The Right to Political Participation and the Negotiation of Durable Solutions: Palestinian Refugees in Comparative Context

Vol. I of II

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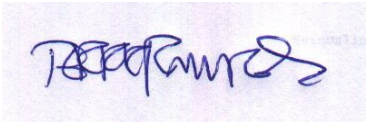
I certify that all the material in this dissertation which is not my own work has been identified and that no material has previously been submitted and approved for the award of a degree by this or any other University.



ABSTRACT

In the 1990s Palestinian refugees sought to secure a seat in negotiations alongside the PLO and Israel in talks to resolve their situation. Their efforts raise a number of basic questions concerning the right to political participation and the negotiation of durable solutions to refugee situations. First and foremost is the question of whether peace negotiations comprise a conduct of public affairs under international law entailing a concomitant right to take part. Second and related is the question of whether citizens, refugees in particular, have a right to take part in the conduct of public affairs when they are outside their country of citizenship voluntarily or otherwise. This study examines these questions through legal analysis of the right to political participation under international treaty law, jurisprudence and soft law and through empirical analysis of all negotiated settlements to armed conflict between 1990 and 2000. The study concludes that while refugees did not have a "right" to take part in the negotiation of durable solutions during the period under consideration, the PLO and Israel may have nevertheless had an obligation to facilitate the participation of refugees in a manner that would have allowed for substantial influence on decisions affecting their lives with the objective of shared ownership of agreements reached. The study also finds that between 1990 and 2000 few refugees appeared to take part directly in the direct negotiations to their situation. The implementation of durable solutions and agreements reached along with unofficial or indirect peacemaking mechanisms appeared to comprise the primary or most common domains for political participation. The study concludes that the negotiation of durable solutions for refugees is nevertheless a developing area of law and practice which has arguably strengthened in the decade since Israel and PLO sought to achieve a negotiated solution to the Palestinian refugee issue.

LIST OF CONTENTS

ACKNOWLEDGMENTS

It would be better to work at the prevention of misery,
than to multiply places of refuge for the miserable.

Denis Diderot

This dissertation was inspired by nearly a decade of community-based work in the occupied West Bank at a time when talks between the PLO and Israel raised for the first time in decades the prospect of a negotiated solution to the long-standing plight of Palestinian refugees. Many people have accompanied and provided generous support throughout what has been a long and often arduous process of trying to "make sense" of past experiences, placing them in broader contexts and ultimately translating thoughts into words in a manner that hopefully conveys new meaning to a little understood much less studied issue. This dissertation is but a modest step in that direction with much to be done. Many thanks go to a community in Palestine-Israel that became an unexpected second home away from home more than a decade ago and who are ultimately the inspiration for this study. Thanks also go to those who provided places of temporary refuge, especially those who opened their homes to me after being uprooted and barred from Palestine-Israel mid-way through the writing process. Words of thanks are also due to Exeter University and in particular to my advisor Mick Dumper for supporting a project that at times seemed like it might never see the light of day. Of course, final thanks go to my family and friends for their constant encouragement and unquestioning support throughout the many ebbs and flows of this journey.

ABBREVIATIONS

AfCmHPR	African Commission on Human and Peoples' Rights
ACHR	American Convention on Human Rights
AfCHPR	African Charter on Human and Peoples' Rights
AfCHPR-PW	African Charter on Human and Peoples' Rights, Protocol on the Rights of Women in Africa
AFN	Assembly of First Nations
AHC	Arab Higher Committee
AIC	Alternative Information Center
AU	African Union
CC	Continuing [Quadripartite] Committee
CEDAW	United Nations Committee on the Elimination of Discrimination Against Women
CERD	United Nations Committee on the Elimination of Racial Discrimination
CEIRPP	United Nations Committee on the Inalienable Rights of the Palestinian People
CoE	Council of Europe
CoS	League of Arab States Conference of Supervisors of Palestinian Affairs in Arab Host Countries
ECHR	European Convention on Human Rights
ECmHR	European Commission on Human Rights
ECtHR	European Court on Human Rights
EFCNM	European Framework Convention on the Protection of National Minorities
ESM	United Nations Economic Survey Mission
GRC	General Refugee Conference
GRC-R	General Refugee Congress - Ramallah
HRC	United Nations Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICRC	International Committee of the Red Cross
ICEDAW	International Convention on the Elimination of Discrimination Against Women
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICJ	International Court of Justice
IDMC	Internal Displacement Monitoring Centre
IDP	Internally Displaced Persons
ILO	International Labor Organization
LAS	League of Arab States
NGO	Non-governmental organization
OAS	Organization of American States
OAU	Organization of African Unity
OCHA	United Nations Office for the Coordination of Humanitarian Affairs
OPT	Occupied Palestinian Territories
PA	Palestinian Authority
PCPRC	Preparatory Committee of the Popular Refugee Conference
PLC	Palestinian Legislative Council

PLO	Palestine Liberation Organization
PNC	Palestine National Council
RWG	Refugee Working Group
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
UNCCP	United Nations Conciliation Commission for Palestine
UNHCR	United Nations High Commissioner for Refugees
UNRWA	United Nations Relief and Works Agency for Palestine Refugees
US	United States of America
UYAC	Union of Youth Activities Centres

LIST OF TABLES

LIST OF FIGURES

CHAPTER ONE

Introduction

I. Introduction

On 13 September 1996 more than 600 Palestinian refugees from the Bethlehem area along with refugee activists from across the West Bank gathered in the yard of a UN-run girl's school in Deheishe Refugee Camp for one of the first popular refugee conferences in the 1967 occupied Palestinian territories (OPT). The one-day conference marked a significant step in refugee efforts to achieve a solution to their situation after nearly 50 years of forced displacement. In a set of lengthy recommendations, debated and approved during the conference, participants declared that the "[t]ime [had] come for the refugee community to organize itself in popular committees and to design a strategic program of struggle based on the hidden capacities of the people—the refugees themselves—who, with their unity, patience and clear objectives, [had] maintained the struggle for their national rights".[1] The recommendations called for a new strategy in negotiations between Israel and the Palestine Liberation Organization (PLO) "based on the positions of refugees all over the diaspora [whose] opinion[s] must be taken into consideration in all matters pertaining to them, their struggle and their future".[2] The conference participants further declared that "popular refugee support for parties—elected or not, official or not—and for any negotiating team, [would] depend on their respect for democracy,

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1 Declaration Issued by the First Popular Refugee Conference, *infra* n. 580, pt. 1, para. 1. *See also*, AIC 1996d. The declaration is reprinted in, Annex I, Table A1.3 - Declarations, Palestinian Refugees.

2 Declaration Issued by the First Popular Refugee Conference, *ibid*., pt. II, para. 3.

national and human rights".[3]

The emergence of a popular refugee movement in the Palestinian camps and communities of exile in the 1990s can be ascribed to at least four major factors. First, and foremost, was the marginalization of the Palestinian refugee issue in the 1993 Declaration of Principles on Interim Self-Government Arrangements setting out a framework for a solution to the conflict in Palestine-Israel.[4] Negotiated by the PLO and Israel in secret talks in Oslo, Norway, the declaration established an "agreed political process" through which the two sides aimed to resolve their long-standing differences in two main stages.[5] In the first stage, the framework agreement provided for the gradual redeployment of Israeli military forces from designated areas of the 1967 OPT, the dismantlement of Israel's Civil Administration and the withdrawal of its Military Government along with the transfer of limited responsibilities and powers to an elected self-governing Palestinian Authority (PA).[6] In the second and final stage, the two sides agreed to resolve all of their outstanding differences with the aim of "achiev[ing] a just, lasting and comprehensive peace settlement and historic reconciliation" based on UN Security Council Resolutions 242 and 338.[7] The

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3 *Ibid*., pt. I, para. 11.

4 The 1993 Declaration was based on ideas first put forward by US and Israeli officials in the 1970s and subsequently elaborated in the 1978 Framework for Peace in the Middle East agreed to by Israel and Egypt. For further discussion of the 1978 agreement and the secret negotiations between Israel and the PLO that led to the signing of the 1993 declaration *see*, Chapter 3, *infra* 218-219, 232-235.

5 Declaration of Principles on Interim Self-Government Arrangements, *infra* n. 385, preamble. The 1993 Declaration delineates three separate stages—early empowerment, interim and final status. The first two stages, however, are commonly grouped together as a single stage thus leading to a two stage process. For a more detailed analysis *see*, Benvenisti 1993; and, Albin 1999b.

6 This included the withdrawal of Israeli forces from the Gaza Strip and Jericho areas in preparation for early empowerment and the initial transfer of limited responsibilities and powers to the Palestinian Authority.

7 Declaration of Principles on Interim Self-Government Arrangements, *infra* n. 385, preamble. UN Security Council Resolution 242, adopted in the aftermath of the 1967 Arab-Israeli war, emphasizes the inadmissibility of the acquisition of territory by war and sets out a framework for a "just and lasting peace in the Middle East". SC Res. 242, *infra* n. 395, para. 1. Adopted during the 1973 Arab-Israeli war, Security Council Resolution 338 calls for a ceasefire and for the implementation of Resolution 242.

issues to be addressed in so-called final status negotiations included the status of Jerusalem, the future of Jewish settlements in the 1967 OPT, security arrangements, the delineation of borders and the unresolved plight of Palestinian refugees.[8]

Millions of Palestinians had been displaced from their homes, lands, villages and towns of origin since the beginning of the conflict. Indeed, by the time Israel and the PLO agreed on a framework for a negotiated solution to the conflict, as much as two-thirds of the entire Palestinian people had experienced some form of forced displacement, either within or beyond the borders of historic Palestine.[9] More than half of all Palestinians resided outside their historic homeland, most by force of circumstance and not by their own free will. The majority had sought refuge from or were expelled during major wars between Israel and neighbouring Arab states in 1948 and 1967. These refugees, commonly referred to as 1948 and 1967 refugees, are most often associated with what has become known as the "Palestinian refugee problem". A smaller but no less significant number of Palestinians had been displaced in the context of almost half a century of nearly uninterrupted Israeli military rule that began inside the newly-created state of Israel after the 1948 war and continued in the West Bank and Gaza Strip after the next major war in 1967. Palestinians continued to be displaced on both sides of the 1949 armistice line dividing Israel from the West Bank, East Jerusalem and Gaza Strip following the

[8] Declaration of Principles on Interim Self-Government Arrangements, *ibid.*, art. 5, para. 3.

[9] There are no commonly accepted figures for the total Palestinian refugee population. This is due largely to the absence of a universal refugee definition and a comprehensive registration system. Figures vary according to definitions applied and categories of refugees and other displaced persons included. For an overview *see*, Chapter 3, 153-157. Estimates are reproduced in, Annex I, Table A1.4 - Estimated Palestinian Refugee Population, 1950-2011. The term "historic Palestine" is used here in reference to the territory currently comprised of Israel and the 1967 OPT. For detailed discussion of the borders of historic Palestine *see*, Abu Sitta 2004, 4–10 and sources cited.

signing of the 1993 framework agreement between Israel and the PLO due, in particular, to the revocation of residency rights in East Jerusalem as well as land confiscation and house demolition.[10]

The political process agreed to by Israel and the PLO included three separate fora—multilateral, quadripartite and bilateral—through which a negotiated solution to the Palestinian refugee issue was expected to be found. Security Council Resolutions 242 and 338, which affirmed the need for a "just settlement of the refugee problem", provided the framework for the negotiations.[11] At the multilateral level, a "Refugee Working Group" (RWG) focused on the humanitarian needs of the refugees in advance of final status negotiations.[12] Attended by Israel, the Palestinians (later the PLO), Egypt, Jordan, the United States, Russia, the European Union, Japan and a number of other interested states, the multilateral process aimed to build confidence, strengthen regional cooperation and assure refugees that even though solutions for the vast majority had been deferred to final status talks they had not been forgotten in the interim.[13] A quadripartite or "Continuing Committee" (CC),

[10] Tens of thousands of Palestinians were also displaced within and from Palestine during the two-and-a-half decades of British rule that preceded the 1948 war, the dissolution of Palestine and the establishment of the state of Israel. Additional discussion of the various "waves" of Palestinian displacement can be found in Chapter 3, 144-146.

[11] SC Res. 242, *infra* n. 395, para. 2; and, SC Res. 338, *infra* n. 396, para. 2. Similar to the 1978 Framework for Peace in the Middle East, the 1993 Declaration established procedures to resolve the refugee issue, but did not elaborate the principles or rights governing a solution outside the general language found in the aforementioned Security Council resolutions. The two sides, moreover, differed on the meaning Resolution 242 with respect to a solution to the refugee issue.

[12] The letter of invitation to the opening conference in Madrid provided for bilateral and multilateral negotiations. US and USSR 1991. The RWG also addressed the issue of family reunification which both parties viewed as having political implications concerning solutions for Palestinian refugees. While Palestinian negotiators favoured the inclusion of the issue on the RWG agenda as a way to compensate for deferral of talks on the future of 1948 refugees to final status negotiations, Israeli negotiators initially opposed dealing with the issue because they considered it to comprise a "back-door" to the right of return. Additional discussion and sources can be found in Chapter 3, 171 n. 385, and 177 n. 398.

[13] Membership in the Palestinian delegation was originally limited to Palestinians from the 1967 OPT, excluding East Jerusalem. The US and Canada, which chaired the RWG, subsequently supported the inclusion of Palestinians from outside the 1967 OPT. The PLO was able to take part in the talks following the signing of 1993 Declaration of Principles on Interim Self-Government Arrangements. *See*, the discussion in Chapter 3, 235-239.

comprised of Israel, the PLO, Egypt and Jordan was established to negotiate "modalities [for] the admission of persons displaced from the West Bank and Gaza Strip in 1967".[14] The future of Palestinians displaced during the 1948 Arab-Israeli war was among a handful of issues, as noted above, deferred for discussion in bilateral talks between Israel and the PLO.[15] The process was largely silent on other categories of displaced Palestinians, including those displaced after the two major wars in 1948 and 1967.

Refugees, and many non-refugees alike, expressed three major concerns about the 1993 Declaration of Principles with respect to a solution to their situation.[16] First, the agreement excluded express reference to General Assembly Resolution 194 and Security Council Resolution 237, the primary UN resolutions governing solutions for Palestinian refugees, as well as the rights and principles guiding durable solutions for refugees generally.[17] The absence of explicit reference to the rights of return, restitution and compensation, in particular, appeared especially striking to many Palestinians given the importance attached to such rights in negotiated settlements to other refugee situations.[18] Second, the agreement divided refugees into separate groups with

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[14] Declaration of Principles on Interim Self-Government Arrangements, *infra* n. 385, art. 12. *See also*, Agreement on the Gaza Strip and Jericho Area, *infra* n. 385, art. 16; and, Interim Agreement on the West Bank and Gaza Strip, *infra* n. 385, art. 27.

[15] Declaration of Principles on Interim Self-Government Arrangements, *ibid.*, art. 5, para. 3; and, Interim Agreement on the West Bank and Gaza Strip, *ibid.*, art. 31, para. 5.

[16] The summary of refugee views is derived from a range of sources including working papers and recommendations from the 1996 popular refugee conference in Bethlehem, statements issued by refugee organizations, survey research and verbatim reports of deliberations among Palestinian refugees. A list of sources can be found in Chapter 3, 254254 n. 580.

[17] GA Res. 194, *infra* n. 392, para. 11; and, SC Res. 237, *infra* n. 394, para. 1. *See also*, GA Res. 3236, *infra* n. 394, para. 2. The resolutions affirm the principles of refugee return, restitution and compensation. For additional discussion of these and other resolutions on Palestinian refugees and the shift in the framework for negotiations over time *see*, Chapter 3, 174-176.

[18] This included, in particular, negotiated settlements to conflicts in the former Yugoslavia. In the years leading up to final status negotiations between Israel and the PLO, press reports (Amr 1999; Redden 1999; and, Ibish 1999) not infrequently drew comparisons with the Palestinian case, especially the situation in Kosovo. The comparison with Kosovo was also drawn by a number of refugees who testified before a British All Party Parliamentary Commission of Inquiry on Palestinian refugees. LMEC 2001, 24, 194. It also appeared

the future of Palestinians displaced in 1948 and 1967 subject not only to different procedures, but also seemingly different solutions. While the Declaration was silent on the future of 1948 refugees, provision for the "admission" of 1967 refugees to the West Bank and Gaza Strip appeared to be an implicit recognition of a "right to return" even though the Declaration made entry dependent on agreement.[19] And finally, the 1993 Declaration deferred discussion on the future of the majority of the refugees—i.e., those displaced during the 1948 Arab-Israeli war—to final status talks between Israel and the PLO. What refugees and most Palestinians considered to be the "core" of the conflict was essentially sidelined while negotiators focused on issues related to the transfer of limited powers and responsibilities from Israel's military government to the newly-established Palestinian Authority.[20] The predominantly humanitarian focus of the multilateral talks on refugees, meanwhile, seemed to confirm refugee fears that not only had they been forgotten, but that the actual intent of the negotiations was to facilitate their *de facto* resettlement through a process of human and economic development leading to their permanent integration in the host countries in which they had found refuge.

The emergence of the popular refugee movement also reflected refugee concerns about the representation of their rights and interests in the

striking in relation to the development of principles, as noted in Chapter 5, governing return, restitution and compensation.

[19] Benvenisti 1993, 552. The Declaration also conditioned the entry of 1967 refugees on the maintenance of public order and security. The PLO's decision to accept this bifurcated approach to the refugee issue, moreover, was at odds with its previous rejection of similar provisions in the 1978 Framework for Peace in the Middle East. UN 1978. The bi-furcated approach "intensif[ied] the disaggregation of Palestinians into inchoate set of groups with varying status and entitlement" (Weighill 1999, 7) and further undermined the "(re)integration" achieved through the establishment of the PLO as the sole, legitimate representative of the Palestinian people. Hilal 2010, 32.

[20] The division of the negotiating agenda into interim and final status issues enabled the parties to defer discussion of the most intractable issues, in particular, the right to self-determination of the Palestinian people and the rights of Palestinian refugees—i.e., return, restitution and compensation. It was thought that a phased process would enable the parties to build trust and confidence needed to resolve the most intractable issues by dealing first with relatively less contentious issues.

negotiations. This stemmed, in part, from the PLO's apparent willingness, exemplified in its 1993 agreement with Israel, to set aside fundamental principles and substantive demands on the refugee issue, at least in the short term, in exchange for Israel's recognition of the organization as the representative of the Palestinian people, a long sought after seat at the negotiating table in talks to resolve the conflict and the prospect of a Palestinian state in the West Bank and Gaza Strip with its capital in East Jerusalem.[21] It also stemmed, however, from what many refugees saw as the lack of effective mechanisms to adequately represent their rights and interests in talks with Israel. First, and foremost, was the ossification of the PLO's National Council, established to represent the Palestinian people as a whole, a process which had begun well before the launch of peace talks with Israel in the 1990s.[22] This

[21] The 1993 Declaration, as noted above, excluded express reference to UN resolutions on Palestinian refugees and principles applicable to the crafting of durable solutions for refugees generally. The substantive differences between proposals for a Palestinian self-governing authority presented by Palestinian officials in the Washington talks that followed the Madrid conference and in the secret negotiations in Oslo (Abdul Hadi 2007, 4: 194-291), along with Palestinian concessions on Jerusalem, international arbitration and an international trusteeship in the Gaza Strip during the second period of the Oslo talks in exchange for Israel's recognition of the PLO (Waage 2005, 12) further exemplified the apparent willingness of certain officials to set aside—and from a more critical perspective effectively concede—fundamental principles and long-held substantive demands. The PLO nevertheless maintained its official support for the right of return, notwithstanding a shift in emphasis towards individual rather than collective return. In an exchange of letters setting out the relationship between UNRWA and the PLO following the signing of the 1993 Declaration and the initial transfer of certain powers from Israel to the Palestinian Authority, moreover, PLO Chairman Yasser Arafat explicitly referred to major UN resolutions on Palestinian refugees emphasizing his understanding that the PLO could "count on the continuation of [UNRWA] services both in the occupied Palestinian territories, including Jerusalem, and elsewhere, until the Palestine refugee problem has been resolved in accordance with principles of human rights and the relevant United Nations resolutions, particularly General Assembly Resolution 194 (III) and Security Council Resolution 237 (1967)". UNRWA 1994. *See*, the brief discussion of the PLO's position on the refugee issue in Chapter 3, 230-231231.

[22] The ossification of the PLO's democratic institutions can be ascribed to at least four main factors: the adoption of a quota system to fill the seats of its National Council, the bureaucratization of its institutions, frequent conflicts between the PLO, Arab host states and Israel and the transfer of PLO cadre and resources to the 1967 OPT along with the delegation of responsibilities to the Palestinian Authority. This situation gave rise to what refugee activists and practitioners, negotiators and policymakers and academics described as a crisis of representation. Palestinians also expressed doubt as to whether the PLO was technically ready for talks with Israel in the period leading up to final status negotiations. While most refugees continued to view the PLO as their representative, activists emphasized the importance of parallel representation of refugees by refugees themselves. Additional

was exacerbated by the fact that the Palestinian Authority, a transitional administration established under the 1993 Declaration to lay the groundwork for a future Palestinian entity or state, with its jurisdiction limited to the 1967 OPT, or parts thereof, was incapable of representing the majority of the refugees who resided outside their historic homeland.[23] The various Palestinian factions or political parties, meanwhile, while not inattentive to refugee concerns, were unable to put forward an effective strategy and plan to defend and advance refugee rights due to their own internal crises.[24] Finally, with non-governmental organizations (NGOs) focused predominantly on the humanitarian needs and day-to-day protection of refugee rights, there were few NGOs actively working to advance human rights-based solutions for the refugees.[25]

The emergence of the popular refugee movement also reflected refugee concerns about the lack of international protection of their rights in the context of a negotiated solution to their situation based on the 1993 Declaration of

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discussion and sources can be found in Chapter 3, 226 n. 518-519, and 249-252 n. 570-575.

[23] The Palestinian Authority's first presidential and legislative elections, which took place in early 1996 prior to the first popular refugee conference in Deheishe refugee camp later that year, effectively illustrated the PA's limited capacity to represent Palestinian refugees. The eligibility criteria for taking part in the elections agreed to by Israel and the PLO excluded the vast majority of refugees due to the fact that they resided outside the 1967 OPT. *See*, Chapter 3, n. 572.

[24] This included differences over the Oslo process, difficulties in transitioning from a liberation movement to legislative politics and conflicts regarding the status of civil society organizations in particular their relationship to the various political factions. The right of return was a central pillar of the Palestinian national movement and a cross-cutting concern to its various political factions, however, the issue was also instrumentalized in the context of divisions between supporters and opponents of the 1993 declaration and the agreed upon political process to resolve the long-standing conflict over self-determination in Palestine-Israel. ICG 2004, 18; and, Khalidi 2006, 206. *See also*, Chapter 3, n. 573. The establishment of the Palestinian Authority in the early 1990s and the holding of its first presidential and legislative elections marked a general decline in the role of the various factions that made up the PLO. Brown 2003, 145.

[25] The small number of organizations working on political aspects of the refugee issue tended to focus predominantly on documentation, data collection and the production of policy-oriented research related to the Oslo process rather than on the advocacy of refugee rights. The affiliation of some NGOs with political factions, themselves politically divided, as noted above, combined with the redirection of donor support for the "development of civil society" in the 1967 OPT, often at the expense of older, membership-based organizations and associations, further hampered the development of an independent and coordinated civil society initiative for refugee rights. Nabulsi 2005, 123; Challand 2009; and, Merz 2012. *See also*, Chapter 3, n. 573.

Principles agreed to by Israel and the PLO. This concern stemmed, in large part, from at least three major gaps in the "special" or "mixed" regime responsible for the protection and assistance of Palestinian refugees.[26] First and foremost, and unlike most other refugees, was the absence of an international agency with an explicit mandate to protect, promote and facilitate the implementation of refugee rights in the context of a negotiated solution.[27] Second, owing largely to its *ad hoc* evolution, various groups of Palestinian refugees found themselves through no fault of their own excluded from or unable to access the assistance and arguably limited protection afforded by the regime.[28] Third, funding shortfalls resulting in cutbacks in services as well as rumours of an early transfer of regime responsibilities to the Palestinian Authority in advance of a comprehensive solution to the conflict exacerbated refugee fears that they would be left without even symbolic protection of their rights and interests in the context of a negotiated solution to their situation.[29]

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[26] The "special" or "mixed" regime for Palestinian refugees is comprised of the UN Conciliation Commission for Palestine (UNCCP), the UN Relief and Works Agency for Palestine Refugees (UNRWA) and the UN High Commissioner for Refugees (UNHCR). For additional discussion *see*, Chapter 3, 163-165.

[27] The UNCCP, the primary body responsible for protection, had been inactive for decades with little prospect of its reactivation. UNRWA, the primary body responsible for assistance, had gradually assumed a greater role in refugee protection following the cessation of UNCCP activities, however, the agency did not have an explicit mandate to protect refugee rights in the context of a negotiated solution. The UNHCR, the body responsible for all other refugees including Palestinian refugees outside the 1967 OPT, Jordan, Lebanon and Syria, did not assume, largely for political reasons, a protection role for Palestinian refugees in UNRWA areas of operation following the cessation of UNCCP activities, nor did the refugee agency have an explicit mandate to protect the rights of Palestinian refugees in the context of a negotiated solution to their situation. *Ibid.*

[28] This included, in particular, Palestinians displaced outside the borders of the state of Israel and the 1967 OPT after the 1948 and 1967 wars, but who remained within UNRWA areas of operation, namely, Jordan, Lebanon and Syria. In some cases, however, it appears that some individuals displaced after 1948 were registered for assistance. A recent UNRWA report, for example, notes that the Agency registered some Bedouin communities expelled by Israel into the West Bank after the 1948 war. UNRWA and Bimkom 2013, 10. The status of descendants of Palestinians displaced prior to 1948 and those displaced within Israel and the 1967 OPT was also unclear.

[29] In the mid-1990s UNRWA reported a 29 percent drop in the average expenditure per refugee. UNRWA 1997, para. 8. The funding shortfall was further exacerbated by an economic downturn in the region, including the OPT where per capita income fell by 36 percent in real terms between 1992 and 1996 with camp refugees affected the worst. O'Brien 1999. *See also*, UNRWA 1995, para. 22–25; AIC 1996e, 3; and, LMEC 2001, 20–21.

Marginalization of both the United Nations and the League of Arab States from US-led efforts to facilitate a negotiated solution to the conflict further militated against the protection of refugee rights and interests in talks to resolve their situation.[30]

Finally, the emergence of the popular refugee movement reflected refugee concerns that the balance of power at all levels weighed against a rights-based solution to their situation. The asymmetrical relationship between Israel and the PLO militated against Palestinian efforts to obtain Israeli acknowledgment of responsibility for decades of Palestinian displacement let alone recognition and implementation of refugee rights.[31] Israel refused to acknowledge any responsibility for Palestinian displacement and had long opposed the return and restitution of refugees who originated from towns and villages inside Israel.[32] The bilateral nature of the peacemaking process, the lack of a coherent approach and strategy to the negotiations compounded by divisions among member states of the Arab League effectively debilitated regional efforts to offset the balance of power that weighed in Israel's favour,

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[30] The United Nations involvement in the peace process was initially limited to its status as an observer stemming in large part from Israel's distrust of the international organization and its opposition to the "internationalization" of efforts to resolve the conflict. The League of Arab States, which included members opposed to the Oslo process, was not among the parties invited to participate as an official observer. Additional discussion can be found in Chapter 3, 172 n. 388-389, 391.

[31] This did not mean that there was a complete absence of support for Palestinian positions, including positions on the refugee issue. The US and Canada, for example, both supported the participation of Palestinians from outside the 1967 OPT in the multilateral talks on refugees. Brynen 1997, 282. *See also*, Chapter 3, n. 538. In general, however, and especially with regard to the refugee issue, the balance of power weighed heavily in Israel's favour with widespread agreement among key international actors that the rights of Palestinian refugees and their implementation would be decided in the context of negotiations.

[32] Israel remained open to the return of a small number of refugees on a humanitarian basis through family reunification, but was opposed to giving refugees a free choice as to whether they wished to return or resettle elsewhere. In contrast, Israel appeared to accept, in principle, that Palestinian refugees originating from the 1967 OPT should be allowed to return or, rather, "enter" the West Bank and Gaza Strip. For a brief discussion of Israel's position and related sources *see*, Chapter 3, 177 n. 398.

especially in relation to the refugee issue.[33] The United States, the co-sponsor and primary mediator to the talks, and Israel's most important ally, moreover, appeared to largely support Israel's position on a solution to the refugee issue.[34] Israeli negotiators, US mediators and international "friends" of the Middle East peace process, moreover, seemingly shared an unwritten assumption, itself a function of the balance of power, that the "logic" of a two-state solution to the conflict necessitated the resettlement of the vast majority of refugees outside the state of Israel.[35] Talks on the "admission" of 1967 refugees to the West Bank and Gaza Strip, meanwhile, had already ground to a halt in the months preceding the first popular refugee conference with the multilateral talks put on hold less than a year later.

Thus, by the mid-1990s, only several years after Israel and the PLO signed the Declaration of Principles setting out an agreed political process to resolve the conflict, there was widespread and growing sentiment among Palestinian refugees—inside the 1967 OPT, in the Arab world and further afield

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[33] The League adopted a declaration and a draft convention on the protection of refugee rights in the 1990s, both of which included provisions on durable solutions for refugees in the Arab world, but did not put forward a comprehensive plan of action to address the situation of Palestinian refugees. Akram and Rempel 2004. Among its member states, Syria and Lebanon refused to take part in the multilateral Refugee Working Group, while Palestinian refugees residing in both states were prevented from participating in the Palestinian delegation. Tamari 1996. For additional discussion of the Arab League *see*, Chapter 3, 166-168.

[34] Memoranda of understanding between Israel and the United States since the mid-1970s effectively committed the US to respect and comply with Israel's view on the framework for a solution to the conflict. In the early 1990s, the US launched a brief effort to expunge major UN resolutions relating to final status negotiations, including the refugee question, from the UN record on the basis that the resolutions unnecessarily complicated a negotiated solution to the conflict. US 1994. Palestinians and some US officials alike cited the US relationship with Israel, in which US diplomats often acted "like attorneys for Israel" rather than as neutral third party mediators, as a major flaw in efforts to resolve the conflict. Moughrabi and Khalidi 1988, 188; and, MEI 2005, 6.

[35] This view correlated largely with Israel's position on self-determination and its self-definition as a Jewish state characterized, in particular, by a permanent Jewish majority population and by the preferential status accorded to persons of Jewish nationality, particularly in relation to citizenship and property rights. For a brief discussion *see*, Chapter 3, 147-149. Some Palestinian officials involved in the peace process also appeared to share the view that a two-state solution to the conflict would necessitate a solution to the refugee issue outside the borders of the state of Israel. *See*, Chapter 3, n. 510.

—that they had been largely excluded from the process that would decide their future.[36] Faced with an agreement that failed to acknowledge their rights and interests, inadequate representation by the PLO, the absence of an international agency with an explicit mandate to protect their rights and interests in the context of negotiations and a balance of forces that weighed against them, the emergence of a popular refugee movement reflected an emerging consensus among refugees that if their rights and interests were to be defended, it would have to be refugees themselves who would have to take the initiative.[37] "The times of inactivity on the refugee question", commented one community-based organization, "seem[ed] past: stirred by the prospect of losing their internationally recognized rights in the framework of the Oslo negotiations, Palestinian refugees everywhere have begun to organize themselves in order to give voice to their demands".[38] One refugee activist further noted that "[g]iven the broad refugee consensus on their central demands, the question [was] not 'what do refugees want?'", but rather "whether refugees in the 21st century [would] be able to overcome [the obstacles to a rights-based solution] despite the unfavorable balance of forces, locally, regionally and internationally".[39]

The idea of establishing a grassroots movement to lobby for the rights and interests of Palestinian refugees emerged in the early 1990s shortly after

[36] The Commissioner-General of UNRWA alluded to this sense of marginalization in his 1995 annual report to the UN General Assembly observing that refugees were "caught between the hope for a better future and the fear that they might be neglected and even forgotten in the new political environment". UNRWA 1995, para. 55. This also included internally displaced Palestinians inside Israel who experienced a double form of marginalization as Palestinians and as citizens of Israel. For a discussion of IDP mobilization and organization inside Israel *see*, Wakim and Beidas 2001; and, Cohen 2003.

[37] In the 1967 OPT refugee activists outlined the need for a popular refugee movement in a number of working papers prepared in advance of the 1996 popular refugee conference (Abdul Hadi 1997; Abed Rabbo 1997b; and, Qaraqa 1997), in various articles published by local community-based organizations active on the refugee issue (Abed Rabbo 1997a; AIC 1997b; and, Samara 1997) and in conclusions from a number of workshops focused on refugee mobilization and organization (AIC 1997a).

[38] AIC 1996a, 1.

[39] Abed Rabbo 1997a, 3.

Israel and the PLO signed the Declaration of Principles setting out a framework for a solution to the conflict. The efforts of Palestinian refugees in the 1967 OPT, while only part of a much broader and diverse array of refugee activities, arguably comprised one of the most concrete expressions of the nascent movement.[40] As early as the summer of 1994, representatives of West Bank refugee camps and activists from Palestinians towns and villages called for the establishment of a "Committee for Defending Palestinian Refugees' Rights".[41] The first major step in launching a popular movement in historic Palestine, however, came in December 1995 when the Union of Youth Activities Centers (UYAC), a community-based association operating programs in refugee camps across the West Bank and Gaza Strip, organized a conference for refugee activists on the premises of the former Israeli prison in al-Far'ah northeast of the city of Nablus. Attended by some 1,500 Palestinians from across historic Palestine, the participants reaffirmed the right of return as the primary solution for Palestinian refugees, denounced efforts to resettle refugees without giving them the option to return and criticized cut-backs in assistance provided by UNRWA. The al-Far'ah conference concluded with a call for the election of local refugee committees to be followed by a national conference to unite refugee efforts in demanding their rights in the context of a comprehensive solution to the long-standing conflict.[42]

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[40] The emergence of the movement in the 1967 OPT can be ascribed, in part, to the ability of refugees to exercise their political freedoms relative to other major host countries, notwithstanding the restrictions imposed by Israel's ongoing military occupation. It can also be ascribed, however, to continuity in civil society relative to the situation of refugees outside of historic Palestine where civil society organizations had to be (re)constructed in the aftermath of the 1948 war and the dispersion of Palestinians across the Arab world. *See also*, Chapter 3, n. 577.

[41] Hamam 2004, 12. Hamam cites Palestinian intellectual and Fatah founding member Khalid al-Hassan as among the first Palestinians to call for "the unification of refugees" including the possibility of establishing a refugee political party. *See also*, ICG 2004, 18 n. 18. Refugees had likewise considered but decided against the establishment of their own political parties following the 1948 war. Plascov 1981, 107–108.

[42] AIC 1995d. *See also*, AIC 1996i, 1; and, Gassner 1996b, 31; and, Jaradat 2007, 22.

In March 1996, three months after the al-Far'ah meeting, refugee activists in the Bethlehem district of the occupied West Bank organized a first meeting to begin the process of establishing a popular refugee movement to advocate for their rights. Attended by 150 refugees and representatives of major NGOs, the participants elected a 15-member preparatory committee with a mandate to organize the first popular refugee conference in the Bethlehem district.[43] Over the coming months, the local committee conducted a series of public workshops to discuss issues of concern to refugees. Topics covered included the socio-economic situation of refugees, camp services and the future of UNRWA, legal aspects of the refugee question and its solution, the substance and implications of agreements between Israel and the PLO, and strategies for the subsequent mobilization of the refugee community.[44] The recommendations from these workshops effectively set the agenda for and basis of recommendations issued by the popular refugee conference the following September.

Held exactly three years to the day that Israel and the PLO met on the south lawn of the White House to sign the Declaration of Principles on Interim Self-Government Arrangements, the popular refugee conference in Deheishe refugee camp challenged both substantive and procedural foundations of the framework agreed to in secret talks between Israeli and Palestinian negotiators in Oslo, Norway.[45] The significance of the event, as one activist noted, lay in its

[43] Israeli-imposed restrictions on freedom of movement between the West Bank and Gaza Strip, the existence of separate unions for refugee youth (the unions were later merged), different approaches to refugee organization and mobilization and obstacles to the establishment of an independent refugee movement in the Gaza Strip made it difficult to organize a popular refugee movement throughout the 1967 OPT. For a brief comparison of refugee efforts in the West Bank and Gaza Strip *see*, AIC 1996a.

[44] AIC 1996j.

[45] On the procedural level, refugees not only demanded that the negotiating process be held under international auspices, in particular, the United Nations, they also demanded a seat at the table alongside Israel and the PLO. On substantive issues, refugees called for a solution to the conflict in accordance with international law and relevant UN resolutions. In laying out

potential to "[transform] the refugee issue from one handled exclusively by experts, researchers and university lecturers to one that [was] the primary concern of the refugees themselves".[46] Refugees reaffirmed their commitment to a solution based on relevant UN resolutions and international law as well as their allegiance to the PLO as the sole, legitimate representative of the Palestinian people.[47] They also recommended, however, the establishment of an elected refugee leadership to strengthen the struggle for their "legitimate national rights" and to promote democracy and human rights.[48] Refugees called upon the PLO and the PA "to take their power from the people", to develop a coordinated and comprehensive strategy for a rights-based solution to the conflict and to work towards replacing the US-mediated process with negotiations held under the auspices of the United Nations.[49]

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the rationale for a refugee rights campaign, one component of the popular refugee movement that emerged inside and beyond the borders of historic Palestine in the mid-1990s, the Alternative Information Center, a Palestinian-Israeli NGO with offices in Jerusalem and Bethlehem, explained that "NGOs [were] working to *establish an alternative framework* so that [refugee] rights [were] respected, as well as concrete means to improve social and educational standards in the refugee communities". [emphasis added] AIC 1996e, 4.

46 Gassner 1996b, 32. *See also*, Gassner 2001a, 252, 255.

47 Declaration Issued by the First Popular Refugee Conference, *infra* n. 580, pt. I, paras. 3-4, pt. II, para. 4. The conference preparatory committee emphasized the importance of a rights-based solution to the refugee question arguing that "[h]istorical experience assured that agreements and accords based on power and superiority don't serve people who are seeking for honored peace". PCPRC 1996, para. 7. The participants further affirmed that "[a]ny negotiations or programs on the refugee question which bypass[ed] the international resolutions and decisions on [the refugees'] right to return to [their] homeland and property, or contradict[ed] the international human rights declaration, [would] receive, from [refugees], nothing but struggle and resistance". Declaration Issued by the First Popular Refugee Conference, *ibid.*, pt. I, para. 5.

48 Declaration Issued by the First Popular Refugee Conference, *infra* n. 580, pt. I, paras. 1-6. A project proposal for a campaign for refugee rights initiated in the 1967 OPT by the Alternative Information Center observed that "Palestinian refugees are at a moment where negotiations are conducted about their future must speak for themselves. They must participate effectively in the policy process by coming up with feasible and alternative policies based on the respect of human rights, democracy, social justice and comprehensive peace". The campaign aimed to "strengthen refugee communities by building the capacities of local NGOs, by providing them with the opportunity to clarify their needs and their strategies, and by facilitating their interaction with the international community". AIC 1996e, 3–4.

49 Declaration Issued by the First Popular Refugee Conference, *infra* n. 580, pt. II, para. 1. The PLO official in attendance, As'ad Abdelrahman (PLO Expatriates Committee) expressed agreement with all major recommendations and promised to promote them in the framework of the PLO. AIC 1996a, 2.

The participants decided to elect a 49-member refugee council for the Bethlehem district and recommended that similar councils be elected in each district of the 1967 OPT and in all sites where Palestinian communities resided in exile.[50] Each council would be responsible for the election of an executive committee with collective responsibility for the preparation of a General Refugee Conference (GRC) to be held inside and outside of Palestine.[51] The GRC would, in turn, elect its own executive committee to coordinate initiatives for a rights-based solution to the refugee question and the struggle for the basic rights of refugees in exile until a solution to their situation was achieved on the basis of relevant UN resolutions and international law.[52] Refugees further recommended that the GRC be the only body authorized to negotiate a solution to the refugee question through the PLO.[53] The final recommendations of the conference endorsed the creation of a movement based on principles of "democracy, pluralism, flexibility and tolerance" in order to ensure the representation of all refugees. "We do not oppose peace", the recommendations concluded, but "[w]e are for a peace built on mutual respect for internationally recognized rights, and hold that the implementation of the right of return and the respect of the Palestinian national rights are the key to ending the conflict in the whole region".[54]

II. Statement of Problem

The right to political participation is widely recognized as a fundamental human

[50] *Ibid*., pt. III, para. 2.
[51] *Ibid*., paras. 3-4. The executive committee was tasked with implementation of decisions and recommendations between meetings.
[52] *Ibid*., para. 5.
[53] *Ibid*., para. 6.
[54] *Ibid*., Conclusion.

right enshrined in both international and regional treaties and in a vast body of resolutions, declarations and programmes of action, conclusions and guiding principles adopted by international and regional organizations.[55] An array of political freedoms, referred to variously as "campaign rights", "expressive rights" or "rights of communication", including freedom of information, opinion, expression, association and assembly, are further regarded as essential to the effective exercise of the right to political participation.[56] These inter-related political rights and freedoms are broadly recognized to "lie at the core of democratic government based on the consent of the people".[57] The importance of the right to political participation is commonly regarded to be two-fold. Its intrinsic value derives in large part from the fact that, like all other human rights, the right to take part in the conduct of public affairs is inherent to all persons.[58] It is nevertheless distinct from other human rights in that its exercise is generally

[55] This includes treaties relating to civil and political rights, the elimination of race and gender-based discrimination and the protection of migrant workers and members of their families. A number of additional international and regional treaties include provisions relating to the effective participation of minorities and indigenous peoples. For a list of treaties and other relevant instruments *see*, Annex II.

[56] In its General Comment on the right to political participation, the Human Rights Committee, the UN body responsible for oversight of the ICCPR, notes that "the full enjoyment of rights protected by article 25 ... requires the full enjoyment and respect for the rights guaranteed in articles 19, 21 and 22 of the Covenant, including freedom to engage in political activity individually or through political parties and other organizations, freedom to debate public affairs, to hold peaceful demonstrations and meetings, to criticize and oppose, to publish political material, to campaign for election and to advertise political ideas". HRC 1996b, para. 8, 12, 25, 26. *See also*, Steiner 1988, 88; Nowak 1993, 565; and, Goodwin-Gill 2006, 102.

[57] HRC 1996b, para. 1. That such participation is central to democratic government is evident from the origins of "democracy" with its Greek roots *demos* (people) and *kratos* (rule) or "rule of the people". Held 1987, 2. The etymology of democracy draws attention to two basic questions that are central to this study, namely, who are the people (with reference herein to the status of refugees) and what kind of rule is envisaged for them (referring herein to whether peace negotiations comprise a domain for political participation). It is also evident from the fact, as Van Deth observes in his brief review of the field, that almost every study of political participation "starts with the allegation that political participation and democracy are inseparable". Van Deth 2001, 1, *citing*, major studies on political participation by Verba and Nie 1972, 1; Kaase and Marsh 1979, 28; and, Parry, Moyser, and Day 1992, 3.

[58] The human rights regime is founded on the notion that "[a]ll human beings are born free and equal in dignity in rights". UDHR, *infra* n. 607, art. 1. This provision is common to international and regional human rights instruments. The intrinsic value of political participation is also said to derive from its contribution to the development of human capacities. Pateman 1970, 22–27; and, Parry 1972, 26–31. This also lends political participation, as Perry observes, a certain instrumental quality "since participation is in part a means to this development as well as part of the process of development". *Ibid.*, 19.

limited to citizens and is often restricted on a number of grounds including residence.[59] All other human rights, including the political freedoms mentioned above, are universal in character. From an instrumental perspective, exercise of the right to political participation is widely regarded to be *sine qua non* for the realization of all other human rights.[60] Thus, in contrast to most human rights, which express substantive entitlements, the right to political participation is also procedural in nature, in that it establishes an entitlement to take part in various political activities and domains—i.e., the conduct of public affairs—empowering citizens to advance their individual and collective welfare.[61]

The right to political participation is distinct from, but also related to the right to self-determination. Commonly defined as the right of a people to freely

[59] HRC 1996b, para. 3. The connection between citizenship and the right to political participation, as Nowak observes, "stems from the concept of the modern nation-State, namely, that only those individuals who are attached to 'their' State by the special bond of citizenship may exercise political rights". Nowak 1993, 576. Other restrictions on the exercise of the right to political participation commonly accepted as reasonable include age, incarceration and mental illness. These restrictions including residence are most often associated with the right to vote and to be elected with relatively little discussion of such restrictions in relation to other forms of political participation. *See*, Partsch 1981, 243; Bossuyt 1987, 473; Fox 1992, 554, 563; Nowak 1993, 578; and, Joseph, Schultz, and Castan 2004, 659.

[60] In the first of a series of resolutions on "enhancing the effectiveness of the principle of periodic and free elections", for example, the UN General Assembly "[s]tress[ed] its conviction that periodic and genuine elections are a necessary and indispensable element of sustained efforts to protect the rights and interests of the governed and that, as a matter of practical experience, the right of everyone to take part in the government of his or her country is a crucial factor in the effective enjoyment by all of a wide range of other human rights and fundamental freedoms, including political, economic, social, and cultural rights". GA Res. 43/157, 43rd Sess., 75th Plenary Mtg., UN Doc. A/RES/43/157, Dec. 8, 1988, para. 2. This principle is reaffirmed in a wide range of additional instruments adopted by international and regional organizations in recent decades. The relationship between the right to political participation and other human rights, however, is also considered to be interdependent. In a resolution on the "promotion of the right to democracy", for example, the UN Human Rights Commission "[r]ecogniz[ed] that democracy, development and respect for all human rights and fundamental freedoms are interdependent and mutually reinforcing, and that democracy is based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives". CHR Res. 1999/57, 56th Sess., 57th Mtg., UN Doc. E/CN.4/RES/1999/57, Apr. 27, 1999, preamble.

[61] It is for this reason that the right to political participation has been described as a "master right", "indispensable building block" and "keystone of the entire human rights apparatus". Santa Cruz 1962, 82; Farer 1988, 505; Fox 1992, 595 n. 298; and, Steiner 1988, 77. As Fox further explains, the consideration of political participation as an essential prerequisite to the enjoyment of all other rights "is straightforward: citizens will never attain sufficient power to advance their own welfare unless they possess a voice in the decisions of their government". *Ibid. See also*, Parry 1972, 19–26.

determine their political status and pursue their economic, social and cultural development, often though not exclusively through the establishment of an independent state, the right to self-determination defines "the status of a people in relation to another people, State or Empire".[62] The right to political participation, by way of contrast, defines "the relationship between a people and 'its own' State or government" and concerns the right of both individuals and groups to take part in the increasingly wide array of political activities that comprise the conduct of public affairs.[63] The right to self-determination, moreover, is generally conceived as "discontinuous" in the sense that once realized (e.g., through plebiscite or referendum) its exercise usually falls into abeyance, whereas the right to political participation is a "continuous" right (e.g., as in periodic and genuine elections) and a means for ongoing renewal of the popular consent that is at the heart of democratic governance.[64] The two rights

[62] HRC 1984, para. 2. *See also*, Thornberry 1993, 101. The right to self-determination may be considered to have both external and internal dimensions. CERD 1996a, para. 4. Rosas identifies three primary elements of external determination: "[t]he right of a people of an existing State to determine freely their status without *outside* interference; [t]he right of a people which has been subjugated to *foreign* occupation or domination to free itself from this occupation or domination; [and], [t]he right of a people, including a colonial people, to *secede* from a State and set up their own State or join another State". Rosas 1993, 229–230. The right to political participation is often described, by way of contrast, as an internal form of self-determination. *See further*, Bell 2008, 205–206; Cassese 1995, 52–53; and, Wheatley 2002a, 228–231.

[63] HRC 1996b, para. 2. *See also*, Thornberry 1993, 101. According to Rosas' distinction between external and internal self-determination, referred to above, the latter comprises two primary elements: "[t]he right of a people to determine its *constitution* (*pouvoir constituant*), including an autonomous status within the confines of the bigger State; [and], [t]he right of a people to *govern*, that is, to have a democratic system of government". Rosas 1993, 229–230.

[64] The right to self-determination may also be considered as having a continuous aspect in two primary contexts. First, as Thornberry points out, the right to self-determination may be conceived as a "continuous defence against external subversion or intervention". Thornberry 1993, 101. Indeed, this aspect, as discussed in subsequent chapters, long militated against the development of the right to political participation due to the fact that the internal organization of states was considered to be a matter over which states exercised sovereign discretion. Second, there may be special situations, such as revolution, civil war and the systemic violation of human rights including the violation of internal self-determination, which may give rise to new self-determination procedures. Koskenniemi 1994, 245–248. The UN Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations (GA Res 2625, 25th Sess., 1883rd Mtg., UN Doc. A/RES/2625, Oct. 24, 1970), for example, states that the territorial integrity or political unity of states only applies to states "conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described

are nevertheless similar in the sense that the exercise of each is considered essential for the realization of all other rights.[65] Whereas the right to political participation is widely considered *sine qua non* for the realization of other human rights, as already noted above, the right to self-determination is said to be "an essential condition for the effective guarantee and observance of individual human rights", generally, hence its pre-eminent position in the International Bill of Rights.[66]

These inter-related rights—individual and collective—appear to be of special importance to refugees for at least three basic reasons. First, the violation or denial of each is often among the root causes of forced displacement. Millions of people have and continue to be uprooted from both home and homeland in the context of struggles over self-determination and the exercise of their fundamental political rights and freedoms.[67] Second, as a result

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above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour". Bell 2008, 206. For additional discussion of the ongoing nature of the right to self-determination *see*, Cassese 1995, 101.

[65] The two rights are also related in the sense that the right to self-determination provides the normative foundation for the right to political participation. Franck describes self-determination as "the historic root from which the democratic entitlement grew". Comprised of the right to self-determination, freedom of expression and the right to vote and to be elected, it is also the oldest element of what Franck posits as an emerging right to democracy. Franck 1992, 52–56. While the Soviet bloc and the developing world emphasized the external aspect of self-determination in the post-WWII period including the related principles of sovereign equality and non-intervention in the internal affairs of states, Western states emphasized the internal aspect of self-determination, that is to say, the "right of the peoples of every state freely to choose a system of government that fully meets the aspirations of the people". Cassese 1995, 45–46. These divisions largely dissipated with the end of the Cold War.

[66] HRC 1984, para. 1; and, HRC 1996b, para. 2. The International Bill of Rights is comprised of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Common article 1 of the covenants affirm that "[a]ll peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development". ICCPR, *infra* n. 612, art. 1(1); and, ICESCR, *infra* n. 612, art. 1(1).

[67] Decolonization and struggles for national liberation and self-determination in the post-WWII period, for example, led to mass displacement across Africa, Asia and parts of the Americas. A combination of political instability, military dictatorship, authoritarian rule, repression of ethnic and religious minorities, secessionist conflict and civil war resulted in further waves of displacement. Internal conflicts and the violation of political rights among others became an increasingly prominent driver of forced displacement. Khan 1981. The "down-sizing" of states in the 1990s (Kelly 1998) along ethnic or national lines contributed to new waves of displacement from the former Soviet Union and the former Yugoslavia with ongoing conflicts

of their displacement refugees often face an array of obstacles which militate against self-determination and participation in the public affairs of their countries of origin. Beginning with challenges to their status as citizens and the imposition of residence-based restrictions on the exercise of such rights, obstacles frequently extend to the loss of documents, insecurity and discrimination along with gaps in legal regimes, lack of standards and ambiguities in mandates of relevant political and humanitarian institutions.[68] Finally, the exercise of self-determination and political participation appears to afford refugees "means towards the ends of [both] protection and durable solutions".[69] While the

over self-determination, especially in Africa and Asia (Gurr, Marshall, and Khosla 2001), resulting in unresolved and ongoing forced displacement. Internal conflicts nevertheless continued to be the major driver of forced displacement in the post-Cold War period. Weiner 1996; Moore and Shellman 2004; and, Lischer 2007. The linkage between the violation or denial of political rights is also evident from international and regional treaties which include persecution on the basis of political opinion, external aggression, occupation and foreign domination among the criteria for recognition of individuals and groups as refugees and from empirical research on forced displacement. Commenting on persecution-based flight as "a major root cause of refugee flows", UNHCR observes that "[p]ersecution usually takes place in the context of fundamental political disputes over who controls the state, how society organizes itself and who commands the power, privileges, patronage and perks that go with political control. These disputes are at their most heated during periods of intense change—in the aftermath of revolutionary struggle (successful or failed), at the moment of a far reaching change of regime or upon the emergence of a new state". UNHCR 1993d, 21.

[68] Disputes over the composition of groups considered to comprise a people with a concomitant right to determine their political status and pursue their economic, social and cultural development are common to self-determination conflicts, a matter further complicated by the existence of some 3,000 different linguistic groups and 5,000 distinct minorities. Kelly 1998, 212. The right to take part in the conduct of public affairs, as noted earlier, is also unique among human rights in that it is generally limited to citizens with residence widely understood as a reasonable restriction on its exercise. Recent studies on the electoral rights of displaced persons cite loss of documents, insecurity and discrimination as major barriers to the enfranchisement of refugees and IDPs. Bagshaw 2000; Mooney and Jarrah 2005; and, Grace and Mooney 2009. Focusing on the growing practice of post-conflict elections in the late 1990s, Gallagher and Schowengerdt highlighted the "surprising dearth of literature and documented experience on the obstacles, options, and, most important, the implications of refugee enfranchisement ... [the lack of] clarity among international organizations in either the humanitarian or the election fields as to whose mandate it is to advocate, facilitate, and evaluate the electoral participation of refugees ... [and the absence of] standards or guidelines on how best to address the issue of refugees in elections". Gallagher and Schowengerdt 1998, 195. Similar gaps arguably exist in relation to refugee participation in self-determination procedures and in other ways and means that citizens take part in the conduct of public affairs.

[69] UNHCR 2003b, 45. The study refers to refugee participation generally, but the point made may be applied more specifically to refugee participation in self-determination procedures and in the public affairs of their home countries. In a recent UNHCR evaluation Long explains that "[u]nderstanding forced flight as a form of political exclusion", as noted above, means that "the methods employed to solve refugee crises must also be necessarily political, involving full (re)admission to citizenship for refugees, either in a host country or in the country of origin". The evaluation further notes that "placing political inclusion at the centre of

realization of self-determination is an "essential condition" for the "effective guarantee and observance" of their rights, generally, political participation in theory affords refugees the opportunity to advance solutions to their situation, helps to ensure that responses are consonant with both their wishes and needs, and arguably enhances the legitimacy and durability of solutions reached.[70]

Recent decades have witnessed growing awareness and recognition among practitioners, scholars and policymakers of the importance of refugee participation in decisions that affect their lives. Initially focused on participatory approaches to development as a response to the protracted conflicts and refugee situations of the 1980s, the cessation of Cold War hostilities and a rise in negotiated settlements to armed conflict along with a concomitant shift towards voluntary repatriation as the preferred or most appropriate solution to forced displacement in the 1990s contributed to growing emphasis on the participation of refugees in the public affairs of their home countries.[71] Both

international approaches to durable solutions suggests that the political participation of refugees must play a key role in moving the displaced beyond exile". Long 2010b, para. 17–18.

[70] The right to political participation, as noted above, is widely recognized as essential for the realization of all other rights. In his 1996 study on the rights of IDPs, for example, Francis Deng observes that "[t]he ability to participate in governmental and public affairs can enable internally displaced persons to influence and possibly ameliorate their own situation of displacement". UNCHR 1995, para. 350. Refugee participation is also said to contribute to better needs assessment, improved project design and implementation, enhanced programme ownership and sustainability, and greater understanding and trust among refugees and agencies and organizations responsible for refugee assistance and protection. Brookings Institution and University of Bern 2008a. Recent research, while not applied to the specific situation of refugees, meanwhile, suggests that there is a correlation between civil society participation in peacemaking and the sustainability of agreements reached, especially in the absence of democratic government. Wanis-St. John and Kew 2008. Empirical research corroborates this finding. Nilsson 2012.

[71] The emergence of discourses and practices of participatory development, initially among development NGOs, and the redirection of donor aid to the NGO sector arguably contributed to participatory approaches to development among refugees in the context of protracted refugee situations. Harrell-Bond 1995, 9–11. Addressed by the UN General Assembly in the early 1980s, UNHCR's Executive Committee dealt with the issue in an array of notes and conclusions on international protection, which by the 1990s with the agency's shift towards voluntary repatriation (Zieck 2004) began to also address the participation of refugees in the planning, design and implementation of durable solutions to their situation. For a list of relevant instruments and provisions see, Annex II. UNHCR's shift away from its "exilic" focus towards a more "homeland" oriented approach to forced displacement (UNHCR 1995) along with the rise in negotiated settlements which outpaced military settlements by roughly two to one (Mack 2007, 19) contributed towards the consideration of the human rights of refugees

forms of refugee participation arguably find their roots in the law and practice of self-determination beginning with the decolonization plebiscites and referenda of the 1960s and 1970s followed by the emergence and development of solidarity rights in subsequent decades.[72] Drafted in the early 1990s in response to the changing nature of forced displacement, UNHCR's *Handbook on Voluntary Repatriation* addressed the issue of refugee participation in the various phases of the return process including their involvement in home country elections and in the negotiation of durable solutions.[73] These ways and means for refugees to take part in the conduct of public affairs arguably reflected broader developments in law and practice of the period, as noted below, including the adoption of new instruments, the expansion of democracy at all levels and the growing demand of individuals and groups to participate in decisions that affect their lives. While considerable attention has been given to refugee participation in home country elections, as noted below, relatively little thought has been directed towards their participation in the negotiation of durable solutions.

The efforts of Palestinian refugees to secure a seat at the negotiating table in the 1990s raise two important and inter-related questions about the right

in their home countries including the right to take part in the conduct of public affairs.

[72] Plebiscites and referenda in decolonization contexts, beginning in Algeria, frequently provided for the participation of refugees, facilitated most often through their repatriation rather than through out-of-country voting. Since the 1990s, however, self-determination procedures have also provided for refugee participation prior to return to their countries of origin. The emergence of solidarity rights, the right to development in particular, and the concomitant recognition of a right to take part applicable to both individuals and peoples, arguably provided the foundation for the consideration of refugee participation in development in the context of protacted refugee situations in the 1980s and in the context of post-return reintegration and rehabilitation in the decade that followed. Solidarity rights also appeared to provide a foundation for subsequent consideration of a refugee right to take part in the public affairs of their home countries in more political contexts including post-conflict elections and the negotiation of durable solutions.

[73] UNHCR 1996a. Drafted in response to the changing nature of forced displacement, UNHCR's *Handbook on Voluntary Repatriation* moved beyond early notes and conclusions referred to above to address refugee participation in home country elections and in the negotiation of durable solutions as protection issues.

to political participation and the negotiation of durable solutions to forced displacement.[74] First and foremost is the question of whether peace negotiations comprise a "conduct of public affairs" under international law entailing a concomitant right to take part. Treaties which codify political participation as a fundamental human right affirm that citizens should be allowed to take part in elections, but say little else on ways and means that citizens can take part in the conduct of public affairs.[75] The negotiated settlement of armed conflict, moreover, has long been considered in both law and in practice to fall largely if not solely within the jurisdiction of the state with

[74] Much emphasis has been given to the right to self-determination, due largely it seems to its fundamental importance as well as the unresolved nature of the dispute, notwithstanding the concomitant focus on its substantive content in contrast to its procedural implementation. Initially focused on the political demands of Palestine's indigenous Arab population for independence, the development of self-determination as a right under international law along with the adoption of UN resolutions on its applicability to the Palestinian people in the 1960s and 1970s appeared to inspire new research on legal aspects of self-determination focused largely on Palestinians rather than Israelis. This research, moreover, appeared to develop alongside or in response to major political events in the conflict including affirmation of the right to self-determination of the Palestinian people by the UN General Assembly, the adoption of the 1978 Framework for Peace in the Middle East setting out a political process to resolve the conflict, Israel's construction of Jewish settlements in the 1967 OPT, the signing of the 1993 Declaration of Principles for Interim Self-Government Arrangements between the PLO and Israel, the latter's construction of a separation Wall in the West Bank and PLO/PA efforts to upgrade the status of the PLO at the UN to that of an observer state. Recommending the need for "two distinct mechanisms" to enable Palestinians, exiles and refugees in particular, to address more effectively their collective and individual concerns in relation to the peacemaking process, a British Commission of Inquiry observed that, despite the elaboration of the principle of self-determination, "very little work [had] been done" on mechanisms for the exercise of collective will. LMEC 2001, 28–29. Relatively little attention has been given to the right to political participation, a gap which may be explained in part by unresolved and inter-related controversies over both self-determination and the right of return. While studies on Palestinian refugees frequently focus on their political activities, the literature has yet to examine in detail the legal and practical aspects of participation in their historic homeland which is today comprised of the state of Israel and the 1967 OPT. The issue of refugee participation in the conduct of public affairs in the 1967 OPT through elections for a self-governing Palestinian Authority has been addressed in part (IOM 2003), however, the literature is largely silent on other ways and means for refugees to take part in the public affairs of the 1967 OPT and Israel itself.

[75] This can be ascribed in part, as explained briefly in Chapter 2, to the difficult if not impossible task of defining succinctly, beyond the right to vote and to be elected, the various ways and means that citizens may take part in the conduct of public affairs given the diversity of political systems and the ever evolving understandings of political participation. The ambiguous or indeterminate content of the right to take part in the conduct of public affairs, however, also appears to reflect a certain deference to the principle of state sovereignty and its corollary of non-interference in the internal affairs of states central to which is the organization or constitutional structure of the state. *See*, Chapter 2, *infra* n. 168-169 and corresponding text.

public participation often viewed as a hindrance rather than a help.[76] A second and equally important question is whether citizens have a right to take part in the conduct of public affairs when they are outside their country of citizenship. Treaties which codify political participation as a fundamental norm affirm the right of every citizen to take part in the conduct of public affairs, but do not explicitly address the situation of citizens, refugees in particular, who are outside their country of origin.[77] At the same time, residence has long been accepted in both law and in practice as one of several reasonable restrictions which states may impose on the exercise of the right to political participation.[78]

The promotion and development of international law, especially in recent decades, including the adoption of new instruments, the clarification of existing ones and an expansion in treaty ratification has nevertheless contributed to evolving understandings of the right to political participation while also

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[76] The international character of such negotiations along with their "time-bounded" nature, in contrast with other domains (most notably elections) which enable the exercise of political participation on a regular or recurring basis, appeared to militate against their consideration as domains for political participation. Often focused on conflict between rather than within states, the substantive content of many peace negotiations—e.g., the cessation of hostilities and the nature of inter-state relations—appeared to fall outside issues generally considered to be within the public sphere. *See*, Chapter 2, *infra* n. 170, 245-248 and corresponding text.

[77] This can be ascribed in part to the initial "compartmentalization" of human rights and refugee law such that the international human rights regime with responsibility for oversight of treaties which codify political participation as a basic human right focused on the protection of individuals and groups who remained in their countries of citizenship while the international refugee regime with its "non-political" and humanitarian mandate assumed responsibility for the situation of refugees in their countries of asylum. This division of responsibilities with respect to the protection of fundamental human rights and freedoms created a peculiar situation in which political persecution comprised grounds for refugee status, while the protection of a refugee's political rights appeared to fall outside the mandate of both the international refugee and human rights regimes. *See*, Chapter 2, *infra* n. 204-205 and corresponding text.

[78] The initial and almost exclusive focus on activities and domains for political participation within the state arguably rendered refugees "invisible" in the study of political participation by virtue of their presence outside their countries of origin. The apparent invisibility of refugees may also be explained, however, by the view that while the causes of refugee situations are inherently political, the response to forced displacement including the search for and negotiation of durable solutions is primarily a humanitarian issue. The establishment of a tripartite mechanism to facilitate joint planning between UNHCR, the country of origin and host country, moreover, arguably consolidated the systemic exclusion of refugees from the negotiation of durable solutions to their situation. *See*, Chapter 2, *infra* n. 206, 286-289 and corresponding text.

enhancing its normative strength.[79] The largely internal and complex nature of armed conflict along with the shortcomings if not failings of traditional forms of diplomacy, not to mention the participatory demands and abilities of civil society actors to influence peacemaking processes, have likewise contributed to new approaches and understandings of how armed conflicts come to an end.[80] These developments have influenced and in turn have been influenced by a range of parallel discourses including those relating to women, minorities, indigenous peoples, refugees and IDPs, civil society, human security, human rights, development and democracy.[81] Common to each is the growing legal and

[79] In 1989, as the Cold War drew to a close, the UN General Assembly set an agenda for the 1990s calling upon member states to promote acceptance of and respect for the principles of international law and to encourage the progressive development of international law and its codification. GA Res. 44/23, 44th Sess., 60th Plenary Mtg., UN Doc. A/RES/44/23, Nov. 17, 1989. The details of the agenda were set out and subsequent developments reviewed in a series of resolutions adopted by and reports submitted to the General Assembly. The right to political participation was enshrined throughout the period in new treaties relating to the rights of indigenous peoples, minorities, migrant workers, non-citizens and women and in a draft treaty on human rights in the Arab world. It was also enshrined in a wide range of declarations and resolutions on women, indigenous peoples, minorities, refugees, human rights, elections, democracy and peace adopted by international and regional organizations. Several UN committees responsible for oversight of international human rights treaties issued comments and recommendations clarifying the substantive content of the right to political participation. The end of the Cold War also saw a significant increase in ratification of major treaties (ICCPR, 59 states; ICEDAW 67 states; ICERD, 39 states) which enshrine political participation as a fundamental human right. As Koskenniemi remarks, in a brief history of the development of international law since WWII, "[i]n the early and mid-1990s, the rhetoric of the 'rule of law' was everywhere". Koskenniemi 2009, para. 42. A selection of relevant instruments and provisions can be found in, Annex II.

[80] The vast majority of armed conflicts took place within rather than between states, a trend noted by the UN Secretary-General in the 1990s in a supplement to a report setting out an *Agenda for Peace* for the post-Cold War era. UNSG 1995, para. 10. International and regional efforts to manage and resolve such conflicts were often constrained by principles and organizational mandates which prohibited intervention in the internal affairs of states. Spencer and Spencer 1992, 7–8. The ethnic or identity-based nature of many conflicts, the subjective nature of disagreements between warring parties, the proliferation of conflict actors and consequent diffusion of power, the regional and international scope of many conflicts and their protracted character including the repeated failure of peacemaking efforts contributed to the complexity of armed conflict in the post-Cold War period. Lederach 1997, 5–17; Wallensteen and Magareta 2001, 634; and, Barnes 2006, 15–18. The impact of armed conflict on civilian populations coupled with an increasing ability to influence peacemaking processes partly as a result of developments in travel and communications technologies informed and strengthened demands for a role in the resolution and transformation of armed conflict. A selection of relevant data can be found in, Annex III.

[81] This includes a wide array of UN declarations, programmes of action and resolutions which address the role of women in international peace and security which arguably contributed to and culminated in the adoption of Security Council Resolution 1325 (2000) and the consideration of a new protocol to the African Charter on Human and Peoples' Rights with provisions relating to the participation of women in the negotiated settlement of armed conflict. The post-Cold War period also saw renewed concern about minority rights in the

practical significance of popular sovereignty along with the concomitant shrinkage of domains long considered to fall within the sole jurisdiction of the state. The resulting synergy of discourses and developments has arguably begun to reshape norms and practices in ways that are significant for the participation of refugees in the negotiation of durable solutions to their situation.

The literature on the right to political participation and on the study of its practice is nevertheless largely silent on both legal and empirical aspects of refugee participation in the negotiation of durable solutions. It has yet to address, in substantive terms, the two fundamental questions that are central to this study, namely, whether peace negotiations comprise a conduct of public affairs under international law entailing a concomitant right to take part and whether citizens, refugees in particular, have a right to participate in the conduct of public affairs when they are outside their country of citizenship.[82] Research in

context of growing "cultural diversity" (Kymlicka 1996) and a resurgence of ethnic or identity-based conflict, especially in Europe with the dissolution of the former Soviet Union and former Yugoslavia. The long-term struggles of indigenous peoples also received greater attention due in no small part to the mobilization, organization and participation of indigenous peoples in the drafting of new instruments to address their plight. The shift towards voluntary repatriation as the preferred or most appropriate solution for refugees along with the growing phenomenon of internal displacement, partly a function of the internal nature of armed conflict and the growing retiscence of states to provide safe asylum, led to greater focus on the rights of refugees in their countries of origin. The 1990s also witnessed a rapid growth in civil society organizations worldwide along with their growing involvement in public affairs at all levels—local, national, regional and international. Falk 2001, 164–165; and, Paffenholz 2009, 61–62. The impact of armed conflict on civilians in the context of an increasingly globalized world informed new thinking on security characterized by a shift away from state-centred ideas of security or at least greater consideration of the security needs of individuals and communities. UNDP 1994; and, Alkire 2003. The end of the Cold War also contibuted to the renewed emphasis on the promotion and development of international law including the mainstreaming of human rights-based approaches in international, regional and national organizations, beginning with the field of development and expanding to an increasingly wide range of additional fields including peacebuilding. Schabas and Fitzmaurice 2007, 19–50. The interest in civil society participation in peacebuilding was also a function of the participatory agenda articulated by development actors who played an increasingly broader role in peacebuilding processes in the 1990s. Pouligny 2005; Paffenholz and Spurk 2006, 17–18; Barnes 2006, 21; and, Paffenholz 2009, 61–62. The end of the Cold War also contributed to an expansion in the number of democratic regimes worldwide along with efforts to promote, strengthen and codify democracy as a fundamental human right. This included a renewed focus on the role of democracy in the resolution of conflict and the maintenance of peace. UNSG 1996, 6–7.

[82] The study of political participation in each of these two major fields can be divided into at least three major phases. Initial research in each field tended to focus on indirect forms of political participation, in particular, the right to vote and to be elected along with related

both fields of study—legal and empirical—has tended to focus on "indirect" forms of political participation that take place within the confines of the state with arguably less attention to the various "direct" ways and means that citizens take part in the conduct of public affairs including those that cross or occur beyond the borders of the state.[83] The literature has nevertheless begun to examine ways in which each of the aforementioned discourses and developments have begun to shape or re-shape understandings of political participation in both law and in practice. Research on women, indigenous peoples and minorities, constitution and international law-making processes, civic engagement and political transnationalism, among others, provide significant conceptual perspectives, but do not explicitly address the inter-related questions of whether peace negotiations comprise a conduct of public affairs and whether refugees have a right to take part in the public affairs of their countries of origin.[84] Nor do they offer empirically descriptive accounts of the

campaign rights and practices. The research agenda subsequently widened to include more direct forms of political participation with a concomitant shift away from the almost exclusive interest in the participation of individuals towards or at least greater consideration of the participation of certain groups. More recently, research has begun to explore the right and practice of political participation in domains that extend across and beyond the borders of the state. For additional discussion of each field *see*, Chapter 2, *infra* n. 167, 244.

83 In one of the earliest studies on the right to political participation, for example, Santa Cruz examined the elimination of discrimination in the matter of political rights primarily in relation to the right to vote and to be elected. Santa Cruz 1962. While Steiner's major study on the right to political participation examined the right to take part in the conduct of public affairs directly or indirectly through freely chosen representatives, Franck's proposition of an emerging democratic entitlement and the considerable body of literature that followed focused like Santa Cruz on the right to vote and to be elected. Steiner 1988; and, Franck 1992. It is only recently, as noted above, that legal scholars have begun to explore the right to take part in the conduct of public affairs directly in a more substantive manner. Early studies on political participation similarly tended to focus on voting and related campaign activities as the primary domain for political participation. Lazarsfeld, Berelson, and Gaudet 1948, *cited in*, Van Deth 2001. Empirical research on political participation in subsequent decades has similarly been dominated by studies on voting and related campaign activities. Verba 1978; and, Parry, Moyser, and Day 1992, *cited in*, Teorell 2006, 788–789. Empirical research on deliberate and direct democracy is relatively recent.

84 The importance of these fields in addressing legal and empirical aspects of refugee participation in the negotiation of durable solutions arises in part from analogies that may be drawn and through conceptual stretching that allows for the inclusion of peace negotiations as a conduct of public affairs and domain for political participation along with the consideration of refugees as political actors and citizens with a concomitant right to take part in the public affairs of their home countries. The literature on women, indigenous peoples and minorities, for example, offer a number of useful perspectives on the law and practice of

extent to which peace negotiations comprise a domain for political participation or the scope of refugee participation in the public affairs of their countries of origin through negotiations or otherwise.[85]

Long focused on the role of states and third party intermediaries with more recent interest in rebel and opposition movements, peace and conflict studies literature has only begun to examine the direct participation of civil society actors in the management, resolution and transformation of armed conflict.[86] The literature nevertheless focuses predominantly on unofficial diplomacy, post-conflict elections and post-agreement peacebuilding programmes and initiatives.[87] Few scholars and practitioners explore peace

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political participation which may be applied by analogy to refugees given the fact that women, indigenous peoples and minorities often comprise major sectors of refugee populations. *See*, Chapter 2, *infra* n. 199-200, 186-192. The literature on participatory constitution making and international law making is relevant to the extent that each process may be considered analogous to the negotiated settlement of armed conflict. *See*, Chapter 2, *infra* n. 193-197. The conceptual stretching evident in the literature on civic engagement allows for the inclusion of a broad range of activities and domains for political participation which arguably may include public participation in peace negotiations. *See*, Chapter 2, *infra* n. 273-277. Political transnationalism directs one's gaze beyond geographically-confined constituencies that have otherwise made refugees seemingly invisible in the study of political participation. *See*, Chapter 2, *infra* n. 228-233, 290-297. The related concept of diaspora applied to research in peacemaking, meanwhile, counters a tendency to view diaspora's contribution, including that of refugees, primarily, if not solely, in terms of initiating, sustaining or augmenting conflict. *See*, Chapter 2, *infra* n. 298-306.

[85] The most extensive account can be found in recent literature on women's participation in peacemaking, which concludes that women comprise less than 10 percent of participants in official peace negotiations. *See*, Chapter 2, *infra* n. 285. The study of political transnationalism, which addresses some of the conceptual problems that arise in the consideration of refugee participation in the negotiation of durable solutions, namely, domains not bounded fully by the geographical borders of the state and political participants resident outside the borders of the state, is comprised primarily of case studies and small-N comparisons. *See*, Chapter 2, *infra* n. 296. The study of diaspora in peacemaking suffers from a similar lack of empirical data and also appears to be one of the weakest areas of diaspora research. *See*, Chapter 2, *infra* n. 303.

[86] This includes a small number of case studies, at least one empirical study, a briefing paper prepared for the Oslo Forum, an annual mediator's retreat, special volumes of *Accord: An International Review of Peace Initiatives* and *International Negotiation* on public participation in peacemaking, and several thematic studies which address the roles of civil society in peacebuilding including their participation in peace negotiations. For a brief review of the literature *see*, Chapter 2, *infra* n. 278-285. These studies arguably marked a new phase in the study of civil society participation in the negotiated settlement of armed conflict with earlier research, summarized below, focused on civil society participation in unofficial or indirect initiatives followed by research on participation in post-agreement peacebuilding.

[87] Davidson and Montville's distinction between Track I (official) and Track II (unofficial) negotiations in the 1980s arguably established a foundation for the consideration of civil society participation in the negotiated settlement of armed conflict. It was the expansion in Track II agenda from relationship-building to policy-making and the inclusion of issues

negotiations as a domain for political participation or consider the situation of refugees beyond the causes and consequences of armed conflict.[88] Common to each of these areas of study is a distinct lack of adequate data, especially when compared to that assembled over time on the role of states and third party mediators.[89] There also appears to be little connection between existing research on public participation—in conflict prevention to peacemaking and post-conflict peacebuilding—and the broader body of legal and empirical

generally regarded as falling within the public sphere, however, that contributed to evolving understandings of peace negotiations as a domain for public participation. *See*, Chapter 2, *infra* n. 249-258. In the 1990s post-conflict elections appeared to comprise the primary domain for political participation in peacebuilding contexts with the holding of elections following the signing of a peace agreement the centre-piece of international peacebuilding missions. Exemplifying the increasingly determinate character of the right to vote and to be elected, the study of post-conflict elections also marked a resurgence in academic and policy interest in the nexus of democracy and peace. *See*, Chapter 2, *infra* n. 267-272. The shortcomings if not failings of electoral democracy in bridging transitions from war to peace, however, contributed in part to new thinking about the roles of civil society in post-agreement peacebuilding and the implementation of agreements reached. The emphasis on civil society participation in the post-agreement phase also appeared to address or side-step challenges associated with the participation of civil society actors in official negotiations not least of which was the reluctance of official actors and mediators to allow the participation of unofficial actors. *See*, Chapter 2, *infra* n. 259-265.

[88] The consideration of post-conflict elections, as noted above, appeared to be the primary domain for political participation in peacebuilding contexts. While many of the activities associated with post-conflict peacebuilding fall within the repertoire of activities examined in the study of political participation, peace and conflict research rarely appears to consider or explore such activities within the broader body of literature on political participation. The related body of literature on transitional justice also appeared to provide an entry point for the consideration of refugee participation in the negotiation of durable solutions, but does not address substantive aspects of the issue. *See*, Chapter 2, *infra* n. 200, 234-237. The situation of refugees in peace and conflict contexts often "falls in the cracks between various scholarly and practical disciplines" and has been addressed largely in the relation to the causes and consequences of conflict-induced displacement. Lischer 2007, 143. Locating refugee studies in conflict research, Mussano argues that the consideration of forced migration has been "prompted primarily by worldwide historical and political developments that have seen asylum-seekers bring the problem of population displacement caused by war, famine and natural disasters to the doors of Western societies". Mussano 2003, 129.

[89] Datasets on conflict management and resolution focus largely on mediation of inter-state and more recently intra-state conflict. For a brief summary *see*, DeRouen, Bercovitch, and Pospieszna 2011, 663–664. Collation of empirical data on Track II or unofficial peacemaking is hindered in part by the often secretive nature of such initiatives while the broad array of activities and domains for participation in peacebuilding coupled with extension of the concept to all phases of the peacebuilding process—prevention, peacemaking, peacekeeping and post-conflict peacebuilding—similarly complicate collation of empirically descriptive data on civil society participation. *See*, Chapter 2, *infra* n. 258-265. The literature on post-conflict elections like much of the literature above tends to focus on well-known case studies, in particular, those in which there was been significant external—regional and international—intervention and engagement in peacebuilding. *See*, Chapter 2, *infra* n. 268. This gap has been addressed in part by studies which have relied on peace agreement datasets for large-N comparisons of civil society participation. *See*, Chapter 2, *infra* n. 265.

literature on political participation.[90] Peace and conflict studies literature nevertheless appears to be locus for the consideration of peace negotiations as a conduct of public affairs entailing a concomitant right to take part along with the inspiration for the subsequent consideration of refugee participation in the negotiation of durable solutions. The literature has nevertheless yet to address each of these issues in a substantive way.

The consideration of refugee participation in the negotiation of durable solutions in refugee and forced migration studies, meanwhile, is limited to a small number of recent policy-oriented studies which, although important, provide little insight on legal and empirical aspects of such participation.[91] Participation has been viewed primarily in the context of development while the study of refugee participation in the public affairs of their countries of origin—legal and empirical—has focused predominantly on their involvement in post-conflict elections with little attention to other forms of participation.[92] Research

[90] Studies appear to posit or identify peace negotiations as comprising a conduct of public affairs entailing a concomitant right to take part, but have yet to explore the substantive basis for such participation under international law. *See*, Chapter 2, *infra* n. 202-203. While research on post-conflict elections appeared to provide an entry point for the consideration of refugee participation in the public affairs of their home countries and has begun to explore the legal basis for such participation, it has yet to address the related question of whether refugees have a right to take part in the negotiation of durable solutions to their situation. *See*, Chapter 2, *infra* n. 223-227. There appears to be little connection, as noted above, between emerging research on the direct participation of civil society actors in peace negotiations and the broader body of literature on political participation, notwithstanding the fact that many of the issues addressed at the negotiating table and in agreements reached are widely recognized as falling within the public sphere.

[91] This includes a small number of case studies, policy studies on IDPs including those produced by the Brookings Institution-University of Bern Project on Internal Displacement, UNHCR handbooks, a briefing paper produced by UNHCR's Africa Bureau for the agency's annual consultations with non-governmental partners and a policy paper published by UNCHR's Policy Development and Evaluation Service. *See*, Chapter 2, *infra* n. 208-222, 238-243, 313-325. While UNHCR recommends that states and other relevant actors facilitate the participation of refugees, women in particular, in peace negotiations which address their situation, agency evaluations of repatriation operations are largely silent on the issue. The literature on durable solutions, meanwhile, tends to focus predominantly on aspects of refugee return, restitution, compensation and increasingly on transitional justice, that is to say on substantive aspects of durable solutions, with little attention to procedural elements, most notably the participation of refugees in the design, planning, implementation and evaluation of durable solutions, whether through peace negotiations or otherwise.

[92] The protracted refugee situations of the 1980s and UNHCR's promotion of development in the absence of durable solutions along with emergence of discourses and practices of participatory development, initially among non-governmental development actors, the

on the political agency of refugees, especially in relation to their home countries, has otherwise been influenced by early consideration of politically and militarily active refugees—i.e., "refugee warriors"—with the boundaries between the two often blurred.[93] The small body of existing research on refugee participation in the negotiation of durable solutions appears to have been inspired in large part by recent literature on public participation in peacemaking with less obvious connection to the broader body of literature on the law and practice of political participation.[94] Studies which describe refugee participation in the negotiation of durable solutions as a right and examine related practice nevertheless offer little substantive insight on its legal and empirical nature.

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redirection of development aid towards the NGO sector and subsequent recognition of the right of individuals and groups to take part in development arguably provided the foundation for the consideration of refugee participation in development contexts. The practice of refugee participation in referenda and early "post-conflict" elections in decolonization contexts in Africa in the 1960s and 1970s, which has received relatively little coverage in the literature, appeared to provide a basis for the consideration decades later of refugee participation in post-conflict elections following the end of the Cold War. The latter has been been examined in a wide range of case studies, small-N comparisons, a special issue of *Refugee Survey Quarterly*, UNHCR handbooks and through IOM's Participatory Elections Project. *See*, Chapter 2, *infra* n. 307-312.

93 The treatment or consideration of refugees as political actors appears to pre-date their later consideration as "warriors" or potential "spoilers" to a negotiated settlement of armed conflict. Debate around the inclusion of political rights in the 1951 Convention Relating to the Status of Refugees, for example, revolved around concerns expressed by some states that recognition of such rights could lead to instability within and between states. The compromise reached under which the Convention neither explicitly prohibited nor affirmed the political rights of refugees arguably contributed to a perception of refugees as non-political actors. A more critical reading suggests that the compromise in fact aimed to depoliticize refugees. The consideration of refugees as political actors in the context of referenda and post-conflict elections during decolonization, as noted above, has been largely overlooked in the literature, in contrast to research on "refugee warriors" which often appeared to cast refugee agency in a largely negative context, notwithstanding the fact that the concept also challenged conventional views of refugee dependency. The more recent study of refugee participation in post-conflict elections and in the negotiation of durable solutions appears to mark a shift towards greater consideration of the positive or constructive contribution of refugees in transitions from war to peace.

94 The small body of research referred to above commonly cites the lack of literature and frequently relies on the broader body of literature on public participation, women in particular, in the negotiated settlement of armed conflict. Studies situate refugee participation in the context of human rights-based approaches to peacebuilding and the inter-related concepts of popular sovereignty, democracy and self-determination while a number suggest that refugees have a right to take part in the negotiation of durable solutions. In comparison to the literature on refugee participation in post-conflict elections, however, the literature does not address the substantive basis for refugee participation in peace negotiations under international law. *See*, Chapter 2, *infra* n. 319-325. Reference to the study of political participation appears to be virtually absent from research which examines refugee participation in the negotiation of durable solutions to their situation.

III. Purpose

This study examines the legal and empirical aspects of refugee participation in the negotiation of durable solutions. The primary and dual objective of the study is to determine (a) whether Palestinian refugees had a right to take part in talks on durable solutions during peace negotiations between the PLO and Israel in the 1990s, and (b) whether the exclusion of Palestinian refugees from the negotiating table was unique or common to refugee experiences elsewhere during the same period.[95] Two secondary and inter-related objectives address the legal and empirical aspects of refugee participation in the negotiation of durable solutions. The first of these secondary objectives is to establish whether refugees have a right to take part in negotiations which aim to resolve their plight. The specific aims are to determine (a) whether peace negotiations comprise a conduct of public affairs under international law, and (b) whether citizens are entitled to take part in the public affairs of their country when they are displaced outside their country of citizenship. The second of these two

[95] The consideration of both legal and empirical aspects of refugee participation in the negotiation of durable solutions is critical for a number of reasons. Discussion of principle without reference to practice, while interesting as a theoretical exercise, may easily overlook the obstacles, implications and responsibilities raised by the elaboration of the substantive content of the right to political participation in new directions. As Held observes in his volume on models of democracy, "[t]he specification of a principle's 'conditions of enactment' is a vital matter; for if a theory of the most desirable form of democracy is to be at all plausible, it must be concerned with both theoretical and practical issues, with philosophical as well as organizational and institutional questions. Without this *double focus*, an arbitrary choice of principles, and seemingly endless abstract debates about them, are encouraged". Held 1987, 273. *See also*, Steiner 1988, 98–99. Discussion of practice without reference to principle, meanwhile, fails to account for the fundamental feature of refugee status, namely, the specific body of rights and related protections afforded to refugees as a result of their loss of national protection. Arguing that "concerns for refugees must derive from the fact that they are human rights made visible", Frelick posits that "[t]he starting point for any effective approach to solving the world refugee problem is to identify it, first and foremost, as a human rights issue. The *cause* of forced migration is essentially a human rights violation; the response must be built on the need to rectify the fundamental abuse of exile". Frelick 1990, 442–443. These rationale—lack of attention to practice and lack of attention to law—also comprise two contrasting criticisms of past, current and proposed approaches to durable solutions for Palestinian refugees.

objectives is to establish the extent to which refugees actually take part in the negotiation of durable solutions. The specific aims are to determine (a) the extent to which peace negotiations comprise a domain for political participation, and (b) the extent to which refugees participate in the negotiation of durable solutions.

IV. Sources

The legal analysis in this study (Chapter 4) draws upon three different sources of international law: international treaty law, judicial decisions and highly qualified juristic writings as well as a wide array of additional "soft law" instruments which may contribute to the development of "hard law" over time.[96] The principal reference for the right to political participation is found in international human rights law, the law conferring rights on both individuals and groups.[97] The study also draws upon jurisprudence on the right to political participation from UN human rights treaty bodies and regional courts and commissions responsible for oversight of international and regional treaties codifying political participation as a basic human right.[98] Commentaries on

[96] The sources of international law include international conventions, international custom and general principles of law. Judicial decisions and the teachings of the most highly qualified publicists comprise subsidiary sources of international law. Statute of the International Court of Justice, June 26, 1945 (*entry into force* Oct. 24, 1945), art. 38(1), 59 Stat. 1031. The contents of soft law instruments may include both "hard" or binding and "soft" or non-binding principles. Sztucki 1989, 305. For additional discussion of soft law see, Chinkin 1989; and, Thürer 2009.

[97] A list of relevant treaties—international and regional—and provisions can be found in Annex II, Table A2.1 - Human Rights Treaty Law, Universal Instruments; and, Table A2.2 - Human Rights Treaty Law, Regional Instruments. For a brief discussion on the right to political participation and other bodies of international treaty law, in particular, international humanitarian law and international refugee law, *see infra* n. 124.

[98] The jurisprudence on the right to political participation was derived from a search of electronic databases for UN human rights treaty bodies (OHCHR <http://www.ohchr.org>) and regional courts and commissions (ECtHR <http://www.echr.coe.int/echr/Homepage_EN>; IACtHR <http://www.cidh.oas.org>; and, AfCHR <http://www.achpr.org/english/_info/news_en.html>). The study also relied on a published index of decisions by the Inter-American Commission on Human Rights (Wilson 1994; and, Wilson 2001) and decisions by the African Commission on Human and Peoples

relevant human rights treaties and studies on the right to political participation provide supplementary information.[99] The study also relies on various soft law sources including resolutions[100], comments, recommendations and concluding observations[101], notes and conclusions[102], declarations and programmes of action[103] and codes of conduct and guiding principles adopted by international and regional organizations[104].

Rights archived in the African Human Rights Case Law Analyzer (Institute for Human Rights and Development in Africa <http://caselaw.ihrda.org/>). Relevant jurisprudence and provisions are reproduced in, Annex II, Table A2.5: Human Rights Treaty Committees, Jurisprudence; and, Table A2.6 - Regional Human Rights Courts and Commissions, Jurisprudence.

[99] This includes commentaries on the UDHR (Rosas 1992), the ICCPR (Nowak 1993; and, Joseph 2000), the ICEDAW (Chinkin, Freedman, and Rudolf 2012), the ECHR (Kempees 1996; Šikuta and Hubálková 2007; and, Mowbray 2012), the EFCNM (Weller 2005; and, Weller and Knobbs 2010) and the ACHR (Burgorgue-Larsen, Úbeda de Torres, and Greenstein 2011). For a discussion of major studies on the right to political participation *see*, Chapter 2 - Review of Literature.

[100] These include resolutions adopted by the United Nations Security Council, General Assembly, Commission on Human Rights and Sub-Commission on the Promotion and Protection of Human Rights. The list was compiled through a keyword search of UN resolutions adopted since 1945 available through RefWorld <http://www.refworld.org>. Relevant instruments and provisions are reproduced in, Annex II, Table A2.10 - United Nations Security Council Resolutions; Table A2.11 - United Nations General Assembly Resolutions; Table A2.12 - United Nations Commission on Human Rights/Human Rights Council Resolutions; and, Table A2.13 - United Nations Sub-Commission on the Protection and Promotion of Human Rights Resolutions.

[101] These include "general comments" and "general recommendations" adopted by human rights treaty committees with respect to the interpretation and implementation of human rights treaties. The study also reviewed concluding observations issued by human rights committees on the compliance of state signatories with relevant articles on the right to political participation under the ICCPR, ICERD and ICEDAW. The general comments, recommendations and observations were compiled through search engines on OHCHR <http://www.ohchr.org>; and, The United Nations Human Rights Treaties <http://www.bayefsky.com>. Relevant comments, recommendations and observations are reproduced in, Annex II, Table A2.3 - Human Rights Treaty Committees, General Comments/Recommendations; and, Table A2.4 - Human Rights Treaty Committees, Concluding Observations.

[102] These include "notes" and "conclusions" on international protection adopted by UNHCR's Executive Committee. A list of notes and conclusions were identified through a search of RefWorld <http://www.refworld.org>. Relevant notes and conclusions are reproduced in, Annex II, Table A2.14 - UNHCR Executive Committee Conclusions and Guidelines.

[103] These include declarations and programmes adopted by the UN General Assembly, the Organization for Security and Cooperation in Europe and the Organization of African Unity/African Unity. The list was compiled through a keyword search of declarations and programmes of action adopted since 1945 available through RefWorld <http://www.refworld.org>. Relevant instruments and provisions are reproduced in, Annex II, Table A2.8 - International Declarations; and, Table A2.9 - Regional Declarations.

[104] These include UNHCR handbooks and UN guiding principles on refugees and displaced persons. The list was compiled through a search of RefWorld <http://www.refworld.org>. Relevant instruments and provisions are reproduced in, Annex II, Table A2.15 - UNHCR Handbooks.

The empirical analysis in the study (Chapter 5) draws upon three main sources of data: the Uppsala Conflict Data Program (UCDP) Peace Agreement Dataset, secondary studies on peacemaking and forced displacement and UNHCR's Statistical Online Population Database. The primary data for the study is derived from the UCDP Peace Agreement Dataset which includes all armed conflicts between 1989 and 2005 regulated or terminated through a peace agreement between at least two warring parties, one of which is a government, which addresses or sets out a process to address the primary disagreement or incompatibility between them.[105] The information derived from the UCDP dataset is supplemented by information from books and major journals, documents and publications produced by non-governmental, governmental and intergovernmental organizations and agencies in addition to various unpublished documents and monographs.[106] UNHCR's Statistical Online Population Database provides baseline data to compare refugee populations across cases including estimates used in the study for the scope of refugee

[105] Harbom, Högbladh, and Wallensteen 2006. The dataset codes each agreement according to a range of variables covering the general features of each agreement, including signatories and type of agreement, regulation of the parties' behavior and the incompatibility between them, issues common to agreements including durable solutions for refugees and conflict termination. Högbladh 2006a. The lower threshold of 25 battle-related deaths, in comparison to a 1,000 battle-related death threshold used in other datasets on armed conflict (e.g., Correlates of War (COW)), provides for the inclusion of armed conflicts regulated or terminated through peace agreements (e.g., Spain (Basque) and UK (Northern Ireland)) which would otherwise be excluded from the peace agreement dataset. The inclusion of dyadic agreements in which at least one of the warring parties in a conflict is excluded provides for the inclusion of armed conflicts that would otherwise be excluded by a focus solely on comprehensive agreements signed by all of the warring parties in a conflict. Gleditsch et al. 2002; and, Högbladh 2006b. The dataset is available from the Uppsala University, Department of Peace and Conflict Research <http://www.pcr.uu.se/research/ucdp/datasets/>. Selected variables for each of the cases covered in study are reproduced in, Annex III.

[106] In addition to published studies on peacemaking and forced migration, the study also surveyed electronic research in a number of major archives including: Forced Migration Online <http://www.forcedmigration.org>; RefWorld <http://www.refworld.org>; the UN Official Document System <http://www.un.org/en/documents/index.shtml>; and, UN Peacemaker <http://peacemaker.unlb.org>. For discussion of major studies on public participation including refugees in peacemaking *see*, Chapter 2 - Review of Literature. An initial search of Keesings and Factiva, electronic archives of global news sources used to gather information for UCDP datasets relied upon in this study, yielded few sources on refugee participation in peace negotiations.

participation in the negotiation of durable solutions.[107]

V. Methods

In order to assess (i) whether peace negotiations comprise a conduct for public affairs entailing a concomitant right to take part and (ii) whether citizens, refugees in particular, have a right to take part in the conduct of public affairs when they are outside their country of origin the study first assembled a list of relevant human rights treaties, jurisprudence and judicial writings and soft law instruments relating to the right to political participation. Analysis of treaty provisions followed the rules of treaty interpretation prescribed by the Vienna Convention on the Law of Treaties which stipulates that "[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose".[108] The study subsequently reviewed the preparatory works (*travaux préparatoires*) of major treaties, international and regional jurisprudence and major commentaries to clarify the substantive content of the right to political

[107] The statistics in the database are derived from governmental agencies, UNHCR field offices and NGOs and include individuals recognized as refugees under international and regional refugee conventions, UNHCR's 1950 Statute, individuals granted complementary forms of protection and those enjoying temporary protection. UNHCR, Statistical Online Population Database <http://www.unhcr.org/pages/4a013eb06.html>. Selected statistics are reproduced in Annex III.

[108] Vienna Convention on the Law of Treaties, May 23, 1969, art. 31(1) (*entry into force* 27 January 1980), 1155 UNTS 331. The context for treaty interpretation, in addition to the treaty's text, includes its preamble, annexes, agreements by the parties to a treaty made in relation to its conclusion and other related instruments made by one or more parties to a treaty with respect to its conclusion. *Ibid.*, art. 31(2). Treaty interpretation should also take into account subsequent agreements between the parties regarding the interpretation of the treaty or application of its provisions, practice in a treaty's application which establishes agreement among parties regarding its interpretation and relevant rules of international law applicable in the relations between the parties. *Ibid.*, art. 31(3). The Vienna Convention does not explicitly define what comprises a treaty's object and purpose, however, Hathaway notes that, given the widespread acceptance of treaties as "living instruments", the object and purpose of a treaty in reference to the interpretation of its provisions should take into account the historical intentions of the drafters as well as the existing context for its implementation in order to "ensure the treaty's effectiveness within its modern social and legal setting". Hathaway 2005, 55. *See also*, Jonas and Saunders 2010, 577–582.

participation both in its historical context and in relation to its contemporary application.[109] Finally, the study analyzed the broader body of soft law instruments to further identify evolving understandings of political participation since the right to take part in the conduct of public affairs was first codified as a fundamental human right. The legal findings were then applied to the Palestinian refugee case.

In order to assess (i) the extent to which peace negotiations comprise a domain for political participation in practice and (ii) the extent to which refugees participate in the negotiation of durable solutions to their situation the study assembled a list from the UCDP Peace Agreement Dataset of all armed conflicts between 1990 and 2000 that were either regulated or terminated through negotiations.[110] Peace agreements in each case were then reviewed to determine whether civil society actors either participated in negotiations alongside warring parties or were among the signatories to each of the peace

[109] In situations where treaty provisions are ambiguous or obscure or where interpretation leads to absurd or unreasonable results, recourse may be had to a treaty's preparatory works (travaux préparatoires). Vienna Convention on the Law of Treaties, *supra* n. 108, art. 32. The comments and recommendations issued by UN human rights treaty bodies provide further clarification of treaty provisions. The Human Rights Committee, which is responsible for oversight of state compliance with the International Covenant on Civil and Political Rights, the primary reference to the right to political participation, describes its general comments, for example, as "general statement[s] of law [which express] the Committee's conceptual understanding of the content [or normative substance] of a particular provision". The Committee further notes that its comments "permit [the ICCPR] to speak to modern circumstances in which understandings and perceptions of language and practice have evolved substantially since the Covenant was adopted". OHCHR 2005a, 24.

[110] The study also cross-referenced the cases in the UCDP dataset with other peace agreement databases to determine additional cases. This included the University of Ulster, Transitional Justice Institute, International Conflict Research Institute, "The Transitional Justice Peace Agreements Database" <http://www.peaceagreements.ulster.ac.uk/>; United States Institute of Peace, "The Peace Agreements Digital Collection" <http://www.usip.org/library/pa.html>; Conciliation Resources, "Accord: International Resources for Peacemaking" <http://www.c-r.org/resources/accord.php>; Kroc Institute for International Peace Studies, "Peace Accords Matrix" <https://peaceaccords.nd.edu/>; and, UN Peacemaker, "Peace Agreements" <http://peacemaker.unlb.org/index1.php>. The study identified 7 additional cases excluded from the UCDP dataset: Algeria, Ethiopia, India-Pakistan, Indonesia (East Timor), Indonesia (Aceh), Lesotho and Senegal (Casamance). For a comparison of the number of agreements across regions and cases in each of the above databases *see*, Annex III. The analysis in Chapter 5 is nevertheless limited to the UCDP dataset due to the lack of comparable coding, described briefly above, for each of the aforementioned cases.

agreements.[111] This information was supplemented by a literature review to determine whether there were additional cases in which civil society actors took part, but were not mentioned in or listed as signatories to peace agreements. Peace agreements and secondary sources were also analyzed for provisions relating to civil society participation in unofficial or indirect peacemaking and in post-conflict peacebuilding including the implementation of agreements reached in order to provide broader context for the consideration of peace negotiations as a domain for political participation.[112] The study then applied the same methodology to each case in which a peace agreement included provisions relating to durable solutions for refugees to determine the extent of their participation.[113] After identifying the number of cases of refugee participation,

[111] The study considers civil society as "the arena of voluntary, collective, actions of an institutional nature around shared interests, purposes, and values that are distinct from those of the state, family, and market. Civil society consists of a large and diverse set of voluntary organizations and comprises non-state actors and associations which are not purely driven by private or economic interests, are autonomously organized, show civil virtue, and interact in the public sphere". Paffenholz 2009, 61. For additional discussion of civil society in peacebuilding contexts *see*, Paffenholz and Spurk 2006, 2–14; and, Wanis-St. John and Kew 2008, 14–17.

[112] The term "unofficial" or "indirect" peacemaking is used to describe the wide range of mechanisms for civil society participation in peacemaking processes outside of "official" or "direct" negotiations among warring parties. This includes Track II and Track III initiatives and other mechanisms such as civil society assemblies, national consultative conferences and inter-community meetings. The term "peacebuilding" has acquired a diversity of meanings and usages encompassing a wide array of activities associated with the various phases of the conflict process from prevention to peacemaking, peacekeeping and post-conflict peacebuilding. The emphasis here is on the latter as defined by the UN Secretary-General in his 1992 report on *An Agenda for Peace* in the post-Cold War era. The report defines post-conflict peacebuilding as "action to identify and support structure which will tend to strengthen and solidify peace in order to avoid a relapse into conflict". UNSG 1992, para. 21. For additional discussion *see*, Chetail 2009.

[113] The term "refugees" describes individuals and groups considered by UNHCR in both law and practice as refugees. "While the UNHCR Statute based UNHCR's mandate on a refugee definition assessed individually, over the following decades the focus [has] shifted to groups or broader displacement situations beyond the confines of strict legal definitions". As agency officials explain, "[t]his includes Article 1 of the 1951 Refugee Convention and UNGA and ECOSOC resolutions, as well as organizational and state practice [which] have taken the refugee concept beyond the 1950 definition ... by calling on UNHCR to accept responsibility for particular groups of displaced persons whose circumstances did not meet the classical definition. Broader definition found in Article 1 of the OAU Convention and paragraph 3 of the 1984 Cartagena Declaration on Refugees". Feller and Klug 2011, para. 36-43. The study does not define or include cases in which official negotiators were also refugees as examples of refugee participation in the negotiation of durable solutions. The three "durable solutions" afforded to refugees under international refugee law comprise voluntary repatriation (UNHCR 1980; UNHCR 1985b; and, UNHCR 1994a), host country integration (UNHCR 2005) and third country resettlement (UNHCR 1991a). *See also*, *ibid.*, para. 70-82.

data derived from UNHCR's Statistical Online Population Database was used as a secondary indicator of the scope or extent of such participation. The empirical findings were then compared to the Palestinian refugee case.

V. Limits, Delimitations and Assumptions

The analysis in this study—legal and empirical—is subject to several limitations. First, the legal analysis in Chapter 4 is limited to those instruments which entered into force no later than 2000 in order to coincide with negotiations that aimed to resolve the Palestinian refugee issue.[114] The 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the 2003 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa and the 2004 Arab Charter on Human Rights, all of which entered into force after 2000, along with jurisprudence and soft law post-2000 are thus excluded from the analysis in Chapter 4.[115] The empirical analysis of refugee participation in the negotiation of durable solutions in Chapter 5 is similarly limited to a review of negotiated settlements to armed conflict between 1990 and 2000 in order to compare negotiations with the Palestinian case. The UCDP dataset also excludes cases

Few agreements include provisions relating to host country integration and third country resettlement, solutions usually only available to a minority of refugees and most often dealt with outside the context of agreements which aim to regulate or terminate armed conflict. Housing and property restitution and compensation along with restorative justice are also regarded as important elements of durable solutions for refugees.

[114] A basic principle of international law—doctrine of intertemporal law—is that the legality of actions should be assessed in the context of the law in force at the time of their commission. For a more detailed explanation *see*, Elias 1980. A discussion of the application of the principle in the Palestinian refugee case can be found in, Boling 2007.

[115] International Convention on the Protection of Migrant Workers and Members of Their Families, Dec. 18, 1990 (*entry into force* July 1, 2003), 2220 UNTS 3; Protocol to the African Charter on Human and People's Rights on the Rights of Women, July 11, 2003 (*entry into force* Nov. 25, 2005), CAB/LEG/66.6 (Sept. 13, 2000); and, Arab Charter on Human Rights, Sept. 15, 1994, *reprinted in*, *Human Rights Law Journal* 18 (1997). For a list of additional instruments and provisions *see*, Annex II.

in which at least two of the warring parties signed a ceasefire agreement which did not address or establish a process to address the primary disagreement or incompatibility between them as well as agreements which address or establish a process to address the primary disagreement or incompatibility between warring parties, but which were signed by parties other than the warring parties.[116] Subsequent developments in both law and practice, however, are briefly reviewed in Chapter 6 analysis of results.

The second major limitation relates to the sources used in the study. The legal sources have four major limitations. First, analysis of the drafting histories of treaty provisions relating to the right to political participation is limited by the lack of preparatory works for each treaty.[117] A review of the drafting discussions of each treaty was beyond the scope of this study. Second, there is little jurisprudence from international and regional human rights committees, commissions and courts on the substantive content of the right to take part in the conduct of public affairs or on the right of refugees to take part in the public affairs of their countries of origin.[118] Third, in several cases, international and

[116] UCDP Peace Agreement Database, Ver. 1.0 (2006). Harbom, Högbladh, and Wallensteen 2006; and, Högbladh 2006b. This includes, for example, agreements in Indonesia (East Timor), Lebanon and Nicaragua. For a list of cases between 2001 and 2005, the last year of the UCDP Peace Agreement Dataset, *see*, Annex III. The UCDP published a revised (Ver. 2.) (2012) dataset inclusive of agreements between 1975-2011 following the completion of this study.

[117] The study relied on guides to the *travaux préparatoires* of the ICCPR (Bossuyt 1987), ICEDAW (Rehof 1993) and the ECHR (CoE 1977). The author was unable to locate guides for other major human rights treaties which codify political participation as a fundamental human right.

[118] There were 21 individual complaints filed with the HRC between 1977 and 2000 with regard to alleged violations of article 25 of the ICCPR of which one was ruled inadmissible. Of these only three related to article 25(a). The single complaint with regard to alleged violations of article 5(c) of ICERD was not applicable to the right to take part in the conduct of public affairs directly. No complaints regarding alleged violations of article 7 of ICEDAW were submitted to CEDAW during the period under review. The Committee only came into being in December 2000. The European Court does not appear to have addressed direct forms of political participation relevant to a discussion of a refugee right to take part in the negotiation of durable solutions. ECHR-P1, as noted in Chapter 4, only enshrines an obligation to hold free and fair elections. The study identified six cases as of 2000 in which the AfCmHPR dealt with article 13 under the AfCmHPR none of which addressed the right to take part in the conduct of public affairs directly.

regional bodies responsible for oversight of the respective human rights treaties were established relatively late or not established until after the period under consideration.[119] Fourth, major commentaries and studies of the right to political participation focus predominantly on the right to vote with relatively little consideration of other ways and means to take part in the conduct of public affairs.

The sources used for analysis of practice also have four major limits. First, given the absence of a universally-accepted definition of a peace agreement, other datasets or compilations of peace agreements may include additional armed conflicts regulated or terminated through peace agreements.[120] Second, the data excludes cases in which refugees may have taken part in direct negotiations with the government of their country of origin outside the context of a negotiated solution to armed conflict.[121] Third, information available

[119] The protocol providing for the submission of individual complaints under ICEDAW did not come into force until December 2000. Optional Protocol to the International Convention on the Elimination of Discrimination Against Women, Dec. 10, 1999 (*entry into force* Dec. 20, 2000), 2131 UNTS 83. In Africa, the protocol establishing an African Court on Human and Peoples' Rights only came into effect in 2004. Protocol to the African Charter on the Establishment of an African Court on Human and Peoples' Rights, June 10, 1998 (*entry into force* Jan. 1, 2004, OAU/LEG/MIN/AFCHPR/PROT.1 rev.2 (1997).

[120] The Transitional Justice Institute Peace Agreements Database, for example, includes more than three times as many peace agreements as the Uppsala dataset for the period under review. The larger number of agreements is due largely to: the inclusion of ceasefire agreements that do not address the incompatibility between warring parties, joint declarations, agreed accounts of meetings between the parties, legislation, constitutions, interim constitutions, constitutional amendments and UN Security Council resolutions resulting from negotiations. University of Ulster, Transitional Justice Institute, International Conflict Research Institute, "The Transitional Justice Peace Agreements Database" <http://www.peaceagreements.ulster.ac.uk/>. For a comprehensive discussion of peace agreements, including definitions, classifications, history, legal nature and impact on the development of international law *see*, Bell 2006; and, Bell 2008. Other major peace agreement databases include: United States Institute of Peace, "The Peace Agreements Digital Collection" <http://www.usip.org/library/pa.html>; Conciliation Resources, "Accord: International Resources for Peacemaking" <http://www.c-r.org/resources/accord.php>; Kroc Institute for International Peace Studies, "Peace Accords Matrix" <https://peaceaccords.nd.edu/>; and, UN Peacemaker, "Peace Agreements" <http://peacemaker.unlb.org/index1.php>. For a comparison of the number of agreements across regions and cases in each of the above databases *see*, Annex III. Finally, in four cases included in the UCDP Peace Agreement Dataset (Afghanistan, Chad, Philippines, Niger), texts were unavailable for all of the peace agreements.

[121] The author is not aware of any examples of this type of negotiation between refugees and the government of their country of origin. The paucity of case research on refugee participation in the search for and negotiation of durable solutions, however, combined with

from secondary sources is highly uneven across regions and cases with research more widely available on "high profile" cases of displacement, such as Bosnia and Herzegovina, with relatively little research on cases like Niger which receive relatively little international attention.[122] Fourth, UNHCR's statistical database does not allow for determination of whether displacement in each case was directly related to armed conflict, however, given the fact that armed conflict is one of the primary drivers of forced displacement it is assumed that a majority of refugees in each case was displaced in the context of armed

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the fact that talks between refugees and officials from their country of origin are often "hidden", as noted in Chapter 5 of this study, nevertheless contribute to a situation where such talks, should they have taken place in the period under review, may be easily overlooked in the absence of primary research on and direct knowledge of each case. There are also 12 armed conflicts included in the UCDP dataset on armed conflict—five of which were regulated or terminated through peace agreements which included provisions on refugees—which are absent from its dataset on peace agreements. These include, organized by region, Russia (Chechnya), Spain (Basque), Azerbaijan (Nagorno-Karabakh), India-Pakistan, Indonesia (Aceh), Indonesia (East Timor), Algeria, Ethiopia, Lesotho, Senegal (Casamance), South Africa, and Iraq-Kuwait. The cases covered in the Uppsala Peace Agreement Dataset nevertheless provide broad coverage of refugee situations in the period under review.

[122] In their review of the study of refugees before the advent of "refugee studies" as a field of academic inquiry in the 1980s, Skran and Daughtry note that "even as the breadth of scholarship has changed over time, scholars have always focused with greatest interest on refugee groups who were the beneficiaries of major international assistance efforts". Skran and Daughtry 2007, 16. This gap may be partly addressed through grey literature. This study's description of Palestinian refugee efforts to secure a seat in negotiations between Israel and the PLO in the 1990s, for example, is derived, in large part, from grey literature and the author's personal knowledge of the Palestinian case. A systematic effort to compile and review grey literature on the participation of Palestinian refugees in negotiations on durable solutions has yet to be undertaken. Plascov's discovery of files in the Truman archives relating to refugee mobilization and organization in Jordan in the 1950s suggest that there is significant material that has yet to be reviewed. Plascov 1981. The newsletters of the Palestine Arab Refugee Office, which the author was unable to access, provide yet another example of early literature on Palestinian refugee participation. Grey literature on Bangladesh, as noted in Chapter 5, may provide additional insight into the role of the Jumma Refugee Welfare Association, which has otherwise received almost no coverage in refugee literature. UNHCR's field files from the period under consideration, which may provide "frontline" data on refugee participation in peace negotiations, remain inaccessible due to a 20-year embargo. McDonald 2006. This does not appear to be a major limitation, however, given that there are few Field Fonds on cases covered in this study. *See*, UNHCR, Archives and Records <http://www.unhcr.org/pages/49da066c6.html> [accessed Aug. 10, 2011]. While the lack of adequate data from secondary sources is not insurmountable in single and small case studies through field visits, interviews, etc., the time and resources these methodologies require are not suitable to larger case studies. The author attempted to obtain further information on several cases through key contacts (researchers, practitioners, activists, etc.), however, initial correspondence and interviews generated little information or response and required an investment of time and resources beyond the scope of the study. The author thus decided to defer such initiatives for future research.

conflict.[123]

The study is also subject to several delimitations. First, while the right to political participation may be inferred from treaties regulating the conduct of armed conflict and the protection of its victims (international humanitarian law) and from treaties regulating the status and treatment of refugees (international refugee law), the legal analysis is limited to international human rights law, the primary reference to the right to political participation under international law.[124] Second, a related set of political freedoms, as noted above, including freedom of thought, conscience and religion, freedom of opinion and expression, and freedom of assembly and association are widely-regarded as fundamental to the realization of the aforementioned core right to take part in the conduct of

[123] Torres 2005, 3. In several cases, moreover, a country experienced more than one armed conflict during the period under consideration only one of which is included in the study due to its regulation or termination through a peace agreement. The refugee population from such armed conflicts excluded from the study, however, is relatively small and therefore has minimal impact on population estimates relating to political participation. These include: Bosnia (Bihač); Georgia (South Ossetia), Yugoslavia (Slovenia), and Niger (Toubou). In general, the statistical data should be regarded as indicative rather than conclusive. The statistics are "provisional and subject to change" due to a number of factors including, but not limited to, possible differences of opinion about who is a refugee and the degree to which conditions facilitate accurate registration. Statistical data may also be revised over time due, for example, to the inclusion of previously unavailable data. For a useful overview of common problems with refugee statistics *see*, Crisp 1999.

[124] The right to political participation may be inferred from the preamble of the Hague Regulations which emphasizes the instrument's purpose to "mitigate [the] severity [of armed conflict] as far as possible" and that "in cases not included in the Regulations ... the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience". Hague Convention (IV) Respecting the Laws and Customs of War on Land and its Annex: Regulation concerning the Laws and Customs of War on Land, Oct. 18, 1907 (*entry into force* Jan. 26, 1910), 187 CTS 227, preamble. It may also be inferred from article 43 which requires the occupying power "to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country". *Ibid.*, art. 43. The right to political participation may similarly be inferred from the preamble of the 1951 Refugee Convention, which underscores the United Nations' "profound concern for refugees and [its endeavour] to assure refugees the widest possible exercise of [their] fundamental rights and freedoms". Convention Relating to the Status of Refugees, July 28, 1951 (*entry into force* Apr. 22, 1954), 189 UNTS 150, preamble. Moreover, while humanitarian and refugee law treaties do not explicitly enshrine the right of individuals and groups to take part in the conduct of public affairs or the obligation of states to facilitate and ensure such participation, the principle of participation can also be found in a growing body of related soft law instruments. For a discussion of participation in humanitarian operations *see*, *e.g.*, Dufour, Grünewald, and Levy 2003. For a similar discussion on the participation of refugees in a humanitarian context *see*, *e.g.*, Anderson 1994; and, Brookings Institution and University of Bern 2008a.

public affairs. Important in understanding factors which may contribute to political participation, the aim of this study is to ascertain whether refugees have a right to take part in the public affairs of their country in the context of the negotiation of durable solutions. Third, analysis of the right to political participation under international customary law and general principles of law—the other primary sources of international law—are beyond the scope of this study.[125] Fourth, the study relies primarily on English-language literature. While not critical in determining the presence or absence of refugees from the negotiating table, the focus on English-language literature limits the contextualization of participation across a large number of cases.[126]

The study is also based on two major assumptions. First, the study explores the right to take part in peace negotiations as a direct form of political participation notwithstanding the fact that for practical reasons participation is often limited to appointed or elected representatives. The elaboration of a right to take part in the negotiated settlement of armed conflict under international human rights law poses a number of additional conceptual problems. The

[125] Analysis of the right to political participation as custom would require a comprehensive assessment of the activities of state organs and officials, demonstrate that practice is common, consistent and concordant, and that actions taken with regard to the right to political participation are considered to be obligatory. The content of general principles of law, meanwhile, is unclear and often controversial. For a brief discussion of international custom and general principles of international law relating to the right to political participation *see*, Grace 2003, 13–16. For a general discussion of custom and general principles of international law *see*, Gaja 2011; and, Treves 2009.

[126] The paucity of case research and the author's lack of access to non-English language primary sources appears to present a particular limitation on access to information concerning refugee efforts to secure a seat in negotiations on durable solutions, whether that be through advocacy and lobbying, statements, demonstrations, and/or meetings with local, national, regional and/or international officials. The efforts of Palestinian refugees to secure a seat at the negotiating table in the 1990s is a case in point. The experience described in the introduction to this chapter is largely absent from literature on negotiations for durable solutions for Palestinian refugees. Such is the apparent "invisibility" of refugees that one of the few studies on the issue concluded that "nobody [had] proposed a comprehensive strategy for refugee participation [in negotiations to resolve their situation]". Abu-Iyun and Murad 2006, 47. Partly a function of the general tendency to analyze conflict at the elite level, the "hidden" character of refugee participation described in more detail in Chapter 5 may also stem from perceptions of refugees as non-political actors.

participation of government officials and rebel or opposition leaders in peace negotiations, for example, is frequently viewed as a form of representative participation, however, official participants are rarely chosen through elections.[127] The right to take part in the conduct of public affairs through freely chosen representatives, moreover, is explicitly defined in human rights treaties as the right of citizens to vote and to be elected in genuine and periodic elections. The right to take part in the conduct of public affairs directly, meanwhile, is most often associated with mechanisms like referenda and recall initiatives which allow for broad-based participation. The participation of civil society, including refugees, in peace negotiations, may nevertheless be usefully characterized as a form of direct participation in contrast to the participation of their elected or unelected government or rebel representatives.[128]

Second, the study assumes that the Palestinian refugee case, in particular, refugee efforts to secure a seat at the negotiating table in talks to resolve their situation in the 1990s, is comparable to other refugee cases during the same period. The long-standing tendency to treat Palestinian refugees as "*a case apart* from other refugees in the region, and indeed, the global context generally"[129] has militated against comparative research on durable solutions for this group of refugees.[130] The last decade has nevertheless seen a "relative

[127] The participation of previously elected officials (e.g., through national elections) in such negotiations may also be viewed as a form of indirect representation, however, the negotiated settlement of armed conflict often takes place in the context of disputes over democratic inclusion or following the collapse of democratic institutions. Thus, while official participants may have come to power through elections, democratic or otherwise, the context in which peace negotiations take place raises the question whether previously elected officials may still be viewed as democratic representatives of their respective constituencies. A similar problem arises in conceptualizing expanding forms of participatory or direct democracy and citizenship engagement. *See*, the discussion in Urbinati and Warren 2008, 405–406.

[128] Several studies which examine a right to take part in constitution-making and the right of women to take part in peace negotiations employ a similar approach. *See*, respectively, Hart 2003; and, Missire 2008.

[129] Fabos, al-Ali, and el-Abed 2005, 8.

[130] The small body of research on durable solutions for Palestinian refugees in the aftermath of the 1948 Arab-Israeli war included a number of studies which examined durable solutions in

decline in exceptionalism"[131] and a concomitant increase in comparative literature due, in part, to the promotion by non-governmental organizations of rights-based frameworks for resolving the refugee issue as well as the availability of an increasingly broad range of information previously inaccessible to researchers, especially in the developing world.[132] The issue in comparative research, moreover, is not whether each case resembles the other in its totality, but rather whether there is sufficient similarity and reasoned basis for comparison across cases.[133] The combined elements of displacement and

other refugee cases. *See*, *e.g.*, UNCCP 1950c; and, Schechtman 1952. There appear to few comparative studies on Palestinian refugees in the decades that followed including the first decade of negotiations between Israel and the PLO in the 1990s. Comparative studies are virtually absent, for example, from a bibliography prepared by the Norwegian Institute of Applied Social Science (FAFO) in the context of multilateral talks on Palestinian refugees. FAFO 1997. A stocktaking conference on Palestinian refugee research in the late 1990s included only passing reference to comparative research on solutions for Palestinian refugees. PRRN and IDRC 1997. This can be ascribed, in part, to the special regime established to assist, protect and implement durable solutions for Palestinian refugees and the special status of most Palestinian refugees under international refugee law. Acknowledging the fact that most Palestinian refugees fall outside UNHCR's mandate, Jeff Crisp, head of the agency's Evaluation and Policy Analysis Unit, nevertheless questions why "research on refugee issues so rarely focus[es] on the Palestinians or refer[s] to the Palestinian case for comparative purposes? ... Is it really the case that nothing can be learned from the Palestinian situation in relation to the many other themes and topics we have discussed?" Crisp 2001, 6. The scope of displacement, multiple contexts, length of time, absence of a viable country of origin and statelessness of the majority of the refugee population are other important distinguishing characteristics. Dumper 2006, 5–7; and, Rempel 2006, 5. The treatment of Palestinian refugees as a case apart can also be explained more generally by treatment of the case of Israel and the Israeli-Palestinian conflict as unique in comparison to other states and armed conflicts. On the latter see, Barnett 1996; Merom 1999; and, Hermann and Newman 2000.

131 Kagan 2009.

132 Non-governmental and community-based organizations have looked to other refugee cases to identify principles and best practices which may be applied to the situation of Palestinian refugees. These efforts first emerged in the second half of the 1990s when the international community was engaged in promoting rights-based solutions to refugee situations in the Balkans, measures that did not go unnoticed among Palestinians including refugees. These efforts, moreover, can be situated in the broader context of the 1990s which, as noted above, saw an expansion of international law in global affairs. While the rights-based approach advocated by NGOs and experts did not have a defining impact on the Oslo process, it is possible to ascertain ways in which the process, in Dajani's words, operated within the "shade or shadow" of the law. Dajani 2007. This includes, for example, symbolic recognition of the right of return and the provision of choices to refugees regarding solutions to their plight. Rempel 2009. Recent examples of comparative research on solutions for Palestinian refugees include: Benvenisti and Zamir 1995; Akram and Rempel 2000; Boling 2000; Saideman 2003; Akram and Rempel 2004; Dumper 2006; Quigley 2006; Dumper 2007; Kacowicz and Lutomski 2007; Kagan 2007; Hilal 2008; Wühler and Niebergall 2008; Farah 2009; Rempel 2010a; and, Adelman and Barkan 2011.

133 Comparison of Palestinian refugees with other refugee situations also raises statistical issues. UNHCR's Statistical Population Database only includes a small number of Palestinian refugees who fall within the agency's mandate. UNHCR, Statistical Online

negotiations which address durable solutions for refugees appear to afford a basis for consideration and comparison of Palestinian refugee demands for a seat at the negotiating table with negotiated solutions to other refugee situations during the same period.

VI. Significance of the Study

The significance of this study is threefold. First, the study builds and expands upon existing research on political participation in several inter-related disciplines or fields of study, in particular, international law, political science, peace and conflict studies and refugee and forced migration studies. In the area of international law, the study expands on research which has begun to examine new domains—e.g., constitution and international law making—for the exercise of the right to take part in the conduct of public affairs.[134] The study also builds on research—e.g., out-of-country-voting—which has begun to explore normative issues relating to the participation of citizens in the conduct of public affairs when they are outside their country of citizenship.[135] Drawing upon

Population Database <http://www.unhcr.org/pages/4a013eb06.html> [Accessed Aug. 20, 201l]. UNRWA only registers those Palestinians displaced in 1948 along with their descendants, who reside in one of its five areas of operation, and who meet the criteria for assistance as set out in its refugee definition and registration instruments. UNRWA, Statistics <http://unrwa.org/etemplate.php?id=253> [Accessed Aug. 20, 2011]. Refugee definitions for the purpose of registration also differ between Palestinian refugees and other refugee cases. It is, therefore, difficult to compare statistics across cases. In the absence of comparable statistics, estimates used should be regarded as illustrative rather than conclusive.

[134] The study of participatory constitution and international law making examine domains for the exercise of the right to take part in the conduct of public affairs within the state and at the international level previously considered much like the negotiated settlement of armed conflict to fall largely if not solely within the exclusive jurisdiction of the state. The significance of these areas of research also stems from their analogous relationship to the negotiated settlement of armed conflict. *See*, Chapter 2, *supra* n. 193-197. This study moves beyond analogy to consider whether peace negotiations comprise a conduct of public affairs under international law entailing a concomitant right to take part.

[135] The study of the growing practice of out-of-country voting explores the implications of migration and globalization on practices of political participation, in particular the question of whether residence comprises a reasonable restriction on the right to take part in the conduct of public affairs of one's country of citizenship. It also raises the question of whether a distinction should be drawn between citizens who are outside their country of citizenship voluntarily and those who have been involuntarily displaced. *See*, Chapter 2, *supra* n. 228-

existing research on civic engagement and transnational participation in the field of political science, the study also posits peace negotiations as an area for new research in the study of political participation.[136] The consideration of refugees as political actors or participants in the public affairs of their countries of origin also addresses a gap in the study of political participation which otherwise appears to be largely silent on the situation of refugees. In the field of peace and conflict studies, the study builds on an emerging body of research on public participation in peacemaking by examining whether negotiations comprise a conduct of public affairs under international law entailing a concomitant right to take part.[137] The focus on refugee participation in the negotiation of durable solutions, moreover, expands on the study of armed conflict and forced displacement which has otherwise tended to focus on the causes and consequences of refugee flows. Finally, in the field of refugees and forced migration, the study builds and expands upon the small body of largely policy-oriented literature on the political participation of refugees in their countries of origin, which has yet to address legal and empirical aspects of

233. With much of the research to date on the situation of refugees focused on normative aspects of their participation in home country elections, this study breaks new ground with its consideration of whether refugees also have a right under international law to take part in the negotiation of durable solutions to their plight.

136 The conceptual depth of civic engagement encompassing an increasingly wide range of activities and domains for the direct participation of citizens in the conduct of public affairs arguably provides a framework for the consideration of peace negotiations as a domain for political participation. *See*, Chapter 2, *supra* n. 273-277. By focusing on activities and domains for political participation that cross or extend beyond the borders of the state, the concept of transnational political participation similarly provides a framework for the consideration of refugees who have otherwise been largely excluded from the study of political participation. *See*, Chapter 2, *supra* n. 290-297. These areas of research, however, have yet to consider the participation of refugees in the negotiation of durable solutions to their situation.

137 The emerging body of research on public participation in peacemaking posits or identifies peace negotiations as a conduct of public affairs and domain for political participation with a number of studies also referring to a putative right to take part. *See*, Chapter 2, *supra* n. 278-285. With the notable exception of research on women's participation in peacemaking, there appears to be little "cross pollination" between peace and conflict studies literature on public participation in peacemaking and research on the right to political participation under international law. In contrast to existing research, moreover, the study comprises a first effort towards the creation of a dataset on public participation in peace negotiations, notwithstanding the aforementioned and unresolved data problems.

refugee participation in the negotiation of durable solutions.[138] The consideration of refugee participation in the negotiation of durable solutions also provides a type of "corrective" to literature which has largely focused on refugees as "warriors" or as "spoilers" in peacemaking contexts.

Second, the study comprises a first effort towards the creation of a dataset for systematic and more detailed research on the participation of refugees in the negotiation of durable solutions. At present there is little data—qualitative or quantitative—from which to draw comparisons and conclusions on a range of inter-related issues that arise from the consideration of refugee involvement in talks to resolve their plight.[139] This includes, for example, the roles or functions that refugees play in the negotiation of durable solutions, an issue which appears crucial for understanding if and how such participation contributes to the search for and implementation of durable solutions for refugees and what type of participation may be most effective in what type of circumstances.[140] Another area of research which may be derived from such a

[138] The emerging body of research on refugee participation in the negotiation of durable solutions, which is rooted in the broader body of research on public participation in peacemaking, referred to above, similarly posits peace negotiations as a conduct of public affairs and domain for political participation entailing a right to take part applicable to the negotiation of durable solutions for refugees, but has yet to explore the legal basis for such a right in a substantive manner. *See*, Chapter 2, *supra* n. 319-325. The study similarly comprises a first effort towards the creation of a dataset on the participation of refugees in the negotiation of durable solutions.

[139] The "hidden" cases examined in this study, apart from the relatively well-documented experience of Guatemalan refugees, suggest that while refugee participation in the negotiation of durable solutions may be rare it may nevertheless be more common than suggested in existing literature on the issue. The study of refugee participation in the negotiation of durable solutions should also "look beyond" cases of actual participation to examine cases of non-participation with a further distinction between cases in which refugees sought to participate but were denied a seat at the negotiating table and cases in which refugees did not wish to take part in negotiations governing durable solutions to their situation. These different experiences are critical in understanding the dynamics that facilitate and those which militate against refugee participation in the negotiation of durable solutions. The process of "uncovering" additional cases given existing gaps in literature and the lack of attention accorded to the issue despite the progressive development of related principles would appear to require in-depth knowledge and first hand experience of individual refugee cases.

[140] The related body of research on civil society participation in peacemaking, for example, has moved beyond an initial enthusiasm for such participation towards a more critical assessment based on the view that what appears to matter beyond the fact that civil society

dataset relates to the "parenthetical" aspects of refugee participation in the negotiation of durable solutions, namely, the identification of factors which facilitate or militate against participation as well as the assessment of its impact or contribution to the durability of solutions for refugees. Critical to bridging potential gaps between principle and practice in the negotiation of durable solutions, "parenthetical" research is also important to ensuring the effectiveness of refugee participation beyond the deliberation and negotiation of solutions to their situation.[141] Finally, this study provides an initial basis for comparison between indirect or representative and direct or participatory forms of refugee engagement in peacebuilding processes. This may include a comparison of how refugees take part in peacebuilding processes along with the limitations and advantages of these two contrasting forms of political participation.[142]

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is at the negotiating table is the type of role/s that civil society actors play. Paffenholz and Spurk 2006. One study which found a correlation between civil society participation and the sustainability of agreements reached found that negotiations in each case provided "highly active, substantive roles for [civil society]". This included adjunct mediation, actual mediation and public interest advocacy. Wanis-St. John and Kew 2008, 31–32. A more critical assessment should also examine the problematics of "mirror representation" in the context of refugee participation in the negotiation of durable solutions. Addressing the issue in the related body of research on women's participation in peacemaking, for example, Anderlini observes that "[s]ome observers argue that women who participate in peace negotiations behave no differently than their male counterparts. They may not represent the views and concerns of women at large; they are often divided along political, racial and ideological lines; and they may not be more competent peacemakers than men". Anderlini 2000, 6.

[141] The literature on civil society participation, for example, emphasizes that states, rebel and opposition groups and other official actors are often reluctant to consider or facilitate the inclusion of unofficial actors in peace negotiations. The complexity of multiparty negotiations including the multiplication of participants, issues brought to the table and the number of positions which need to be addressed likewise appear, at least in theory, to militate against broad participation. It also raises a range of issues related to representation including how representatives are chosen, on what basis and which groups or individuals are given a seat at the negotiating table. Research should explore what theories can be applied or adapted from literature on compliance with international law and from the study of political participation. The literature on civil society participation in peacemaking has also found that there is a statistically valid correlation between civil society participation and the sustainability of agreements reached. In order to assess the relationship between refugee participation and the durability of negotiated solutions to their situation, research must first identify the factors or variables for determining the durability of solutions to forced displacement.

[142] The literature appears to suggest, for example, that refugee participation in post-conflict elections is more common than the direct participation of refugees in the negotiation of durable solutions to their situation. This arguably creates a problem for the exercise of the

Third, the study contributes to research on Palestinian refugees in three major areas. To begin, the study adds to a growing body of research on rights-based solutions to the Palestinian refugee issue. Focused predominantly on the rights of return, restitution and compensation with a smaller body of research on restorative justice, the literature has yet to examine whether Palestinian refugees have a right to take part in the negotiation of their own durable solutions.[143] The study also builds on an emerging body of comparative research on durable solutions to the Palestinian refugee issue. Apart from a handful of early studies on population exchanges, resettlement and restitution, the literature on Palestinian refugees has been largely silent until recent decades as already noted on comparative approaches to durable solutions.[144]

right to political participation if one understands peace negotiations to comprise a domain for political participation in the sense that post-conflict elections usually take place following the signing of a peace agreement. Refugees may face a double form of exclusion, moreover, in situations where electoral participation is contingent on return and conditions in their country of origin at the time of elections remain inconducive to their safe and voluntary repatriation. A comparison of refugee participation in the conduct of public affairs, directly or indirectly, in peacebuilding contexts, may also reveal or clarify the limitations and unique contributions of each to the reintegration and rehabilitation of refugees including the realization of all other human rights.

[143] The literature on the rights of Palestinian refugees arguably first emerged in the 1970s in the context of UN recognition of the inalienable rights of the Palestinian people, the coming into force of major human rights instruments and the international refugee regime's initial shift towards voluntary repatriation as the preferred or most appropriate solution to forced displacement in light of new refugee flows across Africa, Asia and parts of the Americas. The launch of renewed efforts to resolve the Palestinian refugee situation in the 1990s, UN efforts to promote and develop international law including the mainstreaming of human rights-based approaches throughout the organization, the end of the compartmentalization of the refugee and human rights regimes and the concomitant consideration of the human rights of refugees, and the adoption of human rights-based approaches by civil society actors, including those critical of the peacemaking process in Palestine-Israel contributed to a significant expansion in literature on the legal aspects of the Palestinian refugee issue. While a wide range of instruments affirm that refugees should be allowed to participate in the planning, design and implementation of durable solutions to their situation, the literature on return, restitution and compensation as well as restorative justice in the Palestinian refugee case has yet to explore legal aspects of their participation in a substantive manner.

[144] The Palestinian case has long been viewed, as noted earlier, as distinct from other refugee situations. This view stems, in part, from the establishment of a special or mixed regime to protect and assist this group of refugees. It also can be attributed, however, to the characterization of Israel as a unique case, which often leads to the conclusion that a solution to the Palestinian refugee issue thus requires a unique solution. Comparative research on solutions to the Palestinian refugee issue was virtually absent from early literature generated in the context of renewed efforts in the 1990s to facilitate a negotiated solution to the conflict. Driven in part by civil society, the growth of comparative research on solutions for Palestinian refugees is also linked to the aforementioned growth in rights-based research which contributed to interest in and study on durable solutions for other refugees,

Finally, the study comprises a first attempt to explore the search for durable solutions for Palestinian refugees through the "lens" of political participation. While there is a growing body of literature produced by or written from the perspectives of refugees themselves, the study of negotiations on the future of Palestinian refugees remains focused by and large on the role of states, third party mediators and major non-state actors.[145] By focusing on the right to political participation this study puts refugees themselves front and centre in efforts to resolve their situation.

Finally, the practical significance of this study is three-fold. From an intrinsic perspective, the study begins to address normative and empirical aspects of existing policy guidelines which "encourage" and "urge" states and other relevant actors to include refugees in the negotiation of solutions to their plight.[146] This in turn provides a basis for the consideration of standards, best practices and mandates to facilitate refugee participation in the negotiation of

particularly, in a global context which emphasized voluntary repatriation as the primary solution for refugees and increasingly focused on housing and property restitution as a key element of durable solutions. The accessibility of information with new communication technologies further contributed to the development of comparative research on durable solutions for Palestinian refugees.

[145] The literature on UN-led negotiations after the 1948 Arab-Israeli war frequently mentions refugee efforts to secure a seat in negotiations, but addresses the issue in a largely incidental manner. With a focus on the PLO, the literature related to the second major period of negotiations, inclusive of the first Camp David summit which led to the signing of an agreement between Israel and Egypt setting out a framework for a negotiated solution to the conflict in Palestine-Israel for decades to come, is virtually silent on the role of refugees. This study was unable to account for unique refugee contributions to the peacemaking process during this period outside of their representation through the PLO. The large volume of literature related to the third period of negotiations focuses almost solely on states, mediators and major third party actors while significant efforts by refugees to influence the peacemaking process and secure a seat in negotiations through the popular refugee movement are rarely addressed in the context of accounts of negotiations on the refugee issue. To the extent that refugees make an "appearance" in the literature, it is often as passive victims of the conflict—as "problems to be solved"—or as "refugee warriors" and "spoilers" to a solution to the conflict due to their insistence on recognition and implementation of their basic rights, in particular, the rights of return, restitution and compensation.

[146] This includes notes and conclusions on international protection adopted by UNHCR's Executive Committee, agency handbooks and operational guidelines, guiding principles and declarations, programmes of action and resolutions adopted by international and regional organizations.

durable solutions. The instrumental significance of the study lies in the putative linkage between the right to political participation and the realization of all other human rights including those associated with durable solutions, namely, return, restitution and compensation. It also stems from the apparent linkage between participation and the legitimacy and sustainability of agreements reached. Finally, the intrinsic and instrumental rationale for the participation of refugees in the negotiation of durable solutions appears to be of practical significance to the Palestinian refugee situation. The Palestinian case is one of the largest and longest-standing unresolved situations of forced displacement in the world today.[147] While it would be a simplification to attribute past failures solely to the exclusion of refugees from the negotiating table, the intrinsic value and instrumental rationale for participation would appear to support arguments in favour of a more participatory approach.

VII. Results

The efforts of Palestinian refugees to secure a seat in negotiations between the PLO and Israel in the 1990s to resolve their situation raises a number of basic questions regarding the right to political participation and the negotiation of durable solutions for refugees. First and foremost is the question of whether peace negotiations comprise a domain for political participation entailing a concomitant right to take part under international law. Second and related is the

[147] With a refugee population that is estimated to exceed six million persons, nearly two in three Palestinians are refugees who in turn comprise more than two-fifths of the global refugee population. The search for durable solutions for more than six decades through a largely top-down elite pact-making approach to peace, moreover, has consistently failed to achieve a solution to the refugee issue or the broader conflict. "When such promise yields to catastrophic failure", as Wanis-St. John and Kew observe in reference to the initial enthusiasm at the beginning of the peace process between the PLO and Israel in the early 1990s, "scholars and practitioners of peace and conflict resolution should ask whether or not the exclusion relied on by negotiators and mediators is worth the risks it may pose to the attainment of peace". Wanis-St. John and Kew 2008, 13.

question of whether citizens, refugees in particular, have a right to take part in the conduct of public affairs when they are outside their countries of citizenship. The primary and dual objective of the study was to determine (a) whether Palestinian refugees had a right to take part in talks on durable solutions during peace negotiations between the PLO and Israel in the 1990s, and (b) whether the exclusion of Palestinian refugees from the negotiating table was unique or common to refugee experiences elsewhere during the same period. The study addressed the first objective through legal analysis in order to determine whether peace negotiations comprise a conduct of public affairs under international law and whether citizens, refugees in particular, have a right to take part in the conduct of public affairs when they are outside their country of citizenship. The study addressed the second objective through empirical analysis of all negotiated settlements to armed conflict between 1990 and 2000 in order to determine the extent to which peace negotiations comprise a domain for political participation in practice and the extent to which refugees take part in the negotiation of durable solutions to their situation. The legal and empirical findings were then applied to the Palestinian refugee case.

The legal analysis suggests that Palestinian refugees did not have a "right" under international law to take part in negotiations on durable solutions to their situation in talks between the PLO and Israel in the 1990s. While developments in law as of 2000 evidence emerging understanding of (a) peace negotiations as comprising a conduct of public affairs entailing a concomitant right to take part[148], along with (b) the right of citizens, refugees in particular, to

[148] First, the texts and drafting histories of major treaties which enshrine political participation as a fundamental human right indicate that the conduct of public affairs comprises more than the participation of citizens in government. Second, commentaries and jurisprudence on the right to political participation recognize constitution-making, given the "composition, nature and scope of activities" involved, as comprising a conduct of public affairs entailing a concomitant right to take part. Third, commentaries relating to the elimination of

take part in the conduct of public affairs when they are outside their country of citizenship[149], such a right had yet to be codified as a binding norm in international and regional treaties which enshrine political participation as a fundamental human right.[150] International and regional jurisprudence, moreover, had yet to address whether peace negotiations comprise a conduct of public affairs or whether refugees have a right to take part in the public affairs of their countries of origin through the negotiation of durable solutions or otherwise.[151] Finally, the majority of additional instruments including comments and recommendations, declarations and programmes of action, resolutions as well as conclusions and guidelines adopted by international and regional organizations which addressed each of these issues in part or in whole were non-binding.[152] The status of refugee participation in the negotiation of durable

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discrimination against women with respect to the right to political participation explicitly refer to peace negotiations as comprising a conduct of public affairs entailing concomitant right to take part. Finally, a related body of soft law instruments emphasize that women "must" participate in matters of international peace and security, call upon states to adopt special measures including "adequate legal protection" to ensure their "full and effective" participation "in negotiations", recognize such participation as a "basic human right" and urge states "to ensure increased representation of women at all decision-making levels in national, regional and international institutions and mechanisms for the prevention, management, and resolution of conflict". *See*, Chapter 6, *infra* n. 1053-1059.

[149] First, that refugees have a right to take part in the public affairs of their country of origin may be inferred from the texts and drafting histories of treaties which emphasize that among citizens the right to political participation is universal, oblige state parties to ensure both the right and opportunity of citizens to take part in the conduct of public affairs, prohibit discrimination in the exercise of political rights and stipulate that any restrictions on the right to political participation be reasonable. Second, commentaries on the elimination of racial discrimination explicitly affirm that refugees and displaced persons have a right to take part in the conduct of public affairs after they return to their countries of origin. Third, international and regional jurisprudence relating to discrimination in the exercise of human rights, including the right to political participation, emphasizes that in certain situations—especially when citizens are outside their country involuntarily—residence may comprise an unreasonable restriction on the right to take part in the conduct of public affairs. Finally, an array of additional instruments including decolonization agreements, resolutions, peace plans and agreements, and conclusions and guidelines adopted by international and regional organizations call upon states to "ensure" such participation through the return of refugees to their countries of origin, recognize that refugees have a "right" to take part in both referenda and home country elections following their return, affirm that refugees "should" be permitted to take part in the conduct of public affairs when they are outside their countries of origin, and "encourage" and "urge" states and inter-governmental organizations to include refugee representatives in the negotiation of durable solutions. *Ibid.*, n. 1059-1062.

[150] *Ibid.*, n. 1062.

[151] *Ibid.*, n. 1063-1064.

[152] *Ibid.*, n. 1065-1069.

solutions in the period between 1990 and 2000 may thus be described more accurately as a "principle", similar to the concept of "effective participation", rather than a "right" under international law.[153] This would suggest that, while Palestinian refugees did not have a right to take part in the negotiation of durable solutions to their situation, Israel and the PLO nevertheless had an obligation to facilitate the participation of refugees in decisions that affected their lives.[154] It would also have imposed an additional obligation upon both parties to ensure that the participation of refugees in such negotiations had a substantial influence on their outcome leading to shared ownership of durable solutions to their situation. Finally, understanding refugee participation as a form of effective participation would have also meant that, beyond the principle of informed and voluntary choice on durable solutions, the participation of Palestinian refugees in both procedural and substantive aspects of the negotiation process fell short of a right to decide.[155] The question of whether refugees have a right to take part in the negotiation of durable solutions to their situation is nevertheless a developing area of law which has arguably strengthened in the decade since Israel and the PLO sought a negotiated solution to the issue.[156]

The empirical analysis suggests that the exclusion of Palestinian refugees from the negotiation of durable solutions to their situation in the 1990s was common to negotiated settlements to other refugee cases during the same

[153] *Ibid.*, n. 1070-1073.
[154] *Ibid.*, n. 1074.
[155] The primary difference between Palestinian refugees and most other refugee situations where residence or lack thereof often comprises the primary barrier to participation in the public affairs of their home countries, is that the majority of Palestinian refugees are stateless persons. With the right to political participation dependent in most national contexts on citizenship, resolution of the question of whether Palestinian refugees have a right to take part in the public affairs of their historic homeland also requires attention to their citizenship status. For a discussion and review of findings *see*, *ibid.*, n. 1082-1102.
[156] For a discussion of developments in treaty law, jurisprudence and soft law *see*, *ibid.*, n. 1046, 1049-1050, 1056, 1061.

period. While developments in practice as of 2000 evidence emerging understanding of (a) peace negotiations as a domain for political participation[157], along with (b) emerging recognition of refugees as citizens and political participants in the negotiation of durable solutions to their situation[158], it appears that in practice the negotiated settlement of armed conflict rarely comprised a domain for the direct participation of refugees in the negotiation of durable solutions.[159] Democratic mechanisms and procedures which aimed to regulate or terminate the incompatibility among warring parties following the signing of a peace agreement along with post-agreement peacebuilding and the implementation of agreements reached comprised the most common domain for civil society/refugee participation.[160] The primary domain for participation in

[157] First, the substantive content of peace agreements addressed a wide array of issues that are recognized as falling within the public sphere. Second, in addition to the inclusion of a wide range of democratic mechanisms (nearly all cases) to regulate or terminate the incompatibility among warring parties, peace agreements also included provisions governing civil society participation (more than half of all cases) in peacebuilding and in the implementation of agreements reached. Third, and more specifically, armed conflicts regulated or terminated through negotiations evidenced significant recognition of the importance of civil society participation in the resolution or transformation of armed conflict. In at least half of all cases, civil society actors took part in peacemaking through various unofficial or indirect mechanisms which provided opportunities for a broader array of stakeholders to identify root causes of, deliberate over and recommend solutions to armed conflict. Finally, civil society actors also took part directly in the negotiated settlement of armed conflict alongside states, rebel groups and opposition movements. The inclusion of civil society actors at the negotiating table (around one-tenth of all cases) most clearly appears to challenge the long-held distinction between state and civil society domains of action in the negotiated settlement of armed conflict. *Ibid.*, n. 1103-1109.

[158] First, similar to the situation of civil society generally, the substantive content of peace agreements addressed a wide range of issues that are recognized to be of public concern to refugees. Second, peace agreements also provided for the participation of refugees in various of the aforementioned democratic mechanisms established to regulate or terminate armed conflict (one-quarter of all cases) as well as in the design, planning and implementation of durable solutions (more than one-tenth of all cases). Third, similar to civil society actors, generally, armed conflicts regulated or terminated through negotiations also evidenced recognition of the importance of refugee participation in the negotiation of durable solutions to their situation. In at least one-fifth of all cases, refugees took part in at least one of several unofficial mechanisms which provided opportunities to examine the root causes of forced displacement and put forward ideas to resolve it. Finally, the direct participation of refugee representatives in official negotiations appeared to comprise the most significant form of refugee participation in peacemaking over the decade as well as the most direct challenge to the long-held distinction between state and civil society domains of action in the negotiated settlement of armed conflict. In just over one-tenth of all cases, refugees secured a seat at the negotiating table in talks about their future alongside the representatives of states, rebel groups and opposition movements. *Ibid.*, n. 1095-1099.

[159] *Ibid.*, n. 1113-1115.

[160] *Ibid.*, n. 1100-1104.

the negotiated settlement of armed conflict appeared to be through unofficial or indirect peacemaking initiatives rather than official or direct participation in negotiations alongside representatives of states, rebel groups and opposition movements.[161] There were few cases in which civil society actors including refugees took part in official negotiations alongside warring parties.[162] The Palestinian refugee case nevertheless appeared to be unique from other refugee cases in that peace agreements included few if any provisions for civil society/refugee participation in post-conflict peacebuilding, durable solutions

[161] *Ibid*., n. 1106-1111.

[162] *Ibid*., n. 1116-1120. The three cases in which refugees took part in official negotiations appeared to share in varying degrees at least four common features that may have facilitated or contributed to their participation. First, in each of the cases, refugees were able to organize and elect a leadership to represent and promote their rights and interests in negotiations with the government of their country origin. Second, refugee organizations were often able to rely on the added leverage of key actors and networks at various levels—national, regional and international—to advance both procedural and subtantive demands. Third, the establishment of separate or dedicated fora to address forced displacement also appeared to facilitate the inclusion of refugees in talks about their future by addressing factors which are said to militate against public participation in the negotiated settlement of armed conflict. Finally, in each case, the country of origin was not only willing to take back the refugees, but also appeared to have incentives to facilitate refugee return. While each of these factors, on their own, may not have been decisive in securing refugees a seat in negotiations to resolve their situation, it appears that at least some combination of each was important in facilitating refugee participation. *See*, Chapter 6, *supra* n. 1116-1120. The difference between refugee participation in the negotiation of durable solutions in the Palestinian case and other refugee situations may be explained in part by the nature of the conflict in Palestine-Israel. While such participation appeared more likely in conflicts over government, the conflict in Palestine-Israel is generally coded as a conflict over territory. The Palestinian case also differs, however, from each of the three cases in which refugees took part in the negotiation of durable solutions, in that Palestinian refugees were unable to overcome the major challenges or obstacles referred to above to securing a seat at the negotiating table to resolve their plight. In the first instance, despite a detailed framework for the election of a General Refugee Council to represent the rights and interests of refugees in negotiations alongside the PLO and Israel, as described in previous chapters, refugees were unable to implement their plan in advance of final status negotiations. Second, Palestinian refugees were unable to rely, at least initially, upon a similar range of key actors and networks at the national, regional and international levels to advance their procedural and substantive demands. Third, Palestinian refugees were unable to secure access to separate or dedicated fora on the refugee issue. The fourth and primary difference between Palestinian refugees and those from Burundi, Bangladesh and Guatemala, however, was and remains the absence of a viable country of origin willing to allow the refugees to return. The absence of a viable country of origin, in relation to the state of Israel or a future Palestinian state in the West Bank, East Jerusalem, and Gaza Strip, is a direct function of the unresolved conflict over self-determination in historic Palestine. *See*, Chapter 6, *supra* n. 1127-1131. A comprehensive assessment of the self-determination claims of both parties is beyond the scope of this study, however, the observations of the UN human rights treaty committees on the rights of Palestinian refugees, referred to in the previous section, would suggest that Israel's concept of self-determination is inconsistent with its obligations under human rights treaty law with regard to the right to freedom of movement, in particular, the right of Palestinian refugees to return to their homes and places of origin.

and in the implementation of agreements reached.[163] The Palestinian refugee case, moreover, appeared to be the only case in which a peace agreement explicitly barred refugees, albeit temporarily, from taking part in elections in their country of origin.[164] The Palestinian refugee case, however, also appeared to be the only case during the 1990s in which unofficial or indirect mechanisms for civil society participation in peacemaking focused explicitly or rather solely on forced displacement.[165] Developments in practice since 2000 nevertheless suggest that civil society/refugee participation in the negotiated settlement of armed conflict has become increasingly common notwithstanding the fact that it remains significantly less common than participation through indirect mechanisms and through peacebuilding and the implementation of agreements.[166]

VIII. Outline of Study

The study is divided into six additional parts beginning with a review of literature (Chapter 2) on the legal and empirical aspects of refugee participation in the negotiation of durable solutions. The chapter identifies major developments in both law and practice from a review of literature on the right to political participation, the study of political participation, peace and conflict studies and from refugee and forced migration studies. This is followed (Chapter 3) by an in-depth discussion of the Palestinian refugee case including background on the different waves and root causes of displacement, the number and different

[163] *Ibid.*, n. 1124.
[164] *Ibid.*, n. 1123.
[165] *Ibid.*, n. 1125.
[166] For a discussion of developments in relation to peace agreement provisions on civil society participation in peacebuilding and in the implementation of peace agreements, unofficial or indirect peacemaking mechanisms and in official or direct negotiations *see*, *ibid.*, n. 1105, 1112, 1121.

categories of Palestinian refugees, their location and situation in exile as well as international and regional responses. After providing a brief overview and comparison of the different periods of negotiations, mediators, frameworks and participants, the chapter identifies and examines the participation of Palestinian refugees in major negotiations to resolve their situation. The next three sections (Chapters 4 through 6), which comprise the central body of the study, address each of the three major aforementioned objectives. Following a brief overview of the right to political participation under international law, Chapter 4 examines whether peace negotiations comprise a conduct of public affairs under international law entailing a concomitant right to take part and whether refugees have a right to take part in the public affairs of their countries of origin. Chapter 5 begins with an overview of armed conflict between 1990 and 2000 and then examines whether peace negotiations comprise a domain for political participation and the extent to which refugees took part in the negotiation of durable solutions to their situation. The penultimate section (Chapter 6) assesses the legal and empirical findings from each of the previous chapters and then draws comparisons to the Palestinian refugee case to determine whether refugees had a right to take part in negotiations on durable solutions in the 1990s alongside the PLO and Israel and whether their exclusion from the negotiating table was unique or common to refugee experiences elsewhere during the same period. The chapter concludes with a brief overview of some of the instrumental reasons for refugee participation, generally, and in relation to the search for durable solutions for Palestinian refugees. The study concludes (Chapter 7) with an update on Palestinian refugees and efforts to facilitate a negotiated solution to their situation since 2001 as well as a summary of major

developments in law and practice relating to the participation of refugees in the negotiation of durable solutions. The conclusion also highlights a number of areas for further research on both legal and empirical aspects of this issue.

CHAPTER TWO

Review of Literature

I. Introduction

The right to political participation is arguably a central, but little understood much less studied aspect of forced displacement. The centrality of the right to take part in the conduct of public affairs as noted in the introduction to this study is at least three-fold. It derives in part from the fact that its violation or denial is often among the root causes of forced displacement. As a consequence of their displacement, moreover, refugees often face a range of obstacles which militate against participation in the public affairs of their home countries. Exercise of the right to political participation, meanwhile, appears to afford refugees the opportunity to realize the panoply of rights violated or denied as a result of their displacement, ensure that solutions reached are consonant with both their rights and interests, while enhancing the legitimacy and sustainability of agreements reached. The fact that refugees are by circumstance and definition outside their countries of origin, however, raises a host of issues regarding the law and practice of political participation, especially in relation to the negotiated settlement of conflict long considered to fall within the primary if not sole domain of the state. The legal and empirical aspects of refugee participation in the negotiation of durable solutions to their situation nevertheless remains a little studied aspect of forced displacement.

This chapter provides an overview and analysis of literature relating to the right to political participation of refugees in the public affairs of their countries of origin. The review focuses on two primary aspects of this issue,

namely, whether refugees have a right to take part in the public affairs of their country of origin in the context of negotiations which aim to resolve their situation and whether refugees actually take part in the negotiation of durable solutions in practice. Each of these questions implicates a diverse set of disciplines and related fields, including, but not limited to, international law, political science, peace and conflict studies and refugee and forced migration studies. While research in these four areas provides foundations and conceptual frameworks for the consideration of the law and practice of refugee participation in the negotiation of durable solutions, there are nevertheless few studies which examine legal and and empirical aspects of refugee participation in talks to resolve their situation. Existing research, moreover, addresses the law and practice of refugee participation in a largely cursory manner. Rather than providing a comprehensive review, which is beyond the scope of this study, the chapter aims to situate the relatively recent interest in refugee participation in the negotiation of durable solutions within each of the aforementioned disciplines and fields of study.

The chapter is divided into two major sections. The first part of the review examines what the literature says about a putative right of refugees to take part in the negotiation of durable solutions. The second part focuses on what the literature reveals about the practice of refugee participation in such negotiations. Each part in turn explores two major aspects of these questions, namely, whether peace negotiations comprise a conduct of public affairs under international law and a domain for political participation in practice and whether refugees have a right to take part and actually participate in the negotiation of durable solutions. As the following review explains, there appears to be an

emerging understanding of peace negotiations as comprising a domain for the conduct of public affairs entailing a concomitant right to take part applicable to the negotiation of durable solutions for refugees. The literature also suggests, however, that there are few cases in which civil society or refugees actually take part in the negotiated settlement of conflict and its consequences including forced displacement. The literature has yet to address legal and empirical aspects of refugee participation in the negotiation of durable solutions in a substantive and comprehensive manner.

II. The Right to Take Part in the Conduct of Public Affairs

The literature on the right to political participation is largely silent on two inter-related questions that are central to the consideration of a refugee right to take part in the negotiation of durable solutions.[167] First, the literature has yet to address, in substantive terms, the question of whether peace negotiations comprise a "conduct of public affairs" under international law entailing a concomitant right to take part. Second, the literature has only begun to explore the specific question of whether citizens, refugees in particular, have a right to

[167] The study of the right to political participation can be divided into at least three major phases. From the 1960s through the 1980s a small body of research focused largely on the codification of political participation as a fundamental right under international human rights law. "Legal writing on participatory rights [during this period]", as Fox observes, "was [generally] scarce". Fox 1992, 543. In the early 1990s the research agenda appeared to narrow as scholars concentrated on the right to take part in periodic and genuine elections. The most obvious departure from past research, however, was the attempt to re-conceptualize the right to vote and to be elected, in Franck's words, as an "emerging right to democratic governance". Franck 1992. The mid- to late 1990s saw a shift away from an almost exclusive interest in individual participation with new research on the right of certain groups, in particular, minorities and indigenous peoples, to take part in decisions that affect their lives marking a new phase in the study of the right to political participation. This was part and parcel of a much broader shift away from a similarly exclusive focus on indirect forms of political participation towards the consideration of the right to take part in the conduct of public affairs directly. The exploration of a right to political participation in domains no longer bounded solely by the geographical borders of the state marked yet another shift unique to recent literature on the right to political participation. The literature is nevertheless relatively small compared to the broader body of research on the practice of political participation discussed in the second section of this chapter.

take part in the conduct of public affairs when they are outside their country of citizenship. This is not to say that the literature is completely silent on these issues. Research on the effective participation of minorities and indigenous peoples, participatory constitution and international law-making, public participation in peacemaking, post-conflict elections, transnational political participation, and victim participation in transitional justice programs has arguably contributed to evolving understandings of the right to political participation and its relevance to the negotiation of durable solutions for refugees. There is, moreover, an emerging body of largely policy-oriented research, addressed in more detail in the second section of this chapter, which has begun to examine the participation of refugees and displaced persons in peace processes. Most studies refer to general principles of law and have yet to address each of the aforementioned questions in substantive terms.

i. The Conduct of Public Affairs and Peace Negotiations

One of the major challenges in elaborating a right to take part in the negotiation of durable solutions is that international and regional treaties which codify political participation as a fundamental human right are largely silent on the ways and means for citizens to take part in the conduct of public affairs. This can be ascribed in part to the difficult if not impossible task of defining succinctly, beyond the right to vote and to be elected, the various ways and means that citizens may take part in the conduct of public affairs given the diversity of political systems and the ever evolving understandings of political participation.[168] The ambiguous or indeterminate content of the right to take part

[168] The representatives of states that took part in drafting the ICCPR, the primary reference to the right to political participation, for example, struggled to find language that would

in the conduct of public affairs, however, also appears to reflect a certain deference to the principle of state sovereignty and its corollary of non-interference in the internal affairs of states central to which is the organization or constitutional structure of the state.[169] The conceptualization of peace negotiations as comprising a conduct of public affairs entailing a concomitant right to take part is also confronted by the fact that the management and resolution of conflict within and between states under international law has been traditionally recognized as falling almost solely within the jurisdiction of the state.[170]

accommodate a range of political practices and express legal obligations under the Covenant. *See*, the brief discussion in Chapter 4, *infra* n. 619. Drafted some two decades later, ICEDAW appeared to reflect evolving understanding of the conduct of public affairs, particularly in reference to participation in non-governmental organizations and associations and at the international level. *See*, Chapter 4, *infra* n. 805-656. References to political participation in a wide array of soft law instruments including declarations and programmes of action, resolutions, conclusions and guidelines adopted by international and regional organizations further reflect the ongoing expansion in ways and means that citizens take part in the conduct of public affairs underscoring the problem of defining the conduct of public affairs succinctly in a single instrument.

[169] State representatives taking part in the drafting of the ICCPR, for example, expressed concerns about the potential conflict with state sovereignty that might be created by codification of political participation as a fundamental human right. *See*, Chapter 4, *infra* n. 619. Such concerns were also raised during the drafting of the ECHR with the issue unresolved until the adoption of protocol enshrining the right to vote. *Ibid.*, n. 677. While codification of political participation as a binding norm raised the prospect of a "clash" with the much older norm of state sovereignty, its intensity appears to have been mitigated somewhat by an apparent "compromise" under which states remain free, notwithstanding relatively explicit obligations relating to periodic and genuine elections, to define the ways and means for the exercise of the right to political participation. There was widespread agreement among drafters to the ICCPR, for example, that the Covenant allowed for various forms of democracy and did not intend to impose upon states certain ways and means for citizens to exercise the right to political participation. *See*, Chapter 4, *infra* n. 728. For additional discussion of the potential conflict between state and popular sovereignty raised by the codification of political participation as a binding norm *see*, Fox 1992, 543–544; and, Roth 2000, 322–325.

[170] This is reflected in the UN Charter (Charter of the United Nations, June 26, 1945 (*entry into force* Oct. 24, 1945), 59 Stat. 1031, arts. 2(1), 2(7)), in various international declarations on the peaceful settlement of international disputes (United Nations "Manilla" Declaration on the Peaceful Settlement of International Disputes, annexed to, GA Res. 37/10, 37th Sess., 68th Plenary Mtg., UN Doc. A/RES/37/10, Nov. 15, 1982; and, United Nations Declaration on the Prevention and Removal of Disputes and Situations which may Threaten International Peace and Security and on the Role of the United Nations in this Field, annexed to, GA Res. 43/51, 43rd Sess., 68th Plenary Mtg., UN Doc. A/RES/43/51, Dec. 5, 1998), in UN Secretary-General reports (UNSG 1992, para. 34–37) which laid out an *Agenda for Peace* for the post-Cold War era and in the international organization's handbook (UN 1992) on the peaceful settlement of disputes. Indeed, as Crawford observes, the "[assumption] that the executive has comprehensive power in international affairs [is one of several] features of classical international law [that can be described as] deeply undemocratic, or at least ... capable of operating in a deeply undemocratic way". According to this assumption, as Crawford further

Steiner's 1988 study on "Political Participation as a Human Right" was among the first to explore in detail the substantive content or meaning of the right to political participation under international law.[171] With political rights largely "relegated to the bottom of the human rights agenda" during the Cold War period, the study also appeared to mark growing interest in the right to political participation among both scholars and policymakers as the Cold War drew to a close.[172] In his comprehensive study of the "controversy over the character of the right", Steiner questions whether the right to political participation, given its "vagueness and plural meanings ... expresses *any* shared ideal, or serves any useful purpose within the conceptual framework of

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explains, "the head of State and the Minister for Foreign Affairs [generally] have plenary powers to make international commitments on behalf of the State, and to agree to rules of international law which may affect the rights or claims of individuals without their consent, and even without their knowledge". Crawford 1993, 117, *citing*, Vienna Convention on the Law of Treaties, May 23, 1969 (*entry in force* Jan. 27, 1980), art. 7(a), UNTS 1155, 331-512. *See also*, Forsythe 2006, 17.

[171] Steiner 1988. The article also appears to be one of the first studies to examine the drafting process and codification of political participation in major human rights treaties. At the time of publication, all major treaties—international and regional—which enshrined political participation as a fundamental human right had come into force. Steiner focuses on the UDHR, ICCPR and ECHR. The small body of pre-existing research addressed the substantive content of political participation as a human right in a largely cursory manner. In the late 1950s, for example, the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities commissioned a study on discrimination in the matter of political rights. Santa Cruz 1962. The study preceded by several years the adoption of ICERD, the third major treaty to codify political participation as a fundamental human right. Studies by Partsch and Humphrey in the early 1980s, each part of edited collections on human rights, followed the adoption and coming into force of the ICCPR and ICEDAW, the other two major international human rights treaties which enshrine political participation as a binding norm. Partsch 1981; and, Humphrey 1984. Steiner's study was also preceded by the publication of the t*ravaux préparatoires* of the ECHR and the ICCPR. *See*, CoE 1977; and, Bossuyt 1987.

[172] Fox 1992, 570; Franck 1992, 64; and, Rich 2001, 22. The shift in interest in the right to political participation among policymakers was reflected in the adoption of the first in a series of UN General Assembly resolutions on "enhancing the effectiveness of the principle of periodic and genuine elections" (GA Res. 43/157, 43rd Sess., 75th Plenary Mtg., UN Doc. A/RES/43/157, Dec. 8, 1988) and in declarations adopted by "newly restored democracies" (Managua Declaration of New or Restored Democracies, July 6, 1994, annexed to UN Doc. A/49/713, Nov. 23, 1994). The international community also appeared increasingly willing to address state compliance with obligations relating to the right to political participation under international and regional human rights treaties through the adoption of country-specific resolutions and concluding observations on state practice. The adoption of a series of "counter" resolutions on "respect for the principles of national sovereignty and non-interference in the internal affairs of States in their electoral processes" (GA Res. 44/147, 44th Sess., 43nd Plenary Mtg., UN Doc. A/RES/44/147, Nov. 15, 1989), which reiterated the principle of sovereign equality and self-determination of peoples, nevertheless, underscored the unresolved issue of whether the principle of state sovereignty, as noted earlier, prohibited external intervention in matters related to the exercise of the right to political participation.

human rights instruments".[173] [emphasis added] Finding that the right to political participation does indeed reflect a "shared ideal" among different political systems, Steiner nevertheless argues that its component parts need to be treated separately. In his view, the right to take part in the conduct of public affairs through freely chosen representatives—i.e., the right to vote and to be elected—is relatively "determinate"[174] and should thus be regarded as an expression of positive law effective immediately upon state ratification of relevant human rights treaties.[175] In contrast, Steiner suggests that the right to take part in the conduct of public affairs directly—a provision left undefined but, arguably, central to the consideration of a putative right to take part in peace negotiations—is relatively indeterminate, aspirational or hortatory in character and should therefore be treated as a type of "programmatic" right.[176] In other

[173] Steiner 1988, 77. Commenting on the controversy over the character of the right, Steiner observes that "countries with remarkably different political systems have termed political participation the vital human right". These same "governments invoke it [both] to justify their own political systems and to delegitimize that of their opponents". *Ibid.* On a continuum spanning rights on which there was relative consensus and those over which there was considerable divergence—negative rights, rights relating to procedural fairness, anti-discrimination norms, expressive rights, the right to political participation—Steiner situates the latter on the extreme end of divergence. *Ibid*., 81.

[174] A right may be considered "determinate" to the extent that its text clearly identifies to *whom* it applies and *how* it is to be implemented. Lack of determinacy diminishes a rule's legitimacy and reduces compliance and enforceability among adherents. Franck 1992, 57; and, Fox 1992, 595. A range of instruments and the practices of states, especially since the late 1980s when Steiner's study was published, as detailed above, have contributed to the clarification of the substantive content (e.g., whether free and fair elections require political pluralism) of the right to vote. For additional discussion *see*, Goodwin-Gill 2006.

[175] Steiner observes that while liberal democracies and communist states may understand the right to take part in conduct of public affairs through freely chosen representatives differently, "neither group of countries views the requirement of elections as in some sense a *tabula rasa*, as open to fresh experimental definition". He further argues that "the evolution of liberal and communist societies is unlikely to introduce significant changes in understanding". Steiner 1988, 132. Recognition of the right of non-citizen residents to take part in local elections along with emerging recognition of a right to transnational political participation through out-of-country voting nevertheless appear to comprise significant changes in understanding of the right to take part in the conduct of public affairs through freely chosen representatives.

[176] Commenting on the "indeterminate" character of the direct right to political participation, Steiner observes that "[o]ne cannot identify broadly shared and stable views of its import, or even crystallized disputes about appropriate forms of institutionalization or about the types of governmental duties that it imposes". *Ibid.* In contrast to civil and political rights, which are effective immediately upon ratification of relevant human rights treaties, programmatic rights may be implemented over time, taking into consideration the context of their implementation. The term is associated with economic, social and cultural rights and derivative third

words, much like, but distinct from, economic, social and cultural rights, the ways and means for actualizing the right to part in the conduct of public affairs directly should take into account the context of the right's implementation allowing for changes in understanding and the expression of different practices of political participation.[177] This conclusion appears to leave open the possibility for consideration of peace negotiations as comprising a conduct of public affairs, but remains far from an explicit elaboration of an obligation upon states to provide citizens with a meaningful opportunity to take part in such negotiations.

The relatively determinate character of the right to take part in periodic and genuine elections was central to Franck's subsequent proposition in the early 1990s of an emerging right to democratic governance.[178] Marking a new

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generation "solidarity rights" like the right to development. The ICESCR, for example, requires states parties "to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to *achieving progressively* the full realization of the rights recognized in the ... Covenant by all appropriate means, including particularly the adoption of legislative measures". [emphasis added] ICESCR, *infra* n. 622, art. 2.

[177] Steiner acknowledges that unlike economic, social and cultural rights, civil and political rights are to be implemented immediately upon ratification of relevant instruments enshrining these norms. The only exception in which the implementation of the right to political participation may be set aside is in states of emergency, however, even this is limited. The American Convention on Human Rights and the non-binding Paris Minimum Standards of Human Rights in a State of Emergency, adopted by the International Law Association both prohibit derogation from the right to political participation during states of emergency. The characterization of the right to take part in the conduct of public affairs directly as a programmatic right, as Steiner explains, is an acknowledgment, rather, that "[a]s societies change—through industrialization or urbanization, evolving relations between public and private sectors, reorganization of political and economic life, ideological shifts—the context of the right must be open to experimental reformulation. The notion of what it requires of governments will change significantly with ongoing national experience". Steiner 1988, 132.

[178] Franck's notion of a right to democratic governance essentially comprises two inter-related elements: "[governments] derive 'their just powers from the consent of the governed'"; and, "a nation earns 'separate and equal station' in the international community by demonstrating 'a decent respect to the opinions of mankind'". Franck 1992, 46. The study examines four main indicators—*pedigree*: the depth of a rule's roots in a historical process; *determinacy*: a rule's ability to communicate content; *coherence*: a rule's internal consistency; and, *adherence*: a rule's vertical connectedness to a normative hierarchy—positing that the legitimacy (i.e., compliance pull) of a right to democratic governance depends on the degree to which the rule exhibits each of the aforementioned qualities. Analysis of the substantive content of the right to vote under international and regional human rights treaties and election monitoring standards can be found in, Fox 1992, 570, 590. For regional studies of the democratic entitlement in the Americas, Europe and in Africa *see*, Cerna 1994; Rich 2001; Wheatley 2002a; Udombana 2002; and, Kale 2008.

phase in the study of the right to political participation, the study aimed to assess the legal significance of democracy in the post-Cold War era.[179] Few scholars had previously considered democracy a subject of international law and only a handful, as noted above, had examined its central feature—political participation—as a fundamental human right.[180] Franck's seminal study and those that followed reflected at least two major areas of consensus about the right to political participation decades after its codification as an international norm. That individuals had a *right* to participate in the public affairs of their country, either directly or through freely chosen representatives was without doubt. Codification of the right was widespread and an increasing number of states had ratified the respective instruments.[181] Scholars generally shared the view, moreover, that since the end of the Cold War, "popular sovereignty [the notion that no law or rule is legitimate unless it rests directly on the consent of the individuals concerned], once largely a nominal principle, [had] taken on a

[179] Fox and Franck, for example, both point to the significant increase in the number of states committed to holding free and fair elections. Fox 1992, 540; and, Franck 1992, 47. Fox also explores the significance of the voluntary acceptance of election observation missions by independent states and the contribution of monitoring standards to the clarification of the substantive content of the right to vote. A number of studies emphasize the introduction or strengthening of conditions for membership in regional organizations and receipt of foreign assistance on respect for democratic governance as well as measures to oppose the overthrow of democratically elected governments. Cerna 1994; Wheatley 2002a; and, Kale 2008. The literature also examines the significance of the promotion of democracy at the international level through clarification of the substantive content of the right to political participation, electoral assistance and support to new or newly restored democracies. Rich 2001; and, Goodwin-Gill 2006.

[180] The consensus among legal scholars prior to Franck's study was that "international law does not generally address domestic constitutional issues, such as how a national government is formed". Fox and Roth 2001, 327 n. 2, *citing*, American Law Institute, Restatement (Third) of the Foreign Relations Law of the United States, sec. 3 203, comment (e) (1987). *See also*, Nowak 1993, 564; and, Wheatley 2002a, 225.

[181] The number of states which had ratified international human rights treaties enshrining political participation as a fundamental right increased from a low of 54 percent (ICCPR) in 1989 to a high of 87 percent (ICEDAW) in 2000 of all UN members states. The ICCPR experienced the greatest increase (by nearly half) in state ratifications, but also remained the least ratified international treaty to codify the right to political participation. There was a similar increase in the number of states which had ratified regional treaties enshrining political participation as a fundamental right. For ratification information *see*, United Nations Treaty Collection <http://treaties.un.org>.

more concrete *legal significance*".[182] [emphasis added] Franck's contribution to the debate on the meaning or substantive content of the right to political participation, however, was in his conceptualization of the right to vote as an emerging right to democracy or democratic entitlement.[183] Significant as a first attempt to define democracy as a right under international law, the equation of democracy with free and fair elections was also criticized by scholars who argued that voting was "under-determinative" of democracy, "elevat[ed] a means into an end" and "mask[ed] the limitations" of liberal democratic institutions.[184] Acknowledging the shortcomings of equating elections with

[182] Roth 2000, 33. The growing legal significance of popular sovereignty is exemplified, for example, in participatory provisions in instruments relating to women, minorities, indigenous peoples, migrants and other "vulnerable" groups (e.g., UN "Vienna" Declaration and Program of Action, UN Doc. A/CONF.157/23, July 12, 1993), in declarations on newly restored democracies (e.g. Managua Declaration of New or Restored Democracies, July 6, 1994, annexed to UN Doc. A/49/713, Nov. 23, 1994), which affirmed a broader vision of participatory democracy and decentralized government as central to the exercise of peoples' sovereignty, and in UN resolutions on democracy (e.g., CHR Res. 1999/57, 56th Sess., 57th Mtg., UN Doc. E/CN.4/RES/1999/57, Apr. 27, 1999) which emphasized the linkage between broad participation by all sectors and actors of society and the resolution of social, economic and cultural problems. The growing significance of popular sovereignty is a consequence in large part of the "continuing blurring of the distinction between political and non-political activities; that is, between private and public spheres" (Van Deth 2001, 5.), along with a concomitant and "increasingly complex political terrain that is less confined within state territoriality, more pluralized and increasingly dependent on political negotiation and deliberation to generate political legitimacy" (Urbinati and Warren 2008, 388).

[183] Franck describes the right as emerging in the sense that it suffers from a lack of coherence (i.e., a rule's internal consistency) due to a conflict with the fundamental norm of state sovereignty and the corollary principle of non-intervention in the internal matters of states. Franck 1992, 78. The apparent conflict between state sovereignty and the right to political participation was illustrated, for example, by the aforementioned debate and disagreement in the late 1980s and early 1990s over UN General Assembly resolutions on enhancing the principle of periodic and genuine elections. State practice nevertheless appears to affirm, in Petersen's words, "a teleological principle, according to which States have to develop towards democracy". Petersen 2009, para. 21. Franck identifies three factors necessary for a right to democratic governance to achieve normative status: voluntary acceptance by states of external monitoring of national elections, establishment of a credible monitoring mechanism, and the establishment and application of consequences for non-compliance.

[184] Carothers 1992, 264; Wheatley 2002a, 236; and, Marks 1997, 374. The proposition of an emerging right to democratic governance has encountered at least two additional criticisms. One strand of criticism questions the interpretation of legal instruments and the significance accorded to practices said to comprise evidence of custom. Scholars identify at least three major problems: treaties do not explicitly affirm a "right to democracy"; the practices of UN monitoring missions do not, in and of themselves, evidence applicable standards of state practice required for the clarification of ambiguous treaty terms; and, state practice evidences disagreement among major states and across regions. Fox 2009, para. 4; Roth 2000, 342; and, Petersen 2009, para. 18. A second strand of criticism focuses on the broader implications of enshrining democracy as a right under international law arguing that codification of a right to democracy could lead to "a new ideology of imperialism" since a breach would entail consequences relating to a regime's legitimacy, its recognition by other

democracy, proponents of Franck's thesis nevertheless maintain that the focus on voting is justified given that elections are "at the core of all modern democratic systems" and because they provide a comparatively easy means "to verify a [country's] democratic path".[185] The debate provoked by Franck's thesis underscored the fact that, despite the aforementioned areas of consensus, the substantive content of a putative right to democracy including the right to political participation was far from a settled issue.

This was also apparent with the emergence of new research on the right to political participation of indigenous peoples and minorities. Part and parcel of much broader debates related to the rise of ethnic or identity-based conflicts and the "management" of what Kymlicka describes as "cultural diversity" in the post-Cold War era, research on indigenous peoples and minorities expanded understanding of the substantive content of the right to political participation in at least three important ways.[186] First, it contributed to a shift towards or at least

states and international organizations and, in particular, its claim of a sovereign right against intervention in its internal affairs. Marks 1997, 372–373; and, Roth 2000, 323.

[185] Fox 2003, 185. Fox adds that elections also generally capture the attention of a broad swath of the population of a country, government conduct during elections generally provides a good indicator of its respect for other rights and elections focus international attention on states whose human rights record might otherwise draw little attention. Similar points were made by drafters of the ICCPR during discussions on codification of political participation as a fundamental right. *See*, Chapter 4, *infra* n. 618. A critic of Franck's thesis, in terms of its empirical foundations, Carothers similarly observes that elections comprise "the most visible, tangible part of the democratic process". Carothers 1992, 264.

[186] Since the end of the Cold War, ethno-nationalist wars have comprised around three-quarters of the total number of wars compared to just under half at the beginning of the 20th century. Wimmer, Cederman, and Min 2010, 4, citing, Wimmer and Min 2006. Kymlicka attributes growing cultural diversity and the emergence of a new "politics of difference" to the increase in global migration leading to a rise in the number of poly-ethnic states and to the re-emergence of nationalism and its affect on multi-national states. Kymlicka 1996, 193. The drafting of new instruments on indigenous (UN Declaration on the Rights of Indigenous Peoples, GA Res. 61/295, 61st Sess., 107th Plenary Mtg., UN Doc. A/RES/61/195, Sept. 13, 2007) and minority rights (UN Declaration on the Rights of Persons Belonging to National, Ethnic, Religious and Linguistic Minorities, GA Res. 47/135, UN Doc. A/RES/47/135, 47th Sess., Dec. 18, 1992) along with the establishment of a UN Permanent Forum on Indigenous Issues and an OSCE Office of High Commissioner for Minorities exemplified international concern over both historical consequences of indigenous exclusion and contemporary aspects of minority inclusion, especially in Europe, where dismemberment of the former Soviet bloc was accompanied by ethnic conflict. On the right to political participation of indigenous peoples see, Turpel 1992; Clavero 2005; Campbell 2007; and, Royo 2011. On minorities see, Palermo and Woelk 2003; Verstichel 2005; Weller 2007; Drzewicki 2010; Klímová-Alexander 2010; Marko 2010; and, Wheatley 2010.

the consideration of political participation as a group right. Existing literature on the right to political participation had focused largely on the individual nature of the right to take part in the conduct of public affairs.[187] Second, and related, it marked a growing interest in more direct forms of the right to political participation. A common thread running throughout this body of work is that political participation comprises more than the right to take part in periodic and genuine elections; *effective participation* requires the introduction of "positive" and/or "special measures"—e.g., recognition of indigenous institutions, establishment of autonomy arrangements, etc.—to facilitate the inclusion of minorities and indigenous peoples within the state and enable them at the same time to maintain their own culture and identity.[188] Third, it also appeared to contribute to the consideration of peace negotiations as a domain for the exercise of the right to political participation. Commenting on the protection of the right to political participation of minorities in conflict settings, for example, Baldwin et al. emphasize that "[p]eacemaking efforts should be rights-based, should follow [UN] Security Council Resolution 1325 [urging states to ensure

[187] McGoldrick 1999, 6, *citing*, Kymlicka 1995; Ramaga 1993; and, Thornberry 1995. In addition to the adoption of new instruments on indigenous peoples and minorities, this shift is also reflected, in part, in international jurisprudence relating to the right to political participation. In a consenting opinion in *Diergaardt et al. v Namibia*, one of only two cases to address the substantive content of the right to take part in the conduct of public affairs directly, Martin Scheinin, a member of the UN Human Rights Committee, responsible for oversight of the ICCPR, argues that "there are situations where article 25 [on the right to political participation] calls for special arrangements for rights of participation to be enjoyed by members of minorities and, in particular, indigenous peoples. When such a situation arises, it is not sufficient under article 25 to afford individual members of such communities the individual right to vote in general elections. Some forms of local, regional or cultural autonomy may be called for in order to comply with the requirement of effective rights of participation". HRC 2000.

[188] Positive measures may be required to address the historical consequences of discrimination and exclusion whereas special measures may be needed to ensure equality and inclusion in factually different situations. As Machnyikova and Hollo explain, "[w]hen individuals are in similar situations they are to be treated in a similar manner, and when they are in different situations they are to be treated in a different manner. Different treatment is necessary when concrete individual circumstances place a person or group of persons in a position whereby they require that specific account be taken of their different characteristics, identities or situation in order to be treated equally". Machnyikova and Hollo 2010, 101. *See also*, Wheatley 2002b. For additional discussion of effective participation of minorities and indigenous peoples *see*, Weller 2007; and, ILO 2009.

increased representation of women in the prevention, management and resolution of conflict]", and should be "inclusive of all peoples affected, and not just those that take up arms".[189] Two main issues, however, complicate clarification of peace negotiations as a conduct of public affairs entailing a concomitant right to take part under treaties governing the status of indigenous peoples and minorities. First, existing treaties are either silent or relatively vague on ways and means to actualize the political participation of minorities and indigenous peoples leaving the matter largely to the discretion of states.[190] Second, existing treaties emphasize the principle of effective participation, but do not explicitly define the participation of indigenous peoples and minorities as a fundamental human right.[191] These issues are nevertheless developing areas of law with a growing body of jurisprudence and soft law pointing towards an "evolutionary interpretation" of the right to political participation not unlike Steiner's early characterization of the direct right to take part in the conduct of

[189] Baldwin, Chapman, and Gray 2007, 37. The authors explain that since "[o]ne of the major focuses of peace processes in ethnically- or religiously-divided societies is how the state will be governed in the future and what role the various communities will have in it ... [i]t is highly important for minority women and men to take part in such processes". *Ibid*., 16.

[190] Treaties require states to "establish means" and "create conditions" for the effective participation of indigenous peoples and minorities, but are otherwise relatively silent on the ways and means for both groups to take part in the conduct of public affairs. Treaties on indigenous rights further call upon state signatories to consult indigenous peoples through their representative institutions. Commenting on the situation of minorities, for example, Weller notes that "[w]hile the systems for political participation of minorities are well understood in theory and in practice [e.g., anti-discrimination procedures, equality in law and fact, minority rights, guarantees for effective representation, representation at the executive level, territorial or cultural autonomy and integration of autonomous structures within the state], their anchoring in legal commitments is a different matter". Weller 2007, 480. The practice of states with regard to the implementation of the European Framework Convention on the Protection of National Minorities, moreover, has "crystalized the view that [while] the state may be entitled to choose which of the above mechanisms for effective participation it wishes to employ [a state is] also obligated to ensure a result". *Ibid*., 481.

[191] This issue was the subject of "enormous debate" during the drafting of the 1989 ILO convention on indigenous and tribal peoples. Swepston describes the "battle" as one "waged between the concept of 'consent' (described by its opponents as a right of veto over the wishes of national majorities, and by its proponents as an absolute human right enshrined in many national constitutions) and that of consultation". Swepston 1990, 690. The ILO Secretariat explained that it "had not intended to suggest that the consultations ... would have to result in the obtaining of agreement or consent ... but rather to express an objective for the consultations". *Ibid.*, 691.

public affairs as a type of programmatic right.[192]

This evolutionary interpretation of the right to political participation is also evident in research on public participation in both constitution and international law making processes. Drawing upon contemporary practices of constitution-making and what she describes as a small, but "remarkably well-hidden" and "under-used" body of international jurisprudence relating to the right to take part in the conduct of public affairs, Hart argues that "support in international law for a right to participate in constitution-making is, inch by inch, gaining footing and expanding in scope".[193] In their study on the making of international law and, in particular, the development of indigenous rights in recent decades, Boyle and Chinkin contend that "there is now a principle, backed by supporting state practice, that the rights of indigenous peoples cannot be determined without their participation and consent".[194] The significance of these studies for the

[192] The evolutionary interpretation of the right to political participation of both indigenous peoples and minorities is exemplified, for example, in the aforementioned international declarations which, in contrast to existing conventions on indigenous peoples and minorities, recognize an explicit *right* to take part in the conduct of public affairs. The evolutionary interpretation of the right to political participation can also be found in regional and international jurisprudence on indigenous peoples and minorities. *See*, respectively, the discussion in, Campbell 2007; and Verstichel 2005.

[193] Hart 2003, 7. Hart describes the latter part of the 20th century as "an era of constitution-making" noting that more than half of an estimated 170 constitutional documents have been written since the mid-1970s. Hart 2001, 153 n. 1, *citing*, Sartori 1997, 197. Another study notes that between 1990 and 2000, 17 African states, 14 Latin American states, and nearly all the post-communist states in Eastern Europe and the former Soviet Union drastically altered or replaced their constitutions. Ghai and Galli 2006, 19, *citing*, Van Cott 2000. In terms of jurisprudence, Hart refers, in particular, to the Marshall case involving participatory claims of indigenous peoples in Canada, in which the UN Human Rights Committee, the body responsible for oversight of the ICCPR, the primary treaty enshrining the right to political participation, concluded that "[c]itizens also participate directly in the conduct of public affairs when they choose or change their constitution". Hart 2003, 6. For additional discussion of the legal aspects of participatory constitution-making *see*, Samuels 2005; and, Banks 2007.

[194] Boyle and Chinkin 2007, 50. The late 20th century may also be described as an era of international law. Setting an agenda for the decade, the UN General Assembly (GA Res. 44/23, 44th Sess., 60th Plenary Mtg., UN Doc. A/RES/44/23, Nov. 17, 1989) called upon member states to promote acceptance of a respect for the principles of international law and to encourage the progressive development of international law and its codification. Commenting on the role of international law in the 1990s, the UN Secretary-General observed that "[i]t is possible to discern an increasingly common moral perception that spans the world's nations and peoples, and which is finding expression in international laws, many owing their genesis to the work of [the United Nations]". UNSG 1992, para. 15. The significance of Chinkin and Boyle's finding, at least with respect to indigenous rights, is not

conceptualization of peace negotiations as a conduct of public affairs under international law is potentially three-fold. First, they illustrate ways in which the right to take part in the conduct of public affairs has increasingly infringed upon a range of spheres long considered to fall within the sole jurisdiction of the state underscoring the growing legal significance of popular sovereignty.[195] Second, the notion of a right to take part in international law making exemplifies the expansion in domains for political participation that are no longer bounded solely by the geographical borders of the state, rendering state-centric limitations and restrictions like citizenship and residency increasingly less relevant to the exercise of a right to political participation.[196] Third, the conceptual significance of these findings for the elaboration of a right to take part in peace negotiations can be found in Bell's seminal research on contemporary peace agreements which she describes as "international

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so much the fact that citizens are able to take part in the law making process. As Strauss observes, "citizens have always participated [in the international order] as the adjunct of states". The significance lies, rather, in the idea that "citizens have an entitlement to participate in the international system on their own behalf". [emphasis added] Strauss 2001, 162. See also, Schachter 1998, 13; Chinkin 1999, 131; and, Wolfrum 2012, para. 47.

[195] Commenting on constitution-making in post-conflict states, for example, Banks observes that "[t]raditionally [such] constitutions have been viewed as power maps that are products of elite-brokered deals, often written by foreign experts. The process generally takes place outside of the public eye with no input from average citizens or civil society". Banks 2007, 105. For additional discussion of participatory constitution-making in post-conflict situations see, Ghai and Galli 2006. *See also*, case studies on participatory constitution-making in Guatemala, Fiji, Kenya, Colombia, Afghanistan, Nigeria, Rwanda, East Timor, Hungary, Bahrain, Chile and Indonesia produced by the Stockholm-based International Institute for Democracy and Electoral Assistance <http://www.idea.int> [accessed Mar. 2, 2012]. In a chapter on participants in international law-making Boyle and Chinkin similarly point out that "[t]he traditional statement of the sources of international law, the Statute of the International Court of Justice (ICJ), Article 38(1) assumes states to be the primary actors in international law-making and gives no indication of the ways in which non-state entities impact upon this function". Boyle and Chinkin 2007, 41.

[196] The declining relevance of both residence and citizenship to the right to political participation exemplifies the impact of both migration and globalization, as discussed in more detail in the following section of this chapter, on its exercise. Urbinati and Warren similarly point out that while "territoriality [has been] historically essential to the evolution of democratic representation, [it] identifies only one set of ways in which individuals are involved in, or affected by, collective structures and decisions". An increasingly wide array of "extraterritorial" (e.g., migration, global trade, environment) and "non-territorial" issues (e.g., religion, ethnicity, nationalism, professional identity, recreation, gender identity, social movements) raise questions about representation and participation in domains no longer bounded solely by the state. Urbinati and Warren 2008, 389–390.

transitional constitutions with a clear relationship to both international legal agreements and domestic constitutions".[197] Analogous to the negotiated settlement of armed conflict, research on the right to take part in constitution and international law making processes appears to provide at least a potential framework for the consideration of peace negotiations as a domain for the conduct of public affairs entailing a concomitant right to take part.

Recent studies on public participation in peacemaking indeed appear to conceive peace negotiations as a domain for the conduct of public affairs entailing a concomitant right to take part. These studies point to yet another way in which popular sovereignty has taken on more concrete legal significance in recent decades as well as evolving understandings of the nexus of the right to political participation and the negotiated settlement of conflict.[198] In their study on a legal framework for "building women into peace", Chinkin and Charlesworth argue that international law, "informed by an awareness of its

[197] Bell 2008, 108. In an earlier study Bell similarly describes peace negotiations as "a process of constitution-making as negotiated settlement". Bell 2006, 374. The conceptual difficulties that arise in placing peace agreements in either category—i.e., domestic constitutions or international law—as Bell explains, begin to make the case for a new *lex pacificatoria* or law of the peacemakers. This creates a situation in which international law influences both the substantive content and processes by which peace agreements are negotiated, as Bell notes, with resulting agreements and processes through which they are negotiated in turn contributing to the development of international law including the right to political participation. In a subsequent article on peace agreement provisions for civil society participation, Bell and O'Rourke argue, for example, that such provisions not only "demonstrate commitment to the idea that some degree of participatory democracy is important to post-conflict reconstruction", they also "constitute genuine innovations in governance which deserve further examination for their potential to negotiate the dilemmas of theories of participatory democracy". Bell and O'Rourke 2007, 304.

[198] This is not to say that consideration of the nexus between the right to political participation and the negotiated settlement of armed conflict is unique to the late 20th century. The drafters of the ICCPR, for example, identified the connection between political participation and international peace and security, as set out in the democratic peace thesis—the notion that democratic forms of government are more peaceful than other forms of government—as one of several justifications for codification of political participation as a fundamental human right. *See*, Chapter 4, *infra* n. 618. The Charter of the United Nations and subsequent declarations and guidelines on the peaceful settlement of international disputes, as noted above, however, did not address the relevance of political participation in the actual process of settling such disputes. Partly addressed through the development of solidarity rights, in particular, the right to peace, evolving understandings of peace negotiations as a conduct of public affairs, as argued below, find a much stronger basis in instruments relating to the elimination of gender discrimination at all levels, including the involvement of women in the peaceful settlement of international disputes.

shortcomings with respect to women and a willingness to take measures to redress them ... can offer a language recognized by states in which to claim *an entitlement to be involved in policy and decision-making about peace-building*".[199] [emphasis added] Positing a link between discrimination against women in times of peace and the violence perpetrated against them during armed conflict, Missire argues that the right of women to take part in post-conflict transformation, including their participation in peace negotiations, may be viewed as "a *reparation measure* addressing the roots of violence against women, hence preventing its reoccurrence".[200] [emphasis added] In an edited collection of studies on mechanisms for public participation in peacemaking, Barnes appears to echo aforementioned research on the right to democracy and on the right to political participation of indigenous peoples and minorities when she concludes that civil society's role in the negotiated settlement of conflict should be "understood within the wider context of *the right to effective*

[199] Chinkin and Charlesworth 2006, 943. Two major criticisms raised in relation to the use of international law to advance women's rights and interests include the colonial origins of law and its structural hierarchy which is said to bias male interests. Noting that such critiques "focus on the operation and interpretation of international law rather than on its basic nature", the authors argue that "[i]f international law is understood as a method of controlling the use and abuse of power, it can provide protection against arbitrary determinations and unfettered discretion and therefore a basis for accountability". *Ibid.*, 942-943. Research on the right to political participation of women in the context of peacemaking reflects a rich body of relatively under-used instruments on women and international peace and security. This includes a wide array of resolutions, declarations and programmes of action and recommendations adopted by international and regional organizations.

[200] Missire 2008, 58. Commenting on the connection between the impact of war on women and its negotiated settlement, the UN Special Rapporteur on violence against women recommends, for example, that "women must have a greater role in the peace process, during which time the framework for future government structures and administration are set in place, and a concerted effort must be made to involve women in society's efforts to address the past". UNCHR 2000, 4, *quoted in*, *ibid.*, 67. The consideration of victim participation, women in particular, as a reparation measure, as Missire notes, is enshrined in a growing body of instruments (e.g., Nairobi Declaration on Women's and Girl's Right to a Remedy and Reparation, Mar. 21, 2007; UN Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity, UN Doc. E/CN.4/2005/102/Add.1, Feb. 8, 2005) and guidelines (e.g., OHCHR 2006a, 7; OHCHR 2006b, 2; and, OHCHR 2008, 15–16) on reparations and transitional justice. It is also reflected in jurisprudence on the right to political participation of indigenous peoples which interprets the norm to include "the more specific rights to ... *special remedial measures* and procedural safeguards to ensure [their] effective participation". Campbell 2007, 499. *See also*, Úbeda de Torres 2011.

participation in governance".[201] [emphasis added] Focusing on the concomitant obligation of states to uphold the right to political participation, Jessop et al. suggest that the success of civil society mediation in "ripening" the conflict in Sierra Leone lends weight to the establishment of a "*normative 'duty'*" to facilitate public participation in the negotiated settlement of armed conflict.[202] [emphasis added] Goulding, a former UN mediator, however, is more cautious observing that "ambiguities remain about how far public participation in peacemaking is viewed ... as *normative*, in the sense that the people have an inherent *right to participate* in efforts to maintain peace in their countries".[203]

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[201] Barnes 2002a, 10. The small body of research on public participation in peacemaking reflects the most recent phase in the study of civil society participation in peacebuilding with previous research, as noted in the second section of this chapter, focused largely on the participation of civil society actors in unofficial peace initiatives and in post-agreement peacebuilding initiatives. The consideration of civil society participation in official initiatives, i.e., negotiations, is unique in its consideration of a putative right to participate in the negotiated settlement of conflict. In addition to the broad body of soft law on women, international peace and security, referred to above, the progressive development of law on civil society participation in peacemaking is also evident in international declarations and programmes of action on peace. While instruments adopted in the 1970s and 1980s (e.g., UN Declaration on the Right of Peoples to Peace, GA Res 39/11, 39th Sess., 57th Plenary Mtg., UN Doc. A/RES/39/11, Nov. 12, 1984) focused exclusively on the role of the state in matters of international peace and security, more recent instruments (e.g., UN Declaration and Programme of Action on a Culture of Peace, GA Res. 53/243, 53rd Sess., 107th Plenary Mtg., UN Doc. A/RES/53/243, Sept. 13, 1999) also call upon states to promote greater involvement of civil society actors in the prevention and resolution of conflict.

[202] Jessop, Aljets, and Chacko 2008, 94. The conclusion is based on the authors' assessment that the successful negotiation and implementation of a peace agreement may be linked to the early involvement or participation of a "respected peace-oriented civil society group" in a peace process. This point was subsequently reiterated by the government of Sierra Leone, with respect to the participation of civil society actors as observers, in a UN Security Council debate on the role of civil society in post-conflict peacebuilding. UNSC 2004b, 5. The concept of "ripeness" aims to explain how the presence of a mutually hurting stalemate—i.e., a situation in which neither party to a conflict is able to achieve a unilateral victory—and a mutually enticing opportunity—e.g., through a change in relationship or through external intervention—facilitate the resolution of armed conflict. Touval and Zartman 2001.

[203] Goulding 2002, 86. Recounting his own evolution in thinking, Goulding notes that when "asked whether [he] thought NGOs had a role to play in the UN's efforts to maintain peace and security", shortly after his appointment as UN Under-Secretary-General for Peacekeeping in the mid-1980s, "[he] answered with an unequivocal 'no'". Explaining his answer, Goulding notes that "[t]he United Nations was an association of governments [and while] NGOs could help to relieve hardship [they] had no role in the negotiation and implementation of peace settlements". Reflecting on the issue a decade-and-a-half later, Goulding concludes that "[he] would not give the same answer today". In addition to unresolved issues relating to whether civil society actors have a right to participate in peacemaking, Goulding adds that ambiguities also remain as to whether participation is "pragmatically desirable, because it contributes to the efficiency of peacemaking; or as a nuisance, which governmental peacemakers would prefer to avoid". *Ibid.*

[emphasis added] Important in identifying peace negotiations as a conduct of public affairs entailing a concomitant right to take part, existing literature nevertheless falls short of an explicit elaboration of the legal basis for such participation.

ii. The Right of Refugees to Take Part in the Conduct of Public Affairs

The second major challenge in elaborating a right to take part in the negotiation of durable solutions is the absence of an explicit reference to refugees in treaties codifying political participation as a fundamental norm of international law. This can be ascribed in part to the initial "compartmentalization" of human rights and refugee law such that the international human rights regime with responsibility for oversight of treaties which codify political participation as a basic human right focused on the protection of individuals and groups who remained in their countries of citizenship while the international refugee regime with its "non-political" and humanitarian mandate assumed responsibility for the situation of refugees in their countries of asylum.[204] This division of responsibilities with respect to the protection of fundamental human rights and

[204] Coles 1985a, 212; Chimni 1998, 350; Frelick 1998, 262; and, Stavropoulou 1998, 515–516. Commenting on the development of human rights law, some two decades after the establishment of the international refugee and human rights regimes, the International Law Commission, the UN body mandated to promote the development and codification of international law, observed that there remained a "broad division of functions between bodies concerned with human rights and those occupied with other areas of international law". The Commission further noted that "[a]s the law in one or other sphere develops, there may be an increasing need ... to reflect the progress elsewhere—for the law relating to human rights to take account of developments in other areas of international law, and, vice versa, for efforts undertaken with respect to the codification and development of other branches of international law to take cognizance of the degree of recognition now given to human rights in a series of specific texts". UNSG 1971, para. 395, *cited in*, Alston 1988, 11. UNHCR's interpretation of its "non-political" mandate, as stipulated in the agency's founding statute coupled with the regime's focus on the situation of refugees in their countries of asylum meant that UNHCR rarely intervened to address or protect the rights of refugees in relation to their country of origin. The agency likewise steered clear of addressing root causes of displacement, including violation or denial of political rights, holding that UNHCR engagement with root causes of forced displacement "would be 'political', and therefore inadmissible". Coles 1985a, 82; UNHCR 1995, 18; and, Frelick 1998, 263.

freedoms created a peculiar situation in which political persecution comprised grounds for refugee status, while the protection of a refugee's political rights appeared to fall outside the mandate of both the international refugee and human rights regimes.[205] The limitations and restrictions imposed or considered reasonable in terms of the exercise of the right to political participation, residence in particular, moreover, appeared to further militate against the elaboration and recognition of a refugee's right to take part in the public affairs of his or her country of origin under international law pending durable solutions to their situation.[206] The "exilic" nature of the refugee regime during its early years of operation with its focus on countries of asylum appeared to contribute further to a one-dimensional view of refugees as non-citizens, i.e., in relation to their country asylum, with no inherent right to take part in the conduct of public

[205] Apart from its preamble, underscoring a general obligation among states signatories to assure refugees the widest possible exercise of their fundamental rights and freedoms, along with its prohibition of enforced return (*non-refoulement*), the 1951 Convention Relating to the Status of Refugees is practically silent on the rights of refugees in relation to their country of origin, in particular, the right to take part in the conduct of public affairs. By consequence there was little discussion or attention to the rights accruing to refugees in relation to their countries of origin, including the fundamental right to take part in the conduct of public affairs. Rimmer and Long both draw attention to this issue in their discussion of refugee participation in transitional justice and home country political processes. *See*, *infra* n. 236-237. Driven by concerns among some states that refugee activism might lead to conflict within and between states, and the opposition of others to the inclusion of provisions that explicitly prohibited political activities and discriminated against refugees, the drafters of the 1951 Refugee Convention settled on a compromise such that the convention neither endorsed nor explicitly prohibited the exercise of political rights and freedoms. For drafting discussions *see*, Robinson 1953, 35–36; and, Grahl-Madsen 1997, 79. The drafting histories of various treaties which enshrine political participation as a fundamental human right are silent on the situation of refugees. The refugee issue only appeared to arise in relation to discussions regarding inclusion of separate provisions relating to asylum and nationality.

[206] The right to political participation is unique among human rights, as noted earlier, in that its exercise is generally regarded as limited to the citizens of a state notwithstanding more recent developments relating to the participation of non-citizens in the conduct of public affairs, including elections, at the local level. As Nowak explains, this "stems from the concept of the modern nation-State, namely, that only those individuals who are attached to 'their' State by the special bond of citizenship may exercise political rights". Nowak 1993, 576. Residence has also long been regarded as one among several pre-conditions or reasonable restrictions on the exercise of the right to political participation. Partsch 1981, 243; Bossuyt 1987, 473; Fox 1992, 554, 563; Nowak 1993, 573; and, Joseph, Schultz, and Castan 2004, 659. Residence-based restrictions on the exercise of the right to political participation also derive in part from the origins of the nation-state system in which residence, as noted earlier, was a primary criteria for representation, but have also been widely recognized as necessary to ensure conditions necessary for free and fair elections notwithstanding the growing practice of out-of-country voting in recent decades.

affairs.[207]

Francis Deng's 1995 *Compilation and Analysis of Legal Norms* relating to the status of internally displaced persons (IDPs) under international law was among the first legal studies to identify the lacuna with respect to the right to political participation of displaced persons.[208] Undertaken at the request of the former UN Commission on Human Rights at a time of rising IDP numbers, northern efforts to contain new refugee flows from the south, and growing awareness and recognition of forced displacement as a human rights issue, the study aimed to restate existing legal norms and identify gaps relating to the protection and assistance of internally displaced persons in the absence of a universal instrument elaborating IDP rights.[209] In general, Deng found that "the

[207] In its 1995 edition of *State of the World's Refugees*, UNHCR described the agency's initial approach to refugee situations as "reactive, *exile-oriented* and refugee-specific". [emphasis added] It was reactive because UNHCR dealt with refugee situations primarily in the country of asylum; exile-oriented because efforts focused on activities in the country of asylum, and responsibility for solving refugee problems was seen as resting with countries receiving refugees rather than with those producing them; and, refugee-specific because UNHCR generally did not address other forms of displacement. UNHCR 1995, 18. *See also*, Coles 1985b, 119; Chimni 2004, 61; and, Zieck 2004, 34, *citing*, Hathaway 1990, 160, 183. While it is also true that most refugees were likely unable to avail themselves of the protection afforded through their status as citizens, hence their flight and need for international protection, the predominant if not sole focus on their concomitant status as non-citizens in their countries of asylum arguably contributed to the perception of political participation and refugee status as mutually exclusive since the right to take part in the conduct of public affairs, as initially conceived, was limited to citizens. For additional discussion of the relationship between refugee status and political agency *see*, Malkki 1995, 378; Nyers 2003, 1080; and, Rajaram 2002, 247–248.

[208] UNCHR 1995, para. 351–357. The report is based on two separate studies prepared by the Ludwig Boltzman Institute of Human Rights and the American Society of International Law in cooperation with the International Human Rights Law Group. The studies adopt two distinct approaches to the issue—rights- and needs-based. The emergence of forced migration studies in the 1990s with its broader definition of displaced persons and its focus, among others, on the (re)construction of post-conflict states; the production of policy-oriented research on IDPs through new partnerships between academic institutions and NGOs; the expansion of UNHCR's mandate to include IDPs; and, the creation of special bodies to monitor their treatment, including Deng's position as the UN Secretary-General's Special Representative on Internal Displacement, each appeared to contribute to an early focus on the political rights of IDPs rather than refugees.

[209] By 1990 the number of IDPs worldwide had surpassed the global refugee population reaching a decade high four years later of 28 million persons. IDMC 2009a. This rapid increase stemmed, in part, from a spike in the number of armed conflicts around the world in the early part of the decade. Wallensteen and Sollenberg 2001, 639. In several cases, including Iraq, Liberia and Bosnia, armed conflicts left more than a million people displaced within their own countries. The rising number of IDPs was often exacerbated by the early or forced repatriation of refugees who were unable or unwilling to return to homes of origin. That the global IDP population continued to outpace the number of refugees worldwide,

highly complex web of norms originating from a variety of legal sources [made the] application [of existing international law] in specific situations of displacement difficult unless it [was] restated in a concise form".[210] Deng identifies the right to political participation as one among several norms where international law is indeterminate with respect to the situation of displaced persons. Existing law neither prohibits nor explicitly affirms the right of displaced persons to take part in the conduct of public affairs in their places of origin.[211] Deng thus recommends that "[a] future international instrument should stress that internally displaced persons do not lose their right to political participation because they are forced to leave their homes".[212] A major drawback of the

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however, also reflected a growing reticence among states to provide asylum to large numbers of refugees, especially those fleeing armed conflicts in less developed regions of the world. Cohen and Deng 1998, 3. The consideration of IDPs as a human rights issue marked another shift away from the early compartmentalization of refugee and human rights law. Initiated in the 1980s in the context of UN efforts to address the growing and protracted nature of refugee situations around the world under the theme of human rights and mass exoduses, the period that followed witnessed increasing involvement of the UN human rights regime in a range of refugee-related issues including population transfer, housing rights and forced evictions, freedom of movement and the right to remain. For a comprehensive discussion see, Stavropoulou 1998.

[210] UNCHR 1995, para. 4. The background reports prepared for the study draw upon a variety of sources including international treaty law, international customary law, UN Security Council and General Assembly resolutions, human rights principles and standards proposed by experts and non-governmental bodies and the practice of UN human rights treaty bodies. *Ibid*., paras. 13-26.

[211] In August 1996, less than a year after Deng submitted his report to the UN Commission on Human Rights, the UN Committee on the Elimination of Discrimination, which oversees compliance with ICERD, adopted a recommendation clarifying the *right* of refugees and other persons displaced by foreign military, non-military and/or ethnic conflicts to take part in the conduct of public affairs after their return to their countries of origin. CERD 1996b, para. 2(d). An important expression of principle, General Recommendations are not considered legally binding. Ando 2009, para. 41. The lack of an express reference to internally displaced persons, moreover, led at least one commentator to conclude that the recommendation did not address the specific situation of IDPs. Bagshaw 2000, 5.

[212] UNCHR 1995, para. 358. Two years later the UN General Assembly adopted a set of Guiding Principles on Internal Displacement setting out the rights of IDPs under international law. In accordance with the Special Representative's recommendation, the Principles affirm the *right* of IDPs to take part in the conduct of public affairs directly or through freely chosen representatives *during* their displacement and *after* they return to their homes of origin or resettle elsewhere in their country. UNCHR 1998, Principles 22(1)(d) and Principle 29(1). The Guiding Principles thus go beyond the language of the CERD General Recommendation, referred to above, which only affirms the right to political participation *after* refugees and displaced persons return to their homes of origin. The Guiding Principles reflect and are consistent with international human rights law and international humanitarian law, but like General Recommendations are themselves non-binding. For a useful discussion *see*, Kälin 2001, 1–2.

report is that it does not explicitly address the right of IDPs to take part in the negotiation of durable solutions.[213] Moreover, specific to the situation of internally displaced persons, the report is silent on the problem external displacement appears to create for refugees in taking part in the public affairs of their country of origin.

This gap was partially addressed one year later with the publication of UNHCR's first operational handbook on the voluntary repatriation of refugees. Drafted at the request of the agency's Executive Committee, the 1996 *Handbook, Voluntary Repatriation: International Protection* aimed to consolidate principles and best practices to guide UNHCR operations during what the agency's High Commissioner foresaw as a "Decade of Voluntary Repatriation".[214] Reflecting the increasingly determinate character of the right to

[213] The report refers to UNHCR's policy regarding informed decision-making and the participation of women with respect to voluntary repatriation, but does not address IDP participation in the design and implementation of repatriation and restitution programs or their participation when such issues are decided in negotiations. UNCHR 1995, para. 247. Such participation may be inferred, however, from the aforementioned UN Guiding Principles on Internal Displacement which call for special efforts to ensure IDP participation in the planning and management of durable solutions. UNCHR 1998, Principle 28(2). Subsequent policy papers (Bagshaw 2000; and, Lacy 2004), handbooks (Brookings Institution 1999; UNHCR 2007b; Brookings Institution and University of Bern 2008b; and, UN 2008b) and a small number of policy-oriented academic studies (Mooney and Jarrah 2005; and, Grace and Mooney 2010) focus almost solely on the right of IDPs to take part in elections. A number of handbooks (Brookings Institution and University of Bern 2005; and, UNHCR 2007b) also emphasize the principle of IDP participation in the planning and implementation of durable solutions, but do not address the question of whether IDPs have a right to participate in the negotiation of durable solutions.

[214] UNHCR 1996a; Ogata 1992; and, Black 2001, 25. UNHCR statistics record 2.4 million returns in 1992, the second highest number of returns throughout the 1990s, with the number of refugee returns reaching a decade high of 3.4 million two years later. UNHCR 2010a, UN. The Handbook consolidates and expands upon basic guidelines on voluntary repatriation already set out in Executive Committee conclusions on international protection. The publication of the handbook and its human rights focus also marked a shift away from the early compartmentalization of the refugee and human rights regimes. Acknowledging the long-held "artificial distinction" between refugee and human rights, UNHCR observed that "[t]he issue of human rights is so inextricably linked to the question of human displacement that it is impossible to examine one without the other". UNHCR 1995, 53. In addition to addressing the human rights of refugees in their countries of origin, the period also witnessed growing cooperation between the refugee and human rights regimes including UNHCR's active participation in the Commission on Human Rights, the UN Centre on Human Rights (later consolidated with the Office of the High Commissioner for Human Rights) and the various human rights treaty bodies, working groups, special rapporteurs and experts. UNHCR 1992a, para. 30; UNHCR 1993c, para. 40; and, UNHCR 1998b, para. 46. *See also*, Stavropoulou 1998, 546–547. The UN refugee agency subsequently described its

vote and the growing involvement of the UN in post-conflict elections, the handbook recommends that UNHCR "[s]afeguard the *rights* of the refugees/returnees to participate in elections following peace agreements and monitor equal access of returnees to voter registration and voting procedures".[215] [emphasis added] The handbook also addresses the issue of refugee participation in the negotiation of durable solutions in two main contexts. In relation to tripartite talks on voluntary repatriation involving host states, countries of origin and UNHCR, the handbook advises that "[f]ormal representation of the refugee community [in such talks] be *considered*".[216] [emphasis added] In an apparent nod to the growing importance of peace negotiations in crafting durable solutions for refugees, along with agency efforts to mainstream women's rights throughout its operations, the handbook also

approach to forced displacement as "proactive, homeland-oriented, and holistic". In contrast to the refugee regime's initial focus on the country of asylum, the new approach focused equal attention on the right to return to one's homeland, focused on the central role of the country of origin in facilitating solutions to forced displacement and saw UNHCR increasingly involved in a refugee's country of origin after his/her return. The agency also focused greater attention on prevention, including the right to remain, while UNHCR efforts to facilitate solutions involved a growing and more diverse number of actors and addressed an increasingly broad range of issues and beneficiaries. UNHCR 1995, 25–26.

[215] UNHCR 1996a, 49. The handbook further states that if refugees wish to participate in elections in their country of origin "UNHCR should certainly spare no effort to assist them in returning in time". *Ibid*. The election provision is significant for two main reasons. First, the handbook explicitly states that refugees have a right to participate in home country elections. Second, the handbook does not appear to affirm the long-held view that residence comprises a reasonable, or at least absolute, restriction on the right to political participation noting that refugees have a right to take part in elections "following peace agreements" with no explicit linkage between repatriation and the exercise of the right to political participation although such linkage may be inferred from the handbook's focus on repatriation. In cases where the country of origin agrees to out-of-country voting and refugees are unable to return to their countries of origin in time to participate in elections, moreover, the handbook also recommends that UNHCR "monitor the election process in exile and ensure that the preconditions for it taking place in exile are met". *Ibid*. The participation of refugees in home country elections nevertheless appears to be a matter left solely to the discretion of states.

[216] *Ibid*., 26. The handbook further advises that UNHCR should "not enter into (tripartite) repatriation arrangements without due consultation with the refugee women and men concerned. This includes situations where repatriation forms a part of a peace plan". *Ibid.* The tripartite process was first used in the early 1960s to facilitate the return of refugees displaced during Algeria's war of independence. Important in facilitating co-operation between UNHCR and a refugee's country of origin and asylum, the agency's tripartite approach to voluntary repatriation also appeared to further institutionalize the exclusion of refugees from decisions relating to their future. Riess 2000, 20. For a more detailed discussion of the tripartite process and legal significance of agreements reached *see*, Zieck 1998.

recommends that UNHCR "*[e]ncourage* the participation of women in peace negotiations or negotiations aimed at leading to the settlement of any conflict".[217] [emphasis added] The guidelines on refugee participation in negotiations, in contrast to those on elections, are nevertheless framed in terms of general principles.[218] Nowhere does the handbook endorse an explicit refugee *right* to take part in negotiations. The use of the terms "may be considered" and "encourage", moreover, appears to leave the issue of refugee participation in tripartite talks and peace negotiations to the discretion of UNHCR and state actors. Thus, while important as a first expression of principle, the handbook falls short of endorsing an explicit refugee right to take part in tripartite talks on repatriation or in peace negotiations.

[217] UNHCR 1996a, 22. The handbook also recommends that UNHCR "[c]onsult with refugees to involve them in efforts to find a durable solution to their problems, [s]afeguard the refugees' desires, enhance their decision-making process and, through concerted confidence-building measures, enlist their active participation in assessing the feasibility and desirability of their eventual return home". *Ibid*., 14. The specific reference to the participation of women appears to have been informed by the agency's developing policy on refugee women (UNHCR 1990c) and the much broader body of soft law, referred to earlier, relating to women's participation in matters of international peace and security. UNHCR's handbook thus moved beyond Deng's report which, as noted above, was silent on the participation of displaced persons in the negotiation of durable solutions. The handbook also appears to move beyond the UN Secretary-General's aforementioned report on an *Agenda for Peace* for the post-Cold War era in which civil society participation in peacebuilding, generally, appeared to be limited to "formal and informal processes of political participation" (UNSG 1992, para. 55) in the post-conflict peacebuilding phase.

[218] The handbook's provisions on refugee participation appear to arise primarily from a review of agency practice rather than an analysis of relevant international law. An information note on the development of UNHCR guidelines on voluntary repatriation notes that, as a first step, the agency undertook "a thorough analysis of the experience accumulated in the field in promoting and facilitating voluntary repatriation". UNHCR 1993a, para. 6. This may have included lessons learned from the specific experience of refugee participation in the Guatemalan peace process as discussed below. This contrasts with the handbook's discussion of the right of return under international human rights law as providing the legal framework for voluntary repatriation. UNHCR 1996a, 8. The provisions may have also been informed, however, by discourses on participatory development and their application to refugee situations especially in the context of increasingly protracted situations of forced displacement in the 1980s. The subsequent codification of a right to participate in development arguably contributed to the consideration of the right of refugees to take part in the public affairs of their home countries. It was the introduction of human rights approaches to development, moreover, which appeared to mark the first major shift away from the early compartmentalization of human rights in the UN system. In the late 1980s, for example, the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities (Sub-Comm. Res. 1987/29A, 39th Sess., 36th Mtg., UN Doc. E/CN.4/RES/1987/29A, Sept. 3, 1987) recommended "the integration of human rights concerns in the policies of United Nations development and financial agencies and institutions and of specialized agencies". Alston 1988, 16.

Riess criticizes the Handbook's provisions on refugee participation in the negotiation of durable solutions through tripartite talks or otherwise as an insufficient guarantee for the safe return of refugees. Arguing that UNHCR's initial shift in the 1990s towards safety rather than voluntariness as the "institutionalized safeguard of *non-refoulement*" may have contributed in certain situations to the *refoulement* of Guatemalan refugees, Riess concludes that "[f]or 'return in safety' to be an effective corollary to *non-refoulement* the criteria presented by the refugees themselves, rather than formal or 'objective' criteria [associated with safe return], must be decisive in establishing whether or not conditions in the country of origin are indeed safe".[219] Indeed, as Riess explains, it was only through their direct participation that Guatemalan refugees were eventually able to secure the conditions necessary for return in safety.[220] The study thus recommends that refugee participation "in set[ting] the terms and conditions for their repatriation must formally become part of [UNHCR's] standard operating procedures".[221] Riess' recommendation that UNHCR should *ensure* rather than *consider* or *encourage* refugee participation in the

[219] Riess 2000, 17, 19. The emergence of "safe return" in the context of the search for durable solutions in the early 1990s reflected growing resistance, primarily among northern states, to the granting of long-term asylum to refugees and UNHCR's own assessment that in certain cases, the conditions in a refugees' country of origin were "safer" than those in his or her country of asylum. The problem with "safe return", as Riess explains, is that it effectively substitutes the "objective assessment" of UNHCR and relevant states for the "subjective assessment" of refugees themselves. *Ibid.*, 13. This type of "objectivism", Chimni argues, effectively "disenfranchises the refugee through eliminating his or her voice in the process leading to the decision to deny or terminate protection". Challenging the notion of "objective assessment", Chimni further argues that since "facts do not exist outside the world of interpretation ... most often, what objectivism tends to do is to substitute the subjective perceptions of the State authorities for the experience of the refugee". Chimni 2004, 61–62.

[220] Riess 2000, 15. UNHCR considered the election of a civilian government in 1985, which subsequently invited the refugees to return to Guatemala, to be an important factor conducive to the safe return of Guatemalan refugees. Two years later the governments of Guatemala and Mexico along with UNHCR initialled a voluntary repatriation agreement. Refugees, however, cast doubt on whether the election of a civilian government would enable their safe return, especially given the ongoing influence of the country's military apparatus, which was responsible for the forced displacement of Guatemala's indigenous population. Military officials, moreover, participated in tripartite talks that led to the repatriation agreement. Refugees thus emphasized that they should have a role in setting the conditions for their return in direct talks with the Guatemalan government.

[221] *Ibid.*, 19.

negotiation of durable solutions also appears to reflect a broader concern about whether the conditions which ultimately enabled refugees to take part in the Guatemalan talks could be replicated elsewhere.[222] Like the literature that preceded it, however, the study lacks an analysis of the legal basis for a refugee right to take part in the public affairs of their country of origin through the negotiation of durable solutions or otherwise.

Grace's 2003 study on the electoral rights of "conflict-forced migrants" partially addresses this gap. Prepared for the International Organization for Migration's (IOM) "Participatory Elections Project", and drawing upon the aforementioned research on the right to democracy, Grace examines and compares the electoral rights of IDPs and refugees under three primary sources of international law: international treaty law, customary law and general principles of law.[223] The consideration of the electoral rights of refugees arguably marked a new phase in research on the right to political participation of

[222] Riess further observes that "[t]he fact that, to this day, the repatriation of the Guatemalans from Mexico is the only case in which a formal agreement between the refugees and the government of their country of origin has been signed, testifies to this". *Ibid.* Participants to a UNHCR evaluation of the Guatemalan repatriation operation raised similar concerns. Summarizing the discussion of lessons learned from the Guatemalan experience, UNHCR observed that "[s]ome participants wondered about the potential applicability of Guatemalan peace negotiation lessons—in particular the notion of refugees negotiating their own return—to other situations. Was it not too *sui generis*, with its elements of class, cold war politics, race, militarization, regional peace initiatives and the particular role of the international community?" The evaluation appears to reject the notion of the Guatemalan experience as unique, but also cautions practitioners that the application of lessons-learned to other refugees requires "clear-headed analysis" and a recognition and acknowledgment of the "complexity and specificity" of each refugee situation. Jamal 2000, para. 19.

[223] Grace 2003. The project which ran from 2002 to 2004 sought to identify obligations, standards and best practices for the enfranchisement of displaced populations in home country elections addressing a research gap first identified several years earlier by Gallagher and Schowengerdt in their study of the practice of refugee participation in post-conflict elections which is discussed in more detail in the following section of the chapter. Among other gaps, the authors noted the lack of standards and guidelines relating to refugee participation in home country elections apart from the aforementioned general reference in UNHCR's 1996 handbook on the right of refugees to take part in post-conflict elections. Gallagher and Schowengerdt 1998, 195. A separate IOM report delineates standards and best practices based on a review of 10 major refugee cases. This includes discussion of electoral systems and displaced persons, voter registration and eligibility, election security, movement and legal status of displaced persons, voter education and campaigning in countries of asylum, and ballot transparency and confidence. Grace and Fischer 2003.

refugees. While the legal analysis focuses explicitly on the right to vote, the conclusions drawn are nevertheless relevant to the broader question of whether refugees have a right to take part in the public affairs of their countries of origin. Grace finds that the right to political participation of refugees is more difficult to establish due largely to the absence of a "universally accepted legal principle hold[ing] that citizens *residing outside of their home state* have a right to participate in national political life".[224] [emphasis added] In light of this lacuna the study suggests that such a right "must generally be deduced by extending the non-discrimination principles of UDHR, ICCPR, and the regional instruments to these persons".[225] These principles would seem especially relevant to the participation of refugees in home country elections given the relatively determinate character of the right to vote as mentioned earlier. With the exception of situations where other civil society sectors are given a seat at the negotiating table, however, the principles of non-discrimination and equality

[224] Grace 2003, 18. The question of whether citizens, including refugees, have a right to take part in the conduct of public affairs when they are outside their country of citizenship is nevertheless a developing area of law. The 1990 International Convention on the Protection of the Rights of All Migrant Workers and of Their Families, as Grace suggests, "could be interpreted to protect the rights of all migrants, including refugees and those who are in irregular situation", notwithstanding the discretion accorded to states in terms of the implementation of provisions relating to the participation of migrants in the public affairs of their country of citizenship. The combined effect of the convention's "clawback clause", which allows states to implement participatory provisions in accordance with national legislation, and the fact that few states have ratified or intend to ratify the treaty nevertheless appear to render the convention, in Grace's assessment, "of marginal importance at best", in securing a refugee right to take part in home country elections. *Ibid*., 20. The convention, moreover, explicitly states that it does not apply to refugees unless such application is provided for in national legislation. The evolution of international law is reflected more directly in the OSCE's 1999 Istanbul summit declaration which calls upon states to facilitate the "right" of refugees to participate in elections in their countries of origin.

[225] Grace 2003, 17. One of the earliest studies on the right to political participation, as noted earlier, focused on the specific issue of discrimination in the manner of political rights. Santa Cruz's report for the UN Sub-Commission, prepared, in part, in response to growing international concern about the violation of political rights and related freedoms by white minority regimes in Africa, also included a set of draft principles, but did not address the specific situation of refugees. Santa Cruz 1962. The principles of non-discrimination and equality are also considered essential, as noted earlier, to the effective participation of indigenous peoples and minorities. The importance of these principles for refugees is explicit in CERD's aforementioned General Recommendation on the prohibition of discrimination against refugees and persons displaced by foreign military, non-military and/or ethnic conflicts under article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination.

appear less useful as a basis from which to infer a refugee right to take part in the negotiation of durable solutions given the relatively indeterminate character of the right to take part in the conduct of public affairs. Grace reiterates Deng's recommendation for "international action to directly codify and support the extension of [the right to political participation] to conflict forced migrants".[226] The study further recommends that the UN Human Rights Committee, the body responsible for oversight of the ICCPR, clarify the issue through the adoption of a "General Comment" on the right to political participation of refugees and displaced persons; the appointment of a UN Special Rapporteur to further investigate and publicize the issue; and, the promotion of universal standards among relevant organizations, including UNHCR and election observation missions.[227]

The issue of whether citizens have a right to take part in conduct of public affairs when they are outside their country is nevertheless a developing area of law. The increasing dispersion of populations through migration along with enhanced abilities to maintain relations with their countries or origin through advances in transportation and communications technologies have contributed to evolving understandings of the linkage between residence and the exercise of the right to political participation.[228] While the right of citizens to

[226] Grace 2003, 17–18. The specific recommendation focuses more narrowly on the right to vote, but may be interpreted more broadly to include the right to take part in the conduct of public affairs directly or through freely chosen representatives.

[227] *Ibid*., 24. The report also recommends that regional organizations, in particular, the Inter-Parliamentary Union, the Organization for Security and Cooperation in Europe, the Council of Europe and the Organization of American States promote baseline standards and provide technical assistance to governments regarding refugee enfranchisement. In recent years, the OSCE, CoE (Venice Commission) and UNHCR have all undertaken various efforts to clarify principles, mandates and have begun to develop guidelines on the enfranchisement of refugees and displaced persons, however, as noted in the following section, practice continues to vary widely within and across regions. Finally, Grace suggests that governments consider the adoption of a separate human rights instrument on the political rights of refugees and internally displaced persons. *Ibid*., 25.

[228] This includes, as noted above, the adoption of a convention in the 1990s relating to the protection of the rights of migrant workers and members of their families. In his study on the normative aspects of external voting Bauböck identifies three main reasons that legislatures

take part in the conduct of public affairs when they are outside their country of citizenship falls short of an explicit right under international law, as noted above, Bauböck appears to suggest that refugee situations may comprise an exception to the generally held view that residence is a reasonable and legitimate restriction on the exercise of the right to political participation. Assessing the legal significance of external voting in recent decades, Bauböck argues that the extension of voting rights to citizens when they are outside their country of citizenship should be viewed as "contingently legitimate", neither completely rejected nor wholly accepted as applicable to all expatriates.[229] External voting rights should be allocated, rather, "to individuals who are *stakeholders* in the future of the political community".[230] [emphasis added] This would appear to include refugees, in particular, those wishing to return to their country of origin. Bauböck in fact posits that, despite the absence of binding norms governing the enfranchisement of refugees, it seems "intuitively plausible that those who have

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have extended voting rights to citizens residing abroad: in the context or aftermath of major wars; during transitions to democracy; and, migrant states change of attitude to expatriates to promote state interests. Bauböck 2006, 2400. For a discussion of the history of external voting see, Ellis 2007.

[229] Bauböck 2006, 2397. The study defines external voting as the "intersection" or "union" of expatriate and extra-territorial voting. Expatriate voting refers to voting by individuals who have a permanent residence abroad and no permanent residence in the country where the election is held. Extraterritorial or out-of-country voting is a special form of absentee voting outside the territory where the election is held. *Ibid*., 2398. A recent survey of state practice found that close to 100 countries and territories, more than half of UN members, and a majority of democratic states allow external voting. Annex A - External Voting: A World Survey of 214 Countries and Territories", in Nohlen and Grotz 2007, 234–245. The survey classifies countries into four major categories: countries with external voting provisions, countries with no external voting provisions, countries in transition and countries with no provisions for direct elections.

[230] Bauböck 2006, 2397, 2446. The study thus concludes that "generations born abroad who have no stake in their forebears' country of origin" would generally not have a claim to take part in "home country" elections. It is unclear whether Bauböck's distinction between forced and voluntary migrants, as noted in the text, also applies to refugees born abroad. Bauböck further argues that it is important to distinguish between migrants and national minorities. The study posits that the right to political participation of minorities are "better realized through domestic minority rights and political autonomy", as discussed above, rather than through a right to take part in elections in their kin state. *Ibid*., 2447. Bauböck adds that while external voting rights have yet to be widely codified in treaty law or rise to the level of custom, external voting rights should not be abolished where they are currently in practice as "[i]nclusion and exclusion from the demos are normatively asymmetric". *Ibid*., 2402. In other words, it is relatively easier to grant external rights than to rescind them once granted.

been *forced* from their homes have a stronger claim to participation than those who have left *voluntarily*".[231] [emphasis added] If this were not the case and "claims to membership and political participation [were derived] purely from the fact of territorial subjection", Bauböck explains, "we would have to always accept ex post the results of coercive manipulations of the demos and would thereby provide incentives for future manipulations of this kind".[232] Emphasizing that refugees, unlike other expatriate citizens, "have not left their country of origin voluntarily", Mandal similarly observes in a UNHCR policy paper on the political rights of refugees that "it does not seem reasonable to exclude refugees from voting in their country of origin, particularly if this rewards persecutory activities on the part of the authorities there".[233] Significant in identifying a putative right of refugees to take part in the public affairs of their countries of origin, Bauböck does not elaborate in substantive terms the legal basis for such a right.

[231] *Ibid*., 2436. Bauböck notes while the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, referred to above, affirms the right of migrants to take part in the public affairs of their countries of citizenship, its usefulness is diminished not only by the aforementioned clawback clause governing the right to political participation, but also by the fact that the Convention "has not been signed by any major country of immigration and is not considered to establish generally recognized norms that would also apply to non-signatories". *Ibid*., 2410, *citing*, Nohlen and Grotz 2000. In contrast to Bauböck, López-Guerra rejects special electoral claims of forced migrants arguing that "[t]he causes of immigration have nothing to do with the reasons for enfranchisement". López-Guerra 2005, 231.

[232] Bauböck 2006, 2438. Indeed, a number of scholars and practitioners cite refugee enfranchisement in home country elections as a means of reversing ethnic cleansing. Grace 2003, 3–4; and, Grace and Mooney 2009, 101. In a number of cases, such as Bosnia and Herzegovina, peace agreements which aimed to reverse ethnic cleansing included provisions enabling refugees to take part in elections prior to their return. Such agreements not only evidence the ongoing evolution of international law, they also appear to exemplify the role of peace agreements, as noted earlier, in the development of international law. In a recent evaluation of UNHCR's role in country of origin elections and political processes Long nevertheless cautions that a focus on external voting alone may also lead to nothing more than demographic manipulation of the demos. Long 2010b, para. 235.

[233] Mandal 2003, para. 16. Mandal further notes that the right of refugees to take part in home country elections from abroad is a developing area of law and practice citing provisions for such participation in above-mentioned post-agreement elections in the Balkans. *Ibid*., para. 18. The paper, which is part of UNHCR's Department of Protection legal and protection policy series, also appears to criticize the UN Human Rights Committee for not taking into account the specific situation of refugees in its determination of what may comprise a reasonable restriction on the right to political participation. *Ibid*., 16 n. 11. The policy paper otherwise focuses solely on the political rights of refugees in their countries of asylum.

A small number of studies appear to suggest that the right of refugees to take part in the public affairs of their countries of origin may be derived from legal instruments governing reparations and transitional justice. A rapidly expanding field of study in recent decades, "victim" participation is central to the various elements of transitional justice including reparations, prosecution and truth and reconciliation.[234] In his normative evaluation of external voting, for example, Bauböck suggests that in light of the lacuna with respect to the electoral rights of refugees in their countries of origin, refugee enfranchisement may be conceptualized as a form of "rectificatory justice".[235] Taking note of the fact that refugees are often excluded from transitional justice initiatives, and critical of a "minimalist or 'thin' form [of democracy] in post-conflict societies"—i.e., elections—as inadequate for "building democracy in post-conflict societies or pursuing transitional justice strategies", Rimmer appeals for new research "focus[ing] on the linkages between forced displacement and transitional justice outside a violations context", including the question of whether refugees have a right to take part in peace negotiations.[236] Finally, Long's evaluation of refugee

[234] In a study on trends in accountability and peace agreements, Vinjamuri and Boesenecker note that the inclusion of justice and accountability mechanisms in peace agreements "became a sort of 'standard operating procedure' for mediators and negotiators during [the 1990s]". Vinjamuri and Boesenecker 2007, 27. A second study by Mack underscores the growing importance of justice and accountability mechanisms in the decade that followed the end of the Cold War. According to Mack, the decade saw an increase (from one to eight) in the number of government prosecutions of former officials for grave human rights abuses and a concomitant increase (from zero to four) in the number of hybrid and international criminal tribunals. The number of truth and reconciliation commissions active in any one year, meanwhile, increased from one to seven over roughly the same period. Mack 2005, 154–155. The principle of participation is also found in a range of principles and guidelines, as noted earlier, governing reparations and transitional justice measures.

[235] Bauböck 2006, 2435–2438. Bauböck briefly explains his choice of phrase noting that "forced migrants would have been citizens with voting rights had the state protected them from violence as it should". *Ibid*., 2348.

[236] Rimmer 2010, 2. Rimmer also identifies residence as one of the primary factors that make it difficult for refugees to participate in the public affairs of their country of origin. Moreover, the study draws attention to the fact that, unlike the UN Guiding Principles on Internal Displacement, which affirm the right of IDPs to take part in the conduct of public affairs during and after their displacement, as noted earlier, the 1951 Convention Relating to the Status of Refugees "deliberately excludes all mention of civil and political rights once a person has attained refugee status [even though] the conferral of refugee status is confined to those individuals who suffer breaches of civil and political rights". *Ibid*., 1. The participation

participation in home country elections and political processes for UNHCR's Policy Development and Evaluation Service similarly observes that, in addition to being a "powerful symbol of their readmission to the political community as equal citizens", such participation "also provides a means of *recognizing* and *atoning* publicly for the *past wrongs* of forced flight".[237] [emphasis added] These studies once again appear important in providing possible "entry points" for consideration of a refugee right to take part in the negotiation of durable solutions, however, like other areas of research surveyed above they nevertheless fall short of an explicit elaboration of such a right.

This gap is also common to the small body of emerging literature on the participation of refugees and other displaced persons in the negotiation of durable solutions. Part and parcel of the larger body of research on public participation in peacemaking, referred to above, these studies mark a new phase in the study of the right to political participation of refugees. They also appear to reflect growing recognition among scholars, practitioners and policymakers of refugees as "stakeholders" and "citizens" in the context of negotiated settlements to armed conflict.[238] Emphasizing the fact that displaced

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of displaced persons in transitional justice mechanisms is addressed extensively in a recent volume on transitional justice and displacement. Duthie 2012. In a contribution on truth telling and forced displacement, for example, Bradley observes that "displaced populations are increasingly being acknowledged by the international community as important stakeholders who not only have a right to participate in transitional justice initiatives but can also make valuable contributions to the success of truth-telling processes". Bradley 2012, 189.

[237] Long 2010b, para. 20. The study also appears to respond directly to Rimmer's aforementioned point regarding recognition of political persecution as criteria for granting refugee status under the 1951 Refugee Convention, which is silent regarding the protection of the right of refugees to take part in the public affairs of their country of origin, notwithstanding the Convention preamble, as already noted, assuring refugees the widest possible protection of their human rights. Long argues that "[u]nderstanding forced flight as a form of political exclusion means that ... the methods employed to solve refugee crises must also be necessarily political, involving full (re)admission to citizenship for refugees, either in a host country or in the country of origin". Indeed, she argues that "placing political inclusion at the centre of international approaches to durable solutions suggests that the political participation of refugees must play a key role in moving the displaced beyond exile". *Ibid.*, paras. 17-18.

[238] In a study on refugees, IDPs and peacemaking, for example, Jacobsen et al. observe that

persons "have rights grounded in international human rights law and international humanitarian law [and that] states in post-conflict situations have an obligation to protect those rights", Koser recommends that states should "directly include where possible and appropriate legitimate representatives of displaced populations in formal negotiations".[239] This appears to suggest but nevertheless falls short of identifying an explicit right and concomitant obligation to ensure the participation of displaced persons in the negotiation of durable solutions. Indeed, the suggestion that displaced persons should be included in negotiations "where possible and appropriate" appears to leave the issue largely to the discretion of states, not unlike the provisions in UNHCR's previously discussed handbook on voluntary repatriation.[240] In a study on the

"[r]efugees and IDPs clearly have a stake in peace agreements. For most of them, peace—or even security without peace—will enable them to leave the camps, and perhaps return home, reclaim their land, and re-establish their livelihoods". Jacobsen, Young, and Osman 2008, 314. The authors also acknowledge, however, that in some cases "[o]thers will have economic or ideological interests in continuing the conflict and undermining the peace process". Milner makes similar points in his study on refugees and the regional dynamics of peacebuilding noted that "[w]hile the experience of exile may contribute to the politicization of refugee populations, thereby undermining prospects for post-repatriation reconciliation, it is also increasingly recognized that refugees can make a significant contribution to peacebuilding in their country of origin". Milner 2009, 27. Addressing the specific issue of citizenship, Long observes that "recognition of [refugees'] claim to citizenship by the state [at times of peacebuilding], and the consequent inclusion of refugees in formal political activities such as elections or referendums is a powerful symbol of their readmission to the political community as equal citizens". Long 2010b, para. 235.

[239] Koser 2007, 3, 12. Koser further notes that "[c]ivil society–including IDPs–should be encouraged to participate not just as means of exercising their *rights*, but also because they often have significant contributions to make, for example as 'peace connectors' and catalysts." [emphasis added] *Ibid.*, 13. The study observes that "[a] variety of UN and other international conventions and agreements recognize the rights of children, youth and women to participate in political decision-making processes that affect their lives". Koser cites the UN Guiding Principles on Internal Displacement, but does not otherwise address the basis for such participation under international law. The study appears to root such participation in human rights-based approaches to peacebuilding. UN efforts to mainstream human rights-based approaches throughout the international organization in the 1990s (UNSG 1997, para. 78–79), beginning in the field of development, as noted earlier, not only marked the progressive integration of human rights throughout the UN system in contrast to the initial compartmentalization of the regime in relation to other bodies responsible for international law, the organization's efforts were also part and parcel of a broader initiative referred to earlier to promote and develop international law in the post-Cold War era. For additional discussion of human rights-based approaches to peacebuilding *see*, Schabas and Fitzmaurice 2007, 34–35.

[240] The qualifications used by Koser are also similar to the aforementioned "clawback" clause in the 1990 International Convention on the Protection of Migrant Workers and Members of their Families which leaves the issue of migrant participation in the public affairs of their country of origin to the discretion of signatory states. The recommendations also appear to

relationship between peace processes and the political aspects of refugee camps Jacobsen et al. explicitly state that "[d]isplaced people have a *right* to be involved and a strong interest in formal negotiations".[241] [emphasis added] Long's aforementioned evaluation locates a refugee right to take part in decisions relating to durable solutions within the international community's commitment to the inter-related concepts of popular sovereignty, self-determination and democracy.[242] The study recommends that UNHCR "publicly affirm its commitment to support the *right* of refugees to express and develop their own political identities, particularly through engagement with country of origin *political processes to end the conflict* and build sustainable peace which may enable return".[243] [emphasis added] These studies are significant in that

be similar to the concept of effective protection referred to earlier under which states retain the right to choose mechanisms for the participation of indigenous peoples and minorities, but also have an obligation to ensure a result. Surveying advantages and disadvantages of informal or unofficial mechanisms for participation, Koser also recommends, among others, that official actors "[c]onvene separate formal consultations on displacement-specific issues with representatives of displaced populations where their direct participation in peace negotiations is impossible or inappropriate; [s]upport 'track-two' and 'track-three' processes and guarantee no reprisals against any individuals or organizations that participate in these processes; [and] [w]here possible and appropriate visit IDP camps to gain direct insights into the situation of IDPs". Koser 2007, 3. In cases where such participation is not possible, Koser suggests that international mediators encourage warring parties to include displacement on the negotiating agenda and/or focus on the legal rights of displaced persons. *Ibid*., 26-27.

[241] Jacobsen, Young, and Osman 2008, 324. Noting that displaced persons "have not been actively sought out by negotiators and engaged in high-level negotiations", the authors recommend that "[t]he efforts of refugees and IDPs to engage in traditional conflict mediation and citizen-based peacemaking efforts should be complemented by active efforts on the part of negotiators to include them in formal peacemaking activities".

[242] Long 2010b, para. 270. According to Long, these concepts "suggest that 'voluntary repatriation' requires not just refugees' consent, but the shaping of an active choice". *Ibid.* This contrasts with the study's examination of refugee participation in home country elections which analyzes the *right* of refugees to take part in the conduct of public affairs through freely chosen representatives under international human rights law. *Ibid*., paras. 24-34. A study on Palestinian refugees frames their participation in a similar context. Noting that "the way [the refugee issue] has been managed [in peacemaking efforts since the early 1990s] has seriously undermined the possibilities of peace for years to come", Nabulsi argues that "the rights derived from popular sovereignty, participatory democracy and representation need to be integrated into legal and political solutions for Palestinian refugees, as well as by the broader field of refugee experts in general". Nabulsi 2010, 73.

[243] Long 2010b, para. 318. The study further recommends that UNHCR should "[a]ffirm that [it] has a duty to provide refugees, where possible, with meaningful choice. Choice offers refugees freedom and dignity: this means that the right of refugees to participate in country of origin politics must be respected alongside their right not to participate in country of origin political processes". *Ibid.* Long also recommends that UNHCR "[f]acilitate the inclusion of mass or non-elite refugee representatives in political processes in order to balance the

they posit a putative refugee right to take part in the negotiation of durable solutions, however, much like the related literature surveyed above, they similarly fail to elaborate the legal basis for such a claim.

III. The Practice of Political Participation and Peace Negotiations

The literature on political participation is also largely silent on two similar and inter-related questions concerning the practice of refugee participation in the negotiation of durable solutions.[244] First, the literature has yet to identify or consider peace negotiations as a domain for political participation. Second, the study of political participation rarely appears to consider the specific situation of refugees. Similar to the literature on legal aspects of refugee participation in the negotiation of durable solutions, practical aspects of such participation have been addressed, at least in part, by research in a number of related fields. This includes studies on post-conflict elections, civic engagement, public

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overwhelming tendency of elite exiles and diaspora to dominate the refugee voice during peacebuilding negotiations. These measures will also ensure that when it is possible, refugees themselves rather than UNHCR express and protect their own interests during repatriation negotiations". *Ibid*., para. 323. The study appears to move beyond Koser's recommendations, however, the use of the phrase "when it is possible" nevertheless similarly appears to suggest that such participation falls short of a right. It may also be an acknowledgement, however, of difficulties in ensuring such participation in situations where states, rebel groups, opposition movements and mediators do not support the inclusion of refugees.

[244] The study of political participation can also be divided into three main phases. Van Deth 2001. Initial research in the 1940s and 1950s focused largely on voting and related campaign activities. The research agenda widened considerably in the 1960s and 1970s with scholarship increasingly focused on what Kaase and Marsh described as "unconventional" forms of political participation—e.g., protest activities and social movements—in contrast to the earlier focus on more "conventional" forms of political participation like voting. Kaase and Marsh 1979. Since the 1990s the study of political participation has further broadened in ways that are not dissimilar to research on the right to political participation discussed in the previous section. This includes a greater focus on the political participation of certain groups, identification of an even broader array of direct forms of participation and the consideration of new domains for political participation no longer contained solely within the borders of the state. Indeed, some scholars suggest that "unconventional" modes of political participation "have become so popular and mainstream" in recent decades, that "the label has been rendered nearly meaningless". Stolle and Hooghe 2010, 120, *citing*, Inglehart and Catterberg 2002. In contrast to the legal research reviewed above, however, the study of the practice of political participation has produced a much broader and more diverse body of literature.

participation in peacemaking, transnational political participation, and diaspora and peacemaking. As noted in the previous section, there is also a small body of recent literature on the participation of refugees and other displaced persons in the negotiation of durable solutions. The lack of a uniform definition of what constitutes participation along with the varied criteria used for case selection nevertheless make it difficult to draw empirical conclusions on each of the aforementioned questions.

i. The Practice of Political Participation and Peace Negotiations

One of the major challenges in examining the practice of refugee participation in the negotiation of durable solutions is that peace negotiations have rarely been considered as a domain for political participation. This can be ascribed in part to the initial conception of political participation as comprising those voluntary activities of citizens aimed at influencing government within the borders of their country of citizenship.[245] The international character of such negotiations along with their "time-bounded" nature thus appear to militate against their consideration as domains for political participation.[246] It can also be explained by

[245] In a review of the study of political participation Van Deth identifies four different "types, modes or dimensions" of participation common to the literature on political participation: voting, campaign activities, contacting officials or politicians and protest activities. The study also identifies participation in voluntary associations as a possible fifth type of political participation. Van Deth 2001, 8. While the study of political participation has examined a much broader array of activities, as Van Deth also observes, the aforementioned forms are among the most common. Research on the practice of political participation, moreover, has tended to focus largely on "those activities by private citizens that ... aim at influencing the government, either by affecting the choice of government or by affecting the choices made by government personnel". Teorell 2006, 788–789, *citing*, comparative studies of political participation by Verba and Nie (1972) and Kaase and Marsh (1979), and large-scale studies of political participation in the UK by Parry, Moyser, and Day (1992) and in the US by Verba, Scholzman, and Brady (1995). Empirical studies of more direct forms of political participation lag behind and tend to focus predominantly on public initiatives, recalls and referenda in Western democracies. Maduz 2010. Empirical research on deliberative democracy has likewise lagged significantly behind theory. Carpini et al. 2004, 315.

[246] The relative paucity of research on peace negotiations as a domain for political participation may arise from conceptual difficulties stemming from the fact that peace negotiations are often neither fully national or international in character with the study of political participation

the fact that matters of international peace and security, as already noted in the previous section, have long been viewed both in law and in practice as falling almost exclusively within the domain of the state.[247] The involvement of non-state actors, civil society actors in particular, in negotiated settlements was generally considered to be more of a hindrance than a help in the management and resolution of conflict.[248] Often focused on conflict between rather than within states, the substantive content of many peace negotiations—e.g., the cessation of hostilities and the nature of inter-state relations—appeared to fall outside issues generally considered to be within the public sphere.

Davidson and Montville's distinction between official ("Track I") and unofficial ("Track II") diplomacy in the early 1980s arguably provided an initial framework or foundation for the subsequent consideration of peace negotiations as a domain for political participation.[249] Written at a time when heightened Cold

traditionally focused on the activities of citizens within the state. The hybrid nature of peace agreements, "at once political and legal documents, treaties and constitutions, international and legal documents", as Bell observes, exemplifies the conceptual difficulties of placing the process of their negotiation within the broader body of literature on political participation. Bell 2008, 200. The fact that peace negotiations often comprise a "one-off event", with the exception of graduated processes in which issues of dispute are addressed through a series of peace agreements negotiated over a period of several years and cases where the collapse of negotiated settlements result in new rounds of talks leading to new peace agreements, appears to further complicate consideration of such negotiations as domains for political participation with the latter often though not exclusively (e.g., elections versus referenda) focused on activities that allow for ongoing participation of citizens in the public affairs of their country.

[247] In setting out an *Agenda for Peace* for the post-Cold War era, for example, the UN Secretary-General observed that "[i]f conflicts have gone unresolved, it is not because techniques for peaceful settlement [as codified in the UN Charter and subsequent declarations on the peaceful resolution of disputes] were unknown or inadequate. The fault lies first in the lack of political will of parties to seek a solution to their differences through such means as are suggested in Chapter VI of the Charter, and second, in the lack of leverage at the disposal of a third party if this is the procedure chosen". UNSG 1992, para. 34. The UN *Handbook on the Peaceful on the Peaceful Settlement of Disputes* is similarly focused on the role of states. UN 1992. This largely state-centric approach to international peace and security with an emphasis on mediation, facilitation, good offices and arbitration between states reflected the context of its creation and development in the aftermath of two world wars and the subsequent onset the Cold War that lasted throughout much of the rest of the 20th century. Spencer and Spencer 1992, 7–8.

[248] Paffenholz and Spurk 2006, 16; Wanis-St. John and Kew 2008, 21; and, Barnes 2009, 139.

[249] Davidson and Montville 1981. The practice of unofficial diplomacy preceded Davidson and Montville's study, however, it was the latter who coined the term "Track II" to distinguish unofficial diplomacy from official or "Track I" diplomacy. Initiated in 1960, the Dartmouth Conference, named after the US college where the proceedings took place, for example,

War tensions and other long-standing disputes provoked new thinking about ways to address international conflict, the authors' typology marked a departure from the almost exclusive focus on the role of states and third party mediators in the study of conflict management.[250] Davidson and Montville coined the term "Track II" to describe "unofficial, informal interaction between members of adversary groups or nations [facilitated by external actors] which aims to develop strategies, influence public opinion and organize human and material resources in ways that might help *resolve* their conflict".[251] [emphasis added] "Track I" negotiations, by way of contrast, involve official actors, often assisted by third party mediators, and aim to reach agreements to *manage* the conflict between them.[252] Drawing upon their professional experience in psychiatry and

brought together private citizens and former officials from the United States and the Soviet Union for a series of unofficial meetings that aimed to facilitate a reduction in Cold War hostilities. The process arguably provided the initial framework or blueprint for Track II diplomacy. Voorhees 2002. A second series of unofficial meetings between Palestinian and Israeli figures focused on finding ways to resolve the long-standing conflict in the Middle East further contributed to new thinking—the case is featured prominently in Davidson and Montville's early study—about the role of public participation in peacemaking through Track II diplomacy. Cohen and Kelman 1977; Kelman 1979; and, Kelman 1997. For a summary of early Track II and other unofficial initiatives, including back-channel talks, multi-track diplomacy and unofficial mediation among others *see*, Bercovitch and Jackson 2009, 138–139.

[250] The emerging interest in civil society participation in conflict resolution may have also reflected a number of prevailing discourses including those related to popular participation and gender equity with important principles, as noted in the previous section, gradually enshrined in a wide array of largely soft law instruments. Democratic struggles in Central America and Eastern Europe, moreover, focused increasing attention on civil society and its potential role in conflict resolution establishing foundations for more considered approaches to civil society participation in peacemaking over the course of the following decade. Belloni 2008, 184. At the time Davidson and Montville first put forward the concept of "Track II" diplomacy, however, international declarations on the peaceful settlement of disputes and on the right to peace, as noted above, still reflected the long-held view that the negotiated settlement of conflict fell largely if not solely with in the domestic jurisdiction of the state.

[251] Montville 1987, 7, *quoted in*, Hemmer et al. 2006, 133. Montville further explains that Track II diplomacy aims to "assist official leaders ... by exploring possible solutions out of the public view and without the requirements of formal negotiation or bargaining for advantage. Track two diplomacy seeks political formulas or scenarios that might satisfy the basic security and esteem needs of the parties to a particular dispute. On its more general level, it seeks to promote an environment in a political community, through the education of public opinion, that would make it safer for political leaders to take risks for peace". *Ibid.*, 162-163. *See also*, Davidson and Montville 1981, 155. Davidson and Montville's typology is associated with the conflict resolution school of peace research which emphasizes the importance of addressing the underlying or root causes of conflict and rebuilding relationships among the parties and within society at large. Paffenholz and Spurk 2006, 20–21. For a brief overview of Track II diplomacy *see*, Chigas 2003.

[252] Track I diplomacy is associated with the conflict management school in peace research,

diplomacy, Davidson and Montville argue that while solutions to conflict must ultimately be addressed at the political level among official actors, the reduction or removal of psychological barriers, through mechanisms like problem-solving workshops and dialogue groups may facilitate or create opportunities for negotiated solutions to conflict at the official level.[253] Their approach has since evolved from its initial emphasis on relationship-building among elite actors to include various types of policy-oriented initiatives involving a broader range of unofficial or civil society actors.[254] Notwithstanding its roots in political psychology, it is this evolution in Track II practice in recent decades—from relationship-building to policy-making—which has, arguably, contributed to an emerging understanding of peace negotiations as a domain for political

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which focuses on the use of various diplomatic tools—e.g., mediation, facilitation, good offices, etc.—in ending conflicts between and within states. Paffenholz and Spurk 2006, 20. For a brief overview of Track I diplomacy *see*, Nan 2003. The distinction between Track I and Track II diplomacy in some ways mirrored new research in the study of political participation which, as noted earlier, drew a contrast between "conventional" (e.g., voting) and "unconventional" (e.g., public demonstrations) modes of participation.

[253] Davidson and Montville 1981, 153. The contribution of Track II diplomacy to the negotiated settlement of conflict is nevertheless contested due in part to the apparent lack of effective coordination between official and unofficial tracks. In a survey of Track II initiatives in Peru-Ecuador, Moldova-Transdniestra, Israel-Palestine and Tajikistan, for example, Fischer found that direct coordination of Track I and II negotiations was non-existent with indirect coordination taking place primarily through "the interlacing activities of workshop participants who moved back and forth between track two and track one, or who brought issues from negotiations into track two". Fischer 2006, 84–85, 87. *See also*, the discussion of "dissemination strategies" in Çuhadar and Dayton 2012, 170-174. Richmond, moreover, suggests that the two tracks may be incompatible due to the fact that they arise from different schools of thought on the management and resolution of conflict and thus "aspire to different objectives, different versions of order, different epistemologies and methodologies, operating at different levels and involving different types of actors and interests". Richmond 2001, 109. Recent empirical research suggests that while Track I diplomacy may be the most effective means of resolving conflict due to the leverage of and resources available to official actors, a combination of official and unofficial tracks, which enable actors to pool individual resources, decrease uncertainty and ensure grassroots support, can be more effective than independent tracks of action. Böhmelt 2010, 167-168.

[254] These can be usefully distinguished as "old" versus "new" or "soft" versus "hard" forms of Track II diplomacy. According to the latter typology, soft Track II initiatives aim to facilitate "an exchange of views, perceptions, and information between the parties to improve each side's understanding of the other's positions and policies". In contrast, hard Track II initiatives aim to facilitate political agreements through unofficial talks on "sensitive issues that cannot be dealt with in formal settings or between parties that have not yet recognized each other and hence cannot engage one another in official negotiations". Agha et al. 2003, 3. Çuhadar and Dayton (2012, 158) draw a distinction between "process" (old or soft Track II) and "outcome" (new or hard Track II) focused approaches.

participation. Davidson and Montville's initial typology has since been expanded to include a third major track ("Track III") encompassing an array of unofficial "bottom-up" or grassroots initiatives that aim to undergird the peacemaking process.[255] Viewed as a triangle, with Track I at the pinnacle, Track II in the middle and Track III at the base, the latter provides the greatest scope for public participation. Track I initiatives, however, are often regarded as the "main locus of political transition" and the "pivotal component of a [peace] process".[256] Significant in laying a foundation for the consideration of peace negotiations as a domain for political participation, Davidson and Montville's typology nevertheless maintained the long-held distinction between state and civil society spheres of action in the management and resolution of conflict.[257] The other main drawback of the literature is the lack of adequate documentation to assess the extent or scope along with the achievements and failures of civil society participation in unofficial peacemaking initiatives.[258]

[255] The term "Track III" is used to describe initiatives by "unofficial third parties ... with people from all walks of life and sectors of their society to find ways to promote peace in settings of violent conflict" based on the premise that "peace can and must be built from the bottom up as well as from the top down". Chigas 2003. The term "Track 1.5" is used to describe "conflict resolution activities facilitated by unofficials and directly involving official negotiators for the conflict parties". Nan and Strimling 2004. Building on Davidson and Montville's typology, Diamond and MacDonald identify nine different tracks: track one (government), track two (professional conflict resolution), track three (business), track four (private citizen), track five (research, education and training), track six (activism), track seven (religious), track eight (funding) and track nine (public opinion and communication). Diamond and McDonald 1996. Most studies of civil society participation in conflict resolution, however, appear to follow a more simplified three-track model.

[256] Krznaric 1999, 1; Anderlini 2000, 5; and, Wanis-St. John and Kew 2008, 12.

[257] In other words, while civil society might contribute to the resolution of conflict, "it is the job of official negotiators to 'cut a deal' on specific issues". Chataway 1998, 279. In interviews with former American diplomats, Chataway reports that while most expressed a range of views about the contribution and appropriate context for unofficial Track II initiatives, "[m]ost were clear that [official] diplomacy [was] the only real venue for hammering out agreements". *Ibid*., 276.

[258] This is partly due to the fact, as Bercovitch and Jackson explain, that "the work of non-official diplomats often requires a level of confidentiality that makes them invisible to the press or even to the academic community". Bercovitch and Jackson 2009, 143, 146–147. *See also*, Dixon and Simmons 2006, 60. In many cases, information may only become publicly available due to "leaks", the collapse of unofficial initiatives or following the signing of official agreements. The literature is comprised largely of thematic and single case studies with empirical research relatively new. Bercovitch and Gartner 2006, 320. Existing datasets on conflict management and resolution, meanwhile, appear to focus largely on mediation of inter-state and more recently intra-state conflict. For a brief summary *see*, DeRouen,

Lederach's 1997 study on *Building Peace: Sustainable Reconciliation in Divided Societies* marked a new phase in the study of civil society participation.[259] The growing interest in more inclusive and participatory "peacebuilding"[260] methodologies reflected emerging recognition among scholars and practitioners that the "complexity, scale and diversity of conflict" in the post-Cold War era, as Barnes and others point out, necessitated new approaches to dispute resolution.[261] Constructed on the premise that the *transformation* of contemporary conflict requires "a set of concepts and approaches that go beyond traditional statist diplomacy", Lederach emphasizes

Bercovitch, and Pospieszna 2011, 663–664.

[259] Lederach 1997. After identifying the key features of contemporary armed conflict and the inadequacy of state-centric approaches in dealing with conflicts in deeply divided societies, Lederach maps out an eight-point conceptual framework to facilitate conflict transformation. Lederach's model has been described as "the leading reference for most practitioner discussions of peacebuilding" (Paffenholz and Spurk 2006, 24) and arguably marked the entry of civil society participation into the "mainstream of international conflict resolution dogma" (Wanis-St. John and Kew 2008, 11). The use of the term "unconventional", as noted above, to describe the increasingly broad array of ways and means through which civil society actors take part in peacebuilding, as various scholars note in relation to the application of the term in the study of political participation (Ekman and Amnå 2009, 11; and, Stolle and Hooghe 2011, 120, *citing*, Inglehart and Catterberg 2002), may have also exceeded its initial usefulness given the fact that such participation has seemingly become almost conventional over the last decade-and-a-half.

[260] Coined by Johan Galtung, one of the principal founders of peace and conflict studies, in the 1970s, the term "peacebuilding" was popularized in the 1990s with the publication of the UN Secretary-General's report mapping out an *Agenda for Peace* for the post-Cold War era. While the latter used the term in reference to post-conflict efforts to "identify and support structures which will tend to strengthen and solidify peace in order to avoid a relapse into conflict" (UNSG 1992, para. 21), the term has since acquired a diversity of meanings and usages encompassing a wide array of activities associated with all phases—prevention, peacemaking, peacekeeping and post-conflict peacebuilding—of the conflict process. Chetail 2009.

[261] Barnes 2006, 15. Barnes further notes that while "[i]t is clear that civil society actors alone are seldom—if ever—able to transform a wider situation of violent conflict ... it also seems that it is very difficult, if not impossible, for government and inter-governmental organizations to foster a durable 'positive peace' without the engagement of the wider population in the conflict affected society". *Ibid*., 26. Features of contemporary armed conflict which appear to render traditional approaches to diplomacy ineffective include its intra-state or internal character, the failure or collapse of governance structures, the proliferation of conflict actors, the cohesion of identity around ethnicity and/or religion rather than citizenship, the regional/international nature of many conflicts, the deliberate targeting of civilians and the protracted nature of many conflicts including negative experiences with past efforts to manage or resolve them. Spencer and Spencer 1992, 7–8; Lederach 1997, 5–17; Harris and Reilly 1998, 9–12; Wallensteen and Sollenberg 2001, 633–634; and, Barnes 2006, 15–17. The growing interest in civil society participation, however, may have also been influenced by a synergy of parallel discourses on civil society, human security, democracy, development and human rights which arguably contributed to greater consideration of popular sovereignty in peacebuilding contexts.

the importance of a "long-term commitment to establishing an infrastructure [for peace] across [all] levels of a society [which] empowers the resources for reconciliation from within that society and maximizes the contributions from outside".[262] While not synonymous with the tracks identified above, Lederach's multi-level approach is similar to the extent that the actors involved in its various levels—i.e., top, mid-range and grassroots—roughly corresponds to the various groups of actors associated with the three-track approach.[263] It is nevertheless distinct in its emphasis on the primary role of internal rather than external actors, its more detailed consideration of the various functions of civil society and in its "horizontal" expansion of participation to all phases of the peace process from prevention to peacemaking, peacekeeping and post-conflict peacebuilding.[264] Much like Davidson and Montville's typology, the roles

[262] Lederach 1997, xvi. The model effectively lays out a multi-layered structure for rebuilding or fashioning anew the social contract in states emerging from internal conflict. Lederach's multi-level approach to peacebuilding is associated with the conflict transformation school of peace research. Building on the complementary school, which focuses as its name suggests, on the complementarity of the conflict management and resolution schools and emphasizing the importance of "top-down" and "bottom-up" approaches to peacebuilding, the conflict transformation school "recognizes the existence of irresolvable conflicts" and thus focuses on the transformation rather than resolution of conflicts. Paffenholz and Spurk 2006, 22.

[263] The top range is comprised of prominent military, political and religious leaders engaged in high-level negotiations. The mid-range includes ethnic and religious leaders, academics and intellectuals, humanitarian leaders (NGOs) and other respected sectoral leaders involved in problem-solving workshops, conflict resolution training and peace commissions. At the grassroots level, local leaders, leaders of indigenous NGOs, community developers, local health officials and refugee camp leaders undergird the peacebuilding process through participation in peace commissions, prejudice reduction and healing of post-war trauma. Figure 2 - Actors and Approaches to Peacebuilding, in, Lederach 1997, 39. *See also*, Saunders' concept of a "multi-level peace process" comprising an official peace process, quasi-official process, public peace process and civil society. Saunders 2001.

[264] In a subsequent study on civil society engagement in peacebuilding, Paffenholz and Spurk map out seven core functions of civil society—protection, monitoring and accountability, advocacy and public communication, socialization and a culture of peace, conflict sensitive social cohesion, intermediation and facilitation and service delivery—drawn from democratic theory, development discourse and case study knowledge. Paffenholz and Spurk 2006, 27–33. Barnes identifies eight different roles or functions of civil society: waging conflict constructively, shifting conflict attitudes, defining the peace agenda, mobilizing constituencies for peace, reducing violence and promoting stability, peacemaking/conflict resolution, community level peacemaking and changing root causes and building cultures of peace. Barnes 2006, 8–12. The core functions or roles in each study overlap considerably notwithstanding the use of different terminology. While there appears to be widespread agreement on the centrality of such participation, as noted above, scholars have also begun to engage in more critical assessment of the actual nexus of civil society participation and

attributed to actors in the top and bottom two tiers of the model nevertheless appear to maintain the aforementioned distinction between state and civil society domains of action in relation to the negotiated settlement of conflict. The lack of systematic documentation, moreover, makes it difficult to assess the extent or scope of civil society participation, a task further complicated by the wide array of ways and means for participation in addition to its extension to all phases of the peacebuilding process.[265] A related drawback is that while peacebuilding activities associated with the bottom tiers of Lederach's model—e.g., participation in peace associations, humanitarian and human rights organizations—fall within the expanding range of domains for political participation there appear to be few if any studies which examine such participation as forms of political participation.[266]

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peacebuilding based on evaluations of more than a decade of participatory peacebuilding experiences. The literature identifies a range of challenges including the absence of civil society, its weakened state or collapse as a result of conflict, the existence of "uncivil" actors or "spoilers", the sequencing of civil society participation in the peacebuilding process and the problematic role of internationally-supported civil society building programs. Barnes 2002a, 10; Pouligny 2005, 504–505; Chinkin and Charlesworth 2006, 12; Paffenholz, Kew, and Wanis-St. John 2006, 69; Belloni 2008, 188–190; and, Donais 2009, 13.

[265] Existing datasets on the management and resolution of conflict, as noted above, focus almost solely on mediation between official actors. A number of recent studies have addressed this gap in part through textual analysis of peace agreements. The aforementioned study by Bell and O'Rourke, for example, identifies 139 peace agreements (out of a total of 389 reviewed) between 1990 and 2007 which include provisions for civil society participation. When broken down by conflict, peace agreements in 41 of 48 intra-state conflicts include provision for such participation. Bell and O'Rourke 2007. Nilsson identifies 28 negotiated settlements between 1989 and 2004 in which civil society actors either took part in drafting agreements or which include provisions relating to civil society participation in peacebuilding. Nilsson 2012. The broader body of literature on civil society participation in peacebuilding includes studies on the role of NGOs (Albin 1999a; and, Fitzduff and Church 2004), case studies on a range of countries and regions including Guatemala, Sierra Leone, Bosnia and Herzegovina, Liberia, Sri Lanka, West Africa and the Great Lakes Region (Krznaric 1999; Lord 2000; Belloni 2001; Toure 2002; Orjuela 2003; Adejumobi 2004; and, Leeuwen 2008), comparative studies, a number of which focus, in particular, on Northern Ireland, South Africa and Palestine-Israel (Cochrane 2000; Gidron, Katz, and Hasenfeld 2002; and, Tongeren 2005), as well as thematic research (Pouligny 2005; Barnes 2006; Paffenholz and Spurk 2006; and, Barnes 2009) on civil society participation in peacebuilding.

[266] Paffenholz identifies several additional shortcomings in Lederach's model: insufficient elaboration of the linkages between the three levels; lack of attention to external support for other actors including regional and international actors; failure to account for the possibility of civil society participation in the top level; the need for critical analysis of traditional values and local voices; and, better conceptualization of the bottom level of the model. Other critiques (Heathershaw 2008, 608) cite the model's Christian religious understanding of

The consideration of political participation in peacebuilding contexts has been addressed in part by the literature on post-conflict elections. Defined as the first national election following the end of a civil war, post-conflict elections have been described as "standard operating procedure" and "one of the most visible and concrete aspects of UN involvement in the domestic affairs of independent countries [since the end of the Cold War]".[267] The almost exclusive focus on elections since Kumar's (1998) edited collection of studies on Africa, Asia and the Americas appears to suggest that the primary domain for political participation in peacebuilding is at the ballot box rather than at the negotiating table.[268] The importance accorded to electoral participation is partly a reflection of liberal peacebuilding models common to the post-Cold era, but also appears to reflect the increasingly determinate character, as noted in the previous section, of the right to take part in the conduct of public affairs through freely chosen representatives.[269] With an emphasis on issues such as sequencing and

peace which may not be applicable in all contexts. Paffenholz 2010, 55.

[267] Reilly 2003, 175; and, Gassama 1997, 287. Between 1990 and 2003, for example, the UN was responsible for the organization and/or monitoring of elections in all but one of its 17 peacebuilding missions. Fox 2003, 185. Garber identifies four characteristics common to such elections: most occur after the negotiation of peace agreements that include most if not all parties to the conflict; the negotiated settlements offer a major role to external actors in facilitating the transition from war to peace; international actors generally play a major role in administering, supervising, observing and funding elections; and, elections often take place during the early stages of post-conflict reconstruction. Garber 1998, 1. The holding of elections following the signing of a peace agreement is also viewed as marking the termination of civil war, a means to validate agreements reached and provide an "exit strategy" for international actors involved in facilitating transitions from war to peace.

[268] Kumar 1998. The literature covers a range of cases including Afghanistan, Angola, Bosnia and Herzegovina, Cambodia, Colombia, Croatia, East Timor, El Salvador, Ethiopia, Georgia, Guatemala, Haiti, Kosovo, Liberia, Mozambique, Nicaragua, Rwanda, Sierra Leone, Sri Lanka, South Africa, Sudan, Tajikistan and the West Bank and Gaza Strip. For single case studies *see*, Vu 1996; Riley 1997; Belloni 2004; Kiwuwa 2005; Komano 2005; Kandeh 2003; Kandeh 2008; and, Kubo 2007. For comparative research *see*, Lyons 2002; Reilly 2002; Reilly 2003; López-Pintor 2005; Oliva 2007; Reilly 2008; Höglund 2009; and, Sisk 2009. A smaller sub-group of studies focus on women's participation in post-conflict elections. *See*, Ballington and Matland 2004; Ellis 2004; Jabre 2004; Maley 2004; Ndulo 2004; and, UN 2005. This broad body of literature on elections appears to reflect a similar emphasis or focus on "conventional" modes of participation found in much of the legal and empirical research on political participation.

[269] Mac Ginty describes the notion of liberal peace in its various forms—hyper-conservatism, orthodox and emancipatory— as "the 'software' that drives the 'hardware' of many international organizations, states and international and non-governmental organizations". Mac Ginty 2010, 396, *citing*, Richmond 2005, 217. The relationship between liberalism and

design the literature on post-conflict elections focuses largely on how best to manage the peaceful transfer of power through the establishment of a new government whose legitimacy is derived from the will of the people.[270] The significance of this body of literature to the conceptualization of peace negotiations as a domain for political participation is at least two-fold. On the one hand, the study of post-conflict elections appeared to mark a resurgence in academic and policy-oriented interest in the nexus of democracy and peace critical to the consideration of peace negotiations as a domain for political participation.[271] On the other hand, what Pouligny and others describe as "the multiple flaws in the organization of elections in post-conflict contexts and the limits of their role in actually grounding democracy and peace" contributed to the consideration of additional or supplementary "mechanisms to gradually

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the management and resolution of conflict is nevertheless contested. While its proponents hold that "liberalism is the 'ideology upon which life, culture, society, prosperity and political are assumed to rest'", critics of liberalism charge that "it reflects the practical and ideological interests of the global north". Mac Ginty and Richmond 2007, 493, *quoted in*, ibid., 393. For additional discussion of the debate *see*, Newman, Richmond, and Paris 2009a.

[270] Identifying sequencing and design as key variables, Sisk argues that "security must precede electoral events, not follow them" and that "[e]lectoral processes that are broadly inclusive and that pair proportionality with accountability have the best chance of creating legitimacy needed for effective postwar governance because they create the conditions for mutually empowering state-society relations". Sisk 2009, 196. In contrast, Lyons suggests that international actors should focus on "demilitarizing politics" by facilitating the transformation of militias into political parties, strengthening interim institutions that provide the context for post-conflict elections and building electoral administration that creates confidence that the vote will be managed effectively. Lyons 2002, 216. The smaller body of research on the electoral participation of women, referred to above, shifts the focus towards problems of exclusion and a concomitant discussion of strategies for the inclusion of women in post-conflict elections. Combining both law and practice, studies on women's participation in post-conflict elections comprise a "marriage" of literature on the right to democratic governance, discussed in the first section of this chapter, and the literature on post-conflict elections.

[271] In the decades prior to the end of the Cold War, major peer-reviewed journals in the field of peace and conflict studies rarely appeared to address the nexus of democracy and peace. The *Journal of Conflict Resolution*, the *Journal of Peace Research*, and *Security Dialogue*, for example, published only three articles on democracy and peace prior to 1990 compared to more than 100 articles published on the topic over the past two decades. This is not to suggest, however, that the consideration of democracy, liberalism in particular, as central to peace between and within states is relatively new. As Paris and others have noted, the democratic or liberal peace thesis was central to US President Wilson's foreign policy at the end of WWII which "envisaged a world order based on the democratic self-determination of peoples, constitutional protections for minority rights, free trade and commerce, the opening up of diplomacy to public scrutiny, and the creation of a League of Nations to keep the peace". Paris 2004, 41.

install a peaceful and democratic culture" in societies undergoing transitions from war to peace.[272] This included the consideration of public participation in peace negotiations themselves.

The study of civic engagement arguably provided a conceptual framework for the consideration of peace negotiations as a domain for political participation. Popularized by Putnam in his volume on *Making Democracy Work*, the study of civic engagement encompasses an increasingly wide range of activities and domains for the participation of citizens in public affairs.[273] Rowe and Frewer, for example, identify more than 100 different mechanisms

[272] Belloni 2001, 166; and, Pouligny 2005, 496. In contrast to Lederach's "communitarian" (Donais 2009, 6) approach to peacebuilding, liberal peacebuilding approaches "[tend] to be mediated—from top down—between local power brokers, who are often politically extremist or exclusionary—and ignores grassroots community actors, who are potentially more inclusive and moderate". One of the consequences of this approach, as Newman et al. observe, is that "the essential of a liberal social contract is generally absent in post-conflict states, which instead are held together by external actors". Newman, Richmond, and Paris 2009b, 12–13. Acknowledging the possible connection between early elections and the increased likelihood of conflict between protagonists, Reilly suggests that "an extended process of consultations and peacebuilding, in which some of the real interests and concerns that provoked the conflict are addressed in a step-by-step fashion before national elections are held, may offer better prospects for a peace transition in post-war societies". Reilly 2008, 168. The literature identifies a range of additional problems or challenges to the holding of elections following the signing of a peace agreement between warring parties including ongoing stability and insecurity, social and political fragmentation, lack of sufficient resources and, in particular, widespread displacement.

[273] Berger 2009, 335, *citing*, Putnam 1993. Indeed, it is the apparent "elasticity" of the concept, not unlike the "conduct of public affairs" discussed in the first section of this chapter, that provides both for the inclusion of a broad range of political practices, but also necessitates further clarification or consideration of context for the concept to be of consequence for the consideration of peace negotiations as a domain for political participation. Noting that the study of political participation has effectively become "the study of everything", for example, Van Deth offers two strategies to address this dilemma: the a priori exclusion of specific areas (family, schools, workplace), and the use of a more substantive and problem-oriented research perspective. Van Deth 2001, 1, 12. For additional discussion of advantages and disadvantages of conceptual stretching and the concept of civic engagement see, Berger 2009; and, Ekman and Amnå 2009. The study of civic engagement reflects a widely-cited trend in recent decades in which citizens may be voting less, but participating more through an increasingly wide array of fora. Urbinati and Warren 2008, 403, *citing*, Dahl 2007. This has been ascribed to the "growing relevance of government and politics for citizens in modern societies as well as a continuing blurring of the distinction between political and non-political activities" (Van Deth 2001, 5) and to "an increasingly complex political terrain that is less confined within state territoriality, more pluralized and increasingly dependent on informal negotiation and deliberation to generate political legitimacy". Urbinati and Warren, *ibid.*, 388. The study of civic engagement is also part and parcel of what Urbinati and Warren describe as a shift in democratic theory towards a conception of democracy as "any set of arrangements that instantiates the principle that all affected by collective decisions should have an opportunity to influence the outcome". *Ibid.*, 395.

that enable public involvement in policy-making bodies with a focus on practice in the United States and the United Kingdom.[274] Noting the wide array of forms and lack of definitions common to the study of civic engagement, the authors develop a typology to facilitate elaboration of "a theory or model that predicts or describes how to enable effective involvement (i.e., which mechanism to use, and how) in any particular situation".[275] The study categorizes each of the aforementioned mechanisms according to three primary functions—communication, consultation and participation—based upon the nature and flow of information between sponsors and participants. Emphasizing the bi-directional flow of information between sponsors of a mechanism and members of the public that is unique to participatory models of civic engagement, Rowe and Frewer further identify four discrete models for participation in public policymaking bodies. These included action planning workshops, citizen juries and consensus conferences; negotiated rule making and task forces; deliberative polls and planning cells; and, town hall meetings.[276] While the study does not refer to peace negotiations as a domain for civic engagement, the above models comprise mechanisms that are not dissimilar to those associated with peace processes generally. This includes, for example, Track II workshops, constitutional conferences, national dialogues, inter-community and town hall meetings, and civil society assemblies. The identified limitations in case selection further suggest that while not included in the list of participation mechanisms, peace negotiations are not necessarily ruled out as a domain for

[274] Figure 2 - Alphabetical listing of 'participation' mechanisms, in Rowe and Frewer 2005, 257. The figure includes a list of references for each mechanism.
[275] *Ibid.*, 252. The study defines the "effectiveness" of public involvement by "the efficiency with which full and relevant information is elicited from all appropriate sources, transferred to (and processed by) all appropriate recipients, and combined (when this is required)". *Ibid.*, 285.
[276] Table 3 - Types of Engagement Mechanisms, *ibid.*, 278-282.

civic engagement.[277] Rowe and Frewer's recommendation that future research consider a second typology of the different *contexts* in which public engagement takes place, moreover, appears to invite consideration of peace negotiations as a domain for political participation.

Barnes' aforementioned collection of papers from a 2002 workshop on public participation in peacemaking was among the first studies to explicitly identify peace negotiations as a domain for political participation.[278] Drawing on a decade of practice which saw a significant rise in the number of conflicts regulated or terminated at the negotiating table rather than on the battlefield, the study arguably marked the beginning of yet another phase in the study of civil society participation.[279] "Such a mass of conflict settlements", especially in comparison to previous decades, as Darby and Mac Ginty point out, "presents a corpus of evidence and case studies from which to draw conclusions on how violent conflicts come to an end".[280] Examining the various "mechanisms" for participation—consultative, representative and *direct*—Barnes explains that

[277] The authors note that the significant body of grey literature on the issue of public participation, the use of different names for similar mechanisms and the existence of additional mechanisms in other countries would likely increase the types and numbers of mechanisms for public involvement in policy-making bodies. Rowe and Frewer 2005, 256.

[278] Barnes 2002c. The study includes three feature studies on representative (South Africa), consultative (Guatemala) and direct (Mali) mechanisms for public participation in peacemaking. Complimentary articles focus on similar mechanisms for public participation in Northern Ireland, the Philippines and in Colombia. The study also includes reflections on public participation from a former UN mediator and from a political activist.

[279] Twice as many armed conflicts were settled at the negotiating table rather than on the battlefield in the 1990s effectively reversing the ratio between negotiated settlements and military victories since WWII. Mack 2007, 19. Indeed, as Mack further observes, between 1816 and 1945 few armed conflicts were terminated through negotiations with most ending in military victories. *Ibid.*, *citing*, Fortna 2004, 87. The decade also witnessed a five-fold increase in diplomatic interventions in armed conflict. Mack 2011, 67, *citing*, Regan, Franck, and Aydin 2009. According to Bell, negotiated settlements in the 1990s typically involved "a central deal on democratic access to power (including minority rights where relevant), with a human rights framework including measures such as bills of rights, constitutional courts, human rights commissions, reform of policing and criminal justice, and mechanisms to address past human rights violations". Bell 2000, 1. For a useful comparison on common elements across agreements *see*, *e.g.*, the peace agreement drafter's handbooks prepared by the Washington-based Public International Law and Policy Group (PLIPG), <http://publicinternationallawandpolicygroup.org/>. [accessed Oct. 10, 2010]

[280] Darby and Mac Ginty 2003, 1.

peace negotiations "become a form of political decision-making ... [t]o the extent that [they] go beyond agreements on the specific means for ending the hostilities to address questions involving the state structure, political systems or the allocation of resources".[281] In a briefing paper prepared for an annual mediators conference, Paffenholz et al. identify four different mechanisms for public participation in peacemaking—civil society to civil society negotiations, effective communication channels, parallel civil society forums and *direct* participation—noting that "[c]itizenship participation in political decision-making is one of the pillars of democracy".[282] Focused initially on civil society contributions in facilitating the negotiated settlement of armed conflict, scholars have also begun to explore factors that contribute to the presence or absence of civil society in peacemaking and the relationship or nexus between participation and the sustainability of agreements reached.[283] The literature associated with

[281] Barnes 2002a, 10. The term "mechanism", as used in the study, refers to "a definable and typically time-bound procedure or process to engage representatives of a range of sectors and identity-groups to deliberate the substantive and procedural issues addressed in the negotiations". Barnes distinguishes the mechanisms covered in the study—representative, consultative and direct—from Track II and Track III mechanisms discussed above. For a summary of workshop discussions and recommendations see, Barnes 2002b. In a subsequent study, Barnes identifies public participation in peace negotiations through back-channel talks, mediation/facilitation (Track 1.5) and through the participation of civil society delegations as one of eight main functions of civil society in peacebuilding. Barnes 2006, 11.

[282] Paffenholz, Kew, and Wanis-St. John 2006, 67–68. The authors identify advantages and disadvantages associated with each form or mechanism for civil society participation in peacemaking. While such participation is broadly considered to have certain advantages—increased public buy-in, a check on official or Track I actors, the specialization, expertise, local knowledge and richer set of interests brought to the negotiations, more effective public communication and the healing of social divisions—the role of civil society participation in peace negotiations like other forms of participation referred to above is also contested. *Ibid.*, 69-70. Paffenholz et al. identify four specific problems that often appear to militate against public participation in peace negotiations: the multiplication of positions which need to be resolved, the challenge of maintaining coordination and communication among a diverse group of actors, the uneven or lack of expertise and preparation among participants and the problems that may arise from the inclusion of 'uncivil' actors or 'spoilers'. *Ibid.*, 70. It is this dilemma between inclusion and exclusion (and its related dilemma of legitimacy and efficacy) that Jarstad and Sisk describe as one of "the most pervasive dilemmas" in transitions from war to democracy. Jarstad and Sisk 2008, 243. *See also*, Belloni 2008.

[283] Drawing upon Zartman's theory of "ripeness", referred to earlier, Jessop et al., for example, argue that civil society's major contribution to the peacemaking process in Sierra Leone in the late 1990s was in "ripening" the conflict for a solution. Jessop, Aljets, and Chacko 2008. In her study on Mali, Storholt argues that even though the conflict was "ripe for resolution", civil society participation was necessary to ensure peace beyond agreements reached between government and rebel forces. Storholt 2001. In a study of "who gets a seat at the

this phase of research on public participation in peacemaking, with its explicit though not exclusive focus on the direct participation of civil society in negotiations, appears to challenge the above-mentioned distinction between state and civil society domains of action. Similar to the study of civil society participation in unofficial or Track II initiatives and in broader peacebuilding processes, however, the lack of systematic data along with the different definitions of participation applied make it difficult to assess the extent or scope of civil society participation in peace negotiations.[284] There nevertheless

negotiating table", Lanz posits that inclusion and exclusion is related to the interplay of two major factors—practical and normative. In short, does participation augment the chance of reaching a sustainable agreement and is the participation of a given actor consistent with the values of international mediators and sponsors. Lanz 2011, 275. Mac Ginty suggests that hybridized peace processes—i.e., those that depart from aforementioned liberal peacebuilding models—result from the interplay of four major factors: the compliance powers of liberal peace agents, networks and structures; the incentivizing powers of liberal peace agents, networks and structures; the ability of local actors to resist, ignore or adopt liberal peace interventions; and, the ability of local actors, networks and structures to present and maintain alternative forms of peacemaking. Mac Ginty 2010, 391. Paffenholz et al. (2010) identify and examine in comparative context six major enabling and disenabling factors for civil society participation in broader peacebuilding contexts: the behavior of the state, the level of violence, freedom and role of the media, diversity within civil society, the influence of external actors and the role of donor engagement. In a comparative study of 20 cases, Wanis-St. John and Kew find that while it is difficult to make a claim of direct causality, given the "complex" and "dynamic" reasons for the sustainability of peace agreements, there is nonetheless a correlation between civil society participation in peace negotiations and the durability of agreements reached, notwithstanding the array of problems that may arise in their implementation. The results also suggest a correlation between low levels of participation and the sustainability of agreements when there are democratically elected negotiators. Wanis-St. John and Kew 2008. Empirical research by Nilsson confirms these general conclusions. It also suggests, similar to Böhmelt's research on unofficial diplomacy, that peace is more likely to prevail in cases where agreements are reached with the combined participation of civil society actors and political parties. Nilsson 2012.

[284] The study of conflict resolution, as Cochrane observes, is still "too often analysed at the elite level with little emphasis being given to the communities from which the elite political actors derive their authority". Cochrane 2000, 2. Commenting on the literature relating to peace negotiations in Sierra Leone, for example, Jessop et al. observe that, in contrast to the "abundant information on the role of international actors, such as the UN, ECOWAS and ECOMOG, as well as the Sierra Leonean government and the armed rebels ... [t]here is surprisingly little documentation about the [role of the Inter-Religious Council for Sierra Leone] in the peace process, despite the significance of this conflict and the evidently important role played by the IRCSL in helping to end it". The authors argue that this apparent bias in the literature not only "risks marginalizing the IRCSL in the history of Sierra Leone's hard-won peace [but also] distort[s] our understanding of what it took to achieve that fragile piece". Jessop, Aljets, and Chacko 2008, 99. *See also*, Goulding 2002, 86; Hemmer et al. 2006, 131; Stewart 2004, 3; and, Wanis-St. John and Kew 2008, 12. The literature includes a small number of single case studies (Lode 1997; Storholt 2001; and, Jessop, Aljets, and Chacko 2008), at least one small-N study (Wanis-St. John and Kew 2008) and one additional large-N study (Nilsson 2012). The cases covered include Bosnia, Kosovo, Macedonia, Northern Ireland, Nepal, Sri Lanka, Tajikistan, Burundi, Democratic Republic of Congo, Eritrea-Ethiopia, Liberia, Mali, Mozambique, Nigeria, Rwanda, Sierra Leone, South Africa,

appears to be broad consensus that civil society actors rarely participate directly in official peace negotiations.[285]

ii. The Practice of Refugee Participation in the Negotiation of Durable Solutions

The other major challenge in ascertaining the practice of refugee participation in the negotiation of durable solutions is that refugees have rarely been considered as citizens and concomitant political actors in the public affairs of their countries of origin. The initial and almost exclusive focus on activities and domains for political participation within the state, as noted earlier, arguably rendered refugees "invisible" in the study of political participation by virtue of their presence outside their countries of origin.[286] To the extent that refugees

Sudan, El Salvador, Guatemala and Palestine-Israel. A rapidly expanding body of literature on women includes both academic studies (Nasland 1999; Jusu-Sheriff 2000; Karam 2000; Chinkin and Paradine 2001; Nakaya 2003; Porter 2003; Chinkin and Charlesworth 2006; Tinde 2009; Bell and O'Rourke 2010; and, Willett 2010) and a number of policy-oriented publications by non-governmental (Pankhurst 1999; Mpoumou 2004; Anderlini and Tirman 2010; and, CSAG 2011) and, inter-governmental organizations (Anderlini 2000; Rehn and Sirleaf 2002; UNIFEM 2005; Diaz 2010; and, UN 2010b).

[285] Barnes 2002a, 9; Paffenholz and Spurk 2006, 23; Paffenholz, Kew, and Wanis-St. John 2006, 68; Belloni 2008, 194–195; Wanis-St. John and Kew 2008, 11–12; and, Barnes 2009, 132–133. The participation of women in peace negotiations is also rare though seemingly more common than the participation of civil society actors. UNIFEM notes that since 2000 fewer than 7 percent of official negotiators have been women with even fewer women (2.7 percent) signatories to peace agreements. UN 2010, 7. *See also*, Anderlini 2000, 5; Rehn and Sirleaf 2002, 79; Porter 2003, 245; Mpoumou 2004, 120; Chinkin and Charlesworth 2006, 937; and, Anderlini and Tirman 2010, 12. The literature also suggests that when civil society participation takes place it is mostly through indirect means—e.g., lobbying elected representatives, rallying public opinion and providing advice or expertise on issues to be addressed through negotiations. The study by Wanis-St. John and Kew identifies eight cases in which civil society participation occurred primarily through influencing parties at the negotiating table compared to four cases in which civil society groups took part directly in the negotiations. In the remaining cases civil society neither participated nor had influence on or access to the parties taking part in negotiations. Wanis-St. John and Kew 2008.

[286] "[T]he idea that [political] constituencies should be defined by territorial districts", as Urbinati and Warren point out, "has been all but unquestioned until very recently". Urbinati and Warren 2008, 396. A product of the modern state, the linkage between territory, political representation and participation also gave rise to the widely-accepted view, as noted in the previous section of this chapter, that residence comprised a reasonable restriction on the exercise of the right to political participation particularly in relation to the right to vote and to be elected. There were early exceptions to this principle, particularly in relation to out-of-country voting privileges for diplomats and military personnel. Ellis 2007. Refugees nevertheless appeared largely invisible in the study of political participation until recent decades notwithstanding early examples of participation through referenda and transition elections in Africa during the period of decolonization.

were presented as actors in their own right, their early representation often appeared in the form of "refugee warriors" or as "spoilers" to a negotiated settlement of armed conflict.[287] The apparent invisibility of refugees may also be explained, however, by the view that while the causes of refugee situations are inherently political, the response to forced displacement including the search for and negotiation of durable solutions is primarily a humanitarian issue.[288] The establishment of a tripartite mechanism to facilitate joint planning between UNHCR, the country of origin and host country, moreover, arguably consolidated the systemic exclusion of refugees from the negotiation of durable solutions to their situation.[289]

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[287] Long 2010b, para. 1; and, Morris and Stedman 2008, 28, *quoted in*, Milner 2009, 24. A term coined by Zolberg et al. to describe "highly conscious refugee communities with a political leadership and armed section engaged in warfare for a political objective, be it to recapture the homeland, change the regime, or secure a separate state", the authors describe Palestinians as the first refugee warriors. Pointing towards the emergence of "new" refugee warriors in Afghanistan, Central America, Kampuchea, the Horn of Africa and Southern Africa, Zolberg et al. underscore the political agency denoted by the term observing that "[r]efugee-warrior communities, in sum, represent a transformation of refugees from being mere *objects* to be simultaneously *actors and subjects* in their own right". [emphasis added] Zolberg, Suhrke, and Aguayo 1989, 275, 278.

[288] Loescher 1996, 12; Jacobsen, Young, and Osman 2008, 314; and, Long 2010b, para. 35. The exilic nature of the refugee regime during its early years of operation and its allegedly non-political character, as noted above, arguably burnished these views. Long further observes that UNHCR's tendency to view refugee participation in developmental rather than political terms can be ascribed to "the additional logistical challenges that political engagement and protest pose for camp management strategies, the potential for disputes with host state governments anxious to prevent any subversive activity on their territory and the risk that those refugees presenting themselves as leaders may have secured these positions through manipulation and intimidation rather than as a result of fair democratic process (as occurred in the Rwandan camps in Zaire between 1994 and 1996)". *Ibid*. It may also be explained, however, by the refugee agency's "institutional culture" in which there has been and "remains significant cultural resistance to treating refugees as political equals". *Ibid*., para. 319. Similar criticisms have been levelled in relation to the agency's assistance and community development approach. *See*, Bakewell 2003, 15; UNHCR 2001, para. 2; and, UNHCR 2003b, 56. The reluctance of host states and countries of origin alike to view refugee participation in political terms may be ascribed, as Long and other notes, to over-arching concerns about state sovereignty, national security and stability exemplified in various regional instruments which prohibit the engagement of refugees in "subversive" activities. Indeed, from a historical perspective, a more critical reading of the aforementioned drafting debate over the inclusion of provisions prohibiting the political rights of refugees in the 1951 Refugee Convention suggests a deliberate effort to "depoliticize" refugees in order to "neutralize" any threat posed to the state system.

[289] Riess 2000, 20. First used in relation to the repatriation of Algerian refugees in the 1960s, the tripartite mechanism is a central element in UNHCR's approach to voluntary repatriation. While tripartite commissions enabled more systematic and arguably more effective approaches to voluntary repatriation, the early exclusion of refugees from such commissions underscored the primary and almost exclusive role of the state in the search for durable

Introduced by Basch et al. in the early 1990s, the concept of "immigrant transnationalism", in its various political manifestations—e.g., lobbying, participation in hometown associations, external voting—appeared to provide a conceptual and perhaps even normative framework, as noted in the previous section of this chapter, for the consideration of refugee participation in the public affairs of their countries of origin. Defined as "the process by which immigrants forge and sustain multi-stranded social relations that link together their societies of origin and settlement", the concept of immigrant transnationalism directs one's gaze beyond geographically-confined constituencies that have otherwise made refugees seemingly invisible in the study of political participation.[290] Political transnationalism "captures" the ways in which which migration and globalization have begun to alter conventional understandings and practices of political participation.[291] In her typology of transnational political practices,

solutions notwithstanding the widely accepted principle that repatriation should be voluntary allowing for at least some exercise of individual self-determination. This effectively resulted in a situation in which the same mechanism that sought to facilitate the rehabilitation of refugees as citizens, and hence their right and opportunity to take part in the public affairs of their country of origin, effectively perpetuated a view of refugees as non-citizens through their exclusion from decisions that arguably comprised a conduct of public affairs and which would determine their futures. Similar criticism has been expressed in relation to a tripartite approach to refugee assistance. Clark 1987.

[290] In a study on the political aspects of immigrant transnationalism, Østergaard-Nielsen observes that "[f]rom an academic point of view the political networks and activities of diasporas go to the core of one of the central issues within social science, the fading dichotomy between the domestic and the international, challenging state-bound assumptions about political communities and societies underlying so much of the social science literature". Østergaard-Nielsen 2003, 2.

[291] Basch, Schiller, and Szanton Blanc 1994, 7, *quoted in*, Martiniello and Lafleur 2008, 648. The authors draw a contrast between the past "when nation-states were defined in terms of a people sharing a common culture with a bounded territory" and more contemporary understandings of the nation-state as inclusive of "[those] citizens who live physically dispersed within the boundaries of many other states, but who remain socially, politically, culturally, and often economically part of the nation-state of their ancestors". Basch, Schiller, and Szanton Blanc 1994, 8, *cited in*, Schulz and Hammer 2003, 11. Bauböck posits three reasons why sending country governments or political elites consider transnational political practices: human capital upgrading, remittances and the political lobbying of receiving country governments. Bauböck 2003, 709. While political transnationalism existed well before the popularization of its study in recent decades, it is the intensity and sustainability of contemporary transnational political practices stemming from the growth in migration and advances in travel and communications technologies that has made residence less relevant for the exercise of political participation. Foner 2007; and, Martiniello and Lafleur 2008, 248–251. In the last three decades of the 20th century the number of migrants worldwide more than doubled comprising nearly one in every 10 persons in developed regions and one in

Østergaard-Nielsen distinguishes between immigrant politics, homeland politics, emigrant politics, diaspora politics and translocal politics.[292] While refugees may be involved in each of these different types or modes of transnational participation, emigrant politics, which relate to the legal, economic and political status of migrants and refugees in their homeland, appears to be of particular significance to the consideration of refugee participation in the negotiation of durable solutions.[293] The concept of political transnationalism, however, also raises a number of fundamental challenges or problems regarding the political participation of refugees. First, the circumstances of forced displacement are often at odds with what Bauböck describes as the defining feature of political transnationalism, namely, the "overlapping memberships between territorially separated and independent polities" and the "institutional responses that enable migrants to claim *rights* and *memberships* in several polities".[294] [emphasis

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every 70 persons in developing countries. UNDESA 2002, 2. "[I]ncreased access to communication media, particularly radio, television and film", as the UN Secretary-General observed in a report on democracy in the mid-1990s "rais[ed] awareness of problems and opportunities and [led] people everywhere to demand more accountability, more representation and more participation in governance—more control over their future and more say in the decisions that affect their lives". UNSG 1996, 28.

[292] Østergaard-Nielsen defines transnational political practices to include "various forms of direct cross border participation in the politics of their country of origin by both migrants and refugees (such as voting and other support to political parties, participating in debates in the press) as well as their indirect participation via the political institutions of the country (or international organizations)". The focus of immigrant politics is to better the situation in the receiving country. Homeland politics is related to the domestic and/or foreign policy of the country of origin. Diaspora politics is defined as a subset of homeland politics and concerns the activities of migrants or refugees who are barred from political activity in their homeland or do not have a homeland. Finally, translocal politics focus on improving the situation in localities of origin. For a brief discussion of each category *see*, Østergaard-Nielsen 2003, 762–763.

[293] This is not to say that other categories are not relevant to the consideration of refugee participation in the negotiation of durable solutions. Such negotiations, for example, involve issues of domestic and/or foreign policy (homeland politics), the situation of refugees who are unable to take part in the public affairs of their country of origin (diaspora politics) and the betterment of living conditions in their homes, towns and villages of origin (translocal politics). However, the concept of emigrant politics appears to best capture the range of issues addressed in negotiated solutions to armed conflict.

[294] Bauböck 2003, 700; and, Bauböck 2006, 2394. This includes, for example, out-of-country voting and the participation of migrants in local elections, as discussed in the previous section. The difference between refugee and migrant forms of political transnationalism is, perhaps, implicit in Bauböck's caution that "[p]olitical theory must ... carefully distinguish the challenge of multinational and international conflicts, which are about the demarcation of territorial jurisdictions and the allocation of powers between self-governing polities, from the

added] For many, if not most, refugees, however, displacement, insecurity and the lack of an effective legal status often result in "overlapping exclusions" from the conduct of public affairs in both countries of origin and asylum. It is this dual form of exclusion that appears to make political participation for refugees seem all but impossible.[295] Second, with studies of transnational political participation "largely confined to specific national contexts" it is difficult to assess the extent or scope of emigrant politics with respect to the participation of refugees in their countries of origin, a task seemingly complicated by the inclusion of refugees within the broader category of migrants.[296] Significant in drawing attention to the possibility of refugee participation in the public affairs of their country of origin, the other major drawback of this body of literature is that it has yet to examine peace negotiations as a domain for transnational political participation for refugees and non-refugees alike.[297]

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challenge of transnational migration, which concerns the permeability of international borders for geographic mobility and the resulting overlap of political statuses, rights and identifies between the sending and the receiving polity". Bauböck 2003, 721.

[295] Indeed, as Malkki observes, "[p]eople who are refugees [often] find themselves quite quickly rising to a floating world either beyond or above politics, and beyond or above history—a world in which they are simply 'victims'". Malkki 1995, 518. The apparent "impossibility" of political participation for refugees arises both in relation to "non-recognition" by their country of origin and/or host country and from the fact that the 1951 Refugee Convention regulating their status is silent on the right to political participation while human rights instruments, as noted in the previous section, are silent on the political participation of refugees. Indeed, it is the aforementioned focus on the status of refugees in relation to their country of asylum—i.e., as non-citizens—which also contributes to a tendency to describe refugee activism, in Nyer's words, as "an impossible activism—'impossible' because the non-status do not possess the 'authentic' identity (i.e., citizenship) that would allow them to be political, to be an activist". Nyers 2003, 1080. Schulz and Hammer thus argue that "refugee situations constitute the prime argument against transnationalism as the defining reality of people living outside their places of origin". Schulz and Hammer 2003, 12. Focused on the situation of Palestinian refugees, the authors further note that "to act within 'home' and 'host country' ... is clearly not possible for the vast majority of Palestinian refugees, since most of these are barred from travelling at all and most are restricted from coming 'home'". *Ibid*.

[296] Martiniello 2005, 15. In 2002 the UN Department of Economic and Social Affairs reported that there were approximately 175 million persons currently residing in a country other than where they were born of which about nine percent of the migrants were refugees. UNDESA 2002, 2, 4.

[297] The literature often distinguishes between conventional or indirect modes of political participation, such as voting, and unconventional or direct modes of political participation, including, but not limited to membership in hometown associations or charity and development organizations active in home countries, migrant networks and participation in protests and demonstrations criticizing or defending home country politics. Itzigsohn and Villacrés 2008, 668; and, Østergaard-Nielsen 2003, 761. The apparent absence of

This gap is addressed in part by a related body of emerging research on diaspora participation in peacemaking. The 1990s, as Van Hear points out, comprised "a key period for diaspora formation" due to unprecedented rates of global migration and the increasingly large number of refugee asylum claims lodged throughout the decade.[298] Concomitant improvements in communication and travel technologies not only enhanced the ability of diaspora communities to "build, nurture and sustain strong links with their homeland communities", it also increased their ability to influence peacemaking processes in their homelands or countries of historic origin.[299] The added significance of this body of research, beyond its apparent consideration of peacemaking as a domain for diaspora participation, is that it counters a tendency to view diaspora's contribution primarily, if not solely, in terms of initiating, sustaining or augmenting conflict rather than in its resolution.[300] While the concept of diaspora may provide "some of the conceptual tools that one needs to study refugees in

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discussion of peace negotiations as a domain for political participation may be explained, in part, by the fact that such negotiations are often "time-bound" domains for participation, while research on transnational political participation tends to focus, as Martiniello and Lafleur observe, on activities such as elections which occur on a "stable and recurring basis". Martiniello and Lafleur 2008, 649.

298 During this period some eight million asylum claims were lodged in members states of the Organization for Economic Cooperation and Development. The figure excludes refugees resettled from first asylum countries to Western (and other) states, and family reunions or family formations associated with essentially conflict-induced migrations. Inclusion of refugees living in countries sharing common borders with conflict zones would produce an even higher number. Van Hear 2009, 180–181. Peteet further observes that academic interest in diaspora in recent decades "coincided with the end of the Cold War, widespread ethnic/nationalist conflict in the 1990s, historically unparalleled mobility, academic critiques of nationalism, and a globalization discourse that initially assumed a dilution of state control over movements of people, capital, goods, and information". Peteet 2007, 628.

299 PILPG 2009, 1, *citing*, Bercovitch 2007, 17, 20. The post-Cold war era, as noted previously, also witnessed a significant increase in peace processes with negotiated settlements outpacing military victories by a rate of two to one throughout the 1990s.

300 As Baser and Swain observe, there has been a tendency in diaspora literature "to describe diaspora as an extremist, long distance nationalist community that pursues radical agendas taking advantage of the freedom and upliftment that the hostland provides them". Baser and Swain 2008, 9-10. *See also*, Østergaard-Nielsen 2006, 1; Van Hear 2009, 181; and, Brinkerhoff 2011, 116. The Palestinian case, notwithstanding the debate over classification of Palestinians as a diaspora, is among those in which the diaspora is characterized as augmenting conflict. Other cases include the Jewish diaspora, and diasporas from Ethiopia, Kashmir and Sri Lanka.

an increasingly global world", it is not without its problems regarding the study of refugee participation in the negotiation of durable solutions.[301] First, as a broad concept encompassing a "dizzying kaleidoscope of displacements", the concept of diaspora overlooks or often fails to account for the specific circumstances of *forced* displacement which often make it difficult if not impossible for refugees to take part in the public affairs of their country of origin or asylum.[302] Second, the lack of systematic data with much of the existing literature comprised of "selected in-depth case studies many of which are narrowly focused and apply a range of methods", makes it difficult to assess the extent or scope of diaspora participation in peacemaking.[303] The other major limitation or drawback of the literature is that few studies appear to consider peace negotiations themselves as a domain for diaspora participation in the resolution or transformation of conflict notwithstanding the broader focus on peacemaking.[304] Bercovitch's

[301] Wahlbeck 2002, 222–223. Wahlbeck further observes that "[i]t is also possible that the study of transnationalism and diasporas can benefit from the more empirical tradition in the area of refugee studies". *Ibid*.

[302] Peteet 2007, 628–629. This includes, among others, "migrants (voluntary and forced), internally displaced persons, refugees, exiles, guest workers, seasonal workers, overseas labor, expatriates, settlers, jet-setters, and tourists". *Ibid*. The term diaspora, much like the term migrant, fails to distinguish between voluntary and involuntary population movements and the special rights and status that accrue. The title of a lecture by the head of UNHCR's Protection Department—"Are Refugees Migrants? A Dangerous Confusion—succinctly underscores the conceptual problems that lurk beneath the seemingly innocuous consideration of refugees as migrants. Feller 2004. In a discussion on the debate over the classification of Palestinian refugees as a diaspora, Peteet questions, for example, whether "diaspora [can] accommodate or co-exist with a politics of return". *Ibid.*, 627. More to the point, Peteet wonders whether "classifying Palestinians as diasporic risk rendering less resonant and appropriate the internationally-determined and recognized legal category and identity of 'Palestinian refugee'"? *Ibid.*, 635. Van Hear's notion of "refugees in diaspora" or "refugee diasporas" provides a possible solution to this problem, but has not been applied in the specific context of negotiations. Van Hear 2005, 580–586.

[303] Brinkerhoff 2011, 117. This problem is common to related areas of study, as noted above, including unofficial or Track II diplomacy, civil society participation in peacebuilding and public participation in peace negotiations. Existing datasets which examine how armed conflicts end focus largely on mediation between official actors.

[304] One study, for example, observes that diasporas may participate in peacemaking through human rights advocacy; raising consciousness among the hostland public and decision-makers; providing direct political support to pro-peace actors in the homeland; participating in the homeland peacemaking initiatives as advisors or returning to their home country and accepting leadership positions; providing economic support to political parties, civil society organizations, or popular campaigns supporting peace in the homeland; assisting mediators to locate warring parties and pressuring these groups and leaders to participate in peace negotiations; and, lobbying the governments in their countries of residence to engage in

typology of diaspora participation in conflict resolution, for example, identifies three major roles—reframing the conflict, shifting support from military to forces seeking peace and participation in problem-solving workshops—but excludes the direct participation of diaspora in peace negotiations.[305] A recent survey of researchers, policymakers and practitioners, moreover, identifies diaspora participation in "peace-building" as one of "weakest" areas of research, knowledge and practice on diaspora's role in peace and conflict.[306] The literature thus appears to provide little insight on the participation of refugees in the negotiation of durable solutions or otherwise.

Gallagher and Schowengerdt were among the first to identify the "paucity of documented experience on the obstacles, options and implications of refugee participation" in the public affairs of their home countries.[307] Focused on the participation of refugees in post-conflict elections, the study's general conclusions regarding the "[lack of] clarity among international organizations ...

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and/or facilitate negotiations. Baser and Swain 2008. Drawing on comparative practice, another study identifies five key ways that diasporas engage in peacemaking: neutralizing spoilers and building trust and cooperation; infusing realistic ideas and recommendations; building capacity for diaspora to effectively participate; building internal and external political support; and, promoting post-conflict political and economic development. PILPG 2009. *See also*, Brinkerhoff 2011.

[305] Bercovitch 2007. The typology considers diaspora participation (positive, negative and neutral) in four different phases of conflict (prevention, escalation, termination and post-conflict reconstruction and peacebuilding) and in four different arenas (political, military, economic and socio-cultural).

[306] The online survey of analysts, researchers, policymakers and practitioners on diaspora research, policy and practice was undertaken by the George Washington Diaspora Research Program and the Nordic Africa Institute. Brinkerhoff 2011, 117, *citing*, Brinkerhoff and Riddle 2009.

[307] Gallagher and Schowengerdt 1998. Part of Kumar's edited collection of studies on post-conflict elections, referred to earlier, the authors examine the merits and shortcomings of refugee participation in out-of-country and in-country voting through a comparison of voter information and education, voter registration, and the actual experience of voting in the 1990s in eight different elections. Common obstacles include discrimination, residence-based restrictions, lack of documentation, identification and registration of voters who may be spread across a large number of countries, lack of timely and adequate information, insecurity and intimidation, establishment of conditions for safe and secure voluntary repatriation in time to facilitate in-country voting, the added complexities and costs of out-of-country voting and the opposition to or limitations imposed on out-of-country voting by the country of asylum. The emphasis in the literature on elections reflects a similar tendency in empirical research on political participation which, as already noted earlier, tends to focus on voting and related campaign activities.

as to whose mandate it is to advocate, facilitate, and evaluate the electoral participation of refugees", differences among relevant agencies and actors over "what priority ought to be assigned to the issue at the policy-making and operational levels" and the absence of "[universal] standards or guidelines on how best to address the issue" are equally applicable to refugee participation in the negotiation of durable solutions.[308] The significance of this expanding body of research for the study of refugee participation in the negotiation of durable solutions is at least three-fold.[309] First, the study of refugee participation in home country elections reaffirms the aforementioned notion of peacebuilding as a domain for political participation albeit limited to post-conflict elections. Second, Gallagher and Schowengerdt's assessment that "[r]efugees have not in any way relinquished their citizenship by seeking asylum" and should therefore be allowed to take part in home country elections, widely cited in subsequent

[308] *Ibid.*, 195. Gallagher and Schowengerdt's study appeared to spur new research on the electoral rights of refugees and other displaced persons including the aforementioned IOM Participatory Elections Project. One of the outcomes of the project, as noted above, was the development of an initial set of standards and guidelines on the electoral participation of refugees. Standards addressed include voter registration and eligibility, election security, movement and legal status, voter education and campaigning in countries of asylum and ballot transparency and confidence. Grace and Fischer 2003. More than a decade after the publication of Gallagher and Schowengerdt's research and the publication of UNHCR's aforementioned *Handbook on Voluntary Repatriation*, which calls upon relevant actors to "[s]afeguard the right of refugees/returnees to participate in elections following peace agreements" (UNHCR 1996a, 49), the refugee agency was in the process of finalizing a guidance note on the participation of refugees in home country elections. Long 2010b, para. 87–88. It is not clear whether a similar guidance note on the participation of refugees in the negotiation of durable solutions, as "encouraged" in the same handbook, has been considered.

[309] Comprising both academic and policy-oriented research with a dual focus on both refugees and internally displaced persons, the literature examines issues similar to those examined in the aforementioned studies on post-conflict elections. Studies examine elections and referenda in a wide range of countries including Angola, Bosnia, Burundi, Cambodia, Chechnya, Croatia, East Timor, Eritrea, Georgia, Kosovo, Liberia, Mozambique, Namibia, Russian Federation, Sierra Leone, Western Sahara and the West Bank and Gaza Strip. The literature on IDPs includes both case studies (Bagshaw 2000; and, Mooney and Jarrah 2005) on IDP participation in elections and policy-oriented literature (Brookings Institution and University of Bern 2005; Brookings Institution and University of Bern 2008b; and, UN 2008b) which address the rights of IDPs, obligations of states and standards governing the protection of IDP participation in elections.The literature on refugees can be divided similarly into both case studies (Gallagher and Schowengerdt 1998; IOM 2003; and, Lacy 2004) and policy-oriented literature (Grace and Fischer 2003; Fischer 2007; and, Grace and Mooney 2009).

literature, challenges the one-dimensional view of refugees as non-citizens and non-political recipients of humanitarian aid.[310] Third, that practice remains "largely *ad hoc* and inconsistent" and that refugees are often excluded from taking part in elections in their countries of origin, notwithstanding the relatively determinate nature and widespread recognition of the right to vote, as discussed in the previous section, would appear to suggest that refugee participation in peace negotiations may also be relatively if not more rare.[311] The lack of adequate data as in other related fields of study surveyed above nevertheless makes it difficult assess the actual scope or extent of refugee participation in post-conflict elections.[312]

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[310] Gallagher and Schowengerdt 1998, 199. *See also*, Grace 2003, 17; Roberts 2003, 19; Lacy 2004, 13; and, Grace and Mooney 2009, 100. Noting that refugees, with certain exceptions such as denationalization, remain citizens Gallagher and Schowengerdt nevertheless acknowledge that the fundamental and related obstacle to refugee enfranchisement is that refugees "cannot avail themselves of the protection of their country of origin because current conditions therein pose a threat to their lives or livelihood". *Ibid*. Agreeing that "as a matter of legal literalism refugees may still be nationals of the sovereignty from which they have fled", Young draws attention to this general problem arguing that "[s]uch a construction of [the] status [of refugees] is misleading". From a practical perspective, as Young explains, "[t]heir prior sovereign usually has little interest in promoting their felicity and may only wish them ill. [Refugees] themselves may harbor the desire to frustrate politically and even to sabotage with armed force the designs of that prior sovereign. The tie of nationality in legal theory is a reciprocal exchange of loyalty and political commitment from the individual for a warrant from the collective national authority of full and complete succor and protection. When a person becomes a refugee, the act of flight acknowledges the failure of that reciprocal relationship". Young 1982, 339.

[311] Mooney and Jarrah 2005, 32; and, Grace and Mooney 2009, 120. It appears that refugee participation in home country elections takes place primarily through voluntary repatriation. In their early study of refugee participation in post-conflict elections, for example, Gallagher and Schowengerdt found that among the eight cases reviewed—apart from the 1993 referendum on the future of Eritrea which the study includes even though it is not a post-conflict election *stricto sensu*—Bosnia comprised the only example of refugee participation in out-of-country voting. The study observes that the participation of refugees in home country elections through repatriation is more common, in part, because the logistical, administrative, and political challenges are regarded as relatively easier to resolve. Gallagher and Schowengerdt 1998. Such participation nevertheless appears to be relatively rare. Grace 2003, 3; Lacy 2004, 24–26; Fischer 2007, 153; and, Grace and Mooney 2009, 120. While the number of states which recognize out-of-country voting continues to grow, as noted above, out-of-country voting procedures for refugees appear to be limited largely to high profile cases—e.g., Bosnia, Kosovo, Afghanistan and Iraq—where there is significant international engagement and oversight.

[312] Roberts 2003. Case studies on IDP participation in elections tend to focus on OSCE member states, notwithstanding the fact that as of 2009 European IDPs comprised less than 10 per cent of the global IDP population, with the largest number of IDPs (over 40 per cent) residing in Africa. IDMC 2009a. This may be explained, in part, by the paucity of information in other cases. The recent adoption of an African Convention on IDPs, the first regional instrument of its kind, may contribute to the rectification of this situation. The convention has yet to enter

Simon and Manz's 1992 study on representation and organization among Guatemalan refugees in Mexico was among the first studies to examine refugee participation in the negotiation of durable solutions.[313] It was the Guatemalan experience that arguably contributed to the development of UNHCR's operational guidelines on voluntary repatriation, as discussed in the previous section, which recommend that the agency "encourage" the participation of refugees, women in particular, in the negotiation of solutions to their situation. Much like the literature on diaspora in peacemaking, the participation of Guatemalan refugees in the negotiation of durable solutions provided a type of "corrective" to early literature on "refugee warriors" which cast refugee agency largely in terms of its negative impact on the resolution of conflict.[314] Their

into force. On refugees, the data tends to privilege post-conflict elections in Europe—e.g., Bosnia and Kosovo—and those in which there has been significant international involvement —additionally, Afghanistan and Iraq. Studies cover other cases, but the information on refugee participation tends to be less detailed in scope. The uneven information, combined with case selection criteria, thus do not allow for overall quantification of the number of refugees enfranchised or disenfranchised in post-conflict elections.

[313] Simon and Manz 1992. Discussion of refugee participation in negotiations with the Guatemalan government forms only part of the article which provides broader context to the rise of the Permanent Commissions which took part in talks to resolve the refugee situation on behalf of camp-based Guatemalan refugees in Mexico. The article also provides background information on the refugees' communities of origin in Guatemala, the war and subsequent displacement of the country's indigenous population, the situation of refugees in Mexico and the initial efforts to facilitate repatriation under the country's military government in the early 1980s and then under civilian rule during the second half of the decade. The absence of detailed accounts and corresponding analysis of refugee participation in such negotiations is characteristic of the small body of existing literature on the issue. Research on refugee participation in the Guatemalan peace process, however, has also produced a significant body of "parenthetical" literature which addresses, among others, the organization and mobilization of refugees including refugee women in advance of negotiations and the relationship between refugee participation and the durability or sustainability of their return. *See*, Krznaric 1997; Loughna 1999; North and Simmons 1999b; Riess 2000; Crosby 2001; Pessar 2001; Wolfensohn 2001; Cheng and Chudoba 2003; Rapone and Simpson 2004; Stepputat 2006; and, Long 2007.

[314] Commenting on the value of the refugee participation in Guatemala, for example, a UNHCR evaluation observed that rather than waiting for peace "[the refugees] helped forge it". Worby 1999, 6. The study goes on to explain that "[t]he process of Guatemalan refugees organising and negotiating and the Guatemalan peace process were simultaneous and of mutual influence. While the overall context of peace negotiations stimulated the specific negotiations with refugees, the refugee negotiations were a partial blueprint for the way the peace talks took place and contributed concretely to the content of the eventual agreements. For example, the partial peace accord relative to displaced populations adapted the previous experiences with refugees in regard to government land acquisition programmes, documentation legislation and efforts addressing the problem of land mines and explosive artefacts". Ibid. While the phenomenon of "refugee warriors" is often examined in terms of their negative impact of the resolution of conflict, indeed, some scholars suggest that the

participation also challenged the exclusive role of the state in matters of peace and security, not to mention the linkage between territory/residence and political participation, thus contributing to an emerging understanding of peace negotiations as a potential domain for political participation applicable to the negotiation of durable solutions for refugees.[315] Finally, the Guatemalan experience challenged much of the existing research on displacement and participation which "point[ed] to the weakening effect ... of refuge and refugee camp life ... on possibilities for political mobilization", especially in relation to both women and indigenous peoples.[316] It demonstrated, rather, as Simon and Manz argue, "the manner in which a dispossessed and marginalized community [could] use intensive organizing as a means of achieving power and asserting control over its destiny".[317] The Guatemalan case nevertheless remains one of the few and most widely cited cases of refugee participation in the negotiation of durable solutions.[318] If the paucity of literature is any indication of practice, the

term is a "misnomer" (Adelman 1988), another view holds that in certain situations, in particular, foreign domination, occupation and denial of the right to self-determination, refugees may have a prerogative to engage in certain "subversive" activities to realize their basic rights. Grahl-Madsen 1978.

315 The participation of Guatemalan refugees in the negotiation of their own solutions also exemplifies what Mac Ginty later termed as the "hybridization" of peacemaking as discussed briefly in the previous section. It also challenged conventional approaches to voluntary repatriation in which refugee participation was limited largely to individual decision-making on whether or not to return to places of origin when conditions enabled safe, secure and voluntary repatriation.

316 Krznaric 1997, 69. Hammond draws a similar conclusion in his study of the mobilization of Salvadoran refugees and displaced persons. The study identifies three factors that explain the different levels of mobilization in El Salvador: prior political disposition; the perception of immediate threat from an obvious enemy, and the need to exercise self-reliance. Hammond 1993.

317 Simon and Manz 1992, 135. This conclusion is widely reflected in the literature on the Guatemalan case. Participants to a UNHCR evaluation observed, for example, that the experience underscored the potential role of refugees as "agents of change" rather than mere "objects of charity". Jamal 2000, 6. In Koser's words, the Guatemalan case demonstrated that "the participation of displaced populations in formal peace negotiations is possible and can be effective". Koser 2007, 19.

318 The lack of research appears somewhat surprising given the fact that UNHCR's handbook on voluntary repatriation, as noted above, includes express recommendations regarding the participation of refugees in tripartite talks and in negotiations on durable solutions. UNHCR evaluations of voluntary repatriation operations, moreover, do not discuss the issue with the exception of the Guatemalan case (Worby 1999; and, Jamal 2000) and brief reference to the participation of refugees in the post-agreement inter-community meetings that resulted in separate "agreements" among local communities in Mali (UNHCR 1998). On the literature

exclusion of refugees from talks to resolve their situation would appear to follow the rule rather than the exception.

Koser's study on *Addressing Internal Displacement in Peace Processes, Peace Agreements and Peacebuilding* partly addresses this gap.[319] Written some fifteen years after the Guatemalan experience, the study appears to reflect "increasing recognition [among both scholars and practitioners] that durable solutions for the displaced are not simply a humanitarian and socio-economic issue, but a political issue too".[320] Drawing upon specially-commissioned case studies, a review of peace processes and agreements in 13 cases, mission reports of the UN Secretary-General's Representative on the

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gap see also, Koser 2007, 14; UNHCR 2007a, 1; and, Jacobsen, Young, and Osman 2008, 313.

[319] Koser 2007. The report assesses how internally displaced persons can most effectively participate in and contribute to peace processes; identifies good practice for the inclusion of internal displacement issues in the text of formal peace agreements; and, establishes the reasons why internal displacement should also be mainstreamed in peace-building efforts, including considering the potential role in this regard for the United Nations Peacebuilding Commission. The emergence of "forced migration studies" in the mid-1990s, with its broader focus, including the (re)construction of states after conflict, provided a more specific framework for the consideration of refugee participation in the negotiation of durable solutions. The concomitant focus on new categories of displacement, especially IDPs, however, has also meant that much of the initial research on the participation of displaced persons in the public affairs of their countries of origin, in the context peace negotiations or otherwise, has tended to focus on the situation of IDPs. It is, perhaps, not surprising then that the most comprehensive study of participation in the negotiation of durable solutions to date has focused on the participation of IDPs rather than refugees.

[320] Koser 2009, 5, *citing*, Vorrath 2007. In a briefing paper submitted to its Executive Committee on the agency's 50th anniversary in 2000, for example, UNHCR observed that "[c]ivil society in many parts of the world has also played a key role in ensuring a coherent response to problems of displacement. The knowledge and grassroots experience of local populations can enhance humanitarian efforts. In addition, partnerships with national societies have helped to raise the consciousness of the global public to the needs of refugees and displaced persons and have generated new sources of support for the Office. Refugees themselves and their communities have made substantial contributions to finding solutions to their plight. UNHCR has sought to take advantage of their special knowledge and skills to enhance the effectiveness of assistance and in the design and implementation of activities on their behalf. Their participation in peacebuilding processes has produced positive results". UNHCR 2000a, para. 32. In a briefing paper prepared for the agency's annual meetings with NGO partners, UNHCR further identified the high rate of conflict recidivism, and the concomitant potential for renewed displacement as among the reasons for the inclusion of refugees in peace negotiations. UNHCR 2007a, 1. Koser adds that in other cases the sheer scale of displacement renders the exclusion of displaced persons impractical. Koser 2007, 10. The ability of refugees and displaced persons to influence peace processes has been attributed to an array of factors, in particular, the politicizing experience of camp life, as Hammond and others suggest, but also by modern communications technologies. Jacobsen, Young, and Osman 2008, 319.

Human Rights of Internally Displaced Persons and the broader literature on civil society participation in peacemaking, in particular, the literature on women, Koser identifies the Guatemalan case as "a rare example of the formal participation of refugees, and to a lesser extent IDPs, in a 'track-one' process".[321] In 2007 UNHCR's Africa Bureau raised the issue of refugee participation in peace negotiations in the context of a short briefing paper prepared for a side event on "Displaced Populations and Peace Negotiations in Africa" at the 2007 Executive Committee of the High Commissioner's Programme annual NGO consultations.[322] In a subsequent article the authors of the paper recommend that "[a]s the international community debates how to build sustainable peace, full recognition should be given to refugees as key stakeholders, who can and should play a determining role in peace" and that the UN Security Council "should adopt a Resolution that will call for broader civil society engagement including that of refugees".[323] One of the primary drawbacks of this emerging body of research is the lack of adequate and systematic documentation and data on refugee participation.[324] The authors of

[321] Koser 2007, 19. Koser does not find any examples of IDP Track II processes, although IDPs have been included in broader Track II processes in Burundi, Georgia and Liberia. He also suggests that IDP participation in Track III is rare. The case studies include Colombia, Georgia, Sri Lanka and Sudan. The study also examined peace processes and agreements in Bosnia, Burundi, Cambodia, El Salvador, Guatemala, Kosovo, Liberia, Macedonia, Mali, Mozambique, Nepal, Rwanda, Sierra Leone, and the Great Lakes Pact on Security, Stability and Development.

[322] UNHCR 2007a. Focused on refugees from Burundi, the Darfur region of Sudan, Liberia and South Sudan, the paper aims to clarify links between civil society and displaced populations, outline modalities for participation and list a series of points to facilitate consideration of a greater role for civil society, including displaced populations, in peace negotiations. These include Burundi, the Darfur region of southern Sudan, Liberia and South Sudan.

[323] Sharpe and Cordova 2009, 47. In 2000, as noted in the previous section, the Council adopted a resolution on the participation of women in matters of international peace and security, the first resolution of its type to address civil society participation, women in particular, in peacemaking and other phases of peacebuilding processes. The Council has also addressed the broader issue of civil society participation in peacebuilding in subsequent debates. UNSC 2004a; UNSC 2004b; and, UNSC 2005.

[324] In the introduction to his study on addressing internal displacement in peace processes, for example, Koser observes that "[t]here is a distinct lack of literature specifically on the participation of IDPs in peace processes, and so at times this report draws on a wider literature on the mobilization for peace of civilian populations—especially women". Koser 2007, 14. *See also*, UNHCR 2007a, 1. This gap is similar to literature on civil participation in

this small body of largely policy-oriented literature concur that refugee participation in the negotiation of durable solutions is rare.[325]

V. Summary

The law and practice of refugee participation in the public affairs of their home countries, especially in relation to the negotiation of durable solutions to their situation, is a little understood much less studied aspect of forced displacement. The primary fields of study—international law and political science—as the aforementioned review explains, are largely silent on the primary questions that are the focus of this study, namely whether peace negotiations comprise a conduct of public affairs entailing a concomitant right to take part applicable to the negotiation of durable solutions for refugees and whether civil society including refugees actually take part in the negotiated settlement of conflict and its consequences including forced displacement. Emerging areas of research in each field of study evidence evolving understandings of the law and practice of political participation and provide useful conceptual perspectives or frameworks, but do not address the central questions of this study in a substantive manner.

Peace and conflict studies research appears to provide the locus and inspiration for the consideration of the legal and empirical aspects of refugee

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peacemaking. There appear to be few additional studies on refugee or IDP participation in peace negotiations. A number of studies, for example, address various aspects of IDP exclusion and inclusion in Sudan. Jacobsen, Young, and Osman 2008; and, Lanz 2008. Long's 2010 evaluation for UNHCR includes a section (12 pages) on refugee participation in "other political processes", including "emerging transnational political activities", but focuses predominantly on elections (25 pages). The study distinguishes between elite politics (liberation movements, political parties, governments in exile) and non-elite politics with the primary case being Guatemala. Analysis draws on material from a number of case studies, including but not limited to Eritrea (1993), Bosnia (1996), Liberia (1997 and 2002) Kosovo (1999), East Timor (1999), Afghanistan (2004, 2009), Iraqi (2005, 2010) and Southern Sudan (2010, 2011). Long 2010b.

[325] Koser 2007, 19; UNHCR 2007a; Jacobsen, Young, and Osman 2008, 314; and, Sharpe and Cordova 2009, 46.

participation in talks to resolve their situation. While there is an emerging body of empirical research on civil society participation in peace negotiations, it has yet to address the situation of refugees, while literature which posits a right to take part only does so in a cursory fashion. The lack of systematic data, moreover, makes it difficult to draw empirical conclusions on the extent or scope of such participation. Refugee and forced migration literature has only begun to examine refugee participation in the negotiation of durable solutions. The small body of largely policy-oriented literature suffers from drawbacks similar to those identified above including insufficient legal analysis and inadequate empirical evidence with studies often relying on the aforementioned and broader body of peace and conflict studies research.

The literature nevertheless appears to point towards emerging recognition of peace negotiations as a conduct of public affairs under international law entailing a concomitant right to take part that is also applicable to the negotiation of durable solutions for refugees. The literature also suggests, however, that peace negotiations rarely comprise a domain for political participation with an emphasis rather on civil society participation in unofficial or indirect peacemaking initiatives. It also seems that refugee participation in official or direct negotiations on solutions to their situation is equally rare. Research in each of the aforementioned fields of study has nevertheless yet to address the legal and empirical aspects of refugee participation in the negotiation of durable solutions in a substantive and comprehensive manner. Before turning to these questions in Chapters 4 and 5 of this study, however, it is first necessary to examine the historical background to Palestinian refugee efforts to secure a seat in negotiations to resolve their situation.

CHAPTER THREE

Palestinian Refugees and the Negotiation of Durable Solutions

1948 - 2000

I. Introduction

The right to political participation is also a central, but little understood much less studied aspect of the Palestinian refugee issue. The centrality of the right to take part in the conduct of public affairs stems in part from the fact that the violation and denial of political rights is among the root causes that have contributed to Palestinian displacement over more than six decades. It is also central to the predicament of Palestinian refugees in the sense that exile, military occupation and statelessness have made it difficult if not impossible for most of the refugees to take part in the public affairs of their historic homeland. The centrality of the right to political participation also derives from its effective exercise which seemingly offers Palestinian refugees a means to realize their full set of rights, including those relating to a solution to their long-standing plight. The division of historic Palestine and the creation of the state of Israel, the latter's longstanding opposition to refugee return and the absence of a Palestinian state, however, raise a host of issues relating to the effective exercise of such a right. While the political activities of Palestinian refugees over the past six decades have generated a wide range of research, the literature rarely engages the question of whether they have a right to participate in the conduct of public affairs in their historic homeland, especially in relation to the negotiation of durable solutions to their situation.

This chapter examines the participation of Palestinian refugees in the

public affairs of their historic homeland in the context of international efforts to facilitate a negotiated solution to the conflict in Palestine-Israel over the past six decades. A comprehensive account of the myriad ways and means for refugees to participate in the conduct of public affairs—i.e., elections, referenda, protests, civic associations, etc.—is beyond the scope of this chapter. The more limited aim is to background or situate Palestinian refugee efforts to secure a seat at the negotiating table in the 1990s in a broader historical context, beginning with negotiations on the refugee issue that followed the 1948 Arab-Israeli war and ending with bilateral talks between the PLO and Israel in 2000-2001. In contrast to much of the literature on the negotiation of durable solutions for Palestinian refugees, which focuses predominantly on the role of states, third party mediators and major non-state actors, this chapter focuses on the role of refugees themselves. The question of whether peace negotiations comprise a conduct of public affairs entailing a concomitant right to take part, the actual practice of refugee participation in the negotiation of durable solutions elsewhere and a comparison with the Palestinian case are examined in subsequent chapters.

The chapter is divided into three main sections. The first section provides a brief overview of the Palestinian refugee issue. This includes a summary of the different "waves" and root causes of Palestinian displacement, a profile of the various groups of Palestinian refugees and their estimated size, the distribution and situation of the refugees in camps and communities of exile and the international and regional responses to the Palestinian refugee situation. The second section summarizes and compares past efforts to facilitate negotiated solutions for Palestinian refugees. It identifies major periods of

negotiations, third party intermediaries, frameworks for negotiations, Palestinian and Israeli positions on solutions for the refugees and the parties taking part in each set of talks. Sections one and two provide the context for the third and final section which examines the role of Palestinian refugees in each of the major set of talks to resolve the refugee issue. This includes a discussion of both refugee organizations and national institutions which sought to represent refugees in talks to resolve their situation, the procedural and substantive demands of both groups, and the outcome of their efforts in relation to each period of negotiations.

II. Background on Palestinian Refugees

The forced displacement of Palestinians from and within their historic homeland since the early part of the 20th century can be divided into at least five major periods. Rooted in the unresolved conflict over self-determination in historic Palestine, Palestinian displacement can also be ascribed to more proximate causes - from fear and persecution to the destruction of property and expulsion of civilians in the context of both war and protracted military occupation. It is estimated that more than two-thirds of the Palestinian people have experienced some form of forced displacement with Palestinian refugees comprising one of the largest refugee populations in the world today. Despite ongoing displacement and migration over more than six decades, the geographic dispersion of Palestinian refugees remains largely the same with the majority of refugees residing in the 1967 OPT or in one of several Arab states which border their historic homeland. The status of refugees varies widely across host countries and all regions of exile, however, the scope of rights afforded to them

generally appears to increase the further refugees are dispersed from their homes of origin with the situation most severe inside Israel and the 1967 OPT. The United Nations and the League of Arab States have each established special regimes to protect and assist Palestinians displaced as a result of the ongoing conflict over self-determination in historic Palestine. While there are major differences between these regimes common to both is the absence of an explicit or active mandate to search for durable solutions for Palestinian refugees.

i. Circumstances of displacement

The Palestinian refugee issue is often associated with the two major wars between Israel and its neighbouring Arab states in 1948 and 1967. This association, found in much of the literature on Palestinian refugees, is largely a function of the "visibility" of war-related displacement. The establishment of camps to provide temporary shelter for refugees from the two wars, the proliferation of labels to describe and categorize them, the sheer size of the refugee population comprising over half of the Palestinian people, and the establishment of a special or mixed regime to protect and assist 1948 and 1967 refugees are among the features of war-related displacement that contribute to such association. The tendency to view the Palestinian refugee case through the "prisms" of 1948 and 1967, while understandable, nevertheless, overlooks the much broader pattern of forced displacement summarized below.[326] The

[326] Sayigh characterizes this tendency as a form of "static mapping" noting that it is so common "that it is scarcely noticed even by specialists". Sayigh 1998, 20. This is not to say that the literature is silent on Palestinian displacement before and after each of the two major wars of 1948 and 1967. Discussion, rather, tends to be "embedded" in broader studies of each period and in research on policies and practices relating to Israel's annexation of East Jerusalem, military occupation of the West Bank and Gaza Strip and treatment of its Palestinian citizens. Discussion of Palestinian displacement before and after the two wars,

incremental nature of Palestinian displacement in the periods preceding and following each of the aforementioned wars, the relative absence of refugee camps and institutions to protect and assist displaced Palestinians and the paucity of labels used to describe and categorize them each contribute to the relative "invisibility" of other groups of Palestinian refugees and displaced persons.

The forced displacement of Palestinians can be divided into at least five main periods. The earliest "wave" of displacement took place in the decades that preceded the 1948 Arab-Israeli war when upwards of 10 percent (100-150,000 persons) of the country's Arab Palestinian population was displaced within and beyond the borders of the country in the context of resistance to British rule and Zionist colonization.[327] This period effectively "set the stage" for the second and mass wave of displacement that accompanied the 1948 Arab-Israeli war when an estimated 750-900,000 Palestinians—half of the country's Arab Palestinian population comprising 85-90 percent of Palestinians residing within territory controlled by Israeli military forces at the end of the war—fled or were expelled from their homes, villages and towns of origin.[328] In the years that

moreover, is often disconnected from the situation of 1948 and 1967 refugees and rarely identified as part and parcel of the Palestinian refugee issue.

[327] This included both internal and external displacement. Rempel 2003, 277–228 and sources cited. For additional discussion of the relationship between Palestinian migration, citizenship and displacement during this period *see*, Karpat 1985; Qafisheh 2009; and, Foroohar 2011. A small number of Jews were also displaced as a result of civil unrest during this period. British reports to the Permanent Mandates Commission, the League of Nations' oversight body, refer to displaced Jews as refugees, notwithstanding the internal nature of their displacement, but rarely if ever appear to refer to the larger number of displaced Palestinians as refugees.

[328] The majority of Palestinians displaced during this period remained inside the borders of historic Palestine in the West Bank and Gaza Strip with several tens of thousands remaining internally displaced within the *de facto* borders of the state of Israel. Rempel 2003, 279 and sources cited. In a small number of exceptional cases, expulsion orders were revoked (e.g., Nazareth) and refugees were allowed to return (e.g., Mi'ilya). Morris 1987, 201, 228. This period is unique from others not only because of its "visibility", as already noted, but also because it is one of the few waves which also included the Jewish population of Palestine. Figures vary from 8,000-72,000 persons. UNCCP 1949a, 23; Levinovsky 2007, 2 n. 5; and, Naor 2008, 255 n. 60. Israel refers to the first Arab-Israeli war as its war of independence. Palestinians describe the period in Arabic as their *Nakba* or catastrophe.

followed the 1948 war, tens of thousands of Palestinians—an estimated 15 percent of the Palestinian population that remained within the *de facto* borders of the newly-established state of Israel—were displaced within and expelled from the Jewish state marking the third major period of Palestinian displacement since the beginning of the 20th century.[329] The 1967 Arab-Israeli war resulted in a fourth wave of displacement when 350-400,000 Palestinians or 35-40 percent of the OPT population, including refugees from the 1948 war who had found shelter in the West Bank and Gaza Strip, were displaced within and from their historic homeland.[330] The fifth and longest wave of displacement affecting as many as three-quarters of a million Palestinians has taken place primarily within and from the West Bank, East Jerusalem, and Gaza Strip since Israel occupied these territories during the 1967 war.[331] Thus, while the scope of Palestinian displacement has ebbed and flowed over time, what emerges when one looks "beyond" the wars of 1948 and 1967 is a relatively continuous and

[329] Two groups of Palestinians that appear to have been particularly vulnerable during this period were internally displaced Palestinians and Bedouins, both of whom were expelled in significant numbers to the West Bank and Syria. The ratio of Palestinians displaced within and beyond the *de facto* borders of Israel during this period is unclear. Rempel 2003, 292, 295 and sources cited. In several cases (e.g., Bir'im and Iqrit) Israeli officials promised that internally displaced Palestinians evicted from their villages for alleged security reasons would be allowed to return. Ryan 1973; Kimmerling 1977; Abu Hussein 2003; and, Boqae'e 2006. These pledges, however, have yet to be fulfilled.

[330] In contrast to the 1948 war, the majority of Palestinians displaced during this period found refuge outside the borders of their historic homeland, with a smaller number displaced inside the 1967 OPT. In another contrast to the first Arab-Israeli war, the Jewish population appeared to be unaffected by war-related displacement. Rempel 2003, 293, 295 and sources cited. Israel's occupation of the West Bank, East Jerusalem, and the Gaza Strip, moreover, enabled Jews displaced during the 1948 war to submit claims for previous losses. Benvenisti and Zamir 1995, 308–314; Rempel 1997, 530–531; and, Segev 2007, 485–491. Often referred to as the six day war, denoting its length, Palestinians frequently refer to the war in Arabic as the *Naksa* or setback.

[331] Palestinian displacement during this period is especially difficult to quantify given the length of time covered, the "low intensity" or creeping nature of displacement and the lack of systematic information on displacement. As with the period after the 1948 war, the ratio of refugees to internally displaced is also unclear. It is estimated, however, that by the time Israel and the PLO sat down for negotiations in the 1990s more than half of the Palestinian people had been displaced outside the borders of their historic homeland. Rempel 2003, 281–282 and sources cited. Noting the multiple waves of displacement, Palestinians have increasingly referred to their situation as an *ongoing Nakba*. In recent years a small number of Jewish and Palestinian Israelis have also been displaced temporarily from their homes in the context of hostilities between Israel and Lebanon and with the Hamas-run government in the Gaza Strip.

arguably systematic pattern of forced displacement.

Palestinian displacement is both a consequence and cause of the century-old conflict over self-determination in historic Palestine, an area that is today comprised of the state of Israel and the 1967 occupied Palestinian territories. The roots of the conflict can be traced to competing claims for self-determination between the indigenous population or habitual residents of historic Palestine and the Zionist movement which emerged among diaspora Jewry in the late 19th century largely in response to the dual threat of Jewish persecution and fear of assimilation. While Palestinians sought to establish an independent state, the Zionist movement, drawing upon religious identification with the land, aimed to reconstitute Palestine as a Jewish state through immigration, acquisition of land and settlement or colonization.[332] The unresolved conflict encompasses disagreements on whether Palestinians and Jews each comprise a people with a concomitant right to self-determination in historic Palestine and the territory or areas of the country to which each side's

[332] Important milestones in the conflict include the British pledge (1915-16 Hussein-McMahon correspondence) to support Arab independence and subsequent support (1917 Balfour Declaration) for the establishment of a national home for the Jewish people in Palestine; the codification of this "dual obligation" in the 1922 British Mandate for Palestine; the 1947 UN recommendation (GA Res. 181, 2nd Sess., 128th Plenary Mtg., UN Doc. A/RES/181, Nov. 29, 1947) to partition Palestine into separate Arab and Jewish states; the dissolution of Palestine and the establishment of the state of Israel in 1948; the establishment of the Palestine Liberation Organization in 1964 which initially aimed to liberate Palestine and replace Israel with an independent Palestinian state; Israel's 1967 occupation of the West Bank, East Jerusalem, and Gaza Strip, annexation of East Jerusalem, and subsequent settlement of these areas; international recognition of the inalienable rights of the Palestinian people including the right to self-determination and return; the 1978 Framework for Peace in the Middle East which established negotiations as the primary mechanism to address the conflict; the 1988 PLO Declaration of Independence consummating the organization's shift towards a two state solution to the conflict; the 1993 Declaration of Principles on Interim Self-Government Arrangements between Israel and the PLO setting out an agreed political process to resolve the conflict; the 2003 Performance-Based Road Map to a Permanent Two-State Solution to the Israeli-Palestinian Conflict which set in place a three-stage process to resolve the conflict; the 2004 ICJ Advisory Opinion on the legal consequences of Israel's construction of a wall in the West Bank which concluded that the right to self-determination of the Palestinian people is beyond dispute; and, the 2012 General Assembly decision (Res. 67/19, 67th Sess., 49th Plenary Mtg., UN Doc. A/RES/67/19, Nov. 29, 2012) to upgrade the status of Palestine at the United Nations to that of a non-member observer state. See, generally, Morris 1999; Masalha 2000; Quigley 2005; Tessler 2009; and, Caplan 2010.

self-determination claim applies.[333] The conflict also derives from unresolved differences over whether self-determination is a right of peoples to be free from domination - foreign or otherwise - or whether it is a right of a people to establish their own ethno-national state.[334] Great Britain, the League of Nations, the United Nations and the United States have each played significant roles in the conflict.[335] The conflict has led to two major wars (1948 and 1967), a protracted military occupation (1948-66 and 1967-present) and several major uprisings or revolts (e.g., 1936, 1987 and 2000) against foreign domination, colonization and military occupation.[336] These in turn have resulted in the

[333] At various stages of the conflict each side has rejected the other's claim to comprise a people with a concomitant right to self-determination in historic Palestine. Zionist/Israeli officials frequently argued that Palestinians were a sub-group of the Arab people and had never established their own state in Palestine. Palestinian officials argued that Judaism was a religion rather than a nationality, that Jews were a small minority of Palestine's population and that Zionism was a colonial movement. Given the fact that Jews were a small minority of the population (12.8 percent) and owned even less land (2.96 percent) when the conflict over self-determination came to a fore after the collapse and dissolution of the Ottoman Empire in the early 20th century (above figures for 1922), immigration and settlement comprised two of the main pillars in Zionist efforts to reconstitute Palestine as a Jewish state. Table 1 - Immigration, Population and Jewish-Owned Land in Selected Years, in Dajani 2005, 20 and sources cited. Immigration and settlement subsequently became major tools to assert claims in the West Bank, East Jerusalem and Gaza Strip after the 1967 war and to strengthen control over both areas in the aftermath of each of the two major wars. For population and land figures *see*, Table 6 - Jewish Settlements in the West Bank and Gaza Strip, in *ibid*., 78; Table 8 - Land Controlled by Jewish Local and Regional Councils and the Main Palestinian Communities in the Occupied West Bank (including Jerusalem), in *ibid*., 114; and, Table 9 - Jewish Settlements in the Gaza Strip, in *ibid*., 115. In 2005 Israel dismantled Jewish settlements in the Gaza Strip and redeployed its military forces from the territory.

[334] The Palestinian position has generally favoured the first view, whereas the Zionist or Jewish Israeli position has generally favoured the latter. It is nevertheless important to note that, historically, there has been a plurality of approaches to self-determination on both sides each of which has found varying degrees of support. Some Jews, for example, have advocated the establishment of a bi-national state while others have opposed the Zionist project in its entirety. The primary difference among Palestinians relates to whether self-determination should be realized in a single state encompassing all of historic Palestine or through partition and the establishment of a separate state in part of historic Palestine. For a more detailed discussion *see*, *supra* n. 332 and sources cited.

[335] Great Britain played an accessory role through its dual commitment to support Arab and Zionist claims in Palestine and through the policies and practices adopted during its tenure as Mandatory Power in Palestine. The League of Nations and the United Nations each played accessory roles through decisions that effectively set aside the principle of democratic consent along with mechanisms such as plebiscites and referenda to resolve the conflict over self-determination in Palestine notwithstanding subsequent recognition by the UN General Assembly of the inalienable rights of the Palestinian people. The United States has played a major role in the conflict as both the primary mediator, in particular, since the late 1970s, and also as Israel's major political and military ally. *Ibid.*

[336] The conflict over self-determination is part and parcel of other major wars between Arab and Israeli military forces since 1948, including the 1956 Suez war, the 1973 Arab-Israeli war, the 1982 and 2006 Lebanon wars and the 2009 Gaza war. The focus here, however, is on the

displacement of millions of Palestinians both within and beyond the borders of their historic homeland, the existence of whom is regarded as a major challenge or stumbling block in reaching a negotiated settlement to the conflict.

Palestinian and Israeli positions on how to resolve the conflict over self-determination have evolved over time, but have yet to converge in a manner that would lead to a resolution of the conflict. Mutual adjustment of positions on the territorial dimensions of self-determination in the form of a two-state solution, as discussed later in this chapter, have led to the greatest convergence in thinking, but outstanding disagreements on the borders and sovereign powers of a future Palestinian state to be established in all or part of the Israeli-occupied West Bank, East Jerusalem, and Gaza Strip continue to militate against complete convergence.[337] The least convergence is found in what might be described as the "demographic" aspects of self-determination, namely, whether self-determination applies to all habitual residents of historic Palestine or whether it should be exercised on the basis of race, ethnicity or national identity. The crux of the dispute involves unresolved differences over the future of the vast majority of Palestinian refugees, in particular, whether

major wars in historic Palestine which resulted in the mass displacement of the area's indigenous Palestinian population. In the case of each of the aforementioned wars, relatively few Palestinians were displaced within or from historic Palestine or displacement occurred primarily in countries hosting large numbers of Palestinian refugees.

[337] Palestinians initially sought to realize self-determination through the establishment of a Greater Syria with their claim subsequently focused on the creation of an independent Palestinian state in all of historic Palestine. This gradually evolved in the 1970s into support for a Palestinian entity in any area of Palestine liberated from Israeli control leaving the borders of such an entity undefined. In the 1980s the PLO threw its support behind a solution to the conflict over self-determination through the establishment of a Palestinian state in the West Bank and Gaza Strip with its capital in East Jerusalem. The Zionist movement initially sought to realize the territorial aspects of self-determination through the establishment of a "Greater Israel", but subsequently focused on the creation of a Jewish state in all of historic Palestine. It later decided to accept partition as a means to self-determination. Having realized self-determination through the *de facto* partition of Palestine in 1948, the state of Israel decided against the declaration of established borders. Israel followed a similar policy after its occupation of the remaining areas of historic Palestine in 1967. Since the late 1970s Israel has supported Palestinian autonomy in the West Bank and Gaza Strip, possibly leading to the establishment of a Palestinian state, but has stopped short of explicitly endorsing the right to self-determination of the Palestinian people. *Ibid.*

refugees who originate from areas inside Israel should be allowed to realize their right to self-determination through the exercise of their right to return to their homes, lands and villages of origin.[338] Despite the incongruence between territorial and demographic boundaries, and the failure to reach a negotiated solution, as detailed below, the two sides nevertheless appear to remain committed, at least officially, to a two-state solution to the conflict.

Palestinian displacement can also be ascribed to a number of more proximate causes. The forced displacement of Palestinians during the 1948 and 1967 wars, for example, is generally attributed to a combination of factors including, but not limited to, fear related to the collapse of law and order, propaganda and the commission of atrocities against civilians; the threat to civilian livelihoods, in part, from the burning of crops and the destruction of homes and other property; and, the expulsion of civilians as well as measures aimed to "encourage" or hasten their flight.[339] While emphasis accorded to each

[338] A related aspect of this issue is whether Jews displaced from the West Bank, East Jerusalem, and Gaza Strip during the 1948 war should be allowed to return. This issue has been partially addressed, as noted earlier, though policies and practices relating to the handling of Jewish claims and Jewish settlement in the 1967 OPT. A more complicated aspect of this issue, due to the number of people involved and their political power, is whether Jews who have settled in the West Bank, including East Jerusalem since 1967 (Israel dismantled Jewish settlements in the Gaza Strip in 2005) should be allowed to remain in the context of a two-state solution to the conflict. The idea of land swaps between Israel and a future Palestinian state as a means of resolving the demographic aspect of the conflict over self-determination, first raised during the early decades of the conflict, has thus far failed to facilitate a solution due in part to the fact that while most proposals resolve the issue of Jewish settlement an exchange of lands would fail to resolve the situation of Palestinian refugees given the number of people involved and the extent of their land claims. As of 2000 when Israel and the PLO engaged in talks to resolve the refugee issue there was an estimated 5 million 1948 refugees with estimated claims of 5,000 -17,000 km^2 of land inside Israel in comparison to the roughly 405,000 Jews residing in settlements which controlled around 2,368 km^2 of the 1967 OPT. For Palestinian figures *see*, Fischbach 2003; and, Abu Sitta 2004 and sources cited. For Jewish figures *see*, Dajani 2005, *supra* n. 333 and sources cited. The figures for Palestinian land claims differ according to types of ownership, i.e., private, public and customary ownership.

[339] Discussion of the proximate causes of war-related displacement can be found in early research by Palestinian historians (al-'Arif 1958; and, Khalidi 1959) and in the later work of Israel's new historians (Segev 1986; Morris 1987; Shlaim 1988; and, Pappé 2006). This research has also given rise to new studies by a group of Israeli scholars (Kadish 2004; and, Eyal 2006) who "recontextualize" findings on the proximate causes of displacement during the 1948 war within the official narrative presented by Israel's early historians. *See*, the discussion in, Pappé 2009. The literature often seeks to "weigh" the impact of various causes. While most studies focus on the 1948 war (Morris 1986; Khalidi 1992b; and, Abu

cause varies, common to most accounts of the two wars is a discussion of voluntariness—i.e., did the refugees leave or were they ordered to leave and by whom—and intentionality—i.e., was their displacement an unfortunate byproduct of war or the result of a deliberate policy of ethnic cleansing.[340] The displacement of Palestinians during each of the two major wars has also been attributed more broadly to the state or states deemed responsible for the initiation of hostilities regardless of the specific policies or practices of war which may have contributed to refugee flight.[341] In the debate over the nexus of aggression and forced displacement, which refocuses discussion on the unresolved dispute over self-determination in historic Palestine, both sides view their actions as largely defensive and the other side's actions as offensive.

Palestinian displacement in the periods preceding and following each of the two major wars has been attributed to an array of similar factors including internal transfer of population, destruction of homes and other properties,

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Sitta 2004), at least one study has applied a similar methodology to the 1967 war (Dodd and Barakat 1968). For more detailed citations of causes in the literature *see*, Akram and Rempel 2004, 32–33.

340 These issues are raised primarily in relation to the 1948 war, largely due to the number of Palestinians affected and because of the significance of the war to each side's narrative of the conflict and position on its solution. On the first issue, there is widespread consensus among Palestinian, Israeli and other scholars (Khalidi 1959; Childers 1971; Morris 1987; and, Pappe 1999) that there is no historical evidence to suggest that Palestinians voluntarily left en masse at the behest of Arab leaders promising that the refugees would be able to return following the cessation of hostilities. There is less consensus among Palestinian and Israeli scholars about whether Israel intended to displace Palestinians or whether their flight was an unfortunate outcome of war. Some scholars (Teveth 1990; and, Karsh 2001) maintain that the expulsion of Palestinians was the exception rather than the rule. Others give more credence to the role of expulsion (Morris 2004), but nevertheless maintain that Palestinian displacement was largely a byproduct of war. Some scholars also focus on the linkage between Zionist thinking on population transfer (Masalha 1992) and the policies and practices of Israeli military forces during war. Still others (Quigley 1998b; Blecher 2005; and, Pappé 2006) argue that Israel has engaged in a deliberate practice of ethnic cleansing. A number of recent studies (Chemillier-Gendreau 2002; and, Boling 2007) have also begun to assess Israeli policies and practices in light of relevant legal obligations.

341 This level of analysis is common to much of the early debate on the refugee issue following the 1948 war. It appears to arise less frequently in relation to the 1967 war. It is also more common to Israel's account of Palestinian displacement. A survey of studies on the refugee issue produced by Israel's official information center, for example, found that Palestinian displacement was attributed primarily to the Arab initiation of the 1948 war, second only to the now discredited claim that Arab leaders called upon the local population to leave. Nets-Zehngut 2008.

expulsion and deportation as well as measures aimed to "encourage" Palestinian emigration.[342] Restrictions on freedom of movement after both wars have also forced Palestinians inside Israel and in the 1967 OPT to relocate in order to secure employment and access basic services such as health and education. Jewish national institutions (World Zionist Organization, Jewish Agency and Jewish National Fund) and military governments inside Israel (1948-1966) and in the 1967 OPT (1967-present) have each played major roles in the forced displacement of Palestinians over the past six decades.[343] Civil laws inside Israel and military orders in the 1967 OPT, in particular those relating to citizenship, residence and property ownership, along with judicial fora in both areas have also contributed to and participated either directly or indirectly in the displacement and dispossession of Palestinians.[344] An issue

[342] Discussion of the proximate causes of Palestinian displacement before and after the major wars of 1948 and 1967 can be found in a disparate collection of studies on population transfer (Masalha 1997), denationalization and denial of citizenship (Rubinstein 1976; Handelman 1994; Robinson 2005; and, Qafisheh 2009), expulsion and deportation (Lesch 1979a; Lesch 1979b; Hiltermann 1986; and, Gaff 1993), revocation of residency rights (Stein 1997; Herling 1999; HRW 2012b; and, Jefferis 2012), house demolition (Carroll 1989; Farrell 2002; AI 2004; PCC, SC (UK), and WA 2009; and, WCLAC 2010), land ownership (Jiryis 1973; Bisharat 1993; Lein 2002; Abu Husayn and McKay 2003; Foreman and Kedar 2004; and Dajani 2005) and on resettlement (Klich 1996). In contrast to the research on war-related displacement, there is no parallel effort to date to "weigh" the relative impact of the various factors. Assessment of the various causes of non-war related displacement in light of relevant international and domestic law in the above literature has been subject to greater discussion in comparison to the causes of war-related displacement. For a summary assessment of causes *see*, Akram and Rempel 2004, 32–33.

[343] The World Zionist Organization, Jewish Agency and Jewish National Fund were set up to facilitate the acquisition of land, immigration and settlement of Jews in Palestine. The two bodies have continued to play a similar role following the creation of the state of Israel and after Israel's 1967 occupation of the West Bank, East Jerusalem and the Gaza Strip establishing what has been described as an institutionalized form of racial discrimination. There are no parallel government agencies that provide similar services to non-Jews inside Israel and in the 1967 OPT. Lehn and Davis 1988; Abu Husayn and McKay 2003; and, Dajani 2005. In 1948 Israel established a Military Government to administer the affairs of Palestinians residing in territories held by Israeli military forces—i.e., within the *de facto* borders of the state of Israel. The military government was abolished in 1966. Jiryis 1976; Lustick 1980; and Pappé 2011. A year later Israel established a Military Government comprised of military and civilian wings to administer the West Bank (excluding East Jerusalem) and the Gaza Strip. The Civil Administration was shut down and the Military Government withdrawn in the 1990s under agreements reached between Israel and the PLO, however, the Military Government remains the sole source of authority in the West Bank and Gaza Strip. Singer 1982; Benvenisti 1993; and, Shehadeh 1997.

[344] This includes, in particular, the Absentees' Property Law, Mar. 14, 1950; Development Authority (Transfer of Property) Law, July 31, 1950; Law of Return, July 5, 1950; Entry into

which has received less attention is the relationship between inter-factional fighting among Palestinians and forced displacement in the periods that followed each of the two major wars. The displacement of Palestinians has also been attributed to a number of broader phenomena such as colonialism, military occupation and apartheid and the inter-play of a complex range of derivative factors including deprivation of resources, denial of rights and the ethno-national separation of populations.[345] There is little agreement between Palestinians and Israelis on the applicability or nexus of these phenomena with the forced displacement of Palestinians within and from their historic homeland.

ii. Profile of displacement

The term "Palestinian refugee" encompasses a diverse range of experiences and statuses. Most commonly used to refer to those Palestinians displaced during the major wars of 1948 and 1967, the term is also used with reference to Palestinians displaced prior to and after both wars. The complex nature of

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Israel Law, Aug. 26, 1952; Nationality [Citizenship] Law, Apr. 1, 1952; Land Acquisition (Validation of Acts and Compensation) Law, Mar. 10, 1953; and, the Basic Law: Israel Lands, July 19, 1960. Military orders include, among others, Order Concerning Transactions in Real Property (No. 25), June 18, 1967; Order Concerning Abandoned Property (Private Property) (No. 58), July 23, 1967; Order Relating to Identity Cards and Population Registry (No. 234), 1968; Order Relating to Identity Cards and Population Registry (No. 297), Jan. 3, 1969; Order Regarding the Lands Law (Acquisition for Public Needs) (No. 321), Mar. 28, 1969; Order Concerning the Registration of Special Transactions in Land (No. 569), Dec. 17, 1974; and, the Order Concerning Law of Registration of Unregistered Immovable Property (No. 1060), June 28, 1983. For a comprehensive list of relevant laws and military orders *see*, Dajani 2005. *See also*, *supra* n. 342 and sources cited. On the role of Israel's Supreme Court and the special military tribunals Israel established in the OPT after 1967 *see*, Kretzmer 2002; and, Hajjar 2005.

[345] In contrast to the argument over aggression, which is most often posited by Jewish Israeli scholars and policymakers, arguments relating to the link between colonization, military occupation, apartheid and displacement are more commonly made by Palestinian scholars and policymakers. Other scholars, including a small number of Jewish Israelis, have also examined the linkage between displacement and colonization, military occupation and apartheid. The refugee issue is nevertheless largely embedded within discussions of these phenomenon rather than being a central focus of study. For a discussion of colonization, occupation and apartheid in the Palestinian-Israeli context *see*, McTague 1985; Shahak 1988; Quigley 1991; Marshall 1995; Glaser 2003; Gordon 2008; Regan 2008; HSRC 2009; and, Pappé 2011.

Palestinian displacement, however, has also given rise to an often confusing lexicon of additional labels to describe and categorize the various groups of Palestinian refugees.[346] Partly a description of the particular circumstances of their displacement, as summarized above, and partly a function of the special or mixed regime responsible for their protection and assistance, as discussed below, the proliferation of labels is especially evident with regard to refugees from the two major wars. Palestinians displaced in 1948, for example, are referred to alternatively as Palestine refugees, 1948 refugees, and registered and unregistered refugees.[347] Refugees from the 1967 war are referred to variously as displaced persons, 1967 refugees and ex-Gazans. The terms Arab refugees, absentees and article 1D refugees encompass both groups.[348] The relative paucity of terms used to describe Palestinians displaced after the two wars—other refugees, post-1967 refugees, article 1A refugees—is partly a function of gaps in the special or mixed regime for Palestinian refugees, but

[346] A number of additional labels are used in the context of refugee assistance—e.g., Jerusalem and Gaza Poor, Frontier Villages, Compromise Cases, and MNR Family Members. *See*, UNRWA 2009a. Another category of refugees not included here are "undocumented refugees" who are neither registered with UNRWA nor with authorities in their host country. *See*, Danish Refugee Council and Palestine Human Rights Organisation 2005; and, Trad 2006.

[347] These terms initially included a small number of Jewish Palestinians/Israelis who were displaced, as noted earlier, as a result of hostilities between Arab and Jewish/Israeli military forces. In contrast to Palestinian refugees, however, most of the Jewish population displaced during the war was able to return following the cessation of hostilities. Those who had resided in areas that fell under Arab control during the war, moreover, were able to file claims for their properties following Israel's occupation of the West Bank, East Jerusalem, and Gaza Strip in 1967.

[348] The terms for Palestinians displaced in 1948 and 1967 identify refugees by their place of origin (Palestine refugees, ex-Gazans), the status of their place of refuge (displaced persons), identity (Arab refugees), year of displacement (1948 and 1967 refugees), relationship to their property (absentees), eligibility for UN assistance (registered and unregistered refugees) and status under international refugee law (article 1D). The term displaced persons refers to Palestinians from the West Bank who found refuge in Jordan during the 1967 war. Jordan's annexation of the West Bank in 1950, while not recognized internationally, nevertheless meant that Palestinians who fled or were expelled to Jordan did not cross an international border *per se* and were therefore described as displaced although the term refugee has since been used interchangeably. The term "absentee", as defined in Israel's 1950 Absentees' Property Law, technically applied as well to displaced Jews, however, a loophole in the law enabled Israel to exempt Jews from its application. Foreman and Kedar 2004, 815. The use of the term "1D refugees" became more common after 2000 when UNHCR released several notes (UNHCR 2002b; and, UNHCR 2009b) clarifying the status of Palestinian refugees under international refugee law.

also stems from their invisibility relative to the much larger and more visible group of Palestinians displaced during the two major wars.[349] This is also true for Palestinians displaced prior to 1948 who are rarely referred to or included in research or discussion on Palestinian refugees.[350] The terms internally displaced persons and present absentees describe Palestinians displaced within Israel and the OPT during and after the wars of 1948 and 1967.[351] Finally, Palestinian refugees who seek asylum outside the Arab world often "disappear" due to non-recognition of Palestinian nationality or categorization of Palestinians as Middle Eastern, Other or Nationality Unknown.[352]

Statistical data on the global number of displaced Palestinians varies widely. Figures for the year 2000 when Israel and the PLO entered so-called

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[349] The terms similarly identify refugees by period of displacement (post-1967 refugees), status under international refugee law (article 1A) and in relation to refugees from the two major wars (other refugees). The latter terms—article 1A refugees and other refugees—like the term article 1D refugees, as noted above, became more common after 2000.

[350] Recent exceptions include studies on the denationalization of Palestinians under the 1925 Palestine Citizenship Order (Qafisheh 2009) and on "non-ID" Palestinians in Lebanon (Trad 2006). The case identified in the latter report involved the descendant of a Palestinian who was a political prisoner in Lebanon during the late 1940s. Having been displaced prior to 1948, the individual and his children were unable to register as refugees despite finding themselves in conditions similar to Palestinians displaced to Lebanon during the 1948 war.

[351] The use of the term internally displaced person in the Israeli-Palestinian context is relatively new having come to prominence after 2000 largely through the advocacy efforts of civil society actors including IDPs themselves, the development of new approaches to protect and assist IDPs at the international level, including the appointment of a special UN representative on IDPs and the establishment of an IDP monitoring centre, and the engagement of UN institutions such as UNRWA and OCHA in the 1967 OPT on the issue of internal displacement. The term "present absentees" describes Palestinians who are physically present, but considered absent with respect to their property under Israeli property law as well as military orders applicable to the 1967 OPT. Palestinian IDPs have also been referred to as internal refugees due, in part, to the fact that those who were displaced during the 1948 war fell within the mandate of the special regime for Palestinian refugees, described below, until 1952 when Israel assumed responsibility for them. Bligh 1994.

[352] The earliest example of this phenomenon can be traced to the pre-1948 period. Palestinians travelling to Central America on Ottoman passports were registered as "Turks" rather than Palestinians. A significant number were denationalized under the 1925 Palestine Citizenship Order promulgated during the British Mandate. This phenomenon continues to be an issue regarding registration of Palestinian asylum seekers. In Austria, Finland, Germany, the Netherlands, Norway and Sweden, for example, Palestinians fall within the general category of stateless persons without reference to Palestinian nationality. In the United States Palestinian refugees are listed according to their place of birth creating problems for identification of refugee descendants. Austria, Canada, Switzerland categorize Palestinian refugees by last place of residence. In Finland, German, Hungary and Switzerland, Palestinian refugees are listed as nationality unknown. Sondergaard 2005, 335–336. For an update *see*, Sondergaard 2011.

final status negotiations with the aim of reaching a comprehensive solution to the refugee issue range from 3.8 million or less to more than 5.6 million persons.[353] The discrepancy can be ascribed, in large part, to the lack of a uniform refugee definition and a comprehensive registration system encompassing all forms of Palestinian displacement and categories of refugees and displaced persons.[354] The UN Relief and Works Agency for Palestine Refugees and the UN High Commissioner for Refugees, described in more detail below, are the only international agencies which register and maintain databases on Palestinian refugees.[355] To be registered, a Palestinian refugee

[353] The smaller figure comprises the total number of 1948 refugees and their descendants registered to receive assistance from the UN Relief and Works Agency (UNRWA), the primary international body, as discussed below, responsible for the majority of Palestinian refugees. UNRWA 2001. The figure excludes other categories of displaced Palestinians described in the above notes and corresponding text. The larger figure includes 1948 and 1967 refugees and IDPs, but excludes Palestinians displaced prior to 1948 and an unknown number of Palestinians displaced from their historic homeland (Israel and the 1967 OPT) after the two major wars of 1948 and 1967. For original estimates *see*, Table 2.1 - Palestinian Refugees, Internally Displaced Palestinians, and Convention Refugees, 1950-2002, in Boqae'e and Rempel 2003, 33. For revised and upgraded figures *see*, Table 2.1 - Palestinian Refugees and IDPs by Group and Appendix 2.1, in Gassner 2010, 58, 82–84.

[354] The discrepancy in figures in the literature on Palestinian refugees can also be ascribed to differences over registration practices, in particular, those relating to the registration of refugee children and Palestinians who have been accorded or who have obtained citizenship, primarily in Jordan, in a second state. The lack of conclusive statistics also stems from difficulties arising from emergency registration practices, the movement of Palestinians within and beyond countries of first asylum and the protracted nature of Palestinian displacement. Such discrepancies and the reasons for them are also common to statistical data on other groups of refugees. *See*, the discussion on refugee statistics in, Crisp 1999.

[355] UNRWA registration is voluntary and is therefore not statistically valid nor has the Agency carried out a comprehensive census of refugees falling within its mandate. Statistical data includes Palestinians displaced in 1948 (and their descendants) who fall within the Agency's eligibility criteria for assistance. Recent statistics disaggregate 1948 refugees who do not fall within UNRWA's refugee definition, but are nevertheless registered due to significant loss and hardship as a result of the 1948 war. UNRWA 2012a. For a discussion of the development of UNRWA's registration system *see*, Tamari and Zureik 2001a. UNHCR data is based on information provided by governmental agencies, its own country and field offices and non-governmental organizations. UNHCR statistics include 1948, 1967 and other categories of Palestinian refugees, but do not differentiate or identify these groups. For a discussion of UNHCR data *see*, UNHCR 2010, 15–16. Incompatibility between UNRWA and UNHCR registration systems has also made it difficult to trace the movement of Palestinian refugees between the two agencies' respective areas of operation, however, over the last decade the two UN agencies have begun to explore ways to more effectively share registration data for Palestinian refugees. The Internal Displacement Monitoring Centre (Israel and the 1967 OPT), UNRWA (in its areas of operation) and OCHA (1967 OPT) have also begun to monitor internal displacement within their respective fields of operation over the last decade, but do not register internally displaced Palestinians. Information collected by the UN Register of Damage relating to displacement and dispossession caused by Israel's construction of the wall in the occupied West Bank is not available to the general public.

must fall within one of three relevant definitions: UNRWA's working definition of a "Palestine refugee", Article 1A of the 1951 Convention Relating to the Status of Refugees, or Article 1D of the same instrument.[356] Not all displaced Palestinians, however, fall within these definitions—e.g., 1967 refugees, Palestinians displaced after the wars of 1948 and 1967 to states and territories where UNRWA operates and internally displaced persons.[357] The size of the global Palestinian refugee population (see Table 3.1 below) must, therefore, be derived from a range of sources, starting with registration figures from UNRWA and UNHCR and combining those with information derived from statistical surveys, academic/policy studies and demographic projections for groups not covered in the registration systems of either of the two agencies.[358] While

[356] UNRWA's definition of a Palestine refugee is used to determine eligibility for Agency services (e.g., education, health, welfare). For discussion of the definition *see*, Takkenberg 1998, 68–83; and, UNRWA 2009a. Articles 1A and 1D determine refugee status under the 1951 Refugee Convention. For a discussion of these definitions see, UNHCR 2002b; and, UNHCR 2009b. The UN Conciliation Commission for Palestine (UNCCP), the body mandated to facilitate the implementation of General Assembly Resolution 194, affirming that 1948 refugees should be allowed to return to their homes, drafted a refugee definition in 1951 in consultation with UNHCR for the purpose of facilitating the implementation of solutions, however, the Commission's responsibilities were largely devolved to the parties to the conflict in 1952, as noted below, and the definition was never adopted. *See*, UNCCP 1951b; and, UNCCP 1951a.

[357] The UN General Assembly, as noted below, has requested UNRWA to assist Palestinians displaced during the 1967 Arab-Israeli war and by subsequent hostilities, however, these groups of refugees are neither registered nor counted in UNRWA statistics. For a description of other categories of non-registered Palestinians who may receive UNRWA services, but who are not counted in Agency statistics see, UNRWA 2009a. In 2012, as noted above, the Agency added a new category—other registered persons—to cover those persons who do not meet the Agency's refugee definition, but who for historical and political reasons are nevertheless registered and eligible to receive Agency services. UNRWA 2012a. As noted earlier, UNRWA initially registered 1948 refugees (i.e., IDPs) inside Israel, but following the transfer of responsibility to Israel in 1952, their registration files became inactive. Tamari and Zureik 2001b, 44–45.

[358] The survey research conducted by the Palestinian Central Bureau of Statistics and Natural Resources (Damascus), the Palestinian Central Bureau of Statistics (Ramallah) and the Institute for Applied International Studies (FAFO) comprise the primary sources of additional data on 1948 and 1967 Palestinian refugees. For demographic estimates of the two groups of refugees *see*, *e.g.*, Abu Lughod 1971. Demographic estimates for non-registered 1948 refugees can be found in, Abu Sitta 1998. For comparisons of sources *see*, Morris 1987, 297–298; Zureik 1994, 11; and, Kossaifi 1996, 3–4, 6. The survey research carried out by the Galilee Society - The Arab National Society for Health Research & Services comprises the most up-to-date information on IDPs inside Israel. Since 2002, the Internal Displacement Monitoring Centre has compiled information on internally displaced Palestinians inside Israel and in the 1967 OPT. For recent information *see*, IDMC 2009b; and, IDMC 2011. In recent years, the UN Office for the Coordination of Humanitarian Affairs - OPT has also begun to document internal displacement in the West Bank, East Jerusalem, and Gaza Strip. There

providing a broader picture of Palestinian displacement, the global figure should be read as indicative rather than definitive.

Table 3.1 - Palestinian Refugees and IDPs by Group, by Decade (1950-2000)

Year	Registered 1948 Refugees	Non-Registered 1948 Refugees	1967 Refugees	IDPs in Israel since 1948	IDPs in the OPT since 1967
1950	914,221	304,740	-	47,610	-
1960	1,120,889	373,630	-	67,159	-
1970	1,425,219	475,073	266,092	94,734	16,240
1980	1,844,318	614,773	375,349	133,631	31,920
1990	2,422,514	840,838	529,467	188,500	49,889
2000	3,737,494	827,022	743,257	264,613	72,758

Source: Table 2.1 - Palestinian Refugees and IDPs by Group, in Gassner 2010, 58. The table excludes an unknown number of displaced Palestinians who are neither 1948 nor 1967 refugees, but who have been displaced from historic Palestine (Israel and the 1967 OPT) and are unable or unwilling to return owing to a well-founded fear of persecution. The figures reflect estimates according to best available sources and population growth projections. Figures are therefore indicative rather than conclusive.

iii. Situation in exile

The geographic pattern of Palestinian dispersion over the past six decades (see Table 3.2 below), despite a significant increase in the number of refugees, has remained largely the same in the sense that the majority of refugees continue to reside in the Israeli-occupied West Bank, East Jerusalem, and Gaza Strip and in Arab states which share a common border with Israel and the 1967 OPT, namely, Jordan, Lebanon and Syria.[359] Slightly less than one-third of the refugees residing in these areas are registered as residing in one of 58 official refugee camps, nearly half of which are located in the West Bank, East

are no major studies on the number of Palestinians displaced for the first time after the 1948 and 1967 wars. For a review of data derived from historical studies *see*, Rempel 2003, 281–282 and sources cited. For a useful overview of statistical data on Palestinian refugees *see*, Abu-Libdeh 2007.

[359] The majority of refugees residing in these areas are registered refugees, that is to say, they are eligible and registered to receive UNRWA assistance. For the number of registered refugees at the time of final status negotiations between the PLO and Israel in 2000-2001 *see*, UNRWA 2001. For estimates of refugee populations per country *see*, Table 7 - The Distribution of Palestinians in 1998 (minimum estimate), in Abu Sitta 2000, 24; and, Table 3.2.5 - Estimated Number of Palestinians in the World, End Year 2000, in PCBS 2001, 2:143. Israel dismantled Jewish settlements and redeployed its military forces from the Gaza Strip in 2005, but is still considered by the United Nations and others to be an Occupying Power due to its effective control over the land and coastal borders as well as airspace over the Gaza Strip.

Jerusalem and the Gaza Strip.[360] A smaller number of refugees reside elsewhere in the Arab world, most notably in Egypt, Iraq, Saudi Arabia, Kuwait and Yemen with others scattered across Libya and other parts of North Africa.[361] While most refugees in these countries reside in urban areas, a number of temporary refugee camps have been established to shelter refugees during political and humanitarian emergencies.[362] Palestinian refugees also reside in

[360] This includes eight camps in the Gaza Strip, 19 in the West Bank, 12 in Lebanon, 10 in Jordan and nine in Syria. While the fewest number of camps are located in Gaza, the area has the highest number of refugees registered as residing in camps comprising around one-third of the combined population in the 58 official camps. UNRWA 2001. The number of refugees residing in the camps may vary as UNRWA figures do not record actual place of residence. This explains discrepancies, for example, in the 1967 OPT between UNRWA figures and those compiled by the Palestinian Central Bureau of Statistics. *See*, statistics in, UNRWA 2010. The majority of the camps (52) were established during the years that followed the 1948 Arab-Israeli war, with a smaller number (six) established after the 1967 Arab-Israeli war. A smaller number of refugees reside in a number of unofficial or unrecognized refugee camps. *See*, Table 2.5 - Population of Palestinian Refugees in Camps (official and unofficial), mid-2008, in Gassner 2010, 67–69. Sites for the delivery of key resources, in particular, health, education and shelter, refugee camps also became, as Husseini observes, "bastions of Palestinian nationalism [and] the focus of the PLOs' implantation and its main recruiting ground". al-Husseini 2000, 54–55. This was arguably aided by the self-settlement of refugees according to villages and places of origin in historic Palestine. According to data for Palestinian refugees registered with UNRWA, nearly three-quarters of all 1948 refugees from villages moved to one area and only one-fifth to two areas. The remainder found refuge in more than two areas. Abu Sitta 2001, 23.

[361] The registration status of these refugees is unclear. For estimates of refugee populations for selected countries *see*, Table 7 - The Distribution of Palestinians in 1998 (minimum estimate), *supra* n. 359; and, Table 3.2.5 - Estimated Number of Palestinians in the World, End Year 2000, *supra* n. 359. *See also*, Annex A.7: Refugee Population by Origin and Country or Territory of Asylum, 1992-2001 (thousands), in UNHCR 2002c, 91–94.

[362] In 1948, for example, Egypt set up a number of camps in both Cairo and in the Sinai to house Palestinians displaced by the war in Palestine. These camps were eventually closed. El-Abed 2009. Palestinian refugees who were relocated to the Sinai following Israel's demolition of their shelters in the 1970s, ostensibly to improve access and security in the refugee camps located in the southern part of the Gaza Strip, referred to the place of their relocation as "Canada Camp" due to the stationing of Canadian UN Emergency Force soldiers there during the 1956-57 Suez Crisis. Separated from the Gaza Strip after Israel's withdrawal from the Sinai and the re-establishment of the international border in 1982, the refugees were eventually relocated back to the Gaza Strip in the 1990s. Wilkinson 2001. In the mid- to late 1990s, Salloum camp (also known as "The Return Camp") was established on the Egyptian-Libyan border to shelter Palestinian refugees, primarily ex-Gazans who had lost their residency rights due to Israel's military occupation, along with other Palestinians in Libya threatened with deportation. The threat was later rescinded and refugees were permitted to enter or remain in Libya. Sirhan and Khaleq 1996; and, Takkenberg 1998, 166–167. A number of camps have were also set up along the Jordanian-Iraqi border (Ruweished and Karama camps) and the Syrian-Iraqi border to shelter Palestinian refugees displaced by the 2003 war in Iraq until UN agencies were able to secure resettlement slots in third countries of asylum. HRW 2006; and, Wengert and Alfaro 2006. More recently, Palestinians displaced during the war in Libya have found shelter once again along the border with Egypt at Salloum and in several other locations including a transit camp in Benghazi. Fiddian-Qasmiyeh 2011. The majority of Palestinian refugees displaced from Syria since the onset of civil war in 2011 reside in existing Palestinian refugee camps or urban areas in neighbouring Arab states.

Europe and the Americas with smaller numbers in Australia, New Zealand and in parts of Africa and Asia.[363] Insufficient opportunities for sustainable livelihoods in countries of first refuge along with political instability and armed conflict in the Arab world have nevertheless contributed to shifts in the distribution of the Palestinian refugee population within and beyond the region over the past sixty years. In the 1950s and 1960s, for example, the provision of travel documents coupled with employment opportunities outside countries of first refuge contributed to wider dispersion of refugees across the Arab world.[364] The 1970s and 1980s witnessed a much broader geographic dispersion as a greater number of refugees sought asylum outside the region fleeing armed conflict in Lebanon and Israel's increasingly protracted military occupation of the West Bank, East Jerusalem and Gaza Strip.[365] Since the 1990s there have been

[363] The registration status of these refugees is unclear. For estimates of refugee populations for selected countries *see*, Table 7 - The Distribution of Palestinians in 1998 (minimum estimate), *supra* n. 359; and, Table 3.2.5 - Estimated Number of Palestinians in the World, End Year 2000, *supra* n. 359. *See also*, Annex A.7 - Refugee Population by Origin and Country or Territory of Asylum, 1992-2001 (thousands), in UNHCR 2002c, 91–94.

[364] In the aftermath of the 1948 Arab-Israeli war, UNRWA's refugee placement and works programs aimed to address the lack of economic opportunity through migration and economic development of host countries. These programs, however, were both insufficient in terms of the scale of the challenge and inappropriate given the widespread wish of refugees to return to their places of origin. UNRWA's short-lived placement services program enabled several thousand refugees to find employment elsewhere in the Arab world while the works program was eventually replaced by a new approach focused on the delivery of essential services (e.g., education, health, welfare) contributing to the human development of the refugee community. For a brief discussion *see*, Schiff 1995, 33–35. *See also*, UNRWA's annual reports from the 1950s and 1960s for more details. The reports are archived on UNISPAL <http://unispal.un.org> [accessed June 25, 2011]. In 1954 the League of Arab States decided (LASC Resolution 714) to issue travel documents to Palestinian refugees in the organization's member countries. The issuance of travel documents is also addressed in the League's 1965 Casablanca Protocol, discussed below, which aimed to regularize the status of Palestinians in the Arab world. For more detailed discussion of League travel documents *see*, Takkenberg 1998, 136–149.

[365] There are no conclusive statistics on the distribution and number of refugees affected. In Lebanon, survey research suggests that the number of Palestinian refugees is considerably lower than the number registered to receive UNRWA assistance due to out-migration for the past several decades. Ugland 2003. For a discussion of migration, asylum and resettlement in Europe see, Shiblak 2005. The estimated forced migration rate from the West Bank and Gaza Strip between 1967 and 1986, according to one study, was 33,400 persons per annum. Table 6 - Estimated Forced Migration from the West Bank and Gaza Strip, 1967-1986 (in thousands), in Kossaifi 1996, 8 n. 3. A more recent survey found the annual net-migration (voluntary and forced) between 1968 and 1991 to be as high as 2 percent per annum. Pederson, Randall, and Khawaja 2001, 153.

several additional shifts in the distribution of Palestinian refugees largely due to Israel's ongoing military occupation and armed conflict in the region, in particular, in Kuwait, Iraq, Lebanon, Libya and in Syria.[366] Despite a notable decline in the situation of Palestinian refugees across the Arab world, especially since 2000, most have found it increasingly difficult to obtain asylum within or outside the region.

The socio-economic and legal status of Palestinian refugees varies considerably across host countries and territories and all regions of exile. The living conditions and scope of rights afforded to Palestinian refugees, generally, appear to improve or increase the farther refugees are dispersed from their historic homeland, with those residing in Lebanon and inside the 1967 OPT being among the most vulnerable to the violation of their basic human rights.[367] This stems, in large part, from decades of sectarian conflict in Lebanon and

[366] This includes the expulsion of Palestinians from Kuwait during the 1990-1991 Gulf War (Floyd 1991; and, Troquer and al-Oudat 1999) and from Libya in 1996 following the establishment of a Palestinian self-governing authority in the 1967 OPT (Shiblak 1995; and, Sirhan and Khaleq 1996), the displacement of Palestinians during and after the 2003 US-led war on Iraq (HRW 2003b; HRW 2006; and, AI 2007), the displacement of Palestinians in Lebanon during the 2006 war with Israel and internal armed conflict in 2007 between Lebanese security forces and Islamic militants in Nahr al-Bared camp near Tripoli (Tiltnes 2008), the displacement of Palestinians in the Gaza Strip during Israel's 2009 war on Hamas (IDMC 2009c), the displacement of Palestinians from Libya in 2011 during the fall of the Qaddafi regime (Fiddian-Qasmiyeh 2011) and the displacement of Palestinian refugees from Syria beginning in 2012 in the context of ongoing violence between government and opposition forces (AFP 2012; Hamoud 2012; and, HRW 2012a) In the 1967 OPT this includes two different forms of internal displacement: persons forced to relocate because they are unable to reside or access employment, education and health care, and/or family; and persons unable to relocate who effectively become internally stuck. For a discussion of emigration from Lebanon and Palestine *see*, *respectively*, Doraï 2003; and, Khawaja 2005.

[367] Information on the status of Palestinian refugees in their current host countries also varies according to category of refugees and their geographic location. The information is greatest for those refugees displaced during the two major wars of 1948 and 1967, while information becomes increasingly sparse as refugees are dispersed farther from Palestine and, in particular, beyond the region. That so little information is available on refugees outside the Middle East may be ascribed to their smaller number, the fact that some or most may have acquired new nationalities, the assumption that they are now part of an integrated "diaspora" community or the simple fact that "out of sight" they are also "out of mind". On the legal status and living conditions of refugees in the Arab world *see*, Ghabra 1987; Shiblak 1996; Hanssen-Bauer, Pederson, and Tiltnes 1998; Takkenberg 1998, 131–171; Abu Shalal 2000; Pederson, Randall, and Khawaja 2001; Khawaja and Tiltnes 2002; Ugland 2003; Lesch 2005; Tiltnes 2006; El-Abed 2009; al-Az'ar 2010, 211–240; and, Khalil 2011. For discussion of the legal status and living conditions of Palestinians elsewhere *see*, Imseis 1997; Shiblak 2005; Sondergaard 2005; Malloy 2009; and, Sondergaard 2011.

from Israel's protracted military occupation of the West Bank, East Jerusalem, and the Gaza Strip. It can also be attributed, to some extent, however, to the emergence of gaps, as discussed below, in the international and regional regimes responsible for the protection and assistance of Palestinian refugees. That the majority of Palestinian refugees continue to remain in the region where threats to their rights are most severe means that the lack of respect for basic human rights affects most Palestinian refugees. Common to many, with the exception of 1948 refugees in Jordan, a small number of refugees elsewhere in the Arab world, as well as an indeterminate number outside the region, is the lack of citizenship without which they are often denied or unable to exercise the panoply of rights accorded to individuals under international law.[368] This includes, among others, the right to take part in the conduct of public affairs, the exercise of which, as noted in the previous chapter, is general limited to citizens and is broadly recognized as essential to the realization of all other human rights.[369]

[368] Palestinian refugees who found shelter in Jordan during the 1948 war, along with their descendants, were subsequently accorded citizenship under article 3(2) of the country's 1954 Nationality Law and are able to exercise the right to political participation subject to limitations on political rights and freedoms inherent to Jordan's political system. The article defines Jordanian nationals to include "[a]ny person who, not being Jewish, possessed Palestinian nationality before 15 May 1948 and was a regular resident in the Hashemite Kingdom of Jordan between 20 December 1949 and 16 February 1954. Law No. 6 on Nationality, Jan. 1, 1954, art. 3(2). For an account of early refugee participation in national and municipal elections in Jordan *see*, Plascov 1981. A small number of Palestinians have also acquired citizenship status in other parts of the Arab world, including Lebanon, Syria and Egypt. Shiblak 1996, 39; Takkenberg 1998, 164; and, Sondergaard 2005, 17.

[369] In most Arab host states the lack of respect of respect for political rights affects both citizens and refugees alike although refugees face greater restrictions on their political activities and in most cases, with the notable exception of 1948 refugees in Jordan, are unable to take part in the public affairs of their host country due to their refugee status. For an overview of situation in the Arab world see AHDR 2002, 105–20; and, AHDR 2005. A discussion of respect for political rights in the Arab world since the so-called Arab Spring is beyond the scope of this study. Inside Israel limitations on the exercise of the right to political participation primarily affect the country's Palestinian citizens and refugees and stem from the country's self-definition as a Jewish state. For a brief overview see, Navot 2007, 102–107. In the 1967 OPT limitations derive from agreements signed between Israel and the PLO in the 1990s which circumscribe PA elections in East Jerusalem and exclude 1967 refugees who originate from the occupied Palestinian territories.

Table 3.2 - Distribution of Displaced Palestinians, Selected Years (1949-2000)

Year	Israel	West Bank/Gaza Strip	Jordan, Lebanon, Syria	Other Arab States	Elsewhere
1949	31,000	470,000	245,000	11,000	0
1970	94,734	600,746	1,106,805	254,300	25,000
1982	143,663	717,935	1,645,442	652,925	251,825
1990	188,500	958,767	2,457,680	445,195	450,000
2000	264,613	1,480,389	3,073,120	601,428	506,342

Sources: The estimates include 1948 refugees and IDPs and 1967 refugees and IDPs. The table excludes an unknown number of displaced Palestinians who are neither 1948 nor 1967 refugees, but who have been displaced outside historic Palestine (Israel and the 1967 OPT) and are unable or unwilling to return owing to a well-founded fear of persecution. Figures for 1949, 1970 and 1982 are derived from Table 1.1 - Palestinian Population Distribution, Brand 1988, 9. Figures for 1990 are derived from Table 2 - Numbers of the Palestinian People, Refugee/Displaced and Non-Refugee Status 1990-91, Zureik 1994, 6. Figures for 2000 are derived from Table 3.2.5 - Estimated Number of Palestinians in the World, End Year 2000, PCBS 2001, 143. Figures for IDPs inside Israel are derived from Table 2.1 - Palestinian Refugees and IDPs by Group, Gassner 2010, 58.

iv. Institutional response

There are three major international bodies responsible for the protection and assistance of Palestinian refugees. The UN Conciliation Commission for Palestine (UNCCP) was set up in December 1948 to facilitate the implementation of General Assembly Resolution 194 relating to a peaceful settlement of the conflict over Palestine.[370] This included responsibility for protection of the rights, property and interests of refugees from the 1948 war along with the facilitation of their repatriation, resettlement, social and economic rehabilitation and the payment of compensation to them.[371] The UN Relief and

[370] The UNCCP was established under General Assembly Resolution 194. GA Res. 194, *infra* n. 392, para. 2. The Commission's mandate "to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees [from the 1948 war] and the payment of compensation [to them]" is contained in paragraph 11 of the above resolution. The mandate was augmented in 1950 under Assembly Resolution 394, which directed the Commission to establish a Refugee Office to make arrangements for the assessment and payment of compensation in addition to other elements of a solution listed in paragraph 11 and to consult with the parties regarding the protection of refugee rights, property and interests. GA Res. 394, 5th Sess., 325th Plenary Mtg., UN Doc. A/RES/394, Dec. 14, 1950, para. 2. The emphasis on compensation in the latter resolution stemmed from the deadlock in negotiations over repatriation. For more on the UNCCP *see*, Hurewitz 1953; Hamzeh 1968; Forsythe 1972; and, Touval 1982, 76–105. Commission reports and other records are archived on UNISPAL <http://unispal.un.org> [accessed Mar. 29, 2011].

[371] In late 1951, following the collapse of UNCCP-led negotiations, the Commission informed the General Assembly that it was unable to fulfill its mandate. In early 1952 the General Assembly decided to devolve responsibility for the conflict's resolution to the parties themselves "consider[ing] that the governments concerned have the primary responsibility for reaching a settlement of their outstanding differences in conformity with the resolutions of

Works Agency for Palestine Refugees in the Near East (UNRWA) was established a year later to oversee a relief and works program for 1948 refugees in the West Bank, Gaza Strip, Jordan, Lebanon and Syria.[372] The program aimed to meet the immediate needs of the refugees and to facilitate their economic reintegration in region through repatriation or resettlement. The UN High Commissioner for Refugees (UNHCR), which began operations in 1951, was established to protect, assist and seek durable solutions for refugees worldwide and is responsible for Palestinian refugees who are outside the above areas of UNRWA operations and fall within the terms of the refugee definition codified in the 1951 Convention Relating to the Status of Refugees.[373]

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the General Assembly on Palestine". GA Res. 512, 6th Sess., 365th Plenary Mt., UN Doc. A/RES/512, Jan. 26, 1952, para. 3. The UNCCP subsequently focused on the documentation and valuation of property losses from the 1948 Arab-Israeli war which it completed in the 1960s. For a detailed discussion *see*, Fischbach 2003. Since then the Commission has been largely inactive with the exception of a brief effort in the early 1960s, as noted below, to facilitate a solution to the refugee issue. The UNCCP continues to file a brief annual report notifying the General Assembly that it has nothing new to report. *See*, *e.g.*, UNCCP 2000.

[372] UNRWA was established under General Assembly Resolution 302. GA Res. 302, 4th Sess., 273rd Plenary Mtg., UN Doc. A/RES/302, Dec. 8, 1949, para. 7. The Agency replaced and augmented the work of the UN Relief for Palestine Refugees (UNRPR) which was responsible for the initial coordination of emergency relief. UNRWA's mandate has evolved in response to the changing circumstances and needs of Palestinian refugees. Assembly Resolution 393, for example, instructed the Agency to establish a reintegration fund to facilitate the economic reintegration of the refugees in the region. GA Res. 393, 5th Sess., 315th Plenary Mtg., UN Doc. A/RES/393, Dec. 2, 1950, para. 5. Two years later the Assembly requested UNRWA to explore the transfer of its responsibilities to host governments. GA Res. 513, 7th Sess., 365th Plenary Mtg., UN Doc. A/RES/512, Jan. 26, 1952, paras. 4-5. The Agency has been unable to fulfill this request in the absence of a negotiated solution to the refugee issue. In 1967 the Assembly requested UNRWA to provide assistance to Palestinians displaced for the first time during the 1967 Arab-Israeli war. GA Res. 2252 (ES-V), 5th Spec. Sess., UN Doc. A/RES/2252, July 4, 1967, para. 6. In 1982 the Assembly further requested UNRWA to assist Palestinians displaced by subsequent hostilities. GA Res. 37/120B, 37th Sess., 128th Plenary Mtg., UN Doc. A/RES/37/120B, Dec. 16, 1982, para. 2. UNRWA is responsible for Palestinian refugees in the 1967 OPT, Jordan, Lebanon and Syria who fall within the terms of its definition of a Palestine refugee in addition to a number of other categories of Palestinians who are eligible to receive agency services. UNRWA 2009. The Agency also participates in joint efforts with UNHCR on behalf of Palestinian refugees in other parts of the Arab world. For more on UNRWA *see*, Buehrig 1971; Forsythe 1971; Schiff 1995; and, Bocco and Takkenberg 2010. Agency reports and other records are archived on UNISPAL <http://unispal.un.org> [accessed Mar. 29, 2011].

[373] The UNHCR was established under General Assembly Resolution 319. GA Res. 319, 4th Sess., 265th Plenary Mtg., UN Doc. A/RES/319, Dec. 3, 1949, para. 1. The Assembly approved and adopted a statute for the agency a year later. Statute of the Office of the United Nations High Commissioner for Refugees, annexed to, GA Res. 428, 5th Sess., 325th Plenary Mtg., UN Doc. A/RES/428, Dec. 14, 1950. On UNHCR protection and assistance of Palestinian refugees *see*, Goddard 2010. UNHCR reports and other records can be found on

The largely *ad hoc* development of this special or mixed regime has resulted in various "gaps" in the protection of Palestinian refugee rights.[374] While there are differences of opinion as to the nature and scope of gaps in the day-to-day protection of Palestinian refugees, there is widespread acknowledgement of the absence of such protection in relation to the search for durable solutions for Palestinian refugees.[375]

RefWorld <http://www.unhcr.org> [accessed Mar. 29, 2011].

[374] The term "protection gaps" is used to describe "the difference between what refugees need in order to be protected and what the reality is on the ground". In the Palestinian case, protection gaps arise at all levels—national, regional and international—from a combination of factors including a lack of effective instruments, mechanisms and deficient practices. Sondergaard 2005, xxx. The impact of these gaps for Palestinian refugees has often been further aggravated, as noted earlier, by frequent political and humanitarian emergencies and by shortfalls in donor funding which has failed to keep pace with the needs of a growing refugee population in the absence of durable solutions to their situation. The emergence of such gaps has also meant that certain categories of displaced Palestinians as already noted are unable to access the assistance and protection afforded by the regime to other Palestinian refugees. Numerous efforts have been made over the past six decades to clarify the status of Palestinian refugees and the responsibilities of the respective agencies. *See*, UNRWA and UNHCR 1954; UNHCR 1968; UNCEIRPP 1978, para. 37–45; UNHCR 1982; UNGA 1983, para. 157–159; UNHCR 2002b; UNHCR 2009b; and, Morris 2010, 551. For a more detailed discussion of the Palestinian regime and the protection of Palestinian refugee rights *see*, Takkenberg 1998; Akram and Goodwin-Gill 2000; Goddard 2010; and, Kagan 2010b.

[375] The promotion of solutions for 1948 refugees, as noted above, initially fell within the mandate of the UNCCP. The General Assembly's 1952 decision to devolve responsibility for a solution to the conflict to the parties themselves, with the exception of the Commission's brief appointment of a special representative in the early 1960s, meant that there was no international agency with an explicit mandate actively engaged in the promotion of solutions for Palestinians displaced during the 1948 war. The promotion of solutions for 1967 refugees, as noted below, initially fell within the mandate of the Secretary-General's Special Representative appointed under Security Council Resolution 242. The mission's end in 1971 also meant that there was no international body with an explicit mandate actively engaged in the promotion of solutions for Palestinians displaced during the 1967 war. There appeared to be tacit agreement between the UNCCP and UNRWA that for practical reasons the latter might pursue negotiations to facilitate the resettlement of refugees notwithstanding the fact that the negotiation of durable solutions fell solely within the UNCCP's mandate. UNRWA undertook a number of operational activities to facilitate the return of a small number of 1967 refugees (UNRWA 1967) and subsequently clarified its potential operational commitment to facilitating refugee return (UNCEIRPP 1978) in the context of a proposed two-state solution to the conflict in the mid-1970s that provided for the phased return of 1948 and 1967 refugees. The mandate to promote solutions for Palestinians displaced after each of the two major wars as well as IDPs inside Israel and the 1967 OPT remains unclear. Since 1994, the UN Secretary-General, through the Office of the United Nations Special Coordinator in the Occupied Territories, his Personal Representative to the Palestine Liberation Organization and the Palestinian Authority, also appears to share a mandate to promote solutions for Palestinian refugees (Parvathaneni 2010, 266; and, Bartholomeusz 2010, 469–473), but has not been actively engaged in a manner similar to UNHCR activities in other refugee situations nor has the UN Secretary-General in his role as a member of the Middle East Quartet (alongside the US, Russia and the EU) which was established in 2002 to promote a comprehensive solution to the conflict. Indeed, the UNSG has been criticized by a former Special Coordinator and by the UN Special Rapporteur on Human Rights in the 1967 OPT for failing to adequately promote respect for international law including the rights of

There is also one major regional body responsible for the protection and assistance of Palestinian refugees. The Conference of Supervisors of Palestinian Affairs in Arab Host Countries (CoS), established by the League of Arab States in 1964, is mandated to monitor the status of Palestinians scattered across the Arab world.[376] Membership in the permanent conference, in addition to the PLO, is limited to major Arab host states, namely, Jordan, Lebanon, Syria and Egypt. In contrast to the special or mixed regime, discussed above, the regional regime is responsible for all Palestinians in the Arab world, refugees and non-refugees, and all categories of Palestinian refugees.[377] A significant

Palestinian refugees. In its early years of operation UNRWA frequently reminded political actors of a need for a solution to the refugee issue, but appeared to cede that role in the 1970s following UN recognition of the PLO as the representative of the Palestinian people. Rempel 2010b, 423–424. The Agency appeared to revive its promotional role slightly in the 1990s in the context of renewed efforts to resolve the conflict. While UNRWA had long noted that the responsibility for resolving the refugee situation lay elsewhere within the UN, the Agency also acknowledged that "as the symbol of the international community's determination to achieve a solution to the Palestine refugee question the Agency was closely associated with the process and the outcome". UNRWA 1997, para. 12. The extent of the Agency's involvement appeared to be in warning state actors about growing refugee disaffection and sense of marginalization from the peacemaking process and in facilitating the first popular refugee conference in the West Bank by declaring its school in Deheishe refugee camp a "non-UNRWA facility" for the duration of the conference. AIC 1996a, 2. In recent years UNRWA has explicitly acknowledged that the promotion of just and durable solutions for Palestinian refugees falls within its mandate. Morris 2010, 551. Acknowledging that "the elucidation of that solution is for political actors to achieve", UNRWA notes that its role includes "advis[ing] and support[ing] where possible, necessary efforts by other actors toward achieving and implementing a solution" and "help[ing] to ensure that in its elaboration, the rights, views and interests of refugees are heard and safeguarded". UNRWA 2009c, para. 48; UNRWA 2012b, 4. In recent years, Commissioners-General have also emphasized the importance of negotiations that are "inclusive and balanced, that allow for refugee representation and address, along with other final status matters, the question of Palestine refugees in a manner consistent with their rights". UNRWA 2009b.

[376] The CoS was established under LASC Res. 1946, Mar. 31, 1964. The League of Arab States initially set up several bodies each of which shared partial responsibility for monitoring the status of Palestinians in the Arab world. This included a Financial Experts Committee and High Council for Relief established in 1948 to oversee financial assistance and disburse material aid for Palestinian refugees. A Palestine Administration divided into separate political and refugee sections was also set up in the LAS General Secretariat to coordinate the work of the various institutions responsible for Palestinian refugees. In 1953 the League established an advisory body of governmental specialists in Palestinian affairs to advise the LAS Council on the Palestinian issue. The advisory body was later renamed the Forum of Heads of Departments of Palestine Affairs in Arab States. The CoS replaced this body in 1964, the same year that the LAS decided to establish the PLO as the representative body of the Palestinian people. The CoS has undertaken a number of missions to investigate the status of Palestinian refugees in the Arab world. These missions, however, do not appear to have to contributed to substantial improvements in the treatment of refugees. For a discussion of the regime *see*, Takkenberg 1998, 131–171; Akram and Rempel 2004, 16–24; and, al-Az'ar 2010, 211–240.

[377] The 1965 Protocol on the Treatment of Palestinians (Casablanca Protocol), the primary

effort to regularize the status of Palestinians in the region in the absence of solutions to their situation, the largely *ad hoc* development of the regime since its establishment has also resulted in a number of gaps in relation to the protection and assistance of Palestinians in the Arab world.[378] Similar to the special/mixed regime for Palestinian refugees and the international regime described above, the regional regime for Palestinian refugees in the Arab world lacks an explicit mandate to search for durable solutions.[379] The Arab League

instrument regulating the status of Palestinian refugees in the Arab world, refers to the treatment of Palestinians generally in Arab states. Takkenberg observes that "[t]he change [in language from refugees to Palestinians] [was] apparently initiated by the realization that the legal position of non-refugee Palestinians [was] much the same as that of those who had become refugees in 1948-49". Takkenberg 1998, 141.

[378] These gaps arise in relation to the lack of effective instruments, mechanisms and deficient practice. The Casablanca Protocol, referred to above, for example, does not fully incorporate the range of rights accorded to refugees under international refugee law. The Protocol requires states signatories to provide Palestinians with the same treatment as nationals of Arab host states with regard to employment, the right to leave and to return to the territory of the state in which they reside, freedom of movement between Arab states, issuance and renewal of travel documents, and freedom of residence, work and movement. The Protocol is supplemented by LAS Council resolutions addressing a range of matters including family reunification, travel documents and permanent solutions for Palestinian refugees. In 1970 the League adopted Resolution 2600, Mar. 11, 1970, which allowed Palestinians to acquire dual citizenship and, hence, the right to take part in the political affairs of the country of second citizenship. The resolution exempts Palestinians from provisions of LASC Resolution 776, Apr. 5, 1954 (Agreement on Citizenship), which otherwise prohibits citizens of Arab states from acquiring two nationalities. The exemption addressed political concerns that the acquisition of Jordanian citizenship by a large number of Palestinian refugees would be used as a pretext for the cessation of refugee status and the cancelation of international assistance. For a collection of major resolutions *see*, Khalil 1962; and, Shiblak 1998. In the early 1990s, moreover, the LAS Council adopted a resolution (LASC Res. 5093, Sept. 12, 1991) allowing for national regulation of the Casablanca Protocol setting out the rights of Palestinians in the Arab world. Scholars and practitioners differ, however, as to whether the resolution has led to the revocation of the Protocol. Shiblak 1996, 42; and, Takkenberg 1998, 149. The CoS, the primary body mandated to oversee the implementation of the Casablanca Protocol, lacks effective authority to ensure that states comply with their obligations under the Protocol. There is also a lack of effective cooperation and coordination among major Arab host states.

[379] The provisions in the 1965 Casablanca Protocol, which regulate the status of Palestinians in the Arab world, for example, address the protection of Palestinians on a day-to-day basis, but do not address solutions to their displacement. This contrasts with the 1994 Arab Convention on Refugees which explicitly affirms that "the will for return to country of origin in all cases shall be respected" and calls upon "[t]he country of asylum, in cooperation with the country of origin, [to] make appropriate arrangements for the safe return of refugees willing to return home". Arab Convention Regulating Status of Refugees in the Arab Countries, 1994, art. 9. The Convention, however, has yet to enter into force. It is also unclear if the Convention is applicable to the situation of Palestinian refugees in the Arab world. Regional displacement arising from the so-called Arab spring and from the civil war in Lebanon that followed have highlighted weaknesses in both national and regional refugee protection regimes along with the increasingly complex nature of migration, forced and otherwise, in the region. For additional discussion *see*, Bonfiglio 2012; Koser 2012a; and, Koser 2012b.

Council and its individual member states have nevertheless attempted to promote solutions through the adoption of resolutions affirming refugee rights and through efforts to strengthen the mandate of the special or mixed regime discussed above with respect to the promotion and implementation of solutions.[380] The regional regime for Palestinian refugees is among the weakest regimes for refugees across all regions.

II. Peace Negotiations and Palestinian Refugees

The search for a negotiated solution to the Palestinian refugee issue between 1948 and 2000 can be divided into at least three main periods each of which followed major wars in the region. Negotiations to resolve the conflict have also evolved in at least three main ways. First, third party mediation, common to all periods, has shifted from the United Nations to the United States, which has played the role of lead mediator for more than three decades. Second, the framework for negotiations has shifted from the relatively specific language on refugees found in General Assembly Resolution 194 to the comparatively ambiguous formulation used in Security Resolution 242. Third, barred from negotiations in the aftermath of the 1948 war, Palestinians secured a seat at the

[380] In one of its first resolutions on solutions for Palestinian refugees, for example, the Arab League affirmed that "the lasting and just solution of the problem of refugees would be their repatriation and the safeguarding of all their rights to their properties, lives and liberty, and that these should be guaranteed by the United Nations". LAS Res. 231, Mar. 1, 1949. One year later, Egypt attempted to rally support for a General Assembly resolution that would have established a "United Nations Agency for Repatriation and Compensation of Palestine Refugees" with provision for Chapter VII intervention in case of non-compliance did not obtain sufficient support. Egypt: Draft Resolution, UN Doc. A/AC.38/L.30, Nov. 7, 1950, paras. 1 and 7. Arab states also sought Assembly approval for the establishment of a UN custodian to protect refugee rights and interests relating to their properties. Fischbach 2003, 223–224. Several states which hosted Palestinian refugees, in particular, Jordan and Syria, initially offered to resettle significant numbers of Palestinian refugees in exchange for development assistance, however, resistance to resettlement among refugees, Israel's refusal to afford refugees the choice of returning to their places of origin and changes in government meant that the offers were never put into practice. UNCCP 1951g; Shlaim 1986; and, al-Husseini 2007.

negotiating table in the 1990s after more than four decades of exclusion from talks concerning their future. Three major elements have nevertheless remained the same across all periods: negotiations have focused largely on the situation of refugees displaced in the context of war with little attention to other groups of Palestinian refugees and displaced persons; the parties continue to disagree about how to resolve three major elements of a solution to the refugee issue, namely, return, restitution and responsibility; and, finally, the refugees themselves have been excluded from talks to resolve their situation.

i. Periods of Negotiations

The first period of negotiations began in the spring of 1949 following the 1948 Arab-Israeli war and lasted until the end of 1951. Talks held in Lausanne and New York (1949), Geneva (1950) and Paris (1951) failed to secure agreement on a solution to the refugee issue or the broader conflict.[381] The period following the 1967 Arab-Israeli war witnessed three different sets of talks. The first set of negotiations in the summer of 1967 in the Jordan valley led to the only agreement to date that allowed at least some refugees to return to their homes of origin.[382] The second set of talks in Geneva in 1973 did not address

[381] The UNCCP-led talks comprised the second set of international conferences on the future of Palestine. In the decade leading up to the 1948 Arab-Israeli war the British government organized conferences between the parties to the conflict in 1939 and 1946 in London. *See*, Cohen 1982, 197–202, 209–221; and, Caplan 1983, 1:85–113, 141–149. The 1948 talks, however, comprised the first negotiations on refugees. The situation of Palestinians displaced during the British Mandate was resolved largely through spontaneous return. A follow-on effort to revive negotiations on the refugee issue after the collapse of the UNCCP-led talks through a Commission-appointed special representative, Joseph Johnson, an American academic, diplomat and former President of the Carnegie Endowment for International Peace, in the early 1960s was also unsuccessful. On UNCCP-led negotiations, including the mission of the Commission's special representative *see*, Forsythe 1972; Touval 1982, 186–205; Morris 1987, 254–285; Caplan 1997a; and, Bick 2006.

[382] This bilateral set of negotiations comprised the only set of substantive talks on the refugee issue during the second period of negotiations. An estimated 140,000 refugees (35,184 applications) filed requests with the ICRC to return to the West Bank under the agreement mediated by the Red Cross. *See*, Text of Agreement on Return concluded between the Israeli and Jordanian Authorities on 6 August and handed to the Commissioner-General on 7 August 1967 by the Red Cross Representative, Aug. 6, 1967. Israel approved the return of

substantive issues while the third set of negotiations which concluded in Camp David in 1978 resulted in an agreement that set out a two-stage framework for a negotiated solution to the conflict including separate procedures to address the situation of 1948 and 1967 refugees.[383] Palestinian led efforts to launch an alternative process to resolve the conflict through the UN General Assembly based on the "inalienable rights" of the Palestinian people did not lead to negotiations.[384] The third main period of negotiations began in the fall of 1991

19,000 1967 refugees (4,699 applications) of whom 14,051 returned to the West Bank. ICRC 1967; and, ICRC 1970. *See also*, UNRWA 1967; and, Raz 2012, 125-135. The ICRC files related to the talks have yet to be declassified.

[383] The one day conference in Geneva aimed to launch a process that would lead to bilateral talks with Israel and the Arab states that had taken part in the 1948, 1967 and 1973 wars. A US-led attempt to revive the Geneva process in 1977, discussed below, was effectively sidelined when Egypt agreed to enter into separate talks to secure an agreement with Israel. The framework agreed to by Israel and Egypt at Camp David in 1978 established the outlines of a negotiated solution to the Arab-Israeli conflict for the coming decades. Framework for Peace in the Middle East, Sept. 17, 1978. This included the bifurcated approach to the situation of 1948 and 1967 refugees. The framework created two separate tracks of negotiations for the two major groups of refugees and established separate timelines for a solution to the refugee issue, with the situation of 1967 refugees to be resolved during the interim period of Palestinian self-rule through a quadripartite committee comprised of Israel, Egypt, Jordan and representatives of the Palestinians while the situation of 1948 refugees would be resolved in the context of a comprehensive solution to the conflict with Egypt and Israel taking a lead in promoting a solution to the issue. Relevant provisions on refugees are reproduced in Annex I, Table A1.1 - Peace Agreements and Proposals, Provisions on Palestinian Refugees. The separate treatment of 1948 and 1967 Palestinian refugees appeared to derive from the staged process in which the two sides were to establish the trust and confidence needed to resolve the most intractable issues (e.g., solutions for 1948 Palestinian refugees) by first dealing with issues that were deemed to be less difficult to resolve (e.g., 1967 refugees). The approach also facilitated the negotiation of separate principles to be applied to the two groups of refugees, effectively allowing Israel to concede a "right of return" to the 1967 OPT, but reject application of the same right of return to the state of Israel while also establishing precedent that public order and security effectively "trump" refugee return. It also contributed to a perception that the "logic of the two state solution" *ipso facto* necessitated a solution to the entire Palestinian refugee issue, including refugees who originated from areas inside Israel, within the borders of a future Palestinian entity or state. For a detailed discussion of negotiations during this period *see*, e.g., Touval 1982, 238–240 and 284–320; Saunders 1985; Quandt 1993; Eisenberg and Caplan 1998; and, Stein 1999.

[384] In 1975 the UN General Assembly, drawing in part on its experience with regard to the suppression and elimination of apartheid in South Africa, established a special Committee on the Inalienable Rights of the Palestinian People (CEIRPP) to consider and recommend a program to enable Palestinians to realize their inalienable rights—i.e., the right to self-determination and the right of refugees to return to their homes and properties—and invited the PLO to participate in efforts to resolve the conflict. GA Res. 3376, 30th Sess., 2399th Plenary Mtg., UN Doc. A/RES/3376, Nov. 10, 1975, para. 3. In 1983 the Committee organized an International Conference on the Question of Palestine. Israel and the US opposed the approach and did not participate. *See*, Geneva Declaration and Programme of Action for the Achievement of Palestinian Rights, UN Doc. A/38/497, Oct. 12, 1983. The conference was nevertheless noteworthy, in part, because of its explicit recommendations regarding the roles of civil society in facilitating a resolution to the conflict. The following the

after the second Gulf War and lasted nearly a decade. The talks resulted in agreements setting out a phased process to resolve the conflict including separate procedures to address the situation of 1948 and 1967 refugees. Multilateral (1992-1997), quadripartite (1995-1996) and bilateral (2000-2001) talks nevertheless ended without agreement.[385] Efforts to restart negotiations over the last decade are beyond the scope of this chapter, but are touched upon briefly in the conclusion of the study.

year the Committee organized the first NGO meetings on the Question of Palestine. While the existence of solidarity networks can be traced back to the early decades of the conflict, the involvement of civil society actors in efforts to resolve the conflict arguably became more prominent following the establishment of the Special Committee and organization of international and regional seminars and conferences on Palestine which provided fora for such participation. The UN General Assembly continued to call for an international peace conference with the participation of all parties to the conflict, including the PLO, Israel and the five permanent members of the Security Council until the signing of a framework agreement between the PLO and Israel in 1993. The special Committee remains active but has been effectively sidelined from official efforts to resolve the conflict. For more information *see*, CEIRPP <http://unispal.un.org/unispal.nsf/com.htm> [accessed May 2, 2012].

[385] The third period began with an international conference followed by bilateral talks on interim self-government arrangements, multilateral talks on issues of regional concern, including refugees, and quadripartite talks on modalities for the admission of 1967 refugees to the West Bank and Gaza Strip. A parallel set of back-channel talks mediated by Norway resulted in a framework agreement between Israel and the PLO which established an agreed upon political process to resolve the conflict. Declaration of Principles on Self-Government Arrangements, Sept. 13, 1993. The parties subsequently signed a number of additional agreements on interim or transitional arrangements. *See*, in particular, Agreement on the Gaza Strip and Jericho Area, May 4, 1994; and, Interim Agreement on the West Bank and Gaza Strip, Sept. 28, 1995. These agreements maintained the separate procedures for addressing the situation of 1948 and 1967 refugees, but no longer appeared to require that the situation of 1967 refugees be resolved prior to final status talks on 1948 refugees. This division was maintained in a later agreement establishing a timetable for the resumption of final status talks. *See*, Sharm el-Sheikh Memorandum on Implementation Timeline of Outstanding Commitments of Agreements Signed and the Resumption of Permanent Status Negotiations, Sept. 4, 1999. Relevant provisions on refugees are reproduced in Annex I, Table A1.1 - Peace Agreements and Proposals, Provisions on Palestinian Refugees. The process also divided the refugee issue in a third major way: humanitarian and political. While multilateral talks on the refugee issue focused predominantly on humanitarian issues, quadripartite and bilateral talks focused on political issues relating to a solution to the refugee issue. The inclusion of family reunification in multilateral talks, primarily a humanitarian issue, was nevertheless viewed by both sides as having political implications relating to a solution to the refugee issue. On multilateral talks on refugees *see*, Adelman 1995; Brynen 1997; and, Peters 1997. On quadripartite refugee talks *see*, Tamari 1996. On bilateral refugee talks *see*, Tovy 2003; Klein 2007; and, Hovdenak 2009. On unofficial refugee talks *see*, Brynen et al. 2003; and, Klein 2006. *See*, generally, Mansour 1993; Eisenberg and Caplan 1998; Enderlin 2003; Waage 2004; Quandt 2005; and, Wanis-St. John 2011.

ii. Third party conciliation and intermediation

Negotiations during each of the above three periods were facilitated by third party mediators. Initial efforts to facilitate a negotiated solution to the conflict in the aftermath of the 1948 Arab-Israeli war took place under the auspices of the United Nations.[386] The three major sets of talks that followed the 1967 Arab-Israeli war each relied on different intermediaries. The International Committee of the Red Cross (ICRC) played a short-lived role in talks leading to the above-mentioned agreement between Jordan and Israel providing for the return of a small number of refugees to the West Bank after the 1967 war.[387] The brief round of talks in Geneva six years later were held under UN auspices with the United States and the former Soviet Union acting as co-sponsors.[388] The United

[386] In May 1948 the UN Security Council appointed a mediator, the Swedish diplomat Count Folke Bernadotte, to "[p]romote a peaceful adjustment of the future situation of Palestine". SC Res. 186, 2nd Spec. Sess., UN Doc. S/RES/186/S-2, May 14, 1948, para. 1(a)(iii). Bernadotte was assassinated by Jewish militants in September 1948 prior to the conclusion of his mission, however, his recommendations formed the basis of the UN "peace plan" (i.e., General Assembly Resolution 194) for Palestine and led to the formation of the UNCCP, established under the above resolution "[t]o assume, in so far as it considers necessary in existing circumstances, the functions given to the [UN Mediator]; [t]o carry out the specific functions and directives given to it by [Resolution 194] and such additional functions and directives as may be given to it by the General Assembly or by the Security Council; [and] [t]o undertake, upon the request of the Security Council, any of the functions now assigned to the [UN Mediator] or to the United Nations Truce Commission by resolutions of the Security Council". GA Res. 194, *infra* n. 392, para. 2. On the mediator's role *see*, Persson 1979; and, Touval 1982, 24–53. Subsequent negotiations were conducted under UNCCP auspices. The Commission held separate talks with Arab and Israeli officials who also met on an unofficial basis outside the formal setting of the UNCCP-sponsored meetings. Officially a UN body, Commission members (United States, France and Turkey) followed policy directives issued by their respective capitals rather than the General Assembly, a source of dispute between the Commission and Arab states throughout the three years of negotiations. The United States played a lead role in setting Commission policy throughout its years of operation, a role it would reprise during the second period of negotiations. In the early 1960s, as noted earlier, the UNCCP also appointed a special representative in an effort to mediate a solution to the refugee issue. For more on the UNCCP *see*, *supra* n. 370 and sources cited.

[387] The extent of the ICRC role in bilateral talks that resulted in the 1967 agreement is unclear. As noted earlier, ICRC files from this period remain under embargo. The coverage of the issue in the *International Review of the Red Cross* simply states that "[o]n August 6, 1967, an agreement was signed between Jordan and Israel, *under ICRC auspices*, in the execution of which the Geneva institution is assisting". [emphasis added] ICRC 1967, 475. The literature is largely silent on the negotiations that resulted in the repatriation of a small number of refugees from the West Bank and Gaza Strip after the 1967 war. For a recent discussion *see*, Raz 2012, 102-35.

[388] The UN Secretary-General appointed a Special Representative, Swedish diplomat Gunnar Jarring, after the 1967 Arab-Israeli war "to establish and maintain contacts with the States concerned in order to promote agreement and assist efforts to achieve a peaceful and

States assumed a leading role in trying to facilitate a negotiated solution to the conflict when it mediated talks at Camp David in the late 1970s.[389] With the exception of Norwegian-mediated "back-channel"[390] talks in the early 1990s, the United States continued to play the role of lead mediator throughout the decade even though the former Soviet Union/Russia officially shared the title of co-sponsor.[391] The US has continued to play a leading role in third party efforts to

accepted settlement in accordance with the provisions and principles [of Security Council Resolution 242]". SC Res. 242, *infra* n. 395, para. 3. The special representative did not address the refugee issue in substantive terms nor did the mission achieve its objective of facilitating the implementation of Resolution 242. On the role of the Special Representative *see*, Touval 1982, 134–164; and, Mørk 2007. The UN role in Geneva in 1973 was largely ceremonial. The appointment of the special representative and the subsequent Geneva conference comprised a shift in UN responsibility from the General Assembly, which assumed the primary role in facilitating a solution to the conflict after the assassination of the Security Council-appointed mediator Count Bernadotte in 1948, back to the Security Council. The demise of the special representative's mission effectively marked the end of the UN role in facilitating a solution to the conflict, despite aforementioned efforts by Palestinians, Arab states and the developing world to launch an alternative process in the 1970s and early 1980s through the General Assembly.

389 The United States played a leading role in trying to mediate a solution to the conflict during each of the three major periods of negotiations, however, the 1978 Camp David summit marked the first major effort by the United States as the sole mediator to the conflict. It also consolidated the marginalization of the United Nations from diplomatic efforts to resolve the conflict. For a comprehensive account of the US role see, Quandt 1977; and, Quandt 2005. The marginalization and exclusion of the United Nations was driven in large part by Israel's distrust of the international organization and US acquiescence to this view. It was also an expression of an "exceptionalist" view of the conflict. As Merom explains with regard to Israel's national security policy, such an approach leads to the view that "no existing solution can be adopted since the problems are unprecedented; only an exceptional solution is adequate; [and that] such a solution is feasible and can overcome the circumstances or historical quasi-laws, since it is devised and executed by exceptional people". Merom 1999, 433.

390 Norway assumed a brief mediating role in January 1993 with the initiation of secret back-channel talks between the PLO and Israel. The term "back-channel" talks or negotiations is used to describe "officially sanctioned negotiations conducted in secret between the parties to a dispute". Wanis-St. John 2006, 119. The talks led to the signing of the 1993 Declaration of Principles on Interim Self-Government Arrangements the following September which set out an "agreed political process" to resolve the conflict between the two sides. On Norway's mediation role *see*, Waage 2004; and, Wanis-St. John 2011. The peacemaking process that began in Madrid and continued in Oslo, as one former diplomat noted with reference to multilateral talks on refugees, "was designed to break away from debate driven by UN processes". This led not only to the establishment of new fora disassociated from the UN, but also to the development of new terminology. The heads of the different multilateral sectoral working groups, for example, were referred to as "gavel holders" with states responsible for follow-up and development of different sectors described as "shepherds". It was thought that such an approach would harness the resources, capabilities and political will necessary to resolve major regional issues including the situation of Palestinian refugees. BADIL 2003a.

391 Invitations to take part in the opening conference in Madrid in October 1991 were issued jointly by the United States and the former Soviet Union. Two months later, however, the Soviet Union officially dissolved, with the newly-independent Russian Federation less focused on the Middle East Peace Process. In contrast to the 1973 Geneva conference, the United Nations was invited to take part in the opening conference as an observer. According

restart negotiations over the last decade.

iii. Framework for negotiations

The framework for negotiations has also evolved over time. General Assembly Resolution 194 of December 1948 provided the primary framework for initial negotiations to resolve the conflict after the 1948 Arab-Israeli war.[392] As noted earlier, the resolution established the UNCCP and requested the commission to facilitate a comprehensive solution to the conflict, providing specific directives on the status of holy places, the future of Jerusalem and on the issue of refugees. In the latter case, the Assembly "[r]esolv[ed] 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

to a draft understanding between the US and Israel, "[t]he UN representative [would] have no authority. He may hold talks only in the hallways, note down the content of talks, and report to the Secretary-General". Israel and US 1991, para. 7. Israel further demanded that the US "make a commitment that the United Nations Security Council [would] not convene to discuss the [Middle East] conflict during negotiations". *Ibid.*, para. 10. Reprising a commitment to Israel 15 years earlier, the US informed Palestinians in a separate letter of assurance that the US would "not support a competing or parallel process in the United Nations Security Council" as long as the process was ongoing. US 1991b. Since the mid-1990s, the international organization's role has been gradually upgraded, as noted earlier, to its current status as a member of the so-called Quartet, a type of "contact group" for the Middle East peace process. The United States nevertheless continues to dominate international efforts to mediate a solution to the conflict.

[392] GA Res. 194, 3rd Sess., 187th Plenary Mtg., UN Doc. A/RES/194, Dec. 11, 1948. The resolution formed the basis for several UNCCP proposals to advance negotiations among the parties to the conflict. This included the 1949 Lausanne Protocol (UNCCP 1949ae Annex), the 1951 Comprehensive Pattern of Proposals (UNCCP 1951g, para. 23) and the 1962 plan for resolving the refugee issue drafted by the Commission's Special Representative Joseph Johnson (US 1962). While the Lausanne Protocol called for negotiations based on General Assembly Resolutions 181 and 194, the Comprehensive Pattern of Proposals called upon Israel to agree to the repatriation of a specified number of refugees who could be integrated into the economy of the state and to compensate those not wishing to return. Others would be resettled in Arab host states. The Johnson plan emphasized the principle of refugee choice, but also gave states the final say on the admission of refugees. It also provided for compensation. Refugees denied repatriation would have been allowed to appeal the decision to an independent commission, while those who favored resettlement could later decide to return to their homes and places of origin in Israel. The US also offered assurances to Israel that the plan would be devised in such a way as to ensure that no more than 10 percent of the refugees would be allowed to return to their homes and places of origin inside Israel.

damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible".[393] Since the adoption of Security Council Resolution 242 in 1967, Resolution 194 and subsequent resolutions which reaffirm the rights of Palestinian refugees have been excluded from official frameworks for a negotiated solution to the conflict.[394] Adopted in the aftermath of the 1967 Arab-Israeli war, Resolution 242 has provided the primary framework for official negotiations to resolve the conflict including the refugee issue over the past four decades.[395] In contrast to

[393] GA Res. 194, *ibid*., para. 11. Paragraph 11 essentially contains two parts with two distinct aims. The first part sets out the rights and principles to guide a solution to the refugee issue —namely the rights of return, restitution (i.e., return to homes) and compensation and the principle of refugee choice. The second part sets out the responsibilities of the UNCCP instructing it "to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation". Read together, the two paragraphs include all three solutions commonly afforded to refugees, namely, repatriation, integration and resettlement, along with the overarching principle of refugee choice. The resolution nevertheless emphasizes return, restitution and compensation for loss and damage as the primary elements of a solution to the Palestinian refugee issue. For a useful interpretation *see*, UNCCP 1950a.

[394] This includes three major resolutions. Security Council Resolution 237 "[c]alls upon the Government of Israel to ensure the safety, welfare and security of the inhabitants of the areas where military operations have taken place and to facilitate the return of those inhabitants who have fled the areas since the outbreak of hostilities". SC Res. 237, 22nd Sess., 1361st Mtg., UN Doc. S/RES/237, June 14, 1967, para. 1. General Assembly Resolution 3236, which provided the framework for Assembly-led efforts to facilitate a negotiated solution to the conflict after the 1967 war, including its plan for a two-state solution to the conflict, "[r]eaffirms the inalienable right of the Palestinians to return to their homes and property from which they have been displaced and uprooted, and calls for their return". GA Res. 3236, 29th Sess., 2296th Plenary Mtg., UN Doc. A/RES/3236, Nov. 22, 1974, para. 2. The Assembly approved plan provided, among others, for the phased return of Palestinian refugees to their homes of origin inside Israel and in the 1967 OPT. UNCEIRPP 1976. General Assembly Resolution 36/146 which "[r]equests the Secretary-General to take all appropriate steps, in consultation with the [UNCCP], for the protection and administration of Arab property, assets and property rights in Israel, and to establish a fund for the receipt of income derived therefrom, on behalf of their rightful owners" has likewise been excluded. GA Res. 36/146C, 36th Sess., 100th Plenary Mtg., UN Doc. A/RES/36/146C, Dec. 16, 1981, para. 1. The Security Council and General Assembly have also adopted a range of resolutions on solutions relating to other forms of displacement including expulsion, deportation and house demolition.

[395] SC Res. 242, 22nd Sess., 1382nd Mtg., UN Doc. S/RES/242, Nov. 22, 1967. The terms of a solution based on Resolution 242 were subsequently set out in a number of documents, memoranda of understanding and bilateral peace agreements. These include a 1975 Brookings Institution report outlining a framework for Middle East peace (Brookings Institution 1975), memoranda of understanding between Israel and the US (Israel and US 1975; Israel and US 1977; and, Israel and US 1991), the 1978 Framework for Peace in the Middle East agreed to by Egypt and Israel and major agreements between Israel and the PLO including the 1993 Declaration of Principles on Interim Self-Government Arrangements, the 1994 Agreement on the Gaza Strip and Jericho Area and the 1995 Interim Agreement on the West Bank and Gaza Strip. On refugees the Brookings report suggested that Palestinian refugees should be resettled in a "new Palestinian entity" and that "reasonable

the relatively specific language in Resolution 194, among others, emphasizing the rights of Palestinian refugees, the text of Resolution 242 calls for a "just settlement of the refugee problem" without elaborating its specific content.[396] The resolution has remained central to US-led efforts to revive negotiations between Israel and the PLO over the past decade.

iv. Palestinian and Israeli positions on the refugee issue

Israeli and Palestinian positions on a solution to the refugee issue have remained largely, though not completely, unchanged throughout each of the three major periods of negotiations. Fundamental differences between the two sides concerning the elements of a solution revolve primarily around the rights of return and restitution, recognition of responsibility for Palestinian

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compensation" should be paid to both Palestinian refugees and Arab Jews who fled or were expelled from Arab countries after the 1948 war. The 1977 memorandum between Israel and the United States stipulated that solutions for Palestinian refugees and Arab Jews should be in accordance with terms to be agreed upon by the parties themselves. The 1978 framework agreement, the 1993 declaration and the 1995 interim agreement, as discussed earlier, established separate procedures for negotiations on 1948 and 1967 refugees, however, in contrast to the first agreement, which stipulated that the situation of 1967 refugees should be resolved during the interim or transitional phase of the peace process, the latter two agreements do not appear to require that a solution be found prior to final status negotiations on 1948 refugees. In general, documents, memoranda and agreements which set out the terms of an agreement focus on process rather than principles governing a solution to the refugee issue. These principles, rather, were to be agreed upon in the context of the negotiating process.

396 SC Res. 242, *ibid*., para. 2. This language is reaffirmed in Resolution 338 which was adopted during the 1973 Arab-Israeli war. SC Res. 338, 28th Sess., 1747th Mtg., UN Doc. S/RES/338, Oct. 22, 1973, para. 2. In 1973, the General Assembly adopted Resolution 3089 which explicitly affirms that "the enjoyment by the Palestine Arab refugees of their right to return to their homes and property, recognized by the General Assembly in resolution 194 (III) of 11 December 1948, which has been repeatedly reaffirmed by the Assembly since that date, is indispensable for the achievement of a *just settlement of the refugee problem*". [emphasis added] GA Res. 3089D, 28th Sess., 2193rd Plenary Mtg., UN Doc. A/RES/3089D, Dec. 7, 1973, para. 3. This provision appeared to comprise a Palestinian and Arab effort to modify the language of Resolution 242 in a way that would enable the PLO to participate in negotiations on the basis of the Security Council resolution. Two subsequent efforts by Great Britain (1974) and by Kuwait (1979) to modify the language of Resolution 242 to incorporate Palestinian rights in the context of new resolutions on the conflict failed to secure sufficient support among UN member states. UN 1974; and, Cobban 1984, 237. For a more detailed discussion of the relationship between Resolution 194 and the meaning of a "just settlement of the refugee problem" in Resolution 242 *see*, Mallison and Mallison 1980; and, Quigley 2007.

displacement and the principle of refugee choice.[397] These rights and principles have been central to the Palestinian position over the past six decades, but have been generally anathema to Israel which views resettlement and compensation along with limited family reunification as the most appropriate solutions for the vast majority of Palestinian refugees.[398] This does not mean that there is broad consensus among the two sides on other elements of a solution to the refugee issue. Despite significant areas of agreement on the issue of compensation, for example, the parties differ on the type of losses to be covered (e.g., material and immaterial, movable and immovable), their valuation (ranging from several billion to several hundred billion US dollars), the methods of payment (e.g., individual versus lump sum) and the relationship between compensation and other elements of a solution (e.g., return, restitution and responsibility).[399] Given these differences it is not surprising that the two sides

[397] The absence or lack of access to primary documents from negotiations, questions regarding the reliability of recollections and accounts written by official negotiators and differences between public and private views of negotiators complicate the task of establishing official positions taken during each of the three periods of negotiations. The positions summarized herein are based largely on positions expressed in official documents. The chapter also highlights important shifts in positions on the refugee issue, to the extent possible, that depart from those set out in official documents.

[398] These divergent positions are most often raised in relation to negotiations on the future of 1948 refugees who comprise the majority of the Palestinian refugee population. These positions also appear to reflect the views of the two sides with respect to other groups of refugees with the exception of 1967 refugees who comprise the second largest group of Palestinian refugees. The two sides agree, in principle, that 1967 refugees should be permitted to return to the West Bank and Gaza Strip, but disagree on modalities for the admission of this group of Palestinian refugees. A number of platforms adopted by Israeli governments in the 1990s nevertheless rejected the return of 1967 refugees, a position also found in legislation adopted after 2000. The 1978 Framework for Peace in the Middle East and the 1993 Declaration of Principles on Interim Self-Government Arrangements, as noted earlier, also include a "clawback" clause which appears to allow for restrictions on the admission of 1967 refugees in accordance with the security concerns of either party. A detailed assessment of each side's position over the three periods of negotiations including nuances in official positions, unofficial positions or those of individual officials and negotiators on a solution to the refugee issue are beyond the scope of this study. This includes debate over whether Palestinian officials in closed-door talks with Israel conceded the right of return apart from the return of a largely symbolic number of refugees to their homes and places of origin inside Israel. For a more detailed discussion *see*, Morris 1987; Khalidi 1992a; Masalha 2002; Masalha 2003; Klein 2007; Segev 2007; and, Hovdenak 2009. On legal issues *see*, Radley 1978; Mallison and Mallison 1980; Lapidoth 1986; Arzt and Zughaib 1991; Tadmor 1994; Lawand 1996; Weiner 1997; Quigley 1998a; Lynk 2003; Zell and Schnyder 2003; Saideman 2003; Boling 2007; and, Zilbershatz 2007.

[399] The issue of refugee compensation has received considerable attention from academics and

also disagree on the general framework for a solution to the refugee issue. While Palestinians have generally favoured a solution that accords with the specific directives on return, restitution and compensation found in General Assembly Resolution 194 and other major UN resolutions on the refugee issue, Israel has preferred the more general language contained in Security Council Resolution 242 calling for a just settlement of the refugee issue. The two sides have also tended to view these resolutions in fundamentally different ways. While Israel has viewed the resolutions as providing a starting point for direct negotiations leading to a mutually agreed upon understanding of relevant rights and principles, Palestinians have tended to view the resolutions as providing a set of universal rights and principles which Israel is obliged to respect while being open to discussion about their implementation.[400] In other words, while

policymakers due in part to the fact that among the various issues to be resolved, including return, restitution, integration and resettlement, the greatest convergence in thinking among Israeli and Palestinian negotiators was in the area of compensation. The issue of compensation, moreover, was consistent with the largely "unwritten assumption", referred to earlier, that a two-state solution to the conflict would necessitate resettlement rather than return of the vast majority of Palestinian refugees. The discussion has nevertheless focused predominantly on the situation of 1948 refugees who originated from areas inside the state of Israel notwithstanding apparent efforts by the PLO to expand the discussion to include compensation for 1967 refugees and for damages and losses suffered as a result of Israel's military occupation of the West Bank, East Jerusalem, and Gaza Strip. For a discussion of compensation *see*, Benvenisti and Zamir 1995; Rempel 1999; Abdo 2000; Buttu 2000; Fischbach 2003; Lynk 2003; Lewis 2007; and, Brynen and El-Rifai 2012a. A discussion of the latter can be found on the websites of the PLO Negotiation Affairs Department (<http://www.nad-plo.org> [accessed Aug. 10, 2013) and the al-Jazeera Transparency Unit (<http://www.transparency.aljazeera.net> [accessed Aug. 10, 2013) which published leaked documents relating to final status negotiations between the PLO and Israel.

[400] A number of different characterizations have been employed to distinguish between these two approaches to a solution to the refugee issue and the broader conflict. The Israeli position, for example, has been described as "power-based" in comparison to the "rights-based" position expressed by Palestinians. Falk 2004, 332–333. This contrast highlights a long-standing debate, dating back to the League of Nations decision to accord Great Britain a mandate in Palestine, about the role of international law in facilitating a solution to the conflict. The Palestinian position has, in turn, been described as "backward-looking" in comparison to the "forward-looking" approach adopted by Israel. Arzt 1996, 7; Alpher and Shikaki 1998, 45; and, Bowker 2003, 160. This distinction is somewhat misleading in the sense that it appears to assume that a "backward-looking" approach would lead to the restoration of the *status quo ante*, i.e., the situation as it existed prior to displacement of Palestinians during and after the 1948 war. Since it is practically impossible to restore the *status quo*, in the complete sense of the term, the return of Palestinian refugees to their places of origin inside Israel is also forward-looking, in the sense that refugees would be returning, in part, to a situation that did not exist when they fled or were expelled. A distinction has also been drawn between the "absolute" (i.e. right of return) and "relative"

Palestinians have generally sought implementation of established rights, Israel has sought to establish the substantive content of refugee rights through negotiations, arguing that the rights themselves are a matter of dispute.

v. Participants to the negotiations

Finally, the parties to the negotiations have also changed over time. The first period of talks that followed the 1948 Arab-Israeli war involved Israel, Egypt, Jordan, Lebanon and Syria with Arab states acting as surrogate representatives of the Palestinian people. The exclusion of Palestinians from talks to decide their future marked the beginning of a trend, as detailed below, that remained in place for nearly four decades.[401] The three different sets of talks that followed the 1967 Arab-Israeli war involved different groups of participants. The first set of talks that led to an agreement allowing some refugees to return to the West Bank involved Jordan and Israel. Egypt, Jordan, Lebanon and Israel took part in the second set of talks in Geneva that followed the 1973 Arab-Israeli war. The third and final set of talks at Camp David which led to the framework agreement setting out procedures for a solution to the refugee issue and a framework for a comprehensive solution to the conflict involved Egypt and Israel. The third period of negotiations initiated in the aftermath of the 1991 Gulf War comprised

(i.e., symbolic return) justice of the two positions. Abu Zayyad 1995; and, Khalidi 1998. This distinction is also misleading for the same reasons summarized above, that is to say, since the *status quo ante* cannot be restored in the complete sense of the term, implementation of a rights-based solution falls short of absolute justice and is more akin to relative justice.

[401] The exclusion of Palestinians from talks to decide their future has its roots in the aforementioned London conferences of 1939 and 1946 when British officials attempted to bring the parties together to find an agreed upon solution to conflict over the future of Palestine. In announcing plans for the 1939 conference, the British government reserved the right to refuse to receive those leaders whom they regarded as responsible for the 1936-39 Palestinian uprising against British rule and Zionist colonization in Palestine. In the aftermath of the 1948 Arab-Israeli war, Arab states assumed the role of *de facto* or surrogate representative of the Palestinians, a role they would continue to fill in the coming decades, as explained below.

the first time that Palestinians took part in official talks to resolve the conflict in nearly 40 years. Multilateral and quadripartite talks on the refugee issue involved Egypt, Jordan, Israel and the Palestinians (eventually the PLO), with additional states and inter-governmental organizations taking part in the multilateral talks as co-sponsors, co-organizers and interested third parties. Bilateral talks on the future of 1948 refugees involved Israel and the PLO.

III. Refugee Participation in the Negotiation of Durable Solutions

Palestinian refugees have sought a seat at the negotiating table in talks to resolve their situation during each of the three major periods of negotiations. The nature of such participation, however, has evolved through each period. During the first period of negotiations that followed the 1948 Arab-Israeli war, the Arab Higher Committee sought to take part in UN-sponsored negotiations as the representative of the Palestinian people half of whom had been displaced during the war. A number of refugee organizations also demanded a seat at the negotiating table on behalf of refugees themselves. In negotiations that followed the 1967 Arab-Israeli war, the issue of refugee participation arose largely in relation to efforts by the Palestine Liberation Organization, which emerged from the refugee camps and communities of exile spread across the Arab world, to secure a place in talks to resolve the conflict on behalf of the Palestinian people as a whole. The PLO eventually secured a seat at the negotiating table during the third period of negotiations that followed the 1990-1991 Gulf war, however, the period also saw the emergence of a popular refugee movement which demanded a place in negotiations on the refugee issue alongside the PLO and Israel.

i. Peace Negotiations after the 1948 Arab-Israeli War

The participation of Palestinian refugees in talks that followed the 1948 Arab-Israeli war did not appear to be a major concern when the United Nations decided to embark on a process which member states hoped would lead to a negotiated solution to the conflict. Palestinians—refugees and non-refugees alike—were not among the parties that the UNCCP invited to take part in negotiations that began in the spring of 1949 and lasted through the fall of 1951. While this did not deter Palestinian efforts to secure a seat at the negotiating table, their exclusion from the UN-sponsored talks, as already noted, marked the beginning of a pattern that would continue through the coming decades. The issue of refugee participation in talks to resolve their situation arose in at least two primary ways: through representation by the Arab Higher Committee, the *de facto* representative of the Palestinian people since the mid-1930s, which sought a seat at the negotiating table on behalf of the Palestinian people as a whole, and through representatives of various refugee organizations who also sought to take part in the negotiations on behalf of refugees themselves.[402] As the following section explains, neither the AHC nor refugees themselves were

[402] According to Flapan, the AHC appointed refugee committees for Syria, Jordan and Egypt. Flapan 1987, 219. The issue of refugee participation also arose through the inclusion of a number of refugee advisors in the various Arab delegations taking part in the talks. An indirect avenue for the representation of refugee rights and interests, these advisors comprised the sole mechanism for the actual participation of Palestinians, refugees and non-refugees alike, in the UN-sponsored talks. One of the most prominent advisors was Ahmad Shuqayri, a former member of the AHC who also held a number of diplomatic posts for various Arab governments. Shuqayri was later elected the first Chairman of the Palestine Liberation Organization, the establishment of which, as discussed in the following section, provided a new mechanism for Palestinian participation and the representation of refugee rights and interests in talks to resolve the conflict. Relatively little appears to have been written about Palestinian advisors that took part in UN-sponsored talks after the 1948 war. There also appears to be a similar gap in the literature on the armistice talks in Rhodes. Declassified material from the UNCCP archives are silent on this aspect of Palestinian participation. Additional information may be found in UNCCP member state archives, archives of the parties taking part in the talks and in autobiographies, diaries, etc. of individual advisors.

able to secure a seat in talks to resolve the conflict. These efforts nevertheless comprised significant precedents each of which would be reprised in subsequent periods.

The Arab Higher Committee was one of the first Palestinian organizations to request a place at the negotiating table in the aftermath of the 1948 war. Having represented Palestinian interests in various national, regional and international fora for more than a decade, the Committee assumed that it would be accorded the same status as Israel and the Arab states in talks on the future of Palestine.[403] In a letter to the UNCCP, Issa Nakleh, the AHC representative, argued that as "the true owners of the country" and as "the majority of its legal inhabitants", Arab Palestinians were "the party most interested and concerned in the problem of Palestine, and as such should enjoy the right of having the first say in all discussions concerning their future and that of their country".[404] Nakleh further pointed out that UN General Assembly Resolution 194, which set out the general parameters for a solution to the conflict, as detailed above, "directed the Commission to consult with the 'governments and authorities concerned', and that the Arab Higher Committee had, in the eyes of all United Nations organs, always enjoyed the status of one of the 'authorities concerned' in the Palestine problem".[405] The AHC thus hoped that the UNCCP would

[403] UNCCP 1949v, 1. The brief account of AHC efforts to secure a seat in talks that followed the 1948 war is based largely on UN documents. The literature on the UNCCP-led talks, noted earlier, includes few references to AHC efforts to participate in the negotiations.

[404] UNCCP 1949c, 1. Additional members of the AHC delegation included Yusuf Sahyun and Raja' al-Husseini. AHC representatives included Jamal Tuqan, Edmond Rock, Walid Salih and Musa al-Husseini (Jordan); Farid al-Sad and Ahmad Shuqayri (Syria); Rashid al-Shawwa and Musa Surani (Egypt). Flapan further notes that the AHC sought to undermine the role of the General Refugee Congress of Ramallah, one of the primary refugee organizations that sought to take part in the negotiations, as discussed below, by circulating rumors that the Congress was a front for the Jordanian government. Flapan 1987, 219, 222.

[405] UNCCP 1949x, 2. Nakleh further pointed out that the AHC had been "recognized [as the institution that represented the country's Arab population] by the Arabs of Palestine, the Arab States, the defunct Palestine (Mandatory) Government, and the British Government in London. The United Nations themselves, upholding this right of the Arabs, recognized the representative character of the Arab Higher Committee, and accepted its delegations to speak in the name of the Palestine Arabs before the First Committee of the General

recognize the Committee's right to take part in all discussions relative to the future of Palestine including those on the refugee issue.

The AHC's substantive demands on the refugee issue were not dissimilar to those advanced by refugee organizations and Arab states taking part in the negotiations. The Committee emphasized that it was "a most simply [sic] and just right for the refugees to be permitted to return immediately to their homes and their country".[406] The AHC also demanded that the refugees should "be given back immediately all their properties, whether movable or immovable, and for such damage or loss as may have resulted from Jewish terrorism and violence adequate indemnity must be paid to them".[407] The Committee further emphasized that the refugees "should be guaranteed to live freely in peace and in prosperity" upon return to their homes and places of origin.[408] The AHC demands, however, also appeared to be different from those put forward by the refugee organizations discussed below in that they focused on the issue of Palestine as a whole rather than just on the refugee issue. Primary among the Committee's broader demands was respect for the principle of self-determination, which the AHC argued had been violated by the UN recommendation (Resolution 181) to divide Palestine into two states against the express wishes of the majority of the country's inhabitants.[409] The AHC thus

Assembly and the Security Council, in all sessions discussing the Palestine problem, including the session in which the Palestine Commission was formed". *Ibid.*

[406] *Ibid*., 6.

[407] *Ibid.*

[408] *Ibid.* The AHC's substantive demands are amplified in the Committee's subsequent criticism of the UNCCP's approach to conciliation and mediation. The AHC argued that the UN Commission had failed its mandate for four main reasons: "[b]y not treating the Refugee Question as urgent and by failing to take any immediate steps for repatriation of Refugees; [b]y connecting the Refugee Question with political questions notably the question of boundaries which involv[ed] untold difficulties and most certainly [would] not be settled; [b]y raising doubts as to the practicality of returning Refugees to their homes; [and], [b]y indirectly encouraging the Jews to take the unjustifiable and unreasonable attitude of refusing to allow Arab Refugees to return home". UNCCP 1949q, 13. Palestinians would level similar criticisms during the second and third period of negotiations.

[409] UNCCP 1949v, 3. The AHC argued that GRC-R's focus on return without reference to self-determination comprised an implicit recognition of the state of Israel. Flapan 1987, 218. The

argued that a "just plan" to resolve the conflict and "remove the injustice befalling the Arabs" required "the nullification of the [UN] Partition Scheme, the reversion of Palestine into its unity, and guaranteeing its freedom and independence, in accordance with the principles of true democracy, and the principles of the United Nations".[410]

The UNCCP's position regarding the AHC's demand for a seat at the negotiating table was nevertheless far from certain. The Committee had already faced opposition to its participation in previous UN deliberations on Palestine owing to its demand to take part as the official representative of the All Palestine Government that had been set up in Gaza in the fall of 1948.[411] Arab states

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UN partition plan comprised the second major time that the international community, first through the League of Nations and then through the UN, had decided to set aside the principle of self-determination as a means for determining the future of Palestine, primarily due to a parallel commitment to facilitate the establishment of a Jewish national home in Palestine. UNSCOP 1947, para. 176. Self-determination mechanisms used elsewhere, such as plebiscites, minority regimes and UN trusteeships, were therefore considered inapplicable to the situation in Palestine. Advocates of the UN partition plan, many of whom acknowledged that the plan created as many if not more questions than it resolved (FRUS 1948b; and, FRUS 1948a), dismissed concerns that the plan would create a dangerous precedent for the territorial integrity of states (UNGA 1947) and narrowly defeated efforts by opponents to obtain an advisory opinion from the International Court of Justice. The UN Mediator on Palestine, Israel and Arab states all raised the idea of holding a referendum on self-determination relating to part or the whole of historic Palestine in the years that followed the collapse of the UN partition plan, however, the proposals were either rejected or were deemed no longer relevant in the context of post-war developments. *See*, UNSC 1948; UNGA 1948, sec. VII Conclusions, para. 4(c); UN 1949; UNCCP 1949p, 1–2; and, UNCCP 1951h, 9.

[410] UNCCP 1949v, 5. The AHC demand for the nullification of the UN partition plan was not without precedent. The United States itself, one of the leading proponents of the UN partition plan, withdrew its support in early 1948 when it became clear that it would be impossible to secure implementation of the plan without the deployment of large numbers of foreign troops in Palestine. A counter plan for the establishment of a UN trusteeship in Palestine (US 1948; and, UNGA 1948a), however, was effectively sidelined by Jewish military operations in Palestine in April and May 1948 leading up to the unilateral establishment of the state of Israel. Boling 2003. The AHC further emphasized that "as much as the Arabs of Palestine desired peace; it must be a real and just peace if it were to be a lasting one; the [UN] Commission must bear in mind the principles laid down in Article 1 of the Charter concerning 'conformity with the principles of justice and international law'". UNCCP 1949v, 1–2. The AHC emphasis on international law continued an ongoing debate about the role of law in resolving the conflict over Palestine, a debate brought to the fore by the League of Nation's decision several decades earlier to throw its support behind the establishment of a Jewish national home in Palestine.

[411] In October 1948 the AHC with Egyptian support established a short-lived "All Palestine Government" in the Gaza Strip and declared "the full independence of the whole of Palestine ... as well as the establishment of a free and democratic sovereign state". AHC 1948a; and, AHC 1948b. When the Assembly's First Committee opened debate on the future of Palestine on 15 October 1948, the AHC issued a request (UN Doc. A/C.1/30, Oct. 14,

invited to take part in the UNCCP-led negotiations, moreover, were not unanimous in their support for AHC participation in the talks that followed the 1948 war. Syria, for example, explicitly requested that the UNCCP grant the Arab Higher Committee "the same treatment as it enjoyed in the General Assembly and in the Security Council".[412] Hoping to solidify its territorial claim to the West Bank through the negotiations, however, Jordan had already made clear its view that the AHC no longer represented the interests of all Palestinians, particularly those in Jordan and the West Bank, and threatened to boycott the talks if the AHC was given a seat at the table.[413] Israel's preference for dealing with the conflict at the inter-state level, not to mention the AHC's views regarding the dissolution of the newly independent Jewish state, appeared to further preclude the Committee's involvement in the UN-sponsored talks.[414] Refugee organizations hoping to take part in the negotiations also cast doubt on the AHC's claim to represent the refugees. In a joint memorandum to the UNCCP, three of the main refugee organizations informed the Commission that "the so-called Arab Higher Committee should not represent [the refugee]

1948) to appear before the Committee as the APG representative. The Soviet bloc opposed the request which it felt contradicted the UN partition plan. UNGA 1948b, 237. Syria argued that the Ukrainian SSR's position on the issue was inconsistent with its support for reference to the "Provisional Government of the State of Israel" during previous debates in the UN Security Council. The Syrian representative pointed out that when Council members had opposed the use of the term on the basis that it implied recognition of the state of Israel, which had yet to obtain UN membership, the Ukrainian representative had responded that use of the term did not imply recognition. The representative further noted that the USSR had supported a Czech proposal to admit the representatives of the Korean government even though it had no international status. *Ibid.*, 240. The Assembly eventually agreed to AHC participation in its own right—i.e., without reference to the APG. The UNCCP may have rejected AHC participation in part for similar reasons. Pappé notes that AHC member members who travelled to Lausanne for the first round of talks represented the All Palestine Government. Pappé 1986, 88. Declassified Commission records do not provide further insight on its rejection of the AHC request to take part in the talks.

[412] UNCCP 1949u, 9. There is no record of positions taken by other Arab states in the Commission's declassified documents.

[413] Shlaim 1988, 489; and, Quigley 1990, 80 n. 58, *citing*, Kirk 1954, 280–281; Avnery 1986, 85; and, Flapan 1987, 128–129. Jordan would take a similar approach, as discussed below, to PLO participation during the first part of the second period of negotiations.

[414] Shlaim 1988, 495.

case".[415] Given these procedural disagreements, not to mention the substantive differences on a solution to the refugee issue, the UNCCP's rejection of the AHC request to take part in the peace talks appeared all but certain.[416] In place of a seat at the negotiating table, the Commission thus offered to meet the Committee in the context of unofficial meetings and ongoing consultations with non-governmental organizations.

The UN-sponsored negotiations on the future of Palestine thus proceeded without the formal participation of the Arab Higher Committee. For its part, the Committee informed the UNCCP that it was unable to accept the invitation to take part in or enter into any discussions with the Commission solely at the unofficial level or as a non-governmental organization.[417] In a subsequent memorandum the AHC expressed its members' incomprehension that the UNCCP "allow[ed] itself the liberty of discussing matters involving the

[415] UNCCP 1949n, 1. *See also*, UNCCP 1949w, 2. The conflict between the AHC and refugee organizations is also discussed briefly in, Plascov 1981, 11; and, Shlaim 1988, 504. The studies do not address, however, whether the dispute was reflective of a broader concern about representation in Palestinian society at large. While refugees also demanded a seat at the negotiation table in the 1990s, as discussed below, they did not seek to replace, but rather take part alongside the PLO as the representative of the Palestinian people including refugees.

[416] The Commission disseminated its position in a press release, having revised its original response fearing that it was "too brief and brusque". UNCCP 1949y, 2. Explaining its position, the UNCCP observed that it was "established policy of the Commission to accept cooperation of any group desiring to assist in the implementation of the Assembly Resolution of 11 December 1948. In pursuance of that policy the Commission [welcomed] spokesmen of the Arab Higher Committee at the Commission's Headquarters in the Arab sector of Jerusalem at any time prior to the proposed Beirut meeting of Arab Governments, or otherwise in Beirut on 24 March [1949], which day will be reserved for the presentation of views of non-governmental bodies having submitted to the Commission a request to that effect". UNDPI 1949b. The issue arose several months later in the context of a UNCCP discussion regarding the distribution of a questionnaire to the parties to the conflict. The US representative, Mark Ethridge, observed that while he still supported informal communication with the AHC, he felt that "the Commission should consider seriously whether it desired to put any questions to the Arab Higher Committee, particularly in view of the fact that that Committee had made no attempt to contact the Commission since the initial meeting". It was Ethridge's view that the AHC "was chiefly interested in establishing its own status with the Commission". The Turkish representative, Mr. Yenisey, similarly thought that "it would serve no useful purpose to put questions to the Committee". He also expressed concern, moreover, that Israel and the Arab states would object to such consultation. The Commission decided to postpone consideration of the issue indefinitely. UNCCP 1949ab, 2.

[417] UNCCP 1949c, 2. The AHC thus decided to submit a memorandum rather than appear in person at pre-conference consultations in Beirut in March 1949. UNDPI 1949a.

birthright, the national rights, the civil rights, the religious rights, the rights to homes and properties of the Arabs of Palestine with a Jewish Delegation representing every nationality in the world except Palestine [while it] disregard[ed] the opinion and wishes of the Arabs of Palestine".[418] The AHC also raised the issue with UN Secretary-General Trygve Lie arguing that the Commission's decision to exclude the Committee from the negotiations had "plac[ed] the Arabs of Palestine in a secondary position in the discussion of their country's problems; obliterat[ed] the official Palestinian point of view; depriv[ed] the owners of the country of their natural right to be regarded as the main interested party in the Palestinian problem; and present[ed] the Palestine Arabs as a disunited people with divided opinions".[419] The Conciliation Commission's initial opposition to AHC participation nevertheless remained intact. While the AHC continued to press for its inclusion in official talks, it eventually conceded its position and decided to meet with the Commission in an informal capacity on several occasions.

The issue of refugee participation in the UN-sponsored talks that followed the 1948 war also arose in relation to the demands of various refugee organizations to take part in the talks on behalf of refugees themselves. The political mobilization and organization of refugees in the aftermath of the 1948 war was in many ways remarkable given the widespread dispersion of refugees within and beyond the borders of historic Palestine, the UN decision to hold talks outside the region and therefore beyond the reach of the vast majority of refugees, and the elite nature of international efforts to resolve the conflict.[420]

[418] UNCCP 1949q, 8.

[419] UNCCP 1949c, 2. For a detailed presentation of the AHC's position on the negotiations *see*, UNCCP 1949q. Palestinians expressed similar sentiments at the Madrid peace conference in 1991 in relation to the exclusion of the PLO from peacemaking process.

[420] The history of refugee efforts to secure a seat at the negotiating table in talks that followed the 1948 war has received little substantive coverage in accounts of the first period of

Indeed, the UNCCP appeared taken aback by the arrival in Lausanne, Switzerland of representatives of various refugee organizations when official talks first commenced in the spring of 1949.[421] Led mostly by professionals—including political activists, lawyers and doctors—some of whom had been elected by refugees themselves, the representatives of the various organizations that came to Lausanne to lobby for a seat at the negotiating table comprised primarily urban, middle-class Palestinians who had been displaced during the 1948 war.[422] Each of the organizations claimed to represent refugees

negotiations. Most accounts, moreover, appear to rely primarily on Israeli and Jordanian archival documents. This chapter draws upon existing studies of this relatively unknown episode in the first set of talks on the refugee issue, but relies primarily on a relatively underused source of documentation, namely, the statements, proposals, etc. issued by the various refugee organizations and subsequently archived in the UNCCP archives. The documents focus predominantly on the Lausanne talks, but also include communication between the Commission and refugee organizations extending through the Geneva and Paris talks. The archives of the UNCCP's member states (US, France and Turkey), other major Arab host states (Lebanon and Syria), and the unpublished materials produced by the various refugee organizations, all of which have yet to be explored in relation to this issue, may provide further insight on early refugee efforts to secure a seat in negotiations on a solution to their plight.

[421] Refugee organizations listed in the UNCCP records include the General Refugee Congress of Ramallah, the Jaffa District and Inhabitants Committee, the Representatives of the Land Lords of Palestine, the Palestine Refugees' Conference (Beirut), the Inhabitants of the Western Galilee, the General Palestinian Refugee Congress in Lebanon and the Palestine Refugees in Lebanon. Most accounts of the Lausanne talks appear to concur that only the first three of the above-mentioned organizations travelled to Lausanne. Indeed, these three organizations subsequently issued a number of joint statements outlining refugee demands. The General Refugee Congress has, nevertheless, received the most prominent coverage in studies on the UNCCP-led talks. At a first meeting of the Congress, attended by some 500 refugees, participants adopted a resolution providing for the election of a 40-member General Council comprised of 30 members from the West Bank and 10 from Jordan. The Council would in turn elect a 10-member Executive Committee which would elect staff for its Refugee Office. The General Council was further empowered to increase its membership "to provide the fullest possible representation of refugees in all Arab countries". GRC-R 1949b, para. 6. The Resolution further stated that the Council "shall have the exclusive right to represent the refugees in all matters and that no other body shall have the right to represent them". *Ibid*. The Congress' statement of aims and policy further mandated the organization "to incorporate in the Congress, General Council and Executive Committee duly elected representatives on behalf of those refugees in the other Arab countries not already represented in the Congress". GRC-R 1949a.

[422] This included Muhammad Nimr Hawari, a Nazareth-born lawyer and a former commander of *Najada*, a semi-military organization established during the British mandate, who was elected chairman of the General Refugee Congress. Various studies mention that Hawari had, on occasion, collaborated with the Haganah during the pre-1948 period. He was later granted Israeli citizenship and appointed a municipal judge. Aziz Shehadeh, a Jaffa-born lawyer and co-founder of the law firm A. F. & R. Shehadeh, served as Hawari's deputy. The Lifta-born Yahya Hammuda, a lawyer and the second chairman of the PLO who succeeded Ahmad Shuqayri, the Palestinian advisor to the Syrian delegation in Lausanne, was also among the founding members of the Congress. Nassib Bulos, a journalist, is identified in Congress documents as the organization's general secretary. The GRC delegation also

in their specific areas of exile, but they also drew criticism at times from the largely rural, landless and camp-based refugee communities who feared that the organizations would "sell out" their right to return in exchange for compensation. The dispersion of refugees across the region and divisions among them prevented the formation of a unified refugee delegation in advance of the UN-sponsored talks.

The refugee organizations nevertheless held remarkably similar demands, albeit seemingly narrower in scope than those put forward by the AHC. On procedural issues, the primary demand was to be included in all discussions related to the future of the refugees. In a meeting with the UNCCP in late August 1949, for example, the representatives of three major refugee organizations—the General Refugee Congress, the Jaffa District and Inhabitants Committee and the Representatives of the Land Lords of Palestine—informed the Commission that "[t]hey wish[ed] to have full knowledge of all that was being done with regard to the refugees and to assist in the matter by making suggestions and recommendations whenever desirable".[423] They also wanted to be informed of the establishment of all working groups, attend their

included Jaffa lawyer Muhammad Yahya and Zaki Barakat, a Jaffa-born merchant and farmer, Salih Awnallah from Nazareth and Ahmad Salih who had been the major of Salama. Flapan 1987, 219-221. Edward Berouti and Said Beidas are listed as secretaries of the Jaffa District and Inhabitants Committee while Choukri Tagi el-Farouki headed the Representatives of the Land Lords of Palestine. Izzat Tannous, a Nablus-born medical doctor, who headed the Arab Information and Arab League offices in London during the 1930s and 1940s, directed the Arab Palestine Office in Beirut and also signed a communique to the UNCCP on behalf of the Committee for Arab Property Owners in Palestine. Tannous later headed the Palestine Arab Refugee Office in New York and participated in discussions on the refugee issue in the General Assembly's Ad Hoc Political Committee. Other figures associated with the refugee organizations included Michel Azer (General Palestinian Refugee Congress in Lebanon) and Jamil Hamad, Ahmed Sirhan, S. Fahouin and T. Abdul Majid (Inhabitants of the Western Galilee).

[423] UNCCP 1949x, 1. An earlier memo to the Commission noted that the organizations had "insisted from the beginning that the Commission should look upon [them] as the real representatives of the refugees" since they were "elected by the majority of the refugees [and] supported in [the] talks by all other refugees who could not participate in [the UNCCP-sponsored] conference because of being poor or [because] they could not attend, to express their wishes". UNCCP 1949n, 1.

meetings and assist them in the field. The organizations informed the Commission that they had "not given anyone the power to negotiate for them" and that "they were entitled to be represented as refugees and not by any member of a single government".[424] In a subsequent letter to the UNCCP on behalf of refugees in Lebanon, Izzat Tannous, head of the Arab Palestine Office in Beirut, appealed to the democratic sensibilities of the Commission's members reasoning that "[a]s we are the people most concerned, we believe that we should have a decisive say in the matter, and this can only be done effectively through personal contact to exchange views as to the best means to arrive at a fair and just solution".[425] Nassib Bulos, Secretary of the General Refugee Congress of Ramallah, further warned that any agreement reached between the Arab and Israeli delegations would "be illusory unless it [was] acceptable to the Palestinian Arabs, or in other words, unless it [was] acceptable to the Arab refugees, for they constitut[ed] the overwhelming majority of the Arab population of Palestine".[426]

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[424] UNCCP 1949x, 2. This included, as noted earlier, the Arab Higher Committee. On the issue of representation *see also*, UNCCP 1949f, 2; UNCCP 1949r, 2; UNCCP 1949o, 3; and, UNCCP 1949m, 1. On 2 September 1950 the General Refugee Congress met with the UNCCP and reiterated their demand that the refugees "should be party to all discussions or negotiations connected with the solution of their problems, and should be consulted as such in regards to any suggestions made by any of the negotiating parties on questions concerning them". UNCCP 1950n, 1.

[425] UNCCP 1951f, 2. GRC-R lobbying of Arab delegations emphasized the importance of resolving the issue of borders and refugees and suggested that they accept Israel in exchange for the Israel's recognition of the right of return. They rejected, however, a linkage between borders and refugees advocated by the Conciliation Commission. Flapan 1987, 367-368. The UNCCP hoped that reaching an agreement on borders, under which a certain number of refugees would return to areas from which Israeli forces would withdraw, would help to resolve the refugee issue by reducing the overall refugee population with claims to return to areas inside the newly-established Jewish state. A number of Arab states, as noted below, similarly proposed that Israel withdraw to the UN partition borders thus enabling a large number of refugees to return to their places of origin.

[426] UNCCP 1949e, 1. The Congress also warned that in the absence of a solution the refugees "would cause the Jewish state nothing but trouble". al-Hawari n.d., *cited in*, Morris 1987, 264. The Jaffa District and Inhabitants Committee further warned that a delay in resolving the refugee issue "threatened to spread anti-democratic principles across the Near East". UNCCP 1950e, 3. Initial efforts by western powers to resolve the refugee issue were driven in part by a fear that left unresolved the refugee camps and communities of exile would provide fertile ground for communist infiltration across the region. Refugee organizations would raise similar arguments about the legitimacy of agreements reached in their absence

From a substantive point of view, the refugees' immediate demands included the revocation of Israel's absentees' property laws used to expropriate refugee properties, facilitation of family reunification, the unblocking of refugee bank accounts and the urgent return of certain categories of refugees including those required to maintain the country's citrus industry.[427] The primary demand of the refugees, however, as in subsequent decades, was to return to their homes, lands and properties.[428] Far from creating any new rights, representatives of the various organizations argued that paragraph 11 of Resolution 194 setting out a solution to the refugee issue "acknowledg[ed] and express[ed] the natural and equitable rights of the refugees as confirmed by international law and usage".[429] They also argued that "[t]he right of every

during the third period of negotiations.

[427] UNCCP 1949d, 1; UNCCP 1949e, 5–6; UNCCP 1949r, 2; UNCCP 1949o, 1; UNCCP 1949g, 1 and 3; and, UNCCP 1951d, 4. *See also*, GRC-R 1949b, para. 4. The demands were also put to the Commission by Arab states. *See*, UNCCP 1949l.

[428] *See*, UNCCP 1949o, 1; UNCCP 1949x, 3; UNCCP 1950d, 2; UNCCP 1951d, 1–2; and, UNCCP 1951e, 4–5. *See also*, GRC-R 1949b, para. 1 and 3; and, GRC-R 1949a, para. 1. GRC-R Chairman Muhammad Hawari proposed that Israel agree to the repatriation of 400,000 refugees who would live in peace with Israel and act as a 'peace bridge' between Israel and the Arab states. al-Hawari n.d.; and, Sasson 1949a, *cited in*, Morris 2004, 559. The United States had similarly indicated during the same period that Israel should take back the same number of refugees. FRUS 1949. The General Refugee Congress also recognized in its statement of aims and policy that "some refugees, for varying reasons, may not wish to return to their former domiciles and that they may wish to be settled temporarily or permanently elsewhere" and that it was "the inalienable right of the refugees to dispose of their former property as they [saw] fit". GRC-R 1949a, para. 1 and 3. The general preference among refugees for return, restitution and compensation is echoed in early UNCCP and UNRWA reports. The reports are available on UNISPAL <http://unispal.un.org> [accessed Mar. 5, 2011]. One of the earliest surveys of refugee opinion found that only 10 percent of refugees would opt for resettlement rather than return. Bruhns 1955. This contrasts with communiques between the UNCCP and some Arab states who believed that few refugees would ultimately choose to return. al-Husseini 2007. This debate about the number of refugees that might wish to return, in particular, the figure of 10 percent, would continue to arise in subsequent decades. Despite the assessment of Arab states, the UNCCP and Israel remained either reluctant or opposed to giving refugees a free choice about their future fearing that their assessment of the small number of refugees wishing to return might in the end prove incorrect.

[429] UNCCP 1949f, 2. The Jaffa District and Inhabitants Committee explained that the position was based upon a natural right, humanitarian grounds and Resolution 194. In fact, only one day prior to adopting Resolution 194, the General Assembly adopted the Universal Declaration of Human Rights which affirmed the right to leave and, on the basis of a Lebanese amendment unanimously approved by the drafting committee, a right to return to one's country of origin. Glendon 2002, 153. The Jaffa District and Inhabitants Committee also pointed out that in the specific case of Jaffa, an agreement had been made between the city's emergency committee and the commanding officer of Jewish forces guaranteeing their return. UNCCP 1949r, 1. The Jaffa case was one of a small number of cases, as noted

refugee to return to his home must be independent of political argument, and must not be made the subject of bargain for political ends".[430] In addition to compensation for damages and losses, the organizations held that refugees should also be compensated for "displacement, resettlement and rehabilitation costs [as well as] the loss of income from established trades, professions, vocations, industry, etc.".[431] However, they rejected compensation as an alternative to return.

The organizations also put forward various practical suggestions for resolving the refugee issue. An overarching concern was the need for international guarantees for the safety of the returning refugees, the granting of citizenship *ipso facto* upon their return, the full restoration of their rights and guarantees against discrimination.[432] Presumably this included the right to take part in the public affairs of the state as refugees were excluded from taking part

earlier, in which Israeli authorities agreed in principle that refugees should be allowed to return, however, as in Jaffa few refugees were able to return. For further discussion of the Jaffa case *see*, Morris 2004, 219.

[430] UNCCP 1951d, 1–2. The memo further noted that "[s]uch utter trampling on civil rights as [had] appeared hitherto [could] find its equal only in barbaric times, and even then it did not take long before the wrong was put right again". *Ibid.*

[431] UNCCP 1949r, 1–2; and, UNCCP 1951c, 2. *See also*, GRC-R 1949b, para. 2. Refugee organizations put forward similar arguments during the third period of negotiations.

[432] UNCCP 1949f, 6; UNCCP 1949x, 3; and, UNCCP 1949m, 2. The issue of non-discrimination and the protection of minority rights was central to the UN's 1947 partition plan and was also a concern of the UNCCP whose principal secretary, the Spanish diplomat Pablo de Azcarate, had previously worked in the Minorities Section of the League of Nations. The minority protections in the partition plan were among a number of provisions which the plan described "as fundamental laws of [each] State [which] no law, regulation or official action shall conflict or interfere ... nor shall any law, regulation or official action prevail over them". GA Res. 181, *supra* n. 332, Part I, Sec. C. The issue was also a significant concern to Arab states generating considerable correspondence between Arab states, the Commission and the state of Israel. Israel's first draft constitution, in fact, included provisions for non-discrimination, equality and the protection of minority rights. UNCCP 1949af, 5–6. Despite the strict terms set out in the partition plan, minority protections for Israel's Palestinian citizens were deleted from subsequent drafts while the constitutional project itself eventually collapsed due to irreconcilable differences over its content. Radzyner 2010, 9. Israel's Zionist parties eventually agreed to prepare a constitution over time through the promulgation of individual laws comprising the elements of a future constitution. That process has yet to be completed, however, efforts to push the project forward in the 1990s in the context of renewed talks to resolve the conflict raised fundamental questions and often terse debates about the fundamental principles of equality and non-discrimination and in particular Israel's obligations towards Palestinian refugees.

in Israel's first election held on the eve of the UNCCP's arrival in the region.[433] The General Refugee Congress approached the Commission with ideas regarding the alteration of the armistice line in order to enable the immediate return of refugees from areas designated to be part of the Arab state under the UN partition plan and the role of the Arab Legion and the UN in facilitating the return and reintegration of refugees in their places of origin.[434] The Congress also offered to assist in the registration of refugees for purposes of finding short-term employment and facilitating return, restitution and compensation in the context of a solution.[435] The refugee organizations also developed a number of proposals for housing, land and property restitution. In a memo prepared on

[433] Israel held its first election in January 1949, just prior to the arrival of the UNCCP in the region. The UN partition plan required that "[t]he Provisional Council of Government of each State shall, not later than two months after the withdrawal of the armed forces of the mandatory Power, hold elections to the Constituent Assembly which shall be conducted on democratic lines". GA Res. 181, *supra* n. 332, Part I, Sec. B, para. 9. The plan also prohibited electoral gerrymandering through migration of Arabs and Jews to the state in which they comprised a minority under the plan. UNPC 1948, para. 3. Palestinian refugees, half of whom were of voting age (comprising two-thirds of the electorate), were nevertheless excluded from taking part in the election due to the fact that they were not registered in Israel's November 1948 census which the Provisional Government used to define the electorate that would be allowed to take part in the January poll. While the refugee issue was not mentioned explicitly in government discussions about the census, Liebler and Breslau argue that it was nonetheless clear, given the decision to prevent refugee return, that a major reason for holding the census prior to the cessation of hostilities was to permanently deny refugees the opportunity to exercise their political rights inside Israel. Israeli officials believed that "[i]f the departure of the Arab residents could be defined as a political act of renunciation ... the exclusion of an ethnic minority could be legitimated in terms of international norms regarding citizenship rights". Liebler and Breslau 2005, 891–892. A concensus had already been reached in June 1948, several weeks into the war, that the government would take all necessary measures to prevent the return of Palestinian refugees. Morris 1987, 141. For a discussion of the debate on whether Palestinians who remained inside the borders of Israel should be given the right to take part in the public affairs of the state *see*, Medding 1990; and, Robinson 2005.

[434] GRC-R 1949a, para. 2 and 5; UNCCP 1949i, 2; and, UNCCP 1949j, 1. Arab states similarly suggested that Israel's withdrawal to the UN partition lines would enable a significant number of refugees to return to their places of origin. UNCCP 1949s. Israel continued to view these areas as "occupied territories" through May 1949 until its application for UN membership had been approved. Pappé 2006, 175. A number of Arab states, including Saudi Arabia, Yemen and Syria, in addition to Iran, continued to raise the issue in annual discussions on Palestinian refugees in the UN General Assembly's Ad Hoc Political Committee in the mid-1950s following the end of the UN-sponsored talks. The idea was also akin to ideas raised in the 1990s during the third period of negotiations regarding land swaps as a mechanism to facilitate the return of greater number of refugees.

[435] GRC-R 1949a, para. 8. At one point, the General Refugee Congress, also supported the idea of organizing a peaceful march of refugees back to their homes. Pappé 1986, 92. Refugees would initiate similar return marches in the 1990s during the third period of negotiations.

behalf of several refugee organizations, Sami Hadawi, a Palestinian land specialist who had worked in the British administration in Palestine before the 1948 war, recommended the establishment of an international body, with offices located in major Arab host states, to "contact the refugees and collect particulars of their property and losses in Palestine; to collect particulars of lands and buildings owned by the Government and to value them; [and] to obtain information regarding all assets of the Government and to value them".[436] The refugee organizations suggested that the body should be comprised of an Arab, an Israeli and a neutral member appointed by the United Nations as approved by the refugees themselves.[437]

The UNCCP, Arab states and Israel each held unofficial talks with the refugee organizations, but otherwise appeared to maintain a largely arms-length relationship. The UNCCP agreed to supply the organizations with relevant information on an informal basis, but held that the Commission could not reply in writing to either specific or general questions related to the negotiations.[438]

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[436] UNCCP 1950f, 6–7. The GRC had earlier recommended the establishment of a mixed survey commission to collect information on the status of refugee properties in cities, towns and villages across Palestine. UNCCP 1949f, 5. The organizations also argued that "an opportunity should and must be given to each individual refugee to put his claim before Special Tribunals or Claims Commissions to be set up for this purpose". UNCCP 1951c, 2. Hadawi later worked for a brief period on the UNCCP property documentation and valuation project and authored a book (Hadawi 1988) on Palestinian rights and losses stemming from the 1948 war based on British land records. For a detailed discussion *see*, Fischbach 2003.

[437] UNCCP 1949m, 2; and, UNCCP 1950n, 2–5. A subsequent memo from refugees in Lebanon in 1951 suggested the creation of a special UN committee, including representatives of refugees, to administer refugee properties until a solution was found for the refugee issue. UNCCP 1951d, 4; and, UNCCP 1951e, 1. This issue was also taken up by Arab states who subsequently raised the issue in annual discussions on Palestinian refugees in the General Assembly's Ad Hoc Political Committee. *See*, the discussion in, Fischbach 2003, 223–224, 241–245. It was only in 1981, that Arab states secured sufficient votes in the General Assembly for a resolution reaffirming the right of refugees to their properties and the revenues derived therefrom. This effort nevertheless fell short of obtaining sufficient support for the establishment of an international property custodian as demanded in the years that followed the 1948 war.

[438] UNCCP 1949e, 1. Flapan 1987, 221, *citing*, a letter from UNCCP Principal Secretary Azcárate dated Aug. 3, 1949 to Hawari, Beidas, al-Taji from the personal archive of Aziz Shehadeh. The Congress described the UNCCP's position as "unsatisfactory" and continued to push for participation in the negotiations. The Commission reconfirmed its position in a subsequent letter to the Congress. UNCCP 1949h, 1. Available UNCCP records indicate that it met with the organizations on only a handful of occasions. This included a meeting in

Expressing reservations about the "actual authority of the [organizations], or the authenticity of their claim to represent the refugees" and concerned about setting a precedent for the inclusion of other groups, the UNCCP rejected refugee requests to take part in the official negotiations.[439] Arab states expressed suspicion over direct contacts between Israeli officials and representatives of some of the refugee organizations with Jordan particularly opposed to giving the refugees a seat at the negotiation table fearing that it would undermine Jordan's territorial claims to the West Bank.[440] Israeli officials held unofficial talks with refugee representatives, but discounted the utility or

Beirut in advance of the Lausanne conference, at the beginning and end of Lausanne, and then again prior to an inter-sessional meeting in New York in the fall of 1949. Two months later, refugee organizations issued a joint letter again requesting access to the negotiations and copies of records relating to discussions of the refugee issue. UNCCP 1949n, 1.

[439] UNCCP 1949ac, 3. The Commission already faced a significant challenge in reconciling the procedural and substantive positions of the official parties on the refugee issue. It seemed unlikely, therefore, to add yet another "problem" to its list of challenges. The high-level nature of the talks and the fact that the refugees were unable to form a unified delegation may have further militated against their participation. The UNCCP was also in the final stages of setting up an Economic Survey Mission (ESM) with the aim of collecting information and making recommendations on the economic reintegration of the refugees in the region. While not ruling out return, the plan reflected a growing consensus within the UNCCP and among western powers that most refugees would have to be resettled due to Israel's opposition to their return and donor fatigue which necessitated a transfer of responsibility from the international community to the states in which refugees would be resettled. Given the refugee demand for return, the UNCCP decision to grant refugee organizations a hearing while excluding them from official talks may have been a means of managing or containing refugee opposition while pursuing a course which the Commission and western powers felt to be in the best interest of the refugees. Discussions in the UNCCP and among western states in annual debates on the refugee issue at the UN frequently emphasized the importance of modifying refugee opinions. The UNCCP also appeared reluctant to open up discussion on return fearing that too many refugees would indicate their desire to return. UNCCP 1949z, 2.

[440] Arab states were also concerned that talks between the refugee organizations and Israel granted the latter a type of recognition without having secured any concessions on the refugee or other issues relating to a solution to the conflict. Similar to its response to the AHC request to take part in the negotiations, Jordan initially threatened to leave the talks if the refugees took part. Plascov 1981, 21 n. 66. Jordanian authorities later placed heavy restrictions on the General Refugee Congress of Ramallah in an attempt to marginalize the organization. The other Arab states taking part in the talks subsequently decided to sever contact with the Congress. The restrictions were only lifted, somewhat ironically, after Israeli officials who had engaged in talks with the organization threatened to go public with the issue and embarrass Jordan unless the restrictions were removed. Shlaim 1988, 504–505. In 1954, after discovering that the General Refugee Congress had engaged in direct talks with Israel over the release of blocked accounts, Jordan's minister responsible for Arab affairs stated that GRC-R members who had taken part in the talks "would be guilty of 'treason' for making contact with 'the enemy'". A warrant was subsequently issued for their arrest. Peretz 1958, 235. *See also*, Fischbach 2003, 226–227 and Flapan 1987, 224-227.

seriousness of the talks given the refugee organizations limited agenda and their inability to guarantee implementation of any agreement that might be reached.[441] Arab and Israeli negotiators nevertheless sought to use the refugee organizations to advance their own interests in the negotiations.

The outcome of refugee efforts was mixed. On the one hand, the organizations failed to advance major substantive and procedural demands. Maintaining a formal commitment to the rights of return and restitution, as set forth in Resolution 194 delineating the terms of its mandate and the framework for a solution to the refugee issue, the UNCCP increasingly focused on practical or technical aspects of compensation coupled with measures to facilitate the economic reintegration of the refugees in the region reasoning that this could take place without prejudice to the right of return.[442] The Commission agreed to

[441] The comments of Elias Sasson, Director of the Israeli Foreign Affairs Middle East Department, and an advocate of both population transfer and refugee resettlement, appear to reflect the general position of the official parties to refugee efforts to secure a role in the decision-making process that would determine their futures. Expressing frustration about Israel's failure to effectively use the refugees to advance a solution to the issue, Sasson observed that "[a]s for the refugees they are the scapegoats—so no one takes any notice of them. No one listens to their demands, explanations and suggestions. On the other hand, all parties use this problem towards ends that are practically unrelated to the aspirations of the refugees themselves". Sasson 1949b, *quoted in*, Shlaim 1988, 475 and 494–495. Israeli officials and representatives of the GRC-R nevertheless discussed a range of ideas including the incorporation of the West Bank into Israel, the establishment of an autonomous area in the "Triangle" and the creation of an independent Palestinian state in the West Bank each of which were conceived in some manner as providing a solution to the refugee issue. Pappé 1986, 89; Shlaim 1988, 508; and, Caplan 1997a, 3:74. These ideas do not appear in correspondence between refugee organizations and the UNCCP. When the GRC-R proposed holding meetings inside Israel to discuss these issues, Israeli officials demurred fearing that if refugees saw their unsettled lands it would only strengthen their resolve to return. Shlaim 1988, 496. Israeli officials were also reluctant to give refugees a choice about their future. When the UNCCP conveyed to Israeli officials its view of a shift in refugee opinion towards resettlement in the spring of 1950, hoping that Israel would agree to comply with Resolution 194, Israeli Foreign Minister Sharett observed that "[t]o be perfectly frank, we would much prefer to rely on a definite decision of the governments rather than on the freely expressed will of the people concerned". UNCCP 1950p, 12. *See also*, Flapan 1987, 227-228.

[442] This approach appears to be reflected in Commission member comments relating to the drafting of a working paper (UNCCP 1950a) in the spring of 1950 on the interpretation of Resolution 194. With the completion of the ESM survey and the establishment of UNRWA, which had begun operations to facilitate the economic reintegration of the refugees in the region, the UNCCP had already taken significant steps towards what it's members appeared to consider a pragmatic solution to the refugee issue given Israel's refusal to allow the refugees to return. In preparing the aforementioned working paper on Resolution 194, which reaffirmed the Assembly's recognition of the individual rights of the refugees, Commission

meet refugees informally but, as noted above, turned down their requests for a seat at the negotiating table. On the other hand, refugee organizations claimed to have played a major role in securing the adoption of the Lausanne Protocol in May 1949, a framework for negotiations based on Resolutions 181 and 194, signed by Israel and the Arab states taking part in the negotiations.[443] The UNCCP also appeared to support some level of refugee participation in Commission efforts to facilitate a solution to the issue and considered a number of mechanisms for participation raised by refugees themselves.[444] The Commission appeared to be receptive, for example, to refugee participation in

members observed that despite having shifted towards a more pragmatic approach the paper would "help the Commission to maintain a sound position on the refugee question during the forthcoming negotiations". UNCCP 1950a, 6. This apparent inconsistency, affirming the need to maintain a principled approach yet proceeding with plans to facilitate a pragmatic solution, may be explained by Commission efforts to advance the view that a solution might be found by separating the recognition of principle from practice, an approach that would be resurrected some five decades later during the third period of negotiations. UNCCP 1950l, 3. It may also be explained by differences between Commission members and its Secretariat. While the Secretariat appeared to maintain a principled approach to the refugee issue, as required under its mandate as a UN body, it was the individual members of the Commission who took their directives from their respective governments who often appeared to adopt more pragmatic positions to overcome the deadlock in negotiations.

[443] Pappé 1986, 89, *citing*, personal interview with Aziz Shehadeh of the General Refugee Congress. The Protocol quickly became a source of disagreement. Arab states claimed that with its signature Israel had recognized the right of the refugees to return, but Israeli officials would disavow any such commitment "characterizing the document as merely a 'procedural device' and attributing no political significance to their country's signature". Caplan 1997a, 3:82. The Lausanne Protocol is annexed to, UNCCP 1949ae. The signing of the Protocol would be the first and last time that Israel would affix its name to a document calling for a solution to the refugee issue in accordance with Resolution 194. In the last round of final status talks during the third period of negotiations Israeli officials submitted a "non-paper" which referred to Resolution 194, but also redefined the parameters for its implementation such that few refugees would be permitted to return to their places of origin inside Israel. The Protocol and Non-Paper are reproduced in Annex I, Table A1.1 - Peace Agreements and Proposals, Provisions on Palestinian Refugees.

[444] The UNCCP's Principal Secretary, Pablo de Azcárate, observed in his personal account of the Commission's efforts, that "[a]s human beings [the refugees] [had] the *right* to demand that their opinion not be ignored in deciding the new course that [was] being mapped out for them". [emphasis added] Azcárate 1966, 196. *See also*, UNRWA 1952, 2, *annexed to*, UNCCP 1951l. Azcárate nevertheless appeared to be less supportive of the refugees' substantive demands which he considered to be impractical given the political environment in the region after the 1948 Arab-Israeli war. Critical of the UN Mediator's recommendation that the General Assembly endorse the right of refugees to return to their homes, Azcárate argued that subsequent affirmation of the principle of Resolution 194 had given Arab states a "platform" to wage an ongoing battle against the state of Israel, it "paralyz[ed] any possible initiative" based on finding a practical solution to the issue and, in his opinion, it also "created a state of mind among the refugees, based on the vain hope of returning to their homes, which has immobilized their cooperation, a cooperation which is an indispensable condition if a way is to be opened to a solution at once practical and constructive of their distressing problem". *Ibid.*, 191. These arguments echoed Israel's own views about Resolution 194.

mixed committees mandated to discuss "interim" issues like family reunification.[445] The Commission also appeared to be open to the idea of refugee participation in a future claims process. John Berncastle, the British land expert and former Palestine government official who the UNCCP had hired to carry out a valuation of refugee property, appeared to be a particularly strong proponent of the idea. In his view, the refugees had "no more invited the Conciliation Commission to represent them than they [had] invited the Arab States".[446] The Commission nevertheless either rejected or failed to consider seriously other proposals put forward by the refugee organizations. This included a refugee request to take part in the work of the Technical Committee and Economic Survey Mission, temporary bodies set up under the auspices of the UNCCP, whose findings Commission members hoped would lead to a solution to the refugee question, in the latter case through their economic reintegration in the region.[447]

[445] UNCCP 1949ad, 3. The final terms of reference for the establishment of the mixed committees nevertheless adopted a tripartite approach—comprised of representatives of Israel, the Arab states and the UNCCP. *See*, UNCCP 1950g; and, UNCCP 1950b. An early paper, however, suggested that the rules of procedure could be modified by mutual agreement. UNCCP 1950h, 1.

[446] UNCCP 1952a, 1. Egypt similarly supported refugee representation to ensure that their interests were protected and to give the UNCCP's Refugee Office, which was set up in 1950 to oversee technical work on refugee claims, the benefit of their experience. UNCCP 1951k, 6. In light of practical difficulties in electing representatives, evident, perhaps, in the refugee organizations' inability to form a unified delegation to the UNCCP-sponsored talks, Berncastle suggested that the Commission nominate one or more experts from among the refugees to sit on a mixed technical committee mandated to oversee the valuation process. UNCCP 1952a, 1. Berncastle recommended Sami Hadawi, who then held the post of Director of Land Taxation in the Jordanian government, in addition to Izzat Tannous, who had already appeared before both the Commission and the UN General Assembly's Ad Hoc Political Committee as a representative of the refugees. In a subsequent discussion on valuation methods for compensation, the US representative on the Commission similarly noted that the membership of a technical committee on compensation "should be composed solely of technical experts [and that] care must be taken not to appear to be favouring any one group of refugees by designating one of their representatives to serve". UNCCP 1952c, 7. The Commission further suggested that Berncastle limit his initial inquiries to the official level with the views of refugees on methods of compensation ascertained from UNRWA. UNCCP 1952b, 3.

[447] In a meeting with the Commission in late August 1949, the refugee organizations expressed their dissatisfaction at being excluded from the Technical Committee to assess the situation of refugee orange groves, especially since they were "the parties best qualified to know the question and to ascertain whether the groves being shown to the committee belonged in reality to Arabs or not". They also regretted the exclusion of refugee representatives in

The collapse of UNCCP-led talks in 1951 marked the end of first period of negotiations on a solution to the situation of Palestinians displaced from their homes, lands and villages during the 1948 war. The refugee organizations that had tried to advance a solution to their situation expressed frustration at the UN failure to facilitate the implementation of Resolution 194 affirming that refugees should be allowed to return to their homes of origin. Writing on behalf of refugees in Lebanon, Izzat Tannous raised questions about the complicity of western states in the dispersion of the Palestinian people and the poor impression of democracy this gave to refugees. "[W]hat kind of Democracy [were Palestinians] living under", Tannous asked the UNCCP, "when a refugee, only a few yards away from his home [could not] go back to it to live a peaceful and free life, the life of the 'five freedoms' broadcast by [President Roosevelt]?"[448] Apart from a brief effort by the United States and the UK ("Operation Alpha") in the mid-1950s and a UNCCP-appointed special representative to obtain agreement on a framework for a solution to the refugee issue in the early 1960s, there was no serious attempt to restart negotiations on a comprehensive solution to the issue until more than a decade and a half later following the 1967 Arab-Israeli war.[449] The international community treated the

dealing with blocked bank accounts. They further indicated that they were "prepared to accept the principle of the establishment of [the Economic Survey Mission] and were ready to cooperate with such a body, only on condition, however, that decisions taken by that group should not be final or binding upon the refugees unless they had themselves been consulted and had agreed". UNCCP 1949x, 3. *See also*, GRC-R 1949a, para. 7.

[448] UNCCP 1951e, 3. Tannous was presumably referring to President Roosevelt's 1941 State of the Union speech in which he identified freedom of fear, freedom of information, freedom of religion, freedom of expression and freedom from want as the primary rights which everyone ought to enjoy. Refugee organizations indicated that they were "tired" of submitting memoranda to the Commission. Also writing on behalf of refugees in Lebanon, Michel Azar challenged UNCCP members, observing that they had a "rare chance to affirm justice to this disaster which remain[ed] a black spot in the history of humanity" warning that "unjust and unpractical solutions [could not] live long, and usually contain[ed] in themselves the seeds for revolution". UNCCP 1951d, 5.

[449] The joint effort by the US and UK was motivated by concerns about Soviet involvement in the region. Hoping that a solution to the conflict would consolidate western interests in the region, the two powers collaborated on a plan comprised of a series of incentives and pressures under which Israel would agree to the return of 40-70,000 refugees, compensate

situation of Palestinian refugees during the intervening years primarily as a humanitarian rather than a political issue, notwithstanding opposition among certain states, especially in the Arab world, to this approach and the outright rejection of such an approach by Palestinians—refugees and non-refugees alike—themselves.[450] In the camps and communities of exile refugees organized demonstrations, issued petitions and spoke out on a range of issues from emergency relief to the right of return. They protested against UNRWA's initial relief and works programme which they viewed as an attempt to "liquidate" their cause through economic development and resettlement.[451] At

those resettled in Arab states, and "buy-out" Palestinians that remained within the *de facto* borders of Israel in order to create a largely homogenous Jewish state. For additional discussion *see*, Caplan 1997b. The UNCCP Special Representative Joseph Johnson met with Arab and Israeli officials during two trips to the Middle East to discuss his proposals for a solution to the refugee issue, but turned down a request to meet with representatives of the refugees. Fischbach 2003, 282. The latter included Izzat Tannous and Issa Nakleh, both of whom had previously sought a seat at the negotiation table on behalf of refugees and the Palestinian people, respectively, in UN-sponsored talks after the 1948 war. Both men were also part of a larger Palestine delegation that had sought UN recognition (UN Doc. A/SPC/48, Nov. 8, 1960) to appear before the General Assembly's Ad Hoc Special Committee in 1960 as the representative of the Palestinian people. UNGA 1960, 125–126. Johnson was also met during his trips by refugee demonstrations and petitions against his mission.

[450] In 1952, the UN General Assembly, as noted above, not only decided to devolve responsibility for a solution to the conflict to the parties themselves, it also attempted to transfer responsibility for assistance from the UN to the respective Arab host states. This latter effort, however, failed in light of opposition from refugees and from Arab states themselves. Jordan and Syria both indicated an initial willingness to resettle a significant number of refugees hoping, in part, to capitalize on much needed investment and development of their national economies. In general, however, Arab states collectively opposed resettlement plans that did not provide refugees with the *a priori* choice of returning to their homes and places of origin. Arab amendments to UNRWA's founding resolution ensuring that assistance would not prejudice refugee rights delineated under Resolution 194 (UN Doc. A/AC.31/L.48, Dec. 1, 1948), Egypt's subsequent draft resolution providing for the establishment of a UN repatriation commission with Chapter VII enforcement powers (UN Doc. A/AC.38/L.30, Nov. 7, 1950), efforts to establish an international property custodian to oversee the use of refugee properties until a solution could be found to the refugee issue (UN Doc. A/AC.53/L.28, Jan. 11, 1952) and calls for an ICJ advisory opinion on refugee rights (UN Doc. A/AC.61/L.33, Dec. 10, 1952) exemplified the general preference for repatriation and deference to the views of refugees themselves. *See also*, al-Husseini 2007.

[451] UNRWA's early reports contain numerous references to such incidents along with Agency efforts to obtain refugee co-operation in the implementation of its relief and works programmes. The reports are archived on UNISPAL <http://unispal.un.org> [accessed Mar. 5, 2011]. The agency's archives also contain numerous files documenting the growing politicization of the refugee community. In the years that followed the collapse of the UNCCP talks, the assistance and limited protection afforded to the refugees by UNRWA, the development of skills through education and vocational training, and the experience gained through employment in the operation and administration of the Agency's programs, nevertheless contributed to the broader process of national reconstruction that had begun in the camps and communities of exile. For a discussion of the relationship between UNRWA

the United Nations prominent refugees like Ahmad Shuqayri and Izzat Tannous called upon the international body to protect and respect refugee rights foremost of which was the right to return to their homes and places of origin.[452] Refugees also appealed to the Arab League to help establish a unified body that would represent the interests of all refugees regardless of their situation or place of exile.[453] These efforts were part and parcel of a broader process of national reconstruction that followed the dissolution of Palestine and the dispersion of its indigenous population as a result of the 1948 Arab-Israeli war.

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and the reconstruction of the Palestinian national movement *see*, al-Husseini 2000; Shabaneh 2010; and, Shabaneh 2012.

[452] Ahmad Shuqayri and Izzat Tannous first appeared before the UN General Assembly's Ad Hoc Political Committee in 1951 during discussion of UNRWA's annual report. UNGA 1952a, 249. The following year Arab states orally requested that Tannous be allowed to speak during discussions of the UNCCP's annual report. The UK opposed the request, arguing that it would comprise a dangerous precedent, in view of the political nature of the discussion. The US argued that the refugee perspective would be given in any event through Shuqayri who took part in the meeting as the Syrian representative. The request was narrowly rejected by a vote of 14-13 with 20 abstentions. UNGA 1952b, 147–148. In other words, while committee members were willing to hear the views of refugee representatives on humanitarian issues, they were unwilling to do so when it came to political matters, notwithstanding their opinion that Shuqayri himself could speak on behalf of the refugees. In a letter to the Chairman of the Committee Izzat Tannous noted that refugees were "grieved and disappointed" at the Committee's "hasty decision which barred the victims in this case to speak face to face to the body which decided their lamentable fate on 29 November 1947" when the Assembly recommended that Palestine be divided into two states. Further noting that refugees were "indebted" to Arab states for their "heroic defence" of the Palestinian cause, Tannous nevertheless emphasized that "the defense case [was] [the refugee] case and that refugees "should participate in the struggle". Tannous 1952, 10. No formal request for participation in discussions on the UNCCP's annual report was made in 1952 after which the Commission, as noted earlier, discontinued its peacemaking efforts. The issue of refugee participation in the Ad Hoc Political Committee grew more contentious in the following years as Israel began to express misgivings and then opposition to such participation. The first request for a hearing of a Palestine Arab delegation, as noted above, was submitted in 1960. Three years later, as discussed below, Arab states requested that the PLO be allowed to take part in the discussions.

[453] In 1956 refugees petitioned the Conference of Arab States on Refugee Affairs calling for the establishment of a region-wide body to represent refugee rights and interests. The following year a special refugee congress was held in Jerusalem. Plascov 1981, 59–60. In a memorandum addressed to the Arab League in 1962, Izzat Tannous, who had since established a Palestine Arab Refugee Office in New York, called for a new strategy. Noting that Palestinians had been unable to take part in talks to resolve the conflict, largely due to the fact that they been unable to establish a state in 1948, and that Arab states had since acted as their surrogate representatives, Tannous called upon Arab states to publicly state that as they were not the principal party to the conflict they had no right to participate in negotiations on behalf of Palestinians. Tannous then called for the creation of a Palestinian delegation, the elaboration of Palestinian demands and an Arab declaration of support. *See*, Tannous 1962. In 1962, Arab states repeated their request (UN Doc. A/SPC/74) for the participation of a Palestine delegation in annual discussion of the refugee issue in the General Assembly's Ad Hoc Political Committee. UNGA 1962, 167–172.

As the following section explains, these efforts would eventually coalesce in a way that provided refugees a new mechanism for the representation of their rights and interests in future negotiations.

ii. Peace Negotiations after the 1967 Arab-Israeli War

The participation of Palestinian refugees in the negotiation of durable solutions also appeared to be a non-issue in the various rounds of talks that followed the 1967 Arab-Israeli war. The second period of negotiations was nevertheless distinct from the first due to growing international recognition that Palestinians would have to have some role in the resolution of the conflict and in the determination of their future. There was less agreement, however, on the nature of such participation. The primary disagreements among the various sponsors and parties to the negotiations revolved around representation and pre-conditions for Palestinian participation. While disputes over representation focused primarily on the role of the Palestine Liberation Organization, debates about pre-conditions for participation centred on Palestinian acceptance of Security Council Resolution 242 as the framework for negotiations, recognition of the state of Israel and renunciation of terrorism and violence as a means to achieve political objectives. The issue of refugee participation in talks to resolve their situation during the second period of negotiations thus appeared to arise primarily in relation to PLO efforts to secure a place at the negotiating table on behalf of the Palestinian people as a whole.[454] Similar to the first period of

[454] It is unclear to what extent refugees themselves may have continued to raise demands for separate or parallel participation in negotiations to resolve their situation. The literature on negotiations during this period is largely silent on the refugee issue with few studies, moreover, on solutions for refugees. The issue of Palestinian participation in talks to resolve their situation also arose in relation to the involvement of Palestinian officials in unofficial or Track II initiatives. These talks which began as early the 1970s arguably contributed to the eventual inclusion of the PLO in official or Track I talks during the third period of negotiations.

negotiations, as explained below, Palestinians were once again unable to take part in negotiations to resolve the conflict including the situation of the millions of refugees displaced since its beginning. The various ideas put forward to facilitate Palestinian participation would nevertheless establish precedent for the eventual inclusion of the PLO during the third period of negotiations.

The conflict over the PLO's inclusion in the various rounds of negotiations that followed the 1967 Arab-Israeli war appeared to first arise in relation to the 1973 Geneva conference, which the United States and the Soviet Union, the two co-sponsors, viewed as a "stepping stone" towards bilateral talks between Israel and its Arab neighbours.[455] The PLO's roots can be traced to the early mobilization of refugees after the 1948 war, the development of mass-based organizations for Palestinian students, trade unions and women, among others, and the emergence of political factions in the camps and communities of exile dedicated to the liberation of and return to historic Palestine.[456] In May 1964 roughly 400 Palestinians gathered in East Jerusalem to draft the PLO's constitution and founding covenant.[457] Established at the behest of the Arab

A number of members of the Palestinian delegation to peace talks in Madrid and Washington in the early 1990s, moreover, took part in these unofficial initiatives. For more detailed discussion *see*, Cohen and Kelman 1977; Gresh 1985, 195–199; Sahliyeh 1986; Abdul Hadi 1987; Kelman 1995; Wanis-St. John 2001, 86–111; and, Mansour 2011, 39.

[455] The issue of Palestinian participation did not appear to arise in the first set of negotiations on the Palestinian refugee issue between Jordan and Israel that followed the 1967 war. Indeed, as discussed below, both states initially viewed PLO participation in negotiations to resolve the conflict as detrimental to their national interests. The ICRC files relating to this brief set of negotiations, as noted earlier, however, have yet to be declassified. Jordan would eventually throw its support behind Arab recognition of the PLO as the sole, legitimate representative of the Palestinian people. It would take another several decades, however, before Israel would agree to enter into direct talks with the PLO.

[456] In January 1964, at its first summit meeting, the Arab League instructed Ahmad Shuqayri, the Palestinian advisor to the Syrian delegation to the UNCCP-led talks, as noted above, to initiate efforts towards the establishment of a Palestinian entity. Following the collapse of the UN-sponsored negotiations, Shuqayri had served as the League's assistant Secretary-General and as the Saudi Ambassador to the United Nations. The League's decision to establish the PLO was partly an expression of Arab solidarity with the Palestinian people and partly an effort to manage or contain the growing political mobilization of Palestinians across the region. For more on the PLO and its origins *see*, Cobban 1984; Brand 1988; Nassar 1991; and, Sayigh 1997.

[457] The Palestinians that took part in the May 1964 conference were nominated from Palestinian communities in the West Bank, Gaza Strip, Jordan, Lebanon, Syria, Egypt, Iraq, Kuwait,

League, it was the launch of armed struggle by Palestinian factions as a means to liberate Palestine, and the subsequent ascension of Palestinian fighters to the leadership of the PLO following the defeat of Arab forces in the 1967 Arab-Israeli war that facilitated widespread mobilization, organization and integration of the Palestinian people under the PLO's umbrella.[458] The establishment of the PLO created new opportunities for Palestinians, the majority of whom were refugees, to exercise their political rights, in particular, through its National Council—a type of "parliament in exile"—and through its popular organizations.[459] Moreover, as discussed below, the PLO provided a new

Libya and Qatar. Shuqayri proclaimed the establishment of the PLO as "a mobilizing leadership of the forces of the Palestine Arab people to wage the battle of liberation, as a shield for the rights and aspirations of the people of Palestine and as a road to victory". PLO 1967. Shuqayri was succeeded in 1967 by Yahya Hammuda, the Liftawi born refugee who, as mentioned earlier, was one of the founding members of the General Refugee Congress that sought a seat at negotiations in UN-sponsored talks that followed the 1948 war.

458 The Palestinian factions that eventually coalesced under the umbrella of the PLO employed armed struggle as a means to liberate their historic homeland from Israeli rule throughout the 1950s and 1960s. It was only in 1968, however, that the PLO affirmed armed struggle "as the only way to liberate Palestine". PLO 1968b, para. 9. Palestinian factions subsequently assumed control of the leadership of the PLO. Yasser Arafat, a founding member and the head of Fatah, succeeded Yahya Hammuda as PLO Chairman, a position he retained until his death in 2004. Dispersed within and beyond the borders of their historic homeland and faced with "conflicting pressures of assimilation and segregation" the PLO and its institutions provided "vital linkages not only between the various Palestinian communities of the diaspora, but also between the diaspora on the one hand and the Palestinians inside the occupied territories on the other". Hilal 1993, 47; and, Hilal 1995, 2. It was the ossification of these institutions, organizations and groups in the 1980s and 1990s, as discussed later, that contributed to the re-emergence of refugee organizations with their concomitant demand for a seat at the negotiating table in talks to resolve the refugee issue during the third period of negotiations.

459 The PLO's fundamental law (Constitution) established an elected Palestine National Council (PNC) as the supreme authority responsible for organization's policies, plans and programs. PLO 1963, para. 5–11; and, PLO 1968a, para. 5–12. In practice, the PLO was unable to secure necessary co-operation for direct elections in all areas of Palestinian exile. Council seats were thus filled on the basis of proportional representation through a "quota system" involving negotiations with all major factions of the organization. The PLO's 1965 Popular Mobilization Law, meanwhile, established procedures for the organization of the Palestinian people on the basis of geography and through their direct participation based on an organizational pyramid comprised from bottom to top of local units, divisions and regions, with a national leadership at the top of the pyramid. Each level included popular assemblies and an elected executive committee, which were supposed to meet on a regular basis. As with the idea of direct elections for the PNC, however, the regional organizing scheme failed to obtain the requisite support of Arab host states and was impossible to implement in the West Bank, East Jerusalem, and Gaza Strip after Israel's 1967 occupation of the territories. The organization of the Palestinian people thus proceeded on a sectoral basis with mass based organizations, like the General Union of Palestinian Students and the General Union of Palestinian Workers, which pre-dated the establishment of the PLO, providing a foundation for such an approach.

mechanism for refugee participation and the representation of their rights and interests in talks to resolve the conflict.

The PLO's procedural and substantive demands in the period leading up to the Geneva conference were not dissimilar from those put forward by the AHC and refugee organizations in the aftermath of the 1948 war. On procedural issues, the PLO emphasized its right—as did the AHC before it—to take part in all decisions relating to the future of Palestine and its people. This was implicit in the PLO's founding covenant which "encharged [the organization] with the movement of the Palestine people in its struggle to liberate its homeland in all liberational, organizational, *political* and financial matters, and in all other needs of the Palestine Question in the Arab and international spheres".[460] [emphasis added] Beginning in 1965 with its participation in the UN General Assembly's Special Political Committee where annual discussions on Palestine focused largely on the issue of refugees, the PLO gradually won the right to take part in various regional and international fora on behalf of the Palestinian people.[461] In the period leading up to Geneva, the PLO's National Council—the organization's *de facto* parliament in exile—affirmed the organization's role as

[460] PLO 1964, para. 25. Similar language is used the PLO's 1968 revised covenant. PLO 1968b, para. 26.

[461] In May 1964, following its establishment in Jerusalem, the PLO's National Council sent a formal letter of notification to the UN Secretary-General. The participation of the PLO in the 1965 meetings of the General Assembly's Special Political Committee, at the request of Arab states, led to significant procedural debate relating to whether the delegation should be received as individuals as per past practice or as a delegation, whether its members would be identified as representatives of the PLO and whether the PLO would appear in name in the committee's records. The controversy reprised in many ways the earlier dispute over the participation of the AHC as the representative of the All Palestine Government. Arab states pointed to a number of committee precedents—e.g., the African National Congress, North and South Korea, Yemen and Israel itself—to support their case for recognition of and reference to the PLO as the representative of the Palestinian people. Israel expressed reservations but did not oppose hearing individuals. *See*, UNGA 1965a; and, UNGA 1965b. In the early 1970s, the PLO was able to take advantage of a number of UN decisions (GA Res. 3102, 28th Sess., 2197th Plenary Mtg., UN Doc. A/RES/3102, Dec. 12, 1973, para. 2; ECOSOC Res. 1835, 56th Sess., 1896th Plenary Mtg., UN Doc. E/RES/1835, May 14, 1974, para. 3; and, ECOSOC Res. 1840, 56th Sess., 1896th Plenary Mtg., UN Doc. E/RES/1840, May 15, 1974, para. 2(b)) inviting national liberation movements to participate in various UN-sponsored conferences.

"the sole legal representative of the Palestinian people", emphasizing that "no one [could] decide the future of Palestine or the Palestinian people without it [and that] any measure, step or agreement ... that originat[ed] from any other quarter [was] illegal".[462]

On substantive issues, the PLO similarly demanded that all Palestinians displaced by the creation of the state of Israel in 1948 and its subsequent occupation of the West Bank, East Jerusalem, and Gaza Strip in 1967 be allowed to return to their homes and places of origin. Implicit in the organization's founding covenant, which called for the liberation of Palestine, the demand was explicit in the covenant's subsequent revision, which affirmed the PLO's role in leading the Palestinian struggle "to retrieve [their] homeland, liberate and *return* to it".[463] [emphasis added] As with the AHC, which had also claimed to represent all Palestinians, the PLO's substantive demands were broader than the refugee issue alone. Foremost among the organization's broader set of demands, and explicit in the organization's founding covenant,

[462] PLO 1972. The congress adopted the communique following Jordan's announcement of a plan that provided for the permanent annexation of the West Bank to Jordan. Jordan 1972. The Council reaffirmed its position a year later in its last meeting prior to the Geneva conference. The issue of representation was addressed specifically in the context of relations between the PLO and Arab states. PLO 1973. The resolution adopted by the council states that "[the PLO] alone speaks on [the Palestinian people's] behalf on all problems related to their destiny, and it alone, through its organizations for struggle, is responsible for everything related to the Palestinian people's right to self-determination". *Ibid*.

[463] PLO 1964, para. 1, 3-4; and, PLO 1968b, para. 26. The right of return is also implicit in the definition of a Palestinian citizen found in both versions of the covenant. The founding covenant states that "[t]he Palestinians are those Arab citizens who were living normally in Palestine up to 1947, whether they remained or were expelled. Every child who was born to a Palestinian parent after this date whether in Palestine or outside is a Palestinian". PLO 1964, para. 6. The following paragraph further states that "Jews of Palestinian origin are considered Palestinians if they are willing to live peacefully and loyally in Palestine". *Ibid*., para. 7. The revised covenant appears regressive in two important ways. First, it limits the acquisition of Palestinian nationality to descendants of male lineage stating that: "Palestinians are those Arab nationals who, until 1947, normally resided in Palestine regardless of whether they were evicted from it or have stayed there. Anyone born, after that date, of *a Palestinian father*—whether inside Palestine or outside it—is also a Palestinian". [emphasis added] PLO 1968b, para. 6. Second, it also places limitations on the acquisition of nationality for Jews stating that: "Jews who had normally resided in Palestine *until the beginning of the Zionist invasion* will be considered Palestinians". [emphasis added] *Ibid.*, para. 7.

which described "the partitioning of Palestine in 1947 and the establishment of Israel [as] illegal", was the right to self-determination, which the PLO hoped to achieve through the liberation of historic Palestine and the establishment of an independent Palestinian state.[464] In the aftermath of the 1967 war, however, which ended with Israel's occupation of the remaining areas of historic Palestine, the PLO increasingly began to envision the exercise of self-determination through the establishment of a secular democratic state. In 1973 the organization's National Council called for "the establishment of the democratic Palestinian society in which *all citizens* [i.e., Arab and Jews] [would] enjoy the right to work and to a decent life, so that they may live in equality, justice and brotherhood, and which [would] be opposed to all kinds of ethnic, racial and religious fanaticism".[465] [emphasis added]

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[464] The founding covenant further states that the UN partition plan and Israel's establishment "were contrary to the wish of the Palestine people and its natural right to its homeland, and in violation of the basic principles embodied in the Charter of the United Nations, foremost among which is the *right to self-determination*". [emphasis added] It also states that once Palestine is liberated the "people of Palestine [will] determine its destiny ... in accordance with its own wishes and free will and choice". PLO 1964, para. 4, 17. The revised covenant, adopted four years later, includes similar language. In a new article on armed struggle the revised covenant states that the Palestinian people "assert their right to normal life in Palestine and to exercise their *right to self-determination* and sovereignty over it". [emphasis added] PLO 1968b, para. 3, 9.

[465] PLO 1973. This transition had begun several years earlier in 1969, the same year that the UN General Assembly adopted its first major resolution on the inalienable rights of the Palestinian people. At its fifth session in February 1969, the PLO's National Council for the first time called for the establishment of a "free democratic society in Palestine encompassing all Palestinians, including Muslims, Christians, and Jews". Muslih 1990, 13–14. "Recognizing that the problem of the Palestine Arab refugees [had] arisen from the denial of their inalienable rights under the Charter of the United Nations and the Universal Declaration of Human Rights" the General Assembly "[r]eaffirm[ed] the inalienable rights of the people of Palestine". GA Res. 2535, 24th Sess., 1827th Plenary Mtg., UN Doc. A/RES/2535B, Dec. 10, 1969, preamble and para. 1. In the years leading up to the Geneva conference, various Palestinian officials had also begun to consider PLO participation in diplomatic efforts to resolve the conflict on the basis of a two-state solution. With Israel opposed to a secular democratic state, "pragmatic" factions within the PLO increasingly accepted the conclusion that it would be difficult if not impossible, at least in the short- to medium-term, to obtain Israel's acquiescence to the idea given the balance of power that weighed against the PLO and its original objectives. Given divisions among Israeli officials about the future status of the 1967 OPT, moreover, some Palestinians argued that in the event of Israel's withdrawal from the territories it had occupied during the war the PLO should be ready for the establishment of a "mini-state" in the West Bank, East Jerusalem, and Gaza Strip. The events of September 1970 ("Black September") in which Jordanian forces effectively drove the PLO out of Jordan, its primary base of operations, led other Palestinians to conclude that the establishment of a state in at least part of historic Palestine

The United States and the Soviet Union, co-sponsors of the talks, both subscribed to the idea that Palestinians should be allowed to take part in decisions relating to their future. This was a change from the deliberate exclusion of Palestinians from the negotiations that followed the 1948 war.[466] The co-sponsors of the Geneva conference nevertheless differed on the nature of Palestinian participation. While Soviet officials supported the PLO's unconditional participation in the talks, US officials appeared reluctant to give the PLO a seat at the negotiating table regardless of whether the organization met the pre-conditions for its participation.[467] The situation was further

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was a necessary stage in the realization of the PLO's objectives since the organization could not rely on Arab states to provide a secure environment from which the organization could freely operate. Finally, the fact that Jordan stayed on the sidelines of the 1973 war led other Palestinians to conclude that Jordan had effectively conceded its claim to and role in the West Bank. Cobban 1984, 60–62. Promoted mostly by senior officials in the Fatah movement, including Farouq Qaddumi, Salah Khalaf and Khaled al-Hassan, the pursuit of this approach would eventually give rise to a significant split in the PLO with factions openly declaring their opposition to the two-state approach and withdrawing from the organization's Executive Committee. The PLO's official position remained intact for the time being, but would take the first of several major steps towards a two-state solution to the conflict following the Geneva conference.

[466] The Arab League's secret recognition of the PLO as the "sole, legitimate representative" of the Palestinian people in the weeks leading up to the conference, moreover, effectively laid to rest the idea that Arab states could represent Palestinians in a surrogate role as they had since the 1948 war. Meeting in Algiers weeks before the Geneva conference, the Arab League "[r]esolv[ed] that the goals of the current phase of the common Arab struggle [included]: (3) Commitment to restoration of the national rights of the Palestinian people, according to the decisions of the Palestine Liberation Organization, as *the sole representative of the Palestinian nation*". [emphasis added] LAS 1973. Jordan, which hosted the largest number of Palestinian refugees and continued to hold out territorial claims to the West Bank, voted in favour of but expressed reservations about the resolution. The League openly endorsed the representative role of the PLO a year later.

[467] The first PLO delegation visited Moscow in 1970 following a visit some two years earlier by PLO Chairman Yasser Arafat who travelled to the Soviet Union as a guest of an official Egyptian delegation. The joint-communique issued during the 1970 visit and those that followed are silent on the issue of PLO participation in talks to resolve the conflict. Soviet officials were nevertheless clear in discussions leading up to Geneva that they favoured the PLO's inclusion. Stein 1999, 127. The Soviet insistence that a joint communique with the United States issued in 1973 explicitly refer to "the legitimate interests of *the Palestinian people*", underscored Soviet support for Palestinian self-determination and by consequence a place at the table in talks to determine the future of the Palestinian people. For more on Soviet policy *see*, Golan 1997. In the period before and after the 1973 Arab-Israeli war, US Secretary of State Henry Kissinger rebuffed private overtures by PLO Chairman Yasser Arafat indicating a willingness to accept Resolution 242 and to recognize Israel. This included a meeting in Rabat in November 1973 between CIA Deputy Director Vernon Walters and "a close associate of Arafat's" followed by a second meeting in March 1974 after which the US severed contacts with the PLO. According to Kissinger, these brief interactions were meant "to gain time and to prevent radical assaults on the early peace process". Cobban 1984, 236, *citing*, Kissinger 1982, 503, 624–629.

complicated by the fact that Israel not only refused to take part in negotiations with the PLO, it also sought and obtained US assurances that the issue of Palestinian participation in future talks would not be raised during the Geneva conference.[468] The adoption of Resolution 242 as the framework for the Geneva conference, meanwhile, created a dilemma for the PLO, which rejected the resolution as a basis for a solution to the conflict due to the fact that it failed to accord with the organization's substantive demands.[469] Caught between external pressures to accept the apparent concessions and risks inherent in accepting Resolution 242 as a means to secure a seat at the negotiating table and the internal pressures arising from its pluralistic membership and its associational roots which necessitated a minimum level of public support for the organization to retain its role as the sole, legitimate representative of the Palestinian people the PLO leadership decided to wait for an invitation to the conference before having to take a stand on the issue.[470] Such an invitation

[468] In a speech to the ruling Labor Party in April 1973, Israeli Prime Minister Golda Meir, affirmed that "[Israel] shall not negotiate with the organizations of murderers and their leaders who endeavour to destroy the State of Israel and to establish instead a Palestinian state on the 'plundered earth'". Israel 1973. US President Nixon tried, unsuccessfully, to convince Israeli officials that mention of Palestinian participation at the conference would not prejudice the outcome of decisions on the matter and that the participation of additional members would, in any case, require agreement of the initial participants. Quandt 2005, 138–140, *citing*, Kissinger 1982, 789. This would become a precedent for future US concessions that would, as noted below, ultimately grant Israel a veto over Palestinian participation in talks to resolve the conflict.

[469] The PLO rejected Resolution 242, in part, because it "ignored the right of the refugees to return to their homes [along with] the existence of the Palestinian people and their right of self-determination". The PLO also rejected the resolution because "as a whole [it was] in the nature of a political declaration of general principles, and [was] more like an expression of international intentions [rather] than the resolution of an executive power". PLO 1967, para. 1–2, 7. *See also*, PLO 1968b. Participation on the basis of Resolution 242 therefore appeared to require major concessions on the rights of return and self-determination or at least a leap of political faith that these issues would be addressed in negotiations in a manner consistent with Palestinian objectives whatever the shortcomings of the resolution. The PLO appeared to subsequently attempt to interpret Resolution 242 in a manner consistent with its substantive demands through the promotion of new UN resolutions and in regional proposals to resolve the conflict. The PLO's approach to Resolution 242 contrasted with the first period of negotiations when refugee organizations appeared willing to accept the existence of the state of Israel provided that refugees were able to return to their homes, lands and villages and obtain citizenship with guarantees for non-discrimination and the protection of minority rights.

[470] This included pressure from Egypt and Jordan which had already accepted Resolution 242 effectively rejecting the "three no's" agreed to by Arab states meeting in Khartoum after the

never arrived. The one day conference attended by Israel, Egypt and Jordan thus proceeded without the participation of or explicit reference to the PLO or the participation of Palestinians in future talks.[471] The subsequent launch of US shuttle diplomacy with the more limited aim of reaching disengagement agreements between Israel and its Arab neighbours, meanwhile, effectively sidelined the Geneva process until the election of a new American administration several years later.

The issue of Palestinian participation in talks to resolve the conflict appeared to be even more difficult to resolve when the US and USSR tried to relaunch the Geneva process. The co-sponsors remained committed to the principle of participation, but continued to differ on the nature of Palestinian involvement in talks to resolve the conflict. With Soviet officials still pressing for an independent role for the PLO, their US counterparts focused on the PLO's inclusion in a joint Arab delegation with the proviso that the organization accept Resolution 242 and recognize the state of Israel.[472] The latter conditions were

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1967 war. In its first summit after the war, the Arab League members agreed to "unite their political efforts at the international and diplomatic level to eliminate the effects of the aggression and to ensure the withdrawal of the aggressive Israeli forces from the Arab lands which have been occupied since the aggression of June 5. This [would] be done within the framework of the main principles by which the Arab States abide, namely, *no peace with Israel*, *no recognition of Israel*, *no negotiations with it*, and insistence on the rights of the Palestinian people in their own country". [emphasis added] LAS 1967. *See also*, Muslih 1976, 132; Cobban 1984, 58; and, Sayigh 1997, 339. Commenting on the "Palestinian dilemma" after the relocation of the PLO from Beirut to Tunis in 1982, Khalidi observed that with "[t]he bulk of Palestinian public opinion ... physically beyond their control [PLO officials were] more dependent than any politicians in the world on what their people [thought]". Khalidi 1985, 100.

[471] The Egyptian and Jordanian representatives both referred to the "legitimate rights" of the Palestinian people. Egypt 1973; and, Jordan 1973. Speaking on behalf of the United States, Secretary of State Henry Kissinger only referred to the "legitimate interests" of the Palestinians, language agreed to several months earlier, as noted above, in a joint communique with the USSR. US 1973. The emphasis on interests rather than rights would become a hallmark of US efforts to mediate a solution to the conflict including the situation of Palestinian refugees. All three parties, however, remained silent in their opening speeches on the absence of Palestinians from talks which aimed to decide their future. It was only the Soviet representative, in his role as co-sponsor, who reiterated that "[i]t goes without saying that the Palestinian problem cannot be considered and decided without the participation of representatives of the Arab people of Palestine". USSR 1973.

[472] A 1975 report by the Brookings Institution, a US-based think-tank, which set out principles and approaches for a comprehensive solution to the conflict, effectively laid out the various

set out in separate memorandum between Israel and the United States. The memorandum further stipulated that "the participation at a subsequent phase of the [Geneva] conference of any possible additional state, group or organization [would] require the agreement of all the initial participants".[473] The most that Israeli officials appeared willing to consider was the inclusion of Palestinians from the West Bank and Gaza Strip in a Jordanian delegation.[474] This approach, as noted in the following section, would eventually provide the first in a series of mechanisms that would facilitate the "graduated" participation of Palestinians in the peacemaking process. In the meantime, the PLO having taken an initial step towards a two-state solution with its plan for the establishment of a Palestinian

options for dealing with the issue of Palestinian participation in future negotiations. A number of contributors to the report were later appointed to senior foreign policy positions in the Carter administration. While questioning whether the PLO represented the Palestinian people, the report's authors suggested three different methods for bringing Palestinians into the peacemaking process: a joint delegation comprised of the PLO and Palestinian leaders from the 1967 OPT; the incorporation of Palestinians within an Arab delegation; and, the direct participation of the PLO through a process of mutual recognition with Israel. A fourth possibility included Palestinian participation in "a more informal and multilateral meeting to assess conditions and to discuss the future" in advance of official negotiations. Brookings Institution 1975. These ideas would comprise the primary mechanisms that would eventually open up a seat at the negotiating table for the PLO in later decades. For US policy *see*, *e.g.*, US 1976. For Soviet policy *see*, *e.g.*, USSR and PLO 1975; USSR 1976; and, USSR and PLO 1977.

[473] Israel and US 1975, para. 2. As Cobban observes, this effectively "implied that the US could not act freely as a mediator in the Arab-Israeli dispute, and gave Israel (as well as the other participants at the Geneva Conference's December 1973 session, of course) a veto for any formula for PLO participation at a reconvened conference". Cobban 1984, 67. US Secretary of State Kissinger, as noted above, put this idea forward several years earlier in an attempt to secure Israel's participation in the first Geneva conference. The US further promised that it would "oppose and, if necessary, vote against any initiative in the Security Council to alter adversely the terms of reference of the Geneva peace conference or to change Resolutions 242 and 338 in ways which are incompatible with their original purpose". Israel and US 1975, para. 4. This appeared to be a direct response to Palestinian and Arab attempts to "re-interpret" the meaning of Resolution 242 or establish new terms for the resolution of the conflict through adoption of new UN resolutions in the years that followed the first Geneva conference. Several months after signing the 1975 memo, the Security Council met to discuss the alternative framework for a solution to the conflict adopted by the General Assembly in November 1974 (GA Res. 3236) along with the participation of the PLO in its implementation. As promised, the US vetoed a draft resolution (UN Doc. S/11940, Jan. 23, 1976) reaffirming the inalienable rights of the Palestinian people and their participation in negotiations to resolve the conflict. While the US pledged to confront initiatives to change Resolution 242 or alter the framework for a solution to the conflict, its pledge to Israel in 1975 and in subsequent memoranda effectively began to reinterpret and alter the framework for the conflict's resolution in a manner consistent with Israel's political objectives.

[474] Israel 1974b; and, Israel 1974a. Israel otherwise continued to refuse to "negotiate with terrorist organizations whose avowed policy [was] to strive for Israel's destruction and whose method [was] terrorist violence". Israel 1976. *See also*, Sayigh 1997, 417.

entity "over every part of Palestinian territory that is liberated", had won growing international recognition of its substantive and procedural demands.[475] This included affirmation of the "inalienable rights of the Palestinian people"—i.e., return and self-determination—and recognition of the PLO as the "sole, legitimate representative of the Palestinian people" along with its right to take part in the activities of the UN General Assembly as an observer.[476] Several months after Israel obtained the above-mentioned US assurances, the Assembly explicitly called for "the invitation of the [PLO], the representative of the Palestinian people, to *participate in all efforts, deliberations and*

[475] In 1974 the PLO's National Council adopted a 10-point programme endorsing the creation of a "national combatant authority on any territory of liberated Palestine". PLO 1974. In an apparent shift in position on Security Council Resolution 242, moreover, the National Council rejected the resolution "only because it 'obscur[ed] the national and pan-Arab rights of [the Palestinian] people, and deal[t] with the cause of [the Palestinian] people as a refugee problem'—in other words, not because it embodied the principle of a peaceful settlement or recognized Israel, but because it did not accommodate the political aspirations of the Palestinians". The Council continued to use similar language in subsequent programmes. Muslih 1990, 20. The reference to a "combatant" authority was an apparent concession to obtain the support of PLO factions opposed to a two-state solution. The program further stated, moreover, that "[a]ny step taken towards liberation [was] a step towards the realization of the [PLO's] strategy of establishing the democratic Palestinian state specified in the resolutions of previous Palestinian National Councils". Ibid., para. 4. The program also noted that "the Palestinian national authority [would] strive to achieve ... the liberation of all Palestinian territory". *Ibid.*, para. 8. These references were later dropped from the Council's political programmes.

[476] In 1974 the UN General Assembly affirmed (GA Res. 3236) the "inalienable rights"—i.e., return and self-determination—of the Palestinian people. Israel and the US voted against the resolution. The US also rejected a draft proposal by the UK, as noted earlier, that attempted to find language inclusive of Resolutions 242 and 3236 despite acknowledging the fact that the Security Council resolution "[d]id not deal with the political aspect of the Palestinian problem". US 1975. Several months later, the Arab League, which had already recognized the PLO as the "sole, legitimate representative of the Palestinian people" in a secret resolution a year earlier, openly endorsed this position at its summit meeting in Rabat. LAS 1974. While Jordan initially indicated that it would not agree to PLO participation in negotiations as the "sole, legitimate representative of the Palestinian people", it subsequently acknowledged that the kingdom would not have a role in negotiations on the future of the West Bank. Quandt 1986, 38–39. In the aftermath of the League's recognition, the UN General Assembly invited the PLO to take part in deliberations on the question of Palestine. GA Res. 3210, 29th Sess., 2268th Plenary Mtg., UN Doc. A/RES/3210, Oct. 14, 1974. A second decision upgraded the PLO's status to that of an observer. GA Res. 3237, 29th Sess., 2296th Plenary Mtg., UN Doc. A/RES/3237, Nov. 22, 1974, paras. 1-3. The PLO was also listed officially, for the first time, in records of the General Assembly's Special Political Committee in the context of the annual debate on Palestinian refugees. The UN Security Council later invited the PLO to participate in debates on the "Situation in the Middle East" on the same level as states. The decision was approved by a vote of nine to three with three abstentions. The United States, the United Kingdom and Costa Rica voted against the decision. UNSC 1975.

conferences on the Middle East which are held under the auspices of the United Nations, on an equal footing with other parties".[477] [emphasis added] Marking its shift towards a diplomatic solution to the conflict, the PLO's National Council affirmed for the first time the organization's "*right to participate*, independently and on an equal footing, in all international conferences, forums and efforts relating to the Palestinian question and the Arab-Zionist conflict".[478] [emphasis added]

In the fall of 1977 the US and USSR issued a joint statement outlining measures for relaunching the Geneva process. In calling for the participation of "the representatives of all parties involved in the conflict including those of *the Palestinian people*", the statement appeared to represent a compromise between the co-sponsors, not referring explicitly to but nevertheless leaving the door open for the participation of the PLO as the sole, legitimate representative of the Palestinian people.[479] [emphasis added] The US further indicated that it was willing to accommodate PLO concerns about the substantive content of Resolution 242 by allowing the organization to state its reservations and by giving assurances that the question of Palestine would be on the negotiation agenda.[480] This approach would be revisited several decades later. With the

[477] GA Res. 3375, 30th Sess., 2399th Plenary Mtg., UN Doc. A/RES/3375, Nov. 10, 1975, para. 2. Israel, the US, Bolivia and the Dominican Republic voted against the resolution. The Assembly's call for the invitation of the PLO in talks to resolve the conflict was reaffirmed in annual resolutions on "The Situation in the Middle East" through the 1980s. The European Economic Community adopted similar language. EEC 1977. The EEC statement nevertheless noted that the "appropriate manner" for such participation would have "to be worked out in consultation between all the parties concerned" effectively maintaining third party veto over the form of Palestinian participation. *Ibid*.

[478] PLO 1977. The period also saw the expansion of PLO missions in western Europe and direct relations with the "developing" world and the opening of talks with Jewish Israelis. In 1977 the PNC for the first time "emphasiz[ed] the importance of relations and coordination with Jewish democratic and progressive forces inside the occupied homeland, and outside, which are fighting against Zionism as an ideology, and against its conduct". *Ibid.*, para. 14. The PNC reaffirmed this position in subsequent sessions. PLO 1983, sec. 1 para. 4. *See also*, Muslih 1990, 23, 29.

[479] US and USSR 1977. The language was similar to that used in the aforementioned EEC statement, referred to above, on the Middle East issued several months earlier.

[480] Quandt 1986, 86, 89; and, Sayigh 1997, 421.

PLO open to participation in a joint Arab delegation, and some officials supportive of a modified version of Resolution 242, the time appeared ripe for a solution that would finally pave the way for the PLO's participation in talks to resolve the conflict.[481] Several days after the release of the joint US-USSR statement, however, American officials initialled a second memorandum on the Geneva process, this time with Israel. The narrow reference, at Israel's request, to participation of the "Palestinian Arabs", rather than the Palestinian people, in discussions on the West Bank and Gaza Strip—i.e., excluding Israel—not only appeared to rule out PLO participation, but also appeared to negate consideration of the organization's substantive demands, foremost being the rights of self-determination and return applicable to all Palestinians, the majority of whom were displaced outside the 1967 OPT.[482] The US and the PLO, meanwhile, were unable to agree on language concerning the latter's acceptance of Resolution 242 with Arab states unable to cobble together a joint delegation.[483] The assessment of the UN Secretary-General, Kurt Waldheim, at the beginning of 1977 (when the US and USSR began to explore possibilities

[481] PLO officials who supported a modified version of Resolution 242 included Farouq Qaddumi and Salah Khalaf who, as noted above, had been among the first to suggest that the PLO push for the establishment of a Palestinian state in the 1967 OPT. PLO Chairman Yasser Arafat, moreover, is reported to have approached US President Jimmy Carter informing him that the PLO would also be willing, if necessary, to relinquish its direct participation in the negotiations, in favour of a PLO-nominated US citizen of Palestinian origin. Sayigh 1997, 421, 423. The nomination of a Palestinian holding citizenship in a second country would be tried once again the 1990s to resolve a dispute over the participation of Palestinians from East Jerusalem in talks on Palestinian autonomy arrangements.

[482] Israel and US 1977. The second working paper was a direct response to Israel's reservations about the joint invitation issued by the US and the USSR. Cobban 1984, 90, *citing*, Dayan 1981, 43. Israel continued to refuse to take part in the Geneva process if the PLO was allowed to participate as an independent delegation. Quandt 1986, 146. In its summit conference that followed, meanwhile, the Arab League "warn[ed] against any attempt to prejudice the legitimacy of the PLO representation of the Palestinian people". LAS 1977.

[483] According to Khaled al-Hassan, the PLO's point person on foreign affairs, the US requested that the organization draft a "positive refusal" of Resolution 242 in place of its "negative refusal". American officials nevertheless rejected the PLO's draft language. In Hassan's words, "[US officials] refused to given any commitment, and they wanted a plain acceptance of 242". Interview with Khaled al-Hassan, *quoted in*, Cobban 1984, 88. *See also*, Quandt 2005, 180–181, 185–186.

for relaunching the Geneva process) that "the difference between the parties on [Palestinian participation] [was] too fundamental to be bridged by procedural devices" proved correct.[484] The launch of bilateral talks between Egypt and Israel, following Egyptian President Anwar Sadat's visit to Jerusalem in November 1977, effectively laid the Geneva process to rest.

The Framework for Peace in the Middle East, agreed to by Egypt and Israel in September 1978, in the context of US-mediated talks at Camp David, and the PLO's reaction to it appeared to confirm the Secretary-General's assessment regarding the limitations of procedural devices in addressing the fundamental conflict over Palestinian participation.[485] The agreement recognized

[484] UNSG 1977. The UN Secretary-General noted that he had "discussed the question of participation at length with all of the parties in an effort to find a means of overcoming this primary obstacle to reconvening the [Geneva] Conference [including] the possibility of the Conference discussing the question of participation as its first order of business ... the possibility of a unified Arab delegation and other procedural solutions". The Secretary-General concluded that a solution to the issue would require "certain changes in the attitude on all sides". The report identified "the attitude of the PLO toward Israel as reflected in the Palestine National Charter (formerly called Covenant), the attitude of Israel toward the PLO and the nature and context of a Palestinian entity in a future settlement [as] among the key issues where adjustment of attitude would have an important bearing on prospects of success of the Peace Conference". *Ibid*., para. 20.

[485] The autonomy provisions in the framework agreement appeared to be inspired, in part, by ideas put forward in the aforementioned Brookings Institution 1975 report on Middle East peace. The report recommended an Israeli withdrawal from the West Bank, East Jerusalem, and Gaza Strip with agreed upon modifications of 1967 borders, the establishment of a Palestinian state or confederation with Jordan and the resettlement of refugees therein. It also recommended a staged process, possibly beginning with an international conference and general agreement on principles, and the possible deferral of sensitive issues like Jerusalem for final status talks leading to a comprehensive solution and the implementation of Security Council Resolution 242. The substantive content of the 1978 Framework for Peace in the Middle East, however, more closely reflected Israel's 1977 autonomy plan for the West Bank and Gaza Strip. Israel 1977b. Prime Minister Begin put forward the plan after it became clear that Egypt would not enter into a separate peace treaty with Israel without a parallel agreement on the Palestinian question. Egypt 1977. The Begin plan essentially offered Palestinians in the West Bank and Gaza Strip limited control over their lives while Israel would maintain full control over the land itself, both in terms of its use and in relation to the exit and entry to and movement within the 1967 OPT. Provision for the election of an "Administrative Council", moreover, effectively aimed to create an alternative to the PLO. Heller 1979. Taking these limitations into consideration, Fayez Sayegh, an independent scholar and founder of the PLO's Research Center, observed that at most "a fraction of the Palestinian people (under one-third of the whole) [might] attain a fraction of its rights (not including its inalienable right to self-determination and statehood) in a fraction of its homeland (less than one-fifth of the area of the whole)" under the plan. Sayegh 1979, 40. It was these same concerns that led many Palestinians, including refugees, to question the legitimacy of the Camp David-inspired agreement reached between the PLO and Israel some 15 years later.

the principle of participation, but imposed several major limitations on the inclusion of Palestinians in future talks.[486] The agreement recognized that "representatives of *the Palestinian people*", along with Egypt, Israel and Jordan, "should participate in negotiations on the resolution of the Palestinian problem in all its aspects".[487] [emphasis added] This appeared to favour the inclusion of the PLO, broadly recognized as the sole, legitimate representative of the Palestinian people, much like the aforementioned invitation to reconvene the Geneva process. In a letter appended to the agreement, however, Israel clarified in terms similar to those used in its 1977 memorandum of understanding with the US that the term "Palestinian people" referred to "Palestinian Arabs" thus limiting Palestinian participation, in its view, to residents of the West Bank and Gaza Strip.[488] The agreement provided for the participation of "Palestinians from the West Bank and Gaza" within Egyptian and/or Jordanian delegations on negotiations to establish an elected self-governing authority in the West Bank and Gaza Strip. The inclusion of "other Palestinians", however, would have to be "mutually agreed" thus preserving the veto over Palestinian participation first elaborated in Israel's 1975 memorandum of understanding with the US.[489] Palestinian participation in negotiations to

[486] The US, which mediated the talks, continued to support Palestinian participation, in principle, but remained silent on the role of the PLO. In advance of the Camp David summit, President Carter held that the process must "enable the Palestinians to participate in the determination of their own future". US 1978b. The US ambassador to the negotiations further observed that "[a]ny solution, if it [was] to be viable and lasting, [would have to] be based ultimately on the consent of the governed". US 1978a. *See also*, Quandt 2005, 194. This position was similar to that adopted by European states. *See*, EEC 1978, para. 3. For further discussion of procedural limitations *see*, Sayegh 1979, 7–8.

[487] Framework for Peace in the Middle East, *supra* n. 383, Sec. A., para. 1. In this respect, the text of the agreement appeared to depart from Israel's 1977 proposal, referred to above, in which Palestinian participation was explicitly limited to residents of the 1967 OPT. Rabinovich 1981, 168.

[488] Israel 1978b. Begin used the same term in November 1977 when he invited King Hussein to Israel to discuss the future of the West Bank. Israel 1977a.

[489] Framework for Peace in the Middle East, *supra* n. 383, Sec. A., para. 1(b). This limitation or veto on the composition of a Palestinian delegation in talks to resolve the conflict can be traced back to the London conferences of the late 1930s when British officials, as noted earlier, asserted a prerogative to deny seating to Palestinians deemed to be hostile to British

decide the future of the 1967 OPT, moreover, would be limited to "the elected representatives of the inhabitants of the West Bank and Gaza".[490] The agreement further stipulated that any agreement reached on the future status of the West Bank and Gaza Strip would be put to a vote by the elected representatives of the Palestinian inhabitants of the territories, rather than by the inhabitants themselves.[491] This meant that the vast majority of Palestinians, in particular those who resided outside the 1967 OPT, would be excluded from taking part in decisions which affected the Palestinian people as a whole. On substantive issues, the framework agreement called for a solution to "the Palestinian problem *in all its aspects*", but was silent on the rights of return and self-determination leaving these issues to be decided in future negotiations between the parties.[492] The procedural and substantive approaches set out in

interests.

[490] *Ibid.*, Sec. A., para. 1(c). In the autonomy talks that followed two issues relating to the holding of elections for a Palestinian council caused significant disagreement and would resurface in peace talks between Israel and the Palestinians more than a decade later. During the fourth round of talks, US mediators reportedly suggested that the franchise should be extended to Palestinian residents of East Jerusalem and "other Palestinians", presumably those outside the West Bank and Gaza Strip. Israeli officials opposed both suggestions. Rabinovich 1981, 180–181. In the context of back-channel talks between Israel and the PLO which led to the 1993 Declaration of Principles on Interim Self-Government arrangements, as detailed below, the parties apparently reached a "compromise" on the issue under which Palestinian elections would be held in East Jerusalem while 1967 refugees from the OPT would be "temporarily" excluded until the two sides reached agreement on modalities for their admission to the West Bank and Gaza Strip.

[491] *Ibid*. The provision was also a step back from previous decades in which Palestinians, Arab states, the UK, Israel and the United Nations, as noted earlier, had all put forward the idea in the first years following the end of the 1948 war for the holding of a plebiscite to determine the future of the West Bank and Gaza Strip and/or historic Palestine as a whole. It also comprised the third major time that existing mechanisms and procedures for the exercise of self-determination had been set aside, having been previously deemed inappropriate in the context of the conflict over historic Palestine by the League of Nations and the United Nations, in favour of other procedures. The 1978 Framework for Peace in the Middle East, moreover, clearly established negotiations as the primary if not sole mechanism to resolve the conflict over self-determination.

[492] The rights of return and self-determination may be inferred from provisions which state that a negotiated solution must lead to "the resolution of the Palestinian problem in all its aspects" and "recognize the legitimate rights of the Palestinian people and their just requirements". Framework for Peace in the Middle East, *supra* n. 383, Sec. A, para. 1, preamble and sub-paragraph (c). These terms are, nevertheless, ambiguous leaving their meaning open to the interpretation of the parties themselves. Indeed, as Sayegh pointed out, with reference to the term "legitimate rights", the terms in themselves have no legal meaning. Sayegh 1979, 27–31. On the situation of refugees, the agreement established negotiating fora but did not elaborate rights and principles for the resolution of the refugee issue. At most, the agreement

the framework agreement would become a model for the third period of negotiations.

The PLO rejected the framework agreement as incompatible with the substantive and procedural rights and demands of the Palestinian people. In its first session after the 1978 Camp David summit, the PLO's National Council criticized the framework agreement for "abrogating the inalienable right of the Palestinian Arab people to their homeland, Palestine, as well as their right to return to it and their right to self-determination, [and overriding] the PLO, the leader of [Palestinian] people's national struggle".[493] The Council pledged to "defend the PLO and adhere to it as the sole legitimate representative of [the Palestinian] people, as leader of their national struggle and as their spokesman in all Arab and international forums; resist all attempts to harm, override or circumvent the PLO, or to create alternatives or partners to it as regards representation of [the] Palestinian people".[494] Two years later as Egypt and

appeared to imply that 1967 refugees would be allowed to return to their places of origin in the West Bank and Gaza Strip subject to Israeli approval and security considerations. Framework for Peace in the Middle East, *supra* n. 383, Sec. A, paras. 3, 4. Israel turned down an Egyptian proposal that provided for negotiations on "[m]odalities for the *implementation of relevant UN resolutions* on Palestinian refugees". [emphasis added] Egypt 1978; and, Israel 1978a.

493 PLO 1979. The Council concluded that it was "obliged to reject this conspiratorial scheme, to confront it and defend [the Palestinian] people and their inalienable right to their homeland, Palestine". *See also*, PLO 1978b, para. 5; and, PLO 1978a, para. 7. The PLO also rejected the idea of establishing a quadripartite committee to discuss modalities for the admission of 1967 refugees to the West Bank and Gaza Strip which Palestinian officials felt "transformed the right of return into a selective privilege". UN 1978. A small number of Palestinians in the 1967 OPT who were on "good terms" with Israel and who supported Sadat's policies initially supported the autonomy plan. Heller 1979, 114. PLO Chairman Yasser Arafat is also reported to have sent the US a secret note after Camp David to ascertain if the autonomy provisions provided some scope for further discussion. Quandt 1986, 265.

494 *Ibid.* The PLO viewed agreement provisions for elections in the 1967 OPT as an explicit attempt to create an alternative to the PLO. Indeed, Israel had already tried (and failed) to facilitate the emergence of an alternative leadership through municipal elections in the West Bank in the years leading up to Camp David and would re-introduce this idea once again in the 1980s. Israel did not hold municipal elections in the Gaza Strip arguing that unlike the West Bank there was no pre-existing legislation providing for and therefore requiring Israel as an occupying or administering power, in its terms, to hold municipal elections. Drori 1974; and, Drori 1977. Palestinian residents of East Jerusalem were given the opportunity to take part in municipal elections following Israel's *de facto* annexation of the city, however, the majority boycotted the elections to protest Israel's occupation and "unification" of the city after the 1967 war. Benvenisti 1976, 42; and, Dumper 1997, 48. In contrast to Palestinian inhabitants of the 1967 OPT, Jewish Israelis who settled in the occupied Palestinian

Israel engaged in talks on Palestinian autonomy in the West Bank and Gaza Strip, the PNC affirmed that "no country [had] the right to allege that it represent[ed] the Palestinian people or to negotiate the Palestinian problems—whether this refer[ed] to the Palestinian soil, people or rights".[495] The Council further declared that any decisions or agreements reached in the absence of the PLO and/or on the basis of Camp David and Security Council Resolution 242 were "null and void and [had] no legal standing".[496] The talks eventually collapsed over irreconcilable differences regarding the substance and objectives of the autonomy arrangements.

The issue of Palestinian participation continued to complicate efforts to facilitate a negotiated solution to the conflict in the decade that followed the Camp David agreement. In the early 1980s the US introduced a new pre-condition for Palestinian participation. In addition to the acceptance of Resolution 242 and recognition of Israel, the US also required the PLO to renounce terrorism and the use of violence as means of achieving its political objectives.[497] Still opposed to giving the PLO a seat at the negotiating table, Israel introduced a legislative amendment criminalizing contact between Israeli

territories were permitted to take part in Israeli elections. Rubenstein 1988, 69. The League of Arab States (LAS 1978; and, LAS 1979) and the UN General Assembly (GA Res. 33/28(A), 33rd Sess., 73rd Plenary Mtg., UN Doc. A/RES/33/28(A), Dec. 7, 1978, para. 4; and, GA Res. 35/207, 35th Sess., 98th Plenary Mtg., UN Doc. A/RES/35/207, Dec. 16, 1980, para. 3) similarly condemned the framework agreement as incompatible with the inalienable rights of the Palestinian people, including their right to take part in decisions relating to their future. The General Assembly, moreover, continued to affirm the importance of PLO participation throughout the 1980s.

[495] PLO 1981.

[496] *Ibid.*

[497] Cobban 1984, 110. The US also tried, unsuccessfully, to downgrade the PLO's status in Security Council debates on the conflict. In 1982 US Ambassador to the UN Jeane Kirkpatrick opposed hearing the PLO under provisional rule 37, which conferred upon the PLO the same rights as states, rather than rule 39 relating to NGOs. The debate effectively reprised the earlier controversy over whether the AHC should be allowed to participate in negotiations as the representative of the Palestinian people or as an NGO. The US position was defeated by a vote of 11 to one with three abstentions. UNSC 1982. The US nevertheless continued to support Palestinian participation in talks to resolve the conflict, within the Camp David Framework, focusing, in particular, on the idea of a joint Jordanian-Palestinian delegation. US 1982a. *See also*, US 1982b; and, US 1988b.

citizens and members of the organization.[498] The PLO, meanwhile, continued to gather support for its inclusion in future talks and appeared increasingly flexible in terms of meeting the pre-conditions for its participation.[499] The UN General Assembly described the PLO's participation in future peace talks as "indispensable" emphasizing that "no State [had] the right to undertake any actions, measures or negotiations that could affect the future of the Palestinian people, its inalienable rights and the occupied Palestinian territories without the participation of the [PLO] on an equal footing, in accordance with the relevant United Nations resolutions, and reject[ed] all such actions, measures and negotiations".[500]

The 1980s saw three major initiatives to restart negotiations all of which attempted to address the problem of Palestinian participation in talks to resolve the conflict. In 1985, Jordan and the PLO signed an accord which called for "comprehensive peace as established in United Nations and Security Council resolutions"—an implicit recognition of Resolution 242 and the state of Israel—and the participation in negotiations of the PLO "within a joint delegation (joint

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[498] The 1986 amendment to the Prevention of Terrorism Ordinance, Sept. 23, 1948, followed previous changes to the law which aimed to contain the rise in political activism in the 1967 OPT after the signing of the 1978 framework agreement. A number of unofficial Israeli proposals also raised the prospect of PLO participation in future talks. One proposal recognized that "[t]he sole official representative of the Palestinian people in any settlement [was] the PLO without whose participation there [was] no point in reaching any settlement". Amirav 1987, para. 3 and 4. Another suggested "Israel and the PLO announce reciprocal political recognition between the Israeli and Palestinian people" thus opening the way for the organization's participation in negotiations. Israel 1988a, para. 1. Officially, however, Israel remained opposed to talks with the PLO, but open to the inclusion of Palestinians in a Jordanian delegation. Jordan and Israel 1987, para. 3, 4; and, Israel 1988b, para. 1.2.4.

[499] The European Economic Community, for example, having previously limited its position, as noted above, to a more general statement on Palestinian participation began to underscore the importance of "associating" the PLO with the negotiation process. EEC 1980, para. 7. By the end of the decade, the ECC affirmed that the PLO "should participate" in talks to resolve the conflict. EEC 1989, para. 1.

[500] GA Res. 35/169A and B, 35th Sess., 95th Plenary Mtg., UN Doc. A/RES/35/169A and B, Dec. 15, 1980, paras. 3; and, GA Res. 35/207, 35th Sess., 98th Plenary Mtg., Dec. 16, 1980, para. 3. These provisions were reaffirmed through 1989 with the exception of the latter phrase rejecting all such agreements which was dropped from the text of subsequent resolutions after 1982 and the collapse of the autonomy negotiations.

Jordanian-Palestinian delegation)".[501] Palestinian officials also drafted several statements which aimed to meet US demands on the renunciation of terrorism and use of violence.[502] Differences of opinion between the PLO and Jordan, disagreements between the PLO and the US and divisions within the organization ultimately contributed to the initiative's collapse.[503] The PLO's National Council subsequently rejected the "deputization, procuration, and sharing of participation in Palestinian representation ... [r]ejecting and resisting any alternatives to the PLO".[504] The Council also reiterated its adherence to "the

[501] Jordan and PLO 1985. The two sides had attempted, but failed to reach agreement several years earlier. The PLO's apparent "flexibility" in trying to meet the conditions for its participation in negotiations to resolve the conflict is illustrated by the joint accord's language on refugees. The 1985 Accord called for a solution to the issue "in accordance with UN resolutions" rather than elaborating the specific rights of refugees as done in the political statements and programmes of action adopted by the organization's National Council. At the same time, however, the Accord also attempted to clarify the meaning of Resolution 242 in accordance with some of the PLO's other substantive demands by calling for "total withdrawal [of Israeli forces] from the territories occupied in 1967" and by affirming the "[r]ight of self-determination for the Palestinian people". These contrasting provisions on refugees and self-determination appeared to reflect a growing emphasis on Palestinian statebuilding in the 1967 OPT as opposed to finding solutions for the refugees, in particular, those who originated from areas inside the state of Israel. As discussed in the following section, Palestinian concerns about this approach would contribute to the rise of a popular refugee movement during the third period of negotiations. In an effort to win US support for the idea, the PLO also offered American officials a role in choosing the members of the Palestinian delegation. For the PLO, the dialogue with Jordan, which began as early as 1977, aimed to prevent the latter's participation in the Camp David process including the autonomy talks that followed and secure a base from which it could transfer funds to the 1967 OPT to counter Israel's efforts to weaken national forces aligned with the organization. Sayigh 1997, 439. For its part, Jordan's decision to enter into talks with the PLO, after having forced the organization out of the country a decade earlier, stemmed in part from alarm over the renewal of Israeli support for a solution to the Palestinian question in Jordan—i.e., "Jordan is Palestine". *Ibid*., 546.

[502] PLO 1985. The statement reaffirmed a 1974 declaration "condemn[ing] all operations outside [Palestine] and all forms of terrorism", called upon the international community "to force Israel to stop all of its acts of terrorism both inside and outside [Palestine]" and reaffirmed "the right of the Palestinian people to resist the Israeli occupation of its land by all available means". Four years earlier, the UN General Assembly had "[a]ffirm[ed] the legitimacy of the struggle of peoples under colonial and alien domination recognized as being entitled to the right of self-determination to restore to themselves that right by any means at their disposal". The Assembly further "[c]ondemn[ed] those Governments that deny the right to self-determination of peoples recognized as being entitled to it, especially of the peoples of southern Africa and Palestine". GA Res. 2649, 25th Sess., 1915th Plenary Mtg., UN Doc. A/RES/2649, Nov. 30, 1970, paras. 1, 5. The PLO's National Council had similarly condemned terrorism at its session in Algiers in 1983, but also called for the "intensification of armed struggle" in order to realize the inalienable rights of the Palestinian people. PLO 1983.

[503] Nassar 1991, 134; Sayigh 1997, 547, 578; and, Quandt 2005, 251, 261.

[504] PLO 1987. The PNC had issued a similar statement following the collapse of the first round of talks between the PLO and Jordan in 1983 emphasizing the organization's "adherence to independent Palestinian national decision-making, protecting it and resisting the pressures

Palestinian people's national inalienable rights to repatriation, self-determination and establishment of an independent state on Palestinian national soil, whose capital is Jerusalem".[505] For its part, Jordan eventually decided to fully disengage and sever all legal ties with the West Bank, effectively signalling that it would no longer seek to act as a proxy representative of the Palestinian people.

In 1988 the PLO decided to meet all three pre-conditions for its participation in talks to resolve the conflict. Declaring the establishment of an independent Palestinian state in the West Bank and Gaza Strip with its capital in East Jerusalem, the PLO agreed to accept Resolution 242, recognize Israel and renounce terrorism and the use of violence.[506] The timing of the move aimed, in part, to capitalize on the solidarity and political momentum engendered by the Palestinian uprising in the 1967 OPT that had begun less than a year earlier.[507] The decision also appeared to comprise a gamble in

aimed against this independence, from whatever quarter they may come". The Council also rejected "all the plans which do not include these rights, particularly the Camp David accords, the autonomy plan, the Reagan initiative and all plans that do not recognize [Palestinian] national inalienable rights". PLO 1983. The PNC reiterated these positions at its following session rejecting "all plans aimed at encroaching upon the right of the PLO as sole legitimate representative of the Palestinian people in any form such as power-of-attorney or agent or participant in the right of representation". PLO 1984.

505 PLO 1987. The PNC also affirmed its "[c]ontinued rejection of the Security Council Resolution 242, which [was] not considered a good basis for the settlement of the Palestine Question because it [dealt] with it as if it were an issue of refugees and ignore[d] the Palestinian people's national inalienable rights". The Council also continued to "[reject] and [resist] all solutions and plans aimed at liquidating [the] Palestine question, including the Camp David accords, Reagan's autonomy plan and functional partition in all its forms".

506 PLO 1988b; PLO 1988a; and, PLO 1988d. Marking the apparent shift in the PLO's position towards Israel in the period leading up to its declaration of independence, the organization's National Council reiterated its call for the "[d]evelop[ment] [of] relations with *Israeli democratic forces* supporting the Palestinian people's struggle against Israeli occupation and expansion and the inalienable national rights of [the Palestinian] people ...". PLO 1987, sec. III, para. 8. The PLO subsequently clarified its shift in position in a meeting with a delegation of Jewish Americans and in a speech delivered by Chairman Yasser Arafat and crafted with the advice of the United States. PLO 1988e; and, PLO 1988c. In December 1988, the UN General Assembly decided that "Palestine" rather than the "Palestine Liberation Organization" should be used in the UN system. GA Res. 43/177, 43rd Sess., 82nd Plenary Mtg., UN Doc. A/RES/43/177, Dec. 15, 1988, para. 3.

507 The PLO also aimed to reassert its leadership position, which some in the organization viewed as being threatened by popular mobilization and the emergence of Palestinian leaders in the 1967 OPT, a concern that was perhaps exacerbated by the exclusion of the PLO from talks to resolve the conflict and by Israeli efforts to identify and cultivate a

which the PLO sought to redefine the framework for negotiations in the context of its acceptance of Resolution 242 with the prospect of reintroducing its substantive demands once it had obtained a seat at the negotiating table.[508] The PLO agreed, for example, to accept Resolution 242 within the context of "international legitimacy", terminology used by the organization to encompass international law and the broad range of resolutions on the question of Palestine.[509] The PLO's recognition of the state of Israel, moreover, was framed within the context of the UN's 1947 partition plan (Resolution 181) under which the Jewish and Arab states to be set up under the plan were required to accord all habitual residents citizenship and equal rights without reference to ethnicity or race.[510] Finally, having renounced terrorism, the PLO reserved the right to

leadership alternative to the organization.

[508] The decision marked a significant departure from the PLO's more cautious approach 15 years earlier when officials had decided to wait for an invitation to the Geneva conference rather than accept Resolution 242 as the basis for negotiations to resolve the conflict. The PLO's position towards Resolution 242 had thus undergone three major shifts: first, the organization rejected the resolution outright as a basis for a solution to the conflict; second, the PLO attempted to alter the resolution's content through the adoption of a new resolution; and, finally, the PLO accepted Resolution 242 in the apparent hope that once having secured a seat at the negotiating table it would be able to alter its content through the negotiating process.

[509] The political statement adopted by the PLO's National Council in relation to its peace initiative explicitly referred to "the United Nations Charter, the principles and provisions of international legality, the norms of international law, and the resolutions of the United Nations ... and the resolutions of the Arab summits, in such a manner that safeguards the Palestinian Arab people’s rights to return, to self-determination, and the establishment of their independent national state on their national soil, and that institutes arrangements for the security and peace of all states in the region". PLO 1988a. The Palestinian delegation taking part in bilateral talks on autonomy in the early 1990s would attempt to secure an agreement based on a similar framework, but were unable to obtain Israeli acquiescence to such a framework. It was the absence of such a framework from the agreement reached in back-channel talks between the PLO and Israel in 1993, as noted in the following section, that raised concerns among Palestinians, including refugees, about the representation of their rights and interests in the negotiating process.

[510] This provision contributed to considerable confusion in the years and decades that followed. In a meeting between the PLO and a delegation of Jewish Americans, Palestinian officials clarified that in endorsing a two-state solution, the National Council supported "a solution to the Palestinian refugee problem in accordance with international law and practices and relevant UN resolutions (including right of return or compensation)". PLO 1988e. The PLO Observer to the United Nations had made a similar, but more detailed statement on refugee rights more than a decade earlier in the context of the development of recommendations to facilitate the realization of the inalienable rights of the Palestinian people. UNCEIRPP 1976c. Some Israeli officials and academics, nevertheless appeared to interpret the PLO's endorsement of a two-state solution within the context of Resolution 181, which recommended the establishment a Jewish state, as recognition of Israel's self-definition as a Jewish state and acknowledgement that the refugee issue would have to be resolved

resist Israel's denial of the inalienable rights of the Palestinian people.[511] It was perhaps for these reasons, as well as its opposition to the PLO's revised objectives, that Israel continued to oppose direct talks with the PLO notwithstanding US recognition that the PLO had met each of the three pre-conditions for the organization's participation.[512] While the PLO's compliance with each of the three pre-conditions opened the door for a US-PLO dialogue, it nevertheless failed to open the way for the organization's participation in talks to resolve the conflict.

Israel's reintroduction of a plan for West Bank/Gaza Strip elections in the spring of 1989 was the anti-thesis of the PLO's overture. Put forward in response to a US request for new ideas to advance a solution to the conflict, the Israeli election plan became the basis for US-led efforts to relaunch negotiations at the end of the decade.[513] It also revived an idea central to Israel's 1977

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primarily through resettlement since the return of the refugees, in their view, would undermine Israel's Jewish character. Notwithstanding the PLO's aforementioned clarification, this comprised an overly-literal construction of the meaning a Jewish state as set forth in the UN partition plan given its provisions on citizenship, minority rights and constitutional protection of fundamental human rights. The situation was further complicated, however, by statements from some Palestinian officials (e.g., Faysal Husayni, Salah Khalaf and Nabil Shaath) who in the years following the 1988 declaration suggested that in exchange for the establishment of a Palestinian state in the 1967 OPT few refugees would be able to return to their homes and places of origin inside Israel. Husayni 1989, 11-12; Khalaf 1990, 100; and, Shaath 1992, 41.

511 The PLO's National Council "renew[ed] its commitment to United Nations resolutions that affirm the right of peoples to resist foreign occupation, colonialism, and racial discrimination, and their right to struggle for their independence ..." PLO 1988a. *See also*, PLO 1988d.

512 Israeli Prime Minister Yitzhak Shamir described the PLO's peace plan as "a deceptive propaganda exercise". Israel 1988d. The day after the PLO issued a clarification of its commitment to each of the three pre-conditions, drafted with US assistance, Israel continued to describe the PLO initiative as a "monumental act of deception". Israel 1988c. The following day, however, the US agreed to enter into a dialogue with the PLO. US 1988a. In a 1988 statement PLO Advisor Bassem Abu Sherif noted that if the international community still doubted whether the PLO represented the Palestinian people, it should organize a plebiscite. Abu Sherif 1988, para. 43.

513 Quandt 2005, 296. A 1988 report by the Washington Institute for Near East Policy, a pro-Israel think-tank, similarly suggested that the US "encourage the emergence of an alternative Palestinian leadership willing to co-exist with Israel". Discussion of the Palestinian question, it suggested, should take place within the context of Jordanian-Israeli negotiations. WINEP 1988. Drafted by institute staff who would later become influential members of the first Bush administration, the authors hoped that the report would have an impact on US policy similar to the aforementioned 1975 report by the Brookings Institution. A second Brookings report, meanwhile (also published in 1988), recommended that "Palestinians should be represented in any negotiations with Israel by spokesmen of their own choosing, whether in a joint

autonomy plan and the Framework for Peace in the Middle East agreed to by Egypt and Israel a year later. At the heart of the plan was Israel's ongoing refusal to enter into talks with the PLO or recognize the organization as the sole, legitimate representative of the Palestinian people.[514] The holding of elections in the 1967 OPT according to the plan thus aimed to "permit the development of an authentic representation that [was] not self-appointed or appointed from the outside [i.e., the PLO]" in order to "locate legitimate representatives of the Palestinian population" and "bring about a process of political negotiations".[515] Israel further demanded that any talks about its plan only include those Palestinians "satisfactory" to Israel and that the US "stand by Israel in the event that another party to the dialogue deviat[ed] from what [had] been agreed upon" between the two parties.[516] These twin demands first set out

Jordanian-Palestinian delegation or in some other configuration". The report further recommended that the US "support free elections to municipal councils as an essential step that would allow Palestinians to select their own leaders for purposes of self-government and as possible participants in the Palestinian negotiating delegation". Brookings Institution 1988, 21–22. Israel would adopt a similar approach to elections for a self-governing Palestinian authority during initial negotiations in the early 1990s. Worded differently the recommendations on Palestinian participation in the two reports essentially reflected the Camp David "consensus". The authors of the Brookings report also recognized, however, that "Palestinians [were] unlikely to come forward to negotiate with Israel without having the implicit or explicit endorsement of the Palestine Liberation Organization (PLO)". *Ibid.* Some of the authors, moreover, criticized the report for having failed "to go far enough and say clearly that the PLO must be involved in peace negotiations with Israel [and that] the Palestinian refugees have the right to return to their homes or to be compensated". Moughrabi and Khalidi 1988, 187–188. *See also*, Hallaj 1988.

514 Israel 1989c, sec. 4. *See also*, Israel 1989b, para. 10.

515 Israel 1989c, sec. 4. Drawing upon language from the 1978 Framework for Peace in the Middle East, the second version of the plan explicitly provided for the participation of the "elected representatives of the Palestinian Arab inhabitants of Judea, Samaria and the Gaza district", alongside Jordan and Egypt, as requested, in both interim and final status talks on the future of the 1967 OPT. Israel 1989b, para. 9–10.

516 Israel 1989a, para. 2. The demands followed an attempt by the US to advance Israel's election plan after Israeli officials rejected an Egyptian counter proposal. US 1989. The Egyptian proposal included guarantees for Israeli acceptance of the election results, an apparent attempt to prevent Israel's dismissal of elected representatives and cancellation of future elections as had happened after Palestinian nationalist candidates swept municipal elections in 1976; the presence of international observers, an issue that would arise again during the third period of negotiations; immunity for elected representatives (Israel had previously deposed and deported nationalist mayors elected in 1976 municipal elections in the West Bank); the withdrawal of Israeli forces from voting stations; guarantees for campaign freedoms; restrictions on Israeli movement in the 1967 OPT on election day; the participation of Palestinian residents from East Jerusalem, which Israel had rejected during autonomy talks with Egypt in the early 1980s; and, an acknowledgment of Palestinian

some 15 year earlier essentially sought to preserve Israel's veto over the composition of a Palestinian delegation and the substantive content of the framework for negotiations. Palestinians argued conversely that there should be no restrictions on the composition of their delegation, rejecting Israel's plan as an attempt "to divide [the Palestinian people] into 'inside' and 'outside' Palestinians", and no pre-conditions as to the substance of the talks between the two sides.[517]

The second period of negotiations thus came to an end without a solution to the issue of Palestinian participation in talks to resolve the conflict. In contrast to the nearly two decades of diplomatic stalemate which followed the collapse of peace talks after the 1948 war, however, the second period of negotiations was followed almost immediately by a decade of intensive efforts to facilitate a negotiated solution to the long-standing conflict. The ideas put forward for the inclusion of Palestinians in decisions relating to their future during the second period of negotiations, as noted earlier, would comprise key elements of a solution to the issue during the third period of negotiations. The end of the second period of negotiations was nonetheless similar to the first in that the refugee issue increasingly appeared to be pushed to the sidelines. While this had occurred in the past largely through the international community's treatment of the refugee issue as a humanitarian problem, it was the PLO that increasingly appeared to be complicit in the marginalization of the refugee issue towards the end of the second period of negotiations through its efforts to

political rights. Egypt 1989.

[517] PLO 1989c; and, PLO 1989a. They also held that the dialogue and a future international conference should be conducted under the auspices of the United Nations with the participation of the five permanent Security Council members and on the basis of international law and relevant UN resolutions. *See also*, PLO 1988f; and, PLO 1989b. Several Palestinian figures in the 1967 OPT, including Faysal Husseini, Ziad Abu Zayyad, Sari Nusseibeh and Jamil Tarifi, discussed the election proposal but stopped after PLO rejected the plan. Sayigh 1997, 638.

secure a place at the negotiating table and recognition of a Palestinian state in the West Bank, East Jerusalem, and Gaza Strip.[518] Despite widespread support among Palestinians who continued to view the PLO as their sole, legitimate representative, questions began to arise regarding the organization's willingness if not ability to represent the interests of the Palestinian people as a whole including those who had been displaced from their homes, lands and villages since the beginning of the conflict. Related, in part, to differences of opinion about the PLO's endorsement of a two-state solution and uncertainty about its implications for refugees, the majority of whom originated from areas inside Israel, criticism of the organization also focused on the shortcomings if not failings of the PLO's representative structures after more than two and a half decades of struggle.[519] These concerns would come to the fore during the next

[518] This can be attributed, in part, to the PLO's primary focus on self-determination and the establishment of an independent Palestinian state in the 1967 OPT. It can also be ascribed, however, to the organization's failure to adequately follow-up on its explanation of how the refugee issue could be resolved within the context of a two-state solution to the conflict. In a detailed account to the UN Committee on the Inalienable Rights of the Palestinian People in 1976, the PLO Observer explained that "[b]y the right of return [the PLO] [meant] that Palestinians should return to their homes and property—to their homeland—as of right and not on sufferance. By the right of return [the PLO meant] that the right to choose between returning and not returning is a right vested in each Palestinian, and is not subject to curtailment by any authority". UNCEIRPP 1976a; and, UNCEIRPP 1976c. The schematic details of a plan for the phased return of refugees were subsequently set out in the Committee's recommendations for a two-state solution to the conflict. UNCEIRPP 1976b. The PLO did not appear to undertake any further work to develop and promote the recommendations. Statements by various Palestinian officials in the late 1980s and early 1990s, as noted earlier, suggesting that a solution to the refugee issue would likely have to be found within the context of a Palestinian state not only created confusion about the organization's position on the refugee issue, but also appeared to undermine trust between the PLO and the people it sought to represent.

[519] The shortcomings or failings of the PLO's representative structures can be ascribed to at least two major problems. First, the adoption of a "quota system", which enabled the PLO to fill Council seats in the absence of an environment conducive to direct elections, empowered the various political factions that made up the PLO at the expense of Palestinian representatives from the various communities, associations and trade unions that made up the PNC. Hilal 1993, 53; and, Sayigh 1997, 459. This was further complicated in the 1980s with the emergence of various Islamic factions which were not part of the PLO; an issue which would come to the fore during the third period of negotiations. Second, the rapid expansion in the PLO's diplomatic activities in the 1970s and the corresponding increase in financial support, as well as the increase in the Palestinian population and their growing needs, which host countries and international organizations were unable or unwilling to fully meet, contributed to a process of bureaucratization accompanied by mismanagement, corruption and nepotism. Nassar 1991, 65. The organization's National Council first addressed this issue in 1979 affirming that its Executive Committee would "review the

period of negotiations giving rise to new demands for the participation of refugees themselves.

iii. Peace Negotiations after the 1990-1991 Gulf War

The issue of refugee participation elicited a range of reactions among the sponsors and official parties to the negotiations that followed the 1990-1991 Gulf war. Most appeared to be either indifferent or opposed to such participation with only a few to publicly acknowledge that talks on the refugee issue would have to allow at least some role for refugees themselves in the determination of their future. The primary focus of the third period of negotiations which lasted until 2000-2001 was on finding a solution to the general problem of Palestinian participation that had obstructed efforts to restart talks in previous decades. The sponsors and official parties to the negotiations nevertheless faced renewed demands among refugees themselves, similar in part to the first period of negotiations, for a role in negotiations on their future. The issue of refugee participation arose in three major ways: through representation by the PLO, through the inclusion of refugees in unofficial initiatives on the refugee issue

departments and organs of the PLO in a manner that would take merit and quality into account in order to achieve optimal performance from these departments and organs". PLO 1979. Bureaucratization also began to slowly erode the political role of the mass-based organizations that had facilitated the "reconnection" and "reintegration" of Palestinians within and beyond the borders of their historic homeland and had enabled the PLO to put the issue of Palestinian rights back on the international agenda. Hilal 1993, 52–53; Sayigh 1997, 459; and, Khalidi 2006, 176. Indeed, having finally secured a seat at the negotiation table, as discussed in the following section, the PLO appeared to all but jettison its popular base in the context of diplomatic efforts to achieve its substantive demands. Hilal 1993, 459; and, Baumgarten 2005, 36. The challenge of rebuilding a national movement in exile, moreover, frequently put the PLO in direct conflict with Arab states that it also depended upon for economic and political support. The expulsion of the PLO from Jordan in the 1970s and from Lebanon in the 1980s followed by its relocation to Tunis separated the organization from the very constituency from which it had emerged and to which it aspired to represent. Nassar 1991, 137; Hilal 1995, 3–4; and, Nabulsi 2010, 80. Finally, Israeli measures, including the ban on Palestinian political activities in areas under its jurisdiction, the assassination of PLO officials, the introduction of legislation criminalizing Israeli contact with the PLO and its 1982 invasion of Lebanon leading to the evacuation of the PLO, all aimed to undermine if not destroy the PLO.

and through refugee efforts to secure their own seat at the negotiating table alongside Israel and the PLO. While the PLO was eventually able to take part in negotiations that aimed to resolve the long-running conflict, refugees continued to be excluded from taking part in official talks that would determine their future.

The relaunch of peace talks in the 1990s to resolve the long-standing conflict over Palestine depended in large part on finding a formula for the inclusion of Palestinians in the negotiation process. The PLO continued to push for a seat at the negotiating table having met each of the three major US-imposed pre-conditions for its participation. In talks with US officials who were searching for a procedural formula that would facilitate the inclusion of Palestinians in peace negotiations, Palestinian officials reiterated that as "the sole legitimate leadership and interlocutors, embodying the national identity and expressing the will of the Palestinian people everywhere" only the PLO was "empowered to represent [the Palestinian people] in all political negotiations and endeavours, having overwhelming support of its constituency".[520] Palestinian officials also continued to demand that the PLO should be free to choose the members of its delegation rejecting Israel's previous demand that it retain an effective veto over the composition of a Palestinian negotiating team. The organization's National Council reaffirmed that "in its capacity as sole legitimate representative of the Palestinian people, [the PLO had] the right to form the Palestinian delegation from inside and outside the occupied territories, including

[520] Palestinian officials further emphasized that "[t]he Palestinian people alone have the right to choose their leadership and will not tolerate any attempt at interference or control in this vital issue". PLO 1991d, para. 1. *See also*, PLO 1991c; PLO 1991b; and, PLO 1991e. They also called upon the US to restore the US-PLO dialogue which the US severed in June 1990 after a guerilla attack on Israel's coast. US officials had restricted their meetings thereafter to Palestinians from the 1967 OPT. The attack followed the killing of eight Palestinians by a Jewish Israeli civilian in Rishon le Zion, an Israeli city located south of Tel Aviv, several days earlier and the killing of nearly a dozen more and the wounding of hundreds by Israeli military forces in the days that followed. In contrast to its decision to sever contacts with the PLO, the US noted that it regretted the loss of Palestinian life and called for restraint. It also vetoed a Security Council resolution establishing a commission to investigate the violence.

Jerusalem, and to formulate a framework for [the delegation's] participation in the peacemaking that up[held] [the PLO's] authority in this context".[521]

On substantive issues, the PLO continued to press in its official statements for recognition of the rights of return and self-determination which it viewed as central to a comprehensive solution to the conflict. The provision on refugees in the political statement issued by the organization's National Council at its 1991 session, however, appeared to be unique in comparison to language used in past statements. While refugee organizations had routinely called for the implementation of Resolution 194 since the first period of negotiations, it was only in 1991, some two-and-a-half decades after its establishment, that the PNC explicitly called for the implementation of the resolution.[522] The Council affirmed that the PLO aimed to achieve "[a] solution, in accordance with UN resolutions, *particularly General Assembly Resolution 194*, to the problem of

[521] PLO 1991a. Council members nevertheless left the final decision on the issue of Palestinian participation in future talks to resolve the conflict to the organization's Central Council, essentially a sub-committee of the PNC responsible for policy issues when the Council is not in session.

[522] The Council, as discussed above, had previously referred to the return of refugees through the liberation of their historic homeland and to the right of return as a collective right of the Palestinian people. The Council also affirmed the right of return in the context of General Assembly Resolution 3236 on the inalienable rights of the Palestinian people. While PNC statements during this period do not refer to Resolution 194, advocates of Resolution 3236 frequently referred to Resolution 194 during the drafting process in reference to refugee rights. Resolution 3236 effectively resolved one of the major gaps in Resolution 194 which was the absence of any reference to the right to self-determination. The initial shift towards an explicit reference to Resolution 194, however, appeared to take place in the context of the PLO's 1988 declaration of an independent state. The PNC's political statement accompanying the declaration appeared to reaffirm the organization's historic emphasis on return as a collective right. The Council observed that the two-state solution it had endorsed called for a "comprehensive settlement ... within the framework of the United Nations Charter, the principles and provisions of international legality, the norms of international law, and the resolutions of the United Nations ... and the resolutions of the Arab summits, in such a manner that safeguards *the Palestinian Arab people's rights to return*". PLO 1988a. A joint statement between PLO and Jewish American figures, however, noted that the two-state solution endorsed by the PLO "[c]alled for a solution to the Palestinian refugee problem in accordance with international law and practices and *relevant UN resolutions (including right of return or compensation)*". PLO 1988e. [emphasis added] The latter phrase appeared to be a reference to Resolution 194 which is generally understood as affirming return and compensation as primary elements of a solution to the refugee issue. For additional discussion the evolution in the PLO's position *see*, Khalidi 1992a; Klein 1998; and, Masalha 2002.

Palestinian refugees who were uprooted from their land by force and coercion".[523] [emphasis added] The reference to Resolution 194 appeared to suggest that in line with its shift towards a two-state solution to the conflict the PLO no longer considered return to be a collective right, but rather an individual one to be exercised on the basis of the individual choice of each refugee.[524] The PLO's primary objective, as listed in the PNC statement, moreover, was "[t]o secure the Palestinian people's right to self-determination which would also ensure its right to freedom and national independence".[525] The Council concluded by expressing hope that the sponsors of the peacemaking process would strive to remove the obstacles preventing the realization of these rights.

The US and the Soviet Union (later the Russian Federation) continued to support the idea that Palestinians should have a say in the determination of their future. In contrast to the previous period of negotiations, however, the co-sponsors also appeared to have reached consensus that a joint Jordanian-Palestinian delegation, an idea first raised decades earlier, comprised the most appropriate mechanism for securing a Palestinian seat at the negotiating

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[523] PLO 1988a. The statement does not address the situation of 1967 and other categories of Palestinian refugees. That such refugees are included, however, may be inferred from the general reference to UN resolutions. This would appear to include, at minimum, General Assembly Resolutions 3236 and 36/146C as well as Security Council Resolution 237. As noted above, the Assembly and Council have adopted a number of additional resolutions relating to ongoing forms of Palestinian displacement since the 1948 and 1967 Arab-Israeli wars. The explicit reference to Resolution 194 can be attributed to the fact that the resolution was the first UN resolution to address a solution to the Palestinian refugee issue and because it addresses the largest group of Palestinian refugees, namely, those displaced during the 1948 war and who originate from areas inside the state of Israel.

[524] Subsequent statements by the PLO confirm this shift. In 1992, for example, the organization's leadership called for "the recognition of the legitimate national political rights of the Palestinian people—foremost of which is the right of return, in accordance with Resolution 194". PLO 1992b. *See also*, PLO 1992c. The PNC's Central Council reaffirmed this position in a statement marking the formal end of the interim phase of the peace process set out in its 1993 agreement with Israel. The statement called for "the resolution of the case of refugees, on the basis of resolution 194, and of international law". PLO 1999. The PLO's shift from a collective to individual approach to refugee return, however, can be traced back to the aforementioned statement by the organization's UN representative in the mid-1970s in the context of General Assembly-led efforts to promote a two-state solution to the conflict with the phased return of 1948 and 1967 refugees to their places of origin.

[525] *Ibid.*

table.[526] A significant development in light of previous disagreements over the mechanism for Palestinian participation, the co-sponsors had yet to resolve the related dispute over the nature or composition of a Palestinian delegation. Open to the inclusion of Palestinians in a joint delegation with Jordan, Israel continued to insist that it would only negotiate with "representatives of Arab residents of Judea, Samaria [West Bank] and Gaza" and that "at no stage [would it allow] the PLO, the terrorist organization, [to] have a foothold in the peace process".[527] In a move similar to previous periods, moreover, Israel once again appeared to obtain assurances that the United States would "[not] hold a dialogue with the PLO as long as the organization [did] not prove it [had] changed its character" and that "[t]he Palestinian representatives in a joint delegation with Jordan to the regional conference [to be held in Madrid in October 1991] [would] be registered in the Judea, Samaria [West Bank] and Gaza population register and [would] not come from Jerusalem or the diaspora".[528] Emphasizing that "no side —Israel included—[would] have to negotiate with anyone it [could not] sit with", US officials acknowledged that American assurances effectively comprised "a sort of veto, allowing Israel [to determine the nature of the Palestinian

[526] The US position is set out in a draft memorandum with Israel concerning the terms of reference for the peace process. Israel and US 1991, para. 1. On the Soviet/Russian position *see*, Golan 1997, 128–129.

[527] Israel further insisted that if members of the Palestinian delegation openly acknowledged any connections to the PLO, Israel would refuse to engage in negotiations. Israel 1991. *See also*, Quandt 2005, 310.

[528] US 1991a; and, Israel and US 1991, para. 9. Zakariya al-Agha, a member of the Palestinian delegation meeting with US officials to work out the terms for the talks, explained the US retreat from its initial support for a Palestinian delegation that would include members from East Jerusalem and from outside the West Bank and Gaza Strip in terms of its relative power and the PLO's own weakness following the Gulf War. al-Agha 1991. In the context of the 1990-91 Gulf War, PLO rejected the use of force as a means to resolve the armed conflict resulting from the Iraqi invasion of Kuwait, which was also interpreted within and outside the region as support for Iraqi President Saddam Hussein and the invasion of Kuwait. This resulted not only in the loss of financial support from the important Gulf allies like Kuwait, it also resulted in the expulsion of hundreds of thousands of Palestinians from Kuwait. The end of the Cold War and the massive influx of Soviet immigrants to Israel, many of whom were settled in the 1967 OPT, further diminished the PLO's political leverage. The outbreak of the first Palestinian intifada in the 1967 OPT in the late 1980s only partially compensated for the loss of political power in other areas. *See also*, Quandt 2005, 307.

negotiating team]".[529] The same procedural issues that had prevented the resumption of negotiations between Israel and the PLO in previous decades thus appeared to continue to comprise a stumbling block in the way of renewed talks to resolve the conflict.

In contrast to past initiatives, however, a solution to the issue of Palestinian participation was eventually found through a graduated process of inclusion, drawing for the most part upon ideas first put forward in previous decades. At each stage, however, the PLO was required to make additional concessions to secure and then expand Palestinian participation in the negotiations. Participation was initially secured through the creation of a joint Palestinian-Jordanian delegation.[530] All the parties involved—Israel, the PLO and the co-sponsors—as already noted in the previous discussion, had at one point supported such a mechanism. The dispute over membership of the Palestinian delegation, meanwhile, was addressed by establishing separate criteria for interim talks on self-government and final status talks relating to a comprehensive solution to the conflict. Members of the Palestinian delegation taking part in interim talks would be restricted, as demanded by Israel, to Palestinian residents of the West Bank and Gaza Strip.[531] In final status talks, however, and in an apparent departure from ideas raised during the previous period of negotiations, the delegation, as demanded by Palestinians, could include previously excluded groups, namely, residents of East Jerusalem and

[529] Israel and US 1991, para. 2.
[530] This formula was set out in the joint US-USSR letter of invitation to the 1991 opening conference in Madrid, Spain. US and USSR 1991. A US Letter of Assurances to the Palestinians stated that while the US did "not seek to determine who speaks for the Palestinians" it nevertheless "believ[ed] that a joint Jordanian-Palestinian delegation offer[ed] the most promising pathway" for "achieving the legitimate political rights of the Palestinian people and for participation in determination of their future". US 1991b.
[531] *Ibid.*

those from outside the 1967 OPT.[532] Three additional criteria applied to both sets of talks. Palestinian participants would have to agree to negotiations on two tracks (bilateral and multilateral), in phases (interim and final status) and be willing to live in peace with Israel.[533] Palestinian officials criticized the restrictions placed on the composition of their delegation for "ignoring [the] national, historical, and organic unity" of the Palestinian people.[534] They nevertheless decided to accept the formula in order to secure a seat at the negotiating table, affirming that the Palestinian delegation would "represent the rights and interests of the whole [of the Palestinian people]".[535] The inclusion of Palestinians in the opening conference in Madrid in October 1991 and in the

[532] *Ibid.* This limitation appeared to be a regression from the terms agreed to by Egypt and Israel several decades earlier and set out in the 1978 Framework for Peace in the Middle East. This agreement, as noted above, included provision for the inclusion of "other Palestinians" in talks on interim self-governing arrangements in the West Bank and Gaza Strip even though their participation was left to the discretion of Israel, Egypt and Jordan. In contrast, the terms of reference for Palestinian participation in talks during the third period of negotiations clearly prohibited the inclusion of Palestinians other than those from the West Bank and Gaza Strip.

[533] *Ibid*. For its part, the US departed from the criteria when it deemed necessary. During the Madrid Conference, for example, the US received the Palestinian delegation as well as Palestinians from Jerusalem and outside the 1967 OPT. At the end of the eighth round of bilateral talks in Washington, DC, the US received the Palestinian delegation separately after receiving the joint Jordanian-Palestinian delegation the previous day. Mansour 1993, 3, 28. In any case, all parties to the arrangement were fully aware that the Palestinian delegation received its instructions from the PLO. The delegation publicly acknowledged its affiliation with the PLO and in May 1992, on the eve of Israeli elections which saw the defeat of the Likud government that had promised to withdraw from negotiations if members of the Palestinian delegation acknowledged any connections with the PLO, as noted earlier, the Palestinian delegation openly took part in a meeting of the PLO's Central Committee. *Ibid*., 18.

[534] Abdul Shafi 1991. Nabil Shaath, then Chairman of the PLO's Political Committee, similarly observed: "It is unfair for the other side to say, 'We will only take Palestinians from the West Bank and Gaza', or 'We will only take Palestinians who are not prominent in the PLO' or 'We will not represent Jerusalem, or we will not represent the diaspora'. But these are only symbolic, in the final analysis this delegation wherever it comes from, whoever it has, is 100 percent united with its people and its leadership, and there is absolutely no difference between them. There is no chance of driving a wedge between them". Shaath 1992, 42.

[535] Abdul Shafi 1991. The decision to accept US-Israeli imposed limitations on the composition of its delegation reflected the political weakness of the PLO, as noted above, in the aftermath of the 1990-1991 Gulf war. Camille Mansour, an advisor to the Palestinian delegation, observed at the time that "while the prospect of accepting the US terms was bleak, refusing the initiative would be even bleaker. Keeping the Palestinians out of the process would spell further isolation, the possibility of being evicted from Tunis [where the PLO had established its headquarters after its expulsion/evacuation from Lebanon in 1982], the steady advance of Israeli settlement activities in the occupied territories (i.e., the inexorable loss of the remaining Palestinian territorial basis), and finally, perhaps, the end of the post-1965 Palestinian national movement itself". Mansour 1993, 7.

Washington talks on interim self-governing arrangements that followed thus marked an end to the decades-long exclusion of Palestinians from talks to determine their future.

The conflict over Palestinian participation, nevertheless, remained far from resolved and would continue to complicate US-led efforts to advance a process to resolve the conflict. The PLO continued to call for the "[modification of] Palestinian participation in the peace process wherein it [would] become comprehensive, representative and legitimate through direct and official PLO participation, without any conditions and restrictions on the participation of Jerusalem or diaspora Palestinians".[536] The first two rounds of talks on interim self-government were taken up by disagreements about the modalities of Palestinian participation in the joint delegation. The essence of the dispute focused on whether Palestinians would be allowed to hold separate talks with Israel. The US eventually imposed a solution which maintained the existing formula for participation—i.e, through a joint delegation with Jordan—but allowed Palestinians to comprise a majority of the joint delegation (nine Palestinians and two Jordanians) in talks with Israel on self-government.[537] The issue resurfaced during the opening meeting of multilateral talks in Moscow when the Palestinian delegation was denied seating because its members

[536] PLO 1993d. The PLO's Central Council emphasized that the PLO had a "right" to determine the composition of its negotiating team and that in order to "[ensure] Palestinian national rights" and "the widest possible support for [the Palestinian] people" such a delegation should be comprised of Palestinians both "inside and outside" their historic homeland. PLO 1992a. *See also*, PLO 1992b. The PLO also continued to call upon the US to re-open dialogue with the PLO.

[537] Israel and Jordan 1992. Israel had agreed to separate talks with the Palestinian side, but later backtracked on the commitment leading to the dispute. *See also*, Mansour 1993, 12. Israel also rejected a Palestinian suggestion raised during bilateral talks on interim issues that a plebiscite be held to enable the Palestinian people themselves, as proposed in the past, to decide their future. Palestinian negotiators pointed to elections in Namibia in 1989 and the UN Security Council endorsed plan for a referendum on the future of Western Sahara. Nabulsi 2003, 490.

included Palestinians from East Jerusalem and from outside the 1967 OPT.[538] The first two sessions of the multilateral working group of refugees (RWG) were similarly taken up by procedural issues relating to the inclusion of a Palestinian from outside the 1967 OPT and a member of the PLO's National Council.[539] The first issue was resolved, in part, when the Israeli government agreed to the inclusion of non-OPT Palestinians provided they were not members of the PLO's National Council, while the second was resolved through procedural ambiguity under which PNC membership was considered to have lapsed when when the council was not in session.[540]

The launch of Norwegian-sponsored back-channel talks in January 1993 between a small group of Palestinians and Israelis marked the first major

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[538] The Palestinian delegation nevertheless obtained a commitment that Palestinians from outside the 1967 OPT would be included in future working groups, including the one dedicated to working on regional aspects of the refugee issue parallel to quadripartite talks on modalities for the return of 1967 refugees and final status negotiations between Israel and the Palestinians on the future of 1948 refugees. Mansour 1993, 13. In a press conference that followed the Moscow conference, US officials indicated that they regretted the Palestinian absence from the talks and that they supported the participation of Palestinians from outside the 1967 OPT in talks on the refugee issue. US 1992a. *See also*, US 1992b. Canada, which chaired the Refugee Working Group, concurred with the US position. Brynen 1997, 282.

[539] This dispute over Palestinians from outside the OPT may have related, in part, to disagreements between the PLO and Israel about the role of the refugee working group. Palestinians viewed the RWG as linked to final status talks on the refugee issue, thus permitting the inclusion of Palestinian negotiators from outside the OPT as per the Madrid invitation. Israel negotiators viewed the RWG as part of the interim phase, which limited Palestinian participation to those from the 1967 OPT, excluding East Jerusalem. The inclusion of Palestinians from outside the OPT also made practical sense, given the fact that the majority of Palestinian refugees resided outside the West Bank, East Jerusalem, and the Gaza Strip. This appeared to be the primary basis for the aforementioned US and Canadian positions on the issue. The inclusion of a PNC member, meanwhile, challenged Israel's ongoing refusal to talk to the PLO. Israel also objected to the inclusion of Uri Davis, a Jewish Israeli (who defines himself as a Palestinian Hebrew), which led to the postponement of an inter-sessional meeting. Israel's opposition appeared to arise primarily from the individual's anti-Zionist positions, but it also appeared to undermine Israel's efforts to advance a solution to the refugee issue based on ethno-national separation of the two communities.

[540] A "rider" attached to the newly-elected Labor government's coalition agreement with the leftist Meretz party also expressed the view that the law prohibiting contact with the PLO, adopted towards the end of the previous period of negotiations, should be amended and that the PLO should be included in subsequent negotiations "once the PLO [had] prov[ed] by declaration, and mainly by deed, that it recogniz[ed] Israel and renounc[ed] terrorism". Israel 1992b. The second issue was finally resolved in 1993 when Israel and the PLO, as discussed below, exchanged letters of mutual recognition. *See*, generally, Mansour 1993, 24–25; Brynen 1997, 283; and, Peters 1997, 323–325.

expansion in Palestinian participation since the Madrid conference. The back-channel talks also comprised the first major opportunity for PLO officials and their Israeli counterparts—notwithstanding the fact that the PLO had been indirectly involved in the peacemaking process early on from appointing members of the Palestinian delegation to the drafting of negotiation guidelines—to hash out an agreement outlining the details of a process that both sides hoped would lead to a comprehensive solution to the conflict.[541] The first phase of the talks, which lasted from January to May 1993, involved a small number of PLO officials and Israeli academics with ties to the governing coalition. The second phase, which concluded in September 1993, involved the PLO and representatives of the Israeli government. Israel's decision to upgrade its status in the talks effectively comprised *de facto* recognition of the PLO as the representative of the Palestinian people, but formal recognition of the organization came at a cost.[542] Israel offered to recognize the PLO if the organization agreed to forego the existing framework agreement drafted during the first phase of the talks in favour a new draft which excluded provision for international arbitration, an international trusteeship in the Gaza Strip during the

[541] The idea built on several decades of unofficial contacts, as noted above, between the two sides. The idea is also alluded to in the 1975 Brookings report which suggested the inclusion of Palestinians in pre-conference preparatory talks as one way to handle the problem of Palestinian participation in the negotiations. The back-channel talks enabled both sides to advance their respective interests. In addition to demonstrating that only the PLO was capable of delivering a comprehensive solution to the conflict, the back-channel talks also enabled the PLO to obtain Israel's *de facto* recognition of the organization, subsequently formalized, as noted below, through an exchange of letters. For Israel, the secret talks allowed the government to engage in arms-length talks with the PLO despite ongoing restrictions which prohibited contact with the organization. It also allowed Israel to "test" the PLO's willingness to accommodate Israel's interests in a manner which it viewed necessary to reach a comprehensive solution to the conflict. In their initial phase, the talks comprised a hybrid type of Track II negotiations. The configuration, comprised of unofficial and unempowered Israeli representatives alongside official and empowered representatives of the Palestinian people, underscored the asymmetry between the two parties. For a detailed assessment *see*, Wanis-St. John 2001; Waage 2004; and, Wanis-St. John 2011.

[542] The shift followed a Palestinian decision to withdraw from the talks unless Israel upgraded its status. Waage 2005, 10. The government subsequently rescinded legislation prohibiting contact between Israelis and the PLO.

interim phase of the peace process and negotiations on the status of Jerusalem in advance of a comprehensive agreement.[543] The PLO's decision to accept these concessions paved the way for Israel's recognition of the organization and its full participation in the peacemaking process.

The exchange of letters between Israel and the PLO that accompanied the signing of the 1993 Declaration on Interim Self-Government Arrangements, almost 15 years to the day after Egypt and Israel reached an agreement setting out a framework for Middle East peace marked the beginning of the PLO's official participation in negotiations to resolve the long-standing conflict. In its letter the PLO once again reiterated its compliance with the three major pre-conditions for its participation in the negotiations, namely acceptance of Resolution 242, recognition of Israel, and the renunciation of terrorism and other forms of violence.[544] The PLO also affirmed that its National Council would revise articles of the organization's Covenant that were inconsistent with the Declaration on Interim Self-Government and its letter to Israel.[545] Israel's letter,

[543] *Ibid*., 12.

[544] PLO 1993c. The PLO's letter added a fourth and related issue affirming the organization's commitment to a peaceful resolution of the conflict. A parallel letter from the PLO to the Norwegian Foreign Minister called upon Palestinians in the OPT to "take part in the steps leading to the normalization of life, rejecting violence and terrorism, contributing to peace and stability and participating actively in shaping reconstruction, economic development and cooperation". PLO 1993b. This appeared to be a type of compromise in response to Israel's initial demand that in the PLO's letter to Israel the organization also assume responsibility for all violent acts in the 1967 OPT and call for the end of the first *intifada*. Waage 2005, 17. Israel appeared to obtain the PLO's consent to this demand, however, in the 1995 Interim Agreement on the West Bank and Gaza Strip. In an article on "rights, liabilities and obligations", the agreement states that "[t]he transfer of powers and responsibilities from the Israeli military government and its civil administration to the Council ... includes all related rights, *liabilities and obligations* arising with regard to acts or omissions which occurred prior to such transfer. Israel will cease to bear any financial responsibility regarding such acts or omissions and *the Council will bear all financial responsibility for these* and for its own functioning". [emphasis added] Interim Agreement on the West Bank and Gaza Strip, *supra* n. 385, art. XX, para. 1(a).

[545] The Council subsequently amended the Covenant and tasked its legal committee with redrafting the Covenant without mentioning the articles annulled. PLO 1996. The Council's actions were criticized from both sides. Some Israeli officials expressed doubts about the "effectiveness" of the Council's actions, doubts which eventually forced the PLO to agree to reaffirm its commitment to the agreed upon revisions to its Covenant. The Wye River Memorandum, *supra* n. 385, pt. II, sec. C, para. 2. The PLO reaffirmed this commitment in 1998. PLO 1998. Some Palestinians, meanwhile, criticized the move as pre-mature given

by way of contrast, recognized the PLO as the representative of the Palestinian people, but stopped short of recognizing their right to self-determination through the establishment of an independent Palestinian state.[546] Israel, moreover, only agreed to recognize the PLO as the "representative" of the Palestinian people rather than using terminology—i.e., the sole, legitimate representative—employed by regional organizations, including the League of Arab States, and the United Nations General Assembly.[547] The letter also excluded provision for

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the fact that Israel had yet to withdraw from the 1967 OPT and recognize a Palestinian state. The preparatory committee to the first popular refugee conference in the West Bank, for example, expressed concern that the revision could be understood as Palestinian willingness "to lessen their legitimate historic right in Palestine and to close the way in front of the refugees to ask for their legitimate right of return to their home land...". PCPRC 1996. Still others criticized the PLO, as noted below, for failing to convene the PNC to review and approve the 1993 agreement with Israel prior to making any changes to the PLO's Covenant.

[546] Israel 1993. At the start of the process Israel had sought a US commitment that "negotiations [were] not supposed to lead to the establishment of a Palestinian state". Israel and US 1991, para. 10. The policy guidelines of the Labor government, elected in June 1992, were silent on the outcome of final status negotiations, however, they did call for the "entrenchment and strengthening of settlements along the line of confrontation", an apparent acknowledgement that the borders between Israel and a Palestinian entity in the West Bank and Gaza Strip was a matter yet to be resolved. Israel 1988b, para. 2.9. In an interview in the Israeli press several months prior to the election, Labor Party Chairman Yitzhak Rabin indicated that the party opposed the establishment of a Palestinian state. Israel 1992a. However, a rider to the Labor-Meretz coalition agreement noted that Meretz was free to express its opinion on the right of Palestinians in the West Bank and Gaza Strip to self-determination and the possible creation of an independent and demilitarized state. Israel 1992c. A number of studies have subsequently argued that Israel's recognition of the right to self-determination of the Palestinian people is implicit in its letter to and recognition of the PLO as the representative of the Palestinian people. For a detailed discussion *see*, Benvenisti 1993, 543–544; Blum 1994, 214; and, Quigley 2000, 134–135.

[547] The implication of Israel's choice of terminology is unclear, but it does appear to reflect a less than full recognition of the PLO given the widespread reference elsewhere to the PLO as the sole, legitimate representative of the Palestinian people. This ambiguity can also be found in the preamble to the 1993 Declaration on Interim Self-Government Arrangements. The preamble refers to "[t]he Government of the State of Israel and *the PLO team (in the Jordanian-Palestinian delegation to the Middle East Peace Conference)* (the "Palestinian Delegation"), *representing the Palestinian people*". [emphasis added] Declaration on Interim Self-Government Arrangements, *supra* n. 385, preamble. The implications of this rather convoluted construction also appear unclear. On the one hand, the language could be read as a type of retroactive recognition of the PLO, which as noted above was formally excluded from taking part in the early phases of the peace process. On the other hand, the preamble could also be read to define the PLO as compromising Palestinians from the West Bank and Gaza Strip rather than the entire Palestinian people, notwithstanding the fact the Palestinian delegation taking part in the early phases of the peace process insisted, as noted above, that they represented the Palestinian people as a whole. The choice of language is also puzzling given the fact that the agreement is signed by the PLO rather than the "Palestinian Delegation" etc. as used in the preamble. The limitations of Israel's recognition of the PLO was further revealed five years later when the UN General Assembly decided to upgrade the status of Palestine granting the Palestinian delegation the right to take part in general debates, the right to co-sponsor resolutions and the right to raise points of order on the Middle East. GA Res. 52/250, 52nd Sess., 89th Plenary Mtg., UN Doc. A/RES/52/250, July 7,

the mutual renunciation of terrorism and other forms of violence. The declaration and accompanying letters nevertheless opened the door for the first time for direct talks between Israel and the PLO on both interim arrangements and a comprehensive peace. Reaching an agreement on the substantive differences that divided them, especially in relation to the refugee issue, as discussed later, would prove much more difficult and ultimately unsuccessful.

The issue of refugee participation in talks to resolve their situation also arose in the context of a number of unofficial Track II initiatives which provided opportunities for a small number of refugees to take part in discussions on issues to be addressed in final status talks between Israel and the PLO. These initiatives provided the first major opportunity since 1948 for Palestinian refugees themselves to take part in discussions or deliberations, albeit unofficial in nature, relating to various aspects of a solution to their situation.[548] Launched in the late 1990s when official negotiations between Israel and the PLO had begun to stagnate, unofficial or second track talks on the future of Palestinian refugees aimed not only to facilitate dialogue and foster networks among the various stakeholders to the refugee issue, including refugees themselves, but also to generate new ideas relating to the solution of specific aspects of the

1998, para. 1. Israel voted against the resolution. The United States was among three additional states voting against the resolution.

[548] The use of second track discussions to advance a solution to the conflict, as noted earlier, began in the 1970s and continued over the following decades. The Track II initiatives in the 1990s, however, were the first to include refugees themselves, with the exception of instances where individual participants in previous second track initiatives were themselves refugees. Information on these initiatives is derived primarily from unpublished conference papers, evaluations and from the author's experience as a participant. This section only examines major Track II initiatives on the refugee issue in which refugees were able to participate and which took place between 1990 and 2000. A third major Track II initiative—the BADIL Expert Forum on Palestinian Refugees—is therefore excluded in the following discussion. For discussion of the initiative and a selection of working papers *see*, Rempel 2010a. The discussion also excludes a number of Track II initiatives on the refugee issue—Harvard, Stockholm and Geneva—in which refugees were not invited to participate. For details of these initiatives *see*, Alpher and Shikaki 1998; Agha et al. 2003; Klein 2006; and, Chiller-Glaus 2007.

refugee issue.[549] Supported by the Canadian government, which chaired the multilateral working group on refugees, the "Ottawa Process" comprised a series of "stocktaking workshops" on Palestinian refugee research along with a number expert workshops on specific aspects of a solution to the refugee issue.[550] A second initiative, supported in large part by the European Commission—"Palestinian Refugees in the Middle East Peace Process"—comprised of expert workshops, scenario-building exercises and regional stakeholder meetings focused on the regional aspects of a solution to the refugee issue with a particular emphasis on the inclusion of host states and refugees themselves.[551] Refugees taking part in these initiatives included a

[549] Noting that "[w]ithin the civil societies of the region, the NGO, media and academic communities [had already] sustained considerable discussion and analysis of the refugee issue and its resolution", a 1995 working paper by the head of the multilateral Refugee Working Group observed that "enhanced dialogue activities [would help the RWG] harness the commitment, not only of governments, but also individuals and societies to the cause of a just and lasting peace in the Middle East". Perron 1995, para. 4.13. The consensus-driven approach to discussions in the Refugee Working Group meant that key issues over which there was considerable disagreement, in particular, the right of return, were excluded from the negotiating agenda and RWG projects and initiatives. With a dual focus on both "relationship-building" and "policy-making", the initiatives comprised elements of both "soft" and "hard" Track II diplomacy. It was the latter focus, as noted in Chapter 2, that arguably contributed towards the consideration of peace negotiations as a domain for political participation.

[550] A review of the Ottawa Process defines Track II activity as "dialogue among well-connected experts, former officials, and officials, which aims at facilitating formal 'track-one' diplomatic efforts between actors in conflict". The emphasis given to the generation of knowledge with the aim of facilitating a solution to the refugee issue in Track I talks reflected the fact that numerous disagreements between the PLO and Israel had yet to be resolved, in particular, the rights of return, restitution and responsibility. It also reflected, as noted above, the fact that both the PLO and Israel were ill-prepared for substantive talks on the Palestinian refugee issue. Given the moribund state of official negotiations, moreover, the Track II initiative also aimed to provide a forum for ongoing discussions until official talks resumed. The stocktaking conference and expert workshops were held between 1997 and 1999. A second stocktaking conference was held in 2003. The Ottawa process also included a "Core Group" of experts and officials who attempted to draft an agreement on refugees and a joint dialogue project by the Israeli-based Economic Cooperation Foundation and the PLO's Department of Refugee Affairs which together organized Israeli visits to Palestinian refugee camps along with a single visit by refugees to their places of origin inside Israel. The initiative was supported by the Canadian Department of Foreign Affairs and International Trade (DFAIT), the Canadian International Development Agency (CIDA) and the International Development Research Centre (IDRC). Brynen et al. 2003. *See also*, The Ottawa Process: Conferences, Workshops and Dialogue on Refugees, Palestinian Refugee ResearchNet <http://prrn.mcgill.ca/activities/index.htm> [accessed Jan. 28, 2011].

[551] An independent evaluation of the Royal Institute of International Affairs (RIIA)/Centre for Lebanese Studies (CLS) initiative observed that the project "was not a classic Track II activity as Israelis did not participate". Having defined Track II negotiations as "discussion involving non-officials of conflicting parties in an attempt to clarify outstanding disputes and

small number of independent researchers and academics along with representatives of various grassroots refugee organizations from the 1967 OPT, Jordan, Lebanon, Syria and from organizations based outside the Middle East.

These initiatives had a mixed outcome. On the one hand, internal and independent evaluations concur that each of the initiatives facilitated dialogue and fostered networks among the various stakeholders to the Palestinian refugee issue.[552] With its emphasis on research, the Ottawa Process also generated a significant pool of knowledge on specific aspects of the Palestinian refugee issue, in particular, on the issue of compensation.[553] The initiatives were

to explore the options for resolving them in settings or circumstances that are less sensitive than those associated with official negotiations", the evaluators nevertheless considered the project as a form of Track II diplomacy given the range of conflicts between Arab host states, the PLO and the refugees themselves. The premise of the RIIA/CLS initiative was that in the absence of all stakeholders to the refugee issue, negotiations and agreements reached would neither be viewed as legitimate nor would they be able to be implemented. In addition to the refugees and other Arab states, the initiative also provided a forum for the inclusion of officials from Syria and Lebanon, states which had turned down invitations to take part in multilateral negotiations. Israeli officials were rarely invited to participate due to sponsor concerns that their presence would either cause Syria and Lebanon, which did not have official relations with Israel, to withdraw from the initiative or would result in a dynamic in which Arab officials would be less willing to express opinions on politically sensitive aspects of the refugee issue. The initiative was divided into two major phases. The first phase included three workshops all of which took place in 2000. The remaining workshops and in-country dialogue groups took place between 2001 and 2004. The second phase, which followed the collapse of final status negotiations between Israel and the PLO was renamed "Palestinian Refugees in the Search for Middle East Peace". The Canadian, Swiss and UK governments provided additional support for the initiative. Marshey and Tansley 2005. *See also*, Chatham House Project on the Palestinian Refugee Issue <http://www.chathamhouse.org.uk/research/middle_east/current_projects/palestinian_refugees/minster_lovell/> [accessed Jan. 28, 2011].

[552] Brynen et al. 2003, 34; and, Marshey and Tansley 2005, 29–30. Marshey and Tansley's evaluation of the RIIA/CLS initiative nevertheless recommended that "more refugees from Palestine, Jordan and Lebanon, more officials from Lebanon, and more specialists on different aspects of the refugee issue need to be brought into the project to achieve the dialogue that was part of the intended output of the project". The evaluation also found that while a significant number of participants remained in contact with each other between meetings, these contacts were not necessarily "fostered or supported" by the initiative. The RIIA/CLS initiative was nevertheless more likely to facilitate dialogue with refugees themselves, in particular, representatives of the various refugee organizations invited to take part in the initiative. The Ottawa Process focused more on dialogue among experts and opinion-makers.

[553] In addition to research papers prepared for workshops on compensation and the future of UNRWA, the research output from the "Ottawa Process" also included a collection of case and source material on refugee compensation (Zerriffi 1999), a collection of selected stocktaking conference papers on the challenges of repatriation and development (Brynen and El Rifai 2006), a comparative volume on property restitution and compensation (Wühler and Niebergall 2008) and two volumes on compensation and a number of additional perspectives on solutions to the refugee issue (Brynen and El-Rifai 2012a; and, Brynen and El-Rifai 2012b). This does not include the independent production of research produced by

less successful in facilitating dialogue and generating knowledge on key issues of dispute such as the right of return, restitution and responsibility. As such they largely failed to overcome the obstacle imposed by the consensus driven approach which rendered the aforementioned issues taboo in multilateral discussions on the refugee issue.[554] Moreover, much like the RWG, the focus on issues of "least dispute", in particular, compensation, also resulted in tension or conflict between sponsors or facilitators and some of the refugee organizations taking part in the initiatives who felt that refugee rights and interests were largely ignored.[555] The initiatives also appeared to have little impact on public opinion, Palestinian, Israeli or otherwise, although neither initiative identified the

participants. The research output of the RIIA/CLS included at least one unpublished paper (Fathallah 2001) on the individual rights of Palestinian refugees. The independent evaluation of the initiative concluded that "the number and quality of research papers and reports produced by the project was not adequate". Marshey and Tansley 2005, 29–30.

554 Indeed, both initiatives, whether intentional or not, appeared to reflect the dominant but disputed paradigm governing official talks on the refugee issue, namely, that a solution to the issue would have to be found primarily through the resettlement and compensation of the refugees —apart from the small number able to return through family reunification procedures—due to Israel's opposition to their return. This is also reflected in the aforementioned 1995 working paper by the Canadian head of the RWG. The paper states that a solution to the refugee issue "must be in accordance with international law", but then notes that since "the prospects of [what it describes as] a narrowly-defined legalistic solution to the problem are extremely limited ... the parties will have to work together to produce a forward-looking political solution to the problem, based on shared interests and a common commitment to achieving peace". Perron 1995, para. 3.1.4. The paper acknowledges that in order to achieve a solution "the parties will have to talk openly and freely about a range of delicate solutions [including] the right of return and compensation and resettlement among others", but then appears to limit initiatives on the right of return to surveys of refugee opinion with more substantive and technical work devoted to compensation and resettlement. *Ibid.*, paras. 3.1.5, 4.10.5, 4.10.7.

555 This tension is evident in part in summary reports from both initiatives, however, the lack of attribution of comments to speakers under Chatham House rules makes it somewhat difficult to decipher refugee views. A number of refugees and experts taking part in the workshops, including the author of this study, who criticized the initiatives for the lack of adequate consultation and participation in agenda-setting and, in particular, for having "largely failed to sufficiently address the issue of most concern to Palestinian refugees—i.e., a solution to more than 50 years of exile that is consistent with UN Resolution 194 and international law", subsequently withdrew from the RIIA/CLS initiative. BADIL 2003b. *See also*, al-Awda 2003; and, RIIA 2003. The fact that some refugee organizations continued to take part in the initiative reflected in part differences of opinion on the value of the process and how best to address refugee rights and interests. While these criticisms largely surfaced after the collapse of official talks between Israel and the PLO in 2000-2001, some participants privately expressed doubts and frustration about both initiatives from the very beginning. An external review of the RIIA/CLS initiative subsequently recommended that "questions of approach and strategy need to be collectively tackled amongst participants and organizers". Marshey and Tansley 2005, 23–24.

shaping of public opinion as one of its major objectives.[556] Owing, in part, to their late start on the eve of final status negotiations, the initiatives also had little immediate or sustained impact on official talks between Israel and the PLO with the possible exception of negotiations on refugee compensation.[557] Finally, while these initiatives neither aimed nor were able to provide a substitute for actual participation of refugees in decisions relating to their future, either directly or

[556] The stocktaking conference and workshop reports from the Ottawa Process were made available through the Palestinian Refugee ResearchNet website and listserve, but did not receive widespread coverage beyond activists, academics and analysts interested in the Palestinian refugee issue. Brynen et al. 2003, 35. The RIIA/CLS initiative suffered from a lack of systematic and timely documentation, however, summary reports of the meetings were later uploaded to the RIIA website. Marshey and Tansley 2005, 24. In both cases, the initiatives relied on Chatham House rules in which participant comments were recorded without attribution, thus making it difficult to communicate or relay sources of agreement and disagreement to a wider audience. The downside of this approach for refugees, in particular, was that their voices, already marginalized from the peacemaking process, were largely "silenced" and only "audible" to those already familiar with their positions. In his study of Track II initiatives on the Palestinian refugee issue in which refugees were not invited to participate, Klein similarly observed that the initiatives failed to discuss "how to inform the geographically and politically divided refugee communities on the negotiations or the options under discussion". Klein 2006, 89.

[557] An internal assessment of the Ottawa Process noted that the initiative had "helped to familiarize a number of key Israelis with the refugee issue, individuals who later contributed to Israeli policy planning [on the refugee issue]". The process appeared to have less of an impact on the Palestinian position in the negotiations partly due to the fact that while officials from the PLO's Department for Refugee Affairs took part in initiative workshops the PLO's Negotiations Support Unit and the PA Ministry of Planning and International Cooperation who were directly responsible for the negotiations did not participate. On the initiative's contribution to negotiations on compensation, the assessment noted that the US position on refugee compensation, in particular, "appear[ed] to have been influenc[ed] [heavily] by the IDRC/PRRN workshop on the topic" and that final status talks on refugee compensation in Taba in January 2001 also "tilted heavily towards issues raised in [the Ottawa] compensation workshop". Brynen et al. 2003, 28, 33. While host countries were excluded from final status negotiations on the refugee issue, the evaluation of the RIIA/CLS initiative found that Jordanian, PLO/PA and Syrian officials taking part in the initiative consistently reported on workshop and other proceedings to relevant officials in their respective governments. The evaluation quoted one un-named official who stated that his government "[had] in-house brainstorming sessions [based on] ideas [that were] were brought back directly from Chatham House [RIIA/CLS] and discussed in these sessions". This had a number of "spin-off" outcomes, including the employment of a Jordanian legal team to prepare a file on the refugee issue for subsequent negotiations and the decision to proceed with the first major rehabilitation of a refugee camp which had previously been rejected due to concerns that it would contribute to the *de facto* resettlement of the refugees. Marshey and Tansley 2005, 29–30, 36. The initiatives, however, also appeared to suffer from a lack of effective coordination and communication with official (Track I) talks on the refugee issue. The evaluation of the RIIA/CLS initiative found that there was uncertainty or differences of opinion among sponsors as to "how different, sometimes conflicting perspectives would be taken forward by the project in order to inform eventual negotiations". *Ibid*. The limited impact of the Ottawa process on official negotiations on the refugee issue after 2000-2001 also stemmed from the lack of funding and staff changes in Canada's Department of Foreign Affairs and International Trade which had supported the Ottawa process in the years leading up to final status talks between Israel and the PLO in 2000-2001. Brynen et al., *ibid.*, 35.

through the PLO's representation, participatory opportunities for refugees were nevertheless circumscribed by the nature of Track II processes with their focus on small group dialogue and discussions.[558]

A number of "Track III" initiatives also launched on the eve of final status negotiations offered a larger number of refugees the opportunity to participate in unofficial discussions on solutions to their situation. The initiatives were informed, in large part, by a growing concern among a small group of activists and policymakers about the marginalization of refugees and the refugee issue from the peacemaking process, the implications for refugees and it impact on official efforts to reach a comprehensive solution to the conflict.[559] Through both consultative and deliberative methodologies, Track III initiatives sought to give refugees an opportunity to express their views about a solution to their situation, facilitate public debate on the refugee issue, and encourage official actors to address the representation of refugees and their rights and interests in the

[558] The degree of refugee participation differed between each of the two major Track II initiatives on the refugee issue. Relatively few refugees took part in the "Ottawa Process" workshops on the refugee issue in comparison to refugee participation in the RIIA/CLS workshops and in-country dialogue groups. This stemmed from the fact that the latter initiative aimed explicitly to facilitate dialogue and foster networks among the various stakeholders to the refugee issue in the Middle East, in particular, among host country officials and refugee representatives. The RIIA/CLS initiative nevertheless encountered various obstacles in securing refugee participation in the initiative. This included, for example, the reluctance among some Jordanian officials to allow the participation of Palestinian refugees from Jordan. An evaluation of the initiative also observed that refugees from the 1967 OPT were underrepresented in the workshops and related meetings. Marshey and Tansley, *ibid*., 32.

[559] In the mid-1990s, as already noted in Chapter 1, the Commissioner-General of UNRWA informed the UN General Assembly of a growing sense of marginalization among refugees in relation to official efforts to resolve the conflict. It was also during this time, as discussed in more detail below, that refugees in the 1967 OPT, Arab host states and elsewhere began to organize and mobilize themselves to ensure that their rights and interests were adequately addressed in the context of a solution to the broader conflict. In its report, written some five years later, the Joint Parliamentary Commission of Enquiry observed that the refugee issue had been "dangerously neglected under the Oslo peace process" and that "insufficient weight had been accorded to the refugee crisis, bearing in mind the scale and complexity of the situation, the centrality of the issue, its significance in the peace process, and in the minds of Palestinians everywhere". LMEC 2001, 30. A special advisor to the Commission noted that rather than facilitating "incremental improvement on the contours or the substance of the refugee problem", the peacemaking process which deferred discussion on solutions for the majority of refugees to final status talks between Israel and the PLO had resulted in "incremental disrepair, damage, neglect, a growing intransigence and a growing ignorance of [the refugee] issue above all within the wider epistemic community of the Middle East Peace Process". Nabulsi 2010, 72.

negotiations.[560] A first initiative, organized by the Israel-Palestine Center for Research and Information (IPCRI), a joint Israeli-Palestinian NGO based in Jerusalem, comprised 48 town hall style meetings in nine different camps across the West Bank and Gaza Strip.[561] A second initiative—a Joint [British] Parliamentary Middle East Councils Commission of Enquiry—held hearings in refugee camps and communities of exile in the 1967 OPT, Jordan, Lebanon and Syria.[562] While IPCRI aimed to "encourage practical and realistic thinking with regard to future negotiations [beyond] the well known principles and rights as expressed in international law" the British Commission accepted "the principle

[560] Information on these initiatives is derived primarily from unpublished reports, independent evaluations and from published material produced by each of the initiatives. This section only examines Track III initiatives on the refugee issue in which refugees were able to take part and which took place between 1990 and 2000. A number of additional Track III initiatives on the refugee issue—"Time for Them to Speak and for Us to Listen" (Panorama) and Civitas—are therefore excluded from the following discussion. For a discussion of these initiatives see, Abu-Iyun and Murad 2006; and, Civitas 2006.

[561] Project coordinators and workshop moderators prepared an initial list of discussion topics which were finalized by participants in each camp. The participants discussed the living conditions in refugee camps, the role of host states, UNRWA, frameworks for a solution to the refugee issue and the negotiations themselves. Refugees addressed similar issues in other initiatives including the British Commission of Enquiry and the popular refugee movement discussed below. The IPCRI initiative organized discussions in Arroub, Kalandia, Am'ari, Far'ah, Tulkarm and Bethlehem area camps in the West Bank, as well as Maghazi, Jabalia and Khan Younis refugee camps in the Gaza Strip. The final report provides a rapporteur's summary of the town hall meetings. The second phase of the project provided for the presentation of findings to Israeli public officials by refugee focus groups. The initiative also included a survey of refugee opinion. The initiative was supported by Cordaid, the Netherlands, the National Endowment for Democracy and the Ford Foundation. al-Araj and Abu Zneid 2001; IPCRI 1998; IPCRI 1999; and, IPCRI 2001.

[562] The British Commission sought advice on contacts in the refugee community from relevant groups and NGOs in the region in order to reflect the views of a broad political, social and economic cross-section of the refugee community. It also sought advice from the British Foreign and Commonwealth Office, British Embassies and Consulates in the region, the PLO, Palestinian academics and experts on the refugee issue. Advice and cooperation was also sought from the governments of Syria, Lebanon, Jordan and the Palestinian Authority. Participants taking part in the hearings were asked to identify their organizational affiliation, its principles and goals, their preference for a solution to the refugee issue based on international law, the representativeness of their organization's views and whether they had discussed the right of return and its practical implementation in their organization. The hearings were held over the course of a 10-day trip to the 1967 OPT (Aida, Balata, Maghazi, Nusayrat, Rafah, Jabalia, Khan Younis, Dayr al-Balah, Shati' and Burayj camps), Jordan (Baqaa camp), Lebanon (Mieh Mieh and Shatila camps) and Syria. The political situation in each area required different approaches to securing refugee input. The commission also met with government representatives and with the various organizations and institutions that work in the refugee camps in each areas. The final report provides a verbatim record of the hearings thus allowing refugee voices themselves to emerge as the primary reference. In a second phase the commission presented the findings to relevant stakeholders. The initiative was supported by a number of individuals and foundations including the al-Makhtoum Foundation. LMEC 2001; and, LMEC n.d.

of refugee preference and choice within the framework of UN Resolution 194, as the most appropriate structure and starting point" for its deliberations.[563]

These initiatives also appeared to have a mixed outcome in terms of advancing a solution to the refugee issue. On the one hand, both initiatives provided opportunities for a larger number of refugees to take part in discussion and deliberation about their future. The participants also comprised a broader cross-section of the refugee community in comparison to the smaller number of refugees who took part in the aforementioned second track initiatives.[564] Refugees taking part in both Track III initiatives emphasized that the refugee issue was the "core" of the conflict and that a solution had to be based on relevant UN resolutions, in particular, General Assembly Resolution 194 and Security Council Resolution 237, and relevant international law as applied to refugees elsewhere.[565] They also emphasized that "a peaceful solution could

[563] IPCRI 1999; and, LMEC 2001, 30.

[564] The initiatives differed with respect to the scope of refugee participation. While IPCRI's initiative was limited to the 1967 OPT, the British Commission held hearings in refugee camps and communities of exile across all major host countries in the Arab world. The Commission placed particular attention on "establish[ing] the representativeness of the evidence [given in its hearings]". It did this first through consultations with a diverse array of actors—i.e., community-based organizations, NGOs, academics, experts, diplomats, and governments—on contacts in the refugee community. The commission also "asked questions about the type of organisations that were represented at the meetings, how they were constituted and what their aims were". LMEC 2001, 32. With hearings held across the major host countries in the Arab world, what emerges from the British Commission is the commonality of views among refugees despite their geographical separation, generational gaps, social and financial differences and the situation in their respective host countries.

[565] In hearings held in Lebanon, Muhammad Nawfal, a refugee from the village of Saffuria, described the refugee issue as "[t]he major issue for our Palestinian people ... and if the issue of the refugees' return to their lands properties of 1948 is not solved, the Palestinian issue will never be solved". LMEC 2001, 16. Bassam Naim, a refugee from Yazur further explained to Commissioners during hearings in the occupied West Bank that "[t]he issue of refugees is significant because it is the only issue that started in consequence of the war of 1948 [and is therefore] the most complicated one and the one to insist on most strongly ...". *Ibid*. The rapporteur's summary of the IPCRI town hall meetings notes that the refugee issue "should not be based on UN Security Council Resolutions 242 and 338 since they are too general and vague in terms of the particularities of solving this issue fairly and squarely". Refugees also called for the mobilization of refugees and the convening of conferences, seminars and marches to "oblige the international community to implement UN Resolution 194 that guarantees the right of return". They also called upon refugees who were members of the PLO's National Council and the PA's Legislative Council, in addition to refugees employed in the PA civil and security services "to unify their endeavors towards achieving the right of return and have to firmly stand in front of any attempt to make concessions in this right". IPCRI 2001.

only emerge with the inclusion of the refugee issue, as well as the refugees' participation in some manner".[566] The initiatives did not appear to facilitate or impact public debate on the refugee issue among Jewish Israelis or in the Jewish diaspora. The fact that both projects took place between 1998 and 2000, moreover, meant that they had little prospect of influencing official actors to address the representation of refugee rights in talks to resolve the conflict.[567] Finally, as unofficial initiatives, neither project was able to facilitate a substantive or direct role for refugees in the decisions that would determine their future. Among its recommendations, however, the British Commission urged the European Union to undertake an examination of mechanisms required for collective and individual refugee representation.[568]

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[566] In hearings in Lebanon, for example, Haifa Jamal who originates from Shafa Amr told members of the British Commission that "every year [Palestinian refugees] hear more stories and scenarios about what might be the solution for the refugees. We hear that no one considers solving it based on UN [resolution] 194. They talk about this resolution, but in reality they don't discuss it to solve our problem. Sometimes we hear that they will send us to Canada, Australia or to London. Really, we hear different things every day. But no one comes to ask us our opinion and point of view. ... Always we said: 'We are human beings. You should ask us. We have our right to self-determination'. LMEC, *ibid.*, 194. The Commission described the issue of refugee representation as "the most complicated [and] perhaps the most understudied and misunderstood part of Palestinian refugee life". Commissioners discovered that representation was not only needed on different levels—political, legal, individual and civil—but also that refugee understandings of representation differed according to the issue at hand, whether that be the rights of return, restitution and compensation, the broader panoply of individual rights or collective rights, in particular, the right to self-determination. Moreover, refugees indicated that there was a "wide disparity" in representation across host countries. *Ibid.*, 18. IPCRI's summary of refugee views described Palestinian negotiators as "detached", ill-prepared to take part in negotiations and "defeated" when it came to securing refugee rights. According to the summary, refugees further emphasized that "all the bodies and organizations that try to act on behalf of the refugees have no right to represent them as they are not elected from the refugees' masses". ICPRI, *ibid*.

[567] An independent evaluation of the IPCRI project concluded that the project's impact, according to respondents interviewed for the evaluation, "varied from that of being interesting to being of little importance". Tamm et al. 2004, 18.

[568] The LMEC report made a number of recommendations, urging the EU to strengthen UNRWA, to make sure the refugees were included in any process that concerns them, and help reconnect them to their legitimate representation in ways they choose for themselves". The Commission also recommended that Britain consider making a verbal acknowledgment of historical responsibility for the refugee situation stemming from the British Mandate and increase its support of UNRWA. The main findings related to participation, however, are directed towards the European Union. LMEC 2001, 27–29. The Commission's recommendations formed the basis for a larger deliberative project among Palestinian refugees and communities of exile conducted after the collapse of final status talks between Israel and the PLO. Civitas 2006.

The issue of refugee participation during the third period of negotiations also arose in the context of refugee demands for a seat at the negotiating table alongside Israel and the PLO. The emergence of a popular refugee movement reflected growing concern among Palestinians about the willingness if not ability of the PLO to represent the rights and interests of the Palestinian people as a whole in bilateral negotiations with Israel.[569] First raised during the latter part of the second period of negotiations, Palestinian apprehension stemmed both from differences of opinion about the PLO's endorsement of a two-state solution, in particular, its uncertain implications for refugees, and from the shortcomings if not failings of the organization's representative structures.[570] These concerns were exacerbated, as already noted, by the PLO's agreement to a framework that excluded reference to relevant UN resolutions (e.g., GA Res. 194 and SC Res. 237) and the broader body of international law governing solutions for the refugees and which deferred discussion on a solution for the vast majority of

[569] Jamil Hilal, then director of the PLO's Information Department, identified three major and simultaneous challenges facing the organization following the signing of the 1993 Declaration on Interim Self-Government Arrangements. The PLO "[would] have to demonstrate to Palestinians in the occupied territories that it [could] create from the September agreement the necessary conditions to build an independent state in these areas; it [would] have to demonstrate to the agreement's opponents its fidelity to democratic principles of government; and *it [would] have to show the Palestinians of the diaspora that their rights and interests will not be ignored*. In other words, the PLO leadership [had] to prove that it [was] still able to represent, defend, and further the interests, aspirations, and rights of the entire Palestinian people, and not just a portion of them". [emphasis added] Hilal 1993, 46.

[570] In September 1993, only weeks before the signing of the Declaration of Principles, more than 100 Palestinian figures issued a public statement warning that "decisions on issues that are crucial to the destiny of the future of the Palestinian people [were] no longer [being] made by Palestinian institutions". Palestinian Notables 1993. *See also*, statements by Palestinian activists from inside and outside the 1967 OPT on PLO reform. Palestinian Figures 1993b; and, Palestinian Figures 1993a. The declining role of the PLO's national institutions was perhaps best exemplified for many Palestinians by the fact that the 1993 agreement was not brought before the PNC, the organization's "parliament in exile" and highest policy-making body, for ratification. This may have stemmed from concerns among some Palestinian officials that the agreement would not obtain sufficient votes for approval. Khalidi 1996, 24–25; and, Aruri 2001a, 266. For additional discussion see, al-Hout 2011, 270–281. In addition to concerns about the ability of PLO institutions to represent the rights and interests of the Palestinian people as a whole, critics also expressed concern that the organization was ill-prepared for negotiations with Israel. The most incise criticism was levelled by Palestinian advisors who had taken part in early talks that followed the Madrid conference. *See*, Zureik 1994; Shehadeh 1997; Khalidi 2006; and, Mansour 2011.

refugees until final status talks between the two sides.[571] The relocation of PLO cadre and resources to the West Bank and Gaza Strip and the delegation of PLO authority and functions—political, financial and administrative—to a newly established Palestinian Authority whose jurisdiction was limited to the 1967 OPT further weakened the PLO and its ability to represent Palestinians as a whole.[572] This situation was further exacerbated by disarray among political factions, the

[571] The emergence of the right of return movement, as Suleiman notes, "was a direct reaction and response to the weakening of the right of return's legal framework by accords [signed by Israel and the PLO]". Suleiman 2004, 265. A number of Palestinian negotiators involved in multilateral talks expressed similar concern. Muhammad Hallaj, head of the Palestinian delegation to the multilateral RWG, for example, observed that the negotiations had "corrupted the process by denying the moral and legal standards accepted by the international community for more than four decades. By shelving the United Nations resolutions, it put the future of Palestinian refugees at the mercy of the balance of power and confined refugee rights to what Israel [was] willing to concede". Hallaj 1994, 13. In a statement issued a day before the official signing ceremony at the White House on 13 September 1993, the PLOs Executive Committee appeared to try to reassure Palestinians declaring that its agreement with Israel would "guarantee the control of [the Palestinian] people over all its capabilities, affairs and return of those who have left since 1967 during the interim stage". [emphasis added] PLO 1993a. The declaration, however, contained few if any guarantees for Palestinian control of their affairs. Indeed, as noted above, Israel's military government remained the highest source of authority in the 1967 OPT under the agreement. While the PLO's National Council continued to affirm the right to return, official statements and reassurances were frequently undermined by leaks from the negotiations and unofficial statements from public figures which were contrary to the PLO's official position. Public reaction to the news that the PLO had reached a draft final status agreement (Framework for the Conclusion of a Final Status Agreement between Israel and the Palestine Liberation Organization, Oct. 31, 1995 (Beilin-Abu Mazen Accord)) in back-channel talks with Israel, which effectively negated the right of refugees to return to their homes and places of origin, was such that Palestinian officials associated with the talks denied having reached such an agreement. JMCC 1999. Relevant provisions of the draft agreement are reproduced in, Annex I, Table A1.1 - Peace Agreements and Proposals, Provisions for Palestinian Refugees. The draft agreement nevertheless became a "template" for Israeli, American and some Palestinian proposals to resolve the refugee issue for the next decade.

[572] The political process agreed to by the PLO in 1993 appeared to "undo" much of what the organization had accomplished since its establishment, notwithstanding the fact that ossification of the PLO's representative structures had begun well before the third period of negotiations. Most damaging, perhaps, was the fact that the process "created separate political fields for Palestinians in the West Bank and Gaza Strip, within the Green Line, and in the diaspora, with no institutional links or unified vision or strategy to unite them". Hilal 2010, 32. Activists described the process as having "cut [off] one of the two legs of the Palestinian national struggle" and as having "effectively reduced diaspora Palestinians to bystanders of their own destiny". Abed Rabbo 1997a, 3; and, Kawas 1996, 33. With the relocation of the PLO leadership to the 1967 OPT, the establishment of a Palestinian Authority and the holding of elections limited to inhabitants of the occupied territories, Israel on the other hand appeared to have accomplished what it had sought since former Prime Minister Begin first put forward an autonomy plan for the West Bank and Gaza Strip, namely, the creation of an elected and alternative Palestinian leadership limited to the 1967 OPT and separated from the mass of refugees spread across the Arab world and elsewhere. Agreements between Israel and the PLO linked the exercise of the right to political participation to residence such that all refugees who originated from the 1967 OPT, but were outside the West Bank, East Jerusalem, and Gaza Strip, as noted earlier, were denied the right to take part in PA elections until the two sides agreed on modalities for the admission or

initial lack of civil society organizations with a mandate to promote refugee rights, gaps in international and regional regimes responsible for the protection of refugee rights and the balance of power which militated in Israel's favour.[573] Thus, while most Palestinians, including refugees, continued to regard the PLO as their sole, legitimate representative, a growing number appeared to feel either ill-represented or not represented at all.[574] Indeed, many appeared to fear

return of such refugees. Declaration of Principles on Interim Self-Government Arrangements, *supra* n. 385, Annex I, art. 3; and, Interim Agreement on the West Bank and Gaza Strip, *ibid.*, Annex II, art. 2. During the Washington talks that followed the Madrid conference Palestinian negotiators attempted to secure the participation of 1967 refugees in PA elections, however, negotiators taking part in back-channel talks in Oslo agreed to the temporary restriction on 1967 refugees in exchange for Israel's agreement to allow PA elections to be held in East Jerusalem. This provision was also enshrined in the PA election law. Law No. 15, Relating to the Elections Issued in Gaza, Dec. 7, 1995, art. 7. One Israeli scholar suggested at the time that "the whole logic of the [1993] agreement was to territorialize the PLO leadership, and induce it to shift its agenda at the expense of the refugees who were its original constituency and base of support". Heller 1995, *quoted in*, Shehadeh 1997, 165 n. 9. As the Oslo process began to unfold, moreover, the results increasingly appeared to reflect the predictions set out decades earlier by Fayez Sayegh who warned, as noted above, that under the 1978 Framework for Peace in the Middle East, upon which Oslo was based, only a fraction of the Palestinian people would attain a fraction of their rights in a fraction of their homeland.

[573] The various political factions responded to refugee concerns largely with slogans and speeches in support of refugee rights, but failed to put forward a concrete plan to advance the exercise or implementation of refugee rights. BADIL 1999c, 3; Gassner 2001a, 252–253; and, Hamam 2004, 11. Initial efforts in 1995-1996 to establish a regional network of NGOs involved with refugees failed to come to fruition while the Palestinian NGO network in the 1967 OPT decided to focus on issues relating to the end of Israel's military occupation and the establishment of a Palestinian state rather than the future of refugees. The West Bank-based NGO Coalition for Family Reunification, comprised of Palestinian, Israeli and international human rights NGOs, was one of the few networks actively working on rights-based solutions to refugee-related issues in the early 1990s. AIC 1996b, 2–3; and, AIC 1996e, 2–3. The popular refugee movement also aimed to "[revive] the international solidarity movement, which suffered many setbacks during and after the Oslo period". Suleiman 2004, 268–269. The primary gap in international and regional regimes responsible for Palestinian refugees, as noted above, was the absence of an agency with an explicit mandate to protect and promote the rights and interests of refugees in the context of negotiations. Reflecting the historically strained relationship between the refugee community and UNRWA, activists associated with the popular refuge movement initially questioned whether UNRWA as "a large bureaucratic body with no independent policy making authority" could be "regarded as an active partner in the shaping of strategies in defense of refugee rights". AIC 1996e, 3. The movement subsequently decided, however, that UNRWA should be strengthened, partly as a result of interactions between activists and key staff, but also in response to Israeli efforts to obtain international support for early cessation of UNRWA operations. BADIL 2000a. The factors weighing in Israel's favour included its economic and political power, its ability to create unilateral facts on the ground, its bargaining skills and experience in international negotiations and its close relationship with the United States, the primary mediator to the talks. Albin 1999b, 333.

[574] The lack of effective mechanisms or institutions for refugees to pursue their rights and interests gave rise to what refugee activists and practitioners (Samara 1997; and, Gassner 2001a), negotiators and policymakers (Tamari 1996; Hammarberg 2000; and, ICG 2004) and academics (Nabulsi 2010) subsequently described as a crisis of representation. The most cogent explanation of refugee representation can be found in the main findings of the British Parliamentary Commission of Enquiry (2000) on Palestinian refugees which held public

that the very aim of the peacemaking process was to undermine if not extinguish their rights.[575] This situation not only led to growing demands for PLO reform, it also led to increasing calls for the broader participation of Palestinians in the peacemaking process.

The popular refugee movement that emerged in the 1990s was different from refugee efforts to secure a place in negotiations that followed the 1948 war in terms of the number and type of organizations involved, the broad cross-section of Palestinian society associated with the movement and in terms of its geographic scope. The movement comprised a loose coalition of village associations and societies, community and camp-based organizations and popular committees, unions for refugee youth and women, non-governmental and community-based organizations, each functioning separately, but also co-operating and coordinating efforts in varying degrees and at different levels.[576]

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hearings in camps and communities of exile in major Arab host countries. LMEC 2001, 17–18. One commentator observed that it was the absence of representation equivalent to that of workers, women, students and NGOs that "made it possible and easy for the PLO to ignore [refugees] in the negotiations of Madrid-Oslo, and to compose a Palestinian refugee delegation from among persons who act[ed] as functionaries and employees, dealing with the refugee question from an academic, rather than from a militant approach". The commentator further observed that "[e]ven if these were the best people to represent the refugees, the refugees themselves [had] never elected them nor [had] they ever been consulted about their appointment". Samara 1997, 4–5. *See also*, Klein 1998, 11; Aruri 2001a, 260; Gassner 2001a, 252; ICG 2004, 19–20; and, Marshey and Tansley 2005, 36.

575 Similar concern was expressed by some Palestinian negotiators. Commenting on a 1994 RWG report on assistance to Palestinian refugees, for example, Tamari observed that "[u]nless progress occur[ed] in [both humanitarian and political] spheres, the second assumption [of the RWG] report, referring to the non-prejudicing of the rights of refugees [would] become a formula for covering up schemes of relocation and resettlement of refugees, without satisfying their needs or aspirations". Tamari 1996. Indeed, the focus on improving the living conditions of Palestinian refugees in the absence of progress on a political solution to the refugee issue appeared reminiscent of early UN efforts to facilitate a *de facto* solution to the issue through the economic reintegration of refugees in the region. The refugee issue, according to Tamari, increasingly appeared to reflect "a new dichotomy within Palestinian politics between the contingencies of statebuilding, and the demands of the diaspora for representation and repatriation". *Ibid*.

576 The popular refugee movement included both "old" (pre-1990) and "new" (post-1990) organizations, institutions, associations and societies. While some of its "members" were affiliated with political factions, others were independent of or at least not formally linked with a particular faction. The mandates of the various organizations associated with the movement varied from the organization of popular activities to service delivery, research and advocacy. On the eve of final status talks between the PLO and Israel a core group of organizations met in Cyprus to begin the process of establishing a coalition that would facilitate communication, cooperation and joint initiatives for the right of return. Hamam 2004.

The diversity of individuals and groups involved not only reflected the centrality of the refugee issue for Palestinians, as noted above, it also reflected the fact that over the course of the conflict as much as two-thirds of the entire Palestinian people had experienced some form of forced displacement. With roots inside historic Palestine, the popular refugee movement stretched across camps and communities of exile elsewhere in the Middle East and further abroad where Palestinians had sought refuge and asylum over the course of the conflict.[577] The movement was also unique from past refugee initiatives in terms of the wide array of activities and tools used to advance the rights and interests of the refugees—e.g., cultural and sporting events; lectures, workshops and conferences; print and electronic media; press releases, statements and petitions; and, demonstrations, commemorations and village visits, etc.[578] The development of new communication technologies, in particular,

Various groups associated with the popular refugee movement also convened in the city of Boston for the first right of return conference in North America. BADIL 2001c. Attended by more than a thousand Palestinian/Arab Americans—intellectuals, veteran and new community and student activists—the conference contributed to the establishment of right of return networks in North America (Palestine Right to Return Coalition/*al-Awda*) and in Europe (Palestinian Right of Return Coalition/*al-Awda*). BADIL 2001a; and, Suleiman 2004. For a selection of conference papers, *see*, Aruri 2001b. The number of initiatives and organizations focused on Palestinian refugees continued to expand in the years that followed the collapse of final status talks in 2000-2001 between Israel and the PLO. For further discussion of the popular refugee movement *see*, *e.g.*, Aruri 2001a; Aruri 2001b; Gassner 2001a; Hamam 2004; Suleiman 2004; and, al-Hardan 2012.

[577] The largely spontaneous emergence of the movement makes it difficult to pinpoint its "geographical" origins. Some of the most extensive or detailed plans and proposals for the development of an institutional "infrastructure" for the movement, however, appeared to emerge from inside historic Palestine—e.g., the ideas set out in the declaration issued by the first popular refugee conference in the West Bank discussed in the first chapter of this study—notwithstanding input and ideas from activists and communities in exile. In the mid-1990s, for example, Palestinian intellectuals in North America and Europe issued a call for a "Congress of Self-Determination and Return" to "serve as a constituent assembly to remedy the legal vacuum which plagu[ed] the Palestinian nation". CRS 1996; and, Aruri 2001a. That some of the most detailed plans and proposals emerged from within historic Palestine may be explained, in part, by the fact that despite restrictions on and obstacles to the development of Palestinian civil society in Israel and in the 1967 OPT over the course of the conflict civil society never ceased to exist, in contrast to the situation in exile where refugees had to (re)construct civil society after their displacement. Hilal 1993, 50–51; and, Muslih 1993, 260–262. The restrictions and obstacles to the development of civil society in exile, especially in the Arab world, moreover, often appeared to be at least if not more severe than inside Israel and the 1967 OPT.

[578] The declaration issued by the 1996 popular refugee conference in Deheishe refugee camp, for example, recommended the organization of conferences, events and campaigns, the

the internet and satellite television, not only facilitated access to information, it also provided a means to share experiences, debate issues and strategies and coordinate work among various refugee initiatives.[579]

The movement's substantive demands were similar to those put forward by the PLO's National Council and by the AHC and refugee organizations that preceded it. One of the most detailed elaborations can be found in the 1996 declaration issued by the first popular refugee conference held in Deheishe refugee camp in the West Bank city of Bethlehem referred to in the introduction to this study.[580] Refugees taking part in the conference declared that they would

establishment of non-governmental organizations to help meet refugee needs, the establishment of a center for documentation and information and the publication of newsletters, magazines and other materials on the refugee issue. Declaration Issued by the First Popular Refugee Conference, *infra* n. 580, pt. II, paras. 8-12. Similar to language found in PNC statements since the late 1970s, the Preparatory Committee to the first popular refugee conference in Deheishe also "address[ed] all Israelis who [were] against expansion and war" and called upon them "to work seriously to make a significant change in the Israeli mentality towards the historic rights of the refugees". PCPRC 1996, para. 5. Refugees in the 1967 OPT also pushed for the establishment of a lobby in the Palestinian Legislative Council through the creation of a sub-committee on refugees. AIC 1996a, 2; AIC 1996h, 4–5; and, AIC 1996j, 7. Petitions signed by individuals and organizations representing a cross-section of Palestinian society within and beyond the borders of historic Palestine called for the right of return (PRM 2000) and for the right to restitution (PRM 1999). Refugee visits to village sites inside Israel aimed to promote practical thinking about how to resolve the refugee issue. BADIL 2000i. A first right of return march in 1995 (AIC 1995a) was followed by renewed and expanded annual commemoration of the Palestinian *Nakba* which became in many ways both a symbol and expression of the popular refugee movement. Commenting on commemoration practices in camps in Lebanon, Khalili observes that while practices sponsored by the Palestinian leadership were "macro-historical" in focus, those that emerged in the camps centred on the village and included popular ethnographies, memory museums, naming practices and history telling using new technologies. Khalili 2004.

[579] This was particularly important given restrictions on freedom of movement within and between the 1967 OPT, Israel and major host countries in the region. In the West Bank, for example, the 1996 popular refugee conference in Deheishe refugee camp was followed immediately by a two hour call in radio program. AIC 1996e, 1. In the summer of 1999, the Information Technology Unit at Birzeit University in the West Bank launched a project entitled "Across Borders" which aimed to connect refugees across host countries through the establishment of internet centers, provision of training and the creation of websites for each refugee camp. de Préneuf 1999; and, Usher 1999. The use of both old and new media also became an important tool for the campaign to defend refugee rights that was subsequently launched in the West Bank and Gaza Strip. For additional discussion of the use of media *see*, BADIL 2000a, 9; and, BADIL 2001b, 16.

[580] Declaration Issued by the First Popular Refugee Conference, Deheishe Refugee Camp, Sept. 13, 1996. The declaration is reproduced in, Annex I, Table A1.3 - Declarations, Palestinian Refugees. Refugee views about the peace process can be ascertained from a range of sources. For a review of refugee opinions derived from survey research *see*, *e.g.*, Zureik 1999; and, Daneels 2001. A summary of refugee views expressed during town hall meetings in the West Bank and Gaza Strip in the late 1990s can be found in, Al-Araj and Abu Zneid 2001. Refugee views can also be ascertained from statements issued by refugee organizations and associations. *See*, *e.g.*, statements archived at BADIL Resource Center

"struggle" for the implementation of UN resolutions and international legal instruments which "recognized the Palestinian people's unconditional right to self-determination and confirmed the refugees' right to return to their homes and property".[581] Not unlike refugee organizations that sought a seat at the negotiating table during the first period of negotiations, refugees also "rejected the concept of 'compensation' as an alternative to the right of return".[582] In the meantime, they called for "the improvement of refugee living conditions in the refugee camps and outside them [in a manner] which protect[ed] the identity of the camps and serv[ed] refugee interests, and [did] not go to the expense of the refugees' national right of return".[583] The declaration also rejected any effort to

for Palestinian Residency and Refugee Rights <http://www.badil.org> [accessed Dec. 12, 2010]; and, the Palestinian Return Centre <http://www.prc.org.uk> [accessed Dec. 12, 2010] Finally, the most comprehensive collection of refugee views can be found in the verbatim reports of deliberations among Palestinian refugees. These reports underscore the general "cohesion and consistency" of refugee views on solutions to their plight across host countries. *See*, LMEC 2001; and, Civitas 2006.

581 Declaration Issued by the First Popular Refugee Conference, ibid., pt. I, para. 3. See also, paras. 4-5. The conference preparatory committee underscored the importance of a rights-based solution to the refugee question arguing that "[h]istorical experience assured that agreements and accords based on power and superiority don't serve people who are seeking for honored peace". PCPRC 1996, para. 7. Statements issued by refugee organizations on the eve of final status negotiations between the PLO described the right to return to homes and property as a "basic and natural right", an "individual and collective right", a right "inherited by the new generations", and a "non-negotiable right". The statements further noted that these rights were codified in a range of UN resolutions—e.g., GA Res. 194, GA Res. 3236 and SC Res. 237—and in an array of treaties including the UDHR, ICCPR, ECHR, ACHR, AfCHPR, the Nuremberg Convention and the Fourth Geneva Convention. In language similar to that used in the 1970s in the context of decolonization, the right of return was also described as "an essential condition for the Palestinian people to practice their right to self-determination". Finally, refugee organizations "reject[ed] any attempt to prioritize [Palestinian] rights or the suggestion that they contradict[ed] each other" noting that "all of [their] rights [were] strongly connected [and] linked to the core of the conflict, i.e., the right of the Palestinian refugees to return to their homes". BADIL 1999a; BADIL 2000b; BADIL 2000c; and, BADIL 2000d.

582 Declaration Issued by the First Popular Refugee Conference, *ibid.*, pt. I, para. 6. *See also*, BADIL 1999a; and, BADIL 2000e. As noted above, Israel viewed compensation and resettlement as primary elements of a solution to the refugee issue. Other major actors, including the United States, appeared to share Israel's view holding that large-scale return was unrealistic given the passage of time and Israel's resolute opposition to refugee return aside from its willingness to accept a small number of refugees on a humanitarian basis through family reunification. The limited progress made in official negotiations and in unofficial or Track II fora on the refugee issue focused on compensation, as already noted, due to the fact that it was the one major aspect of the issue on which both sides were able to reach some level of accommodation.

583 Declaration Issued by the First Popular Refugee Conference, *ibid.*, pt. II, para. 8. *See also*, pt. IV, para. 2. The demands set out in the conference declaration are notable in that they also address the economic, social and civil rights of refugees in host countries. In this

terminate UNRWA and transfer its services to the Palestinian Authority until there was a comprehensive solution to the refugee issue.[584] Finally, the popular movement warned that "[a]ny negotiations or programs on the refugee question which bypass[ed] the international resolutions and decision on [their] right to return to [their] homeland and property, or contradict[ed] the international human rights declaration, [would] receive, from [their] side, nothing but struggle and resistance".[585]

The movement's procedural demands were likewise similar to those put forward by refugee organizations during the first period of negotiations. Refugees rejected efforts by "some Arab friends and brothers here and there, who volunteer[ed] their own opinion to the media and ... [who were] ready to sit

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respect, the declaration challenges a common misconception that the right of return is the sole concern of Palestinian refugees. Read as a whole, moreover, the declaration underscores widespread consensus relating to the indivisibility and interdependence of human rights. The declaration further emphasized that refugee camps should not be pressured to become municipal areas. *Ibid.*, pt. II., para. 10. Refugee activists expressed concern that incorporation of the camps as municipalities would be interpreted as de facto resettlement and thus endanger the right to return to their homes and properties. AIC 1995b. In the aftermath of the 1948 war and following the collapse of UNCCP-sponsored negotiations, the international community had attempted to facilitate a solution to the refugee issue through the economic reintegration of refugees in the region. While this effort was to be undertaken "without prejudice" to the right to return, many refugees nevertheless viewed the initiative at the time as a "ploy" to facilitate their resettlement. Scholars and policymakers also began to explore the granting of citizenship to Palestinian refugees in a future Palestinian state and in host countries as a means to "resolve" the refugee issue. This included a major proposal published by the US-based Council on Foreign Relations. Arzt 1996. The use of citizenship to effectively "dissolve" the refugee issue had been a concern of many refugees, as noted earlier, since Jordan granted citizenship to Palestinians who had found refuge in Jordan during the 1948 war.

[584] Declaration Issued by the First Popular Refugee Conference, *ibid.*, pt. II, para. 5. The Deheishe Declaration also recommended that UNRWA be "connect[ed]" to UNHCR in order to extend protection and assistance to a broader group of refugees, guard against a de facto solution to the refugee issue through the granting of citizenship and strengthen efforts for refugee repatriation. *Ibid.*, pt. I., para. 8. There had been several previous attempts, including by the PLO, as noted earlier, to extend protection to Palestinian refugees through UNHCR. UNGA 1983, para. 157–159; and, Takkenberg 1998, 134. These initiatives aimed to address the aforementioned "gaps" created in part by the aforementioned devolution of UNCCP responsibilities following the collapse of the first major round of negotiations after the 1948 war. The reference to UNHCR may have also been informed by greater awareness of the agency's role in promoting and facilitating the implementation of durable solutions for refugees resulting from its intervention on behalf of refugees displaced by the 1990-1991 Gulf war and due to the extensive media coverage given to agency efforts to facilitate the return of refugees displaced by conflicts in the Balkans.

[585] *Ibid.*, pt. I, para. 5.

at the negotiation table and speak on behalf of the refugees".[586] Noting that refugee rights were "[not] a matter of people's opinion" nor "a subject [to be resolved through] opinion polls", refugee organizations demanded that "the circle of participants in the negotiations [be expanded], in order to guarantee the representation of a broad spectrum of political views and intellectual thought".[587] The procedural demands put forward by refugees, however, were much broader in their elaboration of a mechanism for a democratically elected refugee leadership mandated to represent refugee rights and interests in negotiations alongside the PLO and Israel. The Declaration issued by the first popular refugee conference, as already explained in the introduction to this study, recommended the organization of popular conferences and the election of "refugee councils" in camps and communities of exile within and beyond the borders of historic Palestine.[588] Each council would in turn elect an executive committee to oversee council decisions and recommendations and together with other executive committees organize a "General Refugee Conference" which would elect its own executive committee.[589] The latter would be responsible for "follow[ing] up the struggle for the refugees' national rights (right

[586] BADIL 1999e.

[587] *Ibid.* Opinion polls comprised one of the primary tools used to "engage" and "consult" Palestinian refugees about their future. They also generated significant controversy, especially when results appeared to indicate a willingness among a significant number of refugees to forego or cede the right to return to their places of origin. One critique drafted in part by the author of this study questioned the usefulness of opinion polls as indicators of future refugee choices given the lack of factual information required for educated choices, the absence of any guarantees that their choices would be recognized and public sensitivity or suspicion that polls were being used to undermine refugee rights and interests. BADIL 1999d. Summarizing the findings of a project in the Jalazon camp in the occupied West Bank, Abu-Iyun and Murad similarly questioned "the benefit of opinion polls and other quantitative research that asks refugees' opinions without finding out if refugees understand the meaning of such terms as 'repatriation', 'compensation' and 'international law'". The study found that while refugees were able "to articulate complex analyses that acknowledge the difficulties of implementing the right of return [they] could not cite details about relevant international resolutions. They did not know the specific positions of Palestinian, Israeli and international parties on the right of return. Most were unaware that they have both the legal right to compensation and the right of return". Abu-Iyun and Murad 2006, 47–48.

[588] Declaration Issued by the First Popular Refugee Conference, *supra* n. 580, pt. III, paras. 1-2.

[589] *Ibid*., pt. III, paras. 3-4.

of return), and the struggle for civil refugee rights in their areas of domicile, e.g., the right to work, education, health, environment, culture, movement, expression, and all those human and civil rights protected by international conventions".[590] The General Refugee Conference would also be "the only body authorized to negotiate—*through the PLO*—on the refugee issue".[591] [emphasis added]

The popular movement and its demands elicited a range of reactions from the co-sponsors of and parties taking part in the peace negotiations. The two co-sponsors, the United States and Russia, appeared to be either unaware or indifferent to the movement and its demand for a seat at the negotiating table alongside the PLO and Israel.[592] Given the popular movement's substantive demands, especially the right of return, Israeli officials likely viewed the refugee movement as a potential "spoiler" to a comprehensive agreement to the

[590] *Ibid*., para. 5.

[591] *Ibid*., para. 6. Refugees also called upon the PLO and the PA to "support the establishment and development of bodies of coordination between camps and diaspora refugees" and to "strengthen Palestinian-Arab and Islamic coordination". *Ibid.*, pt. II., paras. 1-2 and 4. This demand appeared to reflect refugee concerns about the aforementioned "disintegration" of the Palestinian body politic following the relocation of the PLO to the 1967 OPT and the establishment of and delegation of PLO responsibilities to the Palestinian Authority with its jurisdiction limited to Palestinians in the West Bank, East Jerusalem, and Gaza Strip.

[592] The primary accounts and studies on final status negotiations between the PLO and Israel are silent on the popular refugee movement and its demand for a seat at the negotiating table. It may be assumed, given the high-level or elite nature of the talks and the substantive demands of Palestinian refugees for return and restitution, which Israel opposed, that US mediators, in particular, would have opposed the participation of refugees in the negotiations. In his account of the peace process, Dennis Ross, Special Middle East Coordinator under US President Bill Clinton, writes that he was "focused not on reconciling rights but on addressing needs". Ross 2004, 726. The essential "trade-off" under this approach was the establishment of a Palestinian state, defined as a Palestinian "need", in exchange for the "extinguishment" of the right of return, thus enabling Israel to realize its "need" for security and the preservation of Israel as a Jewish state. Ross goes on to note that among key US officials there was “no disagreement" on refugees: "there would be no right of return to Israel, and this was truly the measure of the Palestinian readiness to make peace with Israel". *Ibid.* According to one Palestinian advisor who took part in final status negotiations on the refugee issue at Camp David in 2000, "American negotiations became strangely touched at the mere mention of principles and rights". Hanieh 2001, 75. The British Commission of Enquiry on Palestinian refugees, discussed above, attributed "the neglect of refugees' views by those involved with the Oslo process [as] largely based on an understanding of refugees' attitudes as irredentist, intransigent and backward-looking, rather than either productive or constructive to peace and a reasonable settlement of the conflict". LMEC 2001, 23.

conflict.[593] In contrast to first period of negotiations, as described above, Israel did not engage refugee organizations affiliated with the popular refugee movement. The PLO initially sought to marginalize or contain the movement fearing that it aimed to compete with or even replace the organization as the sole, legitimate representative of the Palestinian people.[594] There was nevertheless some degree of recognition among a handful of officials that a lasting solution to the refugee issue would be difficult to achieve without the participation of refugees themselves. One Palestinian negotiator observed, for example, that "an honest open debate on the refugee issue within the Palestinian refugee community [was] absolutely essential" recommending that "the [Palestinian] leadership explore possible options directly with the refugees themselves and that they neither be faced with a *fait accompli* nor coerced into

[593] The primary accounts and studies on final status negotiations between Israel and the PLO are also silent on Israel's views towards the popular refugee movement. It may nevertheless be assumed that, given the popular refugee movement's demands for return and restitution, Israel would have likely opposed refugee participation in the negotiations. In advance of final status talks with the PLO Israel identified refugee return as one of five "no's" in its list of non-negotiable demands. Israel 1999b; and, Israel 2000a. Successive Israeli governments, moreover, had consistently rejected giving refugees a free choice in solutions to their situation fearing that too many would choose to return to their homes and places of origin inside Israel. According to one refugee activist, inside Israel the movement "was immediately branded as being a challenge to Israel's 'right to exist', as 'extremist' undermining the authority of then President Arafat, and as 'fundamentally opposed to peace'". Jaradat 2007, 22. Commenting on the Israeli public's understanding of the refugee issue at the time, the British Commission of Enquiry on Palestinian refugees, referred to above, observed that while "refugees had, on the whole, developed a pragmatic and realistic understanding of the reality that is Israel today ... these views [were] not well known amongst the Israeli public". LMEC 2001, 23. For additional discussion of Israeli public opinion on the refugee issue and Palestinian perceptions of Israel's position *see*, Zakay and Klar 2002; and, Zureik 2007.

[594] The popular refugee movement was accused of "fragmenting the national rights and cause" notwithstanding the fact that other sectors of Palestinian society, including workers, students and women, had their sectoral representatives. AIC 1997b, 7; and, Jaradat 2007, 22. The emergence of the movement led the PLO to reactivate its Department for Refugee Affairs and to establish Popular Service Committees as its presence in each camp. The committees were eventually integrated into the movement, however, as its members were refugee activists and because the PLO's Refugee Affairs Department "lacked the means (manpower, infrastructure and funds) required to build the committees as an alternative to the independent movement". Gassner 2001b, 256. Some observers nevertheless felt that it was the PLO that had effectively co-opted the popular refugee movement in part through the dispersal of funds to assist popular committees and initiatives. ICG 2004, 20. For a comparison between the situation in the West Bank, where activists coordinated efforts with PLO/PA officials, and the Gaza Strip, where independent initiatives were initially co-opted by the PLO *see*, AIC 1996f. *See also*, the discussion on governing Palestinian refugees camps in, Hanafi 2010.

accepting solutions not in their interest".[595] A retired Israeli general associated with unofficial talks on the refugee issue who supported the resettlement of the refugees outside the state of Israel similarly argued that refugees should be included in talks to resolve their situation.[596] "[T]he importance of allowing refugees themselves a voice in their destiny", as one international representative to the multilateral talks on refugees observed, had nevertheless been all but forgotten noting that their exclusion had contributed to "a crisis of confidence between the PLO and many of the refugees they aspir[ed] to represent".[597]

The outcome of refugee efforts was mixed. On procedural demands, the popular refugee movement was unable to elect a refugee council, as set out in the declaration adopted at the first popular refugee conference in Deheishe refugee camp, with a mandate to take part in negotiations on the refugee issue alongside the PLO and Israel.[598] Nor was the movement able to obtain the

[595] Zureik 1994, 14, 16. Another expressed doubt about whether "any future agreements [would] be binding unless the refugees themselves [took] part in the talks" and thus suggested that "[refugee] representation [could] take place through the negotiating team or through independent commissions". Tamari 1999, 88. Tamari further observed that "[t]he fact of being a refugee does not necessarily mean that one represents refugees. That is why it is important that members of the grass-roots committees of the camp associations also be represented". *Ibid*.

[596] Shlomo Gazit, *cited in*, Ginat and Eickelman 2001, 141. Shai Franklin, a researcher associated with the Washington Institute for Near East Policy, the US-based pro-Israel think tank referred to above which recommended that the US encourage the emergence of an alternative Palestinian leadership that accepted Israel's existence, suggested that refugees be brought into the process as a way to "adjust long-held positions and legalistic arguments, to accept that the core issues are existential and must be faced realistically and directly, and to translate conflicting assertions of political rights into a negotiated settlement based upon shared interests". Franklin 1995, 216.

[597] Hammarberg 2000, 53–54. The establishment of a number of Track II and Track III initiatives on the refugee issue, as noted above, with the support of major donors to the Middle East peace process on the eve of final status talks between Israel and the PLO similarly appeared to reflect an emerging if not belated awareness of the importance of ensuring refugee buy-in or ownership of agreements reached through official negotiations.

[598] The movement struggled against sectarianism among grassroots organizations, political parties and individuals; lack of experience and resources necessary for effective and sustained lobbying efforts; and, limitations stemming from the widespread dispersion of refugees, restrictions on freedom of movement and the lack of political freedoms faced by the great majority of refugees in the 1967 OPT and in major Arab host states. The movement also encountered a solidarity network that had been divided and debilitated by the peace process and which often lacked understanding of the refugee issue, in part, due to the predominant focus on issues relating to the end of Israel's military occupation. BADIL 1999b,

support of Palestinian and Israeli officials for a seat at the negotiating table. Final status talks between Israel and the PLO in 2000-2001 thus proceeded without the direct participation of the refugees themselves. On substantive issues, activists associated with the popular refugee movement felt that the movement had begun to "re-activate" concern about refugee rights, re-introduce the issue in both popular and official institutions and develop and disseminate knowledge on the refugee issue.[599] Other observers were less definitive about the movement's contribution, noting that it was "neither structured nor organized in a manner adapted to Palestinian political structures and its decision-making process".[600] Activists themselves remained "deeply concerned about the status

6; BADIL 2000a, 12; BADIL 2000g; and, Jaradat 2007, 22–23. Public mobilization around the 1996 Palestinian Authority legislative council and presidential elections, referred to earlier, further delayed refugee efforts to elect a refugee council in the 1967 OPT. AIC 1996j, 7–8. In September 2000, around 100 representatives of popular refugee unions (Union of Youth Activity Centers, Union of Women's Activity Centers), the Popular Service Committees, the Society for the Defense of the Rights of Internally Displaced in Israel, as well as local refugee committees, societies organizing refugees based on their villages of origin met to revive efforts to establish an elected refugee council. BADIL 2000f. Efforts to restart the process were again delayed, however, with the onset in late September 2000 of the second Palestinian *intifada*.

[599] In its annual report for 1999, for example, BADIL Resource Center for Palestinian Residency and Refugee Rights, a community-based advocacy organization established as a result of recommendations from the first popular refugee conference in Deheishe refugee camp several years earlier, observed that "[c]ampaign activities in Palestine were reported by the Palestinian media, and closely followed by the Palestinian Authority and PLO institutions directly related to the Palestinian refugee file (especially the PLO Department of Refugee Affairs)". The report further observed that "[r]efugee rights activities and lobbying showed some impact on the official Israeli position, which [had] progressed from suggesting that the refugee question [was] of minor importance (by not addressing it at all) towards increasing recognition that the final status negotiations [would] have to tackle the refugee question". BADIL 2000a, 12. The organization also felt that refugee efforts had contributed to "increasing awareness [especially at the European level] of the importance of the Palestinian refugee question and the need for a solution based on international law and acceptable for the refugee community". *Ibid.*, 13. A year later, it reported that "[t]he situation of relative isolation and marginalization of refugee rights changed rapidly [and that] significant progress could be achieved with the formation of a sound, rights-based official Palestinian position on refugee rights on the one hand, and the establishment of a world-wide Palestine right-of-return network on the other". BADIL 2001b, 26. The organization thus "shar[ed] the optimism of its partners that past and current efforts [could] achieve recognition of the need for a rights-based approach to the solution of the Palestinian refugee question". *Ibid*. *See also*, BADIL 2000h; Hourani 2004; and, Jaradat 2007.

[600] ICG 2004, 17. A former head of the PLO's Department of Refugee Affairs quoted in the report suggested that "at the end of the day [the movement's] impact [was] not going to be decisive, because [it was] not organised, just loud". ICG Interview, As'ad Abdelrahman, *ibid.* A former negotiator, however, observed that with the emergence of the popular refugee movement the PA had become "more vigilant, careful, but also more secretive [and that] every negotiator was looking over his shoulder every time he made a statement". ICG Interview,

of Palestinian refugee rights in the future stages of the political negotiations" and, as such, were "convinced that only a strong Palestinian lobby for the defense of refugee rights [could] prevent premature Palestinian concessions to strong Israeli and international pressures for a political settlement which [fell] short of meeting international standards and laws".[601]

The collapse of final status talks between the PLO and Israel marked the end of the third period of negotiations. Having secured a seat at the negotiating table, after decades of exclusion, the PLO was less successful in obtaining Israel's recognition, let alone implementation, of the rights and interests of the Palestinian people, the majority of whom were refugees. Quadripartite and multilateral talks on refugees had already ground to a halt by the summer of 2000 when the parties attempted to hash out a comprehensive solution to the

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Salim Tamari, *ibid.* The Crisis Group's apparent comparison between the popular refugee movement and western-style lobbies misconstrues the nature of the movement and thus tends to marginalize or overlook its impact on PLO policy. The ICG observes, for example, that there is no indication that the movement attempted to influence the PLO leadership in advance of final status talks with Israel. To cite one example of many, some 60 institutions and community organizations as well as more than 1,000 individuals signed a memorandum which was presented in June 2000 to Salim Zanoun, head of the PNC, the organization's highest policy-making body. BADIL 2000e. In fact, contrary to ICG assertions, the popular movement's strength as a movement rather than as a western-style lobby lay in the fact that the refugee issue, as the report accurately observes, was a cross-cutting or national issue which made the movement's concerns more difficult to dismiss than if it had been organized around more narrow interests. In lobbying for refugee rights, the movement thus aimed to reconnect and advance the rights of the Palestinian people as a whole and not just those of the refugees.

[601] BADIL 2000a, 11–12. In its 1999 annual report the organization also noted that despite the aforementioned progress the "impact of [its community-based] efforts at raising international awareness for Palestinian refugee rights [could not] be considered much more than a drop in the ocean of ignorance, forgetfulness, and political bias". *Ibid.*, 13. Reporting continued progress a year later, the organization nevertheless cautioned that its relative optimism "remain[ed] overshadowed by the insistence of international policy makers, especially the governments of the United States and Europe, and Israel, in a 'rapid deal' outside the framework of international law and UN resolutions", and further warned that such an approach "if imposed on the Palestinian leadership—[would] prevent a durable solution of the Israel-Palestinian/Arab conflict for years to come". BADIL 2001b, 26. An activist associated with the popular refugee movement identified three major shortcomings or failures. The movement had "failed to prevent the emergence of enormous dangers facing the right to return, especially with the development of racist, right-wing ideologies and streams within Israeli society". It had also failed "to deter those [Palestinians and others, referred to earlier] who conspired against the right of return". Finally, the movement had "failed to make the refugee issue a popular issue in the Arab world" where popular sentiment continued to focus on ending Israel's occupation and establishing an independent Palestinian state. Hourani 2004, 15.

conflict under US-auspices at Camp David.[602] After more than two weeks of negotiations, the high stakes talks ended without agreement and were followed by the outbreak of a second Palestinian *intifada* in the 1967 OPT.[603] The two sides continued efforts to find a solution through the fall culminating in a second round of final status talks in early 2001 in the Egyptian resort of Taba.[604] While appearing to make some headway on technical issues, the Taba talks once again ended without agreement.[605] Efforts to restart negotiations over the past

[602] The quadripartite talks on modalities for the admission of 1967 refugees to the West Bank and Gaza Strip ground to a halt in 1996 over disagreements related to the definition of such refugees, their number and procedures for their entry into the West Bank and Gaza Strip. The committee had met six times between March 1995 and February 1996. An agreement between the PLO and Israel in 1999 called for the resumption of talks in October of that year, but the talks did not resume until April 2000 and once again collapsed over similar disagreements. Multilateral talks were suspended in 1997 when Arab states decided to withdraw their delegates to protest Israel's ongoing settlement construction in the 1967 OPT. The RWG held seven plenary meetings between May 1992 and December 1995 with inter-sessional meetings to discuss specialized themes. The bilateral talks briefly opened in 1996 (Israel and PLO 1996), but were suspended following the election of a new government in Israel and renewed violence in the 1967 OPT. The parties agreed to resume talks in 1999 and complete an agreement within one year. Sharm el-Sheikh Memorandum on Implementation Timeline of Outstanding Commitments of Agreements Signed and the Resumption of Permanent Status Negotiations, *supra* n. 385. In early 2000 Israel and the PLO once again turned to back-channel talks in an effort to reach a framework agreement in advance of negotiations on a comprehensive solution to the conflict. US 2000a. The effort failed and the two sides entered US-brokered talks at Camp David in July 2000 without agreement on major principles let alone details for their implementation.

[603] The two sides described the talks as "unprecedented" and reaffirmed their commitment "to achieve a just and lasting peace [and] to conclude agreement on all permanent status issues as soon as possible". They further reiterated that "[bilateral] negotiations based on UN Security Council Resolutions 242 and 338 [were] the only way to achieve such an agreement", acknowledged "the importance of avoiding unilateral actions that [would] prejudge the outcome of negotiations" and reaffirmed that the United States "remain[ed] a vital partner in the search for peace". Israel, PLO and US 2000. For statements by Israel and the PLO *see*, Israel 2000b; and, PLO 2000. For more detailed accounts of the talks *see*, *e.g.*, Agha and Malley 2001; Enderlin 2003; Pressman 2003; and, Swisher 2004.

[604] In December 2000, the US put forward its own bridging proposal (US 2000b) which largely reflected ideas already developed in back-channel talks among the two sides in the mid-1990s. This included the aforementioned draft final status agreement which became known as the Beilin-Abu Mazen Accord. The draft agreement is reproduced in Annex I, Table 1.1 - Peace Agreements and Proposals, Provisions on Palestinian Refugees. Neither side rejected the US bridging proposal in full, but each side relayed serious reservations. PLO 2001a. Israel's views have yet to be released to the public.

[605] The PLO and Israel once against described their talks as "unprecedented", but ascribed their failure to reach a comprehensive agreement to "the circumstances and time constraints" surrounding the negotiations. The latter included forthcoming elections in Israel. They further noted, moreover, that "they [had] never been closer to reaching an agreement" and that "the remaining gaps could be bridged with the resumption of negotiations following the Israeli elections". Israel and PLO 2001. Accounts of the talks suggest that the parties made some progress on technical aspects of the refugee question, including the establishment of a compensation mechanism, however, on central issues, including the question of responsibility and the right of return, the parties failed to bridge their differences. For working

decade have yet to result in substantive talks to resolve the conflict, especially in relation to durable solutions for Palestinian refugees.

IV. Summary

The right to political participation is, arguably, a central but little understood much less studied aspect of the Palestinian refugee issue. This chapter examined the participation of Palestinian refugees in the public affairs of their historic homeland in the context of international efforts to facilitate a negotiated solution to their situation over the past six decades. The discussion reveals a number of useful insights, first and foremost of which is the continuity of refugee efforts to secure a place in talks to resolve their situation over the past six decades. While the type of participation demanded and the relationship between refugee organizations and national institutions changed during each of the three periods, common to all was the desire of refugees to have a say in the determination of their future. A second insight that emerges from a review of each period of negotiations is the basic continuity in both procedural and substantive demands—i.e., the rights and interests which refugees sought to address or redress in the context of negotiations to resolve the conflict. Finally, the discussion suggests that refugee efforts to secure a separate or independent seat at the negotiating table occurred during periods when national institutions were perceived as unable or unwilling to represent the rights and interests of refugees in negotiations to resolve the conflict. The question of whether Palestinian refugees had a right to take part in negotiations alongside

papers on the refugee issue from the Taba talks *see*, PLO 2001a; and, Israel 2001. The papers are reproduced in Annex I, Table A1.1 - Peace Agreements and Proposals, Provisions on Palestinian Refugees. A summary of areas of agreement and disagreement on the refugee issue can be found in, Moratinos, EU 2001. For a more detailed account of the negotiations *see*, *supra* n. 603 and sources cited.

Israel and the PLO during the 1990s and the question of whether their exclusion was unique or common to refugee situations elsewhere are the focus of the followings chapters.

CHAPTER FOUR

Legal Foundations

I. Introduction

The right to political participation, as already noted in the introduction to this study, is widely recognized as a fundamental human right enshrined in both international and regional treaties and in an array of other instruments adopted by international and regional organizations. Treaties which codify political participation as a binding norm, however, are largely silent on ways and means for citizens, refugees in particular, to take part in the conduct of public affairs. The promotion and development of international law, especially in recent decades, including the adoption of new instruments and the clarification of existing ones, has nevertheless contributed to evolving understandings of the right to political participation while a concomitant expansion in treaty ratification has enhanced its normative strength. These developments have influenced and in turn have been influenced by a range of parallel discourses on women, minorities, indigenous peoples, refugees and IDPs, civil society, human security, human rights, development and democracy. The synergy of these developments and discourses has arguably begun to reshape legal norms governing political participation in ways that appear significant for understanding peace negotiations as comprising a conduct of public affairs entailing a concomitant right to take part applicable to the participation of refugees in negotiation of durable solutions to their situation.

This chapter examines the right of refugees to take part in the public affairs of their countries of origin under international law in the context of

negotiations which aim to resolve their plight. The chapter has two major aims. The first aim is to determine whether peace negotiations comprise a conduct of public affairs under international law entailing a concomitant right to take part. Research on the right to political participation offers a number of useful conceptual perspectives while peace and conflict studies literature appears more explicit in its conceptualization of peace negotiations as comprising a conduct of public affairs under international law, however, the literature has yet to examine the issue in a substantive manner. The second aim is to determine whether citizens, refugees in particular, have a right to take part in the conduct of public affairs when they are outside the borders of their country of citizenship. Research on the right to political participation is largely silent on the situation of refugees, especially in relation to the negotiation of durable solutions to their situation. Refugee and forced migration literature on the participation of refugees in the negotiation of durable solutions posits a right to take part, but does not address its substantive content in a comprehensive manner.

The chapter is divided into three sections. The first part identifies relevant provisions of the right to political participation under international human rights law, major commentaries and jurisprudence on the right to political participation and significant developments in soft law. This section provides the foundation for subsequent analysis of the substantive content or meaning of the conduct of public affairs along with analysis of whether citizens, refugees in particular, have a right to take part in the conduct of public affairs when they are outside the country of their citizenship. Part two examines key developments in law to determine whether peace negotiations comprise a conduct of public affairs under relevant human rights treaties. The third and final section of the chapter

aims to determine whether citizens, refugees in particular, have a right to take part in the conduct of public affairs when they are outside their country of citizenship. The chapter concludes that there is an evolving understanding of peace negotiations as comprising a conduct of public affairs under international law entailing a concomitant right to take part. It also finds a similar evolution with regard to the participation of refugees in the public affairs of their country of origin. In the period under consideration, however, these understandings may be best understood as principles having yet to be codified as rights under international law.

II. The Right to Political Participation under Human Rights Treaty Law

Human rights treaties—international and regional—comprise the primary legal instruments which define and codify political participation as a fundamental right under international law. This includes treaties relating to civil and political rights, the elimination of race and gender-based discrimination and the status of non-citizens including migrants and members of their families. A number of additional treaties at both levels include provisions relating to the effective participation of indigenous peoples and minorities in the conduct of public affairs. International and regional bodies responsible for oversight of these treaties have issued several comments and decisions which address the substantive content of the right to political participation. A wide array of resolutions, declarations and programmes of action, conclusions and guidelines adopted by international and regional organizations as well as peace agreements regulating or terminating armed conflict further evidence evolving understandings of the right to political participation in various contexts from the

promotion of gender equality to the protection of refugees and other displaced persons. The development of the substantive content of the right to political participation through these inter-related set of instruments, as the following sections of this chapter explain, has arguably contributed over time to emerging recognition of peace negotiations as a conduct of public affairs entailing a concomitant right to take part that is also applicable to the negotiation of durable solutions for refugees.

i. International Instruments

The International Covenant on Civil and Political Rights (ICCPR) is the primary reference for the right to political participation under international law. The origins of the Covenant date to the founding of the United Nations in 1945 when states first considered drawing up an international bill of human rights. Differences of opinion on form eventually led to the drafting of a non-binding declaration setting out general principles and a binding covenant elaborating specific rights and obligations.[606] The Assembly completed the first task—a non-binding declaration—in 1948 when it adopted the Universal Declaration of Human Rights (UDHR).[607] The UDHR was the first international instrument to enshrine political participation as a fundamental human right and became a model for subsequent treaties which codified political participation as a binding norm. Article 21 affirms that "[e]veryone has the right to take part in the

[606] UNGA 1955, chap. I, para. 5.

[607] Universal Declaration of Human Rights, GA Res. 217A, 3rd Sess., 183rd Plenary Mtg., UN Doc. A/RES/217A, Dec. 10, 1948. The Assembly adopted the Declaration by a vote of 48-0 with 8 abstentions. A draft version of the declaration prepared by the United Kingdom excluded reference, among others, to the will of the people as the basis of the authority of government and to elections due to concerns about the application of political rights and freedoms in British colonies. Rosas 1999, 434–437. The UDHR is not a treaty, but has gradually been accepted by the international community as an authoritative statement of human rights obligations incumbent upon all UN member states. Buergenthal 2011, para. 9; and, Charlesworth 2011, paras. 15-16.

government of his country, directly or through freely chosen representatives".[608] Sub-paragraph 3 further states that the will of people "shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent voting procedures".[609]

It was later decided to divide a binding covenant into two separate instruments owing to disagreements about the inclusion of economic, social and cultural rights.[610] A draft covenant on civil and political rights was completed by the mid-1950s. While few changes were made to the instrument thereafter, Cold War divisions delayed adoption of the draft covenant by the UN General Assembly for more than a decade. Throughout this period the United Nations rarely addressed the practice of states with respect to the right to political participation.[611] Adopted in 1966, the International Covenant on Civil and Political Rights entered into force a decade later following its required ratification by 35 states.[612] The ICCPR remained the least ratified human rights

[608] Ibid., art. 21(1). For complete text see, Annex II, A2.8 - International Declarations.
[609] *Ibid*., art. 21(3).
[610] UNGA 1955, chap. II, paras. 4–12.
[611] Major exceptions included discrimination on the basis of gender and race. In its first session in 1946, for example, the UN General Assembly addressed the issue of political participation with respect to women "[r]ecommending that all member states, which have not already done so adopt measures to fulfill the purposes and aims of the Charter in this respect by granting to women the same political rights as men". GA Res. 56, 1st Sess., 55th Plenary Mtg., UN Doc. A/RES/56, Dec. 11, 1946, para. (a). Several years later, in one of its first resolutions on the issue of apartheid, the Assembly "[d]eclared that in a multi-racial society harmony and respect for human rights and freedom and the peaceful development of a unified community are best assured when patterns of legislation and practice are directed towards ensuring equality before the law of all persons regardless of race, creed or colour, and when economic, social, cultural and political participation of all racial groups is on the basis of equality". GA Res. 616B, 7th Sess., 401st Plenary Mtg., UN Doc. A/RES/616B, Dec. 5, 1952, para. 1.
[612] International Covenant on Civil and Political Rights, Dec. 16, 1966 (*entry into force* Mar. 23, 1976), 999 UNTS 171. The Assembly adopted the Covenant by a vote of 104-0. GA Res. 2200A, 21st Sess., 1496th Plenary Mtg., UN Doc. A/RES/2200A, Dec. 16, 1966. The simultaneous adoption of the International Covenant on Economic, Social and Cultural Rights completed what is commonly referred to as the "International Bill of Rights" comprising the normative foundation of the international human rights regime. International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966 (*entry into force* Jan. 3, 1976), 993 UNTS 3. The Assembly adopted the Covenant by a vote of 104-0. GA Res. 2200A, 21st Sess., 1496th Plenary Mtg., UN Doc. A/RES/2200A, Dec. 16, 1966. For additional discussion of the International Bill of Rights and the human rights regime *see*, Nowak 2004.

treaty codifying political participation as a fundamental right decades after its adoption.[613] Progressive development of the norm, largely through UN General Assembly resolutions, declarations and programmes of action nevertheless occurred in certain areas—e.g., women, youth, elderly, disabled—where there was common agreement on the need for international action.[614] The number of ratifications, however, nearly doubled during the 1990s following the end of the Cold War such that more than three-quarters of UN member states had acceded to the Covenant by the end of the decade.[615]

The right to political participation is set forth in Article 25 of the Covenant. With a few minor changes, the text generally mirrors that found in Article 21 of the UDHR. Paragraph (a) affirms the right of every citizen "to take part in the conduct of public affairs, directly or through freely chosen representatives".[616] These two distinct forms of political participation—direct and indirect—are common to most human rights treaties which codify political participation as a basic right. So is paragraph (b) which affirms the right "to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and

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[613] As of the end of 1989, 85 of 157 UN member states had ratified the ICCPR. For ratification information *see*, United Nations Treaty Collection <http://treaties.un.org> [accessed Dec. 5, 2010].

[614] This included General Assembly resolutions which addressed in both preambular and operative language the participation of women (GA Res. 2716, 26th Sess., 1930th Plenary Mtg., Dec. 15, 1970, preamble), youth (GA Res. 3141, 28th Sess., 2201st Plenary Mtg., UN Doc. A/RES/3141, Dec. 14, 1974, preamble), the elderly (GA Res. 2842, 26th Sess., 2025th Plenary Mtg., UN Doc. A/RES/2842, Dec. 18, 1971, preamble) and disabled persons (GA Res. 34/154, 34th Sess., 105th Plenary Mtg., Dec. 17, 1979, para. 16) in national life. The General Assembly also addressed participation in development (GA Res. 3273, 29th Sess., 2311th Plenary Mtg., UN Doc. A/RES/3273, Dec. 10, 1974, para. 5) with a special focus on women (GA Res. 3342, 29th Sess., 2323rd Plenary Mtg., UN Doc. A/RES/3342, Dec. 17, 1974, para. 2) as well as their participation (GA Res. 3519, 30th Sess., 2441st Plenary Mtg., UN Doc. A/RES/3519, Dec. 15, 1975) in matters of international peace and security.

[615] By the end of 2000 the number of ratifications had climbed to 147 out of a total of 189 UN member states. The largest increase in ratifications took place in Africa and Europe followed by Asia and the Americas. Few non-signatory states in the Middle East ratified the ICCPR between 1990 and 2000. For ratification information *see*, United Nations Treaty Collection, *supra* n. 613.

[616] ICCPR, *supra* n. 612, art. 25(a). For complete text see, Annex II, A2.1 - Human Rights Treaty Law, Universal Instruments.

shall be held by secret ballot, guaranteeing the free expression of the will of the electors".[617] The codification of political participation as a binding norm appeared to reflect widespread acknowledgment among states of the importance of the right to political participation to the realization of other human rights.[618] Much like subsequent human rights treaties, however, differences over ways and means to exercise the right coupled with a certain deference to the much older principle of state sovereignty meant that, with the exception of the right to vote and to be elected, the ICCPR was largely silent on ways and means to take part in the conduct of public affairs.[619] Restricting the exercise of the right to political participation to citizens, moreover, a limitation common to other human rights treaties, article 25 of the ICCPR does not address directly the situation of citizens who are outside their country of origin voluntarily or

[617] ICCPR, *ibid.*, art. 25(b). The characterization of the right to vote as an "indirect" form of political participation should not be confused with indirect voting. In contrast to direct voting, in which electors choose between candidates vying for public office, indirect voting refers to a process in which voters elect persons who are mandated to choose among candidates for public office.

[618] The delegates taking part in the drafting process identified various rationale for inclusion of political participation in the draft covenant. In one of the most concise and comprehensive explanations, the Yugoslav delegate (Mr. Jevrémović) identified three major reasons for enshrining political participation as a binding norm. Jevrémović described the right to take part in the conduct of public affairs as "one of the most essential human rights" in part because "the maintenance of world peace was largely dependant on its exercise". More specifically, respect for the right to political participation was "one of the best tests of [the] sincerity [of states] in fulfilling their obligations under the [UN] Charter". Jevrémović further noted that since "[n]early all the rights granted to citizens by the covenant could be limited or, in certain cases, even withdrawn by governments by legislation or for reasons of public peace [inclusion] of the right of citizens to take part in the conduct of public affairs would, to some extent, remove the danger that its provisions might remain a dead letter, since citizens would thus be able to exert a direct influence on legislation". UNCHR 1953e, 7–8.

[619] A significant problem was to find language that was "sufficiently flexible" to accommodate a range of political systems and practices, yet "specific [enough] to express legal obligations within the framework of the Covenant on human rights". Mr. Kaeckenbeeck (Belgium), UNCHR 1953c, 14. *See also*, comments by Mr. Cassin (France) UNCHR 1953b, 9; Mr. Hoare (UK), UNCHR 1953a, 5; Mrs. Rossël (Sweden), *ibid.*, 10; and, Mrs. Chattopadhyay (India), UNCHR 1953d, 4. The Soviet delegate (Mr. Fomin) further noted that an additional "problem had been to find a criterion which while being realistic would ensure that the draft covenants, touching as they did on many questions relating to the domestic competence of States, would not contravene the fundamental provisions of the United Nations Charter". UNGA 1954, para. 21. There was also some concern that "[f]or many States [compliance with the provisions of the covenants] would involve a process of social readjustment which would take time". Mr. Hoare (UK), UNCHR 1953a, 6. *See also*, UNGA 1955, chap. VI, para. 170.

otherwise.

The ICCPR also provides for the establishment of a Human Rights Committee (HRC) to oversee compliance of Covenant signatories.[620] Two important aspects of the Committee's mandate include the preparation of "concluding observations" on state practice and the drafting of "general comments" to guide states on the implementation of the Covenant. Describing its comments on the ICCPR as "general statement[s] of law [which express] the Committee's conceptual understanding of the content [or normative substance] of a particular provision", the HRC further notes that the comments also "permit [the ICCPR] to speak to modern circumstances in which understandings and perceptions of language and practice have evolved substantially since the Covenant was adopted".[621] While Cold War divisions made it difficult to further "hone the principles of the ICCPR"[622], the Human Rights Committee has since the early 1990s addressed both the practices of state signatories and the substantive content of the right to political participation.[623] This includes the adoption of General Comment 25 on the right to political participation which, as the following sections explain, is useful in clarifying the meaning or substantive

[620] ICCPR, *supra* n. 612, art. 28. For more information *see*, United Nations Human Rights Committee (HRC) <http://www2.ohchr.org/english/bodies/hrc> [accessed Mar. 2, 2012].

[621] OHCHR 2005a, 24. *See also*, Ando 2009, para. 11–19.

[622] Franck 1992, 64. Stoll similarly notes that the Cold War "had an important and altogether detrimental impact on the work of [human rights] bodies and the development of their proper procedures [including] strong resistance in view of any activity which was felt to put into question the sovereignty of States Parties [to the respective human rights treaties]". Stoll 2009, para. 8, 15.

[623] The HRC addressed the practice of signatories with respect to article 25 of the Covenant in 54 states between 1990 and 2000. None of the cases addressed participation in peace negotiations or the participation of refugees. For a compilation of concluding observations by article, theme and state signatory *see*, The United Nations Human Rights Treaties <http://www.bayefsky.com> [accessed Apr. 30, 2012]. *See also*, the database of concluding observations archived at, United Nations Office of the High Commissioner for Human Rights <http://tb.ohchr.org/default.aspx> [accessed Apr. 30, 2012]. The HRC adopted its first general comment in 1981, but another 15 years would pass before the committee adopted a comment on article 25 relating to the right to political participation. The end of the Cold War, the dissolution of the Soviet Union along with democratic developments in eastern bloc states provided the enabling context for the committee to address the substantive content of the right to political participation. Evatt 2004, 182-183.

content of article 25 of the Covenant.[624] The HRC comment was part and parcel of a wide array of thematic and country-specific instruments on political participation and democracy adopted in the aftermath of the Cold War.[625] An Optional Protocol to the ICCPR, which came into force in 1976, also provides for the submission of individual complaints to the HRC concerning alleged treaty violations by states parties.[626] Relevant jurisprudence on the right to political participation is addressed below.

In 1965, one year prior to the adoption of the ICCPR, the UN General Assembly approved the first of two major human rights instruments relating to the prohibition of discrimination. The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the International Convention on the Elimination of Discrimination Against Women (ICEDAW), adopted 14

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[624] The HRC examined a first draft (HRC 1994a) of the comment in 1994 and dedicated a further 15 meetings to a discussion of the draft comment with a final version (HRC 1996a) adopted in 1996. For a more detailed discussion on General Comment 25 *see*, Evatt 2004. For complete text *see*, Annex II, A2.3 - Human Rights Treaty Bodies, General Comments/Recommendations.

[625] This included resolutions on women in public life (GA Res. 45/127, 45th Sess., 68th Plenary Mtg., UN Doc. A/RES/45/127, Dec. 14, 1990), popular participation (GA Res. 40/99, 40th Sess., 116th Plenary Mtg., UN Doc. A/RES/40/99, Dec. 13, 1985; CHR Res. 1990/14, 46th Sess., 38th Mtg., UN Doc. E/CN.4/RES/1990/14, Feb. 23, 1990), periodic and genuine elections (GA Res. 43/157, 43rd Sees., 75th Plenary Mtg., UN Doc. 43/157, Dec. 8, 1988; and, GA Res. 44/147, 44th Sess., 82nd Plenary Mtg., UN Doc. 44/147, Dec. 15, 1989) and on overcoming obstacles to (CHR Res. 1995/60, 51st Sess., 59th Mtg., UN Doc. E/CN.4/RES/1995/60, Mar. 7, 1995), promoting (CHR Res. 1999/57, 55th Sess., 57th Mtg., UN Doc. E/CN.4/RES/1999/57, Apr. 27, 1999) and consolidating (CHR Res. 2000/47, 56th Sess., 62nd Mtg., UN Doc. E/CN.4/RES/2000/47, Apr. 25, 2000) democracy. The issues of political participation and democracy were also addressed in an array of declarations (Manilla Declaration of Newly Restored Democracies, June 6, 1988; United Nations Vienna Declaration and Programme of Action, UN Doc. A/CONF.157/23, July 12, 1993), documents and charters (OSCE Copenhagen Document, June 29, 1990; IPU Declaration on Criteria for Free & Fair Elections, Mar. 26, 1994) adopted by inter-governmental organizations.

[626] Optional Protocol to the International Covenant on Civil and Political Rights, Dec. 16, 1966 (*entry into force* Mar. 23, 1976), 999 UNTS 302. The Assembly adopted the Optional Protocol by a vote of 104-0. GA Res. 2200A, 21st Sess., 1496th Plenary Mtg., UN Doc. A/RES/2200A, Dec. 16, 1966. The HRC addressed 15 individual complaints related to the right to political participation under the Protocol during its first decade-and-a-half of operation. Most of the complaints addressed alleged violations of sub-paragraph (b) on the right to vote and to be elected. As of 2000, the Committee had examined only two cases relating to alleged violations of sub-paragraph (a) of the Covenant which affirms more broadly the right to take part in the conduct of public affairs directly or through freely chosen representatives. For a compilation of jurisprudence *see*, The United Nations Human Rights Treaties, *supra* n. 623; and, United Nations Office of the High Commissioner for Human Rights, *ibid*.

years later, both prohibit discrimination in relation to the exercise of the right to political participation. Unlike the ICCPR, the drafting and adoption of ICERD was completed within a relatively short span of time. In 1960 the UN General Assembly adopted the first in a series of resolutions calling upon states "to take all necessary measures to prevent all manifestations of racial, religious and national hatred".[627] Two years later the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities issued a report on the impact of discrimination in the matter of political rights.[628] Among others the report recommended the preparation of a set of draft principles or new international and regional instruments relating to the prohibition of discrimination in the matter of political rights.[629] The following year the General Assembly approved a Declaration on the Elimination of All Forms of Racial Discrimination.[630] Article 6 explicitly prohibits discrimination in the matter of political rights, in particular, "the right to participate in elections through universal and equal suffrage and to

[627] GA Res. 1510, 15th Sess., 943rd Plenary Mtg., UN Doc. A/RES/1510, Dec. 12, 1960, para. 2. *See also*, GA Res. 1684, 16th Sess., 1081st Plenary Mtg., UN Doc. A/RES/1684, Dec. 18, 1961; and, GA Res. 1779, 17th Sess., 1187th Plenary Mtg., UN Doc. A/RES/1779, Dec. 7, 1962. The General Assembly later decided to address religious and racial hatred in separate instruments. Schwelb 1966, 997–998.

[628] Santa Cruz 1962. First raised in 1952, the Sub-Commission decided to proceed with the study in 1956 with the final report submitted six years later. Commenting on state practice at the time, the report observed that while "the scope of political rights [had] considerably broadened in recent years" due to the elimination of certain restrictions on the right to political participation, the adoption of new instruments enshrining political participation as a fundamental human right and the realization of self-determination in former colonial and non-self-governing territories, "millions [were] still deprived [of the elementary right to take part in the Government of their own country] by discrimination on grounds of race, sex, language or religion ...". *Ibid.*, 81-82. It is unclear whether the 88 states which submitted background reports for the study, in particular those which generated significant numbers of refugees during the period, addressed the political rights of refugees. The location of the "Conference Papers" prepared for the report is unknown. del Mar Sanchez Moncho 2011. In 1999 the Sub-Commission was renamed the Sub-Commission on the Promotion and Protection of Human Rights. The body was replaced by a Human Rights Council Committee in 2006 in the context of UN reforms.

[629] Santa Cruz 1962, 90–95. Annexed to the report is a set of General Principles on Freedom and Non-Discrimination in the Matter of Political Rights. The principles focus primarily on the right to vote and to be elected. *Ibid*., 96-99.

[630] United Nations Declaration on the Elimination of All Forms of Racial Discrimination, GA Res. 1904, 18th Sess., 1251st Plenary Mtg., UN Doc. A/RES/1904, Nov. 20, 1963. The Declaration was adopted without a vote.

take part in the government".[631] The General Assembly subsequently requested the Commission on Human Rights to prepare a binding treaty on the elimination of racial discrimination.[632] Adopted in 1965, the International Convention on the Elimination of All Forms of Racial Discrimination came into force four years later following its ratification by 27 states.[633] During the 1990s the number of ratifications climbed from 78 to 82 percent of UN member states.[634]

The Convention defines racial discrimination as "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life".[635] While the Convention, much like ICEDAW, focuses on the *duty* of states to the eliminate discrimination in the exercise of political rights, it nevertheless affirms like the ICCPR a substantive right to take part in the conduct of public affairs.[636] Article 5 obliges states parties "to prohibit and to eliminate racial discrimination in all its forms" and to guarantee equality in the exercise of basic human rights including "the right to participate in elections—to vote and to stand for election—on the basis of universal and equal suffrage [and the right] to take part in the Government as well as in the conduct of public

[631] Ibid., art. 6. For complete text *see*, Annex II, A2.8 - Regional Declarations.
[632] GA Res. 1906, 18th Sess., 1261st Plenary Mtg., UN Doc. A/RES/1906, Nov. 20, 1963, para. 1.
[633] International Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21, 1965 (*entry into force* Jan. 4, 1969), 660 UNTS 195. The Assembly adopted the Convention by a vote of 106-0 with 1 abstention. GA Res. 2106A, 20th Sess., 1406th Plenary Mtg., UN Doc. A/RES/2106A, Dec. 21, 1965.
[634] As of the end of 1989, 123 of 157 UN member states had ratified the convention. By the end of 2000 the number had grown to 155 of 189 member states. The most significant expansion occurred in Europe with a smaller increase in ratifications among states in Asia and Africa. There were few new ratifications in the Americas and in the Middle East. For ratification information *see*, United Nations Treaty Collection, *supra* n. 613.
[635] ICERD, *supra* n. 633, art. 1.
[636] Partsch 1992, 341, *cited in*, Wolfrum 1999, 504. If this were not the case, "the individual complaints procedure established by the Convention", as Wolfram notes, "would be meaningless". *Ibid*.

affairs at any level".[637] General Assembly action on state practice in South Africa, Namibia (South West Africa) and Zimbabwe (Southern Rhodesia) further underscored the importance given to the elimination of racial discrimination in the exercise of political rights.[638] The Assembly nevertheless appeared to limit its interventions at the time to the most egregious violations of the right to political participation with few resolutions on respect for the right to political participation in other states.

The Convention also establishes a Committee on the Elimination of Racial Discrimination (CERD) to oversee compliance of state signatories.[639] Similar to the Human Rights Committee, CERD's mandate includes the preparation of concluding observations on state practice and general recommendations (i.e., comments) which guide state signatories on the implementation of the Convention and clarify or develop the substantive content of its provisions.[640] The adoption of General Recommendation 22 on refugees and displaced

[637] ICERD, *supra* n. 641, art. 5(c). For complete text see, Annex II, A2.1 - Human Rights Treaty Law, Universal Instruments.

[638] In South Africa, as noted above, the General Assembly had already emphasized the importance of equality with respect to the exercise of fundamental human rights and freedoms including the right to political participation. *See*, GA Res. 616B, *supra* n. 611. In Namibia, the Assembly "invit[ed] the Committee on South West Africa ... to ascertain and make proposals to the General Assembly on the steps which would enable the indigenous inhabitants of South West Africa to achieve a wide measure of internal self-government designed to lead them to complete independence as soon as possible". GA Res. 1568, 15th Sess., 954th Plenary Mtg., UN Doc. A/RES/1568, Dec. 18, 1960, para. 4(b). Two years later the Assembly "request[ed] the administering Power [in Southern Rhodesia/Zimbabwe] to undertake urgently the convening of a constitutional conference, in which there shall be full participation of representatives of all political parties, for the purpose of formulating a constitution for Southern Rhodesia, in place of the Constitution of 6 December 1961, which would ensure the rights of the majority of the people, on the basis of 'one man, one vote', in conformity with the principles of the Charter of the United Nations and the Declaration on the Granting of Independence to Colonial Countries and Peoples, embodied in Resolution 1514". GA Res. 1747, 16th Sess., 1121st Plenary Mtg., UN Doc. A/RES/1747, June 28, 1962, para. 2.

[639] *Ibid.*, art. 8. For more information *see*, United Nations Committee on the Elimination of Racial Discrimination (CERD) <http://www2.ohchr.org/english/bodies/cerd/index.htm> [accessed Mar. 2, 2012]. CERD addressed compliance with respect to article 5(c) in 29 states between 1990 and 2000. The Committee's observations did not address discrimination with respect to the participation of refugees in the public affairs of their home countries. For a compilation of concluding observations by article, theme and state signatory *see*, The United Nations Human Rights Treaties, *supra* n. 623. *See also*, the database of concluding observations archived at, United Nations Office of the High Commissioner for Human Rights, *ibid*.

[640] Wolfrum 1999; and, Ando 2009, para. 20–25.

persons in the mid-1990s marked a significant shift in Committee practice, both in relation to its recognition of refugee situations as a human rights issue and in its reference to the political rights of refugees in their countries of origin.[641] The recommendation's focus appeared to reflect growing international concern about ethnic or identity-based conflict as a driver of forced displacement in the post-Cold War era.[642] General Recommendation 22 was one of several UN initiatives—e.g., human rights and mass exodus, population transfer, housing rights and forced evictions and internal displacement—that also marked growing international recognition of forced displacement as a human rights issue.[643] The Convention also provides for the submission of individual complaints, however, there is little jurisprudence on article 5(c) relating to the prohibition of discrimination in the matter of political rights.[644]

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[641] CERD 1996b. The Recommendation focuses on the elimination of discrimination against refugees under sub-paragraph (d)(ii) on the right to leave and to return to one's country and under sub-paragraph (c) on political rights. In contrast to the drafting history of General Comment 25 on the right to political participation under the ICCPR, Recommendation 22 is discussed in only a handful of summary records and in little detail. For complete text *see*, Annex II, A2.3 - Human Rights Treaty Bodies, General Comments/Recommendations. The Committee issued its first General Recommendation in 1972.

[642] In explaining the reasoning for the adoption of the recommendation, one Committee member observed that "[CERD] needed to deal with the question of refugees if it wanted to move ahead in finding solutions to ethnic conflict" which appeared to be increasingly common in the post-Cold War era. Mr. Rechetov, CERD 1996c, para. 57. Another noted that the specific provision on political participation was included in the committee's recommendation "since those rights were often denied in practice". Mr. Wolfrum, *ibid*., para. 52.

[643] This recognition is explicit in the UN Commission on Human Rights' 1981 report on "human rights and mass exoduses", prepared by Sadruddin Aga Khan, who had previously headed the UN's refugee agency. Commenting on state practice two decades after Santa Cruz issued his report on discrimination in the matter of political rights, Khan observed that while denial of the right to political participation was "[not] the essential cause for large movements of population ... "[a]ll mass exodus which took place during the [the 1970s] poured forth from regions where the prevailing situation prevented individual citizens from exercising their political rights". Echoing Santa Cruz's conclusions two decades earlier, the report observed that "[d]emocracy [was] still in short supply in many parts of the world, and the majority are ruled without 'taking part in the government of their country directly or through freely chosen representatives'. Khan 1981, para. 55. For a detailed discussion of the shift towards consideration of forced displacement as a human rights issue *see*, Stavropoulou 1998.

[644] ICERD, *supra* n. 633, art. 14. The provision came into effect in 1982 after 10 states signatories issued declarations accepting the Committee's competence to review individual complaints. As of the end of 2000, the Committee had addressed compliance of state parties with article 5(c) on the elimination of discrimination with respect to the right to political participation in only one case. The case did not address participation in peace negotiations or the participation of refugees. For a compilation of jurisprudence *see*, The United Nations Human Rights Treaties, *supra* n. 623; and, United Nations Office of the High Commissioner

In 1979 the UN General Assembly adopted a separate convention relating to the elimination of discrimination against women. The Assembly had already approved a number of instruments on the rights of women including the 1952 Convention on the Political Rights of Women[645], which affirmed the basic set of political rights found in the Universal Declaration, namely, the right to vote and to be elected as well as the right to hold public office and to exercise all public functions.[646] In the early 1960s, the General Assembly decided that a more comprehensive approach was needed to eliminate gender-based discrimination.[647] A Declaration on the Elimination of Discrimination against Women was prepared and in 1967 it was adopted by the Assembly.[648] The Declaration affirms women's "right to vote in all elections [and] in all public referenda", language that would eventually be codified in a binding instrument.[649] The declaration was followed by a series of resolutions, declarations and programmes of action on the rights of women, including political participation, which, as discussed in the following section, contribute to an understanding of ways and means to take part in the conduct of public affairs.[650] Seven years later, in the run-up to the UN-designated International

for Human Rights, *ibid*.

645 Convention on the Political Rights of Women, Dec. 20, 1952 (*entry into force* July 7, 1954), 193 UNTS 135. The Assembly adopted the Convention by a vote of 46-0 with 11 abstentions. GA Res. 640, 7th Sess., 409th Plenary Mtg., UN Doc. A/RES/640, Dec. 20, 1952.

646 *Ibid.*, arts. 1-3. For complete text *see*, Annex II, A2.1 - Human Rights Treaty Law, Universal Instruments.

647 GA Res. 1921, 18th Sess., 1274th Plenary Mtg., UN Doc. A/RES/1921, Dec. 5, 1963.

648 United Nations Declaration on the Elimination of Discrimination against Women, GA Res. 2263, 22nd Sess., 1597th Plenary Mtg., UN Doc. A/RES/2263, Nov. 7, 1967. The Assembly adopted the Declaration by a vote of 111-0 with no abstentions.

649 *Ibid.*, art. 4. For complete text *see*, Annex II, A2.8 - International Declarations.

650 The growing array of resolutions and declarations on the participation of women contributed to the development of principles relating to the participation of refugee women in development (GA Res. 35/135, 35th Sess., 92nd Plenary Mtg., UN Doc. A/RES/35/135, Dec. 11, 1980, para. 2, 5; and, ECOSOC Res. 1991/23, 46th Sess., 12th Plenary Mtg., UN Doc. E/RES/1991/23, May 30, 1991, para. 6) while the interplay between instruments on women's participation in development and in the promotion and maintenance of peace arguably established interstitial principles which contributed to the development over time of language relating to the participation of refugees in the negotiation of durable solutions. The Assembly also addressed the participation of women in rural areas (GA Res. 37/59, 37th Sess., 90th

Women's Year, the organization's Commission on the Status of Women decided to prepare a binding instrument to further strengthen efforts to eliminate discrimination against women. Few substantive changes were made to the various drafts of the convention during the six-year drafting process.[651] The 1979 International Convention on the Elimination of Discrimination Against Women came into force in 1981 following its adoption by 20 states.[652] ICEDAW was the most widely ratified human rights instrument codifying the right to political participation between 1990 and 2000 with nearly 90 percent of all UN members having acceded to the instrument by the end of 2000.[653]

The Convention defines discrimination against women to include "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field".[654] Similar to ICERD's focus on the duties of states, article 7 of ICEDAW obliges signatories to take all measures necessary to eliminate discrimination against women in "political and public life" and to promote equality with respect to the right to political participation. This includes the adoption of measures ensuring women "the right

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Plenary Mtg., UN Doc. A/RES/37/59, Dec. 3, 1982, preamble), in the UN Secretariat (GA Res. 45/125, 45th Sess., 68th Plenary Mtg., UN Doc. A/RES/45/125, Dec. 14, 1990, para. 1) and in transitional justice mechanisms (GA Res. 49/205, 49th Sess., 94th Plenary Mtg., UN Doc. A/RES/49/205, Mar. 6, 1995, preamble).

651 Chinkin, Freedman, and Rudolf 2012, 200.

652 International Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979 (*entry into force* Sept. 3, 1981), 1249 UNTS 13. The Assembly adopted the Convention by a vote of 130-0 with 10 abstentions. GA Res. 34/180, 34th Sess., 107th Plenary Mtg., UN Doc A/RES/34/180, Dec. 18, 1979.

653 As of 1989, 97 of 157 UN member states had ratified ICEDAW. The number grew to 165 of 189 member states as of the end of 2000. For ratification information *see*, United Nations Treaty Collection, *supra* n. 613. There was a significant and similar increase in ratifications in Europe, Africa and Asia with only a small increase in ratifications in the Americas and in the Middle East.

654 ICEDAW, *supra* n. 652, art. 1.

to vote in all elections and public referenda and to be eligible for election to all publicly elected bodies" as well as "the right to participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government".[655] ICEDAW is nevertheless unique in its expanded list of ways and means to take part in the conduct of public affairs, an apparent acknowledgement of the challenges to gender equality in various domains for the conduct of public affairs, but also a reflection of the expansion in such domains since political participation was first enshrined as a human right. Unique to ICEDAW, article 7 affirms the right of women "to participate in non-governmental organizations and associations concerned with the public and political life of the country" while article 8 calls upon states to ensure that women have "the opportunity to represent their Governments at the international level and to participate in the work of international organizations".[656]

As with other human rights treaties, the Convention establishes a committee to oversee compliance among states signatories.[657] The mandate of the Committee on the Elimination of Discrimination Against Women (CEDAW) similarly includes the preparation of concluding observations on state practice and the drafting of general recommendations (i.e., comments) on the Convention.[658] Two years after the adoption of the 1995 UN Beijing Declaration

[655] *Ibid.*, art. 7. For complete text see, Annex II, A2.1 - Human Rights Treaty Law, Universal Instruments.

[656] *Ibid.*, arts. 7 and 8. While article 8 does not refer to a "right", the obligation of states to ensure that women have the "opportunity" to take part in the conduct of public affairs at the international level nevertheless creates a "subjective right of individual women to non-discrimination" with regard to the exercise of the right to political participation. Chinkin, Freedman, and Rudolf 2012, 223.

[657] *Ibid.*, 17. For more information *see*, United Nations Committee on the Elimination of Discrimination Against Women (CEDAW) <http://www2.ohchr.org/english/bodies/cedaw/index.htm> [accessed Mar. 2, 2012].

[658] Wolfrum 1999; and, Ando 2009, para. 26–35. The Committee addressed compliance with articles 7 and 8 in 48 states between 1990 and 2000. While CEDAW did not address the participation of refugees in the public affairs of their home countries, in at least one case

and Platform of Action, the first major declaration on women's rights in the post-Cold War era, and a year after the HRC adopted its general comment on article 25 of the ICCPR, referred to above, the Committee adopted a recommendation on articles 7 and 8 of the Convention requiring states parties to eliminate discrimination against women in the exercise of the right to political participation.[659] The ways in which General Recommendation 23 clarify the substantive content of the right to political participation under ICEDAW are discussed in more detail in the following sections. An Optional Protocol providing for the submission of individual complaints regarding alleged violations of the Convention came into force at the end of 2000.[660]

A decade after the adoption of ICEDAW, the international community addressed the issue of political participation in a new treaty on the rights of indigenous and tribal peoples. The International Labour Organization (ILO) had already addressed the participation of indigenous and tribal peoples in its 1957 Convention Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (ILO107).[661] Article

(Croatia) the Committee's concluding observations appeared to recognize peace negotiations as a domain for political participation under articles 7 and 8 of the Convention. *See*, Annex II, A2.4 - Human Rights Treaty Bodies, Concluding Observations. For a compilation of concluding observations by article, theme and state signatory *see*, The United Nations Human Rights Treaties, *supra* n. 623. *See also*, the database of concluding observations archived at, United Nations Office of the High Commissioner for Human Rights, *ibid*.

659 CEDAW 1997b. The Committee decided to draft a general recommendation (CEDAW 1996) on articles 7 and 8 of the convention in 1994 and completed the process three years later when it adopted its final recommendation on the right to political participation. In contrast to the relatively detailed summary records of discussion relating to the drafting of General Comment 25, there appears to be relatively little discussion of the actual drafting of General Recommendation 23. For complete text *see*, Annex II, A2.3 - Human Rights Treaty Committees, General Comments/Recommendations. The Committee issued its first General Recommendation on the Convention in 1986.

660 Optional Protocol to the International Convention on the Elimination of Discrimination Against Women, Dec. 10, 1999 (*entry into force* Dec. 20, 2000), 2131 UNTS 83. The General Assembly adopted the Protocol without a vote. GA Res. 54/4, 54th Sess., 28th Plenary Mtg., UN Doc. A/RES/54/4, Oct. 6, 1999. Complaints filed after December 2000 when the Protocol came into effect are beyond the scope of this study.

661 Convention Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries, June 26, 1957 (*entry into force* Feb. 6, 1959), 328 UNTS 247. The Convention entered into force two years after its adoption,

5 requires state signatories to "seek the collaboration of these populations and of their representatives" and to "stimulate by all possible means the development among [them] of civil liberties and the establishment of or participation in elective institutions".[662] Recognizing the need for new standards some two decades later, the United Nations commissioned a special study on discrimination against indigenous peoples and established a working group with a mandate to review national practice and further develop international standards for the protection of indigenous peoples.[663] The ILO subsequently decided to revise its convention in light of broad consensus that the instrument's "integrationist approach" was both obsolete and detrimental to indigenous peoples.[664] The 1989 Convention Concerning Indigenous and Tribal Peoples in Independent Countries (ILO169), which entered into force in 1991 following the first two ratifications of the instrument, was the last international treaty relating to political participation to come into force in the twentieth century.[665] By the end

however, few states ratified the treaty in the decades that followed. Thirty years later when the ILO adopted a new convention on indigenous rights, only 27 states had ratified the 1957 instrument. For ratification information *see*, International Labour Organization <http://www.ilo.org/ilolex/english/newratframeE.htm> [accessed Dec. 5, 2010]. ILO107 remains in force in 18 countries, many of which have significant indigenous populations, but is no longer open for ratification.

662 *Ibid*., art. 5. For complete text *see*, Annex 2.1 - Human Rights Treaty Law, Universal Instruments.

663 The UN commissioned study includes a separate chapter on the political rights of indigenous peoples. Similar to the aforementioned study by Santa Cruz on the elimination of discrimination in the matter of political rights, the study focuses almost exclusively on the right to vote and to be elected with some additional discussion on equal access to public service and related political freedoms, i.e., information, opinion and assembly. UNCHR 1984. The UN Working Group on Indigenous Populations was established in 1982. ECOSOC Res. 1982/34, 36th Sess., 28th Plenary Mtg., UN Doc. E/RES/1982/34, May 7, 1982, para. 1. By 1993, the UN-declared International Year of the World's Indigenous People, the Working Group had completed a draft declaration on indigenous rights, but it had yet to be adopted by the end of the decade. The Working Group on Indigenous Populations was replaced in 2000 by a Permanent Forum on Indigenous Issues.

664 Swepston 1990, 689.

665 Convention Concerning Indigenous and Tribal Peoples in Independent Countries, June 27, 1989 (*entry into force* Sept. 5, 1991), 72 ILO Official Bulletin 59. In 1990 the United Nations adopted a new treaty on the rights of migrant workers and their families, however, the convention did not come into force until the new millennium. International Convention on the Protection of the Rights of All Migrant Workers and the Members of Their Families, Dec. 18, 1990 (*entry into force* July 1, 2003) 2220 UNTS 3. For ratification information *see*, United Nations Treaty Collection, *supra* n. 613. The Convention defines a migrant worker as "a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a

of the decade 14 states, mostly from Central and South America, had ratified the revised convention.[666]

The 1989 Convention is applicable to all groups who self-identify as indigenous or tribal peoples.[667] The twin principles of consultation and participation comprise the "cornerstone" of the revised convention and are incorporated throughout the treaty.[668] The primary reference is found in article 6 which requires states parties to "establish means by which [indigenous] peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them".[669] In contrast to previous treaties on civil and political rights and

State of which he or she is not a national". *Ibid.*, art. 2(1). The Convention appeared to comprise the first treaty to recognize the right of citizens to take part in the conduct of public affairs when they are outside their country of citizenship. Article 41 affirms that "[m]igrant workers and members of their families shall have the right to participate in public affairs of their State of origin and to vote and to be elected at elections of that State, in accordance with its legislation" and that "[t]he States concerned shall, as appropriate and in accordance with their legislation, facilitate the exercise of these rights". *Ibid.*, art. 41. The Convention established a Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families to oversee compliance of states signatories and also provides for the submission of individual complaints against states which recognize the competence of the Committee to receive and consider such communications. *Ibid.*, arts. 72-73. For more detailed discussion *see*, OHCHR 2005b, 2.

666 Denmark, Netherlands and Norway were the only states outside of the Americas to have ratified the convention by the end of 2000. For ratification information *see*, *supra* n. 661.

667 ILO169, *ibid.*, *supra* n. 665, art. 1(2). In addition to the subjective criterion set forth in article 1(2), article 1(1) delineates objective criterion relevant to self-identification of groups as indigenous or tribal peoples. Sub-paragraph 1 states that the convention applies to "(a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations; [and] (b) peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions". The ILO observes that there is "emerging consensus that a formal definition is neither necessary nor desirable". ILO 2009, 109–110.

668 *Ibid.*, 59. In addition to article 6, the principles of consultation and participation can also be found in articles 7, 12, 15, 17, 20, 22-23, 25, 27-28 and 33. For complete text see, Annex II, A2.1 - Human Rights Treaty Law, Universal Instruments. The issue of whether the Convention requires indigenous consultation or consent comprised a major source of disagreement among drafters and indigenous peoples. The ILO subsequently observed that it "had not intended to suggest that the consultations ... would have to result in the obtaining of agreement or consent ... but rather to express an objective for the consultations". ILO 1989, para. 74, *cited in*, Swepston 1990, 690–691.

669 ILO169, *supra* n. 665, art. 6. State signatories are also required to consult indigenous

the elimination of race and gender-based discrimination, the ILO Convention does not enshrine a substantive "right" to take part in the conduct of public affairs. Several years after ILO169 entered into force, however, the aforementioned UN working group on indigenous peoples completed a draft declaration on indigenous peoples which explicitly affirmed their "*right* to participate fully, if they so choose, at all levels of decision-making in matters which may affect their rights, lives and destinies through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions".[670] [emphasis added] The revised ILO Convention nevertheless comprised the only binding instrument on indigenous rights during the period under consideration.

The International Labour Organization is responsible for oversight of state compliance with the Convention. In addition to submitting reports to the ILO's Committee of Experts on the Application of Conventions and Recommendations, the ILO Constitution requires states to provide representative workers and employers organizations with copies of their reports which may also submit comments on state compliance to the expert committee.[671] The Experts Committee is also responsible for drafting General

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peoples "through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly" and "establish means for the full development of [indigenous] institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose". *Ibid*.

670 The declaration was adopted 13 years later. United Nations Declaration on the Rights of Indigenous Peoples, GA Res. 61/295, 61st Sess., 107th Plenary Mtg., UN Doc. A/RES/61/295, Oct. 2, 2007, art. 18. The right to political participation is also enshrined in articles 5, 27 and 41. The General Assembly adopted the declaration by a vote of 143-4 with 11 abstentions. For complete text *see*, Annex II, A2.8 - International Declarations.

671 International Labor Organization Constitution, Apr. 1, 1919 (*entry into force* June 28, 1919), 5 UNTS 40, arts. 22-23. For more information see, Applying and Promoting International Labour Standards <http://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/lang--en/index.htm>. As of the end of 2000, the Committee had issued 21 observations concerning the application of ILO169 in 10 state signatories along with 23 direct requests relating to more technical questions or requests for more information in nine state signatories.

Observations on the substantive content of ILO conventions.[672] A second Conference Committee on the Application of Standards and Recommendations, a tripartite body comprised of representatives of governments, employers and workers, reviews the findings of the Expert Committee and issues conclusions on compliance of state signatories to the convention.[673] Similar to the human rights treaties referred to above, the ILO Constitution also establishes "special procedures" for the submission of complaints on alleged violations of the organization's conventions including its convention on indigenous peoples.[674] In contrast to other treaties, under which victims of such violations may submit complaints directly to the bodies responsible for their oversight, however, indigenous peoples do not have direct access to the ILO's supervisory bodies.[675]

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[672] The Committee of Experts adopted its first General Observation on ILO169 in 2008. The Observation notes that while "the establishment of appropriate and effective mechanisms for the consultation and participation of indigenous and tribal peoples regarding matters that concern them is the cornerstone of the Convention" and "an essential element in ensuring equity and guaranteeing social peace through inclusion and dialogue", it "remains one of the main challenges in fully implementing the Convention in a number of countries". In contrast to the Convention, moreover, the Committee notes that it "cannot over-emphasize the importance of ensuring the *right* of indigenous and tribal peoples to decide their development priorities through meaningful and effective consultation and participation of these peoples at all stages of the development process, and particularly when development models and priorities are discussed and decided". [emphasis added] The comment also sets out five elements that are essential to effective consultation and participation: "[t]he form and content of consultation procedures and mechanisms need to allow the full expression of the viewpoints of the peoples concerned, in a timely manner and based on their full understanding of the issues involved, so that they may be able to affect the outcome and a consensus could be achieved, and be undertaken in a manner that is acceptable to all parties". ILO, CEACR, General Observation, adopted 2008, 98th Sess., 2009.

[673] International Labor Organization Constitution, *supra* n. 671. For more information see, Applying and promoting International Labour Standards <http://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/lang--en/index.htm>. As of the end of 2000, the Conference Committee had issued conclusions on compliance with ILO 169 in two cases.

[674] International Labor Organization Constitution, *ibid.*, art. 24-34. This includes representations and complaints regarding the application of ILO standards. For more information see, Applying and promoting International Labour Standards <http://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/lang--en/index.htm>. As of the end of 2000, the special procedures mechanism had examined four cases in three state signatories to ILO169.

[675] The special procedures mechanism is limited to complaints submitted by workers and employers organizations. Indigenous groups, however, may submit complaints through such organizations and may also draw attention to their concerns through an array of indirect mechanisms and procedures. For additional discussion *see*, ILO 2009, 9–10.

ii. Regional instruments

The right to political participation is also found in several regional human rights treaties. Established in 1949, the Council of Europe (CoE) was the first regional organization to adopt a convention on human rights. The drafting process began shortly after the organization's founding and was completed in 1950, two years after the adoption of the UDHR. The 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) is unique among international and regional human rights treaties in that there is no provision for the right to political participation in the initial treaty.[676] The states taking part in the drafting process agreed on the importance of political participation but held different views as to its codification as a fundamental human right.[677] This gap was partially corrected two years after the Convention's adoption through the promulgation of an additional Protocol.[678] The ECHR and its first Protocol came into force in 1953 and 1954, respectively, following ratification of each instrument by 10 states. The number of states ratifying the ECHR and its first Protocol doubled in the 1990s such that by the end of 2000 almost all members of the Council of Europe had ratified the Convention.[679]

[676] European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 11, 1950 (*entry into force* Sept. 3, 1953), ETS 5.

[677] Much like the debates surrounding the drafting of the UDHR and ICCPR, there was disagreement among European states relating to the nature and content of political participation as a fundamental human right. Some states similarly argued that "[s]uch matters of a 'constitutional and political character' were 'not appropriate' because of their numerous practical difficulties, including the 'impossibility of reaching agreement on what precisely [were] the fundamental principles of democracy'". Sir Oscar Dowson (United Kingdom), CoE 1977, 3:182. The UK was alone in its opposition to the inclusion of a provision on the right to political participation. In a subsequent Conference of Senior Officials, however, Denmark, Greece, the Netherlands, Norway and Sweden joined the UK in rejecting the inclusion of such an article in the European convention. France, Ireland, Italy, Luxembourg and Turkey favoured the inclusion of language on the right to political participation while Belgium reserved its position on the issue. CoE 1977, 4:232, 234. The Council eventually decided to defer the matter for further study having failed to reach consensus. For a brief overview of the drafting process *see*, Frowein 2011, para. 1.

[678] Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, Mar. 20, 1952 (*entry into force* May 18, 1954), ETS 9.

[679] By the end of 1989, 19 of 23 members had ratified the ECHR and Protocol 1 to the

Article 3 of Protocol 1 to the ECHR requires states signatories "to hold free elections at reasonable intervals by secret ballot under conditions which shall ensure the free expression of the opinion of the people in the choice of the legislature".[680] Similar to international treaties on the elimination of discrimination, discussed above, the Protocol focuses on the obligation of states, however, jurisprudence subsequent to its adoption affirms that article 3 enshrines a substantive right to take part in elections as codified in the ICCPR and in other regional human rights treaties.[681] Article 3 nevertheless addresses only partially the aforementioned gap in the Convention since it does not enshrine the right to take part in the conduct of public affairs directly, a provision common to most international and regional human rights instruments which codify political participation as a fundamental human right.[682] The establishment under the Convention of a European Commission (inactive as of 1998) and a Court of Human Rights with mandates to review and adjudicate alleged violations of the rights and fundamental freedoms codified in the ECHR and its related protocols provides one of the most effective mechanisms for the enforcement of human rights among both regional and international human

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Convention. At the end of 2000, 38 of 41 members had ratified the treaty and its first protocol. This was primarily due to the expansion of democratic regimes in eastern Europe following the end of the Cold War. For ratification information *see*, Council of Europe <http://conventions.coe.int> [accessed Dec. 5, 2010].

680 ECHR-P1, *supra* n. 676, art. 3. For complete text *see*, Annex II, A2.2 - Human Rights Treaty Law, Regional Instruments.

681 The European Commission (*X v United Kingdom*) and Court of Human Rights (*Mathieu-Mohin v Belgium*) have each interpreted article 3 of the Convention to include a substantive right to vote and to be elected. Fox 1992, 560; and, Goodwin-Gill 2006, 63.

682 The right to take part in the conduct of public affairs may be inferred from Protocol No. 12 to the ECHR, which provides for a general prohibition of discrimination inclusive of rights not enshrined in the Convention. Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, Apr. 11, 2000 (*entry into force* Apr. 1, 2005), ETS 177. Article 14 of the ECHR on non-discrimination only applies to those rights codified therein. Protocol 12 was developed in the 1990s in the context of concern over the resurgence of racism, xenophobia, anti-semitism and intolerance in Europe. The Protocol, however, only came into force in 2005 after the period under consideration while jurisprudence has yet to provide "clear guidance on the issue". Machnyikova and Hollo 2010, 111–112.

rights regimes.[683] The Commission and the Court have issued decisions in a significant number of cases relating to article 3 of Protocol I, including several discussed in more detail below, which appear to address, at least in part, the question of whether refugees have a right to take part in the public affairs of their countries of origin.[684]

Four decades after the adoption of the ECHR the Council of Europe adopted a separate convention on the protection of national minorities.[685] First discussed in 1949, it took another four decades before the Council recommended the drafting of a European-wide convention on minority rights.[686]

[683] ECHR, *supra* n. 676, art. 19. Individuals were initially required to submit their complaints to the Commission which would make an assessment of admissibility following which approved cases would be submitted to the European Court of Human Rights. In 1998 the Council of Europe decided to abolish the Commission thus opening the way for individuals to have direct access to the Court. Protocol No. 11 to the European Convention on Fundamental Rights and Freedoms, May 11, 1994 (*entry into force* Nov. 1, 1998), ETS 155. The enforcement of human rights at the regional level may be more effective, in part, because regional human rights treaties "are more likely to reflect shared normative expectations, heightening compliance by member states". Steiner 1988, 94; and, Fox 1992, 561. For a brief overview of the European regime *see*, Frowein 2011.

[684] Prior to its aforementioned abolition in 1998, the European Commission on Human Rights had issued more than 60 decisions relating to article 3 of Protocol No. 1 on the right to vote and to be elected. In its first two years of operation, the European Court of Human Rights issued seven decisions on article 3. None of the decisions relate directly to the electoral rights of refugees. For jurisprudence *see*, European Court of Human Rights <http://www.echr.coe.int> [accessed Dec. 5, 2011]. *See also*, Kempees 1996; and, Mowbray 2012.

[685] The Council of Europe adopted a separate convention on the political rights of non-citizens. An effort to address the needs and facilitate integration of the growing number of foreign nationals residing outside their country of citizenship, the Convention on the Participation of Foreigners in Public Life at the Local Level calls upon state signatories "to encourage and facilitate the establishment of such consultative bodies or the making of other appropriate institutional arrangements for the representation of foreign residents by local authorities in whose area there is a significant number of foreign residents". The provision does not appear, however, to establish an explicit right to take part in such consultative bodies. While signatories also undertake under article 6 of the Convention "to grant to every foreign resident the right to vote and to stand for election in local authority elections", the extension of electoral rights similarly appears to fall within the discretion of each state party. The Convention defines "foreign residents" to include "persons who are not nationals of the State and who are lawfully resident on its territory". European Convention on the Participation of Foreigners in Public Life at the Local Level, Feb. 5, 1992 (*entry into force* May 1, 1997), ETS 144, arts. 2, 5(1), 6(1). For ratification information *see*, *supra* n. 679. In contrast to other treaties which enshrine political participation as a fundamental norm, moreover, the Convention does not establish a separate mechanism to oversee compliance of state signatories.

[686] Council of Europe, Recommendation 1134, Oct. 1, 1990. Two years later the Committee of Ministers instructed the Council's Steering Committee for Human Rights to examine the possibility of formulating specific legal standards relating to the protection of national minorities. In 1993 the Heads of State and Government instructed the Committee of Ministers to draft "with minimum delay" a framework convention on the protection of national

The renewed drive for the protection of minorities reflected a growing realization that the individual protections set forth in existing human rights treaties failed to provide adequate minority protections in light of the increasingly multinational or multicultural character of European states.[687] The European Framework Convention for the Protection of National Minorities (EFCNM) comprises the first legally binding multilateral instrument relating to the protection of national minorities.[688] There are no similar treaties relating to the protection of national minorities at the international or regional levels.[689] The Framework Convention was completed in 1995 and came into force three years later following its ratification by 12 member states. As of the end of 2000, more than three-quarters of the Council's member states had ratified the Convention.[690]

The Framework Convention does not define national minorities.[691] Article 15 of the EFCNM requires states parties to "create the conditions necessary for the *effective participation* of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular, those affecting them".[692] [emphasis added] This contrasts with the 1990 OSCE Copenhagen

minorities. The drafting of the framework convention began in January 1994 and was completed in October of the same year. CoE 1997, para. 4–5.

687 In 1990, for example, the OSCE called upon participating states to "respect the right of persons belonging to national minorities to effective participation in public affairs". Ringelheim 2010, 105-106. In 1992 the OSCE established an Office of the High Commissioner of Minorities. The following year the EU made "respect for and protection of national minorities", one of the criteria for accession. *Ibid.*, 106.

688 Framework Convention for the Protection of National Minorities, Feb. 1, 1995 *(entry into force* Feb. 1, 1998), ETS 157.

689 The ICCPR affirms that ethnic, religious or linguistic minorities "shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language", but does not explicitly address the participation of minorities in the conduct of public affairs. ICCPR, *supra* n. 612, art. 27. *See also*, Verstichel 2005.

690 For ratification information *see*, Council of Europe, *supra* n. 679. By the end of 2000, 33 of the 41 member states of the Council of Europe had ratified the Convention.

691 Ringelheim observes that "it has been traditionally accepted that a minority is a group which is smaller than the rest of the population and where members fulfill at least two conditions: they have ethnical, religious or linguistic features different from those of the majority, and are animated by the will to preserve these distinctive characteristics. In addition, it has genuinely been agreed that to constitute a minority the members of the group have to be citizens of the state". Ringelheim 2010, 110.

692 EFCNM, art. 15, *supra* n. 688. Similar to the ECHR and to international treaties which

Document and with the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted three years later, both of which affirm the "right" of minorities to effective participation in the conduct of public affairs.[693] The European Convention establishes an Advisory Committee and a Committee of Ministers to monitor compliance of states signatories.[694] Similar to the human rights treaty bodies referred to above, the Advisory Committee's mandate also includes the drafting of commentaries clarifying convention provisions. A decade after the EFCNM came into force the Advisory Committee adopted a commentary on the effective participation of minorities.[695]

Two decades after the adoption of the ECHR, the Organization of American States (OAS), which came into existence in 1948, adopted a human rights treaty covering the Americas. The treaty was preceded by two additional instruments both of which include provisions on the right to political participation. The Inter-American Convention on the Granting of Political Rights

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prohibit race and gender-based discrimination in the exercise of political rights, as noted above, the Convention focuses on the obligation of states.

693 The UN Declaration affirms the "right" of minorities to participate in "cultural, religious, social, economic and public life" and in "decisions on the national and, where appropriate, regional level concerning the minority to which they belong, in a manner not incompatible with national legislation". United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, GA Res. 47/138, 48th Sess., 85th Plenary Mtg., UN Doc. 48/138, Dec. 20, 1993, art. 2(2) and 2(3). The Declaration was adopted without a vote.

694 *Ibid.*, art. 24. For more information *see*, Council of Europe, Monitoring the Implementation of the Framework Convention for the Protection of National Minorities, <http://www.coe.int/t/dghl/monitoring/minorities/2_Monitoring/Monitoring_Intro_en.asp>. As of the end of 2000, the Advisory Committee had addressed compliance with article 15 on effective participation of national minorities in seven signatories to the Convention. None of the cases addressed the participation of minorities in peace negotiations or the participation of refugees from minority groups.

695 Commentary on the Effective Participation of Persons Belonging to National Minorities in Cultural, Social, Economic Life and in Public Affairs, Advisory Committee on the Framework Convention for the Protection of National Minorities, Feb. 27, 2008, ACFC/31Doc(2008)001. On the meaning of effectiveness, the committee observes that "it is not sufficient for State Parties to formally provide for the participation of persons belonging to national minorities. They should also ensure that their participation has a substantial influence on decisions which are taken, and that there is, as far as possible, a shared ownership of the decisions taken". *Ibid.*, para. 19.

to Women, adopted several years prior to the International Convention on the Political Rights of Women, referred to earlier, affirms that "the right to vote and to be elected to national office shall not be denied or abridged by reason of sex".[696] Several months later the OAS adopted the American Declaration on the Rights and Duties of Man which affirms the right to participate in government directly or through freely chosen representatives, including the right to take part "in popular elections, which shall be by secret ballot, and shall be honest, periodic and free".[697] The second part of the Declaration emphasizes "the duty of every person to vote in the popular elections of the country of which he is a national, when he is legally capable of doing so".[698] The OAS subsequently requested the Inter-American Council of Jurists to draft a human rights treaty as part of a broader effort to enhance regional co-operation on human rights drawing inspiration from the American Declaration, the ECHR and the International Bill of Rights.[699] In 1969 the OAS adopted the American Convention on Human Rights (ACHR), the second major regional treaty to codify political participation as a fundamental human right.[700] The Convention came into force in 1978 following ratification by 11 states. While the number of ratifications in the 1990s increased only marginally compared to other treaties which enshrine political participation as a fundamental human right, a majority of OAS member states had nevertheless ratified the Convention by the end of the decade.[701]

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[696] Inter-American Convention on the Granting of Political Rights to Women, Feb. 5, 1948 (*entry into force* Dec. 29, 1954), OAS Treaty Series No. 3. For complete text *see*, Annex II, A2.2 - Human Rights Treaty Law, Regional Instruments.

[697] American Declaration on the Rights and Duties of Man, OAS Res. XXX, May 2, 1948, art. 20. For complete text *see*, Annex II, A2.9 - Regional Declarations.

[698] *Ibid.*, art. 32. For complete text *see*, *ibid.*

[699] Neuman 2011, para. 1.

[700] American Convention on Human Rights, November 21, 1969 (*entry into force* July 18, 1978), OAS Treaty Series No. 36.

[701] At the end of 1989, 21 of 32 states had ratified the ACHR. An additional four states—Brazil, Chile, Dominican Republic and Trinidad & Tobago—ratified the Convention between 1990

The provisions on the right to political participation in the ACHR generally mirror those found in the ICCPR. Article 23 affirms the right of every citizen "to take part in the conduct of public affairs, directly or through freely chosen representatives".[702] The American Convention further defines indirect participation to include the right "to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters".[703] The ACHR is the only treaty at the regional and international levels which explicitly prohibits derogation from the right to political participation in situations of public emergency.[704] It is also the only treaty which explicitly identifies residence as one among several restrictions on the right to political participation which are deemed to be reasonable, a limitation that appears to have considerable significance for refugees who wish to take part in the public affairs of their country of origin.[705] Similar to but less advanced than the European regime, two organs—the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights—are mandated to examine matters relating to the fulfillment of the commitments made by states signatories to the Convention.[706] The Commission and the Court appear to have issued few

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and 2000. For ratification information *see*, Organization of American States <http://www.cidh.oas.org> [accessed Dec. 5, 2010].

[702] ACHR, *supra* n. 700, art. 23(1)(a). For complete text *see*, Annex II, A2.2 - Human Rights Treaty Law, Regional Instruments.

[703] *Ibid.*, art. 23(1)(b).

[704] *Ibid.*, art. 27(2). The non-binding Paris Minimum Standards of Human Rights in a State of Emergency, adopted by the International Law Association, however, include the right to political participation among 16 individual rights and freedoms that are non-derogable even during states of emergency. See, ILA 1985. The question of whether the right to political participation is non-derogable during states of emergency would appear to be significant in relation to the consideration of peace negotiations as a conduct of public affairs given that such negotiations may take place in the context of states of emergency, however, further consideration of this issue is beyond the scope of this study.

[705] The Convention states that "[t]he law may regulate the exercise of the rights and opportunities referred to in [paragraph 23] only on the basis of age, nationality, *residence*, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings". [emphasis added] *Ibid.*, art. 23(2).

[706] *Ibid.*, art. 33. The Commission was established in 1959 prior to the adoption of the ACHR

rulings relating to the interpretation or substantive content of the right to political participation as of 2000.[707]

In 1979, one year after the ACHR came into force, the Assembly of Heads of State and Government of the Organization of African Unity (OAU), which later became the African Union (AU), established an expert committee to prepare "a draft of an 'African Charter on Human and Peoples' Rights' providing, *inter alia*, for the establishment of bodies to promote and protect human and peoples' rights".[708] The origins of the Charter can been traced to the early 1960s when non-governmental organizations first began to discuss the need for a regional human rights regime in Africa. Growing public sensitivity to human rights violations in both white minority and newly-independent states in the region following decolonization along with the coming into force of the International Bill of Rights further strengthened the demands of those calling for the adoption of an African-specific treaty on human rights.[709] Completed over

and received a new statute after the Convention came into force. On the relationship between the European and American regimes *see*, Frowein 2011, para. 17; and, Neuman 2011, para. 19–22.

[707] Fox 1992, 566. For jurisprudence of the Commission *see*, Inter-American Commission on Human Rights <http://www.cidh.oas/org> [accessed Dec. 5, 2011]. *See also*, Wilson 1994; and, Wilson 2001. For jurisprudence of the Court *see*, Inter-American Court of Human Rights <http://http://www.corteidh.or.cr> [accessed Dec. 5, 2011]. *See also*, Burgorgue-Larsen, Úbeda de Torres, and Greenstein 2011.

[708] AHG Decision 115 (XVI), Rev.1 (1979). The inclusion of "peoples' rights"—e.g., prohibition of genocide, equality and self-determination—is common to other international and regional human rights treaties, however, the AfCHPR was the first treaty to incorporate "solidarity rights" including the right to development and the right to peace. Ouguergouz 2011, para. 27, 28. It is this body of rights, as noted earlier, that arguably provided a foundation for the consideration and development of law relating to the participation of refugees in both assistance and later in the negotiation of durable solutions. While the UN General Assembly first addressed the right to participate in development in the 1980s (GA Res. 41/128, 41st Sess., 97th Plenary Mtg., UN Doc. A/RES/41/128, Dec. 4, 1986), it would take another decade before the Assembly considered the participation of citizens in the promotion and maintenance of peace (GA Res. 51/101, 51st Sess., 82nd Plenary Mtg., UN Doc. A/RES/51/101, Mar. 3, 1997).

[709] Ouguergouz 2011, para. 9. The Charter was drafted over the course of three expert meetings and less than 30 days of negotiations. *Ibid.*, para. 8. Having realized the right to self-determination, many of the newly-independent states were less keen to ratify treaties enshrining political participation as a fundamental human right due in part to unresolved internal conflicts over the exercise of political power and distribution of resources. Rosas 1993, 228; and, Cassese 1995, 118. Many of these states, for example, lobbied for and succeeded in removing references to representative government in drafts of the 1970 UN Declaration on Principles of International Law Concerning Friendly Relations and Co-

the course of two years, the African Charter on Human and Peoples' Rights (AfCHPR) was the last regional human rights instrument codifying political participation as a fundamental right to come into force in the twentieth century.[710] The Charter was adopted in 1981 and entered into force five years later after a majority of OAU states ratified the instrument. By the end of 2000 all member states of the African Union, the successor organization to the OAU, had ratified the Charter.[711]

The AfCHPR sets out both the rights and duties of individuals in a manner similar to the aforementioned American Declaration on the Rights and Duties of Man. Like most other human rights instruments, with the exception of the ECHR, the Charter recognizes both direct and indirect forms of political participation. According to Article 13, every citizen has "the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law".[712] In contrast to other human rights treaties, however, the African Charter does not include explicit reference to the right to vote. The latter clause of article 13, moreover, unlike other regional treaties, appears to grant wide discretion to state

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operation Among States (GA Res. 2625, 25th Sess., 1883rd Plenary Mtg., UN Doc. A/RES/2625, Oct. 24, 1970) which affirmed the right to self-determination as a customary norm. *Ibid.*, 45–46.

[710] African Charter on Human and Peoples' Rights, June 27, 1981 (*entry into force* Oct. 21, 1986), OAU Doc. CAB/LEG/67/3 rev. 5. In 1994 the League of Arab States adopted a Charter on Human Rights in the Arab world, but the treaty did not come into force until the new millennium. Article 24 affirms that "[e]very citizen has the right to: (1) Freedom of political activity; (2) Take part in the conduct of public affairs, directly or through freely chosen representatives; [and] (3) Stand for election and to choose his representative in free and fair elections under conditions guaranteeing equality between all citizens and ensuring the free expression of the will of the electorate". The Charter also establishes (arts. 45-48) an Arab Committee on Human Rights to oversee compliance of states signatories. Arab Charter on Human Rights, May 23, 2004 (*entry into force* Mar. 15, 2008), *reprinted in*, al-Midani and Cabanettes 2007. For additional discussion *see*, Rishmawi 2010.

[711] At the end of 1989, 40 of 50 states had ratified the AfCHPR. For ratification information *see*, Organization of African Unity <http://www.achpr.org> [accessed Dec. 5, 2010].

[712] AfCHR, *supra* n. 710, art. 13(1). For complete text *see*, Annex II, A2.2 - Human Rights Treaty Law, Regional Instruments.

signatories regarding the implementation of the right to political participation.[713] The drafting of an additional protocol on the rights of women, including their right to take part in the conduct of public affairs, commenced in the mid-1990s, but had yet to be completed by the end of the decade.[714] Similar to the oversight bodies established under European and American treaties, the AfCHPR established an African Commission on Human Rights with a mandate to oversee and interpret the Charter.[715] The Commission appears to have been relatively silent as of 2000 on the interpretation or substantive content of the right to political participation.[716] Roughly a decade after the Charter came into force the African Union adopted a Protocol establishing the African Court on Human and People's Rights.[717] The Protocol only came into effect in 2004.

III. Peace Negotiations and the Conduct of Public Affairs

The various treaties which enshrine political participation as a fundamental human right, as the previous section illustrates, are largely silent on ways and

[713] This is common to civil and political rights enshrined in the Charter and has been ascribed in part to "their bad drafting". Ouguergouz 2011, para. 25. As noted above, the Charter was drafted in a very short period of time. The apparent limitation on civil and political rights, however, may also stem from the reluctance of states to cede or allow limitations on the sovereign powers of state signatories.

[714] Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women, July 11, 2003 (*entry into force* Nov. 25, 2005). For complete text *see*, Annex II, A2.2 - Human Rights Treaty Law, Regional Instruments. For a discussion of the drafting history *see*, Wandia 2005.

[715] *Ibid*., art. 30.

[716] Kale 2008, 248; and, Olaniyan 2008, 237. The African regime has been described as "a kind of compromise between the highly sophisticated system established by the ECHR and the rather flexible one provided for by the ICCPR and its Optional Protocol". Ouguergouz 2011, para. 11. For jurisprudence of the Commission *see*, African Human Rights Case Law Analyzer (Institute for Human Rights and Development in Africa) <http://caselaw.ihrda.org/> [accessed Dec. 5, 2011]. *See also*, Evans and Murray 2008.

[717] Protocol to the African Charter on the Establishment of the African Court on Human and Peoples' Rights, June 10, 1998 (*entry into force* Jan. 1, 2004), OAU/LEG/MIN/AFCHPR/PROT.1 rev.2 (1997). Previous efforts to establish an African Court of Mediation, Conciliation and Arbitration at the time of the OAU founding, an African Court on Human and People's Rights at the time the Charter was adopted, and an African Economic Community court of justice under the 1991 Treaty Establishing the African Economic Community failed to come to fruition. Ouguergouz 2011; and, Viljoen 2011.

means for citizens to take part in the conduct of public affairs under international law. While the drafting histories of major treaties afford little additional insight on the substantive content or meaning of the conduct of public affairs beyond the right to vote and to be elected, it is nevertheless clear that the conduct of public affairs involves more than the participation of citizens in government and that the substantive content of the phrase should be interpreted broadly to include a range of political systems and practices. The comments and recommendations adopted by UN committees responsible for oversight of state compliance with international human rights treaties affirm these general conclusions, but also evidence evolving understandings of ways and means that citizens may take part in the conduct of public affairs at all levels—national, regional and international. That peace negotiations comprise a conduct of public affairs entailing a concomitant right to take part may be inferred, in part, by analogy from commentaries and jurisprudence which identify constitution-making as a domain for political participation. More explicit reference to peace negotiations as comprising a conduct of public affairs can be found in recommendations and in a broad body of soft law instruments relating to the elimination of discrimination against women, in particular, their participation in decision-making processes relating to the peaceful settlement of international disputes. Peace negotiations may thus be considered, at least in principle, as the following section explains, a conduct of public affairs entailing a concomitant right to take part under international law.

i. Texts and drafting histories

The texts of human rights treaties which codify political participation as a

fundamental right reveal little about the substantive content of the right to take part in the conduct of public affairs. Article 25 of the ICCPR, the primary reference to political participation under international human rights law, is emblematic of most treaties. The article affirms the right to take part in the conduct of public affairs, but with the exception of the right to vote and to be elected, is silent on ways and means to actualize such a right.[718] This relatively ambiguous framing of the right to political participation is also found in ICERD, the ACHR and the AfCHPR with the first Protocol of the ECHR limited to the right to take part in elections.[719] Treaties on indigenous peoples and minorities, as noted above, do not affirm an explicit "right" to take part in the conduct of public affairs, although this is a developing area of law. ICEDAW is only slightly more definitive than the aforementioned treaties on the ways and means for citizens to take part in the conduct of public affairs. The Convention refers, for example, to the participation of women in public referenda, non-governmental organizations and associations concerned with public and political life, international organizations and, more broadly, the participation of women in the formulation and implementation of public policy

[718] ICCPR, *supra* n. 612, art. 25. Legal scholars have offered varying interpretations of this provision. Partsch, for example, observes that "[t]he requirement that every citizen have the right to take part in the conduct of public affairs is satisfied if appointed officials are in some way responsible to elected representatives". Partsch 1981, 239. Other scholars, however, contend that the conduct of public affairs involves more than a distinction between direct and indirect elections. Nowak, for example, argues that "forms of direct democracy ... by plebiscite or referendum, were [also] intended". Nowak 1993, 571. According to Steiner "governmental duties of tolerance and equal protection for all political activities could be viewed as a minimum, essential elaboration of the 'take part' clause". Steiner 1988, 109. Nowak similarly observes that "[a]s a common minimum, article 25(a) merely establish[es] that the exercise of State authority must be based on the principle of sovereignty of the people—i.e., the government is ultimately responsible to the people and may also be controlled and deposed by it". *Ibid.*, 570.

[719] ICERD, *supra* n. 633, art. 5(c); ACHR, *supra* n. 700, art. 23; AfCHPR, *supra* n. 710, art. 13; and, ECHR-P1, *supra* n. 678. While a direct right to take part in the conduct of public affairs may be inferred, as noted above, under Protocol No. 12 to the ECHR, the discussion here is limited to instruments in effect as of the end of 2000. Protocol No. 12 only came into force in 2005.

at all levels.[720] Little else is said, however, about the substantive content of the right to take part in the conduct of public affairs.

The drafting histories of treaties which codify political participation as a fundamental human right appear to afford little additional insight on the substantive content or meaning of the right to take part in the conduct of public affairs. The drafters of the ICCPR, for example, focused primarily on voting with little time afforded to discussion of other forms of political participation.[721] The relative absence of debate on ways and means to take part in the conduct of public affairs, with the exception of discussions related to the slightly broader provisions enshrined in articles 7 and 8 of ICEDAW, appears to be common to drafting histories of other human rights treaties which enshrine political participation as a fundamental norm.[722] The drafting histories of several major treaties nevertheless reveal two important and inter-related insights on the substantive content of the right to take part in the conduct of public affairs. First, it is clear from the drafting history of the ICCPR that the right to take part in the conduct of public affairs is broader than the right to participate in government.[723]

[720] ICEDAW, *supra* n. 652, arts. 7 and 8. The Convention is also more expansive than the Convention on the Political Rights of Women which only refers to the right to vote, to be elected and to hold public office. ICPRW, *supra* n. 645, arts. 1-3.

[721] Commenting on the drafting history of article 25 of the ICCPR, Steiner observes that "[w]hat is indeed striking is less the sharp disputes among states' representatives about the import of the 'elections' clause than the absence of a serious effort to explore or elaborate the 'take part' clause". Steiner 1988, 85. *See also*, Fox 1992, 557.

[722] The analysis in this section is limited to a review of the drafting histories of the ICCPR and ICEDAW. For guides to the *travaux préparatoires* of each instrument *see*, Bossuyt 1987; and, Rehof 1993. The author was unable to locate guides to or collections of the *travaux préparatoires* for ICERD, the ACHR and the AfCHPR. A review of original drafting documents was beyond the scope of this study. The ECHR, as already noted, only addresses the right to take part in elections. It does not appear that drafters examined other forms of political participation. For a guide to the *travaux see*, CoE 1977.

[723] The AfCHPR, which affirms the right of every citizen "to participate freely in the government of his country", appears somewhat unique in relation to other treaties in its apparent limitation to participation in government. AfCHPR, *supra* n. 710, art. 13(1). Interpretation of this phrase as with the rest of the Charter is complicated by the limited scope of *travaux préparatoires* and the lack of verbatim transcription of debates and deliberations. Viljoen 2004, 315. The substantive content of the right to take part in the conduct of public affairs under the Charter may nevertheless be open to future clarification by the African Commission and Court on Human and Peoples' Rights. Indeed, as Fox observes with respect to clarification of the substantive content of the right to political participation under

The drafters rejected a more restrictive clause referring to the right "to take part in the government of the state of which [a person] is a citizen".[724] This is also evident from article 5(c) of ICERD which prohibits discrimination *vis-á-vis* the right "to take part in the Government *as well as* in the conduct of public affairs at any level".[725] [emphasis added] Similar to early drafts of the ICCPR, the UN Declaration on the Elimination of All Forms of Racial Discrimination, adopted two years prior to the Convention, only refers to the right "to take part in the government".[726] That the right to take part in the conduct of public affairs comprises more than participation in government is also evident from the drafting history of ICEDAW. The expanded ways and means for exercising a right to take part in the conduct of public affairs found in articles 7 and 8, referred to above, are broader than those listed in initial drafts of the Convention.[727] Second, and related, the drafting history of the ICCPR further

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the Charter, article 60 instructs the African Commission to "draw inspiration from international law on human and peoples' rights" in the interpretation and application of the Charter". Fox 1992, 568.

[724] The draft proposal submitted by the UN Secretariat, for example, states that "[e]veryone has the right to take an effective part in the *government* of the state of which he is a citizen". [emphasis added] UNCHR 1947b, art. 30. The American draft proposal similar stated that "[g]overnment derives its just powers from the consent of the governed. Everyone has the right to take an effective part in the *government* of the state or territory of which he is a citizen". [emphasis added] UNCHR 1947a, arts. 26-27. *See also*, UNGA 1955, chap. VI, para. 172.

[725] ICERD, *supra* n. 633. That the right to political participation includes more than the right to take part in government is also evident from the use of the phrase "in particular" in reference to the political rights listed in article 5(c). In other words, reference to voting and taking part in government is not exhaustive of the ways and means for taking part in the conduct of public affairs.

[726] United Nations Declaration on the Elimination of All Forms of Racial Discrimination, *supra* n. 630, art. 6.

[727] ICEDAW, *supra* n. 633, arts. 7, 8. A first draft prepared by the Philippines, for example, "referred to States giving women the opportunity to participate in the political and social life of their country, while the final version used much more firm [and definitive] language" including reference to referenda and the formulation and implementation of public policy at all levels—local, national, regional and international. *See*, comments by the Federal Republic of Germany, UN Doc. E/CN.6/591, para. 83; the International Federation of University Women, UN Doc. E/CN.6/591, Annex I, 62; Belgium, UN Doc. E/CN.6/591/Add.1, 4; Mexico, UN Doc. E/CN.6/SR.638, para. 62; and, the Byelorussian SSR, UN Doc. A/32/218/Add.1, para. 27, cited in, Rehof 1993, 94. See also, the discussion in, Chinkin, Freedman, and Rudolf 2012, 200–201. Similar to article 5(c) of ICERD, as noted above, the Convention prefaces the list of political rights in article 7 with the phrase "in particular" indicating that the list is not exhaustive of the ways and means for exercising the right to political participation.

reveals that states taking part in the drafting process supported an open-textured or inclusive definition of the conduct of public affairs. The aim was to "lay down general principles" in a manner that would accommodate ideological differences and a diversity of political regimes "leaving [it to] each country to devise within the framework of its national system its own method of applying them".[728] The substantive content of the right to take part in the conduct of public affairs was thus left largely undefined, at most enshrining a right to vote, but giving states considerable latitude in meeting obligations relating to free and fair elections and even wider latitude with respect to institutionalization of the right to take part in the conduct of public affairs generally. The indeterminate language agreed to not only facilitated broad ratification of the Covenant, it also ensured that its provisions on political participation would adequately "capture" future developments in ways and means for taking part in the conduct of public affairs.

ii. Comments and recommendations

The general comments and recommendations adopted by UN treaty bodies responsible for oversight of the various human rights treaties provide additional insight on the substantive content of the right to take part in the conduct of public affairs. General Comment 25, adopted in 1996, is the primary comment or recommendation on the right to political participation under human rights treaty law.[729] The definition of the right to take part in the

[728] Mr. Kriven (Ukrainian Soviet Socialist Republic), UNCHR 1953b, 4. Describing article 25 of the ICCPR as "[a] carefully drafted text", the Chilean delegate (Mr. Diaz Casanueva) similarly observed that "it was by no means an instrument whereby certain regions of the world might seek to impose their views on all". On the contrary, the article "made due allowance for the co-existence of various types of democracy". UNGA 1961b, para. 11. *See also*, Steiner 1988, 84; Fox 1992, 588; Nowak 1993, 567, 590; and, Roth 2000, 330.

[729] HRC 1996b.

conduct of public affairs comprised one of the most "important" and "difficult" issues the HRC faced in preparing the comment.[730] The comment nevertheless devotes little space to sub-paragraph (a) of the article with the majority of the text focused on the right to vote and to be elected under sub-paragraph (b) along with a discussion of related political freedoms.[731] While committee members generally agreed that "the precise meaning of [article 25(a)] be spelt out with the utmost clarity", they nevertheless struggled, much like the drafters of the ICCPR, to define succinctly the ways and means that citizens may take part in the conduct of public affairs.[732] At minimum there was broad agreement among committee members that the conduct of public affairs comprised "more than the exercise of legislative, executive and administrative powers".[733] In discussing the ways and means that citizens might take part in the conduct of public affairs, other than voting, members referred to participation by laymen in judicial proceedings, interest or pressure groups, peaceful demonstrations, consultations, public debates and dialogues, neighbourhood associations and unions.[734]

[730] Mrs. Evatt, HRC 1994e, para. 3; and, *ibid*., HRC 1995c, para. 7.

[731] The General Comment, comprised of a total of 27 paragraphs, devotes four paragraphs (paras. 5-8) to the right to take part in the conduct of public affairs under article 25(a) with 14 paragraphs (paras. 9-22) devoted to the right to vote and to be elected under sub-paragraph (b) of the article. The remainder of the comment examines the "chapeau" or "umbrella clause", discussed in more detail below, the right to have access to public service (art. 25(c)) and related political freedoms.

[732] Mr. Wennergren, HRC 1994d, para. 59. *See also*, Mr. Bhagwati, HRC 1995e, para. 7. The committee appeared to attach considerable importance to clarifying provisions on the right to political participation in light of democratic developments that followed the end of the Cold War. One committee member observed, for example, that "[g]iven recent political developments in the world, the Committee should take the opportunity to define clearly what was meant by democracy". Mr. Klein, HRC 1995c, para. 32. Another similarly emphasized that provisions on article 25(a) in the draft comment on the right to political participation "sought to express the ideal of democracy, namely, the accountability of the institutions of government to the people". Mrs. Evatt, HRC 1995g, para. 1. Some committee members nevertheless disagreed about the value of the formulation used in the comment. One member, for example, described the comment language on article 25(a) as "full of unassailable but general statements that provided little guidance in human rights law" thus rendering comment provisions on the article "more theoretical than practical". Mr. Prado Vallejo, HRC 1995g, para. 6.

[733] Mr. Bruni Celli, HRC 1997, para. 10; and, Mr. Francis, HRC 1995c, para. 20.

[734] Mr. Wennergren, HRC 1994d, para. 59; Mr. Bhagwati, HRC 1995e, para. 7; and, Mr. Bruni

The final text of General Comment 25 affirms the inclusive character of the right to take part in the conduct of public affairs envisaged by the ICCPR drafters. General Comment 25 describes the conduct of public affairs as "a *broad concept* which relates to the exercise of political power, in particular, the legislative, executive and administrative powers [which] covers *all aspects* of public administration, and the formulation and implementation of public policy at international, national, regional and local levels".[735] [emphasis added] In addition to "exercis[ing] power as members of legislative bodies or by holding executive office", the comment observes that citizens take part in the conduct of public affairs "when they choose or change their constitution or decide public issues through [mechanisms such as] a referendum".[736] The consideration of constitution-making and referenda as domains for the conduct of public affairs appear to be important, as explained in more detail below, in addressing the question of whether refugees have a right to take in the negotiation of durable solutions. Other venues or domains for the conduct of public affairs listed in General Comment 25 include "popular assemblies which have the power to make decisions about local issues or about the affairs of a particular community [and] bodies established to represent citizens in consultation with government".[737] Finally, the comment notes that

Celli and Ms. Medina Quiroga, HRC 1997, para. 22–23. Noting the range of possible domains for political participation among states, Fox similarly suggests that the conduct of public affairs may include participation in local school boards, town hall meetings, advocacy groups, political parties, labor unions, the officer corp of the military and "other institutions wielding influence over policy". Fox 1992, 555 n. 67.

[735] HRC 1996b, para. 5. The ways and means to take part in the conduct of public affairs listed in the comment are also broader than those listed in the draft comment. The draft comment states that "[d]irect participation includes the right to vote in referenda and plebiscites on general or specific issues. It can also include participation in community decisions about local issues. Participation through freely chosen representatives is exercised by nominating or voting for representatives, by raising or debating public issues [and by engaging] in dialogue with representatives. The nomination or appointment of holders of certain public offices by the freely chosen representatives of citizens is another form of participation". HRC 1994a, para. 6.

[736] *Ibid*., para. 6.

[737] *Ibid.* The phrase "bodies established to represent groups of citizens" was used in reference

citizens may take part in the conduct of public affairs by "exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves".[738]

The drafting discussions and final text of General Comment 25 underscore evolving understandings of the substantive content of the right to take part in the conduct of public affairs. This includes several important insights on whether peace negotiations comprise a conduct of public affairs entailing a concomitant right to take part. First, the drafting discussions indicate that the forms of political participation listed in the comment only comprise an "outline description" of ways and means to actualize a right to take part in the conduct of public affairs.[739] Thus, while General Comment 25 does not explicitly mention peace negotiations as comprising a conduct of public affairs under the ICCPR, neither does it explicitly rule them out as falling within the meaning of article 25 of the Covenant. Second, the reference to participation in policy formation at all levels—local, national, regional and international—as comprising the conduct of public affairs may be interpreted to include peace negotiations to the extent that such negotiations involve deliberation of and decisions on public policy.[740]

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to lobby groups. Mrs. Evatt, HRC 1995g, para. 13.

738 HRC 1996b, para. 8.

739 Mrs. Evatt, HRC 1995g, para. 8. Commenting on the initial list of ways and means to take part in the conduct of public affairs in the draft comment, another committee member observed that "there are many other ways to participate in the conduct of public affairs" and that while it "[w]as not necessary to mention them all [the committee] must give the general idea". Mr. Bruni Celli, HRC 1995e, para. 13. The Human Rights Committee also notes, more generally, that its General Comments should not be regarded as limitative. They are intended, rather, "to make the Committee's experience available for the benefit of all States parties, so as to promote more effective implementation of the Covenant; to draw their attention to insufficiencies disclosed by a large number of reports; to suggest improvements in the reporting procedure to clarify the requirements of the Covenant; and to stimulate the activities of States parties and international organizations in the promotion and protection of human rights". HRC 1994c, para. 50.

740 Barnes 2002a, 10. The substantive content of contemporary peace agreements include a broad range of issues generally regarded as falling within the public sphere. For a summary see, Chapter 5, *infra* n. 915. The different forms of direct participation listed in the comment also comprise ways and means through which citizens often take part in peace processes—e.g., lobbying, popular assemblies and referenda.

Finally, the reference to constitution-making as comprising as the conduct of public affairs under article 25 of the Covenant may similarly be interpreted to include peace negotiations if one conceives of such negotiations as "a process of constitution-making as negotiated settlement".[741]

iii. Jurisprudence

The jurisprudence of the Human Rights Committee is largely silent on the question of whether peace negotiations comprise a conduct of public affairs within the meaning of article 25 of the Covenant. In one of the Committee's few decisions (*Marshall v Canada*) on article 25(a), however, the HRC addresses the substantive content of the right to political participation, in particular, the question of whether constitution-making comprises a conduct of public affairs within the meaning of article 25 of the Covenant.[742] The case involved the Mikmaq Tribal Society of Canada which claimed that the Government of Canada violated article 25(a) when it denied the society separate representation at a series of *constitutional conferences* in the 1980s to identify and clarify existing aboriginal and treaty rights in advance of constitutional amendments on matters of direct concern to aboriginal peoples.[743] The Mikmaq representatives

[741] Bell 2006, 374. *See also*, the discussion in Chapter 2, 89 n. 197 and corresponding text.

[742] HRC 1991. The Marshall case is among a small number of judicial interpretations and documents, as Hart observes, that have "gradually expanded the *content* of participation itself, the *arenas* of participation, and the accompanying *penumbra* of rights ... that genuine participation presupposes". [emphasis added] Hart 2003, 6. It is in this context, Hart observes, that the meaning of the right to take part in the conduct of public affairs "has increasingly been explored to discover what those open-ended terms 'take part' and 'public affairs' might mean". *Ibid*. The majority of the Committee's jurisprudence on article 25, as noted earlier, relates to other aspects of the right to political participation.

[743] The communication was submitted by the officers of the Grand Council of the Mikmaq tribal society in Canada "both as individually affected alleged victims and as trustees for the welfare and the rights of the Mikmaq people as a whole". HRC 1991, para. 1. The Committee ruled that the complaint was inadmissible under article 1 of the Covenant on the right to self-determination, but agreed to examine the complaint under article 25(a) as an alleged violation of the individual right to political participation, notwithstanding the fact that the complaint was submitted by a group of individuals. The authors did not allege a breach of article 27 because they conceived themselves as a "people" and not a "minority". Verstichel

identified two key reasons why their exclusion comprised an unreasonable limitation on the right to take part in the conduct of public affairs under article 25(a). First, they emphasized that they had neither chosen nor conferred upon the various indigenous associations invited to the conference a right to represent Mikmaq interests.[744] Second, despite attempts to influence the Assembly of First Nations (AFN), one of the main associations taking part in the conference, the AFN neither submitted nor incorporated Mikmaq interest papers in its conference submissions.[745] The government of Canada argued that article 25(a) is satisfied "when 'freely chosen representatives' conduct and make decisions on the affairs with which they are entrusted by the constitution", that the restrictions placed on Mikmaq participation were "not unreasonable" and that constitutional conferences "do not fall within the scope of activities which individuals are entitled to undertake by virtue of article 25 of the Covenant".[746]

Contrary to the government's position, the HRC concluded that Canada's constitutional conferences, in light of their "composition, nature and scope of activities ... [did] indeed constitute a conduct of public affairs [under article 25 of the ICCPR]".[747] The Committee nevertheless found that the government's decision not to invite the Mikmaq as a separate delegation comprised an acceptable or reasonable restriction on the right to take part in the conduct of

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argues that if the violation of article 25 had been linked to article 27 on minorities in the communication "the HRC would have decided differently and an opportunity would have been given to shed clear light on the relation between minority protection and participation of minorities in decisions which affect them". Verstichel 2005, 31.

744 HRC 1991, para. 4.2.

745 *Ibid*.

746 *Ibid*., para. 4.1. Article 25 of the ICCPR, as noted in the previous section, allows for restrictions on the exercise of the right to political participation provided that such restrictions are reasonable. The Covenant does not elaborate further on what type of restrictions may be considered reasonable. This issue is discussed in more detail in the following section.

747 *Ibid*., para. 5.3. The Committee further noted that while the inclusion of some aboriginal groups in the constitutional conference comprised an exception to the rule, according to the government of Canada, this fact alone did not have a bearing on the Committee's view that such conferences comprised a conduct of public affairs under article 25 of the Covenant.

public affairs. The Committee reasoned that article 25(a) of the Covenant "cannot be understood as meaning that any directly affected group, large or small, has the unconditional right *to choose the modalities of participation* in the conduct of public affairs".[748] [emphasis added] Such modalities, the Committee explained, are determined by the legal and constitutional system of each state. The Committee's ruling appears to suggest that beyond the right to vote and to be elected article 25 merely establishes an obligation for states to ensure participation when such modalities are provided for by the state.[749] This would likewise seem to suggest by inference that peace negotiations only comprise a conduct of public affairs when states and other warring parties (e.g., rebel groups and opposition movements) agree to establish mechanisms for public participation. Mikmaq leaders, legal scholars and at least one former committee member, however, criticized the decision, in part, because the HRC did not address whether the government's failure to invite the Mikmaq comprised a prohibited form of discrimination under international law.[750]

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[748] *Ibid.*, para. 5.5. The Committee further observed that understanding article 25 as according citizens an "unconditional right to choose the modalities of [their] participation in the conduct of public affairs ... would be an extrapolation of the right to direct participation by the citizens, far beyond the scope of article 25(a)".

[749] Nowak 1993, 572; and, Joseph, Schultz, and Castan 2004, 657. Joseph et al. also note that sub-paragraph (c) of the article requires states parties to ensure equal access to public service.

[750] In a memo to the UN Commission on Human Rights, Mikmaq leaders posed three main questions relating to what it considered to be discriminatory aspects of their exclusion from constitutional deliberations in Canada: "[i]f a State party organizes the modalities of participation in such a way that certain groups, although affected, have no meaningful voice in the decision, is this not 'discrimination'? Or if the State party arranges consultations so that some of the affected groups are invited while others are excluded, is this not 'discrimination'? Does the phrase 'unconditional right to choose the modalities of participation' mean that, when a group does have the right to participate in public decision-making, it is the State and not the group itself that has the right to choose the group's representatives?" Four Directions Council 1992, para. 10. The Council further criticized the HRC decision because it "impli[ed] that indigenous peoples have no right to representation, participation or self-government, other than those rights generally enjoyed by citizens". They argued that this was "incompatible with the ILO Convention ... and with the recognition of the special and collective character of indigenous rights..." *Ibid.*, para. 13. They further recommended that "[i]n light of the extreme importance of democracy and the principle of 'consent of the governed' to the global achievement of human rights, ... it would be for the best interests of all countries to seek clarification of the interpretation of article 25 from the International Court of Justice". *Ibid.*, para. 14. *See also*, Graefrath 1994, *cited in*, Alfredsson and de Zayas 1993,

The Human Rights Committee nevertheless appears to have moved beyond its initial conclusion in the Marshall case on the substantive content of the right to take part in the conduct of public affairs. While General Comment 25 affirms that "the allocation of powers and the means by which individual citizens exercise the right to participate in the conduct of public affairs protected by Article 25 should be established by the constitution and other laws [of each state]", the comment also affirms, as one of its lead drafters observes, that "*citizens [also] have a role* in setting the modalities of participation in the conduct of public affairs".[751] [emphasis added] In identifying various forms of participation which comprise the conduct of public affairs within the meaning of the Covenant, as discussed earlier, General Comment 25 explicitly states that "[c]itizens also participate directly in the conduct of public affairs when they *choose or change their constitution* or decide public issues through a referendum or other electoral process conducted in accordance with [article 25] paragraph (b)".[752] [emphasis added] This appears to open the way for the consideration of peace negotiations as comprising a conduct of public affairs entailing a concomitant right to take part within the meaning of article 25(a) if one accepts the aforementioned analogy of peace negotiations as comprising a hybrid form of constitution-making. The circumstances of the Marshall case, moreover, appear to render the Committee's initial conclusions on the right to

6; and, Barsh 1994, 80.

[751] Evatt 2004, 186. Joseph et al. suggest that HRC decisions in two related cases (HRC 1994b; and, HRC 1996b) on the participatory rights of minorities under article 27 of the Covenant also "appear to signal a retreat from the conservative position adopted [in the Marshall case]". Joseph, Schultz, and Castan 2004, 658. Their conclusion that minorities have a right to take part in the conduct of public affairs, notwithstanding the fact that article 27 does not explicitly enshrine such a right, as noted earlier, is based on the Committee's emphasis that minorities must be consulted and their interests considered in relation to decisions which affect their lives. The cases involved claims by Sami people that government quarrying and transportation of stone through traditional reindeer herding territory comprised a violation of their culture. *See also*, Verstichel 2005, 30.

[752] HRC 1996b, para. 6.

take part in the conduct of public affairs less than applicable to the type of hybrid constitution-making processes that often follow armed conflict. In contrast to the circumstances of the Marshall case, in which there was a well-established and functional legal and political order, the circumstances surrounding peace negotiations are often characterized by a breakdown in the rule of law and the collapse of democratic institutions.[753] The modalities for participation in peace negotiations are more often than not determined by the outcome on the battlefield rather than the laws and constitution of the state.

General Recommendation 23 on the right to political participation under articles 7 and 8 of ICEDAW affirms the above conclusion that peace negotiations comprise a conduct of public affairs under international human rights law entailing a concomitant right to take part.[754] Adopted one year after the HRC finalized its comment on the right political participation under article 25(a) of the Covenant, the CEDAW recommendation similarly observes that "[t]he political and public life of a country is *a broad concept* [which includes] the exercise of legislative, judicial, executive and administrative powers [and] covers *all aspects* of public administration and the formulation and implementation of policy at the international, national, regional and local

[753] Bell draws attention to this issue in her seminal work on peace agreements and international law noting that "[t]hose negotiating the constitutional framework are often politico-military elites whose own representative credentials are shaky or non-existent [and that] [t]heir place at the negotiating table is assured by their capacity for violent action—although practically speaking this requires a larger communal base and level of state illegitimacy than is often credited". Bell 2008, 213. Beyond theoretical issues relating to democratic representation, this also appears to have practical implications in light of empirical research which suggests that civil society participation may be especially important to the sustainability of negotiated settlements in the absence of democratically representative negotiators. *See*, the discussion of research by Wanis-St. John and Kew as well as Nilsson in, Chapter 2, *supra* n. 284. Bell further observes that "[d]irect recognition of the groups that military contenders claim they represent can enable the international community to open up negotiations beyond the conflict's primary contenders (whose own representative credentials are unclear), to constituencies viewed as important to building and sustaining both agreement and therefore peace". *Ibid.*

[754] CEDAW 1997b.

levels".[755] [emphasis added] The Committee notes, moreover, that "[t]he obligation specified in article 7 [of the Convention] extends to *all areas* of public and political life and *is not limited* to those areas specified in [the article]".[756] The Committee further observes, for example, that the conduct of public affairs "also includes many aspects of civil society, including public boards and local councils and the activities of organizations such as political parties, trade unions, professional or industry associations, women's organizations, community-based organizations and other organizations concerned with public and political life".[757] The recommendation is nevertheless unique from General Comment 25 in that it explicitly identifies peace negotiations as comprising a conduct of public affairs within the meaning of articles 7 and 8 of ICEDAW. General Recommendation 23 emphasizes the importance of including "a critical mass of women in international negotiations, peacekeeping activities, all levels of preventive diplomacy, mediation, humanitarian assistance, social reconciliation, *peace negotiations* and the international criminal justice system".[758] [emphasis added]

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[755] *Ibid.*, para. 5. Chinkin et al. similarly note that the concept of the "political and public life of the country" used in the Convention is "closely related to—*but even broader than*—the concept of 'public affairs' in ICCPR Article 25". [emphasis added] Chinkin, Freedman, and Rudolf 2012, 201.

[756] CEDAW 1997b, para. 5.

[757] *Ibid.*

[758] CEDAW 1997b, para. 40. This phrase is not used in the Committee's early analysis (CEDAW 1996) of the right to political participation under the convention. It may be assumed, however, that the provision is based generally on the significant body of soft law discussed below. This includes the 1995 UN Beijing Declaration and Programme of Action, referred to below, which the Committee cites in Recommendation 23. One year later, in one of its first concluding observations on the issue, CEDAW called upon the government of Croatia to establish mechanisms "to protect and expand the rights of women and encourage participation by women in the political field, decision-making and *the struggle for peace*". UNGA 1996, para. 588. For complete text see, Annex II, Table A2.4 - Human Rights Treaty Committees, Concluding Observations. Chinkin et al. observe that CEDAW's decision "to formulate a separate article [8] on women's international representation rather than including it as a paragraph in Article 7 ... pays tribute to the immense importance of [women's participation in] decision-making in international fora, on matters such as *peacemaking*, conflict resolution, military expenditure and nuclear disarmament, development and the environment, foreign affairs and economic restructuring". [emphasis added] Chinkin, Freedman, and Rudolf 2012, 222-223.

iv. Soft law

The identification of peace negotiations as comprising a conduct of public affairs in the General Recommendation reflects a broad body of soft law on women's rights which affirm women's participation in securing and maintaining international peace and security. In 1975, some two decades prior to the adoption of the recommendation, the UN Declaration of Mexico on the Equality of Women and their Contribution to Development and Peace affirmed that "[w]omen *must* participate equally with men in the decision-making processes which help to *promote peace* at all levels".[759] [emphasis added] Paragraph 25 emphasizes that since "[w]omen have a vital role to play in the promotion of peace in all spheres of life: in the family, the community, nation and the world [they] *must* participate equally with men in the *decision-making processes* which help to *promote peace* at all levels".[760] [emphasis added] A second major declaration adopted seven years later—the UN Declaration on the Participation of Women in Promoting International Peace and Cooperation—reaffirmed the importance of such participation and called for "special national and international measures" to increase women's participation in the promotion of international peace.[761] This included the

[759] United Nations Declaration of Mexico on the Equality of Women and their Contribution to Development, UN Doc. E/Conf.66/34, July 2, 1975, para. 2. The second paragraph further notes that "[a]ll obstacles that stand in the way of enjoyment by women of equal status with men must be eliminated in order to ensure their full integration in national development and their participation in securing and maintaining international peace". *Ibid.* The Declaration was adopted by a vote of 89 to three with 18 abstentions. For complete text *see*, Annex II, Table A2.8 - International Declarations.

[760] *Ibid*., para. 25. *See also*, GA Res. 3010, 27th Sess., 2113th Plenary Mtg., UN Doc. A/RES/3010, Dec. 18, 1972, para. 2(c). The resolution was adopted without a vote. GA Res. 3519, 30th Sess., 2441st Plenary Mtg., UN Doc. A/RES/3519, Dec. 15, 1975, para. 3. The resolution was adopted by a vote of 90 to 21 with 22 abstentions. For complete text *see*, Annex II, Table A2.11 - United Nations General Assembly Resolutions.

[761] United Nations Declaration on the Participation of Women in Promoting International Peace

establishment of "adequate *legal protection ...* in order to *ensure* [their] effective participation" in the *promotion of international peace* and cooperation.[762] [emphasis added]

The 1985 UN Nairobi Forward-Looking Strategies for the Advancement of Women explicitly called upon governments for the first time to "take measures to encourage the full and effective participation of women in *negotiations* on *international peace* and security".[763] [emphasis added] The Nairobi Strategies emphasize that "[u]niversal and durable peace cannot be attained without the full and equal participation of women in international relations, particularly in *decision-making* concerning *peace,* including the *processes envisaged for the peaceful settlement of disputes* under the Charter of the United Nations ... ".[764] [emphasis added] The strategies further describe women's equal role in decision-making with respect to peace and related issues as "one of their *basic human rights*" under international law.[765] [emphasis added] Noting that women have "begun to play an important role

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and Co-operation, GA Res. 37/63, 37th Sess., 90th Plenary Mtg., UN Doc. A/RES/37/63, Dec. 3, 1982, art. 4. The resolution was adopted without a vote. Article 2 of the declaration recognizes that "[w]omen and men have an equal and vital interest in contributing to international peace and co-operation". For complete text *see*, Annex II, Table A2.8 - International Declarations.

762 *Ibid*., art. 12. Other measures required to ensure women's equal participation, identified in article 12, include: "[t]he promotion of an equitable representation of women in governmental and non-governmental functions; [t]he promotion of equality of opportunities for women to enter diplomatic service; [t]he appointment or nomination of women, on an equal basis with men, as members of delegations to national, regional or international meetings; and [s]upport for increased employment of women at all levels in the secretariats of the United Nations and the specialized agencies, in conformity with Article 101 of the Charter of the United Nations". The list is not exhaustive.

763 Nairobi Forward-Looking Strategies for the Advancement of Women, UN Doc. A/Conf.116/28/Rev.1, July 26, 1985, para. 238. Similar to previous instruments, the strategies affirm that "[w]omen and men have an equal right and the same vital interest in contributing to international peace and co-operation". *Ibid*., para. 235. Due to a lack of time, the draft declaration was brought to the attention of the General Assembly, rather than put to a vote during the conference. For complete text *see*, Annex II, Table A2.8 - International Declarations.

764 *Ibid*., para. 240. It thus states that "[a]ll obstacles at national and international levels in the way of women's participation in promoting international peace and co-operation should be removed as soon as possible". *Ibid*., para. 237.

765 *Ibid*., para. 253.

in *conflict resolution*, peace-keeping and defence and foreign affairs mechanisms", the UN Beijing Declaration and Platform of Action, which is referred to in General Recommendation 23, emphasizes that "[i]f women are to play an equal part in securing and maintaining peace, they must be empowered politically and economically and *represented* adequately at all levels of *decision-making*".[766] [emphasis added] Adopted a decade after the Nairobi conference, the declaration reaffirmed the need for governments and international and regional intergovernmental institutions to "[t]ake action to promote equal participation of women and equal opportunities for women to participate in *all forums* and *peace activities* at all levels, particularly at the *decision-making* level".[767] [emphasis added]

These declarations and programmes of action arguably contributed to and informed the participatory provisions in UN Security Council Resolution 1325 on women and international peace and security.[768] Adopted in October 2000, the resolution comprised the first time that the Security Council "endorsed [the role of] civil society groups, especially women in peace processes" and, in particular, "the role of women as active agents in the negotiation and maintenance of peace agreements".[769] The resolution urges states "to ensure increased representation of women at all *decision-making* levels in national, regional and international institutions and mechanisms for

[766] United Nations Beijing Declaration and Platform for Action, UN Doc. A/Conf.177/20, Oct, 17, 1995, para. 135. The declaration similarly affirms that "[t]he equal access and full participation of women in power structures and their full involvement in all efforts for the prevention and resolution of conflicts are essential for the maintenance and promotion of peace and security". The declaration was adopted by consensus. For complete text see, Annex II, Table A2.8 - International Declarations.

[767] *Ibid.*, para. 144.

[768] SC Res. 1325, 55th Sess., 4213th Mtg., UN Doc. S/RES/1325, Oct. 31, 2000. The declaration was adopted without a vote. For complete text *see*, Annex II, Table A2.10 - United Nations Security Council Resolutions.

[769] Porter 2003, 253; Willett 2010, 142; and, Bell and O'Rourke 2010, 943..

the prevention, management, and *resolution* of conflict".[770] [emphasis added] It also encourages the UN Secretary-General to implement a strategic plan of action to increase "the participation of women at decision-making levels in conflict resolution and peace processes" and further calls on all other actors involved to adopt a gender perspective when negotiating and implementing peace agreements including "[m]easures that support local women's peace initiatives and indigenous processes for conflict resolution, and that involve women in all of the implementation mechanisms of the peace agreements".[771]

IV. Refugees and the Right to Political Participation

Human rights treaties which codify political participation as a fundamental right are also largely silent on whether citizens, refugees in particular, have a right to take part in the conduct of public affairs when they are outside their country of citizenship voluntarily or otherwise. That refugees have a right to take part in the public affairs of their home countries may be inferred in part from the texts and drafting histories of treaties which emphasize that among citizens the right to political participation is universal, prohibit discrimination in its exercise and oblige state parties to ensure citizens have an opportunity to take part. The comments and recommendations adopted by UN human rights treaty committees affirm these general conclusions, explicitly recognize that refugees have a right to take part in the conduct of public affairs after return to their countries of origin and further suggest that residence-based restrictions may be unreasonable in situations where individuals and groups are involuntarily

[770] Res. 1325, *supra* n. 768, para. 2.
[771] *Ibid*., paras. 2 and 8(b).

outside their habitual place of residence. Affirmation that residence may comprise an unreasonable restriction on human rights generally and on the right to political participation specifically can also be found in both international and regional jurisprudence. That refugees have a right to take part in their home countries during displacement and after return is further affirmed in a wide array of additional instruments including peace plans and agreements as well as resolutions, conclusions and guidelines adopted by international and regional organizations. It thus appears, at least in principle, that refugees have a right to take part in the public affairs of their countries of origin in general and more specifically in the negotiation of durable solutions to their situation.

i. Texts and drafting histories

The texts of human rights treaties which codify political participation as a fundamental right appear to reveal little as to whether refugees have a right to take part in the public affairs of their country of origin. Similar to provisions in most other treaties, article 25 of the ICCPR, the primary reference to the right to political participation under international law, affirms that citizens have a right to take part in the conduct of public affairs, but does not address the specific situation of citizens who are outside their country of citizenship voluntarily or otherwise.[772] Three major elements found in the "umbrella clause" of article 25 nevertheless appear to suggest that refugees like all other citizens have a right

[772] ICCPR, *supra* n. 612, art. 25. *See also*, ICERD, *supra* n. 633, art. 5(c); ICEDAW, *supra* n. 652, arts. 7-8; ECHR-P1, *supra* n. 678, art. 3; ACHR, *supra* n. 700, art. 23; and, AfCHRP, *supra* n. 710, art. 13. The international and regional treaties which address the effective participation of indigenous peoples and minorities in public life are similarly silent on their application to refugees. The International Convention on the Protection of the Rights of All Migrant Workers and the Members of Their Families, the first major treaty to recognize the right of citizens to take part in the conduct of public affairs when they are outside their country of citizenship, as noted above, explicitly rules out its application to refugees. The treaty did not come into force until after 2000.

to take part in the public affairs of their home country.[773] The clause stipulates that "*[e]very citizen* shall have the *right and opportunity*", to take part in the conduct of public affairs "*without any of distinctions* mentioned in article 2 [of the Covenant relating to the prohibition of discrimination]".[774] The inclusion of these three elements, all of which duplicate provisions found elsewhere in the Covenant, underscores the distinctive character and importance of the right to political participation to the realization or exercise of all other human rights.[775] It also appears to establish an extremely high bar on any limitations to the exercise of the right to take part in the conduct of public affairs. While the umbrella clause is unique to the ICCPR, the elements enshrined therein are largely common to treaties which enshrine political participation as a fundamental right.

The use of the term "every" suggests that among citizens the right to political participation is universal; there is no explicit distinction in the text between citizens who are refugees and those who are not.[776] Inclusion of the

[773] The principles encapsulated in the "chapeau" or "umbrella clause" of article 25 were the result of a Chilean proposal which aimed to simplify a revised joint Yugoslav/French proposal for a draft covenant on civil and political rights. Suggesting that "the real difficulty with the [Yugoslav/French] proposal lay in its rigid construction", the Chilean delegate recommended that "the enunciation of principles be set out in an introductory clause, which would serve ... as an 'umbrella' clause [with] the remainder of the text being grouped in three sub-paragraphs". Mr. Diaz-Casaneuva (Chile), UNCHR 1953d, 13. *See also*, Partsch 1981, 283.

[774] ICCPR, *supra* n. 612, art. 25.

[775] The emphasis given to the right of "every" citizen to take part in the conduct of public affairs along with the principle of non-discrimination, for example, are reiterated in sub-paragraph (b) which affirms the right "[t]o vote and to be elected at genuine periodic elections which shall be by *universal* and *equal* suffrage". [emphasis added] ICCPR, *ibid.*, art. 25(b). The umbrella clause of article 25 also reiterates the principle of non-discrimination enshrined in article 2 of the Covenant which requires state signatories "to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". *Ibid.*, art. 2(1). Finally, the emphasis given to the "opportunity" to take part in the conduct of public affairs reiterates another precept fundamental to the ICCPR and other human rights treaties under which state signatories are required "to take the necessary steps, in accordance with [their] constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant". *Ibid.*, art. 2(2).

[776] Similar language can be found in other treaties which enshrine political participation as a fundamental human right. The ACHR and the AfCHPR, for example, affirm the right of

term "opportunity" further suggests that in addition to enshrining the right to political participation in domestic law, state parties to the ICCPR are also obliged to adopt practical measures to ensure that citizens are able to exercise the right to take part in the conduct of public affairs.[777] This provision may be read to impose an obligation on states to remove both *de jure* and *de facto* barriers which prevent refugees from taking part in the public affairs of their country of origin.[778] The right of refugees to take part in the public affairs of their country of origin may also be inferred from the prohibition of any "distinction", including race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, in the exercise of the right to political participation.[779] Forced displacement is absent from the enumerated grounds on which discrimination is prohibited, however, such a prohibition may be inferred from the phrase "such as" which suggests that the aforementioned

"every" citizen to take part in the conduct of public affairs of their country of citizenship. ACHR, *supra* n. 612, art. 23; and, AfCHPR, *supra* n. 710, art. 13(1). ICERD requires state parties to guarantee the political rights of "everyone". ICERD, *supra* n. 633, art. 5(c). The object and purpose of ICERD and ICEDAW, namely, the elimination of all forms of racial and gender discrimination, reinforces the principle that among citizens the right to take part in the conduct of public affairs is universal.

[777] This provision is reinforced, as noted above, by article 2 which requires states to adopt legislative and other measures to ensure that citizens are able to exercise the rights enshrined in the Covenant. This general obligation is common to other treaties which enshrine political participation as a fundamental human right. The ACHR, which was modelled in part on the Covenant, however, is the only other treaty to reiterate this principle in relation to the exercise of the right to political participation. ACHR, *supra* n. 700, art. 23(1). The treaties on indigenous peoples and minorities oblige state signatories to "establish means" and to "create conditions" to ensure the "effective participation" of these groups.

[778] In practical terms, this may require states to reform or adopt legislation to ensure the safe and voluntary return of refugees, but it may also require states to adopt additional measures in situations where conditions in the country of origin militate against the safe and voluntary return in a manner that impedes refugees from taking part in the public affairs of their home country.

[779] The fundamental principle of non-discrimination, as noted in Chapter 2, is widely cited as central to the elaboration of the right to political participation of refugees given the present lacuna in both international and regional human rights treaties. The prohibition of any distinction with respect to the right to political participation is reinforced by two additional provisions in the Covenant. Article 2, as already noted, prohibits discrimination in relation to rights enshrined in the ICCPR, while article 26 prohibits discrimination in relation to all rights including those not enshrined in the Covenant. The term "distinctions" used in article 25 is interchangeable with the term discrimination. Henrard 2009, para. 7. The importance of non-discrimination is reinforced by the inclusion of the right to political participation in human rights treaties, namely ICERD and ICEDAW, which aim to eliminate race and gender-based discrimination.

list is not exhaustive.[780] The prohibition of discrimination on grounds of forced displacement may also be inferred from the phrase "other status" which may be read to include refugees and other displaced persons.[781]

The umbrella clause of article 25 of the ICCPR, however, also allows for certain limitations on the exercise of the right to political participation. The clause stipulates that "every citizen shall have the right and the opportunity [to take part in the conduct of public affairs] without any of the distinctions mentioned in article 2 and *without unreasonable restrictions*".[782] While it is clear from the text of the clause that any such restrictions must comport with each of the three aforementioned principles contained therein—i.e., universality, opportunity and non-discrimination—article 25 is otherwise silent on the type of restrictions which state signatories may reasonably impose on the exercise of the right to political participation. The ACHR and the AfCHPR are the only other treaties in which provisions enshrining political participation as a fundamental human right explicitly allow state signatories to impose restrictions on the participation of citizens in the conduct of public affairs.[783] Alone among treaties in its enumeration of such restrictions, the ACHR allows for the regulation of the right to political participation "on the basis of age, nationality, *residence*,

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[780] The use of the phrase "such as" is common to other treaties which enshrine political participation as a fundamental human right with the exception ICERD and ICEDAW which focus specifically on the elimination of race and gender-based discrimination. The phrase is also absent from the ACHR, however, the list of grounds on which discrimination is prohibited may nevertheless be read as indicative rather than exhaustive given the fact that the treaty was modelled closely on the ICCPR and the fact that it prohibits discrimination, as noted below, on the basis of "any other social condition".

[781] The ECHR and AfCHPR each refer to "other status" while the ACHR, as noted above, refers to "any other social condition". ECHR, *supra* n. 676, art. 14; and, AfCHPR, *supra* n. 710, art. 2. ICERD and ICEDAW focus more narrowly on the elimination of race and gender-based discrimination.

[782] ICCPR, *supra* n. 612, art. 25.

[783] The provisions on the right to political participation in the ACHR and in the AfCHPR allow state signatories to legislate certain restrictions. Article 23 of the ACHR states that "the law may regulate" the exercise of the right to political participation while the AfCHPR affirms the right of citizens to take part in the conduct of public affairs "in accordance with the provisions of the law". ACHR, *supra* n. 700, art. 23(2); and, AfCHPR, *supra* n. 710, art. 13(1).

language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings".[784] The identification of residence, in particular, as a reasonable restriction on the exercise of the right to political participation does not in itself prohibit refugees from taking part in the conduct of public affairs, but it does appear to condition such participation on the return of refugees to their countries of origin. The Convention does not distinguish, however, between voluntary and involuntary absence of citizens from their country of citizenship.

The drafting histories of major treaties which enshrine political participation as a fundamental human right are silent on the specific situation of refugees. Discussions among state representatives taking part in the drafting of article 25 of the ICCPR nevertheless afford several additional insights regarding the right of refugees to participate in the public affairs of their country of origin. First, the drafting history appears to strengthen the aforementioned suggestion that such a right may be inferred from elements enshrined in the umbrella clause of article 25. There was broad consensus, for example, that the phrase "'*[e]very* citizen' ... adequately established ... [t]he principle of *universality* ... at the level of the individual".[785] [emphasis added] There was also agreement that the term "opportunity" aimed to further strengthen the right to political participation by remedying the situation of "peoples who were *in principle* granted [political] rights ... but who never had an opportunity to exercise those rights *in practice*".[786] [emphasis added] Finally, it is clear that the drafters of the

[784] ACHR, *ibid.*. Rosas characterizes the restrictions enumerated in the ACHR as "far-reaching" and notes that they may "exceed the limits of the International Covenant on Civil and Political Rights". Rosas 1992, 309.

[785] Mr. Cassin (France), UNCHR 1953b, 8. *See also*, Mrs. Lord (United States), UNCHR 1953c, 8. While drafters generally aimed to avoid unnecessary repetition of principles in the Covenant, they nevertheless agreed that the principle of universality was worth repetition in article 25 given the importance of the right to political participation. This issue also arose in relation to Covenant provisions on the right to vote. *See*, Lady Tweedsmuir (UK), UNGA 1961b, para. 7–8; and, Mr. Spozhnikov (USSR), *ibid.*, para. 41.

[786] Mr. Morosov (USSR), UNCHR 1953c, 17. A number of delegates criticized the Soviet wording of article 25 because it did not refer to the "right" of citizens to take part in the

Covenant intended that the term "other status" in the list of enumerated grounds on which discrimination is prohibited should be interpreted broadly.[787]

Second, the drafting history also appears to suggest that residence should not be regarded as an absolute bar on the exercise of the right to take part in the conduct of public affairs. In discussing residence-based restrictions, drafters were concerned primarily with logistical or practical challenges relating to the holding of free and fair elections including issues such as voter education, registration and ballot transparency.[788] A number of delegates voiced support for "doing away" with residence-based restrictions altogether.[789] There also appeared to be broad agreement that in certain situations, especially when citizens were "involuntarily" outside their place of habitual residence, restricting the right to political participation on the basis of residence would be inconsistent with the prohibition of discrimination in the Covenant. The drafters referred, in particular, to the exclusion of "certain social classes whose conditions or work

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conduct of public affairs. The Chilean delegate (Mr. Diaz-Casanueva), for example, observed that "the concept underlying the word 'right' was [obviously] stronger than that inherent in the word 'opportunity'". UNCHR 1953b, 6. Morosov countered that he "did not consider [the language] to be contradictory or obscure, but if any doubt subsisted the words 'right and' could perhaps be inserted in the text before the word 'opportunity'". *Ibid*., 10. The word "opportunity" was subsequently restored to the draft version of the Covenant in light of Soviet explanations. *See also*, Mr. Marañon Moya (Spain), UNGA 1961b, para. 5; and, Mr. Kasliwal (India), *ibid.*, para. 30.

[787] Bossuyt 1987, 486. Similar to the aforementioned discussion on the universal character of the right to political participation, there was widespread agreement that unnecessary duplication of principles should be avoided, however, given the importance of political participation to the realization of all other rights, a number of delegations held that "it would be well to emphasize [in article 25] that all discrimination was prohibited". Mr. Jevrémović, UNCHR 1953d, 9. *See also*, Mr. Morosov (USSR), UNCHR 1953e, 4; and, Mr. Cassin (France), ibid., 10. For a summary of the drafting discussion *see*, UNGA 1955, para. 176.

[788] The Philippines delegate, for example, stated that residence-based restrictions aimed, primarily, "to avoid any possibility of plural voting and to ensure that voters were acquainted with the needs of the locality and the character and merits of the candidates". Mr. Inglés (Philippines), UNCHR 1953e, 12.. The French delegate (Mr. Juvigny) similarly observed that "though it was quite comprehensive, [article 2 of the covenant] would not prevent States from laying down in their electoral laws conditions—such as domicile—which were necessary not only for the purpose of identifying electors, but also for that of drawing up electoral rolls and eliminating any possibility of fraud". UNCHR 1953d, 9–10. *See also*, Mr. Cassin (France), UNCHR 1953a, 13.

[789] Mr. Morosovo (USSR), *ibid.*, 6. *See also*, Mr. Druto (Poland), *ibid.*, 11.

necessitated frequent changes of domicile".[790] Indeed, as a general principle, drafters appeared to agree that "people should not lose their right to vote in public elections simply because they [had] move[ed] from one part of the country to another".[791] Finally, discussion of residence-based restrictions on the right to political participation focused solely on the situation of citizens who resided within their country of citizenship. The drafters did not discuss the situation of citizens who were outside their country of citizenship voluntarily or otherwise.

ii. Comments and recommendations

The general comments and recommendations adopted by human rights treaty committees affirm these conclusions and provide a number of additional insights on whether refugees have a right to take part in the public affairs of their countries of origin. In recommending that "[s]tate reports should outline the legal provisions which define citizenship", a matter widely regarded as falling largely within the domestic jurisdiction of each state, the UN Human Rights Committee, which is responsible for oversight of the ICCPR, appeared to further reinforce the principle that among citizens the right to take part in the conduct of public affairs is universal by ensuring that citizenship legislation does not arbitrarily deprive individuals and groups of the right to political participation.[792]

[790] The French delegate (Mr. Juvigny) stated that exclusion of such persons would "come within the category of 'unreasonable restrictions'" on the right to political participation. UNCHR 1953d, 9–10. The Soviet delegate (Mr. Morosov) similarly observed with regard to the poor that "[i]t was mainly the poorer people who were deprived of the right to vote because they had not been *resident* in a particular area for the specific period". [emphasis added] UNCHR 1953e, 6.

[791] Mr. Jevrémović, UNCHR 1953e, 9.

[792] HRC 1996b, para. 3. Explaining the importance of the provision, one committee member observed during the drafting discussions that "[i]f the right to participate in public affairs under the Covenant was restricted to citizens, it was naturally crucial to know about the criteria for acquiring citizenship". The member further noted that "in addition to describing the provisions of law governing citizenship, States should spell out the legal impediments to

This reporting requirement would appear to be especially relevant to refugees in situations where their citizenship status is challenged or unclear—e.g., denationalization, state succession or cases where refugees are born outside their country of origin. General Comment 25 also reiterates the obligation of state parties "to ensure that citizens have an *effective opportunity* to [take part in the conduct of public affairs through the adoption of] such *legislative* and *other measures* as may be necessary [including the removal of] impediments to *freedom of movement*".[793] [emphasis added] The linkage between freedom of movement and the conduct of public affairs is reiterated, as discussed below, by the UN Committee on the Elimination of Racial Discrimination in a separate recommendation on the elimination of discrimination against refugees.[794] The

acquiring citizenship and provide information as to whether significant numbers of persons residing in their territories were unable to participate in the political process because they were not citizens". Mr. Kretzmer, HRC 1995c, para. 10 and 63. Reference to the arbitrary deprivation of citizenship in an early draft of the General Comment (HRC 1995a, para. 23) was removed in order to restrict the scope of the paragraph to implied limitations on the right to political participation.

[793] HRC 1996b, para. 1, 12. In drafting the comment one committee member observed that since article 25 "is the only article of the Covenant, which states that the citizen has the right 'and the ability' to exercise certain rights ... [t]he committee should consider the measures that States Parties could take to make that possibility a reality". Mrs. Evatt, HRC 1994e, para. 3. The list of measures which state parties are obliged to take to ensure that citizens are able to exercise the right to take part in the conduct of public affairs are not conclusive or comprehensive. Indeed, a more extensive enumeration can be found in the draft comment on article 25. HRC 1995a, para. 11. Some committee members thought that the list of measures in the comment should be "enhanced" and "expanded". Ms. Chanet, HRC 1995f, para. 10; and, Mr. Francis, ibid., para. 13. A compromise of sorts was reached in which the committee aimed to "support [its] recommendations by numerous examples" while avoiding their multiplication "which would defeat the desired result". Mr. Bruni Celli, *ibid.*, para. 6; Mrs. Evatt, *ibid.*, para. 29; Mr. Buergenthal, *ibid.*, para. 21; and, Mr. Prado Vallejo, *ibid.*, para. 18. A similar rationale resulted in the deletion of references to certain "groups of citizens (such as women, minorities or indigenous people)". HRC 1995a, para. 11. A number of committee members held that the list, while important, was "far too narrow". Mr. Bhagwati, HRC 1995f, para. 8; and, Mr. Lallah, *ibid.*, para. 12. Thus, while the specific situation of refugees is not addressed, it may nevertheless be inferred from the committee's apparent intention not to exclude any one particular group.

[794] General Recommendation 23 on the right to political participation under ICEDAW contains a similar provision on freedom of movement. CEDAW 1997b, para. 20(d) and 45(c). Commenting on the importance of positive or temporary measures to ensure that women are able to exercise the right to political participation, the recommendation emphasizes that "[w]hile the removal of de jure barriers is necessary, it is not sufficient. Failure to achieve full and equal participation of women can be unintentional and the result of outmoded practices and procedures which inadvertently promote men". *Ibid.*, para. 15. "The critical issue", the Committee notes, "[which is] emphasized in the [1995] Beijing Platform for Action, is the gap between the de jure and de facto, or the right as against the reality of women's participation in politics and public life generally". *Ibid.*, para. 26, *citing*, Report of the Fourth World

Comment also emphasizes that "[t]he drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters or *discriminate against any group* and should not *exclude or restrict unreasonably* the right of citizens to choose their representatives freely".[795] [emphasis added] This provision may be read to suggest that the exclusion of refugees from taking part in home country elections may comprise in certain situations a type of electoral gerrymandering which is prohibited under the ICCPR.

General Comment 25 also affords several insights regarding the restrictions which states may reasonably impose on the exercise of the right to political participation. First, the Comment stipulates that the right to take part in the conduct of public affairs "may not be suspended or excluded except on grounds which are *established by law* and which are *objective* and *reasonable*".[796] [emphasis added] Second, in addressing possible restrictions on the right to vote, the HRC observes that residence requirements for the purpose of voter registration "should not be imposed in such a way as *to exclude the homeless* from the right to vote".[797] [emphasis added] The committee did not discuss the specific situation of refugees, however, studies commonly observe

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Conference on Women, Beijing, 4-15 September 1995 (UN Doc. A/CONF.177/20 and Add.1), chap. I, resolution 1, annex I.

[795] HRC 1996b, para. 21.

[796] *Ibid.*, para. 4. A number of members observed during the drafting process that "the committee would benefit from a more detailed analysis of the 'unreasonable restrictions' referred to in article 25 and of the type of 'restrictions' mentioned in paragraph 4 of the draft which might be regarded as legitimate". Mr. Prado Vallejo, HRC 1994d, para. 63. *See also*, Mr. Kretzmer, HRC 1995d, para. 56. The committee appeared to follow aforementioned guidelines in drafting provisions on restrictions on the right to political participation under which it aimed to provide examples while avoiding lengthy explanations and detailed illustrations. General Comment 25 states, for example, that "it may be reasonable to require a higher age for election or appointment to particular offices than for exercising the right to vote, which should be available to every adult citizen [and that] established mental incapacity may be a ground for denying a person the right to vote or to hold office". In contrast, the comment emphasizes that it would be "unreasonable to restrict the right to vote on the ground of physical disability or to impose literacy, educational or property requirements". HRC 1996b, para. 4, 10. Similar restrictions, as noted above, are enumerated in the drafting history of article 25 of the Covenant.

[797] *Ibid.*, para. 11.

that committee members did not explicitly reject application of the term homeless persons to refugees.[798] Finally, while the Human Rights Committee ultimately decided against the inclusion of explicit provisions governing the participation of citizens in the conduct of public affairs when they are outside their country, there nevertheless appeared to be broad agreement that such participation should be encouraged.[799] Members of the committee appeared to concur, moreover, much like the drafters of the ICCPR, that the imposition of residence-based restrictions on the right to political participation was largely a procedural issue "altogether subsidiary to the most serious obstacles to the exercise of [the right to political participation]; if nationals residing abroad were unable to take part in the public affairs of their country of citizenship, their exclusion was often "simply because of the circumstances [of their situation]".[800] The committee did not discuss whether residence may comprise a reasonable

[798] *See*, Bagshaw 2000, 4; Grace 2003, 21; Grace and Mooney 2009, 99; and, Grace and Mooney 2010, 510. The drafting history of General Comment 25 indicates that the term "homeless" was used in reference to persons "with no settled place of residence or fixed abode". HRC 1995e, para. 54, 56–57, 70. *See also*, Mr. Prado Vallejo, *ibid.*, para. 54; Mr. Bruni Celli, *ibid.*, para. 56; Mr. Buergenthal, *ibid.*, para. 67; and, Mr. Baghwati, *ibid.*, para. 62.

[799] The draft comment on article 25 of the ICCPR acknowledges the existence of non-residence-based participation, but does not recognize an explicit right of citizens to take part in the conduct of public affairs when they are outside their country of citizenship. In language removed from the final comment, the draft comment states that "*[o]verseas residents* or unconvicted detainees should not be arbitrarily excluded from provisions for *postal* or *absentee voting* where such methods exist". [emphasis added] HRC 1995a, para. 10. A number of committee members emphasized the importance of ensuring the political participation of citizens residing outside their country of citizenship. One committee member observed, for example, that "some countries have a large number of nationals abroad, whose vote may be very important, especially when the locals themselves do not dare to speak". Mrs. Medina Quiroga, HRC 1995e, para. 59. *See also*, Mr. Baghwati, *ibid.*, para. 62; and, Mr. Francis, *ibid.*, para. 65.

[800] Mr. Buergenthal, HRC 1995e, para. 57; and, Mr. Prado Vallejo, *ibid.*, para. 55. Vallejo explained that "nationals residing abroad pose many problems for the state at the time of an election. We need these people to register in order to establish the electoral lists, and for that we must carry out research and trace them and their address, which causes a lot of expense". *Ibid*. *See also*, Mr. Bruni Celli, *ibid.*, para. 56; Mr. Ban, *ibid.*, para. 60; Mr. Ando, *ibid.*, para. 61; and, Mr. Kretzmer, *ibid.*, para. 67. Examined in the context of the right to vote, it is also important to note that the rationale for such restrictions may not apply to other forms of political participation. Indeed, concerns about ballot secrecy and transparency, prohibitive costs associated with out-of-country voting procedures and concern that non-residents may not vote in a "responsible manner" when they are not directly affected by policy decisions do not appear to apply to the negotiation of durable solutions for refugees assuming that such negotiations comprise a conduct of public affairs entailing a concomitant right to take part.

restriction on the exercise of the right to political participation when citizens are involuntarily outside their country of citizenship.

The UN Committee on the Elimination of Discrimination is the only treaty body to date to have addressed the lacuna relating to the participation of refugees in the public affairs of their country of origin. Adopted in 1996, General Recommendation 22 on article 5 of ICERD explicitly prohibits discrimination against refugees and displaced persons in the matter of their political rights.[801] Noting that "foreign military, non-military and/or ethnic conflicts have resulted in massive flows of refugees and the displacement of persons on the basis of ethnic criteria in many parts of the world", the Recommendation affirms that "[a]ll such refugees and displaced persons have, *after their return* to their homes of origin, the *right to participate* fully and equally in public affairs at all levels".[802] [emphasis added] While the recommendation marks an important advance in clarifying the right of refugees to take part in the public affairs of their country of origin, it also appears to suffer from two major limitations. First, the preamble appears to limit application of the recommendation to persons displaced by certain types of conflicts—i.e., foreign military, non-military and/or ethnic conflicts. At least one committee member, however, observed during the drafting process that the provisions "could apply equally to all refugees whatever the reason for their situation".[803] Second, affirming that refugees have a right to participate *after* they return to their homes of origin the recommendation does not address the situation of refugees who are outside their country of origin. It nevertheless seems logical to interpret this apparent

[801] CERD 1996b, para. 2(d).
[802] *Ibid.*.
[803] Mr. Diaconu, CERD 1996c, para. 63. The apparent limitation appears to derive from the Committee's mandate regarding the elimination of all forms of *racial* discrimination. It also appears to be a direct response, as noted above, to the rise of ethnic or identity-based conflict in the post-Cold War period.

limitation in light of the primary objective of Recommendation 22, as set out in the first operative clause of paragraph 2, which is to facilitate the safe return of refugees to their homes of origin.[804] It is in this context that the Committee also chose to address the political rights of refugees given their importance to the realization of all other rights and because such rights "were often denied in practice".[805] Thus, while the recommendation does not explicitly affirm the right of refugees to take part in the conduct of public affairs when they are outside their countries of origin, it does not explicitly rule out, prohibit or declare such participation to be inconsistent with the right to political participation.

iii. Jurisprudence

The human rights treaty committees responsible for oversight of conventions which enshrine political participation as fundamental right have yet to address the question of whether refugees have a right to take part in the public affairs of their countries of origin. In at least one case (*Simunek et al. v Czech Republic*), however, the UN Human Rights Committee has addressed the broader question of whether residence-based restrictions on the exercise of human rights, generally, may be deemed reasonable in situations of involuntary or forced displacement.[806] Adjudicated under article 26 of the Covenant, which enshrines

[804] CERD 1996b, para. 2(a). The recommendation also appears to reflect early practice on refugee participation in home country elections while emphasizing the importance of political participation in facilitating durable solutions through the reintegration of refugees in the political life of their country of origin. In Cambodia and Mozambique, for example, as discussed below, refugee participation in home country elections was dependent upon their return. The OSCE's 1999 Istanbul Summit Declaration and UNHCR's 1996 *Handbook on Voluntary Repatriation* both affirm the right of refugees to take part in home country elections without explicit reference to repatriation as a pre-condition for such participation. The language used in General Recommendation 22 was drafted in consultation with UNHCR. Mr. Wolfrum, CERD 1996d, para. 48.

[805] Mr. Wolfrum, *ibid*., para. 52.

[806] HRC 1995b. In its review of the admissibility of the petition, the HRC observed that while the circumstances of the complaints preceded the Czech and Slovak Federal Republic's ratification of the ICCPR and the entry into force of the Optional Protocol providing for the

a universal prohibition of discrimination in the exercise of human rights, the case involved the claims of a group of Czech citizens who fled or were forced into exile during the period of communist rule in the former Czechoslovakia and whose property was subsequently confiscated by the state.[807] The authors of the complaint argued that restitution legislation adopted by the Czech and Slovak Federal Republic in the 1990s after the collapse of the communist regime in the former Czechoslovakia constituted unlawful discrimination under article 26 of the ICCPR because it required claimants to assume permanent residence to be eligible for restitution.[808] Disputing the authors' contention that the legislation in question was discriminatory, the Czech government explained that since "[r]estitution of confiscated property [was] a very complicated and *de facto* unprecedented measure [it could not] be expected to rectify all damages and to satisfy all the people injured by the Communist regime".[809] The government further argued that while "certain criteria had to be stipulated for the restitution of confiscated properties [due to the complicated nature of the

submission of individual complaints, the cases were nevertheless admissible under the continuing violations doctrine. *Ibid.*, para. 4.5. The Simunek case, as Hathaway observes, evidences HRC "awareness that refugee rights should follow from their unique predicament as involuntary expatriates" and a concomitant "disinclination to find restrictions to be reasonable insofar as individuals are unable to comply by virtue of having been forced to seek refugee status abroad". Hathaway 2005, 146. In a second and related case (*Adam v Czech Republic*), the HRC also addressed the question of whether citizenship comprised a reasonable restriction on the restitution of property in the Czech Republic. HRC 1996a.

[807] The authors included Alina Simunek, a Polish citizen, and her Czech husband, Jaroslav Simunek, who were forced to leave Czechoslovakia in the 1980s under pressure of state security forces, Dagmar Hastings Tuzilova and Josef Prochazka, Czech citizens who fled Czechoslovakia in 1968, after Soviet and Warsaw Pact forces invaded the country ending a brief period of political liberalization under President Alexander Dubček. In the latter cases, the state convicted the two authors of "illegal emigration" from Czechoslovakia. For the details of each case *see*, HRC 1995b, para. 2.1–2.13.

[808] In 1991 the Czech and Slovak Federal Republic adopted legislation (Act 87/1991) endorsing the rehabilitation of citizens who were forced to leave under communist pressure. The Act also provided for property restitution and compensation, but restricted its application to citizens and permanent residents of the Republic. In the Prochazka case, the author further argued that since a district court had already declared that the confiscation of his property was null and void the 1991 Act should not be applied to his situation. *Ibid.*, para. 3.4.

[809] *Ibid.*, para. 6.1-6.2. The government also noted that under the Czech Republic's Charter of Fundamental Rights and Freedoms, article 11, section 2, "the law may specify that some things may be owned exclusively by citizens or by legal persons having their seat in the Czech Republic". *Ibid.*

process] the purpose [or intent] of such requirements [was] not to violate human rights".[810]

In its ruling, the HRC observed that while not all differentiation in treatment may be deemed to be discriminatory under article 26 of the Covenant it was nevertheless "incompatible with the Covenant to require [the authors of the complaint] permanently to return to the country as a prerequisite for the restitution of their property or for the payment of appropriate compensation", especially since it was "the State party itself [which was] responsible for the departure of the authors".[811] The Committee further noted that "the *intent* of the legislature [was] not alone dispositive in determining a breach of article 26 of the Covenant".[812] [emphasis added] The HRC reasoned that while "a politically motivated differentiation [was] unlikely to be compatible with article 26 ... an act which [was] not politically motivated may still contravene article 26 if its effects [were] discriminatory".[813] The Committee thus concluded that the Czech Republic had violated the rights of the authors of the complaint under article 26 of the ICCPR and that it had a corresponding obligation to provide them with an effective remedy.[814] Denying refugees the opportunity to take part in the public

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[810] *Ibid.* The remainder of the government's explanation addressed the details of the authors' complaint in the context of the 1991 restitution act.

[811] The Committee also noted that the Czech Republic had "acknowledg[ed] that the confiscations were discriminatory", that restitution legislation "must not discriminate among the victims of the prior confiscations" and that "the authors' original entitlement to their respective properties was not predicated either on citizenship or residence". *Ibid.*, para. 11.5-11.6.

[812] *Ibid*., para. 11.7.

[813] *Ibid.*

[814] The Committee thus concluded that the Czech Republic was "under an obligation to provide the authors [of the complaint] with an effective remedy, which may be compensation if the properties in question cannot be returned". *Ibid*., para. 12.2. It also requested the Czech government to inform the Committee, within 90 days of the ruling, of measures taken to comply with the decision. *Ibid*., 12.3. The Czech Republic subsequently amended legislation which made residence a pre-condition for restitution under Act 87/1991 relating to the rehabilitation of citizens forced to leave the country under communist pressure. In its subsequent decision in *Adam v Czech Republic*, referred to above, the HRC also found that the Act's citizenship requirements also comprised a violation of article 26 of the Covenant. HRC 1996a, para. 13.1.

affairs of their country of origin on the basis of residence, especially in situations where a government is responsible for forced displacement, may similarly be deemed incompatible with the fundamental principle of non-discrimination.

The commissions and courts responsible for oversight of regional conventions which enshrine political participation as a fundamental human right are also largely silent on the question of whether refugees have a right to take part in the public affairs of their countries of origin.[815] In several cases, however, the European Commission and Court of Human Rights appear to suggest that the exclusion of persons who are "involuntarily" outside their country of citizenship may comprise an unreasonable restriction on the right to political participation under article 3 of Protocol 1 to the ECHR.[816] In *X v United Kingdom* (1976), the author of the complaint, who resided outside the United Kingdom, argued that British legislation which restricted participation in national elections on the basis of residence, with the exception of British diplomats and members of the British Armed Forces stationed abroad, violated the prohibition of discrimination under article 14 of the ECHR.[817] In reviewing the admissibility of

[815] In at least one additional case, a complaint (Association pour la défense des droits de l'Homme et des libertés - Djibouti, Application No. 133/91, May 11, 2000) lodged with the African Commission on Human Rights identified the right to political participation under article 13 of the AfCHPR as among a list of human rights abuses against members of the Afar ethnic group in fighting between the government of Djibouti and FRUD (Front pour la restauration de l'unité et de la démocratie). The complaint was withdrawn, however, following the signing of an agreement which provided solutions to the civilian victims of the conflict including refugees and displaced persons.

[816] Grace 2003, 22–23. The Commission first addressed the issue in *X v United Kingdom*, Application No. 7566/76, Dec. 11, 1976. The Commission reaffirmed its ruling in a number of additional cases. *See*, *X v United Kingdom*, Application No. 7730/76, Feb. 28, 1979; *X and Y Association v Italy*, Application No. 8987/80, May 6, 1981; and in *Luksch v Germany*, Application No. 35385/97, May 21, 1997. The Council of Europe, as noted earlier, abolished the Commission in 1998 opening the way for the direct submission of individual complaints to the Europe Court. The Court reaffirmed Commission decisions on the issue in *Hilbe v Lichtenstein*, Application No. 31981/96, Sept. 7, 1999.

[817] ECmHR 1976, 121. Article 14 of the ECHR states that "[t]he enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status". ECHR, *supra* n. 676, art. 14.

the case, the Commission noted that "states retain broad authority to limit the franchise of nationals residing abroad" and that residence was "among the conditions commonly imposed in Convention countries on the possession or exercise of the right to vote in Parliamentary elections".[818] It also listed a number of reasons commonly cited for residence-based restrictions on the right to vote including "the assumption that a non-resident citizen is less directly or continuously interested in, and has less day-to-day knowledge of [a country's] problems; the impracticability for Parliamentary candidates of presenting the different electoral issues to citizens abroad so as to secure a free expression of opinion; the need to prevent electoral fraud, the danger of which is increased in uncontrolled postal votes; and, finally, the link between the right of representation in the Parliamentary vote and the obligation to pay taxes, not always imposed on those in voluntary and continuous residence abroad".[819]

In its decision the European Commission upheld the distinction between the author and members of the UK diplomatic service and armed forces in relation to the right to vote in national elections which it considered both "legitimate" in its aim and "proportionate" in its means.[820] The Commission

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[818] *Ibid.*, 122. In a subsequent decision, the Commission nevertheless agreed to revisit the issue "in view of the fact that some of the High Contracting Parties [to the Convention] allow[ed] their nationals abroad to exercise their right to vote in their home country through various means", the question of whether residence comprised a reasonable restriction on the right to political participation "called for further examination". ECmHR 1979, 138. For an overview of European practice *see*, CoE 2010; and, CoE 2011. The commission further observed that "attempts have [also] recently been made to create political rights for non-citizens in the country of their habitual residence". *Ibid*. In the 1990s, as noted above, the Council of Europe adopted a new convention providing for the participation of non-citizens in the conduct of public affairs at the local level.

[819] ECmHR 1976, 122. The Commission reiterated this rationale in each of its subsequent decisions on residence-based restrictions on the right to vote under article 3 of Protocol I to the ECHR. These rationale are also cited in studies on refugee participation in home country elections.

[820] *Ibid.*, 123. The European Court of Human Rights has ruled that any limitations on the right to vote and to be elected must not impair or deprive the right to political participation of its effectiveness, the limitations must have a legitimate aim and they must not be disproportionate to the general aim. *Mathieu-Mohin and Clerfayt v Belgium*, *cited in*, Goodwin-Gill 2006, 63.

reasoned that the two situations were fundamentally different since members of the latter group, unlike the author of the complaint, were "not living abroad *voluntarily* but [had] been sent to a country other than their own by their Government in the performance of services to be rendered to their country. They therefore remain[ed] closely linked to their country and under control of their Government, and this special situation explain[ed] that they [were] regarded as being *resident-citizens although physically outside their country*".[821] [emphasis added] The Commission thus concluded that the situation of diplomats and members of the armed forces residing abroad was "not comparable with those persons who have *chosen to leave their country* and to take up residence elsewhere and no issue therefore [arose] under Article 14 of the Convention [on non-discrimination] in respect of [the author's complaint]".[822] [emphasis added] The right of refugees to take part in the public affairs of their country of origin, particularly in relation to home country elections, may similarly be inferred from the fact that they "also find themselves in a situation where government policies or the action of state-backed or opposition military forces have resulted in their inability to satisfy residency criteria".[823]

[821] ECmHR 1976, 123.

[822] *Ibid.*

[823] Grace 2003, 22. As Grace notes, transparency is one of the primary justifications for residency-based limits on external voting referred to by the Court. Limits on external voting in cases where there are guarantees for electoral transparency would therefore presumably be considered unreasonable. It is also important to note that reasons commonly cited for residence-based restrictions on the right to take part in the conduct of public affairs—most often elaborated in relation to elections—do not necessarily apply to the participation of refugees in the negotiation of durable solutions. That non-residents may not be directly affected by policy decisions and therefore might not participate as responsibly as residents, for example, does not appear to apply to negotiations on durable solutions which directly affect the future of refugees. As non-residents, refugees may have insufficient information or skills necessary to take part in and make informed decisions about their future, however, it is a widely recognized that special measures are required to ensure refugees have sufficient information to make informed decisions about durable solutions. Finally, while out-of-country voting raises concerns about ensuring ballot secrecy, the potentially negative effects of secret or elite talks, especially in cases where the representativeness of those conducting negotiations is either contested or denied, in terms of the legitimacy of agreements reached, suggest that in at least some situations secrecy may not be a desired approach to the negotiation of durable solutions for refugees.

iv. Soft law

These conclusions regarding the putative right of refugees to take part in the public affairs of their countries of origin are also reflected in a broad but relatively underused body of additional instruments. Agreements and other instruments regulating decolonization and the exercise of self-determination arguably comprise the earliest recognition that refugees have a right to take part in the public affairs of their countries of origin. The 1962 Evian Agreement between France and Algeria, marking the end of nearly a decade-long struggle for Algerian independence, for example, guaranteed that "[p]ersons in refuge abroad [*would*] be able to return to Algeria" in order to participate in the referendum to determine the future status of the country.[824] [emphasis added] Outlining a process for Namibian independence a decade-and-a-half later, a 1978 UN Security Council endorsed five-power plan affirmed that "[a]ll refugees or Namibians detained or otherwise outside the territory of Namibia [*would*] be permitted to return peacefully and participate fully and freely in the [the territory's first democratic election] without risk of arrest, detention, intimidation or imprisonment".[825] [emphasis added] The 1979 Lancaster House Agreement,

[824] Declarations Drawn up in Common Agreement at Evian, Mar. 18, 1962, by the Delegations of the Government of the French Republic and the Algerian National Liberation Front, Chapter I, para. L. The agreement similarly guaranteed that "persons who [had] been relocated [within Algeria would] be able to return to their regular places of residence". *Ibid*. For complete text *see*, Annex II, Table A2.7 - Peace Agreements and Proposals. The eight-year war for independence resulted in the displacement of 1.5 million Algerians in the country with hundreds of thousands spilling across borders into Tunisia and Morocco. An estimated 180,000 refugees returned to Algeria with UNHCR assistance between May and July 1962, with most returning in time to take part in the referendum leading to Algerian independence. A smaller number returned on their own and some remained in Tunisia and Morocco. UNHCR 2000b, 38.

[825] Proposal for a Settlement of the Namibian Situation, UN Doc. S/12636, Apr. 10, 1978, para. 7(c). *See also*, SC Res. 435, 33rd Sess., 2087th Plenary Mtg., UN Doc. A/RES/435, Sept. 29, 1978, para. 1. For complete text *see*, Annex II, Table A2.7 - Peace Agreements and Proposals. Implementation of the plan, however, was delayed for more than a decade due to South African obstruction. An estimated 43,000 refugees eventually returned in time for the

which dealt with the transition to majority rule in Zimbabwe, similarly emphasized that "[a]s many [refugees] as possible *should* [be able to return] in order to vote in the [country's first democratic] election".[826] [emphasis added] The 1988 plan drafted by UN Secretary-General Javier Perez de Cuellar to address the unresolved status of Western Sahara, however, appears to comprise the first reference to the *right* of refugees to take part in self-determination procedures. The plan stipulated that "all refugees who have been identified as having the *right to vote* in the referendum and who have expressed the wish to return to the Territory will be enabled to do so".[827] [emphasis added] In the 1990s, self-determination mechanisms also recognized that refugees should be able to take part in referenda on the future status of their home countries without having to return to cast their ballots. The 1993 referendum on Eritrea, for example, provided for the participation of refugees and other Eritreans residing outside the country who comprised nearly a third of the entire

country's first democratic election in November 1989 election. UNHCR 2000, 135. A UNHCR evaluation of the voluntary repatriation operation timed to ensure that refugees would be able to return to participate in the election concluded that "[t]he participation of returnees, particularly SWAPO [South West Africa People's Organization] members, was exemplary and manifested throughout the planning and implementation (pre-departure and post-arrival)". UNHCR 1990b, para. 10. The evaluation thus recommended that "[w]hen refugee leadership, organizational structure and political conditions permit, refugee participation in repatriation operations should be made a priority". *Ibid*., para. 17.

826 Zimbabwe Rhodesia-United Kingdom: Agreements Concluded at Lancaster House Conference, The Pre-Independence Arrangements, Dec. 15, 1979. The ceasefire agreement further stated that "[p]rovisions will be made to permit the return of civilian personnel to Rhodesia in order to vote or engage in other peace activity". Rhodesia: Ceasefire Agreement, Dec. 15, 1979, para. 1. For complete text *see*, Annex II, Table A2.7 - Peace Agreements and Proposals. At the time of the agreement there were around 23,000 refugees in Botswana, 150,000 in Mozambique and 45,000 in Zambia. Coles 1985a, 122; and, UNHCR 2000b, 45. Many refugees were nevertheless disenfranchised due to the timing of the election, the lack of transportation and harassment at designated border crossings. Long 2010b, para. 47–50.

827 UNSG 1990, para. 23, 33, 47, 72. The plan provided for a UNHCR assisted census of Saharan refugees living outside the Territory as well as the implementation of special measures to ensure that the returnees would be able to take part in the referendum, without restriction or risk of being arrested, detained, intimidated or imprisoned. For complete text *see*, Annex II, Table A2.7 - Peace Agreements and Proposals. Disagreements over eligibility criteria, stalled negotiations and delay tactics continue to prevent the holding a referendum on the territory's future.

Eritrean population.[828] Though smaller in number, the 1999 referendum on East Timor similarly allowed for the participation of refugees and other East Timorese "both *inside and outside East Timor ...* on the basis of a direct, secret and universal ballot".[829] These latter cases appear to reflect growing recognition that residence should not comprise an absolute bar on the exercise of the right to political participation.

That refugees should be allowed to participate in the public affairs of their countries of origin has also been affirmed in various UN resolutions most of which relate to decolonization in Africa. In contrast to the above agreements, however, such resolutions have yet to affirm an explicit right to participate or address the situation of refugees who are outside their countries of origin. In one of its first resolutions on refugee enfranchisement, the UN Security Council "called upon" the United Kingdom, the former colonial power in Zimbabwe, "to take all necessary steps in order to *ensure* that eligible Zimbabwe nationals [could] freely participate in the forthcoming electoral process, including [through] the speedy and unimpeded return of Zimbabwe exiles and refugees ...".[830] [emphasis added] In a 1989 resolution addressing the UN's self-determination plan for Namibia, the Security Council "noted" that the mandate of the UN

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[828] The eligibility criteria for participation in the referendum were set out in a 1992 proclamation. Provisional Government of Eritrea, Eritrean Referendum Proclamation No. 22/1992, Apr. 7, 1992. To facilitate the process of identifying eligible voters the Proclamation established an "Identification Board" with a mandate both inside and outside Eritrea. IOM 2003, 69, 73. Over one million people took part in more than 40 countries, including 60,129 in Ethiopia, 164,842 in Sudan and 84,370 in other parts of the world. HRW 2003a, 13.

[829] Agreement between the Republic of Indonesia and the Portuguese Republic on the Question of East Timor, May 5, 1999, art. 1. For complete text *see*, Annex II, Table A2.7 - Peace Agreements and Proposals. This included roughly 30,000 people residing in Indonesia and in half a dozen other countries. The displaced population was allowed to register and vote in person through the External Voting for East Timor programme administered by the International Organization of Migration and the Australian Electoral Commission under the overall supervision of the UN Mission in East Timor. Grace 2003, 56.

[830] SC Res. 463, 35th Sess., 2196th Plenary Mtg., UN Doc. A/RES/463, Feb. 2, 1980, para. 5. The resolution was adopted by a unanimous vote with the exception of the UK which did not take part. For complete text *see*, Annex II, Table A2.10 - United Nations Security Council Resolutions.

Transition Assistance Group included "ensuring the safe return of refugees and their free participation in the electoral process".[831] The UN Commission on Human Rights, meanwhile, "[called] for the unimpeded return of all Namibian refugees and exiles in order to facilitate their full and unfettered participation in the impending decolonization process envisaged under Security Council Resolution 435 (1978)".[832] A year later the Commission "[f]urther demand[ed] the unconditional return of political refugees and members of the liberation movements based outside South Africa and their unimpeded participation in political activities".[833] In the same year, the Commission "[e]ncourag[ed] the Government of Equatorial Guinea to endeavour to facilitate the repatriation of all refugees and exiles, *inter alia* by adopting measures permitting the full participation of all citizens in the country's political, economic, social and cultural affairs".[834]

The right of refugees to take part in the public affairs of their country of origin has also been affirmed in a wide range of peace agreements in recent decades. In Cambodia, Annex III (Elections) of the 1991 Comprehensive Political Settlement affirmed that "[a]ll Cambodians, including those who at the time of signature of [the] Agreement [were] Cambodian refugees and displaced persons, [would] have the same *rights*, freedoms and *opportunities* to take part

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[831] SC Res. 629, 44th Sess., 2842nd Mtg., Jan. 16, 1989, preamble. The resolution was adopted by a unanimous vote. For complete text *see*, Annex II, Table A2.10 - United Nations Security Council Resolutions.

[832] CHR Res. 1989/3, 45th Sess., 35th Mtg, UN Doc. E/CN.4/RES/1989/3, Feb. 23, 1989, para. 18. The resolution was adopted by 32 to none with 10 abstentions. For complete text *see*, Annex II, Table A2.12 - United Nations Commission on Human Rights Resolutions.

[833] CHR Res. 1990/26, 46th Sess., 42nd Mtg, UN Doc. E/CN.4/RES/1990/26, Feb. 27, 1990, para. 10. The resolution was adopted by a vote of 35 to two with six abstentions. For complete text *see*, Annex II, Table A2.12 - United Nations Commission on Human Rights Resolutions.

[834] CHR Res. 1990/57, 46th Sess., 53rd Mtg, UN Doc. E/CN.4/RES/1990/57, Mar. 7, 1990, para. 6. The resolution was adopted without a vote. For complete text *see*, Annex II, Table A2.12 - United Nations Commission on Human Rights Resolutions. The Commission continued to encourage the government of Equatorial Guinea to facilitate the electoral participation of refugees through their repatriation throughout the decade.

in the electoral process".[835] [emphasis added] The 1992 Agreement on the Principles of the Electoral Act in Mozambique (Protocol III) similarly affirmed that "refugees and displaced persons *shall* be registered and included in the electoral rolls together with other citizens in their places of residence".[836] [emphasis added] The 1995 General Framework Agreement for Peace in Bosnia and Herzegovina, which affirmed "refugees' right to vote", comprised the first major peace agreement to extend such provisions to refugees residing outside their country of origin.[837] By allowing citizens "who no longer liv[ed] in the municipality in which [they] resided in 1991 ... to vote *in person or by absentee ballot*", the agreement aimed to ensure that every citizen, regardless of their residence, would have both the right and the opportunity to take part in elections in their country of origin.[838] [emphasis added] The 1999 Interim

[835] Agreement on a Comprehensive Political Settlement of the Cambodia Conflict, Oct. 31, 1991, Annex III (Elections), para. 3. The agreement further specified that children of refugees born in Cambodia who have reached the age of 18 prior to or during the registration period are also eligible to participate in the country's elections. *Ibid.*, para. 4. For complete text *see*, Annex II, Table A2.7 - Peace Agreements and Proposals. The parties failed to agree on provisions that would have enabled some or all of the roughly 350,000 Cambodian refugees outside the country to take part in the country's 1993 election prior to their return. Gallagher and Schowengerdt 1998, 199; and, Lacy 2004, 13. External voting was limited to Cambodian citizens who first registered for the election in Cambodia with polling stations limited to Paris, New York and Sydney. Nevarro, Morales, and Gratschew 2007, 12, 21. Despite numerous obstacles, the vast majority of refugees returned to Cambodia in time to take part in the election. UNHCR 2000b, 145.

[836] Agreement on Principles of the Electoral Act (Protocol III), Mar. 12, 1992, Part IV, para (d). For complete text *see*, Annex II, Table A2.7 - Peace Agreements and Proposals. Mozambique's 1990 constitution provided for out-of-country voting in legislative and presidential elections, but provisions did not come into effect until after 2000. The country's 1993 election law similarly enabled citizens to cast votes from abroad subject to approval of the National Elections Commission. As in Cambodia, the vast majority of the refugees returned to Mozambique in time to take part in the elections. UNHCR 2000b, 151. The postponement of elections in Mozambique beyond the 12 month deadline stipulated in the agreement likely enabled more refugees to participate in that country's 1994 election than would have been the case if the election had been held a year earlier. Gallagher and Schowengerdt 1998, 200.

[837] General Framework Agreement for Peace in Bosnia and Herzegovina, Nov. 21, 1995, Annex III (Agreement on Elections), art. IV. The agreement stated that "the exercise of a refugee's right to vote shall be interpreted as confirmation of his or her intention to return to Bosnia and Herzegovina. By Election Day, the return of refugees should already be underway, thus allowing many to participate in person in elections in Bosnia and Herzegovina". *Ibid.* For complete text *see*, Annex II, Table A2.7 - Peace Agreements and Proposals.

[838] *Ibid*. The agreement also stipulated that "[a]ny citizens of Bosnia and Herzegovina aged 18 or older whose name appears on the 1991 census for Bosnia and Herzegovina [i.e., the last census before the war and the displacement of half the country's population] shall be

Agreement for Peace and Self-Government in Kosovo instructed the Central Election Commission to "adopt electoral Rules and Regulations on all matters necessary for the conduct of free and fair elections in Kosovo, including rules relating to: the eligibility and registration of candidates, parties, and voters, *including displaced persons and refugees*".[839] [emphasis added] While there is no explicit provision in the agreement for out-of-country voting, electoral rules and regulations, as in Bosnia and Herzegovina, enabled refugees residing outside of Kosovo to take part in post-agreement elections.[840] In a number of additional cases, related though less explicit provisions in peace agreements governing post-conflict elections—e.g., the timing of elections, the mandates of transitional regimes and guarantees of fundamental human rights and freedoms—similarly appear to affirm that refugees should be allowed to take part in the public affairs of their countries of origin.[841]

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eligible, in accordance with electoral rules and regulations, to vote". The agreement further empowered the Provisional Election Commission to register citizens not listed in the 1991 census. Similar provision is found in the electoral Rules and Regulations governing the country's 1996 election. IOM 2003, 12. In contrast to Cambodia and Mozambique few of the 1.2 million refugees returned to Bosnia and Herzegovina in time to participate in the country's first post-agreement election. Nearly 400,000 of the 630,257 registered electors outside Bosnia and Herzegovina, however, took part through out-of-country voting. Edgeworth and Hadzimehic 2007, 165.

839 Interim Agreement on Peace and Self-Government in Kosovo, Feb. 23, 1999, Chapter III, art. 3(1). The agreement also called upon the parties to "ensure that conditions exist for the organization of free and fair elections [including] an environment conducive to the return of displaced persons". *Ibid.*, art. 1(1)(c). For complete text *see*, Annex II, Table A2.7 - Peace Agreements and Proposals.

840 This included a combination of in-person voting for refugees residing in the adjacent states of Macedonia, Albania and Montenegro and mail-in voting for refugees residing elsewhere. A majority of the 860,000 refugees displaced during NATO's nine-month military campaign returned within months of the end of hostilities and were thus able to participate in municipal elections held in October 2000. A further 37,700 of 179,000 applicants cast votes through a by-mail program administered by the International Organization for Migration. The relatively low rate of acceptance of applicants for by-mail voting related to the lack of adequate documentation which was either confiscated or destroyed by Yugoslav authorities during the NATO campaign, the cut-off date for the establishment of residency in Kosovo which excluded Kosovar Albanians who had left the province during earlier periods of instability and the lack of time to inform and register refugees abroad. IOM 2003, 102–103.

841 The 1992 National Covenant in Mali, for example, establishes that elections should be held "*after the program of repatriation of displaced persons* and no later than 130 days after the signing of [the] Covenant". [emphasis added] National Covenant, Apr. 11, 1992, Sec. IV, Sub-title B, paras. 55. The 1993 Cotonou Agreement in Liberia states that "[v]oters registration shall commence as soon as possible having due regard for the need to *expedite repatriation*". [emphasis added] Cotonou Peace Agreement, July 25, 1993, Part II, Sec. C,

The participation of refugees in the public affairs of their countries of origin has also been affirmed in various conclusions and guidelines on refugee protection in the context of durable solutions. The provisions in these instruments appear to be rooted in and reflect an array of inter-related policies, practices and legal standards governing participatory development, the elimination of discrimination against women and political participation. In 1990, in one of its first conclusions on the matter, the Executive Committee of the High Commissioner's Programme, UNHCR's governing body, recommended that the agency "*[p]rovide* for informed and active consent and participation of refugee women in individual decisions about durable solutions for them".[842] [emphasis

art. 15(3). The 1995 Erdut Agreement in Croatia empowers the UN transition administration to facilitate the return of refugees and the conduct of elections. Since elections are scheduled to be held prior to the end of the transition phase it can be assumed from the agreement that refugees should be able to participate. The Erdut Agreement, Nov. 12, 1995, paras. 4, 12. In fact, the Croatian government subsequently issued a letter of intent clarifying the right of persons, including refugees, who were registered in the country's 1991 census - i.e., the last census before the war and the displacement of some 300,000 Croatian citizens - to take part in elections. Bagshaw 2000, 12. In Rwanda, the 1993 Arusha Accords provided for a transitional government to be established within 37 days of the signing of the agreement. The transitional government was mandated to organize elections to be held at the end of the transition period. Arusha Accords, Aug. 4, 1993, art. 7; and, The Protocols of Agreement between the Government of the Republic of Rwanda and the Rwandan Patriotic Front on Power-Sharing within the Framework of a Broad-based Transitional Government, Jan. 9, 1993, Sec. 2, Sub-Section 5, art. 23, Sec. A, para. 2. The agreement further provides for the repatriation of refugees to begin within nine months of the establishment of the transition government. The Protocol of Agreement between the Government of the Republic of Rwanda and the Rwandan Patriotic Front on the Repatriation of Refugees and the Resettlement of Displaced Persons, Sub-Section 7 - Timetable for Repatriation, art. 34, para. 4. In Burundi, Protocol IV (Reconstruction and Development) of the 2000 Arusha Peace and Reconciliation Agreement states that "[r]eturnees must have their *rights as citizens* and their property restored to them in accordance with the laws and regulations in force in Burundi after the entry into force of the Agreement". [emphasis added] Arusha Peace and Reconciliation Agreement for Burundi, Aug. 28, 2000, Protocol IV (Reconstruction and Development), Chapter I, art. 2(e).

[842] UNHCR 1990a, para. (x). The following year, the Committee referred for the first time to refugee participation in talks on voluntary repatriation between UNHCR, host countries and countries of origin. The Committee noted that such efforts, including those undertaken "closely *in concert with the refugees themselves* or concerned neighbouring countries through tripartite or *quadripartite* commissions, [were] particularly to be commended". [emphasis added] UNHCR 1991b, para. 35. In 1992 the Committee observed that "[e]xperience [had] show[n] that the smoothest operations which offer[ed] refugees the best chances of durable reintegration [were] those based on arrangements fully discussed and agreed between the parties, usually through the mechanism of 'tripartite' or 'quadripartite' commissions composed of the governments of the countries of asylum and of origin, UNHCR and, where appropriate, refugee representatives". [emphasis added] UNHCR 1992a, para. 8(c). For complete text *see*, Annex II, Table 2.14 - UNHCR Executive Committee Conclusions and Guidelines.

added] Three years later the Executive Committee called upon States and UNHCR "to *encourage* the participation of refugee women as well as men in decisions relating to their voluntary repatriation or other durable solutions".[843] [emphasis added] UNHCR's 1996 *Handbook on Voluntary Repatriation*, referred to in Chapter 2, expands upon Executive Committee conclusions in two important ways. First, the handbook explicitly recognizes that refugees have a "right" to take part in elections in their countries of origin. In a chapter on UNHCR's role in the country of origin, the handbook recommends that the agency "[s]afeguard the *rights* of the refugees/returnees to participate in elections following peace agreements and monitor equal access to returnees to voter registration and voting procedures".[844] Second, in contrast to Executive

[843] UNHCR 1993a, para. (c). For complete text see, Annex II, Table 2.14 - UNHCR Executive Committee Conclusions and Guidelines. A number of regional declarations and programmes of action in the 1990s similarly encouraged states to involve refugees in decisions about durable solutions. The Oslo Declaration and Plan of Action, for example, states that "UNHCR and NGOs should involve refugees in planning and preparing for repatriation. They should secure refugee participation—at the outset of an emergency and throughout the handover phase—in all matters pertaining to camp management, including relief, rehabilitation, development, resettlement and voluntary repatriation, and where appropriate, support collective returns organized by the refugees themselves". Oslo Declaration and Plan of Action, June 9, 1994, Recommendation 94. The Addis Ababa Document on African Refugees states that "refugees should be allowed to participate in decisions concerning their repatriation. In this connection, they should be provided with all the relevant information necessary for informed judgments". Addis Ababa Document on Refugees and Forced Population Displacement in Africa, Sept. 10, 1994, Recommendation 19. For complete text *see*, Annex II, Table A2.9 - Regional Declarations.

[844] UNHCR 1996a, 49. That residence should not comprise an absolute bar on refugee participation in home country elections, as noted in Chapter 2, is implicit in a separate section on repatriation and elections. The handbook states that "[i]f refugees cannot return home before either the deadline for registration for elections or the elections themselves due to continued uncertainty or due to a lack of logistical capacity, [and] if all refugees have an equal and unhindered possibility to cast their vote [through out-of-country voting] and thereby exercise their right to participate in the shaping of the political future of their country without repercussions ... UNHCR should monitor the election process in exile and ensure that the preconditions for it taking place in exile are met". Ibid., 66. For complete text *see*, Annex II, Table 2.14 - UNHCR Executive Committee Conclusions and Guidelines. Similar recognition can be found at the regional level in the OSCE's 1999 Istanbul Declaration under which member states affirmed their commitment "to facilitate the *right* of refugees to participate in elections in their countries of origin". For complete text see, Annex II, Table A2.9 - Regional Declarations. It is important to note, however, that in contrast to the OSCE commitment to "secure" the right to vote of minorities, the declaration only commits member states to "facilitate" refugee participation in elections. The difference in language would appear to stem, in part, from an acknowledgment of the wide range of logistical and political challenges to securing refugee participation in home country elections. It may also relate, however, to the fact that external voting, discussed briefly in Chapter 2, has yet to be codified as a right under international law.

Committee conclusions, the handbook explicitly recognizes that refugees should be allowed to take part in negotiations on durable solutions. Detailing UNHCR's role in voluntary repatriation operations, Chapter 3 of the handbook recommends that the refugee agency "*[e]ncourage* the participation of women in peace negotiations or negotiations aimed at leading to the settlement of any conflict".[845] [emphasis added] The significance of the reference is at least two-fold. First, it appears to be the first major recognition that refugees should be allowed to take part in the negotiation of durable solutions. Second, with such negotiations often though not always held prior to the repatriation of refugees, assuming negotiations comprise a conduct of public affairs entailing a concomitant right to take part, it also appears to underscore the fading relevance of residence-based restrictions on the exercise of the right to political participation.

The UN Sub-Commission on Human Rights has similarly affirmed that refugees should be allowed to take part in the negotiation of durable solutions. In a resolution on the right of return, adopted one year after UNHCR's aforementioned recommendation, the Sub-Commission explicitly "*urg[ed]* Governments of host States and Governments of countries from which refugees originate actively to negotiate with each other and, where negotiations have not yet been successful, to use the good offices of the Secretary-General or of the United Nations High Commissioner for Human Rights, or neutral third party mediation, and *to include representatives of the refugees* and of the Office of the United Nations High Commissioner for Refugees, in a genuine and

[845] UNHCR 1996a, 22. The Handbook further recommends that UNHCR "*[c]onsult* with refugees to involve them in efforts to find a durable solution to their problems ... [s]afeguard the refugees' desires, *enhance their decision-making process* and, through concerted confidence-building measures, *enlist their active participation* in assessing the feasibility and desirability of their eventual return home". *Ibid.*, 14.

concerted effort to realize the primary purpose of such negotiations, which is to make possible the voluntary repatriation of refugees to their country of origin without further unnecessary delay, using where necessary the mechanism of an internationally monitored verification process to determine, in accordance with international legal principles, which of the refugee population have the right to return".[846]

V. Summary

The right to political participation is widely recognized as a fundamental human right in both international and regional human rights treaties and in a broad range of additional instruments adopted by international and regional organizations. Treaties which enshrine political participation are largely silent, however, apart from the right to vote and to be elected, on ways and means for citizens, refugees in particular, to take part in the conduct of public affairs. The promotion and development of international law, especially in recent decades, has nevertheless contributed to evolving understandings of the right to take part in the conduct of public affairs since political participation was first enshrined as a fundamental norm. This chapter examined two inter-related aspects of this developing understanding of the right to political participation—namely, whether peace negotiations comprise a conduct of public affairs under international law and whether citizens, refugees in particular, have a right to take part in the

[846] UN Sub-Commission Resolution 1997/31, 49th Sess., 36th Mtg., UN Doc. E/CN.4/Sub.2/RES/1997/31, Aug. 28, 1997, para. 6. The construction of the paragraph is unclear, however, it would appear that inclusion of refugees in talks to resolve their situation is not contingent upon or linked to situations where initial negotiations have been unsuccessful. The drafting history of the resolution provides little insight on the substantive content or meaning of the paragraph. The resolution was adopted without a vote. For complete text *see*, Annex II, Table A2.13 - United Nations Sub-Commission on the Promotion and Protection of Human Rights Resolutions.

conduct of public affairs when they are outside their country of citizenship—based on analysis of international and regional human rights treaties, commentaries and jurisprudence and a wide array of soft law instruments.

While treaties which enshrine political participation as a fundamental human right are largely silent on the substantive content of the right to take part in the conduct of public affairs, the analysis in this chapter revealed four major findings which point towards emerging understanding of peace negotiations as comprising a conduct of public affairs entailing a concomitant right to take part. That peace negotiations comprise a conduct of public affairs may be inferred from the texts and drafting histories of treaties which indicate that the conduct of public affairs is a broad and inclusive concept that comprises more than the participation of citizens in government. It may also be inferred from comments and jurisprudence which recognize constitution making as a conduct of public affairs if one understandings the negotiated settlement of conflict as a hybrid form of constitution making. A UN recommendation on the elimination of discrimination against women with regard to the exercise of the right to political participation specifically recognizes peacemaking as a conduct of public affairs. This is affirmed in a wide array of soft law instruments adopted by international organizations which call upon states and other relevant actors to ensure the participation of women in the management and resolution of conflict.

While treaties which enshrine political participation as a fundamental human right are silent on whether refugees have a right to take part in the public affairs of their countries of origin, the analysis in this chapter revealed four additional findings which also point towards emerging understanding of such a right. That refugees have a right to take part in the public affairs of their home

countries may be inferred from the text and drafting histories of treaties which emphasize the universal character of the right to political participation, instruct states to ensure the right and opportunity to take part in the conduct of public affairs, prohibit discrimination in its exercise and stipulate that any restrictions on the right to political participation should be reasonable. A UN recommendation on the elimination of discrimination against refugees and displaced persons specifically affirms the right of refugees and displaced persons to take part in the conduct of public affairs after they return to their home countries. Jurisprudence on the right to political participation further affirms that in certain circumstances residence based restrictions on human rights including the right to take part in the conduct of public affairs may be unreasonable. A wide array of soft law instruments similarly affirm that refugees should be allowed to take part in the public affairs in their countries of origin, prior to and after their return, and in the context of negotiations on durable solutions to their situation. Having yet to be codified as a right during the period under consideration, however, the participation of refugees in the negotiation of durable solutions may be more accurately described as a principle rather than a right. Before analyzing these findings in more detail and applying them to the Palestinian case, the following chapter examines the actual practice of refugee participation in the negotiation of durable solutions.

CHAPTER FIVE

Empirical Foundations

I. Introduction

The negotiated settlement of armed conflict, as already noted in the introduction to this study, has long been viewed as falling largely if not solely within the jurisdiction of the state with the participation of civil society including refugees viewed as more of a hindrance than a help in its management and resolution. The primarily internal and complex nature of armed conflict, especially in recent decades, along with the shortcomings if not failings of traditional forms of diplomacy, not to mention the participatory demands and abilities of civil society actors including refugees to influence peacemaking processes, have nevertheless contributed to new approaches and understandings of how armed conflicts come to an end along with the roles played by an increasingly broad range of conflict actors. These developments have influenced and in turn have been influenced, as already noted, by an array of parallel discourses including those relating to women, minorities, indigenous peoples, refugees and IDPs, civil society, human security, human rights, development and democracy. The synergy of these developments and discourses arguably has significant implications for the consideration of peace negotiations as a domain for political participation applicable to the participation of refugees in the negotiation of durable solutions to their situation.

This chapter examines the practice of refugee participation in peace negotiations which aim to resolve their plight. The chapter has two specific and inter-related aims. The first aim is to determine the extent to which peace

negotiations comprise a domain for political participation. The study of political participation has yet to examine peace negotiations as a domain for participation while research in peace and conflict studies literature has only begun to address the issue and tends to focus predominantly on unofficial initiatives and participation in post-agreement peacebuilding and in the implementation of agreements reached. The second and related aim is to determine the scope of refugee participation in the negotiation of durable solutions to their situation. Refugees rarely appear as political actors in the study of political participation while there is a paucity of research on refugee participation in the negotiation of durable solutions in refugee and forced migration studies. A broader problem in the literature is the lack of adequate data from which to draw empirically descriptive conclusions on the extent to which peace negotiations comprise a domain for political participation along with the scope of refugee participation in the negotiation of durable solutions to their situation.

The chapter is divided into three parts. Part one of the chapter identifies and briefly reviews a number of basic features of all armed conflicts active between 1990 and 2000 based on data from the Uppsala Conflict Data Programme. This provides background for subsequent consideration of the two main aims of the chapter. The second part identifies and reviews all cases of armed conflict regulated or terminated through negotiations while section three identifies and reviews all cases of armed conflict in which negotiated settlements addressed durable solutions for refugees. In addition to providing an overview of the substantive content of peace agreements, each of the two sections examines peace agreement provisions for civil society/refugee

participation in peacebuilding and in the implementation of peace agreements, participation through unofficial or indirect peacemaking mechanisms and participation in official or direct negotiations. As the following sections explain, practice evidences emerging understanding and recognition of peace negotiations as a domain for political participation applicable to the negotiation of durable solutions for refugees, however, participation in official or direct negotiations appears relatively rare with unofficial or indirect mechanisms along with peacebuilding and the implementation of peace agreements comprising the most common domains for civil society/refugee participation.

II. Armed Conflict (1990-2000)

The period between 1990 and 2000 saw the highest number of armed conflicts active in any one decade since the end of the Second World War. The conflicts comprised a mix of both old and often protracted disputes that preceded the 1990s along with new onsets throughout the decade with the latter comprising the largest increase in new conflicts in comparison to previous decades. Armed conflicts took place primarily within rather than between states. Almost evenly divided between territorial and governmental disputes, armed conflicts increasingly derived from disputes over government, but were also less intense with fewer rising to the level of major armed conflict. The period between 1990 and 2000 also witnessed a significant increase in conflict terminations characterized by a rising number of conflicts regulated or terminated at the negotiating table rather than on the battlefield. Apart from a brief increase in the number of armed conflicts in the early part of the decade, the period saw the most significant decline in armed conflict in more than a century. While

unresolved conflicts and the outbreak of new ones resulted in the ongoing displacement of civilians, the termination of other conflicts including those regulated or terminated through negotiations enabled millions of refugees to return to their countries and places of origin. These developments arguably contributed in practice to emerging understanding of peace negotiations as a domain for political participation applicable to the negotiation of durable solutions for refugees.

i. Major features

In the period between 1990 and 2000 there was a total of 106 armed conflicts active in 66 different locations around the world.[847] (see Figure 5.1) This includes all conflicts where the use of armed force between two parties, of which at least one was the government of a state, resulted in at least 25 battle-related deaths in any given year.[848] The 106 conflicts comprised the largest number of armed conflicts active in any one decade (by more than half) since the end of the Second World War. Nearly two-thirds were located in Africa and Asia with the number of conflicts in Europe roughly equal to those in the Middle East and the Americas combined. The data for the Middle East excludes the

[847] The data unless noted otherwise is derived from the UCDP/PRIO Armed Conflict Dataset, Ver. 4, 2011. Gleditsch et al. 2002; and, Themnér and Wallensteen 2011. The term "location" refers to the state that is being challenged by a rebel group or opposition movement and not necessarily the geographical location of the armed conflict. Themnér 2011, 6. For a list of armed conflicts *see*, Annex III, A3.1 - Armed Conflicts, 1990-2000. For a brief overview of the armed conflicts *see*, UCDP Conflict Encyclopedia (UCDP Database) <http://www.pcr.uu.se/research/ucdp/database/> [accessed Aug. 2, 2012].

[848] The UCDP dataset defines armed conflict as "a contested incompatibility that concerns government and/or territory where the use of armed force between two parties, of which at least one is the government of a state, results in at least 25 battle-related deaths in one calendar year". Themnér 2011, 1. The lower threshold of 25 battle-related deaths per year, as compared to other datasets (e.g., Correlates of War) which use a higher threshold of 1,000 battled-related deaths per year allows for the inclusion of additional armed conflicts such as the Basque and Northern Ireland conflicts which would otherwise be excluded. Gleditsch et al. 2002, 617.

Fig. 5.1 - Armed Conflict, by Region (1990-2000)

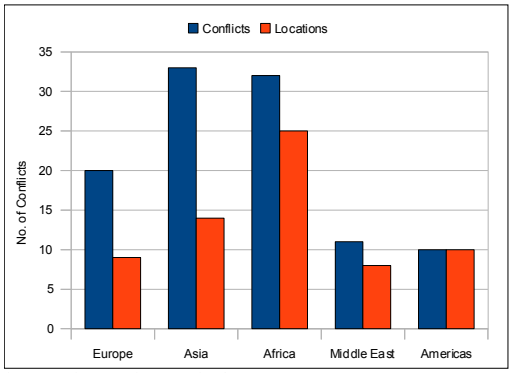
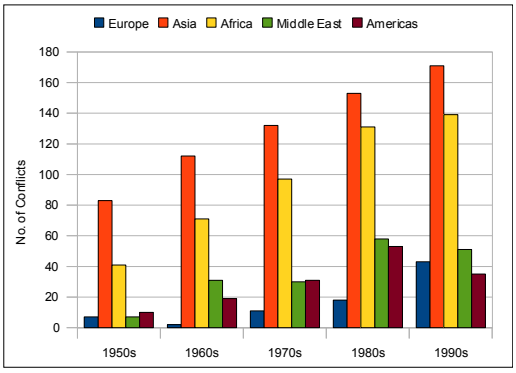


Fig. 5.2 - Armed Conflict, by Region (1950-1999)



Source: UCDP/PRIO Armed Conflict Dataset, Ver. 4, 2011.

armed conflict in Palestine-Israel which is addressed in more detail in Chapter 3 and in the following chapter which examines the case in a global context. The larger number of armed conflicts in comparison to locations was due to the existence of multiple armed conflicts in several states. The 10 armed conflicts in India and eight in Myanmar (Burma), for example, comprised more than half of the total number of armed conflicts active in Asia over the decade.[849] Multiple armed conflicts in Bosnia and Herzegovina, Georgia and in the former Soviet Union/Russian Federation comprised just over half of the total number of armed conflicts active in Europe during the same period.[850] A similar situation can also be found in Africa, in particular, Ethiopia where half a dozen separate armed conflicts comprised nearly one-fifth of the total number of armed conflicts active on the continent between 1990 and 2000.[851]

[849] Myanmar and India also comprised the most "conflict-prone" states with a combined total of 343 conflict years. This includes years in which the conflicts were active prior to 1990. There were no other conflicts active between 1990 and 2000 which exceeded 100 years of armed conflict. The two conflicts also comprised nearly two-thirds of the total number of conflict years in Asia for armed conflicts active between 1990 and 2000. For a list of conflict-prone states since WWII *see*, Figure 1.4 - The Most Conflict-Prone Countries, 1946-2003, in Mack 2005, 27.

[850] Armed conflicts in Bosnia and Herzegovina, Georgia and in the former Soviet Union/Russian Federation, as noted below, were nevertheless relatively short in comparison to other regions making Europe the least "conflict-prone" region. Armed conflicts in the three locations, moreover, only comprised around one-third of the total number of conflict years in Europe for armed conflicts active between 1990 and 2000. For a brief overview of the armed conflicts *see*, UCDP Conflict Encyclopedia (UCDP Database), *supra* n. 847.

[851] Ethiopia also comprised the most "conflict-prone" state in Africa between 1990 and 2000 with a total of 85 conflict years. As noted earlier, this includes years in which armed conflicts were

The 106 armed conflicts comprised a mix of both old and new disputes. While slightly more than half originated in the decades that preceded the end of the Cold War, nearly the same number broke out for the first time in the decade that followed.[852] (see Figure 5.3) The number of new conflicts, however, comprised the largest number of new onsets in comparison to the previous four decades with 1992 marking a post-WWII high in the total number of armed conflicts active around the world in any given year.[853] More than two-thirds of all new onsets were located in Europe and in Africa with the majority arising from the dissolution of the Soviet Union and Yugoslavia and from contested transitions to democratic government across the African continent.[854] Demands for autonomy and independence, among minorities and indigenous and tribal peoples in particular, contributed to new onsets of armed conflict in both Asia and Africa while disputes over borders and border areas sparked new conflicts in Africa, the Americas and the Middle East.[855] The distribution of old and new

also active prior to 1990. Armed conflicts in Ethiopia comprised more the one-quarter of the total number of conflict years for armed conflicts active in Africa between 1990 and 2000. Africa was also the second most conflict-prone region with a total of 302 conflict years for armed conflicts active between 1990 and 2000. For a brief overview of the armed conflicts *see*, *ibid.*

852 The onset of armed conflict is determined by the first year in which the number of battle-related deaths reached the minimum threshold to be defined as an armed conflict, i.e., 25 battle-related deaths in any given year, in relation to a contested incompatibility over government and/or territory between two or more parties of which at least one was the government of a state.

853 Mack 2005, 22. There was an average of 35 new armed conflicts per decade since the 1950s compared to the 51 new armed conflicts between 1990 and 2000. There were 52 conflicts active around the world in 1992 with the increase due largely to new onsets. Two-thirds were located in Africa and Asia with significantly fewer armed conflicts in Europe, the Middle East and in the Americas. The most significant increase in armed conflicts, however, took place in Europe where the total number of armed conflicts nearly tripled between 1990 and 1992. The data excludes the armed conflict in Palestine-Israel which is addressed elsewhere in this study.

854 Armed conflicts related in part or in whole to democratic transitions in Africa broke out in Algeria, Congo, Djibouti, Eritrea, Guinea, Guinea-Bissau, Lesotho, Niger, Rwanda and Sierra Leone. Additional armed conflicts related to government included Mexico, Trinidad & Tobago, Turkey, Egypt, Pakistan, Tajikistan and Uzbekistan. For a brief overview of the armed conflicts *see*, UCDP Conflict Encyclopedia (UCDP Database), *supra* n. 847.

855 Armed conflicts related to claims for autonomy or independence took place in Angola (Cabinda), Comoros (Anjouan), Mali (Azawad), Niger (Air & Azawad), Senegal (Casamance), India (Assam), India (Kukiland), Indonesia (Aceh), Myanmar (Wa) and in Yemen (South Yemen). Armed conflicts over borders and border areas broke out between Cameroon and Nigeria (Bakassi), Eritrea and Ethiopia, Ecuador and Peru, Israel (South

Fig. 5.3 - Onset of Hostilities, by Region (1990-2000)

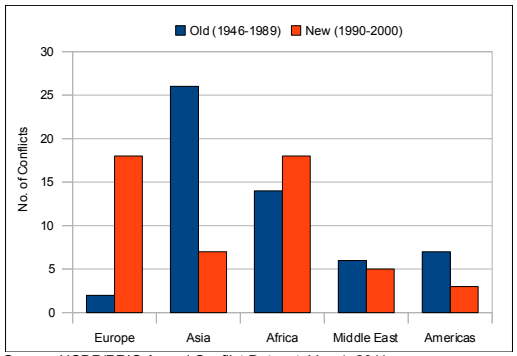
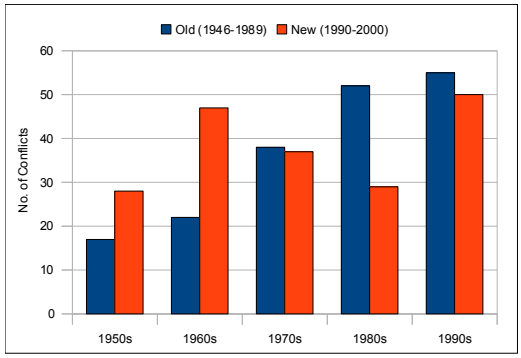


Fig. 5.4 - Onset of Hostilities, by Region (1950-1999)



Source: UCDP/PRIO Armed Conflict Dataset, Ver. 4, 2011.

conflicts was more diverse at the regional level. In both Asia and the Americas, the majority of armed conflicts broke out before 1990 compared to Europe where almost all of the armed conflicts comprised new onsets. Armed conflicts in Africa and the Middle East, meanwhile, were almost evenly divided between old and new ones.

Armed conflicts that pre-dated the 1990s had been ongoing for an average of nearly 20 years with a significant number spanning three and four decades by the time the Cold War came to an end in the late 1980s.[856] The longest running conflicts were located in Asia (around one-quarter originated in the late 1940s) with the average length of those in other regions not far behind.[857] More than half of all armed conflicts that pre-dated the 1990s,

Lebanon) and Iraq and Kuwait. For a brief overview of the armed conflicts *see*, UCDP Conflict Encyclopedia (UCDP Database), *ibid.*

856 The longest running conflicts were located, in order of length, in India, Myanmar, the Philippines, Afghanistan, Cambodia and Bangladesh. In a number of African countries—Angola, Chad, Ethiopia, Mozambique, Somalia and Sudan—armed conflicts had been ongoing since independence from colonial rule. The length of each conflict is determined by the first year in which the conflict meets the aforementioned criteria to be listed in the UCDP armed conflict dataset. It does not indicate consecutive years of armed conflict. For a brief overview of the armed conflicts see, UCDP Conflict Encyclopedia (UCDP Database), *ibid*.

857 The average length of armed conflicts in Asia which pre-dated the 1990s was 21.5 years, followed by the Americas and the Middle East (17 years), Africa (16.5 years) and Europe (16 years). In Asia this included conflicts in India over government, between the Indian government and various indigenous and tribal groups and with Pakistan over the disputed territory of Kashmir; in Myanmar over both government and between the Myanmar government and various indigenous and tribal groups; as well as the conflict over government and the island of Mindanao in the Philippines. Long-running conflicts in Europe included those over Northern Ireland and the Basque region of Spain while conflicts over Kurdistan in the Middle East, in Chad and Ethiopia in Africa and in Colombia and Guatemala

moreover, were protracted in the sense that each experienced 10 or more consecutive years with a minimum of 25 battle-related deaths per annum.[858] (see Figure 5.5) The vast majority (more than three-quarters) were located in Asia and Africa, with protracted conflicts in Asia also comprising the highest percentage (more than half) of the total number of armed conflicts in any one region.[859] In contrast, many of the armed conflicts that broke out for the first time between 1990 and 2000 were relatively short-lived. In Europe, for example, armed conflicts after the end of the Cold War lasted on average for only two years. New onsets in Africa lasted on average twice as long as those in Europe, but their duration was still comparatively short to those that broke out across the continent in previous decades.[860] Armed conflicts that broke out during for the first time during the 1990s indeed appeared to be less intractable than those whose origins pre-dated the decade. The civil wars in Algeria and Sierra Leone were the only new onsets which reached the level of protracted armed conflict

in the Americas contributed to the length of armed conflicts in other regions. For a brief overview of the armed conflicts see, UCDP Conflict Encyclopedia (UCDP Database), *ibid*. *See also*, Figure 1.4 - The Most Conflict-Prone Countries, 1946-2003, Mack 2005, 27.

858 The measure used here is based on Mack's assessment of UCDP data for the Simon Fraser University Human Security Report Project. Mack argues that the percentage of onsets per decade followed by 10 years or more of continuous fighting—i.e., 25 battle-related deaths or more per year—is a better indicator of intractability compared to the average length of active conflicts which is biased by the long duration of some conflicts. Mack 2011, 172.

859 While the number of protracted armed conflicts in the Americas was relatively small—Colombia, Guatemala, El Salvador, Peru—they also comprised nearly half of the total number of armed conflicts in the region. The conflict in Palestine-Israel, which is not included here, however, was the most protracted with at least 25 battle-related deaths in every single calendar year since 1948. For a brief overview of the armed conflicts *see*, UCDP Conflict Encyclopedia (UCDP Database), *supra* n. 847.

860 The average length of new armed conflicts in Asia was four-and-a-half years, Middle East (four years) and in the Americas (one-and-a-half years). In Asia this included armed conflicts in India between the government and various indigenous and tribal groups, the conflict over Aceh in Indonesia along with governmental conflicts in Pakistan, Tajikistan and Uzbekistan. New onsets in the Middle East over government took place in Egypt and Turkey with new conflicts over territory between Iraq and Kuwait, in South Lebanon with Israel and in Yemen. In the Americas short-lived conflicts took place in Mexico between the government and indigenous peoples along with a governmental conflict in Trinidad & Tobago. The relatively brief armed conflicts in Europe arose in the context of the dissolution of the former Soviet Union and the former Yugoslavia. For a brief overview of the armed conflicts see, UCDP Conflict Encyclopedia (UCDP Database), *ibid*.

Fig. 5.5 - Protracted Conflicts, by Region (1990-2000)

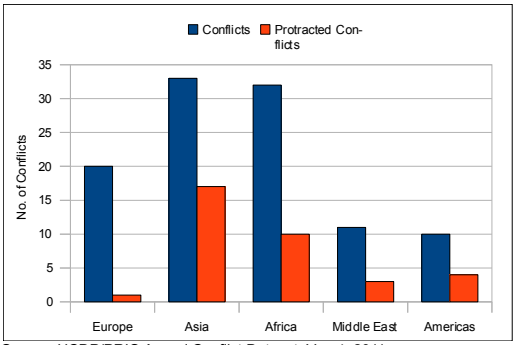
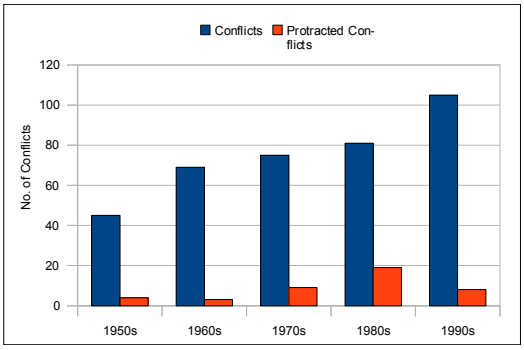


Fig. 5.6 - Protracted Conflicts, by Region (1950-1999)



Source: UCDP/PRIO Armed Conflict Dataset, Ver. 4, 2011.

between 1990 and 2000.[861]

Armed conflicts active between 1990 and 2000 took place primarily within rather than between states. The 106 armed conflicts comprised 101 intra-state conflicts, 16 of which included foreign intervention, and only five inter-state conflicts.[862] (see Figure 5.7) This comprised a more than four-fold increase in the number of intra-state conflicts over the previous four decades and a nearly three-fold decrease in the number of inter-state conflicts over roughly the same period.[863] These shifts have been ascribed in part to the winding down of decolonization which contributed to a decline in inter-state wars and by the concomitant onset of new armed conflicts within many of the newly-independent states that emerged from decades of colonial rule.[864] The end of Cold War

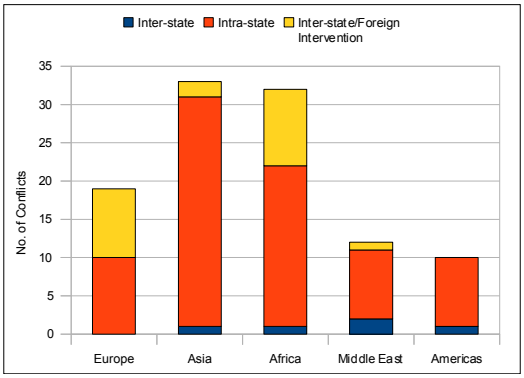
[861] In the period between 2001-2010 only two—India (Assam) and Algeria—of the armed conflicts that broke out between 1990 and 2000 became protracted, i.e., each experienced 10 or more consecutive years with a minimum of 25 battle-related deaths per annum. In contrast, there were 13 armed conflicts which pre-dated the 1990s which either remained protracted or became protracted during the first decade of the new millennium. The vast majority were located in Asia (India (Kashmir), Myanmar (Shan), Myanmar, Nepal, Philippines, Philippines (Mindanao)) and in Africa (Burundi, Ethiopia (Ogaden), Ethiopia (Oromiya), Sudan, Uganda) with only one each in the Middle East (Turkey (Kurdistan) and in the Americas (Colombia). For a brief overview of the armed conflicts see, UCDP Conflict Encyclopedia (UCDP Database), *ibid*.

[862] There were no extra-systemic conflicts, i.e., conflict between a state and a non-state group outside its territory, in the period between 1990 and 2000.

[863] The period also witnessed the largest number of armed conflicts with foreign intervention (more than double) in comparison to the previous four decades. This includes all armed conflicts in which there was at least one year of foreign intervention. The primary actors in the 106 armed conflicts comprised 64 states and nearly three times (177) as many non-state actors.

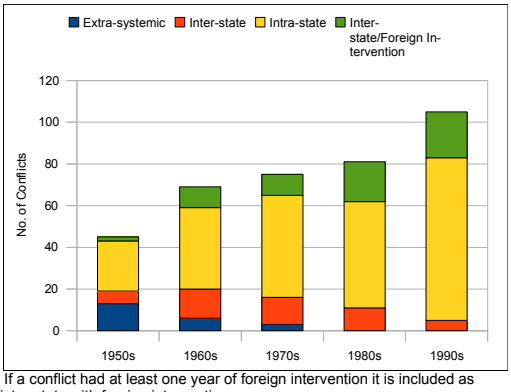
[864] Mack 2005, 147. According to Mack, wars of liberation from colonial rule comprised between

Fig. 5.7 - Armed Conflict, by Type & Region (1990-2000)



Source: UCDP/PRIO Armed Conflict Dataset, Ver. 4, 2011.

Fig. 5.8 - Armed Conflict, by Type & Region (1950-1999)



If a conflict had at least one year of foreign intervention it is included as intra-state with foreign intervention.

hostilities consolidated the overall decline in the number of armed conflicts between states and contributed at the same time to the outbreak of new ones within states especially in Europe where the number of intra-state conflicts increased five-fold.[865] Half of all cases of foreign intervention occurred in Africa with around one-third in Europe and the remaining cases divided between Asia and the Middle East. In four conflicts—the Democratic Republic of Congo, Guinea-Bissau, Lesotho and Lebanon—foreign intervention occurred in each year of conflict activity between 1990 and 2000. Spread across all regions, except Europe, the smaller number of armed conflicts between states involved disputes over borders or border areas including conflicts over natural resources.

Armed conflicts active between 1990 and 2000 were almost evenly divided between conflicts over territory and conflicts over government. (see Figure 5.9) In slightly more than half, the incompatibility among warring parties

60-100 percent of international wars in any one year from the 1950s through the end of the 1970s when they largely came to an end. Decolonization agreements and proposals ending several of these conflicts, moreover, as already explained, included some of the earliest provisions governing the participation of refugees in the public affairs of their countries of origin. *See*, Chapter 4, *supra* n. 824-829.

865 Mack 2005, 150. Lederach estimates that approximately one-third of all armed conflicts were driven in part or in whole by the geopolitics of the Cold War. Lederach 1997, 5. Mack further identifies expansion in the number of democratic regimes around the world, increasing economic interdependence of states, a decline in the economic utility of war and the growth of international institutions with a mandate to facilitate the peaceful resolution of disputes coupled with credible deterrence and effective war fighting capabilities as contributing factors to the decline of inter-state conflict over time. Mack 2005, 147.

Fig. 5.9 - Armed Conflict, by Incompatibility and Region (1990-2000)

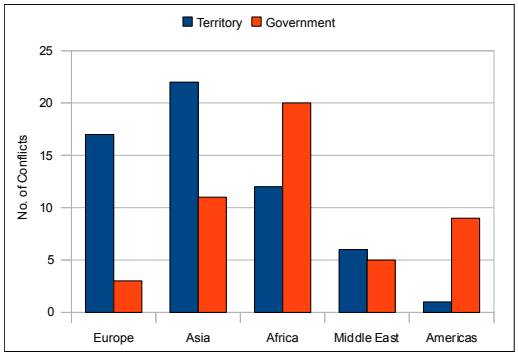
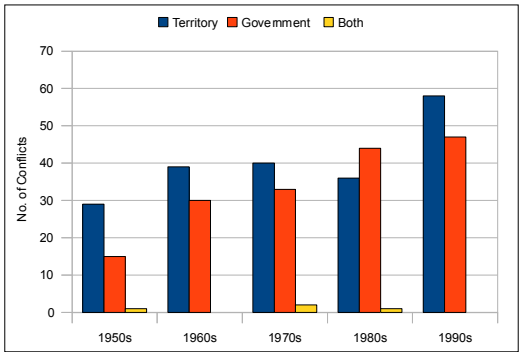


Fig. 5.10 - Armed Conflict, by Incompatibility and Region (1950-1999)



Source: UCDP/PRIO Armed Conflict Dataset, Ver. 4, 2011.

involved disputes over the control of a specific territory, primarily though not exclusively within rather than between states, with the majority of armed conflicts relating to demands for local or regional autonomy and secession.[866] The remaining cases involved disputes over government, that is to say, conflicts related to the type of political system, the replacement of a central government or a change in its composition.[867] Armed conflict in the 1990s nevertheless appeared to derive increasingly from governmental rather than territorial disputes. While the number of conflicts over territory doubled over the second half of the 20th century there was a three-fold increase in the number of armed conflicts over government. The incompatibility between warring parties was more diverse across regions. The majority of armed conflicts in Africa and in the Americas in the 1990s related to disputes over government while a majority in each of the other regions—Europe, Asia and the Middle East—stemmed from

[866] The UCDP/PRIO Armed Conflict Dataset uses incompatibility to distinguish between multiple conflicts in a single state. In some cases a single conflict may be coded as having both territorial and governmental incompatibilities. The authors of the dataset caution that the measure or distinction is "crude in the sense that possible underlying incompatibilities are not considered. In other words, the stated incompatibility is *what* the parties are (or claim to be) fighting over, but it says nothing about *why* the parties are fighting". Högbladh 2006, 4.

[867] While both types of incompatibilities involve issues of governance, incompatibilities over government generally relate to the control of the entire state while those over territory relate to the control of part of a state with the possible exception of inter-state conflicts or cases of irredentism. For additional discussion of the concept *see*, the UCDP Armed Conflict Dataset Codebook, Themnér 2011. *See also*, UCDP, Definitions <http://www.pcr.uu.se/research/ucdp/definitions> [accessed Mar. 2, 2012].

disagreements over territory with conflicts in the latter region almost evenly divided between the two.

Armed conflicts in the 1990s were also less intense or deadly in comparison to previous decades. Approximately two-thirds were minor characterized by 25 to 999 battle-related deaths in any given year while major armed conflicts with 1,000 or more battle-related deaths comprised the remaining third.[868] (see Figure 5.11) The increase in minor armed conflicts between 1990 and 2000 was the highest increase per decade in comparison to the previous four decades while the number of minor armed conflicts also increased at a slightly higher rate than major armed conflicts over the same period. The concomitant decline in the number of battle-related deaths between 1990 and 2000 continued the downward trend in battle-related deaths from previous decades with a decline of 38,000 to 600 battle-related deaths per conflict between the end of WWII and the beginning of the new millennium.[869] This has been ascribed in large part to the aforementioned decline in much

[868] The conflicts are categorized as major armed conflict if there is at least one year between 1990 and 2000 in which there were 1,000 or more battled-related deaths. The percentage of major armed conflicts rises to nearly half, however, when calculated by total number of conflict years, i.e., 1946 through 2000.

[869] Mack 2005, 31. Empirical research on civilian casualties appears to challenge conventional wisdom regarding the increasing number of civilians impacted by armed conflict over the course of the 20th century. A number of studies note that in comparison to the first and second world wars, when civilians comprised between five and 50 percent, respectively, of all causalities, in the 1990s civilians comprised an estimated 80-90 percent of all war-related causalities. Harris and Reilly 1998, 11; Kaldor 1999; and, Shaw 2005, *cited in*, Wanis-St. John and Kew 2008, 18. Empirical evidence, however, suggests that there is a general ratio of 50/50 civilian to military deaths with few outliers. This pattern, moreover, is consistent over time. Melander, Öberg, and Hall 2006, 14. *See also*, Figure 4 - Average Battle Deaths in Countries in Civil Conflict, 1950-2002, *ibid.*, 30. Examining empirical evidence which points toward the declining human impact of civil conflict in the post-Cold War period, Melander et al. argue that this can be explained by "the decline of ideological conflict, the restraining influence of globalization on governments, and the increasing rarity of superpower campaigns of destabilization and counter-insurgency through proxy warfare". Melander, Öberg, and Hall 2009, 505. The authors nevertheless caution that this does not mean that armed conflict in the post-Cold War period was not destructive as civil wars in the Great Lakes Region of Africa and in the Balkans in Europe clearly exemplify. Indeed, Farrell and Schmitt noted that quantitative analysis fails to capture significant effects of armed conflict in recent decades including its impact on civilians below the threshold of death and deaths caused by related food insecurity, population displacement and disease. Farrell and Schmitt 2012, 1.

Fig. 5.11 - Armed Conflict, by Intensity and Region (1990-2000)

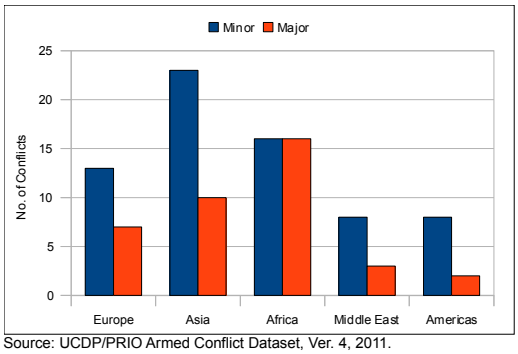
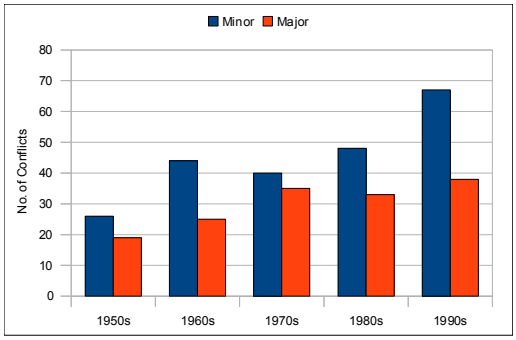


Fig. 5.12 - Armed Conflict, by Intensity and Region (1950-1999)



Source: UCDP/PRIO Armed Conflict Dataset, Ver. 4, 2011.

deadlier inter-state conflict along with the concomitant reduction in military and economic aid to warring parties that followed the end of the Cold War.[870] At the regional level, the balance between major and minor armed conflicts was similar to the global average with the exception of Africa where half comprised major armed conflicts and the Americas where major armed conflicts comprised only quarter of all conflicts in the region.[871]

ii. Termination of armed conflict

The decade also witnessed a significant increase in conflict terminations (more than double) in comparison to previous decades. There was a total of 127 terminations—i.e., at least one year of non-activity.[872] In the vast majority of

[870] Mack 2007, 8, 23; and, Melander, Öberg, and Hall 2006, 30. While the number of campaigns of "one-sided violence"—i.e., those in which victims were unable to respond—increased by more than half in the 1990s, there was nevertheless a relative decline in the number of reported deaths if one excludes the massive number of civilians killed in the 1994 Rwandan genocide. The dataset counts first the number of deadly campaigns perpetrated by either governments or armed non-state groups against civilians each year, and second the fatalities associated with them. Mack, *ibid.*

[871] The declining intensity of armed conflict was most significant in states in the top four levels of development while the trend was "essentially flat" in the bottom quintile. This may explain the high intensity of armed conflict in states in Africa, most of which fall in the bottom level of development. Gurr, Marshall, and Khosla 2001, 13. The balance between major and minor armed conflict is reversed in all regions except Europe and the Americas when calculated by the total number of conflict years, i.e., 1946 through 2000.

[872] The data is derived from the UCDP Conflict Termination Dataset, Ver. 2.1, 2008. Kreutz 2006; and, Kreutz 2010. The higher number of terminations compared to armed conflicts was due to renewed hostilities among warring parties following the termination of the conflict between them. The termination of multiple armed conflicts in a single location occurred in all

cases (nearly half) terminations resulted from the fact that the dispute no longer met the aforementioned criteria to be defined as an armed conflict.[873] (see Figure 5.13) Nearly the same number of cases, however, were terminated through negotiated settlements—i.e., peace agreements and ceasefire agreements including those which included provisions to regulate the incompatibility among warring parties—with only half as many terminated through military victories.[874] This comprised the first time that negotiated settlements outpaced military victories and practically reversed the ratio between the two in comparison to previous decades. The rise in negotiated settlements has been attributed empirically to changes in the relative power of combatants making it more difficult for warring parties to score a decisive victory on the battlefield and to improvements in the "technology of peace" which has "help[ed] combatants bring an end to wars rather than to fight to the finish".[875] Warring parties were four times as likely, however, to resume hostilities following the termination of conflict at the negotiating table rather than on the

regions except the Americas. This included five locations each in Europe and in Asia, three locations in Africa and two in the Middle East. For a list of conflict terminations *see*, Annex III, Table A3.2 - Conflict Terminations, 1990-2000.

[873] A small number of additional conflicts were terminated for "other" reasons. This category covers an array of different outcomes, including cases in which hostilities fell below the minimum threshold of 25 battle-related deaths per calendar year, those in which one of the parties no longer contested the incompatibility, and cases in which one of the parties withdrew from the conflict or ceased to exist. Kreutz 2010, 245. For a brief discussion of definitions *see*, Kreutz 2008, 6.

[874] The dataset defines a peace agreement as an "[a]greement, *or* the first or last in a series of agreements, concerned with resolving or regulating the incompatibility—completely or a central part of—which is signed and/or accepted by all *or* the main parties active in last year of conflict". A ceasefire agreement with conflict regulation includes an "[a]greement between all *or* the main parties active in the last year of conflict on the ending of military operations as well as some sort of mutual conflict regulatory steps" while a ceasefire agreement is defined as an "[a]greement between all *or* the main parties active in the last year of conflict on the ending of military operations". The dataset only includes agreements that end the military behaviour between warring parties. Victories include all cases in which "[o]ne side active in the last year of conflict is either defeated or eliminated, or otherwise succumbs to the power of the other through capitulation or public announcement". Kreutz 2006, 6.

[875] Fortna 2004, 23, *cited in*, Bell 2008, 30. Fortna also points out, however, that empirical evidence regarding the inability of parties to score a decisive win on the battlefield is relatively weak.

Fig. 5.13 - Armed Conflict, Termination by Type & Region (1990-2000)

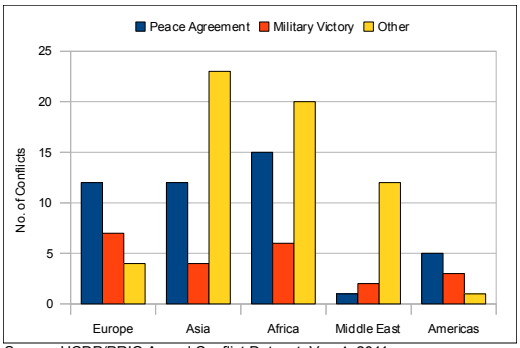
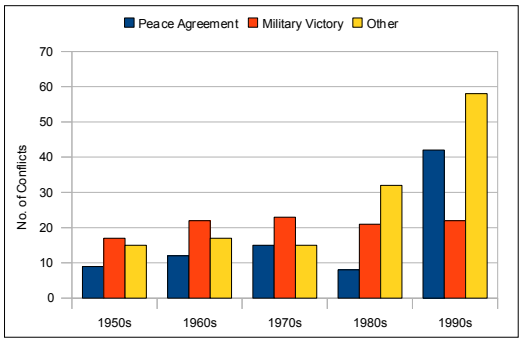


Fig. 5.14 - Armed Conflict, Termination by Type & Region (1950-1999)



Source: UCDP/PRIO Armed Conflict Dataset, Ver. 4, 2011.

battlefield.[876] The largest number of terminations (nearly two-thirds) occurred in Africa and Asia, the regions with the highest number of armed conflicts, with close to one-fifth of all terminations in Europe and the remaining roughly divided between the Middle East and the Americas. Armed conflicts in Asia, however, appeared three times more likely to be terminated through negotiations in contrast to the Middle East where there were twice as many armed conflicts terminated through military victories. The ratio of negotiated settlements to military victories in other regions was similar to the global average.

iii. Decline in armed conflict

The high rate of conflict terminations, notwithstanding the resumption of hostilities among warring parties in a significant number of cases, contributed to an overall decline in armed conflict around the world in comparison to previous

[876] Mack 2007, 21. The data is based on the resumption of hostilities within five years of conflict termination. Mack suggests that the high rate of failure may be attributed in part to the fact many negotiated settlements were "inappropriately designed, ineptly implemented, and poorly supported". *Ibid*. However, as Mack points out, the significant increase in terminations at the negotiating table in the 1990s "more than offsets the effect of their increase failure rate". More than half of all conflicts terminated through negotiations succeeded, i.e., hostilities did not resume within five years of the signing of the peace agreement. Ibid. Empirical research finds that negotiated settlements that are "the most extensively institutionalized—that is, that provide institutional guarantees for the security threats antagonists face as they move toward a situation of centralized statepower—are the ones most likely to prove stable". Harztell 1999, 3.

Fig. 5.15 - Armed Conflict, by Year and Region (1990-2000)

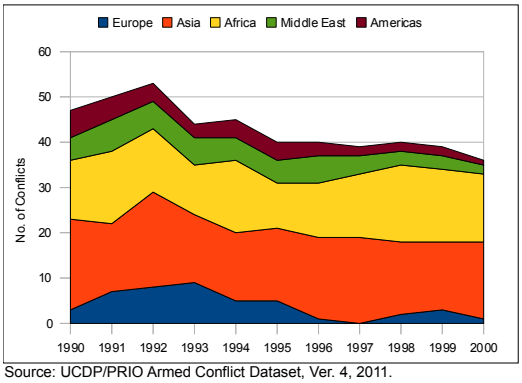
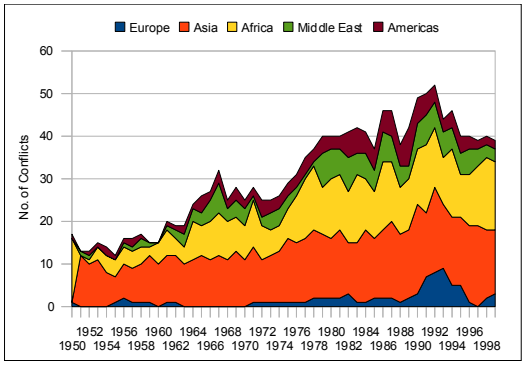


Fig. 5.16 - Armed Conflict, by Year and Region (1950-1999)



Source: UCDP/PRIO Armed Conflict Dataset, Ver. 4, 2011.

decades. The number of armed conflicts decreased by more than a quarter between 1990 and 2000 with the decline in armed conflict after the peak year of 1992, referred to above, comprising the most significant drop in armed conflict in more than a century.[877] The diminishing number of armed conflicts has been attributed in part to the end of the Cold War which in turn facilitated an end to a number of long-standing proxy wars around the world.[878] The cessation of East-West hostilities, moreover, enabled the United Nations to play a more effective role in the management and resolution of armed conflict characterized by a significant increase in preventive diplomacy, peacemaking activities and in post-conflict peace operations.[879] The decline in armed conflict has also been

[877] Mack 2005, 151. Taking into account the increase in the number of states in the international system since the Second World War, the decline in armed conflict in the 1990s, as Gleditsch el al. observe, "brought the probability of a country being in conflict to a level corresponding to the end of the 1950s and lower than at any other later time during the Cold War". Melander, Öberg, and Hall 2006, 12–13, *quoting*, Gleditsch et al. 2002, 621.

[878] Mack 2005, 148, *citing*, Gleditsch 2004; and, Gurr, Marshall, and Khosla 2001. This included proxy wars in Mozambique, Ethiopia, Yemen, El Salvador and in Guatemala.

[879] According to data assembled by Mack, the number of UN preventive diplomacy missions increased from one in 1990 to six in 2002; UN peacemaking activities increased from four in 1990 to 15 in 2002; the number of 'Friends of the Secretary-General', 'Contact Groups' and other mechanisms to support UN peacemaking increased from four in 1990 to more than 28 in 2003; and, UN peacekeeping missions increased from seven in 1988 to more than 16 in 2004. The decade also witnessed a five-fold increase in the use of economic sanctions along with an increase in the use of force; a greater willingness to address the culture of impunity through national prosecutions of former regime officials which increased from one in 1990 to 11 in 2004 and the establishment of an International Criminal Court and hybrid tribunals; and, a concomitant emphasis on reconciliation and addressing the root causes of conflict through various mechanisms including truth commissions which increased from one in 1989 to seven in 2003. Non-governmental organizations, other international agencies and donor states played both a supporting and independent role. Mack 2005, 153–155; and, Mack 2011, 63.

ascribed to the increasing importance of democracy and human rights as global norms in the post-Cold War era along with a concomitant decrease in discrimination against minorities.[880] Europe and the Americas experienced the most dramatic decline—in each region there was only a single conflict active by the beginning of the new decade—however, there was also a notable, but smaller decline in the number of armed conflicts in both Asia and in the Middle East.[881] Africa was the only region which experienced a small increase—from 13 in 1990 to 15 in 2000—in the number of armed conflicts over the decade.[882]

iv. Armed conflict and displacement

The nature of armed conflict in the 1990s resulted in two major trends in forced displacement. On the one hand, the increase in the number of armed conflicts around the world contributed to an expansion in the global refugee population. In 1993 and 1994 alone intra-state conflicts forced an estimated 10,000 persons a day to flee their homes with the size of the global refugee population peaking at over 15 million persons.[883] (see Figure 5.17) This excludes the Palestinian

[880] The number of democracies (as defined by the Polity IV dataset) worldwide increased from 20 at the end of the Second World War to more than 90 in the period after the end of the Cold War. Since the end of Cold War hostilities, moreover, the number of countries prosecuting perpetrators of human rights violations increased more than four-fold while the number of minority groups victimized by governmental discrimination decreased by nearly half. Rising national incomes may have also played a supporting but lesser role. Mack 2011, 76–78, *citing*, Polity IV <http://www.systemicpeace.org/polity/polity4.htm>; Hunjoon and Sikkink 2010; and, Asal and Pate 2005, 29, 33.

[881] This was due largely to the termination of armed conflicts connected to the dissolution of the former Soviet Union and former Yugoslavia, long-running conflicts in El Salvador and Guatemala as well as the termination of more recent ones such as those in Haiti and Mexico. For a brief overview of the conflicts *see*, UCDP Conflict Encyclopedia (UCDP Database), *supra* n. 847.

[882] Gurr et al. identify three major reasons for the "African exception": the lack of political and material resources devoted to conflict management and resolution in Africa compared to Europe, the Middle East and the Americas, the failure of democratic transitions in Africa due primarily to lack of resources and the continent's pervasive poverty. As the authors' point out, commenting on the second two factors, democratic regimes are generally regarded as more adept in addressing ethnic and political demands for reform while states with low levels of development are often more susceptible to conflict than prosperous or more developed ones. Gurr, Marshall, and Khosla 2001, 11–12.

[883] Cohen and Deng 1998, 3 n. 7. The global statistics are derived from UNHCR's Statistical

Fig. 5.17 - Armed Conflict and Refugees, by Type of Conflict (1990-2000)

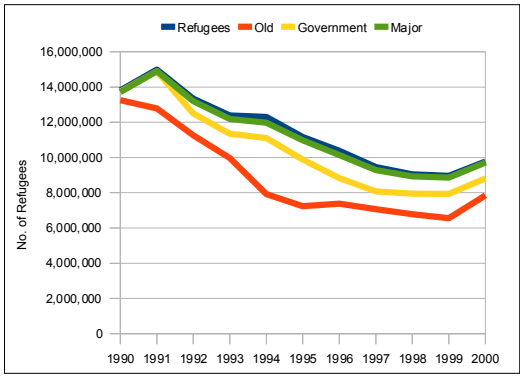


Fig. 5.18 - Armed Conflict and Refugees, by Region (1990-2000)

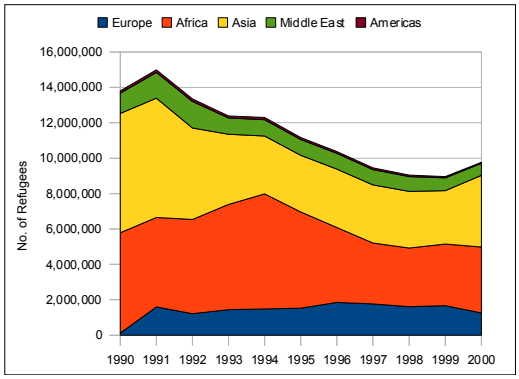


Fig. 5.19 - Armed Conflict and Returnees, by Type of Conflict (1990-2000)

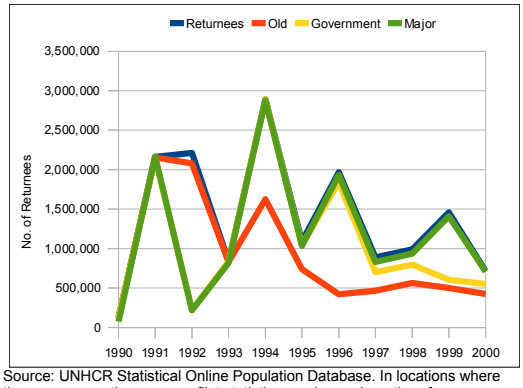
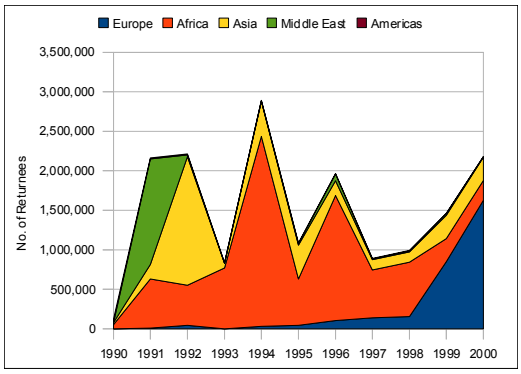


Fig. 5.20 - Armed Conflict and Refugees, by Region (1990-2000)



Source: UNHCR Statistical Online Population Database. In locations where there was more than one conflict statistics overlap and are therefore indicative rather than conclusive.

refugee population. The majority of the refugees were displaced in the context of armed conflicts over government which pre-dated the 1990s. The increase in the global refugee population during the early years of the decade, however, was due largely to forced displacement from new armed conflicts, i.e., those which broke out after the end of the Cold War.[884] The majority of refugees were

Online Population Database <http://www.unhcr.org/pages/4a013eb06.html>. The statistics are reproduced in Annex III, Table A3.8 - Armed Conflict and Refugee Population, 1990-2000. The significant increase in displacement may also be related to the lack of accurate statistics prior to 1990. Melander, Öberg, and Hall 2006, 19, *citing*, Newman 2004, 182. In a study on refugee statistics, for example, Crisp writes that prior to the 1990s UNHCR's "capacity and commitment in the area of refugee statistics was by any standard weak". It was not until the early 1990s that the refugee agency recruited a professional statistician and began to systematically collect data and issue annual statistical reports. Crisp 1999, 15–16.

884 Refugees displaced as a result of the Gulf War in the Middle East, the Balkan wars in Europe and the genocide in Rwanda, for example, each contributed to the post-Cold War surge in the number of refugees. Refugees from protracted conflicts, i.e., those which experience 10 or more consecutive years of armed conflict, most of which pre-dated the 1990s, moreover, comprised over half of the refugee population from countries which experienced armed conflict during the decade. UNHCR Statistical Online Population Database, *ibid.*

from Africa and Asia followed by Europe and the Middle East with the fewest number of refugees from the Americas.[885] On the other hand, the overall decline in armed conflict over the decade facilitated the return of millions of refugees, many of whom had been caught up in protracted situations of displacement, often lasting for several decades.[886] In 1992 alone an average of 46,000 refugees returned to their countries of origin every week with the average return of 1.42 million refugees per annum to countries which experienced armed conflict between 1990 and 2000 five times greater than the number of refugees who had exercised a right to return in the previous decade.[887] The majority of refugees returned to countries in which major armed conflicts over government pre-dated the 1990s notwithstanding the fact that new onsets contributed to the

[885] A clear majority of refugees were displaced in the context of armed conflicts in Africa if refugees from Afghanistan are excluded from the total refugee population in Asia over the decade. Afghan refugees comprised more than nine-tenths of the refugee population in Asia throughout the decade. UNHCR Statistical Online Population Database, *ibid.*

[886] The concept of protracted displacement is different from the aforementioned concept of protracted conflict. UNHCR defines a protracted refugee situation as "one in which refugees find themselves in a long-lasting and intractable state of limbo. Their lives may not be at risk, but their basic rights and essential economic, social and psychological needs remain unfulfilled after years in exile". The measure for protracted refugee situations comprises refugee populations of 25,000 persons or more who have been in exile for five or more years in developing countries. UNHCR 2004c, para. 3. Protracted refugee situations "result from political action and inaction, both in country of origin (the persecution or violence that led to flight) and in the country of asylum. They endure because of ongoing problems in the country of origin, and stagnate and become protracted as a result of response to refugee flows, typically involving restrictions on refugee movement and employment possibilities, and confinement to camps". *Ibid.*, para. 4. Protracted armed conflicts and protracted refugee situations nevertheless overlap. *See*, the discussion below, *infra* n. 941.

[887] UNHCR 1993d, 100. An average of 328,000 refugees returned to their countries of origin each year between 1980 and 1989. More than half returned to countries which experienced protracted armed conflict. UNHCR, Statistical Online Population Database, *supra* n. 883. The statistics are reproduced in Annex III, Table A3.9 - Armed Conflict and Returnee Population, 1990-2000. It was this scale of return which informed UNHCR's shift towards a "proactive, *homeland-oriented*, and holistic" approach to forced displacement and which led the refugee agency's High Commissioner, Sadako Ogata to describe the 1990s as the decade of voluntary repatriation. *See*, Chapter 2, *supra* n. 214. The agency's homeland-oriented approach had three major aspects. First, in contrast to the regime's initial focus on the country of asylum, the new approach focused equal attention on the right to return to one's homeland. This included a preventative aspect subsequently referred to as the "right to remain" or the "right not to be displaced". Second, in contrast to the initial focus on countries of asylum, the new approach emphasized the central role of the country of origin in facilitating solutions to forced displacement. Third, in contrast to UNHCR's reluctance to become involved in a refugee's country of origin the agency and its partners became increasingly involved in countries of origin. UNHCR 1995, 25–28. *See also*, UNHCR 1991b, para. 41.

majority of new refugees during the decade.[888] Similar to the regional distribution of the refugee population above, the majority of returnees were from Africa and Asia followed by the Middle East and Europe and the fewest from the Americas.

III. The Negotiated Settlement of Armed Conflict

The decade that followed the end of the Cold War, as already noted above, witnessed an increasing number of armed conflicts regulated or terminated at the negotiating table rather than on the battlefield. Negotiated settlements were more likely to address major armed conflicts over government whose origins pre-dated the 1990s. Almost all took place within rather than between states. They were also less stable than conflicts terminated on the battlefield with the resumption of hostilities among warring parties often leading to the collapse of negotiated settlements. The decade saw a concomitant rise in the number of peace agreements which aimed to regulate or terminate armed conflict. The inclusion of issues generally regarded as falling within the public sphere, provisions regulating the participation of civil society in post-conflict peacebuilding and in the implementation of agreements reached along with the establishment of unofficial or indirect mechanisms for civil society participation in peacemaking appear to underscore growing recognition and acknowledgement of peacebuilding, generally, as a domain for political

[888] Afghanistan (1992) and Rwanda (1994 and 1996), for example, each experienced at least one year in which more than one million refugees returned to each of the two countries. Hundreds of thousands returned in subsequent years. In Mozambique, between 1992 and 1994, more than one million refugees returned to their places of origin. The number of returns appear less dramatic in comparison to the average annual refugee population over the decade which was 10 times larger than the returnee population over the same period. The number of returns was nevertheless significant, both in comparison to refugee returns in previous decades, as noted above, and in relation to the number of refugees resettled (average 38,000 per annum) during the same period. Resettlement statistics are derived from UNHCR annual reports available at, UNHCR Refworld <http://www.refworld.org>.

participation. Typically negotiated by combatants in "closed-door" meetings, often with the assistance of third party mediators, however, civil society actors rarely appeared to be directly involved in the negotiated settlement of armed conflict.

i. Major features

In the period between 1990 and 2000 there were 40 armed conflicts in 38 locations which were either regulated or terminated through negotiated settlements between two or more warring parties.[889] (see Figure 5.21) This includes all cases in which at least two of the primary warring parties to an armed conflict signed an agreement addressing the incompatibility between them.[890] In other words, approximately two-fifths of the total number of armed conflicts active during the decade were either regulated or terminated at the negotiating table rather than on the battlefield. Nearly half were located in Africa with almost the same number roughly divided between Asia and Europe and the remainder located in the Americas.[891] These figures exclude the conflict in

[889] The data unless noted otherwise is derived from the UCDP Peace Agreement Dataset, Ver. 1.0, 2006. Harbom, Högbladh, and Wallensteen 2006. For a list of armed conflicts and peace agreements *see*, Annex III, Table A3.3 - Armed Conflict and Peace Agreements, 1990-2000.

[890] Högbladh 2006, 2. The UCDP dataset defines a peace agreement as "an agreement signed by at least two of the warring parties addressing the problem of the incompatibility either by settling all or part of it, or by clearly outlining a process for how the parties plan to regulate the incompatibility". *Ibid*., 10. The dataset thus excludes ceasefire agreements which do not address ways and means to regulate or terminate the incompatibility between primary warring parties. Ceasefire agreements, as noted above, are included in the UCDP Conflict Termination Dataset.

[891] The total number of cases and regional distribution is in part related to the definition of a peace agreement. The UCDP Peace Agreement Dataset, for example, excludes one armed conflict in the Middle East (Iraq-Kuwait), three armed conflicts in Europe (Azerbaijan (Nagorno Karabakh), Russia (Chechnya) and Spain (Basque)), three armed conflicts in Asia (India-Pakistan (Kashmir), Indonesia (East Timor) and Indonesia (Aceh)) and four armed conflicts in Africa (Algeria, Ethiopia, Lesotho and Senegal (Casamance)) which are included in the University of Ulster, Transitional Justice Institute, International Conflict Research Institute, "The Transitional Justice Peace Agreements Database" <http://www.peaceagreements.ulster.ac.uk/> [accessed 19 September 2010]. The database includes: proposed agreements not accepted by all relevant parties (but setting a framework); agreements between some but not all parties to conflicts; agreements essentially imposed after a military victory; joint declarations largely rhetorical in nature; and,

Fig. 5.21 - Negotiated Settlements, by Region (1990-2000)

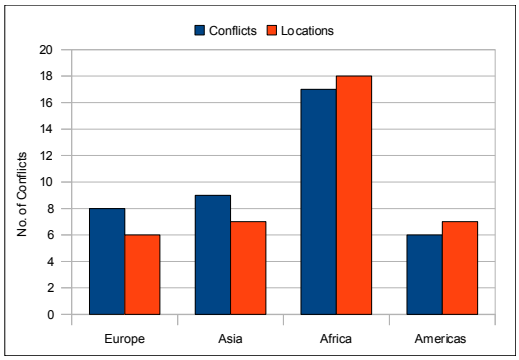
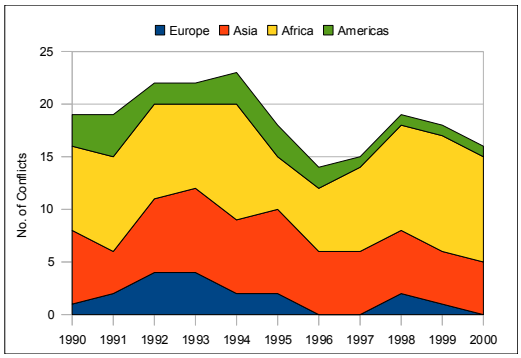


Fig. 5.22 - Negotiated Settlements, by Year & Region (1990-2000)



Source: UCDP Peace Agreement Dataset, Ver. 1.0, 2006.

Palestine-Israel which, as already noted, is discussed in more detail elsewhere in this study. There do not appear to be any other armed conflicts in the Middle East that were regulated or terminated at the negotiating table in the period under consideration.[892] Armed conflicts were more likely to end in negotiations in the Americas where nearly two-thirds resulted in negotiated settlements. In Africa and Europe, between one-half and two-fifths of armed conflicts, respectively, were addressed through negotiations. Armed conflicts were least likely to be addressed at the negotiating table in Asia where just over a quarter resulted in negotiated settlements between two or more warring parties.

The negotiated settlement of armed conflict addressed almost equal numbers of armed conflicts which pre-dated the 1990s and those which broke out during the decade. (see Figure 5.23) With the ratio almost identical to the total number of old and new armed conflicts active between 1990 and 2000, the

agreed accounts of meetings between parties even where these do not create substantive obligations. Legislation, constitutions, interim constitutions, constitutional amendments, or UN Security Council resolutions which were the outcomes of peace negotiations are also included in the database. *Ibid*. For a comparison of major peace agreement databases *see*, Annex III, Table A3.4 - Armed Conflict and Peace Agreements, Comparison of Databases, 1990-2000.

892 The absence of negotiated settlements in the Middle East is in part related to the definition of a peace agreement. The Transitional Justice Peace Agreements Database referred to above, for example, defines UN Security Council resolutions which include provisions to regulate or terminate conflict, including Resolution 687 (1991) relating to the 1990-1991 Gulf War, in its definition of a peace agreement. For additional discussion of Security Council resolutions as peace agreements *see*, Bell 2008, 95–96.

likelihood of a conflict being regulated or terminated at the negotiating table rather than on the battlefield did not appear to depend on the date of its origins. The situation was more diverse at the regional level with the distribution of negotiated settlements largely similar to the ratio of the total number of new and old armed conflicts in each region. Thus, while all of the negotiated settlements in Europe, with the exception of the UK (Northern Ireland), comprised armed conflicts which broke out between 1990 and 2000, the vast majority of those in Asia and the Americas pre-dated the decade.[893] Negotiated settlements in Africa, meanwhile, addressed almost equal numbers of old and new armed conflicts in the region. Negotiated settlements between 1990 and 2000 also addressed almost half of all protracted conflicts—i.e., conflicts characterized by 10 or more consecutive years of armed conflict—most of which broke out prior to the period under consideration.[894] While the majority of protracted conflicts were located in Africa and Asia, negotiated settlements were more likely to address protracted conflicts in Europe and the Americas where between half and three-quarters of all protracted conflicts were regulated or terminated through negotiations rather than on the battlefield.[895]

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[893] In Asia, Tajikistan comprised the only new armed conflict addressed at the negotiating table during the decade. The ratio of old to new armed conflicts in Asia is partly related to the definition of a peace agreement. The Transitional Justice Peace Agreement Database referred to above includes five agreements on the conflict in Indonesia (Aceh). In the Americas negotiated settlements addressed three armed conflicts that broke out in the 1990s—Ecuador-Peru, Mexico and Trinidad & Tobago. For a brief overview of the armed conflicts *see*, UCDP Conflict Encyclopedia (UCDP Database), *supra* n. 847.

[894] This included protracted armed conflicts in the UK (Northern Ireland) (1971-1990), Afghanistan (1978-2000), Bangladesh (1975-1992), Cambodia (1978-1998), India (Tripura) (1979-1988), Philippines (1969-1995), Philippines (Mindanao) (1970-1989), Angola (1975-1995), Mozambique (1977-1992), Sierra Leone (1991-2000), Somalia (1986-1996), Sudan (1983-2000), Colombia (1964-2000), El Salvador (1979-1991) and Guatemala (1965-1995). In some cases the conflicts active in 2000 continued into the next decade. For a brief overview of the armed conflicts *see*, UCDP Conflict Encyclopedia (UCDP Database), *ibid.*

[895] This may be explained, in part, as noted above by the apparent lack of political and material resources devoted to conflict management and resolution in Africa and Asia compared to other regions. *See*, the discussion by Gurr et al., *supra* n. 882. The protracted conflict in the UK (Northern Ireland) and those in El Salvador and Guatemala were all characterized by high levels of international involvement in their management and resolution as well as in post-conflict reconstruction.

Fig. 5.23 - Negotiated Settlements, Onset of Hostilities by Region (1990-2000)

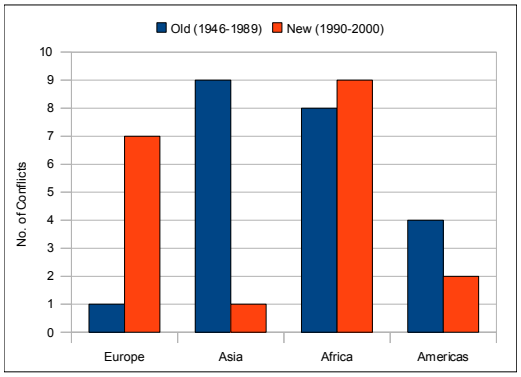
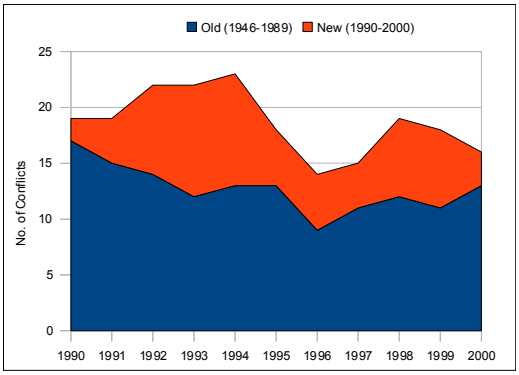


Fig. 5.24 - Negotiated Settlements, Onset of Hostilities (1990-2000)



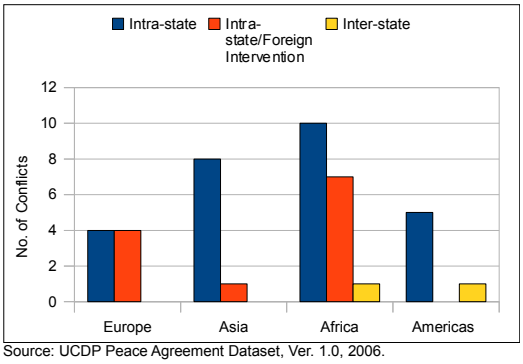
Source: UCDP Peace Agreement Dataset, Ver. 1.0, 2006.

The majority of the 40 armed conflicts addressed through negotiations took place within rather than between states. (see Figure 5.25) Armed conflicts between Eritrea-Ethiopia and Ecuador-Peru comprised the only inter-state conflicts regulated or terminated at the negotiating table between 1990 and 2000.[896] Negotiated settlements were nevertheless equally likely to address armed conflicts within and between states with negotiations in around two-fifths of each type of conflict. They were more likely, however, to address armed conflicts that involved foreign intervention with agreements among warring parties in at least three-quarters of all such conflicts. These cases comprised nearly one-third of the total number of armed conflicts regulated or terminated through negotiations.[897] While negotiated settlements were almost evenly divided between disputes over government and those over territory, settlements

[896] This is also partly a function of the definition of a peace agreement. Inclusion of Security Council resolutions, as noted above, would result in the addition of the armed conflict between Iraq and Kuwait in the early 1990s. *See*, *supra* n. 892. Inter-state conflicts not addressed at the negotiating table included the conflict between India and Pakistan over Kashmir and the conflict between Cameroon and Nigeria over Bakassi. For a brief overview of the two armed conflicts *see*, UCDP Conflict Encyclopedia (UCDP Database), *supra* n. 847.

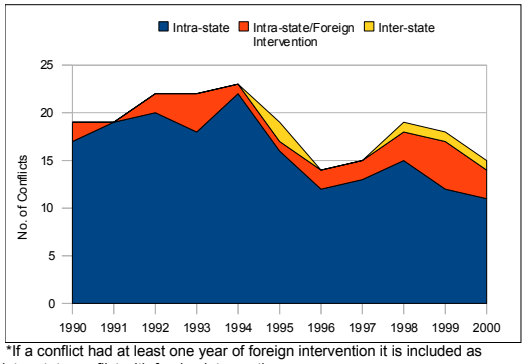
[897] The majority (more than half) were located in Africa with slightly less than half in Europe and a single case in Asia. In two cases—Democratic Republic of Congo and Guinea Bissau—foreign intervention occurred in each year of conflict activity between 1990 and 2000. The negotiated settlement of the armed conflict in Azerbaijan (Nagorno-Karabakh), referred to above, which also involved foreign intervention, is not included in the UCDP dataset. *See*, *supra* n. 891. Three additional conflicts which involved foreign intervention—Lebanon, Lesotho and Uzbekistan—were neither regulated nor terminated through peace negotiations.

Fig. 5.25 - Negotiated Settlements, by Type and Region (1990-2000)



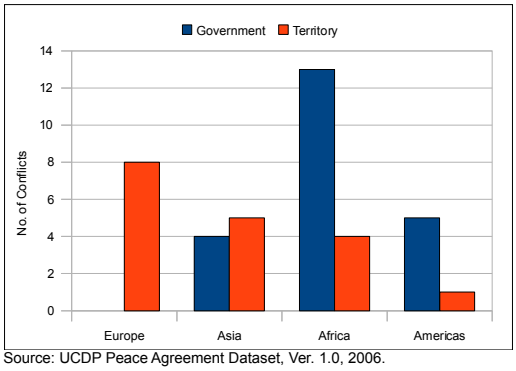
Source: UCDP Peace Agreement Dataset, Ver. 1.0, 2006.

Fig. 5.26 - Negotiated Settlements, by Year, Type and Region (1990-2000)



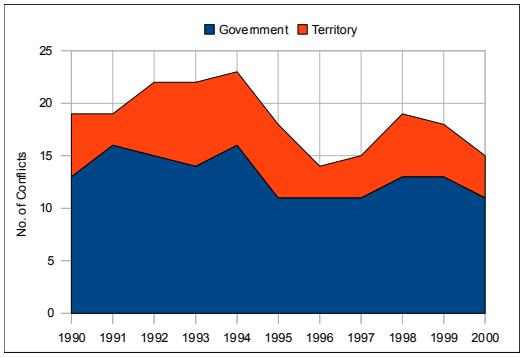
*If a conflict had at least one year of foreign intervention it is included as intra-state conflict with foreign intervention.

Fig. 5.27 - Negotiated Settlements, by Incompatibility and Region (1990-2000)



Source: UCDP Peace Agreement Dataset, Ver. 1.0, 2006.

Fig. 5.28 - Negotiated Settlements, by Year, Incompatibility and Region (1990-2000)



were more likely to address armed conflicts over government (nearly half of all cases) than those over territory (one-third of all cases).[898] (see Figure 5.27) This was also generally true at the regional level with the exception of Europe where none of the armed conflicts over government (Azerbaijan, Georgia and Russia) resulted in negotiated settlements and in the Americas where the only armed conflict over territory (Ecuador-Peru) was terminated at the negotiating table.

The negotiated settlement of armed conflict in the 1990s also appeared more likely to address major armed conflicts. (see Figure 5.29) While armed

[898] This appears to suggest that conflicts over government are more "susceptible" to negotiated settlements than conflicts over territory. Högbladh 2006, 8. This reasons for this are unclear. It may relate to substantive differences between governmental and territorial conflicts with the latter involving fewer issues of dispute to be resolved. International engagement in conflict management and resolution does not necessarily explain the difference with high levels of international involvement in territorial conflicts in Europe and governmental ones in the Americas during the decade.

Fig. 5.29 - Negotiated Settlements, by Intensity and Region (1990-2000)

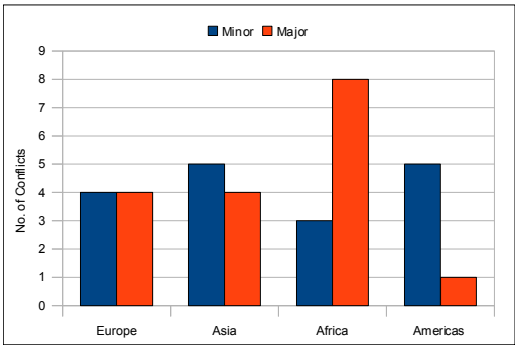
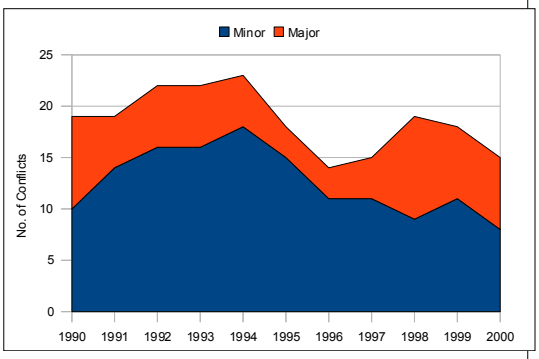


Fig. 5.30 - Negotiated Settlements, by Year, Intensity and Region (1990-2000)



Source: UCDP Peace Agreement Dataset, Ver. 1.0, 2006.

conflicts regulated or terminated through negotiations were almost evenly divided between major and minor conflicts, negotiated settlements were twice as likely to address major rather than minor armed conflicts. Nearly two-thirds of all major armed conflicts were regulated or terminated through negotiations compared to only one-third of all minor armed conflicts. This included long-running major conflicts in Afghanistan, the Philippines, Angola, Mozambique and Sudan as well as more recent ones in Bosnia and Herzegovina, Georgia, Kosovo and Tajikistan.[899] The distribution of major and minor armed conflicts was similar at the regional level—i.e., almost evenly divided—with the exception of Africa where major armed conflicts comprised nearly three-quarters of the total number of negotiated settlements and in the Americas where major armed conflicts comprised less than one-fifth of the total number of negotiated settlements. In most regions negotiated settlements were also around twice as likely to address major armed conflicts. The Americas was the only region in which negotiated settlements addressed a slightly higher percentage of minor

[899] Taking into account the entire length of the 40 armed conflicts, i.e., including conflict activity that pre-dated the 1990s, negotiated settlements addressed a slightly larger number of major armed conflicts, however, given the larger number of major armed conflicts in the period pre-dating the 1990s, negotiated settlements addressed a smaller ratio (around half) of the total number of major armed conflicts.

armed conflicts.[900]

The long-term sustainability of negotiated settlements in the 1990s nevertheless comprised a major challenge to the overall reduction of armed conflict around the world. While the number of armed conflicts regulated or terminated through negotiations more than doubled in comparison to previous decades, as noted above, the number of cases in which violence among warring parties resumed within five years of a negotiated settlement nearly quadrupled over the same period.[901] Hostilities among the same parties resumed in nearly half of all conflicts regulated or terminated through negotiations between 1990 and 2000. In nearly the same number of cases, moreover, at least one of the warring parties officially withdrew from a peace agreement resulting in a collapse of the negotiated settlement.[902] (see Figure 5.31) These conflicts had several common features: the majority pre-dated the 1990s, many were protracted with 10 or more years of consecutive violence, most were fought over the nature or control of government, and the vast majority comprised major armed conflicts with 1,000 or more battle-related deaths per annum.[903] The sustainability of negotiated settlements was highest in

[900] Taking into account the entire length of the 40 armed conflicts at the regional level, i.e., including conflict activity that pre-dated the 1990s, negotiated settlements in Asia were also slightly more likely to address minor rather major armed conflicts.

[901] The UCDP Peace Agreement Dataset uses five years without a restart of hostilities as the standard measure for the success of a negotiated settlement to armed conflict. Högbladh 2006, 8. During the Cold War period the average failure rate for negotiated settlements was around 13 percent. Mack 2007, 21.

[902] The UCDP Peace Agreement Dataset considers a peace agreement to be no longer fully implemented if its validity is contested by one or more of the signatories. An agreement is considered to have ended if one of the signatories officially withdraws from the peace agreement. Högbladh 2006, 5.

[903] In more than three-quarters of all cases in which violence among warring parties resumed within five years of the signing of a peace agreement and in nearly two-thirds of all cases in which peace agreements ended armed conflicts pre-dated the 1990s. Protracted conflicts and those which involved foreign intervention comprised around half of all conflicts in which violence among warring parties resumed within five years of the signing of a peace agreement and around one-third of all cases in which peace agreements ended. Armed conflicts over government comprised more than four-fifths of all conflicts in which violence among warring parties resumed within five years of the signing of a peace agreement and around two-thirds of all cases in which peace agreements ended. Major armed conflict

Fig. 5.31 - Negotiated Settlements, by Sustainability and Region (1990-2000)

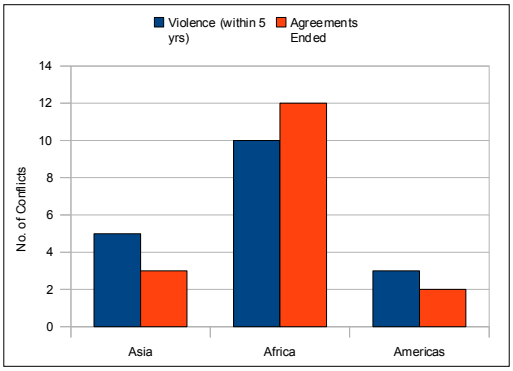
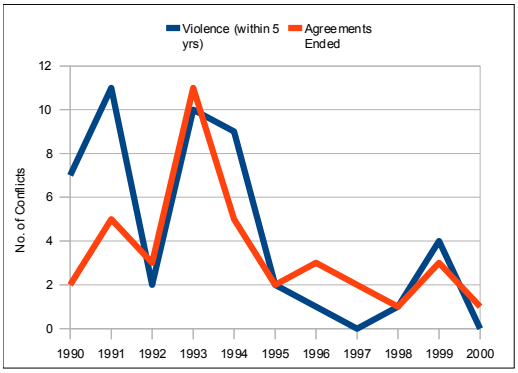


Fig. 5.32 - Negotiated Settlements, by Year, Sustainability and Region (1990-2000)



Source: UCDP Peace Agreement Dataset, Ver. 1.0, 2006.

Europe where five years after the signing of agreements regulating or terminating armed conflict warring parties continued to abide by ceasefires and negotiated settlements remained in force.[904] Negotiated settlements were least sustainable in Africa where violence among warring parties resumed within five years of the signing of agreements in nearly two-thirds of all cases and nearly three-quarters of all peace agreements ended.[905] In Asia and the Americas violence among warring parties resumed in around half of all cases, but only one-third of all peace agreements came to an end.

ii. Peace agreements and provisions

The 40 armed conflicts regulated or terminated through negotiated settlements resulted in a total of 104 peace agreements.[906] (see Figure 5.33) The large

comprised two-thirds of all conflicts in which violence among warring parties resumed within five years of the signing of a peace agreement and around half of all cases in which peace agreements ended.

[904] The high degree of sustainability of peace agreements in Europe, especially in the Balkans, has been attributed to the "dramatic, ongoing commitment of troops and resources from the international community". Wanis-St. John and Kew 2008, 28.

[905] The lack of a similar commitment of political and material support to peace processes in other regions, Africa in particular, as noted above, may explain in part the high rate of recidivism elsewhere. A small body of case studies and empirical research further suggest, however, that peacemaking processes which excluded civil society actors, especially in non-democratic countries, may also be more likely to fail. *See*, studies by Wanis-St. John and Kew and by Nilsson, Chapter 2, *supra* n. 284.

[906] The UCDP Peace Agreement Dataset divides the 104 peace agreements into three basic

number of peace agreements in comparison to the number of conflicts can be attributed to at least three main factors.[907] In some cases (e.g., Guatemala), the parties addressed the conflict between them through a series of agreements each of which dealt with specific aspects of the respective conflicts.[908] In a second set of cases (e.g., Chad), separate agreements were signed between governments and the different rebel or opposition groups taking part in the conflict.[909] In a last set of cases (e.g., Liberia), the failure to implement agreements reached between warring parties and the resumption of hostilities resulted in new rounds of negotiations and the signing of new agreements often incorporating and building upon the texts of previous peace agreements.[910]

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types. Peace process agreements (17) provide a framework for the initiation of a conflict resolution process. Partial agreements (60), as the name suggests, focus on the settlement of one aspect of a conflict. Full agreements (27) set out a comprehensive solution to a conflict. For definitions *see*, Högbladh 2006, 9. The number of peace agreements is partly a function of the definition of a peace agreement. The Transitional Justice Peace Agreement Database and the United Nations Peacemaker Database each include a larger number of peace agreements related to the 40 armed conflicts regulated or terminated through negotiations between 1990 and 2000. The number of agreements in the former, for example, is more than three times the number of agreements in the UCDP dataset. For a comparison by conflict *see*, Annex III, Table A3.4 - Armed Conflict and Peace Agreements, Comparison of Databases, 1990-2000.

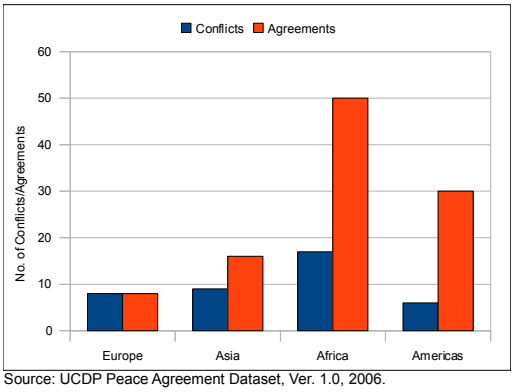
907 The apparent rise in the number of peace agreements in the 1990s, as Bell explains, was both "illusory" and "real". It was illusory in the sense that termination of armed conflict at the negotiating table rather than on the battlefield has continued through time. Drawing a distinction between agreements reached during the Cold War and those negotiated in the decade that followed, Bell identifies UN Security Council resolutions mapping out solutions to conflict, as noted above, agreements relating to domestic peace processes, decolonization agreements as well as a small number of "peculiar peace treaties" as precursors to contemporary peace agreements. The rise in peace agreements in the 1990s was nevertheless real, not so much because of an increase in the number of agreements, but rather due to their distinctiveness. This includes the normative background for such agreements (i.e., self-determination, human rights, humanitarian law and the prohibition of force), the surrounding international and institutionalized context and the largely ambiguous outcomes in relation to the transfer of sovereignty and territory. Bell 2008, 102–104.

908 In Guatemala separate agreements reached over a period of six years established a framework for negotiations and dealt with various issues including democratization, constitutional and electoral reform, human rights, truth and reconciliation, indigenous peoples, socio-economic reform and refugees. Similar cases include Tajikistan, Mozambique, Rwanda and El Salvador.

909 This included the Chad National Front, the Committee of National Revival for Peace and Democracy, the Movement for Democracy and Development, the Renewed National Front of Chad, the Movement for Social Justice and Democracy, the Revolutionary Democratic Council, the Armed Forces of the Republic of Chad in addition to government representatives.

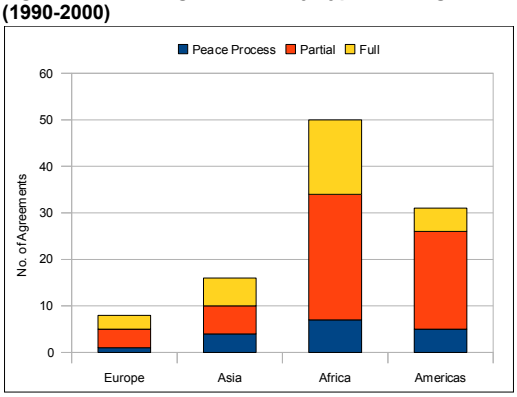
910 The parties signed a total of nine different agreements between 1990 and 2000, seven of which ended—i.e., one or more parties failed to implement the agreement. The Transitional Justice Peace Agreement Database lists nearly double the number of peace agreements in

Fig. 5.33 - Peace Agreements, by Region (1990-2000)



Source: UCDP Peace Agreement Dataset, Ver. 1.0, 2006.

Fig. 5.34 - Peace Agreements, by Type and Region (1990-2000)



Armed conflicts in Africa, which comprised nearly half of the total number of armed conflicts regulated or terminated through negotiations, also produced nearly half of the total number of peace agreements signed throughout the decade. The large number of agreements in Africa can also be traced to each of the explanations cited above—i.e., graduated peacemaking processes, the presence of multiple actors and the failure of initial peace agreements.[911] The second largest number of agreements, comprising around one-quarter of the total number of peace agreements signed during the decade, was in the Americas. With the fewest armed conflicts per region, the Americas had the highest number of agreements per conflict due to the graduated nature of peacemaking processes in El Salvador and Guatemala.[912] The negotiated settlement of armed conflicts in Asia and Europe resulted in fewer peace agreements compared to other regions. Asia had a slightly larger number of agreements than cases while Europe not only had the fewest peace agreements, it was also the only region in which each case only generated a

Liberia over the same period.

911 The negotiated settlement of armed conflict in Africa produced the largest number of agreements of each type. This included seven peace process agreements, 27 partial agreements and 16 full agreements.

912 This included five peace process agreements, 21 partial agreements and five full agreements. Peace negotiations in El Salvador and Guatemala produced a total of 25 of the 30 agreements regulating or resolving armed conflicts in the Americas.

single agreement.[913]

The peace agreements reached in each of the 40 cases included a wide range of provisions to regulate or terminate conflicts between warring parties. Extending well beyond securing a cessation of hostilities, agreements addressed an array of issues generally considered to fall with the public sphere.[914] It is the broad scope and content of such agreements, as already noted in Chapter 2, that has arguably contributed to the consideration of peace negotiations as a domain for political participation.[915] More than half of all peace agreements in more than three-quarters of all cases, for example, included references to the reform or drafting of new constitutions.[916] These provisions

[913] The negotiated settlement of armed conflict in Asia produced four peace process agreements and equal numbers (six) of partial and full agreements. In Europe there was only a single peace process agreement, four partial agreements and three full agreements.

[914] A primary aim of peace negotiations, and often a pre-condition for addressing solutions to other aspects of armed conflict, in particular, durable solutions for refugees, is to secure an end to hostilities between warring parties. Ceasefires comprised the most common means to address the *behaviour* of the parties taking part in each of the armed conflicts. Three-quarters of all cases and nearly two-thirds of all peace agreements included provisions setting out conditions, procedures and timetables for the cessation of hostilities between warring parties. The UCDP dataset does not include ceasefire agreements which do not address other aspects of a conflict between warring parties. Högbladh 2006, 10. Additional provisions which aimed to regulate the behaviour of warring parties included disarmament, demobilization and reintegration, the integration of rebel groups in the armed forces of the state, and the withdrawal of foreign forces. Agreement texts were unavailable in four cases: Afghanistan (two agreements), Chad (all agreements), Philippines (one agreement) and Niger (one agreement).

[915] Additional issues addressed in peace agreements as coded in the UCDP Peace Agreement Database include amnesties, the release of prisoners, refugees, national reconciliation, the establishment of implementation mechanisms, the deployment of peacekeeping missions, the reaffirmation of existing peace agreements and an outline of the peacemaking process. The broad nature of agreement provisions is further evident from categorization of provisions in other peace agreement databases. The Transitional Justice Peace Agreement Database, referred to above, for example, codes agreements for provisions relating to women, civil society, UN involvement, past mechanism, amnesty, prisoners, statehood/identity, governance/democratic institutions, victims, criminal justice reform, national human rights institutions, human rights framework, judicial reform, policing, refugees, land, development and socio-economic rights, involvement of the international community, and enforcement. The UN Peacemaker Peace Agreement Database identifies provisions relating to the framework for negotiations, security (military, police, DDR, etc.), constitution and political system/structure/institutions, rule of law and administration of justice, electoral framework, human rights, women, children, minorities, indigenous peoples and other groups, humanitarian and refugee issues, socio-economic and development issues, media and information, transitional security, governance and institutional arrangements, transitional justice, traditional and local actors, statehood and identity, implementation mechanism and arrangements, implementing and supporting actors. UN Peacemaker Peace Agreement Database <http://peacemaker.unlb.org>.

[916] There is growing recognition in both law and in practice, as explained earlier, of the right of

were more likely in peace agreements which aimed to regulated or terminate major armed conflict over government (around two-thirds of all cases) with little apparent correlation between such provisions and the temporal origins of the conflict. Constitutional provisions were most common in Europe (nearly two-thirds of all cases) and nearly as common in all other regions (around half of all cases and between one-quarter and nearly two-thirds of agreements).

Peace agreements also included provisions which established a range of democratic mechanisms and procedures to regulate or terminate the *incompatibility* between warring parties. (see Figures 5.35 and 5.36) The most common provision, found in around two-fifths of all agreements, but in nearly half of all cases was the holding of elections following the signing of a peace agreement.[917] Electoral provisions were most common in Africa (half of agreements and two-thirds of all cases) followed by Asia and the Americas (half to one-fifth of agreements and one-third of all cases) and Europe (one-quarter of all agreements and cases). While nearly all governmental conflicts and related agreements included electoral provisions, local government, cultural freedoms and autonomy comprised the most common provisions to address the incompatibility among warring parties in conflicts over territory. Approximately two-fifths of all cases and related agreements that aimed to regulate or terminate armed conflict over territory included such provisions.

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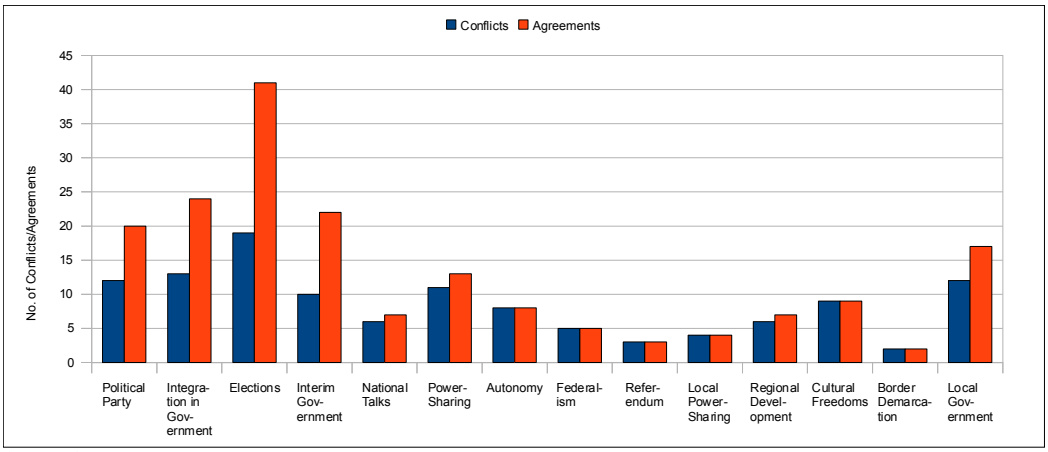
citizens to take part in constitution making. *See*, Chapter 2, *supra* n. 193; and, Chapter 4, *supra* n. 742-750 and corresponding text. There were no cases or agreements with such provisions in the Middle East. The UCDP Peace Agreement Dataset does not code agreements for constitutional provisions. The figures are based on the author's analysis.

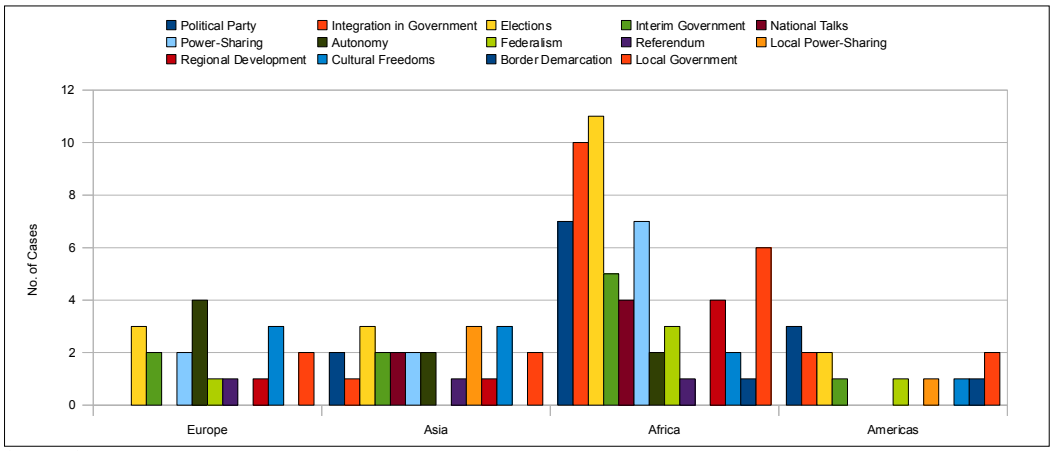
[917] Agreements in Cambodia, Mozambique, Bosnia and Herzegovina and in Kosovo, as noted in the previous chapter, included some of the most detailed provisions. Peace agreements in six cases in Europe (Bosnia and Herzegovina (Croat), Georgia (Abkhazia), Moldova, Yugoslavia (Kosovo), Yugoslavia (Slovenia), UK (Northern Ireland)), six cases in Asia (Bangladesh, India (Bodoland), India (Tripura), Papua New Guinea (Bougainville), Philippines, Philippines (Mindanao)), six cases in Africa (Democratic Republic of Congo, Comoros (Anjouan), Mali (Azawad), Niger (Air & Azawad), Sudan, Eritrea-Ethiopia) and four cases in the Americas (Colombia, Haiti, Mexico, Ecuador-Peru) did not include electoral provisions.

Fig. 5.35 - Peace Agreements, Regulation of Incompatibility (1990-2000)



Source: UCDP Peace Agreement Dataset, Ver. 1.0, 2006.

Fig. 5.36 - Peace Agreements, Regulation of Incompatibility, by Region (1990-2000)

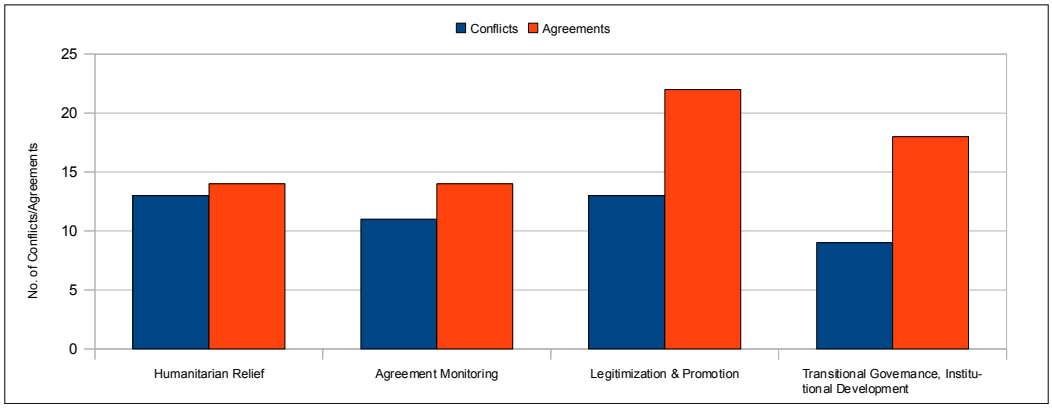


Source: UCDP Peace Agreement Dataset, Ver. 1.0, 2006.

The 104 peace agreements also included a wide range of provisions related to the participation of civil society in peacebuilding including the implementation of peace agreements.[918] (see Figure 5.37 and 5.38) Two-fifths of all agreements and more than half of all cases included provisions governing civil society participation in areas such as humanitarian relief, agreement monitoring, legitimization and promotion of agreements reached and in

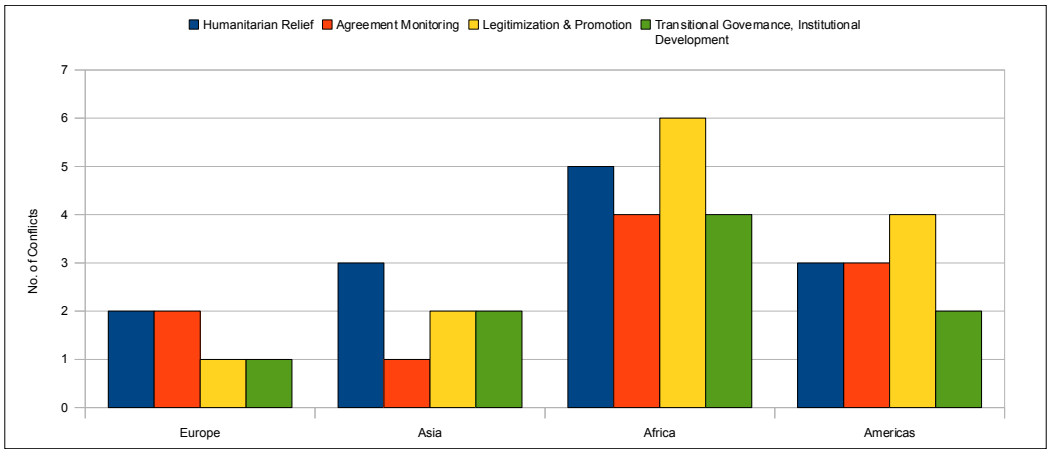
[918] The data is derived from The Transitional Justice Peace Agreement Database <http://www.peaceagreements.ulster.ac.uk/>. Bell and O'Rourke 2007. The latter study, which is derived from the above database, "recorded any reference either to 'civil society' or to any groups which could be considered part of civil society, including nongovernmental organizations (NGOs), general references to women's groups, church groups, and humanitarian organizations, as well as more opaque references, such as to individuals who 'represent special interests' and to provision for popular consultation". *Ibid*., 297.

Fig. 5.37 - Peace Agreements, Civil Society Participation by Type (1990-2000)



Source: University of Ulster, Transitional Justice Peace Agreement Database

Fig. 5.38 - Peace Agreements, Civil Society Participation by Type and Region (1990-2000)



Source: University of Ulster, Transitional Justice Peace Agreement Database.

transitional governance and institutional development.[919] These provisions were more common (three-quarters of all cases) in agreements relating to conflicts over government that broke out during the 1990s (nearly two-thirds). There did

[919] Bell and O'Rourke identify three discrete references in peace agreements to civil society participation in humanitarian relief: provision of humanitarian supplies, protection of civil society groups as legitimate actors and identification of a continued role for civil society in resource allocation. In the area of monitoring the study found references to civil society participation in monitoring human rights, the role of civil society in new human rights institutions and to the participation of civil society actors—local and international—in monitoring the implementation of peace agreements. Peace agreements reviewed by Bell and O'Rourke also included provisions relating to the role of civil society actors as mediators or observers and in generating awareness and building popular support for agreements. The study also identified provisions in peace agreements governing the legal status of civil society organizations, the development of civil society and the role of civil society actors in transitional governance including public consultations, the drafting of new laws and constitutions and the reservation of special seats for civil society actors in national legislatures. *Ibid.*, 297-303. For provisions relating to civil society participation *see*, Annex III - Table A3.5 - Armed Conflict and Peace Agreements, Provisions for Civil Society Participation, 1990-2000.

not appear to be any correlation between such provisions and the intensity of armed conflict. The most detailed provisions can be found in agreements which terminated the long-standing armed conflict in Guatemala. With participatory provisions enshrined almost all of the 16 peace agreements, the most common provisions related to the legitimization and promotion of the negotiated settlement along with the development of civil society and its role in transitional governance. At the regional level such provisions were most common in peace agreements in Africa (more than two-thirds of all conflicts) followed by the Americas and Asia (between one-half and two-thirds of all cases) with participatory provisions least common in Europe (just over one-third of all cases).[920] The inclusion of such provisions appear to further underscore the importance of and apparent linkage between political participation and the resolution or transformation of armed conflict.

iii. Participation in unofficial and official peacemaking

The participation of civil society actors in peacemaking processes between 1990 and 2000 appeared to take place primarily through indirect mechanisms. (see Figure 5.39) The use of such mechanisms, including dialogue groups, workshops and conferences, inter-community meetings, national consultations and civil society assemblies, occurred in all four regions where warring parties

[920] There was more diversity at the regional level in terms of the type of conflicts in which peace agreements included provisions for civil society participation in peacebuilding and in the implementation of peace agreements. In Africa a majority of the conflicts (two-thirds) comprised major armed conflicts that broke out in the 1990s. All of the conflicts related to disputes over government. In the Americas a majority (three-quarters) were old conflicts and all related to disputes over government with most (four-fifths) comprising minor armed conflict. In Asia a majority (four-fifths) comprised minor conflicts that pre-dated the 1990s. The conflicts were almost evenly divided between governmental and territorial disputes. Finally, in Europe a majority (two-thirds) comprised major conflicts that broke out during the 1990s all of which related to disputes over territory.

aimed to regulate or terminate armed conflicts at the negotiating table.[921] While the lack of comprehensive data makes it difficult to draw hard empirical conclusions, it appears that civil society actors took part in peacemaking processes through such mechanisms in at least half of all armed conflicts regulated or terminated through negotiations.[922] A majority comprised major armed conflicts (half) over government (more than three-quarters) which pre-dated the 1990s (two-thirds). In a wide array of cases national, regional and international NGOs and academic institutions sponsored dialogue groups, workshops and conferences to promote discussion among small groups of local civil society actors and assist them in developing conflict resolution strategies.[923] Much broader participation took place in other cases by shifting peacemaking efforts to the local level through community peace processes, inter-community

[921] The lack of standard or cross-cutting definitions of civil society and participation in peacemaking make it difficult to compare such participation across cases. The types or forms of participation listed here are referred to or classified in much of the literature as forms of Track II and Track III diplomacy, as mechanisms for public participation, and as both indirect and direct forms of civil society participation in peacemaking. They are referred to here generally as indirect mechanisms given the often though not always indeterminate relationship, as noted earlier, with the outcome of official or Track I negotiations. *See*, Chapter 2, *supra* n. 253.

[922] Existing datasets on peacemaking, as already noted, focus primarily on the role of third party mediators. *See*, Chapter 2, *supra* n. 258. The UCDP Peace Agreement Dataset used in this study does not include information on civil society participation in negotiated settlements to armed conflict. Nilsson's quantitative study on civil society participation and the sustainability of peace agreements relies on the Terms of Peace Agreements Dataset (unpublished) which covers 83 peace agreements signed between 1989 and 2004. According to Nilsson, just over one-third of all settlements in the dataset included at least one civil society actor, however, the study does not distinguish between civil society participation in peace negotiations and agreement provisions for civil society participation in peacebuilding and in the implementation of peace agreements. The study defines civil society as separate from the state with its governmental institutions, and distinct from the political sphere which comprises political parties. Nilsson 2012, 246, 255.

[923] The literature varies from detailed case studies to research which refers incidentally to civil society participation in unofficial or indirect mechanisms associated with official peace processes. *See*, the discussion on civil society participation in Burundi (Daley 2007, 343, *citing*, de Silva Burke, Klot, and Bunting 2001; McClintock and Nahimana 2008); Colombia (Gomez Serna 2002; and, Institute for Multi-Track Diplomacy <http://www.imtd.org>); Democratic Republic of Congo (Naidoo 2000); Ecuador-Peru (Fischer 2006); Eritrea-Ethiopia (Institute for Multi-Track Diplomacy, *ibid*); El Salvador (Nan 1999); Georgia (Stewart 2004); Moldova (Transdniestra) (Fischer 2006); Rwanda (Clark 2012); Sudan (Dixon and Simmons 2006); Tajikistan (Mullojanov 2001; Slim and Saunders 2001; Saunders 2003; and Zartman 2008); United Kingdom (Northern Ireland) (Montville 1987; and, Guelke 2003); and Yugoslavia (Kosovo) (Morozzo della Rocca 1998).

meetings and regional consultations.[924] In other cases national consultations involving official and unofficial actors enabled representatives of various civil society sectors to identify root causes of each the respective conflicts and put forward recommendations for solutions.[925] The indirect participation of civil society actors appeared to be most common in the Americas (around two-thirds of all negotiated settlements) and least likely in Asia (around one-third of all settlements). In both Europe and in Africa, at least half of all negotiated settlements to armed conflict during the decade included indirect mechanisms for civil society participation.[926]

It was the representatives of states, rebel groups and opposition movements, however, who comprised the primary actors taking part in negotiations in each of the 40 armed conflicts. The majority comprised major armed conflicts (all but one) over government which pre-dated the 1990s

[924] The inter-community meetings in Mali appeared to provide for the broadest scope of participation with meetings attended by 100 to more than 1,000 participants. The case is unique from the previous cases in that civil society actors took part in the negotiation of localized peace agreements that followed the failure of warring parties to implement previous agreements. Government appointed representatives of civil society took part in talks setting out the agenda and process leading up to the second round of official negotiations in 1992, but did not take part in their own right or on their own initiative. A few civil society representatives also participated in ceasefire talks preceding the negotiations. Lode 1997; Storholt 2001; Lode 2002a; Lode 2002b; and, Lode 2002c. *See also*, the discussion on community-level peace processes in Somalia in, Amber 2010.

[925] The most extensive participation took place in Guatemala where a Grand National Dialogue and Civil Society Assembly enabled civil society actors to identify issues to be addressed in official negotiations and then craft position papers on major issues which were then transferred to the parties taking part in the negotiations. The Guatemala case also appears to be one of the few cases over the decade in which civil society actors took part in a regional mechanism set up to support the peace processes taking place in Central America. Krznaric 1999, and Alvarez and Prado 2002 *See also*, the discussion of civil society participation in Angola (Comerford 2004); Liberia (Woods 1996; and, Dupuy and Detzel 2007); the Philippines (Ferrer 2002); and, Sierra Leone (Turay 2000; Barnes and Polze 2000; Dyfan 2003; and, Hayner 2007).

[926] There was more diversity at the regional level in terms of the type of conflicts in which civil society actors took part in unofficial or indirect peacemaking mechanisms. In the Americas a majority (three-quarters) of the cases related to minor armed conflicts over government which pre-dated the 1990s. In Africa a majority of the cases (three-fifths) comprised major conflicts over government which pre-dated the 1990s (two-thirds). All of the conflicts in Europe, by way of contrast, related to disputes over territory while a majority (three-quarters) broke out during the 1990s. The cases were evenly divided between major and minor armed conflicts. In Asia all of the cases comprised major conflicts over government and were evenly divided between old and new disputes.

Fig. 5.39 - Negotiated Settlements, Unofficial/Indirect Civil Society Participation (1990-2000)

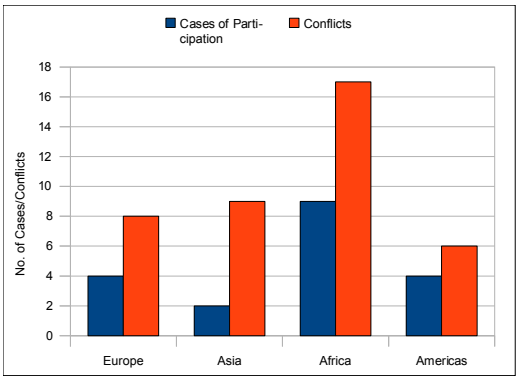
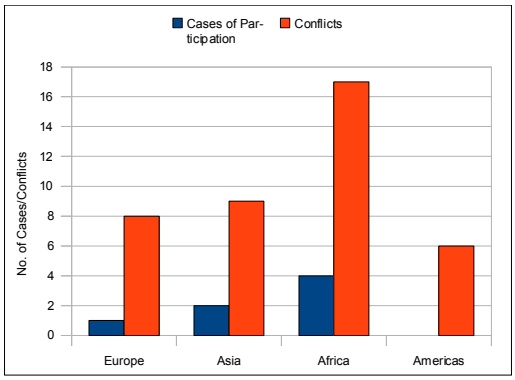


Fig. 5.40 - Negotiated Settlements, Official/DIrect Civil Society Participation (1990-2000)



(nearly three-quarters). Signatories to agreements reached between warring parties included nearly 50 states and more than 100 rebel groups and opposition movements along with a limited number of other non-state actors.[927] In the majority of cases (approximately two-thirds) negotiations were comprehensive, that is to say, they involved all of the warring parties in each conflict.[928] They were less comprehensive, however, in the sense that almost all of the talks appeared to comprise "elite pact-making" approaches to peace negotiations.[929] Civil society actors rarely appeared to be engaged directly in the negotiated settlement of armed conflicts with the exception of third party

[927] An array of international and regional organizations, more than 50 additional states, and a small number of non-governmental organizations co-signed agreements as witnesses, guarantors and as mediators. In addition to 61 individual states, this included the United Nations, the Commonwealth Association, the G8 and the Organization of Islamic Unity. Regional organizations which played a mediating role included the European Union, the Organization for Security and Cooperation in Europe, the Organization of African Unity (predecessor to the African Union), the Economic Community of West African States, and the Southern African Development Community. The negotiations also involved representatives of international and regional peacekeeping missions (UNMIL, IFOR, KFOR, ECOMIL), the International Commission on Decommissioning in Northern Ireland and the Peace Implementation Council in Bosnia and Herzegovina.

[928] The ratio between comprehensive and dyadic agreements was more diverse at the regional level. In Europe and in the Americas the majority of the agreements were comprehensive. There was only one dyadic agreement in Europe (United Kingdom (Northern Ireland) and four in the Americas (Haiti, Mexico and two agreements in Colombia). The number of comprehensive and dyadic agreements in Asia and in Africa was almost even divided.

[929] In "elite pact-making" approaches to peace negotiations, as Barnes explains, "the representatives of the combatant groups (governments and armed insurgencies) [are brought together]—typically with the assistance of an international mediator and often behind closed doors in a foreign location—to reach an agreement that satisfies at least the minimum demands of the negotiators". Barnes 2002a, 8.

mediation by national, regional and/or international non-governmental organizations.[930] At least six cases in Africa and in Asia involved some form of civil society mediation, primarily, though not exclusively, by faith-based organizations.[931] (see Figure 5.40) This included mediation by the *Comunitá di Sant'Egidio* in Mozambique; by the Solomon Islands Christian Association in Papua New Guinea (Bougainville); by the Catholic Bishops Conference-National Council of Churches Joint Peace Committee in the Philippines; by an Inter-Faith Mediation Committee and the International Negotiation Network in Liberia; by an Inter-Religious Council in Sierra Leone; and, by the Mwalimu Nyerere Foundation in Burundi.[932] In the conflict over Northern Ireland, civil society actors took part in negotiations through the election of a women's

[930] This excludes Track II or unofficial negotiations and consultative fora like national conferences and civil society assemblies referred to above. While some studies define these mechanisms as forms of direct participation, as noted in Chapter 2, these mechanisms are considered here as indirect forms of participation given the indeterminate relation between participation and the outcome or influence of such mechanisms on official talks. The data also excludes cases in which civil society actors "took part" in official negotiations as observers rather than participants—e.g., Sierra Leone, Somalia and Burundi. The aforementioned cases each involved women's observer delegations. Dyfan 2003, 5; Porter 2003, 260; and, Daley 2007, 342–343.

[931] Using a broader definition of a peace agreement appears to yield additional cases. In their study of peace agreements, civil society and participatory democracy, referred to above, Bell and O'Rourke identify cases of civil society participation in negotiations which led to the 1994 North Nasioi Agreement in Papua New Guinea (Bougainville) and to the 1998 Istanbul Statement and the 1999 Athens meeting in Georgia (Abkhazia). Bell and O'Rourke 2007, 300–301. It also appears that civil society actors took part in negotiations which led to the 1996 Public Accord Agreement in Tajikistan. Mullojanov 2001, 61. Agreements in these cases are excluded from the UCDP Peace Agreement Dataset.

[932] The *Comunitá di Sant'Egidio* was founded in 1968 as a public lay association of the Roman Catholic Church. The order was also involved in peacemaking efforts in the 1990s in Algeria, Guatemala and Kosovo. Bartoli 1999. The Solomon Islands Christian Association was established in 1967 as an ecumenical organization comprised of the island's five largest Christian churches. Braithwaite et al. 2010. The Catholic Bishops Council and National Council of Churches represented the highest councils of the dominant Catholic and Protestant Christian churches in the Philippines. Santos 2005. The Interfaith Mediation Committee in Liberia was established in 1990 comprised of the Liberia Council of Churches and the National Muslim Council of Liberia. Sesay 1996; and, Woods 1996. The Inter-Religious Council of Sierra Leone was established in 1997 comprised of various Islamic and Christian organizations. Turay 2000; and, Jessop, Aljets, and Chacko 2008. The International Negotiation Network was founded in the late 1980s to promote non-military means of reducing conflict and to help prevent the escalation of lesser-scale conflicts into armed ones. Spencer and Spencer 1992. The Mwalimu Nyerere Foundation was established in 1996 to promote peace, unity and people-centred development in Africa. Bentley and Southall 2005. In Africa all of the cases comprised major conflicts over government and all but one pre-dated the 1990s. In Asia the cases were evenly divided between old and new disputes over both government and territory all of which comprised major armed conflicts.

delegation and a labour coalition which were accorded several seats among the 110 allocated for parties taking part in talks to resolve the long-running conflict.[933] The majority (more than two-thirds) comprised major armed conflicts over government which pre-dated the 1990s. Aside from the participation of refugees in several additional cases, which is addressed in detail in the following section, the negotiations in each of the cases otherwise appeared to maintain a clear division between state and civil society engagement in the negotiated settlement of armed conflict.

IV. Refugees and the Negotiation of Durable Solutions

The 1990s also witnessed an increasing number of refugee situations addressed through negotiations that aimed to regulate or terminate armed conflict. While such negotiations addressed both old and new armed conflicts, they were more likely to deal with displacement stemming from major armed conflicts over government. All of the negotiated settlements which addressed refugee situations aimed to regulate or terminate armed conflicts within rather than between states. These settlements also appeared to be slightly more sustainable with the resumption of hostilities among warring parties and the collapse of peace agreements somewhat lower than negotiated settlements generally. The inclusion of issues in peace agreements on which refugees are widely recognized as having a say along with more explicit provisions on refugee participation in the planning, design and implementation of durable

[933] The participants to the all party talks on the future of Northern Ireland were chosen through a two-track electoral system. Five representatives were elected from each of the 18 territorial constituencies for a total of 90 seats. The remaining 20 seats were allocated to the ten parties, each of which was given two seats at the negotiating table, which obtained the most votes across Northern Ireland as a whole. The women and labor delegations were elected through the latter process. Fearon 2002. The case was a minor armed conflict over territory which pre-dated the 1990s.

solutions as well as the establishment of unofficial or indirect mechanisms for refugee participation in peacemaking appeared to evidence growing recognition and acknowledgement that refugees have a right to take part in the negotiation of durable solutions to their situation. These provisions and mechanisms were nevertheless less developed or extensive than related provisions for civil society, generally, while the negotiation of durable solutions, despite the direct participation of refugees in several cases, similarly appeared to be largely the domain of states, rebel groups and opposition movements.

i. Major features

In the period between 1990 and 2000 there were 22 cases of armed conflict regulated or terminated through negotiations in which one or more peace agreements included specific provisions governing durable solutions for refugees.[934] (see Figure 5.41) In other words, at least half of all armed conflicts ending at the negotiating table rather than on the battlefield included provisions that aimed to remedy the situation of civilians displaced as a result of armed conflict.[935] The refugees from these cases, moreover, comprised just over half of

[934] The data unless otherwise noted is derived from the UCDP Peace Agreement Dataset, Ver. 1.0 (2006). Harbom, Högbladh, and Wallensteen 2006. For a list of armed conflicts and peace agreements *see*, Annex III, Table A3.6 - Armed Conflict, Peace Agreements and Refugees, 1990-2000. The three durable solutions afforded to refugees include voluntary repatriation, host country integration and third country resettlement. Feller and Klug 2011, para. 70–82. Restitution and compensation also comprise important elements of durable solutions for refugees. UNCHR 2005a; and, UNCHR 2005b. Restorative justice is also an important element of durable solutions with growing recognition of refugees and IDPs as transitional justice actors. Rimmer 2010; and, Bradley 2012.

[935] The UCDP Peace Agreement Dataset excludes four cases—Azerbaijan (Nagorno-Karabakh), Russia (Chechnya), Spain, Iraq-Kuwait—which are included in the aforementioned Transitional Justice Peace Agreements Database. *See*, *supra* n. 891-892. It is estimated that the number refugee situations addressed through such negotiations more than doubled in comparison to previous decades. The UCDP Peace Agreement Dataset is limited to armed conflicts active between 1989 and 2005. The estimate is derived from a review of peace agreements in the aforementioned UN Peacemaker peace agreement database. The information was cross-referenced with other peace agreement databases which include agreements regulating or terminating armed conflict before 1990. The UN database includes 11 peace agreements prior to 1990 which contain provisions regulating

the average number of refugees per annum globally between 1990 and 2000 and three-quarters of the average returnee population globally during the same period.[936] In other words, durable solutions for the majority of the world's refugees throughout the decade were addressed in the context of negotiated settlements to armed conflict. The regional distribution of the conflicts was similar to the distribution of armed conflicts which ended in negotiations during the decade. Half of all such conflicts took place in Africa with almost the same number roughly divided between Europe and Asia and the remainder located in the Americas. The conflict in Palestine-Israel, the only armed conflict in the Middle East in which a peace agreement addressed the situation of refugees, as already noted, is discussed elsewhere in this study.[937] Armed conflicts regulated or terminated through negotiated settlements in Africa and Europe appeared more likely to include provisions for refugees than those in Asia and in the Americas. Approximately two-thirds of all armed conflicts in Africa and Europe addressed the situation of refugees compared to two-fifths of armed conflicts in Asia and only one-third of armed conflicts in the Americas.[938] The

durable solutions for refugees.

[936] This included an average population of 7.7 million refugees and 1.1 million returnees per annum. Refugees from these cases, moreover, comprised more than three-quarters of the average annual refugee population from countries which signed peace agreements that aimed to regulate or terminate armed conflict between 1990 and 2000 and around nine-tenths of the average annual number of returnees to these countries. The estimates of refugee and returnee populations used in this section are derived from the UNHCR Statistical Online Population Database, *supra* n. 883. Figures are reproduced in, Annex III, Table A3.10 - Negotiated Settlements and Refugees, Refugee Population, 1990-2000; and, Table A3.11 - Negotiated Settlements and Refugees, Returnee Population, 1990-2000.

[937] The absence of additional cases is related in part to the definition of a peace agreement. The Security Council resolution regulating the termination of armed conflict between Iraq and Kuwait, referred to in the previous section, addresses the issue of forced displacement but is not included in the UCDP Peace Agreement Dataset. *See*, *supra* n. 892.

[938] The fact that armed conflicts in Africa were more likely to include provisions for refugees may be explained, in part, by the fact that with the exception of Asia where the vast majority of refugees originated from Afghanistan, as noted above, the continent hosted the largest refugee population in comparison to other regions in the 1990s. The Organization of African Unity (OAU), moreover, was the only regional organization to have adopted a regional convention regulating the status of refugees. Unlike the 1951 Convention Relating to the Status of Refugees, the 1969 OAU Convention Governing the Specific Aspects of Refugee Rights in Africa explicitly provides for the return of refugees to their countries of origin. The high percentage of agreements in Europe with refugee provisions appears to have been

Fig. 5.41 - Negotiated Settlements and Refugees, by Region (1990-2000)

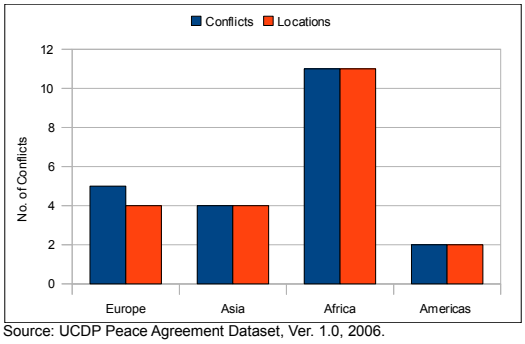
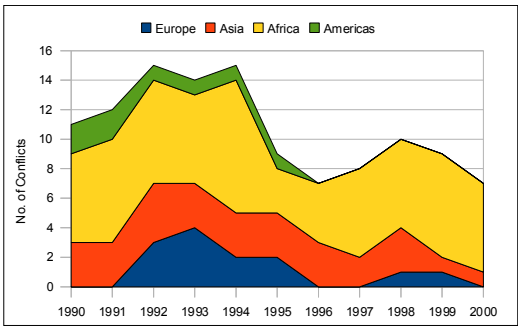


Fig. 5.42 - Negotiated Settlements and Refugees, by Year and Region (1990-2000)



Source: UCDP Peace Agreement Dataset, Ver. 1.0, 2006.

Fig. 5.43 - Negotiated Settlements and Refugees, Refugees by Type of Conflict (1990-2000)

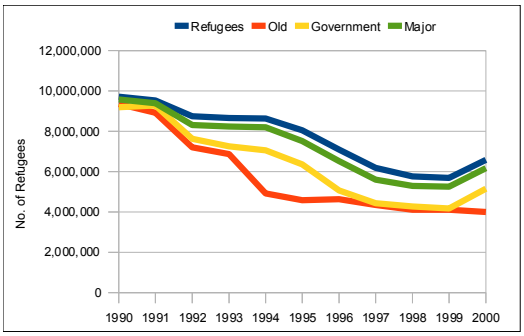


Fig. 5.44 - Negotiated Settlements and Refugees, Refugees by Region (1990-2000)

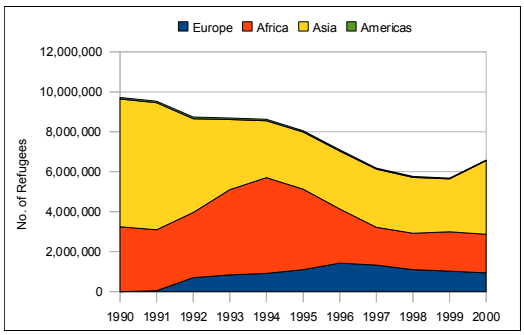
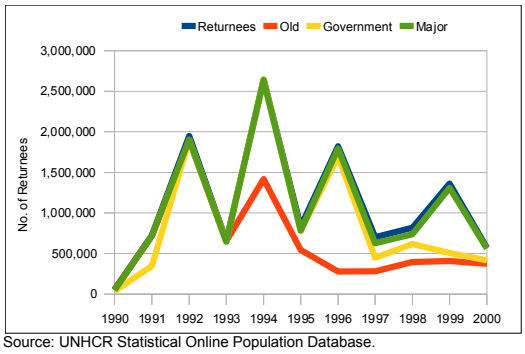
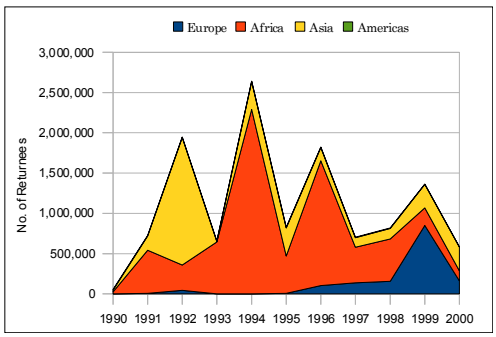


Fig. 5.45 - Negotiated Settlements and Refugees, Refugees by Type of Conflict (1990-2000)



Source: UNHCR Statistical Online Population Database.

Fig. 5.46 - Negotiated Settlements and Refugees, Returnees by Region (1990-2000)



driven by the international community's desire to reverse ethnic cleansing carried out during each of the major armed conflicts, particularly, in the former Yugoslavia, coupled with a reluctance among western states to grant long term asylum. Phuong 2000, *cited in*, Koser 2007, 26. The inclusion of such provisions, however, may also relate to efforts to re-establish rule of law following the cessation of hostilities. In Bosnia and Herzegovina, for example, membership in the Council of Europe and the European Community was made conditional on compliance with principles relating to refugee return and restitution. Prettitore 2010, 152. Major refugee populations not addressed in negotiated settlements to armed conflict during the decade—e.g., Angola, Democratic Republic of Congo, Eritrea, Ethiopia and Somalia—were located almost solely in Africa.

majority of refugees (more than two-thirds) originated from and returned to countries in Africa and Asia with smaller refugee and returnee populations in Europe and the Americas.[939]

The 22 cases were almost evenly divided between armed conflicts which pre-dated the 1990s and those which broke out between 1990 and 2000. (see Figure 5.47) The average refugee population per annum from countries in which armed conflict pre-dated the 1990s, however, was more than three times larger than the number of refugees from countries in which armed conflict broke out between 1990 and 2000.[940] The 22 cases also included just over half of all protracted cases of armed conflict—i.e., characterized by 10 or more consecutive years of armed conflict—regulated or terminated through negotiations rather than on the battlefield.[941] These cases, moreover, comprised

[939] The largest average refugee population per annum from these cases was in Asia (3.78 million) and Africa (3.0 million), followed by Europe (855,000) and the Americas (64,000). The refugee population in Asia, apart from refugees from Afghanistan, however, was relatively small in comparison to Africa. The average refugee population per annum from Afghanistan comprised more than nine-tenths of the average annual refugee population in Asia during the decade. The largest average number of returns per annum took place in Africa (648,000) accounting for slightly more than half of the average number of returnees per annum. The average number of returnees per annum to countries in Asia (318,000) comprised slightly more than a quarter of the average annual returnee population with the remainder of refugees returning to countries in Europe (134,000) and the Americas (5,100). The vast majority of returnees in Asia (more than nine-tenths) originated from Afghanistan.

[940] There was an average of 5.82 million refugees per annum from conflicts which pre-dated the 1990s and 1.88 million from conflicts which broke out during the decade. A larger ratio of refugees from new onsets (over two-fifths), however, returned to their countries of origin in comparison to refugees from old disputes (under three-fifths). There was an average of 636,000 returns to countries where armed conflict pre-dated the 1990s in comparison to 472,000 returnees to countries where armed conflict broke out during the decade. This appears to suggest that return may be more difficult in older conflicts, however, the higher ratio of returns to countries in which armed conflicts broke out during the 1990s may also be related to international efforts to facilitate return in the Balkans with fewer political and material resoures dedicated to longer running conflicts in other regions.

[941] Protracted armed conflicts, as noted in the previous section, are different from protracted refugee situations although there is some overlap among cases. More than half of the conflicts in which negotiated settlements addressed the situation of refugees involved protracted situations of displacement in twice as many host countries. More than half of the protracted refugee situations were located in Africa with the remainder divided almost equally between Europe, Asia and the Americas. Comprising around nine-tenths of the entire refugee population from the 22 cases, around half of the refugees were displaced in the context of armed conflicts in Asia, primarily Afghanistan, with approximately one-third from Africa, less than one-tenth from Europe and the remainder displaced in the context of armed conflicts in the Americas. These cases, moreover, comprised more than two-thirds of the global protracted refugee population between 1990 and 2000. The figure does not include

Fig. 5.47 - Negotiated Settlements, Onset of Hostilities by Region (1990-2000)

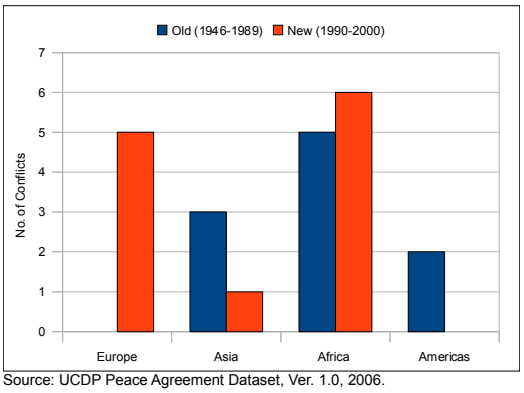
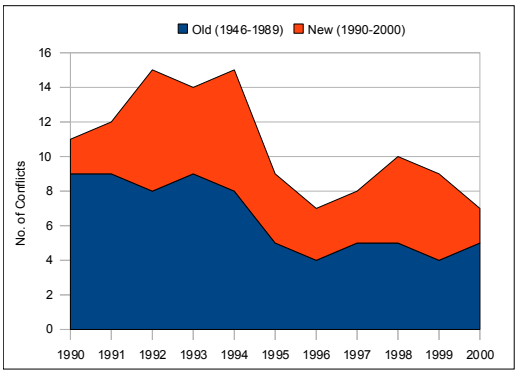


Fig. 5.48 - Negotiated Settlements, Onset of Hostilities by Region (1990-2000)



Source: UCDP Peace Agreement Dataset, Ver. 1.0, 2006.

almost the entire annual average refugee population from protracted conflicts addressed through negotiated settlements and more than two-thirds of the refugee population from protracted cases of armed conflict active between 1990 and 2000.[942] The situation was more diverse at the regional level. In Europe all of the conflicts broke out during the 1990s compared to the Americas where all of the conflicts pre-dated the 1990s. The situation was mixed in other regions. While nearly all of the armed conflicts in Asia pre-dated the 1990s the situation in Africa was almost evenly divided between old and new armed conflicts. The majority of refugees in each of these regions (more than two-thirds) were displaced in the context of armed conflicts which pre-dated the 1990s. In terms of protracted cases of armed conflict dealt with at the negotiating table, settlements which included provisions for refugees comprised three-quarters of protracted conflicts in Africa, two-thirds of such cases in the Americas and half

Palestinian refugees. In other words, durable solutions for the majority of protracted refugee situations in the 1990s were addressed in the context of negotiated solutions to armed conflict.

942 This included Afghanistan, Bangladesh, Cambodia, Mozambique, Sierra Leone, Sudan, El Salvador and Guatemala. These cases comprised an average of five million refugees per annum out of an average of 5.96 million refugees per annum from protracted armed conflicts addressed through negotiations between 1990 and 2000. There was an average of 7.92 million refugees per annum from protracted conflicts during the same period. Protracted conflicts addressed through negotiations in which agreements excluded provisions for refugees included the UK (Northern Ireland), India (Tripura), Philippines, Philippines (Mindanao), Angola, Somalia and Colombia.

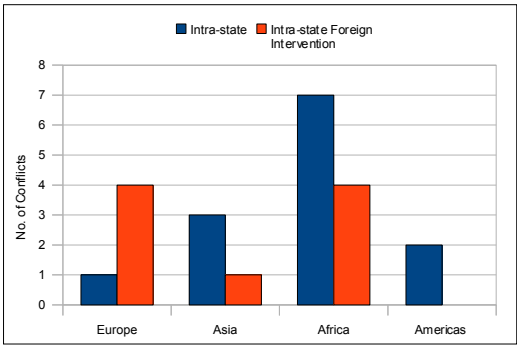
of all protracted conflicts dealt with through negotiations in Asia.

All of the armed conflicts took place within rather than between states. This included over half of the total number of intra-state conflicts which experienced foreign intervention during at least one conflict year.[943] (see Figure 5.49) The average refugee population per annum from these cases, however, comprised more than four-fifths of the average annual number of refugees from intra-state conflicts with foreign intervention addressed through negotiations.[944] Negotiated settlements appeared more likely to address durable solutions for refugees displaced as a result of armed conflict over government. (see Figure 5.51) Governmental conflicts not only comprised more than half of the total number of cases, the negotiated settlement of conflicts over government (around two-thirds of all cases) were also more likely to produce agreements with refugee provisions than settlements over territory (around two-fifths of all cases). This may be attributed in part to the fact that government conflicts, in general, as noted in the previous section, were more likely to be addressed through peace negotiations. It may also be ascribed, however, to the fact that governmental conflicts generated a larger number of refugees than conflicts over territory. Refugees from countries which experienced armed conflict over government comprised more than four-fifths of the average annual refugee population from countries in which armed conflicts regulated or terminated

[943] This included four intra-state conflicts with foreign intervention each in Europe—Bosnia and Herzegovina (Serb), Bosnia and Herzegovina (Croat), Croatia (Serb) and Yugoslavia (Kosovo)—and in Africa—Congo, Mozambique, Rwanda and Sierra Leone—and one additional case (Tajikistan) in Asia. For a brief overview of the armed conflicts *see*, UCDP Conflict Encyclopedia (UCDP Database), *supra* n. 847.

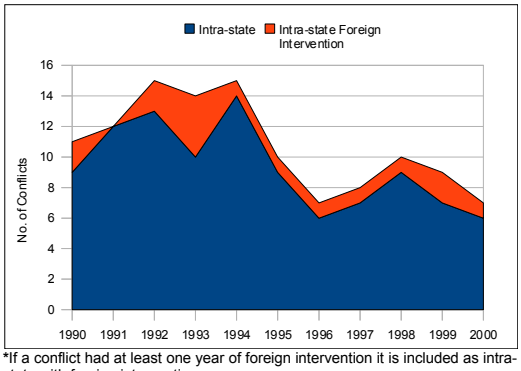
[944] The average refugee population per annum from these cases also comprised three-quarters of the average total number of refugees per annum from armed conflicts with foreign intervention, but which were neither regulated nor terminated through negotiated settlements. The nine cases, however, comprised less than one-third of the average refugee population per annum from the 22 cases in which negotiated settlements addressed durable solutions to forced displacement.

Fig. 5.49 - Negotiated Settlements and Refugees, by Type and Region (1990-2000)



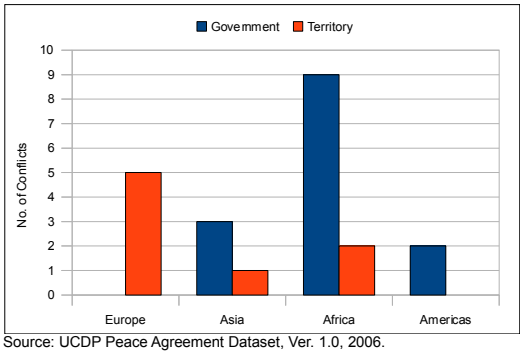
Source: UCDP Peace Agreement Dataset, Ver. 1.0, 2006

Fig. 5.50 - Negotiated Settlements and Refugees, by Year, Type and Region (1990-2000)



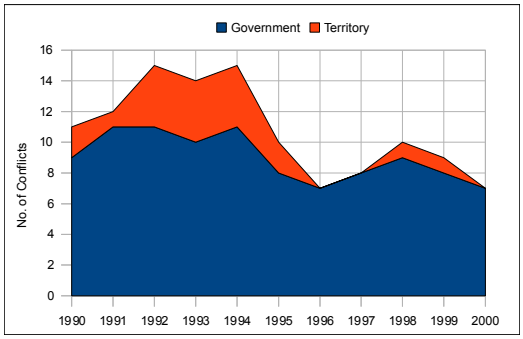
*If a conflict had at least one year of foreign intervention it is included as intra-state with foreign intervention.

Fig. 5.51 - Negotiated Settlements and Refugees, by Incompatibility and Region (1990-2000)



Source: UCDP Peace Agreement Dataset, Ver. 1.0, 2006.

Fig. 5.52 - Negotiated Settlements and Refugees, by Year, Incompatibility and Region (1990-2000)



through peace negotiations addressed forced displacement.[945] The situation was more diverse at the regional level. Europe was the only region where all of the armed conflicts which addressed the situation of refugees at the negotiating table related to conflicts over territory. In contrast, all of the armed conflicts in the Americas which dealt with durable solutions in the context of negotiations among warring parties stemmed from conflicts over government. The source of incompatibility was mixed in both Africa and Asia, however, in both regions approximately three-quarters of all cases involved disputes over government rather than territory. The overwhelming number of refugees in both regions also

[945] This included an average refugee population of 6.35 million per annum from governmental conflicts and 1.34 million refugees from territorial conflicts. The majority of refugees who returned to their countries of origin under negotiated settlements which included provisions relating to durable solutions also returned to countries which had experienced conflicts over government. This included an average returnee population of 914,000 refugees per annum from governmental conflicts and 191,000 refugees from territorial conflicts.

originated from countries which experienced armed conflict over government.

The negotiated settlement of armed conflict between 1990 and 2000 was also more likely to address displacement from major armed conflicts. (see Figure 5.53) Two-thirds of all negotiated settlements which included provisions governing durable solutions for refugees comprised major armed conflicts with minor armed conflicts comprising the remaining third.[946] Major armed conflicts in which negotiated settlements addressed forced displacement produced the vast majority of refugees—more than nine-tenths of the entire refugee population from armed conflicts in which negotiated settlements addressed forced displacement—in comparison to minor armed conflicts which generated comparatively few refugees.[947] At the regional level major armed conflicts comprised between half and around three-quarters of all cases with the exception of the Americas where negotiated settlements in El Salvador and Guatemala which included provisions on refugees both comprised minor armed conflicts between 1990 and 2000.[948] While major armed conflicts in both Asia and Africa produced almost all of the refugees whose situation was addressed at the negotiating table, major armed conflicts produced fewer refugees (around three-quarters) in Europe whose situation was addressed in negotiations among warring parties. Refugees displaced in the context of major armed conflict nevertheless comprised the majority of the refugee population in Europe over the decade.

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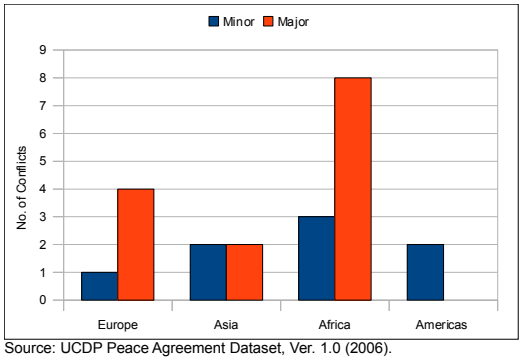
[946] Major armed conflicts comprised nearly three-quarters of all cases if the number of battle-related deaths prior to 1990 are included in the assessment of the intensity of each conflict. Additional major armed conflicts include Cambodia and El Salvador.

[947] This included an average annual refugee population of 7.28 million from major armed conflicts and only 250,000 from minor armed conflicts. If the number of battle-related deaths prior to 1990 are included in the assessment of the intensity of each conflict the refugee population from major armed conflicts rises to an average of 7.56 million per annum.

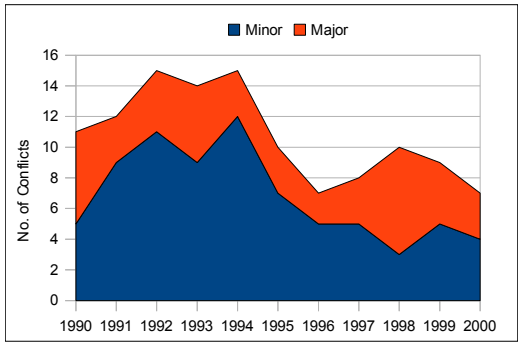
[948] This changes slightly with the inclusion of El Salvador which reached the level of a major armed conflict in the period pre-dating the 1990s.

Fig. 5.53 - Negotiated Settlements and Refugees, by Intensity and Region (1990-2000)



Source: UCDP Peace Agreement Dataset, Ver. 1.0 (2006).

Fig. 5.54 - Negotiated Settlements and Refugees, by Year, Intensity and Region (1990-2000)



The sustainability of negotiated settlements to armed conflict in the 1990s nevertheless raised questions about the durability of solutions for refugees.[949] (see Figure 5.55) Similar to negotiated settlements to armed conflict, generally, hostilities resumed in half of all settlements which included provisions governing durable solutions for refugees. Refugees from these cases, moreover, comprised more than three-quarters of the total refugee population and around two-thirds of the returnee population from the 22 settlements which addressed forced displacement.[950] In just over one-third of all settlements, less than negotiated settlements overall, warring parties withdrew

[949] The sustainability or success of negotiated settlements, generally defined as a minimum of five years without violence among warring parties following the signing of a peace agreement, should not be confused with the durability of solutions for refugees. While security is essential to voluntary repatriation, the durability of solutions to forced displacement involves more than the cessation to hostilities as a pre-condition for refugee return. There are no standard or commonly accepted indicators to assess the durability of solutions for refugees. This is part and parcel of a broader gap in research on the situation of refugees once their return to their countries of origin. Hammond 1999, 227; Toft 2007; and, Weiss Fagen 2009, 38. One study proposes two models, a narrow model focused on the outflow rate of returnees and a broader model which assesses the extent to which refugees are able to realize their broader panoply of civil, political, economic, social and cultural rights. Black and Gent 2006. For a discussion of indicators for IDPs see, UN 2008b, 326. In a briefing paper on refugee participation in peacemaking including the negotiation of durable solutions prepared for UNHCR's annual consultations with non-governmental organizations in 2007, referred to in Chapter 2, the refugee agency's Africa Bureau observed that the instability of negotiated settlements "has incalculable costs, which UNHCR witnesses when organizing repeated voluntary repatriation operations to the same countries and establishing assistance programmes for new groups, which frequently consist of individuals who have fled their countries one or more times in the past". UNHCR 2007b, 1.

[950] These cases comprised an annual average refugee population of 5.91 million and an average annual returnee population of 700,000 between 1990 and 2000.

Fig. 5.55 - Negotiated Settlements and Refugees, by Sustainability and Region (1990-2000)

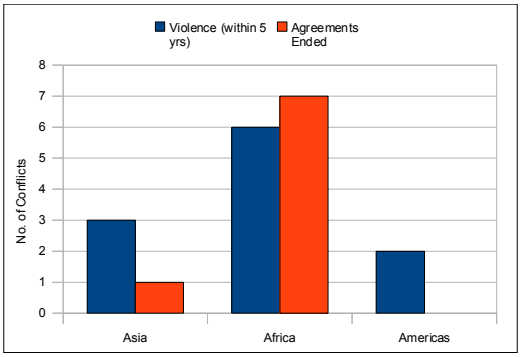
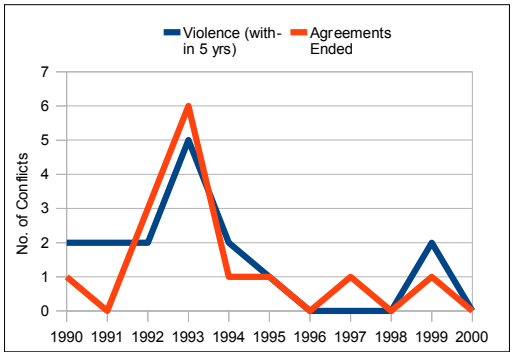


Fig. 5.56 - Negotiated Settlements and Refugees, by Year, Sustainability and Region (1990-2000)



Source: UCDP Peace Agreement Dataset, Ver. 1.0 (2006).

from peace agreements which aimed in part to resolve forced displacement resulting in a collapse of the negotiated settlement. These cases also comprised around three-quarters of the total refugee population and two-thirds of the returnee population from the 22 settlements which addressed forced displacement.[951] Similar to the situation with negotiated settlement of armed conflict, generally, these cases tended to pre-date the 1990s, most were protracted, and almost all involved major armed conflicts over government.[952] More than half of the cases in which violence among warring parties resumed within five years of the signing of a peace agreement were located in Africa with the remaining conflicts almost equally divided between Asia and the Americas.[953] Armed conflicts in which peace agreements ended were located

[951] These cases comprised an annual average refugee population of 5.69 million and an annual average returnee population of 735,000. In other words, while a slightly small number of refugees were affected by the return to violence among warring parties within five years of the signing of a peace agreement, a slightly larger number of returnees were affected by cases in which one or more parties withdrew from a peace agreement leading to the end of the negotiated settlement.

[952] In nearly three-quarters of all cases in which violence among warring parties resumed within five years of the signing of a peace agreement and in almost two-thirds of all cases in which peace agreements ended armed conflicts pre-dated the 1990s. Protracted conflicts and those which involved foreign intervention comprised three-quarters of all conflicts in which violence among warring parties resumed within five years of the signing of a peace agreement and all cases in which peace agreements ended. All of the armed conflicts in which violence among warring parties resumed within five years of the signing of a peace agreement and in which a peace agreement ended were governmental conflicts. Major armed conflict comprised around three-quarters of all conflicts in which violence among warring parties resumed within five years of the signing of a peace agreement and in which a peace agreement ended.

[953] Half of the armed conflicts in which violence among warring parties resumed within five years of the signing of a peace agreement were located in Africa. This included Chad,

almost solely in Africa with a single agreement in Asia.[954]

ii. Peace agreements and provisions

Negotiated settlements in the 22 armed conflicts resulted in nearly four times as many peace agreements.[955] (see Figure 5.57) The large number of agreements in comparison to the number of armed conflicts, as with the negotiated settlement of armed conflict, generally, was due primarily to the inclusion of a greater number of cases involving graduated peace processes, multiple conflict actors and failed agreements necessitating new rounds of negotiations.[956] Approximately half of the total number of peace agreements included specific provisions governing durable solutions for refugees.[957] These focused primarily

Congo, Liberia, Mozambique, Rwanda and Sierra Leone. These cases comprised more than two-thirds (2.1 million) of the average annual refugee population and nearly two-thirds (384,000) of the average annual returnee population. Violence among warring parties also resumed in three armed conflicts in Asia—Afghanistan, Cambodia and Tajikistan—and in two armed conflicts in the Americas—El Salvador and Guatemala. The Asian cases comprised nearly all of the average annual refugee (3.75 million) and returnee (3.49 million) population from the region due to large Afghan population. The American cases comprised all of the average annual refugee (70,000) and returnee (56,000) population from the region.

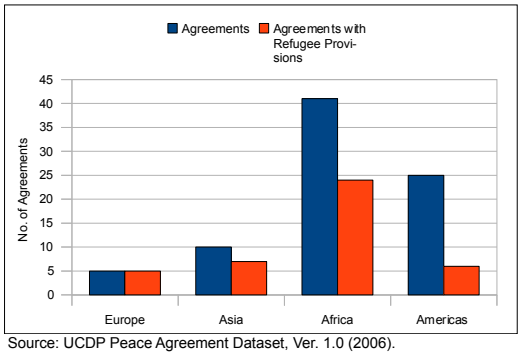
954 This included four cases in which violence among warring parties resumed within five years of the signing of a peace agreement—Chad, Liberia, Rwanda and Sierra Leone—along with three addition armed conflicts in Mali (Azawad), Niger (Air & Azawad) and in Sudan. These cases comprised two-thirds of the refugee (2.04 million) and returnee (438,000) population in Africa. Afghanistan was the only additional conflict in which a peace agreement addressing forced displacement ended. The case also witnessed the resumption of hostilities between warring parties within five years of the signing of the peace agreement. Afghan refugees comprised more than nine-tenths of the refugee (3.65 million) and returnee (305,000) population in Asia.

955 As noted earlier, peace agreements can be divided into three basic types: peace process, partial and full. The 22 cases produced 10 peace process agreements, 50 partial agreements, and, 21 full agreements. For a list of agreements *see*, Annex III, Table A3.6 - Armed Conflict, Peace Agreements and Refugees, 1990-2000.

956 This includes the aforementioned graduated peacemaking processes in El Salvador and Guatemala, the proliferation of rebel groups in Chad and the failure of peace agreements in Liberia.

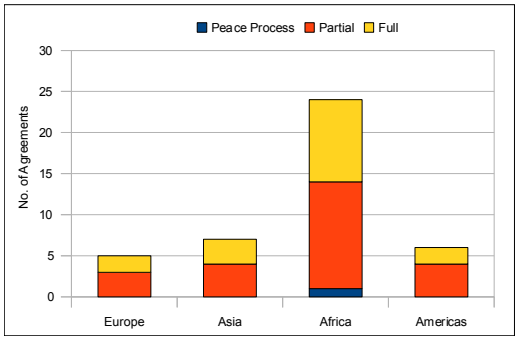
957 This included one peace process agreement, 24 partial agreements and 17 full agreements. In other words, partial agreements were more likely to include provisions for refugees followed by full agreements with peace process agreements the least likely to include such provisions. Among the 24 partial agreements, only two (Rwanda and Guatemala) focused solely on refugees. In some cases, like Cambodia, Bosnia and Herzegovina and Tajikistan, full agreements included specific annexes devoted to the situation of refugees. In other cases, like Kosovo and Burundi, agreements addressed refugee problems in specific chapters of the agreements. In most cases, however, the issue of forced displacement was addressed in one or more articles comprising the body of the peace agreement. There was only one case (Liberia) in which the situation of refugees was addressed in a peace process agreement.

Fig. 5.57 - Negotiated Settlements and Refugees, Peace Agreements, by Region (1990-2000)



Source: UCDP Peace Agreement Dataset, Ver. 1.0 (2006).

Fig. 5.58 - Negotiated Settlements and Refugees, Peace Agreements, by Type and Region (1990-2000)



on various aspects of repatriation rather than integration and resettlement which, as noted below, were rarely addressed. The regional distribution of peace agreements was similar to the distribution of agreements resulting from the negotiated settlement of armed conflict as discussed above. Armed conflicts in Africa produced half of the total number of peace agreements while slightly more than half of these included express provisions governing durable solutions for refugees.[958] When combined with peace agreements from the two cases of armed conflict in the Americas, agreements from these regions comprised more than three-quarters of the total number of peace agreements associated with the 22 armed conflicts. Only a quarter of the agreements in El Salvador and Guatemala, however, included provisions for refugees.[959] Negotiated settlements to armed conflicts in Asia produced more than twice as many agreements as cases while more than two-thirds of the agreements contained provisions relating to durable solutions for refugees.[960] Europe is the only region where all of the cases and agreements dealt with solutions for conflict-related

[958] The 41 agreements comprised six peace process agreements (one of which addressed refugees), 21 partial agreements (13 of which addressed refugees), and 14 full agreements (10 of which addressed refugees).

[959] Armed conflicts in El Salvador and Guatemala produced the highest number of agreements per case. As noted earlier, this was due to the nature of the peacemaking process in which issues of dispute were addressed in separate agreements. This included three peace process agreements (none of which addressed refugees), 20 partial agreements (four of which addressed refugees), and two full agreements (both of which addressed refugees).

[960] This included one peace process agreement, six partial agreements four of which addressed refugees), and three full agreements (all of which addressed refugees).

forced displacement.[961]

The peace agreements included a wide range of provisions governing durable solutions for refugees.[962] (see Figure 5.59) Among the three major rights accorded to refugees in the context of durable solutions—i.e., return, restitution and compensation—the right of return was common to most agreements.[963] As noted in the previous chapter, an increasingly wide range of legal instruments recognize that refugees should be allowed to participate in the design, planning, implementation and evaluation of durable solutions to their situation. Three-quarters of the total number of peace agreements which addressed the situation of refugees in more than four-fifths of cases included provisions for refugee return although the language in the agreements varied widely.[964] In contrast to

[961] This included three partial agreements (three of which addressed refugees) and two full agreements (both of which addressed refugees). This may be explained, in part, as noted earlier, by the international community's desire to reverse ethnic cleansing in each of the cases, along with the imperative of re-establishing rule of law following the cessation of hostilities.

[962] For details of each agreement see, Annex III, Table A3.7 - Armed Conflict, Peace Agreements and Refugees, Provisions for Durable Solutions, 1990-2000. Agreement texts were unavailable in three cases: Afghanistan (two agreements), Chad (all agreements) and Niger (one agreement). In a review of major peace agreements, the Washington-based Public International Law and Policy Group observes that most agreements on refugee return share five common elements. All refugee return agreements begin with a preamble, provide definitions, provide language guaranteeing the parties' cooperation to the resettlement process, enumerate the rights of displaced persons, and define the process for implementation, usually through an implementation commission. Campion and Nakagawa 2005, 3. The study is based on a review of nine major peace agreements from the 1990s—Bosnia and Herzegovina, Burundi, Cambodia, Georgia, Guatemala, Kosovo, Liberia, Mozambique, Sierra Leone—and one from after 2000—Macedonia.

[963] Enshrined in various bodies of treaty law, generally, the 1990s also saw the adoption of new instruments addressing the specific application of these rights in situations of forced displacement. The International Law Association, for example, drafted a Declaration of International Law on Compensation to Refugees. Lee 1993. The UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities affirmed the right of persons to remain in their homes, on their lands and in their own countries, as well as the right of refugees to return, to repossess their properties and to be compensated in cases where return is not practical. Sub-Comm. Res. 1995/13, 47th Sess., 27th Mtg., Aug. 8, 1995, paras. 1-2; and, Sub-Comm. Res. 1998/26, 50th Sess., 35th Mtg., Aug. 26, 1998, para. 1. The UN Committee on the Elimination of Racial Discrimination later addressed the right of refugees to return to their countries of origin in a General Comment on article 5 of ICERD, as discussed in the previous chapter. The Commission on Human Rights subsequently adopted a set of Guiding Principles on Housing and Property Restitution for Refugees and Displaced Persons. UNCHR 2005.

[964] Ten agreements in seven cases—Bosnia (Croat), Bosnia (Serb), Croatia, Georgia, Kosovo, Cambodia and Rwanda—explicitly recognized the right of return. The particularly explicit language in each of these cases may be explained, in part, by the fact that displacement was related to political exclusion and/or was one of the aims of warring parties to each of the

Fig. 5.59 - Peace Agreements, Return, Restitution and Compensation (1990-2000)

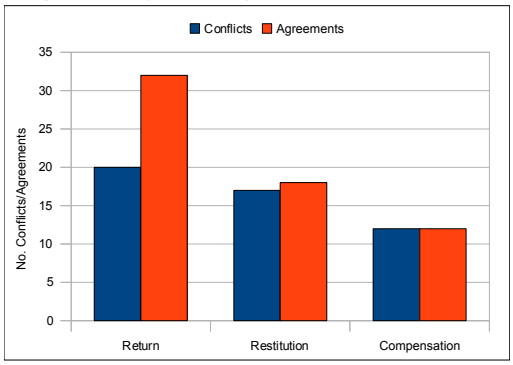
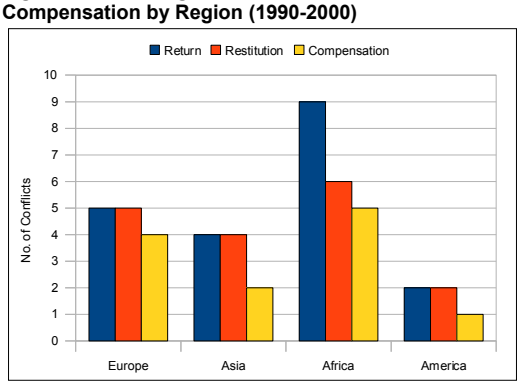


Fig. 5.60 - Peace Agreements, Return, Restitution and Compensation by Region (1990-2000)



the right to return, only half as many agreements in approximately half of the cases included provisions relating to housing and property restitution for refugees. The language used similarly varied among cases and agreements.[965] Peace agreements were least likely to include provisions for refugee compensation. Just over a tenth of all agreements in around one-quarter of the cases required states to compensate refugees for displacement-related losses.[966]

Agreements included a range of additional provisions including

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respective conflicts. In Guatemala two agreements state that refugees must be able to reside freely in the country. The Arusha agreement in Burundi states that refugees must be able to return. Nine agreements in six cases—Afghanistan, Tajikistan, Djibouti, Liberia, Mozambique and Guatemala—provide for the return of refugees to their places or origin or habitual residence. An additional nine agreements in eight cases—Bangladesh, Djibouti, Liberia, Sierra Leone, Mali, Niger, Sudan and Guatemala—simply provide for refugee return. Agreements in Chad, Congo and El Salvador do not explicitly address refugee return.

965 Three agreements in the same number of cases—Kosovo, Cambodia and the Congo—provided for a *right to property*. An additional three agreements in three cases—Bosnia (Serb), Bosnia (Croat) and Croatia (Serb)—provide for the same right, but add that commitments made under duress were null and void. Two agreements in two cases—Burundi and Mozambique—state that property rights were guaranteed. An agreement in Rwanda adds an additional proviso restricting restitution to a 10 year time frame. Another five agreements in three cases—Georgia (Abkhazia), Afghanistan and Tajikistan—provide for a return to property. Agreements in Chad, Djibouti, Liberia, Sierra Leone, Mali, Niger, Sudan and El Salvador do not address restitution.

966 Three agreements involving three cases—Bosnia (Serb), Bosnia (Croat) and Croatia (Serb)—provide for a *right to compensation*. The peace agreement in Burundi provides for *fair compensation or indemnification*. One of the agreements Rwanda provides for *equitable compensation*. In two final agreements in Georgia (Abkhazia) and Mali (Azawad) agreements provide for compensation for property. Agreements in Kosovo, Afghanistan, Cambodia, Tajikistan, Bangladesh, Chad, Congo, Djibouti, Liberia, Mozambique, Sierra Leone, Niger, Sudan, El Salvador and Guatemala do not address compensation.

guarantees for their safe return, assistance and the establishment of mechanisms to facilitate durable solutions. The most extensive provisions can be found in agreements in Bosnia and Herzegovina, Burundi, Guatemala and in Rwanda. In several cases, peace agreements also addressed the participation of refugees in the various democratic mechanisms referred to earlier which aimed to regulate or terminate the incompatibility between warring parties. (see Figure 5.61) Around one-tenth of all agreements in just over a quarter of cases in all regions except the Americas, for example, included explicit provisions which affirmed that refugees should be allowed to take part in elections in their country of origin.[967] Electoral provisions for refugees were more common in agreements which addressed major armed conflicts, but there did not appear to be a correlation between such provisions and the incompatibility among warring parties or the temporal origins of the conflict. Provisions for refugee participation in elections were most likely in Europe (two-fifths of cases) followed by Africa and Asia (around one-quarter) with no provisions in agreements in the Americas.

Peace agreements also included provisions on refugee participation in post-agreement aspects of durable solutions to their situation. Agreements in Burundi and Guatemala, for example, provided for the participation of refugees

[967] Two agreements and two cases—Cambodia and Bosnia and Herzegovina—affirm the *right* of refugees to take part in home country elections. In Mozambique the agreement on the electoral process states that refugees *shall* be registered in the electoral rolls in their *places of residence*. The agreement in Kosovo states that an *environment conducive to the return of displaced persons* is critical for ensuring *free and fair elections*. Two agreements in two cases—Bosnia and Herzegovina and Kosovo—provide for out-of-country voting. In most cases, however, repatriation provided the sole mechanism for refugee participation in home country elections. Two agreements in two cases—Liberia and Sierra Leone—link refugee participation in home country elections more generally with the timing of the repatriation process. An agreement in Mali, meanwhile, provides for temporary legislative seats for refugees. As noted in the previous chapter, the right of refugees to take part in such elections may also be inferred from a number of additional provisions related to human rights guarantees, the mandates of transitional administrations and the timing of elections.

Fig. 5.61 - Peace Agreements, Refugee Participation (1990-2000)

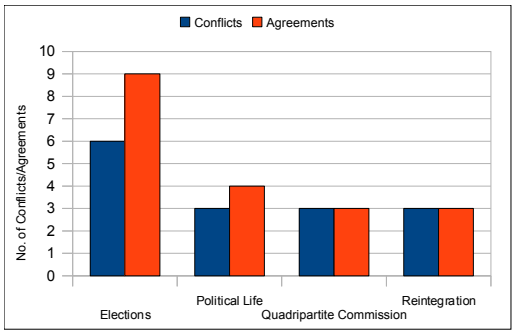
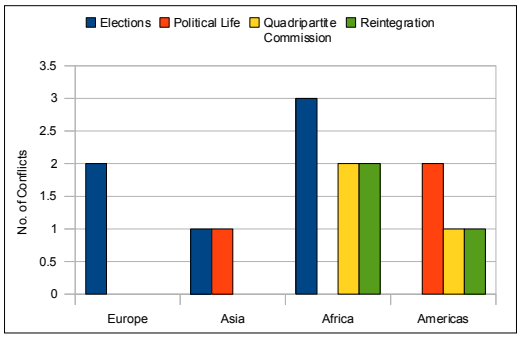


Fig. 5.62 - Peace Agreements, Refugee Participation by Region (1990-2000)



in the planning, design and implementation of voluntary repatriation.[968] Promoted by UNHCR since the early 1990s, participatory approaches to durable solutions were based in part, as noted in the previous chapter, on the agency's earlier promotion of refugee participation in development. Agreements in both Rwanda and Burundi provided for the participation of refugees in quadripartite talks on voluntary repatriation with officials from their countries of origin and asylum as well as officials from UNHCR.[969] Half of the cases in the Americas and just under one-fifth of the cases in Africa included provisions for refugee participation in quadripartite commissions. A similar number of cases in Africa addressed refugee participation in reintegration with all the cases in the

[968] The agreement in Burundi instructs the national agency mandated to facilitate a solution to the refugee issue to *promote* the participation of refugees in their resettlement and rehabilitation. The refugee agreement in Guatemala contains the most comprehensive provisions governing refugee participation in the planning, design and implementation of durable solutions. It describes such participation as *indispensable* and states that refugees *shall* participate linking their involvement to the democratization of state structures.

[969] The refugee agency considered a shift towards a quadripartite approach in the early 1990s in line with its shift towards repatriation as the preferred solution to forced displacement. In 1992, for example, the Executive Committee observed that "[e]xperience shows that the smoothest operations which offer refugees the best chances of durable reintegration are those based on arrangements fully discussed and agreed between the parties, usually through the mechanism of 'tripartite' or 'quadripartite' commissions composed of the governments of the countries of asylum and origin, UNHCR and, *where appropriate, refugee representatives*". [emphasis added] UNHCR 1992a, para. 8(c). The tripartite approach nevertheless remained intact and it appears that few refugees were involved in quadripartite talks on voluntary repatriation. Included in an early draft of UNHCR's protection guidelines on voluntary repatriation, the agency's handbook retained the original emphasis on a tripartite approach to voluntary repatriation. Chimni 2003, 203, *citing*, UNHCR, Protection Guidelines on Voluntary Repatriation, (draft), Sept. 1993, 4, 47.

Americas including similar provisions.[970] These provisions appeared to be more common in agreements which aimed to regulate or terminate major armed conflicts over government which pre-dated the 1990s.

iii. Refugee participation in unofficial and official peacemaking

Similar to the participation of civil society, generally, as discussed in the previous section, refugees also took part in a number of peacemaking processes through various indirect mechanisms. (see Figure 5.63) The lack of comprehensive data makes it difficult as with civil society generally to draw hard empirical conclusions on the extent or scope of such participation. It would seem, however, that refugees were less likely than civil society actors to take part in peacemaking processes through indirect mechanisms like workshops, conferences and national consultations which focused explicitly on forced displacement. In Burundi, refugee women took part in an All-Party Peace Conference for women organized under the auspices of the UN Development Fund for Women (UNIFEM).[971] In Mali, refugee representatives participated in inter-community meetings that aimed to address root causes of the conflict at the local level following the failure of warring parties to implement peace agreements between them.[972] Representatives of refugees who had found

[970] In Bosnia, the international community initiated the establishment of civil society organizations to represent and lobby for the implementation of refugee rights. The Coalition for Return, a multi-ethnic movement of displaced persons, for example, was established in 1996 at the initiative of the Deputy High Representative of the international community in Bosnia with the aim of lobbying for an environment conducive to the return of refugees. OHR 2000.

[971] For additional discussion *see*, WCRWC 2001, 9; Koser 2007, 22; and, UNHCR 2007a, 5.

[972] Malien refugees who had found asylum in Mauritania, for example, took part in inter-community consultations in Mali which led to localized peace agreements. The process, however, was also opposed by refugee leaders in neighbouring Burkina Faso. UNHCR described the refugee participants as "repatriation pioneers" who paved the way for subsequent returns. For more details *see*, Lode 1997, 417–418; Lode 2002a; and, UNHCR 1998c.

Fig. 5.63 - Negotiated Settlements and Refugees, Unofficial/Indirect Refugee Participation (1990-2000)

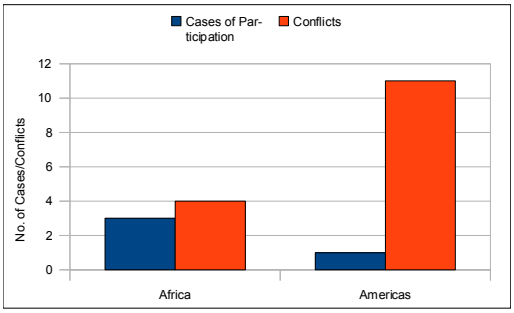
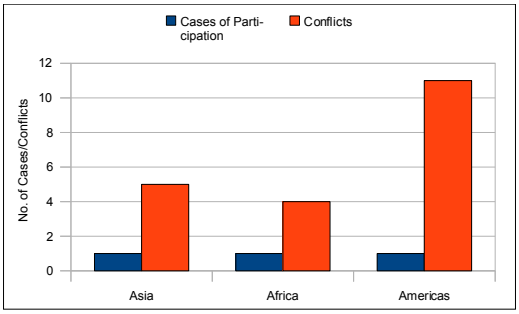


Fig. 5.64 - Negotiated Settlements and Refugees, Official/Direct Refugee Participation (1990-2000)



shelter in Liberia and Guinea took part in a national conference to restore democracy in Sierra Leone.[973] The most extensive participation of refugees took place in Guatemala where representatives took part in both the Grand National Dialogue and the Civil Society Assembly referred to above, as well as in the International Conference on Central American Refugees (CIREFCA) and in a UNHCR-sponsored Regional Forum for Work with Refugee, Returnee and Displaced Women with a Gender Focus (FoReFem).[974] Such participation appeared more likely in major armed conflicts over government which pre-dated the 1990s. The negotiation of durable solutions for refugees throughout the decade otherwise appeared to comprise a largely top-down or "elite pact-making" approach to peace negotiations.

The parties taking part in these negotiations, as noted in previous

[973] Kamara 2000, 13–14.

[974] UNHCR 1994b, para. 43; Loughna 1999, 42; Worby 1999, 7; and, Rapone and Simpson 2004, 142. Guatemala also appeared to be the only case in which at least one indirect mechanism focused exclusively on durable solutions to forced displacement. This included the Civil Society Assembly, which included a working group on refugees and displaced persons, CIREFCA and FoReFem. While refugees played a minor role in the CIREFCA process, Worby argues that their participation in itself was a significant accomplishment given the antogonistic position of various Central American governments to the refugee groups. Worby, *ibid*., 7. Loughna adds that, among others, the process also "affirmed the right of the Guatemalan refugees themselves to play a role in the search for durable solutions to their situation". Loughna, *ibid*. FoReRem aimed to "identify and debate the problems of women that women confront in the search for solutions to refuge, displacement and return; to provide the participants theoretical, practical and methodological instruments necessary to tackle these specific problems with a gender focus; and, to elaborate concrete proposals and recommendations that provide viable response to these issues, with Evaluation Agreements to guarantee their execution". *Ibid.*

section, nevertheless comprised primarily states, rebel or opposition groups and third party mediators. The negotiation of durable solutions for refugees, however, appeared to be somewhat unique from the negotiated settlement of armed conflict, generally, in that in several cases—Burundi, Bangladesh and Guatemala—refugees took part in talks with officials from their country of origin on solutions to their situation.[975] (see Figure 5.64) This included the participation of refugees in both multi-party talks and in bilateral negotiations on forced displacement. In both Bangladesh and Guatemala, the talks produced separate and largely "hidden" agreements on durable solutions. The agreements are hidden in the sense that they are excluded from all major databases on peace agreements. While all of the cases pre-dated the 1990s, they comprised a mix of major and minor armed conflicts over both government and territory. The cases appear to be less significant, however, in that the overall number of refugees able to take part—less than one-tenth of the average annual refugee and returnee populations from the 22 cases—was relatively small.[976] The participation of refugees in each of these cases nevertheless appeared to

[975] This does not include refugee participation in quadripartite talks on voluntary repatriation. In addition to peace agreements, the specific terms of voluntary repatriation where UNHCR is involved are often negotiated separately, as noted above, among the countries of origin, asylum and UNHCR. The refugee agency's 1996 Handbook on voluntary repatriation provides guidelines on tripartite talks. For a discussion of tripartite agreements *see*, Zieck 1998.

[976] The three cases in which refugees took part in negotiations on durable solutions to their situation comprised an average of 505,000 refugees per annum between 1990 and 2000. A majority of the refugees were from Africa (more than four-fifths) with the remainder almost evenly divided between Asia and the Americas. The vast majority of refugees from the three cases (more than nine-tenths) were displaced in the context of armed conflict over government with the remainder displaced by conflict over territory in Asia. All of the refugees were displaced in the context of major armed conflicts which predated the 1990s. The cases comprised only five percent of the returnee population from the 22 cases and only four percent of the global returnee population. The three cases comprised an annual average returnee population of 59,000 refugees from the 22 cases in which negotiated settlements included provisions governing durable solutions for refugees. The largest number of refugees (nine-tenths) returned to countries of origin in Africa with the remainder returning to countries of origin in the Americas and in Asia. The vast majority (95 percent) of the returnee population originated from countries which had experienced armed conflict over government. Bangladesh was the only receiving country in which armed conflict involved disputes over territory. All of the returnee population originated from countries where major armed conflict predated the 1990s.

challenge the division of state and civil society activities in the negotiated settlement of armed conflict.

i. Burundi

The participation of representatives of Burundian refugees in talks leading to the signing of the 2000 Arusha Peace and Reconciliation Agreement appeared to be the only case in which refugees took part in official multi-party negotiations alongside the major parties to a conflict.[977] The armed conflict in Burundi began with the 1965 failed coup attempt by Hutu forces and the subsequent imposition of a military regime dominated by the country's Tutsi minority.[978] The decades that followed saw the violent suppression of Hutu dissent, including several massacres—the most serious taking place in 1972—and the first among several waves of displacement when around 300,000 Hutus fled to neighbouring Tanzania.[979] In 1980 Hutu refugees established the Party for the Liberation of the Hutu People (Parti pour la libération du peuple Hutu) or Palipehutu and subsequently launched an armed struggle to advance Hutu interests. A second

[977] There is relatively little research on the participation of Burundian refugees in direct talks between warring parties. While the participation of a refugee delegation is mentioned, studies do not examine the negotiations themselves including the role and contribution of refugees to Protocol IV setting out principles for a solution to the refugee issue. Correspondence with selected researchers and practitioners did not reveal additional substantive information.

[978] For a brief history of the armed conflict *see*, UCDP Conflict Encyclopedia <http://www.ucdp.uu.se> [accessed Mar. 21, 2011].

[979] This included major massacres in 1965, 1972, 1988 and 1993. In the 1972 massacre an estimated 100-200,000 Hutu were killed with 100,000 Tutsi killed in the 1993 massacre leading to reprisals and the deaths of tens of thousands of Hutus. Havermans 2002, 6. Major waves of displacement took place in 1972 and 1973 with smaller waves in 1965, 1969, 1988 and 1991. ICG 1999, 1; Daley 2007, 333–334. The population of Burundi is divided into three major ethnic groups: Hutu (85 percent), Tutsi (14 percent) and the Twa (1 percent). McClintock and Nahimana 2008, 76. While ethnicity has been used as a political tool, the parties to the Arusha agreement "recogniz[ed] that the conflict was fundamentally political, with extremely important ethnic dimensions; [and that it] stem[ed] from a struggle by the political class to accede to and/or remain in power". Arusha Peace and Reconciliation Agreement, Aug. 8, 2000, Protocol I, Chap. I, art. 4. *See also*, Sommers 1995, 20; Uvin 1999, 254; and, McClintock and Nahimana 2008, 76.

group—the Front for National Liberation (Front pour la libération nationale) or Frolina—later broke away from Palipehutu. The country's first multi-party election in June 1993, which saw the Hutu-dominated Front for Democracy in Burundi (Front pour la démocratie au Burundi) or FRODEBU assume power, was followed by a period of relative calm and the return of an estimated 40-50,000 refugees.[980] The October 1993 assassination of Burundi's democratically elected Hutu president, however, led to a resumption in armed conflict and a new wave of forced displacement when more than 300,000 Hutus fled into neighbouring Tanzania.[981] A new rebel group—the National Council for the Defence of Democracy (Conseil national pour la défense de la démocratie) or CNDD—was subsequently established and launched its own armed struggle to advance Hutu interests. This was followed by yet another coup in 1996 which saw the Tutsi minority regain power and the emergence of a new splinter group among Hutu rebels—National Council for the Defence of Democracy-Forces for the Defence of Democracy (Conseil national pour la défense de la démocratie-Forces pour la défense de la démocratie) or CNDD-FDD—when the armed wing of the CNDD broke away to form its own movement. Thus, by the mid-1990s, when regional efforts to resolve the conflict commenced, there were more than half a million Burundian refugees, the vast majority of them residing in camps in Tanzania.[982]

[980] ICG 1999, 1; and, ICG 2003, i.

[981] The assassination of President Melchior Ndadaye and other senior Hutu members of the government occurred in the context of a failed coup attempt by the Tutsi-led army to restore power to the Tutsi minority. The assassination was followed by the massacre of some 100,000 Tutsis, as noted earlier, with reprisals leading to the killing of tens of thousands of Hutus and the flight of several hundred thousand others. ICG 1999, 1.

[982] The first major wave of refugees who fled Burundi in the early 1970s found refuge in three major settlements —Ulyankulu, Katumba and Mishamo—in western Tanzania. Those displaced in the early 1990s were settled in nine camps in north western Tanzania. An estimated 200,000 refugees comprising a mix from both major waves of displacement were living outside of refugee camps in Tanzania. Fransen and Kuschminder 2012, 7. In 1996, the government also "relocated" an estimated 300,000 people, primarily Hutu, to "regroupment camps" which were allegedly set up to protect the civilian population. The move nearly

A regional process to resolve the conflict, mediated by the late Tanzanian President Julius Nyerere, was initiated in 1996, but delayed for some two years due to increasing violence in Burundi and unresolved questions relating to the legitimacy of the government that came to power in the 1996 coup.[983] In 1998 Nyerere secured agreement among the 17 parties taking part in the talks for the establishment of five committees to begin detailed negotiations on five major issues: the nature of the conflict, democracy and good governance, reconstruction and economic development, peace and security and guarantees for implementation of a peace accord.[984] The launch of multi-party talks also marked the beginning of initial efforts to facilitate the voluntary repatriation of refugees with the signing of a tripartite agreement between UNHCR and the governments of Burundi and Tanzania.[985] Hampered initially by a lack of trust

doubled the number of IDPs in Burundi. Criticized by human rights organizations, the government allowed some of the IDPs to return to their places of origin in 1997 with the policy abandoned a year later with the beginning of multi-party talks to resolve the conflict. The number of IDPs fell to around three-quarters of a million (or 11 percent of Burundi's population) in mid-2000 just months prior to the signing of the Arusha Peace and Reconciliation Agreement. Havermans 2002, 13–14.

983 Nyerere was appointed mediator by regional heads of state who were concerned about the destabilizing impact of the conflict in Burundi. The US-based Carter Center sponsored the first two preliminary meetings. The first All Party Peace Talks (Arusha I) took place in June 1998 followed by a second round (Arusha II) of talks in July of the same year. In March 2000, after several additional rounds of talks, the mediation team presented the parties with a draft agreement. Daley 2007, 343–344. The multi-party talks were preceded by a number of efforts to mediate a solution to the conflict in Burundi by the United Nations and the European Union, each of which appointed special envoys, and by the Organization of African Unity which sent an observer mission to the country following the 1993 assassination of Burundi's president and the resumption of violence. A UN-brokered power-sharing accord in 1994 was never implemented. Havermans 2002, 5–7.

984 These five issues were subsequently addressed in the five protocols that comprise the comprehensive peace agreement signed by the 17 parties taking part in the talks. The 17 parties taking part in the talks organized themselves into two major groups divided along ethnic lines. This included a "Group of 7" Hutu-dominated parties and a "Group of 10" Tutsi-dominated parties. The government of Burundi and the National Assembly also took part in the talks. Daley 2007, 341.

985 An estimated 23,000 refugees returned to Burundi in 1998 following the signing of the agreement. There was also criticism from refugees, however, for not being included in the talks that led to the agreement. ICG 1999, 9–10. It is unclear whether such participation was "considered" as recommended in UNHCR's handbook on voluntary repatriation. The Burundian government was engaged at the same time in back-channel talks with the CNDD, the main rebel group. Mediated by experts from the Catholic lay order *Comunitá di Sant'Egidio* who had previously mediated talks in Mozambique, as noted earlier, the talks aimed to build confidence between the two warring parties and deal with issues relating to the armed conflict, as distinct from the political one, which was being addressed through the

between the parties and the mediator, heightened attacks by rebel splinter groups not taking part in the talks (two of the rebel groups—Palipehutu and the CNDD—had both political and military wings with only the former involved in the negotiations), and lack of follow-up work between formal meetings, the process moved towards the swift conclusion of a comprehensive agreement after the mediation team decided to put its own ideas for a solution to the conflict on the table.[986] This included a solution to the refugee issue. In contrast to the following two cases where refugees appeared to have considerable latitude to organize and mobilize within and across the various camps set up in countries of exile, authorities in Tanzania placed greater restrictions on the political activities of refugees in an apparent effort to maintain stability and guard against unwanted interference in the peace talks.[987] A refugee delegation was nevertheless invited by Nyerere and the chair of Committee IV talks on reconstruction and development after requesting to take part in the negotiations.[988] In advance of

Arusha process. The talks eventually collapsed in April 1997 due to perceptions of a clash with official talks in Arusha, the secret nature of the talks which militated against divulging progress and the increasing level of violence in Burundi which hardened the positions of the participants. McClintock and Nahimana 2008, 82. See also, Daley 2007, 340.

[986] The mediation team initially hoped to secure agreement by the end of 1999. The shift in mediation followed the death of Nyerere in 1999 and his replacement by Nelson Mandela. McClintock and Nahimana 2008, 77–79. *See also*, ICG 2000.

[987] In contrast to the situation in Guatemala, as noted below, where refugees organized themselves according to places of origin, Tanzanian authorities settled refugees as they arrived in order to contain political activities and "avoid the pitfalls of the Rwandan camps". *Ibid.*, 11. For discussion of protection challenges in Rwanda and Burundi see, UNHCR 1996b. A report by the International Crisis Group on the refugee situation in Tanzania described the camps as "stigmatised for being highly militarised and for harbouring rebel movements, including CNDD, Palipehutu, and Frolina". ICG 1999, 1, 15. Responding to international criticism that it was "hosting the Burundian rebellion", the government of Burundi also "launched a massive 'round-up' of most Burundians living outside of refugee camps or settlements". *Ibid.*, 6. *See also*, Durieux 2000. Commenting on the restrictions, the ICG observed that "[t]he international community has a tendency to keep fighting its last battle, in this case, the militarisation of the refugee camps in eastern Zaire". These restrictions, however, also made refugees "tread more lightly" out of fear of being expelled from Tanzania, which in turn appeared to discourage the political involvement of refugees. *Ibid.*, 16-17. "For most Burundi refugees", as Sommers explains, "public silence is the safest strategy for survival. The lives of the poor and disenfranchised are often tenuous, and most Burundi refugees believe that voicing their views publicly could not help them. Attaching a viewpoint to one's identity promotes a person's delineation from the rest, which may invite danger. Sommers 1995, 23.

[988] Nyerere received the request during a visit to refugee camps in Tanzania. BBC Monitoring Service: Africa 1999. *See also*, IRIN 1998; and, ICG 1999, 1, 18. A number of studies have

the talks, UNHCR facilitated camp elections to ensure that the refugee delegation would be both representative and gender balanced. It subsequently facilitated the delegation's travel to the talks in Arusha.[989] Beyond presenting their demands to the official parties taking part in the talks, it is unclear to what extent refugees played a role in negotiating the terms of Protocol IV setting out principles for a solution to the refugee issue. The refugee delegation recommended that the tripartite process on voluntary repatriation involving the governments of Burundi and Tanzania along with UNHCR be postponed until after the signing of a comprehensive peace agreement and that refugees should be accorded refugee status along with the provision of land and primary and secondary education in the camps in Tanzania until they were able to return safely to Burundi.[990] Refugees also put forward a number of broader demands including the establishment of a transitional government; an international peacekeeping force; reform of the Burundian army; the trial of the 1993 coup

underlined the importance of refugee participation in the talks. Recommending continued support, including financial assistance and skills training, for refugee participation in Committee IV talks on reconstruction and development, for example, the International Crisis Group observed that "[t]he talks would benefit greatly by directly engaging refugees in an effort to understand their requirements and preconditions for their return home". ICG 1999, 25. A former head of UNHCR's sub-office in Kigoma observed at the time that while refugee participation in negotiations on durable solutions "[was] more a promise than a reality as yet in the Burundian context, important lessons [could] be learned from refugee and returnee programmes in other parts of the world". Durieux 2000. The report refers, in particular, to the Guatemalan experience, which is discussed below in more detail.

[989] UNHCR 2007a, 5. There were, nevertheless, mixed views about refugee participation in the talks within UNHCR as a whole. While the agency's sub-regional office in Kigoma was reported to be interested in facilitating such participation, as noted above, local staff were divided between those who favoured political representation and those who felt that participation should be limited to the expression of "apolitical" needs. ICG 1999, 18. The mediation team also facilitated the participation of refugees affiliated with the various armed groups, a practice criticized by camp leaders due to the lack of consultation with the refugee community as a whole. The aforementioned ICG report on the refugee situation in Tanzania reported that "there [was] a strong sentiment among the refugees that they [were] being denied participation and [were] being fed false information on [the] Arusha [negotiations], the Tripartite refugee agreement, the situation in their own country, and other issues". The report also noted that refugees were "concerned that the Tanzanian authorities [were] sending mixed signals, allowing some refugees to leave the camps and participate at Arusha clandestinely". *Ibid.*, 17-18.

[990] ICG 1999, 18. *See also*, IRIN 1999. The refugees also recommended that reconstruction aid should only resume after the peace agreement was signed in Arusha.

leaders; the liberation of political prisoners; and, the military intervention of Tanzania if necessary to ensure implementation of the agreement.[991] The peace talks in Arusha, as noted in the previous section, were otherwise conducted solely among the warring parties to the conflict.[992]

The multi-party negotiations concluded in 2000 with an agreement between the government, 13 political parties and 3 of the rebel groups that had taken part in the conflict. Two of the rebel groups—the Conseil nationale de la défense de démocratie-forces de défense de la démocratie (CNDD-FDD) and Parti pour la liberation du peuple hutu-Forces nationales de libération (Palipehutu-FNL)—refused to sign the agreement.[993] The provisions for durable solutions in the Arusha Peace and Reconciliation Agreement, like the agreement in Guatemala, are among the most detailed in agreements reached between 1990 and 2000 that addressed conflict-related forced displacement.[994]

[991] ICG 1999, 18.

[992] The literature on the peace process cites two main reasons for the exclusion of civil society from the peacemaking process: its relatively nascent and unrepresentative character, and the fact that the majority of official participations were opposed to the inclusion of civil society groups as independent participants. McClintock and Nahimana 2008, 86–87; and, Daley 2007, 342. The report submitted by Committee IV on Reconstruction and Development which also addressed the situation of refugees itself observed that "the notion of civil society [in Burundi] [was] in fact a new one and [was] not well understood by the population, just as civil society itself [did] not understand its own mission". Report of Committee IV, Reconstruction and Development, para. 2.5.6.1, *quoted in*, *ibid. See also*, de Reu 2005. Nelson Mandela who mediated talks after the death of Mwalimu Nyerere wanted Arusha endorsed by symbolic civil society organizations, but parties were unable to agree on civil society representatives. Bentley and Southall 2005, 154, 162. While civil society representatives were affiliated with the various official delegations taking part in the talks and were present at the signing of the Arusha agreement as observers, "their exclusion as independent participations", observes Daley, "reinforced the idea that peace making is solely the prerogative of political parties and rebel movements, not the collective responsibility of the people. Daley 2007, *ibid.*

[993] The two rebel groups signed ceasefire agreements with the government in 2002 and 2006. Ceasefire Agreement between the Transitional Government of Burundi and the Conseil National pour la Défense de la Démocratie—Forces pour la Défense de la Démocratie, Dec. 2, 2002; and, Comprehensive Ceasefire Agreement between the Government of the Republic of Burundi and the Palipehutu—FNL, Sept. 7, 2006.

[994] Together with the refugee agreement in Rwanda, the Arusha agreement appears to be somewhat unique from other peace agreements of the period in that it provides for refugee representation in the otherwise "tripartite" mechanism commonly used to facilitate the repatriation of refugees. While most agreements include provision for the country of origin, the host country and UNHCR, the Arusha agreement (Protocol IV) calls for "[c]onvening, in collaboration with the countries of asylum and the Office of the United Nations High Commissioner for Refugees, the Tripartite Commissioner, involving in it representatives of

A small number of refugees returned to Burundi following the signing of the agreement, however, in contrast to Bangladesh and Guatemala, the number of refugees continued to grow due to ongoing clashes between government and rebel forces which had refused to take part in the talks.[995]

ii. Bangladesh (Chittagong Hill Tracts)

Bangladesh appeared to comprise one of only two cases in the 1990s in which refugees participated in separate and direct talks with government officials leading to the signing of an agreement providing durable solutions to conflict-related forced displacement.[996] The armed conflict over territory in Bangladesh dates back to the early 1970s when indigenous groups called for autonomy in the Chittagong Hill Tracts (CHT) located in the south-eastern part of the country.[997] Home to 13 different indigenous groups, referred to collectively as the Jumma peoples, the CHT was an autonomous district during Britain's

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the refugees and international observers". Arusha Peace and Reconciliation Agreement, *supra* n. 979, Protocol IV, Chapt. I, art. 3(c).

995 In mid-2000, at the time of the Arusha agreement, there were 559,000 refugees, the majority of whom resided in Tanzania. The return of Burundian refugees from the camps in Tanzania facilitated government efforts to reduce and eliminate attacks from politically disaffected refugees residing outside the country. The Burundian government pressured UNHCR to shift from facilitation to promotion of repatriation, called upon the government of Tanzania and UNHCR to "halt the actions of 'intimidators'" who were impeding repatriation and sought permission to visit the camps in Tanzania to encourage refugees to return. ICG 1999, 9. Some 6,830 refugees returned spontaneously to Burundi during the year. By mid-2002, six months prior to the signing of the first post-Arusha ceasefire agreement with rebel groups that had not taken part in the talks, some 46,000 refugees had returned to Burundi. Another 845,000 refugees, however, continued to the reside outside the country. The majority were located in Tanzania with smaller numbers in the Democratic Republic of Congo (20,000), Zambia (2,000), Rwanda (2000) and Zimbabwe (1,000). A total of 475,000 Burundians remained displaced within the country. ICG 2001, 11; and, Havermans 2002, 14–15.

996 The published literature on Jumma refugees is relatively small with little information on negotiations between the government of Bangladesh and the Jumma Refugee Welfare Association (JRWA). There is a more significant body of grey literature which focuses on the general aspects of the refugee case. The author was unable to access JRWA correspondence, position papers, etc. archived at the International Institute of Social History, Amsterdam. For a summary *see*, Chittagong Hill Tracts Campaign Collection <www.iisg.nl/archives/pdf/10803695.pdf> [accessed Mar. 28, 2011].

997 For a brief history of the armed conflict *see*, UCDP Conflict Encyclopedia <http://www.ucdp.uu.se> [accessed Mar. 21, 2011]. Some studies refer to the conflict as a case of ethnocide (Chakma 2010) or "creeping" genocide (Levene 1999).

colonial rule of India.[998] The region lost its special status following the 1947 partition of India and the incorporation of the CHT into the newly-formed state of Pakistan.[999] The large-scale migration of Bengali settlers and the exploitation of the region's natural resources not only raised indigenous concerns about the preservation of their identity, culture and traditional means of livelihood, it also led to a major shift in the region's demography including the displacement of many of its indigenous inhabitants. The construction of the Kaptai Hydro-Electric Dam alone in the early 1960s flooded 40 percent of the CHT's arable land and resulted in the forced relocation of an estimated 100,000 people.[1000] The region became part of Bangladesh following Bengali secession from Pakistan in the early 1970s. Government efforts to establish a homogenous Bengali Muslim society coupled with attempts to resolve the dispute over the CHT through military means further exacerbated indigenous concerns and contributed to their ongoing displacement.[1001] During the second half of the 20th century, the size of the indigenous population compared to Bengali and other non-ethnic Jumma populations in the CHT decreased by nearly 50 percent through combined processes of settlement and displacement.[1002] In 1972 indigenous groups formed the Chittagong Hill Tracts People's Coordination

[998] These include the Chakma, Marma, Tripura, Tanchangya, Murung, Lushai, Khumi, Chak, Khyang, Bawm, Pankhua, Assames and Gorkhas. The CHT region has an area of 13,190 km^2 and comprises approximately 10 percent of the total area of Bangladesh. The term "Jumma" is derived from "jum", a term referring to agricultural practice common to most indigenous peoples in the region. Dictaan-Bang-oa 2004, 1.

[999] The region's special status during British rule in India was set out in the CHT Regulation of 1900 which prohibited the immigration and sale or transfer of land to non-indigenous people. The region was declared a "Totally Excluded Area" under the 1935 Government of India Act. Amendment of the Pakistani constitution in 1963 facilitated Bengali migration and settlement in the region. Dictaan-Bang-oa, *ibid*., 2; and, Panday and Jamil 2009, 1054–1055.

[1000] Dictaan-Bang-oa, *ibid*., 2-3; and, Panday and Jamil, *ibid*., 1055.

[1001] Panday and Jamil, *ibid*., 1056-1059, *citing*, Asian Center for Human Rights (ACHR), "The Ravaged Hills of Bangladesh". ACHR Review, Index: Review/35/2004 <http://www.achrweb.org/Review/2004/35-04:html> [accessed July 5, 2008].

[1002] Table 1 - Increasing Trend of Non-ethnic Jumma People in CHT (% distribution), in *ibid*., 1058. *See also*, Table 1 - CHT Population: Hill and Non-Hill People (1872-Present), in Chakma 2010, 291.

Association/Peace Force (Parbattya Chattagram Jana Sanghati Samiti/Shanti Bahini) or PCJSS/SB and subsequently launched an armed struggle for autonomy.[1003] The ensuing conflict led to a new outflow of refugees with the majority of the displaced finding temporary refuge in camps in the Indian states of Tripura and Mizoram bordering Bangladesh.[1004] At the height of the conflict in the early 1990s, an estimated 70,000 refugees from the CHT region resided in some 25 camps in Tripura along with another six to 10 in Mizoram.[1005]

The first round of talks to resolve the conflict began in the mid-1980s when officials from the government of Bangladesh and representatives of the various tribal groups attempted to reach a negotiated settlement on the future status of the CHT and its indigenous peoples.[1006] Having failed to reach an accord after multiple rounds of negotiations, the government pushed through legislation in 1989 providing for the establishment of regional councils in the three largest

[1003] In early 1972, a Jumma delegation presented government officials with four basic demands: autonomy, retention of the CHT Regulation of 1900 prohibiting immigration and sale or transfer of land to non-indigenous people, recognition of the three chiefs of the Jumma and a ban on further Bengali settlement in the CHT region. The government rejected all four demands after which the PCJSS opted for armed struggle as a means to achieve its political objectives. A meeting between Jumma and government representatives in 1975 similarly ended without agreement. Larma 2003, 3. The PCJSS was based on the Panchayat system with members elected by the village members. Its armed wing, the Shanti Bahini (peace brigade), was formed in 1973. For more information *see*, PCJSS/SB <http://pcjss-cht.org> [accessed May 20, 2012]. The political organization of the Jumma peoples, however, can be traced back to the early part of the 20th century. Ray 1995, 2; and, Dictaan-Bang-oa 2004, 4.

[1004] In 1979 thousands of Jumma sought refuge in India after military forces destroyed tribal villages and forced inhabitants into "concentration camps". The refugees returned after receiving government assurances regarding property restitution which nevertheless went unfulfilled. An estimated 50,000 Jumma fled in 1986 following a series of massacres in March and April of the same year. Three years later another 10,000 Jumma sought refuge in border areas in India. Ray 1995, 3. One study identifies 14 major massacres in the CHT region between 1971 and 1993. Larma 2003, 4–5.

[1005] Elahi 1998, 10, *citing*, Shelley 1992; Larma 2003, 4; and, Jamil and Panday 2008, 483. This excludes the tens of thousands of Jumma displaced within the CHT.

[1006] The talks were preceded by a series of dialogues, as noted above, between the PCJSS/SB and the government to resolve the conflict over the CHT region. Talks took place in 1985 and again in 1987. Jumma representatives presented government officials with five key demands, amended in 1987, which government officials rejected on both occasions. These included: autonomy in the CHT region and the establishment of a legislature; constitutional provisions requiring consent of the CHT people to any changes in the status of the region and prohibition of further settlement in the CHT; removal of all "illegal outsiders" who had settled in the region since 1947; provision for economic development of the region; and, a commitment to create a favourable climate for a political solution to the conflict. *See also*, Dictaan-Bang-oa 2004, 6.

districts of the CHT. While some groups accepted the government plan, the PCJSS/SB rejected it as insufficient in part because of the limitations placed on indigenous autonomy, but also because it failed to provide adequate solutions to the conflict over land and the displacement of the region's indigenous inhabitants.[1007] A second round of talks to resolve the conflict commenced in 1992 following the election of a new government the previous year.[1008] The post-election period also saw an improvement in relations between Bangladesh and India paving the way for bilateral talks on the repatriation of Jumma refugees. The Indian government subsequently directed state officials in Tripura to make plans for the repatriation of the refugees to Bangladesh by the end of the year. Faced with the prospect of a cut-off in government assistance, the Jumma Refugees Welfare Association (JRWA), representing refugees in Tripura, decided to enter into talks with government officials from Bangladesh in order to secure acceptable conditions for their return.[1009] In contrast to the Guatemalan case, discussed below, the process was an otherwise "top-down" approach to peacemaking.

The first set of "talks" between refugee representatives and Bangladeshi officials took place in May 1993 during a government visit to India to advance a solution to the refugee issue. Meetings between officials of the two governments ended with an agreement to commence repatriation of the

[1007] *Ibid.* Concern was also expressed that the allocation of seats under the autonomy proposal was inconsistent with the size of the various tribes.

[1008] The newly-elected government established a multi-party committee comprised of the Bangladesh National Party, the Awami League and Jamaat-e-Islami to formulate recommendations on a solution to the conflict. The PCJSS subsequently declared and unilateral cease-fire. Talks between the government committee and the PCJSS over the next four years, however, ended without agreement. *Ibid*., 7-8.

[1009] The refugees initially refused to return arguing that conditions were unsafe. International actors, moreover, appealed to the Indian government to resume rations and not to carry out forcible repatriation of the refugees. The two governments turned down a UNHCR request to ascertain and monitor the voluntary repatriation of refugees. CHTC 1994, 14; Ahmad 1994, 20; and, Ray 1995, 5.

refugees the following month. The JRWA subsequently presented the government of Bangladesh with a 13-point memorandum outlining their demands.[1010] The memorandum addressed the practical aspects of refugee return and reintegration and dealt with the root causes of their displacement including the broader conflict over the future status of the CHT region.[1011] Bangladeshi officials handed refugees the government's response to their demands during a follow-up meeting with their Indian counterparts in June of the same year.[1012] Finding that the government's response still fell short of what was required for the safe return of refugees, as understood by the refugees themselves, the JRWA nevertheless agreed to visit the CHT to assess the situation on the ground for themselves. A delegation of 18 refugees, accompanied by six Indian officials visited the CHT the following September. The visit reaffirmed the JRWA's initial view that the situation in the Chittagong Hill Tracts remained unsafe for return. In their report, the JRWA observed that Bengali settlers and the military continued to occupy most of the land, that the government's rehabilitation package was inadequate and that law and order had yet to be re-established with ongoing incidents of rape, abduction and

[1010] CHTC 1994, 14–15. For an original copy of the memorandum *see*, PCJSS/SB <http://pcjss-cht.org> [accessed May 20, 2012].

[1011] The 13 JRWA demands included: guarantees for security of life and property; rehabilitation, including restoration of land; prohibition of further Bengali settlement in the CHT and the withdrawal of all settlers; restoration of the civil administration; compensation for loss of life and property; unconditional withdrawal of all charges, cases and warrants for arrests; cancellation of all judgements in cases tried in absentia; prohibition of legal action against refugees associated with the rebel groups; cessation of conversions to Islam; forgiveness of loans from government banks and institutions; resettlement of refugees in the CHT under auspices of UN observers, ICRC, representatives of the Indian government, the CHT Commission, the International Working Group on Indigenous Affairs, Survival International, Amnesty International and the ILO; transfer of education certificates; and, resolution of the conflict over CHT. *Ibid*.

[1012] The government agreed to provide each returning refugee family with 10,000 taka (122 USD); a half year supply of rations; two bundles of aluminum sheeting for housing; general amnesty up to 31 December 1993; restoration of land and a commitment not to resettle returnees in cluster villages; forgiveness of loans up to 5,000 taka (61USD); assistance with the re-admission of returnees to schools and colleges; and, to consider reinstatement of employment. CHTC 1994, 15.

religious persecution, among others.[1013] The association insisted that the government meet each of its 13 demands and further observed that the refugee situation could not be resolved in full until there was a comprehensive and permanent solution to the conflict over the CHT region.[1014] Under pressure from both the Bangladeshi and Indian governments, refugee leaders met with government officials from both sides in early 1994 to resume discussions on repatriation. The meeting ended with an agreement for the initial return of some 400 families.[1015] Approximately 5,000 refugees returned to the CHT region in February and June of the same year.[1016] The repatriation program was subsequently put on hold, however, due to refugee concerns that the government of Bangladesh was failing to uphold its commitments as set out in the agreement. Many of the refugees were unable to return to their villages, which had been occupied by settlers or the army, while promises regarding the reinstatement of jobs held prior to displacement, reintegration of refugees into the country's educational system and financial compensation for displacement were not honoured.[1017]

[1013] CHTC 1994, 16.

[1014] *Ibid.*

[1015] The government of Bangladesh sought to encourage return by offering refugees a number of additional incentives including guarantees for security of life and property, a pair of bullocks or 8,000 taka (97 USD), consideration for exemption of bank loans, and an arrangement for special examinations for returning students. Refugee leaders reported that the government also agreed to ensure the adequate rehabilitation of the refugees, that negotiations on resolving the conflict would continue with the PCJSS, and that the government would allow a refugee delegation from Tripura to visit the CHT to ascertain whether the government had fulfilled its promises. CHTC, *ibid*., 17; and, Ray 1995, 5.

[1016] This included 379 families (1,818 refugees) who returned in February 1994 and another 648 families (3,345 refugees) who returned to the CHT in July of the same year. CHTC 1997, 32.

[1017] In March 1994, the South Asia Human Rights Documentation Centre (SAHRDC) submitted a written complaint to the Indian National Human Rights Commission alleging that the refugees were being forcibly repatriated to Bangladesh. Two years later, the Commission issued a report which found that the Indian government's decision to cut rations and other facilities essentially contributed to the forcible repatriation of the refugees. The Commission called upon the government to restore rations and emphasized the importance of UNHCR involvement to ensure the voluntary character of repatriation. The governments of Bangladesh and India both opposed UNHCR oversight of the repatriation operation. The Returnee Jumma Refugee 16-Points Implementation Committee issued a report in October 1996 documenting the government's failure to fulfill its promises. For a summary *see*, *ibid.*, 11.

A new round of negotiations over the future of the CHT and its indigenous peoples began in 1996 following another change in government in Bangladesh. The election of a new administration was also followed by renewed talks on repatriation between government officials and the Jumma Refugee Welfare Association. In early 1997 the two sides reached a second agreement on repatriation which included expanded guarantees governing the repatriation, reintegration and rehabilitation of the refugees.[1018] Refugees started to return to the CHT region within weeks of the March 1997 agreement. By the end of the year the government and indigenous representatives concluded a comprehensive agreement to the conflict. The Chittagong Hill Tracts Peace Accord established a CHT regional council comprising the above-mentioned councils set up five years earlier under previous legislation.[1019] The accord also incorporated previous agreements between the government and the JRWA including the 20-point rehabilitation package for returnees agreed to in talks between the two sides earlier in the year.[1020] In contrast to Guatemala and Burundi, neither Bangladesh (the country of origin) nor India (the host country) agreed to UNHCR oversight of the return operation.[1021] By February 1998, nearly a year after the JRWA representatives and government officials agreed to the conditions for repatriation, 64,609 refugees (12,222 families) had returned

[1018] The agreement included guarantees for safety of life and property; the provision of each family with a cash grant of 15,000 taka (183 USD) along with building materials (corrugated metal and plywood) for housing; nine months of food rations; restitution of land and a grant of 10,000 taka (122 USD) to landed families for the purchase of a pair of bullocks; distribution of land in accordance with existing land policy and 3,000 taka (37 USD) to landless families for the purchase of a dairy cow; forgiveness of bank loans; priority employment of returnees along with reinstatement of government positions; and, finally, recognition of degrees obtained in refugee camps through special examinations and assistance with re-admission of refugees to education institutions upon their return. CHTC 2000, 32. For an original copy of the memorandum see, PCJSS/SB <http://pcjss-cht.org> [accessed May 20, 2012].

[1019] Chittagong Hill Tracts Peace Accord, Dec. 2, 1997.

[1020] *Ibid*., D - Rehabilitation, General Amnesty and Other Matters.

[1021] CHTC 2000, 32.

to Bangladesh. Two years later, it was reported that all of the tribal refugees in Tripura had returned to the Chittagong Hill Tracts region of Bangladesh.[1022]

iii. Guatemala

The Guatemalan case is similar to Bangladesh in that indigenous refugees also negotiated the terms of their repatriation with government officials in advance of a comprehensive solution to the broader conflict.[1023] The armed conflict in Guatemala dates back to 1949 when right-wing conservative forces attempted to overthrow the country's democratically elected centre-left government.[1024] Five years later, the same forces, aided by the US Central Intelligence Agency, forced Guatemala's government to resign and hand over power to the Guatemalan military. Right-wing forces in the country were able to maintain their hold on power in the years and decades that followed the 1954 coup through a combination of electoral fraud and military repression. Beginning in the 1960s, guerilla forces attempted to challenge the governing regime's hold on power through armed struggle. In the early 1980s the various factions joined efforts to establish the Guatemalan National Revolutionary Unity (Unidad Revolucionaria Nacional Guatemalteca) or URNG. Military repression nearly resulted in the defeat of the guerillas. The military's "scorched earth" policy, moreover, resulted in widespread death, destruction and displacement of the country's indigenous population which the military viewed as the URNG's primary base of support.[1025]

[1022] AI 2000, 10. According to UNHCR figures, there were 5,401 refugees at the end of 2000.

[1023] In contrast to the case of Bangladesh, refugee participation in the Guatemalan peace process, as already noted in Chapter 2, has received widespread coverage. The actual process of negotiation, however, has yet to be examined in detail.

[1024] For a brief history of the armed conflict *see*, UCDP Conflict Encyclopedia <http://www.ucdp.uu.se> [accessed Mar. 21, 2011].

[1025] The UN Commission for Historical Clarification, established under an agreement between the Guatemalan government and the URNG in 1994, reported that the scorched earth policy had resulted in the massacre of several Mayan communities, the annihilation of more than 440 villages, the killing of up to 150,000 civilians between mid-1981 and 1983 and the

By the time the two sides began negotiations to resolve the conflict in the early 1990s, there were some 160-365,000 refugees most of whom were either self-settled or living in around 50 camps set up in the southern Mexican state of Chiapas.[1026]

The first set of talks between the Guatemalan government and the URNG took place following the signing of the 1987 Esquipulas II Accord. Agreed to by the presidents of five Central American states—Costa Rica, El Salvador, Honduras, Nicaragua and Guatemala—the accord provided the foundation for subsequent efforts to resolve long-standing armed conflicts across the region including the situation of hundreds of thousands of refugees uprooted by the conflicts.[1027] Identifying "an authentic democratic process that is pluralistic and participatory," as critical to their peacemaking efforts, the Central American governments also "under[took] to address, with a sense of urgency, the problem of the flow of refugees and displaced persons caused by the regional crisis

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displacement of more than a million people. Alvarez and Prado 2002, 39. The first major wave of refugees fled Guatemala in 1981 after the government killed 150 civilians in Coya, Huehuetengango. Another massacre a year later in San Francisco led to another wave of displacement. Refugees continued to seek refuge in Mexico throughout the mid-1980s. For a detailed overview of displacement *see*, Simon and Manz 1992, 102–106.

[1026] The Guatemalan refugee population in Mexico included approximately 46,000 refugees registered with UNHCR and around 150,000 self-settled refugees. Some 18,000 refugees were later moved from Chiapas to settlements in the Mexican states of Campeche and Quintana Roo located in the Yucatan peninsula. A smaller number of refugees sought asylum in El Salvador, Honduras, Belize as well as in the US and in Europe. An estimated one million Guatemalans were displaced inside the country. Krznaric 1997, 63; North and Simmons 1999a, 3; Jamal 2000, 5; and, Wolfensohn 2001, 27. Most of the refugees were from approximately 8 different ethnic-linguistic Mayan groups that comprised Guatemala's indigenous majority population with a smaller number of ladino descent. Loughna 1999, 3; and, Worby 1999, 3.

[1027] Esquipulas II, Peace Treaty, Aug. 7, 1987. In 1983 Colombia, Mexico, Panama and Venezuela (Contadora Group) decided to pursue a solution to conflicts across the region independent of the United States. This led to the first Esquipulas conference in 1986. The accord reached at the second conference in 1987 provided for the end of support for irregular military forces; a ceasefire and amnesty for insurgent groups; national dialogue to promote peace and democratization; and, a National Reconciliation Commission to verify implementation of the accords. Alvarez and Prado observe that while it was difficult initially to implement the accord in Guatemala due to government and URNG pre-conditions, by "de-emphasizing military strategies, the Esquipulas II meeting helped to stimulate the development of new social groups in favour of peace, largely spearheaded by religious organizations, who slowly generated public pressure for dialogue". Alvarez and Prado 2002, 40. For a more detailed discussion *see*, Oliver 1999.

[and] to facilitate their repatriation, resettlement, or relocation, provided that it [was] of a voluntary nature and [took] the form of individual cases".[1028] Shortly after the signing of the accord, the governments of Guatemala and Mexico along with UNHCR reached a tripartite agreement providing for the voluntary repatriation of Guatemalan refugees. The Commission of National Reconciliation (CNR), the body established by the government to facilitate the implementation of the regional accord, meanwhile, facilitated talks between government and URNG officials which continued into 1988.[1029] The negotiations broke down later in the year, however, amid rising violence and disagreements among the two sides on disarmament. It was during this time that Permanent Commission of Guatemalan Refugees (Comisiones Permanentes de Refugiados Guatemaltecos) or CCPP approached the CNR asserting their desire to take part in the negotiation of a solution to their situation.[1030] Comprised of indigenous refugees elected by camp populations situated in Chiapas, Campeche and Quintana Roo, the CCPP was mandated to represent the interests of camp-based refugees in talks with government and international actors.[1031] Refugee women also set up their own organizations—Mama Maquin

[1028] Esquipulas II, *ibid*., arts. 3 and 8.

[1029] The CNR included one official delegate, one representative of existing political parties, one prominent citizen and a delegate from the Guatemalan Bishop's Conference. The Esquipulas II Accord required each of the signatories to establish a Commission of National Reconciliation to "[verify] genuine implementation of the process of national reconciliation and also unrestricted respect for all the civil and political rights of Central American citizens guaranteed in [the Accord]". Esquipulas II, *supra* n. 1027, art. 1(c).

[1030] The CCPP had emerged a year earlier in response to refugee concerns about ongoing instability, human rights violations and secondary occupation of their lands. It was comprised of three branches each of which represented a geographical region of Guatemala. The three different branches also had relations with sectors of the guerrilla groups that comprised the URNG. Krznaric 1997, 62; and, Loughna 1999, 27. In 1992, five years after the emergence of the CCPP, the Association for Dispersed Guatemalan Refugees (ARDIGUA) was set up to represent the interests of the larger, but less visible population of self-settled Guatemalan refugees in Mexico. ARDIGUA represented some 5,000 families from more than 36 communities. In addition to advocating for collective returns to Guatemala, ARDIGUA also pushed for official recognition and provision of documents for self-settled refugees in Mexico. For a more detailed discussion *see*, Wolfensohn 2001.

[1031] Each camp was comprised of a general assembly and a committee of representatives. All camp residents were members of the general assembly, the highest decision-making body in

was the first and largest of the women's group that linked camp refugees across the southern states of Mexico—many of which were affiliated with the CCPP.[1032] In November 1988 the CCPP issued a five-point plan setting out their demands central to which was collective return (rather than the individual return stipulated in the Esquipulas Accord and agreed to by Guatemala, Mexico and UNHCR) and the recovery of their lands.[1033] "[W]ithout their participation [in the return process]", moreover, the CCPP observed that "there [would neither] be a just nor possible solution [to the refugee situation]".[1034] The Guatemalan government nevertheless refused to enter into talks with the Permanent Commissions claiming that the CCPP did not represent the refugees.

In early 1990 the CNR facilitated a new round of indirect negotiations between government and URNG representatives. The talks ended with an

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the camp, which met on an annual basis or as otherwise needed. The committee included representatives of the different neighbourhoods in the camp and representatives of sectors such as health and education. The committee was responsible for the day-to-day administration of the camp. Rapone and Simpson 2004, 141–142. Stepputat observes that the "[p]reservation of family and community structures in exile and a strong 'localocentric bent'" in the Guatemalan case, enabled refugees "to reconstitute themselves as a polity after the violent shock of being uprooted from their traditional lands in Guatemala". Stepputat 1994, 4. Studies also emphasize the importance of self-organization among refugees to "secure emergency aid, negotiate and authorize their stay in Mexico, provide education [and] negotiate the possibility of finding land and work". Krznaric 1997, 69; and, Rapone and Simpson 2004, 140. Rapone and Simpson posit that "the control and organization of camp life by refugees themselves is a prelude to return" providing refugees with "key resources" and a space to "reconstruct their lives, giving organization form to an increasingly sophisticated social consciousness". Rapone and Simpson 2004, 136. *See also*, Krznaric 1997, 69; and, North and Simmons 1999a, 16.

[1032] The founding leadership of the CCPP was dominated by refugee men, however, refugee women were subsequently elected to the CCPP leadership. Crosby 2001, 33; and, Pessar 2001, 479. Unlike the CCPP, women's organizations like Mama Maquin had a dual agenda, focusing both on collective return to their homes of origin in Guatemala and on equality within their own communities and within Guatemalan society. For further discussion of other organizations and the role of Guatemalan refugee women, *see*, Loughna 1999; and, Pessar 2001. As noted below, UNHCR established a separate initiative—FoReFem —to provide a forum for deliberation, discussion and formulation of recommendations by and for refugee women.

[1033] The five demands included a public guarantee of the refugees' security; assurance of a right to return to their lands; the right to organize and freely associate; guarantees that they would be subject to civilian and not military authority; and, accompaniment by international observers during their return. Los 5 puntos de nuestro planteamiento, Nuevo Dia, Nov. 1988, *cited in*, Simon and Manz 1992, 130. The CCPP later demanded guarantees for freedom of movement at both the national and international levels.

[1034] CCPP to the Executive Committee of Esquipulas II, Feb. 15, 1988, *cited in*, Rapone and Simpson 2004, 142.

agreement establishing a framework for future negotiations to be followed a year later by a second agreement on the democratic foundations for a solution to the conflict.[1035] The latter agreement affirmed that future accords between the two sides "must reflect the legitimate aspirations of all Guatemalans" and that "the strengthening of functional and participatory democracy" in Guatemala necessitated, among others, the "pre-eminence of civilian society".[1036] The agreement further recognized that the strengthening of participatory democracy in Guatemala required the "effective resettlement [i.e., repatriation and reintegration] of the population uprooted by the internal armed conflict".[1037] Two weeks after the signing of the second agreement, the CCPP, in an open letter, once again requested that the government accept the refugees' main demands and further proposed the creation of a mediating committee to facilitate an agreed upon solution to the refugee issue between the government and refugee representatives.[1038] Having agreed to further negotiations with the URNG, which it had previously rejected, the Guatemalan government also began to reassess its approach to negotiations with the CCPP. When it turned out that few refugees were willing to undertake the individual repatriation promoted by the government and UNHCR, and realizing that without the return of refugees it

[1035] Basic Agreement for the Search for Peace by Political Means, Mar. 30, 1990; and, The Framework Agreement on Democratization in the Search for Peace by Political Means (Queretaro Accord), Apr. 26, 1991.

[1036] Queretaro Accord, *ibid.*, preamble, para. 6; and, Part I, para. (a). It further defined democratization as "guaranteeing and promoting participation, whether direct or indirect, by civilian society in general in the formulation, implementation and evaluation of government policies at the various levels of the government..." *Ibid.*, Part II. The Esquipulas II Accord, as noted above, identified democratization as a central pillar of the peacemaking process in Central America.

[1037] *Ibid.*, Part I, para. (i).

[1038] Declaracion publica de las comisiones permanentes prepresentes del pueblo guatemalteco refugiado en Mexico, Chiapas, May 8, 1991, *cited in*, Simon and Manz 1992, 130. A year earlier the CCPP had requested UNHCR's country office in Guatemala to take part in a "Mediation Group" alongside the Catholic Church, the recently established Office of the Human Rights Ombudsman and a Guatemalan human rights organization. A support group comprised of diplomatic representatives from Canada, France, Mexico and Sweden along with the International Council of Voluntary Agencies and the World Council of Churches was subsequently set up to assist the Mediation Group. Worby 1999, 13.

would be difficult to obtain much needed development assistance, the government reversed course and opened talks with the CCPP.[1039] Facilitated by a special mediating committee comprised of clergy, human rights representatives and UNHCR, the talks lasted for more than a year and ran parallel to CCPP efforts to raise awareness about refugee demands at both national and international levels.[1040] In contrast to the Jumma refugee situation, where the governments of both Bangladesh and India opposed UNHCR involvement, the refugee agency played a significant role in financing the activities of the CCPP and in providing political support.[1041] On 8 October 1992,

[1039] Government officials were initially confident that most refugees would return on their own initiative rendering such negotiations, as the CCPP demanded, unnecessary. This turned out not to be the case. In 1989, for example, contrary to government predictions that some 10,000 refugee would return to Guatemala with UNHCR assistance, only 1,000 took advantage of the individualized repatriation program. One study observes that "by taking a unified position in rejecting repatriation under the terms offered to them and in that way causing the failure of the Tripartite Agreement to trigger the large-scale return the government had hoped for the refugees were able to generate quite a bit of leverage for themselves". Riess 2000, 19. On 18 October 1991, the two sides reached agreement on a broad outline for continued negotiations. Carta de entendimiento el gobierno de Guatemala y la oficina de la alta commisionada de las naciones unidas para los refugiados relativo a la repatricion voluntaria de los refugiados guatemaltecos, Nov. 13, 1991, *cited in*, Simon and Manz 1992, 132.

[1040] The CCPP sought diplomatic support from both Canada and Sweden, organized consultations with Guatemalan bishops and established relations with both rural and urban popular groups. They also developed a detailed plan for their collective return including mechanisms for international accompaniment and for addressing land claims upon their return. Simon and Manz 1992, 128; and, Rapone and Simpson 2004, 145–146. Refugees were also able to "[effectively appropriate] universalistic discourses such as human rights in their organized struggles to return". Krznaric 1997, 70. *See also*, Stepputat 1994, 9; Wolfensohn 2001, 28–29; and, Rapone and Simpson 2004, 140. Pessar similarly observes in reference to refugee women that their agency was "greatly enhanced by the fact of their being female and indigenous [which] in turn, facilitated their membership in broad political coalitions that crossed national borders". Pessar 2001, 461. The period, as noted in Chapter 2, was important for the development of law and practice relating to the rights of both refugee women and indigenous peoples.

[1041] Pessar 2001, 479. Following the failure of the first round of talks between the CCPP and the Guatemalan government, UNHCR drafted a Letter of Understanding, signed by the Guatemalan President and High Commissioner, which addressed some of the most important concerns raised by the refugees. Worby 1999, 4. *See also*, North and Simmons 1999b, 274. The agency's female staff along with women from UNDP and local and international NGOs, meanwhile, were responsible for the establishment of FoReFem, the conference on refugee women and returnees. Worby 1999, 6. *See also*, UNHCR 1994b, para. 39; and, Loughna 1999, 42. Commenting on the importance of such networks for refugees in Central America, Pritchard observes that contacts between refugees, UNHCR and other international actors provided refugees with "access to a transnational political 'space'". Pritchard 1995, 24, *quoted in*, Krznaric 1997, 71. The church also played an important role as "an effective intermediary between the government and refugee organizations in such a way as to advance refugee interests". Stepputat 2006, 127.

the government and the CCPP reached an agreement providing for the collective return of refugees in accordance with their basic set of demands.[1042] Two years later, the government and the URNG, drawing upon previous talks and agreements involving refugees, signed a comprehensive agreement on the Resettlement [sic] of the Population Groups Uprooted by the Armed Conflict in Guatemala.[1043] The agreement is among the most detailed agreements reached in the 1990s setting out solutions for refugees displaced by armed conflict.

The government and URNG signed a final agreement providing for a comprehensive solution to the conflict in 1996.[1044] Most of the refugees had already returned to the country prior to the signing of the final agreement ending the armed conflict. The first collective return of refugees took place in early 1993 when 50 families (2,480 individuals) left the camps in Mexico and crossed the border back into Guatemala.[1045] The following year another 4,000 refugees

[1042] Rapone and Simpson 2004, 146. The government described the agreement as a "sign of mutual trust and good will" between it and the refugees. Rather than the agreement as a "gift from the government", refugee representatives described the agreement as "the result of efforts by us, the refugees, who have agreed to return despite the fact that some of our demands were not included in the accord". Latin American Database/Latin American Institute 1992. The 1992 agreement obliged the government to allow the refugees to return in groups, to facilitate the return process including their documentation upon return, to assist returnees to reclaim their former land or to purchase new land, and to allow them the right to organize and move freely. It also included an exemption from military service for three years following their return, and guaranteed only a limited military presence in areas of return.

[1043] The Agreement on the Resettlement of the Population Groups Uprooted by the Conflict, June 23, 1994. According to Jamal, "[t]he different steps of negotiation, repatriation, and further negotiation between the refugees and the different governments helped shape the eventual peace. Small-scale accords provided draft models, which were subsequently modified to accommodate successes and mistakes, changes over time, different regimes, and the reality of repatriation". Jamal 2000, 6. *See also*, Alvarez and Prado 2002, 38. Section II of the agreement refers to the earlier agreement between the representatives of the CCPP and the Guatemalan government. The agreement, as noted in the previous section, also includes extensive provisions for the ongoing participation of refugees.

[1044] Agreement on a Firm and Lasting Peace, Dec. 29, 1996.

[1045] Krznaric 1997, 63. The high level of refugee participation helped to stimulate donor funding, led to greater involvement of refugees in reconstruction and reconciliations efforts after their return and contributed to the long-term durability of the return operation, but it also slowed down the return process. Worby 1999, 51; and, Loughna 1999, 38. Participation in itself, moreover, did not guarantee that all of the refugee demands were met nor the successful implementation of all aspects of their agreement with the government. The CCPP was unable to win support, for example, for the abolition of civil patrols or the removal of military barracks from the places to which refugees returned. *Ibid.*, 15. They also failed to achieve agreement on many of the issues affecting refugee women while gains made in exile often failed to take root or were reversed once they return home to Guatemala. Worby 1999, 34–

returned to Guatemala with the number of collective returns rising to 18,000 by mid-1997 some six months after the government and the URNG signed the comprehensive agreement ending decades of armed conflict in the country.[1046] An almost equal number of Guatemalan refugees participated in UNHCR's voluntary repatriation program between 1984 and 1997 choosing to return as individuals rather than through the collective returns organized by the CCPP.[1047] By the time the return operation ended in 1999, some 46,000 refugees had returned to Guatemala, more than two-thirds of whom opted for collective rather than individual return.[1048]

V. Summary

The negotiated settlement of armed conflict has long been viewed as falling largely if not solely within the jurisdiction of the state with the participation of civil society including refugees seen as more of a hindrance than a help in its management and resolution. The largely internal and increasingly complex nature of armed conflict, especially in recent decades, as detailed above, along with the shortcomings if not failings of traditional forms of diplomacy, not to

36; and, Pessar 2001, 461–462. The CCPP lost some of its popular support after refugees began to return while "the returnee population as a whole did not manifest the levels of organization, consolidation and politicization that they had experienced in refuge". Worby 1999, 10; and, Loughna 1999, 36. Assessing the situation of returnees some fifteen years after the first collective returns, Long observes that "the process of collective return has in fact allowed returnee communities to avoid marginalisation and the difficulties of state absence more effectively than repatriados or those residents who remained in Guatemala throughout the conflict. The experiences of negotiating return provided a community basis for representation and social participation, and helped forge and later maintain links with international aid and global society". Long 2007, 5–6.

[1046] Table 2 - Collective Return Organized by the CCPP 1993 - July 1997, in North and Simmons 1999a, 20.

[1047] *Ibid*.

[1048] UNHCR 1998a, para. 28, *cited in*, Naqvi 2004, 74; and, Stepputat 2006, 124. Approximately 22,000 refugees who were relocated to settlements in Campeche and Quintana Roo decided to stay in Mexico, in part, due to ongoing insecurity in Guatemala, but also because the Mexican government had begun to offer the refugees reintegration assistance. Worby 1999, 10.

mention the participatory demands and abilities of civil society actors including refugees to influence peacemaking processes, have nevertheless contributed to new approaches and understandings of how armed conflicts come to an end along with the roles played by an increasingly broad range of conflict actors. This chapter examined two inter-related aspects of the developing understanding of how armed conflicts come to an end—namely, the extent to which peace negotiations comprise a domain for political participation and the extent to which refugees take part in in the negotiation of durable solutions to their situation—based on an analysis of peace agreement provisions for civil society/refugee participation in post-conflict peacebuilding, durable solutions and the implementation of peace agreements, civil society/refugee refugee participation in peacemaking through unofficial or indirect mechanisms and their participation in official or direct negotiations among warring parties.

While the negotiated settlement of armed conflict has long been viewed as falling primarily if not solely within the domain of the state, the analysis in this chapter revealed four major findings which point towards emerging understanding of peace negotiations as a domain for political participation. That peace negotiations comprise a domain for public participation in practice may be inferred in part from the substantive content of peace agreements which extend well beyond the cessation of hostilities to include a wide range of issues generally considered to fall within the public domain. It may also be inferred from peace agreement provisions on the participation of civil society in post-agreement peacebuilding and in the implementation of peace agreements. The establishment of unofficial or indirect mechanisms for civil society participation in more than half of all negotiated settlements to armed conflict in the 1990s

further underscores the emerging understanding of peacemaking as a domain for civil society participation. It was the inclusion of civil society actors in official or direct negotiations, notwithstanding the smaller number of cases involved, however, that appeared to challenge the long-held distinction between state and civil society domains of action in the negotiated settlement of armed conflict.

While refugees have largely been considered as recipients of humanitarian aid rather than political actors and participants in the negotiated settlement of their situation, the analysis in this chapter revealed four additional findings which point towards emerging understanding of negotiations as a domain for refugee participation in talks to resolve their situation. That peace negotiations comprise a domain for refugee participation may be inferred in part from agreement provisions on durable solutions and the concomitant recognition that refugees should be allowed to take part in decisions that affect their lives. It may also be inferred from provisions which explicitly recognize the right of refugees to take part in the public affairs of their countries of origin and in the design, planning and implementation of durable solutions to their situation. The establishment of unofficial or indirect mechanisms for refugee participation in decisions relating to durable solutions to their situation further underscores emerging understanding of peace negotiations as a domain for refugee participation. The inclusion of refugees themselves in official or direct negotiations, as with civil society, generally, challenges the long-held and exclusive role of the state in the negotiation of durable solutions to refugee situations. The practice of civil society participation in peace negotiations, including the participation of refugees in the negotiation of durable solutions, especially in official or direct talks among warring parties, nevertheless falls well

behind the elaboration of principle. The following chapter turns to analysis of the legal and empirical findings on refugee participation in the negotiation of durable solutions and their application to the Palestinian case.

CHAPTER SIX

Conclusion

I. Introduction

The efforts of Palestinian refugees to secure a seat in talks to resolve their situation in negotiations between Israel and the PLO in the 1990s, as detailed in the introduction to this study, raises a number of basic questions about the right to political participation and the negotiation of durable solutions for refugees. First and foremost is the question of whether peace negotiations comprise a conduct of public affairs under international law entailing a concomitant right to take part that is applicable to the participation of refugees in the negotiation of durable solutions. Second, and related, is the question of whether peace negotiations comprise a domain for public participation in practice and whether refugees actually take part in the negotiation of durable solutions to their situation. Chapter 4 explored the first question through analysis of the right to political participation under international and regional human rights treaties, major commentaries and jurisprudence and a range of soft law instruments adopted by international and regional organizations. Chapter 5 examined the second question through analysis of civil society and refugee participation in both official and unofficial negotiations which aimed regulate or terminate armed conflicts between 1990 and 2000 in addition to analysis of peace agreement provisions for civil society and refugee participation in peacebuilding, durable solutions and in the implementation of peace agreements.

This chapter examines the Palestinian refugee case in the context of legal and empirical findings about the participation of refugees in the negotiation

of durable solutions. The chapter has two primary and inter-related aims. The first aim is to determine whether Palestinian refugees had a right to take part in talks on durable solutions during peace negotiations between Israel and the PLO in the 1990s. One of the primary demands of the popular refugee movement that emerged inside historic Palestine and beyond its borders during the decade, as explained in previous chapters, was to take part in official talks to resolve their situation. The second and related aim is to determine whether the exclusion of Palestinian refugees from the negotiating table was unique or common to refugee experiences elsewhere during the same period. Final status talks between Israel and the PLO on the refugee issue, as explained in previous chapters, proceeded without the participation of refugees themselves. Having examined the legal and empirical aspects of refugee participation in the negotiation of durable solutions from an intrinsic perspective and applied the findings to the Palestinian refugee case, the chapter briefly explores some of the primary instrumental rationale for the inclusion of refugees in talks to resolve their situation and examines them in the context of a negotiated settlement to the Palestinian refugee issue.

The chapter is divided into three main sections. The first part of the chapter examines the question of whether Palestinian refugees had a right to take part in the negotiation of durable solutions to their situation in the 1990s. Part two examines whether the exclusion of Palestinian refugees from the negotiating table during this period was unique or whether it was common to refugees elsewhere. Each section briefly reviews and analyzes the main findings of the study, identifies major legal and empirical developments since 2000 and then examines the Palestinian case in light of these findings. The third

and final part of the chapter examines some of the primary instrumental rationale for the inclusion of Palestinian refugees in future negotiations to resolve their plight. As the following sections explains, while there was emerging recognition in the 1990s that refugees should be included in negotiations to resolve their situation, Palestinian refugees did not have a right to take part in such negotiations. The exclusion of Palestinian refugees from the negotiating table, moreover, was not unique to the Palestinian case. The instrumental reasons for participation nevertheless would appear to militate in favour of refugee participation in future negotiations.

II. The Right of Refugees to Take Part in the Negotiation of Durable Solutions

The first objective of this study was to determine whether Palestinian refugees had a right to take part in the negotiation of durable solutions in the context of peace talks between the PLO and Israel that began in the early 1990s and ended roughly a decade later. The study identified two major problems with regard to the elaboration of a refugee right to take part in the negotiation of durable solutions under international and regional treaties which codify political participation as a fundamental human right. First, with the exception of the right to vote and to be elected, relevant treaties are largely silent on the substantive content or ways and means to actualize the right to take part in the conduct of public affairs.[1049] Second, international and regional treaties which codify

[1049] This may be ascribed in part, as noted earlier, to the problem of defining succinctly the ways and means that citizens may take part in the conduct of public affairs given the diversity of political systems and evolving understandings of the right to political participation. That treaties are largely silent on the substantive content or meaning of the conduct of public affairs also reflects a certain deference to the principle of state sovereignty and its corollary of non-interference in the internal affairs of states central to which is the organization or constitutional structure of the state. Consideration of peace negotiations as a conduct of public affairs under international law entailing a concomitant right to take part is also

political participation as a fundamental right are largely silent on whether citizens, refugees in particular, have a right to take part in the conduct of public affairs when they are outside their country of citizenship voluntarily or otherwise.[1050] Chapter 4 examined each of these problems in the context of relevant treaty provisions on the right to political participation, the *travaux préparatoires* of major treaties, commentaries and jurisprudence of UN human rights treaty committees, regional human rights courts and commissions, and a range of soft law instruments adopted by international and regional organizations.[1051] The legal findings in Chapter 4 evidence emerging understanding and recognition that refugees have a right to take part in the negotiation of durable solutions to their situation.[1052] The participation of

confronted by the fact that the management and resolution of conflict has traditionally been considered to fall largely if not solely within the domain of the state. *See further*, Chapter 2, *supra* n. 168-170 and sources cited.

[1050] This may be ascribed in part, as noted elsewhere in this study, to the initial compartmentalization of human rights and refugee law which created a situation in which political persecution comprised grounds for refugee status, while the protection of the political rights of refugees appeared to fall outside the mandates of both the international refugee and human rights regimes. The exilic nature of the refugee regime, with its focus on the protection of refugees in their countries of asylum, arguably contributed to a "one-dimensional" view of refugees as non-citizens. The consideration of residence as a reasonable restriction on the right to political participation appeared to further militate against elaboration and recognition of a refugee right to take part in the public affairs of their home country as long as they were displaced. *See further*, Chapter 2, *supra* n. 204-206 and sources cited.

[1051] The analysis was limited to international and regional human rights treaties, the primary reference to the right to political participation under international law. The right to political participation may also be inferred from international refugee law and from international humanitarian law, however, discussion of relevant treaties and provisions was beyond the scope of this study. The related set of political freedoms, widely recognized as critical to the exercise of the right to political participation, were similarly beyond the scope of this study as was a discussion of the right to political participation under customary and general principles of law, the other primary sources of international law. *See*, Chapter 1, *supra* n. 124-125. For a review of legal sources and methodology *see*, Chapter 1, *supra* n. 96-104, 108-109.

[1052] The right to political participation has, in sum, become increasingly determinate over time—i.e., it elaborates how it is to be implemented (through peace negotiations) and identifies to whom it applies (refugees). *See*, the brief discussion regarding the indeterminate character of the right to take part in the conduct of public affairs directly, Chapter 2, *supra* n. 171-177. The findings are limited to analysis of instruments in force as of the end of 2000. Additional limitations include the lack of preparatory works for each of the treaties reviewed, the paucity of jurisprudence on the right to take part in the conduct of public affairs directly, the late establishment or absence of bodies with a mandate to review compliance with state signatories to each of the reviewed treaties and the predominant focus of major commentaries and studies on the right to take part in the conduct of public affairs indirectly, primarily through freely chosen representatives. *See*, Chapter 1, *supra* n. 114-115, 117-119.

refugees in the negotiation of durable solutions during the period under consideration, as the following analysis explains, nevertheless appeared to fall short of an established "right" under international law.

i. General conclusions

In order to determine whether Palestinian refugees had a right to take part in the negotiation of durable solutions in the 1990s the study first sought to ascertain whether peace negotiations comprise a conduct of public affairs under international law entailing a concomitant right to take part. While treaties which codify political participation as a fundamental right are largely silent on ways and means for citizens to take part in the conduct of public affairs, with the exception of the right to vote and to be elected, the legal analysis in Chapter 4 revealed four major findings which point towards an evolving understanding of peace negotiations as comprising a "conduct of public affairs" under international law entailing a concomitant right to take part. First, the texts and drafting histories of major treaties which enshrine political participation as a fundamental human right indicate that the conduct of public affairs comprises more than the participation of citizens in government.[1053] The conduct of public affairs rather is a broad concept relating to the exercise of political power involving policy-making at all levels—local, national, regional and

[1053] The drafters of major treaties, including the ICCPR, the primary reference to the right to political participation under international law, rejected more restrictive language referring to the right to take part in the government of the state of which a person is a citizen. ICERD and ICEDAW also use broader formulations. *See*, the discussion in Chapter 4, *supra* n. 723-727 and corresponding text. Drafters of the ICCPR also supported an open-textured or inclusive definition that would accommodate ideological differences and a diversity of political systems. Such a definition not only facilitated widespread ratification of the Covenant, it also ensured that its provisions on political participation would "withstand the test of time", that is to say, allow for evolving understandings of ways and means for citizens to take part in the conduct of public affairs. *See*, the discussion in Chapter 4, *supra* n. 728 and corresponding text.

international.[1054] The broad nature or meaning ascribed to the conduct of public affairs would appear to allow at least for the consideration of peace negotiations, in particular those which go beyond setting conditions for the cessation of hostilities, as comprising a conduct of public affairs under international law.[1055] Second, commentaries and jurisprudence on the right to political participation recognize constitution-making, given the "composition, nature and scope of activities" involved, as comprising a conduct of public affairs entailing a concomitant right to take part.[1056] This would likewise appear to allow for the consideration of peace negotiations as a conduct of public affairs if one understands such negotiations as analogous to or comprising hybrid forms of constitution-making.[1057] Third, commentaries relating to the

[1054] Major commentaries on the right to political participation similarly emphasize the broad nature of the concept. In its General Comment on article 25 of the ICCPR, for example, the UN Human Rights Committee identifies the participation of laymen in judicial proceedings, interest or pressure groups, peaceful demonstrations, consultations, public debates and dialogues, neighbourhood associations and unions as examples of domains for the conduct of public affairs. *See*, the discussion in Chapter 4, *supra* n. 733-735 and corresponding text. In addition to non-governmental organizations and associations, referenda and international organizations, the UN Committee on the Elimination of Discrimination Against Women also identifies public boards and local councils, political parties, trade unions, professional or industry associations, women's organizations and community-based organizations as among the wide array of domains for the conduct of public affairs. *See*, the discussion in Chapter 4, *supra* n. 755-757 and corresponding text.

[1055] The substantive content of contemporary peace negotiations frequently comprises a wide range of issues many of which are considered to fall within the public sphere not least of which is the structure of the state along with the distribution of political power and national resources. *See*, the discussion in Chapters 2, *supra* n. 281; and, Chapter 5, *supra* n. 914 and corresponding text. The substantive content of peace agreements may also include provisions relating to the status of certain groups—women, minorities, indigenous peoples, refugees, etc.—each of which have a corresponding right to take part in decisions that affect their lives under various bodies of international law. *See*, the discussion in Chapters 4 and 5 *supra* n. 842-845, 914-917, 962-967 and corresponding text.

[1056] This includes the Marshall case in which the UN Human Rights Committee recognized constitution-making as a conduct of public affairs within the meaning of article 25 of the ICCPR. It is through such cases, as Hart observes, that the meaning of the right to take part in the conduct of public affairs has "increasingly been explored to discover what those open-ended terms, 'take part' and 'public affairs', might mean". Hart 2003, 6. The Committee's subsequent Comment on the right to political participation, moreover, explicitly states that citizens take part in the conduct of public affairs when they choose or change their constitution. *See*, the discussion in Chapter 4, *supra* n. 736, 742-753 and corresponding text.

[1057] The analogy between constitution-making and peace negotiation draws upon emerging practices and evolving understandings of a right to take part in constitution and international law-making. *See*, the brief discussion in, Chapter 2, *supra* n. 193-195 and corresponding text. The conceptual significance of these developments in the practice and law of political participation, as argued in Chapter 2, can be found in Bell's seminal work on contemporary peace agreements which she describes as "international transitional constitutions with a

elimination of discrimination against women with respect to the right to political participation explicitly refer to peace negotiations as comprising a conduct of public affairs entailing concomitant right to take part.[1058] Finally, a related body of soft law instruments emphasize that women "must" participate in matters of international peace and security, call upon states to adopt special measures including "adequate legal protection" to ensure their "full and effective" participation "in negotiations", recognize such participation as a "basic human right" and urge states "to ensure increased representation of women at all decision-making levels in national, regional and international institutions and mechanisms for the prevention, management, and resolution of conflict".[1059]

Having established the evolving understanding of peace negotiations as comprising a conduct of public affairs under international law entailing a concomitant right to take part, the study then examined the second and related question of whether refugees have a right to take part in the public affairs of their country of origin. While international and regional treaties which codify political participation as a fundamental human right are largely silent on the

clear relationship to both international legal agreements and domestic constitutions". *See*, Chapter 2, *supra* n. 197. In this sense, peace negotiations may be described, as Bell argues, as "a process of constitution-making as negotiated settlement". *See*, the discussion in Chapter 4, *supra* n. 741.

[1058] In its General Recommendation on articles 7 and 8 of ICEDAW, the UN Committee on the Elimination of Discrimination Against Women explicitly refers to the participation of women in peace negotiations as a fundamental element of the right to take part in the conduct of public affairs at the international level under article 8 of the Covenant. See, the discussion in Chapter 4, *supra* n. 758. The inclusion of a separate article on the conduct of public affairs at the international level, which is unique to ICEDAW, is an explicit recognition, as Chinkin et al. observe, "[of] the immense importance of [women's participation in] decision-making in international fora, on matters such as *peacemaking*, conflict resolution, military expenditure and nuclear disarmament, development and the environment, foreign affairs and economic restructuring". [emphasis added] Chinkin, Freedman, and Rudolf 2012, 222–223.

[1059] This includes several "generations" of resolutions on women's participation in the strengthening of international peace and security and at least four major UN declarations and programmes of action on the equality and advancement of women, in particular, their contribution to and participation in the promotion of international peace and security. *See*, the discussion in Chapter 4, *supra* n. 759-1115. These instruments were adopted either by consensus or by a large majority with the exception of the Nairobi Forward-Looking Strategies which were brought to the attention of the UN General Assembly rather than put to a vote due to the lack of time. In several cases negative votes or abstentions were cast as a result of unresolvable differences over language relating to the conflict in Palestine-Israel.

question of whether citizens, refugees in particular, retain their right to take part in the conduct of public affairs when they are outside their country of citizenship, voluntarily or otherwise, the analysis in Chapter 4 revealed four additional findings that also point towards emerging recognition that citizens retain such a right when they outside their country of citizenship, especially in situations of forced displacement. First, that refugees have a right to take part in the public affairs of their country of origin may be inferred from the texts and drafting histories of treaties which emphasize that among citizens the right to political participation is universal, oblige state parties to ensure both the right and opportunity of citizens to take part in the conduct of public affairs, prohibit discrimination in the exercise of political rights and stipulate that any restrictions on the right to political participation be reasonable.[1060] Second, commentaries on the elimination of racial discrimination explicitly affirm that refugees and displaced persons have a right to take part in the conduct of public affairs after they return to their countries of origin.[1061] Third, international and regional jurisprudence relating to discrimination in the exercise of human rights,

[1060] These principles, consolidated in the umbrella clause of article 25 of the ICCPR, are common to other treaties which enshrine political participation as a fundamental human right. While residence has been viewed traditionally as comprising a reasonable restriction on the exercise of the right to political participation, it is clear from the drafting history of article 25 that states were concerned primarily with logistical or practical challenges to ensuring free and fair elections for citizens residing outside their habitual place of residence but nevertheless within the borders of the state. The drafting history indicates, moreover, that special arrangements or different treatment may be necessary to ensure the participation of citizens who for a range of reasons may "involuntarily" reside away from or outside their habitual place of residence. These four major elements appear to set an extremely "high bar" for limitations on the exercise of the right to take part in the conduct of public affairs. *See*, the discussion in Chapter 4, *supra* n. 778-790.

[1061] In its General Recommendation on refugees and displaced persons, the UN Committee on the Elimination of Discrimination affirms the political rights of refugees in the context of international efforts to resolve forced displacement through the right of return. *See*, the discussion in Chapter 4, *supra* n. 801-804. That refugees have a right to take part in the public affairs of their countries of origin may also be inferred from the text and drafting history of the Human Rights Committee's General Comment on the right to political participation which obliges state parties to facilitate participation by removing impediments to freedom of movement, undertake measures to ensure the participation of homeless persons, prohibit discrimination through electoral gerrymandering and ensure that any restrictions on the exercise of the right to political participation are both objective and established by law. *See*, the discussion in Chapter 4, *supra* n. 792-967.

including the right to political participation, emphasizes that in certain situations —especially when citizens are outside their country involuntarily—residence may comprise an unreasonable restriction on the right to take part in the conduct of public affairs.[1062] Finally, an array of additional instruments including decolonization agreements, resolutions, peace plans and agreements, and conclusions and guidelines adopted by international and regional organizations call upon states to "ensure" such participation through the return of refugees to their countries of origin, recognize that refugees have a "right" to take part in both referenda and home country elections following their return, affirm that refugees "should" be permitted to take part in the conduct of public affairs when they are outside their countries of origin, and "encourage" and "urge" states and inter-governmental organizations to include refugee representatives in the negotiation of durable solutions.[1063]

The legal analysis in Chapter 4 nevertheless suggests that the participation of refugees in the negotiation of durable solutions to their situation falls short of an established right under international law. Three major reasons

[1062] This includes international jurisprudence relating to residence-based restrictions on the right to housing and property restitution under article 26 of the ICCPR and regional jurisprudence relating to the right to vote and to be elected under article 3 of the first Protocol to the ECHR. *See*, the discussion in Chapter 4, *supra* n. 806-823 and corresponding text. These cases, similar to the drafting histories of major human rights treaties and commentaries on the right to political participation, underscore the principle that different treatment including special measures may be required to ensure equality of treatment in factually different circumstances. *See*, the brief discussion in Chapter 2, *supra* n. 188. That residence may comprise an unreasonable restriction on the right to take part in the conduct of public affairs in situations of forced displacement, moreover, may also be understood as Bauböck observes as a "safeguard" against "coercive manipulations of the demos" and a form of "rectificatory justice" in terms of its restoration. *See*, the discussion in Chapter 2, *supra* n. 235 and corresponding text.

[1063] This includes agreements and plans providing for self-determination procedures in Africa and in Asia, UN resolutions relating to decolonization in Africa, contemporary peace agreements in Africa, Asia and in Europe, regional declarations on refugees in Africa and on democracy in OSCE member states, conclusions and guidelines on refugee protection adopted and approved by member states of UNHCR's Executive Committee and in thematic resolutions on refugees. *See*, the discussion in Chapter 4, *supra* n. 824-846. The resolutions and declarations were adopted by consensus or by a large majority with few negative votes or abstentions.

appear to substantiate this conclusion. First, the right of refugees to take part in the negotiation of durable solutions had yet to be codified as a binding norm in international and regional treaties which enshrine political participation as a fundamental human right.[1064] The human rights treaties in force as of the end of 2000 neither referred to peace negotiations as comprising a conduct of public affairs nor to refugees in relation to the exercise of the right to political participation. The instruments which considered peace negotiations as comprising a conduct of public affairs and/or affirmed the right of refugees to take part in the public affairs of their country of origin were comprised predominantly of non-binding declarations and programmes of action, resolutions, and conclusions and guidelines adopted by international and regional organizations. The adoption of new treaties in the last decade which affirm "the right to participate in the promotion and maintenance of peace" along with the right of certain groups, migrant workers in particular, to take part in the conduct of public affairs when they are outside their country of citizenship nevertheless appears to suggest that the consideration of peace negotiations as a conduct of public affairs entailing a concomitant right to take part along with the right of refugees to take part in the public affairs of their home countries is a

[1064] This lacuna appeared to be first recognized in the 1995 report of the UN Special Representative on Internal Displacement and was addressed in part through the adoption of a set of Guiding Principles on IDPs and by the UN Committee on the Elimination of Racial Discrimination in its General Recommendation on refugees and displaced persons. The Guiding Principles are distinct from the CERD Recommendation in that they affirm the right to take part in the conduct of public affairs during displacement *and* after IDPs return to their places of origin while the latter only refers to such participation in the context of return. This may be explained in part by the fact that residence based restrictions on the exercise of the right to political participation arise most clearly in situations of external displacement, but also by the fact that the CERD Recommendation addressed the right to political participation in the specific context of return. Both instruments, however, are silent on the participation of refugees and IDPs in the negotiation of durable solutions. While these instruments clarify the substantive content of the right to political participation in situations of forced displacement, unlike treaties which are binding on state signatories, guiding principles and general comments or recommendations are not binding instruments. *See*, Chapter 2, *supra* n. 210-212 and Chapter 4, *supra* n. 641, 801-804.

developing area of international treaty law.[1065]

Second, international and regional jurisprudence had yet to address the specific question of whether refugees have a right to take part in the negotiation of durable solutions to their situation. That peace negotiations comprise a conduct of public affairs entailing a concomitant right to take part and that refugees have a right to take part in the public affairs of their country of origin, in particular, when they are outside of their country, may only be inferred by analogy from a small body of case law much of which relates to the prohibition of discrimination.[1066] Reliance on the principle of non-discrimination, moreover, appears to be less useful in supporting the participatory claims of refugees in peacemaking contexts, as already noted in Chapter 2, given the relatively

[1065] This includes the 2003 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women, which entered into force in 2005, and the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which entered into force in 2003. The latter instrument, the first major treaty to recognize the right of citizens to take part in the conduct of public affairs when they are outside their country of citizenship, however, explicitly excludes refugees from its application. For additional discussion *see*, Chapter 4, *supra* n. 714, 665. The adoption of a separate treaty on voluntary repatriation, as recommended in the past by UNHCR's Executive Committee (UNHCR 1985b, para. (m)), along with the adoption of new regional conventions on human rights and refugees may nevertheless provide opportunities in the future to enshrine such a right in a binding treaty. The UN Special Representative on Internal Displacement and the IOM Participatory Elections project, as noted earlier, both recommended that a new instrument enshrine the right to political participation of IDPs and refugees. *See*, Chapter 2, *supra* n. 212, 226. The time expended in drafting a new declaration on the rights of indigenous peoples along with the lengthy period between the adoption and entry into force of a convention on the rights of migrant workers nevertheless illustrate some of the challenges to the expansion and codification of human rights. Boyle and Chinkin 2007, 50; and, Kälin 2001, 2. The drafting of new treaties that "draw heavily from existing law", moreover, as Kälin further observes, "also provides an opportunity for states to put into question existing treaty provisions or weaken customary law by expressing opinion that some provisions are no longer valid" in which case it may be more appropriate to advance the development of law through "guiding principles" and other similar instruments. *Ibid*., 4.

[1066] This includes the consideration of constitution making as a conduct of public affairs under article 25 of the ICCPR (Chapter 4, *supra* n. 742-750), discussion of residence-based restrictions on the right to housing and property restitution under article 26 of the ICCPR (Chapter 4, *supra* n. 806-813) and residence-based restrictions on the right to vote under article 3 of the first Protocol to the ECHR (Chapter 4, *supra* n. 816-823). Moreover, as of 2000 there appeared to be little jurisprudence, aside from the HRC decision in the Marshall case, from which analogies could be drawn in reference to peace negotiations as comprising a conduct of public affairs. While there is a growing body of jurisprudence relating to residence-based restrictions, it should also be noted that existing decisions relate primarily if not solely to cases in Europe with few if any decisions relating to residence-based restrictions on fundamental human rights, political participation in particular, in other regions.

indeterminate character of the right to take part in the conduct of public affairs directly notwithstanding developments in law in recent decades.[1067] The aforementioned codification of the right to take part in the promotion and maintenance of peace in Africa along with the establishment of a regional human rights court nevertheless appears to create a legal and judicial environment amenable to further clarification of peace negotiations as comprising a conduct of public affairs under international law entailing a concomitant right to take part. The growing body of international jurisprudence relating to residence-based restrictions on human rights, generally, along with jurisprudence on refugee participation in home country elections at the regional level also underscore evolving understandings of the right to political participation of refugees.[1068] In a number of observations on state practice,

[1067] While the UN Human Rights Committee appears to have moved beyond its initial position in the Marshall case, the Committee's failure to examine whether the exclusion of the Mikmaq tribal society from constitutional talks in Canada comprised a prohibited form of discrimination illustrates one of the potential drawbacks in relying on the principle of non-discrimination to advance refugee rights. Hathaway raises this issue in his volume on international refugee law noting that the Human Rights Committee "has too frequently been prepared to recognize differentiation on the basis of certain categories, including non-citizenship, as presumptively reasonable [and] has paid insufficient attention to evidence that generally applicable standards may impact differently on differently situated groups, thereby failing to do justice to a substantive understanding of the right to equal protection of the law". Hathaway 2005, 129–130. The Committee's decision in the Simunek case nevertheless appears to indicate, as Hathaway also observes, "an awareness that refugee rights should follow from their unique predicament as involuntary expatriates, and ... a particular disinclination to find restrictions to be reasonable insofar as individuals are unable to comply by virtue of having been forced to seek refugee status abroad". *See*, the discussion in Chapter 2, *supra* n. 225; and, in Chapter 4, *supra* n. 176-177 and corresponding text.

[1068] The UN Human Rights Committee, for example, has reaffirmed its decision in the Simunek case in more than two dozen cases relating to housing and property restitution in the Czech Republic. In several decisions subsequent to the Simunek case, including *Adam v Czech Republic*, the Committee has also found that the absence of citizenship may comprise an unreasonable restriction on the right to housing and property restitution. *See*, the brief discussion in Chapter 4, *supra* n. 815. In *Melnychenko v Ukraine*, which involved a refugee who alleged that rejection of his right to stand for election in his home country comprised a violation of article 3 of ECHR-P1, the European Court appeared to address for the first time the right to political participation of refugees. While the Court reiterated the grounds for residence-based restrictions on the right to vote, as first set out by the European Commission, the Court also relied on the Venice Commission's Code of Good Practice in Electoral Matters, which explicitly recognizes that "[i]f persons, in exceptional cases, have been displaced against their will, they should, provisionally, have the possibility of being considered as resident at their former place of residence". CoE 2002, 15. The Court's decision in favour of the plaintiff would appear to suggest that the exclusion of refugees from taking part in the public affairs of their home countries may comprise an arbitrary and

moreover, UN human rights treaty committees have explicitly called upon state parties to take necessary measures to ensure that refugees and displaced persons are able to exercise the right to political participation.[1069]

Third, the majority of additional instruments including comments and recommendations, declarations and programmes of action, resolutions as well as conclusions and guidelines adopted by international and regional organizations which addressed the participation of refugees in the public affairs of their countries of origin were non-binding.[1070] Affirmation that refugees have a

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therefore prohibited restriction on the exercise of the right to political participation. According to the Court, "[t]he right to stand as a candidate in an election ... would be illusory if one could be arbitrarily deprived of it at any moment. Consequently, while it is true that States have a wide margin of appreciation when establishing conditions in the abstract, the principle that rights must be effective requires that the eligibility procedure contains sufficient safeguards to prevent arbitrary decisions". ECtHR 2005, para. 59. *See also*, Goodwin-Gill 2006, 63–65. Excerpts of the ruling are reproduced in, Annex II, Table A2.6 - Regional Human Rights Courts and Commissions, Jurisprudence. In a second case in Africa (*Sudan Human Rights Organization and the Centre on Housing Rights and Evictions (COHRE)*), the plaintiffs alleged that the right to political participation under the AfCmHPR was among the wide range of rights violated by forced displacement in Sudan. In its ruling, however, the African Commission did not address the right to political participation of refugees and IDPs. AfCmHPR 2009.

[1069] This includes concluding observations on IDPs in Colombia (HRC 2004a, para. 19) and in Serbia and Montenegro (HRC 2004b, para. 18) and on refugees from Chechnya (CERD 2003, para. 9). These cases appear to be the first time that such treaty bodies have addressed the political rights of refugees. For a list of relevant provisions *see*, Annex II, Table A2.4 - Human Rights Treaty Committees, Concluding Observations.

[1070] The comments and recommendations adopted by human rights treaty committees clarify treaty provisions, but are not binding. Ando 2009, para. 41. In principle, General Assembly resolutions, with the exception of those that set forth legal rules (e.g., Declarations) and are adopted unanimously or by consensus, are non-binding. Tomuschat 2011, para. 11. Bell and O'Rourke describe Security Council Resolution 1325 as "a 'thematic' resolution best understood as a Chapter VI UN Charter (non-binding) resolution", but also note that "[the resolution's] legal authority has been accentuated by the fact that it was passed unanimously, and that the resolution uses the language of obligation". Bell and O'Rourke 2010, 943. According to UNHCR, the refugee agency's conclusions on international protection "serve as an indication of State practice in key areas, and hence have a standard-setting role. They serve to interpret and develop principles and provisions of international refugee law, and provide evidence of an already established rule of customary international law, or lead to law creation". Feller and Klug 2011, para. 23. *See also*, Sztucki 1989, 306; and, Hathaway 2005, 113. As for the agency's handbooks, Hathaway observes that while "[t]here is a traditional practice of giving particular weight to the UNHCR's *Handbook on Procedures and Criteria for Determining Refugee Status*, a comprehensive analysis of basic precepts of refugee law prepared at the behest of the Executive Committee ... [i]t is less clear ... to what extent standards recommended by UNHCR, but which have not been adopted as a Conclusion of its Executive Committee, are to be afforded comparable deference". Hathaway 2005, 114. *See also*, Marsh 2001. While peace agreements bind respective signatories, both their provisions and the processes through which they are negotiated, as Bell argues, may also contribute to the development of international law. Bell 2006; and, Bell 2008.

right to take part in the public affairs of their home countries, moreover, was limited to the participation of refugees in referenda on self-determination and in home country elections.[1071] The various conclusions, guidelines and resolutions which addressed the participation of refugees in negotiations only "encouraged" and "urged" relevant actors to include refugees in the negotiation of durable solutions to their situation.[1072] At the same time a significant number of these instruments conditioned the political participation of refugees on return to their countries of origin.[1073] This would appear to exclude most refugees from taking part in the negotiation of durable solutions to their situation given the fact that such negotiations usually take place prior to the return of refugees to their countries of origin.[1074] The adoption of new instruments which recognize the

[1071] These instruments, moreover, addressed a limited number of cases, primarily in Africa and in Asia, but also more recently in Europe. In several cases, Eritrea and East Timor in particular, it is unclear whether referenda provisions explicitly recognized the *right* of refugees and displaced persons to take part. The author was unable to locate relevant texts. *See*, Chapter 4, *supra* n. 827, 835, 837. A number of broader instruments at the international and regional levels, including UNHCR's *Handbook on Voluntary Repatriation* and the OSCE's Istanbul Declaration explicitly recognize that refugees have a right to take part in home country elections. *See*, Chapter 4, *supra* n. 844. Viewed as a whole, however, these instruments nevertheless reflect a steady progression in language—e.g., *should* participate to a *right* to participate—and in the case of resolutions, proposals and plans were adopted with few or no reservations.

[1072] In other words, the issue of refugee participation was left largely to the discretion of states and other relevant actors. This contrasts with aforementioned provisions relating to refugee participation in referenda and in home country elections, in particular those adopted since the 1990s, which affirm a right to participate and therefore create a corresponding obligation on states to ensure that refugees have an opportunity to participate. *See*, Chapter 4, *supra* n. 845, 846.

[1073] This includes a number of decolonization and other peace agreements as well as resolutions adopted by the various UN political bodies—Security Council, General Assembly, Commission on Human Rights—which provide for refugee participation in referenda and home country elections, however, there also appears to be an evolution in practice since the 1990s with a growing number of instruments, peace agreements in particular, providing for refugee participation prior to their return. In several refugee cases, moreover, national legislation included provisions for out-of-country voting although actual practice relating to refugees is less clear. *See*, Chapter 4, *supra* n. 824-840. That residence should not comprise an absolute bar on refugee participation in the public affairs of their countries of origin is also implicit in UNHCR's *Handbook on Voluntary Repatriation* which includes provisions concerning agency monitoring of elections in exile. *See*, Chapter 4, *supra* n. 844. It is also evident in related provisions endorsed by the UN Sub-Commission on human rights which urge the agency and states to include refugees in negotiations relating to durable solutions. *See*, Chapter 4, *supra* n. 845-846. The participation of refugees is nevertheless left to the discretion of relevant state actors.

[1074] While the right to political participation is commonly viewed as *sine qua non* for the realization of all other rights, the emphasis on return as a pre-condition for the participation of refugees in the public affairs of their countries of origin appears to reverse the relationship

"important supporting role" of civil society in the prevention and resolution of armed conflict, affirm that the "active participation" of civil society is "essential", call upon states to "facilitate" refugee participation in peace negotiations, affirm the "right" of refugees to participate in return and restitution processes and which locate or situate such a right within article 25 of the ICCPR nevertheless underscore the evolving understanding of the right of refugees to take part in the negotiation of durable solutions.[1075]

The status of refugee participation in the negotiation of durable solutions in the period between 1990 and 2000 may thus be described more accurately as a "principle" rather than a "right" under international law. Explaining the difference between the two, Klabbers observes that "[a] right would, under most

effectively rendering the right to political participation, and by consequence the broader panoply of human rights inherent to all persons, dependant on the right of return. Noting that repatriation comprises more than just the return of refugees to their home countries, Long proposes that repatriation as a durable solution be understood, rather, as "a political act, involving the remaking of citizenship and consequent re-accessing of rights". Long 2010a, para. 2. In this context, participation provides an opportunity for refugees to "reconstruct" the idea of home rather than seeing it as a natural place to which refugees return.

[1075] The UN General Assembly addressed the role of civil society in 2003 in the context of organization efforts to address the causes and consequences of armed conflict. Similar efforts took place in the Security Council, including a series of debates during the first half of the new decade on ways to enhance coordination and cooperation between the UN, states and civil society in peacebuilding, accompanied by the adoption of an increasing number of resolutions which affirm the role of civil society, women in particular, in the prevention and resolution of armed conflict. UNSC 2004a; UNSC 2004b; and, UNSC 2005. The issue of civil society participation is also addressed in recent UN *Guidance for Effective Communication* (2012) and in a guidance note on *Racial Discrimination and Protection of Minorities* (2013). In the context of its Global Consultations on International Protection in 2002, UNHCR's Executive Committee appeared to move beyond earlier language which *encouraged* refugee participation in negotiations when it called upon states to *facilitate* such participation. In the same year, the UN Sub-Commission on the Protection and Promotion of Human Rights affirmed for the first time the *right* of displaced persons to participate in the return and restitution process, a principle reaffirmed several years later in the 2005 UN Guiding Principles on Housing and Property Restitution for Refugees and Displaced Persons. While the Principles do not affirm an explicit right to participate, the explanatory notes normatively ground such participation in article 25 of the ICCPR on the right to take part in the conduct of public affairs. UNCHR 2005, para. 57. In a recent decision on durable solutions following up on an earlier report on peacebuilding, the UN Secretary-General addressing the issue of refugee participation in public affairs recommendeded that "special efforts should be made to develop policies and legislation that allow displaced persons to fully exercise their right, including the right to participate in public affairs, elections and peacebuilding processes, and ensure that their views are sought and taken into account in ongoing peace processes and the development of policies that affect them". UNSG 2011. For a list of instruments and relevant provisions *see*, Annex II.

constructions, demand a human response [while] the need for a specific human response is decidedly less clear [in relation to a principle]".[1076] In other words, while principles may reflect or incorporate binding norms, they are non-binding in effect in comparison to rights which establish binding obligations. As a principle rather than a right, refugee participation in the negotiation of durable solutions may be akin or similar to the concept of "effective participation" as codified, for example, in existing treaties relating to the rights of indigenous peoples and minorities.[1077] Under such a construction states and other relevant actors would be obligated to facilitate the participation of refugees in decisions relating to durable solutions to their situation and to ensure that the input of refugees has a substantial influence on the outcome of negotiations leading to shared ownership of decisions taken and agreements reached.[1078] At the same time, however, states and other relevant actors would be entitled to choose the type of mechanism or fora for such participation with the role of refugees in

[1076] Klabbers 2006, 195 n. 39, *citing*, Halpin 1997, 107; and, Dworkin 1978, 22.

[1077] A brief discussion of the concept of "effective protection" can be found in Chapters 2 and 4, *supra* n. 661-675, 685-695 and corresponding text. For more detailed discussion *see*, CoE 2008; and, ILO 2009, 59-64. *See also*, Swepston 1990, 690; Clavero 2005; and, Weller 2007. This is nevertheless a developing area of law as noted elsewhere in this study with new instruments affirming, in particular, the *right* of indigenous peoples and minorities to take part in decisions that affect their lives as individuals and as communities. *See*, Chapter 2, *supra* n. 192.

[1078] The OSCE Lund Recommendations on the participation of national minorities in public life emphasize that "effective participation" requires *specific arrangements* to "facilitate the inclusion of minorities within the State and enable minorities to maintain their own national identity and characteristics, thereby promoting good governance and integrity of the State". OSCE 1999 Recommendation 1. In its explanatory note to article 15 of the EFCNM, the Council of Europe further states that for the participation to be effective, "it is not sufficient for State Parties to formally provide for the participation of persons belonging to national minorities. They should also ensure that their participation has a *substantial influence* on decisions which are taken, and that there is, as far as possible, a shared ownership of the decisions taken". [emphasis added] CoE 2008, para. 9. It further emphasizes that "[w]hatever the mechanisms chosen, persons belonging to national minorities should be given real opportunities to influence decision-making, the outcome of which should adequately reflect their needs ... mere consultation is, as such, not a sufficient means to be considered effective participation". *Ibid.*, para. 71. In its guide to ILO169, the International Labor Organization, which is responsible for oversight of the convention, similarly observes with respect to indigenous peoples that "[t]hrough the interrelatedness of the principles of consultation and participation, consultation is not merely the right to react but indeed also a *right to propose*; indigenous peoples have the right to decide their own priorities for the process of development and thus exercise control over their own economic, social and cultural development". [emphasis added] ILO 2009, 60.

decision-making falling short of full consent or a right to decide.[1079] Legal developments since 2000, as explained above, nevertheless suggest a further "hardening" of the principle with growing recognition that refugees have a right to take part in the negotiation of durable solutions to their situation. While existing instruments enshrine largely soft obligations, they nevertheless elaborate the substantive content of the right to take part in the conduct of public affairs and its applicability to the negotiation of durable solutions for refugees with treaty provisions on the right to political participation arguably reinforcing such instruments with normative strength.[1080]

[1079] Commenting on state practice regarding the effective participation of national minorities in Europe, Weller observes that "[t]he implementation of the [E]FCNM has crystalized the view that the state may be entitled to choose which ... mechanisms for effective participation it wishes to employ. But while states may be entitled to choose, they are also obligated to ensure a result". Weller 2007, 481. The Council of Europe's commentary on article 15 of the EFCNM similarly states that "like other provisions contained in the Framework Convention, [article 15] implies for the State Parties an obligation of result: they shall ensure that the conditions for effective participation are in place, but the most appropriate means to reach this aim are left to their margin of appreciation". CoE 2008, para. 10. The comment further states that forms for effective participation include "exchange of information, dialogue, informal and formal consultation and participation in decision-making. It can be ensured through different channels, ranging from consultative mechanisms to special parliamentary arrangements". CoE 2008, para. 70. The International Labor Organization's Handbook on ILO169 merely states that "[t]he Convention requires that indigenous peoples are able to effectively participate in decision-making processes which may affect their rights or interests [and that] [t]he establishment of processes of consultation is an essential means of ensuring effective indigenous peoples' participation in decision-making". ILO 2009, 59. Referring to the Sami cases adjudicated by the HRC under article 27 of the ICCPR, mentioned in Chapter 4, Weller comments that the right to consultation does not appear to amount to a requirement to gain agreement of affected groups. Weller, *ibid.*, 508. While the ILO Handbook states that indigenous peoples have "the right to decide their own priorities for the process of development", it further observes that the "objective of consultation" under the indigenous convention "is to achieve agreement or consent". ILO, *ibid.*, 60, 62. This issue, as noted in Chapter 2, generated considerable debate during the drafting of the Convention, with the ILO Secretariat subsequently clarifying that it "had not intended to suggest that the consultations ... would have to result in the obtaining of agreement or consent ... but rather to express an objective for the consultations". Swepston 1990, 691. The question of whether indigenous peoples and minorities have a right to participate and the nature of their agreement or consent to decisions affecting their lives is nevertheles a developing area of law. *See*, Chapter 2, *supra* n. 192 and corresponding text.

[1080] In a commentary on ICEDAW, Chinkin et al. observe that article 7 of the Convention "reinforces [UN Security Council Resolution 1325's] provisions on women's participatory rights with normative strength". Chinkin, Freedman, and Rudolf 2012, 206. The UN Development Fund for Women similarly describes the relationship between Resolution 1325 and article 7 of ICEDAW on the right to political participation as one characterized by a "[synergy] that can be used greatly to enhance their implementation and impact". UNIFEM 2004, 4. UNIFEM notes that "[ICEDAW] enriches Resolution 1325 by providing substantive normative guidance on 1325-related interventions [while] 1325 can broaden the scope of [ICEDAW's] application by clarifying the relevance of women's human rights standards even in states in conflict that are not parties to [ICEDAW], or in relation to non-state actors and

ii. Conclusions on Palestinian refugees

The legal analysis in Chapter 4 and the conclusions drawn, as summarized above, would appear to suggest that Palestinian refugees did not have a right under international law to take part in negotiations on durable solutions to their situation in talks between the PLO and Israel in the 1990s. Such a right had yet to be codified as a binding norm, case law was silent on the issue and soft law instruments which evidenced emerging understandings of peace negotiations as comprising a conduct of public affairs entailing a concomitant right to take part applicable to the negotiation of durable solutions for refugees did not create binding obligations. Understanding the principle of refugee participation in the negotiation of durable solutions as "effective participation", however, would suggest that Israel and the PLO nevertheless had an obligation to facilitate the participation of Palestinian refugees in decisions that affected their lives.[1081] It would also have imposed an additional obligation upon both parties to ensure that the participation of refugees in such negotiations had a substantial

international organizations". *Ibid.*, 5. *See also*, Bell and O'Rourke 2010.

[1081] As of the end of 2000 Israel had ratified three major treaties (ICCPR, ICERD, ICEDAW) which enshrine political participation as a fundamental human right. For treaty ratification *see*, United Nations Treaty Collection, *supra* n. 613. Israel nevertheless holds that Palestinians and other non-Jews in the 1967 OPT are not subject to its jurisdiction for the purposes of the application of international human rights law. UN human rights treaty committees and the International Court of Justice, among others, contest this position. *See*, HRC 1998a, para. 10; CERD 1998, para. 12; and, CEDAW 1997a, para. 170; and, ICJ 2004, para. 102–113. The PLO is not a state and is therefore not a signatory to international instruments which codify political participation as a fundamental human right. The organization has nevertheless indicated its intention to abide by international law including human rights treaty law. Peace agreements between the PLO and Israel also require the two parties to "exercise their powers and responsibilities ... with due regard to internationally-accepted norms and principles of human rights and the rule of law". Agreement on the Gaza Strip and Jericho Area, *supra* n. 385, art. XIV; and, Interim Agreement on the West Bank and Gaza Strip, *supra* n. 385, art. XIX. The decision by UNESCO to admit Palestine as a member state in October 2011 (UNESCO 2011) enabled the PLO/PA to ratify the ICCPR and ICESCR. The UN General Assembly decision in November 2012 (GA Res. 67th Sess., 44th Plenary Mtg., UN Doc. A/RES/67/19, Nov. 29, 2012) to upgrade the status of Palestine to that of an observer state opened the way for ratification of all remaining international human rights treaties. Hebron University 2012, para. 3.

influence on the outcome of negotiations leading to shared ownership on durable solutions to their situation. Finally, understanding refugee participation in the negotiation of durable solutions as a form of effective participation would have nevertheless meant that, beyond the principle of informed and voluntary choice on durable solutions, the participation of Palestinian refugees in both procedural and substantive aspects of the negotiation process fell short of a right to decide.

The specific circumstances of the Palestinian case, including the division of historic Palestine and the establishment of the state of Israel, the latter's longstanding opposition to refugee return and the absence of a Palestinian state, as noted in Chapter 3, however, raise additional questions not only about whether Palestinian refugees had a right to political participation, but also about the domain—i.e., Israel, a future Palestinian state or elsewhere—for the effective exercise of such a right. Indeed, in contrast to most refugee situations, where physical displacement or lack of residence, often comprise the primary obstacle to refugee participation in the public affairs of their countries of origin, the primary obstacle for Palestinian refugees and major difference with other refugee cases is that the majority of Palestinian refugees are stateless persons, that is to say, they do not have citizenship status in any state.[1082] The two major parties which participated in negotiations to resolve the refugee issue, namely, Israel and the PLO, either refused to recognize Palestinian refugees as citizens, as in former, or in the case of the latter were unable to confer citizenship due to the absence of a state.[1083] In both cases this stemmed from the unresolved

[1082] The major exception to this situation, as noted in Chapter 3, are Palestinian refugees who found refuge in Jordan during the 1948 war and were subsequently accorded citizenship in the early 1950s under the country's revised citizenship legislation. A small number of other refugees have acquired citizenship elsewhere in the Arab world and further broad. *See*, the brief discussion, *supra* n. 368 and corresponding text.

[1083] In the first period of negotiations after the 1948 Arab-Israeli war, refugee organizations that

conflict over self-determination which is addressed in more detail in the following section. The right to political participation, as already noted elsewhere in this study, is unique among human rights in that its exercise, notwithstanding the emergence of new domains at the national, regional and international levels, is generally regarded as limited to citizens of a state.[1084] The question of whether Palestinian refugees had a right to take part in the negotiation of durable solutions in the 1990s, in addition to the two major legal questions addressed above, would also appear then to require attention to the citizenship status of the refugees in relation to the two parties which took part in official negotiations to resolve the refugee issue.

The primary problem facing Palestinian refugees who originate from areas inside the state of Israel is that the government does not consider them to be citizens of the state. These refugees, commonly referred to as 1948 refugees, most of whom are registered to receive assistance and protection from the UN Relief and Works Agency for Palestine Refugees, comprise the majority of the Palestinian refugee population.[1085] Israel's 1952 Nationality

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sought to take part in the talks, as noted in Chapter 3, listed citizenship in their historic homeland as one of their primary demands. *See*, the brief discussion, *supra* n. 432 and corresponding text. While it is unclear to what extent the views expressed by early refugee organizations on this issue reflected the wider refugee community, the call for citizenship continued to be common among refugees nearly five decades later. Refugees who took part in public deliberations organized by the All-Party British Parliamentary Commission of Enquiry on Palestinian Refugees shortly after the collapse of final status talks between Israel and the PLO in July 2000 emphasized their willingness to accept Israeli citizenship in the context of a two-state solution, but also called for the transformation of Israel into a "citizen democracy". LMEC 2001, 37, 40, 138, 143–144, 174, 189, 201.

[1084] The declining relevance of citizenship to the exercise of the right to political participation is exemplified by, among others, the putative right of indigenous peoples to take part in the making of international law governing their rights, and the recognition of the right of non-citizens to take part in local elections. *See*, respectively, Chapter 2, *supra* n. 194; and, Chapter 4, *supra* n. 685.

[1085] There were approximately 3.7 million registered Palestinian refugees in 2000 when Israel and the PLO attempted to reach a negotiated settlement to the conflict in US-mediated talks at Camp David. Estimates of the number of unregistered 1948 refugees in 2000 range from 900,000 to 1.4 million. In addition, there was an unknown number of Palestinians displaced from Israel between 1948 and 1967. For additional discussion of categories of refugees and population statistics *see*, Chapter 3, *supra* n. 346-358 and corresponding text. *See also*, Annex I, Table A1.4 - Estimated Palestinian Refugee Population, 1948-2000.

[Citizenship] Law, as amended, establishes four primary routes or procedures for the acquisition of Israeli citizenship—return, birth, residence and naturalization.[1086] The application of each is dependant first and foremost on ethno-national identity and then by the factual circumstances of each case.[1087] Individuals of Jewish nationality, as defined under Israel's amended 1950 Law of Return, acquire citizenship through immigration or return—in Hebrew *aliyah*—to Israel under the aforementioned Law of Return.[1088] Individuals of other nationalities, including Palestinians, may acquire citizenship through birth, residence or naturalization, but may not acquire citizenship through return which only applies to individuals of Jewish nationality.[1089] Palestinians who had acquired citizenship under the 1925 Palestine Citizenship Order, had continuously resided within the *de facto* borders of the state of Israel from its establishment on 14 May 1948 until its nationality law entered into force on 14

[1086] Nationality [Citizenship] Law, *supra* n. 344, sec. 1. An individual may also acquire citizenship through birth *and* residence (sec. 3(b)) and through a special grant (sec. 9) in the case of a minor whose parents are not in Israel, have died or are unknown. *See also*, Israel's first periodic report to the UN Human Rights Committee, HRC 1998b, para. 48 and 844. For additional discussion *see*, Rosenne 1954; Rubinstein 1976; and, Robinson 2005, 39–182.

[1087] In one of the earliest articles on the 1952 law, Shabtai Rosenne, then legal advisor to Israel's Foreign Ministry, noted that "[t]he fundamental difference between Return and Residence in Israel as modes for the acquisition of Israeli nationality [i.e., citizenship], is that in the former instance the etnographical [sic] characteristics of the individual constitute the determining factor, and in the latter case the decisive criterion is provided by the place of residence of defined dates of the former citizens of Palestine". Rosenne 1954, 9. Initial efforts to draft a "neutral" citizenship law based on the UN partition plan (GA Res. 181), which required each of the states—Arab and Jew—to be established under the plan to accord citizenship status to all habitual residents were defeated in favour of a law that would grant special preference to Jews in the acquisition of citizenship. For additional discussion *see*, Hacohen 1998; and, Gavison 2010.

[1088] Law of Return, *supra* n. 344; and, Nationality [Citizenship] Law, *ibid*., sec. 2. The definition of a "Jew" is set forth in section 4 of the 1950 law as amended. All Jews acquire nationality/citizenship solely through return. This includes Jews who immigrated to or who were born in Palestine before the establishment of the state of Israel and Jews born in Israel after the establishment of the state. The importance of this provision in relation to the acquisition of citizenship is also evident in its pre-eminent place in the 1952 law preceding the acquisition of citizenship by birth, residence and naturalization. The preferential treatment accorded to Jews under the 1952 Citizenship Law has been described by one Israeli legal scholar as "almost without parallel or precedent" and is central to Israel's self-definition as a Jewish state. Rubinstein 1976, 159.

[1089] Nationality [Citizenship] Law, *supra* n. 344, secs. 3, 4 and 5-9. *See also*, Israel's first periodic report to the UN Human Rights Committee, HRC 1998b, para. 386. The acquisition of citizenship through naturalization is rarely granted. Rubinstein 1976, 173.

July 1952 (or who had entered Israel legally during that period) and who were registered as inhabitants of Israel with the country's Population Administration prior to the commencement of the nationality law became citizens of Israel.[1090] Due to their displacement, however, Palestinian refugees who originated from areas inside Israel—85 percent of the state's would be Palestinian citizens in 1948—were unable to meet the fundamental criteria for the acquisition of citizenship as set forth in the law, namely, residence and registration, and were, therefore, unlike most Palestinians who remained in their places of origin, denied Israeli citizenship.[1091] Thus, in contrast to most other refugee cases, in which residence often comprises a "temporary" limitation on the exercise of the right to political participation, Israel effectively re-conceived residence or more specifically "absence"[1092] along ethno-national lines as criteria for

[1090] Nationality [Citizenship] Law, *ibid.*, sec. 3(a). Irregularities with respect to the acquisition of citizenship under the Palestine Citizenship Order; difficulties establishing proof of permanent residence within the *de facto* borders of the state of Israel; and, the bureaucratic nature of the registration process for Palestinians meant that thousands of Palestinians who remained within the borders of the state of Israel after the 1948 war were unable to acquire citizenship until amendment of the law nearly two decades later. Nationality Law, *ibid*., art. 4A(a). A Supreme Court ruling (*Hussein v Governor of Acre Prison*, Nov. 6, 1952) issued after the adoption of the 1952 law found that Palestinian citizenship had ceased to exist and that all inhabitants of the territory that became the state of Israel had become stateless persons. For discussion of the 1925 Palestine Citizenship Order and its implications for Palestinians *see*, Qafisheh 2009. For discussion of residency and registration procedures *see*, Liebler and Breslau 2005; and, Robinson 2005.

[1091] The primary aim of section 3 of the 1952 law, according to one Israeli legal scholar, was "to ensure that nationality would not be given to Arab [Palestinian] residents who had left during [Israel's] War of Independence, and had thereafter illegally returned to their villages". Rubinstein 1976, 171. Israel's decision to hold its first population census in November 1948, as noted briefly in Chapter 3, similarly aimed to deny citizenship and and concomitant political rights to Palestinian refugees who originated from areas inside the *de facto* borders of the state. *See*, Chapter 3, *supra* n. 433. In 1953, just over a year after the adoption of the Citizenship Law, Israel's Supreme Court ruled (*Naqara v Minister of the Interior*, Oct. 1, 1953) that former Palestine citizens had not become nationals of the state of Israel and could only return there as immigrants. Government officials had already communicated this position to the UNCCP in the context of negotiations on the refugee issue. UNCCP 1949a, 3; and, UNCCP 1950j, 1. With immigration a matter widely recognized as falling largely with the sovereign domain of each state, the definition of refugees as migrants rather than citizens aimed to reinforce Israel's argument against return and in favour of resettlement.

[1092] Palestinians displaced in 1948, including those who remained within the *de facto* borders of the state of Israel, as noted in Chapter 3, are defined under Israel's land legislation as "absentees" with respect to their homes, lands and other properties. 1950 Absentees Property Law, *supra* n. 344, sec. 1(b). While "absentees" displaced outside the *de facto* borders of the state of Israel were also barred from taking part in the public affairs of the state, Israel eventually decided that those displaced inside Israel should be able to take part

denationalization and the concomitant denial of the right to political participation in their historic homeland.

The primary problem for Palestinian refugees originating from areas inside the 1967 OPT, by way of contrast, is Israel's military occupation and the absence of a state with the authority to grant effective citizenship to its inhabitants.[1093] Comprising the second largest group of Palestinian refugees, many of whom receive assistance and protection from UNRWA, but unlike 1948 refugees are not registered with the Agency, this situation affects 1967 refugees and those displaced from the West Bank, East Jerusalem, and Gaza Strip over the course of Israel's protracted military occupation.[1094] Two different legal regimes—civilian and military—govern the status of Jews and Palestinians in the 1967 OPT. These regimes and their derivative laws and military orders establish three primary routes or mechanisms for the acquisition of citizenship—

in the conduct of public affairs. Medding 1990, 25–26. Amendments to legislation governing the exercise of the right to political participation, however, subsequently aimed to bar candidates and parties which opposed Israel's self-definition as a Jewish and democratic state. HRC 1998b, para. 832. For a brief overview *see*, Navot 2007, 102–107.

[1093] The peace agreements between Israel and the PLO, as already noted in Chapter 3, do not explicitly recognize the right of the Palestinian people to self-determination or provide for the establishment of an independent Palestinian state. Israel initially sought a US commitment that the process would not lead to the establishment of an independent Palestinian state. The governing platform of the Labor-Meretz coalition, elected in 1992, was silent on the issue while officials from both parties expressed contradictory positions. The platform of the Likud government, elected in 1996, explicitly opposed the establishment of a Palestinian state. The platform of the Labor government, elected in 1999, was again silent on the issue, however, officials indicated that Israel would not withdraw to the 1949 armistice line separating the 1967 occupied Palestinian territories from Israel proper. Several legal scholars have nevertheless argued that Israel's recognition of Palestinian self-determination is implicit in its letter to and recognition of the PLO as the representative of the Palestinian people. *See*, the brief discussion in Chapter 3, *supra* n. 546. Under agreements between the PLO and Israel, the Palestinian Authority issued "passports" to Palestinian residents of the West Bank, excluding East Jerusalem, and the Gaza Strip after clearance by Israel. The Palestinian passports entitle holders to leave and re-enter the West Bank and Gaza Strip, but do not confer citizenship. Sondergaard 2005, 21. For additional discussion *see*, Takkenberg 1998, 181–182.

[1094] There were an estimated three-quarters of a million 1967 Palestinian refugees as of 2000 and an undetermined number of other Palestinians who had been displaced from the West Bank, East Jerusalem and Gaza Strip during the intervening period when Israel and the PLO attempted to reach a negotiated settlement to the conflict in US-mediated talks at Camp David. For additional discussion of categories of refugees *see*, Chapter 3, *supra* n. 346-358 and corresponding text. *See also*, Annex I, Table A1.4 - Estimated Palestinian Refugee Population, 1950-2011.

return, birth and naturalization. The application of each route or mechanism is similarly dependant first upon ethno-national identity and then by the factual circumstances of each case. Individuals of Jewish nationality who reside in the 1967 OPT may acquire Israeli citizenship through return as provided for in the aforementioned 1950 Law of Return and 1952 Nationality [Citizenship] Law.[1095] The status of Palestinians differs according to their place of residence. Palestinian inhabitants of East Jerusalem, following Israel's occupation and extension of its law in 1967, were granted residency status under the 1952 Entry into Israel Law and the *option* to acquire citizenship through *naturalization* under the country's 1952 Nationality [Citizenship] Law.[1096] Palestinian inhabitants of the West Bank and Gaza Strip, meanwhile, are unable to acquire citizenship status in their place of habitual residence due to the absence of a Palestinian state in the 1967 OPT and due to the aforementioned restrictions in Israel's 1952 Nationality [Citizenship] Law which prevent them from acquiring citizenship status in Israel. In contrast to both Jewish settlers in the West Bank, including East Jerusalem, and Palestinian residents of East Jerusalem,

[1095] Law of Return, *supra* n. 344; and, Nationality [Citizenship] Law, *ibid.*. While Israel does not allow, in principle, citizens outside the country to take part in the public affairs of the country, in particular, through elections, an amendment to its electoral law after 1967 enabled the registration and participation of voters "whose address as registered in the Population Registry, is in an area held by the Defense Army of Israel". Knesset Elections (Consolidated Version) Law, 5729-1969 [as amended], *cited in*, Rubinstein 1988, 69.

[1096] Law of Entry into Israel, *supra* n. 344, sec. 2(4); and, Nationality [Citizenship] Law, *ibid.*, secs. 5-9. In contrast to the situation of Palestinians inside Israel, as discussed above, citizenship status may not be obtained on the basis of residence alone. Israel's decision to carry out a population census immediately after the war similarly aimed to prevent Palestinians displaced during the war from obtaining residency status in the 1967 OPT. Israel extended the law, jurisdiction and administration of the state to occupied East Jerusalem under the Law and Administration Ordinance (Amendment No. 11) Law, June 27, 1967. The law enabled Palestinian residents of East Jerusalem to take part in municipal elections, however, most residents reject Israel's annexation of the eastern neighbourhoods of the city and thus refuse to take part in municipal elections. Few residents have chosen naturalization under Israel's citizenship law without which they are unable to take part in national elections. In recent years, however, a growing number of Palestinian residents of East Jerusalem appear to be applying for Israeli citizenship in order to secure their residence in the city. For a brief discussion *see*, Chapter 3, 218 n. 494. For additional discussion of the residency status of Palestinians in East Jerusalem *see*, Herling 1999; and, Jefferis 2012.

Palestinian inhabitants of the West Bank and Gaza Strip may only acquire residency status under Israel's military orders relating to registration and issuance of identity cards.[1097] Finally, Palestinian refugees originating from areas inside the 1967 OPT are unable to acquire residency status due to the fact that they are unable to meet the requirements set out in the aforementioned military orders.[1098] Thus, while the relationship between residence, citizenship and the right to political participation is more complicated than inside Israel, the net effect is similar in that the majority of Palestinian refugees who originate from areas inside the 1967 OPT are unable to take part in the public affairs of their historic homeland.

A detailed assessment of the citizenship status of Palestinian refugees in

[1097] Order Relating to Identity Cards and Population Registry (Judea and Samaria) (No. 234), *supra* n. 344; and, Order Relating to Identity Cards and Population Registry (Judea and Samaria) (No. 297), *ibid*.. Similar orders issued in Gaza. Agreements between Israel and the PLO in the 1990s provided for coordination between the Israeli military government and the Palestinian Authority Ministry for Civil Affairs on residency issues, however, this coordination broke down at the beginning of the second Palestinian *intifada* in the fall of 2000. Israel permitted the holding of municipal elections in the West Bank in the 1970s, but refused to allow additional elections after candidates aligned with the PLO swept to power in the latter part of the decade. *See*, the brief discussion in Chapter 3, 218 n. 494. The 1978 Framework for Peace in the Middle East provided for the election of a self-governing Palestinian council in the West Bank and Gaza Strip, however, Egyptian-Israeli talks on Palestinian autonomy arrangements failed to reach agreement on the holding of such elections. *See*, the brief discussion in Chapter 3, 217 n. 490. The 1993 agreement between Israel and the PLO similarly provided for the election of a self-governing Palestinian Authority despite the absence of a state able to accord citizenship and the concomitant right of citizens to take part in the conduct of public affairs. In accordance with relevant provisions, Palestinian residents of the 1967 OPT, including 1948 Palestinian refugees who resided in the West Bank, East Jerusalem and the Gaza Strip, took part in legislative and presidential elections in 1996 for a self-governing Palestinian Authority. *See*, the brief discussion in Chapter 3, *supra* n. 572.

[1098] Agreements between the PLO and Israel also place a "temporary" restriction on the participation of 1967 refugees in the aforementioned PA elections. Interim Agreement on the West Bank and Gaza Strip, *supra* n. 385, Annex II - Protocol Concerning Elections, art 2. This restriction was later enshrined in the PA election law. Law No. 15, Relating to the Elections Issued in Gaza, Dec. 7, 1995, art. 7. Palestinian negotiators initially sought to secure the participation of 1967 refugees in PA elections, but appeared to concede the temporary limitation on the participation of 1967 refugees in exchange for Israel's agreement to the holding of elections in East Jerusalem. The concession was made during Norwegian-mediated back-channel talks between the two sides. The proposals for a self-governing Palestinian authority and related electoral provisions can be found in, Abdul Hadi 2007, 4: 194-195, 204-210, 222-223, 262, 270-272. Similar disagreements arose during autonomy negotiations that followed the signing of the 1978 Framework for Peace in the Middle East. *See*, Chapter 3, *supra* n. 490.

the state of Israel, a future state in the 1967 OPT, a single Palestinian state comprising all of historic Palestine or some other configuration with a concomitant right to take part in the public affairs is beyond the scope of this study. In its General Comment on the right to freedom of movement, widely recognized as central to the exercise of the right to political participation, the UN Human Rights Committee draws three general conclusions, however, which appear relevant to the situation of Palestinian refugees.[1099] Commenting on the substantive content of article 12 of the ICCPR on freedom of movement, the Committee observes that stripping a person of their nationality and expelling them comprise arbitrary restrictions on the right of return, that the right to return to one's country applies to persons illegally stripped of their nationality in cases of state succession and that it may also apply to persons born outside a country if it is their state of nationality.[1100] In observations on Israel's compliance with major human rights treaties which it has ratified, a number of human rights committees conclude more specifically that Israel's domestic legislation which

[1099] HRC 1999a. In the general comments and recommendations on the substantive content of the right to political participation both the HRC and CEDAW underscore the importance of freedom of movement to the exercise of the right to political participation. *See*, Chapter 4, *supra* n. 793-794. The linkage between freedom of movement and political participation is further emphasized in CERD's general recommendation on refugees and displaced persons. *See*, *ibid*, *supra* n. 801-805.

[1100] HRC 1999a, para. 20–21. The Committee observes that the phrase "his own country" as used in article 12 encompasses each of the three aforementioned situations identified in the comment, that is to say, arbitrary denationalization, state succession and persons born outside their country of nationality. The concept of arbitrariness referred to in the comment was based on more lengthy explanations found in other HRC general comments, in particular, general comments 16 on article 17 (arbitrary or unlawful interference with his privacy, family, home or correspondence) and 17 on article 24 (rights of the child) of the Covenant. The Committee further observes that "[t]he reference to the concept of arbitrariness in this context is intended to emphasize that it applies to all State action, legislative, administrative and judicial; it guarantees that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances". *Ibid*. The regulation of citizenship, as noted in Chapter 4, is widely regarded as falling largely within the jurisdiction of the state, but it is also widely acknowledged that legislation governing the acquisition of citizenship must also comport with relevant principles of international law. It is for this reason that the HRC in its General Comment on article 25 (right to political participation) of the ICCPR recommended that state reports include information on citizenship legislation. *See*, Chapter 4, *supra* n. 792 and corresponding text.

prevents Palestinian refugees from returning to their places of origin does not comport with the state's obligations under international law regarding the right to freedom of movement and that Israel should revise its legislation to facilitate the return of those refugees wishing to re-establish their domicile.[1101] The committees further emphasize that existing legislation which discriminates in favour of Jews with regard to freedom of movement and the acquisition of citizenship in Israel is inconsistent with the overarching principles of equality and non-discrimination.[1102] These conclusions appear to affirm or recognize, on basis of freedom of movement, the citizenship status of Palestinian refugees in

[1101] UN human rights treaty committees first addressed the issue in the early 1980s and have reaffirmed and arguably strengthened findings in subsequent concluding observations. CESCR 1998, para. 13, 36; CERD 1998, para. 18; and, CESCR 2003, para. 12, 18, 34. These conclusions address the right to freedom of movement of 1948 Palestinian refugees, however, the principles set forth in the concluding observations would appear to also apply to the situation of 1967 refugees. These committees have also found that a more recent amendment to Israel's 1952 Nationality [Citizenship] Law, which suspends the possibility of acquiring citizenship and residence permits in Israel, including through family reunification, to Palestinian residents of the 1967 OPT with limited and discretionary exceptions is inconsistent with Israel's obligations under international human rights law. HRC 2003, para. 20-21; and, HRC 2010, para. 15. The concluding observations would also appear to support a number of additional claims relating to freedom of movement. These include the principle that Israel has an obligation to host countries to take back the refugees; that return applies to situations of mass displacement; that derogation on the basis of a threat to public security and the general welfare of the population of the country cannot be used to deny an entire group or people the right to return; and, that while states are allowed to grant preferences in immigration they are prohibited from discriminating with respect to the right to return of refugees. For discussion of arguments and counter-arguments in literature on the right of return of Palestinian refugees *see*, Rempel 2009.

[1102] Israel describes the discrimination between Jews and non-Jews in the acquisition of citizenship as among several distinctions that are central to the existence of Israel as a viable and thriving Jewish state. HRC 1998b, para. 832; and, CERD 2005, para. 258. Israel also argues the distinction is consistent with the principle of self-determination, in particular, the right of states to determine their own immigration policies, and with principles of corrective justice or affirmative action. CERD 2005, para. 265. Israel's highest court (*Adel Ka'adan v ILA*) has ruled, moreover, that the principle of equality is inapplicable to the right of return "since it deals with 'giving the key to the house". Gavison 2010, 36. A number of Palestinian and Jewish lawyers and professors who pushed unsuccessfully for amendments to the law at the time of its drafting characterized the legislation as Israel's first legalization of "racial discrimination". Robinson 2005, 175. More recently, various Israeli scholars have argued that the preferential treatment of Jews with regard to return and citizenship is similar to the preferential treatment given to certain individuals under immigration laws in other countries including Armenia, Bulgaria, Croatia, Czech Republic, Finland, Germany, Hungary, Ireland, Poland, Slovenia and Turkey. Yakobsen 2008; Gavison, *ibid*.; and, Zilbershats and Goren-Amitai 2011. These studies, however, overlook the fundamental difference between Israel and these cases, namely, the flight or expulsion and subsequent denationalization and denial of return of an indigenous majority population from their country of origin. For additional discussion of Israel's citizenship legislation, discrimination and inequality, *see*, Tekiner 1991; Peled 1992; Handelman 1994; and, Klein 1997.

their historic homeland.

III. The Participation of Refugees in Negotiations in Practice

The second and related objective of this study was to determine whether the exclusion of Palestinian refugees from negotiations to resolve their situation in the 1990s was consistent with practice elsewhere during the same period. The study identified two major problems in determining the practice of refugee participation in the negotiations of durable solutions. First, the negotiated settlement of armed conflict including talks on durable solutions for refugees has rarely been considered to comprise a domain for political participation with public participation regarded as more of a hindrance than a help in its management and resolution.[1103] Second, refugees have traditionally been viewed as recipients of humanitarian aid or as potential "spoilers" to a negotiated settlement rather than citizens and concomitant political actors in their country of origin.[1104] Chapter 5 examined each of these problems through analysis of peace agreement provisions for civil society/refugee participation in

[1103] This can be ascribed in part, as noted elsewhere in this study, to the international and "time-bounded" character of peace negotiations while political participation was initially conceived as comprising the voluntary activities of citizens which aimed to influence government within the borders of the state on a stable or reoccuring basis. That peace negotiations often focused on the cessation of hostilities and the relations between states rather than on the relations between a state and its citizens appeared to further militate against the consideration of peace negotiations as a domain for political participation. *See*, the discussion in Chapter 2, *supra* n. 288-289.

[1104] This can be ascribed in part to the initial focus on the voluntary activities of citizens within the borders of the state which arguably rendered refugees "invisible" as political participants by virtue of their displacement beyond the borders of their country of citizenship. The exilic nature of the international refugee regime with its early focus on the situation of refugees in their countries of asylum arguably consolidated a perception of refugees as non-political actors or participants with the exception of cases where refugees took part in armed struggle as a means to achieve their individual and collective rights. While the initial shift towards voluntary repatriation appeared to necessitate new thinking on the rights of refugees in their home countries, partly undertaken in the context of referenda on self-determination, the adoption of a tripartite procedure involving UNHCR and countries of origin and asylum rather than a quadripartite one involving refugees as well arguably solidified the structural exclusion of refugees from taking part in talks on durable solutions to their situation. *See*, the discussion in Chapter 2, *supra* n. 286-287.

peacebuilding, durable solutions and in the implementation of agreements as well as both indirect and direct participation in peace negotiations for all armed conflicts active between 1990 and 2000.[1105] The empirical findings in Chapter 5 evidence emerging understanding of peacemaking as a domain for political participation applicable to the negotiation of durable solutions for refugees, however, the primary domain for such participation was through indirect or unofficial mechanisms and through peacebuilding and the implementation of peace agreements.[1106] It appears that civil society actors including refugees rarely engaged in direct negotiations. The practice of refugee participation in the negotiation of durable solutions to their situation, as the following analysis explains, nevertheless appears akin or similar to the aforementioned concept of effective participation.

i. General conclusions

In order to determine whether the negotiation of durable solutions comprised a domain for refugee participation in practice in the 1990s the study first sought to ascertain the extent of civil society participation in peace negotiations. While the management or resolution of armed conflict has long been viewed as falling largely if not solely within the domain of the state and its executive, the

[1105] The findings are based on a review of English language secondary sources and grey literature from major electronic archives. Qualitative research in each of the cases was beyond the scope of this study. *See*, Chapter 1, *supra* n. 126.

[1106] The findings are limited to negotiated settlements to armed conflict active between 1990 and 2000, the period during which the PLO and Israel attempted to reach a negotiated settlement to the conflict in Palestine-Israel. *See*, Chapter 1, *supra* n. 116. The findings do not address additional peace agreements included in other databases and exclude cases in which negotiated settlements to refugee situations were concluded outside the context of a peace process. The secondary literature on peacemaking including the negotiation of durable solutions for refugees is uneven across cases while statistical data does not allow for identification of refugees displaced by armed conflict and those displaced for other reasons. In four cases, three of which involved negotiated settlements to refugee situations, agreements texts were not available. *See*, Chapter 1, *supra* n. 120-123. For a discussion of sources and methods *see*, Chapter 1, *supra* n. 105-106, 110-113.

empirical analysis in Chapter 5 revealed four major findings which point towards emerging understanding of peacemaking as a domain for political participation. First, the substantive content of peace agreements addressed a wide array of issues that are recognized as falling within the public sphere.[1107] This included, among others, provisions (more than half of agreements and three-quarters of all cases) for constitutional reform, procedures for the drafting of new constitutions and in some cases complete constitutional texts.[1108] That peace negotiations comprise a domain for political participation may also be inferred from agreement provisions relating to various groups such as women, minorities, indigenous peoples and victims of human rights violations who are widely recognized as having a right to take part in decisions that affect their lives.[1109] Second, in addition to the inclusion of a wide range of democratic mechanisms (nearly all cases) to regulate or terminate the incompatibility among warring parties, peace agreements also included provisions governing

[1107] Peace negotiations arguably "become a form of decision-making", as Barnes explains, "[t]o the extent that [they] go beyond agreements on specific means for ending the hostilities to address questions involving the state structure, political systems or the allocation of resources". *See*, Chapter 2, *supra* n. 281. Peace agreements reviewed for this study included provisions relating among others to amnesty, prisoners, human rights, judicial reform, reconciliation and transitional justice, development and other socio-economic issues including land and property reform along with the rights of groups including women, children, minorities, indigenous peoples and victims of human rights and humanitarian law violations. *See*, Chapter 5, *supra* n. 914-915 and corresponding text.

[1108] In its jurisprudence and in its General Comment on article 25 of the ICCPR, the UN Human Rights Committee, as noted above and in previous chapters, explicitly identified constitution making as a domain for political participation given the "composition, nature and scope of activities" involved in constitutional talks. *See*, Chapter 4, *supra* n. 742-750; and, Chapter 5, *supra* n. 916 and corresponding text. The practice of participatory constitution making has evolved considerably since the Marshall case, particularly in post-conflict settings. *See*, Chapter 2, *supra* n. 193, 195 and corresponding text. Peace negotiations, moreover, may be considered as Bell argues as a hybrid form of constitution making. *See*, Chapter 2, *supra* n. 197 and corresponding text.

[1109] This includes participatory provisions in treaties on women, minorities and indigenous peoples as well as the broad body of soft law on the participation of women in a range of areas from development to international peace and security. *See*, Chapter 4, *supra* n. 645-660, 661-675, 685-695, 758-771 and corresponding text. Resolutions, declarations, guiding principles and handbooks adopted by international and regional organizations further emphasize the participation of victims of human rights and humanitarian law violations in mechanisms relating to reparations, prosecution and truth and reconciliation commissions among others. *See*, Chapter 2, *supra* n. 200, 234-237 and corresponding text.

civil society participation (more than half of all cases) in peacebuilding and in the implementation of agreements reached.[1110] As Bell and O'Rourke observe, these latter provisions not only "demonstrate commitment to the idea that some degree of participatory democracy is important to post-conflict reconstruction", they also "constitute genuine innovations in governance which deserve further examination for their potential to negotiate the dilemmas of theories of participatory democracy".[1111] Third, and more specifically, armed conflicts regulated or terminated through negotiations evidenced significant recognition of the importance of civil society participation in the resolution or transformation of armed conflict. In at least half of all cases, civil society actors took part in peacemaking through various unofficial or indirect mechanisms which provided opportunities for a broader array of stakeholders to identify root causes of, deliberate over and recommend solutions to armed conflict.[1112] Finally, civil

[1110] Democratic mechanisms which aimed to regulate or terminate the incompatibility among warring parties included elections, local government, autonomy, integration of rebel or opposition movements in government, their transformation into a political party, interim government, power sharing, federalism and referenda. *See*, Chapter 5, *supra* n. 917 and corresponding text. The widespread inclusion of such mechanisms may be ascribed both to the largely internal nature of armed conflicts in the 1990s along with post-Cold War discourses and developments relating to democracy, in particular, its role in the management and resolution of conflict. The shortcomings if not failings of liberal democracy in facilitating transitions from war to peace along with a wide range of discourses on development, human rights, democracy, human security and civil society arguably contributed to the consideration of additional or supplementary forms of participation. *See*, Chapter 2, *supra* n. 272. This included the participation of civil society in humanitarian relief, agreement monitoring and in the legitimization and promotion of peace agreements. The most direct form of participation, however, related to the involvement of civil society actors in transitional governance and institutional development. *See*, Chapter 5, *supra* n. 919 and corresponding text. The constitutional nature of these latter areas, often involving decisions about the future structure of the state and the distribution of resources, appear to further underscore the negotiation of related agreement provisions as a domain for political participation.

[1111] Bell and O'Rourke 2007, 304. The study further observes that while "[c]ritics of participatory democracy refer to the lack of detail offered by its proponents" and "[d]efendants counter that this is because such a project requires 'new forms of state action'" and that "the evidence accumulated to date about the possibilities and effects of extensive participation is limited ... [p]eace agreements provide democratic experiments which begin to fill this gap". *See*, the brief discussion in, Chapter 2, *supra* n. 197 and corresponding text.

[1112] The most prominent form of participation appeared to be through Track II initiatives. It was Davidson and Montville's distinction between "Track I" and "Track II", as noted earlier, along with the evolution in practice from relationship-building to policy-making that arguably provided an initial framework or foundation for consideration of peace negotiations as a domain for political participation. *See*, Chapter 2, *supra* n. 249-258 and corresponding text. Civil society actors also took part in peacemaking, however, through local community

Fig. 6.1 - Civil Society Participation, Peacebuilding, Unofficial & Official by Region (1990-2000)

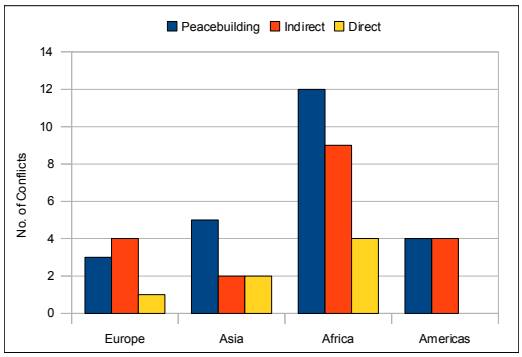
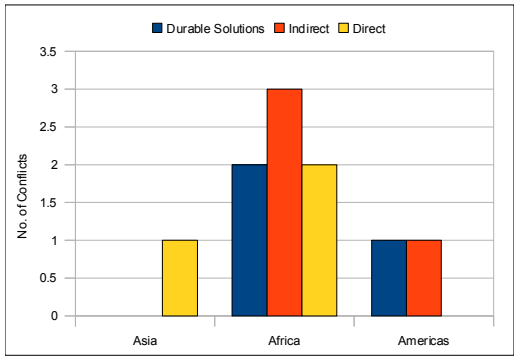


Fig. 6.2 - Refugee Participation, Durable Solutions, Unofficial & Official by Region (1990-2000)



society actors also took part directly in the negotiated settlement of armed conflict alongside states, rebel groups and opposition movements. The inclusion of civil society actors at the negotiating table (around one-tenth of all cases) most clearly appears to challenge the long-held distinction between state and civil society domains of action in the negotiated settlement of armed conflict.[1113]

Having established the evolving practice of peace negotiations as comprising a domain for political participation, the study then examined the second and inter-related question of whether refugees actually take part in the negotiation of durable solutions to their situation. While refugees have often been viewed as recipients of humanitarian aid or "spoilers" to the negotiated settlement of armed conflict rather than citizens and concomitant political actors

meetings, national conferences and consultations and through civil society assemblies. While the holding of elections following the signing of a peace agreement became "standard practice" in the 1990s, recognition of the need for and the establishment of broader participatory fora appear to reflect the growing importance of civic engagement in peacemaking contexts. While participation in Track II initiatives was relatively "narrow" (i.e., few civil society actors could take part although participants may have represented or reflected various spheres of civil society), the latter fora often enabled "broad" (i.e., large numbers of civil society actors) participation that may have also reflected a more diverse array of civil society groups. *See*, Chapter 5, *supra* n. 922 and corresponding text.

[1113] This included civil society mediation and the inclusion of civil society actors as equal participants alongside warring parties in the latter case through the election of representatives. *See*, Chapter 5, *supra* n. 932 and corresponding text. The negotiated settlement of armed conflict, as noted earlier, has traditionally been viewed both in law and in practice as falling largely if not solely within the jurisdiction of the state. With few exceptions, civil society actors have been considered generally more of a hindrance than a help in the management and resolution of conflict.

in their country of origin, the empirical analysis in Chapter 5 revealed four additional findings that point towards emerging recognition of refugees as citizens and political participants in the negotiation of durable solutions to their situation. First, similar to the situation of civil society, generally, the substantive content of peace agreements addressed a wide range of issues that are recognized to be of concern to refugees.[1114] A broad body of instruments, as discussed in Chapter 4, moreover, explicitly call upon states, international humanitarian agencies and other relevant actors to facilitate the participation of refugees in decisions that affect their lives.[1115] Second, peace agreements also provided for the participation of refugees in various of the aforementioned democratic mechanisms established to regulate or terminate armed conflict (one-quarter of all cases) as well as in the design, planning and implementation of durable solutions (more than one-tenth of all cases).[1116] Third, similar to civil

[1114] Almost all included one or more provisions relating to refugee return, housing and property restitution and compensation and several addressed the status of refugees in their countries of asylum and resettlement. *See*, Chapter 5, *supra* n. 964-966. Agreements included a wide range of additional provisions relating to refugee protection, the creation of conditions for safe and voluntary return, provision of information for informed decision-making, issuance of personal documents, family unification and humanitarian and reintegration assistance. *See*, Chapter 5, *supra* n. 963.

[1115] The inclusion of refugees in self-determination referenda during the period of decolonization, as noted in Chapter 4, appeared to comprise the earliest recognition that refugees should be permitted to take part in the public affairs of their countries of origin. *See*, Chapter 4, *supra* n. 824-829. The emergence of solidarity rights, development in particular, the increasingly protracted character of forced displacement in the 1980s along with discourses on participatory development contributed to the elaboration of UNHCR policy on refugee participation. The shift towards voluntary repatriation in the 1990s, the renewed and expanded focus on democracy and international law in the post-Cold War era particularly in peacebuilding contexts along with the incorporation of development actors and participatory discourses in the reconstruction of states emerging from civil war arguably contributed to the expansion of participatory policies to include refugee participation in the public affairs of their home countries beyond the practice of the 1960s and 1970s. *See*, Chapter 2, *supra* n. 218.

[1116] This included both explicit and implicit provision for refugee participation in home country elections, referenda and in one case the establishment of temporary legislative seats for refugees in the country's national parliament. *See*, Chapter 5, *supra* n. 967. These provisions, as noted in Chapter 4, find precedent in early "post-conflict" elections in the 1970s and 1980s all of which took place in Africa. *See*, Chapter 4, *supra* n. 830-834. Their inclusion reflected widespread recognition of the importance of political participation to the realization of other rights and an equal amount of concern that such rights were often denied in practice. In several cases, moreover, it appeared that such provisions had the more specific aim of facilitating the reversal of ethnic cleansing. Such provisions underscore Gallagher and Schowengerdt's widely-cited assessment that "[r]efugees have not in any way relinquished their citizenship by seeking asylum, but rather cannot avail themselves of the

society actors, generally, armed conflicts regulated or terminated through negotiations also evidenced recognition of the importance of refugee participation in the negotiation of durable solutions to their situation. In around one-fifth of all cases, refugees took part in at least one of several unofficial mechanisms which provided opportunities to examine the root causes of forced displacement and put forward ideas to resolve it.[1117] Finally, the direct participation of refugee representatives in official negotiations appeared to comprise the most significant form of refugee participation in peacemaking over the decade as well as the most explicit challenge to the long-held distinction between state and civil society domains of action in the negotiated settlement of armed conflict. In just over one-tenth of all cases, refugees secured a seat at the negotiating table in talks about their future alongside the representatives of states, rebel groups and opposition movements.[1118]

The empirical analysis in Chapter 5 nevertheless suggests that in practice the negotiated settlement of armed conflict rarely comprised a domain for the direct participation of refugees in the negotiation of durable solutions to

protection of their country of origin because current conditions therein pose a threat to their lives or livelihood" and should therefore be allowed to participate in the public affairs of their home countries. *See*, Chapter 2, *supra* n. 1174. Provisions relating to refugee participation in the implementation of durable solutions included the establishment of quadripartite commissions on voluntary repatriation, a mechanism UNHCR considered in the early 1990s, but rejected in favour of its existing tripartite approach involving the agency and representatives of refugees' country of origin and asylum, along with provisions governing refugee participation in the planning, design and implementation of durable solutions. *See*, Chapter 5, *supra* n. 968-969.

[1117] This included inter-community meetings, national and international conferences and civil society assemblies. In several cases, Guatemala in particular, refugees took part in multiple indirect or unofficial fora linked to peacemaking processes. *See*, Chapter 5, *supra* n. 971-1108.

[1118] This included refugee participation in bilateral talks with government representatives and in multi-party talks with representatives of the government of their home country, rebel groups and opposition movements. *See*, Chapter 5, *supra* n. 975-1048. Such participation as noted earlier challenged territorialized notions of political participation which arguably contributed to "invisibility" of refugees as well as conventional wisdom on the weakening effect of refugee and refugee camp life. *See*, Chapter 2, *supra* n. 313-318. It also challenged or provided a type of "corrective" to early consideration of refugee agency largely in terms of "refugee warriors" and their negative impact on the resolution of armed conflict notwithstanding the concomitant and less studied participation of refugees in referenda on self-determination. *See*, Chapter 2, *supra* n. 315.

their situation. Three major findings substantiate this conclusion. First, democratic mechanisms and procedures which aimed to regulate or terminate the incompatibility among warring parties following the signing of a peace agreement along with post-agreement peacebuilding and the implementation of agreements reached comprised the most common domain for public participation.[1119] Emphasis on post-conflict elections, the most common mechanism used to regulate or terminate the incompatibility among warring parties, as the primary domain for political participation creates a problem in relation to the effective exercise of the right to political participation in the sense that it excludes civil society/refugees from taking part in decisions that affect their lives through negotiations given that post-conflict elections most often take place following the signing of peace agreements.[1120] Among the various

[1119] The emphasis on post-conflict elections in agreements appears to reflect widespread recognition of elections as a minimal and central domain for political participation as well as the relatively determinate nature of the right to vote in comparison to other forms of political participation. *See*, Chapter 2, *supra* n. 265. Goulding, a former UN mediator, similarly observes that the post-agreement phase is where civil society participation "comes into its own". Goulding 2002, 87. Civil society participation in peacebuilding and in the implementation of peace agreements appeared to be most common in Africa and the Americas with fewer cases in Asia and least common in Europe. *See*, Chapter 5, *supra* n. 918-921 and corresponding text. In contrast, refugee participation in the planning, design and implementation of durable solutions was most common in the Americas with considerably fewer cases in Asia, Africa and in Europe notwithstanding or perhaps because of the larger number of refugees in each of these regions. *See*, Chapter 5, *supra* n. 968-970 and corresponding text. A strong majority of armed conflicts in which agreements included provisions relating to civil society and refugee participation related to disputes over government. There appeared to be a less significant relationship between the origins (i.e., pre-1990 or 1990s) and intensity (minor or major armed conflict) of the conflicts and negotiated settlements with participatory provisions. The lack of adequate or systematic data, as noted earlier, nevertheless makes it difficult to draw strong empirical conclusions on practice. *See*, Chapter 2, *supra* n. 117, 265.

[1120] Refugees face a range of additional problems not least of which is the fact that participation is most often dependent on their return while timetables for the holding of elections frequently fail to account for or militate against the safe and voluntary repatriation of refugees in time to take part in home country elections. Gallagher and Schowengerdt, for example, found that among eight cases reviewed—apart from the 1993 referendum on the future of Eritrea which the study includes even though it is not a post-conflict election *stricto sensu*—Bosnia comprised the only example of refugee participation in out-of-country voting. In general, as Grace and Mooney point out, refugee participation in home country elections remains "largely *ad hoc* and inconsistent" with refugees often excluded notwithstanding the relatively determinate character of the right to vote. *See*, Chapter 2, *supra* n. 311. In this sense, refugees may experience a double form of political exclusion, first in relation to the negotiation of durable solutions to their situation and second in relation to their participation in post-conflict elections.

provisions for civil society participation in peacebuilding and in the implementation of peace agreements, participation in transitional governance and institutional development, arguably the "strongest" form of political participation, was found in the fewest number of cases in comparison to civil society participation in humanitarian relief, agreement monitoring and in the legitimization and promotion of agreements.[1121] Deferring participation to the post-conflict peacebuilding, meanwhile, not only severs the link between public participation and the outcome of negotiations, it also appears to make it more difficult for civil society actors as well as refugees to raise issues and place them on the peacemaking agenda once an agreement has been reached.[1122] Finally, peace agreements were more likely to include provisions relating to the indirect (e.g., post-conflict elections) rather than direct (planning, design and implementation of durable solutions) participation of refugees, but significantly less likely to include such provisions in comparison to civil society, generally, notwithstanding the relatively well-developed body of soft law referred to in the previous chapter affirming refugee participation in decisions that affect their lives.[1123] Developments in practice suggest that democratic mechanisms and

[1121] In comparison to the 11 to 13 cases in which peace agreements included provisions governing civil society participation in humanitarian relief, agreement monitoring and in the legitimization and promotion of peace agreements there were only nine cases which included provisions regulating civil society participation in transitional governance and institutional development. This latter and arguably more "robust" form of political participation was also least common in all regions with the exception of Asia where civil society participation in agreement monitoring was less common. *See*, Chapter 5, *supra* n. 918-921.

[1122] Chinkin and Charlesworth 2006, 12. *See also*, Oliver 2002, 92. The deferral of civil society participation to the post-agreement phase also raises a number of important questions, as Barnes observes, about "opportunity costs" in such an approach. Barnes 2002a, 10. The exclusion of civil society/refugees from taking part in negotiated settlements through indirect or direct mechanisms, for example, may result in agreements that overlook or ignore root causes of a conflict, challenges and opportunities for solutions as well as ideas, plans and proposals that civil society actors including refugees may bring to the negotiation process. Indeed, while deferring such participation to the post-agreement phase may address problems associated with inclusive and multi-party negotiations, exclusion of stakeholders, as Wanis-St. John notes, can also have "feed-back effects" and "as the stakes of the negotiation get higher, the effects of exclusion seem to be more damaging to long-term projects such as peace". Wanis-St. John and Kew 2008, 12.

[1123] Provisions for civil society participation in peacebuilding and in the implementation of peace

procedures which aim to regulate or terminate the incompatibility among warring parties along with post-agreement peacebuilding and the implementation of peace agreements continue to be the most common domains for the participation of civil society as well as refugees in peace processes generally.[1124]

Second, the primary domain for civil society participation in the negotiated settlement of armed conflict appeared to be through unofficial or indirect peacemaking initiatives rather than official or direct participation in negotiations alongside representatives of states, rebel groups and opposition movements.[1125] It seems that civil society actors and refugees took part in peacemaking between 1990 and 2000 primarily through workshops, dialogue groups, national consultations and conferences and through civil society

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agreements were found in 24 of 40 negotiated settlements in comparison to 18 settlements which included provisions for post-conflict elections. *See*, Chapter 5, *supra n.* 917, 918-921 and corresponding text. In contrast, only three negotiated settlements which addressed durable solutions for refugees included provisions for their participation in the implementation of durable solutions in contrast to six cases which included explicit provisions governing refugee participation in post-conflict elections. *See*, Chapter 5, *supra n.* 967-970 and corresponding text.

[1124] The UCDP Peace Agreement Dataset used in Chapter 5 includes negotiated settlements to armed conflicts in the period between 1989 and 2005. In the five years that followed the practice covered in this study, peace agreements in nearly half of all negotiated settlements included provisions relating to civil society participation in humanitarian relief, agreement monitoring, legitimization and promotion of peace agreements and in transitional governance and institutional development. The regional distribution also appeared to be similar with provisions most common in peace agreements in Africa and Asia with fewer provisions in the Americas and in Europe. Peace agreement provisions for civil society participation appeared to be even more common if one includes agreements signed between 1990 and 2000 for all armed conflicts active between 1990 and 2005. Moreover, in comparison to the previous decade, the most common provision relating to civil society participation in peacebuilding and in the implementation of peace agreements was in the area of transitional governance and institutional development. Peace agreements in negotiated settlements to armed conflict in the five years that followed this study, moreover, were half as likely to include provisions governing refugee participation in the implementation of durable solutions.

[1125] The development of unofficial or Track II diplomacy, as previously noted, along with the expansion in practice from its initial focus on relationship-building to the more recent inclusion of policy-making arguably provided a foundation for the consideration of peace negotiations as a domain for political participation. However, as also noted elsewhere in this study, the differentiation between official (Track I) and unofficial (Track II) diplomacy also appears to maintain the distinction between separate or discrete domains of state and civil society activities in the management and resolution of armed conflict. It is nevertheless difficult to draw strong empirical conclusions about the extent of such participation given the lack of adequate or systematic documentation. *See*, Chapter 2, *supra* n. 249-258 and corresponding text.

assemblies.[1126] While such participation represents a significant shift in thinking about how armed conflicts come to an end, because of the involvement of civil society and their potential role in agenda-setting and policy-making, the indeterminate relationship between civil society participation through indirect or unofficial peacemaking initiatives and the outcome of direct or official negotiations raises the question as to whether such participation may be considered to comprise a form of political participation.[1127] It appears that the representatives of states, rebel groups and opposition movements taking part in official negotiations were rarely if ever obligated to include civil society or refugee recommendations and decisions derived through their participation in indirect or unofficial peacemaking initiatives in peace agreements.[1128] Moreover,

[1126] This finding is consistent with other studies. In their study of civil society participation in 25 negotiated settlements, for example, Wanis-St. John and Kew identify eight cases in which civil society participation occurred primarily through influencing parties at the negotiating table compared to four cases in which civil society took part directly in the negotiations. In the remaining cases civil society neither participated nor had influence on or access to the parties taking part in the negotiations. Wanis-St. John and Kew 2008, 18. *See also*, Chapter 2, *supra* n. 285. Civil society participation in peacemaking through unofficial or indirect mechanisms was most common in the Americas, equally likely in Africa and in Europe and least likely in Asia. As for refugees, participation through indirect or unofficial mechanisms was most common in the Americas with a number of additional cases of participation in Africa. There were no apparent cases in Europe or in Asia. While unofficial or indirect mechanisms provide significant venues for civil society participation, decisions on issues broadly considered to fall within the public sphere appeared to take place primarily in official negotiations underscoring the nature of such negotiations as the "pivotal" moment of a peace process. *See*, Chapter 2, *supra* n. 256.

[1127] Research on Track II negotiations, for example, suggests that coordination with Track I negotiations is often limited to informal communication among individuals who take part in both tracks. It is also suggests, moreover, that the two tracks may be incompatible due to their origins in different schools of thought on the management and resolution of conflict. *See*, Chapter 2, *supra* n. 253.

[1128] The most explicit connection between unofficial or indirect mechanisms for participation and the outcome of negotiations appeared to be in Guatemala. While the consensus papers drafted by participants in the Civil Society Assembly established under the Mexico Accord were non-binding, many of the Assembly's recommendations, including a number of those on refugees, were included in agreements reached in official negotiations. Civil society recommendations on other issues—e.g., land reform—however, failed to obtain endorsement of official actors and were excluded from peace agreements. Krznaric 1997, 4–6. Participant interviews suggest that the ability of civil society actors to influence the URNG's negotiating agenda was related in part to the latter's lack of capacity to prepare documents on substantive issues to be addressed in the negotiations. *Ibid.*, 9. Krznaric nevertheless concludes that the Civil Society Assembly's "ability to develop its policy-making skills, improve its lobbying ability and reduce fragmentation in the popular sector could not compensate for the non-binding nature of the consensus documents and for the lack of a position at the negotiating table". *Ibid.*, 13.

while such initiatives comprised the primary mechanism for civil society participation in peacemaking processes, it appeared that refugees were less likely by half to take part in crafting durable solutions to their situation through indirect or unofficial initiatives.[1129] The extent of such participation may nevertheless be underestimated as it excludes an unknown number of cases in which refugees may have taken part in broader unofficial civil society peacemaking initiatives.[1130] Developments in practice suggest that indirect or unofficial initiatives continue to comprise the most common domain for civil society as well as refugee participation in the negotiated settlement of armed conflict.[1131]

Third, in comparison to civil society/refugee participation in indirect or unofficial peacemaking initiatives and in peacebuilding, durable solutions and the implementation of peace agreements there were few cases in which civil society actors or refugees took part in official negotiations alongside the

[1129] Similar conclusions have been drawn regarding the participation of IDPs in peacemaking through indirect or unofficial mechanisms. A review of four case studies, peace processes and agreements in 13 cases, mission reports of the UNSG Representative on the Human Rights of IDPs and broader literature on civil society participation in peacemaking by Koser did not find any examples of IDP-specific Track II processes. Koser suggests that IDP participation in Track III is equally rare. *See*, Chapter 2, *supra* n. 321. Noting that in some cases IDP participation may not be possible nor desirable, Koser suggests that official mediators and parties taking part in Track I or official negotiations hold consultations with IDPs in advance of negotiations to ensure that their interests are represented and that they focus on the rights of IDPs.

[1130] In his study on addressing internal displacement in peacemaking, for example, Koser finds that although IDPs rarely appear to take part in Track II talks focused solely on internal displacement issues, they have been included in broader Track II initiatives in a number of conflicts including those in Burundi, Georgia and Liberia. *See*, Chapter 2, *supra* n. 321.

[1131] The UCDP Peace Agreement Dataset used in Chapter 5, as noted above, includes negotiated settlements to armed conflicts in the period between 1989 and 2005. In the five years following the period reviewed in this study, it appeared that indirect or unofficial initiatives continued to comprise the most common mechanisms for civil society participation in peacemaking. More than three-quarters of the cases, however, related to civil society participation in armed conflicts active between 1990 and 2000 with only two additional cases unique to the five years that followed. In the period between 2001 and 2005, however, there appeared to be fewer cases of refugee participation in indirect or unofficial peacemaking initiatives with participation limited to armed conflicts active during the previous decade. It is nevertheless difficult to draw hard conclusions due to the lack of adequate or systematic data.

representatives of states, rebel groups and opposition movements.[1132] The participation of civil society actors in such negotiations, moreover, was limited primarily to mediation efforts among official actors rather than participation in the negotiation of agreements to regulate or terminate armed conflict. In comparison, the direct participation of refugees in talks with governmental, rebel and opposition representatives appeared to be more common than civil society, generally, if mediation is excluded as a form of civil society participation in the negotiated settlement of armed conflict.[1133] The exclusion of mediation as a form of civil society participation in peacemaking in the period between 1990 and 2000 would leave only a single case—UK (Northern Ireland)—of direct participation. In either case, practice appears to underscore research which identifies participation as one of the "most pervasive" dilemmas in transitions from war to peace involving among others a key trade off between efficacy and legitimacy.[1134]

[1132] The empirical evidence from Chapter 5 is consistent with both anecdotal evidence and case studies of civil society participation in peace negotiations. These studies widely concur that, despite the progressive development of participatory principles, as summarized above, the actual participation of civil society actors in negotiated settlements of armed conflict is rare. *See*, Chapter 2, *supra* n. 285. Noting that the UN "has always been an organization of governments and will so remain", former UN mediator Marrack Goulding further observes that "[i]t is only slowly and reluctantly that governments have conceded to civil society a role in peacemaking, which almost all of them see as a quintessentially governmental activity. Very few have been persuaded to give civil society access to peacemaking, whether for normative or efficiency reasons". Goulding, *ibid.*, 86-7. In interviews with former American diplomats, Chataway similarly reports that while most expressed a range of views about the contribution and appropriate context for Track II initiatives, "[m]ost were clear that [official] diplomacy [was] the only real venue for hammering out agreements". *See*, Chapter 2, *supra* n. 257. Almost equally common in Africa and Asia, such participation was half as common in Europe with no cases in the Americas. In contrast, however, refugee participation in the negotiation of durable solutions was most common in the Americas, half as common in Asia and relatively uncommon in Africa with no cases in Europe.

[1133] The fact that civil society mediators function, as Paffenholz and Spurk observe, in a manner that is largely similar to governmental mediators, raises the question of whether civil society mediation may be considered as a form of participation. Paffenholz and Spurk 2006, 23. The extent of refugee participation, notwithstanding the significance of Burundi, Bangladesh and Guatemala, nevertheless appears rare when compared to the size of the refugee population from each of the three cases—less than seven percent—to the number of refugees from the 22 cases in which negotiated settlements addressed durable solutions. Returnees from the three cases, moreover, comprised less than six percent of the average annual number of returnees from the 22 cases and around four percent of the average annual global returnee population over the decade. *See*, Chapter 5, *supra* n. 975-976.

[1134] Jarstad and Sisk 2008, 243. *See also*, Belloni 2008, 194. While the complexities associated

The three cases in which refugees took part in official negotiations appeared to share in varying degrees at least four common features that may have facilitated or contributed to their participation.[1135] First, in each of the cases, refugees were able to organize and elect a leadership to represent and promote their rights and interests in negotiations with the government of their country origin.[1136] Second, refugee organizations were often able to rely on the

with multi-party negotiations, not to mention the overriding imperative of bringing hostilities to a swift end, may necessitate talks limited to major combatants, the equally important imperative of legitimacy, not to mention long-term sustainability, appear to require much broader participation. This dilemma has generally been addressed, notwithstanding problematic linkages between official and unofficial peacemaking initiatives, as noted above, either through the establishment of unofficial or indirect peacemaking fora for civil society participation and/or through procedures and mechanisms for civil society participation in peacebuilding and in the implementation of peace agreements. These approaches may be seen to resolve the problem of efficacy by limiting participation in official peace talks to the warring parties, while training and support programmes aim to enhance the capacities, skills and resources of civil society for post-agreement peacebuilding and potential "spoilers" are marginalized from the peacemaking process.

[1135] The three cases each involved intra-state conflicts which pre-dated the 1990s, but differed in relation to incompatibilities and intensity. The majority, moreover, comprised minor disputes over government. A detailed comparison with the 19 cases of non-participation is beyond the scope of this study, however, several general conclusions can be drawn. First, while all of the cases were similarly intra-state in nature, the majority comprised major armed conflicts over government which broke out during the 1990s. Second, in at least two cases—El Salvador and Mozambique—the majority of refugees had already returned to their respective countries prior to the conclusion of negotiations and the signing of peace agreements setting out solutions to their plight. Second, in three cases—Bosnia and Herzegovina, Kosovo and Cambodia—a solution was imposed by external actors. Third, in other cases the exclusion of civil society actors has been ascribed in part to the weak nature of civil society or the existence of uncivil actors. In general, there are few studies which explore or attempt to explain the inclusion or exclusion of civil society actors generally from negotiated settlements to armed conflict. *See*, Chapter 2, *supra* n. 283. A recent study by Paffenholz et al., however, identifies six major "enabling and disenabling" factors for civil society participation in peacebuilding: behaviour of the state, level of violence, freedom and role of media, diversity within civil society, influential political actors (regional actors in particular) and the role of donor engagement. Paffenholz et al. 2010, 405. The literature has yet to explore or explain such participation, moreover, in the context of existing theories on compliance and political participation.

[1136] The issue of representation—e.g., which civil society actors should participate, how civil society representatives are chosen—is widely cited as one of the major challenges in facilitating civil society participation including refugees in the negotiated settlement of armed conflict. Barnes 2002b, 3–4; Belloni 2008, 8; Paffenholz and Spurk 2006, 69; UNHCR 2007a, 3; Koser 2007, 3; and, Lanz 2008, 71–72; and, Wanis-St. John and Kew 2008, 14. A history of popular mobilization and self-organization prior to displacement, the displacement of the majority of refugees to a single host country along with their settlement in camps appeared to facilitate the establishment of an independent and elected refugee leadership. The mobilization and organization of refugees to meet basic needs following their displacement also appeared to lay a foundation for their engagement in negotiations on durable solutions. The elaboration of principles and policies relating to the participation of refugees in development, as noted earlier, similarly comprised interstitial principles which informed the subsequent elaboration of principles and policies relating to refugee participation in the negotiation of durable solutions.

added leverage of key actors and networks at various levels—national, regional and international—to advance both procedural and substantive demands.[1137] Third, the establishment of separate or dedicated fora to address forced displacement also appeared to facilitate the inclusion of refugees in talks about their future by addressing factors which are said to militate against public participation in the negotiated settlement of armed conflict.[1138] Finally, in each case, the country of origin was not only willing to take back the refugees, but also appeared to have incentives to facilitate refugee return.[1139] While each of

[1137] This included, among others, non-governmental and faith-based organizations, rebel movements, diplomatic representatives, mediators and the United Nations. In both Guatemala and Burundi, for example, UNHCR leveraged its own resources—logistical, financial and political—often as a result of the efforts of key staff to encourage governments to open talks with refugee representatives and/or facilitate the participation of refugees in negotiations on durable solutions to their situation. The leveraging of refugee demands through such networks appears especially important given the general reluctance of states, rebel groups and opposition movements as well as mediators to open up official negotiations to civil society actors. This reluctance has meant that progress on civil society participation, as Goulding observes, "has been due [largely] to pressure from below, not wisdom from above; to accumulated precedents, not generic decisions". Goulding 2002, 86–87. Also common to these cases, Guatemala in particular, was the reliance on universal discourses, especially those relating to human rights, women and indigenous peoples, which enabled refugees to increase their leverage by situating their demands in broader fora. *See*, Chapter 5, *supra* n. 1040 and corresponding text.

[1138] These include the multiplication of actors at the table, issues to be addressed, and positions to be resolved, which in turn are said to contribute to or compound problems relating to confidentiality, communication, coordination and cooperation among participants. For more detailed discussion *see*, Wanis-St. John and Kew 2008, 21–23. For a brief overview of advantages and disadvantages to the direct participation of civil society actors in peace negotiations *see*, Paffenholz, Kew, and Wanis-St. John 2006, 70. The establishment of separate fora simplified the substantive and procedural aspects of the negotiations by removing the refugee issue from talks relating to other aspects of each of the respective conflicts. The election of a single refugee leadership mandated to represent refugee rights and interests in negotiations in each of the cases, as noted above, likewise appeared to address problems related to the multiplication of parties, issues and positions. The protracted nature of the conflicts in each of the three cases and the fact that the negotiations took place over an extended period of time, especially in Guatemala and Bangladesh, moreover, allowed refugees time to organize and mobilize broad support for their procedural and substantive demands. In other cases, timeframes frequently militate against civil society participation due to the longer time generally required for more participatory processes. Chopra and Hoje 2004, 289; Pouligny 2005, 501–502; and, Daley 2005, 687.

[1139] This included the improvement in relations between countries of origin and asylum, the suppression and elimination of "refugee warriors" and the encouragement of international investment in reconstruction and national development. Thus, while officials in each of the conflicts may have viewed refugees, in varying degrees, as "uncivil actors", "spoilers", or even as "refugee warriors", refugees were effectively able to (re)position themselves, in Koser's words, as "'peace connectors' and catalysts" to a solution in each of the respective conflicts. Koser 2007, 13. The fact that refugee populations, particularly in Bangladesh and Guatemala, were relatively small, both in actual terms, and in relation to the population of their country of origin, may have also facilitated their inclusion in the negotiations. While the limited size of the refugee population may have worked in their favour in terms of

these factors, on their own, may not have been decisive in securing refugees a seat in negotiations to resolve their situation, it appears that at least some combination of each was important in facilitating their participation. In contrast to other domains for civil society/refugee participation, developments in practice suggest that civil society/refugee participation in the negotiated settlement of armed conflict has become increasingly common notwithstanding the fact that it remains significantly less common than participation through indirect mechanisms and through peacebuilding and the implementation of agreements.[1140]

The practice of refugee participation in the negotiation of durable solutions between 1990 and 2000 thus appeared to reflect in several ways the concept of effective participation. Under such a construction, as explained in the previous section, states and other relevant actors would be obligated to establish mechanisms for participation and ensure that such participation has a significant influence on the outcome of negotiations with the goal of shared ownership of decisions taken. They would nevertheless be entitled to choose the mechanisms for civil society/refugee participation while the latter's involvement would fall short of a right to decide. In contrast to the legal concept of effective participation, however, the practice of "effective participation" in peacemaking does not appear to clearly evidence an obligation among states to provide mechanisms for civil society/refugee participation. Practice also

representation, mobilization and multi-party negotiations, they also comprised little threat to the political power of official parties taking part in the negotiations, notwithstanding their links to rebel and opposition movements.

[1140] The UCDP Peace Agreement Dataset used in Chapter 5, as noted above, includes negotiated settlements to armed conflicts in the period between 1989 and 2005. In the five years following the period under review in this study, civil society actors took part in official negotiations in at least one-quarter of all armed conflicts active during the period. Most of the cases were located in Africa with a single case in Asia. It appeared that refugees, meanwhile, were twice as likely to take part in the negotiation of durable solutions. It is nevertheless difficult to draw firm empirical conclusions given the lack of adequate or systematic data.

appears to be indeterminate with regard to the effectiveness of such participation in the sense that civil society actors including refugees, in many though not all cases, did not appear to have a significant influence on the outcome of official negotiations leading to shared ownership of agreements reached. Finally, the most prominent feature of effective participation in peacemaking as evidenced by practice appears to be the prerogative of states to choose which form or mechanism of participation for civil society/refugee involvement in peacemaking processes.

ii. Conclusions on Palestinian refugees

The empirical analysis in Chapter 5 would appear to suggest that the Palestinian case was both unique from and similar to other refugee cases with regard to the participation of refugees in peacemaking processes in the period between 1990 and 2000. The Palestinian case appears to be somewhat unique from other refugee cases in at least four major aspects. First, while agreements between the PLO and Israel included a range of issues broadly recognized as falling within the public sphere, suggesting as in other cases that peace negotiations comprise a domain for political participation, the agreements appeared to be relatively unique in terms of the almost complete absence of human rights provisions including those governing durable solutions for refugees, namely, return, restitution and compensation.[1141] Second, while

[1141] The interim agreements, as noted in Chapter 2, establish mechanisms for the negotiation of solutions for 1948 and 1967 refugees, but are largely silent on the principles governing solutions with the exception of provisions which condition the "entry" of 1967 refugees to the West Bank and Gaza Strip on public order and security. *See also*, Bell 2000, 247. The lack of a rights-based framework governing durable solutions can be explained in part by the interim nature of the agreements, notwithstanding the fact that refugee provisions in peace agreements in other cases during the 1990s, as noted in Chapter 5, were most common in peace process agreements, but also by the peacemaking framework under which the rights of Palestinians including refugees were to be decided through negotiations. The linkage between security and the entry of 1967 refugees to the West Bank and Gaza Strip reflects in

agreements included democratic mechanisms and procedures, elections and autonomy in particular, to regulate or terminate the incompatibility between warring parties, namely, Israel and the PLO, it appears to be the only case in which a peace agreement explicitly excluded or barred refugees, albeit on a temporary (i.e., pending conclusion of agreement on modalities for their admission to the West Bank and Gaza Strip) basis, from taking part in elections in their country of origin.[1142] In contrast to other cases in which peacebuilding and the implementation of peace agreements comprised the most common domain for public participation in peacebuilding processes generally, the agreements between Israel and the PLO are almost completely silent on civil society participation in peacebuilding and in the implementation of agreements.[1143] Third, while the Palestinian case, similar to other cases during

large part the centrality of security to the peacemaking process (Khan 2005), but also appears to establish a precedent for the use of similar rationale to deny the return of 1948 refugees to their places of origin inside Israel. Draft final status agreements reflect the differing positions of the parties on the substantive rights of Palestinian refugees and the ways in which to balance those rights against the political interests of each side. *See*, Annex I, Table A1.1 - Peace Agreements and Proposals, Provisions on Palestinian Refugees.

[1142] This may be explained in part by the phased nature of the peacemaking process under which elections for a self-governing Palestinian Authority were scheduled to be held prior to the conclusion of quadripartite talks on modalities for the entry of 1967 refugees into the West Bank and Gaza Strip. According to one of Israel's legal advisors, officials were concerned that if 1967 refugees were allowed to vote "hundreds of thousands of Palestinians falling within this category would pressure Israel to be allowed to enter the territories as visitors in order to vote". Singer 1996, 347. The participation of 1948 refugees does not appear to have been raised in part because they originate from areas inside Israel which was and remains opposed to their return. This may also explain the exclusion of 1948 refugees from PA elections in the 1967 OPT, however, it is also curious that neither Israeli nor Palestinian officials, each of whom arguably had interests in promoting the creation of a Palestinian state as a solution to the refugee issue, especially in Israel's case, did not appear to promote the participation of 1948 refugees in PA elections. This can be explained by the official position of the PLO on refugee return and by popular sentiment, refugees in particular, exemplified by the rise of a popular refugee movement, but also by Israel's reluctance to cede control to the PA for entry procedures to the 1967 OPT and its broader security concerns associated with the entry of a large number of refugees to the West Bank and Gaza Strip.

[1143] The University of Ulster Transitional Justice Peace Agreement Database does not identify any provisions for civil society participation in humanitarian relief, monitoring, legitimization and promotion of agreements or in transitional governance. The Interim Agreement on the West Bank and Gaza Strip includes provisions for "people-to-people" programs to enhance dialogue and relations between the two sides, which may fall broadly under the legitimization and promotion of peace agreements, but the agreements are otherwise silent on civil society participation. Interim Agreement on the West Bank and Gaza Strip, Annex VI - Protocol Concerning Israeli-Palestinian Cooperation Programs, *supra* n. 385. For additional

the same period, included unofficial mechanisms for the indirect participation of civil society actors in peacemaking, largely through Track II initiatives, the Palestinian case appeared to be the only case in which a number of indirect initiatives focused solely on forced displacement.[1144] Finally, the exclusion of Palestinian refugees from the negotiation of durable solutions to their situation was not unique to the Palestinian case, but rather common to most negotiations on durable solutions for refugees during the period under consideration.[1145]

The difference between refugee participation in the negotiation of durable solutions in the Palestinian case and other refugee situations may be explained in part by the nature of the conflict in Palestine-Israel. While such participation appeared more likely in conflicts over government, the conflict in Palestine-

discussion *see*, AbuZayyad and Schenker 2005; and, Atieh 2005. This is not to say that civil society has been absent from the peacebuilding process. Indeed, as one recent study observes, "[p]erhaps no contemporary conflict has received more attention by practitioners of track two diplomacy than the Israel-Palestine conflict". The study examined a total of 79 initiatives between 1992 and 2004. Çuhadar and Dayton 2012, 159.

[1144] Indirect mechanisms, as described earlier in the study, provided the initial "entry point" for the PLO in talks to resolve the conflict. *See*, Chapter 3, *supra* n. 541-543. In other armed conflicts active between 1990 and 2000, civil society participation in peacebuilding and in the implementation of peace agreements appeared to be more prevalent in conflicts over government that broke out during the 1990s. The conflict in Palestine-Israel, by way of contrast, pre-dates the 1990s and is coded in the UCDP Peace Agreement Dataset as a conflict over territory rather than government. The establishment of unofficial or indirect mechanisms on the Palestinian refugee issue aimed to expand knowledge on the issue and build networks among refugees, policymakers, practitioners and experts. It may have also aimed to address the growing sense of refugee marginalization from the peacemaking process. *See*, Chapter 3, *supra* n. 549-559. The Palestinian refugee case also departs from practice elsewhere in the sense that participation through unofficial or indirect mechanisms took place primarily in conflicts over government that pre-dated the 1990s. While the Palestinian refugee case also pre-dates the 1990s, the conflict is coded as noted above as a conflict over territory rather than government. In both cases, civil society and refugees, participation appeared to be equally likely to take place in major and minor armed conflicts.

[1145] The practice of refugee participation in the negotiation of durable solutions, if the Palestinian refugee case is included, moreover, would appear to suggest that such participation was even more rare, especially in relation to the actual number of refugees who were able to take part in such negotiations. While the percentage of refugees displaced by armed conflict whose situation was addressed through negotiations would fall slightly from 17 to 14 percent, the percentage of refugees able to take part in such negotiations through their own representatives, notwithstanding the problem of comparing statistics, would fall by nearly half from from 7.2 percent to 4.4 percent. The number of refugees able to take part in such negotiations as a percentage of the average annual refugee population throughout the decade would similarly fall from 3.8 percent (not including Palestinian refugees) to 2.8 percent (including Palestinian refugees). The size of the returnee population would remain unchanged given that absence of durable solutions for the vast majority of Palestinian refugees. For a brief discussion concerning statistical comparisons between Palestinian refugees and other refugee groups *see*, Chapter 1, *supra* n. 133.

Israel is generally coded as a conflict over territory. This also suggests that while official actors and third party intermediaries continue to promote a two-state solution to the conflict, civil society/refugee participation may be more relevant and likely in the context of a one-state solution to the conflict. The Palestinian case also differs, however, from each of the three cases in which refugees took part in the negotiation of durable solutions in that Palestinian refugees were unable to overcome the major challenges or obstacles referred to above to securing a seat at the negotiating table to resolve their plight. In the first instance, despite a detailed framework for the election of a General Refugee Council to represent the rights and interests of refugees in negotiations alongside the PLO and Israel, as described in previous chapters, refugees were unable to implement their plan in advance of final status negotiations.[1146] Second, Palestinian refugees were unable to rely, at least initially, upon a similar range of key actors and networks at the national, regional and international levels to advance their procedural and substantive demands.[1147] Third,

[1146] This can be ascribed to a range of factors including initial sectarianism and restrictions on political activity and freedom of movement within and between major host countries. *See*, Chapter 3, *supra* n. 598-601. The Palestinian case was nevertheless similar to the situation of those refugees who took part in the negotiation of durable solutions in the 1990s in that Palestinian refugees had a long history of mobilization and self-organization. Indeed, refugee efforts to secure a seat in negotiations, as described in detail in Chapter 3, long preceded the emergence of similar efforts in the 1990s among other groups of refugees. There are no studies on negotiated settlements of refugee situations prior to the 1990s, however, given the paucity of documentation on such participation in recent decades, it is not possible to rule out earlier examples of participation conclusively. While refugee camps served a similar role in facilitating the mobilization and self-organization of Palestinians over the course of repeated waves of displacement, unlike refugees from Bangladesh, Guatemala and Burundi, the majority of Palestinian refugees resided outside of camps and were dispersed across multiple host countries.

[1147] These networks would appear to be particularly important in the Palestinian case given the fragmentation of the Palestinian people, restrictions on political activism within and beyond the borders of historic Palestine and the balance of power at all levels, national, regional and international. In contrast to the apparent close connection between refugee organizations and rebel or opposition movements in the other three cases, the PLO at first viewed the popular refugee movement as a potential competitor rather than an ally in negotiations to resolve the conflict. Initial efforts by NGOs to establish a regional network focused on the refugee issue, as noted in Chapter 3, failed to come to fruition due in part to the exclusion of popular refugee initiatives. The international solidarity movement on Palestine constructed over decades of struggle, moreover, was both debilitated and divided in the aftermath of the signing of the 1993 Declaration of Principles on Interim Self-Government Arrangements

Palestinian refugees were unable to secure access to separate or dedicated fora on the refugee issue.[1148] The fourth and primary difference between Palestinian refugees and those from Burundi, Bangladesh and Guatemala, however, was and remains the absence of a viable country of origin willing to allow the refugees to return.[1149] The absence of a viable country of origin, in relation to the state of Israel or a future Palestinian state in the West Bank, East

setting out a political framework for a solution to the conflict. The popular refugee movement also had to raise awareness among solidarity activists and communities about the refugee issue, including their demands for return, restitution and compensation, and how each fit within the framework of a two-state solution to the conflict. The quadripartite and multilateral talks on refugees each provided regional fora for negotiated solutions to various aspects of the refugee issue, however, neither bilateral nor quadripartite and multilateral negotiations addressed legal frameworks and institutions at the regional level necessary for durable solutions. The Palestinian case also differed from the situation in Guatemala and Burundi in that the popular refugee movement did not receive significant support from international organizations which appeared critical to securing refugee access to negotiations in the other cases. This stemmed, in part, from the demise of the UNCCP and the concomitant absence of an international agency with an explicit mandate to protect and promote refugee rights and interests in the context of a negotiated solution to the conflict. It can also be ascribed, more generally, to the exclusion of the United Nations at Israel's behest from diplomatic efforts to resolve the conflict. Similar to cases where refugees took part in negotiations, the popular refugee movement drew upon universal principles to frame their procedural and substantive demands, however, Palestinian refugees also had to struggle against a peacemaking process based largely on power politics with little emphasis on the international law, including the rights of refugees themselves. The fact that the United States, the primary mediator, "friends" of the peace process and major donors largely supported this framework limited the utility of legal and other universal discourses in building and expanding broad networks to advance refugee rights and interests in the context of a negotiated solution to the conflict. It nevertheless provided a mobilizing tool and facilitated refugee efforts to resist an agreement that did not accord with their basic rights and interests.

[1148] The multilateral Refugee Working Group and the quadripartite Continuing Committee on displaced persons provided potential fora for the participation of refugees, but in each case participation was limited to official delegations. While members of the Palestinian delegation in each set of talks were themselves refugees, some participants acknowledged that "the fact of being a refugee does not necessarily mean that one represents refugees". Tamari 1999, 88. In Tamari's view, such participation could have taken place "through the negotiating team or through independent commissions". *Ibid*. The Palestinian case was somewhat similar to the situation of refugees in Bangladesh and Guatemala, however, in relation to timing. Palestinian refugee efforts to secure a seat at the negotiating table took place at a time when both quadripartite and multilateral talks on refugees had ground to a virtual halt, however, the delay in substantive talks on 1948 refugees gave refugees time to mobilize and organize themselves in advance of final status talks between the PLO and Israel.

[1149] In contrast to other cases where countries of origin agreed to the return of refugees, Israel was and remains staunchly opposed to the return of 1948 Palestinian refugees to their places of origin inside Israel. Moreover, while appearing to agree in principle that 1967 refugees should be allowed to "enter" the West Bank and Gaza Strip, as stipulated in agreements with the PLO, Israel retained full control over the borders of the 1967 OPT according it an effective veto over the conditions or modalities of refugee admission. In contrast to the platform of the previous government, moreover, the platform of the Likud-led government explicitly stated that "[t]he Government [would] oppose the establishment of a Palestinian state or any foreign sovereignty west of the Jordan River, and [would] oppose 'the right of return' of Arab populations to *any part* of the Land of Israel west of the Jordan

Jerusalem, and Gaza Strip, is a direct function of the unresolved conflict over self-determination in historic Palestine.[1150] The actual participation of Palestinian refugees in the negotiation of durable solutions would therefore appear to dependent on resolution of the conflict over self-determination.

The primary problem facing 1948 refugees who originate from areas inside the state of Israel, as already noted in Chapter 3, is the unresolved conflict over whether self-determination applies to all of the habitual residents of historic Palestine or whether it should be exercised on the basis of ethnic or national identity. The majority view inside Israel is generally understood to view self-determination as comprising the right of the Jewish people to establish and maintain their own nation state. This view of self-determination is also enshrined

River". [emphasis added] Israel 1996, sec. 7. An agreement between left and right-wing political movements in Israel a year later affirmed Israel's "right" to prevent the return of Palestinian refugees to its sovereign territory and the "entry" of Palestinian refugees to the 1967 OPT would be subject to bilateral negotiations and Israel's security concerns. Israel 1997, pt. E para. 1-2. Israel reaffirmed these positions in the lead up to final status talks with the PLO. Israel 1999a, sec. 1.4; Israel 2000a; and, Israel 2000b. The return of 1967 refugees to the OPT, meanwhile, was viewed as having a potentially destabilizing impact and appeared to necessitate a solution to other final status issues, in particular, borders, Jewish settlements and 1948 refugees, all of which would have an impact on the nature of solutions for 1967 refugees. The government of Israel did not appear to have any significant incentives —positive or negative—to facilitate refugee return. On the one hand, Israel's objective of securing its status as a Jewish state, an aim closely intertwined with its concept of national security, militated against the return of Palestinian refugees to their homes, towns and villages of origin inside Israel. On the other hand, Israel did not face the threat of sanctions for preventing refugees from returning to their places of origin inside Israel or in the 1967 OPT. Akram and Rempel 2004, 141–142, 147–148. In contrast to the aforementioned cases, in which refugee populations were relatively small both in terms of their actual numbers and in relation to the population of their country of origin, the number of Palestinian refugees originating from areas inside Israel at the time of final status negotiations was nearly equal to three-quarters of the population of the state of Israel and roughly the same size as its Jewish population. At the end of 2000, the population of Israel comprised 4,955,400 Jews, 1,188,700 Arabs and 225,200 others. For the Jewish population of Israel *see*, Table 2.1 - Population, by Population Group, CBS 2010, 85-6. At the end of 2000, there was an estimated 4,671,868 to 5,170,131 1948 refugees. The figure excludes an unknown number of Palestinians displaced from Israel between 1949 to the present. For population estimates *see*, Annex I, Table A1.4 - Estimated Palestinian Refugee Population, 1950-2011.

[1150] The conflict over self-determination, as already noted in Chapter 3, has at least three basic elements: a dispute over whether each community comprises a distinct people with a concomitant right to self-determination; the territory to which each community's claim applies; and, whether self-determination is applicable to all habitual residents of a territory or whether it may be exercised more narrowly along ethno-national lines. While the first issue has to a large extent been resolved, the two sides have yet to reach concensus on the borders of a future Palestinian state and recognition of the state of Israel as a Jewish state characterized among others by a permanent Jewish majority. Other aspects of the dispute, however, remaining outstanding.

in the country's "Declaration of Independence" and in its "basic" or constitutional laws which define Israel as a "Jewish and democratic" state.[1151] Two major and commonly accepted elements of this definition militate against the exercise of Palestinian self-determination through the return of refugees to their homes, villages and towns of origin inside Israel. First, a Jewish state is broadly understood to comprise a state with a permanent Jewish majority.[1152] The demographic balance of the population of the state is regulated, among others, through the aforementioned 1950 Law of Return and the 1952 Nationality [Citizenship] Law. Second, a Jewish state is widely understood to comprise a state in which Jews are accorded certain privileges on the basis of their Jewish nationality.[1153] This includes the right to immigrate and acquire

[1151] Jabareen 2008, 362–363. Inspired by the Canadian Charter of Rights and Freedoms, which affirms that the rights and freedoms enshrined therein may be "subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society", the latter phrase was altered in the Israeli context to allow for limitations consonant with "the values of the State of Israel as a Jewish and democratic state". Avnon 1998, 544. *See also*, HRC 1998b, para. 832. This would include, for example, derogation from the right of return with respect to Palestinian refugees. The laws were adopted in the 1990s in the context of renewed efforts to complete a constitution. As noted earlier, initial efforts to draft a constitution in the aftermath of the 1948 war and the establishment of the state collapsed in light of disagreements between secular and religious sectors of Israeli society in the state's early years of existence. The platform of the Likud-Shas government, elected in 1996, appeared to introduce for the first time specific language affirming Israel's self-definition as a "Jewish, democratic state". Israel 1996.

[1152] The idea of establishing a Jewish majority state (of at least 80 percent) was central to Zionist efforts to reconstitute Palestine as a Jewish state. Pappé 2006, 48–49. It informed the movement's emphasis on Jewish immigration and colonization as primary means to reconstitute Palestine as a Jewish state, its thinking on population transfer as a solution to the Arab Palestinian "majority problem" (Masalha 1992), its decision to prevent Palestinian refugees from returning to their homes, villages and towns of origin after the two major wars of 1948 and 1967, and its laws and policies governing citizenship, residency, land and planning. Summarizing Israel's arguments against refugee return, Zilbershats and Goren-Amitai observe that "[r]eturn to the territory of the State of Israel of many of those who regard themselves as Palestinian refugees might severely prejudice the right of the Jewish people in Israel to national and cultural self-determination, public order in the state, the welfare of its citizens, irrespective of nationality or religion, and even the character of the state, its democratic spirit and its level of development". Zilbershats and Goren-Amitai 2011, 66. Israel's High Court has ruled (*Ben Shalom v Central Elections Committee*) that the character of the state is defined among others by a Jewish majority. Adalah 1998.

[1153] In one of its first reports to the UN Human Rights Committee, which is responsible for oversight of the ICCPR, Israel pointed out that "[i]n several areas of law and practice, such as the granting of citizenship to Jewish immigrants under the Law of Return, the residential development activities of the Jewish Agency and the Jewish National Fund, and elsewhere, the State differences exist between the Jewish and non-Jewish populations in different ways that derive from Israel's fundamental identity as a Jewish State". HRC 1998b, para. 832. Jewish nationals enjoy a wide range of additional benefits or privileges including "preferential

citizenship upon "returning" to the state of Israel, one of several rights connected to Israel's self-definition as a Jewish state in which basic laws—i.e., constitutional legislation—allow for differentiation or discrimination on the basis of ethnic or national identity.[1154] In contrast to the relative convergence of thinking around solutions to territorial aspects of the conflict over self-determination in the 1967 OPT, as discussed below, there has been growing divergence over the demographic aspects of self-determination inside Israel particularly since the 1990s when Israel and the PLO agreed to settle their differences through direct negotiations.[1155]

treatment in the distribution of land and water resources; planning and zoning; economic investment strategies and business and tax advantages; ... preferential social, educational, and economic treatment; control over the educational curricula; preference in governmental and other positions; and the determination of national language, national holidays, days of rest, and so forth". Rouhana 2006, 69. The High Court of Israel has ruled (*Ben Shalom v Central Elections Committee*) that the Jewish character of the state is also defined by the preferential status accorded to Jews. The substantive content of Israel's self-definition as a Jewish state is nevertheless an issue of ongoing debate within Israel.

[1154] The right to return is enshrined as a basic human right in article 6 of Israel's 1992 Basic Law: Human Dignity and Liberty. Article 10, however, further states that the law does not affect the validity of any law including the 1952 Nationality [Citizenship Law] under which Israel denationalized Palestinian refugees originating from areas inside the state in force prior to its enactment. Article 8, moreover, allows for the violation of rights enshrined in the law provided that such violation "befit[s] the values of the State of Israel [as a Jewish and democratic state]; is enacted for a proper purpose"; and, infringes the rights granted by the Basic Law "to an extent no greater than required". *Ibid.* In addition, the principles of equality and non-discrimination have yet to be enshrined in Israeli law as constitutional principles. Jabareen 2008, 353, *citing*, Avnon 1998, 535, 539, 547. In its first report to the HRC Israel explains that "[t]he reason for this exclusion, as a normative and practical matter, resides perhaps primarily in the systemic accommodation that Israel has maintained between its character as a liberal democracy and the prerogative it has granted to religious law in various areas of public and private life". HRC 1998b, para. 57. *See also*, CERD 1997, para. 18–24. While some judicial decisions interpret Israel's law to include these principles, the judiciary has largely avoided addressing their application in relation to Israel's self-definition as a Jewish state. Early draft constitutions affirmed equality and non-discrimination as fundamental principles of the state. UNCCP 1949af, 5. More recent efforts to draft a constitution have faltered over differences on enshrining equality and non-discrimination as constitutional principles. Segev 2006; and, Ilan 2007.

[1155] The drafting of basic laws enshrining fundamental human rights in order to complete Israel's "constitutional evolution", identification of Palestinian refugees as an issue for negotiations between Israel and the PLO and the internal tensions and divisions (secular/religious, Ashkenazi/Mizrachi, right/left) inside Israel sharpened the focus on the demographic aspects of self-determination in Palestine/Israel. Avnon 1998, 538; and, Gavison 1999, 44. The growing divergence over this issue is exemplified in public opinion surveys, the adoption of an increasingly wide array of legislation which discriminates against Palestinian refugees, Palestinian citizens of the state of Israel and against Jewish citizens who dissent or actively oppose and seek to alter Israel's self-definition as a Jewish state and in Israel's demand that Palestinians recognize Israel as a Jewish state as part of a comprehensive solution to the conflict. For more detailed discussion *see*, *e.g.*, ACRI 2012; Adalah 2012; Hesketh 2011; Khalidi 2011; and, Zreik 2011.

The primary problem facing 1967 refugees who originate from the West Bank, East Jerusalem, and the Gaza Strip is the unresolved conflict over the future status of these areas. Mutual adjustment of positions on the territorial dimensions of self-determination in the form of a two-state solution have led to the greatest convergence in thinking, but as noted in Chapter 3, outstanding disagreements on the borders and sovereign powers of a future Palestinian state to be established in all or part of the 1967 OPT continue to militate against complete convergence.[1156] Palestinians generally hold that with the exception of agreed upon border adjustments Israel is required to withdraw to the 1949 armistice line, referred to variously as the "Green Line" or the 1967 borders, thus allowing for the establishment of a Palestinian state in the West Bank and Gaza Strip with its capital in East Jerusalem.[1157] Israel holds that it is neither required nor is it feasible for the state to withdraw to the 1949 armistice line and that a solution to the conflict must take into account changes in the 1967 OPT as a result of Jewish settlement as well as the immediate and long-term security needs of the state of Israel.[1158] Despite the relative and apparent convergence in

[1156] A related aspect which further complicates this issue is whether the small number of Jews displaced from the OPT during the 1948 war should be allowed to return to their places of origin. This has been partially addressed through policies and practices relating to the handling of Jewish claims in the 1967 OPT. *See*, Chapter 3, *supra* n. 330. A more complicated aspect of this issue, due to the number of people involved and their political power, is whether Jews who have settled in the West Bank, East Jerusalem and Gaza Strip since 1967 should be allowed to remain in the context of a two-state solution to the conflict. *See*, Chapter 3, *supra* n. 338. The situation is the Gaza Strip was partially addressed in 2005 when Israel dismantled its settlements in the Gaza Strip.

[1157] Palestinians initially held that a solution to the conflict over self-determination should be resolved through the establishment of a Palestinian state in historic Palestine. The PLO initially endorsed this position upon its establishment in 1964. In 1968, the PLO revised its position in favour of a secular democratic state comprised of Muslims, Christians and Jews, but remained committed to a territorial solution to the conflict over self-determination that involved all of historic Palestine. Six years later, the PLO made its first shift towards a two-state solution to the conflict calling for the establishment of a Palestinian entity in any part of liberated Palestine. In 1988, the PLO endorsed the established of a Palestinian state in the West Bank and Gaza Strip with its capital in East Jerusalem. The PLO has continued to promote this approach to the territorial aspect of self-determination with changes to the borders of a future Palestinian state to be agreed upon in the context of negotiations to resolve the conflict. *See*, Chapter 3, *supra* n. 332-338, 409, 464-465, 475, 493, 506, 525 and corresponding text.

[1158] The Zionist movement initially held that a solution to the conflict over self-determination be

thinking on how to resolve the territorial aspect of the conflict over self-determination, the ongoing settlement of Jews in the 1967 OPT and the construction of related infrastructure along with divisions among Palestinian factions which govern or administer separate entities in the occupied West Bank and Gaza Strip have increasingly raised questions about the "viability" of partition and the establishment of two independent states in historic Palestine.[1159] The primary parties and the international community at large nevertheless maintain formal support for a two-state solution to the conflict.[1160]

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resolved through the reconstitution of a Jewish state in historic Palestine. The movement later acquiesced to partition as a solution to the territorial aspect of the conflict. Having secured the establishment of a Jewish state in more than three-quarters of historic Palestine in 1948, Israel decided to leave its borders undeclared in order to accommodate future developments. Israeli officials considered various options—autonomy, annexation, confederation and the establishment of a Palestinian state—for addressing the status of the West Bank (excluding East Jerusalem) and Gaza Strip in the years and decades that followed the 1948 and 1967 wars. Since the late 1970s, Israel has supported the idea of Palestinian autonomy with the future status of the West Bank, East Jerusalem, and Gaza Strip to be resolved through negotiations, but has stopped short of explicitly endorsing the right to self-determination of the Palestinian people. *See*, Chapter 3, *supra* n. 332-338, 409, 492 and corresponding text.

[1159] This includes confiscation of Palestinian land, construction of bypass roads to connect Jewish settlements to each other and to areas inside the state of Israel, checkpoints and terminals that restrict Palestinian freedom of movement within the West Bank and the construction of a wall that effectively annexes large areas of the occupied West Bank and separates Palestinians from their lands and communities. In the mid-1980s, nearly a decade before the signing of the 1993 Declaration of Principles, Israeli writer and former deputy mayor of Jerusalem Meron Benvenisti warned that "a dual society, or ... a 'binational state', [was] not long a vision of the future but an actuality". Benvenisti 1984, 64. Recent estimates suggest that for the first time since their mass displacement during the 1948 war Palestinians comprise a majority of the population West of the Jordan river. Eldar 2012b. The division between the West Bank based Palestinian Authority and the Hamas government in the Gaza Strip since Israel and the international community effectively rejected the outcome of the 2006 PA legislative elections won by Hamas and imposed a siege on the Gaza Strip and the inability of the two factions to reconcile their differences further militate against the realization of Palestinian self-determination. For additional discussion of the viability of a two-state solution to the conflict *see*, *e.g.*, Abunimah 2006; Bisharat 2009; Cohen et al. 2003; Farsakh 2011; Halwani and Kapitan 2008; Ibish 2006; James 2011; JPS 2010; Karmi 2011; Kelman 2011; Morris 2009; Shenhav 2012; Stein 2004; Tilley 2005; and, Witkin 2011.

[1160] In 2002 the UN Security Council "affirm[ed] a vision of a region where two States, Israel and Palestine, live side by side within secure and recognized borders". SC Res. 1397, 57th Sess., 4489th Mtg., UN Doc. S/RES/1397, Mar. 12, 2002, preamble. The Council reaffirmed a two-state solution to the conflict one year later. SC Res. 1515, 58th Sess., 4862nd Mtg., UN Doc. S/RES/1515, Nov. 19, 2003, preamble. For more than a decade, members of the international community have repeatedly warned that due to changes on the ground and in the region a two-state solution to the conflict may be "slipping away", but have nevertheless failed to take sufficient action to prevent unilateral actions regarded as inconsistent or in conflict with a two-state solution to the conflict. In 2012 a majority of UN General Assembly members, as noted above, voted to upgrade the status of Palestine to that of an "observer state", however, the action remains largely symbolic in the absence of parallel efforts to impede and reverse Jewish settlement in the 1967 OPT and facilitate reconciliation among

The question of whether Palestinian refugees have a right to take part in the public affairs of their home country in the context of negotiations on durable solutions to their situation thus appears to be also dependent on resolution of the conflict over self-determination. A comprehensive assessment of the self-determination claims of both parties is beyond the scope of this study, however, the observations of the UN human rights treaty committees, referred to in the previous section, would suggest that Israel's concept of self-determination is inconsistent with its obligations under human rights treaty law with regard to the right to freedom of movement, in particular, the right of Palestinian refugees to return to their homes and places of origin.[1161] Indeed, in addition to calling upon Israel to revise its legislation to enable those refugees wishing to do so to re-establish domicile inside Israel, effectively enabling them to take part in the public affairs of their historic homeland, UN treaty committees have also called

Palestinian factions.

[1161] The right to self-determination, as noted in Chapter 1, relates to the right of peoples to freely determine their political status and freely pursue their economic, social and cultural development. The related principles of sovereign equality, non-interference in the domestic affairs of states and the territorial integrity of states are fundamental to Israel's argument that the return of Palestinian refugees conflicts with the right of the Jewish people to self-determination. These arguments were central to Israel's early position on solutions to the refugee issue, as elaborated by Israeli officials during annual discussions on Palestinian refugees in the UN General Assembly in the years and decades that followed the 1948 war. In the 1960s, several states suggested that a conference be held to examine the conflict between Israeli sovereignty and the return of Palestinian refugees, while Arab and other states through the 1950s and 1960s repeatedly suggested that the International Court of Justice be requested to issue an advisory opinion on the matter. This suggestion was also among the recommendations adopted the UN Committee on the Inalienable Rights of the Palestinian People in 1976 as part of its proposal for a two-state solution to the conflict involving the phased return of Palestinian refugees. It was during this period, which also saw the coming into force of major human rights treaties, including the ICCPR, which enshrined return as a binding norm, that Israel also began to put forward more detailed arguments that the refugees did not have an individual right of return under international human rights law. Israel has drawn upon both sets of arguments against refugee return, collective and individual, since the launch of peace talks in the 1990s, but since their collapse has increasingly emphasized that there is a conflict between the collective rights of Jews and the individual rights of Palestinian refugees. For additional discussion of arguments relating to conflicting rights in the Palestinian refugee case *see*, Kagan 2010a. While international law and practice evidence a preference for the principles of sovereign equality, non-interference in the internal affairs of states and the territorial integrity of states, there may be special circumstances, including revolution, civil war and the systemic violation of human rights including the violation of internal self-determination, which may give rise to new external self-determination procedures. *See*, Chapter 1, *supra* n. 64 and related sources for additional discussion.

upon Israel to ensure that its self-definition as a Jewish state does not discriminate against the rights of non-Jews including Palestinian refugees wishing to return to their places of origin and to enshrine equality and non-discrimination as fundamental norms.[1162] These conclusions thus appear to affirm the compatibility of Israeli self-determination and Palestinian refugee return which would effectively enable refugees to take part in the public affairs of their historic homeland through the negotiation of durable solutions to their situation or otherwise.[1163]

[1162] CESCR 1998, para. 10, 34; CESCR 2003, para. 16, 32; CERD 2007, para. 16; and, HRC 2010, para. 6. This would also appear to be consistent with the UN's 1947 partition plan. While the plan provided for the establishment of a "Jewish state", including control over immigration, it also required each of the two states to be established in Mandate Palestine to enshrine equality and non-discrimination and the citizenship rights of all of the habitual residents of each state as fundamental constitutional principles. Read in this context, General Assembly Resolution 194, which affirms that refugees from the 1948 war should be allowed to return to their homes, effectively enshrines a remedy to the violation of the aforementioned rights and obligations set forth in the UN partition plan. In other words, the establishment of a majority population through the flight and expulsion of the habitual residents of either state would be inconsistent the partition plan. It also suggests that a distinction with regard to immigration be made between habitual residents of Mandate Palestine, who have a right to return, and immigrants whose entry is subject to state discretion. Finally, it suggests that the disqualification of electoral lists and candidates who seek to alter the structure of Israel as a Jewish state, as noted in Chapter 3, is also consistent with the state's obligations under article 25 of the ICCPR. The ECtHR has similarly affirmed this position in a number of cases relating to Turkey (*United Communist Party of Turkey and others v Turkey*; and, *Socialist Party and others v Turkey*) and Bulgaria (*Stankov v Bulgaria*).

[1163] Political participation also appears to provide a means to resolve the conflict over self-determination and a remedy to the historic exclusion of both refugees and the Palestinian people in general from determining their own future. In an article on political participation and self-determination of indigenous peoples, Turpel posits political participation as "an essential element of a long-term strategy to achieve autonomy". Turpel explains that since "recognition of indigenous self-determination will require domestic public support as well as international debate and, ideally, international supervision ... [p]olitical participation is necessary to educate both the state population and the international community about indigenous peoples' human rights problems and political goals. Without enormous resources to wage lobby efforts, media campaigns, and educational initiatives, some direct access to the state apparatus is require to get public attention and to mobilize public opinion effectively. Hence, participation rights may be useful or, more likely, essential on the road to the recognition of self-determination". Turpel 1992, 539. A solution to the conflict over self-determination would seemingly have to take into account and remedy the longstanding exclusion of the Palestinian people from procedures and mechanisms to determine their future since the conflict over self-determination first came to fore with the collapse of the Ottoman Empire in the early 20th century. This includes the setting aside of plebiscites and referenda to determine the future status of Palestine under both the League of Nations and the United Nations, the limitation of a vote on the future of the West Bank and Gaza Strip to the members of an elected council from these territories under the 1978 Framework for Peace in the Middle East, the rejection of a plebiscite to determine the future of the Palestinian people during the third period of negotiations in the 1990s and the effective limitation of such decisions to the Palestinian Authority with its limited jurisdiction to the 1967 OPT and the

IV. Instrumental Rationale for Participation

This study examined legal and empirical aspects of refugee participation in the negotiation of durable solutions as an intrinsic value. The importance of the right to political participation, however, as explained in the introduction to this study, is commonly regarded to be two-fold—intrinsic *and* instrumental. The final section of this chapter briefly examines some of the primary instrumental rationale for public participation including refugees in the negotiated settlement of armed conflict. While the participation of refugees in the negotiation of durable solutions appears to fall short of a treaty right and while practice lags considerably behind the elaboration of legal principles, as detailed above, the instrumental reasons for participation appear to add further weight to the consideration of participatory approaches to the resolution or transformation of armed conflict, generally, and more specifically in relation to the negotiation of durable solutions for refugees. Scholars and practitioners working in field of peace and conflict studies emphasize that the complexity of conflict in the post-Cold War world requires a multi-level approach to the resolution or transformation of conflict. The discourse on participatory development and its application in peacebuilding contexts highlights the local knowledge and resources that civil society actors bring to the table. Finally, the study of political participation and its application to negotiations underscores the legitimacy and sustainability of agreements reached derived from participatory approaches.

centralization of decision-making power within the office of the PA President. *See*, Chapter 3, *supra* n. 357, 432, 514, 566.

i. Complexity of armed conflict

In recent decades, scholars and practitioners working in the field of peace and conflict studies have increasingly turned their attention to the roles of civil society in the management, resolution and transformation of armed conflict. While the primary role of the state in both law and in practice remains largely unchallenged, there is growing recognition that civil society actors including refugees have important roles to play.[1164] The largely internal nature of armed conflict, the cohesion of differences along ethnic or identity-based lines, the proliferation of actors and concomitant diffusion of power, its regional and sometimes global character, negative experiences in peacemaking along with the impact of hostilities on civilians (women, children and refugees in particular), are among the factors that appear to auger in favour of more inclusive approaches to the negotiated settlement of armed conflict.[1165] Indeed, in some

[1164] As Barnes observes, "[g]overnments have primary responsibility to protect civilians and prevent violence. Yet the complexity, scale and diversity of conflict mean that no single entity, on its own, can ensure peace: a comprehensive network of relationships and actions is needed. In this process, civil society can play a critical role in helping to change the root causes of conflict, in working to prevent violence and to protect civilians, in facilitating processes to bring political and social resolution of specific conflicts, and in helping to transform war-torn societies". Barnes 2006, 15; and, Barnes 2009, 133. *See also*, Lederach 1997, xvi; Belloni 2001, 163; Nan and Strimling 2004; Koser 2007, 13; UNHCR 2007a, 1; Wanis-St. John and Kew 2008, 23; and, Paffenholz 2009, 65. Absent from the 1992 *Agenda for Peace*, which set the framework for UN peacebuilding efforts in the post-Cold War period, the UN Secretary-General in his 2001 report on the *Prevention of Armed Conflict* noted that while "the primary responsibility for conflict prevention rests with national Governments ... civil society play[s] an important role". UNSG 2001, para. 169. This was followed by several Security Council debates on the role of civil society in conflict prevention and in peacebuilding. UNSC 2004a; UNSC 2004b; and, UNSC 2005. More recent guidance notes on mediation and the protection of minorities also emphasize the importance of civil society participation in peacemaking. UN 2012; and, UNSG 2013. The issue of civil society participation including refugees has also been addressed in an increasingly broad range of resolutions adopted by international and regional organizations. For major instruments and relevant provisions *see*, Annex II.

[1165] Structured to address armed conflicts that followed WWII, international and regional organizations whose charters prohibited intervention in the internal affairs of states were ill-equipped to address the largely intra-state conflicts of the post-Cold War period. Spencer and Spencer 1992, 7–8. Lederach further explains that the "[s]tatist approach [to mediation] assum[ed] that groups in conflict operat[ed] according to defined hierarchies of power [and] view[ed] armed conflict as primarily motivated and sustained by substantive or national interests [when] the dynamics of contemporary conflict suggest[ed] that they [were] equally driven by psychological elements including longstanding animosities rooted in a perceived threat to identity and survival". Lederach 1997, 16–17. *See also*, Harris and Reilly 1998, 10.

cases, as in Mali where civil society actors addressed disagreements through a series of inter-community meetings in the 1990s, "armed conflicts [may simply] not [be] amenable to de-escalation from the top [down]".[1166] In other cases, such as Darfur where IDPs comprised more than a third of the total population, "the scale of displacement [may be] so large that it is unrealistic to exclude the needs of the displaced and their participation if there is to be peace".[1167] Initially limited to unofficial initiatives (Track II diplomacy), the scope for participation, as

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The proliferation of actors, often accompanied by the diffusion of power within the state, also made it difficult, as Lederach points out, "to assess the ability of leaders to control or deliver their constituencies and difficult to establish representation and hard to locate decision-making structures that [were] not ephemeral". Lederach, *ibid.*, 8. *See also*, Wallensteen and Sollenberg 2001, 634. The regional and international character of armed conflicts further complicated the ability of primary parties to end them through negotiations or otherwise. Barnes 2006, 17; and, Wallensteen and Sollenberg, *ibid.*, 633-634. While the period also witnessed a significant increase in negotiated settlements to armed conflict, conflicts regulated or resolved through negotiations were more likely than those terminated through victories to collapse. Mack 2007, 21. The impact of armed conflict on civilians coupled with the emergence of a new security paradigm focused on individuals and peoples rather than the state added a "moral" reason for civil society participation in the management, resolution and transformation of armed conflict. Porter 2003, 249; Barnes 2006, 7; and, Wanis-St. John and Kew 2008, 18.

[1166] Wanis-St. John and Kew 2008, 23–24. As Storholt observes, while the conflict in Mali was "'ripe for resolution' at the outset of negotiations [it] yet required considerable effort to ensure success beyond the initial negotiated agreement". Storholt 2001, 331. Storholt identifies a range of factors that contributed to successful implementation of peace agreements in the 1990s including "the ability to build trust and confidence through careful timing, a flexible mix of informal and formal negotiations at different stages of the conflict, appropriate third party intervention, and *popular participation from civil society*". *Ibid.* According to Malian scholars and participants, the two most important factors for the success of the process was its internal rather external origins and the roles played by civil society actors. *Ibid.*, 332. For additional discussion of the process *see*, Lode 1997; Lode 2002b; Lode 2002c; and, Lode 2002a. Jessop et al. similarly argue that civil society's major contribution to the peacemaking process in Sierra Leone in the late 1990s was in "ripening" the conflict for a solution. Jessop, Aljets, and Chacko 2008. In recent Security Council discussions on the role of civil society in conflict prevention and in peacebuilding, Sierra Leonian diplomats similarly emphasized the importance of civil society's involvement in the peacemaking process in the country. UNSC 2004b, 5.

[1167] Koser 2007, 12. Noting that IDPs in Darfur comprise over one-third of the total population, Lanz argues that "[t]here can be no meaningful peace process without their involvement". Neither informed nor consulted about solutions to their situation, IDP demonstrations erupted within days of the signing of the Darfur Peace Agreement. Lanz identifies the centrality of land dispossession in the conflict and the politicization of IDP camps as additional reasons for the inclusion of IDPs in future peacemaking efforts in Darfur. UN and AU officials subsequently visited IDP camp "to better grasp their interests and expectations" in the context of renewed efforts to facilitate a solution to the conflict. Lanz 2008, 71. Recent UN resolutions on the conflict in Sudan emphasize the importance of civil society participation, including refugees, IDPs and women, in efforts to resolve the conflict. SC Res. 1935, 65th Sess., 6366th Mtg., UN Doc. S/RES/1935, July 30, 2010, para. 15; SC Res. 2003, 66th Sess., 6597th Mtg., UN Doc. S/RES/2003, July 29, 2011, para. 18; and, SC Res. 2057, 67th Sess., 6800th Mtg., UN Doc. S/RES/2057, July 5, 2012, para. 15. *See also*, Jacobsen, Young, and Osman 2008; and, Steinberg 2008.

noted in Chapter 2, has since broadened to include multi-track and multi-level opportunities for participation that extend to all phases of the peace process, i.e., conflict prevention, *peacemaking*, peacekeeping and post-conflict peacebuilding. While issues such as the timing and mechanisms for civil society participation, which individuals or groups should participate, the roles they should play and the impact of their participation are either subjects of debate or have yet to be addressed, the importance of civil society participation, as Wanis-St. John and Kew point out, has arguably "entered the mainstream of international conflict resolution dogma".[1168] Driven in part by the aforementioned nature of contemporary conflicts, the participatory demands and growing abilities of civil society actors to influence peacemaking processes, the impact of global norms on procedures and mechanisms governing the management and resolution of armed conflict, and the limitations of elite-oriented official initiatives as well as the problematic linkages with unofficial ones, consideration of civil society participation in the actual negotiation of peace is the most recent albeit most tentative expression of this apparent consensus.

The complex and long-standing nature of the armed conflict in Palestine-Israel would appear to militate in favour of a participatory approach to

[1168] Wanis-St. John and Kew 2008, 11. *See also*, Belloni 2001, 163. Wanis-St. John and Kew nevertheless observe that "[a]fter a heady period in the late 1980s and early 1990s, enthusiasts of civil society have grown increasingly tentative as to how much these groups can contribute to lasting social and political change". *Ibid.*, 15. Wanis-St. John notes in the introduction to a special issue of the journal *International Negotiation* on the issue that "mainstream literature underplays the problems of participation". Wanis-St. John 2008, 4. Toure similarly observes that while "civil society has come to be seen, by many analysts, as the vital link in the transition to and sustainability of post-war democracy ... what is contested among scholars is how effective and durable the actions of civil society can be, and which actions are most likely to contribute to democratic consolidation". Toure 2002, 6. The initial enthusiasm for civil society participation, as Paffenholz and Spurk observe, was not matched by empirical research on the nature and impact of such participation. Paffenholz and Spurk 2006, 1. *See also*, Karam 2000, 20. Recent years, however, have seen consideration of civil society roles by official actors (UNSC 2004a; UNSC 2004b; and, UNSC 2005), efforts to develop standards for civil society participation (CSAG 2011), a growth in research on the roles of civil society in peacebuilding (e.g., Barnes 2006; Paffenholz and Spurk 2006) as well as comparative and empirical work on participation and the sustainability of negotiated settlements (Böhmelt 2010; Wanis-St. John and Kew 2008; and, Nilsson 2012).

peacemaking including the negotiation of durable solutions for Palestinian refugees. The complexity of the conflict derives in part from the existence of a "meta-conflict"[1169]—a conflict about what the conflict is all about—a significant and often overlooked or ignored feature that is arguably central to the intractability of the conflict.[1170] The mobilization and organization of identity along ethnic or national lines and the concomitant challenge of accommodating the rights and interests of individuals and their respective communities is another feature of the conflict that appears to make it particularly resistant to a solution.[1171] Partly a function of unresolved inter-state hostilities, the conflict's

[1169] Bell 2000, 75., *citing*, McGarry and O'Leary 1995, 1.

[1170] An intra-state conflict at its origins, efforts to facilitate a solution to the conflict over more than six decades have focused primarily on an inter-state solution through partition and the establishment of two independent states in historic Palestine. The gradual recognition of Palestine as a state, as noted above, notwithstanding developments on the ground which militate against the establishment of an independent Palestinian state in the West Bank, East Jerusalem, and Gaza Strip, may nevertheless lead to a gradual transformation of the conflict into an inter-state conflict. In addition to differences over whether the central dispute is about territory, government or both, there are also significant differences, as noted in Chapter 2, about the applicability of various political and legal paradigms including ethnic cleansing, colonialism, occupation, apartheid and genocide. A central aspect of the meta-conflict is whether the conflict is about 1948 or 1967 and the implications of the latter regarding solutions for 1948 refugees. As Nabulsi observes in an essay on the participation of Palestinian refugees in the crafting of durable solutions to their situation, "the exclusion of the refugees has also effectively de-historicised the conflict, which no longer has an origin, and thus obscured the means and mechanisms necessary to resolve it". Nabulsi 2010, 82, *citing*, Pappé 1999. Klein similarly argues that the Oslo process, with a focus on 1967, aimed to transform the ethnic or identity-based character of the conflict into one about territory, but failed because of the Palestinian refugee issue which relates to 1948 and issues of ethnicity and identity. Klein 2011. For a critical discussion of the 1967 paradigm and its implications for resolving the conflict *see*, Shenhav 2012.

[1171] A central feature of this aspect of the conflict, as explained in the previous discussion, is the different understandings of self-determination, in particular, whether it applies to all habitual residents of historic Palestine or whether it may be exercised on an ethno-national basis. Since the 1930s, when the British Peel Commission recommended partition as a solution to the conflict over self-determination in Palestine, the international community has attempted to resolve this aspect of the conflict through the establishment of independent Jewish and Arab Palestinian states in historic Palestine, however, the dispersion of the two communities throughout the country, the initial opposition of Palestine's indigenous majority to the division of the country into two states, the subsequent and ongoing expulsion of Palestinians, the lack of effective protection for minority rights, ongoing Jewish immigration and settlement on both sides of the 1949 armistice line and the increasing emphasis in both law and practice on the Jewish character of the state of Israel have militated against a solution in which the individual and collective rights of both groups are realized through ethno-national separation. The largely statist approach to peacemaking over the past six decades, while perhaps ammenable to addressing the immediate consequences of the 1948 and 1967 wars, appears inadequate or incapable of addressing subjective or existential aspects of the protracted conflict in Palestine-Israel.

regional character (another aspect of its complexity) also derives from the existence of millions of Palestinian refugees most of whom reside in one of several Arab states that border Israel and the 1967 OPT.[1172] The proliferation of actors over time as a result of the emergence of new ones and ongoing divisions within each community adds yet another layer of complexity as does the protracted character and the concomitant and repeated failure to facilitate a negotiated solution to the conflict.[1173] The complexity of the conflict also stems

[1172] Egypt and Jordan are the only Arab states in the region that have entered into peace treaties with the state of Israel. Despite ongoing displacement and dispersion, the majority of Palestinian refugees, as noted in Chapter 2, reside in the 1967 OPT or in one of several major frontline Arab states, namely, Jordan, Lebanon and Syria. Indeed, as Weighill points out, most continue to live within 100 miles of their homes of origin. Weighill 1999, 15. The attempts by Palestinian refugees to peacefully return to their homes, towns and villages in the immediate aftermath of the 1948 war (Morris 1993, 67) along with visits of Palestinian refugees to border areas between Israel and neighbouring Arab states in 2000 (BADIL 2000b; and, BADIL 2000c), an event replayed in 2011 (Blanford 2011; Cassel 2011; and, Khoury and Pfeffer 2011), illustrate the relative proximity of most refugees to their places of origin and their relative distance given Israeli efforts to prevent their return. During the third period of negotiations, the regional character of the Palestinian refugee was recognized, in part, through the formation of a multi-lateral working group which focused largely on humanitarian aspects of the refugee issue. The regional character of the process was nevertheless limited by the fact that some host states refused to take part in the RWG and by the exclusion of host authorities and refugees alike from efforts to find a negotiated solution to the refugee issue. The RIIA/CLS Track II initiative aimed to address this problem. A broader problem, however, was that unlike other regional refugee situations, including the situation of refugees in Central America, no apparent efforts were made to develop and strengthen regional institutions, briefly discussed in Chapter 3, to protect and assist refugees and search for and implement solutions for them. Recent assessments of forced migration during the so-called Arab spring have once again drawn attention to gaps in national and regional asylum regimes in the Arab world. Bonfiglio 2012; Koser 2012a; and, Koser 2012b.

[1173] On the Palestinian side this includes divisions between those who supported a two-state solution to the conflict and so-called rejectionists, between Islamist and secular factions, between Palestinians inside Israel, those in the 1967 OPT and those in the diaspora, and between those within each of these latter communities. These divisions, moreover, have been encouraged and promoted by Israel and by other states and arguably consolidated through the peacemaking process between Israel and the PLO since the 1990s. On the Israeli side divisions include those between its Palestinian and Jewish citizens, between secular and religious Jews, between those who support and those who reject a two-state solution, between Jews who reside inside Israel and those who reside in the 1967 OPT, between Ashkenazi and Mizrachi Jews, with additional divisions among other major Jewish groups including Russians and Ethiopians and within each of these groups. The three periods of negotiations described in Chapter 3 each ended without a solution to the conflict including the refugee issue while the position of each side on refugees remained largely unchanged notwithstanding unofficial positions or private commitments contrary to official and publicly expressed views. Three major issues—return, reparations and responsibility—thus remain outstanding areas of dispute between Israel and the PLO. Israel's apparent willingness to accord symbolic recognition of Resolution 194, provide refugees with options and possible acknowledgment of some form of limited or shared but neither moral or legal responsibility for the refugee issue and the apparent willingness of some Palestinian negotiators to accept such a formula evidence some change in position if not influence of what Dajani (2007) describes as the "shade" or "shadow" of international law on the

from its impact on civilians over time, in particular, through inter-related and ongoing processes of displacement and dispossession along ethnic or national lines.[1174] The fact that some two-thirds of the Palestinian people have suffered some form of forced displacement, their growing ability to influence attempts to resolve the conflict along with the repeated failure of peacemaking efforts that have been largely top-down in nature raise the fundamental question of whether a solution to the conflict can be found without the participation and consent of refugees themselves who comprise the majority of the Palestinian people.

ii. Local knowledge and resources

The literature on civil society participation in the negotiated settlement of armed conflict also emphasizes the importance of various human and material resources that civil society can bring to the negotiation table. First and foremost is their local knowledge of the root causes of conflict, concomitant understandings of the challenges and prospects for solutions as well as concrete ideas and proposals for resolving the various outstanding disputes.[1175]

negotiating process. That such shifts are primarily if not solely symbolic rather than substantive, however, appears to have undermined their value, among refugees in particular, in bridging differences and facilitating a solution to the refugee issue. *See further*, the discussion in, Rempel 2009, 247–248.

[1174] The conflict in Palestine-Israel, as noted in Chapter 5, is the most protracted conflict in the world with the threshold of violence reaching the level of minor armed conflict in every year since the 1948 Arab-Israeli war and the first mass displacement of Palestinians from their historic homeland. Mack 2005, 27. The tendency to view the Palestinian refugee issue through the prisms of 1948 and 1967, as noted in Chapter 2, masks or overlooks the ongoing nature of Palestinian displacement and dispossession since the early decades of the 20th century which can be divided into at least five major periods. A parallel process has seen the ongoing immigration and settlement of Jews in all areas of historic Palestine, that is to say, in both Israel and in the 1967 OPT. In the early 1920s, at the beginning of the British Mandate, Arab Palestinians comprised 87 percent of the population and held title or usage rights to around 93 percent of the land. Nearly a century later it is estimated that more than half of all Palestinians have been displaced outside their historic homeland with as much as two-thirds having faced some form of forced displacement with many having experienced multiple forms of displacement while those remaining in Israel and in the 1967 OPT have title or access to just 10 percent of the land. Rempel 2003, 296.

[1175] Prendergast and Plumb 2002, 329, *quoted in*, Wanis-St. John and Kew 2008, 18. Writing on human rights accountability in development cooperation, Darrow and Tomas observe that "[b]road-based participation utilizes local knowledge to ensure the most efficient allocation of

The participation of refugees in negotiations with the government of Guatemala, for example, as Riess explains, acted as a safeguard against *refoulement* ensuring that conditions were both safe and secure for their return to places of origin in Guatemala.[1176] While "elite pact-making" approaches to peace may facilitate a swift end to hostilities and side-step complications associated with multi-party negotiations, the exclusion of a broader set of stakeholders may also result in a process that overlooks or intentionally ignores substantive issues of concern to the broader public. It may also under-estimate or over-emphasize barriers to a negotiated solution while discounting potential solutions or proposing ineffective ones.[1177] The elite-driven nature of negotiations in Bosnia

resources, while 'maximizing ownership and sustainability of development processes and outcomes'". Darrow and Tomas 2005, 506. Civil society actors may also contribute to negotiations through their technical expertise and the data they may possess on particular elements or aspects of a conflict and its solution. Wanis-St. John and Kew 2008, 23, *citing*, Corell 1999, 197. The importance of local knowledge is given particular emphasis in the literature on women's participation in peacemaking. Anderlini observes, for example, that "[b]y bringing [their] experiences to the peace table, women can inject the negotiations with a practical understanding of the various challenges faced by civilian populations and the most concrete and effective mechanisms for addressing them". The study further notes that "[w]omen's experiences during conflict can also imbue them with a deeper understanding of the social, economic and gender inequalities they face in society. Within the context of defining the economic and social reconstruction agenda, they can effectively articulate and redress these disparities". Anderlini 2000, 7–8. Drawing attention to the problematics of "mirror representation", Anderlini further cautions that "[n]ot all women that participate are proponents of women's rights". *Ibid.*, 55. In El Salvador, for example, "none of the [high-ranking female commanders who took part in the peace negotiations] could have been considered an advocate for women's rights" and women's issues thus received little attention. Lucik 2003, 3.

[1176] Riess 2000, 12. The UN-sponsored initiative aimed to "identify and debate the problems of women that women confront in the search for solutions to refuge, displacement and return; to provide the participants theoretical, practical and methodological instruments necessary to tackle these specific problems with a gender focus; and, to elaborate concrete proposals and recommendations that provide viable response to these issues, with Evaluation Agreements to guarantee their execution". *See*, the discussion in Chapter 2, *supra* n. 219-222; and, Chapter 5, *supra* n. 974, 1023-1048. This also appeared to be the case in Bangladesh where refugee visits to the CHT region found that conditions remained unsafe for their return. Subsequent negotiations between refugee representatives and government officials resulted in additional guarantees for returnees, notwithstanding ongoing problems with the implementation of agreements reached. *See*, Chapter 5, *supra* n. 996-1022. Indeed, these problems suggest that participation must be supplemented with broader guarantees to guard against *refoulement*.

[1177] It also appears that if substantive issues of concern to the general public are not addressed at the negotiating table, it is much more difficult to put them on the agenda once an agreement has been reached. In their study on peace agreements, civil society and participatory democracy, Bell and O'Rourke point out that "[r]esearch in the area of gender suggests that peace agreements set agendas, and that while exclusion of a constituency (in this case women) is not fatal to addressing it post agreement, it does make it harder to get

and Herzegovina, for example, enabled a relatively swift end to the war, but the resulting agreement, as Belloni points out, also "entrenched the power of the same ethno-national elites responsible for war and made it very difficult for Bosnian society to play a positive role in the post-conflict transition".[1178] It is the "richer set of interests" and "wider set of issues" that civil society actors bring to the table, what Brenk and Van de Veen describe as a "people-focused agenda"[1179], that arguably enhances prospects that peacemaking efforts will address root causes of conflict and lead to the (re)construction of "a new social contract through the peace process".[1180] Civil society actors may also play an important role in facilitating effective communication between official actors and the broader public, shifting attitudes of individual leaders and communities and

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the issue addressed by international organizations and, crucially, more difficult to obtain funding". Bell and O'Rourke 2010, 306, *citing*, Chinkin 2003, 12. Oliver further observes that "consulting civil society on the contents of the peace agreement after it has been negotiated and signed can [also] be difficult and sometimes counterproductive, especially if substantive input is no longer sought or possible". Oliver 2002, 92.

[1178] Belloni 2006, 8. Commenting on the absence of women from the peace negotiations, Grebäck and Zillén similarly observe that "[c]itizens, i.e., civil society, were not consulted on the peace settlement [in Bosnia and Herzegovina], which in turn only reinforced the ruling personalities and parties, their militaries and cronies, as well as the existing power structures". Grebäck and Zillén 2003, 5. Summarizing the findings of a workshop on public participation in peacemaking, Barnes notes generally that allowing those "who initiate and engage in armed conflict ... to impose the terms of peace on the population as a whole ... could result in a process that merely recycles traditional power structures instead of transforming the conditions that create conflict—or one that recycles old power to re-legitimise it through new structures". Barnes 2002b, 3.

[1179] Brenk and Van de Veen 2005, *cited in*, Wanis-St. John and Kew 2008, 23–24. In a briefing paper prepared for the Oslo Forum, an annual conference on mediation, Paffenholz et al. similarly observe that "[m]ore accountable, representative players at the negotiating table provide mediators with a greater set of interests from which to create value and develop innovative, comprehensive solutions to stuck negotiations". Paffenholz, Kew, and Wanis-St. John 2006, 70.

[1180] Paffenholz and Spurk 2006, 69. Barnes further observes that while civil society actors "have not been able to draw on the legal, political or military power of states, they have been able to draw on the power of what some theorists refer to as 'discursive legitimacy' rooted in their analysis of the problems, the moral 'voice' that they bring to identifying solutions, and the perception that they have the support of large numbers of people who want change". Barnes 2006, 23. The linkage between participation, issues brought to the table, and the reconstruction of a social contract is also widely referenced in the literature on women's participation in peace negotiations. According to Azza, participation is "an issue of giving voice to the needs, experiences, demands and hopes of a diverse array of people, in order to form an integral part of an evolving society". Azza 2001, 9. Porter thus argues that "the inclusion of women in political decision-making is not a luxury to be postponed until post-conflict reconstruction. Rather, inclusion of all social groups fosters the pluralism that is necessary to develop an inclusive, stable democratic polity". Porter 2003, 249.

in mobilizing constituencies in support of and holding actors accountable to agreements reached.[1181] Finally, civil society actors may also contribute various human and material resources (e.g., skills and remittances) critical to economic and social rehabilitation and reconstruction once agreements setting out solutions to conflict have been reached.[1182]

The human and material resources that civil society actors including refugees may bring to the negotiating table appears to provide yet another reason for their inclusion in negotiations to resolve the protracted conflict in Palestine-Israel. One of the most significant contributions, given the complexity of the conflict and repeated failure to resolve it, may be their local knowledge or understandings of root causes, obstacles and opportunities for a solution to the conflict as well as the concrete ideas, proposals and plans to resolve it.[1183] This

[1181] Paffenholz, Kew, and Wanis-St. John 2006, 70. The participation of civil society actors in negotiations, as the authors point out, enables them to explain more effectively the substantive content of agreements reached to the broader public. The briefing paper further describes civil society as "the 'laboratories' of peace programming that can spread new social norms throughout the post-war communities". For additional discussion on the roles of civil society in peacebuilding *see*, Barnes 2006, 8–12; and, Paffenholz and Spurk 2006, 27–32.

[1182] This may include the return of refugees and other diaspora communities to fill government posts and staff in-country programmes run by development agencies. Aside from the public sector, private sector civil society initiatives may be critical for investment in and rebuilding of post-war economies, with refugee and diaspora communities facilitating additional investment through linkages to communities of asylum and resettlement. Brinkerhoff 2011, 129–131. Remittances, as Brinkerhoff further observes, may be a significant driver of both conflict and peace. *Ibid.*, 127. According to figures cited by Baser and Swain, developing countries received more than USD 93 billion in remittances in 2003 with the figure even larger when official transfers are combined with unrecorded remittances. Baser and Swain 2008, 16. In addition to post-war rehabilitation and reconstruction, remittances may also contribute to peace, among others, "[b]y sustaining livelihoods and basic services during conflict [creating] a foundation upon which peace and development can be expanded". Brinkerhoff, *ibid.*, 126. For additional discussion of both positive and negative aspects of remittances *see*, *ibid.*, 125-128. *See also*, Long 2010b, para. 23.

[1183] The complexity of the conflict in Palestine-Israel derives in part, as noted above, from the meta-conflict or conflict about what the conflict is about. Participatory approaches to peacemaking which would enable a broader group of stakeholders to deliberate over root causes, obstacles and opportunities for solutions may facilitate agreement on issues that would otherwise be "out-of-reach" of official actors. With respect to the specific situation of Palestinian refugees, lack of adequate knowledge comprised a major challenge for negotiators when they attempted to hammer out an agreement in bilateral talks in 2000-2001. Palestinian negotiators, for example, were widely criticized by civil society as being ill-prepared for negotiations with their Israeli counterparts also largely unprepared to address the refugee issue. *See*, Chapter 3, *supra* n. 578. The PLO only established a negotiations support unit on the eve of final status negotiations with Israel. While knowledge about

includes the unresolved issue of Palestinian refugees which arguably comprises one of the most intractable elements of the conflict. The inclusion of civil society actors, refugees in particular, may facilitate and improve communication between Israel, the PLO and their respective constituencies and help to (re)shape attitudes and opinions of both individual leaders and communities with respect to a solution to the refugee issue and broader conflict.[1184] The British all-party commission that held hearings in refugee camps and communities in major Arab host states, for example, found that rather than being "suspended in time" most refugees understood both "the existence of a new political reality" and the fact that "the physical nature of the land [had] changed, in some cases quite dramatically", since they had been displaced

solutions for Palestinian refugees has grown considerably since the late 1990s, in part, through the various Track II initiatives referred to in Chapter 3, much of the existing research and ideas about how to resolve the refugee issue has been developed largely in the absence of adequate consultation and participation of refugees themselves. An external evaluation of one Track II initiative on the refugees, as noted earlier, recommended a more inclusive approach to agenda setting. *See*, Chapter 3, *supra* n. 552, 555.

[1184] It appears that official actors, Israeli and Palestinian, rarely engaged their respective constituencies directly with opinion polls comprising the primary mechanism for communication. *See*, Chapter 3, *supra* n. 587. One of the major drawbacks of opinion polls as tools for communication is the unidirectional flow of information from the public to their representatives. Another disadvantage is the lack of adequate or differing understandings of terminology used in polls. A project on refugee participation undertaken after the breakdown in final status talks between Israel and the PLO, for example, raised questions about "the benefit of opinion polls and other quantitative research that asks refugees' opinions without finding out if refugees understanding of the meaning of such terms as 'repatriation', 'compensation' and 'international law'". Abu-Iyun and Murad 2006, 47. For additional discussion of advantages and disadvantages of various communication channels in peacemaking contexts *see*, Paffenholz, Kew, and Wanis-St. John 2006, 72–74. Official efforts to resolve the Palestinian refugee issue, moreover, often appear to based on the view that the Jewish Israeli censensus against return and restitution is exogenous or immutable to change through discussion, deliberation and debate. This overlooks that fact that Israel's position against return was constructed over time in part through "rigorous censorship" (Gelber 2001, 289) and propaganda "to galvanize Jewish public opinion against return" (Morris 1987, 281). *See also*, discussion by Nets-Zehngut on collective memory and Israel's National Information Center in, Nets-Zehngut 2008. A pilot project in which internally displaced Palestinians from the village of Bir'im and Jewish Israeli residents of kibbutz Bar'am arrived at an agreement on refugee return and restitution, notwithstanding their inability to implement the agreement in the absence of the Israeli government's acquiesence, appears to underscore the potential for solutions to the refugee issue through participatory approaches. For a discussion *see*, Bronstein 2010. *See also*, findings by Nets-Zehngut on developments in Jewish Israeli views on the expulsion of Palestinians in 1948, Eldar 2012a; and, Nets-Zehngut 2011.

from their homes, towns and villages of origin.[1185] As they had done some five decades earlier in unofficial talks with UN officials, refugees assured the British parliamentarians that they were "prepared to live under Israeli authority" and that there was no need to make their return "dependent on the non-existence of [Jewish Israelis] already living there".[1186] The creative ideas refugees might bring to the table can be found in the example of displaced Palestinians from the village of Bi'rim who drafted maps and plans illustrating possible scenarios for return and reconstruction of their village alongside Jewish Israelis living on their village lands.[1187] Finally, a peacemaking process that is inclusive and

[1185] LMEC 2001, 23. They further observed that this situation deserved special attention "since the neglect of refugees' views by those involved with the Oslo process has been, hitherto, largely based on an understanding of refugees' attitudes as irredentist, intransigent and backward-looking, rather than either productive or constructive to peace and a reasonable settlement of the conflict" and that "these views [were] not well known amongst the Israeli public". *Ibid*., 23-24. Several Jewish Israeli writers have similarly acknowledged that most Jewish Israelis continue to "know little or nothing about the Palestinian refugee problem". Cygielman 1995, 25. *See also*, Avnery 2003, 37. In the press and in public opinion surveys in the period leading up to final status negotiations between the PLO and Israel, Jewish Israelis nevertheless equated the return of Palestinian refugees to their places of origin inside Israel with "the 'destruction of the state', 'a national disaster', 'massacre of the Jews' and even 'holocaust'". Zakay and Klar 2002, 62. Additional reasons that may explain the lack of public debate inside Israel include a lack of awareness of the centrality of the refugee issue to Palestinians; the threatening character of the issue for Jewish Israelis; and, the assumption that acceptance of the two-state solution included a readiness to find a solution to the refugee issue that was amenable to Israel. *Ibid.*

[1186] Tayseir Nasrallah, Qaqun village (resident of Balata refugee camp) and Ismail Abu Hashash, Iraq al-Manshiya (resident of Aida refugee camp) in, LMEC 2001, 24. Nasrallah further observed in the hearing that he had "expressed this [view] at a conference in Greece [the previous] year, that was attended by Palestinians and Israelis". Underscoring the challenges posed notwithstanding the instrumental benefits ascribed to participatory approaches, Nasrallah also noted that Israelis at the conference still "regarded [him] as an enemy of the Israeli people". *Ibid.* Abu Hashash emphasized that Palestinians "should not repeat the mistake of the Israelis and make [their] existence in [their] land dependent on the non-existence of the people who are already living there. Israelis or Jews thought that their existence on the soil of Palestine meant the non-existence of the other. We do not consider that. We want the right of return as an individual and a collective claim to the land we were expelled from. We do not wish to tell them to leave, or for a fragmentation of their state". *Ibid.* In her seminal volume on the Palestinian people, anthropologist Rosemary Sayigh similarly relays the views of a laundry worker in one of the camps in Lebanon who observed that: "We know that Israel exists, we don't want to throw the Jews into the sea. We don't want to die, we want to live. We want to live, and we want others (i.e. Israelis) to live. But we don't want others to live, and us to die". Sayigh 1979, 190.

[1187] The internally displaced residents of the village also engaged in legal struggle through Israel's courts, political struggle through engagement with Israeli officials and in cultural struggle through village visits, holding weddings and funerals, summer camps and other events at the village site. Boqai 2006. Palestinians and Israelis have also undertaken a number of creative mapping projects related to refugee return. A workshop organized by Zochrot, an Israeli non-government organization focused on *Nakba* education in Hebrew, for example, examined through maps a range of questions related to refugee return including:

participatory may also serve to ensure broad involvement and adequate investment in post-agreement rehabilitation and reconstruction that will be necessary to support and underwrite a comprehensive and sustainable solution to the conflict.

iii. Legitimacy and sustainability

The participation of civil society in peacemaking is also said to enhance the legitimacy and sustainability of agreements reached. This may be ascribed in part to the fact that peacemaking efforts that include a broad range of stakeholders, as noted above, are more likely to address the root causes and consequences of conflict beyond those associated with the core interests of and raised by warring parties taking part in official negotiations.[1188] The participation of a broad range of stakeholders may also facilitate greater understanding and acceptance of as well as public support for solutions agreed to at the negotiating table even if their interests are not fully addressed in agreements

What will the return look like? How many new housing units will be built? What will the shared Israeli-Palestinian space be like? How will industrial and agricultural regions be allocated? What infrastructure will be required for towns and villages? What principles will govern movement throughout the area? Manoff 2011. A road atlas entitled *The Return Journey* produced in 2007 by the Palestine Land Society combines the current road maps for Israel with maps of Mandate Palestine enabling users to see together the past and current landscape including Palestinian villages and other sites depopulated and destroyed during the 1948 war. Abu Sitta 2007. In a recent study visit to South Africa organized by BADIL, a Palestinian community-based organization focused on refugee rights, and Zochrot Palestinian and Jewish Israeli participants examined the practicalities of return, reparations and visions for a new state in Palestine-Israel. BADIL and Zochrot 2012.

[1188] "A process relying exclusively on negotiations between leaders of the combatant groups", as Barnes observes, "might result in an agreement that satisfies their core interests but it may not address the underlying substantive issues that are of concern to the public. While this strategy may be effective for ending the violence, it may exacerbate public mistrust and undermine the legitimacy of the agreement—nor does the process facilitate reconciliation between communities and sectors divided by war". Barnes 2002b, 2. *See also*, Nilsson 2012, 247–248. Commenting on the inclusion of women in peace negotiations, Mpoumou similarly observes that "[e]nsuring women's equal participation in formal negotiations enhances the legitimacy of the process by making it more democratic and responsive to the concerns and perspectives of those segments of society involved in, and affected by, the fighting". Mpoumou 2004, 120. *See also*, Anderlini 2000, 5.

reached.[1189] These substantive and procedural benefits ascribed to participatory peacemaking also appear to contribute in a number of ways to the sustainability of agreements reached. Civil society actors are more likely to have a vested interest in the implementation and long-term success of agreements that reflect and address issues of concern to them.[1190] The inclusion of a broad range of stakeholders may also militate against the emergence of disaffected parties or "spoilers" who may seek to undermine agreements reached.[1191] Agreements that have broad public support, moreover, may also act as a safeguard making it more difficult for official actors to undermine or walk away from commitments agreed to at the negotiating table. Empirical research not only underscores the positive relationship between civil society participation and the success or durability of peace agreements, it also suggests that such participation is particularly important to peacemaking efforts in non-democratic societies.[1192]

[1189] Paffenholz, Kew, and Wanis-St. John 2006, 69. Drawing upon major case studies of participation, the experience of participants and experts, and theories of democracy, for example, Barnes explains that "[p]eace processes that enable broad-based participation and public debate have the potential for laying the foundations for *political dialogue*, *problem-solving* and *constructive action* needed to move toward a more participatory and democratic country". Barnes 2002b, 2. [emphasis added] Barnes further speculates that "[i]t is possible that this type of [participatory] process can help to transform conflict relationships and generate a broad public consensus for a more inclusive state and society". *Ibid.*

[1190] Paffenholz, Kew, and Wanis-St. John 2006, 69. *See also*, Barnes 2002a, 8. In a critical examination of liberal peacebuilding missions, Newman et al. observe conversely that the emphasis on "top-down mediation amongst power-brokers and building state institutions—in contrast to more bottom-up, community-driven peacebuilding—has raised concerns about the sustainability of peacebuilding projects". Newman, Richmond, and Paris 2009a, 12. In the absence of participation of a broader range of stakeholders, as the authors further explain, "the essential mechanism of a liberal social contract is generally absent from post-conflict states, which instead are held together by external actors. This also obstructs more progressive bottom-up forces of peacebuilding that cultivate cosmopolitan peaceful forces and address underlying sources of conflict". *Ibid*., 8. In the same vein, Pouligny observes that in the absence of broad participation among civil society actors, "we are pretending to build 'new' societies while excluding the large majority of their members [and] pretending to build states while draining their political substance". Pouligny 2005, 504–505.

[1191] Paffenholz, Kew, and Wanis-St. John 2006, 69. The authors suggest that "[c]ivil society groups that could have a significant role in undermining an agreement or fomenting instability in the peacebuilding phase should be considered for inclusion in the mediation". *See also*, Barnes 2002a, 8; and, Long 2010b, para. 22, *citing*, Milner 2009.

[1192] In their study on civil society inclusion and exclusion in peace negotiations, Wanis-St. John and Kew find a correlation between civil society participation and the durability of agreements reached. The study categorizes civil society participation in each of the cases as high (seated at the negotiating table), moderate (not seated but influenced parties at the negotiating table) or low (not seated and little or no access or influence to parties at the

The apparent relationship between civil society participation and the legitimacy and sustainability of agreements reached also appears to favour the inclusion of civil society including refugees in negotiations to resolve the conflict in Palestine-Israel. The Palestinian case is a cogent reminder, as Barnes observes with reference to peacemaking, generally, that "[r]eaching an agreement [between warring parties] does not necessarily ensure that the public accepts it" and that "'agreements' [reached] can [also] be the trigger for further disagreement".[1193] From the perspective of many refugees, as explained in Chapter 3, the "illegitimacy" of peace agreements reached between the PLO and Israel in the 1990s stemmed in part from the fact that they failed to incorporate or reflect the substantive rights and interests of refugees themselves.[1194] As important, however, was the ossification of the PLO's

negotiating table) based on the presence of civil society actors at the negotiating table and their influence on the parties to the negotiations. Participation is then correlated with three possible outcomes of the negotiations: sustained peace, cold peace and resumed war. The four cases in which civil society groups were seated at the negotiating table all experienced sustained peace. Four additional cases in which civil society actors were able to influence parties at the negotiating table also experienced sustained peace. Wanis-St. John and Kew attribute sustained peace in Bosnia and Herzegovina where civil society was neither seated at the negotiating table nor had access to or influence in the parties taking part in the negotiations to the "massive and longstanding troop and funding commitment [by the international community] to enforce a peace about which the parties themselves were ambivalent". Wanis-St. John and Kew 2008, 31. The results of the study also suggest a correlation between low levels of participation and the sustainability of agreements when there are democratically elected negotiators. This suggests, as the authors point out, that civil society participation may be less important if conflict elites are democratic and broadly representative of their respective societies. Nilsson's statistical analysis of civil society participation in peace negotiations, based on a review of 83 peace agreements between 1989 and 2004, confirms these findings. Nilsson 2012, 244.

[1193] Barnes 2002b, 3. It is also a reminder, as Wanis-St. John has observed, that while closed-door talks limited to conflict elite may serve to bring a swift end to hostilities and in many cases facilitate agreement on broader aspects of a conflict, "elite pact-making" approaches to peace negotiations can also have "feedback effects" which "seem to be more damaging to long term projects such as peace ... as the stakes of the negotiation get higher". Wanis-St. John and Kew 2008, 12. The authors describe the peacemaking in Palestine-Israel as "one of the most exclusive negotiation processes in contemporary conflict resolution practice". *Ibid.*, 20.

[1194] The agreements appeared to reflect the interests of conflict elite, but aroused considerable opposition, especially after the initial euphoria subsided and civil society began to familiarize themselves with the substantive content of the agreements and experience the consequences of their implementation. *See*, Chapter 3, *supra* n. 571. The fact that agreements elsewhere, especially in situations of mass displacement, included express provisions for return, restitution and compensation, in particular, as noted earlier, appeared to further undermined the legitimacy of agreements in the Palestinian case. *See*, Chapter 1,

representative structures and the concomitant transfer of responsibilities to the Palestinian Authority in the 1967 OPT which left many refugees feeling inadequately represented or not represented at all despite their ongoing allegiance to the PLO as the sole, legitimate representative of the Palestinian people.[1195] The deferral of talks on the future of 1948 refugees, who comprise the majority of refugee population, to final status negotiations, moreover, effectively militated against "political dialogue, problem-solving and constructive action" in advance of final status negotiations on the refugee issue.[1196] The exclusion of a broader range of stakeholders from both communities along with

supra n. 18. The apparent discrepancy between principle and practice elsewhere and that applied to the Palestinian refugee case was further highlighted by the shift towards voluntary repatriation as the preferred or most appropriate solution to forced displacement globally during the 1990s, the end of the compartmentalization of the refugee and human rights regimes with the consideration of refugee situations as a human rights issue and the broader mainstreaming of human rights-based approaches throughout the United Nations and major development actors.

[1195] The ossification of the PLO's representative institutions, as explained in Chapter 3, began well before the onset of talks between Israel and the PLO in the 1990s. The fact that the PNC, the PLO's highest policy making body was never convened to review the 1993 Declaration of Principles on Interim Self-Government Arrangements and subsequent peace agreements, which would have allowed the Palestinian people as a whole, notwithstanding the fact that the organization had been unable to hold direct elections for the Council, along with the exclusion of 1967 refugees from PA legislative elections exemplified for many Palestinians, refugees in particular, the exclusionary nature of the peacemaking process. *See*, Chapter 3, *supra* n. 570, 572. The transfer of PLO cadre and resources to the West Bank and Gaza Strip to establish the PA, the PLO's subsequent delegation of many of its functions to the PA with its jurisdiction limited to parts of the West Bank and Gaza Strip, along with the centralization of decision-making power in the office of the PA President further contributed to the ossification of PLO representative institutions leading to what many described as a crisis of representation. *See*, Chapter 3, *supra* n. 571-572, 574.

[1196] In the five decades leading up to final status talks between Israel and the PLO in 2000-2001 a public and substantive consultation, dialogue or deliberation on the refugee issue had yet to be held. Indeed, the 1993 framework agreement between Israel and the PLO, which deferred discussion on the future of 1948 refugees to final status talks, arguably discouraged both official and unofficial discussion of the refugee issue. On the one hand, the fact that the PLO agreed to a two-state solution to the conflict and to defer talks on the refugee issue, a central element of its national program, was interpreted by some Jewish Israelis as a sign that the organization had effectively ceded the right of return. In other words, the refugee issue would be relatively easy to resolve and as such required little attention. On the other hand, aware that the refugee issue nevertheless comprised a sensitive political issue, the PLO appeared reticent to draw attention to refugee demands which harboured the risk of making Israel more recalcitrant with regard to concessions on interim issues. Some Palestinian officials, moreover, as noted in Chapter 3, held that a future Palestinian state in the West Bank, East Jerusalem, and Gaza Strip would provide a solution to the refugee issue. The focus on issues on which there was greatest agreement among parties similarly meant that some of the most intractable aspects of the refugee issue, return, restitution and responsibility in particular, were rarely addressed or comprised major agenda issues in Track II discussions on the refugee issue. Rempel 1999, 47. *See*, Chapter 3, *supra* n. 549.

the frequent use of secret or back-channel negotiations arguably militated against the emergence of a broad constituency of actors with vested interests in the successful outcome of negotiations, aggravated existing political divisions and contributed to a growing pool of disaffected stakeholders which ultimately made it easier for official actors to stall, ignore or walk away from commitments enshrined in agreements between them. This is not to under-estimate the immense challenges, including gaps in understanding, in reaching a negotiated solution to the refugee issue, nor to overlook the challenges of civil society participation, but rather to point out some of the instrumental benefits of participation that have been largely overlooked or ignored in repeated efforts to resolve the long-standing conflict in Palestine-Israel including the situation of Palestinian refugees.

V. Summary

The efforts of Palestinian refugees to secure a seat in talks to resolve their situation in negotiations between Israel and the PLO in the 1990s raise a number of basic questions about the right to political participation and the negotiation of durable solutions for refugees. The primary and dual objective of this study was to determine whether the refugees had a right to take part in the negotiation of durable solutions to their situation and whether their exclusion was unique or similar to negotiated settlements of refugees situations elsewhere during the same period. The legal analysis in Chapter 4 and the conclusions drawn, as summarized above, would appear to suggest that Palestinian refugees did not have a "right" under international law to take part in the negotiation of durable solutions to their situation. Such a right had yet to be

codified as a binding norm, case law was silent on the issue and soft law instruments which evidenced emerging understandings of peace negotiations as comprising a conduct of public affairs entailing a concomitant right to take part applicable to the negotiation of durable solutions for refugees did not create binding obligations. Understanding the principle of refugee participation in the negotiation of durable solutions as "effective participation", however, would suggest that Israel and the PLO nevertheless had an obligation to facilitate refugee participation in decisions that affected their lives and ensure that the participation of refugees had a substantial influence on the outcome of negotiations leading to shared ownership on durable solutions to their situation. The PLO and Israel would have nevertheless retained the prerogative to decide the mechanism for participation, while the participation of refugees in talks to resolve their situation fell short of a right to decide.

The empirical analysis in Chapter 5 and the conclusions drawn, as summarized above, would appear to suggest that the exclusion of Palestinian refugees from the negotiation of durable solutions in the 1990s was in practice similar to other conflicts where few refugees took part in official negotiations alongside warring parties. The absence of Palestinian refugees from the negotiating table in comparison to cases where refugees took part in the negotiation of durable solutions may be explained by a combination of factors including the absence of a democratically elected or representative refugee leadership, the initial lack of national, regional and international networks to leverage their procedural and substantive demands, the lack of access to and absence of separate fora dedicated to the negotiation of durable solutions for refugees and the absence of viable country of origin willing to allow the

refugees to return to their homes, villages and towns of origin. The exclusion of substantive provisions in peace agreements for civil society participation in post-conflict peacebuilding and in the implementation of peace agreements, the explicit exclusion of refugees from post-conflict elections, and the establishment of unofficial or indirect fora focused solely on refugees nevertheless appeared to render the Palestinian case unique from other conflicts.

While the participation of refugees in the negotiation of durable solutions appears to fall short of a treaty right and while practice lags considerably behind the elaboration of legal principles, as detailed above, the instrumental reasons for participation appear to add further weight to the consideration of participatory approaches to the resolution or transformation of armed conflict, generally, and more specifically in relation to the negotiation of durable solutions for refugees. Scholars and practitioners working in field of peace and conflict studies emphasize that the complexity of conflict in the post-Cold War world requires a multi-track or multi-level approach to the resolution or transformation of conflict. The discourse on participatory development applied in peacebuilding contexts highlights the local knowledge and resources that civil society actors bring to the table. Finally, the study of political participation applied to negotiations underscores the legitimacy and sustainability of agreements reached derived from participatory approaches.

CHAPTER SEVEN

Postscript

The Palestinian refugee situation remains one of the largest and longest-standing unresolved cases of forced displacement in the world today. Since the earliest waves of displacement nearly a century ago, the estimated number of Palestinian refugees has grown to more than six million persons in part through natural growth, but also through ongoing displacement from their historic homeland.[1197] The estimated number of displaced Palestinians is even larger if one includes those within Israel and the 1967 OPT where forced displacement has ebbed and flowed, but has nevertheless continued largely unabated for more than sixty years.[1198] The last decade, moreover, has witnessed a significant increase in secondary displacement due to political instability and armed conflict across the Arab world including major inter- and intra-state wars in Iraq, Lebanon, Libya and most recently in Syria. Opportunities for asylum outside the region, meanwhile, appear to be increasingly few and far between despite widespread and ongoing deterioration in the status of Palestinian refugees in the 1967 OPT and other parts of the Arab world.

Since the collapse of final status talks between the PLO and Israel in

[1197] Estimates for 2008 (end year) put the number of Palestinian refugees at around 6.6 million out of a total Palestinian population of 10.6 million. This included around 5.7 million 1948 refugees of whom 4.7 million were registered with UNRWA and around 955,000 1967 refugees. The estimate excludes an unknown number of Palestinians displaced from Israel and the 1967 OPT after the two major wars who are neither 1948 nor 1967 refugees, but may nevertheless qualify as refugees under international law. The figure also excludes Palestinians and their descendants displaced before the 1948 war who remain in refugee-like conditions. Table 2.1 - Palestinian Refugees and IDPs by Group in, Gassner 2010, 58. In other words, since the first mass displacement of Palestinians in 1948, the number of refugees has increased nearly ten-fold with an approximately four-fold increase in the number of 1967 refugees.

[1198] Estimates for 2008 (end year) put the number of internally displaced persons at around 464,000 of whom an estimated 335,000 resided inside Israel. Table 2.1 - Palestinian Refugees and IDPs by Group in, *ibid*. The number of internally displaced Palestinians in the 1967 OPT since 2008 appears to have increased significantly due to the 2008-2009 Gaza war and due to house demolitions in the West Bank, especially in Area C and in the Jordan Valley.

2000-2001, when refugees sought a seat in negotiations on solutions to their situation, numerous plans and proposals for a solution to the conflict along with meetings and conferences aiming to restart negotiations to resolve the long-standing dispute have come and gone.[1199] Two elements common to all are the absence of any reference to the rights of Palestinian refugees, in particular the rights of return and restitution, and the ongoing absence of refugees themselves from talks which aim to decide their future.[1200] Most plans and proposals continue to promote the more than sixty-year old formula of resettlement and compensation along with the return of a small number of refugees to their places of origin inside Israel through existing family reunification procedures as the most appropriate solution to the refugee issue.[1201] The long-standing pattern of closed-door meetings among political elite often held in far away locations remains intact with the broader public on both sides expected to acquiesce to and support the implementation of agreements reached without their consultation, participation or approval.[1202] With the continued failure of this approach in securing a negotiated settlement, the conflict continues to be

[1199] Major plans and proposals include the 2002 Arab Peace Initiative; a 2002 International Crisis Group framework for a Comprehensive Israeli-Palestinian Peace Treaty; the 2003 Performance-Based Road Map to a Permanent Solution to the Israeli-Palestinian Conflict; the 2003 Geneva Accord; the 2003 Nusseibeh-Ayalon Initiative; a 2007 Rand Corporation plan for a Palestinian state; and, a 2007 AIX Group study on the economic dimensions of a two state solution. Internationally-led efforts to restart peace negotiations took place in Annapolis, MD (2007) and in Washington, DC (2010) with renewed efforts by the United States to relaunch substantive talks in 2013.

[1200] A number of plans affirm a right to return to a Palestinian state in the West Bank and Gaza Strip applicable to all refugees, but the plans and proposals do not affirm the right of 1948 refugees to return their homes of origin inside Israel. Nor do they address other outstanding issues relating to the refugee issue, most notably, housing, land and property restitution and responsibility. A selection of key proposals and relevant provisions are reproduced in Annex I.

[1201] *Ibid.*

[1202] A number of officials associated with peacemaking efforts in the past have suggested alternative approaches in recent years. In an opinion piece in the *New York Times* entitled "Going Directly to Israelis and Palestinian", for example, former Israeli former minister Shlomo Ben-Ami, former EU High Representative for Common Foreign and Security Policy, among others, suggested that an international commission be established to explore opportunities for a solution to the conflict with the general public on both sides of the conflict. Ben-Ami et al. 2012.

waged on the ground altering the very context for its solution.

The ongoing marginalization of Palestinian citizens inside Israel including restrictions on their fundamental rights and freedoms coupled with a growing emphasis on the Jewish identity of the state of Israel raises questions about the viability of a solution to the conflict that does not have at its core respect for the rights and equality of both individuals and communities without distinction.[1203] The entrenchment of Israel's military occupation in the 1967 OPT, meanwhile, has led to growing doubts as to whether partition and the establishment of an independent Palestinian state in the West Bank, East Jerusalem, and Gaza Strip can provide a solution to the conflict over self-determination.[1204] This situation is further aggravated by ongoing political divisions among Palestinian factions, physical separation of the West Bank and Gaza Strip along with a more than five year economic, political and military siege imposed on the latter and the virtual collapse of national institutions capable of representing Palestinians as a whole.[1205] Indeed, the situation on the ground appears to bear out Sayegh's more than three decade old assessment that under the 1978 Framework for Peace in the Middle East, the genesis for peacemaking efforts between Israel and the PLO in the 1990s, only a fraction (less than one-third) of the Palestinian people would attain a fraction of their rights (not including self-determination and return) in a fraction of their homeland (less one one-fifth).[1206]

[1203] This includes the adoption of an increasingly broad body of discriminatory legislation and the conditioning of a comprehensive solution to the conflict on Palestinian recognition of Israel's existing self-definition as a Jewish state. *See*, Chapter 6, *supra* n. 1151-1155 and corresponding text.

[1204] This includes ongoing confiscation of land, construction and expansion of Jewish settlements in the West Bank and East Jerusalem, bypass roads to connect settlements to each other and to areas inside the state of Israel, a system of permanent checkpoints which restrict the movement of Palestinians within the 1967 OPT, and a wall that effectively annexes large areas of the occupied West Bank and separates Palestinians from their lands and communities. *See*, Chapter 6, *supra* n. 1156-1159 and corresponding text.

[1205] *Ibid.*

[1206] *See*, the brief discussion of the 1978 Framework for Peace in the Middle East and Sayegh's prediction in Chapter 3, *supra* n. 484.

While a two-state solution to the conflict, including resettlement of the vast majority of Palestinian refugees, continues to attract widespread support among major actors in the conflict, an increasingly wide array of activists, academics, political figures, organizations and institutions have put forward and have begun to explore new approaches to a solution to the conflict. Central to many, notwithstanding diverse and often contradictory perspectives, is a solution that would provide for some form of a single state encompassing both Israel and the 1967 OPT.[1207] Another element common to many is the growing role played by civil society, albeit decentralized and dispersed, from identifying agenda to shifting attitudes within each community and putting forward plans and proposals for a solution to the conflict through alternative mechanisms.[1208] The impact of each of these developments on future talks to resolve the conflict, if and when the parties agree to sit down once again for substantive negotiations, and whether or not they will fundamentally shape the negotiating agenda or facilitate the participation of civil society, including refugees, in a negotiated solution to the conflict is difficult to assess.

The development of law and practice, generally, since the collapse of final status talks between the PLO and Israel, moreover, presents a mixed picture albeit one in which the principle of refugee participation in the negotiation of durable solutions has arguably gained in strength. In a significant development, for example, the 2003 Protocol to the African Charter on Human

[1207] For a list of recent sources and more detailed discussion of debates *see*, Chapter 6, *supra* n. 1159.

[1208] This includes the various education and awareness-raising initiatives on refugee rights referred to in the previous chapter, the establishment of special tribunals to investigate and shed light on the root causes of the conflict and concomitant responsibilities of relevant actors, civil society proposals for a democratic constitution for Israel, the promotion of boycott, divestment and sanctions against Israel until the state complies with relevant obligations under international law, the development of soft law and promotion of state compliance through UN human rights mechanisms, initiatives to investigate and prosecution officials responsible for gross violations of international law and efforts to rebuild representative structures for Palestinians from the bottom-up.

and Peoples' Rights on the Rights of Women, which entered into force in 2005, codified for the first time in treaty law "the right to participate in the promotion and maintenance of peace".[1209] The past ten years have also witnessed significant developments in soft law specific to the situation of refugees. This includes recognition for the first time of "the *right* of all displaced persons to participate in the return and restitution process and in the development of the procedures and mechanisms put in place to protect these rights" which is explicitly grounded in the right to political participation under international law.[1210] [emphasis added] The heads of the UN's two major refugee agencies—UNHCR and UNRWA—moreover, have increasingly highlighted the importance of such participation.[1211] The actual participation of refugees in the negotiation of durable solutions over the last decade, despite notable exceptions (e.g., Afghanistan, Darfur and Liberia), nevertheless appears to continue to fall well

[1209] Protocol to the African Charter on Human and People's Rights on the Rights of Women, *supra* n. 714, art. 10. It also calls upon states parties "to take all appropriate measures to ensure the increased participation of women in the structures and processes for conflict prevention, management and resolution at local, national, regional, continental and international levels". *Ibid.*, art. 10(1)(b). Article 10(2)(b) further calls upon states to ensure women's participation "in the local, national, regional, continental and international decision making structures to ensure physical, psychological, social and legal protection of asylum seekers, refugees, returnees and displaced persons, in particular women". For additional developments *see*, Chapter 6, *supra* n. 1065, 1068-1069, 1075.

[1210] Sub-Comm. Res. 2002/30, 54th Sess., 23rd Mtg., UN Doc. E/CN.4/SUB.2/RES/2002/30, Aug. 15, 2002, para. 6. The Explanatory Note to the 2005 UN Principles on Housing and Property Restitution for Refugees and Displaced Persons, which emphasize under Principle 14 that "[s]tates and other involved international and national actors should ensure that voluntary repatriation and housing, land and property restitution programmes are carried out with adequate consultation and participation with the affected persons, groups and communities", observes that Principle 14 is rooted, among others, in " the general right to take part in the conduct of public affairs (Universal Declaration of Human Rights, art. 21 (1); International Covenant on Civil and Political Rights, art. 25 (a))". UNCHR 2005b, para. 57. For additional developments see, Chapter 6, *ibid*.

[1211] Addressing the Security Council in January 2009, UN High Commissioner for Refugees, Antonio Guterres, explained that participation of refugees in peace processes "can provide critical perspectives on the causes of conflict and contribute to a sense of shared ownership in peacemaking". UNHCR 2009a. Also addressing the Security Council, UNRWA Commissioner-General Karen AbuZayd emphasized that "[n]egotiations to end the occupation and peacefully resolve the Israeli-Palestinian conflict are now more vital than ever—negotiations that are inclusive and balanced, that allow for *refugee representation*, and address, along with other final status matters, the question of Palestine refugees in a manner consistent with their rights". [emphasis added] UNRWA 2009b.

behind the elaboration of a corresponding right to take part.[1212]

This study raises a number of areas for future research on legal and empirical aspects of refugee participation in the negotiation of durable solutions. First, despite the progressive development of law and practice in recent decades, there is a significant gap in both academic and policy-oriented literature on standards, best practices and mandates of humanitarian organizations and political actors responsible for refugee protection. Existing guidelines which urge states and other relevant actors to encourage and facilitate the participation of refugees in the negotiation of durable solutions, as detailed in previous chapters, are silent on what such participation would look like, how it should be implemented and who should do what. While scholars, practitioners and international organizations have in recent years begun to address these gaps in relation to the participation of refugees in post-conflict elections, similar work has yet to be done with regard to other forms of refugee participation in the public affairs of their countries of origin.[1213]

[1212] In the period between 2001-2005, the last years for which UCDP Peace Agreement Database includes information on negotiated settlements to armed conflict it appears that post-conflict peacebuilding and the implementation of peace agreements along with unofficial or indirect peacemaking mechanisms continued to comprise the primary domains for civil society/refugee participation in the negotiated settlement of armed conflict. While developments in practice suggest that civil society/refugee participation in official or direct negotiations has become increasingly common it nevertheless remains less common than participation through indirect mechanisms and through peacebuilding and the implementation of agreements. *See*, Chapter 6, *supra* n. 1124, 1131, 1140. The UCDP published a revised (Ver. 2.0) dataset in 2012 after this study was completed which covers peace agreements regulating or terminating armed conflict between 1975 and 2011.

[1213] On refugee participation in post-conflict elections *see*, *e.g.*, Grace and Fischer 2003; and, Long 2010b. The most detailed elaboration of standards and best practices to date can be found in Koser's (2007) study on IDPs for the Brookings-Bern Project on Internal Displacement. The implications for refugees of the UN Security Council Civil Society Advisory Group on the elaboration of standards for women's participation in peacemaking is unclear, but would appear to have some bearing given the close connection between the development of standards on women and UNHCR policy on refugee participation. *See*, *e.g.*, CSAG 2011. *See also*, the recent elaboration of standards and best practices in, IQD 2010; and, UNIFEM 2010. The potential role of the UN Peacebuilding Commission is also unclear. Established in 2005, the Commission has focused primarily on post-conflict participation, which arguably reduces concerns about sovereignty and UN intervention in the domestic concerns of states. Cutter 2005, 779–780. Security Council discussions of civil society participation have similarly been limited largely to a discussion of participation in post-conflict peacebuilding rather than in the negotiated settlement of armed conflict.

Second, the elaboration of standards, best practices and mandates also requires more extensive knowledge of existing practice. There are few studies of refugee participation in the negotiation of durable solutions including research on cases in which refugees demanded a role in negotiations, but were unable to secure a seat at the negotiating table.[1214] Such cases are critical in understanding the dynamics of participation, but as the Palestinian case suggests, are largely overlooked or ignored in histories of negotiated settlements to forced displacement. Despite the progressive elaboration of policy since the mid-1990s, evaluations of UNHCR repatriation operations are similarly silent on refugee participation in the search for, negotiation and implementation of durable solutions.[1215] There is also little research which identifies and examines factors which either facilitate or militate against refugee participation in the negotiation of durable solutions, knowledge which would appear to be especially important of such participation is indeed an emerging right as suggested in this study.[1216] And finally, while there is an emerging body of literature on the relationship between public participation and the

[1214] Existing research on refugee participation in the negotiation of durable solutions, for example, frequently relies on the broader body of research on public participation in peacemaking including literature on women's participation. This broader body of literature, however, suffers from a similar gap in research notwithstanding the fact that it is more developed than the research on refugees. *See*, Chapter 6, *supra* n. 278-285 and corresponding text.

[1215] Notable exceptions include evaluations of Guatemalan returns and brief mention of refugee participation community peacemaking processes in Mali. *See*, Chapter 6, *supra* n. 318.

[1216] This gap also appears to be common to the broader body of literature on civil society participation in the negotiated settlement of conflict. Paffenholz and Spurk, for example, emphasize the "[n]eed to examine the enabling environment" for civil society participation. Paffenholz and Spurk 2006, 35. In their case study of civil society participation in the peacemaking process in Sierra Leone, Jessop et al. similarly observe that "[t]here is a need to address the structural and political obstacles to participation and how to overcome them". Jessop, Aljets, and Chacko 2008, 110. In a more recent study on civil society in peacebuilding Paffenholz et al. (2010) identify six major enabling and disenabling factors for participation, some of which are similar to those identified in Chapter 5 as potential explanatory factors for the participation of refugees in the negotiation of durable solutions in Guatemala, Bangladesh and Burundi. Theories on compliance and political participation in related fields of study may also provide useful frameworks for understanding the factors that contribute to refugee participation in the negotiation of durable solutions. *See*, *e.g.*, Burgstaller 2004; and, Whiteley 2002, 35–57.

sustainability of negotiated settlements, research has yet to address the relationship between refugee participation and the durability of solutions to their situation.[1217]

Third, there is also need for greater consideration of policy and practice of refugee participation in the negotiation and implementation of durable solutions for Palestinian refugees. This study has sought to address this gap in a modest way. In a recent survey of negotiations to resolve the long-standing conflict, Caplan and Eisenberg observe that while Palestinian, Arab and Israeli officials have been able to "negotiate complicated compromise agreements within cozy confines removed from the public glare", they have nevertheless been unable to "transmit their enthusiasm and newly found trust to their publics at large".[1218] Harold Saunders, a former US diplomat and an expert on unofficial diplomacy, has similarly observed that "one of the major failures on the part of everybody at [the first] Camp David [summit]", which established the framework for peacemaking efforts in the 1990s, "was the fact that to this day there has not been success in somehow conveying the sense of their evolving process and changing relationships to the grassroots".[1219] Identifying the various patterns of Arab, Palestinian, Israeli peacemaking since 1948, Caplan and Eisenberg posit that "possibilities for breakthroughs to peace lie in bold deviations from historical

[1217] This is part of a broader gap in literature on the experiences of returnees. Hammond 1999, 227; Toft 2007; and, Weiss Fagen 2009, 38. This also requires related research on indicators or benchmarks to assess the durability of negotiated solutions for refugees. Black and Ghent, for example, proposed two models: one focused more narrowly on re-emigration and the other more broadly on reintegration. Black and Gent 2004. The UN identifies seven indicators for IDP reintegration once they have returned to their homes, settled locally or elsewhere in their home country: absence of attacks, harassment, intimidation, persecution or any other form of punitive action; freedom from discrimination for reasons related to their displacement; full and non-discriminatory access to national and sub-national protection mechanisms; access to personal documentation; access to mechanisms for property restitution or compensation; adequate standard or living, including shelter, health care, food, water and other means of survival; family reunification; and, exercise of the right to participate fully and equally in public affairs. UN 2008, 326.

[1218] Caplan and Eisenberg 2010, 281.

[1219] Carter Center 2003, 19.

patterns".[1220] While it is difficult to predict the outcome of a peacemaking process that is more participatory, emerging empirical evidence suggests that the inclusion of a broader range of stakeholders may well be the type of bold deviation necessary to facilitate a comprehensive and long-lasting solution to the conflict over Palestine including the situation of refugees themselves.

[1220] Caplan and Eisenberg 2010, 282.

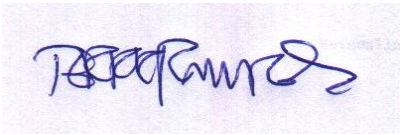
The Right to Political Participation and the Negotiation of Durable Solutions:

Palestinian Refugees in Comparative Context

Vol. II of II

Submitted by Terrance Rempel, to the University of Exeter as a dissertation
for the degree of Doctor of Philosophy in Politics, June 2013.

I certify that all the material in this dissertation which is not my own work has
been identified and that no material has previously been submitted and approved for the
award of a degree by this or any other University.



LIST OF CONTENTS

ANNEX I

Palestinian Documents

Table A1.1 - Peace Agreements and Proposals, Provisions on Palestinian Refugees

Lausanne Protocol, May 12, 1949
The United Nations Conciliation Commission for Palestine, anxious to achieve as quickly as possible the objectives of the General Assembly's resolution of 11 December 1948, regarding refugees, the respect for their rights and the preservation of their property, as well as territorial and other questions has proposed to the Delegations of the Arab States and to the Delegation of Israel that the working document attached hereto be taken as a basis for discussions with the Commission.* The interested Delegations have accepted this proposal with the understanding that the exchanges of views which will be carried on by the Commission with the two parties will bear upon the territorial adjustments necessary to the above indicated objectives. Document attached to the Protocol of 12 May 1949, signed by the Conciliation Commission and the Arab delegations, on the one hand, and the Conciliation Commission and the Israeli delegation on the other. A map of Palestine, scale 1/750.000, showing the territory attributed to the Arab and Jewish States, respectively, by the General Assembly resolution of 29 November 1947.
Text of Agreement on Return Concluded between the Israeli and Jordanian Authorities, Aug. 6, 1967
At a meeting held today through the intermediary of the International Committee of the Red Cross, Dr. Yusuf Zehni Secretary-General of the Jordanian Red Crescent, representing the Hashemite Kingdom of Jordan and Mr. Yosef Tekoah Assistant Director General of the Ministry for Foreign Affairs, representing the State of Israel, have agreed on final arrangements for the return of the residents of the West Bank. First. The question forms used for application for return will carry the names of both state and that of the ICRC. Second. The deadline for return to the West Bank has been postpone to August 31. Third. As state in the question forms, applicants for return should submit passport, UNRWA identity cards or Jordanian certificates issued before the 1st of July, or any other documents which the Israeli government accepts as reasonable. Fourth. All of the above-mentioned documents should bear a photograph of their own. Fifth. All question forms will be filled out in Jordan.

Explanatory Note for Completing the Application Form for a Permit to Return to the West Bank

Any person who was a permanent resident of the West Bank on June 5, 1967 and left this territory for the East Bank between June 5, 1967 and July 4, 1967, and wishes to return to his former place of residence, must complete an application form which can be received from the representative of the International Red Cross.

The form should be duly completed and returned to the representative of the International Red Cross who in turn will transfer it to the Israeli Ministry of Interior.

The latest date to submit the application is August 10, 1967.

The form should be filled out in duplicate (original and copy) clearly and legibly.

One application form should include all the members of one family, i.e., the husband, his wife, and all children up to eighteen (18) years of age accompanying the head of the family to the West Bank. In the absence of the husband, the wife will be considered the head of the family, and in the absence of both parents, the oldest child will be considered the head of the family. Persons over the age of eighteen (18), whether single or married, must complete a separate form. (see sections A and B of the form).

Upon submission of the application the applicant will be requested to present documents that prove his identification as well as his residence in the West Bank on June 5, 1967. These documents may be a passport, identify card, driving license or any other document which bears the photograph of the applicant.

The application must be signed by the application at the time of its submission and his thumb-print affixed in the place afforded on the application form.

The official receiving the application must certify, by his signature, the fact that he has seen and checked the documents presented to him with the application (see section C).

The official receiving the application (original and copy) should fill out the white confirmation slip, sign it, separate it from the original application form and hand it to the applicant. The official should explain to the applicant that he will be notified of the decision regard his application at a later date, and therefore, the applicant should keep the confirmation slip and refer to it for any inquiry regarding his application.

The official receiving the application (original and copy) will deliver it to the representative of the International Red Cross who in turn will pass it on to the Israel Ministry of Interior, while retaining the pink counterfoil for himself.

The applicant will be notified of the decision subsequently taken by the Ministry of Interior through the International Red Cross.

Framework for Peace in the Middle East, Sept. 17, 1978

A. West Bank and Gaza

3. During the transitional period, representatives of Egypt, Israel, Jordan, and the self-governing authority will constitute a continuing Committee to decide by agreement on the modalities of admission of persons displaced from the West Bank and Gaza in 1967, together with necessary measures to prevent disruption and disorder. Other matters of common concern may also be dealt with by this committee.

4. 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.

Declaration of Principles on Interim Self-Government Arrangements, Sept. 13, 1993

Article V: Transitional Period and Permanent Status Negotiations

3. It is understood that these negotiations shall cover remaining issues, including: Jerusalem, refugees, settlements, security arrangements, borders, relations and cooperation with other neighbors, and other issues of common interest.

Article XII: Liaison and Cooperation with Jordan and Egypt

The two parties will invite the Governments of Jordan and Egypt to participate in establishing further liaison and cooperation arrangements between the Government of Israel and the Palestinian representatives, on the one hand, and the Governments of Jordan and Egypt, on the other hand, to promote cooperation between them. These arrangements will include the constitution of a Continuing Committee that will decide by agreement on the modalities of admission of persons displaced from the West Bank and Gaza Strip in 1967, together with necessary measures to prevent disruption and disorder. Other matters of common concern will be dealt with by this Committee.

Annex I: Protocol on the Mode Conditions of Elections

3. The future status of displaced Palestinians who were registered on 4th June 1967 will not be prejudiced because they are unable to participate in the election process due to practical reasons.

Agreement on the Gaza Strip and Jericho Area, May 4, 1994

Article XVI: Liaison and Cooperation with Jordan and Egypt

2. The Continuing Committee shall decide by agreement on the modalities of admission of persons displaced from the West Bank and the Gaza Strip in 1967, together with necessary measures to prevent disruption and disorder.

Treaty of Peace Between the State of Israel and the Hashemite Kingdom of Jordan, Oct. 26, 1994

Article 8 - Refugees and Displaced Persons

1. Recognising the massive human problems caused to both Parties by the conflict in the Middle East, as well as the contribution made by them towards the alleviation of human suffering, the Parties will seek to further alleviate those problems arising on a bilateral level.

2. Recognising that the above human problems caused by the conflict in the Middle East cannot be fully resolved on the bilateral level, the Parties will seek to resolve them in appropriate forums, in accordance with international law, including the following:

a. in the case of displaced persons, in a quadripartite committee together with Egypt and the Palestinians:

b. in the case of refugees,

i. in the framework of the Multilateral Working Group on Refugees;

ii. in negotiations, in a framework to be agreed, bilateral or otherwise, in conjunction with and at the same time as the permanent status negotiations pertaining to the territories referred to in Article 3 of this Treaty;

c. through the implementation of agreed United Nations programmes and other agreed international economic programmes concerning refugees and displaced persons, including assistance to their settlement.

Israeli-Palestinian Interim Agreement Agreement on the West Bank and Gaza Strip, Sept. 28, 1995

Chapter 2 - Redeployment and Security Arrangements

Article X: Redeployment of Israeli Military Forces

1. The first phase of the Israeli military forces redeployment will cover populated areas in the West Bank - cities, towns, villages, refugee camps and hamlets - as set out in Annex I, and will be completed prior to the eve of the Palestinian elections, i. e., 22 days before the day of the elections.

Chapter 3 - Legal Affairs

Article XVII: Jurisdiction

1. In accordance with the DOP, the jurisdiction of the Council will cover West Bank and Gaza Strip territory as a single territorial unit, except for:

a. issues that will be negotiated in the permanent status negotiations:

Jerusalem, settlements, specified military locations, Palestinian refugees, borders, foreign relations and Israelis;

8. The Council's jurisdiction will extend gradually to cover West Bank and Gaza Strip territory, except for the issues to be negotiated in the permanent status negotiations, through a series of redeployments of the Israeli military forces. The first phase of the redeployment of Israeli military forces will cover populated areas in the West Bank - cities, towns, refugee camps and hamlets, as set out in Annex I - and will be completed prior to the eve of the Palestinian elections, i.e. 22 days before the day of the elections. Further redeployments of Israeli military forces to specified military locations will commence immediately upon the inauguration of the Council and will be effected in three phases, each to take place after an interval of six months, to be concluded no later than eighteen months from the date of the inauguration of the Council.

Chapter 4 - Cooperation

Article XXVII: Liaison and Cooperation with Jordan and Egypt

2. The Continuing Committee shall decide by agreement on the modalities of admission of persons displaced from the West Bank and the Gaza Strip in 1967, together with necessary measures to prevent disruption and disorder.

Article XXXI: Final Clauses

5. Permanent status negotiations will commence as soon as possible, but not later than May 4, 1996, between the Parties. It is understood that these negotiations shall cover remaining issues, including: Jerusalem, refugees, settlements, security arrangements, borders, relations and cooperation with other neighbors, and other issues of common interest.

Annex I - Protocol Concerning Redeployment and Security Arrangements

Article I: Redeployment of Israeli Military Forces and Transfer of Responsibility

First Phase of Redeployment

1. The first phase of Israeli military forces redeployment will cover populated areas in the West Bank - cities, towns, villages, refugee camps and hamlets, as shown on map No. 1. This redeployment will be effected in stages, as set out in the schedule attached to this Annex as Appendix 1, and will be completed prior to the eve of the Palestinian elections, i.e., 22 days before the day of elections.

Article IX: Movement Into, Within and Outside the West Bank and the Gaza Strip

2. Passage within the West Bank and between the West Bank and Israel.

a. Without derogating from Israel's security powers and responsibilities in

accordance with this Agreement, movement of people, vehicles and goods in the West Bank, between cities, towns, villages and refugee camps, will be free and normal, and shall not need to be effected through checkpoints or roadblocks.

The Wye River Memorandum, Oct. 23, 1998

IV. Permanent Status Negotiations

The two sides will immediately resume permanent status negotiations on an accelerated basis and will make a determined effort to achieve the mutual goal of reaching an agreement by May 4, 1999. The negotiations will be continuous and without interruption. The U.S. has expressed its willingness to facilitate these negotiations.

Sharm el-Sheikh Memorandum on Implementation Timeline of Outstanding Commitments of Agreements Signed and the Resumption of Permanent Status Negotiations, Sept. 4, 1999

1. Permanent Status Negotiations

i. In the context of the implementation of the prior agreements, the two sides will resume the Permanent Status negotiations in an accelerated manner and will make a determined effort to achieve their mutual goal of reaching a Permanent Status Agreement based on the agreed agenda i.e., the specific issues reserved for Permanent Status negotiators and other issues of common interest.

ii. The two Sides reaffirm their understanding that the negotiations on the Permanent Status will lead to the implementation of Security Council Resolutions 242 and 338;

iii. The two Sides will make a determined effort to conclude a Framework Agreement on all Permanent Status issues in five months from the resumption of the Permanent Status negotiations;

iv. The two Sides will conclude a comprehensive agreement on all Permanent Status issues within one year from the resumption of the Permanent Status negotiations;

v. Permanent Status negotiations will resume after the implementation of the first stage of release of prisoners and the second stage of the First and Second Further Redeployments and not later than September 13, 1999. In the Wye River Memorandum, the United States has expressed its willingness to facilitate these negotiations.

4. Committees

iii. The Continuing Committee on displaced persons shall resume its activity on October 1, 1999 (Article XXVII, Interim Agreement);

Framework for the Conclusion of a Final Status Agreement between Israel and the Palestine Liberation Organization ("Beilin-Abu Mazen Accord), Oct. 31, 1995

Article 7 - Refugees

1. Whereas the Palestinian side considers that the right of the Palestinian refugees to return to their homes is enshrined in international law and natural justice, it recognizes that the prerequisites of the new era of peace and coexistence, as well as the realities that have been created on the ground since 1948, have rendered the implementation of this right impracticable. The Palestinian side, thus, declares its readiness to accept and implement policies and measures that will ensure, insofar as this is possible, the welfare and well-being of these refugees.

2. Whereas the Israeli side acknowledges the moral and material suffering caused to the Palestinian people as a result of the war of 1947-1949. It further acknowledges the Palestinian refugees' right of return to the Palestinian state and their right to compensation and rehabilitation for moral and material losses.

3. The parties agree on the establishment of an International Commission for Palestinian Refugees (hereinafter "the ICPR") for the final settlement of all aspects of the refugee issue as follows:

a. The Parties extend invitations to donor countries to join them in the formation of the ICPR.
b. The Parties welcome the intention of the Government of Sweden to lead the ICPR and to contribute financially to its activities.
c. The Government of Israel shall establish a fund for its contribution, along with others, to the activities of the ICPR.
d. The ICPR shall conduct all fundraising activities and coordinate donors' involvement in the program.
e. The ICPR shall define the criteria for compensation accounting for:

(1) moral loss;
(2) immovable property;
(3) financial and economic support enabling resettlement and rehabilitation of Palestinians residing in refugee camps.

f. The ICPR shall further:

(1) adjudicate claims for material loss;
(2) prepare and develop rehabilitation and absorption programs;
(3) establish the mechanisms and venues for disbursing payments and compensation;
(4) oversee rehabilitation programs;
(5) explore the intentions of Palestinian refugees on the one hand and of Arab and other countries on the other, concerning wishes for emigration and the possibilities thereof;
(6) explore with Arab governments hosting refugee populations, as well

as with these refugees, venues for absorption in these countries whenever mutually desired.

g. The ICPR shall implement all the above according to the agreed schedule defined in Annex Four to the Final Status Agreement.

4. The ICPR shall be guided by the following principles in dealing with the "refugees of 1948" and their descendants as defined in Annex Four to the Final Status Agreement:

a. Each refugee family shall be entitled to compensation for moral loss to a sum of money to be agreed upon by the ICPR.
b. Each claimant with proven immovable property shall be compensated as per the adjudication of the ICPR.
c. The ICPR shall provide financial and economic support, enabling the resettlement and rehabilitation of Palestinians residing in refugee camps.
d. The refugees shall be entitled to financial and economic support from the ICPR for resettlement and rehabilitation.

5. The State of Israel undertakes to participate actively in implementing the program for the resolution of the refugee problem. Israel will continue to enable family reunification and will absorb Palestinian refugees in special defined cases, to be agreed upon with the ICPR.

6. The Palestinian side undertakes to participate actively in implementing the program for the resolution of the refugee problem. The Palestinian side shall enact a program to encourage the rehabilitation and resettlement of Palestinian refugees presently resident in the West Bank and Gaza Strip, within these areas.

7. The PLO considers the implementation of the above a full and final settlement of the refugee issue in all its dimensions. It further undertakes that no additional claims or demands arising from this issue will be made upon the full implementation of this Framework Agreement.

Framework Agreement on Permanent Status, Israeli Non-Paper, July 16, 2000

Article 6 – Refugees

71. The Parties are cognizant of the suffering caused to individuals and communities on both sides during and following the 1948. Israel further recognizes the urgent need for a humane, just and realistic settlement of the plight of Palestinian Refugees within the context of terminating the Israeli-Palestinian conflict.

72. A resolution of the Palestinian refugee problem in all its aspects will be achieved through an international effort with the participation of, as appropriate, the Arab states, the European Union, the United States, and the rest of the international community. Israel, in accordance with this Article, will

take part in this effort.

73. The termination of the Palestinian refugee problem shall incorporate possible return to the State of Palestine, integration within the Host Countries, and immigration to other third countries.

74. In light of the new era of peace, the Palestinian Party recognizes that the Right of Return of Palestinian refugees shall apply solely to the State of Palestine. Israel recognizes the right of Palestinian refugees to return to the state of Palestine.

75. Israel shall, as a matter of its sovereign discretion, facilitate a phased entry of [XX] Palestinian Refugees to its territories on humanitarian grounds. These refugees shall be reunited with their families in their present place of residence in Israel, accept Israeli citizenship and waive their legal status as refugees.

76. An International Commission (Commission) shall be established. Canada, the European Union, the Host Countries (Jordan, Syria, Lebanon, and Egypt), Japan, Norway, the State of Palestine [the PLO], the Russian Federation, the United Nations, the United States and Israel shall be invited to participate therein. Special attention will be given to the special role of the Hashemite Kingdom of Jordan with respect to the Palestinian refugees within its borders.

77. An International Fund (Fund) shall be established and supervised by the Commission and the World Bank. The Fund shall be mandated as an international financial institution ensuring transparency, accountability, and due process. It will collect, manage and disburse the resources pertaining to the rehabilitation of and compensation to Palestinian refugees.

78. The objective of the Commission and the Fund is to provide for a comprehensive and conclusive settlement of the Palestinian Refugee Problem in all its aspects.

79. The Fund shall establish and manage a Registration Committee in order to compile a definitive and complete register of property claims of the refugees due to the 1948 War. The modalities, criteria, timeline, and procedures of the registration of claims, their verification and pro-rata evaluation shall be drawn up as appropriate by agreement upon the establishment of the Fund and within its Framework.

80. The Parties affirm that the register of claims verified by the Registration Committee shall constitute the definitive statement of all Palestinian refugees' property claims.

81. Every Palestinian refugee-household that became a refugee in 1948 or its direct descendents may, within an agreed period, submit one sole claim due to the 1948 War to the Registration Committee for the purpose of compensation for its property. No further individual claims may be filed beyond the agreed date.

82. The Parties agreement that a just settlement of the Israeli-Arab conflict should settle the claims by Jewish individuals and communities that left Arab countries or parts of Mandatory Palestine due to the 1948 War and its aftermath. An international mechanisms affiliated with the above Commission and Fund will be established to deal with such claims.

83. The rehabilitation of the refugees in their current places of residence or their relocation to their new places of residence shall be carried out on the basis of comprehensive Programs for Development and Rehabilitation (PDRs). The PDRs will be concluded between the Commission, the Fund and the relevant country with the aim of enabling the refugee to rebuild his life and the life of his family.

84. The PDR shall provide for gradual elimination of the formal and practical aspects of the refugee problem including the phase withdrawal of UNRWA within 10 years and the transfer of its responsibilities to the Host Country, the provision of full personal-legal status to all refugees that wish to live in such Host Country and the settlement of its national refugee-related claims.

85. The Parties shall call upon the international community to support the permanent settlement of the Palestinian refugee problem by defining a Lump Sum [XX] and to develop immigration options for those refugees wishing to immigrate to third countries. The Lump Sum shall provide for all the financial requirements for the comprehensive and final settlement of the Palestinian refugee problem including those of rehabilitation and all individual or collective claims.

86. Eligibility of a claimant for property compensation shall be proportionate, limited by and subject to, the resources accumulated by the Fund as well as by allocations to rehabilitation programs. Transfer of compensation to a claimant shall be coordinated by such claimant's waiver of further proprietary claims.

87. The Parties call upon the international community to convene a conference for that purpose.

88. In the context of and within such international pledge, Israel will address the issue of a financial annual contribution of XX for XX years.

89. The mandate of the Fund and the Commission shall be concluded between the Parties in the CAPS based on this article.

90. The Commission, the Fund and the State of Palestine shall design and implement a PDR for the permanent resolution of the Palestinian refugee problem in the State of Palestine within 10 years of the conclusion of the CAPs. The State of Palestine shall view the implementation of this program as a final settlement of its national claim in this respect.

91. UNRWA records shall be the main basis for the implementation of this Article. Records from other relevant sources shall be subject to the Commission's scrutiny and approval.

92. The wishes and claims of the Palestinian refugees shall be taken into account to the extent and manner agreed between the Parties in the FAPs and CAPs.

93. The timeline for the implementation of this article is provided for in Annex XXX.

94. Israel shall have no further commitment or obligation emanating from the Refugee issue beyond those specified in this agreement.

95. The implementation of this Article and the completion of the Commission's work as described in paragraph [X] shall resolve the Palestinian refugees problem in a permanent way thus amounting to the implementation of all relevant international resolutions.

96. The Parties encourage the Refugee Multilateral Working Group to continue its work on the basis of its agree terms-of-reference specifically focusing on those individuals who personally became refugees during the 1948 war.

Framework Agreement on Permanent Status, Non-Paper Draft for Brainstorming and Discussion Purposes Only, May 21, 2000

Article 7 - Refugees [See attached paper on the Palestinian position. the text below is not reflective of the Palestinian position]

~~27.~~28. [P: Israel recognizes] [I: Recognizing] the suffering of the Palestinian refugees [I: due to] [P: caused by] the 1948 War and [P: Israeli-Palestinian Conflict] and the need for a just, humane, political, [I: and realistic] solution to their plight based upon UNSCR 242 [P: and the international law that will lead to the implementation of UNGAR 194] in the context of putting an end to the Israeli-Palestinian conflict;

~~28.~~29. [I: Sharing a historical commitment for the final resolution of the Palestinian refugeeism in all its legal and practical aspects, The Parties, together with the Arab States and the international community, should work together to alleviate the suffering due to the 1948 Arab-Israeli War.]

~~29.~~30. [I: Israel, in its recognition of the need to achieve a just, humane, political, and realistic solution to the Palestinian refugee problem and to put an end to their suffering as a result the 1948 Arab-Israeli War, shall, as a matter of its sovereign discretion, facilitate phased entry of [XX] Palestinian Refugees to its territories on humanitarian grounds. These refugees shall be reunited with their families in their present place of residence in Israel, accept Israeli citizenship and waive their legal status as refugees.]

~~30.~~31. The Parties agree to the establishment of an International Commission (Commission). The Commission shall consist of Israel, the PLO/Palestine, the Host Countries (Jordan, Syria, Lebanon, and Egypt), the United Nations, the United States, Canada, the European Union, Japan, the Russian Federation

and Norway.

~~31.~~32. [P: The Commission shall prepare a special Form that will be filled by each Palestinian refugee. The [Commission] [I: Parties] shall determine the format and content of the Form aiming to provide the Commission with the answer as to whether the refugee, subject to the provisions of this article, wishes to:

One. return to their homes in Israel with compensation;
Two. return to Palestine with compensation;
Three. remain in his current place of residence with compensation; or
Four. move to a third country with compensation.]

~~32.~~33. Every Palestinian refugee [household], for the purpose of compensation for its property [P: and losses], may attach its entire claim due to the 1948 War to one Form to be submitted to the Commission. [I: No further individual claims may be filed. The completion of the property compensation shall resolve the entire collective and individual Palestinian claim for Property due to the 1948 War.]

~~33.~~34. An International Fund (Fund) shall be established and supervised by the Commission and the World Bank. The Commission and the World Bank will determine the financial institution that will administer the resources pertaining to the rehabilitation of and compensation to Palestinian refugees. The Fund shall verify and evaluate all claims based on criteria, time line, and procedures to be agreed in the CAPS.

~~34.~~35. The Commission will call the international community to support and contribute to the Fund. [P: The nucleus of the Fund shall be financed by a [I: finite] allocation [I: of XX USD] [P: by the resources accumulated] by the Custodian of the Palestinian Absentee Property in Israel].

~~35.~~36. [The transfer of compensation to every claimant shall be conditioned on his waiver of further proprietary claims.]

~~36.~~37. [I: The Funds for rehabilitation [P: and for the suffering] of the refugees shall be allocated based on the following principles:

One. The rehabilitation funds shall be allocated to the Host Countries and to the individual refugees based on agreed Programs which will be prepared for each of the Host Countries with the aim of enabling the refugee to rebuild his life and the life of his family;
Two. The implementation of the Program shall be conditioned by gradual elimination of the formal and practical aspects of the refugee problem in that Host Country including the gradual withdrawal of UNRWA, the provision of full personal-legal status to all refugees, and by the settlement of the collective refugee-related claim of that Host Country;
Three. The Programs shall be prepared by the Fund within XX years of the conclusion of the CAPS and implemented within XX years .. ???; The Fund shall also monitor their implementation and oversee their disbursement.]

~~37.~~38. [I: The mandate of the Fund and the Commission shall be concluded between the Parties in the CAPS based on this Article.] [The commission shall complete its work within [...] of the date of signing this agreement [P: and no later than [...]. The work of the Commission shall form an integral part of the Permanent Status Agreement.]]

~~38.~~39. UNRWA records shall be the main basis for the implementation of this article. Records from other relevant sources shall be subject to the Commission's scrutiny and approval.

~~39.~~40. The full implementation of this Article and the completion of the Commission's work as described in paragraph (X) shall resolve the Palestinian refugee's problem in a final and permanent way [I: thus amounting to the implementation of UNGAR 194].

Palestine-Israel Comprehensive Agreement on Permanent Status, Draft Outline, Prepared by the Negotiations Support Unit of the PLO Negotiations Affairs Department, Oct. 25, 2000

Article 10 - Refugees

- Recognition of Israel's responsibility for the creation of the refugee problem.
- Reference to ANNEX containing the definition of a "refugee".

Right of Return

- Recognition of the right of return in accordance with UNGA Resolution 194(III).
- Commitment by Israel to the following modalities of return:
    - Priority for the return of Lebanon refugees within two years.
    - A five year deadline for the submission of return applications, after which time refugees lose the right to apply for return.
    - Annual quota for return.
    - [Return in accordance with a repatriation plan implemented by the Commission and outlined in ANNEX.]
- Commitment by Israel to protect the human rights of returning refugees.
- Commitment by Israel to grant citizenship to returning refugees, at which time their refugee status will end.

Restitution

- Commitment by Israel to the restitution of refugee property.
- Commitment by Israel to provide substitute property in cases where restitution in kind is not possible.

Compensation

- Acknowledgment by Israel that Palestine refugees and their descendents [definition provided in Annex ___] are entitled to full financial compensation for their displacement and dispossession, including compensation for material losses and suffering.
- Commitment by Israel to compensate refugees for the following:
    - loss of and damage to real and movable property
    - deprivation of property
    - loss of profit
    - loss of bank accounts
    - loss of income
    - business-related losses including intellectual property
    - interest
    - personal injury
    - detention and expulsion
    - mental pain and anguish
    - [communal property]
- [Commitment by Israel to compensation [host countries] for ... *Or would this be framed as recognition by Israel of the host countries' right to compensation - and then left to Israel and those countries to work out the details?*]
- Commitment by Israel to compensate Palestine refugees and their descendants fully, irrespective of whether they choose to exercise their right to return.
- Acknowledgment by Israel that a Palestine refugee's [and his or her descendants' and dependents'] exercise of his or her right to return shall not in any way prejudice his or her right to receive compensation. [*Seems redundant, after previous provision*]
- Commitment by Israel that a Palestine refugee's receipt of compensation shall not prejudice his or her right to return. [*Redundant?*]
- Commitment by Israel to cooperate in the collection of data and information relating to the claims mentioned in this Article, by granting [relevant individuals / authorities / Tribunals] access to all relevant documents in state and in other archives.
- Waivers:
    - Israel waives any objection based on an alleged failure to exhaust local remedies.
    - Israel waives any objection based on an alleged unreasonable delay in the presentation of the claim or on any statutory or other legal prescription that may apply under national law.
    - Israel waives requirement under international law that the claim must be owned continuously from the date on which the claim arose to the date on which this Agreement enters into force, or to the date of the presentation of the claim.
    - Israel waives sovereignty vis-a-vis collection and executive of award.

Refugee Claims Commission

- Commitment by Israel to establish a Refugee Claims Commission whose composition, structure, mandate, and powers are set forth in ANNEX.

International Fund

- Commitment to establish an International Fund to support and finance the implementation of the Agreement.
- Definition of the composition and structure of the International Fund.
- Recognition that the International Fund shall assist in:
    - Repatriation
    - Compensation
    - Rehabilitation
    - Transitional and institutional costs

Article 11 - Compensation

Compensation Commission for Displaced Persons

- Mutual commitment to establish a Compensation Commission for Displaced Persons for the purpose of adjudicating the claims of displaced persons that resulted from Israel's actions and omissions in [June 1967]. [date?] Reference to ANNEX defining the following:
    - Who is eligible to file a claim
    - Types of claims [property loss; damage to real property; deprivation of property; loss of profit; loss of income; business-related losses; interest; personal injury; mental pain and anguish] to be heard by the Tribunal etc.
    - Structure of the Tribunal
    - Number of members
    - Provision for additional members
    - Number of panel members required for decision
    - Composition of panel members
    - Location of the Tribunal
    - Expenses for facilities and staff of the Tribunal are to be borne by Israel
    - Language of proceedings
    - Rules of the Tribunal
    - Procedures for filing claims before the Tribunal
    - Date for filing claims
    - Awards shall be enforceable against Israel in accordance with its laws
    - Appeal provisions
    - Applicable law
        - Standard of compensation (law of responsibility; law of belligerent occupation; international human rights law)
        - Rates to be used to calculate value of each type of claim
        - Evidence to be used

- Costs, attorney and otherwise, to be borne by Israel
- Disagreement regarding the interpretation or application of this Article of the Agreement shall be decided by the Tribunal upon request of any part [Israel, Palestine or the individual claimant]
- Tribunal shall have the right to determine its jurisdiction

- Waivers:
- Israel waives any objection based on an alleged failure to exhaust local remedies
- Israel waives any objection based on an alleged unreasonable delay in the presentation of the claim or on any statutory or other legal prescription that may apply under national law.
- Israel waives requirement under international law that the claim must be owned continuously from the date on which the claim arose to the date on which this Agreement enters into force, or to the date of the presentation of the claim.
- Israel waives sovereignty vis-a-vis collection and executive of award.

Palestinian Proposal on Palestinian Refugees, Taba, Jan. 22, 2001

ARTICLE XX: REFUGEES

The Significance of Resolving the Resolving Problem

1. The Parties recognize that a just resolution of the refugee problem is necessary for achieving a just, comprehensive and lasting peace.

Moral Responsibility

2. Israel recognizes its moral and legal responsibility for the forced displacement and dispossession of the Palestinian civilian population during the 1948 war and for preventing the refugees from returning to their homes in accordance with United Nations General Assembly Resolution 194.

3. Israel shall bear responsibility for the resolution of the refugee problem.

The Basis for a Settlement of the Refugee Problem

4. A just settlement of the refugee problem, in accordance with United Nations Security Council Resolution 242, must lead to the implementation of United Nations General Assembly Resolution 194.

Right of Return

5. a. In accordance with United Nations General Assembly Resolution 194 (III), all refugees who wish to return to their homes in Israel and live at peace with their neighbors have the right to do so. The right of every refugee to return shall be exercised in accordance with the modalities set out in the Agreement.

6. a. A Palestinian refugee is any Palestinian who was prevented from returning to his or her home after November 29, 1947.
b. Without limiting the generality of the term "refugee", a "refugee" in this Agreement shall include a refugee's descendants and spouse. c. Without limiting the generality of the term "refugee", all registered persons with UNRWA shall be considered refugees in accordance with this Article.

Repatriation Commission

7. A Repatriation Commission shall be established in order to guarantee and manage the implementation of the right to return in accordance with this Article.

8. The Commission, *inter alia*, shall:

a. Verify refugee status as defined in this Article.
b. Determine priorities for certain categories of refugees and certain areas.
c. Determine procedures for repatriation.
d. Process applications.
e. Repatriate the refugees.
f. Provide assistance to returning refugees.
g. Ensure the protection of returning refugees.

9. The Commission shall be composed of representatives from the United Nations, the United States, the Parties, UNRWA, the Arab host countries, the EU, and Canada. The Commission shall consult the governments of the Arab host countries as it may deem it necessary.

10. The Parties should implement the decisions of the Commission and should take appropriate actions to facilitate the execution of the Commission's decisions.

11. The Commission shall define its structure and work procedures.

12. The Commission shall have its headquarters in ___ and may have offices at other locations, as it deems appropriate.

13. The Commission shall establish a mechanism for resolution of disputes arising from the interpretation, application or performance of this Article.

14. Refugees shall have the right to appeal decisions rendered by the Commission pursuant to this Article. The Commission shall establish a mechanism for appeals.

Modalities of Return

15. All refugees who currently reside in Lebanon and choose to exercise the right of return in accordance with this Article shall be enabled to return to Israel within two years of the signing of this Agreement.

16. Without prejudice to the right of every refugee to return to Israel, and in addition to refugees returning pursuant to Paragraph 15 above, a minimum of XX refugees will be allowed to return to Israel annually.

17. The refugees who wish to return should declare their intention to the Commission, in accordance with procedures to be set out by the Commission, within 5 years of the date the Commission starts receiving these declarations. The exercise of the right of return subsequent to such declaration shall not be limited in time.

18. The Commission shall determine, according to transparent criteria, who will be allowed to return in any given year in accordance with Paragraph 16 of this Article.

19. Repatriation should be based on an individual voluntary decision, and should be carried out in a way that maintains the family unit.

20. The refugees should be provided with information necessary for them to make an informed decision with regard to all aspects of repatriation.

21. The refugees should not be compelled to remain in or move to situations of danger or insecurity, or to areas lacking in the basic infrastructure necessary to resume a normal life.

22. The refugees shall be permitted to return in safety, without risk of harassment, intimidation, persecution, or discrimination, particularly on account of their national origin, religious belief, or political opinion.

23. The Parties shall make such modifications to their internal laws as are necessary to facilitate the implementation of the right of return.

24. The Parties shall call upon states that currently host refugees to facilitate the early return of refugees in a manner consistent with human rights and international law.

Legal Status of Returning Refugees

25. Returning refugees should enjoy full civil and social rights and should be protected against discrimination, particularly in employment, education and the right to own property.

26. The returning refugees shall assume Israeli citizenship. This shall end his or her status as a refugee.

Restitution of refugees' Real Property

27. Real property owned by a returning refugee at the time of his or her displacement shall be restored to the refugee or his or her lawful successors.

28. In case where, according to criteria determined by the Repatriation

Commission, it is impossible, impracticable or inequitable to restore the property to its refugee owner, the refugee shall restituted in-kind with property within Israel, equal in size and/or value to the land and other property that they lost.

UNRWA

29. UNRWA should be maintained until this Article is fully implemented and UNRWA' s services are no longer needed. The scope of UNRWA' s services should change appropriately as the implementation of this Article proceeds.

Compensation

30. The State of Israel shall compensate refugees for the property from which they were deprived as a result of their displacement, including, but not limited to, destroyed property and property placed under the custodianship of the "Custodian for Absentees' Property". Compensation should cover loss of property and loss of use and profit from the date of dispossession to the current day ex- pressed in today's value.

31. The State of Israel shall also compensate refugees for suffering and losses incurred as a result of the refugee's physical displacement.

32. Refugees shall, as the case may be, receive repatriation assistance, in order to help them resettle in their places of origin, or rehabilitation assistance, in order to be rehabilitated in the place of their future residence. Funds for Repatriation Assistance and Rehabilitation Assistance should come from the International Fund described below.

33. The rights of return and compensation are independent and cumulative. A refugee's exercise of his or her right of return to Israel shall not prejudice his or her right to receive compensation pursuant to Paragraph 30, nor shall a refugee's receipt of compensation prejudice his or her right of return in accordance with this Article.

34. Unless property is collectively owned, material (and non-material) compensation should be awarded on an individual basis.

35. Pursuant to its responsibility for the compensation to the refugees, set forth in Article 30, Israel shall provide the funds needed for such compensation. These funds should be transferred to the International Funds described below and disbursed by the Fund and the Compensation Commission in accordance with this Article.

36. In particular, and without limiting in any way Israel's responsibility in accordance with Paragraph 35 above, resources available to the "Custodian for Absentees' Property" should be used to compensate the refugees for losses emanating from the dissipation of assets put under its trust. Furthermore, all the records of the "Custodian for Absentees' Property" pertaining to refugees' property shall be transferred to Compensation

Commission.

37. Additional funds from the International Fund referenced below may be used to supplement Israeli funds for compensation purposes.
Compensation for Communal Property

38. The State of Israeli shall pay compensation to the state of Palestine for the Palestinian communal property existing within the internationally recognized borders of the State of Israel.

39. The communal property referenced in Paragraph 36 of this Article shall include real property as well as financial and other movable property.

40. Claims for compensation under Paragraph 36 should be administrated and adjudicated by the Compensation Commission.

Compensation for Host Countries

41. The refugees host countries (i.e., Lebanon, Syria, Jordan, Egypt, Iraq and the Palestinian Authority) shall receive compensation for the significant costs they bore in hosting the refugees.

Compensation Commission

42. A Compensation Commission shall be established to evaluate the Palestinian material and non-material losses, to administer the implementation of the provisions of this Article on compensation, and to administer and adjudicate claims of real property by refugees made pursuant to Paragraphs 27-28.

43. The Commission shall set out the modalities and procedures for submission and adjudication of claims for compensation, and disbursement of payments.

44. The Commission shall be composed of representatives from the Parties, the United States, the EU, the United Nations, the World Bank and donor countries.

45. The Commission shall accept the records of the United Nations Conciliation Commission for Palestine, as well as the records of the "Custodian for Absentees Property" made available to the Commission pursuant to Paragraph 36 above, as *prima facie* evidence of the losses of the refugees. The Commission may also use UNRWA' s records and any other relevant records.

46. The Commission shall send a specialized technical team to evaluate the current value of the property for which compensation is due.

47. The parties should implement the decisions of the Commission and should take appropriate actions to facilitate the execution of the Commission's

decisions. In addition, the state of Israel shall pass, within six months of the date of this Agreement, internal legislation that guarantees access by the individual compensation claimants or their authorized representative to the relevant Israeli state archives in order to facilitate the development of theirs claims.

48. The Commission shall have its headquarters in ___ and may have offices at other locations, as it deems appropriate.

49. The Commission shall establish a mechanism for resolution of disputes arising from the interpretation, application or performance of this Article.

50. Refugees shall have the right to appeal decisions rendered by the Commission pursuant to the Agreement. The Commission shall establish a mechanism for appeals.

International Fund

51. An International Fund shall be established to support and finance the implementation of the provisions in this Agreement related to the resolution of the Palestinian refugee issue.

52. The Fund shall have a Steering Committee responsible for setting priorities and policies for the use of international assistance consistent with the provisions of this Agreement on refugees.

53. The Steering Committee shall be composed of Palestine, the United States, the World Bank, EU, donor countries, __. The Steering Committee will be supplemented by the participation of affected or interested regional parties as might be necessary. The Steering Committee will be responsible for mobilizing, coordinating and managing international financial and other assistance provided to enable implementation of the various aspects and dimensions of this Agreement related to refugees.

54. The World Bank and the United Nations shall be Joint-Secretariat for the Fund. The Secretariat shall be based at the World Bank.

55. The Steering Committee shall ask the World Bank to establish multilateral funding instruments to ensure that each aspect of this Agreement on refugees requiring financial assistance has corresponding instruments available to donors wishing to make use of multilateral mechanisms.

56. The World Bank shall have overall responsibility for ensuring that these funds are managed according to international standards of accounting and transparency. The secretariat shall be responsible for monitoring the overall level of donor contributions and disbursements (both via multilateral and bilateral channels) to support the implementation of the refugee agreement.

57. Assistance from the Fund shall include *inter alia* support for: return, compensation, repatriation assistance, rehabilitation assistance, transitional

costs and related socio-economic assistance. Assistance for compensation shall be disbursed through the Compensation Commission.

58. Recipients of funds channeled through the Fund shall include *inter alia*: refugees, relevant Palestinian Ministries and public bodies, host Government Ministries and public bodies, and international public or private bodies selected to implement project assistance or provide technical or transitional support.

General

59. The Parties should make appropriate modifications to their internal laws to facilitate the execution of this Article.

End of Claims

60. The full implementation of this Article shall constitute a complete resolution of the refugee problem and shall end all claims emanating from that problem.

61. The right of each refugee in accordance with United Nations General Assembly Resolution 194 shall not be prejudiced until the refugee has exercised his right of return and received compensation under this Article or until the refugee has, based on his voluntary choice, received compensation and settled somewhere else.

Israel Private Response to the Palestinian Refugee Proposal, "Non-Paper - Draft 2", Taba, Jan. 23, 2001

The significance of resolving the refugee problem

1. The issue of the Palestinian refugees is central to Israeli-Palestinian relations. Its comprehensive and just resolution is essential to creating a lasting and morally scrupulous peace.

Narrative

2. The State of Israel solemnly expresses its sorrow for the tragedy of the Palestinian refugees, their suffering and losses, and will be an active partner in ending this terrible chapter that was opened 53 years ago, contributing its part to the attainment of a comprehensive and fair solution to the Palestinian refugee problem.

3. For all those parties directly or indirectly responsible for the creation of the status of Palestinian refugeeism, as well as those for whom a just and stable peace in the region is an imperative, it is incumbent to take upon themselves responsibility to assist in resolving the Palestinian refugee problem of 1948.

4. Despite accepting the UNGAR 181 of November 1947, the emergent State of Israel became em- broiled in the war and bloodshed of 1948-49, that led to victims and suffering on both sides, including the displacement and dispossession of the Palestinian civilian population who became refugees.

These refugees spent decades without dignity, citizenship and property ever since.

5. Consequently, the solution to the refugee issue must address the needs and aspirations of the refugees, while accounting for the realities since the 1948-49 war. Thus, the wish to return shall be implemented in a manner consistent with the existence of the State of Israel as the homeland for Jewish people, and the establishment of the State of Palestine as the homeland of the Palestinian people.

6. A just settlement of the refugee problem in accordance with UNSCR 242 must lead to the implementation of UNGAR 194 (Palestinian Position).

7. Since 1948, the Palestinian yearning has been enshrined in the twin principles of the "Right of Return" and the establishment of an independent Palestinian State deriving the basis from International Law. The realization of the aspirations of the Palestinian people, as recognized in this agreement, includes the exercise of their right to self-determination and a comprehensive and just solution for the Palestinian refugees, based on UNGAR 194, providing for their return and guaranteeing the future welfare and well-being of the refugees, thereby addressing the refugee problem in all its aspects.

8. Regarding return, repatriation and relocation, each refugee may apply to one of the following programs, thus fulfilling the relevant clause of UNGAR 194:

a. To Israel - capped to an agreed limit of XX refugees, and with priority being accorded to those Palestinian refugees currently resident in Lebanon. The State of Israel notes its moral commitment to the swift resolution of the plight of the refugee population of the Sabra and Shatila camps.
b. To Israeli swapped territory. For this purpose, the infrastructure shall be prepared for the absorption of refugees in the sovereign areas of the State of Israel that shall be turned over to Palestinian sovereignty in the context of an overall development program.
c. To the State of Palestine: the Palestinian refugees may exercise their return in an unrestricted manner to the State of Palestine, as the homeland of the Palestinian people, in accordance with its sovereign laws and legislation.
d. Rehabilitation within existing Host Countries. Where this option is exercised the rehabilitation shall be immediate and extensive.
e. Relocation to third countries: voluntary relocation to third countries expressing the willingness and capacity to absorb Palestinian refugees.

Definition of a Refugee

9. See Article 6 of Palestinian paper as a Palestinian Position

Compensation and Rehabilitation

10. Each refugee may apply for compensation programs and rehabilitation assistance as shall be detailed in Articles XX. For this purpose an International

Commission and an International Fund shall be established (Articles XX below) that shall have full and exclusive responsibility for the implementation of the resolution of the refugee problem in all its aspects, including the gathering and verification of claims, and allocation and disbursement of resources, to be conducted in accordance with the following principles:

a. These programs shall address financial and in-kind compensation for displacement (moral suffering - Palestinian based position) and material loss, as well as the economic growth of the relevant communities. The dual objectives of individual historic justice and communal economic development shall guide the elaboration of these programs.
b. Programs of a compensatory nature shall be devised on both per-capita and claims based criteria, the former being of a fast-track nature (as detailed in Article XX below), and shall be managed according to a definitive and complete register of property claims to be compiled by an appropriate arm of the International Commission and Fund.
c. The Rehabilitation Assistance and Compensation Programs shall form an integral part of efforts to promote economic development and social regeneration of both the individuals concerned and the communities and societies in which they live or resettle, thus incorporating options or baskets of assistance (to be detailed).
d. Compensation for Host Countries will be in accordance with Article XX below.
e. The international community and the State of Israel shall be the principal contributors to the International Fund up to an agreed ceiling respectively. Israeli fixed assets that will remain in the State of Palestine following the Israeli withdrawal will be transferred to become assets of the International Fund in lieu of an amount of $XX, constituting an integral part of the overall lump-sum of $XX.

Host Countries

11. The refugees' host countries shall receive compensation for the significant costs they bore in hosting the refugees. Future rehabilitation costs and investments shall be addressed according to the details of this agreement, via bilateral arrangements between the host countries and the International Commission.

International Commission

12. The International Commission shall consist of the Palestinian State, Host Countries, Israel and members of the international community, including the United Nations, the World Bank, The European Union and the G8, as well as other relevant international institutions. The International Commission shall have full and exclusive responsibility for implementing the resolution of the refugee issue in all its aspects. The mandate, structure and mode of operation of the International Commission shall be detailed in this agreement.

UNRWA

13. The phased termination of UNRWA shall be in accordance with a timetable to be agreed upon between the parties, and shall not exceed five years. The scope of UNRWA's services should change appropriately as the implementation of this agreement proceeds (whereby the first phase shall include the transfer of the service and administrative functions of UNRWA to host governments and modalities for the transfer of relevant functions to the International Commission, as well as the dis- continuation of the status of Palestinian refugee camp - new Palestinian text to be suggested).

Priority to Lebanese refugees

14. Preference in all the above programs shall be accorded to the Palestinian refugee population in Lebanon.

Former Jewish refugees

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

End of claims

16. The Parties agree that the above constitutes a complete and final implementation of Article 11 of UNGAR 194 of 11th December 1948, and consider the implementation of the agreed programs and measures as detailed above constitute a full, final and irrevocable settlement of the Palestinian refugee issue in all its dimensions. No additional claims or demands arising from this issue shall be made by either Party. With the implementation of these articles there shall be no individuals qualified for the status of a Palestinian Refugee.

Sources: Abdul Hadi, Mahdi, ed. 2007. *Documents on Palestine*. 8 vols. Jerusalem: PASSIA - Palestinian Academic Society for the Study of International Affairs; The Palestine Papers, al-Jazeera Transparency Unit <http://transparency.aljazeera.net/en/projects/thepalestinepapers/>; and, UCDP Conflict Encyclopedia <http://www.ucdp.uu.se/gpdatabase/search.php>. The 1967 agreement between Israel and Jordan is on file with the author.

Table A1.2 - Peace Agreements, Provisions on Civil Society

Israeli-Palestinian Interim Agreement Agreement on the West Bank and Gaza Strip, Sept. 28, 1995
Article XXV Cooperation Programs 1. The Parties agree to establish a mechanism to develop programs of cooperation between them. Details of such cooperation are set out in Annex VI. 2. A Standing Cooperation Committee to deal with issues arising in the context of this cooperation is hereby established as provided for in Annex VI.
Annex VI - Protocol Concerning Israeli-Palestinian Cooperation Programs, Sept. 28, 1995
Article VIII - The People-to-People Program 1. The two sides shall cooperate in enhancing the dialogue and relations between their peoples in accordance with the concepts developed in cooperation with the Kingdom of Norway. 2. The two sides shall cooperate in enhancing dialogue and relations between their peoples, as well as in gaining a wider exposure of the two publics to the peace process, its current situation and predicted results. 3. The two sides shall take steps to foster public debate and involvement, to remove barriers to interaction, and to increase the people to people exchange and interaction within all areas of cooperation described in this Annex and in accordance with the overall objectives and principles set out in this Annex.

Sources: Abdul Hadi, Mahdi, ed. 2007. *Documents on Palestine*. 8 vols. Jerusalem: PASSIA - Palestinian Academic Society for the Study of International Affairs; UCDP Conflict Encyclopedia <http://www.ucdp.uu.se/gpdatabase/search.php>.

Table A1.3 - Declarations, Palestinian Refugees

Resolutions of the General Refugee Congress - Ramallah, Mar. 17, 1949
Resolutions On the 17th of March 1949, a Congress representing all refugees residing in the Arab areas of Palestine was convened at Ramallah to consider the refugee question in all its aspects. After lengthy deliberations the following resolutions were passed: 1. The refugees insist on their return to their homes as of right without awaiting the ultimate settlement for the Palestine question. 2. The refugees ask to be fully compensated for all material losses suffered by them before and after the end of the mandate. 3. That adequate safeguards be taken to ensure that refugee property is returned to the refugees immediately upon their return. 4. Adequate guarantees be given to insure the re-establishment of the Refugees their homes and in their liberties. 5. That the General Refugee Council elected hereafter shall have the exclusive right to represent the refugees in all matters and that no other body shall have the right to represent them. 6. The General Refugee Council shall be constituted as follows: a. The General Council shall consist of 40 members to be elected by this Congress. (In implementation of this resolution the Congress elected, whose names were inscribed in the Refugee Office. Ten seats were reserved for ten duly elected representatives for those refugees residing in the Hashemite Kingdom of TransJordan). b. An Executive Committee of ten members of the General Council to be elected by the Council. (The General Council duly elected ten members whose names were inscribed in the Refugee Office). c. The Executive Committee shall elect from its members the required staff from the Congress Refugee Office. d. The Executive Committee shall be bound by the resolutions of the General Refugee Council. e. The Congress further empowers the General Council to increase its members from time to time to provide the fullest possible representation of refugees in all Arab countries. 7. The Congress empowers the General Refugee Council to contact all political and international organisations for the purpose of attaining the resolutions of

this Congress.

Secretary
General Refugee Congress
(two signatures)

A Statement of the Aims and Policy of the Palestine Arab Refugee Congress, Oct. 9, 1949

Introductory:

The Arab refugees resident in Irbid and Arab Palestine, excepting those in the Gaza enclave, are as fully and as constitutionally represented as circumstances permit by the Palestine Arab Refugee Congress, first called at Ramallah on 17 March 1949 and expanded to full representative capacity in September, 1949.

1. The Palestine Arab Refugee Congress upholds most strongly the right of the refugees to return to their homes, to regain their property, both movable and immovable, and to their right to obtain compensation for loss or damage to such property as defined in the General Assembly resolution of 11th December 1948. The Congress affirms that these rights are inalienable and cannot be fettered, relinquished, conditioned or waived by any Government, authority or body other than themselves.

2. The Palestine Arab Refugee Congress believes that the alteration of the present armistice lines in conformity with the United Nations Partition Plan for Palestine of November, 1947 would facilitate the repatriation of large numbers of refugees to their former homes and would constitute a major and effective step towards the satisfactory settlement of the refugee problem.

3. The Palestine Arab Refugee Congress recognises the possibility that some refugees, for varying reasons, may not wish to return to their former domiciles and that they may be wish to be settled temporarily or permanently elsewhere.

4. In order to preserve as far as possible the entity of Arab Palestine, and in order to satisfy the natural longing of a people for its native soil and climate, the Palestine Arab Refugee Congress affirms that it will not concur in any proposal to resettle Palestine Arab refugees in any of the other Arab countries until the maximum number possible has been resettled firstly in Palestine as a whole and secondly in the Hashemite Kingdom of Jordan.

5. The Palestine Arab Refugee Congress rejects the Israeli contention that the resettlement of the refugees in Israel or Israeli occupied territory is a matter for the Israelis alone, and holds that it is a matter for the United Nations authority to carry out such resettlement in consultation with the competent authorities and the refugees themselves.

6. The Palestine Arab Refugee Congress affirms the inalienable right of the refugees to dispose of their former property as they see fit and their right to

claim and receive full and equitable compensation for any property relinquished, destroyed, lost or damaged as a result of their flight or ejection. It also affirms that the assessment of and payment of compensation, where it is applicable, be carried out under the strict supervision of the United Nations and in close consultation with the refugees themselves.

7. While the Palestine Arab Refugee Congress is not wanting in gratitude and appreciation for the direct assistance that has so generously been afforded to the refugees until now, it fully welcomes the Economic Survey Mission's intention to replace it by relief through employment and offers its full and complete co-operation with the reservation that the refugees shall not be bound by any decision that may conflict with the aims of the Congress or prejudice the rights of the refugees as defined in the General Assembly resolution of the 11th of December 1948.

8. The Palestine Arab Refugee Congress proposes to set up the necessary machinery for the registration of Arab refugees in Palestine by professions; former occupations and property holdings as well as former places of origin. This vital information will be made available to the Economic Survey Mission with a view to opening an employment exchange as soon as employment schemes are approved and with a view to facilitating the later payment of compensation where this is applicable and the subsequent return of refugees to their homes. The Palestine Arab Refugee Congress asks the Economic Survey Mission for its full co-operation in return.

9. The Palestine Arab Refugee Congress proposes to incorporate in the Congress, the General Council and Executive Committee duly elected representatives on behalf of those refugees in the other Arab countries not already represented in the Congress.

The above statement of the aims and policy of the Palestine Arab Refugee Congress was considered and approved by the Executive Committee in a meeting held at Ramallah on the 9th October 1949.

Mohammed El-Yehia
Member
Executive Committee

Aziz Shehadeh
Secretary
Executive Committee

Nassib Bulos
Member
Executive Committee

Recommendations and Decision, First Popular Refugee Conference, Deheishe Refugee Camp, Bethlehem, Sept. 13, 1996

To our struggling people, to our refugees everywhere in the Diaspora:

The drafting committee for the recommendations and decisions of the first refugee conference in the district of Bethlehem, held in Deheishe refugee camp on 13 September 1996, presents to the people in general, and to the refugees in particular, the recommendations compiled in broad, popular meetings held in all refugee sites in the Bethlehem district in the course of the past months, and in a series of workshops conducted between June 4-14, 1996. These recommendations were discussed by the participants on the day of the conference, some of them were cancelled and others amended, the last section was added - all of it in a constructive and democratic atmosphere, which allowed every individual refugee participant to express freely his/her opinions and suggestions concerning this conference document. This document is a product of a collective effort of the refugees in the Bethlehem district. Their pluralistic and democratic approach and mentality made possible the creation of this document, which will function as a tool for measuring and judging positions, and will serve as a guideline to every refugee in his/her evaluation and judgement of the work of the elected representatives.

Dear refugees wherever you are, join us! Here we are, starting the spark and knocking the walls of the container [referring to Ghassan Kanafani's famous novel "Men Under the Sun"]. Hold your popular conferences wherever you are. Move forward!

The Drafting Committee of the Recommendations of the First Conference of the Refugees in the Bethlehem District Deheishe, 13 September 1996

Part I. General Principles

We, the refugees in the district of Bethlehem, participants in the conference in Deheishe refugee camp, the spring of national spirit, declare the following:

1. Time has come for the refugee community to organize itself in popular committees and to design a strategic program of struggle based on the hidden capacities of the people - the refugees themselves - who, with their unity, patience, and clear objectives, have maintained the struggle for their national rights. The refugees thus still hold a basic advantage in the struggle against the enemy, especially in the current international, Arab, and local circumstances. In order to achieve the implementation of the internationally legitimized resolutions in the era of the final status negotiations between Israel and the PNA, such programs must also take into consideration the strength and capacities found on the Arab and international level in regards to the refugee issue.

2. The refugees in the Bethlehem district express their concern and a warning against the implications of the weakness of the Oslo agreements on the refugee issue, and state their readiness to continue, and to renew, the struggle for the transfer of negotiations on the refugee question from the current bi-

lateral forum to the hall of the United Nations.

3. Based on the above, we, the participants in the conference, declare to the public and swear to our people and to our refugee brothers all over the Diaspora, that we will continue the struggle for the implementation of UN Resolution 194 which states our right to return and to compensation. The strength of this resolution derives from the international consensus that has prevailed for decades. We declare our commitment to the internationally legitimized stand on Palestinian refugee issues, especially to resolutions 513, 2452 (1968) and 2535 (1969), 2963 (1972) and General Assembly Resolution 3236 (1974) which recognized the Palestinian people's unconditional right to self determination and confirmed the refugees' right to return to their homes and property.

4. In addition to our demand for the implementation of the UN resolutions, we raise our strong demand for the implementation of the International Declaration of Human Rights, particularly of Article 13 related to our issue.

5. Any negotiations or programs on the refugee question which bypass the international resolutions and decisions on our right to return to our homeland and property, or contradict the international human rights declaration, will receive, from our side, nothing but struggle and resistance. Our criteria for support and acceptance of any party, regardless whether local or international, will be its commitment to the international resolutions on the refugees and their implementation.

6. By this call for action and struggle for the implementation of the international resolutions, we demand from the bodies [i.e. refugee councils] to be elected, as well as from the PNA, to join efforts against calls for the solution of the refugee question in regional frameworks [resettlement], and to always take into consideration Arab solidarity and support. However, such Arab coordination must not be at the expense of the independent decision of the Palestinian people and their right of return.

7. The participants warn of the dangers of UNRWA involvement in the current political process, which favors the opponent and liquidates UNRWA's original objectives. While we condemn strongly all approaches aimed at the liquidation of UNRWA, we demand Arab and international intervention in order to re-establish UNRWA's role based on its responsibilities and internationally legitimized decisions. We demand the activation of UNRWA's bodies and departments for the implementation of the international decisions, particularly Resolution 194, and steps to oblige it to act - in the framework of the UN and outside it - in accordance with international decisions, and not by opposing or bypassing them.

8. In this context, the participants demand all parties - Arab and international - who respect the international legitimacy, to intervene in order to connect UNRWA with the UN High Commission for Refugees (UNHCR) whose operation is based on the UN refugee charter. This charter uses a broader definition of refugees than UNRWA, and can cover all our refugees. Moreover,

it forbids the host countries to issue citizenship status to the refugees. Also, UNCHR's political authority and role is stronger when it comes to the matter of refugee repatriation.

9. It is important to remember that the refugees in the Bethlehem district are following with concern some of the Arab parties in the Multilateral Refugee Working Group, which are bypassing and retreating from internationally legitimized decisions, and trying to avoid the Palestinian national rights, the PLO, and the right of return by supporting resettlement schemes as an alternative to the right of return. Therefore, we demand these parties to respect the international legitimacy and our rights, and we remind them that the current balance of forces may not last. Although the US may be willing to provide funds for the resolution of their financial crisis, it will not be able to provide security and protection. Our national and Arab rights are unnegotiable and not subject to deals.

10. Therefore the Conference appeals to Arab host countries to understand the specific character the refugee camps on their territory, and to abstain from engagement in regional politics which will be at the expense of refugees' right to their historical homeland.

11. In the framework of the general principles, the participants confirm that the refugee bodies to be elected should design programs which serve not only to continue the struggle for our legitimate national rights, but are able to promote democracy, civil and human rights. Any separation between these two dimensions is unacceptable. It should be clear that popular refugee support for parties - elected or not, official or not - and for any negotiating team, will depend on their respect for democracy, national and human rights.

Part II. The Palestinian National Authority

The participants, while understanding the restrictive circumstances of the PNA, its role in the struggle for the national rights, and the numerous obstacles to national reconstruction, believe that refugee mobilization for the implementation of internationally legitimized decisions does not contradict the PNA's aims. Therefore we demand that the PNA not only understand the objective need for the establishment of a popular refugee movement, but also support this movement with the following:

1. Based on study of past experience, the PNA must reconsider its negotiation program and methods. All negotiations on the refugee question must be channelled back to the arena of the United Nations and its bodies, so as to pressure the UN and the international community to implement the legitimate resolutions and all relevant human rights declarations. [The PNA must] take its source of power from the people, and stand up against any effort to cancel, or change these international resolutions.

2. The PNA must design a comprehensive policy aimed at strengthening Palestinian-Arab-Islamic coordination so as to unify positions and their implementation, and in order to formulate a united Palestinian-Arab-Islamic

strategy in refugee negotiations, which will adhere to internationally legitimized decisions (including all relevant human rights conventions) that emphasize our right of return, self determination, and the establishment of the independent Palestinian state. These resolutions, especially Resolution 194, must become a principled stand from which no opinion or move by the negotiators should deviate.

3. The new negotiating strategy must be based on the positions of refugees all over the Diaspora, and their opinion must be taken into consideration in all matters pertaining to them, their struggle, and their future.

4. We demand that the PNA and the PLO, the only legitimate representative of our people, set initiatives to support the efforts for the establishment and development of bodies of coordination between the camps and dispersed refugees, so as to confront the schemes aimed at transforming us into separate communities in different countries. We demand [that the PNA and the PLO] support all activities aimed at mobilizing the refugees under the slogan, "the right of return is a sacred right and the red line which must not be crossed."

5. [We demand that the PNA] reject the policy of transfer of UNRWA tasks to the PNA, and oppose efforts to legally terminate UNRWA, a step which would lead to the criminal dispersion of the Palestinian people and to its expulsion from the homeland.

6. [We demand that the PNA] reject the concept of "compensation" as an alternative to the right of return as a legal concept.

7. [We demand that the PNA] refuse its support of all tendencies and efforts aimed at transforming UNRWA into a financing or development agency in accordance with US policy.

8. [We demand that the PNA] design a set of strategic plans for the improvement of living conditions in the refugee camps and outside them, which protect the identity of the camps and serve refugee interests, and do not go to the expense of the refugees' national right of return.

9. We demand that PNA include in its school curricula materials on the refugee issue, on the massacres our people have witnessed, the destruction of the villages and the suffering of those expelled, the long heroic struggle and its tradition, the heavy price paid, and about the justice of our case.

10. Concerning refugee participation in municipal elections, and in the light of the current hot debate on this matter, we recommend the following: refugee camps should be regarded as one social, political, and legal unit with a distinguished character whose identity must be protected. Therefore they must not be pushed, or included, in municipal elections; however, refugees who reside in cities and pay municipal taxes, have the right to participate in the elections, including the right to vote and stand for election, as they see fit.

Part III. Organization and Administration

1. The participants recommend that the popular conferences in the remaining districts should be held on the basis of the experience in Bethlehem and the Gaza Strip.

2. The participants decided to elect the Refugee Council of the Bethlehem District. They recommend that similar councils be elected in each district and in all sites in the Diaspora. Each district conference will decide the number of members elected to its council. In the case of Bethlehem, we elected a 49 member Council.

3. The elected Council members will later elect a "bureau" (or any other name chosen) which will execute the decisions and recommendations of the Council in the periods between its meetings. Moreover, the "bureau" will have to implement the recommendations of the district conference.

4. The "bureau" (or any other name) must join the councils elected in other districts and in the Diaspora in order to collectively prepare a General Refugee Conference both inside and outside [Palestine].

5. The General Palestinian Refugee Conference inside and in the Diaspora will elect one leading "bureau" to follow up the struggle for the refugees' national rights (right of return), and the struggle for civil refugee rights in their areas of domicile, e.g. the right to work, education, health, environment, culture, movement, expression, and all those human and civil rights protected by international conventions. To this end, carefully designed and comprehensive programs should be used to achieve civil rights parallel to the struggle for national rights based on internationally legitimized resolutions.

6. The participants recommend that the elected Council coordinate its work with other elected councils in the Diaspora so as to transfer the refugee file [from the PNA] to these democratically elected bodies. The General Refugee Conference will thus be the only body authorized to negotiate - through the PLO - on the refugee issue. [These negotiations] will be held in the arena of the United Nations and will be based on international resolutions and Arab and international solidarity. The General Refugee Council elected by the General Refugee Conference will be the body to follow up the refugee issue. The time of paternalism and of appropuses imposed on the refugees without prior consultation will thus end.

7. Frameworks of coordination must be established in order to connect the various initiatives in the Diaspora; the experience of former popular activities must be used in order to bypass foreign restrictions. A refugee charter should be drafted in order to regulate the relations between the various regions in the Diaspora; this charter must be based on the right of return and internationally legitimized decisions.

8. We recommend the organization of conferences, events, and campaigns with a popular character in all refugee sites, inside and outside, emphasizing

the right of return and explaining current developments related to the refugee issue.

9. [We recommend] the establishment of local, non-governmental organizations in all refugee sites; NGOs should work in a coordinated fashion in each region to implement programs based on social needs; [these programs] should be conducted professionally in order to avoid political factionalism (e.g. Committees in Defense of the Right of Return in Lebanon);

10. The elected local refugee councils should establish a center for documentation and for the collection of data and information on refugees, which will - at a later stage - serve as the basis for the establishment of a general refugee information center. This is because we cannot rely on data issued by UNRWA, whose figures, especially in the field of planning, are not always accurate.

11. We recommend that all elected councils in the Diaspora proceed on the basis of democracy, pluralism, flexibility, and tolerance in order to represent all the refugee strata, and in order to preserve the independence of the decisions of the refugee movement; to resist all attempts of co-optation, so as to preserve the refugee issue as the national and un-negotiable priority of the Palestinian people.

12. The participants recommend the publication of newsletters, magazines, and other written materials specializing on the refugee issues.

13. Concerning the Service Committees Suggested by the PNA Local Affairs Ministry in the refugee camps, we declare the following: The Ministry of Local Affairs which proposed the establishment of such committees must explain clearly what are the aims, authorities, organizational structure, and expected role of these committees. Based on this information, the decision whether or not to cooperate with these committees will be taken.

Part IV. Civil Rights

1. The participants recommend to the elected Council to organize study days, workshops, lectures, debates, and opinion polls in order to explore refugee needs and priorities.

2. The participants recommend to the elected refugee councils to coordinate amongst each other and with the PNA, in order to design development plans for the refugee camps which will be complementary to the plans aimed at achieving the right of return and national rights. No way should the [development plans] contradict the latter. The role of the local NGOs, working for the achievement of civil rights and the fulfillment of the various needs, will be defined accordingly. [The participants recommend] to focus the effort on the reduction of housing density in the refugee camps, on the alleviation of poverty and all other sources of suffering, and to work for general and mental refugee health. The fear and concern of resettlement schemes must not prevent the provision of professional services for the improvement of conditions in regard

to work opportunities, education, health, environment, and other social affairs. Studies and research are crucial in order to identify and tackle the relation between living conditions and their effect on political attitudes towards the refugee issue and *vice versa*. It is time for refugees, inside or outside the camps, to live in dignity.

Part V. General National Issues

1. The participants at the Deheishe conference emphasize that they are part and parcel of the Palestinian people and an important factor in the struggle for national liberation aimed at achieving self determination, the establishment of the independent Palestinian state with Jerusalem as its capital, and the right of return of all refugees to their homeland.

2. The participants emphasize their strong support for the Palestinian people's right to Jerusalem as the capital of its independent state; the right of the people on Jerusalem is un-negotiable and not subject to bargaining.

3. The participants express their emotional and moral unity with the prisoners in Israeli jails. We call for their immediate release and demand that the PNA place the issue of political prisoners at the top of their agenda.

4. The participants, deeply concerned about the ongoing construction of settlements, demand the formulation of a comprehensive national plan, based on the peoples' strength, in order to fight the settlers and to protect the land.

5. Stating our determination to cling to our national rights, we are not opposed to the international desire for peace in the region, a peace which will be for the peoples of the region. However, we emphasize that there will be no peace, if our national rights - especially our right to return to our homeland as protected by international law - are neglected. Therefore, peace in the Middle East is directly linked to the Palestinian people's right to self determination, and to the recognition of all its national rights by means of the implementation of the internationally legitimized resolutions, most fundamentally the right of return.

Conclusion

The participants declare that the right of return and the refugee issue are the core of the Israeli- Palestinian conflict. Therefore, any effort at the establishment of a just peace in the region will fail if it does not include a just solution for the refugees based on internationally legitimized resolutions, especially Resolution 194.

We do not oppose peace. We are for a peace built on mutual respect for internationally recognized rights, and hold that the implementation of the right of return and the respect of the Palestinian national rights are the key to ending the conflict in the whole region.

Sources: Avi Plascov, *The Palestinian Refugees in Jordan, 1948-1957*, London: Frank Cass, 1989, 220-223; *Article* 74, 17 (1996), 3-6.

Table A1.4 - Estimated Palestinian Refugee Population, 1950-2011

Year	1948 Refugees		1967 Refugees
	Registered	Non-registered	
1950	914,221	304,740	-
1955	905,986	301,995	-
1960	1,120,889	373,630	-
1965	1,280,823	426,941	-
1970	1,425,219	475,073	266,092
1975	1,632,707	544,236	316,034
1980	1,844,318	614,773	375,349
1985	2,093,545	697,848	445,797
1990	2,422,514	840,838	529,467
1991	2,519,487	839,829	547,998
1992	2,648,707	882,902	567,178
1993	2,797,179	932,393	587,029
1994	3,006,787	1,002,262	607,575
1995	3,172,641	1,057,547	628,841
1996	3,308,133	1,102,711	650,850
1997	3,417,688	1,139,229	673,630
1998	3,521,130	1,173,710	697,207
1999	3,625,592	1,208,530	721,609
2000	3,737,494	827,022	743,257
2001	3,874,738	857,564	765,555
2002	3,973,360	878,050	788,521
2003	4,082,300	897,255	812,177
2004	4,186,711	916,700	836,542
2005	4,283,892	935,641	861,639
2006	4,396,209	957,963	887,488
2007	4,510,510	975,373	912,870
2008	4,671,811	999,993	939,070
2009	4,766,670	1,017,639	966,115
2010	4,966,664	1,042,420	993,939
2011	4,797,723	1,028,130	1,022,546

Source: Table 1.1 - Palestinian Refugees and IDPs by Group, in Nidal al-Azza (ed.), *Survey of Palestinian Refugees and Internally Displaced Persons.* Bethlehem: BADIL Resource Center for Palestinian Residency & Refugee Rights, 2012, 4, 26-27. The following explanatory notes are reproduced verbatim from the Survey.

(1) *UNRWA registered 1948 refugees*: UNRWA reported 4.8 million registered refugees as of 31 December 2011. UNRWA figures are based on data voluntarily supplied by registered refugees. UNRWA registration statistics do not claim to be and should not be taken as statistically valid demographic data. This information is collected by UNRWA for its own internal management purposes, and to facilitate certification of refugee eligibility to receive education, health, and relief and social services. New information on births, marriages, deaths, and change in place of residence is recorded only when a refugee requests the updating of the family registration card issued by the Agency. UNRWA does not carry out a census, house-to-house survey, or any other means of verifying place of residence. Refugees will normally report births, deaths, and marriages when they seek a service from the Agency. Births, for instance, are reported if the family makes use of UNRWA maternity and child health services, or when the child reaches school age if admission is sought to an UNRWA school, or even later if neither of these services is needed. Deaths tend to remain under-reported. While families are encouraged to have a separate registration card for each nuclear family (parents and children), this is not obligatory. Family size information may therefore include a mix of nuclear and extended families, in some cases including as many as four generations.

(2) *Non-registered 1948 refugees*: Approximately 1,028,130 Palestinian 1948 refugees are non-registered refugees. This is calculated based on the assumption that “UNRWA registered refugees represent approximately three-quarters of Palestinian refugees worldwide.” This assumption was applied to the calculation for the three regions: Syria, Lebanon and Jordan. As for the oPt, the results of the 2007 PCBS censuses revealed that non-registered 1948 refugees represent 1.43 percent of the total population in the oPt. As for the growth rate it was revised to 2.86 for 2007, 2.87 for 2008 and 2.88 for the years 2009-2011.

(3) *Alternative estimates*: Based on *The Palestinian Nakba 1948: the Register of Depopulated Localities in Palestine*, London: The Palestinian Return Center, 1998; this source assumes that non registered refugees compose about 27.1% of the registered refugees. This leaves the figure at approximately 1,300,183 which is higher than the above proposed figure.

(4) *Estimates of the 1948 Palestinian refugee population*: The total number of 1948 refugees is calculated by combining UNRWA-registered refugees and non-registered refugees as described above; it amounts to 5,825,853 at the end of 2011.

(5) *Alternative estimates*: Based on *The Palestinian Nakba 1948: The Register of Depopulated Localities in Palestine*, London: The Palestinian Return Center, 1998; this source assumes an average annual growth rate of 3.5 percent for the Palestinian refugee population based on British demographic data from 1947. Accordingly, the total number of estimated 1948 refugees at the end of 1998 is 4,942,121. If an adjusted annual growth of 2.5 percent is applied from 1999 onwards – giving proper consideration to the decline of the fertility rate and the annual growth rate - the total number of 1948 refugees (registered and non- registered) amounts to 6,812,768 by the end of 2011.

(6) *1967 Palestinian refugees*: Approximately 1,022,546 persons as 1967 refugees calculated at end of 2011. This was calculated by projection of 240,000 non-refugees who were displaced for the first time in 1967. It is based on a growth rate of 3.5 till 1999, 3.0% during 2000-2006, 2.86 for 2007, 2.87 for 2008 and 2.88 for the years 2009-2011. Figures are derived from *The Report of the Secretary-General under General Assembly Resolution 2252 (EX-V) and Security Council Resolution 237 (1967)*, UN Doc. A/6797, 15 September 1967. This figure includes only persons who were externally displaced for the first time in 1967. It does not include internally displaced persons and 1948 refugees displaced for a second time in 1967. See also Takkenberg, Lex, *The Status of Palestinian Refugees in International Law*, Oxford: Clarendon Press Oxford, 1998, 17; approximately 193,500 Palestinian refugees were displaced for a second time, while 240,000 non-refugees were displaced for the first time, bringing the total to over 430,000 persons displaced in 1967. The figure also excludes those refugees who returned under a limited repatriation program between August and September 1967. The figure does not account for Palestinians who were abroad at the time of the 1967 war and unable to return, refugees reunified with family inside the oPt, or those refugees who returned after 1994 under the agreements of the Oslo peace process.

Table A1.5 - United Nations General Assembly Resolutions

GA Res. 3375, 30th Sess., 2399th Plenary Mtg., UN Doc. A/RES/3375, Nov. 10, 1975 - Invitation to the Palestine Liberation Organization to participate in the efforts for peace in the Middle East
Convinced that the participation of the Palestinian people is essential in any efforts and deliberations aiming at the achievement of a just and lasting peace in the Middle East,
GA Res. 3414, 30th Sess., 2429th Plenary Mtg., UN Doc. A/RES/3414, Dec. 5, 1975 - The Situation in the Middle East
Convinced that the early reconvening of the Peace Conference on the Middle East with the participation of all the parties concerned, including the Palestine Liberation Organization, is essential for the realization of a just and lasting settlement in the region, 4. Requests the Security Council, in the exercise of its responsibilities under the Charter, to take all necessary measures for the speedy implementation, according to an appropriate time-table, of all relevant resolutions of the General Assembly and the Security Council aiming at the establishment of a just and lasting peace in the region through a comprehensive settlement, worked out with the participation of all parties concerned, including the Palestine Liberation, Organization, and within the framework of the United Nations, which ensures complete Israeli withdrawal from all the occupied Arab territories as well as full recognition of the inalienable national rights of the Palestinian people and the attainment of those rights;
GA Res. 33/28, 33rd Sess., 73rd Plenary Mtg., UN Doc. A/RES/33/28, Dec. 7, 1978 - Question of Palestine
4. Declares that the validity of agreements purporting to solve the problem of Palestine requires that they be within the framework of the United Nations and its Charter and its resolutions on the basis of the full attainment and exercise of the inalienable rights of the Palestinian people, including the right of return and the right to national independence and sovereignty in Palestine, and with the participation of the Palestine Liberation Organization;
GA Res. 34/65, 34th Sess., 83rd & 100th Plenary Mtg., UN Doc. A/RES/34/65, Nov. 29, 1979 - Question of Palestine
The General Assembly, Recalling and reaffirming the declaration, contained in paragraph 4 of its resolution 33/28 A of 7 December 1978, that the validity of agreements purporting to solve the problem of Palestine requires that they be within the framework of the United Nations and its Charter and its resolutions on the basis of the full attainment and exercise of the inalienable rights of the Palestinian people, including the right of return and the right to national independence and sovereignty in Palestine, and with the participation of the

Palestine Liberation Organization,

Taking note of paragraphs 33 to 35 of the report of the Committee on the Exercise of the Inalienable Rights of the Palestinian People,

1. Notes with concern that the Camp David accords have been concluded outside the framework of the United Nations and without the participation of the Palestine Liberation Organization, the representative of the Palestinian people;

GA Res. 35/169, 35th Sess., 95th Plenary Mtg., UN Doc. A/RES/35/169, Dec. 15, 1980 - Question of Palestine

A

3. Stresses the basic principle that the future of the Palestinian people cannot be discussed in their absence and, therefore, calls once more for the invitation of the Palestine Liberation Organization, the representative of the Palestinian people, to participate, on the basis of General Assembly resolution 3237 (XXIX) of 22 November 1974, in all efforts, deliberations and conferences on the Middle East which are held under auspices of the United Nations, on equal footing with other parties.

B.

3. Declares that no State has the right to undertake any actions, measures or negotiations that could affect the future of the Palestinian people, its inalienable rights and the occupied Palestinian territories without the participation of the Palestine Liberation Organization on an equal footing, in accordance with the relevant United Nations resolutions, and rejects all such actions, measures and negotiations.

GA Res. 43/176, 43rd Sess., 82nd Plenary Mtg., UN Doc. A/RES/43/176, Dec. 15, 1988 - Question of Palestine

2. Calls for the convening of the International Peace Conference on the Middle East, under the auspices of the United Nations, with the participation of all parties to the conflict, including the Palestine Liberation Organization, on an equal footing, and the five permanent members of the Security Council, based on Security Council resolutions 242 (1967) of 22 November 1967 and 338 (1973) of 22 October 1973 and the legitimate national rights of the Palestinian people, primarily the right to self-determination;

Source: United Nations Information System on Palestine (UNISPAL) <http://unispal.un.org/unispal.nsf/udc.htm>.

Table A1.6 - United Nations Commission on Human Rights Resolutions

UNCHR Res. 2, 37th Sess., 1595th Mtg., UN Doc. E/CN.4/RES/2, Feb. 11, 1981 - The right of peoples to self-determination and its application to peoples under colonial or alien domination or foreign occupation
4. Reaffirms its concern that the Camp David accords were concluded outside the framework of the United Nations and without the participation of the Palestine Liberation Organization, the representative of the Palestinian people;
UNCHR Res. 1985/4, 41st Sess., 32nd Mtg., UN Doc. E/CN.4/RES/1985/4, Feb. 26, 1985 - The right of peoples to self-determination and its application to peoples under colonial or alien domination or foreign occupation.
7. Reaffirms the basic principle that the future of the Palestinian people can only be decided with its full participation in all efforts, through its legitimate and sole representative, the Palestine Liberation Organization; 11. Expresses its deep regret at the negative reaction of the United States of America and Israel towards the above-mentioned international conference and calls upon the United States and Israel to reconsider their attitude, so as to facilitate the convening of the conference under the auspices of the United Nations and with the participation of the Palestine Liberation Organization on an equal footing with all parties concerned in the Arab-Israeli conflict;
UNCHR 1990/6, 46th Sess., 29th Mtg., UN Doc. E/CN.4/RES/1990/6, Feb. 19, 1990 - Situation in occupied Palestine
5. Reaffirms its support for the call to convene an effective international peace conference on the Middle East, with the participation of the permanent members of the Security Council and the parties to the Arab Israeli conflict, including the Palestine Liberation Organization, under the auspices of the United Nations, in accordance with the resolutions of the General Assembly and the Security Council, and to guarantee the inalienable national rights of the Palestinian people, in particular their right to self-determination;

Source: United Nations Information System on Palestine (UNISPAL) <http://unispal.un.org/unispal.nsf/udc.htm>.

ANNEX II

Legal Documents

Table A2.1 - Human Rights Treaty Law, Universal Instruments

International Convention on the Political Rights of Women, Dec. 20, 1952 (*entry into force* July 7, 1954), 193 UNTS 135
Article 1 Women shall be entitled to vote in all elections on equal terms with men, without any discrimination. Article 2 Women shall be eligible for election to all publicly elected bodies, established by national law, on equal terms with men, without any discrimination. Article 3 Women shall be entitled to hold public office and to exercise all public functions, established by national law, on equal terms with men, without any discrimination.
Convention Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries, June 26, 1957 (*entry into force* Feb. 6, 1959), 328 UNTS 247
Article 5 In applying the provisions of this Convention relating to the protection and integration of the populations concerned, governments shall, (a) seek the collaboration of these populations and of their representatives; (b) provide these populations with opportunities for the full development of their initiative; (c) stimulate by all possible means the development among these populations of civil liberties and the establishment of or participation in elective institutions.
International Covenant on Civil and Political Rights, Dec. 16, 1966 (*entry into force* Mar. 23, 1976), 999 UNTS 171
Article 25 Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing

the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.

International Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21, 1965 (*entry into force* Jan. 4, 1969), 660 UNTS 195

Article 5

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(c) Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;

International Convention on the Elimination of Discrimination Against Women, Dec. 18, 1979 (*entry into force* Sept. 3, 1981), 1249 UNTS 13

Article 7

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

(a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;

(b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;

(c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

Article 8

States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

Convention Concerning Indigenous and Tribal Peoples in Independent Countries, June 27, 1989 (*entry into force* Sept. 5, 1991), 72 ILO Bulletin 59

Article 6

1. In applying the provisions of this Convention, Governments shall:

(a) Consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly;

(b) Establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them;

(c) Establish means for the full development of these peoples' own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose.

2. The consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.

Article 7

1. The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.

2. The improvement of the conditions of life and work and levels of health and education of the peoples concerned, with their participation and co-operation, shall be a matter of priority in plans for the overall economic development of areas they inhabit. Special projects for development of the areas in question shall also be so designed as to promote such improvement.

3. Governments shall ensure that, whenever appropriate, studies are carried out, in co-operation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The results of these studies shall be considered as fundamental criteria for the implementation of these activities.

4. Governments shall take measures, in co-operation with the peoples concerned, to protect and preserve the environment of the territories they inhabit.

Article 12

The peoples concerned shall be safeguarded against the abuse of their rights and shall be able to take legal proceedings, either individually or through their representative bodies, for the effective protection of these rights. Measures shall be taken to ensure that members of these peoples can understand and be understood in legal proceedings, where necessary through the provision of interpretation or by other effective means.

Article 15

1. The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.

2. In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities.

Article 17

1. Procedures established by the peoples concerned for the transmission of land rights among members of these peoples shall be respected.

2. The peoples concerned shall be consulted whenever consideration is being given to their capacity to alienate their lands or otherwise transmit their rights outside their own community.

3. Persons not belonging to these peoples shall be prevented from taking advantage of their customs or of lack of understanding of the laws on the part of their members to secure the ownership, possession or use of land belonging to them.

Article 22

1. Measures shall be taken to promote the voluntary participation of members of the peoples concerned in vocational training programmes of general application.

2. Whenever existing programmes of vocational training of general application do not meet the special needs of the peoples concerned, governments shall, with the participation of these peoples, ensure the provision of special training

programmes and facilities.

3. Any special training programmes shall be based on the economic environment, social and cultural conditions and practical needs of the peoples concerned. Any studies made in this connection shall be carried out in co-operation with these peoples, who shall be consulted on the organisation and operation of such programmes. Where feasible, these peoples shall progressively assume responsibility for the organisation and operation of such special training programmes, if they so decide.

Article 23

1. Handicrafts, rural and community-based industries, and subsistence economy and traditional activities of the peoples concerned, such as hunting, fishing, trapping and gathering, shall be recognised as important factors in the maintenance of their cultures and in their economic self-reliance and development. Governments shall, with the participation of these people and whenever appropriate, ensure that these activities are strengthened and promoted.

2. Upon the request of the peoples concerned, appropriate technical and financial assistance shall be provided wherever possible, taking into account the traditional technologies and cultural characteristics of these peoples, as well as the importance of sustainable and equitable development.

Article 25

1. Governments shall ensure that adequate health services are made available to the peoples concerned, or shall provide them with resources to allow them to design and deliver such services under their own responsibility and control, so that they may enjoy the highest attainable standard of physical and mental health.

2. Health services shall, to the extent possible, be community-based. These services shall be planned and administered in co-operation with the peoples concerned and take into account their economic, geographic, social and cultural conditions as well as their traditional preventive care, healing practices and medicines.

3. The health care system shall give preference to the training and employment of local community health workers, and focus on primary health care while maintaining strong links with other levels of health care services.

4. The provision of such health services shall be co-ordinated with other social, economic and cultural measures in the country.

Article 27

1. Education programmes and services for the peoples concerned shall be developed and implemented in co-operation with them to address their special

needs, and shall incorporate their histories, their knowledge and technologies, their value systems and their further social, economic and cultural aspirations.

2. The competent authority shall ensure the training of members of these peoples and their involvement in the formulation and implementation of education programmes, with a view to the progressive transfer of responsibility for the conduct of these programmes to these peoples as appropriate.

3. In addition, governments shall recognise the right of these peoples to establish their own educational institutions and facilities, provided that such institutions meet minimum standards established by the competent authority in consultation with these peoples. Appropriate resources shall be provided for this purpose.

Article 33

1. The governmental authority responsible for the matters covered in this Convention shall ensure that agencies or other appropriate mechanisms exist to administer the programmes affecting the peoples concerned, and shall ensure that they have the means necessary for the proper fulfilment of the functions assigned to them.

2. These programmes shall include:

(a) the planning, co-ordination, execution and evaluation, in co-operation with the peoples concerned, of the measures provided for in this Convention;

(b) the proposing of legislative and other measures to the competent authorities and supervision of the application of the measures taken, in co-operation with the peoples concerned.

International Convention on the Protection of Migrant Workers and Members of Their Families, Dec. 18, 1990 (*entry into force* July 1, 2003), 2220 UNTS 3

Article 41

1. Migrant workers and members of their families shall have the right to participate in public affairs of their State of origin and to vote and to be elected at elections of that State, in accordance with its legislation.

2. The States concerned shall, as appropriate and in accordance with their legislation, facilitate the exercise of these rights.

Source: United Nations Office of the High Commissioner for Human Rights <http://www.ohchr.org>.

Table A2.2 - Human Rights Treaty Law, Regional Instruments

Inter-American Convention on the Granting of Political Rights to Women, Feb. 5, 1948 (*entry into force* Dec. 29, 1954), OAS Treaty Series No. 3
Article 1 The High Contracting Parties agree that the right to vote and to be elected to national office shall not be denied or abridged by reason of sex.
Protocol I to the European Convention for the Protection of Human Rights and Fundamental Freedoms, Mar. 20, 1952 (*entry into force* May 18, 1954), ETS 9
Article 3 The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.
European Convention on the Participation of Foreigners in Public Life at the Local Level, Feb. 5, 1992 (*entry into force* May 1, 1997), ETS 144
Article 4 Each Party shall endeavour to ensure that reasonable efforts are made to involve foreign residents in public inquiries, planning procedures and other processes of consultation on local matters. Article 5 1. Each Party undertakes, subject to the provisions of Article 9, paragraph 1: a. to ensure that there are no legal or other obstacles to prevent local authorities in whose area there is a significant number of foreign residents from setting up consultative bodies or making other appropriate institutional arrangements designed: i. to form a link between themselves and such residents, ii. to provide a forum for the discussion and formulation of the opinions, wishes and concerns of foreign residents on matters which particularly affect them in relation to local public life, including the activities and responsibilities of the local authority concerned, and iii. to foster their general integration into the life of the community; b. to encourage and facilitate the establishment of such consultative bodies or the making of other appropriate institutional arrangements for the representation of foreign residents by local authorities in whose area there is a significant number of foreign residents.

2. Each Party shall ensure that representatives of foreign residents participating in the consultative bodies or other institutional arrangements referred to in paragraph 1 can be elected by the foreign residents in the local authority area or appointed by individual associations of foreign residents.

Article 6

1. Each Party undertakes, subject to the provisions of Article 9, paragraph 1, to grant to every foreign resident the right to vote and to stand for election in local authority elections, provided that he fulfils the same legal requirements as apply to nationals and furthermore has been a lawful and habitual resident in the State concerned for the 5 years preceding the elections.

2. However, a Contracting State may declare, when depositing its instrument of ratification, acceptance, approval or accession, that it intends to confine the application of paragraph 1 to the right to vote only.

European Framework Convention for the Protection of National Minorities, Feb. 1, 1995 (*entry into force* Feb. 1, 1998), ETS 157

Article 15

The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.

American Convention on Human Rights, Nov. 21, 1969 (*entry into force* July 18, 1978), OAS Treaty Series No. 36.

Article 23

1. Every citizen shall enjoy the following rights and opportunities:

(a) to take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and

(c) to have access, under general conditions of equality, to the public service of his country.

2. The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings.

African Charter on Human and Peoples Rights, June 27, 1981 (*entry into force* Oct. 21, 1986), OAU Doc. CAB/LEG/67/3 rev. 5

Article 13

1. Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.

2. Every citizen shall have the right of equal access to the public service of his country.

3. Every individual shall have the right of access to public property and services in strict equality of all persons before the law.

Protocol to the African Charter on Human and People's Rights on the Rights of Women, July 11, 2003 (*entry into force* Nov. 25, 2005), CAB/LEG/66.6 (Sept. 13, 2000)

Article 10 (Right to Peace)

1. Women have the right to a peaceful existence and the right to participate in the promotion and maintenance of peace.

2. States Parties shall take all appropriate measures to ensure the increased participation of women:

b) in the structures and processes for conflict prevention, management and resolution at local, national, regional, continental and international levels;

- in the local, national, regional, continental and international decision making structures to ensure physical, psychological, social and legal protection of asylum seekers, refugees, returnees and displaced persons, in particular women;

- in all levels of the structures established for the management of camps and settlements for asylum seekers, refugees, returnees and displaced persons, in particular, women;

- in all aspects of planning, formulation and implementation of post conflict reconstruction and rehabilitation.

Arab Charter on Human Rights, Sept. 15, 1994

Article 19

The people are the source of authority and every citizen of full legal age shall have the right of political participation, which he shall exercise in accordance with the law.

Article 33

Every citizen shall have the right of access to public office in his country.

Arab Charter on Human Rights, May 22, 2004 (*entry into force* Mar. 15, 2008).

Article 24

Every citizen has the right:

1. To freely pursue a political activity.

2. To take part in the conduct of public affairs, directly or through freely chosen representatives.

3. To stand for election or choose his representatives in free and impartial elections, in conditions of equality among all citizens that guarantee the free expression of his will.

4. To the opportunity to gain access, on an equal footing with others, to public office in his country in accordance with the principle of equality of opportunity.

5. To freely form and join associations with others.

6. To freedom of association and peaceful assembly.

7. No restrictions may be placed on the exercise of these rights other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public health or morals or the protection of the rights and freedoms of others.

Sources: Electronic Information System for International Law <http://www.eisil.org>; *Human Rights Law Journal* 18 (1997); and, *Boston University International Law Journal* 24 (2007), 150-64.

Table A2.3 - Human Rights Treaty Committees, General Comments/Recommendations

ICCPR, General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote), 57th Sess., July 12, 1996
1. Article 25 of the Covenant recognizes and protects the right of every citizen to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service. Whatever form of constitution or government is in force, the Covenant requires States to adopt such legislative and other measures as may be necessary to ensure that citizens have an effective opportunity to enjoy the rights it protects. Article 25 lies at the core of democratic government based on the consent of the people and in conformity with the principles of the Covenant. 2. The rights under article 25 are related to, but distinct from, the right of peoples to self-determination. By virtue of the rights covered by article 1 (1), peoples have the right to freely determine their political status and to enjoy the right to choose the form of their constitution or government. Article 25 deals with the right of individuals to participate in those processes which constitute the conduct of public affairs. Those rights, as individual rights, can give rise to claims under the first Optional Protocol. 3. In contrast with other rights and freedoms recognized by the Covenant (which are ensured to all individuals within the territory and subject to the jurisdiction of the State), article 25 protects the rights of "every citizen". State reports should outline the legal provisions which define citizenship in the context of the rights protected by article 25. No distinctions are permitted between citizens in the enjoyment of these rights on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Distinctions between those who are entitled to citizenship by birth and those who acquire it by naturalization may raise questions of compatibility with article 25. State reports should indicate whether any groups, such as permanent residents, enjoy these rights on a limited basis, for example, by having the right to vote in local elections or to hold particular public service positions. 4. Any conditions which apply to the exercise of the rights protected by article 25 should be based on objective and reasonable criteria. For example, it may be reasonable to require a higher age for election or appointment to particular offices than for exercising the right to vote, which should be available to every adult citizen. The exercise of these rights by citizens may not be suspended or excluded except on grounds which are established by law and which are objective and reasonable. For example, established mental incapacity may be a ground for denying a person the right to vote or to hold office. 5. The conduct of public affairs, referred to in paragraph (a), is a broad concept which relates to the exercise of political power, in particular the exercise of legislative, executive and administrative powers. It covers all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels. The allocation of powers and

the means by which individual citizens exercise the right to participate in the conduct of public affairs protected by article 25 should be established by the constitution and other laws.

6. Citizens participate directly in the conduct of public affairs when they exercise power as members of legislative bodies or by holding executive office. This right of direct participation is supported by paragraph (b). Citizens also participate directly in the conduct of public affairs when they choose or change their constitution or decide public issues through a referendum or other electoral process conducted in accordance with paragraph (b). Citizens may participate directly by taking part in popular assemblies which have the power to make decisions about local issues or about the affairs of a particular community and in bodies established to represent citizens in consultation with government. Where a mode of direct participation by citizens is established, no distinction should be made between citizens as regards their participation on the grounds mentioned in article 2, paragraph 1, and no unreasonable restrictions should be imposed.

7. Where citizens participate in the conduct of public affairs through freely chosen representatives, it is implicit in article 25 that those representatives do in fact exercise governmental power and that they are accountable through the electoral process for their exercise of that power. It is also implicit that the representatives exercise only those powers which are allocated to them in accordance with constitutional provisions. Participation through freely chosen representatives is exercised through voting processes which must be established by laws that are in accordance with paragraph (b).

8. Citizens also take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves. This participation is supported by ensuring freedom of expression, assembly and association.

9. Paragraph (b) of article 25 sets out specific provisions dealing with the right of citizens to take part in the conduct of public affairs as voters or as candidates for election. Genuine periodic elections in accordance with paragraph (b) are essential to ensure the accountability of representatives for the exercise of the legislative or executive powers vested in them. Such elections must be held at intervals which are not unduly long and which ensure that the authority of government continues to be based on the free expression of the will of electors. The rights and obligations provided for in paragraph (b) should be guaranteed by law.

10. The right to vote at elections and referenda must be established by law and may be subject only to reasonable restrictions, such as setting a minimum age limit for the right to vote. It is unreasonable to restrict the right to vote on the ground of physical disability or to impose literacy, educational or property requirements. Party membership should not be a condition of eligibility to vote, nor a ground of disqualification.

11. States must take effective measures to ensure that all persons entitled to

vote are able to exercise that right. Where registration of voters is required, it should be facilitated and obstacles to such registration should not be imposed. If residence requirements apply to registration, they must be reasonable, and should not be imposed in such a way as to exclude the homeless from the right to vote. Any abusive interference with registration or voting as well as intimidation or coercion of voters should be prohibited by penal laws and those laws should be strictly enforced. Voter education and registration campaigns are necessary to ensure the effective exercise of article 25 rights by an informed community.

12. Freedom of expression, assembly and association are essential conditions for the effective exercise of the right to vote and must be fully protected. Positive measures should be taken to overcome specific difficulties, such as illiteracy, language barriers, poverty, or impediments to freedom of movement which prevent persons entitled to vote from exercising their rights effectively. Information and materials about voting should be available in minority languages. Specific methods, such as photographs and symbols, should be adopted to ensure that illiterate voters have adequate information on which to base their choice. States parties should indicate in their reports the manner in which the difficulties highlighted in this paragraph are dealt with.

13. State reports should describe the rules governing the right to vote, and the application of those rules in the period covered by the report. State reports should also describe factors which impede citizens from exercising the right to vote and the positive measures which have been adopted to overcome these factors.

14. In their reports, States parties should indicate and explain the legislative provisions which would deprive citizens of their right to vote. The grounds for such deprivation should be objective and reasonable. If conviction for an offence is a basis for suspending the right to vote, the period of such suspension should be proportionate to the offence and the sentence. Persons who are deprived of liberty but who have not been convicted should not be excluded from exercising the right to vote.

15. The effective implementation of the right and the opportunity to stand for elective office ensures that persons entitled to vote have a free choice of candidates. Any restrictions on the right to stand for election, such as minimum age, must be justifiable on objective and reasonable criteria. Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or by reason of political affiliation. No person should suffer discrimination or disadvantage of any kind because of that person's candidacy. States parties should indicate and explain the legislative provisions which exclude any group or category of persons from elective office.

16. Conditions relating to nomination dates, fees or deposits should be reasonable and not discriminatory. If there are reasonable grounds for regarding certain elective offices as incompatible with tenure of specific positions (e.g. the judiciary, high-ranking military office, public service),

measures to avoid any conflicts of interest should not unduly limit the rights protected by paragraph (b). The grounds for the removal of elected office holders should be established by laws based on objective and reasonable criteria and incorporating fair procedures.

17. The right of persons to stand for election should not be limited unreasonably by requiring candidates to be members of parties or of specific parties. If a candidate is required to have a minimum number of supporters for nomination this requirement should be reasonable and not act as a barrier to candidacy. Without prejudice to paragraph (1) of article 5 of the Covenant, political opinion may not be used as a ground to deprive any person of the right to stand for election.

18. State reports should describe the legal provisions which establish the conditions for holding elective public office, and any limitations and qualifications which apply to particular offices. Reports should describe conditions for nomination, e.g. age limits, and any other qualifications or restrictions. State reports should indicate whether there are restrictions which preclude persons in public-service positions (including positions in the police or armed services) from being elected to particular public offices. The legal grounds and procedures for the removal of elected office holders should be described.

19. In conformity with paragraph (b), elections must be conducted fairly and freely on a periodic basis within a framework of laws guaranteeing the effective exercise of voting rights. Persons entitled to vote must be free to vote for any candidate for election and for or against any proposal submitted to referendum or plebiscite, and free to support or to oppose government, without undue influence or coercion of any kind which may distort or inhibit the free expression of the elector's will. Voters should be able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind. Reasonable limitations on campaign expenditure may be justified where this is necessary to ensure that the free choice of voters is not undermined or the democratic process distorted by the disproportionate expenditure on behalf of any candidate or party. The results of genuine elections should be respected and implemented.

20. An independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws which are compatible with the Covenant. States should take measures to guarantee the requirement of the secrecy of the vote during elections, including absentee voting, where such a system exists. This implies that voters should be protected from any form of coercion or compulsion to disclose how they intend to vote or how they voted, and from any unlawful or arbitrary interference with the voting process. Waiver of these rights is incompatible with article 25 of the Covenant. The security of ballot boxes must be guaranteed and votes should be counted in the presence of the candidates or their agents. There should be independent scrutiny of the voting and counting process and access to judicial review or other equivalent process so that electors have confidence in the security of the ballot and the counting

of the votes. Assistance provided to the disabled, blind or illiterate should be independent. Electors should be fully informed of these guarantees.

21. Although the Covenant does not impose any particular electoral system, any system operating in a State party must be compatible with the rights protected by article 25 and must guarantee and give effect to the free expression of the will of the electors. The principle of one person, one vote, must apply, and within the framework of each State's electoral system, the vote of one elector should be equal to the vote of another. The drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters or discriminate against any group and should not exclude or restrict unreasonably the right of citizens to choose their representatives freely.

22. State reports should indicate what measures they have adopted to guarantee genuine, free and periodic elections and how their electoral system or systems guarantee and give effect to the free expression of the will of the electors. Reports should describe the electoral system and explain how the different political views in the community are represented in elected bodies. Reports should also describe the laws and procedures which ensure that the right to vote can in fact be freely exercised by all citizens and indicate how the secrecy, security and validity of the voting process are guaranteed by law. The practical implementation of these guarantees in the period covered by the report should be explained.

23. Subparagraph (c) of article 25 deals with the right and the opportunity of citizens to have access on general terms of equality to public service positions. To ensure access on general terms of equality, the criteria and processes for appointment, promotion, suspension and dismissal must be objective and reasonable. Affirmative measures may be taken in appropriate cases to ensure that there is equal access to public service for all citizens.

Basing access to public service on equal opportunity and general principles of merit, and providing secured tenure, ensures that persons holding public service positions are free from political interference or pressures. It is of particular importance to ensure that persons do not suffer discrimination in the exercise of their rights under article 25, subparagraph (c), on any of the grounds set out in article 2, paragraph 1.

24. State reports should describe the conditions for access to public service positions, any restrictions which apply and the processes for appointment, promotion, suspension and dismissal or removal from office as well as the judicial or other review mechanisms which apply to these processes. Reports should also indicate how the requirement for equal access is met, and whether affirmative measures have been introduced and, if so, to what extent.

25. In order to ensure the full enjoyment of rights protected by article 25, the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without

censorship or restraint and to inform public opinion. It requires the full enjoyment and respect for the rights guaranteed in articles 19, 21 and 22 of the Covenant, including freedom to engage in political activity individually or through political parties and other organizations, freedom to debate public affairs, to hold peaceful demonstrations and meetings, to criticize and oppose, to publish political material, to campaign for election and to advertise political ideas.

26. The right to freedom of association, including the right to form and join organizations and associations concerned with political and public affairs, is an essential adjunct to the rights protected by article 25. Political parties and membership in parties play a significant role in the conduct of public affairs and the election process. States should ensure that, in their internal management, political parties respect the applicable provisions of article 25 in order to enable citizens to exercise their rights thereunder.

27. Having regard to the provision of article 5, paragraph 1, of the Covenant, any rights recognized and protected by article 25 may not be interpreted as implying a right to act or as validating any act aimed at the destruction or limitation of the rights and freedoms protected by the Covenant to a greater extent than what is provided for in the present Covenant.

CERD, General Recommendation XXII: Article 5 (Refugees and Displaced Persons), 49th Sess., July 24, 1996

The Committee on the Elimination of Racial Discrimination,

Conscious of the fact that foreign military, non-military and/or ethnic conflicts have resulted in massive flows of refugees and the displacement of persons on the basis of ethnic criteria in many parts of the world,

Considering that the Universal Declaration of Human Rights and the Convention on the Elimination of All Forms of Racial Discrimination proclaim that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out therein, without distinction of any kind, in particular as to race, colour, descent or national or ethnic origin,

Recalling the 1951 Convention and the 1967 Protocol relating to the status of refugees as the main source of the international system for the protection of refugees in general,

1. *Draws the attention* of States parties to article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination as well as Committee's General Recommendation XX (48) on article 5, and reiterates that the Convention obliges States parties to prohibit and eliminate racial discrimination in the enjoyment of civil, political, economic, social and cultural rights and freedoms;

2. *Emphasizes* in this respect that:

(a) All such refugees and displaced persons have the right freely to return to their homes of origin under conditions of safety;

(b) States parties are obliged to ensure that the return of such refugees and displaced persons is voluntary and to observe the principle of *non-refoulement* and non-expulsion of refugees;

(c) All such refugees and displaced persons have, after their return to their homes of origin, the right to have restored to them property of which they were deprived in the course of the conflict and to be compensated appropriately for any such property that cannot be restored to them. Any commitments or statements relating to such property made under duress are null and void;

(d) All such refugees and displaced persons have, after their return to their homes of origin, the right to participate fully and equally in public affairs at all levels and to have equal access to public services and to receive rehabilitation assistance.

CEDAW, General Recommendation No. 23: Political and Public Life, 16th Sess., Feb. 13, 1997

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

(a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;

(b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;

(c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

Background

1. The Convention on the Elimination of All Forms of Discrimination against Women places special importance on the participation of women in the public life of their countries. The preamble to the Convention states in part:

"Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity".

2. The Convention further reiterates in its preamble the importance of women's

participation in decision-making as follows:

"Convinced that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields".

3. Moreover, in article 1 of the Convention, the term "discrimination against women" is interpreted to mean:

"any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field".

4. Other conventions, declarations and international analyses place great importance on the participation of women in public life and have set a framework of international standards of equality. These include the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention on the Political Rights of Women, the Vienna Declaration, paragraph 13 of the Beijing Declaration and Platform for Action, general recommendations 5 and 8 under the Convention, general comment 25 adopted by the Human Rights Committee, the recommendation adopted by the Council of the European Union on balanced participation of women and men in the decision-making process and the European Commission's "How to Create a Gender Balance in Political Decision-making".

5. Article 7 obliges States parties to take all appropriate measures to eliminate discrimination against women in political and public life and to ensure that they enjoy equality with men in political and public life. The obligation specified in article 7 extends to all areas of public and political life and is not limited to those areas specified in subparagraphs (a), (b) and (c). The political and public life of a country is a broad concept. It refers to the exercise of political power, in particular the exercise of legislative, judicial, executive and administrative powers. The term covers all aspects of public administration and the formulation and implementation of policy at the international, national, regional and local levels. The concept also includes many aspects of civil society, including public boards and local councils and the activities of organizations such as political parties, trade unions, professional or industry associations, women's organizations, community-based organizations and other organizations concerned with public and political life.

6. The Convention envisages that, to be effective, this equality must be achieved within the framework of a political system in which each citizen enjoys the right to vote and be elected at genuine periodic elections held on the basis of universal suffrage and by secret ballot, in such a way as to guarantee the free expression of the will of the electorate, as provided for under international human rights instruments, such as article 21 of the Universal Declaration of Human Rights and article 25 of the International Covenant on Civil and Political Rights.

7. The Convention's emphasis on the importance of equality of opportunity and of participation in public life and decision-making has led the Committee to review article 7 and to suggest to States parties that in reviewing their laws and policies and in reporting under the Convention, they should take into account the comments and recommendations set out below.

Comments

8. Public and private spheres of human activity have always been considered distinct, and have been regulated accordingly. Invariably, women have been assigned to the private or domestic sphere, associated with reproduction and the raising of children, and in all societies these activities have been treated as inferior. By contrast, public life, which is respected and honoured, extends to a broad range of activity outside the private and domestic sphere. Men historically have both dominated public life and exercised the power to confine and subordinate women within the private sphere.

9. Despite women's central role in sustaining the family and society and their contribution to development, they have been excluded from political life and the decision-making process, which nonetheless determine the pattern of their daily lives and the future of societies. Particularly in times of crisis, this exclusion has silenced women's voices and rendered invisible their contribution and experiences.

10. In all nations, the most significant factors inhibiting women's ability to participate in public life have been the cultural framework of values and religious beliefs, the lack of services and men's failure to share the tasks associated with the organization of the household and with the care and raising of children. In all nations, cultural traditions and religious beliefs have played a part in confining women to the private spheres of activity and excluding them from active participation in public life.

11. Relieving women of some of the burdens of domestic work would allow them to engage more fully in the life of their communities. Women's economic dependence on men often prevents them from making important political decisions and from participating actively in public life. Their double burden of work and their economic dependence, coupled with the long or inflexible hours of both public and political work, prevent women from being more active.

12. Stereotyping, including that perpetrated by the media, confines women in political life to issues such as the environment, children and health, and excludes them from responsibility for finance, budgetary control and conflict resolution. The low involvement of women in the professions from which politicians are recruited can create another obstacle. In countries where women leaders do assume power this can be the result of the influence of their fathers, husbands or male relatives rather than electoral success in their own right.

Political systems

13. The principle of equality of women and men has been affirmed in the constitutions and laws of most countries and in all international instruments. Nonetheless, in the last 50 years, women have not achieved equality, and their inequality has been reinforced by their low level of participation in public and political life. Policies developed and decisions made by men alone reflect only part of human experience and potential. The just and effective organization of society demands the inclusion and participation of all its members.

14. No political system has conferred on women both the right to and the benefit of full and equal participation. While democratic systems have improved women's opportunities for involvement in political life, the many economic, social and cultural barriers they continue to face have seriously limited their participation. Even historically stable democracies have failed to integrate fully and equally the opinions and interests of the female half of the population. Societies in which women are excluded from public life and decision-making cannot be described as democratic. The concept of democracy will have real and dynamic meaning and lasting effect only when political decision-making is shared by women and men and takes equal account of the interests of both. The examination of States parties' reports shows that where there is full and equal participation of women in public life and decision-making, the implementation of their rights and compliance with the Convention improves.

Temporary special measures

15. While removal of de jure barriers is necessary, it is not sufficient. Failure to achieve full and equal participation of women can be unintentional and the result of outmoded practices and procedures which inadvertently promote men. Under article 4, the Convention encourages the use of temporary special measures in order to give full effect to articles 7 and 8. Where countries have developed effective temporary strategies in an attempt to achieve equality of participation, a wide range of measures has been implemented, including recruiting, financially assisting and training women candidates, amending electoral procedures, developing campaigns directed at equal participation, setting numerical goals and quotas and targeting women for appointment to public positions such as the judiciary or other professional groups that play an essential part in the everyday life of all societies. The formal removal of barriers and the introduction of temporary special measures to encourage the equal participation of both men and women in the public life of their societies are essential prerequisites to true equality in political life. In order, however, to overcome centuries of male domination of the public sphere, women also require the encouragement and support of all sectors of society to achieve full and effective participation, encouragement which must be led by States parties to the Convention, as well as by political parties and public officials. States parties have an obligation to ensure that temporary special measures are clearly designed to support the principle of equality and therefore comply with constitutional principles which guarantee equality to all citizens.

Summary

16. The critical issue, emphasized in the Beijing Platform for Action,23 is the gap between the de jure and de facto, or the right as against the reality of women's participation in politics and public life generally. Research demonstrates that if women's participation reaches 30 to 35 per cent (generally termed a "critical mass"), there is a real impact on political style and the content of decisions, and political life is revitalized.

17. In order to achieve broad representation in public life, women must have full equality in the exercise of political and economic power; they must be fully and equally involved in decision-making at all levels, both nationally and internationally, so that they may make their contribution to the goals of equality, development and the achievement of peace. A gender perspective is critical if these goals are to be met and if true democracy is to be assured. For these reasons, it is essential to involve women in public life to take advantage of their contribution, to assure their interests are protected and to fulfil the guarantee that the enjoyment of human rights is for all people regardless of gender. Women's full participation is essential not only for their empowerment but also for the advancement of society as a whole.

The right to vote and to be elected (article 7, para. (a))

18. The Convention obliges States parties in constitutions or legislation to take appropriate steps to ensure that women, on the basis of equality with men, enjoy the right to vote in all elections and referendums, and to be elected. These rights must be enjoyed both de jure and de facto.

19. The examination of the reports of States parties demonstrates that, while almost all have adopted constitutional or other legal provisions that grant to both women and men the equal right to vote in all elections and public referendums, in many nations women continue to experience difficulties in exercising this right.

20. Factors which impede these rights include the following:

(a) Women frequently have less access than men to information about candidates and about party political platforms and voting procedures, information which Governments and political parties have failed to provide. Other important factors that inhibit women's full and equal exercise of their right to vote include their illiteracy, their lack of knowledge and understanding of political systems or about the impact that political initiatives and policies will have upon their lives. Failure to understand the rights, responsibilities and opportunities for change conferred by franchise also means that women are not always registered to vote;

(b) Women's double burden of work, as well as financial constraints, will limit women's time or opportunity to follow electoral campaigns and to have the full freedom to exercise their vote;

(c) In many nations, traditions and social and cultural stereotypes discourage

women from exercising their right to vote. Many men influence or control the votes of women by persuasion or direct action, including voting on their behalf. Any such practices should be prevented;

(d) Other factors that in some countries inhibit women's involvement in the public or political lives of their communities include restrictions on their freedom of movement or right to participate, prevailing negative attitudes towards women's political participation, or a lack of confidence in and support for female candidates by the electorate. In addition, some women consider involvement in politics to be distasteful and avoid participation in political campaigns.

21. These factors at least partially explain the paradox that women, who represent half of all electorates, do not wield their political power or form blocs which would promote their interests or change government, or eliminate discriminatory policies.

22. The system of balloting, the distribution of seats in Parliament, the choice of district, all have a significant impact on the proportion of women elected to Parliament. Political parties must embrace the principles of equal opportunity and democracy and endeavour to balance the number of male and female candidates.

23. The enjoyment of the right to vote by women should not be subject to restrictions or conditions that do not apply to men or that have a disproportionate impact on women. For example, limiting the right to vote to persons who have a specified level of education, who possess a minimum property qualification or who are literate is not only unreasonable, it may violate the universal guarantee of human rights. It is also likely to have a disproportionate impact on women, thereby contravening the provisions of the Convention.

The right to participate in formulation of government policy (article 7, para. (b))

24. The participation of women in government at the policy level continues to be low in general. Although significant progress has been made and in some countries equality has been achieved, in many countries women's participation has actually been reduced.

25. Article 7 (b) also requires States parties to ensure that women have the right to participate fully in and be represented in public policy formulation in all sectors and at all levels. This would facilitate the mainstreaming of gender issues and contribute a gender perspective to public policy-making.

26. States parties have a responsibility, where it is within their control, both to appoint women to senior decision-making roles and, as a matter of course, to consult and incorporate the advice of groups which are broadly representative of women's views and interests.

27. States parties have a further obligation to ensure that barriers to women's

full participation in the formulation of government policy are identified and overcome. These barriers include complacency when token women are appointed, and traditional and customary attitudes that discourage women's participation. When women are not broadly represented in the senior levels of government or are inadequately or not consulted at all, government policy will not be comprehensive and effective.

28. While States parties generally hold the power to appoint women to senior cabinet and administrative positions, political parties also have a responsibility to ensure that women are included in party lists and nominated for election in areas where they have a likelihood of electoral success. States parties should also endeavour to ensure that women are appointed to government advisory bodies on an equal basis with men and that these bodies take into account, as appropriate, the views of representative women's groups. It is the Government's fundamental responsibility to encourage these initiatives to lead and guide public opinion and change attitudes that discriminate against women or discourage women's involvement in political and public life.

29. Measures that have been adopted by a number of States parties in order to ensure equal participation by women in senior cabinet and administrative positions and as members of government advisory bodies include: adoption of a rule whereby, when potential appointees are equally qualified, preference will be given to a woman nominee; the adoption of a rule that neither sex should constitute less than 40 per cent of the members of a public body; a quota for women members of cabinet and for appointment to public office; and consultation with women's organizations to ensure that qualified women are nominated for membership in public bodies and offices and the development and maintenance of registers of such women in order to facilitate the nomination of women for appointment to public bodies and posts. Where members are appointed to advisory bodies upon the nomination of private organizations, States parties should encourage these organizations to nominate qualified and suitable women for membership in these bodies.

The right to hold public office and to perform all public functions (article 7, para. (b))

30. The examination of the reports of States parties demonstrates that women are excluded from top-ranking positions in cabinets, the civil service and in public administration, in the judiciary and in justice systems. Women are rarely appointed to these senior or influential positions and while their numbers may in some States be increasing at the lower levels and in posts usually associated with the home or the family, they form only a tiny minority in decision-making positions concerned with economic policy or development, political affairs, defence, peacemaking missions, conflict resolution or constitutional interpretation and determination.

31. Examination of the reports of States parties also demonstrates that in certain cases the law excludes women from exercising royal powers, from serving as judges in religious or traditional tribunals vested with jurisdiction on behalf of the State or from full participation in the military. These provisions

discriminate against women, deny to society the advantages of their involvement and skills in these areas of the life of their communities and contravene the principles of the Convention.

The right to participate in non-governmental and public and political organizations (article 7, para. (c))

32. An examination of the reports of States parties demonstrates that, on the few occasions when information concerning political parties is provided, women are under-represented or concentrated in less influential roles than men. As political parties are an important vehicle in decision-making roles, Governments should encourage political parties to examine the extent to which women are full and equal participants in their activities and, where this is not the case, should identify the reasons for this. Political parties should be encouraged to adopt effective measures, including the provision of information, financial and other resources, to overcome obstacles to women's full participation and representation and ensure that women have an equal opportunity in practice to serve as party officials and to be nominated as candidates for election.

33. Measures that have been adopted by some political parties include setting aside for women a certain minimum number or percentage of positions on their executive bodies, ensuring that there is a balance between the number of male and female candidates nominated for election, and ensuring that women are not consistently assigned to less favourable constituencies or to the least advantageous positions on a party list. States parties should ensure that such temporary special measures are specifically permitted under anti-discrimination legislation or other constitutional guarantees of equality.

34. Other organizations such as trade unions and political parties have an obligation to demonstrate their commitment to the principle of gender equality in their constitutions, in the application of those rules and in the composition of their memberships with gender-balanced representation on their executive boards so that these bodies may benefit from the full and equal participation of all sectors of society and from contributions made by both sexes. These organizations also provide a valuable training ground for women in political skills, participation and leadership, as do non-governmental organizations (NGOs).

Article 8 (international level)

States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

Comments

35. Under article 8, Governments are obliged to ensure the presence of women at all levels and in all areas of international affairs. This requires that

they be included in economic and military matters, in both multilateral and bilateral diplomacy, and in official delegations to international and regional conferences.

36. From an examination of the reports of States parties, it is evident that women are grossly under-represented in the diplomatic and foreign services of most Governments, and particularly at the highest ranks. Women tend to be assigned to embassies of lesser importance to the country's foreign relations and in some cases women are discriminated against in terms of their appointments by restrictions pertaining to their marital status. In other instances spousal and family benefits accorded to male diplomats are not available to women in parallel positions. Opportunities for women to engage in international work are often denied because of assumptions about their domestic responsibilities, including that the care of family dependants will prevent them accepting appointment.

37. Many permanent missions to the United Nations and to other international organizations have no women among their diplomats and very few at senior levels. The situation is similar at expert meetings and conferences that establish international and global goals, agendas and priorities. Organizations of the United Nations system and various economic, political and military structures at the regional level have become important international public employers, but here, too, women have remained a minority concentrated in lower-level positions.

38. There are few opportunities for women and men, on equal terms, to represent Governments at the international level and to participate in the work of international organizations. This is frequently the result of an absence of objective criteria and processes for appointment and promotion to relevant positions and official delegations.

39. The globalization of the contemporary world makes the inclusion of women and their participation in international organizations, on equal terms with men, increasingly important. The integration of a gender perspective and women's human rights into the agenda of all international bodies is a government imperative. Many crucial decisions on global issues, such as peacemaking and conflict resolution, military expenditure and nuclear disarmament, development and the environment, foreign aid and economic restructuring, are taken with limited participation of women. This is in stark contrast to their participation in these areas at the non-governmental level.

40. The inclusion of a critical mass of women in international negotiations, peacekeeping activities, all levels of preventive diplomacy, mediation, humanitarian assistance, social reconciliation, peace negotiations and the international criminal justice system will make a difference. In addressing armed or other conflicts, a gender perspective and analysis is necessary to understand their differing effects on women and men.24

RECOMMENDATIONS

Articles 7 and 8

41. States parties should ensure that their constitutions and legislation comply with the principles of the Convention, and in particular with articles 7 and 8.

42. States parties are under an obligation to take all appropriate measures, including the enactment of appropriate legislation that complies with their Constitution, to ensure that organizations such as political parties and trade unions, which may not be subject directly to obligations under the Convention, do not discriminate against women and respect the principles contained in articles 7 and 8.

43. States parties should identify and implement temporary special measures to ensure the equal representation of women in all fields covered by articles 7 and 8.

44. States parties should explain the reason for, and effect of, any reservations to articles 7 or 8 and indicate where the reservations reflect traditional, customary or stereotyped attitudes towards women's roles in society, as well as the steps being taken by the States parties to change those attitudes. States parties should keep the necessity for such reservations under close review and in their reports include a timetable for their removal.

Article 7

45. Measures that should be identified, implemented and monitored for effectiveness include, under article 7, paragraph (a), those designed to:

(a) Achieve a balance between women and men holding publicly elected positions;

(b) Ensure that women understand their right to vote, the importance of this right and how to exercise it;

(c) Ensure that barriers to equality are overcome, including those resulting from illiteracy, language, poverty and impediments to women's freedom of movement;

(d) Assist women experiencing such disadvantages to exercise their right to vote and to be elected.

46. Under article 7, paragraph (b), such measures include those designed to ensure:

(a) Equality of representation of women in the formulation of government policy;

(b) Women's enjoyment in practice of the equal right to hold public office;

(c) Recruiting processes directed at women that are open and subject to

appeal.

47. Under article 7, paragraph (c), such measures include those designed to:

(a) Ensure that effective legislation is enacted prohibiting discrimination against women;

(b) Encourage non-governmental organizations and public and political associations to adopt strategies that encourage women's representation and participation in their work.

48. When reporting under article 7, States parties should:

(a) Describe the legal provisions that give effect to the rights contained in article 7;

(b) Provide details of any restrictions to those rights, whether arising from legal provisions or from traditional, religious or cultural practices;

(c) Describe the measures introduced and designed to overcome barriers to the exercise of those rights;

(d) Include statistical data, disaggregated by sex, showing the percentage of women relative to men who enjoy those rights;

(e) Describe the types of policy formulation, including that associated with development programmes, in which women participate and the level and extent of their participation;

(f) Under article 7, paragraph (c), describe the extent to which women participate in non-governmental organizations in their countries, including in women's organizations;

(g) Analyse the extent to which the State party ensures that those organizations are consulted and the impact of their advice on all levels of government policy formulation and implementation;

(h) Provide information concerning, and analyse factors contributing to, the under-representation of women as members and officials of political parties, trade unions, employers organizations and professional associations.

Article 8

49. Measures which should be identified, implemented and monitored for effectiveness include those designed to ensure a better gender balance in membership of all United Nations bodies, including the Main Committees of the General Assembly, the Economic and Social Council and expert bodies, including treaty bodies, and in appointments to independent working groups or as country or special rapporteurs.

50. When reporting under article 8, States parties should:

(a) Provide statistics, disaggregated by sex, showing the percentage of women in their foreign service or regularly engaged in international representation or in work on behalf of the State, including membership in government delegations to international conferences and nominations for peacekeeping or conflict resolution roles, and their seniority in the relevant sector;

(b) Describe efforts to establish objective criteria and processes for appointment and promotion of women to relevant positions and official delegations;

(c) Describe steps taken to disseminate widely information on the Government's international commitments affecting women and official documents issued by multilateral forums, in particular, to both governmental and non-governmental bodies responsible for the advancement of women;

(d) Provide information concerning discrimination against women because of their political activities, whether as individuals or as members of women's or other organizations.

Source: United Nations Office of the High Commissioner for Human Rights <http://www.ohchr.org>.

Table A2.4 - Human Rights Treaty Committees, Concluding Observations

CEDAW, Concluding Observation of the Committee on the Elimination of Discrimination Against Women: Croatia, 13th Sess., 279th Mtg., UN Doc., A/50/38, July 18, 1996
588. A national mechanism should be established to protect and expand the rights of women and encourage participation by women in the political field, decision-making and the struggle for peace. Although women were used by men as "a weapon of war", their solidarity and their organization in non-governmental organizations can constitute an instrument for peace.
CERD, Concluding Observations of the Committee on the Elimination of Racial Discrimination: Russia Federation, 62nd Sess., 1580th and 1581st Mtgs., UN Doc. CERD/C/62/CO/7, June 3, 2003
9. The Committee notes with satisfaction the assurances given by the delegation of the State party that displaced persons from Chechnya living in neighbouring regions will be allowed to vote in the referendum in Chechnya on a new constitution.
HRC, Concluding Observations of the Human Rights Committee: Colombia, 80th Sess., 2183rd Mtg., UN Doc. CCPR/CO/80/COL, May 26, 2004
19. Although the Committee has taken note of the information provided by the State party on the reduction in the number of internally displaced persons in 2002 and 2003, it remains concerned about the continued high number of displaced persons in Colombia and the lack of socio-economic assistance provided by the State party to these people, especially in fields such as the education of children and medical care. The Committee also expresses its concern regarding the difficulties experienced by internally displaced persons in exercising their civic rights, especially the right to vote. The State party should intensify programmes aimed at providing economic and social assistance to internally displaced persons so that they may, in conformity with article 26 of the Covenant, enjoy as many of the benefits provided by State institutions as possible. It should also take the necessary steps to ensure that displaced persons are able to exercise the rights guaranteed in article 25.
HRC, Concluding Observations of the Human Rights Committee: Serbia and Montenegro, 81st Sess., 2221st Mtg., UN Doc. CCPR/CO/81/SEMO, Dec. 8, 2004
18. The Committee is concerned about the lack of full protection of the rights of internally displaced persons in Serbia and Montenegro, particularly with regard to access to social services in their places of actual residence, including education facilities for their children, and access to personal documents. It expresses its concern with regard to high levels of unemployment and lack of adequate housing, as well as with regard to the full enjoyment of political

rights. While noting the State party's view that internally displaced persons have equal status with other citizens of Serbia and Montenegro, the Committee is concerned at the lack of enjoyment of their rights in practice. The Committee notes that Roma from Kosovo displaced during the 1999 conflict are a particularly vulnerable group (arts. 12, 26).

The State party should take effective measures to ensure that all policies, strategies, programmes and funding support have as their principal objective the enjoyment by all displaced persons of the full spectrum of Covenant rights. Furthermore, internally displaced persons should be afforded full and effective access to social services, educational facilities, unemployment assistance, adequate housing and personal documents, in accordance with the principle of non-discrimination.

CERD, Concluding Observations of the Committee on the Elimination of Racial Discrimination: Azerbaijan, 75th Sess., 1968th Mtg., UN Doc. CERD/C/AZE/CO/6, Sept. 7, 2009

5. While noting that significant progress has been made by the State party in protecting the economic, social and cultural rights of persons affected by internal displacement, as well as asylum-seekers and refugees, the Committee is still concerned that asylum-seekers, refugees and internally displaced persons continue to experience discrimination in the areas of employment, education, housing and health. The Committee notes with concern that internally displaced women and children remain in a particularly vulnerable and marginalized situation. The Committee further observes that, while the State party generally endeavours to comply with the standards of the Convention relating to the status of refugees, some asylum-seekers, including Russian citizens from Chechnya, are allegedly excluded from the refugee determination procedure of the State party.

The Committee calls upon the State party to ensure the non-discriminatory implementation of each of the rights and freedoms referred to in article 5 of the Convention for all groups of the population. The Committee requests the State party to include, in its next periodic report, information on measures taken in this regard, and draws the attention of the State party to its general recommendation No. 30 (2004) on discrimination against non-citizens. Furthermore, the Committee requests the State party:

(a) To ensure equal opportunities for displaced persons, and to allow for their enhanced participation in the formulation of State policies and programmes concerning their interests, in particular with regard to the planning of new settlements, improved access to employment, housing, health care and quality education, and measures to encourage mixed schooling with local children. In this respect, it recommends the State party pay special attention to the situation of women and children;

Source: The United Nations Human Rights Treaties <http://www.bayefsky.com> ; and, United Nations Office of the High Commissioner for Human Rights <http://www.ohchr.org>.

Table A2.5 - Human Rights Treaty Committees, Jurisprudence

HRC, *Marshall et al. v Canada*, Communication No. 205/l986, UN Doc. CCPR/C/43/D/205/1986, Nov. 4, 1991

VIEWS

Submitted by: Grand Chief Donald Marshall, Grand Captain Alexander Denny and Adviser Simon Marshall, as officers of the Grand Council of the Mikmaq tribal society (assisted by counsel)
Alleged victims: The authors and the Mikmaq tribal society
State party: Canada
Date of communication: 30 January 1986 (initial submission)
Date of the decision on admissibility: 25 July 1990

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 4 November 1991,

Having considered communication No. 205/1986, submitted to the Committee by the late Grand Chief Donald Marshall, Grand Captain Alexander Denny and Adviser Simon Marshall, as officers of the Grand Council of the Mikmaq tribal society (assisted by counsel) under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the authors of the communication and by the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

The authors:

1. The authors of the communication (initial letter of 30 January 1986 and subsequent correspondence) are Grand Chief Donald Marshall, Grand Captain Alexander Denny and Adviser Simon Marshall, the officers of the Grand Council of the Mikmaq tribal society in Canada. They submit the communication both as individually affected alleged victims and as trustees for the welfare and the rights of the Mikmaq people as a whole. Grand Chief Donald Marshall passed away in August 1991. The communication is, however, maintained by the other authors, who continue to be responsible for the conduct of the affairs of the Mikmaq Grand Council. They are represented by counsel.

The background:

2.1 The authors state that the Mikmaqs are a people who have lived in Mikmakik, their traditional territories in North America, since time immemorial and that they, as a free and independent nation, concluded treaties with the

French and British colonial authorities, which guaranteed their separate national identity and rights of hunting, fishing and trading throughout Nova Scotia. It is further stated that for more than 100 years Mikmaq territorial and political rights have been in dispute with the Government of Canada, which claimed absolute sovereignty over Mikmakik by virtue of its independence from the United Kingdom in 1867. It is claimed, however, that the Mikmaqs' right of self-determination has never been surrendered and that their land, Mikmakik, must be considered as a non-self-governing territory within the meaning of the Charter of the United Nations.

2.2 By Constitution Act, 1982, the Government of Canada "recognized and affirmed" the "existing aboriginal and treaty rights of the aboriginal peoples of Canada" (art. 35(1)), comprising the Indian, Inuit and Métis peoples of Canada (art. 35(2)). With a view to further identifying and clarifying these rights, the Constitution Act envisaged a process which would include a constitutional conference to be convened by the Prime Minister of Canada and attended by the first ministers of the provinces and invited "representatives of the aboriginal peoples of Canada". The Government of Canada and the provincial governments committed themselves to the principle that discussions would take place at such a conference before any constitutional amendments would be made and included in the Constitution of Canada in respect of matters that directly affect the aboriginal peoples, including the identification and the definition of the rights of those peoples (articles 35(1) and 37(1) and (2)). In fact, several such conferences were convened by the Prime Minister of Canada in the following years, to which he invited representatives of four national associations to represent the interest of approximately 600 aboriginal groups. These national associations were: the Assembly of First Nations (invited to represent primarily non-status Indians), the Métis National Council (invited to represent the Métis) and the Inuit Committee on National Issues (invited to represent the Inuit). As a general rule, constitutional conferences in Canada are attended only by elected leaders of the federal and provincial governments. The conferences on aboriginal matters constituted an exception to that rule. They focused on the matter of aboriginal self-government and whether and in what form, a general aboriginal right to self-government should be entrenched in the Constitution of Canada. The conferences were inconclusive. No consensus was reached on any proposal and no constitutional amendments have as a result been placed before the federal and provincial legislatures for debate and vote.

2.3 While the State party indicated (on 20 February 1991) that no further constitutional conferences on aboriginal matters were scheduled, the authors point out (in comments dated 1 June 1991) that the State party's Minister of Constitutional Affairs announced, during the last week of May 1991, that a fresh round of constitutional deliberations, to which a "panel" of up to 10 aboriginal leaders would be invited, would take place later that year (1991).

The complaint:

3.1 The authors sought, unsuccessfully, to be invited to attend the constitutional conferences as representatives of the Mikmaq people. The

refusal of the State party to permit specific representation for the Mikmaqs at the constitutional conferences is the basis of the complaint.

3.2 Initially, the authors claimed that the refusal to grant a seat at the constitutional conferences to representatives of the Mikmaq tribal society denied them the right of self-determination, in violation of article 1 of the International Covenant on Civil and Political Rights. They subsequently revised that claim and argued that the refusal also infringed their right to take part in the conduct of public affairs, in violation of article 25(a) of the Covenant.

The State party's observations and authors' comments:

4.1 The State party argues that the restrictions on participation in the constitutional conferences were not unreasonable, and that the conferences were not conducted in a way that was contrary to the right to participate in "the conduct of public affairs". In particular, the State party argues that "the right of citizens to participate in 'the conduct of public affairs' does not ... require direct input into the duties and responsibilities of a government properly elected. Rather, this right is fulfilled ... when 'freely chosen representatives' conduct and make decisions on the affairs with which they are entrusted by the constitution." The State party submits that the circumstances of the instant case "do not fall within the scope of activities which individuals are entitled to undertake by virtue of article 25 of the Covenant. This article could not possibly required that all citizens of a country be invited to a constitutional conference."

4.2 The authors contend, inter alia, that the restrictions were unreasonable and that their interests were not properly represented at the constitutional conferences. First, they stress that they could not choose which of the "national associations" would represent them, and, furthermore, that they did not confer on the Assembly of First Nations (AFN) any right to represent them. Secondly, when the Mikmaqs were not allowed direct representation, they attempted, without success, to influence the AFN. In particular, they refer to a 1987 hearing conducted jointly by the AFN and several Canadian Government departments, at which Mikmaq leaders submitted a package of constitutional proposals and protested "in the strongest terms any discussion of Mikmaq treaties at the constitutional conferences in the absence of direct Mikmaq representation". The AFN, however, did not submit any of the Mikmaq position papers to the constitutional conferences nor incorporated them in its own positions.

Issues and proceedings before the Committee:

5.1 The communication was declared admissible on 25 July 1990, in so far as it may raise issues under article 25(a) of the Covenant. The Committee had earlier determined, in respect of another communication, that a claim of an alleged violation of article 1 of the Covenant cannot be brought under the Optional Protocol. 1/

5.2 Article 25 of the Covenant stipulates that:

"every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) to take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) to vote and to be elected in genuine periodic elections...;

(c) to have access, on general terms of equality, to public service...."

At issue in the present case is whether the constitutional conferences constituted a "conduct of public affairs" and if so, whether the authors, or any other representatives chosen for that purpose by the Mikmaq tribal society, had the right, by virtue of article 25(a), to attend the conferences.

5.3 The State party has informed the Committee that, as a general rule, constitutional conferences in Canada are attended only by the elected leaders of the federal and 10 provincial governments. In the light of the composition, nature and scope of activities of constitutional conferences in Canada, as explained by the State party, the Committee cannot but conclude that they do indeed constitute a conduct of public affairs. The fact that an exception was made, by inviting representatives of aboriginal peoples in addition to elected representatives to take part in the deliberations of the constitutional conferences on aboriginal matters, cannot change this conclusion.

5.4 It remains to be determined what is the scope of the right of every citizen, without unreasonable restrictions, to take part in the conduct of public affairs, directly or through freely chosen representatives. Surely, it cannot be the meaning of article 25(a) of the Covenant that every citizen may determine either to take part directly in the conduct of public affairs or to leave it to freely chosen representatives. It is for the legal and constitutional system of the State party to provide for the modalities of such participation.

5.5 It must be beyond dispute that the conduct of public affairs in a democratic State is the task of representatives of the people, elected for that purpose, and public officials appointed in accordance with the law. Invariably, the conduct of public affairs affects the interest of large segments of the population or even the population as a whole, while in other instances it affects more directly the interest of more specific groups of society. Although prior consultations, such as public hearings or consultations with the most interested groups may often be envisaged by law or have evolved as public policy in the conduct of public affairs, article 25(a) of the Covenant cannot be understood as meaning that any directly affected group, large or small, has the unconditional right to choose the modalities of participation in the conduct of public affairs. That, in fact, would be an extrapolation of the right to direct participation by the citizens, far beyond the scope of article 25(a).

6. Notwithstanding the right of every citizen to take part in the conduct of public affairs without discrimination and without unreasonable restrictions, the Committee concludes that, in the specific circumstances of the present case,

the failure of the State party to invite representatives of the Mikmaq tribal society to the constitutional conferences on aboriginal matters, which constituted conduct of public affairs, did not infringe that right of the authors or other members of the Mikmaq tribal society. Moreover, in the view of the Committee, the participation and representation at these conferences have not been subjected to unreasonable restrictions. Accordingly, the Committee is of the view that the communication does not disclose a violation of article 25 or any other provisions of the Covenant.

Footnotes

*Made public by decision of the Human Rights Committee.

1. See Views of the Committee in communication No. 167/1984 (Lubicon Lake Band v. Canada), adopted on 26 March 1990, paragraph 32.1.]

HRC, *Simunek v The Czech Republic*, Communication No. 516/1992, UN Doc. CCPR/C/54/D/516/1992, July 19, 1995

Submitted by: Mrs. Alina Simunek, Mrs. Dagmar Hastings, Tuzilova and Mr. Josef Prochazka
Alleged victims: The authors and Jaroslav Simunek (Mrs. Alina Simunek's husband)
State party: The Czech Republic
Date of communication: 17 September 1991 (initial submissions)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 19 July 1995,

Having concluded its consideration of communication No. 516/1992 submitted to the Human Rights Committee by Mrs. Alina Simunek, Mrs. Dagmar Hastings Tuzilova and Mr. Josef Prochazka under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the authors of the communication and the State party,

Adopts its

Views under article 5, paragraph 4, of the Optional Protocol

1. The authors of the communications are Alina Simunek, who acts on her behalf and on behalf of her husband, Jaroslav Simunek, Dagmar Tuzilova Hastings and Josef Prochazka, residents of Canada and Switzerland, respectively. They claim to be victims of violations of their human rights by the Czech Republic. The Covenant was ratified by Czechoslovakia on 23 December 1975. The Optional Protocol entered into force for the Czech

Republic on 12 June 1991.(1)

The facts as submitted by the authors:

2.1 Alina Simunek, a Polish citizen born in 1960, and Jaroslav Simunek, a Czech citizen, currently reside in Ontario, Canada. They state that they were forced to leave Czechoslovakia in 1987, under pressure of the security forces of the communist regime. Under the legislation then applicable, their property was confiscated. After the fall of the Communist government on 17 November 1989, the Czech authorities published statements which indicated that expatriate Czech citizens would be rehabilitated in as far as any criminal conviction was concerned, and their property restituted.

2.2 In July 1990, Mr. and Mrs. Simunek returned to Czechoslovakia in order to submit a request for the return of their property, which had been confiscated by the District National Committee, a State organ, in Jablonece. It transpired, however, that between September 1989 and February 1990, all their property and personal effects had been evaluated and auctioned off by the District National Committee. Unsaleable items had been destroyed. On 13 February 1990, the authors' real estate was transferred to the Jablonece Sklarny factory, for which Jaroslav Simunek had been working for twenty years.

2.3 Upon lodging a complaint with the District National Committee, an arbitration hearing was convened between the authors, their witnesses and representatives of the factory on 18 July 1990. The latter's representatives denied that the transfer of the authors' property had been illegal. The authors thereupon petitioned the office of the district public prosecutor, requesting an investigation of the matter on the ground that the transfer of their property had been illegal, since it had been transferred in the absence of a court order or court proceedings to which the authors had been parties. On 17 September 1990, the Criminal Investigations Department of the National Police in Jablonece launched an investigation; its report of 29 November 1990 concluded that no violation of (then) applicable regulations could be ascertained, and that the authors' claim should be dismissed, as the Government had not yet amended the former legislation.

2.4 On 2 February 1991, the Czech and Slovak Federal Government adopted Act 87/1991, which entered into force on 1 April 1991. It endorses the rehabilitation of Czech citizens who had left the country under communist pressure and lays down the conditions for restitution or compensation for loss of property. Under Section 3, subsection 1, of the Act, those who had their property turned into State ownership in the cases specified in Section 6 of the Act are entitled to restitution, but only if they are citizens of the Czech and Slovak Federal Republic and are permanent residents in its territory.

2.5 Under Section 5, subsection 1, of the Act, anyone currently in (illegal) possession of the property shall restitute it to the rightful owner, upon a written request from the latter, who must also prove his or her claim to the property and demonstrate how the property was turned over to the State. Under subsection 2, the request for restitution must be submitted to the individual in

possession of the property, within six months of the entry into force of the Act. If the person in possession of the property does not comply with the request, the rightful owner may submit his or her claim to the competent tribunal, within one year of the date of entry into force of the Act (subsection 4).

2.6 With regard to the issue of exhaustion of domestic remedies, it appears that the authors have not submitted their claims for restitution to the local courts, as required under Section 5, subsection 4, of the Act. It transpires from their submissions that they consider this remedy ineffective, as they do not fulfil the requirements under Section 3, subsection 1. Alina Simunek adds that they have lodged complaints with the competent municipal, provincial and federal authorities, to no avail. She also notes that the latest correspondence is a letter from the Czech President's Office, dated 16 June 1992, in which the author is informed that the President's Office cannot intervene in the matter, and that only the tribunals are competent to pronounce on the matter. The author's subsequent letters remained without reply.

2.7 Dagmar Hastings Tuzilova, an American citizen by marriage and currently residing in Switzerland, emigrated from Czechoslovakia in 1968. On 21 May 1974, she was sentenced in absentia to a prison term as well as forfeiture of her property, on the ground that she had 'illegally emigrated' from Czechoslovakia. Her property, 5/18 shares of her family's estate in Pilsen, is currently held by the Administration of Houses in this city.

2.8 By decision of 4 October 1990 of the District Court of Pilsen, Dagmar Hastings Tuzilova was rehabilitated; the District Court's earlier decision, as well as all other decisions in the case, were declared null and void. All her subsequent applications to the competent authorities and a request to the Administration of Houses in Pilsen to negotiate the restitution of her property have, however, not produced any tangible result.

2.9 Apparently, the Administration of Housing agreed, in the spring of 1992, to transfer the 5/18 of the house back to her, on the condition that the State notary in Pilsen agreed to register this transaction. The State notary, however, has so far refused to register the transfer. At the beginning of 1993, the District Court of Pilsen confirmed the notary's action (Case No. 11 Co. 409/92). The author states that she was informed that she could appeal this decision, via the District Court in Pilsen, to the Supreme Court. She apparently filed an appeal with the Supreme Court on 7 May 1993, but no decision had been taken as of 20 January 1994.

2.10 On 16 March 1992, Dagmar Hastings Tuzilova filed a civil action against the Administration of Houses, pursuant to Section 5, subsection 4, of the Act. On 25 May 1992, the District Court of Pilsen dismissed the claim, on the ground that, as an American citizen residing in Switzerland, she was not entitled to restitution within the meaning of Section 3, subsection 1, of Act 87/1991. The author contends that any appeal against this decision would be ineffective.

2.11 Josef Prochazka is a Czech citizen born in 1920, who currently resides in

Switzerland. He fled from Czechoslovakia in August 1968, together with his wife and two sons. In the former Czechoslovakia, he owned a house with two three-bedroom apartments and a garden, as well as another plot of land. Towards the beginning of 1969, he donated his property, in the appropriate form and with the consent of the authorities, to his father. By judgments of a district court of July and September 1971, he, his wife and sons were sentenced to prison terms on the grounds of "illegal emigration" from Czechoslovakia. In 1973, Josef Prochazka's father died; in his will, which was recognized as valid by the authorities, the author's sons inherited the house and other real estate.

2.12 In 1974, the court decreed the confiscation of the author's property, because of his and his family's "illegal emigration", in spite of the fact that the authorities had, several years earlier, recognized as lawful the transfer of the property to the author's father. In December 1974, the house and garden were sold, according to the author at a ridiculously low price, to a high party official.

2.13 By decisions of 26 September 1990 and of 31 January 1991, respectively, the District Court of Ustí rehabilitated the author and his sons as far as their criminal conviction was concerned, with retroactive effect. This means that the court decisions of 1971 and 1974 (see paragraphs 2.11 and 2.12 above) were invalidated.

The complaint:

3.1 Alina and Jaroslav Simunek contend that the requirements of Act 87/1991 constitute unlawful discrimination, as it only applies to "pure Czechs living in the Czech and Slovak Federal Republic". Those who fled the country or were forced into exile by the ex-communist regime must take a permanent residence in Czechoslovakia to be eligible for restitution or compensation. Alina Simunek, who lived and worked in Czechoslovakia for eight years, would not be eligible at all for restitution, on account of her Polish citizenship. The authors claim that the Act in reality legalizes former Communist practices, as more than 80% of the confiscated property belongs to persons who do not meet these strict requirements.

3.2 Alina Simunek alleges that the conditions for restitution imposed by the Act constitute discrimination on the basis of political opinion and religion, without however substantiating her claim.

3.3 Dagmar Hastings Tuzilova claims that the requirements of Act 87/1991 constitute unlawful discrimination, contrary to article 26 of the Covenant.

3.4 Josef Prochazka also claims that he is a victim of the discriminatory provisions of Act 87/1991; he adds that as the court decided, with retroactive effect, that the confiscation of his property was null and void, the law should not be applied to him at all, as he never lost his legal title to his property, and because there can be no question of 'restitution' of the property.

The Committee's admissibility decision:

4.1 On 26 October 1993, the communications were transmitted to the State party under rule 91 of the rules of procedure of the Human Rights Committee. No submission under rule 91 was received from the State party, despite a reminder addressed to it. The authors were equally requested to provide a number of clarifications; they complied with this request by letters of 25 November 1993 (Alina and Jaroslav Simunek), 3 December 1993 and 11/12 April 1994 (Josef Prochazka) and 19 January 1994 (Dagmar Hastings Tuzilova).

4.2 At its 51st session the Committee considered the admissibility of the communication. It noted with regret the State party's failure to provide information and observations on the question of the admissibility of the communication. Notwithstanding this absence of cooperation on the part of the State party, the Committee proceeded to ascertain whether the conditions of admissibility under the Optional Protocol had been met.

4.3 The Committee noted that the confiscation and sale of the property in question by the authorities of Czechoslovakia occurred in the 1970's and 1980's. Irrespective of the fact that all these events took place prior to the date of entry into force of the Optional Protocol for the Czech Republic, the Committee recalled that the right to property, as such, is not protected by the Covenant.

4.4 The Committee observed, however, that the authors complained about the discriminatory effect of the provisions of Act 87/1991, in the sense that they apply only to persons unlawfully stripped of their property under the former regime who now have a permanent residence in the Czech Republic and are Czech citizens. Thus the question before the Committee was whether the law could be deemed discriminatory within the meaning of article 26 of the Covenant.

4.5 The Committee observed that the State party's obligations under the Covenant applied as of the date of its entry into force. A different issue arose as to when the Committee's competence to consider complaints about alleged violations of the Covenant under the Optional Protocol was engaged. In its jurisprudence under the Optional Protocol, the Committee has consistently held that it cannot consider alleged violations of the Covenant which occurred before the entry into force of the Optional Protocol for the State party, unless the violations complained of continue after the entry into force of the Optional Protocol. A continuing violation is to be interpreted as an affirmation, after the entry into force of the Optional Protocol, by act or by clear implication, of the previous violations of the State party.

4.6 While the authors in the present case have had their criminal convictions quashed by Czech tribunals, they still contend that Act No. 87/1991 discriminates against them, in that in the case of two of the applicants (Mr. and Mrs. Simunek; Mrs. Hastings Tuzilova), they cannot benefit from the law because they are not Czech citizens or have no residence in the Czech Republic, and that in the case of the third applicant (Mr. Prochazka), the law

should not have been deemed applicable to his situation at all.

5. On 22 July 1994 the Human Rights Committee therefore decided that the communication was admissible in as much as it may raise issues under articles 14, paragraph 6, and 26 of the Covenant.

The State party's explanations

6.1 In its submission, dated 12 December 1994, the State party argues that the legislation in question is not discriminatory. It draws the Committee's attention to the fact that according to article 11, Section 2, of the Charter of Fundamental Rights and Freedoms, which is part of the Constitution of the Czech Republic, "... the law may specify that some things may be owned exclusively by citizens or by legal persons having their seat in the Czech Republic."

6.2 The State party affirms its commitment to the settlement of property claims by restitution of properties to persons injured during the period of 25 February 1948 to 1 January 1990. Although certain criteria had to be stipulated for the restitution of confiscated properties, the purpose of such requirements is not to violate human rights. The Czech Republic cannot and will not dictate to anybody where to live. Restitution of confiscated property is a very complicated and de facto unprecedented measure and therefore it cannot be expected to rectify all damages and to satisfy all the people injured by the Communist regime.

7.1 With respect to the communication submitted by Mrs. Alina Simunek the State party argues that the documents submitted by the author do not define the claims clearly enough. It appears from her submission that Mr. Jaroslav Simunek was probably kept in prison by the State Security Police. Nevertheless, it is not clear whether he was kept in custody or actually sentenced to imprisonment. As concerns the confiscation of the property of Mr. and Mrs. Simunek, the communication does not define the measure on the basis of which they were deprived of their ownership rights. In case Mr. Simunek was sentenced for a criminal offence mentioned in Section 2 or Section 4 of Law No. 119/1990 on judicial rehabilitation as amended by subsequent provisions, he could claim rehabilitation under the law or in review proceedings and, within three years of the entry into force of the court decision on his rehabilitation, apply to the Compensations Department of the Ministry of Justice of the Czech Republic for compensation pursuant to Section 23 of the above-mentioned Law. In case Mr. Simunek was unlawfully deprived of his personal liberty and his property was confiscated between 25 February 1948 and 1 January 1990 in connection with a criminal offence mentioned in Section 2 and Section 4 of the Law but the criminal proceedings against him were not initiated, he could apply for compensation on the basis of a court decision issued at the request of the injured party and substantiate his application with the documents which he had at his disposal or which his legal adviser obtained from the archives of the Ministry of the Interior of the Czech Republic.

7.2 As concerns the restitution of the forfeited or confiscated property, the State party concludes from the submission that Alina and Jaroslav Simunek do

not comply with the requirements of Section 3 (1) of Law No. 87/1991 on extrajudicial rehabilitations, namely the requirements of citizenship of the Czech and Slovak Federal Republic and permanent residence on its territory. Consequently, they cannot be recognized as persons entitled to restitution. Remedy would be possible only in case at least one of them complied with both requirements and applied for restitution within 6 months from the entry into force of the law on extrajudicial rehabilitations (i.e. by the end of September 1991).

8.1 With respect to the communication of Mrs. Dagmar Hastings-Tuzilova the State party clarifies that Mrs. Dagmar Hastings-Tuzilova claims the restitution of the 5/18 shares of house No. 2214 at Cechova 61, Pilsen, forfeited on the basis of the ruling of the Pilsen District Court of 21 May 1974, by which she was sentenced for the criminal offence of illegal emigration according to Section 109 (2) of the Criminal Law. She was rehabilitated pursuant to Law No. 119/1990 on judicial rehabilitations by the ruling of the Pilsen District Court of 4 October 1990. She applied for restitution of her share of the estate in Pilsen pursuant to Law No. 87/1991 on extrajudicial rehabilitations. Mrs. Hastings-Tuzilova concluded an agreement on the restitution with the Administration of Houses in Pilsen, which the State Notary in Pilsen refused to register due to the fact that she did not comply with the conditions stipulated by Section 3 (1) of the law on extrajudicial rehabilitations.

8.2 Mrs. Hastings-Tuzilova, although rehabilitated pursuant to the law on judicial rehabilitations, cannot be considered entitled person as defined by Section 19 of the law on extrajudicial rehabilitations, because on the date of application she did not comply with the requirements of Section 3 (1) of the above-mentioned law, i.e. requirements of citizenship of the Czech and Slovak Federal Republic and permanent residence on its territory. Moreover, she failed to fulfil the requirements within the preclusive period stipulated by Section 5 (2) of the law on extrajudicial rehabilitations. Mrs. Hastings-Tuzilova acquired Czech citizenship and registered her permanent residence on 30 September 1992.

8.3 Section 20 (3) of the law on extrajudicial rehabilitations says that the statutory period for the submission of applications for restitution based on the sentence of forfeiture which was declared null and void after the entry into force of the law on extrajudicial rehabilitations starts on the day of the entry into force of the annulment. Nevertheless, this provision cannot be applied in the case of Mrs. Hastings-Tuzilova due to the fact that her judicial rehabilitation entered into force on 9 October 1990, i.e. before the entry into force of Law No. 87/1991 on extrajudicial rehabilitations (1 April 1991).

9.1 With respect to the communication of Mr. Josef Prochazka the State party argues that Section 3 of Law No. 87/1991 on extrajudicial rehabilitations defines the entitled person, i.e. the person who could within the statutory period claim the restitution of property or compensation. Applicants who did not acquire citizenship of the Czech and Slovak Federal Republic and register their permanent residence on its territory before the end of the statutory period determined for the submission of applications (i.e. before 1 October 1991 for

applicants for restitution and before 1 April 1992 for applicants for compensation) are not considered entitled persons.

9.2 From Mr. Prochazka's submission the State party concludes that the property devolved to the State on the basis of the ruling of the Usti nad Labem District Court of 1974 which declared the 1969 deed of gift null and void for the reason that the donor left the territory of the former Czechoslovak Socialist Republic. Such cases are provided for in Section 6 (1) (f) of the law on extrajudicial rehabilitations which defined the entitled person as the transferee according to the invalidated deed, i.e. in this case the entitled person is the unnamed father of Mr. Prochazka. Consequently, the persons to whom the sentence of forfeiture invalidated under Law No. 119/1990 on judicial rehabilitations applies, cannot be regarded as entitled persons, as Mr. Prochazka incorrectly assumes.

9.3 With regard to the fact that the above-mentioned father of Mr. Prochazka died before the entry into force of the law on extrajudicial rehabilitations, the entitled persons are the testamentary heirs - Mr. Prochazka's sons Josef Prochazka and Jiri Prochazka, provided that they were citizens of the former Czech and Slovak Federal Republic and had permanent residence on its territory. The fact that they were rehabilitated pursuant to the law on judicial rehabilitations has no significance in this case. From Mr. Prochazka's submission the State party concludes that Josef Prochazka and Jiri Prochazka are Czech citizens but live in Switzerland and did not apply for permanent residence in the Czech Republic.

Authors' comments on the State party's submissions

10.1 By letter of 21 February 1995, Alina and Jaroslav Simunek contend that the State party has not addressed the issues raised by their communication, namely the compatibility of Act No. 87/1991 with the non-discrimination requirement of article 26 of the Covenant. They claim that Czech hard-liners are still in office and that they have no interest in the restitution of confiscated properties, because they themselves benefited from the confiscations. A proper restitution law should be based on democratic principles and not allow restrictions that would exclude former Czech citizens and Czech citizens living abroad.

10.2 By letter of 12 June 1995 Mr. Prochazka informed the Committee that by order of the District Court of 12 April 1995 the plot of land he inherited from his father will be returned to him (paragraph 2.11).

10.3 Mrs. Hastings Tuzilova had not submitted comments by the time of the consideration of the merits of this communication by the Committee.

Examination of the merits

11.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol.

11.2 This communication was declared admissible only insofar as it may raise issues under article 14, paragraph 6, and article 26 of the Covenant. With regard to article 14, paragraph 6, the Committee finds that the authors have not sufficiently substantiated their allegations and that the information before it does not sustain a finding of a violation.

11.3 As the Committee has already explained in its decision on admissibility (para. 4.3 above), the right to property, as such, is not protected under the Covenant. However, a confiscation of private property or the failure by a State party to pay compensation for such confiscation could still entail a breach of the Covenant if the relevant act or omission was based on discriminatory grounds in violation of article 26 of the Covenant.

11.4 The issue before the Committee is whether the application of Act 87/1991 to the authors entailed a violation of their rights to equality before the law and to the equal protection of the law. The authors claim that this Act, in effect, reaffirms the earlier discriminatory confiscations. The Committee observes that the confiscations themselves are not here at issue, but rather the denial of a remedy to the authors, whereas other claimants have recovered their properties or received compensation therefor.

11.5 In the instant cases, the authors have been affected by the exclusionary effect of the requirement in Act 87/1991 that claimants be Czech citizens and residents of the Czech Republic. The question before the Committee, therefore, is whether these preconditions to restitution or compensation are compatible with the non-discrimination requirement of article 26 of the Covenant. In this context the Committee reiterates its jurisprudence that not all differentiation in treatment can be deemed to be discriminatory under article 26 of the Covenant.(2) A differentiation which is compatible with the provisions of the Covenant and is based on reasonable grounds does not amount to prohibited discrimination within the meaning of article 26.

11.6 In examining whether the conditions for restitution or compensation are compatible with the Covenant, the Committee must consider all relevant factors, including the authors' original entitlement to the property in question and the nature of the confiscations. The State party itself acknowledges that the confiscations were discriminatory, and this is the reason why specific legislation was enacted to provide for a form of restitution. The Committee observes that such legislation must not discriminate among the victims of the prior confiscations, since all victims are entitled to redress without arbitrary distinctions. Bearing in mind that the authors' original entitlement to their respective properties was not predicated either on citizenship or residence, the Committee finds that the conditions of citizenship and residence in Act 87/1991 are unreasonable. In this connection the Committee notes that the State party has not advanced any grounds which would justify these restrictions. Moreover, it has been submitted that the authors and many others in their situation left Czechoslovakia because of their political opinions and that their property was confiscated either because of their political opinions or because of their emigration from the country. These victims of political persecution

sought residence and citizenship in other countries. Taking into account that the State party itself is responsible for the departure of the authors, it would be incompatible with the Covenant to require them permanently to return to the country as a prerequisite for the restitution of their property or for the payment of appropriate compensation.

11.7 The State party contends that there is no violation of the Covenant because the Czech and Slovak legislators had no discriminatory intent at the time of the adoption of Act 87/1991. The Committee is of the view, however, that the intent of the legislature is not alone dispositive in determining a breach of article 26 of the Covenant. A politically motivated differentiation is unlikely to be compatible with article 26. But an act which is not politically motivated may still contravene article 26 if its effects are discriminatory.

11.8 In the light of the above considerations, the Committee concludes that Act 87/1991 has had effects upon the authors that violate their rights under article 26 of the Covenant.

12.1 The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol, is of the view that the denial of restitution or compensation to the authors constitutes a violation of article 26 of the International Covenant on Civil and Political Rights.

12.2 In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the authors with an effective remedy, which may be compensation if the properties in question cannot be returned. To the extent that partial restitution of Mr. Prochazka's property appears to have been or may soon be effected (para. 10.2), the Committee welcomes this measure, which it deems to constitute partial compliance with these Views. The Committee further encourages the State party to review its relevant legislation to ensure that neither the law itself nor its application is discriminatory.

12.3 Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within ninety days, information about the measures taken to give effect to the Committee's Views.

Notes:

1/ The Czech and Slovak Federal Republic ratified the Optional Protocol in March 1991 but, on 31 December 1992, the Czech and Slovak Federal Republic ceased to exist. On 22 February 1993, the Czech Republic notified its succession to the Covenant and the Optional Protocol.
2/ Zwaan de Vries v. The Netherlands, Communication No. 182/1984, Views adopted on 9 April 1987, para. 13.

Source: United Nations High Commissioner for Human Rights <http://www.ohchr.org>.

Table A2.6 - Regional Human Rights Courts and Commissions, Jurisprudence

ECmHR, Decision, *X v United Kingdom*, Secretariat of the European Commission of Human Rights, Decisions/Reports of the Council of Europe by the European Commission on Human Rights, App. No. 7730/76, Dec. 11, 1976

Article 3 of the First Protocol: In respect of the right to vote, a condition of residence ts not contrary to this provision.

Article 14 of the Convention in conjunction with Article 3 of the First Protocol: In respect of the right to vote, exemption from the residence requirements for diplomats residing abroad does not constitute a discrimination vis-á-vis other citizens residing abroad.

Summary of the facts

The applicant is a United Kingdom citizen, residing in Paris since 1971. She complains that according to relevant legal provisions, British subjects residing abroad cannot take part in national parliamentary elections. The exception to this rule made for diplomats and members of the British Institute living abroad, as well as their families, constitutes according to the applicant, mere discrimination.

THE LAW

The Commission observes that the applicant has stated that she has introduced the application not only on her own behalf but also on behalf of many other British subjects living abroad. Since the Convention does not provide for applications in form of an *actio popularis*, the Commission, while accepting that the issues raised in the present application affect a large number of persons, is considering it insofar as the applicant herself is prevented from participating in elections in the United Kingdom.

Article 3 of Protocol No. 1, on which the applicant relies in the first place, provides as follows:

"The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

In its case law, the Commission has established that although the wording of the above Article seems to provide only for an institutional guarantee to free elections, it implied a recognition of the principle of universal suffrage and, in this context, individual rights, namely the right to vote and the right to stand for election to the legislature. However, this right was neither absolute nor without limitations but subject to such restrictions imposed by the Contracting States as are not arbitrary and do not interfere with the free expression of the people's opinion (cf. Applications Nos . 6745/74 and 6746/74 v/Belgium, D.R. 2, p. 110 (112, 116)).

In the present case the applicant claims that to exclude her from voting in parliamentary elections in the United Kingdom, solely on the ground of non-residence in a recognised Parliamentary constituency at the time of census by Registration officers, constitutes such an arbitrary interference.

The Commission observes that, among the conditions commonly imposed in Convention countries on the possession or exercise of a right to vote in Parliamentary elections, are citizenship, residence and age. Reasons justifying, in the opinion of the Commission, the residence requirement complained of here are: first, the assumption that a non-resident citizen is less directly or continuously interested in, and has less day-to-day knowledge of its problems; secondly, the impracticability for Parliamentary candidates of presenting the different electoral issues to citizens abroad so as to secure a free expression of opinion; thirdly, the need to prevent electoral fraud, the danger of which is increased in uncontrolled postal votes; and finally the link between the right of representation in the Parliamentary vote and the obligation to pay taxes, not always imposed on those in voluntary and continuous residence abroad. These reasons are not all met by the applicant's claim that she has in no way lost touch with her country of origin, which remains the focal point of her personal and social interests and obligations.

The Commission concludes that the residence requirement in the electoral law of the United Kingdom cannot be regarded as unreasonable or arbitrary and so contrary to Article 3 of the First Protocol, so as to interfere with the rights of the applicant.

In regard to the claim of the applicant that the distinction made between her and other British subjects in voting rights is discriminatory in the sense of Article 14 of the Convention, the Commission considers that the distinction pursues a legitimate aim and is not a disproportionate means of achieving it.

It is true that certain categories of United Kingdom citizens living abroad, namely servicemen and members of the diplomatic service, and their families, are exempt from the residence requirements in respect of the right to vote in parliamentary elections.

However, servicemen and diplomats are not living abroad voluntarily but have been sent to a country other than their own by their government in the performance of services to be rendered to their country. They therefore remain closely linked to their country and under control of their government, and this special situation explains that they are not regarded as being non-residents although physically outside their country. As a consequence of the control referred to above there is also no risk of electoral fraud in their use of postal votes.

It follows that they are not comparable with those persons who have chosen to leave their country and to take up residence elsewhere and no issue therefore arises under Article 14 of the Convention in respect of that situation.

An examination of the case as it has been submitted by the applicant, including an examination made ex officio, does not therefore disclose any appearance of a violation of the rights and freedoms protected in the Convention or in Protocol No. 1. It follows that the application is manifestly ill-founded and must be rejected under Article 27, § 2 of the Convention.

For these reasons the Commission DECLARES THE APPLICATION INADMISSIBLE .

ECmHR, Decision, *X v United Kingdom*, Secretariat of the European Commission of Human Rights, Decisions/Reports of the Council of Europe by the European Commission on Human Rights, App. No. 7566/76, Feb. 28, 1979

Article 3 of the First Protocol: Person residing abroad, deprived of the exercise of the right to vote in country of origin. Examination of the justification of such a rule and importance attached to the fact that the person concerned had voluntarily chosen to take up residence abroad.

Article 14 of the Convention, in combination with Article 3 of the First Protocol: In the field of the exercise of the right to vote, the fact that the condition of residence is not applied to members of the diplomatic service or armed forces stationed abroad does not constitute discriminatory treatment in respect of other citizens who have taken up voluntary residence abroad.

Summary of the facts

The applicant, a U.K. citizen, is employed by the European Communities and resident in Brussels.

She complains that she is not allowed to participate in U .K. national elections, although she continues to have some fiscal obligations *vis-á-vis* that country. She compares her situation to that of the members of the diplomatic service or of the British Armed Forces stationed abroad.

THE LAW

1. The Commission first considered the applicant's complaint that she is wrongly excluded from the British Electorate on the ground that she is no longer resident within the United Kingdom.

Article 3 of Protocol No. 1, on which the applicant relies in the first place, provides as follows:

"The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature".

In its case-law, the Commission has established that, although the wording of the above Article seems to provide only for an institutional guarantee of free

elections, it implies a recognition of the principle of universal suffrage and, in this context, individual rights, namely the right to vote and the right to stand for election to the legislature. However, this right is neither absolute nor without limitations but subject to such restrictions imposed by the Contracting States as are not arbitrary and do not interfere with the free expression of the people's opinion (cf. Applications Nos . 6745/76 and 6746/76 v/Belgium, Decisions and Reports 2, p. 110 (112, 1161).

The Commission observes that, among the conditions commonly imposed in Convention countries on the possession or exercise of the right to vote in Parliamentary elections, are citizenship, residence and age. In this respect the Commission recalls that in its decision of 11 December 1976 on the admissibility of Application No . 7566/76, *X v. the United Kingdom* (Decisions and Reports 9, p. 121) it gave a number of reasons justifying the residence requirement.

However, in view of the fact that some of the High Contracting Parties allow their nationals abroad to exercise their right to vote in their home country through various means and that even attempts have recently been made to create political rights for non-citizens in the country of their habitual residence, its reasoning in the above case has called for further examination .

As to the present case, the Commission considers that the reasons justifying the residence requirement complained of are: first, the assumption that a non-resident citizen is less directly or continuously concerned with, and has less knowledge of its day-to-day problems; secondly, the impracticability for and sometimes undesirability (in some cases impossibility) of Parliamentary candidates of presenting the different electoral issues to citizens abroad so as to secure a free expression of opinion; thirdly, the influence of resident-citizens on the selection of candidates and on the formulation of their electoral programmes; and finally, the correlation between one's right to vote in Parliamentary elections and being directly affected by acts of the political bodies so elected.

As to the present case it may well be that the applicant would be regarded as resident in the United Kingdom for certain tax purposes when receiving interest from her holdings of British Government Securities.

This however appears to be a matter of minor detail. The principal point remains that as she has chosen to take up residence abroad her situation still differs considerably from that of citizens permanently resident in the United Kingdom. In particular, as to the correlation between one's right to vote in Parliamentary elections and being directly affected by acts of political bodies so elected, the applicant cannot claim to be affected by the acts of these political bodies to a similar extent as resident citizens.

The Commission is, therefore, satisfied that the restriction on the applicant's right to vote in Parliamentary elections is not arbitrary so that it could be contrary to Article 3 of the First Protocol.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 (21) of the Convention.

2. Insofar as the applicant may be understood to complain that the distinction made between her and members of the UK diplomatic service or Armed Forces stationed outside the United Kingdom who continue to enjoy the right to vote in Parliamentary elections is discriminatory in the sense of Article 14 of the Convention, the Commission considers that the distinction pursues a legitimate aim and is not a disproportionate means of achieving it.

In its opinion these persons are not living abroad voluntarily but have been sent to a country other than their own by their Government in the performance of services to be rendered to their country. They therefore remain closely linked to their country and under control of their Government, and this special situation explains that they are regarded as being resident-citizens although physically outside their country.

It is true that the applicant is employed by the European Communities, being an organisation which performs services to a large community, including her own nation. However, this fact alone cannot, in the opinion of the Commission, be considered as legally decisive for purposes of Article 14 to distinguish her in this respect from others who have chosen to 1eave their country and to take up residence elsewhere.

These persons are not directly comparable with the other groups, referred to by the applicant (diplomats and soldiers stationed abroad) and no issue therefore arises under Article 14 of the Convention in respect of that situation.

For these reasons, the Commission DECLARES THIS APPLICATION INADMISSIBLE.

ECtHR, *Melnychenko v Ukraine*, Application no. 17707/02, Judgment, Oct. 19, 2004, FINAL, Mar. 3, 2005

PROCEDURE

1. The case originated in an application (no. 17707/02) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Ukrainian national, Mr Mykola Ivanovych Melnychenko (“the applicant”), on 23 April 2002.

2. The applicant was represented by Mr Serhiy Holovatyy, a lawyer practising in Kyiv, Ukraine. The Ukrainian Government (“the Government”) were represented by their Agents, Ms Valeriya Lutkovska, succeeded by Ms Zoryana Bortnovska.

3. The applicant alleged, in particular, that his right to stand for elections, as guaranteed by Article 3 of Protocol No. 1 to the Convention, was infringed.

4. The application was allocated to the Second Section of the Court (Rule 52 §

1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 4 November 2003, the Court declared the application admissible as concerns the complaints under Article 3 of Protocol No. 1 to the Convention.

6. The applicant and the Government each filed observations on the merits (Rule 59 § 1). The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other's observations.

THE FACTS

7. The applicant, Mr Mykola Ivanovych Melnychenko, was born on 18 October 1966 in the village of Zapadynka, Vasylkiv District, the Kyiv Region. He currently resides in the United States of America, where he has refugee status.

8. The applicant served in the Department of Security within the Administration of the President of Ukraine. He was in charge of guarding the office of the President. In the course of his work he allegedly made tape recordings of the President's personal conversations with third persons, relating to the President's possible involvement in the disappearance of the journalist Georgiy Gongadze.

9. Mr Gongadze had been a political journalist and the editor-in-chief of the “Ukrayinska Pravda” internet journal. He was known for his criticism of those in power and for his active involvement in awareness-raising in Ukraine and abroad as regards issues of freedom of speech. He disappeared on 16 September 2000 after having complained for months of being subjected to threats and surveillance. On 2 November 2000, the decapitated body of an unknown person, later identified by forensic medical tests as Mr Gongadze, was discovered in the vicinity of the town of Tarashcha, in the Kiev Region. His widow has lodged an application with the Court (no. 34056/02).

I. THE CIRCUMSTANCES OF THE PRESENT CASE

A. Background of the case

10. On 26 November 2000 the applicant left Ukraine, as he was afraid of political persecution following the public disclosure of the aforementioned audiotapes.

11. On 28 November 2000 the Chairman of the Socialist Party of Ukraine, Mr O. Moroz, publicly announced, during a session of the Parliament of Ukraine, *Verkhovna Rada* (Верховна Рада України), the existence of audio records, secretly made in the office of the President, implicating the President and other high-level State officials in the disappearance of Georgiy Gongadze. According to the report of “Reporters sans frontiers”, published on 22 January 2001, the

recorded conversations mentioned different ways of getting rid of Mr Gongadze. In one of those conversations, allegedly between the President and the Minister of the Interior, the Minister said that he knew people capable of performing this task, people whom he called “real eagles”, ready to do whatever was wanted. (The 'real eagles' were purportedly an illegal squad of former or *present members of the security forces.) This disclosure led to a major political scandal.*

12. Two days later, on 30 November 2000, the Pechersky District Court of Kyiv instituted criminal proceedings against Mr O. Moroz in defamation with regard to the audiotapes.

13. The applicant fled Ukraine. However, he still held an internal passport which noted his registered Kiev address for administrative purposes (the “*propiska”*, as it was called at the time, paragraphs 40-42 below).

14. The applicant applied for political asylum in the United States of America (“US”/“USA”). On 27 April 2001 the Immigration and Naturalisation Service of the US Department of Justice recognised the applicant as a refugee under the United Nations Convention Relating to the Status of Refugees 1951 (hereafter “the Geneva Convention”). The US Department of Justice issued a travel document to the applicant and granted him the right to stay in the USA indefinitely.

15. On 4 January 2001 the investigator at the General Prosecutor's Office (the “GPO”) decided to initiate criminal proceedings against the applicant concerning allegations of defamation against the President of Ukraine, Mr L. Kuchma, as well as Mr V. Lytvyn and Mr Y. Kravchenko, who were at the material time the Head of the Administration of the President of Ukraine and the Minister of the Interior, respectively. Proceedings were also initiated for forgery in respect of the official application which the applicant had made for his passport, as he had failed to disclose the fact that he knew certain State secrets by virtue of his employment (paragraph 34 below). On the same date the GPO investigator ordered a search for the applicant.

16. On 14 February 2001 the GPO investigator initiated further criminal proceedings against the applicant for his alleged involvement in disclosing State secrets and an abuse of power. On 15 February 2001 the applicant was to be formally charged with all four offences, jointly. On 19 October 2001 the indictment was re-issued by the GPO in accordance with the new Criminal Code. The defamation charge was thereby dropped as the new Code had decriminalised libel. On 24 January 2002 the Pechersky District Court of Kyiv, in the applicant's absence, issued a warrant for his arrest and detention pending trial.

B. The facts giving rise to the applicant's complaints

17. On 12 January 2002 the 9th Congress of the Socialist Party of Ukraine nominated the applicant as candidate no. 15 on the Socialist Party list for election to the *Verkhovna Rada*.

18. On 22 January 2002 the Socialist Party submitted the applicant's application to the Central Electoral Commission (Центральна Виборча Комісія) for his formal registration as a candidate. In the registration request the applicant gave his *propiska* address as his place of residence in Ukraine for the previous five years.

19. On 26 January 2002 the Central Electoral Commission of Ukraine adopted Resolution No. 94 “on the refusal to register candidates for election on 31 March 2002 as People's members of the *Verkhovna Rada*.”

20. This Resolution was based on the verbatim record of a discussion on the applicant's request for registration, and was adopted following a proposal by Ms I. Stavniychuk, a member of the Central Electoral Commission, who claimed that registration should be refused for the following reasons:

“... It ensues from what has been specified above that the provision of Part II of section 8 of the Law “on the Election of the People's members of the *Verkhovna Rada* of Ukraine”, concerning residence in accordance with the international treaties of Ukraine in force, does not extend to M.I. Melnychenko.

From the legal point of view, M.I. Melnychenko's stay in the USA does not enable him to be recognised as being permanently resident in Ukraine, as prescribed by section 8 of the Law ...

... M.I. Melnychenko remains abroad on other grounds; those grounds are not prescribed by Part II of Section 8 of the Law...

... any break in residence in Ukraine beyond the grounds for residence or stay prescribed by Part II of section 8 of the Law ... rules out the possibility for that person to exercise his right to be elected as a People's member of the *Verkhovna Rada* of Ukraine, since it [a break in residence] cannot constitute residence in Ukraine.

... On account of this factor and due to the fact that M.I. Melnychenko has submitted inaccurate information about his habitual residence or stay for the past five years, as established by the Central Electoral Commission, we propose that the Commission refuse M.I. Melnychenko's registration as a candidate for the People's members of the *Verkhovna Rada* of Ukraine ...”

21. Consequently, the Central Electoral Commission adopted Ms I. Stavniychuk's proposal and rejected the registration of 13 potential candidates, including the applicant. In particular, it decided:

“... 2. To refuse to register, as a candidate for membership of the *Verkhovna Rada* of Ukraine in the multi-mandate all-State electoral constituency, Mykola Ivanovych Melnychenko, enrolled under number 15 on the list of candidates for election as a People's member of the *Verkhovna Rada* of Ukraine on 31 March 2002, whose documents, as submitted to the Central Electoral Commission, contained substantially untruthful data about his place and period of residence

for the past five years”.

22. During its meeting, the Commission had distinguished the applicant's situation from that of a certain Mr Y.M. Zviahilsky, who had been allowed to stand as a parliamentary candidate in a previous election under different regulations, despite having spent more than two years abroad for medical treatment in Israel on a temporary basis. The applicant contended that Mr Y.M. Zviahilsky, who had been prosecuted for abuse of power during his office as the Acting Prime Minister of Ukraine, had fled to Israel during the suspension of his parliamentary immunity.

23. The other 12 candidates were refused registration because of the improper completion of the documents necessary for registration.

24. On 30 January 2002 the Socialist Party lodged an appeal with the Supreme Court of Ukraine against Resolution No. 94 of the Central Electoral Commission of 26 January 2002. It sought to have the resolution declared unlawful and annulled.

25. On 8 February 2002 the Supreme Court of Ukraine rejected this appeal for the following reasons:

“... the information about M.I. Melnychenko's habitual place of residence for the past five years in Ukraine, referred to in the said documents, is contested by the Central Electoral Commission and the court. This information is substantially lacking in truth with respect to a candidate for election as a member of the *Verkhovna Rada* of Ukraine, and therefore paragraph 2 of Resolution No. 94 of the Central Electoral Commission of 26 January 2002 conforms to the requirements of Part II of section 8 and sections 41 and 47 of the Law on the elections of the People's members of the *Verkhovna Rada* of Ukraine.

On the basis of what has been set out and taken into account above, ... the Court has resolved:

that the complaint of the Socialist Party of Ukraine about paragraph 2 of Resolution No. 94 of the Central Electoral Commission of 26 January 2002, on the refusal to register M.I. Melnychenko as a candidate for membership of the *Verkhovna Rada* of Ukraine in the multi-mandate all-State electoral constituency, be dismissed.”

26. On 21 November 2002 the applicant informed the Court that he resides in the United States where he has refugee status. As his case had received so much media attention, this was common knowledge in Ukraine.

II. RELEVANT INTERNATIONAL LAW, DOMESTIC LAW AND PRACTICE

A. Restrictions on refugees' right to vote under international law

27. Article 25 of the 1966 International Covenant on Civil and Political Rights,

to which Ukraine is a party, guarantees the right to vote and to stand for public office for citizens of a country.

28. As regards the participation of refugees in elections in their country of origin, the Human Rights Committee in its General Comment 25 (1996) on Article 25 of the International Covenant on Civil and Political Rights, while noting that Article 25 prohibited arbitrary discrimination between citizens, considered that a registration requirement, itself dependent on residence, would be justifiable. Thus, States do have a right to limit voting in general to those citizens habitually resident in their territory. This Comment also stated that:

"...15. The effective implementation of the right and the opportunity to stand for elective office ensures that persons entitled to vote have a free choice of candidates. Any restrictions on the right to stand for election, such as minimum age, must be justifiable on objective and reasonable criteria. Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or by reason of political affiliation. No person should suffer discrimination or disadvantage of any kind because of that person's candidacy. States parties should indicate and explain the legislative provisions which exclude any group or category of persons from elective office."

B. Extracts from the Guidelines on Elections adopted by the Venice Commission at its 51st Plenary Session (5-6 July 2002)

29. Relevant extracts from the Guidelines on Elections of 5-6 July 2002 read as follows:

Principles of Europe's electoral heritage (Draft Explanatory Report)

"...Thirdly, the right to vote and/or the right to stand for election may be subject to *residence* requirements, ... residence in this case meaning habitual residence. ... Conversely, quite a few States grant their nationals living abroad the right to vote, and even to be elected. ... Registration could take place where a voter has his or her secondary residence, if he or she resides there regularly and it appears, for example, on local tax payments; the voter must not then of course be registered where he or she has his or her principal residence.

The free movement of citizens within the country is one of the fundamental rights necessary for truly democratic elections. However, if persons have been displaced against their will, they should, for a certain time, have the possibility of being considered as resident at their former place of residence. This possibility ought to be open for a minimum of five years but for no more than fifteen years to persons displaced within the national territory.

Lastly, provision may be made for *clauses suspending political rights*. Such clauses must, however, comply with the usual conditions under which fundamental rights may be restricted; in other words, they must:

- be provided for by law;
- observe the principle of proportionality;
- be based on mental incapacity or a criminal conviction for a serious offence.

Furthermore, the withdrawal of political rights may only be imposed by express decision of a court of law. However, in the event of withdrawal on grounds of mental incapacity, such express decision may concern the incapacity and entail *ipso jure* deprivation of civic rights.

The conditions for depriving individuals of the right to stand for election may be less strict than for disenfranchising them, as the holding of a public office is in issue and it may be legitimate to debar persons whose activities in such an office violate a greater public interest."

C. The practice of different jurisdictions concerning the residence requirement in relation to the right to vote

30. There is no uniform State practice with regard to participation in elections by expatriate citizens. Although many States do not impose any residence requirement (*e.g.* the United Kingdom, Ireland, Cyprus, Finland, Italy, France, Greece, Poland, the Netherlands, the Czech Republic, Spain, Portugal, Estonia, Latvia, Croatia, Moldova, Switzerland, Austria and Turkey), other States continue to impose such a requirement for presidential elections (*e.g.* Germany, Bulgaria, Macedonia, Azerbaijan, Albania and Russia) or parliamentary elections (Malta and Iceland - presidential systems; Liechtenstein, Belgium, Luxembourg, Denmark, Norway and Sweden - non-presidential systems) or for both types of election (*e.g.* Hungary, Slovakia, Armenia, Romania, Georgia, Lithuania and Ukraine).

D. Constitution of Ukraine, 1996

31. Relevant extracts from the Constitution of Ukraine read as follows:

Article 8

"... The Constitution of Ukraine has the highest legal force. ... The norms of the Constitution of Ukraine have direct effect..."

Article 9

"International treaties that are in force and are accepted as binding by the *Verkhovna Rada* of Ukraine are part of the national legislation of Ukraine. ..."

Article 22

"... Constitutional rights and freedoms are guaranteed and shall not be abolished. ..."

Article 24

“...There shall be no privileges or restrictions based on ... political ... and other beliefs..., [or] place of residence ...”

Article 38

“Citizens have the right to participate in the administration of State affairs, in all Ukrainian and local referenda, to elect freely and to be elected to bodies exercising State power as well as local self-government bodies.

Citizens enjoy an equal right of access to the civil service and to service in local self-government bodies.”

Article 64

“Constitutional human and citizens' rights and freedoms shall not be restricted, except in cases envisaged by the Constitution of Ukraine.

In conditions of martial law or a state of emergency, specific restrictions on rights and freedoms may be authorised, with an indication of the period of effectiveness of these restrictions. The rights and freedoms envisaged in Articles 24, 25, 27, 28, 29, 40, 47, 51, 52, 55, 56, 57, 58, 59, 60, 61, 62 and 63 of this Constitution shall not be restricted.”

Article 76

“... A citizen of Ukraine who has attained the age of twenty-one on the date of elections, has the right to vote and, if that citizen has resided in the territory of Ukraine for the past five years, may be a member of the *Verkhovna Rada*...

A citizen who has a criminal record for having committed an intentional crime shall not be elected to the *Verkhovna Rada* of Ukraine if the record is not cancelled and erased by the procedure established by law...”

Article 77

“*...* The procedure for the election of the People's members of *Verkhovna Rada* ... shall be governed by the law.”

E. The Law on the Central Electoral Commission of Ukraine, 17 December 1997

32. Relevant extracts from the Law on the Central Electoral Commission of 17 December 1997 read as follows:

Section 1 - The Status of the Central Electoral Commission

“The Central Electoral Commission is a permanent State body which, in accordance with the Constitution of Ukraine, this and other Laws of Ukraine, ensures the organisation, preparation and conduct of the elections of the President of Ukraine, the People's members of the *Verkhovna Rada* of Ukraine

and also all-Ukrainian referenda."

Section 14 (11) – The Powers of the Central Electoral Commission

"The Central Electoral Commission: ...

(11) registers in accordance with the Laws of Ukraine the lists of candidates for membership of the *Verkhovna Rada* from political parties or electoral groups of parties, and issues to political parties and electoral groups a copy of its decision on the registration of these lists; it also issues formal proof of registration to the candidates."

F. Civil Code, 18 July 1963 (In force at the material time)

33. Relevant extracts from the Civil Code read as follows:

Article 17 (1) – Place of residence

"The place of residence is generally the place where a citizen permanently or temporarily resides."

G. State secrecy in relation to passport applications

34. The Law "on the procedure for leaving and entering Ukraine for Ukrainian citizens" contains a reference in its Article 12 to the Law "on State secrets". Persons who hold State secrets are more strictly controlled should they apply for an external passport or permanent residence abroad. The Ministry of the Interior makes a systematic check with the State Intelligence Service of all persons applying for such a passport.

H. Law "on elections", 18 October 2001 (as amended on 17 January 2002)

35. Relevant extracts from the Law on elections read as follows:

Section 8 – The right to be elected

"1. A citizen of Ukraine who has attained the age of twenty-one on the day of the elections, has the right to vote, and, [if he or she] has resided on the territory of Ukraine for the past five years, may be elected as a member of parliament.

2. Residence in Ukraine under this Law means residence in the territory which includes: territory within Ukraine's State borders, vessels sailing under the Ukrainian State Flag and the stay of Ukrainian citizens, in accordance with the procedure established by the law, in Ukrainian diplomatic and consular institutions, international organisations and their bodies, and at Ukraine's polar stations, as well as the stay of Ukrainian citizens beyond its borders in accordance with the international treaties which have entered into force in respect of Ukraine."

Section 41 – The conditions for the registration of a member of parliament who is included in the electoral list of a party

"... 8) the *curricula vitae* of the persons included on the electoral list of the party (block), of no longer than two thousand characters, must include: the surname, name, patronymic name, day, month, year and place of birth, citizenship, information concerning education, labour activity, position (occupation), place of work, public employment (including the dates of elected positions), party membership, family status, address of residence with an indication of the period of residence in Ukraine, [and any] criminal record; ..."

Section 47 – Refusal to register a candidate for membership of parliament

"The Electoral Commission shall refuse to register a person standing for membership of parliament in the event of the: ...

4) ... improper presentation of documents specified in Section 41 ... of the present Law; ...

6) emigration of the person nominated for election to another country for permanent residence; ...

8) finding by the appropriate electorate commission that there was substantial untruthfulness in the information about the candidate, submitted in accordance with the law; ..."

I. Code of Civil Procedure (as amended on 7 March 2002)

36. Relevant extracts from the Code of Civil Procedure read as follows:

Article 243-16 – Jurisdiction over complaints or appeals

"Complaints against decisions, actions or omissions by the Central Electoral Commission shall be considered by the Supreme Court of Ukraine."

Article 243-17 – Lodging a complaint or appeal

"A complaint against a decision, act or omission by the Central Electoral Commission, excluding those determined in Chapters "30-Б" and "30-В" of this Code, shall be lodged with the Supreme Court of Ukraine within 7 days from the date of adoption of the decision by the Central Electoral Commission, or performance of the act or omission. Participants in the electoral process are eligible to lodge claims with the Supreme Court of Ukraine should they consider that their rights or legal interests have been violated by a decision, act or omission of the Central Electoral Commission."

Article 243-20 – The decision of the [Supreme] Court

"The court delivers a judgment after considering the complaint. If the complaint is substantiated the court declares the act or omission of the Central Electoral

Commission unlawful, quashes the decision, allows the applicant's claim and remedies the violation. If the impugned decision or act of the Central Electoral Commission is found to be in conformity with the law, the court shall adopt a decision rejecting the complaint. The court's decision is final and is not subject to appeal. ..."

J. Law "on adhesion to the Convention on the Status of Refugees and the Protocol on the Status of Refugees" of 10 January 2002

37. The relevant part of this Law, adopted on 10 January 2002, reads as follows:

"The *Verkhovna Rada* of Ukraine resolves to adhere to the 1951 Convention on the Status of Refugees and the 1967 Protocol on the Status of Refugees."

The instrument of ratification for the Protocol was deposited on 4 April 2002 with immediate effect. The instrument of ratification for the Convention was deposited on 10 June 2002 and came into force on 8 September 2002.

K. The Ruling of the Constitutional Court of Ukraine of 14 March 2002 (no. 4-y/2002)

38. Relevant extracts from the Ruling of 14 March 2002 read as follows:

"The Law "on the citizenship of Ukraine" determines that continuous residence on the territory of Ukraine means a person's residence in Ukraine, if his/her departure abroad on private matters has not exceeded 90 days, and 180 days throughout the year. The requirement of continuous residence shall not be considered violated when the person is on a business trip, studying abroad, is receiving treatment on the recommendation of a medical institution or changes his or her place of residence within the territory of Ukraine (Article 1 of the aforementioned Law)..."

L. Practice of the Supreme Court

39. Relevant extracts from the judicial practice of the Supreme Court read as follows:

1. Judgment of the Supreme Court of 25 March 2002 in the case of Mr Victor Chayka

"The substantial untruthfulness of the information about the candidate for membership of parliament must be related to intentional acts aimed at concealing from the Central Electoral Commission and the electorate true data that would otherwise exclude his/her election ..."

2. Judgment of the Supreme Court of 13 February 2002 in the case of Mr Yuri Buzdugan

"A clerical error in the documents submitted for registration to the Central

Electoral Commission is not a ground for refusal to register a candidate for membership of the parliament of Ukraine."

3. Judgment of the Supreme Court of 25 March 2002 in the case of Mr Oleksandr Vasko

"The substantial untruthfulness of the information ... may relate to ... the candidate's biography and financial status ... leading the electorate to form an untrue opinion about the particular candidate's decency, qualifications, economic independence or lack of financial opportunities. However, in each individual case, the Commission's conclusion concerning the substantial untruthfulness of such information shall be based on the results of an overall examination of all the information contained in the documents filed by the candidate and the circumstances that led to the provision of such false information."

4. Judgment of the Supreme Court of 25 March 2002 in the case of Mr Stepan Khmara

"... the untrue information supplied by a candidate that would otherwise exclude the possibility of his or her election as a People's member of parliament may concern his/her age, citizenship, the period of residence in Ukraine or his/her previous convictions for intentional crimes... The court considers that the candidate's failure to include in the list of his property private, non-residential premises that belonged to him ... was not as such substantially untrue information that could lead to the annulment of his registration as a candidate for election."

M. Regulations regarding residence

40. The relevant extracts from the Recommendation of 28 December 2001 on the completion of property declarations by election candidates read as follows1:

"B. The recommendation as to the method of completion...

... 1.2. This paragraph [concerning the place of residence] must be filled out on the basis of the *propiska* or temporary *propiska* (registration) contained in the [ordinary citizen's] passport."

41. The Regulations governing applications for telephone services required the citizen to provide the address of his or her permanent residence (*propiska,* having been the passport address). Similar requirements may be found in the Regulations governing unemployment benefits, census lists, the issue of passports, etc.

N. Legal theory and practice

42. According to the Opinion of the Koretsky Institute of State and Law (National Academy of Sciences), an eminent legal institution, a passport was

an official document certifying the identity of its owner, confirming Ukrainian citizenship and registering his or her permanent place of residence. A person was deemed to be resident in Ukraine for the preceding five years if the person concerned held a passport containing a *propiska* for the preceding five years. Neither the Constitution nor the Law “on elections” required information about actual residency, but only information about formal residency on the basis of the *propiska* in the passport. The Civil Chamber of Supreme Court followed this opinion in Case No. 6- 110y98 (decision of 10 June 1998):

“ ... Only documented data collected in a manner prescribed by law regarding the residence of a People's member of parliament, or as a candidate for such membership, or of another person in connection with elections, shall have validity, since this constitutes the essential data about a person ...

... a passport is a general document that certifies the identity of its owner, confirms Ukrainian citizenship and registers the permanent place of residence of a citizen (see Section 5 of the Law “on the citizenship of Ukraine”, and Articles 1 and 6 of the Regulations on the passport of a citizen of Ukraine; 2 September 1993, No. 3423-XII) ...

In full: The declaration of property and income of a candidate for membership of the *Verkhovna Rada* and the members of his/her family for 2001, and the Recommendation on the method for its completion, as approved by the Ministry of Finance of Ukraine in OrderNo. 611 of 28 December 2001, registered with the Ministry of Justice on 2 January 2002 (No. 1/6289).

It is deemed that a person has been resident in Ukraine for the preceding five years if such a person possesses a passport of a citizen of Ukraine that contains a *propiska* for the preceding five years. The *propiska* constitutes the fact of registration of the permanent place of residence.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF PROTOCOL No. 1 TO THE CONVENTION

43. The applicant complains of a violation of Article 3 of Protocol No. 1 to the Convention, which provides as follows:

“The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.”

A. Submissions of the parties

44. The applicant alleged that he was arbitrarily denied registration on the Socialist Party of Ukraine's list of candidates for election to the *Verkhovna Rada*. He maintained, firstly, that he had provided truthful information about his place of residence, according to his *propiska*, for the previous five years and, secondly, that he had residence in Ukraine whilst being outside the country in

“accordance with international treaties”, as envisaged by the Law “on elections”, since he had been granted refugee status by the US Government and the 1951 Geneva Convention on the Status of Refugees had been signed by Ukraine. He contended that the refusal to register him as a candidate for membership of the *Verkhovna Rada* had no objective or reasonable justification, did not pursue a legitimate aim and that the interference with his rights was not proportionate.

45. The applicant stated that, although the Law “on elections” was compatible with Article 3 of Protocol No. 1, its interpretation by the domestic authorities had been arbitrary in his case, as the Law did not specify exactly whether a candidate was required to have five years of legal residence or five years of habitual residence in Ukraine. For him the residence requirement was clearly proved by the *propiska* stamp in the internal passport of a Ukrainian citizen. The *propiska* indicated his permanent, legal address in Ukraine and, accordingly, he had put that information in his candidacy application. He referred to other administrative procedures where information about the *propiska* was required, it having been the “place of residence” (paragraphs 40-42 above.) The *propiska* was an integral, fundamental aspect of the Ukrainian administrative system and constituted the principal basis upon which residency was determined for all official purposes. The Law “on elections” only referred to “residence” in Ukraine, whereas the Central Electoral Commission, in dismissing his candidacy, employed various terms, such as “permanently resident in Ukraine” or “his habitual residence”, terms which did not feature in the text of that Law. The refusal of his application on this basis was therefore incompatible with the principles of equality before the law, legal certainty and the generality of the law.

46. The applicant further maintained that he had submitted truthful data about his place of residence and he had been forced to leave Ukraine due to his persecution by the authorities on political grounds. He alleged that the Central Electoral Commission and the Supreme Court had restricted his right to stand for election, contrary to Article 24 of the Constitution of Ukraine which prohibits discrimination on the ground of residence.

47. The Government claimed that the applicant had not initially provided the real address of his place of residence to the Central Electoral Commission and had not sought to prove that he had been living abroad in accordance with the international treaties signed by Ukraine, because he did not want to reveal his American address to the Ukrainian law enforcement authorities. He had not been living in Ukraine for the previous five years, in accordance with section 8 of the Law “on elections”, because for over a year before his election candidacy he had been living in the USA, having acquired refugee status there. Moreover, the applicant had not been residing abroad in accordance with the international treaties signed by Ukraine within the meaning of section 8 § 2 of that same Law. The Government pointed out that the 1951 Geneva Convention had not entered into force in respect of Ukraine until 8 September 2002. The domestic decisions in the applicant's case were taken well before that date.

48. The Government referred to Article 17 of the Civil Code which defined a person's residence as the place where he or she permanently or temporarily resided (paragraph 33 above). The meaning of a temporary absence from the country was confirmed by the Constitutional Court in its judgment of 14 March 2002 in case no. 4-y/2002 (paragraph 38 above). The place of residence had a completely different meaning from the place of registration which at the time had been denoted by the *propiska*. The Government submitted that the authorities should be afforded a wide margin of appreciation in interpreting the relevant legislation and its compliance with Article 3 of Protocol No. 1.

49. They thus contested any ambiguity in the Law as regards the five- year residency requirement. Moreover, section 8 § 2 of the Law allowed a wide discretion to State authorities in determining which residence could be considered to be “in accordance with the international treaties of Ukraine”.

50. The Government argued that the applicant could not be regarded as a refugee since he was not persecuted in Ukraine and faced no threat of persecution. They conceded, however, that the applicant would be detained by the Ukrainian law enforcement bodies if he were to cross the Ukrainian border. They referred in particular to the pending criminal investigation into the disclosure of the tape recordings allegedly made by the applicant in the office of the President of Ukraine. They noted that untruthful applications for parliamentary election may be attempted in order to acquire immunity from criminal prosecution. Such an aim was incompatible with a parliamentarian's status and function.

51. The Government considered that the grounds for refusing to register the applicant were based on the submission of untrue information and not on the applicant's place of residence as such. Such untruthfulness may mislead the electorate as to the candidate's integrity and qualifications. Therefore, the verification of such data is compatible with the needs of a democratic society.

52. The Government considered that the applicant's behaviour in this whole matter was incompatible with his wish to acquire the status of parliamentarian.

B. The Court's case-law

53. The Court points out that Article 3 of Protocol No. 1 enshrines a fundamental principle for effective political democracy, and is accordingly of prime importance in the Convention system (see *Mathieu-Mohin and Clerfayt v. Belgium*, judgment of 2 March 1987, Series A no. 113, p. 22, § 47). As to the links between democracy and the Convention, the Court has made the following observations in its judgment of 30 January 1998 in the case of the *United Communist Party of Turkey and Others v. Turkey* (*Reports of Judgments and Decisions* 1998-I, pp. 21-22, § 45, quoted in *Yazar and Others v. Turkey*, nos. 22723/93, 22724/93 and 22725/93, § 47, ECHR 2002-II):

“Democracy is without doubt a fundamental feature of the European public order ... That is apparent, firstly, from the Preamble to the Convention, which establishes a very clear connection between the Convention and democracy

by stating that the maintenance and further realisation of human rights and fundamental freedoms are best ensured on the one hand by an effective political democracy and on the other by a common understanding and observance of human rights ... The Preamble goes on to affirm that European countries have a common heritage of political traditions, ideals, freedom and the rule of law. The Court has observed that in that common heritage are to be found the underlying values of the Convention ...; it has pointed out several times that the Convention was designed to maintain and promote the ideals and values of a democratic society ..." (the aforementioned *Yazar and Others* judgment § 47)

54. The Court recalls that Article 3 of Protocol No. 1 implies subjective rights to vote and to stand for election. As important as those rights are, they are not, however, absolute. Since Article 3 recognises them without setting them out in express terms, let alone defining them, there is room for "implied limitations" (see *Mathieu-Mohin and Clerfayt*, cited above, p. 23, § 52). In their internal legal orders the Contracting States may make the rights to vote and to stand for election subject to conditions which are not in principle precluded under Article 3. They have a wide margin of appreciation in this sphere, but it is for the Court to determine in the last resort whether the requirements of Protocol No. 1 have been complied with; it has to satisfy itself that the conditions do not curtail the rights in question to such an extent as to impair their very essence and deprive them of their effectiveness; that they are imposed in pursuit of a legitimate aim; and that the means employed are not disproportionate.

55. As to the constitutional rules on the status of members of parliament, including criteria for declaring them ineligible, although they have a common origin in the need to ensure both the independence of elected representatives and the freedom of electors, these criteria vary according to the historical and political factors specific to each State. The multiplicity of situations provided for in the constitutions and electoral legislation of numerous member States of the Council of Europe shows the diversity of possible approaches in this area. For the purposes of applying Article 3, any electoral legislation must be assessed in the light of the political evolution of the country concerned, so that features that would be unacceptable in the context of one system may be justified in the context of another. However, the State's margin of appreciation in this regard is limited by the obligation to respect the fundamental principle of Article 3, namely "the free expression of the opinion of the people in the choice of the legislature" (see *Mathieu-Mohin and Clerfayt*, cited above, pp. 23-24, § 54; *Podkolzina v. Latvia*, no. 46726/99, § 33, ECHR 2002-II).

56. As to the condition of residence in relation to the right to stand for elections, as such, the Court has never expressed its opinion on this point. However, in relation to the separate right to vote, the Court has held that it was not *per se* an unreasonable or arbitrary requirement (see *Hilbev.Liechtenstein* (dec.), no.31981/96, ECHR 1999-VI). The Court considers that a residence requirement for voting may be justified on the grounds of (1) the assumption that a non-resident citizen is less directly or continuously concerned with, and has less knowledge of, a country's day-to- day problems; (2) the impracticability for and sometimes undesirability (in some cases impossibility)

of parliamentary candidates presenting the different electoral issues to citizens living abroad so as to secure the free expression of opinion; (3) the influence of resident citizens on the selection of candidates and on the formulation of their electoral programmes, and (4) the correlation between one's right to vote in parliamentary elections and being directly affected by the acts of the political bodies so elected (*Polacco and Garofalo v. Italy,* no. 23450/94, Commission decision of 15 September 1997, referring to previous Commission case-law).

57. However, the Court accepts that stricter requirements may be imposed on the eligibility to stand for election to parliament, as distinguished from voting eligibility (see the Venice Commission's election guidelines, paragraph 29 above). Hence the Court would not preclude outright a five-year continuous residency requirement for potential parliamentary candidates. Arguably, this requirement may be deemed appropriate to enable such persons to acquire sufficient knowledge of the issues associated with the national parliament's tasks.

58. Moreover, it is essential that parliamentary candidates are shown to be persons of integrity and truthfulness. By obliging them to put themselves forward publicly, in a full and frank manner, the electorate can assess the candidate's personal qualifications and ability to best represent its interests in parliament. Such requirements clearly correspond to the interests of a democratic society and States have a margin of appreciation in their application.

59. In that connection, the Court reiterates that the object and purpose of the Convention requires its provisions to be interpreted and applied in such a way as to make their stipulations not just theoretical or illusory but practical and effective (see, for example, *Artico v. Italy*, judgment of 13 May 1980, Series A no. 37, pp. 15-16, § 33; *United Communist Party of Turkey and Others v. Turkey*, judgment of 30 January 1998, *Reports* 1998-I, pp. 18-19, § 33; and *Chassagnou and Others v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, § 100, ECHR 1999-III). The right to stand as a candidate in an election, which is guaranteed by Article 3 of Protocol No. 1 and is inherent in the concept of a truly democratic regime, would be illusory if one could be arbitrarily deprived of it at any moment. Consequently, while it is true that States have a wide margin of appreciation when establishing eligibility conditions in the abstract, the principle that rights must be effective requires that the eligibility procedure contains sufficient safeguards to prevent arbitrary decisions.

C. The application of the Court's case-law to the instant case

60. The Court recalls that its competence to verify compliance with the domestic law is limited (see *Håkansson and Sturesson v. Sweden*, judgment of 21 February 1990, Series A no. 171-A, p. 16, § 47) and that it is not the Court's task to take the place of the domestic courts. It is primarily for the national authorities to resolve problems of the interpretation of domestic legislation (see *Waite and Kennedy v. Germany* [GC], no. 26083/94, § 54, ECHR 1999-I). Nevertheless, the Court must examine whether the decisions of the domestic

courts in the instant case were compatible with the applicant's right to stand for elections (see, *mutatis mutandis*, *Sovtransavto Holding v. Ukraine*, no. 48553/99, § 95, ECHR 2002-VII).

61. The Court finds, taking into account the relevant domestic legislation and practice, that the requirement of residence in Ukraine was not absolute and that the domestic authorities, in allowing or refusing registration of a particular candidate, were obliged to take into account his/her specific situation. The Court considers that neither the relevant legislation nor practice contained a direct eligibility requirement of “habitual” or “continuous” residence in the territory of Ukraine. Furthermore, no distinction was made in the law between “legal” and “habitual” residence. It is clear that the applicant's “habitual residence” was partly outside Ukraine during the relevant period, as he had left the country on 26 November 2000, against his will, in fear of persecution, and had taken up residence as a refugee in the United States (see paragraph 10 above). However, the *propiska* in his internal passport remained unchanged.

62. The Court observes that the only proof of legal registration of residence at the material time was in the ordinary citizen's internal passport, which did not always correspond to the person's habitual place of residence (paragraphs 56-58 above). The Court further notes that the *propiska* was an integral and fundamental aspect of the Ukrainian administrative system and was widely used for a number of official purposes (registration of the citizen's current place of residence, conscription, voting, different property issues, etc.).

63. The Court finds particularly significant the fact that parliamentary candidates had to provide personal details about their ownership of property and income, as well as that of their family. The standard declaration form required candidates to give “their *propiska* or temporary *propiska* (registration) as contained in the ordinary citizen's passport” (paragraph 40 above). It considers therefore that the applicant was under an obligation to provide information only with regard to his *propiska* in the declaration of means submitted to the Central Electoral Commission for registration as a candidate.

64. In the Court's view, the applicant's reliance on the 1951 Geneva Convention, as a legal argument, is not of major impact, as it was not in force in Ukraine at the material time. However, it notes that, as a signatory State, Ukraine would have been bound, by virtue of the obligation flowing from Article 18 of the Vienna Convention on the Law of Treaties, to refrain from acts which might have defeated the object and purpose of the Geneva Convention pending its entry into force.

65. More importantly, the Court considers that the applicant may rely on his fear of persecution, as an objective, factual argument, given his employment, the suspicious events surrounding the disappearance and murder of the journalist Georgiy Gongadze, and the foreseeable audiotape scandal. Moreover, he was rapidly recognised as a legitimate asylum seeker in the USA. His hasty flight from the country was therefore understandable and his intention to leave permanently undefined. The Court finds that the applicant was in a difficult position: if he had stayed in Ukraine his personal safety or

physical integrity may have been seriously endangered, rendering the exercise of any political rights impossible, whereas, in leaving the country, he was also prevented from exercising such rights.

66. In the light of the above considerations, the Court is of the opinion that the decision of the Central Electoral Commission to refuse the applicant's candidacy for the *Verkhovna Rada* as untruthful, although he still held a valid registered place of legal residence in Ukraine (as denoted in his *propiska*), was in breach of Article 3 of Protocol No. 1 to the Convention.
67. It follows that there has been a violation of Article 3 of Protocol No. 1 to the Convention.

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN SEPARATELY AND IN CONJUNCTION WITH ARTICLE 3 OF PROTOCOL No. 1

68. The applicant further complained that the fact of denying him the right to stand as a candidate in the parliamentary elections, for the sole reason that he had allegedly failed to provide true information about his place of residence for the previous five years, had caused him to suffer discrimination prohibited by Article 14 of the Convention in the exercise of his right under Article 3 of Protocol No. 1 (cited above). He compared his situation to another candidate who had not resided in Ukraine for a continuous period of five years, but had still been registered as a candidate in the elections. Article 14 reads:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

69. The Government submitted that there had been no violation of Article 3 of Protocol No. 1 in conjunction with Article 14 as the applicant had not been discriminated against.

70. The applicant rejected that argument, referring *inter alia* to the particular circumstances of Mr Y.M. Zviahilsky, who had been elected as a member of the *Verkhovna Rada* despite his foreign residence (paragraph 22 above).

71. The Court considers that this complaint is essentially the same as the complaint under Article 3 of Protocol No. 1. Regard being had to its conclusions in that connection (see paragraphs 60-67 above), the Court considers that it is not necessary to examine the complaint under Article 14 of the Convention separately.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

72. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if

necessary, afford just satisfaction to the injured party."

A. Pecuniary damage

73. The applicant submitted that his claim for pecuniary damage related to the loss of salary due to him as a member of the *Verkhovna Rada*. He suggested that he would have been elected on the Socialist's Party list, since that Party had obtained enough votes for him to be so. He claimed UAH 52,224.832 in compensation, which was based on the approximate value of the salary of a People's Member of Parliament, and which he would have received had he been elected.

74. The Government noted that there was no causal link between the applicant's compensation claims and the violation found. They stated that the situation was analogous to the case of *Podkolzina v. Latvia* (§ 48, cited above).

75. The Court considers, like the Government, that no causal link has been established between the alleged pecuniary loss and the violation found (see *Van Geyseghem v. Belgium* [GC], no. 26103/95, § 40, ECHR 1999-I, and *Nikolova v. Bulgaria* [GC], no. 31195/96, § 73, ECHR 1999-II). It accordingly dismisses the applicant's claims under this head.

B. Non-pecuniary damage

76. The applicant claimed that the refusal to register him as a candidate for election had forced him to stay in exile as a political refugee in the USA. He further alleged that the violation of his rights had led to serious distress and mental anguish, and had damaged his reputation, since the State authorities continue to discredit him though the mass media in Ukraine and abroad. He claimed EUR 100,000 in compensation.

77. The Government considered the sum claimed by the applicant exorbitant, regard being had to the cost of living and the level of income in Ukraine at present. They maintained that his claims were unsubstantiated. They submitted that the finding of a violation would in itself constitute sufficient just satisfaction for any non-pecuniary damage the applicant might have suffered. The Government further mentioned that applications to the European Court of Human Rights cannot serve as a basis for unjustified enrichment.

78. The Court reiterates that non-pecuniary damage is to be assessed with reference to the autonomous criteria it has derived from the Convention, not on the basis of the principles defined in the law or practice of the State concerned (see, *mutatis mutandis*, *The Sunday Times v. the United Kingdom (no. 1)* (Article 50), judgment of 6 November 1980, Series A no. 38, p. 17, § 41, and *Probstmeier v. Germany*, judgment of 1 July 1997, *Reports* 1997-IV, p. 1140, § 77). In the present case the Court acknowledges that the applicant suffered non-pecuniary damage as a result of being prevented from standing as a candidate in the general election. Consequently, ruling on an equitable basis and having regard to all the circumstances of the case, it awards him EUR 5,000 under this head.

C. Costs and expenses

79. The applicant did not claim costs, as the services of a lawyer were provided to him free of charge. Accordingly, the Court makes no award of this nature.

D. Default interest

80. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Holds* by six votes to one that there has been a violation of Article 3 of Protocol No. 1;

2. *Holds* unanimously that it is not necessary to examine separately the complaint under Article 14 of the Convention;

3. *Holds* by six votes to one (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 5,000 (five thousand euros) for non-pecuniary damage, to be converted into United States dollars (USD) at the rate applicable on the date of adoption of the present judgment, together with any value-added tax which may be payable; (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 19 October 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Source: European Court of Human Rights <http://www.echr.coe.int/echr/Homepage_EN>.

Table A2.7 - Peace Agreements and Proposals

Declarations Drawn up in Common Agreement at Evian, by the Delegations of the Government of the French Republic and the Algerian National Liberation Front, Mar. 18, 1962
Chapter I - Organization of Public Powers During the Transition Period and Self-Determination Guarantees L. Persons in refuge abroad will be able to return to Algeria. Commissions sitting in Morocco and Tunisia will facilitate this return. Persons who have been relocated will be able to return to their regular places of residence. The Provisional Executive will take the first economic, social and other measures aimed at assuring the return of these people to a normal life.
Proposal for a Settlement of the Namibian Situation, UN Doc. S/12636, Apr. 10, 1978
II. The Electoral Process 7. The following requirements will be fulfilled to the satisfaction of the United Nations Special Representative in order to meet the objective of free and fair elections: (c) All Namibian refugees or Namibians detained or otherwise outside the territory of Namibia will be permitted to return peacefully and participate fully and freely in the electoral process without risk of arrest, detention, intimidation or imprisonment. Suitable entry points will be designated for these purposes. (d) The Special Representative with the Assistance of the United Nations High Commissioner for Refugees and other appropriate international bodies will ensure that Namibians remaining outside of Namibia are given a free and voluntary choice whether to return. Provision will be made to attest to the voluntary nature of decisions made by Namibians who elect not to return to Namibia.
Zimbabwe Rhodesia-United Kingdom: Agreements Concluded at Lancaster House Conference, The Pre-Independence Arrangements, Dec. 15, 1979
The Return of Citizens Living Outside Rhodesia 19. Many thousands of Rhodesians are at present living outside the country. Most of them wish to return and it will be desirable that as many as possible should do so in order to vote in the election. The return of all refugees will be a task requiring careful organization. But a start should be made in enabling the refugees to return to their homes as soon as possible; and the British Government will be ready to assist with the process. The task of effecting the

return of all refugees will need to be completed by the independent government in cooperation with the governments of the neighbouring countries.

Rhodesia: Ceasefire Agreement

The parties to this agreement have agreed as follows:

1. With effect from 2400 hours on 21st December, 1979, all movement by personnel of the Patriotic Front armed forces into Rhodesia and all cross-border military activity by the Rhodesian forces will cease. This agreement will take effect on a basis of strict reciprocity. The British Government will request the governments of countries bordering on Rhodesia to make arrangements to ensure that externally-based forces do not enter Rhodesia. Provisions will be made to permit the return of civilian personnel to Rhodesia in order to vote or engage in other peace activity. Border-crossing points will be established, under the supervision of the monitoring force, for this purpose.

UNSG, The Situation in Western Sahara, Report of the Secretary-General, UN Doc. S/21360, June 18, 1990

Part I. Proposals by the Secretary-General of the United Nations and the current Chairman of the Assembly of Heads of State and Government of the Organization of African Unity aimed at a settlement of the question of Western Sahara accepted in principle by the parties on 30 August 1988

V. Referendum

A. Census of the Saharan Population

24. All Saharans counted in the 1974 census taken by the Spanish authorities and aged 18 years or over will have the right to vote in the referendum. With the assistance of the United Nations High Commissioner for Refugees (UNHCR), a census of Saharan refugees living outside the territory will be taken in places designated by the Special Representative.

B. Procedures for the Referendum

33. The following conditions will have to be met to the satisfaction of the Special Representative of the Secretary-General, in order to guarantee the organization of a free and equitable referendum;

(c) All Saharan refugees counted in the census taken pursuant to paragraph 24 above will be able to return freely to the Territory and participate freely without restriction in the referendum, without running the risk of arrest, detention, intimidation or imprisonment. Various entry points will be designated for this purpose by the Special Representative;

(d) With the assistance of the United Nations High Commissioner for Refugees, the Special Representative will make sure that Saharans residing

outside the Territory are able to choose freely and voluntarily whether or not to return to the Territory.

Part II. Implementation plan proposed by the Secretary-General pursuant to Security Council resolution 621 (1988) of 20 September 1988

II. Main elements of the Implementation Plan

47. The implementation plan contained in the present report provides for a transitional period during which:

(i) All refugees and other Western Saharans resident outside the Territory and wishing to return will enabled to do so by the United Nations, after the latter has established their right to vote;

XI. Return of Refugees, Other Western Saharans and Members of Frente Polisario Eligible to Vote

72. Following the completion of the work of the Identification Commission, all refugees who have been identified as having the right to vote in the referendum and who have expressed the wish to return to the Territory will be enabled to do so, together with their immediate families, through a program organized by UNHCR. The Special Representative will designate a number of points at which returnees will be able to cross into the Territory. Security at these crossing points and at reception centres established by UNHCR will be provided by the Military Unit of MINURSO. The Special Representative will also take such steps as may be necessary to ensure that the refugees will be able to take part in the referendum without restriction or fear of being arrested, detained, intimidated or imprisoned. To this end they will be granted a general and complete amnesty.

Agreement on a Comprehensive Political Settlement of the Cambodia Conflict, Oct. 31, 1991

Annex III (Elections)

3. All Cambodians, including those who at the time of signature of this Agreement are Cambodian refugees and displaced persons, will have the same rights, freedoms and opportunities to take part in the electoral process.

4. The agreement further specifies that children of refugees born in Cambodia who have reached the age of 18 prior to or during the registration period are also eligible to participate in the country's elections.

Annex IV (Repatriation of Cambodian Refugees and Displaced Persons)

6. With a view to ensuring that refugees and displaced persons participate in the elections, mass repatriation should commence and be completed as soon as possible, taking into account all the political, humanitarian, logistical, technical and socio-economic factors involved.

Mozambique, Agreement on Principles of the Electoral Act (Protocol III), Mar. 12, 1992

IV. Return of Mozambican refugees and displaced persons and their social reintegration

(d) Mozambican refugees and displaced persons shall be registered and included in the electoral rolls together with other citizens in their places of residence;

General Framework Agreement for Peace in Bosnia and Herzegovina, Nov. 21, 1995

Annex III (Agreement on Elections)

Article IV: Eligibility

Voters. Any citizen of Bosnia and Herzegovina aged 18 or older whose name appears on the 1991 census for Bosnia and Herzegovina shall be eligible, in accordance with electoral rules and regulations, to vote. A citizen who no longer lives in the municipality in which he or she resided in 1991 shall, as a general rule, be expected to vote, in person or by absentee ballot, in that municipality, provided that the person is determined to have been registered in that municipality as confirmed by the local election commission and the Provisional Election Commission.

Such a citizen may, however, apply to the Commission to cast his or her ballot elsewhere. The exercise of a refugee's right to vote shall be interpreted as confirmation of his or her intention to return to Bosnia and Herzegovina. By Election Day, the return of refugees should already be underway, thus allowing many to participate in person in elections in Bosnia and Herzegovina. The Commission may provide in the electoral rules and regulations for citizens not listed in the 1991 census to vote.

Interim Agreement on Peace and Self-Government in Kosovo, Feb. 23, 1999

Chapter 3

Conduct and Supervision of Elections

Article I: Conditions for Elections

1. The Parties shall ensure that conditions exist for the organization of free and fair elections, which include but are not limited to:

(c) an environment conducive to the return of displaced persons;

Article III: Central Election Commission

1. The Commission shall adopt electoral Rules and Regulations on all matters

necessary for the conduct of free and fair elections in Kosovo, including rules relating to: the eligibility and registration of candidates, parties, and voters, including displaced persons and refugees; ensuring a free and fair elections campaign; administrative and technical preparation for elections including the establishment, publication, and certification of election results; and the role of international and domestic election observers.

Agreement on Provisional Arrangements in Afghanistan Pending the Re-establishment of Permanent Government Institutions (Bonn Agreement), Dec. 5, 2001

IV. The Special Independent Commission for the Convening of the Emergency Loya Jirga

2) The Special Independent Commission will have the final authority for determining the procedures for and the number of people who will participate in the Emergency Loya Jirga. The Special Independent Commission will draft rules and procedures specifying (i) criteria for allocation of seats to the settled and nomadic population residing in the country; (ii) criteria for allocation of seats to the Afghan refugees living in Iran, Pakistan, and elsewhere, and Afghans from the diaspora; (iii) criteria for inclusion of civil society organizations and prominent individuals, including Islamic scholars, intellectuals, and traders, both within the country and in the diaspora. TheSpecial Independent Commission will ensure that due attention is paid to the representation in the Emergency Loya Jirga of a significant number of women as well as all other segments of the Afghan population.

Peace Agreement between the Government of Liberia, the Liberians United for Reconciliation and Democracy, the Movement of Democracy in Liberia and the Political Parties, Aug. 18, 2003

Part Eight - Political Issues

Article 24 - The National Transitional Legislative Assembly

3. The NTLA shall have a maximum of Seventy-six (76) members who shall come from the following entities:

a. Each of the fifteen (15) Counties.

b. The present Government of Liberia, the LURD, MODEL, the Political Parties, Civil Society and Interest Groups including the National Bar Association, the Liberian Business Organisations, Women Organizations, Trade Unions, Teachers Union, Refugees, the Liberians in the Diaspora/America and the Youth.

Protocol Between the GOS and SPLM on Power Sharing, May 26, 2004

1.8. Population Census, Elections and Representation

1.8.5. Certain considerations, while not conditional upon their completion,

should be taken into account with respect to the elections (including, inter alia, resettlement, rehabilitation, reconstruction, repatriation, building of structures and institutions and consolidation of the Peace Agreement).

Darfur Peace Agreement, May 5, 2006

Article 21 - Urgent Programmes for Internally Displaced Persons (IDPs), Refugees and Other War-Affected Persons and Compensation for War-Affected Persons.

Principles

Protection

182. The Parties shall establish a Darfur Rehabilitation and Resettlement Commission (DRRC) to implement strategies to conduct surveys and assessments, monitor and report on the situation of the displaced and war-affected persons to the appropriate level of government. Strategies, surveys, assessments and information should be shared with the international community.

183. DRRC shall consult with IDPs and returnees as well as all other stakeholders.

187. DRRC shall provide basic food, shelter and access to potable water while displaced persons are en route to areas of return. The DRRC shall make special effort to ensure the full participation of women in the planning and distribution of these basic facilities.

Restitution

195. DRRC and the relevant authorities shall establish restitution procedures, which must be simple, accessible, transparent and enforceable. All aspects of the restitution claims process, including appeals procedures, shall be just, timely, accessible, free of charge, and age and gender sensitive. The procedures shall contain positive measures to ensure that women are able to participate on a fully equal basis in the process.

Compensation

200. The Parties agree on the establishment of an independent and impartial Compensation Commission to deal, without prejudice to the jurisdiction of courts, with claims for compensation by people of Darfur who have suffered harm, including physical or mental injury, emotional suffering or human and economic losses, in connection with the conflict.

202. The membership of the Commission shall comprise persons nominated by the Parties and persons representative of affected communities, leaders of Native Administration. Special measures shall be taken to ensure the effective representation of women in the membership of the Commission. The

Commission may engage experts and may act in accordance with their recommendations.

Chapter Four: Darfur-Darfur Dialogue and Consultation

Article 31

Definition

458. The Darfur-Darfur Dialogue and Consultation (DDDC) shall be a conference in which representatives of all Darfurian stakeholders can meet to discuss the challenges of restoring peace to their land, overcoming the divisions between communities, and resolving the existing problems to build a common future.

484. Issues to be addressed by the DDDC shall include:

(c) Safe return of refugees and IDPs;

Representation

494. Representation at the DDDC shall be decided by the Preparatory Committee according to the following guidelines:

(a) The DDDC should consist of approximately 800 to 1000 delegates in addition to observers.
(b) 60% of delegates shall be selected on the basis of community and tribal representation. All tribes in Darfur shall be represented. This representation shall include recognized tribal leaders, representatives chosen by all localities including refugees and internally displaced persons. Special mechanisms shall be established to ensure that small tribes and non-Darfurians resident in Darfur are represented.
(c) 40% of delegates shall be selected to represent other stakeholders, including political parties, civil society organizations, religious leaders, business leaders, members of the diaspora, trade unions and professionals.
(d) Adequate and effective representation of women and youth shall be ensured.
(e) Observers shall be drawn from other parts of Sudan, AU Mediation and Facilitators, League of Arab States and Organisation of the Islamic Conference, CENSAD, IGAD, UN and international community.

Table A2.8 - International Declarations

Universal Declaration of Human Rights, Dec. 10, 1948, GA Res. 217A, UN GAOR, 3rd Sess., at 71, UN Doc. No. A/810 (1948)
Article 21 1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. 2. Everyone has the right to equal access to public service in his country. 3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.
United Nations Declaration on the Elimination of All Forms of Racial Discrimination, GA Res. 1904, 18th Sess., UN Doc. A/RES/1904, Nov. 20, 1963
Article 6 No discrimination by reason of race, colour or ethnic origin shall be admitted in the enjoyment by any person of political and citizenship rights in his country, in particular the right to participate in elections through universal and equal suffrage and to take part in the government. Everyone has the right of equal access to public service in his country.
United Nations Declaration on the Elimination of Discrimination Against Women, GA Res. 2263, 22nd Sess., UN Doc. A/RES/2263, Nov. 7, 1967
Article 4 All appropriate measures shall be taken to ensure to women on equal terms with men, without any discrimination: (a) The right to vote in all elections and be eligible for election to all publicly elected bodies; (b) The right to vote in all public referenda; (c) The right to hold public office and to exercise all public functions. Such rights shall be guaranteed by legislation.

United Nations Declaration on the Equality of Women and their Contribution to Development and Peace, UN Doc. E/CONF.66/34, July 2, 1975

Stressing that greater and equal participation of women at all levels of decision-making shall decisively contribute to accelerating the pace of development and the maintenance of peace,

Recognizing also the urgency of improving the status of women and finding more effective methods and strategies which will enable them to have the same opportunities as men to participate actively in the development of their countries and to contribute to the attainment of world peace,

Convinced that women must play an important role in the promotion, achievement and maintenance of international peace, and that it is necessary to encourage their efforts towards peace, through their full participation in the national and international organizations that exist for this purpose,

Decides to promulgate the following principles:

2. All obstacles that stand in the way of enjoyment by women of equal status with men must be eliminated in order to ensure their full integration into national development and their participation in securing and in maintaining international peace.

25. Women have a vital role to play in the promotion of peace in all spheres of life: in the family, the community, the nation and the world. Women must participate equally with men in the decision-making processes which help to promote peace at all levels,

United Nations Declaration on the Participation of Women in Promoting International Peace and Co-operation, GA Res. 37/63, 37th Sess., Dec. 3, 1982

Part I

Article 1

Women and men have an equal and vital interest in contributing to international peace and co-operation. To this end women must be enabled to exercise their right to participate in the economic, social, cultural, civil and political affairs of society on an equal footing with men.

Article 3

The increasing participation of women in the economic, social, cultural, civil and political affairs of society will contribute to international peace and co-operation.

Article 4

The full enjoyment of the rights of women and men and the full participation of women in promoting international peace and co-operation will contribute to the eradication of *apartheid*, of all forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States.

Article 5

Special national and international measures are necessary to increase the level of women's participation in the sphere of international relations so that women can contribute, on an equal basis, with men to national and international efforts to secure world peace and economic and social progress and to promote international co-operation.

Part II

Article 6

All appropriate measures shall be taken to intensify national and international efforts in respect of the participation of women in promoting international peace and co-operation by ensuring the equal participation of women in the economic, social, cultural, civil and political affairs of society through a balanced and equitable distribution of roles between men and women in the domestic sphere and in society as a whole, as well as by providing an equal opportunity for women to participate in the decision-making process.

Article 12

All appropriate measures shall be taken to provide practical opportunities for the effective participation of women in promoting international peace and co-operation, economic development and social progress and, to that end:

(a) To promote an equitable representation of women in governmental and non-governmental functions,

(b) To promote equality of opportunities for women to enter diplomatic service,

(c) To appoint or nominate women, on an equal basis with men, as members of delegations to national, regional or international meetings,

(d) To support increased employment of women at all levels in the secretariats of the United Nations and the specialized agencies, in conformity with Article 101 of the Charter of the United Nations.

Article 13

All appropriate measures shall be taken to establish adequate legal protection of the rights of women on an equal basis with men in order to ensure effective participation of women in the activities referred to above.

The Nairobi Forward-Looking Strategies for the Advancement of Women, UN Doc. A/CONF.116/28/Rev.1, July 26, 1985

Introduction

C. Current Trends and Perspectives to the Year 2000

Paragraph 32

To promote their interests effectively, women must be able to enjoy their right to take part in national and international decision-making processes, including the right to dissent publicly and peacefully from their Government's policies, and to mobilize to increase their participation in the promotion of peace within and between nations.

III. Peace

A. Obstacles

Paragraph 235

Universal and durable peace cannot be attained without the full and equal participation of women in international relations, particularly in decision-making concerning peace, including the processes envisaged for the peaceful settlement of disputes under the Charter of the United Nations nor without overcoming [continuing international tension and violations of the United Nations Charter, resulting in the unabated arms race, in particular in the nuclear field, as well as wars, armed conflicts, external domination, foreign occupation, acquisition of land by force, aggression, imperialism, colonialism, neo-colonialism, racism, apartheid, gross violation of human rights, terrorism, repression, the disappearance of persons and discrimination on the basis of sex].

Paragraph 237

It is evident that women all over the world have manifested their love for peace and their wish to play a greater role in international co-operation, amity and peace among different nations. All obstacles at national and international levels in the way of women's participation in promoting international peace and co-operation should be removed as soon as possible.

Paragraph 238

It is equally important to increase women's understanding and awareness of constructive negotiations aimed at reaching positive results for international peace and security. Governments should take measures to encourage the full and
effective participation of women in negotiations on international peace and security. The rejection of the use of force or of the threat of the use of force and foreign interference and intervention should become widespread.

B. Strategies

Paragraph 240

Women and men have an equal right and the same vital interest in contributing to international peace and co-operation. Women should participate fully in all efforts to strengthen and maintain international peace and security and to promote international co-operation, diplomacy, the process of detente, disarmament in the nuclear field in particular, and respect for the principle of the Charter of the United Nations, including respect for the sovereign rights of States, guarantees of fundamental freedoms and human rights, such as recognition of the dignity of the individual and self-determination, and freedom of thought, conscience, expression, association, assembly, communication and movement without distinction as to race, sex, political and religious beliefs, language or ethnic origin. The commitment to remove the obstacles to women's participation in the promotion of peace should be strengthened.

Paragraph 253

Women's equal role in decision-making with respect to peace and related issues should be seen as one of their basic human rights and as such should be enhanced and encouraged at the national, regional and international levels. In accordance with the Convention on the Elimination of All Forms of Discrimination against Women, all existing impediments to the achievement by women of equality with men should be removed. To this end, efforts should be intensified at all levels to overcome prejudices, stereotyped thinking, denial to women of career prospects and appropriate educational possibilities, and resistance by decision-makers to the changes that are necessary to enable equal participation of women with men in the international and diplomatic service.

F. Measures for the implementation of the basic strategies at the national level

Paragraph 266

Women should be able to participate actively in the decision-making process related to the promotion of international peace and co-operation. Governments should take the necessary measures to facilitate this participation by institutional, educational and organizational means. Emphasis should be given to the grass-roots participation and co-operation of women's organizations with other non-governmental organizations in this process.

United Nations Declaration on the Right to Development, GA Res. 41/128, Dec. 4, 1986

Article 1

1. The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all

human rights and fundamental freedoms can be fully realized.

Article 2

1. The human person is the central subject of development and should be the active participant and beneficiary of the right to development.

United Nations Declaration on the Rights of Persons Belonging to National, Ethnic, Religious and Linguistic Minorities, GA Res. 47/135, UN Doc. A/RES/47/135, 47th Sess., Dec. 18, 1992

Article 2

2. Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life.

3. Persons belonging to minorities have the right to participate effectively in decisions on the national and, whee appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation.

United Nations Vienna Declaration and Programme of Action, UN Doc. A/CONF.157/23, July 12, 1993

I

18. The human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community.

20. The World Conference on Human Rights recognizes the inherent dignity and the unique contribution of indigenous people to the development and plurality of society and strongly reaffirms the commitment of the international community to their economic, social and cultural well-being and their enjoyment of the fruits of sustainable development. States should ensure the full and free participation of indigenous people in all aspects of society, in particular in matters of concern to them. Considering the importance of the promotion and protection of the rights of indigenous people, and the contribution of such promotion and protection to the political and social stability of the States in which such people live, States should, in accordance with international law, take concerted positive steps to ensure respect for all human rights and fundamental freedoms of indigenous people, on the basis of equality and non-discrimination, and recognize the value and diversity of their distinct identities, cultures and social organization.

24. Great importance must be given to the promotion and protection of the human rights of persons belonging to groups which have been rendered

vulnerable, including migrant workers, the elimination of all forms of discrimination against them, and the strengthening and more effective implementation of existing human rights instruments. States have an obligation to create and maintain adequate measures at the national level, in particular in the fields of education, health and social support, for the promotion and protection of the rights of persons in vulnerable sectors of their populations and to ensure the participation of those among them who are interested in finding a solution to their own problems.

II

B. Equality, dignity and tolerance

2. Persons belonging to national or ethnic, religious and linguistic minorities

27. Measures to be taken, where appropriate, should include facilitation of their full participation in all aspects of the political, economic, social, religious and cultural life of society and in the economic progress and development in their country.

Indigenous people

31. The World Conference on Human Rights urges States to ensure the full and free participation of indigenous people in all aspects of society, in particular in matters of concern to them.

3. The equal status and human rights of women

43. The World Conference on Human Rights urges Governments and regional and international organizations to facilitate the access of women to decision-making posts and their greater participation in the decision-making process. It encourages further steps within the United Nations Secretariat to appoint and promote women staff members in accordance with the Charter of the United Nations, and encourages other principal and subsidiary organs of the United Nations to guarantee the participation of women under conditions of equality.

Partnership in Action (PARinAC), Oslo Declaration and Plan of Action, June 9, 1994*

Recommendation 94

UNHCR and NGOs should involve refugees in planning and preparing for repatriation. They should secure refugee participation - at the outset of an emergency and throughout the handover phase - in all matters pertaining to camp management, including relief, rehabilitation, development, resettlement and voluntary repatriation, and where appropriate support collective returns organized by the refugees themselves. In the country of origin, UNHCR should assume responsibility of ensuring that the planning process for moving returnees from relief to rehabilitation is initiated on time and in coordination with governments, relevant development organizations, NGOs and local

communities.

United Nations Beijing and Platform of Action, UN Doc. A/CONF.177/20, Oct. 17, 1995

Platform for Action

Chapter IV - Strategic Objectives and Actions

E. Women and Armed Conflict

135. In a world of continuing instability and violence, the implementation of cooperative approaches to peace and security is urgently needed. The equal access and full participation of women in power structures and their full involvement in all efforts for the prevention and resolution of conflicts are essential for the maintenance and promotion of peace and security. Although women have begun to play an important role in conflict resolution, peace-keeping and defence and foreign affairs mechanisms, they are still underrepresented in decision- making positions. If women are to play an equal part in securing and maintaining peace, they must be empowered politically and economically and represented adequately at all levels of decision-making.

138. Refugee, displaced and migrant women in most cases display strength, endurance and resourcefulness and can contribute positively to countries of resettlement or to their country of origin on their return. They need to be appropriately involved in decisions that affect them.

Strategic objective E.1. Increase the participation of women in conflict resolution at decision-making levels and protect women living in situations of armed and other conflicts or under foreign occupation

Actions to be taken

144. By Governments and international and regional intergovernmental institutions:

(a) Take action to promote equal participation of women and equal opportunities for women to participate in all forums and peace activities at all levels, particularly at the decision-making level, including in the United Nations Secretariat with due regard to equitable geographical distribution in accordance with Article 101 of the Charter of the United Nations;

Strategic objective E.5. Provide protection, assistance and training to refugee women, other displaced women in need of international protection and internally displaced women

Actions to be taken

149. By Governments, intergovernmental and non-governmental organizations and other institutions involved in providing protection, assistance and training

to refugee women, other displaced women in need of international protection and internally displaced women, including the Office of the United Nations High Commissioner for Refugees and the World Food Programme, as appropriate:

(a) Take steps to ensure that women are fully involved in the planning, design, implementation, monitoring and evaluation of all short-term and long-term projects and programmes providing assistance to refugee women, other displaced women in need of international protection and internally displaced women, including the management of refugee camps and resources; ensure that refugee and displaced women and girls have direct access to the services provided;

United Nations Declaration and Programme of Action on a Culture of Peace, GA Res. 53/243, 53rd Sess., 107th Plenary Mtg., UN Doc. A/RES/53/243, Sept. 13, 1999

Declaration

Article 6

Civil society needs to be fully engaged in fuller development of a culture of peace.

Programme of Action

B. Strengthening actions at the national, regional and international levels by all relevant actors

12. Actions to ensure equality between women and men:

(d) Promotion of equality between women and men in economic, social and political decision-making;

13. Actions to foster democratic participation:

(a) Reinforcement of the full range of actions to promote democratic principles and practices;

16. Actions to promote international peace and security:

(j) Promote greater involvement of women in prevention and resolution of conflicts and, in particular, in activities promoting a culture of peace in post-conflict situations;

United Nations Declaration on the Rights of Indigenous Peoples, GA Res. 61/295, 61st Sess., 107th Plenary Mtg., UN Doc. A/RES/61/195, Sept. 13, 2007

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Article 18

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 27

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

Article 41

The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

Sources: United Nations Office of the High Commissioner for Human Rights <http://www.ohchr.org>; United Nations Office of the High Commissioner for Refugees, Refworld <http://www.refworld.org>.

Table A2.9 - Regional Declarations

American Declaration on the Rights and Duties of Man, OAS Res. XXX, May 2, 1948
Article 20 Every person having legal capacity is entitled to participate in the government of his country, directly or through his representatives, and to take part in popular elections, which shall be by secret ballot, and shall be honest, periodic and free. Article 32 It is the duty of every person to vote in the popular elections of the country of which he is a national, when he is legally capable of doing so.
Declaration and Concerted Plan of Action in Favour of Central American Refugees, Returnees and Displaced Persons (CIREFCA), May 31, 1989
II. Concerted Plan of Action in Favour of Central American Refugees, Returnees and Displaced Persons 29. The projects contemplated in the Plan of Action are aimed at a part of the population of internally displaced persons and foresee, at the moment, integral assistance for 43,000 internally displaced persons in El Salvador (CIREFCA/89/4, project 4), basic assistance to some 12,500 in Guatemala (CIREFCA/89/3, projects 1 and 2); and integral assistance to some 90,000 in Nicaragua (CIREFCA/89/8), projects 1 and 3 to 7). 30. These projects reflect the necessity to provide a humanitarian treatment to internally displaced persons, which presumes, in principle, facilitating the return to their homes end the reconstruction of their communities, or their location in other areas of the national territory or in places where they are actually living. In any of these possibilities, the common objective is the integration of internally displaced persons and their participation in the development process in the same conditions as other nationals of the country.
Declaration of Commitments in Favour of the Populations Affected Both by Uprootedness and by Conflicts and Extreme Poverty, within the Framework of Consolidating Peace in Central America, June 29, 1994
Declaration of Commitments *Recognizing* that the process of national reconciliation demands effective participation at the local level and that it is therefore imperative to strengthen local institutions in order to advance in the pacification and democratization processes; The Governments of Belize, Costa Rica. El Salvador, Guatemala, Honduras, Mexico and Nicaragua, duly represented at the Third International Meeting of

the Follow-up Committee of the International Conference on Central American Refugees, held in Mexico City on 28 and 29 June 1994,

Convinced that in order to continue advancing towards the consolidation or peace in the new Central American context and give continuity to the treatment of uprooted populations, a change of emphasis has become necessary from the emergency programmes that have prevailed, so that once this stage has been overcome, actions will be initiated towards sustainable human development strategies in the areas or populations prioritized by our countries for the consolidation of peace and the eradication of extreme poverty;

Assume the commitment to:

3. Adopt measures that favour and strengthen a climate and a process of dialogue and consensus-building with organizations representing society, open up these processes to new actors and take them to the local level, since it is believed that community participation in defining problems and in designing, programming, financing, executing and following up on projects is essential to national reconciliation, the consolidation of peace and the strengthening of democracy;

18. Strengthen the presence of their networks in areas prioritized by consensus and support the processes of organization, participation and reconciliation in those areas.

Annex II - Agreement on the Establishment of a Temporary Monitoring Commission for the Transition from Emergency to Development Upon the Finalization of CIREFCA

Bearing in mind the clear awareness of all the actors involved in the CIREFCA process of the need to agree on and give concrete form to appropriate mechanisms to oversee the stage following the finalization of CIREFCA, which is interpreted as a transition from emergency to development, the participants in the Third International Meeting of the CIREFCA Follow-up Committee agree to the following:

1. The will has been expressed to establish co-ordination mechanisms at local, national and regional levels, as part of regional efforts towards peace, reconciliation and development with full participation, so as to reflect the change in emphasis from emergency programmes towards human development strategies in prioritized areas, and to give continuity in addressing the problems of the uprooted populations.

2. To that end, advantage will be taken of CIREFCA's experience, as well as the results of the evaluations of the process in all its efforts to ensure participation and consensus-building by the different actors, which will require mechanisms for consultation, decision-making and followup appropriate to this new stage.

4. The new mechanisms should reflect and put into practice the following

elements, among others:

e) Seeking mechanisms to co-ordinate and make these efforts compatible with other Central American co-ordination, implementation and institutional initiatives, reproducing, as far as possible, CIREFCA's methodology and mechanisms for consensus-building and participation in other spheres.

5. This Temporary Commission will be made up of two representatives from each of the sectors that have participated in the CIREFCA process. The possibility of participation by representatives of the beneficiaries remains open. The Temporary Commission will consult with different sectors to incorporate representative contributions from organized civil society, local governments, central governments, donors and the United Nations system into the resulting proposal.

Organization of African Unity, Addis Ababa Document on Refugees and Forced Population Displacements in Africa, Sept. 10, 1994

Part II - Recommendations

Recommendation 19

Refugees should be allowed to participate in decisions concerning their repatriation. In this connection, they should be provided with all the relevant information necessary for informed judgments. The Government of the country of origin, the Government of the country of asylum, and the United Nations High Commissioner for Refugees should cooperate in providing refugees with the necessary information.

Declaration of the Regional Conference to Address the Problems of Refugees, Displaced Persons, Other Forms of Involuntary Displacement and Returnees in the Countries of the Commonwealth of Independent States and Relevant Neighbouring States, Geneva, May 31, 1996

III. Operational Framework

Objective

60. The objective is that programmes addressing the short- and long-term assistance and protection needs of the beneficiary groups are developed and implemented in accordance with the principles stated in Chapter I. These programmes should be elaborated with the active participation of all groups likely to be affected by them (including the local population) and should fully take into account the interests of these groups. The crucial role of non-governmental organizations in articulating and voicing such interests is recognized. These programmes would provide refugees, persons in refugee-like situations and internally displaced persons with emergency assistance as required, and assistance when repatriating/returning to and reintegrating into the country or region of their previous residence, or in integrating locally. Involuntarily relocating persons may need emergency assistance, and their

resettlement and local integration ought to be facilitated. Assistance should be provided to repatriants and persons belonging to formerly deported peoples for their return and integration. Ecological migrants may need emergency assistance, as well as assistance for local integration. Illegal migrants should be returned and readmitted, with due respect for their human rights.

C. Integration

98. Appropriate measures need to be taken by all concerned actors to increase the local population´s level of acceptance and understanding of integrating persons. All available means should be used, including mass media campaigns and the education system. International and non-governmental organizations have an important role to play in reducing tensions and building confidence within communities. Persons affected by displacement could be encouraged to form associations, to increase their involvement and participation in the decisions affecting them.

OSCE, Istanbul Summit Declaration, Nov. 19, 1999

26. With a large number of elections ahead of us, we are committed to these being free and fair, and in accordance with OSCE principles and commitments. This is the only way in which there can be a stable basis for democratic development. We appreciate the role of the ODIHR in assisting countries to develop electoral legislation in keeping with OSCE principles and commitments, and we agree to follow up promptly ODIHR's election assessments and recommendations. We value the work of the ODIHR and the OSCE Parliamentary Assembly - before, during and after elections - which further contributes to the democratic process. We are committed to secure the full right of persons belonging to minorities to vote and to facilitate the right of refugees to participate in elections held in their countries of origin. We pledge to ensure fair competition among candidates as well as parties, including through their access to the media and respect for the right of assembly.

Cotonou Declaration and Programme of Action, "Refugees in Africa: The Challenges of Protection and Solutions", Cotonou, June 3, 2004

Objective 6: Pursuing durable solutions: voluntary repatriation, resettlement and local integration

Specific strategies:

- Contribute to the development of a more coherent approach to durable solutions by integrating voluntary repatriation, local integration and resettlement, whenever feasible, into one comprehensive approach for resolving refugee situations, implemented in cooperation with countries of origin, host States, UNHCR and its humanitarian and development partners, as well as refugees themselves.

Mexico Declaration and Plan of Action to Strengthen the International Protection of Refugees in Latin America, Mexico City, Nov. 16, 2004

Declaration

Reiterating to States, international organizations and civil society the importance of fully involving uprooted populations in the design and implementation of assistance and protection programmes, recognizing and valuing their human potential,

Source: United Nations Office of the High Commissioner for Refugees, Refworld <http://www.refworld.org>.

Table A2.10 - United Nations Security Council Resolutions

SC Res. 463, 35th Sess., 2196th Mtg., UN Doc. S/RES/463, Feb. 2, 198 Southern Rhodesia/Zimbabwe
5. *Calls upon* the Government of the United Kingdom to take all necessary steps in order to ensure that eligible Zimbabwe nationals will freely participate in the forthcoming electoral process, including: (a) The speedy and unimpeded return of Zimbabwe exiles and refugees in conformity with the Lancaster House agreement;
SC Res. 620, 44th Sess., 2842nd Mtg., UN Doc. S/RES/620, Jan. 16, 1989 - Namibia
Expressing its concern at the increase in the police and paramilitary forces and the establishment of the South-West Africa Territory Force since 1978, and stressing the need to ensure conditions under which the Namibian people will be able to participate in free and fair elections under the supervision and control of the United Nations; *Noting also* that these developments make appropriate a re-examination of the requirements for United Nations Transition Assistance Group effectively to fulfil its mandate which include, *inter alia*, keeping borders under surveillance, preventing infiltration, preventing intimidation, and ensuring the safe return of refugees and their free participation in the electoral process, *See also*, SC Res. 629, 44th Sess., 2842nd Mtg., UN Doc. S/RES/629, Jan. 16, 1989, preamble.
SC Res. 814, 48th Sess., 3188th Mtg., UN Doc. S/RES/814, Mar. 26, 1993 - Somalia
Encouraging the Secretary-General and his Special Representative to continue and intensify their work at the national, regional and local levels, including and encouraging broad participation by all sectors of Somali society, to promote the process of political settlement and national reconciliation and to assist the people of Somalia in rehabilitating their political institutions and economy, 4. *Requests* the Secretary-General, through his Special Representative, and with assistance, as appropriate, from all relevant United Nations entities, offices and specialized agencies, to provide humanitarian and other assistance to the people of Somalia in rehabilitating their political institutions and economy and promoting political settlement and national reconciliation, in accordance with the recommendations contained in his report of 3 March 1993, including in particular: (c) To assist the people of Somalia to promote and advance political reconciliation, through broad participation by all sectors of Somali society, and the re-establishment of national and regional institutions and civil

administration in the entire country;

See also, SC Res. 865, 48th Sess., 3280th Mtg., UN Doc. S/RES/865, Sept. 22, 1993, para. 6.

SC Res. 1076, 51st Sess., 3706th Mtg., UN Doc. S/RES/1076, Oct. 22, 1996 - Afghanistan

8. *Reaffirms* its full support for the efforts of the United Nations, in particular the activities of the United Nations Special Mission to Afghanistan in facilitating the political process towards the goals of national reconciliation and a lasting political settlement with the participation of all parties to the conflict and all segments of Afghan society.

See also, SC Res. 1193, 53rd Sess., 3921st Mtg., UN Doc. S/RES/1193, Aug. 28, 1998, para. 5.

SC Res. 1325, 55th Sess., 4213th Mtg., UN Doc. S/RES/1325, Oct. 31, 2000 - Women and International Peace and Security

Reaffirming the important role of women in the prevention and resolution of conflicts and in peace-building, and stressing the importance of their equal participation and full involvement in all efforts for the maintenance and promotion of peace and security, and the need to increase their role in decision-making with regard to conflict prevention and resolution,

1. *Urges* Member States to ensure increased representation of women at all decision-making levels in national, regional and international institutions for the prevention, management, and resolution of conflict;

8. *Calls* on all actors involved, when negotiating and implementing peace agreements, to adopt a gender perspective, including, *inter alia*:

(b) Measures that support local women's peace initiatives and indigenous processes for conflict resolution, and that involve women in all of the implementation mechanisms of the peace agreements;

SC Res. 1366, 56th Sess., 4360th Mtg., UN Doc. S/RES/1366, Aug. 30, 2001 - Role of the Security Council in the Prevention of Armed Conflicts

Recognizing the role of other relevant organs, offices, funds and programmes and the specialized agencies of the United Nations, and other international organizations including the World Trade Organization and the Bretton Woods institutions; as well as the role of non-governmental organizations, civil society actors and the private sector in the prevention of armed conflict,

2. *Stresses* that the essential responsibility for conflict prevention rests with national Governments, and that the United Nations and the international community can play an important role in support of national efforts for conflict prevention and can assist in building national capacity in this field and *recognizes* the important supporting role of civil society;

SC Res. 1526, 59th Sess., 4908th Mtg., UN Doc. S/RES/1536, Mar. 26, 2004 - Extending the United Nations Mission in Afghanistan

4. *Encourages* Afghan authorities to enable an electoral process that provides for voter participation that is representative of the national demographics including women and refugees and *calls upon* all eligible Afghans to fully participate in the registration and electoral processes;

See also, SC Res. 1536, 59th Sess., 4937th Mtg., UN Doc. S/RES/1536, Mar. 26, 2004, para. 4.

SC Res. 1820, 63rd Sess., 5916th Mtg., UN Doc. S/RES/1820, June 18, 2008 - Women and Peace and Security

Reaffirming the important role of women in the prevention and resolution of conflicts and in peacebuilding, and *stressing* the importance of their equal participation and full involvement in all efforts for the maintenance and promotion of peace and security, and the need to increase their role in decision-making with regard to conflict prevention and resolution,

Deeply concerned also about the persistent obstacles and challenges to women's participation and full involvement in the prevention and resolution of conflicts as a result of violence, intimidation and discrimination, which erode women's capacity and legitimacy to participate in post-conflict public life, and acknowledging the negative impact this has on durable peace, security and reconciliation, including post-conflict peacebuilding,

12. *Urges* the Secretary-General and his Special Envoys to invite women to participate in discussions pertinent to the prevention and resolution of conflict, the maintenance of peace and security, and post-conflict peacebuilding, and encourages all parties to such talks to facilitate the equal and full participation of women at decision-making levels;

SC. Res. 1865, 64th Sess., 6076th Mtg., UN Doc. S/RES/1865, Jan. 27, 2009 - Cote d'Ivoire

Recalling also its resolutions 1325 (2000) and 1820 (2008) on women, peace and security, *condemning* any sexual violence, stressing again the importance of women's equal participation and full involvement in all efforts for the maintenance of peace and promotion of peace and security and the need to increase their role in decision-making with regard to conflict prevention and resolution, and *encouraging* the Secretary-General to mainstream a gender perspective in the implementation of the mandate of the United Nations Operation in Côte d'Ivoire ("UNOCI"),

See also, *See also*, SC Res. 1880, 64th Sess., 6174th Mtg., UN Doc. S/RES/1880, July 20, 2009, preamble; and, SC Res. 2062, 67th Sess., 6817th Mtg., UN Doc. S/RES/2062, July 26, 2012, preamble.

SC Res. 1889, 64th Sess., 6196th Mtg., UN Doc. S/RES/1889, Oct. 5, 2009 - Women and Peace and Security

Remaining deeply concerned about the persistent obstacles to women's full involvement in the prevention and resolution of conflicts and participation in post-conflict public life, as a result of violence and intimidation, lack of security and lack of rule of law, cultural discrimination and stigmatization, including the rise of extremist or fanatical views on women, and socio-economic factors including the lack of access to education, and in this respect, *recognizing* that the marginalization of women can delay or undermine the achievement of durable peace, security and reconciliation,

Noting that despite progress, obstacles to strengthening women's participation in conflict prevention, conflict resolution and peacebuilding remain, *expressing concern* that women's capacity to engage in public decision making and economic recovery often does not receive adequate recognition or financing in post-conflict situations, and *underlining* that funding for women's early recovery needs is vital to increase women's empowerment, which can contribute to effective post-conflict peacebuilding,

Noting that women in situations of armed conflict and post-conflict situations continue to be often considered as victims and not as actors in addressing and resolving situations of armed conflict and *stressing* the need to focus not only on protection of women but also on their empowerment in peacebuilding,

Recognizing that an understanding of the impact of situations of armed conflict on women and girls, including as refugees and internally displaced persons, adequate and rapid response to their particular needs, and effective institutional arrangements to guarantee their protection and full participation in the peace process, particularly at early stages of post-conflict peacebuilding, can significantly contribute to the maintenance and promotion of international peace and security,

1. *Urges* Member States, international and regional organisations to take further measures to improve women's participation during all stages of peace processes, particularly in conflict resolution, post-conflict planning and peacebuilding, including by enhancing their engagement in political and economic decision-making at early stages of recovery processes, through inter alia promoting women's leadership and capacity to engage in aid management and planning, supporting women's organizations, and countering negative societal attitudes about women's capacity to participate equally;

4. *Calls upon* the Secretary-General to develop a strategy, including through appropriate training, to increase the number of women appointed to pursue good offices on his behalf, particularly as Special Representatives and Special Envoys, and to take measures to increase women's participation in United Nations political, peacebuilding and peacekeeping missions;

19. *Requests* the Secretary-General to submit a report to the Security Council within 12 months on addressing women's participation and inclusion in peacebuilding and planning in the aftermath of conflict, taking into

consideration the views of the Peacebuilding Commission and to include, inter alia:

b. Challenges to women's participation in conflict resolution and peacebuilding and gender mainstreaming in all early post-conflict planning, financing and recovery processes,

SC Res. 1898, 64th Sess., 6239th Mtg., UN Doc. A/RES/1898, Dec. 14, 2009 - Cyprus

Agreeing that active participation of civil society groups is essential to the political process and can contribute to making any future settlement sustainable, *welcoming* all efforts to promote bicommunal contacts and events including, inter alia, on the part of all United Nations bodies on the island, and *urging* the two sides to promote the active engagement of civil society and the encouragement of cooperation between economic and commercial bodies and to remove all obstacles to such contacts,

See also, SC Res. 1873, 64th Sess., 6132nd Mtg., UN Doc. S/RES/1873, May 29, 2009, preamble; SC Res. 1930, 65th Sess., 6339th Mtg., UN Doc. S/RES/1930, June 15, 2010, preamble; SC Res. 1953, 65th Sess., 6445th Mtg., UN Doc. S/RES/1953, Dec. 13, 2010, preamble, para. 2; SC Res. 1986, 66th Sess., 6554th Mtg., UN Doc. S/RES/1986, June 13, 2011, preamble, para. 2; and, SC Res. 2058, 67th Sess., 6809th Mtg., UN Doc. S/RES/2058, July 19, 2012, preamble, para. 3.

SC Res. 1935, 65th Sess., 6366th Mtg., UN Doc. S/RES/1935, July 30, 2010 - Report of the Secretary-General on Sudan

15. *Stresses* the importance of achieving dignified and durable solutions for refugees and internally displaced persons, and of ensuring their full participation in the planning and management of these solutions, *demands* that all parties to the conflict in Darfur create the conditions conducive to allowing the voluntary, safe, dignified and sustainable return of refugees and internally displaced persons or their local integration;

SC Res. 1949, 65th Sess., 6428th Mtg., UN Doc. S/RES/1949, Oct. 23, 2010 - Guinea Bissau

19. *Emphasizes* the important role of women in prevention and resolution of conflicts and in peacebuilding, as recognized in resolution 1325 (2000) and 1820 (2008), 1888 (2009) and 1889 (2009), *underlines* that a gender perspective should be taken into account in implementing all aspects of the mandate of UNIOGBIS, and encourages UNIOGBIS to work with national authorities in this regard, and relevant stakeholders to improve women's participation in peacebuilding;

SC Res. 2003, 66th Sess., 6597th Mtg., UN Doc. S/RES/2003, July 29, 2011 - Reports of the Secretary-General on Sudan

7. *Recognizes*, in this context, the potential complementary role of a Darfur-based Political Process (DPP) led by the AU and the UN; *calls on* the Government of Sudan and the armed movements to contribute to the creation of the necessary enabling environment for a DPP that allows the systematic and sustained engagement of all Darfurian stakeholders in constructive and open dialogue; *notes* that, despite some positive developments in the peace process, important elements of the necessary enabling environment for a DPP, including but not limited to respect for the civil and political rights of participants, such that they can exercise their views without fear of retribution, freedom of speech and assembly to permit open consultations, freedom of movement of participants and UNAMID, proportional participation among Darfurians, freedom from harassment, arbitrary arrest, and intimidation, and freedom from interference by the Government or the armed movements, are not yet in place;

18. *Stresses* the importance of achieving dignified and durable solutions for refugees and internally displaced persons, and of ensuring their full participation in the planning and management of these solutions, *demands* that all parties to the conflict in Darfur create the conditions conducive to allowing the voluntary, safe, dignified and sustainable return of refugees and internally displaced persons or their local integration; *notes* potentially encouraging reports of some voluntary returns of IDPs to their villages and places of origin, as indicated in the report of the Secretary-General, *stresses* the importance of the Joint Verification Mechanism in verifying the voluntariness of returns and *expresses* deep concern over some bureaucratic obstacles that undermine its effectiveness and independence;

See also, SC Res. 2063, 67th Sess., 6819th Mtg., UN Doc. S/RES/2063, July 31, 2012, para. 8, 18.

SC Res. 2011, 66th Sess., 6619th Mtg., UN Doc. S/RES/2011, Sept. 16, 2011 - Liberia

14. *Requests* UNMIL to continue to support the participation of women in conflict prevention, conflict resolution and peacebuilding, including in decision-making roles in post-conflict governance institutions, appointed and elected in Liberia, within existing resources;

See also, SC Res. 2066, 67th Sess., 6834th Mtg., UN Doc. S/RES/2066, Sept. 17, 2012, para. 11.

SC Res. 2014, 66th Sess., 6634th Mtg., UN Doc. S/RES/2014, Oct. 21, 2011 - Yemen

Reaffirming its resolutions 1325 (2000), 1820 (2008), 1888 (2009), 1889 (2009) and 1960 (2010) on women, peace, and security, and reiterating the need for the full, equal and effective participation of women at all stages of peace-processes given their vital role in the prevention and resolution of

conflict and peacebuilding, *reaffirming* the key role women play in re-establishing the fabric of society and stressing the need for their involvement in conflict resolution in order to take into account their perspective and needs,

6. *Calls* upon all concerned parties to ensure the protection of women and children, to improve women's participation in conflict resolution and encourages all parties to facilitate the equal and full participation of women at decision-making levels;

SC 2041, 67th Sess., 6738th Mtg., UN Doc. S/RES/2041, Mar. 22, 2012 - Afghanistan

14. *Welcomes also* the measures taken by the Government of Afghanistan, and *encourages* it to continue to increase the participation of women as well as minorities and civil society in outreach, consultation and decision-making processes, and *recalls* that women play a vital role in the peace process, as recognized in Security Council resolution 1325 (2000) and related resolutions, therefore *reiterates* the need for the full, equal and effective participation of women at all stages of peace processes and *urges* their involvement in the development and implementation of post-conflict strategies in order to take account of their perspectives and needs;

See also, SC Res. 1974, 66th Sess., 6500th Mtg., UN Doc. S/RES/1974, Mar. 22, 2011, para. 11.

SC Res. 2057, 67th Sess., 6800th Mtg., UN Doc. S/RES/2057, July 5, 2012 - Report of the Secretary-General on Sudan

Reaffirming its resolutions 1325 (2000), 1820 (2008), 1888 (2009), 1889 (2009) and 1960 (2010) on women, peace, and security and reiterating the need for the full, equal, and effective participation of women at all stages of peace processes given their vital role in the prevention and resolution of conflict and peacebuilding; *reaffirming* the key role women can play in re-establishing the fabric of recovering society and *stressing* the need for their involvement in the development and implementation of post-conflict strategies in order to take into account their perspectives and needs,

15. *Calls upon* the Government of the Republic of South Sudan to take measures to improve women's participation in the outstanding issues of the CPA and post-independence arrangements and to enhance the engagement of South Sudanese women in public decision-making at all levels including by promoting women's leadership, ensuring appropriate representation of women in the revision of South Sudan's Constitution, supporting women's organizations, and countering negative societal attitudes about women's capacity to participate equally;

SC Res. 2061, 67th Sess., 6815th Mtg., UN Doc. S/RES/2061, July 25, 2012 - Iraq

Recognizing the efforts of the Government of Iraq in the promotion and protection of the human rights of women and *reaffirming* its resolutions 1325

(2000), 1820 (2008), 1888 (2009), 1889 (2009) and 1960 (2010) on women, peace, and security and *reiterating* the need for the full, equal, and effective participation of women; *reaffirming* the key role women can play in re-establishing the fabric of society and *stressing* the need for their full political participation, including in the development of national strategies in order to take into account their perspectives,

SC Res. 2067, 67th Sess., 6837th Mtg., UN Doc. S/RES/2067, Sept. 18, 2012 - Somalia

8. *Reaffirms* the important role of women in the prevention and resolution of conflicts and in peacebuilding, and *stresses* the importance of their equal participation and full involvement in all efforts for the maintenance and promotion of peace and security, *urges* the Somali authorities to continue to promote increased representation of women at all decision-making levels in Somali institutions;

Source: United Nations Office of the High Commissioner for Refugees, Refworld <http://www.refworld.org>.

Table A2.11 - United Nations General Assembly Resolutions

GA Res. 3010, 27th Sess., 2113th Plenary Mtg., UN Doc. A/RES/3010, Dec. 18, 1972 - International Women's Year
1. *Proclaims* the year 1975 International Women's Year; 2. *Decides* to devote this year to intensified action: (c) To recognize the importance of women's increasing contribution to the development of friendly relations and co-operation among States and to the strengthening of world peace;
GA Res. 3519, 30th Sess., 2441st Plenary Mtg., UN Doc. A/RES/3519, Dec. 15, 1975 - Women's Participation in the Strengthening of International Peace and Security and in the Struggle Against Colonialism, Racism, Racial Discrimination, Foreign Aggression and Occupation and All Forms of Foreign Domination
3. Calls upon all Governments, intergovernmental and non-governmental organizations, particularly women's organizations and women's groups, to expand and deepen the process of international detente and make it irreversible, to eliminate completely and indefinitely all forms of colonialism and to put an end to the policy and practice of *apartheid*, all forms of racism, racial discrimination, aggression, occupation and foreign domination;
GA Res. 35/135, 35th Sess., 92nd Plenary Mtg., Dec. 11, 1980 - Refugee and Displaced Women
2. Calls upon all States and donors providing immediate relief to refugees and displaced persons to endeavour to lessen the special vulnerability of women in these circumstances, by ensuring their access to emergency relief and to health programmes, and. their active participation in decision making in centres or camps for refugees or displaced persons; 5. Urges the High Commissioner to work with host country Governments to encourage the participation of women, including refugee women, in the administration of refugee assistance programmes, notably the provision of essential food, shelter and medical services in countries of asylum and to promote their participation in training and orientation programmes in countries of asylum and resettlement;
GA Res. 44/15, 44th Sess., 43rd Plenary Mtg., UN Doc. A/RES/44/147, Nov. 1, 1989 - The Situation in Afghanistan and its Implications for International Peace and Security
8. Emphasizes the need for an early start of the intra-Afghan dialogue for the establishment of a broad-based government to ensure the broadest support and immediate participation of all segments of the Afghan people; *See also*, GA Res. 45/12, 45th Sess., 37th Plenary Mtg., UN Doc. A/RES/45/12,

Nov. 7, 1990, para. 7; GA Res. 46/23, 46th Sess., 64th Plenary Mtg., UN Doc. A/RES/46/23, Dec. 5, 1991, para. 8; GA Res. 51/195, 51st Sess., 87th Plenary Mtg., UN Doc. A/RES/51/195, Feb. 13, 1997, para. 5.

GA Res. 45/141, 45th Sess., 68th Plenary Mtg., UN Doc. A/RES/45/141, Dec. 14, 1990 - International Conference on Central American Refuges

5. *Agrees* on the need for projects in favour of refugees, returnees and displaced persons to promote, inter alia:

(a) The participation of women;

GA Res. 46/133, 46th Sess., 75th Plenary Mtg., UN Doc. A/RES/46/133, Dec. 17, 1991 - Situation of Human Rights and Fundamental Freedoms in El Salvador

7. Notes with satisfaction that, in conformity with the New York Agreement, the National Commission for the Consolidation of Peace has been set up in its transitory phase, constituting a mechanism for the monitoring of and for the participation of civilian society in the process of the changes resulting from the negotiations between the parties;

GA Res. 53/203, 53rd Sess., 93rd Plenary Mtg., UN Doc. A/RES/53/203, Dec. 18, 1998 - Assistance to Afghanistan

A.9. *Welcomes* the continuing commitment of the United Nations to facilitate the political process towards national reconciliation and a lasting political settlement with the participation of all parties to the conflict and all segments of Afghan society, and reaffirms its full support for the comprehensive efforts of the Secretary-General, the activities of the Special Envoy of the Secretary-General for Afghanistan and those of the United Nations Special Mission to Afghanistan;

B. 9. *Strongly urges* all of the Afghan parties to end discriminatory policies and to recognize, protect and promote the equal rights and dignity of women and men, including their rights to full and equal participation in the life of the country, freedom of movement, access to education and health facilities, employment outside the home, personal security and freedom from intimidation and harassment in particular with respect to the implications of discriminatory policies for the distribution of aid;

GA Res. 55/76, 55th Sess., 81st Plenary Mtg., UN Doc. A/RES/55/76, Dec. 4, 2000 - Fiftieth Anniversary of the United Nations High Commissioner for Refugees

4. *Notes* the crucial role of partnerships with Governments and international, regional and non-governmental organizations, as well as of the participation of refugees in decisions that affect their lives;

GA Res. 57/234, 57th Sess., 77th Plenary Mtg., Dec. 18, 2002 - Question of human rights in Afghanistan

Stressing the importance of ensuring the full and effective participation of women in all decision-making processes regarding the future of Afghanistan,

13. *Urges* the Transitional Authority to give high priority to the ratification of the Convention on the Elimination of All Forms of Discrimination against Women, to end, without delay, all violations of the human rights of women and girls and to take urgent measures to ensure fully:

(*b*) The full, equal and effective participation of women in civil, cultural, economic, political and social life throughout the country at all levels;

GA Res. 56/173, 56th Sess., 88th Plenary Mtg., UN Doc. A/RES/56/173, Dec. 19, 2000 - Situation of Human Rights in the Democratic Republic of Congo

Reiterating its support for the continuation of the Inter-Congolese Dialogue, which, requiring the cooperation and full participation of all the Congolese parties, is an essential process for the future of the Democratic Republic of the Congo and the entire region,

Acknowledging the need to expand the presence and full participation of women in the peace process,

3. *Urges* all parties to the conflict in the Democratic Republic of the Congo:

(d) To do everything possible to create the prerequisites for further meetings with a view to advancing the Inter-Congolese Dialogue, with emphasis on ensuring the full participation of women in this process;

GA Res. 57/337, 57th Sess., 93rd Plenary Mtg., UN Doc. A/RES/57/337, July 3, 2003 - Prevention of Armed Conflict

39. *Recognizes* the important supporting role of civil society in the prevention of armed conflict, and invites it to continue to support efforts for the prevention of armed conflict and to pursue practices that foster a climate of peace, help to prevent or mitigate crisis situations and contribute to reconciliation.

GA Res. 60/32 A-B, 60th Sess., 58th Plenary Mtg., UN Doc. A/RES/60/32, Nov. 30, 2005 - The situation in Afghanistan and its implications for international peace and security and emergency international assistance for peace, normalcy and reconstruction of war-stricken Afghanistan

5. Endorses the key principles for cooperation between the Government of Afghanistan and the international community during the post-Bonn process as set out in the report of the Secretary-General, 5 including the leadership role of Afghanistan in the reconstruction process, the just allocation of domestic and international reconstruction resources across the country, regional cooperation, lasting capacity- and institution-building, combating corruption and the

promotion of transparency and accountability, public information and participation, and the continued central role of the United Nations in the post-Bonn process, which should also include fields in which the United Nations offers the best expertise available;

13. *Recalls* Security Council resolution 1325 (2000) of 31 October 2000 on women and peace and security, commends the efforts of the Government of Afghanistan to mainstream gender issues and to protect and promote the equal rights of women and men as guaranteed, inter alia, by virtue of its ratification of the Convention on the Elimination of All Forms of Discrimination against Women,13 and by the Afghan Constitution, welcomes the level of participation of Afghan women in the recent parliamentary and provincial council elections, including the election of female candidates to these bodies, and reiterates the continued importance of the full and equal participation of women in all spheres of Afghan life;

21. *Endorses* the key principles for cooperation between the Government of Afghanistan and the international community during the post-Bonn process as set out in the report of the Secretary-General,5 including the leadership role of Afghanistan in the reconstruction process, the just allocation of domestic and international reconstruction resources across the country, regional cooperation, lasting capacity- and institution-building, combating corruption and the promotion of transparency and accountability, public information and participation, and the continued central role of the United Nations in the post-Bonn process, which should also include fields in which the United Nations offers the best expertise available;

GA Res. 61/18, Jan. 24, 2007, para. 21, 42; GA Res. 62/6, Dec. 13, 2007, para. 24.

GA Res. 61/153, 62nd Sess., 76th Plenary Mtg., UN Doc. A/RES/62/153, Dec. 18, 2007 - Protection of and Assistance to Internally Displaced Persons

8. *Notes* the importance of taking the human rights and the specific protection and assistance needs of internally displaced persons into consideration, when appropriate, in peace processes, and emphasizes that durable solutions for internally displaced persons, including through voluntary return, sustainable reintegration and rehabilitation processes and their active participation, as appropriate, in the peacebuilding process, are necessary elements of effective peacebuilding;

GA Res. 65/165, 65th Sess., 89th Plenary Mtg., UN Doc A/RES/65/165, Dec. 19, 2011 - Protection of and Assistance to Internally Displaced Persons

9. *Emphasizes* the importance of consultation with internally displaced persons and host communities by Governments and other relevant actors, in accordance with their specific mandates, during all phases of displacement, as well as the participation of internally displaced persons, where appropriate, in programmes and activities pertaining to them, taking into account the primary responsibility of States for the protection of and assistance to internally

displaced persons within their jurisdiction;

10. *Notes* the importance of taking the human rights and the specific protection and assistance needs of internally displaced persons into consideration, when appropriate, in peace processes, and emphasizes that durable solutions for internally displaced persons, including through voluntary return, sustainable reintegration and rehabilitation processes and their active participation, as appropriate, in the peace process, are necessary elements of effective peacebuilding;

Source: United Nations Office of the High Commissioner for Refugees, Refworld <http://www.refworld.org>.

Table A2.12 - United Nations Commission on Human Rights/Human Rights Council Resolutions

CHR Res. 1985/36, 41st Sess., 55th Mtg., UN Doc. E/CN.4/RES/1985/36, Mar. 13, 1985 - Situation of Human Rights in Guatemala
Welcoming the elections to the Constituent Assembly held in July 1984, which marked the first step of the process for the return of democracy and the institution of a new constitutional government, now scheduled for January 1986, and welcoming the invitation of the Government of Guatemala to political exiles to return to their country and take part in the electoral process with guarantees of full and open participation,
CHR Res. 1989/3, 45th Sess., 35th Mtg., UN Doc. E/CN.4/RES/1989/3, Feb. 23, 1989 - Situation of Human Rights in Namibia
18. *Calls* for the unimpeded return of all Namibian refugees and exiles in order to facilitate their full and unfettered participation in the impending decolonization process envisaged under Security Council resolution 435 (1978);
CHR Res. 1990/5, 46th Sess., 28th Mtg., UN Doc. E/CN.4/RES/1990/5, Feb. 16, 1990 - Situation in Afghanistan
6. Emphasizes the need for an early start of the intra-Afghan dialogue for the establishment of a broad-based government to ensure the broadest support and immediate participation of all segments of the Afghan people; CHR Res. 1991/4, 47th Sess., 28th Mtg., UN Doc. A/CN.4/RES/1991/4, Feb. 15, 1991, para. 7; CHR Res. 1992/5, 48th Sess., 37th Mtg., UN Doc. E/CN.4/RES/1992/5, Feb. 21, 1992, para. 8.
CHR Res. 1990/26, 46th Sess., 42nd Mtg., UN Doc. E/CN.4/RES/1990/26, Feb. 27, 1990 - Situation of Human Rights in South Africa
10. *Further demands* the unconditional return of political refugees and members of the liberation movements based outside South Africa and their unimpeded participation in political activities;
CHR Res. 1990/57, 46th Sess., 53rd Mtg., UN Doc. E/CN.4/RES/1990/57, Mar. 7, 1990 - Situation of Human Rights in Equatorial Guinea
6. *Encourages* the Government of Equatorial Guinea to endeavour to facilitate the repatriation of all refugees and exiles, *inter alia* by adopting measures permitting the full participation of all citizens in the country's political, economic, social and cultural affairs, thus helping to resolve the shortage of specialized personnel, as indicated in the report of the Expert; See also, CHR Res. 1991/80, 47th Sess., 54th Mtg., UN Doc. E/CN.4/RES/1991/80, Mar. 6, 1991, para. 6; CHR Res. 1992/79, 48th Sess., 56th Mtg., UN Doc. E/CN.4/RES/1992/79, Mar. 5, 1992, para. 11; CHR Res.

1993/69, 49th Sess., 65th Mtg., UN Doc. E/CN.4/RES/1993/69, Mar. 10, 1993, para. 8; CHR Res. 1994/89, 50th Sess., 66th Mtg., UN Doc. E/CN.4/RES/1994/89, Mar. 9, 1994, para. 8; CHR Res. 1995/71, UN Doc. E/CN.4/RES/1995/71, Mar. 8, 1995, para. 5.

CHR Res. 1997/51, 60th Sess., 64th Mtg., UN Doc. E/CN.4/RES/1997/51, Apr. 15, 1997 - Assistance to Guatemala in the Field of Human Rights

8. Calls upon the Government of Guatemala, URNG and Guatemalan society as a whole to make every possible effort to familiarize the Guatemalan people with the content of the peace agreements as quickly as possible, to ensure the full participation of the people in building the new multi-ethnic, multicultural and plurilingual nation, establishing a democratic society with social justice, initiating a period of sustained and sustainable economic and social development and ensuring the pre-eminence of civilian authority in national decision-making;

CHR Res. 1997/77, 53rd Sess., 70th Mtg., UN Doc. E/CN.4/RES/1997/77, Apr. 18, 1997 - Situation of Human Rights in Burundi

Recognizing the important role of women in the reconciliation process and the search for peace, and urging the Government of Burundi to ensure the equal participation of women in Burundian society and to improve their living conditions.

See also, CHR Res. 1998/82, 54th Sess., 60th Mtg., UN Doc. E/CN.4/RES/1998/82, Apr. 24, 1998, preamble; 1999/10, 23.4.99, 2000/20, 18.4.2000.

CHR Res. 1998/60, 55th Sess., 52nd Mtg., UN Doc. E/CN.4/RES/1998/60, Apr. 17, 1998 - Situation of Human Rights in Cambodia

15. *Expresses* appreciation to the Government and people of Thailand for the humanitarian assistance to displaced persons from Cambodia, welcomes the role of United Nations agencies in the repatriation of refugees and displaced persons, and calls on the Government of Cambodia to ensure their full re-integration into Cambodian society and political life, and, in particular, to exercise its best efforts to enable their participation in the forthcoming election.

CHR Res. 1998/22, 54th Sess., 43rd Mtg., UN Doc. E/CN.4/RES/1998/22, Apr. 14, 1998 - Assistance to Guatemala in the Field of Human Rights

Considering, in particular, that representatives of the Government of Guatemala jointly with representatives of the Mayan, Garlfunas and Xincas organizations are conducting a process of dialogue and negotiation through the joint commissions set up in pursuance of the Agreement on the Identity and Rights of Indigenous Peoples, with the objective of eliminating the long-standing discrimination and exclusion and defining new mechanisms for political, economic, social and cultural participation by the indigenous peoples,

CHR Res. 2004/80, 60th Sess., 58th Mtg., UN Doc. E/CN.4/RES/2004/80, Apr. 21, 2004 - Assistance to Somalia in the Field of Human Rights

11. *Calls upon*:

(b) All parties to ensure the effective participation of women in the Somali National Reconciliation Process;

See also, UNCHR 2005/83, Apr. 21, 2005, para. 6.

CHR Res. 2004/83, 60th Sess., 58th Mtg., UN Doc. E/CN.4/RES/2004/83, Apr. 21, 2004 - Technical Cooperation and Advisory Services in Liberia

5. Urgently requests the National Transitional Government:

(*d*) To increase the participation of women and girls in the process of peace and national reconciliation;

CHR Res. 2004/84, 60th Sess., 58th Mtg., UN Doc. E/CN.4/RES/2004/84, Apr. 21, 2004 - Technical Cooperation and Advisory Services in the Democratic Republic of Congo

5. *Calls upon* the Government of National Unity and Transition to take specific measures:

(*i*) To respond to the specific needs of women and girls during the period of post-conflict reconstruction and ensure as soon as possible the full participation of women in all aspects of the settlement process and the peace process, in particular peacekeeping, conflict management and the consolidation of peace;

CHR Res. 2005/70, 61st Sess., 59th Mtg., UN Doc. E/CN.4/RES/2005/70, Apr. 20, 2005 - Human Rights and Transitional Justice

Underlining the need for the rights of both victims and accused persons to be respected, in accordance with international standards, with particular attention to groups most affected by conflicts and the breakdown of the rule of law, among them women, children, migrants, refugees, persons with disabilities and persons belonging to minorities, and to ensure that specific measures are taken for their free participation and protection as well as for the sustainable return of refugees and internally displaced persons in safety and dignity,

HRC Res. 20/9, 20th Sess., UN Doc. A/HRC/RES/20/9, July 17, 2012 - Human Rights of Internally Displaced Persons

8. *Emphasizes* the importance of consultation with internally displaced persons and host communities by Governments and other relevant actors, in accordance with their specific mandates, during all phases of displacement, as well as the participation of internally displaced persons, where appropriate, in programmes and activities pertaining to them, taking into account the primary responsibility of States for the protection of and assistance to internally

displaced persons within their jurisdiction;

9. *Also emphasizes* the importance of taking the human rights and specific protection and assistance needs of internally displaced persons into consideration, when appropriate, in peace processes, and further emphasizes that durable solutions for internally displaced persons, including through voluntary return, sustainable reintegration, relocation and rehabilitation processes and their active participation, as appropriate, in the peace process, are necessary elements of effective peacebuilding;

15. *Calls upon* States, in cooperation with international agencies and other stakeholders, to ensure and support the full and meaningful participation of internally displaced women at all levels of decision-making processes and activities that have a direct impact on their lives, in all aspects relating to internal displacement, regarding promotion and protection of human rights, prevention of human rights violations, implementation of durable solutions, peace processes, peacebuilding, post-conflict reconstruction and development;

22. *Stresses the importance* of the participation of internally displaced persons living outside camps and their host families and communities in establishing predictable and systematized support systems that take fully into account their human rights, needs and vulnerabilities;

25. *Acknowledges* the important contribution of age, gender and diversity mainstreaming in identifying, through a participatory approach, the protection risks faced by the different members of communities of internally displaced persons, in particular the non-discriminatory treatment and protection of women, children, persons with disabilities and the elderly;

Source: United Nations Office of the High Commissioner for Refugees, Refworld <http://www.refworld.org>.

Table A2.13 - United Nations Sub-Commission on the Promotion and Protection of Human Rights Resolutions

Sub-Commission Res. 1997/31, 49th Sess., 36th Mtg., UN Doc. E/CN.4/Sub.2/RES/1997/31, Aug. 28, 1997 - The Right to Return
6. *Particularly urges* Governments of host States and Governments of countries from which refugees originate actively to negotiated with each other and, where negotiations have not yet been successful, to use the good offices of the Secretary-General or of the United Nations High Commissioner for Human Rights, or neutral third party mediation, and to include representatives of the refugees and of the Office of the United Nations High Commissioner for Refugees, in a genuine and concerted effort to realize the primary purpose of such negotiations, which is to make possible the voluntary repatriation of the refugees to their country of origin without further unnecessary delay, using where necessary the mechanism of an internationally monitored verification process to determine, in accordance with international legal principles, which of the refugee population have the right to return;
Sub-Commission Res. 2002/30, 54th Sess., 23rd Mtg., UN Doc. E/CN.4/Sub.2/2002/30, Aug. 15, 2002 - The Right to Return of Refugees and Internally Displaced Persons
6. *Reminds* States of the right of all displaced persons to participate in the return and restitution process and in the development of the development of the procedures and mechanisms put in place to protect these rights;
UN Guiding Principles on Housing and Property Restitution for Refugees and Displaced Persons, Commission on Human Rights, Sub-Commission on the Protection and Promotion of Human Rights, 56th Sess., UN Doc. E/CN.4/Sub.2/2005/17, June 28, 2005
13. Accessibility of restitution claims procedures 13.2 States should ensure that all aspects of the restitution claims process, including appeals procedures, are just, timely, accessible, free of charge, and are age and gender sensitive. States should adopt positive measures to ensure that women are able to participate on a fully equal basis in this process. 13.3 States should ensure that separated and unaccompanied children are able to participate and are fully represented in the restitution claims process, and that any decision in relation to the restitution claim of separated and unaccompanied children is in compliance with the overarching principle of the “best interests of the child”. 14. Adequate consultation and participation in decision-making 14.1 States and other involved international and national actors should ensure that voluntary repatriation and housing, land and property restitution programmes are carried out with adequate consultation and participation with the affected persons, groups and communities.

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

Source: United Nations Office of the High Commissioner for Refugees, Refworld <http://www.refworld.org>. The United Nations Sub-Commission on the Promotion and Protection of Human Rights, the main subsidiary body of the former Commission on Human Rights, was established in 1947. Originally the 'Sub Commission on Prevention of Discrimination and Protection of Minorities', it was renamed in 1999.

Table A2.14 - UNHCR Executive Committee Conclusions and Guidelines

Conclusion No. 39, 36th Sess., Oct. 18, 1985 - Refugee Women and International Protection
The Executive Committee, (h) *Recommended* that States, individually, jointly and in co-operation with UNHCR, redefine and reorient existing programmes and, where necessary, establish new programmes to meet the specific problems of refugee women, in particular to ensure the safeguard of their physical integrity and safety, and their equality of treatment. Women refugees should participate in the formulation and implementation of such programmes;
Conclusion No. 54, 39th Sess., Oct. 19, 1988 - Refugee Women
The Executive Committee, *Supported* the High Commissioner's recognition of refugee women as a vital economic force and of the need to promote their participation as agents as well as beneficiaries in the planning of protection and assistance programmes;
Conclusion No. 60, 40th Sess., Oct. 13, 1989 - Refugee Women
The Executive Committee, a) *Expressed* appreciation for the Report on Refugee Women (A/AC.96/727) and commended the Office of the High Commissioner on progress towards promoting the participation of refugee women as agents as well as beneficiaries in the planning and implementation of protection and assistance programmes; e) *Requested* the High Commissioner to provide at the Forty First Session of the Executive Committee, a policy framework and organizational work plan for the next stages in mainstreaming of refugee women's issues within the organization with particular attention to the need for female field workers to facilitate participation of refugee women. In addition, requested the High Commissioner to provide a detailed progress report on the implementation of his Office's policies and programmes for refugee women, on both protection and assistance activities. Requested particularly that the High Commissioner prepare a revised and expanded version of the internal guidelines relating to the international protection of refugee women; g) *Noted* with satisfaction the recruitment of a Senior Coordinator for Refugee Women, the production of guidelines to field offices to identify the special needs and encourage participation of refugee women, and the publication of the revised bibliography on refugee women;

Conclusion No. 64, 41st Sess., Oct. 5, 1990 - Refugee Women and International Protection

The Executive Committee,

(a) *Urges* States, relevant United Nations organizations, as well as non-governmental organizations, as appropriate, to ensure that the needs and resources of refugee women are fully understood and integrated, to the extent possible, into their activities and programmes and, to this end, to pursue, among others, the following aims in promoting measures for improving the international protection of refugee women:

i) Promote energetically the full and active participation of refugee women in the planning, implementation and evaluation/monitoring of all sectors of refugee programmes;

x) Provide for informed and active consent and participation of refugee women in individual decisions about durable solutions for them;

Conclusion No. 68, 43rd Sess., Oct. 9, 1992 - General Conclusion on International Protection

The Executive Committee,

(i) *Expresses* appreciation for the progress report on the implementation of the Guidelines on the Protection of Refugee Women (EC/SCP/74), notes with great concern the precarious situation of many refugee women, whose physical safety is often endangered and who often do not have equal access to basic necessities including adequate health and educational facilities, and calls upon all States, UNHCR and other concerned parties to ensure implementation of the Guidelines, particularly through measures aimed at eliminating all forms of sexual exploitation of and violence against refugee women, protecting women heads of household, and promoting their active participation and involvement in decisions affecting their lives and communities;

Conclusion No. 73, 44th Sess., Oct. 8, 1993 - Refugee Protection and Sexual Violence

The Executive Committee,

(c) *Calls upon* States and UNHCR to ensure the equal access of women and men to refugee status determination procedures and to all forms of personal documentation relevant to refugees' freedom of movement, welfare and civil status, and to encourage the participation of refugee women as well as men in decisions relating to their voluntary repatriation or other durable solutions;

Reinforcing a Community Development Approach, UN Doc. EC/51/SC/CRP.6, Feb. 15, 2001

1. The community development policy defined in this paper highlights the fact that refugees should be "subjects" in the search for durable solutions and be considered as resourceful and active partners, rather than "objects" or passive recipients of assistance.

8. In planning all relevant activities, UNHCR will ensure that:

- A community development approach will be applied from the very early stages of operations, whether an emergency or not, and continue until and including the durable solution phases, such as voluntary repatriation and reintegration.

17. The adoption and operationalization of a community development approach to UNHCR's operations should mean not only a more effective use of limited resources, but also, and most importantly, the involvement of refugees and their communities in shaping their future and in their ongoing search for a solution to their plight.

Global Consultations on International Protection, Voluntary Repatriation, UN Doc. EC/GC/02/5, Apr. 25, 2002

Annex I - Activities to Implement Voluntary Repatriation

UNHCR works both with the countries of asylum and origin to create an acceptable framework within which to implement voluntary repatriation. The following sets out activities UNHCR pursues in this regard, both generally and more specifically with regard to the countries of asylum and origin.

In general:

- Facilitate the participation of refugees, including women, in peace-negotiations;

Agenda for Protection, UN Doc. A/AC.96/965/Add.1, June 20, 2002

III. Programme of Action

Goal 5 – Redoubling the search for durable solutions

2. Improved conditions for voluntary repatriation

- States to facilitate the participation of refugees, including women, in peace and reconciliation processes and to ensure that such agreements duly recognize the right to return and contemplate measures to encourage repatriation, reintegration and reconciliation.

Conclusion No. 98, 54th Sess., Oct. 10, 2003 - Protection from Sexual Abuse and Exploitation

The Executive Committee,

(a) *Calls upon* States, UNHCR and its implementing and operational partners to ensure that appropriate systems to prevent and respond to sexual and gender-based violence, including sexual abuse and exploitation, are in place, ensuring the needs of women and children, as well those of vulnerable persons, are addressed at all times; and recommends that measures to combat sexual abuse and exploitation of refugees and asylum-seekers be guided by the importance of:

(iii) Ensuring that actions undertaken on behalf of refugees and asylum-seekers, including women, children and vulnerable persons, enhance their meaningful participation in decision-making processes; that they are provided with sufficient information to form their opinions, and channels for communicating their concerns to humanitarian agencies, and are provided with full information about refugee protection and available assistance;

(c) *Urges* all States, consistent with applicable international refugee, human rights and humanitarian law:

(ii) to cooperate in eliminating all forms of discrimination, sexual exploitation and violence against female refugees and asylum-seekers, and to promote their active involvement in decisions affecting their lives and communities;

Conclusion No. 99, 55th Sess., Oct. 8, 2004 - General

The Executive Committee,

(h) *Welcomes* the significant achievements in voluntary repatriation over the course of the past year and the further potential for the sustainable voluntary return of considerable numbers of refugees, as a result of peacemaking, reconciliation and reconstruction efforts which have contributed to the resolution of certain long-running conflicts; *acknowledges* the importance of ensuring the ongoing voluntary nature of refugee returns and the full and equal participation of refugee women in the pursuit of voluntary repatriation and the consolidation of sustainable reintegration; and *urges* States, UNHCR and other relevant actors to strengthen their efforts to provide durable solutions for refugees and other persons of concern;

(t) *Acknowledges*, consistent with UNHCR's Convention Plus initiative, the importance of comprehensive approaches, especially for the resolution of protracted and large-scale refugee situations, which incorporate, as appropriate and given the specifics of each refugee situation, voluntary repatriation, local integration and resettlement; *encourages* UNHCR, States and other relevant actors to pursue comprehensive arrangements for specific refugee situations that draw upon combinations of solutions; and *notes* that a community development approach, ensuring the participation of refugee men and women, and refugee children, as appropriate, contributes to the success of such solutions;

Conclusion No. 100, 55th Sess., Oct. 8, 2004 - International Cooperation and Burden and Responsibility Sharing in Mass Influx Situations

The Executive Committee,

(d) *Emphasizes* the importance of efforts to mainstream gender and age concerns into responses to every stage of a mass influx from programme development and implementation to monitoring and evaluation, so as to ensure that the particular protection needs of refugee women, refugee children and older refugees, including those with special protection concerns, are effectively addressed, *inter alia*, through registration in principle on an individual basis, full and equal participation in matters affecting them, protection from sexual and gender-based violence and military recruitment, and maintaining family unity wherever possible;

Conclusion No. 102, 56th Sess., Oct. 7, 2005 - General

The Executive Committee,

(h) *Acknowledges* the value of a focused and concrete pursuit of a range of activities aimed at strengthening the protection capacities of States, particularly those dealing with protracted refugee situations; *welcomes* in this regard the development and promotion of a comprehensive framework for assessing protection capacity needs within the context of the Strengthening Protection Capacity Project; and *encourages* the continued facilitation of consensus building through participatory stakeholder consultations at national levels, bringing together all the relevant actors, including refugee men, women and children, in parallel with improved coordination within UNHCR, and with States and relevant partners to elaborate and operationalise the strategies and initiatives required to address the protection needs identified, in particular through comprehensive approaches aimed at providing practical solutions for protracted caseloads;

(m) *Recognizes* that the participation of refugee women and men in the economic life of the host country is an important means of facilitating their active contribution to the attainment of their own self-reliance; and *encourages* State Parties to respect the full range of rights included in the 1951 Convention and its 1967 Protocol and, mindful of the particular conditions applicable, to explore the most practical and feasible means to accord freedom of movement and other important rights underpinning self-reliance;

(p) *Acknowledges* the important contribution of the age and gender and diversity mainstreaming strategy in identifying, through a participatory approach, the protection risks faced by the different members of the refugee community; *encourages* UNHCR and its NGO partners to continue to roll out and implement on the ground this important strategy, as a means to promote the rights and wellbeing of all refugees, in particular the non-discriminatory treatment and protection of refugee women and refugee children and minority groups of refugees; and *looks forward* to learning more on UNHCR's intentions regarding diversity;

(t) *Reaffirms* the importance of timely and adequate assistance and protection for refugees; that assistance and protection are mutually reinforcing and that inadequate material assistance and food shortages undermine protection; *notes* the importance of a rights and community-based approach in engaging constructively with individual refugees and their communities to achieve fair and equitable access to food, and other forms of material assistance; and *expresses concern* in regard to situations where minimum standards of assistance are not met, including situations where adequate needs assessments have yet to be undertaken;

Conclusion No. 104, 56th Sess., Oct. 7, 2005 - Local Integration

The Executive Committee,

(f) *Urges* States and UNHCR to continue working proactively on local integration where appropriate and feasible and in a manner that takes into account the needs and views of both refugees and their hosting communities;

(m) *Notes* the important part, subject to States' consideration, self-reliance plays in the economic dimension of local integration of refugees whereby individuals, households and communities are enabled increasingly to become self-sufficient and can contribute to the local economy, and in this respect:

ii. *encourages* all States hosting refugees to consider ways in which refugee employment and active participation in the economic life of the host country can be facilitated, *inter alia*, through education and skills development, and to examine their laws and practices, with a view to identifying and to removing, to the extent possible, existing obstacles to refugee employment; and in this regard, *affirms* the relevance of the 1951 Convention in providing a framework for the creation of conditions conducive to the self-reliance of refugees;

(o) *Emphasizes* that age and gender sensitive approaches, and attention to participatory and community development processes should permeate all activities aimed at enhancing the capacities of refugees to integrate locally, recognizing changes in gender roles following displacement and the need for different strategies and support to boost the integration capacity of various groups with special needs, such as refugee women, refugee children and older refugees;

(r) *Recognizes* the importance, in the interest of burden and responsibility sharing, of international cooperation and assistance for building the capacity of developing countries and countries with economies in transition with limited resources so as to assist these States in integrating refugees locally, where appropriate and feasible; and *recommends* that the planning, design and implementation of local integration programmes include elements aimed at strengthening the capacity of host State institutions, local communities, and civil society, including non-governmental organizations, refugees and their communities;

Conclusion No. 106, 57th Sess., Oct. 6, 2006 - Women and Girls at Risk

The Executive Committee,

Acknowledging that each community is different and that an in-depth understanding of religious and cultural beliefs and practices is required to address the protection risks women and girls face in a sensitive manner while bearing in mind obligations under international refugee, human rights and humanitarian law,

(g) Responding more effectively to protection problems faced by women and girls at risk requires a holistic approach that combines preventive strategies and individual responses and solutions. It involves collaboration between, and the involvement of, all relevant actors, including men and boys, to enhance understanding and promote respect for women's and girls' rights.

(k) The empowerment of displaced women and girls is to be enhanced including by partnerships and actions to:

i. strengthen women's leadership, including by enhancing their representation and meaningful participation in displaced community and camp management committees, in decision making, and in dispute resolution systems, by enhancing their access to and control over services and resources, promoting their rights and leadership skills and supporting implementation of UNHCR's Five Commitments to Refugee Women;

iii. work with the displaced community, including men and boys, to rebuild family and community support systems undermined by conflict and flight and to raise awareness of the rights of women and girls and understanding of gender roles.

Conclusion No. 107, 58th Sees., Oct. 5, 2007 - Children at Risk

The Executive Committee,

(g) *Recommends* that States, UNHCR and other relevant agencies and partners work in close collaboration to prevent children from being put at heightened risk, and respond, as necessary, through the general prevention, response and solution measures listed non-exhaustively below:

i. Within the framework of the respective child protection systems of States, utilize appropriate procedures for the determination of the child's best interests which facilitate adequate child participation without discrimination: where the views of the child are given due weight in accordance with age and maturity; where decision makers with relevant areas of expertise are involved; and where there is a balancing of all relevant factors in order to assess the best option;

Conclusion No. 108, 59th Sess., Oct. 10, 2008 - General Conclusion on International Protection
The Executive Committee, *Urging* UNHCR and its partners to continue to draw appropriately upon relevant international humanitarian and human rights law and, in cooperation with States, to adopt a rights- and community-based approach in engaging constructively with individual persons of concern and their communities in their work, including through partnership with relevant international and national human rights, humanitarian and development organizations and the active and inclusive participation of persons of concern,
Conclusion No. 109, 60th Sess., Dec. 8, 2009 - Protracted Refugee Situations
The Executive Committee, (k) *Recognizes* that protracted refugee situations can increase the risks to which refugees may be exposed and that, in this respect, there is a need to identify and respond effectively to the specific protection concerns of men, women, girls and boys, in particular, unaccompanied and separated children, adolescents, persons with disabilities, and older persons, who may be exposed to heightened risks, including sexual and gender-based violence and other forms of violence and exploitation; and *encourages* UNHCR and States to pursue age, gender and diversity mainstreaming and participatory approaches with a view to enhancing the safety, well-being and development of refugees and promoting appropriate solutions for them;
Conclusion No. 110, 61st Sess., Oct. 12, 2010 - Refugee with Disabilities and Other Persons with Disabilities Protected and Assisted by UNHCR
The Executive Committee, (e) Encourages States, UNHCR and all relevant partners to ensure the participation of refugees and other persons with disabilities through appropriate consultation in the design and implementation of relevant services and programmes;

Source: United Nations Office of the High Commissioner for Refugees, Refworld <http://www.refworld.org>.

Table A2.15 - UNHCR Handbooks

UNHCR, *Handbook Voluntary Repatriation: International Protection.* Geneva, 1996.
Chapter 3: UNHCR's Role in Voluntary Repatriation Operations 3.1 Promotion of Solutions, Promotion of Repatriation, Facilitation In carrying out this advocacy role, UNHCR seeks, among other things, to: - Consult with refugees to involve them in efforts to find a durable solution to their problems. Safeguard the refugees' desires, enhance their decision-making process and, through concerted confidence-building measures, enlist their active participation in assessing the feasibility and desirability of their eventual return home. 3.5 Communication in Repatriation Operations: Whom Do We Talk To? Suggestions for Action: Encourage the participation of women in peace negotiations or negotiations aimed at leading to the settlement of any conflict. 3.6 Repatriation Negotiations and Agreements UNHCR should, however, not enter into (tripartite) repatriation arrangements without due consultation with the refugee women and men concerned. This includes situations where repatriation forms a part of a peace plan. The refugee community should be kept informed of the progress of repatriation negotiations. Formal representation of the refugee community can be considered. Whenever the refugee community is not directly involved in repatriation negotiations, UNHCR must develop and maintain regular communications with the refugees throughout the process. The main purpose is to share information on the progress of talks and on information provided by representatives of their home country, but at the same time to get feedback on their reactions and concerns. At a later stage, the refugees' input with regard to the timing, organization and order of repatriation, as well as the identification of vulnerable groups with special protection or assistance needs, will be essential. 6.2 Returnee Monitoring: Amnesties and Guarantees, Monitoring, Reporting, Intervening Safeguard the rights of the refugees/returnees to participate in elections following peace agreements and monitor equal access of returnees to voter registration and voting procedures. 8.5 Repatriation and Elections in the Country of Origin

UNHCR can only commit itself to strive towards the above goal within the limits of its capacity and based on the refugees' willingness to return before elections. If refugees are eager to participate in the national elections, UNHCR should certainly spare no effort to assist them in returning in time. Should refugees be reluctant to return before the elections for fear that the outcome may cause them to flee again, UNHCR has to be mindful of these concerns and reflect them in repatriation planning and implementation.

However, returning in time to vote is not the only issue. The cut-off date for voter registration is usually well before the election date and the question arises whether or not voter registration of refugees can or should take place in the country of asylum. As far as UNHCR is concerned, it certainly can, provided that the host government and the government of the country of origin agree on procedures that allow all refugees the same free access to the voter registration procedure and no benefits or disadvantages are tied to registration or non-registration. Voter registration should never be linked to registration for voluntary repatriation either in terms of the location where it takes place or in terms of the use of data. If voter registration is carried out in the country of asylum, UNHCR should not be actively involved in any way other than monitoring that no international protection principles are violated.

If voter registration has been undertaken in the country of asylum or for any reason is not necessary, the next question is whether in the run-up to the elections political parties should be allowed to campaign in the country of asylum in order to inform eligible refugee voters. Again, this will mainly depend on the relations between the host country and the various parties in the country of origin. If these relations allow for all political parties to campaign in a fair manner and no other protection concerns cloud the situation, UNHCR should monitor these visits of political parties to refugees and, if possible, even consider using their existence as a sign of peace and national reconciliation. UNHCR may wish to point out that it may serve confidence-building, if different political parties address refugees in a common forum so that refugees can see for themselves that their country is on the road to peace and democracy.

If refugees cannot return home before either the deadline for registration for elections or the elections themselves due to continued uncertainty or due to a lack of logistical capacity, should voting take place in the country of asylum? Again, if all refugees have an equal and unhindered possibility to cast their vote and thereby exercise their right to participate in the shaping of the political future of their country without repercussions, UNHCR should leave it to both countries involved to negotiate the arrangements for implementation. However, UNHCR should monitor the election process in exile and ensure that the preconditions for it taking place in exile are met.

UNHCR, *Handbook on Women and Girls*. Geneva, 2008.

UNHCR's Five Commitments to Refugee Women relate to: women's and girls' membership and participation in decision-making

Participation and empowerment of women and girls are essential to ensuring gender equality and to enhancing their protection.8 This means we must undertake targeted actions to: support the participation of women and adolescent girls in all levels of conflict-prevention, management, and solutions, including in relation to peace processes.

Source: United Nations Office of the High Commissioner for Refugees, Refworld <http://www.refworld.org>.

Table A2.16 - Miscellaneous Instruments

CoE, European Commission for Democracy Through Law (Venice Commission), Code of Good Practice in Electoral Matters, Guidelines and Explanatory Report, Adopted by the Venice Commission at its 51st and 52nd Sessions (Venice, 5-6 July and 18-19 October 2002), CDL-AD (2002) 23, Oct. 30, 2002
The freedom of movement of citizens within the country, together with their right to return at any time is one of the fundamental rights necessary for truly democratic elections. If persons, in exceptional cases, have been displaced against their will, they should, provisionally, have the possibility of being considered as resident at their former place of residence.
OSCE, Existing Commitments for Democratic Elections in OSCE Participating States, Warsaw, 2003
5. Universality: Right to Vote 5.5 Residence in the state may be required for the exercise of the right to vote. To vote in local or regional elections, a reasonable period of residence in the area may be required. 5.7 Secure mechanisms should be implemented to permit absentee voting by persons who are temporarily away from their area of residence, especially if such persons are residing internally. The absence of a permanent residence should not prevent an otherwise qualified person from being registered as a voter. (16)
Commission on the Status of Women, Agreed Conclusions on the Status of Women on Women's Equal Participation in Conflict Prevention, Management and Resolution and in Post-Conflict Peace-building, 49th Sess., Mar. 12, 2004
6. To achieve sustainable and durable peace, the full and equal participation of women and girls and the integration of gender perspectives in all aspects of conflict prevention, management and conflict resolution and in post-conflict peace-building is essential. Yet women continue to be underrepresented in the processes, institutions and mechanisms dealing with these areas. Further effort is therefore needed to promote gender equality and ensure women's equal participation at all levels of decision-making in all relevant institutions. Further effort, including consideration of adequate resourcing, is also needed to build and consolidate the capacity of women and women's groups to participate fully in these processes as well as to promote understanding of the essential role of women. In this regard, the international community should use lessons learned from actual experience to identify and overcome barriers for achieving women's equal participation. 9. Peace agreements provide a vehicle for the promotion of gender equality and the participation of women in post-conflict situations. Significant opportunities for women's participation arise in the preparatory phase leading

up to a peace agreement. The content of a peace agreement likewise offers significant scope for ensuring that the rights, concerns and priorities of women and girls are fully addressed. Finally, once a peace agreement has been concluded, its implementation should be pursued with explicit attention to women's full and equal participation and the goal of gender equality.

13. In regard to peace processes, the Commission on the Status of Women calls on Governments, as well as all other relevant participants in these processes, to:

(a) Promote women's full, equal and effective participation as actors in all peace processes, in particular negotiation, mediation and facilitation;

UNSG, Decision No. 20/2011 - Durable Solutions: Follow-Up to the Secretary-General's 2009 Report on Peacebuilding, Oct. 4, 2011

7. Principles and laws under-pinning the UN engagement throughout the durable solutions process includes:

Community-based, participatory approach - The response should address the rights, needs and interests of the refugee returnees, IDPs, and other affected populations and allow them to participate in the planning and management of durable solutions.

D. Ways Forward

12. Programmes

Governance: Participation in Public Affairs - Special efforts should be made to develop policies and legislation that allow displaced persons to fully exercise their rights, including the right to participate in public affairs, elections and peace- building processes, and ensuring that their views are sought and taken into account in ongoing peace processes and in the development of policies that affect them.

Source: United Nations Office of the High Commissioner for Refugees, Refworld <http://www.refworld.org>.

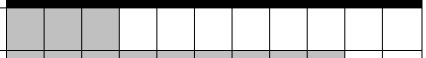
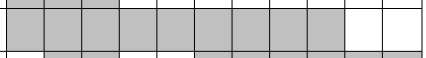
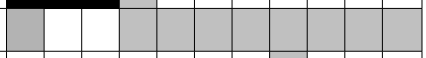
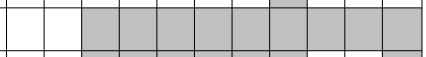
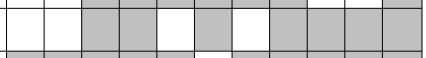
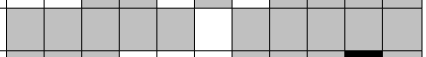
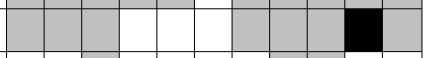
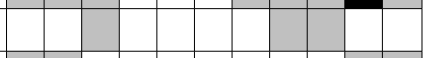
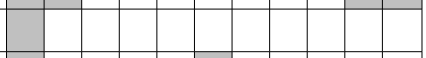
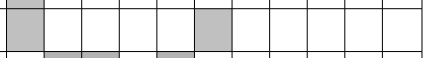
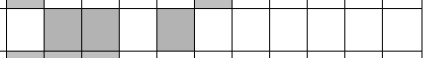
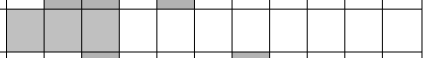
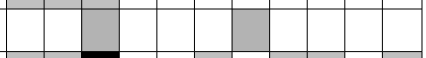
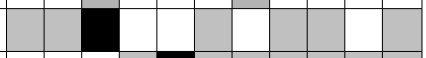
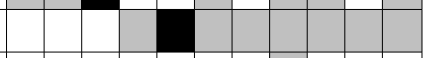
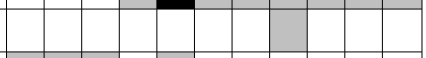
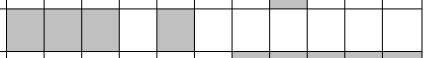
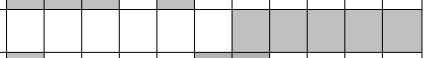
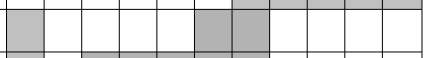
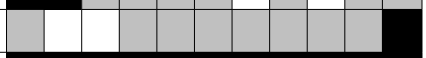
ANNEX III

Peace Negotiations and Refugees

Table A3.1 - Armed Conflicts, 1990-2000

Minor Armed Conflict Major Armed Conflict

ID	Location/government	Incompatibility			Year of activity										
		T	G		1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
	EUROPE														
193	Azerbaijan	■		*Nagorno-Karabakh*		▒	■	■	■						
201			■					▒		▒					
194	Bosnia & Herzegovina	■		*Serb*			■	■	■	■					
203		■		*Croat*				■	▒						
202		■		*Bihač*				▒	▒	▒					
195	Croatia	■		*Serb*			▒	▒		▒					
185	Georgia		■			▒	▒	▒							
198		■		*South Ossetia*			▒								
197		■		*Abkhazia*			▒	■							
199	Moldova	■		*Transdniestria*			▒								
204	Russia		■					▒							
206		■		*Chechnya*					▒	■	■			■	■
220		■		*Dagestan*										▒	
182	Soviet Union	■		*Azerbaijan*	▒										
181		■		*Nagorno-Karabakh*	▒	▒									
147	Spain	■		*Basque*		▒	▒								
119	United Kingdom	■		*Northern Ireland*	▒	▒							▒		
190	Yugoslavia	■		*Croatia*		■									
189		■		*Slovenia*		▒									
218		■		*Kosovo*									■	■	
	MIDDLE EAST														
196	Egypt		■					▒	▒	▒	▒	▒	▒		
143	Iran		■			▒	▒	▒				▒		▒	▒
6		■		*Kurdistan*	▒			▒			▒				
74	Iraq	■		*Kurdistan*	▒	▒	▒			▒	▒				
62			■			▒	▒	▒	▒	▒	▒				
176	Iraq-Kuwait	■		*Kuwait*	■	■									
37	Israel	■		*Palestine*	▒	▒	▒	▒	▒	▒	▒	▒	▒	▒	▒
251	Israel		■	*South Lebanon*		▒	▒	▒	▒	▒	▒	▒	▒	▒	
63	Lebanon		■		▒										
159	Turkey	■		*Kurdistan*	▒	▒	■	■	■	■	■	■	■	■	▒
188			■			▒	▒								
207	Yemen	■		*South Yemen*					■						
	ASIA														

137	Afghanistan				
126	Bangladesh			*Chittagong Hill Tracts*	
103	Cambodia				
170	India			*Assam*	
169	India			*Kashmir*	
156				*Punjab*	
227				*Assam (Bodoland)*	
263				*Kukiland*	
152				*Manipur*	
54				*Nagaland*	
139				*Tripura*	
29					
20	India-Pakistan			*Kashmir*	
134	Indonesia			*East Timor*	
171				*Aceh*	
65	Laos				
26	Myanmar			*Mon*	
25				*Arakan*	
34				*Kachin*	
56				*Karenni*	
23				*Karen*	
67				*Shan*	
228				*Wa*	
24					
72	Nepal				
209	Pakistan				
174	Papua New Guinea			*Bougainville*	
10	Philippines				
112				*Mindanao*	
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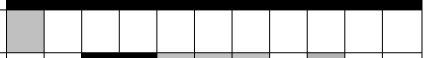
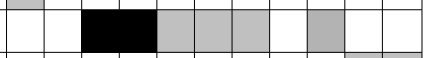
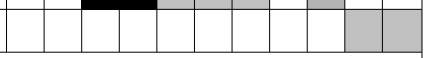
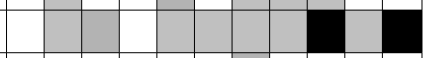
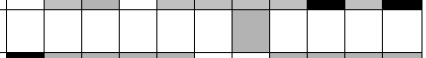
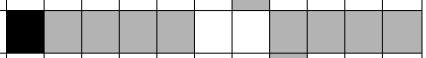
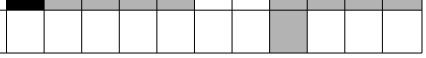
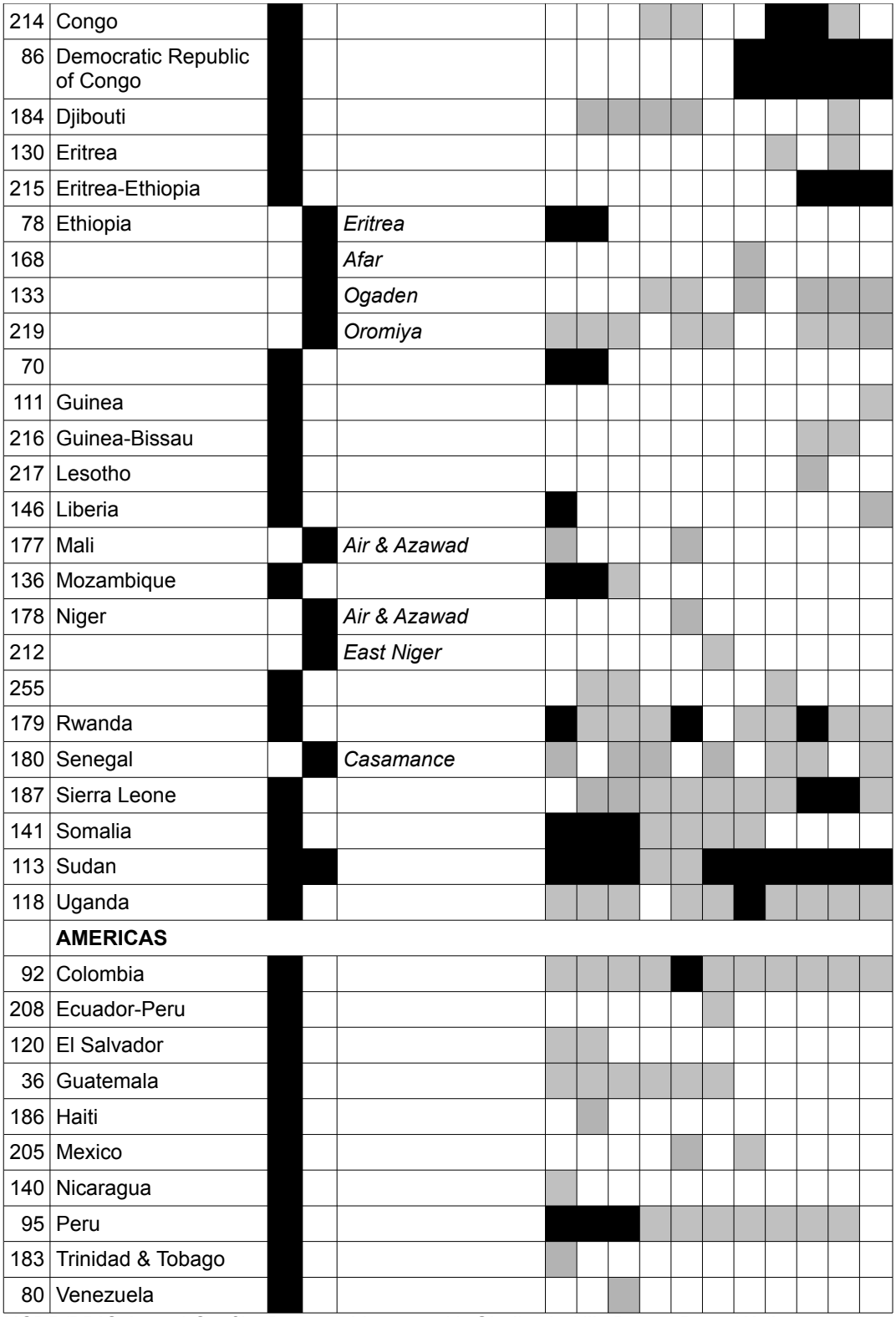
117					
200	Tajikistan				
221	Uzbekistan				
	AFRICA				
191	Algeria				
131	Angola				
192				*Cabinda*	
90	Burundi				
210	Cameroon-Nigeria			*Bakassi*	
91	Chad				
213	Comoros			*Anjouan*	



UCDP/PRIO Armed Conflict Dataset, Ver. 4, 2011; Gleditsch, Nils Petter, Peter Wallensteen, Mikael Eriksson, Margareta Sollenberg, and Håvard Strand. 2002. Armed Conflict 1946-2001: A New Dataset. *Journal of Peace Research* 39 (5): 615–637; and, Themnér, Lotta, and Peter Wallensteen. 2011. Armed Conflicts, 1946-2010. *Journal of Peace Research* 48 (4): 525–536.

Table A3.2 - Conflict Terminations, 1990-2000

Minor Armed Conflict Major Armed Conflict

(1) *Peace Agreement*: Agreement, *or* the first or last in a series of agreements, concerned with resolving or regulating the incompatibility – completely or a central part of – which is signed and/or accepted by all *or* the main parties active in last year of conflict. The agreement is signed either during the last year of active conflict or the first year of inactivity.

(2) *Ceasefire Agreement with conflict regulation*: Agreement between all *or* the main parties' active in last year of conflict on the ending of military operations as well as some sort of mutual conflict regulatory steps. The agreement is signed and/or accepted either during the last year of active conflict or the first year of inactivity. In cases when a ceasefire agreement with conflict regulation is immediately followed by a more comprehensive agreement (peace agreement), the latter is considered the main cause of termination.

(3) *Ceasefire Agreement*: Agreement between all *or* the main parties' active in last year of conflict on the ending of military operations. The agreement is signed and/or accepted either during the last year of active conflict or the first year of inactivity. In cases when a ceasefire is immediately followed by a more comprehensive agreement (peace agreement, or ceasefire with conflict regulation), the latter is considered the main cause of termination.

(4) *Victory*: One side active in the last year of conflict is either defeated or eliminated, or otherwise succumbs to the power of the other through capitulation or public announcement.

(5) *No or Low Activity*: The conflict is not reported as active, i.e. does not fulfil the UCDP criteria with regards to fatalities, level of organization, or incompatibility.

(6) *Other*: Any other theoretically possible outcome.

ID	Location/government	Incompatibility			Year of activity										
		T	G		1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
	EUROPE														
193	Azerbaijan	■		*Nagorno-Karabakh*					3						
201			■					4		4					
194	Bosnia & Herzegovina	■		*Serb*						1					
203		■		*Croat*					1						
202		■		*Bihač*						4					
195	Croatia	■		*Serb*				3		1					
185	Georgia		■					4							
198		■		*South Ossetia*			2								
197		■		*Abkhazia*				1							
199	Moldova	■		*Transdniestria*			3								
204	Russia		■					4							
206		■		*Chechnya*							2				
220		■		*Dagestan*										4	
182	Soviet Union	■		*Azerbaijan*	4										

181				*Nagorno-Karabakh*		6									
147	Spain			*Basque*			5								
119	United Kingdom			*Northern Ireland*		5							2		
190	Yugoslavia			*Croatia*		6									
189				*Slovenia*		2									
218				*Kosovo*										1	
	MIDDLE EAST														
196	Egypt												5		
143	Iran							5				5			
6				*Kurdistan*	5			5			5				
74	Iraq			*Kurdistan*			5				5				
62											5				
176	Iraq-Kuwait			*Kuwait*		2									
37	Israel			*Palestine*						6					
251	Israel			*South Lebanon*										5	
63	Lebanon				4										
159	Turkey			*Kurdistan*											
188							5								
207	Yemen			*South Yemen*					4						
	ASIA														
137	Afghanistan														
126	Bangladesh			*Chittagong Hill Tracts*			2								
103	Cambodia												4		
170	India			*Assam*		5									
169	India			*Kashmir*											
156				*Punjab*				5							
227				*Assam (Bodoland)*	5										
263				*Kukiland*											
152				*Manipur*											5
54				*Nagaland*								2			3
139				*Tripura*				1		5					
29									5						
20	India-Pakistan			*Kashmir*			5								
134	Indonesia			*East Timor*			5						5		
171				*Aceh*		5									
65	Laos				5										
26	Myanmar			*Mon*	5						4				
25				*Arakan*			5		5						
34				*Kachin*			2								
56				*Karenni*			5				5				
23				*Karen*			3			5					

67				*Shan*												
228				*Wa*								2				
24							5		5							
72	Nepal															
209	Pakistan				5						5					
174	Papua New Guinea			*Bougainville*	2						3					
10	Philippines								2			3				
112				*Mindanao*	5											
157	Sri Lanka			*Tamil*												
117					4											
200	Tajikistan										1		4			
221	Uzbekistan															5
	AFRICA															
191	Algeria															
131	Angola								6	5						
192				*Cabinda*		5							5			
90	Burundi						5									
210	Cameroon-Nigeria			*Bakassi*							5					
91	Chad								6							
213	Comoros			*Anjouan*								3				
214	Congo								2					1		
86	Democratic Republic of Congo															
184	Djibouti								1					1		
130	Eritrea											5		5		
215	Eritrea-Ethiopia															1
78	Ethiopia			*Eritrea*		4										
168				*Afar*		6					5					
133				*Ogaden*							5					
219				*Oromiya*		6										
70						4										
111	Guinea															
216	Guinea-Bissau													4		
217	Lesotho												4			
146	Liberia									1						
177	Mali			*Air & Azawad*	1				5							
136	Mozambique						1									
178	Niger			*Air & Azawad*			1		1			2				
212				*East Niger*								2				
255																
179	Rwanda								4							

180	Senegal			*Casamance*	**5**			**2**		**5**							
187	Sierra Leone																**1**
141	Somalia											**6**					
113	Sudan																
118	Uganda					**5**											
	AMERICAS																
92	Colombia																
208	Ecuador-Peru										**1**						
120	El Salvador					**1**											
36	Guatemala									**1**							
186	Haiti					**4**											
205	Mexico									**1**		**5**					
140	Nicaragua																
95	Peru															**2**	
183	Trinidad & Tobago				**4**												
80	Venezuela						**4**										

UCDP/PRIO Armed Conflict Dataset, Ver. 4, 2011; Gleditsch, Nils Petter, Peter Wallensteen, Mikael Eriksson, Margareta Sollenberg, and Håvard Strand. 2002. Armed Conflict 1946-2001: A New Dataset. *Journal of Peace Research* 39 (5): 615–637; Themnér, Lotta, and Peter Wallensteen. 2011. Armed Conflicts, 1946-2010. *Journal of Peace Research* 48 (4): 525–536.; UCDP Conflict Termination Dataset, Ver. 2.1, 2008; Kreutz, Joakim. 2006. How Armed Conflicts End. Unpublished manuscript; and, Kreutz, Joakim. 2010. How and When Armed Conflicts End: Introducing the UCDP Conflict Termination Dataset. *Journal of Peace Research* 47 (2): 243–250.

Table A3.3 - Armed Conflict and Peace Agreements, 1990-2000

F = *Full Agreement* - one or more dyad agrees to settle the whole in- compatibility.

P = Partial Agreement - one or more dyad agrees to settle a part of the incompatibility.

PP = *Peace Process Agreement* - one or more dyad agrees to initiate a process that aims to settle the incompatibility.

ID	Case		F	P	PP	Date
Government						
137	Afghanistan	Islamabad Accord				1993
		Jalalabad Accord				1993
		Mahipar Agreement				1996
131	Angola	Bicesse Agreement				1991
		The Lusaka Protocol				1994
90	Burundi	Arusha Peace and Reconciliation Agreement				2000
103	Cambodia	Agreement on a Comprehensive Political Settlement				1991
91	Chad	El Geneina Agreement				1992
		Tripoli I Agreement				1993
		Bangui II Agreement				1994
		Abeche Agreement				1994
		Dougia Accord				1995
		National Reconciliation Agreement				1997
		Donya Agreement				1998
		Reconciliation Agreement				1999
92	Colombia	Acuerdo Final Govierno Nacional-Ejercito Popular de Liberacion				1991
		Common Agenda for the Path to a New Colombia				1999
214	Congo	Accord de Cessez-le-Feu et de Cessation des Hostilites				1999
86	DRC	Lusaka Accord				1999
184	Djibouti	Accord de paix et de la reconciliation nationale				1994
		Accord Cadre de Reforme et de Concorde Civile				2000
120	El Salvador	Geneva Agreement				1990
		General Agenda and Timetable for the Comprehensive Negotiating Process				1990
		Agreement on Human Rights				1990
		Mexico Agreements				1990
		New York Agreement				1990
		The Compressed Negotiations				1991
		New York Act				1991

		New York Act II				1992
		The Chapultepec Peace Agreement				1992
36	Guatemala	The Oslo Accord				1990
		The Mexico Accord				1991
		The Queretaro Accord				1991
		The Framework Agreement for the Resumption of Negotiations between the Government of Guatemala and the Guatemalan Revolutionary Unity				1994
		The Agreement on a Timetable for Negotiations on a Firm and Lasting Peace in Guatemala				1994
		The Comprehensive Agreement on Human Rights				1994
		The Agreement on the Resettlement of Population Groups Uprooted by the Armed Conflict				1994
		The Agreement for the Establishment of the Commission to Clarify Past Human Rights Violations and Acts of Violence that have Caused the Guatemalan Population to Suffer				1994
		The Agreement on the Identity of Indigenous Peoples				1995
		The Agreement on Socio-Economic Aspects and the Agrarian Situation				1996
		The Agreement on the Strengthening of Civilian Power and the Role of the Armed Forces in a Democratic Society				1996
		The Agreement on a Definitive Ceasefire				1996
		The Agreement on Constitutional Reforms and the Electoral Regime				1996
		The Agreement on the Basis for the Legal Integration of the URNG				1996
		The Agreement for a Firm and Lasting Peace				1996
		The Agreement on the Implementation, Compliance and Verification Timetable for the Peace Agreements				1996
216	Guinea Bissau	Abuja Peace Agreement				1998
186	Haiti	The Governor's Island Agreement				1993
146	Liberia	Banjul III				1990
		Bamako Ceasefire Agreement				1990
		Banjul IV Agreement				1990
		Lome Agreement				1991
		Yamoussoukro IV Peace Agreement				1991
		Cotonou Peace Agreement				1993
		Akosombo Peace Agreement				1994
		Abuja Peace Agreement				1995
		Abuja II Peace Agreement				1996

205	Mexico	The San Andres Accords				1996
136	Mozambique	The Protocol on the Agreed Agenda				1991
		Basic Principles				1991
		Agreement on the Establishment and Recognition of Political Parties				1991
		Agreement on Principles of the Electoral Act				1992
		Acordo Geral de Paz				1992
10	Philippines	GRP-RAM/SFP/YOU General Agreement for Peace				1995
179	Rwanda	The N'Sele Ceasefire Agreement				1991
		The Protocol of Agreement between the Government of the Republic of Rwanda and the Rwandese Patriotic Front on the Rule of Law				1992
		The Protocols of Agreement between the Government of the Republic of Rwanda and the Rwandan Patriotic Front on Power-Sharing within the Framework of a Broad-Based Transitional Government				1993
		The Protocol of Agreement between the Government of the Republic of Rwanda and the Rwandese Patriotic Front on the Repatriation of Refugees and the Resettlement of Displaced Persons				1993
		The Protocol Agreement between the Government of the Republic of Rwanda and the Rwandese Patriotic Front on the Integration of Armed Forces and the Protocol of Agreement between the Government of the Republic of Rwanda and the Rwandese Patriotic Front on Miscellaneous Issues and Final Provisions				1993
		Arusha Accords				1993
187	Sierra Leone	Abidjan Peace Agreement				1996
		Lome Peace Agreement				1999
		Abuja Ceasefire Agreement				2000
141	Somalia	Addis Ababa Agreement				1993
		Nairobi Declaration on National Reconciliation				1994
		The Cairo Declaration on Somalia				1997
200	Tajikistan	Protocol on the Fundamental Principles of Establishing Peace and National Accord in Tajikistan				1995
		Agreement between the President of the Republic of Tajikistan, E.S. Rakhmonov, and the leader of the United Tajik Opposition, S.A. Huri on the results of the meeting held in Moscow, 23 December 1996				1996
		Statute of the Commission on National Reconciliation				1997
		Protocol on National Issues				1997
		The Moscow Declaration				1997

Territory						
126	Bangladesh	Chittagong Hill Tracts Peace Accord				1997
194	BiH (Serb)	The General Framework Agreement (Dayton)				1995
203	BiH (Croat)	The Washington Agreement				1994
213	Comoros (Anjouan)	The Famboni Declaration				2000
195	Croatia (Serb)	The Erdut Agreement				1995
197	Georgia/Abkhazia	Declaration on Measures for a Political Settlement of the Georgia/Abkhaz Conflict				1994
227	India (Bodoland)	Bodoland Autonomous Council Act				1993
139	India (Tripura)	Memorandum of Settlement				1993
37	Israel (Palestine)	Declaration of Principles on Interim Self-Government Arrangements				1993
		Agreement on the Gaza Strip and the Jericho Area				1994
		Agreement on Preparatory Transfer of Powers and Responsibilities between Israel and the PLO				1994
		Israeli-Palestinian Interim Agreement on the West Bank and Gaza Strip				1995
		Protocol on Redeployment in Hebron				1997
		The Wye River Memorandum				1998
		The Sharm el-Sheik Memorandum				1999
177	Mali (Azawad)	Tamanrasset Accord				1991
		Pacte National				1992
199	Moldova (Dniestr)	Memorandum on the Basis for Normalization of Relations between the Republic of Moldova and Transdniestria				1997
178	Niger (Air & Azawad)	Paris Accord				1993
		Ougadougou Accord				1994
		Acord e'tablissant une paix definitive				1995
174	PNG (Bougainville)	The Honiara Declaration				1991
		Honiara Commitments to Peace				1994
112	Philippines (Mindanao)	Mindanao Final Agreement				1996
113	Sudan (S. Sudan)	Khartoum Agreement				1997
119	UK (N. Ireland)	The Good Friday Agreement				1998
218	Yugoslavia (Kosovo)	Kosovo Peace Agreement				1999
189	Yugoslavia (Slovenia)	Brioni Agreement				1991
208	Ecuador-Peru	Acta Presidencial de Brasilia				1998
215	Eritrea-Ethiopia	Agreement between the Government of the State of Eritrea and the Government of the Republic of Ethiopia				1998

UCDP Peace Agreement Dataset, Ver. 1.0, 2006; and, Harbom, Lotta, Stina Högbladh, and Peter Wallensteen. 2006. Armed Conflict and Peace Agreements. *Journal of Peace Research* 43 (5): 617–631.

Table A3.4 - Armed Conflict and Peace Agreements, Comparison of Databases, 1990-2000

Location	Number of Agreements				
	UCDP	TJI	UNP	USIP	KROC
Europe					
Bosnia & Herzegovina (Serb)	1	13	5	3	1
Bosnia & Herzegovina (Croat)	1	1	1	1	
Croatia (Serb)	1	3	4	1	1
Georgia (Abkhazia)	1	30	7	4	
Moldova (Dniestra)	1	5			
UK (Northern Ireland)	1	8	1	1	1
Yugoslavia (Kosovo)	1	5	4	2	
Yugoslavia (Slovenia)	1	1			
Asia					
Afghanistan	3	5	3		
Bangladesh (CHT)	1	1			1
Cambodia	1	6	1	4	1
India (Bodoland)	1	2			
India (Tripura)	1	1			
Philippines	1		8	5	
Philippines (Mindinao)	1	28	1		1
PNG (Bougainville)	2	31	3	1	
Tajikistan	5	25	12	3	1
Africa					
Angola	2	7	3	1	1
Burundi	1	5	1	1	
Chad	8	13			
Comoros (Anjouan)	1	2			
Congo	1	2	2	1	
DRC	1	1	1	1	
Djibouti	2	2			1
Eritrea-Ethiopia	1	7	3	1	1
Guinea-Bissau	1	5	3	1	1
Liberia	9	16	6	5	
Mali (Azawad)	2	2			1
Mozambique	1	14	1	4	1
Niger (Air & Azawad)	1	5			1
Rwanda	6	7	7		
Sierra Leone	3	8	5	4	2
Somalia	3	8	4	4	

Sudan	1	5	2		
Americas					
Colombia	2	30	10	1	
Ecuador-Peru	1	17		1	
El Salvador	9	14	8	9	1
Guatemala	16	17	5	13	1
Haiti	1	3			
Mexico	1	6		5	
TOTAL	104	361	111	77	18

UCDP: UCDP Peace Agreement Dataset, Ver. 1.0, 2006; and, Harbom, Lotta, Stina Högbladh, and Peter Wallensteen. 2006. Armed Conflict and Peace Agreements. *Journal of Peace Research* 43 (5): 617–631.
TJI: The Transitional Justice Peace Agreements Database, Transitional Justice Institute, University of Ulster and International Conflict Research Institute <http://www.peaceagreements.ulster.ac.uk/>.
UNP: Peace Agreements, United Nations Peacemaker <http://peacemaker.unlb.org/index1.php>.
USIP: The Peace Agreements Digital Collection, United States Institute of Peace <http://www.usip.org/library/pa.html>.
KROC: Peace Accords Matrix, Kroc Institute for International Peace Studies <https://peaceaccords.nd.edu/>.

Table A3.5 - Armed Conflict and Peace Agreements, Provisions for Civil Society Participation, 1990-2000

EUROPE
Bosnia and Herzegovina
The General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Agreement), 14 December 1995
Annex 6 - Agreement on Human Rights Chapter 3: General Provisions Article 13 - Organizations Concerned with Human Rights 1. The Parties shall promote and encourage the activities of non-governmental and international organizations for the protection and promotion of human rights. 2. The Parties join in inviting the United Nations Commission on Human Rights, the OSCE, the United Nations High Commissioner for Human Rights, and other intergovernmental or regional human rights missions or organizations to monitor closely the human rights situation in Bosnia and Herzegovina, including through the establishment of local offices and the assignment of observers, rapporteurs, or other relevant persons on a permanent or mission-by-mission basis and to provide them with full and effective facilitation, assistance and access. 3. The Parties shall allow full and effective access to non-governmental organizations for purposes of investigating and monitoring human rights conditions in Bosnia and Herzegovina and shall refrain from hindering or impeding them in the exercise of these functions. 4. All competent authorities in Bosnia and Herzegovina shall cooperate with and provide unrestricted access to the organizations established in this Agreement; any international human rights monitoring mechanisms established for Bosnia and Herzegovina; the supervisory bodies established by any of the international agreements listed in the Appendix to this Annex; the International Tribunal for the Former Yugoslavia; and any other organization authorized by the U.N. Security Council with a mandate concerning human rights or humanitarian law. Annex 7 - Agreement on Refugees and Displaced Persons Chapter 1: Protection Article 3 - Cooperation with International Organizations and International Monitoring 1. The Parties note with satisfaction the leading humanitarian role of UNHCR, which has been entrusted by the Secretary-General of the United Nations with

the role of coordinating among all agencies assisting with the repatriation and relief of refugees and displaced persons.

2. The Parties shall give full and unrestricted access by UNHCR, the International Committee of the Red Cross ("ICRC"), the United Nations Development Programme ("UNDP"), and other relevant international, domestic and nongovernmental organizations to all refugees and displaced persons, with a view to facilitating the work of those organizations in tracing persons, the provision of medical assistance, food distribution, reintegration assistance, the provision of temporary and permanent housing, and other activities vital to the discharge of their mandates and operational responsibilities without administrative impediments. These activities shall Include traditional protection functions and the monitoring of basic human rights and humanitarian conditions, as well as the implementation of the provisions of this Chapter.

3. The Parties shall provide for the security of all personnel of such organizations.

Croatia

The Erdut Agreement, 12 November 1995

11. In addition, interested countries and organizations are requested to establish a commission, which will be authorized to monitor the implementation of this Agreement, particularly its human rights and civil rights provisions, to investigate all allegations of violations of this Agreement, and to make appropriate recommendations.

UK (Northern Ireland)

The Good Friday Agreement, 10 April 1998

Strand 1: Democratic Institutions in Northern Ireland

Relations with other institutions

34. A consultative Civic Forum will be established. It will comprise representatives of the business, trade union and voluntary sectors, and such other sectors as agreed by the First Minister and the Deputy First Minister. It will act as a consultative mechanism on social, economic and cultural issues. The First Minister and the Deputy First Minister will by agreement provide administrative support for the Civic Forum and establish guidelines for the selection of representatives to the Civic Forum.

Yugoslavia (Kosovo)

Kosovo Peace Agreement, 3 June 1999

Framework

Article 2 - Confidence Building Measures

Return

4. The Parties shall cooperate fully with international and non-governmental organizations concerning the repatriation and return of persons, including those organizations monitoring of the treatment of persons following their return.

Access for International Assistance

5. There shall be no impediments to the normal flow of goods into Kosovo, including materials for the reconstruction of homes and structures. The Federal Republic of Yugoslavia shall not require visas, customs, or licensing for persons or things for the Implementation Mission (IM), the UNHCR, and other international organizations, as well as for non- governmental organizations working in Kosovo as determined by the Chief of the Implementation Mission (CIM).

6. All staff, whether national or international, working with international or non-governmental organizations including with the Yugoslav Red Cross, shall be allowed unrestricted access to the Kosovo population for purposes of international assistance. All persons in Kosovo shall similarly have safe, unhindered, and direct access to the staff of such organizations.

Chapter 4b: Humanitarian Assistance, Reconstruction and Economic Development

5. Assistance will also be provided to support the establishment and development of the institutional and legislative framework laid down in this Agreement, including local governance and tax settlement, and to reinforce civil society, culture and education ' Social welfare will also be addressed, with priority given to the protection of vulnerable social groups.

Chapter 6: The Ombudsman

Article III - Powers and Duties

1. The Ombudsman shall investigate alleged violations falling within the jurisdiction set forth in Article II.1. He or she may act either on his or her own initiative or in response to an allegation presented by any Party or person, non-governmental organization, or group of individuals claiming to be the victim of a violation or acting on behalf of alleged victims who are deceased or missing. The work of the Ombudsman shall be free of charge to the person concerned.

ASIA

Cambodia

Declaration on the Rehabilitation and Reconstruction of Cambodia, 23 October 1991

12. This reconstruction phase should promote Cambodian entrepreneurship

and make use of the private sector, among other sectors, to help advance self-sustaining economic growth. It would also benefit from regional approaches, involving, inter alia, institutions such as the Economic and Social Commission for Asia and the Pacific (ESCAP) and the Mekong Committee, and Governments within the region; and from participation by non-governmental organizations.

Tajikistan

Protocol on the Fundamental Principles of Establishing Peace and National Accord in Tajikistan, 17 August 1995

2. The general agreement referred to shall consist of separate protocols on the following groups of problems:

(a) Political problems, including a consultative forum of the peoples of Tajikistan, the functioning of all political parties and political movements and the participation of their representatives in the power structures, as well as the deepening of the democratization process in Tajik society;

Agreement between the President of the Republic of Tajikistan, E.S. Rakhmonov, and the leader of the United Tajik Opposition, S.A. Huri on the results of the meeting held in Moscow, 23 December 1996 - Protocol on the Main Powers and Functions of the Commission on National Reconciliation

The main purposes of the Commission are the attainment of national reconciliation through the Implementation of the agreements reached in the course of the inter-Tajik talks, the creation of an atmosphere of trust and mutual forgiveness, and the institution of a broad dialogue among the various political forces in the country in the interests of the restoration and strengthening of civil accord in Tajikistan. For these purposes, the commission is assigned the tasks of:

Developing proposals for amending the legislation on the functioning of political parties and movements and the mass media.

During the transition period the President and the Commission on National Reconciliation will exercise the following functions and powers:

Submission to a nationwide referendum of proposals for amendments and additions to the existing constitution;

Protocol on Political Issues, 18 May 1997

4. The bans and restrictions on activities by the political parties and movements of the United Tajik Opposition and the mass information media shall be lifted by the authorities of Tajikistan after the completion of the second phase of the implementation of the Protocol on Military Questions. The political parties and movements of the United Tajik Opposition shall function within the framework of the Constitution and the laws in force of the Republic of Tajikistan

and in accordance with the norms and guarantees set forth in the general agreement on the establishment of peace and national accord in the country.

Bangladesh

The Chittagong Hill Tracts Peace Accord, 2 December 1997

(C) The Chittagong Hill Tracts Regional Council

9. d) The Council can conduct programmes related to disaster management and relief, and also coordinate the activities of the NGOs.

Philippines (Mindanao)

Mindanao Final Agreement, 2 September 1996

II. Transitional Period (Phase I)

10. There shall be established a Consultative Assembly with 81 members composed of the following:

d) 11 members from various sectors recommended by non-governmental organizations (NGOs) and people's organizations (POs).

11. The Consultative Assembly shall exercise the following functions and powers:

a. To serve as a forum for consultation and ventilation of issues and concerns;
b. To conduct public hearings as may be necessary and to provide appropriate advice to the SPCPD; and
c. To formulate and recommend policies to the President through the Chairman of the SPCPD and make rules and regulations to the extent necessary for the effective and efficient administration of the affairs of the area.

III. The New Regional Autonomous Government (Phase III)

23. Legislative power shall be vested in the Regional Legislative Assembly.

25. There shall be sectoral representatives in the Legislative Assembly whose number shall not exceed fifteen percent (15%) of the total number of elected Members of the Legislative Assembly coming from the labor, disabled, industrial, indigenous cultural communities, youth, women, non-government organizations, agricultural, and such other sectors as may be provided by Regional Law to be appointed by the Head of the Autonomous Government from among the nominees of the different sectoral groups; provided, however, that the youth representative shall not be less than 18 years of age nor more than 21 years of age at the time of his appointment.

PNG (Bougainville)

The Honiaria Declaration, 21 January 1991

Observers: Solomon Islands Christian Association (Chair mediated the Talks), South Pacific Council of Churches.

Obligations and Responsibilities

10. Parties agreed to take the following actions:

National Government

v) Allow and facilitate non-government agencies, including Churches and Community groups, to contribute towards the successful implementation of this programme.

Bougainville Side

v) Receive and facilitate non-governmental agencies, including churches and community groups to contribute towards the successful implementation of this programme.

AFRICA

Burundi

Arusha Peace and Conciliation Agreement, 28 August 2000

Protocol 1

Article 8 - Principles and Measures Relating to National Reconciliation

1. A national commission known as the National Truth and Reconciliation Commission shall be established.

2. Membership of the commission

(a) Source

Candidates for membership of the Commission shall be put forward by civil society associations, political parties, religious denominations or women's organizations, or may stand as individual candidates.

Protocol 2

Chapter 2 - Transitional Arrangements

Article 15 - Transitional Institutions

The composition of the transitional National Assembly shall be as follows:

The National Assembly

(a) The Members of the National Assembly elected in 1993 shall retain or resume their seats. Where vacancies have occurred, the parties whose members occupied the vacant seats before the vacancy occurred shall fill them or allow those who have already filled them to remain;
(b) The transitional National Assembly shall be augmented so that each of the participating parties which are not represented under (a) will be entitled to at least three seats so as to be represented within the transitional National Assembly;
(c) It shall thereafter be augmented by the 28 members representing civil society currently sitting in the National Assembly;

Protocol 4: Reconstruction and Development

Chapter 2 - Physical and Political Reconstruction

Article 13 - Physical Reconstruction

Physical reconstruction and political reconstruction must be mutually supportive. Political reconstruction is aimed at making national reconciliation and peaceful coexistence possible, and must be directed towards the establishment of the rule of law. In this context, the following programmes and measures shall be undertaken:

(g) Support for the development and strengthening of civil society;

Congo

Accord de Cessez-le-Feu et de Cessation des Hostilities, Dec. 29, 1999

Chapter III - General Stipulations

Article 5: The signatories agree to the following:

The free movement of persons and goods, as well as humanitarian personnel, in conflict zones;

Chapter V - From the Government of the Republic

Article 7: The signatories of this agreement recommend:

The mobilisation of the national and international community for multiform assistance to the population and huge support of the competent NGOs, with the aim to finance the rehabilitation and retraining of FADR members;

Chapter VI - Common Stipulations

Article 9: They ask all citizens and organised groups to contribute to the collection of weapons under the auspices of the Monitoring Commission assisted by the signatories.

Djibouti
Accord de paix de la reconciliation nationale, 26 December 1994
Section III: Management of the Return to Peace d) FRUD undertakes to encourage the refugees and Djibouti displaced persons, finding themselves outside the national territory because of the war, to return home.
Democratic Republic of Congo
Lusaka Accord, July 10, 1999
Preamble Taking note of the commitment of the Congolese Government, the RCD, the MLC and all other Congolese political and civil organisations to hold an all inclusive National Dialogue aimed at realising national reconciliation and a new political dispensation in the DRC;
Guinea Bissau
Abuja Peace Agreement, 1 November 1998
3. That the interposition force will guarantee security along the Guinea-Bissau/Senegal border, keep the warring parties apart and guarantee free access to humanitarian organizations and agencies to reach the affected civilian population. In this regard, the Oswaldo Vieira international airport and the seaport shall be opened immediately;
Liberia
Cotonou Peace Agreement, 25 July 1993
Part II: Political Issues Section F Article 18 - Repatriation of Refugees 1. The Parties hereby commit themselves immediately and permanently to bring to an end any further external or internal displacement of Liberians and to create the conditions that will allow all refugees and displaced persons to, respectively, voluntarily repatriate and return to Liberia to their places of origin or habitual residence under conditions of safety and dignity. 2. The Parties further call upon Liberian refugees and displaced persons to return to Liberia and to their places of origin or habitual residence and declare that they shall not be jeopardized in any ethnic, political, religious, regional or geographical considerations. 3. The Parties also call upon the relevant organizations of the United Nations system, particularly the Office of the United Nations High Commissioner for

Refugees and the United Nations Development Programme, other intergovernmental and non-governmental organizations, to implement programmes for the voluntary repatriation, return and reintegration of the Liberian refugees and internally displaced persons.

4. The Parties proclaim that they shall, jointly or individually, cooperate in all necessary ways with themselves and with the above-mentioned organizations in order to facilitate the repatriation, return and reintegration of the refugees and displaced persons.

Mozambique

Basic Principles (Protocol I), 18 October 1991

5. The parties agree on the principle of establishing a commission to supervise and monitor compliance with the General Peace Agreement. The commission shall be composed of representatives of the Government, RENAMO, the United Nations and other organizations or Governments to be agreed upon between the parties.

Agreement on Establishment and Recognition of Political Parties (Protocol II), 13 November 1991

At the conclusion of their talks, the parties agreed on the necessity of guaranteeing the workings of a multi-party democracy in which the parties would freely cooperate in shaping and expressing the will of the people and in promoting democratic participation by the citizens in the Government of the country.

Article 1 - The Nature of Political Parties

(e) For the operation and full development of a multi-party democracy based on respect for and guarantees of basic rights and freedoms and based on pluralism of democratic political expression and organization under which political power belongs exclusively to the people and is exercised in accordance with principles of representative and pluralistic democracy, the parties must have fundamentally democratic principles by which they must abide in practice and in their political activities.

Agreement on Principles of the Electoral Act (Protocol III), 12 March 1992

VI. Guarantees for the electoral process and the role of international observers

(b) With a view to ensuring the highest degree of impartiality in the electoral process, the parties agree to invite as observers the United Nations, OAU and other organizations, as well as appropriate private individuals from abroad as may be agreed between the Government and RENAMO.

Rwanda
The Protocols of Agreement between the Government of the Republic of Rwanda and the Rwandese Patriotic Front on Power-Sharing within the Framework of a Broad-Based Transitional Government, 30 October 1992 and 9 January 1993
Chapter V - The Judiciary Section 3: The Supreme Court Article 27 The Supreme Court shall particular exercise the following functions: (d) ensure the regularity of popular consultations; Chapter VII - Other Areas of Agreement Article 41 The Constitution which shall govern the country after the Transition Period shall be prepared by the Legal and Constitutional Commission comprising national experts referred to under Article 24.B of this Protocol. This Commission, which shall be under the National Assembly, shall prepare, after an extensive consultation with all the strata of the population, a preliminary draft Constitution which shall be submitted to the Government for advice, before submitting it to the National Assembly which shall finalise the draft Constitution, to be submitted to a Referendum for adoption.
Protocol of Agreement between the Government of the Republic of Rwanda and the RPF on the Repatriation of Rwandese Refugees and the Resettlement of Displaced Persons, 9 June 1993
Chapter 1 - Repatriation of Rwandese Refugees Section 1 - Voluntary Return and Repatriation Sub-Section 6 - Implementation of the overall programme of implementation Article 32 The implementation, at the political and administrative level, of the Repatriation Programme shall be supervised by the Secretariat of State for Rehabilitation and Social Integration. For the technical implementation of the various components of the Repatriation Programme, the Government of Rwanda and the UNHCR shall preferably resort to those NGOs with an established reliability, taking also their respective specialization into account. As such, one or several NGO's shall undertake site development activities, building activities, and the distribution of food aid.

Sierra Leone

Abidjan Peace Agreement, 30 November 1996

Article 4

Citizens' Consultative Conferences shall be organized once a year, the first of which shall be organized within one hundred and twenty days of the signing of the present Peace Agreement in order to encourage people's participation and to invite recommendations for the formulation of guidelines and their implementation that will ensure truly fair and representative political processes.

Article 20

To monitor compliance with the basic rights guaranteed in the present Peace Agreement, as well as to promote human rights education throughout the various sectors of Sierra Leonean society, including schools, the media, the police and the military, an independent National Commission on Human Rights shall be established.

In pursuance of the above, technical and material assistance may be sought from the United Nations Special Commission on Human Rights, the United Nations Centre for Human Rights, the African Commission on Human and the People's Rights and other relevant international organizations. The National Commission on Human Rights shall have the power to investigate human rights violations and to institute legal proceedings where appropriate.

Further, a consortium of local human rights groups shall be encouraged to help monitor human rights observance.

Article 27

A broad-based socio-economic forum, in which the RUF/SL shall participate, shall be established with a view to enriching policy formulation and execution in the socio-economic sector.

Lome Peace Agreement, 7 July 1999

Part II - Governance

Article VI - Commission for the Consolidation of Peace

1. A Commission for the Consolidation of Peace (hereinafter termed the CCP), shall be established within two weeks of the signing of the present Agreement to implement a post-conflict programme that ensures reconciliation and the welfare of all parties to the conflict, especially the victims of war. The CCP shall have the overall goal and responsibility for supervising and monitoring the implementation of and compliance with the provisions of the present Agreement relative to the promotion of national reconciliation and the consolidation of peace.

5. The Commission shall be composed of the following members:

(i) Two representatives of the civil society;
(ii) One representative each named by the Government, the RUF and the Parliament.

Article VII - Commission for the Management of Strategic Resources, National Reconstruction and Development

1. Given the emergency situation facing the country, the parties agree that the Government shall exercise full control over the exploitation of gold, diamonds and other resources, for the benefit of the people of Sierra Leone. Accordingly, a Commission for the Management of Strategic Resources, National Reconstruction and Development (hereinafter termed the CMRRD) shall be established and charged with the responsibility of securing and monitoring the legitimate exploitation of Sierra Leones gold and diamonds, and other resources that are determined to be of strategic importance for national security and welfare as well as cater for post-war rehabilitation and reconstruction, as provided for under Article XXVIII of the present Agreement.

12. The Commission shall be governed by a Board whose Chairmanship shall be offered to the Leader of the RUF, Corporal Foday Sankoh. The Board shall also comprise:

(i) Two representatives of the Government appointed by the President;
(ii) Two representatives of the political party to be formed by the RUF;
(iii) Three representatives of the civil society; and
(iv) Two representatives of other political parties appointed by Parliament.

Part V - Humanitarian, Human Rights and Socio-economic Issues

Article XXV - Human Rights Commission

1. The Parties pledge to strengthen the existing machinery for addressing grievances of the people in respect of alleged violations of their basic human rights by the creation, as a matter of urgency and not later than 90 days after the signing of the present Agreement, of an autonomous quasi-judicial national Human Rights Commission.

4. A consortium of local human rights and civil society groups in Sierra Leone shall be encouraged to help monitor human rights observance.

Abuja Ceasefire Agreement, 10 November 2000

5. The parties undertake, with a view to restoring the authority of the Government throughout the entire territory of Sierra Leone, to ensure free movement of persons and goods, unimpeded movement of humanitarian agencies, and of refugees and displaced persons.

Somalia

Addis Ababa Agreement, 27 March 1993

V. Conclusions

The Conference agreed that the [Transitional National Council] shall appoint a 'Peace Delegation" composed of political movements and other social elements to travel to all parts of the country for the purpose of advancing the peace and reconciliation process as well as to explain the agreements reached in Addis Ababa. We further agree that the TNC shall appoint a National Committee to bring about reconciliation and seek solutions to outstanding political problems with the SNM.

Sudan (Southern Sudan)

Khartoum Agreement, 21 April 1997

Chapter 3 - Political Issues

Democracy

1. Participatory democracy shall be realised through congresses and national convention or conference.
2. In promotion of participatory democracy the congresses and national convention shall be organised:

1. To accommodate forums for all citizens.
2. To discourage all forms of intolerance and totalitarianism.

Chapter 5 - The Coordinating Council of the Southern States

Functions of the Coordinating Committee

6. Encourage establishment and supervision of foreign consulates, UN agencies and NGOs in South Sudan in coordination with the Federal Government in coordination with the Federal organs concerned.

Chapter 7 - Referendum

7. To ensure free and fair conduct of the referendum, the SRC shall invite observers as follows:

- OAU, Arab League, UN, Religious bodies, IGAD, National and Foreign NGOs and any other countries.

AMERICAS

Colombia

Acuerdo Final Gobierno Nacional - Ejercito Popular de Liberacion, 2 February 1991

IV - Monitors

2. International monitor

With the aim of assuring that an international committee keeps watch, supervises and certifies compliance with the pacts and the commitments made by the parties in this definitive demobilisation agreement, the EPL and the national government agree to invite the Socialist Socialist Workers' Party and Socialist International to appoint respective committees which monitor the agreed terms for as long as their mission requires. This is restricted to verifying the full and definitive disarmament of the EPL's forces, the evaluation of the guerrilla organisation's citizen reintegration tasks, political guarantees given to the EPL, what is agreed concerning human rights and the carrying out of development plans to which the national government is obliged as a result of this pact.

To obtain the presence of institutions which are neither governmental nor international democratic entities in the act of surrendering weapons, it is agreed that the national government and the EPL will offer invitations to the UN, Amnesty International, the Church and some international entities.

VII - Reintegration Plan

3. Criteria

b. This will bring about the maximum co-operation between institutions at diverse levels of the government, the civil society and the community in general.

4. Transitional Phase

Whilst the camps remain, the government and the EPL will commence the transitional phase which will involve different entities of the government, non-governmental organisations, private companies and the organisation which is in the process of demobilising. It is estimated that this phase will last up to six months after the end of life at the camps and concludes at the start of the meeting phase. Education and training programmes may continue in the reunion phase.

Activities in this transitional phase will be:

b. Technical-professional training and business advice as preparation for the reunion phase consists of receiving technical training to work in offices or to carry out productive projects, preferably with a nature of self-management or economic solidarity. In the design and execution of these programmes, diverse

governmental institutions (SENA, ICA, amongst others), regional universities, UPN and centres for study and investigation, non-governmental organisations or foundations amongst others will commit themselves according to the requirements of those demobilised in particular.

c. Civic participation and popular communication. The following activities are incorporated under this programme:

Civic participation and public administration. It concerns training people to take part in public activity of the municipality and the department.

Cultural and recreational: Activities paving the way for creation of recreational areas and thought on regional culture, personal and group perceptions and experiences.

IX - Human Rights and Factors of Violence

Fundamental objective of the present agreement is to discourage the factors leading to violence which have manifested themselves in areas where the EPL are present, looking for the participation of the community in the plan for solutions and its implementation, in order to effectively consolidate peace conditions.

1. To fulfil this objective, the parties agree to create a Committee for the Prevention of Violence which will be composed of five people of renowned competence as well as character and reputation, appointed by consensus to ensure an efficient and elevated level of treatment of this problem. This committee will gather on 26th February of this year and will function for a period six months.

3. The national government promises to support and finance the work of the committee which nevertheless can count on the backing and collaboration of international organisations and non-governmental organisations. The national government promises to consider and deal with the recommendations made by this committee.

X - Regional Plans

1. Characteristics

d. It will promote the participation of private companies in the financing of projects it identifies. Equally it links community organisations and will invite non-governmental organisations and the academic sector to participate.

Common Agenda for the Path to a New Colombia, 6 May 1999

5. Economic and Social Structure

5.7 Social participation in planning.

7. Political reform for the broadening of democracy

7.1 Reform of political parties and movements.

El Salvador

Geneva Agreement, 4 April 1990

6. The Government of El Salvador and FMLN agree that the political parties and other representative social organizations existing in El Salvador have an important role to play in the attainment of peace. They also recognize the need for both the Government and FMLN to maintain appropriate, ongoing information and consultation mechanisms with such parties and social organizations in the country, and that the latter must undertake to preserve the secrecy necessary to the success of the dialogue process. When it is deemed appropriate and on the basis of mutual consent, the commissions may call upon representatives of these parties and organizations in order to receive their inputs.

7. The Government and FMLN likewise recognize that it is useful for the Secretary-General to maintain contacts with Salvadorian individuals and groups whose input may benefit his efforts.

Agreement on Human Rights, 26 July 1990

II. International Verification

10. In accordance with the psov «ions of the Geneva Agreement And the agenda for the negotiations which was adopted in Caracas» the Parties hereby agree to the terms of reference for the United Nations human rights verification mission (hereinafter referred to as "the Mission"), as set out below.

12. A Director designated by the Secretary-General of the United Nations shall be in charge of the Mission. The director shall work in close cooperation with existing human rights organizations and bodies in El Salvador. He shall also be assisted by expert advisers. In addition, the Mission shall include as many verification personnel as may be necessary.

Mexico Agreement, 27 April 1991

II. Judicial System and Human Rights

2. Other issues raised in the negotiations were referred to secondary legislation and to other political agreements. Although the set of political agreements on the judicial system envisaged by the Parties in the Caracas Agenda has still to be negotiated, the following agreements have been reached during the current round:

(a) National Council of the Judiciary

Agreement has been reached to restructure the National Council of the

Judiciary so that its composition guarantees its independence from the organs of State and from political parties and its membership includes not only judges but also sectors of society not directly connected with the administration of justice.

New York Agreement, 31 December 1991

Part VII - Economic and Social Questions

4. The Parties refer to the compressed negotiations, as part of the economic and social subject area, consideration of the following topics:

(c) Establishment of a Forum for economic and social accommodation, with participation by the governmental, labour and business sectors, for the purpose of continuing to resolve economic and social problems. The Forum may be open to participation by other social and political sectors as observers, under terms to be determined by it.

The Chapultepec Peace Agreement, 16 January 1992

Chapter V - Economic and Social Questions

8. Forum for Economic and Social Consultation

A. Purpose of the Forum

A forum shall be established in which representatives of the Government, labour and the business community shall participate on an equal footing for the purpose of working out a set of broad agreements on the economic and social development of the country for the benefit of all its inhabitants. The consultation process shall be a sustained effort and shall be conducted in phases, bearing in mind that the aim is to reach some agreements that are to be implemented immediately to achieve stabilization, others that are designed to tackle the economic and social problems that will ensue from the end of the conflict and still others that are geared specifically to reconstruction.

Among other things, the Government shall propose to the Forum for Economic and Social Consultation that existing labour legislation be revised in order to promote and maintain a climate of harmonious labour relations, without prejudice to the unemployed and the public at large. It shall also propose that the situation of disadvantaged urban and outlying urban communities be analysed with a view to proposing solutions to problems resulting from the armed conflict of recent years. In general terms, the Forum shall be the mechanism for agreeing on measures to alleviate the social cost of the structural adjustment programme.

C. Composition of and representation in the Forum

The composition of the Forum and the representation in it of the various sectors and the Government shall be as follows:

a. The Government of El Salvador shall be represented at a high level, its representatives being empowered to take decisions on economic and social matters;

b. The most representative labour and business organizations shall be invited to represent those sectors.

In addition, the Forum may invite other social and political sectors to participate in its work as observers, on terms to be determined by it.

Guatemala

Oslo Agreement, 30 March 1990

(b) The National Reconciliation Commission shall, by mutual agreement with URNG, create the mechanisms required for the convening, preferably in June 1990, of the necessary meetings between the Unidad Revolucionaria Nacional Guatemalteca and representatives of the country's popular, religious and business sectors, as well as other politically representative entities, with a view to finding ways of solving the nation's problems.

Queretaro Agreement, 25 July 1991

2. The Government of the Republic of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca (URNG) have agreed to pursue a process of negotiations whose final objective is the search for peace by political means, the enhancement of functional and participatory democracy and the laying of foundations on which to build national development and progress, thereby ensuring democratic coexistence and the attainment of the common good.

5. The procedures and agreements resulting from the discussion of the general agenda adopted in Mexico are fundamental to the process of enhancing functional and participatory democracy, and the Conciliator should therefore inform the Guatemalan people objectively and fairly about their content.

Accordingly, the Government of the Republic of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca (URNG), agree:

II. That democratization means guaranteeing and promoting participation, whether direct or indirect, by civilian society in general in the formulation, implementation and evaluation of government policies at the various levels of government, recognizing the right of all social groups in the nation to enjoy fair and equitable labour relations, their own forms of culture and organization, and full respect for human rights and the law.

III. That this Agreement must be disseminated widely to the people of Guatemala and, in particular, to the sectors which took part in the dialogue at the meetings held under the Oslo Agreement and the National Dialogue, and

that they must be informed by the Conciliator in order to ensure that the Agreement is duly understood.

Agreement on the Resettlement of Population Groups Uprooted by the Armed Conflict, 17 June 1994

II. Guarantees for the Resettlement of Uprooted Population Groups

11. The Parties recognize the humanitarian work of non-governmental organizations and churches which are supporting the resettlement processes. The Government shall safeguard their security.

Framework Agreement for the Resumption of the Negotiating Process between the Govt of Guatemala and the 'Unidad Revolucionaria Nacional Guatemalteca' (URNG), 10 January 1994

III. Society at Large

The two parties recognize the contribution of the sectors which, pursuant to the Oslo Agreement, have participated in the meetings with URNG held at El Escorial, Ottawa, Quito, Metepec and Atlixco. These meetings have given an impetus to the negotiating process in Guatemala. The participation and contributions of these sectors have helped to make possible the start of direct negotiations between the Government and the command of URNG.

The parties agree that Guatemalan society continues to have an essential role to play in the achievement of peace and in the process of reconciliation.

Without prejudice to other machinery and forums, whether temporary or permanent, for promoting national reconciliation, the parties agree to promote the establishment of an Assembly open to the participation of non-governmental sectors of Guatemalan society, provided that their legitimacy, representative character and lawfulness have been recognized. The Assembly shall meet during the negotiating period and shall have the following functions:

(i) To discuss the substantive issues for the bilateral negotiations, i.e. items (ii) to (vii) of the general agenda contained in the Mexico Agreement, with a view to formulating positions on which there is consensus;

(ii) To transmit to the United Nations moderator, the Government of Guatemala and URNG the recommendations or guidelines resulting from its deliberations. These recommendations and guidelines shall not be binding and shall be aimed at fostering understanding between the parties. The Assembly shall discuss the substantive issues on the basis of a timetable that is synchronized with the dates set for the bilateral negotiations and shall not delay the conduct of the bilateral negotiating process;

(iii) To consider bilateral agreements concluded by the parties on the substantive issues and endorse such agreements so as to give them the force of national commitments, thereby facilitating their implementation. However, if

for any reason a bilateral agreement is not endorsed, the agreement shall continue to be valid.

The parties agree to request the Episcopal Conference of Guatemala to appoint the President of the Assembly, considering for this office the conciliator, Monsignor Quezada Toruño. The President of the Assembly shall be assisted by an organizing committee. The Committee shall be composed of representatives of each of the sectors which participated in the Oslo process, together with representatives of the Maya people.

Agreement on a Firm and Lasting Peace, 29 December 1996

I. Concepts

1. The Peace Agreements reflect a national consensus. They have been endorsed by the various sectors represented in the Assembly of Civil Society and outside it. Their progressive implementation must fulfil the legitimate aspirations of Guatemalans and, at the same time, unite the efforts of all behind these common objectives.

6. Firm and lasting peace must be based on participatory socio-economic development that is geared to the common good and to the needs of the entire population. Such development requires social justice, as one of the cornerstones of national unity and solidarity, and sustainable economic growth as a prerequisite for meeting the population's social demands.

7. The genuine participation of citizens - both men and women - from all sectors of society is essential for achieving social justice and economic growth. The State must broaden these opportunities for participation and strengthen its own role as guiding force of national development, lawmaker, source of public investment, provider of basic services and promoter of social consensus and settlement of disputes. To that end, it must raise fiscal revenues and, as a matter of priority, channel public spending towards social investment.

9. The State and organized sectors of society must join forces to find a solution to agrarian problems and promote rural development, both of which are the key to improving the situation of the majority of the population living in rural areas - the population group most seriously affected by poverty, inequity and the weakness of State institutions.

10. The strengthening of civilian power is an essential prerequisite for the existence of a democratic regime. The ending of the armed conflict affords an historic opportunity to renew the country's institutions so that, working in coordination, they can guarantee Guatemalans the rights to life, liberty, justice, security, peace and the full development of the individual. The Guatemalan armed forces must adjust their functions to the new era of peace and democracy.

III. Expression of Gratitude

17. Upon completion of the historic negotiating process in the search for peace by political means, the Government of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca wish to place on record their gratitude for the national and international efforts that have contributed to the conclusion of the Agreement on a Firm and Lasting Peace. They emphasize the role played by the National Reconciliation Commission, the Conciliation, the Assembly of Civil Society and United Nations Moderation. They also express appreciation for the support provided by the Group of Friends of the Guatemalan Peace Process, consisting of the Republic of Colombia, the United Mexican States, the Kingdom of Norway, the Kingdom of Spain, the United States of America and the Republic of Venezuela.

Agreement on Constitutional Reforms and the Electoral Regime, 7 December 1996

I. Constitutional Reforms

Whereas the constitutional reforms contained in this Agreement constitute a substantive, fundamental basis for the reconciliation of Guatemalan society within the framework of the rule of law, democratic coexistence, full observance of and strict respect for human rights, an end to impunity and, at the national level, the institutionalization of a culture of peace based upon mutual tolerance and respect, shared interests and the broadest possible public participation in all structures of power,

II. Electoral Regime

Electoral Reform Commission

3. It is recommended that the above Commission be constituted no later than three months after the signing of the Agreement on a Firm and Lasting Peace and that it complete its work no later than six months from the date of its establishment. In order to achieve its objectives, the Commission would have to encourage an extensive pluralistic debate on the subject of Guatemala's electoral regime.

Agreement on the Implementation, Compliance and Verification Timetable for the Peace Agreements, 29 December 1996

I. Presentation of the Timetable

Strategy

3. The Timetable is divided into three phases: the first covers a 90-day period from 15 January 1997; the second lasts until the end of 1997; and the third covers 1998, 1999 and 2000. The implementation strategy for these three phases is guided by the following needs:

To promote the effective participation of all social sectors in meeting their needs, particularly in establishing public policies concerning them, and

accordingly, to set timetables for those actions that depend on the consensus-building mechanisms provided for in the Agreements, taking into account their outcome;

Implementation of the Timetable

6. With a view to implementing the Timetable, the Parties have divided the commitments set out in the Agreements into four thematic areas:

(d) Modernization of the democratic State, including strengthening of the capacity for participation and consensus-building of the various components of civil society.

8. Reiterating that the implementation of the Peace Agreements must enable all the country's social and political forces to undertake in a cooperative and responsible spirit the immediate tasks of fighting poverty, discrimination and privilege, the Government has undertaken to promote such action with the effective participation of all social sectors.

9. The Parties call on the various sectors of Guatemalan society to take a leading role in implementing the development agenda set out in the Agreements. They also call on the international community to continue to support national efforts, particularly during the initial phases of the implementation process, while Guatemala is building its own capacities in the areas of human, institutional and financial resources.

II. Timetable for the 90 Days from 15 January 1997

E. Agreement on Social and Economic Aspects of the Agrarian Situation

Expansion of the National Agricultural Development Council

22. Strengthen and expand the participation of small farmers' organizations, rural women, indigenous organizations, cooperatives, producers' associations and non-governmental organizations in the National Agricultural Development Council
(CONADEA), as the main mechanism for consultation, coordination and participation in the decision-making process for rural development.

III. Timetable from 15 April to 31 December 1997

E. Agreement on Social and Economic Aspects of the Agrarian Situation

Credit and Financial Services

106. Promote conditions enabling small and medium-scale farmers to have access to credit, individually or in groups, on a financially sustainable basis. In particular, with the support of the business sector and non-governmental development organizations, promote the strengthening of local savings and loan agencies, such as associations, cooperatives and the like, so that they

can provide credit and financial services to small and medium-sized businesses efficiently and in accordance with local needs and conditions.

IV. Timetable for 1998, 1999 and 2000

E. Agreement on Social and Economic Aspects of the Agrarian Situation

Decentralization of Public Administration

174. Sponsor and introduce in the Congress of the Republic amendments to the Act on the Governance of the Departments of the Republic making it possible to streamline and decentralize public administration, and propose that departmental governors be appointed by the President of the Republic, taking into consideration candidates proposed by the non-governmental representatives of departmental development councils.

V. Follow-Up Commission

Composition

190. The Follow-up Commission shall be composed as follows:

(a) An equal number of representatives from each of the Parties to the peace negotiations;

(b) Four citizens from different sectors of the population, who shall be invited to join the Commission by mutual agreement of the Parties to the peace negotiations;

(c) The Congress of the Republic shall be asked to designate one of its members to represent it on the Commission;

(d) The head of the international verification mission, who shall have the right to speak but not to vote.

Agreement on Socio-Economic Aspects and the Agrarian Situation, 6 May 1996

II. Social Development

B. Health

23. The Parties agree on the need to promote a reform of the national health sector. This reform should be aimed at ensuring effective exercise of the fundamental right to health, without any discrimination whatsoever, and the effective performance by the State, which would be provided with the necessary resources, of its obligation with regard to health and social welfare. Some of the main points of this reform are as follows:

Social participation

(g) The system would encourage active participation of municipalities, communities and social organizations (including groups of women, indigenous people, trade unions and civic and humanitarian associations) in the planning, execution and monitoring of the administration of health services and programmes, through local health systems and urban and rural development councils;

E. Work

26. Work is essential for the integral development of the individual, the well-being of the family and the social and economic development of Guatemala. Labour relations are an essential element of social participation in socio-economic development and of economic efficiency. In this respect, the State's policy with regard to work is critical for a strategy of growth with social justice. In order to carry out this policy, the Government undertakes to:

Ministry of Labour

(g) Strengthen and modernize the Ministry of Labour and Social Welfare, ensuring its leading role in Government policies related to the labour sector and its effective deployment in the promotion of employment and in labour cooperation. To that end, it undertakes to:

Participation, coordination and negotiations

(ii) Facilitate the procedures for the recognition of the legal personality of labour organizations;

III. Agrarian Situation and Rural Development

A. Participation

33. The capacity of all actors involved in the agricultural sector must be mobilized to make proposals and to take action, including indigenous peoples' organizations, producers' associations, business associations, rural workers' trade unions, rural and women's organizations or universities and research centres in Guatemala. To that end, in addition to the provisions of other chapters of this Agreement, the Government undertakes to:

(a) Strengthen the capacity of rural organizations such as associative rural enterprises, cooperatives, small farmers' associations, mixed enterprises and self-managed and family businesses to participate fully in decisions on all matters concerning them and to establish or strengthen State institutions, especially those of the State agricultural sector, involved in rural development so that they can promote such participation, particularly the full participation of women in the decision-making process. That will strengthen the effectiveness of State action and ensure that it responds to the needs of rural areas. In particular, participation in development councils will be promoted as a framework for the joint formulation of development and land use plans;

(b) Strengthen and expand the participation of tenant farmers' organizations, rural women, indigenous organizations, cooperatives, producers' trade unions and non-governmental organizations in the National Agricultural Development Council as the main mechanism for consultation, coordination and social participation in the decision-making process for rural development, and in particular for the implementation of this chapter.

Agreement on the Strengthening of Civilian Power and the Role of the Armed Forces in a Democratic Society, 19 September 1996

III. System of Justice

Commission on the Strengthening of the Justice System

15. The Parties also agree that, within 30 days after the signing of the agreement on a firm and lasting peace, the President of Guatemala will propose that a commission be established with the mandate to prepare within six months, following an extensive debate on the justice system, a report and a set of recommendations for implementation as soon as possible. That commission, which will receive advisory assistance from the Mission for the Verification of Human Rights and of Compliance with the Commitments of the Comprehensive Agreement on Human Rights in Guatemala (MINUGUA), shall include the qualified representatives of the various public institutions and social and private bodies that are involved in and/or are knowledgeable about the justice system.

16. The work of the Commission shall include and not be limited to the following:

Non-State partners

(i) Promote the active involvement in the legal reform process of those bodies outside the State system of justice which play a decisive role in such reform.

V. Social Participation

56. The strengthening of civilian power requires that the ability of citizens to participate in society also must be enhanced, by providing increased opportunities for citizen participation and building their capacity to participate.

57. In particular, social participation at the community level promotes respect for ideological pluralism and non-discrimination on social grounds, facilitates the broad, organized and harmonious participation of citizens in decision-making and enables them to shoulder their responsibilities and commitments in the quest for social justice and democracy.

58. With a view to facilitating community participation, and pursuant to the agreements already signed, the Government reiterates its commitment to decentralize the civil service in order to mobilize the full power of the State for

the benefit of the population and thereby enhance the relationship between the State and the citizenry. To that end, it is necessary, inter alia, to:

(a) Strengthen municipal governments and ensure that the development council system is functioning properly. Accordingly, the relationship between these groups and the community shall be improved, to which end the authorities shall strengthen democratic practices; in addition, the relationship between these groups and the central Government shall be enhanced;

(b) In particular, establish local development councils. To accomplish that goal, the various social mechanisms created to improve people's lives shall be treated on a par with the councils; these include institutions serving indigenous communities, improvement committees and other groups which encourage all neighbours to participate in the development of their communities and municipalities and which are recognized and registered by their respective municipal authorities;

(c) Pursuant to the Agreement on Identity and Rights of Indigenous Peoples and the Agreement on Social and Economic Aspects and Agrarian Situation, create a set of circumstances conducive to the growth of local organizations that are representative of the population. In particular, the Government reiterates the commitment it made in the Agreement on Social and Economic Aspects and Agrarian Situation to enhance social participation with a variety of information and education tools focusing on the protection of human rights, the renewal of the political culture and the peaceful settlement of disputes. It also reaffirms its intention to empower social organizations to participate in social and economic development.

VI. The Role of Women in Strengthening Civilian Power

59. In order to increase opportunities for women to participate in the exercise of civilian power, the Government undertakes to:

(a) Set up nationwide public awareness campaigns and educational programmes with a view to increasing public awareness of women's right to participate actively and decisively, both in rural areas and in the cities, in the process of strengthening civilian power, fully and equally and without any discrimination;

(b) Ensure that social and political organizations adopt specific policies to enhance and promote the role of women in the process of strengthening civilian power;

(c) Respect, promote, support and institutionalize women's organizations in rural areas and in the cities;

(d) Ensure that at all times in the exercise of power, women, whether organized or not, are provided with and guaranteed opportunities to participate.

60. The Parties appreciate the work undertaken at the national level by the various women's organizations and encourage them to work together to make their contribution to the process of implementing the agreements on a firm and lasting peace, especially those undertakings most directly related to women.

Mexico

Joint Proposals that the Federal Government and the EZLN agree to remit to the National Debating and Decision-Making Bodies in Accordance with Paragraph 1.4 of the Rules of Procedure, Feb. 16, 1996, (San Andres Accords)

8. Communications. In order to encourage an intercultural dialogue from the community to the national level, allowing a new and positive relationship among the indigenous peoples and between them and the rest of society, these peoples must be provided with communications media, which at the same time are also key instruments in the development of their cultures. Consequently, it will be proposed that the corresponding national agencies should prepare a new communications law to allow indigenous peoples to acquire, operate, and administer their own communications media.

The federal and state governments shall work for the indigenist communications media to become indigenous communications media, when so requested by the indigenous peoples and communities.

The Federal Government shall recommend to the appropriate agencies that the 17 broadcasting stations belonging to the National Indigenist Institute be handed over to the indigenous communities in the respective regions, with the transfer of permits, infrastructure, and resources, when the indigenous communities so request.

In addition, there is a need for a new legal framework for communications to address the following issues: the nation's cultural diversity; the right to use indigenous languages in the media; the right to reply; guarantees for the rights of expression, information, and communication; the democratic participation of indigenous peoples and communities before the bodies responsible for decisions affecting the field of communications; and the participation of interested parties in civil society's empowerment on the decision-making bodies in the communications arena through the creation of a Communications Ombudsman or a Citizens' Communications Council.

Bell, Christine, and Catherine O'Rourke. 2010. Peace Agreements or Pieces of Paper? the Impact of UNSC Resolution 1325 on Peace Processes and Their Agreements. *International & Comparative Law Quarterly* 59 (4): 941–980; and, The Transitional Justice Peace Agreement Database, University of Ulster, Transitional Justice Institute, International Conflict Research Institute <http://www.peaceagreements.ulster/ac.uk/>.

Table A3.6 - Armed Conflict, Peace Agreements and Refugees, 1990-2000

F = *Full Agreement* - one or more dyad agrees to settle the whole in- compatibility.

P = Partial Agreement - one or more dyad agrees to settle a part of the incompatibility.

PP = *Peace Process Agreement* - one or more dyad agrees to initiate a process that aims to settle the incompatibility.

ID	Case		F	P	PP	Date
Government						
137	Afghanistan	Islamabad Accord				1993
90	Burundi	Arusha Peace and Reconciliation Agreement				2000
103	Cambodia	Agreement on a Comprehensive Political Settlement				1991
91	Chad	El Geneina Agreement				1992
		National Reconciliation Agreement				1997
214	Congo	Accord de Cessez-le-Feu et de Cessation des Hostilites				1999
184	Djibouti	Accord de paix et de la reconciliation nationale				1994
		Accord Cadre de Reforme et de Concorde Civile				2000
120	El Salvador	Agreement on Human Rights				1990
		The Chapultepec Peace Agreement				1992
36	Guatemala	The Queretaro Accord				1991
		The Agreement on the Resettlement of Population Groups Uprooted by the Armed Conflict				1994
		The Agreement for a Firm and Lasting Peace				1996
		The Agreement on the Implementation, Compliance and Verification Timetable for the Peace Agreements				1996
146	Liberia	Banjul IV Agreement				1990
		Cotonou Peace Agreement				1993
		Akosombo Peace Agreement				1994
		Abuja Peace Agreement				1995
		Abuja II Peace Agreement				1996
136	Mozambique	Agreement on Principles of the Electoral Act				1992
		Acordo Geral de Paz				1992
179	Rwanda	The Protocol of Agreement between the Government of the Republic of Rwanda and the Rwandese Patriotic Front on the Rule of Law				1992
		The Protocols of Agreement between the Government of the Republic of Rwanda and the Rwandan Patriotic Front on Power-Sharing within the Framework of a Broad-Based Transitional Government				1993

		The Protocol of Agreement between the Government of the Republic of Rwanda and the Rwandese Patriotic Front on the Repatriation of Refugees and the Resettlement of Displaced Persons				1993
		Arusha Accords				1993
187	Sierra Leone	Lome Peace Agreement				1999
		Abuja Ceasefire Agreement				2000
200	Tajikistan	Protocol on the Fundamental Principles of Establishing Peace and National Accord in Tajikistan				1995
		Agreement between the President of the Republic of Tajikistan, E.S. Rakhmonov, and the leader of the United Tajik Opposition, S.A. Huri on the results of the meeting held in Moscow, 23 December 1996				1996
		Statute of the Commission on National Reconciliation				1997
		The Moscow Declaration				1997
Territory						
126	Bangladesh	Chittagong Hill Tracts Peace Accord				1997
194	BiH (Serb)	The General Framework Agreement (Dayton)				1995
203	BiH (Croat)	The Washington Agreement				1994
195	Croatia (Serb)	The Erdut Agreement				1995
197	Georgia/Abkhazia	Declaration on Measures for a Political Settlement of the Georgia/Abkhaz Conflict				1994
37	Israel (Palestine)	Declaration of Principles on Interim Self-Government Arrangements				1993
		Agreement on the Gaza Strip and the Jericho Area				1994
		Agreement on Preparatory Transfer of Powers and Responsibilities between Israel and the PLO				1994
		Israeli-Palestinian Interim Agreement on the West Bank and Gaza Strip				1995
		Protocol on Redeployment in Hebron				1997
		The Wye River Memorandum				1998
		The Sharm el-Sheik Memorandum				1999
177	Mali (Azawad)	Tamanrasset Accord				1991
		Pacte National				1992
178	Niger (Air & Azawad)	Paris Accord				1993
		Ougadougou Accord				1994
		Acord e'tablissant une paix definitive				1995
113	Sudan (S. Sudan)	Khartoum Agreement				1997
218	Yugoslavia (Kosovo)	Kosovo Peace Agreement				1999

UCDP Peace Agreement Dataset, Ver. 1.0, 2006; and, Harbom, Lotta, Stina Högbladh, and Peter Wallensteen. 2006. Armed Conflict and Peace Agreements. *Journal of Peace Research* 43 (5): 617–631.

Table A3.7 - Armed Conflict, Peace Agreements and Refugees, Provisions for Durable Solutions, 1990-2000

EUROPE
Bosnia and Herzegovina (Croat)
Washington Agreement, 1 March 1994
V. Human Rights The principles set forth below, as well as the rights and freedoms provided in the instruments listed in the annex, shall be applied throughout the territory of the Republic of Bosnia and Herzegovina. In the Federation: 2. All refugees and displaced persons have the right freely to return to their homes of origin. 3. All persons shall have the right to have restored to them any property of which they were deprived in the course of ethnic cleansing and to be compensated for any property which cannot be restored to them. All statements or commitments made under duress, particularly those relating to the relinquishment of rights to land or property, shall be treated as null and void.
Bosnia and Herzegovina (Serb)
General Framework Agreement for Peace in Bosnia and Herzegovina, 14 December 1995
Article VII Recognizing that the observance of human rights and the protection of refugees and displaced persons are of vital importance in achieving a lasting peace, the Parties agree to and shall comply fully with the provisions concerning human rights set forth in Chapter One of the Agreement at Annex 6, as well as the provisions concerning refugees and displaced persons set forth in Chapter One of the Agreement at Annex 7.
Annex 4, Constitution of Bosnia and Herzegovina
Article II: Human Rights and Fundamental Freedoms 5. Refugees and Displaced Persons. All refugees and displaced persons have the right freely to return to their homes of origin. They have the right, in accordance with Annex 7 to the General Framework Agreement, to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any such property that cannot be restored to them. Any commitments or statements relating to such property made under duress are null and void.

Annex 7, Agreement on Refugees and Displaced Persons

The Republic of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, and the Republika Srpska (the "Parties") have agreed as follows:

Chapter One: Protection

Article I: Rights of Refugees and Displaced Persons

1. All refugees and displaced persons have the right freely to return to their homes of origin. They shall have the right to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any property that cannot be restored to them. The early return of refugees and displaced persons is an important objective of the settlement of the conflict in Bosnia and Herzegovina. The Parties confirm that they will accept the return of such persons who have left their territory, including those who have been accorded temporary protection by third countries.

2. The Parties shall ensure that refugees and displaced persons are permitted to return in safety, without risk of harassment, intimidation, persecution, or discrimination, particularly on account of their ethnic origin, religious belief, or political opinion.

3. The Parties shall take all necessary steps to prevent activities within their territories which would hinder or impede the safe and voluntary return of refugees and displaced persons. To demonstrate their commitment to securing full respect for the human rights and fundamental freedoms of all persons within their jurisdiction and creating without delay conditions suitable for return of refugees and displaced persons, the Parties shall take immediately the following confidence building measures:

1. the repeal of domestic legislation and administrative practices with discriminatory intent or effect;

2. the prevention and prompt suppression of any written or verbal incitement, through media or otherwise, of ethnic or religious hostility or hatred;

3. the dissemination, through the media, of warnings against, and the prompt suppression of, acts of retribution by military, paramilitary, and police services, and by other public officials or private individuals;

4. the protection of ethnic and/or minority populations wherever they are found and the provision of immediate access to these populations by international humanitarian organizations and monitors;

5. the prosecution, dismissal or transfer, as appropriate, of persons in military, paramilitary, and police forces, and other public servants, responsible for serious violations of the basic rights of persons belonging to ethnic or minority groups.

4. Choice of destination shall be up to the individual or family, and the principle of the unity of the family shall be preserved. The Parties shall not interfere with the returnees' choice of destination, nor shall they compel them to remain in or move to situations of serious danger or insecurity, or to areas lacking in the basic infrastructure necessary to resume a normal life. The Parties shall facilitate the flow of information necessary for refugees and displaced persons to make informed judgments about local conditions for return.

5. The Parties call upon the United Nations High Commissioner for Refugees ("UNHCR") to develop in close consultation with asylum countries and the Parties a repatriation plan that will allow for an early, peaceful, orderly and phased return of refugees and displaced persons, which may include priorities for certain areas and certain categories of returnees. The Parties agree to implement such a plan and to conform their international agreements and internal laws to it. They accordingly call upon States that have accepted refugees to promote the early return of refugees consistent with international law.

Article II: Creation of Suitable Conditions for Return

1. The Parties undertake to create in their territories the political, economic, and social conditions conducive to the voluntary return and harmonious reintegration of refugees and displaced persons, without preference for any particular group. The Parties shall provide all possible assistance to refugees and displaced persons and work to facilitate their voluntary return in a peaceful, orderly and phased manner, in accordance with the UNHCR repatriation plan.

2. The Parties shall not discriminate against returning refugees and displaced persons with respect to conscription into military service, and shall give positive consideration to requests for exemption from military or other obligatory service based on individual circumstances, so as to enable returnees to rebuild their lives.

Article III: Cooperation with International Organizations and International Monitoring

1. The Parties note with satisfaction the leading humanitarian role of UNHCR, which has been entrusted by the Secretary-General of the United Nations with the role of coordinating among all agencies assisting with the repatriation and relief of refugees and displaced persons.

2. The Parties shall give full and unrestricted access by UNHCR, the International Committee of the Red Cross ("ICRC"), the United Nations Development Programme ("UNDP"), and other relevant international, domestic and nongovernmental organizations to all refugees and displaced persons, with a view to facilitating the work of those organizations in tracing persons, the provision of medical assistance, food distribution, reintegration assistance, the provision of temporary and permanent housing, and other activities vital to

the discharge of their mandates and operational responsibilities without administrative impediments. These activities shall include traditional protection functions and the monitoring of basic human rights and humanitarian conditions, as well as the implementation of the provisions of this Chapter.

3. The Parties shall provide for the security of all personnel of such organizations.

Article IV: Repatriation Assistance

The Parties shall facilitate the provision of adequately monitored, short-term repatriation assistance on a nondiscriminatory basis to all returning refugees and displaced persons who are in need, in accordance with a plan developed by UNHCR and other relevant organizations, to enable the families and individuals returning to reestablish their lives and livelihoods in local communities.

Article V: Persons Unaccounted For

The Parties shall provide information through the tracing mechanisms of the ICRC on all persons unaccounted for. The Parties shall also cooperate fully with the ICRC in its efforts to determine the identities, whereabouts and fate of the unaccounted for.

Article VI: Amnesty

Any returning refugee or displaced person charged with a crime, other than a serious violation of international humanitarian law as defined in the Statute of the International Tribunal for the Former Yugoslavia since January 1, 1991 or a common crime unrelated to the conflict, shall upon return enjoy an amnesty. In no case shall charges for crimes be imposed for political or other inappropriate reasons or to circumvent the application of the amnesty.

Chapter Two: Commission for Displaced Persons and Refugees

Article VII: Establishment of the Commission

The Parties hereby establish an independent Commission for Displaced Persons and Refugees (the "Commission"). The Commission shall have its headquarters in Sarajevo and may have offices at other locations as it deems appropriate.

Article VIII: Cooperation

The Parties shall cooperate with the work of the Commission, and shall respect and implement its decisions expeditiously and in good faith, in cooperation with relevant international and nongovernmental organizations having responsibility for the return and reintegration of refugees and displaced persons.

2. Members of the Commission must be of recognized high moral standing.

Article IX: Composition

3. The Commission may sit in panels, as provided in its rules and regulations. References in this Annex to the Commission shall include, as appropriate, such panels, except that the power to promulgate rules and regulations is vested only in the Commission as a whole.

4. Members appointed after the transfer described in Article XVI below shall be appointed by the Presidency of Bosnia and Herzegovina.

Article X: Facilities, Staff and Expenses

1. The Commission shall have appropriate facilities and a professionally competent staff, experienced in administrative, financial, banking and legal matters, to assist it in carrying out its functions. The staff shall be headed by an Executive Officer, who shall be appointed by the Commission.

2. The salaries and expenses of the Commission and its staff shall be determined jointly by the Parties and shall be borne equally by the Parties.

3. Members of the Commission shall not be held criminally or civilly liable for any acts carried out within the scope of their duties. Members of the Commission, and their families, who are not citizens of Bosnia and Herzegovina shall be accorded the same privileges and immunities as are enjoyed by diplomatic agents and their families under the Vienna Convention on Diplomatic Relations.

4. The Commission may receive assistance from international and nongovernmental organizations, in their areas of special expertise falling within the mandate of the Commission, on terms to be agreed.

5. The Commission shall cooperate with other entities established by the General Framework Agreement, agreed by the Parties, or authorized by the United Nations Security Council.

Article XI: Mandate

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. Claims may be for return of the property or for just compensation in lieu of return.

Article XII: Proceedings before the Commission

1. Upon receipt of a claim, the Commission shall determine the lawful owner of the property with respect to which the claim is made and the value of that property. The Commission, through its staff or a duly designated international or nongovernmental organization, shall be entitled to have access to any and all property records in Bosnia and Herzegovina, and to any and all real property located in Bosnia and Herzegovina for purposes of inspection,

evaluation and assessment related to consideration of a claim.

2. Any person requesting the return of property who is found by the Commission to be the lawful owner of that property shall be awarded its return. Any person requesting compensation in lieu of return who is found by the Commission to be the lawful owner of that property shall be awarded just compensation as determined by the Commission. The Commission shall make decisions by a majority of its members.

3. In determining the lawful owner of any property, the Commission shall not recognize as valid any illegal property transaction, including any transfer that was made under duress, in exchange for exit permission or documents, or that was otherwise in connection with ethnic cleansing. Any person who is awarded return of property may accept a satisfactory lease arrangement rather than retake possession.

4. The Commission shall establish fixed rates that may be applied to determine the value of all real property in Bosnia and Herzegovina that is the subject of a claim before the Commission. The rates shall be based on an assessment or survey of properties in the territory of Bosnia and Herzegovina undertaken prior to April 1, 1992, if available, or may be based on other reasonable criteria as determined by the Commission.

5. The Commission shall have the power to effect any transactions necessary to transfer or assign title, mortgage, lease, or otherwise dispose of property with respect to which a claim is made, or which is determined to be abandoned. In particular, the Commission may lawfully sell, mortgage, or lease real property to any resident or citizen of Bosnia and Herzegovina, or to either Party, where the lawful owner has sought and received compensation in lieu of return, or where the property is determined to be abandoned in accordance with local law. The Commission may also lease property pending consideration and final determination of ownership.

6. In cases in which the claimant is awarded compensation in lieu of return of the property, the Commission may award a monetary grant or a compensation bond for the future purchase of real property. The Parties welcome the willingness of the international community assisting in the construction and financing of housing in Bosnia and Herzegovina to accept compensation bonds awarded by the Commission as payment, and to award persons holding such compensation bonds priority in obtaining that housing.

7. Commission decisions shall be final, and any title, deed, mortgage, or other legal instrument created or awarded by the Commission shall be recognized as lawful throughout Bosnia and Herzegovina.

8. Failure of any Party or individual to cooperate with the Commission shall not prevent the Commission from making its decision.

Article XIII: Use of Vacant Property

The Parties, after notification to the Commission and in coordination with UNHCR and other international and nongovernmental organizations contributing to relief and reconstruction, may temporarily house refugees and displaced persons in vacant property, subject to final determination of ownership by the Commission and to such temporary lease provisions as it may require.

Article XIV: Refugees and Displaced Persons Property Fund

1. A Refugees and Displaced Persons Property Fund (the "Fund") shall be established in the Central Bank of Bosnia and Herzegovina to be administered by the Commission. The Fund shall be replenished through the purchase, sale, lease and mortgage of real property which is the subject of claims before the Commission. It may also be replenished by direct payments from the Parties, or from contributions by States or international or nongovernmental organizations.

2. Compensation bonds issued pursuant to Article XII(6) shall create future liabilities on the Fund under terms and conditions to be defined by the Commission.

Article XV: Rules and Regulations

The Commission shall promulgate such rules and regulations, consistent with this Agreement, as may be necessary to carry out its functions. In developing these rules and regulations, the Commission shall consider domestic laws on property rights.

Article XVI: Transfer

Five years after this Agreement takes effect, responsibility for the financing and operation of the Commission shall transfer from the Parties to the Government of Bosnia and Herzegovina, unless the Parties otherwise agree. In the latter case, the Commission shall continue to operate as provided above.

Article XVII: Notice

The Parties shall give effective notice of the terms of this Agreement throughout Bosnia and Herzegovina, and in all countries known to have persons who were citizens or residents of Bosnia and Herzegovina.

Article XVIII: Entry into Force

This Agreement shall enter into force upon signature.

Annex 3, Agreement on Elections

Article IV: Eligibility

Voters. Any citizen of Bosnia and Herzegovina aged 18 or older whose name

appears on the 1991 census for Bosnia and Herzegovina shall be eligible, in accordance with electoral rules and regulations, to vote. A citizen who no longer lives in the municipality in which he or she resided in 1991 shall, as a general rule, be expected to vote, in person or by absentee ballot, in that municipality, provided that the person is determined to have been registered in that municipality as confirmed by the local election commission and the Provisional Election Commission.

Such a citizen may, however, apply to the Commission to cast his or her ballot elsewhere. The exercise of a refugee's right to vote shall be interpreted as confirmation of his or her intention to return to Bosnia and Herzegovina. By Election Day, the return of refugees should already be underway, thus allowing many to participate in person in elections in Bosnia and Herzegovina. The Commission may provide in the electoral rules and regulations for citizens not listed in the 1991 census to vote.

Croatia

The Erdut Agreement, 12 November 1995

The Parties agree as follows:

1. There shall be a transitional period of 12 months which may be extended at most to another period of the same duration if so requested by one of the parties.

2. The U.N. Security Council is requested to establish a Transitional Administration, which shall govern the Region during the transitional period in the interest of all persons resident in or returning to the Region.

4. The Transitional Administration shall ensure the possibility for the return of refugees and displaced persons to their homes of origin. All persons who have left the Region or who have come to the Region with previous permanent residence in Croatia shall enjoy the same rights as all other residents of the Region. The Transitional Administration shall also take the steps necessary to reestablish the normal functioning of all public services in the Region without delay.

7. All persons have the right to return freely to their place of residence in the Region and to live there in conditions of security. All persons who have let the Region or who have come to the Region with previous permanent residence in Croatia have the right to live in the Region.

8. All persons shall have the right to have restored to them any property that was taken from them by unlawful acts or that they were forced to abandon and to just compensation for property that cannot be restored to them.

9. The right to recover property, to receive compensation for property that cannot be returned, and to receive assistance in reconstruction of damaged property shall be equally available to all persons without regard to ethnicity.

Georgia (Abkhazia)
Declaration on Measures for a Political Settlement of the Georgia/Abkhaz Conflict, 4 April 1994
4. The parties have agreed to and signed a quadripartite agreement, a copy of which is attached to the present declaration, on the repatriation of refugees and displaced persons. The agreement provides for the return of refugees/displaced persons in accordance with existing international practice, including the practice of UNHCR. A special commission on refugees/displaced persons, which shall include representatives of the parties, UNHCR, the Russian Federation, and CSCE in an observer capacity, shall begin its work in Sochi in mid-April 1994. The implementation of the agreement will begin upon the deployment of a peace-keeping force. 5.The parties reaffirm their request for the early deployment of a peace keeping operation and for the participation of a Russian military contingent in the United Nations peace-keeping force, as stated in the Memorandum of Understanding of 1 December 1993 (S/26875, annex) and the communiqué of 13 January 1994. The plan for carrying out the peace-keeping operation will be agreed upon with the parties to the conflict. The realization of the peace keeping operation should also promote the safe return of refugees/displaced persons. The parties again appeal to the United Nations Security Council to expand the mandate of the United Nations Observer Mission in Georgia (UNOMIG). Quadripartite agreement on voluntary return of refugees and displaced persons signed on 4 April 1994 The Abkhaz and Georgian sides, hereinafter referred to as the Parties, the Russian Federation and the United Nations High Commissioner for Refugees, Recalling Security Council resolutions 849 (1993) of 9 July 1993, 854 (1993) of 6 August 1993, 858 (1993) of 24 August 1993, 876 (1993) of 19 October 1993, 892 (1993) of 22 December 1993, 896 (1994) of 31 January 1994, 901 (1994) of 4 March 1994 and 906 (1994) of 25 March 1994, Recognizing that the right of all citizens to live in and to return to their country of origin is enshrined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, Noting conclusions 18 (XXXI) and 40 (XXXVI) of the Executive Committee of the Programme of the Office of the United Nations High Commissioner for Refugees, which constitute internationally agreed principles governing the repatriation of refugees, Acting in accordance with the Memorandum of Understanding signed by the Parties on 1 December 1993 and especially paragraph 4, under which Parties expressed their willingness to create conditions for the voluntary, safe and dignified return of displaced persons to their permanent places of residence in all regions of Abkhazia,

Recalling that resolution 428 (V) of 14 December 1950, by which the General Assembly of the United Nations adopted the statute of the Office of the United Nations High Commissioner for Refugees, ascribes to the High Commissioner the function of providing international protection to refugees and of seeking permanent solutions for the problems of refugees, inter alia, by promoting and facilitating their voluntary repatriation,

Given the responsibility entrusted to the United Nations High Commissioner for Refugees to act, under the Secretary-General's authority, as the international lead agency for the repatriation of displaced persons to Abkhazia,

Noting the desire of the Parties to cooperate with each other to achieve full observance of the principles and safeguards governing voluntary repatriation, Considering the need, therefore, to establish a framework to define modalities of such cooperation for implementation of the repatriation,

Noting that the Parties agree that a repatriation operation to Abkhazia will imply, prior to its implementation, that the security and living conditions in the areas of return are guaranteed.

HAVE AGREED ON THE FOLLOWING PROVISIONS:

1. The Parties agree to cooperate and to interact in planning and conducting the activities aimed to safeguard and guarantee the safe, secure and dignified return of people who have fled from areas of the conflict zone to the areas of their previous permanent residence.

2. For the purpose of the present agreement, the parties will guarantee the safety of refugees and displaced persons in the course of the voluntary repatriation and rehabilitation operations to be organized.

3. In implementing this voluntary repatriation programme, the Parties undertake to respect the following principles:

(a) Displaced persons/refugees have the right to return voluntarily to their places of origin or residence irrespective of their ethnic, social or political affiliation under conditions of complete safety, freedom and dignity;

(b) The voluntary character of the repatriation shall be ascertained and respected through appropriate arrangements;

(c) Displaced persons/refugees shall have the right to return peacefully without risk of arrest, detention, imprisonment or legal criminal proceedings.
Such immunity shall not apply to persons where there are serious evidences that they have committed war crimes and crimes against humanity as defined in international instruments and international practice as well as serious non-political crimes committed in the context of the conflict. Such immunity shall also not apply to persons who have previously taken part in the hostilities and are currently serving in armed formations, preparing to fight in Abkhazia. Persons falling into these categories should be informed through appropriate

channels of the possible consequences they may face upon return;

(d) The Parties shall ensure that returnees, upon return, will enjoy freedom of movement and establishment including the right to return to the areas where they lived prior to leaving the conflict zone or to the area of their choice;

(e) The Parties shall ensure that refugees and displaced persons, upon return, will get their expired documents (propiska, passport) extended and validated for their previous place of residence or the elected place of return;

(f) The Parties shall ensure that repatriants, upon return, will be protected from harassment, including unauthorized charges or fees and threat to life or property;

(g) Returnees shall, upon return, get back movable and immovable properties they left behind and should be helped to do so, or to receive whenever possible an appropriate compensation for their lost properties if return of property appears not feasible.

The Commission mentioned in paragraph 5 below will establish a mechanism for such claims. Such compensation should be worked out in the framework of the reconstruction/rehabilitation programmes to be established with a financial assistance through the United Nations Voluntary Fund;

(h) Displaced persons/refugees who choose not to return to Abkhazia shall continue to be assisted and protected until acceptable alternative solutions are found for such cases;

(i) In accordance with the fundamental principle of preserving family unity, where it is not possible for families to repatriate as units, a mechanism shall be established for their reunification in Abkhazia. Measures shall also be taken for the identification and extra care/assistance for unaccompanied minors and other vulnerable persons during the repatriation process;

(j) The Parties agree that refugees and displaced persons will be guaranteed unimpeded access to all available information on the situation in the areas where repatriation will take place. Such an information should be provided in the framework of a campaign to be launched by the Commission as mentioned in paragraph 9 (b) below.

4. For the purpose of the implementation of voluntary return of displaced persons and refugees to Abkhazia, a quadripartite Commission is hereby established.

5. The principal tasks of the Commission shall be to formulate, discuss and approve plans to implement programmes for the safe, orderly and voluntary repatriation of the refugees and displaced persons to Abkhazia from Georgia, the Russian Federation and within Abkhazia and for their successful reintegration. Such plans should include registration, transport, basic material assistance for a period of up to six months and rehabilitation assistance.

In order to create the conditions for the return of refugees and displaced persons, the Commission will establish a working group of experts to undertake an assessment of the level of damage to the economic and social infrastructure in Abkhazia, the availability of housing and the extent of damage to houses in the areas of return as well as the projected needs in rehabilitation/ reconstruction, with financial implications. This survey should be undertaken region by region according to the plan of return to be worked out and accepted by the Parties, bearing in mind that the Parties have agreed to start the repatriation operation with the Gali region.

6. The Commission shall be composed of four members, one being designated by each of the Parties and two representing the Russian Federation and the United Nations High Commissioner for Refugees. In addition, the Conference on Security and Cooperation in Europe (CSCE) will designate a representative to attend the Commission's meetings in an observer capacity. If circumstances do not allow the designated CSCE representative to attend such meetings, the Commission will keep the CSCE mission in Georgia informed on a regular basis on the progress of the Commission's work.

7. Any member of the Commission may, when attending any meeting of the Commission, be accompanied by such advisers as the Party designating that member may deem necessary. Where a member of the Commission is unable to attend any meeting of the Commission, the Party concerned may designate a substitute.

8. The Commission shall meet as often as required, but no less frequently than once every month. Meetings of the Commission may be convened at the request of any of the members and shall be held on the territory of the Russian Federation, except as the members of the Commission may otherwise agree. The Parties agree to guarantee the personal security of the members of the Commission and personnel involved in the activities agreed.

The first meeting of the Commission shall be scheduled as soon as possible and no later than one week after the adoption by the Security Council of a resolution on a mechanism ensuring the security conditions in the areas of return.

9. During its first meeting, the Commission will set out the modalities of the assessment mentioned in paragraph 5 above and will establish a plan concerning:

(a) The areas where repatriation will be primarily conducted according to the level of guaranteed security and preparedness;

(b) The implementation of an information campaign among the displaced person/refugee population to encourage voluntary return;

(c) The registration process of persons expressing their willingness to return;

(d) The activities needed to safeguard the safety of returnees based on the principles set out in paragraph 3 (a) to (j) above;

(e) The needs for financial, transport and basic material assistance to displaced persons/refugees as well as projected needs for rehabilitation/reconstruction of the areas of return as mentioned in paragraph 5 above.

10. The Parties agree that representatives of refugees and displaced persons shall be provided with facilities to visit the areas of return and to see for themselves arrangements made for their return.

11. In the event of disagreement within the Commission regarding the application and interpretation of this Agreement, where such disagreement cannot amicably be settled among the members of the Commission, the Commission shall refer such disagreements to the Parties and to the Russian Federation and the United Nations High Commissioner for Refugees.

THE PARTIES, THE RUSSIAN FEDERATION AND THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES FURTHER AGREE AS FOLLOWS:

(a) UNHCR shall have direct and unhindered access to all displaced persons/refugees from Abkhazia in order to undertake activities essential to the discharge of its mandate and operational and monitoring responsibilities;

(b) Travel shall be facilitated between and within all areas where refugees and displaced persons are located and areas of return for the personnel of the United Nations and other relevant international and non-governmental agencies cooperating with the United Nations in repatriation, reintegration and rehabilitation programmes. It shall include the free use of airspace and authorized airstrips and airports for relief flights and the exemption from taxes and duties of all goods imported for use in the voluntary repatriation programme of displaced persons/refugees from Abkhazia and for the provision of relief integration and rehabilitation assistance to the Abkhazian region by the United Nations and cooperating agencies, as well as the expeditious clearance and handling of such goods;

(c) The Russian Federation will guarantee unimpeded transit of humanitarian supplies through its territory for the purposes of the present Agreement;
(d) UNHCR shall establish local offices, as deemed appropriate, at locations to be approved by the Parties concerned, to facilitate voluntary repatriation, reintegration and rehabilitation;

(e) The security of the staff and property of the United Nations and the cooperating agencies shall be guaranteed;

(f) The allocation and continued use by the Parties, the United Nations and the cooperating agencies of particularly designated radio frequencies for radio communications between their offices, vehicles, and staff, in areas where refugees and displaced persons are located and in areas of return, shall be

provided.

Kosovo

Interim Agreement for Peace and Self-Government in Kosovo, 23 February 1999

Framework

Article II: Confidence-Building Measures

Return

3. The Parties recognize that all persons have the right to return to their homes. Appropriate authorities shall take all measures necessary to facilitate the safe return of persons, including issuing necessary documents. All persons shall have the right to reoccupy their real property, assert their occupancy rights in state-owned property, and recover their other property and personal possessions. The Parties shall take all measures necessary to readmit returning persons to Kosovo.

4. The Parties shall cooperate fully with all efforts by the United Nations High Commissioner for Refugees (UNHCR) and other international and non-governmental organizations concerning the repatriation and return of persons, including those organizations monitoring of the treatment of persons following their return.

Chapter 3

Conduct and Supervision of Elections

Article I: Conditions for Elections

1. The Parties shall ensure that conditions exist for the organization of free and fair elections, which include but are not limited to:

(c) an environment conducive to the return of displaced persons;

Article III: Central Election Commission

1. The Commission shall adopt electoral Rules and Regulations on all matters necessary for the conduct of free and fair elections in Kosovo, including rules relating to: the eligibility and registration of candidates, parties, and voters, including displaced persons and refugees; ensuring a free and fair elections campaign; administrative and technical preparation for elections including the establishment, publication, and certification of election results; and the role of international and domestic election observers.

Chapter 4b

Humanitarian Assistance, Reconstruction and Economic Development

3. The international community will provide immediate and unconditional humanitarian assistance, focusing primarily on refugees and internally displaced persons returning to their former homes. The Parties welcome and endorse the UNHCR's lead role in co-ordination of this effort, and endorse its intention, in close co-operation with the Implementation Mission, to plan an early, peaceful, orderly and phased return of refugees and displaced persons in conditions of safety and dignity.

ASIA

Afghanistan

Islamabad Accord, 7 March 1993

Recognizing the urgency of rehabilitation and reconstruction of Afghanistan and of facilitating the return of all Afghan refugees,

Effective steps shall be taken to facilitate the return of displaced persons to their respective homes and locations.

6. All public and private buildings, residential areas and properties occupied by different armed groups during the hostilities shall be returned to their original owners. Effective steps shall be taken to facilitate the return of displaced persons to their respective homes and locations;

Cambodia

Agreement on a Comprehensive Political Settlement of the Cambodia Conflict, 23 October 1991

PART III: HUMAN RIGHTS

Article 15

1) All persons in Cambodia and all Cambodian refugees and displaced persons shall enjoy the rights and freedoms embodied in the Universal Declaration of Human Rights and other relevant international human rights instruments.

PART V: REFUGEES AND DISPLACED PERSONS

Article 19

Upon entry into force of this Agreement, every effort will be made to create in Cambodia political, economic and social conditions conducive to the voluntary return and harmonious integration of Cambodian refugees and displaced persons.

Article 20

1) Cambodian refugees and displaced persons, located outside Cambodia,

shall have the right to return to Cambodia and to live in safety, security and dignity, free from intimidation or coercion of any kind.

2) The Signatories request the Secretary-General of the United Nations to facilitate the repatriation in safety and dignity of Cambodian refugees and displaced persons, as an integral part of the comprehensive political settlement and under the overall authority of the Special Representative of the Secretary-General, in accordance with the guidelines and principles on the repatriation of refugees and displaced persons as set forth in annex 4.

Annex II: Withdrawal, Ceasefire and Related Measures

Article XII: Repatriation and resettlement of displaced Cambodians

The military component of UNTAC will provide assistance as necessary in the repatriation of Cambodian refugees and displaced persons carried out in accordance with Articles 19 and 20 of this Agreement, in particular in the clearing of mines from repatriation routes, reception centres and resettlement areas, as well as in the protection of the reception centres.

Annex III: Elections

3. All Cambodians, including those who at the time of signature of this Agreement are Cambodian refugees and displaced persons, will have the same rights, freedoms and opportunities to take part in the electoral process.

Annex IV: Repatriation of Cambodian Refugees and Displaced Persons

PART I. INTRODUCTION

1. As part of the comprehensive political settlement, every assistance will need to be given to Cambodian refugees and displaced persons as well as to countries of temporary refuge and the country of origin in order to facilitate the voluntary return of all Cambodian refugees and displaced persons in a peaceful and orderly manner. It must also be ensured that there would be no residual problems for the countries of temporary refuge. The country of origin with responsibility towards its own people will accept their return as conditions become conducive.

PART II: CONDITIONS CONDUCIVE TO THE RETURN OF REFUGEES AND DISPLACED PERSONS

2. The task of rebuilding the Cambodian nation will require the harnessing of all its human and natural resources. To this end, the return to the place of their choice of Cambodians from their temporary refuge and elsewhere outside their country of origin will make a major contribution.

3. Every effort should be made to ensure that the conditions which have led to a large number of Cambodian refugees and displaced persons seeking refuge in other countries should not recur. Nevertheless, some Cambodian refugees and displaced persons will wish and be able to return spontaneously to their

homeland.

4. There must be full respect for the human rights and fundamental freedoms of all Cambodians, including those of the repatriated refugees and displaced persons, in recognition of their entitlement to live in peace and security, free from intimidation and coercion of any kind. These rights would include, inter alia, freedom of movement within Cambodia, the choice of domicile and employment, and the right to property.

5. In accordance with the comprehensive political settlement, every effort should be made to create concurrently in Cambodia political, economic and social conditions conducive to the return and harmonious integration of the Cambodian refugees and displaced persons.

6. With a view to ensuring that refugees and displaced persons participate in the elections, mass repatriation should commence and be completed as soon as possible, taking into account all the political, humanitarian, logistical, technical and socio-economic factors involved, and with the cooperation of the SNC.

7. Repatriation of Cambodian refugees and displaced persons should be voluntary and their decision should be taken in full possession of the facts. Choice of destination within Cambodia should be that of the individual. The unity of the family must be preserved.

PART III. OPERATIONAL FACTORS

8. Consistent with respect for principles of national sovereignty in the countries of temporary refuge and origin, and in close cooperation with the countries of temporary refuge and origin, full access by the Office of the United Nations High Commissioner for Refugees (UNHCR), ICRC and other relevant international agencies should be guaranteed to all Cambodian refugees and displaced persons, with a view to the agencies undertaking the census, tracing, medical assistance, food distribution and other activities vital to the discharge of their mandate and operational responsibilities; such access should also be provided in Cambodia to enable the relevant international organizations to carry out their traditional monitoring as well as operational responsibilities.

9. In the context of the comprehensive political settlement, the Signatories note with satisfaction that the Secretary-General of the United Nations has entrusted UNHCR with the role of leadership and coordination among intergovernmental agencies assisting with the repatriation and relief of Cambodian refugees and displaced persons. The Signatories look to all non-governmental organizations to coordinate as much as possible their work for the Cambodian refugees and displaced persons with that of UNHCR.

10. The SNC, the Governments of the countries in which the Cambodian refugees and displaced persons have sought temporary refuge, and the countries which contribute to the repatriation and integration effort will wish to

monitor closely and facilitate the repatriation of the returnees. An ad hoc consultative body should be established for a limited term for these purposes. The UNHCR, the ICRC, and other international agencies as appropriate, as well as UNTAC, would be invited to join as full participants.

11. Adequately monitored short-term repatriation assistance should be provided on an impartial basis to enable the families and individuals returning to Cambodia to establish their lives and livelihoods harmoniously in their society. These interim measures would be phased out and replaced in the longer term by the reconstruction programme.

12. Those responsible for organizing and supervising the repatriation operation will need to ensure that conditions of security are created for the movement of the refugees and displaced persons. In this respect, it is imperative that appropriate border crossing points and routes be designated and cleared of mines and other hazards.

13. The international community should contribute generously to the financial requirements of the repatriation operation.

Tajikistan

Protocol on the Fundamental Principles for Establishing Peace and National Accord in Tajikistan, 17 August 1995

2. The general agreement referred to shall consist of separate protocols on the following groups of problems:

(c) The voluntary, safe and dignified repatriation and reintegration of refugees, including legal, economic and social guarantees for their protection;

Agreement Between the President of the Republic of Tajikistan, E.S. Rakhmanov, and the leader of the United Tajik Opposition, S.A. Huri on the results of the meeting held in Moscow, 23 December 1996

Protocol on the Main Functions and Powers of the Commission on National Reconciliation

In connection with the beginning of a qualitatively new phase in the attainment of peace and national accord in Tajikistan and in accordance with the Agreement between the President of the Republic of Tajikistan, E. Sh. Rakhmonov, and the leader of the United Tajik Opposition, S. A. Nuri, the parties have taken the decision to establish for the transition period a Commission on National Reconciliation.

The main purposes of the Commission are the attainment of national reconciliation through the implementation of the agreements reached in the course of the inter-Tajik talks, the creation of an atmosphere of trust and mutual forgiveness, and the institution of a broad dialogue among the various political forces in the country in the interests of the restoration and strengthening of civil accord in Tajikistan.

For these purposes, the Commission is assigned the tasks of:

Implementing measures for the safe and appropriate return of the refugees, their active involvement in the social, political and economic life of the country and the provision of assistance in reconstruction of the housing and industrial and agricultural facilities destroyed by the war;

Statute of the Commission of National Reconciliation, 21 February 1997

5. The Commission shall comprise four sub-commissions:

(c) On refugee issues;

7. The Commission shall have the following functions and powers:

Implementing measures for the safe and appropriate return of the refugees and their active involvement in the social, political and economic life of the country, and provision of assistance in reconstruction of the housing and industrial and agricultural facilities destroyed by the war;

The Moscow Declaration, 27 June 1997

The President of Tajikistan and the leader of the United Tajik Opposition have agreed that the signing of the present General Agreement marks the beginning of the phase of full and interconnected implementation of the agreements reached, which will put an end once and for all to the fratricidal conflict in Tajikistan, ensure mutual forgiveness and amnesty, return the refugees to their homes, and create the conditions for the democratic development of society, the holding of free elections and the restoration of the country's economy destroyed by the many years of conflict. The highest national priorities of the country are peace and the national unity of all nationals of Tajikistan, regardless of their ethnic origin, political orientation, religion or regional affiliation.

Annex VIII - The Protocol on Refugees, 13 January 1997

With a view to overcoming the consequences of the civil war and achieving peace and national accord in the country, and in accordance with the Protocol on the fundamental principles for establishing peace and national accord in Tajikistan of 17 August 1995, the joint statement on the results of the fourth round of inter-Tajik talks in Almaty and the appeal by the President of the Republic of Tajikistan, Mr. Emomali S. Rakhmonov, and the leader of the United Tajik opposition, Mr. S. A. Nuri, to their fellow countrymen who had been forced to leave the country, adopted in Moscow on 23 December 1996, the delegations of the Republic of Tajikistan and the United Tajik opposition (hereinafter referred to as “the Parties”), have agreed as follows:

I. To step up mutual efforts to ensure the voluntary return, in safety and dignity, of all refugees and displaced persons to their homes, and to complete this

process within 12 to 18 months from the date of signature of this Protocol. With a view to ensuring their safety, honour and dignity, the Parties also call upon the United Nations, the Organization for Security and Cooperation in Europe (OSCE) and the office of the United Nations High Commissioner for Refugees (UNHCR) to provide assistance in order to ensure the safety of returning refugees and displaced persons and to establish and expand their presence at places where such persons are living.

2. The Government of the Republic of Tajikistan assumes the obligation to reintegrate returning refugees and displaced persons into the social and economic life of the country, which includes the provision to them of humanitarian and financial aid, assistance in finding employment and housing and the restoration of all their rights as citizens of the Republic of Tajikistan (including the return to them of dwellings and property and guaranteed uninterrupted service), and not to institute criminal proceedings against returning refugees or displaced persons for their participation in the political confrontation and the civil war, in accordance with the legislative acts in force in the Republic.

3. The Parties have decided to resume the work of the Joint Commission oil problems relating to refugees and, within one month from the date of signature of this protocol, with the assistance of UNHCR, to draw up a statute of the Commission.

4. The Parties have decided to instruct the Joint Commission, with the participation of representatives of local authorities and the United Tajik opposition for the period during which this Protocol is being implemented, to visit on a regular basis, in accordance with a separate timetable, refugee camps in the Islamic Republic of Afghanistan, places in the Commonwealth of Independent States (CIS) where there are concentrations of refugees, and districts in the Republic of Tajikistan to which refugees and displaced persons intend to return. Similar visits shall be organized by the Joint Commission to places where displaced persons live in large numbers. The above-mentioned timetable shall be agreed by the Joint Commission within one month from the date of signature of this Protocol,

5. The Parties appeal to the Governments of the CIS States to consider issuing temporary identity documents co refugees from Tajikistan and to assist UNHCR in carrying out additional measures to ensure the safety of refugees and defend their honour and dignity.

6. The Parties express their sincere gratitude to the United Nations, UNHCR, OSCE, donor countries and the Aga Khan Foundation for their assistance and at the same time make an urgent appeal to them and to the international Monetary Fund, the World Bank, the European Development Bank, the Islamic Bank and the Aga Khan Foundation to provide additional and substantial financial and material support co refugees and displaced persons and to the Joint Commission on problems relating to refugees, and also for the purpose of rehabilitating the national economy destroyed by the war and improving the well-being of the population.

Bangladesh

Chittagong Hill Tracts Peace Accord, 2 December 1997

D) (Gha) REHABILITATION, GENERAL AMNESTY AND OTHER MATTERS

Both sides have reached the following position and agreement to take programmes for restoring normal situation in Chittagong Hill Tracts area and to this end on the matters of rehabilitation, general amnesty and others related issues and activities:

1. An agreement has been signed between the government and the refugee leaders on March 9, 1997 with an aim to take back the tribal refugees from India's Tripura State based on the 20-point Facilities Package. In accordance with the said agreement repatriation of the refugees started since March 28, 1997. This process shall continue and with this in view, the Jana Sanghati Samiti shall provide all kinds of possible cooperation. The Task Force shall, after determination, rehabilitate the internally displaced tribal people of three districts.

AFRICA

Burundi

Arusha Peace and Reconciliation Agreement, 28 August 2000

Protocol I - Nature of the Burundi Conflict, Problems of Genocide and Exclusion and their Solutions

Article 7: Principles and measures relating to exclusion

10. Reinstatement of former refugees, taking into account experience gained before and during their exile.

Protocol II - Democracy and Good Governance

CHAPTER I

CONSTITUTIONAL PRINCIPLES OF THE POST-TRANSITION CONSTITUTION

Article 3: Charter of Fundamental Rights

15. All Burundian citizens shall have the right to move and settle freely anywhere in the national territory, as well as to leave it and return to it.

CHAPTER II

TRANSITIONAL ARRANGEMENTS

Article 12: Objectives

1. Exceptional and special arrangements concerning the government of Burundi shall be made pending the adoption and entry into force of a Constitution that is in conformity with the constitutional principles set forth in Chapter I of the present Protocol.

2. The objectives of the transitional arrangements shall be:

c. To ensure the repatriation, resettlement and reintegration of Burundians living outside the national territory and the rehabilitation of the sinistrés;

Article 18: Combating impunity during the transition

3. The transitional Government shall scrupulously fulfil the commitments contained in Protocol IV to the Agreement concerning the repatriation and resettlement of refugees and sinistrés as well as the restitution of property, including land, belonging to such persons.

Article 22: Interim period

6. Between the date of signature of the Agreement and the installation of the transitional Government, the Government shall:

a. Provide all necessary assistance and cooperation to international agencies, the political parties and the Implementation Monitoring Committee in regard to establishing structures and facilities and issuing the necessary documentation, including travel documents for all returning exiles, refugees and members of the armed groups as provided for in this and other protocols, as required by the international agencies or as directed by the Implementation Monitoring Committee;

10. No arrest of a returnee or refugee shall be permitted without notification and justification to the Implementation Monitoring Committee or a sub-committee or agency designated by it, and in any event no arrest or charging of a refugee or returnee or holder of political public office for a crime committed for a political purpose prior to the signature of the Agreement shall be permitted until the installation of the transitional Government.

Protocol III. Peace and Security for All

CHAPTER I

PEACE AND SECURITY FOR ALL

Article 5: Manifestations of the insecurity and violence

The insecurity and violence are manifested in:

b. Massive forcible displacements of individuals, families and groups who as a result leave their customary places of residence and become refugees outside

the country or remain inside the country as displaced and regrouped persons in camps, tents, shacks and other makeshift arrangements;

Article 9: Security-related regional and international issues

The three most pertinent security-related regional and international issues are:

b. The need to create conditions that encourage peaceful co-existence, foster a culture of peace and tolerance and cultivate a hospitable environment that encourages people to remain in their places of residence within their country rather than flee as refugees;

c. The need to promote participation in and respect for the international conventions on refugees.

CHAPTER III

PERMANENT CEASEFIRE AND CESSATION OF HOSTILITIES

Article 26: General principles

1. The following principles are agreed upon:

d. Humanitarian assistance shall be facilitated through humanitarian corridors in order to render assistance to displaced persons, refugees and other sinistrés;

Article 27: Verification and supervision

3. Maintenance of peace and security

c. All embassies of Burundi in neighbouring and other countries providing shelter for Burundian refugees and residents shall provide them with passports, identity papers and any other requisite documents to which all Burundian citizens are entitled;

Protocol IV, Reconstruction and Development

Preamble

Have agreed:

1. To support the rehabilitation and resettlement of the refugees and sinistrés by complying with the provisions of Chapter I of the present Protocol;

CHAPTER I

REHABILITATION AND RESETTLEMENT OF REFUGEES AND SINISTRES

Article 1: Definitions

1. For the definition of the term "refugee", reference is made to international conventions, including the 1951 Geneva Convention Relative to the Status of Refugees, the 1966 Protocol Relative to the Status of Refugees and the 1969 Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa.

2. The term "sinistrés" designates all displaced, regrouped and dispersed persons and returnees.

Article 2: Principles governing return, resettlement and reintegration

1. The Government of Burundi shall encourage the return of refugees and sinistrés and resettle and reintegrate them. It shall seek the support of other countries and international and non-governmental organizations in carrying out this responsibility.

2. It shall respect the following principles:

a. All Burundian refugees must be able to return to their country;

b. Refugees no longer in their first country of asylum are entitled to the same treatment as other returning Burundian refugees;

c. Return must be voluntary and must take place in dignity with guaranteed security, and taking into account the particular vulnerability of women and children;

d. The reception mechanisms must be put in place in advance of the return;

e. Returnees must have their rights as citizens and their property restored to them in accordance with the laws and regulations in force in Burundi after the entry into force of the Agreement;

f. All sinistrés wishing to do so must be able to return to their homes;

g. Specific conditions must be provided for sinistrés who believe that they can no longer return to their property, so as to enable them to return to normal socio-professional life;

h. In the return of the refugees and the resettlement and reintegration of the returnees and displaced and regrouped persons, the principle of equity, including gender equity, must be strictly applied in order to avoid any measure or treatment that discriminates against or favours any one among these categories.

Article 3: Preparatory activities

The Government shall undertake the following preparatory activities:

a. Establishing and constituting a National Commission for the Rehabilitation of Sinistrés (CNRS), which shall have the mandate of organizing and coordinating, together with international organizations and countries of asylum, the return of refugees and sinistrés, assisting in their resettlement and reintegration, and dealing with all the other issues listed in the report of Committee IV. To this end, it shall draw up a plan of priorities. The members of the CNRS shall be drawn inter alia from the participating parties and the Government of Burundi, and shall elect the Commission's chairperson;

b. Establishing and constituting a Sub-Commission of the CNRS with the specific mandate of dealing with issues related to land as set out in article 8 (j) of the present Protocol;

c. Convening, in collaboration with the countries of asylum and the Office of the United Nations High Commissioner for Refugees, the Tripartite Commissioner, involving in it representatives of the refugees and international observers;

d. Requesting international organizations and the host countries concerned to conduct a gender and age disaggregated census of the refugees, including the old caseload refugees (1972);

e. Conducting a multi-dimensional census of the sinistrés;

f. Organizing information and awareness campaigns for refugees and sinistrés as well as visits to their places of origin;

g. Undertaking information and awareness campaigns on the mechanisms for peaceful coexistence and return to collines of origin;

h. Setting up reception committees where they do not yet exist. The role of these committees shall be to receive and provide support services for all the sinistrés returning to their homes, ensure their security and assist them in organizing their socio-economic reintegration.

Article 4: Guidelines governing resettlement and integration

The CNRS shall decide on the activities for the resettlement and integration of refugees and sinistrés in accordance with the priority plan taking into account the availability of resources, in order to achieve the following aims and objectives:

a. To ensure the socio-economic and administrative reintegration of the sinistrés;

b. To give all returning families, including female- and child-headed families, food aid, material support and assistance with health, education, agriculture and reconstruction until they become self-sufficient;

c. To provide communes, villages and collines with assistance in the

reconstruction of community infrastructures and with support for income-generating activities, paying special attention to women and enhancing their roles in building and sustaining families and communities;

d. To settle all those who believe that they cannot yet return on sites close to home, in order to enable them to go and till their fields initially and return to their land later on;

e. To encourage, to the extent possible, grouped housing in the reconstruction policy in order to free cultivable land;

f. To ensure equity in the distribution of resources between the ethnic groups on the one hand and the provinces on the other, and to avoid overlap between the various parties involved;

g. To promote the participation of the population in the resettlement activities;

h. To help returnees to recover the property and bank accounts left in Burundi before their exile and whose existence has been duly proven;

i. To offer intensive language courses for returnees to mitigate the language problems;

j. To assist returnees in other areas such as medical services, psycho-social support, social security and retirement, education of children and the equivalency of diplomas awarded outside Burundi.

Article 5: Actions with regard to returnees in their country of asylum

The Government shall undertake the following actions with regard to returnees in their country of asylum:

a. Helping returnees settle their disputes in their country of asylum relating notably to immovable property, bank accounts, social security, etc;

b. In the context of agreements between countries or social security institutions, helping those who were employed in the country of asylum receive social security benefits to which they are entitled in respect of such employment;

c. Studying ways of indemnifying and compensating returnees for property in the country of asylum they are unable to take with them, profit from or sell;

d. Assisting pupils and students in their two final years of study in primary, secondary and higher education wishing to complete their studies in the country of asylum.

Article 6: Other actions

Any other action decided upon by the CNRS in accordance with the priority

plan and in the light of available resources may be taken.

Article 7: Access and safety of international personnel

The Government shall allow international organizations and international and local non-governmental organizations unrestricted access to returnees and other sinistrés for purposes of the delivery of humanitarian assistance. It must guarantee the safety of the staff of such organizations and must also facilitate the provision of short-term aid for repatriation, appropriately supervised and without discrimination.

Article 8: Issues relating to land and other property

To resolve all issues relating to land and other property, the following principles and mechanisms shall be applied:

a. Property rights shall be guaranteed for all men, women and children. Compensation which is fair and equitable under the circumstances shall be payable in case of expropriation, which shall be allowed only in the public interest and in accordance with the law, which shall also set out the basis of compensation;

b. All refugees and/or sinistrés must be able to recover their property, especially their land;

c. If recovery proves impossible, everyone with an entitlement must receive fair compensation and/or indemnification;

d. Refugees who do not return may receive a just and equitable indemnification if their land had been expropriated without prior indemnification and in contravention of the principle set out in sub-paragraph (a) of the present article;

e. The policy with respect to distribution of State-owned land shall be reviewed so that priority can be given to the resettlement of sinistrés;

f. An inventory of destroyed urban property shall be drawn up with a view to making it habitable in order to redistribute it or return it as a priority to the original owners;

g. A series of measures shall be taken in order to avoid subsequent disputes over land, including the establishment of a register of rural land, the promulgation of a law on succession and, in the longer term, the conduct of a cadastral survey of rural land;

h. The policy of distribution or allocation of new lands shall take account of the need for environmental protection and management of the country's water system through protection of forests;

i. Burundi's Land Act must be revised in order to adjust it to the current

problems with respect to land management;

j. The Sub-Commission on Land established in accordance with article 3 (b) of the present Protocol shall have the specific mandate of:

i. Examining all cases of land owned by old caseload refugees and state-owned land;

ii. Examining disputed issues and allegations of abuse in the (re)distribution of land and ruling on each case in accordance with the above principles;

k. The Sub-Commission on Land must, in the performance of its functions, ensure the equity, transparency and good sense of all its decisions. It must always remain aware of the fact that the objective is not only restoration of their property to returnees, but also reconciliation between the groups as well as peace in the country.

Article 9: National Fund for Sinistrés

A National Fund for Sinistrés shall be established, and shall derive its funding from the national budget and from grants by bilateral and multilateral aid agencies or assistance from non-governmental organizations.

Article 10: Vulnerable groups

The Government shall ensure, through special assistance, the protection, rehabilitation and advancement of vulnerable groups, namely child heads of families, orphans, street children, unaccompanied minors, traumatized children, widows, women heads of families, juvenile delinquents, the physically and mentally disabled, etc.

Chad

El Geneina Agreement, 31 October 1992

Text not available

National Reconciliation Agreement, 3 October 1997

Text not available

Congo

Accord de Cessez-le-Feu de Cessation des Hostilites, 29 December 1999

Article 4: The cease-fire and end of hostilities Monitoring Commission is divided into working committees, namely:

2. The committee for the resettlement of displaced and exiled people in their habitual place of residence;

Djibouti
Accord de paix et de la reconciliation nationale, 26 December 2000
Part III. Management of Return to Peace d) The FRUD undertakes to encourage refugees and displaced persons in Djibouti, located outside the country because of war, to return home. To this end, the (FRUD) is responsible for presenting the government with a list of names of people involved, so that the Djibouti government provide them with support and assistance.
Accord cadre de reforme et de concorde civil, 7 February 2000
Article 1 The rehabilitation of areas affected by civil conflict will be conducted to enable civilian refugees, displaced or affected by the conflict return to their places of residence, occupation, production, under the best conditions.
Liberia
Banjul IV Agreement, 21 December 1990
3. The warring parties agree to seek assistance from ECOWAS and other friendly governments and organizations to help repatriate and resettle Liberians prior to the All Liberia Conference.
Cotonou Accord, 25 July 1993
Part II Political Issues Section C Article 15: Elections Modalities 3. Voters Registration: Voters Registration shall commence as soon as possible having due regard for the need to expedite repatriation; Section F Article 18: Repatriation of Refugees 1. The Parties hereby commit themselves to immediately and permanently bring to an end any further external or internal displacement of Liberians and to create the conditions that will allow all refugees and displaced persons to, respectively, voluntarily repatriate and return to Liberia to their places of origin or habitual residence under conditions of safety and dignity. 2. The Parties further call upon Liberian refugees and displaced persons to return to Liberia and to their places of origin or habitual residence and declare

that they shall not be jeopardized in any ethnic, political, religious, regional or geographical considerations.

3. The Parties also call upon the relevant organizations of the United Nations system, particularly the UNHCR and UNDP, other inter-governmental and non-governmental organizations, to implement programmes for the voluntary repatriation, return and reintegration of the Liberian refugees and internally displaced persons.

4. The Parties proclaim that they shall, jointly or individually, cooperate in all necessary ways with themselves and with the above-mentioned organizations in order to facilitate the repatriation, return and reintegration of the refugees and displaced persons. Amongst others, they agree to:

a) establish all necessary mechanisms or arrangements, such as joint repatriation committees, which would facilitate contacts, communications and work with the relevant organizations for purposes of implementing the repatriation, return and reintegration operation and to enable effective decision-making and implementation of the relevant activities:

b) facilitate access by UNHCR and other organizations to the refugees and displaced persons who have returned so as to deliver the necessary humanitarian assistance and programmes and monitor their situation;

c) guarantee and provide security to UNHCR and the other relevant organizations, their staff, vehicles, equipment and resources necessary to carry out their work;

d) provide all other necessary facilities and support that will be necessary to facilitate the implementation of the return, voluntary repatriation and reintegration of refugees and displaced persons.

Akosombo Peace Agreement, 12 September 1994

The agreement updates the Cotonou Agreement.

Abuja Peace Agreement, 19 August 1995

The agreement updates the Cotonou Agreement.

Abuja II Peace Agreement, 17 August 1996

The agreement updates the Cotonou Agreement.

Mozambique

Agreement on Principles of the Electoral Act (Protocol III), 12 March 1992

III. Liberty of movement and freedom of residence

All citizens shall have the right to move about throughout the country without having to obtain administrative authorization.

All citizens have the right to choose to reside anywhere in the national territory and to leave or return to the country.

IV. Return of Mozambican refugees and displaced persons and their social reintegration

(a) The parties undertake to co-operate in the repatriation and reintegration of Mozambican refugees and displaced persons in the national territory and the social integration of war-disabled;

(b) Without prejudice to the liberty of movement of citizens, the Government shall draw up a draft agreement with Renamo to organise the necessary assistance to refugees and displaced persons, preferably in their original places of residence. The parties agree to seek the involvement of the competent United Nations agencies in the drawing up and implementation of this plan. The International Red Cross and other organisations to be agreed upon shall be invited to participate in the implementation of the plan;

(c) Mozambican refugees and displaced persons shall not forfeit any of the rights and freedoms of citizens for having left their original places of residence;

(d) Mozambican refugees and displaced persons shall be registered and included in the electoral rolls together with other citizens in their places of residence;

(e) Mozambican refugees and displaced persons shall be guaranteed restitution of property owned by them which is still in existence and the right to take legal action to secure the return of such property from individuals in possession of it.

Acordo Geral de Paz, 4 October 1992

Protocol VII Donors' Conference

1. The Parties decide to request the Italian Government to convene a conference of donor countries and organisations to finance the electoral process, emergency programmes and programmes for the reintegration of displaced persons, refugees and demobilised soldiers.

Rwanda

Protocol of Agreement between the Government of the Republic of Rwanda and the Rwandese Patriotic Front on the Rule of Law, 18 August 1992

Chapter I: National Unity

Article 4

The two parties acknowledge that the national unity of the people of Rwanda cannot be achieved without a definitive solution to the problem of Rwandese refugees. They recognize that the return of the Rwandese refugees to their country is an inalienable right and represents a factor of peace, unity and national reconciliation. They undertake not to hinder the free exercise of this right by the refugees.

Protocol of Agreement on Power-Sharing within the Framework of a Broad-Based Transitional Government between the Government of the Republic of Rwanda and the Rwandese Patriotic Front, 12 July 1992

Section 2: The Broad-based Transitional Government

Article 13

The current structure of the Government, namely, the number and appellation of Ministries, shall remain unchanged. However, a Secretariat of State in the Prime Minister's Office in charge of Social Rehabilitation and Integration shall be established.

It shall be responsible for:

1. Repatriation and social and economic reintegration of the Rwandese refugees who may wish to go back home;

Section 2: The Broad-based Transitional Government

Sub-Section 5: Outline of the Broad-based Transitional Government Programme

E. Repatriation and Reintegration of Refugees

Repatriate and reintegrate all Rwandese refugees who may wish to go back home, following the modalities specified in the Peace Agreement.

Protocol of Agreement between the Government of the Republic of Rwanda and the Rwandese Patriotic Front on the Repatriation of Rwandese Refugees and the Resettlement of Displaced Persons, 9 June 1993

The Government of the Republic of Rwanda on one hand, and the Rwandese Patriotic Front on the other;

Agree on the following provisions on the repatriation of Rwandese refugees and the resettlement of displaced persons.

Chapter I: Repatriation of Rwandese Refugees

Section 1: Voluntary Return and Repatriation

Sub-Section 1: Basic Principles

Article 1

The return of Rwandese refugees to their country is an inalienable right and constitutes a factor of peace, national unity, and reconciliation.

Article 2

The return is an act of free will on the part of each refugee. Any Rwandese refugee who wants to go back to his country will do so without any precondition whatsoever.

Each person who returns shall be free to settle down in any place of their choice inside the country, so long as they do not encroach upon the rights of other people.

Article 3

For purposes of settling returnees, the Rwandese Government shall make lands available, upon their identification by the “Commission for Repatriation” so long as they are not currently occupied by individuals.

The Commission shall be at liberty to explore and choose, without any restriction, resettlement sites throughout the national territory. The selection of sites, their occupation and farming shall take due consideration of the protection of endangered animal species, especially the mountain gorilla. Depending on the protection requirements and the planned farming development activities, the transfer of those species into compatible ecosystems is recommended.

Article 4

The right to property is a fundamental right for all the people of Rwanda. All refugees shall therefore have the right to repossess their property on return.

The two parties recommend, however, that in order to promote social harmony and national reconciliation, refugees who left the country more than 10 years ago should not reclaim their properties, which might have been occupied by other people. The Government shall compensate them by putting land at their disposal and shall help them to resettle.

As for estates which have been occupied by the Government, the returnee shall have the right for an equitable compensation by the Government.

Article 5

The repatriation exercise shall aim at achieving a harmonious and definitive integration.

Article 6

The repatriation process must mesh with the economic changes underway in the country.

Article 7

The principle of dual citizenship is hereby accepted. The laws governing the Rwandese citizenship shall be reviewed accordingly.

Sub-Section 2: The Beneficiaries of the Programme for the Return and Repatriation

Article 8

The Programme for the Return and the Repatriation shall be designed solely for Rwandese Refugees.

Shall qualify as a Rwandese refugee:

1. Anyone in possession of documents issued by the Office of the United Nations High Commissioner for Refugees (UNHCR), testifying that the bearer is a Rwandese refugee;

2. Any Rwandese national who declares himself to be a Rwandese refugee, but who is not registered with the Office of the UNHCR.

Sub-Section 3: Repatriation Procedures

Article 9

Upon the recommendation of the Secretariat of State for Rehabilitation and Social Integration, the Broad-Based Transitional Government shall set up a Commission for Repatriation composed of Government, UNHCR, OAU and Refugee representatives.

Article 10

The Commission shall have, as a general mandate, to finalize and to implement a programme for the repatriation and reintegration of returnees.

The concrete missions of the Commission shall be as follows:

1. Conduct a socio-economic survey of refugees;
2. Organize a pre-repatriation census and registration of returnees;
3. Conduct an information and sensitization campaign both to the refugee community and the population within the country

4. Identify settlement sites, supervise the distribution of plots and establishment of basic infrastructures such as Reception Centres, Health Centres, Educational Centres, etc.;
5. Make travel arrangements for all returnees, where necessary, and arrangements for the transport of their property;
6. Supervise all kinds of assistance for the returnees, such as food aid, farming tools, building materials, domestic items, seeds, etc.;

That Commission may set up Committees, where necessary, for the execution of some of its missions.

Article 11

For border crossings, a list of items subject to an export ban in the country of asylum and to an import ban in Rwanda shall be communicated in advance to refugees opting for repatriation.

Property and assets of returnees shall be exempted from all import duties and taxes, except for commercial goods.

The exchange regulations shall be communicated to returnees and facilitated by the appropriate authorities.

Customs formalities shall also be specified by the country of asylum and by Rwanda.

The Secretariat of State for Rehabilitation and Social Integration, in coordination with Immigration and Emigration Services, shall provide facilities at border posts and at the International airport, for the reception of returnees who shall have opted to go back home with their own means.

Sub-Section 4: Assistance

Article 12

The repatriation funding programme shall provide for provisional accommodation centres on the settlement sites in rural or in urban areas, in existing or those to be built, on condition that the latter are built for ultimate use.

Returnees at that time shall be fully taken care of, including an initial free medical check-up.

Article 13

Returnees shall provisionally be accommodated in shelters built on plots allocated to them, but they shall rapidly be given a set of building materials to enable them to build their own houses and design them in accordance with model development schemes drawn up by the Commission for Repatriation.

Article 14

Upon their arrival in the country, repatriates shall each be paid a small amount of money to enable them to meet vital needs not catered for by the aid programme.

Article 15

With the assistance of the International Community, the Rwandese Government shall provide assistance to the returnees, in the following areas:
1. food aid;
2. domestic items;
3. farming tools;
4. building materials;
5. health;
6. education.

The same assistance shall equally be provided to those returnees who may go back to their places of origin.

Article 16

Food aid shall be provided for a period of at least 15 months, after which conditions for the continued supply of that aid shall be reviewed.

Article 17

Each family of returnees shall be provided with basic items such as kitchen utensils and bed and beddings.

Article 18

The programme for the settlement of returnees shall also avail a set of farming tools and seeds, preferably selected to meet the soil and climate requirements in the area. In so doing, it shall enable the repatriated farmers to undertake farming activities as soon as possible.

Article 19

The repatriation programme shall also include the supply of medicines and various equipment for the existing or newly established Health Centres.

Vulnerable groups, i.e. women, children, the aged people and the handicapped shall be specifically taken care of.

Article 20

A programme of assistance for children admitted in the educational system shall be established and tailored in such a way as to cater for school fees, funds for the purchase of uniforms and school equipment for two academic

years.

Article 21

The returnees who shall take up activities other than farming, but are not able to take care of themselves, shall each benefit from some of the assistance programmes mentioned above especially:

1. Accommodation and food aid for a period of 6 months;
2. basic items such as kitchen utensils, bed and beddings

The Rwandese Government shall establish, through the Ministry of Labour and Social Affairs and the Secretariat of State for Rehabilitation and Social Integration, mechanisms for the orientation and follow-up of job seekers.

Sub-Section 5: Integration Modalities

Article 22

Returnees may benefit from opportunities availed by the Development Projects designed for the enhancement of employment in the public and private sectors, in the same conditions as residents.

Article 23

The Rwandese Government shall undertake negotiations with international funding institutions, within the framework of the Structural Adjustment Programme (SAP), so that the absorption capacities of the Public Sector could be enhanced.

There are certain sectors, however, which already hold out employment opportunities, such as Education, Health and the Judiciary.

A returnee who shall be integrated in the public sector shall be employed at the level to be determined on the basis of their qualification and professional experience.

Employment shall not be subjected to any precondition and criteria other than the age for employment and retirement.

Article 24

Returnees who have contributed to the Social Security in Rwanda may claim their dues, either for themselves or their beneficiaries.

As for those who have been contributing to the Social Security abroad, the Rwandese Government shall negotiate with the countries concerned so as to arrange for the compensation or transfer of their dues.

Article 25

Lack of knowledge of Kinyarwanda or French shall not constitute an obstacle to employment and discharge of duties within the public sector.

During the first three years of service, with effect from the date of appointment, the returnees shall use those languages they are most familiar with, and shall take intensive French or Kinyarwanda courses. At the end of that period, consideration of this facility shall be re-examined in order to determine whether it would be maintained or not.

To that effect, a programme of linguistic support as well as translation and interpretation services shall be organized, according to the needs, soon after the establishment of the Broad-Based Transitional Government, using funds provided for in the Plan of Action for returnees or any other funds.

Article 26

The existing Commissions on the Equivalence of diplomas shall include qualified personnel among returnees and shall pay special attention to that problem.

Diplomas and certificates internationally recognised shall be considered for purposes of employment in the educational institutions or appointment to professional posts, in accordance with the UNESCO grading regulations and systems.

Article 27

The access to employment opportunities in the Private Sector and the establishment of new enterprises in the country have been liberalized within the framework of the Structural Adjustment Programme (SAP). They shall be open to returnees without any preconditions, and under the same conditions as residents.

Government role in that field will be to reactivate support to existing firms, promote new investments and simplify formalities required to get started in the Private Sector. The Plan of Action shall also include a Guarantee Security Fund, so as to facilitate access to loans by returnees.

Article 28

The Commission for Repatriation shall develop settlement sites. The sites shall be provided with basic socioeconomic infrastructures such as schools, Health Centres, water, access roads, etc.

The Housing scheme in these areas shall be modelled on the “village” grouped type of settlement to encourage the establishment of development centres in the rural area and break with the traditional scattered housing.

Article 29

The programme for the reintegration of returnees shall provide additional school facilities, by expanding existing schools or creating new infrastructures to accommodate the returnee children already at school or of school age.

Article 30

For purposes of ensuring a smooth integration into the educational system in the country, and avoiding that students interrupt their studies and suffer adverse effects, a number of measures shall be taken:

1. During the first year, education should be provided in the language used in the country of asylum.
2. Within the first three months, intensive French courses should be organised for teachers and students, especially for students in the senior level of primary school and for students in secondary schools and institutions of higher learning, from the anglophone countries.
3. Some of the aspects of adaptation may be catered for in the private educational system.
4. The Plan of Action for Rwandese refugees shall take in charge students in their last two years of the primary, secondary schools and institutions of higher learning who may wish to stay behind and complete their studies in the host countries, if the educational systems in which they were studying are not available in Rwanda. Their certificates shall be recognized in accordance with the UNESCO system of equivalence of diplomas, certificates, etc.

However, special attention shall be given to the writing and reading of Kinyarwanda through additional remedial lessons, to enable new pupils and any other who might experience similar difficulties to catch up with those who are more conversant with the language.

Sub-Section 6: Implementation of the Overall Programme of Repatriation

Article 31

In accordance with the mandate entrusted to them by the Dar es Salaam Summit of 19th February, 1991, the UNHCR and the OAU shall organize, within six (6) months after the establishment of the Broad-Based Transitional Government, a Donors' Conference for the financing of projects earmarked in the Plan of Action for the Rwandese refugees.

In addition to other internal sources of funding, the Rwandese Government shall also rely on bilateral cooperation to support the Repatriation Programme.

Article 32

The implementation, at the political and administrative level, of the Repatriation Programme shall be supervised by the Secretariat of State for Rehabilitation and Social Integration.

For the technical implementation of the various components of the Repatriation Programme, the Government of Rwanda and the UNHCR shall preferably resort to those NGOs with an established reliability, taking also their respective specialization into account. As such, one or several NGOs shall undertake site development activities, building activities, and the distribution of food aid.

Sub-Section 7: Timetable for Repatriation

Article 33

All the returnees having the means to settle themselves without recourse to Government assistance may do so, soon after the signing of the Peace Agreement.

To that end, Rwandese Embassies shall issue travel documents to all Rwandese refugees who wish to go back to Rwanda.

Article 34

With respect to repatriation in groups, the following programme of sequence is envisaged:

1. Within six (6) months after the establishment of the Broad-Based Transitional Government, the UNHCR and the OAU shall organize a Donors Conference on the financing of the Repatriation Programme.
2. Within six (6) months after the establishment of the Broad-Based Transitional Government, tripartite agreements between Rwanda, the UNHCR and individual countries in the Region and the UNHCR shall have been concluded on issues pertaining to the repatriation of refugees.
3. Within Six (6) months after its establishment, the Broad-Based Transitional Government shall undertake operations for the preparation of settlement sites.
4. Within nine (9) months following the establishment of that Government, the repatriation of the first batch of returnees may begin.

Section 2: Other Repatriation Solution: Settlement in the Host Country

Article 35

The Broad-Based Transitional Government shall take and implement measures, including through bilateral agreements, for the protection of the Rwandese nationals who shall have opted to settle in the host countries as immigrants.

Those immigrants shall fully enjoy the same rights as all other Rwandese citizens.

Chapter II: Return of Persons Displaced by War and Social Strifes

Section 1: Preparatory Measures

Article 36

The organized return of persons displaced as a result of war and social strife shall be done after the following preparatory measures have been taken:

1. Deployment of the International Neutral Force.
2. Disengagement of Forces in the war zones.
3. Establishment of the Broad-Based Transitional Government.
4. Clearance of mines in the war zones.
5. Planning and provision of humanitarian assistance in essential services.

Section 2: Administration and Security in the War Zones

Article 37

The administration entities established before the outbreak of war shall be reconstituted.

Article 38

The socio-economic services established before the outbreak of war, especially in the educational, health, justice, youth, trade, agricultural and animal husbandry sectors at the level of administration entities in the war zones shall resume their activities.

Article 39

The Broad-Based Transitional Government shall determine mechanisms of appointing local authorities in these zones.

Article 40

The clearance of mines in the zones shall be conducted by the International Neutral Force, in collaboration with
the Army Command High Council.

Article 41

Security shall be ensured by the local police to be provided with adequate means and assisted, where necessary, by the National Gendarmerie.

Section 3: Humanitarian Assistance

Article 42

Humanitarian Aid shall be distributed by the Secretariat of State for Rehabilitation and Social Integration, assisted by the Humanitarian Agencies.

Article 43

The humanitarian aid shall consist of:

1. Food aid;
2. Domestic items;
3. Farming tools;
4. Building materials;
5. Health care and Medicines;
6. Education (School equipment, uniforms, school fees for a period of two years);
7. Transport to their places of domicile for those who cannot afford it;
8. Labour costs for the construction of houses;
9. Seeds;
10. Establishment of temporary shelters.

Section 4: Timetable and Modalities for Return

Article 44

As soon as the preparatory measures spelled out in Article 36 of the present Protocol are put in place, the Broad-Based Transitional Government shall issue directives for the return of displaced persons.

Article 45

The return of war displaced persons to their homes shall, as much as possible, be coordinated with the return of the refugees who left the country during the war, as well as that of persons displaced as a result of social strife.

Arusha Accords, 4 August 1993

Recognizing that the unity of the Rwandese people cannot be achieved until a definitive solution to the problem of Rwandese refugees is found and that the return of Rwandese refugees to their country is an inalienable right and constitutes a factor for peace and national unity and reconciliation;

Noting the Protocol of Agreement on the repatriation of Rwandese refugees and the Resettlement of Displaced Persons, signed at ARUSHA on 9th June, 1993;

Sierra Leone

Peace Agreement Between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone, 7 July 1999

Part Two, Governance

Article VI: Commission for the Consolidation of Peace

1. A Commission for the Consolidation of Peace (hereinafter termed the CCP), shall be established within two weeks of the signing of the present Agreement to implement a post-conflict programme that ensures reconciliation and the

welfare of all parties to the conflict, especially the victims of war. The CCP shall have the overall goal and responsibility for supervising and monitoring the implementation of and compliance with the provisions of the present Agreement relative to the promotion of national reconciliation and the consolidation of peace.

2. The CCP shall ensure that all structures for national reconciliation and the consolidation of peace already in existence and those provided for in the present Agreement are operational and given the necessary resources for realizing their respective mandates. These structures shall comprise:

(vii) the National Commission for Resettlement, Rehabilitation and Reconstruction;

Part Five, Humanitarian, Human Rights and Socio-Economic Issues

Article XXII: Refugees and Displaced Persons

The Parties through the National Commission for Resettlement, Rehabilitation and Reconstruction agree to seek funding from and the involvement of the UN and other agencies, including friendly countries, in order to design and implement a plan for voluntary repatriation and reintegration of Sierra Leonean refugees and internally displaced persons, including non-combatants, in conformity with international conventions, norms and practices.

Article XXIII: Guarantee of the Security of Displaced Persons and Refugees

As a reaffirmation of their commitment to the observation of the conventions and principles of human rights and the status of refugees, the Parties shall take effective and appropriate measures to ensure that the right of Sierra Leoneans to asylum is fully respected and that no camps or dwellings of refugees or displaced persons are violated.

Abuja Ceasefire Agreement, 10 November 2000

5. The parties undertake, with a view to restoring the authority of the Government throughout the entire territory of Sierra Leone, to ensure free movement of persons and goods, unimpeded movement of humanitarian agencies, and of refugees and displaced persons.

Sudan (Southern Sudan)

Khartoum Agreement, 21 April 1997

Chapter Three - Political Issues

In the field of rehabilitation of the war affected areas, the following shall be observed:

1. The Federal Government and the Coordinating Council shall work to attract loans and aid from the sisterly and friendly countries and international benevolent organisations to rehabilitate the economic projects which ceased to

function or were damaged because of the war affected areas and resettlement of returnees and displaced persons.

2. The Federal Government and the Coordinating Council shall launch a plan and joint international appeal for the reconstruction, rehabilitation, repatriation and development of the Southern States and other war affected areas.

3. The Coordinating Council shall also establish a relief, resettlement, rehabilitation and reconstruction commission to manage and administer the resources acquired for the above purposes.

Chapter Four - The Interim Period

c. The Coordinating council shall carry out the following activities during the interim period:

1. To assist repatriate, resettle and rehabilitate the displaced and the returnees.

Chapter Five - The Coordinating Council of the Southern States

2. Functions of the Coordinating Council

The Coordinating Council shall have the following functions:

2. Voluntary repatriation of the returnees, and the displaced, rehabilitation and reconstruction of war affected areas in Southern States.

Mali

Pacte National, 11 April 1992

Section II. The Final Judgement of Hostilities and Settlement of Matters Arising from the Status of Armed Conflict

7. The safety and physical integrity of the combatants and reintegrate members Movements and Fronts and those repatriated displaced populations will be fully guaranteed.

9. A program of repatriation of displaced persons will be prepared starting from the signing of this Covenant. The implementation of this program will start 60 days after the signing, at the end of the enforcement provisions of the cease-fire set forth in paragraph 7 above, which reads as follows:
Within sixty days of signing the Covenant, it will be a program execution on the concurrent measurements listed after:

10. The repatriation program will be conducted jointly by the Government and the movements and in cooperation with the officials of host countries, as well as friendly countries and international humanitarian organizations will be solicited for this purpose.

11. The reintegration of displaced populations and assistance to victims of all the consequences of armed conflict northern Mali will lead to the creation of two funds:

- A Development Fund to promote reintegration and the establishment of Small and Medium Industries (SMIs) and Small and Medium Enterprises (SMEs) and the integration of displaced populations in the production pipeline,
- Fund assistance and compensation to civilian victims and military of both Parties and their successors from all consequences of armed conflict. This fund will in priority to compensate the victims was the result of the work of the Independent Inquiry Committee.

Title IV OF THE CONSECRATION OF SOLIDARITY AND NATIONAL UNITY IN THE NORTH OF MALI

Subtitle A MEASURES OF CONSECRATION OF THE NATIONAL SOLIDARITY

44. As mentioned in paragraph 11 Title II, the reintegration of displaced populations and assistance to victims of all the consequences of armed conflict in northern Mali will lead to the creation of two funds:

- Fund Development and reinsertion
- Fund assistance and compensation to victims of all the consequences of armed conflict.

45. These two funds that will be created and filled within thirty days of the signing of the Covenant, will remain on active for one year. They will be managed by a Board which shall sit in bilateral representatives of the Government and Movements.

46. For the purpose of enabling the successful operation of these two funds, both Parties to join in an appeal to the generosity of the people of Malian national whole and an appeal for humanitarian assistance and financial of the International Community.

Subtitle B MEASURES OF CONSECRATION OF NATIONAL UNITY

54. To ensure the fullness of their representation in the National Assembly, and in order to provide an actual participation of northern populations, including people displaced by the conflict, it will be created on an exceptional basis for the first legislature, a total of 4 seats to be filled by people displaced in northern Mali.

55. These seats will be filled through elections to be held after the program of repatriation of displaced persons and no later than 130 days after the signing of this Covenant.

Title V COOPERATION SUB-REGIONAL AND INTERNATIONAL SERVICE FOR PEACE AND DEVELOPMENT

61. Finally, the Government of Mali will ask friendly countries to contribute, within the framework of intergovernmental cooperation, the training or retraining of young people from the displaced populations in northern Mali who either could not have access to training or have been forced to stop, or had received abroad.

Title VI OF SCHEDULE FOR IMPLEMENTATION OF PROVISIONS OF THE COVENANT OF NATIONAL RECONCILIATION

67. Within 60 days of signing the Covenant, the post of Commissioner for the North of Mali, load animate the implementation of this Covenant for a term of five years, will be provided in consultation with the Movements.

68. Within 30 days of signing the Covenant will be created and supply the Development Fund and reintegration of displaced populations and the Fund for assistance and compensation for victims of all the consequences of armed conflict.

69. Sixty days after the signing of the Covenant, will be launched with the help of the host countries and friendly countries and international humanitarian organizations and coordination between the State and the Movements, the program of voluntary repatriation of displaced populations in North countries in the sub-region. This program will be finalized within a period of sixty days with the reintegration assistance was granted by the Fund referred to in paragraph 68 above. During this same period, assistance to persons remained within the country and being destroyed because of conflict will be granted.

70. One hundred and thirty days after the signing of the Covenant, ten days after completion of the repatriation program, will be held by the partial elections for seats in the National Assembly created as ad hoc for the first legislature for the people displaced in northern Mali.

73. Six months after the signing of this pact, the election will be held by the Assemblies of Municipalities, Districts, Circles and Regions.

Niger (Air & Azawad)

Paris Accord, 10 June 1993

Text not available

Ougadougou Accord, 9 October 1994

Section IV - Urgent Measures

Clause 10: The Government of the Republic of Niger will take the measures which will make possible the coming back, freely consented, and the

reinsertion of refugees. These measures will be taken in relation with the CRA and with the help of friendly countries and international organisations.

Accord e'tablissant une paix definitive, 15 April 1995

Section V - Economic, Social and Cultural Development

Clause 19: In order to allow the freely consented return and the reinsertion of displaced persons, the Government, together with the ORA, encourages friendly countries and international humanitarian organisations concerned to establish on one hand reception and direction points, where the stay will be as brief as possible, and on the other hand reinsertion sites in which adequate social and economic activities will be developed.

AMERICAS

El Salvador

Agreement on Human Rights, 26 July 1990

I. Respect for and Guarantee of Human Rights

7. Displaced persons and returnees shall be provided with the identity documents required by law and shall be guaranteed freedom of movement. They shall also be guaranteed the freedom to carry on their economic activities and to exercise their political and social rights within the framework of the country's institutions.

The Chapultepec Peace Agreement, 16 January 1992

Chapter VI: Political Participation by FMLN

The following agreements have been reached concerning political participation by FMLN, and shall be subject to the implementation timetable contained in this Agreement:

3. Full guarantees and security for the return of exiles, war-wounded and other persons currently outside the country for reasons related to the armed conflict.

Guatemala

Queretaro Agreement, 25 July 1991

Accordingly, the Government of the Republic of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca (URNG),

Agree,

I. That the strengthening of functional and participatory democracy requires:

(i) Effective resettlement of populations uprooted by internal conflict.

Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict, 17 June 1994

Preamble

Reiterating their commitment to put an end to the armed conflict through a negotiation process which lays the bases for a firm and lasting peace in Guatemala,

Considering the national, traumatic dimensions of the uprooting that occurred during the armed conflict in the country, in human, cultural, material, psychological, economic, political and social terms, which caused violations of human rights and great suffering in the communities which were forced to abandon their homes and ways of life, and in the populations which remained in those areas,

Considering the commitment of the Government of Guatemala and of the Unidad Revolucionaria Nacional Guatemalteca to contribute constructively, together with the rest of Guatemalan society, to finding a lasting solution and to facilitating the process of resettling the uprooted population groups in a framework of social justice, democratization and sustained, sustainable and equitable national development,

Considering that the resettlement of these uprooted population groups should be a dynamic factor in the economic, social, political and cultural development of the country and, consequently, an important component of a firm and lasting peace,

Recognizing the indispensable role of the participation of the affected population groups in taking decisions concerning the design and implementation of an effective resettlement strategy,

Bearing in mind the statements and proposals for consensus elaborated on this topic by the civil Assembly, which includes the specific demands of organizations representing the various uprooted groups,

Reiterating that the present Agreement together with those to be signed on the other agenda items in the negotiation process form part of an agreement on a firm and lasting peace and shall enter into force at the time of the signing of such agreement, with the exception of matters relating to the Technical Committee referred to in section V of this agreement and in paragraph 4 of that section,

The Government of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca (hereinafter referred to as "the Parties") agree as follows:

I. DEFINITIONS, PRINCIPLES AND OBJECTIVES OF A COMPREHENSIVE STRATEGY FOR RESETTLING THE POPULATIONS UPROOTED BY ARMED CONFLICT

Definitions

1. For the purposes of this Agreement, the term "uprooted population" shall include all persons who have been uprooted for reasons connected with the armed conflict, whether they live within or outside Guatemala, and shall include, in particular, refugees, returnees and internally displaced persons, either dispersed or in groups, including popular resistance groups.

2. "Resettlement" shall mean the legal process of return of uprooted population groups and individuals to their place of origin or another place of their choice in Guatemalan territory, and their relocation and integration therein, in accordance with the Political Constitution of the Republic of Guatemala.

Principles

The Parties agree that a comprehensive solution to the problem of uprooted population groups should be guided by the following principles:

1. Uprooted population groups have the right to reside and live freely in Guatemalan territory. Accordingly, the Government of the Republic undertakes to ensure that conditions exist which permit and guarantee the voluntary return of uprooted persons to their places of origin or to the place of their choice, in conditions of dignity and security.

2. Full respect for the human rights of the uprooted population shall be an essential condition for the resettlement of this population.

3. Uprooted population groups deserve special attention, in view of the consequences they have suffered from being uprooted, through the implementation of a comprehensive, exceptional strategy which ensures, in the shortest possible time, their relocation in conditions of security and dignity and their free and full integration into the social, economic and political life of the country.

4. Uprooted population groups shall participate in decision-making concerning the design, implementation and supervision of the comprehensive resettlement strategy and its specific projects. This participatory principle shall extend to population groups residing in resettlement areas in all aspects concerning them.

5. A comprehensive strategy will be possible only within the perspective of a sustained, sustainable and equitable development of the resettlement areas for the benefit of all the population groups and individuals residing in them in the framework of a national development plan.

6. The implementation of the strategy shall not be discriminatory and shall promote the reconciliation of the interests of the resettled population groups and the population groups already living in the resettlement areas.

Objectives

The comprehensive resettlement strategy shall have the following objectives:

1. To ensure that the uprooted population groups fully enjoy all their rights and fundamental freedoms, in particular those rights and freedoms which were affected during the uprooting process;

2. To reintegrate the uprooted population groups, which were socially, economically and politically marginalized, and create the conditions that would allow them to be a dynamic factor in the economic, social, political and cultural development of the country;

3. To give priority to the fight against poverty and extreme poverty, which have had a particularly serious effect on areas where the population has been uprooted, and which largely correspond to the resettlement areas;

4. To develop and strengthen the democratization of State structures, ensuring that the constitutional rights and duties of the uprooted population groups are respected at the community, municipal, departmental, regional and national levels;

5. To promote genuine reconciliation, fostering a culture of peace in the resettlement areas and at the national level based on participation, mutual tolerance, reciprocal respect and commonality of interests.

II. GUARANTEES FOR THE RESETTLEMENT OF UPROOTED POPULATION GROUPS

In conformity with past resettlement initiatives and activities, particularly the letter of understanding between the Government and the Office of the United Nations High Commissioner for Refugees and the agreement of 8 October 1992 between the Government and the Standing Committees of Refugees, with its ad hoc verification mechanism, the Parties have agreed as follows:

1. Full respect for human rights and fundamental freedoms is essential for the security and dignity of resettlement processes. The Parties reiterate their decision to comply fully with the Comprehensive Agreement on Human Rights, which took effect on 29 March 1994, promoting respect for the human rights of uprooted populations, one of the vulnerable sectors which deserve particular attention, with special vigilance.

2. Special emphasis should be placed on protecting female-headed families and widows and orphans, who have been the most seriously affected.

3. The rights of the various indigenous communities, primarily Mayas, should be taken into account, especially respect for, and encouragement of, their way of life, cultural identity, customs, traditions and social organization.

4. Concerned about the security of those who are being resettled or who live in

the zones affected by the conflict, the Parties recognize the urgent need to remove all types of mines or explosive devices buried or abandoned in these areas, and they commit themselves to cooperate fully in these activities.

5. In view of the efforts being made by uprooted communities to improve the level of education of their people and of the need to support and provide continuity to this process, the Government undertakes to:

5.1. Recognize the formal and informal educational levels of uprooted persons, through the use of rapid evaluation and/or certification procedures;

5.2. Recognize the informal studies of education and health promoters and grant them, following an appropriate evaluation, equivalent credit.

6. The Parties request the United Nations Educational, Scientific and Cultural Organization (UNESCO) to elaborate a specific plan to support and provide continuity to efforts to educate the population groups in the resettlement areas, including providing continuity to the efforts being made by the uprooted communities.

7. The lack of personal documentation for the majority of the uprooted population groups increases their vulnerability and limits their access to basic services and the enjoyment of their civil and political rights. This problem requires urgent solutions. Consequently, the Parties agree that the following steps are necessary:

7.1. In order to arrange for the documentation of uprooted persons as soon as possible, the Government, with the cooperation of the international community, shall intensify its efforts to streamline the necessary mechanisms, taking into account, where appropriate, the registers kept by the uprooted communities themselves;

7.2. Decree No. 70-91, a provisional act concerning replacement and registration of birth certificates in civil registers destroyed by violence, shall be revised so as to establish a system adapted to the needs of all the affected population groups, with streamlined, free-of-charge registration procedures. For such purposes, the views of the affected sectors shall be taken into account. Personal documentation and identification shall be completed as soon as possible;

7.3. The necessary administrative rules to streamline formalities to ensure that children of uprooted persons born outside the country are registered as native Guatemalans, in compliance with article 144 of the Constitution of the Republic, shall be promulgated;

7.4. For the implementation of this documentation programme, the Government shall request the cooperation of the United Nations and the international community.

8. An essential element of the resettlement process is legal security in the

holding (inter alia, the use, ownership and possession) of land. In that regard, the Parties recognize the existence of a general problem which particularly affects the uprooted population. One of the principal manifestations of legal insecurity is the difficulty of producing evidence of landholding rights. This situation stems, inter alia, from problems concerning registration, the disappearance of the files of the Instituto Nacional de Transformaci“n Agraria (INTA), the institutional weakness of specialized bodies and municipalities; the existence of rights based on customary systems for the holding and surveying of land; the existence of secondary occupants or the annulment of rights on the basis of the improper application of provisions concerning voluntary abandonment.

9. In the particular case of abandonment of land as a result of armed conflict, the Government undertakes to revise and promote legal provisions to ensure that such an act is not considered to be voluntary abandonment, and to ratify the inalienable nature of landholding rights.

In this context, it shall promote the return of land to the original holders and/or shall seek adequate compensatory solutions.

10. In accordance with the observance of political rights, the organizational practices of the uprooted populations shall be respected, pursuant to the constitutional framework, for the purpose of strengthening the community organization system and to allow these populations to become agents of development and manage their own services and infrastructure. It is important to integrate new groups of resettled populations into the municipal system.

11. The Parties recognize the humanitarian work of non-governmental organizations and churches which are supporting the resettlement processes. The Government shall safeguard their security.

12. The Government undertakes to strengthen its policy for protecting citizens abroad, especially uprooted population groups residing abroad for reasons related to the armed conflict. It shall also ensure the voluntary resettlement of this population group in conditions of security and dignity. With regard to uprooted persons who desire to remain abroad, the Government shall take the necessary steps and conduct the necessary negotiations with the host countries so as to ensure that the migrants are living in a stable situation.

III. PRODUCTIVE INTEGRATION OF UPROOTED POPULATION GROUPS AND DEVELOPMENT OF RESETTLEMENT AREAS

The Parties agree that a comprehensive resettlement strategy presupposes the productive integration of the uprooted population into the framework of a sustained, sustainable and equitable development policy in the resettlement areas and regions that will benefit all the population groups living there. This productive integration policy shall be based on the following criteria and measures:

1. The resettlement areas are predominantly rural. Land, which is a finite

resource, is one of the alternative sources of economic and productive integration. Sustainable agricultural development projects are required, in order to offer the population the means to break the vicious circle of poverty and degradation of natural resources and, in particular, to allow for the productive and ecologically sound protection and development of fragile areas.

2. For the identification of land that could be used for resettling uprooted persons who do not own land but wish to acquire it, the Government undertakes to:

2.1. Carry out a review and updating of official land and real estate registers;

2.2. Conduct studies to identify and individualize all State-owned, municipally owned and private land, offering an option to purchase it. These studies shall include information on the location, legal regime, acquisition, size, boundaries and agricultural suitability of the land in question;

2.3. Complete these studies by the date of entry into force of the present agreement, at the latest.

3. The criteria for selecting land for settlements shall include the agro-ecological potential of the soil, its price, the sustainability of natural resources and existing services.

4. The development of the above-mentioned areas in conditions of justice, equity, maintainability and sustainability shall involve, in addition to agricultural activities, the creation of jobs and income from agro-industry, industry and services, under systems that are appropriate to the rural environment and to the preservation of natural resources. To this end, it is essential to develop basic infrastructure for communications, electrification and production. Public investment shall be geared primarily to this purpose, and a system of investment incentives for rural development in the areas in question shall be established.

5. To improve the quality of life, the objectives of rural development should include: (i) local food security and basic service infrastructure for the population groups, including housing, sanitation, drinking water, rural storage, health and education; (ii) an increase in production and productivity and promotion of local and regional markets for agricultural, agro-industrial and non-industrial products and inputs; (iii) generation of jobs and income; (iv) sustained and sustainable use of the available natural resources, through management of resources at the local level.

6. Productive integration projects and activities related to the comprehensive resettlement strategy shall take into account the following criteria:

6.1. The regional and local aspects of the resettlement areas, and the use of territorial management tools to promote the use of resources in accordance with their best potential;

6.2. Use of the response capacity, organizational levels and expectations of the population, promoting an increasingly organized and informed participation;

6.3. Legalization and award of land titles, and of water rights, to provide the necessary framework of security in the use of these basic natural resources;

6.4. Promotion of local and regional organizations and institutions for the combining of interests and rational planning of the use of available resources;

6.5. Establishment of successive development objectives, based on a prime, immediate objective of food security and adequate nutrition for families and communities;

6.6. Promotion of local and regional markets for products and inputs, and developing appropriate marketing mechanisms for agricultural, agro-industrial and non-industrial products;

6.7. Establishment of basic service infrastructure for population groups: housing, sanitation, drinking water, rural storage, health and education;

6.8. Improvement and/or installation of permanent, competent services of technical support to all organizations and projects, including support to non-governmental organizations which select population groups to help implement their projects;

6.9. Improvement and/or establishment of rural financial and credit assistance services suited to the needs and possibilities of the populations involved;

6.10. Setting up of training programmes designed to diversify and expand the production and management capacity of the beneficiaries.

7. The Government undertakes to put into effect and promote the agreed planning systems for developing the resettlement areas and to ensure that the population groups have access to them as neighbours and residents.

8. The Government undertakes to eliminate any form of de facto or de jure discrimination against women with regard to access to land, housing, credits and participation in development projects. The gender-based approach shall be incorporated into the policies, programmes and activities of the comprehensive development strategy.

9. The solving of each of the problems involved in resettlement and development of the affected areas shall take as a point of departure the study and design of resettlement conditions and the advice, views and organized participation of the uprooted groups and resident communities.

10. The institutional development of municipalities is fundamental in the democratic development process and in the integration of marginalized populations. The Government agrees to intensify the administrative, technical

and financial strengthening of local governments and organizations through basic training, occupational training and employment programmes. It shall also strengthen the community organization system so that communities can be their own agents of development, manage their own systems of services and infrastructure and be duly represented in the management of their own political, legal and economic affairs.

11. The Government also undertakes to expand on its plan for decentralization of public administration, and to enhance its capacity to implement them, gradually transferring decision-making power in the management of resources and administration of services to local communities and governments.

IV. RESOURCES AND INTERNATIONAL COOPERATION

1. The Parties recognize that the responsibility for solving the problems of resettling the uprooted population falls on the entire Guatemalan society, and not on the Government alone. Broad sectors of Guatemalan society must unite their efforts to ensure its success.

2. For its part, the Government undertakes to allocate and mobilize national resources in a manner consistent with its efforts at macroeconomic stabilization and modernization of the economy; and to reorient and target public expenditure towards fighting poverty and resettling the uprooted population.

3. The Parties recognize that the series of tasks relating to the resettlement of the uprooted population is of such breadth and complexity that the strong support of the international community is needed in order to complement the domestic efforts of the Government and of the various sectors of civil society. Otherwise, the Government's commitment would be limited by financial constraints.

V. INSTITUTIONAL ARRANGEMENTS

1. The agreements contained in the comprehensive resettlement strategy shall be implemented through the execution of specific projects.

2. For that purpose the Parties agree to establish a Technical Committee for the implementation of the resettlement agreement, to be composed of two representatives designated by the Government, two representatives designated by the uprooted population groups and two representatives of donors, cooperating bodies and international cooperating agencies. The latter representatives shall have consultative status. The Committee shall draw up its own rules of procedure.

3. The Committee shall be established within 60 days following the signing of this Agreement and to that end the Government of Guatemala shall issue the corresponding governmental decree.

4. The Committee shall, from the time it is established until the entry into force

of this Agreement, conduct the necessary evaluations and studies in order to identify and analyse the needs and demands of the uprooted population and to formulate projects corresponding to the various undertakings contained in the strategy determined in this Agreement. In carrying out said studies and analyses and formulating projects the Committee shall have the technical support of the corresponding specialized personnel.

5. Once the study phase is completed and as soon as this Agreement enters into force, the Committee shall be responsible for prioritizing and approving projects and supervising their execution, allocating the funds required in each case and securing technical and financial resources. The Parties agree that implementation of the strategy shall meet the criteria of priority to the struggle against poverty, efficient management, participation of the recipient populations and transparency concerning expenditures.

6. For the purpose of ensuring implementation of the resettlement strategy, the Parties agree to establish a fund to implement the agreement on resettlement of population groups uprooted by armed conflict essentially with contributions from the international community. The United Nations Development Programme (UNDP) shall be asked to administer the funds of each of the projects to be executed.

Agreement on a Firm and Lasting Peace, 29 December 1996

I. CONCEPTS

3. Population groups uprooted by the armed conflict have the right to reside and live freely in Guatemalan territory. The Government of the Republic undertakes to ensure their return and resettlement in conditions of dignity and security.

Agreement on the Implementation, Compliance and Verification Timetable for the Peace Agreements, 29 December 1996

I. PRESENTATION OF THE TIMETABLE

Content of the phases

4. Based on the above, the main, but not sole, emphasis in each phase shall be on the following:

(a) The timetable for the first 90 days shall place emphasis on:

(iii) Carrying out other types of action linked to the consequences of the armed conflict, such as developing the programme for compensating
victims and continuing to care for refugees and displaced persons;

II. TIMETABLE FOR THE 90 DAYS FROM 15 JANUARY 1997

B. Agreement on Resettlement of the Population Groups Uprooted by the

11. Sponsor in the Congress of the Republic the necessary amendments to the Act on the Personal Documentation of the Population Uprooted by the Internal Armed Conflict (Decree 73-95). Such amendments, in addition to solving the documentation problems of uprooted population groups, shall resolve the lack of personal documentation of URNG members. The Congress of the Republic shall be asked to consider and resolve this issue
in the two months following the introduction of the corresponding initiative.

Identification of land for the resettlement of uprooted persons

12. Present existing studies concerning State, municipal and private land with an option to buy (location, legal regime, acquisition, size, boundaries and agricultural suitability), for the purpose of resettling uprooted population groups.

Mine clearance

13. Implement a programme for clearing all types of mines, bearing in mind that both the Guatemalan armed forces and URNG are to provide the United Nations with detailed information on explosives, mines and existing minefields.

Fund for the Resettlement of Uprooted Population Groups

14. Establish a fund for the implementation of the Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict.
Plan for the education of uprooted population groups

15. Request the United Nations Educational, Scientific and Cultural Organization (UNESCO) to submit a specific plan for the education of uprooted population groups.

Resettlement of uprooted population groups

16. Speed up the ongoing negotiations between the Government, refugees and displaced persons to ensure the voluntary return of uprooted persons to their place of origin, or to a location of their choice, in dignity and safely.

III. TIMETABLE FROM 15 APRIL TO 31 DECEMBER 1997

B. Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict

Identification of land for the resettlement of uprooted persons

74. Conduct further studies to identify State, municipal and private land with an option to buy, for the purpose of resettling uprooted population groups.

Resettlement

75. Conclude the planning and/or resolution of the processes of return and transfer for the resettlement of uprooted population groups, based on their freely expressed wishes and decisions.

Documentation

76. Step up the personal documentation process for all those who do not have such documentation, particularly uprooted population groups and URNG members, including formal registration of the children of uprooted persons and URNG members born abroad.

Productive integration of uprooted population groups

77. Undertake productive integration programmes, as part of a policy of sustainable development with equity, in resettlement areas and regions. See “Agreement on Social and Economic Aspects and the Agrarian Situation”, paragraphs 102, 103 and 106 of this Agreement.

Prompt settlement of land disputes

78. See “Agreement on Social and Economic Aspects and the Agrarian Situation”, paragraph 108 of this Agreement.

Consensus-building for development planning

79. See “Agreement on Social and Economic Aspects and the Agrarian Situation”, paragraph 86 of this Agreement.

Implementation of the education plan

80. Recognize the formal and non-formal educational levels of uprooted persons and the non-formal studies of education and health outreach workers.

Strengthening of local governments and organizations

81. See “Agreement on Social and Economic Aspects and the Agrarian Situation”, paragraph 167 of this Agreement.

IV. TIMETABLE FOR 1998, 1999 AND 2000

A. Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict

Protection of Guatemalan nationals outside the country

138. Strengthen the policy of ensuring protection for Guatemalan nationals outside the country, especially members of the uprooted population living abroad, and make the necessary arrangements with host countries to ensure that this population has stable immigrant status.

Marketing

139. See “Agreement on Social and Economic Aspects and the Agrarian Situation”, paragraph 167 of this Agreement.

UCDP Peace Agreement Dataset, Ver. 1.0, 2006; and, UCDP Conflict Encyclopedia <http://www.ucdp.uu.se/gpdatabase/search.php>.

Table A3.8 - Armed Conflict and Refugee Population, 1990-2000

UNHCR Statistical Online Population Database <http://www.unhcr.org/pages/4a0132b06.html>.

The statistics in the database are derived from governmental agencies, UNHCR field offices and NGOs and include individuals recognized as refugees under international and regional refugee conventions, UNHCR's 1950 Statute, individuals granted complementary forms of protection and those enjoying temporary protection. For additional discussion of sources, methods and data considerations consult the online database.

Country	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
EUROPE											
Azerbaijan			300,000	328,005	299,095	200,520	236,086	234,950	329,657	610,353	284,277
Bosnia			437,501	618,427	776,084	769,753	993,868	849,241	640,075	554,419	474,981
Croatia			168,571	151,688	76,256	245,572	310,008	349,307	338,089	346,034	335,199
Georgia				6,012	5,117	308	48,489	47,164	35,669	29,067	21,821
Rep. Moldova				6	458	529	5,829	5,141	2,754	2,159	2,657
Russian Fed.	117,736	1,555,576	213,802	243,312	251,393	207,034	173,723	198,063	172,730	25,676	40,310
Spain					42	36	218	215	60	11	80
UK	1	1	1	2	108	77	73	79	92	73	113
Serbia	1,745	45,823	90,081	58,253	54,976	86,120	80,090	74,114	84,844	101,230	101,350
Slovenia				28,429	14,829	12,860	3,368	3,414	3,302	3,227	3,284
Sub-total	119,482	1,601,400	1,209,956	1,434,134	1,478,358	1,522,809	1,851,752	1,761,688	1,607,272	1,672,249	1,264,072
MIDDLE EAST											
Egypt	48	97	209	258	502	872	1,363	1,890	2,833	2,337	4,165
Iran	89	130,366	128,781	115,523	121,287	112,364	104,129	93,993	89,979	68,104	88,278
Iraq	1,133,805	1,321,853	1,343,824	771,077	749,834	718,719	714,730	707,338	675,030	604,002	526,179
Israel											
Kuwait	44	47	74	89	756	762	854	825	830	555	692
Lebanon	6,993	8,501	10,257	10,635	15,654	13,515	10,890	10,235	9,786	5,196	10,215

Turkey	5,508	6,452	10,089	16,768	28,873	44,866	50,354	47,341	45,019	36,931	47,155
Yemen	8	73	31	39	150	369	1,154	1,721	1,935	1,967	2,113
Sub-total	1,146,495	1,467,389	1,493,265	914,389	917,056	891,467	883,474	863,343	825,412	719,092	678,797
ASIA											
Afghanistan	6,339,095	6,306,301	4,552,153	3,374,576	2,731,169	2,679,133	2,674,427	2,676,803	2,667,272	2,568,423	3,587,523
Bangladesh	477	611	53,921	57,158	56,199	56,956	58,411	44,373	4,658	2,770	5,401
Cambodia	54,346	43,168	28,851	9,753	8,538	61,225	62,244	103,245	76,576	38,326	36,855
India	198	408	1,019	1,492	3,263	5,011	7,550	8,924	9,663	6,549	11,399
Indonesia	7,169	6,164	6,829	7,924	8,784	9,898	11,365	8,799	9,053	2,214	9,149
Laos	135,633	122,326	96,157	74,501	54,896	58,193	46,909	37,367	29,017	21,321	16,094
Myanmar	28	40,053	245,130	281,574	204,510	152,298	143,017	135,772	133,407	131,168	137,128
Nepal			1	1	4	27	44	52	101	143	235
Pakistan	486	525	1,086	1,422	4,430	5,277	7,502	5,985	6,864	3,898	10,133
PNG						2,000	2,008	808	220	1	8
Philippines	10	15	46	113	436	516	598	525	45,598	45,454	45,482
Sri Lanka	208,271	209,349	128,115	91,845	114,456	107,589	109,578	122,287	114,976	96,279	124,160
Tajikistan			60,008	70,108	57,144	58,956	107,503	75,878	56,349	44,981	59,940
Uzbekistan				2	29,060	143	69,747	69,069	51,729	45,364	3,628
Sub-total	6,745,713	6,728,920	5,173,316	3,970,469	3,272,889	3,197,222	3,300,903	3,289,887	3,205,483	3,006,891	4,047,135
AFRICA											
Algeria	19	55	71	86	20,743	1,520	2,247	3,418	5,728	2,978	8,034
Angola	407,760	381,636	300,492	323,831	282,577	246,657	249,687	267,696	319,430	350,645	433,760
Burundi	191,622	223,946	184,135	871,382	389,706	350,582	428,680	519,123	502,568	526,392	568,084
Cameroon	100	1	83	173	238	2,017	2,109	2,258	1,348	1,361	2,062
Chad	184,806	72,319	66,381	212,932	211,971	59,727	58,445	55,025	61,298	58,413	54,962
Comoros	4	2	2	2	5	10	13	10	33	22	28

Congo	2	4	7	11	32	177	221	21,147	17,143	27,350	27,579
DRC	67,423	65,816	81,269	74,826	73,286	89,738	158,667	173,712	158,707	249,649	371,182
Djibouti	5	10	11	38	18,068	18,095	18,101	8,142	3,219	1,580	1,910
Eritrea	43	500,633	503,200	427,213	422,433	286,712	332,225	319,077	346,781	346,851	376,851
Ethiopia	1,345,928	251,241	313,129	251,828	226,436	100,987	96,270	84,401	70,680	62,530	66,410
Guinea		2	19	30	105	441	523	648	924	633	1,497
G. Bissau	5,003	5,006	5,008	5,011	5,015	830	856	868	8,887	3,162	886
Lesotho	4	4	55				2	3	3	1	4
Liberia	735,689	673,435	520,915	704,051	797,835	744,637	784,008	493,340	365,398	293,073	266,930
Mali	1	14,704	71,189	98,572	172,905	77,219	55,198	18,015	3,702	326	364
Mozambique	1,247,992	1,316,636	1,445,474	1,172,550	234,497	125,562	34,657	33,652	59	14	30
Niger		2	22,008	22,307	22,024	10,291	10,361	2,788	423	494	493
Nigeria	16	23	76	100	592	1,939	4,754	3,059	3,999	3,054	5,742
Rwanda	361,322	431,240	434,736	450,462	2,257,753	1,819,366	463,649	62,241	69,078	83,789	116,365
Senegal	60,006	25,138	15,466	22,601	25,622	17,592	17,631	17,163	9,716	11,512	11,088
Sierra Leone	9	124,614	253,952	311,183	275,302	379,495	375,104	329,323	406,072	488,854	402,797
Somalia	470,174	732,594	812,195	574,617	631,426	638,698	636,985	608,094	557,959	481,904	475,655
Sudan	523,998	196,242	267,767	393,871	405,135	445,280	475,305	364,589	390,013	478,516	494,363
Uganda	58,820	39,386	32,456	33,415	31,450	24,166	28,339	55,241	13,301	10,764	32,414
Sub-total	5,660,746	5,054,689	5,330,096	5,951,092	6,505,156	5,441,738	4,234,037	3,443,033	3,316,469	3,483,867	3,719,490
AMERICAS											
Colombia	494	740	843	1,042	1,363	1,902	2,168	2,377	3,538	3,537	9,279
Ecuador	3	27	40	47	174	206	221	217	512	331	671
El Salvador	30,019	33,049	30,855	26,124	30,735	23,535	19,639	17,126	12,591	11,790	7,756
Guatemala	47,988	52,587	53,941	50,267	49,610	42,899	40,342	37,508	32,747	27,182	20,711
Haiti	2,092	1,858	2,486	3,866	9,803	13,925	15,118	15,481	13,538	8,582	7,561

Mexico					248	361	52	665	1,016	455	1,291
Nicaragua	52,618	46,789	44,275	33,052	28,591	23,938	22,820	22,494	21,389	20,309	5,071
Peru	256	475	727	1,959	4,314	5,883	6,696	6,610	7,066	6,382	6,944
Trinidad & Tobago											
Venezuela		1	4	135	371	476	557	608	570	52	471
Sub-total	133,470	135,526	133,171	116,492	125,209	113,125	107,613	103,086	92,967	78,620	59,755
GRAND TOTAL	13,805,906	14,987,924	13,339,804	12,386,576	12,298,668	11,166,361	10,377,779	9,461,037	9,047,603	8,960,719	9,769,249

Table A3.9 - Armed Conflict and Returnee Population, 1990-2000

UNHCR Statistical Online Population Database <http://www.unhcr.org/pages/4a0132b06.html>.

The statistics in the database are derived from governmental agencies, UNHCR field offices and NGOs and include individuals recognized as refugees under international and regional refugee conventions, UNHCR's 1950 Statute, individuals granted complementary forms of protection and those enjoying temporary protection. For additional discussion of sources, methods and data considerations consult the online database.

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
EUROPE											
Azerbaijan					29,000	39,000	11			38	27
Bosnia			10,300	1	99	815	100,618	120,852	129,073	31,783	18,715
Croatia			29,360			10	359	16,155	24,939	10,578	19,014
Georgia					1,001	4,500			1,495	270	81
Moldova							2				
Russian Federation				1	4	1	17	42	55	18	122
Spain											1
United Kingdom											
Serbia		7,500	3,500		116	2	3,691	1,900	2	807,139	124,734
Slovenia											
Sub-total		7,500	43,160	2	30,220	44,328	104,698	138,949	155,564	849,826	162,694
MIDDLE EAST											
Egypt							5				6
Iraq	190	1,336,812	17,801	13	3,654	18,029	81,546	10,438	12,064	20,732	3,715
Iran	320	380	2,677	71	65	30	3,498		3	9	60
Israel											
Kuwait											
Lebanon	50				4	8	2				1,572

Turkey							129	1,171	626	108	270
Yemen						2	100				7
Sub-total	560	1,337,192	20,478	84	3,723	18,069	85,280	11,609	12,693	20,849	5,630
ASIA											
Afghanistan	21,580	178,270	1,576,933	1,879	329,327	348,343	158,715	86,500	107,046	253,031	292,484
Bangladesh						1	3	16,539	13,420		
Cambodia		70	8,850	5,217	40	153	369	3,375	7,143	36,164	
India							2				23
Indonesia	990	540		232	186		25			8	803
Laos	3,104	3,082	4,658	4,205	5,590	2,527	245	350	189	1,237	9
Myanmar			8,530	46,130	85,300	66,004	23,097	10,070	106	1,128	1,323
Nepal											
Pakistan			4	2			20				
PNG											
Philippines									3		3
Sri Lanka			29,102	58	8,176	10,216	47	1	116	96	16
Tajikistan					18,325	1,338	6,713	12,257	3,785	4,694	1,498
Uzbekistan							4		17	1	
Sub-total	25,674	181,962	1,628,077	57,723	446,944	428,582	189,240	129,092	131,825	296,359	296,159
AFRICA											
Algeria				1			70		1	1	3
Angola	7,000	35,280	84,781	1,319	49	13,326	549	54,008	21,791	19,952	8,538
Burundi	320	6,580	48,250	6,355	271,088	5,840	108,062	90,813	23,790	12,243	6,843
Cameroon			1	1	1	5	1	6			3
Chad	5,890	57,370	9,810	6,340	384	10,285	2,188	2,611	1,172	2,130	2,619
Comoros											

Congo					6		1	12,176	25,250	52,252	5,685
DRC	80		15,261	124	511	2,782	1,815	45,115	66,209	17,284	14,000
Djibouti											2
Eritrea			70,000		8,776	21,488	1,357	1,600	6,360	1,516	51,005
Ethiopia		53,840	11,995	56,614	39,665	35,153	28,001	10,034	12,762	1,867	2,936
Guinea	50						1				
Guinea Bissau										5,276	890
Lesotho				3	1	1					
Liberia		99,970	80,920	16,291	5,465	9,666	737	15,182	240,442	104,264	42,363
Mali				1		39,022	21,976	34,496	26,889	5,045	5
Mozambique	510	340	158,798	604,387	804,376	159,134	1,605	30	39		
Niger				2	3	200		403	3,830	14	1
Nigeria						8	91		1	1	1
Rwanda			140	307	1,208,005	240,698	1,410,782	220,454	10,939	38,420	26,262
Senegal			710	1,098			2			425	23
Sierra Leone			12,980	2,889	113		504	1,800	194,639	3,502	40,900
Somalia	20,190	430	4,918	66,613	61,174	43,109	1,800	51,841	51,502	25,951	45,870
Sudan	18,440	370,000	4,130	7,647	3	30	1,117	63,339	104	168	269
Uganda	80	60	4,992	1,146	4,017	4,571	334	1,258	1,007	236	438
Sub-total	52,560	623,870	507,686	771,138	2,403,637	585,318	1,580,993	605,166	686,727	290,547	248,656
AMERICAS											
Colombia			71	7	17	4	7		2	49	309
Ecuador							1				
El Salvador	8,290	2,550	2,911	646	429	191	1,230	130	74	30	10
Guatemala	920	1,750	2,020	5,093	6,149	9,538	4,458	3,573	3,915	2,036	82
Haiti	150	500	5,300	1,958	1,271	650	372		2	7	6

Mexico							1				6
Nicaragua	35,570	6,100	2,040	372	66	15	1,012	41	155	61	25
Peru				13	13	10	47	8	25		2
Trinidad & Tobago											
Venezuela					131			3			4
Sub-total	44,930	10,900	12,342	8,089	8,076	10,408	7,128	3,755	4,173	2,183	444
GRAND TOTAL	123,724	2,161,424	2,211,743	837,036	2,892,600	1,086,705	1,967,339	888,571	990,982	1,459,764	713,583

Table A3.10 - Negotiated Settlements and Refugees, Refugee Population, 1990-2000

UNHCR Statistical Online Population Database <http://www.unhcr.org/pages/4a0132b06.html>.

The statistics in the database are derived from governmental agencies, UNHCR field offices and NGOs and include individuals recognized as refugees under international and regional refugee conventions, UNHCR's 1950 Statute, individuals granted complementary forms of protection and those enjoying temporary protection. For additional discussion of sources, methods and data considerations consult the online database.

Country	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
EUROPE											
Bosnia			437,501	618,427	776,084	769,753	993,868	849,241	640,075	554,419	474,981
Croatia			168,571	151,688	76,256	245,572	310,008	349,307	338,089	346,034	335,199
Georgia				6,012	5,117	308	48,489	47,164	35,669	29,067	21,821
Serbia	1,745	45,823	90,081	58,253	54,976	86,120	80,090	74,114	84,844	101,230	101,350
Sub-total	1,745	45,823	696,153	834,380	912,433	1,101,753	1,432,455	1,319,826	1,098,677	1,030,750	933,351
ASIA											
Afghanistan	6,339,095	6,306,301	4,552,153	3,374,576	2,731,169	2,679,133	2,674,427	2,676,803	2,667,272	2,568,423	3,587,523
Cambodia	54,346	43,168	28,851	9,753	8,538	61,225	62,244	103,245	76,576	38,326	36,855
Tajikistan			60,008	70,108	57,144	58,956	107,503	75,878	56,349	44,981	59,940
Sub-total	6,393,441	6,349,469	4,641,012	3,454,437	2,796,851	2,799,314	2,844,174	2,855,926	2,800,197	2,651,730	3,684,318
Bangladesh	477	611	53,921	57,158	56,199	56,956	58,411	44,373	4,658	2,770	5,401
Sub-total	477	611	53,921	57,158	56,199	56,956	58,411	44,373	4,658	2,770	5,401
Sub-total	6,393,918	6,350,080	4,694,933	3,511,595	2,853,050	2,856,270	2,902,585	2,900,299	2,804,855	2,654,500	3,689,719
AFRICA											
Burundi	191,622	223,946	184,135	871,382	389,706	350,582	428,680	519,123	502,568	526,392	568,084
Chad	184,806	72,319	66,381	212,932	211,971	59,727	58,445	55,025	61,298	58,413	54,962
Congo	2	4	7	11	32	177	221	21,147	17,143	27,350	27,579
Djibouti	5	10	11	38	18,068	18,095	18,101	8,142	3,219	1,580	1,910

Liberia	735,689	673,435	520,915	704,051	797,835	744,637	784,008	493,340	365,398	293,073	266,930
Mozambique	1,247,992	1,316,636	1,445,474	1,172,550	234,497	125,562	34,657	33,652	59	14	30
Rwanda	361,322	431,240	434,736	450,462	2,257,753	1,819,366	463,649	62,241	69,078	83,789	116,365
Sierra Leone	9	124,614	253,952	311,183	275,302	379,495	375,104	329,323	406,072	488,854	402,797
Sub-total	2,721,447	2,842,204	2,905,611	3,722,609	4,185,164	3,497,641	2,162,865	1,521,993	1,424,835	1,479,465	1,438,657
Mali	1	14,704	71,189	98,572	172,905	77,219	55,198	18,015	3,702	326	364
Niger		2	22,008	22,307	22,024	10,291	10,361	2,788	423	494	493
Sudan	523,998	196,242	267,767	393,871	405,135	445,280	475,305	364,589	390,013	478,516	494,363
Sub-total	523,999	210,948	360,964	514,750	600,064	532,790	540,864	385,392	394,138	479,336	495,220
Sub-total	3,245,446	3,053,152	3,266,575	4,267,359	4,785,228	4,030,431	2,703,729	1,907,385	1,818,973	1,958,801	1,933,877
AMERICAS											
El Salvador	30,019	33,049	30,855	26,124	30,735	23,535	19,639	17,126	12,591	11,790	7,756
Guatemala	47,988	52,587	53,941	50,267	49,610	42,899	40,342	37,508	32,747	27,182	20,711
Sub-total	78,007	85,636	84,796	76,391	80,345	66,434	59,981	54,634	45,338	38,972	28,467
Grand Total	9,719,116	9,534,691	8,742,457	8,659,725	8,631,056	8,054,888	7,098,750	6,182,144	5,767,843	5,683,023	6,585,414

Table A3.11 - Negotiated Settlements and Refugees, Returnee Population, 1990-2000

UNHCR Statistical Online Population Database <http://www.unhcr.org/pages/4a0132b06.html>.

The statistics in the database are derived from governmental agencies, UNHCR field offices and NGOs and include individuals recognized as refugees under international and regional refugee conventions, UNHCR's 1950 Statute, individuals granted complementary forms of protection and those enjoying temporary protection. For additional discussion of sources, methods and data considerations consult the online database.

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
EUROPE											
Bosnia			10,300	1	99	815	100,618	120,852	129,073	31,783	18,715
Croatia			29,360			10	359	16,155	24,939	10,578	19,014
Georgia					1,001	4,500			1,495	270	81
Serbia		7,500	3,500		116	2	3,691	1,900	2	807,139	124,734
Sub-total		7,500	43,160	1	1,216	5,327	104,668	138,907	155,509	849,770	162,544
ASIA											
Afghanistan	21,580	178,270	1,576,933	1,879	329,327	348,343	158,715	86,500	107,046	253,031	292,484
Cambodia		70	8,850	5,217	40	153	369	3,375	7,143	36,164	
Tajikistan					18,325	1,338	6,713	12,257	3,785	4,694	1,498
Sub-total	21,580	178,340	1,585,783	7,096	347,692	349,834	165,797	102,132	117,974	293,889	293,982
Bangladesh						1	3	16,539	13,420		
Sub-total						1	3	16,539	13,420		
Sub-total	21,580	178,340	1,585,783	7,096	347,692	349,835	165,800	118,671	131,394	293,889	293,982
AFRICA											
Burundi	320	6,580	48,250	6,355	271,088	5,840	108,062	90,813	23,790	12,243	6,843
Chad	5,890	57,370	9,810	6,340	384	10,285	2,188	2,611	1,172	2,130	2,619
Congo					6		1	12,176	25,250	52,252	5,685
Djibouti											2

Liberia		99,970	80,920	16,291	5,465	9,666	737	15,182	240,442	104,264	42,363
Mozambique	510	340	158,798	604,387	804,376	159,134	1,605	30	39		
Rwanda			140	307	1,208,005	240,698	1,410,782	220,454	10,939	38,420	26,262
Sierra Leone			12,980	2,889	113		504	1,800	194,639	3,502	40,900
Sub-total	6,720	164,260	310,898	636,569	2,289,437	425,623	1,523,879	343,066	496,271	212,811	124,674
Mali				1		39,022	21,976	34,496	26,889	5,045	5
Niger				2	3	200		403	3,830	14	1
Sudan	18,440	370,000	4,130	7,647	3	30	1,117	63,339	104	168	269
Sub-total	18,440	370,000	4,130	7,650	6	39,252	23,093	98,238	30,823	5,227	275
Sub-total	25,160	534,260	315,028	644,219	2,289,443	464,875	1,546,972	441,304	527,094	218,038	124,949
AMERICAS											
El Salvador	8,290	2,550	2,911	646	429	191	1,230	130	74	30	10
Guatemala	920	1,750	2,020	5,093	6,149	9,538	4,458	3,573	3,915	2,036	82
Sub-total	9,210	4,300	4,931	5,739	6,578	9,729	5,688	3,703	3,989	2,066	92
GRAND TOTAL	55,950	724,400	1,948,902	657,055	2,644,929	829,766	1,823,128	702,585	817,986	1,363,763	571,567

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