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The International Legal Protection for the Palestinian Refugees in International Law

Dr. Ahmad Hasan Abu Ja'far

Faculty of Law/ Al-Istiqlal University-

Palestine

Introduction

The Palestinian Refugees living in the Diaspora or in their historic homeland Palestine for sixty-ninth years now, are suffering from the scourge of asylum and displacement. Israel deliberately continues to create living conditions which lead to the displacement of more Palestinians. It also denies the Palestinian refugees right to return to their homes they abandoned, depriving them from exercising their right to self-determination. These policies constitute a grave breach of international law, which came basically to protect individuals and groups, especially the refugees.

Statement of the problem

The problem of this study appears in the failure of the United Nations to provide the required protection for the Palestinian refugees in the light of the repeated Israeli attacks on the cities and camps of Gaza Strip, as the Palestinian refugees in general and particularly in Gaza Strip need a strong protection system that guarantees their rights according to the rules of international law.

Questions of the study

The research arises three essential questions:

- 1.What are the legal basis for the Protection of the Palestinian Refugees?
- 2.What kind of International protection can the UN provide for the Palestinian refugees?
3. Have the mechanisms which are adopted by the UN according to the rules of International Law implemented their goals for the protection of the Palestinian Refugees?

Study approach

The researcher used the legal descriptive approach and the methodology of content analysis, so as to describe the facts, analyzing the international legal norms, and trying to know how these norms are applied to the facts related.

Part I: The Legal Definition of Palestinian Refugees

We are going to talk about the definition of the refugees in terms of international statements since customary international law does not recognize them,⁽¹⁾ because that law is concerned with the rights and obligations of states towards each other and towards the citizens of other countries. ⁽²⁾

In accordance with the Geneva Convention of 1951, a refugee has been defined as: A person 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, 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. ⁽³⁾

In 1967, a Protocol Amending the Convention of 1951, which stipulated in its first article that the word refugee means that, "Every person applies to the definition contained in the first article of the 1951 Convention".

Based on that definition, a refugee, according to the protocol, is a person in accordance with Article I of the Convention of Refugee Affairs in 1951, regardless of the date and the place of the occurrence of events that caused him to become a refugee. ⁽⁴⁾

Thus, the Convention on the Status of Refugees of 1951 explicitly excluded the Palestinian refugee from its definition, exempting the UNHCR from any responsibility of supervision of Palestinian refugees. Article 'D' stated that this Convention does not apply to persons who currently enjoy the protection or assistance from United Nations bodies or agencies other than the United Nations High Commissioner for Refugees, in reference to the UNRWA, which supervises the Palestinian refugees. ⁽⁵⁾

Hence, it was decided to deliberately exclude Palestinian refugees from this Convention and from the protection of the High Commission, while UNRWA has been assigned to protect and assist Palestinian refugees.

¹ Bukhri Abdullah AlJa'li: " **The basic legal aspects for protection of the refugees in the international law: codification and development**", The Egyptian Magazine of the International Law. No. 40, 1984, p77.

² Suzan Akram: **Palestinian Refugees and their status: Rights, Politics and Implications for a just solution**, Journal of Palestine studies, Vol. 31, N.3.PP36-51. University of California Press.

³ Review article 1/A/2 of UN Accords of the refugee affairs of 1951.

⁴ Abu Alkheir Ahmed Atteyeh: "**The Legal Protection of the Palestinian Refugee**", Dar Al-Nahdah, 1997, p81.

⁵ Mohammed AbdulHamid Seif: "**The Palestinian Refugees right of return and compensation in the light of the statements of the general international law**", Al-Dar Al- Arabia for Science, 2002, p44.

UNRWA has defined a Palestinian refugee as: "the 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 livelihood as a result of the 1948 conflict."⁽¹⁾ However, the groups include displaced individuals, and are outside the responsibility of UNRWA.⁽²⁾

The concept of UNRWA for Palestinian refugees, confined to the post-war refugee, which deprived Palestinians who were outside Palestine before 1946 of the right to return, as well as for those who were outside the West Bank and Gaza Strip before the 1967 war, from 1952 onwards until 1967.

Thus, in order to determine the legal definition of Palestinian refugees for the purpose of legal protection, I believe the definition of the Palestinian Refugee must be linked to the General Assembly Resolution 194 of 1948, which dealt specifically with Palestinian refugees and gives the right to return for those who wish to, or compensation for the property of those who do not wish to return.

Part II: Legal Basis for the Protection of the Rights of Palestinian Refugees

Although we have different definitions of Palestinian refugees, they all support the legal rights of Palestinian refugees. However, these rights that are in accordance with the provisions of international law are based on the two basic rights: First: the right of the Palestinian people to self-determination through ending the Israeli occupation.

Second: the right of Palestinian refugees to return to their homes and properties based on the principles and norms of international law.

In the coming lines, I am going to review these rights in accordance with the legal basis to protect the rights of refugees, as follows:

1.The right to self-determination for the Palestinian people in public international law:

The principle to self-determination was mentioned twice in the United Nations Charter of 1945: once in the second paragraph of Article 1 related to the goals of the United Nations, which makes it the most important foundation for the development of international relations and "to develop friendly relations among nations based on respect of the principle of equal rights among peoples, where each has the right to self-determination, as well as to take the necessary measures to strengthen general peace."

6.Fatima Kheir: **The International dimension of the the refugee issue'**, Samed Economic Magazine, No. 105, July-September 1996, p142. Also see Hasan Alsayed Naf'a (editor), **The International Community and The Palestinian Issue'**, Institute of Arab Research (Cairo), 1993,p.48.

² Elia Zureik: **"The Palestinian Refugees and the Peace Process."** Palestinian Studies Association, Beirut, 1st edition, 1997, p14.

The second time, is in Article 55 in the framework of the review of the foundations of international economic and social cooperation, which stipulates that "a desire for the creation of stability conditions and the well-being necessary for peaceful and friendly relations among nations based on respect of the principle of equal rights between peoples, and each people have the right to self-determination."

The principle to self-determination was expanded when the international conventions of Human Rights (International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights in 1966) were implemented in 1976, as both conventions mentioned the right to self-determination in the first article of each convention.⁽¹⁾ This is in addition to the contents of the International Declaration of Human Rights on the right to self-determination.

Additionally, the exercise by the Palestinian people to self-determination gives them the right to armed struggle and liberation after the United Nations recognized the legitimacy of the struggle of peoples and the use of force for independence.⁽²⁾

As for the Palestinian people's right to self-determination and its relationship to the right to return, the League of Nations has dealt with this right by declaring its intention to adopt the mandate through which the international community has recognized the legal right of the people of Palestine to self-determination and independence since 1919. In accordance with the Charter of the League of Nations, formally approved in 1922, Great Britain received trusteeship of Palestine until the Palestinians reached the stage where they were able to carry the burden of independence.⁽³⁾ Thus, the imposition of the mandate on Palestine was an implicit recognition of the "Palestinian national identity."⁽⁴⁾

It is noted that there is a close correlation between the right of Palestinians to self-determination and their right to return to their homes and properties, through many resolutions of the United Nations,

¹ Article 1 of the two agreements state the following:

- 1- All nations have the right to self-determination, and accordingly, they are free to determine their political cores and to ensure their economic, social and cultural development.
- 2- All nations, for their own interest, are free to exploit their wealth and natural resources without causing any disturbance in the economic cooperation and the international law. No nation should be deprived from private living means.
- 3- All states involved in the agreement, including those administering other regions and those under trusteeship, should work on achieving self-determination and respect this right in accordance with the United Nations Charter.

² Aysheh Rateb: " **Legality of armed struggle,**" The Egyptian Journal of International Law. Also see, Khalil Sami Ali Mahdi: " **The General Theory of Internationalization in modern international law, with applied study on attempts to internationalize Jerusalem.**" 1996. p. 482.

³ **The Palestinian displaced people and refugees, a comprehensive survey of 2002,** Badil, p 12.

⁴ Ahmed Alwanis Shatta: "**The legal grounds to the Palestinian refugees issue in the frame of a peaceful solution of the Arab-Israeli conflict**", Arab Research and Studies Journal, Cairo, no.21, 1993, p30.

especially of the General Assembly on Palestine Refugees, which stressed the recognition of the inalienable rights of the Palestinian people to return and self-determination, both with regard to refugees in 1948 and to those displaced in 1967. There can be no self-determination without it being preceded or accompanied by enabling the refugees to return to areas that are meant directly for self-determination.

The other situation concerns those who have left their homes in the part of Palestine allocated to the Arab State, the Palestinian refugees who fled from the territories occupied in 1967. These refugees have, in accordance with the provisions of international law and United Nations resolutions, two basic rights; the first is of an individual nature that lies in the right of every refugee to return to their homes and property, while the second is of a collective nature, which should enable these refugees - side by side with the fellow inhabitants of the occupied territories – to exercise the right to self-determination. ⁽¹⁾

2. The principle of the right to return for the Palestinian refugees in international law:

The issue of Palestinian refugees is one of the oldest asylum issues in the world. For more than sixty nine years, the Palestinian refugees have been struggling, by all means, for the right of return to their homes and property from which they were expelled in 1948. ⁽²⁾

It was included in the Universal Declaration of Human Rights in 1948, and stipulated in the Convention on the Elimination of all Forms of Racial Discrimination in 1965. It is also stated in the document on international civil and political rights issued in 1966. Moreover, it can be concluded that this right was stated in the 1949 Geneva Convention on the protection of civilians in time of war. ⁽³⁾

I am going to discuss the principle of the right to return for Palestinian refugees in light of international human rights law and international humanitarian law and the law of nationality.

A) Principle of the right to return in international human rights law:

The Human Rights Act, which grants rights to individuals directly and not through states, also includes the right to return. The right to return is the norm of customary law in international human rights law and exists in a number of international and regional human rights treaties. The Universal Declaration of Human Rights, adopted by the General Assembly in 1948, one day prior to the issuance of Resolution 194, is considered the basis for the right to return in human rights law. Article 13(2) of the Universal Declaration of Human Rights simply states the right to return as follows: "Everyone has the right to leave any country including his own, and also has the right to return." Additionally, Article 12(4) of the

¹ Ahmed Alwanis Shatta,, ibid, pp32-33.

² **The return to their homes is the just and lasting solution. Badil**, 3rd edition May 2001, p 10.

³ Ramadan Baba : "**The Right of Return for the Palestinian People**", Palestinian Studies Association, Beirut 1996, pp 10-11.

International Covenant on Civil and Political Rights states the right to return as follows: "No person shall be deprived of the right to enter his country arbitrarily."

It should be noted that Israel has signed and ratified the International Covenant on Civil and Political Rights, and did not express any reservations to Article 12(4), which includes the right of return.⁽¹⁾

However, the Israeli government claims that the Declaration "allows the return of its citizens or nationals only, and therefore they do not apply to the Palestinian refugees." Ruth Labidot, a professor of international law, has supported this position by saying, "The right to return owned by citizens of a state and, at most, those permanent residents, but the refugees were neither citizens nor permanent residents in Israel, as they fled before its establishment in 1948 or in 1967 before the occupation of the areas in which they lived."

It is clear that these arguments are legally groundless because the Universal Declaration of Human Rights and the special agreements referred to the return of the person to his homeland and not to their own country.⁽²⁾

The right of the Palestinian people to self-determination and return are based on the fundamental rule, which is that sovereignty remains for the Palestinian people under Israeli occupation.

Therefore, in accordance with this legal fact, sovereignty remains potential for the Palestinian people who are eligible to return to their land and property.⁽³⁾ The International Covenant on Civil and Political Rights adopted in 1966, states in article 12:

1. Everyone legally resides in the territory of a state has the right to free movement, and to choose a place of residence within that territory.
2. Everyone is free to leave any country, including his own.
3. No one shall be arbitrarily deprived of the right to enter his country.⁽⁴⁾

Therefore, the formulation of the International Covenant on Civil and Political for the right to return can put up with the first or the second or the third solution of the Palestinian refugees. Accordingly, Article 12(4) of this Covenant used the term "his own country" to determine the destination, or the place

¹ Gil J Boling: **Palestinian Refugees and the Right of return, A study in the International Law**, papers presented by Badil for discussion, paper 6 December 23, p8.

² Mohammed AbdulHamid Seif, Ibid, p60.

³ Abdul Rahman Abu Al-Nasser: **Geneva Convention (article 4) for protecting the civilians of 1949 and its application in the Palestinan Territories**. 2000 ,p 248.

⁴ Ghazi Hasan Sabbarini: " **The Concise in Human Rights and Basic Freedom**", Dar Al-thaqafa for publications and distribution, 2nd Edition, Amman, 1997, p298.

where the right to return will be exercised; whereas the term "country," mentioned in the same Article, is applicable to a wider group of people, not just "citizens" of a state.⁽¹⁾

B) Principle of the right to return in international humanitarian law:

The principle of the right to return is not only a legal principle in international human rights law, but it is also described in the same way in international humanitarian law. We particularly refer to the four Geneva Conventions of 1949, which together constitute an essential legal aspect for the protection of human rights, including the right to return, in cases of military occupation and armed conflict.⁽²⁾

The convention also contains some items relevant to the protection of persons who are forcibly removed from their homes during the war, such as Article 45. It states that "no protected person may be transferred to the state that is not a party in this Convention. This shall not form the provision of any case as an obstacle to the return of the protected persons or return to their countries of residence after the end of hostilities. "

Article (49) of the Convention states that "It is prohibited to forcibly transport protected persons, be collective or individual, or exile them from the occupied territories to the territory of the occupying power or to the territory of any other country, occupied or not, whatever the motive may be."⁽³⁾

Two separate articles of the Treaty point explicitly the matter of return. The first concerns the issue of return; whereas, Article 6(4) covers deadlines that do not match the treaty. ⁽⁴⁾ Thus, a review of general principles of international and humanitarian law and of legal texts of the Fourth Geneva Convention of 1949 gives a solid legal ground to support the right to return for Palestinian refugees as an absolute one.

In addition to the baseless Israeli arguments on the applicability of the provisions of the Geneva Conventions on the status of refugees and exiled Palestinians, Israel maintains the view that the 1948 refugees were displaced at a time when the Geneva Conventions had not entered into effect. The Israelis claim that the provisions of the Fourth Geneva Convention related to the expulsion of persons does not apply to civilian status of Palestinian refugees who were displaced from their homes located in the State of Israel on the grounds that the expulsion case - as governed by the Convention - assumes the existence of "international conflict", a situation that did not happen in the event of conflict in Palestine in 1948.⁽⁵⁾

¹ Lex Takkenberg: **The Status of Palestinian Refugees in International Law**, Oxford Clarendon Press, 1998.P. 74-75.

² Shrif Al-Qam, Mohammed Abdul Wahed: **Encyclopedia of International Humanitarian Law**, The Red Cross, Cairo, 2004, p. 206.

³ Shrif Al-Qam, Ibid, pp. 207-208.

⁴ Gil J Boling: *ibid*, p 14-15. See also, Shrif Al-Qam: **Encyclopedia of International Humanitarian Law**.

⁵ Ahmed Alwanis Shatta,, *ibid*, p23.

In addition, the right to return is also evidenced in international humanitarian law. The Geneva Conventions of 1949 support the right to return of displaced persons to their homes after the cessation of hostilities. Also, according to humanitarian law, the right to return applies to all displaced persons, regardless of how they become displaced during the conflict.⁽¹⁾

In light of the advisory opinion of the International Court of Justice on July 9, 2004 regarding the separation wall in the Occupied Palestinian Territory, the Court considered that the Fourth Geneva Convention applies to the Occupied Territories in the event of an armed conflict between two or more of the High Contracting Parties. Israel and Jordan were parties to that Convention when armed conflict erupted in 1967, therefore, the Court considers that the Convention applies to the Occupied Palestinian Territories. ⁽²⁾

Part III: International protection for Palestinian refugees and the United Nations

The United Nations position on the issue of the Palestinian refugees was absolutely clear on the empowerment of Palestinian refugees to return to their homes and properties they abandoned in 1948 and displaced in 1967, through many resolutions, especially UN Security Council resolutions 242 and 338.

At this stage, I will address the most important United Nations resolutions concerning the protection of the rights of Palestinian refugees:

1. Partition Resolution of 1947 and the principle of the right of return:

On November 29, 1947, the General Assembly issued a resolution that called for the partition of Palestine into two states, one Arab and one Jewish. Despite the refusal of the Arabs to Resolution 181, it is considered one of the most important legal bases for the Palestinian cause, in particular, the right to return for refugees.

Nevertheless, the resolution has given the same responsibility on the two countries it called for. However, the partition resolution has stated a number of duties towards Jewish or Arab minorities. First, each State should establish equal rights in its constitution in areas of civil, political, economic, religious, and the enjoyment of human rights and fundamental freedoms.

Israel is the only country that was born as a result of a United Nations resolution. It offered on the day of its Declaration of Independence to the United Nations, a statement that shows the following: The

¹ Gil J Boling, *ibid*, p 14

². Hosam Hasan Hassan: **The Separation Wall and the International Court of Justice**", Dar Al-Nahda Al-Arabiyyah, Cairo, 2004, p176.

State of Israel will help in the development of the country for the benefit of all people. It would be based on the principles of freedom, justice and peace, and maintain social and political equality for all citizens, without discrimination because of race, creed or sex.

If we take into account the pledge made by Israel from its legal obligation to the United Nations for the implementation of all resolutions issued by the international organization regarding Palestine and Israel, then, is also committed to the empowerment of the Palestinian refugees who were displaced from their homes to immediately return to the homes and property, according to the partition resolution.

Second: The recommendations of the United Nations mediator on the right of return of Palestinian refugees:

On May 14, 1948, the General Assembly Resolution 186(d2) appointed an international mediator for Palestine. The selected mediator was Count Folk Bernadotte. He suggested proposals that include the following: the United Nations must confirm the right of innocent people who have been displaced from their homes, because of the current terrorism, to return to their homes. Also, compensation should be paid to those who wished to return.⁽¹⁾ But Zionist gangs assassinated him, one day after introducing his plan on the return of Palestinian refugees to their homes.⁽²⁾ Nevertheless, the General Assembly accepted the recommendations and proved officially the right of Palestinian refugees to return and compensation in the famous Resolution 194 of 1948.⁽³⁾

Third: In December 1948, the General Assembly Resolution 194 has called for the establishment of the United Nations Conciliation Commission for Palestine (UNCCP), as a mechanism to facilitate the implementation of durable solutions for Palestinian refugees, based on the United Nations mediator recommendations. In addition, paragraph 11 of the resolution forms a framework to solve the problem of Palestinian refugees.

Subparagraph "1" from paragraph 11 of Resolution 194 clearly defines three prominent rights of Palestinians under international law: the return and the restoration of property and compensation.

The General Assembly adopted Resolution 194. The provisions of the resolution were mainly concerned with the UNCCP, which replaced the work originally assigned to the mediator, and with the holy places. Finally, to the refugee issue, was allocated only paragraph 11 of the resolution, the General

1 Nizar Ayyoub:" **The Legal Status of Jerusalem from mandate to political solution**", AL-Haq Association, Ramallah, 2001, pp 96-97.

2 Nizar Ayyoub: *ibid* . p2.

3 UN.Doc, A/AC.25/W.82/rev 1, 2 Oct. 1961 p.5Pointed to in, Mohammed Abdul Hamid Seif, *ibid*, p7.

Assembly decided in favor of the return, as soon as possible, of refugees wishing to return to their homes and live peacefully with their neighbors, and compensation for the property of those who decided not to return to their homes, and for every missing or damaged persons, in accordance with the principles of international law and equity, by the responsible governments or authorities.⁽¹⁾

Resolution 194 gives the refugees the right to compensation. Paragraph 11 states the two types of compensation:

- I- Compensation to refugees who wish and choose not to return to their homes.
- II- Compensation for damages (moral and physical), which caused suffering to refugees and their property.

It is worth mentioning that the right to compensation is an absolute right for all refugees, not just those who choose not to return to their homes of origin.

To sum up, Resolution 194 did not establish a new right, but reaffirmed the principle of international law (for example, the right to return) already considered binding to states in 1948, whereas Resolution 194 gained value was in establishing the legal basis of the principles of international law.

Based on the above, I share Dr. Nabil El-Arabi's view concerning the advisory opinion on the Separation Wall before the International Court of Justice, which says, "From our point of view, the partial application of Resolution 181(2) through the declaration of the state of Israel, while the independence of a Palestinian state did not happen, would contribute to the Israeli-Palestinian conflict. Such a thing forms a clear failure on the part of the General Assembly for a full application of the resolution. Hence, the General Assembly bears responsibility towards the Palestinian people and the establishment of their own independent state."⁽²⁾

Fourth: Respect for the right to return is to accept Israel's membership in the United Nations:

Since the UN accepted Israel as a member stresses the fact that the UN recognizes only Israel's region defined by partition Resolution 181 of 1947 and Resolution 194. The resolution to accept Israel as a member of the General Assembly recalls statements made by the Government of Israel's representative before the special committee of the United Nations in which he expressed Israel's respect and commitment to the resolutions of the UN. Furthermore, the Israeli Foreign Minister sent a telegram to the Government of the United States confirming the same previous position, mentioning that Israel had

¹ Ramadan Baba Diji et al, ibid, pp79-80.

² Liisa Malkki: *Refugees and Exile " from Refugee Studies" to the National Order of Things*, Vol. 24, University of California 1995 . P. 82.

declared an independent republic within the limits approved by the General Assembly in Resolution 181 dated November 29, 1947.

Israel is the only country that was born as a result of a partition resolution. On the day of the declaration of its "independence," Israel submitted to the United Nations statement specifying that it will help in the development of the country for the benefit of all people; it would be based on the principles of freedom, justice and peace..⁽¹⁾

Thus, the acceptance of Israel as a member of the UN established legal obligations to observe the provisions of the Charter of the UN. ⁽²⁾

Fifth: The Right to Return in the UN Security Council Resolutions:

Despite the lack of resolutions issued by the Security Council regarding the return of Palestinian refugees to their homes, all these resolutions affirm this right.

The Security Council has a secondary role in solving the problem of Palestinian refugees. For example, Resolution 73 on August 11, 1949, concerning the 1947-1948 dispute, expressed hope that governments and authorities would pledge in attempting to reach an agreement through negotiations conducted either with the Conciliation Commission, or by direct route to achieving agreement on all outstanding issues between them. The Security Council, in Resolutions 89 (1950) and 93 (1951), called for the return of displaced persons from demilitarized zones established by the Armistice Agreement.⁽³⁾

One of the most important international resolutions concerning the Palestinian refugees is Resolution 242 issued by the Security Council on November 22, 1967, following the war in June 1967. This resolution also emphasized the need to "achieve a just settlement of the refugee problem," meaning displaced Palestinians since the 1948 war as well as the 1967 war. The resolution attempts to lay the foundations for peace in the region, stressing the need to develop a just solution to the refugee problem.⁽⁴⁾

It should be remembered that Resolution 242, which was confirmed by Resolution 338 on October 22, 1973 voted by the Security Council itself, does not state "The need...to achieve a just settlement of the refugee issue."

¹ Al-Sayed Mustafa Ahmed Abu Al-Kheir: " **Status of The Separation Wall and the International Law.**" Atirak for Publishing and Distribution,Cairo, 2006, p19.

² Khalil Sami Ali Mahdi, " **The General Theory of Internationalization in modern international law, with applied study on attempts to internationalize Jerusalem.**" Dar Al-fikr, Cairo 1996. P557.

³ Ahmed Alwanis Shatta,, *ibid*, p39. See also Mohammed AbdulHamid Seif, *Ibid*, pp84-85.

⁴ Abdul Azziz Mohammed Sarhan: " **The Palestinian State**", Dar Al-Nahda Al-Arabiyyah, Cairo, 1989, p54.

In short, the UN resolutions with regard to Palestinian refugees, in particular those of the General Assembly, gave frequent recognition of the legitimate and fixed rights for Palestinian refugees. ⁽¹⁾

Therefore, the legal significance of the UN resolutions on Palestine refugees is that they stress the legitimate rights of the Palestinian people, especially the resolutions of the General Assembly, which have important legal value because they have been issued by the vast majority of the UN member states.

Part IV: Mechanisms for the Protection of Palestinian Refugees in International Law

Up until drafting of the statute of the office of the United Nations High Commissioner for Refugees in 1950, international protection used to be called legal and political protection. International protection means "one form of protection, legal and political". Legal in the sense that it is related to the effort exerted to ensure the legitimate rights and interests of the refugees, particularly in regard to the providing, monitoring and regulating the application of existing conventions on the legal status of refugees, including, working on a review, if necessary, and assurance of day to day monitoring of the implementation in certain situations. ⁽²⁾ The refugees and the displaced Palestinians have the right to receive international assistance and protection. UNCCP was the first international body to provide international protection to Palestinian refugees in addition to a number of national and international associations.⁽³⁾

International protection normally includes activities such as providing protection for the daily needs of the refugees and ensuring their rights, including the right of asylum, food, clothing, work, education, health services and the right to physical and psychological safety. ⁽⁴⁾

However, concerning the Palestinian issue, the United Nations established a unique system for the refugees and displaced Palestinians in order to provide them with protection and assistance. For example, UNCCP, established in 1948, was mandated to provide international protection for Palestinian refugees and facilitate the process of achieving a just and comprehensive solution to their cause . On the other hand, UNRWA, which was established in 1949, was entitled to provide international assistance to them in their areas. ⁽⁵⁾

This study examines protection and legal assistance to Palestinian refugees and mechanisms for implementation, as follows:

¹ Rex Brynen: **Palestine Refugees Challenges of Repatriation and Development**. London, Routledge,2006.P. 195.

² Bukhri Abdullah AlJa'li. Ibid, p76

³ **The Palestinian displaced people and refugees**, Ibid, p114.

⁴ **The Palestinian displaced people and refugees**, Ibid, p114.

⁵ **The Palestinian displaced people and refugees**, Ibid, p114.

First: International legal protection and assistance for the Palestine refugees:

The mechanism established by the UN in 1948 to provide protection and assistance to Palestine refugees has faded out. In contrast, international efforts were focused on alleviating the refugees suffering. These efforts were confined in providing refugees with education, health services and social infrastructure as well as some emergency relief provided by UNRWA. Palestinian refugees were granted basic protection already granted to other refugees in the world under the supervision of the UNHCR, which include legal representation in the absence of a representing state.

The UNCCP, which was established to serve as an agency for providing protection for Palestinian refugees, only had limited effectiveness, so its activities were halted. ⁽¹⁾

Below, I will talk about the protection and assistance to Palestinian refugees through the following organs of the United Nations:

1— UNCCP, established in 1948, by the United Nations as an independent international agency for granting protection and searching for a final solution for the Palestinian refugee question, based on the recommendations of the UN mediator for Palestine. This agency, consisting of the United States, France, and Turkey was established in accordance with the third article of the General Assembly Resolution 194. It was given the task of helping governments and authorities concerned to complete the final settlement of the Palestinian issue, to grant protection and to look for a just and lasting solution to the issue of Palestinian refugees. ⁽²⁾

The Commission has also tried to reunify Palestinian splintered families. Its initial efforts were focused on family reunification, particularly family dependents (children and wives) who remained in areas where Israel was established. In addition, the Commission engaged in a number of activities for the sake of providing protection for refugees and their legal status. ⁽³⁾

When the Convention on Refugees was drafted in 1951, the Palestinians had already been granted special protection system consisting of the UNCCP, which was given authority to offer protection, and UNRWA, which was given authority to offer assistance. ⁽⁴⁾

2— United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA):

1 **Return to Home, The Just and lasting solution to the Palestinian refugees issue**, Badil, 3rd edition, May 2001, p21.

2 Terry Rambell: **United Nations Committee for Documentation on Palestine, The Protection and Lasting Solution for the Palestinian refugees**, Badil, Paper 5, August 2001.

3 **The Palestinian displaced people and refugees**, Ibid, p115.

4 Suzan Akram: "**The Temporal Protection for the Palestinian Refugees**" (Proposal) 121, Badil, Worksheet 5, December 2004, p13.

In accordance with the General Assembly resolution 302(IV) in 1949, UNRWA was established to provide assistance and relief, "without prejudice to the outcome of paragraph 11 of General Assembly Resolution 194" in order to spare the plight of refugees, to alleviate their suffering and to create safety and stability. UNRWA has no mandate to provide international protection for Palestinian refugees, but the Agency recorded in its reports the urgent need of refugees to receive such protection.⁽¹⁾

We should not deny that UNRWA has provided great services to Palestinian refugees. The Agency has not only preserved the Palestinian identity in exile, but its programs provide schooling and health care to more than four million registered refugees. It upgraded education and health care. UNRWA faces the risk of termination due to deficits in its annual budget. This possible termination forms an ambitious objective that Israel seeks, in order to eradicate the effects of aggression, and to escape from its responsibility for the displacement of Palestinian refugees and to give the impression to the world that there is no refugee problem.⁽²⁾

3- Office of the United Nations High Commissioner for Refugees (UNHCR):

The Treaty of Refugees in 1951 contains special conditions to provide protection and assistance to Palestinian refugees, since Article 1d of the Treaty is inclusive of the Palestinian refugees of 1948 and in 1967 within the framework of the Treaty on Refugees of 1951.⁽³⁾

UNHCR has partially covered the only protection gaps left by the UNCCP in the early 1950s. The nature of the relationship between UNCCP and Palestinian refugees of 1948 and 1967 is attributed to several factors, including the absence of any implicit item or paragraph about the Palestinian refugees in the basic legislation of UNHCR of 1950. This legislation has not included similar content to that of the Treaty on Refugees in 1951 article 1d. Finally, there is Western and Arab rejection of the High Commission intervention in the protection of all Palestinian refugees.⁽⁴⁾

If we properly define the UNCCP system, UNRWA, and article 1d of the Treaty on Refugees of 1951, we find that they are designed to ensure that Palestinian refugees receive the protection and assistance in all cases, whether through two other United Nations or through the UNCHR (preferably in association with UNRWA). Article 1d was intended to ensure that, in the case of a system failure of UNRWA or the Commission to carry out the task of their missions successfully, the Treaty of Refugees

1 **The Palestinian displaced people and refugees**, Ibid, p120.

2 Mohammed Abdul Hamid Seif, Ibid, p76.

3 **The Palestinian displaced people and refugees**, Ibid, p117.

4 **The Palestinian displaced people and refugees**, Ibid, p117.

automatically covers Palestinian refugees, as they are considered a group or an entire category, without the need for individual application of the definition contained in article 1a (2).⁽¹⁾

UNHCR provides a limited degree of international protection for a limited number of Palestinian refugees from 1948 and in 1967, and it doesn't provide protection to the Palestinian refugees in areas of UNRWA operations, which include all of the West Bank, Gaza Strip, Jordan, Syria and Lebanon.

The only limited protection activity provided by the Commission for Palestinian refugees is usually in facilitating access to travel documents, renewing registration cards of refugees outside UNRWA areas of operation, and working to find temporary solutions for Palestinian refugees in the case of forced evictions.

Second: Mechanisms for Protection of the Palestinian refugees rights in international law:

The question of international protection for Palestinians in general, and the refugees in particular, has been highlighted by many agencies as well as legal and political UN commissions. For example, the Security Council has invited the Secretary-General to make his recommendations on "mechanisms and the means to provide protection to the Palestinians civilians under Israeli occupation" through Resolution 605 issued on December 22, 1987. The recommendations included, in addition to UNRWA staff, the appointment of a "UN investigator for complaints" in the Occupied Palestinian Territories, and urged the signatories to the Fourth Geneva Convention to use all means in order to exert pressure on Israel to respect the Convention in all circumstances.

Security Council Resolution 681 on December 20, 1990, entitled the Secretary General to monitor the situation of the Palestinians under the Israeli occupation, and to submit a final report to the General Assembly every three months. About one year later the initiative was halted following the intervention of the United States, which claimed that the surveillance program would be "inconsistent" with the political process that began in Madrid in October 1991.

The General Assembly has issued a number of resolutions calling on providing international protection for Palestinian refugees, and the necessity to stop the aggression against the refugee camps. In 1982 and 1993, the General Assembly issued annual resolutions that invite the Secretary General in coordination with UNRWA to ensure effective mechanisms to provide security and the legal and human rights of the Palestinian refugees in the Occupied Territories.⁽²⁾

1 Suzan Akram: **The temporal Protect for the Palestinian refugees**, ibid, p18.

2 **The Palestinian displaced people and refugees**, ibid, p119.

The UN system provides a variety of mechanisms suitable for the implementation and application of international laws and the protection of the rights guaranteed by these laws. These mechanisms include the following: ⁽¹⁾

A. Gathering and receiving information and claims about the commitment of all parties of any state to the various United Nations treaties through its different bodies.

B. All states are expected to abide by international laws and conventions that facilitate the work of the rights granted to recipients.

C. Settling and resolving disputes where human rights are violated through international institutions such as the International Court of Justice, which exercises a judicial role in resolving disputes between states in accordance with the UN Charter and the Charter of the court itself. ⁽²⁾ Consequently, Israel is obliged to bear responsibility of all damages resulting from the construction of the wall in the Occupied Palestinian Territory, including East Jerusalem and its surroundings.⁽³⁾

As for international protection for Palestinian refugees, there is no international body, for the time being, that provides full protection. UNRWA adopted a protection program during the first Palestinian uprising - as a reaction and not acting on the program – which works to monitor daily events and report violations, and modest interference with the Israeli side, Whereas the UNCCP is the international body established by the General Assembly Resolution 194 in order to provide protection for Palestinian refugees, was stopped in the early 1950s.

During the first and second *Intifada* in the Occupied Palestinian Territory, Palestinian refugee camps were bombed and a large number of martyrs and wounded fell, a high proportion of them are children. The question here is: whom should the Palestinian refugees seek protection from? Also what is the international body that is responsible for the protection, for facilitating the right of Palestinian refugees to return to homes and property, for the restoration of the rights and compensation as stipulated in international law? The Israeli violations should be a motivation to call for international protection forces to be deployed in the Occupied Palestinian Territories, through the General Assembly and the Security Council on the basis of Chapter VII of the Security Council. In case of failure to pass the draft of

1 . Mohammed Abdul Hamid Seif, *ibid*, p78.

2 Abdullah Al Ashal: **The Case of The Separation Wall Before the International Court of Justice**, Dar Al- Naser for Publishing and Distribution, Cairo, 2nd Edition, 2006, p71.

3 Al-Sayed Mustafa Ahmed Abu Al-Kheir, *ibid*, pp 101-102.

international protection troops deployment by the Security Council, the issue must be forwarded to the General Assembly to take decision based on the basis of a decision for peace.

All states parties to the Fourth Geneva Convention have to apply international legal mechanisms for the protection of the Palestinian people, including the Palestinian Refugees in order to ensure the Israeli commitment and obligation to the Fourth Geneva Conventions.

Conclusion

It is obvious from the above mentioned that the right of Palestinian refugees for the international legal protection is guaranteed by the international law. Finally, I make some final recommendations that I believe are necessary to ensure effective protection for the Palestinian refugees. The most important of these recommendations are as follows:

First: There is a need to amend the definition of who is a "refugee," so that it includes a definition of refugees fleeing their homelands because of civil war or occupation or alien domination in order to cover these categories with the protection of the international refugee law and the international organizations for the protection of refugees.

Second: Assuring that the provisions of the international law is applicable to the status of Palestinian refugees, which provides the legal basis to protect their right to return in accordance with General Assembly Resolution 194.

Third: The need to emphasize the recognition of articles A and D of the Treaty on Refugees of 1951, which ensure the protection of Palestinian refugees.

Fourth: Recommending that the United Nations take appropriate decisions to send an international protection force to the Occupied Palestinian Territories for the purpose of control and the submitting periodic reports on the parties' implementation of human rights and international humanitarian law and in order to fully protect the human rights in the Occupied Territories.

Fifth: The Fourth Geneva Convention on the protection of civilians under military occupation is the law that governs Israeli actions in the Occupied Territories. Therefore the states which are parties to the Fourth Geneva Convention and the General Assembly of the United Nations must meet immediately in order to call for the establishment of an international mechanism to protect the Palestinians in the Occupied Palestinian Territory, including refugees, in order to compel the Israeli occupation authorities to respect and apply the Fourth Geneva Convention to protect the Palestinian people.