



# International Solidarity and Palestinian Refugees: Lessons for the Future Directions of Refugee Law

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## Abstract

The way in which international solidarity is conceptualized with respect to Palestinian refugees is different from how it is employed when discussing refugees more broadly and has been ignored in refugee law scholarship. International solidarity is generally understood to mean states sharing responsibility for refugees. However, in the Palestinian context, it refers to individuals' and organizations' empathetic support for refugees' struggles and a political commitment to end displacement. If we adopt the latter definition, there are many examples of international solidarity with respect to Palestinians and other refugee groups. Nevertheless, international solidarity in the Palestinian context is not without controversy. I consider what lessons this divergent understanding of international solidarity may have for the refugee regime's future directions. I discuss how it informs an unidentified tension in the Global Compact on Refugees as well as how it could foster a less elitist and more inclusive approach to international solidarity.

## Introduction

Palestinian refugees are the second largest refugee group<sup>1</sup> and constitute the longest protracted refugee situation (Akram 2002, p. 36; UNHCR 2019b, p. 23). The international community treats Palestinian refugees differently from other refugee populations. Palestinians displaced due to the 1948 Arab-Israeli war were excluded from the Refugee Convention when it was drafted (article 1D) and some states and scholars are of the view that article 1D continues to apply to their descendants and Palestinians displaced as a result of subsequent conflicts (AD (Palestine) 2015, paras. [133], [148]; Bolbol v Bevándorlási és Állampolgársági Hivatal 2010, para. [51]; Goodwin-Gill and McAdam 2007, p. 157; cf. Hathaway and Foster 2014, pp. 513–4). Palestinians are also

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<sup>1</sup>There are 5.5 million refugees under UNRWA's mandate and while Palestinians were the largest group of refugees for a long time, recently the numbers of Syrian refugees have reached 6.7 million (UNHCR 2019b).

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the only refugees not to come within the United Nations High Commissioner for Refugees' (UNHCR) mandate and have their own United Nations (UN) body to provide protection and assistance—the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA).<sup>2</sup>

In this article, I show that with respect to international solidarity, Palestinians are again treated as an anomalous group of refugees. Discussions of international solidarity's meaning in refugee law literature ignore the Palestinian experience. Refugee law scholars approach the concept of international solidarity in a state-centric manner by defining it as states sharing responsibility for refugees. In contrast, in the Palestinian context, the term is used to refer to individuals' and organizations' empathetic support for refugees' struggles and a political commitment to end displacement. I also consider if international solidarity has ever occurred in practice with respect to Palestinians. I argue that states have not demonstrated international solidarity towards Palestinian refugees with reference to the commonly accepted meaning of the term in refugee law scholarship. However, if we adopt Palestinian understandings, there are many examples of international solidarity in practice, for Palestinians as well as other groups of refugees.

Nevertheless, the approach to international solidarity in the Palestinian context is not without controversy. In the final section, I consider the dissension surrounding demonstrations of international solidarity with Palestinian refugees, and what lessons it may hold for the refugee regime's future directions. I discuss how the Palestinian approach to international solidarity informs an unidentified tension in the Global Compact on Refugees (GCR) (2018a) as well as how it could provide a model to foster a less elitist and more inclusive approach to international solidarity.

## Defining International Solidarity: the Palestinian Exception

Refugee law scholars use the term “international solidarity” to refer to states sharing responsibility for refugees. Writing in 1980, Fonteyne (p. 176) defines international solidarity as states providing financial assistance to care for refugees and sharing the responsibility for hosting refugees. More contemporary publications do not depart from this state-centric understanding of international solidarity. Türk and Garlick (2016, p. 661) posit that international solidarity is “support by States to others” and includes initiatives that lessen the burden on states that host significant numbers of refugees (p. 662). Dowd and McAdam (2017, p. 868) employ the term “solidarity” in the context of states calling for greater assistance for developing countries hosting large numbers of refugees. Koo (2016) and Küçük (2016) use the phrase “international solidarity” to refer to state initiatives for responsibility sharing with respect to hosting refugees. Martin (2016, p. 7) describes large-scale, state-led resettlement initiatives such as occurred with refugees from Vietnam, Cambodia and Laos in the late 1970s and early 1980s as acts of international solidarity. Noll (2000) employs the concept of international solidarity in discussing actions states can take to better co-ordinate responsibility for refugees such as creating harmonious refugee law and policy,

<sup>2</sup> Palestinians used to receive protection from the UN Conciliation Commission for Palestine, but the UN terminated its protection mandate in 1951.

financial assistance between states, sharing operational resources and physical distribution of refugees.

The term “international solidarity” is not contained in the Refugee Convention. Rather, the preamble includes a reference to international cooperation. Scholars use these terms synonymously to refer to state initiatives for responsibility sharing (see Cook 2004, p. 334; Dowd and McAdam 2017, pp. 869, 870, 872, 880, 884; Edwards 2013, p. 1). However, Inder (2017, p. 528) suggests that the terms are distinct: international cooperation is a procedural obligation (states must cooperate but the obligation is “neutral as to outcome”) but international solidarity implies “a normative obligation to support States that face particular difficulties” in hosting large refugee populations. Nevertheless, when using either term, refugee law scholars fixate on relations between nation-states.

Refugee law scholarship on international solidarity also ignores Palestinian refugees. For example, Roper and Barria’s (2010) examination of burden sharing addresses states’ funding of UNHCR but not UNRWA. Dowd and McAdam’s (2017) consideration of international cooperation encompasses state practice with respect to UNHCR but not UNRWA. Wall’s (2017) proposal for a new approach to burden sharing and Türk and Garlick’s (2016) suggestions for the GCR do not consider Palestinian refugees specifically. Failure to discuss Palestinian refugees in law and policy reform is significant because, while there are divided views on the correct interpretation of article 1D of the Refugee Convention (see Ogg 2019), the international community continues to treat Palestinian refugees differently. This is evidenced by the UN General Assembly (UNGA) continuing to extend UNRWA’s mandate. Scholarship outlining new approaches to responsibility sharing should state whether the proposals encompass Palestinian refugees.

Scholarship on international solidarity in refugee law also ignores Palestinian understandings of international solidarity. In the Palestinian context, scholars, international actors and Palestinian refugees employ the term “international solidarity” but give it a different meaning. It does not speak to relations between states but rather the relationship between individuals and organizations and the Palestinian people. Rather than nation-states being asked to show solidarity to countries hosting large numbers of refugees, we as activists, students, union members, employees and global citizens are asked to show solidarity with Palestinian refugees. This is reflected in the language used to discuss international solidarity in the Palestinian context. For example, Eid (2014, p. 113) discusses “international solidarity with the Palestinian people”. Sawalha (2008, p. 200) refers to “solidarity with the Palestinians”. The former UNGA president (Brockmann 2008) spoke about “solidarity with the Palestinian people” and said “[i]n solidarity, I urge the international community to raise its voice against this collective punishment of the people of Gaza”.

What does it mean for individuals and organizations to demonstrate solidarity with Palestinian refugees? Looking across scholarship and writings by Palestinian refugees and Palestinian-led organizations, there are four aspects of international solidarity in the Palestinian context. The first is a sense of empathy. Palestinian refugees see international solidarity as different from humanitarian aid or pity (Sawalha 2008, p. 202). In Sawalha’s study of Palestinian international solidarity, a Palestinian refugee explains that those who support the Palestinian cause must “be able to connect the Palestinian suffering to the struggles of other oppressed communities” because this distinguishes

“solidarity work from ... simple acts of charity” (Sawalha 2008, p. 201). This refugee suggests that “solidarity with the Palestinians be intertwined with the struggles of other oppressed communities around the world, such as indigenous peoples or African-Americans” (Sawalha 2008, p. 200). A sense of empathy can also be derived from experiencing Palestinian refugees’ day to day lives. Said (2004, p. xiii) describes the actions of Corrie, an American volunteer killed in Gaza, as a form of international solidarity because she had “gone to Gaza to stand with suffering human beings with whom she had never had any contact before”.

International solidarity also has an element of reciprocity: Palestinian refugees must support others’ struggles. For example, after a fund-raising performance in a Palestinian refugee camp, the performers decided to give half of the donations to Hurricane Katrina victims and understood this to be an element of international solidarity (Sawalha 2008, p. 200). Demonstrating the reciprocal nature of international solidarity in the university context, Salaita (2017, p. 1) encourages scholars of American Indian studies to take account of Palestinian refugees but also asks that “Palestinian solidarity work on Campus ... engage with American Indian communities”.

Another aspect of Palestinian international solidarity is bearing witness to refugees’ struggles. The International Solidarity Movement (ISM) is a Palestinian-led organization that asks volunteers to come to the West Bank to engage in non-violent resistance against occupation. ISM leaders explain that the “presence of international citizens sends a message to the Palestinian community—‘we see, we hear and we are with you’” (ISM n.d.). ISM asks volunteers to be “immediately alongside Palestinians in olive groves, on school runs, at demonstrations, within villages being attacked, by houses being demolished or where Palestinians are subject to consistent harassment or attacks from soldiers and settlers” (ISM n.d.). Seitz (2003, p. 50) argues that ISM emerged from “initiatives by concerned internationals to provide—via their own physical presence—protection and witness for an increasingly-isolated and besieged Palestinian population”.

Another fundamental feature of Palestinian international solidarity is that it has a political element focussed on condemning the causes of and seeking an end to displacement. Desmond Tutu explains that those who show international solidarity towards Palestinians cannot remain impartial with respect to the Israel-Palestine conflict: “[p]eople who are denied their dignity and rights deserve the solidarity of their fellow human beings ... If you are neutral in situations of injustice, you have chosen the side of the oppressor” (cited in Wilkins 2014). Demonstrating the political aspect of international solidarity, Eid (2014, p. 113) reflects on “what the nature of international solidarity should be, and how it can best support the Palestinian struggle for self-determination”. Salaita (2017, p. 2) defines Palestinian solidarity in the academic context as “work in some way committed to Palestinian liberation”.

The political element of international solidarity is inherent in the Boycott, Divestment and Sanction (BDS) campaign, a Palestinian-led movement that “urges action to pressure Israel to comply with international law” (BDS n.d.). The BDS movement calls for “a global citizens’ response of solidarity with the Palestinian struggle for freedom, justice and equality” (BDS n.d.). Bakan and Abu-Laban (2009, p. 32) describe the BDS campaign as “a strategy of international solidarity” important for “a revival of peace-building initiatives in the Middle East, and Israel-Palestine in particular”. The former UNGA president used the term “solidarity” when he urged the UN to “consider

following the lead of a new generation of civil society, who are calling for a ...non-violent campaign of boycott, divestment and sanctions to pressure Israel to end its violations” (Brockmann 2008). While refugee law scholarship on international solidarity is political in the sense that it urges states to share responsibility for refugees, the term is not invoked to denounce the perpetrators of persecution or call for an end to displacement.

## International Solidarity in Practice

In this section, I examine if states have shown solidarity towards Palestinian refugees in the way refugee law scholars use the term. I then discuss Palestinian understandings of international solidarity and consider when it has been displayed towards Palestinians and other refugees. In doing so, I am answering the empirical question posed for this special issue: has international solidarity ever been achieved in practice? I do not evaluate the efficacy of acts done under the name of international solidarity.

Have states demonstrated international solidarity towards Palestinian refugees?

The initial exclusion of Palestinian refugees from the Refugee Convention most probably cannot be considered a form of international solidarity. There are several considerations of the reasons for their exclusion (see Akram 2002, pp. 40–43; Goodwin-Gill and McAdam 2007, pp. 151–157; Hathaway and Foster 2014, pp. 509–521). By way of summary, the United States (US) delegate at the drafting conference proposed that Palestinian refugees be excluded from the Convention. The French delegate supported it on the ground that states would not want to be bound to accept this large group of refugees. Delegates from Arab states supported exclusion on the grounds that the UN, having caused Palestinians’ displacement, had special responsibility for them. The drafters also assumed that Palestinian refugees’ situation was temporary and that repatriation was the most desirable solution. The Egyptian delegate suggested that Palestinians should *ipso facto* receive the benefits of the Refugee Convention if UN protection or assistance ceases without the position of Palestinian refugees being definitely settled. The drafters agreed on the grounds that it would ensure Palestinian refugees receive continuity of international protection (Goodwin-Gill and McAdam 2007, p. 154). As a result, article 1D of the Refugee Convention is best viewed as a “contingent inclusion clause” (Goodwin-Gill and McAdam 2007, p. 153).

This conformity between Western and Arab states indicates that they were motivated by concerns antithetical to international solidarity. Arab states, while prepared to host Palestinian refugees temporarily, were adamant that they remained the UN’s responsibility. Western states did not want Palestinian refugees in their territories. Nevertheless, by agreeing to the Egyptian proposal, the drafters perhaps demonstrated some degree of international solidarity. However, at the time the Refugee Convention was drafted, it was assumed that a political solution to Palestinian refugees’ displacement would soon be achieved. Accordingly, the inclusionary clause in article 1D can at best be classified as prospective international solidarity that the drafters presumed would most probably never eventuate.

Contemporary jurisprudence on article 1D also evidences a lack of international solidarity. There is debate on whether article 1D applies only to those receiving UN protection and assistance when the Refugee Convention was adopted in 1951 or

whether it also includes their descendants and Palestinians displaced as a result of subsequent hostilities. If the former interpretation is adopted, the group of excluded Palestinians will get smaller over time and article 1D will eventually become redundant. Palestinians not part of this group (most of today's displaced Palestinians) can become Convention refugees if they meet the refugee definition. If the latter interpretation is preferred, Palestinians continue to be excluded but retain *ipso facto* entitlement to the benefits of the Refugee Convention if the UN's protection or assistance ceases for any reason.

Some courts have held that article 1D is historically bounded, placing most Palestinian refugees in the same situation as all other refugees who can seek protection under the Refugee Convention (*El-Ali v Secretary of State for the Home Department* 2003; *Minister for Immigration and Multicultural Affairs v WABQ* 2002). The European Union (EU) and New Zealand (NZ) have determined that article 1D has continuative effect (AD (Palestine) 2015, paras. [133], [148]; *Bolbol v Bevándorlási és Állampolgársági Hivatal* 2010, para. [51]). However, in most of these EU and NZ cases, the inclusionary clause in article 1D (which provides that Palestinian refugees are *ipso facto* entitled to the benefits of the Refugee Convention if UN protection and assistance ceases) has been read narrowly (AD (Palestine) 2015, para. [186]; *Mostafa Abed El Karem El Kott v Bevándorlási és Állampolgársági Hivatal* 2012, paras. [58]–[63]; Ogg 2019; cf. *AE (Lebanon)* 2019). This indicates a lack of international solidarity: the EU and NZ apply article 1D in a way that means they accept responsibility for very few Palestinian refugees, the rest remaining under the care of UNRWA—an underfunded and overstretched agency struggling to fulfil its protection and assistance mandate. Funding shortfalls in 2015 forced UNRWA to suspend cash assistance for housing (UNRWA 2015) and consider whether it had to delay the academic year for schools in Palestinian refugee camps (El-Shamayleh 2015). The situation significantly deteriorated as a result of the US decision to stop providing funding which forced UNRWA to discontinue cash for work activities, food assistance programs, community mental health programs and mobile health clinics (UNRWA 2018).

Whether states' funding of UNRWA is a form of international solidarity is a vexed question. Based on 2017 figures, many states gave more to UNRWA on a per capita basis than to the UNHCR.<sup>3</sup> However, complicating this is that UNRWA has been facing a funding crisis for several years the likes of which the UNHCR has not faced. In response to US funding cuts, the EU, Germany, Ireland and Jordan promised to increase funding to UNRWA (Al Jazeera 2018). Increasing donations in the face of a sudden and significant shortfall may be a form of international solidarity. However, as discussed above, EU member-states have limited their responsibility for physically hosting Palestinian refugees through their interpretation of article 1D. This raises the question as to whether a state or supranational organization can demonstrate international solidarity with a group of refugees if it provides funding for their protection and assistance but interprets its legal obligations in a way that limits its responsibility to physically host them.

<sup>3</sup> The UK donated approximately \$12USD to every refugee under UNRWA's mandate and \$5USD to every refugee under UNHCR's mandate. Sweden donated approximately \$11USD to every refugee under UNRWA's mandate and \$6USD to every refugee under UNHCR's mandate. These calculations are based on data in UNHCR (2017a) and UNRWA (2017).



## Palestinian International Solidarity

There are many examples of the Palestinian approach to international solidarity (affinity with refugees and a political commitment to bring about change) occurring in practice. Due to international solidarity for Palestinian people being driven not by states but grass-roots organizations and manifesting in twenty-first century methods of communication (Bakan and Abu-Laban 2009, p. 38; Sawalha 2008, p. 197; Seitz 2003, p. 50), we must look across more diverse fora to find examples of it manifesting in practice. There are a number of examples of public figures declaring international solidarity for the Palestinian people. For example, Nkosi Zwelivelile, Nelson Mandela's grandson, in an opinion piece in the online Guardian outlines what he sees as "eerie similarities between Israel's racial laws and policies towards Palestinians, and the architecture of apartheid in South Africa" (Zwelivelile 2018). Whether there are such similarities is contested<sup>4</sup> and outside this article's scope. The important point for this paper is that Zwelivelile demonstrates both empathetic and political aspects of international solidarity:

For we South Africans ... know that effective resistance to apartheid requires international solidarity. Just as allies around the world were vital in our struggle for freedom, the spirit of internationalism lives on in the non-violent boycott, divestment and sanctions (BDS) movement supporting the Palestinian liberation struggle (Zwelivelile 2018).

There are also examples of international solidarity between Indigenous persons in settler colonial societies and Palestinian refugees. Demonstrating the empathetic element of international solidarity, an Indigenous Australian activist blogs that she "became active in the Palestinian solidarity campaign" because she "saw the similarities between the Indigenous struggle of the Palestinian people and the struggle of Indigenous Australians" (Kim 2012). One similarity is the struggles Indigenous Australians have faced in having Australia Day recognised as a day of mourning and attempts made to prevent Palestinian refugees commemorating the Nakba on Israel's Independence Day.<sup>5</sup> Offering a US perspective, Salaita refers to international camaraderie between Palestinian refugees and Native Americans such as Indigenous Americans' visits to and written reflections on Palestine (Salaita 2017, p. 25).

Exhibiting both empathy and reciprocity, a Palestinian Australian filmmaker describes why she connects to Indigenous Australian struggles:

The first time I visited Palestine, I began to understand what it must feel like to be Aboriginal ... I stood and watched the layers of colonialism that cover the land and place and felt the disjuncture of that experience with the historic experiences and relationships of Indigenous people.

<sup>4</sup> Klein (2009) in her call for sanctions against Israel acknowledges that the situations in South Africa and Israel are different but uses South Africa as an example of a situation where sanctions were effective.

<sup>5</sup> Nakba means "disaster" or "cataclysm" and refers to the displacement of more than 700,000 Palestinians during the 1948 war.

I have spoken to a number of Aboriginal Elders from different countries across [Australia] and learnt how similar the struggles have been. Especially in the context of what happened in our village, the massacre that took place, the denial of the people of that village to pay their respects or conduct a dignified burial (Charida, cited in Gibson 2016).

Another example of international solidarity with Palestinian refugees is evident in murals in Northern Ireland (Arar 2017).<sup>6</sup> Reflecting a sense of affinity between political struggles across the globe, Arar explains that many murals in Northern Ireland depict a shared struggle—they “express support for Palestinians while bolstering Nationalist political sentiments” (Arar 2017, p. 867). She discusses a Nationalist mural painted on a sign in Derry/Londonderry stating “You are Now Entering Free Derry”. The mural has a Palestinian flag, a face with bloody tears and says “End Genocide in Gaza”. Arar (2017, p. 866) explains that the mural is “a particularly meaningful site used to express solidarity with the Palestinians because it commemorates Nationalist opposition and the start of the Troubles”.

One of the most controversial aspects of international solidarity in the Palestinian context is the BDS movement. There are some explanations of decisions to boycott Israeli institutions or products that are accompanied by a demonstration of international solidarity with Palestinian refugees. For example, Nastovski writes about some Canadian trade unions’ decisions to participate in the BDS movement. These trade unions demonstrate international solidarity by arranging “worker to worker delegations” in which Canadian trade union members travel to meet Palestinian workers and Canadian trade unions host Palestinians (Nastovski 2011). These trade unions specify that they want to “break our links with the State of Israel’s atrocities against the Palestinian people” (Nastovski 2011).

## Expressions of Solidarity for Other Groups of Refugees

Another question for this article is whether there have been instances of this form of international solidarity with respect to other refugee populations. Perhaps poignantly, given this article’s focus on Palestinians, the other leading example of this distinct understanding of international solidarity is Jewish individuals’ and organizations’ demonstrations of affinity with refugees fleeing genocide. In response to the conflict in Darfur, leaders of American Jewish communities came together as “one people united in solidarity with the people of Darfur, victims of a government-sponsored genocide” (Harris and Messinger 2005). Exhibiting the empathic and political elements of international solidarity, Harris and Messinger (2005) write:

Sixty years ago, after the Holocaust, the world vowed ‘never again.’

The Jewish community’s response on the grass-roots level has been extraordinary: Thousands of Jewish individuals and communities around the country have educated, agitated and raised money to end the Sudanese government’s policy of mass extermination.

<sup>6</sup> Arar (2017) also discusses murals demonstrating solidarity with Israel.



Another example of a display of solidarity that invokes an affinity between global struggles and a commitment to political change is a Jewish organisation's condemnation of the genocide in Darfur:

The Jewish community has been the quintessential victims of religious persecution, and of all people, we understand the duress of this persecution and will devote ourselves to any measures designed to lessen its impact. It is our duty and obligation to prevent this persecution in the future (Religious Action Centre of Reform Judaism [n.d.](#)).

The term "solidarity" is increasingly used by non-government organizations (NGOs) and the UN to show support for refugees (Goodall [2011](#)). This understanding of solidarity has some similarities with the way in which the term "international solidarity" is used in the above examples but is, in other respects, distinct. It shares the idea of showing solidarity with refugees themselves as opposed to the states that host them. It is also a grass-roots employment of the idea of solidarity towards refugees that uses modern forms of communication to rally support. For example, Solidarity with Refugees is an NGO that has held demonstrations asking the British government to "take responsibility" for refugees (Solidarity with Refugees [2016](#)). The Australian Medical Students' Association has held demonstrations asking others to "join us as we show solidarity for refugees" (Refugee Council of Australia [n.d.](#)). A petition circulated by We Welcome Refugees, a US NGO, asked people to "stand in solidarity with refugees" (We Welcome Refugees [n.d.](#)). The United Nations Children's Fund (UNICEF) organized an event called "Requiem for Darfur: A Song of Solidarity" (Kiem [2007](#)). The UNHCR's ([2019a](#)) "#WithRefugees" campaign involves asking cities and local authorities to sign a "statement of solidarity".

The term "solidarity" in these examples is being used in a political manner. However, the calls for legal and policy change are different from the political nature of international solidarity in the Palestinian context. These organizations use the term solidarity to persuade governments to welcome more refugees and provide better protection. With respect to the causes of refugee displacement, they remain neutral. For example, UNICEF's "Requiem for Darfur: A Song of Solidarity" aimed to "honour the more than 200,000 people who have perished during the conflict in western Sudan and raise funds to help the millions displaced through the region". The Solidarity with Refugees marches were "a message from the UK that we would like to welcome more refugees into our country" and a protest against the "toxic language used by some members of [the UK] Government to describe refugees" (Solidarity with Refugees [2015](#)). We Welcome Refugees' petition stated "I welcome refugees and stand in solidarity with them" (We Welcome Refugees [n.d.](#)). The UNHCR's "#WithRefugees" campaign asked cities to acknowledge the ways they "promote inclusion, support refugees and bring communities together" (UNHCR [2019a](#)). The Australian Medical Students' Association's rallies were organized to "send a strong message to the community and the [Australian] government that detention harms health" (Refugee Council of Australia [n.d.](#)).

Another distinction is that a sense of shared struggle is not present, probably because many of those involved, while advocating for refugees' rights, do not share a history of persecution and displacement. Nevertheless, there are examples of encouraging

empathy. For example, as part of its virtual marathon for refugees, the UNHCR explained that “[r]efugees escaping violence, persecution and war, flee their homes for weeks, even months, to reach safety” and encouraged participants to “take just a footstep in their shoes and make the journey together” (UNHCR 2019c).

## Lessons for Refugee Law’s Future Directions

Examining the notion of international solidarity from the perspective of Palestinian refugees raises a number of empirical, normative and legal quandaries for academic research. For example, do demonstrations of solidarity with Palestinian refugees assist or hamper peace efforts? What are the ethical implications of supporting or choosing not to support the BDS movement for individuals, organizations and states? Does anti-Semitism taint the BDS movement? In what contexts are demonstrations of international solidarity with Palestinian refugees protected by the right to freedom of expression, taking into account that it is not an absolute right?<sup>7</sup> These are important questions and they have given rise to vigorous and ongoing debates in many fields of scholarship, but they are not of direct concern to refugee law and the refugee protection regime. In the remainder of this article, I want to open up a new question. Having highlighted different understandings of international solidarity in the Palestinian context and that they have been ignored in refugee law scholarship, I want to consider what lessons Palestinian approaches to international solidarity may have for the development of refugee law and the refugee protection regime more broadly. In doing so, I am not making any comments on how international solidarity towards Palestinian refugees should progress. Rather I am using expressions of international solidarity in the Palestinian context to inform debates and concepts central to refugee law scholarship.

One way in which practices of international solidarity in the Palestinian context can inform refugee law is that they prompt a broader understanding of international solidarity. While refugee law scholars fixate on a state-centric notion of international solidarity, this article has highlighted how individuals and organizations express solidarity with refugees themselves. These demonstrations of empathy and support can democratize and humanize international solidarity in refugee law by positioning it not only as an elite activity undertaken by state actors but also one that ordinary people can participate in and foster.

There is some movement towards extending the concept of international solidarity in this manner in regional contexts. While the concept of solidarity in the EU has traditionally been “state-centred” (Mitsilegas 2017, p. 722), scholars argue that EU law requires member-states to show solidarity towards refugees and migrants (Morano-Foadi 2017, p. 223; Moreno-Lax 2017, p. 743). Morano-Foadi (2017, p. 245) defines EU solidarity towards refugees as providing them with the protections they are entitled to under the Refugee Convention. Mitsilegas (2017, p. 739) agitates for “humanizing” the concept of solidarity in the EU through a “move away from a concept of solidarity

<sup>7</sup> The right to freedom of expression may be subject to certain restrictions provided by law and necessary for respect of the rights and reputations of others or the protection of national security, public order, public health or morals (International Covenant on Civil and Political Rights 1966 article 19(3)). Some German cities have banned BDS activities on the grounds that they spread antisemitism (Jewish Telegraph Agency 2018; Weinthal 2017).

centred on the state, to a concept of solidarity centred on the refugee”. The 2004 Mexican Declaration and Plan of Action refers to solidarity 16 times, mostly with respect to solidarity between states but twice it is used to mean solidarity with refugees (Espinoza 2018, p. 86). The preamble promotes “the values of solidarity, respect, tolerance and multiculturalism, underscoring the humanitarian plight of victims of forced displacement and their fundamental rights”. It is then reflected in the chapter on durable solutions, which notes that “Latin America has a broad tradition of protection and solidarity toward those who have been persecuted”. Pursuant to the Declaration, Latin American states have established a Borders of Solidarity program, solidarity resettlement and solidarity cities, all of which focus on refugees’ protection needs (Barichello 2016, pp. 200–201).

These regional examples of extending the notion of international solidarity beyond a state-centric concept to include solidarity with refugees could apply at the global level. UNHCR Executive Committee Conclusions leave open the possibility of a broader notion of international solidarity. While the 2016 conclusion on international cooperation focuses on states (Executive Committee of the High Commissioner’s Programme 2016), the 1988 conclusion on international solidarity is less state-centric. It stresses that “the principle of international solidarity has a fundamental role to play in encouraging a humanitarian approach to the grant of asylum” (Executive Committee of the High Commissioner’s Programme 1988, para. [3]) and “respect for fundamental humanitarian principles is an obligation for all members of the international community, it being understood that the principle of international solidarity is of utmost importance to the satisfactory implementation of these principles” (para. [4]). Further, the GCR (para. [4]) refers to “strengthened cooperation and solidarity” with affected host countries as well as with refugees.

However, when considering how international solidarity in the Palestinian context can inform refugee law, we cannot ignore that demonstrations of international solidarity with Palestinian refugees, as well as refusals to do so, incite intractable controversy. Entertainers, artists and musicians face backlash and criticism for boycotting Israel as well as when they choose to perform there. Acts of solidarity with Palestinians can also have serious and unintended consequences. Some such demonstrations have been condemned as anti-Semitic, and these accusations of anti-Semitism have the potential to either fuel further conflict or inhibit peace efforts (Sacks 2017; Sheskin and Felson 2016; Weinthal 2017). There have been concerns that the BDS movement has triggered violent anti-Semitism in Europe and the US (Weiss 2018). There are also suggestions that acts of international solidarity intended to support Palestinian refugees have instead caused them harm (Sheffield 2015). Some suggest that the BDS campaign has made the prospect of peace in the region more unlikely (Falkenstein 2014; Sacks 2017; Thrall 2018).

I do not intend to weigh in on the well-established debates on the efficacy and legitimacy of these demonstrations of solidarity or choices not to, for example, support the BDS campaign. As a refugee law scholar, I am interested in what lessons these controversies have for the field. I suggest that they inform an unidentified contradiction in the GCR. Paragraph five states that the GCR “is entirely non-political in nature ... centred on the cardinal principle of non-refoulement” and governed by the “humanitarian principles of humanity, neutrality, impartiality and independence”. This is not controversial. The 1967 Declaration on Territorial Asylum confirms that the “grant of

asylum ... is a peaceful and humanitarian act". The predominant view among scholars is that asylum should be viewed as apolitical (Anker 2002, p. 146; Grahl-Madsen 1966, p. 27; cf. Price 2009). However, paragraph eight of the GCR stresses that "[p]rotection and caring for refugees ... needs to be accompanied by dedicated efforts to address root causes" and calls on states to undertake "early efforts" to address the "drivers and triggers" of displacement. Paragraph nine stipulates that "[a]ll states and relevant stakeholders are called on to tackle the root causes of large refugee situations, including through heightened international efforts to prevent and resolve conflict ... and to end exploitation and abuse, as well as discrimination of any kind ...".

While states may have the obligations outlined in paragraphs eight and nine of the GCR under various areas of international law, it is significant that they are referred to alongside states' duties with respect to asylum. The Refugee Convention and binding regional refugee agreements (see African Union Convention 2009; EU Directive 2011/95/EU; EU Directive 2013/33/EU) do not call on states to address the root causes of displacement.<sup>8</sup> The UNHCR has, at times, understood its role to include taking proactive measures to prevent displacement but more recently has refocused on the primacy of refugee protection (Hathaway 2007, p. 97; see also UNHCR 2018b, p. 4; UNHCR 2017b, p.4).

Can the grant of asylum remain a humanitarian and apolitical act when states are, at the same time, asked to address the "causes of large refugee situations" including through "heightened international efforts"? Actions aimed at preventing or resolving civil conflicts usually involve a judgement about acts perpetrated by state and non-state parties to the conflict. These "heightened international efforts" to end conflict can also cause rather than resolve refugee situations. One example is the US invasion of Afghanistan, which was partially justified with reference to the Taliban's treatment of women (Engle 2005). However, the violence and instability caused by US actions resulted in millions of Afghans seeking refuge across international borders.

A question for the future direction of refugee law is the wisdom of juxtaposing the grant of asylum, traditionally accepted to be an impartial act, with calls for host states to address the root causes of displacement. While some scholars argue that the refugee regime must respond to the root causes of displacement (Simeon 2017), Hathaway (2007, p. 97–8) argues that "until and unless we reach the point where violence and other abuse can truly be stopped around the world, it would be completely unethical to abandon the palliative refugee law system ...". The way in which the notion of international solidarity is understood and acted upon in the Palestinian refugee context provides additional insights on this quandary. As discussed above, there is a political element to this understanding of international solidarity. Declarations of international solidarity with Palestinian refugees openly condemn Israel's actions. Supporting the BDS movement and ISM could be understood as taking "heightened international efforts" to tackle the root causes of displacement. The reason why such demonstrations of international solidarity for Palestinian refugees, as well as refusals to join or support such demonstrations, cause controversy is due to the profound legal, historical and moral complexity of the Israeli and Palestinian conflict. Refugee law has traditionally been removed from the broader controversies surrounding conflict and persecution.

<sup>8</sup> The 1984 Cartagena Declaration on Refugees' preamble refers to states "making the necessary efforts to eradicate the causes of the refugee problem" but it is not a binding agreement.

The issues in a refugee status assessment (RSA) are complicated but discrete. The relevant question is whether a person is unwilling or unable to return to her country of origin or habitual residence due to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion. In a complementary protection case, a decision-maker may consider whether there is a real risk that a person would face torture or cruel, inhuman or degrading treatment or punishment or whether her life would be at risk due to armed conflict. Refugee law does not ask larger questions regarding, for example, the cause of persecution, why torture is inflicted or the triggers of armed conflict and how they could be prevented. As soon as we ask these questions and undertake efforts to address these issues, we open new areas of contention. For example, a girl who claims refugee status because she will be detained or tortured for refusing to wear traditional female dress will most probably be successful in an RSA. A decision-maker will determine if she has a well-founded fear of being persecuted (arbitrary detention or torture) and whether that is for reasons of her political opinion (perhaps her feminist beliefs) or membership of a particular social group (women in her country of origin). However, once the inquiry broadens to how we address sex discrimination in her country of origin, we enter a murkier and more contested arena. Actions intended to combat sex discrimination in refugee-producing countries have been decried as ineffective, counterproductive or examples of Western imperialism (Kapur 2002; Engle 2005). Another example is civilian victims of war. Most people fleeing the Syrian conflict would satisfy definitions for complementary protection, but refugee law does not concern itself with the root causes of the Syrian conflict or how to best prevent or resolve such conflicts. Addressing these questions raises a plethora of vexed issues, in particular how conflict and human rights abuses can be prevented or addressed without causing further displacement.

I am not suggesting that the international community should not address human rights abuses or conflict. The question I am asking is whether the international refugee regime should maintain its privileged position in which it is removed from these greater complexities, or should get its hands dirty and weigh in on these controversial issues? Coupling the international refugee regime with a commitment to tackle the root causes of displacement at first appears sagacious. That Palestinians constitute the longest protracted refugee situation highlights the need to address root causes of displacement and the consequences of failing to do so. However, reflecting on how international solidarity is practiced in the context of Palestinian refugees also indicates that to do so will open up the international refugee regime to criticism of a kind it has not confronted before. The refugee regime has faced criticism on the grounds that granting asylum, especially to large numbers of refugees, burdens the host state, but there is evidence to show this is not the case (Hugo 2011; IMF 2016) and advocates can justify any negative consequences with reference to the need to protect people from persecution, torture and conflict. Once the international refugee regime involves itself with attempts to end displacement, it will become embroiled in actions far less easy to legitimize because undertakings aimed at preventing or resolving conflict and ending discrimination risk encroaching on the human rights of others or having unintended consequences that worsen the intended beneficiaries' situation. The highly contentious nature of

some of these efforts means that the refugee regime will face criticism even from those who are strong supporters of expanded and robust refugee protection.

## Conclusion

The term “international solidarity”, while used by refugee law scholars to refer to states sharing responsibility for refugees, has a different meaning in the context of Palestinian refugees. It encompasses empathetic support for Palestinian refugees, condemnation of displacement and rights abuses and calls to end displacement. While it is difficult to conclude that states have shown international solidarity to Palestinian refugees with reference to the way refugee law scholars define the term, there are many examples of the latter notion of international solidarity in practice. Examining this divergent conceptualization of international solidarity not only provides a more comprehensive picture of the meaning of international solidarity for refugees, it also provides lessons for the future directions of refugee law. The GCR refers to international solidarity seven times but does not explicitly define the term. It calls for “strengthened cooperation and solidarity with refugees and affected host countries” (para. [4]) and heightened international efforts to address the root causes of displacement including conflict, exploitation, abuse and discrimination. This perhaps reflects a broader approach to international solidarity than the one embedded in refugee law scholarship that focuses more narrowly on states sharing responsibility for refugees. Reflecting on the way international solidarity is understood and practiced with respect to Palestinian refugees provides lessons for the development of the meaning of international solidarity. I suggest that the grass roots and empathetic elements of international solidarity (individuals and organizations showing support for refugees) demonstrated in the Palestinian context and more broadly could foster a less elitist and more inclusive approach to international solidarity. However, the controversy surrounding demonstrations of international solidarity with Palestinian refugees indicates that it may be unwise to couple refugee law with efforts to address the root causes of displacement. This means that the notion of international solidarity should remain a political one in the sense that it encompasses states more equitably sharing responsibility for refugees as well as calls by individuals and organizations for states to provide better protection to refugees but perhaps should be apolitical with respect to causes of and ending displacement.

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