

Peace in the Middle East: getting real on the issue of Palestinian refugee property

by Scott Leckie

In October 2002, UNHCR issued a 'Note on the Applicability of Article 1D of the 1951 Convention Relating to the Status of Refugees to Palestinian Refugees'.¹ This essentially re-affirmed the long-standing interpretation of the Convention that - with the exception of a select few who reside outside the immediate region - the five million Palestinian refugees² are excluded from the benefits from the Convention, and thus of direct protection assistance by UNHCR. Justifying these views on the fact that the UN Relief Works Agency (UNRWA) already provides 'protection or assistance' to the refugees, the international community has thus not only excluded the largest portion of the world's refugee population from the protection that only UNHCR can give but has also excluded the global refugee protection agency from being a key player in finding solutions to one of the oldest unsettled refugee problems in the world.

While it is understandable that some quarters may not wish UNHCR to take on the world's most intractable refugee issue, it is a travesty of the truth to argue that the four million registered Palestinian refugees in the five UNRWA fields of operation (Gaza, West Bank, Jordan, Lebanon and Syria) receive adequate protection from the agency. Not only does UNRWA itself assert that it does not have a protection capacity but the ineffectual institution meant to provide such protection under UN General Assembly Resolution 194 - the UN Conciliation Commission for Palestine (currently comprised of the US, Turkey and France) - is nothing less than a cruel joke. Here, in full, is the report submitted by the UNCCP to the General

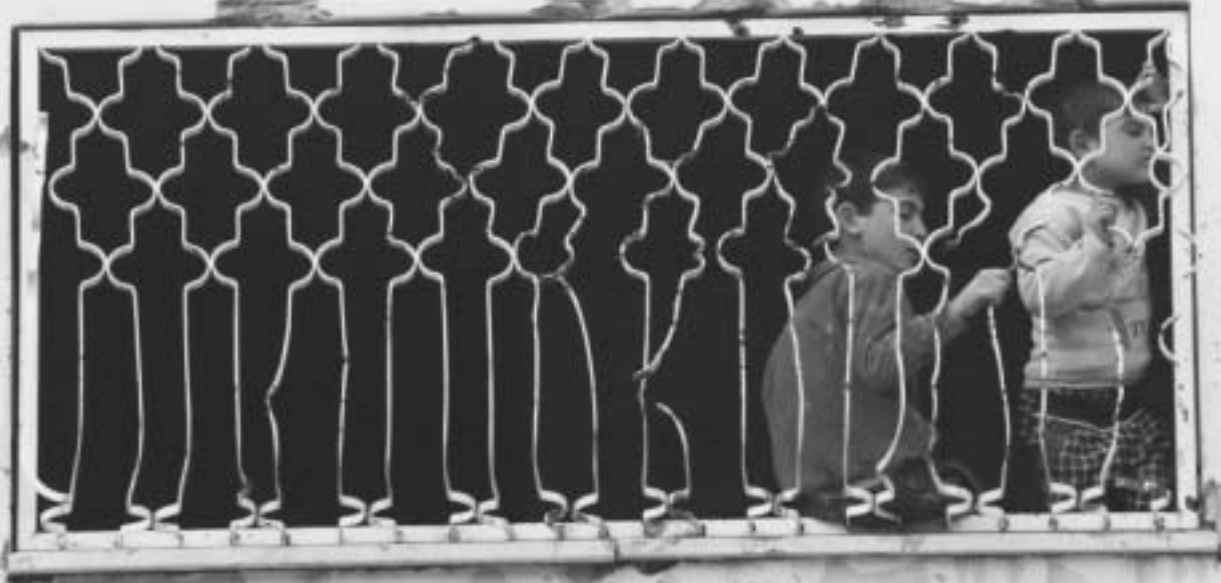
Assembly earlier this year:

In paragraph 2 of its resolution 56/52 of 10 December 2001, the General Assembly requested the Commission to report to the Assembly as appropriate, but no later than 1 September 2002. The Commission notes its report of 31 August 2002 (A/56/290) and observes that it has nothing new to report since its submission.

That's it. This is the entire report of the sole UN institution mandated to provide international protection for Palestinian refugees. A similar 'report' is provided each year to the General Assembly.³

Surely UNHCR could do better than this. Obviously, a simple assertion by UNHCR that the exclusion clause of Article 1D was no longer applicable, though highly desirable, would not of itself make a radical difference in the elusive search for a viable solution for Palestinian refugees. However, such a move would signal UNHCR's willingness to become a player in the process leading towards finding permanent solutions for all Palestinian refugees. It could also perhaps entice oil rich countries in the Middle East to increase their minimal contributions and thus lessen UNHCR's current financial woes.

UNHCR's renewed emphasis in recent years on solution-driven approaches to refugee situations - particularly voluntary repatriation, return and the restoration of housing and property rights - is ideally suited for helping to solve the refugee crisis affecting Palestinians. Refugees in Bosnia, Mozambique, Tajikistan, Kosovo, Rwanda and elsewhere have benefited



Still Pictures/Donald Boström

Jenin, Palestine, April 2002 greatly in returning to their original homes, thanks to the direct assistance and support provided by UNHCR.

We need to ask the broader humanitarian community, therefore, why Palestinian refugees are treated so systematically differently from all of the world's other refugee groups. On what grounds are Palestinians' rights to housing and property restitution so casually ignored? Is it because the challenge is so immense, that UNHCR risks failure from the start? Is it because large parts of the international community know that the extremist position taken by Israel towards Palestinian refugees is so entrenched that finding solutions for the refugees in a manner that is consistent with their rights is simply unachievable? Or is it because the international community simply cannot be bothered with such a difficult refugee population when UNHCR is preoccupied with financial crises and internal morale problems?

it seems the world simply doesn't care

Whatever arguments may be used to seek to justify the continuing lack of willingness to provide protection for refugees, many of whom have been displaced from their homes for more than 54 years, the fact of the matter is that, when viewed through the eyes of the refugees themselves, it seems the world simply doesn't care. Their exclusion from the protection granted under the Convention has the effect of encouraging other institutions and

governments (including those in the region that pay extensive lip service to the rights of refugees) to treat Palestinian refugees differently from other refugees, as if their predicaments and hardships were somehow less dismal than refugees elsewhere. To Palestinian refugees, political, legal or financial arguments are simply excuses for inaction, the result of which will be a prolongation of the injustice and misery they suffer each and every day they are prevented from returning to their homes, lands and properties. Any claim that Palestinian refugees are getting the support, protection and attention they deserve borders on the absurd.

Israel's theft of refugee property

The longstanding Israeli policy of destroying the lives and livelihoods of Palestinians and taking Palestinian homes and lands has been a core component of the ethnic cleansing that Israel has carried out for over five decades. Although often forgotten, it is vital to recall that when Israel was created in 1948 the Palestinian majority population owned more than 90% of the land, houses and properties in historic Palestine while Jews possessed less than 10%. Today that figure is almost precisely reversed, thanks to massive housing, land and property rights violations and other crimes carried out by Israel against Palestinian refugees. Over 500 villages have been destroyed by Israel in their haste to create 'so-called' facts on the ground

and to negate history. Today hundreds of thousands of Israeli Jews live as tenants of the Jewish Agency in stolen Palestinian homes. Some are still using furniture, books and family heirlooms left behind when the refugees fled to save their lives. Israel has never allowed any refugees to return to their homes and lands, nor has it paid compensation for these thefts or for the damage they have caused.

The restitution question remains very much an open one. Recent calculations put the total current market value of Palestinian land, housing and property stolen or destroyed by Israel at US\$250 billion. This figure does not include the billions claimed by such Palestinian refugee-hosting countries as Jordan.⁴

Successive Israeli governments have introduced laws that have sought to give some form of formal 'legitimacy' to this massive property grab. The innocuous name of Israel's 1950 Absentee Property Law belies the reality that it has provided a 'legal' basis for five decades of ongoing theft. Legal challenges against the 1950 law have repeatedly failed.

Tellingly, all of the so-called abandonment laws adopted by all sides during the war in Bosnia took as their guidance Israel's 1950 Absentee Property Law. Since the end of the Bosnian war, **all** abandonment laws have been relegated to the rubbish bin of history, comprehensively repealed and replaced by laws designed to ensure

enforcement of the refugee return and restitution provisions of the Dayton Agreements.

Housing and property restitution for all Palestinian refugees

There can be no prospect of a workable peace agreement until the return and property restitution question is properly addressed. Indeed, this is a major lesson of all post-conflict situations throughout the world: address restitution issues head on, and more likely than not peace will hold. Ignore it, and the war that was so hard to stop in the first place will be much more likely eventually to re-ignite.

In the case of Middle East peace, this would mean that part of any peace agreement between Israel and Palestine would, by necessity, include a detailed plan upholding the right of every Palestinian refugee to an effective remedy for the housing, land and property rights violations they have suffered. To date, most proposals for rectifying this massive illegal confiscation have centred either on the payment of non-defined amounts of financial compensation (the most progressive Israeli position) or on the full exercise of the right to return (the mainstream Palestinian position). Inadequate attention has been given to the policies, mechanisms, procedures and institutions that could be created to make the re-assertion of Palestinian housing, land and property rights a workable component of a permanent peace. If Palestinian refugees are to be accorded the rights to which refugees just about everywhere else are now entitled, then the refugee issue must be addressed through the lens of restitution and the rights to re-establish control over confiscated properties.

The Palestinians are hardly trying to break new ground. The right to return and the right to restitution of property have a long legal history, and have been most recently actualised in such places as Bosnia, Kosovo, Mozambique, South Africa, Tajikistan and throughout eastern and central Europe. The US has often provided political and financial backing for restitution. Nobody has done more to enshrine the establishment of the right to restitution of property than Jewish groups of Holocaust victims. Through phenomenal organisation and determination they have helped ensure that hundreds of thousands of people have been rightly allowed to return to, regain control over or be compensated

for property illegally confiscated during the Second World War.

The failure to address this issue in the case of Palestinian refugees means that there is no real movement forward and no reason to hope that the next agreement, whenever it is, can last. Unresolved housing, property and land disputes almost always have a nasty way of causing the next conflict, wherever this may be. So to ignore this question in the final status talks between Israel and Palestine – whenever these may occur – would be a recipe for future disaster.

Towards a restitution blueprint

If refugee rights are universal in nature – which they are surely intended to be – then Palestinian refugees need to be offered the same solutions that are routinely available to refugees elsewhere. This would include recognition that protecting the housing and property restitution rights of refugees is now the rule, not the exception. Not only has this right been affirmed on numerous occasions in UN resolutions addressing the Middle East conflict but so too have many peace agreements and voluntary repatriation agreements directly addressed the housing and property restitution rights of returning refugees. Various international legal standards also explicitly address these rights, and the UN recently proposed the appointment of a Special Rapporteur on the Restitution of Refugee Property to give even greater prominence to this issue. So many countries have undergone restitution processes in the past two decades, in fact, that a series of important lessons can be readily identified to enhance the effectiveness of future efforts at restorative justice.

What would it take, then, in institutional terms to ensure that Palestinians, like refugees from many other nations, were able to implement their rights to housing, property and land restitution?

A renewed peace process based on human rights: A rights-based approach to restoring the housing, property and land rights of Palestinian refugees, based squarely on basic principles of human rights and international law, provides the only reasonable and fair basis for a just and lasting solution. Both sides in whatever talks may eventually emerge – and they surely will, no matter how distant a prospect that may now seem – need to put human rights-consistent, practi-

cal, non-discriminatory and equitable proposals on the negotiating table that adequately address the restitution issue. It is hoped that the massive restitution benefits rightfully enjoyed by hundreds of thousands of Israeli and other Jews will infuse the restitution policies Israel places on the table. Likewise, it will need to be realised by the Palestinians that overly politicised rhetoric and diatribes will not lead to the development of viable restitution processes.

Inclusion of a detailed restitution arrangement within the peace agreement: All players – the UN, UNHCR, UNRWA, the EU, Russia, the US and others that will be involved with eventual peace talks, along with the Israeli and Palestinian delegations – should heed the lessons learned from other similar exercises, and include, in as detailed a manner as possible, the contours of the restitution rights, institutions, mechanisms and procedures within the eventual peace agreement itself. These decisions must not be delayed for some indeterminate time in the future, as was the case under Oslo. They must be included in the peace agreement itself.

A workable and independent restitution institution: Any peace agreement worthy of its name will need to create an independent institution to coordinate the entire restitution process. This institution must be entirely independent of both parties and be adequately supported – both financially and politically – by the international community. Important lessons can be learned in this regard from the Commission for Real Property Claims in Bosnia, the Housing and Property Directorate in Kosovo and the Land Claims Court in post-apartheid South Africa. The restitution institution would then coordinate all the bodies created to implement the restitution provisions of the eventual agreement. Needless to say, changes in Israeli law would need to precede any equitable restitution process; most notably, the Absentee Property Law would need to be repealed in full, just as the repressive laws preventing restitution in Bosnia, South Africa and elsewhere were repealed.

A fair and equitable claims process: Any restitution process must allow all Palestinian refugees and/or their heirs to submit a detailed restitution claim, within a defined time-frame, outlining the precise nature of the restitution remedy being sought by that particular individual or family. This would

include the right to submit a claim to an independent judicial body seeking the restitution of their original homes confiscated by Israel since 1947. This process would be legal in nature, rather than solely political, and would include the establishment of a judicial body independent of both the Israeli and Palestinian judiciaries but which had sole jurisdiction over all outstanding restitution claims and the power to enforce these decisions within Israel and Palestine.

A broad evidentiary base: In contrast to many other instances of ethnic cleansing, virtually all Palestinian owners and heirs whose properties have been stolen still possess titles, deeds, land documents, keys, photographs and other pieces of evidence proving their ownership. One of the few concrete things the UN has done to promote the rights of Palestinian refugees is to digitalise many of the property records held by the refugees, the results of which are now under lock and key in the UN in New York. Physical proof of rights, rather than military muscle, should form the basis for restitution decisions.

An enforcement procedure: Restitution has worked in Bosnia, South Africa, Tajikistan, Germany, Latvia, Czech Republic, the Chagos Islands, Hungary and many, many other places because effective enforcement mechanisms were in place, whether judicial or political in nature.

Having a pronouncement by a restitution institution for Palestinian refugees will not be enough for actual restitution to occur. Some form of powerful enforcement will need to be a central element within the process.

Protecting the rights of secondary occupants: For restitution to succeed, the rights of all secondary occupants (current occupants of Palestinian refugee properties) to re-housing must be respected and secured. No one – neither Israeli nor Palestinian – should end up homeless as a result of the restitution process.

A time limit to the process: As evidenced by the more than two dozen restitution programmes underway during the past decade, any Palestinian refugee restitution process will also surely take considerable time to implement in full. It will be one fraught with political and other tensions and tempers are sure to become frayed. These are challenges facing all restitution processes and will not be unique to the Middle East.

Conclusion

From the outside, it appears almost impossible for the average Israeli to come to terms with the fact that Israel has had to commit decades of human rights violations and other crimes in its attempt to create a so-called Jewish State (recalling that one million Israeli citizens are Palestinians). However, citizens of other nations have had to

acknowledge crimes committed by their own governments, whether these were committed long ago or in recent years. For Israel to survive as a nation at peace with its neighbours, Israelis and Jews everywhere need to recognise that stealing the homes, lands and properties of millions of innocent people is a price too high for the world to accept, and that this unprecedented theft is something that will never be forgotten by those who are still waiting for restitution.

Permanent peace will come when discrimination ceases and tolerance returns, systems of apartheid-style governance and military occupation are no longer accepted, and just and equitable solutions are found to meet the reasonable demands of Palestinians to return to their original homes. Bringing UNHCR into the process would be one more step likely to make Palestinian restitution rights a reality.

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For further information on fora available for Palestinian refugee restitution, see www.badil.org/Publications/Briefs/Brief-No.2.html and Al Awda, The Palestinian Right to Return Coalition www.al-awda.org.

1. To see the Note, together with commentary on UNHCR's revised interpretation of Article 1D, go to www.badil.org/Protection/Documents/Protect_Docs.htm.
2. For statistics on the total Palestinian refugee population, see www.shaml.org/resources/facts/palestinian_refugees_fact_sheet.htm
3. For a review of the inadequacy of the Commission see www.badil.org/Publications/Briefs/Brief5.pdf
4. See the excellent and very detailed article of Atif Kubursi 'Valuing Palestinian Losses in Today's Dollars' in *Palestinian Refugees: The Right of Return* (Naseer Aruri, ed), Pluto Press, London, 217-251. See also: www.passia.org/publications/bulletins/english_refu/REFUGEEES9.pdf

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