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Summary

The issue with the Palestinian refugees is one of the world's longest standing refugee problems. After the American invasion of Iraq in 2003, the Palestinians living there have been targeted for gross human rights abuses including kidnappings, torture and killings. This has led to a mass flight of Palestinians out of Iraq. The problem for this group of refugees is that they have not been accepted in the neighbouring countries. This in turn has led to the establishment of several refugee camps along the Syrian-Iraqi border. The camp of Al-Hol is situated on the Syrian side of the border, the camp of Al-Waleed camp is on the Iraqi side and the camp of Al-Tanf is normally referred to as being located in the "no-mans-land" between the Syrian and the Iraqi border posts.

In this essay, this issue is being examined and the relevant legal regimes are being applied to the situation in Al-Tanf. As the relevant States for many different reasons are not accepting their responsibility for the Palestinian refugees, the international community takes a subsidiary responsibility in order to assist in the plight of these displaced persons.

The United Nations High Commissioner for Refugees and the United Nations Works and Relief Agency for Palestine Refugees in the Near East have different areas of operation and the mandates of the two organisations are examined in the light of the situation with the Palestinian Iraqi refugees. As the situation in Iraq is still not considered to be safe enough for Palestinians and because Israel is preventing their return to the Palestinian Occupied Territories, the only viable solution is resettlement in a third country.

Sweden is one of the countries that are accepting Palestinian Iraqi refugees within the framework for its refugee quota. More than 150 refugees were resettled in Sweden in 2008 and an additional 450 persons are to be included in the 2009 refugee quota. The problem is that Sweden is not accepting resettling of the refugees in Al-Waleed where the conditions are judged to be the toughest out of the three camps. This is because Al-Waleed is situated in Iraq and thus the refugees are not outside their usual place of residence, which is a requirement in order to apply for asylum according to the Swedish Aliens Act. Unfortunately, the fact that the refugees still are inside Iraq also means that they are in an extremely vulnerable situation as the Iraqi authorities have not been able to grant their safety.

Sammanfattning

Den palestinska flyktingsituationen är ett av världens längst varande flyktingproblem. Efter den amerikanska invasionen av Irak 2003 har palestinerna som lever där utsatts för svåra kränkningar mot de mänskliga rättigheterna, bl. a. genom kidnappningar, tortyr och mord. Detta har i sin tur lett till en palestinsk massflykt från Irak. Problemet för denna flyktinggrupp är att de inte har accepterats av grannländerna och detta har lett till en etablering av flera flyktingläger längs den syrisk-irakiska gränsen. Lägren Al-Hol är placerat på den syriska sidan av gränsen, lägret Al-Waleed ligger på den irakiska sidan medan lägret Al-Tanf allt som oftast sägs vara placerat i det så kallade ingenmanslandet mellan de syriska och irakiska gränsposteringarna.

I den här uppsatsen undersöker jag de relevanta rättsregleringar som tillämpas på situationen i Al-Tanf. Eftersom de berörda staterna av flera olika anledningar inte accepterar sitt ansvar för de palestinska flyktingarna måste det internationella samfundet axla ett subsidiärt ansvar för att kunna hjälpa dessa flyktingar i deras svåra situation.

Förenta Nationernas Flyktingkommissariat (UNHCR) och dess palestinska flyktingorgan (UNRWA) har skilda områden och mandat och dessa undersöks i ljuset av situationen med de palestinska flyktingarna från Irak. Eftersom situationen i Irak fortfarande inte anses vara säker nog för palestinier att återvända till, och eftersom Israel hindrar dem från att återvända till de Ockuperade Palestinska Områdena, är den enda återstående lösningen att vidarebosätta de palestinska Irakflyktingarna i ett säkert tredje land.

Sverige är ett av de länder som tar emot palestinska Irakflyktingar inom ramen för sin flyktingkvot. Fler än 150 personer blev vidarebosatta i Sverige under 2008 och ytterligare 450 ingår i 2009 års flyktingkvot. Problemet är att Sverige inte accepterar vidarebosättning av flykting från lägret Al-Waleed där förhållandena anses vara de svåraste av de tre lägren. Detta beror på att Al-Waleed är placerat på den irakiska sidan av gränsen och därför anses flyktingarna inte vara utanför det land där de haft sin vanliga vistelseort, vilket är ett krav för att kunna söka asyl i Sverige enligt Utlänningslagen. Dessvärre så innebär det faktum att flyktingarna fortfarande befinner sig inom Iraks gränser även att de är i en extremt sårbar position eftersom de irakiska myndigheterna inte kan garantera deras säkerhet.

Abbreviations

CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CESR	Convention on Economic and Social Rights
CSSR	Centre for Strategic Studies and Research, Damascus University
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on Ethnical and Racial Discrimination
ICJ	International Court of Justice
UNHCR	United Nations High Commissioner for Refugees
UNUDHR	United Nations Universal Declaration on Human Rights
UNRWA	United Nation Relief and Works Agency for Palestinian Refugees in the Near East
MNF	Multi National Forces

1. Introduction

“The twice-displaced Palestinian refugees are one of the worst-off groups in a country full of desperate people. ... They have no country to go to, no valid travel documents, no protectors inside Iraq, and hardly anyone prepared to support them outside either. ... It is to everyone’s dishonor that these human beings are still rotting [in border camps] and - worst of all - in Baghdad where one or more is being murdered virtually every day.”¹

The conditions in which the Palestinian refugees in the camps on the Syrian-Iraqi border are living are extremely bad. In this situation is contained not only their isolation and the inferior conditions at the camps but also the hopelessness as they cannot return to Iraq and at the same time are denied entry into Syria. Refugees have been gathering in the camps along the Syrian border for several years but have not until now gained the attention of the world.

I first heard about the camps in the autumn of 2008 when I was researching for possible subjects for my master thesis. After reading an article in UNHCR’s magazine *Refugees*, I got very upset to find out that some of these people had been living in the camp in “no-mans-land” for several years. Many questions arose about the peculiar location of the refugee camp.

According to Article 14 of the Universal Declaration of Human Rights, everyone who is persecuted has the right to seek and to enjoy asylum. How can that right be upheld in a no-mans-land? As these refugees are not admitted into Syrian territory, does that mean that they are being refouled at the border? As the refugees cannot access Syrian territory nor return to Iraq, are they then being detained in the no-mans-land? How does this detention and uncertain future affect the children of Al-Tanf? I had many questions and started to conduct research, both in written form and from people who were working with this particular issue at the UNHCR, the UNRWA and the Swedish Board of Migration.

The more I researched the more complex the situation grew. No one seemed to really know what the legal situation of these camps was. My main task would be to establish where the Al-Tanf camp actually is situated. I traveled to Damascus in order to gather information from people who were working with the camps. I also hoped to be able to visit the Al-Tanf camp but due to the sensitivity of this issue in Syria, I could not get permission to travel to the camp. Going to Damascus was very valuable for my over all understanding of the issue even though it would have been even better to

¹ Rupert Colville, “How the World has turned its Back on the Palestinian Refugees in Iraq,” in: *Refugees*, No. 146, Issue 2, 2007, p. 24, http://www.unhcr.fi/Pdf/publications/nr_146_2007.pdf

also visit the camp. I have been conducting interviews with officials from both the UNHCR and the UNRWA in New York as well as in Damascus. Because of the sensitivity of this question, I had to promise some of my sources that they would remain anonymous and that is the reason why I sometimes only refer to “UN-officials”. I also interviewed the director of the Centre for Strategic Studies and Research at Damascus University in order to get the Syrian point of view.

However, my time in Damascus was rather complicated, and I quickly realised that the issue with Palestinian refugees is above all a political one. It was very hard to get accurate information, if any information at all. Even from the agencies that are working with the refugees in the camps, the information I received differed considerably. I have been using information from the UN-agencies, the Swedish embassy, the Swedish Board of Migration, different human rights organisations, NGO:s and the Centre for Strategic Studies and Research and piece by piece I have put the information together to get a fuller picture of the legal situation of the stateless Palestinian refugees from Iraq.

Even though the issue with Palestinian refugees often is regarded as a political question, I wanted to look at it from a different angle. I did not want to accept the referral to a “no-mans-land” and I have been trying to establish State responsibility through a human rights perspective. I have examined different human rights treaties and other relevant documents in order to establish State responsibility for the breaches of the Palestinian refugees’ human rights. I have also examined the grounds for a subsidiary responsibility within the United Nations and alternatives for a lasting, viable solution outside the refugee camps. The Swedish refugee quota has been examined in the light of the situation with the internally displaced refugees in Al-Waleed.

As already mentioned, this has not been an easy task as information has been difficult to access. Despite this, I am very grateful for the opportunity to conduct a field study in Syria as this has given me extra compassion, commitment and dedication for the subject.

2. Background

In early 1947, the British Government announced its desire to terminate the Mandate Palestine. They then passed the responsibility of Palestine over to the United Nations. In November 1947, the General Assembly adopted a resolution² in which it recommended a partition plan that provided for the termination of the Mandate. This was supposed to lead to the progressive withdrawal of British armed forces and the creation of two states in Palestine. The adoption of the resolution led to an outbreak of violence in various parts of Palestine. In May 1948, the day after the last British troops had left; Israel proclaimed a Jewish state and a full-scale war broke out as a number of Arab States joined the conflict. The war lasted for about a year and when it was over, Israel was in control of most of the territory of the former Mandate Palestine. Some 750 000 Palestinians had fled their homes and lived in makeshift camps in the Gaza Strip, the West Bank, Jordan, Lebanon and Syria.³

2.1 Palestinian refugees

The Palestinian exodus began in the period between 1947 and March 1948 with the departure of many of the country's upper and middle class families. The first wave numbered several tens of thousands. The situation changed dramatically in the end of March 1948 following the Jewish conquest of a large number of Arab-populated areas.⁴ The displacement of refugees reached its peak between April and August 1948. The outcome was that almost half of all Palestinians, between 600,000 and 700,000, were made refugees.⁵

The refugees from the war in Palestine in 1948 constitute one of the largest and most enduring of the world's refugee problems. The great majority of those who fled found refuge in the neighboring states. That is also where they and their descendants live to this day, many still in refugee camps in Jordan, Syria, Lebanon, the West Bank and the Gaza Strip.

The Palestinian refugees differ in many ways from other groups of forced migrants as their flight coincided with the establishment of another State on the territory from which they originated.

² United Nations General Assembly Resolution 181, November 29, 1947, <http://domino.un.org/UNISPAL.NSF/181c4bf00c44e5fd85256cef0073c426/7f0af2bd897689b785256c330061d253!OpenDocument>

³ Takkenberg, "The status of Palestinian refugees in international law", pp. 12-13, Clarendon Press, Oxford, 1998.

⁴ Morris, "1948 and after", p.223, Clarendon Press, Oxford, 1990.

⁵ Morris, "The birth of the Palestinian refugee problem, 1947-1949", pp. 297-298, Cambridge University Press, 1987.

2.2 Palestinian refugees in Iraq

After the 1948-49 war, approximately 5,000 Palestinians took refuge in Iraq. They were to be followed by another group who fled the Occupied Territories, mainly in 1967, as a result of the third Arab-Israeli war. They were later followed by a third group who moved from the Gulf countries in the nineties after the 1991 War when Yasser Arafat's public support for the Iraqi invasion of Kuwait inflamed anti-Palestinian sentiments in Kuwait. A significant number of Palestinians from Kuwait resettled in Iraq. As Iraq, for some time after the war, continued to view Kuwait as one of its provinces, Palestinians from Kuwait had unlimited access to the country.⁶ Unlike Jordan, Syria, Lebanon and Egypt, Iraq did not sign an agreement with the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) preferring instead to address the assistance needs of the Palestinian refugees itself.

According to the UNHCR there were 34,000 Palestinians living in Iraq at the time of the American invasion in 2003.⁷

2.2.1 The situation for Palestinian refugees in Iraq, 1948 – 2003

The Palestinian refugees in Iraq were never formally recognised as refugees by the Iraqi government. However, they were protected by the Iraqi authorities based on resolutions of the League of Arab States and especially the 1965 Protocol for the Treatment of Palestinians in Arab States, the so-called Casablanca Protocol. Iraq has not ratified the 1951 Convention relating to the Status of Refugees and the Iraqi governments have not granted Palestinians refugee status or citizenships and also barred them from owning houses or land.

However, prior to the US-led invasion of Iraq in 2003 Palestinians had relatively good access to services. They were taken care of by the Iraqi government which provided special travel documents for Palestinian refugees to all Palestinians living in Iraq. Iraqi nationality legislation also provided Palestinians with preferential treatment in respect of naturalisation.⁸ They were allowed to work and had full access to social services, including health and education. Most Palestinians lived in state-owned apartments provided by the Iraqi authorities. Others lived in privately-owned apartments but their rent payments were subsidised by the Iraqi authorities. Some Iraqi owners of such apartments were said to have

⁶ Takkenberg (1998), p. 155.

⁷ UNHCR, UNHCR concerned about situation of Palestinians on Iraq border, March 18 2009, <http://www.unhcr.org/cgi-bin/texis/vtx/iraq?page=news&id=47df514>

⁸ Ibid., p.154.

been forced by the government to rent them cheaply so that the Palestinians could live in them.⁹

2.2.2 The situation for Palestinian refugees in Iraq after 2003

Palestinian refugees in Iraq have been targeted for gross human rights violations since the American invasion in March 2003. They have been threatened, abducted, tortured and killed mainly by Shi'a armed militia groups like the Mahdi Army but also by Iraqi government forces.¹⁰ The bodies of those abducted and killed were often found mutilated or with marks of torture. The Palestinians have been targeted because of their ethnicity but also because they are reputed to have received preferential treatment under the former government headed by Saddam Hussein. As a result of the persecution, thousands have fled their homes after they or their relatives suffered abuses or received death threats.¹¹

The situation of Palestinians worsened considerably after the bombing of the Shi'a holy shrine in Samarra on 22 February 2006, for which no group has claimed responsibility. The attack triggered sectarian violence in Iraq between Shi'a and Sunni Muslims, which led to the killing of thousands of civilians. Palestinians were not spared. On the contrary, hatred of them increased and they suffered numerous attacks in the weeks and months following the bombing.¹²

According to the UNCHR there are currently 12, 500 Palestinians living in Iraq,¹³ the vast majority in Baghdad, but some in Mosul and Basra as well.

⁹ Amnesty International, "Iraq: human rights abuses against Palestinian refugees", p. 5, October 2007, AI Index: MDE 14/030/2007, <http://www.amnesty.org/en/library/info/MDE14/030/2007>

¹⁰ Human Rights Watch, "Nowhere to flee – the perilous situation of Palestinian refugees in Iraq", Vol. 18, No. 4(E), <http://www.hrw.org/reports/2006/iraq0706/iraq0706sumandrecs.pdf>

¹¹ Amnesty International, "Al-Tanf Camp, Trauma Continues For Palestinians Fleeing Iraq", April 2008, AI Index: MDE 14/012/2008, <http://www.amnesty.org/en/library/info/MDE14/012/2008/en>

¹² Amnesty International, "Iraq: human rights abuses against Palestinian refugees", p. 6, October 2007, AI Index: MDE 14/030/2007, <http://www.amnesty.org/en/library/info/MDE14/030/2007>

¹³ UNHCR, "Iraq Operation, At A Glance", January 2009, <http://unhcr.org.iq/IndexPageFiles/Stories/20090209/AtAGlanceJanuary09.pdf>

2.3 Iraqi refugees in Syria

Jordan and Syria are the countries with the largest groups of Iraqi refugees on their territories. Since the American invasion of 2003, there has been a steady influx of Iraqis into Syria. UNHCR estimates that the peak was reached in the summer of 2006 with approximately 1.5 million Iraqis residing in Syria. The social infrastructure and economy of Syria have been strained to breaking points as it copes with the massive displacement from Iraq without adequate help from the international community.¹⁴ As a consequence, Syria has introduced visa restrictions for Iraqis.

According to the Syrian visa regulations which came to force in October 2007, there are fourteen categories of Iraqis that are allowed entry or residence visas for Syria. The majority of Iraqis obtain their visas because they either have their children registered in Syrian schools, they suffer serious medical conditions or they are registered with the Iraqi Chamber of Commerce. Iraqis can usually obtain a temporary residence permit of three months and this can be renewed by the immigration department. The risk of being deported increases for the refugees who do not have any documents, have entered Syria illegally or have committed any kind of criminal acts.¹⁵

Due to the recovering security situation in Iraq and the new visa requirements for Iraq citizens the number of Iraqis registered with the UNHCR was 225,530 in January 2009.¹⁶

2.4 Palestinian refugees from Iraq

The Syrian authorities have been very generous towards refugees fleeing Iraq but are generally not willing to accept Palestinian refugees. Palestinian refugees from Iraq are not allowed to enter into Syria at all. Despite this, some managed to enter Syria using falsified Iraqi passports before the visa requirement was introduced. According to UNRWA, there were in June 2008 4,005 Palestinian refugees from Iraq in Syria which had approached UNRWA and received temporary eligibility cards in order to be entitled to UNRWA services.¹⁷ This group has entered Syria irregularly and does not have a legal status in the country and thus they fear deportation.

Because of the Syrian refusal to accept the Palestinian refugees from Iraq, three Iraqi-Palestinian refugee camps have been established on or

¹⁴ UNHCR, "Iraq situation, UNHCR Global Appeal 2008-2009", <http://www.unhcr.org/home/PUBL/474ac8d811.pdf>

¹⁵ UNHCR, "Syria Update", February 2009, http://www.un.org.sy/forms/publications/files/UNHCR_Syria_Update_February_2009.pdf

¹⁶ *Ibid.*

¹⁷ "UNRWA services to Palestine refugees from Iraq", UNRWA's Syria Field Office, 9 June 2008.

close to the Syrian-Iraqi border which have been in use since 2006. As the locations of the camps are within different jurisdictions, the situation varies from camp to camp. A total of about 2700 refugees are currently living in these makeshift camps. In two of the camps, the refugees are in a particularly vulnerable situation because of their non-admission into Syrian territory.

2.4.1 Al-Hol

The camp of Al-Hol is located on the Syrian side of the border. It was the first camp to be established in 2005 when the Syrian Government allowed a group of 286 Palestinians stranded on the Jordanian border to enter Syria. There are currently 380 people living in the Al-Hol camp.¹⁸ This group enjoys relative safety and receives basic assistance but their freedom of movement is limited. They depend on humanitarian aid and it is not yet clear what legal status they will be granted in Syria. Some of them have close relatives lawfully residing in Syria and will hopefully be authorized to join them.¹⁹

The children in Al-Hol are sent to nearby Syrian schools and can go to local doctors for treatment. They stay in the camp during the evening, but during the day they can move freely in the area.²⁰ Out of the three camps, Al-Hol clearly provides for the best living conditions.

2.4.2 Al-Tanf

The Al-Tanf camp is usually referred to as being located in the no-mans-land between the Iraqi and Syrian border posts. The camp was established in May 2006 when a group of 389 Palestinians fleeing persecution in Iraq went to the Syrian border and was refused entry by the Syrian authorities. The camp continues to expand as some of the Palestinians who used falsified passports to enter Syria illegally are being deported to the camp or even chose to voluntarily leave for Al-Tanf.²¹

Since October 2007, when the population was about 350, all new arrivals are Palestinians who have been residing in Syria with Iraqi

¹⁸ As of 31 January 2009.

¹⁹ UNHCR, "Aide-mémoire, Protecting Palestinians in Iraq and Seeking Humanitarian Solutions for Those Who Fled the Country", <http://www.unhcr.org/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=SUBSITES&id=45b9c1672>

²⁰ Amnesty International, "Iraq: human rights abuses against Palestinian refugees", p. 14, October 2007, AI Index: MDE 14/030/2007, <http://www.amnesty.org/en/library/info/MDE14/030/2007>

²¹ Amnesty International, "Al-Tanf Camp, Trauma Continues For Palestinians Fleeing Iraq", April 2008, AI Index: MDE 14/012/2008, <http://www.amnesty.org/en/library/info/MDE14/012/2008/en>

documents obtained fraudulently and who have been deported or left voluntarily to the Al-Tanf Camp.²² As of 31 January 2009, the population of the camp is 852 people. The living situation in the camp is very hard and hazards include extreme temperatures, floods, fires, inadequate medical facilities and accidents caused by passing trucks. Two young boys have been killed by trucks, one person died out of kidney failure and one pregnant woman was killed in a tent fire.²³

2.4.3 Al-Waleed

Al-Waleed is located in Iraq only a couple of kilometers from the Syrian border and was the last of the three camps to be established when the Syrian border was closed for Palestinian refugees from Iraq.

Despite Syria's closure of its border to new Palestinian arrivals in May 2006, Palestinian refugees have continued to move towards the Syrian border. The Syrian Government stopped admitting Palestinians into Al-Tanf, in the so-called no-mans-land in December 2006. This move initiated the creation of the Al-Waleed site that has become a de facto camp for Palestinian refugees in the Iraqi border area. At present there are 1,473 individuals in the Al-Waleed camp. Many of the refugees in Al-Waleed have family members living in Al-Tanf. The medical condition of the refugees continues to deteriorate because of their limited access to medical assistance. The Al-Waleed camp receives little assistance and few services because of the difficulty of access for international organisations and the poor security conditions in the Anbar Province.²⁴

Like Al-Tanf, it is located along the highway and has the added disadvantage of being close to a Multi-National Forces military base. Conditions in the camp have been extremely poor but the UNHCR has just facilitated the transfer of the residents to a new camp on the other side of the highway. Despite the bad condition of the camp the biggest problem with Al-Waleed is that it is in Iraq, where Palestinians remain highly vulnerable to violence from militias and the government.

²² UNHCR "Syria Update, November 2008", <http://unhcr.org/news/NEWS/4926c9d52.pdf>

²³ UNHCR "Syria Update, February 2009", http://www.un.org.sy/forms/publications/files/UNHCR_Syria_Update_February_2009.pdf

²⁴ UNHCR "Syria Update, November 2008", <http://unhcr.org/news/NEWS/4926c9d52.pdf>

3. The question of jurisdiction over Al-Tanf

The Al-Tanf camp is built on a short and narrow strip of sand and is located in the desert, approximately 300 kilometres from Damascus. On one side is the busy highway that leads into Iraq and on the other side is a wall separating the camp from a Syrian militarised zone. At one end of the camp is the Iraqi border post and at the other end is the Syrian border post. The refugees in the camp are not able to leave since they cannot enter either country. The location of the camp seems to be completely unsuitable for any kind of human habitation.

What makes the Al-Tanf camp especially interesting compared to the other camps along the Syrian border is the fact that the location of the camp always is referred to as in “no-mans-land”. According to international law, there is nothing like such a definition. All borders should be defined and clear as long as there is no border dispute. Deciding where the Al-Tanf camp is located is necessary in order to decide what legal regime and human rights conventions are applicable.

3.1 Border

The border between Iraq and Syria was demarcated by Britain and France after the end of the First World War. The borders established by colonial rule in the Middle East have historically been rather weak and have not been under a very strict control. The border between Iraq and Syria is not an exception. After the Iraqi border post at Al-Waleed there is a buffer zone of seven kilometers in length before we find the Syrian border post of Al-Tanf. The area where the Al-Tanf camp is situated is in this area and the camp is usually referred to as being located in no-mans-land. The area between the border posts is said to be jointly shared and administered by the two concerned governments.²⁵

There are many conflicting opinions about what is really happening in the border area and which country actually is exercising jurisdiction in the buffer zone between Iraq and Syria. Syria is said to have administrative sovereignty over the half closest to its border post, where the refugee camp is located. According to the UNHCR, the border between Syria and Iraq remains to be officially demarcated but the stretch of land where the Al-Tanf camp is located should be perceived as Syrian territory.²⁶

²⁵ Interview with a UNHCR official, December 2008.

²⁶ *Ibid.*

3.2 Jurisdiction

The term jurisdiction is most often used to describe the lawful power of a State to define and enforce the rights and duties, and control the conduct, of natural and juridical persons.²⁷ In its broadest sense, the jurisdiction of a State may refer to its lawful power to act and hence to its power to decide whether and how to act. By establishing rules, the State exercises its jurisdiction. This is sometimes called the exercise of legislative jurisdiction or prescriptive competence.²⁸

The land areas of the world today nearly all belong to the territory of States. These areas have been completely divided among States by the drawing of boundaries. As a rule, any given territory belongs to only one State. Cases of territory belonging to two or more States are rare.²⁹ Boundaries are permanent lines dividing spheres of *de jure* jurisdiction. The boundary circumscribes the outer limit of territorial sovereignty. There is, under general international law, no such concept as frontier zones where a State is subject to specific limitations.³⁰

It is wrong though to maintain that territory constitutes the limit of absolute validity of the State's legal order. Each State enjoys territorial powers with extra-territorial effects or even extraterritorial powers, some in foreign territory and some in spaces not subject to the jurisdiction of any State. Territory is both a physical and a legal reality.³¹

3.2.1 The exercise of jurisdiction in Al-Tanf

Many incidents point to the conclusion that the Al-Tanf camp is situated on Syrian territory or at least under Syrian jurisdiction. For example, the UNHCR only needs permission from the Syrian authorities to get to the camp. When traveling to Al-Tanf, the UNHCR staff does not get a departure stamp from Syria. According to the UNHCR, there is also no need for Iraqi authorities to issue permission if traveling from the Iraqi side. When accidents, such as traffic accidents and fires, have occurred inside the Al-Tanf camp, investigations have been conducted by Syrian authorities and been settled in Syrian courts. That is a strong indication of Syria being in *de facto* control of the area where the camp is located.

²⁷ Bernard H. Oxman, "Jurisdiction of States", in: R. Bernhardt (ed.), *Encyclopedia of Public International Law*, Volume III (1997), p.55.

²⁸ *Ibid.*

²⁹ Michael Bothe, "Boundaries", in: R. Bernhardt (ed.), *Encyclopedia of Public International Law*, Volume I (1992), p.443.

³⁰ *Ibid.* p.447.

³¹ Santiago Torres Bernardéz, "Territorial sovereignty", in: R. Bernhardt (ed.), *Encyclopedia of public international law*, Volume IV (2000), p. 826.

According to a source at the UNHCR³², there is an agreement between Iraq and Syria concerning the code of conduct in the camp. For example, no weapons should be carried inside the camp and if the Iraqi authorities are going in to Al-Tanf they need to notify the Syrian authorities and vice versa. This could imply that there is no established border and that none of the countries seem to consider the area where the refugee camp is situated as its territory. There are indeed incidents indicating that Syrian authorities in an arbitrary manner sometimes chose to practice jurisdiction over the Al-Tanf camp. This stands against unconfirmed information from UNHCR-officials that Iraqi soldiers and security apparatus have been inside the Al-Tanf camp in 2007 and that an American helicopter has been circulating over the area without any Syrian response. These days, the security situation in Al-Tanf seems to be under control and no such incidents have been reported since 2007.³³ According to the same UN-official, Syria has expressed that it does not consider Al-Tanf being on Syrian territory but under the Syrian “sphere of influence”.

The situation with the refugees in Al-Tanf clearly constitutes of a very peculiar situation. According to Dr. Sameer Ismael, Director of the Centre for Strategic Studies and Research at Damascus University (CSSR), the border area is sometimes seen as Iraqi territory and sometimes as Syrian territory. The actual refugee camp of Al-Tanf seems to be considered to be under Syrian jurisdiction by the authorities as it is supervised by the Syrian government. The Syrian authorities allow the UN to provide assistance and resettlement for the refugees in the camp. The inhabitants of the camps are completely dependent on UN assistance.

3.3 Conclusions

There is still uncertainty regarding the location of the actual border at Al-Tanf and because of that, the territorial question cannot be completely established. It is evident though that Syria exercises a de facto jurisdiction over the Al-Tanf camp. The fact that the Syrian authorities are the ones handling the permissions for visiting the camp in combination with the investigations of the deaths in the camp proves that Syria is exercising jurisdiction over Al-Tanf. This has to be given precedence over the Syrian official position that the refugees in Al-Tanf are not admitted into Syrian territory. Syria is thus exercising sovereignty over Al-Tanf.

Sovereignty is a key constitutional safeguard of international order. Despite the pluralisation of international relations through the increasing of non state actors, the State remains the fundamental guarantor of human rights. Sovereignty carries with it the primary responsibility for States to protect persons and property. In particular, since the signing of the UN Charter, there has been a steady expansion of State obligations in the field

³² Interview with a UNHCR official, UNHCR Damascus, February 2009.

³³ *Ibid.*

of human rights. These create a set of state obligations to protect persons and property. There are also regional arrangements that have to be examined in order to establish what legal regimes are applicable in the case of Al-Tanf. Now that Syria has been established as the sovereign over the Al-Tanf camp, we will have to look into what human rights- and refugee conventions Syria is bound by.

4. Syria's legal responsibilities

As concluded in the previous chapter, the refugee camp of Al-Tanf is, if not located on Syrian territory, at least within Syrian jurisdiction. This means that we have to examine the different human rights conventions and other documents relating to refugees that Syria is a State Party to in order to establish what rights should be accorded to the refugees in Al-Tanf. We also have to examine what distinctions might be applicable between individuals within a State Party's territory and within its jurisdiction.

4.1 International Human Rights Treaties

Syria is not a State party to the Geneva Convention relating to the Status of Refugees nor to its optional protocol and one of the main reasons for this is the lack of a lasting solution of the Palestinian refugees' right to return. But even though Syria is not a party to this convention there are many other international human rights treaties that possibly could be applied on the situation with the stateless refugees in Al-Tanf.

International human rights law provides protection because it applies to every person under the jurisdiction of a State, regardless of their nationality. This also means that the human rights treaties that a state has ratified apply between the state and a stateless person.

Syria is a party to the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture (CAT), the International Covenant on the Elimination of Racial Discrimination (CERD), the Convention on the Rights of the Child (CRC), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Elimination of Discrimination against Women (CEDAW).

The three most interesting human rights conventions applicable to Al-Tanf are the International Covenant on Civil and Political Rights, the Convention Against Torture and the Convention on the Rights of the Child. These conventions are the ones that I will examine further in the light of the situation with the refugees in Al-Tanf.

4.1.1 The International Covenant on Civil and Political Rights

In the International Covenant on Civil and Political Rights we find articles on both detention in article 9 and indirectly on non-refoulement in Article 7. In its General Comment No 20,³⁴ the Human Rights Committee expressed its view of Article 7 as also meaning that:

“States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement.”

According to Article 4 of the ICCPR, derogations in state of emergency is clearly impossible when it comes to Article 7.

Regarding the extraterritorial application of the International Covenant on Civil and Political Rights, there are two different interpretations of Article 2.1. This article stipulates that:

“Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

The interpretation of the word “and” between territory and jurisdiction is of crucial importance for the implications of this Article. There are two possible ways to read this sentence; the first being that the individuals must be (i) within the territory of the State and (ii) within the jurisdiction of the State. The second way to interpret the Article would be that the individuals covered by the Covenant are (i) all individuals within the territory of the State and also to (ii) all individuals subject to the jurisdiction of the State. Even though the first interpretation might seem like the more literal way to read Article 2.1, this could be inconsistent with the object and purpose of the ICCPR. The Human Rights Committee has chosen the second interpretation, and argues that the rights contained in the ICCPR are not limited to persons within the territory of a State Party. In its “General Comment No. 31 on the Nature of the General Legal Obligation Imposed on States Parties to the ICCPR”, the Human Rights Committee has stated that

“State Parties are required by Article 2, paragraph 1, to respect and to ensure the Covenant rights to all persons who may be within

³⁴ “General Comment no 20”, Human Rights Committee of the United Nations, 10 March 1992, <http://www.unhchr.ch/tbs/doc.nsf/0/6924291970754969c12563ed004c8ae5?Opendocument>

their territory and to all persons under their jurisdiction. This means that a State Party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party.”³⁵

In its advisory opinion of the legal consequences of the construction of a wall in the occupied Palestinian territory,³⁶ the International Court of Justice (ICJ) endorses the view of the Human Rights Committee and states in paragraph 111 that:

“In conclusion, the Court considers that the International Covenant on Civil and Political Rights is applicable in respect of acts done by a State in the exercise of its jurisdiction outside its own territory.”

The Court examines whether the International Covenant on Civil and Political Rights is applicable outside the State borders of Israel. According to the Court, the answer lies in the interpretation of “jurisdiction” that is found in the ICCPR. As States have become more and more involved in issues beyond their national territory, the definition of “jurisdiction” altered over time so as to meet the new challenge. The ICJ recognises that

“while the jurisdiction of States is primarily territorial, it may sometimes be exercised outside the national territory. Considering the object and purpose of the International Covenant on Civil and Political Rights, it would seem natural that, even when such is the case, States parties to the Covenant should be bound to comply with its provisions.”³⁷

The ICJ also refers to several cases in which the Human Rights Committee has declared that “the Covenant was applicable where the State exercises its jurisdiction on foreign territory”.³⁸ It goes on to examine the *travaux préparatoires* of the Covenant and these confirm the Committee’s interpretation of Article 2 of that instrument. These show that

“the drafters of the Covenant did not intend to allow States to escape from their obligations when they exercise jurisdiction outside their national territory. They only intended to prevent persons residing abroad from asserting, vis-à-vis their State of

³⁵ “General Comment No 31” (“The Nature of the General Legal Obligation Imposed on States Parties [the International Covenant on Civil and Political Rights]”), Human Rights Committee of the United Nations, 29 March 2004, <http://www.unhcr.org/refworld/docid/478b26ae2.html>

³⁶ International Court of Justice, “The Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory”, Advisory Opinion, 9 July 2004, <http://www.icj-cij.org/docket/files/131/1671.pdf>

³⁷ *Ibid.*, paragraph 109.

³⁸ *Ibid.*

origin, rights that do not fall within the competence of that State, but of that of the State of residence.”³⁹

4.1.2 The Convention Against Torture

In the Convention Against Torture, we find the prohibition of refoulement in Article 3. This article prohibits State parties from returning, extraditing or refouling any person to a State “where there are substantial grounds for believing that he would be in danger of being subjected to torture”.

The Committee against Torture has affirmed that the non-refoulement obligation contained in Article 3 of the Convention Against Torture applies in any territory under a State party’s jurisdiction.⁴⁰

4.1.3 The Convention on the Rights of the Child

The Convention on the Rights of the Child provides that the best interest of the child always should be of primary consideration in all actions concerning children.⁴¹ In Article 2.1 of the Convention, it is explained that the CRC applies to all children within the jurisdiction of a State party without discrimination of any kind. This means that Syria’s obligations under the Convention on the Rights of the Child are applicable in Al-Tanf.

4.2 Detention

Article 9 of the ICCPR is the key provision in international law guaranteeing the right not to be arbitrarily detained. Article 9.1 states that

“Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”

³⁹ The Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory”, paragraph 109.

⁴⁰ UNHCR, “Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol”, p. 17,

<http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=45f17a1a4&page=search>

⁴¹ Convention on the Rights of the Child, Article 3.1.

Article 9 protects individuals against arbitrary deprivation of liberty. Article 12 applies to restrictions on movement for aliens who are lawfully on a State's territory. Severe restrictions of movement may be considered a deprivation of liberty. The European Court of Human Rights has stated that the difference between restrictions upon freedom of movement and arbitrary detention is "merely one of degree or intensity and not of nature or substance"⁴². This can be analogously applied on the provisions on arbitrary detention and restrictions on the freedom of movement contained in the International Covenant on Civil and Political Rights.

4.2.1 A v Australia

In the case of *A v Australia*⁴³, where a Cambodian man was refused asylum in Australia and detained by the Australian authorities, the Human Rights Committee stated that it was not arbitrary *per se* to detain individuals requesting asylum. Nor is there a rule of customary international law which renders all such detentions arbitrary. However, every decision to keep a person in detention should be open to review periodically so that the grounds justifying the detention can be assessed. In any event, detention should not be prolonged beyond the period for which the State can provide appropriate justification. For example, the fact of illegal entry may indicate a need for investigation and there may be other factors particular to the individual, such as the likelihood of absconding and lack of cooperation, which may justify detention for a period. Without such factors detention may be considered arbitrary, even if the refugees entered the country illegally.⁴⁴

4.2.2 Amuur v France

The European Court of Human Rights has in *Amuur v France*⁴⁵ made a judgement which is interesting also for the situation in Al-Tanf. Even though the European Convention on Human Rights only applies for the Council of Europe Member States, it is likely that the Committee of Human

⁴² *Guzzardi v. Italy*, ECtHR, 6 November 1980, <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=guzzardi&sessionId=21630303&skin=hudoc-en>

⁴³ *A v Australia*, Human Rights Committee, CCPR/C/59/D/560/1993, <http://www.unhcr.org/refworld/docid/3ae6b71a0.html>, accessed 27 March 2009.

⁴⁴ *Ibid.*

⁴⁵ *Amuur v. France*, ECtHR, 25 June 1996, <http://cmiskp.echr.coe.int/tkp197/portal.asp?sessionId=21572645&skin=hudoc-en&action=request>

Rights would uphold the same arguments concerning detention in a border zone. In *Amuur v France*, the applicants were four Somali siblings who arrived at Paris-Orly Airport on board a Syrian Airlines flight from Damascus, where they had stayed for two months after travelling there via Kenya. They had fled Somalia because their lives were in danger and several members of their family had been murdered. The airport and border police refused to admit them to French territory, on the ground that their passports had been falsified, and held them at a hotel that had been let to the Ministry of the Interior and converted for use as a waiting area for the airport. According to the applicants, police officers would drop them off at the airport very early in the morning and take them back to the hotel in the evening. Twenty days later, when the Minister of the Interior had refused them leave to enter, the siblings were sent back to Syria, which had agreed to take them.

In the *Amuur* case, the French government argues that the transit zone where the refugees were held, although it was closed “on the French side”, remained “open to the outside”. That meant that the refugees could return to Syria where their safety was granted.⁴⁶ The Court argues that the mere possibility for asylum seekers to voluntarily leave the country where they wish to seek asylum does not exclude a restriction on liberty, even though the right to leave any country including one’s own is guaranteed. Further, this can become theoretical if there is no other country offering comparable protection as the country in which they are seeking asylum.⁴⁷ Holding aliens in the international zone does indeed involve a restriction upon liberty, but this restriction is not in every aspect comparable to one in aliens’ detention centres pending deportation.

States’ legitimate concern to limit the increasingly frequent attempts to evade immigration restrictions must not deprive asylum-seekers of the protection afforded by refugee- and human rights conventions. Holding of asylum seekers should not be excessively prolonged. If they are, there would be a risk of turning a mere restriction on liberty into a deprivation of liberty. We should keep in mind that this measure is applicable not to those who have committed criminal offences but to refugees who have fled from their own country because they fear persecution. Above all, such confinement must not deprive the asylum-seeker of the right to gain effective access to the procedure for determining refugee status.”⁴⁸

4.2.3 Detention in Al-Tanf

According to a source at the UNHCR, the population of Al-Tanf consists of a mix of persons who have left for the camp voluntarily and who have been deported by Syrian authorities. Some are even said to have been convicted for having carried false identification documents and are now held as

⁴⁶ *Amuur v France*, paragraph 46.

⁴⁷ *Ibid.*, paragraph 48.

⁴⁸ *Ibid.*, paragraph 42-43.

criminals in the Al-Tanf camp. According to the same source, some Palestinians who are considered to have committed serious crimes against the immigration laws have been refouled to Al-Waleed on the other side of the Iraqi border. This happened more than two years ago as the Iraqi authorities since that has stopped readmitting Palestinians into Iraq.

The refugees in Al-Tanf seem to be arbitrarily detained and this should be even more evident than in the *Amuur*-case where the French government argued that the even though the transit zone where the refugees were held was closed on the French side, it still remained open to the outside. That meant that the refugees could return to Syria where their safety was granted. This is evidently a huge difference from the case with the refugees in Al-Tanf. According to the UNHCR, it has been reported that Palestinians who have left Iraq have had their passports stamped so that they have no right to return to Iraq. The U.S. Committee for Refugees and Immigrants reported in 2008 that the Iraqi authorities stamps Palestinian ID documents with the words "right to exit, no right to return". The neighbouring countries do not seem to accept the Palestinian passports.⁴⁹ Syria argues that the refugees in Al-Tanf are in the international zone but in this case, contrary to the *Amuur*-case, the refugees do not have the possibility to return to a country where their safety is granted. In the case of Iraq, the refugees seem to not be allowed back and if they were, they would face persecution.

Their situation has been prolonged for several years and nothing indicates that these refugees would have had access to a review of their detention. In *A v Australia*, the Human Rights Committee stated that every decision to keep a person in detention should be open to review periodically so that the grounds justifying the detention could be assessed. Even if the refugees in Al-Tanf entered Syria illegally, the prolonged detention in Al-Tanf must be considered as arbitrary.

4.3 Non-refoulement

The most essential component of refugee status and of asylum is protection against return to a country where the refugee has reason to fear persecution. This protection is formulated in the principle of non-refoulement that is found in a number of international instruments.⁵⁰ States are bound not to send back any individual to another country if this would result in exposing him or her to serious human rights violations, notably arbitrarily deprivation of life, or torture or other cruel, inhuman or degrading treatment or punishment. An explicit non-refoulement provision is contained in Article 3 of the 1984 Convention Against Torture and Other Cruel, Inhuman or

⁴⁹ U.S. Committee on Refugees and Immigrants (USCRI), "Iraq. World Refugee Survey 2008", <http://www.refugees.org/countryreports.aspx?id=2146>

⁵⁰ 1951 Convention relating to the Status of Refugees, 1967 United Nations Declaration on Territorial Asylum etc.

Degrading Treatment or Punishment, which prohibits the removal of a person to a country where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

Obligations under the 1966 Covenant on Civil and Political Rights have also been interpreted by the Human Rights Committee to include the obligation for a State not to extradite, deport, expel or otherwise remove a person from their territory if there is a real risk of irreparable harm for that person to be deprived of his or her rights under Articles 6 and 7 of the Covenant. The prohibition of refoulement to a country where the person concerned would face a real risk of irreparable harm such as violations of the right to life or the right to be free from torture or cruel, inhuman or degrading treatment or punishment extends to all persons who may be within a State's territory or subject to its jurisdiction, including asylum seekers and refugees.⁵¹ As earlier stated, Syria is a State party to both the ICCPR and the CAT. The obligations of non-refoulement under Article 7 International Covenant on Civil and Political Rights and Article 3 Convention Against Torture are absolute and no exceptions or derogations are permitted.

States are bound by their obligations not to return any person over whom they exercise jurisdiction to a risk of irreparable harm. In determining whether a State's human rights obligations with respect to a particular person are engaged, the decisive criterion is not whether that person is on the State's national territory, or within a territory which is *de jure* under the sovereign control of the State, but rather whether or not he or she is subject to that State's effective authority and control.⁵² According to Lauterpacht and Bethlehem⁵³ it follows that the principle of non-refoulement applies to the behavior of State officials or those acting on behalf of the State wherever this occurs. This means that the principle is applicable also beyond the national territory of the State in question, which includes border posts or other points of entry and in international zones.

4.3.1 Refoulement to Al-Waleed

There have been several reports indicating that Syria has turned away three busloads of Palestinians attempting to enter the "no-mans-land" in June 2006. On 16 December 2006, with the arrival of 41 persons to the border area, the Syrian authorities prevented their entry to the area between the

⁵¹ "General Comment No 31" ("The Nature of the General Legal Obligation Imposed on States Parties [the International Covenant on Civil and Political Rights]"), Human Rights Committee of the United Nations, 29 March 2004, <http://www.unhcr.org/refworld/docid/478b26ae2.html>

⁵² UNHCR, "Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol", p. 16, <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=45f17a1a4&page=search>

⁵³ Lauterpacht and Bethlehem, "The scope and content of the principle of *non-refoulement*" in: *Refugee Protection in International Law* (ed. Feller, Turk and Nicholson), Cambridge, 2003, p. 160.

border posts. These persons were then trapped at the border area on the Iraqi side and became the first inhabitants of the de facto Al-Waleed camp.⁵⁴ According to UNHCR officials, there are also at least two cases where Palestinians from Iraq have been refouled to the Iraqi border and later admitted to the Al-Waleed camp. According to the same source, refoulement was avoided in a number of other cases just because of interventions by different organisations which allowed for admission of the persons to be refouled into the Al-Tanf and Al-Hol camps instead.

The refugees in Al-Waleed are victims of refoulement at the border, as they are not even allowed to present their asylum cases with the Syrian authorities. It has also been confirmed by the UNHCR that there have been some cases of refoulement from Al-Tanf into Al-Waleed, where the refugees still are risking persecution. The physical security and assuring the basic needs for survival are still the main concerns in the Al-Waleed camp. Until temporary relocation to safety and resettlement are secured, this group is in need of life-saving protection and assistance.

4.4 The best interest of the child

According to article 3.1 of the Convention on the Rights of the Child (CRC), to which Syria is a State party, the best interest of the child should be of primary consideration in all actions concerning children.⁵⁵ Article 2.1 of the convention stipulates that CRC applies to all children within the jurisdiction of a State party without discrimination of any kind. This means that Syria's obligations under the Convention on the Rights of the Child are applicable in Al-Tanf. Article 27.1 states that:

“States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.”

Article 37(b) relates to deprivation of liberty of children and stipulates that:

“No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.”

The life in Al-Tanf has proved to be very hard for the children of the camp. Two young boys have been killed by trucks when riding their

⁵⁴ UNHCR, “Iraq Operation, Information Note No. 7 on the current conditions of Palestinian refugees in Iraq”, June 2007,

<http://unhcr.org.iq/IndexPageFiles/Stories/20090209/AtAGlanceJanuary09.pdf>

⁵⁵ Convention on the Rights of the Child, Article 3.1.

bicycles on the nearby highway. Even though the UNRWA provides schooling in the camp and a psychologist visits the camp on a regular basis, the children suffers from severe traumas.

In June 2008, the UNRWA arranged a summer camp for refugee children in the Syrian seaside town of Tartus in Syria. Some children from the Al-Tanf camp were given special permission from the Syrian authorities to participate in the camp. It proved to be too much though for the traumatized children from Al-Tanf. The sudden possibility of freedom of movement and unlimited supplies of food and drink along with the sounds of laughing children reminded the nine children from Al-Tanf what they have been missing and will miss again when they have to return to the camp after the week of holiday. The children were too traumatized to appreciate and enjoy the break from their reality. The camp staff did not push the children in joining the activities that included swimming, dancing and singing and the children themselves did not see any point in participating and be happy when they knew that they would soon have to return to the desperate situation of Al-Tanf. One of the girls expressed her feelings: “My life is not happy; I need to leave this summer camp right now. The first day I was happy, but by the second day I was not happy. We are not adapted to this happy life and need to stay strong for our hard life.”⁵⁶ One of the persons that works with the children from Al-Tanf for the UNHCR said he felt the pain that the children were living through: “Al Tanf is like a prison - and no child will ever thrive in a prison. They cannot go forwards because they are not allowed into Syria or anywhere else. They cannot go backwards, because they and their families are threatened in Iraq. If you look at these children, even though they are the same age as all the other children at the summer camp, their eyes, their body language tells you that they have suffered more than any child should suffer. It hurts to see the trauma in their every movement.”⁵⁷

It is obvious that the living situation in Al-Tanf is not along the lines with the provision of Article 27.1 in the Convention on the Rights of the Child. The standard of living is clearly not adequate for the child’s “physical, mental, spiritual, moral and social development”. The prolonged detention and the uncertainty about the future affect the mental health of the refugee children in a very negative manner.

4.5 Arab League Documents

The Arab League Council and the Council of Arab Ministers of the Interior have adopted a series of resolutions concerning the status and treatment of

⁵⁶ UNHCR, “Seaside break in Syria proves too much for young Palestinians”, 30 June 2008.

⁵⁷ *Ibid.*

Palestinian refugees in their territories.⁵⁸ The Arab League Resolution 714 of 27 January 1954⁵⁹ unanimously approved the issuance of travel documents for Palestinian refugees. Article 1 states that:

“The governments of member states of the League have agreed that each government should issue the Palestinian refugees residing in its territory, or coming under its jurisdiction, temporary travel documents upon their request”

Article 6 stipulates that the Member States

“shall accord to the holders of these travel documents the same treatment with respect to visas and residence as is accorded to their own nationals.”

The Protocol on the Treatment of Palestinians⁶⁰ adopted by the Council of Ministers in 1965 in Casablanca is the most important instrument relevant to temporary protection of Palestinian refugees in Arab host states. The Casablanca Protocol emphasizes the importance of preserving Palestinian identity and maintaining Palestinian refugee status. The Casablanca Protocol was a major effort to regularise the status of Palestinians in the states to which they had fled in 1948 and where they continued to live. The Casablanca Protocol consists of five articles and it requires that Palestinians shall receive the same treatment as nationals of Arab host states regarding employment; the right to leave and return to the territory of the state in which they reside; freedom of movement between Arab states and issuance and renewal of travel documents. Article 3 states that:

“When their interests so require, Palestinians presently residing in the territory of [name of country] shall have the right to leave the territory of this state and return to it.”

The Casablanca Protocol was adopted by a majority decision of the Council of the Arab League. Its contents are therefore only binding upon those member states willing to accept it, either in full or subject to reservations. Only seven member states ratified the Protocol without reservations, and Syria is one of those.⁶¹

As the rights outlined in the Protocol were not being adequately upheld in the host states, another resolution was adopted in December 1982 by the Council of Arab Ministers of the Interior⁶² and it clarified even

⁵⁸ For a compilation of LASC resolutions in English translation: Abbas Shiblak, “The League of Arab States and Palestinian Refugees’ Residency Rights”, Monograph Series 11, Ramallah, SHAML, 1998.

⁵⁹ The text of Resolution 714 is reproduced in full in Takkenberg (1998), pp. 372–374.

⁶⁰ Protocol on the Treatment of Palestinians, 11 September 1965, <http://www.badil.org/Documents/Protection/LAS/Casablanca-Protocol.htm>

⁶¹ Takkenberg (1998), p. 144.

⁶² LASCAMI res. 8, 15 December 1982, in Takkenberg (1998), p. 374.

further the rights of Palestinians: Paragraph 1 confirms that the travel documents issued to Palestinians by any Arab country must be granted on an equal basis with the national passports issued to its own citizens. Paragraph 2 stipulates that bearers of such documents

“shall be accorded the same treatment as nationals of the state issuing this document, as regards freedom of residence, work, and movement.”⁶³

Even though the Syrian treatment of the Palestinians from Iraq clearly violates all of its obligations in the above-mentioned Arab League documents, this does not get any practical implications. Despite attempts by the Arab League to create standards on the treatment and status for Palestinians in the Arab world, the actual practice is inconsistent. The temporary protection afforded by the Arab League resolutions and the Casablanca Protocol have not had the effect of improving the civil and human rights of the refugees. However, Syria has historically been one of the most generous countries towards Palestinian refugees and has granted its Palestinian residents almost the same rights as the actual Syrian citizens. These rights are clearly not something that will be accorded to the Palestinians from Iraq, who are regarded as being “an Iraqi problem”.

4.6 The State’s right to regulate immigration

As a sovereign State exercising jurisdiction over its own territory, and in the case of Al-Tanf possibly also beyond its borders, Syria has the right to regulate immigration into its territory. Accepting immigrants should be done within a framework that balances the sovereign right of all States to regulate the entry of immigrants with their obligations to respect the human rights and dignity of all persons, especially when it comes to refugee protection.

Many countries have for several years been confronted with an increasing flow of asylum seekers. Syria is today probably one of the countries with the largest influx of refugees, reaching a peak in the summer of 2006 when 1.5 million Iraqis were residing in the country. Even though the situation has changed dramatically since then, the number of Iraqis registered with the UNHCR was 225,530 in January 2009.⁶⁴ It is thus understandable that Syria, as many other countries need to find a way to regulate the immigration flow.

In *Amuur v France* for example, the Court emphasises that “States have the undeniable right to control aliens’ entry into and residence in the territory.” However, this right has to be “exercised in accordance with the

⁶³ *LASCAMI* res. 8, 15 December 1982, in Takkenberg (1998), p. 374.

⁶⁴ *Ibid.*

provisions of the Convention, including Article 5”.⁶⁵ This is an argument that is also applicable to the rights contained in all the Conventions that have been treated in relation to Syria’s actions or lack of actions in Al-Tanf.

It is a difficult challenge to strike a proper balance between the right of the State to control immigration and the State’s human rights obligations. Regarding the provisions of non-refoulement and detention of refugee children, this should nevertheless be accorded a higher priority than the State’s right to control immigration.

⁶⁵ *Amuur v France*, paragraph 41.

5. United Nations and the Palestinian refugees

The United Nations has a long history of dealing with the Palestinian issue and the Palestinian refugees. After the foundation of Israel and the first Arab-Israeli war, the international community decided not to include the refugees from Palestine in the mandate of its newly established refugee agency but to create a special UN organization to take care of this group. This led, in 1949, to the creation of the UNRWA, the United Nations Works and Relief Agency in the Near East. Palestinian refugees who were supported by the UNRWA were thus not included in the 1951 Convention relating to the Status of Refugees. Combined with the fact that none of the UNRWA-countries are party to the 1951 Convention, this means that Palestinian refugees registered with the UNRWA lack the special protection provided for in the 1951 Convention as well as the international protection extended by the United Nations High Commissioner for Refugees.

5.1 The UNRWA and its mandate

The UN Relief and Works Agency for Palestine Refugees in the Near East was created in 1949 to give emergency assistance to Palestinians displaced by the 1948 War. The UNRWA defines Palestine refugees as:

“persons whose normal place of residence was Palestine between June 1946 and May 1948, who lost both their homes and means of livelihood as a result of the 1948 Arab-Israeli conflict. UNRWA's services are available to all those living in its area of operations who meet this definition, who are registered with the Agency and who need assistance. UNRWA's definition of a refugee also covers the descendants through the male line of persons who became refugees in 1948. The number of registered Palestine refugees has subsequently grown from 914,000 in 1950 to more than 4.6 million in 2008, and continues to rise due to natural population growth.”⁶⁶

The UNRWA is mandated to carry out “relief and works programmes” in support of Palestinian refugees. Palestinian refugees in this sense are refugees from the territory that was under the British Mandate of Palestine. The UNRWA currently provides basic humanitarian relief and human development services in its area of operation which is Jordan,

⁶⁶ The United Nations Relief and Works Agency for Palestine Refugees in the Near East, <http://www.un.org/unrwa/refugees/whois.html>

Lebanon, Syria, the Gaza Strip, the West Bank and East Jerusalem. Displaced Palestinians in other countries are also considered to be refugees but they fall under the protection of the UNHCR instead.

5.2 The UNHCR and its mandate

The UNHCR was created in December 1949 with the principal aim to deal with refugees in Europe after the Second World War.

It has a world-wide mandate to protect, assist and seek durable solutions for refugees in need of international protection. Concerning the Palestinians, the UNHCR's mandate covers Palestinians who are refugees within the meaning of the 1951 Convention. The UNHCR normally only handles Palestinian refugees when they are outside the UNRWA's area of protection.

The main legal instruments governing the legal status of refugees are the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. Even though the Convention and the Protocol are applicable to States, all people meeting the eligibility criteria set out there are considered refugees according to the UNHCR. The 1951 Convention defines refugees as people who are outside their countries because of a well-founded fear of persecution based on their race, religion, nationality, political opinion or memberships in a particular social group and who, for persecution related reasons, are unable or unwilling to return home.⁶⁷ Article 1D of the 1951 Convention states:

“1. This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.

2. When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of the Convention”.⁶⁸

Palestinians who are refugees as a result of the 1948 or 1967 Arab-Israeli conflicts, and who receive protection or assistance from the UNRWA do not benefit from the protection of UNHCR under paragraph 1 of Article 1D of the 1951 Convention. However, if a person is outside the UNRWA's area of operations, he or she may no longer enjoy the protection or assistance of UNRWA and would therefore fall within the scope of

⁶⁷ 1951 Convention relating to the Status of Refugees, Article 1A(2),

⁶⁸ “UN and Palestinian Refugees”, UNRWA Public Information Office.
http://www.unhcr.ch/html/menu3/b/o_c_ref.htm

paragraph 2 of Article 1D. This leads to the conclusion that such a person automatically will be entitled to the benefits of the 1951 Convention and will fall within the competence of UNHCR. Therefore, Palestinian refugees in Iraq, being outside UNRWA's area of operations, fall within the competence of UNHCR by virtue of paragraph 2 of Article 1D of the 1951 Convention.

5.3 Palestinians fleeing Iraq

What will then happen to the Palestinian refugees that have left or at least are attempting to leave Iraq? As mentioned earlier, Syria is a country where the UNRWA is operating and there are about 457 000 Palestinians living in Syria today.⁶⁹

5.3.1 Justified movement

A refugee is not supposed to leave his or her country of asylum to find lasting solutions elsewhere. The UNHCR Executive Committee Conclusion 58 (XL) of 1989⁷⁰ states in paragraph (e) that

“refugees and asylum seekers, who have found protection in a particular country, should normally not move from that country in an irregular manner in order to find durable solutions elsewhere but should take advantage of durable solutions available in that country etc”.

Paragraph (g) of the same Conclusion recognizes that in exceptional circumstances, where the refugee or asylum seeker justifiably claims that he or she has reason to fear persecution or that his or her physical safety or freedom is endangered in the country where he or she previously had found protection, should be considered favorably by authorities where he or she requests asylum for the second time. It has been concluded that the movement of this group from Iraq, the first country of asylum, to Syria, the second country of asylum, is justified and meets the criteria of EXCOM Conclusion 58 (g).⁷¹

⁶⁹ UNRWA, “Total registered refugees per country and area”, June 30 2008, http://www.un.org/unrwa/publications/pdf/rr_countryandarea.pdf

⁷⁰ UNHCR, Executive Committee Conclusion 58 (XL), 1989, <http://www.unhcr.org/excom/EXCOM/3ae68c4380.html>

⁷¹ UNCHR, “Background Note: Submission of Iraq Palestinian refugees for resettlement”.

5.3.2 Refugees in Al-Waleed

As Iraq is not part of the UNRWA's area of operation, the Palestinian refugees there are covered by the UNHCR and the 1951 Convention. If they would return to the UNRWA's area of operations they should then cease to benefit from the 1951 Convention. However, as in the case of Palestinians in the Iraqi camp of Al-Waleed, who are prevented from entering Syria, there are reasons why they cannot be returned to UNRWA's area of operations, such as either *unwillingness* to return to that area due to threats to his or her physical safety or freedom or because they are *unable* to return to that area because the authorities of the concerned country refuse readmission or the renewal of the travel documents. The refugees in Al-Waleed, who are still in Iraq, receive assistance from UNHCR's Iraqi Operation Unit in Amman. The Multinational Forces allow UNHCR international staff access to the camp once a month.

5.3.3 Refugees in Al-Tanf

Theoretically, in the case of Al-Tanf, which clearly is under Syrian jurisdiction and also assumed to be on Syrian territory, this group of refugees should be protected by the UNRWA rather than the UNHCR. In reality, as the group used to be under the UNHCR's protection whilst in Iraq and because of the fact that the group is not registered with the UNRWA, the UNHCR continues to be the main provider for these people. Even though Syria is an area of UNRWA-operation, the Palestinians in Al-Tanf, whose habitual residence is Iraq, are not assisted nor registered by UNRWA. Because of the sensitivity of the Palestinian issue in the Syrian context and the high number of Iraqi refugees, Syria maintains that Palestinian refugees from Iraq are not allowed to enter the country. The fact that Syria maintains its position that the refugees are not legally admitted in to Syria makes it impossible for their registration by the UNRWA field office. According to UN-officials, Syria has refused that the refugees become registered with the UNRWA as this would imply that the Iraqi Palestinians would get the same rights as the Syrian Palestinians. This would demand much more of the Syrian government. Because of that, the UNRWA has determined that the Palestinian refugees in Al-Tanf do not meet the registration criteria and will thus continue to be protected by the UNHCR and the benefits of the 1951 Convention.

The UNHCR has the over all responsibility to provide for the refugees in Al-Tanf. The UNHCR and its partners provide food, drinking water, infrastructure and medical care as well as it is working to find durable solutions such as resettlement for the refugees. UNRWA launched a tented school in Al-Tanf in 2007. Today there are about 170 pupils in the school. The UNRWA also provides teacher training, dental care, work shops and summer camps.

6. Future perspectives

6.1 Return

As the Palestinians are not granted admission into Syria, they will theoretically have to either return to Iraq or the Occupied Palestinian Territories or be resettled with the assistance of the UNHCR. The UNHCR does not consider the conditions in Iraq to be safe enough for returning the Palestinian refugees who used to live there. According to the UNHCR, the prevailing security situation, the lack of a clear legal status for Palestinians, and the general hostility and resentment of local Iraqis toward Palestinians implies that the return of Palestinian does not meet their minimum concerns for safety of returnees. Even though the security situation in Iraq is improving, the Palestinians are one of the most vulnerable groups of refugees and Iraq can not be considered safe enough for their return now or in a foreseeable future.

Refugees should, when possible, be able to exercise their right to return home in safety and dignity. The General Assembly Resolution 194 (III)⁷² provides for a specific framework for durable solutions for refugees displaced in 1948. According to this resolution, the primary durable solution would be return to Israel, the West Bank and Gaza. Returning to the West Bank or Gaza would be an option worth considering for most of the refugees but Israel has consistently barred their entry.

6.2 Resettlement

The refugees in the camps on the Syrian border are entirely dependent on the assistance they receive from the UNHCR and other organisations. As neither Syria nor Iraq can live up to their commitments under international law and because Israel doesn't allow the Palestinians to reenter the Occupied Territories, the solution has to be found within the UNHCR and the support of the international community. Resettlement seems to be the only viable option for the Palestinian Iraqi refugees.

The refugees on the Syrian-Iraqi border meet the criteria for resettlement according to Chapter 4.2 in the UNHCR Resettlement Handbook which states that legal and physical protection needs are linked to

⁷² United Nations General Assembly Resolution 194 (III), <http://domino.un.org/unispal.NSF/59c118f065c4465b852572a500625fea/c758572b78d1cd0085256bcf0077e51a!OpenDocument>

“immediate or long term threat of refoulement to the country of origin or expulsion to another country from where the refugee may be refouled, treat of arbitrary arrest, detention or imprisonment, and the threat to physical safety or human rights in the country of refuge analogous to that considered under the refugee definition and rendering asylum untenable”.⁷³

According to the UNHCR, some of the most urgent resettlement needs in the world exist for the Palestinians from Iraq living in the Al-Hol, Al-Tanf and Al-Waleed camps. There are no alternatives to resettlement, as the refugees cannot find protection in Syria nor return to their country of origin. The mere fact that Palestinians from Iraq can be submitted for resettlement is a breakthrough though. Both the Syrian government and the PLO first opposed resettlement but now accept resettlement to third countries for the persons who so wish.

6.2.1 Resettlement in Sweden

Since 1950, Sweden has received persons for organised resettlement within the framework of a special refugee resettlement quota. This quota is used for transferring persons in need of international protection or others in particularly vulnerable situations. Each year, the Swedish Parliament provides funding to enable the Swedish Migration Board to resettle persons within the refugee quota.

The refugee quota is intended for refugees and other people who are in need of protection. A refugee is a person who has left his or her country of origin owing to a well-founded fear of persecution because of race, nationality, gender, sexual orientation, membership of a particular social group, or religious or political opinions and who is unable or unwilling to avail him or herself the protection of that country. The refugee quota may also include people otherwise in need of protection. The Swedish Government sets the criteria for the selections and the size of the refugee quota. In 2008, the quota comprised 1,900 persons.⁷⁴ In the beginning of each year, the Swedish Board of Migration and the UNHCR decide which refugee groups that will be included in the refugee quota. The Board of Migration has made a decision on how this year's refugee quota of 1900 positions is to be divided. The emphasis will be on stateless Palestinians and Iraqis. 450 people will be selected through a visit to Syria and Iraq and focus will be on Palestinian refugees in Al-Hol and Al-Tanf.⁷⁵

⁷³ UNHCR, "Resettlement Handbook, 4:2", <http://www.unhcr.org/protect/PROTECTION/3d464db54.pdf>

⁷⁴ Migrationsverket, "Flyktingkvoten", www.migrationsverket.se

⁷⁵ Interview with Oskar Ekblad, Migrationsverket.

6.2.1.1 The Swedish Aliens Act

Under the Swedish Aliens Act⁷⁶ a person has the right to seek asylum if he or she meets the definition of refugee spelled out in the Act.

In Chapter 4, section 1 of the Swedish Alien's Act a refugee is defined as:

“an alien who is outside the country of the alien's nationality, because he or she feels a well-founded fear of persecution on grounds of race, nationality, religious or political belief, or on grounds of gender, sexual orientation or other membership of a particular social group and is unable, or because of his or her fear is unwilling, to avail himself or herself of the protection of that country.

Section 2 stipulates that:

“A stateless alien shall also be considered a refugee if he or she
- is, for the same reasons that are specified in the first paragraph, outside the country in which he or she has previously had his or her usual place of residence and
- is unable or, because of fear, unwilling to return there.”

This means that an alien, regardless of his or her legal status as a citizen of any country or being stateless, has to be outside either his or her country of nationality or place of usual residence.

6.2.1.2 The refugees in Al-Waleed

Around the world, there are an estimated 20-25 million persons who are displaced within the borders of their home countries. These are people who have fled their homes but have not sought refuge in other countries. According to the UNHCR, internally displaced persons “are individuals or groups of people who have been forced to flee their homes to escape armed conflict, generalized violence and human rights abuses.”⁷⁷

In general, internally displaced persons have many of the same protection needs as refugees but, since they have not crossed an international border, they are not covered by the Refugee Convention or by the UNHCR's Statute. International concern for the internally displaced persons has increased in recent years as greater numbers of people are

⁷⁶ Swedish Aliens Act (1989:529), <http://www.regeringen.se/sb/d/5805/a/66122>

⁷⁷ UNHCR, “Internally Displaced People: Questions & Answers”, 2007, <http://www.unhcr.org/basics/BASICS/405ef8c64.pdf>

exposed to danger and death within the borders of their home countries. There is no single international agency or an international treaty focusing on internally displaced persons. As a result, the international response to internal displacement has been selective and sometimes inadequate. Large numbers of internally displaced persons receive no humanitarian assistance or protection at all.

According to the Swedish Aliens Act's definition of a refugee, the asylum seeker has to be outside his or her usual place of residence. This poses a problem when it comes to the Palestinians in Al-Waleed. Even though this group has been proved to be the most vulnerable of all the Palestinians along the Syrian-Iraqi border because of the insecurity that prevails in the Al-Waleed camp, they can not be considered for resettlement within the framework of the Swedish refugee quota. The problem with Al-Waleed is that the refugees are internally displaced and according to the Swedish Aliens Act, refugees have to be outside their home country in order to be granted asylum. But although priority should be given to persons with a well-founded fear of persecution in the sense of the 1951 Convention, the quota can reach out to broader categories. The resettlement quota has actually in exceptional cases been used for persons who have not yet crossed the boundary of their country of nationality.⁷⁸

The reason why the refugees in Al-Waleed cannot be included in a Swedish resettling process is as earlier stated that they are not considered to be outside their usual place of residence. This is something that can be argued and depends completely on what is implied in the definition of "earlier place of residence". The UNHCR argues that in the case of the Palestinians from Iraq, in order to facilitate for their resettlement, the "usual place of residence" is the Occupied Palestinian Territories and not Iraq. If the Palestinians were to be considered as having the Occupied Palestinian Territories as their "usual place of residence", they would automatically be included in the refugee definition contained in the Swedish Alien's Act.

⁷⁸ UNHCR, "Resettlement Handbook, Country Chapter Sweden", p. 2, <http://www.unhcr.org/home/PROTECTION/3c5e5a219.pdf>

7. Concluding reflections

Palestinian refugees constitute the worlds largest and longest standing refugee population as they remain without a durable solution to their plight. They have virtually no prospect of being allowed to return to the lands and homes they left when they were departed from what is today Israel and Occupied Palestinian Territories.

Even though I wanted to write about the Palestinian Iraqi refugees from a legal perspective, one has to remember that when it comes to the Palestinian question, it is all about politics. The destiny of about 3000 Palestinian Iraqi refugees on the Syrian-Iraqi border is not only a humanitarian disaster and a legal dilemma but also a brick in a political game that has been played for more than sixty years. The more I learned about the situation of the Palestinian refugees in Al-Tanf, Al-Hol and Al-Waleed, the more hopeless and desperate it seemed. These persons had to flee the country where they initially had been given refuge only to realise that no other country would accept them. The 12,000 or so Palestinians who are still in Iraq, including those in camps on the Syria Iraqi border are in a legal limbo. The United Nations High Commissioner for Refugees recognizes them as refugees as the Iraqi government and the Multinational Forces have failed to provide them with adequate protection. They rely entirely on resettlement to a safe third country. There have evidently been several Syrian breaches of its obligations under both the Convention Against Torture, the Covenant on Civil and Political Rights and the Convention on the Rights of the Child as well as of the obligations under the Arab League resolutions.

In Al-Tanf, the refugees may no longer face persecution but the situation in the camp is not only below all decent living standards but also aggravated by the uncertainty of their legal status. In Al-Waleed, this is further aggravated by the fact that there are serious security problems in the camp. Iraqi security forces visit the camp frequently and the refugees in the camps feel intimidated by such visits. Many clashes between insurgents and the MNF and the Iraqi forces have taken place close to the camp. Unknown people in cars have come to camp and sexually harassed women and girls in the camp.

7.1 Syrian motives

What is then the behind lying reason for the Palestinian Iraqi refugees' denial of admission to Syria? Even though Syria historically has been one of the most generous countries towards Palestinians, they are consistently refusing to absorb the Palestinians from Iraq. Syria has a

population of about 457,000 Palestinian refugees, which has been living in the country since the early Arab-Israeli wars. They are registered with the UNRWA and are receiving support from the agency. Most Palestinians are very well integrated in the Syrian society and they enjoy the same rights as Syrian citizens except the right to vote. Syria has also been extremely generous towards Iraqi refugees since the outbreak of war in 2003 and hosted about 1.5 million Iraqis during the worst time of the crisis. The answer to what makes Syria refusing about 2000 Palestinians on their border is not a lack of capacity, even though Syria is not a rich country. The answer lies in the ever-lasting political element of the Palestinian matter. As Syria is granting its Palestinians a wide range of rights that Palestinians in other Arab countries do not enjoy, Syria is worried that the acceptance of the Palestinians from Iraq could lead to a mass-influx from other countries, namely from Lebanon where Palestinians are not treated in an equal manner with the Lebanese nationals.

The general rule in Syria is to accept that Palestinians as well as other Arabs come and go as they like in Syria as long as they have valid travel documents. Because of the very peculiar situation for the Palestinians in Iraq after the fall of the Saddam Hussein regime, the new Iraqi regime seems to have withdrawn most of the Palestinians travel documents. Another factor that plays in when barring the Palestinians from entering Syria is that the Syrian authorities expect the Iraqi citizens to return home when the situation in Iraq stabilizes while the Palestinians will not be able to return to their homeland, not in Iraq nor in the Occupied Palestinian Territories.

The Syrian position regarding possible breaches against its obligations under human rights conventions and the possible application in the Al-Tanf camp is repeatedly denied by the Centre for Strategic Studies and Research at Damascus University. This is an extraordinary situation and its peculiarity makes it be considered as an emergency case. The Syrian government regards this as a temporary problem and expects that the UN and the international community will be able to provide for both immediate humanitarian assistance as well as viable resettlement solutions.

Syria also seems to regard the Palestinian refugee issue as an Iraqi problem and maintains that it has to be seen from several angles. The Palestinian Iraqi refugees consist of a small number but Syria's position is that consideration has to be taken to what the implications in the region could be by accepting Palestinians from neighbouring countries. According to the CSSR, Syria is also of the view that there is an American policy of wanting to evacuate all Palestinians from Iraq and by that avoid the problem of resettlement in the Occupied Palestinian Territories. Assimilating the Iraqi Palestine refugees in Syria would ease the pressure on Israel to deal with the 1948 Palestine refugee issue. Syria does not have an issue with resettlement as long as the Palestinians do not lose their right to return if that will one day be an option. For Syria this is more than a humanitarian issue as there are so many political aspects involved and the right to return to the Occupied Palestinian Territories remains one of the most fundamental ones.

If the UNHCR will not be able to find solutions for the Palestinians in the camps on the border, the representatives for the Centre for Strategic Studies and Research believe that the refugees will have to stay in the camps or go back to Iraq. Syria does not seem to have in mind to accept Palestinians from neighbouring countries because of the possible consequences concerning both a possible influx of Palestinians and the political consequences for the 1948 Palestine refugees in particular and the entire Arab-Israeli conflict in general.

Syria has historically been extremely generous towards refugees and it is understandable that the authorities feel like the limit is reached, especially as the economic situation is strained. However, Syria should offer temporary humanitarian relief within the framework of UNRWA-protection to the Palestinian Iraqi refugees in the border area camps until resettlement can be found in a safe, third country.

7.2 Internally displaced persons

As Syria obviously fails to protect the Palestinian Iraqi refugees, the United Nations and the international community have the subsidiary responsibility for providing them with assistance and resettlement. Sweden is one of the countries that have been the most generous but unfortunately, selection to the refugee quota has only been made from the Al-Hol and the Al-Tanf camp even though the conditions in Al-Waleed have been proven to be the worst out of the three camps. The resettlement need in Al-Waleed is the most urgent because of the continued persecution of Palestinians in Iraq. The policy of not accepting internally displaced persons in the refugee quota should be changed as this group often is at least as vulnerable as conventional refugees. The reason why the refugees in Al-Waleed cannot be included in a Swedish resettling process is that they are not considered to be outside their usual place of residence. As the Palestinians' "usual place of residence" is something that can be discussed and decided to be either Iraq or the Occupied Palestinian Territories, the Swedish government should be more flexible in its assessment of this question consider the refugees, as the UNHCR, as having the Occupied Palestine Territories as their "usual place of residence". By doing so, the refugees in Al-Waleed would be included in the refugee definition contained in the Swedish Alien's Act and have the possibility of being resettled in Sweden along with the refugees who managed to cross the border.

Annex

Universal Declaration on Human Rights:

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.

International Covenant on Civil and Political Rights:

Article 2:

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.
3. Each State Party to the present Covenant undertakes:
 - (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
 - (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
 - (c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 4:

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the

present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 6:

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7:

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 9:

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.
4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 12:

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.
4. No one shall be arbitrarily deprived of the right to enter his own country.

European Convention of Human Rights:

Article 5: Right to liberty and security

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

- a) the lawful detention of a person after conviction by a competent court;
- b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
- c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
- d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
- e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
- f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment:

Article 3:

1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.
2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

Convention on the Rights of the Child

Article 3:

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

Article 27:

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

Article 37:

- b. No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.

The Protocol on the Treatment of Palestinians (Casablanca Protocol):

On the basis of the Charter of the League of Arab States and its special annex pertaining to Palestine, and of the LAS Council resolution concerning the Palestinian issue, and, in particular, of the Special resolution pertaining to safeguarding Palestinian existence,

The Council of Foreign Ministers of Member states agreed, in its meeting in Casablanca on 10 September 1965, upon the following regulations, and

called upon member states to take the necessary measures to put them into the sphere of implementation:

(1) Whilst retaining their Palestinian nationality, Palestinians currently residing in the land of have the right of employment on par with its citizens.

(2) Palestinians residing at the moment in in accordance with the dictates of their interests, have the right to leave and return to this state.

(3) Palestinians residing in other Arab states have the right to enter the land of and to depart from it, in accordance with their interests. Their right of entry only gives them the right to stay for the permitted period and for the purpose they entered for, so long as the authorities do not agree to the contrary.

(4) Palestinians who are at the moment in, as well as those who were residing and left to the Diaspora, are given, upon request, valid travel documents. The concerned authorities must, wherever they be, issue these documents or renew them without delay.

(5) Bearers of these travel documents residing in LAS states receive the same treatment as all other LAS state citizens, regarding visa, and residency applications.

Council of the League of Arab States, Arab Charter on Human Rights:

Article 8

Everyone has the right to liberty and security of person and no one shall be arrested, held in custody or detained without a legal warrant and without being brought promptly before a judge.

The Swedish Alien's Act:

Chapter 4: Refugees and persons otherwise in need of protection

Definitions

Section 1

In this Act 'refugee' means an alien who

- is outside the country of the alien's nationality, because he or she feels a well-founded fear of persecution on grounds of race,

nationality, religious or political belief, or on grounds of gender, sexual orientation or other membership of a particular social group and

- is unable, or because of his or her fear is unwilling, to avail himself or herself of the protection of that country.

This applies irrespective of whether it is the authorities of the country that are responsible for the alien being subjected to persecution or these authorities cannot be assumed to offer protection against persecution by private individuals.

A stateless alien shall also be considered a refugee if he or she

- is, for the same reasons that are specified in the first paragraph, outside the country in which he or she has previously had his or her usual place of residence and
- is unable or, because of fear, unwilling to return there.

Section 2

In this Act a 'person otherwise in need of protection' is an alien who in cases other than those referred to in Section 1 is outside the country of the alien's nationality, because he or she

1. feels a well-founded fear of suffering the death penalty or being subjected to corporal punishment, torture or other inhuman or degrading treatment or punishment,
2. needs protection because of external or internal armed conflict or, because of other severe conflicts in the country of origin, feels a well-founded fear of being subjected to serious abuses or
3. is unable to return to the country of origin because of an environmental disaster.

The corresponding applies to a stateless alien who is outside the country in which he or she has previously had his or her usual place of residence.

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