

Compensation to Palestinian Refugees and the Search for Palestinian- Israeli Peace



Edited by Rex Brynen and
Roula El-Rifai



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Preface

This book builds on the extensive involvement of Canada's International Development Research Centre (IDRC) in thinking about solutions to the Palestinian refugee problem. Beginning in 1992, IDRC's engagement took shape through a programme of research called the 'Expert and Advisory Services Fund' (EASF), which was managed by one of the co-editors, Roula El-Rifai, after 1999. The EASF was set up to develop knowledge and thinking about solutions in support of the Palestinian-Israeli negotiations process. It supported Canada's role as Gavel of the Refugee Working Group as part of the multilateral negotiations track of the Middle East peace process.¹ The EASF was funded by the Canadian International Development Agency (CIDA) and IDRC, in collaboration with Canada's Department of Foreign Affairs and International Trade (DFAIT).

Over the years, the EASF's contribution to Palestinian refugee research work and to policy debates among Palestinians, Israelis and international policymakers has been substantial. This was accomplished through formal project support and through the networks, informal dialogues, and quiet linkages that IDRC has fostered. The EASF has systematically and strategically supported a broad range of policy-relevant research on almost all aspects of the refugee issue, including the issue of compensation.

The EASF also convened, facilitated, participated in, and financed informal 'track two' discussions on the issue, and held several major conferences and workshops on key aspects of the refugee question. These include three major international conferences on Palestinian refugee research: two stocktaking conferences on Palestinian refugee research (1997, 2003)² and one specifically on Palestinian refugee compensation (1999).³

In 2007, the co-editors of this book published an edited volume on another key aspect of a solution to the refugee problem, titled: *Palestinian Refugees: Challenges of Repatriation and Development*.⁴ The co-editors are also finalizing work on a third publication: *Resolving the Palestinian Refugee Problem: A Comprehensive Guide to Issues*, which develops an array of

policy options for addressing various aspects of the refugee issue, to be published by Pluto Press.

It is doubtful that there has been an official discussion of any sort on the refugee issue anywhere in the world over the past decade that has not involved at least one participant in past EASF-supported activities. With support from its EASF project partners and in coordination with DFAIT, EASF staff have been asked on numerous occasions to provide briefings to both regional governments and to the broader international community, aimed at updating policymakers on progress to-date on the various technical complexities of the refugee problem. At various points EASF-supported projects have also enjoyed the active cooperation of the Palestinian Authority, Israel, Jordan, Syria, and Lebanese officials, as well as Western governments and international agencies.

To develop and foster knowledge networks around the Palestinian refugee issue, the IDRC has worked closely over the years with many institutions and experts in the Middle East, Europe and North America. Specifically, EASF developed a close partnership with Rex Brynen of McGill University, co-editor of this publication and coordinator of the 'Palestinian Refugee ResearchNet' (PRRN). The PRRN has become an important repository of knowledge on the Palestinian refugee issue and more recently has been offering a unique forum for debating online the Palestinian refugee issue.⁵ The EASF has also worked closely with Chatham House in the UK, which has managed a regional project on the Palestinian refugee issue since 1996.⁶

At the time of publication of this volume, the immediate likelihood of substantive resumption of peace negotiations between Palestinians and Israelis seems close to nil. However, those who have continued to work closely on the Palestinian refugee issue over the years have realized that there is still potential for the technical discussions of thorny issues to have a positive effect on the progress and outcome of future negotiations, when and if they might resume. Such technical discussions of politically sensitive issues can lead to creative thinking about solutions and a sense that solutions are indeed in the realm of the possible. They can also help develop solutions that are workable and easier to implement and can create goodwill among negotiators. Certainly, the refugee issue is not going to go away, nor will the desirability fade of a mutually-acceptable, negotiated resolution of the protracted Israeli-Palestinian conflict.

This volume is part of IDRC's effort to put in the public domain more of the thinking on refugee solutions and to thereby ensure that such knowledge has a prolonged 'shelf-life'. When the time comes, negotiators will make political decisions about the resolution of such complex technical and existential issues as the Palestinian refugee problem. Negotiators will have to consider compensation and reparations as one aspect of the package solution that needs to be reached to end more than 60 years of conflict between Palestinians and Israelis. Between now and then we hope that this volume will be a useful reference on the subject for scholars and policymakers alike, and will make a modest contribution to the process of thinking about and designing workable solutions.

NOTES

1. For more information on the Refugee Working Group, see Rex Brynen and Jill Tansley, 'The Refugee Working Group of the Middle East Multilateral Peace Negotiations', *Israel–Palestine Journal* 2, 4 (Autumn 1995), at: <http://prn.mcgill.ca/research/papers/brytan.htm> (accessed 20 October 2012).
2. IDRC and PRRN, 'A Stocktaking Conference on Palestinian Refugee Research', PRRN (1997), <http://prn.mcgill.ca/prn/prconference.html> (accessed 20 October 2012); and IDRC, 'Stocktaking II – Conference on Palestinian Refugee Research', IDRC (2003).
3. IDRC and PRRN, 'Compensation as Part of a Comprehensive Solution to the Palestinian Refugee Problem', PRRN (1999), at: <http://prn.mcgill.ca/prn/prcomp.html> (accessed 20 October 2012).
4. Rex Brynen and Roula El-Rifai (eds), *Palestinian Refugees: Challenges of Repatriation and Development* (London: I.B. Tauris, 2007).
5. The webpage for PRRN can be found at: <http://prn.mcgill.ca/>
6. The webpage for the Chatham House 'Palestinian Refugees' Project can be found at: www.chathamhouse.org/research/middle-east/current-projects/israelpalestine (accessed 20 October 2012). This project has been funded by The European Commission and the IDRC. The UK's Foreign and Commonwealth Office has also supported activities within this Chatham House project.

1

Introduction

Rex Brynen and Roula El-Rifai

At present the prospects for serious Israeli–Palestinian negotiations on a permanent end to the conflict seem bleak. Such pessimism was reflected in a May 2012 report by the highly-respected International Crisis Group, which asked pointedly whether ‘anyone still believes in the Middle East Peace Process?’

Nineteen years after Oslo and thirteen years after a final settlement was supposed to be reached, prospects for a two-state solution are as dim as ever. The international community mechanically goes through the motions, with as little energy as conviction. The parties most directly concerned, the Israeli and Palestinian people, appear long ago to have lost hope. Substantive gaps are wide, and it has become a challenge to get the sides in the same room.¹

Against that backdrop, this volume leaves aside the ambitious task of rethinking the broad architecture of negotiations or the even broader balance of power. It does, however, recognize that the time has come to review and assess the work that has been done to date on achieving Middle East peace. In so doing, it focuses on one of the most sensitive and technical aspects of the ‘peace process’, namely that of compensation or reparations to those who have been forcibly displaced by the Arab–Israeli conflict. The premise is that the issue is sufficiently complex and controversial as to deserve detailed analytical attention. The volume is also informed by a genuine concern that much of the very good work that has been done on compensation must be preserved in case the ‘hiatus’ in the search for peace proves to be a very prolonged one. Offering a multitude of analyses and perspectives can only serve to enhance both future research and any future negotiations – whatever form they might take. While contributors to this volume examine the issue of compensation only in terms of forced displacement and

associated property seizures, some of the technical issues raised might also have application to other sorts of claims arising from Israeli occupation or other aspects of the conflict.

While refugee compensation may well be a *necessary* condition of resolving the refugee issue, nothing in this volume suggests that it can be thought of as a *sufficient* one. Issues of refugee return, repatriation, resettlement, development and moral acknowledgement also loom large – and are themselves hotly contested among, and even within, the various parties to the conflict. Moreover, while a thematic focus such as the one offered in this volume is essential in exploring the complex issues, debates, and trade-offs involved, it is important to remember that neither the question of compensation nor the broader refugee issue exists in a vacuum. As this volume will attest, the compensation issue is intimately bound up with the broader elements and dynamics of the conflict.

A BRIEF HISTORY OF THE COMPENSATION ISSUE

With the establishment of the state of Israel in 1948, approximately three-quarters of a million Palestinians were forcibly displaced from their homes and sought shelter in neighbouring Arab countries. They thereafter became involuntary exiles, barred by the Israeli government from returning home. Still other Palestinians were internally displaced within Israel itself, and were also subject to property seizures. With the occupation of the West Bank, Gaza, and East Jerusalem by Israel in 1967, another 300,000 or so Palestinian ‘displaced persons’ (most of them also 1948 refugees) fled the Occupied Territories, largely to Jordan. Over the years, still other Palestinians found themselves displaced by various other aspects of Israeli policies, including land seizures, the separation barrier, and travel and readmission regulations. Meanwhile, from the late 1940s onwards, hundreds of thousands of Jews in Arab countries fled to Israel, often after facing violence or discrimination.

For almost as long as there has been a Palestinian refugee issue, securing compensation or reparations for those who were forcibly displaced during the establishment of the state of Israel in 1948 has been considered a key aspect of any just and durable solution to the problem. United Nations General Assembly Resolution (UNGAR) 194, approved in December 1948, explicitly recommended that ‘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 the principles of international law or in equity, should be made good by the Governments or authorities responsible.’ The United Nations Conciliation Commission for Palestine, established at that time, was instructed by the General Assembly ‘to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation.’ The UNCCP would spend several years after that gathering data on Palestinian refugee property losses in 1948.

The question of refugee property was briefly addressed at the Lausanne Conference in 1949, but there and in the decades that followed there was little progress towards a comprehensive Arab–Israeli peace, nor any resolution of the refugee issue. Within Israel, the Absentees’ Property Law (1950) further codified the refugee property seizures that had taken place during and immediately after the 1948 war. Despite the establishment of the Custodian of Absentee Property, there was little evidence that Israel planned to return refugee properties, or even undertake a detailed and systematic assessment of their values for compensation purposes. Instead, seized properties found their way into Israeli/Jewish use.

Through the subsequent decades several important academic studies of the value of refugee property were undertaken.² However, the absence of any form of Israeli–Palestinian negotiations meant that there was no real forum in which to raise the issue. On the Palestinian side, many refugees grew fearful that any talk of compensation was intended to divert refugees from asserting their right of return to 1948 areas. Consequently, practical discussion of the compensation issue grew more difficult. On the Israeli side, there was little attention to any aspect of the refugee issue, compensation included.³

While there was little progress on the issue in the Israeli–Palestinian case in the decades that followed, international human rights law and practice did evolve significantly. In the immediate aftermath of World War II there had been little effort to address refugee property losses either in Europe or in the decolonizing world. Over time, however, refugee repatriation, property restitution, and addressing other refugee claims became an increasingly important component of conflict resolution. This was evident in particular peace agreements, such as the General Framework Agreement for Peace in Bosnia and Herzegovina

(1995) wherein the return of refugees and the restitution of refugee properties were key elements of the accord. It was also evident in the 'Pinheiro Principles' on Housing and Property Restitution for Refugees and Displaced Persons, adopted by the UN Sub-Commission on the Protection and Promotion of Human Rights in August 2005.⁴ The Palestinian case, however, continued to present particular challenges, not only because both sides held very different views of historical responsibility, but also because the passage of time and the corresponding multigenerational dimensions of the issue created additional practical complications.

With the onset of comprehensive Arab–Israeli peace negotiations in 1991, and even more so with the signing of the Israeli–Palestinian Oslo Accords in 1993, attention to the issue began to increase. The issue was addressed in the December 1997 'Stocktaking Conference on Palestinian Refugee Research', convened by the International Development Research Centre (IDRC) and Palestinian Refugee ResearchNet, as part of the so-called 'Ottawa process' of second track research and dialogue meetings, although it remained highly sensitive.⁵ By July 1999, however, it was possible to organize an international workshop on 'Compensation as Part of a Comprehensive Solution to the Palestinian Refugee Problem' involving some three dozen Palestinian, Arab, Israeli, and international experts.⁶ While sensitivities had not entirely abated – negotiating the unwieldy workshop title alone took several weeks – the meeting nonetheless was able to explore the complexity of the compensation issue, including debates over how losses might be calculated, what should be included, how payments might be made, how beneficiaries and amounts might be calculated, and how implementation mechanisms might be designed. The workshop report also attempted to pull together these discussions by highlighting some of the apparent strengths and weaknesses of varying approaches to compensating the refugees (see Appendix 1).

The advent of Israeli–Palestinian permanent status negotiations in 2000 led both the parties themselves and others to devote more analytical attention to the compensation issue. This was particularly true of the Negotiations Support Unit (NSU) of the Palestine Liberation Organization, which began to commission a range of specialized studies on aspects of the refugee issue – an activity it would continue, on and off, for roughly a decade. Another summary of approaches to refugee compensation, based on a systematic literature review and examination of a

few comparable cases, was undertaken by the World Bank, but was never published.⁷

Compensation issues were not addressed in much detail at the Camp David negotiations in July 2000, where there was little discussion beyond the statement of opening positions. The Clinton Parameters of December 2000 merely stated that: ‘An international [refugee] commission should be established to implement all the aspects that flow from your agreement: compensation, resettlement, rehabilitation, etc. The US is prepared to lead an international effort to help the refugees.’

However, much more detailed work was undertaken at the Taba negotiations in January 2001. The Palestinian position paper, presented at the start of the talks, included more than 31 separate clauses on refugee property and other claims. These provided for the restitution of property to all returning refugees (or similar property if the original was unavailable); compensation for other property losses as well as for suffering; compensation for communal property; and compensation to host countries. A commission would be established to value Palestinian losses, and administer compensation.⁸ A subsequent Israeli response to the opening Palestinian position excluded any restitution element and instead focused on compensation:

10. Each refugee may apply for compensation programs and rehabilitation assistance as shall be detailed in Articles XX. For this purpose an International Commission and an International Fund shall be established (Articles XX below) that shall have full and exclusive responsibility for the implementation of the resolution of the refugee problem in all its aspects, including the gathering and verification of claims, and allocation and disbursement of resources, to be conducted in accordance with the following principles:

- a. These programs shall address financial and in-kind compensation for displacement (moral suffering – P based position) and material loss, as well as the economic growth of the relevant communities. The dual objectives of individual historic justice and communal economic development shall guide the elaboration of these programs.
- b. Programs of a compensatory nature shall be devised on both per-capital [sic] and claims based criteria, the former being of a fast-track nature (as detailed in Article XX below), and shall be managed according to a definitive and complete

register of property claims to be compiled by an appropriate arm of the International Commission and Fund.

The Israeli proposal also suggested that:

the issue of compensation to former Jewish refugees from Arab countries is not part of the bilateral Israeli–Palestinian agreement, in recognition of their suffering and losses, the Parties pledge to cooperate in pursuing an equitable and just resolution to the issue.⁹

The two sides also developed a joint Israeli–Palestinian working paper on a possible refugee mechanism.¹⁰

By this time, therefore, it had become accepted by both parties, as well as by the international community, that compensation would be paid to Palestinian refugees. Differences remained, however, as to what losses would be compensated, how these amounts would be assessed, whether the cost would be fully borne by Israel, how individual claims would be made, whether host countries would also receive compensation, and how the entire process would be implemented and administered.

A long hiatus in permanent status negotiations followed the election of Ariel Sharon as prime minister of Israel in February 2001. However, track two and other work on the refugee issue continued, most notably in the work of the Geneva Initiative and the Aix Group.¹¹ In both cases, groups of Israelis and Palestinians sought to explore what a refugee agreement might look like, and how it might be implemented. IDRC also continued its work, including a second stocktaking conference on Palestinian refugee research in June 2003.¹² There was also discussion of various aspects of the refugee issue, including that of compensation, in the context of a long-standing project on the regional dimension of the Palestinian refugee issue led by Chatham House. This included a June 2008 negotiations simulation that highlighted some of the continued lack of international preparedness on the issue.¹³

The November 2007 launch of the Annapolis Round of permanent status negotiations between the Palestinian Authority/PLO and the Israeli government of the then Prime Minister Ehud Olmert renewed diplomatic attention to the refugee issue by the negotiating parties and others. Subsequent leaks of NSU documents revealed a number of studies which had been undertaken for the Palestinian side on issues such as property

losses, valuations, and Israel's capacity to pay.¹⁴ The NSU had also developed ideas on possible implementing mechanisms, which were put forward in talks.¹⁵

The Annapolis Round came to an end in late 2008 with the collapse of the Olmert government, the war in Gaza from December 2008 to January 2009, and the election of Benjamin Netanyahu as prime minister of Israel in February 2009. Despite a very brief period of direct Israeli–Palestinian negotiations in the autumn of 2010, there was absolutely no substantive progress, and even less meaningful discussion of the refugee issue.

The on-again, off-again character of official refugee discussions over the past decade presents the challenge of what some have called 'shelf-life'. As personnel and governments change, the insights of past work risk being lost. This is especially true within the Israeli government, where there are few if any staff assigned to work on the issue on an ongoing basis. There are also relatively few Israelis outside government who specialize on the issue, and several that do, may be associated with past rival administrations. On the Palestinian side, there is more sustained interest among scholars, much greater interest within the PA/PLO in retaining ongoing expertise and information on the issue, and greater continuity in senior negotiators. Even here, however, changes in personnel can risk eroding knowledge of past work and lessons learned. Many second track and dialogue projects do not produce extensive documentation of their work, or archive any records in places where they will be accessible for extended periods of time. The international community, including foreign ministries and aid agencies, suffers from problems of knowledge management and institutional memory, and sometimes struggles to get back up to speed on permanent status issues whenever negotiations once more seem likely (only to let that knowledge atrophy in periods of diplomatic stalemate). It is this need to assure that past work on refugee issues is available to current and future scholars, planners, policymakers, and negotiators that motivates the current volume, as well as an earlier volume on the repatriation and development aspects of the refugee question.¹⁶

PALESTINIAN REFUGEE COMPENSATION: KEY ASPECTS

The terminology of this issue can be complex, for a variety of reasons. Some analysts prefer the term reparations to that of compensation, arguing that it more accurately captures the broad

array of legal and moral measures that ought to be taken in response to the forced displacement of Palestinians. According to the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law adopted by the United Nations General Assembly in December 2005,

victims of gross violations of international human rights law and serious violations of international humanitarian law should, as appropriate and proportional to the gravity of the violation and the circumstances of each case, be provided with full and effective reparation...which include the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.¹⁷

Thus reparations would hold out the possibility not only of financial compensation, but also of the return of properties to refugees (restitution), and other possible measures, and is typically favoured by Palestinian negotiators. Israeli officials, on the other hand, avoid the use of the term precisely because it seems too expansionary. Israeli officials have certainly thus far refused to consider the physical return of refugee property as a possible solution. Moreover, in everyday language it is often associated (as in the UNGA resolution above) with an implicit acknowledgement of past wrongdoing – a moral point that Israel is unwilling to concede. Israel has thus used the term ‘compensation’ in its past negotiations. Complicating matters still further, UNGAR 194 (1948) itself used the term ‘compensation’, making that term all the more common in the literature.

In this volume different authors have preferred different terminology for various legal, technical, political, historical, or other reasons. We have not attempted to impose one particular usage.

While there may have been agreement in past negotiations on the idea of compensation, that does not mean that the primary parties or others are agreed on what it should look like, or the purposes it may serve. The first three chapters of this volume therefore address the various rationales for refugee compensation. Leila Hilal discusses Palestinian negotiation priorities on reparations for the refugees, emphasizing four key themes: international law and legitimacy; individual justice for refugees; Israel’s historical

responsibility for the refugee issue; and interconnectedness and packaging. She argues that compensation, understood as a trade-off in the absence of any decisions on the other elements of concern, has yet to become a negotiation priority for Palestinians. Orit Gal looks at the range of concerns and interests that Israel brings to the negotiating table. She highlights the extent to which the issue touches upon sensitive narratives and core aspects of Jewish national identity. She also notes Israel's strong desire that any agreement be comprehensive, bringing about the end of claims on the issue. An alternative Israeli approach, she suggests, could deal with the issue using a more unilateral and piecemeal approach, aimed at transforming it rather than comprehensively resolving it. Lena El-Malak explores the legal aspects of the issue, arguing that the refugees' right to compensation is firmly grounded in international law. She argues, however, that awarding compensation to Palestinian refugees is not a sufficient remedy on its own – rather, Palestinian refugees must also insist on the acknowledgement by Israel of its responsibility for their displacement and dispossession in 1948.

Any future Israeli–Palestinian peace agreement that includes a compensation dimension will need to address how losses are calculated and claims evaluated. Michael Fischbach thus provides an overview of the work of the United Nations Conciliation Commission for Palestine, assessing the contribution that its records might make to assessing losses and documenting refugee claims. Roby Nathanson and Hagar Tzameret-Kertcher further contribute to this issue by looking at Israeli state records on Palestinian refugee holdings, assessing their potential contribution to valuation and documentation. Reviewing the records of the Custodian of Absentee Property and Development Authority held in the Israeli State Archives, they conclude that the data on previous land ownership by Palestinian refugees is highly detailed, and would allow for the creation of a mechanism for individual compensation of the refugees as part of an overall peace agreement. Finally, Elia Zureik and Jaber Suleiman offer insights into the archival records of the United Nations Relief and Works Agency (UNRWA). By analysing UNRWA data from 1948 and 1992 in Jordan, Lebanon, and Syria, they suggest what contribution the UNRWA archives might make to the issue of compensation.

Next, the contributors to this volume move on to the question of valuation itself. Thierry Senechal and Leila Hilal offer an estimate

of Palestinian material losses in 1948, based on international compensation standards. In doing so, they estimate the value of rural, urban, religious, and state-owned property seized by Israel, as well as losses of employment, businesses, and movable assets. Overall they suggest a value of US\$3.4 billion in refugee losses in 1948, equivalent to US\$297 billion in 2009 dollars when interest is assessed on the total, at a rate of 1.71 per cent over inflation. Atif Kubursi provides similar analysis of Palestinian losses in 1948, including fixed and movable property, capital, and natural resources. He suggests a comparable total of over US\$3 billion (1948) in refugee losses, equivalent to US\$294.8 billion at 2008 prices when an appropriate amount of accumulated interest is included. Both chapters underscore the fundamental social and economic impacts that accompanied the forced displacement of three-quarters of a million Palestinians in 1948. They highlight the importance of inflation and interest rates assessed for 1948 losses. Finally, they implicitly highlight the immense gap that exists between the scope of the Palestinian refugees' losses, and Israel's readiness to compensate these losses. In past negotiations, Israel has shown a willingness to offer only a few billion dollars at most for refugee compensation.¹⁸ For its part, the international community has signalled an unwillingness to make up the difference, viewing this largely as an Israeli responsibility. Clearly resource constraints could have profound implications not only for the scope of compensation, but also for the design of a compensation system.

In the next section of the book, attention shifts to the enormous complexities of designing and implementing a compensation system. Here, Norbert Wühler and Heike Niebergall offer extremely useful advice, based on lessons learned from a broad range of international compensation/reparation regimes involving displaced populations. While the Palestinian case is particularly complex, given the passage of time and the number of potential claimants, there is still much to be learned from examining other experiences. In their chapter, therefore, they review a range of issues, including how a mechanism might be established, how a claims mechanism might operate, the standards of proof that might be required, questions of inheritance, and various gender-related issues. They note that any claims mechanism will need to carefully manage the expectations of the large and diverse Palestinian refugee community. Related to this, Wühler and Niebergall argue that the claims mechanism ought to allow

for the participation of Palestinian refugees through the inclusion of civil society organizations. Past experience in the negotiation and implementation of a compensation process suggests that there needs to be a degree of legal closure, such that Palestinian refugee claims which are addressed by the claims mechanism are resolved in a comprehensive and final manner, and that future legal action regarding these claims is barred.

Megan Bradley explores the gender implications of refugee compensation in more detail, noting that different systems of claims, eligibility, and payment could have quite different implications for male and female refugees. They suggest that redressing Palestinian refugee claims is an opportunity not only to account for an unresolved historical wrong, but also to promote a more equitable and prosperous future for Palestinian women, men and children. Making the most of this opportunity, however, requires that the gender dimensions of the reparations issue be analysed and addressed head-on, in advance of any final status agreement.

Megan Bradley also discusses the question of the internally displaced within Israel – those Palestinians who had property seized in 1948, but who remained within the borders of what became the Jewish state, and who thus acquired Israeli citizenship. She suggests that although this group has generally stood outside negotiations, Israeli initiatives to address their losses could help to create a more stable and respectful relationship between the Jewish majority and Israel's Palestinian minority. Thereafter, Michael Fischbach raises the issue of compensation for Jews who fled Arab countries after 1948. While Jews clearly suffered property losses, he notes that most efforts of the Israeli government and international Jewish organizations to press claims against Arab countries have been made to serve Israeli diplomatic interests, not to seek financial resolution of these claims on behalf of individual persons. The issue has thus been used as a bargaining chip, primarily in the hope that it might somehow offset Palestinian claims (despite the obvious lack of Palestinian responsibility for Jewish property losses).

In the penultimate chapter of the volume, Rex Brynen raises a host of other complexities and inter-relationships associated with the refugee compensation issue, highlighting how it is likely to interconnect with other aspects of any future peace process. Specifically, this chapter focuses on issues related to the relationship between compensation and moral responsibility; the question of 'end of claims'; the social and economic implications

of various compensation modalities; resource availability; territorial dimensions; and possible interim measures. In doing so, the chapter highlights the potential practical and political consequences of different implementation mechanisms, both for the refugees and for their current host countries.

Finally, Anne Massagee places the issue of refugee reparations in the broader context of transitional justice and Israeli–Palestinian conflict resolution. In doing so, she explores whether acknowledgement, truth-seeking, rehabilitation, revival of memory, and commemoration might also have a valuable role in finding a way forward. Any attempt to apply these transitional justice mechanisms in the Israeli–Palestinian case will, however, encounter the challenge of deeply held narratives on both sides, and the often incommensurate historical paradigms through which both sides understand the events of 1948 and the legal and political relevance of UNGAR 194. While this volume has largely limited its scope to property losses and the material dimensions of reparations, Massagee’s contribution (as with many others in volume) reminds us that moral and normative intangibles remain at the very core of the refugee issue.

CONCLUSION

As noted earlier, in focusing on issues of refugee compensation in this volume, we are in no way suggesting that the refugee issue is at root simply one of material resources. The injustices and grievances of forced displacement in 1948 cannot be resolved solely or even primarily through the provision of monetary compensation.

Equally, however, compensation is likely to be a key part of any eventual negotiated refugee deal – whenever, and however, that might come. The scope, complexity, and challenges of any compensation regime will be enormous. As a consequence, there will also be considerable scope for mistakes, missteps, and delays. To the extent that the issue receives greater analytical and policy attention *before* substantive negotiations and *before* the international community is called upon to create a compensation mechanism, the less likely these challenges are to undermine effective implementation of a refugee agreement. Certainly this volume has not addressed all of the dimensions of this very complicated issue. However, in offering a variety of insights and reflections we hope that it makes a modest contribution to future thinking on the issue.

APPENDIX 1.1

POSSIBLE APPROACHES TO COMPENSATION

<i>Claimants</i>	<i>Strengths</i>	<i>Weaknesses</i>
Claims made by individual 1948 property owners (and their heirs)	Provides most direct linkage between compensation and losses, and hence greatest degree of psychological closure.	Requires documentary evidence, which may be problematic; claimant pool is elderly and diminishing; if original owner were deceased, multiple relatives might lodge competing claims; the pattern of 1948 property ownership and current inheritance laws would disadvantage women.
Claims made by extended family (<i>hamula</i>) or villages	Villages and clans were the primary units of social organization in Palestine in 1948; might mitigate the problems caused by collective ownership of many agricultural lands.	Difficult to establish the membership of claimant groups; social divisions arising from disputes over distribution; possible gender inequities.
Claims made by all refugees, regardless of property ownership, including original and subsequent generations	Avoids shortcomings noted above; recognizes that all refugees (including second- and third-generation) have suffered disadvantages; greater gender equity.	Large claimant pool reduces the amounts of individual payments; need to determine 'who is a refugee'.
Collective claim made by Palestinian state on behalf of all refugees	Simple; helps to offset the future costs of services provided by Palestinian state.	Unsatisfying to refugees; no guarantee that refugees would benefit.
Collective claims made by host governments for the previous costs of hosting refugees	Simple; helps to offset the past and future costs of services provided by host states; might be linked to adequate rights for any Palestinians choosing to remain in host countries.	Unsatisfying to refugees; no guarantee that refugees or Palestinians would benefit.

continued

<i>Formula</i>	<i>Strengths</i>	<i>Weaknesses</i>
Claims-based system, in which compensation is based on the value of lost property (or a portion thereof)	Provides most direct linkage between compensation and losses, and hence greatest degree of psychological closure.	Requires substantial documentary evidence, which may be difficult to obtain; extremely expensive and time-consuming to administer; original claimant pool is elderly and diminishing, and might die before process completed; if original owner were deceased, multiple relatives might lodge competing claims; recreates the social inequalities of 1948 Palestine, with a large proportion of compensation going to large land-holding families, and less to poorer refugees; possible disputes or appeals by claimants of the valuations assigned; if only limited resources are available, the gap between the valuation of claims and the amounts actually paid may generate substantial dissatisfaction.
Modified claims-based system, in which claimants are slotted into various 'categories' (based on estimated claim size), and receive standardized payments	Requires less documentary evidence, administration, and adjudication than the purely claims-based system above; payment system could be made more progressive to mitigate social inequalities.	Like the pure claims-based system, this system retains the complexities that arise from claims made by family members on behalf of deceased property owners; possible disputes or appeals by claimants of the category to which they have been assigned.
Per capita payment system, in which all refugees receive equal payments	By far the fastest, cheapest, and simplest system to administer; offsets gender and social inequalities of pre-1948 property ownership patterns.	Large claimant pool reduces the amounts of individual payments; need to determine 'who is a refugee'; provides less linkage between losses and payments, perhaps diminishing the psychological value of compensation.

continued

Modified per capita payment system, in which some classes of claimants (i.e. returnees v. non-returnees, or first-generation v. subsequent generation refugees) receive different levels of compensation	Still much faster, cheaper, and easier to administer than claims-based systems, although more complex than straight per capita system; scarce resources can be concentrated on particular groups of claimants (e.g. first-generation refugees); offsets gender and social inequalities of pre-1948 property ownership.	Large claimant pool reduces the amounts of individual payments; need to determine the refugee 'category' of each claimant; provides less linkage between losses and payments, perhaps diminishing the psychological value of compensation; possible social tensions between different classes of claimants.
<i>Payment mechanism</i>	<i>Strengths</i>	<i>Weaknesses</i>
Cash payments to individuals	Easiest to administer; provides refugees with greatest flexibility.	Requires cash financing of compensation scheme; cannot be directed towards specific developmental or social objectives; risk of high consumption and socio-economic dislocation caused by sudden cash infusion (minimized by gradual payment, however).
Services/vouchers/entitlements for individuals and families	Allows non-cash resources to be harnessed for compensation; facilitates Israeli and international contributions; can be better integrated into developmental objectives.	Less flexibility for refugees; risk of social tensions between those entitled to special services and others; less direct connection to actual 1948 losses.
Investment in community development	Promotes effective use of resources to promote general development of ex-refugee community; facilitates resource-generation from Israel and international donors.	Diffusion of benefits may make it difficult for refugees to see this as 'compensation'; possibility of little refugee control over development decision-making.
Equity (refugee co-ownership of investment or development corporation or similar collective entity)	Combines some of the strengths of the cash and community development models.	Combines some of the weaknesses of the cash and community development models.

continued

<i>Implementation process</i>	<i>Strengths</i>	<i>Weaknesses</i>
Payment of lump sum to Palestinian state, to be subsequently distributed	Allows Palestinian state (and hence the elected representatives of Palestinians) to determine modalities of payment, rather than leaving these to diplomatic negotiation.	Potential problems of transparency, accountability, and leakage; no guarantee that refugees would benefit.
Bi-national commission (Palestine, Israel)	Reflects negotiating process and requires no additional actors.	Potential politicization of technical issues and administrative deadlock.
Trilateral commission (Palestine, Israel, other)	Less chance of deadlock, compared to bi-national commission.	Risk that differences among members slows the process.
International commission (others, acceptable to Palestine and Israel)	Less chance of deadlock, compared to trilateral commission; might also deal with Jewish refugee claims.	Members of commission not accountable to primary stakeholders (Palestinian refugees, Israeli taxpayers).
UN commission	Less chance of deadlock, compared to trilateral commission; might also deal with Jewish refugee claims; high degree of international legitimacy; high degrees of transparency.	Members of commission not accountable to primary stakeholders (Palestinian refugees, Israeli taxpayers); fears of UN bureaucratization or politicization.
UNRWA or UNRWA successor agency	Less chance of deadlock, compared to trilateral commission; high degree of international legitimacy; knows refugee issue well; well-established track record; high degrees of transparency.	Members of commission not accountable to primary stakeholders (Palestinian refugees, Israeli taxpayers); fears of UNRWA bureaucratization or politicization.
Determination of amounts, modalities, and mechanisms left to future Palestinian–Israeli negotiations	Delays discussion of a controversial issue to a future, and perhaps more amenable, time; might facilitate moving forwards on other issues.	No guarantee of eventual agreement; potential stalling, as original 1948 refugee population continues to age.

Source: IDRC and PRRN, ‘Compensation as Part of a Comprehensive Solution to the Palestinian Refugee Problem’, PRRN (1999), at: <http://prn.mcgill.ca/prn/prcomp.html> (accessed 24 August 2011).

NOTES

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 17. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN General Assembly resolution A/RES/60/147, 16 December 2005, at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/496/42/PDF/N0549642.pdf>
 18. During the Taba negotiations in January 2001, Israeli negotiators operated under the assumption that some US\$2–3 billion might be made available by Israel for compensation.

2

Palestinian Negotiation Priorities on Reparations for Refugees

Leila Hilal

Palestinian–Israeli negotiations on a permanent status agreement have historically aimed to achieve a resolution to the conflict in all its aspects. A comprehensive resolution for Palestinian refugees would entail that the status of the refugees as displaced persons be resolved through the provision of durable solutions¹ and that reparations² be made to them for their losses and the human rights violations they have experienced. These two dimensions are interrelated in law and practice. Moreover, they were approached as linked matters in the course of Palestinian negotiation efforts. Therefore, while the purpose of this piece is to elaborate Palestinian reparation priorities, the subject can only adequately be addressed through a review of Palestinian priorities on the entire refugee question.

Taking this broad view as its starting point, this chapter identifies four key themes underpinning the dominant Palestinian approach to a negotiated resolution of the refugee issue. A discussion of these themes – international law and legitimacy, individual justice, historical responsibility, and interconnectedness and packaging – broadly explains how Palestinians approached resolving the outstanding rights and needs of the refugees while enabling specific insights into the Palestine Liberation Organization (PLO) negotiation agenda on reparations.

INTERNATIONAL LAW AND LEGITIMACY

International legitimacy has been the largest objective driving Palestinian negotiation priorities on refugees. To be sure international legitimacy is the leading basis of Palestinian positions on all permanent status subjects. From borders to water to state-to-state relations and economic arrangements,

Palestinians have posed their demands for peace on the basis of universal principles and international best practices.³ In the case of the refugee question, due to the highly legal, personal, popular and long-standing nature of the issues at stake, international legitimacy has been especially influential in shaping Palestinian negotiation positions.

The Palestinian national cause has been grounded in international legality and justice since its inception. In its founding documents, the PLO named their struggle as one for international legal rights. In its National Charter, the Palestinian National Council declared:

The Palestinian Arab people possess the legal right to their homeland...the partition of Palestine in 1947 and the establishment of the State of Israel are entirely illegal...⁴

Even as PLO leaders shifted their tactical emphasis from popular action during the first intifada to political dialogue in the early 1990s, the moral cause of the Palestinian struggle remained the same – the obvious nature of this statement often times being overlooked in the present-day reality of a conflict that has become obscured by successive political failures and facts on the ground. The hundreds of resolutions adopted by the UN on the Palestinian question since 1947 have further reinforced the centrality of international law and legitimacy to the resolution of the Israeli–Palestinian conflict.

In particular, United Nations General Assembly Resolution (UNGAR) 194 served as the legal cornerstone for Palestinian leaders and negotiators on the refugee question. This oft-cited resolution was adopted by the General Assembly in 1948 during the ongoing mass displacement of Palestinians from areas that fell under Israeli sovereignty. It was Resolution 194 which established the United Nations Conciliation Commission for Palestine (UNCCP) to mediate a comprehensive resolution of hostilities between the new Israeli state, Arab countries, and Palestinian representatives. Among other instructions to the UNCCP, the General Assembly resolved:

...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 equity, should be made good by the Governments or authorities responsible.⁵

The political relevance of UNGAR 194 in working towards a resolution of the refugee question has endured, despite the eventual collapse of the mediation efforts by the UNCCP and its *de facto* demise. The General Assembly has consistently reaffirmed the applicability of Resolution 194 to a settlement of the refugee question.⁶ The Resolution was regarded as the relevant framework for reaching a negotiated agreement on refugees by all parties to the conflict, except Israel.⁷ Prominent third states supporting the Israeli–Palestinian peace process also considered Resolution 194 as the appropriate basis for a political settlement on refugees. Resolution 194 was part of the stated policy on refugees of the Canadian government, the gavel-holder of the former Multi-Lateral Working Group on refugees.⁸ The fulfilment of Resolution 194 is an explicit objective of the parameters proposed by former US President Clinton, which most joint peace proposals draw on to this day.

Regarding the substantive relevance of Resolution 194 to permanent status negotiations, Paragraph 11 of the resolution contains a normative framework considered by experts as necessary for a fair and lasting resolution to refugee situations.⁹ Consistent with the relevant international human rights principles and international refugee law and policy, Resolution 194 upholds the principle of voluntary repatriation and restitution for refugees who want to return to their original places and reclaim their properties. Consistent with the principle of restitution under international law, the resolution sets out compensation as an alternative for refugees who choose not to repossess their properties.¹⁰ Repatriation, resettlement, and rehabilitation were to be facilitated by the UN.

The normative framework affirmed by Resolution 194 (i.e., voluntary return and restitution/compensation) acts as the benchmark of legitimacy and acceptability with respect to an agreement on refugees among Palestinians, and also concerning the matter of reparations.¹¹ Accordingly, Palestinian negotiators have generally sought Israeli recognition of the right to return, restitution and compensation as the principle framework of a political settlement on refugees.¹² Palestinian negotiators have indicated their willingness to discuss and agree upon the scope of implementation of these rights – a clear necessity to realizing the

rights at issue.¹³ They have also pursued agreements to honour refugee choice in the implementation of such a settlement. The specifics of these efforts are discussed in further detail below.¹⁴

During the course of permanent status talks between Israel and PLO leaders over the course of the years following the signing of the Declaration of Principles, other applicable international standards came to shape Palestinian negotiation positions. The post-Cold War era produced significant normative and practical developments in the area of durable solutions for refugees, as well as in the field of reparation. Numerous conflicts involving the mass displacement of persons were resolved through peace agreements in the 1990s, including in the former Yugoslavia, Afghanistan and Iran, and Guatemala. A plan was drawn up by the UN for resolving the long-standing displacement of persons in Cyprus. Several mass claims schemes were also implemented during this period to remedy human rights abuses, including arbitrary displacement and loss of property. Notable examples are the property claims commissions for persons displaced in Bosnia and Herzegovina and Kosovo, as well as the United Nations Compensation Commission (UNCC) for the victims of Iraq's invasion of Kuwait. These post-conflict efforts culminated with the passage of treaties¹⁵ and international guidelines¹⁶ presenting the lessons learned.¹⁷

Palestinian negotiation teams drew on these advancements to supplement and flush out the principle framework affirmed in Resolution 194, their core negotiation position. Among the notable developments which Palestinian negotiation interventions drew upon was the applicability of non-material damages (or 'refugeehood' compensation in Palestinian-Israeli peace jargon). Non-material damages were part of the compensation scheme in the UNCC for persons who suffered mental pain and anguish as a result of Iraqi actions in Kuwait; persons forcibly displaced were also compensated through the UNCC.¹⁸ Compensation for lost opportunities and moral damages were codified as part of the corpus of reparations available to victims of human rights abuses under the UN Guidelines on the Right to a Remedy and Reparation.

Palestinian negotiators also took note of the growing prominence of restitution rights in transformations to post-conflict situations.¹⁹ As a solid principle of international law and universal moral reasoning, property restitution had been a consistent demand of Arab countries and Palestinian representatives in peace

negotiations with Israel since 1949, including in Taba in 2001, and presumably in the context of the 2007–08 Annapolis talks. In 1928 the Permanent Court of International Justice decided a landmark case that determined that states are responsible for making reparation (return to the *status quo ante*) for their breaches of international law.²⁰ Property restitution is the primary remedy for arbitrary property takings because it fulfils as far as possible the objective of wiping out the consequences of the violation and returning the victim to her former status.²¹ Compensation is an accepted alternative to restitution, where elected by the property owner, or where restitution is a factual impossibility or disproportionately burdensome.²²

The importance of restitution in remedying property violations was affirmed by the European Court of Human Rights and stressed by the International Court of Justice (ICJ) in its Advisory Opinion on the Consequences of the Construction of a Wall in the Occupied Palestinian Territory. The post-conflict experiences in places like Bosnia and Kosovo, however, brought to the forefront the relevance of restitution rights for effective, dignified refugee solutions.²³ The developments of this period also established processes by which return and restitution may be implemented and enforced for mass groups of persons following violent conflict, including in cases involving extensive property destruction and secondary occupancy. They also highlighted the distinction between return and restitution as independent rights. The specific demands asserted by Palestinian negotiators following these precedents of restitution and redress for non-material damages are explained in the following section.

INDIVIDUAL JUSTICE

Closely linked with adherence to international legitimacy was the need to achieve a settlement that satisfies individual justice. Individual justice rested on the recognition of the individual rights of refugees, namely, the universal rights to return, restitution and compensation. In this sense, individual justice could be described as an extension of an agreement based on international legitimacy (i.e., a framework solution conforming to the principles affirmed by Resolution 194). Individual justice, however, also required that the core rights of the refugees be implemented in a manner which respects the individual interests of refugees and refugee families. This implies that the solution should address individual

entitlements to the greatest extent possible, in addition to the rehabilitation of refugee communities following a durable solution. In other words, community rehabilitation could not act as a substitute for individual remedies for personal losses. The specific practical implications of this principle and the operational frameworks with regard to reparation are detailed below.

Evolution of requirement of individual justice

Individual justice evolved as an imperative for any settlement of the refugee question after the PLO accepted the partitioning of Mandate Palestine in exchange for Palestinian independence. The PLO's original platform proposed a total liberation of Mandate Palestine from Zionist rule. The refugee question was subsumed in this quest as the return of Palestinians in exile would be an automatic outcome of liberation and the bars to refugee return would be removed.²⁴ Return was then inherently linked to the national-territorial project. In 1988, after the PLO resolved to negotiate the establishment of a sovereign Palestinian state along the pre-1967 borders,²⁵ the refugee issue emerged as a separate question in need of resolution.

The 'historic compromise' of 1988 left the individual rights of refugees legally and politically outstanding. PLO demands for independent statehood are based on the legal right to self-determination, whereas refugee rights were founded in other sources of law. The nature of the right to self-determination and the rights of return and restitution are also distinct. The right to self-determination concerns the rights of peoples (a collective body) to be free of external intervention and to determine their own affairs. The right is normally linked to territory. The right to return adheres to individuals, and is by definition, a right to enter one's country after departure.²⁶ The Palestinian refugee narrative was constituted around the direct link between the country of origin and the right of return, with generations of refugees understanding return to mean the act of going back to ancestral lands in areas inside Israel rather than to a politically constructed nation-state in the West Bank and Gaza Strip. A legal-conceptual and aspirational vacuum was therefore created by the shifting PLO position on territory.

When the PLO turned to accept partition as a basis for peace, it called for a 'settlement of the question of refugees in accordance with the relevant United Nations resolutions.'²⁷ The UNGA Resolution 194, previously rejected for its implicit acceptance of Israeli sovereignty as declared in 1948, emerged then as part

of the Palestinian platform for a compromise peace deal. The call in Resolution 194 for voluntary repatriation, restitution and compensation echoed the instinctual desires of displaced Palestinians to have the chance to return home and reclaim their lost homes and lands. It also reflected the long-standing international position on resolving the refugee situation in a manner consistent with international law.

Implications for a negotiated solution for refugees

Whereas before 1988 the PLO had demanded return through liberation, post-1988 the PLO began to seek an individualized solution to the refugee situation based on internationally applicable principles separate from the establishment of a Palestinian state. This position was articulated in further detail during the course of the first officially-sanctioned round of permanent status negotiations on refugees at the Camp David Summit and subsequent talks as requiring the provision of choice to Palestinian refugees. In his account of the Camp David talks, Dennis Ross, a US adviser, noted to Israeli negotiators that a main objective of Palestinian negotiators was to obtain 'the right [of refugees] to apply to return to Israel', albeit according to a predetermined number.²⁸ When Clinton tried to bridge the gap between the PLO and Israel on the right of return, he proposed a formulation of the right that would preclude voluntary repatriation to Israel in practice. The PLO's official response to the Clinton Parameters pointed out:

The essence of the right of return is choice: Palestinian refugees should be given the option to choose where they wish to settle, including return to their homes from which they were driven... recognition of the right of return and the provision of choice to the refugees is a prerequisite for the closure of the conflict.²⁹

The element of choice is also relevant to decisions regarding the fate of refugee property, as refugees are entitled to choose whether to reclaim lost property, unless it is materially impossible to do so. The desire to see return and restitution implemented in a manner that honours individual choice was repeated during the Taba negotiations:

The Palestinian side stressed that the [menu of destination options] shall be subject to the individual free choice of the

refugees and shall not prejudice their right to return to their homes in accordance with its interpretation of UNGAR 194.³⁰

In addition, regarding material reparations, the emphasis on individual justice translated into a demand for individualized remedies corresponding to the violations experienced. At the outset of permanent status negotiations at Camp David, Palestinian negotiators proposed that reparations be made to individual refugees as a component of a 'just solution'.³¹ The collective claims for the Arab share of public property have been handled separately from the individual losses. Such collective claims could have logically been paid to a future Palestinian state, whereas reparation claims would be posted by individuals to an international claims programme. Awards would have been dispensed to individual refugees and/or refugee families.

The Palestinian non-paper submitted at the Taba negotiations continued the call for restitution and compensation to be awarded to individual refugees. In the written proposal, the Palestinian delegation sought the return of property owned by refugees at the time of their displacement unless impracticable, inequitable, or impossible to restore.³² In the alternative, Palestinians asked for restitution in-kind of property of equal size and/or value. Where compensation was elected, it was to be based on the value of lost property according to market prices at the time of the loss, actualized to today's cost.³³ Finally, the Palestinians sought non-material damages for 'the suffering and losses incurred as a result of the refugees' physical displacement'.³⁴ All of these remedial elements were asserted by Palestinian negotiators until the recent cessation of negotiations.³⁵

The concept of individual justice, including with respect to reparations, has remained controversial on the Israeli side. Israel has long offered to pay compensation for some refugee properties, however, the government has historically resisted comprehensive individualized remedies out of fear that it would amount to an admission of responsibility and result in overwhelming costs – seen and unforeseen – to the state. In the context of mediation efforts undertaken by the UNCCP in 1949, Israel rejected restitution out of hand. It accepted discussion only on property compensation. It refused direct compensation to individuals, and agreed to make payments only to a common fund for limited property losses.³⁶ At Camp David, more than 50 years later, Israel continued to demonstrate ambivalence towards a mass

claims process for refugees. At the 2000 talks, Israeli negotiators emphasized a limited lump sum contribution to an international fund for the purpose of rehabilitating refugee communities in locations outside of Israel.³⁷

HISTORICAL RESPONSIBILITY

Symbolic justice and official accountability – referred to as ‘moral satisfaction’ in international law – also featured prominently in determining Palestinian negotiation priorities on refugees. Moral satisfaction is a supplementary form of reparation in that it is intended to provide redress for wrongs that cannot be materially remedied or financially assessed.³⁸ The modalities of satisfaction were, therefore, largely unprescribed and open to being moulded to fit the circumstances at issue. Some typical forms of moral satisfaction are state acknowledgement of a breach and/or a formal apology.³⁹ The UN has also recognized truth commissions, commemorations to victims, reconciliation training, and judicial pronouncements restoring the rights as applicable forms of satisfaction.⁴⁰ Measures to ensure a break with the past, such as legal reforms and human rights training, may also be considered forms of satisfaction.

Moral satisfaction became particularly relevant to Palestinian negotiation demands during the Oslo years as a way to achieve co-existence within a two-state solution. This form of reparation addresses the collective aspiration of Palestinians for recognition as a nation forced into exile, remembering that the West Bank and Gaza Strip are not the ancestral Palestinian homeland, but a compromise position on territorial partition. At an individual and collective level, remedies directed towards moral satisfaction may be capable of providing a sense of dignity to a people that have struggled to gain the basic rights denied to them for decades and whose mere existence has been contested. Recognition and acknowledgement, regret and apology – the primary types of satisfaction – may serve as an antidote to the decades of denial experienced by Palestinians. Satisfaction facilitates closure, especially for refugees who may not be interested in return or able to achieve restitution. This is also in the Israeli interest. A testimony taken from a refugee in the Gaza Strip, as part of a Joint Commission of Inquiry into possible resolutions to the situation of the refugees by British MPs, illustrates the fundamental role acknowledgement plays in facilitating an Israeli–Palestinian peace:

They think that we are illogical when we demand to return to Tel Aviv, whose name was Tal al-Zuhur (the hill of flowers) or when I want to return to my village. They think we are fantasizing and they ask us to be logical. I reject such a logical solution if it means that I should accept the Israeli state as a reality. This state refuses to recognize my identity and even refuses to recognize me as a human being.⁴¹

Palestinian demands for moral satisfaction were articulated mostly during the course of permanent status negotiations as a claim for 'recognition of responsibility'. The first written proposal on recognition in the Palestinian non-paper introduced at Taba sought Israeli acceptance of the following language:

Israel recognizes its moral and legal responsibility for the forced displacement and dispossession of the Palestinian civilian population during the 1948 war and for preventing the refugees from returning to their homes in accordance with [UNGA] Resolution 194.⁴²

This clause captures the notion of responsibility not only for the physical displacement of the refugees but also for the measures subsequently enacted by the Israeli state which denied the refugees the option of return. Another key component of moral satisfaction from the Palestinian point of view is Israeli formal recognition of the right of return: 'Key to the resolution of the refugee issue is Israel's acknowledgement of its responsibility [...and of the] refugees' right to return to their homes and lands.'⁴³ As the right of return constitutes a core aspect of refugee identity, acceptance of the principle of right of return would actually amount to a form of substantive reparation.

Despite its centrality to achieving an end of conflict, Israel has refused to accept responsibility for the refugee problem, it has not considered an apology, and it won't recognize the principle of the right of return. Some accounts of Camp David suggest that Israel's resistance in this area may be the single greatest obstacle to achieving a comprehensive settlement on refugees.⁴⁴ Haniyeh reported that the Camp David Refugee Committee talks were 'the most difficult, strangest and most unsuccessful'.⁴⁵ Haniyeh attributed the failure in large part to Israel's denial of its action in displacing Palestinians and its refusal to take responsibility. In contrast to Camp David, where little progress was reported in

the refugee talks, at the Taba round Israeli negotiators admitted 'partial responsibility'. Not incidentally, this round progressed farther on the details of a refugee settlement, although no conclusion was reached.

In the reparation field there is a theory that any form of reparation, including compensation, conveys symbolic recognition.⁴⁶ The possible symbolic justice contained within an offer of compensation has not been persuasive to Palestinian refugees. According to a reductionist reading of the UNGA Resolution 194 that casts return and compensation as competing rights,⁴⁷ accepting compensation has come to be viewed as a form of corruption antithetical to return. Compensation is viewed by many as a renunciation of the right of return and therefore, the potential conciliatory effect of it has not been promoted by Palestinian leaders. The negative association Palestinians hold with respect to compensation has been compounded by the fact that Palestinian leaders are frequently chided for mentioning the right of return by Israeli or third-party peace interlocutors. In the absence of political space that would allow for open, honest discussions of all possible resolutions to the conflict, including return, compensation can only appear as a trade-off. This is complicated by Israel's refusal to recognize responsibility and the rights of the refugees.

INTERCONNECTEDNESS AND PACKAGING

International law prescribes a variety of remedies for displaced persons.⁴⁸ The core remedies – return, restitution and compensation – all have a clear relevance to a resolution for Palestinian refugees as discussed above. Rehabilitation is also a relevant remedy for refugee solutions.⁴⁹ It is considered a distinct measure of reparation, including community services to help people rebuild their lives.

In locating Palestinian negotiation priorities on reparations, it is important to keep in mind that since the launch of the permanent status negotiations in Oslo, no single remedy has been pursued in negotiations to the exclusion of the others. Instead, the full scope of applicable reparations have been raised with the aim of achieving a variety of remedies that may at once respond to Israeli concerns while maximizing refugee options according to their international entitlements.⁵⁰ Providing refugees with choices

regarding their future is crucial to realizing a just and lasting solution. As noted by Megan Bradley:

Clearly part of what makes the creation of refugees so heinous is that it strips citizens of much of their capacity to make free decisions about their lives...A just return process should counteract this coercive experience by empowering refugees to choose between as wide a range of options as possible regarding their repatriation.⁵¹

This reasoning is especially pertinent in the Palestinian refugee case where the essence of their experience has been the denial of their rights, and increasingly exclusion from decision-making processes. Moreover, in the case of Palestinian refugees who have been displaced for multiple generations, honest and genuine choice would have to include the full range of options typically available to refugees. Refugees should be provided with as many options as possible through a packaging of remedies consistent with international legitimacy and individual justice. As a second step, an effective implementation process is needed to ensure that the options provided to the refugees are efficiently and fairly put into action.

Similarly, at a macro level, the Palestinian political elites pursued negotiations on refugees as part of a package within a comprehensive solution to all aspects of the conflict. In this sense any compromise on refugees would be measured against the total outcome of an agreement. Without intending it to be a function of trade-offs, the idea is that a resolution to the long-standing national aspirations of the Palestinians should be judged in light of the gains achieved through a comprehensive agreement. It remains to be seen whether this approach represents a consensus among Palestinians, particularly as public support for partition seems to be fading and the movement for equal rights intensifying.

CONCLUSION

Palestinian permanent status negotiation efforts have been informed by the above elements: international law and legitimacy, individual justice, historical responsibility and interconnectedness and packaging. With little visible progress sustained in past negotiations according to these aspects of Palestinian demands, no substantive outcomes for resolving the full dimensions

of the refugee problem have yet been reached.⁵² In particular, compensation, understood as a trade-off in the absence of any decisions on the other elements of concern, has yet to become a negotiation priority for Palestinians. In the event that the leading interests of the Palestinians are addressed, talks should restart to seriously take up the matter as part of a package of remedies for refugees.

In order to adequately resolve the matter of compensation within a comprehensive solution, certain issues will have to be decided. These issues include the relationship between compensation and restitution, the types of compensation to be awarded, who will contribute what amount for which losses and damages, and the mechanism to process and distribute the awards. These matters should be decided according to the principles outlined above.

Although the details of a compensation scheme have political and symbolic meaning and therefore remain contentious, they remain secondary to most Palestinians who have been seeking basic justice in the form of the application of international law, acknowledgement of their rights, historical reconciliation and real options for transforming their situation from that of stateless refugee to empowered citizens.

NOTES

1. The three recognized durable solutions for refugees are voluntary repatriation, local integration, and third country resettlement. Voluntary repatriation is the preferred solution.
2. States are obligated to make reparation for breaches of international law. *Chorzow Factory* (Jurisdiction) Case [x], International Law Commission articles on State Responsibility. See also Pablo de Greiff, *Reparations, International Law, and Global Justice: A New Frontier, The Handbook of Reparations* (Oxford, Oxford University Press, 2008) pp. 478–503. Accepted forms of reparation include restitution, compensation, moral satisfaction, guarantees of non-repetition and rehabilitation. See also, United Nations, ‘Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law’, A/Res/60/147, March 2006. This Chapter discusses how these different forms of reparation have been raised in the Palestinian–Israeli negotiations context.
3. Palestine Liberation Organization, Negotiations Affairs Department, *Negotiations Primer* (Ramallah: Palestine Liberation Organization, Negotiation Affairs Department), 13, at: www.nad-plo.org/userfiles/file/primer_english_020311.pdf (accessed 17 October 2012).
4. Palestine National Council, ‘The Palestinian National Charter (July 1968)’, in Walter Laqueur and Barry Rubin (eds), *The Israel–Arab Reader: A*

Documentary History of the Middle East Conflict (New York: Penguin, 2001), 117–18.

5. United Nations General Assembly A/RES/194 (III) of 11 December 1948.
6. UN General Assembly resolutions are generally non-binding on states, however, Resolution 194 is considered an affirmation of existing legal obligations and rights. Moreover, some legal commentators argue that the Resolution has binding status as customary international law. See Susan Akram and Terry Rempel, 'Temporary Protection for Palestinian Refugees: A Proposal', paper presented at the Stocktaking Conference on Palestinian Refugee Research, Ottawa, Canada (17–20 June 2003), 19.
7. League of Arab States, 'The Arab Peace Initiative', 28 March 2002, at: www.mideastweb.org/saudipeace.htm (accessed 17 October 2012). Israel never rejected Resolution 194, although it still contests the principles contained in Paragraph 11.
8. Canadian Department of Foreign Affairs and International Trade statement on Canadian policy on key issues in the Israeli–Palestinian Conflict, at: www.international.gc.ca/name-anmo/peace_process-processus_paix (accessed 5 January 2010).
9. Megan Bradley, 'The Conditions of Just Return: State Responsibility and Restitution for Refugees', *Refugee Studies Centre Working Paper Series* 21 (2005).
10. The wording of the paragraph conflates the right of return and restitution by stating that the refugees who want to 'return to their *homes* should be permitted to do so at the earliest practicable date...'. Over the years, the language used by the General Assembly has been frequently miscast as providing for a 'right to return or compensation' for the refugees. As a result, the issue of property restitution – the primary form of reparation under international law – has been frequently dropped from the conventional analysis of the Palestinian refugee issue and the question of compensation has been over-generalized and misapplied.
11. In a poll taken by the Jerusalem Media and Communications Centre, 82 per cent of Palestinians in the West Bank and Gaza Strip said that a just solution is one that is in accordance with Resolution 194. Isabelle Daneels, *Palestinian Refugees and the Peace Process: An Analysis of Public Opinion Surveys in the West Bank and the Gaza Strip* (Jerusalem: Jerusalem Media and Communications Centre, 2001), 16.
12. See 'The Arab Peace Initiative'.
13. Yaser Arafat, 'The Palestinian Vision of Peace', *New York Times*, 3 February 2002; PLO Negotiations Affairs Department, 13.
14. PLO, 'Official Palestinian Response to the Clinton Parameters', 1 January 2001, at: www.intertech.ps/nad/etemplate.php?id=98 (accessed 20 October 2012).
15. United Nations, 'Rome Statute of the International Criminal Court', A/CONF.183/9, July 1998.
16. See United Nations, 'Principles on Housing and Property Restitution for Refugees and Displaced Persons', E/CN.4/Sub.2/2005/17, June 2005 (the 'Pinheiro Principles'); and United Nations, 'Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law', A/Res/60/147, March 2006.

17. The ICJ case on the Wall was also important to the question of remedies for displaced persons as it reaffirmed the primacy of restitution in the event of a wrongful taking of property.
18. Marc Henzelin, Veijo Heiskanen and Antoine Romanetti, 'Reparations for Historical Wrongs: From ad hoc Mass Claims Programs to an International Framework Program?' (2006), 91–118.
19. Michael Kagan, 'Restitution as a Remedy for Refugee Property Claims in the Israeli–Palestinian Conflict', *Florida Journal of International Law* 19, no. 2 (2007), 421–89.
20. *Chorzow Factory Case* at 47; See also Scott Leckie, 'New Directions in Housing and Property Restitution Rights', in Scott Leckie (ed.), *Returning Home: Housing and Property Restitution Rights of Refugees and Displaced Persons* (Ardsey: Transnational Publishers, 2003), 6.
21. International Law Commission draft article 35; Kagan (2007), 462–63. The protection of civilian property is also a fundamental principle of humanitarian law, Kagan (2007), 464.
22. International Law Commission draft articles 35 and 36.
23. Megan Bradley, *FMO Research Guide: Reparations, Reconciliation and Forced Migration* (Oxford: University of Oxford Refugee Studies Centre Forced Migration Online, 2006), at: www.forcedmigration.org/guides/fmo044/ (accessed 20 October 2012).
24. Jaber Suleiman, 'The Palestine Liberation Organization: From the Right of Return to Bantustan', in Naseer Aruri (ed.), *Palestinian Refugees: The Right of Return* (London: Pluto Press, 2001), 93.
25. In 1988 the Palestinian National Council declared Palestinian independence and issued a resolution calling for multilateral negotiations on the basis of United Nations Security Council (UNSC) Resolutions 242 and 338. Recognizing the validity of these resolutions amounted to recognition of Israeli sovereignty within the pre-1949 borders and acceptance of a 'two-state solution'.
26. *Universal Declaration of Human Rights*, Art. 13; *International Covenant on Civil and Political Rights*, Art. 12.
27. Palestine National Council, 'Political Resolution (November 15, 1988)', in Walter Laqueur and Barry Rubin (eds), *The Israel–Arab Reader: A Documentary History of the Middle East Conflict*, (New York: Penguin, 2001), 352.
28. Dennis Ross, *The Missing Peace: The Inside Story of the Fight for Middle East Peace* (New York: Farrar, Straus and Giroux, 2004), 720.
29. PLO, 'Official Palestinian Response to the Clinton Parameters'.
30. Miguel Moratinos, 'European Union Taba Negotiations: The Moratinos Non-Paper', January 2001, at: www.mideastweb.org/moratinos.htm (accessed 20 October 2012).
31. Charles Enderlin, *Shattered Dreams: The Failure of the Peace Process in the Middle East, 1995–2002* (New York: Other Press, 2003), 197.
32. Palestine Liberation Organization (PLO), 'Palestinian Proposal on Refugees', January 2001, at: www.mideastweb.org/ta.htm Articles 27–28.
33. *Ibid.*, Article 30.
34. *Ibid.*, Article 31.
35. PLO Negotiation Affairs Department, 16.

36. Michael Fischbach, *Records of Dispossession: Palestinian Refugee Property and the Arab–Israeli Conflict* (New York: Columbia University Press, 2003), 92.
37. Barak Ravid, ‘Document shows progress on core issues at Camp David’, *Haaretz*, 31 December 2007.
38. Moral damages may be financially assessable and therefore rightfully part of a compensation scheme (e.g., ‘compensation for refugeehood’). International Law Commission, *Responsibility of States for Internationally Wrongful Acts: Draft Articles and Commentaries* (New York: United Nations, 2005), 264.
39. *Ibid.*, Article 37.
40. UN Guidelines on the Right to a Remedy, Article 22.
41. Labour Middle East Council, Conservative Middle East Council, and Liberal Democrat Middle East Council, *Joint Parliamentary Middle East Councils Commission of Enquiry – Palestinian Refugees: Right of Return* (London: Labour Middle East Council, 2001), 110.
42. Palestinian Proposal on Refugees, Article 2.
43. PLO Negotiation Affairs Department, 16.
44. Akram Haniyeh, *The Camp David Papers* (Ramallah: Al-Ayyam Press, 2000), 46–47.
45. *Ibid.*
46. Elazar Barkan, *The Guilt of Nations: Restitution and Negotiating Historical Injustices* (Baltimore: The Johns Hopkins University Press, 2001).
47. See Note 8.
48. See Bradley (2005); Bradley (2006).
49. UN Guidelines on a Right to a Remedy and Reparation.
50. PLO Negotiation Affairs Department, 16.
51. Bradley (2005), 8.
52. Quartet Press Statement, 9 November 2008, at: www.state.gov/r/pa/prs/ps/2008/nov/111664.htm

3

Compensation for Palestinian Refugees: An Israeli Perspective

Orit Gal

INTRODUCTION

The Palestinian refugee issue is perhaps the most intricate and challenging concern of all core issues within the Israeli–Palestinian negotiation process. This is due to the different conceptual connotations it provokes, which set it apart from other core issues. The challenges surrounding other issues, such as Palestinian sovereignty, borders, security, water, economic relations and Jerusalem are all future-oriented, directly relating to the actual manifestation of a two-state solution. However, the refugee issue is the only one that is mainly past-oriented, relating to the essence of the conflict between two peoples claiming the same land, and the political, cultural and institutional lengths each has gone to in order to substantiate and ingrain these claims throughout most of the last century.

From an Israeli perspective, the subject of this paper – negotiating some kind of closure to this issue – touches on Israelis’ most deep-seated fears. On the one hand deliberating the country’s constituting elements threatens to reopen Israel’s historical narratives, collective identity and founding myths, while attempting to resolve the Palestinian refugee situation threatens to jeopardize Israel’s ability to maintain itself as a self-determining Jewish and democratic state. However, the challenges which the refugee situation poses for the negotiations arise not only from its socio-political significance but also from the deliberation process itself.

Under the heading of ‘Palestinian Refugees’ lies a complexity of issues involving political, economic, legal and social elements, which have generally tended to overwhelm decision-makers approaching the issue. Negotiating these elements engages a multiplicity of actors with vested interests and varying agendas,

many of whom reside outside the negotiators' direct sphere of influence. Furthermore, such negotiations hold much greater levels of inherent uncertainties in terms of the expected outcomes of the actual implementation process. This is due to the fact that unlike other core issues, such as borders or security arrangements, the implementation process of any agreement on the refugee issue will not be carried out by two sovereign agents but rather by hundreds of thousands of individuals, and once commenced could not be subject to negotiated improvements. This complexity serves as the fundamental context for assessing Israeli attitudes during the negotiation process, and for understanding their evolution over the last two decades.

This chapter aims to assess and explain the evolving Israeli positions and priorities towards the issue of compensation for Palestinian refugees. Understanding such attitudes beyond mere rhetoric requires a systemic approach. Overall, a negotiated resolution of the refugee issue entails addressing three domains: the domain of historical narratives; the domain of permanent residence, that is, how to end refugee status; and the domain of material compensation. While this chapter focuses on the latter domain of compensation, it is important to note that the three domains cannot be understood as constituting separate issue areas, but rather as projecting the whole system of elements which make up the Palestinian refugee predicament through a different operational manifestation.

Through their deliberations on compensation, both sides are actually also debating historical narratives and political or constitutional arrangements such as citizenship. For example, questions about the definition of a 'Palestinian refugee' for the purpose of compensation cannot be viewed solely as reflecting a legal-bureaucratic enigma but rather need to be understood as reflecting fundamental tensions over narrative dominance, identity, and cultural-political power relations.

Therefore, to get a deeper understanding of the Israeli positions and attitudes towards the issue of compensation one must explore three levels of observation. First is the epistemic level, that is, how Israel has defined the refugee issue as a problem; second is the strategic level, that is, how Israel has approached the negotiation process; and third is the operational level, that is, the kind of solutions and mechanisms it has proposed.

ISRAEL'S PERSPECTIVES ON COMPENSATING PALESTINIAN REFUGEES: AN EPISTEMIC VIEW

Since the beginning of the Oslo process the relative weight and attention given to each of the core issues to be negotiated has significantly evolved. Initially, the greatest conceptual and political challenge from an Israeli perspective centred on the question of full Palestinian statehood. All domestic political, governmental and public debates revolved around the question of Palestinian sovereignty as opposed to alternative options previously debated, such as various models of autonomy or the 'Jordanian Option'. In fact, during the early 1990s it was only the Israeli political left that fully accepted the idea of Palestinian statehood. The mainstream remained sceptical, while the political right still promoted to a large extent the notion of '*Eretz Israel Hashlema*' – Israeli sovereignty from the Jordan River to the Mediterranean Sea. Conversely, within a decade, the Israeli political discourse transformed radically with the quest for '*Eretz Israel Hashlema*' completely marginalized, and the idea of Palestinian statehood generally accepted by all of the leading political parties. Consequently, as long as questions of sovereignty dominated the Israeli discourse, the refugee issue was held to be a non-issue at best, or at worst one that would solve itself within the last stages of the negotiations.

The Oslo process reflected this assumption. The 1993 Palestinian Declaration of Principles postponed any bilateral discussions on the refugee issue to the stage of permanent status negotiations.¹ The Beilin-Abu Mazen Understandings of 1995 aimed to provide initial and informal sketches for such understandings, and were the first to address the refugee issue in general and the notion of compensation in particular. While issues of permanent residency were only discussed in vague terms, the subject of compensation, juxtaposed with economic development efforts has been generally assumed and boxed under the need for an International Commission for Palestinian Refugees. Hence, while some Israelis were ready to discuss the issue of compensation for the Palestinian refugees, it was generally perceived to fall within the international and material spheres, rather than within the bilateral and political domains. Throughout the late 1990s, as security concerns gained centre stage, the refugee issue was perceived as mostly rhetorical and ceremonial rather than

substantive, and the evolving Palestinian discourse on nationality and identity got lost in translation.

The degree of disparity between the Israeli and Palestinian positions finally became fully evident during the Camp David summit in 2000, which aimed at finalizing a permanent status agreement. Even though during the preliminary talks through the 'Stockholm Channel', Israel continued to concern itself with various ideas for international compensation mechanisms, it quickly became apparent that the Palestinian side's demand for Israeli acceptance of its own historical narrative and the 'right of return' would be the focal point of the discussions. Hence, even though some practicalities were discussed during Camp David, it was not possible to differentiate elements of the political narrative from the operational details including compensation.² It is in this context of fusion between the political and the material that the issue of compensation for Jewish refugees from Arab states was also first introduced into the negotiations. This element should not be seen merely as a practical demand but as part of the struggle over the historical debate.

The Israeli public shock over the failure of Camp David was ultimately attributed almost solely to the refugee issue and the Palestinian demand for the 'right of return'. Moreover, this was not perceived as an issue for further negotiations but rather as the proof that the Palestinians were not really interested in peace or Palestinian statehood, as this demand completely undermined the ideational acceptance of Israel's right to exist as a Jewish state, and the practicalities and rationale of a two-state solution. Hence, an issue previously perceived as marginal to the peace process became the focal point of all Israeli fears, suspicions and ominous prophecies. However, this level of apprehension, while remaining engrained at the public level, set off a significant conceptual transformation at the governmental level towards the next round of talks.

In advance of the Taba negotiations in January 2001, as the refugee issue came to be seen as the last hurdle to peace, Israel started to approach it within a solution-seeking framework. In this mindset, the refugee issue was to be defined as a 'refugee problem' that required practical resolution rather than as a manifestation of a fundamental conflict over history and identity.

An overview of changes in Israeli attitudes towards the refugee issue at the epistemic level reveals a significant process of transformation – first, an initial stage of denial; second, a required

ceremony; third, a one-dimensional fundamental threat; and lastly, a practical issue that if only deconstructed into its functional elements could be solved. In order to better understand the effect these mindsets have had on actual negotiation positions, one needs to understand how they have been translated into a strategic framework within which alternative models for compensation could be considered.

ISRAEL'S PERSPECTIVES ON COMPENSATING PALESTINIAN REFUGEES: A STRATEGIC VIEW

When exploring the strategic level from an Israeli perspective an initial question that comes to mind is why negotiate the refugee issue in the framework of a permanent status agreement in the first place? Israel could have opted for a negotiated agreement finalizing all arrangements necessary for the creation of a Palestinian state and preferred discussing the refugee issue outside this framework, but it never even tried to follow this avenue in practice. The reason is that throughout the peace process, negotiating the refugee issue was perceived as an Israeli strategic interest. This interest drew on the following assumptions.

First of all, by negotiating all core issues simultaneously, Israel assumed it could create leverage for trade-offs between components. As described above, when Israeli attention was focused on the concept of Palestinian statehood, it was assumed that the main trade-off would be between Palestinian sovereignty and Palestinian demands for addressing the refugees as a core issue. Later on, as negotiations progressed it was assumed that a trade-off existed between Palestinian claims for the 'right of return' and compensation (this corresponds to Israel's reading of UN General Assembly Resolution 194, that is, that the resolution mandates either return or compensation, but not both).

After Camp David and in advance of the Taba negotiations, as Israel adopted a more solution-based approach, the resolution of the refugee issue and especially the massive funds expected to be involved in the compensation process came to be seen as an important strategic tool for the implementation of a peace agreement. As Israeli-Palestinian dialogues concerning compensation continued, it was realized that the vast amounts of funds involved would go to a number of recipients including the Palestinian State, host states and especially Jordan, community projects and hundreds of thousands of individuals. Hence, this

would provide a great opportunity for advancing economic development and achieving a quantum leap in the regional socio-economic environment. Such an environment would help promote stability and prosperity, and the refugee agreement could thus serve the basis for a 'Marshall Plan' for the Middle East.

The second reason for wanting to negotiate all issues simultaneously was their symbolic significance. Israel hoped that by resolving the issue of the right of return, it would receive at minimum an implicit and at maximum an explicit acknowledgement of the Jewish right to self-determination and the Jewish character of the state of Israel. Furthermore, by resolving the refugee issue, Israel could conclude a comprehensive peace deal that would declare an 'end to the conflict'. This also corresponded with the general tendency among Israelis to view conflicts as binary concepts (peace or war) rather than as ongoing processes. Thus the general Israeli strategic framework can best be described as drawing on the notion of a 'big bang' – one comprehensive agreement, bridging all gaps and ushering in a new era of peace. Within this context, it is much easier to understand Israel's position and priorities regarding the different components of a compensation package.

ISRAEL'S PERSPECTIVES ON COMPENSATING PALESTINIAN REFUGEES: AN OPERATIONAL VIEW

At the operational level, throughout the negotiation process on the refugee issue, Israeli negotiators and policy planners had to deal with an overwhelmingly complex array of compensation issues, each requiring careful independent and interdependent consideration. Questions concerning who should be compensated, for what wrongdoing, and through what kind of mechanism, have proved much less straightforward than initially expected at the principle level of discussions. Within the bilateral and international dialogues, special attention has been given by both sides to the implied narrative elements, which have been reflected through alternative compensation arrangements. Israel has expressed particularly high sensitivity to two kinds of elements: first, the need to exclude elements that would suggest its overall responsibility for the creation of the refugee problem, as this has been regarded as an outcome of a war initiated by the Palestinians themselves; and second, the need to

include elements that would suggest a finality of claims and a finite implementation process. To date, the two most important documents specifying Israel's preferences and proposals have been the two non-papers put forward during the Camp David and Taba rounds of negotiations.

Camp David

The Israeli draft of the Framework Agreement on Permanent Status³ from Camp David depicts a preliminary structure whereby an international commission is created, comprising all of the leading international and regional players, with a special role given to Jordan. Under this commission and with the help of the World Bank, a special international fund is to be created. This fund will 'collect, manage and disburse the resources pertaining to the rehabilitation of and compensation to the Palestinian refugees.' The fund will then create a 'Registration Committee in order to compile a definitive and complete register of property claims of the refugees due to the 1948 War.'

This proposal suggests the basis for compensation would be confined to property rights. 'Every Palestinian refugee-household that became a refugee in 1948 or its direct descendants may, within an agreed period, submit one sole claim...for the purpose of compensation for its property.' The draft then goes on to state that 'the parties agree that a just settlement of the Israeli-Arab conflict should settle the claims by Jewish individuals and communities that left Arab countries... due to the 1948 War and its aftermath.' It even goes further to suggest that 'an international mechanism affiliated with the above commission and fund will be established to deal with such claims.' However, a resolution of Jewish claims is not proposed to be part of the same package. Thus, it would seem that the importance of including their case in the draft is to provide a counterbalance for historical grievances.

The manner in which claims would be processed and evaluated is not elaborated and is deferred to the management of the fund itself, which will need to allocate resources between 'rehabilitation' efforts, such as collective/public efforts and individual compensation. The concept of host countries is yet to be fully developed.

Overall, in this document the resolution of the refugee issue is perceived as an international effort, towards which Israel is willing to contribute its own share. This terminology makes an

important distinction intended to prevent the connotation that any financial commitment made by Israel could be understood as some form of acceptance of guilt or responsibility for the creation of the refugee problem. Israel's specific contribution is to be a fixed sum distributed annually over an agreed upon number of years, hence it is not to be open-ended. Finally, the concept of 'finality of claims' is referred to both at the individual and the collective level: 'transfer of compensation to a claimant shall be conditioned by such claimant's waiver of further proprietary claims...Israel shall have no further commitment or obligation emanating from the Refugee issue beyond those specified in this agreement.'

As described earlier in this chapter, during the few months between Camp David and Taba, Israel's approach towards the refugee issue evolved considerably. This is reflected in the presumed outputs of these negotiations.

The Taba round

The Taba non-papers reflect much more elaborate thinking concerning the refugee issue in general and compensation in particular. This can be attributed to the change in Israel's strategic approach into a comprehensive solution-based framework as described above.

The 'Israeli Response RE refugees'⁴ opens with an elaborate reference to the historical narrative, followed by a proposed solution to the issue of return. Hence, for the first time the narrative and the practicalities of compensation are functionally differentiated. The 'Compensation and Rehabilitation' section reflects further development of the practicalities of Israel's solution-based approach. Similarly to the Camp David proposals, it is suggested that an international commission and fund be established with 'the full and exclusive responsibility for the implementation of the resolution of the refugee problem in all its aspects.'⁵ The significant transformation in attitudes is reflected through the change in focus, from a narrow and legally framed emphasis on compensation for property loss to a more holistic socio-economic perspective.

In terms of the manner in which the compensation programmes have been defined, it is also important to note how Israel was willing to openly integrate some symbolic elements from the Palestinian narrative, as the compensation is to be given for 'displacement (moral suffering – Palestinian based position) and material loss'.

Under the proposed arrangements, each refugee (as opposed to each household) may apply for compensation programmes. These programmes hold the

dual objectives of individual historical justice and communal economic development...the Rehabilitation Assistance and Compensation Programs shall form an integral part of efforts to promote economic development and social regeneration of both the individual concerned and the communities and societies in which they live or resettle,⁶

thus reiterating the emerging strategic vision of the resolution of the refugee issue as a leading vehicle for the creation of a new environment of peace across the region. As part of this approach, the funding would also be channelled to other states in the region through the notion of 'host countries'. As the non-paper states, 'The refugees' host countries shall receive compensation for the significant costs they bore in hosting the refugees.'

New ideas also emerged concerning the actual process for the disbursement of funds. Two avenues were suggested: a per capita avenue to be designed as a 'fast-track' option, with the alternative being a presumably lengthier process founded on 'claims-based criteria'. Moreover, while not elaborated upon, compensation is mentioned as coming in two forms – financial and in-kind.

Reference to Jewish refugees is also made in the Taba non-paper, but this time clearly stipulating that 'compensation to former Jewish refugees from Arab countries is not part of the bilateral Israeli–Palestinian agreement.' However, 'in recognition of their suffering and losses, the Parties pledge to cooperate in pursuing an equitable and just resolution to the issue.'⁷ Unlike the Camp David non-paper, there is no mention of operational steps to be taken such as the previous demand for the creation of another international mechanism.

Overall, the 2001 Taba proposals reflect the significant progress made in the Israeli willingness to engage the refugee issue as a collective national problem, and to draw up some general principles to guide a comprehensive and implementable programme. These operational ideas corresponded to the strategic and epistemic transformations in Israeli attitudes that developed during a decade of negotiations.

ISRAEL'S PERSPECTIVES ON COMPENSATING PALESTINIAN REFUGEES: FUTURE ORIENTATION AND ALTERNATIVE FRAMEWORKS

We will never know if the progress reached at Taba could have culminated in an actual deal under different political circumstances, but today – despite periodic returns to the negotiation table – it seems that a resolution concerning the refugee issue is farther away than ever. While the intifada years seem to have brought the leadership of the PLO/Fatah and the Israeli government closer to a feasible settlement on borders, economics, and even on Jerusalem, it seems that they have only diverged on the refugee issue, putting a comprehensive bilateral resolution of the refugee issue, (and with it the conclusion of a permanent status agreement) seemingly out of reach.

The growing divergence on the refugee issue is due to the convergence of certain key trends that have transformed the environment within which negotiations on the issue are carried out. However, strategically, the same forces that have apparently closed the door on one course of action are also opening a door to new directions. If taken advantage of, such new directions could help both sides out of this quagmire and onto a new road to peace.

Over the last decade, the environment within which negotiations are carried out has been altered to such an extent so as to render most of the earlier Israeli strategic objectives concerning the refugee issue unfeasible. Four key emerging trends can be detected:

- a. **Disintegration:** In a continuation of the Oslo process, negotiations towards a permanent status agreement are carried out between Israel and the PLO as the sole representative of the Palestinian people, both within and outside the Occupied Palestinian Territories (OPT). However, various trends within the Palestinian political system over the last decade have significantly undermined the PLO's assumed monopoly on representation of the Palestinian people. The political outreach of Hamas and the growing voice and organization of numerous refugee activist groups have challenged the Palestinian collective identity to such an extent that even the definition of 'refugee' is highly debatable. Hence, under the present circumstances a West Bank leadership would be negotiating an issue for which the vast majority of stakeholders reside outside its scope of political governance. This trend

has greatly constrained the Palestinian negotiation positions, increased tendencies towards risk aversion, and significantly weakened the PLO's delivery capacities.

- b. **Individualization:** The disintegration of the Palestinian representational system has emerged vis-à-vis two other trends. The first is the rising dominance of the international legal discourse in the Palestinian public refugee debate, which has been aided by the rise of a new Palestinian legal epistemic community since the late 1990s. The second and interrelated trend is the shift from a collective conceptualization of the refugee predicament to an individually-based conception of rights and claims, which has also been aided by the general international shift into individually-based legal and normative discourse (human rights, human security, and so on). This trend has had two major effects. First, it greatly undermined the collective/nationalistic dimension of the conflict surrounding the refugee issue, that is, the 'refugee issue' has transformed from a national Palestinian concern to be negotiated by a Palestinian leadership into a civilian concern of millions of Palestinian individuals to be mediated through Palestinian representation at multiple levels. Second, as the focus of Palestinian claims transferred from collective needs (whether related to narrative or practicalities) to legally-defined individual rights (which cannot be withheld) it gradually shifted the debate away from a solution-based orientation. It is no longer about solving a humanitarian problem or resolving a national historic conflict but about addressing non-negotiable private claims, thus placing it outside the bilateral negotiation framework between two collectives at war.
- c. **Spiralling expectations:** The growing multiplicity of voices and agendas involved, together with the individualization of claims and the distancing from solution-oriented negotiation strategies, have combined to create spiralling expectations among Palestinians both inside and outside of the OPT regarding financial compensation, migration options, and symbolic gestures. This upshot of this is that any potential practical settlement reached will fall significantly short of both the Palestinian and wider Arab public expectations, only increasing the risk aversion of the Palestinian negotiators.
- d. **Diminishing international capacities:** The special status of the 'Palestinian refugee' has been defined, for historical-political reasons, differently from the general definition of

refugeehood found in the 1951 Convention relating to the Status of Refugees. Under the 1951 Convention, refugee status is not always inherited by the refugees' descendants, nor is it continued once a refugee receives citizenship. However, a Palestinian refugee can hold actual citizenship, moreover it is an inherited status, and thus it is not humanitarianly-based. The unique definition of 'Palestinian refugeehood' distinguishes it from the universal definitions of a 'refugee'. This politically-driven classification has created a widening gap between the Palestinian predicament and that of the ever-growing population of global refugees and displaced persons (defined on an individual-needs basis and currently estimated at tens of millions) around the world. While many of those defined as 'Palestinian refugees' still suffer the social, political, and economic hardships, and the discrimination commonly associated with refugeehood, for many others this definition manifests itself in the form of problems more easily associated with issues of personal identity or general forms of socio-economic poverty. Both difficulties which are unlikely to be resolved through direct compensation schemes.

The growing strain on Western governments and international organizations to assist refugees around the globe and the institutionalization of aid processes which have accelerated over the past decade will make it very difficult to justify and approve current ideas concerning the creation of a new international body aimed to specifically assist Palestinian refugees, as differentiated from their surrounding non-refugee communities and the funnelling of a seemingly disproportionate level of funds directly towards non-humanitarianly defined refugees. Moreover, the institutional constraints existing within most potential contributing states on the possibilities for channelling taxpayers' funds towards personal compensation should also be taken into serious consideration.

From an Israeli negotiation standpoint, these trends may be translated into the following emerging working assumptions:

- a. Once the refugee issue is no longer perceived in 'collective national' terms but rather in terms of 'individual rights', its function as a negotiable element between the two people becomes irrelevant. Under such circumstances, a trade-off no longer exists within the refugee issue between the principled collective concepts of the 'right of return' and the Jewish State.

- b. A trade-off no longer exists between personal and national compensation and claims for the 'right of return'.
- c. Similarly, any trade-off between the refugee issue and other core issues is currently unworkable.
- d. Therefore, a comprehensive peace agreement that brings closure to all Palestinian and Jewish grievances cannot be reached.
- e. Last but not least, no international capacity can be expected to fully emerge so as to implement a settlement, even if it reflects the minimal end of current expectations and informal policy suggestions.

While such considerations have yet to fully manifest themselves in the emergence of a new strategic framework for negotiations, there is a growing concern that the above-mentioned trends have turned the conflict over the refugee issue into an intractable one. This could be the underlying force paralyzing the negotiation process and thereby undermining the achievement of a two-state solution, the political outcome that would have helped alleviate much of the suffering experienced by the Palestinian refugees, and the lack of which will leave many of the refugees in continued political and socio-economic limbo.

One option out of the quagmire is to take the refugee issue out of the permanent status negotiation framework and instead of striving towards 'big bang' solutions aimed at ending all the Israeli-Palestinian historical grievances, strive as a first step to end those associated with 1967. This more humble approach may possibly be more effective in the long term, enabling the cessation of the Israeli occupation and the creation of a Palestinian state, thereby establishing new constructive dynamics that may gradually transform the conflict environment, preparing the ground for addressing 1948 grievances at a later stage, and perhaps previous ones after that.

For Israel, this would require an epistemic and strategic conceptual shift, as it would mean giving up on the notion of 'end of conflict' or 'end of claims' as driving rationales. At the operational level, it would require not letting the refugee issue be sidelined for another 60 years. On the contrary, once this doctrinal shift is accepted, Israel should actively initiate a number of processes aimed towards gradually resolving some key practical elements of the refugee problem. The leading rationale here is to start addressing the issues one by one, rather than continuing to hope to comprehensively resolve them all at once.

These processes relate to two main issue areas under Israel's direct control. First, there is a need to open up its domestic public discourse towards allowing historical reflections and the acknowledgement that Historical Palestine was not a 'land without people for people without a land'; second, there is a need for Israel to formally initiate its own compensation schemes for those who left their properties during the 1948 war.

To this end, Israel could set up a special fund and mechanism for processing claims for financial compensation for properties left by Palestinian refugees in 1948. Compensation for properties is already generally publically accepted in Israel; it has existing legal foundations and does not require any international or bilateral strings attached. Moreover, because international funding for individual compensation is so highly doubtful, Israel can assume it will have to take on most of the burden, in which case the international umbrella would provide the country with nothing but complications. For economic, political, and social reasons, a pilot programme could begin by addressing the grievances of the internally displaced among the Israeli Palestinian Arabs – another issue put off by the 'big bang' doctrine.

Ultimately it should be remembered that conflicts do not end, they merely transform, gradually dissolving into the minute cultural undercurrents of the social consciousness. However, in the absence of intervention, their intractability creates such self-sustaining forces that they condemn all the parties involved (the weak as well as the strong) to an ever-growing misery.

NOTES

1. This section draws on Rex Brynen's comprehensive review of Israeli–Palestinian negotiations on the refugee issue. See Rex Brynen, *The Past as Prelude? Negotiating the Palestinian Refugee Issue* (London: Chatham House, 2008).
2. Interviews with a member of the Barak negotiation team.
3. Gilead Sher, *The Israeli–Palestinian Peace Negotiations, 1999–2001: Within reach* (London, Routledge, 2006), 247–50.
4. MidEast Web, 'The Taba Proposals and the Refugee Problem', at: www.mideastweb.org/tabam.htm (accessed 20 October 2012). In the late summer of 2001, the Paris-based daily *Le Monde* published two draft proposals for a durable solution for Palestinian refugees. The proposals, one Palestinian and the other Israeli, were apparently presented during the last official round of final status negotiations between the PLO and Israel at Taba, Egypt in January 2001.
5. *Ibid.*
6. *Ibid.*
7. *Ibid.*

4

An Analysis of the Palestinian Refugees' Right to Reparation under International Law with a Focus on the Right to Compensation

Lena El-Malak

INTRODUCTION

The 1990s was the decade of reparations. Commissions were set up in Bosnia and Kosovo to resolve the property claims of refugees from the Balkan wars, Holocaust reparations claims were filed against private corporations in US courts, and the fall of the Berlin Wall provoked legislative changes to restitute property confiscated during the Communist era. For Palestinian refugees, however, the 1990s was the decade of false hopes and unfulfilled dreams. Israeli–Palestinian negotiations, initiated in 1991, have not led to a permanent settlement to the conflict. More than 60 years after their initial displacement from their homes, and more than two decades since the start of the ‘peace process’, Palestinian refugees continue to demand their rights to return and reparation.

The aim of this chapter is to provide an international legal analysis of the Palestinian refugees’ right to receive reparation for the losses incurred as a result of their displacement from their homes in 1948. The first section of this chapter will provide a brief overview of the legal concept of reparation. Although, as will be demonstrated, restitution is the preferred form of reparation under international law, the second section of this chapter will focus on the legal grounds for the Palestinian refugees’ right to compensation. As such, the legal basis of the established right of Palestinian refugees to return to their homes inside Israel is not the subject of this chapter. Nor is the aim of this chapter to discuss how Israeli–Palestinian negotiations have addressed claims for reparation, or the mechanisms to implement them.

THE LEGAL CONCEPT OF REPARATION

In the *Factory at Chorzów* case, the Permanent Court of International Justice (PCIJ) enunciated the general obligation flowing from the commission of an internationally wrongful act: 'It is a principle of international law that the breach of an engagement involves an obligation to make reparation in an adequate form.'¹ In international law, the obligation to provide reparation comes into play most frequently in the context of inter-state claims that arise under the law of state responsibility. The codification of the law on state responsibility began in 1948, and culminated in the adoption in 2001 of the International Law Commission's Articles on State Responsibility (hereinafter ILC Articles).² The adoption of the ILC Articles was closely followed by the adoption in 2005 of the *Basic Principles and Guidelines on the Right to Remedy and Reparation* (hereinafter Guidelines on Reparation) by the United Nations General Assembly.³ Principle 18 of the Guidelines and Article 34 of the ILC Articles identify restitution, compensation and satisfaction, either singly or in combination as the main forms of reparation.

In the 1927 *Factory at Chorzów* case, the PCIJ indicated that restitution was the preferred form of reparation for an act contrary to international law.⁴ It was only when restitution was not possible that compensation was to be awarded. This view was reiterated in Article 35 of the ILC Articles. More specific standards pertaining to the right to property restitution of refugees and displaced persons (the Pinheiro Principles) were adopted on 11 August 2005 by the UN Sub-Commission on the Promotion and Protection of Human Rights.⁵ Article 2 of the Pinheiro Principles reaffirms restitution and compensation as the two forms of reparations used to remedy an expropriation of property. In line with the principles of international law stated in the *Factory at Chorzów* case, this article prioritizes restitution as the preferred remedy in cases of property expropriations, and presents compensation as an alternative only when restitution is 'factually impossible'. This view was endorsed by the European Court of Human Rights in recent decisions,⁶ as well as by the International Court of Justice in its Advisory Opinion on the Wall.⁷ According to Professor Michael Dumper, restitution has not only been favoured by the courts: 'In reviewing postconflict agreements, it is noteworthy, despite the difficulties involved, the extent to which the preferred option of international law – restitution – is employed.'⁸ Notwithstanding

the primacy of restitution as a form of reparation, this chapter will focus on the legal grounds for the Palestinian refugees' right to compensation.

LEGAL GROUNDS FOR THE PALESTINIAN REFUGEES' RIGHT TO COMPENSATION

As discussed in the first section, the obligation to provide reparation flows from the commission of an internationally wrongful act. Article 2 of the ILC Articles defines an internationally wrongful act of a State as 'conduct consisting of an action or omission [which]: (a) is attributable to the State under international law; and (b) constitutes a breach of an international obligation of the State.' The application of this definition to the events leading to the displacement and dispossession of the Palestinian refugees raises a few issues. First, there is the question of the attribution of responsibility for the displacement and continued dispossession of the Palestinian refugees. Attribution is easily established in cases where laws and regulations were adopted by the state of Israel itself to preclude Palestinian refugees from returning to their homes (such as the Law of Return),⁹ or to expropriate their property (such as the Absentees' Property Law).¹⁰ In specific cases where Palestinians were expelled by Jewish militants, or incurred physical or material damages in the months preceding the establishment of the state of Israel, the retroactive attribution of these actions to the state of Israel becomes more difficult and may require a case-by-case examination of the relevant historical facts on the ground.

As for demonstrating that there was a breach of an international obligation, the inter-temporal rule¹¹ requires that the conduct attributed to the state of Israel be in breach of an obligation in force for that State at that time. The obligation does not have to be treaty-based. It can arise from any other source of international law.¹² In the case of the displacement of Palestinian refugees and the expropriation of their property, the primary obligation violated may be derived from humanitarian law, the law on enemy property, UN resolutions and human rights law. Unless the primary obligation requires otherwise, 'fault' and 'damages' are irrelevant to the notion of state responsibility in international law.¹³ The next section will outline the primary obligations under international law, which may have been violated by Israel when it

displaced and dispossessed Palestinian refugees from their homes in 1948.

Israel's violations of humanitarian law during the *Nakba*

At the time of the creation of the state of Israel, the relevant treaties and documents on international humanitarian law were the Hague Conventions of 1899 and 1907 and their Regulations.¹⁴ The nascent state of Israel was not, and is not today, a party to either Convention. However, in 1946, the Nuremberg International Military Tribunal stated that the provisions of the 1907 Convention had become declaratory of the laws and customs of war.¹⁵ As such, they were binding on all states, including those that have not ratified them. In addition, Israel's High Court has accepted the Hague Regulations as binding customary law, enforceable in Israeli courts.¹⁶

The Hague Regulations, which were annexed to the 1907 Hague Convention, include provisions protecting both private and public property. These provisions fall under two different sections in the Regulations. The first two provisions protecting property rights fall under Section II of the Regulations, titled 'Hostilities'. As such, these provisions apply to protect property *during* hostilities. The provisions are thus relevant to an analysis of events affecting property rights, which took place *during* the 1948 Arab–Israeli war. They are less relevant to the analysis of legislation that was adopted in the 1950s with the aim of expropriating refugee property, such as the Absentees' Property Law and other regulations. The two provisions which apply during hostilities are the following:

Art. 23 [I]t is especially forbidden...(g) To destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war.

Art. 28 The pillage of a town or place, even when taken by assault, is prohibited.

These provisions prohibit the destruction, seizure and pillaging of property, in the absence of military necessity. As documented by one of Israel's New Historians, Benny Morris, the state of Israel was responsible for the destruction of entire villages as part of a deliberate policy aimed at preventing the refugees' return.¹⁷ The State also proceeded to settle arriving Jewish immigrants ('*olim*)

in abandoned refugee property.¹⁸ These acts were in violation of the above-mentioned provisions of the Hague Regulations thus constituting a wrongful act, which is directly attributable to the state of Israel. As such, this wrongful act triggers Israel's state responsibility and its ensuing obligation to provide reparation for the damage and the destruction of property which took place during hostilities and as a direct result of actions or omissions by the state of Israel and its armed forces. In fact, Article 3 of the 1907 Hague Convention stipulates that '[a] belligerent party which violates the provisions of the said Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces.' This conclusion is supported by the findings of the UN Mediator for Palestine, Count Folke Bernadotte. In his last Progress Report to the Secretary General, Bernadotte stated that:

[t]here have been numerous reports from reliable sources of large-scale looting, pillaging and plundering, and of instances of destruction of villages *without apparent military necessity*. *The liability of the Provisional Government of Israel to restore private property to its Arab owners and to indemnify those owners for property wantonly destroyed is clear*, irrespective of any indemnities which the Provisional Government may claim from the Arab States.¹⁹

The remaining provisions of the Hague Regulations pertaining to immovable property rights fall under Section III, titled 'Military Authority over the Territory of the Hostile State'. They provide an explicit injunction against the confiscation of private property in addition to forbidding acts of pillage and damage or seizure of public property:

Art. 46 Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected.

Private property cannot be confiscated.

Art. 47 Pillage is formally forbidden.

Art. 56 The property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when State property, shall be treated as private property. All seizure of, destruction or wilful damage done to

institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings.

It is important to note that the confiscation of property is prohibited in absolute terms in Article 46. No exceptions are made, not even in cases of military necessity. This can be contrasted with the wording in Article 23(g) which allows the seizure and destruction of property if ‘demanded by the necessities of war’. Since they fall under Section III of the Regulations, these provisions are meant to apply in the territory of a hostile state while it is under the military authority of another state, such as an occupying power. Israel could however challenge the applicability of these provisions to the territory of the state of Israel, in which Palestinian refugee property is located, as it is not considered occupied territory in international law. However, in a working paper which interprets the wording of UNGA Resolution 194 on ‘Compensation to refugees for loss of or damage to property to be made good under principles of international law or in equity’, the Secretariat of the UNCCP explicitly cites these provisions as prohibiting the acts of looting, pillaging and plundering of private property, and the destruction of property and villages without military necessity that occurred in Palestine in 1948.²⁰ Nothing in the Secretariat’s working paper suggests that the provisions of the Hague Regulations, including Articles 46, 47 and 56, do not apply to the territory of the state of Israel within its *de facto* borders set by the 1949 armistice agreements. Regardless of whether Israel can successfully challenge the applicability of these provisions within its *de facto* pre-1967 borders, it remains bound by the provisions under Section II of the Regulations (Art. 23 and 28) and has the obligation to provide reparations for the damage caused to property that was pillaged, looted, or destroyed by Israeli troops without military necessity during the 1948 war.

Israeli property expropriation and the doctrine on enemy property

While the previous section focused on violations of international law committed by the State of Israel *during* the war, this section will shed light on the state of Israel’s policy towards refugee property both during and after the war. As noted by Professor Michael Kagan, civilian property was traditionally viewed as linked to sovereignty and hence considered a legitimate object of warfare (spoils of war).²¹ As discussed earlier, the 1899 and

1907 Hague Conventions and annexed Regulations did however include provisions protecting civilian property. While these legal instruments may have put a limit to the doctrine of war booty, the seizure of 'enemy property' was still permitted if 'imperatively demanded by the necessities of war.'²² The rationale behind this was that civilian assets could be used to generate funds for the war effort.²³ It was also based on the presumption that, in times of conflict, a person's formal nationality would influence their political and military loyalties.²⁴ This led to the development of a practice in international law, which enabled a warring state to place enemy property under its administrative control in order to prevent its use for the benefit of the enemy, *without seizing the property or depriving its enemy owner of title*.²⁵ The British were the first to use enemy property legislation during World War I²⁶ and again in World War II.²⁷ Israel drew on these laws when it enacted the Emergency Regulations on Absentees' Property of 5709/1948, which were the first regulations adopted to deal with absentee property in Israel and the precursors to the Absentees' Property Law of 1950.²⁸ Subsequent Israeli legislation, namely the Absentees' Property Law of 5710–1950 and the Development Authority (Transfer of Property) Law of 1950, enabled the Custodian to dispose of absentee property instead of just holding it in trusteeship for the absentees until a peaceful settlement is reached.²⁹

While Israel could argue that it had to use absentee property to house the thousands of incoming Jewish settlers, the historical development of laws affecting absentee property suggests that the Israeli state had an ulterior motive, which was to use the 'law, along with other means, to impose and legitimize Jewish political and territorial domination within its sovereign space.'³⁰ In a study of the perverse use of enemy property doctrine in the Middle East, Michael Kagan reaches the conclusion that:

Israel followed the enemy property doctrine only in form. Its policies are better understood as an application of the war booty doctrine, where conquest alone effectively led to permanent dispossession. Instead of holding refugee property in anticipation of a peace settlement, Israel transferred it for the benefit of Israeli Jews without any provision for the property to be preserved for its original owners' benefit. The enemy nationals concept hence facilitated a practice that international law had sought to ban decades earlier by providing a formal

mechanism by which non-Jews could be labelled enemies (or in the Israeli legislation, ‘absentees’).³¹

In sum, Palestinian refugees can argue that Israel’s property confiscations constituted illegal seizures from the outset. These confiscations and the subsequent alienation of refugee property for the benefit of Jews only cannot be justified under the doctrine of enemy property. The Custodian should have held the property in custody and preserved the original owner’s interests in anticipation of a peace settlement. Israel’s distorted use of the doctrine of enemy property is thus nothing more than a political cover to mask policies that were prohibited under international law.

Palestinian refugees’ right to compensation under UN General Assembly resolutions

On 29 November 1947, the General Assembly adopted Resolution 181(II) (the Partition Plan). Besides recommending the partition of Palestine into a Jewish and Arab State, Resolution 181 includes important provisions protecting the rights of the minorities in each state. With regard to property rights, the resolution explicitly provides that:

[N]o expropriation of land owned by an Arab in the Jewish State (by a Jew in the Arab State) shall be allowed except for public purposes. *In all cases of expropriation full compensation as fixed by the Supreme Court shall be paid previous to dispossession.*³²

The Zionist leadership accepted Resolution 181 and proceeded with its plans to establish a Jewish State. On 14 May 1948 the Jewish leaders grounded the declaration of the Jewish State of Israel ‘on the strength of the resolution of the United Nations General Assembly [Resolution 181]’.³³ Though United Nations General Assembly resolutions are generally not binding, the nascent State of Israel has accepted this resolution and relied on it when it declared its independence. It is thus bound by its provisions, including the ones protecting minority rights and their property interests.³⁴ As discussed in the previous section, Israel did not confiscate property for public purposes, though the housing of incoming Jewish settlers may have been one of its short-term goals. From the outset, the State of Israel had a long-term plan to permanently deprive non-Jewish owners of their property and

transform their land into Israeli lands. It has therefore violated its obligations towards the Arab minority under Resolution 181.

Further indication of the international will to safeguard the rights of the inhabitants of Palestine came in the form of Security Council Resolution 46, adopted on 17 April 1948, which called on all persons and organizations in Palestine, 'and especially upon the Arab Higher Committee and the Jewish Agency [...] to refrain, pending further consideration of the future government of Palestine by the General Assembly, from any political activity which might prejudice the rights, claims, or position of either community'.³⁵ This resolution was passed only a few weeks before the State of Israel was declared in May 1948. At the time, the Haganah, which was the main paramilitary organization, and which later became the regular army of the State of Israel (the Israeli Defense Forces or IDF), had already set in motion a military plan which called for the 'destruction of villages', and their encirclement. 'In the event of resistance, the armed force must be wiped out and the population must be expelled outside the borders of the state.'³⁶ Land confiscations and expulsions were thus taking place in Palestine both before and after the creation of the State of Israel. The broad language of the resolution, and its clear prohibition of any activity which might prejudice the 'rights, claims, or positions of either community,' should have prevented Israel from confiscating properties, and from obstructing the Palestinian refugees' return to their homes. Unlike General Assembly resolutions, Security Council resolutions are binding. This Palestine-specific resolution, coupled with the general rules of international humanitarian law discussed earlier, strengthens the arguments that Israel violated its obligations under international law by destroying and confiscating Palestinian-owned property both during and after the 1948 war.

As noted earlier, in his last Progress Report to the UNGA, the UN Special Rapporteur to Palestine, Count Folke Bernadotte, condemned the destruction and pillaging of Palestinian property, in the absence of military necessity, and considered the Provisional Government of Israel to be liable to restitute private property to its Arab owners and to provide them with compensation for property wantonly destroyed.³⁷ Acting on Bernadotte's report, the UNGA adopted Resolution 194, which established a UN Conciliation Commission for Palestine (UNCCP) and requested it to assume the functions of the UN Mediator on Palestine in view of reaching a final settlement of the Palestine question. More

specifically, with regards to refugees, Paragraph 11 of Resolution 194 provides the most often cited statement in support of the right of return, restitution, and compensation of Palestinian refugees in international law. Paragraph 11(1) stipulates ‘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’. This statement raises several questions: (i) who should be compensated; (ii) what damages are compensable; (iii) who should compensate; and (iv) what is the standard of compensation?

With regard to the first question, according to the debate which preceded the adoption of Paragraph 11, the drafters agreed to use the term ‘refugees’ to refer to ‘all refugees, irrespective of race or nationality, provided that they had been *displaced from their homes in Palestine*.’³⁸ Therefore Paragraph 11(1) applies both to Arab and Jewish refugees who had been residing in Palestine and were displaced from their homes during the 1948 war. It does not apply to Jewish refugees who fled from other Arab countries in 1948 or later on. In his memorandum to the UNCCP, Contini stated that ‘[W]henver a loss or damage to refugee property is attributable to an action by the Israeli Government, which is wrongful under international law, the claimant is entitled to a pecuniary indemnification *in addition* to the restitution of returnable property.’³⁹ This statement confirms that the rights of return, restitution and compensation are not mutually exclusive. As such, both returning and non-returning refugees should be compensated. In fact, Paragraph 11(1) distinguishes between two different categories of claims based on whether a refugee chooses to return or not. These categories are: (i) compensation claims for property of refugees not choosing to return; and (ii) compensation claims for loss of or damage to property, which, under principles of international law or in equity should be made good. Compensation claims for war damages is a third category of claims which typically arises at the end of hostilities. This category of claims was not included, however, in Resolution 194.

The first category of claims listed above is based on the general legal principle that the confiscation of private property is illegal under international law, unless required for public purposes or out of military necessity. In cases where property seizure can be justified, in order to be lawful, compensation must be paid to the property’s rightful owner.⁴⁰ According to a working paper

prepared by the UNCCP's Secretariat, this category of claim must also be

considered in the light of the Assembly's decision that refugees should be given the choice either to return to their homes and live at peace with their neighbours or to receive compensation for their property if they choose not to return.⁴¹

The second category of claims is an intermediate group of claims, which falls between compensation claims for non-returning refugees and compensation claims for war damages. The claims for loss of or damage to property must in fact be distinguished from claims for ordinary war damages as they do not directly arise out of military events in Palestine. According to the legislative history of Paragraph 11(1), the cases which the General Assembly had envisaged were those of 'looting, pillaging and plundering of private property and destruction of property and villages without military necessity', which were all prohibited by the laws and customs of war on land which were laid down in the Hague Regulations of 1907.⁴² By contrast, war damages originate as the direct consequences of military operations. Nothing in the wording of Resolution 194 or in its drafting history suggests that anything other than property loss or damage should be compensated. Damages for emotional suffering, death, or physical injury for instance were not mentioned in Paragraph 11(1). It is not uncommon, however, for regional courts and mass claims tribunals to award compensation for non-pecuniary damages.⁴³ Palestinian refugees could for instance demand compensation for the distress caused by their continuing displacement and for loss of enjoyment of their property.

With regard to property, there is no justification in international law for a distinction between land and other property or between movable and immovable property. According to Contini, '[n]o such distinction was made in the resolution, and it was clearly the intention of the General Assembly that non-returning refugees should be compensated for whatever property they have left behind.'⁴⁴ This is particularly significant in the case of Palestinian refugees as the majority were not landowners.⁴⁵ In addition, the majority of landowners were members of the Palestinian bourgeoisie. Had compensation been restricted to this class of individuals, the neediest refugees would have been left without any financial remedies for their displacement and their loss. The

word 'property' in Paragraph 11(1) thus refers to the loss of any property, which could include cattle, bank accounts, dwellings, and lands.

Regarding the 'Governments or authorities responsible' for compensating refugees, Resolution 194 does not explicitly name any states. However, as discussed earlier, compensation should be provided in cases where property was confiscated by the State of Israel, or damaged by acts of pillage and wanton destruction, unwarranted by military necessity. In both cases, the claims for compensation arise out of actions which are directly attributable to the state of Israel. Nothing in the various reports and working papers on the interpretation of Paragraph 11(1) of Resolution 194 which were issued by the UNCCP, suggest that the drafters expected the international community or states, other than Israel, to compensate refugees for their losses. Arab states may still have to compensate Israel for claims arising out of ordinary war damages. However, as mentioned earlier, this category of claims was not included in Paragraph 11(1) of Resolution 194. Though there aren't any documents supporting this interpretation, this author's view is that Paragraph 11(1) does not mention any specific government because at the time this paragraph was drafted, that is, in December 1948, Israel was still at war with neighbouring Arab countries and the outcome of that war was uncertain. Israel may well have lost that war in which case Arab countries would have had to provide compensation for loss of or damage to the property of Jewish refugees who were residing in Palestine during the hostilities. This interpretation may also explain why the drafters of Paragraph 11(1) intended the word 'refugees' to include both Arabs and Jews, provided they had been displaced from their homes in Palestine.

Unlike Resolution 181, which called for 'full compensation' in cases of land expropriation,⁴⁶ Paragraph 11(1) does not refer to a specific standard of compensation. On the other hand, in his Progress Report to the General Assembly, Bernadotte favoured the standard of 'adequate compensation'.⁴⁷ In the final text of Paragraph 11(1), the General Assembly opted however to drop the word 'adequate' as applied to the concept of compensation. This may indicate that the General Assembly was either in favour of 'full compensation', or uncertain about the applicable standard of compensation and chose to leave it to the UNCCP and the various governments or the authorities responsible to agree on a method of valuation, which would have to be based on 'principles

of international law' or 'equity'. In circumstances involving the displacement of refugees, the UN Group of Governmental Experts on International Co-operation to Avert New Flows of Refugees⁴⁸ and the International Law Association's *Declaration of Principles of International Law on Compensation to Refugees*, also known as the 1991 Cairo Declaration,⁴⁹ both endorsed the standard of 'adequate compensation'. According to the UNHCR's Executive Committee, returning refugees who are unable to regain possession of their property 'should be justly and adequately compensated by the country of origin.'⁵⁰ Though there seems to be widespread support for the standard of 'adequate compensation' in cases involving the displacement and dispossession of refugees, the Pinheiro Principles refer to the refugees and displaced persons' 'right to *full and effective* compensation as an integral component of the restitution process'.⁵¹ Besides referring to the standard of 'full compensation', or 'adequate compensation', none of these instruments has explicitly defined what constitutes adequate or full compensation. However, as stated earlier, compensation is used to complement restitution, in cases where the restituted property is damaged, or to substitute restitution when the latter is 'factually impossible'. Either way, compensation has to serve the same purpose as restitution. In other words, it has to restore the claimant, as far as possible, to the status quo ante by restoring 'the value of the loss of the destroyed property' or offering restitution in kind.⁵² Hence, regardless of whether the standard of compensation is referred to as 'adequate', or 'full', the underlying principle is that compensation must be granted with the same intention as restitution.

The significance of Resolution 194

Almost 60 years after its adoption in December 1948, the UN General Assembly Resolution 194 continues to be one of the most often cited resolutions in support of the Palestinian refugees' rights to return, restitution and compensation. It is important to note that Resolution 194 was not intended to declare new rules of international law but rather to affirm existing ones. In fact, in his last Progress Report, UN Mediator Bernadotte called on the General Assembly to *affirm* and make effective the rights of displaced people,⁵³ rather than to declare these rights. This presupposes that these rights (return, restitution and compensation) were already well-grounded in international law and were simply reiterated in Resolution 194. As discussed

in previous sections, acts of destruction, pillage or confiscation of private property were already prohibited under the existing norms of international law in 1948, namely the 1907 Hague Regulations. As such, violations of these Regulations created obligations on Israel to provide reparations (in the form of restitution and/or compensation) to land and property owners even before Resolution 194 was adopted. With regard to the right to compensation, Resolution 194 additionally attributes that right to ‘principles of international law or [...] equity’, thus making it clear that the General Assembly was restating pre-existing law or equity.⁵⁴ According to refugee law expert Luke T. Lee,

[when] a resolution restates existing international law, [as is the case of Resolution 194] its binding legal force on member states rests not on the resolution, but on the declared law. The law binds all states, whether or not they have voted for that resolution.⁵⁵

Repeated and near unanimous reaffirmations of this resolution every year since 1948 have further strengthened the legal validity of refugees’ rights.⁵⁶ Israel is thus bound, by virtue of principles of international law restated in Resolution 194, to reconstitute the property of Palestinian refugees and provide compensation for damage to or loss of property.

According to the UN Committee on the Exercise of the Inalienable Rights of the Palestinian People, Israel’s binding obligations towards Palestinian refugees flowed also from

its specific undertaking, when applying for membership of the United Nations, to implement General Assembly resolutions 181 (II) of 29 November 1947, safeguarding the rights of the Palestinian Arabs inside Israel, and 194 (III) of 11 December 1948, concerning the right of Palestinian refugees to return to their homes or to choose compensation for their property. This undertaking was also clearly reflected in General Assembly resolution 273 (III),⁵⁷

by which the General Assembly admitted Israel to membership in the UN.⁵⁸ This resolution recalled Resolution 181 and 194. In its declaration before the ad hoc Political Committee in respect of the implementation of these resolutions, the government of Israel announced ‘its acceptance of obligations to make compensation

for abandoned lands.’⁵⁹ Throughout the years, the General Assembly continued to reiterate Palestinians refugees’ rights to return, restitution and compensation. At least since 1981, the General Assembly has annually adopted resolutions which specifically call for the protection of the rights, property, and interests of the Palestinian refugees.⁶⁰

Palestinian refugees’ property rights under human rights law

In a recent resolution pertaining to Palestinian Refugee Property, the General Assembly recalled ‘that the Universal Declaration of Human Rights and the principles of international law uphold the principle that no one shall be arbitrarily deprived of private property.’⁶¹ International human rights law can thus provide an additional basis for Palestinian refugee property claims in Israel. The main obstacle to a rights-based approach to these claims is the inter-temporal rule which precludes the application of modern norms of international law to events which occurred several decades ago before the development of new international legal norms protecting individuals’ rights. Modern human rights treaties, such as the 1965 Convention on the Elimination of Racial Discrimination (CERD), which include provisions protecting property rights did not exist, or were at least not binding, in the 1940s and 1950s when Palestinians were displaced from their homes, or when Israel adopted legislation confiscating their property. The right to property and adequate housing, in particular, has only recently gained significance and broader appeal.⁶² The argument that binding norms of human rights pertaining to property were violated by Israel in 1948–50 is therefore quite tenuous. The only provision on property rights that existed at that time was Article 17(2) of the Universal Declaration of Human Rights (UDHR) which stipulates that ‘[N]o one shall be arbitrarily deprived of his property’. The UDHR was adopted by the UN General Assembly on 10 December 1948,⁶³ several months after the creation of the State of Israel but well before Israel adopted the Law on Return and the Absentees’ Property Law of 1950, barring the refugees’ return and expropriating their property. It is not, however, a treaty and is not considered a source of binding obligations under international law.

Though it would be difficult to establish that Israel’s expropriation of property in the 1950s violated binding norms of human rights law, this does not render this body of international law irrelevant to a contemporary discussion of Palestinian refugee

rights. Notwithstanding the application of the inter-temporal rule, UN studies, human rights organizations, and legal scholars have argued that the rights of Palestinian refugees to return to their homes and receive compensation for their losses are based on and strengthened by the norms of international human rights law enunciated in modern treaties.⁶⁴

CONCLUSION

As was demonstrated in this chapter, the Palestinian refugees' right to compensation is firmly grounded in international law. It derives from the very basic premise that '[i]n international law, as in domestic law, rights without remedies are illusory, *i.e.*, "no rights" at all'.⁶⁵ While commendable, awarding compensation to Palestinian refugees is not a sufficient remedy on its own. In fact, it has been argued that 'the introduction of a financial substitute for State and community obligations risks lending support to ethnic, religious and ideological cleansing'.⁶⁶ In order to eliminate this risk, Palestinian refugees must insist on an explicit acknowledgement by Israel of its responsibility for their displacement and dispossession in 1948. Absolving Israel of this responsibility would only encourage it to pursue similar policies against Palestinians in the Occupied Territories, while expecting the international community to foot the bill for its unlawful actions.

NOTES

1. *The Factory at Chorzów* (Jurisdiction), 1927, Permanent Court of International Justice, Series A, no. 9, 21.
2. For an overview of the codification process, see James Crawford, *The International Law Commission's Articles on State Responsibility: Introduction, Text and Commentaries* (Cambridge: Cambridge University Press, 2002), 1–60.
3. Adopted by UN General Assembly Resolution 60/147 of 16 December 2005.
4. *The Factory at Chorzów* (Merits), 1928, Permanent Court of International Justice, Series A, no. 17, 47.
5. Principles on Housing and Property Restitution for Refugees and Displaced Persons, UN Doc. E/CN.4/Sub.2/2005/17 (2005) (hereinafter 'Pinheiro Principles'), at: www.cohre.org.
6. See *Papamichalopoulos and Others v. Greece* (Art. 50) *Application no. 14556/89*, 31 October 1995 at para. 34, 38–39 and *Loizidou v. Turkey*, (Merits) (40/1993/435/514), 18 December 1996 at para. 39–47.
7. *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, ICJ Advisory Opinion, 9 July 2004 at para. 152–53.

8. Michael Dumper, *The Future for Palestinian Refugees: Toward Equity and Peace* (London: Lynne Rienner, 2007), 140.
9. Law of Return, 5710–1950, 5 July 1950.
10. Absentees' Property Law, 5710/1950, 14 March 1950.
11. The so-called inter-temporal rule, which was first stated by the Permanent Court of Arbitration in the *Island of Palmas Case* in 1928, stipulates that '[a] juridical fact must be appreciated in the light of the law contemporary with it, and not of the law in force at the time such dispute in regard to it arises or falls to be settled.' See *Island of Palmas Case (United States v. the Netherlands)*, *Reports of International Arbitration Awards* 2 (1928), 845.
12. Crawford (2002), 83–84.
13. *Ibid.*, 84.
14. Convention (II) with Respect to the Laws and Customs of War on Land and its Annex: Regulations Concerning the Laws and Customs of War on Land, The Hague, 29 July 1899 (hereinafter 1899 Convention); Convention (IV) Respecting the Laws and Customs of War on Land and its Annex: Regulations Concerning the Laws and Customs of War on Land, The Hague, 18 October 1907 (hereinafter 1907 Hague Convention).
15. *American Journal of International Law* 41 (1947), 248–49.
16. David Kretzmer, *The Occupation of Justice: The Supreme Court of Israel and the Occupied Territories* (Albany: State University of New York Press, 2002), 31–40.
17. Benny Morris, *The Birth of the Palestinian Refugee Problem Revisited* (Cambridge: Cambridge University Press, 2004), 348–60.
18. *Ibid.*, 395.
19. Emphasis added. *Progress Report of the United Nations Mediator on Palestine Submitted to the Secretary-General for Transmission to the Members of the United Nations*, UN doc. A/648, 16 September 1948, Part V, para. 7 (hereinafter Bernadotte's Progress Report).
20. UNCCP, *Compensation to Refugees for Loss of or Damage to Property to be Made Good under Principles of International Law or in Equity*, W/30, 31 October 1949 at para. 13.
21. Michael Kagan, 'Destructive Ambiguity: Enemy Nationals and the Legal Enabling of Ethnic Conflict in the Middle East', *Columbia Human Rights Law Review* 38, no. 2 (2007), 269.
22. Article 23(g) of the 1907 Hague Regulations.
23. Kagan (2007), 273.
24. *Ibid.*
25. Lord McNair and A. D. Watts, *The Legal Effects of War* (Cambridge: Cambridge University Press, 1966), 332.
26. In World War I, Britain enacted the 1914 British Enemy (Amendment) Act, which established the first custodian of enemy property in order to collect revenues on German property.
27. Kagan (2007), 273.
28. Michael Fischbach, *Records of Dispossession: Palestinian Refugee Property and the Arab–Israeli Conflict* (New York: Columbia University Press, 2003), 22.

29. Jeremy Forman and Sandy Kedar, 'From Arab land to "Israel Lands": The legal dispossession of the Palestinians displaced by Israel in the wake of 1948', *Environment and Planning D.: Society and Space* 22 (2004), 816–17.
30. *Ibid.*, 812.
31. Kagan (2007), 297.
32. Emphasis added. UNGA Resolution 181, Chapter 2 at para. 8.
33. The Declaration of the Establishment of the State of Israel, 14 May 1948. Available from the Israeli Ministry of Foreign Affairs, at: www.mfa.gov.il
34. A study prepared by the United Nations Committee on the Exercise of the Inalienable Rights of the Palestinian People concluded that '[s]ince, of the two states envisaged in the partition plan, Israel was the only one to come into existence, it bore the obligation of discharging the responsibilities toward its minority population as prescribed by the partition resolution.' United Nations Committee on the Exercise of the Inalienable Rights of the Palestinian People (CEIRPP), *The Right of Return of the Palestinian People*, UN doc. ST/SG/SER.F/2, 1 November 1978 at Chapter IV.
35. UNSC Resolution S/Res/46, 17 April 1948, S/723 at para. 1(d).
36. Walid Khalidi, 'Plan Dalet: Master Plan for the Conquest of Palestine', *Journal of Palestine Studies* 18, no. 1 (1988), 29.
37. See Bernadotte's Progress Report.
38. Emphasis added. UNCCP, *Analysis of paragraph 11 of the General Assembly's Resolution of 11 December 1948*, UN doc. W/45, 15 May 1950, 1.
39. Emphasis added. UNCCP, *Letter and Memorandum dated 22 November 1949, Concerning Compensation, received by the Chairman of the Conciliation Commission from Mr. Gordon Clapp, Chairman, United Nations Economic Survey Mission for the Middle East*, UN doc. W/32, 19 January 1950, 13.
40. In his memorandum to the UNCCP, Contini states that 'A refusal to accept the principle of compensation to non-returning refugees for all their property vested in the Custodian would be equivalent to a confiscation of private property. Such action would appear to be contrary to a legal principle which is generally recognized both under the domestic law of most countries and under international law.' See P. Contini, *Legal Aspects of the Problem of Compensation to Palestine Refugees*, 22 November 1949, attached to *Ibid.*, 7.
41. UNCCP, W/30, 31 October 1949, para. 12.
42. *Ibid.*, para. 13.
43. For cases involving property losses in which compensation was awarded for loss of enjoyment and other non-material damages, see *Papamichalopoulos and Others v. Greece* (Art. 50) *Application no. 14556/89*, 31 October 1995 at para. 34, 38–39 and *Loizidou v. Turkey*, (Art. 50) (40/1993/435/514), 28 July 1998 at para. 31 and 39. The United Nations Compensation Commission also awarded compensation for non-pecuniary damages such as death, mental pain, or serious personal injury, which was a direct result of Iraq's invasion of Kuwait. (See the UNCC website for a list of the different categories of claims at: www.uncc.ch). In addition, Principle 20 of the Guidelines on Reparation stipulates that compensation should be provided for economically assessable damage such as physical or mental harm, lost opportunities or moral damage.
44. UNCCP, W/32, 19 January 1950, 7.

45. In 1965, Frank Jarvis, head of the UNCCP's Technical Office, estimated that 43.6 per cent of Palestinian refugees were landowners. See Fischbach (2003), 277.
46. UNGA Resolution 181, Chapter 2 at para. 8.
47. See Bernadotte's Progress Report at Part I, Section VIII, para. 3(e), in which Bernadotte states that '[T]he right of innocent people, uprooted from their homes by the present terror and ravages of war, to return to their homes, should be affirmed and made effective, with assurance of adequate compensation for the property of those who may choose not to return.'
48. UN doc. A/41/324 at para. 66(f).
49. Principle 1 of the Cairo Declaration of Principles of International Law on Compensation to Refugees, adopted by the International Law Association (Cairo, 1992), reprinted in the *American Journal of International Law* 87 (1993), 157.
50. UNHCR EXCOM, *Conclusion on Legal Safety Issues in the Context of Voluntary Repatriation of Refugees*, No.101 (LV), 8 October 2004 at para. (c) and (h).
51. Emphasis added. Principle 21 of the Pinheiro Principles.
52. Principle 21.1 of the Pinheiro Principles.
53. See note 47 above.
54. Luke T. Lee, 'The Preventive Approach to the Refugee Problem', *Willamette Law Review* 28 (1992), 829–30.
55. *Ibid.*, 829.
56. Samuel A. Bleicher, 'The Legal Significance of Re-Citation of General Assembly Resolutions', *American Journal of International Law* 63 (1969). According to Michael Lynk, Resolution 194 has been reaffirmed or referred to, by an overwhelming majority, at least 130 times since its adoption in 1948. Michael Lynk, 'Compensation for Palestinian Refugees: An International Law Perspective', *Palestine Yearbook of International Law* XI (2000–2001), 169.
57. CEIRPP (ST/SG/SER.F/2, 1 November 1978), Chapter VII.
58. UNGA Res. 273 (III), Admission of Israel to membership in the United Nations, 11 May 1949.
59. UNGA, (A/855), A/PV.207, 11 May 1949.
60. See UNGA Resolution 36/146 C of 16 December 1981 which 'Requests the Secretary-General to take all appropriate steps, in consultation with the United Nations Conciliation Commission for Palestine, for the protection and administration of Arab property, assets and property rights in Israel, and to establish a fund for the receipt of income derived therefrom, on behalf of their rightful owners [...]', UNGA Resolution 51/129, 13 December 1996, UNGA Resolution 55/128, 8 December 2000, and UNGA Resolution 61/407, 14 December 2006.
61. UNGA Resolution 61/407, 14 December 2006.
62. Scott Leckie, *Legal Resources for Housing Rights: International and National Standards* (Geneva: Centre on Housing Rights and Evictions, 2000), 5.
63. UNGA Resolution 217A(III), 10 December 1948.
64. See Kathleen Lawand, 'The Right to Return of Palestinians under International Law', *International Journal of Refugee Law* 8 (1996), 547–58; Gail Boling, *The 1948 Palestinian Refugees and the Individual Right of Return: An International Law Analysis* (Bethlehem: Badil Resource Centre, 2001),

- 36–42. See also CEIRPP (ST/SG/SER.F/2, 1 November 1978), Chapter II; Lynk, 171–72.
65. Covey T. Oliver, 'Legal Remedies and Sanctions', in Richard B. Lillich (ed.), *International Law of State Responsibility for Injuries to Aliens* (Charlottesville: University Press of Virginia, 1983), 61.
66. Guy Goodwin-Gill, *The Refugee in International Law* (Oxford: Oxford University Press, 1998), 269.

5

The United Nations Conciliation Commission for Palestine's Records on Palestinian Refugee Property Losses

Michael R. Fischbach

The archives of the United Nations Conciliation Commission for Palestine (UNCCP) have long been known to contain what is arguably the most thorough reckoning of the scope and value of Palestinian refugee land ever undertaken. Although part of the UNCCP's 'Technical Project' detailing 1948 Arab property in Israel was made public in 1964 after twelve years of work, significant details, such as the value of the property, were not. The voluminous records collected by the commission over the years were handed over to the United Nations Secretariat Archives in 1966, which continues to keep them under literal lock and key across the East River from the UN Secretariat (headquarters), in an annex in the Queens section of New York City. The UNCCP generally has not allowed access either to these records on Arab property, or to its other documents, ever since.¹

This archival material assumed an almost mythical status over the years for those studying the refugee property question, as it long was known that this useful material was secreted away 'somewhere at the UN'. As the result of a massive project to digitize some of the UNCCP archives in the late 1990s, and rare permission to view some of its records, we now are in a position to comment on the usefulness of these archival documents for studies of the question of Palestinian refugee property compensation.

RESOLUTION 194 AND THE CREATION OF THE UNCCP

The establishment of the UNCCP was the result of some of the earliest UN efforts to deal with the Palestinian refugee property issue. In an effort to stop the escalating fighting during the first Arab-Israeli war of 1948, the General Assembly adopted

Resolution 186 (S-2) on 14 May 1948, which created the position of a Mediator for Palestine. The Security Council chose the Swedish diplomat, Folke Bernadotte, as Mediator. The plight of the Palestinian refugees during the war, including the disposition of their abandoned property, soon became one of his major concerns. Bernadotte's Progress Report to the General Assembly of 16 September 1948 noted his firm belief that Israel should allow the refugees to return:

From the start, I held the firm view that, taking into consideration all the circumstances, the right of these refugees to return to their homes at the earliest practicable date should be established...It is, however, undeniable that no settlement can be just and complete if recognition is not accorded to the right of the Arab refugee to return to the home from which he has been dislodged by the hazards and strategy of the armed conflict between Arabs and Jews in Palestine...It would be an offence against the principles of elemental justice if these innocent victims of the conflict were denied the right to return to their homes while Jewish immigrants flow into Palestine, and, indeed, at least offer the threat of permanent replacement of the Arab refugees who have been rooted in the land for centuries.²

Regarding the refugees' property, he noted:

There have been numerous reports from reliable sources of large-scale looting and plundering, and of instances of destruction of villages without military necessity. The liability of the Provisional Government of Israel to restore private property to its Arab owners and to indemnify those owners for property wantonly destroyed is clear irrespective of any indemnities which the Provisional Government may claim from the Arab States.³

Jewish militants assassinated Bernadotte the very next day, and he was replaced by the American Ralph Bunche. Bunche soon found himself busy with arranging ceasefires and eventual armistice agreements between Israel and the Arab states, not particular questions relating to refugees and their abandoned property.

However, the General Assembly remained mindful of the property question. Several months after Bernadotte's murder, it adopted a major resolution dealing with the refugees: Resolution 194 (III) of 11 December 1948, which called for, *inter alia*, refugee

repatriation and property compensation. The resolution was significant in that it raised these issues from a matter for the belligerent parties to deal with to the level of an international mandate. Paragraph 11 of Resolution 194 states that the General Assembly:

Resolves that the refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for the loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible.⁴

The resolution did something else as well. It created a three-member Conciliation Commission, the UNCCP, to take over the role of the Mediator. In addition to this, the resolution charged the new body with carrying out Paragraph 11's specific call for refugee repatriation and compensation. The resolution:

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;⁵

Three nations were appointed as members of the new commission, France, Turkey, and the United States of America. They posted diplomats to the commission, who were assisted in their tasks by UN bureaucrats. The UNCCP commenced functioning from Jerusalem one month later, in January 1949.

UNCCP officials held separate conciliation meetings with representatives of Israel and the Arabs in the Middle East in early 1949, and later brought the parties together in Lausanne for a conference that lasted from 27 April to 12 September 1949 but that failed to bring about peace. The conference also failed to make progress on the refugee issue generally, and the property question specifically. The UNCCP's later peace-making efforts at the Geneva Conference (30 January–15 July 1950) and the Paris Conference (13 September–19 November 1951) also failed.⁶ The General Assembly then adopted Resolution 512 (VI) on 26

January 1952, which recognized that ‘the governments concerned [i.e., not the UN] have the primary responsibility for reaching a settlement of their outstanding differences in conformity with the resolutions of the General Assembly on Palestine.’

After Paris, the UNCCP effectively abandoned its conciliation efforts and concentrated instead almost exclusively on more limited, focused measures to ‘facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation’ as called for in Paragraph 11. In this lies the genesis of the UNCCP’s decision to work on concrete measures for dealing with Palestinian refugee property. Among these efforts were its successful brokering of three agreements by which Israel restituted the assets of blocked refugee bank accounts and the contents of blocked safe deposit boxes starting in 1953.⁷ John M. Berncastle, a British land expert working for the UNCCP’s Refugee Office, also issued a ‘Global Estimate’ in August 1951 on the scope and value of refugee property based on maps and published Mandatory government data. Yet the most significant UNCCP endeavour on behalf of refugee property compensation was the massive Technical Program of 1953–1964, the records of which form the largest number of documents in the UNCCP archives today.

THE TECHNICAL PROGRAM OF 1953–1964

As part of the new direction it took away from active mediation and towards more tertiary, ‘technical’ aspects of the refugee problem, the UNCCP decided to expand on Berncastle’s Global Estimate by conducting a much more thorough study of refugee losses, one that would compile data on individual refugees’ property for future use in any final compensation plan. Based on Berncastle’s own recommendations on how to follow up on the Global Estimate, the UNCCP decided in September 1952 to proceed with a huge plan to identify every parcel of Arab-owned land in the part of Palestine that became Israel, and assign it a value.⁸ It was hoped that such an endeavour could provide the data needed for some type of compensation plan in the future, when the diplomatic times were right. A new UNCCP office, the Technical Office, was established and work on the project – called the Technical Program – commenced in late December 1952. Berncastle returned to civil service work in Britain, and the UNCCP hired Palestinian land expert Sami Hadawi to begin

the Technical Program. Hadawi had worked as a land taxation valuator for the British Mandatory government in Palestine, and later for the Jordanian government in the West Bank.

The Technical Office commenced work at the UN secretariat building in New York under several significant assumptions that bear directly upon the usefulness of the records today. First, the Program aimed to determine a value for compensation based on the scope and value of all Arab property in Israel (according to the final cease fire boundaries and international borders) as of 14 May 1948, the day before Israel's declaration of independence and thus the last day that Palestine existed as a juridical entity. The office decided to identify *all* Arab-owned land because it could not determine precisely which Arabs ended up becoming refugees. The UNCCP decided upon this policy knowing full well that some of the Arab-owned land it would identify remained in the possession of Palestinians who stayed and became Israeli citizens after the war, while other small amounts of Arab land had been owned by non-Palestinian Arabs. Because it only focused on land in Israel, from which the refugees came, the Technical Program did not extend to land in the West Bank, East Jerusalem, and Gaza. However, it did identify land in the Demilitarized Zones along Israel's armistice lines with Syria and Egypt, and in No Man's Land along the Israeli-Jordanian lines in Jerusalem.

Second, the Technical Program aimed to identify the scope and value of land and certain types of movable goods. It was decided not to investigate the value of other movable property such as household goods, nor of commercial and professional facilities, or intangible items like rental contracts. Third, the Program would determine the value of Arab property as of 29 November 1947, the date on which the UN General Assembly voted to partition Palestine. The UNCCP's logic for choosing that date was that it felt that the violence that broke out shortly after the partition decision led to an abnormal situation regarding land sales and prices.

Based on these assumptions, Hadawi and his staff based their identification work on the most detailed and credible records they could find: land registers, tax records, cadastral maps, and other documents produced by the British Mandatory government in Palestine from 1920–1948. In 1952, the UNCCP purchased copies of 35mm films that the British officials had made of various land records prior to quitting Palestine. These included Ottoman land registers, British registers of deed and registers of title, and other records. However, except for the registers of title, most

of the rest of these filmed records were deemed insufficient for the task for various technical reasons. Having worked with land taxation under the British Mandate, Hadawi knew that he could supplement information from the registers of title with Mandatory land taxation records instead. Most of these were in the Israelis' possession, although some ended up under Egyptian, Jordanian, and Syrian control after the war.

Hadawi and his staff culled the various documents and recorded information on forms called 'R/P1' (for 'refugee property') forms, one form for each parcel of Arab-owned land. In examining the British records, they simply looked for Arab names (although they also included Armenian names as well). On each form, they listed the name of the parcel's owner; if co-owned, they wrote down each owner's name and his/her share of ownership. They also recorded the name of the village, sub-district name, any identifying cadastral numbers such as registration block and parcel number; description of the property; surface area, in dunums (one dunum = 1,000 square metres); and information on encumbrances such as mortgage liens. The Technical Program created R/P1 forms for individually owned property, land owned by companies and corporate bodies, *waqf* (endowment), and *musha'* (collectively owned land). Information about land owned by municipal bodies or registered in the name of a *mukhtar* (village headman) on behalf of villagers was recorded on R/P3 ('excluded land') forms. Data on Jewish land and state land also were placed on R/P3 forms. R/P5 forms were used for state land that had been leased to Arabs, who were eligible to purchase it some day. Starting in 1963, Technical Office staff compiled a set of index cards listing, by village, the property holdings of each individual landowner in the village.

After identification was completed in 1958, the Technical Office turned to assigning a value to each parcel of Arab land. This began in 1956 under Berncastle, who returned to UNCCP service after Hadawi left in 1955, and was completed by Frank Jarvis, a British land tax expert who was hired in 1960. To determine the value of each parcel, the Technical Office personnel studied general land prices for each sub-district and parts of sub-districts, based on the sale prices for 1946 and 1947 contained in various Mandatory records. They aimed at determining the value on the basis of the price that a given parcel of land could have fetched on the open market on 29 November 1947 – the date that the UN voted to partition Palestine. The value of each parcel eventually was written in red ink, rounded to the nearest P£, on the top of

each R/P1 form and each index card. Valuation was completed in 1962.

On 13 May 1964, the UNCCP published the Technical Report, which contained data on the Technical Program's methodology and its final estimates of the scope of Arab land in Israel.⁹ Values were kept secret, and have not been published by the UNCCP to this very day. Nor did the commission publish its estimates of how much Arab land was owned by Palestinians who became refugees, and how much by those who stayed and became Israeli citizens. Presented below are the figures generated by the UNCCP for the total scope of all Arab land in Israel. Also included are the secret figures for its value, as well as a secret breakdown of refugee vs. non-refugee land that was carried out. Some of these figures later proved inaccurate, as is discussed later in this chapter.

Table 5.1 UNCCP Technical Program's estimate of the scope of all Arab land in Israel as of 14 May 1948

<i>Sub-district</i>	<i>Total area (dunums)</i>	<i>Covered by R/P1 forms (dunums)</i>
<i>Sub-districts excluding Beersheba</i>		
Acre	795,357	507,707
Baysan	366,095	147,167
Nazareth	490,942	248,345
Safad	696,859	347,710
Tiberias	439,031	194,439
Haifa	972,312	405,580
Jenin	257,212	228,407
Nablus	23,414	23,414
Tulkarm	503,676	332,571
Hebron	1,162,336	1,144,808
Jerusalem	296,943	221,482
Ramallah	6,240	6,240
Jaffa	285,084	140,425
Ramla	763,481	569,813
Gaza	815,437	675,983
<i>Total</i>	<i>7,874,419</i>	<i>5,194,091</i>
<i>Beersheba sub-district*</i>	<i>12,445,000</i>	<i>64,000</i>
<i>Grand Total**</i>	<i>20,319,419</i>	<i>5,258,091</i>
<i>Final Grand Total</i>		<i>7,069,091</i>

*R/P1 forms were not drawn up for an additional 1,811,000 dunums of cultivable land in the Beersheba sub-district that were assumed to be cultivated by Bedouin Arabs.

** Adding the 1,811,000 dunums of land in Beersheba assumed to be cultivated by Bedouin Arabs but for which no R/P1 forms were drawn up.

Source: UN Document A/AC.25/W.84, 'Working Paper Prepared by the Commission's Land Expert on the Methods and Techniques of Identification and Valuation of Arab Refugee Immovable Property Holdings in Israel', 28 April 1964.

Table 5.2 UNCCP Technical Program's estimate of the scope of land owned by Arabs still living in Israel after 1948

<i>Sub-district</i>	<i>Amount (dunums)</i>
Acre	318,714
Baysan	9,390
Nazareth	190,182
Safad	30,222
Tiberias	50,323
Haifa	170,238
Jenin	86,554
Nablus	0
Tulkarm	140,231
Hebron	7,649
Jerusalem	3,186
Ramallah	0
Jaffa	40
Ramla	5,320
Gaza	0
<i>Total</i>	1,012,059

Source: United Nations Secretariat Archives [hereafter, UNSA], Record Group DAG 13–3, UNCCP. Subgroup: Principal Secretary. Series: Records Relating to the Technical Office/Box 16/1952–57/Land Identification Project/Jarvis Report; Document: A/AC.25/W.83, 'Initial Report of the Commission's Land Expert on the Identification and Valuation of Arab Refugee Property Holdings in Israel', 15 September 1961.

Table 5.3 UNCCP Technical Program's estimate of the scope of Arab land owned in Israel by refugees v. owned by those who stayed

<i>All Arab land in Israel (dunums) (on R/P1 forms)</i>	<i>Land owned by Palestinians still living in Israel (dunums)</i>	<i>Land owned by refugees (dunums) (on R/P1 forms)</i>
5,258,091	1,012,059	4,246,032

Source: UN Document A/AC.25/W.84, 'Working Paper Prepared by the Commission's Land Expert on the Methods and Techniques of Identification and Valuation of Arab Refugee Immovable Property Holdings in Israel', (28 April 1964); UNSA DAG 13–3, UNCCP. Subgroup: Principal Secretary. Series: Records Relating to the Technical Office/Box 16/1952–57/Land Identification Project/Jarvis Report; Document: A/AC.25/W.83, 'Initial Report of the Commission's Land Expert on the Identification and Valuation of Arab Refugee Property Holdings in Israel', (15 September 1961).

Because the UNCCP does not allow research into its records, it is not well known that it conducted other studies relating to Palestinian refugee property besides the estimates of individually owned Arab land that it never publicized. These studies are also contained within its archives. For example, Jarvis estimated the value of communally owned Arab land. This issue later would

constitute a major Arab complaint against the UNCCP's various public studies of refugee land: they did not publicly study the value of abandoned communal property. Jarvis roughly estimated this land to be worth approximately US\$56,000,000 (1962 dollars). As an internal 1962 UNCCP document noted, 'For the purposes of an estimate a figure of 56 million dollars has been suggested but it is emphasized that this figure has no basis in valuation...'¹⁰

Table 5.4 UNCCP Technical Program's estimate of the value of rural Arab land in Israel as of 29 November 1947

<i>Sub-district</i>	<i>Value (P£) *</i>
Acre	15,051,225
Baysan	3,464,834
Nazareth	5,595,879
Safad	7,323,092
Tiberias	3,805,192
Haifa	11,757,629
Jenin	4,357,696
Nablus	540,660
Tulkarm	11,987,299
Hebron	12,443,989
Jerusalem	10,598,408
Ramallah	135,150
Jaffa	23,560,057
Ramla	22,190,429
Gaza	19,579,534
Beersheba	15,000,000
<i>Total</i>	167,395,073

*P£1 = UK£1 = US\$4.03 in 1947.

Source: UNSA DAG 13-3, UNCCP. Subgroup: Principal Secretary. Series: Records Relating to the Technical Office/Box 16/1952-57/Land Identification Project/Jarvis Report; Document: A/AC.25/W.83 ADD 1, 'Initial Report of the Commission's Land Expert on the Identification and Valuation of Arab Refugee Property Holdings in Israel', 10 September 1962.

In the early 1960s, Jarvis studied several methods for estimating the value of movable refugee property as well. This estimate also was never released nor even publicly mentioned. Jarvis used three different methods to determine this amount. His first was to base the value of movables on the value of the rural land. Using 4.7 per cent as the basis of his calculations, Jarvis came up with a rough estimate of P£5,678,000, excluding the Beersheba sub-district. He then added to this 60.9 per cent of the value of urban land and arrived at approximately P£36,418,000. The total figure was then P£42,069,000 (excluding Beersheba). Jarvis'

second method was to determine the value as a percentage of the Arab share of the national income of Palestine. He came up with P£70,000,000 as '...a reasoned guess' for the total Arab share of the national income using this method. Assuming that 700,000 out of 1,124,000 non-Jews became refugees, this left a total of P£17,400,000. The third method was to base the value on the ownership of capital. Here Jarvis did have Mandatory data on ownership of industrial equipment, and so forth. He came up with a total figure of P£30,600,000 for the Arab sector of pre-1948 Palestine as follows: industrial equipment (P£4 million); commercial stock (P£5.5 million); vehicles (P£2 million); agricultural livestock (P£13.1 million); and household furniture (P£6 million). Again, deducting a percentage to represent the refugees only, left him with a figure of P£19,125,000 in refugee immovable property. The three different methods then produced figures of P£42,069,000, P£17,400,000, and P£19,125,000.¹¹

Table 5.5 UNCCP Technical Program's estimate of the value of urban Arab land in Israel as of 29 November 1947

<i>Area</i>	<i>Vacant lots (P£)*</i>	<i>Buildings (P£)*</i>	<i>Total (P£)*</i>
Acre	423,542	919,385	1,342,927
`Afula	984	0	984
Bat Yam	1,683	0	1,683
Baysan	53,691	457,186	510,877
Haifa	4,311,086	10,467,644	14,778,730
Holon	123,441	890	124,331
Jaffa	7,559,740	14,094,203	21,653,943
Jerusalem	6,371,160	12,062,701	18,433,861
Lydda	438,690	1,403,399	1,842,089
al-Majdal	94,960	728,976	823,936
Natanya	36,497	0	36,497
Nazareth	219,907	1,412,635	1,632,542
Ramat Gan	71,447	0	71,447
Safad	157,354	840,675	998,029
Shafa' `Amr	52,814	284,330	337,144
Tel Aviv	2,366,740	134,020	2,500,760
Tiberias	201,253	524,084	725,337
Beersheba (estimate)			600,000
Ramla (estimate)			1850,000
<i>Total</i>			68,265,177

*P£1 = UK£1 = US\$4.03 in 1947.

Source: UNSA DAG 13-3, UNCCP. Subgroup: Principal Secretary. Series: Records Relating to the Technical Office/Box 16/1952-57/Land Identification Project/Jarvis Report; Document: A/AC.25/W.83 ADD 1, 'Initial Report of the Commission's Land Expert on the Identification and Valuation of Arab Refugee Property Holdings in Israel', 10 September 1962.

Table 5.6 UNCCP Technical Program's estimate of the value of rural and urban Arab land owned in Israel by refugees vs. owned by those who stayed

<i>All Arab land owned in Israel (P£)*</i>	<i>Land owned by Palestinians still living in Israel (P£)*</i>	<i>Land owned by refugees (P£)*</i>
235,660,250	31,000,000	204,660,190

*P£1 = UK£1 = US\$4.03 in 1947.

Source: UNSA DAG 13-3, UNCCP. Subgroup: Principal Secretary. Series: Records Relating to the Technical Office/Box 16/1952-57/Land Identification Project/Jarvis Report; Document: A/AC.25/W.83 ADD 1, 'Initial Report of the Commission's Land Expert on the Identification and Valuation of Arab Refugee Property Holdings in Israel', 10 September 1962.

In September 1965, Jarvis issued to the UNCCP the results of another secret study which he had made detailing the ratio of landowning to non-landowning refugees. He based his research on 434 randomly selected villages not located near urban centres. Jarvis used 1945 Mandatory population figures as a baseline figure and then added 6 per cent to account for population growth after that. He then checked his UNCCP records to determine that 133,495 out of 306,103 persons living in those 434 villages – 43.6 per cent – had owned property.¹²

In addition to its records on Arab property, the UNCCP's archives contain other documents. These include documents in several record groups, including the Office of the Principal Secretary; Office of the Legal Advisor; Refugee Office; Liaison Office; Special Representative (who was Joseph E. Johnson); and Reference Library. Among these are such items as statistics on Palestinian refugees, John Berncastle's field diaries, correspondence with host governments about the Technical Program, UNCCP relations with UNRWA, maps, and myriad other topics.

What happened to the UNCCP's records once the commission stopped functioning in 1966? By then, it had accumulated a huge amount of material relating to Arab property in Israel: 96 linear feet (2,926 linear centimetres) of paper, mostly R/P1 forms and documents, but also thousands of maps. The UNCCP also possessed 1,642 rolls of 35mm films of Ottoman and British Mandatory land registers, plus 226 rolls of 16mm films that it had taken of its own R/P1 forms and owners index cards.¹³ After depositing its records with the UN Secretariat Archives in New York, the UNCCP became moribund. While it technically still exists, it does not function.

COPIES AND MODERNIZATION OF UNCCP DOCUMENTS

Some of the UNCCP's records can be found in several other places around the world. Various parties with a direct interest in the Palestinian refugees began requesting copies of some of the documents at the UNCCP's disposal as early as April 1953, when the Arab League asked for copies of what was at the UNCCP's disposal.¹⁴ Although several renewed Arab requests for copies were made from 1962–64, the commission refused to acquiesce. With the completion of the Technical Program in 1964 and the Arab states' ongoing stated desire to determine their own estimates of refugee losses, the UNCCP finally conceded. Jordan, Lebanon, Egypt, and Syria formally requested copies of all the UNCCP's records relating to Palestinian land in February 1967, but the June 1967 war created more important matters for those states and the UN to deal with, and there was no follow up.

In September 1973, Egypt requested copies of UNCCP documents, to be made at its own expense. The following June, the UN made copies of the UNCCP's films of Mandatory land registers, R/P1 forms, and owners index cards and delivered them (Egypt received a second copy of the films in March and May 1975). In May 1974, Jordan requested copies of the films as well; these were delivered the following year. In November 1982, the Palestine Liberation Organization (PLO) asked for films as well; duplication was completed by the UN in May 1984, and the PLO stored the films at its Economics Department in Damascus. It is worth noting that the UNCCP also turned over copies of its films to a UN committee. In 1976, the newly-formed Committee on the Exercise of the Inalienable Rights of the Palestinian People requested 'an inventory of Arab property in Israel and the territories occupied by Israel.' The UNCCP provided copies of the same films it allowed the Arabs to acquire.¹⁵

Twenty years later, the Institute for Palestine Studies sought its own copy of the films for research purposes. It approached the PLO and asked that it request another copy of the films for a joint project. The institute proposed carrying out the work of scanning the images contained in the films onto two sets of CD-ROMs at its own expense, keeping one set and giving the other to the PLO. The UNCCP authorized the project in June 1997. Starting in August 1997, the Canadian-based TransCad, Ltd. company began several months of work scanning the Ottoman and Mandatory land registers, the R/P1 forms, and the owners index card. It

also scanned other UNCCP documents along with 5,625 maps.¹⁶ Thereafter, the PLO continued with the second stage of the process – creating a computerized database from the CD-ROMs – without the institute, but rather with the UN's Committee on the Exercise of the Inalienable Rights of the Palestinian People. Prior to this, on 13 December 1996, the UN General Assembly enacted Resolution 51/129 calling for, *inter alia*, the 'preservation and modernization' of the UNCCP's records relating to Arab property in Israel. On the basis of this, the Committee on the Exercise of the Inalienable Rights of the Palestinian People agreed to provide UN funds – US\$500,000 from its budget – to pay for the creation of the database. The PLO provided an additional US\$250,000, and the second phase was approved in May 1998.

TransCad, Ltd. then used the CD-ROMs to create a sophisticated GIS (geographic information system) computer database linking the property records with maps. The project was essentially completed by May 2000, and the resulting computerized database contained all of the property owners' names, location of properties, and property values contained in the UNCCP's R/P1 forms and owners index cards. The values were discovered on the R/P1 forms and the cards. Both the PLO Observer Mission to the UN and the UN Secretariat archives in New York ended up with copies of the database. Neither the PLO nor the UN thus far has allowed unrestricted public access to the databases. Up to three pirated copies of the database also are rumoured to exist in the Middle East.

Besides preserving the UNCCP's records in a secure format in case the original paper records and films ever deteriorate, the computerized database project is of great value for having revealed flaws with the original UNCCP Technical Program's estimates. For example, computerization determined that not all R/P1 forms contained complete information. It was also revealed that despite the Technical Program's methodology to produce one R/P1 form for each parcel of Arab-owned land, the total number of unique R/P1 forms exceeded the total number of unique parcels of land in the database. Thus, the project found that the Technical Program staff had compiled a total of 523,750 R/P1 forms. Of these, only 423,750 represented unique forms while the rest were duplicates. Even considering this, the number of R/P1 forms still did not match the number of unique parcels of land. The Technical Program staff created 423,750 unique R/P1 forms although computerization determined that there

actually are 458,210 unique parcels represented in the UNCCP records.¹⁷ The new Program also revealed that the actual surface area of the unique parcels of Arab-owned land in Israel covered by R/P1 forms was 4,851,613.978 dunums – less than the figure of 5,258,091 dunums (that were covered by R/P1 forms) that was announced by the UNCCP in 1964. Computerization furthermore determined that the value of the land, taken from the owners index cards, totalled P£224,815,931 – less than Jarvis' unpublished figure of P£236,660,250. Finally, it estimated that the number of Arab landowners in Israel was less than 100,000.¹⁸

The following data indicate the scope and value of Arab land in Israel after rectification during digitization and computerization of the data:

Table 5.7 UNCCP Technical Program's amended estimate (after computerization of its records) of the scope and value of all Arab land in Israel (owned both by refugees and Palestinians still in Israel)

<i>Scope (dunums) as covered by R/P1 forms*</i>	<i>Value (P£)</i>
4,851,613.978	224,815,931

*Excluding Beersheba district.

Source: Information provided by the Permanent Observer Mission of Palestine to the UN; interview with Adnan Abdelrazek (September 2001); Adnan Abdel Razeq [sic], 'Refugee Property: UN Modernizes Land Records (Pt. II)', *The Jerusalem Times Insight Report* (Internet Edition), 10 October 2001; Adnan Abdelrazek, 'Modernizing the Refugee Land Records: Advantages and Pitfalls', in Salim Tamari and Elia Zureik (eds), *Reinterpreting the Historical Record: The Uses of Palestinian Refugee Archives for Social Science Research and Policy Analysis* (Jerusalem: Institute for Jerusalem Studies and Institute for Palestine Studies, 2001).

Another party created a computerized database by using the films it acquired from the UNCCP: Jordan. In 1999, the Foreign Ministry's Department of Palestinian Affairs approached the Ministry of Finance's Department of Lands and Survey about undertaking such a joint project to develop a computerized database of Palestinian property. The Prime Minister's office later provided the funds for the project, and the two departments came to an agreement in March 1999. Data was extracted not only from the films which Jordan had acquired from the UNCCP in 1974 but also from the original British Mandatory and Ottoman registers in the land department's possession since 1948, as well as other documents in the land department's possession. In July 2001, the land department publicly announced that the project

had been completed. Like the PLO, the Jordanian government has not yet granted unrestricted public access to its database.¹⁹

Interestingly, there exists a third computerized database detailing Palestinian refugee property losses. It was developed by an Israeli non-governmental organization, based not on UNCCP records but rather those of the Israeli government's Custodian of Absentees' Property. The Israeli Institute for Economic and Social Research (now called the Macro Centre for Political Economics) in Tel Aviv created the database with European funding. Although the institute has presented two models for compensation for Palestinian refugee landowners based on this data, it too, has not allowed unrestricted public access to its database.²⁰

UNCCP RECORDS AND THE PEACE PROCESS

The UNCCP archival record is important for diplomats working on Palestinian refugee compensation and/or restitution on two levels. The most basic is that it contains the full details of the most exhaustive, 'neutral' reckoning of the scope and value of the refugees' property losses. This is not to suggest that all parties have accepted these data. In the mid-1960s, both Israel and the Arab states registered objections both to the Technical Program's methodology and final estimates. Yet the fact remains that few parties ever have matched the UNCCP's Technical Program in creating a systematic attempt to estimate the value of the abandoned property, including individual parcels of land, based on a careful study of some of the best available records: British Mandatory land and land taxation documents. The resulting R/P1 forms, while not offering proof of legal title, thus represent a convenient form documenting a parcel's presumptive owner(s), the share held by each, location (village, block, parcel number), size, value, and other features. The records thus provide both macro- and micro-level information on Arab landholdings in what became Israel. The PLO/UN project to computerize the UNCCP data is particularly important because the Technical Program data have been put into a readily accessible if still not publicly available format.

There are problems with the UNCCP data, however. The most serious is that the Technical Program was not in fact able to identify all Arab-owned land in Israel. The most glaring omission is land in the vast, sparsely-populated Mandatory district of

Beersheba, which comprised approximately 12.5 million dunums of mostly uncultivated land in southern Palestine. The Beersheba district had not undergone British land settlement operations – a thorough determination of land rights in each village that began in 1928. As a result, there were no registers of title available. Nor had regular land taxation registers been drawn up for Beersheba. The district had not been subject to the normal British tax procedures employed for determining rural tax values. Under the Commutation of Tithes Ordinance, the district was assessed with a lump sum tax that then was subdivided among the inhabitants by the village tax distribution committees. While this information had been recorded, the documents disappeared during the 1948 war. The only records that UNCCP Technical Office staff could locate for the region were 60 Mandatory registers of deed (used in villages where land settlement had not been applied) that Israel had acquired in the course of the war. As a result, the staff prepared R/P1 forms for only 64,000 dunums. While it assumed that the remaining 1,935,000 dunums of cultivable land in the Beersheba district had been cultivated by Arab Bedouin, the staff did not record this information on R/P1 forms.²¹

There are other lacunae in the UNCCP data. One example is uncultivated land, such as grazing land, in villages that had not been settled. Because the British did not tax this type of land, village authorities did not always list such property in the village tax distribution sheets. With incomplete data, the Technical Office decided to exclude all of this land – approximately 460,000 dunums – that lay in unsettled villages. No R/P1 forms were drawn up for this land. Beyond that, Technical Office staff could not locate information for all of the urban property in Ramla, nor could they find data for property in eleven villages.²²

Furthermore, the R/P1 forms are not proof of absolute title. Except for those R/P1 forms that were created from the data recorded in the films of British Mandatory registers of title – themselves the result of the incomplete process called ‘land settlement’ that determined all legal rights to land on a village-by-village basis beginning in 1928 – the R/P1 forms merely contain the names of presumptive owners. There is no way of determining which R/P1 forms were based on the registers of title and which were based on land taxation and other Mandatory records.

For all these problems, the UNCCP archives also contain other potentially useful material besides the R/P1 forms. For example, it

contains an overall plan to compensate Palestinian refugees that was based on the value of property but, significantly, included other factors as well. The entire point of the Technical Program was to produce usable data on Arab land ownership upon which an eventual plan to compensate Palestinian refugees could be based. Starting in about 1961, as work on the Program was winding down, Jarvis began formulating a number of ideas that he hoped could form the basis of just such a plan. He hoped his plan could be implemented someday by a 'UN Repatriation/Compensation Agency'. The UNCCP never publicly made mention of the fact that Jarvis devised such a plan, let alone released the total compensation figure (for land, interest payments, etc.) that he developed.²³ In total, Jarvis' secret plan to pay compensation based on the value of land, movable property, interest, and so forth, totalled some P£400,000,000, or US\$1,125,000,000 (in 1962 dollars). Word of the various general figures being talked about began to leak out almost immediately, and some people with connections with the UN began talking of US\$1,500,000,000 in compensation, while other figures cited at that time were between two and seven times as large. But like his estimates of refugee property values, Jarvis' overall compensation plan never was made public and has lain hidden in the UNCCP archives for four decades.²⁴

The UNCCP archives thus contain a virtual treasure trove of information relating to the commission's various public and private initiatives aimed at providing data and plans for some type of compensation scheme (the archives reveal that the UNCCP thought largely in terms of compensation, not restitution). The UNCCP archives are also useful for the other studies that they contain. These include careful studies of other types of property, like communal land, that have been the subject of controversy over the decades during which the property issue has been alive. Among these are studies of the percentage of the refugees who owned land. Finally, the archives are useful for the detailed total compensation plan that Jarvis developed in the early 1960s, and that he hoped could be implemented one day by some type of 'UN Repatriation/Compensation Agency'. The existence of these plans indicates that the UNCCP was thinking beyond simply using the value of abandoned property as the basis for a compensation regime. Jarvis' ideas can also serve as useful indicators not only of the UNCCP's historical thinking, but

could also provide modern-day scholars and negotiators with ideas about how to construct a workable total compensation package. Given the emergence of the idea of an international fund out of which refugees could receive compensation, such ideas could prove useful – particularly in convincing a sceptical Palestinian population that the fund's provisions extended out of UN, and not Israeli–American, thinking.

CONCLUSION

As one prominent Palestinian scholar has pointed out, the UNCCP archives represent one of the most complete sets of records documenting the landholdings of any group of refugees in the twentieth century.²⁵ Their value to researchers is immense. Beyond the specific question of the refugees' property losses in 1948, the UNCCP property records are extremely important for studies of Palestinian socio-economic history generally. Despite all this, it remains one of the ironies of the Arab–Israeli conflict that the archives still remain off-limits. While filmed and scanned copies of some of the UNCCP material have been made and distributed over the years, these too, largely have been kept out of the hands of researchers by the parties that control them. Yet perhaps the cruellest irony of all is that the refugees themselves have not been able to access this material, which details their own families' histories, memories, and rights. Why such secrecy?

When the Technical Program was completed in the early 1960s, the UNCCP feared that publication of its estimates of the properties' value might become politicized in the public relations struggle between Israel and the Arab world. The author himself published these estimates nearly four decades later, so that cat is already out of the proverbial bag with no noticeable impact on the Arab–Israeli conflict.²⁶ Others have voiced concern about the integrity of the records, but with so many copies of the R/P1 forms in existence today, it would be easy to cross-check them for accuracy. In truth, it is hard to come up with a good reason to justify continuing to keep the UNCCP's entire archives (not just its documents on Arab property in Israel) closed. Subject to the usual procedure of having archivists vet the material to determine what still remains classified, opening these archives would be of immense help to researchers and negotiators, not to mention to the refugees themselves – whose history these archives document.

NOTES

1. This study is based on the author's *Records of Dispossession: Palestinian Refugee Property and the Arab–Israeli Conflict* (New York: Columbia University Press, 2003). In 2000 and 2001, he was granted access to some of the UNCCP's archives. See also his book *The Peace Process and Palestinian Refugee Compensation: Addressing Claims for Property Compensation and Restitution* (Washington: United States Institute of Peace Press, 2006).
2. Bernadotte's Progress Report is contained in UN document A/648, 16 September 1948.
3. *Ibid.*
4. UN Document A/194/III, 11 December 1948.
5. *Ibid.*
6. For more information on these conferences, see Fischbach, *Records of Dispossession*, Chapter 2.
7. *Ibid.*, 195–209.
8. *Ibid.*, Chapter 5.
9. UN Document A/AC.25/W.84, 28 April 1948. While dated 28 April 1948, the report was not released until 13 May 1964.
10. United Nations Secretariat Archives [hereafter, UNSA] DAG 13–3, UNCCP. Subgroup: Principle Secretary. Series: Records Relating to Compensation/Box 18/1949–62/Selected Documents and Working Papers; Document: '[Draft] Working Paper on the Problems Presented by the Paragraphs on Compensation Contained in the Johnson Proposal', 19 September 1962.
11. UNSA DAG 13–3, UNCCP. Subgroup: Principal Secretary. Series: Records Relating to the Technical Office/Box 16/1952–57/Land Identification Project/Jarvis Report; Document: A/AC.25/W.83, 'Initial Report of the Commission's Land Expert on the Identification and Valuation of Arab Refugee Property Holdings in Israel', 15 September 1961.
12. UNSA DAG 13–3, UNCCP. Subgroup: Principal Secretary. Series: Records Relating to the Technical Office/Box 17/General Programme; Document: 'An Analysis of Property Owners compared with Population and the Amount of Property in Various Categories of Value', 1 September 1965.
13. Fischbach, *Records of Dispossession*, 307–08.
14. *Ibid.*, 307–12.
15. UN Documents A/31/254, 30th UNCCP Report, 4 October 1976; A/38/397, 37th UNCCP Report, 13 September 1983; A/39/455, 38th UNCCP Report, 6 September 1984.
16. The author was a consultant to this phase of the project. See also Adnan Abdel Razeq [sic], 'Refugee Property: UN Modernizes Land Records', Pt. II, *The Jerusalem Times Insight Report* Internet Edition, 10 October 2001, at: www.jerusalem-times.net/tjt/insight/main.htm; Adnan Abdelrazek, 'Modernizing the Refugee Land Records: Advantages and Pitfalls', in Salim Tamari and Elia Zureik (eds), *Reinterpreting the Historical Record: The Uses of Palestinian Refugee Archives for Social Science Research and Policy Analysis* (Jerusalem: Institute for Jerusalem Studies and Institute for Palestine Studies, 2001); telephone interview with Adnan Abdelrazek (September 2001).
17. *Ibid.* Other information about this project was also provided by the Permanent Observer Mission of Palestine to the UN.

18. Telephone interview with Adnan Abdelrazek (September 2001); information provided by the Permanent Observer Mission of Palestine to the UN.
19. *Jordan Times* Internet Edition, 26 July 2001; *Afaq 'Iqariyya* [publication of the Jordanian Department of Lands and Survey] 5 (July 1999); interview with 'Abd al-Mun'im Samara al-Zu'bi (August 2001).
20. See Chapter 6 of this volume, as well as Israeli Institute for Economic and Social Research, 'Survey of Palestinian Refugee Real Estate Holdings in Israel: Legal Mechanisms after 1948 Which Enable Accurate Identification of Real Estate Owned by Palestinian Refugees and a Proposed Compensation Model Accordingly, May 2003', at: www.idrc.ca/uploads/user-S/10576734600Session_7-_Roby_Nathanson-_Paper.DOC (accessed 20 October 2012).
21. UN Document A/AC.25/W.84, 28 April 1948.
22. *Ibid.*
23. UNSA DAG 13–3, UNCCP. Subgroup: Principal Secretary. Series: Records Relating to Compensation/Box 18/1949–62/Selected Documents and Working Papers; Document: 'Note for the Record', 14 March 1962; NARA, RG 59, POL 27–14 PAL/UN, 'United Nations Conciliation Commission for Palestine. Aide Memoire by Land Expert', 24 January 1964, attached to USUN to Department of State, 24 January 1964; UNSA DAG 13–3, UNCCP. Subgroup: Principal Secretary. Series: Records Relating to Compensation/Box 18/1949–62/Selected Documents and Working Papers; Documents: 'Working Paper, United Nations Repatriation/Compensation Agency, Questions Requiring Prior Decision', 5 June 1962 and Jarvis to UNCCP, 24 November 1961.
24. UNSA DAG 13–3, UNCCP. Subgroup: Principal Secretary. Series: Records Relating to Compensation/Box 18/1949–62/Selected Documents and Working Papers; Documents: 'The Arab Refugee Problem. A Reappraisal and a New Concept [draft]', 'Working Paper, United Nations Repatriation/Compensation Agency, Questions Requiring Prior Discussion' 5 June 1962, and Jarvis' memorandum to UNCCP, 24 November 1961; David P. Forsythe, *United Nations Peacemaking: The Conciliation Commission for Palestine*. Published in Cooperation with the Middle East Institute (Baltimore and London: The Johns Hopkins University, 1972), 118.
25. Discussion the author had with Salim Tamari.
26. They were published first in 'The United Nations and Palestinian Refugee Property Compensation', *Journal of Palestine Studies* 31, 2 (Winter 2002), 34–50, and later in both Fischbach, *Records of Dispossession* and Fischbach, *The Peace Process and Palestinian Refugee Claims*.

6

Israel's Policy Regarding Palestinian Refugee Real Estate Holdings: Israel's State Records

Roby Nathanson and Hagar Tzameret-Kertcher

INTRODUCTION

One of the main bones of contention between the Israeli and the Palestinian sides in the negotiations over a comprehensive peace agreement has been the question of compensation for the Palestinian refugees. A wide literature exists on the possible solutions to the refugee problem, which usually relates to issues such as mechanisms of reparation, repatriation, lump-sum compensation payments, and so on. However, this body of research lacks a basis in definitive records of the Palestinians' property holdings in 1948.

Some of the studies that have been published on the subject are comprehensive, but they are not exhaustive; most of them are based on the data of the United Nations Conciliation Commission for Palestine (UNCCP) Technical Project that ended in the early 1960s. This paper will discuss a different database, developed on the basis of materials found in the Israel State Archive (ISA), which contains detailed information on movable and immovable property left by the Arab refugees.

The first part of the paper describes the major laws enacted by Israel in order to legalize and institutionalize the expropriation of the Palestinian refugees' property. The second part briefly surveys the methods of expropriation used by Israeli authorities and institutions on the ground, and their implications for acquiring information on the identity of the owners of the land and its value. Finally, the third part points to various ISA records that illustrate the method of the expropriation. This part will also suggest that detailed examination of the ISA records can be very useful in the identification of the Palestinian refugees' property before the war.

LEGALIZING THE EXPROPRIATION OF PROPERTY

On 16 June 1948, the Israeli interim government decided to forbid the return of Arab refugees who had left their houses in the previous months. Two weeks later, on 30 June the state legislated the Abandoned Areas Ordinance, 5708–1948, which stipulated that the government is the body with the sole authority to regulate the refugees' property. The Ministry of Finance, which was put in charge of refugees' properties, established a new post of Custodian for Deserted Property, and the Ministry of Agriculture received the authority to handle all arable lands.

Yet these actions were provisional and the government had to form a clear policy towards the seized property. Between 1948 and 1960, the Israeli government adopted several laws that legalized the expropriation of abandoned property by the Palestinians. The expropriation policies affected both movable and immovable property, and was expressed through two main laws, which addressed private as well as public property: the Absentees' Property Law of 1950 and the Land Acquisition Law of 1953. The legalization of the expropriation necessitated the creation of institutions to be in charge of it; the two main institutions were the Custodian of Absentee Property and the Development Authority.¹

The Custodian, according to the Absentees' Property Law, was the institution responsible for the expropriation of property, allowing its utilization by the various state authorities. At first glance, his role appears to be more benign: Article 7 of the Absentees' Property Law states that the Custodian is obliged to care for the absentees' property, to maintain it, and to make all the investments necessary for its upkeep and development. One might therefore conclude that the purpose of the Custodian was chiefly to administer the property of the absentees. However, the limitations of transferability, set forth in Article 19 of the Absentees' Property Law, clearly demonstrate the implicit policy intentions regarding the properties concerned. This article states that the Custodian is not entitled to sell or transfer the right of ownership to absentees' property. Nevertheless, it continues, if a 'Development Authority' is established by law for the purpose of acquiring and possessing land to be used for the good of the public, the Custodian may sell (or lease) absentees' property to that authority, although at a price (rent) not less than the official value of that property.

Such a development authority was established that very same year, on 9 August 1950, under the provisions of the Development Authority (Transfer of Property) Law, 5710–1950. Article 1 of the Development Authority Law defines property as immovable and movable property, rights and interests of any kind whatsoever.

The Land Acquisition (Validation of Acts and Compensation) Law, 5713–1953 relates exclusively to immovable property. This law, approved on 10 March 1953, presented a second legal basis, supplementing that provided by the Absentees' Property Law, for transferring ownership to the Development Authority. Whereas the Absentees' Property Law required that certain conditions be met by the owner of the property, namely, being considered an absentee, the Land Acquisition Law took only the land into consideration, irrespective of the status of its owner. Because the Law refers only to the land's characteristics, it pertains to owners who did not comply with the definition of an absentee as stated in the Absentees' Property Law, and subsequently creates the legal foundations for the expropriation of land for the 'benefit of the public'. Moreover, the Land Acquisition Law could also be applied to those who had fled their original homes but had remained within the borders of Israel (sometimes referred to as 'present absentees').

Inasmuch as the State of Emergency declared on 19 May 1948 is still in effect, the Absentees' Property Law (contingent on the continuation of such a State) is, technically, still in force, and the Custodian has continued to identify and administer these lands up to the present.

ISA RECORDS ON THE PRACTICE OF EXPROPRIATION: WHAT CAN THEY TELL US ABOUT PALESTINIANS' PROPERTY?

The laws adopted by Israel created institutions and mechanisms to expropriate Palestinian property. The discussion below will focus on several methods of expropriation and their importance as sources of information for the original Palestinian owners and for determining the value of their property. The discussion is based mainly on documents found in the ISA.

As we have shown above, the legislation motivated Israeli institutions to identify property as belonging to refugees, so that they could make use of it for the public good. This identification process was supposed to be implemented on movable as well as immovable property, but in practice movable property was

frequently not available for expropriation. Although provisional safety measures were taken during the war by the Jewish leadership, much of the movable property was looted by Jews, taken by the owners in their flight, or later by Arab infiltrators who succeeded in crossing the border into Israel and reaching their former homes. Other property such as bank accounts, shares in companies and the like were expropriated according to the Absentees' Property Law, which empowered the Custodian to take hold of absentees' shares. Moreover, when the total share of absentees was at least 50 per cent of company shares, the state took possession of it.²

The profits from the expropriation of movable property by Israel were negligible in comparison to the value of the immovable property in the urban³ and rural areas.⁴ This is reflected in the ISA records that provided lists of expropriated houses (and information on their condition), of arable lands, plantations, and so on. One of the major sources of information on the owners and the value of their property are the tax records held by the ISA. Israel holds most of the records of the British Mandate. The tax records detail the identity of the buyer of the precise block and parcel of land, the amount he paid, the time of payment, and the net assessment of the lands.⁵

Methods of identification

The authority in charge of identifying a person as an absentee was the Department for Identification of Property (*Ha-Mador Le'zihuy Rekhush*), under the responsibility of the Custodian. Its main mission was to identify the property that under the new laws of Israel should be transferred to the Custodian.

The work of the Department for Identification of Property was immense and it used a variety of tools to identify the property as well as the person connected to it. One of the best-known methods was a survey. Small teams of researchers were sent to potential absentees' property, and filed a report on the state of the land. The surveys were very detailed. They describe the houses, the condition of the agricultural territories and the environment. An example can be drawn from a survey, which took place in the village of Dallata, in the district of Safed, on May 1949:⁶

Most of the village is in ruin, and there are no residents. There are still several houses that are decent to quarter after fixing... Near the outer houses there are approximately 10 dunums of

fruit trees in good condition. The planted area (olive and fig trees) is near the village. In the village there are approximately 25 more houses unsuitable for habitation.

Table 6.1 Inventory of the Infrastructures in Dallata 1949

Building with concrete roof-stone walls	7 buildings	2 rooms	Total: 14 rooms
	2 buildings	1 room	Total: 2 rooms
	3 buildings	3 rooms	Total: 9 rooms
	Total: 12 buildings		Total: 25 rooms
Houses with stone walls – primitive roofs	9 buildings	2 rooms	Total: 18 rooms
	5 buildings	1 room	Total: 5 rooms
	Total: 14 buildings		Total: 23 rooms
Unfinished houses	2 buildings	2 rooms	Total: 4 rooms
Public houses	1 mosque with concrete roof	1 room	Total: 1 room
	1 big hall, a mosque	1 room	Total: 1 room
	4 buildings		6 rooms
<i>Total</i>	30 buildings		54 rooms

A comparison with official Palestinian data on Dallata in 1948 reveals that the Palestinians claim that there were 70 houses in the village, which shows a disparity from the Israeli survey. However the Palestinian records do not elaborate what they mean when they write a ‘house’. The comparison also reveals that what the Israeli surveyor took for a mosque was probably a public school.⁷

Legally, in order to expropriate property, the authorities had to identify its owner as an ‘absentee’. But in practice, if the Custodian was informed that a certain village was deserted, he might make a sweeping declaration that all the lands belonging to that village were absentees’ land, even when he lacked any information about the whereabouts of its inhabitants. The Custodian then leased or rented out the property.⁸ For example, in October 1951 two parcels were demanded by Israeli authorities in the village of Saqiya. According to the Department for Identification of Property they belonged to an Arab who was considered an absentee. The decision to declare the owner an absentee was based on two facts: it was known that most of the village dwellers deserted it and moved to the Arab areas; and the owner of the land did not claim it.⁹ Sometimes a suspension of the payment of taxes by the

original owner was another justification for declaring the lands as belonging to an absentee.¹⁰

The Custodian also expropriated public properties and lands, known in Islam as *waqf* (in plural *awqaf*). The *waqf* was used to provide services to the community. It was divided into two types: the public *waqf* consisted mainly of cemeteries, mosques, and other facilities for public prayer. The family *waqf* was private land that had been donated for public uses, such as the construction of religious schools, kindergartens, hospitals, and other community institutions. Both types of *waqf* were registered in the name of the Supreme Muslim Council and administered by it. With the passage of the Absentees' Property Law, all members of the Supreme Muslim Council were declared absentees and all the *waqf* land, whether public or family, was vested, *in toto*, with the Custodian. There was no attempt to differentiate between the two kinds of *waqf*, nor to ascertain whether the original owners of family *waqf* were indeed absentees under the provisions of the law.¹¹

Owners' claims

Another source of information on Palestinian property holdings is the records of claims made by Palestinians for the restitution of their lands from the Custodian. Every Palestinian who wanted to make use of his property had to prove his ownership. Israeli records show that there were several ways to prove ownership.

In order to prove his ownership of the property, the plaintiff was required to prove that he was not an absentee during the war. He could do this by providing a document signed by the Military Governor of his area of residence affirming that he is a permanent resident of the village or city and did not leave it. Acquiring such a document was very difficult. Moreover, there are records of cases in which a person identified himself, and the committee discussing his matter ruled that although he lived in Israel, he must be considered a refugee according to Israeli law. The plaintiff also had to present documents proving his ownership of the property. The most valid document was a form attesting that he purchased the land or paid taxes on it. However, even if the committee responsible for this process was sure that the plaintiff wasn't an absentee according to law, it could decide not to return the property.¹²

The committees that discussed the Palestinians' claims made thousands of decisions. The reasons given by the committees to return the property or to keep it were varied, but all in all they

were heavily biased against the return of the property. In one case the Committee handling claims for property in Ramla and Lydda was rebuked by the Legal Advisor, who demanded that they return property to a Palestinian, who had never been an absentee and who proved his ownership beyond doubt.¹³

One common objection that the committees used against the plaintiff's claims was a consideration of the size of the plot held by each plaintiff. If the plaintiff had a right to part of a parcel of land, the committee usually decided against him. Because the possession of land by Palestinians was sometimes collective and because the Custodian expropriated most of the property, in most cases the plaintiffs lost a large part of the land.¹⁴ If a property was mortgaged, it was confiscated as well. The justification was that the plaintiff stopped paying his bills, obviously as a result of the war.

Expropriation and development

The records demonstrate that one of the main reasons for not returning property to its owners was the need for development. This finding is in concurrence with Israeli legislation. Many claims were turned down because the land was part of a development planned by the Development Authority, other state authorities or Jewish organizations, especially the Jewish National Fund (JNF) and the Jewish Agency.¹⁵

An example is recorded in the fall of 1951. The Israel National Water Company, Mekorot, wanted to expand its activities across Israel. It filed a request to the Department for Identification of Property to receive information on the ownership of blocks and parcels of land in the territories in which it was interested. In its reply to Mekorot, the office of the Custodian sent detailed lists of Palestinian owners, which according to Israeli law were all considered absentees.¹⁶ The same is true concerning the development of the Lod national airport (later renamed the Ben-Gurion Airport). The airport administration requested and received detailed lists of dozens of Palestinian absentees who owned the lands in the areas to which the airport expanded.

The need for development was most conspicuous in the field of agriculture. During the 1948 war many Jews from the agricultural sector received permission from the Jewish leadership to harvest the absentees' crops. The Ministry of Agriculture received permission to work on arable lands, and it developed plans to lease hundreds of thousands of refugee plots to Jewish farmers.¹⁷

After the war when the legal mechanisms of expropriation and exploitation were developed, Israeli authorities put an emphasis on the cultivation of fruit orchards, a major export sector at the time.¹⁸ ISA records demonstrate how the Israeli authorities – especially the Custodian and the Ministry of Agriculture – battled among themselves on the right to manage the lands. The expropriation process also identified the previous owners and the value of their lands.¹⁹

One of the most notorious actions of the Israeli government was the transfer of expropriated land to the Jewish National Fund (hereinafter the Fund).²⁰ In 1949 the Fund received the first million dunums and in 1950 it received the second million dunums of land. The Custodian transferred the lands to the Development Authority, which in turn transferred them to the Fund. Most of the lands were rural, in the areas which Israel occupied from the Palestinians. The land transfer facilitated the connection of the centre and north of the country to Jerusalem and the Negev. The Fund quickly established dozens of new Jewish settlements on these new territories and expanded existing Jewish settlements to them.²¹ It should be noted that contrary to the provisions of the Absentees' Property Law, the Custodian, in certain cases, directly transferred land to the Jewish National Fund rather than to the Development Authority, even in the absence of any financial exchange representing payment for the land.²²

As was stated above, the Land Acquisition Law of 1953 allowed the Israeli state authorities to reinforce their expropriation of Palestinians' lands. In 1955 the state authorities estimated that a third of the lands under the Custodian's supervision belonged to 'present absentees', to whom the law promised compensation.²³ The ISA records show that using the Acquisition Law until 1 April 1956 Israel purchased 24,963 dunums while compensating 1,395 Palestinians with 7,746 dunums and 1,432,922 Israeli Lira (US\$796,068).

However, it must be remembered that the Palestinians were under intense pressure from the Israeli authorities to relinquish their rights to their lands in return for unfair compensation. For example, in December 1955 a member of Knesset, Yussuf Hamis, filed a complaint with the Minister of Agriculture. He tried to protest a wrongdoing against former residents of Miska village in the district of Tulkarm, who lived at the time in Tira. They were defined by the Israeli laws as present absentees, and had to lease lands from the Custodian in order to make a living. In

1955, the Custodian forced them to sign documents in which they relinquished their lands in Miska in return for the privilege of continuing the lease.²⁴

FROM EXPROPRIATION TO COMPENSATION: IDENTIFICATION AND VALUATION

When Israel actively worked to expropriate the refugees' property, it publicly supported a solution to the refugee problem in the form of compensation while excluding the option of repatriation of the refugees to its territories. This was not an act of goodwill but a question of Realpolitik. The new state, at war with all its neighbours, was also subject to heavy international pressure to repatriate the refugees back to their homes. However, the question of compensation could not be resolved due to the wider political dimensions of the Arab–Israeli conflict, which has continued almost unabated for over 60 years.

The international pressures on Israel failed to solve the Palestinian refugee problem. However, they did produce a mechanism that may be useful in any future peace talks. As a result of the UN General Assembly Resolution 194 (1948) there was a decision to establish the UNCCP, whose objective was, *inter alia*, to solve the refugee problem. However, in retrospect, its main achievement was the initiation of a Technical Program to identify and value every parcel of Arab-owned land in Israel. The Program ran from 1952 to 1964 under a Technical Office. Its database is primarily based on cadastral maps, land records and tax records.²⁵ To this day, the records of the UNCCP are an invaluable resource for data on the property owned by the Arab population in Palestine before 1948. Nevertheless the database has some drawbacks. It does not specify which of the properties listed in it belonged to refugees, and which to Arab Israeli citizens. As noted by prominent historian Michael Fischbach, the UNCCP received only minor cooperation from the state of Israel, which held most of the tax records. Furthermore, the most definitive information on the lands and owners remained at the Custodian and was not disclosed to the UNCCP.

As was demonstrated earlier, the ISA is a major source of information on Palestinian refugees' properties. The archives also hold exact and detailed information on Palestinian owners and their property. Since 1997, the Macro Center for Political Economics (formerly the Israeli Institute for Economic and Social Research)

has been working methodically on ISA records in order to produce the most conclusive database to date on Arab refugees' property. The Center's research methodology compares different sources of data that are found in the ISA. The idea behind the construction of this database is that it would facilitate the formation of a peace agreement between the Israelis and the Palestinians, by addressing the refugee issue with an offer of individual compensation. In the course of the research which led to the construction of the database, documents relating to 376 Palestinian villages identified as abandoned were examined. These villages had been home to about 370,000 people in 1945. Prior to the establishment of the state of Israel, Palestinian villages had been relatively small in size, with an average population of 955 inhabitants per village. Very few of the villages located in Israel's Central District remained occupied, and all the villages in the south were abandoned.

The next section elaborates the findings that resulted from a systematic comparison between the ISA and the UNCCP archives regarding one such village named al-Haditha. As the analysis makes evident, the Macro Center's method of systematic comparison can give accurate information pertaining to the ownership of lands belonging to Palestinian refugees.

THE VILLAGE OF AL-HADITHA

The Center's researchers studied the ISA records of the village of al-Haditha, situated in the district of Ramla. The Arab dwellers fled after the village was attacked by Israeli armed forces in July 1948. A comparison between the Israeli Land Registry records and the UNCCP records found a match of 87 per cent between the different records. This comparison also includes the amount of land in dunums held by each owner in 1948.

The village had a total land area before 1948 of 7,110 dunums, divided between the Arab population (6,544 dunums), the Jewish population (157 dunums) and public spaces (409 dunums). About 4,799 dunums was cultivable area. In 1948, the total population equalled 882 people. The Israeli army occupied this village on 12 July 1948. Today, Hadid occupies part of the village's land.²⁶

The form of land ownership is a salient issue for the development of a compensation mechanism, for it would have a crucial effect on the distribution of incomes in the Palestinian state. Benny Morris found that about half of all Arab land in the 1940s was held by small landowners. A considerable proportion of the remaining

land was owned by large estate owners, living far from their properties, primarily in Lebanon, Egypt and Syria. The findings from this study do not match with Morris's thesis. According to the sample of 13 villages used for this study, the distribution of land ownership was much more equal.²⁷

Based in part on British Mandate tax collection figures from 1945, the database identifies the names of the owners of land in the village, as shown in Table 6.2. As can be concluded from the table, the distribution of ownership in the village is quite wide, indicating that it was not held by one or a few clans.

Table 6.2 Summary of the Village Family Names

<i>Family name</i>	<i>Area (dumum)</i>	<i>Share of total village %</i>	<i>Share of area found %</i>
'Abal	11.728	0.18	0.19
'Abd	336.852	5.09	5.48
'Abdallah	46.991	0.71	0.76
'Abdan	1.766	0.03	0.03
Abu Hamida	1.794	0.03	0.03
Adham	27.649	0.42	0.45
'Adnan	24.408	0.37	0.40
Ahmad	9.533	0.14	0.15
Al'abd	2.697	0.04	0.04
Alasmar	883.059	13.36	14.36
Alasmas	0.223	0.00	0.00
Al'atshan	3.516	0.05	0.06
Albahtari	34.142	0.52	0.56
Aldin	13.806	0.21	0.22
Alfatah	7.027	0.11	0.11
Alfeter	3.561	0.05	0.06
Alhaj	6.775	0.10	0.11
Alhuj	40.676	0.62	0.66
'Alian	133.896	2.03	2.18
Alkhatib	6.555	0.10	0.11
Alla-Co.	7.228	0.11	0.12
Allah-Co.	4.924	0.07	0.08
Allatif	13.584	0.21	0.22
Alnabi	13.528	0.20	0.22
Alqadir	0.040	0.00	0.00
Alrahim	2.530	0.04	0.04
Alrahman	2.671	0.04	0.04
Alsadr	5.026	0.08	0.08
Alzain	15.634	0.24	0.25
'Amr	2.186	0.03	0.04
'Awad	62.541	0.95	1.02
'Awdallah	52.309	0.79	0.85
Bakr-Co.	6.466	0.10	0.11
Ghaith	86.081	1.30	1.40

continued

Table 6.2 *continued*

<i>Family name</i>	<i>Area (dunum)</i>	<i>Share of total village %</i>	<i>Share of area found %</i>
Hamad	109.496	1.66	1.78
Hasan	69.442	1.05	1.13
Hassuna	58.257	0.88	0.95
Husain	13.079	0.20	0.21
Ibrahim	14.878	0.23	0.24
'Id	1,044.491	15.80	16.98
Ilayen	5.385	0.08	0.09
Isma'il	29.811	0.45	0.48
Jabr	57.508	0.87	0.93
Jir	9.002	0.14	0.15
Jum'a	75.502	1.14	1.23
Khalid-Co.	20.257	0.31	0.33
Khalil	3.699	0.06	0.06
Kuka-Co.	12.960	0.20	0.21
Mahfuz	1,182.339	17.88	19.22
Mahmud-Co.	4.255	0.06	0.07
Makhluf	31.177	0.47	0.51
Mifhas	62.153	0.94	1.01
Mufamis	5.287	0.08	0.09
Muhammad	36.724	0.56	0.60
Muhsin	6.354	0.10	0.10
Mukhtar of the village	116.307	1.76	1.89
Muqammas	468.629	7.09	7.62
Musa-Co.	104.881	1.59	1.71
Musallah	70.038	1.06	1.14
Musallam	14.680	0.22	0.24
Mustafa	87.327	1.32	1.42
Qutaifan	16.654	0.25	0.27
Rabbah	15.115	0.23	0.25
Sa'ad	5.222	0.08	0.08
Safadi	3.970	0.06	0.06
Safi	92.199	1.39	1.50
Salama	122.539	1.85	1.99
Salih	48.926	0.74	0.80
Salim	0.652	0.01	0.01
Shaqrih-Co.	29.085	0.44	0.47
Shhada-Co.	28.565	0.43	0.46
Shufrah	21.650	0.33	0.35
Subh-Co.	36.835	0.56	0.60
Sulaiman	6.000	0.09	0.10
The Supreme Islamic Council	7.697	0.12	0.13
'Ubaid	6.641	0.10	0.11
'Urthman	19.223	0.29	0.31
Ya'qub	5.146	0.08	0.08
Yasin	90.836	1.37	1.48
Yunis	6.354	0.10	0.10
Yusif-Co.	2.508	0.04	0.04
<i>Total</i>	6,151.137	93.03%	100.00%

Constructing the database with the intention of it becoming a basis for an individual compensation mechanism, the new parcelization system should be matched with the old system, formed by the British Mandate. An example for such a match as it was constructed for the village of al-Haditha is shown in the maps in Figures 6.1 and 6.2.

In due time, when Macro's research is published, its findings can be compared to the UNCCP database. This comparison can give policymakers the most definitive data available on the value of the properties as well as on ownership before the 1948 war.²⁸

CONCLUSIONS

In light of the above, it is obvious that it was Israeli government policy to obtain as much land as possible from displaced Palestinian owners and to create a legal basis to keep the land in their hands. Laws were enacted and an administrative structure was created to implement this policy. In addition, the state wanted to ensure that such land would not be transferred back to the original owners. Thus, in order to guarantee the status of the transferred land, it was stipulated in law that the Custodian could transfer those properties only to the Development Authority, which as an agency operating in good faith, could acquire even wrongly vested land and make further transfers according to the state's various policy goals. This chapter has shown how as an extension of this basic policy, the Land Acquisition Law was enacted. This act makes it possible for the state to retain the property wrongly vested in the Custodian but not yet transferred to the Development Authority, as well as to expropriate land of individuals other than those defined in the Absentees' Property Law.

The paper demonstrated that the mechanisms Israel established in order to expropriate Palestinian refugee lands are well documented. The Custodian usually attempted to identify the owner of the land and to document its condition as part of the expropriation process, thereby permitting contemporary researchers to gain information about the status of the land in 1948. In many other cases, data concerning property can be obtained from the records detailing the claims which displaced Palestinians filed in an attempt to reclaim their land. These documents are available in the Israeli State Archives, and can be cross-referenced with documents which have already been partly investigated in the past, such as the British Mandate tax records.

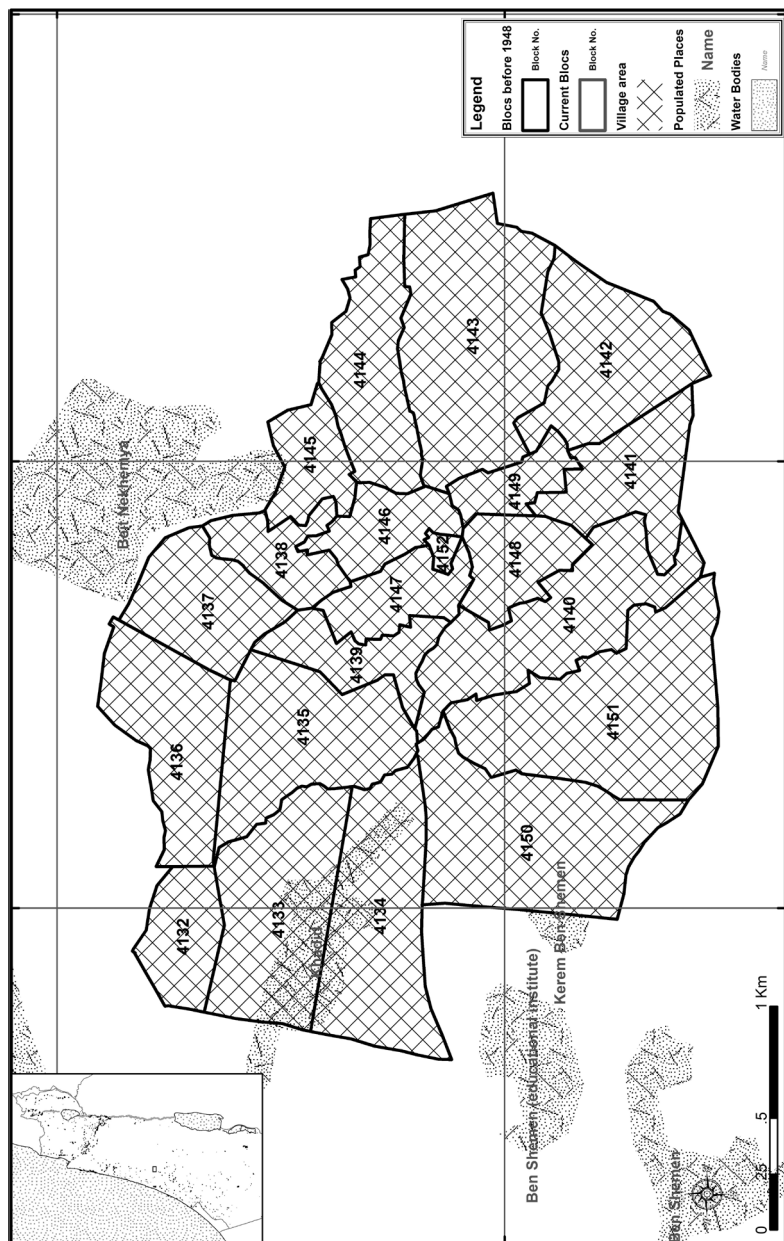
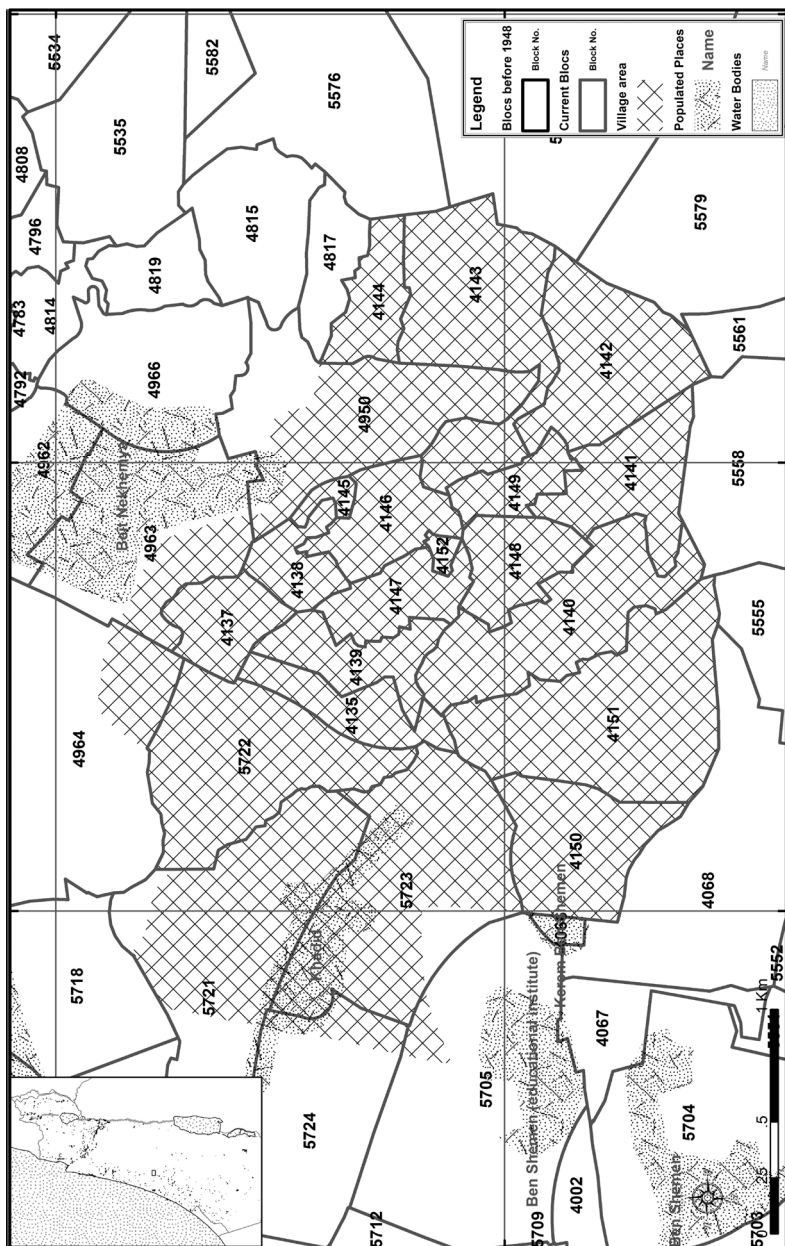


Figure 6.1 Al-Haditha Blocs Before 1948



The irony of fate is that these same records of expropriation can be used as a definitive database for compensation to the Palestinian refugees and therefore as a building block for peace.

Such a database is in its final stages of construction by the Macro Center for Political Economics. As demonstrated in the example above, the information included in the database about the land ownership of the Palestinian refugees is highly detailed, and allows for the creation of a mechanism for individual compensation for the refugees, as part of an overall peace agreement between the conflicting sides.

NOTES

1. For a general review on Israeli legislation concerning the Palestinian refugees, see Michael R. Fischbach, *Records of Dispossession: Palestinian Refugee Property and the Arab-Israeli Conflict* (New York: Columbia University Press, 2003), 17–27, and 53–58; Arnon Golan, *Wartime Spatial Changes: Former Arab Territories Within the State of Israel, 1948–1950* (Sede Boquer: The Ben Gurion Heritage Center, Ben Gurion University of the Negev, 2001) (Hebrew); Sami Hadawi, *Palestinian Rights and Losses in 1948: A Comprehensive Study* (London: Al Saqi Books, 1988), 85–87; Sabri Jiryis, ‘The Legal Structure of Expropriation and Absorption of Arab Lands in Israel’, *Journal of Palestine Studies*, 2, no. 4 (1973): 82–104.
2. Fischbach (2003), 9, 27–28, and 195–209; Hadawi (1988), 87–88, and 102.
3. For a detailed review of the Israeli occupation and the settlement of Jewish newcomers in urban areas, see Golan (2001), 20–200.
4. Fischbach (2003), 28.
5. As Fischbach mentions in his research, the UNCCP’s access to the tax records held by Israel was limited. Fischbach (2003), 252–54.
6. ISA, Gimel 3110/112, 25 May 1949.
7. ‘Welcome to Dallata, District of Safad’, at: www.palestineremembered.com/Safad/Dallata/index.html (accessed 20 October 2012).
8. In cases of uncultivated lands, it was transferred immediately to the supervision of the Ministry of Agriculture and not through the Custodian mechanism.
9. ISA, Gimel 3108/967, 25 October 1951.
10. An example of the Custodian identification process is found in ISA, Gimel 35941/913, 14 December 1951.

This act was *a posteriori* justified if no claim was made for the property and/or when no taxes were paid for the property by its owner, as documented in the tax records. Palestinians were also expected to provide a certificate proving their place of residence from the Minority Officers in cities or villages where there were no military authorities, or from the military governor when the army controlled the area.

11. For a general review of Israel policy towards the *waqf* system, see Michael Dumper, *Islam and Israel: Muslim Religious Endowments and the Jewish State* (Washington, DC: Institute of Palestine Studies, 1994). For specific examples that demonstrate how the Development Authority expropriated

- waqf* lands in Jaffa, Haifa, and other smaller towns, see ISA, Gimel 3133/1207/51, January 1955; ISA, Gimel 3121/1139, 1955.
12. However, if the person was considered a 'present absentee' by the Department for Identification of Property – a person who was categorized as an absentee but lived in Israel – and he proved his ownership of the property, his request was turned to a committee that discussed his claim.
 13. 'Letter of the Legal Advisor to the Custodian', ISA, Gimel 8166/112, 27 March 1949.
 14. ISA, Gimel 3039/227, 28 April 1949.
 15. See for example the Ministry of Agriculture's refusal to release lands because they were needed to develop an Agricultural School, Kadoorie. For another example, see the refusal to release lands by the Northern District of the Development Authority despite the authorization by the Custodian that the plaintiff has the right to it. ISA, Gimel 3133/3, 10 August 1953; ISA, Gimel 3133/1260, 15 October 1953.
 16. ISA, Gimel 34341/913, 1951.
 17. Arnon Golan, 'The Transfer of Abandoned Rural Arab Lands to Jews During Israel's War of Independence', *Cathedra* 63 (April 1992) (Hebrew), 122–54; Golan (2001), 201–56; Benny Morris, *The Birth of the Palestinian Refugee Problem, 1947–1949* (Tel Aviv: Am Oved, 1997) (Hebrew, third printing revised and updated), 232–43; Fischbach, 12–15, and 34. For a detailed account of the use of rural lands in the first years after the Israeli occupation, see Golan (2001), 201–56.
 18. *Ibid.*, 246–54.
 19. ISA, Gimel 2439/9.
 20. The Jewish National Fund was established by the Fifth Zionist Congress in Basel in 1901, in order to purchase land in Palestine for the establishment of a Jewish national home. The monies needed for this purpose were raised through contributions collected worldwide. The fundamental principle governing the Fund's activities is that its land will not be sold but remains the property of the Jewish people, and thus can only be leased. See: www.kkl.org.il/hebrew/nosim-ikaryim/al-kakal/history (accessed 20 October 2012).
 21. Golan (1992).
 22. For example, compare the transfer of lands to the JNF in the northern parts of the country in 18 January 1949 to the transfer of lands from the Custodian to the Development Authority and only then to the JNF in 1953 in order to develop the Jewish village of Beit-Dagan, built on Palestinian land. See ISA, Gimel 3122/138, 18 January 1949; ISA, Gimel 3106/2071, 26 June 1953.
 23. ISA, Gimel 2424/9.
 24. ISA, Gimel 2438/34.
 25. For a detailed review of the work of this authority, see Fischbach, 246–312.
 26. 'Welcome to Abu Shusha, District of al-Ramla', at: www.palestineremembered.com/al-Ramla/al-Haditha/index.html (accessed 20 October 2012).
 27. Macro Center in cooperation with Panorama, *Survey of Palestinian Refugee Real Estate Holdings in Israel: Comparison of the MACRO Alternative Land Registry with the UNCCP Database and Developing a Practical Compensation Mechanism for Reparation of Palestinian Refugees Stage II* (Tel Aviv and Ramallah: Macro Center and Panorama, 2008, unpublished).
 28. The method of assessing the refugees' property by using Israeli data was first mentioned in the UNCCP's diplomatic negotiations. However, due to

political considerations and the fear that Israel will disclose only selected documents, the option was discarded.

See Palestine Conciliation Commission, 'Progress Report to the United Nations General Assembly', at: www.mfa.gov.il/MFA/Foreign+Relations/Israels+Foreign+Relations+since+1947/1947-1974/7+Palestine+Conciliation+Commission-+Progress+Repo.htm (accessed 20 October 2012).

In Search of Information about Refugee Property Ownership

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INTRODUCTION

There are numerous quantitative and qualitative historical studies which address various facets of the Palestinian refugee experience. This study differs from most existing published research because it is based on an analysis of archival material culled from two sets of the United Nations Relief and Works Agency (UNRWA) historical family files: first, data was extracted from information that was collected from the refugees following their dispersal in 1947–1948 (to be referred to as the ‘1948 files’); second, data was collected from the refugees subsequent to UNRWA’s decision in August 1992 to register ‘Palestine refugees’, who for one reason or another did not register in the original UNRWA census carried out in the early 1950s, but who were able at a later stage to meet UNRWA’s criteria for eligibility of Palestine refugees and register with the Agency (to be referred to as the ‘1992 files’).²

The report is a pilot study that analyses around 500 family files in three of UNRWA’s five fields of operations (Jordan, Lebanon and Syria) to ascertain the extent to which these files contain information about abandoned Palestinian refugee property in the wake of their flight and expulsion in 1948. With regard to the 1948 files, the study relies on a randomly-selected sample of 210 files that were chosen to reflect the proportional distribution of the refugees in the three above-mentioned regions: 133 files from Jordan, 38 from Lebanon and 39 from Syria. With regard to the 1992 files, the study examines 300 family cases, with 100 cases selected randomly from each of the regions. In the latter case, no special proportional weighting of the sample selection was made in the expectation that these oversampled files, which were compiled by the Agency after 1992, contain more detailed information about refugee property than the 1948 files. It is important to bear

in mind that the 1948 and 1992 files contain self-reported data. As such, the information about property ownership in particular was provided without submitting supporting documents, unless the refugee volunteered such information, which was then automatically included in the files. Overall, however, those refugees who registered after 1992 tended to provide supporting documents pertaining to property ownership.

Information contained in the family files was classified by means of a codebook designed to ascertain the following: place of origin in Palestine and current place of residence; family size and the number of generations in each family; the occupational background of the refugees in Palestine and their current occupational status; and property ownership (land and built structures) in Palestine. In addition, the study incorporated a limited sample containing qualitative information to provide a nuance for the quantitative data reported in this study.

Although the files contain rich information about the demography, social and geographic mobility of the refugees, the property information in these files is less extensive and varies by region. There are two main reasons for this. First, as pointed out earlier, the method of collecting such data, particularly in the early 1950s following expulsion, did not seek information about abandoned property, unless it was volunteered by the refugees during the interviews. In any case, Agency officials saw no need to query the refugees about their abandoned property.³ This is in spite of the fact that the original census forms prepared by UNRWA contained questions about property ownership in Palestine. The main concern of the Agency in the early years of dispersal was to provide basic subsistence and much needed immediate humanitarian assistance. Second, the method of data collection by the Agency was not always consistent throughout the regions, which in some instances gave rise to problems of comparability.

In the early phase of formulating the research project, the idea was suggested to compare data on property in the UNRWA files to the information that was available in the archives of the United Nations Conciliation Commission for Palestine (UNCCP), which undertook a survey of abandoned refugee property in Palestine in the early 1950s. Upon inspection, it became clear that the conditions of the UNCCP files, even though they are available in digitized form, do not lend themselves to electronic linkages between the two databases. Comparison, if carried out, had to be done manually on a case-by-case basis, which rendered the

task unwieldy and impossible to undertake in terms of time and available resources. Hopefully, plans which are underway for upgrading the storage and access technology of the UNCCP digitized files will make future comparison with the UNRWA files more practical and efficient.

DEMOGRAPHIC BACKGROUND

Almost overnight in 1947, close to two-thirds of the Arab population of Palestine became refugees. Of the 1.3 million Palestinian Arabs who populated British Mandatory Palestine in 1947, between 750,000 and 900,000 became refugees who were largely driven from their homes by Zionist forces, and were eventually prevented by the new state from returning to their towns and villages. Prior to their expulsion and dispersal around 70 per cent of Palestine's Arabs lived in rural areas, with the remaining 30 per cent classified as town and city dwellers.

At the dawn of the *Nakba*, close to 85 per cent of the Arab Palestinian population consisted of Muslims and the remaining 15 per cent were Christians and others. According to the UNRWA, which was established in 1949 to assist Palestinian refugees, there are currently 4.7 million refugees registered with the Agency, representing in excess of 1 million families. Some 1.4 million of the refugees live in 58 camps in UNRWA's five fields of operations: Jordan, Syria, Lebanon, Gaza and the West Bank, including East Jerusalem. The remaining two-thirds of the registered refugees live in towns and localities near the camps. It is important to note that not all of the Palestinian refugees are included in UNRWA's census. Excluded from the registration system are internal refugees (so-called displaced people) who remained in what became Israel but to this day are not allowed to return to their homes. They account for 20–25 per cent of the Palestinian population in Israel, that is, around 250,000–300,000 individuals. Those who became refugees as a result of the 1967 war do not fall under UNRWA's definition of 'Palestine refugees', and are not registered with the Agency. The same applies to Palestinians who became refugees in the early 1950s but left to neighbouring countries other than Jordan, Lebanon or Syria, and at the time the West Bank, without registering with the Agency, and/or those who lack documents to prove their refugee status. Finally, a stratum of middle-class Palestinians, who became refugees in 1948, did not register with the Agency in order to avoid the stigma of refugeehood. Altogether

it is estimated there are around 6–7 million displaced Palestinians worldwide, some of whom did not or could not claim refugee status. Currently, Palestinian refugees constitute the largest single national group of refugees in the world.

Based on the UNRWA registration records, the rural–urban distribution of the refugees and their descendants is close to the actual British census estimates of Mandatory Palestine, as shown in Table 7.1, based on family registrations.

Table 7.1 Place of origin in Palestine of registered refugee families according to UNRWA records, by rural–urban distribution and fields of operation (2009)

<i>Place of origin</i>	<i>Jordan</i>	<i>West Bank</i>	<i>Gaza</i>	<i>Lebanon</i>	<i>Syria</i>	<i>Total</i>
Rural %	74	70	92	68	70	76
Urban %	26	30	8	33	30	25
Number of families	335,090	161,207	248,516	117,235	134,956	100%

When examined by place of origin that is based on classification of ten major cities/towns and their surrounding villages in Palestine (see Appendix 7.1), we begin to see the distinctive geographic features of the Palestinian refugee exodus: 50 per cent of those who ended up in Jordan came primarily from two locations: Lydda/Ramla (27 per cent) and Jaffa (22 per cent). These were followed by Beersheba, Jerusalem and Haifa, each at 13 per cent. The Galilee represented by Nazareth, Haifa, Acre and Safad accounted for a combined 14 per cent of the refugees who ended up in Jordan.

Close to one-third of the refugees who sought shelter in the West Bank came predominantly from Jerusalem and its environs (30 per cent), followed by Haifa (23 per cent), Jaffa (19 per cent) and Lydda/Ramla (18 per cent). Except for Haifa, few refugees from the north of the country, such as Acre, Nazareth and Safad ended up in the West Bank, which at the time was occupied by Jordan.

Syria and Lebanon sheltered refugees from the Galilee and the north of the country. Refugees who sought shelter in Syria came predominantly from Safad (45 per cent), followed by Haifa (20 per cent) and Tiberias (18 per cent). Lebanon, which also absorbed refugees from the north of the country, showed the following composition: Acre (32 per cent), Safad (28 per cent) and Haifa (19 per cent). Overall, as Table 7.1 shows, Lebanon (33 per cent) and Syria (30 per cent) had the largest proportion of refugees originating from urban areas, mainly the north.

Finally, refugees who took shelter in Gaza came mainly from the south of the country: Gaza and its surrounding villages (44 per cent), Beersheba (21 per cent), Jaffa (18 per cent) and Lydda/Ramla (16 per cent).

Current figures on the religious background of the UNRWA registered refugee population show that it is overwhelmingly Muslim (97 per cent). The largest Christian refugee community is in Lebanon (10 per cent) (see Table 7.2).

Table 7.2 Religious background of Palestine refugees according to UNRWA records, by region and registered families

<i>Region</i>	<i>Muslim</i>	<i>Christian</i>	<i>Total</i>
Jordan	401,813	6,987 (2%)	408,800
West Bank	198,859	8,618 (4%)	207,477
Syria	118,608	1,030 (1%)	119,638
Lebanon	105,314	11,200 (10%)	116,514
Gaza	25,110	601 (2%)	25,711
<i>Total</i>	849,704	28,436 (3%)	878,140

During the first decade of exile, Lebanon offered citizenship to some of the educated and well-to-do Christian and Sunni refugees. Jordan is the only host country that in due course provided citizenship to Palestinian refugees of 1948. In Syria, Palestinian refugees enjoy social and economic rights but are not granted citizenship rights.

SAMPLE SELECTION FOR THE PILOT STUDY

With regard to the 1948 files, the study relied on a random sample of the refugee family files that were chosen on a proportional basis from the UNRWA Family Archives. We attempted to ensure representation in our sample that reflects the actual distribution of the refugees in UNRWA's fields of operations. Due to constraint of time and resources, this pilot study is limited to Jordan, Syria and Lebanon. A total of 210 family files were selected for analysis, to represent the refugees who were registered with the Agency in what we called the 1948 files: Jordan (133), Lebanon (38) and Syria (39). For the sake of contrast, we selected randomly on an equal basis another 300 files representing those refugees who claimed their refugee status after 1992.

Table 7.3 Registered refugees by field of operation

<i>Field of operation</i>	<i>Number of registered refugees</i>	<i>Per cent</i>	<i>Number of registered refugee families</i>	<i>Per cent</i>	<i>Number of families selected</i>
Jordan	1,930,703	42	387,992	37	111
West Bank	784,263	17	196,894	19	57
Gaza	1,059,584	23	233,825	22	66
Lebanon	416,608	9	110,026	11	33
Syria	456,983	10	111,491	11	33
<i>Total</i>	4,618,141	101	1,040,156	101	300

Source: www.un.org/unrwa/publications/pdf/rr_countryandarea.pdf

METHODOLOGICAL CONSIDERATIONS

The selection process relied on an anonymous list of the family files serialized according to the Ex-Code registration system adopted by UNRWA. The selection method was Chromy's random sequential sampling, whereby a starting unit is randomly chosen from the entire stratum, and then the procedure picks units sequentially from the start to the end of the stratum and then continues from the beginning of the stratum until the required number of units is selected.⁴

It is important to keep in mind that inasmuch as the UNRWA files are an important resource for research, the information contained in these files is voluntary in nature; its continual updating depends on the refugees themselves and their willingness to provide the Agency with up-to-date information. This has a large bearing upon the demographic data on family size and the number of generations within the extended family, which in turn would affect the criteria used in compensation calculations.

Some of the files that appeared in the random sample were damaged due to storage and moving of the files between locations, or the information in them was incomplete/illegible. The damaged files were discarded from the sample and replaced by other files from UNRWA's master database.

The problem of data collection across the three fields was apparent from file inspection. For example, in the case of Jordan (and the West Bank), at the time of the census the investigators specifically asked if the refugees owned property in Palestine, and the answers were recorded on UNRWA's census Fact Sheets.⁵ In most cases, there were no supporting documents for the answers

given, and the investigators wrote down what was told to them by the refugee. In the case of Lebanon and Syria, information about property of the 1948 refugees was not collected by the census takers, even though the Fact Sheet did include a question about property in Palestine. With regard to the 1992 registration, the New Registration Form, which was adapted by UNRWA from the 1948 Fact Sheet, contains specific questions about refugee property and proof of such property. The information in the 1992 files about property ownership was a combination of verbal testimony by the refugees and documentary proof of property ownership.

In coding the family files, we defined generation as follows: the first generation is the 1948 generation of refugees who were born before 1948; the second consists of those who were born to the first generation after 1948; the third generation covers those who are offspring of the second generation; and the fourth generation consists of descendants of the third generation.

FINDINGS

Family size and generation

As we can see from Table 7.4, the average size of the 1948 refugee family living in Jordan is substantially larger than that of the 1992 refugees: 85 per cent of the 1948 refugees belonged to families with nine members or more, compared to nearly 50 per cent of the 1992 refugees. From the Jordan files, it appears that in terms of generations, the 1948 refugees are split between those households which combine first and second generations (45 per cent) and those which include three generations (41 per cent). There are few who belong to the category of four generations (4 per cent). The 1992 refugees consist primarily of first (85 per cent) and second generations (15 per cent).

The situation in Syria is different. Here data on the extended family and the number of generations is available through the exchange of information between the General Authority of Palestinian Arab Refugees in Syria (GAPAR) and UNRWA. Registration with GAPAR is mandatory for any refugee in Syria to obtain a Syrian refugee identity card. The information about Syria can be seen in Table 7.4. The contrast between the 1948 and 1992 family size shows that the latter is slightly larger than the former when it comes to families with six members and

more (43 per cent: 32 per cent), a trend that differs from that discerned in Jordan. With regard to Lebanon, which provided the least accurate and least complete information about family demography, it appears from Table 7.4 that 84 per cent of the 1948 refugees and 66 per cent of the 1992 refugees, have five family members or less. Half of the 1948 refugees consist of first, second, and third generations. Forty-two per cent consist of first and second generations. A minority of 8 per cent of the households consist of first generation. The majority of the 1992 refugees consist of first and second generations (72 per cent). The rest (28 per cent) belong to households of the first generation.

Table 7.4 Family size and number of generations within each family by refugee group and region

Family size Numbers	Refugee group		Number of generations per family		
	1948	1992	Generation	1948	1992
<i>Jordan</i>					
1-2	1.0%	12%	1st generation	9.7%	15%
3-5	8.1%	7%	1st and 2nd generation	45.6%	85%
6-8	4.0%	32%	1st, 2nd and 3rd generation	41.4%	-
9-10	10.5%	19%	1st, 2nd, 3rd and 4th generation	3.7%	-
10+	76.4%	30%			
Sample size	123	100		123	100
<i>Lebanon</i>					
1-2	19 (50%)	16 (18.6%)	1st generation	7.9%	27.9%
3-5	13 (34.2%)	43 (50%)	1st and 2nd generation	42.1%	72.1%
6-8	4 (10.53%)	18 (20.9%)	1st, 2nd and 3rd generation	50%	-
9-10	1 (2.63%)	3 (3.5%)	1st, 2nd, 3rd and 4th generation	-	-
10+	1 (2.63%)	6 (7%)			
Sample size	38	86		38	86
<i>Syria</i>					
1-2	2 (5.13%)	5 (5%)	1st generation	0	2 (2%)
3-5	11 (28.21%)	22 (22%)	1st and 2nd generation	6 (15.39%)	13 (13%)
6-8	13 (33.33%)	32 (32%)	1st, 2nd and 3rd generation	32 (82.05%)	84 (84%)
9-10	8 (20.51%)	15 (15%)	1st, 2nd, 3rd and 4th generation	1 (2.56%)	1 (1%)
10+	5 (12.82%)	26 (28.95%)			
Sample size	39	100		39	100

Occupational distribution

A contrast between the occupational background of the heads of households for the 1948 and 1992 refugees shows interesting results. For Jordan, more than one-third of the 1948 refugees were farmers in Palestine, one-quarter were blue-collar workers of one sort or another, and one-tenth were merchants. A minority of around 5 per cent were landowners. For those who registered after 1992, one-quarter of the heads of households were farmers and shepherds in Palestine, 17 per cent were landowners and 16 per cent were Mandatory government employees. None of the heads of households who registered after 1992 in Jordan had professional backgrounds. The registered occupations of the offspring tells an interesting story as an expression of social mobility across generations. For Jordan, around one-third of the 1992 offspring registered their occupation as homemakers, 15 per cent as blue-collar workers, 13 per cent as students, 7 per cent as private sector employees, 5 per cent as government employees and 4 per cent as merchants. There were hardly any farmers or landowners. The proportion of those with professional backgrounds amounted to 2 per cent.

The contrast with Lebanon could not be any starker. The first thing to note is the difference between the 1948 and 1992 refugees. One-third of the 1948 refugee heads of households were teachers in Palestine, followed by blue-collar workers (21 per cent), students (18 per cent) and merchants (11 per cent). Few gave farming as an occupation in Palestine (6 per cent), and none identified themselves as landowners. While it is difficult to conclude that this data is representative of the refugee population in Lebanon (or indeed in any of the other regions in the study) due primarily to the small sample size, it is important to remember that many of these refugees who ended up in Lebanon came from urban centres in Palestine with higher levels of education. This accounts for the large percentage of teachers in this group and the low percentage of those who gave farming as their occupation.

Of the 1992 refugees in Lebanon, 27 per cent were government employees in Palestine, followed by homemakers (23 per cent), merchants (20 per cent), professionals (12 per cent) and teachers (8 per cent). Farmers and landowners registered 1 per cent each. The offspring of these refugees have a slightly different occupational structure. Unlike their parents, they are absent from the public sectors, teaching and farming. This can be explained by recalling

that by law Palestinian refugees in Lebanon could not own land, work for the government, or enter many professional occupations in the private sector. Yet, 55 per cent of their offspring gave their occupations as professionals (doctors, lawyers and engineers), compared to 12 per cent of their parents. One-third of the 1992 refugees' offspring were students at the time of filing the refugee application with UNRWA; one-tenth were blue-collar workers. Compared to the refugees who registered in 1948 and in the early period, we can say that those who registered in 1992 were more urban in their origin and better educated than their parents and their 1948 brethren.

Among the 1948 refugees in Syria, there are no professionals and few were landowners (4 per cent) in Palestine. Blue-collar workers comprised close to one-third (30 per cent) of the group, followed by merchants and government employees (17 per cent each). Of the 1948 refugee offspring, seven were blue-collar workers and there was one teacher. Either no information was provided on the rest, or they were too young to hold jobs at the time of their UNRWA registration.

Table 7.5 Occupational distribution of sampled registered refugees according to UNRWA records by region and refugee group

<i>Occupation</i>	<i>Jordan</i>			
	<i>1948</i>		<i>1992</i>	
	<i>Head of household</i>	<i>Offspring</i>	<i>Head of household</i>	<i>Offspring</i>
Merchant, store owner	10.5%	N/A	2%	4%
Government employee	3	=	16	5
Private sector	–	=	–	7
Farmer, shepherd	36.8	=	24	1
Blue-collar worker (carpenter, mechanic, driver, etc.)	24.8	=	12	15
Teacher	<1	=	2	1
Student	<1	=	2	13
Unemployed	<1	=	26	17
Landowner	4.5	=	17	–
Homemaker	3	=		35
Professionals (Doctor, engineer, lawyer, pilot, etc.)	–	=	–	2
Number	133	=	58*	757

<i>Occupation</i>	<i>Lebanon</i>			
	<i>1948</i>		<i>1992</i>	
	<i>Head of household</i>	<i>Offspring</i>	<i>Head of household</i>	<i>Offspring</i>
Merchant, store owner	4 (10.53%)	N/A	15 (20.27%)	2.63%
Government employee	=	=	20 (27.03%)	=
Private sector	1 (2.63%)	=	=	=
Farmer, shepherd	2 (5.62%)	=	1 (1.35%)	=
Blue-collar worker (carpenter, mechanic, driver, etc.)	8 (21.05%)	=	4 (5.41%)	10.53%
Teacher	12 (31.48%)	=	6 (8.11%)	=
Student	7 (18.42%)	=	1 (1.35%)	31.6%
Unemployed	=	=	=	5.26%
Landowner	=	=	1 (1.35%)	=
Homemaker	4 (10.35%)	=	17 (22.97%)	7.9%
Professionals (Doctor, engineer, lawyer, pilot, etc.)	=	=	9 (12.16%)	55.3%
Number	38	=	74**	40

<i>Occupation</i>	<i>Syria</i>			
	<i>1948</i>		<i>1992</i>	
	<i>Head of household</i>	<i>Offspring</i>	<i>Head of household</i>	<i>Offspring</i>
Merchant, store owner	4 (17.39%)	=	5 (5.26%)	2 (0.89%)
Government employee	4 (17.39%)	=	20 (21.05%)	26 (11.61%)
Private sector	=	=	11 (11.58%)	19 (8.48%)
Farmer, shepherd	6 (26.09%)	=	27 (28.42%)	2 (0.89%)
Blue-collar worker (carpenter, mechanic, driver, etc.)	7 (30.43%)	7 (87.5%)	10 (10.53%)	87 (38.84%)
Teacher	=	1 (12.5%)	15 (15.79%)	24 (10.71%)
Student	=	=	=	28 (12.5%)
Unemployed	=	=	=	7 (3.13%)
Landowner	1 (4.35%)	=	4 (4.21%)	=
Homemaker	1 (4.35%)	=	=	=
Professionals (Doctor, engineer, lawyer, pilot, etc.)	=	=	3 (3.16%)	29 (12.95%)
Number	23***	8	95****	224

*38 respondents' fathers were too young to be included in the 1948 sample.

**14 respondents' fathers were too young to be included in the sample.

***10 of the respondents' fathers (1948 sample) were too young to be included in the sample and six applicants lacked information about occupation.

****24 of the respondents' fathers (1992 sample) were too young to be included in the sample, while 20 of the applicants worked in more than one occupation after 1948.

Turning to the 1992 Syrian sample, 28 per cent reported farming as the occupation of the head of the household in Palestine, followed by government employment (21 per cent), teaching (16 per cent), private sector employment (12 per cent) and blue-collar work (11 per cent). Five per cent were merchants, 4 per cent were landowners before leaving Palestine and 3 per cent recorded their occupations as professionals.

Of the offspring in this group, 39 per cent are blue-collar workers, 11 per cent teachers, 13 per cent professionals, 12 per cent government employees and 12 per cent students. As expected, very few were farmers (1 per cent) and none were landowners. Ownership of property (mainly land) by Palestinian refugees in Syria is also restricted, though not to the same absolute extent as it is in Lebanon. These figures contrast with those for Lebanon, which by law does not allow Palestinian refugees to enter the public sector and severely limits their entry into the private sector.

Property ownership: Land and structures

The present study: Jordan

As will become apparent from the following discussion, except for Jordan, available information about property ownership in Palestine was not comprehensive, and the extent of information varied across the three fields in the pilot study. Data on property ownership, mainly land, should be evaluated against the background of customary law that was prevalent during the Ottoman time. Communal usage of land in villages was common in Palestine, which gave 'ownership' specific meaning in contrast to the individually-based definition of ownership. Attempts by the Ottomans to regularize ownership in the mid-nineteenth century with the introduction of the Tanzimat were resisted by villagers for fear that such a system would lead to taxation and induction into the Ottoman army. Thus, the meaning of ownership can be ascertained on the basis of two approaches: first, by ethnographic study which would involve interviews with a sample of refugee landowners, and second by cross-referencing the data gleaned from the UNRWA family files on a family basis with the UNCCP data once its conversion to efficient machine-readable format is complete.

The data provided by the 1948 and 1992 refugees who sought shelter in Jordan gives us a partial picture of property ownership, as shown in Table 7.6. With regard to the 1948 refugees, 51 per cent of those selected in the random sample provided such

information, compared to 38 per cent of the 1992 refugees. When classified in terms of the size of landholding, as reported by the head of the household to UNRWA investigators, the median for the 1948 refugees falls in the interval of 51–100 dunums, and for the 1992 refugees the median falls below 50 dunums. For refugees in Jordan, the average landholding size per household is 170 dunums for the 1948 refugees, compared to 280 dunums for the 1992 group.

Table 7.6 Property ownership in Palestine by region and refugee group (Jordan)

<i>Land in Palestine (dunums)</i>	<i>Land</i>	
	<i>1948 (%)</i>	<i>1992 (%)</i>
Up to 20	25	24
21–50	20	26
51–100	18	13
101–200	15	13
201–300	10	3
301–400	2	8
401–600	3	10
601–1000	6	–
1001–2000	2	–
2000+	–	3
Total:	100%	100%
Number	68/133 (51%)	38/100 (38%)
Average landholdings per household in dunums	For those declaring they owned land: 155.22 dunums	
<i>Houses</i>	<i>Houses and rooms</i>	
	<i>1948 (%)</i>	<i>1992 (%)</i>
1	87	84
2	–	9
3	2	–
4+	–	7
Number of houses	45/133 (34%)	32/100 (32%)
Rooms		
1–2	46	39
3–4	39	42
4–5	6	11
5+	9	8
Number of rooms	70/133 (53%)	36/100 (36%)

In addition to land ownership, our survey sought information related to immovable property such as home ownership and the size of homes. Of the 1948 refugees in Jordan, one-third indicated that they owned houses, with the majority of this group (87 per cent) owning one house and the rest between two and three houses. Nearly half (46 per cent) gave the size of their house as one or two rooms, one-third, as three to four rooms and one-fifth indicated that their houses had four rooms or more.

For Jordan, the house ownership data for the 1992 refugees shows a similar pattern compared to the 1948 data. One-third provided data on home ownership, with 84 per cent reporting that they owned one house in Palestine, and 16 per cent indicating that they owned two houses or more. Slightly more than one-third (36 per cent) provided information about the size of their homes in terms of number of rooms, indicating similarity with the 1948 refugees.

The 1951 UNRWA study

At the time the study was underway, the authors became aware of the existence of a survey of refugee property that was based on the UNRWA census 'fact sheets' that were used in Jordan (which at the time included the West Bank). The findings were reported by the UNCCP in the course of its work on the valuation of abandoned refugee property.⁶ As such it is an incomplete survey since it does not include abandoned property of the refugees in Lebanon, Syria, Gaza and other places, in which the refugees sought shelter after 1948. Although at a later stage we were able to obtain a copy of the 1951 study, thanks to UNRWA's efforts, this report relies on the summary of the same findings as reported in Michael Fischbach's 2003 study of Palestinian refugee property.⁷

The UNRWA survey fact sheets of 1951 were distributed to a sample of 8,400 heads of refugee households covering around 340,000 persons. The results of this survey show that around two-thirds of the refugees owned 3,508,540 dunums of land, and 59 per cent reported a loss of a total of 47,500 homes containing 158,000 rooms, in addition to 4,150 shops and 131 independent structures. The average size of lost cultivated land per family is 36.2 dunums. However, when classified by the size of the abandoned landholdings, 77 per cent indicated that they owned less than 63 dunums per household. Of the more than 3.5 million dunums owned, 2 million dunums (77 per cent) were classified

as cultivated land, and close to 0.5 million dunums consisted of citrus groves and other trees.

From Table 7.7, in which we coded our data to make it comparable to the 1951 UNRWA survey, it is interesting to note the extent of similarity between the 1951 UNRWA data as reported by the UNCCP and our separate study regarding ownership of cultivated land: 55 per cent: 57 per cent regarding the 1951 files; and 68 per cent: 57 per cent regarding the 1992 files. The average amount of cultivated land per household is substantially larger in our samples for the 1948 and 1992 files, compared to the 1951 survey carried out by UNRWA on behalf of the UNCCP. For the entire 1948 and 1992 samples, the average size of landholding per household is 79.3 and 65.7 dunums, respectively. In the 1951 UNRWA survey reported by UNCCP, the average size of landholding per family is 36.2 dunums for cultivated land. For the tree-planted land, our sample is too small to justify meaningful comparisons. In terms of ownership of houses, around one-third of the UNRWA survey reported owning houses, whereas for us the figures are 56 per cent and 42 per cent for the 1948 and 1992 files, respectively. The number of rooms per house is fairly close for the three samples: 2.85 rooms for the 1948 sample, 3.09 rooms for the 1992 sample and 3.33 rooms for the 1951 UNRWA survey.

Comparisons with data from Syria and Lebanon were excluded because, as pointed out above, the 1951 UNRWA survey dealt with Jordan (including the West Bank) only.

With regard to our study, in the case of Lebanon and Syria information about property was largely not collected from the 1948 refugees, even though the UNRWA Fact Sheet contained questions about property ownership. The majority of the refugees were simple farmers, who did not see the need to carry documents proving ownership. The main concern in those times was to provide immediate humanitarian assistance. Thus, Table 7.8 shows that none of the 1948 refugees provided information about their property, either pertaining to land or buildings, and only 11 per cent of the 1992 group did so with regard to land ownership, and 7 per cent with regard to ownership of homes. This is unlike the 1992 refugees, some of whom were able to record their property on the Fact Sheet, or on what later came to be known as the New Registration Form.

Additional qualitative information was gleaned upon perusal of the original family files. In the case of Lebanon, two examples demonstrate that, unlike the 1948 refugees, here some of the

refugees who registered with UNRWA after 1992 held onto their property records, and in one case the claimant, who lived in Beirut at the time, received a reply in 1965 from F. E. Jarvis, the Technical Representative of the UNCCP, confirming that, based on the Title Records, the claimant is the owner of cultivable land in the village of Dammun. In the second case, the claimant wrote to the Palestine Section of the Colonial Office in London about his property which consisted, in addition to his own residence, of land in the village of Dammun and two buildings in Haifa. What is interesting about this case is the detailed nature of the request for compensation, which the claimant deposited with UNRWA upon filing for registration. His request for compensation contained copies of the land deed, a list of the monthly rental income from the two apartments in Haifa, and the value of the belongings, furniture and appliances that the claimant owned in Haifa.

Table 7.7 Comparison between the 1951 UNRWA survey findings and the present study for Jordan by refugee group and type of property

<i>Type of property</i>	<i>1948 refugee group</i>	<i>1992 refugee group</i>
Cultivated land	10,555 dunums	6,571 dunums
Proportion of households declaring ownership of cultivated lands	73 (55%) Compared to UNRWA 1951 survey: 57%	68 (68%) Compared to UNRWA 1951 survey: 57%
Average size of lost cultivated landholding per household	144.59 dunums (based on the number of those who declared land ownership, N=73); 79.36 dunums for the entire sample (N=133)	172 dunums (based on the number of those who declared ownership, N=68); 65.7 dunums for the entire sample (N=100)
Average size of tree-planted land per household	20.67 dunums (based on the number of households who declared ownership, N=24)	96 dunums (based on the number of households who declared ownership, N=7)
Ownership of houses	56% (based on the total sample of 133 households) Compared to UNRWA 1951 survey: 34%	42% (based on the total sample of 100 households) Compared to UNRWA 1951 survey: 34%
Rooms per house	2.85 Compared to UNRWA 1951 survey: 3.33	3.09 Compared to UNRWA 1951 survey: 3.33

Table 7.8 Property ownership in Palestine by region and refugee group (Lebanon)

<i>Land in Palestine (dunums)</i>	<i>Land</i>	
	1948	1992
Up to 20	=	8 (72.7%)
21–50	=	1 (9.1%)
51–100	=	2 (18.2%)
101–200	=	=
201–300	=	=
301–400	=	=
401–600	=	=
601–1000	=	=
1001–2000	=	=
2000+	=	=
Total	=	100%
Number	N/A	11
Average landholdings per household in dunums	=	

<i>Houses</i>	<i>Houses and rooms</i>	
	1948	1992*
1	=	5 (71.4%)
2	=	2 (28.6%)
3	=	=
4+	=	=
Number of households*	38	7

*There are four households who owned one store each and two households who owned two stores each, while there is one household who owned a bookshop and a printing business. There is no data available for Lebanon on the number of rooms per household.

In the case of the 1992 refugees in Syria (Table 7.9), only 10 per cent provided supporting documents to prove ownership of land, and 5 per cent provided documents in support of home ownership. However, 58 applicants (58 per cent) of the 1992 sample claimed that they had property but without any supporting documents. Various types of property were reported such as houses, land, farmland and orange orchards, shops, industrial workshops, and olive and sesame mills. Some provided information about the locations, areas and values of their properties.

Only 18 per cent of the 1992 sample reported that they had various types of property (land, houses, cattle and stocks/shares), and provided supporting documents (land certificates and deeds, payments receipts and other certificates issued by various relevant companies or governmental departments).

Twenty-four applicants (24 per cent) of the 1992 Syrian sample reported that they had no property of any kind. None of the 1948 refugees reported property claims of any kind.

Table 7.9 Property ownership in Palestine by region and refugee group (Syria)

<i>Land in Palestine (dunums)</i>	<i>1948</i>	<i>1992</i>
<i>Land</i>		
Up to 20	N/A	2 (20%)
21–50	=	4 (40%)
51–100	=	2 (20%)
101–200	=	=
201–300	=	=
301–400	=	=
401–600	=	=
601–1000	=	=
1001–2000	=	2 (20 %)
2000+	=	=
Number	N/A	10
<i>Houses and rooms</i>		
1	=	4 (80%)
2	=	=
3	=	=
4+	=	1 (20%)
Number of households		5
Rooms		
1–2	N/A	N/A
3–4	=	=
4–5	=	=
5+	=	=

Absence of memory

In light of what we know now about the expulsion of Palestinian refugees in 1948, we sought information in the family files about refugee experiences during this crucial period that would shed further light on the issue. Admittedly, the original UNRWA interview schedule and the slightly modified one designed in 1992 did not contain specific questions about the circumstances surrounding refugee flight and expulsion. Still, we thought the refugees would volunteer such information mainly due to the freshness of the experience in people's minds at the time and the harsh circumstances of their uprootedness and dispossession. The fact that such information was not volunteered thus suggesting

it was not uppermost on people's mind, we believe, is due to the following factors. First, there was a general belief among the refugees that their expulsion would last for no more than a few weeks, at the end of which they would return to their homes. Second, as we pointed out earlier, UNRWA personnel who carried out the interviews were mainly concerned at this stage in the early 1950s with assisting the refugees by providing them with shelter and basic amenities. Third, and this is the crucial factor which accounts for the absence of such memory: during the early days following the *Nakba* the dispossessed refugees did not think of themselves as refugees, or at least did not admit publicly their refugee status. The literature on Palestine and the Palestinians subsequent to the *Nakba* and up to the mid-1970s referred to the refugees as fighters and 'strugglers'. To admit publicly their refugee status would have been a badge of shame on a community whose identity was closely associated with their belonging to the land. It was not until the 1980s, particularly after the Oslo agreement, that the label refugee entered public discourse, and refugee consciousness was uppermost in the minds of Palestinians as a whole, including the refugees. It was at this stage that we began to see the blossoming of studies of oral history chronicling the experience of refugees from Palestine and at the time of their expulsion.

Possible link between the UNRWA data and the UNCCP

At one point in researching information about refugee property, we thought it would be prudent to examine a possible link between the UNRWA archives and the UNCCP database, originally located at the United Nations Headquarters in New York. Specifically, we were interested in comparing the extent to which the identification systems in the two databases are compatible so as to carry out on-line case-by-case comparison between the two systems. Upon examination of a copy of the UNCCP digitized database, several problems arose. First, as expected, the identification codes of the two systems were not compatible, which meant that comparisons had to be done manually by using family and first names, in addition to region of origin in Palestine. Second, the search engine of the UNCCP database allows for a search by name and region, but the use of common names in the searches yields tens and even hundreds of such names, and there is no way of shortening the list unless the first and family names are read jointly, something that is not possible in the current structure of the UNCCP database. This

is a major shortcoming of the database as it exists now. Third, the UNCCP database does not have information about refugee property in Gaza and the Negev districts in Palestine. Finally, the UNCCP database is confined to urban and rural land property, and as such does not include data on other types of property, such as property on built-up areas, not to mention mobile property.

The UNCCP database provides useful maps identifying the location of the property, its field description (block, parcel and area in dunums), the legal individual holders of the property and their respective shares. It does not detail the status of the property subsequent to the UNCCP survey.

CONCLUSION

Our pilot study of the UNRWA files is quite useful for highlighting the extent of property information contained in these files. First, it should be obvious that documentary evidence of any kind is contingent upon the circumstances in which the information was collected and its method of classification. In the case of refugees in general, including Palestinian refugees, the rapidity of their expulsion left no room for most refugees to collect and carry with them their documents of proof of property ownership. As is well known from Palestinian history, many of them carried with them the keys to their houses in the hope of returning to their homes within a few weeks. Their main concern at the time, and UNRWA's concern, was to provide the refugees with shelter and basic humanitarian assistance. A second explanation, no less important, is that the majority of the refugees were peasants and farmers who lacked education to enable them to appreciate future implications of proving property ownership. But what was learned from the study is the fact that second and third generations of refugees have experienced tremendous upward mobility in terms of their education and occupational backgrounds. No doubt these generations will embark upon searches of their parents' and grandparents' property ownership. The UNRWA files are indispensable in proving location in Palestine and refugee status.

Third, in comparing the 1948 and 1992 refugee files, we have seen the implications of the differences in the socio-economic background of the two sets of refugees. Unlike the 1948 refugees, the 1992 refugees were more educated and they knew where to search for missing information about their property. As we have discovered, some of them contacted the UNCCP directly seeking

verification of their absentee property, and others wrote directly to the Colonial Office in London seeking similar information.

The comparisons between our two samples and the 1951 UNRWA survey showed that overall our small samples yielded reliable results at certain levels, for example with regard to the overall proportion of the refugees who claimed land ownership. As well, house ownership rates, as reported in our sample, were not all that different from the UNRWA 1951 study, particularly with regard to house size. On a methodological level, this shows that our small samples were drawn in such a way so as to reflect representativeness of the files under study.

What is needed, for the purpose of collecting comprehensive data on property ownership of all kinds, is a new census or registration in which the refugees will be asked to provide detailed information about property ownership. This could be done by inviting the public to register and provide such information using specifically designed registration forms. Such measures are usually adopted in crisis situations which involve the displacement of people and eventual compensation, without prejudicing the right of refugees to return to their homes.

Finally, the UNRWA data is useful for compensation purposes because it provides data on family size across the generations, as well as the occupational background of the refugees. This in itself is an indication of socio-economic status, which is important for the purpose of constructing compensation scales based on needs assessments. It is important to note that any discussion of compensation should not be confined to material losses but should also include social and psychological losses.

APPENDIX 7.1

Places of origin of Palestinian registered refugees and their destination, according to UNRWA records, by city and neighbouring villages

Final destination: Jordan

<i>Place of origin by city and surrounding villages</i>	<i>Total</i>	<i>City</i>	<i>Village</i>	<i>Village percentage %</i>
Jerusalem	43,576	1,013	42,563	95
Jaffa	72,863	28,141	44,722	61
Nazareth	3,809	1,026	2,783	73
Haifa	44,775	17,188	27,587	62
Acre	1,109	412	697	63
Gaza	24,024	100	23,924	99.5
Beersheba	44,422	4,511	39,911	90
Lydda and Ramla	89,797	34,253	55,544	62
Safad	820	512	308	38
Tiberias	9,895	1,511	8,384	85
<i>Total</i>	335,090	88,667	246,423	
Percentage	100	26	74	

Final destination: Syria

<i>Place of origin by city and surrounding villages</i>	<i>Total</i>	<i>City</i>	<i>Village</i>	<i>Village percentage %</i>
Jerusalem	751	660	91	12
Jaffa	6,001	5,457	544	9
Nazareth	5,651	781	4,870	86
Haifa	26,520	12,467	14,053	53
Acre	8,789	3,105	5,684	65
Gaza	567	91	476	84
Beersheba	52	22	30	58
Lydda and Ramla	1,660	1,259	401	24
Safad	60,897	13,045	47,852	79
Tiberias	24,069	4,252	19,817	82
<i>Total</i>	134,957	41,139	93,818	
Percentage	100	30	70	

Final destination: West Bank

<i>Place of origin by city and surrounding villages</i>	<i>Total</i>	<i>City</i>	<i>Village</i>	<i>Village percentage %</i>
Jerusalem	48,132	2,381	45,751	95
Jaffa	29,959	13,131	16,828	56
Nazareth	844	499	345	41
Haifa	37,309	18,943	18,366	49
Acre	1,262	428	834	66
Gaza	6,505	8	6,497	100
Beersheba	6,726	1,596	5,130	76
Lydda and Ramla	29,791	10,568	19,223	66
Safad	330	110	220	67
Tiberias	349	105	244	70
<i>Total</i>	161,207	47,769	113,438	
Percentage	100	30	70	

Final destination: Lebanon

<i>Place of origin by city and surrounding villages</i>	<i>Total</i>	<i>City</i>	<i>Village</i>	<i>Village percentage %</i>
Jerusalem	596	168	428	72
Jaffa	11,190	9,351	1,839	16
Nazareth	6,435	637	5,798	90
Haifa	22,538	17,982	4,556	20
Acre	37,662	7,603	30,059	80
Gaza	127	40	87	69
Beersheba	16	10	6	38
Lydda and Ramla	504	461	43	80
Safad	32,584	1,170	31,414	96
Tiberias	5,583	649	4,934	88
<i>Total</i>	117,235	38,532	78,703	
Percentage	100	33	67	

Final destination: Gaza

<i>Place of origin by city and surrounding villages</i>	<i>Total</i>	<i>City</i>	<i>Village</i>	<i>Village percentage %</i>
Jerusalem	452	326	126	28
Jaffa	44,382	142	44,240	99.6
Nazareth	40	36	4	10
Haifa	1,707	1,651	56	3.28
Acre	133	103	30	23
Gaza	109,648	1,581	108,067	98.5
Beersheba	51,151	6,217	44,924	88
Lydda and Ramla	40,876	4,469	36,407	84
Safad	29	5	24	83
Tiberias	108	33	75	69
<i>Total</i>	248,516	19,059	229,457	
Percentage	100	8	92	

NOTES

1. The authors wish to acknowledge with gratitude the cooperation of UNRWA's management and staff in facilitating access to the family files. These include Richard Cook, Director of UNRWA Operations in the Jordan Field Office, Beth Kuttab, Director of Relief and Social Services in Jordan, and Lex Takkenberg, senior ethics officer at UNRWA; in Lebanon and Syria, Roger Davies and Roger Hearn, Directors of UNRWA Operations in the two fields, respectively, who facilitated access to the family files. Data collection and coding in Jordan was carried out by Intisar Yusuf Hasan Abu Halaweh, Suad Yusuf Ahmad al-Naji and Abdel Raheem al-Safi under the supervision of Abdul Fattah Ahmad Abu Qubu. Jaber Suleiman, an independent researcher, was in charge of collecting and analysing the information in the family files of Lebanon and Syria. Special thanks to Professor Michael Fischbach of Randolph-Macon College for his comments on an earlier version of this chapter. The authors also wish to thank IDRC's Middle East Unit for funding this study.
2. Based on the decision of the Commissioner General Ilter Turkmen in August 1992, 'UNRWA would register all applicants who come to any UNRWA office in the areas of operation in person and were able to produce valid documentation proving their status as 1948 refugees from Palestine.' See *Consolidated Eligibility and Registration Instructions of the New Inscription of Palestine Refugees*, Attachment 1, Annex III, 1 (2002).
3. As discussed in a subsequent section of this chapter, UNRWA did carry out a survey of property ownership on behalf of the UNCCP in 1951 that covered a sample of the refugees in Jordan and the West Bank.
4. J. R. Chromy, 'Sequential Sample Selection Methods', *Proceedings of the American Statistical Association Survey Research Methods Section* (1979), 401-6.
5. It became clear to us at a much later stage during the preparation of this report that these fact sheets were used in Jordan and the West Bank for the purpose

of collecting data about property ownership. Hence, a comparison between our findings and the 1951 UNRWA survey is carried out in this report.

6. UNCCP, *Sampling Survey of Abandoned Property Claimed by Arab Refugees*, UNCCP W/60, April 1951, restricted distribution.
7. Michael Fischbach, *Records of Dispossession: Palestinian Refugee Property and the Arab–Israeli Conflict* (New York: Columbia University Press, 2003).

8

The Value of 1948 Palestinian Refugee Material Damages: An Estimate Based on International Standards

Thierry J. Senechal and Leila Hilal

Nothing will bring me back from my free distance to my palm tree: not peace, nor war. Nothing will inscribe me in the Book of Testaments. Nothing, nothing glints off the shore of ebb and flow, between the Tigris and the Nile.

Without exile, who am I? Mahmoud Darwish¹

INTRODUCTION

On 29 November 1947 the United Nations General Assembly adopted Resolution 181, terminating the British Mandate for Palestine and recommending the partition of the country into two states.² The adoption of Resolution 181 marked the start of intensified armed conflict between Jewish and Arab residents in Palestine involving the mass displacement of civilians. On 15 May 1948, as the British withdrew from the country, Jewish inhabitants declared the state of Israel. Events escalated into the first Arab–Israeli military confrontation (the ‘1948 War’). The war formally ended with a set of armistice agreements in 1949, although incidents of forced displacement of the local population took place up until at least the late 1950s.

During the 1948 conflict, more than 750,000 Palestinians – out of a total Arab population of 1.2 million – were displaced to areas now known as the West Bank and the Gaza Strip and to the neighbouring countries of Lebanon, Syria, Jordan, Egypt and Iraq.³ In their flight, the refugees left behind their lands, homes, farms, shops, factories, household goods and personal belongings, farming equipment, jobs, sources of livelihood, places of worship, financial assets and other properties. In the years following their

displacement, Israel effectively denationalized the refugees and appropriated their private and public properties through a series of laws and emergency regulations. Palestinian rural built-up areas were also systematically razed, while their urban properties were mostly occupied by Jewish immigrants. These events left the Palestinian nation dispersed and dispossessed, a process referred to in Palestinian oral history as *al-Nakba* (or catastrophe).

A second mass wave of Palestinians were made refugees after the 1967 Arab–Israeli War and occupation of the West Bank and Gaza Strip. Today around 7 million Palestinians are considered refugees, with more than 4.7 million ‘1948 refugees’⁴ alone registered with the United Nations Relief and Works Agency (UNRWA). One-third of the registered refugees live in refugee camps in Jordan, Syria, Lebanon, the West Bank and Gaza Strip. The vast majority of Palestinian refugees, including those living outside the camps, remain stateless.

To date, the refugees have not been allowed to return to their former country, nor have they received remedies for the significant losses sustained. Since the early 1990s these issues have been designated for bilateral negotiation between Israelis and Palestinians. As part of an international aid project dedicated to offering technical assistance for peace negotiations, we undertook a study of the aggregate value of material damages stemming from the refugees’ displacement and dispossession. This chapter presents the main components of the study and its findings.⁵

The analysis presented here is historically unique in that it is inclusive of the broad range of deprivations experienced by the refugees. Its approach to valuation is driven by relevant international valuation standards and principles on reparation. It was undertaken for purposes of understanding the full scope of Israel’s pecuniary liabilities on the refugee question. These liabilities are rooted in international customary law, which holds that states are obligated to make reparation for breaches of international law.⁶ As elaborated in other chapters in this volume, the primary form of reparation available for wrongful property takings is restitution, with compensation being a complementary form of justice to cover damages that may not be restituted, or to serve as an alternative remedy in situations where restitution is materially impossible or unduly burdensome.⁷ Accordingly, this chapter is intended to offer a reasoned framework for identifying the types of losses for which reparation is in order and the fair methodologies for their valuation. The figures discussed here

would need to be adjusted downward for properties restituted as part of an agreed peace plan.

PAST VALUATION WORK

Over the past six decades since the Palestinian dispossession, several studies, peace initiatives and Track II groups have sought to quantify and value refugee property losses. These have resulted in a wide range of global loss estimates ranging from US\$480 million to over US\$3 billion in 1948 values⁸ (see also Appendix 8.1 for a description of the various estimates). Variations in the total estimates can be explained in large part by the types of losses valued, the scope of property included, and the valuation methodologies employed, including whether interest was applied. Other variables include the extent and reliability of the data used.

The present analysis draws and builds upon key findings of these past efforts, as well as the rich historical and contemporary records on pre-1948 Palestine, for purposes of producing a straightforward, fully evident model of valuation consistent with universal principles.

FRAMEWORK FOR VALUATION

Our analysis proceeded against the backdrop of all that was in pre-1948 Palestine. Contrary to contentions that historic Palestine was a land without people and economic prospects, on the eve of partition, Palestine was densely populated and intensively cultivated, with a viable economy and significant flows of output and income.⁹ In 1944, the total national output of Palestine was P£123 million.¹⁰ The highest output was divided between the agricultural and manufacturing sectors, with the next largest sectors being commerce and finance. Significant GDP was derived from agricultural products.¹¹ Exports stood at P£14.6 million, with almost 60 per cent of Palestine's exports destined to other Middle Eastern countries (by comparison, only 14 per cent were being sent to Great Britain).¹²

Thus, historical evidence showed an increasingly diverse and self-sustainable regionally-based economy. Palestine had also become an important centre of production and exportation of many petroleum-related products, which came to represent about a third of Palestine's exported manufactured goods.

Loss types

Material damages

Material damages are inclusive of a range of property-based losses that are incurred as a result of international legal breaches. The types of material damages experienced by Palestinian refugees and accounted for in this estimate are: (i) urban and rural real estate (immovable property, homes and buildings); (ii) lost livelihoods and incomes; (iii) personal goods; (iv) business properties; (v) public property; and (vi) financial assets (to the extent not considered business property). So-called communal property held by former Bedouin communities in the south of the country was included under the rubric of lost rural real estate, albeit according to a specified methodological approach. The assumption underlying this estimate is that restitution rights and compensation awards would be processed and distributed individually, with the exception of public property claims. The damages included would have to be adjusted as refugee properties are designated for restitution. Table 8.1 summarizes the various loss types included in our study.

Non-material losses

In addition to material losses, refugees sustained non-material damages in the form of pain and suffering, and lost opportunities as a result of their displacement. Non-material damages for pain and suffering, and lost opportunities have been upheld by regional human rights bodies, including the European Court of Human Rights and the Inter-American Court of Human Rights, and are a common award in national legal systems.¹³ Non-material damages have been paid to victims in Holocaust reparation programmes and by the United Nations Compensation Commission for victims of Iraq's occupation of Kuwait.¹⁴ Non-material damages, which would likely be dispensed on a per capita basis and irrespective of durable solutions, would also represent a form of symbolic reparation and provide financial assistance for many refugees in a post-conflict transition. The value of non-material damages requires a separate analysis, accounting for the number of years refugees spent in exile and depth of suffering, and is not calculated here.

Table 8.1 Loss types included in the study

<i>Loss category</i>	<i>Loss type</i>
INDIVIDUAL	<i>Urban and rural land:</i> Urban land, houses, buildings. Rural land is related to the valuation of various agricultural activities and properties (cereal growing and fruit plantations). Please note that we have also included the share of public and communal land in this report. <i>Personal property – Movable assets:</i> Household and personal effects such as furniture and appliances, clothing, livestock, cars. Please note that we have included movable financial assets in our study, including cash-in-hand and foreign assets. <i>Bank accounts and other securities:</i> Cash accounts, safe deposit boxes, financial assets held in financial institutions, bearer bonds, shareholdings in income-generating businesses, items held abroad...We have little information to propose a thorough valuation of such loss type (as noted above, we have reviewed cash-in-hand and foreign assets with movable assets). <i>Loss of employment and livelihood:</i> Loss of wages or salaries of refugees, loss of livelihood as a result of the 1948 war by losing a source of direct or indirect earnings to sustain their livelihood.
BUSINESS	<i>Loss of income-producing property:</i> Loss of industrial and commercial capital, factories, hotels and restaurants, workshops...(food, textiles, metals and machinery, woodwork, leather, printing and paper, chemicals, stone and cement, diamonds,...), loss of income and profits.
COMMUNAL	<i>Communally-owned property:</i> Bush, grassland and land that has collective ownership, Negev land, water and mineral water. The following categories shall be distinguished as different valuation principles may be applied: agricultural land; non-agricultural land (mostly used for grazing); and uncultivable land/desert land. In our valuation, communal land and buildings are valued in the urban and rural land sections.
RELIGIOUS WAQFS	<i>Waqfs or religious endowments:</i> Properties giving revenues, typically devoting a building or plot of land for Muslim religious or charitable purposes.
STATE	<i>Arab share of state-owned property:</i> This category is related to the following loss types: public properties such as roads, railways, seaports, airports, schools, clinics, hospitals, laboratories, public buildings, irrigation networks.

Methodological principles

General

As stated, this analysis is based on internationally-recognized principles of valuation. Throughout our study, we relied to a great extent on the International Valuation Standards Council (IVSC)¹⁵ standards. These standards were in some cases adapted to conform to available data and to achieve scientifically-defensible and flexible methodological approaches responsive to political realities. Different methodological approaches were also developed which are appropriate to each material loss type. The methodologies applied are elaborated below per loss.

Reliable data

Fundamental to our inquiry was the basic premise that all losses valued should be supported by suitable evidence. Valuation of refugee property held more than 63 years ago in the pre-digital age inevitably involves a degree of uncertainty and speculation, especially concerning the real market data for valuation of property losses. We sought to minimize these pitfalls by conducting extensive research into available documentation, including the United Nations Conciliation Commission for Palestine (UNCCP) individual property records; publicly-available UNCCP technical studies; expert files; published British Mandate records; and numerous secondary sources representing pre-1948 Palestine. These sources were used to create a data set identifying the scope of material losses and, where applicable, sales data or market proxies. Second, we applied clear and flexible methodologies that would allow for further calculations as additional information becomes available.

Market values

Market valuation is the most widely recognized property valuation method.¹⁶ Market valuation standards require true market benchmarks consistent with land transfer deals between willing-buyers and willing-sellers, which are specific to the property and time in question. In this case, market valuation depended on the availability of sufficient contemporaneous market data to allow for accurate sales comparisons. While such historical data were not always available, we were able to extract enough information from past studies and other historical sources to project reliable market values for the purposes of determining

an aggregate total of losses. The data sample published by Atif Kubursi and Sami Hadawi proved useful for the purposes of valuing rural and urban lands, as we were able to review the underlying research and benchmark it against other data sets.¹⁷

Where reliable market data sets were unavailable, recourse was made to some compromise conventions in order to obtain market value proxies. For instance, the valuation of personal property could not be done according to direct market values because the precise scope of holdings left behind has not been identified and market data for personal belongings are not readily available. Therefore, we valued lost personal property by means of approximating standard statistical measurements.

Adjustments for fairness and political exigencies

In order to ensure fair and politically expedient valuation methodologies, the following adjustments were followed, which inevitably lowered the total loss estimated. These adjustments may need to be revised to respond to shifting political demands and contexts.

Population totals

In many instances, Mandate Palestine economic and property data are only available at the aggregate level. Thus we had to apportion aggregated data to the Palestinian Arab or refugee populations under some loss types. We utilized the following totals, depending on the defensibility of the data:

- In the British *Village Statistics 1945*, the total population of Palestine was estimated to be 1,765,000 (to which the Bedouin population should be added), with 1,179,920 persons being counted as 'Arab'.¹⁸
- The number of Palestinian refugees displaced around 1948 ranges from 500,000 to 900,000. We utilized the number of 726,000 based on the revised count produced by the UN Economic Survey Mission in 1949.¹⁹ This number was utilized for purposes of adjusting national aggregates to the share of refugee losses. Internally displaced Palestinians in Israel and Palestinians who were made refugees subsequent to 1949 were not included as part of this aggregate loss estimate. Nevertheless, such persons are entitled to reparation, which should be included in any comprehensive and conclusive mass claims process. These losses could be added to the estimate proposed here.

Territorial scope

The 1949 Armistice Line between the occupied Palestinian territory and Israel was initially considered in this analysis to determine the scope of the refugees' immovable property. The Armistice Line, however, diverged from Mandate district boundaries. To correct this deficiency we designed a methodology to determine the exact scope of land to be accounted for in our study.²⁰ In short, we collected information on a sub-district basis in order to make adjustments for areas falling outside the line. We concluded the total area falling outside of Israeli territory to be 5,819,318 dunums (see Table 8.2).

Table 8.2 Land outside the territory occupied by Israel under the general armistice agreement of 1949

	<i>Sub-district</i>	<i>Area outside Israel's territory</i>	<i>Total sub-district area</i>
	Baysan	411	367,087
	Jenin	577,829	835,147
	Nablus	1,568,304	1,591,168
SUMMARY	Ramallah	680,324	686,564
in Dunums	Jerusalem	1,303,700	1,570,785
	Hebron	933,676	2,076,185
	Ramla	76,318	870,192
	Tulkarm	332,140	835,977
	Gaza Strip	346,616	1,111,501
<i>Total: West Bank & Gaza Strip</i>		5,819,318	9,944,606

Source: Village Statistics 1945, Samir Hadawi and and Atif Kurbursi, *Palestinian Rights and Losses in 1948: A Comprehensive Study* (London: Al Saqi Books, 1988), 224–29.

Ownership of the land in 1948

Adjustments in the available aggregate data were necessary to extract precise figures on the scope of Palestinian refugee property ownership for purposes of calculating urban and rural property losses.

- *Palestinians who maintained possession of property inside Israel:* In order to accurately capture the exact scope of refugee losses, it was necessary to attempt to exclude the property that remained in Palestinian hands in areas inside Israel. As determined by Kurbursi and Hadawi, the scope of land held by Palestinians after 1948 was 1,178,415 dunums

for eight sub-districts.²¹ This figure needs to be verified against Israeli land records once they are available. It is likely that this figure overestimates post-1948 Palestinian property holdings, which were reported to have decreased over time.²²

- *Land sales:* In order to make an accurate determination of the scope of Palestinian property holdings at partition, the average number of land sales to Jews between 1920 and 1948 (an average of 36,091 dunums/year over the period of reference) was calculated and deducted, whenever necessary, from our aggregate figures on the scope of rural and urban lands.

Economic shares

Most of the economic indicators available in the historical record pertain to the period before 1946. Adjustments were made to actualize outputs and national income data to 1948 values and then net output shares were calculated for purposes of adjusting any pre-war data to the 1948 valuation benchmark.²³ The Palestinian Arab economic share was determined to be 69 per cent of the global output.

Exchange rate adjustments

It was necessary to choose an appropriate currency exchange rate for the Palestinian pound ('P£'), the pre-1948 legal tender currency. Underlying figures used in the valuation were in P£. These figures were converted into an international currency – the US dollar, for valuation efficiency. Indeed, the issue of choosing an appropriate currency exchange rate was crucial because the Palestinian pound no longer existed after the war. The exchange rate used was that in effect on 29 November 1947. The exchange rate for the US dollar against the British pound sterling on this date was 4.0319 (at close of the market).

Actualization

In line with applicable international laws and business valuation standards, the total sums concluded were actualized to present-day values. Under customary international law, interest is considered to be a potentially critical element of full reparation. The International Law Commission (ILC), which codified international customary principles on state responsibility, provides that 'full reparation may require payment of interest on the principle sum [...]'.²⁴

Interest is generally due where the loss at issue is quantified earlier than the date of settlement and to the extent necessary to ensure 'restoration of the status quo'.²⁵ In standard financial practice, this common principle is known as market (also referred to as 'replacement' or 'cost') value plus substantive interest, or 'actualization to present-day value'.²⁶ Calculating interest would ensure full and fair reparation for Palestinian refugees, especially in the event that properties are not able to be fully restored and where compensation constitutes the main remedial approach to achieving an end of conflict.

Indeed, such a standard is required to ensure that the Palestinian refugees are made whole after being deprived of the opportunity to earn the time value of money on their losses.

VALUATION OF THE LOSSES

As mentioned, the Palestinian economy at the time of partition was a viable economy. By 1948, agriculture was complemented by a strong industrial sector, showing a diversity of sectors and outputs. Having this in mind, we set out below a summary of the findings of each of the loss types reviewed in our study.

Rural land property

The majority of Palestinian refugees were living in rural villages at the time of dispossession. Of a population of 1.7 million total inhabitants of Palestine, approximately 693,810 Palestinian Arabs were residing in more than 420 villages before 1948.²⁷ Rural property was central to Palestinian economic and social life regardless of land tenure or use. The loss of rural property constituted the most devastating material harm to the greatest number of refugees.

This estimate includes rural property across all 16 districts of Mandate Palestine, including in the Beersheba district. The properties covered were: (i) cultivable and uncultivable land; and (ii) village built-up areas (land and buildings). Rural lands were included irrespective of their Ottoman classifications or whether they were owned or used by private individuals, communities, state authorities or religious entities. Beersheba land, including potentially cultivable and cultivated land, was valued separately.

The historical record is replete with data on the scope of rural and urban land in Mandate Palestine. We relied particularly on the technical study produced by the UNCCP,²⁸ the 1945 British

Village Statistics,²⁹ Kubursi and Hadawi's research and analysis,³⁰ and inaccessible archival material reported by Michael Fischbach in his seminal study of the historical record on Palestinian property losses.³¹

In total, we concluded that:

- Palestinian refugees possessed approximately 5,156,988 dunums of rural lands, excluding Beersheba, before displacement.
- The scope of village built-up properties was 15,926 dunums.
- Beersheba cultivated and potentially cultivable land amounted to approximately 4,896,650 dunums. Grazing land was estimated at 7,680,350 dunums.

Within the valuation framework described above, rural property was valued on a market basis. The market approach used diverges from previous estimates. The UNCCP for instance used a market valuation approach by attempting to determine market values as of 29 November 1947 by reference to tax assessments carried out many years earlier. The UNCCP introduced capitalization to adjust those tax values to market values in 1947; however, their applied values are not defensible as land taxes were not levied at predictable rates and prices quoted in the tax assessment records do not necessarily reflect true market values. Tax values are in general low and, in the case of rural land, were largely arbitrarily set, bearing little relation to the actual market values prevailing during the pre-war years. To avoid the problem of undervaluation, we used market monetary drivers identified and provided to us by Kubursi in the course of our research and consultations.

We concluded that the overall value of the refugees' rural property stands to date at a total of P£399,747,877 or US\$1,611,743,465 in 1948 values. This amount was calculated by aggregating the sum total for: (i) rural land, excluding Beersheba, at P£238,220,003; (ii) Beersheba district land at P£155,255,959; and (iii) village built-up areas for P£6,271,915.

Urban property

Mandate Palestine had many urban centres and towns with relatively sophisticated infrastructure and urban development. Treating urban lands and urban buildings as distinct properties, we first estimated the scope of land in the major urban centres in Palestinian centres (Acre, Baysan, Nazareth, Safad, Tiberias,

Haifa, Jerusalem, Jaffa, Ramla and Beersheba) according to data found in the British Mandate statistics. The extent of urban buildings was estimated by calculating the ratio of built-up urban areas per sub-district basis. The total scope of urban land lost was estimated to be 65,001 dunums. Urban buildings were estimated at 6,250 dunums.

Various methodologies have been used to value urban property in the past. The UNCCP relied mostly on tax assessment methodologies, with tax values serving as proxies for arriving at an aggregate value for urban properties. Kubursi and Hadawi, on the other hand, worked on the basis of derivative true market values. Our analysis was guided by generally-accepted international valuation standards, in particular the market valuation approach. Therefore, as explained with respect to rural property, we chose not to use tax-based methodologies that were inconsistent with international standards and that would result in an arbitrary underestimation of losses. Official British and secondary sources were instead relied upon to identify market and true-cost data appropriate for valuing urban lands and buildings.³² This data was adjusted to reach 1948 fair market values.

The aggregate loss of urban land was estimated at P£138,007,612 or US\$556,432,891 in 1948 values. The sub-total for urban land and buildings was P£23,249,892 (urban land) and P£145,750,000 (urban buildings) respectively. P£30,992,280 was deducted from the sum total of property to account for property sales between 1945 and 1947, as discussed above.

Loss of employment and livelihood

The arbitrary and protracted denial of return effectively stripped most refugees of the ability to resume former means of income and livelihood.³³ As mentioned above, refugees were enjoying relative economic growth at the time of their displacement, with some 60 per cent of the GDP of pre-1948 Palestine attributed to the agriculture sector. The loss of land and related economic opportunities was especially damaging for the more than 50 per cent of refugees who were small-scale farmers, most of whom were unable to quickly rebuild economic means in exile due to changed circumstances and loss of productive assets. Others lost relatively lucrative wage employment in the thriving commerce and civil service sectors. The losses of property amounted to economic deprivation capable of financial assessment and deserving of compensation, separate from the issue of non-material damages.

We approached this loss in respect of income forgone due to the loss of jobs and loss of livelihood. We designed an original income-based (labour-oriented) methodology covering: (i) the value of lost employment for 25 per cent of the Palestinian population, who were estimated to be fully employed in regular wage earning labour; and (ii) the value of lost livelihoods for the remaining 75 per cent of the Palestinian population. Our work consisted of estimating the size of the refugee population at different moments in time, the size of the employable refugee population, the average yearly wage rate and the standard costs of living in order to value lost employment and livelihood distinctly.

The calculations have been done on the basis of different time periods, which could be divided into three periods:

1. Total loss period – The period of complete interruption immediately following, and directly caused by, the 1948 war. This is the period when no activity is assumed to have been possible and when, in effect, refugees suffered a total loss of employment and livelihood.
2. Recovery period – This followed the end of the total loss/interruption period above. Recovery is a period of limited length, which is an interim period during which useful, gainful employment could start to be found by refugees.
3. Residual period – This is the period during which pre-war earning capacity is assumed to be fully recovered. Those suffering losses would now be able to reinstate their pre-1948 livelihood.

The weakness of this methodology is that the time period assumptions set out above cannot be regarded as appropriate in all circumstances, especially for those people who have remained in refugee camps from 1948 right up to the present day or who were otherwise disadvantaged by their condition of displacement.

The combined loss of employment and livelihood was estimated at P£124,327,500 or US\$501,276,047 in 1948 values, with P£42,652,500 representing lost wages and P£81,675,000 lost livelihoods over the three-year period following the 1948 war.

Holy places

Muslim and Christian ‘holy places’ were, and continue to be, an integral part of Palestinian life. Religious sites are held in trust for the benefit of the community (*‘waqf’*). Some 85 per cent of *waqf*

property was confiscated by the Custodian of Absentee Property, similar to other types of Palestinian property.³⁴ In addition, a significant number of mosques and churches were destroyed or heavily damaged, especially in Palestinian village built-up areas.

Complete destruction of holy places was most common in the centre of the country between Jerusalem and Tel Aviv.³⁵ In some instances religious buildings are still standing but inaccessible to Palestinians or the *waqf* and have, over time, become seriously dilapidated. The religious properties in some cases constituted extremely valuable real estate in historical and economic terms. For instance, in the village of Sarafand, a destroyed village near Haifa, the destroyed building was approximately 100 years old, 350 square metres, and has been referred to as one of the best-engineered mosques in Palestine. The Catholic church of al-Bassa, a northern Galilean village, used to be a fine two-story building in the Byzantine style and today the second floor has completely disappeared into rubble, and the rest of the structure is in critical danger of collapse. Of course, many destroyed holy places were significantly less important in size, design and community-religious terms, especially in the remote villages.

This initial attempt at valuing lost or damaged religious properties focused exclusively on mosques and churches, excluding at this point other *waqf* properties, such as those used as living or administrative quarters, orphanages, hostels, burial grounds, farms or community centres. Antiquities were also excluded.

The *Atlas of Palestine* counted 232 mosques in Mandate Palestine. Cross-references revealed that this number was an under-estimation, as the *Atlas* counted only large facilities.³⁶ A report by the Arab Association for Human Rights, *Sanctity Denied*, identifies 247 destroyed mosques and 19 churches, numbers which were utilized in this estimate. Estimated reinstatement costs derived from *A Survey of Palestine* were used to value destroyed holy sites (1948). We were then confronted with the difficulty of estimating an average size of the buildings in square metres, as well as settling on a valuation proxy. We relied on information from *All That Remains*³⁷ to determine the scope of losses and then applied the cost proxies derived for urban buildings to arrive at an aggregate loss.

Under an historical construction cost basis, the loss of holy places which we were able to assess, represents a grand total of P£1,445,840 or US\$5,829,482 in 1948 prices.

Movable assets

In the course of their flight, Palestinian refugees left behind personal items and household goods – many fleeing with only the small number of items that they could manage to carry. The UNCCP was one of the very few studies to value movable assets and come up with a range of estimates. The UNCCP developed three approaches to quantify such losses. A first study developed a percentage of the value of abandoned Palestinian immovable property, applying the percentages used at the time of the Turkish–Greek exchange of populations in the case of predominantly rural and predominantly urban populations. Another study derived movable losses from a percentage of the national income of the Palestinian population of Palestine under the Mandate. A third study computed the aggregate value of the various categories of movable properties owned by Palestinians under the Mandate. The UNCCP studies ranged from P£16 to P£21 million.

Although a range of lifestyles and income levels could be found among Palestinians in pre-1948 Palestine, the average Palestinian had at their disposal a variety of movable assets, such as motor vehicles, cash, household goods and clothing. We were able to collect sufficient data to allow for the aggregate valuation of the following categories of movable assets: livestock, private vehicles, commodities and household goods. A specific valuation methodology was designed for each category at the aggregate population level. Finally, adjustments based on population drivers were made to calculate the share of ownership of the refugees. For all categories, except for household goods, we extracted values from *A Survey of Palestine*³⁸ and adjustments were made to account for the refugees' share. For the category of household goods, we employed an indirect methodology, using income consumption parameters in various countries and developing a benchmark applied to Palestinian refugees.

In total, movable asset losses which we were able to identify were estimated to be P£45,127,501 or US\$181,949,571 in 1948 values.

Business losses

The burgeoning economy of Mandate Palestine was divided into the following sectors: agriculture, manufacturing, handicrafts, commerce and finance, building and construction, and hotels and restaurants. Palestinians were mostly involved in agriculture,

milling grain, tobacco manufacturing and parts of the textile and metal industries.³⁹ We collected information on the annual output for the key businesses predominantly owned by Christian and Muslim Palestinians and divided the model into six major categories corresponding to the Mandate economy: (i) manufacturing and handicraft businesses; (ii) building and construction businesses; (iii) hotels, restaurants and cafés; (iv) domestic and other services; (v) commerce and finance; and (vi) commercial vehicles.

The properties included were those owned by individuals (sole proprietorships) and those owned by corporate entities. According to international accounting standards and basic principles of reparation, business properties should be valued on the basis of their going concern value. This means that the valuation should cover all assets belonging to the concern, including movable property, which therefore need not be valued separately. Considering the range of business losses, it was necessary to adjust the methodology to allow for a proper accounting of the differences. Our methodology involved estimating both the value of the infrastructure of industries, hotels and restaurants and the loss of income derived from these same businesses, drawing on 1944 data from the Loftus National Income with adjustments to reflect the share of refugees' losses in 1948 values.

The estimated value of Palestinian income-producing properties we derived is P£85,516,266 or US\$344,793,033 in 1948 values. It should be noted that this valuation of business losses is done for a variety of small enterprises. We could not identify business data for large corporations in which Palestinians could have had ownership. Small shops, workshops and other informal small businesses made up an important part of Arab-owned businesses as well.

State-owned property

State-owned property was a significant part of the Palestinian economy. Infrastructure such as roads, railways and seaports, as well as postal services and telecommunications played a crucial role in mobilizing the factors of production, which facilitated economic growth in the country. Furthermore, the public sector encompassed a noteworthy stock of buildings enabling public services such as policing, education, health care and government at the national and local levels.

Two methods are generally appropriate for valuing state-owned property: (i) the number of assets in each category multiplied

by their estimated replacement value (or cost) per asset; and (ii) the output of a sector (or all assets within it) multiplied by an appropriate capital-output ratio.

For public transportation and communications (railways, shipping and aviation, post offices), we utilized an analytical method of assessing the contribution of state-owned property to the Palestinian national output in 1944 (output was determined by multiplying by an appropriate capital-output ratio to estimate the real value of these assets so crucial to the Palestinian economy). For other public facilities such as schools, government buildings, police stations and hospitals, we collected data on the number of buildings and used the average construction cost-based approach in order to reach an aggregate estimate.

Our preliminary valuation of the Palestinian share of state-owned property amounted to P£30,602,700 or US\$123,387,026 in 1948 values. We believe that further research on the scope of public property is needed in order to achieve a comprehensive estimate.

PRESENT-DAY VALUATION

International law requires that if compensation is made in lieu of restitution, it should be adequate to fulfil the principle of restitution, which is to wipe out the consequences of the harm resulting from the wrongful act.⁴⁰ As such, it is typical to apply interest to loss estimates to ensure their actualization to present-day values.⁴¹ Our study conducted initial analysis to determine actualized losses, however, this analysis will need to be reviewed and updated at the time refugee claims are resolved.⁴²

CONCLUSION

The estimate presented here is an attempt to build on the historical record accounting for Palestinian refugee material losses. Most of the past estimates have applied arbitrary values or omitted key losses experienced by the refugees and the Palestinian nation as a result of their dispossession. This estimate was modelled using international standards and utilized recognized data sources in order to conclude the most comprehensive, defensible estimate possible. It employed flexible and transparent approaches to accommodate policy decisions as they are made via the political process or by an international body regarding the resolution of the conflict. Most significantly, this estimate would need to

be actualized to present-day values – a reparation principle historically overlooked in the Palestinian refugee context, but essential to maintaining consistency with international standards and delivering satisfaction in a political result.

The 1948 dispossession, in which some three-quarters of the indigenous population of Mandate Palestine were made refugees, will take a major commitment to resolve. The total estimate concluded here and which will continue to rise with the passage of time is not out of line with reparation amounts paid to the victims of international law violations in other conflict situations. The figures involved would be paid over time, according to a reasonable schedule of payments measured against savings and post-conflict investments. Restituting refugee properties would also serve to cut costs. In the end, this estimate offers a reasoned, transparent and internationally-defensible basis from which to begin discussions about the remedies for the refugees' material losses, and can lend support to a just settlement of the refugee issue.

NOTES

1. Mahmoud Darwish, 'Without exile, who am I?', in Mahmoud Darwish, *The Bed of the Stranger*, trans. Anton Shammas (Beirut: Riad El-Rayyes Books, 1999).
2. A/RES/181 (II) 29 November 1947. The UN Partition Plan recommended the division of Mandate Palestine into an Arab and Jewish state, joined in an economic union. The Plan called for the protection of civil, political and minority rights in each state. It prohibited the expropriation of property owned by Arabs in the Jewish state, except for public purposes, and only if full compensation was paid in advance.
3. For population and refugees estimates, see *Village Statistics 1945* (Beirut: Palestinian Liberation Organization Research Center, 1970), and Samih K. Farsoun with Christina Zacharia, *Palestine and the Palestinians* (Boulder: Westview Press, 1997).
4. This phrase refers to Palestinians who were displaced to areas outside of areas now under Israeli sovereignty, and who were then precluded from returning to these areas. Palestinians who remained in Israel but who were displaced from their ancestral villages and homes are referred to as 'internally displaced persons'. The damages to IDP properties were not included in this valuation.
5. The study was originally commissioned by Adam Smith International and the PLO Negotiation Support Unit as part of a technical assistance project for Palestinian negotiators. The study is the product of more than two years of research and analysis, and expert and stakeholder consultations.
6. Michael Kagan, 'Restitution as a Remedy for Refugee Property Claims in the Israeli-Palestinian Conflict', *Florida Journal of International Law* 19, no. 2 (2007), 421–89.

7. *Ibid.* See also International Law Commission Draft Articles and Commentary on Responsibility of States for Internationally Wrongful Acts, Official Records of the General Assembly, Fifty-Sixth Session, Supplement No. 10 A/56/10 (2005) (ILC draft articles).
8. *Implementing a Negotiated Settlement on the Palestinian Refugee Question: The International Dimension*, Chatham House Middle East and North African Programme Paper MENA PP 2012/01 (January 2012). See also Arie Arnon and Saeb Bamyia (eds), *Economic Dimensions of a Two-State Agreement Between Israel and Palestine* (Aix Group, 2007), at: www.aixgroup.org/node/118 (accessed 20 October 2012). This study sought to estimate a compensation figure for material and non-material damages and the cost of post-conflict rehabilitation for the refugees. The figure proposed for material losses was between US\$15–30 billion. No single number will of course be meaningful enough in the context of hostilities lasting for more than 60 years. Still, it is worth pointing out that this range of figures appears to significantly underestimate the total value of material damages. It is not clear how the Aix Group arrived at such a range from a methodological point of view; the comprehensiveness of the Aix Group study is also to be questioned in terms of coverage of the full scope of losses.
9. See P. J. Loftus, *National Income of Palestine, 1944* (Jerusalem: Government Printer, 1946) and *A Survey of Palestine*. Prepared in December 1945 and January 1946 for the Information of the Anglo-American Committee of Enquiry, reprinted 1991 in full with permission from Her Majesty's Stationery Office by the Institute for Palestine Studies, (Washington, DC: Institute for Palestine Studies, 1991) for a detailed breakdown of populations and income in pre-war Palestine.
10. Loftus (1946), 15.
11. *Ibid.* Agriculture and livestock accounted for about 25 per cent of total output, followed by manufacturing and handicrafts for another 25 per cent. Commerce and finance was also important (almost 20 per cent).
12. *Ibid.*
13. Judgement of 21 July 1989, Inter-American Court of Human Rights Valasquez (Compensatory damages), Ser. C, No. 7 (1989), paragraphs 25–26; *Loizidou v. Turkey*, European Court of Human Rights Judgment of 28 July 1998, para. 39.
14. United Nations Compensation Commission (UNCC) Governing Council Decision No. 1, 'Criteria for Expedited Processing of Urgent Claims', UN Doc. S/AC.26/1991/1, 2 August 1991 and UNCC Governing Council Decision No. 3, 'Personal Injury and Mental Pain and Anguish', UN Doc. S/AC.26/1991/3, 23 October 1991, 2–3.
15. National valuation organizations from over 50 participating countries established the International Valuation Standards Council (IVSC) to publish Valuation Standards for use in financial statements and to promote their worldwide observance. While best known for its real estate valuation work, the IVSC has developed guidelines and standards covering all aspects of valuation, including Concepts Fundamental to Generally Accepted Valuation Principles (GAVP). The IVSC has also issued a series of Standards and Guidance Notes, including: International Valuation Standard (IVS) 1 on the Market Value Basis of Valuation; IVS 2 on Valuation Bases Other than Market Value; Guidance Notes on Valuation of Intangible Assets (GN 4);

- Business Valuation (GN 6); Discounted Cash Flow (DCF) Analysis for Market and Non-Market Based Valuations (GN 9); and Valuation of Properties in Extractive Industries (GN 14). In addition, the IVSC has issued a White Paper on Valuation in Emerging Markets, at: www.ivsc.org/
16. See for instance Mark Kantor, *Valuation for Arbitration: Compensation Standards, Valuation Methods, and Expert Evidence* (London: Kluwer Law International, 2008).
 17. Sami Hadawi and Atif Kubursi, *Palestinian Rights and Losses in 1948: A Comprehensive Study* (London: Al Saqi Books, 1988). Access to the underlying samples was not available at the time of the study.
 18. *Village Statistics 1945* (Beirut: Palestinian Liberation Organization Research Center, 1970).
 19. Final Report of the United Nations Economic Survey Mission for the Middle East A/AC.25/6/Part.1, (28 December 1949).
 20. The methodology was based on data from the *Village Statistics 1945* and analysis in Hadawi and Kurbursi (1988), 224–29.
 21. Hadawi and Kubursi (1988), 245.
 22. Hussein Abu Hussein and Fiona McKay, *Access Denied: Palestinian Land Rights in Israel* (London: Zed Books, 2003).
 23. As a basis for calculating the national income of Palestine in 1948, we have used Loftus' 1946 publication *National Income of Palestine, 1944*. This is an official document prepared under the British Mandate and therefore, one that can be considered as primary evidence of economic data (wages, profits interest and rents, and so on). Information on the different populations was obtained from *A Survey of Palestine*.
 24. ILC Articles, Art. 38 with commentary.
 25. *Ibid.*
 26. The United Nations Convention on Contracts for the International Sale of Goods (CISG), for instance, expressly provides that '[i]f a party fails to pay the price or any other sum that is in arrears, the other party is entitled to interest on it....' United Nations Convention on Contracts for the International Sale of Goods, 11 April 1980, UN Doc. A/CONF.97/18 (1980), Art. 78. The North American Free Trade Agreement provides that a tribunal deciding a dispute pursuant to NAFTA may award 'monetary damages and any applicable interest'. (Article 1135, 1a) Uniform laws, such as the International Institute for the Unification of Private Law (UNIDROIT) Principles and the Principles of European Contract Law, also provide for the payment of compensatory interest. It is common practice for commercial treaties and conventions to address payment of interest in the event of a breach. Most countries also typically permit the recovery of interest of the damages as part of their national jurisprudence. A full rendering of this jurisprudence is beyond the scope of this chapter.
 27. The population numbers are from *A Survey of Palestine*; village numbers come from Walid Khalidi (ed.), *All That Remains: The Palestinian Villages Occupied and Depopulated by Israel in 1948* (Washington, DC: Institute for Palestine Studies, 1991).
 28. UNCCP Document A/AC.25/W.81/Rev.2, Annex V, 6–8 (1961). Annex V sets out a methodology and value per sub-district for village built-up lands. We used this study to benchmark our own approach.

29. Village Statistics, 1945. We have made calculations based on the data contained in the original document in order to consolidate the scope of urban land lost by Palestinian refugees in 1948.
30. Hadawi and Kubursi (1988). From this work, we have extracted the summary tables used extensively in our valuation for 1947 rural land market values. Kubursi and Hadawi assert that they extracted these market values from several thousand original sales records, which they and their team have computer coded and computed.
31. Michael Fischbach, *Records of Dispossession: Palestinian Refugee Property and the Arab–Israeli Conflict* (New York: Columbia University Press, 2003), 270. We have used this source to extract the UNCCP prices. It should be noted that these prices do not appear in any other existing study, including the UNCCP official ones. Furthermore, we were not able to access the original document itself or the sales records that were used to produce it.
32. *A Survey of Palestine*; Khalidi (1991).
33. See 'Volume I: Socio-economic Situation of Palestinian Refugees in Jordan, Lebanon, Syria and the West Bank and Gaza Strip', in Laurie Blome Jacobsen (ed.), *UNRWA's Financial Crisis and Refugee Living Conditions* (Oslo: Fafo Institute for Applied International Studies, 2003) documenting the socio-economic conditions of the refugees.
34. Abu Hussein and McKay (2003), 7.
35. Arab Association for Human Rights, *Sanctity Denied* (Nazareth: Arab Association for Human Rights, 2004), from which a detailed table of destroyed holy sites in 1948 was derived (247 mosques and 19 churches).
36. Salman Abu Sitta, *Atlas of Palestine* (London: Palestine Land Society, 2004), 56–57. The *Atlas* provides various statistics on the number of holy places in Palestine before the war. It records 1984 holy places, including 232 mosques. It should be noted that the *Atlas of Palestine* mentions that the number of mosques is underestimated. As stated in the *Atlas*, there are over 774 Palestinian villages within the Armistice lines, of which 559 are main villages. Each village likely had one mosque, and perhaps two for some. The 16 main Palestinian towns had about five to ten mosques each, making a total of 80–160 mosques. As a result, the total number of mosques should have been about 800–1000.
37. Walid Khalidi (ed.), *All That Remains: The Palestinian Villages Occupied and Depopulated by Israel in 1948* (Washington, DC: Institute for Palestine Studies, 1992).
38. See details in note 9.
39. See *A Survey of Palestine* and Loftus (1946) for detailed descriptions of national output in pre-war Palestine.
40. ILC, Articles on State Responsibility, Art. 38. The relevant article reads: 'Interest on any principle sum due on under this Chapter shall be payable when necessary in order to ensure full reparation. The interest rate and mode of calculation shall be set so as to achieve this result. Interest runs from the date the principle amount should have been paid until the obligation to pay is fulfilled.'
41. *Ibid.*
42. For a full discussion of the legal and valuation background on the concept of interest as damages, see John Gotanda and Thierry Senechal, 'Interest as Damage', *Columbia University Journal of Transnational Law*, (2009).

Appendix 8.1 Summary of some past estimate findings

	ESTIMATE 1	ESTIMATE 2	ESTIMATE 3	ESTIMATE 4	ESTIMATE 5	ESTIMATE 6
	UNCCP Global Estimate (Berncastle), 1951	UNCCP Technical Program (Jarvis), 1952–1964	Johnson Plan, 1962	Yusif Sayigh, 1966	Atif Kubursi and Sami Hadawi, 1988	Frank Lewis, 1996
Strategy envisaged:	Assess a global figure for refugees' property left behind (land and movable property only).	Thorough identification to determine exact amount of all Arab and non-Arab holdings/ property as of 14 May 1948.	Propose a resettlement and repatriation plan based on previous UNCCP work.	Comprehensive valuation attempt for refugee land and buildings, movable assets, capital goods, etc.	Comprehensive attempt to estimate the national wealth of Palestine.	Valuation of agricultural abandoned property by analysis of agricultural productivity and output.
Overview of the valuation methodology:	Based on capitalization of urban (N.A.V.) and rural property tax assessments, suitably adjusted to allow for increase in value between date of assessment and 29 November 1947.	Valuation is based on capitalization of tax assessments. Capital values obtained from 1° the N.A.V. assessed for urban property tax and 2° tax categories of land in rural areas.	Building up on the Technical Office's estimate (Jarvis) and adding new components for communal property and other reintegration costs/ allowance.	This study contains a significant amount of economic analysis. However, it does not provide the details of the methodology for conducting a global assessment of Arab losses in Palestine.	The valuation is essentially based on economics and income stream capitalization principles. 1946–1947 values are inflation adjusted to 1948 values. Non land losses are valued under a mix of different approaches.	Approach is based on valuation of agricultural output by considering issues of land ownership, productivity and capitalization of income stream.

continued

	ESTIMATE 1	ESTIMATE 2	ESTIMATE 3	ESTIMATE 4	ESTIMATE 5	ESTIMATE 6
	UNCCP Global Estimate (Bermcastle), 1951	UNCCP Technical Program (Iarvis), 1952-1964	Johnson Plan, 1962	Yusif Sayigh, 1966	Atif Kubursi and Sami Hadawi, 1988	Frank Lewis, 1996
Loss types included in the valuation:	Arab-held land in general and movable left behind.	Various types of immovable property (Arab and non Arab, individually-owned, <i>waqf</i> land, <i>musha</i> land, municipal land...). Movable property is also included as well as an off-record estimate of communal land.	Arab-held land in general, movable property, loss of interest on refugees' property, communal property, reintegration and allowance and administrative costs.	Refugee land including built-up in rural and urban settings, movable assets, capital goods and other financial assets, refugee buildings.	Rural, urban land, industrial capital, agricultural capital, commercial and private vehicles, commercial capital and stocks, financial assets, private and state-owned infrastructure, natural resources, water, and forestry.	Selected land only (crop-based).
Source of information used:	Mostly Village Statistics 1945 (to be obtained) but also tax records and expert opinions.	Individual identification is done mainly from registers of title and tax records but also other public documents.	Same as for the Technical Program for immovable property but the source of information is uncertain for other loss items.	Rely on a few studies (including UNRWA data, Village Statistics 1945). In many cases, the source of data is not mentioned.	Rely on various national income & consumer studies as well as the Survey of Palestine. UN data are used for real property.	Village Statistics 1945 (classification of land by use, quality, and ownership) and other reference documents.

Reliability of the audit trail:	Underlying figures are not disclosed for land. Calculation basis is explained for movables (data to be checked).	Critical underlying information is missing to understand fully the source of some values (sales values, N.A.V. multipliers...).	Very weak for non-immovable property (figures are rather arbitrary in many cases).	The audit trail is very poor and the methodology is not explained and supported by clear references to source documents.	Disclosure of methodologies is made but the underlying figures would need to be checked and assessed.	Clear references to source documents are made throughout the study.
Description of the strengths:	Definition is provided for what constitute abandoned Palestinian refugee land Discuss various valuation methods for abandoned land.	Rigorous identification work carried out (scope and value of refugee property) Consider critical issues: valuation of buildings in rural areas (built-on areas), gardens and fringe areas, land in Beersheba district Deduction is made for property owned by Arabs still residing in Israel after the war.	Attempt to quantify communal property (but basis is unclear). Propose a per capita resettlement allowance (issue needs further exploration).	Exhaustive estimate of the sum of Palestinian's community losses (excluding psychological damage and missed opportunities). Consider the scope and value of potentially arable land as well as the value of public institutions (mosques, factories, hotels, plantation buildings...).	By far the most complete and comprehensive study of refugees' losses. Special care is exercised to distinguish 1°) the Arab share of the national wealth, excluding the Jews and 2°) the share of refugees from the Arab population of Palestine .	Introduce the concept of optimal utility and Arab land productivity. Distinguish Palestinian and Jewish land on quality grounds. Account for land retained by Arabs and for Jewish purchases of Arab land from 1945 to mid-1947.

continued

ESTIMATE 1 UNCCP Global Estimate (Bermcastle), 1951	ESTIMATE 2 UNCCP Technical Program (Jarvis), 1952-1964	ESTIMATE 3 Johnson Plan, 1962	ESTIMATE 4 Yusif Sayigh, 1966	ESTIMATE 5 Atif Kubursi and Sami Hadawi, 1988	ESTIMATE 6 Frank Lewis, 1996
Description of the weaknesses: Fall short of computing the full range of losses (communal/collectively owned land, financial assets...not taken into account). No thorough inspection of abandoned land have been conducted. Land counted as abandoned refugee land can only be approximate without proper and detailed identification. Rely too heavily on tax assessments rather than actual sales/market values.	Identification is weak for non Arab land, communal and common ownership, public and uncultivable. Market value is difficult to obtain from sale values. Tax assessments do not necessarily reflect fair market values. Treatment of land in Southern regions is problematic. The source of data for uncultivable land is imprecise and most of the land was omitted from the valuation.	Absence of hard data to substantiate the estimated values for communal property and other reintegration costs/allowance. The method used for the loss of interest adjustment is not correct. The adjustment for the depreciation in the value of money is unfounded and the method used is again questionable (normal compounding should be used).	Not based on a detailed and thorough enumeration of Arab holdings. No distinction between the productive and non productive capital. No distinction in quality and use of assets (i.e. buildings and dwellings). To be completed once the full study is made available.	The principle for separating the relative shares of the two broad groups of population, Arabs and Jews, is quite approximate. The methodology to reach and apply the value land is not clear from the study. factors is It is crucial to know the origin of raw data. The capitalization method based on a perpetuity formula over an infinite period of time is not appropriate. Normal compounding for future value is preferable.	Very limited in scope and confined to agricultural land. Although a capitalization of income stream is provided, the methodology to reach and apply the capitalization factors is questionable.

Implication of perceived risk (Threats):	Assessment is generally accepted to be understated. Objectivity of the proposed estimate is questionable. Issue of land in the Southern region of Beersheba has to be addressed.	The Johnson Plan allows for refugees to choose compensation or repatriation (limits and methods have to be agreed).	The methodology is not justified and the audit trail of data is very weak. The capital-output ratio is arbitrarily defined. The distinction between productive and non-productive capital is too difficult to make.	Some of the methods (weighted averages for rural land) seems to be robust and scientifically sound but are probably complex to use and duplicate.	The methodology cannot be generalized and standardized for non-agricultural losses.
Opportunities for developing new estimate:	Provide an approach for movable property that can be further investigated.	R/P Forms could be used as a basis for verifying individual claims to ownership in an adjusted methodology.	None at this stage.	None from the identification point of view. However, opportunities do exist to integrate non land data in an adjusted methodology for producing a global figure.	This is an example of an income capitalization approach that can be discussed.

continued

ESTIMATE 1 UNCCP Global Estimate (Berncastle), 1951	ESTIMATE 2 UNCCP Technical Program (Jarvis), 1952–1964	ESTIMATE 3 Johnson Plan, 1962	ESTIMATE 4 Yusif Sayigh, 1966	ESTIMATE 5 Atif Kubursi and Sami Hadaoui, 1988	ESTIMATE 6 Frank Lewis, 1996
Approach is too global for being used to value individual claims. Assessments of net annual value are largely theoretical, bearing little relation to 1947/1948 true market values.	Very valuable identification work for Arab property. We suggest to use this study for developing an adjusted methodology for real property losses (both land and rural lands).	The Johnson Plan does not introduce new methods for land valuation. It introduces new concepts (i.e. for resettlement– repatriation costs) but fails to provide support for the underlying figures.	The approach is comprehensive but the method is not supported and therefore cannot be used at negotiation.	By far, the most comprehensive study of refugees’ property losses. We suggest using some methods of this study to develop an adjusted methodology to arrive at a global figure for non land losses.	Although the approach accounts for productivity change in output for various land categories, it is not appropriate for valuing abandoned agricultural land (range of capitalized prices for land is too wide).
Overall opinion:					

9

Palestinian Refugee Losses in 1948

Atif Kubursi

INTRODUCTION

As the Office of the United Nations High Commissioner for Refugees (UNHCR) has noted, almost every major peace agreement concluded around the world since the late 1980s has included provisions related to the return of displaced persons. Moreover, compensation for loss of properties and opportunities has also been recognized as an essential component of any reconciliation programme or process.¹

Compensation and the right of return are generally considered as complementary programmes that must not be treated as substitutes. The principle that restitution of property and compensation for lost opportunities should be independent of whether one chooses to return or not to her homeland is a primary component of the rights of refugees.

There are at least six types of compensation to be considered. These include:

- Compensation for refugees choosing not to return to their homeland;
- Compensation for loss of movable or immovable property or material damage to property;
- Compensation for incomes derived from the use of refugees' property;
- Compensation for lost income streams, pensions, insurance and deposits;
- Compensation for the loss of collective goods such as infrastructure and natural resources; and
- Compensation for non-material damages such as psychological injuries, and so on.

I have documented elsewhere – in Hadawi (1984) and Aruri (2001) – the nature and magnitude of property and other opportunity losses.² In this paper, I will restrict my analysis to the conceptualization of compensation issues regarding refugees who choose not to return to their homelands and to the estimation of a reasonable financial amount that may be considered, by those who are willing to accept it, as fair and adequate compensation for the loss of homeland or neighbourhood. As well, I will assess various scenarios for refugee compensation.

At this point it is instructive to invoke the UN General Assembly Resolution 194 (III) of December 1948 that dealt directly and unequivocally with the rights of Palestinian refugees to repatriation and compensation, particularly insofar as its explicit mention of compensation. Almost all of the countries of the world, with the exception of Israel and most recently the United States, have affirmed this Resolution more than 40 times, almost on a yearly basis. According to Paragraph 11 of the Resolution, Palestinian refugees have the right to return to their homes and compensation should be paid to those wishing not to return, as well as for loss or damage to property. Specifically, Paragraph 11 resolves:

...that the refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made by governments or authorities responsible.³

While Israel is expected to bear the brunt of the compensation bill, the international community may be persuaded to invest in peace in the Middle East by raising funds that compensate the refugees for principally non-property losses. The size of the compensation package and the perception of its fairness and adequacy will be critical as to whether or not this investment in peace will ‘pay-off’.

Compensation estimates are only meaningful within the overall context of the empowerment of refugees and the preservation of their options and choices. Surely, not all aspects of the traumatic loss of a homeland can readily be measured in monetary terms. The argument here is that monetary values may be assigned to

the loss of neighbourhood that might be acceptable to those who suffered as fair compensation. It will be a partial payment, at best, for the enormous losses and suffering endured by the Palestinian refugees for over six decades. Put positively, it should be large enough to enable them to make a smooth and workable adjustment from refugees to citizens wherever they choose to live.

Indeed, there are many ways to calculate the magnitude of the compensation and many more regimes that can be devised to implement it and monitor its dispensation. Each potential regime has its costs and benefits. It is necessary to draw up a balance sheet that captures these costs and benefits and one that allows researchers and policymakers to evaluate the likely ranking of these regimes in terms of some specific criteria. There are also several precedents that can be used to delineate the range of the 'compensationable' losses and the magnitudes and financial values to assign them. I believe that the special documentation that was used by Jewish Holocaust survivors in their submissions for compensation to the Federal Republic of Germany under the terms of the *Wiedergutmachung* programme (*Wiedergutmachung* meaning 'to make something good again') for the crimes of the Nazis could provide a strong basis for the estimated values and procedures that we intend to use in this paper.⁴

The Jewish Holocaust survivors were successful in their bid for compensation for psychological suffering under the *Wiedergutmachung*; this is a precedent of considerable importance to the issue in question. Palestinian refugees suffered severe psychological and other non-property related hardships. The quote below from the *Wiedergutmachung* document deals with the need to consider compensation for non-property losses:

...After the war, the occupation powers in Germany enacted laws in their individual zones which restored property confiscated by the Nazis to the original owners (mainly Jews). These laws were restricted to real property. They did not encompass personal damage to the victims of Nazi persecution – physical and psychological suffering, or unjust deprivation of freedom, or injury to a person's professional or economic potential. Nor did these laws provide for assistance to the widows and orphans of those who had died as a result of Hitler's policies.⁵

The German basis of compensation was all-inclusive and that is the precedent that is most relevant for this study and it will form the basis of our estimates of Palestinian refugees' losses of neighbourhood.

This paper has a number of objectives but its main purpose is to delineate possible compensation regimes and compensation values for the refugees' loss of neighbourhood under different scenarios. It will also seek to provide a theoretical framework upon which to base compensation calculations and will present an account of the advantages and the disadvantages of different scenarios and regimes.

THE THEORETICAL BASIS FOR COMPENSATION

Two approaches are commonly used to ascertain compensation for those who suffer damages and losses as a consequence of actions or inactions by other parties. The first approach is known as the *income approach*. It is a widely used approach particularly by courts around the world to measure the losses of injured parties based solely on the income streams that would have prevailed in the absence of the injury as compared to the existing streams. This restricts the losses to purely income losses and diminishes the range of injuries and the way different people respond to them. The second approach is known as the *utility approach*. This is more general than the first approach and allows for the inclusion of a wider range of losses and admits individual variations in responses to and consequences of injuries. It is predicated on two main assumptions:

1. Individuals shall be considered better-off if they are in a position of their own choosing. Since we define utility as that which individuals attempt to maximize, it follows that they will choose rather more than less utility. An increase in utility can then be regarded as synonymous with being better-off.
2. Individuals' utility depends entirely on the volume of commodities and services they consume and on the needs they satisfy. They will always be assumed to choose to consume more, or at least not less, of a commodity and to satisfy more of their needs rather than less.

Economics is based on the fundamental postulate that human beings when unimpeded would seek to arrange their economic

affairs in such a way as to obtain the greatest possible satisfaction (utility). Any arrangement that does not produce this outcome is inadequate and will soon be displaced by one yielding a higher level of satisfaction (or 'utility'). That is, individuals will take advantage of any opportunities for exchange to achieve the greatest possible satisfaction where their willingness to trade is matched exactly by their opportunity to do so. Circumstances outside the objective conditions of the market that preclude such an outcome imply lower levels of utility – loss of welfare, as it is usually called. The size of this loss is indicated by the difference between the levels of satisfaction attainable in the two circumstances. Alternatively, it is equal to that monetary compensation that would permit the higher level of utility to be realized.

This conception of economic loss also suggests that social losses are the sum total of individual losses. This is true, however, only if all goods are private goods (those goods any individual's consumption of which reduces what is available to others in the market). In the case of public goods (those goods of which one individual's consumption does not diminish their availability to other members of the society), special adjustments would have to be made. In this paper we shall assume that the loss of neighbourhood is a private good that each and every individual Palestinian refugee has suffered, in his or her way.

Essential to this analysis is the specification of each individual utility function and the determination of the effect on utility of the forced or imposed situations that lead to loss of welfare. Individual utility indices differ not only with respect to the arguments that define them, but also differ with respect to their nature. Typically all things that contribute to utility are included as arguments of those indices. This would make the list too long for any useful analysis. Alternatively, we may group these arguments under the following headings: private goods, public goods, individual psychological needs and social psychological needs. Private goods include all the commodities and services desired and purchased by consumers; public goods include education, health services, and so on; individual psychological needs cover a wide spectrum comprising human security as manifested by tranquillity, safety, absence of pain, and family cohesiveness; and social psychological needs including such things as national identity, neighbourhood, community solidarity and cultural activities.

This manner of defining the welfare function severely limits the form that social value judgements can take. If the welfare of

society is held to depend upon the utility level of the members of society, and upon nothing else, then the only further social value judgements to be made concern the welfare significance of each individual's utility index. In a democratic society each person's utility would count equally, though some form of interpersonal compatibility of utility in cardinal terms would be necessary to give substance to the judgement. Alternatively, it might be held that some members of society are more deserving than others, and their utility indices would be weighted more heavily in the welfare function.

The utility approach provides a strong endorsement for the adoption of compensation schemes that indemnify individuals on a per capita basis. The allocation of compensation on a per capita basis does not, however, exclude weighting individuals differently, depending on their situation.

Whichever form is specified for the social welfare function, it is clear that individual losses are translated into social losses and that the social welfare function can be used to assign valuation of these losses. The concept of compensation as developed by Hicks and Kaldor is a case in point.⁶ The concept underlying the compensation principle is that if a change in a situation would result in some persons being better-off and others worse-off, those who gain could compensate the losers in such a way that on balance would result in everybody being better-off.

Compensation is, therefore, synonymous with indemnification in the legal meaning of the undoing of damage done and losses suffered. Total indemnification means in essence, a return to a situation, which existed before the loss was incurred. If it is done by way of restitution, the old situation is restored in specie. If it is done wholly or partially by way of compensation, the consequences of the damage are liquidated although the old situation is not restored in the true sense of the word.⁷

It is clear, however, that such a return to the old situation is possible only by way of total restitution or total indemnification and only when changes in the general financial, economic, social and demographic situations are taken into account.

WHO IS A REFUGEE AND WHAT IS THE LOSS OF NEIGHBOURHOOD?

Palestinian losses in 1948 were staggering. Thousands of refugees were driven away from their homes, workplaces, wealth,

neighbourhoods and families. In assessing their losses and the extent of the material and psychological damages they suffered, their rights and the compensation values they may be entitled to, we need to begin by defining who is a refugee.

While the definition of who is a refugee has changed over time and particularly with regard to Palestinian refugees, the following definition coined by UNRWA is widely used. It represents an improvement over the Agency's initial definition that required flight and the need for registration as a refugee, but it is still restrictive:⁸

A Palestinian refugee shall mean 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.⁹

This definition does not go as far as the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. More importantly, Palestinian refugees are typically excluded from qualifying for refugee status under the 1951 Refugee Convention definition.

The 1951 Refugee Convention definition states that a 'refugee is a person who is outside the country of nationality and is unwilling or unable to obtain the protection of his country due to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion.' Ironically the Convention has a separate provision that applies solely to Palestinian refugees. Refugee Convention 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 and 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 the Convention.¹⁰

It is clear that the Convention definition is a more inclusive one than UNRWA's definition and as such, serves better our purposes here. Thus, we have not restricted the estimate of the number of

refugees to those that are registered by UNRWA; instead we have made use of estimates of Palestinian refugee numbers that include non-registered refugees.

In 1999, the number of Palestinians worldwide exceeded 7 million. The majority of the Palestinians, about 47 per cent, are in historic Palestine that comprises the West Bank, Gaza and Israel. Another 41 per cent are living in neighbouring Arab countries. Jordan alone is host to over 29 per cent of the Palestinians with the remaining 12 per cent scattered in the Arabian Gulf countries and the rest of the world. The refugees are a smaller number of about 5.1 million, of whom about 3.7 million are registered with UNRWA. Indeed, there are many estimates of the numbers of Palestinian refugees that date back to 1948. In Table 9.1, we present about ten such estimates adopted from George Kossaifi.¹¹

The more current numbers in Table 9.2 are derived from UNRWA sources for 1999. More recent data has been projected forward, based on population growth rates in previous years. These numbers will form the basis of quantifying the total compensation bill.

A brief outline of the rest of the paper is sketched here to set the tone for the development of our estimates of the compensation package and our conclusions. The next section provides different specifications of the neighbourhood that Palestinians lost in 1948. Estimating the compensation values under different assumptions about who qualifies and the magnitudes of the compensation envelope will follow this. I end with an evaluation of the different assumptions (scenarios) and their relative merits.

THE LOSS OF THE PRODUCTIVE NEIGHBOURHOOD

The Palestinian economy, which Israel replaced, was a viable economy with a significant flow of output and income that sustained a growing population of approximately 2 million people in 1948. In 1944, national income at market prices was estimated at P£123 million. Although inflation in the 1940s was high, it does not account for the full increase in national income between 1939 and 1944.

Given the prevailing real interest rate at the time (4 per cent), it is legitimate to claim that the total wealth in Palestine (physical and human) in 1944 was of the order of P£3.1 billion. The Arab share of this wealth is roughly 51.2 per cent, given the estimate of

Table 9.1 Estimates of the 1948 Palestinian refugees by source

	I	II	III	IV	V	VI	VII	VIII	IX	X
900,000–										
1 million	530,000	800,000	577,000	716,000–726,000	810,000	600,000–760,000	714,000	770,000–780,000	805,000	

Notes

- I. Arab Official Estimates as quoted in Benny Morris, *The Birth of the Palestinian Refugee Problem, 1947–1949* (New York: Cambridge University Press, 1987), 297.
- II. Israeli Official Estimates as quoted in Morris and maintained despite better evidence. 'The reason was simple: "if people...became accustomed to the large figure and we are actually obliged to accept the return of the refugees, we may find it difficult, when faced with hordes of claimants, to convince the world that not all of these formerly lived in Israeli territory...It would, in any event, seem desirable to minimize the numbers...than otherwise.'¹²
- III. Eytan in a private letter in late 1950. He referred to the UNRWA registration in 1949 as 'meticulous' and thought that the 'real number was close to 800,000'.¹³
- IV. Israeli Central Bureau of Statistics, 1949 figure, reached 'by the following route: according to British Mandate estimates, the total number of non-Jewish inhabitants in the areas, which became the Jewish State was 722,000 (including western Jerusalem). This includes a six per cent exaggeration. Hence, the real number was probably 679,000. There were about 102,000 Arabs left in Israel – hence 577,000 had become refugees. (It was on this basis that the Israeli Foreign Ministry reached the 520,000–530,000 total, arguing that about 30,000–40,000 refugees, who had infiltrated back into Israel since the November 1948 census that showed 102,000 Arabs In Israel, should be lopped off the 577,000 figure).'¹⁴
- V. UN Economic Survey Mission (1949) and UNRWA.¹⁵
- VI. British Estimates, February 1949: 210,000 refugees were in the Gaza Strip; 320,000 in Trans-Jordan-held Palestine; and 280,000 in Lebanon, Syria, and Trans-Jordan proper.¹⁶
- VII. British Foreign Office Analysis, September 1949. 'The Foreign Office concluded that the number of refugees was "between 600,000 and 760,000." This rather inconclusive conclusion, co-opting the extremities of the Foreign Office Research Department's Estimates (600,000) and the 'Technical Committee's "maximum number" (766,000), was based on the following criticism of the official Israeli estimate: it took no account of natural increase among the Palestine Arabs since 31 December 1947 (which was offset only in part by war casualties); it was incorrect in deducting six per cent from the Mandate total of about "725,000"; it ignored the figure of "95,000" for the Bedouins, many of whom had become refugees. The thrust of the figures in the British analysis was that there were 711,000 *bona fide* Palestine Arab refugees'.¹⁷
- VIII. Estimates at the end of 1948, based on the estimated total of the Palestinian population before expulsion, the Palestinians who remained in Israel after 1948, and the population of the West Bank and Gaza who lived there before and after the creation of Israel, and taking into consideration the reduction in size of the Palestinian areas of the West Bank and Gaza Strip after 1948. It is to be noted that the areas of the West Bank and Gaza Strip decreased from 7,596 square kilometers (sq km) to 5,650 sq km, and from 1,112 sq km to 378 sq km, respectively, following the establishment of Israel in 1948.¹⁸
- IX. Janet L. Abu-Lughod, 'The Demographic Transformation of Palestine', in Ibrahim Abu Lughod (ed.), *The Transformation of Palestine* (Evanston, IL: Northwestern University Press, 1971), 161.
- X. Abu-Sitta Salman, 'The Right of Return for Palestinians: A Sacred, Legal and Also Feasible Right', *Al-Mustaqbal al-Arabi* (6) 1996.

Table 9.2 Palestinian refugee population, 1999

<i>Place of refuge</i>	<i>Refugees*</i>	<i>Registered** refugees</i>	<i>Registered refugees in camps</i>
Gaza Strip	792,938	808,495	442,942
West Bank	675,705	576,160	155,365
Jordan	1,802,759	1,541,405	277,555
Lebanon	422,288	373,440	208,223
Syria	460,493	378,382	110,427
Egypt	41,884		
Saudi Arabia	284,379		
Kuwait	35,573		
Other Gulf countries	109,273		
Iraq and Libya	76,884		
Other Arab countries	5,738		
USA	179,107		
Other countries	228,074		
<i>Total</i>	5,115,095	3,677,882	1,194,512

* Figures from Salman Abu-Sitta, *The Palestinian Nakba* (London: Palestinian Return Centre, 1998). The 1999 figures are estimates made by the BADIL Resource Center.

** UNRWA Department of Relief and Social Services, Statistical Bulletin for the Fourth Quarter, 30 November 1999.

Loftus¹⁹ of Arab net domestic product of P£63 million in 1944. This translates into P£1.575 billion.²⁰

Since non-property income (labour income) then constituted about 50 per cent of total income, the value of human wealth should be around £787.5 million. The refugees represented 55 per cent of the Arab population of Palestine and, on the basis of this proportion, their share of human wealth would be P£433 million in 1944 prices. Indeed, this is an upper bound (maximum figure) because part of the human wealth was carried with the refugees. It is also true that a good part of it was lost because of the loss of complementary inputs. Most of the refugees were engaged in farming; when they were deprived of their land, their human capital was lost too. Refugees who were not farmers lost their labour skills through unemployment. They were confined to camps by the sheer economic force of being excess labour in already labour-surplus economies and in the hope of returning to their homes, businesses and farms some day soon.

If lost opportunity and deterioration of human capital, through lack of use or absence of complementary inputs, were to be valued, a total of P£433 million would result. Translating this into US dollars at the exchange rate of 4.03 dollars for every Palestinian pound would result in US\$1.745 billion in 1944.

Since prices and quantities in 1948 were higher than in 1944, an upward adjustment of the 1944 figures is needed. If real growth is put at 4 per cent per year (a modest figure in historical perspective), and if prices are assumed to rise at the modest inflation rate of the USA, the refugees' share of human wealth losses in 1998 would total US\$348.1 billion. If the human wealth losses were only adjusted for inflation, a total of US\$49 billion would result. On a per-refugee basis, the loss of the productive neighbourhood would add up to US\$9,580 (adjusting for inflation only) and to US\$68,033 if we adjust for income growth and inflation.

FROM REFUGEES INTO RESIDENTS

Refugees live in different countries but over 84 per cent of them reside within 100 miles of the areas from which they left (driven out). Their incomes, if any, are far below the average incomes prevailing in their neighbourhoods. In what follows I estimate what it would take to enable each refugee to achieve a per capita income similar to the existing one in the closest neighbourhood to where the Palestinian refugee now lives. The use of the per capita income in the closest neighbourhood applies only for the countries where refugees are registered. For other areas and countries, I used the average per capita income of the countries where the registered refugees live.

If UNRWA were to wind down its operations, the refugees would not be able to sustain themselves. The use of per capita income as the target income for the refugee is motivated by the desire to enable him/her to achieve an average per capita income and therefore an average consumption level that the citizens in the closest neighbourhoods to them are able to enjoy. Alternatively we consider a basic needs approach that estimates the fraction of the per capita income needed to meet the basic needs of the refugees in their current neighbourhoods.

A lump sum compensation was estimated to be an amount that, if invested at a 5 per cent real rate of return, would yield for the refugee an annual income equal to the target per capita income (sufficient income to sustain their capacity to meet their basic needs) in her neighbourhood. In other words, a real rate of return of 5 per cent is chosen to capitalize the asset value (the total compensation magnitude) that yields the target per capita income on an annual basis. The family compensation is based on an average family size of six persons. The total compensation

envelope is calculated by multiplying the respective annuities by the total targeted refugee population.

It is difficult to estimate the size of any compensation package for Palestinian refugees without knowing the actual number of Palestinians who would choose to return, those who would choose not to return but prefer to contribute their share of the compensation package to more needy ones, those who would choose to return but not to their property, and those who would choose not to return but would like to be considered for compensation for psychological trauma beyond those associated with the loss of neighbourhood.

It is not difficult, however, to conjure a large number of scenarios by using different target incomes, different target populations, different real rates of return, different time horizons, different proportions of returnees, and different distribution profiles of the compensation package. In what follows I will present the results of a few of these possible scenarios, assess their plausibility, point out the way to generate different alternatives and draw out some of their implications.

Scenario I: No returnees

The first scenario entertains a set of assumptions that places some benchmarks for the rest of the scenarios. First, it assumes that refugees would not exercise their right of return to Israel. Second, it assumes that all refugees would be compensated. Third, the compensation packages would reflect the relative incomes of their new neighbourhoods.

Indeed, the compensation envelope that emerges is large – exceeding US\$171.6 billion in 1998 prices. The average compensation per person would be about US\$35,000, which translates into an average family package of US\$208,280.

Scenario II: Different proportions of returnees

The results of assuming that 25 per cent and 50 per cent of the refugees would exercise their right of return are derived using the detailed distribution of refugees by country of residence. Indeed, the compensation package would fall proportionately. Under the assumption of 25 per cent of the current Palestinian refugee population returning, the total compensation package drops to US\$128.7 billion, while it drops further to US\$85.8 billion if 50 per cent are assumed to return.

Scenario III: Compensating the registered refugees only

This scenario assumes that not all refugees would be compensated; some may have done well on their own and some may wish to devote their share of the package to more needy refugees (assumed here to be the registered refugees or the neediest of them). Actually UNRWA defines and keeps records on the neediest of the registered refugees. It refers to them as qualifying for the Special Hardship Case (SHC) status. The numbers and proportions of these SHCs have been consistently high and in some countries their numbers and proportions are rising.²¹ Alternatively, it may be argued that the registered refugees represent the most credible and indisputable group of refugees and therefore compensation packages should target them on an exclusive basis. We begin by assuming that none of the registered refugees would exercise their right of return. The calculation of the decrease in the total compensation envelope for different proportions of returnees can easily be estimated. The total compensation envelope for this scenario would be US\$123 billion. If the registered refugees were able to claim the full compensation share of others who would yield it to them, this number would increase by another US\$50 billion.

It is also interesting to note that when we concentrate on compensating registered refugees, the relevant average per capita income and the average family compensation package would also change. Actually both would increase, because of the higher weight given to Lebanon, which has the highest per capita income in the group.

If 50 per cent chose to return, the compensation envelope would fall to about US\$62 billion. The magnitudes of the decline are linear functions of the proportions of returnees.

Scenario IV: Compensating the refugees in the camps

Not all of the registered refugees are necessarily in difficult economic situations. There is a general belief that those in the camps are by far the poorest and the most destitute and are therefore in need of help, particularly if and when UNRWA no longer exists. The results of this scenario show a major drop in the compensation envelope to less than US\$44 billion.

The relevant average per capita income under this scenario rises from US\$1,736 to US\$1,825. The average compensation per person rises to US\$36,496 from US\$34,713 and the average compensation per family rises from US\$208,280 to US\$218,976.

Again all of these changes are the result of the fact that the relevant averages are now defined on a more restrictive set and where the Lebanese figures take on higher weights.

Scenario V: Meeting the basic needs of the refugees

Compensation envelopes using average per capita incomes may be considered ‘expensive’ by donor countries. Meeting the basic needs (food, shelter and clothing) of the refugees can reduce marginally the total compensation packages. This is because in most of the countries where the refugees live, the fraction of income spent on basic needs is about 70–80 per cent of the average income. We do not have accurate records on these average incomes. Instead, we will use 75 per cent of the relevant per capita income. This will easily reduce the total compensation package by 25 per cent, regardless of the scenario used.

Real differences begin to emerge when the Basic Needs Approach (BNA) becomes the qualifying criterion for compensation. If this were the case, it would be very difficult to compensate refugees that are outside the UNRWA registry and perhaps those who live outside the camps. In Table 9.3, I present summaries of the result of using the Basic Needs Approach under the different assumptions in the previous scenarios. A minimum of US\$32.7 billion would be required under Scenario IV using the Basic Needs Approach, whereas the maximum value would be US\$128.7 billion under Scenario I.

Table 9.3 The basic needs approach

<i>Scenario</i>	<i>Compensation (per person)</i>	<i>Total</i>
Scenario I	\$26,035	\$128,744,799,920
Scenario II (25%)	\$26,035	\$96,558,599,940
Scenario II (50%)	\$26,035	\$64,372,399,960
Scenario III	\$27,372	\$92,278,950,000
Scenario IV	\$27,372	\$32,706,498,060

The Special Hardship Cases call for a differentiated compensation package that directs more compensation for those who need it most. In Table 9.4, we present the calculations that would result if only SHC are compensated using the average compensation values under Scenario I. The results indicate that a total of US\$7.5 billion would be required to compensate the Special Hardship Cases. The largest value is not surprisingly in

Lebanon (US\$2.8 billion), and the lowest value is US\$0.5 billion in Syria.

Table 9.4 Special hardship cases

	<i>Total number of cases</i>	<i>Percentage of registered refugees</i>	<i>Average compensation</i>	<i>Total compensation</i>
Lebanon	39,258	10.5	\$71,200	\$2,795,169,600
Jordan	40,077	2.6	\$30,400	\$1,218,326,512
Syria	24,891	6.6	\$20,400	\$507,776,400
West Bank	30,393	5.3	\$30,240	\$919,084,320
Gaza Strip	66,678	8.2	\$30,240	\$2,016,342,720
<i>Total</i>				\$7,456,699,552

CONCLUSIONS

Designing a fair and an affordable compensation regime that refugees may be willing to accept and funders may be willing to pay for is not a simple matter. Actually there are many complex issues involved in arriving at the 'desired' compensation regime that go far beyond calculating the 'optimal' amount of the compensation package. There are many parties whose interests must be reconciled and there are many principles to uphold. I believe that the most difficult issues to be encountered in this regard are the following:

- The equity issue: Should all refugees receive the same amount?
- The universality issue: Should all refugees be compensated?
- The sustainability issue: Should refugees receive a cash lump sum or shares in an investment fund?
- The host country issue: Should payments to refugees necessarily be invested in the host country where they are welcomed and where they choose to stay?

This is a partial list of some of the most critical considerations that need to be addressed by the refugees and those funding them. Different compensation regimes will emerge depending on the answers offered to these questions.

There are two equity perspectives: first, horizontal equity stipulates that people in the same situation should receive similar treatment; second, vertical equity stipulates that people in different circumstances should be treated differently. The per capita

compensation approach provides refugees with a wide degree of flexibility, is easy to administer, requires very little documentation and militates against the undesirable consequences of recreating the property and gender inequities of the past. Alternatively, it may not take full account of the different dynamic circumstances that different people face. Compensating a single-parent family in the same way that a full family is compensated is perhaps not equitable. Furthermore, Palestinian refugees in Lebanon have typically faced different circumstances, constraints and costs than those living in Syria, Jordan, West Bank and Gaza and consequently feel that they should be compensated differently than their counterparts in these areas.

While the per capita payments could be adjusted to take these differences into account, it is also possible to preserve the principle that all of the Palestinian refugees suffered equivalently the pains of separation from their neighbourhoods and thus compensation must be universal and must include all of them. Besides separating the compensation package from property and physical claims, this approach liberates these claims from being contested by counter-claims for which the refugees bear no responsibility.

To whom should compensation be paid? The universality principle suggests that all should be compensated for the standard pains of losing their neighbourhood. Excluding any group of refugees from compensation (even when they appear that they do not need it) would ultimately pit the interests of those to be compensated against those who are not. This divide would reduce the popularity and acceptability of the programme and would create tensions between the two groups in a way that would reduce the efficacy of the programme. There is considerable evidence that universal programmes (e.g., national health care) create a sense of common ownership and buy-ins for society at large. This explains perhaps the tenacity with which different people hold to these programmes, even when some of them appear not to need them and can easily do without them.

How should the compensation be paid? A lump sum cash payment for each refugee may be the easiest and cheapest way to administer the compensation programme. There are, however, serious concerns about the sustainability of these programmes and the distinct possibilities that these payments will be wasted and consumed quickly. Privatization programmes in many transition economies have shown that the establishment of investment funds to oversee the management of these payments may raise

the returns on these investments and may generate the income flows that are targeted by the compensation regime. Equally important is the fact that these investment funds can be organized to invest the compensation monies in the host countries whose interest in 'co-operating' or 'accommodating' the refugees' choices may be raised by the impending benefits that can come from investing these funds in the host country's economy. In this way the investment funds can narrow the gaps between the refugees and the host country's citizens.

An ideal compensation package is not a feasible outcome. Many compromises must be made before a final programme is acceptable and adequate. Nonetheless, the more equitable, universal and sustainable the programme, the more durable and the more acceptable it is likely to be.

NOTES

1. UNHCR. 1998. Report of the United Nations High Commissioner for Refugees. See also Catherine Phoung, *Forcible Displacement in Peace Agreements* (International Council on Human Rights Policy, 2005).
2. Sami Hadawi, *Palestinian Rights & Losses in 1948*, (London: Saqi Books, 1988) 117–88. Atif Kubursi, 'Valuing Palestinian Losses in Today's Dollars', in Naseer Aruri (ed.), *Palestinian Refugees: The Right of Return* (London: Pluto Press, 2001), 217–50.
3. UNGAR 194 (III), 11 December 1948.
4. Federal Republic of Germany (May, 1985). Focus on restitution in Germany. No. 1. *Wiedergutmachung*.
5. Beg Documents (14 September 1965). *Sweites Gesteiz Zur Anderung des Bundesentschädigungsgesetzes*. Appendix IX.
6. Alan Feldman, 'Kaldor-Hicks Compensation', in Peter Newman (ed.), *The New Palgrave Dictionary of Economics and the Law*, Vol. 2 (London: Palgrave Macmillan, 1998), 417–21; Stephen Marglin, *Public Investment Criteria* (London: Unwin University Books, 1967).
7. Federal Republic of Germany. *Ibid*.
8. The original definition used by UNRWA states that a refugee is '...a needy person, who, as a result of the war in Palestine, has lost his home and his means of livelihood.' See United Nations Relief and Works Agency for Palestine Refugees in the Near East, Official Records of the General Assembly, Fifth Session, Supplement No. 19 (A/1451/Rev. 1), 3.
9. For a more detailed discussion of the definition of a refugee, see Lex Takkenberg, *The Status of Palestinian Refugees in International Law* (Oxford: Clarendon Press, 1998), 68–83.
10. Susan Akram, 'Reinterpreting Palestinian Refugee Rights Under International Law, and a Framework for Durable Solutions', *Badil Information and Discussion Brief* (2000), 4.
11. George Kossai, 'The Palestine Refugees and the Right of Return', *Center for Policy Analysis on Palestine Information Paper* 7 (1996), 3.

12. See Morris, 297, n. 5, 364, ISA FM2564/22, Arthur Lourie to Eytan (Director General of the Israeli Foreign Ministry).
13. *Ibid.*, 297.
14. *Ibid.*, 298.
15. *Ibid.*, 297.
16. *Ibid.*
17. *Ibid.*, 298.
18. George Kossai, 'Contribution à l'Etude démographique de la Population Palestinienne', 98–102.
19. R. Loftus, *National Income of Palestine* (Jerusalem: Government Printer, 1944).
20. This understates the Arab share as the estimates of national income tend to focus on the organized sectors of the economy and ignore non-market activities. The Arab share in the latter was significantly higher than the 51.2 per cent.
21. Admission to Special Hardship Case status builds on the criteria of a particularly difficult situation, such as the absence of a male adult medically fit to provide for the family and of any alternative source of income sufficient to meet basic needs.

Implementation of an Agreed Solution for Palestinian Refugee Claims: Learning from the Experience of Other Claims Mechanisms

Heike Niebergall and Norbert Wühler

INTRODUCTION¹

A comprehensive solution to the Israeli–Palestinian conflict will have to provide remedies for the losses that the Palestinian refugees suffered as a result of their displacement in 1948–1949. It will need to address real property losses as well as other losses, and it is bound to include a mechanism through which Palestinian refugees can claim their rights. Considerable research and preparatory work has been done by the Parties and by others on various aspects of such a mechanism, and several chapters in this publication deal with the treatment of this issue in previous negotiations and with the Parties' positions in this respect.² This chapter examines the question of whether lessons can be learned from the practices and experiences of other past and present claims programmes that could be useful for negotiators and implementers of a claims mechanism for the Palestinian refugees.

It has been submitted that the Palestinian refugee issue is so unique that it requires a unique solution for which a comparison with other claims mechanisms is not helpful. Every reparation claims programme providing for the restitution of property rights or compensation, of course, faces different challenges depending on the environment it is placed in; the political circumstances that led to its creation; and the type of remedies it provides to eligible beneficiaries. As a result, each programme has unique characteristics impacting its legal framework, and its organizational and operational structures.

At the same time, there are a number of features that can be found in practically all past and present reparation claims

programmes.³ For example, almost all reparation claims programmes are characterized by a large case load that has to be processed in a relatively short period of time; high expectations on the side of potential beneficiaries; and strong political pressure to deliver results. At the same time, most claims programmes have only limited financial and human resources available to administer the programme and to fund the financial or in-kind benefits. As a result, policymakers and implementers of reparation claims programmes have been forced to balance the interests of each potential beneficiary in individual justice with the need to bring a fair solution to all entitled beneficiaries within a reasonable time frame.

Given these common features, there has been value in looking at practices and the experiences of past and present programmes, and distilling the lessons learned for future reparation processes. Such an analysis of prior experiences will enable future programmes to avoid ‘reinventing the wheel’ and repeating mistakes. A claims mechanism for Palestinian refugee claims will be no exception and will also have to deal with many of the questions and challenges that other programmes were faced with.⁴ This will include questions such as:

- What losses can be claimed?
- What remedies will be provided, and to whom (including heirs and legal successors)?
- How will the mechanism be organized and how will its various bodies work and interact?
- What procedural rules and methods for deciding the claims will be developed?
- What evidentiary standards will be applied?
- How will the losses be valued in the case of financial compensation?

Several of these questions are dealt with in more detail in other chapters of this publication. The present chapter focuses on those issues that in the past have had a particular impact on the processing times and costs and that are likely to play a considerable role in a claims process for Palestinian refugees. Some of these have been addressed in considerable detail by researchers and in the Parties’ preparatory work and earlier negotiations. Other issues have received less attention, possibly because they relate to later stages of the process or because their relevance and

complexity may yet have to be appreciated by outside observers who have not been involved in the actual implementation of claims mechanisms.

All the issues examined in this chapter will be equally relevant for the different types of possible claims mechanisms that have been discussed in connection with a comprehensive resolution of the Palestinian refugee issue. They will need to be addressed whether the mechanism is to deal with the restitution of property rights or to provide financial compensation for rights lost or violated, or both. The basic assumption is that the remedies foreseen for Palestinian refugees as part of a comprehensive solution will have to be administered through some form of claims mechanism where potential beneficiaries of a restitution or compensation programme submit an application or claim that is then evaluated by the mechanism.

ESTABLISHMENT OF THE CLAIMS MECHANISM

What leads to the establishment of a claims mechanism and how a claims programme is established depend on the circumstances that underlie the losses and the political conditions at the time of the establishment. As such, in the past, there have been claims programmes that were self-contained and only set up for their particular purpose. Others formed part of a larger set of rehabilitation and peace-building arrangements, typically in the wake of conflict or of transitional justice efforts after authoritarian rule. Any mechanism dealing with Palestinian refugee claims is bound to be part of a wider implementation mechanism to address the Palestinian refugee issue as a whole, and in this sense is not going to be self-contained.⁵ How much the claims part will be linked to the wider implementation mechanism will in the first place depend on the provisions of the peace agreement, but will also be influenced by the practice of the organs of the mechanism during its operation.

A whole range of variations exists as to whether a claims programme was established by a national process or whether it was created also or exclusively through international involvement.⁶ Related to this is the question of how much continuing involvement and influence the creators or sponsors of the mechanism should have during its implementation. Based on the preparatory work and the earlier negotiations of the Parties, it can be expected that the mechanism for Palestinian refugee

claims will have significant international involvement, both at the stage of its design and establishment as well as during its implementation.⁷ It would therefore seem appropriate in this chapter to look particularly at those claims mechanisms that were set up and operated with international involvement. There, continuing involvement ranged from participation in policy and supervisory bodies, to the appointment of decision-making bodies and heads of secretariats, to the approval of budgets and of compensation amounts awarded.

Another important question that policymakers and negotiators of a claims mechanism need to decide at the outset is which issues should be addressed and regulated in the peace agreement and its constituting instruments already, and what should be left for regulation by the mechanism and its bodies.⁸ In particular they should consider how much detail should be contained in the constituting instruments as regards the organization and procedures of the mechanism, and what implications their choices will have for the operation of the mechanism.

The main advantages of a comprehensive regulation in the constituting instruments for the claims mechanism are early clarity about its structures and predictability of the process, which is essential in order to manage the beneficiaries' expectations. On the other hand, leaving details regarding the claims process for elaboration by the programme itself makes the programme more flexible and adaptable to unforeseen and changing requirements. In order to minimize the risk of delays or the need for post-peace agreement concessions at the implementation stage, the Palestinian side is likely to favour a detailed constituting agreement. It will not be easy, however, to identify and agree up front on the many details that the claims mechanism will have to address, particularly as the refugee issue is only one of several key areas that will need to be resolved as part of a comprehensive peace agreement. The constituting agreement for a claims mechanism for the Palestinian refugees may thus in the end have to limit itself to the main policy issues and leave details to the implementation stage. It should be noted, however, that the more the details of the mechanism will be left to the implementing bodies of the claims mechanism itself (e.g., policy board, decision-making body and secretariat), the more important the composition and appointment of these bodies becomes as one way of ensuring the success of the programme as well as maintaining some influence over the process.

The interrelationship between the questions regarding the level of (continuing) international involvement, the level of detail regulated in the constituting instruments and the composition and appointment of the implementing bodies requires that these issues are considered together as parameters rather than in isolation when discussing the claims mechanism for Palestinian refugees. These parameters and the importance that they are each given by the creators of a future mechanism will determine the model that is ultimately chosen.

Below is a summary overview of how these parameters were decided in past claims programmes with international involvement:⁹

German Forced Labour Compensation Programme (GFLCP):¹⁰

- Self-contained programme established almost 60 years after the end of World War II;
- Established through a national legislative act following intense international negotiations;
- Constituting instruments contain details on organizational structures, but less on process;
- Continuing involvement of the German government and international stakeholders through representation in the policy-making body;
- All funding made available at the inception of the process;
- Two separate decision-making processes: decision-making responsibility with the Secretariat for fixed compensation amounts for forced and slave labour, and with a Commission for compensation for individual property losses.

Commission for Real Property Claims of Displaced Persons and Refugees (CRPC) in Bosnia and Herzegovina:¹¹

- Programme established as part of wider peace arrangement;
- Agreement reached between parties of the conflict, but with intense involvement by one outside state (USA);
- Few details on structure and process of mechanism in constituting instrument;
- No continuing involvement of international sponsor in the day-to-day work of the claims mechanism;
- One decision-making body;
- Involvement of international sponsors in the enforcement of decisions rendered by the mechanism as part of the implementation of peace agreement.

Property Restitution Programme in Kosovo:¹²

- Programme established in the context of wider peace arrangement;
- SC resolution as basis for mandate of UNMIK regulation creating claims mechanism;¹³
- Regulation contained detailed description of structure and process;
- One decision-making body;
- No continuing involvement in claims mechanism, but in the implementation of decisions of claims mechanism.

United Nations Compensation Commission (UNCC):¹⁴

- Part of wider conflict termination;
- Created by UN Security Council resolution;
- Few details only regarding its structures and processes in subsequent UN Secretary General's report;
- Significant continuing involvement through policy body on rules, eligibility, approval of awarded amounts and funding of the claims mechanism;
- Different decision-making bodies for different claim categories;
- Regular funding secured from proceeds of UN-controlled Iraqi oil sales.

ORGANIZATION AND FUNCTIONING OF THE CLAIMS MECHANISM

The claims programmes that have been established in the past show a variety of organizational structures. The variations relate to the number and composition of bodies; the relationships between them; and to what extent the processes were centralized or decentralized. In addition to the general parameters that influence the shape of the programme as a whole, its structure is determined more specifically by factors such as the number of claims it deals with and the kind of losses it addresses. Other factors are what remedies it provides, what financial and human resources are at its disposal, and pursuant to what rules and procedures claims are reviewed and decisions are made.

A host of questions arises with respect to the funding of a claims programme, and these are not discussed in detail in this chapter. To find sufficient funds not only to start the programme but also

to sustain it until completion will be a similar challenge for the Palestinian claims programme, as it has been for others in the past. Different options for the source of the funds as well as for their administration have been discussed by the Parties and others. One question that will have a particular impact on the valuation of the losses and the payment of the Palestinian refugee claims is whether the amount available for their compensation will be finite or whether the programme will have an open-ended fund.

As mentioned above, it can be expected that the mechanism for Palestinian refugee claims will have significant international involvement, both at its establishment and during its implementation. Not the least because of possible financial contributions, this may well include the participation in audit and oversight functions. Another question in this context that will need to be addressed up front is whether the Palestinian claims mechanism should be 'embedded' in an existing international organization, or whether it should be independent but rely on certain support services from such an organization. The Parties have in their preparatory work and negotiation positions favoured a significant role for international organizations, primarily the UN and the World Bank, in the implementation mechanism. The proposals have differed, though, as to the extent of the 'embedding' specifically of the claims part. The practice of claims programmes in this respect shows a range of options from a stand-alone mechanism to a sub-organ of the UN Security Council, with the choice largely driven by the level of international commitment to and continuing sponsorship of the process.¹⁵

Notwithstanding the variations in their organizational structure, there are several basic functions that every claims programme has to fulfil and for which it therefore needs bodies and resources. At a general level, these functions are collection and processing of the claims; review and decision of the claims and the amounts of compensation; and enforcement of the decisions. The bodies involved in the performance of these functions are of a decision-making, support and policy nature, typically consisting of one or more commissions, a secretariat and a policy board.

Much work has been done to examine the losses for which the Palestinian refugee should be able to claim and how the mechanism dealing with these claims should be structured. What procedures and methods that mechanism would use has received much less attention. On the one hand, to develop these is rightly seen as the task of the bodies which will operate the mechanism.

They will have to adapt their methods to the characteristics of the claims and to the resources that will be available to them. On the other hand, the experience of other claims programmes shows that the procedures and methods used have often been a key factor for the success of the claims and for the time and costs it took to complete a programme.¹⁶ As such, policymakers and negotiators concerned with the success and sustainability of the process might wish to look at how other mechanisms operated in practice to guide them in how much of this they would want to regulate in the peace agreement.

The ultimate authority to decide the claims and award compensation lies with the decision-making body or bodies of a claims mechanism. Their structure, composition and selection therefore received much attention from the creators of the mechanisms and in the constituting documents. Independent of the names given to them, this function is typically performed by one or more independent commissions established specifically for the purpose. Whether one or more commissions are foreseen usually depends on the number of claims anticipated in the programme, but considerations of consistency and economy have sometimes led to only one commission even for a large caseload. Apart from their own efficiency, two additional aspects are key for the results that the decision-making bodies can produce. One is what standards and methods a commission uses for the review and decision of the claims. The other is the type and level of support that the commission receives and accepts from the secretariat. The latter can range from purely clerical assistance to full recommendations by the secretariat for all claims, with the commission only reviewing sample cases and essentially performing a quality-control function.

Although the secretariat's role is crucial for the proper functioning of the programme, it usually receives less attention from policymakers and creators of a claims mechanism. This might be because its role is less visible or because the details of the secretariat's requirements are not easily foreseeable. The functions assigned to secretariats can range from purely administrative to extensive legal and valuation support in the decision-making. In terms of the claims process, all secretariats have been responsible for outreach to the claimants and public information about the programme, the collection and registration of the claims, their formal review, and all communications with the claimants and other parties. Their involvement in the substantive review of

the claims and the decision-making was different in the various programmes. Typically, claims mechanisms have been 'secretariat-heavy', and the larger the caseload and the more standardized the decision-making have been, the bigger the role of the secretariat was. Experience has shown that the secretariat should be left with enough flexibility to tailor its work to the emerging needs of the process.

A secretariat that is fully involved in the claims resolution will perform the full review and verification of all the claims, including the valuation of losses where applicable,¹⁷ and it will make recommendations to the decision-making body on all claims, including drafting the decisions.¹⁸ Such a comprehensive role for the secretariat will mean that the decision-making body will initially focus on rendering precedent-setting decisions containing general principles and criteria, and will later only review sample claims and essentially perform quality control to ensure that the principles and criteria are properly applied. Experience shows that this important secretariat function, and through it the work of the decision-making body, is much facilitated if the claims are well prepared and supporting material such as historic reports, factual and valuation summaries, and electronic data are collected and made available to the process.¹⁹ The preparation of such materials will eventually be to the benefit of all claimants and does not have to await the actual creation of the mechanism.

Another implication of the substantial role typically played by the secretariat is the need for highly professional staff and excellent leadership. Particularly important in this respect will be the qualifications of the person who will head the secretariat of the Palestinian claims programme and how this person will be selected and appointed. Usually, the heads of the secretariats report to the supervisory/policy bodies of the claims mechanism, linking to the third main element of the programme.

Because of the integration of the claims mechanism in the overall implementation mechanism for Palestinian refugees, the policy function for the claims is likely to be performed by the policy body of the overall implementation mechanism. In this case, the general issues to be addressed in the creation of a policy body, such as its membership, appointments, and extent of supervisory and budgetary mandates, will be decided in the larger context of the overall implementation mechanism. In the practice of stand-alone claims mechanisms, the policy functions have ranged from only the initial setting of broad guidelines to

the appointment of the members of the decision-making bodies; continuing provision of policy guidance; operational and financial monitoring; and approval of compensation amounts.

Some examples of the different models of claims mechanisms follow:

Real Property Claims Commission (RPCC) in Iraq:²⁰

- Decentralized mechanism with over 30 independent Judicial Committees throughout the country;²¹
- Central Secretariat with limited support functions;
- Total Secretariat staff approximately 1,300 staff including staff in regional offices;
- Claims submitted on standard claim forms; claims submitted in RPCC office where property located; small number of claims from outside Iraq, submitted through embassies;
- Full review of each claim by a Committee, including hearings and valuations through experts in compensation cases; only clerical support from the Secretariat;
- Full appeals possible through the Appellate Commission;
- Implementation of return decisions through the regular state organs, payment of compensation through the RPCC;
- No specific policy body; limited policy advice from the Head of the Secretariat;
- Duration of process determined by application of Iraqi civil procedure rules and the fact that there is only one Appellate Commission for all appeals.

Property Restitution Programme in Kosovo:²²

- Centralized decision-making through the Kosovo Property Claims Commission (KPCC);
- Central Secretariat with extensive support functions, with approximately 200 staff including in regional offices;
- Claims submitted on standard claim forms; many claims received from claimants residing outside Kosovo, mostly from Serbia, submitted through KPA offices there; subsequent communications with claimants through these offices;
- Verification and credibility assessment of each claim by the Secretariat, including against outside archives and records, with the help of regional offices and mobile teams;
- Database and software application support for claims processing and tracking;

- Decision recommendations by the Secretariat in standardized form for all claims; submission of claims in batches for Commission sessions;
- Full review of all contested claims by the Commission; sample review of uncontested claims;
- Individual Commission decisions for complex contested claims; cover decisions for batches of uncontested claims;
- Possibility of appeals to Special Chamber of Kosovo Supreme Court;
- Consistency in jurisprudence through one Commission;
- Efficiency of mechanism through standardized processes and extensive Secretariat support, including information technology (IT);
- Implementation of decisions through Kosovo Property Agency;
- No specific policy body; policy setting through Commission itself;
- Continued supervision and funding through international community.

Commission for Real Property Claims of Displaced Persons and Refugees (CRPC) in Bosnia and Herzegovina:²³

- Centralized decision-making through the CRPC;
- Central Secretariat with extensive support functions, with approximately 400 staff including staff in regional offices;
- Claims submitted on standard claim forms; many claims received from claimants residing at the time in other countries; in some countries submitted through CRPC offices there, otherwise through mail;
- Verification and credibility assessment of each claim by the Secretariat, including against outside archives and records, with the help of regional offices and mobile teams;
- Database and software application support for claims processing and tracking;
- Decision recommendations by the Secretariat in standardized form for all claims; submission of claims in batches for Commission sessions;
- Extensive sample review by the Commission of all categories of claims;
- Cover decisions of the Commission for batches of all categories of claims;

- Possible to seek reconsideration of a decision by the Commission;
- Consistency in jurisprudence through one Commission;
- Efficiency of mechanism through standardized processes and extensive Secretariat support, including IT;
- Implementation of decisions through domestic authorities;
- No specific policy body; policy setting through Commission itself;
- No specific supervision, but continuing funding through international community.

German Forced Labour Compensation Programme (GFLCP):²⁴

- Centralized decision-making through the Central Secretariat for forced labour claims, and through the Property Claims Commission (PCC) for property loss claims;
- Central Secretariat with extensive support functions, with approximately 180 staff including in IOM missions in other countries;
- Claims submitted on standard claim forms; claims submitted through IOM missions in 60 countries, otherwise through mail;
- Verification of each claim by the Secretariat, including against outside archives and records; grouping of claims according to factual and evidentiary patterns; use of presumptions based on patterns and historic information; credibility assessments;
- Database and software application support for processing and review of claims, generation of decisions and payment;
- For all forced labour claims, decisions made by Secretariat; appeals against forced labour decisions of the Secretariat to an independent Appeals Body;
- For all property loss claims, decision recommendations prepared by the Secretariat in standardized form, submitted in batches to Property Claims Commission sessions; sample review by the Commission of all categories of property loss claims; individual Commission decisions for all property loss claims; possible to seek reconsideration of a decision by the Commission;
- Consistency in jurisprudence through Central Secretariat and one Commission;

- Efficiency of mechanism through standardized processes and extensive Secretariat support, including IT;
- Payment of compensation through Secretariat;
- Continued supervision and policy guidance through supervisory bodies of German Foundation.

United Nations Compensation Commission (UNCC):²⁵

- Centralized decision-making through 19 Panels of Commissioners, each for a different category of claims;
- Central Secretariat with approximately 240 staff, providing extensive legal, valuation and administrative support; functionally independent, administratively 'embedded' in United Nations Office in Geneva;
- Claims submitted on standard claim forms, in 'large' claims supplemented with extensive filings; claims forwarded to Central Secretariat by governments on behalf of their nationals;
- For 'humanitarian' claims for fixed or small individual amounts, verification by the Secretariat through electronic matching against outside records, grouping of claims according to factual and evidentiary patterns, statistical regression analysis, and use of presumptions based on patterns and circumstantial information;
- For 'large' claims for larger individual amounts, verification by the Secretariat through individual review, according to standard criteria and valuation protocols, where necessary with assistance from outside valuation experts; in very large claims with further exchange of documents and exceptionally a hearing;
- Extensive database and software application support for processing, review, verification and valuation of claims, generation of decisions and payments;
- For 'humanitarian' claims: recommendations by the Secretariat with draft cover decisions for the Commissioner Panels and verified lists for all claims; sample review by the Commissioner Panels of a limited number of claims;
- For 'large' claims: recommendations by the Secretariat with a draft decision for each claim for the Commissioner Panel; review of the claim by the Commissioner Panel and adoption or amendment of the draft decision;

- No appeals possible; correction of clerical and computational errors;
- Consistency in jurisprudence through Central Secretariat and conferences of Panel Chairpersons;
- Efficiency of mechanism through standard criteria and protocols, and extensive Secretariat and outside expert support, including IT;
- Payment of compensation through Secretariat;
- Policy guidance, and approval of compensation amounts and budgets, through Governing Council;
- Audits through the UN Office of Internal Oversight Services.

STANDARD OF PROOF AND ADMINISTRATION OF EVIDENCE

This section discusses the standard of proof and, more generally, the administration of evidence in large-scale claims programmes. At first sight, this topic may seem too technical to be of concern for policymakers and negotiators. The practice of past claims programmes has shown that the nature of the evidentiary rules of a programme inevitably impacts upon the accuracy of the decisions taken and as such on the sustainability and ultimate success of the claims programme. Therefore, a number of questions should be considered before the programme is established, so that the legal framework and procedural rules can be tailored to the circumstances on the ground and the specific needs of future claimants.

All claims mechanisms face the challenge of an efficient and fair administration of evidence when reviewing and deciding a claim by a potential beneficiary. Two types of evidence have to be distinguished. First, the information and documentation that is submitted by claimants in support of their claim, for example birth certificates, marriage and death certificates, property deeds, and so on. Second, verification data, such as official cadastral and other records and archives that are used to verify information provided by a claimant or to confirm facts that are a requirement for the claimant's eligibility.

Claims programmes that addressed losses and violations following a conflict or crisis as well as those that dealt with events dating back a long time, had to be sensitive to the evidentiary difficulties claimants faced due to the destruction, loss or inaccessibility of personal as well as public records and documents.

The most important measure to facilitate the claimant's task of proving a claim under such circumstances has been the adoption of relaxed standards of proof. This was done in all Holocaust-related claims programmes in recognition of the devastation caused by the Second World War and the long time that had passed before the establishment of the claims programme. According to these relaxed standards of proof and in the absence of evidentiary information indicating otherwise, it was sufficient for a claimant to show that it was plausible or credible in light of all the circumstances that he or she was entitled to the claimed benefit.²⁶

Other programmes, such as the United Nations Compensation Commission, applied not one, but a system of evidentiary standards, which varied according to the different categories of claims: the higher the loss and compensation sum claimed, the stricter the standards of proof that were applied to substantiate a claim and show the claimant's entitlement.²⁷ Similarly, the German Forced Labour Compensation Programme applied a lower standard of evidence for benefits of fixed smaller amounts, and a higher standard for the compensation of property losses. Other examples of different levels of evidence required can be found in the Property Restitution Programme in Kosovo, where a lower standard is used for claims for repossession of property before the HPCC, while a higher standard is applied when the claim is for confirmation of ownership of real property before the KPCC.

Given the diverse living conditions of Palestinian refugees today and the different fates families have suffered over the past decades, the extent to which claimants will be able to support their claims with documentation will differ significantly. In light of this, a future claims mechanism will have to decide whether to relax the evidentiary requirements in order to facilitate the task of proving a claim for potential beneficiaries. For this decision, the type and quality of evidence that is available to Palestinian refugees today will dictate the standard of proof that can be applied, bearing in mind that the standard should ensure accessibility for all entitled beneficiaries, in particular the neediest claimants, and at the same time protect the process against fraudulent claims.²⁸

In addition, the claims mechanism itself might be tasked to participate actively in the gathering of evidence. The secretariats of most claims processes have gathered evidence in addition to what was provided in the claim through specific requests for further information from claimants, historical research and consultations of external repositories. However, it should be noted that the

extent to which secretariat staff has been engaged largely depends on the number of claims received by the programme. The greater the caseload is, the greater is the need for a standardized and streamlined process, which does not allow for the investigation of facts on an individual claims level.²⁹

In the Palestinian refugee context, the secretariat of a future claims mechanism will likely establish cooperation with holders of relevant information repositories, such as the UNCCP and UNRWA records in order to verify claimant information regarding property rights and refugee status.³⁰ In addition to this, it will also need to be considered to what extent the decision-making organs will be granted powers to conduct additional factual and legal inquiries in order to supplement the information provided in the claim.³¹

Furthermore, the mechanism might apply presumptions that are developed by or on behalf of the programme. The use of presumptions has been a powerful tool for past claims mechanisms to fill gaps in the evidence provided by claimants, in particular in cases where claimants had to establish a causal link between their loss and certain events or actions.³² Presumptions can be developed by piecing together information received from individual claims and/or from historical research conducted by or on behalf of the programme.

INHERITANCE QUESTIONS

An area of implementation that is usually not thought about much or is highly underestimated at the pre-implementation stage is the area of inheritance rights or, in other words, of determining the legal successors of beneficiaries who passed away before they had an opportunity to claim or to receive the benefits of a reparation programme.

The complexity of inheritance issues largely depends on two factors: first, the timing of the programme, that is, the period of time that has passed between the circumstances giving rise to the claims and the claims programme's implementation; and, second, whether the programme is set in an international context and thus faced with claims from claimants who reside in different countries with different legal systems.³³

In the Palestinian refugee context, both factors are likely to lead to very complex legal questions and practical challenges. Due to the long time that has passed since the beginning of the conflict

and initial displacements, very few of the original owners will still be alive to claim the benefits in a future reparation process. Rather, it is to be expected that the majority of beneficiaries of a restitution and/or compensation mechanism will consist of the children and/or grandchildren of the original owners. This will not only result in a multiplication of potential beneficiaries and thus claims to be processed by the mechanism, but will also require the determination of the rightful heirs of the original owners which could involve a complex examination of inheritance laws involving up to three or four generations.

Additionally, complexity will be added by the international context of a claims programme for Palestinian refugees. Palestinian refugees are dispersed all over the world where their living conditions and the level of their assimilation and integration differ distinctly. As a result, many different legal systems apply to questions that are commonly of relevance for the determination of inheritance rights, such as the determination of a person's marital status or of the legal status of biological and adopted children as well as children born out of wedlock.

Experience in other programmes has shown that the determination in each individual case as to which inheritance laws should apply and who would qualify as an heir under these respective laws adds considerable complexity to the claims resolution process and with it increases the processing time and costs. The legal framework for the Swiss Claims Resolution Tribunal (CRT) for Dormant Accounts, for example, provided for determination of inheritance issues based on the national inheritance laws applicable to the case according to the principles of international private law. This required first a determination as to which national legal regime should apply to the case. Once this had been identified, it then had to be applied to the facts of the case in order to determine the rightful heirs. This approach proved to be extremely time-consuming and often required the help of external experts with language skills to research the relevant domestic laws. If all claims are to be resolved in a reasonable time-frame, such an approach is thus only feasible in programmes with low numbers of claims.³⁴

In order to avoid time-consuming and costly legal determinations, claims programmes that faced larger numbers of claims, such as the German Forced Labour Compensation Programme, developed standardized inheritance rules that were applied to all claims.³⁵ These rules defined who was considered an eligible heir for

purposes of filing a claim and of receiving compensation under the programme.

In the Palestinian refugee context, such standardized inheritance rules for the claims mechanism would mean that the rights of inheritance of, for instance, third generation Canadian citizens (with a Palestinian refugee background) would be determined according to the same rules as those of a Palestinian family who has been living as refugees in a camp in Lebanon since the family's displacement and who is still very much adhering to traditional Palestinian customs and rules. Given the different levels of assimilation and integration into host country societies of Palestinian refugees, the development of appropriate and acceptable inheritance rules will be a challenge. However, in light of the large number of claimants to be expected from all over the world, the development of standardized inheritance rules would seem advisable and could be researched and prepared ahead of the establishment of a claims mechanism to allow for a more efficient resolution of all claims in an acceptable time-frame.

The experience of other claims programmes that successfully applied standardized inheritance rules have further shown that the need for and benefits of a self-contained regime of inheritance rules will have to be explained carefully to the claimant communities to ensure that the process is perceived as transparent and fair. This is particularly true if a mechanism's rules might differ distinctly from the national laws known to many of the applicants and as such lead to different results.

On a technical level, the creation and use of a database system that will allow for the capturing and management of relevant heirs' data will be paramount in the Palestinian refugee context. In particular, the functionality of identifying and grouping together various family members that might live in different countries, might not know about each other, and have filed claims separately will be essential. This is mainly to be able to determine early on in the process whether claims received with respect to a certain property are 'competing claims' by different families or family members disputing the rights of other claimants, or whether they are 'complementary claims' by different members of the same family going back to the same original owner and each concerning a share of the property. If feasible, 'complementary claims' should be consolidated into one single claim in order to streamline the procedure. It is thus essential that considerations about the

determination of inheritance rights and issues are included at the very early stages of a programme's implementation.

While considerable research has been carried out to examine the original property records with an aim of compiling a list of the original owners of Palestinian properties, little is known about the situation of today's heirs to these properties. How many heirs to a property would a reparation process face on average? Where are the potential heirs currently located? Are members of the same family dispersed over different countries? Do they know of each other and would they be able to coordinate their claims? Looking at these and other questions by examining some test data would seem advisable in order to advance the preparations and discussions with regard to the development of appropriate inheritance rules for a reparation process for the Palestinian refugees.

GENDER: A CROSS-CUTTING THEME

For a reparation process to be sustainable, it is important to ensure its adherence to established principles and guidelines of international law. Reparation claims programmes today have a firm basis in international law. Reparations for victims in the form of restitution, compensation, rehabilitation, satisfaction or guarantees of non-repetition are called for in many international treaties, and more recently have been elaborated in declarative instruments, notably the Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights and Serious Violations of International Humanitarian Law³⁶ and the Principles on Housing and Property Restitution for Refugees and Displaced Persons.³⁷

At the same time, it is worth noting that a claims mechanism redressing violations of rights suffered by Palestinian refugees dating back to or occurring over the past six decades needs to take into account the developments in international law over the past 60 years, in particular in the area of women's rights.³⁸ Reparations have a strong impact on women and the need for a future claims mechanism for Palestinian refugees to be gender-sensitive is one of the overriding concerns that should be given special attention at every stage of the planning and implementation. In this regard, it will be of particular importance to secure the participation of female members of the Palestinian refugee community in the design process of a future claims mechanism.³⁹

Gender sensitive definition of the type of losses and violations that will be addressed by the claims mechanism

Gender aspects need to be considered when defining the type of losses and violations that will be addressed by the claims mechanism in order to ensure that the claims mechanism adequately addresses the needs of women.⁴⁰ This could become particularly relevant in case the claims mechanism was to provide compensation for refugeehood. Questions to be looked at are: Is there a gender specific dimension to refugeehood? Did women experience refugeehood and life in refugee camps differently, that is, were they exposed to additional or different harms than male refugees? How can these specific harms be addressed so that the claims mechanism is not limited to the understanding of harms to the community or their male members only?

Gender sensitive definition of the reparations benefits and beneficiaries

From a gender perspective, the restitution of land rights always requires careful consideration to avoid negative, disparate impacts on women who as a matter of law or fact are underrepresented among land and wealth owners. In the Palestinian context, to the extent that restitution will be an element of the comprehensive solution for Palestinian refugees, it will need to be analysed: how discriminatory practices stemming from law, custom and religion can be overcome, adequately taking into account the developments in the area of international women's rights.

In the context of compensation schemes, a gender-critical analysis of the parameters used to assess material and non-material harms (such as loss of income, lost opportunities, resulting disabilities, and so on) should be conducted. It should be noted that these parameters often assume a definition of what would otherwise have been a normal or functional life without the harm, a definition that is not necessarily gender neutral. For example, regarding compensation for loss of opportunities (such as educational opportunities which the victims otherwise would have enjoyed), attention needs to be paid to the fact that such opportunities are not necessarily equally distributed among the sexes.

Furthermore, it should be examined which forms of economic compensation are most favourable for women, taking into account that some of these forms may be more socially divisive than others and that women may be especially affected by certain forms of social pressure. In concrete terms, before deciding about a type of

benefit, the pros and cons should be examined for each type from a gender perspective. Are there reasons to favour in-kind benefits such as training opportunities that enhance women's economic self-reliance over financial payments? Should lump sum cash payments be favoured over a pension system, given that relying on the male breadwinner model, pensions are often distributed in percentages to widows, parents and children of the victims?

Regarding the definition of eligible beneficiaries, the way the family is defined might be controversial especially if it is too formalistic and thus insufficiently reflects network support systems. How family members are prioritized in case the victim has died needs to be checked carefully from a gender point of view to ensure that the inheritance paradigm that is followed does not discriminate against female family members.

Finally, collective reparation measures that redress material and cultural harm done to a specific community or people deserve special gender consideration, particularly if the collective reparation might entail the perpetuation of traditional exclusions of women from land holding, or from the recognition of the harm they may have suffered as individuals.

Gender sensitive implementation of reparations programmes

During the implementation phase, in particular the collection or registration of claims, consideration must be given to the procedural aspects of the process to ensure equal access for women. Equal access for women cannot necessarily be achieved through equal treatment only, but might require special measures. These special measures might affect the set-up and opening hours of registration offices, the use of information channels accessible to women, and the rules of confidentiality applied. It might also affect the evidentiary standards applied as well as the choice of the types of documentation that claimants need to or can submit in support of their claims.

Similarly, the procedures used or relied upon to distribute reparations need to take into account that women might still lack economic skills, bank accounts and official documents that may become essential to access economic reparations.

CLOSURE

An important aspect of a sustainable and successful claims process for the Palestinian refugees will be the extent of closure that the

process will bring to all parties, that is, the Palestinian refugees, the Palestinian people, Israel and international stakeholders.

In this regard, two aspects of closure need to be distinguished. There is on the one hand the aspect of bringing 'peace of mind' to the Palestinian refugees, that is, ensuring that they feel that their past suffering has been recognized and acknowledged. Obviously, this aspect of closure cannot be achieved by the claims mechanism alone. Rather, it depends on the entire package provided through the implementation mechanism as part of a comprehensive solution for the Palestinian refugees, as well as the provisions of the peace agreement in general.

Nevertheless, the claims mechanism will play a vital role in bringing a sense of peace to the Palestinian refugees and it will be important to adequately prepare and resource the claims mechanism for these tasks. While it is not possible in the context of this chapter to discuss these tasks in detail, the following are a few comments to outline the challenges that will need to be met.

The mechanism will need to carefully manage the expectations of the large and diverse Palestinian refugee community. This involves, most of all, a clear and unambiguous message about what the programme does and does not offer, and about who is entitled to receive programme benefits. Furthermore, it involves continuous information about the progress of the programme and transparency about the process through regular reporting to the public, policymakers, and supporters of the process such as donors, civil society organizations, and so on. The mechanism itself will need to be staffed adequately to meet these challenges, for example with trained hotline staff answering questions and concerns, and with professional communications and public information specialists who maintain the contact with the public.

Secondly, the claims mechanism should allow for the participation of Palestinian refugees through the inclusion of civil society organizations/organizations representing the refugees as partners in outreach and to inform about cornerstone decisions concerning the programme parameters. The participation of refugee representatives at an early stage of the design process will be key in ensuring that the Palestinian community will have a sense of ownership of the claims mechanism. It will also help to communicate and explain 'difficult' policy decisions.⁴¹

On the other hand, there is the aspect of legal closure. Legal closure would mean that the Palestinian refugee claims that are addressed by the claims mechanism are resolved in a comprehensive

and final manner and that future legal action regarding these claims is barred. Legal closure will need to be addressed comprehensively in the peace agreement. However, the technical aspects of its implementation will need to be addressed through special measures and procedures by the claims mechanism and other stakeholders. In past programmes, such measures have included the signing of waivers by successful claimants as a precondition for receiving compensation or the termination of parallel litigation in other fora.⁴²

CONCLUSION

Palestinian refugee claims are unique and the mechanism to deal with them will have to take that into account. At the same time, as can be seen from the technical parts of this chapter, lessons can be learned from the practice and experiences of other claims programmes. These lessons may be useful not only for implementers, but also for policymakers and negotiators, as they may guide them in designing and agreeing upon a fair, efficient and sustainable claims mechanism.

NOTES

1. This chapter is part of the International Organization for Migration's cooperation with the International Development Research Centre, and follows a more comprehensive IOM publication on the issue. See Norbert Wühler and Heike Niebergall, *Property Restitution and Compensation, Practices and Experiences of Claims Programmes* (Geneva: IOM, 2008). The opinions expressed in this chapter are those of the authors and not necessarily those of IOM. The authors can be contacted at hniebergall@gmail.com and nwuehler@hotmail.de
2. For the work of others, reference is made, for instance, to the Clinton Parameters, the Geneva Accord, the World Bank papers, the EU Exeter papers, the publications of the Aix Group, the Chatham House Minster Lovell process and IDRC-supported research.
3. For a history of claims programmes, see D. J. Bederman, 'The United Nations Compensation Commission and the Tradition of International Claims Settlement', *New York University Journal of International Law and Politics* 27 (1994), 1. For an overview of more recent programmes, see Pablo de Greiff (ed.), *The Handbook of Reparations* (Oxford: Oxford University Press, 2006); Hans Van Houtte, Bart Delmartino and Iasson Yi, *Post-War Restoration of Property Rights Under International Law, Volume 1: Institutional Features and Substantive Law* (Cambridge: Cambridge University Press, 2008); and Hans Van Houtte and Hans Das, *Post-War Restoration of Property Rights Under International Law, Volume 2: Procedural Aspects* (Cambridge: Cambridge University Press, 2008).

4. For an extensive checklist, see Howard M. Holtzmann and Edda Kristjánsdóttir (eds), *International Mass Claims Processes: Legal and Practical Perspectives* (New York: Oxford University Press, 2007).
5. See Rex Brynen's Chapter 14, in this book.
6. A different, although related question is whether and, if so, to what extent a claims mechanism should be 'embedded' in an existing international organization; different examples of such arrangements are examined in the following section below.
7. For discussion of various proposals and the negotiation positions of the Parties, see contributions to this book: Chapter 3 by Orit Gal, Chapter 2 by Leila Hilal and Chapter 8 by Thierry Senechal and Leila Hilal.
8. A Chatham House workshop in 2009 discussed potential international involvement in the preparations for an implementation mechanism and assistance for negotiations in terms of facilitation versus imposition and anticipating versus reacting.
9. For a more detailed description of these programmes, see Norbert Wühler and Heike Niebergall, *Property Restitution and Compensation: Practices and Experiences of Claims Programmes* (Geneva: International Organization for Migration, 2008), 13–85.
10. A waive of class action lawsuits against Germany and German companies in the United States for financial compensation for slave and forced labourers and certain other victims of National Socialist injustice resulted in the signing of the Agreement between the governments of the United States of America and Germany on 17 July 2000, which foresaw the creation of the German Foundation 'Remembrance, Responsibility and Future'. A German national law, the so-called German Foundation Act, followed which established a programme to make financial compensation available to slave and forced labourers of the National Socialist regime. The International Organization for Migration was chosen as one of seven partner organizations of the Foundation charged with the implementation of this programme. Between 2001 and 2006, IOM processed more than 400,000 claims and paid compensation to over 90,000 slave and forced labourers and 1,656 victims of other personal injury under the programme. For further information, see: www.stiftung-evz.de
11. The Commission for Real Property Claims of Displaced Persons and Refugees (CRPC) was created under Annex VII, Chapter 2 of the General Framework Agreement for Peace, otherwise known as the Dayton Peace agreement. Its mandate was to resolve property issues for refugees and displaced persons who lost their homes during the 1992–1995 conflict between the Army of the Republic of Bosnia and Herzegovina, the Army of the Republica Srpska and the Croatian Council of Defense. The CRPC was operational for approximately eight years from 1996 until the end of 2003. During its period, it collected approximately 240,000 claims and issued 312,000 decisions in total. The programme's website is no longer active.
12. The property restitution programme in Kosovo was established following United Nations Security Council Resolution 1244 (1999) of 10 June 1999, which gave the Special Representative of the Secretary General in Kosovo (SRSG) the authority to establish institutions responsible for the restitution of residential property that had been lost during or as a result of the armed conflict that occurred between 27 February 1998 and 20

June 1999. The SRSG acted upon this authority with UNMIK Regulation 1999/23 establishing the Housing and Property Directorate (HPD) and the Housing and Property Claims Commission (HPCC). The HPD/HPCC was operational from November 1999 until March 2006. During this period, it collected and resolved approximately 29,000 claims for repossession of residential property.

Following UNMIK Regulation 2006/10, on 6 March 2006 the staff and assets of the HPD were subsumed by the newly established Kosovo Property Agency (KPA), which assumed responsibility for the implementation of all claims that were still pending before the HPD at that time. The Regulation also established the Kosovo Property Claims Commission (KPCC). The KPCC's mandate is to resolve claims resulting from the 1998–1999 conflict in respect of ownership over private immovable property, including agricultural, residential and commercial property. The KPA has received approximately 42,000 claims. Almost three-quarters of these have been decided by the KPCC to date. See: www.kpaonline.org

13. Since Kosovo's declaration of independence in 2008, the UNMIK regulation has been incorporated into Kosovo law.
14. The United Nations Compensation Commission (UNCC) was created in 1991 as a subsidiary organ of the United Nations Security Council. Its mandate was to process claims and pay compensation for losses and damage suffered as a direct result of Iraq's unlawful invasion and occupation of Kuwait in 1990/91. The UNCC has been the largest international claims programme to date. It resolved over 2.6 million claims submitted through 96 governments. The UNCC was set up for a limited time period and has completed the processing of claims and the payment of awards. It is now finalizing a number of residual tasks, such as archiving its records and monitoring the use of funds awarded for environmental loss and damage. For further details, see: www.uncc.ch
15. For a recent overview of the different roles that the international community has played in the establishment and implementation of claims and reparation programmes, see Heike Niebergall and Norbert Wühler, *International Support for Reparation Processes and the Palestinian Refugee Issue*, Chatham House Middle East and North Africa Programme Paper MENA PP 2012/02.
16. For detailed descriptions of a number of claims processes, see Holtzmann and Kristjánsdóttir.
17. Questions of valuation, which will be particularly important in the context of a claims mechanism for Palestinian refugees, are discussed in this book by Atif Kubursi. As pointed out, one aspect could have a particular bearing on the valuation and calculation of the compensation for Palestinian refugees, that is, whether the funds for compensation will be finite or whether the claims mechanism will have an open-ended fund that will be replenished in function of the amounts awarded. The first scenario would point to the application of standardized values to similarly situated claims including pro-rata reductions of the awards at the end. This approach was taken in the German Property Loss Programme. The second scenario would allow more involved valuations. In this context, it has been proposed to make an assessment of the aggregate value of the refugee property losses at the beginning of the claims process to assist the decision-making body in its valuation tasks.
18. The 'mass claims techniques' that have been developed in recent programmes have made extensive use of information technology to process and verify

large numbers of claims. One method that has proven particularly powerful is computerized data matching, whereby information in the claims is compared electronically with that in outside data repositories, such as cadastres or other archives. This matching assists in the verification of large numbers of claims within a reasonable time and in a way that balances the individual justice interests of each claimant with the need to provide justice for all. See for example Veijo Heiskanen, 'New Uses of Information Technology', in Permanent Court of Arbitration (ed.), *Redressing Injustices Through Mass Claims Processes* (Oxford: Oxford University Press, 2006), 27.

19. For data on Palestinian properties and in particular the UNCCP records, see Chapters 5 and 13 by Michael Fischbach and Chapter 6 by Roby Nathanson and Hagar Tzameret-Kertcher in this book.
20. A reparations programme was set up in Iraq after the fall of the Saddam Hussein regime following the 2002/2003 Iraq War to deal with the consequences of the forced displacement and expropriation policies of the Ba'athist regime. Initially, a commission was established by the Coalition Provisional Authority. The programme was restructured twice, based on a national law, and in 2010 the commission was renamed the Real Property Claims Commission (RPCC). The RPCC has jurisdiction over claims regarding properties that were confiscated and seized since the late 1960s for political, ethnic, religious or sectarian reasons, or that were expropriated without proper consideration. The principal remedy is restitution of the property; in certain cases, compensation can be awarded. Since the start of its operations in 2004, the RPCC has decided 60,000 out of 160,000 claims, but more than 20,000 appeals are pending.
21. The decentralized nature and large number of the decision-making bodies have created challenges in ensuring consistency of jurisprudence and as such equal treatment of all claimants.
22. For background information on this programme, see note 12.
23. For background information on this programme, see note 11.
24. For background information on this programme, see note 10.
25. For background information on this programme, see note 14.
26. See Article 22 of the Rules of Procedure for the Claims Resolution Tribunal for Dormant Accounts or International Commission on Holocaust Era Insurance Claims (ICHEIC), Relaxed Standard of Proof Guide, Rule A1, at: www.icheic.org/docs-documents.html; See also Article 11(2) of the German Foundation Act, at: www.stiftung-evz.de.
27. Norbert Wühler, 'The United Nations Compensation Commission', in Albrecht Randelzhofer and Christian Tomuschat (eds), *State Responsibility and the Individual: Reparation in Instances of Grave Violations of Human Rights* (The Hague: Martinus Nijhoff, 1999), 213.
28. The valuation of Palestinian refugee claims raises particular evidentiary issues. For details on valuation, see Chapter 9 by Atif Kubursi in this book.
29. Heike Niebergall, 'Overcoming Evidentiary Weaknesses in Reparation Claims Programmes', in Carla Ferstman, Mariana Goetz and Alan Stephens (eds), *Reparations for Victims of Genocide, War Crimes and Crimes against Humanity* (Leiden: Martinus Nijhoff, 2009), 153–54.
30. See note 17 on IT support and data matching.
31. See, for example, Article 17 of the Rules of Procedures for the Claims Resolution Tribunal for Dormant Accounts in Switzerland, which granted

broad powers to the decision-making organs to 'conduct on their own such factual and legal inquiries as may appear necessary to assess as comprehensively as possible all submitted claims.' Section 11 (2) of the Federal Foundation Act instructed the claims mechanism under the German Foundation to look for evidence to verify the claims, and if no evidence was available, to determine if the claim could be approved on the basis of credibility.

32. Niebergall, 160.
33. Wühler and Niebergall, 103.
34. The CRT received and resolved 9,918 claims within three and a half years (January 1998 to September 2001). In contrast to this, for example, the German Forced Labour Compensation Programmes at IOM processed over 400,000 compensation claims during its operations from August 2000 to December 2006.
35. Wühler and Niebergall, 110.
36. UN Doc A/RES/60/147. See Article IX, para. 16 which clarifies that a reparation programme does not always imply a legal responsibility of the state who sets up the programme: 'States should endeavor to establish national programmes for reparation and other assistance to victims in the event that the parties liable for the harm suffered are unable or unwilling to meet their obligations.'
37. UN Doc E/CN.4/Sub.2/2005/17.
38. See Office of the United Nations High Commissioner for Human Rights (OHCHR) *Rule-of-Law Tools for Post-Conflict States: Reparation Programmes* (Geneva: OHCHR, 2008).
39. See the Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation, at: www.womensrightscoalition.org/site/reparation. See also the UN Security Council resolutions on Women and Peace and Security, S/Res/1325 (2000) and S/Res/1820 (2008).
40. See for example, the ECOSOC statement of 10 July 2010 expressing grave concerns over difficulties faced by Palestinian women and girls under occupation, at: www.peacewomen.org/portal_resources_resource.php?id=720 (accessed 20 October 2012).
41. The German Forced Labour Compensation Programme established a Steering Committee of Most Affected Victims Associations to ensure the participation of victims in the process.
42. Both measures were applied for instance in the German Forced Labour Compensation Programme.

Gender Dimensions of Redress for the Palestinian Refugees

Megan Bradley

Refugees' claims for restitution, compensation and other forms of reparations have, in recent years, received increasing attention from researchers, policymakers and practitioners working in conflict and post-conflict environments.¹ In countries from Bosnia and Tajikistan to Guatemala and Iraq, significant reparations programmes have been rolled out in an attempt to address displaced persons' justice claims, particularly as they relate to the loss of homes and lands. However, the gender dimensions and implications of reparations programmes for displaced persons have rarely been examined in detail.² As efforts to redress refugees develop, it will be essential to give this issue greater consideration, as the extent to which redress programmes adequately address gender concerns will directly affect the extent to which they are successful in promoting justice and resolving displacement.

Any major initiative to provide redress to the Palestinian refugees in the context of a comprehensive solution to the Palestinian–Israeli conflict will be shaped by gendered power relations, and will likely have significant implications for gender equity in Palestinian society. Yet in debates on compensation and other possible remedies for the Palestinian refugees, the gender aspects of this issue have often been overlooked. This chapter contends that the architects of any reparations programmes involving the Palestinian refugees need to give careful thought in advance to the gender issues at stake, particularly in order to ensure that Palestinian refugee women are treated equitably. This entails facilitating the active participation of Palestinian refugee women in all phases of the reparations process, with a view to ensuring that their property claims are recognized and that reparations processes also look beyond land claims to take refugee women's diverse needs and experiences into full account. As a preliminary contribution to this process, this chapter will first

give a brief overview of some of the concerns that a gender analysis of the Palestinian refugees' claims brings into focus. It will then examine relevant international standards on gender, redress and displacement, and will explore the insights gained from reparations programmes involving displaced populations in other contexts. This analysis will focus on key challenges including facilitating the equal participation of women and men in redress processes; ensuring that gender-based crimes and other issues of particular concern to women are addressed in reparations processes; and calibrating reparations mechanisms so that their potential benefits are maximized for both refugee women and men.

Before proceeding, a few words are needed on the scope of this analysis, and the definitions underpinning it. As Ruth Rubio-Marín points out, 'gender' does not just mean biological sex, or paying attention to women and girls. Socially constructed notions of masculinity shape the commission and experience of abuses, and ignoring this reality hinders efforts to understand and redress violations suffered by men.

However, given present conditions, concerns about gender and gender sensitivity in this and most other contexts in which justice issues arise refer to the disparities and inequities in access, power, opportunities, and rights experienced by women across a wide spectrum of spheres.³

This chapter involves a strong focus on the gender dimensions of efforts to redress Palestinian refugees for the loss of their homes and lands in 1948, with the assumption that compensation is the remedy most likely to be applied to redress this dispossession. However, the Palestinian refugees suffered a much broader range of grievances, the resolution of which may require the integrated application of various reparations mechanisms, such as apologies, truth-telling initiatives and commemorations. In this chapter, the terms 'redress' and 'reparations' are used interchangeably to refer to the different tools or mechanisms that may be applied in an effort to account for past violations of human rights.⁴

GENDER DIMENSIONS OF PALESTINIAN REFUGEE CLAIMS: AN ALL-TOO-BRIEF INTRODUCTION

The gendered nature of the Palestinian refugees' dispossession and life in exile has been analysed in detail by a wide range of

scholars.⁵ Given the great diversity of experiences and perspectives among Palestinian refugee women, it is difficult to accurately generalize about their claims and concerns. However, it is important to highlight some of the key considerations facing Palestinian refugee women that have often been overshadowed in discussions to date on how to account for the injustice of the Palestinians' displacement.

Academic discussions and political negotiations on Palestinian refugees' claims have tended to focus on the loss of land and property in 1948, but have rarely considered refugee women's particular stake in these losses. Palestinian women were directly and deeply affected by the loss of their families' lands. In addition to personal and family ties to their homes and properties, most Palestinian refugee women came from peasant (*fellaheen*) families, and were dependent on access to the land for their livelihoods. However, due to the patriarchal and class-based nature of the predominant land tenure system in Mandate Palestine, some two-thirds of refugees were legally landless when uprooted in 1948, and only a tiny minority of women had any formal land ownership rights.⁶ Consequently, if restitution or compensation programmes are based on legal title, Palestinian refugee women will be almost completely excluded as direct beneficiaries. Even if a reparations programme accepts claims based on families' residency on the land rather than possession of formal title, women risk being marginalized as inheritance practices favour male heirs. As an alternative to providing compensation on the basis of individually held legal title or family claims, compensation expert Salman Abu-Sitta has argued that the village or *hamula* (clan) is the 'best unit of Palestinian society, on which the whole compensation system might be established.'⁷ While the *hamula* was at the heart of Palestinian agrarian society, this would also be a 'problematic' foundation for the distribution of compensation, as 'the village/*Hamula* system was a hierarchical system based on gender, age and class differentiation.'⁸ While the strategy of transferring women's shares of inherited lands to *hamula* heads avoided the extensive parcelization of territory in pre-1948 Palestine, reliance on this system could undercut the claims and socio-economic status of Palestinian refugee women.⁹

While the loss of their families' homes and lands was and is of pivotal importance to Palestinian refugee women, 'scenarios for compensation built around property and material conditions alone overlook the Palestinian women refugees' experience[s].'¹⁰

Beyond the loss of land, exile has entailed particular hardships and abuses for Palestinian refugee women that merit inclusion in a comprehensive redress programme. Widespread dispossession upended the Palestinian economy and family structures as many men who were unable to continue their previous livelihoods sought work in Israel and the Gulf countries, leaving women – who had themselves also lost valuable educational and labour opportunities – to take on the role of heads-of-households.¹¹ This resulted in what Abdo terms the ‘feminization of poverty’, as ‘Women were often left alone to attend to the family, assuming the roles of providers for children, the sick and the elderly, socializers and social and cultural reproducers.’¹² Casting Palestinian refugee women as:

reproducers and transmitters of the old culture...strengthened Palestinian national identity and opened further spaces for male public/political participation. Yet, at the same time, it has led to the further marginalization of refugee women as it has prioritized national concerns over gender rights, pushing women further away from the public productive sphere and into the domestic realm.¹³

In addition to refugee women’s property losses and the gendered implications of refugeehood, reparations mechanisms may be used to address Palestinian refugee women’s exposure to sexual and gender-based violence. In recent years, reparations advocates around the world have lobbied to ensure that transitional justice initiatives acknowledge and address legacies of sexual and gender-based violence.¹⁴ Calls for reparations for rape and other gender-based crimes have not figured centrally in discussions of redress for the Palestinian refugees, potentially due to the shame and stigma that typically accompanies such violations, and the assumption in some quarters that sexual and gender-based violence was not a significant part of refugees’ experiences. However, Israeli historian Benny Morris confirms that there were at least a dozen recorded cases of rape of Palestinian women and girls by Israeli forces, and suggests that ‘Because neither the victims nor the rapists liked to report these events, we have to assume that the dozen cases of rape that were reported, which I found, are not the whole story. They are just the tip of the iceberg.’¹⁵ The UN Mediator Ralphe Bunche raised concerns regarding the attempted rape of Palestinian women, and the fear that Palestinian

women would be rendered 'sexually impure' and their families dishonoured is well documented as a major reason for the refugees taking flight.¹⁶ Indeed, some accounts suggest that the fear of dishonour due to rape was purposefully manipulated to encourage refugees to flee.¹⁷ While this is difficult to verify, it is clear that for many refugee women, particularly those in Lebanon, displacement increased their exposure to rape and other forms of sexual and gender-based violence. For example, Julie Peteet writes that during the 1975–1976 Lebanese civil war, the

eight-month siege and August 1976 fall of Tal al Za'ter camp is the prime example of attacks on women undertaken in an effort to cause population shifts. This was a concerted campaign to assault women in order to ensure a Palestinian (and Muslim) flight from East Beirut, as well as to humiliate and make tangible their increasing vulnerability. Such a policy reached its apogee in the 1982 Sabra–Shatila massacres where women and children were specific targets of rape, atrocities and murder.¹⁸

Responsibility for Palestinian refugee women's exposure to these crimes in 1948 and afterwards rests with a range of actors, and it is unclear that financial compensation would be the most appropriate remedy for these violations. Indeed, even among survivors of these crimes, there may be significant resistance to public acknowledgement of them. However, it is clear that if the aim of a reparations programme is to comprehensively acknowledge and address the injustices of the past, these violations cannot be left entirely in the shadows.

Despite the clear gender dimensions of Palestinian refugees' justice claims, critics of a gender-sensitive approach might argue that while the subjugation of Palestinian women is a problem, it is not the problem at stake in the reparations process, which should focus exclusively on Israel's responsibility for the expulsion of the Palestinians in 1948, and their continued dispossession. The 'engendered' approach to compensation advanced by scholars such as Abdo would involve 'not only reduc[ing] existing gender inequalities among Palestinian refugees, but also [ensuring] a more visible role for Palestinian women in the compensation process.'¹⁹ This would entail moving beyond a strict focus on Israeli responsibility for the refugees' dispossession to consider the broader, intersecting sources of oppression and injustice encountered by Palestinian refugee women. Why would such an

engendered approach be appropriate? Does it risk making the reparations process unwieldy and overly volatile? Ultimately, claimants in reparations processes have a range of different and overlapping identities – as Palestinians, as refugees, as women – that cannot be separated out from one another, and which therefore need to be addressed in an integrated manner. This is not to say that each redress mechanism needs to speak to each of the many injustices that have characterized the Israeli–Palestinian conflict, but that past experience suggests that an effective transitional justice process in the region would have to draw on a range of remedial tools to recognize and address the links between different types of abuses, victims and offenders. It is through such a complex and comprehensive approach that the concerns of women claimants may be best addressed.²⁰ As Benson argues, ‘paying attention to the workings of gender oppression...is necessary for a full understanding of many of the harms at the centre of the reparations debate.’²¹ While Benson is concerned with the campaign for redress for the descendents of slaves in the United States, her observations have pointed relevance for the Palestinian case. Incorporating the concerns outlined above (as well as other issues that may be raised by Palestinian refugee women themselves) may increase the messiness and controversial nature of redress initiatives. However, such messiness and controversy may be unavoidable parts of successful redress programmes: ‘attention to gender inequalities in the here and now – in the very context of repair – may be appropriate, if not required, in order to ensure that reparative programmes do not themselves perpetuate further injustices.’²²

INTERNATIONAL STANDARDS ON GENDER AND REDRESS FOR REFUGEES

A range of international standards support the notion that efforts to redress past injustices should be undertaken in an equitable manner, taking into consideration the diverse needs and concerns that may be raised by women, including those who have been displaced. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) provides an important legal foundation for equitable, gender-sensitive reparations programmes. CEDAW Article 15.1 provides that:

1. States Parties shall accord to women equality with men before the law.
2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals...

CEDAW Article 15.4 goes on to indicate that ‘States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile,’ which may also have important implications for Palestinian refugee women, depending on the extent to which options such as restitution and return to homes in Israel figure in a negotiated resolution to the conflict.

The UN Basic Principles and Guidelines on the Right to a Remedy and Reparations for the Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law simply state that the provision of reparations ‘must be...without any discrimination of any kind or on any ground, without exception,’ (Article 25). The Nairobi Declaration on Women’s and Girl’s Right to a Remedy and Reparation was drafted in 2007 by women’s rights advocates and survivors of sexual and gender-based violence, and calls for the active participation of women in redress initiatives, and the inclusion of crimes committed against women, such as rape, in reparations processes. UN Security Council Resolution 1325 on Women, Peace and Security and the UN Office of the High Commissioner for Human Rights (OHCHR) *Rule-of-Law Tools for Post-Conflict States* both emphasize the importance of the active participation of women, a concept that is echoed at various points in the UN Principles on Housing and Property Restitution for Refugees and Displaced Persons (Pinheiro Principles).²³

Adopted in 2005 by experts serving on the UN Sub-Commission on the Promotion and Protection of Human Rights, the Pinheiro Principles are inspired by international human rights, humanitarian and refugee law, and are perhaps the most detailed international standard addressing the remedial rights of displaced women. While the Principles have been critiqued for paying only limited attention to the role of alternative remedies to restitution, such as compensation, they provide helpful guidance on gender-sensitive

approaches to different aspects of the restitution process, insights which may also pertain to compensation efforts. For example, the Principles indicate that ‘States shall ensure that housing, land and property restitution programmes, policies and practices do not disadvantage women and girls. States should adopt positive measures to ensure gender equality in this regard’ (Article 4.3), and point out that:

States should ensure that all aspects of the restitution claims process, including appeals procedures, are just, timely, accessible, free of charge, and are age and gender sensitive. States should adopt positive measures to ensure that women are able to participate on a fully equal basis in this process, (Article 13.2).

Article 14.2 further stresses the importance of women’s participation, underlining that:

States and other involved international and national actors should, in particular, ensure that women, indigenous peoples, racial and ethnic minorities, the elderly, the disabled and children are adequately represented and included in restitution decision-making processes, and have the appropriate means and information to participate effectively. The needs of vulnerable individuals including the elderly, single female heads of households, separated and unaccompanied children, and the disabled should be given particular attention.²⁴

In short, international standards make clear that refugee women should have an equal say in the development and implementation of reparations programmes designed to help redress and resolve their displacement, and that specific crimes committed against women including but not limited to sexual and gender-based violence should be included in major reparations initiatives. However, these often terse international standards do not necessarily translate into clear strategies for tackling some of the most complex and important questions that arise when considering the gender dimensions of reparations programmes involving refugees. For example, how should the architects of reparations programmes navigate opposition to the equitable participation of women? How far should reparations programmes go in trying to improve the status of women, particularly when this is well out of step

with the status quo ante.²⁵ International practice provides insights into these dilemmas, and underlines the challenges associated with attempting to make good on these standards.

REPARATIONS CHALLENGES: INTERNATIONAL EXPERIENCES AND IMPLICATIONS FOR THE PALESTINIAN CASE

In the contemporary context, reparations are typically offered by states in an effort to acknowledge and repair violations suffered by their own citizens. In contrast, efforts to redress the Palestinian refugees may involve some internal process of reckoning and accountability, but will primarily be an effort to build peace based on an expression of responsibility or at least acknowledgement of past injustices from Israel. The following analysis of insights that may be gleaned from efforts to redress other refugee populations in a gender-sensitive manner is tempered by the recognition that this difference may have important implications for the applicability of 'lessons' discussed below.

The challenge of equal participation

Much of the literature on compensation or other forms of redress for the Palestinian refugees assumes that the critical decisions on reparations will be made by high-level negotiators, and implemented by a high-level international or quasi-international ad hoc body. This 'top-down' approach stands in contrast to the calls for the active participation of women in all phases of the redress process in the international standards discussed above. A survey of reparations efforts suggests that despite these provisions, the active involvement of women in the early phases of compensation negotiations remains relatively rare, but that when such participation does take place, it can have beneficial impacts not only on redress initiatives themselves, but also on the political mobilization of women more broadly. For instance, the Constitutional Court of Colombia recently passed a ruling (Auto 092) calling 'for the government to enact a series of measures to ensure, among other things, the right of displaced women to truth, justice and reparations.'²⁶ This has in turn catalysed increased mobilization of displaced women's groups; tightened the links between humanitarian, development and transitional justice interventions on behalf of Colombian IDPs; and prompted new conceptualizations of gender-sensitive approaches to redress.²⁷ In the late 1980s and early 1990s, Guatemalan refugee

women in Mexico were active players in the negotiation of a collective return agreement with the Guatemalan government, which included extensive remedial rights for the refugees such as property restitution, compensation through the provision of alternative lands, and development support. International donors and powerbrokers were particularly keen to support the efforts of refugee women's groups such as *Mama Maquín*, *Madre Tierra* and *Ixmucané*; this strengthened the refugees' hand at the negotiating table, and helped the women to hone new skills as community leaders, spokespersons and negotiators. Many refugee men were keen backers of women's mobilization efforts in Mexico, because they supported the over-arching goal of a collective return. However, upon return many women were pressured to revert to more traditional roles, eschewing the skills they developed in the struggle for repatriation and redress.²⁸

Palestinian refugee women already have a long history of political mobilization. Experiences in Colombia and Guatemala suggest that the negotiation of reparations could be a valuable opportunity to further advance Palestinian refugee women's organizing, while at the same time improving the scope and content of a reparations package for refugees. Abdo suggests that Palestinian refugee women may serve as:

gender experts, resource people, gender consultants and as overall observers to guarantee a gender equitable approach... Representation can be drawn from the women's movement, NGOs working on peace and women's and human rights issues, academics, refugee camp dwellers and researchers with gender-based analysis backgrounds.²⁹

However, it is important not to idealize the participation of women as a panacea for the complexities of the reparations process. Even with active participation of women in initial reparations negotiations, and in the implementation and evaluation of an agreement on redress, this may well be a highly fraught endeavour. While the participation of women does not guarantee smooth sailing, OHCHR stresses that their early involvement 'might be crucial if decisions about criteria of access (including, importantly, application deadlines and evidentiary thresholds) are to be taken in ways that increase the likelihood that women will be appropriately served by an eventual programme.'³⁰ The active involvement of women is also essential to ensuring that the types

of crimes being redressed reflect their experiences and priorities, as will be discussed below.

A particularly delicate issue is the extent to which Israel and international supporters of the reparations process have a responsibility to enable or ensure the equitable participation of Palestinian refugee women in the negotiation, implementation and evaluation of reparations. Since Israel will presumably finance the bulk of a reparations programme for the Palestinian refugees implemented through an ad hoc, internationally-supported claims commission, it is not only Palestinians but also Israelis and international actors who will have to give due consideration to how best to facilitate women's active and equitable participation. Ideally, these external actors will simply support the vision for participation advanced by women in the Palestinian refugee community; however, international standards and best practice suggest that if women's concerns and voices are being marginalized, as financers and implementing partners, Israeli and international actors may need to take steps to ensure that women are not sidelined.

While this particular participation challenge has rarely been encountered elsewhere, international experiences suggest a number of innovations in the delivery or implementation of reparations programmes that may support the equitable engagement of women. For instance, in Afghanistan the Norwegian Refugee Council worked with local partners to provide free legal aid to returnee and IDP women, among others, seeking to use traditional conflict resolution mechanisms such as *shura* and *jirga* to reclaim their lost properties. The availability of free legal aid was instrumental to many displaced women receiving a favourable response to their claims.³¹ In the Palestinian context, the provision of free legal aid may also be extremely beneficial in supporting the equitable participation of refugee women. In the context of reparations for property losses, for example, legal aid may help ensure that women who are not recognized as legitimate claimants by their families can contest their marginalization in the process. The truth commission for Timor-Leste, known as the Commission for Reception, Truth and Reconciliation in East Timor (CAVR), was specifically mandated to support the resolution of displacement by establishing the truth about the violations that forced thousands of Timorese from their homes, and promoting the peaceful 'reception' of the displaced. The CAVR convened sessions specifically on displacement and on

violations committed against women, initiatives which facilitated the direct involvement of displaced women in the commission. Should a truth commission be established as part of a reparations programme developed to support the resolution of the Palestinian–Israeli conflict, similarly targeted sessions could increase the participation of refugee women. However, it must be noted that when CAVR officials interviewed refugee women, they often concentrated on issues such as sexual and gender-based violence, overlooking the important testimony they could give on broader issues including gendered experiences of forced migration.³² If this model is followed in an Israeli–Palestinian ‘truth-telling’ initiative, displaced women’s participation must not be ‘limited by blinkered conceptions of the contributions they may make to truth-telling.’³³

The challenge of ensuring redress for wrongs of particular concern to women

The architects of every reparations programme must face the critical question of which kinds of injustice merit redress. Whereas many transitional justice advocates in recent years have drawn attention to the importance of acknowledging and redressing sexual and gender-based crimes, this issue has for the most part not figured centrally in calls for redress for the Palestinian refugees. However, as discussed, Palestinian women were subjected to sexual and gender-based violence and to the threat of such attacks in the context of the 1948 war. In addition, increased exposure to crimes such as rape has been a troubling characteristic of exile for many Palestinian refugee women, particularly those in Lebanon. Palestinian refugee women have arguably been reticent to raise these concerns due to the conservative nature of many Palestinian communities. However, drawing on experiences in countries including Bosnia, Rwanda, Sierra Leone and Timor-Leste, various women’s rights advocates suggest that in order to challenge the stigma surrounding sexual and gender-based violence it is essential that these experiences be addressed in the context of truth-telling processes, and incorporated into the historical narratives that these institutions help to shape. Whether this is a culturally and politically appropriate course of action in the Palestinian case is a matter of debate, but what is certain is that the issue merits greater consideration than it has received to date.

Ensuring that reparations programmes respond to the concerns of women does not mean simply counting women as stakeholders in property restitution and compensation processes, and ‘adding’

sexual and gender-based violence to the repertoire of wrongs to be redressed. Rather, a gender-sensitive approach may also entail making sure that the particular challenges encountered by displaced women are integrated into the narratives established by truth commissions or commemoration projects. The Diaspora Project of the Liberian Truth and Reconciliation Commission is one of the few truth-telling initiatives to have systematically engaged diaspora members (including refugees) in truth-telling processes, and to have concertedly investigated and reported on gendered experiences of forced migration at all stages, from the initial flight to exile and the pursuit of solutions to displacement. In the event that truth-telling processes accompany an eventual resolution of the Palestinian–Israeli conflict, the considerable insights gained through this initiative should be explored in depth.³⁴

The challenge of calibrating gender-sensitive reparations mechanisms

Reparations alone cannot rectify the systematic marginalization and oppression of women, but at their most potent they can be ‘transformative’ and ‘empowering’, giving women a greater measure of control over material resources, political capital and national narratives.³⁵ For refugee women, reparations can also have a direct impact on the resolution of their displacement by providing them with valuable resources to support solutions including return, local integration or resettlement. The extent to which reparations processes should actively seek to transform gender relations is a difficult question, made all the more so in this case because efforts to redress the Palestinian refugees will likely involve external actors including Israel, the United Nations and members of the Quartet. To what degree (if any) should these actors have a say in the extent to which reparations attempt to ‘transform’ the status of Palestinian women? While the complexities of these questions cannot be addressed within this introductory chapter, this section will consider different ways in which reparations programmes may be calibrated to support the equitable involvement of women claimants. When considering the gender-sensitive calibration of reparations mechanisms, it is essential to bear in mind that ‘Rather than encouraging a positive challenge to rigidly defined gender roles...the mishandling of gender relations can have an overwhelmingly negative impact, not least in a context in which the ability of people to absorb additional challenges is likely to be limited.’³⁶ Given that reparations for the Palestinian refugees would be rolled out at a

time of great change and uncertainty in the region, the stakes will be high for those working to calibrate reparations mechanisms for the Palestinian refugees in a gender-sensitive manner.³⁷ Many stakeholders, including ‘beneficiaries’ themselves, may object to efforts to radically reposition Palestinian refugee women as more powerful rights-holders, and may prefer, for example, the ‘simple’ restitution of lost properties to male heirs.³⁸ Yet as de Greiff and Rubio-Marín stress, ‘turning back the clock’ on human rights violations such as the massive dispossession of the Palestinian refugees in 1948 is impossible.

One of the problems of conceptualizing reparations primarily as actions to restore the *status quo ante* is that prior to the violence or abuse, the victim[s] often suffered all sorts of disadvantages, such as in the holding and exercise of rights. Even if the measures do not simply try to restore that status but attempt to compensate for losses, the very evaluation of the losses is affected by the unequal starting point.³⁹

Particular reparations mechanisms can be calibrated in a range of ways to promote the fair evaluation of women’s losses, and to ensure that women can equitably access the benefits reparations programmes distribute, such as money, land or acknowledgement. For all types of redress, gender-sensitive outreach is critical so that women know their rights in the process, and can step forward to claim them. ‘Whatever the outreach measures,’ the OHCHR underscores, ‘it is important to be sensitive to gender differences and to be ready to adjust outreach efforts so as to draw in as many female beneficiaries as possible.’⁴⁰ Gender-sensitive outreach may necessitate working in close collaboration with Palestinian refugee women’s organizations. In Sierra Leone and Timor-Leste, women’s organizations played a central role in channelling information on reparations to women, and raising public awareness of issues surrounding the participation of women in the transitional justice process.⁴¹

International experience suggests that women benefit the most from reparations programmes when they are complex, that is, when they use a variety of different remedial tools to distribute a range of different benefits, ‘such as educational support, health services, truth-telling and other symbolic measures, in addition to material compensation.’⁴² While this diversity ‘opens possibilities

for addressing the needs of female beneficiaries,' it must be recognized that:

These possibilities are not self-actualizing. Each type of benefit requires gender-sensitive design and implementation; for instance, truth-telling and memorialization can exclude all but the memories of male ex-combatants. Health services can be designed and implemented in ways that serve mainly the medical needs of male patients. But the different elements of a complex reparations programme can also be designed and implemented with an eye to female beneficiaries.⁴³

Regarding compensation in particular, the OHCHR argues that:

Where the level of material compensation is set and how the compensation is distributed have a significant gender impact. All other things being equal, modes of distribution that ensure that women not only access, but also retain control over, the benefits are preferable.⁴⁴

In the case of the Palestinian refugees, Abdo suggests that direct, flat-rate cash payments to individual refugees is the modality that would best protect women's interests. In contrast to distributing compensation to (likely male) heads of household or communities, this approach would help women retain a greater degree of control over how their allotment of compensation is used. Delinking compensation payments from the size and value of landholdings lost in 1948 would have the benefit of ensuring that the gender and class inequalities that characterized the tenure system in Mandate Palestine do not hinder female or legally landless Palestinian refugees from benefiting from this form of redress. Cash compensation could help refugees access a range of different solutions to their displacement, contributing to the cost of new residences or establishing new livelihoods. Cash payment may be 'particularly important for single women, single-mother families or families dependent on female members for their survival.'⁴⁵

Despite the merits of flat-rate, lump sum cash payments, the OHCHR cautions that:

International experience suggests that it is better to distribute compensation awards in the form of a pension rather than a

lump sum. Although lump sums in theory maximize individual choice, in some contexts coming into what may be seen as sudden wealth may cause divisions within communities and, more frequently, within families. There is also some evidence that lump sums are often misspent and that they have less impact in the long term than expected. Women, in particular, would seem to benefit more from a pension system than a one-off payment (which might make them the centre of demands for assistance and in effect do away with the whole award).⁴⁶

Some of these problems were evident in Timor-Leste, where a compensation programme intended to benefit displaced families was not undertaken in a gender-sensitive manner.⁴⁷ Payments were distributed to returnee families, but were usually collected by male family members, or deposited by officials directly into bank accounts, despite the impossibility of women being recognized as joint account holders, or having bank accounts of their own. Many refugee men disappeared with the money, particularly when families were polyamorous or undergoing domestic conflict. This left returnee women unable to pay household debts, which were usually taken out in their names, and lacking resources to support their reintegration.⁴⁸ Beyond heeding the relatively obvious lessons this experience offers, the provision of compensation in a gender-sensitive manner may be advanced by apportioning payments (whether lump sums or pensions) among family members according to predetermined percentages. In various countries, this approach has helped ensure that women benefit from compensation, and can shape decisions about how compensation is used. In Morocco, for example,

the Equity and Reconciliation Commission opted for apportioning explicitly to protect the interests of women. Spouses will receive 40 per cent of the awards, in contrast to the 8 per cent for female spouses in local inheritance law, which in accordance with tradition favours sons.⁴⁹

According to the OHCHR, 'Apportioning is worth considering particularly if there are patterns of unequal treatment that affect family relations as well. Women, in particular, stand to gain from this practice.'⁵⁰

CONCLUSION

The gender dimensions of redress for the Palestinian refugees is an issue that requires further study and discussion. These deliberations will need to actively involve Palestinian refugees, particularly women, and must be situated in the broader context of efforts to secure 'engendered' peace and justice in the region. Redressing the Palestinian refugees is an opportunity not only to account for an unresolved wrong, but also to promote a more equitable and prosperous future for Palestinian women, men and children. Making the most of this opportunity requires that the gender dimensions of the reparations issues be analysed and addressed head-on.

NOTES

1. See for example, Roger Duthie (ed.), *Transitional Justice and Displacement* (New York: Social Science Research Council, 2012), and Megan Bradley, *Refugee Repatriation: Justice, Responsibility and Redress* (Cambridge: Cambridge University Press, forthcoming).
2. Important recent studies of this issue include Lucy Hovil, 'The Nexus Between Displacement and Transitional Justice: A Gender-Justice Dimension', in Roger Duthie (ed.), *Transitional Justice and Displacement* (New York: Social Science Research Council, forthcoming). Ruth Rubio-Marín examines efforts to 'engender' reparations processes, but does not focus on the particular challenges associated with redressing displaced populations. See Ruth Rubio-Marín (ed.), *The Gender of Reparations* (Cambridge: Cambridge University Press, 2009).
3. Rubio-Marín, 4. See also OHCHR, *Rule-of-Law Tools for Post-Conflict States: Reparations Programmes* (Geneva: OHCHR, 2008), 36.
4. This use of the term 'reparations' follows the UN *Basic Principles on the Right to a Remedy and Reparations for the Victims of Gross Violations of International Human Rights Law and Serious Violation of International Humanitarian Law*. This document uses reparations as an umbrella term encompassing various approaches to remedying past abuses, such as restitution, compensation and 'satisfaction', which may include trials, truth commissions, commemorations and apologies.
5. See for example, Fatma Kassem, *Palestinian Women: Narrative Histories and Gendered Memory* (London: Zed Books, 2011), Sophie Richter-Devroe, "'Here, it's not about conflict resolution – we can only resist": Palestinian Women's Activism in Conflict Resolution and Non-violent Resistance', in Nadjie Al-Ali and Nicola Pratt (eds), *Women and War in the Middle East: Transnational Perspectives* (London: Zed Books, 2009); Riina Isotalo, 'Gendered Palestinian Citizenship: Women, Legal Pluralism and Post-conflict Aid', in Nadjie Al-Ali and Nicola Pratt (eds), *Women and War in the Middle East: Transnational perspectives* (London: Zed Books, 2009); Samia Costandi, 'The Politics of Dispossession', in Ronit Lentin and Nahla

- Abdo (eds), *Women and the Politics of Military Confrontation: Palestinian and Israeli Gendered Narratives of Dislocation* (Oxford: Berghahn Press, 2002); Julie Peteet, 'Women and the Palestinian Movement: No Going Back?', in Suad Joseph and Susan Slyomovics (eds), *Women and Power in the Middle East* (Philadelphia: University of Pennsylvania Press, 2001); and Rita Giacaman, Islah Jad and Penny Johnson, 'For the Common Good? Gender and Social Citizenship in Palestine', in Suad Joseph and Susan Slyomovics (eds), *Women and Power in the Middle East* (Philadelphia: University of Pennsylvania Press, 2011).
6. Michael Fischbach, *The Peace Process and Palestinian Refugee Claims: Addressing Claims for Property Compensation and Restitution* (Washington, DC: United States Institute of Peace, 2006), 20; Nahla Abdo, 'Engendering Compensation: Making Refugee Women Count!' (2000), at: http://prnn.mcgill.ca/research/papers/abdo_01.htm (accessed 20 October 2012). Abdo points out that although the majority of Palestinians were Muslims, the community did not typically follow provisions in *shari'a* law, backstopping women's rights to inherit property. For a detailed discussion of the gendered nature of property ownership patterns in Mandate Palestine, see Annelies Moors, *Women, Property and Islam: Palestinian Experiences, 1920–1990* (Cambridge: Cambridge University Press, 1996).
 7. Abdo (2000).
 8. *Ibid.*
 9. *Ibid.*
 10. *Ibid.*
 11. In addition, many men were absent from their families due to having joined the PLO, or imprisoned in Israel. Particularly in Lebanon, men who remained in the camps with their families struggled to make a living due to often severe restrictions on their freedom of movement, a gender-specific abuse the ramifications of which could be investigated and acknowledged through truth-telling initiatives.
 12. Abdo (2000).
 13. *Ibid.*
 14. See Colleen Duggan and Ruth Jacobson, 'Reparation of Sexual and Reproductive Violence: Moving from Codification to Implementation', in Ruth Rubio-Marín (ed.), *The Gender of Reparations: Unsettling Sexual Hierarchies while Redressing Human Rights Violations* (Cambridge: Cambridge University Press, 2009).
 15. Ari Shavit, 'Survival of the fittest? An Interview with Benny Morris', *Logos* 3, no. 1 (2004) (this interview originally appeared in *Ha'aretz*; Benny Morris, *The Birth of the Palestinian Refugee Problem Revisited* (Cambridge: Cambridge University Press, 2004), 220, 231, 257, 500 and 522.
 16. Frances S. Hasso, 'Modernity and Gender in Arab Accounts of the 1948 and 1967 Defeats', *International Journal of Middle East Studies* 32 (2000), 495–7; Nafez Nazzari, *The Palestinian Exodus from Galilee, 1948* (Beirut: Institute for Palestine Studies, 1978).
 17. Julie Peteet, *Gender in Crisis: Women and the Palestinian Resistance Movement* (New York: Columbia University Press, 1991), 59; Kitty Warnock, *Land Before Honour: Palestinian Women in the Occupied Territories* (New York: Monthly Review Press, 1990), 23.
 18. Peteet (1991), 80.

19. Abdo (2000).
20. Rubio-Marín (2000), 11–17.
21. Carolyn Benson, 'Further Trouble for Unsettled Waters: Attention to Gender in the Debate on Black Reparations', in Jon Miller and Rahul Kumar (eds), *Reparations: Interdisciplinary Inquiries* (Oxford: Oxford University Press, 2007), 135.
22. *Ibid.*, 139.
23. The Inter-Agency Standing Committee (IASC) *Framework on Durable Solutions for Internally Displaced Persons* offers relatively detailed guidance on providing redress to displaced persons, and facilitating the equal participation of women in such processes. Although its focus on internally displaced persons (IDPs) means the IASC Framework is not directly applicable to the Palestinian refugees, it may inform the Palestinian case by analogy.
24. Other provisions in the Pinheiro Principles relevant to gender analysis and the equal rights of women include Articles 4.1, 4.2, 12.2, 13.7, 13.8 and 19.3.
25. Following the standard set in the groundbreaking 1927 *Factory at Chorzów* decision of the International Court of Justice, the restoration of the status quo ante is often seen as the preferred goal of reparations processes. In this ruling, the Court opined that 'reparation must, so far as possible, wipe out all the consequences of the illegal act and re-establish the situation that would, in all probability, have existed if that act had not been committed.' See Dinah Shelton, 'Righting Wrongs: Reparations in the Articles on State Responsibility', *American Journal of International Law* 96, no. 4 (2002), 835. This relevance of this standard for massive reparations programmes has been questioned by scholars such as Pablo de Greiff.
26. Hovil, 15.
27. Donny Meertens, 'Forced Displacement and Gender Justice in Colombia: Between Disproportional Effects of Violence and Historical Injustice', in Roger Duthie (ed.), *Transitional Justice and Displacement* (New York: Social Science Research Council, forthcoming).
28. Bradley.
29. Abdo.
30. OHCHR, 36.
31. Conor Foley, 'Housing, Land, and Property Restitution Rights in Afghanistan', in Scott Leckie (ed.), *Housing, Land, and Property Rights in Post-Conflict United Nations and Other Peace Operations: A Comparative Survey and Proposal for Reform* (Cambridge: Cambridge University Press, 2008).
32. Susan Harris Rimmer, *Gender and Transitional Justice: The Women of East Timor* (London: Routledge, 2010); Susan Harris Rimmer, 'Reconceiving Refugees and Internally Displaced Persons as Transitional Justice Actors', *UNHCR New Issues in Refugee Research Papers* 187 (2010); and Susan Harris Rimmer, 'Women Cut in Half: Refugee Women and the Commission for Reception, Truth-Seeking and Reconciliation in Timor-Leste', *Refugee Survey Quarterly* 29 (2010).
33. Megan Bradley, 'Truth-telling and Displacement: Patterns and Prospects', in Roger Duthie (ed.), *Transitional Justice and Displacement* (New York: Social Science Research Council, 2012); Hovil.
34. See Laura Young and Rosalyn Park, 'Engaging Diasporas in Truth Commissions: Lessons from the Liberia Truth and Reconciliation Commission

- Diaspora Project', *International Journal of Transitional Justice* 3 (2009); and Advocates for Human Rights, *A House with Two Rooms: Final Report of the Truth and Reconciliation Commission of Liberia Diaspora Project* (Saint Paul: DRI Press, 2009), Chapters 10 and 13.
35. See Rubio-Marín; Hovil; and Susan Martin, 'Justice, Women's Rights, and Forced Migration', in David Hollenbach (ed.), *Refugee Rights: Ethics, Advocacy, and Africa* (Washington, DC: Georgetown University Press, 2008).
 36. Hovil.
 37. The participation of Palestinian refugee women in the design and implementation of reparations programmes may help build popular support for gender-sensitive approaches to redress.
 38. Of course this is far from a simple proposition given the growth of Palestinian refugee families since 1948, and the fact that Israeli families have in many cases been living on the Palestinians' lost lands for generations.
 39. Ruth Rubio-Marín and Pablo de Greiff, 'Women and Reparations', *International Journal of Transitional Justice* 1, no. 3 (2007), 325.
 40. OHCHR, 17.
 41. Clara Ramírez-Barat, *Making an Impact: Guidelines on Designing and Implementing Outreach Programs for Transitional Justice* (New York: ICTJ, 2011), 25.
 42. OHCHR, 37. 'Collective' forms of redress may be particularly significant in this respect.
 43. *Ibid.*
 44. *Ibid.*
 45. Abdo.
 46. OHCHR, 31. Some researchers have argued against redressing the Palestinian refugees through the provision of pensions for a number of reasons, including the fact that many impoverished refugee families will need an early infusion of funds to establish new homes and livelihoods outside of the camps. Early lump sum payments and modest pensions administered by a Palestinian government or an independent agency need not be mutually exclusive.
 47. This initiative was not officially labelled a compensation programme, in order to avoid generating resentment among non-displaced families who were not eligible for the payments. However, it has been considered as a transitional justice initiative by some observers.
 48. See Hovil; and Phyllis Ferguson, 'IDP camp closure and gender inequality in Timor-Leste', *Forced Migration Review* 34 (2010), 67–69.
 49. OHCHR, 32.
 50. *Ibid.*

12

Redressing Internally Displaced Persons in Israel

Megan Bradley

In many cases, displaced persons receive no redress for the loss of their lands, and the crimes that forced them from their homes. One of the accomplishments of the Palestinian struggle has been to assert the remedial rights of those displaced in 1948, so that it is now widely accepted that the creation of peace in the Middle East must involve some form of redress for the Palestinian refugees, whether restitution, compensation, apologies or a combination of these measures.

In recent years, a growing body of research and advocacy work has drawn attention to the fact that the Palestinian refugees are not the only uprooted group with claims to address in the context of a comprehensive solution to the conflict. Many Israeli Mizrahi Jews bear unresolved compensation claims against a variety of Arab states.¹ In addition, the claims of internally displaced Palestinian citizens of Israel are ‘conspicuous by their long absence from the international agenda’.² The claims borne by Palestinian internally displaced persons (IDPs) are similar in many aspects to those of the Palestinian refugees, and cannot be overlooked in a serious discussion of the role that reparations, including compensation, may play in achieving a comprehensive solution to the Israeli–Palestinian conflict. Accordingly, this chapter offers a preliminary discussion of Palestinian IDPs’ claims, and some of the domestic and international frameworks relevant to them. It also examines the key actors’ responses to these grievances, and the obstacles to resolving them in the future.

Given their shared national identity and the similarities between the claims of the Palestinian refugees and IDPs, particularly regarding loss of land, it is striking that their concerns are not addressed in tandem in discussions on the peace process. While separating refugee and IDP claims may be a politically astute

and appropriate strategy given the different interests of the actors involved, this chapter argues that the timely resolution of IDPs' claims represents a critical aspect of a truly comprehensive solution to the conflict, and thus cannot be scuttled or sidelined. Resolving internal displacement in Israel is linked, conceptually and practically, to the resolution of the Palestinian refugee situation on a number of levels. For instance, the claims are historically linked, since they stem from the same events. Prior to the Oslo process, the PLO represented both the refugees and the IDPs, and advocated for the resolution of both groups' claims. Although the IDPs now advocate for the resolution of their claims on their own behalves, as Israeli citizens, the just resolution of their concerns is important in terms of enabling Palestinian institutions and individuals to accept the legitimacy of the Israeli state. Many Palestinian IDPs consider themselves to be part of the refugee community, a view that is shared by many Palestinians in the Occupied Territories and elsewhere. Therefore, the Palestinian nation's grievances with Israel simply cannot be laid to rest without addressing the IDPs' concerns.

Although compensation is likely to be the principal remedy afforded to Palestinian refugees in the context of a two-state solution, this chapter suggests that it should not be assumed that compensation must play a similarly prominent role in resolving IDPs' claims. Particularly as the restitution of IDPs' lost properties will have no impact on Israel's desire to maintain a Jewish demographic majority in the state, this remedy should not be excluded from the suite of reparation mechanisms employed to redress IDPs' claims. Historically, progress on the issue of reparations for IDPs has been crippled by the fear on all sides of setting precedents that may affect the resolution of the refugees' claims. While Israel has refused to restore IDPs' property for fear that this would backstop calls for a broader right of refugee return, IDPs have been loath to accept other forms of redress such as compensation, partially out of concern that this would undercut the refugees' restitution demands. In such a complex and protracted case, there is a dire need for creative and carefully-crafted compromises that move beyond a blinkered focus on precedent. Ultimately, the challenge is to open up avenues for compromise, with a view to ensuring that the process of redressing the Palestinian IDPs is maximized as an opportunity to advance both a comprehensive settlement and the maturation of Israel as a democracy that equitably respects the rights of all its citizens.

INTERNALLY DISPLACED PALESTINIANS AND THEIR CLAIMS

According to the 1998 UN Guiding Principles on Internal Displacement, IDPs are:

persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.³

Calls to redress the Palestinian IDPs have been difficult to advance, as neither the Israeli government nor many international agencies recognize that Israel has an internally displaced population. However, the Internal Displacement Monitoring Centre (IDMC) maintains that Palestinians who were forced from their homes in 1948 and remain displaced within the borders of 'Israel proper' are 'clearly identifiable as IDPs'.⁴ The forced migration of Arab citizens of Israel, including the Bedouin, has continued even after the signing of the armistice agreement in 1949.⁵ In addition to these IDPs, thousands of Jewish Israeli citizens have been temporarily forced from their homes due to rocket attacks from Gaza and southern Lebanon, while scores of stateless Palestinians have been displaced within the West Bank and Gaza through violence and the construction of Israel's security wall.⁶ However, this chapter focuses on Palestinian citizens of Israel who were forced from their homes through the 1948 war and have been unable to secure a durable solution to their displacement.

Estimates vary regarding the size of the original and contemporary '1948 IDP' population. Approximately 15–25 per cent of the 156,000 Palestinians left behind the Green Line in 1948 had been displaced.⁷ Although Israeli citizenship was conferred upon the remaining Palestinians fairly rapidly, internal displacement continued apace in the early post-war years, as the state of Israel forcibly depopulated and demolished more than 400 Palestinian villages from 1948–1949.⁸ Since 1948, the number of Palestinian IDPs has grown to an estimated 238,000–275,000, representing some 25 per cent of Israel's Palestinian citizens.⁹ While the IDPs are rarely counted in studies of the Palestinian refugees, the IDPs generally view themselves as part of the refugee community.¹⁰

The majority of the 1948 IDPs hail from approximately 60 villages in the north of Israel.¹¹ Most continue to reside in northern Israel, often within a few miles of their original lands. Almost immediately after their dispossession, the IDPs began appealing to return to their lands. Cohen identifies three main reasons why Israel refused to permit these requests. First, after years of restricted land access, Israel's leaders saw the IDPs' expulsion as a 'golden opportunity' to acquire more land for Jewish settlements.¹² Second, the refusal was tied to security concerns. Palestinian IDPs were viewed as a 'fifth column' who had to be evacuated from sensitive areas, and prohibited from returning. Third, Cohen argues that the decision was motivated by vengefulness, the refusal to reward perceived aggressors, and the belief that 'allowing the internal refugees to return to their villages...would be perceived by them as an indication of weakness and would cause them to disparage the state of Israel.'¹³ In Ben-Gurion's words, 'the government dealt generously with them and permitted them to stay in villages [nearby]...and to be residents of Israel.'¹⁴ In short, allowing the IDPs to remain in Israel was seen as a humanitarian gesture, and return an impossibility.

Post-1948, Israel quickly moved to legally entrench the IDPs' dispossession and foreclose opportunities for the IDPs to return or raise their claims. The demolition of depopulated villages was authorized under emergency regulations, while military governors were empowered to close Palestinian areas and prevent IDPs from returning to their lands.¹⁵ Initially, the 1943 British Mandate-era Land Ordinance was used to legitimize the confiscation of IDPs' land with extremely limited compensation. In 1950, the adoption of the Basic Law on Absentee Property 'retrospectively and prospectively provided for the State of Israel to confiscate properties from anyone identified as an absentee.'¹⁶ Carefully drafted to cover the land of both refugees and IDPs, the law defines an absentee as anyone who 'left his regular abode in Israel (a) to a place outside Israel before 1948 or (b) for a place in Israel which was at that time occupied by forces which sought to prevent the establishment of the state of Israel or fought against it after its establishment.'¹⁷ As the IDPs were defined as absent despite their manifest presence in Israel, they were bestowed with the 'Kafkaesque' title 'present absentees'.¹⁸

Under the Absentees' Property Law, the Custodian of Absentee Property is considered the owner of absentees' lands, and is prohibited from transferring ownership of the land to any party

other than the Jewish Development Authority. The government transfers payment for the land to the Custodian, so that it can be argued that the property was acquired legally. If an IDP wants to contest the confiscation of his or her land, the burden of proof is on the IDP to demonstrate that he or she was not legally absent from the land in 1948.¹⁹ Prominent IDP advocate Wakim Wakim maintains that there is no legal precedence for an IDP successfully arguing this point in court, and contends that:

As a 'present absentee', the only 'right' you have vis-à-vis your own land is the 'right' to sign a sales contract and concede it, at which point the state will give you a [*sic*] compensation that's been held in reserve in an Israeli bank. Needless to say, the amount has been determined unilaterally and has absolutely no relation to market value.²⁰

In later years, Israel further consolidated the legal apparatus obstructing access to land for Palestinian citizens, including IDPs.²¹ It is unclear exactly how much land IDPs lost through the 'maze of legal instruments' created for the purpose of expropriation, as few of the detailed studies conducted on Palestinian losses consider the claims of IDPs.²² For example, the United Nations Compensation Commission (UNCCP) was tasked with carrying out detailed studies of property losses in 1948, but did not carry out disaggregated analyses of the claims of those displaced within Israel.²³ Masalha, however, suggests that 300,000 dunums of IDP land was declared 'absentee property', and that between 1948 and 1988, 80 per cent of the property owned by Palestinians in Israel was confiscated.²⁴ Files available in the Israeli State Archives (ISA) may help to clarify the assets owned by Palestinians who were internally displaced in 1948. See Nathanson and Tzameret-Kertcher's Chapter 6 in this volume for more details on the potential role of ISA records in assessing the scope of Palestinian losses.

Looking beyond land claims

The injustices for which Palestinian IDPs could legitimately seek redress run beyond their physical dispossession. Palestinian citizens of Israel regularly face discrimination and human rights violations, treatment that has compounded the problem of the IDPs' displacement. For example, discriminatory development codes have resulted in overcrowding and poor living conditions in many Palestinian settlements in Israel, particularly those

inhabited by IDPs.²⁵ Land and housing problems are especially severe among those IDPs who refused to accept compensation for their land.²⁶ The economic development of IDP communities has been stymied by restrictions on their freedom of movement and the losses the 1948 war entailed for the Palestinian economy. As Lustick contends, 'the mass expropriation of Arab land has been the heaviest single blow which government policy has dealt to the economic integrity of the Arab sector'.²⁷ The upshot of these policies, according to Wakim, is that 'the drive for return is not based on nostalgia or yearning but on an existential problem: The pressing need for housing and available surface area.'²⁸

Beyond these grievances, the Palestinian IDP community might also seek redress for events such as those of 30 March 1976, when Israeli police shot dead six Palestinian citizens protesting ongoing land expropriations.²⁹ While these deaths are commemorated annually by Palestinian citizens on Land Day, this type of event might also be recognized by Israel in the context of an apology for the discriminatory treatment of Palestinian citizens of Israel, including IDPs. Linking forms of redress such as apologies for discrimination and ill-treatment with reparations designed to resolve the IDPs' land claims may prove essential to effectively facilitating reconciliation between Israel and the IDPs, and among Israel's diverse citizens.

Asserting claims: IDP organizing

Since 1948, IDPs have continuously demanded to return to their homes, only to be continuously refused the opportunity to do so. However, specific IDP advocacy movements only began in earnest in the early 1990s, with the creation of more than 20 local IDP associations.³⁰ In part, the creation of IDP advocacy groups was part of a broader movement for the recognition of the Palestinian citizens of Israel as a 'coherent *national* minority'.³¹ The instigation of IDP organizing was also prompted by the fledgling peace process, and the realization among Palestinian IDPs that the PLO was not going to fend for their claims. Many IDPs felt their concerns were neglected at the Madrid and Oslo negotiations, and were dissatisfied with the Palestinian leadership, which they saw as 'selling out' on refugee and IDP rights.³² Serious land shortages and housing problems served as an additional incentive to organize, as did the hope held out by IDP activists that some internal refugees could return to their unoccupied lands. Newly-formed IDP organizations rekindled the IDPs'

connection to the land through work camps and restoration and commemoration activities.³³

Particularly at the national level, IDP organizations have been vocal in their renunciation of compensation as an alternative to restitution and return. National-level organizing on IDP issues began in 1992 with the first major public meeting on internal displacement in Israel. In 1995, 280 IDP representatives attended the second major public meeting on internal displacement in Israel. At this meeting, the National Committee for the Defence of the Rights of Internally Displaced Palestinians in Israel was formed, with aims including the promotion of the right of return and the rejection of compensation as an acceptable alternative. The National Committee was officially registered in 2000, and continues to operate under two slightly different names, the second being the Association for the Defense of the Rights of the Internally Displaced in Israel (ADRID).³⁴ At a public rally for the right to return in March 2000, the National Committee launched a petition calling for the opening of the IDP file, the cancellation of the Absentees' Property Law and all other discriminatory statutes, and the return of the IDPs to their homes. The petition declared that:

While internally displaced Palestinians are part and parcel of the Palestinian people represented by the PLO as its sole legitimate representative, the National Committee for the Rights of the Internally Displaced represents the need and interests of the internally displaced Palestinians in Israel.³⁵

ADRID's claim to represent the IDPs was recognized by the High Follow-Up Committee for the Affairs of the Arabs in Israel, the primary leadership body for Palestinians behind the Green Line.³⁶

According to ADRID President Wakim Wakim, the decision to declare ADRID the sole legitimate representative of the IDPs was made in consultation with the PA and the Palestinian negotiating team, with the goal of,

shoot[ing] down any Israeli plan to force the Palestinian negotiating team into conceding our rights...We took this decision to ensure our own representation of our own rights and to make crystal clear that we would consider any concession by the Palestinian team touching on our rights and property as null and void.³⁷

Restitution and return are the primary issues upon which ADRID is avowedly unwilling to make concessions. As Wakim declares, 'We will not accept any other solution. We will not take any compensation...We do not forget and will not forget our homes.'³⁸ However, ADRID has arguably already made a 'historic concession', as it seeks only the restoration of uninhabited lands.³⁹ Even with this compromise position, some commentators have suggested that ADRID's stance is generally seen as hard-line, rather than part of the mainstream Arab community in Israel.⁴⁰ For his part, the chair of the High Follow-Up Committee for the Affairs of the Arabs in Israel has expressed the belief that, contrary to ADRID's position, a viable solution will put a 'premium on compensation'.⁴¹

In short, while many IDP families and prominent IDP organizations have rejected compensation as a sell-out that can yield nothing better than 'cosmetic integration into Israel', a closer examination of the politics of the IDP community reveals a diversity of views and practices, with even seemingly 'hard-line' groups such as ADRID demonstrating a willingness to compromise.⁴² However, the Palestinian citizens of Israel have not yet articulated what they feel it would take to achieve a historic compromise and reconciliation with their Jewish neighbours and the Israeli state.

FRAMEWORKS FOR REDRESSING THE INTERNALLY DISPLACED

International frameworks

Although a full discussion of the various international frameworks informing reparations efforts for IDPs is not possible here, some key standards demand mention, including the 2005 UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (UN Reparations Principles), the UN Principles on Housing and Property Restitution for Refugees and Displaced Persons (Pinheiro Principles) and the Guiding Principles on Internal Displacement. While restitution and compensation are the forms of reparation most hotly debated in the Palestinian-Israeli context, according to the UN Reparations Principles they are only two of the broader range of remedies available to redress wrongs such as displacement. The UN Reparations Principles identify five

main types of remedy: restitution, compensation, rehabilitation, guarantees of non-repetition, and satisfaction, which may involve a variety of mechanisms such as apologies, trials and truth commissions. Restitution has traditionally been seen as the 'first form of reparations', and the Pinheiro Principles embrace this perspective, stressing restitution as the preferred form of redress for refugees and IDPs.⁴³ However, the UN Reparations Principles do not explicitly affirm restitution's place at the top of the remedial hierarchy. Rather, the Reparations Principles list restitution as one of several approaches to redress that may be employed depending on the 'circumstances of each case'.⁴⁴ Similarly, under the Guiding Principles on Internal Displacement the obligation to facilitate restitution for IDPs is subject to negotiation and interpretation. Guiding Principle 29.2 states that:

Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.⁴⁵

By indicating that the competent authorities are only obliged to *assist* in facilitating restitution *to the extent possible*, the Guiding Principles tacitly recognize the mitigating effect considerations such as the passage of time and the presence of secondary occupants may have on restitution claims.

Thus general international frameworks on reparations and displacement offer a mixed picture of remedial obligations towards IDPs. On the one hand, it is clear that IDPs have the right to a remedy, and that such remedies may play a critical role in creating durable solutions to displacement.⁴⁶ On the other hand, international law and frameworks do not yet provide firm guidance on how to accommodate competing rights and determine when restitution, compensation, another type of redress or a mix of different remedies is most appropriate.

International frameworks and political statements pertaining specifically to the Palestinian case offer a similarly muddled view of the situation. The UN Committee on Economic, Social and Cultural Rights has discussed violations of the rights of displaced

Palestinians, including the present absentees, and has called on Israel to provide 'adequate restitution and compensation' to dispossessed Palestinians, without offering specific guidance on the circumstances in which one remedy may be more appropriate than the other.⁴⁷ Some scholars and advocates have argued that IDPs count as part of the refugee population addressed in UN General Assembly Resolution 194 (III), and that this oft-repeated resolution underpins the IDPs' right to return and restitution. Resolution 194 (III) famously resolves that:

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.⁴⁸

While debates on the correct interpretation and contemporary significance of Resolution 194 are outside the scope of this chapter, it is noteworthy that it remains unclear whether the terms of Resolution 194 may be neatly and effectively applied to support the Palestinian IDPs' calls for return and restitution.

Israeli standards and practices

While international laws and standards do not offer conclusive insight into whether the Palestinian IDPs must have the right to choose restitution over compensation, Israeli laws and practices have favoured compensation to the almost complete exclusion of restitution and return. As aforementioned, the expropriation of IDPs' land was facilitated by the imposition of military rule and the creation of a range of laws including the Absentees' Property Law and the 1953 Land Acquisition Law, which mandated compensation for IDPs through money or the provision of alternative lands.

In the 1950s and 1960s, IDPs were under concerted pressure from the state to accept compensation and give up their claims.⁴⁹ Especially in the early years of the Israeli state, the IDPs largely refused compensation as they saw return as a realistic option, and perceived accepting compensation as treasonous; the refusal of compensation 'constituted a principle, which united the [internal] refugees and preserved their identity.'⁵⁰ For social and moral

reasons, IDPs were particularly loath to accept compensation in the form of alternative land, as the property offered typically belonged to other displaced Palestinians, sometimes even members of the same family.⁵¹ The refusal of financial compensation was also motivated by the fact that the amount offered was typically 'derisory'.⁵² Under the Land Acquisition Law, the state assessed the value of the expropriated property in Israeli pounds as of 1 January 1950, and awarded this amount as compensation, plus 3 per cent for each additional year of dispossession. By the time the Land Acquisition Law was enacted in 1953, the Israeli pound had plummeted, losing more than 80 per cent of its value relative to the British pound.⁵³ This compensation framework was particularly galling for the IDPs as it did not cover lost income from the land, while the 1950 Absentees' Property Law included provisions to ensure that should a Palestinian citizen recover his or her property, the Custodian of Absentee Property would be reimbursed for expenses associated with upkeep of the land.⁵⁴ Although the Land Acquisition Law was eventually amended to provide more realistic rates of compensation, Shafir and Peled argue that the persistent inadequacy of the state's compensation systems reflects their ultimate purpose:

...it should be quite clear that adequate compensation would have defeated the purpose of expropriation. Anything like equitable compensation in alternative land, or the true value of the expropriated land in cash, would have enabled the Palestinians to maintain their land holdings or else invest significant amounts of capital in other productive enterprises. Neither of the two outcomes would have served the purposes of Zionism, the aim of which was to transfer resources from Palestinians to Jews.⁵⁵

There is a lack of reliable data on how many Palestinian IDPs have accepted compensation from Israel. However, as their displacement wore on, some IDPs became more inclined to accept compensation and permanent resettlement. This was attributable to various factors including recognition that Israel was there to stay; extensive use of the IDPs' land for new Jewish communities; financial necessity; and the creation of economic incentives for the IDPs to accept compensation and renounce their claims. For example, in some cases internal refugees who accepted compensation and relinquished their claims were

eligible to receive new houses or loans.⁵⁶ The state also applied strategic tactics to pressure IDPs into giving up their claims. For instance, authorities refused to lease alternative lands to those who refused compensation, and would offer particularly 'generous' compensation deals to those most in need, in an attempt to 'weaken the communities of the internal refugees from within, by tempting and co-opting people to act against their norms.'⁵⁷ By taking over responsibility for the internal refugees from UNRWA, Israel took an additional step towards creating conditions under which the problem of the IDPs might be dispelled through compensation. When Israel assumed responsibility for the internal refugees from UNRWA, it instituted a policy of dealing only with individuals rather than their representative bodies, and providing assistance on the basis of economic need rather than displaced status. This decreased the 'value' of the (internal) refugee label, and prompted individual families to consider accepting compensation, a step that remained taboo in the broader group.⁵⁸ In some cases, the decision to accept compensation created new social divides, as many absentees who accepted compensation were ostracized from their communities.⁵⁹

For those IDPs who have steadfastly refused compensation, the domestic court system has not served as an effective institution through which to advance their case for restitution.⁶⁰ Since its inception, the Supreme Court of Israel has demonstrated major resistance to any discussion of restitution for the displaced, and has only once intervened to prevent 'what has otherwise been the state's unfettered hand in expropriating private property.'⁶¹ The experience of IDPs from Iqrit and Bir'im clearly illustrates the difficulties of pursuing restitution in a court system characterized by 'extreme deference' to the executive branch, which has staunchly opposed restitution for all displaced Palestinians. The residents of Iqrit and Bir'im were expelled under military order soon after the establishment of Israel, but were specifically promised that their evacuation was temporary, and that they would be allowed to return. A Supreme Court ruling in the 1950s mandating the villagers' return was never enacted due to 'security considerations'. In 2003, the Supreme Court revisited the case, but accepted the state's claim that barring a significant change in the political situation, the IDPs could not be allowed to return due to security concerns and the risk of bolstering Palestinian refugees' persistent demand for the right of return, which was widely perceived in Israel as one of the primary reasons for the

collapse of the Camp David talks and the Oslo peace process. At the hearing, the government of Israel also advanced the familiar argument that allowing the villagers to return was impossible as it would pave the way for the claims of other IDPs, which would result in the displacement of Jewish citizens and harm Israel's strategic interests. However, the villagers had drawn up a restitution plan that asked only for the return of unoccupied land, and would not displace any Jewish Israelis.⁶² In light of the villagers' evident willingness to compromise, the court's acceptance of the government's intransigence was publicly decried by many commentators, both in Israel and abroad.⁶³

MOVING FORWARD: STRATEGIES, OBSTACLES AND OPPORTUNITIES

As the above discussion demonstrates, neither international nor domestic frameworks provide an adequate guide to navigating the complex demands of this case. Consequently, most Palestinian IDPs have not benefited from any form of redress for their land claims. Problematically, both the state and the majority of its citizens are also unprepared to even attempt to rectify the broader range of grievances that hinder harmony and equity in Israel. Moving forward, it is essential to appreciate the obstacles and opportunities inherent in the creation of a 'historic compromise' between the state of Israel and its Palestinian citizens, and the strategies employed by the major actors involved to hasten or hinder this outcome.

Strategies to resolve the IDP problem

As discussed above, Israel's strategy vis-à-vis the IDPs has focused on using compensation to facilitate the permanent resettlement of the internally displaced, to the exclusion of alternative approaches such as return and restitution. Historically, Israel has treated the IDPs as a non-issue, or as an internal issue entirely divorced from the question of the Palestinian refugees, except insofar as the resolution of the IDP problem could serve as a precedent for ending the refugees' displacement. While this strategy has long been seen by Israeli politicians and scholars as a success, this assumption is now being called into question by the rise of Palestinian IDP organizations demanding return and restitution.⁶⁴ Critically, to this point compensation has been seen by Israel

as a 'humanitarian gesture', and not an acceptance of moral responsibility for the plight of its displaced citizens.⁶⁵

During the Oslo process, the PLO and the government of Israel agreed not to discuss the IDP issue, and the Palestinian leadership has retained a strategy of extremely limited engagement on the IDP question, beyond making some statements supporting the IDPs' right of return. However, some advocates argue that the PLO has actively interfered in the work of IDP organizations due to concerns that IDP activities could damage the broader negotiation process with Israel.⁶⁶

Although many if not most IDPs see themselves as part of the Palestinian people represented by the PLO, the strategy of the IDP community itself has been to organize internally and raise its concerns directly with Israel, as citizens of the state. While Israel and the Palestinian leadership have sidelined the IDP issue in the peace talks, the IDPs have attempted to position themselves as key stakeholders in the peace process. In many ways, the IDPs' strategies have mirrored those of the Palestinian refugees, focusing strongly on grass-roots mobilization, commemoration and education. Yet unlike the refugees, the IDPs have not generally raised their concerns at the international level. Instead, the IDPs have favoured a domestic approach, drawing on the tools available to them as Israeli citizens, including legal activism and Knesset representation.⁶⁷ Wakim characterizes the core of the IDPs' strategy in this way: 'Our position is that our right to return to our villages is based not only on international legality and the natural right of every individual to own property, but also on Israel's own laws, which guarantee everyone's natural right to live wherever he or she wants.'⁶⁸ However, the IDPs are well aware that there is little hope of restoring the conditions that existed in 1948. They argue that much of their property is in fact unused, and focus their efforts on regaining this unsettled land, despite little sign of equal willingness to compromise on the side of the Israeli state.⁶⁹

For its part, the international community has demonstrated little active interest in the Palestinian IDPs. While the Internal Displacement Monitoring Centre recently began collecting data on the Palestinian IDPs, the Representative of the UN Secretary-General on the Human Rights of Internally Displaced Persons (RSG) has not reported on this situation, which has been addressed only briefly by the UN Committee on Economic, Social and Cultural Rights.

Obstacles and opportunities

The obstacles impeding rectification of the injustices experienced by the Palestinian IDPs are manifold, but not necessarily insurmountable. First among these obstacles is the lack of international and domestic recognition of the problem. Given the paucity of international concern, there is little pressure on Israel to negotiate with its IDPs. The RSG on IDPs and the UN Office for the Coordination of Humanitarian Affairs (OCHA) could contribute to resolving the problem by undertaking studies of it from legal and operational perspectives.⁷⁰ Clearly recognizing the problem at the international level may prompt greater discussion of the issue within Israel, and exploration of efforts in other countries to use reparations to resolve long-standing displacement. Indeed, there are also ample lessons to be drawn from Israel's own efforts to compensate settlers forced to move out of Gaza in advance of the 2005 disengagement, if the opportunity is created to explore this comparison.⁷¹

A second, related problem is the lack of reliable information about the Palestinian IDP population, and their concerns and preferences regarding reparations and the resolution of their displacement. More rigorous research is essential to move beyond assumptions about the IDPs' preferences and priorities, and ensure that the concerns and perspectives of those who are not necessarily active in IDP organizations are not sidelined.

Third, commentators such as Zreik suggest that there is a lack of unity among the Palestinian citizens of Israel, which hinders efforts to negotiate an agreement with Israel. Zreik argues,

As the 'natives' who bore the cost of the establishment of the state, the Palestinians of Israel [feel] that the state has an unpaid debt to them not only as individual citizens but as part of the nation that was crushed by the state in 1948. Such claims, however, cannot be negotiated with the state unless there is, first, an entity or a 'self' recognized as representing the Israeli Palestinians and, second, a coherent vision of the conditions for (and compromises necessitated by) a historic reconciliation.⁷²

Fourth, the application of reparations with a view to resolving displacement raises a host of conflicts of principle. How, from the Palestinian perspective, can a distinction be made between accepting compensation and legitimizing displacement? How can

bridges be mended between those who refused compensation and those who have been ostracized for accepting it? How can a misguided focus on compensation as a tool to subvert the refugee identity make way for broader conceptions of reparations as an opportunity to backstop the identity of Palestinian citizens of Israel by recognizing their sacrifices and suffering? While there are no straightforward answers to these questions, coming to terms with these conflicts of principle clearly requires more regular, open and respectful conversations between the parties, and a recognition that while land claims will always feature prominently in these discussions, reparations intended to resolve the IDPs' displacement and marginalization must address not only their physical dislocation, but also the creation of an equal place for them and all other Palestinian citizens in the Israeli state.

The final major obstacle to redressing the Palestinian IDPs' claims is the lack of popular understanding of and support for the IDPs among the Jewish Israeli public. In a democracy, convincing the public to 'get on board' is essential to designing, financing and implementing a successful reparations project. Indeed, in many cases, it is the public demand for recognition and accountability for past injustices that pushes states to engage in redress. In a region characterized by divided narratives and the widespread belief that recognizing and rectifying past wrongs is a sign of weakness that will eventually be used against the conciliatory party, building public support for redress is no small feat. Despite repeated rejection by the Israeli government, the Palestinian IDPs have retained a remarkable willingness to compromise and discuss creative solutions that may draw on limited return and restitution to resolve their uprooting without engendering any further displacement. The challenge is to convince Israel's Jewish citizens to push their state to reach out across the negotiating table, recognizing that in contemporary democracies, critically reflecting on the past and moving to rectify past injustice is a 'liberal marker of national political stability and strength rather than shame.'⁷³ To this end, the work of organizations such as Zochrot and the leadership of public intellectuals including David Grossman and Amos Oz is a critical, if still modest, beginning.⁷⁴

Redressing the displacement of its Palestinian citizens offers Israel a twofold opportunity, beyond the obvious benefits for the IDPs themselves. First, by negotiating with its displaced citizens and drawing on a diverse range of remedial tools to respond to their concerns, Israel stands to benefit from a more stable and

respectful relationship with its largest minority group. Given that the resolution of the IDP situation will not affect the demographic composition of the state, Israel can well afford to show a willingness to negotiate and compromise by integrating some amount of restitution and return, and not only compensation, into the suite of reparations developed to respond to the IDPs' grievances. While Israel has long feared that demonstrating any willingness to compromise on the right of return for IDPs would create a precedent for the implementation of a full right of return for the Palestinian refugees, this outcome clearly does not necessarily follow from enabling a relatively small group of people who are already Israeli citizens to reclaim their homes. However, if handled correctly, this process may unlock a second major opportunity for the state of Israel and all its citizens: it may demonstrate to the broader Palestinian people an essential respect for their sacrifices, and a new willingness to negotiate seriously and open-mindedly to resolve the barriers to peace. It can only be hoped that this in turn may ultimately advance a comprehensive solution to the conflict.

NOTES

1. See Michael Fischbach's Chapter 13 in this volume for a discussion of these claims.
2. Nur Masalha, 'Introduction', in Nur Masalha (ed.), *Catastrophe Remembered: Palestine, Israel and the Internal Refugees* (London: Zed Books, 2005), 13.
3. United Nations Guiding Principles on Internal Displacement (1998), Introduction, Part 2.
4. Dina Abou Samra and Greta Zeender, 'Can the IDP label be used in Israel/Palestine?', *Forced Migration Review* 26 (2006), 37.
5. Assessing and redressing the Bedouins' loss of land in the Negev is particularly complicated due to the community's tradition of communal land ownership, and the lack of records on their holdings in the Israeli State Archives (ISA) and other record depositories. For a discussion of the displacement of Bedouin from the Negev, see for example Aref Abu-Rabia, 'The Bedouin Refugees in the Negev', *Refuge* 14, no. 6 (1994); Ronen Shamir, 'Suspended in Space: Bedouins Under the Law of Israel', *Law and Society Review* 30 (1996); Alexandre Kedar, 'Out of Place: The Bedouins of the Negev Under Israeli Law', *Paper presented at the annual meeting of the Law and Society Association, Chicago*, 27 May 2004.
6. Internal Displacement Monitoring Centre (IDMC) *Israel: Multiple patterns of internal displacement affect several ethnic and religious groups* (Geneva: IDMC, 2007), 6.
7. Efrat Ben-Ze'ev and Issam Aburaiya, '"Middle-Ground" Politics and the Re-Palestinization of Places in Israel', *International Journal of Middle East Studies* 36, no. 4. (2004).

8. Raef Zreik, 'The Palestinian Question: Themes of Justice and Power Part II: The Palestinians in Israel', *Journal of Palestine Studies* 33, no. 1 (2003), 43; and Joseph Schechla, 'The Invisible People Come to Light: Israel's "Internally Displaced" and "Unrecognized Villages"', *Journal of Palestine Studies* 31, no. 1 (2001), 20.
9. Nihad Bokae'e, *Palestinian IDPs inside Israel: Challenging the Solid Structures* (Bethlehem: Badil, 2003), 4; Internal Displacement Monitoring Centre (IDMC) *Israel: Displaced Arabs have little grounds for optimism, despite small Bedouin success* (Geneva: IDMC, 2005), 1; Amal Jamal, 'The Palestinian IDPs in Israel and the Predicament of Return: Between Imagining the Impossible and Enabling the Imaginative', in Ann Lesch and Ian Lustick (eds), *Exile and Return: Predicaments of Palestinians and Jews* (Philadelphia: University of Pennsylvania Press, 2005), 137; Schechla, 22; Abou Samra and Zeender, 37. Cohen suggests that the number of 1948 IDPs is closer to 150,000. In contrast, Masalha (2005, 11) indicates that if all displaced Arab citizens of Israel were counted, including the Bedouin and urban IDPs who were allowed to return to their cities of origin but not their original homes, the total would exceed 300,000. See Hillel Cohen, 'Land, memory and identity: The Palestinian Internal Refugees in Israel', *Refuge* 21, no. 2 (2003), 12; Masalha, 11.
10. Jamal, 133–34.
11. Masalha, 143.
12. Cohen (2003), 7.
13. *Ibid.*
14. *Ibid.*
15. Masalha, 145–51.
16. Cohen (2003), 8.
17. Hillel Cohen, 'The Resettlement of the Palestinian Internal Refugees in Israel: A Successful Story?', in Arie Kacowicz and Pawel Lutomski (eds), *Population Resettlement in International Conflicts: A Comparative Study* (Lanham: Lexington Books, 2007), 140; Cohen (2003), 8.
18. Masalha, 12; Cohen (2003), 8. Notably, not all IDPs are present absentees, because not all of them have had their properties literally confiscated. Schechla estimates that 200,000 of 238,000 Palestinian IDPs are present absentees. See Schechla, 21–22.
19. Yifat Holzman-Gazit, *Land Expropriation in Israel* (London: Ashgate, 2007), 108–09.
20. Wakim Wakim, 'The "Internally Displaced": Seeking Return within One's Own Land (Interview)', *Journal of Palestine Studies* 31, no. 1 (2001), 32.
21. On the issue of land expropriation in Israel more generally, see Holzman-Gazit (2007); and Oren Yiftachel and Avinoam Meir (eds), *Ethnic Frontiers and Peripheries: Landscapes of Development and Inequality in Israel* (Boulder: Westview Press, 1998).
22. Gershon Shafir and Yoav Peled, *Being Israeli: The Dynamics of Multiple Citizenship* (Cambridge: Cambridge University Press, 2002), 13.
23. Michael Fischbach, *Records of Dispossession: Palestinian Refugee Property and the Arab-Israeli Conflict* (New York: Columbia University Press, 2003), 120 and 272.

24. Majid Al-Haj, 'The Arab Internal Refugees in Israel: The Emergence of a Minority within the Minority', *Immigrants and Minorities* 7, no. 2 (1988), 158; Masalha, 154.
25. Terry Rempel, 'Housing and Property Restitution: The Palestinian Refugee Case', in Scott Leckie (ed.), *Returning Home: Housing and Property Restitution Rights of Refugees and Displaced Persons* (New York: Transnational Publishers, 2003), 288. In contrast, Cohen suggests that IDPs' living conditions are 'reasonable' in comparison to those of other Israeli Arabs, but recognizes that on one reading of the problem, this is not the point – 'the question is not housing but justice'. See Cohen (2007), 147.
26. Cohen (2003), 11.
27. Ian Lustick, *Arabs in the Jewish State: Israel's Control of a National Minority* (Austin: University of Texas Press, 1980), 182; Bokae'e, 6.
28. Wakim (2001), 34.
29. Robert Blecher, 'Citizens without Sovereignty: Transfer and Ethnic Cleansing in Israel', *Comparative Studies in Society and History* 47, no. 4 (2005): 737; Schechla, 27; Masalha, 152; Shafir and Peled, 115.
30. Cohen (2003), 6 and 10.
31. Schechla, 27.
32. Ben-Ze'ev and Aburaiya, 640; Bokae'e, 13.
33. Cohen (2003), 11; Ben-Ze'ev and Aburaiya, 640.
34. Wakim (2001), 36; Masalha, 165.
35. Badil Resource Center for Palestinian Residency and Refugee Rights, 'Report: RETURN RALLY National Committee of the Internally Displaced', 2000, at <http://www.badil.org/en/component/k2/item/1048-updatecampaign-for-the-defense-of-palestinian-refugee-rights> (accessed 19 November 2012).
36. Bokae'e, 14.
37. Wakim (2001), 38.
38. Uriah Shavit and Jalal Bana, 'The Palestinian Dream, the Israeli Nightmare', *Haaretz*, 6 July 2001.
39. Elie Rekhess 'The Arabs of Israel After Oslo: Localization of the National Struggle', *Journal of Israel Studies* 7, no. 3 (2002), 28.
40. International Crisis Group, *Palestinian Refugees and the Politics of Peacemaking* (New York: International Crisis Group, 2004), 33.
41. *Ibid.*
42. Zreik, 42.
43. Dina Shelton, 'Righting Wrongs: Reparations in the Articles on State Responsibility', *American Journal of International Law* 96, no. 4 (2002), 849; Principles on Housing and Property Restitution for Refugees and Displaced Persons, UN Doc. E/CN.4/Sub.2/2005/17 (2005), Principle 2.2. Principle 2.2 calls upon states to 'demonstrably prioritise the right to restitution as the preferred remedy for displacement and as a key element of restorative justice.'
44. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN Doc. A/RES/60/147 (2005), Section IX, para. 18.
45. Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add.2 (1998), Principle 29.2.

46. Brookings-Bern Project on Internal Displacement, *When displacement ends: A framework for durable solutions* (Brookings-Bern Project on Internal Displacement, 2007).
47. United Nations Committee on Economic, Social and Cultural Rights, 'Concluding Observations: Israel', UN doc. E/C.12/1/Add.27 (1998); UN doc. E/C.12/1/Add.90, 23 May 2003.
48. United Nations General Assembly Resolution 194 (III). See Wakim Wakim and Suliman Fahmawi, 'Association for the Defence of the Rights of Internally Displaced Persons in Israel', Internal Displacement Monitoring Centre (2000); Jamal, 149.
49. Cohen (2003), 10.
50. *Ibid.*
51. Holzman-Gazit, 113.
52. Hillel Cohen, 'The State of Israel *versus* the Palestinian Internal Refugees', in Nur Masalha (ed.), *Catastrophe Remembered: Palestine, Israel and the Internal Refugees* (London: Zed Books, 2005), 61; Holzman-Gazit, 112; IDMC 2007. There are differing views regarding whether compensation rates affected IDPs' willingness to accept or refuse compensation. Wakim, for example, stresses that refusal of compensation was a principled stance unrelated to the amount of money on offer. See Wakim Wakim, 'The Exiled: Refugees in their Homeland', *Palestine-Israel Journal* 9, no. 2 (2002).
53. Holzman-Gazit, 112–13.
54. Fiona McKay and Hussein Abu Hussein, *Access Denied: Palestinian Land Rights in Israel* (London: Zed Books, 2003), 73.
55. Shafir and Peled, 114; Holzman-Gazit, 113.
56. Holzman-Gazit, 144; Cohen (2003), 8; Cohen (2005), 61.
57. Cohen (2007), 144.
58. *Ibid.*, 142–43.
59. Bokae'e, 3.
60. Blecher, 730 and 746.
61. Holzman-Gazit, 1. This decision was ultimately reversed.
62. Joseph Ryan, 'Refugees within Israel: The Case of the Villages of Kafr Bir'im and Iqrit', *Journal of Palestine Studies* 2, no. 4 (1973); Terry Rempel, 'International Protection and Durable Solutions', in Nur Masalha (ed.), *Catastrophe Remembered: Palestine, Israel and the Internal Refugees* (London: Zed Books, 2005), 273–74; Meron Benvenisti, 'The High Court and fear of return', *Haaretz*, 3 July 2003; Masalha, 160–63; Ben-Ze'ev and Aburaiya, 655; Jamal, 151–52; IDMC 2007, 4; and IDMC 2005, 1, 6.
63. See for example Amiram Barakat, 'High court rejects the right of Ikrit refugees to return home', *Haaretz*, 27 July 2003; and Benvenisti (2003).
64. Cohen (2007), 135.
65. *Ibid.*, 147.
66. Cohen (2003), 11; Bokae'e, 15.
67. Rekhess, 27; Jamal, 136; Wakim (2001), 37. In the early years of the Israeli state, major attention was devoted in the Knesset to the issue of the return of the 'internal refugees' to their villages. The IDP question was raised in almost every Knesset session from the late 1940s to 1967, when the issue fell off the radar until the 1990s. At this point the Arab parties and Hadash representatives began to demand a solution in their election platforms. ADRID has also raised the issue at the local level, convincing 27 heads of local councils to

- sign a petition to cancel the Absentees' Property Law. See Bokae'e, 12–13; Cohen (2003), 9; and Ben-Ze'ev and Aburaiya, 647.
68. Wakim (2001), 36.
 69. Cohen (2003), 12; Wakim (2001), 35.
 70. Abou Samra and Zeender, 37.
 71. For a discussion of Israel's efforts to compensate settlers forced to relocate from Gaza, see Ehud Eiran, 'Lords of the Earth? The 2005 Disengagement and the Israeli Settlement Project', in Arie Kacowicz and Pawel Lutomski (eds), *Population Resettlement in International Conflicts: A Comparative Study* (Lanham: Lexington Books, 2007). Settlers relocated from Gaza received an average of US\$200,000 to US\$300,000 per family. In addition, the state provided temporary and permanent housing, transportation, and support from social workers. A 'specialized relocation agency' (SELA) was created to deal with compensation for and the absorption of the removed settlers into the state of Israel. The cost of relocating the settlers as of June 2006 exceeded US\$2 billion. Interestingly, debates on compensation for the Gaza settlers were also deeply concerned with the question of creating precedents: part of the Gaza settlers' rationale for fiercely refusing relocation and compensation was the fear of creating a precedent that would undergird moves to relocate settlers away from the West Bank. See Eiran, 168, and 176–77; BBC, 'Israel votes to refund settlers', *BBC News On-Line*, 24 October 2004, at: http://news.bbc.co.uk/2/hi/middle_east/3948987.stm (accessed 20 October 2012).
 72. Zreik, 46.
 73. Elazar Barkan, *The Guilt of Nations: Restitution and Negotiating Historical Injustices* (Baltimore: Johns Hopkins University Press, 2000), xxix.
 74. For a discussion of Zochrot's involvement in commemorating the IDPs' displacement, see Eitan Bronstein, 'The *Nakba* in Hebrew: Israeli–Jewish Awareness of the Palestinian Catastrophe and Internal Refugees', in Nur Masalha (ed.), *Catastrophe Remembered: Palestine, Israel and the Internal Refugees* (London: Zed Books, 2005).

Linking Palestinian Compensation Claims with Jewish Property Claims against Arab Countries

Michael R. Fischbach

INTRODUCTION

In the first several years after the Arab–Israeli war of 1948, Israel qualified its stated readiness to pay compensation for property abandoned by Palestinian refugees during and after the war with various caveats.¹ These included limiting compensation to privately-owned refugee land and real estate only, and not paying for abandoned movable goods.² Yet beyond such technical caveats dealing with Palestinian property itself, Israel also raised counter-claims that it linked to its compensation obligations. The most important of these was its March 1951 decision to link Palestinian compensation with the property losses sustained by Jews who had immigrated to Israel from Iraq. The Israeli government announced that it would consider the value of Jewish property sequestered in Iraq when it computed the value of Palestinian refugee compensation; Israel later included Jewish property claims against all Arab states as well. In so doing, Israel dragged the wider Arab world, as well as Jews who emigrated from Arab countries, into the Palestinian refugee property question.

This study examines the question of how Israel diplomatically linked Jewish property claims against Arab countries with those of the 1948 Palestinian refugees. It notes the various Israeli attempts to register Jewish losses in the 1950s; how Israeli negotiators raised and then modified the link between Jewish and Palestinian claims diplomatically during the Israeli–Palestinian peace process of 1993–2001; and what preparations have been made by Israel and Jewish organizations to bring up Jewish claims in future peace talks.

LINKING JEWISH PROPERTY LOSSES WITH PALESTINIAN COMPENSATION

Hundreds of thousands of Jews, often called ‘Sephardic’ or ‘Mizrahi’ Jews,³ left their homes in the Arab world during and after the 1948 Arab–Israeli war. The reasons for their decisions to leave varied by circumstance, country, time period and social class. Among these reasons was rising anti-Zionist anger in parts of the Arab world that led to anti-Semitic laws, practices and attacks. Approximately 260,000 Jews from the Arab world moved to Israel during and immediately after the 1948 war. The hostile atmosphere some experienced in Arab countries, combined with the end of European colonial rule, Zionist encouragement, and other factors such as the search for a better life, triggered an even greater exodus of Jews from the Arab world in the 1950s and 1960s. By 1970, approximately 800,000 Jews had emigrated from Arab countries in the Middle East and North Africa. Most settled in Israel; some lost property as a result of their exodus.

Various parties had begun linking the fate of Jews and Jewish property in the Arab world with that of the Palestinian refugees even as the 1948 war was underway. Yet what firmly and fundamentally brought together Palestinian and Jewish property claims on the level of international diplomacy was Israel’s announcement in March 1951 that it formally would link Palestinian compensation with the question of Iraqi Jewish immigrants to Israel whose property had been sequestered by the Iraqi government. On 19 March 1951, Israeli Prime Minister Moshe Sharett addressed the Israeli parliament, the Knesset:

By freezing the assets of tens of thousands of Jews who are immigrating to Israel – today stateless but citizens of Israel immediately upon their immigration – the government of Iraq has opened an account between it and the government of Israel. We already have an account with the Arab world, namely, the account of the compensation that accrues to the Arabs who left the territory of Israel and abandoned their property...The act now committed by the kingdom of Iraq...forces us to link the two accounts...We shall take into account the value of the Jewish property that has been frozen in Iraq when calculating the compensation that we have undertaken to pay the Arabs who abandoned property in Israel.⁴

Henceforth, this would become a long-standing dimension of Israeli policy towards the question of Palestinian refugee compensation: Israel would pay the Palestinians (some) compensation, but only after Jewish claims against Arab countries were deducted from the amount.

Israel's policy of linkage could only succeed if it were able to produce statistics detailing Jewish losses in Arab countries. The Israeli Registrar of Foreign Claims already had begun asking Israeli citizens to register claims around the world in 1949, prior to the articulation of the linkage policy. By 1 August 1952, the Registrar had recorded a total of US\$86,870,456 (in 1952 dollars) in claims specifically against Arab countries.⁵ The Israeli government was disappointed with the low public turnout in registering claims. Its diplomats now began to worry that Israel's very public announcement of linkage might backfire if the amounts claimed remained low compared with Palestinian figures. The United Nations Conciliation Commission for Palestine (UNCCP) had produced a 'global estimate' of Palestinian refugee property losses in August 1951 that set Palestinian losses at more than four times what Israel had registered for Jewish losses: P£100,383,784 (US\$404,546,448 in 1947 dollars) in abandoned Arab land and approximately P£20,000,000 (US\$80,600,000) in movable assets.⁶ An Israeli Foreign Ministry official cautioned the Israeli embassy in Washington in November 1952 not to overemphasize the policy of linkage in light of the imbalance between the two sets of property losses: 'Considering this I would like to draw attention to the danger of emphasizing our claims to the frozen Jewish property in Arab countries.'⁷

The influx of tens of thousands of Iraqi immigrants in 1950–1951 offered Israel the possibility of registering many new claims. On 30 September 1952, the Israeli government decided to renew the campaign to register Jewish losses in the Arab world in the hopes of gathering more complete statistics. The process was kept open for several years, although less than US\$20,000,000 in additional claims were registered over the next three years, and by February 1956, the total amount claimed against Arab states and individuals stood at US\$103,373,485⁸ – still only one-quarter of estimated Palestinian losses.

At the same time as they were anxious to register claims against Arab states, Israeli officials worried that those Jews who registered claims might expect that the cash-strapped Israeli government itself might compensate them for their losses pending a final

arrangement with the Arab world. This became a particular concern during the massive influx of Iraq Jews. When it was decided to establish a special commission specifically to register the claims of Iraqi Jews, the Foreign Ministry warned that the government should give no intimation to immigrants that it would compensate them for their losses. An internal Foreign Ministry document from late March 1951 noted:

It must be taken into consideration that such a process of registration is likely to create illusions among the immigrants, and the agency that gathers the claims will be burdened with a great responsibility toward them (unless it objects to this from the outset). It is therefore critical that this office will be *public, and not governmental* [emphasis added].⁹

A 'public' body would possess the requisite air of authority, but would not actually be a governmental agency. This could provide the government with the distance it needed to thwart any compensation calls from Iraqi Jews.

The government went on to establish such a special public commission, the Public Commission for the Registration of the Claims of Iraqi Immigrants, in mid-1955 (although it did not announce its formation until January 1956).¹⁰ The policy of linkage hung over the commission's work. In fact, Israeli policy toward Palestinian refugee compensation prompted the commission to circumscribe severely the kinds of property losses citizens could register. Former Iraqi Jews only were allowed to register the same kind of property for which the Israeli government earlier had stated it would pay compensation to Palestinian refugees: individually owned land and real estate, plus bank accounts (because of Israel's 1952 decision to restitute Palestinian refugee bank accounts). The commission did not seek information about other claims, such as moveable household property, that did not fit into the formula of linkage. An internal memorandum summing up the discussions of the 22 October 1955 meeting of the commission stated this quite clearly:

It was agreed upon that, for the time being, Jews from Iraq will not be asked about the moveable property which they abandoned in their homes. This is in accordance with the position of the Prime Minister, who has determined that such

registration could contradict our policy on the compensation of Arab refugees, which is limited to immoveable property alone.¹¹

The commission worked for nearly a year, and issued an unpublished interim report to the Foreign Ministry on 17 December 1956. The news was not encouraging. Like earlier efforts to register claims, this new attempt failed to garner registrations from more than a fraction of Iraqi immigrants – only between 3,000 and 4,000 of the more than 37,000 Iraqi families in Israel bothered to comply.¹² The commission's precise estimates never have been released.

The Israeli government soon undertook another special registration targeting losses in one specific Arab country: Egypt. It formed another special public commission in March 1957 to register Israeli citizens' property claims against Egypt stemming from the 1956 Suez War and the expulsion of Jews without property from that country. From July to September 1957, that commission registered 640 claims totalling E£5,531,755,370. Work continued for over one and a half years. Eventually the commission collected over 3,500 claims, although its complete findings have remained secret.¹³

No more attempts to register or collect Mizrahi/Sephardic property claims were made in Israel for about ten years. Then, on 28 March 1969, the Israeli government created a special unit within the Ministry of Justice to collect and maintain data on such losses. The office remained open until the second half of 1999. By that time, it had collected some 15,000 documents.¹⁴

The policy of linkage remained a bedrock principle of Israeli diplomacy towards Palestinian refugee property compensation for decades. The overall lack of comprehensive figures detailing Jewish property losses did not present Israel with a major problem inasmuch as discussions on Palestinian compensation and Israeli counterclaims grew more and more infrequent as the Arab–Israeli conflict intensified during the 1950s. Indeed, little was heard of either set of claims in the two and a half decades after 1967.

JEWISH CLAIMS AND THE PALESTINIAN–ISRAELI PEACE PROCESS, 1993–2001

The Oslo Accord signed between Israel and the Palestine Liberation Organization (PLO) on 13 September 1993 set in motion a peace process whereby the two sides would resolve

several so-called final status issues as part of an Israeli–Palestinian peace treaty. Among the most important and vexing of these final status issues was the question of the Palestinian refugees. It was in discussing this matter with the Palestinians that Israel finally could employ its policy of linkage after decades of waiting. Indeed, in 1993, Israeli negotiator Zalman Shoval summed up his government’s policy of linkage quite succinctly: ‘Israel would agree to cancel the Jewish claims if the Palestinians would give up their compensation demands.’¹⁵

The peace process was fraught with problems, however, and final status talks, while technically opened in May 1996, did not really open until September 1999. By that time Israeli negotiators had discovered that they faced a huge problem after decades of waiting to bring up Jewish property claims: neither Israel nor any other party possessed complete, detailed statistics on Jewish losses. To prepare for the talks, various Jewish parties decided to undertake international efforts to register Mizrahi/Sephardic Jewish property losses in the late 1990s.

In the United States, the American Sephardi Federation (ASF) decided to work with the Israeli Justice Ministry on such a campaign. The ASF distributed over 75,000 questionnaires about property losses to Mizrahi/Sephardic communities around the world, including 30,000 to those in Israel, by mid-1999.¹⁶ The Israeli government of Prime Minister Benjamin Netanyahu was also concerned about Israel’s lack of preparedness. It needed help, but wanted this help to come from a source outside the Israeli government itself. Bobby Brown, Netanyahu’s Advisor on Diaspora Affairs, called ASF President Leon Levy after receiving reports that the Palestinians were collecting detailed information on their 1948 property losses in preparation for the talks.¹⁷ Brown later stated, ‘We knew that this would be the time to put our claims on the table.’¹⁸ Levy agreed that the Palestinians were ‘... way ahead of the Israelis in quantifying their losses. They’ve been going house to house in East Jerusalem with telephone books from before 1948, identifying exact locations of where Arabs lived.’¹⁹

As a result of discussions with Brown, the ASF decided to join forces with the World Jewish Congress (WJC), which had considerable experience with pursuing Jewish Holocaust claims, in expanding the questionnaire project that the ASF already had undertaken. Together, they created a new group: The International Committee of Jews from Arab Lands (ICJAL), which formally started its registration efforts on 21 June 1999. ICJAL’s chief

chairman, Amram Attias, was clear about the purpose of the campaign, which was not actually to press for compensation from individual Arab states. The purpose was to develop statistics on Jewish losses in order to parry Palestinian compensation demands. 'It's not to try to get any money, we have no hope, no expectation that we are going to get any money,' he conceded.²⁰ Attias continued:

Our claim is simple. We want Israel to demand our property back in the negotiations. We are not against the Palestinians, but we consider them part of the Arab nation as they do themselves. They were driven out or left – and so were we. For each house they demand, a house of ours should be demanded. For each mosque, a synagogue. For each cemetery, a cemetery.²¹

Brown stated Israel's objectives clearly:

An injustice was committed to the Jews from Arab countries, and for 50 years we've been saying that it's not the right time to deal with this issue. But in a month, or a year, we will be sitting with the Palestinians...and negotiating. The issue of restitution will come up. The Palestinians are going to say, 'You owe us X-amount.' That's the moment that the Jewish side must say, 'There was a war. We also have claims. And these must act as a counterbalance.' We have to find a rough justice on both sides.²²

David Bar-Illan, Netanyahu's head of communications and Director of Policy Planning, also noted, 'If claims to Arab property are raised, then obviously Israel will have to counter them with claims to property that is immeasurably greater.'²³ ICJAL distributed over 100,000 questionnaires to Mizrahi/Sephardic communities around the world from 1999–2002.

In addition to ICJAL, other groups became involved in the question of Jewish property losses in the Arab world. In 2000, the WJC published a report on the subject written by Israeli journalist Itamar Levin, noted for his research on Holocaust-era Jewish assets.²⁴ The World Organization of Jews from Arab Countries (WOJAC), established in 1975 by Iraqi-born Israeli politician Mordechai Ben-Porat, said that it had a file with 10,000 private property claims, and that it had lawyers in New York and Tel Aviv working on the issue.²⁵

Israel's interest in such campaigns clearly stemmed from its hope that these programmes would assist it diplomatically without having it become directly involved. This was the case in the 1950s, forming 'public bodies' to do such work gave the government deniability, and kept it safe from those Jews who might hold it accountable for the eventual payment of some kind of compensation.

Israel and groups like ICJAL were still gathering statistics when final status talks with the Palestinians began in earnest at the Camp David II summit in the United States, held from 11–25 July 2000. But at this conference, Israel changed its nearly 50-year-old policy of linkage in an important way. Instead of linking the value of Jewish claims with what it would pay the Palestinians, it advocated the establishment of an international fund that would compensate both sets of aggrieved parties. The idea was that international donors would contribute to the fund, which would pay out claims to individuals – not governments – who filed claims. Palestinian refugees therefore would seek redress from the fund, not from Israel. Mizrahi Jews would petition the fund instead of Arab governments.

What motivated the Israelis to change the policy of linkage now that, at last, its negotiators were sitting down face-to-face with their Palestinian counterparts in serious talks about the refugees? First, one of the most important factors undoubtedly was the sheer scale of the imbalance in the compensation figures each side likely would present. Despite efforts by ICJAL and other groups, Israel still did not possess enough information on Jewish claims, and what statistics it did have were far smaller than Palestinian claims. Itamar Levin quoted a 'deeply involved source' shortly before Camp David II, in December 1999, as saying that a confidential Israeli Foreign Ministry study revealed that, based on the incomplete records the government possessed on Jewish losses in the Arab world, Palestinian claims were likely to dwarf Jewish claims by a ratio of 22:1. Levin's source noted:

The Ministry of Foreign Affairs conducted a tiny sample study of Jewish claims, and it was very hard to arrive at an estimated valuation. But according to that sampling, the ratio of claims is 22:1 in the Palestinians' favour...there's no question that there is a problem, because they [the Palestinians] can claim very rationally about a minimum of \$13 billion in property, in 1948 terms.²⁶

Given this disparity, the Israelis may have felt that insisting on linkage still would leave them owing a considerable amount of money. The international fund idea would relieve them of this burden, because even though they would ‘participate in its [the fund’s] financing’, the Israelis would not be responsible for coming up with all the money. Israel also no doubt realized that its major problem lay not with paying out compensation to the Palestinian refugees, but with the PLO’s demand for the ‘right of return’ – refugee repatriation to their pre-1948 homes in Israel. How to blunt this demand constituted a major problem for the Israelis.

For their part, PLO negotiators at Camp David II angrily rejected the fund idea and the concept of linking their refugees’ property claims with those of Jews who left Arab countries.²⁷ One Palestinian negotiator told his Israeli counterpart, ‘This problem has nothing to do with us. Bring it up with the Moroccan authorities, the Yemenis, and so forth.’²⁸ In the end, the summit ended and failed to reach an agreement.

The last substantive Israeli–Palestinian final status talks took place in Taba, Egypt, from 21–27 January 2001. Here the two sides wrestled with the complexities of the Palestinian refugee issue at great length, and the question of Jewish property took another historic turn. PLO negotiators continued to maintain that the subject of the Jewish claims was ‘not a subject for a bilateral Palestinian–Israeli agreement.’²⁹ What is remarkable is that after almost exactly 50 years of articulating linkage, the Israeli delegation agreed, and backed away even further from the policy. Specifically, the Israeli proposal at Taba stated:

Although the issue of compensation to former Jewish refugees from Arab countries is *not a part of the bilateral Israeli–Palestinian agreement* [emphasis added], in recognition of their suffering and losses, the parties pledge to cooperate in pursuing an equitable and just resolution to the issue.³⁰

Even though the Taba talks failed, the new policy marked the end of an era for Israeli diplomacy on the Jewish property claims issue. However, de-linking Palestinian and Jewish property claims through the creation of an international fund was not the end of the connection between Jewish and Palestinian claims. Israel still faced the demand for the right of return, and some felt that the plight of ex-Arab Jews could provide the means for deflecting it.

PREPARATIONS AFTER 2001 FOR RENEWED ISRAELI–PALESTINIAN TALKS

The violence of the al-Aqsa intifada halted the Israeli–Palestinian peace process for several years, and various parties began preparing for the day when negotiations would resume. The efforts of the Israeli government and Jewish groups around the world in this regard centred around two goals. The first was the need to obtain more statistics on Jewish property losses in the Arab world. The second was to launch an international political and public relations campaign designed to equate the experience of Palestinian refugees with that of Jewish emigrants from Arab countries, with the goal of neutralizing Palestinian demands for the right of return.

Registration efforts resumed in March 2002, when the Israeli government reopened the Justice Ministry's department on Jewish property claims against Arab countries that had been shut down in 1999. This unit, the Department for the Rights of Jews from Arab Countries, began compiling a computerized database detailing Jewish claims. The WJC also started working on behalf of Jewish claims against Arab countries, but took its campaign in a different direction. Instead of focusing on property, the WJC decided to raise international awareness of Jewish emigrants from Arab countries and their experiences, in an effort to equate them with the experiences and claims of Palestinian refugees. The purpose was to negate Palestinian demands for the right of return by arguing that a permanent, irrevocable Jewish–Arab population transfer had occurred in the Middle East and North Africa as a result of two refugee exoduses during and after 1948: Palestinian and Jewish.

In December 2001, this new campaign was unveiled when the WJC's European branch, the European Jewish Congress, held a conference in Paris on the 'forgotten exodus' of Jews from Arab countries.³¹ The WJC argued:

There is no justification for the argument of Palestinian repatriation to Israel. Aside from the suicidal consequences for Israel, repatriation of the Arab refugees would create a new norm in international affairs. In the period surrounding the birth of the state of Israel, there were two refugee movements: one into Israel and one out of it. In effect, there was an exchange of populations. Should the clock be turned back on all the other

population exchanges? Such an idea is not seriously considered in any other case...

It is time to remove the veil of silence that surrounds the story of the Jewish refugees. Especially as the Arabs are becoming more and more vocal about their true aims and the 'right of return' of the Palestinian Arabs, it is important to remember that there were other victims of the Arab–Israeli conflict. The Jewish expellees, however, are no longer refugees. They are full and proud citizens of their new country. Though they left behind communal and private property worth billions of dollars, and memories of a life that is gone forever, Israel seeks no 'right of return' of the Jews to Arab lands. Likewise, it rejects a 'right of return' for Arabs to Israel.³²

The WJC and its Canadian branch, the Canadian Jewish Congress (CJC), co-sponsored a similar conference in Montreal in November 2002. In describing what transpired at the conference, CJC President Keith Landy articulated the campaign's aims frankly: 'To be crass, it's a bargaining tool at the table with Palestinians when it comes to negotiating a settlement in the Middle East.'³³

In September 2002, a new coalition was formed in New York to advocate for Jewish grievances against the Arab world by continuing both with property registration efforts and, more importantly, to argue for the population exchange thesis: Justice for Jews from Arab Countries (JJAC). JJAC initiated an ambitious agenda to publicize the plight of Jewish emigrants from the Arab world and afford them what it called 'political recognition', much as it claimed the world already had done with the Palestinians.³⁴ Like the WJC, JJAC sought to enlist the experience and losses of the Jews from the Arab world to serve Israeli diplomatic strategies vis-à-vis the Palestinians. This is why, unlike the pursuit of European Holocaust claims made earlier by the WJC and other groups, JJAC made it clear that it was *not* seeking financial compensation for Jewish losses in the Arab world. Canadian-born JJAC Executive Director Stanley Urman stated on numerous occasions that for JJAC, the issue 'is not about money'.³⁵ Rather, its clear thrust was to focus on future Israeli–Palestinian negotiations as the venue where Israel could pursue justice for Jews from the Arab world by whatever means it decided. Urman was very open about the fact that JJAC would hand over to Israel power of attorney to deal with the claims it collected. 'It is not up to us to decide, it is

up to Israel,' he stated in 2007. 'We don't demand specific rights, we just demand recognition.'³⁶

JJAC pressed hard in its campaign to shift global thinking to accept the notion that the Middle Eastern and North African Jews were 'refugees' deserving equal treatment and political legitimacy as the Palestinian refugees; that there had been a permanent and irreversible population exchange in the Middle East; and that Israeli-Palestinian peace could only be obtained if the PLO dropped its insistence upon the right of return. To support its idea that Jews from the Arab world deserved the same degree of political legitimacy as Palestinian refugees, JJAC always used the term 'Jewish refugees' when referring to the 800,000 Jews who had left Arab countries during and after 1948 – regardless of why they had left. It argued that United Nations Security Council Resolution 242 of November 1967 discussed a 'just solution to the refugee problem' without language qualifying whether the refugees were Palestinian or Jewish, leaving the door open for interpreting Resolution 242 as including Jews as well as the Palestinians. The Canadian jurist and JJAC Honorary Co-Chairman Irwin Cotler further stated that not only were ex-Arab Jews refugees, they were made refugees because the Arab world had used a 'pattern of ethnic cleansing' to rid itself of its Jewish population.³⁷

Not all Jews from Arab countries have been happy about these recent campaigns on behalf of Mizrahi/Sephardic property claims, however. These persons resent the idea that the Israeli government would use their property losses to reduce or eliminate the amount Israel would pay the Palestinians. If the claims cancelled each other out, they argued, the Jews from Arab countries therefore would end up with nothing. One vocal critic has been the Tel Aviv University sociology professor Yehouda Shenhav, an Israeli academic and activist of Iraqi origin, who has researched the property question extensively. Shenhav blasted the concept of linkage for what he perceived as its cynical goal of aiding in the dispossession both of Palestinian refugees and Jewish emigrants from Arab countries. He also scored what he perceived as the arrogance of the Israeli government presuming to use the property of private Mizrahi/Sephardic Jews for its own, national diplomatic priorities. In referring specifically to Iraqi Jews, he noted:

The idea of offsetting the claims of Iraqi Jews with those of the Palestinians is completely immoral. Israel is trying to settle accounts with the Palestinians at the expense of the Mizrahim.

Instead of compensating the Palestinians and helping the Mizrahim, it is pulling a stunt that will leave both sides with nothing. Besides, who says the Israeli government owns the property that Iraqi Jews left behind? Who gave the Israeli government the right to nationalize all that property?³⁸

Another Israeli activist of Tunisian and Iranian heritage, Moshe Karif, also has denounced linkage:

Why should my grandparents' modest assets be used by world Jewish organizations as an excuse not to pay the Palestinians? Who gave the World Jewish Congress, JJAC, or the State of Israel the authority or the right to negotiate away my family's property?...Both the Ashkenazim [Central and Eastern European Jews] and the Mizrahim arrived in this country as refugees, with nothing. Those who received [German Holocaust] reparations were able to create a financial basis for themselves, while the Mizrahim, who arrived with nothing, have remained in the lower classes until now. Now, after all we've suffered, we're supposed to be the ones who 'pay off' the Palestinians? Where's the justice in that? It takes a lot of arrogance, *hutzpa*, and racism to pit the Mizrahi assets against the Palestinian assets. Why didn't anyone do that with the reparations from Germany?³⁹

Expressions of Mizrahi/Sephardic resentment also arose within the Israeli government. Speaking anonymously, an Israeli government official of Iraqi origin told an Israeli journalist in 1999,

Sephardim will say that Israel didn't want to bring them in the first place, that it then put them in transit camps, then in development towns – and that now we're being used as a bargaining chip. This will create an explosion. I can't say how big. But it will.⁴⁰

David Tal, a Knesset member of Tunisian origin, agreed, stating 'the bitterness will come to the surface, with serious public implications.'⁴¹ He continued:

If Israel resolves this issue with the Arab world, that's fine. But that's not the end of the account. Israel would then have to give some compensation to the Sephardim. I don't want to

draw comparisons, but the Jews who fled Germany and Eastern Europe got compensation. That money helped them establish themselves here. The Jews who fled Arab lands have never got anything.⁴²

The Israeli official Bobby Brown conceded this last point in 1999: if linkage proved successful, and the Jewish and Palestinian claims cancel one another out, the Israeli government would need to provide some kind of payment to immigrants from Arab countries. 'There will be a lot of debate on this. The first debate will be with the Palestinians. The second will be on how we handle it among our own people,' Brown said. Israel would need to 'find a way to provide compensation to the Sephardim.'⁴³

Five years after JJAC's campaign started, Israeli-Palestinian negotiations finally resumed on 27 November 2007 in Annapolis, Maryland. Despite JJAC's high-profile campaign, the Israeli government did not seem to feel that the time was right for using the question of Mizrahi/Sephardic Jews with the Palestinians. Shortly before the Annapolis summit, JJAC received a letter, dated 8 October 2007, from Israeli Prime Minister Ehud Olmert. In it, Olmert told the group that diplomatic discussion of ex-Arab Jews was premature, but that Israel would 'reaffirm its commitment to resolving the rights of Jewish refugees from Arab countries as well,' when the time was right.⁴⁴

At time of writing, JJAC continues its activities, and neither Jewish nor Palestinian property claims have been resolved in the context of Israeli-Palestinian talks. But some Mizrahi/Sephardic Jews are not waiting. Rejecting linkage and the population exchange theory, they are pressing for immediate property compensation directly from the Arab governments concerned. In Israel, an organization of Iraqi Jews called Shemesh – Shalom ve Shilumim sued the Israeli government in September 2005 before the High Court of Justice, trying to force the government to open compensation talks with the new, post-Saddam Hussein government in Iraq. After the Libyan leader Muammar al-Qaddafi announced in August 2004 that his country would compensate former Libyan Jews for confiscated property, the World Organization of Libyan Jews in Israel reportedly began working on claims. What is more, two rival groups of former Libyan Jews living in Italy began negotiating directly with the Libyan government as well. In mid-2007, the

relatives of an Egyptian Jew expelled in 1957 settled a lengthy lawsuit in the Egyptian courts against the Egyptian government that had demanded restitution of a hotel in Alexandria, which had been nationalized in 1962. Finally, a former Egyptian Jew in Canada resorted to the American courts in April 1997 to seek compensation for land in Cairo that also had been nationalized in 1962. In this instance, he sued not the Egyptian government, but the Coca-Cola Company, which he claimed purchased a share in the land, knowing full well that it had been seized from his family. That case is ongoing.⁴⁵

CONCLUSION

The efforts of the Israeli government and international Jewish organizations to press for Jewish property claims against Arab countries over the past 50 years have been made to serve Israeli diplomatic needs, not to seek financial resolution of these claims on behalf of individual persons. Israel's original 1951 decision to link Jewish claims with its stated commitment to compensate 1948 Palestinian refugees for some of the landed property they abandoned during their exodus was designed to relieve the cash-strapped new Israeli state of some of its financial burdens. The interconnectedness of the Palestinian refugee problem with the overall Arab–Israeli conflict ultimately made it impossible to isolate it from its wider context, and both Palestinian and Jewish compensation disappeared from the diplomatic radar screens for several decades starting in the mid-1950s.

The issues reappeared during the Israeli–Palestinian peace process in the 1990s. The shift in Israeli policy in 2000 away from linked compensation, and towards the creation of an international fund to which individuals from all sides could petition for compensation, reflected a new effort to relieve Israel's future financial burdens. Moreover, recent international efforts to hold up ex-Arab Jews as refugees whose plight is on a par with that of the Palestinians also have aimed to serve Israeli needs – in this case, to deflect the Palestinian call for the right of return.

As a result, no serious efforts have been exerted by Israel or international Jewish organizations over the decades to seek immediate compensation for dispossessed Mizrahi/Sephardic Jews. Indeed, some of these Jews have resorted to legal action – in American, Arab and Israeli courts – to seek redress on their

own, instead of waiting for others to take up their cause. The irony is that while many supporters of Israel over the years have accused the Arab states of using the Palestinian refugees as pawns for their own purposes, dispossessed Jews from Arab countries appear to have suffered the same fate at the hands of Israel and its diplomatic supporters.

NOTES

1. This study is based upon my book, Michael R. Fischbach, *Jewish Property Claims Against Arab Countries* (New York: Columbia University Press, 2008).
2. For more on this, and Palestinian refugee property claims generally, see M. J. Fischbach, *Records of Dispossession: Palestinian Refugee Property and the Arab–Israeli Conflict* (New York: Columbia University Press, 2003), and M. J. Fischbach, *The Peace Process and Palestinian Refugee Claims: Resolving Claims for Property Compensation and Restitution* (Washington: United States Institute of Peace Press, 2006).
3. The term ‘Sephardic’ refers to Jews whose ancestors were expelled from the Iberian Peninsula in 1492, many of whom found refuge in Mediterranean countries. Despite this, many Jews have used the term ‘Sephardic’ to denote any Jew not of Ashkenazic (Central and Eastern European) ancestry. Use of the term ‘Mizrahi’ (Hebrew: eastern) to refer to Jews of Middle Eastern, North African, and South-west Asian descent, originated in Israel in recent years in an attempt at greater precision.
4. Yehouda Shenhav, *The Arab Jews: A Postcolonial Reading of Nationalism, Religion, and Ethnicity* (Stanford: Stanford University Press, 2006), 110.
5. Israel, Prime Ministry. Israel State Archives [hereafter, ISA] (130) 2401/22, ‘Claims for Jewish Property Frozen in Arab States’ (6 October 1952).
6. UNCCP, ‘Valuation of Abandoned Arab Land in Israel’ (14 August 1951). This report, written by the UNCCP’s John M. Berncastle, is found in several archives. One is at the United Nations Secretariat Archives DAG 13–3, UNCCP. Subgroup: Refugee Office. Series: Land Specialist/Box 35/1951/ Reports: J. M. Berncastle; Document: MCP/3/51/9. It can also be found in World Zionist Organization, Central Zionist Archives [hereafter, CZA] Z6/1995.
7. ISA (130) 2401/22/1, Director of UN Department of Ministry of Foreign Affairs to Washington (5 November 1952).
8. ISA (130) 2563/7, Levisohn to Aliav (20 February 1956).
9. ISA (130) 1791/1, ‘Jewish Iraqi Property – Registration of Claims (Proposal)’.
10. *Divrei ha-Knesset* [Knesset Debates] 26, 1050 (10 February 1959); Itamar Levin, *Locked Doors: The Seizure of Jewish Property in Arab Countries*, trans. Rachel Neiman (Westport: Praeger, 2001), 63–64; Shenhav, 131.
11. ISA (130) 2563/7, ‘Summary of Meeting on the Public Commission for the Registration of Claims of Iraq Jews’ (22 October 1955).
12. *Divrei ha-Knesset* [Knesset Debates] 26 (10 February 1959), 1050; Levin (2001), 63–64.

13. Levin (2001), 136–8.
14. Randall C. Belinfante, 'Resources for Research on Jews of Arab Countries', *Proceedings of the 38th Annual Convention of the Association of Jewish Libraries* (2003), 18, at: www.jewishlibraries.org/ajlweb/publications/proceedings/proceedings2003/belinfante.pdf#search=%22roumani%20%22as%20you%20know%22%22 (accessed 20 October 2012).
15. Peter Hirschberg, 'Private Property; Keep Out!', *The Jerusalem Report* (1999).
16. Daniel Kurtzman, 'Sephardim Gauge Moneys Lost During Exodus from Arab Lands', *Jewish Telegraphic Agency*, 21 June 1999; Elli Wohlgeleernter, 'Campaign Identifies Jewish Property in Arab Countries', *Jerusalem Post*, 14 May 1999.
17. Aryeh Dayan, 'A Home for a Home, and a Synagogue for a Mosque', *Haaretz*, 23 September 1999; Kurtzman (1999).
18. 'Jewish Assets in Arab Countries', *The Scribe* no. 73 (July 2000).
19. Kurtzman (1999).
20. Elli Wohlgeleernter and Ben Lynfield, 'Jews Seek to Identify Property Left Behind in Arab Countries', *The Jewish News Weekly of Northern California*, 7 May 1999.
21. Dayan (1999).
22. Hirschberg (1999).
23. Wohlgeleernter and Lynfield (1999).
24. Itamar Levin, *Confiscated Wealth: The Fate of Jewish Property in Arab Lands. Policy Forum No. 22* (Jerusalem: Institute of the World Jewish Congress, 2000).
25. *Middle East Peace Report*, 8 January 2001; *The Jerusalem Post* (International Edition), 1 April 2001.
26. Levin (2001), 223.
27. Akram Hanieh, 'The Camp David Papers', *Journal of Palestine Studies* 30, no. 2 (2001), 82; *Haaretz* (Online Edition), 3 January 2000; *Jerusalem Post* (International Edition), 1 April 2001.
28. *Le Monde Diplomatique*, September 2000.
29. 'The Moratinos Non-paper on the Taba Negotiations, Summer 2001', *Journal of Palestine Studies* 31, no. 3 (2002), 87.
30. 'Israeli proposal presented at Taba', *Journal of Palestine Studies* 31, no. 2 (2002), 150.
31. Institute of the World Jewish Congress, 'A Population and Property Transfer: The Forgotten Exodus of Jews from Arab Lands', (Dispatch no. 88, September 2002).
32. *Ibid.*
33. Charlotte Hall, 'Diaspora Gives Stage to Arab Jews', *Haaretz*, 23 May 2003.
34. Telephone interview with Stanley Urman (15 September 2006).
35. See, for example, Eric Fingerhut, 'Forgotten Refugees: Effort Under Way to Focus on Jews of Arab Lands', *Washington Jewish Week* (Online Edition), 26 July 2007.
36. Fingerhut (2007).
37. Jenny Hazan and Greer Fay Cashman, 'Jews Expelled from Arab Countries Accuse Arab Regimes of Ethnic Cleansing', *Jerusalem Post*, 25 June 2003.
38. Dayan (1999).

39. Eetta Prince-Gibson, 'The Right of Return', *Jerusalem Post Magazine*, 8 August 2003.
40. Hirschberg (1999).
41. *Ibid.*
42. *Ibid.*
43. *Ibid.*
44. Ben Harris, 'Olmert: Not Yet on Jewish Refugees', *Jewish Telegraphic Agency*, 5 November 2007.
45. See Fischbach (2008) for details.

14

Palestinian Refugee Compensation: Connections and Complexities

Rex Brynen

As the chapters of this volume make clear, the compensation of Palestinian refugees is simultaneously a political issue, a legal issue, a moral issue and a complex technical issue. It is also an issue inextricably bound up with other dimensions of both the Palestinian refugee and the broader Palestinian–Israeli and Arab–Israeli conflicts. On the one hand, both Palestinians and Israelis alike will weigh all elements of any future peace agreement (and not just the refugee component) as they determine whether they support or oppose it. On the other hand, the particular approaches that an agreement might adopt for dealing with compensation will have remarkably broad implications. The design and implementation of a compensation regime will also have profound social, economic and political implications for the longer-term viability, stability and success of a future Palestinian state.

Several of the contributors to this volume have delved into the legal and technical aspects of compensation in substantial detail. Consequently, this chapter focuses instead on the multifaceted linkages between compensation and other aspects of a possible peace agreement. In doing so, it will highlight several key issues: the relationship between compensation and issues of moral responsibility; the question of ‘end of claims’; the social and economic implications for both refugees and host countries of various compensation modalities; resource availability; territorial dimensions; possible interim measures; and the possible practical and political consequences of potential implementation mechanisms. In doing so, it will highlight the importance of properly preparing for any eventual agreement.

REFUGEE COMPENSATION AND ISSUES OF MORAL RESPONSIBILITY

Any payment by Israel of compensation for Palestinian properties seized during and after the 1948 Arab–Israeli War carries with it the potential perception of Israeli acceptance of culpability for the forced displacement of the refugees themselves. This is especially true if the compensation includes a component for immaterial losses, the pain and suffering of refugees, and the experience of ‘refugeehood’ itself.

Up until the 1990s, therefore, there was often a marked reluctance on the part of many Israelis to accept the idea of any primary responsibility for paying refugee compensation. Instead, it was preferred that any compensation scheme be internationalized so as to dilute any notion of Israeli culpability. By the time of final status negotiations in 2000–01, it was broadly accepted that compensation would be an important part of resolving the refugee issue, and that Israeli contributions could be justified on the grounds that no matter what happened in 1948, Israel was now the possessor of former Palestinian properties – in short, that *compensation* did not imply *responsibility*. Nonetheless, Israel’s position continued to place primary emphasis on the role of the international community in financing refugee compensation, with Israel agreeing to contribute a defined sum only in the context of this broader international effort.¹

Conversely, for Palestine Liberation Organization (PLO) negotiators the payment of compensation is not only about redressing property losses arising from forced displacement, but is also a means for expressing Israel’s clear culpability for such displacement. The Palestinian position put forward in the Taba round of negotiations, for example, placed primary and extensive responsibility upon Israel for the provision of both compensation and actual property restitution, with the international community assigned a supporting role in the provision of resources and implementation of the agreement.² Palestinian officials have also sometimes preferred to speak of refugee *reparations* rather than refugee compensation, a term that holds stronger implications of (Palestinian) victimhood and (Israeli) moral liability.³

Ironically, Israeli efforts to limit or avoid any expression of moral responsibility for the creation of the refugee problem tend to run at cross-purposes to the desire to limit Israel’s financial liability for

the issue. Public opinion polls indicate that normative issues figure prominently, even centrally, in how Palestinians think about the refugee issue. This is true among both refugees and non-refugees alike, who hold remarkably similar views on the topic. Moreover, social science research suggests that when issues are held as deeply normative 'sacred values', offering material incentives (such as compensation) to elicit concessions on matters of principle (such as refugee return) are often perceived as insults, and hence may make an actor less willing to compromise.⁴ Instead, 'when dealing with conflicts involving sacred values, culturally sensitive efforts at identifying symbolic trade-offs that involve equitable gains or losses over those values may open up new channels for peaceful resolution of otherwise intractable conflicts.'⁵ This would suggest that the greater the degree of regret and culpability expressed by Israel in any refugee agreement – that is to say, the greater extent to which it addressed the normative, non-tangible dimensions of the issue – the *more* willing Palestinians might be to accept a *less* generous compensation scheme.

END OF CLAIMS

For Israeli negotiators, a peace agreement with the Palestinians is expected to bring about a formal, declared and definitive end to the conflict. Absent this, they fear that the birth of a Palestinian state in the West Bank and Gaza might be accompanied by irredentist claims against the territory of the state of Israel, as well as a range of other demands based on past historical injustices. These would threaten Israeli interests, tax Israeli resources and hamper its normalization in the region.

This concern is particularly strong with regard to the refugee issue. Israeli leaders have no desire to sign an agreement regarding refugee return, repatriation and compensation, only to find additional refugee-related demands being made at a future post-agreement period, whether by the Palestinian state or by individual refugees and their heirs. Reflecting this concern, the 21 paragraphs of the refugee section (Article 6) of the draft Framework Agreement on Permanent Status, prepared by the Israeli negotiating team in 2000–2001, contains numerous references to the end of claims: 'termination of the Palestinian refugee problem' (6.73); a 'comprehensive and conclusive settlement of the Palestinian refugee problem in all its respects'

(6.78); the 'definitive statement of all Palestinian refugees' property claims' (6.80); and 'all financial requirements for the final settlement of the Palestinian refugee problem including those of rehabilitation and all individual or collective claims' (6.85); as well as statements that 'no further individual claims may be filed beyond the agreed date' (6.80); and that the 'State of Palestine shall view the implementation of this program as a final settlement of its national claim in this respect' (6.90).⁶ No other section of the proposed agreement contains quite so many explicit references to finality and the end of claims, underscoring Israeli concerns in this area.

The Palestinians, as expressed in their opening position paper for the Taba negotiations, did offer that 'full implementation of this Article shall constitute a complete resolution of the refugee problem and shall end all claims emanating from that problem,' (XX.60), although it added that:

The right of each refugee in accordance with United Nations General Assembly Resolution 194 shall not be prejudiced until the refugee has exercised his right of return and received compensation under this Article or until the refugee has, based on his voluntary choice, received compensation and settled somewhere else. (XX.61).⁷

Moreover, the Palestinian position included provision for a compensation appeals process, and held Israel responsible for the costs of compensation.

Further complicating this question is the extent to which agreement on the end of claims in a bilateral Israeli-Palestinian agreement would necessarily be binding on all of the Palestinian diaspora, or on host countries. In recent decades, international human rights law and practice has increasingly rejected the idea that states can, by agreement, limit intrinsic individual rights. That being said, it is not clear whether individual refugees would have much opportunity to pursue legal cases against Israel outside the framework of a peace agreement. The Israeli Supreme Court would be unlikely to entertain these, and few other courts could claim jurisdiction (which, in any case, Israel would almost inevitably reject).

SOCIAL AND ECONOMIC IMPLICATIONS FOR REFUGEES AND HOST COUNTRIES

One of the most important, yet least studied, aspects of any future refugee agreement will be the substantial social and economic consequences of compensation payments, both for the refugees themselves and for the state of Palestine and neighbouring host countries. Indeed, given probable compensation payments in the billions or tens of billions of dollars, these amounts would rival and possibly exceed the volume of bilateral development assistance to the parties. Designed well, a compensation regime might prove an important stabilizing element for the broader peace agreement and for the region as a whole. Designed poorly or critically underfunded, however, a compensation regime could instead destabilize both.

Throughout the permanent status negotiations of 2000–2001, and in most unofficial and official discussions of refugee compensation since then, there has been a presumption that compensation would certainly be paid to individual refugees,⁸ most likely to host countries, and perhaps to the Palestinian state itself.⁹ The idea of forgoing individual refugee compensation in favour of a lump-sum payment of collective compensation to the Palestinian state, although sometimes discussed in the literature, has not been given serious consideration in light of the political backlash it would likely generate among refugees themselves.¹⁰

One key issue in individual compensation is how payments are made. Do refugees receive compensation in cash, or as a series of vouchers that would enable them to access education, housing, or other benefits? Some economic researchers, particularly in Israel, have favoured the latter as a way of directing refugee monies towards ‘productive’ investments.¹¹ Concern has also been expressed about the possible inflationary effects of a sudden influx of compensation funds into the local economies.

This view was explicitly rejected, however, in an unpublished *Assessment of the Absorptive Capacity of the West Bank and Gaza in Integrating Returnees and Associated Costs*, prepared by World Bank staff in support of the Camp David negotiations. The World Bank argued instead that:

individual or household cash compensation arrangements are generally likely to be well used by recipients – for immediate consumption needs, for human capital, and for longer-term

housing and durable improvements – and do not necessarily in themselves carry the danger of unproductive use and lack of absorptive capacity.¹²

Certainly, cash payments would provide much greater flexibility to refugee families, and be much less cumbersome and costly to administer. They could also be defended on both moral and political grounds. In the case of the former, what right do negotiators, a compensation commission, or the international community have to tell refugees how best to use monies that are in payment for past wrongs? In the case of the latter, a potentially bureaucratized and cumbersome voucher system runs a far greater risk of becoming a lightning rod for refugee discontent than does a similarly-valued system of cash compensation payments.

There are a number of other ways in which the modalities of individual compensation payments will have potentially profound effects of the social and economic development trajectories of a future Palestine. Claims-based compensation systems, for example, will have the effect of directing the largest share of resources to the descendants of the large landowning families of Mandatory Palestine. Data collected by the United Nations Conciliation Commission for Palestine, for example, suggests that fully 40 per cent of refugee families had lands worth less than P£100 in 1948, representing roughly 2 per cent of all refugee landholdings. By contrast, a little over 1 per cent of families had holdings exceeding P£10,000.¹³ A compensation system based wholly on property losses might therefore serve to significantly exacerbate inequalities in Palestinian society – especially when it is considered that the poorest refugees were (and are) those most likely to have larger families and still be residing in refugee camps. On the other hand, a system of per capita payments (including any payments for ‘refugeehood’) would direct a much larger share of compensation resources to those most in need, and would have much more progressive effects on economic equality.

The modalities of compensation payments might also have significant gendered effects.¹⁴ Per capita compensation paid to all refugees and their descendants would be evenly distributed to both men and women alike. By contrast, claims-based payments (or even per capita payments to refugee households or heirs of an original claimant) would be predominantly received by male refugees, given prevailing patterns of ownership as well as inheritance laws in many countries of the Middle East.

Compensation payments are likely to provide a significant share of the resources available for refugees seeking to repatriate to a Palestinian state, possibly far exceeding the resources allocated by donors to help the new state absorb returnees. In this, Palestinian refugee repatriation would differ significantly from the sorts of repatriation programmes associated with most refugee populations elsewhere in the developing world. In the housing sector, refugees could use cash compensation payments to finance housing construction, or to upgrade existing housing. This means that state policies might be less directed at the large-scale provision of public housing for returnees and more towards making sure that the construction sector, housing market, the housing finance system and local municipalities were prepared to meet the demand for new homes. This might include investments in infrastructure such as water, sanitation, roads and electricity; subsidies to local governments (to create incentives to attract, rather than dissuade, absorption); sites-and-services programmes (wherein serviced lots are made available at affordable prices, but refugees provide both the cash and possibly labour inputs into private sector house construction); improvements in the land registration system; and the establishment of mortgage guarantees and other mechanisms to encourage the availability of bank financing. These sorts of absorption policies were recommended by the World Bank in its analyses of Palestinian refugee absorption,¹⁵ and were also addressed in the Palestinian Authority's own policy planning.¹⁶ They also mirror Israeli experiences. In Israel, highly problematic efforts to absorb Jewish immigrants in the 1950s through the building of 'development towns' and the provision of public housing later gave way to much more successful programmes of state facilitation of the private housing market in the 1980s.¹⁷

Host countries have long held the position that they too are owed significant compensation for the costs of hosting Palestinian refugees since 1948. It is difficult, however, to estimate what this cost might be. Some Arab governments have certainly borne the costs of providing infrastructure and social services to refugees. This is particularly true in Jordan (which provided citizenships to most refugees) and Syria (which treats refugees as citizens in most regards). In both Jordan and Lebanon, the refugee presence and associated Palestinian nationalist activity clearly has had destabilizing political effects at times, as well as attracting retaliatory and punitive attacks by Israel. Lebanon has suffered especially severely from this, with Israel occupying significant

portions of the country between 1978 and 2000, causing hundreds of millions of dollars in damages and displacing many tens of thousands of Lebanese.

On the other hand, UNRWA operations have defrayed the actual social service costs borne by hosts, even where (as in Jordan) those refugees are also citizens. Moreover (and with the partial exception of Lebanon, where central government authority still does not really reach into the refugee camps) refugees pay taxes to host governments like any other residents. Palestinian human and financial capital, remittances and investment have also played a significant role in local economies, notably in Jordan.

Even if one somehow could calculate a 'net cost' to host countries, however, it seems unlikely that those countries will be directly given any sort of claims-based compensation out of a compensation fund in a peace agreement. There are two major reasons for this.

First, donor countries are likely to prefer to direct their support to host countries through an increase in their existing development programmes, rather than through the provision of cash compensation. Second, the pool of cash funds for compensation is likely to be inadequate to meet refugee expectations in the first place. Diminishing it still further by allowing governments a share might imperil the entire compensation regime.

Table 14.1 Indicative estimates of refugee compensation payments, by host country

	<i>Palestine</i>	<i>Jordan</i>	<i>Syria</i>	<i>Lebanon</i>
Refugee population (UNRWA 2012)	1,895,043	1,979,580	486,946	436,154
Percentage of Palestinian refugee population	41	40	10	9
Share of US\$20 billion compensation fund	US\$8.2 billion	US\$8.0 billion	US\$2.0 billion	US\$1.8 billion
Compensation as % of host country GDP	124	27	3	5

It must also be remembered that host countries, including the Palestinian state, will benefit significantly from compensation payments to refugees within their borders. Table 14.1 shows a very rough estimate¹⁸ of the order of magnitude of these benefits, assuming US\$20 billion in compensation. As can be readily seen,

the positive economic implications for Palestine and Jordan in particular are striking.

Host governments will certainly be able to collect a significant share of compensation payments indirectly through their taxation systems. These might tax refugee income, and will certainly tax refugee consumption (through both sales and import taxes). Jordan, Syria, Palestine and especially Lebanon all suffer from weaknesses in domestic revenue collection, whether relating to tax structures, compliance, or excessive reliance on external grants (or typically all three), suggesting that tax reform might be an essential – if heretofore unrecognized – part of their policy response to refugee compensation.

On the other hand, host countries might find themselves faced with increased social service costs as UNRWA operations are slowly wound down under a refugee agreement. Given a projected UNRWA core budget of US\$655 million in 2012, this could amount to additional costs of US\$6.5 billion or more over ten years for these governments, with Palestine particularly hard hit. It might be possible for donors to provide some transitional budget support for host countries as they assume the cost of UNRWA services, drawn from funds that would have otherwise have gone to UNRWA directly.

RESOURCE AVAILABILITY

Much of the work on Palestinian refugee compensation has tended to assume that ‘if you negotiate it, someone will pay’ – that is, that whatever valuation mechanism or lump-sum amount is agreed will be available. It is far from clear, however, that Israeli–Palestinian agreement on a compensation mechanism will guarantee adequate funding for that mechanism.

Bosnia provides an example of this. Annex 7 of the Dayton Peace Agreement established a Commission on Real Property Claims (CRPC) which held out the possibility of international contributions, something favoured by the Serbian side (but not necessarily the international donor community). In practice, the CRPC’s Refugees and Displaced Persons Property Fund received almost no external funding, and even the Commission itself had initial difficulties attracting enough donor support to undertake its work. In Bosnia, refugee property claims were not resolved by the provision of compensation from a central fund, but rather by returning title to the original owner, or by private arrangements

made by claimant–owners and current occupants against the backdrop of a possible CRPC decision.

In the Palestinian case, however it is difficult to imagine Israel ever agreeing to return title of former refugee properties to the refugees. Financial compensation, rather than property restitution, would thus likely be the primary mechanism for addressing these issues. The announcement of a compensation mechanism that is then found to be underfunded would create a dysfunctional sequence of raised refugee expectations followed by subsequent disappointment that could prove politically toxic for both a refugee agreement and a broader peace deal.

Most analysts of the compensation issue assume that Israel will finance all or most of this. As noted earlier, there is a Palestinian political preference that it does so, since such funding can be seen as tacit Israeli acknowledgement of responsibility both for property seizures and for the suffering caused to refugees. On the Israeli side, there has been reluctance to do so, and a preference for both financial and symbolic reasons that Israel simply be one of several contributors to an international fund. The United States reportedly discussed an international fund of some US\$10–20 billion during the Camp David negotiations.¹⁹ However, many donor officials have expressed doubt that their countries would be willing to make direct cash contributions for property compensation, noting that as the possessor of former refugee properties Israel ought to pay, and also underscoring the greater ease of providing donor aid in the form of development assistance than cash contributions. In addition, there are likely to be many other demands on the donor purse if a peace agreement were to be concluded: budget support and development assistance for the new state; aid to host countries; and US military assistance to Israel (to offset the strategic risks associated with territorial withdrawal from the West Bank). Finally, the post-2008 global recession (and particular fiscal challenges within both the United States and the Eurozone) might put into further question the possible generosity of Western donors in financing any future refugee deal.

How much might then be available for Palestinian refugee compensation? This is largely a political, rather than economic question, hinging in large part on the amounts that Israel is willing and able to generate, the domestic resistance to funding compensation, and the political capital that Israeli leaders are

prepared to exert in 'selling' the idea to the Israeli public. One rough estimate suggested that:

The various scenarios here suggest a range of \$6.7 billion to \$27.3 billion is economically sustainable given the size of the Israeli economy and the availability of official development assistance from Arab and international donors. Whether this level of resources is politically sustainable is, as suggested earlier, an entirely different question. Variation in the 'plausible' figures presented above is largely a function of Israeli willingness to generate the necessary financial resources. To the extent that such willingness exists, the amounts available for compensation (as well as repatriation and development) might be significant. If Israel is unwilling to generate the needed resources, there will simply not be adequate funds available for compensation. The same holds true if Israel insists, implicitly or explicitly, on linking its contributions to the scale of Arab and international donations. Given current economic realities and urgent demand for [official development assistance] elsewhere in the world, there is little scope for substantial expansion of commitments on the donor side.²⁰

At the time of the Taba negotiations, Israeli negotiators believed that between US\$3–5 billion might be available as a maximum Israeli lump-sum contribution to compensation – although even these numbers might have been more than Prime Minister Barak was considering at the time. Representing less than US\$1,000 per refugee, and only a fraction of most estimates of the current value of refugee properties seized by the Israeli government after 1948, such an amount would clearly be inadequate.

The question of finding adequate resources to finance the refugee compensation component of a future peace agreement has been further complicated in recent years by the demand that Jews who fled Arab countries after 1948 also receive compensation. Off the record, some Israeli officials have acknowledged that this is a bargaining chip, intended to counterweigh Palestinian claims – although it is not clear why the Palestinians should be held responsible for the actions of Iraq, Egypt, Yemen, Libya or other Arab countries, especially when Israel has declined to pursue claims with Egypt and Jordan (with which it already has peace agreements). The issue was raised at Camp David in 2000, and at that time President Clinton suggested that Jews from Arab

countries could be included in a deal. The issue was not, however, raised in Israel's own draft Framework Agreement on Permanent Status nor in the Clinton Parameters of December 2000. Indeed, the Israeli 'non-paper' presented at the 2001 Taba negotiations explicitly accepted that 'the issue of compensation to former Jewish refugees from Arab countries is not part of the bilateral Israeli–Palestinian agreement'.²¹

TERRITORIAL DIMENSIONS

There are a number of ways in which the territorial character of any future Israeli–Palestinian peace agreement will affect the resolution of the refugee agreement. First and foremost, most analysts assume that a sovereign Palestinian state will have control over its own borders and admissions policy, thus allowing Palestinians in the diaspora to repatriate if they so wish.²² In addition, the territorial extent of a Palestinian state will have profound implications for its economic viability and growth, and hence for its ability to absorb returnees, deliver former UNRWA services and address the needs of refugee camps in the West Bank and Gaza. Finally, there is the issue of Israeli territory that would be swapped to a Palestinian state in exchange for Jewish settlements that would be annexed to Israel under an agreement. In past negotiations – notably at Taba in January 2000 – it was suggested that refugee repatriation to these swapped territories could be considered a form of symbolic 'return' to 1948 areas.

This latter territorial aspect could intersect with the refugee issue if it were somehow suggested that such a 'return' reduced the need for refugee compensation, either in general or for those returnees who availed themselves of such an opportunity. This would be a mistake. It is unlikely that small areas of marginal border territory would in any way be seen by the Palestinian public as any meaningful form of return to 1948 areas, or as an achievement that somehow offset the need for other Israeli compromises. Instead, territorial swaps are likely to be regarded only as a *quid pro quo* for Israeli annexations. Indeed, attempts to sell them as more than this would likely backfire.

COMPENSATION AND INTERIM MEASURES

While discussion in this chapter has presumed that refugee compensation takes place as part of a broader comprehensive

agreement, it is possible to imagine that compensation could become decoupled from other aspects of an agreement as part of a more piecemeal approach to resolving the conflict. Israel could, for example, establish a unilateral programme of refugee compensation, in an effort to remove the issue from the agenda of permanent status negotiations. This is extremely unlikely, however. There would be little public support within Israel for mobilizing the kind of resources necessary for this, especially without a comprehensive peace agreement with the Palestinians or Palestinian acceptance of the 'end of claims'.

Conversely, Israel might decouple compensation from other issues in the opposite direction, by openly or tacitly accepting the repatriation of refugees to the West Bank and Gaza before a full agreement is reached, and without any commitment as to any future compensation regime that might be negotiated. Versions of this have been suggested by former Israeli negotiator Gidi Grinstein²³ and by former deputy head of the Israeli National Security Council Chuck Freilich.²⁴

This might conceivably be used as a confidence-building measure if it were packaged as an Israeli gesture in support of the Palestinian Authority (as in the Freilich formulation) that did not seek to limit refugee rights, rather than as a policy initiative intended to 'dilute' the refugee issue (as in Grinstein's proposal). Whether the Israeli security establishment or the Israeli public would countenance a substantial inflow of Palestinians into the Occupied Territories in the absence of an agreement is another issue, however. Palestinians, on the other hand, would likely view the idea with considerable cynicism, especially given Israel's refusal to implement its commitment in the 2003 Oslo Accord to permit the return of persons displaced in the 1967 Arab–Israeli War.

POLITICAL IMPLICATIONS

As has already been evident in this discussion, the design of any refugee compensation scheme could well have profound effects on the political sustainability of a broader Palestinian–Israeli peace agreement. It is unlikely that compensation will be so generous that it will either 'compensate' for compromises on Palestinian rights (notably the right of return), or that it will help to 'sell' other unpalatable parts of an agreement. Rather, the best that can be hoped for is that the compensation system is generous (and well-designed) enough that it does not generate a political backlash and prove to be a political liability.

It is possible to imagine several ways in which the compensation component of an agreement could prove a political liability. These include:

- Inadequate resources are made available for refugee compensation. This might occur because of inadequate Israeli contributions, unrealistic expectations about international contributions, or an agreement that requires that the limited pool of compensation funds be shared with Jewish refugees from Arab countries rather than leaving this as an issue to be negotiated between Israel and the countries responsible.
- Unrealistic expectations are created by inflated claims from the international community regarding the level of funds available. There is significant evidence, for example, that US officials at the July 2000 Camp David negotiations both overestimated the degree of funding that would be available for compensation, and were willing to consider contributions (such as bilateral donor aid and the imputed cost of third country resettlement) that would not likely be seen as 'compensation' by the refugees themselves.
- Host countries are dissatisfied with their level of compensation (whether direct or indirect), leading them to mobilize refugee sentiment against the deal.
- A system of compensation is created that excludes a significant proportion of refugees (for example, by emphasizing land ownership), or which provides the vast majority of compensation payments to a small proportion of wealthier refugees.
- A system of compensation is established that – whether due to complexity, political deadlock, legal complications, or bureaucratic inefficiency – delays payments for years, thus creating disappointment during the critical early period of a peace agreement.

Given the above, it is essential that either the compensation agreement itself, or more likely the commission or agency charged with implementing it, address the critical need to communicate with refugees and manage refugee expectations. It is also important that the system be designed so that any rancour and blame that does develop could be aimed at the commission, or the UN, rather than at the primary local parties (and especially not at the politically nascent Palestinian state). In this way, international

organizations might act as something of a lightening rod to deflect discontent that might otherwise have more destabilizing effects. Throughout the process it is important both to communicate clearly with the refugees and to manage expectations regarding the pace and process of compensation, as well as the extent of any funds that refugees might receive. The parties and the international community should also resist the temptation to oversell an agreement, something that has been done all too often in the past with supposed 'peace dividends'.

There is also much that can be done in advance of an agreement. It is essential that negotiators are well informed about the technical requirements and complexities of a refugee deal, so as to avoid agreeing out of political expediency to modalities that will ultimately prove difficult to implement. While it would be nice to assume that this is the case, there is a tendency for negotiators to operate in a 'negotiation bubble' that leaves them disconnected from technical issues that may be crucial to later implementation.²⁵ Moreover, while the Palestinian side has enjoyed consistent support from the PLO's Negotiation Support Unit as well as connections to active NGO, research and advocacy communities, Israel has often been sorely lacking in expertise on the Palestinian refugee issue, especially within government. Many of those who developed some expertise on the issue in 2000–2001 have since left government. Within the international community, foreign service rotations and limited institutional memory often mean that key aspects of the issue have to be rediscovered or relearned. Concerned about this, Canada (and especially its International Development Research Centre) has sought to support the dissemination and enhance the 'shelf life' of policy-relevant refugee research.

It is important that public expectations be coaxed into line with likely outcomes. On the Israeli side this means the acceptance of a substantial Israeli contribution to a compensation fund, significantly larger than the amounts that appear to have been envisaged before; a realistic assessment of the limits of international financial support for cash compensation payments (as opposed to other aspects of a refugee agreement and broader peace deal); and recognition that it is both inappropriate and probably ineffectual and counterproductive to burden Palestinian–Israeli negotiations with the issue of what some non-Palestinian Arab regimes may have done in the past to their Jewish citizens. It also requires, most fundamentally, acceptance that compensation alone will not

resolve the refugee issue. Normative issues of return and moral acknowledgement also need to be addressed. Indeed, to the extent that they are, the monetary cost of the deal may decrease – just as failure to do so, in effect, may increase the financial cost to Israel of using compensation to assuage legitimate Palestinian grievances.

On the Palestinian side, there is also a need to recognize, and prepare the public for, probable political realities. The amount of compensation available in any future deal will certainly fall short of high-end estimates of the value of refugee properties, probably by a very substantial margin. Discussion of this cannot be left until after an agreement, when the gap between past valuations (and past rhetoric) and actual amounts received will be seen as a failure of the negotiations and the negotiators.

Regionally, there is also a need to shape realistic expectations. Host countries need to understand that they are unlikely to receive large cash transfers in compensation for the costs of hosting refugees. They should expect some degree of increased development assistance in recognition of their support for the agreement, however. It might also be possible to negotiate some form of UNRWA wind-down that does not leave them suddenly bearing an unreasonable burden of providing services that were previously offered by the agency and financed through external contributions. While it is not likely that host countries would be intimately involved in the negotiating process (especially one that is so sensitive and often cloaked in secrecy), they ought to be engaged in a process of dialogue with Palestinian negotiators, in particular one that would allow a free exchange of interests, positions and assessments prior to any deal being reached. To date, this has occurred only haphazardly at the official level, although there have been significant efforts to foster such communications in an unofficial way through second track initiatives – most notably the ‘Minster Lovell Process’ undertaken through 2000–2012 by the Royal Institute of International Affairs.²⁶ The political position taken by the host countries after an agreement has been reached could have significant impact on the degree of acceptance of that deal by the refugees themselves.

CONCLUSION

This chapter has highlighted the extent to which the question of Palestinian refugee compensation is linked to other aspects of the refugee issue, other dimensions of any future Israeli–Palestinian

peace agreement, and to the socio-economic and political sustainability of such a deal. While many of these connections have been noted in the past, it is less clear whether either the parties themselves or outside analysts have fully appreciated the extent to which weaknesses in the technical design of a compensation system could have deleterious, and potentially devastating, post-agreement effects. Indeed, the extent of this was highlighted in simulated Palestinian refugee negotiations conducted in June 2008 by Chatham House, involving a mix of former officials, negotiators and technical experts. These found that neither the primary parties nor the international community had adequately thought through the full range of implementation and resource issues involved, despite the more than 17 years that had elapsed since the start of the Middle East Peace Process in Madrid in 1991.²⁷

It is unlikely that successful Israeli–Palestinian permanent status negotiations will occur any time soon, let alone the establishment of a Palestinian state and a just and mutually acceptable resolution of the refugee issue. However, research, analysis and reflection on these compensation issues – in all their complexity – might serve not only to facilitate future negotiations, but also to help assure that any agreements that are reached have optimal and sustainable consequences, both for regional peace and for the refugees themselves.

NOTES

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18. A number of simplified assumptions have been made here. First, UNRWA (2012) registration data has been used. This, however, only counts refugees registered in UNRWA's area of operations. The actual number is likely to be significantly larger, and many refugees (notably those in Lebanon) may not be residing in the areas where they are registered. The table also assumes that all refugees remain in their current location, while a significant proportion may instead choose to repatriate under a peace agreement (thus increasing the economic benefits to Palestine). Economic data is drawn from Central

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15

Beyond Compensation: Reparations, Transitional Justice and the Palestinian Refugee Question

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The subject of reparations has been a cornerstone of the legal claims for the (now) over 6 million Palestinian refugees for more than 60 years, although it is not always considered within that framework.² In Resolution 194(III), passed soon after the beginning of what Palestinians term the *Nakba*³ in 1948, the UN General Assembly (GA) stated 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.⁴

Widely interpreted by various interlocutors⁵ and subsequently parsed extensively over the decades, the resolution firmly grounds the Palestinian refugee issue within what jurists term the right to a remedy, or ‘means of enforcing a right or preventing or redressing a wrong.’⁶ This right was recognized in international law by the Permanent Court of International Justice in the *Factory at Chorz  w* case, which held that, ‘It is a principle of international law and even a general conception of law, that any breach of an engagement involves an obligation to make reparation.’⁷ The right has been subsequently reaffirmed in four pillars of public international law, including international humanitarian,⁸ human rights,⁹ criminal¹⁰ and refugee law.¹¹ In the case of mass violations, reparations are owed regardless of whether the specific perpetrator of the violation is identified, apprehended, prosecuted or convicted.

Despite the General Assembly's call in Resolution 194 for the Palestinian refugees' right to return to their homes (and its extensive reaffirmation since that time), nothing has been substantively done to operationalize Resolution 194. In other words, the refugees' right to a remedy has yet to be fulfilled.¹² Moreover, in the two decades since the launch of bilateral Palestinian–Israeli peace talks, the refugees' legitimate rights often appear to have been set aside, viewed by many as a bargaining chip in the negotiations process. Those who seek to find ways to provide meaningful reparation face a daunting task.¹³

Given this context, this paper will explore the applicability of reparations and other transitional justice mechanisms to the Palestinian refugee question. Its intention is to question the restrictive return/compensation dichotomy¹⁴ and explore whether transitional justice tools may be of use to the Palestinian refugee community in exploring broader policy options. Other forms of reparation – including acknowledgement, rehabilitation and commemoration – may also have a critical role in finding a way forward. Similarly, transitional justice approaches such as truth-seeking, revival of memory and accountability could be explored. It would be essential to consider the objective of such endeavours, and to think about broader points of strategy, and questions such as: what is the violation being addressed and who was affected; which mechanism(s) may be considered and why; and when the mechanism may be able to be implemented and how it can be done?

Finally, the chapter does not seek to come up with answers, but rather to pose questions for those seeking a just solution for the issue that respects the centrality of the victims, their needs and rights. While there are a number of other complexities which are substantial – *inter alia*, the broader substance of the Arab–Israeli conflict, the imbalance of power in the region, and the deepening internal Palestinian divide – many of these issues have been explored elsewhere, so this paper will focus on examining whether transitional justice provides a useful framework for advancing the resolution of the Palestinian refugee situation.

REPARATIONS: A SYNOPSIS

Resolution of the Palestinian refugee question is often presented as a restricted paradigm of return and compensation. However, the right to reparation is far richer than this dichotomy suggests. The

UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (hereinafter the Basic Principles) outlines the content of the right, asserting that full and effective reparation includes five diverse forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.¹⁵ Given the common misperception that ‘reparations’ and ‘compensation’ are interchangeable terms, a brief explanation of each form may be useful:

- *Restitution* is the principle of restoring the situation to that which it was before the violation occurred. This concept explicitly includes the right of return, as the Basic Principles state that restitution includes, *inter alia*, ‘return to one’s place of residence.’¹⁶
- *Compensation*, the financial form of reparation, should be provided for any economically assessable damage, to include such things as physical or mental harm, lost opportunities, and material and moral damages.¹⁷
- *Rehabilitation* includes medical and psychological care, as well as legal and social services.¹⁸
- *Satisfaction*, in its legal sense, is quite broad but may include measures such as cessation of ongoing violations, revealing the truth, holding perpetrators accountable, commemoration of the victims, acknowledgement and public apology.¹⁹
- *Guarantees of non-repetition* include a range of steps to prevent re-occurrence, something which is key if there is to be reassurance that the reparation process is a serious one.²⁰

These forms are not trade-offs in opposition to each other, as a strong reparation programme will include some combination of these approaches based on the context and gravity of the violation.²¹ In the case of Palestine, reliance on a single approach – typically presumed by observers to be compensation – may be considered more combative than constructive by the refugee community.²² Moreover, such an approach could be seen as forced acceptance of a *fait accompli*, eliminating any input or choice on the part of the refugees, and thus substantially delegitimizing the process in the eyes of the victims.

A brief note should be made about terminology since this conflict has produced a linguistic minefield in which terminology is laden with presumptions and interpretations. Reparations, like

many subjects within the human rights framework, tend to speak of ‘victims’ – a term which is not always helpful as those to whom it refers may not see themselves as such. It is useful to consider the definition outlined in the Basic Guidelines, which states that victims are:

[...] persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law.²³

It should be emphasized that the concept is grounded in the recognition of their status as *rights holders*. For the purpose of this chapter, Palestinian refugees will be termed both as victims and as rights bearers.

LOSSES FOR WHICH REPARATIONS ARE GIVEN

Reparations are often considered a remedy provided for tangible losses. However, as is clear from the breakdown above, they may also be used for projected losses (e.g., lost opportunities), and even for moral ones. Moreover, the Inter-American Court of Human Rights has found that both the actual victim and her family may be owed reparation, as they may both have been subjected to moral (as well as material) damages.²⁴

With this in mind, one thing which Palestinian refugee advocates should strategically consider is more precisely articulating the extent of the harm to which Palestinian refugees have been subjected and for which they are owed reparations.²⁵ Such clarification is essential in order to identify the resulting needs, based on which meaningful policy options can be crafted – ones which can respond to the damages in their real essence. The most obvious injury which they have suffered has been displacement from their own country.²⁶ However these harms need to be ‘unpacked’, as numerous other layers of damage have resulted from and been built upon this initial injury, and they too must be taken into consideration. Consequential layers of damage relating to livelihoods, access to property, and security might include:

- the loss of movable or immovable property (e.g., residential, agricultural, commercial, communal and religious property);
- loss of financial assets (e.g., bank accounts, insurance and pensions);
- destruction of property;
- depletion or use of natural resources;
- imposition of statelessness;
- breaking up of family;
- destruction of community;
- impoverishment;
- loss of means of employment; and
- prolonged denial of links to their homes and communities.

Moreover, the loss of agricultural and commercial property, for example, has also led to lost earnings and opportunities from which the subsequent inhabitants have benefited. These are some of the concepts which are incorporated by those suggesting that Palestinians are owed reparation for 'refugeehood'.

Given the gravity of the violations in question, it is evident that Palestinian refugees have also experienced substantial moral harm (e.g., pain, suffering and mental anguish). Both the European²⁷ and Inter-American Courts of Human Rights have produced compelling jurisprudence on the issue of moral damages, with the latter declaring that it 'is indemnifiable, according to international law, and especially in cases of human rights violations.'²⁸ This form of loss should also be included in any recapitulation of the harms experienced.

An outline of this sort, which clarifies the various damages experienced, is important in developing a meaningful reparations programme. It details those injuries which require redress, and thus would be a primary reference point for the programme design.

FORMS OF REPARATIONS

Once the losses are more clearly identified, the question then becomes: which approaches may be useful in developing a reparations programme to address them? The continually evolving situation on the ground over the course of the last six decades greatly complicates the matter. Broadly speaking, there are two primary forms of reparations which may be considered: material or symbolic, and a reparations programme should usually include elements of both. Material varieties, or 'benefits', are those which

are more concrete and tangible – typically things like restitution of property, provision of health or other social services, and compensation. In considering forms of benefits which might have particular resonance for the Palestinian refugee community, options include:

- returning to homes and property from which they were displaced;
- restitution of immovable property (or real property);
- restoration of movable property or assets (or personal property);
- housing, health (physical or mental), education or other service packages for the refugee community;
- recognition/renovation of religious facilities or burial sites; and
- compensation or pensions.

While all reparations have a representative meaning, some are explicitly symbolic in nature and publicly ‘memorialize’ the victims. Symbolic reparations can play an important role in overcoming long-standing exclusion which victims have suffered. In the Palestinian refugee context, such measures could take a wide variety of forms, including:

- acknowledgement of the legacy of forced displacement;
- offering an apology to the refugees;
- publication of the names of those displaced, destroyed villages, and so on;
- renaming streets, towns, or other public spaces in recognition of refugees or their villages;
- building museums or memorials; and
- establishing days of commemoration.

Reparations efforts gain synergy from combining both forms of remedy. The meaning of material mechanisms is enhanced when combined with symbolic measures,²⁹ and conversely, symbolic endeavours are less likely to appear to be empty gestures when accompanied by material approaches.³⁰ In some instances, aspects of material reparations have symbolic meaning as well, of course. For example, in the Palestinian refugee context, who pays compensation will relay an important symbolic message in addition to the obvious material one. Most importantly, it is

essential that no matter which form the reparations may take, they must not lose sight of the linkage between the reasons they have been provided – the displacement and associated violations to which Palestinians have been subjected – and the victims themselves.

As the illustrations make evident, each form may be distributed through either individual or collective means and thought should be given as to the implications of each.³¹ Individual reparations – whose beneficiaries must be determined through a precise identification process – provide a direct recognition of that person as a victim, acknowledging her particular experience and seeking to meet her needs. However, individual measures are by nature selective, and may aggravate tensions within a victim community. Collective reparations avoid that problem by recognizing the community as a group and ensuring equal treatment.³²

Then again, collective material reparations may be seen as benefits which they have a right to as citizens, rather than as acknowledgement of their status as victims,³³ whereas collective symbolic measures may give the impression that they alone are intended to be adequate remedy.³⁴ Moreover, in a development-dependent environment such as the West Bank and Gaza Strip, care must be taken not to conflate collective reparations with aid to which citizens are already entitled. As with all such endeavours, a reparations programme for the Palestinian refugees would need to be designed (and implemented) carefully in order to try to strike as careful a balance as possible – between means which are individual and collective as well as material and symbolic – and to ensure that the needs of the community of victims are met. Consideration of these design concerns would be an essential component of any accountability endeavours undertaken on the refugee question.

Extensive consideration must be given to the many practical issues of establishing a reparation programme and its implementation mechanism – what evidentiary standard will be established, how reparations are to be distributed, and so forth. Space precludes exploring these matters in depth, but it is important to note that existing resources – notably the databases of the UN Conciliation Commission for Palestine (UNCCP) and the UN Relief and Works Agency for Palestinian Refugees in the Near East (UNRWA) archives – can play a critical role in such a process.³⁵ Those seeking to establish a programme must also give careful thought to the standards of evidence required, being

careful not to set the bar so high as to block victims from accessing reparations, and thus potentially traumatizing them further.

As noted above, return is a specific option within the principles of reparation. This is the issue of greatest sensitivity for Palestinians and Israelis alike. Palestinians view return as an individual and collective (national) right, for which individuals have the right to choose, and which must be accompanied by property restitution and compensation.³⁶ Israelis state that no such right exists, and that return or restitution as it relates to what is now the State of Israel is not an option.³⁷ Some proposed peace plans have included provisions for a fixed number of refugees to return,³⁸ although the precise figure has been a highly sensitive matter on which negotiators have been circumspect. No matter the number or location, the complexities of the implementation of return go far beyond figures, as preparations must be made – procedures developed, time-frames established, absorption plans elaborated, and so on.³⁹ Moreover, for those who may return to the State of Israel, steps must be taken to handle such situations as that of secondary occupation, in particular those cases in which the refugees cannot repossess their property due to its current use for community or municipal purposes. While every situation is unique, comparative cases (with varying degrees of success) such as the former Yugoslavia,⁴⁰ South Africa⁴¹ and Guatemala⁴² may provide useful lessons.⁴³

One essential element of reparation should be emphasized: that of acknowledgement. From a victim-centric perspective, the act of publicly acknowledging what has happened can be one of the most critical forms of accountability. In a context in which unrecognized harm has been so prevalent, the act of recognition will be critical. As Edward Said observed:

What is needed, at the very least, is an acknowledgment of the destruction of Palestinian society, of the dispossession of the Palestinian people and the confiscation of their land. And also of the deprivation and the suffering over the last 52 years, including such actions as the killing at Sabra and Chatila refugee camps. I believe that the conflict can only end when Israel assumes the burden of all that. I think an attempt should be made to say 'this is what happened.' This is the narrative.⁴⁴

Acknowledgement serves as a means of coming to terms with the past, and to many victims, it is the most significant element

of reparations they seek. As Stanley Cohen observed, there is a substantial value of truth in itself, particularly in a situation characterized by deep denial.⁴⁵ The Israeli–Palestinian context is certainly one in which ‘denial of the injustices and injuries inflicted on the Palestinians is built into the [Israeli] social fabric,’⁴⁶ due perhaps to fears of delegitimizing the State of Israel or its establishment. Given this environment, what language formula would be viable? Palestinians have sought acknowledgement of Israel’s responsibility for the displacement, while Israelis have adamantly refused the same.⁴⁷ Israelis have offered to acknowledge refugee suffering in the context of recognizing the suffering by both sides, but Palestinians have maintained that this is insufficient.⁴⁸ Clearly, recognition will undoubtedly be one of the most challenging hurdles in addressing the Palestinian refugee question, and thus is a linchpin in resolving the conflict as a whole.

FOCUSING ON THE VICTIM

Regardless of the form reparations may take, the Palestinian refugees themselves – the bearers of the right of return – should be at the centre of the struggle for accountability. Indeed, one of the most fundamental goals of reparations in any context is to provide acknowledgement of the victims and of the wrongful acts committed. Those organizing reparations programmes typically seek to define the beneficiaries: identifying not just what is termed the ‘full universe’ of victims (in this case, all Palestinian refugees), but also the various categories of victims (for example, diverse host countries, different generations, property owners) in order to determine potential measures of reparation.⁴⁹ It should be emphasized that the purpose of such categorization is neither to deny anyone’s victimhood nor to increase divisions, but rather to more finely tune the reparations to the specific harms experienced. The determination of particular categories to be utilized would have to be extremely carefully done so as not to create or exacerbate tensions within the refugee community.

Reparation programmes are greatly strengthened by clearly-defined priorities. In the case of a large universe of victims, who are widely dispersed such as that of the Palestinian refugees, it may be useful to consider such factors as age, poverty and status within host country. Determining priorities does not serve to dismiss anyone’s status as a rights-bearer or a victim, but rather seeks to find a way to urgently address the needs of

the most severely disadvantaged and vulnerable. Addressing temporal realities in this manner does not minimize the need to provide some form of reparation to the full universe of victims. Moreover, given that reparations can sometimes serve to duplicate prior inequalities (e.g., those based on class and gender), the provision of reparation to the greater body of victims can serve to minimize such discrimination. Care should be taken to ensure that implementation does not (re)create or strengthen inequalities.

One important guideline in the development of any reparation programme is the inclusion of victims and victims groups in the design, implementation and oversight of the programme, in order both to be informed about their needs, priorities and concerns and, importantly, to ascertain what is considered meaningful. Victims have a special status in the design and implementation of transitional justice processes.⁵⁰ In the case of Palestine, the success of such an endeavour would absolutely hinge on the broader refugee community's perception of the legitimacy and 'representativeness' (including of different gender, class and political affiliations) of those being consulted. However, refugees have typically had little voice in past peace-making efforts, which have favoured a more top-down approach, denying them ownership in determining their own future. While it would be ill-advised to expect refugee voices to be the sole consideration shaping reparations programmes, the more 'exclusionist' approach utilized in past negotiations has been short-sighted at best, risking the undermining of any reparations which might be realized. Here, mechanisms designed to address the right to truth (addressed *infra*) may serve an important complementary role.

The inclusion of victims throughout the process can also assist in one other particularly critical way: managing expectations. No reparations programme can realistically repair all harms – a point that will be no less true for the Palestinian refugees than it has been for beneficiaries of all other reparation programmes. Just as minimalist positions that nothing need be done can be problematic, maximalist expectations can be a stumbling block as well. This is not to say that the refugees must sacrifice all their ambitions on the altar of Realpolitik, but rather that they may need to find creative ways to ensure that both needs and possibilities are met. Moreover, the inclusion of victims throughout the process may reaffirm the message that the refugees hold certain rights and that addressing the abuses to which they have been subjected is crucial in creating a just future for the region.

As noted earlier, reparations programmes require a foundation of information: about the wrongs which were committed and their impact; about those who are believed to be responsible; and of course, the possible means by which those harms can be redressed. The UNCCP databases and the UNRWA archives are a rich source of data for this process, and a substantial body of research has been produced over the course of the negotiations era to date.⁵¹ In terms of potential redress, some efforts have been made to get a better understanding of the needs and priorities of the Palestinian refugee community, such as the Civitas Project⁵² and the UK Joint Parliamentary Middle East Councils Commission of Enquiry on the Palestinian Refugees,⁵³ and they provide interesting insights into the range of views among the refugee population. However, more work in this area could be important, and if done strategically could serve as a useful foundation for developing an eventual outreach programme. Ultimately, work in this area would also be an important step in ensuring that the refugees can make an informed choice, which acknowledges their experiences and is an important part of larger efforts to meet their needs.⁵⁴

Finally, no reparations programme can adequately meet the victims' needs on its own. As is discussed below, it should be one in a set of tools utilized to deal with the past in the region. Not only can a complementary approach enhance the overall effectiveness, it may better serve the need for recognition of the refugees' experience, something which has been identified by the community as an essential component of justice. As such, it is important that reparations are not seen as an incentive for which other mechanisms should be abandoned.

REPARATIONS AS PART OF TRANSITIONAL JUSTICE

Reparation is only one mechanism used to respond to systematic or widespread violations of human rights and to come to terms with the legacy of abuse in order to achieve accountability and redress for victims and to prevent repetition of abuses. Transitional justice, or the 'toolbox' of ways used to address such a legacy, is grounded in a triangle of core rights – the rights to the truth, to justice and to reparation – and is complemented by the guarantee of non-repetition (or the duty of prevention). Other mechanisms include criminal justice, truth-seeking and revival of memory, and reform of abusive institutions.⁵⁵ This breadth of possibilities is important – after six decades of grave violations in the Israeli–

Palestinian context, a combination of approaches will be essential in order to address the legacy of the past. Such a combination, if strategically sequenced, can serve to complement and strengthen the effectiveness of each mechanism.

Truth-seeking and revival of memory

The right to truth focuses on the right of individuals to know about mass human rights abuses and the fate of their loved ones. Its corollary is the duty of the state to remember; as Louis Joinet noted,

to be forearmed against the perversions of history that go under the names of revisionism or negationism, for the history of its oppression is part of a people's national heritage and as such must be preserved.⁵⁶

Pursuing the right to truth is arguably a foundational process, as clear records of what happened are essential for the implementation of any transitional justice mechanism, including reparations.⁵⁷ As the Office of the UN High Commissioner for Human Rights (OHCHR) noted,

When a period characterized by widespread or systematic human rights abuses comes to an end, people who suffered under the old regime find themselves able to assert their rights and to begin dealing with their past. As they exercise their newly freed voices, they are likely to make four types of demands of the transitional State, namely demands for truth, justice, reparations and institutional reforms to prevent a recurrence of violence. Each of these demands relies on the availability of archives.⁵⁸

In the case of the Palestinian refugee question, projects pertaining to the right to truth could be of value by, *inter alia*, clarifying the violations which occurred, identifying those responsible and defining the harms that require redress.

Truth-seeking and revival of memory are perhaps among the tools most utilized by local advocates, particularly as they relate to the Palestinian refugees. Truth-seeking measures seek to determine answers to several key questions, notably: what happened; who did it happen to; who was responsible; where did it happen; and why did it happen? Revival of memory builds on that

information, striving to give representation to those events and those affected by them. A substantial array of activities fall within this category, including mapping and documentation, human rights reporting, commissions of enquiry, truth commissions, exhumations, fact-finding endeavours, establishment of archives, commemoration, memorials and oral history projects.⁵⁹ Such projects are not easy, for those engaged in this work in the midst of one of the most politically-charged conflicts in the globe are likely to face substantial criticism. However, the records these individuals and organizations set are among the most essential for long-term accountability and the establishment of a sustainable peace.

Over the years, projects such as the Civitas Project and the UK Joint Parliamentary Middle East Councils Commission of Enquiry; the extensive memory work done by institutions such as Badil, Birzeit University, the Nakba Archive, Shaml, and Zochrot; as well as research done by such prominent academics as Salman Abu Sitta and Walid Khalidi,⁶⁰ have all played a significant role in establishing a record of what happened around 1948. Moreover, they make an important political contribution: given the significance of the refugee question in the bilateral negotiations, memory and narrative projects help to assert the refugees' role in the Palestinian body politic.⁶¹ As Phalli observed, it is no coincidence that memorialization efforts particularly emerged around the same time as the peacemaking endeavours.⁶²

Criminal justice

Prosecutions are another important tool of transitional justice. Grounded in the right to justice, they can include domestic litigation, cases in third-party states, ad hoc tribunals (be they domestic, hybrid or international in composition), cases before UN human rights bodies, or the use of existing international courts such as the International Court of Justice (ICJ) or the International Criminal Court (ICC).⁶³ Cases can focus on civil claims, criminal claims, or matters pertaining to third-party obligations. No matter what the focus, prosecutions are a delicate topic in the region, with their possibility seen by many Israelis as threatening, while many Palestinians interpret their absence as blanket impunity.⁶⁴ However, it is important to note that prosecutions are not narrowly focused on penalizing individual perpetrators, as the principles of bringing the violation to an end and preventing its repetition are key.

Nevertheless, their complexities are substantial, not least given the context of mass violations, as there is a limit to how many alleged perpetrators can practically be brought before a judicial body. Through focusing on those most responsible, however, prosecutions send an important message that no one is above the law. On the other hand, focusing on the prosecution of *individuals* seen as most responsible can obscure the accountability of institutions and of states and lose sight of the larger picture.

Despite sensitivities around litigation, there have been important developments in this arena. For example, the ICJ's Advisory Opinion on the construction of the Wall in the Occupied Palestinian Territory (OPT)⁶⁵ has reaffirmed key legal principles and given additional legal authority to claims, which Israeli officials have dismissed.⁶⁶ Steps such as the issuing of warrants in New Zealand and the United Kingdom against Israeli officials alleged to have committed international crimes in the OPT, or the acceptance of jurisdiction in Belgium or Spain of such cases, serve as an acknowledgement of the gross human rights violations which have taken place in the region. Moreover, the announcement in February 2009 by ICC Prosecutor Luis Moreno-Ocampo that he would consider whether the Court has jurisdiction over international crimes committed in the context of 'Operation Cast Lead'⁶⁷ has drawn increased international attention to the subject of litigation as a means of pursuing accountability in the Israeli–Palestinian conflict. Few of these endeavours have focused explicitly on refugee-related concerns; nevertheless, many of those in the affected population were themselves refugees, as was the case in the atrocities in such places as Sabra and Shatila in 1982 and in Gaza in 2008/2009. The nascent litigation efforts to date have raised awareness of the impunity gap which is prevalent in the region.

Reform of abusive institutions

While reparations, truth-seeking/revival of memory and criminal justice are often perceived as predominantly focusing on the past, the reform of abusive institutions is generally seen as looking to the future. Its primary focus is on the prevention of reoccurrence of human rights violations and the provision of effective and accountable systems to the community, as a means of re-establishing rule of law. Those working in this arena tend to engage in activities which are seen as being somewhat technical such as:

judicial reform; reform of police, military or other branches of the security sector; lustration; and disarmament, demobilization and reintegration of former combatants. However, to the extent that institutional reforms may address means that will ensure that the refugees will not get displaced again, it has an obvious relevance to the Palestinian refugee question.

Sequencing and synergy

What is clear from an overview of the transitional justice toolbox is that using a series of inter-linked approaches can assist those pursuing accountability by creating synergy to increase the overall impact. While each mechanism has inherent limitations (e.g., restricted resources such as time, money and facilities), they can be ameliorated by using a complementary package of approaches. Those seeking to develop a transitional justice strategy have to think about local priorities, identifying the harms that have been caused and how they might be addressed. Victims must determine their specific priorities and concerns. There are a plethora of comparative cases, which might be helpful in deliberating strategies, but of course each situation is unique, and those on the ground have to consider what would be meaningful to them. Designing a plan of action can be a complicated balance of substantial needs, limited resources and conflicting priorities.

One particular concern in the Israeli–Palestinian context is that the refugee question is further complicated by being one of a package of issues subject to negotiations. This is not to minimize its importance, of course. Time has shown that the failure to meaningfully address this complex question has been a key factor in bringing down potential agreements,⁶⁸ as has been seen in the responses to a number of Track II endeavours over the years. Negotiation by its very nature is a process which requires both parties to engage in good faith to reach an agreement which can satisfy at least the minimum demands of each – a process which requires substantial concessions on both sides. Unfortunately, as has become formally known (as opposed to an open secret, as journalist Amira Hass characterized it⁶⁹) in the wake of the release of the ‘Palestine Papers’, such concessions to date have been imbalanced. One question to consider is whether developing a broader transitional justice strategy could provide opportunities to contribute towards addressing that imbalance.

INTRICACIES OF THE PALESTINIAN REFUGEE CONTEXT

All situations of mass displacement have substantial complications which must be considered when seeking their resolution, and the Palestinian example will clearly be no different. The refugee question is one of great sensitivity for both Palestinians and Israelis, as the very thing which is sacrosanct to the Palestinian refugees – recognition of the principle of the right of return⁷⁰ – is unthinkable to many Israelis.⁷¹ As one commentator observed, both Israelis and Palestinians ‘experience the refugee issue as critical for their collective futures.’⁷² The passage of time has further muddled the situation, and presently there are a number of challenges facing those seeking to explore transitional justice mechanisms to address the Palestinian refugee question.

Of course, this political sensitivity extends to language. The term ‘transitional justice’ may itself cause concern on the ground, as might approaches which suggest that reconciliation (as opposed to redress) is the intended outcome. Alternative terminology such as ‘dealing with the past’ could perhaps be less problematic, or instead, strategically focusing discussions on the practical approaches themselves rather than on an umbrella term within which to group them. In a context which is characterized by what Christine Bell terms a meta-conflict – a conflict about what the conflict is about⁷³ – language relating to the mechanisms themselves is also not exempt from controversy. Can one speak of truth, for example, in a context in which there are such heavily contested narratives?⁷⁴ Are reparations needed if the underlying cause of the harm is not clearly attributed to the state? While some might note that contested narratives are the very reason why truth-seeking is needed, and that reparations are owed even when perpetrators cannot be identified, these issues illustrate that what may appear to be technical or process matters may in fact represent this underlying meta-conflict.

Perhaps the most fundamental technical concern is the lack of meaningful inclusion of the refugees – the victims themselves – from discussions about how to provide them with a remedy. Presumptions of what they want or need are frequently made without adequate consultation. As addressed earlier, victims must always be included in the process, not necessarily as the final arbiter, but to give essential input and thus ensure that whatever programme is developed will be seen as legitimate and meaningful, and thus have a greater chance of success.

This leads to an ancillary challenge: lack of clarity about who represents the refugees. Given that the Palestinian refugee population has become markedly heterogeneous over the course of four generations of displacement, who has the authority to speak for all of them? This question has relevance not just in negotiation but throughout the entire process: given the collective and individual nature of Palestinian refugee claims, to whom are reparations collectively owed? Is it the Palestinian Liberation Organization, recognized as the sole legitimate representative of the Palestinian people? Or the Palestinian Authority, established through the Oslo Process? Critics have questioned how representative these bodies are, but are there any meaningful alternatives? These are complicated questions that only the Palestinian people can answer.

One vital concern which must be considered in developing mechanisms to address the Palestinian refugee question is that of managing victims' expectations. Reparations programmes are designed to factor in both what is needed and what is possible. Given the grounding of Palestinian refugee aspirations in their right to return as based in international legal norms, the issue of managing expectations will be a complicated task. Promises of full return to their homes to all the refugees would be cruel to the victims themselves, in light of the clear impossibility of that outcome. On the other hand, denial of the principle of the right of return and a ban on any refugees' return to their homes would fail to meet what is needed.⁷⁵ Finding a path that meets need with possibility will be extremely complicated. For those who return, clear steps should be taken to ensure that they have a real grasp of what it would entail, including providing them with information about the status of their homes when necessary. When possible, 'go and see' visits for community and other representatives might be a useful tool for helping the refugees in their decision-making and grounding 60-year-long expectations in a more contemporary reality.

The long temporal period which has passed since the initial displacement has undoubtedly contributed to a series of problems. Issues such as the long-ago destruction of many Palestinian homes, prolonged secondary occupation of Israelis residing in those homes remaining, the conversion of some homes to other uses, bring into sharp relief the practical difficulties which will be faced in providing remedy to the Palestinian refugees.⁷⁶ Moreover, should return to within Israel's borders prove possible, the end result would not necessarily be what refugees believe to be ideal.

Creative ways could be explored as a means to try to address some of these dilemmas.

The layers of displacement over the years have further complicated matters. Given that there have been multiple instances during which Palestinians have been displaced – 1948, 1967, and more recently as a result of the construction of the Wall and settlements – there are likely to be many interwoven claims.

One problem which has become an issue over recent years has been the linkage of the Palestinian refugee question with that of the Mizrahi Jewish community from neighbouring countries such as Egypt, Iran, Iraq, Lebanon, Tunisia and Yemen. This was not always the case – the Israeli compromise position at the 2001 Taba talks stated that,

[a]lthough the issue of compensation to former Jewish refugees from Arab countries is not part of the bilateral Israeli–Palestinian agreement, in recognition of their suffering and losses, the Parties pledge to cooperate in pursuing an equitable and just resolution to the issue.⁷⁷

Unfortunately, this issue has been used by some as an ‘equalizer’ in terms of population as well as reparations,⁷⁸ an approach which distracts from the issues of both communities. Moreover, imposing an inappropriate linkage fails to provide meaningful remedy to either the Palestinian refugee or the Mizrahi communities.⁷⁹

Perhaps one of the most obvious issues is that the conflict is still ongoing, a point which is frequently raised as a polarizing ‘peace versus justice’ dichotomy. This approach tends to neglect the complementary role that each concept has with the other – with justice measures helping to ensure a sustainable peace, and steps towards peace allowing room for the pursuit of justice. Sequencing, one of the most important aspects of the transitional justice framework, can play a critical role in creating space in which peace and justice can coexist. The situation is undoubtedly a complicated one, but not necessarily one which is insurmountable. Moreover, the present period – during which neither peace nor justice have been achieved – can still be utilized as an opportunity to consider many of the larger justice strategy questions such as those posed in this chapter.

The best-planned reparations programme still requires political will for its implementation. In the Palestinian refugee context, this would include that of the Israeli authorities, Palestinian authorities

and the international community. This point must be considered when designing a possible reparation programme, as developing a programme which has no hope of delivery can only serve to further frustrate intended beneficiaries. Undoubtedly the need to factor in Israeli authorities' discretion will cause frustration to those seeking reparations for the Palestinian refugees, but it is worth exploring whether there may be creative ways to address this matter. It should also be noted that the issue of political will should not be a *carte blanche* for political actors to do as they like, but rather places a burden on those negotiating to pursue solutions which the victims, in this case the refugees, can accept.

WHERE NEXT FOR REFUGEE RIGHTS ADVOCATES?

As noted at the beginning, this chapter poses more questions than answers for those seeking to find a just solution for the plight of the Palestinian refugees. In exploring whether the transitional justice paradigm may be of use to Palestinian refugee rights advocates, the author is well aware that actors in several other contexts with similar settings (such as Indonesia as relates to Timor-Leste and Iraq in regard to the Kurdish autonomous region) failed to deal adequately with property restitution issues. However, it is submitted that the failure to take these issues into account is a key contributor to the violence and tensions that remain in these regions to date. A sustainable peace in Israel/OPT will require genuine efforts to find a justice-based solution to the Palestinian refugee question.

Finally, it should be emphasized that managing expectations is absolutely essential, and the failure to do so risks further victimizing the refugee population. No transitional justice mechanism has unlimited resources, time or political will, and acknowledgement should be made of that point in the construction of a programme to deal with the past. Here, putting victims at the centre will be essential in identifying the community's needs, and forging a strategic programme that meaningfully addresses them. After all, it is up to the refugee community to choose its own path.

NOTES

1. The opinions expressed in this chapter are my own and do not necessarily reflect those of ICTJ. Thanks are owed to ICTJ's Reparations Programme, in particular Lisa Magarrell and Ruben Carranza, as well as to Hanny Megally,

Habib Nassar, Paul Prettitore and Jaber Suleiman, each of whom have been generous with their time and advice. Responsibility for flaws is wholly my own.

2. It is difficult to obtain an authoritative figure for the number of Palestinian refugees worldwide, as some are registered with the UN Relief and Works Agency (UNRWA), some with their host states and others not at all. In addition, there are several hundred thousand internally displaced in Israel and the Occupied Palestinian Territory (OPT). The lack of clear statistics is an indicator of both the sensitivity and the complexity of this issue.
3. *Nakba* ('catastrophe') is the term used to describe the events between December 1947 and September 1949 when over 400 Palestinian villages were destroyed and an estimated 750,000 Palestinians fled or were expelled from their homes and villages, thus becoming refugees. For an overview of the history of these events, see Souad Dajani, *Ruling Palestine*, May 2005 (Geneva: Centre on Housing Rights and Evictions and BADIL).
4. Adopted and proclaimed by UN General Assembly Resolution 194 (III) of 11 December 1948, at: <http://unispal.un.org/UNISPAL.NSF/0/C758572B78D-1CD0085256BCF0077E51A>, (accessed 21 March 2010).
5. For example, the Palestinian position places responsibility for the displacement on Zionist military groups and emphasizes that refugees must be given the option of exercising their right to return to their homes and to compensation. In contrast, the Israeli position disputes the cause of the displacement, and holds that international law does not permit the Palestinian refugees to return to the present-day state of Israel. See PLO Negotiations Affairs Department, 'Refugees Non-Paper', June 2010, at: www.nad-plo.org/userfiles/file/Non-Paper/Refugees-Non-Paper%202010.pdf; and Ruth Lapidot, 'Do Palestinian Refugees Have a Right to Return to Israel?', 15 January 2001, at: www.mfa.gov.il/MFA/Peace+Process/Guide+to+the+Peace+Process/Do+Palestinian+Refugees+Have+a+Right+to+Return+to.htm (accessed 30 March 2010).
6. 'Remedy', *Black's Law Dictionary*, 7th edition (St. Paul: West Group, 1999), 1296.
7. Permanent Court of International Justice, *Factory at Chorzów*, 13 September 1928 (Series A. No. 17, 29).
8. See the 1907 Hague Regulations (Article 3) and the 1977 First Additional Protocol to the Geneva Conventions Relating to the Protection of Victims of International Armed Conflicts (Article 91).
9. See the Universal Declaration of Human Rights (Article 8), the International Covenant on Civil and Political Rights (Article 2), and the International Convention on the Elimination of All Forms of Racial Discrimination (Article 6).
10. See the Statute of the International Criminal Court (Articles 68 and 75).
11. See the UN Principles on Housing and Property Restitution for Refugees and Displaced Persons, UN Doc. E/CN.4/Sub.2/2005/17 (2005).
12. The exception which proves the rule would be the small number of Palestinian refugees who returned to their homes in 1967 after negotiations between Israel and Jordan, brokered by the International Committee of the Red Cross (ICRC).

13. This chapter will address only the issue of reparations as it relates to Palestinian refugees and the state of Israel, as space precludes any analysis of the transitional justice concerns pertaining to host states.
14. For a good overview of the positions of both Israeli and Palestinian negotiators on the refugee issue since the beginning of the Oslo Process in 1993, see Rex Brynen, *The Past as Prelude? Negotiating the Palestinian Refugee Issue* (London: Chatham House, 2008).
15. Adopted and proclaimed by UN General Assembly Resolution 60/147 of 16 December 2005, at: www2.ohchr.org/english/law/remedy.htm (accessed 30 September 2009).
16. *Ibid.*, para. 19.
17. *Ibid.*, para. 20.
18. *Ibid.*, para. 21.
19. *Ibid.*, para. 22.
20. *Ibid.*, para. 23.
21. For more discussion on the concepts included within reparation, see, *inter alia*, Lisa Magarrell, 'Reparations in Theory and Practice', *Reparative Justice Series* (New York: International Center for Transitional Justice, 2007), and Office of the United Nations High Commissioner for Human Rights, *Rule-of-Law Tools for Post-Conflict States: Reparations Programmes* (Geneva: OHCHR, 2008).
22. See, for example, the responses to the 2003 poll of the Palestinian Center for Policy and Survey Research (PSR), in which many respondents viewed more favourably compensation plus return to the State of Palestine than they did to remaining in their host states and accepting compensation. PSR, 'Results of PSR Refugees' Polls in the West Bank/Gaza Strip, Jordan and Lebanon on Refugees' Preferences and Behaviour in a Palestinian-Israeli Permanent Refugee Agreement', 18 July 2003, at: www.pcpsr.org/survey/polls/2003/refugeesjune03.html (accessed 25 March 2010).
23. UN General Assembly Resolution 60/147 (2005), para. 8.
24. See Inter-American Court of Human Rights (IACHR), *Case of Castillo-Páez v. Peru*, Judgment of 27 November 1998 (Reparations & Costs), Series C No. 43, para. 79.
25. As is evident from the 'Palestine Papers', the Palestine Liberation Organization's (PLO's) Negotiations Support Unit (NSU) has done important work on this issue. See, for example, 'NSU Outline of Refugee Issues', at: www.ajtransparency.com/files/2344.pdf; and the 2009 'Summary of Palestinian Refugee Rights', at: www.ajtransparency.com/files/4682.pdf (accessed 10 August 2011).
26. Here it is important to recall that the UN Human Rights Committee (HRC) has held that the right to enter one's own country, as found in Article 12(4) of the International Covenant on Civil and Political Rights, is not limited to nationality in a formal sense, and includes those individuals who have special ties to or claims in relation to a given country. See HRC General Comment 27 (1999), UN Doc. CCPR/C/21/Rev.1/Add.9.
27. See particularly European Court of Human Rights (ECHR), *Case of Loizidou v. Turkey* (40/1993/435/514), 28 July 1998, in which it was held that the petitioner – a Greek Cypriot who lost her property in Turkish-occupied Cyprus – was granted compensation 'in respect of the anguish and feelings

- of helplessness and frustration which the applicant must have experienced over the years in not being able to use her property as she saw fit' (para 39).
28. See IACHR, *Velásquez Rodríguez v. Honduras*, Judgment of 21 July 1989, Series C No. 7, para. 27 and IACHR, *Neira Alegria, et al v. Peru*, Judgment of 19 September 1996, Series C No. 29, para. 53.
 29. As Naomi Roht-Arriaza observes, 'Over and over again, in interviews and in interactions with therapists, victims ask for official and societal acknowledgment that they were wronged, restoration of their good name, knowledge of who and how it was done, justice and moral reparations. Victims are much more ambivalent about monetary reparations.' See Naomi Roht-Arriaza, 'Reparations Decisions and Dilemmas', *Hastings International & Comparative Law Review* 27 (2004), 180.
 30. An interesting illustration of the 'empty gesture' interpretation was the silent reception which met President Shimon Peres' apology in December 2007 for the Kufr Qassem massacre. In 1956, Israeli forces killed 47 Palestinian residents of the village who had broken a curfew which, unbeknown to them, had been imposed on the area. The commander paid a minimal symbolic fine, and those responsible received prison sentences but were pardoned. In this context, the apology rang hollow.
 31. This individual-collective structure has parallels in what Palestinians term as the individual and national rights of the refugees.
 32. Collective reparations in such contexts as Aceh Province (Indonesia), Colombia, Liberia, Morocco, Peru, Sierra Leone, and Timor-Leste, have provided such means as targeted socio-economic development in key regions, social service packages, psycho-social reconstruction of the community, compensation, the construction of museums, and statements of acknowledgement and apology.
 33. A strategic outreach programme can help to minimize this risk.
 34. There are substantive advantages and disadvantages to each form which those considering the design of such programmes should take into consideration. For more on this, see Pablo de Greiff, 'Addressing the Past: Reparations for Gross Human Rights Abuses', in Agnes Hurwitz and Reyko Huang (eds), *Civil War and the Rule of Law: Security, Development, Human Rights*, (Boulder and London: Lynne Rienner, 2008).
 35. These resources have been converted into an electronic format, which will help in making them more accessible. However, they are not publicly available, which would be a substantial hurdle for individuals seeking to use them as evidentiary support for their reparation claims.
 36. See Gail Boling, 'Palestinian Refugees and the Individual Right of Return', BADIL (2007), at: www.badil.org/en/documents/category/35-publications?download=101%3Aindividualror-en (accessed 30 March 2010).
 37. See Lapidoth (2001).
 38. For example, the 2001 Taba negotiations proposed a framework which included return and repatriation to Israel, Israel-swapped territory, and the Palestinian state; the unofficial 2003 Geneva Accord provided for modalities of return to the State of Palestine, areas in Israel being transferred to Palestine in the land swap, third countries, the State of Israel, and present host countries. The Israeli response to the 2003 Performance-Based Roadmap to a Permanent Two-State Solution to the Israeli-Palestinian Conflict, however, called for, '[...] the waiver of any right of return for Palestinian refugees to

- the State of Israel.' See point 6, 'Israel's Response to the Road Map', 25 May 2003, at: www.knesset.gov.il/process/docs/roadmap_response_eng.htm (accessed 23 March 2010). During the Annapolis negotiations, then-Prime Minister Ehud Olmert stated to a journalist that he had offered President Mahmoud Abbas 1,000 returns per year over five years. See Greg Sheridan, 'Ehud Olmert Still Dreams of Peace', *The Australian*, 28 November 2009.
39. Such preparations would also have to be made by a Palestinian state in cases of return to the West Bank and Gaza Strip.
 40. The situation in Bosnia-Herzegovina is of particular relevance. In this case, two million people were displaced due to the conflict, although as Williams notes, reparations efforts for the displaced in the Balkans were both dependent on and complicated by international intervention. For an overview of the Bosnia-Herzegovina property restitution experience, see Rhodri Williams, *The Contemporary Right to Property Restitution in the Context of Transitional Justice* (New York: International Center for Transitional Justice, 2007), 33–41.
 41. Between 1913 and the end of the *apartheid* era, millions of non-white South Africans were dispossessed from their land, a legacy which the post-*apartheid* government sought to redress, although it faced complications due to the broader context of a controversial land redistribution programme. See Williams, 23–33.
 42. In the Guatemalan context, over a million people were displaced due to the internal armed conflict. However, proposals for restitution were substantially complicated by failing to resolve matters of secondary occupants, a problem that was worsened by the dashed expectations of those who had been displaced. See Williams, 41–47.
 43. An interesting example of work in this area is the comparative study visits organized by BADIL to such places as South Africa, Bosnia-Herzegovina, and Cyprus. See BADIL, 'Comparative Study Visits', at: www.badil.org/en/comparative-study-visits (accessed 1 April 2010).
 44. Edward Said, *Power, Politics, and Culture* (New York: Vintage, 2001).
 45. Stanley Cohen, *States of Denial* (Cambridge: Polity Press, 2001), 225.
 46. *Ibid.*, 157.
 47. See, for example, the overview of the July 2000 Camp David Summit in Brynen, 'The Past as Prelude?', as well as the exchange between Tzipi Livni and Ahmed Qurei reflected in 'Meeting Minutes: Plenary Session Post-Analysis', leaked as part of the Palestine Papers and available at: www.ajtransparency.com/files/2437.pdf (accessed 10 August 2011). Shlomo Gazit has remarked on the Israeli sensitivity on this issue, commenting that if the State were to recognize the right of return, '[...] it would also be admitting responsibility, and perhaps even culpability for creating the problem.' See Shlomo Gazit, *The Palestinian Refugee Problem, Final Status Issues: Israel–Palestinians, Study No. 2* (Tel Aviv: Jaffee Center for Strategic Studies, 1995), 9.
 48. See, for example, 'Israel and Palestine Refugee Proposal', at: www.ajtransparency.com/files/2412.pdf (accessed 10 August 2011).
 49. Given that there is controversy from some quarters as to the continuation of Palestinian refugeehood across generations, it may be useful to consider the definition of 'victim' contained within the Basic Guidelines in this process, which says '[...]Where appropriate, and in accordance with domestic law, the term 'victim' also includes the immediate family or dependants of the

direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.' [emphasis added] See Basic Guidelines, para. 8.

50. This is noted in the recently issued internal guidance note 'UN Approach to Transitional Justice', 10 March 2010, 6. On file with author.
51. See, for example, the extensive resources developed through the Ottawa Process and other policy and research endeavours, available at the Palestinian Refugee ResearchNet, at: <http://prn.mcgill.ca>.
52. Civitas Project, 'Palestinians Register: Laying Foundations and Setting Directions', August 2006, at: www.nuffield.ox.ac.uk/projects/Civitas (accessed 11 March 2009).
53. Joint Parliamentary Middle East Councils, *Right of Return: Report of the Joint Parliamentary Middle East Councils Commission of Enquiry on the Palestinian Refugees* (London: Labour Middle East Council, Conservative Middle East Council, and Liberal Democrat Middle East Council, 2001).
54. Possible activities in this regard could include an information campaign, 'go and see' tours for refugee representatives to see the areas of their former villages. None of this is intended to substitute for an adequate outreach programme, an issue which is beyond the scope of this chapter.
55. See ICTJ, 'What is Transitional Justice?' (2008), at: www.ictj.org/static/TJApproaches/WhatisTJ/ICTJ_WhatisTJ_pa2008_.pdf (accessed 28 March 2010); Neil J. Kritz (ed.), *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, (Washington, DC: US Institute of Peace Press, 1995); and Ruti G. Teitel, *Transitional Justice* (New York: Oxford University Press, 2000).
56. See para. 17 of Question of the Impunity of Perpetrators of Human Rights Violations (Civil and Political), E/CN.4/Sub.2/1997/20/Rev.1.
57. The means of pursuing this right can take many forms which can be complementary. Legal truth, for example, can entail issues such as possession, succession and title, which clearly relate to other forms of truth such as personal narratives.
58. OHCHR, 'Right to the truth: Report of the Office of the High Commissioner for Human Rights', A/HRC/12/19, 21 August 2009, para. 4.
59. For more on truth-seeking and memorialization as transitional justice mechanisms, see ICTJ, 'Truth-seeking', at: www.ictj.org/en/tj/138.html (accessed 21 March 2010); ICTJ, 'Memorialization', at: www.ictj.org/en/tj/785.html (accessed 21 March 2010); and OHCHR, *Rule-of-Law Tools for Post-Conflict States: Truth Commissions* (Geneva: OHCHR, 2006).
60. More recently, the new Israeli historians such as Ilan Pappé, Avi Schläim and Tom Segev have also contributed to this process.
61. See Laleh Khalili, 'Commemorating Contested Lands', in Ann Lesch and Ian Lustick (eds), *Exile & Return: Predicament of Palestinians and Jews* (Philadelphia: University of Pennsylvania Press, 2005), 20.
62. *Ibid.*
63. For more on prosecutions as a transitional justice mechanism, see ICTJ, 'Criminal Justice', at: www.ictj.org/en/tj/781.html (accessed 21 March 2010); and OHCHR, *Rule-of-Law Tools for Post-Conflict States: Prosecutions Initiatives* (Geneva: OHCHR, 2006).

64. Cases have also been filed against Palestinian officials, including the Palestinian Liberation Organisation, notably in relation to the commission of suicide bombings.
65. International Court of Justice (ICJ), *Legality of the Construction of a Wall in the Occupied Palestinian Territories*, Advisory Opinion, ICJ Rep, 2004, 136.
66. It has also led to the creation of the UN Register of Damages, which can become a means of acknowledging, if not actually fulfilling, the rights of Palestinians harmed by the Wall to reparations.
67. See Catherine Philp and James Hider, 'Prosecutor looks at ways to put Israeli officers on trial for Gaza "war crimes"', *The Times*, 2 February 2009.
68. Moreover, seeking to address the past through bad faith measures risks long-term harm in how victims may view future policies, diluting both the meaning and effectiveness of any measures adopted.
69. See Amira Hass, 'The Real Palestinian Concession', *Ha'aretz*, 26 January 2011, at: www.haaretz.com/print-edition/opinion/the-real-palestinian-concession-1.339252 (accessed 1 August 2011).
70. Yves Besson stated that, 'Palestinians consider the refugee issue as the heart of their conflict with Israel, the centre of their collective memory, the focal point of their modern political life and the core of their present identity as a people.' See Yves Besson, 'The Right of Return and Compensation', paper presented to the conference *Resolving the Palestinian Refugee Problem: What role for the International Community?*, University of Warwick, 23–24 March 1998.
71. Gazit, *Palestinian Refugee Problem*.
72. Dan Rabinowitz, 'Israel and the Palestinian Refugees: Postpragmatic Reflections on Historical Narratives, Closure, Transitional Justice, and Palestinian Refugees' Right to Refuse', in Susan Slyomovics and Barbara Rose Johnston (eds), *Waging War, Making Peace: Reparations and Human Rights* (Walnut Creek: Left Coast Press, 2009), 225–40.
73. See Christine Bell, *Peace Agreements and Human Rights* (Oxford: Oxford University Press, 2000), 15.
74. It is interesting to note that Palestinian negotiation advisors discussed options that contained 'limited historical references, in order to be acceptable by both parties.' See 'Talking Points for Meeting with Tal Becker Re: Recognition of Refugees' Rights', leaked in the 2011 release of the Palestine Papers, at: www.ajtransparency.com/files/2370.pdf (accessed 10 August 2011).
75. Moreover, it would be severely problematic, rewarding those responsible who were strategic enough to simply 'wait it out'.
76. As noted earlier, there is past practice worth examining which has considered long-standing property restitution claims, in particular South Africa, in which the timeframe addressed is even longer than that of the Palestinian refugee situation. The South African constitution states that, 'A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property, or to equitable redress.' See 36 ILM 744 (1997).
77. 'Non-paper: Private response to Palestinian refugee paper of January 22, 2001', para. 15, 23 January 2001, at: <http://prn.mcgill.ca/background/background-position-isr.pdf> (accessed 23 March 2010).

78. Such efforts towards equalization are reflected in the establishment of the Israeli Ministry of Pensions Affairs' new department which is gathering records and other evidence of the lost property of the Mizrahi community in Israel. As their spokesperson remarked, '[W]e are not waiting until there is a negotiation for a peace accord. We need to be prepared, so that if there are negotiations and the Palestinians say, "We are owed a few billion dollars," We will say, "OK, no problem," and be ready with a much higher figure of what we are owed.' See Benjamin Joffe-Walt, 'New office begins investigating lost property of ME Jews', *The Jerusalem Post*, 28 July 2010.
79. However, it will be interesting to see whether increasing Israeli efforts to push for compensation for the Mizrahi community will serve to help ground recognition of the need for compensation for the Palestinian refugees.

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Lebanon, Working Paper Series No. 64, Refugee Studies Center, Oxford University (June 2010).

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