



ANALYSIS TO THE STATUS OF PALESTINIAN REFUGEES IN INTERNATIONAL LAW

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Abstract

This paper analysed the sources of law that constitute the basis of the refugee law and confined its focus on the 1951 Convention for the status of Palestinian refugees especially Article 1(A-F). The paper also outlined and analysed the unique position of the Palestinian refugees, its implication and a proper solution to the Palestinian refugees under international law.

Keywords: Refugee, Law, Palestinian

Introduction

After World War II, a vast number of refugees were growing, this brought about concern among international community to assume responsibility to such refugees in terms of their protection and assistance. After the war between Israeli and Arab states in 1947, some hundreds of thousands of Palestinians fled their homes to refugee camps in Gaza strip, the West Bank and the neighbouring Jordan, Lebanon and Syria¹. This brought about the beginning of the Palestinian refugee problems which this paper tried to analyse. The second displacement of Palestinians to refugee camps came up after the six-day war in 1967 when Israeli forces occupied the Golan Heights and the Quneitras area. Large numbers of Palestinians were again forced to flee their homes as a result of the war.

The working definition of the UNRWA does not confer or give any right to the Palestinians but only gave access to its services. A 'Palestinian refugee' is defined as; 'any person whose normal place of residence was Palestine during the period 1 June 1946 to 15 May 1948 and who lost both home and means of livelihood as a result of the 1948 conflict'². Although this definition was not ratified by a UNGA Resolution it is nevertheless used by the UNRWA. This means those Palestinian refugees who did not register with UNRWA are excluded or those who lost their registration as a result of a change in their status. So thousand of Palestinian even though lost their land and sources of livelihood but did not lose their residence in Gaza and the West Bank will not be included under this definition.

It was because of the growing number of Palestinian refugees fleeing into the neighbouring

¹ Lex Takkenberg, *The status of Palestinian refugees in International law*: (Oxford: Clarendon Press, 1998).

² UNRWA Consolidated Registration Instruction. (CRI), 1 January 1993, Para. 2.13.



Arab states, there is a growing concern for the United Nations to increase its aids towards refugees through the United Nations High Commissioner for Refugees (UNHCR). The Arab States lobbied for an exclusive status to be accorded to Palestinian refugees. The primary concern of the Arab states was that the UN should exclude the Palestinian refugees in the mandate of the UNHCR statute to remain the direct responsibility of the United Nations. This decision by the Arab states is for a political reason rather than legal considerations. Their reasons was that if the Palestinian refugees were included under the UNHCR statute they will be submerged with other categories of refugees from other part of the world and would thereby relegated to a lower position of important.

Discussion

The United Nations decided to create a special organisation to take care of the Palestinian refugees thereby excluding them from the mandate of the UNHCR. In 1949, the United Nations Relief and works Agency for Palestinian refugees in the Near East (UNRWA)³ was established by UNGA Resolution 302(IV) of 8th December 1949, to carryout in collaboration with local government in providing assistance or protection to refugee's basic needs of food, clothing and shelter. This includes Palestinian refugees residing in West Bank and Gaza as well as those in Jordan, Syria and Lebanon.

The mandate accorded to UNRWA was extended in 1967 to include Non Palestinian refugees

because of the emerging War which brought about the emergency nature of the situation otherwise UNRWA only deals with Palestinian refugees. The UNRWA was not the only body that assist the Palestinian refugees; the UNCCP⁴ was created by the United Nations General Assembly in UNGA Resolution 194 to protect the Palestinian refugees which include repatriation or compensation and seek a solution to the Israeli-Palestinian conflict in line with the 1947 partition plan.

UNCCP like the UNHCR was created with a protection function that will provide the Palestinians with a durable long-term solution. Its sole beneficiary is the Palestinian refugees. Due to Israeli refusal to honour the repatriation or compensation of the Palestinian refugees, it makes UNCCP loses its main function hence becomes irrelevant. After the collapsed of the UNCCP, the Palestinians were left with only the UNRWA to shoulder the full responsibility with their work mostly around given food, shelter and clothing.

The Palestinian refugees were left with only UNRWA to cater for them. They were excluded from the protection of the 1951 convention in Article 1D and the UNHCR in Article 7c simply because they are receiving protection from UNRWA which is not adequate. This miscalculation thereby contributes to the plight of the Palestinian refugee anomaly. Hathaway argued

³ United Nations Relief and Works Agency for Palestinian refugees in the Near East (UNRWA) 1949

⁴ United Nations Conciliation Commission for Palestine, (UNCCP)



that “today’s human rights abuses are tomorrow refugee’s problems”⁵.

More than 7 million Palestinian refugees were left without any proper legislation to their favour. With the incapacitation of UNCCP, UNRWA failed to fill the massive gap that resulted from such emasculation.

In 1951 the Convention relating to the status of refugees was established. This convention brought about significant changes and development in international law. It establishes some specific rights of refugees by prescribing standards of treatment of refugees wherever they might find themselves. Again the Palestinian refugees were excluded from the 1951 convention because of the assistance given to them by the UNRWA which is a UN body. This connotes that the Palestinian refugees registered with UNRWA and residing within its area of operations were excluded from the international protection of the UNHCR and the special protection of the 1951 convention.

Through 2 clauses, Article 1D of the 1951 convention and UNHCR Article 7(c) Palestinian Refugees were been denied international redress and protection meant for refugees both in access and definite status⁶.

There are no international instruments dealing with Palestinian refugees specifically but only some

resolution of the Arab League⁷, hence there is no general accepted definition of who is to be considered as a Palestinian refugee legally. According to Article 1A (2) of the 1951 convention, the termed ‘Refugee’ for the purpose of the convention shall apply to any person who:

As a result of events occurring before 1 January 1951 and owing to well founded fear of being persecuted for reasons of race, religion, nationality, Membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such Fear, is unwilling to return to it.

Thus under the 1951 convention determining refugee status depends largely on whether those circumstances mentioned resulted in forcing the individual to leave his or her country. This goes to show that a Palestinian refugee who can satisfy the criteria above may exercise such right with some minor exception. The difficulty lies in Article 1D⁸ which makes the Palestinian refugees status difficult to enjoy the protection and assistance rendered by the convention.

⁵ Hathaway J, *the rights of refugees under international law*, (Cambridge: University Press, 2005)

⁶ Reem Salahi, Reinterpreting Article 1D: Seeking viable solutions to the Palestinian refugee anomaly. *Berkeley Journal of Middle-Eastern and Islamic law*, (2008)

⁷ Lex Takkenberg. *The Status of Palestinian Refugees in international law* (supra).

⁸ Article 1D of the 1951 refugee convention.



Article 1D provides:

This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance. When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Convention.

According to Siraj Sait⁹ it was the Arab miscalculation that puts the Palestinian refugee into this dilemma. The Arabs thought that the issue could be sorted out quickly and adequately if the UN made a specialised alternative arrangement to the Palestinian refugees.

Again the failure of the Arab League to provide a regional regime that would address the problem of the Palestinian refugees added to such suffering which, for more than 60 years have kept them away from international protection. It is rather unfortunate and sad when the UNHCR refused to include the Palestinian refugees under its protection when it is known that the UNRWA is not in position to give protection to the Palestinian

⁹ Siraj Sait. International refugee law: excluding the Palestinians' in Strawson J, *Law after Ground Zero* (London: Cavendish, 2002) p. 95.

refugees that resulted in making them vulnerable to attack and unnecessary suffering. The Palestinian refugees are taken as an exceptional case that requires special protection and assistance.¹⁰

All this exclusion from the protection of both the 1951 convention and the UNHCR is as a result of interpretation of article 1D of the convention and Article 7c of the UNHCR which resulted in condemning Palestinian refugees and their descendants to a life of misery in UNRWA camps until political negotiations resume finding a place for them. Palestinian refugees now have a unique position in international law. This is because they are the only refugees who were given a distinct and specific status in determining their refugee status.¹¹

Article 1D serves both as an inclusive and exclusive clause. The first paragraph tend to exclude those refugees who enjoy protection or support from other United Nations body apart from the UNHCR, in this case the UNRWA, while the second part provides that where such protection cease for any reason and a definite position is not determine by United Nations General assembly Resolution, they should automatically fall under the protection of the refugee convention.

Going by the events that occurred after the collapsed of the UNCCP, it is clear that the UNRWA is not capable of protecting as well as assists the growing number of the Palestinian refugees; hence paragraph 2 of article 1D came into

¹⁰ Gorlick B. Human rights and refugees: Enhancing protection through international human rights law, *Nordic Journal of international law*, (2000) p. 117-177.

¹¹ Lex Takkenberg. The status of Palestinian refugees in international law, (Supra)



play. The argument here is that even though the first paragraph of article 1D excluded the Palestinian refugees from the protection of the convention, the second paragraph included them base on the reasons given above. So even though the legal status of the Palestinian refugees is mandated to UNRWA, it would be more appropriate to include them under both the 1951 refugee convention and the UNHCR statute so that the problem will be solve once and for all. It is an injustice suffered for more than 60 years by the Palestinian refugees.¹²

Because of multiple interpretation accorded to article 1D it became ambiguous hence the need to consider the rules governing interpretation embodied in the Vienna Convention on the Law of Treaties in order to ascertain the true meaning of the Article in question.

Article 31¹³ provides that “a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.”

Going by the this one can see that Article 1D in all intent and purpose is designed to give protection and or assistance to the Palestinian refugees, and were such purpose cannot be achieve then it deceived the objectives of such article. It is natural

that UNRWA cannot fulfil its mandate because of the growing number of Palestinian refugees who when UNRWA was established are not more than 750.000 to 900.000 thousand to present more than 7 million.

It's unreasonable to continue treating the Palestinian refugees outside the protection of the refugee convention and the UNHCR; it will deceive the intention of the drafters of such legislation. Article 32 of the Vienna convention reads as follows:

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

The above article is enough to show how bad the international community interpreted article 1D. It is clear that excluding Palestinian refugees will leads to result that are not only absurd but unreasonable.

Lex Takkenberg¹⁴ is of the view that the intention of the drafters of the 1951 convention was only to exclude Palestinian refugees temporarily, that is why the second sentence of article 1D was added in order to avoid possible misinterpretation. Takkenberg goes on to say that when the assistance or protection ceased for any reason, the refugees

¹²Steinbock, The Refugee definition as law: Issues of interpretation, in F. Nicholson and P. Twomey (eds.) *Refugee Rights and Realities: Evolving International concepts and Regimes.* (Cambridge: University Press, 1999)

¹³ Convention on the Law of treaties, 1969

¹⁴ Lex Takkenberg. The status of Palestinian refugees in international law, (Supra)



concerned shall ipso facto be entitled to the benefit of the convention.

Looking at the discussion that took place during the drafting process of Article 1D, the intention of the UN delegates towards the Palestinian refugees is that the refugees required a unique and distinct international protection and assistance. This protection is to be extended to the Palestinian refugees until their refugee problem is solved in accordance with the UN Resolution on the subject.

At the initial stage of the drafting process, the United States delegates proposed that the refugees be divided into 'refugees' who would qualify for protection under the Convention, and 'neo-refugees' which include the Arab/Indian refugees to be excluded from the protection of the refugee convention.

It was adopted and submitted to the Economic and Social Council (ECOSOC) but due to the criticism by some delegates, the refugees were defined in the same manner with consensus among them that Palestinians required special protection.

At the second stage, in order to see that Palestinians were not relegated or equated to other refugees, the Arab delegates came with a proposed amendment to the effect that Palestinian refugees be given extra care pending the outcome of the Arab-Israeli conflict on repatriation plan. The proposed amendment is done in order to avoid misinterpretation of Article 1D which reads:

When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the

relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Convention

The Egyptian delegate¹⁵ is of the view that the amendment was made so as to make sure that Arab refugees from Palestine, who were still refugees when the organs and agencies of the United Nations at present providing them with protection or assistance ceased to function, would automatically come within the scope of the Convention¹⁶.

Even at that, the Commission of Churches on Internal Affairs are concerned that the provision of the Article in question is subject to misinterpretation hence, should be amended to read 'assistance and protection' instead of Assistance or protection because 'material assistance is not in itself a guarantee of protection'.

Based on the afore-mentioned general consensus, the international community indicates not only its overwhelming intention to provide Palestinian refugees with a continuity of protection, but also a heightened level of protection because of the nature of their status. The inclusion of the second sentence in Article 1D is a clear indication that the Palestinian refugees were wished a greater and unique position in both protection and assistance hence need to be included in both the UNHCR and the 1951 Convention.

¹⁵ See generally the drafting of the 1951 refugee convention.

¹⁶ Paul Weis (ed.), *The Refugee Convention, 1951* (Cambridge: University Press, 1995)



Looking at the situation in another angle it is possible that Palestinian refugees no longer receive UNRWA assistance even though they fall under its mandate. Those who, for any reason find themselves in one of the states that ratified the convention, and who are unable to return to their original country of refuge or to any other country where UNRWA operates, the second sentence of Article 1D should apply to them.

Applying it this way does not contradict the true intention of the drafters of the Convention whose primary concern is that Palestinian refugees receive special international care in so far as a durable solution is not achieved.

The circumstances prevailing at the time of the adoption of the convention should not be construed as restricting the application of the article in question so that the purpose and objectives of the convention are not deceived.

Article 1A¹⁷ of the 1951 convention is paramount in determining the legal status of the Palestinian refugees. Some states like USA and Canada who are signatories to the convention due to the misinterpretation of Article 1D considered the Palestinian refugees against the provision of article 1A(2) of the 1951 refugee convention.

Article 1A defines a refugee as persons who are suffering from persecution because of their race, religion, nationality, membership of a particular social group or political opinion hence cannot return to his country of nationality. A careful look of the Article brings a similarity with a Palestinian refugee. This is because there are Palestinian

refugees who were persecuted because of the fact that they are Palestinians, while some suffered because of their religious beliefs.

The only obstacle preventing the Palestinian refugees from enjoying the protection of the convention is solely on the misinterpretation of Article 1D. An in-depth look at the provisions in whole as analysed above will suggest that Palestinian refugees were wrongly denied what is really meant to alleviate their suffering.

Another question we ask ourselves is what happens to those Palestinian refugees who left the UNRWA area of operations due to well-founded fear of being persecuted? This suggests that the first sentence of Article 1D loses its suspending effect hence the 1951 refugee convention becomes applicable to Palestinian refugees.

Another instance where a refugee loses his status is contained in Article 1c. This is because of the understanding that international protection is offered only when it's necessary and justified. Article 1c which is relevant to the Palestinian refugee provides; This Convention shall cease to apply to any person falling under the terms of Section A if:

(3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality;

This connotes that if the Palestinian refugee enjoys the protection of a country then he/she is deemed no longer in need of any international protection¹⁸. This conclusion might be wrong because if some will get the protection or support from some states, others might not be that lucky hence generalising it

¹⁷ Article 1, Refugee Convention 1951

¹⁸ Lex Takkenberg (1998), *Supra*



amount to injustice to those that might not be that lucky.

Another issue worth considering is the fact that Palestinian refugees who acquired citizenship of Jordan, Iraq, Saudi-Arabia or any such countries are deemed to no longer having the status of a refugee under the convention, yet when it comes to the eligibility to protection or assistance under UNRWA or for the exercise of the right of return and the right to self-determination, the Palestinians refugees are considered as refugees under the convention. Article 1c is drafted to refer to persons falling under the terms of Article 1A (2) but looking at it objectively, it should also be applied to those who are refugees under Article 1A (1) and or Article 1D second paragraph.

Article 1E which provides *“This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.”*

The Article is drafted to suits those refugees that were given citizenship as Germans at the end of Second World War, having rights and obligation as any other German. It equally applied to those Palestinian refugees who were residing in Syria. They were given citizenship with some exception which include retaining their original nationality but have no right to vote in Syria, to own a single house and not to carry a Syrian passport but instead are eligible to a special travel document.¹⁹

¹⁹ Ibid.

The exclusion of the above Palestinian refugees from the 1951 convention is not a big issue, because the Syrian government had shown its willingness to provide them with legal protection and or assistance by making laws to that effect. One might ask what will be their fate in today’s Syria.

All that is needed is the protection and assistance from the international community. It doesn’t matter where it comes from so long the protection or assistance is guaranteed by the issuing authority.

Another obstacle to the recognition of Palestinian refugees as refugees under the 1951 refugee convention is the labelling them as ‘terrorist’. After the September 11 attack in New-York, the US made their policy about refugee strict by passing the USA-PATRIOT Act²⁰. The Act not only support the stoppage of humanitarian project to organisation that are listed as terrorist organisation but, allows for the detention and deportation of non-citizens that provides assistance to organisation not officially classified as a terrorist group.

This position taken by the US makes asylum difficult which include the suspension of its resettlement programs for refugees. This means that the tens and thousands of refugees which include Palestinian that were given asylum will be facing difficulty.

The UK follow suit by enacting the Anti-Terrorism, Crime and Security Act in 2001. It became strict in

²⁰ Uniting and Strengthening America by Providing Appropriate Tools Required intercepting and obstructing Terrorism Act (USA PATRIOT) October 2001.



its war on terrorism. Any slight connection of an asylum seeker with an organisation listed as Terrorist group by the UK will be denied asylum and be deported back to his country. This connotes that persons who are seeking asylum after escaping from violence, which include terrorism could now face deportation. The Palestinians and other Arabs states asylum seekers were penalised not because they are terrorist but because they originate from a country of conflict with either political, ethnical or religious ties or affiliation. This position taken by the UK government is totally against the principle of Non-refoulement.²¹

Article 1F of the refugee convention is seen by many as excluding a refugee who is categorised as terrorist from enjoying the benefits accorded by the refugee convention. The article provides;

The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

(a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

(c) he has been guilty of acts contrary to the purposes and principles of the United Nation.

The Middle-East is now considered as heaven for terrorist, a threat to the US and the civilised world. All this is done in violation of the guideline provided by UNHCR. The commission in its Exclusion clauses²² provides to the effect that 'the fact of membership of a terrorist organisation does not, in and of itself, amount to participation or complicity. The decision maker will need to consider whether the applicant had close or direct responsibility for, or was actively associated with, the commission of any crime specified under Article 1F.

Siraj Sait²³ argued that '*the Palestinian refugees are guilty not merely by association but, through a stage manage criminalisation, into a form of collective terrorism*'.

The Israeli ceased this opportunity of the international war against terrorism to dismantle the Palestinians who they see as enemies. Israeli military forces soon start targeting Palestinian refugee camps. The camps were destroyed all in the pretence that there are terrorists from amongst the refugees. This led to loss of lives of refugees of whom many are Palestinians.

The labelling of the Palestinian refugees as terrorist by some countries like the US is baseless and does not exclude them from the refugee convention. The

²¹ Non-refoulement is the doctrine of international law that prohibits the expulsion of an asylum seeker from the country he/she is seeking asylum to his country of origin where he/she is facing persecution.

²² UNHCR, Exclusion Clauses: Guideline on their Application, December 1996, paragraph 40, 45, and 47.

²³ Siraj Sait. International Refugee Law: Excluding the Palestinians, (Supra)



provision of Article 1F is clear and had no linkage to the Palestinian refugees. The September 11 incident brought about international war on terrorism, the Palestinian refugees became victim of such campaign. As a result of the war between Israeli and Palestinians, most of the Palestinians flee and end off as refugees. And there classification as terrorist means their quest for asylum cannot be easily granted if at all it would be.

This left the Palestinian refugees stranded without a place to stay or the right to return to their country of origin. This injustice is unbearable and it is the duty of the United Nation to provide the Palestinian refugees with a solution to their problem.

This can be achieved by classifying the Palestinian refugees as refugees under both the 1951 convention and the UNHCR so as to enjoy the protection and assistance rendered to every refugee. Another central issue to the Israel-Palestinian conflict is the issue of right of return for the Palestinian refugees to their homes.²⁴

Palestinians argued that not only do they have the right of return to Palestine but, they also have the right to be compensated for any loss or damages to their individual suffering since 1948. The Palestinians need the refugee issue to be resolve irrespective of the final outcome of the Arab-Israeli conflict.

Israeli on their part disagree with the notion of Palestinian right of return. But this disagreement is not a total disagreement rather Israeli agreed that a

²⁴ Van Arsdale, Peter W. *Force to flee: Human rights and human wrongs in refugee homelands*, (Lanham: Lexington books, 2006)

limited number of Palestinian refugees could return to Israel. The return could not be possible to the Palestinian original homes which could have been destroyed as a result of the war between the two parties or, is taken over by new occupants. The rest of the refugees should return to such area under the control of the Palestinians or to continue staying in their present location.²⁵

On the issue of compensation, Israel maintained that the compensation should be given not only to the Palestinians but, also to the Jewish people who also lost their properties as a result of the war in Israel and Arab countries. This way all the two parties should receive adequate compensation proportionate to individual lost of property.

Israeli rejected the Palestinian demand of resolving the refugee issue prior to the final determination of the Arab-Israeli conflict maintaining that it should be solved as part of a permanent settlement of the conflict. The question is does the Palestinians have a right of return under international law?

Israel argued that neither UNSC resolution 242 and 338²⁶ made mentioned of the right of return. UNGA resolution 194 of 1948 drafted in connection to the Israeli-Palestinian conflict provides as follows;

²⁵ Matthew Kalman. Palestinian right of return in International law: The Israeli perspective. *Nexus: Journal of Opinion*, (2003).

²⁶ UNSC Resolution 242 November 22, 1967 and UNSC Resolution 338 October 22, 1973. The two resolution was carefully drafted in order to give room for further negotiation between the parties rather than given an individual right.



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

Israel argued that the above resolution does not mention any right of return for the Palestinian refugees, nor can it be inferred from the wordings of the resolution. Israeli lawyers are of the view that the wording of the resolution 'should be permitted' cannot be the same with 'must be permitted' to warrant any such right. That even though Israeli agreed that resolving the issue of Palestinian refugee is central to finding a permanent solution to the conflict; the Palestinian had no legal right to return in international law.²⁷

Ruth Lapidoth, professor emeritus of international law at the Hebrew University of Jerusalem is of the view that

"Neither under the general international convention, nor under the major UN resolution, nor under the relevant agreements between the parties, do the

*Palestinian refugees have a right to return to Israel.'*²⁸

The option left for the Palestinian is to come to terms with the Israeli in form of negotiations. This brought about the Madrid Peace Conference of 1991 which was established in order to alleviate the hardship of Palestinian refugees pending the outcome of a more permanent solution.

The refugee anomaly is indeed among the main issue of concern in bringing to an end the Israeli-Palestinian conflict. Around 800,000 Palestinians became refugees as a result of the conflict; according to report 2/3 of Palestinians are refugees. This makes it a sensitive and central issue in the negotiation between Israeli and Palestinians.

Palestinians are of the view that the right of return is their inherent right which is absolute, a universal law enshrined in Article 13 of the Universal Declaration of Human Rights as follows; '*everyone has the right to..., return to his country...*'

Palestinians argued the above article which is of universal application is enough to serve as a guarantee to their right of return, and it serves as an essential part of transition to peace between the parties. Again Article 12(4) of the ICCPR²⁹ which serves as customary international law provides; "*No one shall be arbitrarily deprived of the right to enter his own country.*"

Israel rejected the Palestinian right of return, a population of 3 to 4 million Palestinian and their

²⁷ Matthew Kalman, Palestinian right of return in International law: The Israeli perspective.(Supra)

²⁸ Ruth Lapidoth, Some Legal Aspects of the Palestinian Refugee Question, (on file with Jerusalem Viewpoints, (Sept.1, 2002).

²⁹ Article 12, International Covenant on Civil and Political Rights, (1976)



descendants if allowed into Israel will destroy the Jewish nature of the state of Israel. The position of the Israeli is to a partial return and compensation in return to recognition of the Jewish refugees in Arab countries among other things.

Procedure for managing the refugee population which focuses largely on resettlement and incorporation is extremely difficult, and fulfilling the portion of the UNRWA mandate which serves in encouraging refugees to become self-supporting is nearly impossible to accomplish.³⁰

The UNHCR in its notes on the applicability of Article 1 of the 1951 convention relating to the status of refugees to Palestinian refugees categories the refugees into group, depending on the circumstances of the Palestinian.

There are those that became 'refugees' base on the definition of UNGA resolutions especially Article 194(III) 1948, and those that were displaced from their homes in Palestine which has now became Israel. And those Palestinians and their descendants that flee due to the armed conflict and are unable to return to their territories occupied by Israel since 1967. All the above Palestinians falls under article 1D provided they did not fall short under article 1C, 1E and 1F.³¹

But for those who left the territory before the armed conflict for fear of persecution for reason of

race, religion, Nationality, membership of a particular social group or political opinion and are unwilling to return, did not fall under article 1D but are protected under Article 1A (2) of the refugee convention of 1951 provided they are still within Article 1C and, are not excluded by Article 1E and 1F.

This explanation by the UNHCR clearly shows the injustice suffered by the majority of Palestinian refugees. Those Palestinian that fled their homes as a result of armed conflict, leaving behind everything they owned were kept in refugee camp, with little or no protection from UNRWA. While those that left the territory for reasons mentioned above mostly taken their time and having the knowledge of leaving, are accorded full protection and placed under the 1951 refugee convention and the UNHCR.

It is my believe that those Palestinian that wake-up suddenly and found themselves in conflict and as a result fled and subsequently became refugees needed immediate and full protection of the refugee convention to those that were not around during the armed conflict and only flee because of a different reason.

If the latter is deemed by the international community in need of full protection which they did, the former who were forced to flee are in greater need hence should be protected by both the refugee convention and the UNHCR.

Palestinians that left as a result of armed conflict needed to be protected and be given full protection by the 1951 convention before those that left on their own Will. The wish of the international community is to protect and assist refugees and

³⁰ Ilana Feldman. Refusing Invisibility: Documentation and memorialisation in Palestinian Refugee claims, *Journal of refugee studies*, (2008)

³¹ UNHCR. Note on the applicability of article 1D of the 1951 Convention relating to the status of refugees to Palestinian refugees. *International Journal of Refugee Law*, (2002)



putting the Palestinian refugees under the refugee convention will really help the refugee situation to a greater level.

Conclusion

The continued exclusion of the Palestinian refugees from the international protection enjoyed by other refugees around the world defeats the original intention of the drafters of the convention (who never intended for the current situation to exist, much less this long) and the UNHCR statute. Due to the intense armed conflict between Israeli and Palestinians which resulted in massive ten of thousand in-flow of refugees, the UNCCP and UNRWA with its functional dissolution cannot cater to those refugee's needs of full protection or assistance.

The international community must seriously begin to address the issue of the Palestinian refugees who are leading in the world in term of population. Re-interpreting Article 1D in its plain language by the international community will help in restoring and bridging the protection gap enforced on the Palestinian refugees.

Recommendation

Correcting the Palestinian refugee anomalies will among other thing help in restoring peace in the Middle-East, ease the burden on few Arab states who shouldered the responsibility instead of many states of the UN. It will also decrease the number of asylum seekers in Europe and other western countries because of the full protection and support they will be getting from the UN.

Palestinian refugees deserves the best of protection, this can be achieved if the international community stand-up to its task by re-interpreting Article 1D, inclusion of the Palestinian refugees within the mandate of the UNHCR statutes working hand in hand with UNRWA, establishing a temporary regional protection program pending UNHCR implementation of a lasting and durable solution that will end the plight of the largest and longest refugee situation.

After more than 60 years of hardship and suffering, it is high time the International community for the interest of all puts an end to the Palestinian refugee anomaly.

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