

# Reinterpreting Article 1D: Seeking Viable Solutions to the Palestinian Refugee Anomaly

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## INTRODUCTION

Palestinian refugees have a unique status in international law: they are the only refugees for whom a specific analysis determines their refugee status.<sup>1</sup> Even though Palestinian refugees are one of the largest refugee populations in the world—comprising two out of every five refugees<sup>2</sup>—they are singled out for non-conventional treatment. For nearly six decades Palestinian refugees have been excluded from the United Nations' permanent international protection body, the United Nations High Commissioner for Refugees, and have remained without a durable solution to their plight.

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\* J.D., University of California, Berkeley School of Law (Boalt Hall), 2008; B.A., University of California, Los Angeles, 2003. I would like to dedicate this article to all the Palestinian refugees who are yet without any viable international protection. May there be a resolution to their continued suffering and struggles. Many thanks to Kate Jastram who inspired me to write this article and provided me with helpful comments and suggestions throughout the process. Similarly, I would like to thank Marci Hoffman who provided me with extensive assistance in researching my article. I am grateful to Rana Anabtawi, Hamada Zahawi and the staff of the *Berkeley Journal of Middle Eastern & Islamic Law* for their outstanding editing and support. Finally, I would like to thank my loving parents, Mohammad and Raghda Salahi, for continually pushing me to be the change I wish to see in the world.

1. Generally, refugees have a unique status under international law and are accordingly granted certain amenities. Yet Palestinian refugees are even more unique in that they lack even the basic rights that are granted to all other refugees. While Palestinian refugees are strewn in many countries throughout the world, the focus of this paper is primarily targeted at Palestinian refugees in UNRWA-mandated countries (i.e. Jordan, Syria, Lebanon, the West Bank, and the Gaza Strip). Yet this paper remains relevant to all Palestinian refugees, even with the clarification *Note* on Article 1D in 2002, as many countries have treated it as a recommendation and have yet to grant Palestinian refugees their rights in accordance to the 1951 Refugee Convention and the UNHCR Statute. *See infra* note 46 and the relevant text.

2. BADIL RES. CTR., SURVEY OF PALESTINIAN REFUGEES AND INTERNALLY DISPLACED PERSONS 2004-2005 (hereinafter, BADIL, SURVEY OF PALESTINIAN REFUGEES AND INTERNALLY DISPLACED PERSONS), at vii (2006).

The status and protection of Palestinians has been a matter of controversy since the United Nations' partition of historic Palestine in 1947 displacing 750,000-800,000 Palestinians, totaling nearly 85% of the population.<sup>3</sup> With the United Nations acknowledging responsibility for creating the Palestinian plight, Arab states lobbied for an exclusive regime which ensured special concessions to Palestinian refugees. Arab states argued successfully for the non-applicability of the United Nations High Commissioner for Refugees ("UNHCR") Statute and the 1951 Geneva Convention Relating to the Status of Refugees ("Refugee Convention") so long as Palestinian refugees received both protection and assistance from other UN agencies.<sup>4</sup> While an exclusive protection refugee regime was set up for Palestinian refugees, it was short-lived.<sup>5</sup> Since 1952, no international body has been endowed with the mandate to provide any sort of short or long-term protection for Palestinian refugees.<sup>6</sup>

For over fifty years now, the international community has remained steadfast in its belief that Palestinians are "excluded" from the 1951 Refugee Convention. Yet the reality is that such a belief does a disservice to the drafters of both the UNHCR Statute and the 1951 Refugee Convention who would have never predicted, nor desired, for Palestinians to still be without any durable solutions to their refugee plight. The primary cause of the Palestinian refugee crisis may be the failure of the international community to reach any lasting political solution to the problems posed by an absence of a Palestinian state. However, drafting inconsistencies and misinterpretation of relevant texts, along with abstruse academic readings, have only hindered the status and protection of Palestinian refugees.

The Palestinian refugee crisis has been treated much too long as the anomaly in refugee law. Through two special clauses, Article 1D in the 1951 Refugee Convention and Amendment 7(c) of the UNHCR Statute, Palestinian refugees have been denied international redress to eliminate their protection gap. Yet, through a historical reading of Article 1D and Amendment 7(c), it becomes clear that the consensus among participating states at the drafting sessions was that Palestinian refugees were not only in need of international protection, but rather were in need of a *heightened* regime of protection.<sup>7</sup> The drafters' sought to en-

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3. Susan M. Akram & Terry Rempel, *Recommendations for Durable Solutions for Palestinian Refugees: A Challenge to the Oslo Framework* (hereinafter, Akram, *Recommendations for Durable Solutions for Palestinian Refugees*), XI THE PALESTINE Y.B. INT'L L. 1, 4 (2000-2001). For more discussion on the historical reasons for the Palestinian refugee situation, see *infra* note 51.

4. See Susan M. Akram, *Palestinian Refugees and Their Legal Status: Rights, Politics, and Implications for a Just Solution* (hereinafter, Akram, *Palestinian Refugees and Their Legal Status*), 3 J. PALESTINE STUD. 36 (2002).

5. See generally Susan M. Akram, *Reinterpreting Palestinian Refugee Rights under International Law* (hereinafter, Akram, *Reinterpreting Palestinian Refugee Rights under International Law*), in PALESTINIAN REFUGEES: THE RIGHT OF RETURN 165, 169 (Naseer Aruri ed., 2001).

6. *Id.*

7. See Akram, *Palestinian Refugees and Their Legal Status*, *supra* note 4.

sure continuity of protection but their efforts were frustrated when the clauses were later misconstrued by the international community and participating states.

This failure resulted in the egregious, longstanding denial of international protection and the lack of access to voluntary durable solutions available to all other refugees as a matter of law and right.

Part I lays out specific facts and figures related to the Palestinian refugee diaspora. Part II examines the international refugee regime that applies to all refugees other than the Palestinians. Part III explores the alternative refugee regime that is specific to Palestinian refugees. Part IV argues for the reinterpretation of Article 1D in light of its drafting history and its scope and purpose. Finally, Part V argues for the incorporation of Palestinian refugees within the UNHCR mandate and the formalization of an internationally-harmonized temporary protection status that will provide interim protection to Palestinian refugees prior to the implementation of durable solutions.

## I

### A GLIMPSE INTO THE PALESTINIAN REFUGEE DIASPORA

Palestinian refugees represent one of the world's largest and longest standing unresolved refugee problems to date.<sup>8</sup> Around three-quarters of all Palestinians are displaced<sup>9</sup> and more than half of the total Palestinian population is *de jure* stateless persons.<sup>10</sup> The majority of Palestinian refugees reside in the Arab

8. BADIL RES. CTR., CLOSING PROTECTION GAP: HANDBOOK ON PROTECTION OF PALESTINIAN REFUGEES (hereinafter, BADIL, CLOSING THE PROTECTION GAP), at 2-3 (2005). The largest group of Palestinian refugees, an estimated 4.3 million persons, was displaced/expelled from their homes of origin in the 1948 conflict and subsequent war. The second major group, an estimated 834,000 Palestinian refugees, was displaced for the first time from their homes of origin as a result of the 1967 war. The last major group, an estimated 400,000 Palestinians refugees, is neither 1948 nor 1967 refugees but currently reside outside of former Palestine. This group is either unable or unwilling to return due to a well-founded fear of persecution. The majority of Palestinians in this last category are from the 1967 territories (the West Bank or the Gaza Strip). See BADIL, SURVEY OF PALESTINIAN REFUGEES AND INTERNALLY DISPLACED PERSONS, *supra* note 2, at 47. The number of Palestinian refugees has only increased throughout the decades because the offspring of Palestinian refugees are also considered refugees. See *infra* note 55.

9. Displaced Palestinians can fall into one of two categories: refugees or internally displaced persons. As of 2005, approximately 6.8 million Palestinians were refugees and 400,000 others were internally displaced, representing a total of 70% of the entire Palestinian population. In other words, 7.2 million Palestinians were refugees and internally displaced while 2.1 million Palestinians were non-refugees. In addition, 400,000 Palestinians' legal status remained unclear. It is believed that the majority of the latter group resides outside the occupied territories as refugees and is unable or unwilling to return out of fear of persecution. See BADIL, SURVEY OF PALESTINIAN REFUGEES AND INTERNALLY DISPLACED PERSONS, *supra* note 2, at 48.

10. *De facto* statelessness means stateless in fact; *de jure* statelessness means stateless under law. The internationally recognized definition of a stateless person is "one who is not considered as a national by any State under the operation of its law." Article 1, Convention Relating to the Status of Stateless Persons (1954 Convention), Sept. 28, 1954, 360 U.N.T.S. 117; Article 1, Convention on the Reduction of Statelessness (1961 Convention), Aug. 30, 1961, 989 U.N.T.S. 175 (entered into force Dec. 13, 1975). See discussion, *infra* notes 71-80 and accompanying text.

world—specifically in Jordan, Syria, Lebanon and Saudi Arabia.<sup>11</sup> Due to internal political and military conflicts in some Arab states, many Palestinians have recently fled to Western European countries and to the United States.<sup>12</sup> Currently, over 500,000 Palestinian refugees and displaced persons reside in countries outside of the Arab world.<sup>13</sup>

Only half of the Palestinian refugee labor force is economically active, with unemployment rates ranging between 7%-30% depending on the country or region.<sup>14</sup> Around 23%-43% of Palestinian refugees live in poverty with the most impoverished refugees living in refugee camps in Lebanon.<sup>15</sup> About 25% of Palestinian refugees living in Syria and 35% of Palestinian refugees living in Lebanon earn less than \$2 USD a day.<sup>16</sup>

Education-related problems similarly range among the different host countries. Generally, there are high enrollment rates among refugee children that tend to drop off at preparatory levels due to high poverty, lack of motivation, marriage and social constraints.<sup>17</sup> This may also be due to the constraints placed on children who have only earned a basic level of education but who then find the need to contribute to the family livelihood upon reaching a certain age. Palestinian refugees in Jordan have the highest level of education whereas refugees in Lebanon have the lowest educational attainment<sup>18</sup>; most refugees in Lebanon have not even completed basic education.<sup>19</sup>

In the area of health, Palestinian refugees—particularly women and children—have experienced drastic improvements over the course of the last five decades.<sup>20</sup> The health status of Palestinian refugees has improved from a devel-

11. As of 2005, an estimated total of 2,881,604 Palestinian refugees live in Jordan; 449,241 Palestinian refugees live in Syria; 427,517 Palestinian refugees live in Lebanon; and 318,869 Palestinian refugees live in Saudi Arabia. A smaller, yet considerable, amount of Palestinian refugees also reside in Egypt, Iraq, Libya and Kuwait. See BADIL, SURVEY OF PALESTINIAN REFUGEES AND INTERNALLY DISPLACED PERSONS, *supra* note 2, at 54.

12. The most recent war in Iraq in 2003 has resulted in the displacement of 34,000 Palestinians in Iraq. They are currently trying to escape Iraq into Western nations especially since most Arab states have refused to grant them asylum. See Human Rights Watch, *Nowhere to Flee: The Perilous Situation of Palestinians in Iraq*, available at [http://hrw.org/reports/2006/iraq0706/iraq0706\\_sumandrecs.pdf](http://hrw.org/reports/2006/iraq0706/iraq0706_sumandrecs.pdf) (last visited March 15, 2008).

13. BADIL, CLOSING PROTECTION GAP, *supra* note 8, at 4.

14. The labor force participation rate is the proportion of every employed and unemployed person above the age of 15 to the total population above that age. See BADIL, SURVEY OF PALESTINIAN REFUGEES AND INTERNALLY DISPLACED PERSONS, *supra* note 2, at 77. The rates of Palestinian unemployment are substantially higher for Palestinians living in the occupied Palestinian territories at present due to the Israeli military activity during the second *intifida*. *Id.* at 80.

15. *Id.* at 82.

16. *Id.* at viii.

17. *Id.* at 91.

18. *Id.* at 92.

19. *Id.*

20. *Id.* at 94.

oping stage to a developed stage where there has been a decline in infant, child and maternal mortality. Unfortunately, there is an epidemiological transition towards patterns in more developed countries characterized by the increased incidence of non-communicable diseases, such as cardiovascular diseases and diabetes.<sup>21</sup> Among the refugee population, Palestinian refugees in Lebanon have the highest reported problems with chronic illness, psychological diseases and disabilities due to ineffective protection and insufficient assistance. On the other hand, Palestinian refugees in Jordan and Syria have the best reported health outcomes.<sup>22</sup> Although there is a generally low maternal mortality rate among nearly all Palestinian refugee women due to the accessibility of prenatal care,<sup>23</sup> child malnutrition has been increasing in recent years, especially in the Gaza Strip and the West Bank.<sup>24</sup> There has also been a resurgence of anemia.<sup>25</sup>

While the United Nations Relief and Works Agency ("UNRWA") operates to alleviate the hardships faced by many, if not most, Palestinian refugees, it is limited in its ability to provide improved living conditions by protracted conflict, shortfall in donor contributions and a restrictive assistance mandate.<sup>26</sup> As long as the refugee crisis remains, Palestinian refugees will be impeded in their human development, growth, prosperity and freedom. Yet before one can understand the crux of the Palestinian refugee problem, one must examine the general international regime that operates for all other refugees worldwide.

## II

### THE INTERNATIONAL LEGAL REGIME FOR REFUGEES

The current international legal regime for refugees originated after the Second World War. The basis of international refugee law was established under the framework of the 1951 Geneva Convention Relating to the Status of Refugees ("Refugee Convention"), its companion 1967 Protocol Relating to the Status of Refugees ("Refugee Protocol") and the Statute of the United Nations High Commissioner for Refugees ("UNHCR"). With the rise in international collaboration and the mass exodus of European refugees from their homes of origin during WWII, there was a growing concern among the international community to assume responsibility for the protection and assistance of the refugee population.<sup>27</sup> This concern for the well-being of refugees has extended

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21. *Id.* at 95.

22. *Id.* at 94.

23. *Id.* at 97.

24. *Id.* at 98.

25. *Id.*

26. *Id.* at 76. The recent Israeli war on Lebanon illustrates this point as the fighting prevented UNRWA from reaching many refugee camps in Lebanon.

27. LEX TAKKENBERG, THE STATUS OF PALESTINIAN REFUGEES IN INTERNATIONAL LAW 54 (hereinafter, TAKKENBERG, THE STATUS OF PALESTINIAN REFUGEES IN INTERNATIONAL LAW) (1998).

until the present-day with the overwhelming adoption of international refugee law norms into national domestic laws of many Western and non-Western states.<sup>28</sup>

The Refugee Convention has brought about a number of significant developments in the area of international refugee law. In addition to establishing specific rights of refugees<sup>29</sup> and prescribing standards of treatment of refugees as inhabitants of the country of refuge,<sup>30</sup> the Refugee Convention adopted an individualized definition of a “refugee” which was a dramatic departure from the group definition used previously.<sup>31</sup> Under Article 1A(2), a “refugee” is defined as:

[A person who], owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his formal habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.<sup>32</sup>

The Refugee Convention also codified the principle of *non-refoulement* or non-return which has become customary international law. According to Article 33(1), “No Contracting State shall expel or return a refugee in any manner whatsoever to the frontiers or territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”<sup>33</sup> Lastly, the Refugee Convention shifted away from the ad hoc approach of addressing refugee problems (which involved only the affected states) to institutionalizing refugee responses on a global spectrum. In essence, this shift spoke to the international desire of moving away from merely providing refugees assistance to actually providing them with international protection and durable solutions. Therefore, the simple recognition that a person meets the defined criteria of a “refugee” automatically triggers state obligations towards that person—most fundamentally the obligation of *non-*

28. See United Nations Enable, *International Law and National Frameworks*, available at <http://www.un.org/esa/socdev/enable/comp101.htm> (last visited April 10, 2008).

29. These rights include recognition of the law of personal status (Article 12); the right to primary education (Article 22); the issue of identity papers (article 27); the issue of travel documents (Article 28); and the facilitation of naturalization (Article 34). See *Id.* at 86-87.

30. At minimum, the Convention provides that refugees should receive at least that treatment which is accorded to aliens in general. See art. 7 (1); also arts. 5, 6, 13, 18, 19, 21, 22 (2) and 26; see also TAKKENBERG, *THE STATUS OF PALESTINIAN REFUGEES IN INTERNATIONAL LAW*, *supra* note 27, at 87.

31. Akram, *Palestinian Refugees and Their Legal Status*, *supra* note 4.

32. 1951 Geneva Convention Relating to the Status of Refugees (hereinafter, 1951 Refugee Convention) 189 U.N.T.S 137, July 28, 1951, art. 1; see ch. II, introductory paras. at sec. 2.

33. *Id.* at art. 33, para 1.

*refoulement*. In addition, a state is obligated to provide such refugees with more permanent forms of relief such as residency status and citizenship.<sup>34</sup>

The UNHCR—which was established in December of 1950 out of the United Nations General Assembly (UNGA) Resolution 428(V)<sup>35</sup>—was granted the mandate:

- To supervise state compliance with the Refugee Convention and Protocol
- To implement durable solutions for refugees
- To provide for their interim or temporary protection until a durable solution is implemented<sup>36</sup>

According to the UNHCR Statute,<sup>37</sup> UNHCR's primary functions can be divided into the daily direct protection of refugees' human rights through the provision of assistance<sup>38</sup> and the search for and implementation of long-term protection through durable solutions for refugees. There are three possibilities for refugees: voluntary repatriation, third state resettlement and local integration. UNHCR's work of implementing durable solutions is guided by the principle of individual choice. Theoretically, a refugee may choose one solution over another

34. Akram, *Recommendations for Durable Solutions for Palestinian Refugees*, *supra* note 3 at 12.

35. See U.N. GAOR, 5th Sess., Plenary Mtg., Summary records. G.A. Res. 428(V), 14 Dec. 1950.

36. G.A. Res. 428(V), 14 Dec. 1950. Annex, Statute of the Office of the United Nations High Commissioner for Refugees (hereinafter, UNHCR Statute).

37. The UNHCR Statute specifies the agency's protection function. This includes promoting international agreements for refugee protection, supervising and monitoring compliance with those agreements, assisting governments and non-governmental organizations in the voluntary repatriation of refugees or in their resettlement in host or third-party states and assisting refugees in protecting their properties (such as restitution or transfer of assets left in their home of origin). See Akram, *Palestinian Refugees and Their Legal Status*, *supra* note 4, at 37.

38. Refugee Protection includes: "(a) registration and documentation of refugee individuals or groups; (b) provision of special travel documents to refugee individuals or groups; (c) protection by publicity, particularly in relation to HR violations; (d) promotion of international refugee law, both at international and domestic levels; (e) provision of humanitarian emergency assistance (including food, shelter and primary health care); (f) provision of 'temporary protection' in third-party states; (g) provision of legal aid to refugees, or legal intervention with relevant state authorities; (h) unilateral or multilateral interventions short of the use of force, such as economic sanctions against relevant state authorities; and (i) facilitating durable solutions, including repatriation, resettlement in host states and asylum in third-party states . . . (k) ensuring physical protection through unilateral or multilateral interventions, not excluding under Chapter VII of the UN Charter." This particularly applies to situations of armed conflict or belligerent occupation. There are different types of protection. Short-term protection is the provision of basic humanitarian needs whereas long-term protection provides refugees with durable solutions to their refugee situation. Assistance, on the other hand, is immediate and limited in capacity. It is usually *seen* as the provision of daily basic needs of food, clothing and shelter. Harish Parvathaneni, *UNRWA's Role in Protecting Palestinian Refugees* (hereinafter, Parvathaneni, *UNRWA's Role in Protecting Palestinian Refugees*) 10-11 (BADIL Res. Ctr., Working Paper No. 9, Dec. 2004).

so long as it is feasible to implement the solution of choice.<sup>39</sup> Realistically however, a refugee can usually choose only voluntary repatriation since local integration and third state resettlement depend on the decisions of the country of asylum as well as the UNHCR.<sup>40</sup>

In recent years, UNHCR has expanded its role to include persons who do not necessarily fit into the statutory definition of the Refugee Convention<sup>41</sup> as well as increasing the expanse of its protection mandate. With the increase of regional and international human rights bodies and human rights instruments,<sup>42</sup> UNHCR has become the foremost vehicle in representing refugee interests on the international level.

As the designated voice for refugees, UNHCR is able to represent refugees in the international arena. It negotiates with states on behalf of refugees and in the search for durable solutions.<sup>43</sup> Additionally, in the International Court of Justice's ("ICJ") *Advisory Opinion on Reparations for Injuries Suffered in the Service of the United Nations*, the UNHCR has the standing to bring refugee claims to the ICJ or to any forum with jurisdiction over the claims and parties.<sup>44</sup> The ICJ has compromissory jurisdiction over state parties to the Refugee Convention. While UNHCR has never raised any such claims to the ICJ, it has worked with both the United Nations General Assembly and the Economic and Social Council ("ECOSOC") to address various refugee concerns and to help extend its mandate to refugees who did not fall under the statutory definition of the Refugee Convention.<sup>45</sup>

39. See Akram, *Palestinian Refugees and Their Legal Status*, *supra* note 4, at 38.

40. For more information on the UNHCR and its implementation of durable solutions, see UNHCR: The UN Refugee Agency, available at <http://www.unhcr.org/cgi-bin/texis/vtx/home> (last visited April 26, 2008).

41. These persons include "displaced persons, returnees, persons falling within broader refugee definitions adopted by individual states and persons who are 'of concern to the international community.'" *Id.*

42. The primary regional human rights bodies are the Organization of African Unity and the African Commission; the Organization of American States with its Inter-American Court and Commission; the European Union and the European Court of Human Rights. The main human rights treaty bodies are the Human Rights Committee; the Committee on Economic, Social and Cultural Rights; the Committee Against Torture; the Committee on the Elimination of Racial Discrimination; the Committee on the Elimination of all Discrimination Against Women; and the Committee on the Rights of the Child. UN organs include the International Court of Justice at The Hague; the UN High Commissioner on Human Rights and the Office of the High Commission on Human Rights; the UN General Assembly; the UN Security Council; and the Economic and Social Council. *Id.* at 49 n.11.

43. Akram, *Recommendations for Durable Solutions for Palestinian Refugees*, *supra* note 3, at 13.

44. *Id.* at 14.

45. Beginning in 1957, the UNGA has authorized the UNHCR to assist refugees who did not fall under the statutory definition, but were "of concern to the international community." See G.A. Res. 1167(XII), 26 Nov. 1957; G.A. Res. 1286(XIII), 5 Dec. 1958; 1389(XVI), 20 Nov. 1959; 1500(XV), 5 Dec. 1960. The UNGA then developed the concept of "good offices" and finally, "refugees of concern" as a general term to extend UNHCR's mandate over other non-Convention refugees, without the necessity of a UN Resolution addressing a specific refugee situation. Since the



### III THE PALESTINIAN REFUGEE ANOMALY

This regime of international refugee protection—as outlined by the Refugee Convention, Refugee Protocol and the UNHCR Statute—applies and is guaranteed to all refugees except for Palestinian refugees within UNRWA's mandate jurisdiction.<sup>46</sup> Currently, Palestinian refugees are the only refugee population to be “excluded” from any formal international protection due to the perceived exclusionary nature of Article 1D of the Refugee Convention and Amendment 7(c) of the UNHCR Statute. Article 1D states:

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.<sup>47</sup>

Similarly Amendment 7(c) of the UNHCR Statute stipulates that the competence of the High Commissioner shall not extend to a person who “continues to receive from other organs or agencies of the United Nations protection or assis-

mid-70s, the UNGA has referred to and commended the UNHCR's activities towards “refugees and displaced persons of concern” to the Agency. ECOSOC and the General Assembly have passed a number of resolutions authorizing UNHCR to extend its “good offices” towards displaced persons and others “of concern.” See ECOSOC Resolutions 1655(LII), 1 Jun. 1972; 1705(LII), 27 Jul. 1972; 1741(LIV), 4 May 1973. See also G.A. Resolutions 2958(XXVII), 12 Dec. 1972; 3271(XXIX), 10 Dec. 1974; 3454(XXX), 9 Dec. 1975. Akram, *Recommendations for Durable Solutions for Palestinian Refugees*, *supra* note 3, at 13 n.45.

46. In 2002, UNHCR wrote a *Note on the Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees* (hereinafter, *UNHCR Note*) clarifying that UNHCR's mandate excludes all Palestinian refugees “who are inside UNRWA's area of operations and is registered, or is eligible to be registered, with UNRWA . . . should be considered as receiving protection or assistance within the sense of paragraph 1 of Article 1D,” and would therefore be excluded from the Refugee Convention and from assistance and protection of UNHCR. On the other hand, if a Palestinian refugee is outside of UNRWA's area of operations, s/he would automatically be entitled to the benefits of the Refugee Convention and would qualify for both protection and assistance from UNHCR provided that s/he would not be excluded under Articles 1C, 1E or 1F of the Refugee Convention. 14 INT'L J. REFUGEE L. 450, 453 (2002). Yet even with the clarification as put forth by this UNHCR *Note*, the vast majority of Palestinian refugees remain without any form of international protection. Due to the recent publication of this *Note*, some European States such as Germany have been slow to implement this interpretation in regards to the Palestinian refugees within their borders and still deny them the rights afforded to them under the Refugee Convention and the UNHCR Statute. It is unclear to what degree states will apply this new interpretation of Article 1D into domestic law. Refugee scholars currently fear that the vast majority of states will likely regard the new interpretation as merely a recommended approach to be used by domestic judicial authorities in the interpretation of Article 1D. This might especially be the case in countries whose legal systems are based on the principles of *stare decisis*, or judicial precedence. See Parvathaneni, *UNRWA's Role in Protecting Palestinian Refugees*, *supra* note 38, at 13.

47. See 1951 Refugee Convention, *supra* note 32, art. 1D, 189 U.N.T.S. at 156.

tance.”<sup>48</sup> As discussed below, these two provisions have been read and interpreted by the international community to specifically and solely exclude Palestinian refugees from all forums of international refugee protection. For over fifty years, this has resulted in a major protection gap for Palestinian refugees.

#### A. Article 1D

While Palestinian refugees are not specifically mentioned in Article 1D, based on the drafting history and the interrelationship of Article 1D with three other UN instruments,<sup>49</sup> it is clear that Article 1D applies solely to Palestinian refugees.<sup>50</sup> Furthermore, at the time Article 1D was drafted, the only refugee population in need of international protection who was receiving aid or protection from a UN agency other than the UNHCR was the Palestinian one; both UNRWA—with an assistance mandate—and the United Nations Conciliation Commission for Palestine (“UNCCP”)—with a protection mandate—were in place.

#### B. UNRWA/UNCCP

UNRWA was established by Resolution 302(IV) in December 8, 1949, following the initial 1948 war.<sup>51</sup> UNRWA’s mandate is solely to provide assistance

48. The “other” UN agencies to which these provisions refer are the UNCCP and UNRWA.

49. These three instruments are the UNHCR Statute, the Regulations governing UNRWA and the UN Resolution 194 which established the UNCCP.

50. TAKKENBERG, *THE STATUS OF PALESTINIAN REFUGEES IN INTERNATIONAL LAW*, *supra* note 27, at 90. For the drafting history of Article 1D and the related provisions, and the intentions of the drafters in drawing them up, see *THE COLLECTED TRAVAUX PREPARATOIRES OF THE 1951 GENEVA CONVENTION RELATING TO THE STATUS OF REFUGEES* (hereinafter *THE COLLECTED TRAVAUX PREPARATOIRES*) (Alex Takkenberg and Christopher L. Tahbaz eds. 1989); See generally *THE REFUGEE CONVENTION, 1951* (PAUL WEIS ed., Cambridge University Press 1995).

51. While long and complex, the history of the Palestinian refugees can be simplified for purposes of this paper to three factors: (1) international interest in Palestine after WWI; (2) the problem of Jewish refugees and displaced persons in Europe; (3) the Zionist program of creating a “homeland” for Jews in Palestine through the transfer of the native Palestinian population. See NUR MASALHA, *EXPULSION OF THE PALESTINIANS: THE CONCEPT OF ‘TRANSFER’ IN ZIONIST POLITICAL THOUGHT, 1882-1948* (1992). The Zionist program was legitimized by the UNGA recommendation to partition historic Palestine into a Jewish and an Arab state against the will of the majority of indigenous inhabitants. See G.A. Res. 181, U.N. GAOR, 1st Sess, U.N. Doc. A/64 (1947); See also Akram, *Recommendations for Durable Solutions for Palestinian Refugees*, *supra* note 3, at 3 n.7. This increased tension between the two populations and a war broke out between the Arab and Jewish communities in May 1948 which resulted in the displacement of a third of the entire Palestinian Arab population (approximately 400,000 persons). The numbers of refugees increased with the Zionist military attacks on civilians, massacres, looting, destruction of property and forced expulsion. See SALMAN ABU SITTA, *THE PALESTINIAN NAKBA 1948: THE REGISTER OF DEPOPULATED LOCALITIES IN PALESTINE 17-20* (1998). These acts of war against the indigenous Palestinian Arab population and the expulsion and internal transfer of Palestinians continued after the signing of the 1949 Palestinian Armistice Agreements. The best-documented figures of Palestinian refugees from this time is between 750,000-800,000, approximately 85% of the Palestinian population in the territory that became the state of Israel. See BENNY MORRIS, *THE BIRTH OF THE PALESTINIAN REFUGEE PROBLEM*,

for refugees' basic daily needs of food, clothing and shelter. The mandate extends to Palestinian refugees residing in Jordan, Syria, Lebanon, the West Bank and the Gaza Strip.<sup>52</sup> Under UNRWA, a Palestinian refugee is defined narrowly as "any person whose normal place of residence was Palestine during the period 1 June 1946 to 15 May 1948 and who lost both home and means of livelihood as a result of the 1948 conflict."<sup>53</sup> While UNRWA's mandate is limited to the refugees that fled as a result of the 1948 war, the General Assembly authorized UNRWA to provide assistance to Palestinians not previously within its mandate after the 1967 war based on an emergency basis and as a temporary measure.<sup>54</sup> Additionally, UNRWA's mandate covers refugee offspring, creating an inheritable refugee status along paternal lines.<sup>55</sup>

Prior to the establishment of UNRWA, the UN General Assembly created a separate agency, United Nations Conciliation Commission for Palestine (UNCCP), whose primary purpose was: (1) protecting Palestinian refugees through the resolution of the Palestinian refugee crisis and (2) seeking a solution to the Israeli-Palestinian conflict that would be in line with the Partition recommendation.<sup>56</sup> UNCCP was established by UNGA Resolution 194 and was made up of three state members of the United Nations<sup>57</sup> who were to continue the con-

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1947-1949 (1987). In order to prevent the return of the Palestinian refugees, Israel instituted a plan entitled, "Retroactive Transfer, A Scheme for the Solution of the Arab Question in the State of Israel." *Cited in Id.* at 136. These measures included the destruction of Palestinian villages and population centers, the settlement of Jews in a number of large Palestinian towns and villages and the adoption of laws to prevent the return of refugees. The subsequent 1967 six-day war brought another upheaval of Palestinian refugees. Approximately half a million Palestinians were displaced from Israel and what came to be known as the Occupied Territories (the West Bank and Gaza). They fled to neighboring countries. TAKKENBERG, *THE STATUS OF PALESTINIAN REFUGEES IN INTERNATIONAL LAW*, *supra* note 27, at 17. Israeli policies against the Palestinians residing in Israel and in the Occupied Territories continue until today, resulting in a constant fleeing of Palestinian refugees. BADIL, *CLOSING PROTECTION GAP: HANDBOOK ON PROTECTION OF PALESTINIAN REFUGEES*, *supra* note 8, at 3.

52. *Id.* at 50.

53. According to this definition, "Palestine" meant the entire area under the initial British mandate which includes Palestinian Arabs from current-day Israel and the current-day Occupied Territories. TAKKENBERG, *THE STATUS OF PALESTINIAN REFUGEES IN INTERNATIONAL LAW*, *supra* note 27, at 77-8.

54. So while UNRWA never expanded its definition of "Palestine refugee," it has *de facto* embraced the 1967 Palestinian refugees as well as subsequent refugees. *Id.* at 82.

55. According to the UNRWA mandate, persons eligible for registration are limited to "the descendants [born after 14 May 1948] of fathers [of Palestine refugees]; the descendants [born after 14 May 1948] of fathers registered with UNRWA as 'Gaza Poor' in Gaza, 'Jerusalem Poor' in the West Bank, 'Frontier Villagers' in the West Bank and in Jordan and 'Members of nomadic and semi-nomadic tribes.'" Therefore, if a child is born to a registered refugee woman and a non-registered refugee man, that child cannot be considered a "Palestinian refugee" under UNRWA's definition and therefore cannot register with UNRWA. This has resulted in gender inequality and discrimination against women in accessing UNRWA services. *Id.* at 80-81.

56. G.A. Res. 181(II), UN GAOR, 2nd Sess., UN Doc. A/519(1947). See also Akram, *Reinterpreting Palestinian Refugee Rights under International Law*, *supra* note 5, at 169.

57. The three States that were elected on the UNCCP were Turkey, France and the United States. G.A. Resolution 194(III) states, in part, "The General Assembly . . . 2. Establishes a Concilia-

ciliation and repatriation efforts of the United Nations Mediator on Palestine. This would take place by UNCCP assisting the governments and authorities concerned with the conflict to achieve a final settlement in accordance with Paragraph 11 of UNGA Resolution 194(III) which states:

*Resolves* that the refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible; *Instructs* the Conciliation Commission to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation and to maintain close relations with the Director of the United Nations Relief for Palestine Refugees and, through him, with the appropriate organs and agencies of the United Nations.<sup>58</sup>

Like UNHCR, UNCCP was entrusted with all the essential protection functions that would provide the Palestinians with a durable long-term solution—repatriation and compensation—while UNRWA was later established as a separate agency to provide short-term assistance.<sup>59</sup> Yet unlike UNHCR, UNCCP's mandate was very specific to one refugee population: the Palestinians.<sup>60</sup>

As a result of Israel's complete refusal to accept repatriation or compensation of refugees, UNCCP ceased providing protective functions for Palestinian refugees.<sup>61</sup> Since 1952, UNCCP has restricted its operations to merely "collecting records and documenting refugee properties in Israel."<sup>62</sup> There have been no

tion Commission consisting of three States Members of the United Nations which shall have the following functions: a) To assume . . . the functions given to the United Nations Mediator on Palestine by resolution 186(S-2) of the General Assembly of 14 May 1948; b) To carry out the specific functions and directives given to it by the present resolution and such additional functions and directives as may be given to it by the General Assembly or by the Security Council; c) To undertake, upon the request of the Security Council, any of the functions now assigned to the United Nations Mediator on Palestine or to the United Nations Truce Commission by resolutions of the Security Council."

58. *Id.* para. 11.

59. *Reinterpreting Palestinian Refugee Rights under International Law*, *supra* note 4, at 169.

60. The specific and exclusive mandate for Palestinian refugees is rooted in the Arab states' fear (more specifically Egypt, Saudi Arabia and Lebanon) that the prospect for Palestinian refugees to return to their homes would be negatively affected if they were included in the mandate of the UNHCR. They feared that if Palestinian refugees joined in the general definition of "refugees," they would be submerged and relegated to a position of minor importance. These countries argued that the existence of the Palestinian refugees was a direct result of the UN's decision to partition historic Palestine despite its full knowledge of the consequences. The placement of Palestinian refugees in the general category of refugees would be a complete betrayal of the UN's direct responsibility in creating the Palestinian refugee problem. It was a general consensus of members to the Refugee Convention that Palestinians afforded both special protection and assistance with only the Israeli delegate in opposition. See TAKKENBERG, *THE STATUS OF PALESTINIAN REFUGEES IN INTERNATIONAL LAW*, *supra* note 27, at 60-3.

61. *Id.* For discussion on Israel's refusal of Palestinian refugee repatriation, see DAVID P. FORSYTHE, *UNITED NATIONS PEACEMAKING: THE CONCILIATION COMMISSION FOR PALESTINE 70-83* (John Hopkins University Press 1972).

62. Akram, *Reinterpreting Palestinian Refugee Rights under International Law*, *supra* note 5, at 169. UNCCP completed the cataloguing process by 1964. Since that year, UNCCP has been es-

other international attempts to provide protective functions for Palestinian refugees since the functional dismemberment of UNCCP.

### C. Palestinian Refugee Protection (or Lack Thereof)

With the dissolution of UNCCP's protective functions, Palestinian refugees have been left without any protective redress. Due to the common, but arguably incorrect reading of Article 1D of the Refugee Convention and Amendment 7(c) of the UNHCR Statute, Palestinian refugees have been excluded from the widespread refugee protection mechanisms afforded to all other refugees. Most Arab states have refused to grant Palestinian refugees permanent status, contending that the countries that divided Palestine and helped establish Israel should foot the assistance bill for them.<sup>63</sup> Some Palestinian refugees themselves are also resistant to resettlement and naturalization efforts due to their desire to return to their homeland.<sup>64</sup>

Currently, the only United Nations agency that provides any sort of protection or assistance to Palestinian refugees is UNRWA. While UNRWA's mandate is limited to direct assistance (food, shelter and clothing), it has expanded its mandate over the years to include oversight of security officers and assistance in political negotiations, among other things. This expansion beyond assistance has never been officially sanctioned or legitimized by the international arena, rendering UNRWA largely ineffective.<sup>65</sup>

In essence, with the lack of any sort of formalized international protection, Palestinian refugees are left with a "protection gap."<sup>66</sup> While Palestinian refu-

entially dysfunctional and is limited to reporting annually to the General Assembly on its inability to fulfill its mandate until "substantial changes" take place in the positions of the parties. Yet the UNCCP concluded even as early as 1951 that "during its three years of existence" it had "been unable to make substantial progress in the task given to it by the General Assembly of assisting the parties to the Palestine dispute towards a final settlement of all questions outstanding between them." It further claimed that the "present unwillingness of the parties fully to implement the General Assembly resolutions under which the Commission is operating . . . have made it impossible for the Commission to carry out its mandate." See Parvathaneni, *UNRWA's Role in Protecting Palestinian Refugees*, *supra* note 38, at 15.

63. TAKKENBERG, THE STATUS OF PALESTINIAN REFUGEES IN INTERNATIONAL LAW, *supra* note 27, at 66. The only Arab country to grant Palestinian refugees permanent full residency status has been Jordan, yet this status is limited to 1948 refugees and those who held Jordanian passports upon their displacement in 1967. BADIL, CLOSING PROTECTION GAP, *supra* note 8, at 14.

64. See Parvathaneni, *UNRWA's Role in Protecting Palestinian Refugees*, *supra* note 38, at 14.

65. After the first *intifada*, UNRWA assigned special officers to provide protection for the Palestinians in the West Bank and Gaza Strip. They were functioning in the same capacity as the security officers of UNHCR. Israel cracked down on these officers and threw them out of the West Bank and Gaza Strip under the auspices that UNRWA's mandate did not allow for such functions. Similarly, during the negotiations of the Oslo Accords, UNRWA attempted to sit on the continuing committees and Israel strongly objected stating that UNRWA's mandate did not grant it the authority to engage in political conciliatory discussions. Telephone interview with Susan M. Akram, Associate Professor at Boston University School of Law, in Cairo, Egypt (Nov. 13, 2006).

66. While the most serious implications of the "protection gap" are for Palestinian refugees

gees originally had a special regime that provided both protection through the UNCCP and assistance through UNRWA, they currently receive only the most basic assistance and short-term protection. Presently, the lack of formalized protection measures ensures that the approximately 7.5 million Palestinian refugees strewn throughout the Arab world will never have any form of resolution.<sup>67</sup> This has created, and threatens to continue creating, a perpetuation of multiple forced displacements for refugees.

As noted earlier, due to the emasculation of UNCCP's protection mandate and the resultant protection gap, UNRWA has stepped up its role in providing more extensive protection and assistance to the Palestinian refugees who reside within its mandate. By the late 1950s, UNRWA unofficially moved away from its original mandate of direct emergency assistance in order to develop and finance three permanent programs: (1) education; (2) health and relief; and (3) social services. These are in addition to its microenterprise and microfinance special programs.<sup>68</sup>

UNRWA is also involved in "passive protection" of Palestinians to a small extent. In 1988, with the onset of the first *intifada*, the United Nations Secretary-General requested that UNRWA increase the number of international staff to intervene with Israeli authorities in order to protect Palestinians. The Refugee Af-

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residing in areas under the UNRWA mandate, Palestinian refugees who flee UNRWA countries into Western countries also face major protection difficulties. For example, when these refugees seek asylum, some states do not recognize persecution by non-state actors such as militia groups in Lebanon. Other Western states find that Palestinians have "indeterminate" status in that they are neither stateless nor refugees and are therefore not entitled to the protections of either convention. This results in Palestinian refugees in Western countries either being denied asylum or else having to undergo extremely long and protracted proceedings during which they are unable to work or travel and may be held in lengthy immigration detention. See Akram, *Palestinian Refugees and Their Legal Status*, *supra* note 4, at 44-5. For Palestinian refugees who reside in areas under the UNRWA mandate, the "protection gap" translates into many other difficulties. Because there is no international agency with the explicit mandate to systematically work for the realization of the basic human rights of Palestinian refugees and to search and implement durable solutions consistent with international law as affirmed by the UNGA Resolution 194, Palestinian refugees have no meaningful access to international protection that is legally available to other refugee populations. The implication of this protection gap is of a varying degree and the availability of protection differs for Palestinian refugees from state to state. Susan M. Akram & Terry Rempel, *Temporary Protection as an Instrument for Implementing the Right of Return for Palestinian Refugees* (hereinafter Akram, *Temporary Protection as an Instrument for Implementing the Right of Return for Palestinian Refugees*), 22 B.U. INT'L L.J. 1, 14 (2004). The protection gap has an especially profound consequence in seeking durable solutions due to the lack of international representation to assert Palestinian refugee rights to return and to obtain restitution and compensation. Additionally, Palestinian refugees lack access to international mechanisms that claim and promote refugee rights. Lastly, Palestinian refugees are excluded from an internationally-mandated entity to preserve and promote their individual and collective claims in the context of a negotiated peace plan. *Id.* at 15.

67. It is estimated that 70% of the all Palestinian refugees reside in UNRWA's area of operations. Parvathaneni, *UNRWA's Role in Protecting Palestinian Refugees*, *supra* note 38, at 3-4.

68. *Id.* at 16. Currently, UNRWA allocates 49% of its budget on education, 18% of its budget on health and relief and 11% of its budget on social services. The remaining 22% of the budget is spent on operational and common services expenses. See UNRWA Official Homepage, available at <http://www.un.org/unrwa/english.html> (last visited April 13, 2008).

fairs Officer (“RAO”) Programme became the most expansive protection mechanism ever instituted by UNRWA but it was suspended in Gaza by 1993 and in the West Bank by 1996 at the conclusion of the Declaration of Principles on Interim Self-Government Arrangements.<sup>69</sup> Since 2000, the Operational Support Officers (“OSO”) Programme was introduced to assist in the delivery of humanitarian goods. In addition, it too has engaged to a limited extent in “passive protection.”<sup>70</sup>

While UNRWA has expanded beyond its scope of immediate relief to provide essential humanitarian aid on an ad hoc basis, the short-term protection it provides Palestinian refugees is limited and far from the durable solutions afforded to all other refugees under the Refugee Convention and the UNHCR Statute. Even with UNRWA’s attempts to step up and provide “passive protection,” it has failed to fill in the protection gap that has resulted with the incapacitation of UNCCP.

#### D. Statelessness

Aside from the Refugee Convention and the UNHCR Statute, the protection of Palestinian refugees is also affected, albeit to a lesser degree, by instruments governing their rights as stateless persons. Statelessness is defined as “a person who is not considered as a national by any State under the operation of its laws.”<sup>71</sup> According to this definition, Palestinians are the world’s largest stateless community<sup>72</sup> and one of the world’s longest standing stateless communities spanning four generations of Palestinians.<sup>73</sup> While the Refugee Conven-

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69. The goals of the RAO Programme were two-fold: (1) to facilitate UNRWA operations during the difficult circumstances of the ensuing *intifada*; and (2) to provide passive protection for the refugee and non-refugee population in the Gaza Strip and the West Bank. Passive protection meant that UNRWA officials would maintain international presence in the field who would observe, report and—when necessary—make contact with the Israeli security forces. On the other hand, UNRWA could not enforce the rights of the refugees nor could RAOs make physical contact or engage in heated arguments with Israeli security forces. Thus, while successful to a certain extent, the RAO Programme was unable to bridge the protection gap in relation to Palestinian refugees in the Occupied Territories. These refugees continue to face serious violations of person and property as reported by John Dugard, the Special Rapporteur to the Human Rights Council on the situation of human rights in the Occupied Territories. See *Id.* at 17-18.

70. *Id.* at 19.

71. Akram, *Recommendations for Durable Solutions for Palestinian Refugees*, *supra* note 3, at 15.

72. More than half of the eight million Palestinians are considered *de jure* stateless persons and can be divided into three categories: (1) holders of the “Refugee Travel Document” issued by Syria, Lebanon, Egypt, Iraq and some other Arab countries; (2) holders of nationalities of convenience (mainly temporary Jordanian passports); and (3) holders of the Palestinian passport issued by the Palestinian Authority which is considered as a travel document. Abbas Shibliak, *Stateless Palestinians* (hereinafter, Shibliak, *Stateless Palestinians*), available at <http://www.fmreview.org/FMRpdfs/FMR26/FMR2603.pdf> (last visited April 10, 2008).

73. Prior to the 1948 conflict and under the League of Nations, Palestinians were considered British Protected Persons. While they received British passports issued by the government of Pales-

tion covers stateless refugees, there are two other instruments which cover stateless persons who are not refugees or who are excluded from the coverage of the Refugee Convention: the 1954 Convention Relating to the Status of Stateless Persons (“1954 Statelessness Convention”)<sup>74</sup> and the 1961 Convention on the Reduction of Statelessness (“1961 Statelessness Convention”).<sup>75</sup> Although these Statelessness Conventions potentially afford stateless persons with significant legal rights, the very low rate of ratification by states has limited their reach.<sup>76</sup>

As stateless people, Palestinian refugees can theoretically seek protection under either of the two Statelessness Conventions in the signatory states.<sup>77</sup> The 1954 Statelessness Convention was adopted to regulate and improve the status of stateless persons and to assure stateless persons the widest possible exercise of fundamental rights and freedoms.<sup>78</sup> The 1961 Statelessness Convention tries

time, their national status was “Palestinian citizen under Article One or Three of the Palestinian Citizenship Order.” Yet with the proclamation of the Israeli state and the termination of the British mandate, Israeli courts held that former citizens of Palestine had lost their citizenship without acquiring any other. Israel then passed the 1952 Nationality Law which confirmed the repeal of the Palestine Citizenship Orders retroactively to the day of the establishment of the state of Israel. Furthermore it declared itself the exclusive law on citizenship, which would normally be available by way of return, residence, birth and naturalization. Currently, there are three laws enacted that have nullified the rights of the displaced non-Jewish population to return to their homes: the Absentees’ Property Law, the Law of Return and the Israel Citizenship Law. Even current Palestinian inhabitants of the Occupied Palestinian Territories (“OPT”) are considered non-citizens and foreign residents. Residents of East Jerusalem and the Golan Heights are deemed as permanent residents but not citizens of Israel. Only two groups of Palestinians gained Israeli citizenship: those who were inhabitants and did not flee on the day of the establishment of the Israeli state and a child born to a Palestinian father or mother with Israeli citizenship. All other Palestinians who did not acquire the nationality of a third state remained stateless and without formal citizenship. Currently, even with the establishment of the Palestine Liberation Organization (“PLO”) and the international recognition of a Palestinian people, the entity of “Palestine” does not satisfy the international legal criteria of statehood. See TAKKENBERG, *THE STATUS OF PALESTINIAN REFUGEES IN INTERNATIONAL LAW*, *supra* note 27, at 178-80.

74. 1954 Convention Relating to the Status of Stateless Persons (hereinafter, 1954 Statelessness Convention), Sept. 23, 1954, 360 U.N.T.S. 117.

75. 1961 Convention on the Reduction of Statelessness (hereinafter, 1961 Statelessness Convention), Aug. 30, 1961, 989 U.N.T.S. 175.

76. As of December 1999, forty-two states are party to the 1954 Statelessness Convention, of which, only three Arab states—Algeria, Libya and Tunisia—are parties. Israel is a party to the Convention. Multilateral Treaties Deposited with the Secretary General 274, U.N. Doc. ST/LEG/SER.E/18 (2000). On the other hand, only nineteen states have ratified the 1961 Statelessness Convention, of which, only one—Libya—is an Arab state. Israel is a signatory, but has not ratified the Convention. TAKKENBERG, *THE STATUS OF PALESTINIAN REFUGEES IN INTERNATIONAL LAW*, *supra* note 27, at 186.

77. Interpretations of the status of Palestinians as stateless persons have varied even within states that are a signatory to the Conventions. For example, the German Federal Ministry of Interior views Palestinians “originating” from Lebanon as having “indeterminate” or “unsettled” status, and therefore not eligible for the guarantees of the 1961 Statelessness Convention. Akram, *Temporary Protection as an Instrument for Implementing the Right of Return for Palestinian Refugees*, *supra* note 66, at 17.

78. These rights include travel documents, employment authorization and granting nationality to stateless children born in those countries. *Id.* at 16.



to fill in the gaps left by the previous convention by expanding the definition of statelessness and proposing specific measures for the elimination of statelessness.<sup>79</sup> Article 11 in the 1961 Convention provides for the establishment of an agency with the mandate to protect and assist stateless persons claiming the benefit of the Convention. This mandate was entrusted to the UNHCR by the UN General Assembly in 1974. Acting in lieu of the UNGA, the UNHCR has yet to establish an agency. Rather, UNHCR has only taken very initial steps in exercising this mandate, such as communications with other organizations.<sup>80</sup> Therefore, while Palestinian refugees who lack a citizenship or nationality in any country qualify as *de jure* stateless persons, the two Conventions on statelessness have had minimal effectiveness in providing viable protection and solutions to these stateless persons who would otherwise be entitled to their benefits.

#### *E. The Arab Leagues' Attempt to Close the "Protection Gap"*

In the absence of durable solutions for Palestinians as set forth by the UNGA Resolution 194(III), the Arab League<sup>81</sup> adopted a series of resolutions concerning the treatment and status of Palestinian refugees in their territories. Among these resolutions are the:

- **League of Arab States Council ("LASC") Resolution 424:** This resolution allowed for the reunification of dispersed Palestinian families in the current place of residence of the head of the household.<sup>82</sup>

79. Akram, *Recommendations for Durable Solutions for Palestinian Refugees*, *supra* note 3, at 15.

80. While UNHCR has not established an agency, it has begun discussion on collaboration with human rights organizations (such as the Centre for Human Rights) to address the need to provide protection for stateless persons. Furthermore, UNHCR is also cooperating in this area with the Council on Europe, the Organization for Security and Cooperation in Europe, the International Law Commission, parliamentary commissions and other interested governmental and non-governmental organizations. See Note on UNHCR and Stateless Persons, Doc. No. EC/1995/SCP/CRP.2 (1995).

81. The Arab League is the most important regional body in the Arab world. It was established by the Arab League Pact in March 1945 in order to draw closer relations between member states and to work in collaboration. The Arab world comprises of twenty-two Arab states that are members of the Arab League: Algeria, Bahrain, the Comoros Islands, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Palestine, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, the United Arab Emirates, and Yemen. Only nine of the twenty-two members of the Arab League are parties to both the Refugee Convention and the Refugee Protocol: Algeria, Djibouti, Egypt, Mauritania, Morocco, Somalia, Sudan, Tunisia, and Yemen. Akram, *Temporary Protection as an Instrument for Implementing the Right of Return for Palestinian Refugees*, *supra* note 66, at 8.

82. LASC Resolutions are based on proposals and suggestions submitted to the LAS by the permanent Palestinian representative, the General Administration for Palestine Affairs at the General Secretariat and the Supervisory Conference on Palestinian Refugee Affairs in Arab host states. See Akram, *Temporary Protection as an Instrument for Implementing the Right of Return for Palestinian Refugees*, *supra* note 66 at 49 n.95. For a compilation of LASC resolutions in English, see Palestinian Diaspora and Refugee Centre (SHAML), The League of Arab States and Palestinian Refugees' Residency Rights, available at <http://www.shaml.org> (last visited April 30, 2008). LASC Resolution

- **LASC Resolution 714:** This resolution provided for the issuance of travel documents to refugees.<sup>83</sup>
- **LASC Ministers of the Interior Resolution 8:** This resolution granted bearers of travel documents equal treatment as citizens of the issuing state.<sup>84</sup>
- **1965 Protocol on the Treatment of Palestinians (“Casablanca Protocol”):** This resolution sought to regularize the status of Palestinians in the states where they had fled in 1948.<sup>85</sup>

Of the resolutions adopted by the Arab League, the most important resolution was adopted in Casablanca in 1965, commonly referenced as the Casablanca Protocol. In an effort to regularize the status of Palestinians in the states where they had fled in 1948, the Casablanca Protocol requires that Arab states afford Palestinian refugees with equal treatment with regards to: (1) employment; (2) the right to leave and return to the territory of the state in which they reside; (3) freedom of movement between Arab states; (4) issuance and renewal of travel documents; and (5) freedom of residence, work and movement.<sup>86</sup>

Despite the Casablanca Protocol’s limited scope, some of its provisions are more generous than those in the Refugee Convention. Under the Casablanca Protocol, Palestinian refugees have the right to employment on par with nationals, in contrast to the Refugee Convention which only provides for treatment as favorable as possible.<sup>87</sup> Additionally, Palestinian refugees are granted freedom of movement between all Arab states who are signatories of the Casablanca Protocol, whereas the Refugee Convention only grants refugees freedom of movement within a host country.<sup>88</sup> Furthermore, under the Casablanca Protocol, the country of first refuge becomes primarily responsible for the issuance and extension of travel documents to Palestinian refugees, whereas under the Refugee Convention, the responsibility concerning the issuance and extension of travel documents is transferred to the contracting state where the refugee lawfully took residence.<sup>89</sup>

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424 was passed in 1952.

83. *Id.* LASC Resolution 714 was passed in 1954.

84. Equal treatment for Palestinian refugees includes freedom of residency, employment and mobility as well as being prosecuted according to the prevailing laws of the Arab state. LASC Ministers of the Interior Resolution 8 was passed in 1982. *Id.*; See also Akram, *Temporary Protection as an Instrument for Implementing the Right of Return for Palestinian Refugees*, *supra* note 66 at 49 n.99.

85. The League of Arab States and Palestinian Refugees’ Residency Rights, *supra* note 82. The Protocol on the Treatment of Palestinians was passed in 1965.

86. *Id.* at 8.

87. *Id.* at 9.

88. *Id.*

89. *Id.*

Yet the LASC Resolutions and the Casablanca Protocol afford Palestinians only temporary protection. They do not extend beyond that limited mandate to grant them long-term durable solutions which allow for their resettlement or local integration through permanent status.<sup>90</sup> The unfortunate reality on the ground is a lack of compliance by Arab states with the LASC Resolutions and the Casablanca Protocol. Only ten of the twenty-two Arab states ratified the Casablanca Protocol<sup>91</sup> and several other states—Kuwait, Lebanon and Libya—ratified the Protocol with major reservations.<sup>92</sup> LASC Resolution 5093 further weakened the protection afforded to Palestinian refugees by recommending that internal state laws govern the application of the Casablanca Protocol,<sup>93</sup> essentially revoking the protocol and denying Palestinian refugees many basic human rights.

Despite the attempts of Arab states to standardize and formalize treatment of Palestinian refugees in the Arab world through the Casablanca Protocol and the LASC Resolutions, the lack of binding and enforceable regional standards have resulted in varying standards of treatment for the refugees depending on their host state. Currently, in Jordan, only Palestinian refugees from the 1948 war have Jordanian nationality.<sup>94</sup> On the other hand, 1967 Palestinian refugees from the Gaza Strip who did not hold Jordanian passports at the time they took refuge have been denied any civil rights and are mostly confined to a camp in the northern city of Jarash.<sup>95</sup> Palestinian refugees in Syria are not granted any formal citizenship but have similar residency, social and civil rights as Syrian nationals.<sup>96</sup> In Lebanon, Egypt and Saudi Arabia, procedures that allow nonresi-

90. While many critics challenge Arab states' failure to grant permanent status to Palestinian refugees, under international law Arab states are not under any obligation to grant permanent status. The only legal customary norm that is required of all states under international law is the obligation of *non-refoulement*. Additionally, the majority of Palestinian refugees do not desire permanent status in the Arab states they reside in out of fear of forsaking their right to return. See TAKKENBERG, *THE STATUS OF PALESTINIAN REFUGEES IN INTERNATIONAL LAW*, *supra* note 27, at 52.

91. The ten states are Jordan, Algeria, Sudan, Iraq, Syria, Egypt, Yemen, Kuwait, Lebanon, and Libya. Akram, *Temporary Protection as an Instrument for Implementing the Right of Return for Palestinian Refugees*, *supra* note 66, at 114.

92. Kuwait does not allow Palestinian refugees the right to self-employment on par with Kuwaiti nationals. Palestinians' right to employment in Lebanon is subject to the social and economic conditions in the country. Their right to leave and enter is subject to "applicable rules and regulations" and holders of travel documents must obtain a re-entry visa to return to Lebanon. In Libya, the right to employment is subject to the same conditions imposed upon other nationals of Arab states. *Id.* at 114-15

93. "For some time, the Arab states on an individual basis had been annulling by administrative decree the rights accorded the Palestinians under the Casablanca Protocol; after the Gulf War, this trend culminated in the adoption by the host countries of Arab League Resolution 5093 officially revoking the protocol, which has been superseded by the internal laws of each host state." Abbas Shibliak, *Residency Status and Civil Rights of Palestinian Refugees in Arab Countries*, XXV 3 J. PALESTINE STUD., 36, 42 (1996).

94. See BADIL, *CLOSING PROTECTION GAP*, *supra* note 8, at 16.

95. Palestinian refugees in Jordan are probably afforded the best treatment in the Arab world. For the most part, their right to employment and education is on par with Jordanian nationals. See *Id.*

96. *Id.* at 17. Shortly after the 1948 war, Syria passed laws giving Palestinians a status equal to

dents to apply for naturalization do not apply to Palestinian refugees.<sup>97</sup> Palestinian refugees in Lebanon probably live under the most adverse conditions.<sup>98</sup> Only Palestinian refugees who took refuge in Lebanon in 1948 are eligible for residency whereas all other refugees—including 1967 refugees—are considered illegal residents.<sup>99</sup> Furthermore, Palestinian refugees in Lebanon lack access to public health care, cannot own property, cannot work in skilled and semi-skilled professions and can only seek employment with a work permit which is difficult to obtain.<sup>100</sup> In recent years, these policies have resulted in many refugees fleeing to Western European countries as well as to the United States.

Due to the lack of a unified standard of treatment, Palestinian refugees' rights and access to government services range drastically from almost absolute status, on par with host state nationals (e.g., Jordan), to non-status and minimal rights that fall extremely short of the rights granted to nationals of the host state (e.g., Lebanon).<sup>101</sup> Theoretically, the Arab League sought to close the protection gap by acting independently and outside of the international refugee framework of the UNHCR. However, the reality is that their lack of compliance with the adopted provisions in the LASC Resolutions and the Casablanca Protocol has diminished the protection gap for Palestinian refugees who currently lack any functional international *or* regional protection.

#### IV

#### REINTERPRETING ARTICLE 1D

As seen by the previous section, the lack of regional protection for Palestinian refugees in the Arab world places an even greater burden on the international community to address the refugee crisis through the implementation of durable solutions. At no point since 1948 has the international community tried to incorporate Palestinian refugees in the global protection regime afforded to all other refugees.<sup>102</sup> While the original intentions of creating a special regime unique to Palestinian refugees were honorable, the reality for nearly the last sixty years is that Palestinian refugees are at a considerable loss and have been overwhelm-

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that of Syrian nationals. They need not acquire a permit in order to work. They may travel freely and are eligible for free education and are granted equal access to Syrian universities. Yet, they are still denied the right to vote and have never been offered citizenship. See Laura Anne Reeds, *Sixty Years in Limbo: The Duty of Host States to Integrate Palestinian Refugees under Customary International Law*, 81 N.Y.U. L. REV. 351, 374-75 (2006).

97. Shiblak, *Stateless Palestinians*, *supra* note 72. In Lebanon, Palestinian refugees are considered a special category of foreigners who are denied most of the rights afforded to other foreigners. See BADIL, CLOSING PROTECTION GAP, *supra* note 8, at 15.

98. *Id.* at 15.

99. *Id.*

100. See BADIL, CLOSING PROTECTION GAP, *supra* note 8, at 15.

101. In addition to Lebanon, Syria and Jordan, Palestinian refugees in the Arab world also reside in large numbers in Egypt, Saudi Arabia, Kuwait, Libya and Iraq. *Id.* at 17-20.

102. Parvathaneni, *UNRWA's Role in Protecting Palestinian Refugees*, *supra* note 38, at 3.

ingly disadvantaged by the international community's interpretation of international refugee law.<sup>103</sup> True, the Palestinian refugee problem is unique because of the UN's special responsibility for creating the refugee flow in the first place. However, the defining elements of the refugee problem are not unique to the Palestinian refugee case.<sup>104</sup> There have been innumerable situations of mass exodus due to war and massive violations of human rights where repatriation and, to a lesser extent, restitution were granted to many other groups of refugees.<sup>105</sup> The real uniqueness of the Palestinian refugee case stems from the egregious, longstanding denial of international protection and the lack of access to durable solutions made available to all other refugees as a matter of law and right.<sup>106</sup> In particular, the specific denial of protection to Palestinians is largely due to the misinterpretation of the special regime established for Palestinian refugees under a series of provisions and agency mandates—most specifically Article 1D of the Refugee Convention.<sup>107</sup>

A handful of scholars (including Susan M. Akram, Guy Goodwin-Gill, Atle Grahl-Madsen, Terry Rempel and Lex Takkenberg<sup>108</sup>) have sought to reinterpret

103. The UNHCR Handbook reads in relevant parts: "Exclusion under this clause applies to any person who is in receipt of protection or assistance from organs or agencies of the United Nations, other than the United Nations High Commissioner for Refugees. Such protection or assistance . . . is currently given by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) . . . With regard to refugees from Palestine, it will be noted that UNRWA operates only in certain areas of the Middle East, and it is only there that its protection or assistance are given. Thus, a refugee from Palestine who finds himself outside that area does not enjoy the assistance mentioned and may be considered for determination of his refugee status under the criteria of the 1951 Convention. It should normally be sufficient to establish that the circumstances which originally made him qualify for protection or assistance from UNRWA still persist and that he has neither ceased to be a refugee under one of the cessation clauses nor is he excluded from the application of the Convention under one of the exclusion clauses." TAKKENBERG, *THE STATUS OF PALESTINIAN REFUGEES IN INTERNATIONAL LAW*, *supra* note 27, at 95.

104. Akram, *Recommendations for Durable Solutions for Palestinian Refugees*, *supra* note 3, at 6.

105. In the 1990s alone, an estimated 12 million refugees were repatriated to Angola, Bosnia-Herzegovina, Cambodia, Ethiopia, Guatemala, Iraq, Mozambique, Rwanda, Somalia and South Africa. See *Refugee Resettlement in Selected Countries, 1990-99*, in *REFUGEES AND OTHERS OF CONCERN TO THE UNHCR 1999, STATISTICAL OVERVIEW* (Geneva: UNHCR, 1999).

106. Proposals for a lasting solution go beyond the scope of this paper. There have been proposals for a two-state solution as well as for a single, secular state. For more discussion on such proposals, see TAKKENBERG, *THE STATUS OF PALESTINIAN REFUGEES IN INTERNATIONAL LAW*, *supra* note 27.

107. Akram, *Recommendations for Durable Solutions for Palestinian Refugees*, *supra* note 3, at 6.

108. Susan M. Akram is an Associate Professor at Boston University School of Law. Guy Goodwin-Gill is a Professor of International Refugee Law at the University of Oxford and President of the Refugee Legal Centre in London. The late Atle Grahl-Madsen acted as a Special Consultant for the Office of the UNHCR and was a central figure in modern international refugee law. Terry Rempel heads the research unit of Badil Resource Center for Palestinian Refugee Rights in Bethlehem. Lex Takkenberg serves as the Chief of Field Relief and Social Services Programme in Gaza for UNRWA. My research is primarily based on these scholars' works and I have referenced the relevant articles throughout this piece. My proposal is merely an elaboration on their insights and is not

Article 1D in a fashion that is more consistent with its plain language, drafting history, scope and purpose. They argue that Article 1D of the Refugee Convention has inaccurately been read as an exclusionary clause for Palestinian refugees residing in UNRWA-mandated areas. According to their scholarship, it is clear that Article 1D (and thus in turn, Amendment 7(c)) have been misunderstood and misapplied in light of: (1) the plain language of Article 1D; (2) the mandates of UNRWA and UNCCP; (3) the drafting history; and (4) the scope and purpose of the Refugee Convention and the UNHCR Statute. Furthermore, in the rules of interpretation embodied in the Vienna Convention on the Law of Treaties, the general rule is that “[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.”<sup>109</sup> In order to understand the ordinary meaning, object and purpose of Article 1D and, similarly, Amendment 7(c) of the UNHCR Statute, one should also look to the *travaux préparatoires*<sup>110</sup> as a “supplementary means of interpretation.”<sup>111</sup>

#### A. Plain Language of Article 1D

Article 1D of the Refugee Convention is based on two sentences. The first sentence can be described as the contingent provision, “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.” The second sentence serves as the inclusion provision, “When such protection or assistance has ceased for any reason, without the position of such person being definitively settled in accordance with the relevant

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necessarily meant to replace any of their works or recommendations regarding the reinterpretation of Article 1D and the treatment of Palestinian refugees.

109. As a whole, the treaty reads: “1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. 2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes: (a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty; (b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty. 3. There shall be taken into account, together with the context: (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions; (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation; (c) any relevant rules of international law applicable in the relations between the parties. 4. A special meaning shall be given to a term if it is established that the parties so intended.” Art. 31, Convention on the Law of Treaties, 23 May 1969; See ch. II, n.34. Art. 31.

110. *Travaux préparatoires* is a French phrase meaning preparatory work, and refers to the official records of negotiation. When published, the *travaux* are useful in clarifying the intentions of a treaty or other instrument.

111. Article 32 of the Convention on the Law of Treaties reads: “Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31: (a) leaves the meaning ambiguous or obscure; or (b) leads to a result which is manifestly absurd or unreasonable.”

resolutions adopted by the General Assembly of the United Nations, these persons shall *ipso facto*<sup>112</sup> be entitled to the benefits of this Convention.” Based on the plain language of these two sentences, it would seem that these two provisions are inconsistent with one another. While the first sentence *precludes* coverage of the Convention if a refugee is receiving protection or assistance, the second sentence *extends* coverage if either protection or assistance has ceased.<sup>113</sup> The question arises of whether the second sentence is triggered by the cessation of assistance, the cessation of protection, the cessation of either one or the cessation of both. As it has been prevalently interpreted, in order for Palestinian refugees to qualify for the benefits of the Refugee Convention, they must not be receiving *any* benefits from a UN organ or agency, whether in the form of protection or assistance. Yet looking at the plain language of the “or” in the clause of the second sentence, “when such protection *or* assistance has ceased” [italics added] clearly indicates that the drafters intended the Convention to be applicable to Palestinian refugees at the cessation of *either* protection or assistance. This interpretation is confirmed and bolstered by the drafting history and Article 1D’s scope and purpose.

#### *B. Drafting History and Article 1D’s Scope and Purpose*

Approximately five years passed between the adoption of the first United Nations resolution concerning the status of refugees in 1946 and the conclusion of the drafting of the Refugee Convention in 1951. The UNHCR Statute was adopted only six months prior to the Convention.<sup>114</sup> The drafting process took place over three stages which will be examined in this section to help shed light on Article 1D’s scope and purpose. Discussions during the three drafting sessions of Article 1D and its related provisions is primary evidence concerning the UN delegates’ intentions towards the Palestinian refugees. Based on these discussions, the delegates are seen forming a consensus that the Palestinians required unique international protection and assistance. Accordingly, this protection and assistance would be extended to Palestinian refugees until their refugee problem was definitively solved according to the UN Resolutions on the subject.

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112. *Ipsa Facto*: “by that very fact.” Oxford English Dictionary 271 (5th ed., 1999).

113. This viewpoint was confirmed in a landmark decision by the German Federal Administrative Court (the *Bundesverwaltungsgericht*) dealing with various aspects of Article 1D when it stated: “The view expressed by the appeals court, that article 1D, first sentence, of the 1951 Convention requires, like the other exclusion clauses in article 1E and 1F of the Convention, that the elements of the general refugee definition of article 1A be met, is not to be followed. Article 1D contains in the first sentence an exclusion and in the second sentence an inclusion clause in relation to the 1951 Convention. The second sentence of article 1D is not confined to regulating the duration of the exclusion of refugee status under article 1A, but rather independently and directly determines the refugee status of certain persons.” See TAKKENBERG, *THE STATUS OF PALESTINIAN REFUGEES IN INTERNATIONAL LAW*, *supra* note 27, at 94.

114. *Id.* at 57.

While UNRWA's mandate was temporary and immediate, UNCCP's mandate would not cease before the refugee problem was solved.<sup>115</sup>

The *travaux préparatoires* of the Refugee Convention reflect this consensus for three basic reasons: (1) Palestinians fell into all three categories of persons of concern as refugees, stateless persons and displaced persons; (2) the UN had a particular legal responsibility toward Palestinian refugees because of their role in creating the initial problem; and (3) Palestinians as a group qualify under the Convention definition of refugee because of their comprehensive expulsion and persecution by Zionist forces.<sup>116</sup>

In the first stage of the drafting process of the Refugee Convention, the United States submitted a proposal differentiating between "refugees" who would qualify for protection under the Refugee Convention and "neo-refugees"<sup>117</sup> who would be excluded from the Refugee Convention. The U.S. delegate proposed that the category of "neo-refugees" would include "the approximately 600,000 Arab refugees for whom the United Nations had made special arrangements" as well as the Kashmiri and Indian refugees.<sup>118</sup> This proposal was met with great criticism.<sup>119</sup> However, the category approach was adopted and, in the draft proposal submitted to the Economic and Social Council ("ECOSOC"), refugees were defined in this same group/category manner without the protective differentiation between "refugees" and "neo-refugees" as proposed by the U.S.<sup>120</sup> Furthermore, there was a consensus among the delegates that the Palestinian refugees required international protection.<sup>121</sup> The subsequent stages of the drafting process would flesh out the form this international protection would assume.

115. *Id.* at 24-8.

116. See THE COLLECTED TRAVAUX PRÉPARATOIRES, *supra* note 50. See also Akram, *Recommendations for Durable Solutions for Palestinian Refugees*, *supra* note 3, at 32. For discussion of Zionist persecution, see *supra* note 51.

117. The "neo-refugee" category reads as: "Neo-refugees. Any person, other than a person of German ethnic origin residing in Germany, or a displaced person as defined in clause 2 of this subparagraph, or a refugee for whom provision is made in General Assembly resolutions 212 (III) of 19 November 1948 and 302 (IV) of 8 December 1949, who as a result of events subsequent to the outbreak of the Second World War, is unable or unwilling to avail himself of the protection of the government of his country of nationality or former nationality, and who has not acquired another nationality." TAKKENBERG, *THE STATUS OF PALESTINIAN REFUGEES IN INTERNATIONAL LAW*, *supra* note 27, at 59.

118. Summ. rec. of the 3rd mtg., 26 Jan. 1950, U.N. Doc. E/AC.32/SR.3, paras. 37-8; THE COLLECTED TRAVAUX PRÉPARATOIRES, *supra* note 50, at 165. See also TAKKENBERG, *THE STATUS OF PALESTINIAN REFUGEES IN INTERNATIONAL LAW*, *supra* note 27, at 59.

119. *Id.* at 60.

120. U.N. Doc. E/1618 and Corr. 1; THE COLLECTED TRAVAUX PRÉPARATOIRES, *supra* note 50, at 405. The category approach for determination of refugee status was later changed to the individualized definition as seen in Article 1A of the Refugee Convention.

121. U.N. GAOR, 5th Sess, 3rd Comm., Sum. Rec., 324th mtg., 22 Nov. 1950, paras. 44-9; see also 326th mtg., 24 Nov., 1950, para.31f. See also Akram, *Recommendations for Durable Solutions for Palestinian Refugees*, *supra* note 3, at 32.



In the second stage of drafting, the Arab states came forth with their proposals of how they envisioned the special protection regime for the Palestinian refugees operating. As discussed earlier, their primary objective was to provide Palestinian refugees with international protection that would not relegate them to a position of similar importance to other refugee groups.<sup>122</sup> The Lebanese delegate initially discussed the differences between the Palestinian refugee problem as opposed to all other refugee problems<sup>123</sup> and was supported by the Saudi Arabian delegate's official proposal of a special regime for Palestinians:

If the General Assembly were to include the Palestine refugees in a general definition of refugees, they would be submerged and would be relegated to a position of minor importance. The Arab states desired that those refugees should be aided pending their repatriation, repatriation being the only solution of their problem. To accept a general definition without the clause proposed by the delegations of Egypt and Lebanon, as well as his own, would be to renounce insistence on repatriation pending a proper settlement of the [Arab-Israeli conflict], the Palestine refugees should continue to be granted a separate and special status.<sup>124</sup>

This proposed amendment of a special separate regime for Palestinian refugees was met with general approval and it was at this stage that the UNHCR Statute was adopted with the Arab states' amendment 7(c) included.

In the third stage of the drafting process at the Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, there was considerable debate whether the Refugee Convention should define refugees in a specified and categorical fashion or whether it should define them in a broad and individualized manner.<sup>125</sup> It was in this context that Palestinian refugees were frequently mentioned to determine the scope and purpose of the exclusionary clause. Out of fear of misinterpretation,<sup>126</sup> the Arab states proposed a second amendment that read similarly to the second sentence of the current Article 1D:

122. For more information on this, *see supra* note 60 and relevant text.

123. "The delegations concerned were thinking of the Palestine refugees, who differed from all other refugees. In all other cases, persons had become refugees as a result of action taken contrary to the principles of the United Nations and the obligation of the Organization toward them was a moral one only. The existence of Palestine refugees, on the other hand, was a direct result of a decision taken by the United Nations itself, with full knowledge of the consequences. The Palestine refugees were therefore a direct responsibility on the part of the United Nations and could not be placed in the general category of refugees without betrayal of that responsibility. Furthermore, the obstacle to their repatriation was not dissatisfaction with their homeland, but the fact that a Member of the United Nations was preventing their return." U.N. GAOR, 3rd Comm., 5th Sess., 328th mtg., para. 47.

124. U.N. GAOR, 3rd Comm., 5th Sess., 328th mtg., paras. 52, 55.

125. *See* TAKKENBERG, THE STATUS OF PALESTINIAN REFUGEES IN INTERNATIONAL LAW, *supra* note 27, at 63.

126. A number of delegates including the High Commissioner for Refugees were of the opinion that the effect of Article 1D was to make the exclusion of Palestinian refugees from the benefits of the Refugee Convention permanent. Out of fear of this misinterpretation, the Egyptian representative submitted his amendment which later was included as the second sentence of Article 1D. It was too late to include this same sentence in the UNHCR Statute which had already passed weeks prior to the Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons. *See* TAKKENBERG, THE STATUS OF PALESTINIAN REFUGEES IN INTERNATIONAL LAW, *supra* note 27, at

Add to the following provision to the text of Article 1, as a second sub-paragraph of paragraph C: When such protection or assistance has ceased for any reason, without the position of such person being definitively settled in accordance with the relevant resolutions adopted by the United Nations General Assembly, they shall *ipso facto* be entitled to the benefits of this Convention Text.<sup>127</sup>

According to the Egyptian representative, the intent of this amendment was "to make sure that Arab refugees from Palestine, who were still refugees when the organs and agencies of the United Nations at present providing them with protection or assistance ceased to function, would automatically come within the scope of the Convention."<sup>128</sup> The Iraqi delegate further commented that "if the Egyptian amendment was rejected, the refugees it was designed to protect might eventually find themselves deprived of any status whatsoever."<sup>129</sup> Even with the added language, there was fear by some that it was insufficient and that the Palestinian refugees would find themselves without international protection.<sup>130</sup> This discussion came so late in the process however, that the delegates did not have the opportunity to reconcile the discrepancy between the two sentences of Article 1D. Nor did they have time to take into account more detailed amendments such as the amendment proposed by the Commission of Churches on Internal Affairs. Its proposal stated in part: "(iii) Material assistance is not in itself a guarantee of protection and the commission suggests that, if this clause is to stand, it should be amended to read 'assistance and protection,' rather than assistance or protection."<sup>131</sup> Furthermore, the UN had already passed the UNHCR Statute without the second *ipso facto* sentence that appears in Article 1D.

Based on the plain reading of Article 1D, the drafting history of Article 1D and the scope and purpose of the special provisions created for the Palestinian refugees, there is no doubt that the international community at the drafting of the UNHCR Statute, as well as the Refugee Convention, envisioned a regime specifically for the Palestinian refugees that included both protection *and* assistance. In fact, only the Israeli delegate opposed the treatment of the Palestinians as "refugees" and felt no need for Palestinian refugees to be included within the Refugee Convention, let alone to have a specific exclusive regime.<sup>132</sup> The general consensus of the international community indicates the overwhelming need

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127. U.N. Doc. A/CONF.2/12; THE COLLECTED TRAVAUX PREPARATOIRES, *supra* note 50, at 20.

128. Summ. rec. of the 28th mtg. at 6, 19 July 1951, U.N. Doc. A/CONF.2/SR.29; THE COLLECTED TRAVAUX PREPARATOIRES, *supra* note 50, at 488.

129. Summ. rec. of the 29th mtg. at 8, 19 July 1951, U.N. Doc. A/CONF.2/SR.29; THE COLLECTED TRAVAUX PREPARATOIRES, *supra* note 50, at 489.

130. See TAKKENBERG, THE STATUS OF PALESTINIAN REFUGEES IN INTERNATIONAL LAW, *supra* note 27, at 65-7.

131. The Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons (Geneva, July 2-25, 1951), Commission of the Churches on International Affairs Observations Concerning Article 1: A/CONF.2/NGO/10. p. 2, *Id.* at 633. See also Akram, *Recommendations for Durable Solutions for Palestinian Refugees*, *supra* note 3, at 35.

132. Summ. rec. of the 22nd mtg. at 8, U.N. Doc. A/CONF.2/SR.22; THE COLLECTED TRAVAUX PREPARATOIRES, *supra* note 50, at 407.

to provide Palestinian refugees not only with a continuity of protection, but also a *heightened* level of protection on par with their special status. This is made abundantly clear from the incorporation of the clarifying amendment embodied in the second sentence of Article 1D. Initially, this heightened protection came through the formation of a special UN commission, the UNCCP, with a very specific mandate embracing the Palestinians. Yet an examination of UNCCP's expansive mandate shows that it is functionally unlikely, if not impossible, to work towards durable solutions and seek conciliatory political measures to end the Israeli-Palestinian conflict. Rather, the Palestinian refugee situation needs to be included in the current UNHCR mandate in accordance with the Refugee Convention.

## V

### SEEKING LASTING SOLUTIONS: A SOLUTION FOR THE PALESTINIAN REFUGEE CRISIS

The preceding discussion makes clear that the spirit of Article 1D requires that Palestinian refugees receive a heightened level of protection. While UNCCP sought to provide that protection, its mandate was excessively expansive and consequently unrealistic. UNCCP's mandate was multifaceted and involved:

- Conciliatory efforts and intervention with state parties to promote and protect the internationally-protected rights of the Palestinian refugees;
- Measures to improve the situation of the refugees;
- The preservation and promotion of the restitution of refugee properties; and
- The promotion of durable solutions for refugees—including repatriation, local absorption and resettlement.<sup>133</sup>

As a result, UNCCP's ability to facilitate the implementation of its specific mandate for the Palestinian refugees was undermined by its efforts to simultaneously conciliate between political heads of states and, specifically, with Israel. As UNCCP's mandate was hinged on its ability to negotiate a solution to the Israeli-Palestinian conflict, UNCCP's failure led to its stagnation and eventual deterioration. Starting in 1951 and as a result of the political impasse, the UNGA passed a number of measures which effectively terminated UNCCP's role of implementing durable solutions for Palestinian refugees and curtailed its role as

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133. See Terry Rempel, *The United Nations Conciliation Commission for Palestine, Protection, and a Durable Solution for Palestinian Refugees* (hereinafter, Rempel, *The United Nations Conciliation Commission for Palestine, Protection, and a Durable Solution for Palestinian Refugees*) 5 (BADIL Res. Ctr., 2000).

intervener with Israel or other states to protect refugees' rights and interests.<sup>134</sup> Currently, UNCCP continues to symbolically operate out of New York with no functional significance.<sup>135</sup> The experience of UNCCP raises both concerns and questions of what kind of international agency should be afforded the responsibility of protecting the Palestinian refugees.

#### *A. Inclusion into the UNHCR Mandate*

While a reformed UNCCP with a revised mandate that excludes its role as a conciliatory body is an option, the reality is that the UNCCP has had little practical experience related to the implementation of durable solutions. It effectively lasted a span of only five years and focused the bulk of its efforts on conciliating with Israeli officials to end the political stalemate that resulted with the partition of historic Palestine. Based on UNCCP's historic failures and lack of international clout, it would be unrealistic to reinvest in the creation of a functional UNCCP which would exist outside of the UNHCR mandate.

A second, and equally unattractive, option would be the expansion of UNRWA's role to include a formalized protection mandate. Although UNRWA has expanded its own mandate over the years through ad hoc measures to provide for the short-term protection of Palestinian refugees, a further expansion to entrust UNRWA with the implementation of durable solutions for Palestinian refugees will likely prove futile. Not only does UNRWA lack the rich experience and resources of UNHCR, but Israel has vehemently protested its expansion.<sup>136</sup> Furthermore, similar to UNCCP, the conflation of UNRWA's current assistance mandate with a protection mandate will be overly expansive, like that of UNCCP. Like UNCCP, UNRWA will likely be unable to fulfill this expansive mandate, leaving Palestinian refugees once again without any viable and effective international protection.

Consequently, the better solution for Palestinian refugees is to include them within the UNHCR protection mandate which would work in conjunction with UNRWA's continuing assistance mandate.<sup>137</sup> This option is most consistent with the drafters of Article 1D and its related provisions' original regime of heightened protection. Additionally, as indicated by the reinterpretation of Article 1D of the Refugee Convention, Palestinian refugees should be afforded pro-

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134. Akram, *Palestinian Refugees and Their Legal Status*, *supra* note 4, at 42.

135. Rempel, *The United Nations Conciliation Commission for Palestine, Protection, and a Durable Solution for Palestinian Refugees*, *supra* note 133.

136. See TAKKENBERG, *THE STATUS OF PALESTINIAN REFUGEES IN INTERNATIONAL LAW*, *supra* note 27, at 280-303.

137. UNRWA's mandate was only temporary and sought to "prevent conditions of starvation and distress among the [Palestinian refugees] to further conditions of peace and stability." The General Assembly envisioned its dismemberment within a few years after its creation. Nonetheless, the General Assembly has continually renewed UNRWA's mandate on a three-year basis since its inception. Most recently, UNRWA's mandate was renewed from November 25, 2004 until June 30, 2008. See BADIL, *CLOSING PROTECTION GAP*, *supra* note 8, at 50.

tection by the UNHCR upon the cessation of protection under the UNCCP. Although the General Assembly may be required to take action in order to effectuate the dual UNHCR/UNRWA regime, both the UNHCR Statute and UNHCR practice already provide for such an option. Under Chapter II, paragraph 10 of the UNHCR Statute, the Agency may delegate and coordinate refugee assistance with other private and public agencies. Currently, UNHCR coordinates assistance with numerous agencies and organizations world-wide.<sup>138</sup>

Considering UNHCR's fundamental role in protecting refugees and implementing durable solutions to numerous refugee crises throughout the decades, UNHCR is not only empowered but also the most suited to implement the appropriate Conventions and Resolutions relating to the rights and enforcement of solutions for the Palestinian refugees. UNHCR's clear mandate to represent refugees will allow it to present Palestinian refugee claims and rights to the General Assembly, to ECOSOC and to other international fora.<sup>139</sup> Additionally, Palestinian refugees would be afforded all the rights and guarantees that are found in the Refugee Convention, including: freedom of movement, access to courts, administrative assistance, rights in movable and immovable property, freedom of religion and housing rights, amongst many others.<sup>140</sup> In addition to general human rights protections, refugee law principles applicable to other refugees should be similarly applied to Palestinian refugees. These principles theoretically include the guarantee that refugees will be granted voluntary choice in determining which of the three main durable solutions—voluntary repatriation, local integration, or third state resettlement—he/she wishes to exercise.<sup>141</sup>

But beyond mere inclusion in the UNHCR refugee mandate, the original consensus of the international community was that Palestinian refugees should receive a *heightened* refugee regime that is consistent with UNGA Resolution 194 which calls for their repatriation and compensation. While the *ipso facto* language of Article 1D entitles Palestinian refugees to the benefits of the Refugee Convention,<sup>142</sup> their rights to exercise their choice of repatriation or compensation is not necessarily compromised because their position has not been

138. See Akram, *Reinterpreting Palestinian Refugee Rights under International Law*, *supra* note 5, at 177.

139. The UNHCR represents refugees in most international forums, in negotiations over durable solutions for refugees, and in bilateral and multilateral committees or task forces. See Part III for discussion on UNHCR.

140. Akram, *Reinterpreting Palestinian Refugee Rights under International Law*, *supra* note 45, at 176-77.

141. Again, it is important to note that most refugees only can choose voluntary repatriation. Third-state resettlement and local integration depend on an agreement between the state of refuge and UNHCR. However, theoretically, the Refugee Convention and the UNHCR Statute promulgate the refugee's right of voluntary choice.

142. See 1951 Refugee Convention, *supra* note 32, art. 1D, 189 U.N.T.S. Preamble: "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."

“definitively settled in accordance with the relevant resolutions,” specifically UNGA Resolution 194. The reaffirmation of UNGA Resolution 194 over 100 times serves as strong evidence of international consensus on the Palestinian refugee question.<sup>143</sup> While the issues of repatriation and compensation for Palestinian refugees will likely not be immediately implemented by the UNHCR due to regional politics, the reiteration of Resolution 194 every year since it was initially passed in 1948 by the UNGA should keep those options open. This, consequently, alleviates Palestinian refugees’ fears of inclusion in the broader UNHCR mandate.

As such, the UNCCP, already functionally impotent for more than five decades, should be immediately dissolved and Palestinian refugees should be included within UNHCR’s mandate in the span of the next eight years. This eight-year development period will provide UNHCR the time to research and allocate the proper financial and physical resources for the implementation of the three durable solutions to the millions of Palestinian refugees. While it may take many additional years to successfully implement the three durable solutions for the Palestinian refugees, it is important that UNHCR is granted an interim time period to develop an action plan on how best to approach this challenge. This interim time period will also allow UNHCR to create memoranda of understanding with the Arab states who house the majority of Palestinian refugees. Currently, only nine Arab states—Algeria, Djibouti, Egypt, Mauritania, Morocco, Somalia, Sudan, Tunisia and Yemen—have passed and are, hence, legally bound by the Refugee Convention and the Refugee Protocol. As the UNHCR has done so often in the past, it should spend these next eight years negotiating with countries like Lebanon, Syria, Jordan, Saudi Arabia and a number of other Gulf states, to involve them in agreements about their Palestinian refugee populations in order to help implement durable solutions.<sup>144</sup> Furthermore, these next eight years will allow UNHCR to develop an annual phased process of working with the various Arab states as well as with Israel. It should seek for the integration of a specified number of Palestinian refugees in the former and the return of refugees in the latter.<sup>145</sup> Family reunification should be the primary factor in de-

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143. The General Assembly has reaffirmed Resolution 194(III) every single year with Israel voting solely in opposition. Following the Oslo agreements in 1993, the U.S., for the first time, abstained from voting on the resolution. See R.I. Khalidi, *Observations on the Right of Return*, 21 J. PALESTINE STUD. 29, 33 (1992).

144. Ideally, UNHCR would want to encourage these countries to pass the Refugee Convention and Protocol so that they are legally bound by them. Yet UNHCR’s primary objective with countries like Syria, Jordan, Lebanon and Saudi Arabia would be to encourage their participation in achieving durable solutions for Palestinian refugees. As discussed earlier, most of these countries were involved in the initial drafting process of the Refugee Convention. Therefore, it is likely that these countries will want to similarly participate in an international effort that seeks to address the largest refugee population within their borders.

145. Historically, Israel has been consistently unwilling to work with the international community in alleviating or addressing the Palestinian refugee problem. It stonewalled UNCCP efforts and other UN efforts. Israel has also flagrantly rejected Palestinian right of return. Yet I propose that the UNHCR include Israel in its solution despite the obvious barriers. As a signatory of both the Refu-

termining who will be integrated and who will be allowed to return. This process should be done incrementally in a manner that is least disruptive to the community that the refugee departs and the community where the refugee integrates. Within these first eight years, UNHCR should work to develop a foundational plan for the integration of Palestinian refugees within its mandate that will involve financial determinations as well as political negotiations with both the Arab states and Israel for the integration and repatriation of Palestinian refugees.

A subsequent question arises of who should be the beneficiaries of UNHCR's mandate. Since there is no formalized definition of Palestinian refugees other than the definition applied by UNRWA,<sup>146</sup> inclusion into UNHCR's mandate should be offered to: all UNRWA-registered refugees no matter where they are located; short-term visa holders; Palestinian refugees with indeterminate status; and those with no recognized status. In regards to the second sentence of Article 1D, which *automatically* entitles Palestinian refugees to the benefits of the Refugee Convention upon the cessation of UNCCP, Palestinian refugees should not be required to prove a well-founded fear of persecution under Article 1(A) in order to qualify for refugee status. This is due to the recognition that Palestinians, as a group, originally underwent persecution during expulsion from their lands and homes upon the partition of historic Palestine.<sup>147</sup> Furthermore, UNHCR should attempt communication with Western countries to clarify the confusion caused by the individualized "refugee" definition under Article 1(A)<sup>148</sup>, which has resulted in many Palestinian refugees having indeterminate status or being denied asylum. This clarification, along with the reinterpretation of Article 1D, should serve as a strong message for Western countries to similarly treat Palestinian refugees within their borders as beneficiaries of the Refugee Convention and the UNHCR Statute. While the UNHCR attempted to clarify the rights of Palestinian refugees outside of the UNRWA-mandated areas in 2002 in its *Note on the Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees*, many Western states have failed to implement this interpretation into their domestic laws and still deny Palestinian refugees their internationally-mandated rights and protections.<sup>149</sup>

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gee Convention and the Refugee Protocol, Israel has an international legal duty to abide by both treaties and to acknowledge its responsibility in returning a limited number of refugees. Israel has absorbed many Jewish refugees world-wide and therefore it is not beyond the imagination to presume that Israel would not act according to international will, international pressure, and international agreement in order to help alleviate the Palestinian refugee problem, which would inevitably be a strong first step towards a peaceful solution in the Israeli-Palestinian conflict. If Israel fails to act in accordance with international will, UNHCR should continue to develop an annual phased process where it might *seek* to resettle Palestinian refugees in more compliant Western nations.

146. See TAKKENBERG, *THE STATUS OF PALESTINIAN REFUGEES IN INTERNATIONAL LAW*, *supra* note 27, at 16.

147. See *supra* note 51 with accompanying text.

148. See *supra* note 66 on the protection gap of Palestinian refugees in Western countries.

149. See *supra* note 46; See also Susan M. Akram & Guy Goodwin-Gill, *Brief Amicus Curiae*, Board of Immigration Appeals, Falls Church Virginia, published in volume XI *THE PALESTINE Y.B. INT'L L* 51 (2002) for discussion of the inconsistencies of legal rulings in the U.S. based on inconsis-

### B. Developing an Interim Temporary Protection Program

In order to allow for the immediate protection of Palestinian refugees, UNHCR should set up an international conference that would involve all states who have a significant Palestinian population, as well as the United Nations. At this conference, an internationally-negotiated temporary protection program should be developed to address the immediate protection concerns of the Palestinian refugees until UNHCR is able to implement longer, more durable protection measures in accordance with its mandate and Statute. In 1980 and 1981, UNHCR's Executive Committee issued two conclusions concerning temporary protection for large-scale refugee influxes:

In the case of large-scale influx, persons seeking asylum should always receive at least temporary protection; and . . . States which, because of their geographical situation or otherwise, are faced with a large-scale influx, should as necessary and at the request of the State concerned receive immediate assistance from other States in accordance with the principle of equitable burden-sharing.<sup>150</sup>

Eventually, this temporary protection proposal by UNHCR was institutionalized into temporary protection statuses and was most effectively implemented by the E.U. and, to a lesser degree, by the U.S.

Temporary protection was instituted in Europe following the Balkan conflict in the early 1990s.<sup>151</sup> Nearly half a million Bosnians flooded into Europe.<sup>152</sup> This resulted in a deep concern about the highly discretionary policies of temporary protection that were being practiced by the European states. In an effort to harmonize temporary protection, the UNHCR Executive Committee adopted instruments that were used to establish guidelines on temporary protection throughout Europe.<sup>153</sup> Since 1992, the E.U. has treated temporary protection as a highly urgent issue yet it has been unable to agree on the exact details of the temporary protection regime in Europe.<sup>154</sup> In 2001, a Council Directive was adopted that provided the very general outline of a temporary protection regime and since then intergovernmental agencies have provided the actual elements of temporary protection in order to address the Bosnian and Kosovar crises.<sup>155</sup>

In the U.S., Temporary Protection Status ("TPS") was incorporated as a distinct legal remedy in the Immigration Act of 1990 which Congress passed in

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tent readings of Article 1D.

150. UNHCR, Executive Committee, Conclusion on Temporary Refuge, No. 19 (XXXI) at para (b)(i-ii).

151. Akram, *Temporary Protection as an Instrument for Implementing the Right of Return for Palestinian Refugees*, *supra* note 66, at 93.

152. *Id.* at 97 n.439.

153. *Id.* at 22.

154. *Id.* at 93.

155. *Id.* at 23.



response to the mass exodus of civil war refugees from El Salvador.<sup>156</sup> Currently, TPS is granted to individuals from specific groups designated for the status by the Attorney General based on: (1) ongoing armed conflict; (2) earthquake, flood, epidemic or other natural disaster causing disruption to living conditions; or (3) extraordinary, temporary conditions preventing nationals from returning home safely.<sup>157</sup>

Rights under temporary protection vary across the two regions and within them. Generally in the E.U., the European Commission proposal includes a framework for harmonizing beneficiaries' rights granted by member states to include family reunification, employment, social security, housing, welfare, education and residence authorization. In the U.S., TPS beneficiaries are granted work authorization and cannot be detained on immigration grounds. However, qualification for public assistance, family reunification, or state benefits is not guaranteed and varies from state to state.<sup>158</sup>

Through the E.U. and U.S. models, temporary protection serves as a viable bridge to temporarily close the protection gap of people who have fled major crises in their home states. Through a regionally-institutionalized temporary protection program, Palestinian refugees can be granted protection of a provisional nature that serves as an interim solution in the host countries in which they currently reside. With the agreed incorporation of Palestinian refugees in UNHCR's mandate within an eight year span, Arab states may be more likely to comply with an internationally-harmonized temporary protection regime. The clear timetable of implementation of durable solutions for the Palestinian refugees who reside within Arab states' borders—whether legally or illegally—will likely encourage Arab states' compliance and participation. Arab states, who otherwise felt burdened by the lack of international support, would likely view UNHCR's efforts as tangible first steps in alleviating the Palestinian refugee problem and would therefore seek to aid in those endeavors.<sup>159</sup> Additionally, the 1965 Casablanca Protocol already sought to provide many temporary forms of protection

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156. *Id.*

157. TPS has been granted thus far to citizens of twelve countries: El Salvador, Kuwait, Lebanon, Liberia, Somalia, Bosnia, Rwanda, Montserrat, Burundi, Sierra Leone, Sudan and Kosovo. *See id.* at 24.

158. *Id.* at 26.

159. The Arab states may be unwilling to cooperate with international efforts to alleviate the Palestinian refugee problem if they feel threatened by the prospect of having to fully integrate the entire refugee population within their borders. The Palestinian refugee population is a tricky population in that many Palestinians have been refugees for approximately six decades and have had no permanent resolution to their precarious status. Yet my proposal is not based on the presumption that Arab states fully absorb and integrate the entire Palestinian refugee population within their borders. Rather, I *seek* a solution that would benefit both the countries where Palestinian refugees are located and Palestinian refugees themselves, many of whom live in sub par conditions in refugee camps and undoubtedly would want a better life. UNHCR should make this very clear to the Arab countries who currently house the majority of Palestinian refugees. I assume and hope that with this clarification by UNHCR, Arab states would be likely to develop a temporary protection regime similar to that of the U.S. or the E.U. as it will only benefit them in the long-run.

for Palestinian refugees. Therefore, temporary protection is neither a new nor disfavored concept within the Arab world. Through UNHCR's leadership and initiative, individual states can be encouraged to play vital roles in regionally institutionalizing these temporary rights in the interim period until durable solutions are granted to Palestinian refugees through their incorporation into UNHCR's mandate.<sup>160</sup>

## CONCLUSION

For far too long, refugee scholars and the international community at large have done little to address the refugee plight of the Palestinians. Whether such inaction on the part of the international community is the result of political motivations or the overwhelming task of including Palestinian refugees in the current refugee regime, the continued exclusion of Palestinian refugees from the international protections offered to all other refugees goes against the original intentions of the drafters of the 1951 Refugee Convention and the UNHCR Statute. The political impasse of the Israeli-Palestinian conflict cannot dictate UNHCR's mandate to protect the interests of refugees and persons of concern. With the functional dissolution of UNCCP, the international community must begin to seriously address the anomalous refugee situation of the largest refugee population in the world. Although UNHCR's *Note on the Applicability of Article 1D* is a positive initial step in helping to close the protection gap of Palestinian refugees, it must be followed by the immediate reinterpretation of Article 1D in accordance with its plain language, drafting history and scope and purpose.

Through the inclusion of Palestinian refugees in the international refugee regime, it will be more difficult for both Arab and Western states to forego their responsibilities towards the Palestinians residing within their borders. Similarly, with the increased international attention and action, Israel may be pressured to assist in helping to alleviate the Palestinian refugee situation. UNHCR's involvement in the Palestinian refugee plight will once again internationalize the refugee crisis and grant Palestinian refugees the necessary protection that they should have received six decades ago. Furthermore, the involvement of the international community through the UNHCR will ease the tremendous burden that has befallen Arab states by distributing the responsibility of the Palestinian refugees among many states and not just a limited few as is the current situation.

The ever increasing number of Palestinians seeking asylum in European and Western nations creates a strong incentive and interest for these nations to address the root causes of the "protection gap"—the lack of durable solutions. Additionally, international involvement will be especially attractive for Arab states that will be guaranteed a clear timetable for the implementation of durable

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160. For more discussion on temporary protection and the implementation of temporary protection as an interim solution for Palestinian refugees, see Akram, *Temporary Protection as an Instrument for Implementing the Right of Return for Palestinian Refugees*, *supra* note 66.

solutions. The Arab states' view that the United Nations bears significant responsibility for the creation of the Palestinian refugee situation in the first place has made them unwilling to fulfill their commitments as outlined in the Casablanca Protocol until the international community bears responsibility over the Palestinian refugee crisis. Therefore, the impetus for change must first come from the international community through: (1) the reinterpretation of Article 1D; (2) the inclusion of Palestinian refugees within the UNHCR mandate (working in conjunction with UNRWA's assistance mandate); and (3) the establishment of a regional temporary protection program until UNHCR's implementation of durable solutions.

By addressing the legal black hole Palestinian refugees have resided in for far too long, the international community will help end the plight of the largest and longest-standing refugee problem. The results will be far reaching. The number of Palestinians living in poverty, for example, could be curbed. The educational and literacy rates could rise. The health conditions could improve. But the human crisis, standing in isolation, is not the reason Article 1D must be reinterpreted. Rather, as a matter of Article 1D's plain language, drafting history and scope and purpose, it is clear the drafters never intended for the current situation to exist, much less persist for nearly sixty years. In short, Palestinians deserve the same protections and guarantees of any refugee population. Nothing less should be accepted.

