

This paper was presented during a conference on Palestinian refugees in the Arab World organized by Al Jazeera Center for Studies in collaboration with the Palestinian Return Centre.

A Right to Take Part?

Refugee Participation in the Negotiation of Durable Solutions

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26 April 2012

The Palestinian refugee issue is one of the largest and longest-standing unresolved situations of forced displacement in the world today. Millions of Palestinians have been displaced since the beginning of the Palestinian-Israeli conflict while repeated efforts to craft durable solutions for them have largely succumbed to failure. This paper examines the potential role of refugees themselves in finding solutions to their unresolved plight focusing, in particular, on the emerging understanding of peace negotiations as comprising a domain for political participation entailing a concomitant right to take part.¹ Drawing upon developments in recent decades relating to the role of democracy and international law in the regulation and resolution of armed conflict, generally, and in the negotiation of durable solutions for refugees, in particular, the paper offers an alternative paradigm that puts refugees themselves at the center of efforts to resolve their long-standing plight.

The paper begins with an overview of the circumstances of Palestinian displacement and the various categories of Palestinian refugees and displaced persons. Challenging the misconception that Palestinian displacement stems solely from the two major wars of 1948 and 1967, the premise of the first section is that for a solution to be durable, it should be inclusive and address the situation of all refugees and displaced persons. The second section provides an overview of the three main periods of official negotiations (1948 to the present) tracing shifts in key features - frameworks, third party mediation, participants and positions. In contrast to other studies, however, the paper highlights the unique role played by refugees themselves. Section three briefly discusses emerging principles governing refugee participation in the negotiation of durable solutions. The conclusion argues that while such participation has yet to be codified as a treaty right, instrumental benefits of participation nevertheless appear to militate in favour of the inclusion of refugees in negotiations to resolve their plight.

Overview of Palestinian Displacement

The emergence of the Palestinian refugee question is most often associated with the Arab-Israeli wars of 1948 and 1967. This common perception of the Palestinian refugee "problem" stems, in large part, from the "visibility" of war-related displacement. The establishment of camps to provide temporary shelter for refugees from the two major wars, the proliferation of "labels" to describe and categorize them, the sheer number of refugees and the establishment of a special regime to protect and assist them are among the primary features of war-related displacement that have contributed to such association.² While understandable, this association overlooks what is, in fact, a much

1 The right of refugees to take part in the public affairs of their countries of origin has been addressed more substantively in relation to home country elections. Relatively little attention has been given to other ways and means for refugees to exercise a right to take part in the public affairs of their countries of origin.

2 There are 58 official refugee camps spread across five major host states and territories: Jordan, Lebanon, Syria and the occupied West Bank, East



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broader pattern of forced displacement preceding and following each of the aforementioned wars. The relative "invisibility" of Palestinians displaced during these additional periods may be ascribed to the incremental or creeping nature of their displacement, the relatively small number of Palestinians affected, the apparent absence of refugee camps to shelter and institutions to protect and assist them and the relative paucity of labels used to describe and categorize Palestinians displaced during these periods.³

The earliest "wave" of displacement took place in the decades that preceded the 1948 Arab-Israeli war when upwards of 10 percent (100-150,000 persons) of the country's Arab Palestinian population was displaced within the beyond the borders of Palestine in the context of resistance to British rule and Zionist colonization. This period effectively "set the stage" for the second and mass wave of displacement during the first major war between Israel and its Arab neighbours when 750-900,000 Palestinians - half of the country's Arab population - fled or were expelled from their homes, villages and towns of origin. In the years that followed the 1948 war, tens of thousands of Palestinians - an estimated 15 percent of those that remained within the newly-established Jewish state - were displaced and expelled marking the third major period of Palestinian displacement since the beginning of the 20th century. The 1967 Arab-Israeli war resulted in a fourth wave of displacement when 350-400,000 Palestinians or 35-40 percent of the OPT population, half of whom were 1948 refugees, were displaced within and from their historic homeland. The fifth and longest wave of displacement affecting an unknown number of Palestinians

Jerusalem and Gaza Strip. Palestinians displaced in 1948 are referred to alternatively as Palestine refugees, 1948 refugees, and registered and unregistered refugees. Refugees from the 1967 war are referred to variously as displaced persons, 1967 refugees and ex-Gazans. The terms Arab refugees, absentees and article 1D refugees encompass both groups. Refugees from the two major wars comprise a majority of the global Palestinian refugee population. The scope of displacement is also significant when compared to the Palestinian population at the time of their displacement and in relation to the current global Palestinian population. It is estimated that refugees and other displaced Palestinians comprise as much as two-thirds of the global Palestinian population. The institutions that comprise the special regime for Palestinian refugees include the UN Conciliation Commission for Palestine, the UN Relief and Works Agency for Palestine Refugees, the UN High Commissioner for Refugees.

- 3 The incremental nature of displacement refers both to the relatively small scope of displacement and the fact that it is spread over a much longer period of time in comparison to the war-related displacement referred to above. The number of Palestinians affected is small in relation to the number of 1948 and 1967 refugees, the size of the Palestinian population at the time of their displacement and in relation to the current global Palestinian population. In many cases, however, their situation is no different from that of 1948 and 1967 refugees. Camps have been established to address humanitarian emergencies in several cases - e.g., expulsion of Palestinians from Libya in 1996, flight of Palestinian refugees from Iraq in 2003 - however, these camps were both temporary and appeared to comprise a mix of various groups of Palestinian refugees and displaced persons. The international community has not established separate institutions for these groups of Palestinians. Some groups, e.g., post-1967 refugees, appear to fall within UNHCR's mandate. In many cases, however, responsibility for international protection and assistance remains unclear. In the case of IDPs inside the 1967 OPT, UNRWA and the UN Office of the Coordinator of Humanitarian Affairs have adopted a collaborative approach. The relative paucity of terms used to describe Palestinians displaced after the two wars - other refugees, post-1967 refugees, article 1A refugees - is partly a function of gaps in the special regime for Palestinian refugees, but also stems from their invisibility relative to the much larger and more visible group of Palestinians displaced during the two major wars. This is also true for Palestinians displaced prior to 1948 who are rarely referred to or included in research on Palestinian refugees. The terms internally displaced persons and present absentees describe Palestinians displaced within Israel and the OPT during and after the wars of 1948 and 1967.

(perhaps as many as three-quarters of a million) has taken place within and from the West Bank, East Jerusalem, and Gaza Strip since Israel occupied these territories more than 40 years ago. Thus, while Palestinian displacement has ebbed and flowed over time, what emerges when one looks beyond the wars of 1948 and 1967 is a relatively continuous and arguably systemic if not systematic pattern of forced displacement.⁴

Statistical data on the global number of displaced Palestinians varies widely. Figures range from as few as 4.97 million (UNRWA) to more than 7 million persons (inclusive).⁵ The significant discrepancy can be ascribed, in large part, to the combined lack of a uniform refugee definition and a comprehensive registration system encompassing all forms of Palestinian displacement and categories of refugees and displaced persons. The UN Relief and Works Agency for Palestine Refugees (UNRWA) and the UN High Commissioner for Refugees (UNHCR) are the only international agencies which register and maintain databases on Palestinian refugees.⁶ To be registered, Palestinian refugee must fall within one of three relevant definitions: UNRWA's working definition of a "Palestine refugee", Article 1A of the 1951 Convention Relating to the Status of Refugees, or Article 1D of the same instrument. Not all displaced Palestinians, however, fall within these definitions - e.g., 1967 refugees, Palestinians displaced after the wars of 1948 and 1967 to states and territories where UNRWA operates and internally displaced persons.⁷ The size of the global Palestinian refugee population must therefore be derived from a range of sources, starting

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- 4 Palestinian displacement may be described as systemic in the sense that once can trace a similar pattern of war and non-war-related causes of displacement over the past 60-plus years. It may also be described as systemic in terms of the role that law has played in the displacement and dispossession of Palestinians. This fact comprises one of the lesser cited rationale for a rights-based approach to durable solutions for Palestinian refugees. Palestinian displacement may be described as systemic in terms its institutional features, in particular, the role of military government and Jewish national institutions in displacement and dispossession. Another systemic feature is its ongoing nature. The issue has also been explored in relation to various systems or structures including colonialism, military occupation and apartheid. The question of whether displacement has been systematic has been largely examined in relation to the 1948 war, in particular, whether Palestinian displacement was a unfortunate byproduct of the war or whether there was an intentional policy of ethnic cleansing. Given the systemic features of Palestinian displacement, it may also be possible to examine its systematic nature in the context of both intent and effect. Broadly speaking Palestinian displacement is both a consequence and cause of the unresolved conflict over self-determination. The five periods covered here may also be divided in sub-periods. Not included in this discussion are secondary waves of displacement in various Arab host countries since 1948. For a more detailed analysis of each period and sources see, Rempel 2003.
- 5 The smaller figure comprises the total number of 1948 refugees and their descendants registered to receive UNRWA assistance. Most commonly associated with the global Palestinian population, the figure excludes other categories and displaced Palestinians described above. The larger figure includes 1948 and 1967 refugees and IDPs, but excludes an unknown number of Palestinians displaced after the two major wars of 1948 and 1967. "Table 2.1 - Palestinian Refugees and IDPs by Group", in Jaradat Gassner 2009, 58.
- 6 UNRWA registration is voluntary and is therefore not statistically valid. The Agency has never carried out a comprehensive survey of refugees falling under its mandate. UNHCR data is based largely on information provided by governmental agencies, its own country and field offices and by non-governmental organizations. The Internal Monitoring Displacement Center, UNRWA and OCHA have over the past decade begun to monitor internal displacement of Palestinians but do not register IDPs. Information on displacement connected with Israel's construction of the West Bank Wall and collected by the UN Register of Damages is not available to the general public.
- 7 The UN General Assembly requested UNRWA to assist Palestinians displaced during the 1967 war and later also those displaced by subsequent hostilities, however, these groups are neither registered nor counted in Agency statistics. UNRWA initially registered 1948 IDPs, however, following transfer of responsibility in 1952 to Israel registration files became inactive.

with the aforementioned registration figures and combining these with information derived from statistical surveys, academic/policy studies and demographic projections for groups not covered in the registration systems of either of the two agencies. While providing a broader picture of Palestinian displacement, the global figure should be read as indicative rather than definitive.

Overview of Negotiations on Durable Solutions

The search for a negotiated solution to the Palestinian refugee issue can be divided into at least three main periods. The first set of negotiations began in the spring of 1949 following the 1948 Arab-Israeli war and lasted until the end of 1951. The second period following the 1967 war saw three different sets of talks, two of which addressed the refugee issue. This included talks in Camp David in 1978 ending in an agreement that set out a two-stage framework for a negotiated solution to the conflict and separate procedures to address the situation of 1948 and 1967 refugees.⁸ The third main period of negotiations which began in the fall of 1991 ending in early 2001 resulted in agreements setting out a phased process to resolve the conflict along with multilateral, quadripartite and bilateral procedures for crafting solutions for 1948 and 1967 refugees. The last decade, not covered here, has comprised intermittent efforts to restart bilateral negotiations between the PLO and Israel.

The search for a negotiated solution to the Palestinian refugee issue has evolved over the course of these three periods in at least three main ways. First, third party mediation, common to all periods, has shifted from the United Nations to the United States, which has played the role of lead mediator for more than three decades. Second, the framework for negotiations has shifted from the relatively specific language on refugees found in General Assembly Resolution 194 to the comparatively ambiguous formulation used in Security Resolution 242.⁹ Third, excluded from negotiations in the aftermath of the 1948 war,

8 A first set of negotiations between Israel and Jordan in the summer of 1967 resulted in the only agreement to date that allowed at least some refugees displaced for the first time during the 1967 Arab-Israeli war to return to their homes of origin in the West Bank. A second set of negotiations took place in December 1973 when the US and USSR convened a one day conference in Geneva under UN auspices, however, the meeting did not result in substantive talks. Palestinian, Arab and "third world" efforts to promote an alternative process through the General Assembly based on the "inalienable rights" (GA Res. 3236, 1974) of the Palestinian people resulted in the establishment of a special UN Committee on the Inalienable Rights of the Palestinian People (similar in many ways to the former UN Special Committee Against Apartheid), the drafting of a plan for a two state solution including the phased return of 1948 and 1967 refugees wishing to do so, and also resulted in a major conference in Geneva in 1983 but was unable to obtain the support or participation of major parties including Israel and the United States which since Camp David had assumed the mantle of lead mediator.

9 In its 1948 resolution the Assembly affirmed that "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" and then tasked the UNCCP to "facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation". GA Res. 194, Dec. 11, 1948, para. 11. The Security Council, by way of contrast, called for a "just settlement of the refugee problem". SC Res. 242, Nov. 22, 1967, para. 2. It is nevertheless important to note that the drafting history of Resolution 242 indicates that its refugee provisions referred to a solution based on Resolution 194. Indeed, the General Assembly affirmed such a view in Resolution 3089D in 1973 as part of an apparent effort to clarify Resolution 242 to facilitate PLO acceptance of the resolution as a basis for talks to resolve the conflict.



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Palestinians finally "won" a seat at the negotiating table in the 1990s after more than four decades of exclusion from talks concerning their future. Three major elements have nevertheless remained the same across all periods: negotiations have focused largely on the situation of 1948 and 1967 refugees with little attention to other groups of Palestinian refugees and displaced persons; the parties continue to disagree about how to resolve three major elements of the refugee issue, namely, return, restitution and responsibility; and, finally, the refugees themselves have been excluded from talks to resolve their situation.

Refugee participation

The efforts of refugee organizations to secure a seat at the negotiating table in UN-sponsored talks that followed the 1948 war has received relatively little attention in the literature on official efforts to resolve the refugee question. The representatives of these organizations comprised primarily urban, middle-class professionals - lawyers, doctors, political figures - who had been displaced during the war. On procedural issues, the organizations informed UN mediators that they had "not given anyone the power to negotiate for them" and that "they were entitled to be represented as refugees and not by any member of a single government".¹⁰ From a substantive point of view, they argued that "[t]he right of every refugee to return to his home must be independent of political argument, and must not be made the subject of bargain for political ends".¹¹ They further rejected compensation as a substitute for return. The organizations also put forward various suggestions for resolving the refugee issue including detailed proposals for housing, land and property restitution.¹²

The outcome of refugee efforts was mixed. UN mediators agreed to supply the organizations with relevant information on an informal basis, but held that they could not

10 UNCCP 1949a, 1. The memo was signed by three of the major refugee organizations: the General Refugee Congress of Ramallah, the Jaffa District and Inhabitants Committee, and the Representatives of the Land Lords of Palestine. An earlier memo to the Commission emphasized that "the Commission should look upon [them] as the real representatives of the refugees" since they were "elected by the majority of the refugees [and] supported in [the] talks by all other refugees who could not participate in [the UNCCP sponsored] conference because of being poor or [because] they could not attend, to express their wishes". UNCCP 1949b, 1. The citations in this section are illustrative of a much broader body of correspondence and meeting minutes between refugee organizations and the UNCCP.

11 UNCCP 1951, 1-2. They also pointed out that, far from creating new rights, paragraph 11 of Resolution 194 setting out the terms for a solution to the refugee issue "acknowledg[ed] and express[ed] the natural and equitable rights of the refugees as confirmed by international law and usage". UNCCP 1949c, 2. The refugees' immediate demands included revocation of Israel's absentees' property laws used to expropriate refugee properties, facilitation of family reunification, the unblocking of refugee bank accounts and the immediate return of certain categories of refugees including those required to maintain the citrus industry. They also demanded international guarantees for the safety of returning refugees, the granting of citizenship ipso facto upon their return, the full restoration of their rights and guarantees against discrimination.

12 Sami Hadawi, a Palestinian land specialist who had worked in the British administration in Palestine before the 1948 war, for example, recommended the establishment of an international body, with offices located in major Arab host states, to "contact refugees and collect particulars of their property and losses in Palestine; to collect particulars of lands and buildings owned by Government and to value them; [and] to obtain information regarding all assets of the Government and to value them". The refugees organizations suggested that the body should be comprised of an Arab, an Israeli and a neutral member appointed by the United Nations and approved by refugees themselves. UNCCP 1950, 6-7. The organizations also put forward suggestions regarding the role of Arab League and UN in facilitating refugee return and restitution.

reply in writing to either specific or general questions related to the negotiations. They appeared to be receptive, however, to refugee participation in mixed committees on issues like family reunification along with their participation in a future claims process. As the talks stagnated, moreover, the UN body mandated to facilitate the implementation of Resolution 194 increasingly appeared to depart from the terms set out for a solution to the refugee issue and the substantive demands of refugees themselves. Arab and Israeli officials taking part in the UN-sponsored talks met with the refugee organizations, each seeking to strengthen their positions in the negotiations, but neither supported a direct role for refugees in official talks that would determine their futures. A number of ideas put forward by refugee organizations during the period - e.g. international property custodian - nevertheless found their way into Arab proposals for resolving the refugee issue in the years that followed the collapse of the UN-sponsored talks.

The renewed efforts by refugees to secure a seat in talks on their situation in the 1990s alongside the PLO and Israel is another relatively unknown episode in the history of official efforts to resolve the Palestinian refugee issue. The popular refugee movement that emerged in camps and communities of exile in the 1990s comprised a loose coalition of village associations and societies, community and camp-based organizations and popular committees, unions for refugee youth and women, and non-governmental organizations and networks.¹³ On substantive issues, the movement similarly demanded a solution which "confirmed the refugees' right to return to their homes and property" and once again rejected compensation as a substitute for return.¹⁴ The movements procedural demands were also similar, but more elaborate in their definition than those put forward by refugee organizations during the first period of negotiations setting out a detailed mechanism for the election of a refugee leadership to represent their rights and interests in the negotiations.¹⁵ Moreover, in contrast to the first period, refugees demanded a seat

13 The movement was different from refugee organizations set up after the 1948 war in part in that it emerged from within the refugee camps whereas the organizations that sought to take part in negotiations five decades earlier were comprised primarily of urban refugees and small land owners displaced during the war. The movement that emerged in the 1990s reflected a growing sense among refugees and non-refugees alike that the Middle East peace process had not only failed to meet their basic aspirations, but that its very aim was to undermine if not extinguish their rights. On the eve of final status negotiations between Israel and the PLO a group of Palestinian refugee organizations met in Cyprus to begin the process of establishing a coalition that would facilitate communication, cooperation and joint initiatives for the right of return. A significant initiative, the popular movement is nevertheless broader than the coalition. The period also saw the emergence of a broad array of community-based and non-governmental organizations focused specifically on solutions for Palestinian refugees.

14 Recommendations and Decisions, First Popular Refugee Conference, Deheishe Refugee Camp, Bethlehem, Sept. 13, 1996. There is extensive documentation of refugee views on solutions to their situation from this period of negotiations. Sources include media reports, survey research, statements issued by refugee associations, community-based organizations and non-governmental organizations, and the consultations and deliberations among refugees. The citations used here are representative though by no means comprehensive of refugee opinion. A key difference between the substantive demands of refugees during the first and third period of negotiations is that refugee views during the latter period also reflect and include positions relating to the rights of the Palestinian people as a whole, in particular, the right to self-determination.

15 The elaboration of the mechanism is contained in the declaration issues by the first popular refugee conference referred to above. The declaration recommended the organization of popular refugee conferences and the election of "refugee councils" in camps and communities of exile within and beyond the borders of historic Palestine. Each council would in turn elect an executive committee to oversee council decisions and recommendations

alongside the PLO and Israel and not in place of the representatives of the Palestinian people.

The outcome of refugee efforts was once again mixed. While the movement was unable to implement plans for the election of their own leadership or secure a seat at the negotiating table in final status talks between the PLO and Israel, the mobilization and organization of refugees arguably contributed not only to broader awareness about the utility of their participation in talks on their future, but also recognition among at least some officials associated with the talks - Palestinian, Israeli and international - that without some form of refugee participation agreements reached between the parties themselves would be neither legitimate nor durable.¹⁶ On substantive issues, the movement arguably contributed to the re-activation of concern about refugee rights in Palestinian, Arab and international contexts, the re-introduction of the issue in both popular and official Palestinian institutions and the development and dissemination of knowledge on the refugee issue.¹⁷ The period following the collapse of final status talks between Israel and the PLO in 2000-2001 has, moreover, seen the emergence of increasingly creative initiatives - e.g., return plans - to resolve the refugee issue that put refugees themselves at the center.

A Refugee Right to Take Part in Negotiation of Durable Solutions

The right to political participation is enshrined in a wide array of international and regional human rights treaties. Most treaties which codify political participation as a fundamental human right commonly affirm the right of citizens to take part in the conduct of public affairs directly or through freely chosen representatives. Two major issues arise in relation

and together with other executive committees organize a "General Refugee Conference" which would elect its own executive committee. The latter would be responsible for "follow[ing] up the struggle for the refugees' national rights (right of return), and the struggle for civil refugee rights in their areas of domicile, e.g., the right to work, education, health, environment, culture, movement, expression, and all those human and civil rights protected by international conventions". The General Refugee Conference would also be "the only body authorized to negotiate - through the PLO - on the refugee issue". Recommendations and Decisions, First Popular Refugee Conference, *ibid.*, Part III.

16 The PLO initially sought to contain the movement with some officials apparently concerned that it aimed to compete with or replace the organization. An assortment of officials from all sides appeared to view the movement as a potential "spoiler" to a comprehensive agreement. The movement itself struggled against party factionalism, lack of experience and resources, and limitations stemming from the widespread dispersion of refugees, restrictions on freedom of movement and lack of political freedoms faced by the great majority of refugees in the 1967 OPT and in major Arab host states.

17 Othman 2001; Hourani 2004; and Jaradat 2007-8. Other observers were less definitive about the movement's contribution, noting that it was "neither structured nor organized in a manner adapted to Palestinian political structures and its decision-making process". ICG 2004, 17. Indeed, the impact on the negotiations themselves is less easy to ascertain and has yet to be examined in detail. One former negotiator, however, observed that Palestinian officials, in particular, had become "more vigilant, careful, but also more secretive" as a result of the movement's activities. *Ibid.* The leak of PLO papers from negotiations over the past decade appeared to confirm the suspicions of some that while the movement had contributed to the consolidation of rights-based language on the refugee issue in public discourse, privately, some Palestinian negotiators appeared ready to cede refugee rights in exchange for the establishment of a state in the 1967 OPT.

to the elaboration of a refugee right to take part in the negotiation of durable solutions. First, human rights treaties are largely silent on ways and means to exercise the right to take part in the conduct of public affairs. While most identify elections as the primary mechanism for taking part in the conduct of public affairs through freely chosen representatives, treaties say little about how to actualize more direct forms of political participation.¹⁸ Second, treaties do not address the specific situation of refugees. The limitation of the right to political participation to citizens and the allowance for certain restrictions on its exercise, in particular, residence, raise further questions of whether refugees have a right to take part in the public affairs of their countries of origin through the negotiation of durable solutions or otherwise. There is nevertheless an emerging understanding of peace negotiations as comprising a conduct of public affairs entailing a concomitant right to take part along with emerging recognition that refugees have a right to take part in the public affairs of their countries of origin.

Human rights treaties which codify political participation as a fundamental right reveal little about the substantive content of the right to take part in the conduct of public affairs directly. While the drafting histories of major instruments do not afford much additional insight they nevertheless indicate that the conduct of public affairs comprises more than participation in government and that the drafters supported a broad definition that would accommodate an array of activities and domains for realizing the right to political participation. The emerging understanding of peace negotiations as comprising a domain for political participation entailing a concomitant right to take part can be traced in part to a growing awareness and recognition of peace negotiations as hybrid forms of constitution- and international law-making processes.¹⁹ While all three processes - peacemaking, constitution-making and international lawmaking - have traditionally been viewed as falling within the sole jurisdiction of states, there is nevertheless a growing recognition in both law and practice that each comprise domains for political participation.²⁰ It can also be traced, however, to the gradual codification over several decades of the right of women to take part in matters of international peace and security. The most recent expression can be found in UN Security Council Resolution 1325, General Recommendation 23 on the right to

18 The indeterminate character of direct participation in the conduct of public affairs that is common to most, but not all, instruments can be ascribed in part to ideological divisions of the time which militated against a more succinct elaboration. It also reflected, however, the simple fact that it would be impossible to enumerate the wide array of ways and means for taking part in the conduct of public affairs which have only expanded in the decades since political participation was first enshrined as a universal norm of international law. It was thus left to states to define in their laws and constitutions the ways and means for taking part in the conduct of public affairs with voting identified as foundational to democratic governance. This effectively allowed for the evolutionary development of the provision taking into account practices among states and increasingly practices of political participation across states and at both the regional and international levels.

19 For a detailed elaboration of peace agreements as hybrid forms of constitution and international law-making see, Bell 2008.

20 The identification of peace negotiations as comprising a potential domain for political participation can be found in a small body of emerging research on civil society participation in peace negotiations. See, e.g., Barnes 2002; Paffenholz et al. 2006; and Wanis-St. John and Kew 2008. On participatory constitution-making see, e.g., Hart 2001. On the emerging right to take part in international law-making, particular, in the context of the development of the rights of indigenous peoples see, Boyle and Chinkin 2007.

political of women under the International Convention on the Elimination of Discrimination Against Women and in the 2003 Protocol on Women to the African Charter on Human and Peoples' Rights which comprises the first treaty to elaborate the right of women to take part in the negotiation of peace.

Human rights treaties are also largely silent on whether citizens have a right to take part in the public affairs of their countries of origin when they are displaced. The drafting histories once again provide little additional insight apart from the fact that residence, as noted earlier, may be viewed as a reasonable limitation on the exercise of the right to political participation. The emerging understanding that refugees have a right to participate in the public affairs of their countries of origin can be inferred in part from the twin norms of non-discrimination and equality. The most explicit expression can be found in General Recommendation 22 on article 5 of the Convention on the Elimination of All Forms of Racial Discrimination.²¹ It may also be inferred from more recent elaboration of a "transnational" right to political participation in the Convention on the Protection of the Rights of All Migrant Workers and their Families, the first major treaty to recognize that citizens have a right to take part in the conduct of public affair when they are outside their country of origin.²² The emerging understanding of a refugee right to take part in the conduct of public affairs, much like the elaboration of peace negotiations as comprising a conduct of public affairs, however, also has a pedigree that can be traced over several decades dating back at least to the period of decolonization and the provision for refugee participation in plebiscites and elections which aimed to facilitate independence and majority rule.²³ A more contemporary expression of a refugee right to take part in the public affairs of their countries of origin can be found in a number of resolutions, peace agreements, and guidelines on voluntary repatriation which affirm both a refugee right to take part in home country elections and, in contrast to previous decades, in the negotiation of durable solutions themselves.²⁴

21 An important elaboration of a refugee right to take part in the public affairs of his/her country of origin, the recommendation nevertheless has several shortcomings. First, General Recommendations do not impose binding obligations on states. Second, the Recommendation does not elaborate ways and means for refugees to participate in the public affairs of the country of origin. Finally, the Recommendation links the implementation of the right to political participation to repatriation creating a practical problem particularly in relation to negotiations which usually take place prior to the return of most refugees wishing to do so.

22 The "clawback" clause which allows states to implement article 41 (right to political participation) "as appropriate and in accordance with their legislation" nevertheless weakens the significance of the treaty as an expression of a transnational right to political participation. Moreover, relatively few states have ratified the treaty.

23 This includes, among others, the 1962 Evian Agreement between France and Algeria, the 1978 Settlement of the Namibian Situation, and the 1979 Lancaster House Agreement in Zimbabwe. The pedigree may extend further to the inter-war period and the recognition that expatriates should be allowed to return in order to take part in plebiscites relating to the future of their homelands. It can also be found in discussions on holding a plebiscite relating to the future of Palestine in the aftermath of the 1948 war.

24 In four major cases - Cambodia, Mozambique, Bosnia and Kosovo - peace agreements included express provision for the participation of refugees in elections following the signing of peace agreements between warring parties. In other cases, the enfranchisement of refugees was implicit in related peace agreement provisions or through national legislation providing for out-of-country voting. In several other cases, including Croatia and Kosovo,

Conclusion

This paper has sought to map foundations for an alternative paradigm that puts Palestinian refugees at the center of efforts to resolve their situation. Central to this paradigm shift is the emerging recognition of peace negotiations as comprising a conduct of public affairs under international human rights law entailing a concomitant right to take part. The instrumental benefits ascribed to participation, in particular, the local knowledge and resources that refugees often bring to the table along with the increased legitimacy and sustainability of agreements reached, would appear to further militate in favour of their inclusion.²⁵ It is nevertheless important to point out that while there is growing recognition of both the intrinsic and instrumental value of such participation a range of issues require additional research in order to ensure its effectiveness. These include, among others, the conditions which facilitate participation, how representatives are chosen and who gets a seat at the table, how participation contributes to the signing of effective agreements, and the longer-term relationship between participation and the durability of solutions.

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post-agreement election rules included provisions for refugees. In its 1996 handbook on voluntary repatriation, UNHCR for the first time explicitly identified refugee participation in home country elections as a right and further recommended that refugees should be permitted to take part in the negotiation of durable solutions. UNHCR 1996. These provisions reflect an evolution in agency thinking on refugee participation beginning with the engagement of refugees in development during the 1980s and progressing towards recognition of refugee participation in durable solutions in the 1990s with a particular emphasis on the involvement of refugee women. This language as been further strengthened over the fifteen years. The UN Sub-Commission on the Promotion and Protection of Human Rights, for example, has "[r]emind[ed] States of the right of all displaced persons to participate in the return and restitution process and in the development of the procedures and mechanisms put in place to protect these rights". [emphasis added] CHR, Sub-Comm. Res. 2002/30, Aug. 15, 2002.

25 In a study of 24 sets of peace negotiations in 20 different cases, Wanis-St. John and Kew find a correlation between civil society participation in peace negotiations and the long-term sustainability of agreements reached. Interestingly, they also discover an apparent correlation between sustainability of the presence of democratic representatives in the negotiations. Wanis-St. John and Kew 2008. An important finding, it also raises the question of how to facilitate and ensure the democratic representativeness of official negotiators. For a detailed elaboration of the benefits and challenges of civil society participation in peace negotiations see, Paffenholz and Spurr 2003; Paffenholz et al. 2006; and, Wanis-St. John and Kew 2008.

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