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The Status of Palestinian Refugees in International Law

Lex Takkenberg

Oxford: Clarendon Press, 1998, 411 pp.

Reviewed by Ardi Imseist[†]

As a result of events that took place in Palestine between December 1947 and September 1949, approximately 750,000 Palestinian Arabs were forcibly expelled from their ancestral homeland around the time that the State of Israel proclaimed its independence. Prohibited from returning to their homes and property by the new “Jewish state,” these unfortunates would remain subject to the harsh reality of involuntary exile for the next half-century. Today, nearly four generations later, approximately 3.4 million Palestinian refugees are still waiting to return to their homes. According to the author of *The Status of Palestinian Refugees in International Law*, theirs is “one of the most tragic and compelling refugee crises of the post World War II era. In quantitative terms, it features prominently on the list of the world’s major refugee situations; in terms of duration and political sensitivity, it is without equivalent after World War II.”¹

Lex Takkenberg is the current Chief of Field Relief and Social Services in Gaza for the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). Distraught by the fact that relatively “little has been written about the plight of Palestinian refugees from a legal point of view,”² Takkenberg’s volume endeavours to determine the status of this special group of refugees in international law “in a comprehensive manner.”³ His study focuses on the legal position of Palestinian refugees resident in both the Arab world and the West. The book offers a meticulous examination of their standing under various international legal regimes, including international refugee law,

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¹ L. Takkenberg, *The Status of Palestinian Refugees in International Law* (Oxford: Clarendon Press, 1998) at 345.

² *Ibid.* at 41.

³ *Ibid.* at 7.

the law relating to stateless persons, humanitarian law, and international human rights law. An examination of the international protection regimes in place to aid the Palestinian refugees (i.e. UNRWA and the UNHCR) is also undertaken, and an insightful exploration of possible solutions to the problem is advanced within the context of the current Middle East peace process. Authoritative and very well researched, this volume is indispensable to anyone with an interest in international law, particularly as it relates to Palestinian refugees

The book is divided into three parts: “Refugee Law” (Part I), “Other Areas of International Law” (Part II), and “International Protection and the Search for a Durable Solution” (Part III). The book’s introduction lays the foundation for the study by providing a succinct outline of the historical and political origins of the Palestinian refugee problem. This is followed by an excellent survey of the role the United Nations has played in dealing with the refugees’ plight since 1948. The relevance of the Madrid, and now Oslo, peace processes to the refugees’ predicament is also discussed.⁴ Particularly noteworthy is Takkenberg’s careful treatment of the highly charged debate between leading Israeli and Palestinian academics regarding the question of responsibility for the creation of the Palestinian refugee problem. The opening narrative describing the experience of a Palestinian refugee woman and her family is a story aptly used by the author to illustrate the “decades-long plight of the Palestinian refugees.”⁵

Part I, “Refugee Law” comprises three chapters and offers a thorough examination of the status of Palestinian refugees under international refugee law. Chapter 2 is chiefly concerned with exploring the meaning of the term “Palestinian refugee” and examines, from an international refugee law perspective, the reasons why “these refugees differ from other forced migrants.”⁶ It also offers a relatively lengthy, but

⁴ The “Madrid” peace process refers to the series of bilateral and multilateral negotiations entered into by Israel, Jordan, Lebanon, the Palestinians and Syria following the so-called “Gulf war” of 1991. This process paved the way towards secret bilateral negotiations between Israel and the Palestine Liberation Organization (PLO), resulting in the September 1993 signing of the Declaration of Principles on Interim Self-Government Arrangements (DOP)—the agreement that inaugurated the current series of Israel-PLO interim peace negotiations widely referred to as the “Oslo” peace process.

⁵ Takkenberg, *supra* note 1 at 5.

⁶ *Ibid.* at 49.

highly important, assessment of the UNRWA definition of a “Palestinian refugee,” as well as a segment on defining Palestinian refugees for the purpose of the current peace negotiations. Chapter 3 focuses on the position of Palestinian refugees under “the main and universal instrument of international refugee law”⁷—namely, the *1951 Convention Relating to the Status of Refugees*. Building on an examination of the *travaux préparatoires* of the *1951 Convention* in the previous chapter, Takkenberg examines the effect of its so-called “exclusionary clauses” (specifically Article 1D)⁸ on Palestinian refugees seeking refugee status in western countries. In one of the most important chapters of the book, the author concludes that “those Palestinian refugees for whom UNRWA assistance is no longer attainable [for what ever reason], and who find themselves in countries bound by the 1951 Convention, are *ipso facto* entitled to benefit from its provisions.”⁹ In Chapter 4, Takkenberg discusses the legal status of Palestinian refugees in the Middle East in light of general refugee law principles, specifically with regard to various regional protection arrangements promulgated by the League of Arab States. One of the most valuable contributions in this chapter is the author’s country-by-country examination of the position of Palestinian refugees in the member states of the Arab League.

⁷ *Ibid.* at 86.

⁸ Article 1D provides that:

This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance. When such protection or assistance has ceased for any reason, without the position of such persons being definitely settled in accordance with the relevant resolutions of the General Assembly of the United Nations, these persons shall *ipso facto* be entitled to the benefits of this convention.

Because the majority of Palestinian refugees live in UNRWA areas of operation (i.e. Jordan, Lebanon, Syria, West Bank and Gaza Strip), many western refugee tribunals and analysts have refused to apply the 1951 Convention to them because they are deemed to be receiving assistance from an “organ” of the United Nations. Takkenberg correctly points out that this has generally been the case “irrespective of whether such refugees individually are, or have been, in receipt of actual UNRWA assistance (at p. 122). See also P. Nicolaus & P. Saramo, “Zu den Voraussetzungen und der Anwendbarkeit des Artikels I Abschnitt D Absatz der Genfer Flüchtlingskonvention” (The requirements and Applicability of Article I(D) of the [1951] Geneva Convention on the Status of Refugees”) (1989) 2 Z.A.R. 67.

⁹ Takkenberg, *supra* note 1 at 122.

Part II, “Other Areas of International Law,” also consists of three chapters. It assesses whether legal regimes other than international refugee law “contain rules that are relevant to the [Palestinian] refugees’ status.”¹⁰ Thus, Chapter 5 deals with the rules of international law concerning stateless persons, and specifically examines the relevance of *the 1954 Convention Relating to the Status of Stateless Persons* and the *1961 Convention on the Reduction of Statelessness* to the Palestinian refugees. Noting that “most Palestinian refugees are also stateless,” Takkenberg convincingly argues that until an independent Palestinian state is established, “it is important that the statelessness of the majority of Palestinian refugees be formally acknowledged, so that, where applicable, individual Palestinians may be able to benefit from the relevant instruments of international law.”¹¹

Chapter 6 then moves on to an insightful examination of the relevance that international humanitarian law has for the Palestinian refugees, particularly for those who live in the West Bank and Gaza Strip—territories that have been illegally occupied and administered by the Israeli military since 1967. Focusing primarily on the provisions of the Fourth Geneva Convention, and noting that “the importance and potential of this body of international law is not always sufficiently realized by lawyers involved in the protection of refugees,” Takkenberg makes good use of the Palestinian refugee issue to illustrate that “refugees and stateless persons living in military conflict zones are to be considered as “protected persons” for the purpose of the applicability of the Fourth Geneva Convention.”¹²

Finally, Chapter 7 considers the relevance of international human rights law to the Palestinian refugee issue, with respect to the right to return and compensation, the right to self-determination, and the right to family unification. While successful in its summary of the general legal content of these rights, this chapter fails to address a number of other areas of international human rights law that are of substantial importance to the Palestinian refugees: the rights related to protection against (mass) expulsion, protection and ownership of property, freedom of movement,

¹⁰ *Ibid.* at 175.

¹¹ *Ibid.* at 195.

¹² *Ibid.* at 226.

freedom of worship, freedom against torture, cruel and inhuman punishment, and freedom against arbitrary arrest and detention, among others. To be fair, Takkenberg does acknowledge this deficiency in his chapter, however,¹³ and on the whole it does not detract from the tremendous value of the book.

Part III, “International Protection and the Search for a Durable Solution,” comprises two chapters and concerns the implementation of the international legal principles examined in parts I and II. Chapter 8 deals specifically with the issue of international protection, and offers a good survey of the role that both UNRWA and the United Nations High Commission for Refugees (UNHCR) have played in this regard. The chapter also engages in a brief discussion of the protection offered by the International Committee of the Red Cross and various other international initiatives (e.g. the Temporary International Presence in Hebron). Among other things, this portion of the book (and for that matter the whole volume itself) serves as a stark reminder that “the vast majority of the Palestinian refugees are living in a highly unstable region of the world, [and as such] there has been a constant need for international protection for this group.”¹⁴ Finally, Chapter 9 deals with the question of finding a durable solution to the Palestinian refugee problem within the framework of international law and the current Middle East peace process. In what is described as “the most ‘political’ chapter of the book,”¹⁵ Takkenberg explores the three most common types of solutions available to refugee problems—voluntary repatriation, local integration, and resettlement in third countries—and then argues convincingly that “because of its complex nature, a resolution of the Palestinian refugee problem is likely to be based on a combination of the three above solutions.”¹⁶ To his credit, he remains impartial and very pragmatic in advancing his proposed solution—the substance of which is certain to offend those Palestinians and Israelis who continue to insist on nothing less than a solution based on their own irreconcilable notions of absolute justice.

¹³ *Ibid.* at 273.

¹⁴ *Ibid.* at 315.

¹⁵ *Ibid.* at 318

¹⁶ *Ibid.* at 327.

The Status of Palestinian Refugees in International Law is not without its faults. Aside from those mentioned in relation to the chapter on human rights law, there are two general problems with the book. First, it fails to address the plight of the substantial number¹⁷ of Palestinian refugees who have lived *within* Israel as nationals of that state since 1948. Although it is true that these individuals technically enjoy the legal protection of a state and are therefore not properly the subject of international refugee law per se, this does not alter the fact that they share many of the same characteristics, and should therefore be entitled to the same legal protections (i.e. in international human rights law) as other Palestinian refugees.¹⁸ This is especially the case given that, as Takkenberg himself points out, the “largest single group of Palestinian refugees assisted by UNRWA resides in Jordan and has been granted Jordanian nationality” [emphasis added].¹⁹ Second, although the book correctly concludes that the refugee problem can only be solved “once the core issue of Palestinian sovereignty has been resolved in a satisfactory manner,”²⁰ its assumption that “Palestinian sovereignty will indeed eventually be forthcoming” from the current Oslo peace process is severely misguided. To date—over five years after the signing of the DOP—interim negotiations between Israel and the Palestine Liberation Organization (PLO) have produced very limited results, and permanent status negotiations (in which the issues of the final political status of the territories and refugees are to be discussed) have been postponed indefinitely.²¹ Moreover, despite the fact that the DOP is itself based on the “land-for-peace” formula of UN resolutions 242 & 338, the official guidelines of the current government of Israel stipulate that it will

¹⁷ At present, Palestinian-Israelis number approximately one million persons—one-fifth of the total population of the state of Israel.

¹⁸ For example, many Palestinian-Israelis are in fact internally displaced persons: that is, in 1948 they were forcibly removed from their original homes by Israeli authorities and, although they remained in Israel, were prohibited from exercising their right to return to those homes. Using the same standards applied to other Palestinian refugees then, these internally displaced Palestinians should legally be entitled to the same right to return to their homes as provided for in various areas of international refugee and human rights law.

¹⁹ Takkenberg, *supra* note 1 at 54.

²⁰ *Ibid.* at 356.

²¹ For a critical discussion of the Oslo peace process see E. Said, *Peace and its Discontents* (New York: Vintage Books, 1996).

“oppose the establishment of a Palestinian state or any foreign sovereignty West of the Jordan river [i.e. in the West Bank and Gaza Strip].” This policy has yet to be countered by any concrete Israeli actions to the contrary.²²

Despite its few shortcomings, *The Status of Palestinian Refugees in International Law* is an extremely important addition to the literature on international law and the Palestine conflict. The volume is of tremendous value because of its ability to provide the reader with a comprehensive, well-researched, and well-organized overview of the relevant international legal principles applicable to Palestinian refugees. It is also of great worth because “it gives the reader a clearer understanding of what it means to be a Palestinian refugee” and because it constitutes an excellent record of “the efforts which have been made to provide for their welfare” over the past fifty years.²³ *The Status of Palestinian Refugees in International Law* stands out as an innovative and authoritative text on a very complex issue that has long stood at the center of much controversy, but has hitherto not been the subject of intensive legal inquiry.

²² Importantly, the guidelines go on to state that the Israeli government will also “oppose ‘the right of return’ of Arab populations to any part of the Land of Israel West of the Jordan River” (i.e. including the West Bank and Gaza Strip). See *Guidelines of the Government of Israel* (1998), on line: The Likud Party: Guidelines of the Government of Israel <<http://www.likud.org.il/policy/govguide.html>> (date accessed: 20 November 1998) at Part I, Art. 7.

²³ Takkenberg, *supra* note 1 at viii.