

**Documenting Dispossession and Exile:  
The Relevance of International Norms on Registration and  
Data Management with Regard to a Negotiated Solution to  
the Palestinian Refugee Problem**

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## **Abstract**

This study examines the use of international practice, by exploring the notion that international standards and precedents that have been applied to refugee situations in other cases can give guidance to Palestinian refugee registration data, in reaching future claims for compensation. Three broad questions are put forward in this study:

1. To what extent can international practice as adopted by the United Nations High Commissioner for Refugees (UNHCR) in its registration and management practices offer a constructive perspective on Palestinian refugee registration procedures and data?
2. What is the relevance of the experience gained in the settlement of refugee claims in international settings, such as the practice of international Claim Commissions in search of guidelines for the planning of a future Palestinian Claim Commission?
3. Can existing Palestinian refugee registration data be constructed in a suitable way for the preparation of future claims?

On a broader level, the study will seek to explore two questions. Firstly, can Palestinian refugee registration data point towards findings that could contribute, by making available to negotiators, the quantitative data necessary for determining claims? Secondly, can international guidelines provide a framework for the use of Palestinian registration data in confronting refugee claims and losses?

The study also takes on a technical analysis. The case studies subject to the analysis are Bosnia and Herzegovina (BiH) and Kosovo. Via this approach, the research will study the general norms and procedures adopted by two Claims Commissions to resolve refugee claims. Insights are then made into the possible transfer of such procedures to the Palestinian refugee case. In doing so, a clearer picture of how a future Palestinian Claims Commission could be established, and how existing Palestinian refugee registration data could be assembled, is then examined. This thesis argues that one of the major gaps in research on Palestinian refugees is that it has not benefited from the experience of international lesson-learning through the analysis of other refugee cases and especially the utilization of the experience of UNHCR and precedents set by international Claim Commissions. The study's main conclusion is that international guidelines and precedents have significant benefits for preparing Palestinian refugee registration data, in reaching future claims for compensation within the Arab-Israeli negotiations.

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## **Abbreviations**

AFSC	American Friends Service Committee
AHC	Arab Higher Committee
AVR	Assisted Voluntary Return
BADIL	Resource Centre for Palestinian Residency and Refugee Rights in Palestine
BiH	Bosnia and Herzegovina
CBS	Central Bureau of Statistics
CDR	Central Data Repository
CERI	Consolidated Eligibility and Registration Instructions
CERMOC	Centre d'Etudes et de Recherches sur le Moyen- Orient Contemporain
CIDA	Canadian International Development Agency
CIVITAS	Foundations for Participation: Civic Structures for the Palestinian Refugee Camps and Exile Communities
COHRE	Centre on Housing Rights and Evictions
CPRR	Council for Palestinian Restitution and Repatriation
CRPC	Commission for Real Property Claims
CRRPD	Commission for Resolution of Real Property Disputes
DHA	Department of Humanitarian Affairs

DoP	Declaration of Principles
DP	displaced persons
DPA	Dayton Peace Agreement
ECHA	Convener of the Executive Committee for Humanitarian Affairs
ECHO	European Commission's department for Humanitarian Aid
ECHR	European Court of Human Rights
ECOSOC	Economic and Social Council
EECC	Eritrea-Ethiopia Claims Commission
ERC	Humanitarian Affairs and the Emergency Relief Coordinator
ESM	Economic Survey Mission
EU	European Union
ExCom	Executive Committee of the United Nations High Commissioner for Refugees
FAFO	Norwegian Institute for Applied Social Science
FERO	Field Eligibility and Registration Officer
FRY	Former Republic of Yugoslavia
GAPAR	Syrian General Authority for Palestine Arab Refugees
GFLP	German Forced Labour Compensation Programme
GIS	geographic information system
GPS	global satellite positioning
HCR	League of Nations High Commissioner for Refugees
HPCC	Housing Property Claims Commission
HPD	Housing and Property Directorate
HVAP	Holocaust Victim Assets Programme
IASC	Coordinator Chairs the Interagency Standing Committee
ICC	International Criminal Court
ICEM	Intergovernmental Committee for European Migration
ICHEIC	International Commission on Holocaust Era Insurance Claims

ICJ	International Court of Justice
ICM	Intergovernmental Committee for Migration
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
ID	identity documentation
IDD	Inter-Agency Internal Displacement Division
IDF	Israeli Defence Force
IDP's	internally displaced persons
IDRC	International Development Research Centre
IHL	International Humanitarian Law
ILA	Israel Lands Administration
IOM	International Organization for Migration
IPS	Institute of Palestine Studies
IPS	Integrated Property System
IRO	International Refugee Organization
IT	information technology
JCC	Jewish Claims Conference
JMCC	Jerusalem Media and Communication Centre
JNF	Jewish National Fund
KLA	Kosovo Liberation Army
KVM	Kosovo Verification Mission
LAS	League of Arab States
LAWE	Palestinian Society for the Protection of Human Rights and the Environment
LSCR	League of Red Crescent Societies
MDSD	Most Different Systems Design
MiMOSA	Migrant Management & Operational Systems Application
MMP	Microfinance and Micro-enterprise Programme
MOP	Palestinian Authority's Ministry of Planning
MSSD	Most Similar Systems Design
NATO	North Atlantic Treaty Organization

NGO	non-governmental organization
NSU	Negotiations Support Unit
OAU	Organization of African Unity
OCHA	Office for Humanitarian Affairs
OPTs	Occupied Palestinian Territories
OSCE	Organization for Security and Co-operation in Europe
OSO	Operational Support Officers
PA	Palestinian Authority (sometimes PNA: Palestinian National Authority)
PCA	Permanent Court of Arbitration
PCBS	Palestinian Central Bureau of Statistics
PHC	Population, Housing and Establishment Census
PICMME	Provisional Intergovernmental Committee for the Movements of Migrants from Europe
PLO	Palestine Liberation Organization
PLS	Palestine Land Society
PP	Project Profile
PPR	permanent place of residence
PRRN	Palestinian Refugee Research Net
PRRP	Palestine Refugee Records Project
RAO	Refugee Affairs Officer
RG	Registration Guide
RO	Refugee Office
RRs	Registered Refugees
RRIS	Refugee Registration Information System
RTD	Repossessions Tracking Database
RWG	Refugee Working Group
SHAML	Palestinian Refugees and Diaspora Centre
SHC	Special Hardship Case
SSE	Small-Scale Enterprise
TO	Technical Office
TRC	Truth and Reconciliation Commission
UN	United Nations

UNAMA	United Nations Assistance Mission in Afghanistan
UNCC	United Nations Claims Commission
UNCCP	United Nations Conciliation Commission for Palestine
UNDP	United Nations Development Programme
UNDRP	United Nations Disaster Relief Project
UNHCR	United Nations High Commissioner for Refugees
UNMIK	United Nations Mission in Kosovo
UNPPR	United Nations Relief for Palestine Refugees
UNPROFOR	United Nations Protection Force
UNRRA	United Nations Relief and Reconstruction Agency
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East
UNSC	United Nations Security Council
URS	Unified Registry System
USCR	United States Committee for Refugees
WB	World Bank
WFP	World Food Programme
WJRO	World Jewish Restitution Organization
WOJAC	World Organization of Jews from Arab Countries

## **Chapter One**

### **INTRODUCTION**



## **1.1. Presentation of the Research**

### **1.1.1. Definition of the Subject: Overall Argument and Hypothesis**

As Israelis and Palestinians attempt to move towards achieving peace in 2008, a number of long-standing issues which have divided them remain unresolved. One of the most crucial and

complicated of all permanent status issues within Arab-Israeli negotiations is the refugee issue. This has formed the fundamental cause of the conflict, with the right of return<sup>1</sup> and restitution featuring as the most difficult problems, and where both parties appear to be the furthest away from making progress. Any reflection of these core issues, demonstrate that it is an extremely complicated and multi-layered subject involving, political, economic, humanitarian, and technical difficulties.

The nature of the Palestinian refugee problem however, marks it as an issue going far beyond being a case of refugee displacement, as is the case with other refugee scenarios. As Shahira Samy points out:

The Palestinian refugee problem is primarily an intrinsic part, not only of the Israeli-Palestinian conflict, but the wider Arab-Israeli one as well. This complex nature has had its impact on the various solutions put forward.<sup>2</sup>

Indeed, despite the increasing urgency of the situation and the recognition of the importance of the Palestinian refugee issue, its longevity has only served to compound the complexities even further, making this refugee situation one of the most compelling of our time. The issues involved were so contentious that during the 1993 Oslo Accords, it was agreed that the refugee issue be deferred as one of the final status issues.<sup>3</sup>

Probably no other conflict post World War II has generated so much attention, and controversy, as the Arab-Israeli conflict, and

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<sup>1</sup> A key Palestinian demand is for recognition of their right to return to their homes. The Palestinian right to return and the actual return of the Palestinians are different. For an understanding of the distinctions see, Jerome Segal, (2001), "Right of Return Confusions", [www.arts.mcgill.ca/mepp/new\\_prrn/research/papers/segal.htm](http://www.arts.mcgill.ca/mepp/new_prrn/research/papers/segal.htm), (accessed on 12/6/2007).

<sup>2</sup> Shahira Samy, "The Politics of Reparations in the Case of Palestinian Refugees: A Comparative Approach", University of Exeter, Department of Politics, Exeter, 2006, p.8.

<sup>3</sup> Other issues deferred for final status issues were: settlements, Jerusalem, borders and security.

the amount of literature associated with the Palestinian refugee issue is vast. The research agenda has tended to focus on the right of return, rehabilitation and resettlement as solutions to the refugee problem. The right of return of refugees to their original homes especially, has been a strong theme and one that has particular relevance to the Palestinians since the implementation of United Nations (UN) General Assembly Resolution 194 (III) of December 1948, hereinafter “resolution 194”.

Paragraph 11 affirms three separate rights for Palestinian refugees displaced in 1948, including internally displaced persons (IDP’s) inside Israel and they are: the right of return, the right to housing and property restitution, and the right to compensation which involves two distinct solutions (i.e. return, restitution and compensation *or* resettlement, restitution and compensation) governed by the principle of individual refugee choice.

Although the ultimate fate of the Palestinian remains uncertain, of all the major components involved, it is the Palestinian refugee property issue that stands out as one of the issues which, unless resolved will prevent any resolution of the refugee issue. As Professor Rex Brynen of McGill University, Toronto, and Coordinator of the Palestinian Refugee ResearchNet (PRRN) <sup>4</sup> states:

A just and lasting resolution of the refugee issue is likely to require some material redress for those Palestinians displaced and dispossessed in 1948 and 1967. To date, examination of this has largely focused on United Nations General Assembly Resolution 194, on the legal case for refugee compensation, or on the scale of Palestinian

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<sup>4</sup> The PRRN is a website devoted to the question of Palestinian refugees, [www.arts.mcgill.ca/mepp/new\\_prn](http://www.arts.mcgill.ca/mepp/new_prn), (accessed on 12/9/2006).

property losses in 1948, and hence the magnitude of any compensation or restitution scheme.<sup>5</sup>

The exact number of Palestinian refugees who were displaced by the events of 1948 will never be known, although it is thought that approximately 550,000<sup>6</sup> Arabs were exiled from their homes and land, something which has permeated into subsequent generations of Palestinian refugees. Unless such grievances are addressed, solving the refugee issue remains impossible.

Palestinian refugee reparations<sup>7</sup> will require a solution, once Israeli and Palestinian negotiators reach the difficult and emotionally charged question of addressing claims for compensation or restitution. When this takes place, Palestinian refugee assets, i.e. refugee property data<sup>8</sup> are likely to be required as a crucial component for future negotiations in the Middle East peace process.

In light of this statement, this research offers a fresh approach to the Palestinian refugee issue. Driven by the quest for policy that is relevant to the Palestinian case, this study examines the use of international practice by exploring the notion that, standards and precedents in other refugee situations can give

<sup>5</sup> Rex Brynen, "Financing Palestinian Refugee Compensation as Part of a Comprehensive Solution to the Palestinian Refugee Problem", paper presented at the Workshop on Compensation as Part of a Comprehensive Solution of the Palestinian Refugee Problem, *PRRN/IDRC*, (Ottawa: July 1999), [www.arts.mcgill.ca/MEPP/PRRN/papers/brynen1.html](http://www.arts.mcgill.ca/MEPP/PRRN/papers/brynen1.html), (accessed on 15/4/2007).

<sup>6</sup> The exact number of Palestinians who fled Israel from November 1947 to December 1948 will never be known. The estimates range from about 400,000 to one million. The most plausible is probably around 550,000. For more information regarding the creation of the Palestinian refugee issue see, Benny Morris, *The Birth of the Palestinian Refugee Problem Revisited*, (Cambridge: Cambridge University Press, 2003). See also Ghada Karmi and Eugene Cotran, *The Palestinian Exodus 1948-1998*, (Reading: Ithaca Press, 1999) and Sami Hadawi, *Bitter Harvest: A Modern History of Palestine*, (Brooklyn, N.Y: Olive Branch Press, 1990).

<sup>7</sup> Palestinian reparations can include restitution of lost property, compensation for damages incurred, rehabilitation, an acknowledgment of the harm done or a combination of all.

<sup>8</sup> This study will address the data that was collected about the Palestinian refugees during 1947-1948 when the refugees were being registered.

guidance to Palestinian refugee registration data in reaching future claims for compensation.<sup>9</sup> Based on this hypothesis the research questions could be formulated, thus:

1. To what extent can international practice as adopted by the United Nations High Commissioner for Refugees (UNHCR)<sup>10</sup> in its registration and management practices offer a constructive perspective on Palestinian refugee registration procedures and data?

2. What is the relevance of the experience gained in the settlement of refugee claims in international settings, such as the practice of international Claim Commissions in search of guidelines for the planning of a future Palestinian Claim Commission?

3. Can existing Palestinian refugee registration data be constructed in a suitable way for the preparation of future claims?

These questions can be further broken down for analysis:

- Is there a correlation between UNHCR's refugee registration activities and the refugee registration activities of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA)?
- To what extent can there be a transfer of best practice from the Bosnia and Herzegovina (BiH) and Kosovo case studies to the Palestinian refugee case?

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<sup>9</sup> Currently much of the data discussed in this study is not easily accessible or not yet available.

<sup>10</sup> UNHCR is a humanitarian, non-political organization which grants, among other things, protection and support to refugees and individuals, but excludes the Palestinian refugees, whose needs are addressed by UNRWA.

- What Palestinian refugee registration data is currently available?
- What is the value of the data for the compensation/restitution question today and what are the limitations of the data?

These are among the main questions that this study aims to answer as part of an international research model. In order to answer these questions, the study will examine all of the main sources of Palestinian refugee registration data. Due to time constraints the field research was only able to focus on the Palestinian registered refugee (RR) data belonging to the UNRWA archives in their respective locations.<sup>11</sup>

This thesis argues that one of the major gaps in research on Palestinian refugees is that it has not benefited from the experience of international lesson-learning through the analysis of other refugee cases and especially the utilization of the experience of UNHCR and precedents set by international Claim Commissions. The study also argues that there are suitable refugee situations where previous precedents can provide guidance to the issue of Palestinian refugee claims. Chapter's three and four broaden the discussion by demonstrating the applicability of international experience and precedents.

Since the argument upon which this study hinges seeks to demonstrate that operational guidelines and technical research is relevant to the Palestinian case, one important clarification is important to be made in light of the purpose of this study. Several aspects of the Palestinian refugee situation support the tendency to view the refugees as being unique from other refugees, and as such a certain 'normalness' of their refugeedom

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<sup>11</sup> UNRWA posses the largest amount of Palestinian registered refugee data.

has become synonymously associated with them. Anita Fabos, Nadjé Al Ali and Oroub el Obeid highlight an important point:

Several aspects of the situation of Palestinian refugees support the tendency to see them as a case apart from other refugees in the region, and indeed, the global context generally. As the longest running unresolved refugee problem in the world, as well as the case with the greatest numbers of displaced people due to any one conflict.<sup>12</sup>

Although the uniqueness of the Palestinians has been documented, with considerable research taking place examining the politics and history of the Palestinian people,<sup>13</sup> international law has also been thoroughly applied in demonstrating its applicability to the Palestinian situation. However, research investigating the applicability of international experience has not taken place as Professor Michael Dumper observes:

On both the analytical level and on the programme planning and policy level, there has been a failure to build upon the existing body of literature and research and, consequently, a frequent re-inventing of the wheel.<sup>14</sup>

Dumper goes on to add that:

Consequently, it is argued that the resolution of the issue should also be formulated from within its own context. One important result of this view is that the experience of UNHCR and other international NGO's has not been utilized which, in turn, has led

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<sup>12</sup> Anita Fabos, Nadjé Al Ali, and Oroub el Obeid, "Regional Paper III: Middle East and North Africa", (*The Refugee Studies Centre*, University of Oxford, 2005), [www.rsc.ox.ac.uk/PDFs/Policy%20Approaches%20to%20Refugees%20and%20IDPs%20RSC-DFID%20Vol%20II.pdf](http://www.rsc.ox.ac.uk/PDFs/Policy%20Approaches%20to%20Refugees%20and%20IDPs%20RSC-DFID%20Vol%20II.pdf), (accessed on 12/1/2008).

<sup>13</sup> Chapter two looks further into some of these unique differences as a way to help disentangle the Palestinian refugee situation in preparation for the following chapters.

<sup>14</sup> Michael Dumper, "Comparative perspectives on Repatriation and Resettlement of Palestinian Refugees: The Cases of Guatemala, Bosnia and Afghanistan", paper prepared for the International Conference on Israel and the Palestinian Refugees, (Heidelberg: July 2003), p.1, [www.law.tau.ac.il/Eng/\\_Uploads/dbsAttachedFiles/Comparativeperspectives2dumperjuly.rtf](http://www.law.tau.ac.il/Eng/_Uploads/dbsAttachedFiles/Comparativeperspectives2dumperjuly.rtf), (accessed on 15/9/2007).

to a restricted range of policy options.<sup>15</sup>

Ghada Ageel also emphasizes Dumper's point that international experience has been neglected:

Because of this supposed characteristics of the Palestinian case, most previous studies have tended to avoid discussion of a durable solution, including the issue of repatriation. They also tend not to address ways of utilizing the experience of United Nations High Commission for Refugees or other international NGO's in the case of the Palestinians.<sup>16</sup>

Additionally, the value of the refugee data collected by agencies about the Palestinians has not been widely explored, which has excluded the Palestinians from comparison with other similar cases where international standards have been applied. The result is that although Palestinian refugee registration data is inseparable to the consideration of compensation claims, and despite the wealth of refugee registration data that exists (some of which dates back more than sixty years), very little research has focused on determining the scope and significance of the data, partially because the archives which contain the data are not all presently accessible to the research community.

The absence of a clear picture today of what data is available, has left the subject matter very much under developed, which has affected the direction of research and contributed to a failure to reach a Palestinian reparation agreement. The obvious, but by no means conclusive argument is that Palestinian refugees have the necessary registration data to fulfil the evidence verification procedures of a future Claims Commission. Chapter five will deal with the contents of all the sources pertaining to Palestinian refugee data belonging to key institutions.

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<sup>15</sup> Ibid., p.1.

<sup>16</sup> Ghada Ageel, "UNRWA and a Durable Solution for Palestinian Refugees: A Comparative Study", University of Exeter, Department of Politics, Exeter, 2007, p16.



In light of the previous discussion this study is important for a number of reasons:

- By looking at UNHCR's operational and technical capacity in its registration and data management practices, it will be possible to get a clearer picture of how international standards may benefit the Palestinian registration system, which will mark a new initiative in Palestinian refugee research;

- The fact that there is presently much interest being built up internationally around the issue of housing and property restitution for refugees and displaced persons (DP's), in addition to legal precedents which see refugees having the right to return to their homes and properties, seems only to enhance the value of getting Palestinian refugee losses documented, which may stimulate a rethink in addressing Palestinian refugee property claims;

- There are no studies focusing specifically upon the subject of this research or that can answer the three main research questions. As such this study will attempt to fill this gap by contributing to a wider understanding of the use of international practice and how it can be applied to a number of issues;

- The timing in which this study is being researched coincides with the digitization of certain Palestinian refugee databases. This provides an opportunity to discover the value of Palestinian refugee registration data, which could potentially unearth new ideas for the utilization of the refugee data.

Research conducted on the Palestinian refugee archives so far, is dominated by three prominent international scholars: Professor Michael Fischbach of Randolph-Macon College in Virginia covered the United Nations Conciliation Commission for

Palestine (UNCCP) archives in New York and Professor Salim Tamari director of the Institute of Jerusalem Studies (IJS) and Professor Elia Zureik of Queen's University in Ontario, covered the UNRWA archives in Amman.

Together they have produced some of the most influential research published on the topic, by focusing on the two main archives which contain the largest amount of Palestinian refugee data. This study has been greatly influenced by their work, which allowed the researcher to position her research relative to their investigations. It also provided an intellectual context which helped to define the objectives of the research, which offers the possibility of furthering the Palestinian research agenda.

Tamari describes the importance of analysing the data to be found within the two main archives:

We can say without exaggeration that these databases (UNRWA and UNCCP files in particular) contain the most extensive and reasonably reliable information about Palestinian refugees - their social attributes as well as socio-economic and property claims - of any refugee population in modern history.<sup>17</sup>

The gradual opening up of the archives which contains data on Palestinian refugee property and land claims, as well as data regarding the social composition and distribution of Palestinian refugee population, will one day make the issue of documenting refugee claims a viable possibility.

Although politics lurks behind some of the matters that concern this study, the researcher wanted to pursue a procedural-

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<sup>17</sup> Salim Tamari, "Palestinian Refugee Property Claims: Compensation and Restitution", *Institute of Jerusalem Studies*, (2003), [www.law.tau.ac.il/Eng/\\_Uploads/dbsAttachedFiles/TamariPaperRefugeeCompensationRestitution1julycon.doc](http://www.law.tau.ac.il/Eng/_Uploads/dbsAttachedFiles/TamariPaperRefugeeCompensationRestitution1julycon.doc), (accessed on 2/9/2007).

technical analysis, calling upon how political and historical factors inter-play with the technical issues only when necessary. The justification for this is based on the fact that the researcher wanted to build upon the approach taken by the work of Tamari and Zureik whose objectives were based on examining the uses of Palestinian refugee data for social science research and policy analysis.

Furthermore, the researcher wanted to focus on the valuable contribution offered by a technical perspective which is under developed in the Palestinian case. With no studies available which incorporate linkages between international practice in the registration and documenting of refugees and the Palestinians or studies focusing on the procedures adopted by international Claim Commissions, this study represents the first to investigate this potential.

This introductory chapter is divided into two further parts. The first part sets out the research methodology and limitations of the study, the second part reviews the literature and the sources. A final note concludes the chapter and introduces chapter two. The chapters that follow will attempt to build upon, update and deepen the research already in existence, and will shed light on why a new study is proposed, where it stands in relation to other studies in the field, and the contribution it offers.

### **1.1.2. Research Methodology and Limitations**

The following section will give an account of the methodology behind the study. It will explain the methodological problems encountered in the research, and how these were overcome. The section will also discuss the levels of analysis used.

The study adopted a broad-based framework which provided the structure for studying the range of data sources. Two levels of analysis were employed: field work and documentary analysis. In addition, the researcher collected information from a range of experts throughout the region.

The field work began in June 2007, in three different locations (Israel, Palestine and Jordan). The researcher spent a twelve-week period at the UNRWA Field offices in the West Bank. The second stage of the field work took place at UNRWA's headquarters in Amman, Jordan.

Field research initially began by visiting UNRWA in Jerusalem where the researcher was able to discuss with staff the nature of the research project and facilitate and arrange visits to a number of UNRWA's Field offices. In-depth interviews were conducted with a number of local staff and with Ardi Imseis, UNRWA's Senior Policy Analysis Officer.

The researcher's first Field office visit was UNRWA's office in Nablus<sup>18</sup> in the West Bank in order to survey and collect data on UNRWAs institutional characteristics and services. Nablus was chosen as opposed to other UNRWA Field offices because it is UNRWA's largest Field office. Whilst there the researcher was able to observe some of the day-to-day activities being carried out.

One daily activity involved UNRWA local staff making changes to the Palestinian refugee registration cards.<sup>19</sup> For example this required staff to add births and marriages and declare deaths to the registration cards. Other activities also routinely involved

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<sup>18</sup> Nablus is the largest Palestinian city located in the West Bank. The Nablus area is the biggest of the three West Bank areas. It comprises of four major cities, Jenin, Tulkarm, Nablus and Qalqilya.

<sup>19</sup> The registration card is issued in the name of the Head of Family, and contains the family's eight digit UNRWA refugee registration number. This is supplemented by other numbers on the card which indicate where the family originally came from and which UNRWA Field the family reside in.

“splitting” the registration cards which occurs upon the marriage of a child whereby the refugee cardholder must come to the UNRWA office and announce the splitting of the family registration card.

Other common changes to the registration card occur when refugees moved within one of UNRWA’s five fields, such changes required the registration cards to be amended. The initial visit was essential to understand how the agency functions operationally, and how UNRWA manages its refugee registration data on a daily basis.

**Table 1: UNRWA Palestinian Registered Refugee Registration**

UNRWA REGISTRATION CARD													
REGISTRATION NO.		EX - CODE		AREA	المنطقة	REGIDENTIAL CENTRE	مركز السكن	DATE OF ISSUE	تاريخ الاصدار				
88548000		387905		EX-GAZA		TULKARM CAMP		09/2001					
ORIGIN		PERSONS		HEAD OF FAMILY & FAMILY NAMES			S.H.C. DATA		NATIONALITY				
42143		5		RAED HUSEIN AHMAD AHMAD			M 05826		PAL				
RANK	FIRST NAME	SEX	RELAT.	D.O.B.	M.CODE	DATE	RANK	FIRST NAME	SEX	RELAT.	D.O.B.	M.CODE	DATE
01	RAED	M	MHF	011972	97	121992							
02	IKHLAS	F	MFI	021972	96	121992							
03	ANFAL	F	BDA	021993	01	021994							
04	IZZIDDIN	M	BSD	031993	01	071993							
05	ISRA	F	BDA	031997	01	081997							
06	SAJA	F	BDA	042001	01	072001							

Card.

Source: Palestine Refugee Records Project, 2003.<sup>20</sup>

Having experienced how UNRWA worked operationally and how the RR data was dealt with in the field, the research returned to UNRWA’s Jerusalem office to meet with Wasef Za’atre, Field Eligibility and Registration Officer (FERO) and Muhammad Abdulla Sarham, Assistant Field Relief Services Officer, West Bank. The purpose of the visit was to look at the digitization process of UNRWA’s family files.

<sup>20</sup> Maher Nasser, “Palestine Refugee Records Project,” paper presented at the second international Stocktaking Conference on Palestinian Refugee Research, *International Development Research Centre*, (Ottawa: June 2003), [http://network.idrc.ca/uploads/user-S/10576731640Session\\_7\\_Maher\\_Nasser\\_Paper.doc](http://network.idrc.ca/uploads/user-S/10576731640Session_7_Maher_Nasser_Paper.doc), (accessed on 3/20/2007).

In their simplest form the family files contain information on RRs dating back in many cases to 1948 and earlier. The family files contain partially hand written and fairly fragmented pieces of paper, and consist of folders; one for each family. These documents were submitted by refugee families to UNRWA in order to support their application to become refugees. They also include new documents regarding their cases since then.<sup>21</sup> The family files contain information about the refugee families which include: Name, place of origin of the original refugee family; religion; occupation; current place of residence; sex and birth dates of all family members; brief family history; a description of the appearance of family housing; living conditions and physical conditions of the refugees; assistance received; UNRWA's recommendations and decisions regarding eligibility.

The family files also include identity cards/passport numbers from the British Mandate period and a certain amount of information regarding RRs property (houses, fields, livestock etc). The family files are located in all of UNRWA's five fields of operation.<sup>22</sup>

The digitizing process involves sorting through each family file, by taking all paper documents from their individual folders and repairing any damaged documents. Each piece of paper is individually scanned by a team of scanners. The scanned data is then indexed and transferred on to a CD-Rom. Of interest to this study is the fact that Palestinian RR property data has been indexed separately, making the data searchable through the use of key words. For example, it is now possible to ascertain how many RRs had property and land losses in each of the family files.<sup>23</sup>

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<sup>21</sup> UNRWA, "Family Files", [www.un.org/unrwa/programmes/rss/family.html](http://www.un.org/unrwa/programmes/rss/family.html), (accessed on 2/3/2008).

<sup>22</sup> UNRWA's five fields of operations are: Lebanon, Syria, Jordan, Gaza and the West Bank.

<sup>23</sup> The digitization of the family files is taking place simultaneously within all of UNRWA's five fields of operation. The researcher was told that the

Whilst in the West Bank the researcher took the opportunity to conduct informal interviews in Ramallah with a variety of individuals in order to become familiar with the various issues concerning Palestinian refugee property. Interviews were conducted with the following people: Enaia Zidan at the Palestinian Bureau of Statistics (PCBS), Salim Tamari, Leila Hilel, former legal advisor at the PLO (Palestinian Liberation Organization), Negotiations Support Unit, Khalil Nijim, director general for Strategic Planning, at the Palestinian Ministry of Planning, Saji Salameh Khalil, PLO advisor, at the Department of Refugee Affairs and Ghassan Khatib, Palestinian Authority (PA) Minister of Planning and director of the Jerusalem Media and Communication Centre (JMCC).

Whilst in Tel Aviv the researcher met with Roby Nathanson, director of the Centre for Political Economics, who was working on one of the major sources of Palestinian refugee registration data by producing a computerized database based on the Custodian of Absentees' Property data. Whilst in Jerusalem the researcher met with Michael Fischbach, an expert on the UNCCP archives, in order to discuss the advantages and disadvantages of Palestinian refugee archival research. The first phase of research enabled the researcher to piece together the answers to the following questions:

- How is the refugee registration data collected?
- What refugee registration data is available?
- What is the significance of the refugee registration data?
- How accessible is the data?

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scanning process would be complete in 2008.

The second stage of the research involved going to UNRWA's headquarters in Jordan. On June 1<sup>st</sup> 2007 the researcher scheduled a meeting with Fattah Ahmed Abu Qubo, FERO/Jordan, and his team where the researcher was shown samples of Palestinian RR registration cards. The researcher was able to ask questions regarding UNRWA's registration database the Unified Registration System (URS), which was developed in 1995 to store electronically refugee information.

The main difference between family files and the URS system is that the family files are paper files that are hand written, and the URS database is a computerized database that includes current data on refugee demographics. Additionally, the family files are historical and cumulative, whereas the URS is current and deletes all old data on a regular basis.

Based on the two phases of field research, the researcher was able to develop a proposal related to the family files for submission to UNRWA for approval. The proposal was based on UNRWA's 1951 study, titled "*Sampling Study of Abandoned Property Claimed by Arab Refugees*".<sup>24</sup> Finally, the researcher met with Jihad Abu Baker, Project Manager of the Palestinian Refugee Records Project (PRRP) to discuss the possibility of carrying out the proposal. However, due to UNRWA's very strict data access policy, the researcher was not able to carry out any further investigations regarding the family files. The research possibilities generated by the proposal will be outlined in chapter five.

The final phase of the research was carried out through desk-based documentary analysis. A technical approach was adopted to investigate UNHCR's operational role, in the registration of

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<sup>24</sup> As the researcher understands it this survey was not carried out at the behest of the UNCCP but carried out by UNRWA. To the best of the researcher's knowledge outside this UNRWA has not carried out any further studies on refugee property.



refugees and data management practices, in search of general norms and procedures in two post-crisis refugee claim systems. Additionally, two case studies were analysed in order to establish whether or not Palestinian refugee registration data could be usefully assembled for a future Palestinian Claim Commission.

Although the comparative approach is often used in comparing cases of this type, the researcher felt that since this study was concerned with general norms and procedures, rather than outcomes, the comparative approach was not necessary to establish what would constitute general international practice.

The researcher decided that the scope provided by using a technical approach, offered the best opportunity for learning, through drawing on the lessons learned from the procedures developed in other countries with comparable components. Using the technical approach would make it possible to ascertain whether or not there were characteristics which could benefit to the Palestinian refugee case.

### **Methodological Limitations**

There were two main methodological problems recognized in trying to conduct the research, and to a certain extent these were identified prior to the research taking place. The first problem was the issue of access to the UNRWA data. As part of the research procedure letters regarding access rights to the archives were sent to UNRWA's head office prior to the research taking place. Since UNRWA's access rights are governed on a case by case basis, with relevant departments being responsible for processing requests for data access and making recommendations to grant or not to grant access to individuals, it was hoped that the proposal would be accepted. Although the researcher was denied access to carry out work on the family

files, it was still possible to produce a range of research suggestions associated with the UNRWA data. Chapter five discuss those suggestions in greater detail along with the issue of accessing the archives.

Since the researchers proposal was based on the property section of the family files a link could be made between UNRWA's data and the refugee property question. As such, it is assumed by the researcher that the proposal was rejected because UNRWA was unwilling to support what the agency might perceive as politically sensitive work on its refugee data.

This discovery in itself was useful information, because it highlighted the danger of interpreting the UNRWA archives as sources of useful data from which it is possible to make large assumptions, when in fact the data remains extremely limited, if not impossible to access for certain areas of research and presently there are very few practical ways to circumvent this problem.

Secondly, the idea of trying to confront the numerous issues of this study was a complex one calling for historical knowledge, political awareness, confidentiality, sensitivity and an understanding of the limitations involved in archival research work. Inevitably, the researcher did not possess all the skills that are required to carry out the research in such a complete manner. However, the researcher's familiarity with the Middle East and the Palestinians coupled with her humanitarian background dealing with refugees (acquired during previous work and research in the Balkans) assisted to compensate where shortfalls in experience occurred.<sup>25</sup>

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<sup>25</sup> During 1990s the researcher worked for a number of UNHCR implementing partners in Kosovo, Albania and Macedonia.

## **1.2. Review of the Literature and Sources**

Having discussed the main features of this research, this section situates the literature and sources associated with the study. The literature has been split into related sections, which provides the most appropriate way of showing how the material has developed. Section 1.2.1 covers the major international conferences, which have dealt with Palestinian refugee research and looks at the main sources of literature that has been built up around Palestinian refugee data. Section 1.2.2 highlights some of the non - governmental organizations (NGO's) that produce and make available statistics on Palestinian refugees.

As previously outlined a review of literature concerning Palestinian refugee registration data reveals the paucity of formal research on the issue, a perception which has seen the Palestinian case not benefitting from the lesson-learning made possible by analyzing other international refugee situations. This study thus, departs from the usual format of a literature review since there was little literature available dealing with this aspect of Palestinian refugee research. In its place the researcher frequently consulted many international conferences, workshops and research organizations dealing with Palestinian refugee research, in order to highlight studies that were of relevance to this study.

### **1.2.1. International Conferences and Literature Dealing with Palestinian Refugee Research**

The literature regarding the Palestinian refugees as a whole can be divided, as Dumper distinguishes, into two main phases attributed to two important events - the 1991 Madrid Middle

East Peace Conference and the 1993 Oslo Accords between Israel and the PLO. The first phase was characterized by descriptive studies that revealed the socioeconomic conditions of the Palestinians.

The second phase continued with the focus on data collection although it was generally directed toward in depth studies on Palestinian capacities and solution-orientated studies.<sup>26</sup> During the early 1990s policy makers were also initiating new research initiatives and priorities in Palestinian refugee research. For example the government of Canada became heavily involved in Palestinian refugee research activities for over a decade.<sup>27</sup>

An important contribution in understanding the need to focus more seriously on Palestinian refugee research was made when the Palestinian refugee became included in the “Permanent Status Issue” in the Oslo Accords, where a certain amount of policy driven work came to surface, mainly by the Canadian International Development Research Centre (IDRC), whose involvement included promoting research and setting up a “second track” set of activities, known as the “Ottawa Process”<sup>28</sup> which facilitated Palestinian-Israeli dialogue.

The first meeting of the process began with a series of “stocktaking” conferences, (1997 and 2003) which pushed forward the Palestinian research agenda further and importantly,

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<sup>26</sup> Michael Dumper, *The Future for Palestinian Refugees: Toward Equity and Peace*, (London: Lynne Rienner Publishers, 2007), p.15.

<sup>27</sup> In January 1992, Canada was asked to assume the role of caretaker of the newly established Refugee Working Group (RWG) launched after the Madrid Peace Conference. The RWG became an essential part of the multilateral negotiations in the Middle East and provided an international forum for dialogue.

<sup>28</sup> For more information on the Ottawa Process see, Rex Brynen, Eileen Alma, Joel Peters, et al. (2003), “The Ottawa Process, An Examination of Canada’s Track Two Involvement in the Palestinian Refugee Issue”, *International Development Research Centre*, [www.idrc.ca/uploads/user-S/10576789140Session\\_3\\_BRYNEN\\_OTTAWA\\_PROCESS\\_PAPER.doc](http://www.idrc.ca/uploads/user-S/10576789140Session_3_BRYNEN_OTTAWA_PROCESS_PAPER.doc), (accessed on 2/12/2007).

included addressing the significance of Palestinian refugee registration data and Palestinian refugee property claims.

The first PRRN and IDRC stocktaking conference on Palestinian Refugee Research in December 1997, titled "*Gaps, Problems and Priorities in Palestinian Refugee Research*", was aimed at furthering policy related work as a means of providing future negotiators with ideas. Some of the topics examined included compensation regimes and different modalities which included the use of Palestinian refugee data. Themes included individual versus collective claims, issues involving defining claimants, and issues regarding international experience of compensation and how it may help to disentangle the Palestinian situation.

Other issues including looking at how claims might be made, to whom should payments be made and evaluating losses, were all themes outlined as areas requiring more research. In general, it was felt that a compensation element was necessary to deal with Palestinian refugee property issues, as well as with issues of responsibility and culpability.<sup>29</sup> The new ideas generated by this conference were of particular relevance to chapter four, where the international perspective is examined by looking at the mechanisms employed by two international Claim Commissions.

The theme of Palestinian compensation was the focus of another IDRC/PRRN workshop in 1999, titled "*Compensation as Part of a Comprehensive Solution to the Palestinian Refugee Problem*". The legal aspects of compensation were given much attention, and themes in the domain of categorizing, identifying and evaluating Palestinian refugee claims were highlighted and debated.<sup>30</sup>

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<sup>29</sup> Rex Brynen, (1997), "Gaps, Problems and Priorities in Palestinian Refugee Research", on-line summary, [www.arts.mcgill.ca/mepp/prrn/prconference3.html](http://www.arts.mcgill.ca/mepp/prrn/prconference3.html), (accessed on 18/8/2007).

<sup>30</sup> See workshop papers on "Compensation as Part of a Comprehensive Solution to the Palestinian Refugee Problem", *PRRN/IDRC*, (Ottawa: July

To an extent this conference did highlight some divergence in the literature on issues surrounding Palestinian refugee documentation and issues associated with future claims. Some participants felt that the documentary evidence was adequate to support specific claims by former property owner's; noting that 2.5 million land records existed, as well as map and photographic evidence. Others suggested that the records were incomplete since much land was not accurately registered, and that sorting through claims would be slow, complicated and expensive. Furthermore, it was outlined that additional complexities would be generated by non-documented moveable property.<sup>31</sup>

This international conference in particular, demonstrated that there was much interest and considerable discussion beginning to be built up around the issues of documenting Palestinian refugee claims, something which was initiated in the first PRRN and IDRC stocktaking conference on Palestinian refugee research in December 1997.

The second stocktaking conference, titled "*Palestinian Refugee Research*", was held in Ottawa in 2003 and produced four papers in particular which were relevant to this study: Michael Fischbach<sup>32</sup> presented a paper based on his research carried out on the usefulness of the UNCCP archives for Palestinian refugee compensation and restitution claims (which will be discussed in

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1999), [www.arts.mcgill.ca/MEPP/PRRN/prcomp3.html](http://www.arts.mcgill.ca/MEPP/PRRN/prcomp3.html), (accessed on 6/8/2007).

<sup>31</sup> See Rex Brynen, "Workshop on Compensation as Part of a Comprehensive Solution to the Palestinian Refugee Problem", Final Conference Report, (Ottawa: July 1999), [www.arts.mcgill.ca/MEPP/PRRN/prcomp3.html](http://www.arts.mcgill.ca/MEPP/PRRN/prcomp3.html), (accessed on 9/6/2007).

<sup>32</sup> Michael Fischbach, "The Usefulness of the UNCCP Archives for Palestinian Refugee Compensation/Restitution Claims", paper presented at the second international Stocktaking Conference on Palestinian Refugee Research, *International Development Research Centre*, (Ottawa: June 2003), [http://network.idrc.ca/uploads/user-S/10576732560Session\\_7-\\_Michael\\_Fishbach-\\_Paper.doc](http://network.idrc.ca/uploads/user-S/10576732560Session_7-_Michael_Fishbach-_Paper.doc), (accessed on 26/9/2007).

the following section); Maher Nasser<sup>33</sup> discussed UNRWA's Palestine Refugee Records Project; Roby Nathanson<sup>34</sup> looked at some of the legal mechanisms adopted by Israel for the purpose of expropriating Arab property and Vandana Patel<sup>35</sup> studied four comparative cases of international mass claims and their various mechanisms.

Aside from the major international conferences outlined in this section, research also began to emerge during the mid nineties via smaller workshops and research organizations. For example the Norwegian Institute for Applied Social Science (FAFO), whose lobbying and advocacy work was predominantly based on Palestinian social environment and living conditions, became instrumental in supporting Palestinian research activities early on.

In particular FAFO's study by Lena C. Endresen and Geir Øvensen, titled "*The Potential of UNRWA - Data for Research on Palestinian Refugees - A study of UNRWA Administrative Data*", was useful, as it examined how to preserve and make Palestinian refugee registration data more accessible, although at this stage the study fell short of realising the potential of the data.

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<sup>33</sup> Maher, Nasser, "Palestine Refugee Records Project", paper presented at the second international Stocktaking Conference on Palestinian Refugee Research, *International Development Research Centre*, (Ottawa: June 2003), [http://network.idrc.ca/uploads/user-S/10576731640Session\\_7\\_Maher\\_Nasser\\_Paper.doc](http://network.idrc.ca/uploads/user-S/10576731640Session_7_Maher_Nasser_Paper.doc), (accessed on 3/20/2007).

<sup>34</sup> Roby Nathanson, "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," paper presented at the second international Stocktaking Conference on Palestinian Refugee Research, *International Development Research Centre*, (Ottawa: June 2003), [http://network.idrc.ca/uploads/user-S/10576734600Session\\_7-Roby\\_Nathanson-Paper.DOC](http://network.idrc.ca/uploads/user-S/10576734600Session_7-Roby_Nathanson-Paper.DOC), (accessed on 19/5/2007).

<sup>35</sup> Vandana Patel, "A Comparative Analysis of Mass Claims Mechanisms" paper presented at the second international Stocktaking Conference on Palestinian Refugee Research, *International Development Research Centre*, (Ottawa: June 2003), [http://network.idrc.ca/uploads/user-S/10578565170Session\\_8\\_Vandana\\_Patel\\_new.doc](http://network.idrc.ca/uploads/user-S/10578565170Session_8_Vandana_Patel_new.doc), (accessed on 22/5/2007).

As well as FAFO, the Centre d'Etudes et de Recherches sur le Moyen-Orient Contemporain (CERMOC) held a series of workshops on UNRWA, which detailed the work of specific UNRWA programmes in three volumes, titled "*UNRWA A History Within History*".<sup>36</sup> The workshops concluded with a consensus concerning the expediency required to preserve and integrate UNRWA's data. While there was agreement on the historical and sociological significance of the data, there was disagreement as to the actual usefulness of Palestinian refugee registration data for final status talks.

Whilst CERMOC's early investigations laid an important foundation in understanding UNRWA, and the process by which the data was collected, the CERMOC studies primarily centred around how best to approach and conduct research on Palestinian refugee data, in a way that would preserve such a huge amount of paper material, and not on policy related research.

By the end of the 1990s the possible uses of the UNRWA archives had become the focus of more serious discussion and further work began to emerge. For example in 1998 the IJS held a workshop in Amman, titled "*Palestinian Refugee Archives: Uses for Research and Policy Analysis*". The purpose of the workshop was to address some of the general problems attributed to archival research on Palestinian refugees, the possible uses of archives for social science, policy related needs and questions concerning the preservation, digitization and centralization of the various collections of UNRWA's refugee registration data.

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<sup>36</sup> Centre d'Etudes et de Recherches sur le Moyen-Orient Contemporain (CERMOC) (1996) UNRWA: A history with History, Proceeding of the 20-22.12.1996 Workshop, Amman, Jordan. Unpublished; Centre d'Etudes et de Recherches sur le Moyen-Orient Contemporain (CERMOC) (1997) UNRWA: A history with History, Proceeding of the 25-27.8.1997 Workshop, Amman, Jordan. Unpublished; Centre d'Etudes et de Recherches sur le Moyen-Orient Contemporain (CERMOC) (1998) UNRWA: A history with History, Proceeding of the 9 - 11.10.1998 Workshop, Amman, Jordan. Unpublished.



As well as international conferences and workshops which have dealt with different aspects of Palestinian refugee registration data, a limited amount of literary publications, have also contributed to the research. Although during the early 1970s and 1980s very few studies focused on the archives which had been built up around the Palestinian refugees, two studies, one by Edward Buehrig <sup>37</sup> and one by Avi Plascov <sup>38</sup> did pick up on various themes regarding the UN and Palestinian refugees, although these studies failed to incorporate a focus on the sources of primary data within the archives, which was not a focus at this stage.

By the mid 1990s a research phase began to take place where researchers and scholars began to focus on the evolution and structure of UNRWA, which became a subject of much more substantial documentation as well as the subject of specialist literature, PhD theses, research papers, NGO reports, workshops and international conferences.

However, it was not until 2001, that a small and specialized amount of literature began being built up exclusively on the issue of Palestinian refugee archives and data. The principle authors and the most often quoted in this study are Tamari, Zureik and Fischbach, whose research provided an essential starting point for this study. In 2001 Tamari and Zureik introduced a new paradigm for the uses of Palestinian refugee data by examining the Palestinian refugee archives for social science research and policy analysis, and is the work that more closely refers to the subject of this study.<sup>39</sup>

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<sup>37</sup> Edward H. Buehrig, *The UN and the Palestinian Refugees: A Study in Non Territorial Administration*, (Bloomington; London: Indiana University Press, 1971).

<sup>38</sup> Avi Plascov, *Palestinian State: Examining the Alternatives*, (London: International Institute for Strategic Studies, 1981).

<sup>39</sup> Salim Tamari and Elia Zureik, *Reinterpreting the Historical Record: The Uses of Palestinian Refugee Archives for Social Science Research and Policy Analysis*, (Jerusalem: Institute of Jerusalem Studies; Washington, DC: Institute

The ideas they presented pushed the research agenda further by looking at the potential of the Palestinian refugee data in addressing claims for restitution and compensation of refugee property, and by making recommendations regarding how to use the data for social science and policy analysis.

Later in 2003 Michael Fischbach <sup>40</sup> published a ground breaking publication in which he examined data belonging to the Palestinian refugee property question by drawing upon the UNCCP archives in New York. In his book, titled "*Records of Dispossession*", Fischbach studies previously unavailable data on the value of Palestinian property losses by examining the UNCCP's efforts in identifying and evaluating refugee property. Fischbach revealed for the very first time the vast amount of refugee land records produced, and the compensation estimates. In doing so, Fischbach drew out the political importance and historical value of the data which could provide useful ideas for researchers and policy makers on how to construct a possible compensation plan for the Palestinians.

Finally, research centres and NGO's have also dealt with a variety of research activities associated with Palestinian refugee reparations and data, which this research has drawn upon. The next section will provide some acknowledgement to the activities of those organizations whose work and research supported this study.

### **1.2.2. Palestinian NGO's and International Centres for Refugee Research**

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for Palestine Studies, 2001).

<sup>40</sup> Michael Fischbach, *Records of Dispossession: Palestinian Refugee Property and the Arab-Israel Conflict*, (New York: Columbia University Press, 2003).

One of the most active groups working towards a rights-based solution for Palestinian refugees and IDP's, and the most comprehensive in this field is Badil - Resource Centre for Palestinian Residency and Refugee Rights.<sup>41</sup> Based in Bethlehem, the group provides a wealth of on-line resource material on most aspects concerning the Palestinian refugees. In particular much of Badil's work is legally based and focuses on areas of research which include refugee property rights, restitution and claims which are well documented.

The internet has also provided an immediate means of outreach and recruitment for such organizations as the Council for Palestinian Restitution and Repatriation (CPRR), which assists Palestinians and their heirs to achieve their rights to land and property.<sup>42</sup> Private groups and organizations have also conducted their own projects involving collecting Palestinian refugee data in the pursuit of acquiring complete property records. For example in 1995 the Arab Studies Society began collecting documents and photographs, with the aim of proving Palestinian refugee ownership in West Jerusalem before 1948. Additionally, the organization constructed a computerized database. In 1996 the Palestinian Society for the Protection of Human Rights and the Environment (LAWE) began compiling a database of Arab owned land in West Jerusalem prior to 1948.<sup>43</sup> In 1999 the IJS also began collecting Palestinian property data in West Jerusalem.<sup>44</sup>

Oral history accounts have also been initiated for various uses such as to identify land claims, particularly in cases where

<sup>41</sup> For more information see Badil's web-site, [www.badil.org](http://www.badil.org), (accessed on 22/09/2006).

<sup>42</sup> The CPRR was created in 2001 in response to growing Palestinian concerns that the outcome of final status negotiations would not resolve the refugee crisis. For more information see the CPRR web-site, [www.rightofreturn.org](http://www.rightofreturn.org), (accessed on 2/3/2007).

<sup>43</sup> For more information on sources of data for policy formulation dealing with Palestinian refugees see, Michael Dumper, *The Future for Palestinian Refugees: Toward Equity and Peace*, p.193.

<sup>44</sup> Salim Tamari, (ed.), *Jerusalem 1948 the Arab Neighbourhoods and their Fate in the War*, (Jerusalem: Institute for Jerusalem Studies/Badil Resource Centre, 1999).

traditional systems of landownership meant that refugees did not have documents detailing land claims. For example Palestinian organizations such as: PalestineRemembered,<sup>45</sup> Palestinian Diaspora and Refugee Centre (Shalm)<sup>46</sup> and the Palestine Return Centre (PRC)<sup>47</sup> all make available their online databases which can be readily accessed on-line. Also groups like Salman Abu-Sitta's, Palestine Land Society (PLS) is a useful web site devoted to research and information regarding Palestinian refugee land and property.<sup>48</sup>

As well as Palestinian research centres and NGO's, there are also a number of international centres for refugee research which cover issues that were of relevance to this study. For example the Geneva-based NGO, the Centre on Housing and Rights and Evictions (COHRE)<sup>49</sup> provides extensive research and publications, which address refugee housing, land and property restitution issues and has a focus on Palestinian refugee land claims and property rights.

### **1.2.3. Sources of Palestinian Refugee Statistics**

This study is also interested in the statistical sources associated with the Palestinian refugees. Given the considerable impact that demography has on current political decisions the work to be found in this area of enquiry is considerable. Statistics dealing with Palestinian refugees are contentious and there are irreconcilable differences between Israeli and Palestinian surveys, in fact, no two reports produce similar figures.

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<sup>45</sup> For further information see the Palestineremembered web-site, [www.Palastineremembered.com](http://www.Palastineremembered.com), (accessed on 14/5/2007).

<sup>46</sup> For more information see the Shaml web-site, [www.shaml.org](http://www.shaml.org), (accessed on 26/8/2007).

<sup>47</sup> For more information see the PRC web-site, [www.prc.org.uk](http://www.prc.org.uk), (accessed on 3/2/2007).

<sup>48</sup> For more information see the Palestine Land Society web-site, [www.plands.org](http://www.plands.org), (accessed on 4/09/2007).

<sup>49</sup> For more information see COHRE's web-site, [www.cohre.org](http://www.cohre.org), (accessed on 22/12/2006).

Accurate, systematic Palestinian statistics are difficult to acquire and are often ambiguous due to a number of reasons such as: the lack of a comprehensive registration system; a vague and unclear definition of “Palestinian refugee”; frequent refugee migration; Israeli military restrictions; and a weak Palestinian institutional capacity to support research in this area.

Palestinian statistics come from two main sources, the PCBS<sup>50</sup> and UNRWA.<sup>51</sup> The PCBS is the official Palestinian agency responsible for providing national statistics that target Palestinian planners, decision makers and other stakeholders and provides the most comprehensive compendium of statistics. The PCBS also carries out periodic surveys and population projections and publishes reports. Since the creation of the PCBS in 1993, the organization has filled the statistical gap by compiling data in the areas of social, economic and geographical spheres.<sup>52</sup> This data is routinely updated and easily accessible on line.

The PCBS carried out one of the first large scale surveys in the occupied Palestinian territories (OPTs) in 1995 and at the time of writing the PCBS was in the process of carrying out surveys for its 2007 census, due for publication in 2008. In the absence of a comprehensive census including all Palestinian Diaspora populations, and those that have remained within what was British Mandate Palestine, exact population figures will remain to be difficult to determine and will continue to be fraught with problems.

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<sup>50</sup> For information see the PCBS web-site, [www.pcbs.gov.ps](http://www.pcbs.gov.ps), (accessed on 26/7/2007).

<sup>51</sup> UNRWA statistics will be studied in 2.2.2.

<sup>52</sup> In August 2007 UNRWA and the PCBS signed a Memorandum of Understanding governing exchange of data between the two parties. Under the terms of this agreement, the PCBS has begun to provide UNRWA with special data sets on macro-economic, demographic and social conditions in the OPTs.

Other sources of data include the Israeli Central Bureau of Statistics (CBS) <sup>53</sup> who publishes comprehensive statistics on the OPTs, the Israeli State Archives in Jerusalem and the Israel Lands Administration (ILA) who hold records of all land transactions in Israel.<sup>54</sup> Additionally, UNHCR also provide statistics for Palestinian refugees outside UNRWA's area of operation on their online statistical population database.<sup>55</sup>

### **1.3. A Final Note**

The general purpose of this chapter was to familiarize the reader with some of the main themes addressed throughout the previous pages. These included: the subject matter, an outline the research questions, discussion of the research methodology adopted for the analysis and an overview of the literature and various sources associated with the study.

Chapter two which follows provides an international dimension within which to view the Palestinian refugee case. It shows how the international refugee regime developed, and the environment and the roles played by various organizations in seeking solutions to global refugee situations. The chapter also studies other aspects of this research which require examining, such as defining the Palestinian refugees, who are the focus group of this study, studying the organizations created by the UN system to deal with the problem, and defining the difference between the UN's two largest bodies, UNHCR and UNRWA.

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<sup>53</sup> For general and current information see the CBS web-site, [www1.cbs.gov.il/reader/cw\\_usr\\_view\\_folder?ID=141](http://www1.cbs.gov.il/reader/cw_usr_view_folder?ID=141), (accessed on 9/6/2007).

<sup>54</sup> For general and current information see the ILA web-site, [www.mmi.gov.il/Envelope/indexeng.asp](http://www.mmi.gov.il/Envelope/indexeng.asp), (accessed on 26/3/2007).

<sup>55</sup> See UNHCR's comprehensive annual statistical publication 2006, [www.who.int/globalatlas/default.asp](http://www.who.int/globalatlas/default.asp), (accessed on 11/2/2008).

## **Chapter Two**

### **The International Refugee Regime and the Palestinian Refugee Issue**

## **2.1. Introduction**

Having defined the main argument of the research, detailed the methodological approaches to the subject, and covered the literature and sources associated with the study, this chapter introduces a number of background issues that are essential in understanding the larger context of this study.

The chapter is split into three parts. Part one focuses on the international refugee regime period after World War I and up to the present day. Such an analysis will demonstrate the way in which contemporary refugee problems have been resolved by the international refugee regime. There is particular analysis of the role played by UNHCR, and how the agency's mandate and



activities have had to change to meet the larger number and diverse needs of those in its care.

Since this study considers the Palestinian refugee case in relation to other international refugee cases, part two looks specifically at the Palestinian refugee predicament in order to establish some of the differences their particular situation presents. Part three looks at the two separate international agencies established by the UN to assist the Palestinian refugees, namely, UNRWA and the UNCCP, which were established to provide assistance and to seek durable solutions<sup>56</sup> for the Palestinian refugees.

The first institution to be studied is UNRWA, which was mandated to provide assistance, the second of these institutions which this section will offer an introduction to is the UNCCP, which was mandated to seek durable solutions for the Palestinian refugees. Finally, the differences between UNRWA and UNHCR are discussed in order to ascertain why the Palestinians are still pending a solution whilst UNHCR seek permanent solutions to the problems of refugees in its care.

### **2.1.1. Origins of the International Refugee Regime**

The international refugee regime has had both a successful and a troubled history. It has succeeded in providing international protection to millions of refugees, globally when their own States have been unable or unwilling to do so, yet despite such

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<sup>56</sup> Durable solutions for refugees include voluntary repatriation, voluntary host country integration, and voluntary third country resettlement. The search for durable solutions has been a central part of UNHCR's mandate since its inception in 1950.

achievements the regime has at times failed to solve serious refugee problems and has not been able to effect durable solutions for many of the world's refugees such as the Palestinian refugees.

Charles Keely aptly describes the international refugee regime as:

the collection of conventions, treaties, intergovernmental and non-governmental agencies, precedent, and funding which governments have adopted and support to protect and assist those displaced from their country by persecution, or displaced by war in some regions of the world where agreements or practice have extended protection to persons displaced by the general devastation of war, even if they are not specifically targeted for persecution.<sup>57</sup>

Refugee movements have been a persistent challenge to the international refugee regime. When people are fleeing persecution they often disregard international boundaries and they can easily overwhelm neighbouring States, many of which do not have the capacity or the resources to cope with large influxes of people. Today this regime centres upon the work of UNHCR - the lead agency<sup>58</sup> that deals with refugees whose origins can be traced back to the events following World War I when the world witnessed mass movements of people.

In 1921 the League of Nations created the position of High Commissioner (HCR) to deal with the large numbers of refugees that resulted from World War I, the Russian revolution, and the collapse of the Ottoman Empire. At the time the international response to supporting the refugees was to provide protection,

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<sup>57</sup> Charles Keely, "The International Refugee Regime(s): The End of the Cold War Matters", *International Migration Review*, Volume. 35 Number 1 (Spring 2001), 303-314.

<sup>58</sup> For further analysis on UNHCR's role as 'lead agency' see, Alex Cunliffe and Michael Pugh, (1996) "The UNHCR as Lead Agency in the Former Yugoslavia", <http://jha.ac/1996/04/01/the-unhcr-as-lead-agency-in-the-former-yugoslavia/>, (accessed on 9/8/2007).

assistance and seek to find durable solutions for the refugees. Initially, the HCR addressed the needs of refugees from Europe and refugee assistance focused on defining the status of refugees and assisting them with employment and protection. The temporary organization had its goal in the repatriation and resettlement of refugees and represented the first truly international refugee regime which eventually led to the establishment of UNHCR.

Other key institutions at the time included the United Nations Relief and Reconstruction Agency (UNRRA), which was created in 1944 to carry out repatriation of DP's in Europe after the war and to organize relief, and set up mass repatriation and resettlement programmes.

In 1945 the League of Nations was replaced by the UN and in 1946 the UN created a new agency called the International Refugee Organization (IRO) to deal with repatriation and resettlement. The IRO was created as a temporary agency to find a solution for the hundreds of thousands of refugees left in Europe and provided relief, repatriation, resettlement, and legal protection. The IRO was granted considerable operational independence, as its programmes were not subject to supervision by the General Assembly.

During the Cold War, refugee policy focused on those escaping communism, resettling refugees was the focus, and not the repatriation of refugees. For example the IRO did not encourage repatriation to communist countries where persecution was likely to take place and in accordance with the 1951 Refugee Convention,<sup>59</sup> those escaping were granted the status of refugees. Since the use of repatriation as a durable solution was limited, refugees were offered permanent resettlement in the

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<sup>59</sup> According to UNHCR the 1951 Refugee Convention relating to the Status of Refugees is the key legal document in defining who is a refugee, their rights and the legal obligations of States.

West, something the Soviet bloc condemned as encouraging political labour migration.

During this period tens of millions of refugees were also created by regional and civil wars that erupted in Asia, Africa, Latin America, and the Middle East. For example, following the partition of India in 1947, and the refugees created after the partitioning of Palestine in 1948, UNRWA was established by the UN to carry out emergency relief and works programmes. Conflicts over decolonization in the late 1950s and 1960s such as those in Algeria, Angola, Rwanda and Zaire also generated large numbers of refugees. In other cases the moves were forced as a result of border changes. At the end of World War II moves were forced as a result of border changes. Polish borders were moved west as the Soviets took over for example Polish territory and Poland took over areas previously in Germany which caused millions of people to flee from their homes. By 1950 the UN established the UNHCR to replace the IRO, to lead and coordinate international action to protect refugees and resolve refugee problems worldwide.

Throughout the Cold War there was a dual refugee regime at play which Keely defines as “the Northern regime, which represented the industrial countries of the first world, and the Southern regime which represented the rest of the world”. Keely describes the Northern refugee regime as “a system which was politically designed and used as an instrument to embarrass Communist States, the focus of which was originally the Soviet Union and Central and Eastern Europe”.<sup>60</sup>

By admitting and resettling those who had escaped, the system could be used to demonstrate the bankrupt structure from which people were fleeing from. It was also a tool to reinforce internal

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<sup>60</sup> Charles Keely, “The International Refugee Regime(s): The End of the Cold War Matters”, *International Migration Review*, Volume. 35 Number 1 (Spring 2001), 303-314.

political support for an anti-Soviet, anti Communist foreign policy and instead of restoring stability, the international system destabilized governments.

As already outlined, at this stage repatriation was not an option, even though repatriation was the preferred durable solution of the international refugee regime. In the South, the regime was a mechanism designed to contain and control the political impacts of civil wars and state failures to ideological conflict, often combined with an element of ethnic or nationality conflict.<sup>61</sup>

On the contrary, the developing world witnessed the refugee regime working in a different way by providing protection and assistance and durable solutions. UNHCR played a part in assisting governments to protect refugees from persecution in conflicts in which Communism and the West played out their rivalry, such as Afghanistan and Cambodia, by supplying relief aid and working towards the return of refugees to their own country.

With the end of the Cold War, the political advantage that had motivated States to accept refugees vanished, and refugees became perceived more and more as migrant threats that crossed international borders illegally, and cultural conditions no longer favoured receiving refugees who seemed to challenge the cultural harmony of the Western world.

After nearly sixty years, the international refugee regime has been through many changes, and has had to evolve, and respond to different circumstances, undergoing dramatic changes during World War II to create a permanent framework to cope with the refugee problem through the creation of UNHCR. The Cold War had an overwhelming influence on the norms and policies of this regime, and in the post-Cold War era the regime has had to adapt to reflect global concerns.

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<sup>61</sup> Ibid.,

The international refugee regime continues to deal with some of the very same issues that forced millions of people to flee decades ago. The vast majority of refugees today, as in the past, are fleeing not from targeted acts of individual persecution but from generalized violence that endangers civilians and radically disrupts everyday life. These conditions are the products of instability, internally or externally generated, and are fed by political opportunism that seeks to exploit social divisions for political gain.<sup>62</sup>

There are predominantly three major causes behind why refugees flee and they include: political causes such as persecution based on race, nationality, membership of a particular social group, religion or political opinion. Secondly, economic roots when poverty and extreme deprivation breeds resignation and resistance, and disputes concerning the distribution of resources during general economic decline often become politically explosive. Thirdly, environmental issues which have seen millions of people forced to leave their homes because the land on which they live has become uninhabitable.

In other cases the cause is a natural disaster such as the 2004 tsunami and catastrophes such as the world's worst nuclear power disaster in history which occurred in 1986 in Chernobyl. Global migration therefore proceeds across a spectrum of very different incentives, ranging from those who flee from persecution to those who are trying to escape from hardship and those who wish to find a better life.

Presently the international refugee regime represents a particularly salient case for studying the role of UNHCR as the next section will highlight. UNHCR has played a unique and

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<sup>62</sup> UNHCR on-line publication, "The State of the World's Refugees 1993", [www.unhcr.org/publ/PUBL/3eeedcf7a.pdf](http://www.unhcr.org/publ/PUBL/3eeedcf7a.pdf), (accessed on 2/1/2008).

independent role in the international system, as the organization created to uphold and oversee the implementation of durable solutions to today's refugees.<sup>63</sup>

### **2.1.2. United Nations High Commissioner for Refugees**

UNHCR was established on December 14, 1950 by the UN General Assembly.<sup>64</sup> The agency is mandated to lead and coordinate international action for the protection of refugees and the resolution of refugee problems worldwide. Its governing body, the Executive Committee, approves the High Commissioner's assistance programmes, advises the High Commissioner, and oversees UNHCR's finances and administration. The agency was initially given a limited three year mandate with the principal aim of helping to resettle millions of European refugees left homeless after World War II. UNHCR eventually became a permanent body and went on to become the major actor within the global refugee regime.

UNHCR performs two main functions: to provide "international protection" for refugees and to obtain "permanent solutions" to their problems. Legal protection is provided to those who fall within its mandate and is the cornerstone of UNHCR's work as set out in its Statute, adopted by the General Assembly in December 1950.<sup>65</sup> Article 1 of the 1951 Convention outlines the first universal refugee definition, formally recognizing the permanence of the issue:

Any person who owing to a well founded fear of being persecuted for reasons of race, religion,

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<sup>63</sup> There are many international actors involved with refugees and IDP's issues. These include the UN, other international organizations, inter-governmental agencies, NGO's, and private voluntary organizations.

<sup>64</sup> For more information see UNHCR's web-site, [www.unhcr.org](http://www.unhcr.org), (accessed on 12/8/2007).

<sup>65</sup> The UNHCR Statute was adopted by the General Assembly in resolution 428 (V) of 14 December 1950.

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, is unable, or owing to such fear, is unwilling to return to it.

This refugee definition is one of the most widely accepted international norms, and remains the sole legally binding international instrument that provides specific protection to refugees. The Convention recognizes the refugees' right to remain and right to return, the principle of non-refoulement,<sup>66</sup> and the right of first asylum.<sup>67</sup> It also defines minimum standards of treatment for refugees, outlines determination procedures, and eligibility criteria for refugee status.

Since then, UNHCR's Executive Committee and UN General Assembly has authorized the agency to deal with conventional refugees (those crossing an international boundary because of a well founded fear of persecution), and those fleeing political unrest or who find themselves displaced for political reasons within their state of residence.

As codified in the 1951 Convention, "refugee" was a universal concept, defined without regard to nationality. However, as Jeff Crisp points out, the geographical limitation of the 1951 Convention restricted the refugee definition to people displaced as a result of events occurring in Europe. Furthermore, the decision to exclude the Palestinian refugee population from the mandate of UNHCR, merely served to reinforce the notion that

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<sup>66</sup> Non-refoulement refers to the policy whereby a nation cannot send a refugee back to a country where his/her life or freedom would be threatened on account of race, nationality, religion, nationality, membership of a particular social group, or political opinion.

<sup>67</sup> The right of first asylum means that a refugee has a right to asylum in the first Convention signatory nation he/she passes through, but any subsequent country has the right to send the refugee back to that first country of asylum.



the refugee question was primarily a concern of the world's more prosperous regions.<sup>68</sup>

However, as Laura Barnett observes, “over the years the General Assembly allowed UNHCR to extend its protection, to those outside the official Convention by referring to DP’s. Relying on a different construction of DP’s than that adopted during World War II, UNHCR was able to use this definition to aid refugees, returnees, and IDP’s, who would normally be considered refugees but who had not crossed any national borders.”<sup>69</sup> Further discussion outlining UNHCR’s universal standards for refugee status is examined in 2.3.3.

UNHCR’s second main function is to seek durable solutions. In general there are three durable solutions that UNHCR seeks for refugees, and they are: voluntary repatriation, local integration in the country of first asylum, and resettlement from the country of first asylum to a third country. UNHCR prefers voluntary repatriation, whereby refugees return to their home countries. If repatriation is impossible, then UNHCR seeks either local integration or, if this is impossible, resettlement in a third country.

When UNHCR began its work during the 1950s the world was reacting to refugee flows created by World War II and UNHCR was concerned with the protection of individual refugees from Eastern European countries. During the 1960s, UNHCR witnessed large-scale refugee outflows, but people were able to return after their countries became independent.

By the 1970s UNHCR focused on finding third-countries to accept refugees fleeing persecution, and this period was

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<sup>68</sup> Jeff Crisp, (2001), “Mind the Gap, UNHCR, Humanitarian Assistance and the Development Process”, *New Issues in Refugee Research*, Working Paper Number. 43, [www.jha.ac/articles/u043.htm](http://www.jha.ac/articles/u043.htm), (accessed on 4/12/2007).

<sup>69</sup> Laura Barnett, “Global Governance and the Evolution of the International Refugee Regime”, *International Journal of Refugee Law*. 2002; 14: 238-262.

characterized by a decade of repatriation whereby millions of refugees were repatriated to places like Angola. By the late 1980s Africa became a critical crisis, with refugees fleeing civil war in Ethiopia and Sudan, with mass flows of people fleeing from war and violence and not due to fears of persecution. Such refugees ideally wanted to be repatriated and were not seeking integration.

During the 1990s the nature of refugee flows became much more complex, which saw UNHCR rapidly transform its repatriation and reintegration policies, as it became apparent that the magnitude of the problem was such that successful reintegration was a critical factor in establishing lasting peace. This period also witnessed UNHCR focusing heavily on issues of reintegration, rehabilitation and developmental processes; because the refugees who were being repatriated were experiencing high levels of insecurity and deprivation which made the repatriation of refugees very dangerous.<sup>70</sup>

A further determinant influence was the fact that the countries refugees were returning to had governments and local authorities who were not in a position to take care of the refugees. This saw UNHCR draw upon its protection and assistance efforts in providing a strong field presence and logistical backup as a response to the many conflicts.

UNHCR also became deeply involved in humanitarian intervention,<sup>71</sup> with the crises in BiH, which projected UNHCR very much into the headlines during the early 1990s, when the agency started its operations, which became one of the biggest relief operations ever organized. UNHCR's mandate in BiH was

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<sup>70</sup> For examples of some of the problems of the repatriation of refugees from Somalia to Ethiopia in 1992 see UNHCR, *The State of the World's Refugees: In Search of Solutions*, (Oxford: Oxford University Press, 1995), p. 172-173.

<sup>71</sup> Humanitarian intervention is when military action taken to prevent or terminate violations of human rights that is directed at and is carried without the consent of a sovereign government.

to support the government in providing protection for refugees and IDP's, and to facilitate durable solutions including return and reintegration of the refugees and IDP's.

The main objectives of UNHCR's representation in BiH, was to ensure access to protection, social and economic rights and services for persons of concern to the agency.<sup>72</sup> Together with the local governments and authorities and in cooperation with other international partners, UNHCR facilitated the return of both refugees and DP's to their homes of origin.

However, the policy of ethnic cleansing in BiH placed UNHCR's mandate in a difficult position, and the agency was confronted with a major dilemma as Alex Cunliffe and Michael Pugh explain:

Although historically the UNHCR's modus operandi was assisting people who had been forced to flee intolerable circumstances, the UN's universal condemnation of ethnic cleansing pointed to a policy of keeping people in their homes. But as the conflict intensified and ethnic cleansing crystallised in areas of Bosnia-Herzegovina, the UNHCR's began to deal with civilians under threat but who had not yet fled. The UNHCR then found itself in the ironic and awkward position of trying to save lives by helping people become refugees.<sup>73</sup>

The changing dynamics of refugee situations post BiH also required UNHCR to adapt to new, and often dangerous and highly politicized environments. For example, humanitarian intervention saw further operational changes for the agency in Iraq, in 1991, where the military became involved in providing protection and logistical support.

Furthermore, when Kosovo hit the international headlines in the late 1990s, when forces under Yugoslav President Slobodan

<sup>72</sup> [www.unhcr.ba](http://www.unhcr.ba), (accessed on 17/11/2007).

<sup>73</sup> Alex Cunliffe and Michael Pugh, (1996), "The UNHCR as Lead Agency in the Former Yugoslavia", <http://jha.ac/1996/04/01/the-unhcr-as-lead-agency-in-the-former-yugoslavia/>, (accessed on 9/8/2007).

Milosevic attempted to suppress the ethnic Albanian majority's independence campaign, Kosovo demonstrated how the agency had to broaden its scope to working with the intervening UN/ North Atlantic Treaty Organization (NATO) military forces, which to an extent cemented the association between humanitarianism and the use of the military.

Although UN peace-keeping operations and humanitarian operations are not deemed suitable partners, (as the researcher witnessed in Kosovo), both take place in war-torn countries and both can coordinate and work effectively together. However, combining peace-keeping and humanitarian action has proved extremely difficult, primarily because peace-keeping operations are not best suited to the protection of humanitarian action.

UNHCR also recognize the difficulties involved by involving the military and state that:

The coordination of humanitarian efforts with political and military actions in refugee producing conflicts is not without its difficulties....It blurs traditionally distinct roles and, if mismanaged, could compromise the strictly neutral character of humanitarian aid which is the best guarantee of access to people in need.<sup>74</sup>

To recap, the international political environment has changed considerably over the years as have the roles and responsibilities of UNCHR.<sup>75</sup> The agency has steadily had to change its activities to include human rights, economic development for repatriation and the protection and security of people displaced. UNHCR have also become the world's largest humanitarian implementing agency; activities which have swollen their mandate and stretched UNHCR's capacities. The scene is now dominated with much more international interest, especially in

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<sup>74</sup> UNHCR, *The State of the World's Refugee: In Search of Solutions*, p.78-9.

<sup>75</sup> To learn more about UNHCR's evolution and its changing responsibilities see, Sadako Ogata, *The Turbulent Decade: Confronting the Refugee Crises of the 1990s*, (W.W. Norton & Company: New York, 2005).

'post conflict' issues, which has seen UNHCR effectively abandon the notion of 'returnee aid and development', preferring instead to focus on 'post-conflict reintegration'.<sup>76</sup>

The mixed flows of people seeking better economic conditions, have further complicated the situation which UNHCR finds itself in, which can be hard, if not impossible, to unravel. The significant developments that have come to characterize UNHCR in the post-Cold War world, have emphasized the changing nature of the international system, and have seen UNHCR's shift from international refugee protection regime to focussing on security, containment, and pre-emptive humanitarian action and assistance. Barnett further highlights this point:

Today UNHCR is more solution-oriented when confronting impending refugee crises. Turning away from its refugee specific approach that saw problems as coming to an end once a refugee was safely settled, UNHCR is now more pro-active, preventative, and homeland-oriented; it has become a more "broadly based humanitarian agency".

Barnett goes on to add:

The organization has shifted towards an operational approach, fostering local civil society, building democratic governance, and working for conflict prevention. Recognizing that long-term refugee resettlement is no longer a viable option, UNHCR now attempts to provide care for refugees on location, emphasizing international presence to encourage potential refugees to stay.<sup>77</sup>

Today the refugee regime has become increasingly more international and more operational in scope, and humanitarian agencies, such as UNHCR are being drawn more deeply into intricate political processes as a result of their involvement in comprehensive responses. Throughout it's years of operation

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<sup>76</sup> Jeff Crisp, (2001), "Mind the Gap UNHCR, Humanitarian Assistance and the Development Process", New Issues in Refugee Research Working Paper Number. 43, [www.jha.ac/articles/u043.htm](http://www.jha.ac/articles/u043.htm), (accessed on 4/12/2007).

<sup>77</sup> Laura Barnett, "Global Governance and the Evolution of the International Refugee Regime", *International Journal of Refugee Law*, 2002; 14: 238-262.

UNHCR has steadily expanded its mandate and changed its work, by providing assistance and protection to a progressively larger number of refugees.

The changes in the handling of the refugee regime have included an increased focus, by many agencies, on preventive action to reduce the likelihood of massive refugee flows across borders, the extension by UNHCR of the categories of people it assists, principally to encompass IDP's, the creation of safety zones to reduce the likelihood of refugee outflows and to encourage return, the authorization of military intervention and the growth of repatriation are to name but a few. The past two decades demonstrate a radically transformed refugee regime aimed at preventing refugee flows and ensuring refugee return.

Conflicts will continue to persist in many parts of the world and refugees will continue to face uncertainty. Today UNHCR provides protection and assistance to 32.9 million people in 111 countries.<sup>78</sup> Finding clear, lasting, and meaningful solutions to refugee problems around the world will continue to be extremely difficult due to complex political, economic and social problems. Additionally the international community has become increasingly unwilling to accept refugees. However, UNHCR and other institutions will have to continue to provide assistance to refugees and IDP's whilst also playing an important independent role in providing assistance and advocacy on their behalf.

## **2.2. The Palestinian Refugees**

### **2.2.1. Who are the Palestinians?**

Having looked at the role played by the international refugee regime in dealing with refugees the remainder of this chapter will focus on the Palestinian refugees, who stand out as the world's longest and largest unresolved case. The purpose of this

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<sup>78</sup> UNHCR web-site, [www.unhcr.org/basics.html](http://www.unhcr.org/basics.html), (accessed on 17/1/2008).

section is to look at various aspects of Palestinian refugeedom which will help to clarify some of the differences that separate the Palestinians from other refugee groups. This chapter will also act as a prelude to chapter's three and four where the international perspective will be further developed by looking at UNHCR's operational guidelines and by examining two Claim Commissions.

There have been many attempts to define the Palestinians refugees, and the debates are likely to continue for as long as the refugee situation lasts. As chapter one pointed out the Palestinian refugees are considered to be unique, and three features in particular make this point:

- The universally - accepted definition of a 'refugee' - Article 1A (2) of the 1951 Convention relating to the Status of Refugees does not apply to the majority of Palestinian refugees;
- The UN established separate international agency's (UNCCP and UNRWA) to provide protection and assistance and to seek durable solutions for the Palestinian refugee population;
- Most Palestinians today are both refugees and stateless persons.

There are also other aspects in which the Palestinian case can be regarded as unique, such as, the longevity of the conflict, the fragmentation of the Palestinian society, the conditions of exile,

the *intifada*,<sup>79</sup> and the need to view the 1948 and 1967 refugees and IDP's as separate groups.<sup>80</sup>

One other major difference which sets the Palestinian case apart is the fact that the Palestinian refugee situation continues to exist today, sixty years on, making the Palestinian case the largest and longest refugee situation in the world. However, the Palestinian case is not alone, according to UNHCR, today there are at least 33 so-called "protracted refugee situations" involving groups of 25,000 people or more who have been in exile for over five years and account for 5.7 million of the world's 9.2 million refugees.<sup>81</sup>

Nonetheless, although the themes of exile and isolation will be common to all refugees, it is only in the Palestinian case that these features have acquired such lasting global notoriety. Furthermore the Palestinian refugees constituted one of many refugee populations after World War II, yet although their case could have been resolved, since many of the refugees had found shelter in neighbouring Arab countries that shared their culture, language, religion and culture, and where many of the refugees had family ties, the Palestinian refugee situation also involved a political structure, which has prevented seeing the Palestinians resettled or absorbed in either the original host country or another designated area, as is the case with other refugee scenarios.

The Arab States have also played a role in keeping the Palestinian refugee situation alive. For example the Arab League

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<sup>79</sup> The *intifada* is an Arabic term referring to the Palestinian uprising against Israel's military occupation. The first *intifada* (1987-1991) was a national uprising of an unarmed Palestinians against Israeli occupation and for Palestinian independence which continued after its outbreak in 1987 intermittently until the signing of the Oslo Accords in 1993.

<sup>80</sup> See appendix 1 for categories of Palestinian refugees.

<sup>81</sup> United Nations Report, (2006), "Protracted refugee situations: Millions caught in limbo, with no solutions in sight", [http://www.un.org/events/tenstories\\_2006/story.asp?storyID=2600](http://www.un.org/events/tenstories_2006/story.asp?storyID=2600), (accessed on 4/3/2007).



has always chosen to continue the war against Israel by confining the Palestinian refugees to camps, as a weapon against Israel. This made the refugees political pawns, held up to the world as an example of Israeli occupation. Since the refugees and host countries were opposed to efforts at large-scale refugee resettlement, by not integrating Palestinian refugees, (though this sometimes happened on an unofficial level) and by keeping the refugees in camps, Arab regimes with the collaboration of the PLO ensured that their suffering would fuel endless conflicts, which also provided recruits for further violence.

Additionally, neighbouring Arab States also competed for influence, seeing the future Palestine as a place they could seize land. Neither during the conflict nor after their defeat did the regimes help create an independent Palestinian Arab State. Egypt held the Gaza Strip whilst Jordan annexed the West Bank.

Furthermore, the emergence of Arab nationalism and the Islamification of Palestinian societies has played a particularly prominent role, and has inflicted immense suffering on the Palestinians, as the researcher has personally witnessed over the years during time spent in the region. Finally, the role of international foreign policy in its support to prop-up an increasingly unpopular PA in order to guarantee its survival, only served to promote a continuation of the painful status quo rather than pursue a sustained course of political action.

By making the Palestinians political pawns, a situation was created in which the dialogue omitted any mention of the rehabilitation or resettlement of the refugees with only the “right of the Palestinians to their homeland” used. As Terry Rempel points out:

Although the UN continues to affirm, in principle, the right of Palestinian refugees to return to their homes

of origin, member States have failed to muster the political and material resources that have made refugee return possible in other contexts.<sup>82</sup>

Sidney Zabłudoff also emphasizes how the Palestinian refugedom sits in stark contrast to the way in which other refugee situations have been dealt with:

Since 1920 all other major refugee crises involving the exchange of religious or ethnic populations, while creating hardships, were dealt with in a single generation. Meanwhile, issues such as the “right of return” and compensation never were adequately resolved and were largely forgotten.<sup>83</sup>

Further political motivations which have hindered a resolution of the Palestinian refugee case will be discussed in 2.3.3. Although these fundamental differences mark the Palestinians out as a case apart from other refugee situations, if international practice that has assisted other refugee cases find peace, then finding a solution to this complicated and protracted refugee scenario is not beyond resolution, as the following chapters will seek to demonstrate.

As well as being a politically charged refugee case, defining Palestinian refugees, and deciphering how many refugees exist today is also difficult to ascertain. According to the PCBS, 2.89 million Palestinian refugees live within an area divided between the state of Israel, the West Bank and the Gaza Strip. But who are the Palestinian refugees?

During the British mandate of Palestine, the term “Palestinian” referred to all those residing there which would have included: Arabs, Christians, Muslims, non Arab Christians and Druze, who had historical roots in Palestine and were granted “Palestinian

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<sup>82</sup> Terry Rempel, “Who are the Palestinian Refugees”, *Forced Migration Review*, Volume 26, (December 2006), p.5.

<sup>83</sup> Sidney Zabłudoff, “The Palestinian Refugee Issue: Rhetoric vs. Reality”, *Jewish Political Studies Review*, 20:1-2, (Spring 2008).

citizenship”, and whose historical roots could be traced to the territory of Palestine as defined by the British mandate borders. Today “Palestinian refugee” is the term given to Palestinians who live in the West Bank, the Gaza Strip and to those Palestinians in the Diaspora, whilst the term Arab citizens of Israel or Arab Israeli is the term given to Palestinians who live inside the State of Israel.

Any discussion on Palestinian identity is problematic because it has never been an exclusive one and remains to be a contested category especially in terms of class, gender, Diaspora and political faction. As Rosemary Sayigh notes:

If anyone had asked a Palestinian before 1948 to describe the Palestinian people he would have probably given one of two widely different responses. He might have said that they are Arab, and therefore like other Arab peoples. Or he might have said that each region, city, class or sect is so different that it calls for a separate description.<sup>84</sup>

Bearing in mind these problematic issues, much has been written about Palestinian refugee identity.<sup>85</sup> Rashid Khalidi<sup>86</sup> for example, explores the early beginnings of Palestinian identity, before its encounter with Zionism. Khalidi demonstrates that there was a widespread consciousness of Palestine as a distinct region, at least as far back as the mid-eighteenth century and that this consciousness heightened over time. Khalidi reiterates, that Palestinian identity has never been an exclusive one, with “Arabism, religion, and local loyalties” continuing to play an important role:

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<sup>84</sup> Rosemary Sayigh. “The Palestinian Identity Among Camp Residents”, *Journal of Palestine Studies*, Volume 6, Number. 3, (Spring 1977), p. 3-22.

<sup>85</sup> See Robert Bowker, *Palestinian Refugees: Mythology, Identity, and the Search for Peace*, (Boulder, Colorado; London: Lynne Rienner Publishers, 2003).

<sup>86</sup> For an opinion on the importance of Palestinian identity see, Rashid Khalidi, *Palestinian Identity the Construction of Modern National Consciousness*, (New York Columbia University Press, 1997).

The modern national identity of the Palestinians has its roots in nationalist discourses, that emerged among the peoples of the Ottoman empire in the late 19th century, becoming particularly acute following the demarcation of modern nation-state boundaries in the Middle East after World War I.<sup>87</sup>

Although Zionism played a part in how Palestinian identity formed, the researcher does not believe it can be seen exclusively as a reaction to Zionism. However, Zionism did provide the Palestinians with a centralized focus for their national struggle, and their encounter with Zionism was one of the catalysts that instigated Palestinian nationalism as Zureik points out:

Palestinians peasants were not colonised by Zionists settlers in the classical sense of colonisation. The situation more resembles a dual society structure, with one part deriving benefit from sponsoring imperial power at the expense of the other.<sup>88</sup>

Additionally, Baruch Kimmerling and Joel Migdal assert that:

In some ways, the Jewish national movement has shaped the Palestinian people almost as much as it did the Jews themselves. Had it not been for the pressure exerted on the Arabs of Palestine by the Zionist movement, the very concept of a Palestinian people would not have been developed.<sup>89</sup>

Palestinian identity is also significant in the way this links the refugees' ties with their homeland, as Norma Masriyeh Hazboun explains:

The identity of the al-Nakbah generation is intrinsically linked to the villages, town and cities from which they were dispersed.

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<sup>87</sup> Ibid., p. 19-21.

<sup>88</sup> Elia Zureik, *The Palestinians in Israel: A Study in Internal Colonialism*, (London, Routledge and Kegan Paul, 1979), p. 66.

<sup>89</sup> Baruch Kimmerling and Joel, S. Migdal, *Palestinians: The Making of a People*, (New York, The Free Press, 1993), p.3.

The subsequent future generations are raised with memories of the homeland, which contrast sharply to their reality in the camps. The village serves as a means of identification among Palestinian refugees, their descendants and is the objects of the dream to which the refugees hope to return.<sup>90</sup>

For Palestinians knowing where one came from is what most refugees use to define themselves in exile, and as the researcher experienced in Al Wihdat Palestinian refugee camp in Amman, it is what Palestinian refugees use when narrating their identity. Helena Lindholm Shultz succinctly describes how collective memory is used to instil to younger generations of Palestinians, by stating that, “through acts of collective memory and narration, Palestine has become a fantasy, for which reality is a poor substitute”.<sup>91</sup>

The link between land and identity is not a recent development of Palestinian history, but is well-rooted within Palestinian culture especially in their poetry and traditions.<sup>92</sup> Although the link between land and identity is strong in this particular context it is not something found in western culture. Yet for the Palestinians the issue of land is a cultural issue, and an issue that is also accentuated by specific circumstances at play, such as exile which renders the land so important to Palestinians. The Palestinian writer Fawaz Turki sums up the Palestinians’ relatedness to their land stating that, “without his land, very simply a Palestinian could not establish his identity”.<sup>93</sup>

From the researcher’s point of view, Palestinian refugees see their lives to an extent as evidence of a catastrophe which ended

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<sup>90</sup> Norma Masriyeh Hazboun, “From Displacement to Dispersion: UNRWA, Israeli Resettlement Policy and Palestinian Refugees in Gaza Strip”, (1999).

<sup>91</sup> Helena Lindholm Shultz, *The Palestinian Diaspora: Formation of Identities and Politics of Homeland*, (London and New York: Routledge, 2003), p. 216.

<sup>92</sup> See for example the works of: Rosemary Sayigh, *Palestinians: From peasants to revolutionaries*, (London: Zed, 1979) and Fawaz Turki, “Day of the Land: What the land means to Palestinians”, *Palestine Congress of North America Newsletter*, (Washington, D.C. February 10, 1983).

<sup>93</sup> *Ibid.*, p.10.

with their present predicament. The word Palestine has continuous importance to the refugees, not only does the word commemorate their narrative, but also it serves to enhance their distinctive sense of identity. Furthermore, the world's diverse Palestinian communities are tied together less by history than by the narrative of dispossession and the dream of returning home.

As well as the importance of land and its impact on the refugees, the Palestinian identity has also been affected by a political aspect. For example, Palestinian identity was embraced as a national fight for Palestinian freedom and rights by Yasser Arafat, Chairman of the PLO, who headed its dominant faction, the secular Fatah party, from 1969 until his death in 2004. Arafat can be credited with maintaining and strengthening the Palestinians' fragile identity and was regarded as the main body that brought the Palestinians back from the brink of national extinction.

As previously mentioned the Islamification of Palestinian societies, through Islamic fundamentalism has not only dramatically and directly impacted Palestinian society but also Palestinian refugee identity. *Hamas*<sup>94</sup> for example and other factions have provided an Islamic dimension to the Palestinian struggle for independence, which has also enabled a political agenda and Islamic ideology to penetrate Palestinian national aspirations as former Al-Aqsa<sup>95</sup> commander Zakariya Zubeidi describes:

The political splits and schisms have destroyed us not only politically - they have destroyed our national identity. Today there is no Palestinian identity. Go up

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<sup>94</sup> *Hamas* is the main Islamist movement in the Palestinian territories, and was born soon after the *intifada* erupted in 1987. For more information on *Hamas*, see Meir Litvak, *The Islamization of Palestinian Identity: The Case of Hamas*, (Tel Aviv, Moshe Dayan Centre for Middle Eastern and African Studies, 1996) and Matthew Levitt, *Hamas: Politics, Charity, and Terrorism in the Service of Jihad*, (New Haven: Yale University Press, 2006).

<sup>95</sup> The al-Aqsa Martyrs' Brigades is a coalition of Palestinian militias in the West Bank.

to anyone in the street and ask him, 'Who are you?' He'll answer you, 'I'm a Fatah activist,' 'I'm a Hamas activist,' or an activist of some other organization, but he won't say to you, 'I am a Palestinian.' Every organization flies its own flag, but no one is raising the flag of Palestine.<sup>96</sup>

Palestinian refugee identity and status was also fed by the lack of any progress made in the Arab-Israeli negotiations on the refugee issue. In response to this, the refugees brought their struggle to the forefront of the Palestinian public agenda during the 1980s when the Palestinians in the OPTs started to build an infrastructure that challenged Israel, and the *intifada* played a crucial role in strengthening and conceptualizing Palestinian national identity.

Eventually, identity, status, politics and all the other intertwined issues that make up the Palestinian refugees will repeatedly cause controversy when trying to define this group of refugees. Perhaps the only definition of identity is a personal one: those who consider themselves to be Palestinian refugees are Palestinian refugees.

This section has briefly looked at some of the features that are unique to Palestinian refugees. The next section will look at another controversial subject matter that plays a central role in the Palestinian refugee issue, and that is the issue of Palestinian refugee figures.

### **2.2.2. Registered Palestine Refugees - Demographic Data**

One of the most difficult aspects associated with the Palestinian refugees is the issue of refugee figures. Nowhere are the competing claims about land and people more noticeable than in

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<sup>96</sup>Avi Issacharoff, "Marching Toward Total Ruin", in *Ha'aretz* newspaper, 4 April, 2008.

the use of figures, and in this conflict especially, demographic figures will play a crucial role in future peace negotiations.

The controversy over the accuracy of population estimates in the Arab-Israeli conflict has always been highly debatable with researches, the UN, international organizations, Israelis and Palestinians all conducting their own surveys and offering their own contradictory figures. This issue is further complicated, because refugee figures relates to security and political concerns in host countries such as Lebanon for example who have hundreds of thousands of Palestinian refugees residing in their country, which explains the vast discrepancy in estimates to be found on the Palestinian refugee population.

Ultimately, accurate figures will always depend on who does the counting and the categories used, which often becomes a political act laden with controversy, especially when remuneration depends upon these figures.<sup>97</sup> As mentioned at the beginning of chapter one, the exact number of Palestinian refugees who were displaced by the events of 1948 will never be known. The most probable estimate is approximately around the 550,000 figure. About 140,000 remained and roughly 50,000 soon returned after 1948 (estimates range from 30,000 to 90,000).<sup>98</sup> About two-thirds of those who left Israel went to the West Bank and the Gaza Strip with the remainder mainly going to Jordan, Lebanon, and Syria.

The number of additional Palestinian refugees resulting from the 1967 war is also based on approximations. Most observers use the sum of around 300,000, of whom nearly 100,000 returned in

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<sup>97</sup> For more information regarding Palestinian refugee statistics see, Hasan Abu-Libdeh, (2003), "Statistical Data on Palestinian Refugees; Prospects for Contribution to Final Settlement", [www.idrc.ca/uploads/user-S/10575995470Session\\_1-Abu-Libdeh-paper-abstractdoc.doc](http://www.idrc.ca/uploads/user-S/10575995470Session_1-Abu-Libdeh-paper-abstractdoc.doc), (accessed on 24/8/2007).

<sup>98</sup> Benny Morris, *The Birth of the Palestinian Refugee Problem Revisited* (2003).



the months following the war.<sup>99</sup> About half of those fleeing were already refugees from the 1948 war. Inside Israel, there were also IDP's. Estimates of IDP figures vary widely for example the Israelis give a figure of 10,000 to 23,000, the International Committee of the Red Cross (ICRC) and UNRWA indicate approximately 25,000 to 46,000 and the Palestinians put the figure much higher at around 150,000 to 300,000.<sup>100</sup>

As chapter one outlined, Palestinian statistics come from two main sources, namely, UNRWA and the PCBS. However, much of the data available on the Palestinian refugees and DP's is characterized to an extent an irregular quality of data, primarily due to the absence of a comprehensive registration system, frequent migration for political and economic reasons, and the lack of a uniform definition of a Palestine refugee.

UNRWA is responsible for administering the only registration system for Palestinian refugees. In doing so UNRWA records only those refugees displaced in 1948 (and their descendents) in need of assistance and located within UNRWA's five areas of operation.

However, UNRWA's data suffers from a number of problems such as: lack of coverage of unregistered refugees, the UNRWA databases are based mainly on data flow from voluntary registration and administrative records resulting from the supply of services to the refugees in UNRWA fields, there is no systematic robust system to capture socio demographic changes, UNRWA's data sets are often incomplete, and without a clear mechanism for updating the data, ascertaining reliable data proves to be very difficult. Furthermore, UNRWA's registration data figures exclude the following: 1948 refugees who did not

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<sup>99</sup> Ori Nir, "What Is a Refugee? What Is a Displaced Person?", in *Ha'aretz* newspaper, 7 March, 1995.

<sup>100</sup> Sidney Zabudoff, "The Palestinian Refugee Issue: Rhetoric vs. Reality", *Jewish Political Studies Review* 20:1-2 (Spring 2008).

register or meet UNRWA's eligibility requirements (and their descendents), 1967 refugees, those displaced after 1967 and IDP's.<sup>101</sup>

Today the reliability of official population statistics and demographic projections are based on the last official census of the OPTs which was conducted in 1997 by the PCBS. The preliminary Palestinian census figures for the Population, Housing and Establishment Census (PHC-2007) revealed that the total number of individuals counted was now standing at a figure of 3,662,205.<sup>102</sup> The PHC covered all individuals who were in the OPTs on the census reference night regardless of nationality and citizenship. The census also included those who were temporarily absent for less than one year, Palestinian students abroad and all prisoners and detainees in the Israeli jails regardless of the duration of detention.

The most recent figures available at the time of writing, on the total number of Palestinian RRs, are those provided by UNRWA. See (Table 2).

**Table 2:** *UNRWA Registered Refugee with UNRWA, as of 31 December, 2007.*

<b>Field of Operations</b>	<b>Official Camps</b>	<b>Registered Refugees in Camps</b>	<b>Registered Refugees</b>
Jordan	10	332,948	1,903,490
Lebanon	12	219,201	413,962
Syria	9	189,787	451,467

<sup>101</sup> Chapter three will provide more detailed discussion about some of the problems associated with the way UNRWA registers its refugees.

<sup>102</sup> The main objective of the PHC-2007 is to update statistical data on the Palestinian population, and to provide small area statistics to the planners and decision makers. The PHC-2007 is the second census conducted by the PCBS. For more information see the PCBSs Population, Housing and Establishment Census, 2007, [www.pcbs.gov.ps/Portals/\\_pcbs/PressRelease/census2007\\_e.pdf](http://www.pcbs.gov.ps/Portals/_pcbs/PressRelease/census2007_e.pdf), (accessed on 12/2/2008).

West Bank	19	491,636	745,776
Gaza Strip	8	491,636	1,048,125
<b>Agency total</b>	<b>58</b>	<b>1,355,470</b>	<b>4,562,820</b>

Source: UNRWA in *Figures*, 31 December, 2007.

The greatest concentration of Palestinian refugees is to be found in the Gaza Strip, the home of more than a million Palestinians, of these, 491,636 live in refugee camps.

Aside from the statistical data provided by UNRWA and the PCBS, alternative sources of Palestinian refugee figures may also be derived from statistics maintained by FAFO who have set up a limited database on Palestinian refugees in Lebanon, Syrian and Jordan. Additionally, UNHCR, the Damascus based PCBS, the Palestinian Right to Return Coalition (Al-Awda), Shaml, Badil, the PLO Department of Negotiation Affairs and Israel, provide various statistical figures.

Global Palestinian figures are equally as problematic. The PCBS announced in 2004 that the number of Palestinians worldwide at the end of 2003 was 9.6 million, an increase of 800,000 since 2001. Badil estimates that there were more than 7 million Palestinian refugees and DP's at the beginning of 2003.<sup>103</sup> The PA and the Ministry of Planning (MOP), uses a figure of 9,305,222 million worldwide Palestinian refugees as an estimated number. See (Table 3) for a break down.

**Table 3:** MOP Population Estimated Number of Palestinians in the World, End Year 2002.

Count	Number	Percent
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<sup>103</sup> See [www.badil.org/Refugees/facts&figures.htm](http://www.badil.org/Refugees/facts&figures.htm), (accessed on 19/12/2006). For other figures see Michael Chiller-Glaus, *Tackling the Intractable Palestinian Refugees and the Search for Middle East Peace*, (Bern; Oxford: Peter Lang, 2007), p. 79-81. See also Rex Brynen and Roula El-Rifai, *Palestinian Refugees: Challenges of Repatriation and Development*, (London: I. B. Tauris, 2007), p. 229-230.

Palestinian Territory	3,559,999	38.2
Israel	1,037,752	11.2
Jordan	2,716,188	29.2
Lebanon	402,977	4.3
Syria	423,453	4.6
Egypt	60,114	0.6
Saudi- Arabia	300,565	3.2
Kuwait	38,254	0.4
Other Gulf Countries	120,612	1.3
Iraq & Libya	112,177	1.2
Other Arab Countries	6,333	0.1
United State	231,723	2.5
Other Foreign Countries	295,075	3.2
<b>Total</b>	<b>9,305,222</b>	<b>100.0</b>

*Source: Palestinian Central Bureau of Statistics.*

This section has attempted to highlight some of the logistical and methodological obstacles involved in enumerating a population scattered throughout the world. The various figures presented here attempt to show that there are a variety of sources available providing Palestinian refugee statistics.

However, aside from the varying aspects of the deficiencies in the data, without a universally accepted refugee definition, a comprehensive registration system, comprehensive census data being supplied by host countries or a superior source of figures for Palestinian IDP's, along with the difficulties of frequent Palestinian refugee migration, obtaining credible Palestinian refugee figures, will remain to be very controversial and extremely difficult, if not impossible to ascertain.

### **2.2.3. Palestinian Refugees Living Conditions**

As well as differing refugee figures, there are also differences in the living and socio economic conditions of the Palestinian

refugees, who live in one of UNRWA's five fields of operation. During 1949 many refugees' settled in camps<sup>104</sup> that were set up by the ICRC and other NGO's who began to operate in the camps, providing tents and food before UNRWA took over the coordination of these activities in 1950.

Tents were set up initially for the refugees, though these were replaced with small detached dwellings which were constructed and owned by UNRWA. The camps were originally set up according to villages, and in most cases those refugees who came from a particular village would often come together to live in one camp, and often camps and even roads were named after former Palestinian villages. Generally, refugee camps are located on the outskirts of existing towns and are situated on land made available to UNRWA by the host governments in Syria, Lebanon and Jordan.

By 1955 the refugee camps were re-planned on a more permanent basis with UNRWA services located on the margins, with each household assigned a *malja* (shelters). Socio-economic developments in the camps began to change in the early 1970s when the camps became an integral part of neighbouring cities and gradually became urban working class neighbourhoods, and Palestinian dwellings became permanent homes with refugees establishing full ownership. Naturally, the refugees began to improve their dwellings by installing electricity and connecting running water. Refugees were able to fund these changes through money gained via construction work in Israel until the first *intifada* broke out.

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<sup>104</sup> UNHCR refer to "camp and settlement" as two different phases in the refugee cycle, the former referring to temporary shelter with temporary guests, the latter to a durable solution (namely integration into the host country) and both are understood to cover the duration of a given refugee situation.

A refugee camp according to UNRWA's definition is "a plot of land placed at the disposal to the agency by the host government for accommodating Palestine refugees and for setting up facilities to cater to their needs". Today the refugee camp is something of a misnomer, because the tents have long gone with refugees building and modifying older structures which have seen living space become highly congested and overcrowded. Palestinian refugee camps are not run by UNRWA the agency is only responsible for providing services whilst the responsibility of providing law and order in the camps lies with the various host country authorities.

It is worthwhile bearing in mind that camp society varies from country to country, though UNRWA has a strong presence in all camps. Ron Wilkinson points out some of the differences in camp composition in each of UNRWA's five fields:

A camp is a plot of land placed at the disposal of UNRWA by the host government (Jordan, Lebanon and Syria). The West Bank was part of Jordan so camps in that area were on land given by Jordan, and until 1967 UNRWA's field office for East and West Jordan was in Jerusalem, with no separate field office in Amman as there has been since 1967 and the Israeli occupation of West Bank.

Wilkinson further notes that:

The land on which camps were set up are either state lands or, in most cases, land leased by the host government from local land owners. This means that the refugees in "official" camps do not own the land on which their shelters were built but they have the right to use the land for a residence. The Gaza Strip was under Egyptian administration from 1948 until 1967 so the camps are on land assigned for refugees by the Egyptian authorities.<sup>105</sup>

Although in other refugee scenarios camps exist as long as the duration of the crisis, in the Palestinian case, camps are not a

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<sup>105</sup> Ron Wilkinson, (2005), "Where are the tents? It is a camp, isn't it?", [www.badil.org/al-majdal/2005/majdal25.pdf](http://www.badil.org/al-majdal/2005/majdal25.pdf), (accessed on 17/2/2007).

temporary option but have become a permanent physical landmark. As the researcher witnessed in Jordan especially, many of the camps are now surrounded by residential areas as a result of natural growth, which is very noticeable in Jordan especially where camps have become indistinguishable from neighbouring residential areas.

However, any improvements or signs of urbanization do not necessarily give the camps any further sense of permanence, perhaps only to the unobservant eye, and visiting camps in the OPTs especially echoes this feeling. Ultimately, regardless of whether camps merge with residential areas, Palestinians define themselves as refugees who live in camps, and the camp remains a very powerful symbol of resistance, defiance and despair.

#### **2.2.4. The Distribution of Palestinian Refugees**

Having briefly looked at the Palestinian refugee living conditions, the following section will look at the distribution of Palestinian refugees in UNRWA's fields of operation. According to UNRWA, in 2008 about one-third of Palestinian refugees live in 58 UNRWA camps.

The Gaza Strip is an area of extreme complexity, demographically, politically and socially. It is home to 8 UNRWA camps, and has one of the highest population densities in the world with 1,048,125 RRs. Although the camps have doubled in the last fifty years expansion has not, and the Gaza Strip displays the classic symptoms which can be found in overcrowded refugee camps all over the world. The majority of the population are refugees, making the Gaza Strip a refuge centre of huge proportion, placing a heavy burden on a small strip of land where camps have been organized totally haphazardly.<sup>106</sup>

<sup>106</sup> For more information see Mona Marshy, (1999), " Social and Psychological Effects of Overcrowding in Palestinian Refugee Camps in the West Bank and the Gaza Strip Literature Review and Preliminary Assessment of the

Most of the people who fled to the Gaza Strip, as a result of the 1948 Arab-Israeli war were from villages south of Jaffa and from the Beersheva area in the Negev. The Gaza Strip represents one of the most unquestionably negative and explosive areas of the OPTs. Under the impact of violence aimed at the Israeli Defence Force (IDF) life for the refugees is among the worst in the region.

The West Bank <sup>107</sup> is home to 745,776 RRs and has 19 official camps, representing the most number of camps run by UNRWA. Not dissimilar to the Gaza Strip, refugees here have suffered from Israeli restrictions which have impeded their ability to lead a normal life. The separation barrier, curfews and closures enforced as security measures have produced massive unemployment and subsequently the economic and social conditions in the camps have deteriorated. UNRWA became the largest employer in the OPTs when jobs such as commercial farming primarily ceased as the refugees had no access to land.

The refugee pattern in Jordan began with migration during the 1920s and 1930s, where camps were initially created on the fringes to provide shelter for the first wave of refugees, when in 1948 an estimated 100,000 refugees crossed the Jordan River and initially took shelter in the temporary camps.<sup>108</sup> In 1967 following the Israeli occupation of the West Bank and the Gaza Strip there was another influx of refugees into Jordan. Some

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Problem”, [www.arts.mcgill.ca/mepp/new\\_prrn/research/papers/marshy.htm](http://www.arts.mcgill.ca/mepp/new_prrn/research/papers/marshy.htm), (accessed on 19/3/2007).

<sup>107</sup> The West Bank today is also referred to as Judea and Samaria and is a landlocked territory to the west bank of the Jordan River. The region did not have a separate existence until 1948-9, when it was defined by the Armistice Agreement between Israel and Jordan. Since the war of 1967 most of the West Bank came under Israeli control.

<sup>108</sup> Avi Plascov, *The Palestinian Refugees in Jordan: 1948-1957*, (London: Frank Cass, 1981), p.62-3. See also Marwan Khawaja, (2003), “Migration and the Reproduction of Poverty: The Refugee Camps in Jordan”, [www.arts.mcgill.ca/mepp/new\\_prrn/research/papers/khawaja-international.pdf](http://www.arts.mcgill.ca/mepp/new_prrn/research/papers/khawaja-international.pdf), (accessed on 14/8/2007).



140,000 persons, already RRs with UNRWA, were part of the new exodus together with about 240,000 citizens of the West Bank who are referred to as DP's.

Today there are 10 official camps with 1,903,490 RRs, making Jordan home to the largest concentration of Palestinian refugees. Palestinians in Jordan are however, granted Jordanian citizenship which allows them the right to a passport as well as the enjoyment of full civil rights, including the right to vote and to hold a government post.<sup>109</sup>

Unlike in Jordan, the Palestinian refugees who arrived in Lebanon after 1948 were considered illegal and were often denied access to government facilities with UNRWA only being able to provide for the refugees on an emergency basis. Most refugees arrived individually or in small groups, some were registered with UNRWA as 1948 refugees in the OPTs, Jordan or Syria who were uprooted for a second time.

Today Lebanon has 12 official camps and 413,962 RRs.<sup>110</sup> As well as being notorious for being the least generous host country, with the highest number of refugees living in poverty and registered with UNRWA's hardship programme,<sup>111</sup> repression and discrimination are widespread and the government uses many exclusion controls. For example authorities have never allowed the refugees to build and extend their homes and they are excluded from owning property. Additionally, Lebanon also

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<sup>109</sup> The exception is the refugees who originally came from Gaza, which was under Egyptian administration. Around 100,000 refugees are not considered Jordanian citizens.

<sup>110</sup> However, these numbers do not accurately represent the number of Palestinian refugees in Lebanon, since many refugees registered with UNRWA are currently residing in other countries. The FMR estimated in 2006 that the number of Palestinian refugees actually residing in Lebanon was around 250,000. *Forced Migration Review*, Volume. 26, (August 2006), p.13, [www.fmreview.org/FMRpdfs/FMR26/FMR26full.pdf](http://www.fmreview.org/FMRpdfs/FMR26/FMR26full.pdf), (accessed on 18/1/2008).

<sup>111</sup> Refugee families who are registered as special hardship cases are eligible for food and cash assistance, shelter rehabilitation, are given priority in the programmes organized by the social services division, and preference in enrolling at the vocational training centres.

refused to apply the League of Arab States Protocol of 1965 which granted refugees the same rights as their citizens.

With the emergence of the resistance movements in Lebanon between the late 1960s up to 1982, the society became very divided along pro and anti Palestinian sentiment. The Lebanese government feared that absorbing a great influx of Palestinian refugees already in Lebanon to its citizen population, most of whom were Sunni Muslim, would not only undermine Lebanon's delicate political sectarian balance, but could potentially destabilize the country.

The refugees also suffer from high rates of unemployment and there is little access to government education, health, and social services. Other obstacles include highly limited civil rights and prohibitions against working outside the camps, except in special cases that require government permits.<sup>112</sup> In addition to the harsh living conditions and discrimination, non identification documented (ID) refugees face further restrictions which has resulted in a whole generation of undocumented persons being created. Unlike 1948 refugees, most undocumented refugees are not settled in camps.<sup>113</sup> Many have the complex experience of multiple displacements. As such, UNRWA's presence remains important in Lebanon as the refugees rely heavily upon the agency's various services.

Most Palestinian refugees fled to Syria during 1948, although in 1967 over 100,000 people, including Palestine refugees, fled from the Golan Heights to other parts of Syria when the area

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<sup>112</sup> For more information on Palestinian refugees in Lebanon see, Sherif Elsayed-Ali, "Palestinian refugees in Lebanon", *Forced Migration Review*, Volume. 26, (August 2006), p.13. See also Cynthia Petrigh, "No Freedom, No Future: Undocumented Palestinian Refugees in Lebanon", *Forced Migration Review*, Volume. 26, (August 2006), p.15.

<sup>113</sup> In 2005 the Danish Refugee Council began advocating to help support undocumented refugees by asking for the files of refugees who were registered with UNRWA in a different field to be transferred to Lebanon see, [www.drc.dk/Lebanon.1740.0.html](http://www.drc.dk/Lebanon.1740.0.html), (accessed on 16/12/2007).

was occupied by Israel. A few thousand refugees fleeing war-torn Lebanon in 1982 also took refuge in the country. Syria has 9 camps and 451,467 RRs. Refugees enjoy rights parallel to those of Syrian citizens, including the right to hold a Syrian passport and have access to government services such as schools, universities and hospitals. While the Syrian government is responsible for providing basic utilities in the camps, UNRWA provides basic environmental health services.<sup>114</sup>

This section has briefly touched on some of the background information necessary for building up a picture of the Palestinian refugees, beginning with an exploration of the definition and issues associated with the Palestinian identity. The section also considered the contentious issue of Palestinian refugee figures before going on to study the living and socio economic conditions of the Palestinians, examining briefly the notion of the refugee camp, and what that means for Palestinian refugees. Each of UNRWA's five different fields of operation was also explored and how the Palestinian experience within each field differed. The next section will take a look at the two UN agencies mandated to deal with the Palestinian refugee problem.

### **2.3. United Nations Involvement in Palestine**

The next section will limit itself to reviewing the UN agency's that have been involved with the Palestinians since the refugee problem was created. To avoid confusion between refugee agencies, UNRWA, UNHCR and the UNCCP will be outlined separately beginning with UNRWA. The differences between the mandates of both UNRWA and UNHCR will also be discussed which will provide a clearer picture of why Palestinian refugees are not offered the same solutions as other refugees. The section

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<sup>114</sup> Hamad Said Al-Mawed, (1999), "The Palestinian Refugees in Syria Their Past, Present and Future", [www.arts.mcgill.ca/mepp/new\\_prn/research/papers/al-mawed.pdf](http://www.arts.mcgill.ca/mepp/new_prn/research/papers/al-mawed.pdf), (accessed on 12/5/2007).

is completed by introducing the UNCCP, an organization involved in the formative period of Palestinian history. The purpose is to provide the reader with the background to both UNRWA and the UNCCP before their archives are examined in chapter five.

### **2.3.1. UNRWA: An Overview**

The Arab-Israeli conflict of 1948 marked the rejection of the UN partition plan that was intended to guide the territorial destiny of Mandate Palestine. Mindful of its role in the Palestine problem, the UN General Assembly addressed the critical humanitarian situation of the refugees, in doing so it established the UN Relief for Palestine Refugees (UNRPR) through Resolution 212 (III) dated 19 November 1948 to provide emergency relief to Palestine refugees, in coordination with other UN and voluntary agencies.

The Assembly then focused on the political aspects of the Palestine problem. It passed resolution 194 whereby it established the UNCCP, mandated to “take steps to assist the governments and authorities concerned to achieve a final settlement of all questions outstanding between them”.

A year later UNRWA or the ‘*Al Wakala*’ as the agency is referred to in the region, was established in 1949 and evolved quite separately from the UN as a specialized agency for the Palestinians as outlined in UN General Assembly resolution 302 (IV) of 8 December 1949. The agency was mandated to provide assistance to the refugees pending implementation of resolution 194. UNRWA’s *raison d’être* was its direct provision of essential public services to Palestine refugees in the Middle East, but, over time UNRWA had to provide many other developmental services. As well as representing the oldest and largest UN humanitarian agency in the world, UNRWA has become known

as the most prolonged, expensive, and controversial refugee programme in existence.

When the agency began operations on 1 May 1950, UNRWA was mandated to carry out direct relief and works programmes in collaboration with local governments; to consult with the Near Eastern governments concerning measures to be taken preparatory to the time when international assistance for relief and works projects is no longer available, and to plan for the time when relief was no longer needed.

The agency's mandate has been repeatedly renewed by the UN General Assembly and whose mandate currently runs up until 30 June, 2011, wherein the UN General Assembly has expressed its awareness of the "continuing needs of Palestine refugees throughout the occupied Palestinian territory and in other fields of operation" and noted that the "functioning of the agency remains essential in all fields of operation".<sup>115</sup>

UNRWA's first priority was to provide assistance and to manage provision of relief to the refugees. To do this UNRWA tried to secure a reasonable standard of living for the refugees by providing basic food rations, shelter and social welfare facilities. The first decade of work established the blueprint for the agency's present four priorities: education, health, relief and social services, and micro-credit; services that are all provided directly to refugees, rather than through implementing partners, something which is unique within the UN system. However, as socio-economic and political conditions in the host countries changed, UNRWA also had to adjust its programmes accordingly, and established development and vocational projects aimed at providing skills to the refugee population.

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<sup>115</sup> UNRWA official web-site see, [www.un.org/unrwa/overview/ga.html#a](http://www.un.org/unrwa/overview/ga.html#a), (accessed on 3/4/2007).

Currently, UNRWA operates one of the largest school systems in the Middle East and has been the main provider of basic education to the refugees for primary and junior secondary schools. The agency also trains teachers and provides grants and scholarships to college students. UNRWA focused heavily on education because the agency had very little scope in pursuing any solution based options for the refugees. As such, UNRWA's educational system encouraged and educated a generation of refugees and provided employment opportunities. According to UNRWA, the agency presently employs approximately 28,000 staff on its registration rolls, the majority of whom are Palestinian refugees.

Since 1991 UNRWA has also introduced Microfinance and Micro-enterprise Programme (MMP) and Small-Scale Enterprise (SSE) an initiative taken in response to the rapidly deteriorating economic conditions. UNRWA is also the main health care provider for the refugee population, and provides a wide variety of comprehensive primary health care, nutrition and supplementary feeding assistance, secondary health care and environmental health in its refugee camps.

Although UNRWA has no mandate to seek durable solutions on behalf of the refugees, shortly after UNRWA's creation, the agency began to set up an experimental migration policy, where refugees were given a chance to be resettled. Four types of programmes were aimed at reintegrating the refugees into the economic life of the region: work relief, small scale training and employment creation, works projects and medium-sized public sector government controlled projects, such as road-building, all aimed at employment creation. These initiatives failed for a number of reasons, but primarily because the refugees and the Arab world magnanimously rejected this policy interpreting it as Palestinian refugee resettlement.

During the course of its assistance efforts, the agency has also had to initiate emergency assistance programmes, to help Palestinian refugees cope with the deleterious impact of regional political shocks that included: the 1967 conflict, the Lebanon civil war, the first *intifada*, the 1991 Gulf war and the *al-Aqsa intifada*.<sup>116</sup> Additionally, UNRWA became involved in providing soft protection to the refugees. (See appendix 2 for a chronology of UNRWA's history).

UNRWA has always been surrounded by controversial debates regarding many areas of its work, and the agency has had to consistently defend itself from the outset. Since the start of the peace process in 1992, UNRWA has been in the firing line, for the way the agency runs its operations. Israel has criticised the agency for politicising the refugees, and for keeping the refugee issue alive. Palestinians have themselves accused the agency of attempting to resettle them against their will. Without doubt the existence of this UN agency and the work it carries out on behalf of the Palestinian refugees can be seen to have sustained a refugee situation which could have been addressed by the resettlement of the refugees in neighbouring Arab States, Israel or the creation of an international organization.<sup>117</sup>

UNRWA has however, consistently attempted to avoid engaging in activities and discussions that it perceives to entail political liabilities or that are perceived to be controversial for its relations with the host countries, refugees and donors. Furthermore, dealing with issues such as refugee compensation

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<sup>116</sup> Harish Parvathaneni, "Who Are the Refugees: Social, Economic and Legal Conditions", paper presented at the second international Stocktaking Conference on Palestinian Refugee Research, *International Development Research Centre*, (Ottawa: June 2003), [www.crdi.ca/uploads/user-S/10576028380Session\\_1-\\_Harish\\_Parvathaneni-\\_Paper.doc](http://www.crdi.ca/uploads/user-S/10576028380Session_1-_Harish_Parvathaneni-_Paper.doc), (accessed on 2/6/2007).

<sup>117</sup> For more information regarding the evolution of UNRWA see Benjamin Schiff *Refugees Unto the Third Generation*, (New York: Syracuse Press, 1995).

and evaluation would be extremely political sensitive and not an area that the agency would want to get involved in.

However, for some UNRWA was seen as a political organization devised as an alternative to the deadlock in peacemaking between Arab States and Israel.<sup>118</sup> Amos Perlmutter accentuates this, adding that:

UNRWA formed a structural addition to the international institutionalization of the Arab-Israeli conflict. At the mercy of the refugees, while at the convenience of Arab States, and their anti-Israeli machinations, the agency's "bypassing" of the conflict became a structured aspect of this conflict.<sup>119</sup>

Despite the desire of some governments to deal with the refugee question from a strictly humanitarian point of view, the political dimensions of the question and the political impact produced by UNRWA has to an extent controlled the way in which UNRWA has dealt with its operations. As a recent report by Barry Rubin, Asaf Romirowsky, and Jonathan Spyer, titled "*UNRWA: Refuge of Rejectionism*", outlines:

Since its inception, UNRWA has managed to transform itself into the guardian of the refugees' isolation whereby the uniqueness of the Palestinian refugees as far as an entity that cannot be assimilated into any Arab country. UNRWA reinforced this sentiment by becoming the parental supervisor for all things concerning refugees. This dependency also caused the refugees not to get involved in politics but to have UNRWA, which means the PLO and now Hamas, to be their advocate.<sup>120</sup>

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<sup>118</sup> David P. Forsythe, "UNRWA the Palestinian Refugees and World Politics 1949-1969, *International Organization*, Volume. 25, Number. 1, (Winter 1971), p. 26-45.

<sup>119</sup> Amos Perlmutter, "Patrons in the Babylonian Captivity of Clients: UNRWA and World Politics", *International Organization*, Volume. 25, Number. 2, (Spring 1971), p. 306.

<sup>120</sup> Barry Rubin, Asaf Romirowsky, and Jonathan Spyer, (2008), "UNRWA: Refuge of Rejectionism", [www.globalpolitician.com/24777-unrwa-palestine-palestinian-refugees](http://www.globalpolitician.com/24777-unrwa-palestine-palestinian-refugees), (accessed on 9/6/2008).



Defending the agency's position, Karen AbuZayd, UNRWA's Commissioner-General asserted in 2008 that, UNRWA's humanitarian and human development activities are non-political in character and practical in orientation, stating that:

To be effective UNRWA we must be conscious of the complex context in which the Palestine refugee condition is situated. We must understand that the causes, evolution and resolution of refugee situations are driven by currents deriving from the perceived interests of states, contests for international influence and the ebb and flow of geo-politics, among them military strength and economic power.<sup>121</sup>

UNRWA remains to be a unique agency within the UN system as an operational body. It was intended as a temporary organization that would provide emergency relief to the Palestine refugees alongside other UN mechanisms that were designed to address the political issues in their entirety. With the failure of the UN mechanisms designed to handle the political issues of the Palestine problem UNRWA metamorphosized and had to re-orientate itself into an all-purpose agency.

The agency's evolution and the range of such services indicate that in the absence of a just and durable solution to the refugee problem and in a context of statelessness, regional political tensions, economic marginalisation and vulnerability, the situation in which the agency was established had changed dramatically, and UNRWA was no longer seen as a temporary agency or as a possible solution to the problem.

Today UNRWA continues to have a presence in all camps, having to balance international relations, whilst being subject to various factors which make the agency's work very difficult, as does the task of providing services to millions of refugees in an ever

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<sup>121</sup> Speech given by Karen AbuZayd at Princeton, 6 May 2008, "Palestine refugees: exile, isolation and prospects", <http://domino.un.org/unispal.nsf/9a798adbf322aff38525617b006d88d7/f854ede26d1a7cfd8525744f004ba100!OpenDocument>, (accessed on 22/6/2008).

changing political and volatile environment. After almost sixty years of operation UNRWA has come to represent something very permanent in the region and has remained operational primarily because the refugee problem has remained. Ultimately, whether UNRWA was created out of desperation or optimism, the agency's presence continues to be fundamental in addressing the humanitarian needs of an ever growing Palestinian refugee population for the foreseeable future.

### **2.3.2. UNCCP: An Overview**

Having discussed UNRWA as one of two agency's mandated to assist the Palestinian refugees, this section will also cover the second agency which was given a mandate to provide protection and facilitate durable solutions for persons displaced as a result of the 1947-1948 conflict and war in Palestine - the UNCCP.

In September 1948, the UN General Assembly voted to create the UNCCP on the basis of resolution 194. This was the UN's first attempt to deal with the Arab-Israeli conflict. Its general task was to seek durable solutions and achieve a final settlement of the Palestinian refugee question. The UNCCP was to "assist the governments and authorities concerned to achieve a final settlement of all questions outstanding between them". In 1949 the UNCCP began work in Jerusalem and was made up of three members: France, Turkey and the United States.<sup>122</sup>

The General Assembly also authorized the UNCCP to provide protection for persons displaced as a result of the 1947-1948 conflict and war in Palestine. For example the Commission was responsible for the direct protection of refugees' rights and interests and for implementing the durable solution of

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<sup>122</sup> For more information on the role of the UNCCP see, Michael Fischbach, "[The United Nations and Palestinian Refugee Property Compensation](#)", *Journal of Palestine Studies*, [Volume. 31, Number. 2](#), (Winter 2002), p. 34-50.

repatriation, resettlement, and rehabilitation while at the same time ensuring a peaceful settlement. Paragraph 2 of the resolution stated that:

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

*Instructs* the Conciliation Commission to, facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation, and to maintain close relations with the Director of the United Nations Relief for Palestine Refugees and through him, with the appropriate organs and agencies of the United Nations.<sup>123</sup>

Early protection activities included: preparation of a draft refugee definition; intervention with Israeli authorities to permit the return of certain categories of refugees (without prejudice to the right of all refugees to return to their homes) based on humanitarian considerations; reunification of separated families; investigation and recommendation of immediate measures to safeguard the rights and property of the refugees; intervention with Israeli authorities to abrogate discriminatory property laws and the facilitation of refugee access to blocked savings accounts and assets in banks inside Israel.<sup>124</sup>

Although the UNCCP was given a mandate to provide protection and facilitate durable solutions for the refugees and DP's the UNCCP was assigned with a dual mandate, a broad mandate for conciliation of all outstanding issues between the parties, and a specific mandate for the protection and promotion of a durable

<sup>123</sup> Resolution 194 (III) 11 December 1948.

<sup>124</sup> *Badil* publication, [www.badil.org/Protection/UNCCP.htm](http://www.badil.org/Protection/UNCCP.htm), (accessed on 15/11/2007).

solution for Palestinian refugees. This dual mandate however was highly problematic as Terry Rempel points out:

This dual mandate created a conflict of interest for the commissioner, making it difficult if not impossible to protect and promote the specific rights of refugees. Due to Israel's opposition to repatriation, the protection of the refugees' right to return home became difficult. Attempts at peace demanded a compromise, which the conflicting parties were not ready to make. This placed an insurmountable obstacle in the way of the Commission's mandate and hampered any progress to achieve a framework for a durable solution for Palestinian refugees.<sup>125</sup>

Initially, the UNCCP began preliminary work which included investigating methods for determination of refugee choices and examining modalities for compensation. The organization also established two bodies - the Technical Committee and an Economic Survey Mission (ESM) to investigate ways of determining refugee choices and improving their immediate situation. The Technical Committee also gathered the necessary data for the implementation of durable solutions related to repatriation and payment of compensation. The Committee based its recommendations on the assumption of resettling large numbers of refugees outside Israel, whilst the ESM's recommendations focused on resettlement opportunities and supporting job opportunities for the refugees in host countries.

When the UNCCP efforts became crippled by the political constraints it faced, and no progress on repatriation and resettlement was to be found, the UNCCP had to pursue new ways to facilitate solutions for refugees. In doing so, the organization turned its focus to property identification and evaluation and in 1951 the UNCCP set up the Refugee Office (RO) in order to

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<sup>125</sup> Terry Rempel, "The United Nations Conciliation Commission for Palestine, Protection, and a Durable Solution for Palestinian Refugees", *Badil* Brief (5), [www.badil.org/Publications/Briefs/Brief-No-05.html](http://www.badil.org/Publications/Briefs/Brief-No-05.html), (accessed on 14/7/2007).

identify property ownership in Israel and examine interim measures by which refugees could derive income from their properties.

The RO was furnished with a legal expert, an economic expert and a land specialist in order to facilitate the collection of refugee information and data. The ROs purpose was to consult with Israel, the Arab States and UNRWA in order to find a practical compensation plan that would include payment to individual refugees, coming up with an informal estimate of the overall scope and value of refugee property.<sup>126</sup> Unfortunately, the RO was not successful in getting parties to agree or accept the figures, as a starting point for negotiating the issue of refugee compensation. The UNCCP subsequently suspended its efforts to achieve agreement from the parties on compensation.

Falling short of making any progress regarding the refugee issue, the General Assembly passed resolution 512 on January 26 1952 which called upon the UNCCP to continue to try and implement resolution 194. However, as Fischbach points out, the resolution recognized that it would need to be the parties themselves who made peace. Fischbach goes on to add that this resolution was 'the final nail in the coffin of the UNCCP as an active mediator in the Arab-Israeli conflict'.<sup>127</sup>

Having failed in its political endeavours, the UNCCP turned its attention to technical matters and in 1952 a new UNCCP office, the Technical Office (TO) undertook a much more detailed effort to enumerate and value the refugees' losses through the Technical Project which lasted until 1964.<sup>128</sup>

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<sup>126</sup> Michael Fischbach, "[The United Nations and Palestinian Refugee Property Compensation](#)", *Journal of Palestine Studies*, Volume. 31, Number. 2, (Winter 2002), p. 39.

<sup>127</sup> Michael Fischbach, *Records of Dispossession, Palestinian Refugee Properties and the Arab Israeli Conflict*, (New York: Columbia University Press, 2003), p.134.

<sup>128</sup> See Michael Fischbach, "The United Nations and Palestinian Refugee Property

In his book, titled *“Records of Dispossession”*, Fischbach concentrates on the twelve year programme initiated by the UNCCP to identify and evaluate refugee property. In doing so Fischbach detailed the huge amount of land related records that were compiled by the office, and he published for the first time some of the compensation estimates. The UNCCP’s efforts in property identification and evaluation will be discussed further in chapter five.

The UNCCP technical efforts however did not tackle non-property related losses, sources of funding, modalities of payment, implementation mechanisms nor was there a settlement of the moral link between responsibility of Israel and compensation. The property the UNCCP were successful in identifying and evaluating, are, the most thorough sources of information regarding Palestinian refugee assets and as Fischbach points out, “the UNCCP data is invaluable, not only for determining the scope of individual refugees’ losses but also for assessing individual values” and is likely to be part of a Palestinian compensation agreement.<sup>129</sup>

Although the UNCCP mandate included conciliation and mediation between the parties on all outstanding questions including, facilitating the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation, the UNCCP’s responsibilities for the direct protection of refugees’ rights and interests and for implementing durable solution never materialized. One of the reasons was that the UNCCP was not provided with the resources to facilitate a solution in the context of what became an extremely difficult and protracted conflict.

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Compensation”, *Journal of Palestine Studies*, Volume. 31, Number. 2, (Winter 2002), p. 34-50;

<sup>129</sup> Ibid., p.44-45.

When the UN established the UNCCP in 1948 it was assumed that the Palestinian refugees would return to their places of origin within a short period of time, it was not expected that the newly established State of Israel would block the return of the refugees. Ultimately, the UNCCP failed to broker any deal on compensation and after only three years the Commission admitted it could not reconcile either party and had failed in its ability to resolve reparations.<sup>130</sup>

As Fischbach notes, “the UNCCP efforts were doomed from the start by the red lines established by Washington. The US and Israel wanted any compensation scheme to finance large-scale resettlement of refugees”.<sup>131</sup> As the UNCCP disappeared from an active role on the scene, so did the issue of compensation. Since the 1950s, little attention has been given to the question until the launch of the Madrid Peace Process in early 1991.<sup>132</sup>

Having discussed the two separate international agencies’ established by the UN to assist the Palestinian refugees, the final section of chapter two will address some of the differences in the way UNHCR handles some of the global issues that affect the refugees under its care, which is then contrasted with how UNRWA deals with the issues that affect the Palestinian refugees.

### **2.3.3. The Differences between UNRWA and UNHCR mandates**

Having outlined the purpose of both UNRWA and UNHCR earlier in the chapter, and studied the role of the UNCCP in its attempt

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<sup>130</sup> The UNCCP continues to exist at the UN Secretariat Archives in New York, but has no budget and no staff.

<sup>131</sup> Michael Fischbach, “[The United Nations and Palestinian Refugee Property Compensation](#)”, *Journal of Palestine Studies* Volume. 31, Number. 2, (Winter 2002), p.47.

<sup>132</sup> Shahira Samy, “The Politics of Reparations in the Case of Palestinian Refugees: A Comparative Approach”, 2006, p.30.

to facilitate durable solutions on behalf of the Palestinian refugees, the following section will focus on some of the striking differences between UNRWA's mandate and UNHCR's mandate. Such an analysis is essential to understand the next two chapters, where international guidelines and precedents will be explored in more detail.

As already established, UNRWA's main function was to provide humanitarian assistance in the form of food rations, shelter and social services until a time when refugees could return to a normal life. One of the major differences between UNRWA and UNHCR is that, as previously mentioned, UNRWA had no mandate to find any solutions for the Palestinian refugees, instead, UNRWA has had continually to reinvent itself and renew its mandate. A similar role was adopted by UNHCR, except that UNHCR had a mandate to resolve the problems of refugee crises as will be outlined in the remainder of this section.

In UNRWA's own words:

UNRWA and the UNHCR are both UN agencies mandated by the international community to do specific jobs for refugee populations. UNRWA deals specifically with Palestine refugees and their unique political situation. One reason for the distinction is that in the main the UNHCR is mandated to offer refugees three options, namely local integration and resettlement in third countries or return to their home country - options which must be accepted voluntarily by refugees under UNHCR's care.

UNRWA goes on to add:

These are not feasible for Palestine refugees as the first two options are unacceptable to the refugees and their host countries and the third is rejected by Israel. Given this context, the international community, through the General Assembly of the United Nations, requires UNRWA to continue to



provide humanitarian assistance pending a political solution.<sup>133</sup>

The second major difference between UNRWA and UNHCR is that both agencies' use very different ways of defining those represented by their mandates. When the General Assembly resolution established UNRWA it envisaged the agency and its mandate to be temporary and it sought: "the alleviation of the conditions of starvation and distress among the Palestinian refugees" with "a view to the termination of international assistance for relief" at an early date.<sup>134</sup>

When the General Assembly charged UNRWA with providing care for the Palestinian refugees, it did not define 'refugee', this task fell to UNRWA who established the definition for the sole purpose of issuing material assistance. UNRWA's working definition of Palestine refugees for operational<sup>135</sup> purposes and for registration assistance is formulated as follows:

Palestine refugees are persons whose normal place of residence was Palestine during the period 1 June 1946 to 15 May 1948 and who, as a result of the Arab-Israeli conflict in 1948, lost both their homes and means of livelihood. To be eligible to receive UNRWA assistance, refugees and descendants of such persons in the male line born after 14 May 1948, must be registered with UNRWA and live in the areas of UNRWA operations.

UNRWA has had to adapt to the growth of its refugee population because UNRWA's refugees include not only those who fled their

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<sup>133</sup> UNRWA publication, "Setting the Record Straight", [www.un.org/unrwa/allegations/index.html](http://www.un.org/unrwa/allegations/index.html). (accessed on 12/8/2007).

<sup>134</sup> The UN General Assembly Resolution 302 (IV): Assistance to Palestine Refugees.

<sup>135</sup> The enormous growth in the number of UNRWA RRs is the result of the fact that UNRWA has adopted a very broad definition of Palestinian refugees, which is much broader than the one adopted in the generally recognized 1951-1967 Convention relating to the Status of Refugees. One of the arguments held against UNRWA's use of the word "operational", is that this would mean those who no longer required assistance would be removed from the rolls, which is not always the case.

homes during 1948, but also their children, grandchildren and great grandchildren, regardless of where and under what social, political, and economic conditions they live today. This is because the refugee status is automatically applicable to all Palestinian refugee descendants, something unique only to the Palestinian refugees. This makes them the only refugee population in the world that continues to grow over time, even as the original refugees pass away, making their refugee status a generational one.

Additionally, Palestinian refugees who fled their homes but remained within Palestine are also defined by UNRWA as refugees, even though they did not flee their homeland. In cases where Palestinian refugees have become full citizens of other States such as in Jordan, they are still referred to as refugees, which is something that is likely to continue to cause difficulties and controversy.<sup>136</sup>

As outlined, UNRWA has no protection mandate, and Palestinian refugees remain outside the framework of rights and protection afforded to other refugees as Dumper notes:

We should recall that UNRWA, unlike UNHCR, was given no protection mandate in Resolution 302(iv), since this role was to be carried out by UNCCP. However, as a result of the invasions of Lebanon and the first *intifada*, UNRWA's protection mandate grew incrementally.<sup>137</sup>

Neither the UNHCR, nor any other international agency, stepped in to completely fill the protection gap as Rempel points out:

The collapse of UNCCP protection, limited intervention by the UNHCR, and lack of an explicit

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<sup>136</sup> Ruth Lapidoth, (2002), "Legal Aspects of the Palestinian Refugee Question", *Jerusalem Letter* Number. 485, (Jerusalem Centre for Public Affairs), [www.jcpa.org/jl/vp485.htm](http://www.jcpa.org/jl/vp485.htm), (accessed on 21/1/2008).

<sup>137</sup> Michael Dumper, *The Future for Palestinian Refugees: Toward Equity and Peace*, p.117-118.

UNRWA protection mandate, has resulted in severe gaps in international protection for Palestinian refugees. No international agency is currently recognized by the international community as having an explicit mandate to systematically work for the realization of the basic human rights of all Palestinian refugees and search for and implement durable solutions consistent with international law as affirmed in UN General Assembly Resolution 194(III).<sup>138</sup>

Therefore, Palestinian refugees receiving support from UNRWA are excluded from the 1951 Convention. This sees the vast majority of Palestinian refugees denied legal protection.<sup>139</sup> As such Palestinian refugees are left outside the mandate of protection offered by UNHCR<sup>140</sup> and with UNCCP's protection mandate ineffectual, Palestinian refugees remain without any of the protection mechanisms or guarantees to which all other refugees in the world are entitled to. Fabos, Al Ali and el Obeid clarify this point:

Palestinians furthermore do not come under the auspices of the UN agency, the High Commission for Refugees. This is because the 1948 Arab-Israeli war leading to the mass displacement of Palestinians predates the establishment of the UNHCR, which additionally was limited geographically and to a specific time period.<sup>141</sup>

On the other hand UNHCR was to provide international protection to refugees, and to seek permanent solutions for the problem of refugees, by assisting governments and NGO's to

<sup>138</sup> Terry Rempel, (2002), "UNHCR, Palestinian Refugees, and Durable Solutions", *Badil* Brief (7), [www.badil.org/Publications/Briefs/Brief-No-07.html](http://www.badil.org/Publications/Briefs/Brief-No-07.html), (accessed on 19/1/2008).

<sup>139</sup> Susan Akram, (2000), "Reinterpreting Palestinian Refugee Rights under International Law", *Badil* Brief (1), [www.badil.org/Publications/Briefs/Brief-No-01.htm](http://www.badil.org/Publications/Briefs/Brief-No-01.htm), (accessed on 13/2/2007).

<sup>140</sup> During 2007 to 2008 UNHCR assisted Palestinian refugee resettlement programmes in Brazil and Chile, assisting the resettlement of Palestinian refugees from Iraq who were outside UNRWA's five areas of responsibility.

<sup>141</sup> Anita Fabos, Nadje Al Ali and Oroub el Obeid, "Regional Paper III: Middle East and North Africa" (*The Refugee Studies Centre*, University of Oxford, 2005), [www.rsc.ox.ac.uk/PDFs/Policy%20Approaches%20to%20Refugees%20and%20IDPs%20RSC-DFID%20Vol%20II.pdf](http://www.rsc.ox.ac.uk/PDFs/Policy%20Approaches%20to%20Refugees%20and%20IDPs%20RSC-DFID%20Vol%20II.pdf), (accessed on 12/1/2008).

facilitate the voluntary repatriation, assimilation within new national communities or return to their countries of origin, as means of fulfilling UNHCR's stated goal of enabling refugees to restart their lives and, ultimately, of ending their status as refugees altogether.

As 2.1.2. briefly touched upon UNHCR applies the universal standard to defining refugees. According to UNHCR, a refugee is someone who is:

outside his/her country of nationality or habitual residence; has well-founded fear of persecution because of his/her race, religion, nationality, membership in a particular social group or political opinion; and is unable or unwilling to avail himself/herself of the protection of that country, or to return there, for fear of persecution.<sup>142</sup>

By excluding people who have found legal protection from established States, or who have refused to do so when offered, UNHCR has managed to keep its refugee figures down, something which differs from UNRWA who confers indefinitely the status of "refugee" upon Palestinian refugees' descendants.

UNHCR outlines in detail the conditions under which the status of "refugee" no longer applies, stating that:

formal refugee status shall cease to apply to any person who has: voluntarily re-availed himself of the protection of the country of his nationality; or having lost his nationality, he has voluntarily re-acquired it; or, he has acquired a new nationality, and enjoys the protection of the country of his new nationality; or... he can no longer, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality.<sup>143</sup>

The difference between the two agencies is also extended to the services they provide. UNHCR's main role in pursuing international protection is to ensure that States are aware of,

<sup>142</sup> Convention relating to the status of refugees, Chapter I, Article 1A.

<sup>143</sup> Convention, Chapter I, Article 1C (3).

and act on, their obligations to protect refugees... and cannot be considered as a substitute for government responsibility”.

UNHCR also provides basic material assistance with the expectation that host or new countries of residence will cooperate in providing for refugee needs.<sup>144</sup>

As stated UNRWA remains the key social, medical, educational and professional service provider for Palestinians living in all of its areas of operation, however UNRWA differs from UNHCR because the agency hires from within its own client population, and has become one of the largest employers in the region, after the host governments and authorities.

Although UNHCR and UNRWA are both dependent on the policies and considerations of States with regard to the refugees in their care, both agencies operate in a highly politicized arena. What differentiates this similarity is the fact that UNHCR was essentially non-political, designed strictly to assist refugees as refugees. By contrast as section 2.2.1 of this chapter has already established, the Palestinians have had to endure manipulation from a variety of players who have all had distinct political agendas. The significance of the Palestinian refugees in political terms is suggested by Fabos, Al Ali and el Obeid:

At the regional level, the Palestinian refugee case maintains a high profile due to a political stance adopted by the League of Arab States (LAS) for their eventual return to an independent Palestinian state. Three regional wars between LAS countries and Israel have been fought in relation to the unresolved issue of a homeland for Palestinians, while internal political and military disputes have set Arab host governments against Palestinian militias and political interests (e.g. conflicts in Jordan in 1970, Egypt in 1976, and Lebanon in 1978).<sup>145</sup>

<sup>144</sup> UNHCR Basic Facts, Protecting Refugees - Questions and Answers, [www.UNHCR.ch/cgi-bin/texis/vtx/basics/opedoc.htm?tbl=BASICS&id=3b0280294](http://www.UNHCR.ch/cgi-bin/texis/vtx/basics/opedoc.htm?tbl=BASICS&id=3b0280294), (accessed on 5/4/2007).

<sup>145</sup> Anita Fabos, Naje Al Ali and Oroub el Obeid, “Regional Paper III: Middle East and North Africa”, (*The Refugee Studies Centre*, University of Oxford,

In a recent article Zabludoff articulates the idea that the Palestinian situation continues to fester without resolution because of the political motivations:

In the years after the 1948 war, the refugee issue was kept alive partly because the Arab countries felt disgraced by having lost the war they had initiated. This sense was further aggravated by a strong nationalism that persisted for decades. After all, Jordan and Egypt could have absorbed the Palestinians in the West Bank and the Gaza Strip, which they controlled as part of their own countries. Meanwhile, both Arab governments and the Arab League opposed granting citizenship to Palestinian refugees in their countries because it would undermine the use of the right of return to eliminate the Jewish state.....

Zabludoff goes on to add:

The end result was that the Palestinian refugees became political pawns. This fact was stated succinctly by the former head of UNRWA, Ralph Galloway, when he said: "The Arab States do not want to solve the refugee problem. They want to keep it as an open sore, as an affront to the UN, and as a weapon against Israel. Arab leaders do not give a damn whether Arab refugees live or die".<sup>146</sup>

Perhaps what is most significant in the difference between UNRWA and UNHCR is the fact that they were established within months of each other, and incredibly most of those who UNRWA were mandated to assist still remain in refugee camps and the application of international norms in the sense of having any substantial impact on the Israeli-Palestinian dilemma has not happened to the extent that they have in other refugee cases, where refugee solutions have been handled by UNHCR and included in international agreements in order to find suitable durable solutions for refugees.

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2005),

[www.rsc.ox.ac.uk/PDFs/Policy%20Approaches%20to%20Refugees%20and%20IDPs%20RSC-DFID%20Vol%20II.pdf](http://www.rsc.ox.ac.uk/PDFs/Policy%20Approaches%20to%20Refugees%20and%20IDPs%20RSC-DFID%20Vol%20II.pdf), (accessed on 12/1/2008).

<sup>146</sup> Sidney Zabludoff, "The Palestinian Refugee Issue: Rhetoric vs. Reality", *Jewish Political Studies Review*, p. 20:1-2, (Spring 2008).

So far in the Palestinian refugee case no UN initiatives <sup>147</sup> have led to an acceptable agreement between both parties. Since the outset of the refugee problem, subsequent UN initiatives have relied upon international norms as a basis for crafting durable solutions for Palestinian refugees, such as the 1976 initiative advanced by the Committee on the Inalienable Rights of the Palestinian People, and the 1983 Geneva Peace Conference. However, the United States vetoed the 1976 plan when it was brought before the UN Security Council and the conference ended without agreement.

From the mid-1980s onwards the United States successfully sidelined the UN from the peacemaking process, which has seen the UN playing only a marginally greater role since the onset of the second Palestinian *intifada* in September 2002, through its various organs, such as the Commission on Human Rights, General Assembly, Security Council, and as a member of the so-called four-party steering group for the Middle East peace process known as the Quartet.<sup>148</sup>

Without a mandate to seek durable solutions, coupled with the fact that the Palestinian refugees themselves have largely been absent from official negotiations, (aside from their involvement in first round negotiations in the early 1950s when the UNCCP made an effort to consult refugee communities during the early stages of negotiations, and in the early 1990s when the Palestinians were part of a joint Jordanian-Palestinian delegation), the consequence has been that no satisfactory international agreement has been found.

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<sup>147</sup> Ben Schiff, *Refugees Unto the Third Generate, UN Aid to Palestinians*, p.40.

<sup>148</sup> Ingrid Jaradat Gassner and Terry Rempel, (2004), "A Rights-Based Approach to Durable Solutions for Palestinian Refugees and Displaced", [www.badil.org/Campaign/Expert\\_Forum/Haifa/WP/WP-4\(Badil-Paper\).html](http://www.badil.org/Campaign/Expert_Forum/Haifa/WP/WP-4(Badil-Paper).html), (accessed on 27/6/2007).

As a result of this the Palestinian refugee situation will continue and without an agency or body with the authority to intervene on their behalf to represent their interests in any international forum, to protect their human rights or to negotiate their future claims, future negotiations will be dominated by the refugee issue which will stand in the way of any lasting peace being achieved.

### **3.1. Conclusion**

This chapter was necessary to place into context some of the background issues necessary for understanding the study. In doing so, part one has provided a review of the international refugee regime, examining specifically UNHCR's involvement in dealing with global refugee scenarios. Part two introduced the Palestinian refugees and attempted to shed light upon some of the factors that distinguish them from other refugees. Part three introduced UNRWA and the UNCCP as the two separate international agency's established by the UN to provide assistance and to seek durable solutions and provide assistance to the Palestinian refugees. Finally, the major differences between UNHCR and UNRWA were separated in their treatment of refugees.

As this section has highlighted the differences between UNRWA and UNHCR could not be further apart.<sup>149</sup> Nevertheless, addressing the Palestinian refugee issue, using the guidance and norms of international law and practice as the basis for the foundations for Middle East Peace could be useful in the search for ways to address Palestinian refugee claims.

Therefore, the next chapter widens the perspective to the international context by focusing specifically on UNHCR's

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<sup>149</sup> UNHCR's 2002 decision to apply the 1951 Convention to Palestinians who do not meet UNRWA's definition will receive support. For example this applies to Palestinian refugees in Iraq and Egypt.



operational role in getting refugees registered and seeking durable solutions. It seeks to find out whether international practice can provide guidelines to benefit a framework for the use of Palestinian refugee registration data. By drawing on international experience the answer to this question will be found.

### **Chapter Three**

#### **Refugee Reparations and International Practice**

### **3.1. Introduction**

Having provided a brief account of the context in which the international refugee regime developed and studied UNHCR's involvement within the regime, the main aim of this chapter is to examine international practice by studying UNCHR's operational role in the collection and management of refugee registration data.

The chapter is divided into three main sections: Section one focuses on the issue of refugee reparations and examines

restitution and compensation specifically as two forms of reparations. Relevant legal instruments are presented. In particular the “Pinheiro Principles” are discussed which represent a new universal approach for dealing with outstanding housing and property restitution claims.

Part two provides a brief historical overview of how UNHCR have collected refugee data and how it is an important aspect of the agencies overall work to find durable solutions to those represented by its mandate. UNHCR’s Registration Handbooks are also examined and the significance of new standards and processes for refugee registration are outlined. The case of Kosovo is used as an example to demonstrate how UNHCR’s adoption of new registration techniques was able to significantly impact the refugee registration process.

Part three studies how the Palestinian registration process works, to do so, UNRWA’s registration instructions is examined. These instructions are then compared with UNHCR’s Registration Handbooks in order to find out what constitutes “good practice” and whether international practice can shed light on a framework for Palestinian refugee registration procedures and data.

## **3.2. Palestinian Reparations**

### **3.2.1. Issues of Reparations**

The issue of reparations is both vast and complex and is being constantly modified and undergoing a process of change and reformulation.<sup>150</sup> Generally speaking it is a remedy set in place to address violations of international law and refers to the obligation of the

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<sup>150</sup> For more on Palestinian refugee repatriation see Michael Dumper, (ed.), *Palestinian Refugee Repatriation Global Perspectives*, (London: Routledge, 2006), p. 289-309.

wrongdoing party to redress the damage caused to the injured party, which can take a number of forms.

There is however, a common misconception as to what the word “reparation” actually means. The most common misconception is that reparation is synonymous with financial compensation.

Although compensation is a common form of reparation, it is not the only existing form and can include: restitution of lost property, compensation for damages incurred, rehabilitation, an acknowledgment of the harm done or a combination of all. For example international law states that:

Reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed.

The right to reparation is a well-established principle of international law. The most referred to case is the 1928 *Chorzów Factory* ruling which shaped the basic remedial norms for violations of international law. After World War I, the government of Poland expropriated a German owned factory standing on Polish territory where the court ruled 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.<sup>151</sup>

Importantly, *Chorzów Factory* was decided as a commercial property action in private international law. Since then its principles on compensation have been endorsed in public international law decisions as Michael Lynk notes:

Some of these endorsements include leading judgements on damages for injuries to United

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<sup>151</sup> Megan Bradley, (2005), “The Conditions of Just Return: State Responsibility and Restitution for Refugees”, *University of Oxford Refugee Studies Centre*, Working Paper Number. 21.

Nations personnel and reparations for human rights violations, as well as by a seminal United Nations study on compensation for human rights violations.<sup>152</sup>

The right to reparation is a well-established principle of international law, Palestinian refugee reparations, is an outstanding issue.<sup>153</sup> Although Palestinian refugees, who lost properties and suffered as a consequence of the various upheavals in the region during 1947 to 1949 and again during 1967, have a substantial body of UN resolutions, some of which refer specifically to restitution and compensation, establishing Palestinian entitlement to compensation and restitution as a right in international law is just one issue. The procedures that would invariably accompany the realization of this right, is however another issue, and the situation today remains unresolved with a total failure to reconstitute Palestinian property or to provide the refugees with any kind of compensation.

### **3.2.2. Issues of Restitution**

The term restitution seeks to find a remedy for individuals or groups of persons who have suffered loss or injury and attempts to re-establish the situation to as it was prior to the disaster.<sup>154</sup> In the Palestinian case for example, one of their compensation demands has included acknowledgment of Israel's role in creating the Palestinian refugee problem in the first instance, which is often referred to as "moral compensation".

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<sup>152</sup> Michael Lynk, (2001), "The Right to Compensation in International Law and the Displaced Palestinians", <http://www.arts.mcgill.ca/MEPP/prrn/papers/mlink.html>, (accessed on 14/6/2007).

<sup>153</sup> For more information on Palestinian reparations see Lena El-Malak, "Reparations for Palestinian Refugees", *Forced Migration Review*, Volume. 26, (August 2006), p.46-47.

<sup>154</sup> For more information on restoration and pre-exile conditions see, Michael Dumper, *Palestinian Refugee Repatriation Global Perspectives*, p. 136-139.

The centrality of moral compensation in this case is a fundamental aspect of the reconciliation process for the Palestinians, as Brynen states:

On the Palestinian side, linking compensation and admission of moral guilt serves to enhance the political efficacy of compensation, especially where the right of return to 1948 areas is unlikely to be realized.<sup>155</sup>

Regarding the Israeli position, Brynen adds:

Conversely, the mobilization of Israeli resources is inversely linked to the moral dimension of compensation; the more it looks like reparations, the less likely it becomes that Israel (and the Israeli public) will provide the required resources.<sup>156</sup>

The right to a remedy for human rights violations is best articulated in the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights and Serious Violations of International Humanitarian Law* which states that:

Restitution should, whenever possible, restore the victim to the original situation before the gross violations of human rights law or serious violations of international humanitarian law occurred. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship; return to one's place of residence, restoration of employment and return of property.<sup>157</sup>

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<sup>155</sup> Rex Brynen, "Financing Palestinian Refugee Compensation", paper presented at the Workshop on Compensation as Part of a Comprehensive Solution of the Palestinian Refugee Problem, *PRRN/IDRC*, (Ottawa: July 1999), [www.arts.mcgill.ca/MEPP/PRRN/papers/brynen1.html](http://www.arts.mcgill.ca/MEPP/PRRN/papers/brynen1.html), (accessed on 15/4/2007).

<sup>156</sup> Rex Brynen, "Financing Palestinian Refugee Compensation", paper presented at the Workshop on Compensation as Part of a Comprehensive Solution of the Palestinian Refugee Problem, *PRRN/IDRC*, (Ottawa: July 1999), [www.arts.mcgill.ca/MEPP/PRRN/papers/brynen1.html](http://www.arts.mcgill.ca/MEPP/PRRN/papers/brynen1.html), (accessed on 15/4/2007).

<sup>157</sup> Housing and Property Restitution for Refugees and Displaced Persons – Implementing the 'Pinheiro Principles', (March 2007), [ftp://ftp.fao.org/docrep/fao/010/a1131e/a1131e01.pdf](http://ftp.fao.org/docrep/fao/010/a1131e/a1131e01.pdf), (accessed on 19/11/2007).

Scott Leckie, director of COHRE and an advocate of housing and property describes restitution as:

Ultimately, the concept of restitution provides a source of hope and a wellspring of potential justice. Restitution offers the displaced the promise that a history of injustice, the abuse of basic rights, or terror and harassment can actually, at least in this one important respect, be reversed.<sup>158</sup>

Fundamentally, the goal of restitution is to restore victim's original conditions that existed prior to the violation through means such as return to one's place of residence and restoration of employment and return of property. Restitution is required unless it is "materially impossible" or "involves a burden out of all proportion to the benefit deriving from restitution instead of compensation".<sup>159</sup>

The emerging right to post-conflict property restitution is based on the international community's evolving understanding of several legal principles: such as the right of people displaced by conflict to return, is now understood to involve return to one's actual home of origin, necessitating restitution of the property itself.

There is increasing support under international law for the idea that a right to "post-conflict property restitution" exists. International treaties, UN resolutions, UNHCR Handbooks and international conferences and workshops, have all demonstrated the need to return refugees to their original homes as the most preferred option. While restitution remains at a fairly preliminary stage of UN implementation, it is viewed as high on

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<sup>158</sup> The Pinheiro Principles United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons, [www.cohre.org/store/attachments/Pinheiro%20Principles.pdf](http://www.cohre.org/store/attachments/Pinheiro%20Principles.pdf), (accessed on 14/12/2007).

<sup>159</sup> Dinah Shelton, (2002), "Righting Wrongs: Reparations in the Articles on State Responsibility", *American Journal of International Law*, 96 (4): p. 849.

the agenda in response to displacement, and property restitution is increasingly viewed as an indispensable element of voluntary repatriation.<sup>160</sup>

Recent restitution schemes have included high-level legal initiatives such as property restitution mechanisms, and political efforts to establish Claims Commissions, which have attempted to provide a sense of justice. Recently there has been a major effort to deal with reparation issues which has included the right of refugees and IDP's to return and to property restitution. As Leckie highlights:

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 BiH and Kosovo and South Africa. Nobody has done more to enshrine the establishment of the right to restitution of property than Jewish groups of Holocaust victims. Through phenomenal organization they have ensured 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.<sup>161</sup>

With so many examples of reparation models available for examination, chapter four will present a summary of some of the international claims tribunals which have been tailor made to settle restitution disputes. The chapter will also take an in depth study of two property compensation and restitution cases.

Without tackling restitution the perceptions of injustice will most certainly remain. Salman Abu Sitta describes what restitution means for the Palestinian refugees:

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<sup>160</sup> For more information on voluntary repatriation see, UNHCR's Handbook on Voluntary Repatriation and International Protection, [www.unhcr.org/publ/PUBL/3bfe68d32.pdf](http://www.unhcr.org/publ/PUBL/3bfe68d32.pdf), (accessed on 15/1/2008).

<sup>161</sup> Scott Leckie, "Peace in the Middle East: Getting Real on the Issue of Palestinian Refugee Property", *Forced Migration Review*, Volume. 16, (January 2003), p. 41-44.



The matter is not just a question of shelter or a place to live. Deeply rooted in the history of Palestine, Palestinians cannot be deported or forced to forget their homeland; they are firmly devoted to their villages, houses, hills and valleys in the narrowest meaning of the geography of the place. There is an Arabic proverb which says, one's parents cannot be replaced. So too is it impossible to replace one's homeland.<sup>162</sup>

However, it is recognized that it is not always possible to restore victims to their original situation. Furthermore, in the Palestinian refugee case the practical challenges of restitution would be extremely difficult and property restitution in particular would need to be addressed.

### **3.2.3. Issues of Compensation**

When restitution is not possible then another type of reparation is provided in the way of compensation. Compensation is only applicable when all possible alternatives have been explored, and it has proved impossible to restore conditions as they were previous to the violation. Compensation is understood to include any economically assessable damage resulting from the crime, such as material damages and loss of earnings and loss of earning potential. It also includes suffering and emotional distress.

The basic principle of the word compensation is to "make good", as stated in resolution 194, or in general terms, "as far as possible, to wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act has not been committed". This is the same principle, *Wiedergutmachung* (making good), under which the

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<sup>162</sup> Salman Abu-Sitta, (1998), "A Call to Establish a Palestine Land Commission", [www.plands.org/articles/8.htm](http://www.plands.org/articles/8.htm), (accessed on 4/12/2007).

German Federal government paid the victims over DM 102 billion for Nazi crimes.<sup>163</sup>

The principle that refugees are entitled to compensation for their lost property has been recognized as essential in the reconciliation process of many cases in the last decade, which among other remedies has increasingly come to be seen as necessary in achieving lasting peace. Recent international efforts to resolve refugee problems such as the case of BiH is frequently quoted as one of the best post conflict examples of where more than half of all property claims saw property and land restored to their original owners.

One of the major historical examples of compensation payments to refugees is the German restitution to the Jewish people, since 1933 for the crimes committed against the Jewish people by the Nazis.

The German-Jewish reparations agreement is an example of a successful case of reparations negotiated between the victimised group and the perpetrator of the injustice. It has demonstrated being a case where both parties developed a motivation for pursuing reparations. This motivation, although different in nature, led to a common perception of the wrongful act and thus a reparations case where opportunity was seized.<sup>164</sup>

This example of a large scale reparation programme which saw Israel and Jewish organizations acknowledging Germany's crimes, particularly demonstrates that a reparation programme as difficult and as emotional as this did find redress of some sort,

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<sup>163</sup> Salman Abu-Sitta, "Restitution and Compensation", paper presented at the Workshop on Compensation as Part of a Comprehensive Solution of the Palestinian Refugee Problem, *PRRN/IDRC*, (Ottawa: July 1999).

<sup>164</sup> Shahira Samy, "The Politics of Reparations in the Case of Palestinian Refugees: A Comparative Approach", University of Exeter, Department of Politics, Exeter, 2006, p.188.

and is instructive in studying the mechanisms and processes employed.<sup>165</sup>

As chapter one noted the Palestinian case has gained much attention and has been examined from many viewpoints, including the perspective of international law. For example, the right to restitution or compensation is frequently articulated by the Palestinians through the use of article 11 of resolution 194, which asserts that:

....compensation should be paid for the property of those choosing not to return and for loss or damage to property which, under the principles of international law or in equity, should be made good by the governments or authorities responsible.

Much deliberation has taken place in analysing the parameters of resolution 194 legally, political and on developmental grounds. For example, the resolution has been debated by some as hard facts such as Gail Boling, former senior legal researcher at Birzeit University's Institute of Law, who points out that:

UN Resolution 194, therefore, simply reaffirms international legal principles that were already binding and which required States to allow refugees to return to their places of origin, and prohibited mass expulsion of persons - particularly on discriminatory grounds.<sup>166</sup>

Other researchers such as Israeli Professor of law, Eyal Benvenisti regards resolution 194 as having no legal grounding whatsoever, stating that "neither resolution 194, nor international human rights law, not even international practice support Palestinian claims, instead this is a matter for negotiation between the respective governments".<sup>167</sup> This

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<sup>165</sup> Ibid., p.188.

<sup>166</sup> Gail Boling, (2001), "Palestinian Refugees and the Right of Return: An International Law Analysis", *Badil* Brief (8), [www.badil.org/Publications/Briefs/Brief-No-08.htm](http://www.badil.org/Publications/Briefs/Brief-No-08.htm), (accessed on 22/9/2007).

<sup>167</sup> Eyal Benvenisti, "The Right of Return in International Law: An Israeli Perspective" paper presented at the second international Stocktaking Conference on Palestinian Refugee Research, *International Development*

confirms the Israeli point of view which is that the resolution is only a recommendation and that the language of resolution 194 merely states that the refugees “should” be “permitted” to return their homes at the “earliest practicable date” and that this recommendation is made conditionally to those refugees “wishing to... live at peace with their neighbours”.

Furthermore, Israel’s position also relies on the fact that resolution 194 also included alternatives to the return of refugees to Israel such as resettlement, compensation and rehabilitation in their new countries of residence. Israel unequivocally rejects that it is responsible for creating the refugee issue and this position seems unlikely to change.

The Arab States originally rejected the resolution because they denounced the resolution’s terminology as incompatible with the idea of a “right” to repatriation. However, Palestinian leaders later came to rely on resolution 194 asserting that it is the legal embodiment of their sacred “right of return”. Moreover, the Palestinian viewpoint maintains that the responsibility for the expulsion rests with Israel who forced and expelled the refugees through bombardment and massacres. The Palestinians also see that Israel should provide compensation and allow the refugees to return, and use resolution 194 to support their inherent right to return to their land.

Regardless of the varying interpretations, there has been a lack of international pressure and UN resolutions have not materialised into anything constructive, leaving the Palestinians with a sense of marginalization, that has been further accentuated by peace agreements that have addressed issues of compensation in other groups of refugees, including refugees in Kosovo and BiH, where international legal instruments and UN Research Centre, (Ottawa: June 2003), [http://network.idrc.ca/uploads/user-S/10576079920Session\\_2\\_Eyal\\_Benvinisti\\_paper.doc](http://network.idrc.ca/uploads/user-S/10576079920Session_2_Eyal_Benvinisti_paper.doc), (accessed on 15/4/2007).

resolutions provided frameworks for the political process, peace agreements and durable solutions to take place. Kathleen Lawand highlights this fact:

The Palestinian refugee question is no more political and no less legal than the issue of repatriation of Hutu refugees to Rwanda or that of Bosnian refugees to Bosnia, to name but a few. It no less deserves the application of international law, and the level of political controversy surrounding the origins and rights of the Palestinian Diaspora is irrelevant to that point.<sup>168</sup>

In light of these different points of view many of the legal principles governing compensation may not be entirely applicable to the Palestinian refugees because claims are generally made by one State on behalf of its nationals against another State, and claims made by stateless Palestinians or those who were not nationals at the time they incurred losses would be very complex to arrange, as would the categorization of claimants.<sup>169</sup> Chapter four considers the contributions of international law and modes of redress in two case studies, BiH and Kosovo, in order to see if the Palestinian case could benefit from an evaluation of international precedents.

### **3.2.4. Legal Instruments**

Housing, land and property restitution rights for refugees and DP's are firmly grounded within the core principles of many fields of international law and other standards that have been

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<sup>168</sup> Kathleen Lawand, (1996), "The Right to Return of Palestinians in International Law," *International Journal of Refugee Law*, Volume. 8, Number. 4, p. 534.

<sup>169</sup> For further reading see Eyal Benvenisti, "Principles and Procedures for Compensating Refugees: International Legal Perspectives", paper presented at the Workshop on Compensation as Part of a Comprehensive Solution of the Palestinian Refugee Problem, *PRRN/IDRC*, (Ottawa: July 1999), [www.arts.mcgill.ca/MEPP/PRRN/benvenisti.html](http://www.arts.mcgill.ca/MEPP/PRRN/benvenisti.html), (accessed on 12/4/2007). See also Daoud Barakat, "Compensation Position Paper", paper presented at the Workshop on Compensation as Part of a Comprehensive Solution of the Palestinian Refugee Problem, *PRRN/IDRC*, (Ottawa: July 1999), [www.arts.mcgill.ca/MEPP/PRRN/barakat.html](http://www.arts.mcgill.ca/MEPP/PRRN/barakat.html), (accessed on 17/4/2007).

adopted throughout the years in recognizing the restitution rights of refugees and DP's. These standards are found within treaty provisions under international law, international and regional human rights law, international humanitarian law and international criminal law, countless UN Security Council and UN General Assembly resolutions, various peace agreements and a range of voluntary repatriation agreements concluded between UNHCR and States which have ended conflicts.

In recent decades refugees and DP's have returned freely to their countries, and have had restored to them housing and property or compensation for property that could not be restored to them. Under the 1951 Refugee Convention, those who have been obliged to leave their homeland and seek safety elsewhere are assured "the widest possible exercise" of all the other fundamental rights affirmed in the UN Charter and 1948 Universal Declaration of Human Rights. This includes the right of return and the right to their property.

Such recognition of the direct links between housing, land and property restitution with peace, stability, reconciliation and economic development are now widely viewed as key elements of any constructive peace-building strategy, although every year millions of people are forced to flee their homes for different reasons and are often unable to return because restitution rights do not exist or are not enforced.

Although private ownership is enshrined in Article 17 of the *Universal Declaration of Human Rights* which states that: (1) Everyone has the right to own property alone as well as in association with others and (2) No one shall be arbitrarily deprived of his property, defining and proving ownership or right of use is extremely complicated especially for countries in the midst of violence and insecurity. For example countries such as Iraq and Afghanistan where the nature of property ownership

and other rights relating to land and housing may be arbitrary, and where institutions are currently too weak to define the boundaries of property, or provide definitive proof of ownership or rights holding, only serves to compound the situation for those affected even further.

In June 2004 however, a major development occurred in the area of restitution and compensation, when the Special Rapporteur to the UN Commission on Human Rights on housing and property restitution, Paulo Sergio Pinheiro presented the "*Draft Principles on Housing and Property Restitution for Refugees and Displaced Persons*" which came to be more commonly referred to as the "Pinheiro Principles" - the first international standard exclusively addressing property restitution rights.

The Pinheiro Principles thus, represent one of the clearest and most important documents on housing and property restitution, designed to provide guidance on how best to address the difficulties in the legal and technical issues involved. Principle two for example states that:

2.1 All refugees and displaced persons have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land and/ or property that is factually impossible to restore as determined by an independent, impartial tribunal.

2.2 States shall demonstrably prioritize the right to restitution as the preferred remedy for displacement and as a key element of restorative justice. The right to restitution exists as a distinct right, and is prejudiced neither by the actual return nor non-return of refugees and displaced persons entitled to housing, land and property restitution.<sup>170</sup>

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<sup>170</sup> Principle 2, The Pinheiro Principles United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons, p.9, [www.cohre.org/store/attachments/Pinheiro%20Principles.pdf](http://www.cohre.org/store/attachments/Pinheiro%20Principles.pdf), (accessed on (14/12/2007)).

The Pinheiro Principles provides practical guidance to States and UN agency's working in the field on how best to address the complex legal and technical issues surrounding housing, land and property restitution. For the first time, the Pinheiro Principles provide a uniquely universal approach for effectively dealing with outstanding housing and property restitution claims which may help to clarify the way restitution and compensation issues may be remedied.<sup>171</sup>

However, the Pinheiro Principles are not international norms and are unfortunately not widely accepted. They are only affirmed rhetorically by most international humanitarian actors. For the Pinheiro Principles to be of any practical value, their implementation needs to take place via restitution practitioners, at both local and national levels, and at operational and at normative levels, in order to secure restitution rights for outstanding cases such as the Palestinian refugee case.

There remains much work to be done with respect to dissemination, publicity and the implementation of these principles in post conflict restitution programmes so that the promise of these standards can actually be realized.

The purpose of the previous section was to widen the perspective by looking at the international context in examining some of the issues of reparations and the legal instruments involved in remedying displacement and refugeedom. Relevant legal instruments were presented, and in particular the Pinheiro Principles universal approach for dealing with outstanding housing and property restitution claims was highlighted to

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<sup>171</sup> For more information on restitution rights see, Scott Leckie, (ed.), *Returning Home: Housing and Property Restitution Rights of Refugees and Displaced Persons*, (New York: Transnational Publishers, 2003). See also Scott Leckie, (2000), "Housing and Property Issues for Refugees and Internally Displaced Persons in the Context of Return: Key Considerations for UNHCR Policy and Practice", *Refugee Survey Quarterly* 19, p. 5-63.



demonstrate how current international thinking and practice in addressing the issue of property restitution.

In order to broaden the international perspective further, the next section focuses on UNHCR's operational role by looking at the agency's registration and data management practices. The purpose of the section is to get an understanding of how international practice deals with displacement and specifically how UNHCR uses refugee data to seek durable solutions.

### **3.3. Looking at International Practice**

#### **3.3.1. Historical Overview of UNHCR's Data Collection Methods**

For UNHCR refugee data collection is an important aspect of its overall work in seeking durable solutions. Understanding the size, changes within the refugee population and population characteristics within any given populace, has an effect on UNHCR's overall activities, and as such, data needs to be both accurate and reliable. Although UNHCR have systematically collected refugee data since its creation in 1950, little attention was given to the compilation, analysis and dissemination of the data. As Bela Hovy points out:

Prior to 1993 UNHCR used refugee data for the purpose of reporting to their donors and by making available information to the public. Although UNCHR have been reporting on refugee data over the years, data was not compiled systematically or published mainly because refugee statistics were deemed to be politically sensitive and until the early 1990s, UNHCR stayed away from dealing too much with refugee statistics. While data had to be presented to UNHCR's ExCom on an annual basis, the figures did not conform to a standard format.<sup>172</sup>

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<sup>172</sup> Bela Hovy, (2000), "Fifty Years of Data Collection: The UNHCR Experience", [www.portal-stat.admin.ch/iaos2000/hovy\\_final\\_paper.doc](http://www.portal-stat.admin.ch/iaos2000/hovy_final_paper.doc), (accessed on 17/9/2007).

Hovy goes on to add that:

Since the data at the agency's disposal was so poor, UNHCR was at risk of losing control of its programmes and losing credibility in the eyes of donors by embarking on costly re-enumerations with little consideration of consistency and continuity or lessons learned from data management in other countries. Also at headquarters, several different UNHCR units were producing their own data sets and enumeration systems were being reinvented constantly.<sup>173</sup>

In 1985 UNHCR's evaluation unit undertook a detailed review of its statistical functions, which demonstrated the extent of the problem disclosing that: that the organization was in some situations "totally dependent on host governments for the numbers on which assistance programmes are based". Second, its efforts lacked consistency and continuity.<sup>174</sup>

At headquarters, several different UNHCR units were producing their own statistics, but without making any real attempt to coordinate their activities. In the field, enumeration systems were being "reinvented again and again by different staff of different levels of competence". "In a few countries," the report observed, "there is no way whatever to be certain about *any* figure." Finally, the report concluded, there was a general lack of seriousness in the way that statistics were handled.<sup>175</sup>

Since then, UNHCR has regularly issued data on asylum-seekers, refugees and others of concern to the Office. With the rise in asylum migration during the 1980s and 1990s UNCHR had to improve its statistics and by 1993 UNCHR created a central statistical initiative in order to deal with all aspects of its

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<sup>173</sup> Ibid.,

<sup>174</sup> UNHCR web site, [www.unhcr.org/cgi-bin/texis/vtx/home](http://www.unhcr.org/cgi-bin/texis/vtx/home), (accessed on 5/12/2007).

<sup>175</sup> Peter Romanovsky and Rob Stephenson, "A review of refugee enumeration: proposals for the development of a unified system", UNHCR, Geneva, September 1995.

statistics. Additionally, UNHCR have undertaken a number of other initiatives such as:

Professionalize their data by employing statisticians and by developing a Statistical Yearbook which provides comprehensive annual statistics.<sup>176</sup> Furthermore, UNHCR also provides a statistical on-line population database, which brings together in a single electronic platform, standardized data at country, regional, and global levels.<sup>177</sup>

Other useful publications, which cover statistics related to aspects of UNHCR's work, can be found in UNHCR's occasional paper series, titled "*New Issues in Refugee Research*". UNHCR's flagship publication, titled "*The State of the World's Refugees*" also draws upon research and policy analysis activities undertaken within and outside the agency, and provides statistics including figures on Palestinian refugees. UNHCR also makes available its *Refworld* CD Roms which provides country data, background papers and legal information.

### **3.3.2. Gathering Refugee Data**

It is not only UNHCR that has been slow in producing and publicizing research on refugee data. In general, it can be said that there has been limited research carried out on the various aspects of refugee data. Themes such as repatriation and rehabilitation within refugee studies appear to have over looked the potential of refugee data. The lack of research, especially in terms of the sources from which refugee data is gathered, has added to the gap produced on refugee data. As Crisp highlights:

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<sup>176</sup> For further information see, UNHCR's Statistical Yearbook 2006, [www.unhcr.org/statistics/STATISTICS/478cda572.html](http://www.unhcr.org/statistics/STATISTICS/478cda572.html), (accessed on 17/3/2007).

<sup>177</sup> Data up to 31 December 2006 can be downloaded from the Statistical Online Population Database, [www.unhcr.org/statistics/45c063a82.html](http://www.unhcr.org/statistics/45c063a82.html), (accessed on 2/4/2008).

While all of the standard works on refugees are replete with numbers, few even begin to question the source or accuracy of those statistics. Scholars have generally been content to rely on figures offered by the two leading producers of refugee statistics, UNHCR and the United States Committee for Refugees (USCR).<sup>178</sup>

In addition to the gap produced on refugee data, there are difficulties in compiling and collating refugee data, this lies in the fact that data accuracy quickly changes and updating information can be time consuming and very costly. Moreover, the process of carrying out periodic registrations to assist with data accuracy is also logistically complex.

There are however, studies that have taken place during the 1990s that have considered refugee data, the benefits associated with the collection of data and the problems associated with numeration. They include: Hovy;<sup>179</sup> Bakewell;<sup>180</sup> Telford;<sup>181</sup> Crisp;<sup>182</sup> Harrell-Bond,<sup>183</sup> and Bilsborrow.<sup>184</sup> To the best of the researchers knowledge, aside from UNHCR's on line data and the various papers mentioned above, no substantive paper or

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<sup>178</sup> Jeff Crisp, (1999), "Who Has Counted all the Refugees", *UNHCR New Issues in Refugee Research*, Working Paper Number. 12, (Geneva: UNHCR's Policy Research Unit), [www.reliefweb.int/rw/lib.nsf/db900sid/LGEL-5RRDWP/\\$file/hcr-count-jun99.pdf?openelement](http://www.reliefweb.int/rw/lib.nsf/db900sid/LGEL-5RRDWP/$file/hcr-count-jun99.pdf?openelement), (accessed on 2/6/2007).

<sup>179</sup> Bela Hovy, (2000), "Fifty Years of Data Collection: The UNHCR Experience", [www.portal-stat.admin.ch/iaos2000/hovy\\_final\\_paper.doc](http://www.portal-stat.admin.ch/iaos2000/hovy_final_paper.doc), (accessed on 17/9/2007).

<sup>180</sup> Oliver Bakewell, (1999), "Can We Ever Rely on Refugee Statistics?", [www.radstats.org.uk/no072/article1.htm](http://www.radstats.org.uk/no072/article1.htm), (accessed on 17/9/2007).

<sup>181</sup> John Telford, (1997), "Counting and Identification of Beneficiary Populations in Emergency Operations: Registration and its Alternatives", (Relief and Rehabilitation Network, Overseas Development Institute, London), [www.forcedmigration.org/sphere/pdf/common/rrn-odi/counting-identification.pdf](http://www.forcedmigration.org/sphere/pdf/common/rrn-odi/counting-identification.pdf), (accessed on 13/6/2007).

<sup>182</sup> Jeff Crisp, (1999), "Who Has Counted All the Refugees", *UNHCR New Issues in Refugee Research*, Working Paper Number. 12, (Geneva: UNHCR's Policy Research Unit), [www.reliefweb.int/rw/lib.nsf/db900sid/LGEL-5RRDWP/\\$file/hcr-count-jun99.pdf?openelement](http://www.reliefweb.int/rw/lib.nsf/db900sid/LGEL-5RRDWP/$file/hcr-count-jun99.pdf?openelement), (accessed on 2/6/2007).

<sup>183</sup> Barbara, E. Harrell-Bond, Eftihia Voutira and Mark Leopold, (1992), "Counting the Refugees: Gifts, Givers, Patrons and Clients", *Journal of Refugee Studies*, Volume. 5 (3/4), p. 205-225.

<sup>184</sup> Richard Bilsborrow et al, (1997), "International Migration Statistics: Guidelines for Improving Data Collection Systems", (International Labour Office, Geneva).

article has recently been produced researching issues concerned with refugee data and its various related components.

Although refugee data and statistics have not been featured as prominently as other areas of refugee studies, the researcher considers that it is an important area of research in line with UNHCR's thinking, which is based on the established criteria of the relevance and necessity of the data. For example, the data captured in the registration process makes it possible for the agency to plan, adapt and modify programmes which would otherwise overwhelm agency capacities, resulting in increased vulnerability to the population of concern.

Before discussing the operational parameters of collecting refugee data, it is worth looking at why refugee data is important. Put simply, in the current refugee regime, statistics matter as they are a fundamental determinant of the allocation of resources. In any refugee crisis, estimating the number of people involved is one of the first steps in determining the nature and size of any external intervention. Not only are UNHCR concerned with the allocation of humanitarian aid but the size of the refugee crisis will also determine the level of political and possibly military resources applied to cope with the situation. For example the huge numbers of refugees flowing from Kosovo were a very important factor cited to justify NATO's intervention.<sup>185</sup>

Ultimately, all global catastrophes will always be measured against the number of refugees and IDP's produced and at some stage they will all require counting. Today the demand for accurate refugee data has increased, and it has become evident to governments and agencies involved in emergencies that

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<sup>185</sup> Oliver Bakewell, (1999), "Can We Ever Rely On Refugee Statistics?", [www.radstats.org.uk/no072/article1.htm](http://www.radstats.org.uk/no072/article1.htm), (accessed on 17/9/2007).

accurate refugee figures are essential for planning and for preventative solutions.

The starting point for any emergency relief programme is to determine the number of refugees involved. Other essential questions that must be answered include the following:

- What proportion of the population has remained within the borders of their own country?
- How many have sought asylum elsewhere, and to which destinations have they gone?
- Who are actual refugees? <sup>186</sup>

When the resolution of refugee problems is addressed, figures collected will continue to feature prominently in order to help reduce the impact of refugee losses, and to build documentary evidence for use in the event of return and restitution.

Fundamentally, UNHCR collects as much data as possible through its registration process in anticipation that the information it captures will provide its beneficiaries with legal identification and a document of their existence. Additionally, UNHCR need data so that assistance to vulnerable persons such as those with special needs, women and unaccompanied children may be provided in a timely and appropriate manner. By collecting data refugee rights and responsibilities are recognized, so that the international community is aware of the

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<sup>186</sup> In the context of a mass influx, individual refugee status determination is usually not practicable, while the need to provide protection and assistance is often extremely urgent. In such situations, many States as well as UNHCR have applied group-based recognition of refugee status on a *prima facie* basis. This means that each individual member of a particular group is presumed to qualify for refugee status. This presumption is based on objective information on the circumstances causing their flight. See UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status*, (Geneva, 1979, re-edited 1992).

refugees needs and that appropriate funds may be made available so that eventually, UNHCR and other agency's can prepare and assist the refugees.

UNHCR also seeks such information to enable the agency to seek one of the three durable solutions. Once collected, the information will be used to work out questions such as: how many refugees can be repatriated to their country of origin, how many refugees can be accepted for resettlement in third countries, and finally how many refugees can be integrated in their country of asylum. Without having access to refugee figures it becomes impossible to address any of these questions or to adequately deal with the refugee population.

Furthermore, refugee data is fundamental for donor States who need to justify their resources and prove accountability, host governments who often hold the burden in assisting incoming refugees and are particularly susceptible and under prepared in planning and providing security and the media who need statistics to provide their audience with information about refugee movements, and asylum flows taking place throughout the world. However, the precise nature of the data required by these different actors evidently varies.

### **Defining Refugees**

Although data on refugees and IDP's are essential to the very basic functions of the international refugee regime, the reality often supersedes the practical levels of obtaining such data, which is unfortunately but unavoidably difficult, especially for UNHCR who are often poorly equipped and inadequately resourced. So why is it so difficult for UNHCR to produce accurate and consistent figures? In part this can be answered by operational problems.

Operationally, even in conventional refugee situations, figures about the same refugee population can be problematic and this largely depends on who is collecting the data and how it is calculated. UNHCR and governments often have conflicting figures about the same population. Definitional problems also cause difficulties when attempting to define the term “refugee”, with politicians, academics and international aid agency’s all offering different interpretations.

For example the USCR includes the Palestinians in its global refugee statistics whilst UNHCR does not. The media in particular mismanage the word often applying it to those who have been forced to leave their place of residence, whether or not they have actually crossed an international border.<sup>187</sup>

Bakewell makes the point that:

Although counting refugees may be a standard task in any refugee crisis, there is still plenty of scope for debate about who should be included within the definition and who is included within any particular statistic.<sup>188</sup>

Several regional treaties included language that broadened the 1951 Refugee Convention’s definition of a refugee. For example in Africa the Organization of African Unity (OAU) Convention governing the specific aspects of refugee problems in Africa, adopted in 1969, Article 1(2), which repeats the definition found in the 1951 Convention, but extends it to any persons compelled

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<sup>187</sup> The difference between refugees and IDP’s according to UNHCR is as follows: A person becomes a refugee only when he/she crosses an international border. In contrast, an internally displaced person remains inside the boundaries of his/her own country. Thus, the difference between refugees and IDP’s is technical and legal, and has little to do with their reasons for flight. Both categories of persons are often affected by the same causes of displacement. They often have identical protection and material needs that deserve the equal attention of the international community. Most humanitarian agencies have the operational flexibility to address the needs of both refugees and IDP’s. UNHCR, whose statutory mandate is to protect refugees, has been authorized, on an ad hoc basis by the UN to act on behalf of IDP’s.

<sup>188</sup> Oliver Bakewell, (1999), “Can We Ever Rely On Refugee Statistics?”, [www.radstats.org.uk/no072/article1.htm](http://www.radstats.org.uk/no072/article1.htm), (accessed on 17/9/2007).



to leave their country “owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality”. That means that persons fleeing violence and war are entitled to claim the status of refugee in States that are parties to this Convention, whether or not they have a well-founded fear of persecution. A parallel regional definition was made for Latin America in the Cartagena Declaration of 1984.<sup>189</sup>

As noted in chapter two it is not only the Palestinian refugee definition that causes difficulties, this section has also highlighted that the refugee definition as a whole is often approached from different perspectives, making the term very much open to interpretation.

### **3.3.3. The Operational Parameters of Refugee Registration**

The previous section looked briefly at why refugee data is important, by examining some of the problems associated with the collection of refugee data and by looking at the way the term “refugee” is understood today. The next section will look at UNHCR’s operational role which will focus on how the agency registers its refugees.

As the previous section covered UNHCR requires detailed refugee data in order to identify and enumerate refugees and IDP’s to ensure that every person receives adequate assistance for the purpose of sustaining life and dignity. Data such as age, gender and ethnicity information is all vital. Additional data such as place of origin, educational background, skills and occupational status is required if the population are to be repatriated or reintegrated.

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<sup>189</sup> For more information on the Cartagena Declaration on Refugees see, [www.unhcr.org/cgi-bin/texis/vtx/research/opendoc.htm?tbl=RSDLEGAL&id=3ae6b36ec](http://www.unhcr.org/cgi-bin/texis/vtx/research/opendoc.htm?tbl=RSDLEGAL&id=3ae6b36ec), (accessed on 14/1/2008).

Getting refugees registered and collecting as much data about them as early as possible has become a pre-requisite for UNHCR where registration is first and foremost, a key protection tool.<sup>190</sup>

The information ascertained from the registration also makes possible legal and physical protection to those under UNHCR's mandate and provides information crucial to finding appropriate durable solutions for their predicament. The reality on the ground is however far more complex, and often minimum standards are hard to adhere to under the pressure and pace of modern refugee scenarios.

Whether it is the beneficiary community, the host government or the international agency's that carries out the process, figures and related data is required. Crisp and Harrell-Bond, describe the necessity of the process:

Since the time international humanitarian agencies became involved in assisting refugees in developing countries, this seemingly entirely reasonable requirement - the need to count the refugees - has, to a significant extent, dominated policy, planning, implementation and evaluation....<sup>191</sup>

Registration is however more than the simple quantification of people as John Telford observes:

Without registration and the legal identification that it provides refugees have no rights and families cannot be reunified. Without registered names refugees can lose their rights to the protection, entitlement, eligibility recognition of refugee status,

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<sup>190</sup> When governments are unable or unwilling to protect their citizens, people seek the protection of other countries. UNHCR has the responsibility to work with countries in protecting these uprooted people and finding them permanent solutions. Using the 1951 Geneva Refugee Convention as its major tool, UNHCR's core mandate is to ensure the international protection of uprooted people worldwide.

<sup>191</sup> Barbara Harrell-Bond, Eftihia Voutira and Mark Leopold, (1992) "Counting the Refugees: Gifts, Givers, Patrons and Clients", *Journal of Refugee Studies*, Volume. 5 (3/4), p. 205-225. Similar arguments can be found in John Telford, (1997), "Counting and Identification of Beneficiary Populations in Emergency Operations: Registration and its Alternatives", [www.forcedmigration.org/sphere/pdf/common/rrn-odi/counting-identification.pdf](http://www.forcedmigration.org/sphere/pdf/common/rrn-odi/counting-identification.pdf), (accessed on 13/6/2007).

and become completely dispossessed, therefore a document of their existence is essential.<sup>192</sup>

A recent UNHCR press release in March 2008 demonstrates UNHCR's interest in making sure that all individuals are correctly identified for the purpose of protecting refugees and finding long-term solutions:

The purpose is to collect and verify information about all the refugees and their families...Having an updated and accurate database of all refugees will help the Zambian government, UNHCR and support agency's to better offer legal protection and to plan for assistance measures...UNHCR is interested in making sure that all the refugees are documented. Registration is a protection tool as there is a link between accurate registration and durable solutions.<sup>193</sup>

Registration is however a fairly loaded word with many different meanings. From an operational point of view, it can be described as a record system whereby the entry of personal information is collected in a formal record which identifies beneficiaries. It is also a document that certifies an act of enrolling at a registration point. UNHCR understand registration to mean:

Refugee registration is the recording, verifying, and updating of information on persons of concern to UNHCR, with the aim to protect and document them and to implement durable solutions.<sup>194</sup>

This method refers to the continuous and compulsory recording of vital events such as births and deaths which are necessary components of the registration system. UNHCR adds three

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<sup>192</sup> Ibid.,

<sup>193</sup> UNHCR Press Release, (2008), "The registration of refugees in Zambia passes another milestone", [www.unhcr.org/cgi-bin/texis/vtx/news/opendoc.htm?tbl=NEWS&id=47d158514](http://www.unhcr.org/cgi-bin/texis/vtx/news/opendoc.htm?tbl=NEWS&id=47d158514), (accessed on 16/3/2008).

<sup>194</sup> UNHCR Handbook for Registration, September 2003.

further points which the agency deems to be important to the registration process:

Firstly, being registered is to your advantage. When everyone in the camp is registered, only those with cards will be entitled to assistance. Newly arriving refugees will have to undergo a screening process prior to being registered. Secondly, registration does not mean that you will be forced to repatriate nor that you will become a permanent resident of the country of asylum. Thirdly, registration will enable those helping you to do so better, thereby improving your living conditions and possibilities of finding a more permanent solution to your situation.<sup>195</sup>

For UNHCR and ICRC the level of detailed data required from the registration process is normally much greater than the level required by other agencies. This is primarily because both agencies have protection mandates which require them to know in detail about the composition of a particular community. Agency's must also follow through by monitoring new arrivals, births, deaths and departures which ultimately determines the overall quality of the data required to assist programmes to plan ahead and prioritise.

UNHCR does not however collect data about refugees with a view to having that information presented as part of legal proceedings regarding compensation for example and is not something UNHCR has been involved in.<sup>196</sup> UNHCR does advocate that operations attempt (time and resources permitting) to collect from refugees information about any property (moveable or otherwise) which they left behind, its

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<sup>195</sup> Ibid.,

<sup>196</sup> IOM for example collect evidence for legal proceedings such as for establishing claims or as a resource for truth and reconciliation type commissions. The UNDP and NGO's were also involved in the registration for resettlement support and compensation took place in 1990 under the *Taif Peace Agreement* in order to address the large number of long term IDP's in Lebanon. The Government created a Ministry of the Displaced and registration, monitoring and disbursement procedures were set up. People who registered were paid compensation: owners of damaged property for repairs, and squatters to evacuate the houses that had been abandoned by displacing families.

condition (rented, owned, occupied, appropriated, damaged, destroyed, etc) and the likelihood of returning to it or recuperating it upon return to their country of origin.

With regard to the registration of refugees, Principle 15 of the Pinheiro Principles suggests that:

States and other responsible authorities or institutions conducting the registration of refugees or displaced persons should endeavour to collect information relevant to facilitating the restitution process, for example by including in the registration form questions regarding the location and status of the individual refugees' or displaced person's former home, land, property or place of habitual residence. Such information should be sought whenever information is gathered from refugees and displaced persons, including at the time of flight.<sup>197</sup>

In light of these new standards UNHCR operations does, permitting time and resources endeavour to gather systematic data in order to deliver durable solutions to the beneficiaries in its care. To achieve this UNHCR uses standard data sets in its immediate emergency response. The standard data sets for registration can be broken down into three levels:

**Level 1 data** deals with registration at the household level mainly as an immediate emergency response to an influx. The data focuses on the minimum information needed to provide for the immediate assistance to the refugee population such as household size, age/sex, location, country of origin and those with special needs;

**Level 2 data** deals with all of level 1 data and includes additional data such as marital status, citizenship, education level, occupation/skills, religion and ethnic origin. This level of information collects sufficient information for the planning of a

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<sup>197</sup> Principle 15.6, The Pinheiro Principles United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons, [www.cohre.org/store/attachments/Pinheiro%20Principles.pdf](http://www.cohre.org/store/attachments/Pinheiro%20Principles.pdf), (accessed on 14/12/2007).

possible voluntary repatriation. It also provides an opportunity to collect individual photographs of the refugees which can be used for individual identification;

**Level 3 data** includes level 1 and 2 and includes additional information such as information on refugees' property: type (housing or land), location, status, condition and related documents. Other information includes voluntary repatriation status, resettlement and local settlement status. This level allows for protection planning and monitoring, for targeting of assistance and services, for performing individual status determination and for identifying and delivering durable solution.<sup>198</sup>

As well as the fundamental requirement of obtaining refugee data there are problems associated with the registration process as Richard Bilsborrow describes:

Registration must be carried out rapidly and under tight control to avoid an artificial inflation of refugee figures because of the inclusion of persons who are not refugees. Since registration is usually accompanied by the issue of ration cards, the cards themselves may remain in circulation long after the refugees have departed and may provide a weak basis for the derivation of statistics.

Bilsborrow goes on to add:

To ensure that such problems are kept to a minimum, the registration of beneficiaries must be subject to periodic checks and verification and, in some instances; registration must be repeated as necessary.<sup>199</sup>

From the researcher's own experience in Kosovo during the late nineties there were noticeable problems associated with ration

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<sup>198</sup> See Annex 8: Standard Data Set for Registration, UNHCR Handbook for Registration, September 2003.

<sup>199</sup> Richard Bilsborrow, et al, (1997), *International Migration Statistics: Guidelines for Improving Data Collection Systems*, (Geneva: International Labour Office).

cards which became easily forged and there were significant problems with refugee figures. For example, agency “planning figures” were often at odds with World Food Programme (WFP) figures, and when food deliveries were distributed often only a percentage of the agreed planning figure would arrive. This in turn led communities to inflate beneficiary figures because food deliveries were always running short.

UNHCR also recognizes some of the problems associated with the registration process. These include obtaining accurate and consistent refugee figures, which must meet certain criteria such as proven validity, transparency and accountability. There must also be a data trail in which to allow replication from the primary data collection and adjustment for bias (for example, changes in the population).

Incorrect registration and refugees who cheat the system are additional problems which UNHCR deals with in all refugee situations. For example, UNHCR notes that incorrect registration can occur from many different sources: Refugees registering more than once in the camp and registering in different camps; inflating their family size; registration by local non-eligible people; corruption amongst registration staff; creating phantom families; sale of beneficiary documents and assisting local people or refugees to register more than once or inflating their family size for pecuniary advantage.<sup>200</sup> Whilst it is not possible to prevent incorrect registration, UNHCR lists several precautions that should be implemented in order to minimise the problem:

- Careful staff selection for the registration exercise; ensuring that the registration plan considers placement of staff within the

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<sup>200</sup> PART 5: Assistance with Planning and Implementation, UNHCR Handbook for Registration, September 2003.

enclosure, the possibility of swapping staff around during the exercise so they are not always working with the same person(s);

- Intensive monitoring of the exercise and frequent spot checks on staff and beneficiaries during the handout of fixing tokens and registration cards;

- Refugee involvement in the exercise, and a good information campaign, to build confidence between aid workers and the refugee community in the exercise;

- The possibility of, and opportunities for, incorrect registration should be considered when planning the exercise. Careful planning, monitoring and evaluation are vital.<sup>201</sup>

Additionally, UNHCR tries to provide adequate, professional resources to be made available during the registration process because population counting and identification needs to be carried out as a continual process. As already stated UNHCR uses a follow through procedure to enable refugee enumeration to become more accurate.

To do this, UNHCR requires a sustained response and full access to the population concerned. Additionally, such a task requires the use of information technology (IT) computerization kits to collate the data. The methods chosen to collect data, which is planned at the beginning of a refugee emergency, is fundamental in order to allow the verification and cross referencing process to take place. The choice of the unit of enumeration is also important, which allows for those with special requirements.

Aware of the need to improve its practices UNHCR has initiated two steps: one was to establish a comprehensive information and verification system with the aim of reducing the margin of error

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<sup>201</sup> Ibid.,



that may take place at the beginning of the registration process. This has been effectively achieved through the use of modern computerized systems which UNHCR have developed. Secondly, UNHCR have developed practical guides which have systematically pooled the agencies experience, to offer a set of approaches and tools which can be applied to varying refugee registration scenarios.

### **3.3.4. Alternatives to Registration**

Although accurate identification of beneficiary populations is an important and necessary ongoing activity, there are alternative methods which are less costly and are possibly less troublesome and less controversial to achieve accurate data. As Telford points out there are number of alternatives for counting and estimating populations in existence to improve accuracy, or reduce margins of error. As such the results of several counting methods must be continually compared.<sup>202</sup> Alternative methods however are generally used as complements to each other and the cross-referencing of sources of information, is used to refine figures. There are a range of different counting methods such as: beneficiary, official, and local community estimates. Existing secondary sources are also invaluable sources of data. For example census data on the community prior to the emergency can yield important data. Additionally, data such as community health, water, food and non food item data can all be used to estimate the overall size of the population to be assisted. As Telford points out such data is extremely valuable:

Experience has shown that in the early stages of an emergency, before vested interests can become consolidated, such estimates can be quite accurate. Moreover, they can be an important source of

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<sup>202</sup> John Telford, (1997), "Counting and Identification of Beneficiary Populations in Emergency Operations: Registration and its Alternatives", [www.forcedmigration.org/sphere/pdf/common/rrn-odi/counting-identification.pdf](http://www.forcedmigration.org/sphere/pdf/common/rrn-odi/counting-identification.pdf), (accessed on 13/6/2007).

alternative or complementary data used to compare results thrown up by other methods.<sup>203</sup>

Other methods include, flow monitoring which is a method based on monitoring and quantification of populations moving into or away from certain locations. By establishing teams of quantifiers at key points of entry or exit to the emergency settlements (border crossing points, major road junctions, ports, etc.) an estimate of population flows per defined time-period can be established.<sup>204</sup>

Existing government estimates at border points, if available, may also be particularly useful. If established from the very beginning of an operation, simultaneous with, or before the first arrivals, flow monitoring may even give an estimate of the total population in an emergency settlement. Though it was a very approximate tool, in combination with other methods such as household surveys, sectoral and geographic data collection, a level of quantification was achieved that allowed for the successful planning and implementation of a huge winter shelter programme.<sup>205</sup>

Other general sources include the authorities (especially those in charge of migration), the media, again especially the local media, and local religious or civic bodies. While few methods can claim to be entirely rigorous and each is prone to very different sets of problems and degrees of inaccuracies and margins of errors, combined they can help in testing assumptions.

Having covered some of the alternative methods to the registration of refugees the next section will look at the developments that have taken place to improve UNHCR's data collection procedures. Firstly, UNHCR's Registration Handbooks

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<sup>203</sup> Ibid.,

<sup>204</sup> Ibid.,

<sup>205</sup> Ibid.,

will be analysed and secondly, UNHCR's use of computerized systems will be examined.

### **3.3.5. UNHCR Handbooks for Registration**

Over the years UNHCR have taken a variety of different steps to enhance their capacity in the area of refugee registration. In 1994 for example, UNHCR published a package of guidelines and registration tools in its Handbook, titled "*Handbook for Registration - a Practical Guide for Field Staff*", also known as the "*Registration Guide*" (RG).<sup>206</sup> The RG provided the first of its kind field experience and expertise pooled together into one useful document. The process set out a coherent and standardized strategy for teams to follow and enabled the registration record to be used to determine the planning and implementation of voluntary repatriation or resettlement programmes.

As well as pooling much of the experience gained by UNHCR in the registration of its beneficiaries, the guidelines (which are periodically updated and refined) provide field staff and operational partners with a variety of different registration tools and approaches which can be adapted to the situation at hand.

These measures have been taken in parallel with a number of other measures such as the establishment of an expanded registration training programme for the WFP, NGO's and government staff; the stockpiling of registration kits; including registration cards and forms; wristbands and computer software; and copies of the registration guidelines. Regional registration officer positions were also created for the purpose of providing UNHCR offices with technical expertise and coordination.

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<sup>206</sup> UNHCR Registration Guidelines: A Practical Guide for Field Staff, 1994, [www.reliefweb.int/rw/lib.nsf/db900sid/LGEL-5N2DKF/\\$file/hcr-register.pdf?openelement](http://www.reliefweb.int/rw/lib.nsf/db900sid/LGEL-5N2DKF/$file/hcr-register.pdf?openelement), (accessed on 21/6/2007).

UNHCR also established a roster of staff with proven skills and experience in the area of registration.

Although registration operations do not fit text book models the purpose of the RG was to be used simultaneously with advances in technology, such as the facilities offered through computerized data, which will be described in the next section. Although the UNCHR Handbooks offer a set of general principles and rules the guidelines were not written as a set of rules or procedures to follow, but offered ideas and techniques which could be consulted as a type of “toolbox” for field workers and their teams to follow, during the onset of a large scale registration situation. Teams working on the ground have the discretion to use the guidelines as they choose. As such the information can be adapted and applied to varying situations requiring information on refugee populations.

Prior to the development of the RG, UNHCR did not provide any rules or set out any procedures for the registration of refugees, and only produced techniques and a framework for making decisions about the best way to register refugees. Moreover, there had been no systematic way to pool together the wealth of expertise into a standardized set of guidelines.

The pressures for collecting reliable refugee data eventually led UNHCR to publish another guide in 2003 – UNHCR’s Handbook for Registration, titled *“Procedures and Standards for Registration, Population Data Management and Documentation”*. The purpose of this manual was to define new standards and processes for registration and as a practical manual and reference tool for UNHCR staff and operational partners. Although similar to the RG in that the Handbook reviews the practical aspect of refugee registration, the Handbook takes the evolution of registration a step further by introducing “good

practice” guidelines for registration, population data management and documentation.

For example the Handbook offers a core methodology applicable in most of the situations in which UNHCR assists refugees and other persons of concern. In place of large scale head-counts for enumeration purposes, it describes how to achieve a continuous process in which the individual record of a manageable number of people is updated and improved on a regular basis. In places where different approaches to registration are adopted for camp and urban situations, it describes a common set of standards and data which varies only in its level of detail from one scenario to another.<sup>207</sup> Furthermore, in place of static population information, the Handbook describes how to achieve a living profile of the population that remains an effective tool for protection and in the search for durable solutions.

Therefore this Handbook offers a more detailed and comprehensive set of standardised information on how to set up registration activities, what type of data should be sought and how to manage and protect data once gathered. The Handbook is split into two parts, part one covers the principles and standards, the unified process an overview of the registration process and the standard data set which looks at the core registration data. The registration of births, deaths and marriages are featured along with the management procedures for registration activities. Part two looks at the operational issues which include the registration and management of population data from the preparation phase through to the deregistration process.

One of the main differences between the 1994 RG and the 2003 Registration Handbook was the fact that the 2003 Handbook included what became referred to as the “unified approach”. The

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<sup>207</sup> UNHCR Handbook for Registration, September 2003.

unified approach ensures that the minimum standards for registration, documentation and population data management are achieved and is based on the understanding that registration is at the core of UNHCR protection activity. Based on the unified approach the Department of International Protection and the Division of Operational Support developed a registration system which would allow for the registering of refugees and asylum seekers, whilst maintaining and updating relevant information which could be easily adapted for the use in any refugee setting.

Furthermore, pressure to provide a more credible and reliable registration process saw UNHCR's Executive Committee (ExCom) adopt Conclusion No. 91 in October 2001,<sup>208</sup> which confirmed the fundamental principles on which all registration activities should be based. It recommended basic considerations for registration and encouraged the development of registration guidelines, and also the development of new technology to go hand in hand with its registration guidelines as the remainder of this section will highlight.

The unified approach to registration is based on the following policy decisions:

1. UNHCR's registration system and processes will adhere to the minimum registration standards enumerated by ExCom;
2. Basic registration, meeting minimum standards, will be undertaken in the same way for asylum seekers and refugees everywhere, and these approaches should also govern the registration of other persons of concern, such as internally displaced persons and stateless persons;
3. An individual record, consisting of a prescribed minimum amount of core bio-data, will be established for each person of concern;

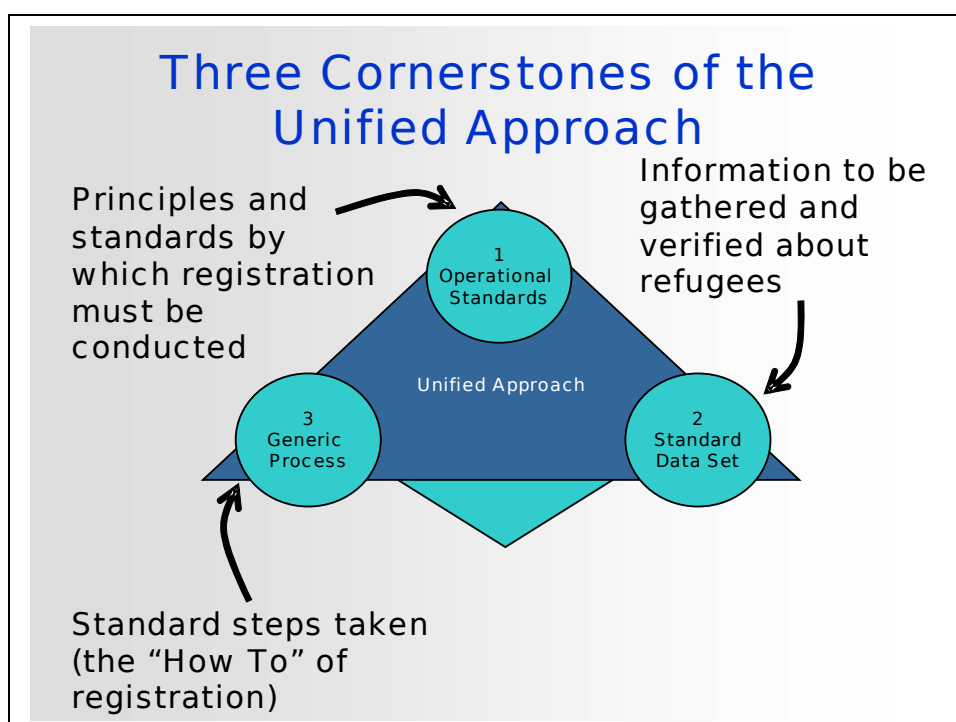
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<sup>208</sup> See appendix 3 for: Annex 1(a): Executive Committee Conclusion No. 91 2001 Executive Committee of the UNHCR Programme (52nd Session).

4. Minor variations are possible in registration procedures and in the information collected, depending on the operational context or the focus population.

The table below outlines the three cornerstones of UNHCR's unified approach:

**Table 4:** *Three Cornerstones of the Unified Approach.*



*Source: UNCHR Handbook for Registration, 2003.*

Although UNHCR approached the collection of reliable data through the registration process in a number of ways, influenced to a degree by the conditions and resources available, not all the registration methods outlined can serve every emergency. Conditions will vary considerably however, there are patterns to be found that may be classified as "typical" scenarios, and when distinguishing features arise tried and tested methods are tested.

The three main cornerstones of the unified approach outline how this method covers all the necessary key areas from the registration process through to the verification and identification process. Ultimately this approach provides an effective global registration system adaptable for most types of refugee setting.

Combined both of these UNHCR Registration Handbooks provide a very comprehensive set of practical, operational and informative base of guidelines and general principles which have vastly improved UNHCR's registration capabilities. However, it is possible to draw out certain faults and criticisms: Although the UNCHR Handbooks offer a set of general principles and rules they are open to possible interpretation and the use of other criteria other than what is outlined may be chosen, based on the prevailing conditions. As such, it can be said that what is available in the Handbooks lacks clarity and is not prescriptive enough to address generic refugee registration situations because realistically the guidelines are open to a certain amount of distortion.

The interpretation or distortion of any system or model is an unavoidable part of any policy-practice. As much as is possible in any such system, standards will be problematic when situated in extreme situations and unavoidable tension is likely to emerge between safeguarding good policy practice from political pressures and other realities on the ground.

From the researcher's own experience in emergency situations, quite often due to the pressure placed on field teams during the initial onset of an emergency, guidelines, principles and procedure are not always followed as the issues on the ground can require immediate action. As previously mentioned adequate, professional resources must be made available during the registration process which requires a sustained response. However, realistically, emergency situations are often under



staffed; new teams may not have been trained to carry out specific procedures; equipment can be missing; and security issues can often render text book situations impossible to abide by. Such issues can mean that procedures have to be adapted based on any number of given shortcomings.

As well as developing its registration guidelines in 2001 a programme entitled, Project Profile (PP) <sup>209</sup> was born, a system which enables UNHCR to conduct registrations according to universal standards, indicating that UNHCR recognized that the Registration Handbooks were not sufficient enough, and that technical components such as those described in the next section, were developed in order to work in parallel with the Registration Handbooks.

### **3.4. New Advances in the Registration Process**

#### **3.4.1. Project Profile**

This next section will study some of the new advances UNHCR have developed in order to improve the refugee registration process. In particular, the Kosovo refugee crisis in 1999 will be used as an example to demonstrate how UNHCR developed alternative methods to cope with mass refugee registration scenarios.

As outlined in the previous section, ExCom recommended the development of new technology to go hand in hand with UNHCR's registration guidelines. PP aimed at strengthening UNHCR's capacity to collect and analyze data whereby standards and tools for registration were incorporated into a comprehensive global registration system. In doing so PP

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<sup>209</sup> In 2005, PP was implemented in 22 countries covering 60 sites. More than 500 staff members were trained on best practices and on the use of the new registration database application, whose development was completed in 2005.

improved the quality of registration management, and improved the quality of documentation and protection provided to persons of concern, as well as ensuring equitable access to services and entitlements.

The overall objectives of PP are outlined as follows:

- Design new standards and procedures to improve the quality of registration and up-date guidelines accordingly;
- Develop new tools such as software and biometrics to help make registration tasks more uniform and effective;
- Provide direct support to field operations in carrying out registration activities by using new methods and tools;
- Ensure that staff is well-versed in the latest procedures, standards and tools for conducting registration activities.

PP demonstrated how UNHCR prioritized the registration process on a long term perspective by creating a fast, efficient, not-too-technologically sophisticated system that would, amongst other things, help prevent fraud and multiple registration. PP also provided significant benefits for all external stakeholders such as countries of asylum which could now benefit from receiving a clearer picture of the refugee population they were hosting. Furthermore, UNHCR's partner organization like the WFP, International Organization for Migration (IOM) and implementing partners could improve their programme delivery to refugees.

Additionally, donor governments would receive programmes based on realistic population indicators and verifiable assumptions. Last but not least, refugees could benefit from PP through improved protection (better identification, tracing,

registration and documentation) and efficient and targeted service delivery.

The impact of the project saw the PP team develop a new registration database application called *ProGres*; a distributed database application which allows for the maintenance and updating of refugee data for use in any setting. UNHCR also developed new tools such as software and biometrics to help make registration tasks more uniform and effective.<sup>210</sup> Unlike previous registration systems *ProGres*, required specialized technical support for long term and large-scale use and after the *ProGres* system had gone live, the responsibility for operating it was left with each field location, which in turn required the necessary resources to maintain the data, and the system, which at times require the recruitment of international staff.

The *ProGres* application contains precious information on RRs for example it can: catalogue refugees villages of origin, and their location as a tool for tailoring services to refugees needs; can be used for family reunification; and for analyzing information and identify inaccuracies or gaps in the data. As such the *ProGres* registration system is a valuable tool for identifying the needs and making available disaggregated data on the registered populations.

Furthermore, as a unified database it catered for UNHCR operations, from camps to urban refugees, from repatriation to resettlement situations by improving registration, documentation and data management, and by introducing standards and tools which saw the development of a new results based management

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<sup>210</sup> In 2002 UNHCR adopted another new approach to its registration system by introducing compulsory iris-scans for returning Afghan refugees on the Pakistan border in order to prevent ID fraud and to stop fraud by those trying to recycle through the system. Each photographed iris is saved as an image, not as a name, to simplify the process and protect the privacy of returnees. The image is then added to a computer database and then staff can be alerted every time someone tries to go through the process again.

software registration system which was able to capture detailed information, standards and indicators.<sup>211</sup>

In doing so this strategy solidified registration and population management procedures, introduced counting and survey methods, developed global population data management software, introduced a fingerprint information system and set up fraud proof identity documentation. One of the major benefits of this system was the fact that information could now be shared and the level of human resources and resource expenditure on mass registration exercises was decreased, whilst the level of protection was increased.

Having discussed some of the new advances in refugee registration it is necessary to examine how such applications really work on the ground. The following section will demonstrate how UNHCR dealt with a massive registration task in Kosovo during 1999 when UNHCR was using a portable refugee registration system to assist with large scale registration. The section will also look at cases thereafter when PP was put to use in the field, which highlights UNHCR's general advancement in the area of refugee registration.

### **3.4.2. The case of Kosovo**

The Kosovo refugee crisis in 1999 resulted in the largest and fastest population movement in UNHCR's history with over 800,000 people displaced within a few short weeks. With continued military activity UNHCR and other NGO's provided protection and assistance to the refugees and IDP's. Like all humanitarian emergencies one of the most typical features was the size of the refugee population and the speed in which the situation escalated. UNHCR's traditional refugee registration

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<sup>211</sup> The *ProGres* application was funded by the European Commission's department for Humanitarian Aid (ECHO).

system came under huge strain because it was designed for more manageable crises and nothing like the scale of what was witnessed in Kosovo.

This crisis saw UNHCR join forces with *Microsoft*<sup>212</sup> in a registration project by developing a portable refugee registration system to register Kosovo refugees in Albania. Such a large refugee population prompted the need for high capacity technologies that enabled a speedy registration and the issuance of ID's for very large refugee populations. This involved developing innovative registration kits with laptops computers, digital cameras and printers to enable the quick registration of refugees;<sup>213</sup> the tracing of refugees; issuing of ID's; reuniting families and proving property rights. This new electronic refugee registration system filled a critical need in coping with hundreds of thousands of refugees.<sup>214</sup>

The Kosovo refugee case demonstrated that UNHCR's use of modern IT techniques did impact the refugee scenario in a positive way, even if Kosovo was deemed to be a failure, the causes of which were based on political factors. Yet, the Kosovo conflict occurred during a revolutionary decade for humanitarian action, where UNHCR and its many implementing partners did alleviate and attempt to exacerbate the humanitarian suffering by stepping in to work on solutions for the newly displaced, and also to ensure that all aspects of protection, shelter, emergency relief, education and health issues were addressed. Furthermore, a new way of registering and maintaining data on hundreds of thousands of refugees was developed in one of the most complex operations in UNHCR's experience.

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<sup>212</sup> *Microsoft* is an American multinational computer technology corporation.

<sup>213</sup> Once registered, the data was stored on the computer and refugees were assured that their records could not be tampered with.

<sup>214</sup> Two refugee data centres were established in Macedonia and Albania and these were linked electronically to share identification information.

The business/humanitarian cooperation efforts with *Microsoft* proved that UNHCR benefited from sharing the “know how” and resources of *Microsoft*. The results highlighted UNHCR’s ability to better address mass displacement issues through the use of IT which helped to maximize UNHCR’s knowledge, experience, and enhanced the agency’s capacity to effectively and efficiently deal with advanced planning for the longer term of finding durable solutions for today’s refugee situations.<sup>215</sup>

Today UNHCR have perfected the PP system and continue to use *ProGres* as a method to collect and make available refugee data as UNHCR point out:

Project Profile and the registration software program *ProGres* improve the way UNHCR staffers collect, share and use information on refugees and other persons of concern. The standardized system - replacing dozens of old, incompatible databases - grew out of a mobile registration system designed for the Kosovo crisis in 1999. It gives a more complete picture of the needs of individual refugees, as well as demographic information on camps, and the origins of refugees to help better plan for their return home.<sup>216</sup>

Further examples of *ProGres*’ work took place during 2004 in an effort to provide protection for some 140,000 Myanmar refugees in Thailand. *ProGres* was used to provide an accurate record of the number of refugees. It was also used to collect additional bio-data such as digital photographs and fingerprints required

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<sup>215</sup> After Kosovo UNHCR and *Microsoft* continued to work together which resulted in the production of 100 registration kits which were replicated at other UNHCR sites around the world. The purpose of the programme was to standardise refugee registration data and replace old incompatible databases.

<sup>216</sup> UNHCR Report, “Fotola - Microsoft and UNHCR team up to better protect refugees”, [www.unhcr.org/cgi-bin/texis/vtx/partners/opendoc.htm?tbl=PARTNERS&id=4444dd522](http://www.unhcr.org/cgi-bin/texis/vtx/partners/opendoc.htm?tbl=PARTNERS&id=4444dd522), (accessed on 22/1/2008).

by the government.<sup>217</sup> By 2006, *ProGres* had been active in all of UNHCR's operations.

It is not only UNHCR that has recognized the importance and relevance of updating its registration system and international organizations have also looked to the use of IT to develop new systems. For example IOM have also developed a system called the 'Migrant Management & Operational Systems Application' (MiMOSA). The MiMOSA project is an IT system that collects various data in the area of IOM's assistance to migrants in member countries. This system is aimed at facilitating IOM's ability to process and monitor the registration and data. The project allows missions to share data between activities within the mission and consolidate into a Central Data Repository (CDR) that users can query for reports using the web.

As this section has highlighted, UNHCR have taken a number of steps over the years to enhance, improve and develop their capacity in the area of refugee registration. This has taken place through the publication of RGs and Registration Handbooks which provide field staff and operational partners with a variety of different registration tools and by turning to IT systems in order to develop ways to better assist with the collection and management of refugee data. The *ProGres* application has proved to be extremely valuable in assisting UNHCR to handle relevant data on its beneficiaries, which has made it easier to support advanced planning and to finding durable solutions.

The next section will look at how UNRWA collects and manages its refugee registration data, and in doing so, it will become apparent to what extent international practice in the registration

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<sup>217</sup> Over the course of the project the introduction of biometrics has been considered such as the use of fingerprinting. The fingerprinting technology has been attached to the core *ProGres* system as an add-on function. While biometrics is seen as a very valuable tool for validating the registration process, it is a costly method to use.

and documenting of refugees can benefit Palestinian registration procedures. The section will begin by describing, as in the previous section, why UNRWA collects refugee data, why the registration process is carried out and some of the problems associated with the agency's data.

### **3.5. UNRWA's Refugee Registration Instructions**

#### **3.5.1. UNRWA's Consolidated Eligibility and Registration Instructions**

To recap, UNRWA was established in 1949 to assist Palestine refugees through direct relief and works programmes. As chapter two highlighted, as part of its organizational and operational evolution, UNRWA has had to shift continually its focus, in the early years, from relief operations to programmes focusing on education, health and relief and social services and provide emergency assistance.

Data collection is an important aspect of UNRWA's overall work and UNRWA has collected refugee data since it became operational. In 1950, there was no requirement to compile the data for analysis or dissemination. Although UNRWA has since undertaken initiatives to update statistics on their web site, the agency does not produce detailed country data, background papers and legal information like UNHCR does openly on the internet.<sup>218</sup> However like UNHCR, UNRWA does not collect data about Palestinian refugees with a view to having that information presented as part of legal proceedings regarding compensation, or in seeking durable solutions, which the UNCCP was mandated to carry out.

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<sup>218</sup> For information on UNRWA's published statistics, programmes and news updates see, UNRWA's official web-site, [www.un.org/unrwa/english.html](http://www.un.org/unrwa/english.html), (accessed on 15/1/2008).



UNRWA requires Palestinian refugee data for a number of reasons such as: for detailed data about the population for future programme planning and in order to provide daily assistance. Data is also needed to justify their resources, gain funding from its donor base and prove the agencies accountability.

Registration with UNRWA serves to certify a person's eligibility for services, provided they meet with the agency's definition of a Palestine refugee. Individuals meeting these criteria, as well as the direct descendants of such persons through the male line, are eligible for assistance as soon as they are officially registered. Registration information is currently housed in two different forms; computerized databases and paper files. As Parvathaneni emphasizes, being registered and being in possession of a UNRWA registration card is extremely important to Palestinian refugees:

Being or not being a "card-holder", that is, possessing an UNRWA registration card has financial and social repercussions for the living condition of refugees in camps. A "card-holder" is entitled to a range of social and financial services which non-card-holders do not have access to, although both groups may reside in the refugee camp. Unregistered refugees are not entitled to education, nor can they enlist on the vocational-training courses, and they do not have access to UNRWA's social programmes.

Parvathaneni goes on to add that:

These structural disadvantages compel some refugees to achieve certain services, such as primary education at UNRWA-schools, in different ways, mainly by using *wasta*; either paying bribes or contacting persons who can enrol the descendants of "unregistered" refugees as if they were "registered" in return for other types of material or non-material favours.<sup>219</sup>

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<sup>219</sup> Signe Gilen, Are Hovdenak, Rania Maktabi, Jon Pedersen and Dag Tuastad, (1994), *Report 177, "Finding Ways - Palestinian Coping Strategies in Changing Environments"*, Oslo: Fafo Institute for Applied International Studies,

Registration can thus be said to be very much motivated by the refugees for access to UNRWA services, and as such the registration data does not necessarily reflect the demographic reality. For example as a 1994 FAFO report noted, there is a problem with underreporting of refugee deaths.<sup>220</sup> Likewise, refugee births are underreported in those areas where the refugee population's utilization of infant and child health services is lower than in other areas of operations (e.g. Jordan and the West Bank).<sup>221</sup> Further information regarding UNRWA's registration data is to be found in chapter five, where UNRWA core sets of refugee data are discussed.

As chapter two touched upon there are problems associated with UNRWA's registration system: Further examples include the fact that the registration system excludes refugees who are classified as professionals or middle class, which is a category of refugees who would have had independent income and property; refugees who were dropped from the record due to budgetary limitations; refugees who were the offspring of a refugee mother and non-refugee father; refugees whose dignity prevented them from registering and refugees whose situation improved.

Other examples include: those who lost their property but remained in Israel and have since become Israeli citizens; refugees displaced in 1948 who fail to meet assistance criteria; refugees who were outside the areas of UNRWA operations (and have not filed for registration under UNRWA's 1993 revised eligibility criteria); refugees who were dropped from the records

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[http://almashriq.hiof.no/general/300/320/327/fafo/reports/FAFO177/3\\_3.html](http://almashriq.hiof.no/general/300/320/327/fafo/reports/FAFO177/3_3.html), (accessed on 13/9/2007).

<sup>220</sup> Ibid.,

<sup>221</sup> Harish Parvathaneni, "Who Are the Refugees: Social, Economic and Legal Conditions", paper presented at the second international Stocktaking Conference on Palestinian Refugee Research, *International Development Research Centre*, (Ottawa: June 2003), [www.crdi.ca/uploads/user-S/10576028380Session\\_1-\\_Harish\\_Parvathaneni-\\_Paper.doc](http://www.crdi.ca/uploads/user-S/10576028380Session_1-_Harish_Parvathaneni-_Paper.doc), (accessed on 2/6/2007).

due to financial constraints; refugees' who had an independent income or property and refugees whose status improved and moved out of eligibility criteria.

UNRWA's registration system differs fundamentally from UNHCR's registration system, since UNRWA is not mandated to ensure compulsory registration of births and deaths, akin to a governmental authority. UNRWA's registration system is set up for the purpose of collecting data with a view to improving its programme planning and to provide daily assistance needs to its registered beneficiaries.

Moreover, unlike governments, UNRWA is not in a position to undertake census and survey operations among the refugee community, particularly in view of the sensitivity associated with the refugee question and means to its resolution. As such, certain issues seriously affect UNRWA's ability to produce reliable statistics on its beneficiaries.

In 2002 UNRWA's Department of Relief and Social Services produced its refugee registration document, titled "*Consolidated Eligibility and Registration Instructions*" (CERI). The twenty three page document is published for internal use within the agency for the purpose of providing instructions regarding the registration of Palestinian refugees within UNRWA's five areas of operation.<sup>222</sup>

The CERI registration instructions outline the practical aspects of refugee registration and unlike UNHCR's Registration Handbooks, the CERI document is written purely from the point of view of providing a written set of instructions for its workforce to follow when registering Palestinian refugees.

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<sup>222</sup> The researcher was not able to find out how often the CERI instructions are produced, however, the 2002 copy stated that its publication cancelled and superseded the 1993 version. Neither was it possible to find out how often the instructions are periodically updated and refined.

The information within the CERI registration instructions is however specific to the Palestinian refugees and only for those who reside within UNRWA's five fields. Therefore, the instructions could not be applied or adapted to other refugee situation, as is the case with the UNHCR guidelines, since UNRWA serves only one specific population which is registered and inhabits one of the agency's areas of operation.

The purpose of the instructions are to set out guidance to UNRWA staff, outline the persons and categories of persons who are eligible to register to receive UNRWA services and outlines those who are eligible to receive services without being registered. Additionally, the instructions also describe the services provided by UNRWA (relief and social services, education, health, microfinance and micro enterprise).

The CERI registration instructions begin by outlining the eligibility for registration. The second section outlines the registration procedures, which includes additions to the registered population which include descendants born after 15 May 1948, of a registered male refugee.<sup>223</sup> (Appendix 4 provides further information regarding UNRWA's CERI registration instructions).

UNRWA defines the term registration as:

The recording, verifying, and updating in UNRWA's Registration System for the purpose of maintaining records, providing UNRWA services, and disseminating information.

This definition differs from UNHCR's registration definition since UNRWA does not aim to protect<sup>224</sup> and document its refugees and

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<sup>223</sup> Requests for registration of descendants from registered families/persons living or working outside the agency's area of operations are also accepted.

<sup>224</sup> UNRWA does not have a mandate to provide refugee protection although the agency has provided some types of basic protection based on a

as has previously been stated, the agency has no mandate to implement durable solutions on behalf of the refugees.<sup>225</sup> The power to approve registration and to register those who satisfy the requirements for registration is vested in the Commissioner-General of UNRWA. The power is delegated to UNRWA's Director of Relief and Social Services and is exercised through the staff in each of UNRWA's fields and decisions regarding the eligibility of refugees are taken on a case by case basis.<sup>226</sup>

It is also the task of the Relief and Social Services Department to manage and upkeep the registration of refugees. The Unified Registry System (URS) holds data for all RRs. Monthly updates come in from the field registration systems and are sent to Amman where it is verified and updated.

The CERI registration instructions does not define any new registration techniques that UNRWA may be using, although UNRWA's 2005-2009 Medium Term Plan (MTP) indicated that it would roll-out a new refugee registration system and that the relief and social services programme would ensure the accuracy of a wide range of data on refugees and would allow for integration and cross-referencing of data from the health and education programmes.<sup>227</sup> As the agency points out:

UNRWA does not always have access to accurate, up-to-date information on Palestine refugee living conditions at the field-level, on which, needs can be assessed and priorities based. The introduction of the new refugee registration system and the management information systems in education and

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humanitarian approach to its mandate. For example during the first *intifada*, UNRWA provided limited protection for refugees through the Refugee Affairs Officer programme.

<sup>225</sup> UNRWA does not have a mandate to implement durable solutions, although since 1982, UNRWA has helped to facilitate the repatriation of Palestinian refugees stranded on the Egyptian side of the border after the return of the Sinai under the Camp David Accords signed by Israel and Egypt.

<sup>226</sup> For a summary of the requirements UNRWA registration services see, Consolidated Eligibility and Registration Instructions (CERI) June 2006.

<sup>227</sup> UNRWA Medium Term Plan (2005-2009), [www.un.org/unrwa/news/mtp.pdf](http://www.un.org/unrwa/news/mtp.pdf), (accessed on 2/2/2007).

health will go some way towards addressing these gaps.<sup>228</sup>

Although the CERI registration instructions provides little basis for in depth analysis, the fact that UNRWA cares for an ever growing beneficiary population of over four million refugees makes their registration system one of significance and one which requires much more analysis, especially in the ways in which the agency can improve some of the problems outlined with its registration process.

The final section will answer one of the main research questions and will look at whether international practice in the registration and documenting of refugee losses can shed light on Palestinian refugee registration procedures and data.

**3.5.2.** To what extent can international practice as adopted by UNHCR in its registration and management practices offer a constructive perspective on Palestinian refugee registration procedures and data?

In order to answer this research question this section aims to establish if UNHCR's registration guidelines can be applied to UNRWA's registration instructions in a way that would provide the agency with a tool box of techniques at their disposal that would not only comply with international standards of collecting, verifying and utilising refugee data, but would also improve the scope of Palestinian refugee registration data?

The best way of answering this question is to look at the problems to be found within the UNRWA registration system. Four major problems were identified and suggestions have been outlined regarding how UNRWA could improve its refugee registration practices:

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<sup>228</sup> Ibid.,

One of the major problems that has led to inaccurate and unreliable Palestinian refugee registration figures has been established, and that is that UNRWA's methods of registration have led to inconsistencies since figures are based on information voluntarily supplied by refugees. Therefore, the data it could be argued cannot be considered statistically valid since reliability and validity issues are dependent on a system which allows the refugee population the responsibility for reporting, births, deaths and changes in status.

Whilst UNHCR also suffers from issues of data reliability and validity, UNHCR turned to modern technology to register its refugees and took steps to establish a comprehensive information and verification system to reduce the margin of error. UNHCR also carried out periodic registrations or revalidations of their refugees to ensure against fraudulent activity. Therefore, modern technology could make it possible for UNRWA to prevent fraud and multiple registrations if the agency aimed to make registration a standard and continuous process, allowing every refugee to be individually registered and to receive ID's with photographs for example.

A second problem that UNRWA could benefit from would be from having firm validation policies in place and by overview the current status of their registration system. For example, validation policies i.e. registration, followed by periodic verifications could take place to help improve refugee status and entitlement, an effective method used today by UNHCR and other international agency's to guarantee the refugee status to those entitled to it. Additionally, UNRWA could overview the current status of registration which would give the agency an idea of any gaps or problems or areas to improve within the registration process. This is also something UNHCR and other international agencies involved in the registration of refugees

carry out from time to time. For example in 2002 the UNCHR launched a 'Registration Baseline Survey'<sup>229</sup> to provide a global overview of the current status of registration. This Baseline Survey revealed considerable variability in registration standards and practices.

A third area of concern for UNRWA should be the problem associated with its registration process. Currently the agency has no system in place to track the movements of its refugees. Problems associated with this include: referring to non-existing refugees as being registered, registering refugees who no longer fit UNRWA's eligibility and including refugees who work overseas on the agencies refugee registration rolls.

Since refugees have no incentive to inform UNRWA that he/she/they are residing and working, for example, in the Gulf States, means that UNRWA has no record of refugees who leave to work abroad and have no record of when they return - an issue which has caused confusion when refugee statistics are collected.

To avoid this problem the registration records of the family/person should be annotated to show that the family/person in question is residing outside the agency's area of operation. Some of these problems could be reduced if appropriate systems such as random household interviews could take place in order to determine actual family numbers. However, checking up registration records in the field would be controversial and would imply a change in UNRWA's policy of voluntarily reporting among refugees.

A fourth problem was identified with UNRWA's registration system. The registration system that the agency uses is limited

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<sup>229</sup> UNHCR Global Report (2002), [www.unhcr.org/publ/PUBL/3edf4fd20.pdf](http://www.unhcr.org/publ/PUBL/3edf4fd20.pdf), (accessed on 15/6/2007).



because the URS deletes data on a routine basis. As such, UNRWA's registration system design does not capture the most out of the data it collects because it is so restrictive. In order to fill this gap UNRWA could develop a computerized registration system to improve its data capabilities. Such an approach could make use of the findings from UNRWA's registration to work closely with the host government to develop and improve facilities for the refugees.

Although UNRWA has improved its registration procedures via the URS with the aim of developing and managing agency-wide integrated electronic databases on Palestinian refugees, this was developed for better programme planning, delivery and monitoring and not for better data utilization.

Since UNRWA's registration system does not allow the agency to compare data across its five regions. Developing a fast, efficient, not-too-technologically sophisticated system would enable data between all five areas to be accessible. If the URS was integrated with UNRWA's other databases, it would be possible to carry out a number of tasks. For example UNRWA's socio-economic database could be a key tool for obtaining data regarding the conditions of families, and could enable UNRWA to play a primary role in determining the type of projects required for both returnees, and for those choosing resettlement.

UNHCR for example use their registration operation in Sudan to address the plight of refugees who, after decades in Sudan, are still relying on humanitarian assistance because of the lack of access to employment, compounded by lack of proper identification. The registration data allows UNHCR and the government of Sudan to determine the exact number of Eritrean and Ethiopian refugees who are still in Sudan and will allow the Sudanese government and UNHCR to determine the best solution based on the data.

If UNRWA had a similar registration system that would enable data between all five areas to be accessible, the data obtained could be used to better address Palestinian refugees who have been living in host countries such as Jordan, Lebanon and Syria for decades. Such a system would also be an excellent source of indicators about future employment and education needs of Palestinian refugees. Since UNRWA collects and stores educational background, skills and occupational status of all its RRs in order to work out its programmes, this data could also be useful if the population were to be repatriated or reintegrated.

A final point regarding UNRWA's limited registration system is that it could benefit from UNHCR's *ProGres* application, which contains information on RRs which can catalogue refugee villages of origin and their location. The benefits of this system include the fact that information can now be shared and used as a tool for tailoring services to refugees needs and for analyzing information and identify inaccuracies or gaps in the data. Adopting a similar system would not only cater for all of UNRWA's operations in each of their areas of operation, but could one day be used for situations requiring data for repatriation and resettlement situations for Palestinian refugees.

### **3.6. Conclusion**

The purpose of this chapter was to answer one of the main research questions. In order to do so, the introduction of this chapter looked at refugee reparations along with relevant legal instruments in order to demonstrate how international practice has dealt with bringing about peace and security in other cases.

The main body of this chapter went on to study UNHCR's registration procedures in seeking 'good practice' and UNRWA's registration instructions were also examined. The chapter has

reaffirmed the importance, in this respect, of registration as a means of facilitating the implementation of appropriate durable solutions in a manner that fully respects international norms and standards regarding the protection of personal data.

This chapter has also demonstrated that although UNRWA and UNHCR's registration systems were set up for different purposes, although it was highlighted how international techniques and guidelines can improve the areas in which UNRWA's registration system has proved to be problematic.

The next chapter intends to widen the international perspective further by studying two case studies in examining various international mechanisms and techniques used in post-crisis refugee settlement systems. By drawing out similarities and differences in the mechanisms adopted, a more detailed sense can be identified of how a future Palestinian Claim Commission could be established, and how existing Palestinian refugee data could be constructed for the preparation of claims in a future Arab-Israeli settlement.

## **Chapter Four**

### **International Claim Processes: A Technical Analysis**

#### **4.1. Introduction**

#### **4.2. International Property Restitution**

Chapter four takes the international perspective a step further through an exploratory technical study, with a view to answering the second research question: What is the relevance of the experience gained in the settlement of refugee claims in international settings, such as the practice of international Claim Commissions in search of guidelines for the planning of a future Palestinian Claim Commission?

What follows will demonstrate that although Claim Commissions are individualistic by nature, and are all subject to specific

variations and experiences, it is possible to draw upon a range of previously developed procedures and approaches to seek out guidelines which reflect international standards. To do so the study adopts a technical approach. Due to factors such as time and resources it was beyond the scope of the thesis to consider anything other than the procedures covered by this chapter.

Two high profile Commissions will be examined: the Commission for Real Property Claims for Displaced Persons and Refugees (CRPC), which confirmed the rights for refugees and DP's who lost property during the BiH conflict, and the Housing Property Claims Commission (HPCC), created to settle disputes covering residential property in the Kosovo conflict. Both mechanisms were effective in delivering justice in accordance with their mandates in resolving a large number of claims.

By studying the kind of compensation to which the refugees were entitled to, and the mechanism involved in achieving a successful outcome, it will be possible to identify whether any lessons can be learned to address the problems of the dispossession of Palestinian property rights and establish a criteria for a future Palestinian Claim Commission.

The chapter is split into three sections. The first part of this chapter provides an overview of the technical approach employed. This is followed by a brief literature review. The second part surveys a range of mechanisms and processes which have become increasingly important in international dispute resolution in post-conflict contexts. The third part will identify independent mechanisms, so that a range of pre-requisites could be analysed as essential components for the construction of a Palestinian refugee Claim Commission.

#### **4.2.1. Why This Method?**

As chapter one outlined this study chose to employ a technical approach in favour of a comparative approach. The following section will explain the reasons behind this decision.

The comparative method is considered one of the primary means of establishing social science generalizations by enabling the researcher to assess whether a particular political phenomenon is simply a local issue or reflects a general trend.<sup>230</sup> When it comes to using the comparative method, researchers often use John Stuart Mill's methods of difference and agreement when comparing different cases. Mills developed what became known as the Most Similar Systems Design (MSSD) and Most Different Systems Design (MDSD).

The MSSD methodology takes cases with similar features but which do not all have the same outcome. The cases are compared in order to identify those explanatory factors that are different and which, therefore, may account for the range of outcomes. Since this study is concerned primarily with general norms and procedures among the case studies selected, rather than outcomes, it was considered that the comparative approach was not the right approach to establish what constitutes general international practice. In its place the researcher chose to adopt a technical approach in order to examine two international Claim Commissions.

The case studies were selected for a number of reasons: The researcher was familiar with the refugee situation in Kosovo; the Kosovo Commission was primarily based on the planning and strategy of the BiH model for land, housing and property rights which demonstrated international thinking on the issues of repatriation, and property claims; both cases produced detailed

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<sup>230</sup> Jonathan, Hopkin "Comparative Methods", in *Theory and Methods in Political Science*, (ed.), by D. Marsh and G. Stoker (New York: Palgrave Macmillan: 2<sup>nd</sup> ed. 2002 [1995]), p. 249.

international peace treaties to deal with addressing the dispossession of property rights, which represented the international community's attempts to provide restitution to refugees and DP's; both cases saw a desire on the part of refugees to return to their places of origin; the close involvement of host countries; both cases included a political settlement and were demonstrative of massive international presence. For example the Kosovo case saw NATO's involvement along with international monitors from the Organization for Security and Cooperation in Europe (OSCE), and BiH gained international assistance from the UN's Protection Force (UNPROFOR), replaced by NATO troops after the Dayton Peace Accords (DPA) were signed.

In light of the previous discussion, a number of questions relating to the case studies need to be addressed and answered:

- To what extent were the mechanisms developed effective?
- Can utilizing new technology increase the efficiency of the process?
- To what extent were standards of proof flexible?
- What are the potential disadvantages of Claim Commissions?

By addressing these questions it will be possible to consider whether mechanisms used in both cases could be transferred to the Palestinian case. Clearly, using the Palestinian refugees in any form of comparative work is highly politicized, and trying to establish Palestinian property rights especially involves many tangled threads, however, one can still make constructive parallels. Although two cases could never make groundbreaking predictions, they are sufficient enough to enable generalisations to take place.

#### 4.2.2. Literature Review

Despite the great quantity of literature now being produced by academics, research institutions and NGO's, looking at the role of lesson-learning from different refugee models, the focus of recent trends has tended to take place in the field of international law.<sup>231</sup> Badil however, served to broaden this perspective by conducting a number of seminars and by facilitating a field research trip in 2003 in order to study lessons learned from the experience of return and real property restitution in BiH.

Badil held two seminars in 2003, one titled "*The Role of International Law in Peacemaking and Crafting Durable Solutions for Refugees*",<sup>232</sup> at the University of Ghent, which used the comparative approach and opened up the research field by looking at similar cases such as BiH and Afghanistan. The second seminar was hosted by the University of Geneva, titled "*The Right to Restitution: Law, Principles, Mechanisms - Comparative Experience and the Palestinian Refugee Case*".<sup>233</sup>

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<sup>231</sup> Eyal Benvenisti, "Principles and Procedures for Compensating Refugees: International Legal Perspectives", paper presented at the Workshop on Compensation as Part of a Comprehensive Solution of the Palestinian Refugee Problem, *PRRN/IDRC*, (Ottawa: July 1999), [www.arts.mcgill.ca/MEPP/PRRN/benvenisti.html](http://www.arts.mcgill.ca/MEPP/PRRN/benvenisti.html), (accessed on 12/4/2007). See also Donna Arzt, "The Right to Compensation: Basic Principles under International Law", paper presented at the Workshop on Compensation as Part of a Comprehensive Solution of the Palestinian Refugee Problem, *PRRN/IDRC*, (Ottawa: July 1999), [www.arts.mcgill.ca/MEPP/PRRN/arzt.html](http://www.arts.mcgill.ca/MEPP/PRRN/arzt.html), (accessed on 19/4/2007).

<sup>232</sup> Badil, Seminar One, (2003), "The Role of International Law in Peacemaking and Crafting Durable Solutions for Palestinian Refugees", [www.badil.org/Campaign/Expert\\_Forum/Ghent/expert-forum\\_ghent.htm](http://www.badil.org/Campaign/Expert_Forum/Ghent/expert-forum_ghent.htm), (accessed on 8/7/2007).

<sup>233</sup> Badil, Seminar Two, (2003), "The Right to Restitution: Law, Principles, Mechanisms - Comparative Experience and the Palestinian Refugee Case", [www.badil.org/Campaign/Expert\\_Forum/Geneva/expert-forum\\_geneva.htm](http://www.badil.org/Campaign/Expert_Forum/Geneva/expert-forum_geneva.htm), (accessed on 15/7/2007).



Combined, the seminars and research trip were able to demonstrate that there are other cases to be found with similar difficulties to those shared with the Palestinian refugee case, which have found a satisfactory resolution, and need to be examined further for possible transferable ideas to the Palestinian case.

Also in 2003 the Max Planck Institute held an international conference, titled “*Israel and the Palestinian Refugees*” in Heidelberg,<sup>234</sup> where reparations, compensation and refugee property were discussed.<sup>235</sup> Around the same time material on restitution laws and the arrangements used to carry out the restitution process and in particular the compensation characteristics of housing and property restitution were becoming available.<sup>236</sup>

COHRE also demonstrated that property restitution and compensation in specific cases such as BiH and Kosovo, where property Claim Commissions have been established to settle large numbers of claimants, suggest that there is a strong relationship between compensation Claim Commissions and the resolution of disputes through effective legal mechanisms.<sup>237</sup>

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<sup>234</sup> Proceedings for the Max Planck Conference can be found in: Michael Dumper “Palestinian Refugees in comparative perspectives” in Benvenisti, E., and Hanafi, S. (eds.), *The Palestinian Refugee Issue and the Arab-Israeli Conflict*, (Max Planck Institute: Heidelberg, 2006).

<sup>235</sup> Salim Tamari, “Palestinian Refugee Property Claims: Compensation and Restitution”, paper presented at the International Conference on Israel and the Palestinian Refugees, (Heidelberg, July 2003), [www.law.tau.ac.il/Eng/\\_Uploads/dbsAttachedFiles/TamariPaperRefugeeCompensationRestitution1julycon.doc](http://www.law.tau.ac.il/Eng/_Uploads/dbsAttachedFiles/TamariPaperRefugeeCompensationRestitution1julycon.doc), (accessed on 2/9/2007); Ruth Klinov, “Reparations and Rehabilitation of Palestinian Refugees”, paper presented at the International Conference on Israel and the Palestinian Refugees, (Heidelberg: July 2003), [www.law.tau.ac.il/Eng/\\_Uploads/dbsAttachedFiles/REPARATIONSANDREHABILITATIONOFPALESTINIANREFUGEES.doc](http://www.law.tau.ac.il/Eng/_Uploads/dbsAttachedFiles/REPARATIONSANDREHABILITATIONOFPALESTINIANREFUGEES.doc), (accessed on 8/10/2007).

<sup>236</sup> Scott Leckie, (ed.), *Returning Home: Housing and Property Restitution Rights of Refugees and Displaced Persons*, (New York, Transnational Publishers, 2003).

<sup>237</sup> See also COHRE’s “Legal Resources International and National Standards for Housing Rights”, (2000), which provides a comprehensive compilation of all international law sources recognizing housing rights this includes international covenants and conventions, international humanitarian law and UN resolutions.

Chapter three has already outlined that there are new global standards governing housing and property restitution rights such as the Pinheiro Principles, which lay out several core elements of property restitution mechanisms consistent with international law. The Principles also contain extensive sections on national procedures, institutions and mechanisms, and the legal and technical issues surrounding housing, land and property restitution developed for BiH, Cyprus, and Kosovo, where international institutions have enforced mechanisms in restitution cases in post-conflict settings.

Specific work emerged on the international mass claims processes when the Permanent Court of Arbitration (PCA)<sup>238</sup> published two books on how reparations had worked in long standing disputes and what lessons and ideas could be available for future cases. (Mass claims will be described in more detail in 4.2.3). Howard Holtzmann and Edda Kristjánsdóttir added to the literature on mass claims by covering some of the most modern and high profile international mass claim systems and provide a wide variety of different techniques and procedures.<sup>239</sup> The modern approaches examined in these recent publications demonstrate the possibility of placing the Palestinian refugees within the context of other refugee situations which have similar issues pertaining to their conflict and highlight how such precedents could be transmitted to other cases.

Although a review of the literature shows that there have been numerous international claim cases which may be able to offer

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<sup>238</sup> Permanent Court of Arbitration, *Redressing injustices through mass claims processes: innovative responses to unique challenges*, (Oxford, Oxford University Press, 2006) and Permanent Court of Arbitration, *Institutional and Procedural Aspects of Mass Claims Settlement Systems*, (Kluwer Law International: 2000).

<sup>239</sup> Howard M. Holtzmann, and Edda Kristjánsdóttir, *International Mass Claims Processes: Legal and Practical Perspectives*, (Oxford University Press, 2007).

some guidance to the Palestinian case, there is very little material concerning the mechanisms and processes involved in the work of mass claims processes.<sup>240</sup> However, current cases such as the Commission for Resolution of Real Property Disputes (CRRPD)<sup>241</sup> which was established to deal with property claims in Iraq<sup>242</sup> will prove to be invaluable when their processes and mechanisms have been fully developed. The CRRPD, in particular may be a useful case to examine since international involvement in this case is not as apparent to the extent of other internationally driven cases.

#### **4.2.3. Property Compensation/Restitution Programmes**

Before carrying out the technical analysis, it will be useful to summarise some of the international claim tribunals that have been developed to settle restitution disputes.

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<sup>240</sup> Exceptions to this generalization include: Vandana Patel, "A Comparative Analysis of Mass Claims Mechanisms", paper presented at the second international Stocktaking Conference on Palestinian Refugee Research, *International Development Research Centre*, (Ottawa: June 2003), [http://network.idrc.ca/uploads/user-S/10578565170Session\\_8\\_Vandana\\_Patel\\_new.doc](http://network.idrc.ca/uploads/user-S/10578565170Session_8_Vandana_Patel_new.doc), (accessed on 22/5/2007). Shahira Samy, "The Politics of Reparations in the Case of Palestinian Refugees: A Comparative Approach", University of Exeter, Department of Politics, Exeter, 2006; Howard M. Holtzmann, and Edda Kristjánsdóttir, *International Mass Claims Processes: Legal and Practical Perspectives*, (2007) and two publications by the Permanent Court of Arbitration, *Redressing Injustices Through Mass Claims Processes Innovative Responses to Unique Challenges*, (2006) and Permanent Court of Arbitration, *Institutional and Procedural Aspects of Mass Claims Settlement Systems*, (2000).

<sup>241</sup> For more information see the CRRPD Commission for the Resolution of Real Property Disputes web-site, [www.ipcciraq.org](http://www.ipcciraq.org), (accessed on 11/9/2007). See also David Romano, (2005), "Whose House is this Anyway? IDP and Refugee Return in Post- Saddam Iraq", *Journal of Refugee Studies*, 18: p.430-453.

<sup>242</sup> As of 31 May 2007, the CRRPD had received 132,038 claims, of which 34,649 had been decided at first instance. Successful claimants whose cases have been resolved have started to receive the title deeds to their properties, and the CRRPD has begun to make payments of compensation to parties. Also see IOMs work in Iraq, [www.iom-iraq.net/ipcp.html](http://www.iom-iraq.net/ipcp.html), (accessed on 8/7/2006).

The case of South Africa <sup>243</sup> provides a relatively good example of how to deal with very old land claims when as part of its transition to democracy, it provided in its new democratic constitutions for the restitution of property dispossessed. The post-apartheid majority rule in the country witnessed a move to redress black land claims, and eventually a variety of laws. One of the first statutes to be passed by the newly elected Parliament in 1994 was the *Restitution of Land Rights Act* and the *Land Claims Court*. The South African case also demonstrated the flexible definition of “restitution”, and essentially exonerated individual white landowners from liability seeing the State undertaking the process and cost of restitution.

The Greek and Turkish land claims in divided Cyprus, also provide applicable ideas that may be useful for the Palestinian refugee case. The 2003 UN plan presented by the then Secretary-general Kofi Annan presented a set of proposals to Greek and Turkish Cypriot leaders. One of the key ways that this UN plan can offer guidance for future talks on Palestinian refugee property claims, is the manner in which it strove to balance the sanctity of individual property rights and justice, with the need to deal with the fact that four decades have passed since the first displacement of population occurred. The UN plan called for creation of a Property Board that would entertain claims. If a claim was upheld, the claimant could choose voluntarily among three alternatives: compensation for lost property; full restitution in terms of reinstatement into possession; or sale, exchange, or long-term lease. <sup>244</sup>

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<sup>243</sup> Jean du Plessis, “Notes on Restitution in South Africa”, Presentation Background for the Badil Expert Seminar, (Geneva: October 2003), [www.badil.org/Campaign/Expert\\_Forum/Geneva/paper11.html](http://www.badil.org/Campaign/Expert_Forum/Geneva/paper11.html), (accessed on 26/6/2007).

<sup>244</sup> Madeline Garlick, (2003), “The UN Peace Plan for Cyprus: Property, Displacement and Proposed Solutions”, [www.badil.org/Campaign/Expert\\_Forum/Geneva/paper09.html](http://www.badil.org/Campaign/Expert_Forum/Geneva/paper09.html), (accessed on 23/9/2007).

Recent cases include Afghanistan where land disputes, illegal land confiscations of returnee lands, unclear ownership rights, dual legal systems (customary and modern), and the prevailing lack of effective restitution procedures have left hundreds of thousands of returnees unable to return home.

In 2001 UNHCR began to monitor the return of thousands of refugees back to their homeland. One of the major problems UNHCR faced was the repatriation of landless refugees. Unlike the Palestinian refugee case, only a small percentage (30 percent) of Afghan refugees claimed land ownership in Afghanistan prior to their departure. UNHCR argued that access to the land (but not necessarily ownership of land) was absolutely essential for refugee repatriation to take place and was a crucial dimension of a sustainable refugee repatriation scheme. In the agency's *"Guideline on Voluntary Repatriation"* UNHCR state that "UNHCR must attempt to protect the interest and legitimate rights of returnees with regards to access to land".<sup>245</sup>

In 2006, new restitution mechanisms were created: In the Middle East for example, two compensation mechanisms have been established to address damage to private property in Lebanon, one dealing with southern Beirut while the other covers the rest of the country. Additionally, in December 2006, the UN General Assembly approved a plan for a UN Register of Damage set up to register reparation claims by Palestinians resulting from the construction of the separation barrier.<sup>246</sup>

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<sup>245</sup> Reem Alsalem, (2003), "Land Problems in the Context of Sustainable Repatriation in the Eastern Region Afghanistan", [www.badil.org/Campaign/Expert\\_Forum/Geneva/paper03.pdf](http://www.badil.org/Campaign/Expert_Forum/Geneva/paper03.pdf), (accessed on 4/11/2007).

<sup>246</sup> For more information see, [www.un.org/News/Press/docs/2006/ga10560.doc.htm](http://www.un.org/News/Press/docs/2006/ga10560.doc.htm), (accessed on 15/3/2007).

However, there remain many unresolved restitution cases where refugees have not been able to return to their homes or achieve reparations. Turkey provides an example of where around two million Kurds who were forcibly relocated or fled violent conflict in eastern Turkey and remain as IDP's. Despite numerous judgments in their favour by the European Court of Human Rights (ECHR),<sup>247</sup> most have not been able to return to their original homes and lands. Another example is the case of Croatia, where more than 100,000 ethnic Serb refugees are unable to return to their original homes in Croatia due to a combination of unwillingness by the authorities in Croatia to remove secondary occupiers from refugee homes and exclusion of Serbs from government housing repair programmes.

Finally, the little known case of Bhutan also provide another example, of where for two decades, some 105,000 Bhutanese refugees have lived in refugee camps in eastern Nepal. Many were arbitrarily stripped of their nationality prior to their expulsion from Bhutan and recent reports indicate that many refugee homes and lands have been officially allocated to secondary occupants. The Bhutanese government expropriated their property, resettled it and in some cases towns have been given new names, while refugees were stripped of their citizenship. The central argument of the Bhutanese government has been that the refugees did not originate from Bhutan and are therefore not Bhutanese citizens.<sup>248</sup>

A new generation of compensation mechanisms emerged with the advent of the Iran-United States Claims Tribunal, established

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<sup>247</sup> The Property Commission was established in response to an adverse ruling against Turkey in respect of the Titina Loizidou case. Ms Loizidou is a Greek Cypriot who was forced to leave her property in Kyrenia / Girne after the invasion and occupation of North Cyprus by the Turkish army. See North Cyprus Property Commission, [www.north-cyprus-property.org/property\\_commission.htm](http://www.north-cyprus-property.org/property_commission.htm), (accessed on 14/9/2007).

<sup>248</sup> Terry Rempel, (2005), "Documenting Palestinian Refugee Claims: The Unfinished Job", Al Madjal, [www.badil.org/al-majdal/2005/Autumn/article6.htm](http://www.badil.org/al-majdal/2005/Autumn/article6.htm), (accessed on 18/8/2007).

by the two States in 1981 as part of the settlement of the crisis which began with the seizure of the US Embassy in Tehran and the freezing of Iranian assets in the US. These new cases became known as “Mass Claims” and the Commissions and tribunals which have adopted mechanisms to decide and resolve them are known as “Mass Claim Processes”.

International Claim Commissions have created laws to address claims for property restitution to support refugees returning who lost land and property. Commissions have also created other elements, such as the investigation of property rights, and the creation of enforcement mechanisms. The main difference between claims and mass claims is the sheer amount of individuals involved and as such claimants usually require a more collective approach to resolve claims as this chapter will highlight.

Mass claims facilities ordinarily have three functional organs: one that sets and oversees policy; another that adjudicates the claims; and one that supports the process administratively. Evidentiary standards are more relaxed than in more formal court proceedings, and claimants are often assisted in the efforts to present and substantiate their claims. Monetary awards or restitution are generally enforced within the specially established system.

More recently, the UN Compensation Commission (UNCC), which was set up in 1991 by the UN Security Council to process claims and pay compensation for direct losses resulting from Iraq’s 1990 invasion and subsequent occupation of Kuwait.<sup>249</sup>

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<sup>249</sup> The UNCC has become the epitome of a mass claims exercise. Since its inception, the UNCC has adjudicated approximately 2.6 million claims, 99 percent of which have been resolved, with nearly USD 44 billion in compensation being awarded (USD 18 billion of which has actually been paid).

To complete these examples, nobody has done more to enshrine the establishment of the right to restitution of property than Jewish groups of Holocaust victims. Now that the Holocaust restitution claims are closed, there are benefits of hindsight available to provide a definitive assessment of how institutes involved in the negotiations against European banks and against Germany and Austria relating to forced labour, insurance claims, and looted art claims 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.<sup>250</sup>

The German foundation “*Remembrance, Responsibility and the Future*”, which was established in 2000, and funded by the German State and private companies to compensate individuals for Nazi abuses such as slave and forced labour, and property losses is one such example, where approximately 2 million claims were brought by or on behalf of Jewish and non-Jewish former slave and forced labourers.

A similar compensation scheme was established under a Swiss Banks Settlement, reached in the United States class action litigation in 2001. The Settlement Agreement provided USD 1.25 billion to settle claims by members of five represented classes of Nazi victims and their heirs who had deposited assets in Swiss banks. The World Jewish Restitution Organization (WJRO) has also succeeded in recovering substantial amounts of Jewish property in Europe and is still working for full restitution.<sup>251</sup>

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<sup>250</sup> Scott Leckie, “Peace in the Middle East: Getting Real on the Issue of Palestinian Refugee Property”, *Forced Migration Review*, Volume 16, (January 2003), p. 41-44.

<sup>251</sup> For more information see the Holocaust Victim Assets Litigation-Claims Resolution Tribunal web-site, [www.crt-ii.org](http://www.crt-ii.org), (accessed on 15/6/2007); Holocaust Victim Assets Programme (Swiss Banks), web-site, [www.swissbankclaims.iom.int](http://www.swissbankclaims.iom.int), (accessed on 22/6/2007); Salzburg Seminar Institute for Historical Justice and Reconciliation web-site, [www.salzburgseminar.org/ihjr/index.cfm?Status=home](http://www.salzburgseminar.org/ihjr/index.cfm?Status=home), (accessed on 4/7/2007), Simon Wiesenthal Centre-Holocaust Restitution web-site, [www.wiesenthal.com/site/pp.asp?c=fwLYKnN8LzH&b=242503](http://www.wiesenthal.com/site/pp.asp?c=fwLYKnN8LzH&b=242503), (accessed on



After years of neglect, Jewish groups have also become increasingly vocal on the issue through an umbrella group called, 'Justice for Jews from Arab Countries', which have pushed a variety of measures in Congress and at the UN that recognize the fate of Jewish refugees. The issue of refugee assets has taken prominence in recent years, with the Palestinians refugees asking to replicate the Holocaust restitution mechanisms and the Israeli government bringing up the issue of Jewish refugees in Arab lands.<sup>252</sup>

This section has attempted to provide examples, some of which have produced favourable outcomes, and have been assisted via internationally backed programmes, employing international agreements and legal principles on property restitution laws that allowed refugees and DP's to repossess homes and properties. Some of the examples highlighted that reparations can bring the injured party a sense of reconciliation and closure on past events. Indeed, a key dimension of the entire claims process is the approach developed to provide a mechanism to mediate between national histories, discourse and grievances.

Redress required for the Palestinian refugee case is well overdue, and any assessment of the Arab-Israeli conflict must acknowledge that it has been left behind. If after almost sixty years, a reparation agreement has failed to come about, could there be a model or mechanisms used in other Claim Commissions that could benefit the Palestinian refugee case?

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13/7/2007); The Centre for Information on Holocaust Restitution web-site, [www.holocaustrestitution.net](http://www.holocaustrestitution.net), (accessed on 4/8/2007); See also Michael J. Bazylar, (2001), "The Holocaust Restitution Movement in Comparative Perspective", [www.globalalliance.net/SFPT/MichaelBazylarHolocaustRestitutionComparedJune2001.htm](http://www.globalalliance.net/SFPT/MichaelBazylarHolocaustRestitutionComparedJune2001.htm), (accessed on 4/2/2008).

<sup>252</sup> Marc Perelman, (2008), "Study Estimates Assets of Arab Lands' Jews", [www.forward.com/articles/13134/](http://www.forward.com/articles/13134/), (accessed on 12/4/2008).

The next section will outline some of the operational issues pertaining to international mass claim processes, with the aim of offering some insight into the mechanisms of the system in order to facilitate comparisons among both cases and in broader terms, to identify whether any lessons can be learned to address problems of dispossession of property rights and establish a criteria for a future Palestinian Claim Commission.

### **4.3. The Case of BiH and Kosovo**

Part one of this section situates the case studies, before going on to examine how a claims process is established and the fundamental features it relies upon, such as the pre-decision making process; which is concerned with investigating claims, notifying parties, verifying documents and drafting legal submissions and recommendations. Part two sets out some of the problems in trying to resolve claims, in particular the challenges of providing documentary evidence is given attention. Part three describes the legal framework relevant to the resolution of claims. The final part contains concluding remarks regarding whether claims mechanisms are successful.

From 1991 to 1995, the former Republic of Yugoslavia (FRY) was torn apart by a brutal war between the different ethnic and national groups. The most protracted of these conflicts was in Bosnia as it dissolved into a civil war between Orthodox Serbs, Catholic Croats, and Muslim Bosniacs. The war left Bosnia's infrastructure and economy in tatters. Around two million people were displaced and unable to return to their homes.

A similar situation prevailed in Kosovo, a case which hit international headlines in the late 1990s, when President Slobodan Milosevic forces attempted to suppress the Albanian

majority. In the mid-1990s the Kosovo Liberation Army (KLA)<sup>253</sup> continued its attacks on Serb targets and by 1998 army reinforcements were sent in to crush the KLA. In this case the continued persecution of Kosovo's Albanian population, led to hundreds of thousands of Albanian refugees fleeing into neighbouring countries, which led to NATO's intervention.

#### **4.3.1. Establishing the Claim Process**

The overall purpose of establishing a claim mechanism is to put in place a process that can provide an effective remedy to claimants within a reasonable period of time, while at the same time ensuring fairness of procedures. All claim mechanisms have one very central question to address in the design phase which is: what type of claim or what type of loss is being addressed under what circumstances? Defining these parameters provides some indication of who the eligible claimants are and how many claims can be expected. Since no one model can apply to every case, each model must be fashioned to the context in which the mechanism became necessary.

As the beginning of this chapter outlined, two high profile Commissions will be examined: The CRPC and the HPCC. To elaborate further, the CRCP was an international Commission established in 1996 under an international treaty, the DPA, to decide claims by Bosnians seeking to re-establish their rights to real property of which they had been dispossessed during the 1992-1995 conflict in BiH.<sup>254</sup>

The HPCC was an independent quasi-judicial body established by the UN Interim Administration Mission in Kosovo (UNMIK) in November 1999. It was mandated to ensure an efficient and

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<sup>253</sup> The KLA is an ethnic Albanian rebel movement which sought independence for the province of Kosovo from Yugoslavia and Serbia in the late 1990s.

<sup>254</sup> Howard, M. Holtzmann and Edda Kristjánsdóttir, (2007), *International Mass Claims Processes: Legal and Practical Perspectives*, p. 23.

effective resolution of residential property disputes arising out of the 1999 armed conflict in Kosovo. The HPCC claim process was established to settle disputes covering residential property which included restoring rights to those whose homes have been illegally occupied.<sup>255</sup> The HPCC was supported by a Housing and Property Directorate (HPD) which was responsible for the collection and processing of claims, the implementation of HPCC decisions and the overall management of the mechanism.

When the type of claim has been decided, defining precisely who is eligible to claim, and for what type of loss has to be addressed. Having an approximate figure of claimants and an idea of the type of claim being addressed avoids a situation in which claims may be rejected.<sup>256</sup> This also provides the life of a mechanism with a definite time frame.

Typically claims are classified and resolved collectively or *en masse*. For example, claims can be prioritized and different fixed amounts of compensation can be applied. Lump sum agreements are now used extensively and have provided precedents for other cases and this procedural device has become the paramount vehicle for settling international claims. Richard Lillich and Burns Weston highlight the contrasts between fixed sum agreements and separate claims:

Various countries have attempted to resolve the international claims of their nationals primarily by another means, namely, by negotiating lump sum settlement agreements under which the respondent state pays a fixed - sometimes called an "*en bloc*" or "global" sum to the claimant State, and the latter, generally through a national Claims Commission established pursuant to domestic legislation

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<sup>255</sup> Ibid., p. 63.

<sup>256</sup> As was the case of the German Forced Labour Compensation Programme (GFLCP) where the majority of the applicants who filed claims with IOM, do not satisfy the criteria of the German Foundation Act and will not receive compensation, see, [www.compensation-for-forced-labour.org/pdf/Factsheet\\_03\\_04\\_%20e.pdf](http://www.compensation-for-forced-labour.org/pdf/Factsheet_03_04_%20e.pdf), (accessed on 3/2/2008).

adjudicates the separate claims and allocates a share of the fund to each successful claimant.<sup>257</sup>

Having decided upon the type of claim and who is eligible, most mechanisms have to launch information campaigns in order to inform potential claimants, such campaigns are usually tackled by claimant outreach programmes. These programmes depend on the number and location of potential claimants, the number and location of properties in question (which would include property rights and title) and what types of documentary evidence or records would be required.

Communicating with claimants has proven to be a significant challenge to the property restitution process, in part because interested parties are often refugees or DP's without a permanent address. Moreover, when refugees are reluctant to return to their homes due to security concerns, or those who are displaced are not concentrated in any particular region, claimants have found it difficult to appear before a Commission or to prepare the appropriate records in order to file a claim.

For a mechanism successfully to solve claims, it must reach those who are most likely to have been affected. In BiH, the CRPC for example, established their own regional offices, in the ex-Yugoslav republics and in some Western European countries that took in BiH refugees, and utilized mobile units to reach claimants. The CRPC provided an Executive office and other offices to inform potential claimants. Radio and television broadcasts were also used to inform the public, which contained all the detailed information for claimants.

In Kosovo, outreach activities in the HPCC claim process were the responsibility of the HPD in cooperation with UNMIK. Like

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<sup>257</sup> Richard B, Lillich and Weston H, Burns, (1998), "Lump Sum Agreements: Their Continuing Contribution to the Law of International Claims", *Journal of International Law*, Number. 82, p.69-80.

the CRPC, efforts had to be extended into Serbia and Montenegro where many refugees had fled. A web site was also used as a method of reaching to refugees and IDP's.<sup>258</sup> To be successful the process had to reach all potential eligible claimants, and avoid receiving claims from ineligible claimants. Equally as vital is the process of extracting appropriate information from the claimants in order to start to facilitate the claims process.

One of the most important components of a claim process is establishing the mechanism. The type of governing instrument is also essential because it establishes the nature of the mechanism. The CRPC was an international Commission established in 1996 under an international treaty, the DPA, to decide claims by Bosnians seeking to re-establish their rights to real property of which they had been dispossessed during the 1992-1995 conflict in BiH.<sup>259</sup> The CRPC was established by agreements between States. A trilateral agreement between BiH and its Entities<sup>260</sup> found in Annex 7 of the DPA, established CRPC as a temporary ad hoc body. Annex 7 stated that:

All refugees and displaced persons have the right to freely return to their homes of origin. They shall have the right to have restored to them property of which there were deprives in the course of hostilities since 1991 and to be compensated for any property that cannot be restored to them.<sup>261</sup>

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<sup>258</sup> Housing and Property Directorate Housing and Property Claims Commission, [www.hpdkosovo.org](http://www.hpdkosovo.org), (accessed on 6/11/2007).

<sup>259</sup> As an independent body the Commission was not subject to domestic BiH law but to international law. Though fully independent the Commission formed part of a cluster of international bodies, created by the DPA, which required the Commission to work with other bodies established under the General Framework Agreement such as the Commission on Human Rights and UNHCR.

<sup>260</sup> The Republic of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and Republika Srpska are the Parties to Annex 7 of the Dayton Peace Agreement.

<sup>261</sup> Paul Prettitore, (2003), "The Right of Housing and Property Restitution in Bosnia and Herzegovina: A Case Study", Paper Working Number.1, *Badil*, [www.badil.org/Campaign/Expert\\_Forum/Ghent/paper08.pdf](http://www.badil.org/Campaign/Expert_Forum/Ghent/paper08.pdf), (accessed on 2/10/2007).

Details of the Commission's mandate were contained in Annex 7 to the DPA, which stated that:

The Commission shall receive and decide any claims for real property in Bosnia and Herzegovina, where the property has not voluntarily been sold, or otherwise transferred since April 1, 1992, and where the claimant does not now enjoy possession of that property.<sup>262</sup>

Annex 7 also made an explicit link between the right to return to a former home of origin and to recover property lost as a result of hostilities. Its purpose was specifically to "receive and decide any claims for real property" where the claimant did not enjoy possession of that property or to receive "just compensation" for it.

The HPCC claims process was established in 1999 by UNMIK to create an independent tribunal to settle disputes concerning non-commercial residential property. The constituting instrument; UNMIK Regulation 1999/23 established the institutions, its respective mandates and functions, which contains provisions on who may be claimants, what claims can be brought, composition of the Commission and appointment of Commissioners, the exclusivity of the Commission's jurisdiction, applicable law, and the possibility for appeals.<sup>263</sup>

The Claim Commission addressed claims arising out of the policies adopted by the government of Yugoslavia in Kosovo which affected property rights from 1989 to 1999, and the

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<sup>262</sup> Hans van Houttee, (2000), "Mass Property Claim Resolution in a Post-War Society: The Commission for Real Property Claims in Bosnia and Herzegovina", Permanent Court of Arbitration, *Institutional and Procedural Aspects of Mass Claims Settlement Systems*, p.32.

<sup>263</sup> A detailed description of the Claims Process is found in UNMIK Regulation 2000/60 of 31 October 2000, On Residential Property Claims and the Rules of Procedure and Evidence of the Housing and Property Directorate and the Housing and Property Claims Commission, [www.hpdkosovo.org](http://www.hpdkosovo.org), (accessed on 19/7/2007).

events which played out in the aftermath of the NATO campaign during 1999.

The mandate conferred on UNMIK was unprecedented in terms of the nature and number of tasks and their complexity, when compared with the mandate of other earlier UN peace operations. It was conferred with legislative and executive powers and mandated to establish an international civil presence that would provide an interim administration in Kosovo until a long term political solution could be reached.

After the mechanism has been established claims must be determined and different substantive and procedural laws must apply. Both cases in this study have the authority to establish some or all of the procedures that are necessary to control the application of rules. Both cases also demonstrate a level of flexibility which allows them to create new rules or modify accepted rules for the overall greater effectiveness of the mechanism.<sup>264</sup>

The BiH property Commission was composed of a mixed body of international and national Commissioners. The Commission consisted of three international members and six national members. The three international Commissioners were have appointed by the President of the European Court of Human Rights. The Federation and the Republika Srpska, being the two constituent entities of the Republic of Bosnia and Herzegovina, two Bosniac and two Croat Commissioners were appointed by the Federation, while two Serb members were appointed by the Republik Srpska.<sup>265</sup> In other words, the Commissioners were mandated to make their own rules and regulations by consensus.

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<sup>264</sup> Each mass claim process differs regarding the types of procedures that govern the way each claim process is established.

<sup>265</sup> Ibid., p.25.



Since the CRPC had the jurisdiction to resolve claims of real property during the war the Commission had to formulate rules and regulations, consistent with the Peace Agreement, in order to carry out its functions. The Commission also adopted a book, titled "*Book of Regulations on Procedure*", which covered legal, administrative and organizational issues, as well as procedural rules<sup>266</sup> for the claims ad decision process, including substantive and evidentiary standards.<sup>267</sup>

#### **4.3.2. Standards of Proof**

The issue of documentary evidence or lack of proof poses serious challenges for Commissioners who have had to adopt a variety of evidentiary standards. Property restitution systems commonly include mechanisms to recover property records and make them available to refugees and IDP's. For example, the evidentiary standards applied in the resolution of claims by these mechanisms vary from fairly "relaxed" to stricter arbitration standards.

Property records are often destroyed, misplaced, or poorly kept during a conflict or natural disaster. Even where official records are well maintained, few refugees and IDP's have access to their individual property records. Today there are procedures of standards of proof that take into consideration what is reasonably expected based on the circumstances of the claimants involved. They seem to work best when claimants can be pooled together in similar classification cases, where the body in charge actually has jurisdiction in entitling compensation to victims who make a claim, where there are adequate funds to run the duration of the programme. With these in place the programme can collect the claims and process them, determining classes of entitlement within a speedy time frame.

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<sup>266</sup> Any procedural matters not regulated by the Regulations were to be governed by the provisions of the Law on Civil Procedure of BiH, as define in the DPA CRPC Book of Regulations on Procedure, Article 91.

<sup>267</sup> Howard M. Holtzmann and Edda Kristjánsdóttir, (2007), *International Mass Claims Processes: Legal and Practical Perspectives*, p. 41.

In the BiH case the international community understood property rights to be fundamental to any durable peace in reversing the ethnic cleansing which had taken place. Making property restitution efforts more complicated was the fact that so much property data and records had been destroyed. The CRPC's book of regulation on procedures contained the necessary evidence required to prove ownership rights, lawful possession of property, and occupancy rights. However, the regulations also made provision for circumstances where evidence was not obtainable. The regulations stated that:

If no relevant evidence is available to a claimant or if the evidence presented by the claimant is of doubtful credibility, the Commission will initiate evidence collection or evidence verification procedures.<sup>268</sup>

As Leckie points out in his 2003 publication, titled "*Returning Home: Housing and Property Restitution Rights of Refugees and Displaced Persons*", in BiH, few DP's had ready access to property records following the war. The BiH Land Commission took upon itself the task of verifying most claims at the municipal level. Pre-war legal problems, such as poorly maintained records and rampant illegal construction, made this task much more difficult. To maximize efficiency, the Land Commission established an administrative determination process, which involved checking claims against electronic survey records and census data wherever possible.<sup>269</sup>

This lack of access to records has significantly complicated property restitution efforts in BiH. As such the CRPC did not require evidence from claimants and in many claim cases initiated, evidence collection or verification procedures in order to gather evidence for decision issuance. The CRPC also applied

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<sup>268</sup> The CRPCs "*Book of Regulations on Procedure*", Article, 35.

<sup>269</sup> Scott Leckie, (2003), *Returning Home: Housing and Property Restitution Rights of Refugees and Displaced Persons*, p.73.

evidentiary presumptions, such as the fact that claimants are refugees or DP's, and that the property has not voluntarily been sold or otherwise transferred since April 1, 1992. The CRPC also established a flexible internal appeals process, which was open to any interested party able to present new evidence to challenge a decision.<sup>270</sup>

However, this situation was exacerbated by legal uncertainty surrounding property records. The cadastre and property rights register was incomplete and inaccurate due to the fact that the pre-1999 system regulating it did not adequately provide for the registration of all property transfers. Furthermore, the conclusion of unregistered and unofficial transfers which had taken place between 1991 and 1999 also rendered records incomplete and unreliable.

This situation was further compounded by the destruction of property records during the conflict and their removal by the FRY authorities when they retreated in 1999.<sup>271</sup> As such, the BiH post-conflict environment demonstrates that housing and property rights challenges ranged from population displacement to widespread damage, and illegal occupation of properties.

The CRPC was able to verify property losses by recognizing the ownership or property right of the specific claimant in question, leaving it to the claimant to select the remedy. Preference for one of the three options could be taken: return into possession, compensation for lost property or confirmation of property rights, leaving the claimant who has not yet decided what to do with the property to keep all options open.

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<sup>270</sup> Ibid.,p.73.

<sup>271</sup> Elanor Beardsley, (2002), "Who owns what? UN tackles Kosovo housing tangle", Christian Science Monitor, [www.csmonitor.com/2002/0110/p7s1-woeu.html](http://www.csmonitor.com/2002/0110/p7s1-woeu.html), (accessed on 4/2/2008).

Through the claim registration proceedings the claimant was given a claim form, something that provided the claimant with an internationally recognized legal document, that local authorities could not take away, and that decisions would eventually have to be implemented. In reality many owners/occupiers encountered difficulties in repossessing their properties.<sup>272</sup>

By restoring property the CRPC were able to lay the groundwork for property rights restitution on a national scale. Despite its imperfections, the CRPC was able, as its budget and staff resources steadily grew, to confirm whether in 1991 somebody had held the ownership of a certain property or occupancy right of a house or apartment and to provide owners/occupiers with a certificate, recognized nationwide, that would allow them to proceed to the next stage of having their property rights reinstated.<sup>273</sup>

The post-conflict environment in Kosovo, also presented similar housing and property challenges. The situation was also made much more difficult by the pre-1999 period of ethnic discrimination which had also resulted in displacement and property disputes.<sup>274</sup> The procedures regulating the collection and registration of claims were set down in sections 7 and 8 of UNMIK Regulation 2000/60. In line with these provisions, the HPD devised internal operating procedures which focused on making the process accessible to all potential claimants.<sup>275</sup>

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<sup>272</sup> The implementation of the Commission's decisions was not always accepted. For example the local authorities remained reluctant to carry out the international obligation undertaken by their central authority, which served to delay implementation.

<sup>273</sup> Madeline Garlick, (2000), "Protection for property rights: a partial solution? The Commission for Real Property Claims of Displaced Persons and Refugees (CRPC) in Bosnia and Herzegovina", *Refugee Survey Quarterly*, Volume. 19, Number 3.

<sup>274</sup> [Housing and Property Claims Commission \(HPCC\)](http://www.pca-cpa.org/showpage.asp?pag_id=1059), Final Report, [www.pca-cpa.org/showpage.asp?pag\\_id=1059](http://www.pca-cpa.org/showpage.asp?pag_id=1059), (accessed on 3/2/2008).

<sup>275</sup> *Ibid.*,

The HPCC standards of proof were flexible and had to be so, because records had in many cases been taken to Serbia. The Commission's rules stated that the "Commission may be guided but is not bound by the rules of evidence applied in local courts in Kosovo. The Commission may consider any *reliable* evidence, which it considers relevant to the claim..."<sup>276</sup>

The development of innovative techniques has also greatly assisted the claims process. For example the CRPC claims process relied heavily upon land records as evidence. This required a large IT department to put all the paper forms into a computer database for quick reference when preparing decisions. The CRPC was then able to verify claims for property through the use of sophisticated software. Furthermore, much of the claims collection and registration was conducted by mobile teams with laptops. As van Houtte points out the CRPC did recover data which was used to verify claims:

In BiH, the CRPC was able to recover and reconstruct most of the computerized land-register data, which was used as a verification database in the resolution of claims. It also used the 1991 census database, in which the main place of residence of all citizens was recorded, and through local courts and administrative bodies obtained additional sources of evidence on property rights.

van Houtte further adds how claims were matched:

The CRPC relied on its free access to all these records to determine property titles where claimants could no longer obtain that information from the local administration, in some cases for ethnic reasons. Its staff could thus check each individual claim against all available records.<sup>277</sup>

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<sup>276</sup> UNMIK Regulation 2000/60, section 21. 1.

<sup>277</sup> Hans van Houtte, (2002), "Due Process in International Mass Claims", *Erasmus Law Review*, Volume 01, Issue 02, [http://66.102.9.104/search?q=cache:Q64TSL1sruIJ:www.erasmuslawreview.nl/files/04-due\\_process\\_in\\_international\\_mass\\_claims.pdf+In+the+Kosovo+case,+the+HPCC+was+not+able+to+award+remedies+other+than+those+provided+for+in+UNMIK+Resolution+2000/60.&hl=en&ct=clnk&cd=2&gl=uk](http://66.102.9.104/search?q=cache:Q64TSL1sruIJ:www.erasmuslawreview.nl/files/04-due_process_in_international_mass_claims.pdf+In+the+Kosovo+case,+the+HPCC+was+not+able+to+award+remedies+other+than+those+provided+for+in+UNMIK+Resolution+2000/60.&hl=en&ct=clnk&cd=2&gl=uk), (accessed on 12/1/2008).

In 2001, the CRPC completed the design of a Repossessions Tracking Database (RTD), to track and follow up on repossession throughout BiH, and in 2002 the CRPC established the Integrated Property System, (IPS) a database that integrated CRPC's claims and decision database and CRPC's RTD which contained all the relevant data on property claims, establishing a framework which domestic authorities could use to take over the implementation of the DPA.<sup>278</sup>

In Kosovo no computerized software was initially involved in designing the claim process. With the absence of a computerized claims database and claim tracking system, the productivity of the Commission suffered, which presented the Commission with many productivity issues. For example the inadequacy of computer support was for a long time one of the principal challenges of the process. Eventually, an in-house IT service was created and computer support played an important role in the turnaround of the claims process and claims were significantly increased.<sup>279</sup>

#### **4.3.3. The Legal Nature of the Claim Process**

Another major component of the mechanism involves the decision makers. In CRPC case the policy-makers and the decision-makers were one and the same. The CRPC consisted of nine Commissioners (six Bosnians appointed by the two Entities of BiH, equally representing the three ethnic groups in BiH, and three internationals appointed by the European Court of Human Rights) who compose the Commission determine CRPC policy by consensus. The Commissioners worked part time in Sarajevo. While decision proposals are prepared by the Secretariat, the

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<sup>278</sup> An extensive team was put together consisting of thirty programmers, database administrators and support staff who supported over 290 work stations, Howard M. Holtzmann and Edda Kristjánsdóttir, (2007), *International Mass Claims Processes: Legal and Practical Perspectives*, p. 339.

<sup>279</sup> *Ibid.*, p. 339-340.

nine Commissioners formally adopt the decisions of CRPC by majority vote. The CRPC had a Secretariat of 400 people at its peak.<sup>280</sup>

In the Kosovo case there were extreme ethnic divisions, and in order to foster the support and confidence of claimants, and the public at large, in the process, the HPCC was composed of a panel of two international and one national Commissioner. The members were not based in Pristina on a full-time basis, but in most instances met in Pristina for Commission sessions. The HPCC was permitted to carry out its adjudicative functions through convening sessions in Pristina or holding sessions elsewhere or through electronic means where appropriate. Sessions were held ordinarily six times per year.<sup>281</sup>

The legal nature of the claim process saw mechanisms providing specific remedies to its claimants. The remedies involved in these case studies fall into two categories: monetary compensation or restitution. The CRPC claim process was a real property restitution programme and saw two remedies being put forward: one was the return of the claimed real property to the claimant or the setting aside of a wartime sale or transfer concluded under duress, with restitution of that which had been exchanged, and the second was monetary compensation in lieu of return of the lost property, or a compensation bond issues for the future purchase of real estate.<sup>282</sup>

However, as the concluding part of this section will point out, during the CRPC's claims process it became clear that no funds were going to be made available, and the compensation fund did not come into existence.

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<sup>280</sup> Vandana Patel, "A Comparative Analysis of Mass Claims Mechanisms", paper presented at the second international Stocktaking Conference on Palestinian Refugee Research, *International Development Research Centre*, (Ottawa: June 2003), [http://network.idrc.ca/uploads/user-S/10578565170Session\\_8\\_Vandana\\_Patel\\_new.doc](http://network.idrc.ca/uploads/user-S/10578565170Session_8_Vandana_Patel_new.doc), (accessed on 22/5/2007).

<sup>281</sup> [Housing and Property Claims Commission \(HPCC\)](http://www.pca-cpa.org/showpage.asp?pag_id=1059), Final Report, [www.pca-cpa.org/showpage.asp?pag\\_id=1059](http://www.pca-cpa.org/showpage.asp?pag_id=1059), (accessed on 3/2/2008).

<sup>282</sup> Dayton Peace Agreement Article XI and Article XII, paragraphs 2 and 5.

The HPCC was a property restitution programme and made monetary compensation available for those in (category “A”); claims of natural persons whose property rights were revoked by discriminatory legislation, and in instances where the claimed property cannot be restored to the rightful owner because it has been sold in the interim period to a third party. The remedies available otherwise were: restitution (category “A”); an order for registration of ownership (category “B”); or an order for repossession (category “C”); which UNMIK Regulation 2000/60 stated that “any refugee or displaced person with a right to property has a right to return to the property or to dispose of it in accordance with the law...”<sup>283</sup>

In the CRPC case, having provided specific remedies to its claimants, an enforcement mechanism had to be ensured. Annex 7 of the DPA did not grant the CRPC any enforcement or implementation powers and implementation of the Commission’s decision was based upon domestic authorities. As mentioned the CRPC did not award any compensation to claimants, however, it did issue certificates confirming property rights that if implemented permitted refugees and DP’s to repossess their properties or to be considered for reconstruction assistance.

Although Annex 7 makes BiH and its two entities responsible for enforcement of CRPC decisions, this was not the case and evicting the current occupant (who was often displaced) began to take place. Without an enforcement mechanism the CRPC could not, by itself, assist people to recover their property rights (or deal with the problem of secondary occupants) and to return home, and only by effecting change in the domestic property legislation via the pressure of the international community could measures be enforced.

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<sup>283</sup> Howard M, Holtzmann and Edda Kristjánsdóttir, (2007), *International Mass Claims Processes: legal and practical perspectives*, p. 77-78.



However from 2000 onwards, the CPRC, working closely with the international organizations involved in the area, achieved wide-spread implementations of its decisions.<sup>284</sup> Gradually the combined efforts of international local authority coordination led to an increasing number of property restitutions. In the Kosovo case it was the HPD in coordination with the Commission's co-registrars who exercised the decisions and eviction orders. Local law enforcement authorities were required to support the Directorate in this function based on the details and provisions on the procedures set out in UNMIK Regulation 2000/60.<sup>285</sup> Decisions of the HPCC were binding and enforceable and were not subject to review by any other judicial or administrative authority in Kosovo.<sup>286</sup>

In recognition of the fact that a decision recognizing a property right on its own, was not sufficient in a post conflict society to restore possession of property to claimants, the restitution programme was explicitly conferred with power to enforce fully and ensure compliance with legally binding decisions. The process also presented claimants with a number of options for the implementation of their decision. In order to deal with the problem of illegal occupation of properties, the HPD was authorized to enforce HPCC decisions through issuing and executing eviction orders.<sup>287</sup>

By way of conclusion, can it be said that the mechanisms were effective? The mass claims mechanisms demonstrated by both the case studies can be said to have been successful. As of July, 2003 the CRPC has collected claim applications for 319,013,

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<sup>284</sup> Ibid., p.136.

<sup>285</sup> Ibid., p.138.

<sup>286</sup> For more information regarding both cases see Leopold Von Carlowitz, (2004), "Settling Property Issues in Complex Peace Operations: The CRPC in Bosnia and Herzegovina and the HPD/CC in Kosovo", *Leiden Journal of International Law*, 17: 599-614.

<sup>287</sup> [Housing and Property Claims Commission \(HPCC\)](http://www.pca-cpa.org/showpage.asp?pag_id=1059), Final Report, [www.pca-cpa.org/showpage.asp?pag\\_id=1059](http://www.pca-cpa.org/showpage.asp?pag_id=1059), (accessed on 3/2/2008).

properties throughout BiH, and as of July, 2003, CRPC issued 302,109, property decisions. As highlighted, the utilization of new technology increased the efficiency of the process and decisions were able to be made in a reasonable period of time.

Decisions provided incontrovertible proof of rights to property and legally require that domestic authorities free up occupied houses so that decision-holders can return. The CRPC provided dispossessed people with final and legally binding decisions on their property entitlements so they can resume their lives with security.<sup>288</sup>

The HPCC has effectively implemented its mandate and resolved as of March 16, 2008, 29,160 claims received, of which 29,160 have been decided (100%) and of which 28,533 claims have been implemented (97.9%). This accomplishment has assisted dispossessed property right holders gain repossession of their homes, and has contributed to peace building and post conflict rehabilitation in Kosovo.<sup>289</sup>

However, one of the important lessons learned from BiH case was that compensation was not a practical solution for refugees and DP's. Although Annex 7 affirmed the right of refugees and DP's to compensation, it never materialised, primarily because compensation posed too many difficult problems to be an effective durable solution for refugees and DP's (e.g., valuation of properties).<sup>290</sup>

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<sup>288</sup> Commission for Real Property Claims of Displaced Persons and Refugees, [www.law.kuleuven.ac.be/ipr/eng/CRPC\\_Bosnia/CRPC/new/en/main.htm](http://www.law.kuleuven.ac.be/ipr/eng/CRPC_Bosnia/CRPC/new/en/main.htm), (accessed on 6/4/2008).

<sup>289</sup> Housing and Property Directorate Housing and Property Claims Commission, [www.hpdkosovo.org/index.htm](http://www.hpdkosovo.org/index.htm), (accessed on 6/4/2008).

<sup>290</sup> *Badil*, (2003), "Refugee Return and Real Property Restitution in Bosnia-Herzegovina - Lessons Learned for the Palestinian Case", [www.reliefweb.int/rw/rwb.nsf/AllDocsByUNID/ea1dd266c1352a4d85256cbc00509518](http://www.reliefweb.int/rw/rwb.nsf/AllDocsByUNID/ea1dd266c1352a4d85256cbc00509518), (accessed on 11/12/2007).

Furthermore, the Bosnian government had no funds and individual compensation was not favoured by the international donors, who were more interested in reconstructing projects such as homes and roads. Although procedures provided refugees and DP's with money, for those who did not wish to return to re- build their lives, the process did not provide a full remedy for those whose homes had been destroyed and did wish to return.

Resolution of property disputes in Kosovo was also a very difficult undertaking. As this section has already established although equipped with a good legal framework, the HPD experienced difficulties in executing its mandate and faced serious resource implications throughout its entire operation. Additionally, the levels of funding were not at a scale or adequate to implement the framework. As outlined the limited IT facilities and the shortage of staff also impeded the ability of the institution to provide an effective remedy to the affected property right holders.

The purpose of this chapter was to technically examine two case studies. Having studied a range of mechanisms and processes in both post-conflict contexts, is it possible to conclude that Claims Commissions are appropriate for resolving mass claims? The overwhelming answer must be "yes".

The mechanisms covered by this chapter have demonstrated that on the whole, they have been successful in rendering decisions for many of the claims they were established to address. The claims achievements and the length of time each claim took to be accomplished varied, based on the approach taken, the number of claims, the funds available to operate, and the establishment of successful enforcement mechanisms to pay out awards or physically to restore property to its rightful owner. The case studies also highlighted the significant role

played by the international community as Rhodri Williams notes in the BiH case:

The international community in BiH played a critical role in overcoming the initially fierce political resistance to refugee return, drawing on an unprecedented deployment of legal, political, and financial resources, as well as an unusual level of unity and perseverance.<sup>291</sup>

To explore the second research question the final section will look at how the mechanisms employed in the BiH and Kosovo cases could be translated into establishing a Palestinian Claim Commission. Although circumstances in the Palestinian refugee case have been identified as being unique, it would nevertheless be insightful to consider if there are mechanisms available that could give valuable guidance, through lessons learned, to the future designers of a Palestinian Claim Commission.

#### **4.4. Looking Towards a Palestinian Claim Commission**

##### **4.4.1. Palestinian Claim Commission: A Framework**

The case studies outlined in this chapter have interesting and perhaps significant implications regards resolution of the Palestinian refugee issue, in general, and the issue of compensation, in particular. While recognizing that each case is unique and specific to its own context, it must be acknowledged that the developments of the last decade especially represent a broad range of different ideas in delineating mechanisms that may apply to the Palestinians. However, these mechanisms need to be carefully examined in order to decide what is feasible in

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<sup>291</sup> Rhodri Williams, (2006), "Post Conflict Property Restitution and Refugee Return in Bosnia Herzegovina: Implications for International Standard – Setting and Practice", [www.law.nyu.edu/journals/jilp/issues/37/37\\_3\\_Williams.pdf](http://www.law.nyu.edu/journals/jilp/issues/37/37_3_Williams.pdf), (accessed on 8/9/2007).

light of all the factors which have made the Palestinian case so unique.

Therefore, the final section will look at possible mechanics of a Palestinian compensation scheme. This section is not intended to deal with detailed steps but will confine itself to studying potential ideas and practical steps based on the two international case studies examined.

#### **4.4.2. What type of Claim?**

Before going on to look at what type of claim is appropriate for the Palestinian case, this section will firstly recap by looking at the parameters for claims within the context of the Palestinian refugee case. As chapter one outlined, paragraph 11 of resolution 194 affirms three separate rights for Palestinian refugees. More recently in 1996 UN General Assembly Resolution 51/129 “reaffirms that the Palestine Arab refugees are entitled to their property and to the income derived there from, in conformity with the principles of justice and equity”. It “requests the Secretary-General to take all appropriate steps... for the protection of Arab property, assets and property rights in Israel and to preserve and modernize the existing records”.<sup>292</sup>

The Taba negotiations of 2001, on the permanent status issues, is the most recent reminder of the complexities of the refugee compensation issue, which saw both sides agreeing to the establishment of an international Commission and an international fund as a mechanism for dealing with compensation in all its aspects. Political negotiations and recent developments on the refugee issue will be outlined in more detail in the following chapter.

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<sup>292</sup> General Assembly Resolution 51/129, 13 December 1996, [www.un.org/documents/ga/res/51/a51r129.htm](http://www.un.org/documents/ga/res/51/a51r129.htm), (accessed on 19/12/2007).

Since all claims mechanisms have a central question to address in the design phase the Palestinian refugee case would also have to delineate precisely further questions, such as: Who is a refugee; what are their needs; how much will it cost to meet them, and who can claim and for what losses. Such questions are imperative for the Commission to be able to factor in the potential number of claimants and how claims are likely to be resolved.<sup>293</sup>

Without doubt the Palestinian refugee case would far exceed any other recent mass claim case in history, with possible millions of global claimants. Tight procedures and well conceptualised and clear eligibility guidelines will have to be established; a complex task in itself because different standards of proof for different types of claims would have to be developed.

Whilst many issues relating to the establishment and implementing procedures of a Claim Commission are likely to take a long time to negotiate, certain processes could be initiated immediately. For example, defining those who would be eligible i.e. defining exactly who is a “Palestinian refugee” would be fundamental for the allocation of resources and for filing compensation claims. Such a definition would be required for providing guidance to issues such as: what type of property loss would be subject to compensation? Would this include the loss of home and property and livelihood?

In the CRPC case those who filed claims were generally refugees, or IDP’s and the CRPC’s book of regulations on procedure, provided guidance on such matters. In Kosovo it was UNMIK Regulation 2000/60 that provided instruction for

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<sup>293</sup> For further information on the issues of property compensation and restitution see Salim Tamari, “Palestinian Refugee Property Claims: Compensation and Restitution”, *Heidelberg*, (2003), [www.law.tau.ac.il/Eng/\\_Uploads/dbsAttachedFiles/TamariPaperRefugeeCompensationRestitution1julycon.doc](http://www.law.tau.ac.il/Eng/_Uploads/dbsAttachedFiles/TamariPaperRefugeeCompensationRestitution1julycon.doc), (accessed on 2/9/2007).

deciding upon eligible claimants. In the Palestinian refugee case a similar jurisdiction of the claims process would have to be set out, and would have to include the types of claims that could be made and the eligibility of future claimants.

As chapter two covered, defining the terms “Palestinian refugee” is a complex question and the official UNRWA definition is surrounded in controversy. However, defining who is a Palestinian refugee could be obtained from UNRWA’s registration files. UNRWA could also provide the necessary information required for determining the total number of Palestinians living in each of the agency’s five fields of operation. Additionally, getting reliable Palestinian refugees figures would be essential for any small scale repatriation programmes or for resettlement of Palestinians in host countries.

Status determination was also a topic discussed by the Geneva Accord <sup>294</sup> which stated that:

The model recommends the creation of a Status-determination Committee, which would be responsible for verifying refugee status. The model also outlined that UNRWA could be considered to be a rebuttable presumption (prima facie proof) of refugee status. <sup>295</sup>

The problem however, with this idea is that UNRWA’s registration system is not an indicator of refugee status, because as outlined previously, registration was based on services for those in need of assistance within UNRWA’s area of operations.

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<sup>294</sup> The Geneva Accord was a permanent status agreement between the State of Israel and the State of Palestine and presented a comprehensive and unequivocal solution to all issues vital to ensuring the end of the conflict.

<sup>295</sup> The Geneva Accord: A Model Israeli-Palestinian Peace Agreement, [www.geneva-accord.org/accord.aspx?FolderID=33&lang=en](http://www.geneva-accord.org/accord.aspx?FolderID=33&lang=en), (accessed on 14/12/2007).

Realistically such issues could be tackled immediately, as early identification of claimants would assist to calculate the level of compensation required and commit funds to the system. In 1999 the PRRN/IDRC workshop on “*Compensation as Part of a Comprehensive Solution to the Palestinian Refugee Problem*”,<sup>296</sup> began to look into defining Palestinian claimants.

Participants identified five types of claimants: claims made by individual 1948 property owners and their descendants; claims made by extended family or villages; claims made by all refugees, regardless of property ownership, including original and subsequent generations; collective claim made by the Palestinian State on behalf of all refugees; and collective claims made by host governments for the previous costs of hosting refugees. The issue of heirs raises further questions such as how many generations and what degree of relationship? Defining the term “family” would also need to be addressed.

This brief summary of the potential claimant pool gives some indication to those with the power to implement just how complex it will be in trying to define who exactly is eligible to make a claim. As chapter two outlined in December 2007 UNRWA estimated the total number of RRs was 4,562,820 million. Fundamentally the choice of definition will impact the methodologies used to process the claim.

#### **4.4.3. Structure of the Commission**

The creation of a Palestinian Claim Commission or a Land and Property Commission in terms of its authority, set up, and enforcement is presently only speculative. Designing a Palestinian Claim Commission would however likely require four components which would consist of: a body including the main

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<sup>296</sup> See the Workshop on Compensation as Part of a Comprehensive Solution of the Palestinian Refugee Problem, *PRRN/IDRC*, (Ottawa: July 1999), for the strengths and weaknesses of the different claimants, [www.arts.mcgill.ca/MEPP/PRRN/prcomp3.html](http://www.arts.mcgill.ca/MEPP/PRRN/prcomp3.html), (accessed on 8/8/2007).



stakeholders, a set of commissioner's to decide upon the claims; an appeals body to deal with disputes and a strong administrative backup team to make the running of the Commission as smooth and as efficient as possible.

The Geneva Accord for example, specified the structure along the lines of establishing an Executive Board composed of representative members to govern the Commission and make the relevant policy decisions in accordance with this Agreement. The Board would need to draw up the procedures governing the work of the Commission and oversee the conduct of the various Committees of the Commission. The Board would also need to create a Secretariat and appoint a Chair to conduct the day-to-day operation of the Commission.<sup>297</sup>

The Commission would also have to be independent and non political. It is also likely that the Commission and would have to cooperate with the PLO and the PA along with the different governments, the UN, UNRWA, the European Union (EU), WB, the host countries, Israel as well as other relevant international institutions.

The Geneva Accord also provides an example of how to establish a model regarding an international Commission, mandate and composition as follows:

An International Commission shall be established and shall have full and exclusive responsibility for implementing all aspects of this Agreement pertaining to refugees. In addition to themselves, the Parties call upon the United Nations, the United States, UNRWA, the Arab host countries, the EU, Switzerland, Canada, Norway, Japan, the World Bank, the Russian Federation, and others to be the members of the Commission.<sup>298</sup>

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<sup>297</sup> The Geneva Accord: A Model Israeli-Palestinian Peace Agreement, [www.geneva-accord.org/accord.aspx?FolderID=33&lang=en](http://www.geneva-accord.org/accord.aspx?FolderID=33&lang=en), (accessed on 14/12/2007).

<sup>298</sup> Ibid.,

As well as being independent and non political, and involving the cooperation of many players, funding would need to be found to establish and keep the Commission running as well as providing compensation payouts. How this works out in the Palestinian refugee case remains to be seen, although it is likely that the United States would be heavily involved with the Commissions funding and support along with the EU, although international funding is not something which has been used in the past to settle claims.

As Maren Zerriffi notes, “there is not one case where the international community has financed compensation on this level which is unprecedented”.<sup>299</sup> Although the international community did provide a degree of financing for the Commissions in the case studies, international funds were used mostly for start-up and administrative costs. Furthermore, as the CRPC case highlighted, the Commission experienced considerable problems in obtaining the pledged international funds.

The appointment of international experts would also be fundamental. This was a common mechanism used in the case in BiH and Kosovo, where international experts served on the Commissions. The Geneva Accord model for example suggested that:

The Parties shall request the International Commission to appoint a Panel of Experts to estimate the value of Palestinians property at the time of displacement. The Panel of Experts shall base its assessment on the UNCCP records, the records of the Custodian for Absentees’ Property, and any other records it deems relevant. The Parties shall make these records available to the Panel. The Parties shall

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<sup>299</sup> Maren Zerriffi, (2000), “Preliminary Thoughts on US Financing of a Compensation Regime for Palestinian Refugees”, *FOFONET Digest* 197, [www.arts.mcgill.ca/MEPP/PRRN/zerriffi.html](http://www.arts.mcgill.ca/MEPP/PRRN/zerriffi.html), (accessed on 19/8/2007).

appoint experts to advise and assist the Panel in its work. Within 6 months, the Panel shall submit its estimates to the Parties.<sup>300</sup>

International assistance would also be necessary for various aspects of the Commission, such as dealing with potentially millions of claims. UNHCR for example could be utilized for its experience in housing and property restitution programmes. Other forms of assistance could be drawn from several experienced international organizations, such as the OSCE, IOM, and the PCA, all of whom have relevant experience.

It is also likely that these international organizations would be looked to in providing the panel of international experts which would be required to advise and assist with the Commissions work. It is also however possible that a new purpose built organization would have to be created.

Some form of Palestinian participation is also likely to be a necessary measure. As Salman Abu Sitta suggests “members who represent villages and cities whose inhabitants were forced to leave in 1948 could be involved in the process”.<sup>301</sup> Indeed, incorporating the views of refugees into the restitution process, and recognizing that restitution measures are far more likely to succeed when the beneficiaries are involved as equal partners in a consultative process, is an important aspect which needs to be considered in the design process.

UNRWA for example, could be asked to address the refugee communities in their areas of operation as one method of

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<sup>300</sup> The Geneva Accord: A Model Israeli-Palestinian Peace Agreement, [www.geneva-accord.org/accord.aspx?FolderID=33&lang=en](http://www.geneva-accord.org/accord.aspx?FolderID=33&lang=en), (accessed on 14/12/2007).

<sup>301</sup> Salman Abu Sitta, (1998), “A Call to Establish a Palestine Land Commission”, [www.plands.org/articles/8.htm](http://www.plands.org/articles/8.htm), (accessed on 22/8/2007). See also Salman Abu Sitta, “Restitution and Compensation”, paper presented at the Workshop on Compensation as Part of a Comprehensive Solution of the Palestinian Refugee Problem, *PRRN/IDRC*, (Ottawa: July 1999), [www.arts.mcgill.ca/MEPP/PRRN/abu-sitta.html](http://www.arts.mcgill.ca/MEPP/PRRN/abu-sitta.html), (accessed on 21/4/2007).

engaging Palestinians in the process. For those Palestinian outside UNRWA's areas of operation or outside the Middle East could establish groups in order to promote greater awareness of the process at the community level. Although, the CRPC did not involve representatives of the claimants in the planning process, the HPCC did draw upon the participation of claimants in the planning of the claims process.

Another feature which would have to be negotiated in designing the structure of a future Palestinian Claim Commission would be the problems associated by the involvement of so many actors. As this section has outlined there are a number of international organizations and bodies which are likely to be involved, which could cause difficulties. For example the PA could reject the fact that so many international players are involved in the process as they consider themselves to be the only suitable representatives of the Palestinians.

However, on the other hand a Commission based on clear and well defined roles and responsibilities with the involvement of the international community should be a bonus to the overall process, and especially in pursuing refugee claims, which has resulted because of international pressure as both BiH and Kosovo were testament to. The Palestinian case would especially require the host countries to be factored into the design procedure along with the roles and responsibilities they are likely to be involved in.

As mentioned previously, it seems necessary that UNRWA would play a role in the process given the agency's involvement with the refugees for so many years and the wealth of archived data the agency possesses in its archives covering all its RRs. On the other hand it is however also possible that UNRWA, would have to take a back seat in many ways because the agency is to an extent too involved in the Palestinian refugee issue to be tasked with any procedural aspects.

It is thus more likely that UNRWA, who has a presence in all Palestinian refugee camps, could be drawn upon to assist with certain aspects of the claims process, although it would seem highly unlikely that the agency would not be the organization chosen to deal with adjudicating claimants. UNRWA's role would be useful in a number of ways. For example UNRWA who has approximately 28,000 staff which could be drawn upon to inform claimants, distribute claim forms, provide assistance with completing the forms and provide all the necessary information that the refugees would require. UNRWA could also assist with outreach programmes for Palestinians which could be conducted in their five areas of operation. Within this context, both fixed offices and mobile teams could be created to process the registration of claims.

Perhaps one of the most relevant lessons from the comparable experience of both case studies, is the way in which both cases used certain principles to guide assessments and claims such as: references to international law, the obligation to compensate for lost property as well as settling property claims and the affirmation that compensation is not a substitute for the right of return.

How this will be approached in the Palestinian case is yet unknown, although designing a Palestinian Claim Commission, would involve deciding upon what type of formula was chosen to compensate the refugees and what type of mechanism would be chosen. The workshop, titled "*Compensation as Part of a Comprehensive Solution to the Palestinian Refugee Problem*",<sup>302</sup> for example identified four types of formula:

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<sup>302</sup> See the Workshop on Compensation as Part of a Comprehensive Solution of the Palestinian Refugee Problem, *PRRN/IDRC*, (Ottawa: July 1999), for the strengths and weaknesses of the different types of formula, [www.arts.mcgill.ca/MEPP/PRRN/prcomp3.html](http://www.arts.mcgill.ca/MEPP/PRRN/prcomp3.html), (accessed on 9/8/2007).

A claims-based system, in which compensation is based on the value of lost property (or a portion thereof); modified claims-based system, in which claimants are slotted into various “categories” (based on estimated claim size), and receive standardized payments; per capita payment system, in which all refugees receive equal payments; modified per capita payment system, in which some classes of claimants (i.e. returnees versus non-returnees, or first-generation versus subsequent generation refugees) receive different levels of compensation.

The Geneva Accord also suggested two modalities: A fixed per capita award for property claims below a specified value. This would require the claimant to prove only title, and should be processed according to a fast-track procedure, or a claims-based award for property claims exceeding a specified value for immovable’s and other assets. This would, however, require the claimant to prove both title and the value of the losses.

Other mechanisms that have been put forward include: cash payments to individuals; services/vouchers/entitlements for individuals and families; investment in community development; and equity (refugee co-ownership of investment or Development Corporation or similar collective entity.<sup>303</sup>

#### **4.4.4. Procedural Rules**

A compensation mechanism relating to Palestinian refugees would have to issue procedural rules, including the design of a claims form and a deadline for submission of claims. As noted in the case studies, the CRPC use a computerized database to register all the data, although the forms were submitted in paper format. Experience in Kosovo on the other hand demonstrated that the lack of attention paid to designing the claim form

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<sup>303</sup> Ibid.,

created many unnecessary problems because many refugees did not understand the questions on the forms accurately.

In the Palestinian case it would be necessary to make sure that claimants clearly understood claims forms, this would be fundamental as the claimant pool is likely to be in the hundreds of thousands and possibly millions. Regional offices would also have to be set up to deal with claimants in host countries and quite possibly offices would have to be located globally to reach claimants in other countries. The effective use of the internet would also be crucial in this case in order to achieve a global outreach programme so that information on the process could be conveyed to as many potential claimants as possible.

As already mentioned, each mass claim process differs regarding the types of procedures that govern the way the claim process works. In the Palestinian refugee case the constituting instruments would need to see the Commission have full and exclusive responsibility for implementing the resolution. To recap, in Kosovo the constituting instrument contained provisions on who may be claimants; what claims can be brought; composition of the Commission and appointment of Commissioners; the exclusivity of the Commission's jurisdiction; applicable law and the possibility for appeals. It also established the HPD to regularise housing and property rights and resolve disputes over residential property.

The two most important elements in the final peace agreement in the BiH case was the DPA, where specific inclusion of legal principles (i.e., refugee rights) and the establishment of international enforcement mechanisms.

Aside from the cases studies, major peace agreements addressing refugee problems worldwide in the last ten years, demonstrate the types of mechanisms and principles that have

been developed and that have been included in final peace agreements. As such there is no reason why similar mechanisms and principles should not be included in a final peace agreement between the PLO and Israel.

Academics, policymakers and individuals who argue that these principles are not applicable to the Palestinian refugee case must be pressured to explain why the Palestinian case is the exception to the rule.<sup>304</sup>

Although the DPA precedent carries little weight in the context of the Palestinian refugees' since physical return and repossession of property is not favoured by Israel, and in many instances what the refugees left behind simply does not exist any longer, other cases such as Cyprus, can be usefully studied for relevant practice with regards to this aspect.

As this section as highlighted similar types of initiatives could be adopted to inform Palestinians refugees who are not concentrated in any particular region, assist them with registering their claims and assist those would find it difficult to appear before a Commission to file a claim.

#### **4.4.5. Identifying and Assessing Palestinian Refugee Property Claims**

Since a Commission in the Palestinian refugee case would involve a high degree of lost Palestinian refugee property, a number of complexities would need to be addressed, foremost, the issue of identifying refugee properties and how to value it. If and when Palestinian refugee property data is examined the data would have to be mapped out and values would have to be

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<sup>304</sup> *Badil*, (2003), "Refugee Return and Real Property Restitution in Bosnia-Herzegovina - Lessons Learned for the Palestinian Case", [www.reliefweb.int/rw/rwb.nsf/AllDocsByUNID/ea1dd266c1352a4d85256cbc00509518](http://www.reliefweb.int/rw/rwb.nsf/AllDocsByUNID/ea1dd266c1352a4d85256cbc00509518), (accessed on 11/12/2007).



assigned to each individual property. As chapter one outlined the workshop, titled “*Compensation as Part of a Comprehensive Solution to the Palestinian Refugees*” examined this issue and noted that there was enough documentary evidence to support specific claims by former property owners, although incomplete records would make the process extremely difficult and expensive.<sup>305</sup>

The designers involved would have to grapple with the evidence in one form or another and in different locations and in different conditions. Since the Palestinian refugee case is so politically charged it is likely that the demands made upon the data would also mean that there would be much less flexible than in the case studies outlined in this chapter. The researcher has listed seven points which the Palestinian refugee property data would need to answer in line with international standards which this study is advocating:

- Property owner’s name;
- Name of father, and ideally, grandfather;
- Village where the property is located;
- Registration block number and individual parcel number of property;
- Size of property, in dunums;<sup>306</sup>
- Name/s of co-owners, if there are any;
- Type of property (e.g., agricultural land, built-up land etc);
- Value of property.<sup>307</sup>

Although one database is unlikely to be able to produce the necessary evidence, by linking the various databases that contain Palestinian refugee registration information it may be

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<sup>305</sup> The PRRN/IDRC workshop report, “*Compensation as Part of a Comprehensive Solution to the Palestinian Refugees*”, [www.arts.mcgill.ca/MEPP/PRRN/prcomp3.html](http://www.arts.mcgill.ca/MEPP/PRRN/prcomp3.html), (accessed on 22/8/2007).

<sup>306</sup> A unit of area used in the Ottoman Empire.

<sup>307</sup> The value of the Palestinian pound during 1947-1948 was £P1 = £UK1 = USD 4.03.

possible to supplement data where gaps are found. This will be discussed in more detail in the next chapter.

As well as examining Palestinian refugee registration documentation, the data would have to be organized. This would require IT-tools, and a proper database would be essential for this case due to the massive claimant pool. Mass claims processing techniques cannot be effectively utilized without a functioning database and in this case a sophisticated database would also secure fair proceedings by providing necessary checks and balances to prevent manipulation of file-data.

As the case studies examined in this chapter briefly touched upon, the use of modern IT is required and relied upon in modern day Claim Commissions. Not only does utilizing computer technology make the organizing of material easier, but also vastly accelerates the process which is important to all Claim Commissions which are often strictly time bound.

Some of the methods highlighted in the case studied include the use of computerized databases, the creation of templates which are required for various stages of the claims system, such as for identical claims, sampling and statistical modelling along with developing a computerized matching system which is necessary for the verification process.

As the BiH and Kosovo models demonstrated, collecting evidence, and seeking verification of documents is a massive undertaking. Although this requires a lot of resources, it also has a number of advantages, for example it makes it possible to pursue a high degree of certainty and a minimal rate of error. With computerized systems playing such an important part in current Commissions, the most up-to-date and sophisticated technology would be necessary for the Palestinian refugee case.

Ideally, developing a computerized system which had the capacity and capability of standardizing claims and being able to incorporate all the data sources which are already digitized would be extremely useful in assisting the process of manipulating the data for claims. Once the data has been technically upgraded and is in a user friendly format a formula needs to be agreed as to how ownership should be determined. Such a process could also be very useful for researchers and negotiators to compile statistical data on the refugees and on their property losses.

The issue of standards of proof would also be necessary in the Palestinian refugee case. As already noted in the case studies some claimant's required supporting evidence whilst others required only plausible proof. The CRPC experienced the fact that large amounts of property information were destroyed and many other records were not available. In order to counter such circumstances often systems will approve "relaxed" standards of proof in line with the understanding that proving a claim after a war or a long period of time has expected difficulties.

The CRPC book of regulations on procedures for example provided very detailed lists of the evidence required to prove ownership, however if no evidence was available or the evidence was not credible enough then the Commission would initiate the process of collecting evidence. Additionally, the CRCP adopted evidentiary presumptions which meant that a claimant did not have to prove they had been displaced.

The CRCP also established a process of checking claims against electronic survey records and census data wherever possible. In lodging a real property claim to the CRPC claimants needed to submit either in person or through an authorised representative IDs or other document by which his/her identity will be established (passport, driving license, refugee ID), and prepare

data about the owner if the owner is not submitting the claim in person (dead, missing, claim lodged by an authorized representative, etc).

Since Palestinian refugees are registered with UNRWA, by using their registration database it would be possible to establish refugee identity when seeking to identify claims. This is something which, could be initiated for all Palestinian RRs in UNRWA's area of operation. Looking at the data archives of UNRWA, the UNCCP and the Custodian of Absentees' Property data will also be a vital task in this regard, especially because many of the major sources have the potential to be used for those seeking claims.

Furthermore parts of these data sources are in the process or have been digitized which will make the process of matching and verifying claims possible. Up until now there has been a complete absence in developing ways of presenting the data in a suitable format, which would be required to satisfy the technical requirements of a Commission. The next chapter will discuss this issue in more detail.

The evidentiary standards that would be required for the Palestinian case are likely to be very difficult to design because establishing standards of proof would have to consider claimants who cannot prove ownership which may be the case for many Palestinians who fled their homes in 1948. Additionally, the longevity of the conflict would also have to be taken into consideration as such a certain degree of flexibility would have to be written into the design.

As this chapter outlined, the HPCC adopted very flexible standards of proof, which was a necessity since so many of the public records had been destroyed. The Commission considered any reliable evidence to support a claim.

Fundamentally, in the Palestinian case it would be important to find a way whereby refugee claims could prove to be valid and where proof could be established. For Palestinians wanting to return to their homes if they exist, and if this was a possibility, would require confirmation of title especially if the property is currently occupied. It would also be necessary to develop a system which would increase the efficiency of the overall evidentiary process in anticipation of a very large claimant pool.

However, in the Palestinian refugee context, where remembering events with accuracy may be difficult, or because no document system was around at the time, may mean that original 1948 refugees may not be able to prove strictly that they were in possession of land, property and so forth. Whether scant Palestinian refugee memories will be enough to support a claim for compensation and can be accepted as true, which was the case in the humanitarian claims process administered by the Jewish Claims Conference (JCC) for the international Commission on Holocaust Era insurance claims (ICHEIC), will have to be seen.

Once evidence and standards of proof have provided assessment of a claim, that claim will have to be valued. The problems of assigning values would be very complex in the Palestinian case. Although other cases have seen fixed payouts used to deal with such a problem it would seem unlikely that the Palestinian refugees would settle for fixed sums, which would probably be paid out in instalments. This leads to one of the most difficult issues for those designing the procedural rules of any future Palestinian Claim Commission.

Research has studied individual versus collective claims. For example Professor Susan Akram points out that “the problems with administering individual claims is that they have proved to

be slow and cumbersome, as well as frustrating for claimants because the full value of loss may be difficult to prove”.<sup>308</sup>

Although lump-sum agreements have fallen short of satisfying the expectations of many claimants (such as the system used by the CRPC which was slow and under - funded by the international community), the lump sum option is clearly the preferred solution for Israel and the Geneva Accord model indicated that:

The aggregate value agreed to by the Parties shall constitute the Israeli “lump sum” contribution to the International Fund. No other financial claims arising from the Palestinian refugee problem may be raised against Israel.<sup>309</sup>

One advantage of a lump sum model is that it is relatively easy to administer and does not need lengthy proceedings to pay out all claims; although lump sum agreements for the most part fail to satisfy the expectations of the claimants, such as the US-Iran assets dispute in 1990. Richard Lillich and Burns Weston point to the advantages of using a lump sum agreement:

Whatever the response of the courts and commentators to lump sum agreements, the response of governments has been to continue to use them extensively as precedent for further such settlements.....it is high time that the international community fully acknowledge their continuing contribution to the law of international claims.<sup>310</sup>

The problem with lump sum agreements in the Palestinian refugee context is that, it is quite likely that individual claimants,

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<sup>308</sup> Susan Akram, (2000), “Fora Available for Palestinian Refugee Restitution, Compensation and Related Claims”, *Badil* Brief (2), [www.badil.org/Publications/Briefs/Brief-No-02.htm](http://www.badil.org/Publications/Briefs/Brief-No-02.htm), (accessed on 4/9/2007).

<sup>309</sup> The Geneva Accord a Model Israeli-Palestinian Peace Agreement, [www.geneva-accord.org/accord.aspx?FolderID=33&lang=en](http://www.geneva-accord.org/accord.aspx?FolderID=33&lang=en), (accessed on 14/12/2007).

<sup>310</sup> Richard B, Lillich and Weston H, Burns, (1998), “Lump Sum Agreements: Their Continuing Contribution to the Law of International Claims”, *Journal of International Law*, Number 82, p.69-80.

who will not have been specifically categorized will come to feel that their grievances have not been addressed appropriately, and it is likely that the issue will not have found a fair conclusion by using this system.

Professor Ruth Klinov from the Hebrew University in Jerusalem has especially discussed a proposed package of such reparations and points out that “it would require heroic assumptions about the items to be included and the revaluation of the price of capital”.<sup>311</sup> Others have suggested a double compensation mechanism should be established. One part should be for property compensation benefiting refugees who have documentary evidence of property ownership inside 1948 boundaries (the British records as well as UNRWA family files may be very useful in this respect); the other part would compensate refugees on an equal footing, with respect to non-property linked claims.<sup>312</sup>

#### **4.5. Conclusion**

Chapter four studied the international perspective through an exploratory study, with a view to answering the second research question: Can international precedents in previous Claim Commissions be drawn upon for guidelines in the planning of a future Palestinian Claim Commission? To answer the question, the chapter focused on two international claim cases, where different mechanisms worked towards rectifying past property related injustices by returning the lost property or paying damages for it.

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<sup>311</sup> Ruth Klinov, “Reparations and Rehabilitation of Palestinian Refugees”, *Heidelberg*, (2003), [www.law.tau.ac.il/Eng/\\_Uploads/dbsAttachedFiles/REPARATIONSANDREHABILITATIONOFPALESTINIANREFUGEES.doc](http://www.law.tau.ac.il/Eng/_Uploads/dbsAttachedFiles/REPARATIONSANDREHABILITATIONOFPALESTINIANREFUGEES.doc), (accessed on 8/10/2007).

<sup>312</sup> Daoud Barakat, “Compensation Position Paper”, paper presented at the Workshop on Compensation as Part of a Comprehensive Solution of the Palestinian Refugee Problem, *PRRN/IDRC*, (Ottawa: July 1999), [www.arts.mcgill.ca/MEPP/PRRN/barakat.html](http://www.arts.mcgill.ca/MEPP/PRRN/barakat.html), (accessed on 17/4/2007).

The cases of BiH and Kosovo were able to demonstrate that reconciliation and reparation programmes can be designed in a way to absorb lessons learned from previous cases, as the Kosovo model was able to highlight, which drew extensively on the experience from precedents employed in the BiH case. This indicates that developing Claim Commissions can turn to previous precedents when designing new processes elsewhere as could be the case in the Palestinian context.

The cases also highlighted the fundamental shift in international efforts to respond to refugee needs, which today includes, provisions related to the return of DP's and the need to secure title for refugee property and land. As the chapter highlighted procedures relating to property records, which had often been destroyed or poorly kept as is the case faced by many Claim Commissions, procedures and standards of proof were developed which took into consideration what is reasonably expected based on the circumstances of the claimants involved.

Although there were substantial differences in the legislative framework in the case studies, both cases do offer future designers of a Palestinian Claim Commissions with a valuable insight into the practical systems developed and employed to deal with large numbers of claims. Furthermore, the mechanisms covered by the cases demonstrated that suitable characteristics, overlaps and points of similarity did have transferable components which could provide for ideas from which to develop a future Palestinian Claim Commission as the chapter detailed.

In order to explore the range of Palestinian refugee registration data which is likely to be called upon in forming the basis for future Palestinian refugee claims, the next chapter will examine all the major Palestinian refugee registration data sources for their content, limitations and usability in order to see if the data



could be organized in a way to meet the demands of a modern day Claim Commissions.

## **Chapter Five**

### **Palestinian Refugee Registration Sources**

## **5.1. Introduction**

Having analyzed international precedents in two modern-day cases in the previous chapter, the objective of this chapter is to deal systematically with the contents of all the sources pertaining to Palestinian refugee registration data belonging to key institutions. By doing so, the chapter will provide a much needed evaluation of the data by examining the breadth of Palestinian refugee evidence available. The value and scope of the data is discussed along with its limitations.

In the broader sense the chapter examines one of the most important issues related to the Palestinian refugee issue, which is the refugee property question. As chapter one stated, the failure to find a resolution for Palestinian refugee property claims has been a primary barrier to finding any sustainable progress, and the way in which the issue has not been addressed satisfactorily, is testament to the failed attempts to solve the refugee problem despite sixty years of negotiations and diplomacy.

The chapter is split into five parts. Since Palestinian property losses touch the very core of this conflict, and will affect the success of any future peace process, the chapter begins by describing the early period of negotiations surrounding the Palestinian refugees. Part two covers the main sources of Palestinian refugee registration data. Part three looks at some of the limitations of the data. Part four seeks to evaluate the data in terms of its relevance and scope and attempts to answer the third research question: Can existing Palestinian refugee registration data be constructed in a suitable way for the

preparation of future claims? The final part looks at the various estimates of Palestinian refugee property.

## **5.2. Overview to the Palestinian Refugee Property Issue**

### **5.2.1. Political Negotiations and Recent Developments on the Refugee Issue**

Although the Palestinian refugee question has been studied since 1948, the issue has only surfaced intermittently at negotiations. The stunted and postponed progress has affected the compensation issue with limited preliminary work being carried out, and as a result the issue of refugee claims has largely gone without discussion with more focus being channelled into issues such as repatriation. Despite the many efforts in devising compensation plans and cataloguing and valuing property records, very little has been achieved, with the issue continually being reserved for final status negotiations.

The Palestinians have been involved in discussing reparations since early UN diplomatic activity on the property issue were defined by resolution 194 which called for refugee repatriation and property compensation. The resolution also created the UNCCP to facilitate a peaceful settlement between the Arabs and Israel in 1949.

In 1978 Egypt and Israel met for negotiations at Camp David for the Framework for Peace in the Middle East talks where the refugee problem was tackled, and where it was agreed that a “continuing committee” including representatives from Egypt, Israel, Jordan and the Palestinians should “decide by agreement on the modalities of admission of persons displaced from the West Bank and the Gaza Strip in 1967” (Article A, 3).

Similarly, it was agreed that “Egypt and Israel will work with each other and with other interested parties to establish agreed procedures for a prompt, just and permanent implementation of the resolution of the refugee problem” (Article A, 4). Since the Camp David Accords with Egypt in 1979, Israel has preferred to view UN Security Council Resolutions 242 and 338 as the basis for the resolution of the refugee issue. However, these resolutions called for a “just settlement” to the refugee issue without the details of resolution 194. Apart from the Framework for Peace in the Middle East talks, nothing significant emerged until the peace talks during the 1990s when the refugee property issue emerged.

The 1991 Madrid Conference was a highly publicized international attempt at the peace process. For the first time Israel came face to face with Syria, Lebanon and Jordan and its other Arab neighbours.<sup>313</sup> After three days of discussion, a framework for further negotiations was constructed, which called for bilateral and multilateral negotiations to begin immediately. After much disagreement among the parties over a location for future meetings, the United States proposed that the bilateral peace talks would convene in Washington, D.C. in December.

The Madrid meeting was supplemented by a further conference held in Moscow in 1992 to launch the multilateral process. At that time five multilateral Refugee Working Groups (RWG), were set up to address regional issues, or ones where the involvement of the international community was required. The establishment in Moscow of the RWG was a measure of the importance attached to the refugee issue.<sup>314</sup>

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<sup>313</sup> The Madrid Conference was convened in October 1991 on the basis of United Nations Security Council (UNSC) Resolutions 242 and 338.

<sup>314</sup> The other four Working Groups were: Water Resources, Environment, Arms Control and Regional Security, and Regional Economic Development.

The RWG was concerned primarily with humanitarian dimension of the problem, such as developing a family reunification programme which saw Israel allow a limited number of refugees to return. The RWG did not discuss any of the major political issues or focus on finding suitable restitution or compensation solutions.<sup>315</sup> Another purpose of the RWG was to promote dialogue and brainstorm on possible solutions to the refugee problem. The RWG eventually ended with the eruption of the second Palestinian *intifada*<sup>316</sup> in September 2000 which suspended all multilateral activities.

Later in 1993 after lengthy Norwegian mediation between Israeli Prime Minister Yitzhak Rabin and PLO Chairman Yasser Arafat and with involvement from United States, President Clinton, Israel and the PLO signed a Palestinian-Israeli Declaration of Principles (DoP) in Washington DC, which established the principle of bilateral negotiations between Israel and the Palestinians. The DoP is also referred to as the Oslo Accords. The DoP bypassed the Madrid framework and established direct bilateral talks between Israel and the PLO.

Negotiations between both parties concentrated mainly on institutional arrangements, such as the nature of the Palestinian administration during the interim period, and other matters of public interest. Addressing matters such as the right of individuals to re-gain possession of property left behind because of the hostilities, or to receive compensation for such property, were not featured and issues such as private claims were deferred to the final stage of the negotiations concerning a permanent status agreement in May 1996. This made the

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<sup>315</sup> The RWG succeeded in Israel agreeing to: increase its family reunification scheme from 1,000 to 2,000; provide 5,000 temporary residents of the OPTs permanent residence and 80,000 permanent residents outside the OPTs would be allowed to return, Michael Dumper, *The Future for Palestinian Refugees: Toward Equity and Peace*, (2007), p.150.

<sup>316</sup> The second *intifada* is also known as the *al-Aqsa Intifada*.

refugee issue one of the last issues to be resolved before a final peace agreement.

The DoP as was based on UN General Assembly 242 and 338, which saw the PLO effectively agree that the aim of the peace process was the settlement of the conflict through the implementation of these two resolutions, and no mention was made of resolution 194 or the 1948 refugees right of return which had always been the Palestinian position.<sup>317</sup>

The next round of talks convened in July 2000 where President Clinton held a summit at Camp David with PLO Chairman Yasser Arafat and Israeli Prime Minister Ehud Barak.<sup>318</sup> Camp David II held intense negotiations on all of the permanent status issues, seeing the Israeli government and the PLO for the first time discussing refugee claims which included Jewish counterclaims in detail.

Israel refused to accept any responsibility for the refugee issue and refused to recognize resolution 194, but offered to get involved with the creation of an international compensation fund, but only in so far as this fund would contribute to Jewish refugees too. Israel also considered the return of 100,000 refugees under the family reunification scheme. The Palestinians agreed to the international compensation fund, but refused to forgo the right of return, and as such these talks did not produce any breakthrough on the refugee issue.

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<sup>317</sup> Nur Masalha, *The Politics of Denial: Israel and the Palestinian Refugee Problem*, (London: Pluto Press, 2003).

<sup>318</sup> For a detailed account of the Camp David negotiations see, Shimon Shamir and Bruce Maddy-Weitzman, (eds.), *Camp David Summit, What Went Wrong?: Americans, Israelis, and Palestinians Analyze the Failure of the Boldest Attempt Ever to Resolve the Palestinian-Israeli Conflict*, (Sussex Academic Press, 2005).

Fundamentally, Camp David did not witness any new ideas. Yossi Beilin, former Israeli Justice Minister and negotiator at Taba, sums up the failure at Camp David:

It seems that the Camp David summit was the political equivalent of the Yom Kippur War. It was seen as the “mother of all disasters”, and as such, everything there is now considered to be misguided.<sup>319</sup>

The reasons for the failure of Camp David have been well discussed: the talks should have been held at a lower level, there was lack of preparation, and that the differences between the parties should have been tackled before leaders met at the summit, are a few examples of the failures that took place. In an attempt to build upon the minor advancement in negotiations, President Clinton expressed his ideas in an initiative for final accelerated negotiations for solving the refugee problem, before he was scheduled to leave office in January 2001.

Among the many issues contained in his proposal called the “Clinton Parameters”, included up to a USD 10 billion dollar compensation fund, something which was proposed earlier at Camp David. However, by excluding the option of allowing refugees the choice to return, the Clinton Parameters effectively negated the legal rights of Palestinian refugees and this initiative again saw no new progress.<sup>320</sup> Since then there have only been two other major talks which have taken place in addressing reparations and these were the Taba negotiations which took place soon after Camp David II in 2001 and the Geneva Accord of 2003.

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<sup>319</sup> Ibid., p. 226.

See also Yossi Beilin, “What really happened at Taba”, in *Ha’aretz* newspaper, 16 July, 2002.

<sup>320</sup> For more details on the parameters see, President Clinton’s “Parameters” for a Comprehensive Agreement Between Israelis and Palestinians, (7 January 2001), <http://domino.un.org/unispal.NSF/1ce874ab1832a53e852570bb006dfaf6/d57afcdd6eb1445585256e37006655e4!OpenDocument>, (accessed on 4/5/2007).

The “Moratinos Document,” as it was called by the Taba negotiators, was the accepted EU non-paper and is the source used to study the contents of the Taba negotiations.<sup>321</sup> The document was named after the EU Special Representative to the Middle East Process.<sup>322</sup> Article three specifically deals with the refugee issue stating that:

Both sides suggested, as a basis, that the parties should agree that a just settlement of the refugee problem in accordance with the UN Security Council Resolution 242 must lead to the implementation of UN General Assembly Resolution 194.

The details concerning the mechanisms and modalities of compensation were articulated in Article 3.3 on compensation in which particular states that:

Both sides agreed to the establishment of an International Commission and an International Fund as a mechanism for dealing with compensation in all its aspects. Both sides agreed that “small-sum” compensation shall be paid to the refugees in the “fast-track” procedure, claims of compensation for property losses below certain amount shall be subject to “fast-track” procedures.

There was also progress on Israeli compensation for material losses, land and assets expropriated, including agreement on payment from an Israeli lump sum or proper amount to be agreed upon that would feed into the International Fund. According to the Israeli side the calculation of this payment would be based on a macro-economic survey to evaluate the assets in order to reach a fair value. The Palestinian side, however, said that this sum would be calculated on the records of the UNCCP, the Custodian for Absentees’ Property and other relevant data with a multiplier to reach a fair value.

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<sup>321</sup> Akiva Eldar, “Moratinos Document: The Peace That Nearly Was at Taba”, in *Ha’aretz* newspaper, 14 February, 2002.

<sup>322</sup> The EU envoy at the time was Miguel Moritano.



Although the Palestinians demanded that the State of Palestine should be in charge of distributing funds, the Israelis favoured that this task be undertaken by the Commission. As for the issue of restitution and claims, Article 3.6 dealt with restitution stating that: “The Palestinian side raised the issue of restitution of refugee property. The Israeli side rejected this.” Article 3.7 dealt with the end of claims and stated that:

The issue of the end of claims was discussed, and it was suggested that the implementation of the agreement shall constitute a complete and final implementation of UNGAR 194 and therefore ends all claims.

The negotiations at Taba on the permanent status issues demonstrated a certain degree of progress, seeing both sides tackling the complexities of the refugee issue, such as the issue of compensation. The Palestinian proposal included restitution of the land of repatriated refugees, compensation for both land and movable property for refugees who would not be returning, compensation for abandoned movable property for repatriated refugees. In cases where it would not be possible to give back land Israel was to give up land in another part of Israel.<sup>323</sup>

According to Badil, a Commission was to be authorized to use the records of the UNCCP, the Israeli Custodian of Absentees’ Property, UNRWA, and any other relevant records to verify claims. The Commission also included a dispute mechanism and appeals process for refugees. Finally, the proposed agreement established an international fund “to support and finance the implementation of the provisions” of the agreement concerning a durable solution for the Palestinian refugees.<sup>324</sup>

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<sup>323</sup> *Badil*, (2001), “Principles and Mechanisms for a Durable Solution for Palestinian Refugees: The Taba Proposals”, *Badil* Brief (10), [www.badil.org/Publications/Bulletins/Bulletin-10.htm](http://www.badil.org/Publications/Bulletins/Bulletin-10.htm), (accessed on 17/8/2007).

<sup>324</sup> *Ibid.*,

The steering committee of the fund, would be mandated to mobilize, coordinate and manage the fund and was to be composed of Palestine, US, World Bank (WB), EU, and donor States, with the WB and the UN acting as a joint-secretariat. Contributions were to be mobilised through compensation funds paid by Israel and multilateral funding instruments developed by the WB. Funds were to be used to support return, compensation, repatriation assistance, rehabilitation assistance, transitional costs and related socio-economic assistance packages for the refugees.<sup>325</sup>

The Israeli proposal discussed material losses, land and assets expropriated, which included a lump sum payment which would go into the international fund. The agreement upon payment however only addressed cultivated land. The Israelis refused to consider compensating for public land and collective payment was the only modality discussed. The Israelis envisaged that the international fund would pay an agreed amount into the fund which would also leave the door open for pursuing future claims (something Israel was interested in for its own refugees). The Palestinian side maintained that this was not a subject for a bilateral Palestinian-Israeli agreement.<sup>326</sup>

After Taba, two unofficial peace plans came to light - The People's Voice Initiative and the Geneva Accord. The Geneva Accord of 2003, was produced by Palestinian's and Israelis outside of the negotiating process and provided representatives of both parties with a platform in which to negotiate final status issues, which were dealt with on the basis of the developments that had taken place at Taba.

The Geneva Accord as outlined in the previous chapter was a permanent status agreement between the State of Israel and the State of Palestine, which presented a comprehensive and

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<sup>325</sup> Ibid.,

<sup>326</sup> Ibid.,

unequivocal solution to all issues vital to ensuring the end of the conflict. The Accord discussed property claims on a compensation basis only and the idea of an international fund was given further discussion as was the issue of compensation and forms of payment.

Both of these plans were rejected by the Palestinian sides primarily because Palestinian rights were being completely ignored as neither party made any reference to the use of resolution 194. Furthermore, property restitution was not discussed because neither peace plan looked at any form of large scale Palestinian repatriation schemes.

Finally, the People's Voice Initiative launched in 2003, which like the Geneva Accord, was an Israeli-Palestinian civil initiative dedicated to advancing the process of achieving peace between Israel and the Palestinians outside of the negotiating process, looked to resolving the conflict in a single agreement and looked at property claims only in the context of repatriation, with compensation as an option for refugees who decided to stay in exile or in a third country. It was considered that Israel would pay into an international fund as would the future Palestinian state.

The most recent international effort to provide a peace agreement in 2003 was the Road Map presented by the Middle East Quartet.<sup>327</sup> Although it did not have a focus on the refugee issue or reparations, the Road Map was based on resolution 242 which called for Israel to withdraw from all or part, depending on the Israeli or the rest of the world's interpretation, of the territories annexed in the 1967 War. Resolution 242 also called for a "just settlement of the refugee problem".<sup>328</sup>

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<sup>327</sup> The Quartet was made up of the United States, Russia, the EU and the UN.

<sup>328</sup> UN Security Council 1967, [www.un.org/documents/sc/res/1967/scres67.htm](http://www.un.org/documents/sc/res/1967/scres67.htm), (accessed on 3/1/2008).

To summarize, the official negotiation processes have left the future of the refugees largely undetermined.<sup>329</sup> Ultimately, the Madrid Conference had launched a new era of relations in the Middle East and had done so by putting the resolution of the Israeli-Palestinian conflict as the key to achieving a durable peace in the region. The Taba negotiations, the Geneva Accord and the People's Voice Initiative however, made little advancement, and generally restitution was ruled out. However, the methods of implementation and the establishment of an international commission (which Israel would contribute into) were heavily focused on.

Although negotiations did not lead to any agreement, the Taba negotiations did demonstrate that detailed discussions did take place regarding the technical aspects of refugee compensation which was something unprecedented, and to some extent both sides had been brought closer than before.

While the Taba negotiations got close to a map of a two-state solution and the Oslo Accords established direct bilateral talks between Israel and the PLO, neither sets of negotiations got far in defining a solution. The Israelis feared having to compromise the Jewish character of the state of Israel<sup>330</sup> and the costs associated with returning expropriated properties and paying large amounts of compensation caused Israeli negotiators to stop short of recognizing Palestinian refugee rights. The Palestinian side was very much swayed by the international community and pressure

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<sup>329</sup> For more insights into the future of the Palestinian refugees and possible scenarios see, Salim Tamari, "Return, Resettlement, Repatriation: The Future of Palestinian Refugees in the Peace Negotiations", *PRRN*, (1996), [www.arts.mcgill.ca/mepp/new\\_prrn/research/papers/tamari2\\_01.htm](http://www.arts.mcgill.ca/mepp/new_prrn/research/papers/tamari2_01.htm), (accessed on 26/4/2007).

<sup>330</sup> See for example, Gideon Levi's article "The Fear of Return", in *Ha'aretz* newspaper, 17 August 1997. See also Uri Avnery's article on the "Right of Return", 14 January 2001, where he refers to the Right of Return, [www.avnery-news.co.il](http://www.avnery-news.co.il), (accessed on 9/6/2007).

from the Palestinian community within the West Bank and Gaza Strip which determined the PLO's and PA's strategies.<sup>331</sup>

Without any progress made in negotiations on the Palestinian refugee property issue, there is no hope for peace, because the resolution of the Palestinian refugee claims issue will continually hamper any effective progress in devising a comprehensive peace proposal. As Fischbach notes:

The refugee property issue is a microcosm of the entire Arab-Israeli dilemma. Both stem from the tumultuous events of 1948....No peace process, treaty, accord or plan will succeed unless it ameliorates as much as possible the effects of that first Arab-Israeli war. The region will not witness lasting peace until all parties, Arab and Israeli alike, can participate equally and democratically in forging a final settlement by which they can address their mutual grievances and heal their respective wounds.<sup>332</sup>

This section has briefly covered the political negotiations and recent developments in relations to Palestinian refugees covering the period from 1978 when Egypt and Israel met for negotiations at Camp David up to the Road Map presented by the Middle East Quartet in 2003. The remainder of the chapter will look at the contribution of the Palestinian refugee registration data in order to shed light on the main sources of data and the limitations and the potential value of the data to meet certain criteria. Finally, various estimates of Palestinian refugee property will be analyzed.

### **5.3. The Main Sources of Palestinian Refugee Registration Data**

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<sup>331</sup> The PLO's position was based on the principles underpinning resolution 194.

<sup>332</sup> Michael Fischbach, *The Peace Process and Palestinian Refugee Claims: Addressing Claims for Property Compensation and Restitution*, (2006), p.123.

Preliminary research has shown that there is a huge amount of untapped historic data available covering most aspects of Palestinian refugees history since 1948. The three main sources of data are: the UNRWA archives in Amman, the UNCCP archives in New York and the Custodian of Absentees' Property database in Tel Aviv. Archival data on Palestinian refugees stored at the ICRC office in Geneva, the AFSC's office in Philadelphia and the Jordanian database in Amman, also make up the other main sources of Palestinian refugee registration data.

The summary that follows intends to do two things: Firstly, to outline what refugee registration data is currently available, and secondly, to discuss the condition, limitations and gaps to be found within each of the sets of data outlined.

### **5.3.1. The ICRC and AFSC Archives (1948-1950)**

UNRWA was not the first agency, nor even the first UN agency to work in Palestine. In 1948 just after the creation of the State of Israel the first relief programmes for Palestinian refugees came into existence. The UN mediator for Palestine, Count Folke Bernadotte established the United Nations Disaster Relief Project (UNDRP), which was given a sixty-day mandate to coordinate relief efforts, among NGO's and UN organizations. The UNDRP was replaced by the UNRPR. Prior to the arrival of UNRWA and immediately after the 1948 war NGO's began to register and provide emergency services to IDP's. In 1949 most of these organizations ceased their operations and the UN created UNRWA to take over the relief effort on behalf of the Palestinian refugees.

In 1948 three *Commissariats*, commonly referred to as "voluntary agencies" were set up to distribute emergency relief to the Palestinian refugees during 1948. They were the League of Red Crescent Societies (LSCR) working in Jordan, Syria and

the Lebanon, the ICRC who were located in Israel and the West Bank, and the AFSC who were operational in the Gaza Strip.

The ICRC was mandated to distribute the relief and medical supplies provided by the UNRPR and other UN agencies such as the United Nations Children's Fund (UNICEF). The ICRC conducted the first systematic registration of the refugees and provided emergency relief to refugees in the West Bank, Syria and in Lebanon.

As previously mentioned the ICRC archives are located in Geneva and cover the period from 1948 to 1950 and contain documents on its activities on behalf of the Palestine refugees in Palestine at that time. The files are stored in 48 boxes and they cover all the operational, administrative, political and diplomatic efforts of the ICRC delegations at that time.

According to Jala Al Hussein, the researcher who accessed the archives, there are around 6,000 items which are all serialized.<sup>333</sup> Of interest to the Palestinian property restitution question, are the field reports on basic camp data, registration methods and the number of refugees registered between August and December 1948.<sup>334</sup> The archives also include items discussing the handover of activities from ICRC to UNRWA in April 1950, which would be of interest in understanding how the transition worked and exactly what happened to the registration data.

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<sup>333</sup> Jalal al Hussein, "Red Cross Palestinian Refugee Archives 1948-1950", in *Reinterpreting The Historical Record: The Uses of Palestinian Refugee Archives for Social Science Research and Policy Analysis*, (ed.), by Salim Tamari and Elia Zureik, (Jerusalem: Institute of Jerusalem Studies, Washington, DC: Institute for Palestine Studies, 2001), p.145.

<sup>334</sup> It is not known what these figures are but the last census carried out by the ICRC from February to April 1950 had 331, 481 refugees registered in Palestine and 28,606 in Israel. Jalal al Hussein, "Red Cross Palestinian Refugee Archives 1948-1950", in *Reinterpreting The Historical Record: The Uses of Palestinian Refugee Archives for Social Science Research and Policy Analysis*, ed. by Salim Tamari and Elia Zureik, (Jerusalem: Institute of Jerusalem Studies, Washington, DC: Institute for Palestine Studies, 2001), p.149.

One of the ICRC's most contentious issues at the time involved its registration procedures, especially in terms of the numbers of refugees being registered. The UNRPR pressured the ICRC and the other two *Commissariats* to reduce the number of refugees being registered. Inflated figures were a well known fact at the time and despite attempts to confirm the figures through a verification process the gap remained. This is significant because the ICRC figures were eventually handed over to UNRWA, when the agency took over operations in the area.

At the time Palestinian officials attempted to get the ICRC to register those who were poor and in need of assistance. The sensitive definition of "refugee" was left to the voluntary organizations to determine and often new categories of refugees claiming refugee status would arrive.<sup>335</sup> This would have included Bedouins, border villagers who may not have lost their homes, but had lost their livelihoods. As this study has already discussed, the issue of refugee status continues to be a hotly contested topic and is an issue that will require working out in any future Palestinian settlement.

### **5.3.2. The AFSC data**

As well as the ICRC archives, the AFSC also began to collect Palestinian refugee data during the same period because they had a presence in the Middle East prior to the refugee crisis in 1948. The AFSC were working in the field of education before being asked by the UNRPR to assist the Palestinian refugees in the Gaza Strip during late 1948. The AFSC were assigned with the responsibility for the organization and distribution of relief

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<sup>335</sup> The ICRC defined "refugee" as a person who has lost his domicile (within Jewish held areas) as a consequence of the war and is in distress.



goods which began in January 1949 as well as setting up Palestinian refugee camps.

The anthropologist Julie Peteet was granted access to the files in Philadelphia and she has written a certain amount about the AFSC documents, which surprisingly have remained more or less untouched until the 1990s, when the process of archiving the data began to take place as part of the agency's 50<sup>th</sup> anniversary.<sup>336</sup>

The documents are housed in the archives section of the AFSC headquarters and comprise of six archival boxes. Usefully, all of the documents are written in English. Each box contains files with a title, number and date. Although the data is not computerized, the data files are all kept on a disk that lists all the files. The records are organized by year and then into categories, making it easy to explore the documents.

The archives consist of a rich body of information because the documents were written from a Quaker perspective and provide a wide-ranging synopsis of the preliminary set up through to the concluding stages of AFSC's operation in Palestine which includes correspondence discussing repatriation and resolution and some rough statistics.<sup>337</sup>

The topics covering 1948 detail the initial set up of operations and include: correspondence with organizations and the correspondence of individual members of the team. There are sets of financial documents such as audits, budgets and fundraising files and a file containing rough figures on

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<sup>336</sup> Julie Peteet, "The AFSC Refugee Archives on Palestine 1948-1950", in *Reinterpreting The Historical Record: The Uses of Palestinian Refugee Archives for Social Science Research and Policy Analysis*, (ed.), by Salim Tamari and Elia Zureik, (Jerusalem: Institute of Jerusalem Studies, Washington, DC: Institute for Palestine Studies, 2001), p.109.

<sup>337</sup> As part of the Oral History Project, relief personnel who had worked in Gaza during 1949 and 1950 were interviewed and the un-organized data were archived.

population statistics in each camp and their places of origin. Additionally, there are files that contain correspondence with governments and files relating specifically to projects for each refugee camp.

The documents covering 1950 include: administrative files; committee and organizational correspondence; financial files containing details of programmes; government minutes and personal files along with files on projects, reports and publicity files. These files demonstrate that the AFSC was being wound down and was in a period of transition and hand over. There are also political reports within the archives which include correspondence addressing questions of repatriation and rehabilitation. In general terms the archive provides a comprehensive view of how the AFSC was set up, the types of programmes it provided and provides documents which illustrate the closure of the relief operation.

As Peteet points out, “unlike refugee scenarios today, where refugee participation is encouraged, the refugee voices are completely absent from the archives”.<sup>338</sup> When the AFSC operations came to an end the system of classification and registration was also handed over, however the registration copies of refugee cards are not available. It is thought that UNRWA adopted AFSC’s system of classification, and documents can be found that deal with the classification of registering refugees and designing the ration cards that were used.

### **5.3.3. The UNRWA Data**

As chapter one noted, the UNRWA data, along with the UNCCP data contain the most extensive and reasonably reliable information about Palestinian refugees, their social attributes as well as socio-economic and property claims of any refugee

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<sup>338</sup> Ibid., p.114.

population in modern history. The largest collection of Palestinian refugee data by far is undoubtedly the archives of UNRWA, which contain the most extensive collection of data on Palestinian refugees in the Middle East.

Tamari and Zureik who conducted extensive research on the archives in 2001 estimate after visiting UNRWAs Headquarters in Amman, and UNRWA's Field Offices in the Gaza Strip and the West Bank, that there were close to seventy million documents stored in these sites.<sup>339</sup>

Since 1950 UNRWA has collected and processed data to serve its daily planning needs and to document the agency's work for its donors. UNRWA's data contains a variety of information about the situation of Palestine refugees in all of UNRWA's five fields of operations. The data is comprehensive in terms of scope, time and geography. As chapter one highlighted, in addition to UNRWA's archives, the agency is also responsible for the ongoing registration of refugees to support their application mainly for issuing of updated registration and ration cards to eligible refugees.

The UNRWA archives contain the following sets of core refugee data:

- The family files are distributed in all fields of operations and contain data that includes original 1948 data;
- The URS system holds data for all RRs. Monthly updates come in from the field registration systems and are sent to Amman where it is verified and updated;

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<sup>339</sup> Salim Tamari and Elia Zureik, *Reinterpreting the Historical Record: The Uses of Palestinian Refugee Archives for Social Science Research and Policy Analysis*, (2001), p. 5.

- The Socio-Economic database holds detailed socio-economic information on the families and individuals enrolled in UNRWA's special hardship case programme. This database is a key tool for the planning and day-to-day management of the special hardship programme;
- The Demographic database holds background data on the refugees;
- The Central Registry contains data that pertains to UNRWA's legal and administrative business, and internal information;
- The health and education files are located in UNRWA's fields of operation.

As already outlined, the researcher was granted access to view the scanning and digitization process of the family files in UNRWA's Jerusalem and Amman offices. According to Maher Nasser, former UNRWA Liaison Officer:

The digitization has its aim to both assist UNRWAs day-to-day registration operations and allow for the preservation of the data through electronic means. This ensures that the registration system and family files are in a form accessible for those parties involved in the final settlement of the refugee issue should access to work on the data be granted.

Nasser also points out that:

The digitization programme also ensures that the information within the family files can be located quickly in an electronic form and that, where necessary, the hard copy (original) can also be retrieved to provide verification.<sup>340</sup>

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<sup>340</sup> Maher Nasser, "Palestine Refugee Records Project", paper presented at the second international Stocktaking Conference on Palestinian Refugee Research, *International Development Research Centre*, (Ottawa: June 2003), [http://network.idrc.ca/uploads/user-S/10576731640Session\\_7\\_Maher\\_Nasser\\_Paper.doc](http://network.idrc.ca/uploads/user-S/10576731640Session_7_Maher_Nasser_Paper.doc), (accessed on 3/20/2007).

The family files contain data regarding property holdings (though it is not systematic) because the refugees were asked about their abandoned property holdings upon registration in 1949 and during the early 1950s, it is however limited. According to Zureik approximately twenty percent of the files include property data.<sup>341</sup>

Interestingly, in a Badil pilot project carried out in 2002, it was discovered that approximately 33 percent of 2000 family files examined had property deeds attached to the family files.<sup>342</sup> Until the family files are fully examined for the purpose of determining refugee property data, researchers will only be able to speculate about the nature of property data figures. Section 5.5.2 of this chapter looks in more detail at the property element of the family files.

#### **5.3.4. The UNCCP Data**

As chapter two outlined, the UNCCP represented the UN's first attempt to deal with the Arab-Israeli conflict. To recap, when it became apparent that the political constraints were not going to yield any satisfactory outcome on refugee repatriation and resettlement, the UNCCP pursued new ways to facilitate solutions for refugees. One of the ways in which the organization did this was to collect Palestinian refugee property data and identify and evaluate the information gathered through the Technical Project which lasted until 1964.

Documents in the UNCCP archive detail and identify almost every parcel of Arab owned land in Israel during the 1950s and 1960s, meaning that the archives contain a wealth of data that is

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<sup>341</sup> Information obtained via E-mail correspondence with the researcher.

<sup>342</sup> Badil, (2002), "Real Property Restitution and Property Documentation", <http://list2.mcgill.ca/scripts/wa.exe?A2=ind0205b&L=fofognet&D=0&F=P&T=0&P=954>, (accessed on 9/8/2007).

directly relevant to the question of Palestinian refugee compensation and restitution.

Very few individuals have been granted access to the UNCCP archives in New York, though in the late 1990s Michael Fischbach was granted limited access to both the land records and other material, and studied in detail the historical compensation plans that were never released to the public.

The UNCCP data includes two types of forms: The RP/1 forms for example were developed by the UNCCP to record the details of specific parcels of Arab property in Israel (one R/P1 form per parcel). Each R/P1 form identifies each parcel of property owned by Arabs in Palestine, including partnerships and companies.

There are also RP/3 forms which identify land owned by the State and other public authorities, Jews, and other individuals which are not included in RP/1 forms. Together these forms contain the most elaborate record of Palestinian refugee property and land losses. These records were digitized in the 1990s when the PLO and the UN undertook a massive project to computerize the data for possible use in the future by negotiators and the UN wanted to preserve the records from deterioration.<sup>343</sup>

The data can be tabulated by title deed owner, size of land and by location coordinates and since the database contains map linkages it is easy to determine the location of property. It was this sophisticated computerization project that revealed the flaws associated with the original UNCCP's Technical

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<sup>343</sup> The basis for UN involvement was provided General Assembly Resolution 51/129 of 13 December 1996, which repeated earlier resolutions calling for the 1948 refugees to be given access to the income from their property, also called for the "preservation and modernization" of the UNCCP's records relating to refugee property.

Programme's methods.<sup>344</sup> Further limitations of the data will be discussed in the remainder of this chapter.

The UNCCP data also provides data relating to the question of Palestinian refugee compensation and restitution. During the 1960s the UNCCP's Land Expert Frank Jarvis studied several methods for estimating the value of moveable property. The archives contain several other noteworthy studies of Arab property that were never made public either. Also the UNCCP archives contain an overall plan to compensate Palestinian refugees that was based on the value of property and other factors. The UNCCP has never released the total compensation figure.<sup>345</sup>

Other material consist of several thousand maps, largely mandatory maps of Palestinian villages and films of Ottoman and British mandatory land registers that the British government sold to the UNCCP in 1952.<sup>346</sup>

### **5.3.5. The Custodian of Absentees' Property Data**

The final two sets of data that make up the main sources of Palestinian refugee registration data and are the Custodian of Absentees' Property data and the Jordanian database.

In 1950, two years after the State of Israel was created, it applied the Absentees' Property Law to the land of any Palestinian who fled or was forced to leave their property during

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<sup>344</sup> For more information see Michael Fischbach, "The Usefulness of the UNCCP Archives for Palestinian Refugee Compensation/Restitution Claims", paper presented at the second international Stocktaking Conference on Palestinian Refugee Research, *International Development Research Centre*, (Ottawa: June 2003), [http://network.idrc.ca/uploads/user-S/10576732560Session\\_7-\\_Michael\\_Fishbach-\\_Paper.doc](http://network.idrc.ca/uploads/user-S/10576732560Session_7-_Michael_Fishbach-_Paper.doc), (accessed on 26/9/2007).

<sup>345</sup> Ibid.,

<sup>346</sup> There are copies of the UNCCP material available outside the UN archives. The parties that have managed to obtain copies of a variety of documents include various Arab states and the Israelis.

the 1948 war. The same law was later applied to Palestinians in the West Bank and Gaza Strip after the 1967 war, and the property rights were transferred to the Custodian of Absentees' Property.

The object of the Absentees' property law was to transfer the control of the property of Palestinian refugees over to a 'Custodian of Absentees' Property who was to safeguard the rights of the Absentees' until the refugee situation had found a solution. The Custodian was specifically authorized by the Law to transfer the Absentees' properties to a government Development Authority and Jewish National Fund (JNF) which could then transfer them to other owners, or could develop them.<sup>347</sup>

The Custodian was regarded as the legal holder of all property belonging to Absentees' and was allowed to sell such properties to a Development Authority. During the 1950s, the Absentees' Property Law transferred millions of acres of land to State ownership which was used to build kibbutzim, moshavim<sup>348</sup> and to develop towns. This abandoned property was significant and one of the greatest contributions towards Israel's early development and in the course of these transfers, detailed records was kept.

The Custodian of Absentees' Property data is an important source of data since it includes documentation of all land expropriated from Palestinian refugees under the 1950 Absentees' Property Law. The Absentees' Property Law stated that any landowner who left his/her permanent residence at any time following November 29, 1947 to any Arab state, or to any

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<sup>347</sup> For more information on the Jewish National Fund and how it secured its land see Walter Lehn and Uri Davis, *The Jewish National Fund*, (Kegan Paul International, London, 1988).

<sup>348</sup> A type of cooperative agricultural community of individual farms pioneered by the Zionists during the second *aliyah*.



area of the Land of Israel (as defined under the British Mandate), which is not the State of Israel (i.e., the West Bank and Gaza Strip), automatically forfeited any property within Israel to the Custodian for Absentees' Properties.<sup>349</sup>

The data includes documentation of all land expropriated from Palestinian refugees under the 1950 Absentees' Property Law (similar to abandoned property laws repealed in other refugee cases such as Bosnia) and later transferred to the state of Israel and the Jewish National Fund. In August 2007 the researcher was granted an interview with Roby Nathanson in Tel Aviv, where he discussed certain aspects of the on-going project to digitalize the Custodian of Absentees' Property database.<sup>350</sup>

The significance of the meeting with Roby Nathanson was that the researcher was able to learn what he and his team have been working on. According to Nathanson, they have been working on a computerized database of the Custodian of Absentees' Property data for the last decade. Based upon this work the Israelis have been able to produce a systematic database covering the whole of the country as it would have looked like during the period of historical Palestine with the purpose of using the data as proof of evidence for Palestinian refugee lands and lost property.

The team were also (at the time of writing) entering public and state land, *waqf* land<sup>351</sup> to complement the private land data already in the system and as such they will soon be able to answer exactly how much *waqf* land was abandoned and seized.

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<sup>349</sup> For more information on the fate of Palestinian refugee property see *Badil*, (2002), "For Jews Only - Israeli cabinet endorses bill regarding use of State Land", [www.maiap.org/maiap/articles/apartheid/020709\\_badil.htm](http://www.maiap.org/maiap/articles/apartheid/020709_badil.htm), (accessed on 2/5/2007).

<sup>350</sup> The researcher was not given specific access to view the database.

<sup>351</sup> Loosely translated the word *waqf* means "religious endowment". *Waqf* land could not be sold and was used for religious purposes primarily. Income derived from the land would go to support mosques and communal purposes.

The project involved the analysis of thousands of Absentees' property files. The British Mandate tax records were used to work out the value of the land since the British had kept thorough land and property lists, using a methodological system to collect evidence on each land registry document. Other records included maps and aerial photographs. The project also relied on using documents such as the British certificates of registration which had the name, parcel numbers, area and the £ P. values (Palestinian pound) from different land ministries.

Other information included: evaluation sheets and urban property tax ordinance of the historical proprietorship situation in 1948 which had the name, location, parcel size, block number, details of when the land was confiscated from which they were able to value it (based on their assumptions) and what type of land it was before 1948 expropriation began. By using the British data it was possible to work out what areas were populated by looking at specific parcels of land.

Since the project began in 1997 the team have now got in place a database that can concretely identify and verify figures of the extent of the land, its value, specific registration data (block and parcel numbers) for each parcel of land that absentees formerly owned. The data has been produced into a map form based on geographic information systems (GIS) techniques which is advantageous for a number of reasons:

- It enables the user to access and to retrieve information easily;
- Having scanned and entered maps to correlate with the property data it is possible for the easy identification of every parcel of land i.e. this system allows one to point and select a parcel on the map and immediately get all the information

related to that specific parcel, such as the owners name(s), parcel number, village, sub district, tax category and so forth.

Probably the greatest potential of the decade long work that has been carried out on the Custodian of Absentees' Property data by the team of Israeli researchers, is the fact that it is now possible to answer three fundamental questions regarding the data: who exactly is an Absentee; what happened to the land; and what that owner is entitled to.

Nothing has been revealed in public regarding the work being carried out by the Israelis, although this clearly demonstrates Israeli initiatives in the preparation of various compensation schemes so that when future negotiations resume, they will have the necessary information and data in which to enter into negotiations with the Palestinians over the issue of refugee compensation.

### **5.3.6. The Jordanian data**

Finally, Jordan has also created a computerized database using the data it received from the UNCCP. This particular database has never been used, let alone studied or properly filed, and there has not been anything written about the database publicly, although Fischbach writes about the database in both his books (2003 & 2006). As such areas associated with this database are still very vague. To the best of the researcher's knowledge, this is the only published source of material to be found on the database at the time of writing.

According to Fischbach, the Jordanian government's Department of Lands and Survey and the Department of Palestinian Affairs jointly financed the creation of a computerized database of Arab landowners in Palestine using the films Jordan purchased from

the UNCCP in 1974.<sup>352</sup> The UN created its own database, and the Jordanians created their own, based on UNCCP microfilms in addition to the records in the possession of the land department. (They are two distinct databases). The programme was completed in July 2001 and will presumably be used should Israel and Jordan pursue claims in the future.

What is known is that the Department of Lands and Survey have a printed version of the microfiche of the UNCCP archives and a copy of the actual microfiche. The UNCCP microfiche are however incomplete, and as such, the Ottoman tabots are referred to when necessary. Using the computerized system makes it possible to type an Arabic name into the computer system to find out dunums, their location and block numbers and where the parcels are as they are filed according to city/village, then block number. It is also possible to find out which city the land is in and to whom it belonged. However, the block numbers do not always match the British Mandate archives because under the Mandate there were old and new block numbers.<sup>353</sup>

Most probably the database was created for the purpose of future claims, an issue that the Jordanians would be extremely interested in due to the large number of Palestinian refugees residing permanently in Jordan. The researcher does not believe that there have been any efforts made to use this database, and as far as it is possible to suggest it seems that the Jordanians are waiting for such a time when compensation talks begin.

Finally, there are other sources of interest with regard to Palestinian refugee data and they include the records held by the

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<sup>352</sup> Interview with Michael Fischbach in Amman, June 2007.

<sup>353</sup> General British mandate material is available at the UK National Archives (formerly the Public Records Office) in Kew, London. Other land records are to be found in Israel, and some records that were captured by the Jordanians in 1948 are located in Jordan.

original first generation refugees themselves. It is known that Palestinians living abroad still have personal papers, keys, and land deeds, tax records etc. The process of collecting existing records still held by refugee would not only fill this gap but would also enhance our knowledge on presently unknown data.

The incorporation of such documentation would be immensely significant if it could be collated and collected into a user friendly database which could categorize and register these historical documents and preserve them. Since the status of such records is not yet known this gap could be realistically filled by the Palestinian refugees themselves who could record their own claims for compensation. (Further categories of sources can be found in appendix 5).

As 5.2.1 stated the stunted progress within the political negotiations has affected the compensation issue which has not seen Palestinian refugee claims achieve any success. The materials outlined in this section could be of value in legitimising future Palestinian refugee claims. Negotiations in Taba for example demonstrated that the issue of compensation would need to involve and the use of records which would include the UNCCP, the Israeli Custodian of Absentees' Property and UNRWA data to verify claims. Most of the data outlined in this section covers most aspects of the Palestinian refugees' history since 1948. Since any future peace process is only likely to succeed when it confronts the effects of the 1948 war, the data outlined in this chapter may prove to be very significant and provide an effective contribution.

#### **5.4. Data Limitations**

Having overviewed the main data sources, this section will discuss the limitations of each data source. The issue of accessing the data will be discussed first, followed by the

condition and usability of the data and finally a summary of the problems and gaps identified in the data will be examined.

#### **5.4.1. Access to the Data**

One of the major problems, as chapter one outlined in 1.1.2 was access to the UNRWA data, which was confirmed during the researcher's field work. Although Tamari and Zureik gained access to the UNRWA archives and Fischbach gained access to the UNCCP archives, many Palestinians and others involved in Palestinian refugee research might be under the impression, because of Fischbach's writings especially and the work of others, that there are many great databases available for research when in fact, all of them are either unusable, inaccessible, or both.

Like all archives, there are questions regarding the preservation of the data, and UNRWA's responsibility as "the Custodian of refugee data" means that the question of preserving its data is directly linked to its operational and organizational agenda. It is also worth noting that UNRWA has no mandate to assist researchers, and the fact that UNRWA continues to operate in one of the most politically unstable regions of the world has to be taken into consideration. Understandably, UNRWA needs to balance between the interests of researchers, negotiators and its own environment.

However, the lack of access to the UNRWA data by "external" researchers and practitioners is impeding any further development and promotion by precluding critical analyses and concerning key questions for Palestinian refugee research. Unlike the other archives, UNRWA does not state their policy on access more than to say it is evaluated on a case by case basis.<sup>354</sup>

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<sup>354</sup> Interview with Jihad Abu Baker, Project Manager of the PRRP, Amman, 1 June 2007.

From what the researcher was able to gather from her field visit, access to UNRWA's family files is restricted to a limited number of researchers whose research does not conflict with the agency's work and mandate. So far UNRWA has yet to introduce any access protocols or an official code of conduct for researchers outside the agency to follow.

In 2003 UNRWA reviewed its policy options related to accessing material contained in the registration system and the family files, and the agency prepared a draft Access Policy Directive, which was to be finalized once the Project Advisory Committee had been established and its views consulted.<sup>355</sup> UNRWA's 2005-2009 MTP also recognized the agency's need to improve its capacity for collection, analysis, management and use of the data but this is for strengthening UNRWA's capacity for research and data analysis and not for those outside of the agency.<sup>356</sup>

There are a number of reasons for restricted access to the UNRWA data. For example: to protect the identity of the refugees, to minimize the risk of misinterpretation of data, and UNRWA are not enthusiastic about organizations carrying out studies on its data in fear of negative publicity.

Although some of these reasons are of genuine concern, it is legitimate to question whether they are sufficient enough to restrict access to this invaluable source of data indefinitely, particularly when these obstacles can be overcome by appropriate use of restrictions. For example precedents and protocols could be drawn up to address several of these concerns.

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<sup>355</sup> Maher Nasser, "Palestine Refugee Records Project", paper presented at the second international Stocktaking Conference on Palestinian Refugee Research, *International Development Research Centre*, (Ottawa: June 2003), [http://network.idrc.ca/uploads/user-S/10576731640Session\\_7\\_Maher\\_Nasser\\_Paper.doc](http://network.idrc.ca/uploads/user-S/10576731640Session_7_Maher_Nasser_Paper.doc), (accessed on 3/20/2007).

<sup>356</sup> For more information see, [www.un.org/unrwa/news/mtp.pdf](http://www.un.org/unrwa/news/mtp.pdf), (accessed on 12/3/2007).

Avenues for the dissemination of data need to take place which will assure the confidentiality of the refugees and anonymization procedures could be developed and introduced to standardise application procedures for research permits without compromising UNRWA's delicate position. Developing proper protocols to improve access would not only lead to new discoveries, lead to greater diversity, improve unexplored aspects of the data, extend what is already known and would allow for refugees and their descendants to be able to use the data to chronicle and trace their history, something which is particularly important for future initiatives to take place on Palestinian research.

UNRWA's data should however not be highlighted as the only difficult-to-access archive. It is just as difficult to access some other databases. For example the UNCCP data stored at the UN Secretariat Archives in New York, is notorious for keeping tight control over access records, and although part of the UNCCP's Technical Project on refugee property losses was made public in 1964, significant details such as the values have never been published, which implies that the UN do not want to make parts of this data available.

As already outlined, it requires special permission to gain access to the UNCCP archives, and very few researchers are granted such access, Michael Fischbach being the exception. Although his subsequent attempts for permission to access the data since his initial visit have been ignored.<sup>357</sup>

The Custodian of Absentees' Property is not currently accessible and this is partly due to the fact that the data is classified and is being assembled specifically for the use of negotiators and decision makers. Nathanson told the researcher that it will be a

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<sup>357</sup> Interview with Michael Fischbach in Amman, June 2007.



long time before the data will be made public as the data is being worked on for the purpose of future negotiations.

The AFSC archives have no access issues, although permission is required from the archivist to access the files which is a straightforward procedure for bona fide researchers.

Responding to the research needs of the academic community in 1995 the ICRC opened up its archives to those interested in its activities and access to the archives is gained through applying to its Executive Board. Finally, the Jordanian government has not yet granted unrestricted public access to its database.

The benefits of sharing the wealth of data examined in this chapter would be immensely useful. For example wider access would produce important observations on a range of issues that have yet to be given any consideration to this very under studied area of Palestinian refugee research. Provision of access to the data would lead to more innovative analyses and increase their relevance for national, regional and international issues such as the proposed nature of this study. Creating the capacities to undertake research enquiries and build mutual trust between those who hold the data and the research community is critical to the future of Palestinian policy research.

#### **5.4.2. The Condition and Usability of the Data**

Not only does further work on the access issue need to be negotiated but it is also important to consider if the data is usable for the research community. In other words, is the data in a suitable condition for researchers to work with?

UNRWA's family files are very fragmented as could be expected when the sheets of paper are so old. The fact that the family files are being digitized serves not only to safeguard the data and improve its usability by making the data available electronically,

but also makes it more critical that researchers and relevant stakeholders, including Palestinian authorities can work on the data.

The UNCCP records have been catalogued and stored according to the system of the Secretariat archives. Although Fischbach saw the UNCCP computer database, he told the researcher that it was extremely complex to use, even for an expert like him, much less a lay person who would not be equipped with the experience to work.<sup>358</sup>

In terms of the usability, the Custodian of Absentees' Property database has been compiled into a computerized system for the very purpose of using the data in future negotiations with the Palestinians, as such it is user friendly, if not yet accessible.

The Archives Division of the ICRC have embarked on protecting their files. For example some of the files which consist of paper sheets have had new cardboard covers to protect the files. Additionally, certain files have been copied on to microfilms in order to preserve the data.<sup>359</sup>

The AFSC files have not been transferred to microfiche or digitised although they have been put on to disk which means that a computer list of the contents of each archive is available, making it easy to see what is in each file. The original documents are all in paper format and as such are in quite a fragile condition though perfectly readable.<sup>360</sup>

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<sup>358</sup> Interview with Michael Fischbach in Amman, June 2007.

<sup>359</sup> Jalal al Hussein, "Red Cross Palestinian Refugee Archives 1948-1950", in *Reinterpreting The Historical Record: The Uses of Palestinian Refugee Archives for Social Science Research and Policy Analysis*, (ed.), by Salim Tamari and Elia Zureik, (Jerusalem: Institute of Jerusalem Studies, Washington, DC: Institute for Palestine Studies, 2001), p.148.

<sup>360</sup> Julie Peteet, "The AFSC Refugee Archives on Palestine 1948-1950", in *Reinterpreting The Historical Record: The Uses of Palestinian Refugee Archives for Social Science Research and Policy Analysis*, (ed.), by Salim Tamari and Elia Zureik, (Jerusalem: Institute of Jerusalem Studies, Washington, DC: Institute for Palestine Studies, 2001), p.116.

As this section has attempted to highlight, preserving the data to ensure that it remains intact and usable over time has been a fundamental function of all the sources outlined in this chapter, and in some cases digital preservation and conversion of some parts of the data has especially become the best way to preserve the life cycle of the data as well as to enhance its usability and scope.

#### **5.4.3. Summary of the Problems and Gaps Identified in the Data**

Having looked at the limitations and condition of the data, this section will highlight the problems and gaps identified within each data source, which have been recognized as limiting factors in the development of further research, beginning with the UNRWA data:

1. The family files contain data on the original process of registration of refugee families as reported by the refugees in 1950, although not systematic, limited information about refugee property ownership is available. However, the family files are not substantial enough to be used as a single source for establishing Palestinian refugee documentation for material/non material claims. Additionally, the files do not offer details such as proof of legal title, or Arab land holding information in what became Israel or outline details on individual parcels of land which were based on records such as British mandatory land and land taxation documents.

2. UNRWA's data was gathered primarily for the provision of the welfare of refugees. The data collected was never intended for research or statistical analysis and this remains to be the case today. The refugee needs were records of ration distribution and essentially they were a record of poor refugees. The middle

classes, professionals and skilled workers are mostly absent from the files. As such, those likely to have had the most substantial compensation claims are not to be found within the files.

3. Another data gap to be found is that there is very little data available on Palestinian refugees living outside the mandate areas of UNRWA, such as refugees who settled, for example, in Egypt and abroad. Such groups of people do not appear in the record. Neither do “internal refugees” who were displaced during 1948 but remained in what became the State of Israel. Furthermore, unregistered Palestinian refugees are also not included. This gap has led to an imbalance in the distribution of data on total Palestinian populations which statisticians would ideally require for assembling accurate refugee figures.

4. When UNRWA was established the agency inherited inaccurate refugee registration records from various voluntary agencies. UNRWA made several attempts to rectify the registration records beginning in the 1950 when half a million names were deleted. However, UNRWA still acknowledges that its registration figures are inaccurate and continue to work, with approximate figures.

5. As chapter three discussed there are problems associated with the reliability of the data. Self-reporting of property losses does not lend itself to authentication, and creates problems when trying to legitimizing claims. In this regard the UNRWA directive is to believe what refugees report to them when they get registered or need to update their status. For refugees living in UNRWA’s area of operations, eligibility has always been tied to registration, which undoubtedly like in all refugee situations, provides incentives for misleading registration of persons. As such there is no way to establish if the data in UNRWA’s family files are facts, partial facts or lies told by the refugee’s predecessors.

To compound the issue is the additional fact that when it becomes a generational story, as it has in the Palestinian refugee case, then it is likely that the data will have become distorted. Whether or not unsystematic sheets of paper with hand written accounts of what refugees may have left behind, can be used as valid standards of proof would be left to the discretion of those involved in the constructing of a future Palestinian claims mechanism.

As it stands, it could be said that the data is no more than self reporting, and alone this data may not be a valid measure of reliability for negotiators to use the files in claims work. This is of course is not just relative to the Palestinian refugee case but to all refugees in the process of making claims.

Agencies such as IOM have been putting in place many system of compensation relying on some form of proof, evidence, file, document, register, or some legal documents to give it meaning and significance. However, it would be unreasonable to exclude the UNRWA data totally because the records are rarely accompanied with documents such as property deeds. Flexible methods would need to be adopted to construct a workable, reliable and fair system of standards of proof, and as the previous chapter outlined this has been achieved successfully in many cases.

Finally, although Fischbach, Tamari and Zureik recognize some of the problems associated with the UNCCP and UNRWA databases, scholarly opinion, much of which ignores the data issue, is mixed regarding just how useful Palestinian refugee registration data is. For example Lex Takkenberg, UNRWA's General Counsel and Ethics Officer, discounts the use of the UNRWA collections as a starting point for claims, for the data was assembled for the dispensation of social welfare and not for

establishing claims.<sup>361</sup> However, Tamari and Zureik argue that the use of multiple collections could furnish the quantitative data necessary for assembling claims.<sup>362</sup> Furthermore, they add that:

After all, the economic and social profiles that can be assembled out of the UNCCP archives and collections of UNRWA data attesting to the trajectories of exilic life worlds constitute the only tangible means of recourse left to Palestinian refugees.<sup>363</sup>

Essentially the only way to determine the extent of the value of the UNRWA archives and others is to allow researchers, and those associated with negotiating the future of the Palestinian refugee issue, access to the files.

## **UNCCP**

Since the UNCCP data has been digitized, claims based on the UNCCP data is available and ready for authentication. However, the UNCCP data has a number of problems related to the comprehensiveness of the data.

1. The data does not cover hundreds of thousands of refugees who were either landless, or those who worked on contracts with landlords. It also excludes the claims of former peasants who lost their property because it was not properly registered.
  
2. The sophisticated digitization project initiated by the PLO and the UN during the 1990s revealed a number of flaws. Firstly, the original UNCCP TOs methods revealed that not all of the R/P1 forms contained full information. It was also revealed that despite the TOs methodology to produce one R/P1 form for each

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<sup>361</sup> Salim Tamari and Elia Zureik, *Reinterpreting the Historical Record: The Uses of Palestinian Refugee Archives for Social Science Research and Policy Analysis*, (2001), p. 21-22.

<sup>362</sup> *Ibid.*, p.22.

<sup>363</sup> *Ibid.*, p. 22.

parcel of Arab-owned land the forms exceeded the total number of unique parcels of land in the database. The digitization project also found that there were duplicates and that many of the RP/1 forms did not have the tax category of the parcel which is essential to working out the value of the parcel of land.<sup>364</sup>

3. The digitized process also discovered that it was not possible to locate 30,000 RP/1 forms covering land mostly in the Jaffa and Jerusalem sub-districts and most RP/3 forms in UN archives where the records are stored. Also many of the RP/1 forms lack information in the tax category of the parcel, something which is fundamental to the determination of the parcel's value.<sup>365</sup>

4. Large areas of refugee property are absent in the UNCCP data, which includes a substantial area of the Negev, which was deemed communal property. Also the data does not reflect changes such as land confiscation and leases and changes in the land such as agricultural land which turned into urban property, and the abolishing of *waqf* land into state land, or communal, or private property.<sup>366</sup>

5. There are also technical problems with the data, for example Arabic names are transliterated and no doubt this will cause problems in identifying those refugees who share the same name since each village is likely to have many similar Arabic family names.<sup>367</sup>

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<sup>364</sup> Michael Fischbach, "The Usefulness of the UNCCP Archives for Palestinian Refugee Compensation/Restitution Claims", *IDRC*, (2003), [http://network.idrc.ca/uploads/user-S/10576732560Session\\_7-Michael\\_Fishbach\\_Paper.doc](http://network.idrc.ca/uploads/user-S/10576732560Session_7-Michael_Fishbach_Paper.doc), (accessed on 26/9/2007).

<sup>365</sup> Adnan Abdelrazek, "Modernising the Refugee Land Record: Advantages and Pitfalls", in *Reinterpreting the Historical Record: The Uses of Palestinian Refugee Archives for Social Science Research and Policy Analysis*, (ed.), by Salim Tamari and Elia Zureik, (2001), p.176-177.

<sup>366</sup> Salim Tamari, "Palestinian Refugee Property Claims: Compensation and Restitution", *Heidelberg*, (2003), [www.law.tau.ac.il/Eng/\\_Uploads/dbsAttachedFiles/TamariPaperRefugeeCompensationRestitution1julycon.doc](http://www.law.tau.ac.il/Eng/_Uploads/dbsAttachedFiles/TamariPaperRefugeeCompensationRestitution1julycon.doc), (accessed on 2/9/2007).

<sup>367</sup> *Ibid.*,

6. There are also problems between the relationship between land losses and compensation. The R/P 1 forms did not list the value of each plot of land to avoid political implementations, neither did the UNCCP publish any total estimates and as such it is not possible to determine values of individual or total refugee land from these forms. Also because the forms are organized by village if land was owned in more than one village each would have to be analyzed separately.<sup>368</sup>

Fischbach recognized that although the UNCCP records remain the most thorough and accurate account of Palestinian refugee land, their usage remains subject to certain reservations. Among these are problems with their thoroughness and accuracy; the correlation between land losses and overall compensation to refugees, and fundamental disagreements among the parties to the Arab-Israeli conflict as to the entire question of refugee land and compensation.<sup>369</sup>

Tamari and Zureik also outline the shortcoming of the UNCCP archives, stating that it is due to the fact that the UNCCP did not take into account collectively owned land, *waqf* land, built-up areas, publicly owned land, and movable property.<sup>370</sup> As such calculations based on Palestinian refugee property losses for the purpose of compensation in any future claims system would not only be extremely complex but figures would have to be treated with the utmost care.

## **Other Sources**

Whilst interviewing Roby Nathanson about the Custodian of Absentees' Property database, the researcher asked him

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<sup>368</sup> Michael Fischbach, "UN Conciliation Commission for Palestine: Land Records", in *Reinterpreting the Historical Record: The Uses of Palestinian Refugee Archives for Social Science Research and Policy Analysis*, (ed.), by Salim Tamari and Elia Zureik, (2001), p.134.

<sup>369</sup> *Ibid.*, p.129.

<sup>370</sup> *Ibid.*, p.7.



whether or not he had experienced any problems whilst compiling the database, in terms of data gaps or missing information. Nathanson said that there were no problems, lacuna, etc., that had been identified that caused any major difficulties in the preparation and construction of the database.

With regard to the ICRC data there are a number of gaps in the ICRC files. These include documents such as personal data on bona-fide refugees, maps and sketches of the operational area and the camps and film shots are known to be missing from the archives.

According to Julie Peteet since the AFSC archives have only recently been recently organized there are no problems with the data although issues may of course arise depending on the nature of the research carried out on the files.<sup>371</sup> Since the researcher did not access the Jordanian database, and had no information regarding what problems may be encountered, it has been impossible to ascertain the extent of the problems or what gaps may be associated with this database, although as highlighted previously, the UNCCP microfiche, being used by the Department of Lands and Survey is incomplete.

While each source, listed in this chapter outlined a number of problems specific to each data set, such as absent data, technical problems and data accuracy, among these shortcomings there is enough extensive and accurate Palestinian refugee registration data for establishing Palestinian refugee documentation for material/non material claims.

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<sup>371</sup> Julie Peteet, "The AFSC Refugee Archives on Palestine 1948-1950", in *Reinterpreting The Historical Record: The Uses of Palestinian Refugee Archives for Social Science Research and Policy Analysis*, (ed.), by Salim Tamari and Elia Zureik, (Jerusalem: Institute of Jerusalem Studies, Washington, DC: Institute for Palestine Studies, 2001), p.117.

With so many systems of compensation to be found which have relied on some form of proof, flexible methods would need to be adopted to construct a workable, reliable and fair system of evaluating the data, and as the previous chapter outlined this has been achieved successfully in many cases.

The purpose of this final section is to take a brief look at some of the various estimates calculated by the UN, Arabs and the Israelis in producing varying estimates in determining the value of all material and non-material losses. Although the issue is political, addressing the subject of Palestinian refugee property and studying the different estimates and categories of losses put forward is a centre piece to any solution and will lay the foundations for any future compensation claims.

#### **5.4. Various Estimates of Palestinian Refugee Property**

A considerable number of estimates exist regarding the value of Palestinian refugee assets and the figures vary enormously because determining the value of property, businesses, and movable assets are susceptible to a wide range of estimates. The purpose of this section is to look at some of the various estimates of Palestinian refugee property. In doing so a number of questions should be kept in mind:

How much property was actually abandoned by the Palestinian refugees in 1948? What it could be worth today? What criteria can be used to calculate figures that will be mutually acceptable to both sides? There are also a number of important subsidiary questions including: Should payment be made to refugees who do return, including for property loss or damage? Would this include movable property in addition to land? Should payment be made to individual claimants or collectively to governments? So

far no agreement has been found on the scope or value of abandoned Palestinian refugee property and land.

UN estimates began as far back as 1949, when resolution 194 called for two types of reparations for refugees: one for “choosing not to return to their homes in Israel”, and one for “loss or damage to property which under the principles of international law or equity should be made good by the governments or authorities responsible”.

As this study has already pointed out, the two UN agencies responsible for different parts of the refugee problem were the UNCCP and UNRWA who produced three studies on abandoned Palestinian refugee property. Two surveys were produced in 1951, one by UNRWA, called the Sample Study <sup>372</sup> and one by the UNCCP called the Global Estimate, which produced the most solid estimate for assets given up by Palestinians fleeing the 1948 war.

The most solid estimate for assets given up by Palestinians fleeing during 1948 was by John Measham Berncastle, a British land value estimator who undertook the task on behalf of the UNCCP in the early 1950s. His 1951 estimate was 120 million Palestinian pounds of which about 100 million was for land and buildings and 20 million for movable property.<sup>373</sup> Other estimates would add some 4-5 million Palestinian pounds for Arab bank accounts blocked by the Israeli government.<sup>374</sup> The total therefore could be approximately 125 million.

According to Zabudoff, the total of 125 million Palestinian pounds amounts to USD 350 million in 1948. This is equal to

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<sup>372</sup> Michael Fischbach, *The Peace Process and Palestinian Refugee Claims: Addressing Claims for Property Compensation and Restitution*, (Washington: United States Institute of Peace, 2006), p.37.

<sup>373</sup> Michael Fischbach, *Records of Dispossession: Palestinian Refugee Property and the Arab-Israel Conflict*, (2003), p.128.

<sup>374</sup> *Ibid.*, p.98.

some USD 650 per 1948-1949 refugee. Thus the total of assets lost by Palestinians is some USD 450 million. In 2007 prices this would amount to USD 3.9 billion. In per capita terms for 2007, this would be USD 4,740 or for a family of seven more than USD 33,000. The 2007 values used by Zabludoff are calculated by using the U.S. Consumer Price Index.<sup>375</sup>

A third survey was produced by the UNCCP's TO as mentioned previously, which, covered the scope of all Arab land in Israel, including abandoned property and began in 1952 and was finally issued in 1964. This study remains to be the most prominent study although it has never been published. Fischbach described this study as "the most ambitious, thorough, and accurate produced to date by any quarter. It is of inestimable importance to the solution of the Palestinian refugee property question".<sup>376</sup>

The Arab interest in the issue, also saw many estimates being produced, the earliest of which was carried out by Izzat Tannous, who was the head of the Committee of Arab Refugee Property Owners in Palestine. His study focused on land and buildings only and presented his findings on the value of different property owners in Palestine to the UNCCP on May 7, 1951.

In 1980 Sami Hadawi<sup>377</sup> and Atif Kubursi<sup>378</sup> produced findings which are regarded as the most thorough Arab statistics on abandoned property and Palestinian land losses in 1948. Hadawi was a former official land valuer of the Palestine government and he reconstructed an identification study of Arab land ownership

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<sup>375</sup> Sidney Zabludoff, "The Palestinian Refugee Issue: Rhetoric vs. Reality", *Jewish Political Studies Review*, 20:1-2 (Spring 2008).

<sup>376</sup> Michael Fischbach, *The Peace Process and Palestinian Refugee Claims: Addressing Claims for Property Compensation and Restitution*, (2006), p.39.

<sup>377</sup> Sami Hadawi, "Palestinian Rights and Losses in 1948: A Comprehensive Study", (London: Saqi Books, 1988). See also Sami Hadawi, "Land Ownership in Palestine", (New York: Palestine Arab Refugee Office, 1957).

<sup>378</sup> Atif Kubursi, (2001), "Palestinian Losses in 1948: Calculating Refugee Compensation, *Centre for Policy Analysis on Palestine Information*, Brief Number 81, 3, [www.arts.mcgill.ca/mepp/prn/papers/kubursi.html](http://www.arts.mcgill.ca/mepp/prn/papers/kubursi.html), (accessed on 17/6/2007).

before any altercations took place. This study was significant because Hadawi designed and initiated the UNCCP's work on refugee losses during 1953-1964 and had always remained very critical about the UNCCP's findings primarily because they did not include large amounts of land in their findings.

Israeli studies of the scope of abandoned land were concerned with working out how much of the abandoned land had come under Israel's jurisdiction in 1948, so that they could then work out just how much compensation they might have to pay out. The earliest Israeli study was produced in November 1948 and was produced by the government committee, titled "*Report on a Settlement of the Arab Refugee Issue*".

The report was illustrative of the fact that the Israelis were trying to investigate the possibilities of resettlement of the refugees. Other studies were also produced shortly after 1948 by the Custodian of Absentees' Property, the Ministry of Foreign Affairs and the Ministry of Agriculture. These studies were intended as internal estimates and it was not until 1962 that the Ministry of Justice's Land Assessment Division issued an international estimate.<sup>379</sup>

There are also two factors that somewhat reduced the amounts that needed to be repatriated. Firstly, assets, especially financial ones, were sometimes saved by moving or smuggling them out of the country. Many wealthy Arab families from Jerusalem, Haifa, and Jaffa left Palestine soon after the November 1947 UN partition resolution, taking with them their financial and other movable assets. Those fleeing after the fighting began, obviously took whatever financial assets and other movable assets they could carry.

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<sup>379</sup> Michael Fischbach, *The Peace Process and Palestinian Refugee Claims: Addressing Claims for Property Compensation and Restitution*, (2006), p. 27.

Secondly, the factor concerns assets repatriated. Israel returned more than 90 percent of Palestinian blocked bank accounts. The process started in 1953 under the UNCCP and was mainly completed by 1959, with the small remainder being paid out during the early 1960s. Similarly, for the most part, contents of safe deposit boxes and items held in custody by the banks also were returned. The amounts returned exceeded USD 10 million (USD 86 million in 2007 prices).<sup>380</sup>

A major unknown is community property such as mosques. Other financial demands have also been put forward. For example the Palestinians have mentioned psychological damage to individuals as well as the lost income. When these are added to property losses, the total according to Hadawi estimates runs from USD 181-USD 290 billion in 2007 prices.<sup>381</sup>

Palestinian refugee claims to their ancestral land and inheritances continues to be a sensitive topic for both Palestinians and Israelis, and the issues surrounding the land and property actually left behind by the refugees continues to be debated. As the Palestinian refugee community has grown, the debates concerning the refugee property issue have also developed and the differences and complexities involved in attempting to determine the scope and value of abandoned land, and in trying to define exactly what constitutes “abandoned land”, and who can claim it are likely to continue until a realistic compromise can be achieved.

At some point in the future, Palestinian reparations will need to be seriously addressed. When this happens it may take various forms, of which the restitution of lost property is likely to be one option. As this chapter pointed out earlier the Israelis intend to

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<sup>380</sup> Michael Fischbach, *Records of Dispossession: Palestinian Refugee Property and the Arab-Israel Conflict*, (2003), p. 198-209.

<sup>381</sup> Sami Hadawi, *Palestinian Rights and Losses in 1948: A Comprehensive Study*, (1988).

base their calculation of reparation payment based on a macro-economic survey to evaluate the assets in order to reach a fair value. Whist the Palestinians said that this sum would be calculated on the records of the UNCCP, the Custodian for Absentees' Property and other relevant data with a multiplier to reach a fair value.

In order to carry this out successfully and in line with the international standards used in previous precedents of refugee asset determination, the UNRWA and UNCCP data would need to be consulted because they provide the most extensive amount of original data regarding the refugees, and would be the type of data sought by any future Claim Commission to verify refugee property losses. Additionally, other sources of data could be used to furnish and fill in the gaps where the UNRWA and UNCCP data may be insufficient. As opposed to the situation represented by the case studies, where so much original property data had been destroyed, the Palestinians are the most documented refugees in the world, and all the original data collected about their lives and property since the beginning of their refugedom is in existence.

As outlined, one of the UNCCP's surveys covers the scope of all Arab land in Israel, including abandoned property. Should this data be released and combined with the UNRWA data and the other sources that hold Palestinian refugee registration data, a comprehensive estimate for determining Palestinian refugee which would need to be consulted in the drawing up and preparation of determining the value of Palestinian refugee losses.

Although all of the studies mentioned here did assign values for the land and property, the problems of assigning value in terms of today's current market value it makes it impossible to determine an exact value for asset losses. Figures will always

vary considerably, and the current value losses need to be determined by bringing the 1949 value up to 2007 value by adjusting for inflation, which presents further problems when trying to determine value. Such issues will inevitable have political implications which will need to be addressed.

### **5.5. Suggestions for a Future Framework for Palestinian Refugee Registration Data**

The final section of this study will suggest various ways in which Palestinian refugee registration data could be used for a future Palestinian framework.

#### **5.5.1. The Databases**

#### **5.5.2. UNRWA Data**

The UNRWA registration data examined in this study has highlighted numerous research possibilities. In view of the fact that the family files contain the fullest details of the socio-economic conditions of the refugees, and are rich in terms of the history and background of the Palestinian refugees (some of which goes back as far as the Ottoman era), the scope of what is becoming available digitally is comprehensive.

Now that the family files are almost completely digitized, and for the very first time are in a readily accessible format, even if access may so far be restricted, this ensures that all data deposited by individual refugees related to their registration with UNRWA is being preserved, and formatted in an easily



accessible way for future reference, which could, in the context of a final settlement be invaluable for research purposes.

The research projects based on the family files would essentially fall into two major categories: preservation and historical research and policy formulation. Taking each one separately:

### **Historical Research**

1. On a historical basis UNRWA's family files could be used for a number of research possibilities: Firstly, with the appropriate handling, the family files could one day become an historical archive which could preserve and keep in order archive material, which could one day facilitate for the Palestinian refugees themselves and the research community the use of its material for historical research.

2. Issues of historical depth are likely to be important in the formulation of future preservation schemes. Given UNRWA's involvement with the refugees, combined with the extensive amount of data archived by the agency, the data could be used to establish and preserve Palestinian history, through the establishment of a Refugee Archive System or a future Palestinian National Archive tasked to receive, preserve and keep in order archive material from Palestinian institutions.

3. The data to be found in the family files contain information regarding the refugees' time of first arrival after their flight from the country of origin, (which includes data on family composition, specifics of dates, movement patterns and changes in their situation over time). As such the family files provide the possibility to work out, at least partially, the lives of the refugees before 1948 using data relevant for historical sampling. By using the original registration forms in the family files it could be possible (if the data could be computer linked with the AFSC or

the ICRC databases) to establish family profiles, neighbourhoods, villages and to trace historical shifts in the Palestinian communities by taking advantage of the digitization of the family files in a fairly systematic way. It could even be possible to compile a computerized register.

Analysis could begin by identifying a number of key/random families chosen from a population of families, now refugees based in different countries. It would be interesting to use the data to track refugees in order to discover where the refugees came from, and where they are now. This could also be compared with UNHCR's registration methods of tracking refugees. This would be a very worthwhile project for the preservation of Palestinian culture, history and national identity and would also encourage more work to emerge from this pool of data.

4. The family files could also be used to compare Palestinian refugee narratives in a similar way to the Palestinian NGO PalestineRemembered project.<sup>382</sup> Some form of comparison work would be useful in cataloguing refugee narratives and could perhaps even be used as future evidence.

5. Finally, the UNRWA data in general could be used for activities which are increasingly recognized as important in the reconciliation and healing process. These include the public recognition of the trauma of refugeedom, such as the creation of museums to remember the experience, and could contribute to an understanding of a key population group in the Middle East at a time of important transitions in its identity and culture. It is hoped that one day the data, some of which is an integral part of Palestinian history, can eventually be utilized and made available to negotiators.

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<sup>382</sup> In the spring of 2003, PalestineRemembered.com launched al-Nakba's Oral History Project.

## **Policy Related Research**

In terms of policy related research, the UNRWA's family files have the potential to be effective working tools based on the following imperatives:

1. As mentioned in chapter one, based on the field research carried out by the researcher, she was able to develop a proposal based on the family files. The proposal was based on UNRWA's 1951 "*Sampling Study of Abandoned Property Claimed by Arab Refugees*" survey. In 1951 the agency issued questionnaires to the refugees under its care in Jordan and the West Bank in order to produce a sample study of Palestinian refugee losses.

UNRWA distributed 84,000 questionnaires to persons who were heads of refugee households. According to its methodology, the response would represent approximately 340,000 refugees. UNRWA personnel then randomly chose 10 percent of the responses to tally and extrapolate for statistical purposes. The questionnaires revealed that 34 percent of the refugee families in Jordan and the West Bank (49,500 families) lost houses in 1948, and 66 percent (55,400 families) sustained losses in land.<sup>383</sup>

The researcher's proposal intended to update and repeat UNRWA's 1951 study by taking advantage of UNRWA's new digitized system, which would allow the researcher to extrapolate information from the family files that UNRWA had already scanned. This would make it possible to compute land and property statistics from the family files, and work out estimates based on the files.

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<sup>383</sup> Michael Fischbach, *The Peace Process and Palestinian Refugee Claims: Addressing Claims for Property Compensation and Restitution*, (2006), p. 37.

This would enable the researcher to ascertain what percentage of the refugee families declared land losses, and if the system differentiated from the UNRWA survey. In other words, the proposal would have been able to ascertain what is presently unknown, which is, how many family files of the total numbers of those scanned contain property losses?

It would also have been feasible to work out the percentage of all the family files sampled who had owned land in total dunum terms per region. Additionally, it would then have been possible to find out where the land was lost and whether the land would have been fertile land or not? Further questions could ask: How many houses were built on the land? How many houses were lost, where were they located, how many rooms etc? What was the replacement value of the land and houses etc? What regional differences exist, if any, regarding property losses, both in terms of when refugees originated in Palestine as well as the host countries where they ended up? What is the value of this data for researchers?

This proposal could also highlight the uses, gaps and ways to better utilize the family files.

2. In terms of using the data to prepare qualitative claims of restitution which reflect the non-material losses of Palestinian refugees (life chances), the data is not systematic enough for material and non-material claims as the family files would only reveal a limited picture of what was available. However, if the data was integrated with UNCCP, ICRC, AFSC and the Custodian of Absentees' Property data for cross-referencing to take place, it would then be possible to ascertain information regarding: classification of needs; property entitlement questions such as length of residency; estimated value; ownership records and any other relevant personal information related to possession or use and loss of property rights.

Additionally, obtaining information such as knowing where the person came from and who is within the family group (including children born during the period of refuge) could also be answered by studying the family files.

3. As mentioned at the start of this section there is a great deal to be gained from integrating the major data sources. Furthermore, creating a single digitized database using the UNRWA and UNCCP archives (by linking the family files with the UNCCP's R/P 1 forms) would help to rectify the absence of property data found in the UNRWA family files. If this was achieved it would be possible to obtain information such as: Property owners' name, name of father and, ideally grandfather, village where property is located, registration block number and individual parcel number of property, size of property, in dunums, name/s of co-owners, if any type and value of property (e.g., agricultural land, built-up land, etc).

Integration of both data sets would also supplement UNRWA's data with a property record that has so far been poorly documented in the family files. It would also help buttress the UNRWA records with an important element of replicability and verifiability, a condition which has been perceived as lacking in much of UNRWA's data. Moreover, this would also form a holistic picture about the real magnitude of Palestinian losses.

4. The digitized system could also make it possible to capture and represent meaningful analysis on other components, if the data could be manipulated. For example data could be analyzed along the time frame, location, etc for emerging patterns and correlations could be explored and used as a model for all cases, by explaining case by case outcomes, and making deductions if distinct comparisons could be identified.

### **5.5.3. The UNCCP data**

The UNCCP archives are extremely valuable historically and practically for studying the compensation and restitution question. In fact, no substantive progress regarding reaching a formula on Palestinian property restitution and compensation, can be made without looking at the UNCCP data, which holds the answers to many of the questions regarding Palestinian refugee compensation.

1. The UNCCP data is especially useful because the figures derived from the new database provides a more accurate accounting of the UNCCP's original 1964 figures on the scope and value of Arab-owned land in Israel. The data is also useful for studies on other types of land in Palestine generally and not just refugee land. For example these are studies of the value of communally-owned Arab land, as well as the percentage of the refugees who owned land and these studies are extremely important for policy makers and negotiators involved in seeking Palestinian property restitution.
2. As outlined previously in the UNRWA section, the UNCCP data could be used as a supplementary source to help in rectifying the absence of data in the UNRWA family files. The usefulness for this purpose has yet to be achieved (although their suitability for determining data relevant to final status negotiations is limited by several key factors as already outlined).
3. Fundamentally, the archives are useful because of the detailed total compensation plans that were developed. The fact that these plans exist could be studied beyond simply using the value of abandoned property, as the basis for a compensation regime. Given the emergence of the idea of an international fund out of which refugees could receive compensation, looking into the UNCCP plans could provide modern day scholars and

negotiators with ideas about how to construct a workable total compensation package.

4. Since the UNCCP system has great potential for manipulating the data, future land experts could prepare work on present day market value of the data and so forth. By using the different methods employed to determine property estimates, negotiators and researchers could develop a compensation framework.

#### **5.5.4. Other Data Sources**

##### **The Custodian of Absentees' Property Data**

If the UNCCP is a “pot of gold” insofar as Palestinian refugee property data is concerned, then the Custodian of Absentees' Property data could be considered to be the second pot of gold. As previously mentioned, for the study of Palestinian claims, the data clearly demonstrates Israeli initiatives in the preparation of various compensation schemes. The Custodian of Absentees' Property database is important for a number of reasons:

1. The value of the data without doubt is high because it has been possible by using this to trace the Absentees' and work out verifiable data from each parcel of land. It is also possible to configure valuation terms based on the formula developed by the Israeli research team.
2. The value of the records both in general and specific terms provides an extremely accurate and reliable data for the study of Palestinian refugee land and property claims. The database produced by the Israelis seems to have all the data, figures and valuations required in preparation for future negotiations with the Palestinians.

3. In terms of linking this data, it could be possible, if compatible computerized systems were developed. For example the Custodian of Absentees' Property data could be compared with the UNCCP data, because they both used the British Mandate tax records.

### **The ICRC Data**

The ICRC files are historically important because they are able to shed light on an undocumented part of the Palestinian refugee's history. The ICRC data is important for a number of reasons:

1. The data to be found within the archives could assist policy makers involved with the refugee issue on an historical level since the ICRC were present during the creation of the refugee problem, and on the statistical level as the ICRC were initially involved in registering the refugees. Since the ICRC files cover the operational, administrative, political and diplomatic matters concerning ICRC's activities during 1948 there is enough scope within the data to warrant further research.
2. The available files which would be of obvious interest to researchers and historians pertain to ICRC's repatriation and transfer schemes files, which could be studied, in order to understand ICRC's early work on implementing repatriation and transfer schemes and the categories of applicants that were considered by the agency.
3. Reports which provide estimates of the number of Palestinians displaced and basic camp data could be used as a valuable source of information, as could the files relating to the refugee definition and registration issues. Also the handover of activities to UNRWA for example, could be studied to find out plans UNRWA intended to implement for early assistance schemes.



4. Since the ICRC files have not been the source of any significant research, it seems only prudent that research initiatives be launched to look at the early activities, of one of the major organizations involved in the creation of the world's most enduring refugee situation.

### **The AFSC Data**

The AFSC data is also historically rich, although little work has been carried out on the archives. As such the scope for further analysis would be useful because the archives contain certain valuable sources which could be used for a number of research areas:

1. The statistic figures derived the archives could be informative in working out the original number of 1948 Palestinian refugees, the nature of the original registration set up, and the subsequent re-registration of the Palestinian refugees by UNRWA in 1950.

2. The AFSC data in particular contains reference to the refugee status before 1948 which could be drawn upon. For example, it would be interesting to study how the classification system was devised (which was then handed on to UNRWA).

The registration codes chosen could be used to find out the code of origin of the refugees, which would indicate where refugees lived pre 1948. It is therefore possible to find out where refugees came from and where they are now. As mentioned in the UNRWA section, some form of tracing system could be set up to trace families, where they are now, how many children they have over each generation etc. Additionally, ICRC and UNRWA data could also be incorporated to establish any missing links.

3. Finally, the AFSC archives are also useful on an historical level and in particular are informative for studying the Palestinian refugees during 1948. Some of the data is especially rich in terms of the way the agency's dealt with the refugees, and how the initial operation was managed by the AFSC, whose documents describe the initial registration of refugees and how the process was organized, which included compiling lists from pre 1948 data. Additionally, monthly camp reports could also be used as additional source of information.

### **Jordanian Database**

There is presently very little information publicly available on the Jordanian data, and since the researcher has not had access to view the data, the possibilities associated with this database can only be speculative until further research is carried out. It does seem however, likely that the data will be crucial for Jordan when it seeks compensation for the lost property of its Palestinian citizens.

Finally, it would be interesting to write something comparative about the three known computerized databases i.e. the UNCCP database, the Custodian of Absentees' Property database and the Jordanian databases, all of which could fill in the gaps created by individual data sets in search of addressing Palestinian refugee losses.

### **5.6. Conclusion**

This chapter has briefly traced the diplomatic negotiations on the Palestinian refugees in order to provide some understanding of the evolution of the refugee issue. The official negotiation processes highlighted the fact that the future of the refugees remains largely undetermined with the hopes of Palestinian refugees to return to their homes or their ancestor's homes or to

reclaim the value of lost property a situation that will continue to persist.

The chapter also attempted to answer the third research question: Can existing Palestinian refugee registration data be constructed in a suitable way for the preparation of future claims? To answer the question a clear, objective picture of all the sources of Palestinian refugee registration data was presented, which provided a wider understanding of what data is available and how the data can be applied to a number of issues.

It is likely that final status discussion on compensation will force negotiators to look far more comprehensively at the range of Palestinian refugee registration data that is available for determining the scope of individual refugees' losses and for assessing individual values, which is likely to be part of a Palestinian compensation agreement.

As the chapter highlighted there are substantial databases available, representing a wide variety of documents, records, and information, all of which in one form or another provide evidence of Palestinian refugee property losses. The chapter also studied the utility of the data sources and highlighted some of the ways the sources can effectively be utilized for both historical and policy related research.

The chapter was also able to discuss practical ideas for studying the refugee property issue by looking at all the major Palestinian archives. In line with international standards of documentation acquisition for the purpose of initiating property claims, the data sources highlight an invaluable and varied pool of information which could be, and should be drawn upon when the refugee property issue within the future peace process resumes. As the researcher's proposal based on UNRWA's family files was able to

highlight, it possible to determine Palestinian refugee land and property losses.

However, there is a clear need for further research to be carried out especially on methods of document preparation for the purpose of processing Palestinian refugee claims. Such a process needs to emerge as a necessary step as the planning of any future compensation schemes would need to seek how best to use the refugee data in a way that would relate to the current debate. Further work in this particular area can only optimize opportunities for such solutions.

The final chapter will conclude the study by looking back at the previous chapters and the introduction of the thesis to study the results of the whole thesis in order to address the main research questions and so that the new insights added in each chapter can be outlined.

## **Chapter Six**

## **Conclusion**

## **6.1. Summary**

The research carried out for this thesis was vast, challenging and extremely rewarding. It was vast, because the fields of the study encompassed the evolution of the refugee regime, international policies and organizational practices, a large body of archival sources and an international body of literature. It was challenging, because it involved an in-depth analysis of data which required archival visits. Also the process of bringing together in one coherent piece of writing all these different elements of material and attention has been a difficult one.

The “conclusions” are offered tentatively, recognizing and accepting that the type of research in which this study has engaged in is both complex and sensitive. Finally, it was rewarding, because it greatly increased the researcher’s appreciation of the breadth of Palestinian refugee evidence.

The choice of study stemmed from two reasons. The first reason for that choice was that little if any utilization of the operational experience of international agencies in the registration and collection of refugee data had taken place. The second reason for that choice was that little research has focused on international Claim Commission mechanisms, which have been successful in resolving a large number of claims.

This thesis argued that one of the major gaps in research on Palestinian refugees is that it has not benefited from the experience of international lesson-learning through the analysis of other refugee cases and the utilization of the experience of UNHCR and precedents set by international Claim Commissions. The study also argued that there are previous refugee claim precedents that if examined, can provide guidance to the Palestinian refugee claims scene.

The following section will illuminate the results of the whole study, summarizing each chapter, and sets out the results of the analysis in answer to the three main research questions, which this study addressed. A summary of the chapters follows:

Chapter one set out to place into context the research through a discussion of the theoretical framework of the study, outlining the methodology chosen and a discussion of the current literature available. The study was carried out on two levels of analysis: field work and documentary analysis:

The first level of analysis focused on the field work and investigated how Palestinian refugee registration took place, how the refugee registration data was collected and what UNRWA did with the data it collected. More specifically, the researcher was able to study the digitization process of UNRWA's family files, which enabled the researcher to answer

the following three questions: How is the data collected? What data is available? What is the significance of the data? The researcher was also able to design a research proposal based on the family files.

Further documentary analysis was carried out by studying all of the major sources of Palestinian refugee registration data belonging to key institutions, in order to provide a much needed evaluation of the data by examining the value and scope of the data along with its limitations. On a broader level, the study tried to ascertain the potential of the data sources for the compensation/restitution question today and whether Palestinian refugee registration data could point towards findings that could contribute, by making available to negotiators, the quantitative data necessary for determining such claims.

The second level of analysis chose to use the technical approach to examine two post-crisis Claim Commissions in search of international guidelines, norms and procedures with a view to finding out whether these could be transferred to the Palestinian refugee case. In doing so, a clearer picture of how a future Palestinian Claim Commission could be established, and how existing Palestinian refugee registration data could be assembled, was examined. This was carried out by calling upon how political and historical factors inter-played with the technical issues only when necessary.

The justification for this approach were based on the fact that the researcher wanted to build upon the approach taken by the work of Tamari and Zureik which examined the uses of Palestinian refugee data for social science research and policy analysis. Additionally, the researcher wanted to focus on the valuable contribution offered by a technical perspective which is so far under developed in the Palestinian refugee case.

The chapter outlined two main methodological problems in trying to conduct the research: the issue of access to the UNRWA data and the involvement of confronting a number of issues involving, historical knowledge, political awareness and archival knowledge. Although access to the UNRWA data was denied, the researcher was still able to develop a research proposal and construct a range of research questions based on what she had seen during her field visits. Such limitations did not hinder the study from making new discoveries, answering the research questions and suggesting areas for further research.

The literature review highlighted that while the Palestinian refugee issue is well established as a subject of debate, there is insufficient scholarly attention given to Palestinian refugee registration data, partially because much of the data is not yet accessible. Whilst various disciplines including political science, international law and refugee studies covered most aspects associated with the Palestinian refugees, the literature had generally dismissed looking at the potential of Palestinian refugee registration data.

Although a limited amount of small and specialized literature had been produced by Tamari, Zureik and Fischbach, they had not explored in any depth the potential of the data to meet certain criteria's. One of the reasons for this failure, as detailed in chapter two, was in part attributed to the tendency to view the Palestinian refugees as being somehow unique from other refugees. As a consequence this has led to a significant gap in the research, which affected the direction of future research, which has not benefitted from a thorough analysis.

The literature review also noted some divergence in the literature concerning the capacity and complexities involved in initiating refugee claims based on the data. For example the



1999 IDRC/PRRN workshop demonstrated that it was perhaps the case that the documentary evidence in existence was too incomplete and inaccurately registered to effectively sort through claims and that categories such as non-documented moveable property would be difficult to work out.

While the study acknowledged the limitations and concerns that are apparent in the data such as the examples discussed in 5.4 which include access to the data, the condition and usability of the data, and the problems and gaps identified in the data, this study attempted to fill this gap by examining all the major sources of Palestinian refugee registration data in order to ascertain the value, scope and limitations of the data. In doing this the researcher was able to demonstrate that the data sources examined are immensely significant. This is in keeping with the research carried out by Zureik, Tamari and Fischbach.

Chapter two provided the necessary contextual background for the study by focusing on the origins of the international refugee regime and by looking at how the regime has dealt with the changing dynamics involved in global refugee situations. In particular, the role played by UNHCR, the agency responsible for the world's refugees in meeting those challenges was examined. The chapter also focused on the Palestinian refugees, providing an overview of the main population centres and the demographic issues surrounding them. The chapter concluded by examining the difference between the two separate international agencies' established by the UN to provide assistance and to seek durable solutions for the Palestinian refugees (UNRWA and UNHCR).

Chapter three evaluated the extent to which the use of international experience in the collection and management of refugee registration data could provide guidelines to benefit a framework for Palestinian refugee registration, by studying UNHCR's operational role in the registration of refugees and

data management practices, where general principles were established. The refugee situation created in Kosovo was used as an example of how mass refugee registration methods were developed by UNHCR. This highlighted how international guidelines have been used to collect refugee data and how the data has been used to seek durable solutions.

Chapter four widened the international perspective further by considering the contributions of international law and modes of redress in two case studies, BiH and Kosovo, in order to see if the Palestinian case could benefit from an evaluation of international precedents. Although the comparison underlined the inescapable implications of the unique characteristics of the Palestinian refugee case, the mechanisms and procedures adopted by the case studies provided illuminating and relevant precedents for the construction of a future Palestinian Claim Commission.

Chapter five examined the Palestinian refugee property issue in past negotiations in order to establish the way in which previous precedents have dealt diplomatically with the refugee issue. The major archives containing Palestinian refugee registration data were then outlined, and the value and scope of the data was examined and various estimates of Palestinian refugee property losses were set out. The final part of the chapter examined the possibilities of the data and made suggestions for further research based on each of the data sources.

The findings of these chapters offer the following answers for the three research questions that this study set out to address. Each question and the conclusions are set below:

1. To what extent can international practice as adopted by UNHCR in its registration and management practices offer a

constructive perspective on Palestinian refugee registration procedures and data?

Having established that both UNRWA and UNHCR have fundamentally different mandates it was still possible to look at the way UNHCR and UNRWA register their refugees, and what types of tools and methods they used to carry out the process. Chapter three reaffirmed the importance that UNHCR placed on registration as a means of facilitating the implementation of appropriate durable solutions on behalf of its refugees, in a manner that fully respects international norms and standards.

Chapter three also examined how UNRWA registered Palestinian refugees via its CERI registration instructions. The chapter highlight that although the CERI instructions provided little basis for an in depth comparison with UNHCR's Registration Handbook, it was possible to demonstrate the need for further analysis and improvement to the UNRWA registration system, particularly in light of the fact that the agency cares for an ever growing number of refugees.

The comparison with UNHCR's international standards enabled the identification of four problems with the UNRWA registration system and offered approaches to tackle them:

- UNRWA's methods of registration have led to inconsistencies since figures are based on information voluntarily supplied by refugees. It was suggested that modern technology could make it possible for UNRWA to prevent fraud and multiple registrations if the agency aimed to make registration a standard and continuous process allowing every refugee to be individually registered and to receive ID's with photographs.

- A second problem associated with the registration process was the lack of firm validation policies. To improve this UNRWA's

registration process should be followed by periodic verifications to guarantee refugee status to those entitled to it. Furthermore, UNRWA could overview the current status of registration which would give the agency an idea of any gaps or problems or areas to improve within the registration process.

- A third area of concern was that UNRWA had no system in place to track the movements of its refugees. To avoid this problem it was suggested that the registration records of the family/person should be annotated to show changes in residency. Also introducing random household interviews could also determine actual family numbers.

- Finally, points were suggested on how UNRWA could improve its limited registration system by developing a computerized system which would improve its operations and data capabilities, and could one day be used for situations requiring data for repatriation and resettlement situations for Palestinian refugees. Additionally, the integration of UNRWA databases would allow the agency to compare data across its five regions.

2. The study also wanted to find out to what was the relevance of the experience gained in the settlement of refugee claims in international settings, such as the practice of international Claim Commissions in search of guidelines for the planning of a future Palestinian Claim Commission?

Chapter four presented an analysis of the mechanisms and processes involved in international Claim Commissions and highlighted the role of the international community in the implementation of such Commissions, in the context of two case studies in BiH and Kosovo.

The mechanisms identified all rendered decisions for the claims they were established to address. This was achieved because a variety of wide ranging legal norms was applied to develop

flexible design procedures in light of the specifics of each case, which in both cases were to confirm property ownership in order to permit persons to regain possession.

Although no specific formula could be found and there were substantial differences in the legislative framework provided by the case studies, the study proposed broad suggestions to facilitate a future Palestinian Claim Commission in order to demonstrate that Claim Commissions can be designed in a way to absorb lessons learned from previous cases.

To do so a hypothetical model was built to explore and apply mechanisms for a future Palestinian Claim Commissions from the case studies. Chapter four demonstrated that valuable insights into the practical mechanisms developed and employed by international Claim Commissions to deal with a large number of claims were available. Therefore, it seems reasonable that Palestinian refugee losses could be similarly evaluated based on models that have brought success in the past, although further research is required in this field.

This chapter also highlighted the gap between theory and the practical nature of this work. The underemployment of theoretical knowledge in writing and setting up research regarding the design of a Palestinian Claim Commission, its processes and understanding and implementation is necessary. As such this study highlights that further research in this area would reinforce future Palestinian endeavours. For example comparative perspectives could be used to identify a much broader range of case studies, particularly from regions which have been not been used in this study and could if appropriate include current Claim Commissions which have newly developed processes and mechanisms.

It would also be useful to look at how similar experiences have dealt with the claimant population so that further research could be carried out on consulting the voices of Palestinian claimants and lobbying for them to be included in the claim process. It is hoped that further research on both fronts can profit from the new ideas generated by this study.

3. The third research question examined whether existing Palestinian refugee registration data could be constructed in a suitable way for the preparation of future claims?

Chapter five demonstrated that there are available substantial databases, providing evidence of Palestinian refugee property losses. By studying all of the major sources of registered Palestinian refugee data it was possible to discover whether existing Palestinian refugee registration data could be constructed in a suitable way for the preparation of future claims. To answer this question two perspectives were taken for analyzing the potential of the data: historical analysis and policy analysis.

The historical analysis of the data, suggested several points which were able to demonstrate the potential of the data for further research:

- Preservation of the family files for future preservation schemes;
- Establishment of a Refugee Archive System or a future Palestinian National Archive;
- Cataloguing and tracing the origins and whereabouts of Palestinian refugees;
- Compilation of computerized register;

- Historical sampling of the family files;
- Cataloguing Palestinian refugee narratives;
- Further research into Palestinian refugee reconciliation.

The policy analysis of the data, suggested several points which were able to demonstrate the potential of the data for further research:

- Carry out the proposal designed by the researcher on the family files in order to compute land and property statistics and work out what percentage of UNRWA's refugee families declared land losses;
- Study the family files for demographics data;
- Link UNRWA's family files with the UNCCP data by using new claim processing techniques so that the gaps within the property section of the family files could be filled which could establish a substantial amount of claims;
- Integrate all of the major databases in order to initiate the preparation of future claims by using the data to assess losses, compile property claims, classification of needs and property entitlement on behalf of the refugees;
- Track refugee profiles using the family files and compare with UNHCR's systems of refugee tracking.

The thesis has presented the research results obtained by focusing on three main research questions, in doing so this conclusion has identified a number of points for further research, investigation, and analysis which the researcher was not able to carry out in this case due to limiting factors such as

timeframe and resource constraints. As such this study was only able to highlight several suggestions to further studies in this field of research.

In conclusion, this study was able to propose its interpretation of refugee claims for the Palestinian refugees, by demonstrating the relevance of the data within the larger international perspective of the global claim system, and underlined the importance of using technical advances in the collection and manipulation of refugee data.

The study's main conclusion is that international guidelines and precedents have significant benefits for preparing Palestinian refugee registration data, in reaching future claims for compensation within the Arab-Israeli negotiations. This study has also confirmed that Palestinian refugees have the necessary registration data to fulfil the evidence and verification procedures of a future Claim Commission. If appropriate methods of document preparation can take place, evaluating Palestinian losses could one day see the wealth of Palestinian refugee registration data could be constructed in a suitable way for the preparation of future claims.

Seeing the patterns and precedents observed in both case studies with regard to the utilization of refugee registration data, learning from UNHCRs technical methods of collecting and registering data and by tracing the diplomatic history of past negotiations, this study has attempted to contribute to a process that might assist future progress on the Palestinian refugee claims.

When the Arab-Israeli peace process resumes once again, hopefully policymakers will take on board some of the suggestions provided in this thesis for future discussions on the potential of claims for the Palestinians and the application of



international standards and agreements in reaching future claims for compensation.

The main findings of the study can be summarized in three points:

1. UNRWA's registration and procedures demonstrate that there is room for improvement as shown by UNHCR's practice in the registration and documenting of its refugees which offered a constructive perspective on Palestinian refugee registration procedures and data;
2. Experience gained from international Claim Commissions is relevant and useful for establishing a future Palestinian Claim Commission;
3. Palestinian refugee registration data is constructive for the preparation of future claims within the Arab-Israeli negotiations.

### **Appendices: 5 items**

### **Defining Key Terms**

Terminology of the Palestinian refugee issue can be confusing because the subject matter is spread across so many different disciplines as such it is necessary to clarify what these terms mean. Since there will always be terminology favoured by one side or another in any dispute careful consideration must be given to the use of terms:

<i>Refugee</i>	encompasses both those who are registered with UNRWA and those who are defined more narrowly by UNHCR's definition.
<i>1948 refugees</i>	refers' to those Palestinians who left their homes in 1947-1949 in what became the State of Israel, together with their descendants.
<i>Beneficiary</i>	will be referred to as those who are in need of assistance.
<i>Claims</i>	will be referred to as the result of something that arises in the post conflict phase and is a mechanisms established as an approach to re-build peace and stability. This includes property loss and displacement.
<i>Compensation</i>	will be defined broadly encompassing material and non-material losses.
<i>Displaced persons</i>	first it refers to those who fled from the West Bank and Gaza Strip upon or after the Israeli occupation of these territories in 1967, as well as those who were outside the occupied territories and were refused permission to return. Secondly, it is used to refer to an individual forced to leave his or her native country or home.
<i>Internally Displaced Persons</i>	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.

*Host Country* refers to that of first asylum, i.e. the place where refugees initially reside after leaving their country of origin.

*Third Country* refers to another country that agrees to resettle refugees from a host country.

*The Right of Return* is usually used to refer to the return of 1948 refugees to a Palestinian State. The right of return is generally not referred to as a mere right, but an entire concept with several aspects.

*Repatriation* refers to the movement of refugees and displaced persons to the territory of a future Palestinian State.

*Resettlement* one of the three durable solutions afforded to refugees and displaced persons. Unlike repatriation refugees do not have a fundamental right to resettle in a third state.

*Restitution* the legal remedy designed to correct the illegal taking of property from its rightful, original owner through restoring the wrongfully taken property back to the ownership and possession of the original owner.

*Occupied Palestinian* refers to East Jerusalem and the West Bank. Under

<i>Territories</i>	international law, Israel is still the occupying power in the Gaza Strip, although it no longer has a permanent military presence there. The Israeli government's preferred phrase to describe the West Bank and the Gaza Strip is "disputed territories" though for the purpose of this study the occupied Palestinian territories will be used as this is what it is most commonly referred to and will avoid bias.
<i>Palestine</i>	there is no independent State of Palestine today and as such the word Palestine will only be used to refer to historical Palestine or to a future State of Palestine.
<i>Real Property</i>	includes land and things permanently attached to the land, such as trees, buildings, and stationary mobile homes. Anything that is not real property will be termed as personal property.

## **Appendix 1: Categories of Palestinian Refugees and Displaced Persons**

### **1. 1948 Palestinian Refugees - Palestine refugees**

Includes two primary categories of Palestinians displaced during the 1948 conflict and war in Mandate Palestine: those registered for assistance with UNRWA and those not registered with UNRWA. UNRWA refers to these refugees as "Palestine refugees". This category comprises the majority of the Palestinian refugee population.

### **2. 1967 Palestinian Refugees - Displaced persons**

Includes those Palestinians displaced for the first time from the West Bank and the Gaza Strip during the 1967 war. This category of refugees is often referred to as “displaced Persons” due to the fact that at the time of their displacement the West Bank was under the control of Jordan. Palestinians were therefore displaced from an area under the control of Jordan to Jordan proper i.e., they did not cross an “international” border.

### **3. Post-1967 Palestinian Refugees - New refugees**

Includes those Palestinians displaced from the 1967 occupied Palestinian territories after 1967 due to revocation of residency, deportation or owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, and are unable or, owing to such fear, are unwilling to return. This category may be referred to as “new refugees”.

### **4. 1948 Internally Displaced Palestinians**

Internally displaced Palestinians include Palestinians who were displaced during the 1948 conflict in Mandate Palestine and remained within the territory that became the State of Israel. This also includes a sub-group of internally displaced Palestinians who were displaced after 1948 due to expropriation of land, house demolition, and internal transfer.

### **5. 1967 Internally Displaced Palestinians**

Internally displaced Palestinians includes Palestinians who were displaced during the 1967 war but remained within the occupied West Bank and the Gaza Strip. This also includes a sub-group of internally displaced Palestinians who were displaced after 1948

due to expropriation of land, house demolition, and internal transfer.

## **Appendix 2: A chronology of UNRWA's history:**

1949: UNRWA is set up by General Assembly resolution 302 of 8 December to provide humanitarian services for the Palestine refugees.

1950: UNRWA begins operations on 1 May to cater for about 915,000 refugees.

1954: UNRWA opens first training centre in Kalandia (West Bank).

1964: UNRWA opens Institution of Education for teacher training purposes.

1966: Registered Palestine refugees exceed 1.3 million.

1967: Arab-Israeli war breaks out causing the displacement of thousands of refugees from the West Bank and Gaza into Jordan.

1968: UNRWA begins replacing tents in emergency camps with more durable shelters.

1969-1972: General Assembly forms a working group on the financing of UNRWA.

1973: Arab-Israeli hostilities renew.

1978: UNRWA Headquarters relocates from Beirut to Vienna as a result of the civil war in Lebanon.

1981: Registered refugees amount to 1.9 million.

1982: UNRWA launches a long-scale relief programme as a result of the Israeli invasion of Lebanon.

1988: UNRWA launches Expanded Programme of Assistance to the West Bank and Gaza with the beginning of the *intifada*.

1990: UNRWA launches emergency appeal to meet emergency needs in Lebanon and the occupied territories.

1991: The Gulf war causes the influx of about 400,000 Palestinians to Jordan and other fields of operations, placing more pressure on UNRWA's already limited resources.

1993: UNRWA launches the phase I of the Peace Implementation Programme.

1994: It is decided to relocate UNRWA Headquarters to Gaza and Amman.

1995: UNRWA marks 45<sup>th</sup> anniversary.

2001: UNRWA launches its second emergency appeal to provide emergency assistance to the refugees in the West Bank and Gaza affected by Israeli repressive measures.

**Appendix 3: Annex 1(a): Executive Committee Conclusion No. 91 2001 Executive Committee of the UNHCR Programme (52nd Session)**

**Conclusion No. 91 (LII) REGISTRATION OF REFUGEES AND ASYLUM-SEEKERS**

*The Executive Committee,*

*Recalling* its Conclusion No. 22 (XXXII) on the protection of asylum-seekers in situations of large-scale influx, Conclusion No.

35 (XXXV) on identity documents for refugees, Conclusion No. 39 (XXXVI) and Conclusion No. 64 (XLI) on refugee women and international protection, as well as Conclusion No. 73 (XLIV) on refugee protection and sexual violence;

*Noting* also that the 1951 Convention relating to the Status of Refugees in article 27, calls on States Parties to issue identity papers to refugees; *Mindful* of the importance accorded to registration in the independent evaluation of UNHCR's emergency preparedness and response to the Kosovo crisis; *Welcoming* the discussion which took place on registration in the context of the Global Consultations on International Protection;

(a) *Acknowledges* the importance of registration as a tool of protection, including protection against *refoulement*, protection against forcible recruitment, protection of access to basic rights, family reunification of refugees and identification of those in need of special assistance, and as a means to enable the quantification and assessment of needs and to implement appropriate durable solutions;

(b) *Recommends* that the registration of refugees and asylum-seekers should be guided by the following basic considerations:

(i) Registration should be a continuing process to record essential information at the time of initial displacement, as well as any subsequent demographic and other changes in the refugee population (such as births, deaths, new arrivals, departures, cessation, naturalization, etc.);

(ii) The registration process should abide by the fundamental principles of confidentiality;

(iii) The registration process should to the extent possible be easily accessible, and take place in a safe and secure location;



- (iv) The registration process should be conducted in a non-intimidating, non-threatening and impartial manner, with due respect for the safety and dignity of refugees;
- (v) Personnel conducting the registration, including, where necessary, refugees and asylum seekers, should be adequately trained, should include a sufficient number of female staff and should have clear instructions on the procedures and requirements for registration, including the need for confidentiality of information collected; special measures should be taken to ensure the integrity of the registration process;
- (vi) In principle, refugees should be registered on an individual basis with the following basic information being recorded: identity document and number, photograph, name, sex, date of birth (or age), marital status, special protection and assistance needs, level of education, occupation (skills), household (family) size and composition, date of arrival, current location and place of origin;

(c) *Encourages* States and UNHCR, on the basis of existing expertise, to develop further and implement registration guidelines to ensure the quality and comparability of registered data, especially regarding special needs, occupational skills and level of education;

(d) *Also encourages* States and UNHCR to introduce new techniques and tools to enhance the identification and documentation of refugees and asylum-seekers, including biometrics features, and to share these with a view towards developing a more standardized worldwide registration system;

(e) *Acknowledges* the importance to the international community, particularly States, UNHCR and other relevant organizations, of sharing statistical data;

(f) *Recognizes* the confidential nature of personal data and the need to continue to protect confidentiality; also recognizes that the appropriate sharing of some personal data in line with data protection principles can assist States to combat fraud, to address irregular movements of refugees and asylum-seekers, and to identify those not entitled to international protection under the 1951 Convention and/or 1967 Protocol;

(g) *Requests* States, which have not yet done so, to take all necessary measures to register and document refugees and asylum-seekers on their territory as quickly as possible upon their arrival, bearing in mind the resources available, and where appropriate to seek the support and cooperation of UNHCR;

(h) *Emphasizes* the critical role of material, financial, technical and human resources in assisting host countries in registering and documenting refugees and asylum-seekers, particularly developing countries confronted with large-scale influxes and protracted refugee situations.

**Appendix 4: Consolidated Eligibility and Registration Instructions Department of Relief & Social Services, January 2002.**

**Eligibility for Registration**

**General**

All registered Palestine refugees families and persons are now included in UNRWA registration records without specific registration categories;

Within these records, families designated as Special Hardship Cases <sup>384</sup> will form a special class and will have their registration

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<sup>384</sup> The SHC was created by UNRWA in 1978. The intent of UNRWA's SHC programme is to provide support to households who are unable to earn their

records marked as “SHC” as long as they retain this status;

If established that a registration family or person is no longer living continuously in the agency’s area of operations for more than one year, this fact should be marked in the registration record of this family or person, by using the symbol “A” for absence from the agency’s area of operations;

The UNRWA index cards and family files of families and persons who were formerly registered in any of the following categories or classes should be clearly annotated to show their former registration class or category:

- Frontier Villagers in the West Bank regardless of their present locality;
- A family registered as a “Compromise” case in Lebanon;
- Jerusalem and Gaza Strip’s poor as long as they are living in their locality;
- UNRWA employee.

### **Registration**

The following persons and their descendants born after 15 May 1948 are eligible for registration with UNRWA:

Palestine refugees - 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 1948 conflict;

The descendants of persons fulfilling the above definition;

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living because of a particularly difficult situation. In February 2008, UNRWA announced that it was going to adopt a new criteria for the SHC. For more information see, [www.irinnews.org/report.aspx?ReportId=76608](http://www.irinnews.org/report.aspx?ReportId=76608), (accessed on 7/2/2008).

The descendants of fathers registered with UNRWA as “Gaza poor” in Gaza, “Jerusalem Poor” in the West Bank, “Frontier Villagers” in the West Bank and in Jordan only;

A registered woman fulfilling the definition of Palestine refugee but who is married to an unregistered husband (who does not fulfil these conditions) may be transferred out of her original family’s registration card into a separate registration card in her own name under the symbol “MNR” i.e. married to a non-registered husband (and not as Head of Family), or remain registered with her original family’s registration card under a MNR relationship; Children born to women who fulfil the conditions of Palestine refugee but who are married to husbands who do not fulfil these conditions will not be registered.

### **Procedures**

The following procedures shall be applied in determining the eligibility of persons for the purpose of registration with UNRWA:

### **Additions to the Registered Population**

Additions to the registered population may be made in respect of the following persons:

Descendants born after 15 May 1948, of registered male refugees may be registered upon the presentation of a Registration Card and an official birth certificate or a temporary “notification of birth document” in the Gaza Strip and the West Bank. The names of the parents given on the birth certificate shall be the same as those given on the Registration Card. If the request for registration of a descendant is made more than one year after the birth of the descendant, proof of existence in the

form of an identity document or inclusion in an identity document of one of the parents is required.

However, requests for registration of descendants from registered families/persons temporarily living or working outside the agency's area of operations may be accepted if official birth certificates from the appropriate authorities in their country of residence are produced together with photocopies of the concerned family member's passport/residential documents. The registration records of the family/person should also be annotated to show that the family/person in question is residing outside the agency's area of operations.

New Inscription: Palestine refugees born before 15 May 1948 and their descendants through the male line may be registered if the applicant:

- Meets the requirements of Palestine refugee;
- Submits the application for registration in person to the agency in any of its five fields;
- Has been approved for registration by the Commissioner General, whose authority is currently delegated to the Director of Relief and Social Services.

Applications for the registration of Palestine refugees born before 15 May 1948 must be accompanied by documentary evidence of refugee status, particularly in respect of:

- The place of residence in that part of Palestine which is now Israel for the two year period immediately preceding 15 May 1948:
- The family composition on 15 May 1948.

Re-instatement persons whose names have been removed from UNRWA registration record may be re-registered with the approval of the Chief Field Relief & Social Service Programme if s/he is convinced that the removal was made by error. Such persons should apply in person and an investigation should be carried out by Registration staff.

### **Reduction in the Registered Population**

Reduction in the registered population is made by the removal of the name of a registered person from the registration records. Such removals shall be made in the following cases:

Upon the death of a person who died after the date of registration, on the strength of:

- A death certificate issued by the government authorities or a death notification issued by an UNRWA Medical Officer. However, an official governmental death certificate is preferred;
- Government records of reported deaths;
- A declaration by a family member supported by a written statement from an UNRWA staff member;
- Circumstantial evidence (extreme old age, information from Mukhtars, which establishes a reasonable presumption of death);
- Children who die before being registered may be registered if a death certificate is provided and their names removed from the registration records immediately after registration;
- Names of persons or families who have been falsely registered or whose registration has been duplicated are removed from the registration records on the strength of:

- Information is given by an UNRWA staff member in writing;
- A voluntary declaration by a family member;
- Information given by others after the facts have been established by a member of the staff member;
- A comparison between UNRWA and/or governmental records revealing an obvious duplication.

### **Transfer of Refugee Registration**

- The transfer of registration of registered families/individuals takes place between fields or between areas in the same field with the approval of the government authority in the field or area to which the families wish to be transferred and, where required, the approval of the governmental authority in the field from which the families wish to be transferred. Such transfer has to be initiated by the receiving field or area. The receiving field or area must not register the transferee(s) until the transferring or field or area has completed its part of the transaction;
- The transfer of registration of registered families/individuals may take place between residential units within an area with the approval of the area/camp Registration Officer and/or the local governmental authority where required;
- Registration Officers in the receiving field or area for the transfer of these instructions shall confirm the existence of all registered transferees by seeing the identity documents issued by the governmental authority in the receiving field for every transferee. They shall update the registration record as may be necessary in light of the newly submitted documents;

- A male family member who establishes his own nuclear family should, at his request have a separate registration card for his new family. This is to be encouraged;

- Up until June 1967 'Frontier Villagers', 'Jerusalem Poor', and 'Gaza Poor' were not permitted to transfer their registration records if they moved out of their specific localities. In that event, they were to be deleted from the registration roll. However, following the 1967 War, the registration records of many families falling within this category were transferred from West Bank to Jordan and separate registration codes were established for them in Jordan and separate registration codes were established for them in Jordan field. For example, many frontier villagers who moved to the Gulf States before the 1967 War later relocated to Jordan following the Gulf Crisis in 1990-1991. As they were forbidden by the Israeli authorities to return to the West Bank, UNRWA allowed the transfer of their records to Jordan;

- Accordingly, it has been decided to treat these families similar to other registered refugee families with regard to registration transactions, but in all cases their residential code number as 'Frontier Villagers', 'Jerusalem Poor', and 'Gaza Poor' should be kept for future reference purposes.

### **Changes to Registration Data**

UNRWA registration records contain the following data with respect to each registered family and person:

#### **Family particulars:**

- Name of head of family (first name, father's name, grandfather's name and family name);
- Nationality of origin;



- Religion;
- District of origin in Palestine;
- Field, area and district of residence and whether in camp or put-of-camp resident.

**Individual particulars:**

- First name;
- Sex;
- Date or year of birth;
- Marital status and relationship to head of family.

**6. Eligibility for UNRWA Services**

UNRWA services are normally provided to persons or families registered with UNRWA, non refugee wives of RRs and to adopted children. Registered women who are married to un-registered husbands and their descendants of such marriages are not eligible for UNRWA services. However, registered women who become divorced or widowed are eligible for UNRWA services themselves;

Under certain conditions, UNRWA services may exceptionally be provided to un-registered persons and their descendants with the prior approval of the field director. (Un-registered persons means non-registered Palestine refugees and non-registered persons living in UNRWA area of operations);

- Families and persons meeting the SHC criteria are eligible for and have priority for all UNRWA service;
- The provision of UNRWA services is subject to financial limitations and all relevant, Instructions, Regulations and Rules;

- Persons applying for UNRWA services may be requested to prove their identity by producing a government-issued identity card and to prove their eligibility by producing an UNRWA registration card;

- UNRWA services may be provided to persons/families registered with UNRWA and living in a field other than the field in which they are registered, who are unable to transfer their registration records to their present residence, subject to the following:

**- Relief and Social Services:** UNRWA Relief & Social Services can be provided to all eligible registered Palestine refugees regardless of the location of their residence and registration in UNRWA's area of operations subject to full coordination between the two fields to avoid duplication of services.

**- Education:** UNRWA education services are provided to all eligible registered Palestine refugees regardless of the location of their residence and registration in UNRWA's area of operation, unless they lack a residential permit from the Government authorities in Jordan and Lebanon fields.

**- Health Services:** UNRWA primary health care services including maternal & child health care and family planning, out-patient medical care and dental care may be provided to registered refugees living in a field other than the field of their recognized place of residency, subject to confirmation from the recognized field of registration that they are registered and that their entitlement to health services had been suspended in that respective field.

Hospital services may be provided to registered refugee persons living in a field other than the field in which they are registered, regardless of the duration of stay in the receiving field, subject

to confirmation of their eligibility status and to the prior approval Chief, Field Health Programme of the recognized field of registration to provide such treatment and charge expenses to the respective field's budget. However, such assistance will be provided within the scope of the hospitalization arrangements maintained in the host fields for registered refugees in that respective field.

No assistance should be provided to registered refugees who make their own arrangements for obtaining specialized medical care or hospitalization services outside the agency run/referral facilities, be it for emergency care or other conditions.

### **Appendix 5: Other Sources**

**Village Statistics 1945:** The British mandate statistics provide a record of the extent of land by village and town, the nature and use of land and type of ownership. It also provides figures for rural and urban property tax payable in each town and village, useful for providing details on unsettled (i.e., non-surveyed) lands. (Only 25 percent of the land of Palestine had been subject to cadastral survey by the time the Zionist/Israeli-Palestinian/Arab conflict began in late 1947)

**Israel Lands Administration:** Includes records of all land transactions in Israel.

**Aerial Photographs:** Aerial photographs taken by German and British forces prior to the beginning of the Zionist/Israeli-Palestinian/Arab conflict reveal original refugee villages, housing and plots of land prior to the depopulation and destruction of some 530 Palestinian localities. Using GIS mapping technology, these photographs can be combined with historical and contemporary maps to locate original refugee villages, housing, and plots of land.

**Mandate-era maps:** Pre-1948 maps help resolve problems related to customary ownership of land by indigenous Bedouin tribes. As of 1948 the British administration in Palestine had not yet begun a land survey in the Bir Saba' (Beersheba) Sub-District, the traditional home of a significant Bedouin community. Only 64 sq. km of Arab-owned land in the Sub-District (the entire area of the sub-district exceeds 12,000 sq. km) were registered in the official Register of Deeds. This land is included in registration records of the UN Conciliation Commission for Palestine. Many pre-1948 maps of the sub-district, however, clearly identify Bedouin tribal lands according to the name of the tribe.

**Refugee Survey/Questionnaire:** During the 1950s, the UNCCP Refugee Office prepared a draft form of a questionnaire to be distributed among refugees, for the purpose of cross-referencing UNCCP records with documents and other materials held by refugees themselves. The project however, never proceeded beyond a pilot stage. The circulation of such a questionnaire (Jewish restitution organizations, for example, have used internet websites for claimants to detail losses and lodge claims) would enhance existing records by identifying titles, deeds and other documents still held by refugees.

**Oral History:** Oral history accounts have been used in various other cases to identify land claims, particularly in cases where traditional systems of landownership mean that refugees do not have paper documents detailing land claims.

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### **Interviewees**

Abu Qubo, Fattah Ahmed. Field Eligibility and Registration Officer, Jordan, June 1<sup>st</sup> 2007.

Fischbach, Michael. Professor Randolph-Macon College, Jerusalem, April 28th and June 1st, Amman, 2007.

Hilel, Leila. Former legal advisor at the Negotiations Support Unit, Ramallah, May 14<sup>th</sup> 2007.

Imseis, Ardi. Senior Policy Analysis Officer, Jerusalem, April 6<sup>th</sup> 2007.

Khalil, Saji Salameh. PLO advisor, at the Department of Refugee Affairs, Ramallah, May 5<sup>th</sup> 2005.

Khatib, Ghassan. Palestinian Authority Minister of Planning and director of the Jerusalem Media and Communication Centre, Ramallah, May 2<sup>nd</sup> 2007.

Nathanson, Roby. Director of the Centre for Political Economics, Tel Aviv, May 26<sup>th</sup> 2007.

Nijim, Khalil. Director General for Strategic Planning, at the Palestinian Ministry of Planning, Ramallah, May 9<sup>th</sup> 2007.

Sarham, Muhammad Abdulla. Assistant Field Relief Services Officer, Jerusalem, April 22<sup>nd</sup> 2007.

Tamari, Salim. Director of the Institute of Jerusalem Studies, Ramallah, May 17<sup>th</sup> 2007.

Za'atre, Wasef. Field Eligibility and Registration Officer, Jerusalem, April 14<sup>th</sup> 2007.

Zidan, Enaia. Representative, Palestinian Bureau of Statistics, Ramallah, May 21<sup>st</sup> 2007.