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Book review.

The Palestinian refugees in international law.

Lex Takkenberg

BY

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Book title: The Palestinian refugees in international law.
The publisher: Clarendon press oxford.
The author: Lex Takkenberg, the chief of the field relief and social services program, Gaza, for United Nations relief and works agency for Palestinian refugees in the near east.
The total number of pages: 411 pages.
The total number of chapters & attachments: Selected abbreviations, Tables of cases, Three parts, Ten chapters, Bibliography & Index.
The first published 1998.
Preface

This book is one of the most important books- I read- which is discussing the tragedy of Palestinian refugees, the author works in GAZA where many Palestinians are living in a refugees camps.

The author explained how he started his way with the legal status of Palestinian refugees “the complexity of the legal status of Palestinian refugees first occurred to me shortly after I joined the Dutch refugee council as legal officer in 1983.

Peter van krieken, who then had just completed an assignment with U.N.H.C.R in Beirut, addressed the subject during a workshop for attorneys specializing in asylum cases, which I had organized. I still remember having considerable difficulty comprehending why these refugees constituted the only category kept out said the general international refugee regime and what consequences this had for their position. At the time I had no idea that some five years later, as an employee of the United Nation relief and works agency for Palestine refugees in the near east U.N.R.W.A, I would be dealing full time with exactly that refugee problem.

There was indeed, no relationship between the two. Nevertheless, the curiosity aroused at the time was one of the factors that in 1991, just after the gulf war, contributed to my decision to comments the research of which this book is the result”.

Introduction:

“The central question of the study is to determine the status of Palestinian refugees in international law in a comprehensive manner” author divided this question to five sub-questions, “under what circumstances can a person considered a Palestinian refugee? What are the right and obligation of the Palestinian refugees have under the international law? To what extent Palestinian refugees are enjoying international protection? To what extent are the applicable rules of international law relevant for the Middle East peas process?”.1

Perhaps many people – even the international law specialists – has not enough information about the situation of the Palestinian refugees in Diaspora, the author try to give a model of the suffering Palestinian refugee, Rule’s story was good model. Rule’s father was born in 1936 in El Majdel, he owned a large orange grove. Kalil - the Rule’s father’s name - tragedy started when the united nation General assembly vote of 29 November 1947 which supported the partition of Palestine into two states, one Jewish and one Arab, and then the war

1Research questions and outline of the study page 43,44.
started, let’s hearing to this “By late autumn of 1948 El Mjdal contained a fairly large refugee population how had fled in the spring and summer from areas to the prompted may of the refugees to move further south, joined by an increasing number of majdalites.

On 4 November 1948 the town was conquered by the IDF [ISRAELIAN DEFANCE FORCE]. Much of the population and the Egyptian garrison had evacuated on 30 October, by boat and on foot. The Egyptian divisional headquarter had already left the town some ten days earlier. Between 1000 and 2000 locale inhabitants remained in El Majdel when the Israelis marched in. These remaining Palestinians were expelled to the GAZA Strip nearly two years later.”

Kalil and his family left their home, his father and one of his brothers staying to protect their property. To make long story short Kalil and his family – which joined by 200000 refugees from other part of Palestine stayed in Gaza tell Kalil graduated from a teacher training college in Cairo at 1958.

From Gaza to the Gulf, kalil’s family tried their luck in the Gulf States. In September 1959 he was appointed as a teacher at the government school in Kuwait. But at August 1990 Sudam Hussein invaded the country and a new chapter from the Palestinian refugees tragedy started.

As we can see many were writ more than one chapters in the Palestinian tragedy, some of them were jaws, some were Christians and many are Arabs and Muslims.

Through ten pages 8-18 the book’s introduction give a historical background to the problem. This land was under the Arab and muscleman’s rule from 636AD until the First World War, except 100 years under the rule of crusaders. During the first world ware British troops under General Allenby with support of the Arab armies ³, captured it from Turks in the campaigns of 1917-18.

The author says “By 1918 there were 56000 Jews living in Palestine, out of a total population of 680000!” ⁴

After the historical Belfour declaration at 2 November 1917 every thing changed especially when this declaration taken as a guideline by the newly formed league of nations when the international body granted Britain the Palestinian mandate in 1920.

At 1929 the Arab population in Palestine – which showed little resentment towards the jaws immigration at 1917 – started there first defense guerrillas war ⁵.

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² The complete story which give us a clear idea about Palestinian suffering P1-5.

³ One of historical Arabs fault.

⁴ Can we imagine what happened?
The Britain started to wore against Arab the author notes that “In all over than 3000 Arabs were killed and the British dead numbered about 150. 6000 Arabs were imprisoned and 110 executed. According to official Israeli government figure Jewish casualties for the same period 1936-1939 were 517 dead many of them second generation immigrants shot down in their fields by Arab neighbours with whom they had previously lived in peace “.

At 28 of April 1974 in the special session of the new United Nation, the general assembly established the United Nations Special Committee On Palestine U.N.S.C.O.P “to investigate all question relevant to the problem of Palestine and recommend solutions to be considered by the regular session in September 1947.”

The U.N.S.C.O.P committee, went to Palestine, surrounding countries, displaced persons camps in Europe packed with Holocaust survivors.

And after three months of investigation the majority of committee recommended that Palestine be partitioned into an Arab State and Jewish state, with Jerusalem as a corpus separatum under the administrative authority of U.N.

From UN’s historical and famous resolution 181 that accepted in general the recommendation of U.N.S.C.O.P majorette. Long historical journey was passed, from 181 resolution to Madrid conference giving us how these problems are difficult and complicated.

Through this long historical part -30 pages- we have many important conclusions:

- Because of the adaptation of resolution 181, the number of Palestinian refugees were increased, At page 12 the author said “The adaptation of resolution 181 led to the outbreak of violence in various part of Palestine. For next six month, until the British withdrew, there was increasing guerilla warfare.

- Israel has a complete responsibility about this problem. Israeli historian Benny Morris said “The exodus began in the period between December 1974 and March 1948, with the departure of many of the country’s upper a middle

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5Perhaps Entefadat Al Aqusa will be the last one.

6The majorities were “Canada, Czechoslovakia, Guatemala, Netherlands, Peru, Sweden, and Uruguay.”

7Page 13 paragraphs 2.
class family, especially from Hiffa and Jaffa. This first wave numbered several tens of thousands. The satuwaion changed dramatically during the end of March–April and the first half of May following the Jewish conquest of a large number of Arab–populated areas”.

The Israel government policy towards the refugees was not to allow them to return, David Ben-Gurion laid out this policy “When the Arab states – he said - are ready to conclude a peace treaty with Israel this question ‘of refugees will come up for constructive solution as a part of agreement settlement, and with due regard counterclaims in respect of the destruction of Jewish life and property.”

In spite of the UN higher inters the Palestinian refugees problems stayed without any solutions “Since 1974 almost 600 resolution were adopted by the security council up to the middle of 1987, of thus 200 were in the Arab – Israel dispute in all it’s aspect.”

The author explains in detail, the deferent UN’s body’s which dealing with this problem, United Nation’s mediator for Palestine. United Nation’s relief for Palestine refugees UNRPR. United Nations conciliation commission for Palestine UNCCP. United Nation’s relief and works agency for Palestine refugees in the near east UNRWA.

At the end of this important historical part, he start to talk about Madrid peace process and it’s relevance for Palestinian refugees, maintain that “Article V of the Israel – Palestinian declaration of principles stipulates that the

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8 In foot note36 at page 14 the author note that by 1995 2.5 million immigrants had arrived to Israel, any fair person can compare between this number and the number to the Palestinian refugees, related to UNRWA the total number of the registered refugees is 3,172,700 please review page 21.
9 Page 22 paragraphs 1 & footnote number 69.
10 Page 22.
11 Page 23.
12 Page 24. This committee established according to resolution number 149, in the paragraph 11 of the same resolution, dealing with the refugee problem, the general assembly resolved that “the refugees wishing to return to their homes and live at peace with their neighbors 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 principal of international law or in equity should be made good by the governments or authorities responsible. The book give us an additional proofs about the short-sight policy of Arab states, they voted against resolution 149 and refused the Israel announcement –at 28July 1949 – to take back 100000 refugees in the context of a peace settlement .As the – page 25 “the Arab response solve the Israel cabinet’s problem”.
13 Page 28.
permanent status negations shall cover many important issues.
Refugees one of them.
It added, "Although not explicitly stated, the term of
refugees in article V refers to the 1948 refugees. This
appears from the fact that the declaration of principals
contains a separate provision dealing with 1967 displaced
persons." Even the Multilateral working group on refugees – Organized by the
Moscow meeting at January 1992 to facilitate and normalize
Israel – Arab relation – this working group has dealt with six
different issues one of them only is very close from real
cases "pertaining to family reunification." This study discusses one category of refugees "It should be
stressed that this is not work about the rights of Palestinian
in general." "The study deals with one specific group of
refugees: those Palestinian who fled that part of mandate
Palestine which in 1948 became the state of Israeli, as the
war accompanying the establishment of this state", From my
point of view this is the most important issues in this study.
Some important questions the author try to answers.

- What is the difference between the Palestinian refugees
and other refugees? The book explain "most refugees are in
principal able, but due to fear of persecution, unwilling
to return to their country. In the case of Palestinian
refugees it’s in generally the opposite. Although the
majority of the refugees have expressed a desire to return
to their places of origin and continue to do so until this
moment, Israel has constantly barred their return except
for small numbers in the context of family reunification.".
Another traditional characteristic of refugeehood” is the lack
of national diplomatic protection by the government of the
country of origin. Especially in early literature on refugee
law, refugees were frequently referred to as unprotected.

14Page 36 last paragraph & page 37 the first one, the author put a paragraph from agreement to proof
this “Liaison and cooperation with Jordan and Egypt, the two parties will invite the government of
Jordan and Egypt to participate in establishing further liaison and cooperation arrangements between
the government of Israel and the Palestinian representatives, on the other hand, to promote
cooperation between them. These arrangements will include the constitution of a continuing
committee that will decide by agreement on the modalities of ambition of persons displaced from the
West Bank and Gaza strip in 1967.
16Page 51.
17Page 49.
 personas. Palestinian refugees are a classic example of a category of unprotected persons.

● Are the international community decided in the early 1950s to exclude Palestine refugee who were being assisted by UNRWA, from the legal regime that was being introduced the protection of refugees?

To answer this question the author reviewed completely the travaux préparatoires (preparatory works) paragraph 7(c) of the UNHCR statute and article 1(d) of 1951 convention and discovered that the Arab states were afraid that, when include under UNHCR statute, the Palestinian refugees would become submerged (with other categories of refugees) and would be relegated to a possession of minor importance. "The international community did not decided to exclude Palestinian refugees from the general legal regime for the protection of refugees, although the Arab states did not considers themselves primarily responsible for financing the relief the effort, they were concerned that assistance or protection be extended to the Palestinian refugees irrespective of whether relief by the UN Would continuo to be provided they therefore made it clear that the provision included upon their request in the draft convention was only to exclude Palestinian refugees temporarily".

The author noticed that only one Non governmental organization—the commission of the churches international affaires had brought to the attention of participants that "Material Assistance is not in itself a guarantee of protection", it suggested that draft article 1C—now 1Dof 1951 convention—be manned to read " assistance and protection “ rather than “ assistance or protection “.

Unfortunately—author said—the suggestion was not taken by any of the governmental participants.

Through ten pages 68-77 the author introduce “The history of the UNRWA's definition of Palestinian refugees".

At 1993—author said—new rules were issue, eliminated the requirements of needs and initial flight, in 1948, to a country within UNRWA’s area of operations. Under these new rules, a 'Palestinian refugees 'is a defined as follows " Palestinian refugees shall mean any person whose normal place of residence was Palestinian during the period 1 June 1946 to 15 may 1948 and how lost both home and means of livelihood as a result of 1948conflect."
The interoperation of that of this definition is relevant for the definition of a Palestinian refugee in the future to be applied for the purpose of the permanent status negotiations and will therefore be discussed in some detail.

**First** What the mining of Palestinian? And what is the effect of the sentence “who lost both home and means of livelihood” on the economic refugees how had lost their means of livelihood, but had not become refugees in the proper sense of the word, as they never fled their homes.

**Second** what is the meaning of “as a result of 1948 conflict”? And how this sentence be effect on “Those who emigrated and took up permanent residency other countries prior to the start of the 1948 conflict are in principal not to be considered as Palestinian refugees”?

**Third** how long the departure from Palestine may have been delayed in order to be considered as still resulting from 1948 conflict?

At the end the author review the Palestinian refugees definition Of peace negotiation which addressed from the chairperson of the Palestinian side of the joint Palestinian - Jordanian delegation elaborated on how is to be included in the category of refugees that are covered by the UN resolutions concerning the right to return and compensation. “The Palestinian refugees who were expelled or forced to leave their homes between November 1947 and January 1949, from the territory controlled by Israel on that later date. This... Coincides with the Israel definition of “absentees”, a category of Palestinian meant to be stripped of its most elementary human and civil rights. This definition does not only apply to camp-dwellers, and certainly not only to those recognized refugees who enjoyed formal registration by UNRWA. Such a definition does not include emigrants who left Palestine before 1947, but it includes all those displaced persons, even inside the territory that became the state of Israel in 1948-1949 period. It also includes all the 1967 and post 1967 displaced persons. It also includes the residents of border villages in the West Bank, how lost their agricultural lands in the war 1948. It include residents of Gaza strip refugee camps who were either relocated to the Rafah Sid of the Egyptian boundary, or ho found themselves separated from their family and kin as a
result of border demarcation after the Camp David agreement between Israel and Egypt. 22

Through 35 pages 23 the author reviewing the different elements of article 1D of the 1951 convention, discussed the deferent meaning to many expressions for example “the 1951 convention does not apply to personas who are at present receiving from organs or agencies of the united nation other than UNHCR protection or assistance”.

Do the words “at present “ refer to the date on which the convention was signed or entered into force? He asks. 24

At the end he discovered that most state party to the convention and/or protocol appear to be reluctant to grant Palestinian refugees access to the benefits of these instruments. One possible explanation – he said – for this attitude may be that these states may find it difficult to grant automatic refugee status to people who merely base their claims on descent.

In the opinion of this author it is there for no more than reasonable that those Palestinians refugees for whom UNRWA assistance is no longer attainable, and who find themselves in countries bound by 1951 convention, are ipso facto entitled to benefit from its privations.

This chapter- IV- is sensitive one, it explains the status of Palestinian refugees in the Arab world, and how the Arab league deals with this important problem.

Two mains principal seem to have influenced the attitudes of the member states of the Arab league vis-à-vis the Palestinian Refugees. First was the Arab solidarity and sympathy toward the refugees. Second that the preservation of the Palestinian identity, put emphasis the Palestinian”s status of refugees, so as to avoid providing Israel with an excuse to evade its responsibility for this plight.

In 1952 the council’s permanent committee on Palestinian dealt for the first time with the possession of refugee. The author noted that “the actual treatment of the refugees depends to a great extent on the policies of the various host countries vis-à-vis the Palestinian liberation organization in particular. Changes in political relations almost

22 Complete definition page 84-85.
23 86-121
24 The author – at this chapter- quoted some German Federal Administrative court.
automatically have an impact on the situation of the Palestinian refugees in the countries concerned. Many important steps taken by Arab league to make the refugees life easier " in 1954 a detailed resolution was unanimously adopted by the council, outlining the criteria and procedures for the issue of unified travel documents for Palestinian refugees. But the most important help to the Palestinian refugees came at 11 September 1965 at during the special summit conference of Arab heads of states held in Casablanca, at this meeting the Arab leaders agreed “ the protocol on the treatment of Palestinian in the Arab world”. The author notes that this protocol is more generous than 1951 convention.

1. It gave the Palestinian refugees “the right to do business and to employed as if they were nationals”, While the 1951 convention provides for national treatment in respect of certain issues.

2. It gave a wide freedom of movement to Palestinian refugees. Article 2 contains a provision when their interests so require, Palestinian recently residing in the territory of ... “shall have the right to leave the territory of this state and return to it the next article extend this right of freedom of movement to the territory of other member states”. Author note that “ Palestinian residing in one Member State in the Arab league shall have the right to enter and leave the territory of any other member state “. Article 3 stipulates that the right to enter ‘does not lead to a right of residence, except for the period and purpose specified”. The 1951 convention doesn’t contain similar provisions .The convention contains in article 26, a provision on freedom of movement, but the only applies to the right to choose one’s place of residence and to move frilly within the territory of the contracting state.

3. Casablanca protocol article 4 reiterates the obligation of the members state to provide travel document to Palestinian residing their countries and it will be responsible for the issue and extenuation of travel document, even the Palestinian concerned has later moved to

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25 The author gave very important examples to prove how the PLO policies harmed- at many times- the Palestinian refugees in many Arab countries like Lebanon, Jordan, Syria and gulf. Through 21 pages150-171 the author discuss the situation of the Palestinian refugees in the various Arab states.

26 The travel document has become known as “ Travel document for Palestinian refugees”. This system helps large number of Palestinian refugee to travel to many Arab countries specially, Gulf states.

27 The author reviewing these issues page 141-142.

28 Page 142.
a third country. This approach is different from the paragraph 11 of the schedule attached to 1951 convention which transfer of responsibility in respect of the issue and renewal of travel document to the competent authority of the territory which the refugee settled in.

4. The article 5 accords treatment equal to other Arab league nationals in respect of visas and residency. The 1951 convention doesn’t contain a similar provision.

To make the long story short, the author believe that “the main problem in relation to the status of Palestinian refugees in the Arab world has been that although the host states have generally provided permanent residency status to those refugees who took direct refugee in their respective countries during and in the after math of the 1948 war. This status has nevertheless not allowed the refugees to become fully integrated. Citizenship has generally not been available, not even the second or the third generation refugees. Furthermore, It appeared to be virtually impossible to transfer the right of permanent residency to third countries in Arab world. During periods of crisis affecting these countries it became clear that de facto integration is not the same as a durable solutions large numbers of Palestinians experienced when they forced to leave, often after having lived and worked their for decades.

At part two, the author discussed many international laws related to the Palestinian refugee issues such as “law relating to stateless persons, humanitarian law and human rights law”.

He notes that “most Palestinian refugees are also stateless has a considerable impact. Being stateless not having the passport of state, not having even the theoretical option of returning to one’s country. He said that, the problem of stateless will only be resolved if and when a Palestinian state is finally established.

In spite of the author believe that refugees are not explicitly mentioned in the definition of protocol persons in article 4 of the fourth Geneva Convention, but however—he said— as far as they are civilian persons, it is generally accepted that they are as such benefiting from the protection provided for in that convention. Through 15 pages, the author start to discuss the position of the Palestinian refugees in the territories occupied by Israel before 1976 war and gives very important conclusions: -

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29 More comparison between Casablanca protocol & 1951 convention page 140-144.
30 Page 195
31 Page 200.
32 Pages 211-226.
1. The Palestinian refugees issue provides an excellent illustration of the considerable importance of humanitarian law for the protection of refugees, especially large numbers probably the majority of today’s refugees.

2. This body of international law is not always sufficiently realized by lawyers involved in the protection of refugees.

3. This body of international law should be given additional attention by international agencies.

4. The unilateral refusal of Israel to apply the fourth Geneva Convention fully to the occupied territories, and the many violations by that country of its provisions, have shown, at the same time, the limitation in international law in effectively protecting the human rights of refugees and other unprotected persons.

In chapter VII the author focused on the position of Palestinian refugees as individuals and as a member of Palestinian people, he discussed the human right law as the relevant concept of international law. The main conclusion on this chapter that “the right of the Palestinian refugees to return to their homes has been affirmed by the general assembly as clearly as in 1948; in the 1970s the general assembly also affirmed that the Palestinian people are entitled to self determination. An attempt was mad to determine the contemporary legal content of both rights as well as their applicability to the Palestinian refugee problem”. Palestinian refugees have aright – author said- to return to their own country “Palestine”. As long as there is no Palestine State, this right applies in principal to the entire territory of the former British mandate.

It means partly, some refugees – especially 1948 refugees – must return to their homes even inside Israelis territories. Because of that we can not understand why the author took some steps back and said “the implementation of the right of the right to return of the Palestinian refugees is likely to be realized only in the contexts of the establishment of the Palestinian state along side Israel “, It seems like a political solution more than a legal solution.

In part two the author discus the “The international protection and the search for a durable solution “. Chapter VIII dealing with international protection, it explains the role playing by UNRWA and other united nation organs to protect the Palestinian refugees in the Middle East.

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33 The conclusion in detail page 226-228.
34 It’s very important chapter page 229-273.
Because of it discussed UNRWA role in chapter one and we reviewed it, we’ll try review the effort of the introduction of refugee affairs officers program (RAO), which was established on the 22 of December 1987, according to the security council resolution 605. The resolution strongly deplored the Israeli valuation of the human rights of the Palestinian people in the occupied territories, and in particular the opening of fire by the Israeli army, resulting in the killing and wounding of defenseless Palestinian civilians. This program (RAO) should be considered as an important step to provide Palestinians with international protection. The author explain in detail the importance of this program and the who Israeli Government criticism this program.

Com to end of the book “the search for a durable solution” for the Palestinian refugee as well as for the other displeased Palestinian, This chapter – author said- is the most political chapter in the study. According to this chapter negotiations should first and foremost address the issue of the territorial status of the West Bank and the Gaza strip, “only a political solution imposing painful compromises on both sides will be able to create the conditions in which international law can applied effectively. The Israelis will eventually have two recognize that they are not entitled to determine the future of the Palestinians. There right simply dos not go that far. Only an agreement between Israeli politicians how subscript to this vision and their Palestinian counterparts how understand the Israeli fear, will finally be able to resolve the conflict, thus paving the way towards a just and comprehensive solution of the Palestinian refugee problems.” It’s the final conciliation in this important and realistic study.

**Words before the end**

As we said in the early beginning of this review the author triad to give an answer to main four questions:

1. Under what circumstances can a person considered a Palestinian refugee?
2. What are the right and obligation of the Palestinian refugees have under the international law?
3. To what extent Palestinian refugees are enjoying international protection?
4. To what extent are the applicable rules of international law relevant for the Middle East peas process?”.

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35Pages290-301.
My point of view is, the author succeed to pay our attention to a new field and gives us a clear idea about how the Palestinian suffer from their satiation, and who is responsible?

It’s very hard to review this important book in 12 or 20 pages, you must read it carefully to understand that international law cannot solve some complicated problems, and many times you must accept some of your rights instead of nothing, it’s a jungle world which we could it policy. This book must translate into Arabic, Our people must know that- Even in the west-you can find fair persons.