through their training when the change was introduced so either had to find the money or drop out. In the early 1990s, UNRWA and the Arab League raised almost

\$700,000 to pay the university fees for Palestinian students in their final year and for those who had graduated but had not yet received their diplomas because they had not been able to pay their fees.

### **Tear gassed, shot at**

Closures, curfews, military actions such as tear gassing and shooting of pupils in al-Khader, near Bethlehem in May 2004, tank fire injuring two 10-year-old boys in Rafah at an UNRWA school as recently as June 2004, Israeli invasions of schools, teachers and students unable to get to their schools because of permit regulations, damage to schools from military attacks, estimated at \$2.2 million for Palestinian Authority schools and \$4.85 million for Palestinian universities and occupation of schools by Israeli military over the past almost 20 years have taken their toll in days of schooling lost, lower success rates in examinations, higher dropout rates and psychological problems among students.

UNRWA staff have seen an erosion of students' skills, ill-preparing them for continuing their education. There has been a marked deterioration in test scores in Arabic, English and mathematics and scores will only deteriorate with the fourth consecutive year of severe school disruptions.

Taking all of the reasons into account, including general strikes in the early years of the first Intifada, more than 40 per cent of school days were lost in Gaza and West Bank during the 1990-91 school year. Currently there are very few general strikes so days lost are mainly the result of actions by the occupation authorities.

### **Now the wall**

Because of the so-called "security fence" Israel is building around and deep into the West Bank, hundreds of children have to take circuitous routes to school as in Kafr Akab neighbourhood north of Jerusalem. They now take 2-3 hours to get to school because of the wall, a trip that used to take 20 minutes. Some teachers don't have permits to go to the schools where they teach; Al Quds University's main campus in Abu Dis just outside Jerusalem has been split in two by construction of the wall; primary and secondary schools students in Jenin, Tulkarem, Qalqilya, Ramallah, Jerusalem and Bethlehem have been cut off from their schools.

In Beit Iksa, near Jerusalem, access to secondary education has been seriously affected. The current practice is for students to enroll in Jerusalem secondary schools or to commute to some Palestinian villages that will not be included in pockets of land cut off by the wall. Once the barrier is complete, however, neither option will be available, so no secondary schooling for 198 refugee children will be available.

Fourteen UNRWA schools will be affected by the barrier in the Jerusalem area alone—10 outside and barrier and four inside. Seventy-four UNRWA teachers will have to cross the barrier to get to their work place and 12 will have to enter the area through the barrier. 260 school pupils will also be affected.

UNRWA's Kalandia Training Centre, north of Jerusalem, has dormitories for trainees but if they want to go home for a weekend, 440 of them, almost half of Kalandia's students will have to cross the barrier which could take hours with the added possibility that they might not be able to pass through the barrier on their return. Another case is Ezbit Jbara in northern West Bank which has no school. Residents have to go through an Israeli-manned iron gate to leave their villages. Some pupils can be up to three hours late getting to school because of the barrier, the gate and Israeli checkpoints.

These are only a few examples of how the wall is affecting Palestinian education and all aspects of life in the West Bank. Since the wall hasn't been yet completed, the list will grow in the 2004-5 school year.

### **De-motivation, fragmentation**

Years of disrupted education results in the fragmentation of the learning experience. The lack of continuity and progress in learning results in de-motivation. These factors plus the daily impediments of getting to and from school and the possibility of being innocent victims of violence has led to severe trauma and emotion stress among school children which doesn't make it any easier to try to educate Palestinian refugee children.

UNRWA's Commissioner-General Peter Hansen says that where once Palestinian refugee communities had, through their own hard work and determination, with the support of the international community, major donors and host governments, "reached and in some cases exceeded, regional standards in health and education, they are now today at the bottom.

"The Palestine refugee population is at a crucial juncture: as in many developing countries around the world, the benefits of available and efficient primary health care had led to sharp drops in child mortality and increase in life expectancy. As a result, the age pyramid of this population shows a very broad base, with 33 per cent of the refugees under 14 years of age, and a very broad middle: 57 per cent between 15 and 59 years... The consequence is simple, we are faced with a cohort of refugees in their prime, enjoying a good level of health and literacy. It will be followed by another large cohort, those currently under 14 years of age."

What role model will they follow? "...The hooded, gun-slitting military or that of the modern young computer whiz? Will it be graduation caps and gowns or will it be

unemployment and forced idleness? Will it be pride in achievement or pride in

destruction? Will it be self-confidence and tolerance or cynicism and bigotry?"

"We cannot afford to disappoint Palestine refugee youth, not only because our failure to secure their future would come back to haunt us, but also because we would have sorely failed in our mission" of preparing them to play their rightful role in the development of their community.

### **Further "barriers" to learning**

Additional barriers facing Palestinian education in the West Bank and Gaza Strip include: Israeli incursions into schools and education ministry offices taking away student records and computer hard drives; arrests of thousands of students often at military checkpoints on their way to or from university or school; forced closures of schools and universities e.g. Hebron's university and polytechnic university were closed by military order for most of one school year, denying more than 6,000 students their right to education; other universities have been closed for varying periods of time; in the 1993-94 school year, UNRWA's Kalandia Training Centre lost 31 per cent of training time, the Gaza Training Centre lost 25 per cent; in the 2001-02 school year, an average of 352 teachers out of a total of 1,787 teachers daily were unable to reach their schools in West Bank. The situation was the same in the Gaza Strip. Also in 2001-2002, 36 UNRWA students were killed and 828 injured, some of whom sustained permanent disabilities.

In a report on the effect of Israeli occupation on education from September 2000 to March 2004, the Palestinian Ministry of Education says that 27 teachers and 645 students (all levels) were killed, 53 teachers and 4,599 students were injured; 167 teachers and 1,252 students were detained by the occupation authorities.

### **Trying to compensate**

To help compensate for the disruption to the education of the quarter of a million refugee children in UNRWA schools across the occupied Palestinian Territories, UNRWA has an emergency education program costing almost \$2.2 million in 2004.

### **The program includes:**

Reassigning teachers to schools closer to their homes so the chances of being able to get to work through checkpoints and roadblocks are increased and hiring additional teachers to replace those unable to reach their work; hiring additional

teachers to give makeup and remedial classes in Arabic, Math and English. These classes are being provided to 39,000 students

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in the Gaza Strip and 23,500 in the West Bank, grades 4-9.

The Palestinian Ministry of Education has also take steps to try to fill the gaps in educating Palestinian children, creating a substitute schooling system by providing materials for home-schooling and for makeshift schools in mosques, basements and empty buildings.

Closure and curfews have left many children confined to their homes so UNRWA has developed distance learning programs using self-teaching and home-schooling materials. With the help of NGOs and individuals an after school program of activities has been developed to provide a stress-free environment to counter the impact of the violence which pupils witness on an almost daily basis and to help them learn to use their free time more purposefully.

The opportunities for education, training and employment have diminished dramatically and the socio-economic cost of not responding to the needs of idle youth is very high. One way UNRWA is addressing this issue is to use existing programs and facilities to engage youth in a constructive learning program to enhance their chances of being employable. The Agency has consulted local business owners and potential employers to design courses responding to local labor market needs. During 2004, 269 trainees in West Bank and 142 in Gaza will be able to take advantage of short-term courses (12-20 weeks) in computer skills, secretarial, automotive electronics and mechanics at existing Agency vocational training centers.

### **Psycho-social support**

Armed conflict as well as closures and curfews are a source of acute psychological stress for all Palestinians. A USAID-funded study by the U.S. and Sweden Save the Children and the National Plan of Action for Palestinian Children release in 2003 showed a particularly devastating impact on children. The study, conducted with the help of UNRWA school counselors found that 93 per cent of children reported feeling unsafe with more than half of them feeling that their parents could no longer protect them. This insecurity was partly brought on by seeing family members subjected to violence and the forced flight from their homes. As a consequence most parents reported traumatic behavior among their children that included nightmares, bedwetting, increased aggression, hyperactivity and decreased ability to concentrate.

To help deal with this, UNRWA has developed a psycho-social support program employing 75 school counselors and 41 mental health counselors in West Bank and Gaza. Cost of this program in 2004 is \$3.7 million.

*Sources:* UNICEF, UNRWA, OCHA Relief Web, Christian Peacemaker Teams, Palestinian Ministry of Education, Save the Children (U.S. and Sweden).

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*Ron Wilkinson is a media consultant with BADIL Resource Center.*

## **New appeal for Rafah rebuilding, emergency aid**

UNRWA has launched an appeal for \$45 million for emergency aid, building repairs and housing construction in Rafah, Gaza. This special appeal includes some \$40 million for needs that remain unfunded from previous Agency appeals. This is in addition to the Agency's regular program of health, education, food distribution and social services for tens of thousands of Palestinian refugees in the Rafah area.

To date, UNRWA has only been able to rebuild 30 per cent of the 2,743 dwelling units required in the Gaza Strip as a result of Israeli military demolitions. In Rafah, 560 families eligible for rehousing following the May 2004 violence form part of a group of almost 1,000 families that UNRWA has been unable to assist due to a serious lack of funds.

The Red Crescent Society of the United Arab Emirates has pledged financial support to build 400 replacement homes in Gaza but the size of the donation has yet to be finalized.

The UAE Red Crescent in 2002 gave \$27 million to UNRWA for the Jenin Rehabilitation Project which is due for completion in October 2004.

Among the houses damaged in Rafah in the spring of 2004 are 69 in Tel el Sultan which house refugees who returned to Gaza after being cut off in Egypt for 18 years. One home was demolished by actions of the Israeli army. These homes were partially paid for by the Government of Canada in order to help relocate 4,500 refugees and reunite families in the Gaza Strip. Infrastructure in the area which was also heavily damaged was paid for by Canada and Kuwait. (See *al-Majdal* No. 19, September 2003 "Don't confuse relocation with return—18 years to move two kilometers".)

Other elements of UNRWA new appeal include:

- cash assistance for 760 families, a one-time payment of \$300 per family to provide for immediate economic needs;



**Inset Map B: Rafah - Demolished and Cleared Areas - Block O & Al Brazil**  
 26 June 2001 and 21 May 2004



Cleared Areas, June 2001 to May 2004 (Cleared areas include residential, agricultural and other land use areas)  
 Metal Barrier  
 International Border

0 250 500 Meters

4 Geographic: OCHA of PI Humanitarian Information Centre - June 2004  
 Base: 484: OCHA update 2004  
 For comments contact: [info@ocha.org](mailto:info@ocha.org) or Tel: +972 (82) 552-8962  
<http://www.ocha.org>

- temporary accommodation funds for 560 families made homeless by the most recent Israeli attacks in Rafah;
- food for one month and money for household needs such as furniture;
- funds for additional medical supplies plus prosthetic devices; and
- almost \$1 million to repair damaged infrastructure including sewage and water systems.

UNRWA reports that 75 per cent of Gaza's population is living below the poverty line and some 40 per cent of the labor force is unemployed. Conditions are even more acute in Rafah, says UNRWA. "This Supplementary Appeal for Rafah does not absolve Israel of its responsibility to uphold international humanitarian law, and in particular its legal

obligations to respect the human rights and protect the well-being of the population in the occupied territory," said UNRWA in announcing the appeal.

#### *World Food Programme to feed half million Palestinians*

The UN's World Food Programme has launched an emergency operation to feed about 500,000 non-refugees in the West Bank and Gaza. WFP says these

Palestinians can no longer afford their basic needs amid dramatically deteriorating living conditions in the occupied territories. "The situation is quite alarming and an increasing number of families over the past six months have been forced to reduce their food intake to make ends meet."

## UNRWA meeting-Geneva

### "You will not be abandoned"

Summing up a meeting of 91 nations and organizations on Palestinian refugees and UNRWA, Walter Fust, Director-General of the Swiss Agency for Development and Cooperation stated that there is a strong desire to continue supporting UNRWA "until a just and lasting solution is found to the question of Palestine refugees based on UN resolutions".

### **To the Palestinian refugees, said Ambassador Fust, "you will not be abandoned".**

The two-day meeting in June was convened to send a positive signal "of our common and sustained concern for the Palestine refugees at a moment when the peace process shows little prospect of an imminent positive development," said Ambassador Fust. The meeting was hosted by the Swiss Agency for Development and Cooperation and chaired by Ambassador Fust.

Although the meeting was not a pledging conference, additional pledges of \$10.5 million were made to UNRWA's estimated planned expenditure of \$310 million for its 2004 regular program. An additional \$193 million is needed for its emergency program in the occupied territories. Currently UNRWA has a total funding gap of \$150 million in the two programs for 2004.

In his introductory remarks to the conference, UNRWA's Commissioner-General Peter Hansen said that the new century saw "a drastic worsening in every sector of the life of the Palestine refugee communities—the start of

the second intifada in late 2000; a retrogression in their social, civil and political lives; a huge drop in safety and security; a massive increase in the applicant pool for relief and aid; a break in their school; massive setbacks in their ability to simply feed their families; a destruction of the infrastructure introduced in preceding decades, the investments—physical, capital national—laid waste; and a continuing loss of that most valuable irreplaceable resource, human life.

Mr. Hansen outlined the aims of the conference:

- To see what can collectively do to stop the decline in the human development and living conditions of Palestine refugee communities;
- To see where and how the infrastructure in health, education and shelter can be retrieved;
- To collectively agree on and draw up a set of actions for immediate, short-term, mid-term and longer-term implementation; and
- To strengthen existing, and to establish, new partnerships towards these common humanitarian goals.

A message from Micheline Calmy-Rey, head of the Swiss Department of Foreign Affairs underscored the purpose of the conference "to raise awareness about the needs and hopes of the Palestinian refugees and to rally support for UNRWA and other key actions to meet those needs.

*For more information about the UNRWA conference visit the UNRWA website: [www.unrwa.org](http://www.unrwa.org)*

## Palestinian Refugees Reject Bush Declaration

### Leaving the Camp Will Only be to Return Home

by Mohamed Ballass and Hasan Jaber

“What Bush declared to satisfy Israel will only make us cling more to our right of return, and if that does not happen today, our children and grandchildren will accomplish it, regardless of the sacrifices they may have to offer,” stated seventy-year-old Khalid Mansour from Jenin refugee camp. The statements of Khalid Mansour (Abu Rashid) regarding Bush’s statements are representative of the opinions of all refugees not only in Jenin camp but in all the refugee communities.

“Who gave that person the right to surrender our right to return to Haifa and Jaffa? This is crazy talk! Since the beginning of the previous century, the forces of evil have conspired against us and our struggle, and many have tried to feed us poison, but they all went away and our case has remained. Bush should realize that he could not change history even if he possessed all the forms of death and aggression.” Abu Rashid suddenly fell silent and left the room, returning with several documents and keys that he handed to his grandchildren, saying to them, “These are the nuts and bolts of return. Cling to them generation after generation, and you will definitely return, because no matter how long the night is, it will end.”

If Mansour ever considers leaving the refugee camp, to which he came half a century ago, it will only be to go to Haifa. Commenting on the 2002 atrocities in the camp, Mansour said: “Occupation forces merely destroyed another stop on our return path. If we ever consider leaving the camp, we have nowhere else to go but the land from which we were displaced by horrifying massacres committed by Zionist gangs.” Abu Rashid sees differences between what happened in 1948 and what happened in 2002. “In 1948, we were driven out of our homes and land in Haifa, Akka, Lydda and Ramle by massacres committed by Zionist gangs, and we headed for the West Bank, Gaza and neighboring countries. But this time things are different; there is no place for us to go. We will not hesitate to return to our homes inside the ‘Green Line’, even if that costs us our lives.”

Ismail Ali al-Kayali, 56 years old from Gaza, was only one year old when his family was displaced from their village. al-Kayali refuses to give up the right of return. “Nobody can give up our dream to return. Even though I don’t

remember the village, my father told me a lot about it and I do the same thing with my sons. All the time I hear statements that call upon us to give up of the right of return, but they don’t know that the Palestinian people will not sell their homeland under any condition.” Tharifa al-Khalidi is 70 years old and originates from Karatiyya. She lives now in Gaza. She affirmed her right and dream to return to her village,. “When we left our village, our conditions became worse. I still believe that the return to our village will resolve all of our problems. I’m willing to give up everything here in order to implement the return to my village.”

Jamal Zubeidi, from Jenin did not live through the Nakba but suffered from its results. “Neither Bush nor Sharon is entitled to extinguish our historical right of returning to the land and homes of our fathers and grandfathers. If the world is willing to succumb to the desires of the United States, we are the exception. Our people will never succumb to the actions of occupation, no matter what form of oppression and aggression it uses. If we intended to surrender the right of return, we would not have offered all the sacrifices we have offered. Losing loved ones for the sake of this issue says that it is sacred to us. There is not a Palestinian in the world that is not willing to give up his life for the cause.” Asma Abu Al-Haija, is married to Sheikh Jamal Abu al-Haija, who was held in an Israeli prison, “What right does Bush have to offer Sharon a new Balfour Declaration and cancel the right of more than five million Palestinians? Why does he allow Jews that have no connection with Palestine to come and immediately receive citizenship and the facilities they need? We reject these statements. There is no alternative to return.”

Jamal Shati, head of the Refugee Affairs Committee at the Legislative Council, agrees. “After 55 years, it is obvious that Israel insists on pursuing and displacing the Palestinian people and demolishing their homes, not realizing that if these people decide to move, they would only return to the homes from which they were driven out in 1948. Bush’s statements, despite their seriousness, will not lead to denying the Palestinian refugees the right of return.” Shati spoke about the brutal attack on the refugee camp in 2002, saying, “The war that the Jenin refugee camp witnessed, fought with US weapons, is part of the Israeli scheme aimed at

forcing the Palestinians out of Palestine. We will not leave, regardless of how much force they use, and if we decide to leave it will be to Haifa, Jaffa, Lydda and Ramle.” Hasan Jabarin, head of the popular committee at al-Bureij refugee camp said, “No one can imagine how much the refugees in

the camp insist on their right of return, all the refugee generations confirm the right of return and will not allow anyone to give up this right.”

*This article was originally published as two separate articles in Haq al-Awda (May 2004).*

## Selected Statements From the Palestinian Press

“Israel received promises from the Americans, but it will not get peace from the Palestinians by confiscating their lands and water, and denying the right of Palestinian refugees to return to their homes and resettle their lands. *Ahmed Qurai’ (Abu Ala’), Palestinian Prime Minister, al-Quds, 16 April 2004*

“I reaffirm the necessity to give Palestinians a greater role in negotiating their future. I reject the violation of international resolutions and call to respect the 1967 borders and right of return for Palestinian refugees.”

*Husni Mubarak, Egyptian President, al-Ayyam, 17 April 2004*

“There is no chance to make peace in the Middle East, unless Palestinian refugees are allowed to return to their homes inside Israel.”

*Rafik al-Hariri, Lebanese Prime Minister, al-Ayyam, 21 April 2004*

“The Jordanian government reaffirms the right of return for Palestinian refugees, in order to reach a solution to their case according to the UN Resolution 194 and the Arab initiative.”

*Marwan Moa’sher, Jordanian Foreign Minister, al-Quds, 16 April 2004*

“The United States of America is not qualified now to play a role as a mediator in the peace process, after President Bush’s support for Sharon’s plan.”

*Naser al-Qudwa, Palestine Representative in the UN, al-Quds, 16 April 2004*

“American President George Bush can’t negotiate in the name of the Palestinian people and cancel UN Resolutions 242, 338 and 194 and the agreements and the road map. The shorter way to make peace is through ending the Israeli occupation and the Israeli withdrawal from the 1967 occupied territories and resolving the Palestinian refugee problem based on the UN Resolution 194.”

*Saeb Erekat, Palestinian Minister for Negotiation Affairs, al-Hayyat al-Jadida, 15 April 2004*

“The Palestinian people will continue their just struggle until they achieve their freedom and independence and their rights and especially their sacred right to return to their original homes.”

*Jamal Shati, head of the Refugee Committee (PLC), al-Quds, 19 April 2004*

“The position of the American President is a new Nakba and a real catastrophe for the Palestinian people, and the most dangerous in the history of the Israeli-Palestinian conflict.”

*Taysir Nasrallah, member of the Palestine National Council, Balata Refugee Camp, al-Quds, 17 April 2004*

“The American position that legitimizes the [Israeli] settlement policy and the occupation of the lands by military force and denies the right of millions of Palestinian refugees to return to their homes is a dangerous indicator and damages any chance to continue the peace process in the Middle East.”

*National and Islamic Emergency Committee, Bethlehem District, al-Quds, 17 April 2004*

### Expert on Palestinian Refugees to Work at Negotiations Support Unit, Ramallah, Occupied Palestinian Territories

The purpose of the NSU, a donor funded project, is to provide expert professional advice to the Palestine Liberation Organization and Palestinian ministries on a range of issues related to final status negotiations with the government of Israel including the refugee issues.

#### Candidates must have:

- At least three years experience advising on, or analyzing, the Palestinian refugee issue.
- Excellent academic qualifications in a relevant subject.
- Very strong reading, writing and speaking skills in English and fluency Arabic.
- A detailed understanding of the Palestinian-Israeli conflict.

Compensation will be above average for the development sector.

Please send both a cover letter and resume before 31<sup>st</sup> July to: [recruitment@nsu-pal.org](mailto:recruitment@nsu-pal.org)

# In Memoriam

List of Palestinian victims of Israeli violence between January 2004 and 15 May 2004. In total, 202 Palestinians were killed by Israeli forces during this period. (Jerusalem Media and Communication Center) Between 29 September 2000 and 30 June 2004, 3,069 Palestinians, including 23 inside Israel, have been killed by Israeli security forces. (PRCS)

Between 29 September 2000 and 7 June 2004, 714 Israeli civilians and 281 members of the Israeli security forces were killed. (B'tselem)

Maheer Jaber, 27, Jerusalem  
Taj Eddin Seif, 16, Nablus  
Radwan Abdul Fattah al-Atari, 32, Nablus  
Abdul Afou al-Qassas, 27, Nablus  
Hisham Ahmad Abdul Fattah Kharyoush, 22, Tulkarem refugee camp  
Mahmoud Ibrahim Al-Kurd, 42, Rafah  
As'ad Khaliliyye, 23, Jenin  
Fouad Kamel Jarwan, 17, Nablus  
Iyad Bilal al-Masri, 19, Nablus  
Fareed Khalil Abu Ismail, 24, Khan Yunis  
Muna Fayeze Ahmad Ismail, 31, Gaza  
Muhsen Haidar al-Da'our, 11, Gaza  
Ashraf Nasrallah al-Mbayyed, 25, Gaza  
Sameer Mohammed al-Skafi, 23, Gaza  
Sami Mohammed Badawil, 15, Gaza  
Akram Abdul Kareem Abu Ajami, 17, Gaza  
Sameh Kamel Totah, 17, Gaza  
Ahmad Ali Abu Rkab, 20, Gaza  
Iyad Mahmoud al-Rai, 37, Gaza  
Marwan Mahmoud Basal, 30, Gaza  
Othman Mohammed Jundiyye, 19, Gaza  
Musa Suleiman Dloul, 30, Gaza  
Yaser Abu Al-E'ish, 26, Gaza  
Hussein Abu Al-Ei'sh, 38, Gaza  
Wajdi Al-Khatib, 32, Gaza  
Baha' Joudeh, 36, Gaza  
Muhammad Abu O'odeh, 25, Aida refugee camp  
Mahmoud Sameer al-Dibes, 22, Jabalia  
Abdul Naser Musallam Abu Shoqa, 37, Gaza  
Abdul Aziz Mahmoud al-Shami, 38, Gaza  
Tareq Majdi al-Sousi, 12, Gaza  
Hasan Ali Rizqah, 19, Gaza  
Ahmad Mahdi Awwad, 23, Jenin  
Khalil Ibrahim Bawadi, 23, Jabalia  
Rami Salah Abu Mandeel, 17, Maghazi  
Mohammed Ahmad Hallas, 17, Gaza  
Mohammed Ayyash al-Ajaleh, 34, Gaza  
Haytham Ribhi Abed, 28, Gaza  
Hani Abu Skheileh, 25, Gaza  
Ismail Abul Ata, 22, Gaza  
Mahdi Yacoub Zeydiyya, 22, Gaza  
Akram Eqeilan, 22, Gaza  
Amer Othman al-Ghamari, 20, Gaza  
Ashraf Farouq Hasanein, 24, Gaza  
Ayman Naser Khalil, 23, Gaza  
Mohammed al-Hayek, 25, Gaza  
Ahmad Kamal Abu Irmeneh, 22, Gaza  
Mohammed Zahran Tantawi, 29, Gaza  
Ibrahim Mohammed Zo'rob, 25, Gaza  
Mohammed Abdul Ghani al-Hamaydeh, 18, Gaza  
Samer Jaser Fawzi Arar, 28, Qarwa Bani Zeid  
Rifat al-Sha'er, 32, Rafah  
Muwaffaq al-A'raj, 24, Gaza  
Muhannad Abu Hatab, 25, Shati refugee camp  
Osama Yousef al-Maghari, 33, Bureij refugee camp  
Mohammed Fadel Hashem Rayyan, 25, Beit Duqqa  
Zakaria Mahmoud Eid Salem, 34, Bet Ijza  
Abed Ibrahim Salem Abu Eid, 60, Biddo  
Ayman Sha'ban al-Dahdouh, 32, Zaytoun quarter, Gaza  
Amin Hamdan al-Dahdouh, 42, Zaytoun quarter, Gaza  
Mahmoud Mohammed Joudeh, 25, Jabalia refugee camp  
Mohammed Oweis, n/a, Nablus  
Mahmoud Abu Raja, 27, Yatta  
Ibrahim al-Deiri, 30, Sabra quarter, Gaza  
Tarrad al-Jamali, 28, Tal al-Hawa, Gaza  
Haytham Hassan, 24, al-Mighraqa  
Mohammed al-Abed Othman, 14, Rafah  
Awni Nayef Kullab, 32, Rafah  
Mohammed Jihad Abu Dayyeh, 18, Gaza  
Hatem Mahmoud Tafesh, 18, Gaza  
Miqdad Mohammed al-Mbayyed, 27, Gaza  
Omar Hasan Yacoub Abu Saeed, n/a, Gaza  
Hussam Khaled Mohammed Eliwe, 28, Gaza  
Musa abul Omreen, 28, Gaza  
Sheikh Hasan Ahmad Zahad, 42, Nuseirat refugee camp  
Fares Fathi al-Hawajri, 21, Nuseirat refugee camp  
Khaled Hazem al-Hizqi, 22, Nuseirat refugee camp  
Omar Mohammed al-Jamal, 18, Nuseirat refugee camp  
Yousef Mahmoud al-Sinwar, 26, Nuseirat refugee camp  
Mohammed Ismail al-Shatli, 24, Nuseirat refugee camp  
Musa Manar Hammo, 23, Bureij refugee camp  
Hazem Rawhi Aqal, 20, Bureij refugee camp  
Mohammed Ali Baddo, 14, Bureij refugee camp  
Amer Abu Zreiq, 14, Nuseirat refugee camp  
Ahmad Harb, 22, Nuseirat refugee camp  
Saher Saleem al-Maghari, 21, Bureij refugee camp  
Mahmoud Abdullah Younes, 11, Nuseirat refugee camp  
Khaled Suleiman Madi, 16, Khan Yunis  
Khaled Taha Madi, 33, Salfeet  
Khaled Musa Hdeib, 15, Jerusalem

Dalal Ala' Sabbagh, 22, Jenin  
Itimad Mahmoud Kullab, 28, Jenin  
Basel Khaled Amro al-Mahdi, 20, Jenin  
Ihab Taleb Abu Ja'far, 26, Jenin  
Mohammed Ahmad Abdullah Kheirallah, 25, Jenin  
Ayman Mahmoud Saba'neh, n/a, Jenin  
Amer Qasrawi, n/a, Jenin  
Tha'er Mohammed Haroun al-Halayqah, 15, Shyoukh Aroub  
Mohammed Suleiman Hboush, 20, Shati refugee camp  
Saeed Mahmoud Mreish, 20, Shujayyia  
Ali Shawkat al-Fares, 38, Tallouzah  
Mahmoud Sa'di Eleiwa, 23, Shujayyia  
Mohamed Mufid al-Mbayyed, 24, Shujayyia  
Ahmad Rafiq Hamdan, 22, Beit Hanoun  
Mas'ad Abu Jarad, 27, Rafah  
Hosni al-Sarafandi, 40, Gaza  
Naser Yasin, 27, Gaza  
Faraj Saeed Abu Jazar, 24, Gaza  
Mahmoud Abdul Fattah Abu Nahel, 32, Gaza  
Ala' Wa'el al-Njeili, 15, Gaza  
Misbah Abdullah Mwafi, 14, Gaza  
Mohammed Shtewe Abu Muhsen, 17, Balata  
Fatmah al-Jallad, 7, Khan Younis  
Basem Qdeih, n/a, Abassan  
Sana al-Dardis, n/a, Gaza  
Abdul Rahman al-Dardisi, n/a, Gaza  
Ra'fat Abu Teimeh, n/a, Jabalia  
Muhammad Abu Halima, 22, Nablus  
Sheikh Ahmad Yasin, 66, Gaza  
Tarek Al-A'lama, 30, Hebron  
Dawoud Nofal, 16, Qalqilya  
Abdullah Hasan al-Mghayyar, 18, Rafah  
Muhammad Al-Qadi, 22, Rafah  
Atef Awajeh, 18, Rafah  
Hamaam Abu Al-Omerain, 27, Gaza  
Ibrahim Ghandour, 69, Hebron  
Khaled Maher Walweel, 6, Balata  
Jamil A-Tal, 35, Hebron  
Muhammad Shahin, 25, Bureij  
Rami al-Khalili, 18, Tulkarem  
Mohammed Abu Rweidah, 18, Gaza  
Ammar al-Rjoudi, 18, Gaza  
Adham Hashem, 22, Gaza  
Mohammed Mahmoud Diriyye, 36, Aqraba  
Iyad Mahmoud al-Tahrawi, 22, Gaza  
Ahmad khaled Hassan, 19, Gaza  
Ali Mahmoud Barhoum, 19, Rafah  
Abdul Aziz Rantisi, 57, Gaza  
Akram Mansi Nassar, n/a, Gaza  
Mujahid Ahmad al-Ghurra, n/a, Gaza  
Dya' Abdul Kareem Abu Eid, 24, Ramallah  
Nael Ahmad Omar, 22, Shati refugee camp  
Mujahid Abdul Qader Abu Awwad, 24, Hebron  
Ibrahim Abu A'amsha, n/a, Tulkarem  
Ghanem Ghanem, n/a, Tulkarem  
Haytham Barahmah, n/a, Tulkarem

Mohammed Rasem al-Malfouh, 16, Beit Lahia  
Asma' Ali Abu Qleiq, 4, Bedouin village  
Muna Abu Tabaq, 9, Nada Towers, Gaza  
Othman Daraghme, n/a, Toubas  
Saeed Ahmad Hardan, n/a, Arrabeh  
Mohammed Mazen Azoufeh, 18, Jenin  
Hasan Mustafa Daraghme, 21, Jenin  
Musa Ibrahim al-Muqayyad, 14, Jabalia  
Ashraf Thaher Hasan Nafe', 25, Tulkarem  
Amjad Ribhi Amarah, 22, Tulkarem  
Islam Zahran, 14, Ramallah  
Thae'r Abu Srour, 20, Jenin  
Ahmad Abdullah Mohammed Kleib, 22, Salfeet  
Subhiyye Mahmoud Abu Labbadah, 65, Jenin  
Hussein Ismail Abu Aker, 6, Khan Younis  
Jamal Radwan, 22, Khan Younis  
Ibrahim Mohammed Hammad, 20, Rafah  
Faisal Mohammed Abu Nqeira, 19, Rafah  
Hashem Abu Hamdan, n/a, Qalqilya  
Nader Abu Leil, n/a, Balata refugee camp  
Nael Hasanein, n/a, Balata refugee camp  
Mohammed Hasan Hamdan, 16, Qalqilya  
Khaled Abu E'ilba, 16, Gaza  
Ahmad Jihad Khawaldeh, 15, Gaza  
Jamil Abu Mustafa, 16, Khan Younis  
Bilal Hamdan, 25, Gaza  
Baha' Falah Abu Zaytoun, 11, Tulkarem  
Abdullah Abdul Fattah al-Jammal, 35, Gaza  
Imad Mohammed Hafeth Janajreh, 32, Nablus  
Yassin Adel al-Joulani, 23, Hebron  
Ra'fat Baker Ramadan Obeid, 22, Gaza  
Fadi Sha'lan Bahar, 19, Jerusalem  
Ammar al-Jirjawi, 27, Zaytoun quarter  
Fadi Ibrahim Nassar, 18, Zaytoun quarter  
Mohammed Faraj Adas, 21, Zaytoun quarter  
Ahmad Salem Sweirki, 16, Zaytoun quarter  
Hamdi Muhsen, 15, Zaytoun quarter  
Yousef Kamal Hijazi, 18, Zaytoun quarter  
Rafiq Bashir Daghmesh, 25, Zaytoun quarter  
Fawzi Misbah al-Madhoun, 28, Zaytoun quarter  
Mohammed Hasan Yasin, 19, Zaytoun quarter  
Mohammed Abdul Aziz Mushtaha, 32, Zaytoun quarter  
Rami Muin abul Awn, 29, Zaytoun quarter  
Mohammed Azmi al-Boji, 19, Rafah  
Ihab Jamal Yousef, 19, Rafah  
Hani Mohammed al-Mugahyyar, 20, Rafah  
Khader Awaajeh, 18, Rafah  
Ramez Jamal Abu Ghali, 23, Rafah  
Fouad Khaled Abu Hashem, 19, Rafah  
Mahmoud Jamal al-Siksik, 18, Rafah  
Sameh Yousef Abu Jazar, 20, Rafah  
Mohammed Mousa Mwafi, 15, Rafah  
Ramzi Ismail Salah, 23, Rafah  
Hamed Fayeze Abu Hamra, 15, Rafah  
Fouad Mohammed Abu Sha'ban, 21, Zaytoun quarter, Gaza  
Ashraf Hasan Qishtah, 37, Rafah

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# Resources on Refugees

## **Forthcoming BADIL Publications**

### *Survey of Palestinian Refugees and Internally Displaced Palestinians 2003*

The *Survey* provides basic historic and current information on Palestinian refugees and internally displaced persons. The *Survey* includes 6 chapters covering the historical circumstances of Palestinian displacement, population, legal status, socio-economic profile, international protection and assistance, and durable solutions. *Available in English and Arabic. 200 pages. ISSN 1728-1679.*

For advance orders contact, [admin@badil.org](mailto:admin@badil.org)

### *Proceedings of the Fourth Annual Meeting of the Global Palestine Right of Return Coalition*

Includes working papers submitted to the fourth annual meeting of the Global Palestine Right of Return Coalition held in London, November 2003. The publication also includes a summary of discussions and debate as well as the final statement issued by the Coalition. Arabic with English summaries.

For advance orders contact, [admin@badil.org](mailto:admin@badil.org).

### *Palestinian Refugee Children, International Protection and Durable Solutions.*

BADIL Information & Discussion Brief No. 10 (2004).

To order contact, [admin@badil.org](mailto:admin@badil.org).

## **Selected BADIL Publications**

### *“Experiencing the Right of Return, Palestinian Refugees Visit Bosnia”*

This 20 video documents a study visit of a delegation of Palestinian refugees to Bosnia-Herzegovina in June 2002. The delegation, comprised of refugees from Palestine/Israel, Lebanon, Jordan, Syria, and Europe traveled to Bosnia in order to understand: What was done and how? What didn't work and why? What are the lessons for Palestinians and their struggle for the implementation of the right of return and real property restitution?

To order contact, [admin@badil.org](mailto:admin@badil.org). Available in English and Arabic.

### *Al-Quds 1948: al-abya' al-'arabiyah wa-masiruha fi harb 1948*

Salim Tamari (ed.). Published by BADIL Resource Center and the Institute for Palestine Studies, 2002. ISBN 9953-9001-9-1.

To order contact IPS-Beirut, [ipsbrt@cyberia.net.lb](mailto:ipsbrt@cyberia.net.lb), or [www.palestine-studies.org](http://www.palestine-studies.org).

### *BADIL Hebrew Language Packet/The Right of Return*

The Packet includes:

- Main Reader, 'Palestinian Refugees:' overview of the issue and demands of Palestinian refugees; law and principles guiding solutions to refugee problems; answers to frequently asked questions; obstacles to be tackled by a law- and rights-based solution (24 pages);
- Legal Brief, 'Palestinian Refugees and their Right of Return, an International Law Analysis' (16 pages);
- Executive Summary, 'The Right of Return:' Report of the Joint British Parliamentary Commission of Inquiry into Refugee Choice (28 pages; translation from the English original published in London, March 2002);
- Readers' feedback sheet and background information about BADIL Resource Center for Palestinian Residency and Refugee Rights.

The BADIL Hebrew-language Information Packet is available for NIS 30. For postal orders inside Israel, please send a check to Andalus Publishers, PO Box 53036, Tel Aviv 61530 ([andalus@andalus.co.il](mailto:andalus@andalus.co.il)).

## **BADIL Expert Forum Working Papers**

A complete list of all working papers commissioned for the BADIL Expert Forum on Palestinian Refugees is available on the BADIL website. Papers address the relationship between international law and peacemaking, housing and property restitution for refugees, international protection, and obstacles to implementation of durable solutions for Palestinian refugees.

See, [http://www.badil.org/Campaign/Expert\\_Forum.htm](http://www.badil.org/Campaign/Expert_Forum.htm)

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## **Suggested Reading from other Publishers**

### *Access Denied*

#### *Palestinian Land Rights in Israel*

Hussein Abu Hussein and Fiona McKay

The struggle for land has been a key element of the conflict between Jews and Arabs in Palestine for the past hundred years. While international attention focuses on Israeli settlements in the West Bank and Gaza Strip, legally outside Israel's boundaries, there is another dimension to the land question altogether. Nearly one-fifth of Israel's population is Palestinian. This book examines how Israeli land policy today inhibits access to land for its own Arab citizens even within the 1948 boundaries of the state of Israel.

To order contact, Zed Books, [www.zedbooks.demon.co.uk](http://www.zedbooks.demon.co.uk).

### *Beer Sheba and Gaza Map 1948*

This map, produced by the Palestine Land Society, covers an area which has been largely unknown or misunderstood. It provides information 77 Bedouin clans in the Beer Sheba and Gaza area, including their location in 1948, their expulsion, their current place of refuge and their land claims. The map is based on travellers and military maps before WWI, British Mandate maps, papers of the Beer Sheba District Officer Aref al-Aref, information from Beer Sheba Societies in Gaza, Jordan and Israel, and personal interviews. Scale 1:120,000. Size: 70 x 100 cm.

To order the English map contact, [info@prc.org.uk](mailto:info@prc.org.uk). Arabic, [omranco@kems.net](mailto:omranco@kems.net).

### *Returning Home: Housing and Property Restitution Rights of Refugees and Displaced Persons*

Scott Leckie (ed.). Forward by Theo van Boven

This volume is a unique effort to cover the topic of the restitution of housing and property in light of lessons learned in the Balkans, South Africa, East Timor, and in a range of other countries that have made the shift from conflict to peace. Individual chapters by authors with direct experience dealing with housing and property restitution in particular contexts will bring into focus the legal and human rights aspects of this question. Several chapters deal with unresolved restitution cases, all of which will require resolution sooner or later, including in Georgia, Turkey, and for specific groups including Palestinian refugees, indigenous peoples and the internally displaced themselves. Housing and property restitution is now viewed as an essential element of post-conflict reconstruction. It is a primary means of reversing 'ethnic cleansing' and vital to securing a war-torn nation's future stability. All parties involved in human rights, refugee assistance, post-conflict reconstruction and reconciliation, and property rights will find this volume to be an indispensable resource.

To order contact Transnational Publishers, Inc., [info@transnationalpubs.com](mailto:info@transnationalpubs.com) or [www.transnationalpubs.com](http://www.transnationalpubs.com)

### *Records of Dispossession, Palestinian Refugee Property and the Arab-Israeli Conflict*

Michael R. Fischbach

From late 1947 through 1948, more than 726,000 Palestinians – about one-half the entire population – left their homes and villages. While some middle class refugees fled with liquid capital, the majority consisted of small-scale farmers whose worldly fortunes were the land, livestock, and crops they had left behind. For the first time this book tells the full story of how much property was left behind, what it was worth and how it was used by the fledgling state of Israel. It then traces the subsequent decades of diplomatic activity on the issue.

To order contact, [www.columbia.edu/cu/cup](http://www.columbia.edu/cu/cup).

### *The Politics of Denial, Israel and the Palestinian Refugee Problem*

Nur Masalha

The aim of this book is to analyse Israeli policies towards the Palestinian refugees as they evolved from the 1948 catastrophe (or *nakba*) to the present. It is the first volume to look in detail at Israeli law and policy surrounding the refugee question. Drawing on extensive primary sources and previously classified archive material, Masalha discusses the 1948 exodus; Israeli resettlement schemes since 1948; Israeli approaches to compensation and restitution of property; Israeli refugee policies towards the internally displaced ('present absentees'); and Israeli refugee policies during the Madrid and Oslo negotiations.

To order contact Pluto Press, [www.plutobooks.com](http://www.plutobooks.com).

### *Transferring Best Practice*

From 9-12 June 2004 the University of Exeter hosted a conference entitled, "Transferring Best Practice: An International Workshop on the Comparative Study of Refugee Return Programmes with Reference to the Palestinian Context.

To read more about the conference and obtain copies of conference papers visit the University of Exeter, Politics Department website: [www.ex.ac.uk/shipss/politics/events/palestine/](http://www.ex.ac.uk/shipss/politics/events/palestine/)



## Documents

1. "Conclusions and Recommendations," *Development Assistance and the Occupied Palestinian Territories, Second Report of Session 2003-2004, Vol. 1, 15 January 2004, House of Commons International Development Committee (excerpts).*

2. *Statement by the John Dugard, UN Special Rapporteur on the Situation of Human Rights in the Palestinian Territory Occupied by Israel Since 1967, 19 May 2004.*

3. *Letter from John Ziegler, UN Special Rapporteur on the Right to Food to Caterpillar Corporation, 28 May 2004 (excerpts).*

*1. "Conclusions and Recommendations," Development Assistance and the Occupied Palestinian Territories, Second Report of Session 2003-2004, Vol. 1, 15 January 2004, House of Commons International Development Committee (excerpts).*

47. We do not agree with the European Commission's approach. We believe in principle that where a sufficiently egregious case of human rights abuse has been established as to warrant economic sanctions, the EU should not be deterred from imposing them simply because the trade balance with the country concerned is in its favour. We urge the UK government to take up this point with the European Commission and with its EU partners.

*2. Statement by the John Dugard, UN Special Rapporteur on the Situation of Human Rights in the Palestinian Territory Occupied by Israel Since 1967, 19 May 2004.*

"The Special Rapporteur of the Commission on Human Rights on the situation of human rights in the Palestinian territory occupied by Israel since 1967 wishes to add his voice to those who have expressed their horror and concern about Israeli military action in Gaza and in particular in Rafah. Conservative estimates show that 2,200 persons have lost their homes following the demolition of 191 homes in Gaza since the beginning of May. Over 30 Palestinians have been killed and hundreds injured. The refugees of Rafah are, once more,

having to seek refuge in temporary structures. These actions constitute a violation of international humanitarian law and constitute war crimes under Article 147 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949 (Fourth Geneva Convention). They also amount to collective punishment which violates both humanitarian law and international human rights law. It is impossible to accept the Israeli argument that these actions are justified by military necessity. On the contrary, in the language of Article 147 of the Fourth Geneva Convention, they are "carried out unlawfully and wantonly."

"In the first instance, the Special Rapporteur calls upon the Government of Israel to desist from such activity and to observe its international obligations. The Special Rapporteur also calls on the Security Council to take appropriate action to stop the violence, if necessary by the imposition of mandatory arms embargo on Israel of the kind that was imposed on South Africa in 1977. The Special Rapporteur reminds Members of the Security Council in general and the Permanent Members of the Security Council in particular of their obligations to take action to restore international peace and security in the region. The Special Rapporteur sees no reason why an arms embargo should not be an appropriate measure. The Special Rapporteur is aware of the tendency of some Member States to use the veto in all action affecting Israel. In this respect, they repeat the behaviour of Permanent Members in respect of South Africa before 1977. The Special Rapporteur urgently calls on all

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Member States of the Security Council to behave responsibly, in accordance with their international obligations, and not to allow domestic political considerations to undermine their international obligations.”

**3. Letter from John Ziegler, UN Special Rapporteur on the Right to Food to Caterpillar Corporation, 28 May 2004 (excerpts).**

The right to adequate food, contained in article 11 of the International Covenant on Economic, Social and Cultural Rights among other international human rights instruments, is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement. The actions of the occupying forces to destroy houses, water and agricultural resources which would further limit the sustainable means

for the Palestinian people to enjoy physical and economic access to food, would therefore constitute the violation of the right to food.

While only States are parties to the Covenant and are thus ultimately accountable for compliance with it, all members of society – individuals, families, local communities, non-governmental organizations, civil society organizations, as well as the private business sector – have responsibilities in the realization of the right to adequate food. In this context, there is also a concern that allowing the delivery of your D-9 and D-10 Caterpillar bulldozers to the Israeli army through the Government of the United States in the certain knowledge that they are being used for such actions, might involve complicity or acceptance on the part of your company to actual and potential violations of human rights, including the right to food.

## About the meaning of al-Majdal

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al-Majdal is an Aramaic word meaning fortress. The town was known as Majdal Jad during the Canaanite period for the god of luck. Located in the south of Palestine, al-Majdal was a thriving Palestinian city with some 11,496 residents on the eve of the 1948 war. Majdalawis produced a wide variety of crops including oranges, grapes, olives and vegetables. Palestinian residents of the town owned 43,680 dunums of land. The town itself was built on 1,346 dunums.

The town of al-Majdal suffered heavy air and sea attacks during the latter half of the 1948 war in Palestine. Israeli military operations (Operation Yoav, also known as “10 Plagues”) aimed to secure control over the south of Palestine and force out the predominant Palestinian population. By November 1948, more than three-quarters of the city’s residents had fled to the Gaza Strip. Israel subsequently approved the resettlement of 3,000 Jews in Palestinian refugee homes in the town. In late 1949 Israel began to drive out the remaining Palestinian population using a combination of military force and administrative measures. The process was completed by 1951. Israel continues to employ similar measures in the 1967 occupied West Bank, including eastern Jerusalem, and the Gaza Strip.

Palestinian refugees from al-Majdal now number over 71,000 persons. Like millions of other Palestinian refugees, Majdalawis are not allowed to return to their homes of origin. Israel opposes the return of the refugees due to their ethnic, national and religion origin. al-Majdal, BADIL’s quarterly magazine, reports about and promotes initiatives aimed at achieving durable solutions for Palestinian refugees and displaced persons based on international law and relevant resolutions of the United Nations.



*Remnants of AL-Majdal / Asqalan*  
Source: [www.palestineremembered.com](http://www.palestineremembered.com)



# Haq al-Awda

## BADIL's Arabic-language magazine

BADIL's Arabic-language magazine, Haq al-Awda (Right of Return), printed and distributed in the 1967 occupied Palestinian territories as a supplement to the Ramallah daily al-Ayyam is now available in electronic format on the BADIL website.

In May 2004 BADIL published a double issue of the magazine (36 pages) as a supplement to al-Ayyam, with 65,000 copies distributed in the 1967 occupied territories, 5,000 copies with Ittihad daily in Israel as well as an s in Lebanon, Jordan, Syria, Europe and North America.

To read Haq al-Awda online visit the BADIL website: [www.badil.org](http://www.badil.org). For more information on individual subscriptions to Haq al-Awda send a message to: [camp@badil.org](mailto:camp@badil.org).