

The Palestinian refugee question: root causes and breaking the impasse

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Acknowledging the root causes of Palestinian displacement and objectively applying international law will be key to any solution to the Palestinian refugee question. Recent attempts to dismiss the Palestinian refugee issue altogether make this all the more imperative.

The ‘root causes’ of Palestinian displacement – the largest and longest-standing protracted refugee situation in the world¹ – are complex and their impact has grown over time as they continue unaddressed. They date back to the early 20th century, when the conflicting aspirations of two groups (one indigenous and one largely constituted by immigrants) over the land of British Mandate Palestine escalated into a war that in 1948 resulted in statehood for one group (Israel) and the denial of the right to self-determination, dispossession and exile for the vast majority of the other (Palestinians).

The fate of the Palestinians, 750,000 of whom became refugees around 1948, was sealed by subsequent Israeli laws and policies that prevented their return to their original homes and made them stateless as they – unlike the Palestinians who remained in what became Israel – were not offered the possibility to become Israeli citizens.² Since 1948 there have been numerous, significant waves of further displacement of Palestinians, many of whom continue to experience varying degrees of discrimination, poverty and loss of rights, not only under Israeli rule in the West Bank and Gaza (occupied since 1967), but also in some other parts of the Arab world where they found refuge.

While the UN’s General Assembly has adopted hundreds of resolutions reaffirming the refugees’ right to return to their homes, along with compensation,³ and the Security Council has frequently affirmed the need to achieve a just settlement of the refugee question, none of these resolutions has ever been implemented. Years of political negotiation between the parties under the auspices of the UN and

then regional and bilateral negotiations from the Madrid Conference and Oslo Accords onward have not ultimately led to any advances either, notwithstanding key developments such as recognition of Israel by the Palestine Liberation Organization.

Divergent narratives about the origins of the Palestinian refugee question have distorted the legal debate on the ways to resolve their situation. A misleading argument that has over time overshadowed the debate is that UNRWA⁴ ‘perpetuates’ the problem by registering and assisting successive generations of refugees.⁵ This aid, which has been instrumental to the survival and dignity of millions, cannot either be blamed for the lack of a political solution nor be a substitute for such action. UN Member States remain responsible for finding a solution to end the plight of the Palestinian refugees.

Unlocking solutions

The Palestinian refugee question is often presented as insurmountable, but it is not. The most difficult challenge is the lack of political will to even acknowledge the ‘root causes’ of either the original displacement or its continuing, protracted nature – lack of self-determination, prevention of return, lack of property restitution, lack of compensation, and denationalisation *en masse*. Efforts to obscure the root causes of Palestinian displacement have affected both the parties’ ability to compromise and the way these refugees’ plight is perceived internationally. Along with the lack of effective support by Member States to ensure the principled application of international law, this has left the Palestinian refugee issue unaddressed.

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The 2016 New York Declaration for Refugees and Migrants and the 2018 Global Compact on Refugees underscore the importance of States' efforts to eliminate root causes in order to achieve solutions including in protracted refugee situations. And these instruments highlight the relevance of a multi-stakeholder approach, together with respect for the rule of law and the protection of human rights as part of the process towards solutions.

For Palestinians, applying such an approach would imply, first and foremost, that the search for solutions be detached from the constraints of politics and the asymmetry in power of the parties, and be guided by the parameters of international law.⁶ While international law cannot by itself settle the complexity of the Palestinian refugee question, it can help move discussions beyond what is 'politically feasible' towards what is fair and acceptable, so that the political process, whenever it resumes, has more chance of success. The positions of Israel and the Palestinians have never been further apart and the promulgation of the 'deal of the century' announced by the US government in June 2019 has further polarised them. A firm lead by the UN in re-centring the debate on the rights of the refugees is imperative.

The homeland that the Palestinian refugees were forced to leave behind in 1948 no longer exists as a political and administrative entity, the root causes of their exile remain unaddressed, and Palestinian displacement and dispossession in the territory that Israel occupied in 1967 continue. These elements are of fundamental importance to the Palestinian case. However, it is not always appreciated that in other respects the problems faced by Palestinian refugees have not been markedly different from those faced by other refugees, almost two thirds of whom also find themselves in a protracted exile and often without respect of their basic rights. Like any uprooted individuals, Palestinians must be allowed to rebuild their lives in safety and dignity and have their fundamental rights respected. Comparative experiences from Asia (after the Indo-China war), Central America, the

former Yugoslavia, Iraq, East Timor and various countries in Africa (from Angola to Mozambique) suggest that solutions to complex, protracted refugee problems can be found through a combination of the application of legal principles and political compromise. In other refugee crises the international response has typically been multidimensional, addressing: first, the refugee status created by the original displacement – through a combination of voluntary choices of repatriation, local integration or resettlement; second, the material consequences of the displacement (damage or loss of property or loss of income) – through restitution and/or compensation; and, third, the moral and psychological loss and damage that may have affected both individuals and the community as a whole – through various forms of reparations.

Applying such a multidimensional response in the Palestinian refugee case would have a number of practical implications. First, it requires acknowledging an objective historical narrative around the 'root causes' of Palestinian displacement and the enduring denial of rights they have experienced ever since. This may help Palestinians see their collective identity and dignity restored after decades of dispossession and exile as – at best – second-class citizens or – often – as second-class foreigners. This may also help foster compromise with Israel and address misperceptions in this regard within Arab countries. Having the UN leading such a process would help ensure objectivity.

Second, any solutions proposed need to reconcile politics with international law including applicable UN resolutions and international human rights law pertaining to collective rights. This implies first and foremost respecting the principle of self-determination for Palestinians. Many argue that an independent, fully sovereign Palestinian State along the 1967 borders would be the logical solution, as it would allow Palestinians to realise the right to self-determination and to nurture a sense of national identity. This would not, however, automatically allow the refugees to realise

their unfulfilled historic claims, including return and compensation. A fair compromise would allow refugees to take up residency in a newly established Palestinian State or remain in host countries until a resolution enables return to Israel in numbers agreed by both parties. However, for this to happen Israel must first relinquish its occupation of the Gaza Strip and West Bank, including East Jerusalem. To facilitate restitution and compensation, relevant historical records should be preserved for the point at which it will be possible to pursue related claims.

Third, applying international law to the Palestinian refugee question also means aligning the solutions for Palestinian refugees with international refugee law and practice pertaining to individual rights. UNHCR considers that the different durable solutions (voluntary repatriation, local integration and resettlement) are not mutually exclusive; provided they are all voluntary, they can complement each other and can be strategically combined. The Palestinian refugee question is no different. For example, in 1948, General Assembly resolution 194 established that those refugees “wishing to return to their homes and live at peace with their neighbours” could do so but also that those refugees not willing to return could opt for resettlement and be compensated. Israel’s firm denial of the refugees’ right to return, however, has also limited the options for alternative voluntary solutions. The fact that there are practical and political obstacles to allowing Palestinians to return to Israel (even though their return would not be at the expense of Israeli nationals and their safety) does not undermine the importance of recognising this right of return. Meanwhile, such an approach necessitates unpacking the persistent belief among Palestinian refugees and their Arab host States that acceptance of any solutions other than return would require relinquishing their claims vis-à-vis Israel. In fact, under international law, ending refugee status only implies cessation of international protection and does not affect the historic

rights of return (including restitution) and compensation – to which Palestinians are entitled under international law as already set out in various UN resolutions.

In sum, the political will to effectively resolve the refugee issue, beyond rhetoric, has sadly been lacking to date. A just and lasting solution to the Palestinian refugee question requires robust and principled political action grounded in international law. Recent efforts to dismiss the Palestinian refugee question as secondary in the search for peace in the region may lead to further instability and should be rejected. Politics ignoring basic principles of justice will not lead to a sustainable settlement.

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This article is written in a personal capacity and does not necessarily represent the views of the authors’ organisations.

1. Out of 13 million Palestinians more than half are considered refugees, some 5.4 million of whom are registered ‘Palestine refugees’ with UNRWA and live in the Near East. Palestine Central Bureau of Statistics, December 2018.
2. While some Palestinians may have acquired citizenship where they ‘relocated’ (Jordan is the only country that granted it *en masse* to those displaced in 1948), the majority remain without citizenship. Lack of full sovereignty of the State of Palestine – an indispensable element to the realisation of the right to self-determination – renders Gaza Strip and West Bank residents stateless under international law.
3. See for example General Assembly Resolution 194, para 11 bit.ly/GenAssResolution194
4. The UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), established 1949, operates in Jordan, Lebanon, Syria, the West Bank including East Jerusalem, and the Gaza Strip, providing education, health services and jobs.
5. Compliance of UNRWA’s registration system with international refugee law and practice is discussed in Albanese F P (2018) ‘UNRWA and Palestine Refugee Rights: New Assaults, New Challenges’, *Current Issues in Depth*, Institute for Palestine Studies. bit.ly/Albanese2018-PalestineStudies
6. For more on the application of the NYD/GCR framework to Palestinian refugees, see Albanese F P and Takkenberg L (2020) *The Status of Palestinian Refugees in International Law*, OUP.



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