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End of Exile: Practical Solutions to the Palestinian Refugee Question

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Abstract

The objective of this Essay is to add new information and analytical insights to the debate, namely, research about how refugee and compensation solutions have been implemented in other situations. Practical implementation options are examined from a variety of comparative experiences. Examining these options could help soften the political absolutism that characterizes the current impasse on the refugee issue. But there is value in any event in understanding the international system context, and mapping realistic scenarios for such matters as an institutional framework to implement a settlement, the criteria and procedures for relocating refugees, and techniques and methods to award adequate compensation. It is, in effect, a tutorial on what has worked in other settings, assuming a settlement of the conflict.

ESSAY

END OF EXILE: PRACTICAL SOLUTIONS TO THE PALESTINIAN REFUGEE QUESTION

*Arthur C. Helton**

I. THE VALUE OF COMPARISONS

A sustainable peace in the Middle East will require a solution to the problem of Palestinian refugees. Indeed, this is why so much has been written about this issue in the context of peace negotiations.¹ But this Essay takes a different approach, offering comparative historical perspectives on the organization, procedures, and criteria for implementing the right of return and compensation for lost property. It is a technical and not a political treatment.

The objective of this Essay is to add new information and analytical insights to the debate, namely, research about how refugee and compensation solutions have been implemented in other situations. Practical implementation options are examined from a variety of comparative experiences. Examining these options could help soften the political absolutism that characterizes the current impasse on the refugee issue. But there is value in any event in understanding the international system context, and mapping realistic scenarios for such matters as an institutional framework to implement a settlement, the criteria and procedures for relocating refugees, and techniques and methods to award adequate compensation. It is, in effect, a tutorial on what has worked in other settings, assuming a settlement of the conflict.

Arrangements relating to Palestinian refugees are in certain ways distinct from generic refugee responses.² Research and

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1. See, e.g., Ami Ayalon & Sari Nusseibeh, *Finding Common Ground: The Missing Pieces of Middle East Peace*, 2 SEATTLE J. SOCIAL JUST. 415 (2001).

2. See Michael Dumper, *Comparative Perspectives on Repatriation and Resettlement of Palestinian Refugees: The Cases of Guatemala, Bosnia, and Afghanistan*, Paper prepared for the International Conference on Israel and the Palestinian Refugees, Max Planck Inst. for Comp. Pub. Law & Int'l Law (July 11-13, 2003).

analysis relating to these topics are similarly divergent.³ A comparative approach can provide insights into the workability of a prospective settlement, the broad parameters of which are discernible from recent negotiations. But as recognized by the current head of the United Nations Relief and Works Administration (“UNRWA”), “No one is working on this.”⁴

II. *SITUATING THE PALESTINIAN REFUGEE ISSUE*

The recently-published Roadmap to Peace in the Middle East⁵ is but the most recent reminder that the Palestinian refugee issue will be a key aspect of any settlement of the Palestinian-Israeli conflict. The Roadmap, authored by the Quartet (the European Union, United Nations (“U.N.”), Russia, and the United States), and promoted now by U.S. President George W. Bush, addresses at the outset a variety of issues ranging from security to settlements.⁶ Plans for the humanitarian rehabilitation of the West Bank and Gaza in this first phase, of course, would indirectly affect many of the 1.5 million Palestinian refugees registered there, but it is the last phase relating to a final settlement, where the refugee issue is explicitly featured.⁷

After an international conference convened by the Quartet in early 2004, there is to be “an agreed, just, fair, and realistic solution to the refugee issue.”⁸ This is an ambitious objective for many reasons, including sheer numerosity. Currently, there are some six million Palestinian exiles, nearly four million of whom are registered as refugees under the mandate of the UNRWA which operates in the region.⁹

3. See Susan M. Akram & Terry Rempel, *Temporary Protection as an Instrument for Implementing the Right of Return for Palestinian Refugees*, 22 B.U. INT'L L.J. 24 (2004); see also Justus R. Weiner, *The Palestinian Refugees' "Right to Return" and the Peace Process*, 20 B.C. INT'L & COMP. L. REV. 1, 1 n.1 (1997).

4. Interview with Peter Hansen, Commissioner-General, United Nations Relief & Works Agency for Palestinian Refugees in the Near East [UNRWA], in Amman, Jordan.

5. See The Secretary-General, *Letter Dated 7 May 2003 from the Secretary-General Addressed to the President of the Security Council, Annex A: A Performance-Based Roadmap to a Permanent Two-State Solution to the Israeli-Palestinian Conflict*, U.N. Doc. S/2003/529 (May 7, 2003).

6. See *id.* at 1-5.

7. See *id.* at 8.

8. *Id.*

9. See The Commissioner-General of the UNRWA, *Report of the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, U.N. Doc. A/59/13 (Oct. 19, 2004).

Indeed, the refugee issue has surfaced periodically as negotiations to settle the Israeli-Palestinian conflict have waxed and waned. Refugees were profiled recently in efforts by former U.S. President Bill Clinton, who convened in July 2000 a summit meeting at Camp David, Maryland, in an audacious bid to resolve the conflict.¹⁰ The issue emerged centrally in the course of the settlement gambit at Camp David, and follow-on exchanges at Taba in Egypt.¹¹ In these settings, they became a deal-blocker, with both sides taking maximalist positions.¹² Israeli negotiators, concerned about the demographic dimension, insisted on alternatives to an absolute right of return.¹³ Palestinian negotiators have long insisted on a categorical right of return, arguing that refugees should be given the maximum feasible choice in terms of where to live in the future.¹⁴

In an attempt to finesse the return issue, a proposal was tabled in these recent discussions for the relocation of refugees to Israeli territory, which would then be transferred to a Palestinian State.¹⁵ In addition, the United States proposed a financial package, reportedly of U.S.\$10 billion, designed to break the impasse and help buttress a peace agreement, while prepared to solicit donations from other countries to compensate Palestinian refugees. Palestinian negotiators have suggested that a figure of scores or even hundreds of billions of dollars would be necessary to constitute fair compensation.¹⁶

Debates about the right of refugees to return to their homes in what is now Israel will permeate political commentary as well

10. See Carole Basri, *The Jewish Refugees from Arab Countries: An Examination of Legal Rights—A Case Study of the Human Rights Violations of Iraqi Jews*, 26 FORDHAM INT'L L.J. 656, 711-12 (2003); see also Hiba I. Hussein, *Challenges and Reforms in the Palestinian Authority*, 26 FORDHAM INT'L L.J. 500, 518 (2003).

11. See Hussein, *supra* note 10, 519-21.

12. See *id.* at 518-19.

13. See *id.* at 518.

14. See Frances Raday, *Self-Determination and Minority Rights*, 26 FORDHAM INT'L L. J. 453, 472-73 (2003).

15. See *Private Response on Palestinian Refugees*, LE MONDE DIPLOMATIQUE, Jan. 23, 2001, available at <http://www.monde-diplomatique.fr/cahier/proche-orient/israel/refugees-en>.

16. See Atif A. Kubursi, *Palestinian Losses in 1948: Calculating Refugee Compensation*, 81 INFO. BRIEF, Aug. 3, 2001, available at <http://www.thejerusalemfund.org/images/informationbrief.php?ID=37>.

as settlement negotiations.¹⁷ Yet, the absorption of refugees into Israel will be highly controversial and will likely be severely limited, with Israeli negotiators never having agreed to accept back more than 100,000 individuals annually even when the conflict was fresh.¹⁸ But the affirmation in principle of the right to return, and the reception of refugees into Israeli territory that is then transferred to Palestinian sovereignty, as well as continued family reunification admissions to Israel, may be feasible. In fact, questions over family reunification have been raised repeatedly in refugee negotiations, even though the issue is analytically distinct, with Israel agreeing in the past to admit 2,000 family reunification cases annually (6000 persons).¹⁹ Actual practice has been more difficult to discern.²⁰

In envisioning a resolution of the problem, the nearly 400,000 Palestinian refugees who are registered in Lebanon²¹ have been prioritized in discussions as they are considered among the most needy and likely to be pressured to leave after a settlement.²² Also, both sides have discussed the establishment of an international commission and fund to deal with compensation issues.²³ Both have suggested that relatively small sums of compensation could be paid on a per capita basis to refugees in fast track procedures.²⁴ But there is no meeting of the minds relating to the method by which to calculate compensation, nor is there agreement on the amount that would be contributed to an international fund.²⁵ Both sides have discussed UNRWA being phased-out, with the Palestinian side more favorable than the Israeli side to a continuing role for the agency.²⁶

17. See generally Nabil Fahmy, *The Global Challenges in the Middle East Region: An Egyptian Perspective*, 28 *FLETCHER F. WORLD AFFAIRS* 150 (2004).

18. See Jacob Tovy, *Negotiating the Palestinian Refugees*, 10 *THE MIDDLE EAST Q.* (2003), available at <http://www.meforum.org/article/543>.

19. See *id.*

20. See generally Glenn Frankel, *Israel Assailed for Family Separation*, *WASH. POST*, Feb. 8, 1987, at A25.

21. See Deborah Sontag, *Painful Glimpse of Home for Palestinians*, *N.Y. TIMES*, May 30, 2000, at A1.

22. See *Israeli Private Response on Palestinian Refugees*, *LE MONDE DIPLOMATIQUE*, Jan. 23, 2001, available at <http://mondediplo.com/focus/mideast/a327>.

23. See *id.*

24. See *id.*

25. See *id.*

26. See *id.*

III. THE EARLY INTERNATIONAL RESPONSE: UNITED NATIONS RELIEF AND WORKS ADMINISTRATION

Historically, the principal international humanitarian response to Palestinian refugees has been UNRWA, which was established in 1949 by the U.N. General Assembly.²⁷ When the agency began operations in 1951, it sought to address the humanitarian needs of some 900,000 refugees, 268,000 of whom resided in 60 different camps in the region.²⁸ Because the General Assembly did not define who was a Palestinian refugee, agency officials developed their own registration criteria.²⁹ Initially, UNRWA policy documents defined a refugee as a person who, as a result of the Palestinian conflict, had lost his home and means of livelihood.³⁰ Subsequently, this definition was further refined, and UNRWA has come to consider a refugee to be a person whose normal place of residence was Palestine during the period June 1, 1946, to May 15, 1948, and who, as a result of the Palestinian conflict, had lost both a home and means of livelihood, and the descendants of such a person.³¹

In the early years, UNRWA began addressing the immediate needs of Palestinian refugees in terms of shelter, education, food and health services.³² When the prospect for more enduring arrangements seemed feasible, public works projects and small-scale integration projects were initiated by the agency,³³ sometimes in the face of a highly suspicious refugee clientele who feared the extinguishment of their right to return and the liquidation of their cause through the promotion of assimilation and resettlement schemes.³⁴ In practice, refugee status was perpetuated for political and economic reasons, and repatriation was considered infeasible.³⁵ This left the UN with a lasting humanitarian assistance commitment institutionalized in the form of

27. See G.A. Res. 302(IV), U.N. Doc. A/1205 (Dec. 8, 1949).

28. See UNRWA, Frequently Asked Questions, at www.un.org/unrwa/overview/qa.html (last visited May 27, 2005).

29. See BENJAMIN SCHIFF, REFUGEES UNTO THE THIRD GENERATION 24 (1995).

30. See *id.*

31. See UNRWA, Who Is a Palestinian Refugee?, at <http://www.un.org/unrwa/refugees/whois.html> (last visited Apr. 18, 2005); see also LEX TAKKENBERG, STATUS OF PALESTINIAN REFUGEES IN INTERNATIONAL LAW, Annex 2, § 2.13 (1998).

32. See TAKKENBERG, *supra* note 31, at 30.

33. See SCHIFF, *supra* note 29, at 21.

34. See *id.* at 46.

35. See *id.*

UNRWA.³⁶

The large sums needed for physical development were not forthcoming, and the agency reverted to a routine of aiding refugees to meet their survival needs.³⁷ Education, a traditional generator of national identity, became a primary and sometimes controversial focus of UNRWA programming.³⁸ The sensitivities were reflected by the fact that the contents of textbooks describing the origins and incidents of the conflict which underlay UNRWA's work had to be carefully negotiated.³⁹

The conflict waxed and waned over the decades, repeatedly interrupting the humanitarian and social agenda of UNRWA, including in 1956 in Gaza and 1958 in Lebanon.⁴⁰ In 1967, war uprooted some refugees once again, and resulted in further Palestinian politicization and militancy.⁴¹ Shelters became tent cities once more, and the UNRWA's work was re-oriented to emergency relief over the next two decades.⁴²

The Palestinian *intifada* fundamentally affected the agency. As this conflict of national aspirations evolved in the midst of the Israeli occupation, UNRWA added programs and staff, and developed an innovative protection mandate.⁴³ The agency utilized publicity and the deployment of special staff (Refugee Affairs Officers and Legal Officers) in an effort to provide some measure of redress for the abuse of refugees.⁴⁴ UNRWA became an advocate for refugee rights, and a mechanism to report on and publicize Israeli treatment of Palestinians in the occupied

36. See UNRWA, Establishment of UNRWA, at <http://www.un.org/unrwa/overview/index.html> (last visited May 27, 2005).

37. See SCHIFF, *supra* note 29, at 46.

38. See UNRWA, Programme Management, at www.un.org/unrwa/Programmes/education/management/html (last visited May 27, 2005).

39. See UNRWA, UNRWA Response to Allegations Made by the Centre Simon Wiesenthal in its Statement to the Commission on 31 March 2003, available at <http://www.un.org/unrwa/allegations/response.html> (last visited May 8, 2005) [hereinafter Response to Allegations].

40. See SCHIFF, *supra* note 29, at 13-15, 21.

41. See generally MICHAEL B. OREN, *SIX DAYS OF WAR: JUNE 1967 AND THE MAKING OF THE MODERN MIDDLE EAST* (2002).

42. See UNRWA, Establishment of UNRWA, *supra* note 36.

43. See BADIL Resource Center for Palestinian Residency and Refugee Rights, The U.N. Relief and Works Agency for Palestine Refugees in the Near East, at <http://www.badil.org/Assistance/text01.htm> (last visited May 27, 2005).

44. See Riccardo Bocco, Matthias Brunner & Jamil Rabah, *International and Local Aid During the Second Intifada*, at 76 n.1 (July 2001), available at www.dartmonitor.org/reports/report2/PPPPreport11.pdf.

territories under the terms of the Fourth Geneva Convention.⁴⁵ “Protection by publicity” became a key agency strategy.⁴⁶

Once post-1967 emergency donations began diminishing, the agency fell into financial crisis, which persisted until 1983 when budget reforms were introduced.⁴⁷ Improved stability and modernized planning and budgetary techniques once again encouraged donors to contribute funds.⁴⁸ The notoriety associated with the *intifada* stimulated contributions, but as the emergency became routine, budgetary shortfalls returned.⁴⁹

The relations of the agency with the parties to the conflict were often strained, including the Palestinian Liberation Organization.⁵⁰ Politically, UNRWA balances between collaboration with the occupying authority, and cooptation by the refugees and their political organizations.⁵¹ The agency’s local employees, many of whom are refugees, have sought to pressure UNRWA to take stands on behalf of refugee causes.⁵² The agency has often had difficulties with host governments, as well as the Israeli army, over its prerogatives as an international or-

45. See BADIL Resource Center for Palestine Refugee and Residency Rights, *What Role for UNRWA? Opportunities and Constraints: A Durable Solution to the Palestinian Refugee Issue*, Discussion paper prepared for the PRRN Workshop on the Future of UNRWA (Feb. 2000), available at <http://www.badil.org/Publications/Monographs/UNRWA.Refugees.pdf>.

46. See The Secretary-General, *Report Submitted to the Security Council by the Secretary-General in Accordance with Resolution 605 (1987)*, ¶ 28(d), U.N. Doc. S/19443 (Jan. 21, 1988).

47. See General Assembly, Working Group on the Finance of the UNRWA, *Report of the Working Group on the Finance of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (1983)*, ¶ 11, U.N. Doc. A/38/558 (Nov. 4, 1983).

48. See *id.* ¶ 12.

49. See The Commissioner-General of the UNRWA, *Report of the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, ¶ 97, U.N. Doc. A/55/13 (Oct. 15, 2000).

50. See, e.g., Press Release, Palestinian Human Rights Organization, *Discord Between UNRWA and Palestinian Political Party on Appointing a School Principal Keeps Students in Their Houses* (Sept. 13, 2002), available at <http://www.euromedrights.net/PRVCGI/engelsk-show.asp?id=1163>; see also Press Release, Palestinian Human Rights Organization, *Camp Popular Committees Become Embroiled in the Conflict Between UNRWA and a Palestinian Political Party*, available at <http://www.euromedrights.net/PRVCGI/engelsk-show.asp?id=1163> (last visited May 16, 2005).

51. See UNRWA, Organization, at <http://www.un.org/unrwa/organization/staff.html> (last visited Apr. 14, 2005).

52. See UNRWA, General Information, at <http://www.un.org/unrwa/employment/organization.html> (last visited Apr. 14, 2005).

ganization, a source of continuous and intense negotiations.⁵³ Rumors about whether or not humanitarian facilities and aid were being diverted to support the *intifada* were frequently in the air in the midst of the conflict.⁵⁴ But the agency's experience in Lebanon taught it that the existence of government, any government, was preferable to anarchy in terms of a working environment.⁵⁵

UNRWA has become enmeshed in the Arab/Palestinian-Israeli conflict.⁵⁶ The killing of a senior UNRWA official by an Israeli soldier in a gun battle with Palestinian militants in 2002 is only the most recent manifestation of a highly polarized situation in which neutrals are not allowed.⁵⁷ At this juncture, UNRWA is institutionally synonymous with the conflict.⁵⁸ These circumstances will inevitably shape UNRWA's role after a resolution of the conflict.

IV. REFUGEE SOLUTIONS: NEW AND OLD HOMES— RETURN, LOCAL INTEGRATION, AND THIRD-COUNTRY RESETTLEMENT

Resolution of the Palestinian refugee question will necessarily involve some combination of three possible place-based outcomes: 1) some measure of voluntary return, 2) a good deal of integration in current places of asylum, and 3) perhaps a significant degree of resettlement in third countries abroad. Indeed, the Canadian Prime Minister has reportedly mentioned that Ca-

53. See, e.g. Danielle Haas, *Tensions Between Israel, U.N. Near Boiling Point*, S.F. CHRON., Dec. 11, 2002, at A12.

54. See Response to Allegations, *supra* note 39.

55. See *Recommendation on the Situation of the Palestine Refugees*, EUR. PARL. ASS., ¶ 3, 16th Sess., Doc. No. 1090, (1988) (expressing concern over the dire situation of Palestinian refugees in Lebanon).

56. See, e.g., Marc Zell & Sonia Shnyder, *Palestinian Right of Return or Strategic Weapon?: A Historical, Legal and Moral Political Analysis*, 8 NEXUS J. OP. 77, 111 (2003) (stating that the creation of the United Nations Relief & Works Agency for Palestinian Refugees in the Near East ("UNRWA") is one key reason why the Palestinian refugee problem has persisted for over half a century and why the right of return remains the single greatest obstacle to peace between Arabs and Jews in the Middle East).

57. See Ardi Imseis, *On the Fourth Geneva Convention and the Occupied Palestinian Territory*, 44 HARV. INT'L L.J. 65, 100 n.376 (2003).

58. See Zell & Shnyder, *supra* note 56, at 111 n.271 (quoting U.S. Congressman Thomas Lantos saying: "For too long, UNRWA has been part of the problem, rather than the solution, in the Middle East . . . [I]t is difficult to escape the painful conclusion that UNRWA, directly or indirectly, is complicit in terrorism.").

nada may accept as many as 15,000 Palestinian refugees living in other Arab States.⁵⁹ While this report is disputed, the notion of such an offer has resonated in speculations about a settlement.⁶⁰ Of course, the precise dimension of each of these place-based outcomes, and their inter-relationships, will be grist for the negotiators' mill.

The generic international regime relating to refugees provides a starting point for considering a realistic framework for practical solutions to the Palestinian refugee question. The generic refugee regime is treaty-based and concerns itself with the legal *status* of individuals who fear persecution upon return to their home country.⁶¹ Various civil and economic rights are to be respected by the country of asylum in the protection of refugees.⁶² In practice, this often means the provision of basic humanitarian assistance, and a firm rule, sometimes violated, not to force refugees back to a place of persecution.⁶³

The centerpiece of the generic regime is the 1951 Convention relating to the Status of Refugees, as amplified by its 1967 Protocol to deal with refugees around the world.⁶⁴ Today, 145 States have signed one of these two U.N. refugee treaties and have undertaken to provide protection and assistance for individuals who left their home countries, and who meet the treaty definition of the term "refugee."⁶⁵ That is, 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."⁶⁶ This contrasts with the operational construct for Palestinian refugees—residence at the specified place and time, coupled with loss of home and livelihood,

59. See J.T. Amman, *Canadian Premier Arrives Today*, JORDAN TIMES, Apr. 14-15, 2000, available at www.jordanembassyus.org/04142000002.htm.

60. See, e.g., Rex Brynen, *Palestinian Refugees and the Middle East Peace Process*, Apr. 3, 1998, available at http://www.arts.mcgill.ca/mepp/new_prrn/research/papers/brynen_980403.htm.

61. See generally U.N. Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137 [hereinafter *Refugee Convention*].

62. See *id.* arts. 4-34.

63. See *id.* art. 33.

64. See Protocol Relating to the Status of Refugees, Jan. 31, 1967, 606 U.N.T.S. 267, art. 1(2).

65. See *id.*

66. *Refugee Convention*, *supra* note 61, art. 1A(2).

and the descendants of such persons.⁶⁷

The implementing institution under the generic regime is the U.N. High Commissioner for Refugees (“UNHCR”).⁶⁸ When UNHCR began operations in January 1951, it had a staff of thirty-four people based mainly in Geneva with a budget of about U.S.\$300,000.⁶⁹ Over the course of the next five decades, the agency grew into a global institution with 268 offices in 114 countries, a staff of more than 5500 people and a budget of just over U.S.\$1 billion.⁷⁰ UNHCR currently helps approximately twenty million people around the world.⁷¹

Under the generic regime, each State treaty party has the discretion to determine whether an individual’s situation satisfies the refugee definition,⁷² resulting inevitably in some measure of differential treatment of like cases.⁷³ The status-oriented generic regime largely begs the question of providing a solution to the situation of international homelessness inherent in the refugee character. Nevertheless, there is an often-articulated policy preference, at least by States, for the voluntary repatriation of refugees⁷⁴—except in those instances, of course, when a different preference predominates. Such was the case after World War II when repatriation from the democratic West to the socialist East became ideologically disfavored during the Cold War and resettlement become the norm.⁷⁵ A more recent instance involved arrangements in the 1980s and 1990s to resettle Vietnamese and other Indochinese refugees.⁷⁶

Nevertheless, conceptually, repatriation is the most congruent solution to refugee flight. What could be more harmonious

67. See UNRWA, Who Is a Palestine Refugee, *supra* note 31.

68. See U.N. High Commissioner for Refugees [UNHCR], Basic Facts, at <http://www.unhcr.ch/cgi-bin/texis/vtx/basics> (last visited May 11, 2005).

69. See UNHCR, Administration, at <http://www.unhcr.ch/cgi-bin/texis/vtx/admin> (last visited Apr. 21, 2005).

70. See *id.*

71. See *id.*

72. See Refugee Convention, *supra* note 61, art. 12.

73. See, e.g., UNHCR, Home Office Quota Resettlement Scheme, at www.unhcr.org.uk/resettlement/home_office_scheme.html (last visited May 11, 2005).

74. See, e.g., U.S. Dept. of Homeland Security, How Do I Apply for Resettlement in the United States as a Refugee?, at uscis.gov/graphics/howdoi.refapp.htm (last visited Apr. 10, 2005).

75. See UNHCR, Home Office Quota Resettlement Scheme, *supra* note 73.

76. See Southwest Asia Resource Action Center, Vietnamese Refugees, at www.searac.org/vietref.html (last visited May 27, 2005).

than the return home of an exile? Indeed, discussion of this outcome has been featured through the Palestinian-Israeli conflict.⁷⁷ The reality, of course, is often quite different. Circumstances may have changed, and the community may no longer exist. Indeed, there may be nothing to which to return. New homes may beckon, or indeed, may have already been found.

A. Repatriation

The largest recent repatriation program concerns Afghans returning to Afghanistan from Iran and Pakistan.⁷⁸ Some two million Afghans have repatriated since the U.S.-led military campaign ended in 2002.⁷⁹ UNHCR has requested U.S.\$195 million to assist return to Afghanistan for 2003, including transportation and a rather meager reintegration package for individuals comprising between U.S.\$5 to U.S.\$30 to cover transportation costs, as well as plastic sheeting, flour, and hygiene materials.⁸⁰

Other significant repatriation efforts over the recent past have included Cambodia where, between March 1992 and April 1993, UNHCR repatriated an estimated 370,000 refugees at the cost of over U.S.\$128 million.⁸¹ In Mozambique some 1.7 million refugees (from six neighboring countries) returned home from 1992 to 1996, costing around U.S.\$150 million.⁸² In the case of Namibia, over 40,000 refugees were repatriated by UNHCR at a cost of U.S.\$36 million.⁸³

77. See David K. Shieler, *Clashing Rights of Return; A Conflict's Bedrock Is Laid Bare*, N.Y. TIMES, May 27, 2001, at D1.

78. See UNHCR, *Refugees by Numbers*, 1-6, at http://www.unhcr.ch/cgi-bin/texis/vtx/basics/+AwwBmeLqZw_MwwwxFqAvxxvWW9WWwmFqtFEIfgIhFqoUflfRZ2ItFqtxw5oq5zFqtFEIfgIAFqoUflfRZ2IDzmxwww1FqtFEIfgl/opendoc.htm (last visited Apr. 6, 2005); see also Charlene Porter, *More than 500,000 Refugees Return to Afghanistan*, May 8, 2002, available at <http://usinfo.org/wf-archive/2002/020508/epf309.htm>.

79. See UNHCR, *Afghanistan: The Most Important Operation*, Refugees, Vol. 4 2003, at 12, available at <http://www.unhcr.org/cgi-bin/texis/vtx/publ/opendoc.pdf?tbl=PUBL&id=400663064>.

80. See Porter, *supra* note 78.

81. UNHCR, *Burden-Sharing*, ISIL YEAR BK. OF INT'L HUMANITARIAN & REFUGEE L., Discussion paper submitted by UNHCR fifth annual plenary meeting of the ACP, available at www.worldlii.org/int/journals/ISIL4BIHRL/2001/17.html (last visited Apr. 18, 2005).

82. See UNHCR, *Evaluation of UNHCR's Repatriation Operation to Mozambique* (1996), available at <http://www.unhcr.ch/cgi-bin/texis/utx/opendoc.html?bl=RESEARCH&id=3acbbcf90&page=research>.

83. See UNHCR, *THE STATE OF THE WORLD'S REFUGEES: FIFTY YEARS OF HUMANITARIAN ACTION* 135 (2000) [hereinafter *STATE OF REFUGEES*].

In the 1980's, more than two million people fled their homes from civil conflict in Central America.⁸⁴ During the early 1990s most of the 72,000 Nicaraguan refugees were repatriated, along with 350,000 internally displaced people, and 30,000 former combatants.⁸⁵ By the mid-1990s, an estimated 32,000 Salvadoran refugees had been repatriated.⁸⁶ And by the late 1990s, 42,000 Guatemalan refugees were repatriated from Mexico, with an additional 22,000 choosing to settle permanently in Mexico.⁸⁷

Refugee repatriation schemes normally involve UNHCR, which seeks to ensure the voluntariness of return and to provide transportation and some measure of reintegration assistance.⁸⁸ International non-governmental organizations ("NGOs") often are the logistical implementers of return programs.⁸⁹

The repatriation operations in Cambodia, Central America and Mozambique reflected a somewhat broader approach to repatriation. Unlike the small-scale and short-term operations that UNHCR had previously engaged in, these new operations sought to include a longer-term approach which aimed at reconstruction, peace building, and reintegration.⁹⁰ The results of this holistic approach have been difficult to measure.⁹¹

Unlike generic repatriations, questions of voluntariness may not feature very prominently in the return of Palestinian refugees, since this is, indeed, the declared aim of Palestinian advocates.⁹² There will be logistical needs, but depending on the di-

84. *See id.* at 105.

85. *See id.* at 139.

86. *See id.* at 137.

87. *See id.*

88. *See* UNHCR, *Helping Refugees*, at <http://www.unhcr.ch/cgi-bin/texis/vtx/basics> (last visited May 11, 2005).

89. *See* UNHCR, *Report on UNHCR's Relations with Non-Governmental Organizations* (1997), available at <http://www.unhcr.ch/cgi-bin/texis/vtx/home/+4wwBmMeDeud3wwwxFqzvxq9xmswmFqo7E2RN02lhFqh0kgZTFqopwGBDnG5zFqmRbZAFqh0kgZTDzmxwww1FqmRbZ/opendoc.htm>.

90. *See* UNHCR, *STATE OF REFUGEES*, *supra* note 83.

91. *See generally* UNHCR, *UNHCR GLOBAL REPORT* (2000), June 1, 2001, available at <http://www.unhcr.ch/cgi-bin/texis/vtx/template?page=publ&src=static/gr2000/gr2000toc.htm>; *see also* UNHCR, *UNHCR GLOBAL REPORT* (1999), *Central America Regional Overview*, June 1, 2000, available at <http://www.unhcr.ch/cgi-bin/texis/vtx/publ/opendoc.pdf?tbl=PUBL&id=3e2d4d611c>; UNHCR, *UNHCR GLOBAL REPORT* (1999), *Cambodia/Thailand Repatriation and Reintegration Operation*, June 1, 2000, available at <http://www.unhcr.ch/cgi-bin/texis/vtx/publ/opendoc.pdf?tbl=PUBL&id=3e2d4d5f0>.

92. *See* SHAML, *BADIL Analysis of PSR Poll*, available at www.shaml.org/ground/shukaki/reactions/badil.htm (last visited Apr. 25, 2005).

mension of repatriation, they may be relatively modest.⁹³ If return is limited to family unity cases, then there will be a need for the assessment of family ties, at least once agreement is reached on the definition of the family concept as it relates to extended members.⁹⁴ UNHCR has had some experience with family-related adjudications for Indochinese and Haitians.⁹⁵ But it is not a mainstream activity of the agency, and a variety of NGOs could be called upon to undertake this work as well.⁹⁶

B. *Resettlement*

A large-scale Palestinian refugee third-country resettlement program, on the other hand, would require a new international framework. Currently, eight countries — Australia, Canada, Denmark, Finland, New Zealand, Norway, Sweden, and the United States — accept most of the 100,000 or so refugees who are resettled world-wide each year, with Australia, Canada, and the United States in the lead.⁹⁷ Increasingly, UNHCR operates as a referral mechanism for cases of third-country resettlement, which the agency considers a remedy of “last resort” to address individuals with specific needs for protection.⁹⁸ The International Organization for Migration (“IOM”), governed by a council of ninety-eight Member States and thirty-three observer States, typically provides practical and logistical support for the movement of resettling refugees.⁹⁹ National resettlement groups ordinarily provide integration assistance.¹⁰⁰

While each country uses the generic refugee definition to determine eligibility, this is a necessary but not a sufficient condition for admission, and each country applies somewhat distinctive additional criteria for resettlement. Nordic countries, for ex-

93. See generally Dumper, *supra* note 2.

94. See generally TAKKENBERG, *supra* note 31, at 262-73.

95. See, e.g., STATE OF REFUGEES, *supra* note 83, § 4, 6.

96. See UNHCR, *Report on UNHCR's Relationships with NGO's*, *supra* note 89 (explaining that United Nations High Commissioner for Refugees (“UNHCR”) has an operational partnership with about 500 non-governmental organizations).

97. See UNHCR, *Refugees by Numbers*, *supra* note 78.

98. *But see* Don Barnett, *Out of Africa*, 2 (Oct. 2003), available at <http://www.cis.org/articles/2003/bacl1303.pdf> (arguing that resettlement is no longer a last resort).

99. See International Organization for Migration [IOM], *What We Do*, at <http://www.iom.int/en> (last visited April 20, 2005).

100. See, e.g., T.L. Early & J.-P. Costa, *Note on International Protection: United Nations General Assembly: Executive Committee of the High Commissioner's Programme, Fifty-fourth session, 2 July 2003*, 16 INT'L J. REFUGEE L., 124, 137 (2004).

ample, have relatively small resettlement programs, which give priority to minors or traumatized and disabled refugees.¹⁰¹

Insights into the nature of the special institutional arrangements that would have to be made for a significant resettlement program for Palestinian refugees can be garnered from other mass resettlement experiences. A case in point is the effort to resolve the immense displacements caused by World War II. Upwards of twenty million people were uprooted in Europe from 1939 to 1945.¹⁰² At the end of the conflict, over ten million individuals found themselves outside of their home countries and in need of assistance and protection.¹⁰³

In 1946, the International Refugee Organization ("IRO") was established to coordinate resettlement.¹⁰⁴ The IRO, which existed from December 1946 to January 1952, was founded to focus on the needs for new permanent homes for a residual population of individuals who had fled (refugees) and been dislocated (displaced persons) by reason of World War II.¹⁰⁵ Initially, this uprooted population was ministered to by a predecessor U.N. Relief and Rehabilitation Administration ("UNRRA"), which focused on both societal recovery as well as humanitarian relief in the context of devastated post-war Europe in the 1940s.¹⁰⁶ Unlike UNRRA, the IRO focused specifically on the refugee question, giving it a coherent organizational mission.¹⁰⁷

The IRO was the first major U.N. humanitarian opera-

101. See UNHCR, *Easy Guide on Refugee Resettlement Programs 2003/2004* (Oct. 2003), available at http://www.unhcr.org.uk/resettlement/resettlement_pdfs/resettlement_programs03-04.pdf; see also Mette Honore, *Resettlement in the Nordic Countries*, Migration Information Source, Sept. 1, 2003, available at <http://www.migrationinformation.org/Feature/display.cfm?id=159>.

102. See Kathryn Bockley, *A Historical Overview of Refugee Legislation: The Deception of Foreign Policy in the Land of Promise*, 21 N.C. J. INT'L L. & COM. REC. 253, 260 (1995) ("In the wake of WWII in 1945, a U.S. State Department report described the situation in Europe as, '... 20 to 30 million of the people of Europe already [have been] torn from their moorings by the terrific impact of war.'")

103. See *The Postwar Situation in Japan and Germany in Japan and Germany as High Technology Societies* (unpublished thesis, on file with the Univ. of Helsinki) available at http://www.valt.helsinki.fi/agathon/2521_3.htm.

104. See *International Refugee Organization*, available at <http://www.encyclopedia.com/html/I/IntR1efu.asp> (last visited April 8, 2005).

105. See *id.*

106. See *id.*; see also *United Nations Relief and Rehabilitation Administration*, available at <http://www.encyclopedia.com/html/u/UN1R1eh.asp> (last visited Apr. 18, 2005).

107. See *International Refugee Organization*, *The Columbia Electronic Encyclopedia* (6th. ed. 2005), available at <http://www.infoplease.com/ce6/history/A0825355.html>.

tion.¹⁰⁸ During its existence, the agency resettled 1,038,750 refugees to 65 different countries, including nearly 300,000 persons to the United States. IRO's annual budget was in excess of U.S.\$150 million with an administrative budget of nearly U.S.\$5 million. At the height of its operations, the agency had 5,600 staff, and arrangements with 120 humanitarian groups, in which it invested nearly U.S.\$40 million to provide ancillary social services to refugees and displaced persons. Overall, the IRO expended over U.S.\$400 million.¹⁰⁹

The IRO was established as the first U.N. "specialized agency," although its founders gave relatively little attention to what this form of organization actually meant.¹¹⁰ In practice, the agency was granted considerable operational independence, as its programs were not subject to supervision by the General Assembly.¹¹¹

The predominant mission of the IRO was resettlement in Western Europe and beyond.¹¹² In the early years of the agency's operations, there was a small measure of refugee repatriation, with the IRO organizing the return of 72,834 refugees to their home country.¹¹³ But increasingly unwilling to repatriate, the residue of this displaced population became an object of international attention as the ideological confrontation of the Cold War worsened.¹¹⁴ Return to Communist-dominated homelands became unpalatable to western governments, most notably the United States.¹¹⁵ The IRO, which was funded and thus governed by western governments, faced early denunciations by the Soviet bloc as being dedicated primarily to promoting labor mi-

108. See UNHCR, *PARTNERSHIP: AN OPERATIONS MANAGEMENT HANDBOOK FOR UNHCR'S PARTNERS* (Feb. 2003), UNHCR e-Centre, available at http://www.the-ecentre.net/resources/e_library/doc/Operations_Management_Handbook.pdf [hereinafter *PARTNERSHIP*].

109. See *International Refugee Organization*, available at <http://www.mhsc.ca/encyclopedia/contents/15877.htm> (last visited May 27, 2005).

110. See Convention on the Privileges and Immunities of the Specialized Agencies, Nov. 21, 1947, 33 U.N.T.S. 261, available at <http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterIII/treaty2.asp>.

111. See Constitution of the International Refugee Organization, Dec. 15, 1946, 18 U.N.T.S. 3, available at <http://www.yale.edu/lawweb/avalon.decade.decad053.htm>.

112. See *id.*

113. See *id.*

114. See *PARTNERSHIP*, *supra* note 108, at 7.

115. See *STATE OF REFUGEES*, *supra* note 83, ch. 1.

gration for political purposes.¹¹⁶ In this connection, it is interesting to note the difficulty the IRO faced in attempting to resettle refugees with high educational and professional attainments.¹¹⁷ Manual laborers were preferred in the labor-starved work places of post-war Europe.¹¹⁸

Another illustrative mass resettlement scheme was prompted three decades later by a humanitarian crisis in Southeast Asia. As countries in the region refused to allow asylum seekers to land, thousands of Vietnamese perished in the South China Sea.¹¹⁹ A terrifying specter emerged, of small, ramshackle boats containing thousands of desperate refugees roaming the seas of Southeast Asia, before they either drowned or starved.¹²⁰ A group of countries led by the United States intervened, creating programs to relocate some two million individuals at a cost of U.S.\$1 billion plus associated integration costs over a fifteen-year period.¹²¹

To begin the effort, in July 1979, the U.N. convened an international conference of sixty-five governments, along with international organizations and NGO's.¹²² The Secretary-General opened the conference by emphasizing the need for all countries to realize the obligations and responsibilities of the countries of origin, asylum and final settlement.¹²³ "The countries of origin had an obligation to respect the right of emigration and family reunification, while avoiding any action," leading to the departure of their nationals under dangerous conditions.¹²⁴

116. See Laura Barnett, *Global Governance and the Evolution of International Refugee Regime*, 14 INT'L J. REFUGEE L. REV. 238, 244 (2002).

117. Cf. DEPARTMENT OF INTERNATIONAL PROTECTION, UNHCR, RESETTLEMENT HANDBOOK, NOV. 1, 2004, available at <http://www.unhcr.ch/cgi-bin/texis/vtx/protect/opendoc.pdf?tbl=PROTECTION&id=3d464a844> (noting that non-protection purposes, such as opportunities based on higher education, are not of primary importance).

118. See U.N. Economic and Social Council, *Report of the International Refugee Organization on Resettlement of Non-repatriable Refugees and Displaced Persons*, U.N. Doc. E/RES/208(VIII) (March 9, 1949) (asking countries to accept more intellectuals and help them re-educate themselves professionally), available at <http://www.unhcr.ch/cgi-bin/texis/vtx/excom/opendoc.htm?tbl=EXCOM&page=home&id=3ae69ef918>.

119. See C.N. Le, *A Modern Day Exodus*, available at www.asian-nation.org/exodus.shtml (last visited May 27, 2005).

120. See *id.*

121. See *id.*

122. See UNHCR, *Meeting on Refugees and Displaced Persons in South-East Asia*, U.N. Doc. A/34/627 (Nov. 7, 1979).

123. See *id.* ¶ 12.

124. See *id.*

They also had a responsibility to cooperate with UNHCR "to ensure an orderly outflow."¹²⁵ Since the countries of asylum were themselves developing countries with their own social and economic problems, it was considered essential that countries outside the area be primarily responsible for eventual resettlement.¹²⁶

Pledges were made at the conference by developed countries to expand greatly the number of refugees they would be willing to resettle.¹²⁷ Funding was also pledged to finance the refugee support and relief operations.¹²⁸ In order to reduce the size of the build-up of asylum seekers, Vietnam agreed to enforce a moratorium on illegal departures from its shores.¹²⁹

An initial decline in the number of boat people was not, however, permanent. In January 1986, Vietnam suspended its program of orderly departures to the United States, the country that had accepted most of those legally departing.¹³⁰ This development, coupled with increased arrivals and diminished third-country resettlement, presented another looming refugee crisis.¹³¹ Representatives of seventy-six governments met in Geneva in June 1989 at a second international conference on Indochinese refugees to establish procedures to screen on a region-wide basis those asylum seekers who arrived after a cut-off date in order to determine which among them deserved resettlement as refugees.¹³² Those rejected were subject to return, including mandatory deportation, to Vietnam in order to discourage clandestine departures and establish legal emigration as the eventual sole method of departure.¹³³

This new Comprehensive Plan of Action ("CPA") was adopted at the conference under which countries in the region

125. *See id.*

126. *See id.*

127. *See* U.S. Citizenship & Immigration Services, *This Month in Immigration History: July 1979*, at <http://uscis.gov/graphics/aboutus/history/july79.htm> (last visited Apr. 18, 2005).

128. *See id.*

129. *See id.*

130. *See* CHUNG HOANG CHUONG & LE VAN, *THE AMERASIANS FROM VIETNAM: A CALIFORNIA STUDY* (1994), at <http://www.seacrc.org/media/pdffiles/AmerAsn.pdf>.

131. *See id.*

132. *See* Josh Briggs, Comment, *Sur Place Refugee Status in the Context of Vietnamese Asylum Seekers in Hong Kong*, 42 AM. U. L. REV. 433, 439 (1993).

133. *See id.*

agreed to continue to provide first asylum in return for a promise of resettlement abroad of both the “long stayer” population as well as more recent arrivals determined to be “refugees,” as defined under U.N. criteria.¹³⁴ Status adjudication procedures were developed on a region-wide basis.¹³⁵ Decisions were made to be taken by the national authorities in accordance with the generic criteria.¹³⁶ UNHCR was to be a trainer and technical advisor to governments, as well as a monitor of the proceedings, and source of counseling resource for applicants.¹³⁷ A Steering Committee of governments was established to implement the CPA.¹³⁸

What are the implications of these mass resettlement experiences for a Palestinian refugee resettlement program? The IRO and CPA experiences suggest Palestinian resettlement could be effectuated by UNHCR and IOM, although UNHCR’s refugee mandate is qualitatively different, and founded on the generic refugee concept of a person in flight from persecution.¹³⁹ Agency culture certainly could complicate matters. Many UNHCR staff became disenchanted with the concept of resettlement particularly after involvement with resettling refugees from South East Asia.¹⁴⁰ “There was not a detailed discussion of who was and was not a refugee,” explained a UNHCR resettlement official, “the refugee camps were a problem that demanded a resolution.” But many in the agency resented being pressured to resettle these refugees by the United States, UNHCR’s largest single donor government.¹⁴¹ Agency staff saw themselves as unwilling participants in the creation of an “automatic resettlement machine.”¹⁴²

134. See STATE OF REFUGEES, *supra* note 83, at 84-85.

135. See *id.*

136. See *id.*

137. See *id.*

138. See *id.*

139. See Refugee Convention, *supra* note 61, art. I.

140. See MIGRATION POLICY INST., STUDY ON THE FEASIBILITY OF SETTING UP RESETTLEMENT SCHEMES IN EU MEMBER STATES OR AT EU LEVEL, AGAINST THE BACKGROUND OF THE COMMON EUROPEAN ASYLUM SYSTEM AND THE GOAL OF A COMMON ASYLUM PROCEDURE 7 (2001), at http://www.migrationPolicy.org/pubs/resettlement-study-full_2003_en.pdf.

141. See Jeremy R. Tarwater, *Analysis and Case Studies of the “Ceased Circumstances” Cessation Clause of the 1951 Refugee Convention*, 15 GEO. IMMIGR. L. J. 563, 618 n.468 (2001) (stating that the United States was the UNHCR’s largest donor).

142. See JOANNE VAN SELM, STUDY ON THE FEASIBILITY OF SETTING UP RESETTLEMENT

But when asked, UNHCR engaged and implemented the broad resettlement objectives of the Indochinese operation, albeit with a bit of grumbling.¹⁴³ A finite effort relating to Palestinian refugees should be workable, even in an era when resettlement procedures have become enmeshed in national security considerations.¹⁴⁴

Indeed, for a variety of reasons, security issues would likely permeate any arrangement for Palestinian resettlement. Security measures implemented after the horrific terrorist attacks in the United States in September 2001 have radically reduced refugee admissions.¹⁴⁵ New background checks have slowed the process and made it more expensive.¹⁴⁶ Some of this delay is caused by the sequence of processing.¹⁴⁷ Refugees are adjudicated as eligible and appropriate for admission before investigations are requested.¹⁴⁸ In the case of Palestinian refugees, given the group nature of the determination, those desiring to avail themselves of resettlement abroad should be allowed to request a security check up front.¹⁴⁹ Such a procedure would permit applicants to learn early on whether they may have an entry problem. For those who do not, the process could be expedited. A speedy and reliable third-country resettlement solution would help build confidence on all sides.

A more serious impediment to a significant resettlement effort concerns the difference between the Palestinian definition of refugee and the generic concepts.¹⁵⁰ The immigration and

SCHEMES IN EU MEMBER STATES OF AT EU LEVEL, AGAINST THE BACKGROUND OF THE COMMON EUROPEAN ASYLUM SYSTEM AND THE GOAL OF A COMMON ASYLUM 32-33 (citing 1985 Executive Committee documents on durable solutions, which state that UNHCR staff members were opposed to the creation of an automatic resettlement machine).

143. See generally STATE OF REFUGEES, *supra* note 83, ch. 4.

144. See Maria Stavropolou, *The Right Not to Be Displaced*, 9 AM. U. J. INT'L L. & POL'Y 689, 740 (1994).

145. See Philip Peters, Issue Brief, *Refugee Admissions Remain Below Par, Needs Remain High*, available at <http://www.lexingtoninstitute.org/immigration/040226.asp> (last visited Apr. 17, 2005).

146. See Peters, *supra* note 145.

147. See Philip Shenon, *Threats and Responses: Immigration; New Asylum Policy Comes Under Fire*, N.Y. TIMES, Mar. 19, 2003, at A22.

148. See U.S. DEP'T OF STATE, PROPOSED REFUGEE ADMISSIONS FOR FY 2004—REPORT TO THE CONGRESS, II(B) (1), (Oct. 2003), available at <http://www.state.gov/g/prm/asst/rl/rpts/25691.htm>.

149. See Akram & Rempel, *supra* note 3, at 55.

150. See *id.* at 55, 63, n.122; see also UNRWA, Who Is a Palestinian Refugee?, *supra* note 31.

refugee laws of the main resettlement countries generally incorporate the U.N. refugee standard.¹⁵¹ If Palestinian refugees are to be resettled in significant numbers, then adjustments would likely have to be made in numerous national legal systems. Potential resettling governments will thus have to review their laws and make any necessary amendments in order to establish new or expanded humanitarian admissions authorities that would cover Palestinians.

C. *Local Integration*

A local integration strategy will undoubtedly be the predominant solution for Palestinian refugees. This approach will require a comprehensive assistance and development strategy to address the well-being of Palestinian refugees as well as the host communities into which they would more fully assimilate.¹⁵² This would involve political, legal, social and economic initiatives designed to root refugees in their new communities. UNRWA could, of course, play an important role in this endeavor. Indeed, this is what UNRWA has done for much of its existence—provide assistance verging on development.¹⁵³ The U.N. Development Group and World Bank would also play major roles in developing country and regional integration strategies as they did in Cambodia, Central America, and Mozambique, and in relation to past refugee repatriations.¹⁵⁴

Integration assistance, of course, can facilitate resettlement, local integration, or repatriation. Such assistance can cover matters such as language instruction, micro-credit lending, reviving agricultural production, and according citizenship. Development aid relating to Palestinian refugees, of course, has always been a sensitive question.¹⁵⁵ Refugee advocates have resisted assistance such as housing aid, which might be construed as choos-

151. Maryellen Fullerton, *A Comparative Look at Refugee Status Based on Persecution Due to Membership in a Particular Social Group*, 22 *CORNELL INT'L L. J.* 505, 510 (1993).

152. See Akram & Rempel, *supra* note 3.

153. See generally UNRWA, Programmes, at <http://www.un.org/unrwa/programmes/index.html> (last visited May 27, 2005).

154. See UNHCR, *Cambodia/Thailand Repatriation and Reintegration Operation*, in 1999 *GLOBAL REPORT* (1999); see also UNHCR, *Evolution of UNHCR's Repatriation Operation to Mozambique*, available at <http://www.unhcr.ch/cgi-bin/texis/vtx/print?£1=RESEARCH&id=3ae6bcf90> (last visited Apr. 24, 2005); UNHCR, *Central America: Regional Overview*, in 2000 *GLOBAL REPORT* (2000).

155. See Sahar Aziz, *The Laws on Providing Material Support to Terrorist Organizations*:

ing integration and forfeiting the return option.¹⁵⁶ Extending benefits to the host community is a conventional wisdom relating to promoting repatriation and local integration. It is also an accepted method of dealing with Palestinian refugees camps, which is necessitated by practical and logistical reasons, albeit without addressing the formal juridical status of the camps.¹⁵⁷ Generic refugee repatriation efforts over the past few decades have sought to integrate repatriation and development assistance, with mixed success.¹⁵⁸ Indeed, the difficulty of transitioning from humanitarian to development assistance modalities remains one of the principal challenges of humanitarian action in our era.¹⁵⁹

Integration assistance, moreover, can involve substantial sums. The annual budget of the European Commission's Humanitarian Office ("ECHO") has been running at about €500 million over the past several years,¹⁶⁰ with about one-third each going to refugee reception and integration activities, and about half that amount used to facilitate voluntary repatriation around the world.¹⁶¹ In the region, Israel has been a leading practitioner of integration assistance.¹⁶² Since 1989, over 1.1 million persons have emigrated to Israel,¹⁶³ and, in recent years, the

The Erosion of Constitutional Rights or a Legitimate Tool for Preventing Terrorism?, 9 TEX. J. ON C. L. & C. R. 45, 87 (2003).

156. See Zell & Shnyder, *supra* note 56.

157. For instance, Jordan, which hosts forty-one percent of the Palestinian Refugees and ninety percent of the displaced persons, will seek compensation. See Jordanian Ministry of Foreign Affairs, Jordan and the Middle East Peace Process, at http://demo.nets.jo/mfa/pages.php?id_s=13&level=2+level;=2title_s=Jordan%20And%20The%20Middle%20East%20Peace%20Process (last visited May 10, 2005).

158. See Jeff Crisp, *Mind the Gap! UNHCR, Humanitarian Assistance and the Development Project*, J. HUMANITARIAN ASSISTANCE (2001) [hereinafter *Mind the Gap!*], available at <http://www.jha.ac/articles/u043.htm>.

159. See *id.*; see also U.N. Office for the Coordination of Humanitarian Affairs [OCHA], *Georgia Humanitarian Situation and Strategy 2003* (Feb. 13, 2003) available at <http://www.reliefweb.int/rw/RWB.NSF/db900SID/SKAR-649JQX?OpenDocument>; Roger Winter, Testimony before the Committee on Foreign Relations Committee Subcommittee on Africa United States Senate (June 15, 2004), available at http://www.usaid.gov/press/speeches/2004/ty040615_1.html.

160. See European Commission's Humanitarian Office [ECHO], *The Budget*, at http://europa.eu.int/comm/echo/finances/budget_en.htm (last visited Apr. 15, 2005).

161. See *id.*

162. See generally Mark J. Altschul, *Israel's Law of Return and the Debate of Altering, Repealing, or Maintaining Its Present Language*, 2002 U. ILL. L. REV. 1345 (2002).

163. See MINISTRY OF IMMIGRATION ABSORPTION, *IMMIGRATION DATA 2004 2* (2005),

budget of the Israeli Ministry of Immigration Absorption has been operating at the equivalent of U.S.\$400 million.¹⁶⁴ UNRWA's recent annual expenditures, some portion of which can be attributed to integration-like assistance for matters such as education and health, have amounted to approximately U.S.\$300 million.¹⁶⁵

V. COMPENSATION/RESTITUTION COMPARISON

Another feature of a settlement of the Arab/Palestinian-Israeli conflict is likely to be the payment of some form of monetary compensation relating to Palestinian refugees. U.N. General Assembly Resolution 194, passed in 1948, explicitly contemplates compensation for property lost by non-returning Palestinian refugees as a result of the situation in Palestine in 1948.¹⁶⁶ Subsequent discussions of compensation have also included the claims of Palestinians who were displaced, some a second time, by war in 1967, and of Jews from various Arab countries who moved to Israel during and after 1948 and were forced to leave behind their property.¹⁶⁷ Negotiators have yet to agree upon the precise subjects of compensation in resolving the Israeli-Palestinian conflict.¹⁶⁸

Compensation for property loss is only one aspect of the possibility for financial resource transfers that may be included in a political settlement. Recent discussions about a settlement have identified additional payment modalities relating to the situation of Palestinians who departed from their homes, in effect, a notion of being "compensated" for the condition of interna-

at http://www.moia.gov.il/english/netunim/netuney_alia_2004.pdf; see also Israeli Central Bureau of Statistics, Monthly Bull. of Statistics, tbl. E, (Feb. 2002), available at http://www.cbs.gov.il/yarhon/el_e.htm.

164. See Ministry of Immigration Absorption, The Comptroller, at <http://www.moia.gov.il/english/about/about2.htm#20.%20The%20Controller> (last visited May 27, 2005).

165. See UNRWA, Frequently Asked Questions, *supra* note 28.

166. See G.A. Res. 194(III), ¶ 11, U.N. Doc. A/RES/194(III), (Dec. 11, 1948).

167. See G.A. Res. 2252, U.N. Doc. A/RES/2252(ES-V) (June 17-18, 1967); see also G.A. Res. 2452(XXIII), ¶¶ 35-42, U.N. Doc. A/RES/2452(XXIII)(A-C) (Dec. 19, 1968); The Secretary-General, *Report of the Secretary General Under Security Council Resolution 331 (1973)*, U.N. Doc. S/10929 (Apr. 20, 1973).

168. See, e.g., G.A. Res. 59/117, U.N. Doc. A/RES/59/117 (Dec. 10, 2004) (acknowledging unresolved issues of compensation pursuant to G.A. Res. 194(III)).

tional homelessness associated with being a refugee.¹⁶⁹ Raised as well in discussions are the prospects of payments designed to help re-establish voluntarily repatriating refugees, to facilitate their local integration in places of current residence, or their resettlement abroad in new home countries.¹⁷⁰ Such different payment purposes would likely require quite divergent financial schemes.

For those desiring to return to long-lost lands and houses, confirmation of title may be crucial, particularly if currently occupied by others. For this purpose, a restitution mechanism could be used to award possession to returning refugees, like the Bosnian Commission for Real Property Claims of Displaced Persons and Refugees ("CRPC") established under Annex 7 of the 1995 Dayton Peace Agreement.¹⁷¹ The Bosnian Property Commission is a mixed body of international and national commissioners, with three international members appointed by the President of the European Court of Human Rights, and six national members, of which four are appointed by the Federation of Bosnia and Herzegovina and two by the Republika Srpska.¹⁷² The commissioners have been supported by some 400 local staff, and twelve regional field offices.¹⁷³ As of March 2003, CRPC had resolved eighty-one percent of the 318,780 claims submitted for decision.¹⁷⁴ This has required deep investigation of the complicated amalgam of historical legal traditions relating to the registration of property ownership, ranging from the methods used under the Austria-Hungarian system to more recent socialist law enactments, in order to confirm title.¹⁷⁵ But the investigation of title relating to Palestinian and Israeli property would be just as complicated. The CRPC is to complete its work in 2003.¹⁷⁶

Similar but somewhat less well known mechanisms, the

169. See Helena Cobban, *Abu Mazzen in the NYT*, JUST WORLD NEWS, Feb. 14, 2003, available at <http://www.justworldnews.org/archives/001125.html>.

170. See, e.g., ELIA ZUREIK, *PALESTINIAN REFUGEES & THE PEACE PROCESS* (1997).

171. See The General Framework Agreement for Peace in Bosnia and Herzegovina, Bosn. & Herz.-Croat.-Yugos., Annex 7, ch. 2, art. vii, Dec. 14, 1995, 35 I.L.M. 75. This agreement is known as the Dayton Peace Agreement.

172. See *id.* art. 9, § 1.

173. See *id.* at art. 10, § 1.

174. See Hans Das, *Restoring Property Rights in the Aftermath of War*, 53 INT'L & COMP. L. Q. 429, 433 (2004).

175. See Omer Ibrahimagic, *The Aggression Upon Bosnia and the Judicial Protection of Human Rights*, 12 CONN. J. INT'L L. 171, 185 (1997).

176. See Das, *supra* note 174.

Housing and Property Directorate to mediate disputed claims, and the U.N. in 1999 in Kosovo to adjudicate rights disputes arising during Kosovo's post-autonomy period (1989-1999).¹⁷⁷ The Kosovo mechanisms seek to regularize informal property trades and restore rights to those whose homes have been illegally occupied.¹⁷⁸ Officials expect to process an estimated 100,000 residential claims.¹⁷⁹

In Kosovo, as of July 2003, 28,587 claims have been filed, and by the end of 2003, about 13,000 cases had been decided.¹⁸⁰ If mediation fails, then a claim is decided by a three-member panel of commissioners, one local and two international, and may be reviewed in limited circumstances by a second panel.¹⁸¹ The commission decisions are final, and unlike the Bosnian Commission, may not be reviewed by any other judicial authority, including local courts.¹⁸²

Refugee return became a political imperative in the efforts of the United States and Western European powers to end the armed conflicts in Bosnia and Kosovo that were spawned after the disintegration over the past decade of Socialist Federal Republic of Yugoslavia.¹⁸³ The bundle of human rights violations designed to displace people, commonly known as "ethnic cleansing," were reflected in property law arrangements which the Bosnian and Kosovo mechanisms were designed to unravel.¹⁸⁴ But while considerable progress has been made at the formal level, both the Bosnian and Kosovo efforts have confronted difficulties in implementation by resistant local authorities, reflecting the tenuous nature of the peace.¹⁸⁵ In Kosovo, for example, as of

177. See Daniel Lewis, *Restoring Property Rights in Kosovo* 38 U.N. CHRON. 47 (2001), available at <http://www.un.org/Pubs/chronicle/2001/issue1/0101p47.html>.

178. See *id.*

179. See *id.*

180. See *Internal Displacement Monitoring Ctr., Repossession of Residential Properties and Illegal Occupation: A Slow Process (2002-2005)*, at [http://www.internal-displacement.org/idmc/website/countries.nsf/\(httpEnvelopes\)/326003AB0480337B802570B8005AAA3B?OpenDocument](http://www.internal-displacement.org/idmc/website/countries.nsf/(httpEnvelopes)/326003AB0480337B802570B8005AAA3B?OpenDocument) (last visited Apr. 17, 2005).

181. See Lewis, *supra* note 177.

182. See *id.*

183. See, e.g., Gabriel Partos, *Balkan Refugee Crisis Eases*, BBC NEWS, Mar. 18, 2005, available at <http://news.bbc.co.uk/2/hi/europe/4360555.stm>.

184. See ROGER COHEN, *Ethnic Cleansing*, in *CRIMES OF WAR* 136 (1999), available at <http://www.crimesofwar.org/thebook/ethnic-cleansing.html>.

185. See Answers.com, *Kosovo War*: Information from Answers.com, at www.answers.com/topic/Kosovo-war (last visited Apr. 20, 2004).

December 2002, only 681 forced evictions had been executed.

Palestinian refugee advocates have urged, as an acknowledgement of accountability for past injustices, a restitution-based approach to restore property to absent refugees and simultaneously protect the rights of current occupants as tenants.¹⁸⁶ This is tantamount to ownership with no right to oust the current occupying tenant. But care should be taken not to introduce conflictual elements in an already tense situation. Such inconclusive arrangements could precipitate disputes along the line of those experienced in Bosnia and Kosovo.

Moreover, the objectives of a compensation scheme can be decisive. The Bosnian property commission and the more recent effort in Kosovo are designed to confirm property ownership in order to permit persons to regain possession.¹⁸⁷ Local authorities have resisted compliance.¹⁸⁸ As a lawyer familiar with claims and restitution mechanisms put it, "It is easier to dish out money than implementing solutions on the ground."

But even monetary compensation for lost Palestinian refugee and Israeli property will present several challenges. Such compensation arrangements will require the establishment of a special institution for the duration of the scheme. While there are unique features in the situation, there are other experiences which may provide useful insights for the development of such mechanisms.

In fact, there is a long history of using international claims tribunals to settle disputes, many dealing with alien property. From the Jay Treaty of 1794 between the United States and Britain, until World War II, claims tribunals were often used to effectuate war reparations.¹⁸⁹ Such tribunals, however, came to be considered too slow and overly expensive, leading increasingly to the use of lump sum agreements.¹⁹⁰ These involved State-to-State payments, with the claimant State expected to distribute

186. See, e.g., Hussein Ibish & Ali Abunimah, *Point/Counterpoint: The Palestinians' Right of Return*, 8 HUMAN RTS. BRIEF 4 (2001), available at <http://www.wcl.american.edu/hrbrief/08/2palestinians.cfm>.

187. See John M. Scheib, *Threshold of Lasting Peace: The Bosnian Property Commission, Multiethnic Bosnia and Foreign Policy*, 24 SYRACUSE J. INT'L L. & COM. 119, 121-22 (1997).

188. See *id.* at 127-28, 131.

189. See Eyal Benvenisti & Eyal Zamir, *Private Claims to Property Rights in the Future Israeli-Palestinian Settlement*, 89 AM. J. INT'L L. 295, 332 (1995).

190. See *id.*

funds to individuals, and the paying State obtaining a categorical release of its obligations.¹⁹¹

A new generation of compensation mechanisms emerged with the advent of the Iran-U.S. Claims Tribunal. The Tribunal was established by the two States in 1981 as part of the settlement of the crisis which began with the seizure of the U.S. Embassy in Tehran and the freezing of Iranian assets in the United States.¹⁹² While the Iran-United States Claims Tribunal proved relatively effective in resolving commercial disputes involving U.S. government agencies and private firms,¹⁹³ it was less effective in relation to the claims of private U.S. citizens who had left Iran.¹⁹⁴ Awards, mainly to U.S. claimants, were paid out of frozen bank assets.¹⁹⁵

More recently, the U.N. Compensation Commission ("UNCC"), was set up in 1991 by the U.N. Security Council to process claims and pay compensation for direct losses resulting from Iraq's 1990 invasion and subsequent occupation of Kuwait.¹⁹⁶ The UNCC is governed by a council comprising the fifteen members of the U.N. Security Council,¹⁹⁷ which declared Iraq liable under international law for these losses.¹⁹⁸ In terms of its program, the UNCC has a supporting secretariat of some 200 persons, and uses eighteen three-member panels of commissioners who act as quasi-judges in the examination of claims.¹⁹⁹ Under UNCC procedures, individual claims are presented by governments, and payments to claimants are made through governments.²⁰⁰

191. *See id.* at 334.

192. *See* Iran-United States Claims Tribunal [IUSCT], Background, at <http://www.iusct.org/background-english.htm> (last visited Apr. 25, 2005).

193. *See id.*; *see also* IUSCT, *Claimants Named in the Awards and Decisions Issue*, at <http://www.iusct.org/lists-eng.html> (last visited Apr. 20, 2005) [hereinafter IUSCT Claimants].

194. *See* IUSCT Claimants *supra* note 193.

195. *See* IUSCT, *Declaration Of The Government Of The Democratic And Popular Republic Of Algeria*, Jan. 19, 1981, at <http://www.iusct.org/general-declaration.pdf>.

196. *See generally*, The Secretary-General, *Report of the Secretary General Pursuant to Paragraph 19 of Security Council Resolution 687 (1991)*, U.N. Doc. S/22559 (May 2, 1991) (establishing the U.N. Compensation Committee).

197. *See* S.C. Res. 687, U.N. Doc. S/RES/687 (Apr. 3, 1991).

198. *See id.*

199. *See* U.N. Compensation Commission [UNCC], The Commissioners, at <http://www2.unog.ch/uncc/commiss.htm> (last visited Apr. 23, 2005); *see also* UNCC, at The Secretariat, <http://www2.unog.ch/uncc/secretar.htm> (last visited Apr. 23, 2005).

200. *See* S.C. Res. 986, U.N. Doc. S/RES/986 (Apr. 14 1995).

The UNCC has become the epitome of a mass claims exercise. Since its inception, the UNCC has adjudicated approximately 2.6 million claims, ninety-nine percent of which have been resolved, with nearly U.S.\$44 billion in compensation being awarded (U.S.\$18 billion of which has actually been paid).²⁰¹ Since 1995, UNCC awards have been funded by the U.N. Oil-for-Food Program established by the Security Council in 1995 to mitigate the adverse effects of economic sanctions on the people of Iraq.²⁰² Both the UNCC and Oil-for-Food ended in 2003.²⁰³

In recent years, the quest to right historical wrongs has led to the proliferation of new claims mechanisms which came about under the pressure of U.S. class action court litigation. Notable among the efforts is the German foundation (Remembrance, Responsibility and the Future) which was established in 2000, and funded by the German State and a consortium of private companies to compensate individuals for Nazi abuses such as slave and forced labor, as well as property loss.²⁰⁴ Approximately two million claims have been brought by or on behalf of Jewish and non-Jewish former slave and forced laborers.²⁰⁵

The German foundation is governed by a board of trustees, staffed by a management group, and operates through a complex system utilizing a group of seven partner organizations that process claims from different categories of eligible claimants and that make payments to those claimants.²⁰⁶ The IOM, for example, is one of the partner entities which, in its German Forced

201. See UNCC, *The Claims*, at <http://www2.unog.ch/uncc/theclaims.htm> (last visited May 10, 2005).

202. See UNCC, *UNCC at a Glance*, at <http://www.unog.ch/uncc/ataglance.htm> (last visited May 10, 2005); see also Office of the Spokesman for the Attorney-General, *Use of Sanctions Under Chapter VIII of the U.N. Charter* (Jan. 2006), available at <http://www.un.org/News/ocg/sanction.htm>.

203. See S.C. Res. 1483, § 16, U.N. Doc. S/RES/1483 (May 22, 2003); see also UNCC at a Glance, *supra* note 202.

204. See Press Release, IOM, *IOM Paid Almost 10 Percent of Presumably Eligible Claims* (Jan. 30, 2002), available at <http://www.swissbankclaims.iom.int/English/docs/PR%20G%201.02e.pdf>.

205. See Press Release, IOM, *IOM Pays Maximum Amounts to German Industry's Forced Labourers* (Jan. 21, 2005), available at http://www.compensation-for-forced-labour.org/english_home.html (then select "Press Releases" from the menu on the left, then select the above named press release from the list of press releases).

206. See *Agreement Between the Government of the United States of America and the Government of the Federal Republic of Germany Concerning the Foundation "Remembrance, Responsibility and the Future," Annex A*, Jul. 17, 2000, available at http://www.compensation-for-forced-labour.org/english_home.html (then select "Docu-

Labour Compensation Programme, has received approximately 330,000 slave and forced labor claims on a global basis for non-Jewish claimants.²⁰⁷ IOM has set up a separate Property Claims Commission to address more than 27,500 property claims.²⁰⁸ However, as of May 2003, only 3182 have been resolved (703 positively and 2479 negatively).²⁰⁹ These activities have preoccupied a substantial portion of IOM's staff in Geneva.²¹⁰

A similar compensation scheme was established under a Swiss Banks Settlement, reached in U.S. class action litigation in 2001.²¹¹ The Settlement Agreement provided U.S.\$1.25 billion to settle claims by members of five represented classes of Nazi victims and their heirs who had deposited assets in Swiss banks.²¹² Significantly, the Swiss Banks Settlement mechanism includes an innovative "refugee" class of claimants—persons who attempted to flee Nazi persecution and who were refused entry into Switzerland and were abused thereafter.²¹³ Approximately 6380 claims were made under the refugee class category, and, as of May 2003, the Jewish Claims Conference has recommended that 1180 of the claimants, mostly Holocaust survivors, be awarded a total of U.S.\$2 million. The remaining refugee class claimants are mostly heirs and have yet to be reviewed.

These recent mass claims facilities ordinarily have three functional organs: one that sets and oversees policy, another that adjudicates the claims, and a third that supports the process administratively. Rules are ordinarily developed during the process, and the participation of the parties is limited.²¹⁴ Eviden-

ments" from the menu on the left, then select the above named document from the list of documents).

207. See IOM, *Fact Sheet: General Information on the German Forced Labor Compensation Programme*, ¶ 2, Mar. 2004, available at http://www.compensation-for-forced-labour.org/pdf/FactSheet_03_04_%20e.pdf.

208. See *id.* ¶ 14.

209. See *id.* ¶ 16.

210. See *id.*

211. See *In re Holocaust Victims Assets Litig.*, 311 F.Supp. 2d 363 (E.D.N.Y. 2004) (explaining the class action settlement reached between Holocaust survivors and Swiss banks).

212. See *id.* at 365-66.

213. See *id.* at 365; see also Jewish Claims Conference, Claims Conference Programs: Swiss Banks Settlement Refugee Class, available at <http://www.claimscon.org/index.asp?url=swiss/settlement> (last visited Apr. 20, 2005).

214. See Morris A. Ratner, *Factors Impacting the Selection and Positioning of Human Rights Class Actions in U.S. Courts*, 58 N.Y.U. ANN. SURV. AM. L. 623 (2003).

tiary standards are more relaxed than in more formal court proceedings, and claimants are often assisted in the efforts to present and substantiate their claims. Processing methodologies and techniques in the various claims programs are similar.²¹⁵ Monetary awards or restitution are generally enforced within the specially-established system.²¹⁶

A compensation scheme for lost Palestinian refugee property would introduce complications relating to the identification of refugee properties and choosing from among a range of methods of valuation. While much documentation has been collected on this question, these controversies have yet to be authoritatively resolved.²¹⁷ In furtherance of a settlement, it would be necessary to map out the universe of refugee property and assign values to the individual properties. In addition, compensation may be limited by the overall level of funds provided for this purpose, introducing yet another series of complexities.

Perhaps the most authoritative statistics assembled to date on the scope and value of Arab property was produced by the technical program of the U.N. Conciliation Commission for Palestine ("UNCCP"), which began its work in 1952, and which reported initially in 1964.²¹⁸ This report was amended in certain respects by the computerization of the underlying data in 2000.²¹⁹ The UNCCP Property database contains some 453,000 records documenting about 1.5 million individual holdings.²²⁰ The project calculated the scope of Arab land at 4,851,613.98 dunums (one dunum equals 1,000 square meters), with a value of 100,383,784 Palestinian pounds²²¹ (one Palestinian pound in

215. *See id.*

216. *See id.*

217. *See* Rex Brynen, *Financing Palestinian Refugee Compensation*, July 14-15, 1999, available at http://www.arts.mcgill.ca/mepp/new_prm/research/papers/brynen_990714.htm.

218. *See* Michael R. Fishbach, *The United Nations and Palestinian Refugee Property*, 31 J. OF PALESTINIAN STUD. 34, 34-35 (2002).

219. *See* Michael R. Fishbach, *The Usefulness of the UNCCP Archives for Palestinian Refugee Compensation/Restitution Claims*, Paper presented at the Stocktaking Conference on Palestinian Refugee Research, 15 (Jun. 17-20, 2003), available at http://network.idrc.ca/uploads/user-S/10576732560Session_7-Michael_Fishbach-Paper.doc.

220. *See* BADIL Resource Center for Palestinian Residency and Refugee Rights, The U.N. Conciliation Commission for Palestine, at <http://www.badil.org/Protection/UNCCP.htm> (last visited Apr. 27, 2005).

221. *See id.*

1948 was the equivalent of U.S.\$4.03).²²² Nevertheless, the fact that the exact scope and value of Palestinian refugee land continues to be debated by scholars and officials prompted the author of a forthcoming book on the question to include the abstracts of sixteen different studies of the question in the book's appendix.²²³

In organizing a program of work, a compensation facility relating to Palestinian refugees would have to issue procedural rules, including a deadline for submission of claims, and design a claims form that requests all relevant information. Experience with other efforts teaches that close attention should be paid at the outset to the design of such a form in order to ensure both comprehensiveness and understandability.²²⁴ This will be particularly important as many claimants will be unfamiliar with such forms. As has been used with the German foundation and Bosnian property commission, a helpline and proactive efforts to facilitate the filing of claims will be needed.

In a Palestinian refugee claims mechanism, UNRWA would be an obvious resource in terms of notifying potential refugee claimants of the procedures and deadline for the filing of claims; however, it cannot be the exclusive mechanism, because many refugees have no contact with the agency. A special outreach effort would be needed, particularly for claimants outside of the region of UNRWA's mandate.

Compensating refugee property claims would be more complicated and take longer than paying out departure claims, probably requiring a decade or so to complete the task given the experience of other property claims efforts. But relatively quick closure on this contentious issue could help to build confidence between the parties and avert renewed tensions.

A variety of measures could be used to expedite payments. Individual property values can be assessed using standardized methodologies. Claims that present common features can be

222. *See id.*

223. *See* Refugees Int'l, *Palestinian Refugees Face Humanitarian Crisis as Violence Continues* (Apr. 5, 2002), at <http://www.refugeesinternational.org/content/articke/detail/794>.

224. *See* Vandana Patel, *A Comparative Analysis of Mass Claims Mechanisms*, Paper presented at the Stocktaking Conference on Palestinian Refugee Research (Jun. 17-20, 2003), available at http://web.idrc.ca/uploads/user-S/10578565170Session_8_Vandana_Patel_new.doc.

grouped and sampling techniques can be used to check the accuracy of groupings. As was done in the case of the German Foundation, a relaxed evidentiary standard demanding that claims be supported by only plausible proof could be used to take into account the loss of documentation and memory that typically accompanies the passage of time.²²⁵

Determining the adequacy of compensation will be a key issue. Methods and techniques exist to determine the value of refugee property, either by individual valuation or through estimates.²²⁶ An overarching issue will be whether the funds available are sufficient to satisfy the claims, and if not, whether the financial resources available are sufficient to provide adequate compensation.

For example, funding limitations might require that only a *pro rata* portion of property claims be paid, but it would be necessary even in this event to identify the claims and assign them values for purposes of equity. Whether based on departure or property loss, threshold estimates are likely to be inexact to some extent.²²⁷ One method of dealing with the resulting uncertainty is to pay fixed claims in installments, say the first sixty percent of the claim, until all claims are paid and an upward bound resource obligation is calculated. This could be followed by payment of the last installment of forty percent, or a lesser remainder. Such a procedure has been used for German foundation claims.²²⁸

Information and evidence contained in claims forms must be verified by using sources such as the UNCCP database or UNRWA records. As UNRWA evolved over five decades, it registered a growing and shifting refugee population and collected millions of records.²²⁹ The agency received records from the International Committee of the Red Cross and the American Friends Service Committee, which in 1948 the U.N. requested to provide relief to Palestinian refugees in the region before the

225. See IOM, Fact Sheet, *supra* note 207, ¶ 8.

226. See generally Benvenisti & Zamir, *supra* note 189, 229-335.

227. See Ibish & Abunimah, *supra* note 186, at 7.

228. See Karen Helig, *Stephen A. Risenfeld Symposium 2001: From the Luxembourg Agreement to Today: Representing a People*, 20 BERKELEY J. INT'L L. 91, 146, 189-92 (2002).

229. See, e.g., UNRWA, Total Registered Refugees per Country and Area, at www.un.org/unrwa/publications/statis-01.html (last visited May 27, 2005).

establishment of UNRWA.²³⁰ Archives of records exist in Lebanon and Syria as well as in a Unified Registration System created in 1995.²³¹

Details about current UNRWA recipients of relief and social services, some 225,000 individuals, are contained in a computer database.²³² Records relating to another 800,000 families exist, but are not computerized.²³³ A U.S.\$6 million proposal by UNRWA to scan the family files into a database, if funded, might take upwards of three years or more to implement, according to UNRWA staff.²³⁴

The special institution to arrange compensation for Palestinian refugees will require a policy body comprising the principal stakeholders, commissioners to decide claims, and a supporting secretariat. Disputes over property claims could be resolved by an independent appeals board, as provided for in the German foundation claims procedure. A specific waiver of judicial remedies could avoid complicated institutional disputes which have vexed the Bosnian Property Commission.²³⁵

A different set of technical issues would be raised in the organization of a refugee fund. In particular, once a fund is established to defray the social costs associated with refugee return, integration and resettlement, it could be replenished through periodic financial contributions by donor governments for these purposes. Funds would be dispersed, as is normally the case, upon the preparation of needs assessments relating to the refugees and their communities and specific project proposals.²³⁶ Implementation could be evaluated for effectiveness.

Another approach still would likely be needed in order to organize payments for the departure of individuals. In this instance, in order to fix appropriate payment amounts, funds would be committed by governments at the outset. In addition, the number of eligible refugee claimants would have to be iden-

230. See UNRWA, Overview, Frequently Asked Questions, at www.un.org/unrwa/overview/qa.html (last visited May 27, 2005).

231. See UNRWA, Unified Registration System, at www.un.org/unrwa/programmes/rss/unified.html (last visited May 27, 2005).

232. See *id.*

233. See *id.*

234. See *id.*

235. See Scheib, *supra* note 187, at 126.

236. See Benvenisti & Zamir, *supra* note 189, 333-34.

tified in order to calculate the level of compensation. This would raise contentious questions concerning *who* is a refugee, and *how many* refugees would be eligible to claim, including descendants of those who originally left Palestine.

Threshold definitional issues will concern such matters as the notion of refugee descendants, raising issues such as how many generations and what degree of relationship. How will loss of livelihood be evaluated? What about individuals who remained inside Israel? Or those uprooted in 1976 from the West Bank and Gaza who are sometimes referred to as "displaced persons."²³⁷ Once numbers have been identified, and once the amount of funds available is fixed, then lump sum payments for individuals and families could be calculated and paid to the individuals.

These claims would be similar in some respects to the departure claims that were paid under category "A" of the UNCC category. "A" claims are those of individuals who had to leave Kuwait or Iraq between the date of the invasion of Kuwait by Iraqi forces on August 2, 1990, and the date on which the Iraqi occupation came to an end on March 2, 1991.²³⁸ Compensation for successful claimants in this category was fixed at U.S.\$2500 for individuals and U.S.\$5000 for families (U.S.\$4000 and 8000, respectively, if claims were not lodged in other categories). In the case of the UNCC, payments to individuals were made by the governments that presented the claims.

The new generation of compensation mechanisms has proven workable, in part, because of the application of modern information technology and sampling methods. A lawyer who worked with the Iran-U.S. claims tribunal, and who was deeply involved with the operations of the UNCC, emphasized the importance of computerization in organizing claims for processing. This requires an investment of resources up front but is "critical to the success" of any compensation effort.

The failure by governments to provide money at the outset, for example, slowed the work of the Bosnian Property Commission substantially.²³⁹ The entire enterprise was "a last minute

237. *See id.* at 308, 319, 320 n.139.

238. *See id.*

239. *See* Ann Davies, *Restitution of Land and Property Rights*, FORCED MIGRATION REV., Sept. 21, 2004, available at <http://www.fmreview.org/text/FMR/21/04.htm>.

thought” in peace negotiations, according to an official with the commission.²⁴⁰ Like the restitution mechanism in Kosovo, the Bosnian Commission was starved for funds from the outset and only began to have an impact when it began to produce decisions and build the confidence of claimants.²⁴¹

However, the basic formula for a successful claims effort can be discerned from the experience of the past decade. As a lawyer familiar with the German Foundation claims program and UNCC noted, to be effective a claims scheme had to have both a “human face,” referring to outreach and facilitates activities, as well as a “cold technical” capacity in the form of sophisticated information technology and computerization.²⁴²

VI. *IN ANTICIPATION OF SETTLEMENT*

A settlement of the Palestinian refugee question would require a number of interrelated program components relating to repatriation, local integration, and resettlement. In addition to these place-based options, there would also need to be mechanisms for compensation arrangements. The components must be melded together in order to fashion a coherent international response.

An assemblage of new and old tasks would be necessary for dealing with the Palestinian refugee question. This might mean the creation of a new time-limited unified entity, like the IRO, in effect a Palestinian Refugee Organization, or a situation-based solutions program, like the Indochinese Comprehensive Plan of Action, in this instance a CPA for Palestinian refugees. While coherence of effort would be promoted by a unified entity, there is an understandable reluctance by donor governments to create new international organizations, particularly to deal with time-bound problems. This is often a criticism leveled against UNRWA.²⁴³

240. See Susan F. Martin & Andrew I. Schoenholtz, *Asylum in Practice: Successes, Failures—the Challenges Ahead*, 14 *GEO. IMMIGR. L.J.* 584, 591 (2000).

241. See Davies, *supra* note 239.

242. See Martin & Schoenholtz, *supra* note 240, 591.

243. See Press Release, Simon Wiesenthal Ctr., Wiesenthal Center to UN Secretary-General: “Investigate UNRWA’s Role in Perpetuation of the Middle East Conflict” (Mar. 10, 2002) available at <http://www.wiesenthal.com/site/apps/s/content.asp?c=fwLYKnN8LzH&b=253162&ct=286102>; see also UNRWA, *Setting the Record Straight* (Apr. 9, 2003), available at <http://www.un.org/unrwa/allegations> (last visited May 27, 2005).

UNRWA itself is too bound up with the underlying conflict to be the aegis for these multifaceted activities, and build confidence among parties which are likely to be wary even after a political settlement.²⁴⁴ While UNRWA has many important continuing roles to play,²⁴⁵ something new would be needed. This includes a discrete compensation mechanism, which could be either a program component of an existing organization, like IOM's property commission, or a free-standing but related organization, like the Bosnian Property Commission.

The I.R.O. experience provides the case for a separate, time-limited new agency in order to focus the mission. And while implementation would likely take many years, as did the work of the I.R.O., a separate dedicated agency could go out of existence at a future time when the problem it was mandated to address has been resolved.²⁴⁶ While compensation activities require different sets of skills and tasks, a degree of comprehensiveness would be achieved by having one institutional rubric that included these activities as well, particularly if compensation were envisioned to help defray the costs of return, integration, and resettlement abroad.

Many issues relating to institutional framework and implementing procedures would have to await a settlement. But negotiations could address some critical matters which would facilitate resolution, such as was done in the property annex to the 1995 Dayton Peace Accord that ended the Bosnian conflict.²⁴⁷ For example:

1. The terms "Palestinian refugee" and "family" should be defined in the settlement. This could give settlement implementers guidance on issues of what type of property loss is subject to compensation (loss of home and livelihood). It will also give donors and others a sense of the potential numbers of

244. See Press Release, Simon Wiesenthal Center, *supra* note 243.

245. See, e.g., U.N. Ass'n of the U.K., Little-heard News of the Middle East, at <http://www.una-uk.org/archive/me/unrwa.html> (last visited May 27, 2005).

246. See Palestinian Refugee Research Net, Palestinian Refugees and Final Status: Key Issues, at <http://www.arts.mcgill.ca/MEPP/PRRN/prissues.html> (last visited May 27, 2005); see also Committee on Migration, Refugees, and Demography, Council of Europe Parliamentary Assembly, *The Situation of Palestinian Refugees*, Doc. 9808 (May 15, 2003) available at <http://assembly.coe.int/main.asp?Link=documents/workingdocs/doc03/edoc9808.htm>.

247. See generally RICHARD HOLBROOKE, *TO END A WAR* (1998) (detailing the use of annexes in the Dayton Peace Accord).

claimants, including descendants, as well as those in need of new homes or old homes;

2. The best evidence of refugee property ownership should be identified, such as the UNCC records. While there may be lingering disputes at the margins that must be resolved, a consensus on this issue will enable claims work to begin so that refugees can see the benefits of a settlement quickly and begin to gain confidence in the process; and

3. If a new unified organization with a designated inter-governmental management structure is not established, then a steering group of interested governments should be created to oversee and provide policy guidance to the array of international organizations and NGOs that would be responsible for implementing a multi-faceted set of initiatives designed to resolve the refugee question. This body could also oversee the revision of national laws that would be necessary to implement a third-country resettlement program. A similar approach was taken in the Comprehensive Plan of Action for Indochinese refugees.²⁴⁸

Generic refugee solutions have evolved over the past century, and institutional mechanisms have been refined to implement these solutions.²⁴⁹ Similarly, mass compensation claims techniques and frameworks have evolved.²⁵⁰ While arrangements for Palestinian refugees will be complex, there is ample experience out of which to fashion the institutional framework, procedures, and criteria to implement a plausible settlement. All that remains is for the parties to make peace.

248. See generally W. Courtland Robinson, *The Comprehensive Plan of Action for Indochinese Refugees, 1989-97: Sharing the Burden and Passing the Buck*, 17 J. OF REFUGEE STUD. 319 (2004).

249. See Barnett, *supra* note 116.

250. See, e.g., UNCC, *The UNCC at a Glance*, at www2.unog.ch/uncc/ataglance.htm (last visited Apr. 23, 2005).