

Report

Investigative International Mission

8/7-04

Lebanon

Palestinian refugees : systematic discrimination and complete lack of interest on the part of the international community

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Introduction

1) Presentation of the mission

The FIDH (International Federation for Human Rights) mandated Mr. Mohamed MOUAQIT, Professor at Law, and Economic and Social Sciences University of Casablanca, to undertake a mission in Lebanon in order to account for the legal situation of the Palestinian refugees in this country.

The mission took place between September 4 and September 8, 2002.

The present report is based on the information gathered during Mr. Mouaqit's stay in Lebanon, as well as on the legal research he did (browsing through law, decrees, legal studies, etc) as a primary part of the mission.

Institutions visited and delegates met during the mission

During the mission, meetings were organized with refugees, Palestinian representatives and intellectuals, Lebanese politicians, a representative of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), and members of Human rights defense associations.

A list of all the people met during the mission can be found in the Annex.

The scheduled meetings with representatives of the host country did not take place because they did not reply to the solicitation. Other Lebanese delegates could not or would not reply to the meeting invitation. It should be mentioned that the mission coincided with the bloody events at the Al Jalil (or Wafel) Palestinian Camp at Baalabek on September 4, 2002. During that same week, the shut down of the stations of the MTV channel by the covering force led to even more acute political tension.

The FIDH and its delegate would like to thank particularly the members of the Palestinian Human Rights Organization (PHRO-Lebanon) for the help and documentation they have provided for the completion of the mission.

2) Context

384,918 Palestinian refugees, that is 10% of the total Palestinian population, are registered with the UNRWA in Lebanon. Palestinians therefore constitute a little over 11% of the total population in Lebanon. The majority of them lives in 12 refugee camps¹. However, the Lebanese government and the Palestine Liberation Organization (PLO) count 450,000 Palestinian refugees actually living in Lebanon. According to the Palestinian Human Rights Organization (PHRO), there is a third category of Palestinian refugees who are not accounted for; that would be another 10,000 Palestinians living in Lebanon without any identification paper².

Degradation of the relations between the Palestinian refugees on the one hand, and the Lebanese authorities and population on the other hand

On September 4, 2002, the Lebanese Army entered the refugee camp of Al Jalil (or Wafel) at Ba'alabek under the pretext of searching one of the installations of the Fateh-revolutionary Command of Abou Nidal. The intervention resulted in four deaths (a Lebanese staff sergeant and three Palestinians) and several wounded. However, the Al Jalil camp, which stands among the less dense camps (6,000 inhabitants), is considered as "one of the most peaceful camps of Lebanon"³. A few weeks earlier, in August 2002, the Lebanese Army had had to intervene at the Ain el-Heloue camp, South Lebanon, but without having to enter the camp however, to seize an individual (of Lebanese nationality) who was involved in the murder of three members of the military. This operation took place without having to deplore any casualties.

Beyond the political interpretations, these events testify, if need be, of the degradation of the relationship between the Lebanese authorities and the Palestinian refugees, and of the growing tension of this relationship. These events participate in the continuous degradation of the political, economic, social and legal situation of the Palestinian refugees in this country, which had nevertheless shown its hospitality at the beginning of their installation.

1. Figures provided by the UNRWA, Public Information Office, April 2002.

2. PHRO, 2002: *A review of the Status of Palestinian refugees in Lebanon*.

3. "L'Orient Le Jour", daily newspaper in French, issue of September 5, 2002, p.4.

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The responsibility of the civil war attributed to the Palestinians by certain segments of the Lebanese society is given as an explanation by the latter of the inexorable degradation of the situation of the Palestinian refugees. A strong anti-Palestinian sentiment is developing, to the extent that some Lebanese authorities have qualified it as "racism". This feeling originates both from the dead-end of the peace process in the Middle East and from the religious prism, which gives the Palestinian presence on Lebanese soil the character of a definitive implantation, which could threaten the demographical balance of the religious denominations in Lebanon.

A disastrous humanitarian situation

The present report provides an overview of the condition of the Palestinian refugees in Lebanon. Several reports, governmental and otherwise, have stated the deplorable living conditions of the Palestinian refugees in Lebanon. Among the Arab countries to have welcomed Palestinian refugees on their territory, Lebanon is often cited in these reports as the location of the most grievous mistreatment.

Another report, emphasizing the disastrous situation of the Palestinian refugees and listing all the host-State's derelictions of its national and international obligations, wouldn't be useless. In the meantime, the present report is focused on the study of the evolution of the Lebanese legislation having a direct or indirect impact on the Palestinian refugees, as an indicator of the position of the Lebanese authorities towards the Palestinian refugees.

An openly discriminatory domestic law

The orientation of this report was dictated by the specific situation of the Palestinian refugees. Indeed, the non-respect of their human rights could be a result of an authoritarian application of political power of which they would not be the sole victims, even though it does, or could, particularly affect them. But the facts show that the Lebanese government's violations are not only limited to the non-respect of rights guaranteed by domestic and international texts. Indeed, Lebanon has developed, towards the Palestinian refugees, discriminatory laws, which themselves constitute a dereliction of its national and international duties.

In other words, Lebanon's disregard of obligations towards the Palestinian refugees is not anymore to be solely found in the violation of national and international texts, but also in the legalization of an openly discriminatory practice, which influences the evolution of the Lebanese domestic law.

A defaulting international legal protection

What is even more atypical is that through a "perverse" effect in the sociological sense of the term (that is to say an unexpected effect), this evolution seems induced by the "logic" of international law, which, directly or indirectly, tends to legitimize it. Indeed, the status of Palestinian refugees, in Lebanon and elsewhere, is primarily determined by the intervention of the UNRWA, which ensures them a specific framework. But this framework only takes into account the protection of the refugees' rights dealing with humanitarian assistance. In this sense, it supports the Palestinian refugees' legal status in Lebanon, which is more and more limited to a residence right. Indeed, why should the Lebanese domestic law be more protective of the rights of the Palestinian refugees if international law excludes them from such a protection? In this study of the Palestinian refugees' conditions, the legal framework of the UNRWA's intervention has to be examined for two main reasons: first because it is a determining factor in the collection of data regarding the Palestinian refugees' condition; and second because of its articulation to the Lebanese policy towards the Palestinian refugees, it embodies a certain "logic" inherent to this policy, which is a violation of Lebanon's international commitments.

It is not enough to point out the deficiencies and difficulties of the UNRWA assistance mission to the Palestinian refugees. Since the UNRWA framework is only an assistance operation, it consequently keeps Palestinian refugees out of a legal protection system. Because the UNRWA's position consists of the prospect of a conflict resolution leading to the creation of an independent Palestinian State and to the return of the refugees on that territory, as a definitive solution, it tends to justify the Lebanese policies granting the Palestinian refugees only a minimal legal status. In other words, the Palestinian refugees' rights are limited to the right of residence as a condition of the application of UNRWA's humanitarian assistance.

Therefore, it is not surprising that Lebanese laws be more and more discriminatory towards the Palestinian refugees, since they are the responsibility of the UNRWA and its humanitarian assistance, and not of the Lebanese host-State.

International law and Lebanese law contribute, separately and in concert, to affirm the rights of the Palestinians as a collective entity and to deny the Palestinian refugees' individual rights.

I- The International Law applicable to Palestinian refugees: a right to humanitarian assistance, not to legal protection

The United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA)

The UNRWA was created by Resolution n° 302 (IV) of the UN General Assembly dated of December 8, 1949 and has been in operation since May 1, 1950. It provides relief to about 4 million⁴ registered Palestinian refugees in Jordan, Lebanon, the Syrian Arab Republic, the West Bank and the Gaza strip. The number of Palestinian refugees registered by the UNRWA in Lebanon was 384,248 as of December 31, 2001⁵.

This figure is the result of several relocation influxes of population but does not take into account all the Palestinian refugees in Lebanon, because some of them are not registered with the UNRWA. These unregistered Palestinian refugees, who are about 10,000 according to the Palestinian Human Rights Organization (PHRO), do not have access to the services of the UNRWA and therefore are in an even greater state of poverty and need.

The UNRWA provides services such as education, professional and technical training; health and hygiene; and social services to the most vulnerable categories of the population (women, children, disabled), and infrastructure. The UNRWA's operations in Lebanon are essential since the Lebanese government usually excludes the Palestinian refugees from government services: *"Palestine refugees in Lebanon are among the most disadvantaged in any field. They have only limited access to government services and have to depend almost entirely on the Agency for basic education, health and relief and social services. Lebanese authorities continued to prohibit construction in certain refugee camps, and in others entry of construction materials continued to be subject to military approval, which was not always granted. Palestine refugees in Lebanon suffer from poor living and housing conditions, restrictions on mobility and high rates of unemployment."*⁶

According to its reports, the UNRWA applies tremendous efforts to balance out the lack or the denial of access to Lebanon's governmental services for Palestinian refugees: *"Lebanon remained the only field in which UNRWA offered*

*secondary-level education on a limited scale to address the problem of restricted access for Palestine refugees to public schools, and the prohibitively high cost of private schools."*⁷ The providing of these services has put the UNRWA in a difficult financial position since the 1990s. The lack of a co-funding system makes the UNRWA depend on voluntary donations, and its services inevitably bear the consequences. For its operations in Lebanon, UNRWA had to make an emergency appeal for extraordinary funding in July 1997 to face the ordinary budget shortfall. At the last meeting in Amman between the UNRWA, the donating States and the host-States, held in September 2002, the Commissioner-General Peter Hansen mentioned a budget deficit of over 25 million dollars for the UNRWA.

The Palestinian refugees, in Lebanon and elsewhere, are reliant on the UNRWA for its humanitarian assistance without which their economic and social situation would be even worse. They also cling to the hope, confirmed by the General Assembly resolution n°194, for the eventual repatriation of the Palestinian refugee population. Nevertheless, the UNRWA does not escape the complaints of the Palestinian refugees and of Human rights defenders. In Lebanon notably, the services it offers, owing to the meagerness of its resources, cannot cover every humanitarian situation, as expected by the condition of Palestinian refugee from a relief organization. The services provided by the UNRWA are subject to cost-cutting measures, which sometimes preclude the provision of expensive care⁸.

Besides, the feeling of the vital importance of the UNRWA's assistance in the refugees' life has been reinforced by the fear of a change of the organization's role since the Oslo process. From a humanitarian assistance organization, the UNRWA would have become, according to some Palestinian analysts, one of the gears and a mechanism of implementation of the Oslo process⁹. The portion of the budget allocated to financing projects¹⁰ that help the refugees become more self-sufficient would be a mark of this change. Some fear that this would occur in the eventuality of a future withdrawal of the UNRWA, in spite of the application of Resolutions 184 and 194 by which it is bound¹¹.

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The International legal framework: the 1951 Geneva Convention relating to the status of refugees

Even if the humanitarian mission of the UNRWA is still fulfilling the need of Palestine refugees for social services, it is at the same time, and despite the organization itself, an element of their legal frailty. Its mission, which was initially only temporary, has lasted over 50 years, by extensions every three years. This organization stands in parallel to the legal framework set by the 1951 Geneva Convention relating to the status of refugees, the provisions of which constitute the refugees' common law. Created in reference to the resolution 184 (II) dated November 1947 relating to the partition of Palestine, the UNRWA's mission was to constitute a specific framework in the perspective of a right to repatriation proclaimed by resolution 194 (III) dated December 11, 1948. Indeed, in the 1951 Convention, article 1-D states that *"This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations, other than the United Nations High Commissioner for Refugees, protection or assistance."*

The institutionalization of this temporary legal framework however excludes the Palestinian refugees from the legal protection of the 1951 Geneva Convention. Thus, this framework has become as time goes by, some sort of derogation to the provisions of this convention: it protects the collective Palestinian entity's rights indirectly by means of humanitarian assistance, but it also sacrifices the Palestinian refugees individual rights guaranteed to all refugees by the 1951 Convention¹². Another interpretation, closer to history and to the resolutions, denies the legal duality of the framework of the UNRWA and of the UNHCR: *"There is no evidence that a weakened protection system was ever envisioned for Palestinian refugees by the drafters of the relevant instruments. Moreover, there is no legal justification for denying Palestinian refugees the benefits of the existing refugee regime governing the rights of all refugees worldwide"; "Appropriately analysed, the heightened regime set up two agencies with immediate mandates over the Palestinian refugees: UNRWA, which was to be the assistance agency, and UNCCP, which was to be the protection agency. Article 1 (D)'s function was to ensure that if for some reason either of these agencies failed to exercise its role before a final resolution of the refugee situation, that agency's function would be transferred to the UNHCR and the Refugee Convention would fully and immediately apply without preconditions to the Palestinian*

refugees. That is what the "protection or assistance" distinction and the ipso facto language of article 1 (D) requires".

The contradiction between the right of Palestine and the individual rights of the Palestinian refugees - which are feared to be leading to a denial of the historical Palestinian rights, should the identity of the refugees tend to blend into that of the host states - can be justified and has been so from a Palestinian and Arabic stand-point, in a short-term perspective and in a temporary legal framework. But it became intolerable when it was perpetuated, leading the Palestinian Human Rights organizations to increasingly defy the limits of the legal framework of the UNRWA and to combine it to a legal protection of the refugees' individual rights, in this case that of the 1951 Geneva Convention on the rights of refugees. International law already seems favorable to such a solution¹³.

Therefore, the fact that the host country can guarantee, through the ratification of the 1951 Convention, a legal protection for the refugees' individual rights in parallel to the providing by an international organization of collective humanitarian assistance, to which the refugees are entitled through historic rights, actually aggravates the refugees' status' legal vulnerability. Indeed, the refugees depend on the State's good will to ratify, or not, the Convention. In the particular case of Lebanon, the refugees are doomed to the absence of legal protection because of the Lebanese refusal to ratify the 1951 Convention.

The ratification of the 1951 Convention by the host country remains the most favorable solution for the refugees who enjoy the assistance of an organization other than the HCR to be entitled to some legal protection of their individual rights. Otherwise, the only means for the refugees to be protected by the Convention would be if the UNRWA put an end to its assistance. Indeed, the 1951 Geneva Convention, in article 1 (D), second paragraph, stipulates: *"When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Convention."*

However, such a proposition, in favor of the Palestinian refugees' individual rights, is not conceivable outside of a definitive solution to the Palestinian problem, because the UNRWA is bound to a legal system, which guarantees the

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Palestinian people its historic rights to Palestine. Therefore the Lebanese ratification of the 1951 Convention is a necessity for the protection of the Palestinian refugees' rights, given the difficulty, if not the impossibility, to revise international refugee law in a sense that would not consider as exclusive of one another the rights of the Palestine collective entity and the individual rights protected by the 1951 Convention.

4. Report of the Commissioner General of UNRWA, July 1, 2000- June 30, 2001, A/56/13.

5. According to UNRWA statistics.

6. *Op.cit.*, p.7, § 34.

7. *Ibid.*, § 178.

8. *Hokouk*, newsletter issued by the Palestinian Human Rights Organization, Issue n°3, July 2002.

9. The UNRWA in fact acknowledges the change: "Since its inception, UNRWA has continuously adapted to the rapidly changing political environment in the region as it catered to the needs of Palestine refugees. As part of its organizational and operational evolution, the Agency shifted gears from the early works activities to relief operations, and now to the more comprehensive human resource development programme. The current phase of the reform process may be traced back to 1996." *Op.cit* § 16.

10. The budget of these projects has been included in the general budget for the biennial period.

11. - Ramzi RABAH and Ali FAÏÇAI. Refugees and the right to repatriation , between bargaining rights and premises of a mass upheaval. Dar At-takadom Al-Arabi Li-Çahafa Wa-Tibâa Wa-Nashr. Beyrouth. 2000. E arabic.

- Fathi AL-KALEEB. Nakba Suffering. Dar Al-wataniyya Al-Jadida/Damas et Dar Fourat/Beyrouth. 2001.

12. Reinterpreting Palestinian refugee rights under international law, and a framework for durable solutions. Ms. Susan M. Akram, Associate Professor, Boston University School of Law, International Conference on Palestine Refugees, organized by the Committee on the Exercise of the Inalienable Rights of the Palestinian People in cooperation with the Organization of the Islamic Conference and the League of Arab States, UNESCO Headquarters, Paris. 26 and 27 April 2000.

13. It is the case for BADIL (Resource Center for Palestinian Refugee and Residency Rights) whose conclusion, at a workshop on the future of the UNRWA, states: " Within the current political context and the unlikelihood that an agreement can be reached in the near future that resolves the problems of the refugees according to relevant UN resolutions and international refugee law, critical discussion about the protection of Palestinian refugees is urgent. This discussion, moreover, does not contradict or negate a role of UNRWA, which continues to fulfill an important role in providing assistance for Palestinian refugees and could play an important role in implementing a durable solution for Palestinian refugees. Perhaps there is no need to 're-invent' a role for UNRWA, but rather to put in place a complete refugee regime, one that could provide protection through UNHCR as mandated under Article 1(d) of the 1951 Refugee Convention, assistance and future development through UNRWA, while compensation could be administered through the UNCCP ". See What role for UNRWA? Opportunities and constraints. A durable solution to the Palestinian refugee issue. Discussion Paper prepared by BADIL Resource Centre for Palestinian Refugee and Residency Rights for the PRRN Workshop on the Future of UNRWA. UK (February 2000). The Palestinian Human Rights Organization (PHRO) maintains a similar position.

II- From a relative hospitality to the constitutionalized obsession of "Tawtîn" (implantation)

Lebanon has not always been inimical to the Palestinian refugees. Thanks to the ideology of the Arab "qawmiyya" (Arab nationalism), Lebanon initially expressed solidarity with the Palestinian exiles¹⁴. Lebanon set up a specific administrative structure and a limitation to some of the already restrictive rights. In 1959, the government created, inside the Ministry of Internal Affairs, a committee in charge of the Palestinian refugees' situation, which was to work closely with the UNRWA. Among the common tasks of this alliance was the provision of assistance to the refugees; examination of the passport requests and delivery of the necessary documents relating to personal status; authorization for marriages between a Palestinian refugee and a Lebanese citizen; authorization of movement or resettlement from one camp to the other; etc.

Another decree was passed in 1960 for the creation of a High Committee of Palestinian Affairs, to examine the status of the Palestinian cause, to gather all information, and to initiate the necessary studies about the cause, and to contend the Zionist propaganda. The decree dated July 28, 1962 exempted the Palestinians from carrying a passport when traveling between Lebanon and Syria. Comparably, the decree dated December 29, 1954 had exempted the passport delivery or renewal from tariff stamps for Palestinian refugees. The Palestinian refugees were generally ruled by the foreigners' law (law of July 10, 1962), but were treated better, according to their situation.

This solidarity expressed initially by the Lebanese people and political leaders towards the Palestinian refugees of 1948 gave way, however, to some signs of intolerance of the Palestinian presence on Lebanese soil as soon as it seemed more permanent. The Lebanese refusal to ratify the 1951 Convention on refugees, which has been maintained so far, testifies, long before the effects of the Lebanese civil war, of the hindrance caused by the fear of "Tawtîn" (implantation) by the Palestinian refugees. The Protocol of Casablanca of 1965, initiated by the League of Arab States, tried to create a political basis for the guarantee of a minimum of rights for the Palestinian refugees on Arab soil. However, since this text was not legally binding, it could not fill the vacuum left by the non-ratification of the Convention on refugees.

The relationship between the Lebanese and the Palestinian people was even expressed more politically than legally with

the conclusion of the Cairo agreement of November 3, 1969, which was more devoted to conciliating the necessity for the Palestinians to fight against Israel with the respect of the sovereignty of the Lebanese state, than to ensure rights for the Palestinian refugees. The Cairo agreement, between the Palestinian Liberation Organization (PLO) and the Lebanese government, which included a confidentiality clause, nevertheless maintained the necessity to guarantee the Palestinian refugees the rights to residency, work and freedom of movement. The guarantee of such rights depended more on the existence of a political agreement than on a stable legal basis, and therefore was exposed to the uncertainties of politics. These were manifested when the Palestinian refugees lost the protection of the Lebanese government after the PLO left Lebanon in 1982, and the Cairo agreement was nullified and abrogated by the Parliament in 1987.

The legal instability of the Palestinian refugees' rights did not only reside in the political weakness of an agreement between Palestinian and Lebanese authorities, but actually in the Lebanese legal system itself. The Lebanese Constitution of May 23, 1926, amended notably by the Taef Agreements of October 22, 1989, which were added to its preamble, formally guarantees human rights and freedoms. The preamble of the Constitution and the constitutional law of September 21, 1990, stipulates that Lebanon is a: *"a founding and active member of the League of Arab States and abides by its pacts and covenants. Lebanon is also a founding and active member of the United Nations Organization and abides by its covenants and by the Universal Declaration of Human Rights. The Government shall embody these principles in all fields and areas without exception."*

On November 3, 1972, Lebanon ratified the two 1966 international Covenants, and then on November 12, 1971, the 1965 Convention on the Elimination of All Forms of Racial Discrimination. These ratifications allow a primeval place to international Human rights in domestic Lebanese law, since article 2 of the Code of civil proceedings extends them preference over domestic law. Indeed, this article exposes the general principle according to which, in case of a contradiction between domestic law and the provisions of applicable international norms, the international norm shall be applied. But the Lebanese civil war, for which the Lebanese see the Palestinians responsible, also had the

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consequence to introduce and institutionalize, in the foundations of the Lebanese legal system, the fear of the "Tawtin". The Constitution amended by the Taef agreements, stipulates, *"There is no displacement of the population on the basis of any type of belonging, and no fragmentation, partition, or Implantation."*

To sum up, the legal frailty of Palestinian refugees' rights in Lebanon is the consequence of a combination of factors, which are sometimes the effects of one another:

- The absence of international law to protect the Palestinian refugees' rights, because of the disconnection-which could have come from a misunderstanding¹⁴ -of the humanitarian system of the UNRWA from the protective legal system of the 1951 Convention on refugees;
- The Lebanese refusal to ratify this Convention, even though this ratification would allow the combination of humanitarian assistance with the legal protection that the international law failed to implement;
- The link between the Palestinian refugees' rights-which should be guaranteed by the Host country's stable legal system-and the political relationships between the Lebanese government and the Palestinian authorities materialized, or that could be materialized, by an agreement whose fate is left to the uncertainties of politics. Some Palestinians still link their rights on the Lebanese soil to an agreement between the Lebanese government and the Palestinians, even though the existence of a Lebanese and Palestinian perspective of Human rights is beginning to integrate the rights of the Palestinian refugees as part of domestic and international law. Though an agreement might be necessary between the Palestinian delegates and the Lebanese authorities to find a solution to political problems linked to the presence of Palestinian refugees in Lebanon, the guarantee and the respect of the Palestinian refugees' individual rights cannot depend on this kind of agreement and must find their groundings in Lebanon's national and international legal obligations;
- The fear of "Tawtin": it is more the effect of the religious prism-supported by religious division of the religious balance concern among the different communities, than a Palestinian desire of permanent installation in Lebanon¹⁶. The

importance of this religious division in the Lebanese political life is such that the duality, if not the duplicity, is a striking trait of the Lebanese politicians' attitude towards the Palestinian refugees. The members of Parliament, who have brought appeal before the Constitutional Council against the new law on property right, have also voted in favor of this text. The same Lebanese Human rights activists, whose dedication to the cause of Human rights should caution against religious division, who qualified this text as "racist", have found this term inadequate during my conversation with them. Although the Constitution states, *"The abolition of political confessionalism is a basic national goal and shall be achieved according to a gradual plan"*, it seems that neither the political leaders, nor the Lebanese activists are able to extricate themselves from this religious prism, at least not towards the Palestinian refugees.

14. On the question, see notably the FIDH report on the "Situation of the Palestinian refugees", from 3 to 9 June 1993, La Lettre hebdomadaire de la FIDH, special edition n°188, May 1994.

15. See supra, note 9. (Hokouk, newsletter issued by the Palestinian Human Rights Organization, Issue n°3, July 2002).

16. According to PHRO, a poll conducted on a large sample of Palestinian refugees has shown the general attachment to the right to repatriation to their country.

III- The Lebanese legal system: systematic and open discrimination against the Palestinian refugees

In the past, Lebanon's position could avail of a common standpoint with the Arab countries on the rejection of "Tawtîn" and awaited some Arab countries' schemes-which did not hesitate to proceed to massive expulsions of Palestinians-to also take hostile measures against the Palestinians. Lebanon's case is different however, because the government's hostility against the Palestinian refugees has taken the form of an openly hostile legal policy. The Palestinian refugees ceased to be a special category towards which the Lebanese law would have particular obligations. Evenly the "Direction of Palestinian Refugees Affairs" at the Ministry of Internal Affairs was renamed "Direction of Political and Refugees Affairs" after decree n° 4082 was passed in November 2000. The Lebanese government does not want this official status of Host State for the Palestinian refugees anymore.

The reference to "qawmiyya" set aside, the Palestinian refugees are treated not only as foreigners but also as non-nationals, that is to say almost stateless. The fear of "Tawtin" is constitutionalized and is henceforth the justification to administrative barriers and repression established against the Palestinian refugees, and also to an openly discriminatory law. The objective of such practices, even if not admitted, is in fact to make their lives even less bearable than they already are and force them to leave Lebanon.

The living conditions in the camps are infamously terrible. The extreme overcrowding-due to the scarcity of space-is aggravated by the prohibition for Palestinian refugees to rebuild the destroyed camps¹⁷, build new camps or extend the existing ones. Even though no legal document formally outlaws the construction or renovation inside the camps, the Lebanese army prohibits, with weapons if need be, the conveying of any tool or building material to certain camps. Though the prohibition isn't extended to all camps¹⁸, it has been verified in several camps of South Lebanon. The "offenders" are liable to imprisonment and may put their lives at risk¹⁹.

From the *de facto* prohibition, the Lebanese legislators rashly leapt directly to the *de jure* outlaw.

The national preference: restrictions to the Palestinian refugees' right to work

The temptation of national preference, concerning the professional field and its regulations, dates back to the 50's. The Lebanese President at the time, Bechara El Khoury, was however opposed to the decision by the Ministry of Labor and Social Affairs to prohibit the refugees from working. Nowadays, the prohibition for Palestinians from occupying certain job functions originates in the ministerial decree dated December 15, 1995. This decree enumerates the job functions and independent professions of the private sector to which the national preference must be given. This enumeration is updated every year according to the current needs, and the ministerial decree of December 15, 1995 is itself an update of previous decrees, the first being apparently decree n° 1/289 dated December 18, 1982.

The prohibition on these job functions concerns to all foreigners, but Palestinians are the primary targets of that policy because of the reciprocity clause²⁰. This clause was established by the ministerial decree n° 17561 dated July 10, 1962, which served as a basis for the ministerial decree dated December 15, 1995, the latter listing all the jobs forbidden to foreigners. Why are the Palestinians particularly targeted by such a decree? Because the Palestinian refugees are not considered foreign nationals of a State bound to Lebanon by reciprocity, even though Lebanon, as a member of the Arab League, treats the Palestinian authority as representing an Arab State. Since they are not considered as foreign nationals, Lebanon stigmatizes the Palestinian refugees as stateless, to whom the Lebanese government should apply the exemption of reciprocity, as stipulated in the Convention relating to the status of Stateless Persons dated September 28, 1954²¹. Since the Lebanese government has not ratified this Convention either, it does not have any obligation towards its content.

The list given by the ministerial decree of December 15, 1995 of the salaried professions reserved to the Lebanese workforce by the Ministry of Labor, is long: it includes about 72 jobs and professions according to some people and 46 to others, such as hairdresser, concierge, cook, and pharmacist, accountant, teacher, as well as other independent

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professions. But this list is only conditionally limitative, since the text fixes that the national preference will be applied to all the jobs and professions that can be occupied by Lebanese, or to quote the text, to: *"any employment which could compete with Lebanese workers"*. The prohibition for the Palestinian refugees from occupying any professional job was already being applied before this ministerial decree: anyone who wanted to follow a professional career had to register with the relevant professional fellowship, which was only open to the Lebanese.

The exceptions to national preference mentioned by the said decree only benefit the foreign nationals who have been living in Lebanon since their birth, the foreigners of Lebanese origin or whose mother is Lebanese, or the foreigners married to a Lebanese woman. Therefore, Palestinians are excluded from such exemptions: both the Palestinians who have been residing in Lebanon since their exile in 1948, because they were not born on Lebanese soil, and the Palestinians born in Lebanon to Palestinian parents.

As for the jobs not referred to as part of the national preference, the Palestinian refugees must have a work permit like the other foreigners, according to the law of July, 10 1962 relating to the conditions of entry, residence and exit of foreigners; and this places the Palestinians in harsh competition with the other foreigners²².

The Lebanese law is in obvious contradiction with the International Covenant on Economic, Social and Cultural Rights of 1966, ratified by Lebanon in 1979, and notably its article 6 which states: *"The States parties to the present covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right."*

Absence of Social Security

Employed Palestinian refugees do not have access to social security, in spite of their contributions as workers, because the clause of reciprocity prevents them from benefiting from the social rights to which a foreign national should be entitled. (Social Security Code, September 26, 1963).

Violation of the Palestinian refugees' right to property

Not only are the Palestinian refugees deprived of equal right to work, but since the law n° 296 dated April 3, 2001, the

Palestinian refugees have to cope with recent restrictions regarding their right to property: this law, published in the official gazette n° 15 dated April 4, 2001, restricts the law-decree n°11614 dated January 4, 1969, relating to the acquisition of immovable property by foreigners in Lebanon²³. This restriction uses explicitly for the first time the constitutional clause of "Tawtin" to oppose the legal possibility for Palestinians to acquire real estate. Under the pretext of encouraging foreign investment in Lebanon, the new text supposedly allows foreigners to buy real estate under certain conditions. But the legislators included a provision according to which *"It is prohibited to anyone who is not a national of a recognized State, or anyone whose access to property is contrary to the Constitution's provisions relating to "Tawtin" to acquire real rights of any nature."* This double condition is clearly targeted at the Palestinian refugees in Lebanon. The Lebanese members of Parliament, some of whom have made openly hostile comments about the Palestinian refugees, all passed this new law, even when they had reservations about it.

This text was brought to the Lebanese Constitutional Council by some deputies even though they had voted in its favor, for non-conformity with the provisions of the covenants and conventions ratified by Lebanon. The Council affirmed the constitutionality of this text and rejected the demand, arguing that the international Human rights covenants and conventions recognize the competence of the State to restrict the rights claimed and guaranteed by these instruments.

It is quite clear that the judge's power of interpretation, in this case the constitutional judge, in his legal system, leaves room for several possible legal answers. He may therefore orientate his reasoning towards a legal answer more in favor of the power of the State to the detriment of Human rights. When the judge is more concerned with Human rights issues, he may then tend to give a more protective interpretation of these rights.

In this case, the Lebanese Constitutional Council adopted an interpretation of the clause of the "Tawtin" - which is meant to oppose a collective implantation and does not include the right to acquire real estate which does not affect the internationally recognized right of the exiled collectivity, to which it belongs, to exist as a legal entity and recover its sovereignty, and cannot necessarily imply the renouncement to belong to this community - which amounts to the negation of the right of a foreign national to acquire real estate property. The interpretation of international law relating to Human rights that cannot induce less nor suspend the

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protection of these rights²⁴ made by the Lebanese Constitutional Council encourages the State to pass measures affecting Human rights.

To become a landowner or be entitled to some of other rights, the only solution left for the Palestinians would be to adopt the Lebanese nationality. But one can easily imagine that if the Palestinian acquisition of real estate is seen as a threatening sign of implantation, the adoption of the citizenship is even more threatening. The current Lebanese laws concerning nationality²⁵ offer the possibility to obtain naturalization if the foreign national specifically requests so and if he fulfills certain conditions, such as the non-interrupted residence on the Lebanese soil and the marriage to a Lebanese woman (who does not give her nationality to her children). But the issues of nationality and naturalization in Lebanon have kept until recently a collective political and religious dimension. Indeed, there are numerous peoples who have perpetually resided in Lebanon (such as Kurds, Armenians, Assyrians, etc), whose Lebanese identity has only been resolved after the failure of a rewriting of the Lebanese nationality law- by the Hairiri government's recent decree n° 5247 dated June 20, 1994.

In fact, if some Palestinian refugees have been able to gain the Lebanese citizenship, the obsession of the "Tawtin" has also led to the generalized confusion between individual naturalization and collective implantation. This is what the members of Parliament argued when they brought the text on real estate acquisition by Palestinians before the Constitutional Council: they maintained that the naturalization of Palestinians was contrary to the constitutional clause of "Tawtin", but the acquisition of real estate property by non-Lebanese is not. The lawyer and former minister Issam Nou'man has proposed a new law²⁶, unsuccessfully so far, which would exclude the Palestinians of the application from the law on the acquisition of real estate property. In this perspective, there is a logical risk that the marriage of a Palestinian with a Lebanese woman, which can currently constitute a means of naturalization, would no longer lead to this possibility.

Absence of freedom of movement of Palestinian refugees

The Palestinian refugees could also try to go and find work in other countries of the region to fulfill their needs and those of his family, but leaving Lebanon could imply the impossibility to enter again. The order from the Ministry of Internal Affairs n° 478 dated September 23, 1994 already constitutes a

precedent: it demands from the Palestinian refugees residing in Lebanon an entry or exit visa, which puts an end to the freedom of entry and exit for the Palestinians that the law n° 1188 dated July 28, 1962 has until then granted to all foreigners. The Palestinian refugees would take the chance to leave Lebanon without being able to return and meet with their families, as it actually happened.

Even though the measures stated by the order dated September 24, 1994 were abrogated in 1999, the precedent of this order discourages both Palestinian refugees to go abroad, and other State administrations to grant them visas (like it is the case for the Gulf countries), in case a new text would impose a return visa to Lebanon, with all the risks implied.

Another consequence of the abrogation of this text was the expulsion by Libya of a large number of Palestinian refugees carrying Lebanese travel documents back to Lebanon.

Freedom of association

In Lebanon, associations are regulated by the law dated August 3, 1909, later completed by the law dated October 9, 1962. Associations may be created freely: a member of the association has to register its constitution and is given a receipt. However, foreigners may only create associations under the condition of reciprocity, which excludes the Palestinians from such a freedom.

Members of the PHRO²⁷, the Palestinian Human Rights Organization, created on November 29, 1997, have requested its registration at the Ministry of Internal Affairs in January 2001 by filling the "Ilm wa Khabar" form intended to this purpose. As of January 2003, they have neither been given a receipt or a matriculation number, which would put it on the organizations register and give it the permission to operate lawfully. The organization has made renewed requests to meet with the Ministry of Internal Affairs, notably in January and May 2002, but none of them has been addressed so far.

Therefore the PHRO is not legally recognized, which greatly obstructs its operations. The organization faces serious financing difficulties and the usurpation of its name may be at stake.

This restriction on the freedom of association is contrary to the International Covenant on Civil and Political Rights (article 22) and to the UN General Assembly Declaration on Human Rights defenders, adopted on December 9, 1998, and

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especially articles 1, 3, 5 b and 16, which state that *"everyone has the right, individually or in association with others, to promote and strive for the protection and realization of human rights and fundamental freedoms at the national and international levels."*

Restrictions to the right to a fair trial

The Lebanese law offers Lebanese citizens, who do not have sufficient means to pay for the services of a lawyer to defend them in a trial, legal assistance (article 425, law-decree 90/83). However, article 426 of the same decree offers legal assistance to foreign nationals under the reciprocity condition. Once again, the Palestinian refugees are the primary targets of such provisions.

Therefore, it often happens that Palestinian refugees tried in Lebanon are not legally represented. Besides, without such legal assistance, the Palestinian refugees end up being held in protective custody longer than other delinquents. Nevertheless, a recent amendment limits such a custody to no more than 60 days.

17. During his stay, our delegate talked to a Palestinian delegation from Nabatieh camp, when they were protesting by sit-in in front of the UNRWA's office. The protest was a vain attempt to obtain support to their request of rebuilding their camp, destroyed by Israeli raids in 1974.

18. In the camp of Sabra and Chatila, the delegate witnessed the construction of a building (a mosque).

19. Recently, gunshots wounded a young Palestinian who was trying to escape the Lebanese soldiers who wanted to arrest him for bringing building material into the camp.

20. The reciprocity clause is referred to in most of the Lebanese laws relating to foreigners. It provides that a right granted to the nationals of a particular State in Lebanon shall also be granted to the Lebanese nationals living in that State.

21. The Convention Relating to the Status of Stateless Persons states : *"After a period of three years' residence, all stateless persons shall enjoy exemption from legislative reciprocity in the territory of the Contracting States"*. (Article 7,2).

22. The statistics about the Palestinian workers authorized to work, stated by Souhail Mahmoud An-Natour, come from a study conducted from 1968 to 1985. See his *"Conditions of the Palestinian people in Lebanon"*, Dar At-Takadoun Al-Arabi, 1993. From the study of these statistics, one can make two observations:

- First, the number of work permits granted to the Palestinians have decreased over the period

- And the availability of Palestinian workers in Lebanon does not impede the employment of foreigners, Arab or otherwise.

23. On January 24, 2003, the FIDH sent a letter to the President of the Lebanese Parliament to demand an amendment of this law on real estate property.

24. For example, see article 5,1 of the International Covenant on Civil and Political Rights: *"Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant."*

25. Several texts rule the questions of nationality in Lebanon.

26. Mr. Issam Nou'ham mentions it in one of his study cases and was kind enough to forward it to our delegate.

27. The Observatory for the protection of Human Rights defenders (a joint programme of the FIDH and the OMCT, World Organization against Torture) sent a letter, dated January 23, 2002, to the Lebanese authorities demanding inscription of the PHRO on the organizations register.

IV- Conclusion and Recommendations

Conclusion

The situation is confronted to a very vicious circle: the instability of the Palestinian refugees' status in international law makes it tributary of the host state's domestic law, which encourages even greater instability, and in turn intensifies the Palestinians' hope for a more protective international law.

The Palestinian refugees' international rights are limited by the complexity of the international system and the failure of the international community to impose a just peace in the Middle East conflict. However, the easiest way to a better consideration of the human dignity of Palestinian refugees in Lebanon remains the ratification of the 1951 International Convention on refugees, as well as its respect by Lebanon.

Therefore, the Palestinian refugees in Lebanon are in a situation of extreme social, economic and political exclusion. According to Palestinian Human rights organizations, the unemployment rate of Palestinian refugees in Lebanon is close to 40%.

The Lebanese legal provisions make quite clear the legal discrimination, from which Palestinian refugees suffer, and which is contrary to Lebanon's international Human rights obligations.

For example, Lebanon is violating article 26 of the International Covenant on Civil and Political rights (ratified by Lebanon in 1972) which stipulates that *"All persons are equal before the law and are entitled without any discrimination to the equal protection of the law..."* Lebanon does not respect either the provisions of the Convention on the Elimination of All Forms of Racial Discrimination, ratified by Lebanon in 1971.

Moreover, the flagrant violations of its international obligations by Lebanon have also clearly led to the complete abandonment by the Lebanese State, of the Palestinian refugees to their tragic fate. Because their stay in Lebanon is supposed to be only "temporary" (although many of them have been there since 1948), they are being kept in a situation of organized exclusion and confronted to daily struggle for survival. The most extremist movements are

often the ones to profit from this situation, by ensuring - at least partly - the survival of the refugees, in a situation where the host state is guilty of not fulfilling its obligations, and the international community draws a blind eye.

The European Parliament expressed in a resolution about the conclusion of an agreement with the Lebanese Republic on January 16, 2003- *"serious concern about the difficult situation of 300,000 Palestinian refugees in Lebanon"*. The Parliament invited the *"Lebanese authorities to ratify the Geneva Convention relating to the status of refugees, and to end the discriminations against the Palestinian refugees and asylum applicants, and to protect the persons threatened by expulsion and to facilitate the integration of those who wish for it"*²⁸.

Recommendations

The FIDH calls for the Lebanese authorities to:

- ratify the 1951 Geneva Convention relating to the Status of Refugees
- strive by all means to ensure the respect of the Palestinian refugees' rights in Lebanon and particularly:
- to put an end to any measure limiting the Palestinian refugees' access to work and prohibition from occupying of certain jobs, especially the medical, legal or academic professions
- to proceed with a revision of the law on property in Lebanon, in order to grant the Palestinian refugees the right to acquire real estate
- to terminate the measures precluding the Palestinian refugees from receiving social security benefits
- to ensure freedom of movement inside Lebanon's borders and the possibility to be delivered travel documents
- to recognize the legal existence of Palestinian non-governmental organizations in Lebanon.

The International Community:

- to strive for the application to Palestinian refugees in Lebanon of the protection provided for by the 1951 Convention relating to the status of refugees, until a global resolution by the opposing parties and by the International

28. European resolution of January 16, 2003 , P5_TA-PROV(2003)0018, 85-0641/2002.

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Community of the Middle-East conflict and of the problem of
Palestinian refugees is achieved.

- to support financially the UNRWA's humanitarian assistance

The UNRWA to :

- take into account the Palestinian refugees who are not
registered with their office (about 10,000 people).

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V- Annex 1 : List of persons encountered

- Political representatives

Mr. Walid EIDO, deputy

Mr. Issam NOU'MAN, deputy and former Minister

- UNRWA

Mr. Alfredo MICCIO, Director of UNRWA Affairs

- Human rights organizations

Mr. Georges HADDAD, FHHRL (Foundation for Human and Humanitarian Rights in Lebanon)

M. Nou'man ANTOUN, FHHRL

M. Ghassan Abdallah, PHRO (Palestinian Human Rights Organization)

M. Naji SAFA, PHRO

M. Wafic HAWARI, PHRO

- Other individuals

M. Ahmad Naser MERHI, avocat, Member of the Administrative Commission of the General Union of Palestinian Jurists-Lebanese section

Fathi Al-KALEEB, author of the book "Nakba suffering" Dar Al-wataniyya Al-Jadida/Damas et Dar Fourat/Beyrouth, 2001

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