"Popular Sovereignty, Collective Rights, Participation and Crafting Durable Solutions for Palestinian Refugees"

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paper prepared for

BADIL Expert Forum

Seminar 1

The Role of International Law in Peacemaking and Crafting Durable Solutions for Refugees

22-23 May 2003

Ghent University/Department of Third World Studies

www.badil.org

Popular Sovereignty, Collective Rights, Participation, and Crafting Durable Solutions for Refugees

This discussion paper falls into three parts. The first offers a classification of rights, with differing typologies and sources, drawn from modern legal and political theory. The second provides a survey of the Palestinian context in relation to two groups of these rights and principles, first setting out the development of these principles in practice. This section argues that the rights derived from popular sovereignty, participatory democracy, and representation need to be integrated into approaches of legal and political solutions for Palestinian refugees, as well as by the broader field of refugee experts in general. It concludes with a final section that makes two recommendations which connect the particular role of these principles to the crafting of a durable solution for Palestinian refugees.

There are four typologies grouped below; the first two rest on rights that accrue anterior to the founding of a State, and concern the just basis for its establishment. The latter two are more commonly implemented once the state has been established, although of course the sources are drawn from models which were developed well before the modern State came into being.[1]

Popular Sovereignty: The origin of popular sovereignty in the modern legal tradition is derived directly from what is defined as the social contract school of the late 17th to mid 18th centuries. Popular sovereignty is the notion that no law or rule is legitimate unless it rests directly or indirectly on the consent of the individuals concerned; that is, of the people.[2] Thomas Hobbes (1588-1679)[3], John Locke (1632-1704),[4] and Jean-Jacques Rousseau (1712-1778)[5] are some of the founders of this theory, which argues that the nature of society,

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[1] See Michael Freeden, *Rights* (Milton Keynes: Open University Press), 1991, and Hillel Steiner's *An Essay on Rights* (Oxford: Blackwell), 1994.

[2] G. La France, ed. *Studies on the Social Contract* (Presses de l'Université d'Ottawa,Ottawa),1989, p. 30.

[3] See Quentin Skinner's *Reason and Rhetoric in the Philosophy of Hobbes* (Cambridge: Cambridge University Press) 1996. For the distinction between different conceptions of social contract theory, see P. Winch's "Man and Society in Hobbes and Rousseau", in M. Cranston and R Peters eds., *Hobbes and Rousseau* (New York: Garland Press) 1972, and Cell and McAdam's *Rousseau's Response to Hobbes* (New York: Peter Lang) 1988.

[4] Locke in his *Second Treatise of Government*, published 1690, claimed (as Hobbes had before him) that the social contract was permanent and irrevocable, but the legislative as nly mpowered o egislate or he ublic good. If this trust was violated, the people retained the power to replace the legislative with a new legislative. It is unclear if Locke deposited sovereignty in the people or in the legislative. Locke's conception is quite closely reflected in the traditional British view of Parliamentary sovereignty. John Locke *Two Treatises of Government*, ed. Peter Laslett (Cambridge University Press: Cambridge) 1990, II, sec 135.

[5] JJ Rousseau "Le Contrat Social",in *Oeuvres Complètes* (Paris: Pléiades) 1964-95.

whatever its origins, lies in a contractual arrangement between its members. Rousseau's *The Social Contract*, 1762, is largely regarded as the most influential canon of modern democratic theory and the articulation of popular sovereignty.[6] Rousseau set out the claim that all power and legitimacy rested and was derived from the people, and furthermore proposed a variety of mechanisms in order to enable one to discover what the "general will" of a community actually was. He saw legislative powers as vested in the people itself. This theory of popular sovereignty had two distinct branches. The first relied upon the will of the people and shaped the ideology of communism and socialist republics, and the second, from which the theory of modern democracy is drawn, saw the enactment of the will of the people through the creation of democratic republics.[7] Democracies established during the late 18th century, France, America, Poland and the rest of Europe in the 19th century, relied heavily upon the principles Rousseau set out in the *Social Contract* and elsewhere in his writings. In recent times legal philosophers such as Ronald Dworkin have reconfirmed the basic legal principles of modern democratic life in his works by recalling the basis in the notion of popular sovereignty, setting out a series of principles that currently underpin the institutional design of today's democracies.[8]

Self Determination of Peoples: The second source that will concern us here are the rights of a people to self determination as enshrined in international law, starting with Wilson's Fourteen points of 1917 and articulated in both the League of Nations and later the United Nations; it was the basis for the restructuring of Europe after the First World War, and for the demands of self determination by peoples under colonial rule.[9] The right of self determination of peoples is widely understood to be concerned with the national liberation of a people from foreign or colonial rule, and to leave aside the question of the type of regime or government peoples would choose to live under. This constraint was shaped by the politics of the Cold War, of the Soviet Union's support for national liberation movements and models, and the West's reliance upon authoritarian regimes and dictators. Yet the very notion of self-

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[6] For Rousseay's broader political theory, and the role of social contract theory within it, see Arthur Melzer's *The Natural Goodness of Man: On the System of Rousseau's Thought* (Chicago: Chicago University Press) 1990, and

[7] For a development of this model see chapter 4 of David Held's *Models of Democracy* (Polity, Cambridge); 1990, pp 105-136.

[8] Most recently in his *Sovereign Virtue* (Harvard University Press: Cambridge, Mass), 2000, pp 351-385.

[9] National liberation is drawn from an older tradition in the laws of nations, which does not place democracy as a precondition nor a necessary component of a people's freedom. For a legal narrative of the development of self

determination of peoples has, by its nature, an implicit recognition that all peoples have a right to democratically determine their fate, as a nation, or a state, or both.[10]

*Individual Rights.*The third set of rights are those more usually implemented once a state is formed; indeed the function and purpose of the modern democratic state itself is to both guarantee and preserve the basic individual rights of her citizens. However these rights have an older legal basis than the establishment of the modern state, and current legal and political principles in the West are drawn from established traditions of mainly Roman, Renaissance, and Enlightenment thought.[11] Individual rights can be classified in generations, in tiers, or through ontological traditions.[12] Social, political, civil, and economic rights of an individual are all types of rights whose protection is to be provided for by the state.[13] The most important of these, in the Western canon, is the preservation and guarantee of individual liberties.[14] The Universal Declaration of Human Rights, which absorbed competing claims from the socialist and the democratic traditions, ranks these types of rights into a hierarchy that reflected this priority of civil and political rights over social and economic ones.[15]

Collective Rights. The fourth set of rights that are used when looking at refugees are group rights and collective rights, and much of the legislating principles and practices have emerged as a result of the development of rights for minority groups within a state system.[16] The rights of refugees as a distinct body of people within States, who hold special claims on protections of various kinds under both domestic and international law have been extensively rehearsed, developed, and disseminated by international jurists and scholars.[17] Collective rights claims,

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determination from a political ideal to a legal standard, see Antonio Cassese's *Self Determination of Peoples: A Legal Reappraisal* (Cambridge: Cambridge University Press) 1998

[10] Cassese, *ibid*, 48.

[11] The classic account is in Quentin Skinner's *The Foundations of Modern Political Thought* (Cambridge: Cambridge University Press), 1978, two volumes.

[12] For an overview of the development of rights theory see Shapiro *The Evolution of Rights in Liberal Theory*, (Cambridge: Cambridge University Press), 1986pp. 23-148.

[13] Ronald Dworkin, *Taking Rights Seriously* (Harvard University Press: Cambridge, Mass), 1977, p 240.

[14] See for example, H.L.A. Hart's classic *Law, Liberty, and Morality* (Stanford, Stanford University Press) 1963.

[15] International conventions protecting individual rights are seen as standards for domestic courts to adopt. The European Convention on Human Rights is treaty law, and as such has mechanisms of enforcment. See http://www.un.org/Overview/rights.html

[16] Will Kymlicka, ed, *The Rights of Minority Cultures* (Oxford: Oxford University Press), 1995.

[17] Guy Goodwin Gill, *The Refugee in InternationalLaw* (Clarendon: Oxford)1996.. On Palestinian Refugees in particular see: Lex Takkenberg, *The Status of The Palestinian Refugees in International Law,* (Oxford and New York: Clarendon Press), 1998; , Susan Akram and Terry Rempel, "Recommendations for Durable Solutions for Palestinian Refugees: A Challenge to the Oslo Framework," 11 *Palestine Yearbook of International Law*

on the other hand, often address issues such as multiculturalism in a liberal State, and the rights of religious or ethnic groups within such a State to autonomous practices and protections of various kinds. Yet these politicial theorists (many of whose principles can be illustrated in recent Canadian legislation for example) derive their notion of collective rights from their notion of individual rights, and the underlying principles of individual automony.

(2000/2001), Gail Boling, *The 1948 Palestinians and the Individual Right of Return*, (Bethlehem: Badil Resource Centre for Palestinian Residency and Refugee Rights), 2001; Stacy Howlett, "Palestinian Private Property Rights in Israel and the Occupied Territories", *Vanderbilt Journal of Transnational Law*, 34:1(January 2001), 117-167; Kathleen Lawand, The Right of Return of Palestinians in International Law, *International Journal of Refugee Law*, 8:4(1996), 532-568; John Quigley, "Displaced Palestinians and a Right of Return", *Harvard International Law Journal,* 39:1(1998), 171-229;

The Palestinian Context: Rights of Participation and Representation

This   second part will briefly discuss the political and legal context for the first two categories of rights outlined above, focusing upon popular sovereignty and the rights of participation in a democracy in a short account   of the structural difficulties of Palestinian representation, and constraints on its ability to achieve self determination in the last 40 years. First there will be an introduction to modern democratic theory in practice.

Popular Sovereignty: the Principles in Practice

This   section will outline the ways in which institutions and mechanisms in modern society reflect and represent popular sovereignty in the manner democracies operate   today. The creation, by institutional design, of mechanisms, procedures and institutions that could give a voice to the "general will" of a people, as defined in democratic theory, has been the focus of much of the political   thought and activities over last two centuries in the west, and in recent decades in eastern Europe, as well as through vast democratization programmes worldwide.[18]

There are a wide variety of institutions and functional levels and mechanisms through which voice is expressed in a democratic State. They consist of the application of a framework of laws which can include constitutions; with elected houses of representatives, with executive organs, and with independent judiciaries and courts, amongst other structures.[19] The processes themselves in which citizens participate are various. Most commonly understood is elections, where citizens vote for their representatives, both local and national. But voting and elections are only a small part of democratic procedure.[20] Citizens give voice and choose political options through different types of democratic deliberation within the public sphere. They also shape legislation as well as public policy through participation in public and civic bodies.[21] The relationship between elected representatives and their constituents operate through a variety of ways outside of the election process, and all of these are essential and everyday

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[18] For defining criteria see Dahl "Procedural Democracy"   in Dahl, *Democracy, Liberty, and Equality* (Oslo: Norwegian University Press) 1986. pp 191-225.

[19] Shapiro, *Democratic Justice*, op.cit., p 11.

[20] For the difference between procedural and substantive conceptions of democracy see Charles Beitz "Equal Opportunity in Political Representation" in N. Bowie, ed. *Equal Opportunity* (Westview Press) 1988, pp 155-68.

[21] On the participatory tradition in democratic   politics that begins with Rousseau see Carol Pateman *Participation and Democratic Theory* (Cambridge University Press) 1970, and J Cohen and Rogers *On Democracy* (London Penguin) 1983.

practices in democratic societies.[22] The activities take place in a series of spheres and levels, which both interconnect and interact: local groups with larger ones, government representatives with popular societies, newspapers, and unions, and so forth. The bedrock of that continual association – the social contract – occurs in the public sphere of civil society.[23] Within civil society there are a variety of institutions, associations, groups, unions, parties, popular committees, NGOs, and community groups, that is "the whole body of individuals, groups, and organisations that work for the welfare of their nation or community outside the established official services of the government".[24]

Popular Sovereignty and Self Determination, the Palestinian Case

The Palestine Liberation Organisation can be defined as a loose coalitional institution that has broadly represented the prevailing popular will of the Palestinian people. It has been representative in its ability to capture the aspirations and goals of the Palestinian people in their search for self determination, embodying as it did the many political and guerilla movements for national liberation (to varying degrees) in its near 40 year history. The PLO consisted of a set of institutions: the Palestine National Council, a parliament based in exile made up of Palestinians inside and outside the West Bank and Gaza, its executive and legislative bodies, and the differing departments that operated as ministries, with representation at the UN and all other international bodies and embassies and offices worldwide. The national liberation movement has been drawn largely from Palestinian refugees in the Arab world who had been expelled from their homes in Palestine to make way for the establishment of the state of Israel in 1948, and these parties operated inside the West Bank and Gaza as well. Resistance to Israel was launched from those refugee camps of Lebanon, Syria, Jordan, Egypt after seventeen years waiting for Israel to implement the United Nations Resolution 194 which would allow them to return to their homes, towns, and villages.

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[22] Salamon Lester and Helmut K. Anheier: 'Social Origins of Civil Society: Explaining the Nonprofit Sector Cross-Nationally.' *Voluntas: International Journal of Voluntary and Nonprofit Organizations*, Vol. 9, No. 3, 1998, pp. 213-218

[23] The relationship of citizens to each other is one part; the other is the citizens with their elected government. See Carol Pateman *Participation and Democratic Theory,* op. cit.; on civil society see Michael Edwards, *The Rise and Rise of Civil Society*, Developments, 2, (2001).

[24] *Making Informed Choices: A Trainers Manual for Civic Education*, produced by the Civic Education for Marginalised Communities (CEDMAC).

Representation. As the umbrella institution within which the broad-based popular movement operated, the PLO suffered a series of profound seismic shocks in the Lebanon in 1982 and 1985, in Jordan in 1970 and the 1990s, in the Gulf during the first war of 1990. While separating it from its relationship with its constituencies living outside the West Bank and Gaza, these ruptures have also undercut its organically developed democratic mechanisms. The first was when it moved the shattered remnants of its institutional base from Lebanon to Tunis at the end of the 1982 invasion of Lebanon, after tens of thousands of civilians (Lebanese and Palestinians), cadres and fighters of the movement were killed. Much of its institutional infrastructure and popular base (which was deeply associational, grass-roots, and democratic in nature), drawn from the 300,000 Palestinian refugees living in the camps there, was destroyed in much the same manner as the recent institutional and social destruction in the West Bank and Gaza, though much more violently and comprehensively.[25]

The second division occurred when the core part of the PLO political infrastructure resettled in Gaza under the terms of the Oslo accords after 1993, becoming in the process the Palestine National Authority, and responsible only for Palestinians inside the West Bank and Gaza. This had serious repercussions for the Palestinian people as a whole, as the PLO had previously operated in a far closer relationship with the grass roots associations in the refugee camps outside of the West Bank and Gaza. Indeed, Palestinians have always resisted attempts to separate the 'outside' from the 'inside' since the Israeli occupation of the West Bank and Gaza in 1967, when Israel attempted to establish an alternative leadership to the exile PLO through the 'Village Leagues' or other collaborationist measures. Instead, almost all politically active Palestinians living under military occupation within the 1967 borders (the 22% of historic Palestine) were, since 1965, members of the underground movements that made up the PLO, such as Fatah, the Popular Front, and the Democratic Front and others. Yet one consequence of the move of much of the official apparatus of PLO to inside the occupied Palestinian territories in 1994 was that it did not only lessen representation with Palestinians outside the occupied Palestinian territories, but it created new cleavages with those of the underground parties in the territories where they were now functioning.

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[25] On the 1982 Israeli invasion of Lebanon and destruction see the *MacBride Commission of Enquiry into the Lebanon Invasion of 1982*; for recent events in the West Bank and Gaza, see *Humanitarian Plan of Action 2003, Occupied Palestinian Territory*. Geneva and New York: United Nations (November 2002); Riccardo Bocco et al., *International and Local Aid During the Second Intifada*, October 2000 - February 2001, Geneva: University of Geneva, Graduate Institute of Development Studies, 2001.

Democratic Partipation. The most serious assault to the collective sovereignty of the Palestinian body politic and accompanying loss of democracy was a direct result of the elections themselves in the West Bank and Gaza by which the Legislative Council was established in 1995. Instead of enhancing true democracy and representation, this process further fragmented the Palestinian people as a whole, excluding as it did all Palestinians outside of them from the democratic process to which they too were entitled, and creating cleavages and tensions between segments of Palestinian society. At Washington between 1991 and 1993, the Palestinian delegation to the peace talks argued that elections must involve all Palestinians, including the refugees of 1948 and 1967 that were in camps across the borders in Lebanon, Syria, Jordan, etc, and not just the refugees who happened to have ended up in refugee camps inside the occupied West Bank and Gaza, who could (and did) participate. Excluding almost half a large proportion of an entire people from the most fundamental mechanism that allows them a minimal participation in shaping their present and their future cannot under any terms be classified as a democratic process, whether adhering to either a conservative or more liberal understanding of the concept.[26]

Participation in Civil Society: The enhancing of civil society structures and funding of civic and human rights NGOs inside the West Bank and Gaza further intensified this divide between Palestinians inside and outside: those inside received considerable international funding, whilst the political and civil participation of those outside the Palestinian territories in building a common future were ignored, neglected, and even rejected. One of the effects of this stripping of political identity has been to polarise the views of the refugees outside, who have been excluded from any peace process. Furthermore, many of those refugees outside who are part of the political parties contributed to their own marginalisation, through a loyal silence in the years immediately following Oslo. Doubting the purposes behind the Oslo deal yet wanting to 'give peace a chance', they accepted the PLO's promise not to forget them and represent them honourably at the final status negotiations – although clearly their patience has now come to an end.

The exclusion of refugees has also denied them an elementary democratic right to help shape the constitution and the political institutions of the future state that is as much theirs as the rest of the Palestinian people's. Rather than lowering expectations or building confidence in a fair settlement, denying basic civic rights has proved merely to exacerbate the original

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[26] See Amy Gutman and Dennis Thompson's *Democracy and Disagreement* (Cambridge: Harvard University

distress of their predicament, limiting creative possibilities for a solution. Furthermore, the exclusion of the refugees has also effectively de-historicised the conflict, which no longer has an origin, and thus no longer the necessary means and mechanisms to resolve it.[27]

Press) 1996.

[27] See Ilan Pappe's "Were they Expelled? The History Historiography and Relevance of the Palestinian Refugee Problem" in Ghada Karmi and Eugene Cottran, eds., *The Palestinian Exodus, 1948-1988*, London Ithaca Press, 37-62.

Solutions and recommendations for Palestinian Refugees based upon rights inherent in Models of Democracy and Civic Participation in the Peace Process

This final section will look at a range of solutions to the refugee issue which corrects the current lacunae in legal and political issues of representation and participation. First there is the development of a variety of mechanisms which could helpfully restore the functioning of representation of refugees. A second practical recommendation is for a policy awareness programme that focuses not only on individual rights of Palestinian refugees and collective rights of refugees under their legal status as refugees, but an awareness of their rights as a people in order to help shape their future through democratic representation and public participation. This equally important sets of rights, derived from popular sovereignty and the basic principles of democratic practice, have hitherto been absent from approaches to a solution.

Recommendation: Civic Structures for Refugees

One claim for the creation (and in some cases the recreation) of civic structures for the refugees outside of the West Bank and Gaza is drawn directly from the main recommendations of a report that was published in March 2001 by the Joint Parliamentary Middle East Councils Commission of Enquiry on Palestinian Refugees. Its conclusions and recommendations concern the issue of political and civic representation for the refugees – including their voices – as the main shortcoming in the past ten years on finding a solution to the refugee issue that would be both acceptable and durable.

"The gaps left by new structures [of the PNA], all of which have emerged since Oslo, and the shift of focus exclusively to the West Bank and Gaza, point to several aspects which the Commission believes need attention. The last seven years (and in particular during the run-up to the first Legislative Council elections of 1995) saw a tremendous surge of interest, expertise and donor money flooding into the Occupied Territories from the various EU member states, and above all by the European Union, in order to give badly needed assistance with the important task of constructing the institutional and social components of a democratic society. British organisations, such as the Westminster Foundation for Democracy, helped in the transparency procedures for these elections and in the training of several women candidates in campaigning. However, it is clear that non-governmental organisations, parliamentary organisations, and European governments could all help with the establishment of political infrastructures for the refugees now outside the West Bank and

Gaza, so that they may continue to have much needed links maintained with their chosen representatives."[28]

Most of the intervention logic and examples lie within the *Themes, Remarks, and Recommendations* of this British Parliamentary Report, the bulk of which is testimony from refugees from all over the region. The evidence clearly demonstrates that, although the PLO is without question the representative of choice of all refugees everywhere, they are not being represented at this point in time by them.[29] Further, it demonstrates that the refugees state that their wish is to be better represented on a wide range of issues by the PLO, and not only on final status issues concerning their legal and political rights. The *Findings* of the Report examines this question of political and civic representation. In a section entitled "Representativeness" it sets out the paradigm and parameters for the case for structures outside the West Bank and Gaza, however temporary, that would help construct a role for the refugees in the peace process and participate in shaping their future:

There were several discrete aspects concerning the complex subject of representation. This issue is the most complicated of all, but it is also perhaps the most understudied and misunderstood part of Palestinian refugee life. We learnt that over different sets of rights and concerns there were different responses to the question of representativeness. The Commission learnt that representation involves different understandings depending on the issue at hand: individual property rights, civil rights and collective rights as a people to self-determination. For the collective will, and as to the rights of the Palestinian people as a people, the Commission was told without exception that their representative was the PLO. Khaled Mansur (Um al-Zaynat) put it quite simply, as did all Palestinians when this issue was raised:

"As a Palestinian, I consider the PLO to be the only legitimate representative of the Palestinians and the leadership of our struggle to achieve the right of return. The strategy of the PLO is to push the international community and the United Nations to work for an implementation of the right of return through diplomatic and political channels."

Refugees repeatedly told us, however, that representation was needed at several levels, not just one: political, legal, individual, and civil. However, all were explicit about the limits of national representation over individual rights. In Gaza, we were told that it was the refugees' right to make decisions about their individual claims to their property. Abdullah Arabid (Hirbiya, Gaza) said:

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[28] *Recommendations of the Commission*, Right of Return: Joint Parliamentary MEC Commission of Enquiry – Palestinian Refugees (London: LMEC) 2001, p 50.
[29] The physical constraints upon the PLO being able to provide the full representation it would like to refugees are covered in Kodmani-Darwish: *The Palestine Question: A Fragmented Solution for a Dispersed People*, Paris: Institute D'Etudes Politiques), 1996.

"My personal private rights state that nobody, whoever he is, is entitled to take a decision on my behalf. I am from the occupied village of Hirbiya. Nobody is entitled to sell, to let, to rent or to relinquish Hirbiya to anybody, on my behalf."

They all believed popular sovereignty and democracy was crucial to a representation over their rights, and that "no group has the right to challenge" the right of return. "Furthermore," Arabid said, "we consider any bargain or concession concerning these national essentials, which were ratified by international law, to be treason. The main authority to decide on such issues is people themselves, not some individuals." The Commission notes that there was wide disparity between those who were fortunate in having active representation at a grassroots level in the camps, and places where there was no such adequate representation. Finally, the Commission noted that the groups able to make direct representations to their elected leadership were only those refugees in close physical proximity to them; those living in the Occupied Territories. Indeed the only group that the Commission met who mentioned petitioning the leadership were in Gaza.

There was a deep concern amongst refugees in the Arab countries that they were not in a physical position or situation which would allow their voices to be heard by their chosen representatives, the Palestine Liberation Organisation, and they were seeking for means to correct this.[30]

Conclusion on models of participation and the peace process: The views from the refugees who participated in this Report, as well as the democratic rights that have been established in this discussion paper, both support the claim for a robust notion of democracy that could provide a more fair system of decision making, and prevent the antagonisms and distrust that now exist between the Palestinian leadership and the refugee community as a whole. Deliberative democracy possesses other benefits, and in this instance as a technique of confict resolution in the development of more consensual position vis-à-vis a final settlement. Thus deliberative democracy can provide instrumental benefits and procedural usefulness[31] that far outweigh the methodology used by the Oslo framework, which relied upon confidence building measures and mutual trust that never appeared.[32]

Recommendation: Education about the Refugee Issue

Another way to advance the peace process would be to broaden the understanding of the policy community on the issue of the entire range of refugee rights. It is important to set out

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[30] *Ibid.*

[31] See Adam Przeworski's utilitarian and instrumentalist view of democracy's benefits in his "Mimimalist conception of democracy; A defense" in Shapiro and Hacker-Cord́n, eds. *Democracy's Value* (Cambridge: Cambridge University Press) 199

[32] Another claim made by the framers of the Oslo agreement was that by deferring the refugee issue to the final status negotiations, one could lower the threshhold of expectations of the refugees. For an overview of the Oslo Accords and their effect on the local refugee community in the West Bank and Gaza see the first section of Ingrid Jaradat's *The Evolution of an Independent, Community based Campaign for Palestinian Refugee Rights:*

the contours of group, individual, and collective rights of refugees, the rights of participation and democratic deliberation, and their constructive benefits in approaching a durable solution.

Although the Oslo Accords themselves were implemented with the advice and assistance of a host of academics in consultancy positions from various universities and think-tanks around the world, the intellectual underpinnings and practical policy frameworks that guided the peace process up until its collapse at Camp David in 2000 and the start of the Al Aksa intifada were constructed on a theory which proved fatally flawed in some of its parts, nowhere more apparent than on the issue of the refugees. It has been widely recognized now that an actual reverse of a peace process has taken place on the refugee issue (whilst no progress had been achieved on the smaller confidence building measures either). It is commonly agreed by diplomats, policy experts, and academics that the question of the Palestinian refugees itself, as well as a practical means to resolve this issue, has become even more intractable during the ten years that it was put onto a "multilateral track" and frozen in its activity over the last decade.

This reversal of peace is widely understood to be the result of three factors: neglect, a growing ignorance of the issue of the refugees and their place in the conflict, and a hardening of positions on both sides, once the Oslo Accords failed to provide any progress towards a fair settlement. One way to address this would be to introduce theoretical and practical frameworks based upon established measures and mechanisms, both from the community of legal experts, and from those experts in conflict resolution across the world who have successfully used techniques of public participation and education in peace processes, applying them to the refugee issue.[33]

Recommendation: A multi-tiered education programme aimed directly at the epistemic communities now crucially involved in the peace process in the Middle East on the refugee issue could successfully address this problem. A programme of collective research and policy initiatives, aimed at introducing the relevant and basic facts, useful methodologies based on legal standards, and substantive approaches, will be crucial to advance a successful peace

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Palestinian Refugees in the 1967 Occupied Territories and the 1948 Palestine/Israel Coping with the Post Oslo Conditions, Badil Briefing No. 3, 2000.

[33] The Badil/University of Ghent's *Expert Forum* addresses this particular gap by providing a forum for an exchange of ideas and expertise for a wide variety of participants from the international legal community and the broader policy community on refugees and the peace process.

process in long term, but it can also provide positive redress in the short and medium term through dissemination and education.[34]

Conclusion

Models of democracy and civil and political rights have slowly been eroded and abandoned in the case of a large segment of the Palestinian people – those refugees that reside outside of the West Bank and Gaza. This exclusion has heightened isolation, intransigence, and a highly fractured body politic; all of these factors have prevented a solution to the refugee issue rather than assisted it. The involvement of the refugees in civic structures and in national political activities, where they can contribute to the peace process, means crafting a durable peace.[35]

The right to take an active role in the many aspects of the process – deliberations on the future possible constitution, discussions on a wide range of issues with their representatives (not only on their basic right of return, but on social, economic, and legal issues); all these mechanisms will create new bridges to the future. Refugee choice and the preservation of individual rights of Palestinian refugees is absolute, and much of the conceptual and legal work on this issue has been forged, in recent years, by rights-based organisations such as BADIL. But refugees' rights to a collective – not as a group of refugees dealing with issues of return – but as a people who have the right to shape their future and be represented as such – is the absent part of this quest for a durable structure of peace.[36]

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May 20th 2003

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[34] For example, BADIL have just come out with a Hebrew Pack of basic information about Palestinian Refugees, May 2003.

[35] See, for example, Guiseppe Di Palma's *To Craft Democracies; An Essay on Democratic Transitions* (University of California Press: California), 1990, pp 80 onwards.

[36] For the mechanisms needed for a peace process which included the refugees, see the author's article in the Guardian, co-authored with Ilan Pappe, of Sept 19th , 2002:
http://www.guardian.co.uk/comment/story/0,3604,794634,00.html . See also the first two articles by the author on Sept 17 and 18, which defines the problem of exclusion, and explores the centrality of the issue of return in a series: http://www.guardian.co.uk/comment/story/0,3604,793506,00.html and
http://www.guardian.co.uk/comment/story/0,3604,794085,00.html