

The Decline of Palestinian Exceptionalism

*Observation of a trend
and its consequences for refugee studies in the Middle East*

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I. Introduction

There has historically been a great divide at the heart of refugee policy and scholarship in the Middle East, between Palestinian refugees and all others. This intellectual and policy divide runs throughout political discourse, governmental and United Nations administration, and civil society activism. It poses a challenge to the coherency of forced migration studies in the Middle East. There is now a significant and growing interdisciplinary literature about refugees of many nationalities in the region, but the largest and most visible refugee group in the region has been traditionally treated as “a case apart,” to borrow a phrase used recently in the *Forced Migration Review* (Couldrey and Morris 2006). Any scholarly attempt to synthesize this expanding knowledge into a coherent theoretical or research agenda – especially if one aims for this research to have practical application – will likely founder so long as this remains the case.

The division between Palestinian and non-Palestinian refugees has been driven by the assumption – what Michael Dumper has called an “orthodoxy” -- that the Palestinian refugee case is unique, and should be treated as such (Dumper 2007, 347). But this assumption has always been questionable, and (more important) it is increasingly being questioned.¹ In this paper, I argue that while the Palestinian refugee case does indeed bear some unique characteristics and thus should be treated separately in some ways, the predicament of Palestinian refugees also bears much in common with other refugees. My goal is to observe what I believe is a longstanding but accelerated trend: the decline of

¹ The August 2006 issue of *Forced Migration Review* that I have quoted above in fact posed a question. Its cover title was: “Palestinian Displacement: A case apart?”

Palestinian exceptionalism. I then attempt, in brief form, to highlight some of the implications of this trend, especially for forced migration studies.

I should state from the outset that there is an autobiographical – and hence highly subjective – aspect to my observations here. Nearly all of my career in refugee law has been in the Middle East, dating back to 1998. For the first five years, I dealt almost exclusively with non-Palestinians, both as a practitioner developing legal aid programs and as a teacher and writer in an academic vein. But more recently, I have worked extensively on issues relevant to both Palestinians and non-Palestinians, including occasionally with the Badil Resource Centre in Bethlehem, a Palestinian organization that has been at the forefront of applying international law and comparative research to the Palestinian case. It should be obvious that in this paper I am taking the risk of assuming that my own career trajectory reflects a larger trend. But I believe, and will try to make the case, that this career path could be possible only because of longstanding division between Palestinian and non-Palestinian refugees, and that my personal bridging of this divide is neither unique nor accidental.²

What is Exceptionalism?

In this paper I use the term exceptionalism to refer to a real or perceived uniqueness that leads to institutionalized separation and a tendency to avoid comparisons to other cases or reference to common principles such as international law. I take as a given that all refugee situations are unique in some way, and that there are also common elements in all refugee cases. Thus exceptionalism is evident mainly in the way similarities and differences are interpreted by policymakers, civil society and researchers. Perception of uniqueness thus is as important as actual difference. Two refugee cases may appear similar or different depending on what question one asks. For instance, the UN High Commissioner for Refugees (UNHCR) in Egypt in 2007 protected both Iraqi and Sudanese refugees on a group basis. In this way the two refugee groups were similar. But

² In 2003 I worked with a Lebanese NGO that was originally named the Ad Hoc Committee for the Support of *Non-Palestinian* Refugees and Asylum-Seekers (emphasis added). But in 2003, for many reasons, the organization re-formed under the name Frontiers Association. With the change in name, the organization also expanded its mandate, and now actively includes Palestinian refugees (especially those not recognized by the UN or the Lebanese Government) within its work.

Iraqis lived in different neighborhoods, and often appeared to have more formal education and financial resources.

There is no preset answer as to whether the similarities or differences matter more in any particular refugee situation. Often, the question of whether one stresses similarities or differences depends on whether one looks at the big picture, or at small details. A balanced analytical approach would take note of all similarities and differences, and focus on those criteria most relevant for the question at hand. Exceptionalism is essentially a kind of biased analysis, where differences (real or perceived) are stressed by default, thus ignoring underlying similarities. There may very well be an opposite type of imbalance toward non-Palestinian refugees; arguably, scholars and policymakers may inadequately account for the differences between other refugee groups. But the key point here is that in the case of Palestinians, exceptionalism has led to differences being emphasized and similarities with non-Palestinians suppressed, and that this has distorted our general understanding of refugee issues in the Middle East.

What Makes the Palestinian Refugee Case Unique?

Before critiquing Palestinian exceptionalism, it is worth examining the ways in which the Palestinian refugee case is actually special. Michael Dumper has identified five unique aspects of the Palestinian refugee case (Dumper 2005: 5-6).

First, **longevity combined with non-integration**. The Palestinian refugee problem dates to 1948. It was hardly the first mass refugee exodus of the 20th Century, but unlike the older Armenian, Greek-Turkish, or India-Pakistani examples (among others), the Palestinian refugees have remained a distinct population for six decades. Rather than integrating with host communities, separate Palestinian national identity has, if anything, grown in exile.

Second, **demographic scale and ambiguity**. The Palestinian refugee population is massive in scale in two respects. It is large relative to other refugee groups, since Palestinians represent the largest displaced community in the world. It is even larger

relative to the total Palestinian population; around three-quarters of all Palestinians are displaced persons or refugees. Yet, despite its massive scale, the actual size of the Palestinian population is in fact a subject of ambiguity. There is no standard figure about the number of Palestinian refugees in the world, much less in the Middle East.

Third, ***unique legal and administrative framework***. The Palestinians are the only refugee group in the world with at least one and arguably two specialized UN agencies dedicated to their assistance and protection, the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), and the *de facto* inactive UN Conciliation Commission for Palestine (UNCCP). The existence of these agencies has contributed to the exclusion of many Palestinians from the benefits of the 1951 Convention relating to the status of Refugees, and of the protection and assistance of the UN's main refugee agency, the UN High Commissioner for Refugees (UNHCR).

Fourth, Palestinian ***return is precluded*** by the ethno-religious nationalism of the Israeli government. Usually, refugee repatriation is precluded by continuing war or political repression. But Palestinian refugees are unable to return not because they are in danger at the places of origin (the classic condition of a refugee), but because the new government there has simply decided as a matter of policy to forbid their return. Israel has a Zionist government aiming to build and maintain a Jewish state, and the refugees are not Jewish.

Fifth, Palestinians ***lack of sovereignty over any of their historic territory***. Even before Israel occupied that part of historic Palestine which it did not acquire in 1948, Palestinians did not govern any part of their own country. From 1948 to 1967, the Gaza Strip was subject to Egyptian occupation and military rule, while the West Bank as occupied by Jordan (which unilaterally sought to annex the territory).

Dumper's list is certainly subject to alternative interpretations or formulations, as any list like this would be. For instance, one might suggest that Zionism is in many ways similar to other forms of nationalism and is not actually unique; opposition to repatriation of minority ethnicities has also occurred in the Balkans and elsewhere. Perhaps the

distinctiveness in the Palestinian case lies not in the nature of the Israeli government but rather in the lack of international political will to implement refugee return. But what is most interesting for present purposes is that several of the supposedly unique characteristics of the Palestinian case are in fact mutually reinforcing. For instance, demographic ambiguity is in large part the product of legal ambiguity. Since there is no standard definition nor registration system for Palestinian refugees, it is impossible to count them authoritatively. The non-integration of Palestinian refugees (and corresponding maintenance of a separate national identity) was in part the result of choices by Arab host governments that wanted to keep Palestinians apart (Sondergaard 2005: 79). Thus, while the Palestinian refugee case bore distinctive characteristics from the beginning, its uniqueness also grew because of the way key actors responded to it.

It should be observed that even in these distinctive traits, revealing comparisons can be made between Palestinians and other groups of refugees. For instance, Palestinians are not the first refugee group to be deliberately blocked from integration in host countries in order to serve a political agenda. In December 1946, the United Nations established the International Refugee Organization, the forerunner of UNHCR. The IRO's constitution mandated it to help refugees to find new permanent homes except "in the case of Spanish Republicans [who should] establish themselves temporarily in order to enable them to return to Spain when the present Falangist regime is succeeded by a democratic regime." In this respect the Palestinian case thus appears more unique today than it might have when key decisions were made.

My argument is that, historically at least, Palestinian refugees have been relatively unique in the evident desire by their own leaders, by scholars who studied them, and by agencies and activists that sought to assist them to be seen and treated as an exceptional case. Palestinian exceptionalism has been manifest in two distinct arenas. First, a desire for exceptionalism has appeared surrounding questions concerning the eventual solution to the refugee problem. Second, exceptionalism has appeared around questions of how Palestinians should be treated in exile until a solution is found, especially in terms of the division of labor between UNRWA and UNHCR.

II. Manifestations and Decline of Exceptionalism on the Right of Return Question

The trend away from Palestinian exceptionalism is most evident and most complete in the field of durable solutions, where both Palestinian political leaders and civil society have widely (though probably not completely) embraced international law as the basis of the refugee cause. Scholarly books seeking to compare the Palestinian refugee case to others in terms of solutions or application of international law are now increasingly common.³ This trend is so widespread that it may appear strange to claim that Palestinians ever wanted anything but to apply the same rules of law that apply to everyone else. Palestinians have called for a right of return since 1948, and today it is routine for leaders of the Palestine Liberation Organization to call for a solution to the refugee problem consistent with international law and UN resolutions. Palestinian exceptionalism appears today to have been thrust on them by Israel, which violates international law by blocking refugee return. B.S. Chimni ended his classic 1999 essay critiquing the involuntary imposition of repatriation on most refugees with the following observation:

I would [] like to end by drawing attention to those situations where refugees want to go home but are unable to exercise their right to return. I have especially in mind the right of Palestinian refugees to return to their country of origin (Chimni 1999: 17).

For Chimni, a neo-Marxist scholar of international refugee law writing a decade after the end of the Cold War, it seemed that Palestinians were subject against their will to a policy totally opposite that applied to every other refugee case. But the Palestinian embrace of a *legal* right of return is in fact a relatively new development. For many years, Palestinians actually resisted the application of international law and of UN resolutions to their case. Israeli violations and responsibility notwithstanding, Palestinians themselves long

³ Leading examples include Dumper, M. (ed.) (2005) *Palestinian Refugee Repatriation: Global Perspectives* (London: Routledge) and Benvenisti, E., Gans, C. and Hanafi, S. (eds.) (2007) *Israel and the Palestinian Refugees* (Heidelberg: Springer).

resisted the applications of common standards, and favored instead exceptionalism in their desire for repatriation.

In the 1950s and 1960s, some Palestinians resisted being labeled or treated as refugees because they feared that the refugee label would render them an anonymous mass of exiles rather than recognize their national identity and desire to return (Khalidi 1992: 30-31). The first Palestinian National Council meeting in 1964 labeled them “returners” rather than refugees. As late as 1974, the PLO objected to Resolution 242 because, allegedly, it “effaces the national rights of our people, and deals with their cause as a refugee problem” (Khalidi 1992: 30-31). Since refugee policy (though not necessarily refugee law) during the Cold War favored exile (Chimni 1999), Palestinians feared its application would undermine their desire for return. As Elia Zureik wrote in 1994:

The thrust of refugee law (*sic.*) in the aftermath of World War II has not been so much on repatriation but on (a) providing new places of residence for displaced persons (i.e. resettlement) and (b) protecting such individuals from persecution in their adopted country or in their country of origin should they be forced to return to it. ... Historically, the emphasis in the Palestinian situation is substantially different. Palestinian refugees are not seeking a place of residence other than their country of origin. Their main wish is to be allowed, should they so choose, to return to their homeland. (Zureik 1994: 8).

The phrase “right of return” appears to implicitly invoke international law by reference to a specific right. Yet the Palestinian demand for return has not always been identical the right of return as embraced by international law. At the time of the first Palestinian Intifada, there was no “no authoritative Palestinian definition of what constitutes the right of return” (Khalidi 1992: 29). The asserted right has been interpreted variously as return to original pre-1948-homes and places of origin, or a return of some Palestinians to a limited part of historic Palestine (*Ibid.*). This difference appeared as early as the 1949 Lausanne conference, where Arab governments appeared ready to limit the principle of return to areas that had been designated for the Arab state by the UN’s partition plan (Khalidi 1992: 33).

International law conceives of the Palestinian right of return and the right to property restitution in individual terms (Quigley 1998, Kagan 2007B). This means that each Palestinian refugee could choose to return, or to not return, regardless of whether this fit the goals of the national leadership, and could make similar individual choices about whether to seek full restitution of lost property. But until just before the second Intifada, the PLO focused mainly on a purported collective right of return, and stressed the general principle over practical issues of how return might be implemented (Klein 2005: 90). The individualist conception of the right of return has been criticized by some for undermining community membership and for preserving Israeli state sovereignty at the expense of Palestinian self-determination (Zuriek 1994: 16). These concerns led Palestinian leaders to hesitate in their embrace of international law. Rashid Khalidi has written:

Palestinian rejection of relevant UN resolutions began with General Assembly resolution 181 of 1947 for the partition of Palestine, and continued through Security Council Resolution 242 of 1967. Some of the first independent Palestinian organization that formed during the decade and a half following the defeat of 1948 appealed to general principles of international law such as self-determination, while basing themselves on alternate sources of legitimacy, part Palestinian nationalist, part Arab nationalist, and part revolutionary radical. Until 1968, the idea of return, important though it was, was generally subsumed under the idea of the total liberation of Palestine. (Khalidi 1992: 33-34).

The eventual embrace of international law by the Palestinian national leadership has largely been traced to strategic changes in the PLO's agenda as it moved closer to making a territorial compromise with Israel. But it is important to note first that the nature of refugee policy globally has also evolved, so that today repatriation is the primary durable solution promoted by UNHCR for most refugee situations (Chimni 1999). Though controversial in its own right, this global trend makes international refugee policy considerably more appealing to Palestinians than it was decades ago. Mass refugee repatriation and property restitution operations in the former Yugoslavia, Georgia, Guatemala, and South Africa have made comparative analysis appealing for Palestinian advocates in a way it might not have been earlier.

On the Palestinian side, the PLO's gradual embrace of international law has been seen by some as a concession to Israel reflecting a strategic shift toward negotiation with Israel (Khalidi 1992: 35). After 1968, the PLO's focus shifted away from pan-Arabism toward Palestinian nationalism, and refugee return was emphasized more explicitly (Khalidi 1992: 34). Beginning in 1974, as its position moved toward allowing a territorial compromise with Israel, the PLO "began to adopt internationally recognized principles for a regional peace settlement as the basis of its own position" (Khalidi 1992: 35). Until the first Intifada, the PLO generally avoided basing return on UN resolutions (Klein 2005: 91). But in 1988, with the Palestinian Declaration of Independence, the PLO for the first time described refugee return as a right sanctioned by UN resolutions, and stated that the right should be achieved in the context of these resolutions (Khalidi 1992: 35). Also in 1988, PLO Chairman Yasir Arafat spoke of Resolution 194 in a speech to European Parliament members and again to the UN General Assembly (Khalidi 1992: 35). This acceptance of Resolution 194 imposed "crucial limitations" on the absolute right of return because it offered individual choice to the refugees whether to return or seek compensation instead, and because Resolution 194 implicitly includes a *de facto* acceptance of Israel's existence (Khalidi 1992: 36).

With the arrival of the Oslo Accords in the early 1990s and the seemingly more real possibility of establishing a Palestinian state in the West Bank and Gaza Strip, an individualized right of right suddenly suited the PLO's political position more readily than it had in the past. The individual right of return, based in international law, helped Palestinians explain why collective return to a new state of Palestine in the West Bank and Gaza Strip would not be an adequate solution to the refugee problem (Klein 2005: 90). If the Palestinian right of return were based solely on the goal of self-determination and liberation, then territorial concessions to Israel would also appear to be concessions on refugee repatriation. In the 1990s, Israeli and Palestinian positions on refugee return effectively reversed, with Israelis increasingly supporting collective "return" to a new Palestinian state, and Palestinians increasingly focused on individual rights (*Ibid.*: 91).

In recent years, the PLO's Negotiations Support Unit, the legal advice arm of Palestinian negotiators, has engaged in depth study of the legality and feasibility of property restitution (Fischbach 2006: 97). Thorough legal studies of the right of return and of refugee property rights have been published in American law reviews (Quigley 1998; Kagan 2007B). Some Palestinian advocates now use the UNHCR-invented language of "durable solutions" to express their claims (Joint NGO Statement 2007). The Badil Resource Centre has been particularly active in promoting this trend. This is not to say that it is universal; claims to a collective right of return are still common, and the embrace of local integration and resettlement along with repatriation as solutions is still potentially anathema to many Palestinians, though it is standard refugee policy generally. Yet, the embrace of international law is now institutionalized and routine to a considerable degree in the Palestinian national leadership, and among Palestinian supporters in civil society and academia. These changes in Palestinian thinking about solutions stand in contrast to Israeli and American policy. Today Israel and the US government are more likely than Palestinian leaders to insist on exceptionalism by resisting solutions to refugee problems that have been used elsewhere and that are embraced by international law.

III. Two Protection Gaps: The Attack on Exceptionalism in UN Agency Differentiation

Exceptionalism has long been most institutionalized on the question of how Palestinian refugees should be assisted in exile. The divide between Palestinians and others is embodied by the division of labor between UNHCR and UNRWA. The international community could have decided to fold Palestinians into the global refugee protection regime in 1951, but instead opted to keep them separate by maintaining a system of separate agencies to address their situation. This separateness affected UNRWA's relationship with the Palestinian national movement, depending on whether Palestinians perceived UNRWA to be encouraging or undermining their national cause. In the early 1950s, UNRWA's mandate to engage in "works" was directed toward mass development projects in the Jordan Valley and Sinai aimed at the local integration of refugees, and

“was from the outset seen in Palestinian political circles as having been created by the Western powers to liquidate the refugees’ political rights through socioeconomic means” (Husseini 2000: 52). Yet UNRWA’s relief apparatus, especially its educational programs, have been institutional incubators of Palestinian nationalism and organization, filling a crucial gap after 1948 until the emergency of the PLO (*Ibid.*: 53-55). Longstanding institutionalized differentiation in the UN system and its role in fostering Palestinian national identity remain unique to the Palestinian refugees.

There is little prospect today of UNRWA’s mandate being absorbed by UNHCR. Yet there are cracks appearing in the longstanding differentiation between UNRWA and UNHCR. While remaining separate, the agencies are in some ways moving closer to each other. UNRWA has, at least since the first *Intifada*, shown an interest in “protection.” Though the specific content of UNRWA’s protection role has been difficult to define, one of UNRWA’s distinctive characteristics vis-à-vis UNHCR was long thought to be its lack of a protection mandate in favor of “assistance.” UNRWA has gradually sought to erase, or at least minimize, the difference between these two concepts. For instance, UNRWA’s Commissioner-General recently said, “We have intimate insights into the living conditions of refugees and the threats they face, and we draw on these insights in our role as a global advocate for the protection and care of Palestine refugees” (Abu Zayd 2007).

The changes that have occurred in the UNHCR-UNRWA relationship are tentative at best, and should not be exaggerated. But they occur at a time when the exclusion of Palestinians from UNHCR’s mandate is under increasing attack by legal scholars and advocacy groups. The Badil Centre has again played a pivotal role here, sounding alarm about a “protection gap” for Palestinians. Badil’s argument, based on prior work by Profs. Guy S. Goodwin-Gill and Susan Akram, argues that UNRWA’s limited mandate should be understood in light of the General Assembly’s creation of the Conciliation Commission for Palestine (UNCCP), which was charged with resolving the Israeli-Palestinian conflict and thus of finding a solution to the refugee problem. In Badil’s words:

The collapse of UNCCP protection, limited intervention by the UNHCR, non-implementation of recommendations of key UN human rights bodies, and inadequate protection by national authorities has resulted in severe gaps in international protection for Palestinian refugees and displaced persons. This is referred to as the ‘protection gap.’ (Badil, Undated, Online)

The protection gaps campaign relates to a complicated legal question concerning the interpretation of Article 1D of the 1951 Convention relating to the status of Refugees, which is the essential backbone of UNHCR’s mandate. The Convention nowhere excludes Palestinians *per se*, and in fact prohibits discrimination by nationality in its Article 3. But Article 1D, inserted in part at the insistence of Arab governments, excludes “persons who are at present receiving from organs or agencies of the United Nations ... protection or assistance.” But the article’s second sentence says that “when such protection or assistance has ceased for any reasons ... these persons shall ipso facto be entitled to the benefits of this Convention.” Akram argues that this give UNHCR a mandate over Palestinians refugees. While conventional interpretations have assumed that article 1D refers to the assistance provided by UNRWA, she argues that the protection or assistance in Article 1D referred to the combined efforts of UNRWA and UNCCP. The erosion of UNCCP thus arguably triggers the second sentence – the *ipso facto* inclusion of Palestinians within UNHCR’s mandate. Akram writes: “The ramifications of this are quite clear: first, if UNCCP has failed to fulfil its protection mandate, that function must be fulfilled by UNHCR” (Akram 2001: 174). In my view, this is a debatable legal analysis which appears to strain the text of the Convention, but it is not my purpose to assess this question here. Akram has also promoted the use of “temporary protection” for Palestinians in exile until they can return home (Akram 2004). Her proposal is complicated and highly nuanced, and borrows ideas from non-Palestinian refugee policy. The point for present purposes is simply that UNHCR’s exclusion of Palestinian refugees is under sophisticated legal attack, via arguments that cannot be dismissed out of hand, and which are based on general international refugee law rather than assumptions of separateness.

It should be observed that there are in fact two different protection gaps confronting Palestinians. The first – what we might call the “solutions gap” – relates to the potential role of UN agencies in the promotion of durable solutions. The debate about UNCCP’s demise and its legal significance concerns the solutions gap. But there is also a second protection gap, what we might call the “individual protection gap.” This concerns a very different problem – the status of individual Palestinian refugees with urgent protection problems separate from the overall Israeli-Palestinian conflict. One group affected by this gap includes individual Palestinians who seek asylum abroad – in some cases fleeing from a first country of refuge where UNRWA operates; Badil has published a handbook examining the application of article 1D in these cases (Sondergaard 2005). A few Palestinians have fled the occupied territories and have sought protection inside Israel, which is a party to the 1951 Refugee Convention. They generally are refused the opportunity to submit applications to either the Israeli government or the local UNHCR office, but their cases have been taken on by some Israeli human rights groups.⁴ A second and more numerous group are the “unrecognized” Palestinians of Lebanon, who number in the thousands. Some are not registered with the Lebanese Government, while a somewhat larger group also lack registration with UNRWA. Their plight has been taken up by several NGOs, and has led to calls for UNHCR to assert its protection mandate over certain Palestinian individuals in Lebanon (Frontiers Association 2005: 80).

UNHCR to date has been largely resistant to intervening in cases of Palestinians in UNRWA countries or in Israel, though there may be signs that the agency is beginning to grapple with its potential mandate over some Palestinians in the Middle East. In 2002 in Egypt, UNHCR began for the first time to include tens of thousands of Palestinians in its statistical tallies of refugees in the country (UNHCR 2005: 319). One need not grapple with Akram’s arguments regarding UNCCP in order to see a clear mandate to for UNHCR over some individual Palestinians in Israel or Lebanon. UNHCR’s own official interpretation of Article 1D focuses on individualized questions of status under the

⁴ I am aware of these cases from my work since 2004 with the Refugee Rights Clinic at Tel Aviv University. A report on the subject of gay Palestinian asylum-seekers in Israel is due out in early 2008.

Refugee Convention, and notes that “not all ‘Palestine refugees’ residing in UNRWA’s area of operations are registered with UNRWA” (UNHCR 2002: FN16).

In UNHCR’s view, Article 1D excludes those Palestinians in UNRWA countries of operation who are either registered or eligible to be registered (*Ibid.*: para. 6). UNHCR has not explained how it interprets the situation in Lebanon, where many Palestinians fit UNRWA’s registration criteria but cannot register with UNRWA because of Lebanese government resistance (Frontiers Association 2005: 48-49). Nevertheless, UNHCR has made clear that if unregistered Palestinians from Lebanon flee to another country “even within UNRWA’s area of operation, they cannot be considered as receiving protection or assistance from organs or agencies of the United Nations other than UNHCR, as per Article 1D of the 1951 Convention” (UNHCR 2006B: FN 12). UNHCR has also extended protection to Palestinians who have fled Iraq fled Jordan and Syria, despite UNRWA’s operation there (UNHCR 2006A: para. 12). In the Iraq case, UNHCR was careful to frame this as a unique arrangement (*Ibid.*). Yet, in combination with UNHCR’s separate statement on Palestinians fleeing Lebanon, it appears that UNHCR is now willing to extend protection inside UNRWA countries at least to some Palestinian refugees who engage in secondary migration from other countries. At time of writing, UNHCR’s policy on Palestinian refugees in the Middle East appears fairly muddled, but this may be the result of the agency re-examining and slowly eroding its prior policy of geographic exclusion. UNHCR thus may increasingly play a role in correcting the individual protection gap for small numbers of Palestinians in the Middle East, even if it does not seek to fill the shoes of UNCCP.

IV. Consequences for Refugee Studies in the Middle East

The decline of exceptionalism is most pronounced in terms of scholarly examination of durable solutions for Palestinian refugees. By contrast, exceptionalism still reigns in terms of official policy regarding treatment of Palestinians in exile, especially when it comes to the UNHCR-UNRWA distinction. Yet exceptionalism is under intellectual attack here too, in ways very similar to what we have seen on the right of return question.

After many decades of intellectual separation, the analytical lens of international refugee law is being focused on Palestinians, and prior assumptions about Palestinian exclusion are coming under question. Although UNRWA is unlikely to disappear – and I am certainly not arguing that it should – the differences between its mandate and UNHCR's are increasingly being blurred as the UN and NGOs wrestle with both large and small protection problems in the Middle East.

I have stressed that exceptionalism is basically a form of bias that favors seeing differences while ignoring similarities. Whatever the differences between UNRWA and UNHCR, it is important to observe a very obvious way in which they are now and have always been similar. Both are agencies of the United Nations. Much of the scholarship surrounding the differences between the two agencies assumes that if UNRWA disappeared, UNHCR would fill its role. But this assumption is actually built on the implicit premise that some UN agency must take the lead in dealing with Palestinian refugees in the Middle East. Yet international law normally assigns responsibility for refugee protection to governments, and effective protection normally depends on governments even where UNHCR is actively involved (Kagan 2006: 12-14). In an article examining UNHCR' refugee status determination activities in Lebanon and Egypt (which principally affects non-Palestinians), I examined how this responsibility had shifted from governments to the United Nations (*Ibid.*: 15-17.). Yet, in that case I focused mainly on the policies of UNHCR, which I noted had not published any comprehensive statement on the subject (*Ibid.*: 15).

For Arab governments, however, responsibility shift has long been an explicit policy, at least with Palestinians. In 1950, the delegates of Egypt, Saudi Arabia and Lebanon all rose at the General Assembly to argue against including Palestinians in the general definition of refugees (Sondergaard 2005: 78-79), both to preserve the focus on refugee return and to ensure that the United Nations (rather than host states) should take responsibility for refugee welfare. The Lebanese delegate said: “The Palestine refugees were [] a direct responsibility on the part of the United Nations and could not be placed

in the general category of refugees without betrayal of that responsibility” (*Ibid.*: 79).⁵ UNRWA was thus asked to perform roles that could have been assigned to sovereign governments. Just a few years later, UNHCR began to do the same with non-Palestinians when it signed its first memorandum of understanding in the Middle East, with Egypt in 1954. Government-to-UN responsibility shift thus represents an essential common denominator of refugee policy in the Middle East, and one that warrants considerable more scholarly examination.

Refugee studies in the Middle East should continue to deal with Palestinians as a unique group where they are in fact unique. Yet it is increasingly essential that this uniqueness not be taken for granted in all fields. This is especially important as there is a new massive refugee flow from Iraq, which is introducing another large refugee population into Arab host states, this time under UNHCR’s mandate. There are other, smaller, long-term refugee populations in the region, especially from the Horn of Africa. Much like Palestinians, they live mainly in urban settings. The bottom line is that research on refugees in the Middle East should not take the division between Palestinians and non-Palestinians for granted. It will make sense sometimes, but as a matter of methodology it should be justified.

⁵ The blame placed here on the UN for the Palestinian refugee problem should be seen mainly as an expression of political convenience. The UN’s 1947 Partition Plan for Palestine did not authorize any population transfer or expulsion, and in fact provided for substantial rights of equality for Palestinians who would remain in the proposed Jewish State (and for Jews in the proposed Arab state) (U.N. General Assembly 1947: Chs. 2-3). In 1949, Lebanon’s delegate to the UN had blamed Israel for the refugee problem, and stated, “The United Nations had certainly not intended that the Jewish State should rid itself of its Arab citizens” (U.N. General Assembly 1949: Mr. C. Malik of Lebanon).

References

- Abu Zayd, K. K. (9 October 2007) “UNRWA’s work in the global context,” Briefing by UNRWA Commissioner-General to New Zealand Parliamentary Group.
- Akram, S. (2001), “Reinterpreting Palestinian Refugee Rights under International Law,” in Aruri, N. (ed.) *Palestinian Refugees: The Right of Return* (London: Pluto Press), pp. 165-194.
- Akram, S. (2004) “Temporary protection as an instrument for implementing the right of return for Palestinian refugees,” *Boston University International Law Journal* 22, pp. 1-162.
- Badil Resource Centre for Palestinian Residency and Refugee Rights, *Legal Papers and Working Papers*, available at: http://www.badil.org/Publications/Legal_Papers/L_Papers.htm.
- Badil Resource Centre for Palestinian Residency and Refugee Rights (Undated, online) “The Protection Gap,” available at: <http://www.badil.org/Protection/Protection-Gap.htm>.
- Chimni, B.S. (1999) “From resettlement to involuntary repatriation: toward a critical history of durable solution to refugee problems,” *New Issues in Refugee Research*, Working Paper No. 2 (UNHCR).
- Couldrey, M. and Morris, T. (eds.) (2006) “Palestinian displacement: A Case Apart?” *Forced Migration Review* 26.
- Dumper, M. (2005) “Introduction: The comparative study of refugee repatriation programmes and the Palestinian case,” in Dumper, M. (ed.), *Palestinian Refugee Repatriation: Global Perspectives* (London: Routledge), pp: 1-19.
- Dumper, M. (2007) “Comparative Perspectives on the Repatriation and Resettlement of Palestinian Refugees: the Cases of Guatemala, Bosnia and Afghanistan” in Benvinisti, Gans and Hanafi (eds., *Israel and the Palestinian Refugees*, pp. 387-407.
- Fischbach, M. R. (2006) *The Peace Process and Palestinian Refugee Claims: Addressing Claims for Property Compensation and Restitution* (Washington: US Institute of Peace Press).
- Frontiers Association (2005) *Falling Through the Cracks: Legal and practical gaps in Palestinian refugee status – A case study of unrecognized refugees in Lebanon* (Beirut: Frontiers).
- Husseini, J. (2000) “UNRWA and the Palestinian Nation-Building Process,” *Journal of Palestine Studies* 29(2), pp. 51-64.

Joint NGO Statement to the UNHCR Executive Committee (2007)

Kagan, M. (2006) “The Beleaguered Gatekeeper: Protection Challenges Posed by UNHCR Refugee Status Determination,” *International Journal of Refugee Law* 18(1), pp. 1-29.

Kagan, M. (2007A) “Legal Refugee Recognition in the Urban South: Formal v. De Facto Refugee Status,” *Refugee* 24(1).

Kagan, M. (2007B) “Restitution as a Remedy for Refugee Property Claims in the Israeli-Palestinian Conflict,” 19:2 *Florida Journal of International Law*, pp. 421-489.

Khalidi, R. (1992) “Observations on the Right of Return,” *Journal of Palestine Studies* 21(2), pp. 29-40.

Klein, M. (2005) “The Palestinian refugees of 1948: Models of allowed and denied return,” in Dumper, M. (ed.), *Palestinian Refugee Repatriation: Global Perspectives* (London: Routledge), pp: 87-105.

Quigley, J. (1998) “Displaced Palestinians and a Right of Return,” *Harvard International Law Journal* 39, pp. 171-229.

Sondergaard, E. (2005) *Closing the Gaps: Handbook on Protection of Palestinian Refugees* (Bethlehem: Badil Resource Centre for Palestinian Residency and Refugee Rights).

U.N. General Assembly (1947) Resolution 181(II): Plan of Partition with Economic Union.

U.N. General Assembly (1949) Official Records, A/AC.24/Sr.45, 5 May 1949.

U.N. High Commissioner for Refugees (UNHCR) (2002), “Note on the Applicability of Article 1D of the 1951 Convention relating to the status of Refugees” (Geneva).

U.N. High Commissioner for Refugees (UNHCR) (2005) *UNHCR Statistical Yearbook* (Geneva).

U.N. High Commissioner for Refugees (UNHCR) (2006A), “Aide-Memoire -- Protecting Palestinians in Iraq and Seeking Humanitarian Solutions for Those Who Fled the Country” (Geneva).

U.N. High Commissioner for Refugees (UNHCR) (2006B), “UNHCR Position on the International Protection Needs of Asylum-Seekers from Lebanon Displaced as a Result of the Recent Conflict” (Geneva).

U.S. Committee for Refugees and Immigrants (USCRI), Campaign to End Refugee Warehousing, available at
<http://www.refugees.org/article.aspx?id=1109&rid=1179&subm=33&area=Investigate#law>.

Zaiotti, R. (2006) "Dealing with non-Palestinian Refugees in the Middle East: Policies and Practices in an Uncertain Environment," *International Journal of Refugee Law* 18, pp. 333-353.

Zureik, E. (1994) Palestinian Refugees and Peace," *Journal of Palestine Studies* 24(1), pp. 5-17.