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Contradiction in Terms:
Nation States, Individual Rights and Refugee Policy
in the Universal Declaration of Human Rights

In 1945 delegates from fifty-one nations came together to draft the charter of the United Nations. Two years later another set of representatives came together to draft the Universal Declaration of Human Rights (UDHR). The first drafting process was meant to give nation states a forum to solve disputes and protect national sovereignty. The second was intended to articulate and protect individual rights. Though a mark of progress for individual rights, the force of the Universal Declaration of Human Rights was nonetheless blunted by a preemptive concern for national sovereignty. This was, and is, a document setting out the universal rights of individuals, but written by representatives of nation states. It is a document proclaiming the sovereignty of individuals crafted within the context of a great deference for national sovereignty. The goal of shaping a universal plank to secure individual rights was doomed from the start –as the UN really had no power to enforce these rights and nations had little obligation to uphold them. This tension between the guarantee of individual rights and the primacy of the state was evident from the outset of the drafting of the declaration.

The assertion of national sovereignty is also quite evident in the international conflict taking place simultaneously: the Arab-Israeli War. The Arab-Israeli War was the first international conflict and instance of human rights violation with which the UN was confronted as it attempted to lay out a standard of universal human rights. It was the first non-theoretical

event with which the UDHR was put in direct conversation. The drafters made it clear that they were aware the refugee fallout from the war was precisely the type of situation the declaration was meant to address, and the emerging declaration provided a framework through which the war was approached. Ultimately, these two events, the drafting of the UDHR and the Arab-Israeli War, examined in tandem illuminate the impasse and conflict between the rights of nation states and those of individuals, particularly when we look at the status of refugees.

Nevertheless, the UDHR is regarded by many as a landmark of progress within the realm of human rights, as one of the first international instruments to recognize the universality of certain individual rights. However, the contradiction inherent to the document is largely overlooked. The concept of a group of nation states ensuring universal rights to individuals – rights which it is often not in their best interest to ensure, and which they have no real impetus to compel them to abide by – is inherently contradictory.

Only one month after the end of World War Two, delegates met in San Francisco to draft the charter that would establish the United Nations.¹ The UN was founded as a replacement of sorts for the UN's predecessor, the League of Nations. The League of Nations had been deemed a failure due to its inability to prevent the war. After the Second World War, the world community made a second attempt at forming an international administrative body. The United Nations was, in many ways, very similar to the League. Mark Mazower, scholar of European history, calls the United Nations "a warmed-up League" because the League and the UN bore a very close resemblance to one another. However, the United Nations differed from the League in some significant ways, perhaps most significantly so in that veto power was given

¹ Emma Haddad, *The Refugee in International Society: Between Sovereigns*, (Cambridge: Cambridge University Press, 2008), 78. The war in Europe ended May 8th and the UN Charter was signed June 26th

to the Big Three (the name given to the US, USSR and UK). This specific change made “the great powers . . . simultaneously both more willing to support the UN –since it could not act against them—and more willing to ignore it (for the same reason).”²

In *No Enchanted Palace: The End of Empire and the Ideological Origins of the United Nations*, Mazower writes a critical review of the origin of the United Nations. He takes a hard look at the motives behind its founding, and gives a realistic evaluation of the efficacy of the organization. Specific to its human rights policy, he writes that even though the League of Nations gets a harsh assessment, it really had better human rights protections than the UN: “minorities would find less protection under the United Nations than they had done under the League . . . The United Nations became an even fiercer defender of national sovereignty than the League had been.”³ Despite its aims at providing more protection for individuals, the United Nations ultimately achieved less, in this regard, than its predecessor had. Particular to refugee rights, the UN put in place a bill of rights that deferred to national power. However, Emma Haddad, Research Associate at the University of Oxford Refugee Study Centre, compares the League of Nations and the UN in a different way, saying that the League of Nations had a positive view of sovereignty that “saw a state’s internal sovereignty as the guarantee of the protection of individuals *qua* citizens, the negative view of sovereignty upheld by the United Nations saw a state’s external sovereignty as the guarantee of the protection of the individuals *qua* individuals.”⁴ Where the League of Nations saw the means of protection for individuals to

² Mark Mazower, *No Enchanted Palace: The End of Empire and the Ideological Origins of the United Nations*, (Princeton: Princeton University Press, 2009), 16.

³ Mark Mazower, *No Enchanted Palace: The End of Empire and the Ideological Origins of the United Nations*, (Princeton: Princeton University Press, 2009), 24 and 25.

⁴ Emma Haddad, *The Refugee in International Society: Between Sovereigns*, (Cambridge: Cambridge University Press, 2008), 137.

reside in their status as citizens of nation states, the UN attempted to make individual rights a universal guarantee, regardless of citizenship. The UDHR was a key part of this change. Adopted in 1948, the UDHR was one of the first international instruments to recognize the universal nature of individual rights.

Within the literature on human rights, refugees, and international policy, there is a general recognition of this dilemma between sovereignty and rights, but few make a specific or detailed analysis of the inconsistency within the UDHR itself. At the initial adoption ceremony of the Universal Declaration of Human Rights, Eleanor Roosevelt said, “We stand today at the threshold of a great event both in the life of the United Nations and in the life of mankind. This declaration may well become the international Magna Carta of all men everywhere.” The UDHR has since been referred to as the changing point in the human rights movement, the preemptory norm for international policy. Scholars on the subject agree that, although the Declaration was adopted without an enforcement mechanism, it has revolutionized the international human rights regime. In “The Declaration of Human Rights in Postmodernity,” diplomat and prominent human rights actor, Jose Alves examines the Declaration in relation to postmodernity. Alves, like many scholars, writes of the Declaration’s pivotal role in the human rights movement:

For more than half a century, the Universal Declaration of Human Rights, proclaimed by the United Nations in 1948, has played an extraordinary role in the history of mankind. It codified the hopes of the oppressed, supplying authoritative language to the semantics of their claims . . . It launched a new and profuse juridical discipline, the International Law of Human Rights . . . It set parameters for evaluating the legitimacy of any government, replacing the efficacy of force by the force of ethics.⁵

⁵ Jose Lindgren Alves, “The Declaration of Human Rights in Postmodernity,” *Human Rights Quarterly* 22.2 (2000), 478.

Alves acknowledges the Declaration's flaws, but is intrigued by what he sees as the impact it has had in spite of this. Other scholars agree with Alves about the UDHR's monumental impact on human rights law and practice. Johannes Morsink writes, "In the late 1940s believers in human rights had to fight for intellectual legitimacy, a battle they finally won on account of the horrors perpetrated by the Nazis. Now, as the document passes its fiftieth anniversary, critics have to make their case against the background of the extraordinary success that the Declaration has become."⁶ Morsink references a long list of international human rights instruments and court cases, all of which reference or were inspired by the UDHR, as proof of its success.⁷ Like Morsink, James Nickel writes in *Making Sense of Human Rights* of the UDHR's role in influencing human rights history and policy: "The Universal Declaration has been amazingly successful in establishing a fixed worldwide meaning for the idea of human rights."⁸ He, too, cites a number of international instruments inspired by the UDHR.

Specific to refugee rights and the UDHR, Haddad explores the roles of refugees in international law. She writes in *The Refugee in International Society: Between Sovereigns* that "with the new emphasis on individual rights, as immortalized in the 1948 Universal declaration of Human Rights, refugees were recognized as individuals with a right to protection in a state."⁹ She does not go on to mention that this recognition has largely been in name only. It is often not pointed out that the progress marked by the UDHR was primarily abstract. W.M. Reisman

⁶ Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting and Intent*, (Philadelphia: University of Pennsylvania Press, 1999), xi.

⁷ Treaties and conventions inspired by the UDHR include: the European Convention on Human Rights (1950), the Convention Relating to the Status of Refugees (1951), the International Covenant on Civil and Political Rights (1966), The American Convention on Human Rights (1966), and as many as forty others.

⁸ James Nickel, *Making Sense of Human Rights*, (Oxford: Blackwell Publishing, 2007), 9.

⁹ Emma Haddad, *The Refugee in International Society: Between Sovereigns*, (Cambridge: Cambridge University Press, 2008), 137.

writes about sovereignty in relation to international human rights in his article “Sovereignty and Human Rights in Contemporary International Law.” He focuses his discussion more specifically on state versus popular sovereignty in terms of general elections, but he credits the Universal Declaration of Human Rights with “dethroning” the sovereign. He also claims that “no serious scholar still supports the contention that internal human rights are ‘essentially within the domestic jurisdiction of the state’ and hence insulated from international law.”¹⁰ While Reisman is technically correct in his assertion (because the human rights reform after the Second World War changed the assumption that states are solely in control of their internal affairs) the idea is nonetheless only theoretically upheld, especially when it comes to refugees. In practice—for example during the Arab-Israeli War—refugees were no more guaranteed protection after 1948 than they had been before the Declaration was drafted and endorsed.

The adoption of the UDHR in 1948 spurred the creation and adoption of a number of subsequent treaties and conventions. However, continuing refugee crises like the Palestinian refugees from the 1948 Arab-Israeli War demonstrate the problematic nature of upholding the principles enshrined in the UDHR and the following conventions, from the very outset of its creation. In December 2008, the General Assembly of the UN celebrated the 60th anniversary of the UDHR, where they recognized the impact of the UDHR but also the continuing need for better practical enforcement of it. Martin Uhomoibhi, president of the UN Human Rights Council, spoke at the 60th anniversary of the Declaration: “Simply put, humanity today no longer lacks the human rights instruments to promote, protect and defend human rights and fundamental freedoms. However, what is sorely needed is for States party to existing human

¹⁰ W. M. Reisman, “Sovereignty and Human Rights in Contemporary International Law,” *American Journal of International Law*, 84 No. 4 (1990), 868 and 869.

rights instruments to take the practical steps necessary to implement their provisions for the benefit of all mankind.”¹¹ Thus, over 60 years later the UDHR remains as theoretical as the day it was drafted. The UN has no more power to enforce its principles, and nation states just as little reason to live up to them. In his discussion of human rights history and practice, Charles Beitz writes that “international human rights practice notoriously lacks a standing capacity to enforce many of the rights listed in the major treaties, and even when an enforcement capacity exists, it usually applies selectively and often only at the sufferance of those states against which it might be used.”¹²

I agree that the UDHR is not practically effective; it is of great theoretical significance without any substantial application. This lack of effectiveness is chiefly due to the root conflict of sovereignty between states and individuals. I examine this conflict through a close reading of the refugee articles within the UDHR, and through a careful examination of the UN debates surrounding the declaration. Though the UDHR is important for the ideological change it effected, its downfall has been that the great ideas promoted within it lack a practical means of enforcement or states willing to rigorously apply them. Beitz writes that “one reason why governments found it possible to accept the principle of international concern for human rights was the expectation that the UN would respect the domestic jurisdiction of states by refraining from intervention in their internal affairs.”¹³ The UDHR was adopted because its drafters were comforted by the knowledge that they would not be forced to abide by it. The UDHR was a major development in the recognition of universal rights, but what made nation states willing

¹¹ U.N. General Assembly, 63rd Session. *65th Meeting, Meeting Record*. 10 Dec. 2008 (A/63/PV.65).

¹² Charles R. Beitz, *The Idea of Human Rights*, (Oxford University Press, Oxford: 2009), 3.

¹³ Charles R. Beitz, *The Idea of Human Rights*, (Oxford University Press, Oxford: 2009), 21.

to sign it in the past has made its enforcement problematic in the present. I argue that the UDHR is both consequential and inadequate. Though an important step forward in the recognition of human rights, the supremacy of national sovereignty crippled its efficacy. The declaration debates were fraught with this tension between national power and individual rights, and the final articulation of rights within the UDHR displays this conflict. Lastly, the 1948 Palestinian refugee crisis shows this contradiction in practice.

The initial refugee problem with which the United Nations wrestled after the Second World War, when drafting the Universal Declaration of Human Rights, actually had its origins in the First World War and the shift in international refugee policy in the 1920s and 1930s. To fully understand the policy changes that came in the post-war era, it is necessary to outline international refugee policy during the First and Second World Wars.

During and after the First World War, immigration policy changed throughout the world. Specifically, nations began passing strict immigration quotas to limit the number of immigrants allowed into their countries each year. In her book, *Refugees in Inter-war Europe*, Claudena Skran writes that the abrupt end of the period of free immigration began in the United States.¹⁴ The U.S. set its first immigration quota in 1921, which established limits on the number of immigrants allowed each year and attempted to “ensure a certain ethnic composition.”¹⁵ Other nations soon followed suit. This same period of immigration quotas saw the development of other barriers to immigration: the institution of a passport system, stricter border control, and

¹⁴ Claudena Skran, *Refugees in Inter-War Europe: The Emergence of a Regime*, (Oxford: Clarendon Press, 1995), 21.

¹⁵ Esther Rosenfeld, “Fatal Lessons: United States Immigration Law During the Holocaust,” UC Davis J. Int'l L. & Pol'y, 1995. p. 2. And Claudena Skran, *Refugees in Inter-War Europe: The Emergence of a Regime*, (Oxford: Clarendon Press, 1995), 22.

alien registration. This restriction of immigration further complicated the refugee problem by adding obstacles to international mobility.¹⁶

In the years preceding the Second World War, the refugee exodus in Europe became a crisis. After Hitler came to power in 1933 and subsequently embarked on building the Third Reich, Germans began fleeing the area. Initially the majority of those fleeing were political opponents to Hitler; later the refugees were predominantly Jewish. At the same time as Hitler was building his Reich in Germany, Francisco Franco was rising to power in Spain. Shortly before the war, hundreds of thousands of Spaniards joined the refugee exodus as they fled Franco's regime.¹⁷ Few nations were willing to take in more than a few hundred of the thousands of European refugees.

The reluctance to accept refugees, in particular those of Jewish descent, was aggravated by economic hardship and the Nazi laws impoverishing emigrants. The worldwide economic depression lasted far into the 1930s, and consequently most nations were reluctant to expand their populations.¹⁸ Nazi policy further complicated emigration issues. Nazi laws stripped Jews of property and bank accounts before they were allowed to emigrate. Hitler asked the world to take in impoverished refugees who would not have been welcome under the most ideal circumstances. Nations operated under strict immigration quota systems that set limits on the

¹⁶ Claudena Skran, *Refugees in Inter-War Europe: The Emergence of a Regime*, (Oxford: Clarendon Press, 1995), 21 and 22.

¹⁷ Michael Robert Marrus, *The Unwanted: European Refugees from the First World War through the Cold War*, (Philadelphia: Temple University Press, 2002), 123.

¹⁸ Richard Rubenstein and John Roth, *Approaches to Auschwitz: The Holocaust and Its Legacy*, (Atlanta: John Knox Press, 2003), 122.

number of refugees allowed from each country. In the end, only one in twelve European Jews was able to find refuge abroad.¹⁹

In 1938, after the *Anschluss*²⁰ and the subsequent increase in pressure to take in refugees, U.S. President Roosevelt called for an international conference to discuss the refugee crisis. On July 6th 1938, delegates from thirty-two nations convened in Evian-les-Bains, France. The focus of the conference was on refugees in Europe, particularly Jewish refugees from Germany and Austria.²¹ The Conference resulted in a recognition of the growing crisis in Europe, but a firm unwillingness to offer help. The chairman of the Evian Conference, former U.S. Steel Corporation CEO and personal friend of Roosevelt, Myron C. Taylor, stressed the importance of national sovereignty. Other delegates followed suit and, while expressing “support for the humanitarian principle” behind refugee aid, stated concern for their own national welfare.²² All in all, the delegates concluded that nations were unable to aid refugees and stressed the importance of individual migration through private organizations. The Evian Conference resulted in the creation of the Intergovernmental Committee on Refugees, but offered little help to refugees themselves.²³

The attitude towards refugees at the Evian Conference and otherwise during this period, was fraught with racial undertones, as a substantial percentage of immigrants during the inter-war period were Jewish. When the leaders of Nazi Germany pursued a policy of mass expulsion

¹⁹ Martin Gilbert, *The Holocaust*, (New York: Braun Center for Holocaust Studies, 1994), 11-12.

²⁰ Anschluss literally means “union” or “connection.” Anschluss was the name given to Hitler’s annexation of Austria in 1938.

²¹ Claudena Skran, *Refugees in Inter-War Europe: The Emergence of a Regime*, (Oxford: Clarendon Press, 1995), 211.

²² Claudena Skran, *Refugees in Inter-War Europe: The Emergence of a Regime*, (Oxford: Clarendon Press, 1995), 209 and 212.

²³ Claudena Skran, *Refugees in Inter-War Europe: The Emergence of a Regime*, (Oxford: Clarendon Press, 1995), 214.

for the Jews, the nations of the world closed their doors. Of the 10 million Jews in occupied Europe, only 800,000 found refuge elsewhere. That is fewer than one in seven of the total number of Jews murdered.²⁴ It was at the Evian Conference of 1938 that the Australian delegate summed up the attitude of the world toward the Jews: "It will no doubt be appreciated that as we [Australians] have no racial problem, we are not desirous of importing one."²⁵ No nation wanted the burden of thousands of refugees, particularly Jewish ones, and so they remained trapped in places where they were easily captured and later murdered.

After the Second World War, as the scale of atrocity became known, international policy toward refugees came under a process of review. The tragedies of the war brought on a renewed sense of duty to the international community. Tragic events such as the Nazi Holocaust and the Japanese Rape of Nanking, put pressure on the world to take responsibility for human rights violations. These tragedies, and particularly the testimonies in the aftermath of war, made the international community feel remorse for not having taken action sooner. This sense of responsibility was evident in the shaping of post-war policy.

The preeminent document of the United Nations regarding individual rights is the Universal Declaration of Human Rights. A universal declaration of human rights, or something with a similar effect, had been called for since the middle of the Second World War but was not completed until late 1948. By 1943, the demand for "some sort of human rights plank" within the prospective peace treaties was fervent; private organizations even began taking the initiative to draft their own versions of an international bill of rights." While the Charter of the United Nations did not include a bill of rights, it did mandate the establishment of a

²⁴ Martin Gilbert, *The Holocaust*, (New York: Braun Center for Holocaust Studies, 1994), 13.

²⁵ Martin Gilbert, *The Holocaust*, (New York: Braun Center for Holocaust Studies, 1994), 12.

Commission on Human Rights, with the assumption that this commission would then draft an international bill of rights.²⁶ With an increasingly intense demand for an expression of human rights, the Human Rights Commission began drafting The Declaration in 1947. The drafting process lasted nearly two years, from January 1947 to December 1948, in seven stages that included different committee meetings and debates throughout which the articulation of the declaration was refined.²⁷

The drafting of the Declaration, like the founding of the UN and the drafting of related legislation, was heavily influenced by the recent events of the Second World War. In his history of the drafting of the UDHR, Johannes Morsink writes about World War II as a catalyst for human rights reform: “the drafters made it abundantly clear that the Declaration . . . had been born out of the experience of the war that had just ended.”²⁸ In the final debate, in which the General Assembly put the Declaration to a vote, the influence of the war was firmly stated. Throughout the two year drafting process as well, the role of the Second World War as a catalyst was often noted. Specifically relating to the right of refugees, a number of delegates cited the war as a reason to guarantee these rights. The delegate from Belgium mentioned that “[article 13] was of vital importance: the principles of freedom of movement and freedom of residence had to be stressed at the moment when the war and the resulting upheavals had demonstrated to what point that principles could be trodden underfoot.”²⁹ The atrocities that

²⁶ Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting and Intent*, (Philadelphia: University of Pennsylvania Press, 1999), 1-3.

²⁷ Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting and Intent*, (Philadelphia: University of Pennsylvania Press, 1999), 4.

²⁸ Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting and Intent*, (Philadelphia: University of Pennsylvania Press, 1999), 36.

²⁹ U.N. General Assembly, 3rd Session. Third Committee. *120th Meeting, Meeting Record*. 2 Nov. 1948 (A/C.3/SR120), 322.

the international community witnessed during the Second World War made the necessity of these rights blatantly obvious. It was for these reasons that the members included a clause referring to the war in the preamble to the Declaration, where it states that the Declaration was drafted because “disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind.”³⁰ This clause refers back to the recent atrocities and the way in which they inspired a reform of human rights policy. It is almost universally agreed among scholars that the modern human rights movement came out of the Second World War and the legacy of the tragedies that had occurred.³¹ David Weissbrodt and Connie De La Vega agree that “the war demonstrated that unfettered national sovereignty could not continue to exist without untold hardships and, ultimately, the danger of total destruction of human society. It was out of the trauma of WWII . . . that the modern human rights movement was born.”³² The Second World War provided impetus for the creation of universal human rights policy, but these well-intended aspirations eventually fell to the interests of the state.

The Universal Declaration of Human Rights marked an important recognition of both individual and universal rights. The UDHR was the key document that fomented the development of human rights law. Prior to the postwar period, “the way a State treated its

³⁰ U.N. General Assembly, 3rd Session, Plenary. *Universal Declaration of Human Rights*. 10 Dec. 1948 (A/res/217A).

³¹ However, Mark Mazower, in his book examining the United Nations, notes two scholars who do not see the 1940s as the beginning of the human rights movement; Samuel Moyn in particular does not believe we can date the origin of the modern human rights movement before the 1970s.³¹ As we examine the drafting process of the Universal Declaration of Human Rights, it is clear that World War Two acted as a catalyst for the beginning of modern human rights policy.

³² David Weissbrodt and Connie De La Vega, *International Human Rights Law: An Introduction*, (Philadelphia: University of Pennsylvania Press, 2007), 21.

citizens was regarded as an internal matter over which it had sovereign control.”³³ After the war, the perspective on the rights of individuals as citizens changed drastically. The way a state treated its citizens was no longer considered an internal matter, but rather an international one (though this distinction was not necessarily true in practice, the war did change the international ideology). The Declaration acknowledges the universal right to life, freedom of speech, belief, movement, and freedom from fear, persecution and discrimination. Articles 13, 14, and 15 specifically relate to the rights of refugees. These articles acknowledge the right to freedom of movement and residence, the right to seek and enjoy asylum, and the right to nationality.³⁴

The UDHR is of particular importance because it was the first international document that acknowledged the universality of particular rights –rights that were not dependent on belonging to a certain state. Following the adoption of the UDHR almost all “multilateral instruments” were based on the Universal Declaration of Human Rights.³⁵ For example, legislation of particular importance to refugees, such as the 1951 Convention Relating to the Status of Refugees, has used the UDHR as a kind of legal foundation. The UDHR quite obviously played a pivotal role in the development of a new human rights ideology. The extent to which its role remains purely ideological, however, is equally crucial.

³³ Erika Feller and Volker Türk, *Refugee Protection in International Law: UNCHR's Global Consultations on International Protection*, (Cambridge: Cambridge University Press, 2003), 37.

³⁴ Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting and Intent*, (Philadelphia: University of Pennsylvania Press, 1999), 332.

³⁵ Emma Haddad, *The Refugee in International Society: Between Sovereigns*, (Cambridge: Cambridge University Press, 2008), 74 and 78.

The Contradiction Inherent

Many articles in the Universal Declaration of Human Rights came up against the newly invigorated demand for individual rights and a long standing deference for national sovereignty. None of the articles faced opposition like the articles concerning freedom of movement, asylum, and nationality.³⁶ Articles 13, 14, and 15 were particularly troubling for the drafting committees as they involved not just one state, but the cooperation of many states to allow mobility from one place to another. (See Appendix for the full text of these articles)

The language of these articles sparked debate from the very outset of the drafting process. The drafting committee asked John Humphrey, Director of the Secretariat's Division on Human Rights, to draft a preliminary version of a declaration.³⁷ Humphrey's "base" draft was then reviewed by the larger drafting committee, the Commission on Human Rights, the Economic and Social Council, and the General Assembly. Throughout these different sessions, the language was changed numerous times, often with nation states asking for more ambiguity and less responsibility while NGOs demanded stronger protections for individuals.³⁸ It was the meetings of the Third Committee that finalized the refugee articles.

Sessions 120 through 124 of the Third Committee of the Third Session of the General Assembly concerned the articles about refugees and asylum, which became articles thirteen through fifteen of the Declaration. While Articles 13 and 15 demonstrate the conflict between states rights and those of individuals, the provisions of Article 14 brought on a particularly

³⁶ Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting and Intent*, (Philadelphia: University of Pennsylvania Press, 1999), 72.

³⁷ Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting and Intent*, (Philadelphia: University of Pennsylvania Press, 1999), 5.

³⁸ Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting and Intent*, (Philadelphia: University of Pennsylvania Press, 1999), 76 and 77.

fervent discussion. Article 13 concerns freedom of movement and residence, article 14 the right to asylum, and article 15 the right to nationality.

Article 13 particularly was not seen as much of a threat to national power. The discussion of this article was largely focused on the amendment put forth by the USSR, which attempted to restrict the scope of the article in deference to national sovereignty. Unlike in the discussion that followed for article 14, most of the states did not feel threatened by the provisions of article 13 –largely because Article 13 “presupposed that the individual in question had already obtained permission to enter the country, the right of entry being governed by the legislation of the country concerned.”³⁹ Consequently, the majority of the delegates opposed the USSR amendment.

The USSR amendment sought to add the words “in accordance with the laws of that State” to the end of paragraph one, stating that “Everyone has the right to freedom of movement and residence within the borders of each State.” And also to include the clause “in accordance with the procedure laid down in the laws of that country,” after the words “Everyone has the right to leave any country, including his own.”⁴⁰ The general consensus about the USSR amendment was that it would unduly restrict the provisions of the article. While a “state was entitled to decide how the principle was to be applied; . . . to include such interpretation in a declaration of human rights would imply the renunciation of the inherent rights of mankind.”⁴¹ This opinion was voiced by the delegate from Chile, and confirmed by the

³⁹ U.N. General Assembly, 3rd Session. Third Committee. 120th Meeting, *Meeting Record*. 2 Nov. 1948 (A/C.3/SR120), 319.

⁴⁰ U.N. Commission on Human Rights, 3rd Session. *Report of the Third Session of the Commission on Human Rights*. 28 June 1948 (E/800), 11 and 41.

⁴¹ U.N. General Assembly, 3rd Session. Third Committee. 120th Meeting, *Meeting Record*. 2 Nov. 1948 (A/C.3/SR120), remark by the Chilean delegate, 316.

other delegates. It was felt that “a document drawn up in that sense would be a declaration of the absolute rights of the State and not a declaration of human rights.”⁴² Obviously the tension between national sovereignty and individual rights was apparent to the drafting delegations, However, they were able to be idealistic about sacrificing national sovereignty only as long as this sacrifice remained theoretical. As soon as the discussion turned to asylum, their idealism quickly dissipated.

While a number of states found article 13 troubling,⁴³ the majority were comfortable with it, and argued against putting more restrictions on it. During this debate, most nations actually expressed divergent concerns from the ones they would express only a day later, during the debate on article 14 concerning asylum, in which they expressed concerns about too much infringement upon national sovereignty. In the article 13 debate, delegates instead voiced cautions about government restrictions. The Haitian delegate felt, “government restrictions ran counter to the aspirations of the universal conscience; they might be tolerated as a temporary necessity, but there could be no question of including them in the declaration.”⁴⁴ The Philippines delegation agreed that “the amendments proposed by the USSR delegation, if adopted, would nullify the meaning of article [13], because instead of establishing common standards to govern the movements of people in general, the Committee would be sanctioning the deplorable state of affairs which existed in the world.”⁴⁵ This same point came up during the discussion of Article 15 –on the right to nationality –and was again pointed at a

⁴² U.N. General Assembly, 3rd Session. Third Committee. 120th Meeting, *Meeting Record*. 2 Nov. 1948 (A/C.3/SR120), 316.

⁴³ Largely the Eastern Bloc states (USSR, Poland, UkrainianSSR, and Belarus).

⁴⁴ U.N. General Assembly, 3rd Session. Third Committee. 120th Meeting, *Meeting Record*. 2 Nov. 1948 (A/C.3/SR120), 318.

⁴⁵ U.N. General Assembly, 3rd Session. Third Committee. 120th Meeting, *Meeting Record*. 2 Nov. 1948 (A/C.3/SR120), 318.

USSR amendment. The USSR delegate, Alexei Pavlov, “wished to stress the fact that the question of nationality –by which was meant a specific relationship between the State and the individual—fell entirely within the internal competence of each State. To grant nationality or to take away was a prerogative of sovereign States with which no third party should interfere.”⁴⁶ The response to this position was to reiterate a desire not to sanction “the deplorable state of [world] affairs.” The delegates responded to Pavlov with remarks about the intended nature of the declaration being to set an international standard and to be a bastion of principle for the nations of the world. The delegates felt comfortable being idealistic when they were secure in their sovereignty. The Chilean delegate responded to the USSR, remarking:

[the] purpose was not to impose laws on any sovereign State, but to enable the people of a State to judge for themselves whether the laws under which they lived were in conformity with the principles of the declaration. If the Hitler regime were still in existence, the result of adopting the USSR amendment would be to justify the acts of that regime rather than to protect individuals against them.⁴⁷

Eleanor Roosevelt agreed with the Chilean delegate about the need for sovereign states to give up a little power in order to conform more wholly with the Declaration: “To state that freedom of movement should be granted only in accordance with the laws of each country would be equivalent to limiting the fundamental rights of the individual and increasing the powers of the State.” Here Roosevelt expressed a desire to place individual well-being above state power. However, when the debate turned to the right of immigration or asylum, nations were quick to

⁴⁶ U.N. General Assembly, 3rd Session. Third Committee. 123rd Meeting, *Meeting Record*. 5 Nov. 1948 (A/C.3/SR123), 355.

⁴⁷ U.N. General Assembly, 3rd Session. Third Committee. 123rd Meeting, *Meeting Record*. 5 Nov. 1948 (A/C.3/SR123), 357.

restrict the scope of the article, to willingly “increasing the powers of the State” and “limiting the fundamental rights of the individual.”⁴⁸

When the issue of immigration came up briefly in the discussion of Article 13, and later within the discussion of Article 14, many delegates quickly reversed their opinions on sacrificing state sovereignty. Roosevelt sympathized with the view expressed by the Haitian delegate “especially when he explained that every man should have the right to settle in the country of his choice” but she felt that because “economic considerations had forced certain countries to take legal measures restricting immigration . . . A declaration of human rights should not contain principles the application of which was rendered impossible by existing circumstances.”⁴⁹ This attitude toward sovereignty and immigration and asylum is fully evident within the article 14 discussion.

Article 14, ensuring the right of asylum, was the most contested article in the Declaration. John Humphrey, author of the original draft, wrote in his memoir, “No article in the Declaration has been more criticized than Article 14, which says that everyone has the right ‘to seek and enjoy’ asylum from persecution. This gives no right to asylum but only a right to enjoy it once it has been granted. It was probably too much to expect that governments would give up their discretionary power under international law to refuse to allow foreigners to enter their territories.”⁵⁰ Humphrey himself recognized the reluctance of nation states to relinquish power in his original draft in which he “sidetracked the issue saying merely that ‘every state

⁴⁸ U.N. General Assembly, 3rd Session. Third Committee. 120th Meeting, *Meeting Record*. 2 Nov. 1948 (A/C.3/SR120), 319.

⁴⁹ U.N. General Assembly, 3rd Session. Third Committee. 120th Meeting, *Meeting Record*. 2 Nov. 1948 (A/C.3/SR120), 319.

⁵⁰ John P. Humphrey, *Human Rights and the United Nations: A Great Adventure*, (New York: Transnational Publishers, 1984), 70.

shall have the right to grant asylum to political refugees,' a right which was already recognized by international law" and which did little to actually further the status of refugees.⁵¹ His draft was amended to include stronger guarantees for refugees largely due to the influence and lobbying of non-governmental organizations, but the final editing of the article would strip out its strongest language in favor for guarantees more amendable to nation states.

In November 1948, during the final debate on the declaration, amendments to this article had been proposed by eight countries: Bolivia, Cuba, Egypt, France, Saudi Arabia, the United Kingdom, Uruguay, and the USSR –all seeking to amend the article stating that "Everyone has the right to seek and be granted, in other countries, asylum from persecution."⁵² The discussion included who would be responsible for ensuring asylum and whether embassies would count as ports of asylum, but most of the discussion concerned the extent to which the article guaranteed refuge. Many of the delegates took issue with the fact that the article was guaranteeing the right to be granted asylum. They argued that this interfered with the sovereignty of the nation, and that they ought to retain the choice of when and to whom to offer refuge.

The debate on granting asylum began with Margery Corbet of the United Kingdom and her reservations about the article. The United Kingdom delegation stated that it was ready to "guarantee that any persecuted person asking for refuge would be treated with sympathy," but that "no State could accept the responsibility imposed by [article 14]."⁵³ The United Kingdom

⁵¹ John P. Humphrey, *Human Rights and the United Nations: A Great Adventure*, (New York: Transnational Publishers, 1984), 70.

⁵² U.N. Commission on Human Rights, 3rd Session. *Report of the Third Session of the Commission on Human Rights*. 28 June 1948 (E/800).

⁵³ U.N. General Assembly, 3rd Session. Third Committee. *121st Meeting, Meeting Record*. 3 Nov. 1948 (A/C.3/SR121), 330.

felt that adopting article 14 would be impossible “as no foreigner could claim the right of entry into any State unless that right were granted by treaty.” Corbet explains that her amendment includes the phrase “to enjoy asylum” as opposed to “to be granted,” and that this is a better representation of the right the assembly was trying to secure. The United Kingdom supported the Saudi Arabian amendment (which proposed to delete the words “and be granted” from the article), but thought it should be phrased as: “Everyone had the right to seek, *and to enjoy*, in other countries, asylum from persecution.” This structuring of the article was amenable because it limited “the obligation of the State,” but still provided some recourse for persecuted people.⁵⁴

Saudi Arabia agreed with the United Kingdom in that assuring the right “to be granted” asylum “would be a flagrant violation of the sovereignty of the State concerned.”⁵⁵ Because article 14 did not include provisions for consulting the States about offering refuge, or delineate who would be responsible for directing persons to particular countries for asylum, “the article promised more than it should.”⁵⁶ The majority of the states supported this position. The Australian delegation voiced support, saying “each State must be free to decide the form in which that right [of asylum], having been proclaimed in the declaration, should be applied.”⁵⁷ The states’ obvious concern for their own power eclipsed the more humanitarian concern of securing protections for refugees.

⁵⁴ U.N. General Assembly, 3rd Session. Third Committee. 121st Meeting, *Meeting Record*. 3 Nov. 1948 (A/C.3/SR121), 330.

⁵⁵ U.N. General Assembly, 3rd Session. Third Committee. 121st Meeting, *Meeting Record*. 3 Nov. 1948 (A/C.3/SR121), 331.

⁵⁶ U.N. General Assembly, 3rd Session. Third Committee. 121st Meeting, *Meeting Record*. 3 Nov. 1948 (A/C.3/SR121), 331.

⁵⁷ U.N. General Assembly, 3rd Session. Third Committee. 121st Meeting, *Meeting Record*. 3 Nov. 1948 (A/C.3/SR121), 338.

These views expressing concern for national sovereignty were countered by the delegates from Lebanon, Pakistan and Poland. Mr. Azkoul of Pakistan thought that the “conception of the right of the individual had been replaced to a certain extent by that of the obligation of the State. The statement of a right should not, however, depend on the possibility of States to comply with that right.”⁵⁸ This is exactly the problem the Assembly was wrestling with in this discussion of refugee rights: the rights of a state versus the rights of the individual. Azkoul was right in seeing that the obligations of the state were taking precedence over the rights of the individual. Though they began with very humanitarian and idealistic intentions, the delegates soon got bogged down in state politics and deference for national sovereignty.

Poland thought that the UK and Saudi Arabian amendment would weaken the article. Uncharacteristically for Pavlov of the USSR, who had thus far been a fervent advocate of state sovereignty, he pushed for the right not only to seek, but also to receive, asylum: “The United Kingdom amendment affirmed the right to seek asylum, but that was of little value unless there were provisions for implementing it.”⁵⁹ Ultimately the words “to be granted” asylum were deleted in favor of the idea of “enjoying” asylum, which put less pressure on the states to ensure asylum.

Contradiction in Practice

In the introduction to his book on the United Nations and Palestinian refugees, Edward Buehrig writes that political refugees “are the tragic product of an incompatible

⁵⁸ U.N. General Assembly, 3rd Session. Third Committee. 121st Meeting, *Meeting Record*. 3 Nov. 1948 (A/C.3/SR121), 335.

⁵⁹ U.N. General Assembly, 3rd Session. Third Committee. 122nd Meeting, *Meeting Record*. 4 Nov. 1948 (A/C.3/SR122), 343 and 344.

juxtaposition.”⁶⁰ Here he is referring to conflicts like class, religion and ideology, but refugees are just as easily a product of the incompatible juxtaposition between national sovereignty and individual rights. Refugees are often unsafe or unhealthy in one country, but unwanted by another. At the time of the drafting of the Universal Declaration of Human Rights, crises made both the necessity and the contradiction of the declaration evident. The Arab-Israeli War of 1948 triggered a massive refugee exodus that left thousands of refugees caught in a struggle between national sovereignty and individual welfare. The use of these refugees in the political bargaining between the Arab states and Israel exemplifies the disregard of individual rights in favor of state concerns.

The longstanding relationship between the UN and Palestine makes the example of the UDHR and the Arab-Israeli War especially meaningful. The UN has been involved in the Palestine conflict longer “than in any other regional dispute.” It was involved from the outset as crafter of the two-state partition plan, as head of the refugee relief effort, and as peacekeeper and mediator.⁶¹ The UN played a key role in the escalation of the problem and more than sixty years later continues to police it. Furthermore, the UNs involvement in Palestine developed concurrent to its drafting of a universal human rights platform, and this declaration provided a backdrop for UN actions in Palestine.

The origins of the Arab Jewish conflict in Palestine are complex and date back considerably. However, the particulars of the 1948 war begin with The British Mandate in Palestine. After the First World War, some territories of the Ottoman Empire, of which

⁶⁰Edward H. Buehrig, *The UN and the Palestinian Refugees: A Study in Nonterritorial Administration*, (Bloomington: Indiana University Press, 1971), 3.

⁶¹Nathan Pelcovits, *The Long Armistice: UN Peacekeeping and the Arab-Israeli Conflict, 1948-1960* (Boulder: Westview Press, 1993), 1.

Palestine was one, were divided into mandates. The League of Nations mandate transferred control from the Ottoman Empire to various allied countries. The United Kingdom gained control of the area in 1917, and was officially given a mandate to administer a newly defined Palestine in 1923.⁶²

Throughout the period of the mandate, there was constant conflict among Jews, Arabs, and the British. Palestinian Arabs demanded an Arab Palestine while Zionist Jews refused to curb immigration or tame demands for a Jewish state in Palestine. During the First World War, and the entirety of the mandate period, the British made promises to both groups, though they were more consistently supportive of a Jewish state. The Balfour Declaration of 1917 stated outright British support for a Jewish state in Palestine, and this declaration was included as a part of the official mandate over the area. After an Arab rebellion in 1936, the British withdrew some of their promises to the Jews, and made an attempt to restrict Jewish immigration, but their previous support for a Jewish state in Palestine had already both alienated and injured the Arabs there.⁶³

In February 1947, Britain decided to relinquish control of Palestine due to an inability to find an acceptable solution to the conflict and an increasing difficulty in maintaining control over the area.⁶⁴ The Mandate would not officially end until May 1948, but the “problem” of Palestine was officially handed over to the UN in February.⁶⁵ In May the United Nations Special Committee on Palestine (UNSCOP) was formed to create a solution for the conflict in Palestine.

⁶² Benny Morris, *1948: A History of the First Arab-Israeli War*, (New Haven: Yale University Press, 2008), 11.

⁶³ Ilan Pappé, *A History of Modern Palestine: One Land, Two Peoples* (Cambridge: Cambridge University Press, 2006), 84 and 107.

⁶⁴ Benny Morris, *1948: A History of the First Arab-Israeli War*, (New Haven: Yale University Press, 2008), 15 and 37.

⁶⁵ Ilan Pappé, *A History of Modern Palestine: One Land, Two Peoples* (Cambridge: Cambridge University Press, 2006), 121.

In August, UNSCOP presented a partition plan to the General Assembly that suggested dividing Palestine into two separate states with an economic union. The plan was hotly debated in the Assembly; deliberations lasted until November of 1947 and the plan still barely managed to get the required two-thirds majority for adoption. Ultimately, the plan was accepted by the Jewish community but rejected by the Palestinians.⁶⁶

On September 1, 1947, the day after the partition plan was brought before the General Assembly, fighting broke out in Palestine. The widespread violence soon became a full-out civil war.⁶⁷ Palestinian Arabs rioted and attacked Jewish owned businesses. In December, the Arab Higher Committee organized a strike to protest the adoption of the UN partition plan.⁶⁸ The Palestinian Arabs were outraged by the partition plan that gave “37 percent of the population 55 percent of the land (of which they owned only 7 percent)” and which forced them from the most fertile land.⁶⁹ The Jews responded to Arab attacks with attacks of their own. The civil war was “characterized by guerrilla warfare accompanied by acts of terrorism.”⁷⁰ This civil-war between Palestinian Arabs and Jews in the region lasted until May 1948, when the British Mandate in Palestine was terminated and the Arab-Israeli war began.

The Arab-Israeli War officially began after the Jewish nation declared statehood on the 14th of May, anticipating the conclusion of the British Mandate. Five Arab states (Egypt, Iraq, Jordan, Lebanon and Syria) responded by invading the newly created nation. The Arab States

⁶⁶ Ilan Pappé, *A History of Modern Palestine: One Land, Two Peoples* (Cambridge: Cambridge University Press, 2006), 125.

⁶⁷ Ilan Pappé, *A History of Modern Palestine: One Land, Two Peoples* (Cambridge: Cambridge University Press, 2006), 127.

⁶⁸ Yoav Gelber, *Palestine, 1948: War, Escape and the Emergence of the Palestinian Refugee Problem* (Sussex: Sussex Academic Press, 2006), 16.

⁶⁹ Benny Morris, *1948: A History of the First Arab-Israeli War*, (New Haven: Yale University Press, 2008), 65.

⁷⁰ Benny Morris, *1948: A History of the First Arab-Israeli War*, (New Haven: Yale University Press, 2008), 77.

were motivated by a strong desire not to have a Jewish state established among their own nations. They were further motivated to invade by the steady refugee flow from Palestine as well as the increasing certainty of Palestinian Arab failure in the conflict. Israel's declaration of statehood and the invasion by the Arab states triggered further fighting between Jewish and Arab groups in the cities and on the roads.⁷¹

The first wave of refugees came before the war even began. After the UN General Assembly resolution on the 29th of November 1947 sanctioned the division of British controlled Palestine into two states, Arab people began leaving the Jerusalem and Jaffa areas. The causes of the refugee exodus were then, and are still, fervently debated. Both sides blamed the other for the refugee crisis: "according to the Arab Higher Committee, some 550,000 Palestinian Arabs had been forced to leave their homes as a result of Jewish attacks" but according to Israel, "most of these [refugees] had left Palestine during recent months in the wake of the war launched against Israel by neighboring Arab States, partly in obedience to direct orders by local Arab military commanders, and partly as a result of the panic campaign spread among Palestinian Arabs by the leaders of the invading Arab States."⁷² It is likely that the cause of the refugee exodus is a combination of many events. The invasion by the Arab states exacerbated the instability already present in the region; during the civil war that preceded the official Arab-Israeli War, there were sporadic attacks between Arab and Jewish groups, as well as a persecution campaign focused on the Arabs by the Haganah.⁷³ In the months leading up to the official outbreak of war, Plan Dalet, a Zionist offensive against Arabs was enacted. This

⁷¹ Benny Morris, *The Birth of the Palestinian Refugee Problem Revisited*, (Cambridge: Cambridge University Press, 2004), 13.

⁷² The United Nations, *Yearbook of the United Nations 1947-1948*, 447.

⁷³ Haganah was a Jewish Paramilitary group that later became the Israeli Defense Forces. Benny Morris, *The Birth of the Palestinian Refugee Problem Revisited*, (Cambridge: Cambridge University Press, 2004), 67.

campaign included forced migration, attacks, rapes, and a number of massacres of Arab villages.⁷⁴ The outbreak of war only increased the refugee flow. By July 1948 it was clear that a refugee crisis was at-hand.⁷⁵ By this time “400,000-500,000 Arabs had been displaced by the fighting.”⁷⁶ The refugee crisis was a concern to the international community, and particularly to the Arab states, but no one state felt that they could or should take responsibility. There was a general call for the UN to head up the refugee relief effort.

The Palestinian refugees first came under discussion at the 117th and 118th meetings of the Third Session of the UN General Assembly –at the same session in which they were conducting an article by article analysis of the UDHR. Following the recommendation of UN envoy Folke Bernadotte that the UN take charge of refugees, the committee initiated a discussion regarding how best to provide aid. The meeting minutes of the 117th meeting recognize that the case of the Palestinian refugees had relevance to the universal declaration at hand. The minutes state, “the Third Committee was no longer faced with an abstract idea of humanity as described in the declaration of human rights, but with a specific case.”⁷⁷ The Arab-Israeli War presented the committee with an opportunity to move away from the abstract principles they were trying to uphold. They acknowledged that “those fine ideas and stimulating provisions had been violated in the most manifest fashion in the case of the

⁷⁴ David Gilmour, *Dispossessed: The Ordeal of the Palestinians, 1917-1980* (London: Sidgwick and Jackson, 1980), 68 and 69.

⁷⁵ Edward H. Buehrig, *The UN and the Palestinian Refugees: A Study in Nonterritorial Administration*, (Bloomington: Indiana University Press, 1971), 26.

⁷⁶ Benny Morris, *The Birth of the Palestinian Refugee Problem Revisited*, (Cambridge: Cambridge University Press, 2004), 39.

⁷⁷ U.N. General Assembly, 3rd Session. Third Committee. 117th Meeting, *Meeting Record*. 29 Oct. 1948 (A/C.3/SR117), 283.

Palestine refugees. That crime was being committed under the very eyes of the judges.”⁷⁸ The discussion centered around where best to procure funds from and how best to administer them. These sessions led to the development of a sub-committee to further explore the issue.⁷⁹

The sub-committee drafted a proposal for a relief program. After review by the General Assembly, the United Nations Relief for Palestine Refugees (UNRPR) was created on November 19th 1948.⁸⁰ The UNRPR was followed, in 1950, by the United Nations Relief and Works Agency (UNRWA). The UNRPR was funded by the UN’s Working Capital Fund and its member agencies. Their focus was on offering economic aid for the refugees. The UNRWA absorbed the works of the UNRPR and continues this work today.

The original United Nations mediator to Palestine, Bernadotte, who had recommended the refugees become a UN charge, wrote to the Assembly that the “choice is between saving the lives of many thousands of people now or permitting them to die.”⁸¹ The solution by the United Nations, to offer aid to the refugees but no permanent refuge, left hundreds of thousands of refugees in a limbo of sorts. Refugee camps still exist from the 1948 war, more than sixty years later. Today the UNRWA continues to provide “assistance, protection and advocacy for some 4.7 million registered Palestine refugees in Jordan, Lebanon, Syria and the

⁷⁸ U.N. General Assembly, 3rd Session. Third Committee. 117th Meeting, *Meeting Record*. 29 Oct. 1948 (A/C.3/SR117), 283.

⁷⁹ U.N. General Assembly, 3rd Session. Third Committee. 117th Meeting, *Meeting Record*. 29 Oct. 1948 (A/C.3/SR117), 279. And U.N. General Assembly, 3rd Session. Third Committee. 118th Meeting, *Meeting Record*. 30 Oct. 1948 (A/C.3/SR118), 304.

⁸⁰ The United Nations, *Yearbook of the United Nations 1948-1949*, 202.

⁸¹ Folke Bernadotte, United Nations, *Progress Report of the United Nations Mediator on Palestine*, 16 Sep. 1948, (A/648), 53.

occupied Palestinian territory, pending a solution to their plight.”⁸² No one was willing to take responsibility for the refugees and today these people continue to suffer.

Both Israel and the neighboring Arab states used the refugees “as a political pawn.”⁸³ Israel refused to let the refugees return, but later used them as a bargaining piece in attempts to gain a more favorable peace deal.⁸⁴ Despite UN sanctions asking for the repatriation of refugees, the official Israeli policy, as voiced by Prime Minister Moshe Sharett, remained as follows: “in the main a solution must be sought, not through the return of the refugees to Israel, but through their resettlement in other states.”⁸⁵ The Arab states in turn refused to absorb the refugees, hoping that Israel would eventually take them back and thus effectively “destabilize” the Jewish state. Stuck in the middle of a political battle between states, individual rights once again were disregarded.

Israel’s desire for a Jewish state left no room for the return of thousands of Arab refugees. In a memorandum to the United Nations Conciliation Commission for Palestine, the government of Israel wrote in July 1949:

The clock cannot be put back. Since this first arose, the Jewish population has increased by 50%. The question of housing the newcomers was partly solved by placing them into habitable houses in abandoned Arab towns and villages. Immigration continues at an average rate of 800 per day. These figures alone give clear indication that the individual return of Arab refugees to their former places of residence is an impossible thing. Not only can the whole Arab economic system not be simply restored because

⁸² The United Nations Relief and Works Agency for Palestine Refugees in the Near East, “About UNRWA,” <http://www.unrwa.org/etemplate.php?id=47>

⁸³ Quote from Mark Etheridge, Palestine Conciliation Commission, in *The Birth of the Palestinian Refugee Problem Revisited*, Benny Morris, (Cambridge: Cambridge University Press, 2004), 39.

⁸⁴ Benny Morris, *The Birth of the Palestinian Refugee Problem Revisited*, (Cambridge: Cambridge University Press, 2004), 551.

⁸⁵ Israeli Ministry of Foreign Affairs, *Memorandum to the United Nations Conciliation Commission for Palestine*, 8 Aug. 1949 (A/AC.25/IS.33).

its basis has practically disappeared; but also the physical return of the Arab middle-classes such as shopkeepers, tradesmen, free professions, has become a physical and geographical impossibility. Their houses have gone, their jobs have gone.⁸⁶

The Israeli Ministry of Foreign Affairs suggested resettlement in Arab countries as a solution more favorable than repatriation. The Arab countries were both unwilling and unable to commit to incorporation of the hundreds of thousands of refugees. Stubbornness on both sides coupled with the UN's inability to enforce its sanctions led to a stalemate on the issue. Concern for human rights soon fell to the wayside, as national concern overshadowed the desire to secure individual welfare. As the member states of the UN had not adopted a guarantee of the right to secure asylum, the UN put pressure on Israel in an effort to enforce the right of return, which had been established by the UDHR. The final language of articles 13 and 14 in the Declaration had a pivotal effect on how the countries involved in the Arab-Israeli War were framed. The UN recommended both repatriation and resettlement for the refugees, but, because of the influence of the UDHR, more strongly pushed Israel on the issue of repatriation.

The Arab-Israeli War clearly demonstrates the tragedy of not establishing definitive language to guarantee refugees asylum, but it also exhibits a clear dismissal of what rights had been guaranteed –specifically the right of return. The final debate over article 13 focused much attention on the right of return. The working draft of the Declaration guaranteed an individual's right to “to leave any country” and the final debate made a point to guarantee that an individual had the right to “leave any country, including his own, and to return to his country.” This right has been ignored for Palestinian refugees. Thousands of Palestinians fled their homes

⁸⁶ Government of Israel, *Memorandum to the United Nations Conciliation Commission for Palestine on Principles Guiding the Resettlement of Arab Refugees*, 28 July 1949, (A/AC.25/Com.Tech/8).

and were never allowed to return. The newly declared State of Israel was threatened by the idea of thousands of Arabs returning to the area, and refused to let them back. In August 1948 they began implementing an official anti-repatriation policy. This included destroying or occupying Palestinian homes and villages.⁸⁷

On December 11th 1948 the United Nations passed Resolution 194 on Palestine. The resolution lays out a number of guidelines for the situation in Palestine, perhaps most notably, the resolution calls for a return of the refugees to their homes: “[The General Assembly] *Resolves* that the refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date.”⁸⁸ This direct urging, as well as its backing principle, Article 13 in the UDHR, officially adopted one day prior on December 10th, 1948, was disregarded by the State of Israel. Israel adamantly refused to repatriate the refugees, and the UN was in no position to force them to do so. Resolution 194 was the first of many UN resolutions urging Israel to acknowledge the refugee's right to return. In following years, the UN would continue to sanction Israel, petitioning them to repatriate the Palestinian refugees. The UN annually renews Resolution 194, and continues to ask Israel to "affirm the inalienable rights of all inhabitants who had left their homes as a result of the outbreak of hostilities in the Middle East to return home, resume their normal life, recover their property and homes, and rejoin their families according to the provision of the Universal Declaration of Human Rights."⁸⁹ The way in which the articles in the UDHR were affected by the conflict between sovereignty and individual rights shaped the way the 1948 Arab-Israeli War

⁸⁷ Ilan Pappé, *A History of Modern Palestine: One Land, Two Peoples* (Cambridge: Cambridge University Press, 2006), 145.

⁸⁸ U.N. General Assembly, *Resolution 194*, 11. Dec 1948 (A/RES/194(III)).

⁸⁹ U.N. General Assembly, *Committee on the Exercise of the Inalienable Rights of the Palestinian People*, 11 March 1976 (A/AC.183/L.3).

was dealt with. The UN has also urged Arab states to consider officially resettling Palestinian refugees, but has done so without the backing of the UDHR, and with less force than with which it has approached Israel.

Despite UN sanctions, the urgency of the Palestinian refugee problem soon faded from international attention. Though the United Nations initially approached the Arab-Israeli conflict with a fervent desire to broker peace and implement the rights in the UDHR, “in the end, all the parties, including Israel, accommodated themselves to the stalemate of an armistice policed by the UN peacekeepers.”⁹⁰ This change in attitude applied to the refugee situation as well. The UN quickly went from trying to resolve the problem to simply sustaining the refugees as they were. This attitude was especially apparent throughout early 1949, when the UN began discussing Israel’s application for UN membership. Just months after the adoption of the UDHR and the issuing of Resolution 194, UN member states showed little compulsion to abide by the principles to which they had agreed. The Arab states made strong objections to Israel’s admission, specifically due to Israel’s non compliance with the refugee situation. Fawzi Bey of Egypt did not support Israel’s application and mentioned the rights given to the refugees by the UDHR: “Were those refugees not human beings? Did not a Universal Declaration of Human Rights exist?” The Saudi Arabia delegation agreed with Bey: “It would be unwise to admit [Israel] . . . They had carried out acts of terrorism at the very moment when certain democratic States were promoting the adoption of the Universal Declaration of Human Rights and were about to sign the Convention on Genocide. . . . Despite those facts, some Members still considered the applicant a peace-loving State.” As Bey states, despite Israel’s non-compliance

⁹⁰ Nathan Pelcovits, *The Long Armistice: UN Peacekeeping and the Arab-Israeli Conflict, 1948-1960* (Boulder: Westview Press, 1993), 7.

with the UDHR and subsequent UN sanctions, the majority of the member states argued to admit Israel into the UN. Warren Austin of the US summed up the majority opinion by agreeing that Israel needed to abide by the UN resolution, but he nonetheless thought that “the long discussion of Israel's application was evidence of the general deep-rooted desire for a just solution of questions relating to Palestine, and especially those of Jerusalem and the Arab refugees,” and in light of that “the United States delegation, together with the large majority of members of the Security Council and of the *Ad Hoc* Political Committee, considered that Israel fulfilled the requirements of [membership].”⁹¹ The Arab States, with their concerns regarding Israel and the refugee crisis, were hugely outnumbered. Israel was admitted as a member to the UN on May 11th 1949.⁹²

In a somewhat hollow gesture towards a conclusion of the conflict, the UN continues to request Israel's repatriation of the refugees, and Israel continues to ignore this request.⁹³ The State of Israel actively ignores individual rights in favor of its own national agenda. At the same time, Arab states refuse refugees citizenship, denying them both the right to true asylum and the right to nationality. The refugee tragedy stemming from the 1948 Arab-Israeli War exemplifies the tenuous relationship between the rights and interests of nation states and those of individuals. Both in theory and in practice, nation states infringe upon individual rights for their own benefit. Regardless of the progress made in international policy, or the promulgation of rights' declarations and conventions, the rights of the individual are not secure.

⁹¹ U.N. General Assembly, 207th Plenary Meeting, *Meeting Record* 11 May 1949 (A/PV.207).

⁹² U.N. General Assembly, 207th Plenary Meeting, *Meeting Record* 11 May 1949 (A/PV.207).

⁹³ David Gilmour, *Dispossessed: The Ordeal of the Palestinians, 1917-1980* (London: Sidgwick and Jackson, 1980), 75.

Conclusion

Both the drafting of the UDHR and the Arab-Israeli war exhibit the repercussions of the tension between state power and individual rights. Despite the ambitious and humanitarian intentions following WWII, numerous factors mitigated the more humanitarian goals of the international community. In his larger text on the UDHR, Johannes Morsink mentions that “the lesson learned from the Holocaust was lost in the disagreements about what to do about the half million refugees created by the 1948 Arab-Israeli war.”⁹⁴ Morsink briefly suggests that the concerns of the Arab states were the cause behind the change in language in the UDHR. However, he glosses over the fact that the most vocal advocates for changing the provisions of the asylum article were western nations, such as the United States and the United Kingdom. These nations did not experience the same potential affect of the unfolding Arab-Israeli refugee crisis, yet remained adamant about not guaranteeing refugee asylum.

Still, the UN discussions of the refugees from the Arab-Israeli war do illustrate the way the conflict between state interests and individual interests within the UDHR played out. Yet, the two events are not tied as intimately as Morsink implies. Because of the simultaneity, it is tempting to see a direct correlation between the drafting of the UDHR and the events of the Arab-Israeli War. That is, either the refugee crisis shaped the debates and final articulation of rights, or the UN’s growing concern for human rights led the institution to address the Palestinian refugee crisis in ways in line with the UDHR. While the Arab-Israeli War was a legitimate crisis of human rights with which the UN and its member states were confronted just

⁹⁴ Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting and Intent*, (Philadelphia: University of Pennsylvania Press, 1999), 78.

as they were attempting to articulate universal rights for individuals, the war actually illustrates the inherent contradiction of a community of nation states charged with the security of universal individual rights. States hold the power to ensure rights, but have rarely demonstrated the motivation to uphold them when worse comes to worst. Consequently, Article 14 of the UDHR was passed without firm language asserting the right of refugees “to be granted” asylum, instead they were left with the right simply “to seek and to enjoy” asylum. Other articles, like Article 13 regarding the right to asylum, which were passed with firmer language have simply been ignored. And 4.7 million Arab-Israeli refugees continue to live a troubled and stateless existence.

However, over the long-term, the articles in the UDHR and the particular ways in which they articulated this tension between sovereignty and individual rights have shaped the way the 1948 Arab-Israeli War has been approached. Because of the way national sovereignty reigned in the UDHR debates, the right to asylum was not assured, yet the right to return was. Because of this, the UN and a host of others have been able to use the UDHR as a tool to put pressure on Israel to allow the return of refugees to their land. At the same time, the UDHR does not serve to urge the Arab states to grant these same refugees asylum. This is evident within the UN discussions and ensuing measures, such as Resolution 194 of 1948. The issue of granting asylum (or not) and the right of return established an intellectual framework for how the states involved with the Palestinian refugees would be regarded.

The UN’s entrenched involvement in the Arab-Israeli War, as well as the timing of the conflict –just as the delegates were in the end stages of drafting the UDHR—make the War a particularly interesting example. The Arab-Israeli War and the ensuing refugee crisis not only

demonstrate the conflict between nations and individuals, but the way in which the UN and the international community approached the situation was shaped by the promulgation of the UDHR. Because of the principles within the Declaration, pressure remains on Israel to rectify the refugee crisis. Arab states continue to offer refuge to millions of Palestinians, but refuse full asylum or citizenship. The simultaneity of the conflict and the Declaration affected the way in which the crisis has been, and is, managed.

The impasse demonstrated in the examples of both the UDHR drafting and the Arab-Israeli War are particularly relevant today, in a world where states increasingly restrict the provisions for refugees in favor of ensuring state security and national sovereignty. Erika Feller and Volker Türk write that:

Security concerns since the attacks in the United States on 11 September 2001 dominate the debate, including in the migration area, and have at times overshadowed the legitimate protection interests of individuals. A number of countries have, for instance, revisited their asylum systems from a security angle and have in the process tightened procedures and introduced substantial modifications.⁹⁵

State concerns, from Palestinian refugees to modern-day terrorists, have often overshadowed the rights of individuals. Especially in the era of terrorism, when national security is heightened around the world and immigration is continuously being restricted, refugee rights and their history are important.

In the case of the UDHR, refugee protections were marginalized in favor of state protection. Before the Universal Declaration of Human Rights was complete, the Arab-Israeli War played out the conflicts between national and individual rights that the drafters faced.

⁹⁵ Erika Feller and Volker Türk, *Refugee Protection in International Law: UNCHR's Global Consultations on International Protection*, (Cambridge: Cambridge University Press, 2003), 5.

What was a momentous Declaration has become little more than a theoretical nod to individual rights —rights which do not actually play out on the international field. This deep-rooted tension prevents individuals from truly having these rights guaranteed.

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APPENDIX – Articles 13, 14, and 15 of the Universal Declaration of Human Rights

Article 13

- (1) Everyone has the right to freedom of movement and residence within the borders of each state.
- (2) Everyone has the right to leave any country, including his own, and to return to his country.

Article 14

- (1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.
- (2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15

- (1) Everyone has the right to a nationality.
- (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.