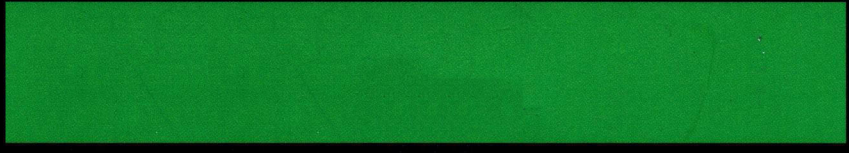
Compensation to Palestinian Refugees and the Search for Palestinian–Israeli Peace

Edited by Rex Brynen and Roula El-Rifai



Compensation to Palestinian Refugees and the Search for Palestinian–Israeli Peace

Edited by Rex Brynen and Roula El-Rifai

常州大学图书馆
藏书章

PlutoPress
www.plutobooks.com

First published 2013 by Pluto Press
345 Archway Road, London N6 5AA

www.plutobooks.com

Distributed in the United States of America exclusively by
Palgrave Macmillan, a division of St. Martin's Press LLC,
175 Fifth Avenue, New York, NY 10010

Copyright © Rex Brynen and Roula El-Rifai 2013

The right of the individual contributors to be identified as the authors of this work has been asserted by them in accordance with the Copyright, Designs and Patents Act 1988.

British Library Cataloguing in Publication Data
A catalogue record for this book is available from the British Library

ISBN	978 0 7453 3337 3	Hardback
ISBN	978 0 7453 3336 6	Paperback
ISBN	978 1 8496 4816 5	PDF eBook
ISBN	978 1 8496 4818 9	Kindle eBook
ISBN	978 1 8496 4817 2	EPUB eBook

Library of Congress Cataloging in Publication Data applied for

This book is printed on paper suitable for recycling and made from fully managed and sustained forest sources. Logging, pulping and manufacturing processes are expected to conform to the environmental standards of the country of origin.

10 9 8 7 6 5 4 3 2 1

Designed and produced for Pluto Press by Chase Publishing Services Ltd
Typeset from disk by Stanford DTP Services, Northampton, England
Simultaneously printed digitally by CPI Antony Rowe, Chippenham, UK and Edwards Bros in the United States of America

Compensation to Palestinian Refugees
and the Search for Palestinian–Israeli Peace

List of Figures

6.1 Al-Haditha Blocs Before 1948 102
6.2 Al-Haditha Current Blocs 103

此为试读,需要完整PDF请访问: www.ertongbook.com

List of Tables

5.1 UNCCP Technical Program's estimate of the scope of all Arab land in Israel as of 14 May 1948 75
5.2 UNCCP Technical Program's estimate of the scope of land owned by Arabs still living in Israel after 1948 76
5.3 UNCCP Technical Program's estimate of the scope of Arab land owned in Israel by refugees v. owned by those who stayed 76
5.4 UNCCP Technical Program's estimate of the value of rural Arab land in Israel as of 29 November 1947 77
5.5 UNCCP Technical Program's estimate of the value of urban Arab land in Israel as of 29 November 1947 78
5.6 UNCCP Technical Program's estimate of the value of rural and urban Arab land owned in Israel by refugees vs. owned by those who stayed 79
5.7 UNCCP Technical Program's amended estimate (after computerization of its records) of the scope and value of all Arab land in Israel (owned both by refugees and Palestinians still in Israel) 82
6.1 Inventory of the Infrastructures in Dallata 1949 93
6.2 Summary of the Village Family Names 99
7.1 Place of origin in Palestine of registered refugee families according to UNRWA records, by rural–urban distribution and fields of operation (2009) 110
7.2 Religious background of Palestine refugees according to UNRWA records, by region and registered families 111
7.3 Registered refugees by field of operation 112
7.4 Family size and number of generations within each family by refugee group and region 114
7.5 Occupational distribution of sampled registered refugees according to UNRWA records by region and refugee group 116
7.6 Property ownership in Palestine by region and refugee group (Jordan) 119
7.7 Comparison between the 1951 UNRWA survey findings and the present study for Jordan by refugee group and type of property 122

7.8 Property ownership in Palestine by region and refugee group (Lebanon) 123
7.9 Property ownership in Palestine by region and refugee group (Syria) 124
8.1 Loss types included in the study 136
8.2 Land outside the territory occupied by Israel under the general armistice agreement of 1949 139
9.1 Estimates of the 1948 Palestinian refugees by source 167
9.2 Palestinian refugee population, 1999 168
9.3 The basic needs approach 172
9.4 Special hardship cases 173
14.1 Indicative estimates of refugee compensation payments, by host country 270

Appendices

1.1 Possible approaches to compensation 13
7.1 Places of origin of Palestinian registered refugees and their destination, according to UNRWA records, by city and neighbouring villages 128
8.1 Summary of some past estimate findings 153

Preface

This book builds on the extensive involvement of Canada's International Development Research Centre (IDRC) in thinking about solutions to the Palestinian refugee problem. Beginning in 1992, IDRC's engagement took shape through a programme of research called the 'Expert and Advisory Services Fund' (EASF), which was managed by one of the co-editors, Roula El-Rifai, after 1999. The EASF was set up to develop knowledge and thinking about solutions in support of the Palestinian–Israeli negotiations process. It supported Canada's role as Gavel of the Refugee Working Group as part of the multilateral negotiations track of the Middle East peace process.[1] The EASF was funded by the Canadian International Development Agency (CIDA) and IDRC, in collaboration with Canada's Department of Foreign Affairs and International Trade (DFAIT).

Over the years, the EASF's contribution to Palestinian refugee research work and to policy debates among Palestinians, Israelis and international policymakers has been substantial. This was accomplished through formal project support and through the networks, informal dialogues, and quiet linkages that IDRC has fostered. The EASF has systematically and strategically supported a broad range of policy-relevant research on almost all aspects of the refugee issue, including the issue of compensation.

The EASF also convened, facilitated, participated in, and financed informal 'track two' discussions on the issue, and held several major conferences and workshops on key aspects of the refugee question. These include three major international conferences on Palestinian refugee research: two stocktaking conferences on Palestinian refugee research (1997, 2003)[2] and one specifically on Palestinian refugee compensation (1999).[3]

In 2007, the co-editors of this book published an edited volume on another key aspect of a solution to the refugee problem, titled: *Palestinian Refugees: Challenges of Repatriation and Development.*[4] The co-editors are also finalizing work on a third publication: *Resolving the Palestinian Refugee Problem: A Comprehensive Guide to Issues,* which develops an array of

policy options for addressing various aspects of the refugee issue, to be published by Pluto Press.

It is doubtful that there has been an official discussion of any sort on the refugee issue anywhere in the world over the past decade that has not involved at least one participant in past EASF-supported activities. With support from its EASF project partners and in coordination with DFAIT, EASF staff have been asked on numerous occasions to provide briefings to both regional governments and to the broader international community, aimed at updating policymakers on progress to-date on the various technical complexities of the refugee problem. At various points EASF-supported projects have also enjoyed the active cooperation of the Palestinian Authority, Israel, Jordan, Syria, and Lebanese officials, as well as Western governments and international agencies.

To develop and foster knowledge networks around the Palestinian refugee issue, the IDRC has worked closely over the years with many institutions and experts in the Middle East, Europe and North America. Specifically, EASF developed a close partnership with Rex Brynen of McGill University, co-editor of this publication and coordinator of the 'Palestinian Refugee ResearchNet' (PRRN). The PRRN has become an important repository of knowledge on the Palestinian refugee issue and more recently has been offering a unique forum for debating online the Palestinian refugee issue.[5] The EASF has also worked closely with Chatham House in the UK, which has managed a regional project on the Palestinian refugee issue since 1996.[6]

At the time of publication of this volume, the immediate likelihood of substantive resumption of peace negotiations between Palestinians and Israelis seems close to nil. However, those who have continued to work closely on the Palestinian refugee issue over the years have realized that there is still potential for the technical discussions of thorny issues to have a positive effect on the progress and outcome of future negotiations, when and if they might resume. Such technical discussions of politically sensitive issues can lead to creative thinking about solutions and a sense that solutions are indeed in the realm of the possible. They can also help develop solutions that are workable and easier to implement and can create goodwill among negotiators. Certainly, the refugee issue is not going to go away, nor will the desirability fade of a mutually-acceptable, negotiated resolution of the protracted Israeli–Palestinian conflict.

This volume is part of IDRC's effort to put in the public domain more of the thinking on refugee solutions and to thereby ensure that such knowledge has a prolonged 'shelf-life'. When the time comes, negotiators will make political decisions about the resolution of such complex technical and existential issues as the Palestinian refugee problem. Negotiators will have to consider compensation and reparations as one aspect of the package solution that needs to be reached to end more than 60 years of conflict between Palestinians and Israelis. Between now and then we hope that this volume will be a useful reference on the subject for scholars and policymakers alike, and will make a modest contribution to the process of thinking about and designing workable solutions.

NOTES

1. For more information on the Refugee Working Group, see Rex Brynen and Jill Tansley, 'The Refugee Working Group of the Middle East Multilateral Peace Negotiations', *Israel–Palestine Journal* 2, 4 (Autumn 1995), at: http://prrn.mcgill.ca/research/papers/brytan.htm (accessed 20 October 2012).
2. IDRC and PRRN, 'A Stocktaking Conference on Palestinian Refugee Research', PRRN (1997), http://prrn.mcgill.ca/prrn/prconference.html (accessed 20 October 2012); and IDRC, 'Stocktaking II – Conference on Palestinian Refugee Research', IDRC (2003).
3. IDRC and PRRN, 'Compensation as Part of a Comprehensive Solution to the Palestinian Refugee Problem', PRRN (1999), at: http://prrn.mcgill.ca/prrn/prcomp.html (accessed 20 October 2012).
4. Rex Brynen and Roula El-Rifai (eds), *Palestinian Refugees: Challenges of Repatriation and Development* (London: I.B. Tauris, 2007).
5. The webpage for PRRN can be found at: http://prrn.mcgill.ca/
6. The webpage for the Chatham House 'Palestinian Refugees' Project can be found at: www.chathamhouse.org/research/middle-east/current-projects/israelpalestine (accessed 20 October 2012). This project has been funded by The European Commission and the IDRC. The UK's Foreign and Commonwealth Office has also supported activities within this Chatham House project.

Acknowledgements

This book would not have been possible without the support of many individuals and institutions. Thanks go to the International Development Research Centre (IDRC) for funding the publication and for funding the activities of the EASF programme. We would like to express our thanks to CIDA for its invaluable financial support to EASF from 1992 to 2008, and to DFAIT for their support of various EASF activities too. Rex Brynen would also like to thank the Social Science and Humanities Research Council of Canada and the United States Institute of Peace for their support of his past research in this area. The co-editors certainly wish to thank all the contributors to this volume, the participants in many of the activities funded by the EASF/IDRC over the years, including the 1999 conference on compensation. The opinions expressed in this volume are, of course, those of the editors and authors and not necessarily those of IDRC.

Special thanks also go to Megan Bradley, Alex Brynen and Thérèse Wassily Saba for their meticulous editing and indexing work. We are grateful to Pluto Press for having been so encouraging, supportive and patient throughout the production process.

Finally, we would like to express our joint hope for future progress towards peace in the region. Far too many people have suffered for far too long in the Israeli–Palestinian conflict, the refugees themselves being foremost among them.

此为试读,需要完整PDF请访问: www.ertongbook.com

Contents

List of Figures vii
List of Tables viii
Preface x
Acknowledgements xiii

1. Introduction 1
Rex Brynen and Roula El-Rifai
2. Palestinian Negotiation Priorities on Reparations for Refugees 19
Leila Hilal
3. Compensation for Palestinian Refugees: An Israeli Perspective 35
Orit Gal
4. An Analysis of the Palestinian Refugees' Right to Reparation under International Law with a Focus on the Right to Compensation 49
Lena El-Malak
5. The United Nations Conciliation Commission for Palestine's Records on Palestinian Refugee Property Losses 69
Michael R. Fischbach
6. Israel's Policy Regarding Palestinian Refugee Real Estate Holdings: Israel's State Records 89
Roby Nathanson and Hagar Tzameret-Kertcher
7. In Search of Information about Refugee Property Ownership 107
Elia Zureik and Jaber Suleiman
8. The Value of 1948 Palestinian Refugee Material Damages: An Estimate Based on International Standards 132
Thierry J. Senechal and Leila Hilal
9. Palestinian Refugee Losses in 1948 159
Atif Kubursi

10. Implementation of an Agreed Solution for Palestinian Refugee Claims: Learning from the Experience of Other Claims Mechanisms 177
Heike Niebergall and Norbert Wühler

11. Gender Dimensions of Redress for the Palestinian Refugees 204
Megan Bradley

12. Redressing Internally Displaced Persons in Israel 224
Megan Bradley

13. Linking Palestinian Compensation Claims with Jewish Property Claims against Arab Countries 245
Michael R. Fischbach

14. Palestinian Refugee Compensation: Connections and Complexities 263
Rex Brynen

15. Beyond Compensation: Reparations, Transitional Justice and the Palestinian Refugee Question 282
Anne Massagee

Notes on Contributors 308
Index 314

1
Introduction

Rex Brynen and Roula El-Rifai

At present the prospects for serious Israeli–Palestinian negotiations on a permanent end to the conflict seem bleak. Such pessimism was reflected in a May 2012 report by the highly-respected International Crisis Group, which asked pointedly whether 'anyone still believes in the Middle East Peace Process?'

> Nineteen years after Oslo and thirteen years after a final settlement was supposed to be reached, prospects for a two-state solution are as dim as ever. The international community mechanically goes through the motions, with as little energy as conviction. The parties most directly concerned, the Israeli and Palestinian people, appear long ago to have lost hope. Substantive gaps are wide, and it has become a challenge to get the sides in the same room.[1]

Against that backdrop, this volume leaves aside the ambitious task of rethinking the broad architecture of negotiations or the even broader balance of power. It does, however, recognize that the time has come to review and assess the work that has been done to date on achieving Middle East peace. In so doing, it focuses on one of the most sensitive and technical aspects of the 'peace process', namely that of compensation or reparations to those who have been forcibly displaced by the Arab–Israeli conflict. The premise is that the issue is sufficiently complex and controversial as to deserve detailed analytical attention. The volume is also informed by a genuine concern that much of the very good work that has been done on compensation must be preserved in case the 'hiatus' in the search for peace proves to be a very prolonged one. Offering a multitude of analyses and perspectives can only serve to enhance both future research and any future negotiations – whatever form they might take. While contributors to this volume examine the issue of compensation only in terms of forced displacement and

associated property seizures, some of the technical issues raised might also have application to other sorts of claims arising from Israeli occupation or other aspects of the conflict.

While refugee compensation may well be a *necessary* condition of resolving the refugee issue, nothing in this volume suggests that it can be thought of as a *sufficient* one. Issues of refugee return, repatriation, resettlement, development and moral acknowledgement also loom large – and are themselves hotly contested among, and even within, the various parties to the conflict. Moreover, while a thematic focus such as the one offered in this volume is essential in exploring the complex issues, debates, and trade-offs involved, it is important to remember that neither the question of compensation nor the broader refugee issue exists in a vacuum. As this volume will attest, the compensation issue is intimately bound up with the broader elements and dynamics of the conflict.

A BRIEF HISTORY OF THE COMPENSATION ISSUE

With the establishment of the state of Israel in 1948, approximately three-quarters of a million Palestinians were forcibly displaced from their homes and sought shelter in neighbouring Arab countries. They thereafter became involuntary exiles, barred by the Israeli government from returning home. Still other Palestinians were internally displaced within Israel itself, and were also subject to property seizures. With the occupation of the West Bank, Gaza, and East Jerusalem by Israel in 1967, another 300,000 or so Palestinian 'displaced persons' (most of them also 1948 refugees) fled the Occupied Territories, largely to Jordan. Over the years, still other Palestinians found themselves displaced by various other aspects of Israeli policies, including land seizures, the separation barrier, and travel and readmission regulations. Meanwhile, from the late 1940s onwards, hundreds of thousands of Jews in Arab countries fled to Israel, often after facing violence or discrimination.

For almost as long as there has been a Palestinian refugee issue, securing compensation or reparations for those who were forcibly displaced during the establishment of the state of Israel in 1948 has been considered a key aspect of any just and durable solution to the problem. United Nations General Assembly Resolution (UNGAR) 194, approved in December 1948, explicitly recommended that 'refugees wishing to return to their homes and live at peace with their neighbours should

be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under the principles of international law or in equity, should be made good by the Governments or authorities responsible.' The United Nations Conciliation Commission for Palestine, established at that time, was instructed by the General Assembly 'to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation.' The UNCCP would spend several years after that gathering data on Palestinian refugee property losses in 1948.

The question of refugee property was briefly addressed at the Lausanne Conference in 1949, but there and in the decades that followed there was little progress towards a comprehensive Arab–Israeli peace, nor any resolution of the refugee issue. Within Israel, the Absentees' Property Law (1950) further codified the refugee property seizures that had taken place during and immediately after the 1948 war. Despite the establishment of the Custodian of Absentee Property, there was little evidence that Israel planned to return refugee properties, or even undertake a detailed and systematic assessment of their values for compensation purposes. Instead, seized properties found their way into Israeli/Jewish use.

Through the subsequent decades several important academic studies of the value of refugee property were undertaken.[2] However, the absence of any form of Israeli–Palestinian negotiations meant that there was no real forum in which to raise the issue. On the Palestinian side, many refugees grew fearful that any talk of compensation was intended to divert refugees from asserting their right of return to 1948 areas. Consequently, practical discussion of the compensation issue grew more difficult. On the Israeli side, there was little attention to any aspect of the refugee issue, compensation included.[3]

While there was little progress on the issue in the Israeli–Palestinian case in the decades that followed, international human rights law and practice did evolve significantly. In the immediate aftermath of World War II there had been little effort to address refugee property losses either in Europe or in the decolonizing world. Over time, however, refugee repatriation, property restitution, and addressing other refugee claims became an increasingly important component of conflict resolution. This was evident in particular peace agreements, such as the General Framework Agreement for Peace in Bosnia and Herzegovina

(1995) wherein the return of refugees and the restitution of refugee properties were key elements of the accord. It was also evident in the 'Pinheiro Principles' on Housing and Property Restitution for Refugees and Displaced Persons, adopted by the UN Sub-Commission on the Protection and Promotion of Human Rights in August 2005.[4] The Palestinian case, however, continued to present particular challenges, not only because both sides held very different views of historical responsibility, but also because the passage of time and the corresponding multigenerational dimensions of the issue created additional practical complications.

With the onset of comprehensive Arab–Israeli peace negotiations in 1991, and even more so with the signing of the Israeli–Palestinian Oslo Accords in 1993, attention to the issue began to increase. The issue was addressed in the December 1997 'Stocktaking Conference on Palestinian Refugee Research', convened by the International Development Research Centre (IDRC) and Palestinian Refugee ResearchNet, as part of the so-called 'Ottawa process' of second track research and dialogue meetings, although it remained highly sensitive.[5] By July 1999, however, it was possible to organize an international workshop on 'Compensation as Part of a Comprehensive Solution to the Palestinian Refugee Problem' involving some three dozen Palestinian, Arab, Israeli, and international experts.[6] While sensitivities had not entirely abated – negotiating the unwieldy workshop title alone took several weeks – the meeting nonetheless was able to explore the complexity of the compensation issue, including debates over how losses might be calculated, what should be included, how payments might be made, how beneficiaries and amounts might be calculated, and how implementation mechanisms might be designed. The workshop report also attempted to pull together these discussions by highlighting some of the apparent strengths and weaknesses of varying approaches to compensating the refugees (see Appendix 1).

The advent of Israeli–Palestinian permanent status negotiations in 2000 led both the parties themselves and others to devote more analytical attention to the compensation issue. This was particularly true of the Negotiations Support Unit (NSU) of the Palestine Liberation Organization, which began to commission a range of specialized studies on aspects of the refugee issue – an activity it would continue, on and off, for roughly a decade. Another summary of approaches to refugee compensation, based on a systematic literature review and examination of a

此为试读,需要完整PDF请访问: www.ertongbook.com