

THE FAILURE OF PROTECTION IN THE INTERNATIONAL REFUGEE  
REGIME: THE CASE OF THE PALESTINIAN REFUGEE PROBLEM

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## ABSTRACT

### THE FAILURE OF PROTECTION IN THE INTERNATIONAL REFUGEE REGIME: THE CASE OF THE PALESTINIAN REFUGEE PROBLEM

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This thesis examines the effectiveness of the international refugee regime in providing protection to Palestinian refugees. It critically analyzes the plight of Palestinian refugees who currently comprise the largest refugee population in the world. Despite the existence of an international legal and institutional framework designed to guarantee the legal and physical protection of refugees, Palestinian refugees have endured protracted displacement and persistent vulnerability for over seven decades. In this sense, this thesis aims to reveal the ways and extent to which the international refugee regime has failed in providing international protection to Palestinian refugees. The main argument of this thesis is that significant legal and institutional gaps exist within the regime, leading to a protection gap for Palestinian refugees. To accomplish this, the thesis initially presents the historical background of the Palestinian refugee crisis. Subsequently, it provides a significant conceptual framework on the international refugee regime and its interaction with Palestinian refugees. Finally, the thesis analyzes the legal and institutional gaps within the regime to highlight the scope of the protection gap experienced by Palestinian refugees. By shedding light on these systematic deficiencies within the international refugee regime, this thesis seeks to provide a more comprehensive understanding of the legal and physical challenges faced by Palestinian refugees since their initial displacement.

**Keywords:** International Refugee Regime, Palestinian Refugees, International Protection, Liberalism, Protection Gap

## ÖZ

### ULUSLARARASI MÜLTECİ REJİMİNDE KORUMA BAŞARISIZLIĞI: FİLİSTİNLİ MÜLTECİ SORUNU ÖRNEĞİ

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Bu tez, uluslararası mülteci rejiminin Filistinli mültecilere koruma sağlamadaki etkinliğini incelemektedir. Halihazırda dünyadaki en büyük mülteci nüfusunu oluşturan Filistinli mültecilerin içinde bulunduğu kötü durumu eleştirel bir bakış açısıyla analiz etmektedir. Mültecilere hukuki ve fiziksel koruma sağlamak üzere tasarlanmış uluslararası yasal ve kurumsal bir çerçevenin varlığına rağmen, Filistinli mülteciler yetmiş yılı aşkın bir süredir uzun süreli yerinden edilmeye ve sürekli savunmasızlığa maruz kalmışlardır. Bu anlamda, bu tez, uluslararası mülteci rejiminin Filistinli mültecilere uluslararası koruma sağlamada ne şekilde ve ne ölçüde başarısız olduğunu ortaya koymayı amaçlamaktadır. Bu tezin temel argümanı, rejimde önemli yasal ve kurumsal boşlukların bulunduğu ve bunun da Filistinli mülteciler için bir koruma boşluğuna yol açtığıdır. Bunu başarmak için, tez öncelikle Filistinli mülteci krizinin tarihsel arka planını sunmaktadır. Daha sonra, uluslararası mülteci rejimi ve bu rejimin Filistinli mültecilerle etkileşimi hakkında önemli bir kavramsal çerçeve sunmaktadır. Son olarak, tez, Filistinli mültecilerin yaşadığı koruma açığının kapsamını vurgulamak için rejimdeki yasal ve kurumsal boşlukları analiz etmektedir. Bu tez, uluslararası mülteci rejimindeki bu sistematik eksikliklere ışık tutarak, Filistinli mültecilerin ilk yerlerinden edilmelerinden bu yana karşılaştıkları hukuki ve fiziksel zorlukların daha kapsamlı bir şekilde anlaşılmasını sağlamayı amaçlamaktadır.

**Anahtar Kelimeler:** Uluslararası Mülteci Rejimi, Filistinli Mülteciler, Uluslararası Koruma, Liberalizm, Koruma Açığı

*To my beloved parents Murat GÜLER and Şehriban GÜLER*



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## **CHAPTER 1**

### **INTRODUCTION**

With the emergence of the ongoing wars in Syria and Ukraine, the world has recently witnessed large-scale refugee crises. Millions of Syrians and Ukrainians who were forcibly displaced as a consequence of the violent conflicts in their countries began to seek refuge in neighboring countries to escape persecution. As a result of the increasing size of these crises, the issue of international protection has recently come to the fore again. On the other hand, however, millions of Palestinian refugees have long been ignored to benefit international protection since their successive flights from territory of Palestine in 1948 and 1967, respectively. Indeed, Palestinian refugee crisis is unique in terms of its numerosity and longevity. In the first place, Palestinian refugees make up the largest refugee population in the world today, with the total number estimated at around 8.36 million.<sup>1</sup> Also, they are experiencing one of the most protracted refugee crises in history. After seventy-five years of massive displacement, Palestinian refugee crisis still remains the most significant unresolved refugee crisis.

At the outset, Palestinian refugee crisis mainly emerged as a result of the UN plan proposing partition of Palestinian territory among Arab and Jewish states in 1947. Later, with the establishment of the State of Israel and ensuing Arab-Israeli War in 1948, the scale of the crisis was severely escalated due to extensive violence across the region. Approximately 750,000 Palestinians were subjected to forced displacement and fled to neighboring states as refugees, mainly Jordan, Lebanon, Syria. Many were also resettled in the West Bank and Gaza Strip, which after the war came under the control of Jordan and Egypt respectively. Then, another massive wave of Palestinian displacement took place during and after the 1967 Arab-Israeli War, when Israel

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<sup>1</sup> BADIL, (2022). Survey of Palestinian Refugees and Internally Displaced Persons, 2019-2021, Volume X. Bethlehem, Palestine: BADIL Resource Center for Palestinian Residency and Refugee Rights, p 40.

occupied the West Bank and Gaza Strip. Again, more than 300,000 Palestinians were displaced, and sought refuge in neighboring Arab states. Apart from these two main displacements, Palestinian population who remained within the territory of Israel after 1948 and 1967 wars had faced oppressive military rule restricting their fundamental human rights by the government of Israel. Since its establishment, Israel had been already pursuing strong policies to systematically drive Palestinian population out of the state. As a result of these expulsion policies, many other Palestinians have been forced to leave Israel at different times. The total number of displacements since 1967 is estimated at more than 800,000.<sup>2</sup>

In response to the mass displacement of Palestinians in 1948, the UN, as the main international institution in the newly created international system, created a legal framework to provide emergency international protection and assistance to Palestinian refugees. As the main legal instrument concerning the resolution of Palestinian refugee crisis, UN Resolution 194 (III) of 1948 has set out the basic legal structure for refugee protection, which consists of upholding the fundamental rights of refugees, such as their repatriation or resettlement in countries of asylum. Furthermore, the resolution instructed the establishment of the Conciliation Commission (UNCCP) to seek final solution to refugee crisis and settlement of dispute between Arabs and Israel. Next year, another international agency, the UN Relief and Works Agency (UNRWA) was established to provide emergency relief and work programs to Palestinian refugees. In time, UNRWA's operations evolved in providing emergency humanitarian assistance due to certain political challenges in the region. Therefore, UNRWA started to provide basic humanitarian needs of refugees such as food, shelter, health care, education and social services. Ultimately, these two UN agencies comprised a distinctive regime aimed at providing general protection and assistance to Palestinian refugees. However, there were significant differences in capabilities and effectiveness between this distinctive regime and the international refugee regime that was later created.

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<sup>2</sup> BADIL, (2005). Closing Protection Gaps: Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention. Bethlehem: BADIL Resource Center for Palestinian Residency and Refugee Rights, p. 2.

The international refugee regime, which is the main evaluation subject of this thesis, is a universally recognized legal framework consisting of international institutions, international law, specific principles and policies to provide international protection and assistance to refugees in order to secure their fundamental human rights and overall well-being. Basically, the regime was created on the legal basis of 1951 Convention Relating to the Status of Refugees which is often used as 1951 Refugee Convention in this thesis. It basically set up the basis of international refugee law based on universal principles of human rights. Later, with the 1967 Protocol, as a complementary legal component of the regime, certain geographical and time limitations put by the 1951 Refugee convention to designate people of concern to international protection and assistance were abolished. In addition, UNHCR was created in 1951 as the regime's institutional instrument to execute promised international protection and assistance to refugees. In general, the international refugee regime, which mainly consists of these legal and instrumental components, aims to ensure the safety and well-being of refugees by applying international protection instruments.

As for Palestinian refugees, however, the international refugee regime has never encompassed them in the application of international refugee protection. This is because they were excluded from the legal refugee definition established by the 1951 Refugee Convention. Similarly, UNHCR was legally limited to provide its services to Palestinian refugees by a specific article in its founding statute. This legal and functional exclusion was initially justified that Palestinian refugees were already receiving protection and assistance services from other UN agencies at the time, UNCCP and UNRWA, and were given a particular legal position in international law. It was mainly supposed that giving particular attention to Palestinian refugee through a distinctive protection regime would facilitate the resolution of the crisis. However, history has proven otherwise. With the initial failure of UNCCP to achieve its protection mandate and its ultimate demise in 1952, no other international agency had been officially mandated to guarantee international protection for Palestinian refugees. In this sense, this thesis will question adequacy of the international refugee regime in providing supposed international protection to Palestinian refugees on the basis of fundamental human rights and international law.

In order to comprehensively assess the effectiveness of the refugee regime in offering international protection to Palestinian refugees, it is important to correctly understand what international protection is. Basically, this thesis defines international protection as legal and institutional actions that aim to protect the fundamental human rights of refugees in order to compensate for the lack of national protection. In addition, this thesis will rely on two interrelated aspects of international protection. The first and the foremost important one is legal protection that seeks securing legal status of refugees to eventually provide a permanent solution to their problems on the basis of fundamental human rights. The second aspect is, on the other hand, physical protection. Significantly, physical protection of refugees means ensuring the physical safety and material wellbeing of refugees through the equitable distribution of services. Essentially, throughout the thesis, the phrase protection gap will refer to the conditions where these protection means, legal and physical protection, are absent in the treatment towards refugees. In this context, the term international protection will be used throughout this thesis to cover two broadly interrelated aspects. Largely, the application of these aspects of international protection to Palestinian refugees will be examined throughout the thesis.

In doing so, the emergence of Palestinian refugee problem will be deeply examined at first. However, since this thesis is not about general discussion on Israeli-Arab conflict, it will focus solely on the role of international community in the creation of the refugee problem in order to eventually evaluate the international refugee regime. Then, the necessary conceptual framework will be provided on the international refugee regime and Palestinian refugees in order to better comprehend the general discussion of the thesis. Eventually, the main discussion of the thesis will be held through systematic analysis of international refugee regime in terms of the legal status and fundamental rights of Palestinian refugees. An in-depth analysis of the legal and institutional deficiencies in the regime will provide a basis for evaluating the regime's effectiveness in international protection. In doing so, the legal position of Palestinian refugees will be examined. On the other hand, the competence of distinctive protection regime specific to Palestinian refugees will be assessed. Eventually, certain problems that Palestinian refugees face in the course of their displacement will be examined. Ultimately revealing implementation gaps through legal and socio-economic conditions



of Palestinian refugees in host countries across the world will give an essential insight to understand legal and institutional gaps in the regime. In this sense, each of these legal, institutional and implementation gaps will be referred as a protection gap in general.

Within the literature, there are dozens of studies on the Palestinian refugee problem. Many of them deals with the historical roots and developments of the problem. Although they are very helpful studies to gain general knowledge on Palestinian refugee crisis, they do not hold a discussion on the international refugee regime and its role in providing protection to Palestinian refugees. In this sense, the significant contributions of Benny Morris<sup>3</sup>, Ilan Pappé<sup>4</sup>, Nur Masalha<sup>5</sup>, Mark Tessler<sup>6</sup> and Yoav Gelber<sup>7</sup> will be benefitted in this thesis only to shed light on the understanding of the roots and development of the refugee problem. Furthermore, there are many studies that are concerned with a long-standing general conflict between Arabs and Israel. They often reflect the political aspect of the problem, and fails to address very legal problem about Palestinian refugees. Since this thesis does not seek a particular inquiry on the broad Arab-Israeli conflict, these studies will hardly be included in the thesis. Essentially, there are also significant studies concerning the legal aspects of Palestinian refugee problem. Nevertheless, some of them serves as a descriptive source to understand legal position of Palestinian refugees in international law. For instance, “The Status of Palestinian Refugees in International Law”<sup>8</sup> and “Palestinian Refugees

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<sup>3</sup> Morris, B. (2004). *The birth of the Palestinian refugee problem revisited* (No. 18). Cambridge University Press.

<sup>4</sup> Pappé, I. (2006). *A history of modern Palestine*. Cambridge University Press; Pappé, I. (2006). *The ethnic cleansing of Palestine*. Oneworld Oxford.

<sup>5</sup> Masalha, N. (2003). *The politics of denial: Israel and the Palestinian refugee problem* (Vol. 298). London: Pluto Press.

<sup>6</sup> Tessler, M. (2009). *A history of the Israeli-Palestinian conflict*. Indiana University Press.

<sup>7</sup> Gelber, Y. (2006). *Palestine 1948: War, escape and the emergence of the Palestinian refugee problem*. Liverpool University Press.

<sup>8</sup> Takkenberg, A. (1998). *The Status of Palestinian Refugees in International Law*. Clarendon Press.

in International Law”<sup>9</sup> will be commonly used for the descriptive parts of this thesis. On the other hand, some of the leading scholars and their books, articles and reports reflect their views on the problem of Palestinian refugee protection in international law. Susan Akram<sup>10</sup> is one of these leading scholars in this context. Through many published sources in this context, Akram principally argues that there is a constant denial of Palestinian refugee protection in the international system.<sup>11</sup> As a result, she focuses on a protection gap in terms of resultant implications of the denial of international protection, such as basic right of Palestinian refugee to a durable solution.<sup>12</sup> In this sense, she further argues that international regime has failed to separate the political aspects of the broad Arab-Israeli conflict from legal right-based aspect of the refugee problem.<sup>13</sup> In this context, Victoria Mason calls this failure of the regime to separate the political and legal aspects as ‘liminality’.<sup>14</sup> She argues they Palestinian refugees have been exposed to a liminal position between international law and global politics.<sup>15</sup> Additionally, Asem Khalil refers to the protection gap as the exclusion of Palestinian refugees from protection mandate of international agencies in international law.<sup>16</sup> He criticizes that protection of Palestinian refugees were left to the discretion of host states in the absence of proper protection mechanism, which

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<sup>9</sup> Albanese, F. P., & Takkenberg, L. (2020). *Palestinian refugees in international law*. Oxford University Press.

<sup>10</sup> Akram, Susan M., *"Closing Protection Gaps: Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Convention"* (2015). Books. 19; Akram, S., & Syring, T. (Eds.). (2014). *Still waiting for tomorrow: The law and politics of unresolved refugee crises*. Cambridge Scholars Publishing; Akram, S. M. (2002). Palestinian refugees and their legal status: rights, politics, and implications for a just solution. *Journal of Palestine Studies*, 31(3), 36-51; Akram, S. M. (2000). Brief Amicus Curiae on the Status of Palestinian Refugees under International Law; Susan M. Akram, Myths and Realities of the Palestinian Refugee Problem: Reframing the Right of Return, in 8 MIT Electronic Journal of Middle East Studies 183 (2008).

<sup>11</sup> Akram, S. M., Dumper, M., Lynk, M., & Scobbie, I. (Eds.). (2011). *International law and the Israeli-Palestinian conflict: A rights-based approach to Middle East peace*. Routledge, pp. 13-44.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> Mason, V. (2020). The liminality of Palestinian refugees: Betwixt and between global politics and international law. *Journal of Sociology*, 56(1), 84-99.

<sup>15</sup> Ibid.

<sup>16</sup> Khalil, A. (2009). Palestinian Refugees in Arab States: A Rights-Based Approach. *Robert Schuman Centre for Advanced Studies CARIM Research Report*, (2009/08).

eventually left them without any legal protection.<sup>17</sup> Like Akram, he also focuses on the right-based approach in this context.<sup>18</sup> In addition, Maissaa Almustafa emphasizes on the structural deficiencies of the international refugee regime that resulting in the failure to protect Palestinian refugees during the recent Syrian crisis.<sup>19</sup> Likewise, Are Knudsen disputes that Palestinian refugees in Lebanon persistently experience both formal and informal discrimination in daily life through series of legal restrictions due to their peculiar legal status in international law.<sup>20</sup> In this sense, they also argue that absence of definite legal status causes a protection gap in the legal and socio-economic situations of Palestinian refugees both in Syria and Lebanon.<sup>21</sup> Furthermore, the non-profit organization ‘BADIL Resource Center for Palestinian Residency and Refugee Rights’ also contributed to the literature through various handbooks, surveys and research papers to reveal existing protection gap in the case of Palestinian refugee protection.<sup>22</sup>

On the other hand, some scholars disagree with the existence of protection gap in international protection for Palestinian refugees. For instance, Scott Custer claims that “in spite of the absence of the word “protection” in UNRWA’s founding resolution, UNRWA has received, and has exercised over the years, a clear mandate to provide “protection” for Palestine refugees”<sup>23</sup>. Similarly, Lance Bartholomeusz also states that

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<sup>17</sup> Khalil, A. (2011). The ‘Protection Gap’ and the Palestinian Refugees of the Gaza Strip. *IALHS-BZU Working Paper Series*, (2011/11), pp. 126-135.

<sup>18</sup> Khalil, A. (2009). Palestinian Refugees in Arab States: A Rights-Based Approach.

<sup>19</sup> Almustafa, M. (2018). Relived vulnerabilities of Palestinian refugees: Governing through exclusion. *Social & Legal Studies*, 27(2), 164-179.

<sup>20</sup> Knudsen, A. (2009). Widening the protection gap: the ‘politics of citizenship’ for Palestinian refugees in Lebanon, 1948–2008. *Journal of Refugee Studies*, 22(1), 51-73.

<sup>21</sup> Almustafa, M. (2018). Relived vulnerabilities of Palestinian refugees: Governing through exclusion, pp. 164-179; Knudsen, A. (2009). Widening the protection gap: the ‘politics of citizenship’ for Palestinian refugees in Lebanon, 1948–2008, pp. 51-73.

<sup>22</sup> BADIL, (2022). Survey of Palestinian Refugees and Internally Displaced Persons, 2019-2021; BADIL, (2015). Closing Protection Gaps: Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention (2<sup>nd</sup> ed, Al-Ayyam Press 2015). Bethlehem: BADIL Resource Center for Palestinian Residency and Refugee Rights.

<sup>23</sup> Custer Jr, S. (2010). United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA): Protection and Assistance to Palestine Refugees. In *International Law and the Israeli-Palestinian Conflict* (pp. 55-78). Routledge, p. 52

UNRWA has a well-defined protection mandate.<sup>24</sup> However, these author's objection on the protection gap is solely based on the protection role of UNRWA. In this sense, Kagan argues that there is no protection gap that stems from the failure or ineffective involvement of UNRWA, but there is a political failure of the regime.<sup>25</sup> In this sense, he argues that the only protection gap exists in individual protection of Palestinian refugees in host states, such as Lebanon, due to their obscure legal status.<sup>26</sup>

In the context of this thesis, the literature review reflects that debates on international refugee regime and Palestinian refugee problem are often addressed in terms of the consequences of the international refugee regime's failure to involve in Palestinian refugee protection as a protection gap. In response to the protection gap debate in the literature, some scholars claim otherwise. They maintain that there is no protection gap in the system since UNRWA already has a well-defined protection mandate. In this sense, they perceive these criticisms as an attack to the existence of UNRWA. However, this thesis will argue that UNRWA is not the main target of the protection gap debate. Although UNRWA has certain legal and operational deficiencies that will be later analyzed in this thesis, it will mainly be the international refugee regime to be evaluated in terms of its effectiveness to provide appropriate means of international protection to Palestinian refugee as in the case of other refugees around the globe. Basically, this thesis will address the certain gaps in the legal and institutional arrangements of the regime to widely highlight the scope of the protection gap in international regime for Palestinian refugees. To do so, what the scope of the protection gap in international refugee regime concerning Palestinian refugees is, and why such a protection gap exists will be the main research question of this thesis. Complementarily, this thesis will also ask the question of in what ways and to what extent international refugee regime fails to protect Palestinian refugees. By asking these fundamental questions, it will be analyzed whether legal and institutional

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<sup>24</sup> Bartholomeusz, L. (2009). The mandate of UNRWA at sixty. *Refugee Survey Quarterly*, 28(2-3), p. 466

<sup>25</sup> Kagan, M. (2009). Is there really a protection gap? UNRWA's role vis-à-vis palestinian refugees. *Refugee Survey Quarterly*, 28(2-3), p. 529.

<sup>26</sup> *Ibid.*

arrangements to ensure the protection of Palestinian refugees are applicable, adequate in scope or interpreted appropriately within the existing international refugee law.

This thesis applies qualitative research method to analyze legal position of Palestinian refugees in international law. Thus, in what ways international law is not implemented to Palestinian refugees will be examined in order to eventually reveal the failure of international refugee regime to comply with the principles of international law and universal human rights at the expense of international protection. The methodological template, in this thesis, includes in-depth literature review based on secondary sources such as academically reliable published books, articles and reports. Also, primary sources are also frequently used such as official documents of the United Nations and its subsidiary agencies related to the framework of this thesis. In addition, many relevant articles, reports, surveys and working papers of some non-governmental and non-profit organizations, such as BADIL Resource Center for Palestinian Residency and Refugee Rights, are also utilized to strengthen the structure of the thesis. Based on these dozens of sources, international refugee regime and its protection role on Palestinian refugees were examined. In this context, this thesis, as emphasized earlier, questions whether international refugee regime is effective in protecting Palestinian refugees in terms of legal and institutional arrangements.

The theoretical framework of this thesis will be based on the fundamental tenets of liberal theory. Through analyzing application of the basic principles of liberal theory to Palestinian refugees, international refugee regime will be evaluated based on adherence to its founding tenets influenced by liberal international order. Basically, the post-World War I order was shaped through liberal principles that emphasizes on freedom, justice, fundamental human rights, self-determination, international cooperation, importance of international organizations, sovereignty, and eventually democracy. Similarly, international refugee regime embraced these liberal principles<sup>27</sup> to equitably provide international protection to refugees and stateless persons who need international protection in the absence of national protection. Basically,

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<sup>27</sup> Suhrke, A., & Newland, K. (2001). UNHCR: Uphill into the Future. *International Migration Review*, 35(1), p. 285.

international refugee regime was assumed as an exclusive state for refugees and stateless persons across the world. This thesis will analyze if this state has ever accepted Palestinian refugees under its protection mandate. As mentioned earlier, through certain legal and institutional arrangements, Palestinian refugees were excluded from universal refugee definition and international protection. In this sense, this thesis will evaluate the success of the regime in applying liberal principle when it comes to Palestinian refugees. Significantly, it will be discussed that Palestinian refugees have been deprived of their fundamental right to self-determination from the outset. This is actually the root of the Palestinian refugee problem since ignorance of international law by international community paved the way for the establishment of the State of Israel. On the other hand, Palestinian refugees were not given the same privilege to decide their own fate at the expense of their historical belonging to the territory of Palestine. The problem is that it is not a historical fact, but this ignorance still continues by international community and international refugee regime even today. Therefore, this thesis will assess the influence of the regime in creation of Palestinian refugee problem, and it will be evaluated in its compliance with the liberal principle of self-determination. Furthermore, one of the most significant premises of international refugee regime on the basis of liberal theory is to ensure fundamental human rights for all refugees. In this context, it will be argued whether Palestinian refugees have been legally recognized these basic human rights. Most significantly, through analyzing their legal and socio-economic positions in international law, host states and Occupied Palestinian Territories (OPTs), the regime's achievement to provide these rights to Palestinian refugees will be discussed. Also, they will be compared to the rest of the world's refugee population to examine different applications of international law and fundamental human rights. In this sense, the fairness of the regime will be argued in this thesis. In addition, liberal theory assumes that international organizations are useful for maintaining universal peace and freedom. Thus, these international organizations will be evaluated to decide whether it is applicable for Palestinians who have lived in severe conditions for decades around the world. All in all, this thesis will discuss the consideration that international refugee regime was established based on liberal principles relying on human rights, justice, freedom, and self-determination. Therefore, in this thesis, international refugee regime will be analyzed on the basis of these basic premises of the liberal theory.

The main inspiration of this thesis arose from the urgent need of Palestinian refugees to access comprehensive international protection. Therefore, this thesis aims at demonstrating fundamental failures of international refugee regime to provide international protection for Palestinian refugees who comprise the largest refugee population in the world. In doing so, two aspects of international protection will be examined, legal and physical protection. Then, it will be discussed that physical protection cannot be applied in cases where there is no legal protection that guarantees the legal status of refugees in international law. In this sense, legal and institutional deficiencies of international refugee regime will be analyzed to finally highlight whether Palestinian refugees have long been facing serious human rights violations in terms of legal and socioeconomic conditions around the world. This thesis aims to contribute to the literature by providing a comprehensive understanding of legal and institutional deficiencies in international refugee in terms of resultant protection gaps for millions of Palestinian refugees for decades. Thus, the unique aspect of this thesis is that it mainly deals with the protection gap debate from a legal perspective. In other words, this thesis will examine legal and institutional deficiencies of the international refugee regime in terms of Palestinian refugees to eventually understand what the scope of the protection gap is. Ultimately, analysis of these arrangements will represent whether international refugee regime has ever been blind to the one of the greatest refugee crises in history.

Including this introductory chapter, this thesis will consist of eight chapters: historical background of Palestinian refugee problem, theoretical framework of international refugee regime, theoretical framework for Palestinian refugees in international law, an assessment of discriminated legal position of Palestinian refugee in the international refugee regime, the ineffectiveness of distinctive refugee regime, the scope of protection gap and eventually overall assessment of protection gaps that Palestinian refugees have long faced for decades.

In the second chapter, the historical background of Palestinian refugee problem will be explored to understand the roots causes of mass displacements Palestinian refugees had faced in 1948 and 1967 as consequences of two major Arab-Israeli wars. At the outset, the birth of Zionism and early Jewish immigration flows to Palestine will be

explained. Basically, the growing Jewish population was decisive in leading to great inconvenience and deterioration of the situation in Mandatory Palestine. Besides emphasizing on physical causes of displacement resulted from the Civil War and respective Arab-Israeli wars, this chapter will also underline the role of the United Nations (UN) in creation of this crisis by ignoring the historical right of Palestinian refugees to have a nation state within the territory of Palestine. In this sense, the UN partition plan will be stressed in bringing about the establishment of Jewish state. It will also examine the systematic repressive treatment of the Israel after the first and greatest displacement to emphasize the Palestinian population has suffered from constant displacement over time.

In the third chapter, the international refugee regime will be described. The objective of this chapter is to understand fundamental tenets of the regime. It is important for the purpose of this thesis because whether the international refugee regime complies with its basic principles in the Palestinian refugee problem will be analyzed later. In this sense, the basic principles of the regime will be described on the basis of liberal theory. As the new international order prevailed after the WW I, liberal principles were at the heart of the new international system. In the same way, international refugee regime was also established based on these principles. Basically, stressing on the principles of justice, human rights, self-determination and the importance of international organizations, liberal theory was very influential in the creation of international refugee law in a global context. In general, this chapter serves as a conceptual framework to understand what the international refugee regime is. In doing so, besides explaining historical development of the regime to date, the establishment of the UN and international refugee law will be examined.

The fourth chapter will serve as both the conceptual framework and the descriptive part for the legal status of the Palestinian refugee issue in international law. In the first place, the legal definition of Palestinian refugees and the scope of their displacement will be analyzed. Then, their legal status will be explored in international law. In addition, the legal status of Palestinian refugees who reside within the UNRWA areas will be examined. Later, this chapter will describe the distinctive refugee regime created for Palestinian refugees. After explaining the early reaction of the UN to the



emerging Palestinian refugee crisis, the chapter will further examine the role of UNCCP and UNRWA in providing international protection and assistance to Palestinian refugees. In addition, the UN Resolution 194 (III) of 1948 will be explained since it represents historical importance in creation of a legal framework for basic rights of Palestinian refugees. Ultimately, UNHCR will be observed in terms of its legal restrictions on involvement to the Palestinian refugee protection. In this sense, the 1951 Refugee Convention and the UNHCR Statute will be analyzed. In general, this chapter is significant because it basically explains the uncertain legal status of Palestinian refugees in international law through their exclusion from other refugees with the Article 1D of the Refugee Convention by being justified that they were receiving services from other UN agencies at the time. Ultimately, this chapter will work as an introduction to the next three chapters analyzing protection gap for Palestinian refugees in the international refugee regime.

The fifth chapter will present an assessment of the legal position of Palestinian refugees in international refugee regime. From an analytical perspective, this chapter will discuss the legal gap in the regime in terms of the position of Palestinian refugees in international law. As this thesis aims to analyze the failure of international refugee regime to provide international protection for Palestinian refugees, this chapter is significant to understand the root causes of this failure by closely focusing on uncertain legal status of Palestinian refugee in international refugee law. In this sense, first of all, it will be argued that the very basis of the regime had already been problematic from a legal point of view. This is because the 1951 Refugee Convention, which is considered as the foundation of international refugee law, already had certain legal limitations in itself to serve as a universal framework. The main focus was Europe where millions of people were displaced across the continent as a result of devastating war. Initial refugee definition of the Convention encompassed those people who had been displaced as a result of “events occurring in Europe before 1 January 1951”<sup>28</sup>. As a result of this restrictive definition of a refugee, millions of refugees outside Europe were excluded from the regime’s mandate. In this context, the Refugee Convention

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<sup>28</sup> UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, art. 1B (1), available at: <https://www.refworld.org/docid/3be01b964.html> [accessed 15 July 2023]

will be criticized on its flawed legal foundation. Then, intentional exclusion of Palestinian refugees from the benefits of the Convention will be argued. Since the source of all the problems Palestinian refugees have been experiencing for decades basically stems from their exclusion from the universal definition of a refugee by specific provision, this chapter will critically analyze exclusion clause of the Convention, Article 1D. The chapter will later examine the legal consequences of their exclusion. Basically, the international refugee regime will be criticized for the inconsistency between international law and its application to Palestinian refugees. It will be argued that the regime has been inadequate in applying the basic principles of international law to Palestinian refugees to date. Ultimately, the chapter will demonstrate how certain basic rights, right to return, self-determination and nationality, could not be attained by Palestinian refugees due to the legal gap resulting in ambiguous legal status for them in international refugee law.

The sixth chapter will focus on the institutional gap in the international refugee regime. Basically, the incompetence of the distinctive regime for Palestinian refugees in providing them with international protection will be analyzed. The distinctive regime was composed of UNCCP and UNRWA, that are mandated to provide international protection and assistance to Palestinian refugees respectively. In this sense, the failure of UNCCP to implement its core mandate will be discussed first. Then, UNRWA will be analyzed in twofold. In the first place, legal and operational deficiencies of the agency to function its core mandate will be debated. Next, its failure to take over protection mandate from UNCCP will be questioned since it was the only international agency responsible for Palestinian refugees in international law. Ultimately, the role of UNHCR in Palestinian refugee protection will be argued. Since it is the only international agency responsible for refugee protection, UNHCR will be evaluated in terms of its limited involvement in Palestinian refugee crisis. In fact, it is not a component of the distinctive regime. The main reason that this chapter will contain UNHCR is to underline the institutional gap in the regime by criticizing its restricted role in involvement in Palestinian refugee crisis. In general, these three UN agencies will be assessed in terms of their failure to implement a durable solution to the problem. It will be argued that none of the three forms of a durable solution have been applied to the Palestinian refugee issue.

The seventh chapter will serve as a concrete illustration of the protection gap in international refugee regime. Basically, the consequences of legal and institutional gaps will be analyzed in this chapter. In the first place, legal and socio-economic conditions of Palestinian refugees in the UNRWA field will be examined. The analysis will include only five areas where UNRWA operates since the majority of Palestinian refugee population reside in these areas. These areas are Jordan, Lebanon and Syria as Arab host states and the West Bank and Gaza Strip as Occupied Palestinian Territories (OPTs). This thesis considers that examining these areas will give sight to understand general situation of Palestinian refugees across the Arab region. Then, situation in non-Arab states will be evaluated in terms of their interpretation of Article 1D of the 1951 Refugee Convention. It will be argued that uncertain legal status of Palestinian refugee causes different interpretations of Article 1D especially in the European countries. As result, asylum applications of Palestinian refugees are rejected in most cases in non-Arab world. In this sense, this chapter represents that they are deprived of their fundamental human right to seek and find an asylum from persecution. Eventually, Palestinian refugee problem will be discussed in terms of multiple displacements they have constantly experienced in the course of their flight.

Lastly, based on main findings of the thesis, the conclusion chapter will discuss overall protection gaps in the international refugee regime in terms of Palestinian refugee protection.

## **CHAPTER 2**

### **HISTORICAL BACKGROUND OF PALESTINIAN REFUGEE PROBLEM**

The late 19<sup>th</sup> century was crucial for understanding the Palestinian problem because it represents the emergence of the long-lasting conflict between Arabs and Jews over the territory of Palestine. Starting with the situation in Palestine at the time, Palestine territory has been under the rule of Ottoman Empire for more than four centuries, and people from different religious and ideological backgrounds were living together. When it comes to the third quarter of 19<sup>th</sup> century, Palestine territory under the rule of Ottoman Empire was populated with the overwhelming majority of Arabs, while Jews were constituting very small minority at the time.

#### **2.1. The Birth of Zionism and Early Developments**

In explaining main source of this problem lasting for more than a century between Palestine and Israel, it is essential to underline notion of nationalism emerged in the late 19<sup>th</sup> century, in this context Arab nationalism and Zionism. In the first place, emergence of Zionism and strengthening of Arab nationalism as political ideologies played an important role in creating such a conflict in Middle East. Nevertheless, this part will not go into detail of emergence of neither Zionism nor Arab nationalism because this thesis argues that it is not a problem about conflicting ideologies or religious ideas deep down, but it is about an incontrovertible conflict on a land for one party and a sought for self-determination for another. Therefore, it is adequate to explain basic developments that paved the way for large scale conflict in subsequent decades.

In fact, Palestine under the rule of Ottoman Empire had already been receiving small numbers of Jewish migrants with the increasing hostility and exclusionary attitudes

against Jews in Russia and other parts of the Europe from the early 1880s. Later, it was understood that these developments took place in Europe paved the way for Jews to resurrect their desire to return Palestine and to create a Jewish state as new settlers emerged in Palestine as a result of a flow of Jewish immigration. Basically, immigrants started to create new Jewish settlements in which various facilities were structured such as schools, farms, and livelihoods.<sup>29</sup> Still, Arab reaction was not very aggressive against new arrivals since there were no political confrontation and large-scale settlement in the territory at the time.<sup>30</sup> However, early Palestinian Arab inconvenience about Jews started with the establishment of wide settlements of Jewish immigrants in Palestine by land purchases from Arab landlords which steadily resulted in a disengagement of Arab lower-class population from their homelands in terms of economic and social aspects starting from 1990s onwards. In other words, due to Jewish immigration waves, numbers of Arab Palestinians became more and more incapable of sustaining their survivals in their own settlements since they were basically started to be discriminated and left without even homes and jobs in time when migration flows had grown in following decades.

Later, establishment of the World Zionist Organization in 1897 by Theodor Herzl has dramatically influenced the attitudes of both Arabs and Jews. That is because Organization embraced Zionism as a political movement in search for establishing a Jewish nation state in Palestine. Likewise, previously mentioned resurrection of the desire to create a homeland for Jewish nation, particularly Jewish state, was formally backed by the creation of the Organization seeking the same desire. Basically, immigration to the Palestine which is considered as a Holy Lands of Israel were strongly encouraged by the Organization in order to create a massive determination to settle and to coalesce in a future nation state of Jewish people.<sup>31</sup> Yet, this development was one of the turning points that escalated the situation in Palestine.

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<sup>29</sup> Cohn-Sherbok, D., & El-Alami, D. (2022). The Palestine-Israeli conflict: A beginner's guide. *Simon and Schuster*, p. 19.

<sup>30</sup> Takkenberg, A. (1998). *The Status of Palestinian Refugees in International Law*. Clarendon Press, p. 8.

<sup>31</sup> Ibid.

On the one hand, Arab population in Palestine were disturbed by the idea of Jewish nation state in their territories, which created disturbance among the society.

Even, early reactions of Arabs against Jewish settlement brought about restrictions on immigration and purchases of land which was previously encouraged by Ottoman Empire to increase foreign investment in the region in line with the 1867 law of Ottoman legislation.<sup>32</sup>

On the other hand, Jewish population in Palestine constituting very small portion of the Palestine population and new Jewish immigrants arrived in the territory with the encouragement of the Organization also became determined to pursue the idea of Jewish nation state.<sup>33</sup> With all these historical backgrounds, Palestine under the Ottoman rule has experienced disturbance among Arab and Jewish dwellers. In this environment, the next crucial turning point arose with the breakout of World War I. Ottoman empire was in the wake of collapse due to this large-scale war. During the war, Arabs were secretly promised to have self-determination and independent Arab states by British government, but on the other hand, another promise to Jews were officially given by the announcement of the Balfour Declaration in 1917.<sup>34</sup>

Firstly, secret negotiations between the high commissioner of Britain in Egypt and the sharif of Mecca which was later on revealed as Husain-McMahon Correspondence was making a pledge for a future Arab independence in the region.<sup>35</sup> At the time, the British was in the pursuit of acquiring Arabs as a partner against Ottoman Empire to ease power of the caliphate over the Muslim majority of the region. Therefore, Arabs as powerful actors in the region to alleviate the resistance of Ottoman empire were secretly encouraged to revolt against the Empire in return for independence aftermath of the Great War. Indeed, the Correspondence fashioned a hope for independence in

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<sup>32</sup> Cohn-Sherbok, D., & El-Alami, D. (2022). *The Palestine-Israeli conflict: A beginner's guide*, p. 134.

<sup>33</sup> Takkenberg, A. (1998). *The Status of Palestinian Refugees in International Law*, p. 8.

<sup>34</sup> Albanese, F. P., & Takkenberg, L. (2020). *Palestinian refugees in international law*. Oxford University Press, pp. 19-22.

<sup>35</sup> Krämer, G. (2008). *A history of Palestine: From the Ottoman conquest to the founding of the state of Israel*. Princeton University Press, p. 144.

the Arab region. Yet, negotiations between the British and the Arabs stayed confidential up until the beginning of the WW II, and expectations of Arabs were interrupted by another agreement called Sykes-Picot Agreement in 1916 and a year later by Balfour Declaration of 1917. In fact, Britain and France have already reached a secret agreement for post war era in propounding the partition of Ottoman territories in Middle East. In addition, in the context of Palestine, formal statements by Britain later on stressed upon the fact that independence of the territory of Palestine had already been excluded from agreement reached by Arabs in the wartime period.<sup>36</sup>

Secondly, one of the most significant developments in the pursuit of establishment of a Jewish State occurred in 1917 when British foreign secretary Balfour revealed the Balfour declaration certifying their intention for the support of creation of national home for Jewish people in Palestine after the partition of Ottoman Empire when the war had ended. Basically, these developments made the problem worse since Arabs were dissatisfied with the Britain which broke her promise of giving self-determination to Arabs after the collapse of Ottoman empire in return for Arab support against Ottomans in the war. Also, growing Jewish population whose political and social positions were getting strengthened in the territory of Palestine created an inconvenience in the society. After the WW I, Palestine territory was freed from Turks and granted to the British mandate with regard to post war partitioning of Ottoman Empire. Officially in 1922, Palestine territory were assigned to the British Mandate by the League of Nations. However, the problem was still alive for Arabs since League of Nations embracing Balfour Declaration in their agenda indicating British support for a prospective Jewish state in granting Britain a mandate. During the mandate, there has been a tremendous flow of immigration by Jews in Palestine. Starting from the establishment of mandate, certain developments in Europe such as Nazis took over government in Germany have brought about massive immigration of Jews living in Europe.

While Jewish population were increasing, there has still been overwhelming majority of the Arabs on the land. Yet, Arab population was not happy with the rising population of the Jews accommodating the villages that they purchased or confiscated.

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<sup>36</sup> Ibid.

As mentioned earlier, inconvenience among Arabs have already sparked after 1917 as a response to the Balfour Declaration. Arab Palestinians were strictly against the idea of establishing a Jewish nation state within their territory. Not only being unsatisfied with the growing number of Jewish population, but Arabs were also disturbed by the fear of Jews enforcing them to leave their homes both by physical and psychological threats. With the rise of the scale of immigration, Arab reaction also started to escalate.

In order to prevent Jewish settlement, Palestinians engaged in riots as well as Jews who had attempted to form a resistance movement against both Arab population and British mandate in Palestine. With the opposition of two parties, there has been a growing hostility among them as well as against British troops. As Jewish immigration continued to increase, the situation in Palestine territory were deteriorated from 1920s onwards under the British mandate. With the escalation of the problem, the British attempted to take precautions to prevent further conflicts by restrictions on Jewish immigration and heavily suppressing revolts. Still, there had been an ongoing civil war in Palestine. Many significant revolts took place both by Arabs and Jews during mandate. In this context, within different proposals in resolving the problem, even partition of Palestine between parties had been recommended by Peel commission report in 1937 as a response to the outbreak of 1936 Arab revolt. Overall, despite all British efforts, conflict in Palestine was not even diminished. Eventually, Britain expressed its intention to leave mandate to the newly establish international institution, United Nations after the WW II.

## **2.2. The UN Partition Plan of 1947**

Due to the escalating conflict under their control, the British expressed their intention to leave the mandate in early 1947. The determination of the British to terminate the mandate was driven by their hope to transfer the Palestine question to the United Nations, which was a newly established intergovernmental organization after the Second World War. As a response, the UN arranged a special committee to observe the situation in Palestine in 1947, United Nations Special Committee on Palestine (UNSCOP). After months of observation in the field, the Committee finalized its report for recommendations on the future of Palestine. Basically, the majority report



of the Committee was in favor of the partition of Palestine into an Arab State and a Jewish State, with the Economic Union among them, and Jerusalem under the administration of international community.<sup>37</sup> Indeed, the partition plan demarcated the Arab State, the Jewish State and the city of Jerusalem. However, along with the drawbacks in legal or moral basis of the plan, allocation of the land among two hypothetical states was also unfair, since Arabs still constituting great majority of the population in Palestine were assigned with the forty-three percent of the territory, while Jewish State was granted fifty-six percent of most developed and fertile regions of the territory.<sup>38</sup>

After pronouncement of the recommendations, reactions of both parties varied in Ad hoc committee created by the UN General Assembly to contemplate the report of UNSCOP that Arab Higher Committee, representative of Palestinian Arabs, strongly rejected any recommendation including partition of Palestine territory, while Jewish agency was partly satisfied with the recommendations and supported the report despite depreciations among some Jewish. Discussing the planned partition, Arabs advocated that there is no legal basis for Jewish assertion over Palestine territory, so possible future of the whole Palestine territory should be comprised of only an Arab state. Furthermore, the Arab view criticized the international community to intertwined two distinguish problems of Jewish refugee issue and Palestine issue. In other words, the Arabs advocated that a new problem aroused out of failing to distinguish these two issues, while the Palestinian Arab right of self-determination according to UN charter has been violated.

Despite the Arab objection, in November 1947, the UN General Assembly passed Resolution 181 (II) which acclaimed the partition of Palestine between independent Arab and Jewish States with economic union according to UNSCOP report after the termination of the British mandate in August 1948 at the latest. In addition, city of

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<sup>37</sup> Pappe, I. (2006). A history of modern Palestine. Cambridge University Press, p. 125.

<sup>38</sup> Held, C. C. (2018). Middle East patterns: Places, people, and politics. Routledge, p. 255.

Jerusalem shall be founded as a separate entity under the envision of special international regime and governed by the UN according to the UN partition plan.<sup>39</sup>

### **2.3. 1947-1948 Civil War in Mandatory Palestine**

On the one hand, Jewish community partially amused by the plan started to deploy campaigns over Arab settlements in a proposed Jewish State to evacuate the land from Arabs. On the other hand, Palestinian Arabs who were unsatisfied with the plan and threatened by Jewish campaigns started to organize against Jews. Other actors dissatisfied with the plan were neighboring Arab states that were strictly against the idea of creation of Jewish State from the outset represented their support for Palestinian Arabs against Jewish threat. Following the adoption of the Resolution 181 (II), extreme violence broke out in Mandatory Palestine. Heavy confrontations between two parties have soon transformed into a civil war in the late 1947 and in 1948.

Immediately after the UN adopted the resolution, Palestinian civilians started to be expelled from their homes by Jewish paramilitary forces. Essentially, Arab population in the region were fiercely attacked, while Arab paramilitary forces counterattacked. Despite the fact that Arabs had adequate resources for fight, they were not as powerful as Jewish forces to sustain their pressure on the other side. Due to the beginning of heavy confrontations and intimidation, first wave of Palestinian exodus started to take place in the late 1947. (Statistics needed if found) Thousands of upper and middle classes of Palestinian population had to escape because of attacks and fear of assaults.

Nevertheless, Jewish community needed more systematic violence to immediately clean the region because American and international attitudes started to change in terms of credibility of the partition plan and think about alternative solutions. Strong lobbying by Jewish community attempted to prevent any other possible solution, but essential priority was to demonstrate Jewish determination. Therefore, the Plan Dalet

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<sup>39</sup> UN General Assembly, Resolution 181 (II). "Future government of Palestine", 29 November 1947, A/RES/181 (II). Accessed July 15, 2023. <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/038/88/PDF/NR003888.pdf?OpenElement>.

put into force by high officers of Haganah which was the main military force of Jewish community, and they more systematically attempted to cleanse the whole Arab components in the region as soon as possible for future Jewish state. Most of the villages and cities were destroyed by Jewish paramilitary organization Haganah. Indeed, the atmosphere was so harsh that organized violence and operations of Jewish forces started to transform the master plan of expelling Palestinians into the ethnic cleansing. As a striking example, Jewish forces executed a bloodshed in an Arab neighborhood known as Dir Yassin massacre. Although local people made a peace pact with some Jewish heads, Irgun which was Zionist paramilitary group assaulted the village and killed many Palestinian Arab residents including women and children. As a result of the fierce atmosphere in Palestine, second wave of Palestinian exodus started to occur from the early 1948 onwards. Many of the Arab settlements were steadily cleaned by locals since people were afraid of violent attacks. About three thousand local Arabs fled by leaving all their properties and belongings behind because of heavily offensive violence of Haganah.

#### **2.4. The Establishment of the State of Israel and the 1948 Arab-Israeli War**

Just months before the retreat of British, consequences of civil war were in favor of the Jewish side accomplishing a decisive victory. Noticeably, Arab military groups were largely crushed, and most of the Arab population were displaced since they had to flee. At the time, Haganah had already captured many Arab villages. With this strong and confident position Jewish community declared the establishment of the State of Israel on the early hours of 15 May 1948, immediately after the British mandate had ended. In fact, the declaration did not specify borders of the new state, but it was stated that the Partition Plan was the main guide in the establishment of the state. After the declaration, many states immediately recognized the new state of Israel including two rival superpowers, the America and the Soviet Union.<sup>40</sup> On the other hand, Palestinian Arabs were left incapable of consistent administration with the British withdrawal. It aggravated Arab stance against regular and systematized Jewish

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<sup>40</sup> Pappé, I. (2006). A history of modern Palestine. Cambridge University Press, p. 131.

administration since the only authority in the Arab regions became local leaders.<sup>41</sup> In this context, neighboring Arab states were already uncomfortable with the idea of Jewish State in Palestine. Therefore, immediately after the declaration of the state, joint military forces of Arab coalition comprised of Egypt, Jordan, Syria and Iraq arrived at former mandate lands to restore order and protect Palestinian Arabs' rights. Basically, civil war transformed into regular warfare between Arab states and newly established state of Israel, in which air bombings and heavy shootings of civilian settlements randomly took place.<sup>42</sup>

Although Arab forces had taken control of Palestinian Arab zone at the beginning, as a result of subsequent fierce confrontations, Israel army pushed the Arab forces back. As the UN intervention attempts to end the war by mediating between two parties continued and sometimes interrupted the war, but still warfare somehow continued in different phases. Progressively, Israel took control of more than a half of the territory designated for Arabs in the UN partition plan as well as the West Jerusalem. Afterwards, Armistice Agreement was signed in 1949 between Israel and Arab states respectively, except Iraq at the time. Consequently, it was recognized that Israel captured seventy eight percent of former Mandatory Palestine.<sup>43</sup> Later on, Egypt captured the Gaza Strip, while Jordan captured the West Bank and East Jerusalem.

As a result of previous civil war and Arab-Israeli war, continued between 1947 and 1949, Palestinians homeland and society were demolished. It is estimated that around 700,000-900,000 Palestinian Arabs were driven from their homes, which is known as *Nakhba*.<sup>44</sup> All these Palestinians, expelled from their homeland, became refugees inside and outside of the country, and most were settled in refugee camps throughout Arab countries as well as around 150.000 internally displaced Palestinian Arabs left within the State of Israel.

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<sup>41</sup> Gelber, Y. (2006). Palestine 1948: War, escape and the emergence of the Palestinian refugee problem. Liverpool University Press, p. 85.

<sup>42</sup> Pappé, I. (2006). A history of modern Palestine. Cambridge University Press, p. 130.

<sup>43</sup> Ari, T. (2007). Filistin'de Kalıcı Barış Münkün mü. Akademik Orta Dogu, 2(1), p. 17.

<sup>44</sup> BADIL, (2022). Survey of Palestinian Refugees and Internally Displaced Persons, 2019-2021, p. 1.

## **2.5. Developments Between 1948-1967: The Palestinian Displacement**

Briefly, heavy defeat in the war brought about a significant Palestinian refugee issue and Palestine problem evolved Arab-Israeli problem in a broader extent. Later on, with the escalation of the problem due to subsequent 1967 war, Palestinian refugee problem could not be resolved up until today.

Looking at the post war period, Israeli government attempted to take precautions to consolidate its supremacy over the territory. Basically, main aim was to prevent return of the Palestinian refugees. Therefore, it was witnessed that homes and villages of Arabs were demolished, and new Jewish settlements were created in former Arab towns and villages. Furthermore, it was sought to endorse policy of resettlement of Palestinians in neighboring Arab countries in order to discourage Palestinians returning homes. However, from the early 1950, refugees near Israeli borders constantly attempted to cross the borders of Israel hoping to regain some of their belongings or properties since they were left hopeless to maintain their survival. Yet, it was violently reacted by the Israelis that so called infiltrators who attempts to reach their homes for economic and social reasons were brutally attacked. Moreover, in order to retaliate the ambitions of the refugees attempting to end their misfortune by regaining their stolen belongings and needs, Israel attacked Palestinian refugee camps around the borders, especially in Gaza Strip.<sup>45</sup>

Palestinian Arabs left within the territory of Israel were also treated badly. Most of them were made unskilled workers after coercively leaving agriculture due to dispossession of lands, in serving the development of Jewish industry. Israeli government imposed suppressive military administration to maintain domination over Arab population. Once majority in the population, Palestinian became minority in the State of Israel, and there was well-defined discrimination against them in economic, social and political terms. Overall, there have been strict legal exercises to ensure supervision of the lands taken over from Arab population. Moreover, Israel enacted

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<sup>45</sup> Masalha, N. (2001). The historical roots of the Palestinian refugee question. Palestinian refugees: The right of return, pp. 36-67.

the Law of Return to provide further Jewish immigration aiming at strengthening the Jewish state in 1950, which paved the way for increase in Jewish population.<sup>46</sup>

Basically, the ceasefire agreement ended the war did not bring about a total settlement of disputes. Conflicts continued to survive in different phases and on different topics until 1967 war worsening the situation of both situation of refugees and overall Arab-Israel opposition. In the first place, emergence of large-scale refugee problem occupied agendas of Arabs and Israel as well as international community in the following years, and still remained unresolved up until today. Following the Arab Israeli war, thousands of displaced Palestinians were distributed around the Gaza Strip that remained under the control of Egypt until 1967, the West Bank that was formally captured by Jordan in 1950, and other parts of the neighboring Arab states.

In the aftermath of the war, other issues affecting escalation of disputes were the status of Jerusalem and boycott imposed by Arabs to prevent economic development of Israel.<sup>47</sup> Explaining former, due to historical ad religious attachments of both Muslims and Jews, sovereignty on city of Jerusalem was always a case of contest.<sup>48</sup> For latter, after 1948, interaction between Israel and its neighboring Arab states were very limited except for conflict. Arab states did not involve in any political, economic and social interactions with Israel as well as even boycotting Israel in economic aspects. Yet, despite boycotts, Israel was not really affected and continued to develop regularly since then. Nonetheless, Egypt decision to put restrictions on the passage of Israeli ships through the Suez Canal and the Straits of Tiran, which created an inconvenience for Israel since it hindered Israeli trade. Sparked with the Egyptian nationalization of the Suez Canal in 1956, tension between Israel and Egypt extremely increased. In this environment, Israel invaded the Sinai of Egypt in pursuit of gain control of the Suez Canal with the assistance of the British and French forces. In the course of incident, the Gaza Strip was captured as well as Sinai Peninsula. However, pressure soon imposed by the US and the UN forced Israel to end the occupation, so evacuated the

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<sup>46</sup> Tessler, M. (2009). A history of the Israeli-Palestinian conflict. Indiana University Press, p. 270.

<sup>47</sup> Tessler, M. (2009). A history of the Israeli-Palestinian conflict, p. 331.

<sup>48</sup> Ibid.

territories next year. Then, Egypt had to accept the UN Emergency Force (UNEF) on its lands to prevent further tensions over the region. In this way, Egyptian sovereignty over the Suez Canal was affirmed by international community, while Israel regained the freedom to use the Suez Canal and the Straits of Tiran.

Not only Egypt, but also Syria was important actor in the region to deteriorate relations with Israel. In the second half of 1960s, aggression was highly in place between Israel and Syria due to cross border issues. Additionally, in this period conflict did not remain between Israel and Arab States, especially Egypt and Syria, but other actors also involved. Various small scale paramilitary movements have emerged in time. Yet, the most significant armed group was the Palestinian National Liberation Movement, Fatah, established in 1959 by Yasser Arafat and later transformed into political party in 1965.<sup>49</sup> Next, it was witnessed the establishment of Palestinian military and political organization in 1964, so called the Palestinian Liberation Organization (PLO). These actors subsequently unified with the joining of Fatah to the PLO in 1967, aimed to create strong resistance to Israel by providing Arab Unity.

## **2.6. The 1967 Arab-Israeli War and Further Displacement**

The political environment composed of persistent tensions in the region soon generated second most influential factor in the creation of Palestinian refugee problem, the second Arab-Israel war in 1967. Within the ongoing Cold War rivalry the Soviet Union had asserted that Israel was in the preparation of attacking Syria with strong mobilization on the border. As a consequence, with the already existing military and political crisis with Israel, Egypt responded the request for help by Syria, and Egyptian troops crossed the Israeli border after calling for evacuation of the area by UNEF. Thereafter, another Arab-Israeli war broke out, later called Six-Day war. The war did not last long because of tactical attacks of Israel over the air forces of Arab armies at the outset. Destruction of air forces in a short time shocked and weakened Egypt and Syria in the days that followed. Therefore, the war lasted only six days and was concluded with decisive Israeli victory over Egypt, Syria and Jordan. As a result, Israel

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<sup>49</sup> Ibid, p. 373.

has emerged as a dominant regional power exercising control over the Golan Heights, West Bank, Gaza Strip and Sinai Peninsula.

Consequences of the war were heavy for Palestinians once again. In the course of the conflict more than 300.000 were displaced from occupied territories by Israel, especially the Gaza Strip and West Bank. Reasons for this displacement were similar to the previous one between 1947 and 1949. Basically, many people had to escape from extensive attacks by Israeli forces. Furthermore, Israeli occupation paved the way for displacement of many more due to actions of Israeli forces such as demolition of villages. Besides assaults, people had to flee since they were felt threatened both for themselves and their families. Another important development was the second displacement of Palestinian refugees of previous war. Thousands of refugees were living in refugee camps around the Gaza Strip and West Bank under the control of Egypt and Jordan respectively. However, occupation brought about displacement of many refugees second time. In fact, not only refugees outside of their homeland were miserable, but also Palestinians stayed within the occupied territories were because they were subjected to military administration in the Gaza and West Bank. Basically, Israeli treatment against Palestinians under their rule was despotic restricting all kinds of freedom and rights. At the latest, Israel had reached their desire to have a control over the entire Palestine, and they sought to erase any threat against Israeli safekeeping. Therefore, in the Gaza Strip and West Bank, policies conducted by Israeli government were brutal that deportations, confiscations and imprisonments have been commonly taken place. Overall, everlasting Palestinian refugee problem emerged as an expulsion of nearly one million Palestinians from their homeland as a consequence of Arab-Jewish war between 1947 and 1949, and subsequently of Six-Day war in 1967.



## CHAPTER 3

### WHAT IS THE INTERNATIONAL REFUGEE REGIME?

As conflicts and wars had been common phenomenon in the world history, forced displacement of individuals and populations have also been constant phenomenon as a result of various circumstances and many other small or large scale driving forces throughout the history. As well as internal displacements of masses, transboundary individual and population movements as a result of displacement in their country of origin had been a reality historically. Therefore, world politics has always been interested in consequences and solutions for tackling these displacements. Especially, it has been witnessed early arrangements for the creation of international regime in responding large-scale flights during the modern state system established by the Treaty of Westphalia of 1648 such as French protestants' escape from France in 1685 and flights of many French aristocrats as a result of French revolution after 1789.<sup>50</sup> In fact, reactionary attitudes at the time were individualistic, which means that every state attempted to deal with the refugee problem on their own, as well as some small scale alliances of states involved in regulated actions such as accepting and helping refugees.<sup>51</sup>

Still, there was no collective international mechanism created to deal with the issue. Then, the refugee problem attracted international attention as a result of sought for balance of power in Europe.<sup>52</sup> Fundamentally, there have hardly been seen a concrete international collective response to the problem of refugees up until the early 20<sup>th</sup>

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<sup>50</sup> Barnett, L. (2002). Global Governance and the Evolution of the International Refugee Regime. *International Journal of Refugee Law*, 14(2\_and\_3), p. 239.

<sup>51</sup> Ibid, p. 240.

<sup>52</sup> Ibid, p. 241.

century. In this context, Alexander Betts<sup>53</sup> argues that international collaboration is the principal basis for the creation of refugee regime to achieve collective goal of dismantling refugee problem. Hence, the early 20<sup>th</sup> century can be regarded as a landmark for creating an international regime for effectively responding ever-lasting refugee problems around the world by international collaboration.

Before elaborating on the development of the international refugee regime, it is necessary to explain what the international refugee regime is. Starting with the definition, international refugee regime is a structure composed of international institutions, laws, principles and policies that seek to provide legal protection and assistance for refugees to guarantee their fundamental rights and well-being. Principally, aiming at ensuring safety and well-being of the refugees, international refugee regime prioritizes universal principles of human rights in safeguarding refugees appeared as a result of wars, persecutions and many other reasons. In doing so, collective endeavor of intergovernmental and non-governmental organizations is essentially used for implementing treaties and conventions as instruments concerning majority of international state actors in seeking solution to the problem.

Mainly, the international refugee regime is fundamentally based on 1951 Convention Relating to the Status of Refugees and 1967 Protocol Relating to the Status of Refugees. As cornerstones of the regime, 1951 Convention and its 1967 Protocol designates boundaries of legal protection and assistance for refugees as well as the role of nations states and intergovernmental organizations in this process of protection and assistance. In addition, another vital component of the regime is the United Nations High Commissioner for Refugees (UNHCR) that serves as a primary agency responsible for coordination and surveillance of international protection and assistance provided for refugees. Indeed, besides its fundamental elements mentioned above, the regime also encompasses other different institutions, declarations and guidelines as well as regionally initiated protection systems such as the European Union's Common

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<sup>53</sup> Betts, A. (2015). The normative terrain of the global refugee regime. *Ethics & International Affairs*, 29(4), p. 363.

European Asylum System and the African Union's Convention for the Protection and Assistance of Internally Displaced Persons in Africa.

### **3.1. Historical Development of the Regime**

As mentioned earlier, the early 20<sup>th</sup> century was milestone in international relations in terms of the emergence of the truly organized international refugee regime in response to the refugee problem worldwide. Following the creation of modern state system with the Treaty of Westphalia in 1648, there have been various international endeavors to create legal and institutional arrangements in order to adequately react to the problem of refugees. Over time, with the changing nature of international politics and the refugee issue itself, it has been witnessed the evolution of the international coping mechanism with refugees, which would eventually pave the way for laying the foundations of a systematized refugee regime in 1920s.

Historically, the early 20<sup>th</sup> century was marked by massive displacement of many people due to political disturbances, ethnic conflicts and wars, which resulted in extraordinary population mobility taken place globally.<sup>54</sup> The first major mass movement was sparked as a result of Russian Revolution in 1917. After repressive Bolshevik regime seized the power in Russia, over a million people started to leave Russia in the following years in search for more convenient and secure places.<sup>55</sup> At the outset, there have been unsuccessful attempts to cope with the refugee crisis among some individual European states by forming bilateral arrangements to settle refugees accumulated within their borders to the other states. Yet, it then became unbearable with the idea of adapting escalating refugee concept which posed a threat in political and economic aspects. Thus, many European states did not want to accept massive refugee settlement in their territories. Therefore, as a supranational organization established after the First World War, the League of Nations were expected to initiate an institutional legal basis for dealing with the refugee problem exceeding one million

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<sup>54</sup> Barnett, L. (2002). Global Governance and the Evolution of the International Refugee Regime. *International Journal of Refugee Law*, 14(2\_and\_3), p. 241.

<sup>55</sup> Ibid.

refugees in terms of protection and surveillance, since lack of central authority for coordination was a source of concern in international community due to worsening circumstances. As a response to the large-scale deteriorating conditions, the League of Nations agreed to form a new organ affiliated with the refugee matters, the League of Nations High Commissioner. Shortly after, in 1921, the League assigned Norwegian politician and scientist Fridtjot Nansen as the first High Commissioner, in the first place for Russian refugees. Beforehand, Nansen had already represented a strong posture thanks to his individual endeavors in providing basic humanitarian needs to the Russians suffering from hunger and famine, and repatriation of thousands of war prisoners to their countries. Designated roles of Nansen as a High Commissioner and basically the refugee regime in a broader term were determination of legal status of refugees, repatriation, occasionally settlement to another country, and providing employment for economically vulnerable refugees.

However, significant problem on the agenda was that most of the Russian refugees did not hold valid identity cards to travel across the region.<sup>56</sup> In this respect, in 1922, necessary international step was aimed to be taken by holding a conference in Geneva. In the conference, “Arrangement with regard to the Issue of Certificates of Identity for Russian Refugees”<sup>57</sup> was adopted. As a result, with the arrangements of Nansen, Russian refugees without identification were granted ‘Nansen Passport’ as a legal document, which would let them travel without any legal restrictions. Negatively, the League of Nations did not introduce a general refugee classification, and the refugee regime mandate was categorized according to refugees’ country of origin. Indeed, the regime targeted only Russian refugees at the outset. Yet, as the improvement of refugee regime went on with the steady extension of its mandate, there have been further inclusions of other refugee groups such as Armenians, Turks, Kurds and some other ethnic group.<sup>58</sup> Thereafter, with the beginning of 1930s, the League have made

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<sup>56</sup> Roversi, A. (2003). The evolution of the refugee regime and institutional responses: Legacies from the Nansen period. *Refugee Survey Quarterly*, 22(1), pp. 21-35.

<sup>57</sup> Hathaway, J. C. (1984). The Evolution of Refugee Status in International Law: 1920—1950. *International & Comparative Law Quarterly*, 33(2), p. 352.

<sup>58</sup> Barnett, L. (2002). Global Governance and the Evolution of the International Refugee Regime, p. 242.

some rearrangements that transformed former High Commissioner into Nansen International Office for Refugees in 1931 with the designated due date until 1938. Within the mandate of Nansen Office, after his death in 1930, another significant development emerged testing the presence of the office and international community. Starting from 1933, another large scale refugee flow began when German refugees started to flee Germany due to the fact that Nazis came to power. In this political environment, the office by gathering several different intergovernmental institutions under unity drafted the Convention relating to the International Status of Refugees in 1933 with the aim of producing more persistent refugee protection system. Indeed, the Convention was a significant development since it represents the first international convention aiming at assistance for refugees fleeing conflicts. In addition, it was distinct from its ancestors since it aimed at imposing legal obligations for signatory states.<sup>59</sup> However, with the escalated political and economic conditions, the League and fundamentally the refugee regime were seemed to inadequately sustain their effectiveness approaching the Second World War. Basically, destruction of the Second World War aggravated situation of both refugees and the refugee regime. In this way, scale of displacement has been extraordinarily augmented following the outbreak of the war.

Then, continued with respective establishment and dismantlement of several different international institutions concerning refugee matters such as the Intergovernmental Committee for Refugees (IGCR) and the United Nations Relief and Rehabilitation Agency (UNRRA), the complementary actor of the refugee regime ultimately emerged with the establishment of the International Refugee Organization (IRO) at the first meeting of the UN General Assembly in the late 1946, with the designated mandate for three years.<sup>60</sup> Before succeeded by the main landmark agency of the international refugee regime, the United Nations High Commissioner for Refugees (UNHCR), the

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<sup>59</sup> Hathaway, J. C. (1984). *The Evolution of Refugee Status in International Law: 1920—1950*, p. 357.

<sup>60</sup> Roversi, A. (2003). *The evolution of the refugee regime and institutional responses: Legacies from the Nansen period*, p. 30.

IRO accomplished resettlement of more than one million refugees during its mandate until 1951.<sup>61</sup>

### **3.2. The United Nations and International Refugee Law**

Aftermath of the World War II was a milestone period for development of more systemized international refugee regime. Basically, legal emphasis on the protection of human rights and fundamental freedoms was placed at the core of newly founded intergovernmental organization, the United Nations, aiming at maintaining international order in line with peace and security. In this sense, from the outset, the UN Charter officially underlined the significance of promotion and protection of fundamental rights and freedoms without any discrimination on race, religion or sex.<sup>62</sup> Then, with the adoption of the Universal Declaration of Human Rights in 1948, it was legally reaffirmed that the right to seek asylum from persecution, and the right to protection from being forcibly displaced became universal principles in international relations.

In line with the increasing recognition of universal human rights, the United Nations General Assembly drafted the UNHCR Statute in its Resolution 428 (V) adopted in December 1950, which established the United Nations High Commissioner for Refugees (UNHCR) as a main international agency to address and tackle the issue of displacement in Europe at first, and subsequently in the world to a broader extent. In addition, another United Nations related agency International Office for Migration (IOM) was established to promote safe migration by collaborating with governments and other partners. Indeed, with the emergence of the unprecedented scale of displacement and humanitarian crisis due to the Second World War, international response and precautions were necessary to provide international stability as well as human dignity. Therefore, the establishment of the UNHCR were aimed at serving in line with these purposes. Basically, as a specialized agency of the UN, the UNHCR

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<sup>61</sup> Triola, N. (2014). The International Refugee Regime: A Failing System. *Ramapo Journal of Law and Society*, 1, p. 3.

<sup>62</sup> United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI, available at: <https://www.un.org/en/about-us/un-charter/full-text> [accessed 16 July 2023]

was assigned to be responsible for leading international efforts to protect and assist refugees. Besides providing protection and assistance for refugees, the UNHCR aimed at finding durable solutions for massive displacement by collaborating with governments, NGOs, and other actors. Fundamentally, the UNHCR became a primary agency for strengthening the mechanism of international refugee regime.<sup>63</sup>

Another decisive development in the history of the international refugee regime was the adoption of the 1951 Convention Relating to the Status of Refugees by the United Nations. Crucially, the 1951 Convention firmly constitutes a cornerstone of international refugee law. Basically, international refugee law refers to the branch of international law that regulates the protection of refugees and state obligations towards refugees. In this respect, the 1951 Convention became the most significant legislative instrument of the refugee regime, demarcating legal framework for refugee protection and determining rights and obligations of both refugees and states.

In the first place, the 1951 Convention had an essential qualification that it noticeably set the definition of the term refugee forth. According to the Convention, the term refugee was defined:

*as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.*<sup>64</sup>

Nevertheless, this definition had deficiencies at the time that it only focused on specific groups of refugees, referring to the European refugees as a result of the World War II. Furthermore, it specified the time of displacement by the events occurred before 1951 for application of the principles. However, with the emergence of further refugee

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<sup>63</sup> Barnett, L. (2002). Global Governance and the Evolution of the International Refugee Regime, p. 245.

<sup>64</sup> UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, art. 1A (2).

problems outside the jurisdiction of the Convention, these limitations were questioned. As a response, amendments were executed by the adoption of 1967 Protocol Relating to the Status of Refugees. In this way, limitations on time and geography were removed.<sup>65</sup> Overall, properly settled definition of the term refugee paved the way for establishing a standard in the recognition and treatment of displaced people who are in the need of protection and assistance.

Secondly, the 1951 Convention and its 1967 Protocol basically introduced a general principle of non-refoulment. Mainly, non-refoulment refers to the fact that any states should not forcibly expel refugees from their territories to the territories where their life or freedom would be under danger.<sup>66</sup> Likewise, this principle fundamentally became the basis of international refugee protection. Overall, with the creation of the UNHCR and the 1951 Convention and its 1967 Protocol, the legal framework of international refugee regime was principally set out. In this way, obligations and determinations of strengthened and foursquare refugee regime was regarded to gain a general recognition in the treatment of refugees around the globe.

### **3.3. Evolution of the Regime Until Present**

As briefly expressed, the international refugee regime underwent different phases of development and evolution over time in line with the changing political, social and economic circumstances. Ultimately, internationally recognized systematic structure regarding refugee issues was settled on the basis of the UN convention of 1951 and its protocol in 1967. On top of it, the main international agency, the United Nations serves as a guardian of the system for maintaining proper functioning of the mechanism, as the United Nations secretary general Gutierrez states.<sup>67</sup> In this respect, the statement from New York declaration of the UN is crucial to understand fundamental

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<sup>65</sup> UN General Assembly, *Protocol Relating to the Status of Refugees*, 31 January 1967, United Nations, Treaty Series, vol. 606, p. 267.

<sup>66</sup> UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137.

<sup>67</sup> UN High Commissioner for Refugees (UNHCR), *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol*.



components of the refugee regime. It was stated that “we reaffirm the 1951 Convention relating to the Status of Refugees and the 1967 Protocol thereto as the foundation of the international refugee protection regime”<sup>68</sup>.

Following the foundation of systemized international regime for refugee issues, subsequent decades, until present, have brought about further improvements in response to the changing nature of international politics. Basically international refugee regime has strengthened its influence and legal framework through supplementary regional and international instruments. Nevertheless, very founding basis of the regime has remained constant over decades.

In the course of subsequent decades, despite some fluctuations on the magnitude time to time, there has still been a continuation of growing trend on the degree of displacement around the world. In particular, during the Cold War era, different phases of great displacements have occurred on a global scale. For example, massive escapes from communist states and permanent proxy hostilities in different parts of the world gave rise to large scale refugee flows.<sup>69</sup> Therefore, the evolution of the regime took shape as a response to the emerging situations over time.

Starting with the 1960s, there has been an extension on the limits of protecting refugees towards developing countries. Indeed, with the emergence of African decolonization, wide continental displacement was needed attention. Therefore, the UNHCR involved in protection and assistance efforts to alleviate the predicament of African refugees. Particularly additional regional instruments were executed in collaboration with the African union. As a result, the OAU Convention on the specific aspects of refugee problems in Africa, was drafted in 1969. The OAU convention broadened the definition of refugees from being a victim of persecution to being exposed widespread

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<sup>68</sup> UN General Assembly, New York Declaration for Refugees and Migrants: resolution / adopted by the General Assembly, 3 October 2016, A/RES/71/1, sec. IV, para. 65.

<sup>69</sup> Betts, A. (2011). Protection by persuasion: International cooperation in the refugee regime. Cornell University Press, p. 5.

violence.<sup>70</sup> Sticking on the existing definition of the 1951 convention, the OAU convention inserted that:

*the term refugee shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.*<sup>71</sup>

At the outset, with the return of millions of refugees to the newly independent states through decolonization period, repatriation began to occupy the agenda of international refugee regime in 1970s. Furthermore, over the course of the period, international burden-sharing became significant concepts in response to the demolishing situation in Vietnam. Tackling with the humanitarian predicament of Vietnamese people leaving the country in inconvenient ways needed international collaboration and burden-sharing. In this respect, International Conference on Refugees and Displaced Persons in Southeast Asia in 1979 and its output Comprehensive Plan of Action were highly significant for the development of the IRR at the time in creating shared responsibility among states.<sup>72</sup>

In 1980s and 90s, refugee protection became more significant, as Nicole Triola<sup>73</sup> argues, that international refugee regime has begun to shape contemporary form when refugee protection and politicization of asylum occupied the agenda on international community. At the time, large-scale displacement of millions of people, particularly in Afghanistan due to ongoing conflict, and in Central America, Africa, Middle East, Balkans, Somalia and many parts of the world. In response, the refugee regime executed significant efforts for the delivery of protection and services to refugees by

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<sup>70</sup> Erika Feller, The Evolution of the International Refugee Protection Regime, 5 WASH. U. J. L. & POL'Y 129 (2001).

<sup>71</sup> Organization of African Unity (OAU), Convention Governing the Specific Aspects of Refugee Problems in Africa ("OAU Convention"), 10 September 1969, 1001 U.N.T.S. 45, art. 1(2).

<sup>72</sup> Erika Feller, The Evolution of the International Refugee Protection Regime, 5 WASH. U. J. L. & POL'Y 129 (2001).

<sup>73</sup> Triola, N. (2014). The International Refugee Regime: A Failing System. *Ramapo Journal of Law and Society*, 1, p. 1-20.

closely collaborating with various international actors. Within this framework, one of the most important developments of the period was the adoption of The Cartagena Declaration by number of Latin American states in 1984 for primarily addressing the recent challenges confronted by large numbers of refugees fleeing massive violence and persecution in Central America in the course of 1980s. Through the Declaration, definition of refugee was expanded to people fleeing generalized violence and other situations seriously demolishing public order, which aimed at broadening protection mandate for larger units under international refugee law. As of 1990s, as a reaction to the increasing interstate and intrastate conflicts with the end of the Cold War, the UNHCR embraced peacekeeping role in international relations.<sup>74</sup> Moreover, due to emergency circumstances, temporary protection gained more prominence than the notion of resettlement.<sup>75</sup>

By the 2000s, the total number of refugees in extraordinary need of protection and assistance reached 25 million.<sup>76</sup> Within the international political environment where skyrocketing scale of refugee flows became a source of threat to stability in international relations in terms of political and economic aspects.<sup>77</sup> Notably, primary attention of the international refugee regime was transferred on the control of refugee flows rather than repatriation or resettlement. Accordingly, the Agenda for Protection was adopted by the UNHCR in 2004 producing strategies to prevent further forced displacement and search for durable solutions.

Contemporarily, as a result of civil wars, widespread pandemic, ethnic and religious conflicts, and interstate and intrastate aggressions noticeably taking place lately in the 21<sup>st</sup> century, number of forcibly displaced people on a global scale has reached 103 million by the mid-2022 according to the UN, including 32.5 million refugees, 53.2

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<sup>74</sup> Adelman, H. (2001). From refugees to forced migration: The UNHCR and human security. *International Migration Review*, 35(1), pp. 7-32.

<sup>75</sup> *Ibid*, p. 16.

<sup>76</sup> Feller, E. (2001). International refugee protection 50 years on: The protection challenges of the past, present and future. *International review of the red Cross*, 83(843), p. 587.

<sup>77</sup> *Ibid*.

million IDPs, 4.9 million asylum seekers and 5.3 million others who are in the need of international protection.<sup>78</sup> Mainly, majority of the refugees worldwide originated from Syria, Venezuela, Ukraine, Afghanistan and South Sudan respectively in numbers.<sup>79</sup> Despite facing many challenges, the international refugee regime addressed the need for comprehensive reaction and solution to the problem through various means. Remarkably, as the UN initiated the New York Declaration in 2016 and the Global Compact on Refugees in 2018, it was reaffirmed that the UN member states committed to the international refugee protection by more inclusive methodology and greater international responsibility sharing for protection and assistance of victims of forced displacement worldwide.

### **3.4. Liberal Theory in the Establishment of the Regime**

Given the catastrophic political, economic and social environment in the aftermath of the WW I, the emergence of the new international order was witnessed. By the establishment of the League of Nations as a main agent, the primary goals of the international community were to restore widespread order and stability, and prevent further disastrous global conflicts. Distinctively, liberal principles and democratic values were at the heart of this newly created world system. In the same way, liberal principles were crucial in shaping the post-war refugee protection regime as well. The creation of the legal and institutional framework based on liberal and democratic values paved the way for international system to take shape by emphasizing on cooperation, human rights, rule of law, multilateralism and overall liberal democracy.

Together with this development of the international system constructed relying on the liberal principles, several factors played a crucial role in the establishment of the legal framework for refugee matters. In the first place, the emphasis on the notion of human rights has provided an international recognition that any people who are in the need of protection or assistance due to violence and persecution deserve to be saved, and to

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<sup>78</sup> United Nations High Commissioner for Refugees. "UNHCR - Refugee Statistics." UNHCR. Accessed July 15, 2023. <https://www.unhcr.org/refugee-statistics/>.

<sup>79</sup> Ibid.

live in dignity. Likewise, embracement of principle of international cooperation was also beneficial for the development of the international refugee regime fueled by collective action towards refugee problems. Furthermore, significant principle of rule of law has assured effective refugee protection mechanism by promoting the right of refugee to be treated fairly and equally under the international law. In addition, protection of refugees was acknowledged as a moral and legal obligation for international community with the influence of liberal point of view.

Above all, the post-war era has produced significant changes in international relations. Mainly a new international order emerged based on liberal democratic values. As the new international order prevailed, the international refugee regime was also influenced by the same bases. In other words, there was conceivably close relationship between the liberal international system and the creation of the international refugee regime. As emphasis on the sovereign democratic states, the international community essentially created a state for stateless people at the time. In fact, the term state created for refugees around the globe is to be conceived as a shelter under the jurisdiction of the refugee regime and its instruments. To illustrate, as a crucial actor in the development of the refugee regime, the League of Nations was instrumental in promoting international collective effort based on cooperation. Noticeably, as mentioned before, the League initiated an action to provide identity creation for refugees who were not carrying valid identity documents to travel. In this context, identity creation was an instrumental means for the creation of a common shelter for those in need for help due to wars and persecutions.

## **CHAPTER 4**

### **PALESTINIAN REFUGEE IN INTERNATIONAL LAW**

As this thesis aims to analyze the efficiency of the international refugee regime in providing protection for Palestinian refugees, it is first needed to indicate basic information about them in international law. Therefore, this chapter will outline the necessary conceptual framework about Palestinian refugees to better comprehend analyzes to be made in the next three chapter. The first part of this chapter will describe legal definition of Palestinian refugees in international law and the scope of their displacement. In the first place, they have had various legal definitions by different international agencies. Unlike other refugee definitions, however, Palestinian refugee definitions have been created for operational purposes rather than legal considerations. Thus, these definitions have never been widely recognized as their legal definition in international law. Then, the scope of their displacement will be examined in terms of both conditions and numbers. In the second part of this chapter, the legal status of Palestinian refugees will be explored. Basically, legal position is the most significant indicator of eligibility for international protection. In this sense, their legal status and its determinants in international law, in Arab host states and in the Occupied Palestinian Territories (OPTs) will be explained respectively. In the last part, the creation of a distinctive regime for Palestinian refugees will be examined historically. It is mainly aimed at presenting the role of UNCCP and UNRWA as main instruments of the distinctive regime in providing international protection and assistance. Ultimately, the legal position of Palestinian refugees in the fundamental instruments of the international refugee regime, UNHCR and the 1951 Refugee Convention, will be explained. The main aim here is to understand the role of UNHCR, as the basic operational instrument of the international refugee regime, in providing protection for Palestinian refugees. Eventually, this chapter serves as conceptual framework for the

legal position of Palestinian refugee in international law. In this sense, it will facilitate the understanding of subsequent analyses held in the following three chapters.

#### **4.1. Who are Palestinian Refugees?**

This part will define Palestinian refugees and the scope of their displacement. As the main concern of this thesis, it is essential to understand who Palestinian refugees are. Furthermore, this part also highlights the indefinite legal definition of Palestinian refugees through explaining different types of definitions created for different purposes over time. In this sense, this part will be useful for understanding uncertain legal status of Palestinian refugees analyzed in the next chapters. Lastly, general conditions of Palestinian refugees during their displacement will be examined. It will facilitate the understanding of the scope of the Palestinian refugee crisis.

##### **4.1.1. Definition**

The term ‘Palestinian refugees’ used throughout this thesis basically refers to the Palestinian Arab population and descendants who were residents of British of Mandate Palestine and were driven out of the territory as a result of 1948 and 1967 wars and widespread conflicts and violence prior to these conflicts. As mentioned earlier, with the establishment of the State of Israel after the termination of British mandate in Palestine territory, violent conflicts and respective wars resulted in large-scale displacement of the Palestinian population. After that, return of the massively displaced population outside the territory has also been prohibited through policy and military actions of the Israeli government. As a result, thousands of Palestinians became refugee in neighboring Arab states in vulnerable conditions. Not only being displaced, but Palestinians also became stateless after termination of their citizenship by Israel. Therefore, Palestinians who were subjected to legal protection and assistance of the British Mandatory Palestine were left without any internationally recognized protection and assistance from any state. Regarding their displacement and statelessness, Palestinian refugees spread around the world constituting one of the major ongoing refugee crises in the history.

Basically, general definition of the Palestinian refugees is a problematic issue in international law and politics. In fact, general definition of the term 'refugee' was determined by the 1951 UN Convention, and it gained a universal recognition in international law. However, when it comes to the Palestinian refugees, they were somehow excluded from the generally accepted definition. With the Article 1D of the Convention, Palestinian refugees were given distinct position in international law, which will be further discussed later. Not only subjected to the lack of international protection by the refugee regime authorized by the 1951 Convention, but international recognition of determining Palestinian refugees who are crucially in need of protection and assistance was also left ambiguous.

Distinctly, in time, there have been multiple definitions put forth to establish criteria for describing Palestinian refugees through effort of the UN to provide assistance and relief. At first, in order for being consistent with the United Nations Relief for Palestine Refugees (UNRPR) that was the early separate UN agency created to "direct a program of relief for Palestine refugees"<sup>80</sup> in 1948, as a non-governmental organization, League of Red Cross Societies (LRCS) generated the early definition<sup>81</sup> of Palestinian refugees in 1950 that "any person who had permanent residence and principal occupation in Palestine from which as a result of the Palestine conflict he has been deprived and who is without sufficient resources for basic maintenance shall be considered a refugee eligible for UNRPR relief."<sup>82</sup>

Later on, with the establishment of the UN Conciliation Commission for Palestine (UNCCP) and the UN Relief and Work Agency for Palestine Refugees in the Near East (UNRWA) by the UN respectively, further definitions have aroused in consistence with the purposes of these organizations. Indeed, it is important here to

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<sup>80</sup> United Nations. "United Nations Relief for Palestine Refugees (UNRPR) - Secretary-General Report (A/1060) Pursuant to GA Resolution 212 (III) of 1948." Question of Palestine (blog).

<sup>81</sup> Takkenberg, A. (1998). *The Status of Palestinian Refugees in International Law*. Clarendon Press, p. 71.

<sup>82</sup> LRCS, 'Report of the Relief Operation on Behalf of the Palestine Refugees Conducted by the Middle East Commission of the League of Red Cross Societies in Conjunction with the United Nations Relief for Palestine Refugees, 1949-1950', Geneva, 1950,42, cited in Takkenberg, A. (1998). *The Status of Palestinian Refugees in International Law*. Clarendon Press, p. 71.



note that although the UN resolutions paved the way for the creation of the UNCCP and UNRWA were reasonable efforts to deal with the Palestinian refugee crisis, they did not include a concrete definition for Palestinian refugees.<sup>83</sup>

Essentially, established by UN Resolution 194 (III) in 1948 to provide international protection to Palestinian refugees and promote a final solution to the problem, the UNCCP established an operational definition to determine eligibility criteria for international protection. It indicated that “the term ‘refugees’ applies to all persons, Arabs, Jews and others who have been displaced from their homes in Palestine. This would include Arabs in Israel who have been shifted from their normal places of residence.”<sup>84</sup>

Subsequently, this definition was extended by the UN resolution in response to the working paper prepared by the Legal Advisor.<sup>85</sup> Consequently, categorization of Palestinian refugees was presented in Article 1 and Article 2 of the working paper as follows:<sup>86</sup>

*Article 1:*

*1. Are to be considered as refugees under paragraph 11 of the General Assembly resolution of 11 December 1948 persons of Arab origin who, after 29 November 1947, left territory at present under the control of the Israel authorities and who were Palestinian citizens at that date.*

*2. Are also to be considered as refugees under the said paragraph stateless persons of Arab origin who after 29 November 1947 left the aforementioned territory, where they had been settled up to that date.*

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<sup>83</sup> Takkenberg, A. (1998). *The Status of Palestinian Refugees in International Law*, p. 70.

<sup>84</sup> UNCCP, Analysis of Paragraph 11 of the General Assembly’s Resolution of 11 December 1948, May 15, 1950, UN Doc. W/45 (1950), cited in Akram, S. M., Dumper, M., Lynk, M., & Scobbie, I. (Eds.). (2011). *International law and the Israeli-Palestinian conflict: A rights-based approach to Middle East peace*. Routledge, p. 19.

<sup>85</sup> Akram, S. (2014). UNRWA and Palestinian Refugees. In E. Fiddian-Qasmiyeh, G. Loescher, K. Long, & N. Sigona (Eds.), *The Oxford handbook of refugee and forced migration studies* (pp. 227–240). Oxford: Oxford University Press.

<sup>86</sup> Question of Palestine. “Definition of a ‘Refugee’ - UNCCP Working Paper - Addendum”. 11 December 1948.

*3. Persons who have resumed their original nationality or who have acquired the nationality of a country in which they have racial ties with majority of the population are not covered by the provisions of the above paragraphs of this Article. It is understood that the majority of the said population should not be an Arab majority.*

*Article 2, the following shall be considered as covered by the provisions of Article 1 above:*

*1. Persons of Arab origin who left the said territory after 6 August 1924 and before 29 November 1947 and who at that later date were Palestinian citizens:*

*2. Persons of Arab origin who left the territory in question before 6 August 1924 and who, having opted for Palestinian citizenship, retained that citizenship up to 29 November 1947.<sup>87</sup>*

Replacing the UNRPR, UNRWA was established by the General Assembly Resolution 302 (IV) of the UN in 1949 to provide relief and assistance for Palestinians displaced as a result of the conflicts erupted in 1948 by means of consulting and collaborating with neighboring states.<sup>88</sup> As a main international agency to deliver assistance and relief to Palestinian refugees, UNRWA formulated a definition to designate target of its operations. As its name indicates, the terms ‘Palestine refugees’ was used to identify boundaries of its mandate. In fact, usage of the terms ‘Palestine refugees’ instead of Palestinian refugees was intentional since the agency aimed at broadening the scope of its operations from only Palestinian Arabs to the other residents of the Palestine affected by conflicts at the time.

At the beginning, the definition of the Palestine refugees in the Interim Report of the director of UNRWA in 1951 referred to “a needy person, who, as a result of the war in Palestine, has lost his home and his means of livelihood.”<sup>89</sup> Later in 1952, another definition was adopted again by UNRWA, and it remained nearly the same internationally recognized definition of the Palestinian refugees until today, with subsequent extensions in its eligibility in the next decades such as the status of

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<sup>87</sup> Ibid.

<sup>88</sup> UN General Assembly, Resolution 302 (IV). “Assistance To Palestine Refugees”, 8 December 1949, A/RES/302 (IV).

<sup>89</sup> “Interim Report of the Director of UNRWA.” Accessed July 15, 2023.  
<https://www.jewishvirtuallibrary.org/interim-report-of-the-director-of-unrwa>.

descendants. Accordingly, the Palestine refugees are described as “persons whose normal place of residence was Palestine during the period 1 June 1946 to 15 May 1948, and who lost both home and means of livelihoods as a result of the 1948 conflict.”<sup>90</sup> Nonetheless, these efforts to define Palestinian refugees were based on operational and administrative purposes of the organizations.<sup>91</sup> Therefore, UNRWA definitions never constituted a legally recognized definition for Palestinian refugees in international law.<sup>92</sup>

Ultimately, definition of who is a refugee in the case of Palestinian issue represents utmost significance. Together with having left out of universal refugee definition, Palestinian refugees also suffers from various ambiguous definitions each with different purposes. During the course of their endless displacement, Palestinian refugees has been facing numerous political, economic and social difficulties due to their lack of precise legal definition and legal status in international law. Likewise, Akram perfectly illustrates that:

*due to the complexity of the definitions, there is no uniform understanding of who is a Palestinian refugee; the benefits or durable solutions s/he is owed; which agency is to seek and implement the required durable solutions; which ‘refugees’ are represented in the peace negotiations between Israel and the Palestinians; and when refugee status terminates.*<sup>93</sup>

#### **4.1.2. Scope of Palestinian Displacement**

Palestinian refugee problem is the most challenging and protracted refugee matters in the history in terms of its emergence, scope and longevity without any hope for solution. Basically, prominence of the problem is not only about legal aspects, but also

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<sup>90</sup> UNRWA. “Palestine Refugees”. Accessed July 15, 2023. <https://www.unrwa.org/palestine-refugees>.

<sup>91</sup> Bocco, R. (2009). UNRWA and the Palestinian refugees: a history within history. *Refugee Survey Quarterly*, 28(2-3), p. 238.

<sup>92</sup> Ibid.

<sup>93</sup> Akram, S. (2014). UNRWA and Palestinian Refugees. In E. Fiddian-Qasmiyeh, G. Loescher, K. Long, & N. Sigona (Eds.), *The Oxford handbook of refugee and forced migration studies* (pp. 227–240). Oxford: Oxford University Press. p. 234.

about humanitarian aspects. In order to truly comprehend the severity of the problem, it is significant in the first place to realize the scale of it in terms of numbers and conditions of the Palestinians. Therefore, this section aims to give sight about historical and contemporary information on the numbers, distribution and overall conditions of the Palestinian refugees.

Palestinian refugees who have comprised the largest refugee population in the world since their initial displacement were the habitual residents of the British Mandatory Palestine up until the British decided to turn over the mandate to the UN in 1947.<sup>94</sup> Then, catastrophe began to emerge for Palestinians in the next years together with the certain developments in the region. As expressed earlier in the historical background chapter, the UN intention for partitioning the Palestine and establishment of the Jewish state deteriorated the climate in 1947 in Mandatory Palestine. Furthermore, following the British withdrawal, with the establishment of the state of Israel in 1948, a major Arab Israeli war broke out. Severely affected by widespread longstanding violence and fear, the Palestinian displacement took place in a large scale in total.

Tracing this displacement of the Palestinians there have actually been respective certain time frames having distinct characteristics historically. Earlier, the first displacement that was both internal and external had already started within the period of the British Mandate until the 1948 War. Started with the increasing Jewish immigration, there have been several serious conflicts in the region. Initially, confrontations between Palestinian Arabs and Jewish population resulted in an inconvenience. Subsequently, with the emergence of series of upheavals originated by both parties, the environment in Palestine became deteriorated and violent. Furthermore, execution of Zionist plan to drive Palestinian Arabs out of the territory brought about the fact that Palestinians faced serious violent assaults and threat of persecution. Ultimately, these circumstances caused approximately 150.000 Palestinians being displaced both internally and externally during this period.<sup>95</sup>

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<sup>94</sup> BADIL, (2022). Survey of Palestinian Refugees and Internally Displaced Persons, 2019-2021, p. 19.

<sup>95</sup> BADIL, (2005). Closing Protection Gaps: Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, p. 2.

The next and the most destructive displacement has emerged as a result of the Israeli declaration of a Jewish state on May 1948 in Palestine following the UN partition plan and termination of the British mandate. For this, neighboring Arab states immediately reacted by waging a war on newly establish state in the next days. As a result, the war concluded with the 1949 Armistice Agreement created highly striking consequences for Palestinians. The picture illustrating the severity of the war showed that with the Israeli victory over the majority of the former Mandatory Palestine more than 750.000 Palestinian were displaced and sought refuge across armistice line.<sup>96</sup> Essentially, the outcomes were so devastating that Palestinians since then called this major case resulted with the enormous displacement the *Nakba* meaning catastrophe.<sup>97</sup> At the outset, numbers of Palestinian refugees were located in an interim refugee camps in the Gaza Strip, Westbank and adjacent Arab countries Lebanon, Jordan, Egypt, Syria and several others in the region. Yet, the common perception regarding the large-scale displacement that it was temporary one, and Palestinian refugees hoped to return. Sadly, it was the beginning of the seriously protracted displacement lasting for decades without a solution. Crucially, it was primarily stemmed from the Israeli commitment not to accept return of the refugees and to bring the state of Israel a Jewish character.<sup>98</sup> For these purposes, many regulations were posed and conducted by the Israeli government by means of politics and military.<sup>99</sup> For instance, the government implemented Nationality Law and the Non-infiltration Law to form a legal base in this context. Through these laws, prevention of Palestinian return was ensured.<sup>100</sup> Since then, this standpoint of the Israel remained valid until today that they have not accepted and allowed return despite bilateral and multilateral efforts. Therefore, the contentious concept of return has still been regarded as one of the main debates in Palestinian refugee problem.

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<sup>96</sup> Ibid, p. 3.

<sup>97</sup> Ibid.

<sup>98</sup> Albanese, F. P., & Takkenberg, L. (2020). Palestinian refugees in international law, p. 32.

<sup>99</sup> Ibid.

<sup>100</sup> Ibid.

Following the end of the war, around 150.000 Palestinians stayed within the armistice lines of Israel.<sup>101</sup> They also faced certain humiliations and inhuman conditions under Israeli jurisdiction. Moreover, many of them became internally displaced, while numbers of them were deported. Another large-scale expulsion of Palestinians took place due to the second Arab-Israel War in 1967. As a result of the war lasted only six days, Israel extended its borders beyond the demarcation of the Partition Plan by seizing Sinai and the Gaza Strip from Egypt, the east Jerusalem and West Bank from Jordan, and the Golan Heights from Syria.<sup>102</sup> Consequently, it is estimated that around 400.000 Palestinians had to evacuate these areas.<sup>103</sup> In fact, considerable numbers of them were subjected to second displacement including 1948 refugees residing in refugee camps in the West Banks, Gaza and others, while around 240,000 Palestinians became displaced for the first time.<sup>104</sup> After the 1967 Six-Day War, Israel again applied the same strategy to expel remaining Palestinian population. It paved the way for displacement of anticipated about 800.000 Palestinians since then.<sup>105</sup>

Throughout the decades, Palestinian refugees have been struggling unfortunate humanitarian conditions and facing economic and social difficulties in countries they found refuge after their displacement. From the outset, they have been settled mainly in refugee camps in neighboring countries. Due to miserable conditions of the refugee camps, many of them suffered from lack of economic and social sufficiency to carry on a proper livelihood. They have mostly depended on the services provided by either their host states or international organizations. In this context, even though there have been several considerable efforts by the international refugee regime comprised of the UN and its agencies devoted to Palestinian refugees for delivering protection and assistance, it is clear that the ultimate solution has never been found. Furthermore, due

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<sup>101</sup> BADIL, (2005). Closing Protection Gaps: Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, p. 3.

<sup>102</sup> Ibid.

<sup>103</sup> Albanese, F. P., & Takkenberg, L. (2020). Palestinian refugees in international law, p. 50.

<sup>104</sup> BADIL, (2022). Survey of Palestinian Refugees and Internally Displaced Persons, 2019-2021, p. 11.

<sup>105</sup> BADIL, (2005). Closing Protection Gaps: Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, p. 3.

to serious ambiguities regarding Palestinian refugees in the mechanism of the refugee regime such as exclusion from general definition of the term ‘refugee’, Palestinian refugees have suffered also from different treatments in different host countries in line with their unclear legal recognition. Since there has never been a concrete legal infrastructure regarding Palestinian refugees, each host state interpreted their status contrarily, which eventually put them into wretched positions. Today, considerable numbers of Palestinian refugees in the host countries live under unpleasant conditions by limited access to education, work, medication, electricity, food and other essential means of livelihood.<sup>106</sup> Again, the majority suffer from poverty and still need humanitarian assistance.

Currently, even though there is no single estimation on the size of Palestinian displacement, according to non-profit organization BADIL Resource Center for Palestinian Residency and Refugee Rights, approximate number of forcibly displaced Palestinian refugees is anticipated as 9.17 million including 812.000 IDPs out of total 14 million Palestinian population across the globe.<sup>107</sup>

With respect to international assistance, roughly 5.9 million Palestinian refugees of the total number of 9.17 million displaced Palestinians worldwide are eligible for services comprising relief and assistance by being registered by UNRWA.<sup>108</sup> Among them, 1948 refugees constitute majority portion followed by 1967 refugees.<sup>109</sup> According to reports of UNRWA, approximately 1.5 million Palestinian refugees still “live in 58 recognized Palestine refugee camps in Jordan, Lebanon, the Syrian Arab Republic, the

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<sup>106</sup> BADIL, (2022). Survey of Palestinian Refugees and Internally Displaced Persons, 2019-2021, p. 32.

<sup>107</sup> Ibid, p. 39.

<sup>108</sup> UNRWA. “Palestine Refugees”. Accessed July 15, 2023. <https://www.unrwa.org/palestine-refugees>.

<sup>109</sup> As of 2022, out of total number of forcibly displaced Palestinians and their descendants, 1948 refugees are estimated about 7 million, while 1967 displaced persons constitutes 1,33 million. See for more information BADIL, (2022). Survey of Palestinian Refugees and Internally Displaced Persons, 2019-2021, Volume X. Bethlehem, Palestine: BADIL Resource Center for Palestinian Residency and Refugee Rights, p. 43. Accessed July 15, 2023. [https://www.badil.org/cached\\_uploads/view/2022/10/31/survey2021-eng-1667209836.pdf](https://www.badil.org/cached_uploads/view/2022/10/31/survey2021-eng-1667209836.pdf).

Gaza Strip and the West Bank, including East Jerusalem”<sup>110</sup>, whereas BADIL implies that this number is more than 1.8 million.<sup>111</sup> On the other hand, however, as number of refugees living in the camps indicates, majority of the UNRWA registered Palestinian refugees resides outside the camps. They mainly stay at different locations, as UNRWA states “in and around the cities and towns of the host countries”<sup>112</sup> and occupied territories of the West Bank and Gaza Strip.

## **4.2. Status of Palestinian Refugees**

This section will examine the legal status of Palestinian refugees and its determinants in international law and UNRWA's five areas of operation. Basically, the legal status of Palestinian refugees is uncertain in international refugee law since were excluded from universally recognized refugee definition through Article 1D of the 1951 Refugee Convention. As mentioned in the previous part of this chapter, various definitions were created for Palestinian refugees to determine eligibility to protection and assistance services of UNCCP and UNRWA. However, since these definitions were generated for operational purposes, there has been no universally recognized legal definition of Palestinian refugees. Given their indefinite legal status, it is left to the discretion of the host Arab states and Israel to determine their legal status in the five UNRWA areas. Accordingly, the legal status of Palestinian refugees significantly varies in Arab host countries in general.

### **4.2.1. Legal Status in International Law**

The legal status of Palestinian refugees in international law is a complicated issue. The main concrete reason paved the way for this complication was their exclusion from general refugee definition legally acknowledged in international system by the 1951

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<sup>110</sup> UNRWA. “Palestine Refugees”. Accessed July 15, 2023. <https://www.unrwa.org/palestine-refugees>.

<sup>111</sup> BADIL, (2022). Survey of Palestinian Refugees and Internally Displaced Persons, 2019-2021, p. 46.

<sup>112</sup> UNRWA. “Palestine Refugees”. Accessed July 15, 2023. <https://www.unrwa.org/palestine-refugees>.



UN Convention. While the Convention set up the basic requirements in determination of legal refugee status worldwide and more generally founded very basis of international refugee law, a particular provision prevented application of the Convention on Palestinian refugees. The main reason was that they had already been under the jurisdiction of other UN agencies. Eventually, this exclusion resulted in different treatment towards them in terms of international protection and assistance compared to other refugees in the world. At first, in explaining the legal status and fundamental rights of Palestinian refugees, it is essential to mention the role of international refugee regime and its primary apparatuses.

Historically, in order to deal with massive displacements broke out during and after the Second World War, the international refugee regime has been set out as grounded on the 1951 UN Convention Relating to the Status of Refugees and then its 1967 Protocol as instrumental tools. In addition, UNHCR was given a mandate to serve as a ‘*guardian*’<sup>113</sup> of the international legal framework drawn by these significant instruments on the global refugee matters through its statute. Through these initial international initiatives, it was mainly aimed at redounding a worldwide recognition of the need for attention to refugee issues. However, these instrumental and organizational landmarks of the international refugee regime singled Palestinian refugees out of their operational scope. Essentially, the general refugee definition and certain provisions of the Convention did not apply Palestinian refugees except one. Article 1D of the 1951 Convention states that “this Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.”<sup>114</sup>

In fact, only persons presumed receiving protection and assistance from other agencies of the UN were Palestinians at the time. In this sense, the provision referred to

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<sup>113</sup> UN High Commissioner for Refugees (UNHCR), The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, September 2011, available at: <https://www.refworld.org/docid/4ec4a7f02.html> [accessed 14 July 2023]

<sup>114</sup> UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, art. 1D.

Palestinian refugees without indicating specific name. In this way, blurriness on the legal status of the Palestinian refugees was materialized. Beforehand, there had already been ambiguity on the definition of the Palestinian refugees as previously mentioned. Different definitions were created and used for operational purposes of the agencies that Article 1D mentioned, UNRWA and UNCCP. Then, this ambiguity was coupled with the exclusion of the Palestinian refugees from general refugee definition. Thus, they were furthermore left out of the mandate of the main agency, UNHCR, responsible for protection, assistance and promoting durable solution on refugee matters worldwide. Thereafter, the 1967 Protocol Relating to the Status of Refugees was adopted to remove certain limitations of the 1951 Convention. Through the protocol, geographical and time limitations on international refugee protection were lifted off. While it expanded application of international refugee law to larger extent, the position of Palestinian refugees remained the same as in the 1951 Convention. Alienated from universally recognized refugee regime, determination and governance of the legal status of Palestinian refugees were generally handed over to a distinct specialized regime only for Palestinians.<sup>115</sup>

Factually, in response to the large-scale displacement of Palestinians after 1948, the UN drafted Resolution 194 (III) with regard the emerging Palestinian refugee crisis. Basically, with the Resolution, the UN intended to reveal rights of the Palestinian refugees in search for permanent settlement of the crisis. Paragraph 11 of the UN General Assembly Resolution 194 (III) states that:

*the refugees wishing to return to their homes and live at peace with their neighbors should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible; Instructs the Conciliation Commission to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation and to maintain close relations with the Director of the United Nations Relief for Palestine*

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<sup>115</sup> Akram, S. M. (2002), p. 38.

*Refugees and, through him, with the appropriate organs and agencies of the United Nations.*<sup>116</sup>

Resolution 194 was essential in the sense that it gives certain rights to Palestinian refugees. Fundamentally, these rights were the right to return and compensation for losses of Palestinian refugees. However, these rights have never been implemented due to the fact that Israeli governments refused any kind of repatriation of Palestinians to the newly established state of Israel as well as compensation. Crucially, lack of any legal refugee status, Palestinian refugees were denied as refugees to be repatriated. Indeed, Israel insist on the fact that the reason of their displacement was very nature of warfare and voluntary exchange of Israeli and Palestinian populations between Arab countries and Israel respectively.<sup>117</sup> In addition to certain rights of Palestinian refugees, Resolution 194 paved the way for the establishment of the UNCCP in 1948 as a main agency to provide protection and final settlement of Palestinian refugee crisis. Yet it soon failed to function in accordance with its objectives and became an ordinary agency reporting annual statistics on refugee properties<sup>118</sup>. Next year, in 1949, UNRWA was established by the UN Resolution 302 (IV) to ensure fundamental humanitarian assistance to Palestinian refugees residing within five designated operational areas of UNRWA, the West Bank, Gaza, Jordan, Lebanon and Syria.<sup>119</sup> In order to conduct its operations UNRWA favored certain definitions over time, but still neither these definitions nor the competence of UNRWA were in compatible with the universal refugee definition of the 1951 Convention and UNHCR's functional extent.

Upon unclarified legal status of Palestinians as refugees, there were two important international developments on their status of stateless persons. Firstly, the 1954

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<sup>116</sup> UN General Assembly, Resolution 194 (III). Palestine-Progress Report of the United Nations Mediator, 11 December 1948, A/RES/194, para. 11, available at: <https://www.refworld.org/docid/4fe2e5672.html> [accessed 15 July 2023]

<sup>117</sup> Akram, S. M., Dumper, M., Lynk, M., & Scobbie, I. (Eds.). (2011). International law and the Israeli-Palestinian conflict: A rights-based approach to Middle East peace. Routledge, p.26.

<sup>118</sup> Ibid, p.25.

<sup>119</sup> UNRWA. "Palestine Refugees". Accessed July 15, 2023. <https://www.unrwa.org/palestine-refugees>.

Convention Relating to the Status of Stateless Persons was adopted by the UN. The aim was to assure fundamental human rights for stateless persons. Afterwards, the 1961 Convention on the Reduction of Statelessness broadened the scope of previous convention by including de facto stateless persons.<sup>120</sup> However, similar exclusion of Palestinians was also applied by the 1954 Convention stating that the Convention shall not apply “to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance so long as they are receiving such protection or assistance.”<sup>121</sup>

Subsequently, UNHCR embraced certain amendments in their interpretation of Article 1D of the 1951 Convention by releasing Note on the Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian refugees<sup>122</sup> in 2002 and its revised note in 2009<sup>123</sup> respectively. The Notes basically described Palestinian refugees under three categories:<sup>124</sup>

1. *“Palestinians who are “Palestine refugees” within the sense of UN General Assembly Resolution 194 (III) of 11 December 1948 and other UN General Assembly Resolutions,2 who were displaced from that part of Palestine which became Israel, and who have been unable to return there.”*

2. *“Palestinians who are “displaced persons” within the sense of UN General Assembly Resolution 2252 (ES-V) of 4 July 1967 and subsequent UN General Assembly Resolutions, and who have been unable to return to the Palestinian territories occupied by Israel since 1967.”*

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<sup>120</sup> Akram, S. M. (2001). Reinterpreting Palestinian Refugee Rights under International Law, in Palestinian Refugees: The Right of Return, p. 170.

<sup>121</sup> UN General Assembly, Convention Relating to the Status of Stateless Persons, 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117, available at: <https://www.refworld.org/docid/3ae6b3840.html> [accessed 15 July 2023]

<sup>122</sup> UNHCR, (2002). Note on the Applicability of Article ID of the 1951 Convention relating to the status of Refugees. Geneva, Switzerland: UNHCR. <https://www.un.org/unispal/document/auto-insert-197289/>

<sup>123</sup> See Revised Note on the Applicability of Article 1D of the 1951 Convention Relating to the Status of Refugees to Palestinian Refugees. Available at: <https://www.un.org/unispal/document/auto-insert-205174/>.

<sup>124</sup> UNHCR, (2002). Note on the Applicability of Article ID of the 1951 Convention relating to the status of Refugees.

3. *Palestinian refugees “who are neither “Palestine refugees” nor “displaced persons”, but who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, are outside the Palestinian territories occupied by Israel since 1967 and are unable or, owing to such fear, are unwilling to return there.”*<sup>125</sup>

Essentially, the Notes indicated that the third category of Palestinian refugees does not fall within Article 1D’s exclusion provision, and therefore can benefit from the 1951 Convention.<sup>126</sup> Exceptionally, in the case that the first and second categories live outside the UNRWA areas of operation, they inevitably became authorized for benefits of the 1951 Convention since the second paragraph of Article 1D states that:

*when such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Convention.*<sup>127</sup>

It is because once they are outside of UNRWA areas, they became unable to reach protection and assistance provided by UNRWA. Additionally, the Notes further indicated that international protection and assistance contains descendants of Palestinian refugees of 1948 and 1967. As a primary agency for international protection and assistance, UNHCR intended to clarify the status of Palestine refugees in international refugee law through these notes.

In general, because the definition of both refugee in the 1951 Convention and stateless persons in the 1954 Convention did not comprehensively contain them, it was left unclear whether Palestinian refugees are comprehensively subjected to international protection and assistance as refugees or stateless persons. Regarding their exclusion from the primary international instrument of the refugee protection regime, the 1951 Convention, and subsequent Conventions pertaining statelessness, there has hardly been a consensus on the legal status of Palestinians in international law. Therefore, in addition to incompetence to enjoy certain universal rights and freedoms granted to

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<sup>125</sup> Ibid.

<sup>126</sup> Ibid.

<sup>127</sup> UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, art. 1D, available at: <https://www.refworld.org/docid/3be01b964.html> [accessed 15 July 2023]

other refugees in the world, Palestinian refugees have faced various difficulties in terms of their need for protection and assistance in different host countries.

#### **4.2.2. Status in Arab Host States**

Having discussed on international status of Palestinian refugees over time, the striking point in it that since international standards on the status of Palestinian refugees have been uncertain, determination on status and execution of certain treatment towards Palestinians were left to the discretion of host states in neighboring region. Therefore, Palestinian refugees have confronted different types of treatments in each country where they found refuge, due to particularities in their distinct legal position under international law. This section, therefore, explains varying interpretations and implementations of hosting Arab States on the legal status of Palestinian refugees.

Historically, from the outset when Palestinians started to escape from conflicts in their homeland, neighboring Arab states were the main and nearest destinations to find refuge. However, main stance of Arab states in the establishment of international refugee regime emphasizing on non-refoulment, settlement and protection in country of first refugee and resettlement in a third country was critical with respect to Palestinian refugees. Rather, they advocated repatriation, restitution and compensation according to desires of most of the Palestinian refugees. In other words, Arab states desired international regime to promote final resolution of the problem instead of acknowledging it since Arab states felt threatened by prospective economic, social and political instability due to the scale of the problem.

Indeed, there had been also regional efforts by Arab states to set the standards of governing Palestinian refugee issue. The most significant one was so called Casablanca Protocol adopted by Arab League during the conference in Moroccan capital Casablanca in 1965. Basically, The Protocol on the Treatment of Palestinians sought to establish systematized legal refugee regulations throughout the Arab region. In particular, the Protocol encapsulated certain proposed provisions for Palestinian

refugees with respect to employment and substances of freedom of movement.<sup>128</sup> In this sense, member states were required to implement these following regulations quoted from the Protocol:<sup>129</sup>

*1. Whilst retaining their Palestinian nationality, Palestinians currently residing in the land of ..... have the right of employment on par with its citizens.*

*2. Palestinians residing at the moment in ..... in accordance with the dictates of their interests, have the right to leave and return to this state.*

*3. Palestinians residing in other Arab states have the right to enter the land of ..... and to depart from it, in accordance with their interests. Their right of entry only gives them the right to stay for the permitted period and for the purpose they entered for, so long as the authorities do not agree to the contrary.*

*4. Palestinians who are at the moment in ....., as well as those who were residing and left to the Diaspora, are given, upon request, valid travel documents. The concerned authorities must, wherever they be, issue these documents or renew them without delay.*

*5. Bearers of these travel documents residing in LAS states receive the same treatment as all other LAS state citizens, regarding visa, and residency applications.*<sup>130</sup>

The League mainly aimed at promoting implementation of the same rights on Palestinian refugees as citizens of Arab states.<sup>131</sup> However, these regional instrumental efforts were both uncertain in some cases and non-binding. Accompanied with this situation, most of the hosting Arab states were not party to the main international regulatory instruments on refugees and stateless persons, the 1951 Convention and 1954 Statelessness Convention.<sup>132</sup> Therefore, under these circumstances, each state governed refugee matters according to their own legislation without incorporating

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<sup>128</sup> BADIL, (2005). Closing Protection Gaps, p. 13.

<sup>129</sup> League of Arab States, Protocol for the Treatment of Palestinians in Arab States ("Casablanca Protocol").

<sup>130</sup> League of Arab States, Protocol for the Treatment of Palestinians in Arab States ("Casablanca Protocol"), 11 September 1965, available at: <https://www.refworld.org/docid/460a2b252.html> [accessed 19 April 2023]

<sup>131</sup> BADIL, (2005). Closing Protection Gaps, p. 13.

<sup>132</sup> Ibid, p. 14.

internationally and regionally endorsed regulations.<sup>133</sup> Consequently, Palestinian refugees' enjoyment of fundamental civil rights and freedoms refugees has been subjected to change through time and space. In different occurrences, legal status of the majority of them has been considered as temporary residents or foreigners rather than fully enjoyed citizenship in all host countries. Yet, there is only one exception that Jordan granted citizenship to Palestinians in some certain circumstances.

In particular, Jordan was the only Arab state where the legal status of Palestinian refugees is considerably improved. Initially, Palestinians who were residents of former Mandatory Palestine have enjoyed equal Jordanian citizenship with nationals starting from 1949. Later on, this legal status was officially ratified by Jordanian Nationality Law in 1954.<sup>134</sup> Basically, the Law states in the Article 3 (2) that "Any 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"<sup>135</sup> was eligible for Jordanian citizenship.

In subsequent years, the 1967 refugees of the West Bank and those who had residence in the East Bank earlier was also given citizenship by Jordan. Still, other than West Bank residents, others arriving after 1954, mostly Palestinian refugees displaced as a result of 1967 conflicts, were treated as foreigners, and they could not enjoy as many rights as citizens. In this case, Palestinians who obtained citizenship have been able to reach fundamental rights and freedoms like Jordanian nationals, whereas others have been treated as holders of temporary resident status or as foreigners.<sup>136</sup> Nevertheless, it is acknowledged that there has always been an informal discrimination against all Palestinian refugees in many spheres of life.<sup>137</sup> Furthermore, by 1983, there have been

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<sup>133</sup> Shiblak, A. (1996). Residency status and civil rights of Palestinian refugees in Arab countries. *Journal of Palestine Studies*, 25(3), p. 38.

<sup>134</sup> Law No. 6 of 1954 on Nationality (last amended 1987), 1 January 1954, available at: <https://www.refworld.org/docid/3ae6b4ea13.html> [accessed 19 April 2023]

<sup>135</sup> Ibid.

<sup>136</sup> BADIL, (2005). Closing Protection Gaps, p. 16.

<sup>137</sup> BADIL, (2022). Survey of Palestinian Refugees and Internally Displaced Persons, 2019-2021, p. 104.



certain changes in the status of many Palestinians. Basically, Jordan has imposed a card system to identify residents of the West Bank from others.<sup>138</sup> Through this identification, they were regarded as Palestinians, and therefore were exposed certain restrictions on civil rights by Jordan. Afterwards, Jordanian administration revoked many Palestinian citizenship of West Bank residents to temporary residency status after administrative detachment of the West Bank by 1988.<sup>139</sup>

On the other hand, majority of Palestinian refugees in Syria have experienced comparatively better treatment than others dispersed across the region only until 2011.<sup>140</sup> By 1949, there have been implementations of series of specific laws and regulations pertaining to Palestinian refugees. The most significant one was Law 260 issued in 1956. The Law 260 was groundwork for governing legal status of Palestinian refugees, and it enabled them to reach wide range of civil rights in Syria.<sup>141</sup> In this way, even though they have not been entitled Syrian citizenship to conserve their Palestinian nationality, they have had most of the basic social and economic rights and freedoms like Syrians. Nevertheless, these implementations of rights and freedoms have not covered all Palestinian refugees. Remarkably, for instance, those who took refuge in Syria from other Arab states after 1970 have had limited access to these fundamental rights and freedoms by being treated as foreigners. Eventually, however, the outbreak of Syrian uprising in 2011 and following civil war devastated the whole stability in the country. In this way, like the majority of the Syrian population, Palestinian refugees were also heavily influenced and displaced as a result of constant violence and conflicts since then. As a result, Palestinian refugees have suffered from multiple displacements and sought refuge in other countries in the region, which is a contentious issue having further discussed later in this thesis.

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<sup>138</sup> Ibid, p. 103.

<sup>139</sup> Shiblak, A. (1996). Residency status and civil rights of Palestinian refugees in Arab countries, p. 42.

<sup>140</sup> Bastaki, J. (2017). The Legacy of the 1951 Refugee Convention and Palestinian Refugees: Multiple Displacements, Multiple Exclusions. *Berkeley J. Middle E. & Islamic L.*, 8, 1, p. 8.

<sup>141</sup> Ibid.

In Lebanon, however, Palestinian refugees have experienced the worst conditions among others in neighboring Arab states. At first, Lebanon was moderate to accept Palestinian refugees. However, in time, Palestinian refugees were considered as a source of threat for the stability in the country. Only few proportions of Palestinian refugees who have arrived in 1948 were given residency status with Lebanese ID, while others only had limited travel documents.<sup>142</sup> Still, even these legal residents were officially considered and treated like foreigners. In general, vast majority of Palestinians have been subjected to strong discrimination in all spheres of life. Essentially, they have not had access to many fundamental rights and freedoms. In any case, majority of the refugee population live in refugee camps. Those who are outside of the camps have also marginalized from social and economic life by imposed restrictions. Furthermore, living conditions of Palestinians in refugee camps have been miserable as well as the fact that they constituted the poorest proportion of Palestinian refugees around the world. In addition to the certain developments such as the civil war took place between 1975 and 1990 in Lebanon and constant Israeli attacks on refugee camps, the civil war in Syria deteriorated the conditions of both Lebanese population and Palestinian refugees in terms of economic, social and political aspects.<sup>143</sup> Consequently, more than half of the Palestinian refugee population has left the country to seek refuge elsewhere. In this respect, even if they wished to return, they faced certain difficulties for renewal of their travel documents by Lebanese officials.

In fact, there have also been many other destinations in the region where Palestinian refugees arrived after they suffered massive displacement in 1948 and 1967 from their homeland as well as subsequent displacements as a result of various pushing factors over time. Yet, above mentioned three Arab states where UNRWA operates have relatively been hosting large proportion of Palestinian refugees, and also, they are significant examples to represent changing legal status of Palestinian refugees in different places. Palestinian refugees obtained residency status in their first country of

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<sup>142</sup> Albanese, F. P., & Takkenberg, L. (2020). *Palestinian refugees in international law*. Oxford University Press, pp. 212-219.

<sup>143</sup> *Ibid*, pp. 207-219.

refuge after 1948 exodus.<sup>144</sup> Significantly, however, changing character of political environment in host states has influenced the legal status of Palestinian refugees over time as in cases of Lebanon, Egypt, Libya.<sup>145</sup> In addition, protracted conflicts and wars in the Middle East severely deteriorated both conditions and status of Palestinian refugees throughout the region. Eventually, these negative developments with respect to time and place brought about the fact that Palestinian refugees had to experience multiple displacements over time.

#### **4.2.3. Status in the Occupied Palestinian Territories (OPTs)**

As of 2021, about forty three percent of the total displaced Palestinian population reside in the West Bank and Gaza Strip.<sup>146</sup> Majority of them include registered refugees within UNRWA as well as other non-registered Palestinian refugees for whom UNRWA operations are still accessible. In addition to these, there are thousands of Palestinians who are internally displaced. Indeed, the legal status of those displaced Palestinians in the region has been historically subjected various determinants throughout the time since the outbreak of problem. Basically, as mentioned earlier, at the outset, the West Bank was under control of Jordan, while the Gaza Strip was controlled by Egypt until Israeli occupation of both territories in 1967. Within these circumstances, the legal status of Palestinians was determined by these two Arab states throughout that time. On the one hand, Palestinians in the Gaza Strip under Egyptian control had temporary resident status with deficient enjoyment of fundamental rights and freedoms. On the other hand, Jordan granted citizenship to Palestinians including those in the West Bank as well as other Palestinians in the country being displaced between 1947 and 1954.

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<sup>144</sup> Takkenberg, A. (1998). *The Status of Palestinian Refugees in International Law*. Clarendon Press, p. 173.

<sup>145</sup> Ibid, p. 175.

<sup>146</sup> BADIL, (2022). *Survey of Palestinian Refugees and Internally Displaced Persons, 2019-2021*, p. 44.

However, with the Israeli occupation in 1967 and subsequently cessation of citizenship status of West Bank residents by Jordanian government in 1988, certain changes took place with regard to Palestinians' status.<sup>147</sup> After Israel occupied the West Bank and Gaza Strip, it exercises military administration on these territories. Therefore, residency status of Palestinians started to be shaped under this strict military orders.<sup>148</sup> In this sense, only those Palestinians who were registered through a census operated by Israel after the occupation in 1967 were considered legal residents of the territories. The rest were regarded as illegal residents both in the West Bank and Gaza Strip. In fact, both refugees and non-refugees in these regions have had the same status in terms of applicability of certain rights and freedoms under Israeli control.<sup>149</sup> In other words, holding a residency status in the occupied territories of Palestine did not mean to enjoy wide range of fundamental rights and freedoms as neither refugees nor residents. According to Israeli legislation, those refugees who holds residency status were considered as foreign residents of the territories.<sup>150</sup> Refugees both from the West Bank and Gaza were issued different identity cards indicating that they were designated to reside wherever they are registered. Essentially, they were obliged to get permit from Israeli government to travel abroad. In this situation, many Palestinians who left these territories have faced a threat of termination of their residency status. It meant for Palestinians that they have not had freedom of movement even within the territory of Palestine. Furthermore, according to BADIL, through execution of military orders following occupation in 1967 Israel has terminated more than 240.000 Palestinians' residency in the West Banks and Gaza Strip as a result of the fact that their permission date expired to return the territories until 1994.<sup>151</sup>

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<sup>147</sup> Albanese, F. P., & Takkenberg, L. (2020). Palestinian refugees in international law. Oxford University Press, pp. 236-238.

<sup>148</sup> BADIL, (2005). Closing Protection Gaps, p. 20.

<sup>149</sup> Ibid.

<sup>150</sup> Albanese, F. P., & Takkenberg, L. (2020). Palestinian refugees in international law. Oxford University Press, pp. 236-238.

<sup>151</sup> Ibid; BADIL, (2014). "Forced population transfer: The case of Palestine denial of residency", Working Paper No. 16, April 2014, pp. 18-19.

Another change came within the framework of peace efforts by Oslo Accords in 1993 between Israel and Palestine Liberation Organization (PLO) which is a military and political organization representing the Palestinians.<sup>152</sup> According to the Accords, it was agreed that Palestinian Authority (PA) has an administrative control of residency matters of Palestinians in the occupied territories in collaboration with Israeli government.<sup>153</sup> Since then, Palestinians from the occupied territories have been entitled to have Palestinian Passport.<sup>154</sup> Nevertheless, there have been many restrictions on travelling in and out of these territories. In addition to restrictions on movement, Palestinians have faced certain difficulties and discriminations in social and economic sphere such as education, employment and basic facilities regardless of whether they are refugees or non-refugees. Further restrictions also emerged following 2000 as a consequence of the second intifada which was the second Palestinian uprising against Israel. Israel invalidated the coordination with the PLO agreed in the Oslo Accords and retook absolute control of the occupied territories again. Since then, following significant developments such as the creation of a separation Wall in the West Bank in 2002 and Israeli withdrawal from Gaza in 2005, Palestinian Authority (PA) currently continues limited domestic control in the occupied territories, while Israel is still the main administrative and military invader of the West Bank and Gaza Strip.<sup>155</sup>

#### **4.3. Distinctive Regime for Palestinian Refugees**

Palestinian refugee problem occupied significant place on the agenda of international system from the outset. Within the framework of the early attempts to create an international refugee regime, Palestinian refugees were drawn particular attention with their unique position as a result of massive displacement. During the drafting process of the bases of emerging international regime pertaining refugee issues, it was obvious

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<sup>152</sup> Macintyre, R. R. (1975). The Palestine Liberation Organization: Tactics, Strategies and Options towards the Geneva Peace Conference. *Journal of Palestine Studies*, 4(4), p. 83.

<sup>153</sup> BADIL, (2005). *Closing Protection Gaps*, p. 20.

<sup>154</sup> *Ibid*, p. 21.

<sup>155</sup> *Ibid*, pp. 20-22.

that the United Nations had already intended to separate the issue of Palestinian refugees from general refugee framework. As previously mentioned, the UN attempted to take immediate action in response to the devastated post-war situation in terms of large-scale displacement in Europe by creating a collective refugee regime. These attempts resulted in the creation of international refugee protection regime based on the universally acknowledged 1951 Refugee Convention. Basically, the Convention set the basic principles of the international refugee law. However, Palestinian refugees were not included within the recognized refugee definition by emphasizing that they have already fallen within the scope of the UNCCP and UNRWA.

In fact, there were two main reasons rested on for this particular attention of the UN and exclusion of Palestinian refugees from the Convention. In the first place, the UN was motivated to pay special attention to the Palestinian refugee problem because of its own responsibility for creation of massive expulsion of Palestinians from the Mandatory Palestine. Essentially, the problem stemmed from the UN Partition Plan in 1947 proposing the establishment of Arab State and Israeli State in historic Palestine territory. As chapter two indicates, roots of the dispute originated from the establishment of the State of Israel and following Arab-Israeli War in 1948, as a result of the Plan. Secondly, Arab States hosting thousands of Palestinian refugees were insistent on the particular involvement of the UN in the resolution of the problem. Arab states strongly discouraged the inclusion of the Palestinian refugees within the universal refugee definition during the negotiations pave the way for the emergence of the Refugee Convention in 1951 as they advocated repatriation of the Palestinians in line with their own wishes and international principles instead of settlement in a country of first asylum or resettlement in a third country. Indeed, the main motivation of the Arab states was to accomplish final solution as soon as possible since they were strictly against the existence of the State of Israel and were afraid that as a result of predicament in the problem, they would confront extensive burden of Palestinian refugees. Consequently, as well as several initial endeavors, it has eventually been witnessed the creation of distinct refugee regime by the United Nations, comprised of two primary agencies: the UNCCP and UNRWA, in 1948 and 1949 respectively.

Upon this background, since this thesis aims to assess the competence of the international refugee system in delivering protection and assistance and promoting durable solution for the Palestinian refugee problem, this section is significant to comprehend the distinct regime designated only for Palestinian refugees. In this sense, this section attempts to elaborate on the emergence and development of these particular efforts of the international system to cope with the problem. Alongside addressing the role of UNHCR and universal Refugee Convention of 1951 in Palestinian refugee problem, the early UN initiatives, UNCCP and UNRWA are articulated in depth to shed light on the efficacy of international system to adequately respond to the problem.

#### **4.3.1. Early UN Reaction to Emerging Palestinian Refugee Crisis**

The initial international reaction was displayed by the UN as a response to the exacerbated conflicts aroused in Mandatory Palestine after the Partition Plan was approved. As of the adoption of the Plan, many Palestinians were forced to leave the territory due to intense violence, fear of persecution and many other reasons that put them into vulnerable situation in humanitarian aspects until the establishment of the State of Israel on 14 May 1948. Upon these circumstances, the UN Mediator for Palestine was assigned by the General Assembly in the same day as the establishment of the Jewish state in order to negotiate settlement of dispute among the parties. The head of Swedish Red Cross at the time, Count Folke Bernadotte, was assigned as a Mediator.<sup>156</sup> Besides mediation among the two parties, one of the most important tasks given to Mediator by the UN was to ensure protection and assistance for Palestinian refugees. In this sense, there have been some efforts to provide relief for Palestinian refugees with the foundation of UN Disaster Relief Project. Although the effectiveness of these efforts to provide relief and protection was questionable, the major achievement of Mediator was several suggestions offered to the UN in pursuit of reaching peaceful settlement of the conflict, obtained through observations in the region. Bernadotte ended up with the evaluation that Palestinian refugees had a right

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<sup>156</sup> Takkenberg, A. (1998). *The Status of Palestinian Refugees in International Law*. Clarendon Press, p. 23.

to return their homeland, therefore he involved in negotiations with Israel to persuade them for return. Unsurprisingly, Israeli government strictly rejected this proposition. Nevertheless, he subsequently delivered his suggestions to the UN Secretary-General in the form of official report in late 1948. Basically, his ‘Progress Report of the UN Mediator on Palestine’ was composed of three parts in which he stressed on the necessary mediation efforts, reflections of the two ceasefires until that time, and his observations and suggestions on the refugee conditions and indispensable assistance needed.<sup>157</sup> Significantly, the Report was essential to guide the UN in acting accordingly in terms of introducing necessary means to resolve refugee problem. It was indicated that over 300.000 Palestinians were displaced internally and around neighboring states<sup>158</sup>, Bernadotte desperately stated in the Report that: “I am deeply concerned with the plight of some three hundred thousand Arab refugees scattered in Arab countries and Arab-controlled areas of Palestine. Their suffering will be intensified when winter comes.”<sup>159</sup> Through his observations, he concluded that the essential step to achieve final solution for the refugee problem is repatriation of thousands of displaced Palestinians as soon as possible. In this sense, he put forth as a specific conclusion about the refugee problem that:

*The right of the Arab refugees to return to their homes in Jewish-controlled territory at the earliest possible date should be affirmed by the United Nations, and their repatriation, resettlement and economic and social] rehabilitation, and payment of adequate compensation for the property of those choosing not to return, should be supervised and assisted by the United Nations conciliation commission...*<sup>160</sup>

As another significant output of the Report, he offered the establishment of a special conciliation commission as revealed at the end of the quotation above. Furthermore, within the report he noticeably identified the tasks of the commission that:<sup>161</sup>

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<sup>157</sup> Progress Report of the UN Mediator on Palestine, (1948). Third Session Supplement No. 11 (A/648), PARIS, 16 September 1948. Retrieved July 15, 2023, from <https://www.jewishvirtuallibrary.org/progress-report-of-the-un-mediator-on-palestine>

<sup>158</sup> Progress Report of the UN Mediator on Palestine, (1948).

<sup>159</sup> Progress Report of the UN Mediator on Palestine, (1948), part 1, V, 3.

<sup>160</sup> Progress Report of the UN Mediator on Palestine, (1948), part 1, VIII, 4(i).

<sup>161</sup> Progress Report of the UN Mediator on Palestine, (1948), part 1, VIII, 4(k).



- 1. To employ its good offices to make such recommendations to the parties or to the United Nations, and to take such other steps as may be appropriate, with a view to ensuring the continuation of the peaceful adjustment of the situation in Palestine;*
- 2. Such measures as it might consider appropriate in fostering the cultivation of friendly relations between Arabs and Jews;*
- 3. To supervise the observance of such boundary, road, railroad, free port, free airport, minority rights and other arrangements as may be decided upon by the United Nations;*
- 4. To report promptly to the United Nations any development in Palestine likely to alter the arrangements approved by the United Nations in the Palestine settlement or to threaten the peace of the area.<sup>162</sup>*

Basically, the Report was essential in the sense that it inspired the UN to then produce certain responses accordingly. In the first place, as a response to remarks of the Report crucially underlined that immediate assistance was needed as Palestinian refugees at the time were suffering miserable conditions and it was going to be more difficult for them to handle toughness of the coming winter,<sup>163</sup> the UN generated another relief program within the framework of newly established agency called the UN Relief for Palestine Refugees (UNRPR) in December 1948. Even though the agency served humanitarian aids for refugees living in and around Palestinian territory for that period, there were still complexities to identify operational boundaries as there was no obvious definition of Palestinian refugees who were in need at the time. Eventually, within the context of the early responses of the UN, while relief mandate of UNRPR were taken over by UNRWA in late 1949, the task of Mediator was concluded when armistice agreement that ceased the Arab-Israel War were reached in 1949.<sup>164</sup> Noticeably, the UN incorporated certain suggestions of the Report within the General Assembly Resolution 194 (III) through which means for durable solution to the refugee problem were accordingly determined as well as the fact that a conciliation commission were established.

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<sup>162</sup> Progress Report of the UN Mediator on Palestine, (1948), part 1, VIII, 4(k).

<sup>163</sup> Progress Report of the UN Mediator on Palestine, (1948), part 1, V, 3.

<sup>164</sup> Takkenberg, A. (1998). The Status of Palestinian Refugees in International Law. Clarendon Press, p. 24.

#### 4.3.2. UN Conciliation Commission for Palestine (UNCCP) and UNGA Resolution 194

The UN General Assembly adopted Resolution 194 (III) on 11 December 1948. Essentially, the Resolution was crucial in the sense that it constituted a prominent base for creation of coping mechanism for Palestinian refugee issue in international system. In other words, subsequent discussions for possible resolution of Palestinian refugee issue were held through referencing the Resolution as a groundwork since then. Basically, the Resolution can be regarded as a first step of the international system to build a separate international refugee regime focusing solely on Palestinian refugees. Even though the Resolution did not raise specific definition of Palestinian refugees, it established a legal framework in pursuit of resolving the refugee problem. Most importantly, it provided basic rights for Palestinian refugees to be internationally recognized. It basically affirmed the right to return their homeland and compensation for their losses in accordance with the recommendations of the UN Mediator's Progress Report. It was stated in paragraph 11 of the Resolution that:

*the refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible.*<sup>165</sup>

Through the Resolution, furthermore, General Assembly established the UN Conciliation Commission (UNCCP) as a separate organization with dual purposes of providing protection to Palestinian refugees and promoting a final resolution of the problem as a whole, again based on the same Report of Mediator.<sup>166</sup> In the continuation of paragraph 11, the General Assembly instructed the Commission:

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<sup>165</sup> UN General Assembly, Resolution 194 (III). Palestine-Progress Report of the United Nations Mediator, 11 December 1948, A/RES/194 (III), para. 11.

<sup>166</sup> Rempel, T. M. (2000). The United Nations Conciliation Commission for Palestine, Protection, and a Durable Solution for Palestinian Refugees. BADIL, Information & Discussion Brief Issue No. 5, June 2000, p. 1. [https://badil.org/phocadownload/Badil\\_docs/bulletins-and-briefs/Brief-No.5.pdf](https://badil.org/phocadownload/Badil_docs/bulletins-and-briefs/Brief-No.5.pdf)

*to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation, and to maintain close relations with the Director of the United Nations Relief for Palestine Refugees and, through him, with the appropriate organs and agencies of the United Nations.*<sup>167</sup>

In this way, regarding Resolution 194 (III) and its output UNCCP, the UN set up a protection regime composed of legal instruments and agencies for Palestinian refugees emphasizing protection and assistance of the refugees and peaceful settlement of the conflict. Basically, targeted international protection was comprised of ensuring Palestinians' rights of return and restitution of properties, providing compensation for losses, taking necessary steps to improve refugee conditions and eventually stipulating durable solutions for refugee problem in a broader extent.<sup>168</sup> Pursuing these purposes, UNCCP initially attempted to execute certain operations by assisting and encouraging state parties "to achieve a final settlement of all questions" as the Resolution instructed.<sup>169</sup> Furthermore, as well as encouraging payments for compensation directly to individuals rather than governments, it made substantial efforts to provide voluntary repatriation of Palestinian refugees to Israel though numerous meetings with Israeli officials. However, without having any coercive power, UNCCP failed at achieving protection of refugees and final settlement of the conflict. Indeed, from the beginning of its mandate, UNCCP was burdened several important and at the same time difficult missions. Therefore, as the only agency responsible for providing protection, with the failure of UNCCP in implementation of provisions of Resolution 194 due to its inability to execute its broad functions, Palestinian refugees have been left out beyond legitimate international protection since then. Nevertheless, although UNCCP lost its activeness after 1952, it had never been shut down, and continued to submit yearly reports to the UN General Assembly comprising records of Palestinians property losses as a result of their displacements.

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<sup>167</sup> UN General Assembly, Resolution 194(III). Palestine-Progress Report of the United Nations Mediator, 11 December 1948, A/RES/194(III), para. 11.

<sup>168</sup> Rempel. T. M. (2000). The United Nations Conciliation Commission for Palestine, Protection, and a Durable Solution for Palestinian Refugees. BADIL, Information & Discussion Brief Issue No. 5, June 2000, p. 7.

<sup>169</sup> UN General Assembly, Resolution 194 (III). Palestine-Progress Report of the United Nations Mediator, 11 December 1948, A/RES/194(III), para. 6.

### 4.3.3. UNRWA

Nearly after a year of the adoption of Resolution 194 (III) and establishment of UNCCP, another fundamental and contrarily enduring component of the distinct regime, the United Nations Relief and Work Agency for Palestine Refugees in Near East (UNRWA), was established as a subsidiary agency of the UN by Resolution 302 (IV) on 8 December 1949. In fact, UNRWA was intended to have a temporary mandate for three years starting from the launch of its operations in 1950. However, to date, its temporary mandate has been renewed every three years. Significantly, it replaced its predecessor organization UNRPR by being authorized to provide relief and assistance for Palestinian refugees in accordance with UNCCP whose designated tasks were protection and conciliation for a durable solution. In this respect, in Resolution 302, the General Assembly directed UNRWA “to consult with the United Nations Conciliation Commission for Palestine in the best interests of their respective tasks, with particular reference to paragraph 11 of General Assembly resolution 194 (III) of 11 December 1948”.<sup>170</sup> Indeed, even though the title of the Resolution was highlighted as an assistance to Palestine refugees, in fact UNRWA was not given any specific assistance mandate with any sort of legal basis but only relief and works programs<sup>171</sup>, unlike in the case of UNHCR and its Statute specifying its mandate as protection and assistance.<sup>172</sup> Basically, Resolution 302 (IV) indicated that UNRWA is established:

*To carry out in collaboration with local governments the direct relief and works programmes as recommended by the Economic Survey Mission;  
To consult with the interested Near Eastern Governments concerning measures to be taken by them preparatory to the time when international assistance for relief and works projects is no longer available.*<sup>173</sup>

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<sup>170</sup> UN General Assembly, Resolution 302 (IV). “Assistance To Palestine Refugees”, 8 December 1949, A/RES/302 (IV), para. 20. Accessed July 15, 2023. <https://www.unrwa.org/content/general-assembly-resolution-302>.

<sup>171</sup> UN General Assembly, Resolution 302 (IV). “Assistance To Palestine Refugees”, 8 December 1949, A/RES/302 (IV), para. 7.

<sup>172</sup> Akram, S. M., Dumper, M., Lynk, M., & Scobbie, I. (Eds.). (2011). International law and the Israeli-Palestinian conflict: A rights-based approach to Middle East peace. Routledge, p.48.

<sup>173</sup> UN General Assembly, Resolution 302 (IV). “Assistance To Palestine Refugees”, 8 December 1949, A/RES/302 (IV), para. 7.

As the Resolution reflects, UNRWA was designated to be responsible for executing “relief and works programs” for refugees based on recommendations of Economic Survey Mission (ESM) in cooperation with related governments of host states in the region.<sup>174</sup> Furthermore, it also attempted to assure regional assistance in the absence of international assistance. However, designated works program by the Resolution based on ESM recommendations was very challenging because of political and economic inability of the agency. Because it seemed to be difficult to build a consensus among regional states on the necessity of reintegration of Palestinian refugees in social and economic life in the region, due to inadequate source of fund and apprehension of regional parties on possible permanency and standardization of the situation.<sup>175</sup> Therefore, main focus was directed to relief program to alleviate inhuman conditions Palestinian refugees suffers. Basically, it included supplying basic humanitarian needs of refugees such as food, shelter as well as health care, education and social services.<sup>176</sup> Nevertheless, the initial assignment of UNRWA was to determine to whom this relief and works programs would cover because its founding resolution did not generate a definition for Palestinian refugees although its name has indications to some extent in terms of target of services. In this sense, after various definitions were generated in time for operational purposes, eventually in 1952, as stated earlier, Palestine refugees were defined as: “persons whose normal place of residence was Palestine during the period 1 June 1946 to 15 May 1948, and who lost both home and means of livelihoods as a result of the 1948 conflict.”<sup>177</sup>

Basically, UNRWA started its relief operations in 1950 in collaboration with related governments and various international non-governmental organizations. In particular, operational areas of UNRWA was circumscribed within Jordan, Syria, Lebanon, the Gaza Strip and the West Bank. Therefore, it reached bilateral agreements by each of

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<sup>174</sup> UN General Assembly, Resolution 302 (IV). “Assistance To Palestine Refugees”, 8 December 1949, A/RES/302 (IV), para. 7.

<sup>175</sup> Akram, S. M., Dumper, M., Lynk, M., & Scobbie, I. (Eds.). (2011). International law and the Israeli-Palestinian conflict: A rights-based approach to Middle East peace. Routledge, p.50.

<sup>176</sup> UNRWA. “Who We Are”. Accessed July 15, 2023. <https://www.unrwa.org/who-we-are>.

<sup>177</sup> UNRWA. “Palestine Refugees”. Accessed July 15, 2023. <https://www.unrwa.org/palestine-refugees>.

these Arab hosting states. Throughout its mandate, UNRWA has evolved by expanding scope and scale of its operations. Significantly, with the emergence of another massive displacement as a result of the 1967 war, it also included these refugees in its jurisdiction. At the same time, due to absence of international protection assumed to be provided by UNCCP, respective resolutions of the UN General Assembly repeatedly contained the term protection with respect to UNRWA's operational purposes. Presently, UNRWA delivers its relief and assistance services to approximately 5.9 million registered Palestinian refugees living in its five areas of operation.<sup>178</sup> While 1.5 million of these registered refugees are still living in 58 recognized refugee camps, others spread around different areas of host countries in the region.<sup>179</sup>

#### **4.3.4. The Role of UNHCR and the 1951 Refugee Convention**

The United Nations High Commissioner for Refugees (UNHCR), 1951 Refugee Convention and its 1967 Protocol constitute a fundamental base of the international refugee protection regime. Since the emergence of the international refugee regime was already discussed earlier, this part of the study aims to provide significant perspectives on the places of Palestinian refugees in this global refugee protection regime.

Clearly, the early responses of the UN to the emerging Palestinian refugee problem and Arab Israeli conflict were considerably active due to its partial responsibility in the creation of these problems through the adoption of resolution indicating partitioning of Palestine territory between Arab and Israeli states. In this sense, it had formulated various policies and legal instruments for the resolution of these specific problems. These policies have led to the emergence of a distinctive regime comprised of UNCCP and UNRWA as separate agencies of the UN with responsibility to provide protection and assistance for Palestinian refugees as well as reconciliation efforts for the final settlement of disputes. However, the existence of separate agencies devoted

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<sup>178</sup> Ibid.

<sup>179</sup> Ibid.

to this specific problem of Palestinian refugees resulted in the exclusion of Palestinian refugees from universal refugee regime and its protection mandate from the outset.

Considering UNHCR's role with respect to Palestinian refugees, there is no obvious legal responsibility for UNHCR to execute its basic functions of delivering international protection and seeking durable solution in Palestinian refugee issue since there have been legal and political restrictions on ability of UNHCR in involving protection of Palestinian refugees for several reasons from the outset. Principally, the UNHCR Statute delineating UNHCR's operational framework as a founding legal document, and 1951 Refugee Convention as a legal basis of universal refugee protection system embrace certain impediments in terms of including Palestinian refugees within broader international refugee definition and refugee protection system. In addition, these have been certain political constraints within and outside of UNHCR due to Arab Israeli conflict, which makes it difficult to negotiate and eventually compromise upon satisfactory solution for Palestinian refugee problem.

Initially, in the course of the creation of a universal refugee regime, the UN General Assembly passed Resolution 428 (V) in late 1950 through which the UNHCR Statute was adopted. However, Palestinian refugees were excluded from the broad international responsibility of UNHCR to provide protection and promote durable solutions for refugees through paragraph 7 (c) of the Statute expressing that the authorization of the agency shall not extend to a person "Who continues to receive from other organs or agencies of the United Nations protection or assistance...".<sup>180</sup>

Moreover, as the most significant legal basis of the regime, 1951 Refugee Convention contained similar specific exclusionary provision in its article 1D indicating only Palestinian refugees who were at the time receiving protection and assistance from other UN agencies. Essentially, the first paragraph of Article 1D states that "the Convention shall not apply to persons who are at present receiving from organs or

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<sup>180</sup> UN General Assembly, Statute of the Office of the United Nations High Commissioner for Refugees, 14 December 1950, A/RES/428(V), para. 7(c).

agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.”<sup>181</sup>

Basically, this provision is crucial since the Convention generally set the basic criteria for universal refugee protection system as an official document constituting international refugee law. Through this first paragraph of the Article 1D and paragraph 7 (c) of the UNHCR Statute, Palestinian refugees were left out of mandate of the universal refugee protection system and its operational instrument UNHCR because they were given special attention by creation of a distinctive refugee regime for protection and assistance through UNCCP and UNRWA. Therefore, Palestinian refugees were treated different than other refugees worldwide in terms of receiving international protection from the outset. Furthermore, not only special agencies devoted only to Palestinian refugees differs them from other refugees, but also determination of their refugee status also makes difference since their status is determined by Article 1D of the 1951 convention whereas determination of other refugees’ status is based on Article 1A (2) of the same Convention.<sup>182</sup>

Nevertheless, through different successive interpretations of Article 1D mentioned above in this chapter, UNHCR has made certain amendments in its operational framework for Palestinian refugees living outside of UNRWA’s areas of operation. In this regard, UNHCR signifies the second paragraph of Article 1D stating that:

*When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Convention.*<sup>183</sup>

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<sup>181</sup> UN General Assembly, Convention Relating to the Status of Stateless Persons, 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117, art. 1D.

<sup>182</sup> BADIL, (2015). Closing Protection Gaps: Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention (2<sup>nd</sup> ed, Al-Ayyam Press 2015). Bethlehem: BADIL Resource Center for Palestinian Residency and Refugee Rights, p. 27. Accessed July 15, 2023. [https://www.badil.org/cached\\_uploads/view/2021/04/18/art1d-2015handbook-1618743231.pdf](https://www.badil.org/cached_uploads/view/2021/04/18/art1d-2015handbook-1618743231.pdf)

<sup>183</sup> UN General Assembly, Convention Relating to the Status of Stateless Persons, 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117, art. 1D.



Noticeably, UNHCR underlines this statement as an inclusion clause contrary to the first paragraph considered as an exclusion clause. Indeed, this second paragraph of Article 1D becomes applicable to Palestinian refugees when protection and assistance operations of UNRWA ceased due to some “objective reasons”.<sup>184</sup> UNHCR note on Interpretation Article 1D of 2013 described it as “any objective reason outside the control of the person concerned such that the person is unable to (re-)avail themselves of the protection or assistance of UNRWA.”<sup>185</sup> In this sense, UNHCR interprets the phrase “ceased for any reason” with the following “objective reasons”:

- 1. Termination of the mandate of UNRWA;*
- 2. Inability of UNRWA to fulfil its protection or assistance mandate;*
- 3. Threat to the applicant’s life, physical integrity, security or liberty or other serious protection-related reasons;*
- 4. Practical, legal and/or safety barriers preventing an applicant from (re)availing him/herself of the protection or assistance of UNRWA.*<sup>186</sup>

Accordingly, UNHCR declares that two groups of Palestinian refugees and their descendants are evaluated within the scope of Article 1D since they are assumed to be receiving or entitled to receive UNRWA services. Basically, UNHCR describes these two groups as follows:

- 1. Persons who are “Palestine refugees” within the sense of UN General Assembly Resolution 194 (III) of 11 December 1948 and subsequent UN General Assembly Resolutions and who, as a result of the 1948 Arab-Israeli conflict, were displaced from that part of Mandate Palestine which became Israel, and who have been unable to return there.*
- 2. Persons who are “displaced persons” within the sense of UN General Assembly Resolution 2252 (ES-V) of 4 July 1967 and subsequent UN General Assembly resolutions, and who, as a result of the 1967 conflict, have been displaced from the*

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<sup>184</sup> UN High Commissioner for Refugees (UNHCR), Note on UNHCR’s Interpretation of Article 1D of the 1951 Convention relating to the Status of Refugees and Article 12(1)(a) of the EU Qualification Directive in the context of Palestinian refugees seeking international protection, May 2013, p. 4, available at: <https://www.refworld.org/docid/518cb8c84.html> [accessed 15 July 2023]

<sup>185</sup> Ibid.

<sup>186</sup> UN High Commissioner for Refugees (UNHCR), Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, April 2019, HCR/1P/4/ENG/REV. 4, p. 245, available at: <https://www.refworld.org/docid/5cb474b27.html> [accessed 15 July 2023]

*Palestinian territory occupied by Israel since 1967 and have been unable to return there. It also includes those persons displaced by “sub-sequent hostilities”.*<sup>187</sup>

On the other hand, Palestinians who do not belong to either group are entitled to enjoy standard benefits of the 1951 Convention. Additionally, in terms of individual claims of Palestinian people, if they prove qualifications for attaining normal refugee status according to Article 1A (2) of the Convention, they can also be regarded as a refugee and entitled to benefit from the 1951 Convention regardless of the fact that whether they meet criteria of Article 1D. Within this context, according to the latest UNHCR Global Trends Report including information about Palestinian refugees, there are 96,340 registered Palestinian refugees of concern to UNHCR by the end of 2018.<sup>188</sup>

In brief, international refugee regime has created a system of protection and assistance for refugees globally to overcome and eventually resolve refugee problems. However, aim of creating a universal system was disrupted since Palestinian refugees have been fallen within the mandate of distinctive refugee regime. This situation resulted in a difference between Palestinian refugees and other refugee populations in the world. While UNHCR was organized to serve as a main agency to provide protection and assistance for refugees with the ultimate aim of producing durable solutions for refugee problems, in terms of Palestinian refugees, UNHCR serves as an alternative international organization in case of the fact distinct international protection and assistance provided by UNCCP and UNRWA would “cease for any reason”.<sup>189</sup>

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<sup>187</sup> Ibid, p. 242.

<sup>188</sup> United Nations High Commissioner for Refugees (UNHCR), “UNHCR Global Trends 2019.” UNHCR, p. 80. Accessed July 15, 2023. <https://www.unhcr.org/statistics/unhcrstats/5ee200e37/unhcr-global-trends-2019.html>.

<sup>189</sup> UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, art. 1D, available at: <https://www.refworld.org/docid/3be01b964.html> [accessed 15 July 2023]

## **CHAPTER 5**

### **LEGAL GAP: AN ASSESSMENT OF THE LEGAL POSITION OF PALESTINIAN REFUGEES IN INTERNATIONAL REFUGEE REGIME**

After closely examining the inferior legal position of Palestinian refugees within the international refugee regime in the previous chapter, this chapter will reveal that there is a significant legal gap in the application of international protection to Palestinian refugees. It will be argued that the roots of the prolonged Palestinian refugee problem were strongly related to the establishment of international refugee protection regime after the Second World War, based on internationally recognized legal document, the 1951 Refugee Convention, and its instrumental guardian, UNHCR. As stated earlier in detail, both the UNHCR Statute and the 1951 Convention contains essential exclusionary provisions about Palestinian refugees, which makes them legally left out of international protection supposedly planned to be provided for all refugees across the world. In this sense, international refugee regime will be criticized for deteriorating legal status of Palestinian refugees with mainly political concerns rather than considering legal dimension of the problem. For this purpose, the main emphasis of this chapter will be on the uncertain legal status of Palestinian refugees in international refugee law.

Furthermore, this chapter will serve as a critique of the international refugee regime, which does not comply with the fundamental human rights when it comes to Palestinian refugees. In this context, it will be contended the general understanding that international refugee regime was established on the basis of liberal principles. In contrast, it basically violated fundamental human rights of Palestinian refugees and eventually international law by restricting them to benefit from broad international protection. Ultimately, non-implementation of the legal protection for Palestinian refugees in the form of durable solution will be highlighted. Based on these grounds,

the first section of the chapter will discuss international refugee regime already has certain deficiencies in terms of restrictive refugee definition from the outset. In the following section, the exclusion of Palestinian refugees from the Refugee Convention will be analyzed to underline the importance of legal status in accessing international refugee protection. The next section will demonstrate that there is a significant inconsistency from the outset between the basic principles of international law and its application to Palestinian refugees. Lastly, it will be discussed how their right to return was ignored at the expense of Universal Declaration of Human Rights (UDHR). Apart from being one of the basic principles of UDHR, repatriation of refugees to their homeland has always been a primary form of durable solution to refugee problems. In the case of Palestinian refugees, however, even though the UNGA Resolution 194 (III) underlines that repatriation is the key for permanent resolution of this problem, it has never been intended to implement due to serious political contradictions and eventual inability of the international refugee regime. In this sense, this thesis will emphasize how legal and political restrictions undermined Palestinian refugees' right to return to their homeland. Significantly, this chapter is prominent as it provides a general framework with the next chapter for a better understanding of the scope of the protection gap that will be analyzed in the final chapter.

### **5.1. Initial Gap in the Regime: Restrictive Refugee Definition**

Before elaborating on direct relation between the regime and Palestinian refugee issue, the 1951 Refugee Convention in the first place was already problematic in its nature since its main motivation was to eradicate refugee problem occurred in European continent as a result of devastating World War II. Through this motivation, the Convention has had many restrictions in itself from the outset in terms of establishing an international refugee protection regime. Essentially, the Convention was not intended to be universal at the time, but it only focused on particular refugee population displaced in Europe and in a specific time frame. It can clearly be seen in Article 1A (2) of the Convention defining allegedly universal meaning of a 'refugee'. The Convention defines refugee as a person who:

*as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.*<sup>190</sup>

Basically, the Convention explained the statement “events occurring before 1 January 1951” in subsequent Article 1B as “events occurring in Europe before 1 January 1951”.<sup>191</sup> As this refugee definition aimed at determining the target of newly established refugee protection regime, millions of refugees outside of the Europe were excluded from protection and assistance mandate of the regime. As a main instrument of the regime to provide this protection and assistance to refugees in the field, UNHCR was also influenced by the limitations of the Convention by serving a certain refugee population. In this sense, international refugee regime has been exposed of many criticisms on being Eurocentric in nature and thus serving interests of European states.<sup>192</sup> Crucially, with the changing character of world politics in time, the regime also realized its shortcomings, and thus made certain amendments to broaden its effectiveness in refugee protection. The most significant step towards eradicating shortcomings of the system was the adoption of Protocol Relating to the Status of Refugees by the United Nations in 1967. Through this Protocol, temporal and geographical limitations imposed by 1951 Convention were abolished. Thus, international refugee regime has gained more universal character as of 1967. Furthermore, there have also been significant changes in the legal and operational framework of the regime as a response to subsequent displacements throughout the world.

However, there was a unique exception that Palestinian refugees have been profoundly affected by these policies and limitations of the regime from the outset. Almustafa

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<sup>190</sup> UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, art. 1A (2).

<sup>191</sup> Ibid.

<sup>192</sup> Almustafa, M. (2018). Relived vulnerabilities of Palestinian refugees: Governing through exclusion, p. 166.

correctly argues that Palestinian refugee crisis is an exclusive instance of how legal limitations of the regime severely influenced a particular group of refugees outside of the European continent, and an inevitable consequence of resettlement policy imposed by the regime to eliminate refugee problem in Europe.<sup>193</sup> Clearly, Jews escaped from persecution executed by Nazi Germany and other severe conditions resulted from the tremendous war were one of the largest refugee populations in Europe at the time. Together with the ongoing flow of migration lasting for about seven decades, the main destination of Jewish population was again Palestine. In this sense, the refugee regime has played a crucial role to resettle those Jewish refugees from Europe to Palestine. In addition, the most dramatic development occurred with the decision of United Nations (UN) to pass Resolution 181 proposing a partition of the former Mandatory Palestine among Jewish and Arab states. This decision in fact resulted in an outbreak of long-lasting misery of Palestinians through establishment of State of Israel and Zionist plan to expel them from their homeland. Through these developments, more than 750,000 Palestinian people were displaced by 1948.<sup>194</sup> Yet, international refugee regime did not live up to its name implied as international. Unlike other refugee populations in the world, thousands of Palestinian refugees were excluded from the mandate of the regime by numbers of limitations.

Overall, Palestinian refugee problem emerged as a result of direct responsibility of the UN and refugee regime due to Partition Plan proposed in 1947 and resettlement program executed by the regime respectively. Furthermore, besides its role on the emergence of the problem, international refugee regime has not played its assumed role in resolving Palestinian refugee issue. In this sense, Eurocentric character of the regime established by the 1951 Convention brought about protracting displacement suffered by large numbers of Palestinian people. Eventually, it is clear that newly established regime has already certain deficiencies in itself from the origin, which created profound protection gaps not only for Palestinian refugees but also for other refugees displaced outside of Europe at the outset. Beyond that, this initial gap did not

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<sup>193</sup> Ibid, p. 167.

<sup>194</sup> BADIL, (2019). Survey of Palestinian Refugees and Internally Displaced Persons, 2016-2018, Volume IX. Bethlehem, Palestine: BADIL Resource Center for Palestinian Residency and Refugee Rights, p. 6.

remain the only one affecting status and living conditions of Palestinian refugees, but it was coupled with different legal instruments of the regime.

## 5.2. Palestinian Exclusion from the Universal Regime

From the outbreak of the problem to date, there are substantial protection gaps in international refugee regime through which Palestinian refugees have been reduced to survive without attaining minimum protection standards and durable solution that should have been provided by the regime in line with its basic principles. The fundamental reason why such a significant protection gap exists in the regime with respect to Palestinian refugees mainly stems from their exclusion from the principal framework of the regime consisting of Statute of UNHCR and the 1951 Convention Relating to the Status of Refugees. Critically, the language used in both documents was very similar in terms of reason of exclusion. In the first place, Statute of UNHCR declared by the UN Resolution 428 (V) of December 1950 remarks in its paragraph 7 (c) that the competence of the High Commissioner shall not extend to a person “who continues to receive from other organs or agencies of the United Nations protection or assistance...”.<sup>195</sup> As mentioned earlier in this thesis, the 1951 Convention in its Article 1D similarly states that:

*This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.*

*When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Convention.*<sup>196</sup>

Even though both of the legal documents did not specify the term ‘Palestinian refugees’ in their manuscript, the only refugee population at the time receiving supposed protection and assistance from other organs of the UN was Palestinian

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<sup>195</sup> UN General Assembly, *Statute of the Office of the United Nations High Commissioner for Refugees*, 14 December 1950, A/RES/428(V), para. 7(c).

<sup>196</sup> UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, art. 1D.

refugees. As stated earlier, as a response to massive displacement of Palestinians following the establishment of State of Israel and ensuing Arab Israeli war, the United Nations created particular regime for forcibly displaced Palestinians. The regime consists of two UN organs. In the first place, the UN Conciliation Commission for Palestine (UNCCP) established in December 1948 was assigned to provide international protection for Palestinian refugees and promote durable solution through political endeavors. On the other hand, the UN Relief and Work Agency for Palestine Refugees in the Near East (UNRWA) was established in December 1949 to provide relief and assistance for Palestinian refugees.

As a result, legal position of Palestinian refugees under international refugee law remained ambiguous. It is because the 1951 Convention set the foundation of international refugee law, and Palestinian refugees were not suited within the definition of refugee according to the Convention. It put Palestinian refugees in a vulnerable position in terms of enjoying their fundamental rights to reach international protection and durable solution under international refugee law. Basically, governed by the principles of the Convention, UNHCR is the primary international agency responsible for providing protection and assistance for refugees and seeking durable solutions to the refugee problems. Contrarily, in the case of Palestinian refugees, UNCCP was entitled to execute these particular missions of reconciliation between parties, protection and promoting durable solutions on behalf of them. However, approximately after four years of its establishment, it was understood that UNCCP was incapable of sustaining its mission largely due to certain political obstacles as well as internal contradictions. Therefore, UNCCP was deactivated by the UN in 1952 in terms of its official mandate, but was never shut down and continued to serve as a reporting agency about refugee properties and ways of compensation. In this respect, protection role given to UNCCP for Palestinian refugees could not be actualized, and they were left without international protection.

Indeed, UNHCR should have taken over this mission of international protection since it is assumed as a guardian of universal refugee protection regime. Yet, due to Article 1D and paragraph 7 (c), UNHCR was imposed legal restrictions on fulfilling its only responsibility towards refugees. It clearly shows that the discriminated legal status of



Palestinian refugees within the regime results in grave consequences for them to date. Therefore, their legal status actually needs an urgent change. In contrast, officials of the regime however argue that Article 1D is still valid since UNRWA still serves Palestinian refugees, but they do not realize protection gap occurred as a result of demise of UNCCP because UNRWA's mandate only contains relief and daily assistance to refugees. They cannot enjoy minimum protection guarantees provided by UNHCR unlike any other refugee population in the world. Significantly, Akram summarizes the stance of the regime as "the persistent and severe denial of international protection."<sup>197</sup> She is unquestionably right in her argument since there has been strong a rejection by the regime on the idea that Palestinian refugees cannot benefit from international protection. In this respect, the United Nations attempted to make some changes in the role of UNRWA by assigning it protection mandate through different suggestions in time instead of amending legal status of Palestinian refugees. Nevertheless, UNRWA still remains as an agency providing assistance with no official responsibility to provide protection and promote durable solutions. For sure, as a consequence, there are millions of refugees outside of international protection. Ultimately, Akram rightly argues that this consistent denial of protection in the case of Palestinian refugees creates a serious gap in comprehending their legal position under international law.<sup>198</sup>

Furthermore, as clearly seen that exclusion clause of the Convention is at the heart of the discussion about protection gap. In this sense, the United Nations has repeatedly expressed through different official documents over time that Article 1D does not only contain exclusion clause but also inclusion clause in its second paragraph. Basically, the paragraph indicates that when protection or assistance ended, Palestinian refugees can also be eligible to the benefits of the Convention.<sup>199</sup> This argument is the primary ground for the regime to explain validity of the clause. However, it is not correct. In the first place, there is an ambiguity in the meaning of the second paragraph of Article

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<sup>197</sup> Akram, S. M., Dumper, M., Lynk, M., & Scobbie, I. (Eds.). (2011). *International law and the Israeli-Palestinian conflict: A rights-based approach to Middle East peace*. Routledge, p.13.

<sup>198</sup> Ibid, p.14.

<sup>199</sup> UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, art. 1D.

1D. There is no adequate explanation about circumstances through which this clause would apply. Above all, if we just reinterpret the given meaning, it is still problematic not to implement the second paragraph after UNCCP has ceased in 1952. Basically, the paragraph says “when such protection or assistance has ceased for any reason...”<sup>200</sup> Contemplating on this statement, there are alternative scenarios about elimination of protection or assistance. The significant point here is the word ‘or’. The Convention says that if either protection or assistance provided by other organs of the UN ended, those refugees become “ipso facto” entitled to international protection.<sup>201</sup>

Significantly, it is known that UNCCP was assigned to provide protection and promote durable solution, whereas UNRWA was mandated to serve as an assisting agency delivering direct relief to refugees. In this respect, this clause has already actualized with the demise of UNCCP because protection mandate of this distinctive regime became ineffective. At this point, it is necessary to apply the second paragraph of Article 1D that Palestinian refugees should have been permitted to the advantages of the Convention. Thus, protection mandate should have been transferred to UNHCR. However, the inclusion clause is wrongly interpreted as the fact that Palestinian refugees shall not receive neither protection nor assistance from any of the UN agencies<sup>202</sup>, so the regime did not make any changes by referencing existence of UNRWA. Here, it was however ignored that since UNRWA’s mandate is just to provide relief and assistance, lack of protection would cause serious gaps in the system only for Palestinian refugees. Nevertheless, problem about this interpretation continues as it is insisted that inclusion clause is only implemented when UNRWA’s assistance ceases. As a consequence, Palestinian refugees were left without international protection for decades.

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<sup>200</sup> Ibid.

<sup>201</sup> Ibid.

<sup>202</sup> BADIL, (2019). Survey of Palestinian Refugees and Internally Displaced Persons, 2016-2018, Volume IX. Bethlehem, Palestine: BADIL Resource Center for Palestinian Residency and Refugee Rights, p. 66.

### **5.3. Inconsistency between International Law and Its Implementation to Palestinian Refugees**

Both in a literature and in this thesis, it has been constantly argued that Palestinian refugees do not have a direct access to accurate international protection. In this section, however, it is discussed how and in what ways they are restricted to access international protection, although they have both a natural and legal right to access all forms of protection. Basically, international refugee protection regime was founded on the basis of universal principles of human rights in international law. It acquired its legitimacy from seeking protection of human rights and freedoms. Based on universal principles of human rights, refugees are granted fundamental rights and freedoms through international refugee law. Besides being entitled to basic humanitarian necessities, refugees are also guaranteed to have access to international protection by international refugee regime and its apparatuses. Basically, access to international protection is also recognized as one of the fundamental rights of all refugees across the world. The only exception, however, is Palestinian refugees. Within the course of preparation of international refugee law, Palestinian refugees were intentionally excluded from general provisions of international protection. They were entitled to a distinctive refugee regime for their international protection and assistance. Yet, this exclusion was illegal based on universal principles of human rights.

Discussing on universal principles of human rights, it is necessary to note that the UN adopted Resolution 217 (III) on 10 December 1948, which proclaiming the Universal Declaration of Human Rights (UDHR). The Declaration basically established a cornerstone of general doctrines of human rights applied to all human beings<sup>203</sup>. Since then, international doctrines and practices about human rights were followed on the basis of Declaration. However, there is a serious inconsistency between this international framework and its application to Palestinian refugees. Shortly after the adoption of the Declaration, the United Nations created a specific refugee regime on the basis of Resolution 194 (III) by referring fundamental human rights set out by the

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<sup>203</sup> UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), art. 1, available at: <https://www.refworld.org/docid/3ae6b3712c.html> [accessed 15 July 2023]

Declaration, and applied it to the case of Palestinian refugees. Accordingly, Palestinian refugees, without being legally described as refugees, were officially guaranteed an access to international protection in the form promotion of a durable solution as well as international assistance. However, there are significant legal and practical problems within newly created specific refugee regime only for Palestinian refugees. Significantly, it is essential here to discuss legal problems that Palestinian refugees have historically confronted within the context of international law from the outset. Later in the next chapter, practical problems are also discussed.

### **5.3.1. Absence of Right to Self-determination and Nationality**

Before discussing legal deficiencies of newly created separate regime, it is important to note that Palestinians have begun to suffer from inconsistencies of international law in terms of its implementation from the outset. In the first place, the right to self-determination became one of the basic tenets of international law, especially in the post-World War I period, under the influence of customary international law. Later in 1966, International Covenant on Civil and Political Rights, ratified by the UN through UNGA Resolution 2200A (XXI), reaffirmed that “all 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.”<sup>204</sup> However, Palestinian refugees was firstly deprived of their right to determine their own fate in international system. Indeed, it originally stemmed from the fact that the United Nations provoked the establishment of a Jewish state in a territory of historic Palestine through its Resolution 181 (II) in 1947. As mentioned previously, the UN proposed a partition of former British Mandatory Palestine among Jewish and Arab states. Subsequently, this proposal brought about a forced evacuation of all Palestinian population out of their homeland. As a response, the UN did not take necessary actions to prevent large-scale displacement of Palestinians. Besides the UN’s failure in action during conflicts, it was already a historical mistake to violate very basic right of Palestinian refugees in international law, right to self-determination. Therefore, the

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<sup>204</sup> UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, art. 1 (1), available at: <https://www.refworld.org/docid/3ae6b3aa0.html> [accessed 15 July 2023]

primary actor responsible for long-lasting Palestinian refugee problem was indeed the United Nations. In general, international community did not properly comply with international law.

Furthermore, this historical mistake was coupled with the fact that the great majority of Palestinian population lost their citizenship and became stateless persons. Following the establishment of a Jewish state, Israeli government passed the Israeli Nationality Law in 1952 as a second piece of broad Israeli Citizenship Law. Together with restrictions on both living in a new state as a Palestinian and return of those forcibly displaced, these legislative arrangements resulted in the termination of Palestinian citizenship. After that time, Palestinian refugees have suffered from their complicated legal status either as refugees or stateless persons in international system. Similar to general violation of right to self-determination, legal deprivation of Palestinians' citizenship was unlawful. Significantly, it is against customary international law in which state succession is acknowledged as a vital principle in the case that sovereignty of former state is succeeded by a new state.<sup>205</sup> In this situation, Palestinian refugees as habitual residents of former Mandatory Palestine must have been granted nationality within newly established state of Israel.<sup>206</sup> However, Israel only acknowledged Jewish nationality rather than Israeli nationality, which was documented by the Law of Return of 1950 granting all Jewish people across the world a Jewish nationality.<sup>207</sup>

In addition, the Universal Declaration of Human Rights sets “the right to a nationality”<sup>208</sup> in Article 15 as one of the basic principles of universal human rights. Further, Article 15 also includes another provision stating that “no one shall be

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<sup>205</sup> BADIL, (2019). Survey of Palestinian Refugees and Internally Displaced Persons, 2016-2018, Volume IX. Bethlehem, Palestine: BADIL Resource Center for Palestinian Residency and Refugee Rights, p. 68.

<sup>206</sup> Ibid.

<sup>207</sup> BADIL, (2014). “Forced population transfer: The case of Palestine denial of residency”, Working Paper No. 16, April 2014, p. 14. Accessed July 15, 2023.  
[https://badil.org/cached\\_uploads/view/2021/04/19/wp16-residency-1618823152.pdf](https://badil.org/cached_uploads/view/2021/04/19/wp16-residency-1618823152.pdf)

<sup>208</sup> UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), art. 15, available at: <https://www.refworld.org/docid/3ae6b3712c.html> [accessed 15 July 2023]

arbitrarily deprived of his nationality”<sup>209</sup>. Eventually, newly established state of Israel violated both human rights of Palestinian refugees and international law in general. It is to some extent explicable that Israel did not comply with principles of human rights because UDHR does not have a coercive influence over states. However, it is not acceptable that international community has consistently ignored this issue at the expenses of fundamental human rights and international law.

During the course of both establishment of a Jewish state and deprivation of Palestinian citizenship, the UN in particular has remained silent in action to prevent breaking of international norms and principles at the expense of its main responsibility to maintain international order and to implement international law. It was only 1974 when the UN recognized that “the Palestinian people is entitled to self-determination in accordance with the Charter of the United Nations”<sup>210</sup>. However, it was too late to fix deep-rooted problem that any concrete step has been nevertheless taken in international community to compensate for its historical mistake. As a result, Palestinian refugees in more than seven ensuing decades has been suffering from lack of precise national identity and statelessness. Eventually, these two inconsistencies prove that international community is delinquent not only in the creation of a subsequently being discussed protection gap, but also in the creation of a problem that resulted in an urgent need for this international protection for Palestinian people.

### **5.3.2. Ambiguous Legal Status in International Law**

In consistent with international principles of human rights, Resolution 194 (III) designated a certain framework for Palestinian refugees. Especially three significant principles of Universal Declaration of Human Rights, rights to “security of person” (Article 3), “return to his country” (Article 13), and “to seek and to enjoy in other countries asylum from persecution” (Article 14), were incorporated into the

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<sup>209</sup> Ibid

<sup>210</sup> UN General Assembly, Resolution 3236 (XXIX). Question of Palestine, 22 November 1974, A/RES/3236 (XXIX) available at: <https://www.un.org/unispal/wp-content/uploads/2016/05/ARES3236XXIX.pdf>

Resolution.<sup>211</sup> Basically, through paragraph 11 of the Resolution, it was determined “under principles of international law” 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”.<sup>212</sup> Furthermore, UNCCP decided to be established with this resolution were directed “to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees”.<sup>213</sup> This framework has basically intended to end massive human rights abuses with a special effort to settle growing disputes among Israel and Arab states, and to promote a durable solution for Palestinian refugee problem in accordance with international law. Next year, Palestinian refugees were also offered general relief and assistance with the establishment of UNRWA in 1949. In other words, Palestinian refugees were assumably afforded international protection by a distinctive refugee regime.

Conversely, there are significant deficiencies in the theoretical basis of this protection framework, resulting in certain failures in implementation of it to Palestinian refugees. Basically, it was not clear who were eligible for this proposed international protection at the outset. Since Resolution 194 (III) and 302 (IV) did not produce a definition for Palestinian refugees, legal positions of Palestinian refugees remained undefined within the distinctive regime. Uncertainty regarding the legal status of Palestinian refugees, one of the most significant initial problems about Palestinian refugee issue, has historically continued to exist at the heart of debates. Nevertheless, in subsequent years ensuing establishment of UNCCP and UNRWA, these two institutional components of distinctive regime have started to put forward several definitions. Yet, the aim of these definitions was to identify frame of eligibility to their services. In other words, these definitions were prepared for working purposes that who are eligible for international protection and assistance provided by these two agencies. Here, it is criticized that this ambivalent determination of agencies resulted in an aggravation of

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<sup>211</sup> UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), art. 15, available at: <https://www.refworld.org/docid/3ae6b3712c.html> [accessed 15 July 2023]

<sup>212</sup> UN General Assembly, Resolution 194 (III). Palestine-Progress Report of the United Nations Mediator, 11 December 1948, A/RES/194 (III), para. 11, available at: <https://www.refworld.org/docid/4fe2e5672.html> [accessed 15 July 2023]

<sup>213</sup> Ibid.

legal problem that Palestinian refugees had already been suffering from the beginning. It is mainly because these definitions have never been internationally recognized. It means that legal position of Palestinian refugees in international law remained imprecise. As a result, uncertainty regarding the legal status of Palestinian refugees continued even if the absence of definition within resolutions 194 (III) and 302 (IV) were subsequently filled.

Furthermore, aside from problem about the absence of universal recognition, even the most commonly referred definition of UNRWA already contained a certain limitation itself. According to UNRWA, definition of a Palestine refugee is “persons whose normal place of residence was Palestine during the period 1 June 1946 to 15 May 1948, and who lost both home and means of livelihoods as a result of the 1948 conflict.”<sup>214</sup> Significantly, the aim of defining Palestinian refugees was to specify eligibility standards for humanitarian assistance. Therefore, it contains a time limitation that only the former residents of Mandatory Palestine “who lost both home and means of livelihoods as a result of the 1948 conflict”<sup>215</sup> were regarded as Palestine refugees, since they were in need of urgent humanitarian assistance due to massive displacement.

However, it reveals serious deficit of the definition because Palestinian refugee problem is not limited only to 1948 refugees. It is evident that majority of Palestinians fled their homeland as of 1948. But there were still considerable numbers of internally displaced persons (IDPs) from Palestinian origin who were unable to leave at the time. To illustrate, there were about 46,000<sup>216</sup> Palestinian people who were internally displaced within newly established state of Israel in the aftermath of 1948 war. On the other hand, more than 10,000<sup>217</sup> Palestinians became internally displaced as a result

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<sup>214</sup> UNRWA. “Palestine Refugees”.

<sup>215</sup> Ibid.

<sup>216</sup> BADIL, (2022). Survey of Palestinian Refugees and Internally Displaced Persons, 2019-2021, p. 41,

<sup>217</sup> BADIL, (2016). Survey of Palestinian Refugees and Internally Displaced Persons, 2013-2015, Volume VIII. Bethlehem, Palestine: BADIL Resource Center for Palestinian Residency and Refugee Rights, p. 54.



1967 war. In addition to internally displaced Palestinians, more than 300,000 Palestinians after 1948 were not able to qualify as a registered refugees within UNRWA since they were considered not meeting eligibility criteria.<sup>218</sup> Not only in the time of wars, but also further forced displacement of additional thousands of Palestinians has persistently continued even in the aftermath of two wars. In particular, immense expulsion strategies of Israel had also caused further displacements through demolition of accommodation facilities and cancelation of residency status of Palestinian refugees. As a result, by the end of 2021, total number of Palestinian IDPs reached nearly 812,000<sup>219</sup>, while the approximate number of those non-registered Palestinian refugees today is 1.2 million<sup>220</sup>. Another group of Palestinians strictly affected by restrictive definition of UNRWA was those who were displaced due to Israeli occupation of the West Bank and the Gaza Strip during 1967 war. At the time, while more than 400,000 Palestinians had to escape from occupied territories, around 240,000 of which were Palestinians displaced for the first time. Those who became displaced for the first time were not registered as a refugee at UNRWA. Rather, they were called as displaced Palestinians. Even though they were allowed to benefit UNRWA's assistance activities to some extent, their operational status as refugees were not ratified. Recently, the number of displaced Palestinians is estimated as more than 1.3 million.<sup>221</sup> Basically, despite existence of further refugee groups in urgent need, UNRWA's definition includes only 1948 refugees as Palestine refugees being eligible to humanitarian services.

It is ultimately proved that attainment to international protection has always been challenging for Palestinian refugees due to restrictive interpretation of their legal status. Thousands of refugees have struggled to have access to protection and assistance means. In particular, the distinctive regime was not inclusive for all displaced Palestinians at the time. In this sense, from the very beginning, a legal gap

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<sup>218</sup> BADIL, (2022). Survey of Palestinian Refugees and Internally Displaced Persons, 2019-2021, p. 42.

<sup>219</sup> Ibid, p. 40.

<sup>220</sup> Ibid, p. 41.

<sup>221</sup> Ibid.

had already occurred in terms of protection for Palestinian refugees as international community, especially the United Nations, failed to comprehensively specify legal boundaries of international protection in consistent with international law.

In addition to restrictive definition of Palestine refugee within distinctive regime, another serious problem has subsequently emerged with 1951 Refugee Convention, through which already existing legal gap within the context of promised international protection for Palestinian refugees has gradually exacerbated. As formerly said, the Convention laid the foundations of international refugee law. Most significantly, the Convention created a universally recognized refugee definition together with certain amendments through its 1967 Protocol. Yet, through Article 1D of the Convention, Palestinian refugees were excluded from broad refugee definition by justifying their special conditions under distinctive regime. Indeed, discussion on exclusion of Palestinian refugees is already held previously in this chapter. For this part, though, it is aimed at generally demonstrating legal gap within international refugee regime due to inconsistencies between international law and its application to Palestinian refugees. In this sense, determination of Palestinian refugees' legal status through 1951 Refugee Convention is the most important factor triggering legal gap in protection of Palestinian refugees.

In a critical point of view against prospective international refugee regime during the drafting phase of the Convention, the exclusion of Palestinian refugees was entirely based on political determinants at the time. In other words, the main reason paved the way for discriminated legal status of Palestinian refugees was entirely political. Basically, with the absence of strong determination to implement rules and principles of international law, the United Nations had failed to present a strong stance to persuade Israel to reach a final solution to a large-scale humanitarian crisis. At the time, Israel was passionately motivated to execute its own policies aimed at cleaning out their newly demarcated borders from Palestinian refugees. Although it was evident that Israeli occupation and expurgation were illegal according to international law, the UN did not impose any sanctions to prevent forcibly displacement of thousands of Palestinians and strong impediments to return. On the contrary, it served aggravation

of refugee crisis by weakening their legal status under newly established universal refugee regime.

On the other hand, Israel was not sole actor affecting final decision of excluding Palestinian refugees from benefits of the Convention and eventually international protection, but Arab states also played a critical role. During drafting phase of the Convention, Arab perspective was also against to involve Palestinian refugees in a global refugee definition. Primarily, Arab states were determined to bring in a special position to Palestinian refugees in international refugee regime. In other words, their motivation was to encourage refugee regime to pay particular attention to the Palestinian issue not only as a refugee issue, but also as a political problem that needed to be resolved in a short time. However, main reason behind their motivation was they pursued their own political, social and economic interests. Because including Palestinian refugees in international refugee regime would have been meant permanent settlement of thousands of them in Arab states. At the time, Arab states were already hosting large numbers of Palestinian refugees as neighbors. Therefore, most of them expected that it was a temporary situation. In this sense, they recognized that the best way to preserve their economic and social stability was promotion of return soon by safeguarding particular international attention on the issue.

Consequently, political determinations paved the way for legal exclusion of Palestinian refugees from universal refugee definition and refugee protection, at the expense of particular attention. Nevertheless, the result was not as expected by Arab states, whereas Israel was satisfied with consequences of this differentiated legal position of Palestinian refugees in international refugee law. Above all, however, Israeli and Arab involvements in decision making process show that legal status of Palestinian refugees were basically determined on the basis of political framework rather than legal framework.

Critically, legal foundations were noticeably ignored by international refugee regime from the outset. It basically contradicts with international law in terms of disregarding fundamental human rights. Because, through exclusion, Palestinian refugees were deprived of all endowed human rights in international law.

In fact, the main purpose of refugee regime at creating an inclusive refugee protection system was to guarantee fundamental human rights for all refugees across the world in accordance with international law.<sup>222</sup> Nonetheless, in this context, refugee regime was even in contradiction with its own founding document. Principally, in the preamble of 1951 Refugee Convention, it was apparently indicated that all parties of the Convention “considering that the Charter of the United Nations and the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination”<sup>223</sup>. Although refugee regime asserted that they founded an international protection system in accordance with universally recognized fundamental human rights, it actually violated the principle of basic human rights and freedoms of Palestinian refugees without any discrimination. As a result, Palestinian refugees have traditionally suffered from absence of international protection due to unrecognized legal refugee status in international law. It considerably proves an existence of legal gap between practices of international refugee regime and basic principles of international law with respect only to Palestinian refugees.

#### **5.4. Denial of the Right to Return**

Historically, one of the most heatedly debated issues related to the Palestinian refugee problem in terms of its legal aspect has been a ‘right to return’. In fact, another terminology used for return is ‘voluntary repatriation’ of refugees to their homeland. It is one of the three alternatives of a durable solution within context of international refugee protection. Throughout this part, the phrases ‘right to return’ and ‘voluntary repatriation’ are used interchangeably in keeping with the course of discussion. Still, the eventual implication of the discussion is legal position of Palestinian right to return in international law and in refugee regime.

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<sup>222</sup> Akram, S. M. (2001). Reinterpreting Palestinian Refugee Rights under International Law, in *Palestinian Refugees: The Right of Return*, p. 168.

<sup>223</sup> UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, preamble, available at: <https://www.refworld.org/docid/3be01b964.html> [accessed 15 July 2023]

Basically, voluntary repatriation is commonly considered as the most suitable option for durable solution. Moreover, among other alternatives of durable solution, Palestinian refugees have always been in a strong aspiration for returning to historic Palestine at the nearest time. The importance of the right to return as an inalienable human right basically stems from the fact it is mostly considered as the only way to end Palestinian refugee problem from the Arab perspective. However, although voluntary repatriation has usually been applicable right for other refugees across the world, Palestinian refugees' right to be repatriated has always been implicitly neglected in international law. For this reason, it is important to examine implications of 'right to return' in a legal context. In accordance with discussions throughout this chapter, this part thus aims to demonstrate that the most severe impact of the negatively discriminated legal position of Palestinian refugees in international law has been on their right to return. Consequently, it is displayed how the denial of the Palestinian right to return has contributed widening of already existing legal gap in the protection of Palestinian refugees.

Together with its historical roots within international law in terms of fundamental human rights, refugees' right to return was also embraced by post-World War II international system based on the UN Charter and Universal Declaration of Human Rights (UDHR) of 1948. In terms of Palestinian refugees, however, application of right to return was problematic in legal context, as well as in implementation. Initially, Resolution 194 (III) of 1948 has been deemed significant in terms of affirming Palestinian refugees' right to return. Basically, the Resolution concluded 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"<sup>224</sup>. Furthermore, the Conciliation Commission was established "to facilitate the repatriation"<sup>225</sup> together with other forms of durable solutions to Palestinian refugee problem, "resettlement and economic and social rehabilitation of the refugees"<sup>226</sup>. However, implementation of these provisions indispensably failed due to inability of the Commission to reconcile

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<sup>224</sup> UN General Assembly, Resolution 194 (III). 11 December 1948, A/RES/194 (III), para. 11.

<sup>225</sup> Ibid.

<sup>226</sup> Ibid.

contradicting claims of Israelis and Arabs. On the one hand, Arabs perspective has correctly insisted that it is an essential right of Palestinian refugees to return to their historical homeland. Significantly, establishment of State of Israel was illegal in terms of principles of international law since Palestinians has had historical right of self-determination and eventual independent state of Palestine. Nevertheless, they were compelled to leave their homeland through massive and intentional violence by Israelis. On the other hand, Israeli perspective, claiming historical right of Jewish people to have a nation state in Palestine, has consistently denied that Palestinian people had been forcibly driven out. Instead, among other claims they mainly argue that Palestinians have voluntarily left. In general, repatriation has never been regarded as an option by Israel.

Furthermore, their position against repatriation has been even strengthened thanks to the fact that also international refugee regime has constantly ignored repatriation as a critical way in resolution of Palestinian refugee problem. Considerably, this is the central issue on which international refugee regime is strongly criticized here. After the demise of UNCCP, no other international agencies were given a protection mandate for Palestinian refugees, through which repatriation as a form of durable solution was laid aside. It was crucially both a legal and moral mistake of refugee regime that it has never involved in implementing fundamental rights endowed to all human beings to Palestinian refugees. Also, the UN admitted this historical mistake. To illustrate, in UNGA Resolution 2535, it was recognized that “the problem of the Palestine Arab refugees has arisen from the denial of their inalienable rights under the Charter of the United Nations and the Universal Declaration of Human Rights”<sup>227</sup>. Furthermore, with further intensification of Palestinian refugee problem as a result of invasion of the West Bank and the Gaza Strip by Israel, the UN, through successive resolutions<sup>228</sup>, firmly requested Israel to provide return of Palestinians displaced as a result of hostilities at the time. For instance, UNGA Resolution 2452 (XXIII) in December 1968 called upon “the Government of Israel to take effective and immediate

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<sup>227</sup> UN General Assembly, Resolution 2535. United Nations Relief and Work Agency for Palestine Refugees in the Near East, 10 December 1969, A/RES/2535, sec. B, available at: <https://www.refworld.org/docid/3b00f1d050.html> [accessed 1 July 2023]

<sup>228</sup> UNGA RES 2252 (ES-V) of 1967 and 2452 (XXIII) of 1968

steps for the return without delay of those inhabitants who have fled the areas since the outbreak of hostilities”<sup>229</sup>. However, it was not a call for a durable solution to entire Palestinian refugee problem. It was instead targeted only victims of recent hostilities, which has not also been achieved. Since then, the UN began to frequently use the language emphasizing indispensable rights of Palestinian refugees including ‘right to return’<sup>230</sup>. Nevertheless, these emphasizes remained only at in language, and has never been implemented both in legal and practical terms. For instance, none of the major peace negotiations and agreements between Israel and Arab representatives included right to return for Palestinian refugees, as well as excluding Resolution 194 (III) from treaties as a reference.<sup>231</sup>

After discussing legal and practical failures in application of Palestinian refugees’ right to return, it is essential to underline, as a criticism, that legal framework drawn for Palestinian refugees already had certain deficiencies in itself. In the light of morally binding provision of UDHR and instructions of Resolution 194 (III), many scholars argue that Palestinian refugees were recognized a right to return. However, these arguments are contended in this part. Basically, UDHR does not explicitly grant a right to return to Palestinian refugees, and none of the founding documents of the distinctive regime for Palestinian refugees call return as a right of Palestinian refugees under international law.

Firstly, UDHR firmly indicates that all human beings have the “to return to his country”<sup>232</sup>. Yet, it has a significant flaw in its expression in terms of Palestinian refugees. The Declaration implies that any person has the right to return to a place

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<sup>229</sup> UN General Assembly, Resolution 2452 (XXIII). Report of the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, 19 December 1968, A/RES/2452 (XXIII) (A-C), available at: <https://www.palquest.org/en/historictext/9961/unga-resolution-2452-xxiii> [accessed 15 July 2023]

<sup>230</sup> UN General Assembly, Resolution 3236 (XXIX). Question of Palestine, 22 November 1974, A/RES/3236 (XXIX) available at: <https://www.un.org/unispal/wp-content/uploads/2016/05/ARES3236XXIX.pdf>

<sup>231</sup> Akram, S. M. (2002), p. 47.

<sup>232</sup> UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), art. 13, available at: <https://www.refworld.org/docid/3ae6b3712c.html> [accessed 15 July 2023]

where he is a citizen. In this sense, it is not applicable to Palestinian refugees under international law because Palestinian refugees are not nationals of any country. They were ripped of citizenship and became stateless with the establishment of state of Israel, which is already incompatible with Article 15 of the Declaration stating that “everyone has the right to a nationality”<sup>233</sup> and “no one shall be arbitrarily deprived of his nationality”<sup>234</sup>. Therefore, the phrase ‘to his country’ has always been open to be misused. Eventually, partially due to this initial wrong interpretation and its very nature of being only morally binding, Palestinian refugees have not been legally possessed a right to return.

Most prominently, however, language used in Resolution 194 (III) had the most decisive impact on right to return for Palestinian refugees, in terms of its controversial implications. Recalling paragraph 11 of Resolution 194 (III), it was resolved that:

*the refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible.*<sup>235</sup>

In the first place, it does not include any specific provision named return as a right for Palestinian refugees in international law.<sup>236</sup> It only request parties to provide return. Therefore, it is questionable to assert that Resolution 194 is a legal reaffirmation of right to return.<sup>237</sup> If it was meant to be right, language must have been used in imperative terms. In other words, according to Resolution, return depends on

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<sup>233</sup> Ibid, art. 15,

<sup>234</sup> Ibid.

<sup>235</sup> UN General Assembly, Resolution 194 (III). Palestine-Progress Report of the United Nations Mediator, 11 December 1948, A/RES/194 (III), para. 11.

<sup>236</sup> Radley, K. R. (1978). The Palestinian refugees: the right to return in international law. American Journal of International Law, 72(3), p. 601.

<sup>237</sup> UN General Assembly, Resolution 3089(XXVIII). United Nations Relief and Works Agency for Palestine Refugees in the Near East, 28th sess.: 1973-1974, 7 December 1973, A/RES/3089(XXVIII)[B], available at: <https://digitallibrary.un.org/record/642293?ln=en> [accessed 15 July 2023]



requesting permission as made off the phrase “should be permitted”<sup>238</sup> rather than being an authoritative instruction by using “must” instead of “should”.<sup>239</sup> Additionally, it is wrongly argued that paragraph 11 indicates both rights to repatriation and compensation was resolved to be executed in accordance with doctrines of international law.<sup>240</sup> However, I agree with opposition of Radley<sup>241</sup> stating that the expression “under principles of international law or in equity”<sup>242</sup> can be understood only for compensation, not repatriation. Ultimately, as opposed to common belief, Resolution 194 (III) is not reaffirmation of right to return in international law.<sup>243</sup>

Briefly, similar to other fundamental rights and more specifically other means of durable solution, Palestinian refugee’s right to return has been disregarded from the outset. Even though Universal Declaration of Human Rights (UDHR) grants such a right to all human beings, Palestinian refugees have been incapable of enjoying it as a result of the legal and institutional arrangements of international refugee regime. The clearest example is the creation of distinctive regime for Palestinian refugees based on Resolution 194 (III) of 1948. Aside from being ineffective in refugee protection in practice, legal basis of distinctive regime is also flawed in terms of guaranteeing fundamental human rights for Palestinian refugees based on international law. To conclude, the overall legal gap is evident in non-implementation of proposed refugee protection for Palestinian refugees. Alongside serious contradictions itself, particular protection framework established for Palestinian refugees has also failed to be executed as theoretically proposed. Accordingly, the next chapter will analyze how particular institutional arrangements failed to fill existing legal gap, but rather aggravated the overall protection gap.

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<sup>238</sup> UN General Assembly, Resolution 194 (III). Palestine-Progress Report of the United Nations Mediator, 11 December 1948, A/RES/194 (III), para. 11.

<sup>239</sup> Radley, K. R. (1978). The Palestinian refugees: the right to return in international law. *American Journal of International Law*, 72(3), p. 601.

<sup>240</sup> Tomeh, G. J. (1968). Legal Statutes of Arab Refugees. *Law & Contemp. Probs.*, 33, p. 118.

<sup>241</sup> Radley, K. R. (1978). The Palestinian refugees: the right to return in international law, pp. 601-602.

<sup>242</sup> UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), art. 15, available at: <https://www.refworld.org/docid/3ae6b3712c.html> [accessed 15 July 2023]

<sup>243</sup> Radley, K. R. (1978). The Palestinian refugees: the right to return in international law, p. 602.

## **CHAPTER 6**

### **INSTITUTIONAL GAP: THE INCOMPETENCE OF DISTINCTIVE REGIME IN PROVIDING PROTECTION FOR PALESTINIAN REFUGEES**

A separated legal framework was created for Palestinian refugees to benefit from effective international protection and assistance. Basically, with the adoption of Resolution 194 (III) in 1948, Palestinian refugees were granted a unique position for protection in terms of their entitlements to immediate promotion of a permanent solution in the form of repatriation and resettlement. Furthermore, again based on principles of the same resolution, a distinctive international regime was established comprising UNCCP and UNRWA, as previously examined in detail. Mandated to provide protection and assistance to Palestinian refugees, these two agencies had soon failed to deliver effective protection. While UNCCP was eliminated due to its failure to implement its core responsibilities, UNRWA remained only as an assistance and relief agency. At this point, UNHCR, as the only international agency mandated to provide protection for all refugees, was not still given any legal authority to include Palestinian refugees and thus remained only an alternative agency. Consequently, international protection for Palestinian refugees were abandoned without consideration. Critically, international refugee regime had failed to properly address an urgent protection need of Palestinian refugees.

Significantly, this chapter of the thesis points out that this legal and functional failures of the regime basically resulted in an institutional gap in the protection of the most vulnerable refugee population for decades in the world. In this sense, this chapter will analyze this institutional gap by closely examining the incompetence of the distinctive regime to provide comprehensive legal protection for Palestinian refugees. Through respectively examining the failure of UNCCP, inadequacy of UNRWA and UNHCR's lack of involvement in the next parts, it will be discussed that distinctive regime fails

to protect Palestinian refugees in consistent with the fundamental human rights and basic premises of Resolution 194 (III). Moreover, none of the three forms of durable solution has been achieved despite the long-lasting suffering of Palestinian refugees. In addition, with the absence of legal protection, Palestinian refugee also suffers from lack of physical protection. Therefore, vast majority of Palestinian refugees across the world have been facing inhuman economic and social conditions. In general, this chapter concludes that even though the main motivation behind the establishment of a distinctive regime for Palestinian refugees was to particularly offer them an effective and unique protection, international refugee regime had caused deterioration of the Palestinian refugee problem by leaving them with ineffective international instruments to provide protection.<sup>244</sup>

### **6.1. The Failure of UNCCP**

UNCCP was established by the UN Resolution 194 (III) through recommendations of the UN Mediator Bernadotte. The Commission was comprised of the US, Turkey and France. Main responsibilities given to the Commission were the reconciliation for the final settlement of disputes between parties, and a promotion of a durable solution and subsequently refugee protection.<sup>245</sup> Significantly, explicit protection mandate was assigned to UNCCP with Resolution 394 (V) in 1950. Through the resolution, the UN General assembly directed “the United Nations Conciliation Commission for Palestine to establish an office which, under the direction of the Commission, shall...continue consultations with the parties concerned regarding measures for the protection of the rights, property and interests of the refugees”.<sup>246</sup> Indeed, establishment of a separate UN agency with this particular mandate was theoretically reasonable at the outset. Basically, the second clause of the Paragraph 11 of the Resolution 194 (III) noticeably instructs the Commission:

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<sup>244</sup> BADIL, (2022). Survey of Palestinian Refugees and Internally Displaced Persons, 2019-2021, p. 83.

<sup>245</sup> BADIL, (2015). Closing Protection Gaps, pp. 45-50.

<sup>246</sup> UN General Assembly, Resolution 394(V). Palestine: Progress report of the United Nations Conciliation Commission for Palestine; Repatriation or resettlement of Palestine refugees and payment of compensation due to them, 14 December 1950, A/RES/394(V), para. 2.

*to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation, and to maintain close relations with the Director of the United Nations Relief for Palestine Refugees and, through him, with the appropriate organs and agencies of the United Nations.*<sup>247</sup>

Significantly, it shows that assumed roles to the Commission were clear example of refugee protection in a broader sense as indicated through two aspects of international refugee protection consisting of physical and legal aspects. Thus, it is generally acknowledged that UNCCP was given a protection mandate for Palestinian refugees similar to the general protection mandate later given to the UNHCR for European refugees at first and eventually all refugees in the world except Palestinians.

Practically, immediately following its establishment, the Commission strived to accomplish many of the protection tasks assigned by the UN. In the first place, it attempted to mediate between Israel and Arab states for an immediate peaceful settlement of disputes. For sure, Palestinian refugee problem was the main topic on the table in this endeavor, among other sources of conflict. Afterwards, subsequent efforts were made to ensure protection of Palestinian refugees including improvement of refugee situation and to promote a permanent solution including voluntary repatriation, restitution and compensation for losses. In order for these ambitions, two subsidiary organs, Technical Committee and Economic Survey Mission (ESM), were established by the Commission for investigation and eventually recommendation.<sup>248</sup> Furthermore, Refugee Office was also founded aiming at enabling an effective execution of the Resolution. However, despite all these efforts, it ultimately was understood that it is not possible to reconcile both parties' expectations and requirements for the settlement of conflict. Eventually, all efforts of the Commission have failed.

Critically, there were multiple reasons that pave the way for this failure. In fact, here, it is better to replace the word 'reason' with 'mistake', since reasons below honestly

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<sup>247</sup> UN General Assembly, Resolution 194 (III). 11 December 1948, A/RES/194 (III), para. 11.

<sup>248</sup> BADIL, (2015). Closing Protection Gaps, pp. 45-50.

were historical mistakes that partially result in augmentation and continuation of the Palestinian refugee problem to date. First of all, UNCCP has already had a significant interior paradox due to its overburdened responsibilities. More specifically, it has been assigned a broad mandate including not only protection functions, but also promotion of “a permanent solution to all outstanding problems of the Arab-Israeli conflict”<sup>249</sup> in general through negotiation and reconciliation. Yet, it was a mistake since it was obvious that there was an essential need to have separate international agencies to deal with these two difficult and distinct missions. In fact, distinct here does not mean that these two issues of concern are completely distinctive, but it means that these are issues that need different kinds of means and approaches for resolution. In this sense, the Commission has consistently suggested the UN that it is necessary to establish a convincing international agency to cope with one of these difficult missions.

However, these suggestions were never taken into account by the international community. As a result, UNCCP failed to function its dual mandate of reconciliation and protection, and was eventually doomed to cease. From a critical point of view, it must have been contemplated by the international community to take necessary measures before the demise of UNCCP as the only agency responsible for Palestinian refugees’ protection. Essentially, it was not unreasonable either to strengthen political and economic power of UNCCP or to alleviate its burden by transferring one of its mandates to a new agency. Moreover, nearly after two years of its establishment, UNHCR began to function with a broad protection mandate. UNHCR could have also been an alternative solution to be transferred protection mandate. For sure, there were legal restrictions that prevents UNHCR to involve in protection of Palestinian refugees, but it must have also been overcome. Nevertheless, none of these precautions were taken, and UNCCP consequently failed to function appropriately.

The second mistake was that the Commission did not genuinely comprehend indispensable rights of the refugees. More precisely, even though it was obvious that the most desired permanent solution for Palestinian refugees was repatriation, the Commission has consistently recommended resettlement of refugees in the host

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<sup>249</sup> Ibid, p48.

countries. It basically disregards their right of return. However, due to its inability to impose repatriation, the Commission concluded that the best solution is resettlement. Thirdly, member states of UNCCP largely focused on reconciliation between two parties of dispute rather than equally carrying out its dual mandate. It was mistakenly supposed that settlement of disputes between Israel and the Arab states would serve resolution of refugee problem as a whole. On the contrary, however, failure of reconciliation resulted in lack of protection for Palestinian refugees.

Indeed, beyond these three internal contradictions, there was also a concrete reason for the failure. Considerably, UNCCP has suffered from lack of adequate financial and political power. On the one hand, the Commission was economically dependent on funding of international community. On the other hand, its political power to provide settlement of disputes was inadequate. Most significantly, for instance, while what Palestinians expect was full repatriation and restitution of properties, the Commission still could not persuade Israel for neither repatriation nor compensation because of its fragile political authority. There was a strong opposition by Israel for returning of Palestinian refugees. Moreover, Israel consistently denied compensating losses of refugees as a result of their forced displacement. The significant reason here was political dimension of the problem since Israel backed by the United States insisted that newly established state of Israel is a homeland only for Jewish people and Israel does not have any responsibility for massive displacement of Palestinian population. Significantly, Israeli officials persistently argues that Palestinian refugees were not forcibly displaced, but they voluntarily left these territories due to very nature of war and previous clashes. Therefore, Israel could not be reconciled at any expense with regard to general repatriation and compensation. Nonetheless, it is again international community's mistake as it did not adequately support the Commission neither financially nor politically to achieve a permanent solution. Basically, Akram thinks that one of the main causes of persistent Palestinian refugee problem is UNRWA's "inability to separate political dimension of the problem from legal and natural rights of this unique refugee population"<sup>250</sup>. In general, mistakes and reasons for the failure

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<sup>250</sup> Akram, S. M., Dumper, M., Lynk, M., & Scobbie, I. (Eds.). (2010). *International law and the Israeli-Palestinian conflict: A rights-based approach to Middle East peace*. Routledge, p.14.

of UNCCP was actually evident from the outset. The main problem here is international community not to take precautions to prevent this eminent conclusion.

All in all, in the early years its mandate, UNCCP had proved to be unsuccessful in its core functions. This thesis argues that one of the most significant driving forces of protection gap suffered by Palestinian refugees stems from failure and eventual demise of UNCCP. In fact, it is no doubt relevant to the inaccuracy of international community and particularly of international refugee regime. Basically, the reason why Palestinian refugees were excluded from universal refugee protection regime composed of 1951 Refugee convention and its organizational instrument UNHCR was very existence of UNCCP as well as its sister organization UNRWA. Therefore, through this evaluation it is understood that UNCCP's failure to function its protection mandate resulted in protection gap for Palestinian refugees as international community has never appointed an appropriate international agency for protection since then.

## **6.2. The Inadequacy of UNRWA**

Another concrete reason of excluding Palestinian refugees from mandate of international refugee regime is the second and enduring component of the distinctive regime established only for Palestinian refugees, the United Nations Relief and Work Agency for Palestine Refugees in Near East (UNRWA). In other words, together with UNCCP, UNRWA was the direct reference of the statement "organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance" in Article 1D of the 1951 Convention. Basically, as a main argument of this thesis, protection gap is significantly derived from legally separating Palestinian refugees from the mandate of universal refugee protection regime by referring to the existence of these two UN agencies. In fact, it has been historically argued that these two agencies were devoted to the management and resolution of this specific problem because international community paid a particular attention to the Palestinian issue. However, it is essential to evaluate outcomes emerged as a result of creating a separate regime, to better understand whether this particular attention produced a gap compared to the universal refugee regime whose main responsibility is to provide protection and assistance. Basically, the first component of distinctive

regime, UNCCP, had already failed to sustain its mandate within a short period of time, as explained earlier. Therefore, this part primarily aims to elaborate on legal and institutional flaws of UNRWA to provide protection for Palestinian refugees in the course of its operational history.

Following the establishment of UNCCP, in the late 1949, the United Nations adopted Resolution 302 (IV) proposing establishment of UNRWA as of 1950 as a complementary agency to UNCCP. The main responsibility given to UNRWA was to provide assistance for Palestinian refugees within its operational areas through relief and work programs.<sup>251</sup> It was clearly stated in the Resolution that the UN General Assembly creates UNRWA “to carry out in collaboration with local governments the direct relief and works programmes as recommended by the Economic Survey Mission”.<sup>252</sup> Basically, primary aim of UNRWA was designated “to prevent conditions of starvation and distress among them and to further conditions of peace and stability”.<sup>253</sup> It was also emphasized that UNRWA will operate in collaboration with UNCCP in order to achieve directives of paragraph 11 of Resolution 194 (III). Formally, UNRWA was directed in Resolution 302 (IV) “to consult with the United Nations Conciliation Commission for Palestine in the best interests of their respective tasks, with particular reference to paragraph 11 of General Assembly resolution 194 (III) of 11 December 1948”<sup>254</sup>

At the outset, the main focus of UNRWA in terms of its assistance mission was on the work programmes to sustain general welfare of Palestinian refugees living in its five operational areas that are designated as Jordan, Lebanon, Syria, Gaza Strip and the West Bank. These efforts included economic and social development and integration projects. However, initial endeavors for enhancing economic and social welfare were constrained by political environment of that time. Therefore, UNRWA has shifted its

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<sup>251</sup> UN General Assembly, Resolution 302 (IV). “Assistance To Palestine Refugees”, 8 December 1949, A/RES/302 (IV).

<sup>252</sup> Ibid, para. 7.

<sup>253</sup> Ibid, para. 5.

<sup>254</sup> Ibid, para. 20.



focus on fundamental humanitarian services such as health care, education and social services. In this sense, throughout its operational history, it has literally executed core missions expressed as “human development and humanitarian services encompass primary and vocational education, primary health care, relief and social services, infrastructure and camp improvement, microfinance and emergency response”<sup>255</sup>. According to official documents of UNRWA, as of 2022, there are approximately 5.9 million Palestinian refugees registered in UNRWA within its five operational areas including 1.5 million living in camps, and more than 1.7 million enjoy “emergency food and cash assistance”.<sup>256</sup> Here, however, a substantial problem occurs. Looking at the worldwide Palestinian refugee population that is estimated around 9.17 million out of total population of 14 million<sup>257</sup>, it is easily realized that more than three million of Palestinian refugees cannot benefit from services of UNRWA. Though the main cause of this externalization is about UNRWA’s restrictive definition of a Palestine refugee discussed below, UNRWA’s exclusively designated areas of operation also plays a curial role. As indicated, the agency is assigned to operate in only five regions. It is actually because majority of refugee population live there. However, it is dismissed by international community during decision making that there are millions of refugees in various places in the world. As a result, influenced by its restrictive definition, UNRWA fail to serve as a global agency for Palestinian refugees by focusing only certain areas.

Even though the main aim here is to assess UNRWA in terms of its protection role with regard to Palestinian refugees, there are significant internal deficiencies that need attention at the outset. Therefore, before assessing its protection role, it is essential to closely evaluate mechanism and effectiveness of UNRWA with respect to its assistance role rather than protection role at first. In the first place, administrative mechanism of UNRWA is not based on any statutory instructions as in the case of UNHCR. Basically, legal authority of UNHCR was established relying on its Statute,

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<sup>255</sup> UNRWA. “What We Do”.

<sup>256</sup> UNRWA. “2023 Global Appeal for UNRWA.” Accessed July 15, 2023.  
<https://www.unrwa.org/resources/fact-sheet/2023-global-appeal-unrwa>.

<sup>257</sup> BADIL, (2022). Survey of Palestinian Refugees and Internally Displaced Persons, 2019-2021, p. 61.

whereas UNRWA relies on resolutions and recommendations of the UN and its related agencies such as ESM. In this sense, Akram articulates that “UNRWA is the sole UN program without a governing body outside the UNGA, which devotes only about one day a year discussing its annual report and budget.”<sup>258</sup> Thus, it brings about a fragile administrative structure within UNRWA, which paves the way for lack of accurate legitimate authority for its actions.<sup>259</sup> It is basically a significant shortcoming for the agency. For instance, its inability to execute wide-ranging development projects recommended by Economic Survey Mission (ESM) at the beginning of its mandate is an essential consequence of its weak legal authority. Crucially, it cannot persist oppressions of host states that opposed large scale work programs due to political, social and economic interests.

Recalling interim report of ESM, “programmes of relief and public works” were essentially recommended by the Mission<sup>260</sup>. In detail, based on its observations, ESM underlined the importance of regional and country-based projects to provide improvements of refugee situations in host countries and around.

*A programme of public works, calculated to improve the productivity of the area, and such continuing relief as will be needed should be organized as an integrated operation, in co-operation with the governments of the countries where the refugees are located. This programme should be planned and arrangements negotiated with the appropriate Near Eastern Governments to begin 1 April 1950.*<sup>261</sup>

Afterwards, the UN General Assembly authorized UNRWA “to continue to furnish direct relief to refugees in need” by considering “the reintegration of the refugees into

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<sup>258</sup> Akram, S. (2014). UNRWA and Palestinian Refugees. In E. Fiddian-Qasmiyeh, G. Loescher, K. Long, & N. Sigona (Eds.), *The Oxford handbook of refugee and forced migration studies* (pp. 227–240). Oxford: Oxford University Press. note. 5.

<sup>259</sup> Ibid, p. 229.

<sup>260</sup> UNCCP, First Interim Report of the United Nations Economic Survey Mission for the Middle East, 16 November 1949, A/1106, New York, 1949, p. 17. Available at: <https://www.un.org/unispal/wp-content/uploads/1949/12/NL321438.pdf>.

<sup>261</sup> Ibid.

the economic life of the Near East”.<sup>262</sup> Essentially, the primary goal of proposed projects was industrial, agricultural and infrastructural developments in line with the purposes of employment and integration of Palestinian refugees in the region. Yet, UNRWA failed to execute its ‘works’ mission as indicated in its name as a work agency. Rather, it altered its focus to provide essential humanitarian services such as health care, education, etc. In this context, UNRWA was legally and economically constrained to enhance general welfare of the refugees in host states. Thus, it crucially shows a weakness of UNRWA and its authority.

In addition, the issue of defining a Palestinian refugee was also problematic within UNRWA. Initially, neither its founding resolution 302 (IV) nor other related resolutions and legal documents contained an accurate definition for who a Palestinian refugee is. In fact, the same situation applied for UNCCP that its founding Resolution 194 (III) did not specify any definition for Palestinian refugees. Nonetheless, both agencies later on produced administrative definitions, as mentioned earlier in this thesis. Explaining what is problematic about UNRWA definition, it has been in the first place subjected many changes in itself. UNRWA actually failed to produce a certain refugee definition for displaced Palestinians. In time, it was enforced to impose certain limitations to reduce numbers of registered refugees for assistance due to pressure of funding states. Accordingly, UNRWA inserted, for example, additional requirements for registration as a refugee such as ‘need’ and ‘first refuge to states within agency’s area of operation’.<sup>263</sup> It means that when a refugee becomes not in need or leave operation areas of the agency, he or she is no more registered as a refugee.<sup>264</sup> Although these limitations were removed later in 1993, many Palestinian refugees from 1948 could not be eligible for emergency assistance services of UNRWA.

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<sup>262</sup> UN General Assembly, Resolution 393 (V). “Assistance To Palestine Refugees”, 2 December 1950, A/RES/393 (IV), art. 3,4. Available at: [https://avalon.law.yale.edu/20th\\_century/mid020.asp](https://avalon.law.yale.edu/20th_century/mid020.asp).

<sup>263</sup> Takkenberg, A. (1998). *The Status of Palestinian Refugees in International Law*. Clarendon Press, p. 78.

<sup>264</sup> Bocco, R. (2009). UNRWA and the Palestinian refugees: a history within history. *Refugee Survey Quarterly*, 28(2-3), p. 237.

Moreover, another problem was the limitation applied for Palestinians displaced for the first time as a result of 1967 war. Significantly, number of those Palestinians were nearly 240,000.<sup>265</sup> Indeed, the UN took an immediate action to respond another large-scale displacement by passing Resolution 2252 (ES-V) ensuing escalated hostilities in 1967. Notwithstanding not located in its mandate, UNRWA was urged by the UN General Assembly to deliver emergency humanitarian assistance. Urgently, UNRWA was officially endorsed by the Resolution “to provide humanitarian assistance, as far as practicable, on an emergency basis and as a temporary measure, to other persons in the area who are at present displaced and are in serious need of immediate assistance as a result of the recent hostilities.”<sup>266</sup> Nevertheless, UNRWA never included Palestinians displaced for the first time in 1967 in its refugee definition. Noticeably, they were not registered as refugees, but continued to be eligible to UNRWA services as long as they are in “serious need of continued assistance”<sup>267</sup>.

Furthermore, similar exclusion was also imposed for certain category of descendants. Notably, according to definition of Palestine refugee, UNRWA considers descendants of 1948 refugees as a refugee only “through the male line”<sup>268</sup>. Namely, a registered woman and her descendants are not included in definition of a registered refugee in the agency in the case the woman married to non-registered man. On the other hand, if a registered man marries non-registered woman, his descendants and even wife becomes eligible to register for agency’s services. It is principally annoying discrimination adopted by UNRWA. In this sense, Takkenberg rightly criticizes that “UNRWA's institutionalization of gender discrimination is inconsistent with the UN's general mandate to advocate the elimination of such discrimination”<sup>269</sup>.

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<sup>265</sup> Takkenberg, A. (1998). *The Status of Palestinian Refugees in International Law*, p. 83.

<sup>266</sup> UN General Assembly, Resolution 2252 (ES-V). Humanitarian Assistance, 4 July 1967, A/RES/2252 (ES-V), art. 6.

<sup>267</sup> CERI - UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), Consolidated Eligibility and Registration Instructions (CERI), 1 January 2009, sec. III, B, available at: <https://www.refworld.org/docid/520cc3634.html> [accessed 25 June 2023]

<sup>268</sup> Ibid, sec. VII, J.

<sup>269</sup> Takkenberg, A. (1998). *The Status of Palestinian Refugees in International Law*, p. 82.

In general, UNRWA's definition of Palestine refugee contains many deficiencies. Basically, it is a very restrictive definition that does not encompass all Palestinian refugee population. There are many criteria formulated "for identifying those who are entitled to be registered in its Registration System and/or to receive the Agency's services"<sup>270</sup>. Additionally, rather than pursuing legal determinations, UNRWA's definition is actually produced for operational purposes only. It does not have any political or legal dimensions. Therefore, it does not have an international validity, which lowers status of Palestinian refugees within international refugee law.<sup>271</sup> This creates significant setbacks for universal recognition of Palestinian refugees due to which they confront many difficulties to enjoy fundamental rights and freedoms across the world.

Beyond, even if Palestinians are registered as refugees and eligible for UNRWA's assistance, it does not mean that they enjoy an absolute standard of welfare. Majority of registered Palestinian refugees live in poor conditions. Living conditions do not significantly vary between camp dwellers and others living outside of the camps. Even, those living in camps have simpler access to UNRWA services.<sup>272</sup> Today, about 1.5 million that form one third of registered refugees still live in the camps.<sup>273</sup> It has been more than seven decades that more than four generation of Palestinians experience living in camps with very poor living conditions. At this stage, UNRWA's role remains only to provide relief and assistance services. Even though there are certain services available to Palestinian refugees from health care to education, it is clearly not a desired solution they expect. To say, providing only essential services does not mean tackling with a significant and protracting problem. Furthermore, these services also are not adequately distributed to increase quality of life. Many of the refugee camps,

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<sup>270</sup> CERI - UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), Consolidated Eligibility and Registration Instructions (CERI), 1 January 2009, sec. I.

<sup>271</sup> Takkenberg, A. (1998). *The Status of Palestinian Refugees in International Law*, p. 92.

<sup>272</sup> Feldman, I. (2012). The humanitarian condition: Palestinian refugees and the politics of living. *Humanity: an international journal of human rights, humanitarianism, and development*, 3(2), p. 159.

<sup>273</sup> UNRWA. "Palestine Refugees". Accessed July 15, 2023. <https://www.unrwa.org/palestine-refugees>.

for example, suffers from overcrowded population. As well, education and health care services are not always accessible by entire population. Additionally, Palestinian refugees do not have any economic and social freedom in different areas of host states. Despite limited efforts of UNRWA, all of the refugee population living in and outside the camps are subjected to legislation of hosting state. Thus, they are generally discriminated in terms of their economic, social and political rights or at least expectations. In this case, UNRWA has nothing to effect political will of governments of host states. It basically shows that UNRWA is not the only determinant of changing circumstances that Palestinian refugees live in. Still, it sincerely proved ineffectiveness of UNRWA even in its only affordable mission to enhance standard of living among Palestinian refugee population dispersed across its areas of operation. Truthfully, it is ultimately unfair that millions of people are subjected to survive under poor living conditions, even in ill conditioned refugee camps in the twenty-first century. In addition, it is also unfair that they are subjected to live without proper accessing and enjoying fundamental human rights and freedoms by bearing a resilient hope to reach final solution to their misery one day.

Furthermore, another problem carrying an importance with respect to UNRWA is that it has for a long time suffered from financial instability. UNRWA does not have an independent funding system or systematic financial contribution from the United Nations. Significantly, UNRWA has entirely depended on voluntary donations. From the outset, this funding system has been generated by various donor states. However, this dependency of UNRWA on donor states' funding has revealed significant suspicions about objectivity of the agency. At this point, UNRWA faces many serious criticisms. For instance, Bocco says UNRWA has traditionally been influenced in terms of its decisions and actions due to lack of financial autonomy.<sup>274</sup> It is true that dependent nature of the agency is always subjected to certain political interests. Therefore, it creates essential vulnerability for the decision making and operational stages of the agency. Even more, since the early 1990s, UNRWA has been experiencing serious financial deficiency. It is basically because donor states have

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<sup>274</sup> Bocco, R. (2009). UNRWA and the Palestinian refugees: a history within history. *Refugee Survey Quarterly*, 28(2-3), p. 233.

reduced their voluntary funding to the agency over time. Although there are various reasons behind this reduction such as political interests and unsatisfactory outcomes generated by the agency, it is crucial here to contemplate on the consequences. Mainly, the outmost consequence is related to Palestinian refugees. Due to insufficient funding, eligible services have gotten more restrictive lately for over three decades. Particularly, Palestinian refugees living in camps are more vulnerable to limited services since they are mostly relied on fundamental humanitarian assistance in terms of food, shelter, infrastructure and so forth. Generally, it can be concluded that financial constraints of UNRWA creates certain problems both for itself and Palestinian refugees. While the agency's reliability has always been questioned, Palestinian refugees have had to experience lower standards of well-being compared to other refugee populations around the world.

Yet, it is basically aimed at explicitly explaining certain legal and operational drawbacks of UNRWA in its mandate. That is because it is essential to firstly understand whether UNRWA is able to fulfill its main legal responsibilities providing relief and assistance to Palestinian refugees. Then, its lack of protection mandate can be argued. Exploring protection gaps throughout this thesis it must be underlined that the term 'protection gap' is not only related to lack of protection as understood by its regular meaning. It has actually broad references that any deficiency within a general system established for protection of refugees indicates a protection gap. Therefore, above mentioned legal and operational drawbacks of UNRWA already bring about different protection gaps at different scales within the system. Handling regular meaning of protection, however, there is no protection role assigned to UNRWA since its establishment. Basically, within a distinctive regime aimed at providing protection and assistance for Palestinian refugees as in the case of UNHCR's legitimate responsibility, UNCCP was legally responsible for providing a protection and seeking a durable solution. On the other hand, UNRWA has never been explicitly authorized for neither protection nor pursuing a durable solution. However, with the demise of UNCCP, protection mandate ceased. Neither UNHCR as a global refugee protection agency nor UNRWA as the only agency left for Palestinian refugees took over protection mandate of UNCCP. At this point, a protection gap occurred for Palestinian refugees since they have lost their protection provider. Even today, there is no

international agency responsible for protection of Palestinian refugees since they have already excluded from protection mandate of UNHCR through Article 1D of 1951 Refugee convention due to the fact that they are receiving protection and assistance from other UN agencies. Therefore, due to legal limitations of UNHCR to involve in Palestinian refugee protection, UNRWA is the only agency responsible for carrying out this mandate. However, UNRWA functionally fails in this sense.

Basically, the most significant problem about UNRWA is that it is unable to meet general expectations to provide protection for Palestinian refugees. There is an important gap between growing expectations from UNRWA to involve in protection activities and its capability to do so. Besides its capability, however, it is a serious mistake of international refugee regime not to instruct UNRWA to take over protection mandate. In fact, what is missing about protection here that although UNRWA has theoretically begun using the term ‘protection’ over time, it has hardly been able to practically execute protection activities with all aspects. Before elaborating on these aspects, it is necessary to look at certain proceedings that resulted in evolution of UNRWA’s activities with respect to protection. In detail, ensuing 1967 Arab Israeli war, there was increasing distress about security of Palestinians. At the end of the war, Israel occupied the Gaza Strip and the West Bank where majority of Palestinian population were living including 1948 refugees. In order to prevent catastrophic consequences, the United Nations immediately responded with passing the Security Council Resolution 237 and the General Assembly resolution 2252 (ES-V) respectively. The main objective was continuation of assistance for all victims of the violence and “protection of civilian persons in time of war”<sup>275</sup>. Subsequently, there have also been several attempts by the regime to hand over protection mandate to UNRWA, but none of them assigned the agency a concrete legal responsibility. They were actually non-obligatory directives that recommends taking protection actions. For example, the UN General Assembly passed Resolution 37/120 in 1982 as a response to annexation of Lebanon by Israeli forces. In part J of the resolution, which is called ‘Protection of Palestine Refugees’, the General Assembly urged “to undertake

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<sup>275</sup> UN Security Council (UNSC), Resolution 237 (1967). 14 June 1964, S/RES/237, art. 2. Available at: <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/240/89/PDF/NR024089.pdf?OpenElement>.



effective measures to guarantee the safety and security and the legal and human rights of the Palestinian refugees in the occupied territories.”<sup>276</sup> In this way, the United Nations officially used protection language for the first time with respect to designated mission of UNRWA. Afterwards, further resolutions started to be passed by the UN, which directs UNRWA to launch protection actions for Palestinian refugees.<sup>277</sup> Additionally, in 2006, it is officially recognized by the General Assembly Resolution 61/114 that UNRWA involves in protection activities together with general assistance.<sup>278</sup> Through the resolution, the UN General Assembly appreciated “the valuable work done by the refugee affairs officers of the Agency in providing protection to the Palestinian people, in particular Palestine refugees”<sup>279</sup>. Eventually, the term ‘protection’ was incorporated within the scope of UNRWA’s services. Currently, UNRWA usually describes its mandate “to provide assistance and protection”<sup>280</sup> as lately seen in its Medium Term Strategy 2016-2021.

In that respect, Custer argues that although founding Resolution 302 (IV) did not include protection mandate for UNRWA, UNRWA has gradually started to have and execute “a clear mandate to provide ‘protection’ for Palestine refugees”.<sup>281</sup> On the contrary, this thesis argues that protection means twofold, and they are strongly intertwined. Basically, there is a physical protection on the hand, and a legal protection that aims to secure legal rights of refugees in search for durable solution on the other. Therefore, including protection language in UNRWA’s description does not mean that

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<sup>276</sup> UN General Assembly, Resolution 37/120. “United Nations Relief and Works Agency for Palestine Refugees in the Near East”, 16 December 1982, A/RES/37/120, sec. J. Accessed July 15, 2023. <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/425/98/IMG/NR042598.pdf?OpenElement>.

<sup>277</sup> Takkenberg, A. (1998). *The Status of Palestinian Refugees in International Law*, p. 289.

<sup>278</sup> UN General Assembly, Resolution 61/114. Operations of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, 15 January 2007, A/RES/61/114, available at: <https://www.refworld.org/docid/45fa57182.html> [accessed 15 July 2023]

<sup>279</sup> Ibid, p. 2.

<sup>280</sup> UNRWA, (2016). *UNRWA Medium Term Strategy 2016–2021*, p. ii. Available at: [https://www.unrwa.org/sites/default/files/content/resources/mts\\_2016\\_2021.pdf](https://www.unrwa.org/sites/default/files/content/resources/mts_2016_2021.pdf).

<sup>281</sup> Custer Jr, S. (2010). United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA): Protection and Assistance to Palestine Refugees. In *International Law and the Israeli-Palestinian Conflict* (pp. 55-78). Routledge, p. 52.

UNRWA provides a protection for Palestinian refugees. It is basically obvious that the principal element of refugee protection is promotion of a durable solution that majority of Palestinian refugees hope for. Yet, UNRWA does not have any explicit mandate for ensuing durable solution. To illustrate, UNRWA officially states that “the task of finding a comprehensive solution for the Israeli-Palestinian conflict and the Palestine refugee problem, however, is not part of UNRWA’s mandate but is rather the responsibility of the parties to the conflict and other political actors”<sup>282</sup>. In this sense, some scholars strongly defend UNRWA. In the first place, Custer advocates that international refugee regime never request UNRWA to undertake activities for a permanent solution.<sup>283</sup> That being said, the only mission that UNRWA was assigned to provide physical and material protection of Palestinian refugees. Therefore, it is not a responsibility of UNRWA not to involve in searching for a durable solution. Similarly, Kagan admits that there is a protection gap in terms of permanent resolution, but UNRWA cannot be charged since it is about political gap within international refugee regime.<sup>284</sup> However, they do not recognize that it is actually not UNRWA blamed for this protection gap, but international refugee regime itself. Here, UNRWA remains as an institutional mean deployed by international refugee regime to justify its legal discrimination over Palestinian refugees. Overall, durable solution is a key factor in refugee protection. Therefore, despite having undertaken some protection activities together with UNHCR, UNRWA does not meet a significant principle to be recognized as an agency providing protection to Palestinian refugees. Critically, there is no international agency ensuring an appropriate protection to more than nine million Palestinian refugees including nearly 6 million UNRWA registered refugees.

In conclusion, the aim here is not actually to defame UNRWA. Basically, the main aim is to evaluate effectiveness of an agency due to which international refugee protection cannot be applied to Palestinian refugees. It is clearly seen that UNRWA already has internal deficiencies to execute its core missions providing assistance

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<sup>282</sup> UNRWA & UNHCR (2007) *The United Nations and Palestinian Refugees*. p. 5. Available at: <https://www.unrwa.org/userfiles/2010011791015.pdf>.

<sup>283</sup> Custer Jr, S. (2010). p. 58.

<sup>284</sup> Kagan, M. (2009). Is there really a protection gap? UNRWA’s role vis-à-vis palestinian refugees, p. 522.

through relief and work services to Palestinian refugees. Due to lack of authority caused by its administrative base, restrictive and unstable refugee definition adopted only for operational purposes, absence of financial self-sufficiency and inability to serve all Palestinian refugee population, it is concluded that legal and functional structure of UNRWA is problematic in nature. It basically creates a gap between its mandate and implementation. Nevertheless, I admit UNRWA is still a significant agency in terms representing the only international agency devoted to assistance of Palestinian refugees. In this sense, this thesis agrees with Irfan stating that “UNRWA is neither an exemplar to be adopted as an ideal mode, nor a disaster that should be entirely disregarded”<sup>285</sup>. Most importantly, however, UNRWA is incapable of providing protection for Palestinian refugees contrary to general assumptions of international community and some scholars. It is subsequently assigned only to provide security of Palestinian refugee at certain cases. Involving in small-scale protection activities and advocating to have protection mandate do not make UNRWA as agency legitimately responsible for protection of Palestinian refugees. Significantly, it is rather a ‘passive’ protection as Parvathaneni calls.<sup>286</sup> In this sense, UNRWA lack any mandate and authority to pursue a durable solution to protracting refugee problem. Therefore, a serious gap occurs that Palestinian refugees are subjected to survive in the absence of international protection due to the fact that international refugee regime has significantly discriminated them in terms of their legal position under international law.

### **6.3. UNHCR and Lack of Effective Involvement in the Palestinian Refugee Problem**

Even though UNHCR is not a component of a distinctive regime for Palestinian refugee, it is still worth evaluating its limited role in refugee protection with respect to Palestinians. That is because above mentioned two components of regime, UNCCP and UNRWA, have proven their ineffectiveness in refugee protection through either

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<sup>285</sup> Irfan, A. (2017). UNRWA and the Palestinian Precedent: Lessons From the International Response to the Palestinian Refugee Crisis. *Global Politics Review*, 3(1), p. 11.

<sup>286</sup> Parvathaneni, H. (2004). UNRWA’s Role in Protecting Palestine Refugees, Working Paper No. 9. BADIL Resource Center for Palestinian Residency & Refugee Rights.

termination of mandate or failures in legal and functional structures. At this point, UNHCR stays as the only international agency responsible for providing protection and assistance to refugees in the world. However, it has never implemented the same means of protection for Palestinian refugees, applied to other refugee populations around the world. Significantly, as the most significant content of refugee protection, a durable solution has never been on the agenda of UNHCR in the case of Palestinian refugees. Because UNHCR was legally restricted to include Palestinian refugees within its mandate by both its Statute and international refugee law. In this sense, discriminated legal status of Palestinian refugees has direct relevance with their inability to benefit international protection, which creates serious protection gap for them. Therefore, this part aims to assess the role of UNHCR in the continuation of this gap and its reasons by not involving in Palestinian refugees' protection.

Basically, since the emergence of the Palestinian refugee problem, there has been to date significant neglect ensuring international protection for Palestinian refugees for decades. In spite of considerable endeavors at first to pay particular attention for tackling with the Palestinian refugee problem, proper framework for international protection could not be constituted by international community. As the most substantial institutional instrument of international refugee protection regime based on 1951 Convention Relating to the Status of Refugees composing the base of international refugee law, UNHCR has been left apathetic to one of the worst refugee crises in the history for years due to certain international legal restrictions. These legal restrictions were imposed by its own founding Statute and Article 1D of the Convention. Significantly, similar to each other, both implicitly specified that Palestinian refugees are excluded from benefits of the Convention and services of UNHCR because of falling within the mandate of other UN agencies UNCCP and UNRWA. Therefore, UNHCR remained inactive in delivering its services to Palestinian refugees for a long time.

Nevertheless, with the outbreak of significant violent hostilities in the Middle East after late 1970s, UNHCR took an action to assure security and safety of Palestinian refugees who are outside of UNRWA's five operational fields. It was mainly provided by reinterpretation of Article 1D with its exclusion and inclusion clauses. As

mentioned, while the first paragraph of Article 1D excludes Palestinian refugees from international protection, the second paragraph indicates their inclusion in the case of cessation of protection or assistance from other UN agencies. In this sense, UNHCR reinterpreted Article 1D that when refugees are outside of UNRWA field it means that they do not receive protection or assistance from the agency. In this situation, cessation clause becomes applicable for those who are not in the UNRWA's areas of operation, and they are considered whether they fulfill the criteria "owing to well-founded fear of being persecuted"<sup>287</sup> of Article 1A (2) of the Convention. However, this change did not correspond a proper protection framework for Palestinian refugees. It was still problematic that Palestinian refugees were required to prove their situation of being exposed to "well-founded fear of being persecuted"<sup>288</sup> despite the fact that they should have been automatically granted a refugee status with respect to their specific situation in line with Article 1D. Consequently, Palestinian refugees have faced many difficulties to take asylum in third countries for years. Afterwards, it was only 2002 when UNHCR released 'Note on the Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian refugees'<sup>289</sup> through which previous interpretation of Article 1D was amended. In this way, Palestinian refugees outside of UNRWA areas began to be considered as a refugee under Article 1D regardless of Article 1A (2). Furthermore, another amendment was made in 2013 in interpretation that condition of being outside of UNRWA areas of operation was abolished.<sup>290</sup> Basically, the expression 'ceased for any reason' was reinterpreted as "(i) the termination of UNRWA as an agency; (ii) the discontinuation of UNRWA's activities; or (iii) any objective reason outside the control of the person concerned such that the person is unable to (re-)avail themselves of the protection or assistance of

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<sup>287</sup> UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, p. 137, art. 1A (2).

<sup>288</sup> Ibid.

<sup>289</sup> UNHCR, (2002).

<sup>290</sup> UN High Commissioner for Refugees (UNHCR), Note on UNHCR's Interpretation of Article 1D of the 1951 Convention relating to the Status of Refugees and Article 12(1)(a) of the EU Qualification Directive in the context of Palestinian refugees seeking international protection, May 2013, available at: <https://www.refworld.org/docid/518cb8c84.html> [accessed 15 July 2023]

UNRWA.”<sup>291</sup> Accordingly, as long as UNRWA exists and continues its activities, Palestinian refugees can be eligible for benefits of the 1951 Convention and UNHCR services based on the fact that whether they benefit from UNRWA activities. Ultimately, the primary goal was to avail Palestinian refugees, who cannot benefit from UNRWA, for international protection and assistance, provided by UNHCR.

### **6.3.1. Failure to Implement Durable Solution**

However, these attempts to somehow include Palestinian refugees in international protection through reinterpretation of Article 1D was not concluded with an expected result by Palestinian refugees. Crucially, recognition of their refugee status in certain circumstances must have meant that Palestinian refugees are entitled to enjoy benefits of fundamental rights drawn especially by UNGA Resolution 194 (III) most substantially including a durable solution with the assistance of UNHCR. Because one of the most significant components of international protection mandate of UNHCR is promoting a durable solution for refugees under its responsibility. As officially stated, UNHCR is “the only international agency mandated to protect refugees and promote durable solutions to their problems”<sup>292</sup>. Still, UNHCR has inevitably failed to appropriately actualize alternative solutions to Palestinian refugee problem.

There are three internationally recognized alternatives of a durable solution. These alternative solutions are repatriation of a refugee to country of origin, economic and social integration of a refugee within a country of first refuge and resettlement of a refugee to a third state. Indeed, mandate for these three forms of solution were assigned to UNCCP by Resolution 194 (III) at the outset. However, with the termination of its operations as a consequence of failure to facilitate forms of durable solution, no other international agency was assigned responsibility to take over its mandate. In this sense, although it has a broad mandate to promote durable solutions to refugee problems across the globe, UNHCR has also never explicitly motivated to seek a durable

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<sup>291</sup> Ibid, sec. 3, p. 4.

<sup>292</sup> Jastram, K., & Achiron, M. (2001). *Refugee protection: A guide to international refugee law*. Geneva: IPU/United Nations High Commissioner for Refugees (UNHCR), p. 7.

solution for Palestinian refugee problem. In fact, through reinterpretation of Article 1D, it was actually intended to provide emergency protection and assistance to those Palestinian refugees who are unable to enjoy these services from UNRWA.

Basically, as one of the alternatives of durable solution, resettlement in a third country has been indeed referred as a last resort in case either repatriation or integration in host states is not an option by UNHCR within its protection mandate throughout its operational history.<sup>293</sup> On the contrary, in the case of Palestinian refugees, UNCHR has hardly involved in promotion of durable solution in the form of repatriation and integration as a result of which there is no explicit mandate assigned by neither international refugee law nor its own statute. The main focus of UNHCR has been on resettlement by facilitating asylum seeking process.<sup>294</sup> Yet, UNHCR fails in most cases. It was primarily derived from the fact that interpretations and guidelines of UNHCR are not binding orders, but rather a “useful guidance”<sup>295</sup> for states to utilize in decision making process on asylum applications of Palestinian refugees. Hence, there has been no standard implementation of these interpretations, which varies from state to state. In addition, many states do not even incorporate Article 1D in their domestic legislation.<sup>296</sup> As a result, majority of asylum applications of Palestinian refugees in third countries are usually rejected. In this sense, there is no international guarantee for Palestinian refugees to enjoy their fundamental refugee right to be resettled. Eventually, it shows ineffectiveness of UNHCR in its responsibility to Palestinian refugees under its limited mandate. Most significantly, however, this situation mainly stems from failure of international refugee regime to unsuccessfully incorporate Palestinian refugees into refugee protection mechanism.

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<sup>293</sup> Akram, S. M. (2002), p. 46.

<sup>294</sup> Parvathaneni, H. (2004). UNRWA’s Role in Protecting Palestine Refugees, Working Paper No. 9. BADIL Resource Center for Palestinian Residency & Refugee Rights, p. 11.

<sup>295</sup> UNHCR, (2002).

<sup>296</sup> Parvathaneni, H. (2004). UNRWA’s Role in Protecting Palestine Refugees, Working Paper No. 9. BADIL Resource Center for Palestinian Residency & Refugee Rights, p. 11.

Furthermore, other means of durable solution supposedly committed by UNHCR have hardly been even pursued in the case of Palestinian refugees. Firstly, as opposed to other refugee cases, UNHCR has never involved in a peaceful settlement of disputes between Arabs and Israelis. Likewise, repatriation of Palestinian refugees to their homeland has never included in the agenda of UNHCR. Even though the most desired solution to Palestinian refugee plight is return to territories of former Mandatory Palestine, UNHCR has been ineffective to offer the most preferred solution alternative. The foremost justification for this case is legal restrictions. It is commonly referred that within the framework of its Statute and the 1951 Refugee Convention, UNHCR does not have a designated mandate to seek a permanent solution for Palestinian refugee problem. However, there is a serious paradox in this case. As mentioned, UNHCR undertook some revisions in their interpretation of these legal restrictions under Article 1D. So, it was expected to involve in promoting a durable solution in Palestinian refugee case as well. Yet, it is still not applicable for majority of Palestinian refugees since UNHCR reinterpreted Article 1D as serving only to those who are unable to benefit from UNRWA services. As a result, UNHCR has never engaged in promoting a return of Palestinian refugees since it would have to imply all Palestinian refugee population in the world. In this sense, UNHCR mandate over Palestinian refugees remains very limited in terms of both scope and service. In addition, UNHCR remains passive also in providing social and economic integration of Palestinian refugees in states of first refuge. Majority of Palestinian refugee population live in states that are included within UNRWA's fields of operation. Therefore, UNHCR is legally constrained in this case as well.

Ultimately, it is evident that UNHCR involvement in Palestinian refugee issue in all aspects has always remained considerably ineffective. Despite attempts to reveal inclusion implication of Article 1D through reinterpretation, these attempts were both significantly late and unproductive. UNHCR has to a limited extent provided protection and assistance to Palestinian refugees left out on UNRWA's mandate. Current interpretation of UNHCR for applicability of inclusion clause of Article 1D includes only those Palestinians who are neither 1948 refugees nor 1967 displaced people. Thus, substantially limited number of Palestinians can be eligible for international protection by UNHCR. Significantly, this protection has never included



a promotion of durable solution. UNHCR unsurprisingly failed to carry out the durable solution alternatives. It basically creates a serious flaw in supposed international protection for small proportion of Palestinian refugee population since a durable solution is an essential implication of refugee protection. Furthermore, its endeavors to reinterpret legal status of Palestinian refugees did not have an international validity. Its guidelines about interpretation of status of Palestinian refugees were not commanding but recommending. Because Palestinian refugees has always had ambiguous position in international refugee law. Ultimately, it proves the prominence of international recognition of refugee status. As Palestinian refugees were not suited within universal refugee definition, they had always confronted legal restrictions to reach international protection. As a response, international refugee regime has never taken an action to compensate this vulnerable position of Palestinian refugees. Consequently, together with the failure of UNHCR to successfully involve in Palestinian refugee problem, international regime in general has created a serious and continuous protection gap for Palestinian refugees. All in all, after revealing legal and institutional gaps in providing international protection for Palestinian refugees, the next chapter will represent the scope of the overall protection gap, and in what ways Palestinian refugees are influenced.

## **CHAPTER 7**

### **THE SCOPE OF THE PROTECTION GAP: LIVING IN AN EXILE FOR DECADES**

Due to the persistent disparity between the principles of international law and their actual implementation for Palestinian refugees, they have historically faced a dearth of international protection. As closely analyzed in previous chapters, failures of international refugee regime to adequately implement means of international protection in accordance with fundamental human rights of Palestinian refugees have led to significant legal and institutional protection gaps in the case of Palestinian refugee problem. Basically, this chapter of the thesis will present the scope of protection gaps derived from these legal and institutional deficiencies of international refugee regime. The aim here is to demonstrate that the legal and institutional gaps in providing international protection for Palestinian refugees have brought about massive and protracting humanitarian crisis. In essence, it will be showed that Palestinian refugees have been living in an exile for more than seven decades without attaining basic human rights unlike other refugees across the world due to the failure of the international refugee regime to comply with the basic liberal principles of human rights and justice.

Accordingly, this chapter is divided into three parts. In the first part, legal and socio-economic conditions of Palestinian refugees in Arab states and Occupied Palestinian Territories (OPTs) will be analyzed. It will essentially prove that neither legal protection nor physical protection is hardly provided for Palestinian refugees in Arab host states and OPTs. Significantly, as a form of durable solution, economic and social integration of Palestinian refugees has never been implemented by host states. In fact, the only exception was Syria where Palestinian refugees were given similar rights as Syrian national, but their situation was also deteriorated after the 2011 civil war. As a

result of general discrimination in host states and OPTs, Palestinian refugees were also deprived of the physical protection, and they suffer from severe living conditions. Crucially, UNRWA also confirms that “Palestine refugees are facing a human development and protection crisis. Levels of food insecurity and poverty are high and increasing”.<sup>297</sup> Within this context, analyzing Palestinian refugees in these five areas will shed light on a general understanding of their situation in the Arab world. Afterward, the second part will analyze perspective of non-Arab countries on Palestinian refugees. Basically, it will emphasize on misinterpretation of Article 1D of the 1951 Refugee Convention by the European States. Due to exclusion of Palestinian refugees from universal definition of a refugee, European states generally do not recognize them as refugees under international law. Through either not incorporating Article 1D into their domestic legislation or misinterpreting it without considering inclusion clause, Palestinian refugee have always faced significant difficulties to find asylum in European countries. Ultimately, the last part of this chapter will underline the problem of multiple displacement. It will argue that Palestinian refugee have often suffered from secondary or more displacement over time due to discrimination in host states and political instability of the region. In this sense, this part will support the argument of Akram stating that “without security of residence, Palestinians have been subjected to repeated expulsion and dispossession for decades, a situation which continues today.”<sup>298</sup>

### **7.1. Legal and Socioeconomic Situation in Arab Host States and Occupied Palestine Territories (OPTs)**

Following their respective mass exodus in 1948 and 1967, the main destination of Palestinian refugee was neighboring Arab states. They basically hoped to find safe places where they could enjoy high-quality living conditions. However, what they found was mostly discrimination and denial of their basic rights. Historically, Palestinian refugees have generally suffered from harsh living conditions in host states for decades, except for Syria until recently. The primary reason is that there has never

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<sup>297</sup> UNRWA, (2016). UNRWA Medium Term Strategy 2016–2021, p. 5, para. 6.

<sup>298</sup> Akram, S. M., Dumper, M., Lynk, M., & Scobbie, I. (Eds.). (2011), p.22.

been a proper legal framework to provide international protection for Palestinian refugees. Their exclusion from protection mandate of international refugee regime has put them in an extremely vulnerable position during their displacement.

Basically, the most severe repercussions of protection gap for Palestinian refugees are evident mainly in their legal and physical conditions where they have been living throughout their exile. On the one hand, they have experienced lack of legal protection in the sense that economic and social integration could not be achieved as a durable solution alternative. From the outset, Arab states where vast majority of Palestinian refugees reside have hardly been willing to entirely absorb Palestinian refugees. They have motivated to grant them only temporary residence until the problem is solved, except Jordan. The main reason is that Arab states thought that resettlement and integration of Palestinian refugees would weaken desire for return.<sup>299</sup> The main motivation of the Arab States has always been the final solution of the refugee problem, through the repatriation of Palestinian refugees to their homeland. Therefore, in almost all Arab host states, Palestinian refugees could not enjoy assured residency status. They were only given temporary residence permits which is also subjected to frequent changes over time due to shifts in domestic or regional politics. As a result of this inferior legal status, Palestinian refugee have usually faced many difficulties to access basic services such as employment, education and health care. Therefore, on the other hand, they also experienced lack of physical protection that they have constantly suffered from lack of socio-economic well-being. Certain restrictions and discriminations resulted in the fact majority of refugee population have been deemed to live in poverty.

Significantly, there has been no international agency authorized to monitor state practices whether they are in accordance with international law and fundamental human rights. As the sole international agency responsible for Palestinian refugees, UNRWA's mandate comprises only humanitarian assistance to Palestinian refugees in Jordan, Lebanon, Syrian, the West Bank and Gaza Strip. Therefore, implementation of principles of international law and fundamental human rights on Palestinian

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<sup>299</sup> Akram, S. M. (2002), p. 42.

refugees was left to the discretion of host states. However, majority of the Arab host states are parties neither to 1951 Refugee Convention nor 1954 Convention on Statelessness. Consequently, UNHCR becomes ineffective to exercise its supervising task on Arab states' practices.<sup>300</sup> Furthermore, despite ratifying Casablanca Protocol in 1965, majority of Arab states have never complied with its core obligations to grant fundamental rights to Palestinian refugees in the region.<sup>301</sup> As a result, these factors created a gap in protection of legal status of Palestinian refugees, as a result of which their socio-economic conditions have always been lower than other refugee groups across the world.

Based on this background, this part of the chapter will analyze the legal and socio-economic conditions of Palestinian refugees in five fields in which UNRWA operates. About 5.9 million Palestinian refugees are registered in UNRWA within these five fields. Therefore, closely analyzing legal and socio-economic conditions of Palestinian refugees in Jordan, Lebanon, Syria, the West Bank and the Gaza Strip respectively will represent a general framework for absence of Palestinian refugee protection in Arab host states where vast majority of Palestinian refugee population reside. Through this analysis, it is basically aimed at revealing that international refugee regime fails to provide protection for Palestinian refugees.

### **7.1.1. Jordan**

Following mass displacement of Palestinian refugees in 1948, Jordan has initially conducted an open door policy for Palestinian. Among other neighboring Arab states, Palestinian refugees arrived in Jordan have enjoyed the most fortunate legal status at the outset, Jordanian citizenship. Immediately responding influx of thousands of Palestinians, the Jordanian government made certain changes in 1928 Citizenship Law

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<sup>300</sup> Akram, S. (2014). UNRWA and Palestinian Refugees. In E. Fiddian-Qasmiyeh, G. Loescher, K. Long, & N. Sigona (Eds.), *The Oxford handbook of refugee and forced migration studies* (pp. 227–240). Oxford: Oxford University Press. p. 238.

<sup>301</sup> Ibid.

to include new arrivals to Jordan into citizenship.<sup>302</sup> Furthermore, after the annexation of the West Bank by Jordan in 1950, all Palestinians living in Jordan and the West Bank became citizens. In 1952, the number of Palestinian refugees was nearly 470,000 in the Hashemite Kingdom of Jordan established in 1950 with the unification of the West Bank and East Bank.<sup>303</sup>

However, this strategy lasted only until 1954 on which Jordanian Nationality Law was enacted. Through the Law, Jordan specified circumstances of being granted as citizens by stating that “any 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”<sup>304</sup>. It was basically decided that those who arrived at Jordan after 1954 are not entitled to Jordanian citizenship, rather they were given temporary residency permission.<sup>305</sup> This restriction meant that together with 1948 refugees arriving in Jordan after 1954, those who have been displaced as a result of 1967 conflicts were not provided citizenship. In fact, majority of them were Palestinians fled former Egyptian-controlled Gaza, and they were carrying just travel documents issued by Egypt.<sup>306</sup> In this regard, approximately 200,000 displaced Palestinians fleeing Jordan were not considered as nationals, but rather recognized as temporary residents following the 1967 war.<sup>307</sup>

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<sup>302</sup> Bastaki, J. (2017). *The Legacy of the 1951 Refugee Convention and Palestinian Refugees: Multiple Displacements, Multiple Exclusions*. Berkeley J. Middle E. & Islamic L., 8, 1, p .7.

<sup>303</sup> BADIL, (2022). *Survey of Palestinian Refugees and Internally Displaced Persons, 2019-2021, Volume X*. Bethlehem, Palestine: BADIL Resource Center for Palestinian Residency and Refugee Rights, p. 102.

<sup>304</sup> Law No. 6 of 1954 on Nationality (last amended 1987), 1 January 1954, art. 3(2), available at: <https://www.refworld.org/docid/3ae6b4ea13.html> [accessed 19 April 2023]

<sup>305</sup> BADIL, (2022). *Survey of Palestinian Refugees and Internally Displaced Persons, 2019-2021, Volume X*. Bethlehem, Palestine: BADIL Resource Center for Palestinian Residency and Refugee Rights, p. 102.

<sup>306</sup> BADIL, (2005). *Closing Protection Gaps: Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*. Bethlehem: BADIL Resource Center for Palestinian Residency and Refugee Rights, p. 16.

<sup>307</sup> BADIL, (2022). *Survey of Palestinian Refugees and Internally Displaced Persons, 2019-2021, Volume X*. Bethlehem, Palestine: BADIL Resource Center for Palestinian Residency and Refugee Rights, p. 102.

Briefly, Palestinian refugees in Jordan had acquired diverse legal positions over time, based on which they have been subjected to different kinds of treatments in social, economic and political spheres. On the one hand, Palestinians holding Jordanian citizenship had the same status as Jordanian origins, through which they were able to reach fundamental rights such as right to employment, education, health care and political participation.<sup>308</sup> Nevertheless, this situation had dramatically changed with the emergence of controversy between the Palestine Liberation Organization (PLO) and Jordan, as a result of which certain restrictions on Palestinian citizens to access these fundamental rights were imposed by Jordanian government.<sup>309</sup> Moreover, considerable numbers of Palestinians have lost their citizenship status over time. Especially, Palestinians living in the West bank as citizens at the time were deprived off their citizenship following administrative segregation of the West Bank from Jordan.<sup>310</sup> They were given temporary Jordanian passports valid for two years, through which they were only able to visit East Bank for a short period of time, and they could no longer obtain permanent residence within the territories of Jordan.<sup>311</sup>

On the other hand, legal status and living conditions of Palestinian refugees who never acquired citizenship has always been worse off. As holders of temporary residence, they had to repeatedly renovate their permission to stay in Jordan. Moreover, there were significant restrictions on Palestinian refugees' employment. Critically, they could not be employed in public sector.<sup>312</sup> They could work in the private sector, where they were generally discriminated against, only by obtaining permission from the state.<sup>313</sup> In addition to these restrictions on their right to employment, they were also economically limited to access other forms of basic humanitarian facilities such as

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<sup>308</sup> Ibid.

<sup>309</sup> Ibid.

<sup>310</sup> Takkenberg, A. (1998). *The Status of Palestinian Refugees in International Law*, p. 160.

<sup>311</sup> Ibid

<sup>312</sup> BADIL, (2022). *Survey of Palestinian Refugees and Internally Displaced Persons, 2019-2021*, Volume X. Bethlehem, Palestine: BADIL Resource Center for Palestinian Residency and Refugee Rights, p. 104.

<sup>313</sup> Ibid.

education and health care. Within these circumstances, it is argued that even in Jordan, ostensibly considered a place where Palestinian refugees enjoys a high quality of life in terms of legal status and fundamental human rights, Palestinian refugees has historically experienced various forms of discrimination and restriction.

In fact, a serious discrimination and various restrictions over Palestinian refugees continue even today. Currently, it is anticipated that Palestinian refugees refugee population constitutes more than half of the total population in Jordan.<sup>314</sup> According to recent records, there are 2,373,018 UNRWA registered Palestinian refugees of whom nearly eighteen percent live in ten official refugee camps as well as three unofficial camps across Jordan.<sup>315</sup> Both registered and other Palestinian refugees constantly experience formal and informal discrimination in all spheres of life. Especially, refugee camp residents suffer from inadequate sources of basic humanitarian facilities, although majority are holding Jordan citizenship. Most of them are primarily on UNRWA's cash assistance, still live in very poor living conditions. Other facilities UNRWA provided in Jordan are also inadequate for meeting large scale humanitarian needs. In fact, UNRWA does not involve in administration of registered refugees in the country, but just provide assistance services mainly on education, health care and economic contribution. According to UNRWA, it offers primary education to 119,047 Palestinian children in 169 schools, while it has 25 health care facilities across Jordan.<sup>316</sup> To emphasize, these basic services illustrate that UNRWA remains substantially insufficient to serve more than 2.3 registered refugees and approximately 180,000 other person of concern to UNRWA.<sup>317</sup>

Meanwhile, discriminatory attitude towards all Palestinian origins was even aggravated with the outbreak of COVID-19 which had severely affected Jordanian

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<sup>314</sup>Bauer, A. (2022). Jordan and the Palestinian cause, An analysis of contemporary foreign and domestic political dimensions. Konrad Adenauer Stiftung, October 2022, p. 1.

<sup>315</sup> UNRWA. "Where We Work", Jordan. Available at: <https://www.unrwa.org/where-we-work/jordan>.

<sup>316</sup> Ibid.

<sup>317</sup> UNRWA. "UNRWA Registered Population Dashboard".



economy.<sup>318</sup> Food insecurity, unemployment, inadequate health and education services are fundamentally common problems that they are persistently struggling. Furthermore, Jordan had firmly imposed serious constraints on further entries from Syria as a result of devastating war started in 2011. Although vast numbers of Syrian refugees were welcomed, Palestinian refugees among them were not accepted by Jordanian government. Even, those who crossed Jordanian borders were compulsorily deported back to Syria.<sup>319</sup> These circumstances basically demonstrates that Palestinian refugee constantly face serious difficulties in the proper enjoyment of their basic human rights in Jordan.

### **7.1.2. Lebanon**

Lebanon is historically the most precarious host state where Palestinian refugees have been consistently suffering from severe economic, social and political irregularities since their initial displacement. At the outset, the approximate number of Palestinian refugees who found refuge in Lebanon during their initial flight in 1948 was 110,000.<sup>320</sup> Only very few of them, mostly Christians, were granted Lebanese citizenship. On the other hand, vast majority of Palestinian refugees were considered as foreigners.<sup>321</sup> Furthermore, only UNRWA registered Palestinian refugees who found direct refugee immediately after 1948 exodus were afforded legal residency in Lebanon, while others who arrived afterward were recognized as illegal residents.<sup>322</sup> The latter has been systematically banned from benefitting basic humanitarian services provided both UNRWA and Lebanese government.<sup>323</sup> The same status were applied

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<sup>318</sup> BADIL, (2022). Survey of Palestinian Refugees and Internally Displaced Persons, 2019-2021, p. 105.

<sup>319</sup> Ibid, p. 10.

<sup>320</sup> Minority Rights Group International, World Directory of Minorities and Indigenous Peoples - Lebanon : Palestinians, 2008.

<sup>321</sup> BADIL, (2005). Closing Protection Gaps, p. 15.

<sup>322</sup> BADIL, (2022). Survey of Palestinian Refugees and Internally Displaced Persons, 2019-2021, p. 108.

<sup>323</sup> Takkenberg, A. (1998). The Status of Palestinian Refugees in International Law, p. 167.

to more than 20,00 Palestinian refugees who entered the country as a result of violent clashes of 1967.<sup>324</sup>

As critique, it is evident that Lebanese government has been committing systematic violation of fundamental human rights for decades. Palestinian refugees have been regularly subjected strict discrimination in terms of all spheres of life. Their fundamental humanitarian rights to work, education, health care and movement have been strictly restricted and regulated. Deliberately, they are deemed to extreme poverty and very harsh living conditions. One of the main factors is strong regulations on employment. Significantly, Palestinian refugees have been widely excluded from most of the public and private professions. Also, they have been required official work permit from the government, which is also extremely difficult to get, to be employed in constricted areas of labor market.<sup>325</sup> Furthermore, access to public health care and education services has not been properly offered to Palestinian refugees. Rather, they have been mostly relied on UNRWA services which is also inadequate and controlled by Lebanese government. There have also been harsh limitations on freedom of movement. Most of the Palestinian refugees have been only given short time travel documents that can be renewed only three times.<sup>326</sup> They have been even required a visa for returning to Lebanon when they go abroad.<sup>327</sup>

Today, there are 489,292 registered refugees in Lebanon according to recent records of UNRWA.<sup>328</sup> However, it is supposed that estimated number of Palestinians are misleading since there have been many Palestinians who left the country as a result of continuous violent conflicts and discriminatory approaches of Lebanese

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<sup>324</sup> BADIL, (2022). Survey of Palestinian Refugees and Internally Displaced Persons, 2019-2021, p. 108.

<sup>325</sup> BADIL, (2005). Closing Protection Gaps, p. 15.

<sup>326</sup> BADIL, (2022). Survey of Palestinian Refugees and Internally Displaced Persons, 2019-2021, Volume X. Bethlehem, Palestine: BADIL Resource Center for Palestinian Residency and Refugee Rights, p. 110.

<sup>327</sup> Ibid.

<sup>328</sup> UNRWA. "UNRWA Registered Population Dashboard". Available at: <https://www.unrwa.org/what-we-do/relief-and-social-services/unrwa-registered-population-dashboard#block-menu-block-10>.

government.<sup>329</sup> As stated, they have experienced multiple displacements throughout the time due to unstable political environment in the region. It is a significant problem that neither UNRWA nor any other international agencies took action to provide international protection and assistance for those thousands of Palestinian refugees. Therefore, it is difficult to estimate total number of Palestinian refugees currently residing in Lebanon. On the other hand, the scale of the protection gap for Palestinian refugees in the country can be still examined.

In the first place, UNRWA remains ineffective in most of the cases to provide basic humanitarian assistance to all Palestinians. In fact, it operates 27 health care facilities and 65 schools in which 37,586 Palestinian children are given primary education.<sup>330</sup> Yet, due to strong restrictions on accessing public health care and further education imposed by Lebanese government, UNRWA's health care and education services are not sufficient for all Palestinian refugees. In addition, nearly forty-five percent of total registered refugees in Lebanon still live in twelve official refugee camps.<sup>331</sup> Over the years, those refugee camps have remained nearly the same. Lebanese government have barely improved conditions of refugee camps. On the contrary, it has effectively prevented building of new camps.<sup>332</sup> As a result, Palestinian refugees have been suffering from overloaded accommodations as well as poor infrastructure. The situation of refugee camps is expressed by UNRWA as the fact that "conditions in the camps are dire and characterized by overcrowding, poor housing conditions, unemployment, poverty and lack of access to justice"<sup>333</sup>.

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<sup>329</sup> BADIL, (2022). Survey of Palestinian Refugees and Internally Displaced Persons, 2019-2021, Volume X. Bethlehem, Palestine: BADIL Resource Center for Palestinian Residency and Refugee Rights, p. 106.

<sup>330</sup> UNRWA. "Where We Work", Lebanon. Available at: <https://www.unrwa.org/where-we-work/lebanon>.

<sup>331</sup> Ibid.

<sup>332</sup> BADIL, (2022). Palestinians and the Search for Protection as Refugees and Stateless Persons, p. 10.

<sup>333</sup> UNRWA. "Where We Work", Lebanon. Available at: <https://www.unrwa.org/where-we-work/lebanon>.

Indeed, Lebanon is a religiously diverse country where Muslims from different sects constitutes majority with more than sixty-five percent, while Christians represents about thirty-two percent of the population.<sup>334</sup> Palestinian refugees who are mostly Sunni Muslims are still considered as threat to political and social stability of the state. Therefore, their integration into Lebanese society has always been opposed by politically and socially from the outset. Accordingly, above mentioned circumstances actually prove discriminatory treatment towards Palestinian refugees that Lebanon have not even intended to integrate them into social and economic life during seventy-five years of exile.

Most recently, Lebanese government shows the same biased attitude towards Palestinian refugees fled Syria as a result of devastating civil war since 2011. It imposes tight border controls to prevent Palestinian entries from Syria. Furthermore, Lebanese government do not hesitate to send those illegally enter Lebanese soil back to Syria, at the expense of universal human rights principles. Still, even though it is estimated that nearly 29,000 Palestinian refugees from Syria live in Lebanon today, they are suffering from the most detrimental living conditions among other refugees in the country.<sup>335</sup> Ultimately, Palestinian refugees are the most affected group by severity of recent economic crisis in Lebanon as a result of worldwide pandemic. Even though they have already been facing social, economic and political difficulties in the form of systematic human rights violations for decades, their vulnerability is recently aggravated. In this sense, 2022 Protection Monitoring Report of UNRWA confirms that an alarming 86 percent of Palestinian refugees in Lebanon are currently living in abject poverty.<sup>336</sup>

### **7.1.3. Syria**

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<sup>334</sup> 2019 Report on International Religious Freedom: Lebanon. <https://www.state.gov/reports/2019-report-on-international-religious-freedom/lebanon/>.

<sup>335</sup> BADIL, (2022). Survey of Palestinian Refugees and Internally Displaced Persons, 2019-2021, p. 111.

<sup>336</sup> UNRWA, (2022). Lebanon: UNRWA - Protection Monitoring Report - Q1 2022.

Among other Arab host states, Syria had offered relatively more decent living conditions for Palestinian refugees since their initial displacement in 1948. At the outset, Syrian government willingly accepted about 90,000-100,000<sup>337</sup> Palestinian refugees in the country. Unlike other Arab states, Syria did not consider huge Palestinian refugee flow as a threat to the economic and social stability of the country. On the contrary, it showed strong enthusiasm to receive more Palestinian refugees, through which it was believed that population increase would help further development. To illustrate, this enthusiasm was proved by articulation of Syrian prime minister denoting that they are capable of resettling up to 300,000 Palestinian refugees in the country.<sup>338</sup> With this motivation, Syrian government continued to absorb relatively smaller numbers of Palestinian refugees in subsequent years.

From the outset, it has been aimed to integrate Palestinian refugees into economic and social life. Indeed, they were not given a Syrian citizenship, but the government adopted series of legal policies to provide Palestinian refugees an equal treatment with Syrians.<sup>339</sup> In this sense, Syria was exclusive in terms of offering Palestinian refugees basic social and civil rights, through which they had been enjoying comparatively better standards of living in the region. However, this situation dramatically changed with the outbreak of Syrian civil war in 2011. Although there is no formal particular disengagement of Palestinian refugees, they have been severely affected in terms of worsened social and economic conditions due to internal conflicts lasting for years. Therefore, in order to comprehend the overall legal and socioeconomic conditions of Palestinian refugees in Syria appropriately, it is necessary to examine the Syrian case in two phases, before and after the 2011 civil war.

Since their first flight, Palestinian refugees had been successfully integrated into social and economic life in Syria. They were formally granted fundamental rights to live in dignity within the country. Different from Jordan and Lebanon, Syria did not impose restrictions on employment, access to health care services, education, movement and

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<sup>337</sup> Brand, L. (1988). Palestinians in Syria: The politics of integration. *Middle East Journal*, 42(4), p. 621.

<sup>338</sup> Ibid, p. 622.

<sup>339</sup> BADIL, (2022). Survey of Palestinian Refugees and Internally Displaced Persons, 2019-2021, p. 112.

even property ownership. In the first place, they were allowed to work in both public and private sector without requiring a work permit, and even own their own business.<sup>340</sup> Only those who were accepted as refugees after 1956 were subjected to some restrictions on working in civil occupations.<sup>341</sup> Therefore, unemployment rate among Palestinian refugees in Syria has always been lower than other states where UNRWA operates. In this way, economic freedom paved the way for increasing welfare among Palestinian refugee population. Furthermore, free access to social services of Syrian government similar to Syrian nationals provided better developments in terms of health conditions and literacy rates among refugees. Basically, Palestinian access to free education at all levels including higher education was facilitated by government. There was no distinction between Syrian nationals and Palestinian refugees in education system.<sup>342</sup> Similarly, public health care services were also free to all Palestinians in Syria. Besides, freedom of movement was granted to all Palestinian refugees. Same as for Syrian nationals, the government issued both identity cards and travel documents to freely move within and outside the country.<sup>343</sup> In terms of property ownership, Palestinian refugees were allowed to possess a single personal house.<sup>344</sup> Other than that, however, personal ownership of land, business constructions and more than one house were formally restricted to preserve economic and social stability of the society.<sup>345</sup> Ultimately, it can be concluded that Palestinian refugees had been enjoying wide-range of economic and social rights in Syria for decades. Syrian

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<sup>340</sup> Ibid, p. 113.

<sup>341</sup> Ibid.

<sup>342</sup> Brand, L. (1988). Palestinians in Syria: The politics of integration. *Middle East Journal*, 42(4), p. 623.

<sup>343</sup> BADIL, (2005). *Closing Protection Gaps: Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*. Bethlehem: BADIL Resource Center for Palestinian Residency and Refugee Rights, p. 17.

<sup>344</sup> Ibid.

<sup>345</sup> BADIL, (2022). *Survey of Palestinian Refugees and Internally Displaced Persons, 2019-2021*, p. 113.

governments had been usually motivated to provide economic and social integration of Palestinian refugees while preserving their original Palestinian identity.<sup>346</sup>

However, with the emergence of Syrian civil war in 2011, living conditions of Palestinian refugees in Syria was intensely reversed, as for Syrian nationals. Consequences of long-lasting civil war are detrimental for all Syrian population. Basically, it devastated political, economic and social stability in the country. Millions of Syrians had to flee the country to seek asylum in neighboring countries and eventually in Europe. Among them, many Palestinian refugees residing in Syria were subjected to second or more rounds of displacement. According to UNRWA, it is estimated that around 120,000 Palestinian refugees had to leave Syria after 2011.<sup>347</sup> They have taken shelter in neighboring countries, especially in Lebanon and Jordan.<sup>348</sup> However, unlike Syrian refugees, Palestinian refugees from Syria were not appropriately welcomed by these countries. Many have faced significant difficulties to find refuge there. Due to above mentioned discriminatory attitudes, significant numbers of Palestinian refugees were sent back to Syria by Lebanese and Jordanian governments. Moreover, humanitarian conditions of those who could enter have been equivalently worse in Lebanon and Jordan. Although UNRWA operates in these countries, basic assistance services are noticeably inadequate for them as well as other Palestinian refugees, which put them highly precarious situation.

On the other hand, majority of Palestinian refugee population remained in Syria. Recent UNRWA records remark that there are nearly 438,000 Palestine refugees currently provided with basic humanitarian assistance in Syria<sup>349</sup>. However, most of them have constantly faced internal displacement due to fear of violent confrontations

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<sup>346</sup> Bastaki, J. (2017). The Legacy of the 1951 Refugee Convention and Palestinian Refugees: Multiple Displacements, Multiple Exclusions. *Berkeley J. Middle E. & Islamic L.*, 8, 1, p. 8.

<sup>347</sup> UNRWA. "Where We Work", Syria. Available at: [https://www.unrwa.org/where-we-work/syria#:~:text=\\*Figures%20as%20of%20July%202022,visit%20the%20Syria%20crisis%20page](https://www.unrwa.org/where-we-work/syria#:~:text=*Figures%20as%20of%20July%202022,visit%20the%20Syria%20crisis%20page).

<sup>348</sup> UNRWA, (2021). Syria: 10 Years of Multiple Hardships For Palestine Refugees, News Releases. <https://www.unrwa.org/newsroom/press-releases/syria-10-years-multiple-hardships-palestine-refugees>.

<sup>349</sup> Ibid.

between Syrian army and other armed groups.<sup>350</sup> Numerous houses were demolished during the war, which left many of them without appropriate accommodation. It is estimated that nearly 280,000 Palestinian refugees are internally displaced in Syria.<sup>351</sup> Furthermore, three main refugee camps, where around thirty percent of total Palestinian refugee population used to stay, were entirely demolished as a result of bombings and violent attacks.<sup>352</sup> Thus, the great majority of Palestinian refugees have lost fundamental means of livelihood. Within these circumstances, it is evident that they have been significantly suffering from human rights abuses for years in Syria, similar to Syrians. Palestinian refugees are struggling to sustain their daily life under very harsh conditions. UNRWA indicates that nearly ninety-one percent of total Palestinian population remained in Syria live in absolute poverty.<sup>353</sup> Therefore, they rely heavily on basic humanitarian services of UNRWA. It is reported that 420,000 Palestinian refugees out of 438,000 total residents in Syria are “in need of cash and in-kind food assistance”.<sup>354</sup> UNRWA currently operates in Syria by providing basic daily humanitarian needs as well as education and health facilities. Still, as the only international agency providing assistance to all Palestinian refugees in Syria, Lebanon and Jordan, UNRWA suffers from significant financial scarcity. Nonetheless, the international community does not pay enough attention neither to the Palestinian refugees’ plight nor to UNRWA's inadequacy.

All in all, there are two periods when Palestinian refugees have experienced totally reversed conditions in Syria. Before 2011, they had lived in decent conditions with an access to many of the government services. Syrian government had also offered most of the basic human rights to facilitate their integration into Syrian society. However, following Syrian civil war erupted in 2011, Palestinian refugees were severely affected

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<sup>350</sup> BADIL, (2022). Palestinians and the Search for Protection as Refugees and Stateless Persons, June 2022, p. 9.

<sup>351</sup> Bastaki, J. (2017). The Legacy of the 1951 Refugee Convention and Palestinian Refugees: Multiple Displacements, Multiple Exclusions, p. 15.

<sup>352</sup> BADIL, (2022). Survey of Palestinian Refugees and Internally Displaced Persons, 2019-2021, p. 114.

<sup>353</sup> UNRWA, (2021). Syria: 10 Years of Multiple Hardships for Palestine Refugees.

<sup>354</sup> UNRWA, (2023). UNRWA: Syria - Humanitarian Snapshot, September & October 2022.



by consequences of the war. Many have left Syria to secure themselves from widespread violence, while majority of Palestinian refugee population remained in Syria. Currently, living conditions are extremely harsh for both those who left and those who remained. On the one hand, those who left Syria faces great discrimination in neighboring countries. Basically, they are more vulnerable than ordinary Syrian refugees since their legal status is unrecognized for international protection. In other words, they cannot enjoy an equal treatment with Syrian refugees across the world. As a result, vast majority of them are still in need of basic humanitarian assistance. On the other hand, those who remained in Syria suffered from internal displacement. Due to the severity of the enduring war, majority of Palestinian refugees have lost their houses and basic livelihoods. Currently, they are incapable of meeting their fundamental humanitarian needs since great majority live in supreme poverty. Ultimately, this analysis concludes that Syria was the only Arab host country having conducted policies to properly integrate Palestinian refugees into almost all spheres of life. Historically, it differs from Jordan and Lebanon in terms of just treatment towards Palestinian refugees in consistent with fundamental human rights and international law. Nevertheless, Palestinian refugees ultimately suffer from severe living conditions all in Jordan, Lebanon and Syria today.

#### **7.1.4. Occupied Palestine Territories (OPTs)**

Occupied Palestine territories refer to the West Bank and the Gaza Strip both taken over by Israel during the 1967 War. Earlier, the West Bank was under the control of Jordan, while the Gaza Strip was controlled by Egypt. Until then, conditions of Palestinian refugees in both territories were highly dependent on unstable political environments of Jordan and Egypt respectively. In the first place, Palestinian refugees in the West Bank were recognized Jordanian citizenship, but they had faced significant restrictions and discrimination in daily life during their dwelling as a part of Jordan state. On the other hand, Palestinian refugees in the Gaza Strip during Egyptian control had acquired temporary residency. Even though they had experienced relatively favorable treatment, there had still been certain restrictions on basic rights and freedoms as refugees of concern to Egypt. In fact, UNRWA has been operating in both territories from the outset, but it has still been inadequate that Palestinian refugees did

not really enjoy stable standards in terms of legal status and living conditions. Nevertheless, with the Israeli occupation of both territories, conditions for Palestinian refugees were deteriorated after 1967.

After the occupation, Israel has conducted military administration over the West Banks and the Gaza Strip. Palestinian refugees' legal status was the same as other Palestinians in the territories. They have been regarded as foreigners in the State of Israel. Also, their residency status has been designed through application of strict military rules.<sup>355</sup> Therefore, they have been denied accessing fundamental rights and freedoms neither as residents nor people of concerns to the State of Israel. They have been facing heavy restrictions on accessing employment, health care services, education and many other basic facilities that must have been provided by Israeli government. In this regard, it is evident that Palestinian refugees as well as other non-refugee Palestinian residents in these occupied territories face inhuman conditions in their daily economic and social life without any access to basic livelihoods. Majority of the refugee population experiencing a humanitarian crisis with an extreme poverty, and they have only limited access to clean water, electricity and other essential means.

With the Oslo Accords in 1993, even though it was agreed to establish interim self-government by Palestinian Authority (PA) in the West Bank and the Gaza Strip<sup>356</sup>, Israel preserves its tight control over two territories in terms of military administration. Especially after Hamas takeover of the Gaza in 2007, Israel imposed strong air and sea blockade over the territory. As a result, both armed attacks and bombings result in killings and injuries of many Palestinian people including refugees. Similarly, in the West Bank, strict Israeli security control prevents effective protection and emergency assistance of Palestinian refugees, as well as resulting in an insecure environment. More generally, Israeli oppressive rule in both territories includes violent attacks targeting civilians, destructions of accommodations and unlawful detentions.

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<sup>355</sup> BADIL, (2005). Closing Protection Gaps: Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention. Bethlehem: BADIL Resource Center for Palestinian Residency and Refugee Rights, p. 20.

<sup>356</sup> Peace Agreements & Related, Declaration of Principles on Interim Self-Government Arrangements ("Oslo Agreement"), 13 September 1993, available at: <https://www.refworld.org/docid/3de5e96e4.html> [accessed 7 July 2023]

Basically, it is internationally recognized that Israel has been violating fundamental human rights and international law in legal and physical treatments towards Palestinian refugees for decades. Recent press released by the UN Human Rights Council confirms that “with the eyes of the international community wide open, Israel had imposed upon Palestine an apartheid reality in a post-apartheid world.”<sup>357</sup> In addition, Amnesty International also calls oppressive rule of Israel in OPTs as a systemized “crime of apartheid under international law”.<sup>358</sup>

By 2022, the number of Palestinian inhabitants in the West Bank is 3,222,646 according to Palestinian Central Bureau of Statistics (PCBS).<sup>359</sup> Among them, there are 903,762 registered refugees under UNRWA’s mandate.<sup>360</sup> More than thirty percent of refugee population live in 18 recognized refugee camps.<sup>361</sup> UNRWA still delivers limited education and health care services, but they are evidently not adequate due to strict Israeli oppression on daily life. Therefore, conditions for Palestinian refugees in refugee camps as well as others outside the camps are extremely far from meeting fundamental humanitarian needs. In this sense, UNRWA best illustrates the severity of situation by stating that:

*Refugees are facing an increasing number of protection threats from armed conflicts in Syria, the West Bank and the Gaza Strip. Prolonged political, social and economic instability combined with repeated and widespread violations of human rights will have significant adverse effects upon the mental health and psychosocial well-being of Palestine refugees.*<sup>362</sup>

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<sup>357</sup> UN Human Rights Council, Special Rapporteur on the situation of human rights in the Occupied Palestinian Territories: Israel has imposed upon Palestine an apartheid reality in a post-apartheid world, 25 March 2022. <https://www.ohchr.org/en/press-releases/2022/03/special-rapporteur-situation-human-rights-occupied-palestinian-territories>.

<sup>358</sup> Amnesty International, (2023). Amnesty International Report 2022/23: The state of the world’s human rights, 27 March 2023, p. 206. <https://www.amnesty.org/en/documents/pol10/5670/2023/en/>.

<sup>359</sup> Palestinian Central Bureau of Statistics, 2023. Palestine in Figures 2022. Ramallah – Palestine, p. 11.

<sup>360</sup> UNRWA. “UNRWA Registered Population Dashboard”. Available at: <https://www.unrwa.org/what-we-do/relief-and-social-services/unrwa-registered-population-dashboard#block-menu-block-10>.

<sup>361</sup> UNRWA. “Where We Work”, West Bank. Available at: <https://www.unrwa.org/where-we-work/west-bank>.

<sup>362</sup> UNRWA, (2016). UNRWA Medium Term Strategy 2016–2021, p. 5, para. 6. Available at: [https://www.unrwa.org/sites/default/files/content/resources/mts\\_2016\\_2021.pdf](https://www.unrwa.org/sites/default/files/content/resources/mts_2016_2021.pdf).

On the other hand, today, the population of the Gaza Strip is 2,196,407, as PCBS indicates.<sup>363</sup> According to UNRWA, there are 1,569,125 registered refugees out of total population.<sup>364</sup> Essentially, due to persistent conflicts and years of blockade, it is estimated that eighty percent of the population are highly dependent on daily assistance.<sup>365</sup> It is firmly restricted to attain employment that about a half of the population are unemployed.<sup>366</sup> Consistently, economic and social stability are extremely devastated. Furthermore, it is reported that about ninety five percent of the population do not have an access clean water.<sup>367</sup> Again, despite UNRWA's education, health care and emergency services, vast majority of the refugees face difficulties regular access to these services. There are eight recognized refugee camps of UNRWA in Gaza. However, conditions in camps are extremely inconvenient that all of them suffers from high density and there is no adequate infrastructure to host as many as refugees. Still, neither governing powers Israel and partially Hamas nor international actors provide an emergency international protection for Palestinian refugees in Gaza where "humanitarian conditions are at crisis level"<sup>368</sup>.

Overall, Palestinian refugees in occupied territories have been suffering from human rights violations under Israeli rule since 1967. Aside from struggling with resilient humanitarian conditions in terms of attaining fundamental daily needs, they also confront systematic physical violence resulting in numerous deaths and injuries under oppressive and discriminatory regime imposed by Israel. In this respect, despite

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<sup>363</sup> Palestinian Central Bureau of Statistics, 2023. Palestine in Figures 2022. Ramallah – Palestine, p. 11.

<sup>364</sup> UNRWA. "UNRWA Registered Population Dashboard". Available at: <https://www.unrwa.org/what-we-do/relief-and-social-services/unrwa-registered-population-dashboard#block-menu-block-10>.

<sup>365</sup> United Kingdom: Home Office, Country Information and Guidance - Occupied Palestinian Territories (OPTs): Security and Humanitarian Situation, June 2015, Version 1.0, available at: <https://www.refworld.org/docid/558807464.html> [accessed 7 July 2023]

<sup>366</sup> UNRWA. "Where We Work", Gaza Strip. Available at: <https://www.unrwa.org/where-we-work/gaza-strip>.

<sup>367</sup> Ibid.

<sup>368</sup> BADIL, (2022). Palestinians and the Search for Protection as Refugees and Stateless Persons, June 2022. Bethlehem, Palestine: BADIL Resource Center for Palestinian Residency and Refugee Rights, p. 9.

significant international condemnations on wide-range human rights violations of Israel, necessary steps are still taken to deliver proper international protection for Palestinians and especially for Palestinian refugees.

## **7.2. Non-Arab World: Misinterpretation of Article 1D**

In this part, the conditions of Palestinian refugees are examined in terms of different interpretations of their legal status under Article 1D of the 1951 Refugee Convention as a result of which their asylum admittances are being shaped for years. Basically, significant problems occur when Palestinian refugees seek asylum in a third country, especially in the Western world. Most of the time, their asylum applications are being rejected mainly by the European states. The main reason is that uncertain legal position of Palestinian refugees in international law. As discussed earlier, Article 1D of the 1951 Convention deprived them of the benefits of international protection, which is, in this case, resettlement to a third country as one of the alternatives of a durable solution to the refugee problem.

Even though there have been several amendments made by UNHCR in their interpretation of Article 1D, it has never gained a universal recognition to equally deliver Palestinian refugees a right to asylum. Basically, UNHCR has clearly revealed through successive official statements starting with its “Note on the Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian refugees in 2002”<sup>369</sup> that Article 1D also contains an inclusion clause in its second paragraph for certain cases. Accordingly, it has been ultimately indicated that those Palestinian refugees who are neither 1948 refugees nor 1967 displaced persons<sup>370</sup> and are not eligible to UNRWA services due to several designated “objective reasons”<sup>371</sup>

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<sup>369</sup> UNHCR, (2002).

<sup>370</sup> Ibid.

<sup>371</sup> UN High Commissioner for Refugees (UNHCR), Note on UNHCR's Interpretation of Article 1D of the 1951 Convention relating to the Status of Refugees and Article 12(1)(a) of the EU Qualification Directive in the context of Palestinian refugees seeking international protection, May 2013, p. 4, available at: <https://www.refworld.org/docid/518cb8c84.html> [accessed 15 July 2023]

are entitled to be recognized as refugees seeking asylum, without requiring them to meet refugee criteria in Article 1A (2) of the of the Convention.

Nevertheless, European states that are mostly parties to the 1951 Convention and its 1967 Protocol have significantly varied in their treatment to the asylum applications of Palestinian refugees. Palestinian refugees are supposedly given a special refugee status that their applications need to be evaluated under provisions of Article 1D. It means that they are not required to meet individual refugee criteria because their refugee status is determined on the basis of their collective positions in international law. However, it represents major flaw of international refugee regime that it paved the way for this inconsistency in determination of refugee status through their abstract definition of a Palestine refugee and former interpretation about Article 1D. Before 2002, UNHCR contributed a lot to this inconsistency since they basically argued that those Palestinian refugees seeking asylum need to meet individual criteria of being a refugee under Article 1A (2). Therefore, recent reinterpretations of UNHCR did not really change general attitudes of many states accordingly. Consequently, many states ignore distinctive position of Palestinian refugees, and expect them to meet individual criteria of Article 1a (2) rather than considering these refugees as a group. In this way, Palestinian refugees who mainly come from countries of their first refuge are considered to escape from discrimination rather than persecution. The main explanation is that either they did not incorporate Article 1D into their legislation or they do not apply inclusion clause of Article 1D at domestic level due to misinterpreting it. Basically, misinterpretations generally derive from the fact that Article 1D basically excludes Palestinian refugees from benefits of the Convention. Consequently, special positions of Palestinian refugees are not properly considered when receiving asylum applications. Still, there are several European states that both incorporate Article 1D into national legislation and apply it in national practices, which are Finland, Hungary and occasionally Norway.<sup>372</sup>

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<sup>372</sup> BADIL, (2005). Closing Protection Gaps: Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention. Bethlehem: BADIL Resource Center for Palestinian Residency and Refugee Rights, p. 337.

Furthermore, most of the Palestinian refugees are regarded as stateless persons or stateless Palestinians.<sup>373</sup> Nonetheless, It is also problematic that their stateless status is not widely recognized since the 1954 UN Convention relating to the Status of Stateless Persons contained similar provision to the 1951 Convention stating that it shall not apply stateless people “who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance so long as they are receiving such protection or assistance”<sup>374</sup>. As a result, in most cases, Palestinian refugees cannot attain benefits of both refugee convention and stateless convention when seeking asylum in a third country.

Basically, there are two outcomes when Palestinian refugees are rejected to be granted asylum in a country. In the first place, they are generally allowed to stay without any legal status. It is mainly because returning them to their country of origin or country of first refuge would endanger them due to well-established environment of violence and persecution. Yet, it is still problematic that they cannot have an opportunity to live in dignity and safety due to economic and social challenges due to not having legal access to any services provided by the host government. On the other hand, though, policy practices of some states contain even detention of Palestinian refugees whose asylum application is rejected. Once they their application is denied they are requested to leave the country voluntarily at earliest date possible. Then, if this request is not fulfilled by refugees themselves, they are forcibly deported. It is forgotten, however, that Palestinian refugees often have no place to return to. In these cases, it is precisely against the core principle of the 1951 Refugee Convention, non-refoulment. However, there is often no effective international response to such violations of international refugee law.

As a result, Palestinian refugees have constantly suffered from their ambiguous legal status under international law in their search for better and safe living conditions. In most of the cases, even though most of the Western countries are parties to the Refugee

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<sup>373</sup> Ibid, p. 335

<sup>374</sup> UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, art. 1D, available at: <https://www.refworld.org/docid/3be01b964.html> [accessed 15 July 2023]

Convention and Stateless Convention, except the UN, Palestinian refugees are still exposed substantial difficulties to take a refuge in consistent with the international law. Therefore, it demonstrates that excluding them from global refugee definition and from the mandate of global refugee regime costs humanitarian challenges for them across the world.

### **7.3. The Problem of Multiple Displacement**

There are many reasons why the Palestinian refugee problem, one of the most serious refugee crises the world has ever seen, is unique. In the first place, it is the most protracting refugee problem ever continuing more than seven decades without any improvements in terms of durable solution and enhancement of their living conditions. As covered, this uniqueness in fact results from their discriminated legal position in international refugee law. In this sense, Palestinian refugees have always suffered from lack of consistent international protection that is provided for any other refugees across the world. Therefore, their political, economic and social conditions have always been vulnerable throughout their displacement. In addition to this fundamental vulnerability, however, one of the most important factors that has made their situations even worse is that a considerable percentage of Palestinian refugee population has been to date experiencing multiple displacements since their first flight in 1948.

Significantly, they were not evicted only from their homeland, but they have also been subjected to other displacements in host states over time. Basically, Palestinian refugees forcibly expelled from the territory of Palestine through violent conflicts and destructive Israeli oppression was dispersed across the region for seeking safety. However, they could not find what they are looking for. In the course of their displacement, they have not been welcomed and treated similar to other refugee populations. They have usually faced either formal or informal discriminations where they took refuge in search for better living conditions. Regularly, they have been suffering from extensive denial of their fundamental human rights, extreme poverty and perilous insecurity. As a consequence, since perpetuation of their plight did not entirely end, many Palestinian refugees either voluntarily or compulsorily left various host states. Furthermore, those Palestinians internally displaced in the State of Israel



have also faced repeated displacements as a result of oppressive Israeli military rule aiming to expel rest of the population by the means of inhuman treatments, denial of basic rights, and even physical violence. Therefore, their internal and external displacements have continued over time depended on various approaches of host states in the region and systematic Israeli eviction policies.

Apart from various discriminations and denial of their fundamental rights in Arab host states and Israel, another prominent factor enforcing Palestinian refugee to a second or more displacement is the unstable and insecure political environment in the Middle East. In the first place, starting with the major Arab-Israeli confrontation in 1948, the region has experienced persistent and violent armed conflict since then. While these conflicts sometimes took place between Arab states and Israel, other conflict has also arisen among Arab states and Palestinian armed groups as well. Definitely, external interventions by the Western states especially the United States had also worsened the situation in the region subsequently. On the other hand, significant changes in internal political interests in host states have severely affected Palestinian refugees since their position has always been vulnerable to policy shifts concerning them. Overall, as a result of these severe conditions in the host states and the region in general, Palestinian refugees have been often subjected multiple displacements over the course of their flight.

In order to demonstrate their struggle with repeated displacements, several concrete illustrations are represented in this part of the thesis. In the first place, as consequences of 1947-1948 civil war and eventual 1948 Arab-Israeli War, about a million Palestinian refugees became displaced. In addition, about 30,000 Palestinians were internally displaced out of nearly 150,000 Palestinian dwellers who remained in the State of Israel after the war ended.<sup>375</sup> Following their initial expulsion from their houses and villages within the newly created state, many internally displaced Palestinians also faced further displacement as a result of oppressive and brutal Israeli military rule over them. Israel continued its expulsion strategy to provide political,

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<sup>375</sup> BADIL, (2005). Closing Protection Gaps: Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention. Bethlehem: BADIL Resource Center for Palestinian Residency and Refugee Rights, p. 3.

social and economic Jewish unity within the borders of the new state. Therefore, Israel conducted forced eviction policies over Palestinian populations remained in the country, including internally displaced Palestinians. In this sense, Palestinians have experienced a second displacement immediately after 1948. These policies of Israel have constantly continued over time, which has also resulted in further displacements of Palestinian refugees between 1948 and 1967. Furthermore, another major displacement took place with the Israeli occupation of the West Bank and the Gaza Strip during 1967 Arab-Israeli war. It is estimated that nearly 400,000 Palestinians were displaced as a result of the war.<sup>376</sup> About half of them have experienced multiple displacements after their first flight back in 1948.<sup>377</sup> In addition, many of those who remained in the occupied territories also experienced secondary or more displacement due to prevailing legal and physical oppression of Israel. Since then, the total number of displaced Palestinians is estimated to be at least 800,000, including both internal and external displacement.<sup>378</sup> Even today, Palestinian refugees are suffering from further displacement under oppressive rule of Israel both in the West Bank and the Gaza Strip. For instance, more than 475,000 Palestinians were displaced as a result of the brutal war in Gaza in 2014, many of whom had experienced multiple displacements.<sup>379</sup>

Also, Palestinian refugees in host states across the region have faced multiple displacements. Initially, Palestinian workers including 1948 refugees were expelled from the Gulf States in the mid-1950s, since they had involved in protests with the local workers against deterioration of oil sector where they were mostly employed.<sup>380</sup> Consequently, many 1948 refugees were displaced again, with the immediate deportation of Palestinian workers by the major Gulf States, Iraq, Kuwait, Libya and

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<sup>376</sup> Ibid.

<sup>377</sup> Ibid.

<sup>378</sup> Ibid.

<sup>379</sup> UNRWA, (2016). UNRWA Medium Term Strategy 2016–2021, p. 13, para. 31. Available at: [https://www.unrwa.org/sites/default/files/content/resources/mts\\_2016\\_2021.pdf](https://www.unrwa.org/sites/default/files/content/resources/mts_2016_2021.pdf).

<sup>380</sup> Brand, L. A. (1988). *Palestinians in the Arab world: institution building and the search for state*. Columbia University Press, p. 126.

Saudi Arabia.<sup>381</sup> Later in the early 1970, Palestine Liberation Organization (PLO) had gained a significant strength after carrying its headquarter in Jordan as a result of Israel's 1967 occupation of the West Bank. In addition, it supported Palestinian Resistance Movements (PRM) consisting of many armed Fedayeen groups, and then began to act independent from Jordanian administration.<sup>382</sup> Gallets argues that PRM attempted to form a "state within a state" by strong motivation of having great numbers of Palestinian population in Jordan.<sup>383</sup> Disturbed by this situation, Jordan attempted to execute control over the PLO. Consequently, after acquiring a victory over PLO and resistance movement, the Jordanian government began expelling members of the Organization out of the country. Within these circumstances, many Palestinian refugee families were also deported as a result of this internal turmoil.<sup>384</sup> Consequently, many Palestinian refugees fled Jordan after 1948 were subjected to the second displacement.

Afterwards, the consequences of the long-lasting war in Lebanon between 1975 and 1991 had also been detrimental for Palestinian refugees. Started as a civil inconvenience in 1975, conflicts had evolved in a wide-ranging clashes and eventual war which lasted for about sixteen years. Experiencing constant state of war in the country, at least 100,000 Palestinian refugees had to flee Lebanon between 1975 and 1991. They mostly sought refuge in neighboring Arab states under difficult conditions. Thus, apart from their previous displacement, they experienced another extensive displacement during the time.

Furthermore, one of the largest displacements of Palestinian refugees took place in the early 1990s. The Gulf crisis broke out when Saddam Hussein invaded Kuwait in August 1990.<sup>385</sup> Before the invasion, there were more than 400,000 Palestinians in

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<sup>381</sup> Ibid.

<sup>382</sup> Gallets, B. (2015). Black September and identity construction in Jordan. *Journal of Georgetown University-Qatar Middle Eastern Studies Student Association*, 2015(1), 12, pp. 1-3.

<sup>383</sup> Ibid.

<sup>384</sup> BADIL, (2005). *Closing Protection Gaps*, p. 4.

<sup>385</sup> Le Troquer, Y., & Al-Oudat, R. H. (1999). From Kuwait to Jordan: The Palestinians' Third Exodus. *Journal of Palestine Studies*, 28(3), 37-51.

Kuwait both for economic and security reasons.<sup>386</sup> Many of these Palestinians were actually Jordanian citizens, which means that they were Palestinian refugees displaced in 1948 initially. As a result of state of insecurity during the war, more than 250,000 Palestinians mostly including refugees returned to Jordan.<sup>387</sup> Moreover, when the invasion had ended, while those who left Kuwait were not allowed to return, about 40,000 more Palestinians were also forcibly expelled from Kuwait by justifying that Yasser Arafat, the leader of PLO at the time, supported Iraqi occupation.<sup>388</sup> As result, many Palestinian refugees were subjected repeated displacement again.

Later in 1995, thousands of Palestinian refugees were forced to leave Libya as a response to peace agreement between Israel and PLO since the leader of Libya at the time, Muammar Gaddafi, strongly protested this agreement.<sup>389</sup> However, the situation was severely critical when nearly 30,000 Palestinian refugees expelled from Libya could not return neither their first countries of refuge nor other Arab neighboring states.<sup>390</sup> On the one hand, Israel had strictly regulated Gaza borders to prevent entries. On the other hand, Egypt and Lebanon had also put strong restraints on entries of Palestinian refugees from Libya. As a result, Palestinian refugees who had already experienced multiple displacements were readmitted to Libya after UNHCR and UNRWA collectively persuaded the Libyan leader.<sup>391</sup> However, Palestinian refugees have been victims of repeated displacement during their forced journey again.

Recently, with the outbreak of Arab Spring in the late 2010, Palestinian refugees were also affected by violent confrontations as nationals of countries across the region. However, the most detrimental effect resulted from Syrian civil war erupted in 2011.

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<sup>386</sup> Erakat, N. (2014). Palestinian refugees and the Syrian uprising: Filling the protection gap during secondary forced displacement. *International Journal of Refugee Law*, 26(4), p. 591.

<sup>387</sup> Le Troquer, Y., & Al-Oudat, R. H. (1999). From Kuwait to Jordan: The Palestinians' Third Exodus, p. 37.

<sup>388</sup> Ibid, p. 38.

<sup>389</sup> Erakat, N. (2014). Palestinian refugees and the Syrian uprising: Filling the protection gap during secondary forced displacement, p. 592.

<sup>390</sup> Ibid.

<sup>391</sup> Ibid.

As mentioned earlier, there were 568,730 registered Palestinian refugees before the outbreak of war in Syria, according to UNRWA.<sup>392</sup> However, protracting war in Syria brought about the fact that around 120,000 Palestinian refugees had to leave the country.<sup>393</sup> Moreover, around 280,000 Palestinian refugees remained in Syria also became internally displaced in the course of the war.<sup>394</sup> However, the situation is very devastating for both those who left the country and those who stayed. On the one hand, Palestinian refugees who left Syria had faced many serious difficulties to get accepted by neighboring countries. As subsequently highlighted in this chapter, especially Lebanon and Jordan imposed strong restrictions on Palestinian refugee entries, while Syrian refugees were allowed to enter both territories by large numbers. Basically, there are serious human rights violations against Palestinian refugees who have been even returned to Syria by host states. In fact, the conditions of those who achieved to enter Lebanon or Jordan are not largely different than others. Both governments imposed strong discriminatory policies over Palestinian refugees in these countries, which prevent them to benefit fundamental human rights as protracted refugees. On the other hand, those who remained in Syria have experienced displacement within the country. Constant state of violence has led many people in the country to leave their places to avoid any physical harm. Moreover, some densely populated refugee camps have also been demolished during the confrontations. As a result, remaining refugee camps have started to suffer from overcrowding. As UNRWA remarks, more than ninety-five percent of the total refugee population in Syria are in need of emergency food and cash assistance.<sup>395</sup> As Syrian case shows that Palestinian refugees' protracting trouble continues even today, after seventy-five years of their exodus. Most importantly, however, it is essential to contemplate that they do not only suffer from

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<sup>392</sup> UNRWA. "Where We Work", Syria. Available at: [https://www.unrwa.org/where-we-work/syria#:~:text=\\*Figures%20as%20of%20July%202022,visit%20the%20Syria%20crisis%20page](https://www.unrwa.org/where-we-work/syria#:~:text=*Figures%20as%20of%20July%202022,visit%20the%20Syria%20crisis%20page).

<sup>393</sup> Ibid.

<sup>394</sup> Bastaki, J. (2017). The Legacy of the 1951 Refugee Convention and Palestinian Refugees: Multiple Displacements, Multiple Exclusions. *Berkeley J. Middle E. & Islamic L.*, 8, 1, p. 15.

<sup>395</sup> UNRWA, (2023). UNRWA: Syria - Humanitarian Snapshot, September & October 2022. [https://www.unrwa.org/sites/default/files/content/resources/syria\\_-\\_humanitarian\\_snapshot\\_september\\_october\\_2022.pdf](https://www.unrwa.org/sites/default/files/content/resources/syria_-_humanitarian_snapshot_september_october_2022.pdf).

duration of the problem, but they also struggle with repeated consequences in the forms of multiple displacement throughout their exile.

In general, one of the most significant gaps in Palestinian refugee protection is that they have had to experience more than one displacement during their flight. Due to their discriminated legal status in international refugee law, Palestinian refugees mostly cannot enjoy minimum standards of human rights. Except some countries, they have always confronted various degrees of discrimination in host states. Furthermore, political instability in the region has also had negative effects on them. In these cases, Palestinian refugees became the first victims of changing policy initiatives in domestic sphere and general insecure political environment of the Middle East. The consequence for them has often been a new displacement from where they had recently stayed. Even, they have often faced many difficulties to find asylum from persecution in European states. As Article 1D of the Refugee Convention excluded them from universal refugee definition, they have been treated as foreigners who need to prove individual criteria of owing well-founded fear from persecution based on Article 1A (2). These misinterpretations of the European states had also contributed other displacements for Palestinian refugees. For this reason, Akram truly argues that “Palestinians are not recognized either as refugees or stateless persons in the majority of cases in the Western world, and reside in a precarious status where they are also vulnerable to multiple displacements due to their “non-returnability”.<sup>396</sup> Overall, a significant protection gap exists in the international refugee system as, unlike other refugee groups in the world, Palestinian refugees are not offered stable political, economic and social conditions consistent with their fundamental human rights.

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<sup>396</sup> Akram, S. M., Dumper, M., Lynk, M., & Scobbie, I. (Eds.). (2011), p.23.

## **CHAPTER 8**

### **CONCLUSION**

The Palestinian refugee crisis is unique among other refugee crises the world has ever witnessed thus far, including the Syrian and Ukrainian. Its uniqueness stems from the fact that they have been deprived of their fundamental human rights during their protracted displacement of more than seven decades. Unlike other refugee populations in the world, Palestinian refugees have never had legal access to international protection. As the main responsible for providing international protection, the international refugee regime has excluded them from its protection mandate through certain legal and institutional arrangements. In this sense, this thesis analyzed that their initial exclusion from universal refugee definition in the 1951 Refugee Convention has created detrimental effects on the fate of Palestinian refugees. It was assessed that Palestinian refugees have never been recognized as legitimate refugees under international refugee law. Hence, they could not enjoy the international protection afforded by the international refugee regime. In addition, it was examined that a distinctive regime established to provide protection and assistance to Palestinian refugees has also failed to fulfill its protection role. As a consequence, Palestinian refugees have faced many discriminations and inhuman conditions in the countries of refuge due to their uncertain legal status and absence of protection by the regime. To being said, they have always suffered from legal and physical insecurity since their first flight. Therefore, this thesis argued that international refugee regime has failed to provide protection to Palestinian refugees. Basically, its failure resulted from certain legal and institutional gaps that have not been even intended to fill to date. Ultimately, these gaps mainly represent an overall protection gap in the regime for Palestinian refugees.

The main argument of this thesis is the extent to which international refugee regime has failed to protect Palestinian refugees. Basically, it was argued that international refugee protection composes of two aspects. The first is legal protection. Legal protection means securing the legal status of refugees to ensure that they ultimately enjoy basic human rights and durable solutions. The second is physical protection. Physical protection basically comprises of ensuring physical security and material well-being of refugees through the equitable distribution of services. Even though international refugee regime has failed on both counts in general, this thesis further emphasized that Palestinian refugees are totally devoid of legal protection since the beginning of their first displacement. Critically, the legal status of Palestinian refugees in international law was intentionally left ambiguous. Their exclusion from general refugee definition resulted in an unrecognized legal position in the application of international law. Ultimately, it was addressed that the legal gap is evident in the regime.

In order to demonstrate this legal gap, this thesis analyzed that the 1951 Refugee Convention was already problematic in nature as a foundation of newly emerging international refugee law. It was only restricted to encompass European refugees displaced across the continent as a result of the WW II. Although several amendments have been later made to serve as a universal instrument, Palestinian refugees have never been included in this universality. This thesis argued that the Palestinian refugee problem has always been considered as a political issue that need a solution through political determinants. This is because international refugee regime has failed to comprehend it is rather a humanitarian problem that need to be solved on the basis of human rights and international law. In this sense, the regime has ignored legal aspect of the problem by leaving Palestinian refugees without certain legal status in international law. It was analyzed that the foundation of the regime was already based on the exclusion of Palestinian refugees. Both the 1951 Refugee Convention and the Statute of UNHCR contained similar provisions that prevent Palestinian refugees to benefit from international protection and assistance role of the regime. The regime assumed that they had been already receiving protection and assistance from other UN agencies at the time. It was theoretically correct that UNCCP and UNRWA were mandated to provide protection and assistance to Palestinian refugees. However, the



regime has ignored that this protection mandate ceased in practice after the UNCCP had proved its failure to fulfill its core responsibilities.

Indeed, the regime has claimed that Article 1D is not all about exclusion of Palestinian refugees. It has been long argued that Article 1D has also an inclusion clause in its second paragraph. The second paragraph indicates that “when such protection or assistance has ceased for any reason”<sup>397</sup>, Palestinian refugees must be entitled to the benefit of the Convention.<sup>398</sup> Accordingly, after the demise of the UNCCP, Palestinian refugees must have fallen under the mandate of the regime, and UNHCR must have also included Palestinian refugee under its role to provide protection. However, this inclusion did not take place through the justification that UNRWA still continues to serve Palestinian refugees. This thesis criticized that the regime in misinterpreting Article 1D of the Convention. Since the clause includes the word ‘or’, when protection mandate of the UNCCP has ended, UNHCR must have taken over this mandate without considering the existence of UNRWA. Because UNRWA did not have a legal mandate to provide protection, but only had assistance mandate. In this context, the regime attempted later to assign a protection role to UNRWA. Afterwards, the absence of international protection has insistently denied by the regime since it has been argued that UNRWA had a protection mandate for Palestinian refugees. Yet, this thesis revealed that legal and institutional arrangements for this protection mandate was insufficient. In fact, there was no legal base for the protection role of UNRWA in international refugee law. It was a UN agency solely responsible for providing relief and emergency assistance to Palestinian refugees, which was also problematic in effectiveness. Essentially, this thesis discussed that UNRWA has always been incapable of providing protection since it has been no legal and economic power. Besides its financial constraint, the main problem is that assumed protection for Palestinian refugee has never been implemented in practice.

This was demonstrated in this thesis with the argument that none of the durable solution alternatives could not be achieved to date. Basically, the most significant form of international protection is promotion of a durable solution to the problems due to

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<sup>397</sup> UN General Assembly, *Convention Relating to the Status of Refugees*, p. 137, art. 1D.

<sup>398</sup> Ibid.

which refugees are in need of protection. It was analyzed that a durable solution is commonly referred in three forms; repatriation, resettlement in a third country or economic and social integration in the country of first refuge. However, UNRWA has never involved in seeking for a durable solution for Palestinian refugee problem. In this sense, the claim of international refugee regime for UNRWA to have a protection mandate was falsified in this thesis. Likewise, the regime has also remained ineffective to involve in promoting any form of durable solution. UNHCR is in fact the main responsible for providing a durable solution as in the case of other refugees in the world. Nevertheless, there have always been legal restrictions that prevented UNHCR to take action. These legal restrictions mainly stem from the unrecognized legal status of Palestinian refugees as legitimate refugees. Basically, the aim here was not to criticize these agencies and their failures. Basically, UNRWA was left alone in tackling with the certain aspects of the problem despite its certain financial troubles. UNHCR, on the other hand, was legally restricted to take over protection mandate to facilitate permanent solution of the problem. The main point is that the regime itself created such a distinctive regime. In the case any inadequacy appears, it is again responsibility of the regime to compensate it. In this sense, in this thesis, it was criticized that the regime did not take any steps to overcome the existing problems. Consequently, it was argued that non-implementation of a durable solution for Palestinian refugees represents the institutional gap in the regime.

In addition, the regime has failed to comply with the basic premises of international law. It was argued that there is a significant inconsistency between principles of international law and its application to Palestinian refugees. This thesis stated that human rights principles were at the heart of the foundation of the regime at the outset. It was essentially underlined that the Universal Declaration of Human Rights (UDHR) was the main reference of the 1951 Refugee Convention.<sup>399</sup> In this context, however, none of the principles of the Declaration was enjoyed by Palestinian refugees from the very beginning of the problem. This thesis argued that the international community has violated the basic principles of international law and human rights by allowing the establishment of a Jewish state. In this case, Palestinians have been denied the basic

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<sup>399</sup> See Preamble of *Convention Relating to the Status of Refugees*.

rights to a nation-state and self-determination. From the outset, the regime, acting with political considerations, has continuously ignored these rights of Palestinian refugees thus far. In accordance, it was revealed that the emergence of the crisis was the result not only of physical violence, but also of legal disruption caused by the international community. In this sense, the international community was primarily responsible for the developments that paved the way for the mass displacement of millions of Palestinians. In addition, Palestinian refugees have been deprived of their nationality by the newly established state of Israel. In response, both international refugee regime and international community as a whole were silent against this human rights violence. Even, the regime deteriorated the situation for Palestinian refugees who became ultimately stateless. Their exclusion did not remained only at the scope of the Refugee Convention, but they were also excluded from the 1951 Convention on Statelessness through similar provision. For these reasons, international refugee regime was the main delinquent in the absence of international protection for Palestinian refugees and stateless persons due to significant legal gaps in itself.

Negatively caused by these legal and institutional gaps in the regime, Palestinian refugees across the world have always been suffering from harsh living conditions for decades. In particular, those living in Arab host states within UNRWA regions, who make up the majority of the total Palestinian refugee population, have received virtually no legal and physical protection from either the international refugee regime or the host state governments. On the contrary, there have constantly been serious discrimination and marginalization against them in the legal, social and economic spheres of life. In fact, the situation is even worse for those living in the West Bank and Gaza Strip. Apart from discrimination and marginalization, they have also faced massive physical violence, detention and deportation over time. Even today, this situation even aggravated with more repressive rule over Palestinian people continues in Israel and the occupied territories of Palestine (OPTs). On the other hand, Palestinian refugees have continuously faced concrete restrictions on the approval of their asylum applications to non-Arab world, especially to Europe. Since most of the European states do not recognize Palestinian refugees as legitimate refugees under international law, they mostly reject to take them under their national protection. In addition, some other states request Palestinian refugees to meet the refugee criteria in

Article 1A (2) of the 1951 Refugee Convention. Although all European states are parties to both 1951 Refugee Convention and its 1967 Protocol, the legal status of Palestinian refugees has generally been misinterpreted and misunderstood by them. Consequently, neither national protection by European states nor international protection by the regime can be provided to Palestinian refugees during their exile. As a result of these two cases in Arab and non-Arab world, they have often experienced multiple displacements in the course of their displacement. Also, this problem of continuous displacement has been one of the several reasons that makes Palestinian refugee problem unique.

Against this background, literature on the protection gap debate is based on the absence of protection for Palestinian refugees in terms of its consequences during their protracted displacement. On the other hand, this thesis emphasized that the protection gap actually lies in the extremely misconfigured structure of the regime, consisting of legal and institutional gaps. In this sense, this thesis sought to provide a more comprehensive understanding of the inverted relationship between the international refugee regime and Palestinian refugees, while serving the same purpose as the literature highlighting the long-standing misery of Palestinian refugees.

Ultimately, in terms of theoretical point of view, this thesis analyzed the failure of international refugee regime to afford protection to Palestinian refugees with reference to liberal theory. It was argued that basic principles of liberal theory were maintained in the legal foundation of the regime. However, these principles had remained only in the theory in terms of its application to Palestinian refugees. In practice, Palestinian refugees did not enjoy equality, freedom, fundamental human rights, self-determination, nationality and the right to return to their homeland. Furthermore, utility of the international organizations, as liberal theory strongly emphasized, has never applied to the Palestinian refugee issue. On the one hand, UNHCR has always refused to be involved, justifying legal restrictions, while on the other hand, UNRWA has been extremely incapable of providing protection to Palestinian refugees. In fact, these are not only historical facts, but also present-day realities. Even today, Palestinian refugees are not recognized as the legitimate holders of these rights. In this sense, this thesis established that international refugee regime failed to comply with

its basic tenets as well as liberal principles. In fact, Palestinian refugee problem is so marginalized that even other actors of international community have hardly concerned with the durable solution of the problem. In this sense, there has always been a serious indifference in the international system regarding the Palestinian refugee crisis at the expense of its founding liberal principles. All in all, this thesis concluded that international protection is either not applicable or inadequate in scope in the case of Palestinian refugees. Due to the existence of legal gap in international refugee regime, Palestinian refugees were left without universally recognized legal status in international law. As a result, international protection became inapplicable to them. On the other hand, institutional arrangements have never been adequate to guarantee international protection for Palestinian refugees. expectedly established distinctive regime entirely failed, while UNHCR as the guardian of international refugee regime assumed to be serving all refugees across the world remained ineffective to execute its core mandate to Palestinian refugees. While the UNHCR, which is supposed to serve all the refugees in the world as the guardian of the international refugee regime, was ineffective in fulfilling its basic mandate towards Palestinian refugees, the distinctive regime established with great expectations has also failed completely.

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## APPENDICES

### A. TURKISH SUMMARY / TRKE ZET

Suriye ve Ukrayna'da devam eden savařların ortaya ıkmasıyla birlikte dnya son dnemde byk aplı mlteci krizlerine tanık oldu. lkelerindeki řiddetli atıřmalar nedeniyle zorla yerinden edilen milyonlarca Suriyeli ve Ukraynalı, zulmden kamak iin komřu lkelere sığınmaya bařladı. Bu krizlerin boyutunun giderek artması sonucunda uluslararası koruma konusu son dnemde yeniden gndeme geldi. te yandan, sırasıyla 1948 ve 1967 yıllarında Filistin topraklarından art arda kaıřlarından bu yana milyonlarca Filistinli mltecinin uluslararası korumadan yararlanması uzun sredir gz ardı ediliyor. Gerekten de Filistinli mlteci krizi, sayısal okluęu ve uzun mrllę bakımından benzersizdir. İlk olarak, Filistinli mlteceler bugn dnyadaki en byk mlteci nfusunu oluřturmaktadır ve toplam sayılarının yaklařık 8,36 milyon olduęu tahmin edilmektedir. Ayrıca, tarihteki en uzun sreli mlteci krizlerinden birini yařamaktadırlar. Yetmiř beř yıllık kitlesel yerinden edilmenin ardından, Filistin mlteci krizi hala zlememiř en nemli mlteci krizi olmaya devam etmektedir.

Bařlangıta, Filistin mlteci krizi esas olarak 1947 yılında Filistin topraklarının Arap ve Yahudi devletleri arasında blnmesini ngren BM planının bir sonucu olarak ortaya ıkmiřtır. Daha sonra, 1948'de İsrail Devleti'nin kurulması ve bunu takip eden Arap-İsrail Savařı ile, blgede yařanan yoęun řiddet olayları nedeniyle krizin boyutları ciddi řekilde artmiřtır. Yaklařık 750.000 Filistinli zorunlu ge maruz kalmıř ve bařta rdn, Lbnan ve Suriye olmak zere komřu lkelere mlteci olarak kamiřtır. Biroęu da savařtan sonra sırasıyla rdn ve Mısır'ın kontrol altına giren Batı řeria ve Gazze řeridi'ne yerleřtirildi. Ardından, İsrail'in Batı řeria ve Gazze řeridi'ni iřgal ettięi 1967 Arap-İsrail Savařı sırasında ve sonrasında bir bařka byk Filistinli g dalgası yařandı. Yine 300.000'den fazla Filistinli yerinden edildi ve

komşu Arap devletlerine sığındı. Bu iki ana yerinden edilmenin dışında, 1948 ve 1967 savaşlarından sonra İsrail toprakları içinde kalan Filistinli nüfus, İsrail hükümeti tarafından temel insan haklarını kısıtlayan baskıcı askeri yönetimle karşı karşıya kalmıştır. İsrail, kuruluşundan bu yana Filistinli nüfusu sistematik olarak devlet dışına çıkarmak için güçlü politikalar izlemiştir. Bu kovma politikalarının bir sonucu olarak, birçok Filistinli farklı zamanlarda İsrail'i terk etmek zorunda kalmıştır. 1967'den bu yana yerinden edilenlerin toplam sayısının 800,000'den fazla olduğu tahmin edilmektedir.

1948'de Filistinlilerin kitlesel olarak yerlerinden edilmesine cevaben, yeni oluşturulan uluslararası sistemdeki ana uluslararası kurum olan BM, Filistinli mültecilere acil uluslararası koruma ve yardım sağlamak için yasal bir çerçeve oluşturmuştur. Filistinli mülteci krizinin çözümüne ilişkin temel yasal belge olan 1948 tarihli 194 (III) sayılı BM Kararı, mültecilerin geri dönüşü veya sığınma ülkelerine yerleştirilmesi gibi temel haklarının korunmasını içeren mülteci korumasına ilişkin temel yasal yapıyı ortaya koymuştur. Kararda ayrıca, mülteci krizine nihai çözüm bulunması ve Araplar ile İsrail arasındaki anlaşmazlığın giderilmesi için Uzlaştırma Komisyonu'nun (UNCCP) kurulması talimatı verilmiştir. Ertesi yıl, Filistinli mültecilere acil yardım ve çalışma programları sağlamak üzere bir başka uluslararası ajans olan BM Yardım ve Çalışma Ajansı (UNRWA) kuruldu. Zaman içinde UNRWA'nın faaliyetleri, bölgedeki bazı siyasi zorluklar nedeniyle acil insani yardım sağlama yönünde gelişti. Bu nedenle UNRWA mültecilerin gıda, barınma, sağlık, eğitim ve sosyal hizmetler gibi temel insani ihtiyaçlarını karşılamaya başlamıştır. Nihayetinde bu iki BM kuruluşu, Filistinli mültecilere genel koruma ve yardım sağlamayı amaçlayan kendine özgü bir rejim oluşturdu. Ancak, bu kendine özgü rejim ile daha sonra oluşturulan uluslararası mülteci rejimi arasında kabiliyet ve etkinlik açısından önemli farklılıklar vardı.

Bu tezin ana değerlendirme konusu olan uluslararası mülteci rejimi, mültecilerin temel insan haklarını ve genel refahını güvence altına almak amacıyla onlara uluslararası koruma ve yardım sağlamak için uluslararası kurumlar, uluslararası hukuk, belirli ilkeler ve politikalardan oluşan evrensel olarak tanınmış yasal bir çerçevedir. Temel olarak rejim, bu tezde sıklıkla 1951 Mülteci Sözleşmesi olarak kullanılan Mültecilerin Hukuki Statüsüne İlişkin 1951 Sözleşmesi'nin hukuki temeli üzerine kurulmuştur.

Sözleşme, temelde evrensel insan hakları ilkelerine dayalı uluslararası mülteci hukukunun temelini oluşturmuştur. Daha sonra, 1967 Protokolü ile, rejimin tamamlayıcı bir hukuki bileşeni olarak, 1951 Mülteci Sözleşmesi'nin uluslararası koruma ve yardıma muhtaç kişilerin belirlenmesine getirdiği bazı coğrafi ve zaman sınırlamaları kaldırılmıştır. Buna ek olarak, mültecilere vaat edilen uluslararası koruma ve yardımı yürütmek üzere rejimin kurumsal aracı olarak 1951 yılında BMMYK kurulmuştur. Genel olarak bu hukuki ve kurumsal bileşenlerden oluşan uluslararası mülteci rejimi, uluslararası koruma araçlarını uygulayarak mültecilerin güvenliğini ve refahını sağlamayı amaçlamaktadır.

Ancak Filistinli mültecilere gelince, uluslararası mülteci rejimi onları hiçbir zaman uluslararası mülteci korumasının uygulanması kapsamına almamıştır. Bunun nedeni, 1951 Mülteci Sözleşmesi tarafından belirlenen yasal mülteci tanımının dışında bırakılmış olmalarıdır. Benzer şekilde, BMMYK'nın Filistinli mültecilere hizmet sunması, kuruluş tüzüğünde yer alan özel bir madde ile yasal olarak sınırlandırılmıştır. Bu yasal ve işlevsel dışlama başlangıçta Filistinli mültecilerin o dönemde diğer BM kuruluşları olan UNCCP ve UNRWA'dan zaten koruma ve yardım hizmetleri alıyor olmaları ve uluslararası hukukta özel bir yasal konuma sahip olmaları ile gerekçelendirilmiştir. Esas olarak, Filistinli mültecilere özel bir koruma rejimi aracılığıyla özel ilgi gösterilmesinin krizin çözümünü kolaylaştıracağı düşünülüyordu. Ancak tarih bunun aksini kanıtlamıştır. UNCCP'nin koruma görevini yerine getirmedeki ilk başarısızlığı ve 1952'de nihai olarak sona ermesiyle birlikte, Filistinli mültecilere uluslararası koruma sağlamak için başka hiçbir uluslararası kuruluş resmi olarak yetkilendirilmemiştir. Bu anlamda bu tez, uluslararası mülteci rejiminin Filistinli mültecilere temel insan hakları ve uluslararası hukuk temelinde sözde uluslararası koruma sağlamadaki yeterliliğini sorgulamaktadır.

Mülteci rejiminin Filistinli mültecilere uluslararası koruma sağlamadaki etkinliğini kapsamlı bir şekilde değerlendirebilmek için uluslararası korumanın ne olduğunu doğru bir şekilde anlamak önemlidir. Temel olarak, bu tez uluslararası korumayı, ulusal koruma eksikliğini telafi etmek amacıyla mültecilerin temel insan haklarını korumayı amaçlayan yasal ve kurumsal eylemler olarak tanımlamaktadır. Buna ek olarak, bu tez uluslararası korumanın birbiriyle ilişkili iki yönüne dikkat çekmektedir.

Bunlardan ilki ve en önemlisi, mültecilerin sorunlarına temel insan hakları temelinde kalıcı bir çözüm sağlamak için yasal statülerini güvence altına almayı amaçlayan yasal korumadır. İkinci boyut ise fiziksel korumadır. Mültecilerin fiziksel olarak korunması, hizmetlerin adil bir şekilde dağıtılması yoluyla mültecilerin fiziksel güvenliğinin ve maddi refahının sağlanması anlamına gelmektedir. Esasen, tez boyunca koruma açığı ifadesi, mültecilere yönelik muamelede bu koruma araçlarının, yasal ve fiziksel korumanın, eksik olduğu durumları ifade etmektedir. Bu bağlamda, uluslararası koruma terimi bu tez boyunca birbiriyle geniş ölçüde ilişkili iki unsuru kapsayacak şekilde kullanılmaktadır. Büyük ölçüde, uluslararası korumanın bu yönlerinin Filistinli mültecilere uygulanması tez boyunca incelenmektedir.

Bu bağlamda, bu tezin ikinci bölümünde, Filistinli mültecilerin 1948 ve 1967 yıllarında iki büyük Arap-İsrail savaşının sonuçları olarak karşı karşıya kaldıkları kitlesel yer değiştirmelerin temel nedenlerini anlamak için Filistinli mülteci sorununun tarihsel arka planı incelenmektedir. Başlangıçta, Siyonizm'in doğuşu ve Filistin'e ilk Yahudi göç akımları açıklanmaktadır. Temel olarak, artan Yahudi nüfusu, Mandater Filistin'de büyük sıkıntılara ve durumun kötüleşmesine yol açmada belirleyici olmuştur. Bu bölüm, İç Savaş ve Arap-İsrail savaşlarından kaynaklanan yerinden edilmenin fiziksel nedenlerine vurgu yapmanın yanı sıra, Filistinli mültecilerin Filistin topraklarında bir ulus devlete sahip olma yönündeki tarihsel haklarını görmezden gelen Birleşmiş Milletler'in (BM) bu krizin yaratılmasındaki rolünün de altını çizmektedir. Bu anlamda, Yahudi devletinin kurulmasını sağlayan BM taksim planına vurgu yapılmaktadır. Ayrıca, Filistinli nüfusun zaman içinde sürekli yerinden edilmeden mustarip olduğunu vurgulamak için ilk ve en büyük yerinden edilmeden sonra İsrail'in sistematik baskıcı muamelesi incelenmektedir.

Üçüncü bölümde, uluslararası mülteci rejimi anlatılmaktadır. Bu bölümün amacı, rejimin temel ilkelerini anlamaktır. Bu tezin amacı açısından önemlidir, çünkü uluslararası mülteci rejiminin Filistinli mülteciler sorununda temel ilkelerine uyup uymadığı daha sonra analiz edilmektedir. Bu anlamda, rejimin temel ilkeleri liberal teori temelinde açıklanmaktadır. Birinci Dünya Savaşı'ndan sonra yeni uluslararası düzen hâkim olurken, liberal ilkeler yeni uluslararası sistemin merkezinde yer almıştır. Aynı şekilde, uluslararası mülteci rejimi de bu ilkeler temelinde kurulmuştur. Temel

olarak adalet, insan hakları, self-determinasyon ilkelerine ve uluslararası örgütlerin önemine vurgu yapan liberal teori, küresel bağlamda uluslararası mülteci hukukunun oluşturulmasında oldukça etkili olmuştur. Genel olarak bu bölüm, uluslararası mülteci rejiminin ne olduğunu anlamak için kavramsal bir çerçeve işlevi görmektedir. Bunu yaparken, rejimin bugüne kadarki tarihsel gelişimini açıklamanın yanı sıra, BM'nin ve uluslararası mülteci hukukunun kuruluşu incelenmektedir.

Dördüncü bölüm, Filistinli mülteciler meselesinin uluslararası hukuktaki hukuki statüsü için hem kavramsal çerçeve hem de açıklayıcı kısım olarak hizmet etmektedir. İlk olarak, Filistinli mültecilerin hukuki tanımı ve yerinden edilmelerinin kapsamı analiz edilmektedir. Ardından, uluslararası hukuktaki hukuki statüleri incelenmektedir. Buna ek olarak, UNRWA bölgelerinde ikamet eden Filistinli mültecilerin hukuki statüsü de incelenmektedir. Daha sonra bu bölümde Filistinli mülteciler için oluşturulan kendine özgü mülteci rejimi anlatılmaktadır. BM'nin ortaya çıkan Filistinli mülteci krizine verdiği ilk tepkinin açıklanmasının ardından, bu bölümde ayrıca UNCCP ve UNRWA'nın Filistinli mültecilere uluslararası koruma ve yardım sağlamadaki rolü incelenmektedir. Ayrıca, 1948 tarihli 194 (III) sayılı BM Kararı, Filistinli mültecilerin temel hakları için yasal bir çerçeve oluşturulmasında tarihi bir öneme sahip olduğu için dikkat çekilmiştir. Son olarak, BMMYK, Filistinli mültecilerin korunmasına katılım konusundaki yasal kısıtlamaları açısından incelenmektedir. Bu anlamda, 1951 Mülteci Sözleşmesi ve BMMYK Tüzüğü analiz edilmektedir. Genel olarak bu bölüm, Filistinli mültecilerin uluslararası hukuktaki belirsiz yasal statülerini, o dönemde diğer BM kuruluşlarından hizmet almaları gerekçe gösterilerek Mülteci Sözleşmesi'nin 1D Maddesi ile diğer mültecilerden dışlanmaları yoluyla açıkladığı için önemlidir. Nihayetinde bu bölüm, uluslararası mülteci rejiminde Filistinli mültecilere yönelik koruma açığını analiz eden sonraki üç bölüme giriş niteliğindedir.

Beşinci bölüm, Filistinli mültecilerin uluslararası mülteci rejimindeki yasal konumlarının bir değerlendirmesini sunmaktadır. Analitik bir bakış açısıyla bu bölüm, Filistinli mültecilerin uluslararası hukuktaki konumu açısından rejimdeki yasal boşluğu tartışmaktadır. Bu tez, uluslararası mülteci rejiminin Filistinli mültecilere uluslararası koruma sağlamadaki başarısızlığını analiz etmeyi amaçladığından, bu

bölüm, Filistinli mültecinin uluslararası mülteci hukukundaki belirsiz yasal statüsüne yakından odaklanarak bu başarısızlığın temel nedenlerini anlamak açısından önemlidir. Bu anlamda, öncelikle, rejimin temelinin hukuki açıdan zaten sorunlu olduğu ileri sürülmektedir. Zira uluslararası mülteci hukukunun temeli olarak kabul edilen 1951 Mülteci Sözleşmesi, evrensel bir çerçeve olarak hizmet etmek için kendi içinde zaten belirli yasal sınırlamalara sahipti. Ana odak noktası, milyonlarca insanın yıkıcı savaşın bir sonucu olarak kıta genelinde yerlerinden edildiği Avrupa'ydı. Sözleşme'nin ilk mülteci tanımı, "1 Ocak 1951'den önce Avrupa'da meydana gelen olaylar" sonucunda yerlerinden edilmiş kişileri kapsıyordu. Bu kısıtlayıcı mülteci tanımının bir sonucu olarak, Avrupa dışındaki milyonlarca mülteci rejimin yetki alanı dışında kalmıştır. Bu bağlamda, Mülteci Sözleşmesi kusurlu yasal temeli nedeniyle eleştirilmektedir. Ardından, Filistinli mültecilerin Sözleşmenin faydalarından kasıtlı olarak dışlanması tartışılmaktadır. Filistinli mültecilerin on yıllardır yaşadıkları tüm sorunların kaynağı, temelde, özel bir hükümle evrensel mülteci tanımının dışında bırakılmalarından kaynaklandığından, bu bölüm Sözleşme'nin 1D maddesini eleştirel bir şekilde analiz etmektedir. Bu bölüm daha sonra dışlanmalarının hukuki sonuçlarını incelemektedir. Temel olarak, uluslararası mülteci rejimi, uluslararası hukuk ile Filistinli mültecilere uygulanması arasındaki tutarsızlık nedeniyle eleştirmektedir. Rejimin bugüne kadar uluslararası hukukun temel ilkelerini Filistinli mültecilere uygulamada yetersiz kaldığı savunulmaktadır. Nihayetinde bu bölüm, geri dönüş hakkı, kendi kaderini tayin hakkı ve vatandaşlık gibi bazı temel hakların, uluslararası mülteci hukukunda muğlak bir hukuki statüye yol açan yasal boşluk nedeniyle Filistinli mülteciler tarafından nasıl elde edilemediğini göstermektedir.

Altıncı bölüm, uluslararası mülteci rejimindeki kurumsal boşluğa odaklanmaktadır. Temel olarak, Filistinli mültecilere yönelik kendine özgü rejimin onlara uluslararası koruma sağlamadaki yetersizliği analiz edilmektedir. Ayırt edici rejim, Filistinli mültecilere sırasıyla uluslararası koruma ve yardım sağlamakla görevli UNCCP ve UNRWA'dan oluşmaktadır. Bu bağlamda, ilk olarak UNCCP'nin temel görevlerini yerine getirmedeki başarısızlığı tartışılmaktadır. Ardından UNRWA iki yönlü olarak analiz edilmektedir. İlk olarak, ajansın temel görevlerini yerine getirme konusundaki yasal ve operasyonel eksiklikleri tartışılmaktadır. Ardından, uluslararası hukukta Filistinli mültecilerden sorumlu tek uluslararası ajans olması nedeniyle UNCCP'den

koruma görevini devralmadaki başarısızlığı sorgulanmaktadır. Son olarak, BMMYK'nın Filistinli mültecilerin korunmasındaki rolü tartışılmaktadır. Mültecilerin korunmasından sorumlu tek uluslararası kuruluş olması nedeniyle BMMYK, Filistinli mülteci krizine sınırlı katılımı açısından değerlendirilmektedir. Aslında, kendine özgü rejimin bir bileşeni değildir. Bu bölümde BMMYK'ya yer verilmesinin temel nedeni, Filistin mülteci krizine müdahaledeki kısıtlı rolünü eleştirerek rejimdeki kurumsal boşluğun altını çizmektir. Genel olarak, bu üç BM kuruluşu soruna kalıcı bir çözüm getirmedeki başarısızlıkları açısından değerlendirilmektedir. Kalıcı çözümün üç biçiminden hiçbirinin Filistinli mülteciler sorununa uygulanmadığı savunulmaktadır.

Yedinci bölüm, uluslararası mülteci rejimindeki koruma boşluğunun somut bir örneği olarak hizmet etmektedir. Bu bölümde temel olarak yasal ve kurumsal boşlukların sonuçları analiz edilmektedir. İlk olarak, UNRWA sahasındaki Filistinli mültecilerin yasal ve sosyo-ekonomik koşulları incelenmektedir. Filistinli mülteci nüfusunun çoğunluğu bu bölgelerde ikamet ettiği için analiz UNRWA'nın faaliyet gösterdiği sadece beş bölgeyi kapsamaktadır. Bu bölgeler, ev sahibi Arap ülkeleri olarak Ürdün, Lübnan ve Suriye ile İşgal Altındaki Filistin Toprakları (OPT) olarak Batı Şeria ve Gazze Şeridi'dir. Bu tez, bu bölgelerin incelenmesinin Arap bölgesindeki Filistinli mültecilerin genel durumunu anlamaya yardımcı olacağını düşünmektedir. Daha sonra, Arap olmayan devletlerdeki durum, 1951 Mülteci Sözleşmesi'nin 1D Maddesinin yorumlanması açısından değerlendirilmektedir. Filistinli mültecinin belirsiz yasal statüsünün, özellikle Avrupa ülkelerinde Madde 1D'nin farklı yorumlanmasına neden olduğu tartışılmaktadır. Sonuç olarak, Filistinli mültecilerin sığınma başvuruları Arap olmayan dünyada çoğu durumda reddedilmektedir. Bu anlamda, bu bölüm Filistinli mültecilerin zulümden kaçarak sığınma talep etme ve bulma gibi temel insan haklarından mahrum bırakıldıklarını ifade etmektedir. Son olarak, Filistinli mülteci sorunu, kaçırları sırasında sürekli olarak yaşadıkları çoklu yerinden edilmeler açısından tartışılmaktadır.

Son olarak, tezin ana bulgularına dayanarak, sonuç bölümünde uluslararası mülteci rejimindeki genel koruma boşlukları Filistinli mültecilerin korunması açısından tartışılmaktadır. Nitekim, Filistin mülteci krizi, Suriye ve Ukrayna krizleri de dâhil olmak üzere dünyanın bugüne kadar tanık olduğu diğer mülteci krizleri arasında



benzersizdir. Bu benzersizlik, yetmiş yılı aşkın süredir devam eden yerlerinden edilmeleri sırasında temel insan haklarından mahrum bırakılmış olmalarından kaynaklanmaktadır. Dünyadaki diğer mülteci nüfuslarının aksine, Filistinli mülteciler hiçbir zaman uluslararası korumaya yasal olarak erişememiştir. Uluslararası koruma sağlamanın ana sorumlusu olan uluslararası mülteci rejimi, bazı yasal ve kurumsal düzenlemeler yoluyla onları koruma yetkisinin dışında bırakmıştır. Bu anlamda, bu tez, 1951 Mülteci Sözleşmesi'ndeki evrensel mülteci tanımından başlangıçta dışlanmalarının Filistinli mültecilerin kaderi üzerinde zararlı etkiler yarattığını analiz etmiştir. Filistinli mültecilerin hiçbir zaman uluslararası mülteci hukuku kapsamında meşru mülteciler olarak tanınmadığı değerlendirilmiştir. Dolayısıyla, uluslararası mülteci rejiminin sağladığı uluslararası korumadan yararlanamamışlardır. Buna ek olarak, Filistinli mültecilere koruma ve yardım sağlamak için kurulan kendine özgü bir rejimin de koruma rolünü yerine getiremediği incelenmiştir. Sonuç olarak, Filistinli mülteciler, belirsiz yasal statüleri ve rejim tarafından korunmamaları nedeniyle sığındıkları ülkelerde birçok ayrımcılık ve insanlık dışı koşulla karşı karşıya kalmışlardır. Deyim yerindeyse, ilk kaçışlarından bu yana her zaman yasal ve fiziksel güvensizlikten mustarip oldular. Dolayısıyla bu tez, uluslararası mülteci rejiminin Filistinli mültecilere koruma sağlamakta başarısız olduğunu savunmaktadır. Temel olarak bu başarısızlık, bugüne kadar doldurulması amaçlanmayan bazı yasal ve kurumsal boşluklardan kaynaklanmıştır. Nihayetinde bu boşluklar, Filistinli mültecilere yönelik rejimde genel bir koruma açığını temsil etmektedir.

Bu tezin ana argümanı, uluslararası mülteci rejiminin Filistinli mültecileri korumakta ne ölçüde başarısız olduğudur. Temel olarak, uluslararası mülteci korumasının iki boyuttan oluştuğu ileri sürülmüştür. Bunlardan ilki hukuki korumadır. Hukuki koruma, mültecilerin temel insan haklarından ve kalıcı çözümlerden nihai olarak yararlanmalarını sağlamak için hukuki statülerinin güvence altına alınması anlamına gelmektedir. İkincisi ise fiziksel korumadır. Fiziksel koruma, temel olarak, hizmetlerin adil bir şekilde dağıtılması yoluyla mültecilerin fiziksel güvenliğinin ve maddi refahının sağlanmasını içerir. Uluslararası mülteci rejimi genel olarak her iki konuda da başarısız olsa da bu tez Filistinli mültecilerin ilk yerlerinden edilmelerinden bu yana yasal korumadan tamamen yoksun olduklarını vurgulamıştır. Kritik olarak, Filistinli mültecilerin uluslararası hukuktaki yasal statüsü kasıtlı olarak muğlak bırakılmıştır.

Genel mülteci tanımının dışında tutulmaları, uluslararası hukukun uygulanmasında tanınmayan bir yasal konumla sonuçlanmıştır. Nihayetinde, hukuki boşluğun rejimde belirgin olduğu ele alınmıştır.

Bu yasal boşluğu ortaya koymak için bu tez, 1951 Mülteci Sözleşmesi'nin yeni ortaya çıkan uluslararası mülteci hukukunun temeli olarak doğası gereği zaten sorunlu olduğunu analiz etmiştir. Sözleşme sadece İkinci Dünya Savaşı sonucunda kıta genelinde yerlerinden edilen Avrupalı mültecileri kapsayacak şekilde sınırlandırılmıştı. Daha sonra evrensel bir belge olarak hizmet etmesi için çeşitli değişiklikler yapılmış olsa da Filistinli mülteciler bu evrenselliğe hiçbir zaman dahil edilmemiştir. Bu tez, Filistinli mülteci sorununun her zaman siyasi belirleyiciler aracılığıyla çözülmesi gereken siyasi bir mesele olarak görüldüğünü savunmaktadır. Çünkü uluslararası mülteci rejimi, bunun insan hakları ve uluslararası hukuk temelinde çözülmesi gereken insani bir sorun olduğunu kavrayamamıştır. Bu anlamda rejim, Filistinli mültecileri uluslararası hukukta belirli bir yasal statüden yoksun bırakarak sorunun hukuki boyutunu göz ardı etmiştir. Rejimin temelini zaten Filistinli mültecilerin dışlanması üzerine kurulu olduğu analiz edilmiştir. Hem 1951 Mülteci Sözleşmesi hem de BMMYK Statüsü, Filistinli mültecilerin rejimin uluslararası koruma ve yardım rolünden yararlanmasını engelleyen benzer hükümler içeriyordu. Rejim, o dönemde zaten diğer BM kuruluşlarından koruma ve yardım aldıklarını varsayıyordu. UNCCP ve UNRWA'nın Filistinli mültecilere koruma ve yardım sağlama yetkisine sahip olduğu teorik olarak doğrudur. Ancak rejim, UNCCP'nin temel sorumluluklarını yerine getirmekte başarısız olduğunu kanıtlamasının ardından bu koruma yetkisinin uygulamada sona erdiğini göz ardı etmiştir.

Gerçekten de rejim, Madde 1D'nin Filistinli mültecilerin dışlanmasından ibaret olmadığını iddia etmiştir. Madde 1D'nin ikinci paragrafında da bir içerme hükmü olduğu uzun süredir tartışılmaktadır. İkinci paragraf, Filistinli mültecilerin sözleşmeden yararlanma hakkına sahip olması gerektiğini belirtmektedir. Buna göre, UNCCP'nin sona ermesinden sonra, Filistinli mülteciler rejimin yetki alanına girmiş olmalı ve BMMYK da Filistinli mültecileri koruma sağlama rolü kapsamına dahil etmeliydi. Ancak bu dahil etme, UNRWA'nın Filistinli mültecilere hizmet vermeye devam ettiği gerekçesiyle gerçekleşmemiştir. Bu tez, rejimin Sözleşme'nin 1D

maddesini yanlış yorumlamasını eleştirmektedir. Madde "veya" kelimesini içerdiğinden, UNCCP'nin koruma yetkisi sona erdiğinde, UNRWA'nın varlığı dikkate alınmaksızın BMMYK bu yetkiyi devralmış olmalıdır. Çünkü UNRWA'nın koruma sağlamak için yasal bir yetkisi yoktu, sadece yardım yetkisi vardı. Bu bağlamda rejim daha sonra UNRWA'ya koruma rolü vermeye çalışmıştır. Daha sonra UNRWA'nın Filistinli mülteciler için bir koruma yetkisi olduğu ileri sürülerek uluslararası korumanın yokluğu rejim tarafından ısrarla reddedilmiştir. Ancak bu tez, söz konusu koruma görevine ilişkin yasal ve kurumsal düzenlemelerin yetersiz olduğunu ortaya koymuştur. Aslında, UNRWA'nın uluslararası mülteci hukukundaki koruma rolünün yasal bir dayanağı yoktu. UNRWA sadece Filistinli mültecilere yardım ve acil durum desteği sağlamaktan sorumlu bir BM kuruluşuydu ve bu da etkinlik açısından sorunluydu. Esasen bu tez, UNRWA'nın yasal ve ekonomik gücü olmadığı için koruma sağlama konusunda her zaman yetersiz kaldığını tartışmıştır. Mali kısıtlarının yanı sıra, asıl sorun Filistinli mülteciler için varsayılan korumanın pratikte hiçbir zaman uygulanmamış olmasıdır.

Bu durum, bu tezde kalıcı çözüm alternatiflerinden hiçbirinin bugüne kadar gerçekleştirilemediği argümanı ile ortaya konmuştur. Temel olarak, uluslararası korumanın en önemli şekli, mültecilerin korunmaya ihtiyaç duydukları sorunlara kalıcı bir çözümün teşvik edilmesidir. Kalıcı çözümün genel olarak üç şekilde ifade edildiği analiz edilmiştir; geri dönüş, üçüncü bir ülkeye yerleştirme veya ilk sığınılan ülkede ekonomik ve sosyal entegrasyon. Ancak UNRWA, Filistinli mülteci sorunu için kalıcı bir çözüm arayışına hiçbir zaman dahil olmamıştır. Bu anlamda, uluslararası mülteci rejiminin UNRWA'nın bir koruma yetkisine sahip olduğu iddiası bu tezde karşı çıkmıştır. Aynı şekilde, rejim herhangi bir kalıcı çözümün teşvik edilmesinde de etkisiz kalmıştır. BMMYK aslında dünyadaki diğer mültecilerde olduğu gibi kalıcı bir çözümün sağlanmasından sorumludur. Bununla birlikte, BMMYK'nın harekete geçmesini engelleyen yasal kısıtlamalar her zaman olmuştur. Bu yasal kısıtlamalar temel olarak Filistinli mültecilerin meşru mülteciler olarak tanınmayan yasal statülerinden kaynaklanmaktadır. Temel olarak buradaki amaç bu ajansları ve başarısızlıklarını eleştirmek değildir. Temel olarak UNRWA, bazı mali sıkıntılara rağmen sorunun belirli yönleriyle mücadelede yalnız bırakılmıştır. UNHCR ise sorunun kalıcı çözümünü kolaylaştırmak için koruma yetkisini devralmakla yasal

olarak sınırlandırılmıştır. Asıl mesele, rejimin kendisinin böyle kendine özgü bir rejim yaratmış olmasıdır. Herhangi bir yetersizlik ortaya çıktığında, bunu telafi etmek yine rejimin sorumluluğundadır. Bu anlamda, bu tezde rejimin mevcut sorunları aşmak için herhangi bir adım atmaması eleştirilmiştir. Sonuç olarak, Filistinli mülteciler için kalıcı bir çözümün uygulanmamasının rejimdeki kurumsal boşluğu temsil ettiği savunulmuştur.

Buna ek olarak, rejim uluslararası hukukun temel öncüllerine uymakta başarısız olmuştur. Uluslararası hukuk ilkeleri ile bunların Filistinli mültecilere uygulanması arasında önemli bir tutarsızlık olduğu ileri sürülmüştür. Bu tez, insan hakları ilkelerinin başlangıçta rejimin kuruluşunun merkezinde yer aldığını belirtmiştir. Esasen İnsan Hakları Evrensel Beyannamesi'nin (İHEB) 1951 Mülteci Sözleşmesi'nin temel referansı olduğunun altı çizilmiştir. Ancak bu bağlamda, Beyanname'de yer alan ilkelerin hiçbirisi Filistinli mülteciler tarafından sorunun en başından itibaren kullanılmamıştır. Bu tez, uluslararası toplumun bir Yahudi devletinin kurulmasına izin vererek uluslararası hukukun ve insan haklarının temel ilkelerini ihlal ettiğini savunmaktadır. Bu durumda Filistinlilerin ulus-devlet ve kendi kaderini tayin etme gibi temel hakları ellerinden alınmıştır. Başından beri siyasi kaygılarla hareket eden rejim, Filistinli mültecilerin bu haklarını bugüne kadar sürekli olarak görmezden gelmiştir. Bu doğrultuda, krizin ortaya çıkışının sadece fiziksel şiddetin değil, aynı zamanda uluslararası toplumun neden olduğu hukuki kesintinin de bir sonucu olduğu ortaya çıkmıştır. Bu anlamda uluslararası toplum, milyonlarca Filistinlinin kitlesel olarak yerinden edilmesine zemin hazırlayan gelişmelerden birinci derecede sorumludur. Buna ek olarak, Filistinli mülteciler yeni kurulan İsrail devleti tarafından vatandaşlıklarından mahrum bırakıldılar. Buna karşılık hem uluslararası mülteci rejimi hem de bir bütün olarak uluslararası toplum bu insan hakları şiddetine karşı sessiz kaldı. Hatta rejim, nihayetinde vatansız kalan Filistinli mültecilerin durumunu daha da kötüleştirdi. Dışlanmaları sadece Mülteci Sözleşmesi kapsamında kalmadı, aynı zamanda benzer bir hükümle 1951 Vatansızlık Sözleşmesi'nin de dışında bırakıldılar. Bu nedenlerle, uluslararası mülteci rejimi, kendi içindeki önemli yasal boşluklar nedeniyle Filistinli mülteciler ve vatansız kişiler için uluslararası korumanın yokluğunda ana suçlu olmuştur.

Rejimdeki bu yasal ve kurumsal boşluklardan kaynaklanan olumsuzluklar nedeniyle, dünyanın dört bir yanındaki Filistinli mülteciler on yıllardır zorlu yaşam koşullarından mustarıptır. Özellikle UNRWA bölgelerinde ev sahibi Arap devletlerinde yaşayan ve toplam Filistinli mülteci nüfusunun çoğunluğunu oluşturan mülteciler ne uluslararası mülteci rejiminden ne de ev sahibi devlet hükümetlerinden neredeyse hiçbir yasal ve fiziksel koruma görmemiştir. Aksine, yasal, sosyal ve ekonomik yaşam alanlarında kendilerine karşı sürekli olarak ciddi ayrımcılık ve marjinalleştirme uygulanmıştır. Aslında, Batı Şeria ve Gazze Şeridi'nde yaşayanlar için durum daha da kötüdür. Ayrımcılık ve ötekileştirmenin yanı sıra, zaman içinde yoğun fiziksel şiddet, gözaltı ve sınır dışı edilmeye de karşı karşıya kalmışlardır. Bugün bile bu durum, İsrail ve işgal altındaki Filistin topraklarında (OPTs) Filistin halkı üzerindeki baskıcı yönetimin devam etmesiyle daha da kötüleşmiştir. Öte yandan, Filistinli mülteciler Arap olmayan dünyaya, özellikle de Avrupa'ya yaptıkları sığınma başvurularının kabul edilmesinde sürekli olarak somut kısıtlamalarla karşı karşıya kalmışlardır. Avrupa devletlerinin çoğu Filistinli mültecileri uluslararası hukuk çerçevesinde meşru mülteciler olarak tanımadığından, onları ulusal koruma altına almayı çoğunlukla reddetmektedir. Buna ek olarak, diğer bazı devletler Filistinli mültecilerden 1951 Mülteci Sözleşmesi Madde 1A (2)'deki mülteci kriterlerini karşılamalarını talep etmektedir. Tüm Avrupa devletleri hem 1951 Mülteci Sözleşmesi'ne hem de 1967 Protokolü'ne taraf olmalarına rağmen, Filistinli mültecilerin hukuki statüsü genellikle bu devletler tarafından yanlış yorumlanmış ve yanlış anlaşılmıştır. Sonuç olarak, Filistinli mültecilere sürgünleri sırasında ne Avrupa devletleri tarafından ulusal koruma ne de rejim tarafından uluslararası koruma sağlanabilmektedir. Arap ve Arap olmayan dünyadaki bu iki durumun bir sonucu olarak, yerlerinden edilmeleri sırasında sıklıkla birden fazla yerinden edilme yaşamışlardır. Ayrıca, bu sürekli yerinden edilme sorunu, Filistinli mülteci sorununu benzersiz kılan çeşitli nedenlerden biri olmuştur.

Bu çerçevede, koruma açığı tartışmasına ilişkin literatür, Filistinli mültecilerin uzun süreli yerinden edilmeleri sırasında ortaya çıkan sonuçlar açısından korumanın yokluğuna dayanmaktadır. Öte yandan bu tez, koruma açığının aslında rejimin yasal ve kurumsal boşluklardan oluşan son derece yanlış yapılandırılmış yapısında yattığını vurgulamıştır. Bu anlamda, bu tez, uluslararası mülteci rejimi ile Filistinli mülteciler arasındaki tersine çevrilmiş ilişkinin daha kapsamlı bir şekilde anlaşılmasını

sağlamaya çalışırken, Filistinli mültecilerin uzun süredir devam eden sefaletine dikkat çeken literatürle aynı amaca hizmet etmektedir.

Nihayetinde, teorik bakış açısı açısından bu tez, uluslararası mülteci rejiminin Filistinli mültecilere koruma sağlamadaki başarısızlığını liberal teoriye atıfta bulunarak analiz etmiştir. Liberal teorinin temel ilkelerinin rejimin hukuki temelinde muhafaza edildiği savunulmuştur. Ancak bu ilkeler, Filistinli mültecilere uygulanması bakımından sadece teoride kalmıştır. Uygulamada Filistinli mülteciler eşitlik, özgürlük, temel insan hakları, kendi kaderini tayin, vatandaşlık ve anavatanlarına geri dönme haklarından yararlanamıyordu. Dahası, liberal teorinin güçlü bir şekilde vurguladığı gibi uluslararası örgütlerin faydası Filistinli mülteciler meselesine hiçbir zaman uygulanmadı. Bir yandan UNHCR yasal kısıtlamaları gerekçe göstererek müdahil olmayı her zaman reddetmiş, diğer yandan UNRWA Filistinli mültecilere koruma sağlama konusunda son derece yetersiz kalmıştır. Aslında bunlar sadece tarihi gerçekler değil, aynı zamanda günümüzün de gerçekleridir. Bugün bile Filistinli mülteciler bu hakların meşru sahipleri olarak tanınmamaktadır. Bu anlamda, bu tez uluslararası mülteci rejiminin temel ilkelerine ve liberal ilkelere uymadığını ortaya koymuştur. Aslında, Filistinli mülteci sorunu o kadar marjinalleştirilmiştir ki, uluslararası toplumun diğer aktörleri bile sorunun kalıcı çözümüyle neredeyse hiç ilgilenmemiştir. Bu anlamda, uluslararası sistemde Filistinli mülteci krizine ilişkin olarak, kurucu liberal ilkeler pahasına her zaman ciddi bir kayıtsızlık söz konusu olmuştur. Sonuç olarak bu tez, uluslararası korumanın Filistinli mülteciler söz konusu olduğunda ya uygulanabilir olmadığı ya da kapsam bakımından yetersiz olduğu sonucuna varmıştır. Uluslararası mülteci rejimindeki yasal boşluk nedeniyle, Filistinli mülteciler uluslararası hukukta evrensel olarak tanınan bir yasal statüden yoksun bırakılmıştır. Sonuç olarak, uluslararası koruma onlar için uygulanamaz hale gelmiştir. Öte yandan, kurumsal düzenlemeler Filistinli mültecilere uluslararası koruma sağlamak için hiçbir zaman yeterli olmamıştır. Beklenen şekilde kurulan farklı rejim tamamen başarısız olurken, dünyadaki tüm mültecilere hizmet ettiği varsayılan uluslararası mülteci rejiminin koruyucusu olan BMMYK, Filistinli mültecilere yönelik temel görevini yerine getirmede etkisiz kalmıştır. Uluslararası mülteci rejiminin koruyucusu olarak dünyadaki tüm mültecilere hizmet vermesi beklenen BMMYK,

Filistinli mültecilere yönelik temel görevini yerine getirmede etkisiz kalırken, büyük beklentilerle kurulan kendine özgü rejim de tamamen başarısız olmuştur.

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