

THE PALESTINIAN REFUGEES: A VOICE HEARD AND UNHEARD

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INTRODUCTION:

The 1951 Refugee Convention¹ protects the rights of the refugees². It elaborated on how the States³ have a legal responsibility to safeguard the refugees. Refugee rights are dealt under many pathways other than International Refugee Law, like; International Human Rights Law, International Humanitarian Law and Customary International Law. The Legal Advisor, Mr. Emanuel-Chiara Gillard has commented about the interplay among all these frameworks can solve the Palestinian refugee crisis and ensure that their rights are well protected⁴. This essay takes a theoretical approach of critically analyzing the conventions violated by Israel and other States with respect to the Violation of the Refugee rights of the Palestinians. This violation as has been detailed below is an exact representation of the classic scenarios that are evident in International Refugee Law, and extent of this violation is unparalleled to comparative scenarios that existed in similar time and space.

This essay, also highlights on the abovementioned Palestinian refugees⁵, the only refugees who have been displaced from their roots for the longest period. Moreover, due to global security crisis they have been the most pained community with the desperate need to keep on changing their residence from one place to another⁶ for their survival (Nell Gabium). Palestinian refugees were mostly individuals who suffered migration and exile from their homelands during the 1948 and 1967 conflict. There were many agreements to bring back the refugees to their own land so that the rights of the refugees are ensured but nothing turned out to be completely successful, as famously quoted '*peace can only be achieved by negotiations not through wars*' (Ralph Waldo Emerson).

Hence, the rights of the Palestinians can be preserved only if solutions such as repatriation, compensation or resettlement can be encouraged at this point of time. There have been various

¹The office of the United Nations High Commissioner for Refugee, also known as UN Refugee agency, 1951

² Art. 1A of UNHCR, 1951 states that the refugees are those people who are forced to cross the international border due to well-founded fear of persecution due to the reasons of race, sex, political opinion, member of a particular social group or nationality.

³Public International law defines State '*as a community which consists of a territory and a population subject to an organized political authority; that such a state is characterized by sovereignty*'.

⁴International Committee of Red Cross(ICRC)<<https://www.icrc.org/eng/resources/documents/statement/6t7g86.htm>> accessed 20 October2020

⁵The term "Palestine" in the acronym of the United Nations Agency refers to the areas formerly under British Mandate (also known as "historic Palestine"), which included the Gaza Strip, the West Bank and the territories that became the State of Israel. Until 1952, UNRWA catered also to the needs of the Jewish communities displaced during the 1948 war. In this paper, the term "Palestinian refugees" mainly refers to the Arab population of Palestine displaced during the 1948 conflict. Available at: [Riccardo Bocco](https://academic.oup.com/rsgq/article/28/2-3/229/1584825/UNRWA-and-the-Palestinian-Refugees-A-History?etoc), 'UNRWA and the Palestinian Refugees: A History within History' (2010) 28 (2-3): 229-252 Refugee Survey Quarterly <<https://academic.oup.com/rsgq/article/28/2-3/229/1584825/UNRWA-and-the-Palestinian-Refugees-A-History?etoc>> accessed 20 October2016

⁶ Nell Gabium, *The Politics of Suffering : Syria's Palestine refugee camps*,(first published 2016, Indiana University Press 2016) 17

political reasons for which the rights of Palestinian refugees cannot be fulfilled hence their lands in Palestine (presently Israel) cannot be returned whereas it is undeniably the legitimate right of any refugee to get right over their land when the fear of persecution no longer persists⁷ (Customary rules [132, 133] of IHL).

I. WHO ARE REFUGEES THEN?

UNHCR, 1951⁸ terms refugees as *'the people who leave their country due to well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion and cannot avail any protection for the reasons above in its own country'*⁹.

III. NOW WHO ARE PALESTINIAN REFUGEES?

UNRWA has defined Palestinian refugees as the people who used to stay in Palestine from 1st June 1946 till 15th May 1948, but unfortunately lost their residence during the 1948 conflict¹⁰. Before going on to the discussion as to how the rights of the Palestinians are violated it is far more important to understand how the Palestinian refugees are created.

UN Resolution no. 181 passed in 1947¹¹ recommended that the Mandate should be terminated and there would be partition of Palestine into two parts: - Independent Arab and Jewish States and Special International Regime for the City of Jerusalem which created more problems between the two communities. Finally, on 14 May, 1948 Israel declared their independence and thus the British troops were forced to be withdrawn. Almost 7,50,000 people fled from Israel creating Palestinian refugees¹². Similarly, on 5th June, 1967 another war began between the Arabs and the Jewish which lasted for six days. This war concluded into Israel capturing the territory of Mandate Palestine which included West Bank, East Jerusalem, Gaza, Syria and Global Heights. Till today there are approximately 6 million Palestinian refugees who are eager to go back to their roots and homelands (UNRWA Report, 2015).

III. ROLE OF UNHCR, 1951

The rights of the Palestinian refugees can be claimed both under Art. 1 (A) and 1 (D) of UNHCR, 1951 hence it is the responsibility of this convention to ensure that the rights of the Palestinians are fulfilled and they receive their due status¹³. Art.1 (A) defines refugees and the conditions for becoming a refugee whereas Art.1 (D) particularly mentions about Palestinian refugees and providing them with aids¹⁴. UNRWA, an agency formed under the authority of Art.

⁷Kathleen Lawand, 'The Right to Return of Palestinians in International Law' [2014]OUP 532 , ICRC 'Customary International Humanitarian Law Rule 132' <https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_cha_chapter38_rule132> accessed 22 October 2020,

ICRC 'Customary International Humanitarian Law Rule 133' <https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_cha_chapter38_rule133> accessed 20 December 2020

⁸The United Nations High Commissioner for Refugee, (hereinafter referred as) UNHCR dated 1951.

⁹UNHCR, 1951 Art. 1 A (2)

¹⁰UNRWA, 'Palestine Refugees' <<http://www.unrwa.org/palestine-refugees>> accessed 20 December 2020

¹¹Eli E. Hertz, 'UN Resolution 181 – The Partition Plan November 29, 1947' <<http://www.mythsandfacts.org/conflict/10/resolution-181.pdf>> accessed 24 December 2020

¹²Cabbu, 'Palestine-Israel Conflict'

<<https://www.caabu.org/sites/default/files/resources/History%20of%20Israel%20Palestine.pdf>> accessed 24 December 2020

¹³ UNHCR, 1951 Convention, <<file:///C:/Users/Mrinalini%20Banerjee/Desktop/3b66c2aa10.pdf>> accessed 24 December 2020

¹⁴Arab-Israel Conflict, <<http://arabisraeliconflict.info/arab-israel-facts/fact-9-palestinian-refugees>> accessed 24 December 2020

1 (D) provides shelter to 350,000 Palestinian refugees hence they cannot claim their rights under Art. 1 (A) of the 1951 convention provided they accept the support of UNRWA. In case the support by UNRWA stops then they can reclaim their rights under Art. 1 (A) of UNHCR, 1951¹⁵. UNHCR needs to read Art. 1 (D) in context to Art. 31 of VCLT, 1969¹⁶. The European Court of Justice also acknowledges that the treaties should be interpreted in good faith.

Art. 1(D) of UNHCR, 1951 further elaborates on the scope of the Palestinian refugees¹⁷.

- It refers to those Palestinians who became refugees after the Arab-Israel conflict and their negotiations were based on UN Resolution No.194 (111) dated 11 December, 1948 when Mandate Palestine was occupied by Israel and the Palestinians were not allowed to stay in Israel.
- Art 1 (D) also includes those Palestinians who were displaced due to the 1967 conflict when the territory of Palestine was completely under Israel and the Palestinians were denied the Right to return. The negotiation of this conflict is based on UN Resolution 2252 dated 4 July, 1967.

IV. COMPARATIVE UNDERSTANDING OF THE PROVISIONS OF UNHCR AND RESULTING GAP IN THE IDENTIFICATION

Alternatively, the refugees who fall under the ambit of Art. 1 (C), (E), (F) of the UNHCR convention are not covered under Art. 1(D) even if they are Palestinian refugees. This shows that the Palestinian refugees who do not fall under the ambit of Art.1 (D) are the most neglected ones as they cannot receive any assistance from UNRWA and Israel won't accept them. Moreover, the other states are unwilling to accept any refugees, hence these refugees are homeless without any support from any of the States or international non-governmental organizations. The position of these migrants is yet to be described by any relevant UN Resolution and this creates a gap ('rather a black hole') in protecting the refugees.

This essay also reflects the helplessness of the refugees who are under the support of UNRWA, and makes a critical analysis of Art.1(D) because the refugees who are under the realm of Art. 1(D) cannot seek help from Art. 1(A) of UNHCR, 1951. UNRWA can only provide basic aid and it does not cover any legal protection for the refugees. UNRWA can neither take decision of the maintenance of law and order in the camps nor do they own the lands for the camps. The lands are generally private leased whose renewal is uncertain. At times when the leases on the lands are not renewed or unilaterally terminated by the owners with limited recourse to judicial forums for enforcing the same, causes again homelessness, to the refugees for the above-mentioned transition period (the initial rehabilitation being mostly political in nature)¹⁸.

This creates a sense of dilemma in the refugees whether to take immediate help from UNRWA or go through the long processes stated in Art.1(A) of UNHCR, 1951 and be officially identified as refugees, moreover, there is no guarantee of protection under Art.1(A) as it depends on the refugee policies of the neighbouring states¹⁹.

¹⁵Ilona-Margarita Stettner, 'The Legal Situation Of Palestinian Refugees' <<http://www.kas.de/palaestinensische-gebiete/en/pages/11536/>> accessed 24 December 2020

¹⁶Art. 31(1) of VCLT states that all treaties should be interpreted good faith and in ordinary terms of the treaty.

¹⁷UNHCR Revised Statement on Article 1D of the 1951 Convention <<http://www.refworld.org/pdfid/4add79a82.pdf>> accessed 24 December 2020

¹⁸Sol Stern, 'End the UNRWA Farce' (City Journal, 10 October 2017) <<http://www.city-journal.org/html/end-unrwa-farce-14932.html>> accessed 15 October 2020

¹⁹Ricardo Bocco, 'Unrwa And The Palestinian Refugees: A History Within History' (2010) 2 Refugee Quaterly Survey 231

The legal gap under the framework of Art. 1 (A) and 1 (D) should be modified so that the refugees to receive both shelter and status and their rights are no further violated²⁰.

Art. 33 of the 1951 Convention²¹ guarantees that the contracting parties to this convention cannot engage into refoulment²² but contracting states like Germany, Greece, Israel, United Kingdom, USA, has completely ignored this provision and denied to accept asylum seekers as refugees even when these people have completely satisfied all the conditions of becoming a refugee²³. This brings much light to the case of how the rights of the Palestinians have been consistently and systematically violated and they inevitably are forced to die as they can neither return to Israel due to well-founded fear of persecution nor the neighbouring countries are willing to accept them.

V. RIGHT TO RETURN: MYTH FOR THE PALESTINIANS

'Every nation should be accessible by the other states' (Hugo Grotius). During multiple interviews and interactions, it has been confirmed time and again that the Palestinian refugees in a united voice have only demanded and desired to return to their own country presently Israel, after its succession over Palestine. Their desire to return is beyond the norms of emotional attachment or identification and only logical as has been supported by multiple papers, thesis on the customary international law and the other laws as stated below. The Arab who fled during 1948 and 1967 conflict thought that the Arab military would win over and when the situation would be under control they would return. Unfortunately, the opposite happened and they inevitably became refugees²⁴ but this does not provide any authority to Israel to prevent the Arab Palestinians from coming back to Israel.

As aforesaid the 'Right to return' is an inalienable fundamental right of every refugee and it is protected under various frameworks of international law. International Humanitarian Law affirms that every individual has a right to return to one's roots when violence has ceased, hence the Palestinians who prefers to return, have the right to return to Israel²⁵. Geneva Convention IV, 1949 (Art.49 along with Art. 147) states that the right to return is a voluntary right of every refugee, neither can they be forced to return nor stopped from returning²⁶. Israel has ratified the GC, 1948 in 1951²⁷ and in the last 66 years (1951 -2017) they have constantly opposed to the 'Right to return' for the Palestinians.

'Right to return' is deeply related to the nationality of a person, hence the Palestinians, nationals of the State (Palestine) presently Israel have the right to become the citizenship of Israel as it

²⁰G.J.L. Coles, 'Temporary Refuge and the Large Scale Influx of Refugees' [1980] Australian Year Book of International Law 189

²¹ Art 33 of the 1951 convention prohibits the return or expulsion of any asylum seeker who has fulfilled the criteria of becoming a refugee as stated under Art. 1 A of the convention.

²²Dr Paul Weis, 'The TravauxPreparatoiresAnalysed With A Commentary' <<http://www.unhcr.org/4ca34be29.pdf>> accessed 3 October 2020

²³UNHCR, United Nations High Commissioner for Refugee, 'States Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol' <<http://www.unhcr.org/protect/PROTECTION/3b73b0d63.pdf>> accessed 3 October 2020

²⁴Amnon Zohar, 'Palestinian Refugee' <<http://www.slideshare.net/amnonzohar/palestinian-refugees-debate>> accessed 3 October 2020

²⁵Geneva convention IV, 1949- Additional Protocol 1977 (AP I Art. 51(7), 78(1) and 85(4)(a) AP II Art. 4(3)(e) and 17)

²⁶Lawand, *The Right to Return ofPalestinians in International Law*(n7) 555

ICRC, 'Internally Displaced Persons and International Humanitarian Law' <<file:///C:/Users/Mrinalini%20Banerjee/Downloads/internally-displaced-persons-icrc-eng.pdf>> accessed 5 October 20178

²⁷Weis, *The TravauxPreparatoiresAnalysed With A Commentary* (n22)

falls under the state responsibility of Israel to accept the nationals of Palestine after occupying Palestine²⁸ as it represents the fundamentals of state-succession under Public International law²⁹. Coming to the 'Nottebohm'³⁰ case, ICJ clearly mentioned that though it is the right of the nation to decide on the citizenship of a person but the court put forth the *effective nationality principle* where if a person has a genuine link with the nation than he can be called as the citizen of that nation. This case also mentioned that there is a difference between nationality and the municipal laws and the 'Right to Return' of the Palestinians would fall under the principle of nationality under Public International Law hence the Palestinians deserve to return to Israel³¹.

Art. 11 of the Bernadotte report by the UN Resolution No. 194 in 1948 mentions that the refugees who are willing to return to their origin state should be allowed to return by the Israel government as soon as possible and the refugees who are unwilling to return should be provided with the necessary compensation as per the rules of International law or in equity³².

The Doha Debates mention that the rights of the Palestinians should be fulfilled by Israel and it is their responsibility to provide the Palestinians with repatriation, resettlement, rehabilitation providing guarantee both economically and socially or adequate amount of compensation for the property for those refugees who do not want to return³³. In *Loizidou v. Turkey*³⁴, the ECtHR states that the displaced persons have the right over their property which they had left behind during the conflict, hence the Palestinians too possess a 'right to return' and also to claim back their property which were left behind³⁵.

In the 12th meeting of the Palestine National Council it was decided that the right to return should be given the maximum priority followed by the right of self-determination. If the Arab refugees are willing to settle in Middle East than they can settle there as per the fundamentals of customary international law. Although the practicalities of establishing such right is difficult but it needs reconciliation towards a permanent solution.

UNHCR believes that the return of the refugees and their reintegration can play an important part in peace-building of this conflict. It recognizes that the return should be voluntary, safe and dignified for the Palestinians which is directly linked to the political development of Israel hence developing such provisions is outside UNHCR's capacity³⁶. Art. 26 of the

²⁸Tjasa Leskovic Vendramin, 'The Right to Return of Refugees in International Law The Case Study of Bosnia and Herzegovina' <http://www.unaslovenia.org/sites/default/files/file/leskovic_vendramin-the_right.pdf> accessed 5 October 2020

²⁹Malcolm Shaw, 'International Law' (first publication 1997, Cambridge University Press 2008) ch. 14 & 17

³⁰*Liechtenstein v Guatemala*- Nottebohm- Judgment of 6 April 1955 - Second Phase - Judgments [1955] ICJ 1; ICJ Reports 1955, p 4; [1955] ICJ Rep 4 (6 April 1955)

³¹Shaw, *International Law* (n29)

³² Guiding principles on Internal displacement also states the same about the refugees Right to Return.

³³Tim Sebastian, 'Doha Debates backs Palestinian refugees' right to return'

(The Peninsula 29 March 2007) <<https://electronicintifada.net/content/doha-debates-backs-palestinian-refugees-right-return/9636>> accessed 7 October 2020

³⁴*Loizidou v. Turkey*, App No 15318/89 (Application No) Case No 40/1993/435/514 (Official Case No) A/31

³⁵*Loizidou v. Turkey*, 40/1993/435/514, Council of Europe: European Court of Human Rights, 23 February 1995 <<http://www.refworld.org/docid/402a07c94.html>,> accessed 7 October 2020

³⁶UNHCR, 'Policy Framework And Implementation Strategy

Travaux Préparatoires mentions about the freedom of movement of the refugees in one's own territory, unfortunately the Palestinians in Israel need to limit themselves in the camps of UNRWA³⁷ hence there is violation of the rights of the refugees.

Coming to International Human Rights Law Art.13(2) of UDHR, 1948 mentions that every individual has the right to 'return' or 'enter' one's own country without any restriction³⁸. The Palestinians fled from Israel due to well-founded fear of persecution but now when conflict no longer persists and they are willing to return, Israel is refusing which showcases how the rights of the Palestinians are being violated. The UN Resolution no. 3236³⁹ in 1974 recognizes the 'Right to return' for the Palestinians and shows deep concern regarding the unfulfillment of this Right.

All the above stated conventions, reports are either directly or indirectly binding on Israel still Israel is constantly avoiding them by preventing 'Right to return' of the Palestinians which is undoubtedly their inalienable right to claim.

VI. BREACH OF INTERNATIONAL HUMAN RIGHTS LAW

Greece, Israel, Jordan, Lebanon and Syria being state parties to ICCPR, 1966⁴⁰, are mandated to abide the laws mentioned in the treaty. Art. 12 (4) of ICCPR, 1966 states that every individual has the right to enter its own country. Hannum has argued that mass movements are not covered under ICCPR, 1966, hence the refugees in totality cannot return to Israel. I object to this argument and believe that, if not all the refugees together but individually the refugees can 'return' to Israel because 'enter' is a broader term and it includes return.⁴¹ If any Palestinian refugee is willing to return to Israel, he should not be prohibited. Unfortunately, for the past 68 years Israel has denied the entry to the Palestinians resulting in factual breach of the treaty provisions⁴². Countries like: - Greece, Lebanon, Syria, UK and the neighbouring countries of Israel together have ratified UDHR, 1948 and they are bound to abide it⁴³. Art. 14 (2) of UDHR read with Art. 1(F) of UNHCR states that the refugees have the right to seek for asylum and they should be granted as it is their right⁴⁴. The truth is harsh as many countries have denied the Palestinians asylum even when their fear for persecution was genuine. Like Georgia and Rwanda if a peace agreement is signed guaranteeing 'Right to Return' by the Israeli government than this conflict can be resolved and the displaced persons can return⁴⁵.

³⁷ Art 33 of the Refugee Convention, 1951

³⁸ UDHR, <<http://www.un.org/en/universal-declaration-human-rights/>> accessed 7 October 2020

³⁹ UN General Assembly Resolution no. 3236, (Question of Palestine) <<https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0738/38/IMG/NR073838.pdf?OpenElement>> accessed 7 October 2020

⁴⁰ United Nations Human Rights, Ratification of State Parties <<http://indicators.ohchr.org/>> accessed 8 October 2020

⁴¹ Oxford dictionary (Online version) <<https://en.oxforddictionaries.com/definition/enter>, <https://en.oxforddictionaries.com/definition/return>> accessed 8 October 2020

⁴² United Nations Human Rights <<http://www.ohchr.org/EN/Countries/MENARegion/Pages/ILIndex.aspx>> accessed 9 October 2020

⁴³ International Journal of Resource Center, 'Asylum & The Rights of the Refugees' <<http://www.ijrcenter.org/refugee-law/>> accessed 9 October 2020

⁴⁴ Sibylle Kapferer, 'Article 14(2) of the Universal Declaration of Human Rights and Exclusion from International Refugee Protection' (2008) 27(3) 53-75 Refugee Survey Quarterly <<https://academic.oup.com/rsq/article-abstract/27/3/53/1515102/Article-14-2-of-the-Universal-Declaration-of-Human>> accessed 9 October 2020

⁴⁵ Eric Rosand, 'The Right to Return under International Law Following Mass Dislocation: The Bosnia Precedent?' (Summer 1998) 19 Michigan Journal of International Law 1091, 1130-31

Recently there were 20,000 children coming through boats from Syria pleaded for asylum but UK instantly denied them from entering their territory hence they were sailing to Greece and on their way the boat reversed and all of them died in the mid sea. This is the actual condition of the refugees and how their rights are being violated by the states even when they are bound to give them asylum⁴⁶.

Egypt, Israel, Lebanon, and Syria have ratified CERD,1965 hence they are bound to abide it. Art. 22 of CERD, 1965 states that if there is any dispute which is yet to be settled, then it can be referred to ICJ and the decision from ICJ is binding and to be recognized and honored in letter and spirit by all the parties. The neighbouring states along with Israel showed no interest in this line and kept on violating the rights of the Palestinians. Moreover, Art. 14 of CERD also provides an opportunity of individual complaint to be heard unfortunately there isn't any such case. When we read Art. 5 in conjunction with Art 2, the state parties are prohibited from encouraging any kind of discrimination rather people should be allowed to enjoy all the basic rights. Moreover, Art.5(d) (iii) specifically mentions that there should not be any restriction in the movement of an individual to either exit or enter one's own nation⁴⁷. The above state countries have violated all these sections of CERD,65 in context to the Palestinian refugees as they are always discriminated from the Jews⁴⁸ moreover, they are subjected to restricted movement in the territory which prohibits the basic right to life⁴⁹.

VIII. VIOLATION OF INTERNATIONAL HUMANITARIAN LAW(IHL)

Along with '*Right to return*' IHL also protects various other rights of the refugees. Geneva Convention(GC) IV and Additional Protocol(AP) I & II along with Customary International Humanitarian Law(ICHL) has provisions protecting the rights of the refugees and these provisions are required to be incorporated in the municipal laws of Israel so that the Palestinians can get domestic remedy⁵⁰.

Art. 3 and 27 of GC IV alongwith Art. 75 of AP I and Art. 2(1) and 4(1) of AP II ensures that the refugees would not face any kind of discrimination⁵¹. Despite, Israel being a state party to --GC from 1951 the Jewish laws have provisions to accept back the Jewish refugees created during the two conflicts but it totally ignored the Palestinians. This showcases what extreme discriminations the Palestinians are facing and how their rights are being violated by Israel⁵².

IDPs in Israel are mainly the Palestinians (civilians) and they are always exposed to all kinds of conflicts whereas GC particularly states about protection of the civilians in such vulnerable circumstances⁵³.

⁴⁶Daniel Wainwright, 'Asylum seekers and refugees: What you need to know' BBC News (England 4 February 2016)

⁴⁷International Convention on the Elimination of All Forms of Racial Discrimination, 1968 <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>> accessed 10 October2020

⁴⁸Human Rights Watch, 'Refugee Rights' <<https://www.hrw.org/topic/refugee-rights>>accessed 10 October2020

⁴⁹HumaHaider, 'International Legal Frameworks for humanitarian action' <<http://www.gsdr.org/topic-guides/international-legal-frameworks-for-humanitarianaction/concepts/overlapping-areas-of-law-toward-a-comprehensive-legal-framework/>>accessed 10 October2020

⁵⁰Zohar, *Palestinian Refugee*(n24)

⁵¹International Humanitarian Law: a short summary of relevant provisions, (Forced Migration Review) <<http://www.fmreview.org/preventing/ihl-provisions.html>>accessed 10 October2020

⁵²Stettner, *The Legal Situation of Palestinian Refugees* (n15)

⁵³ Geneva Convention IV Art. 4 and 27, Additional Protocol I- Art. 51 and 75, Additional Protocol II- Art. 4 and 5, Customary International Humanitarian Law Rule 1 and 7.

The creation of the Palestinian refugees in Israel was due to armed conflict and as per Art. GC IV Art. 33 and ICHL Rule 52 all the properties and possessions of the Palestinians should not be subjected to any kind of pillage⁵⁴. Rule 133 of CHIL, particularly mentions that the hostilities have all the right to get back their transferred properties in the occupied territory (previous Palestine), unfortunately the Palestinians have been constantly denied from these right also⁵⁵.

As per theBDAIL report⁵⁶,the Palestinians have been denied from all the basic rights such as to live a life of dignity, the children lack basic education and they have distorted family life due to the atrocious policies of the Israel government. These violations by Israel has violated a various provision of IHL which are binding on them to follow⁵⁷.

Israel has grossly violated all the above stated provisions of IHL hence committed a heinous crime towards the Palestinian refugees⁵⁸.

VIII. SYRIAN CIVIL WAR

Syria was the neighboring country to Palestine hence many Palestinian migrants seek to become refugees in Syria⁵⁹.Initially Palestinians in Syria were happy as they did not face any discrimination. The refugees had the right to education and labour market⁶⁰. As conflict started in 2011 70,000 Palestinians were forced to leave Syria and they again became asylum seeker in the third-host countries⁶¹.

i. Rights of the Palestinians violated due to the Syrian conflict

When conflicts started, the Syrian government neglected the Palestinian refugee they were left unprotected, hence they had to flee from Syria in hunt of a safe and secured place. They

⁵⁴ICRC, 'Humanitarian Law, Human Rights and Refugee Law – Three Pillars'

<<https://www.icrc.org/eng/resources/documents/statement/6t7g86.htm>> accessed 12 October2020

⁵⁵Vincent Chetail , '*Armed Conflict and Forced Migration: A Systematic Approach To InternationalHumanitarian Law, Refugee LawAnd International Human Rights Law*' (2014) OUP) 700

⁵⁶Palestinian Civil Society Call for Israel Boycott, Divestment and Sanctions Against Israel, <<http://www.badil.org/en/publication/press-releases/19-2005/1613-press-390-05.html>> accessed 12October2020

⁵⁷ Right to life: GC IV Art. 3, 27 and 32, AP I Art 75(2) and AP II Art. 4. Right to education: GC IV, Art. 50(1) and AP II Art. 4(3)(a), 28(2). Right to proper family: GC IV Art. 82 (2) and (3). AP I Art. 75 (5), CIHL Rule 131 and GC IV Art. 26, 27 and 49, AP I Art. 74, AP II 4(3).

⁵⁸Andrew Clapham and Paola Gaeta, '*The Oxford Handbook of International Law in Armed Conflict*' (2014) Oxford University Press 69

⁵⁹NellGambium, 'Spatializing Identity: The Changing Landscape of Palestinian Refugee Camps' (2011) SSRN

ElectronicJournal<https://www.researchgate.net/publication/253236094_Spatializing_Identity_The_Changing_Landscape_of_Palestinian_Refugee_Camps> accessed 14 October2020

⁶⁰NouraErakat, 'Palestinian Refugees and the Syrian Uprising: Filling the Protection Gap during Secondary Forced Displacement' (2014) 26(4)

OUP<<http://ijrl.oxfordjournals.org/content/26/4/581.abstract>>accessed 14 October 2017

⁶¹AsafRomirovsky, 'The Real Palestinian Refugee Crisis'(2014) 14 The Tower

<<http://www.thetower.org/article/the-real-palestinian-refugee-crisis/>> accessed 15 October2020

suffered from identity crisis in the third host country, where they were asylum seekers⁶². There was restricted entry for the Palestinian refugees in most of the neighboring countries and this non-recognition/identification resulted them into illegal migrants⁶³. For generations after generations, they have been running from one country to another country in search of a safe place to stay this elaborates how the rights of the Palestinians are constantly being violated⁶⁴.

ii. Rights of the Palestinian refugees infringed by the Lebanon government who fled from Syria to Lebanon

UNRWA report 2014 stated that 44,000 Palestinians left Syria and entered Lebanon in 2014 they These were registered, but there were many migrants who were unregistered. Lebanon has a strong border policies so that they could restrict entry of the Palestinians hence there was an escalation in the cost of the VISA. This short-term stay of the migrants did not provide them with any right towards education and labour market and health facilities⁶⁵.

iii. Consequences of Such Strict Visa Rules

This strict visa rules led into more number of illegal Palestinian migrants. Palestinians started to take excuses like delay in embassy work, false medical problems or they had extended families in Lebanon. Though Lebanon is a party to most of the human right convention still it has breached the basic rights like education, life, liberty and movement towards the Palestinian refugees⁶⁶.

I. RECOMMENDATIONS

Changes should be welcomed which are long-term, as a matter of recommendation my proposal for solutions are as follows⁶⁷: -

1. The negotiations should focus on the root causes of the displacement of the Palestinians and find out as to why Israel is unwilling to take back the Palestinians in their territory⁶⁸. The 171

⁶²Nell Gabium, 'Humanitarianism, Development, and Security in the 21st Century: Lessons from the Syrian Refugee Crisis' (2016) 48(02) International Journal Middle East

Studies <https://www.researchgate.net/publication/300001392_Humanitarianism_Development_and_Security_in_the_21st_Century_Lessons_from_the_Syrian_Refugee_Crisis> accessed 15 October 2020

⁶³Kamel Dorai, Palestinian #Refugees And The Current Syrian Conflict: From Settled Refugees To Stateless Asylum Seekers? <<http://allegralaboratory.net/palestinian-refugees-and-the-current-syrian-conflict-from-settled-refugees-to-stateless-asylum-seekers/>> accessed 16 October 2020

⁶⁴ Sari Hanafi, Leila Hilal, and Lex Takkenberg, 'UNRWA and Palestinian Refugees: From Relief and Works to Human Development' (New York: Routledge, 2014)

⁶⁵Jaber Suleiman, 'Marginalised Community: The Case of Palestinian Refugees in Lebanon' (2006) <<https://assets.publishing.service.gov.uk/media/57a08c4be5274a31e0001112/JaberEdited.pdf>> accessed 18 October 2020

⁶⁶Maja Janmyr, 'Precarity in Exile: The Legal Status of Syrian Refugees in Lebanon' (2016) 35 (4) Refugee Survey Quarterly 58

⁶⁷BADI, 'Survey of Palestinian Refugees and Internally Displaced Persons' (2013-2015) 3 <<http://www.badil.org/phocadownloadpap/badil-new/publications/survey/Survey2013-2015-en.pdf>> accessed 18 October 2020

⁶⁸Martin Asser, 'Obstacles to Arab-Israeli peace: Palestinian refugees' BBC News (Middle East 2 September 2010)

registered civil societies in Palestine should promote amongst the Israelis that the right of self-determination of the Palestinians are unprotected⁶⁹.

2. UN should ensure that the Palestinians receive the right to repatriation or compensations⁷⁰. This right can be effectuated with an International recognized body if coordinates with States and establish identification and rehabilitation or alternatively evaluate the compensation.
3. Taking consideration of economic and political measures so that Israel falls under the realm of International law and they are bound to fulfill its state-responsibility.
4. Investigating teams should be independent, the perpetrators who breach the conventions should be severely punished so that it remains as a precedent.
5. There should be proper cooperation and coordination between UNRWA, UNHCR, UNCCP, CEIRPP⁷¹ and the other bodies so that proper protection is provided to the refugees⁷².
6. There should be a broader interpretation of Art. 1 (D) and it should include legal protection for the refugees, so that the refugees can possess a valid status.
7. Majority of the refugees depend upon the assistance provided by UNRWA hence its budget needs to be maintained otherwise due to lack of funds the necessities of the refugees are not fulfilled⁷³. Moreover, the donor countries should provide the funds at the proper times and if possible increase the amount so that spontaneous emergency aid are provided to the refugees⁷⁴.
8. Lastly the Palestinian refugees should be allowed to participate in the local activities and in the political aspects as it is their social right hence empowering them.⁷⁵

CONCLUSION

Violation of the 'Right to return', has been the essence of this essay. The position postulated (Hathaway) that extension of refugee rights to '*answer situation-specific vulnerabilities that*

⁶⁹Janmyr, *Precairity in Exile: The Legal Status of Syrian Refugees in Lebanon* (n66)

⁷⁰D. W. Greig, 'The Protection of Refugees and Customary International Law' [1978-1980] Australian Year Book of International Law 108

⁷¹This committee is formed under the UN General Assembly Resolution no. 3376.

⁷²Organisations for Peace-Building, Palestine and Israel, (Edinburgh Peace and Justice Center) <<http://peaceandjustice.org.uk/newsletter/peace-justice-news-civil-society-and-peacebuilding/organisations-for-peace-building-palestine-and-israel/>>accessed 15 October 2020

⁷³UNRWA, 'Lack Of Funds Forces UNRWA To Suspend Cash Assistance For Housing For Palestine Refugees From Syria In Lebanon', (2015) <<https://www.unrwa.org/newsroom/press-releases/lack-funds-forces-unrwa-suspend-cash-assistance-housing-palestine-refugees>>accessed 15 October 2020

⁷⁴UNRWA, '2016Syriaregionalcrisisemergencyappeal' <https://www.unrwa.org/sites/default/files/2016_syria_emergency_appeal.pdf> accessed 15 December 2020

⁷⁵Anna Lise Purkey, 'Justice, Reconciliation, and Ending Displacement: Legal Empowerment and Refugee Engagement in Transitional Processes' (2016) 35(4) Refugee Survey Quarterly 1-25

would otherwise deny refugees meaningful benefits of the more general system of human rights protection' has been adapted by the author, and provides such answers with the aforementioned recommendations.

As has been reflected above, the violations of the basic rights of the *Palestine refugees* under International Humanitarian Law, with detailed analysis of comparative role of UNHCR and other institutions, just connotes the fundamental position that, *Refugees in any case*, have the right to return to their homeland. More importantly, the position of this essay with regards the refugees in terms of identification and the resulting gap just clearly suggests, the ineffectiveness of Public International law *per se* to provide remedies that each individual irrespective of color, creed, nationality and gender (including trans-genders) to the right to meaningful and identifiable existence.

The Palestine refugees have faced a continued persecution as one of the longest in history, which sustains over decades and results in a prolonged non-existence of any Humanitarian rights, for this (otherwise) identifiable group of individuals with non-entitlements even to their very identity, which reflects the thorough ineffectiveness. The Palestinian refugees only reflect the sad but true reality of "*apathy and helplessness*" not of the refugees, but the pseudo organizations who promise to be the guardians of the inalienable rights and basic status. Unfortunately, the position of law along with the factual scenario for the Palestinian refugees as stated as a '*technical legal gap*' is overturned as a plausible remedy with disregard to the position in *Nottebohm*. This climaxes ultimately with non-recognition of both the UN Resolutions and the genuine link established in customary law for any such remedies available against the rights of the refugees.

As non-contractual as it gets, the protection of Human rights even though enshrined in most constitutions of States (implied or express) is only subservient to the political will and might of the persecutors and neighbouring states. The recent geo-political crises in the Middle East is a further reflection on the position of refugees and their so-called protection by States concerned.

Controversially many leading academicians and authors hold the position that that the Refugee Convention is in no way violating the rights of the Palestinians or nationals of any other countries. And support further that, the application of the Refugee Convention in case of the Palestinians refugees are limited due to its inherent limitation. The author is sincerely of the view that the in contemporary times, inadequacy of refugee convention has surfaced and there is needs to an effective broadening of the definition of refugees under Article 1A, until then this convention is insufficient to protect the Rights of the refugees.

This essay concludes on the position held by (Hathaway) that 'the challenge of Humane Protection in a Self-Interested World', wherein the author extends the wording to State-Interest, that Palestine refugees will have some remedy in this decade or the other, only if a more humane interpretation of the Convention's core precepts are recognized in the ever-changing dynamic yet fragile political ecosystem. This will collectively will result in a revolutionized movement that will achieve the legitimate interests of not just the 'Palestine refugees' but any such other refugees who will be protected by both non-governmental observers and States, as a general principle of International Humanitarian Law, to ultimately protect the situation-specific vulnerabilities and achieve a more meaningful yet general system of human rights protection.

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