

COMMENTARY

Hamas Terror and War in Gaza: The Trigger for Palestine Refugees Has Been Pulled¹

Ralf Roßkopf²

Abstract

Terror and war are currently shaking Israel, Palestine and the Middle East. An analysis of the legal consequences for the status of affected Palestinian refugees demonstrates the need to put an end to the conflict and to agree on a definite settlement “in accordance with the relevant resolutions adopted by the General Assembly” as soon as possible – if not for humanitarian reasons than in the sheer self-interest of the international community.

Key Words:

Hamas; Israel; Palestine; Palestinian Refugees; Terror; War; Refugee Convention

1 Situation on the Ground

A new tragic page has been turned in the book of conflict in the Middle East. On October 7, 2023, Hamas and other militant Palestinian groups fired thousands of rockets from Gaza at Israel, crossed into it, slaughtered some 1,200 people, injured thousands and abducted about 240 more regardless of age, sex, vulnerability, nationality or stance on the conflict. Investigations on reported sexual abuse and rape are ongoing. In response and with the declared aim to destroy Hamas, Israeli military forces laid a complete siege of the Gaza strip, bombed assumed military structures and launched a ground invasion. A truce to exchange Israeli hostages for Palestinian prisoners collapsed on the ninth day. On December 6, 2023, and in a rare move of writing under Article 99 of the UN Charter, UN Secretary-General António Guterres brought the matter to the attention of the UN Security Council, summarizing:

“more than 15,000 people have reportedly been killed, over 40 per cent of whom were children. Thousands of others have been injured. More than half of all homes have been destroyed. Some 80 per cent of the population of 2.2 million has been forcibly displaced, into increasingly smaller areas. More than 1.1 million people have sought refuge in UNRWA facilities across Gaza, creating overcrowded, undignified, and unhygienic conditions. Others have nowhere to shelter and find themselves on the street. Explosive remnants of war are rendering areas uninhabitable. There is no effective protection of civilians.

The health care system in Gaza is collapsing. Hospitals have turned into battlegrounds. Only 14 hospitals out of 36 facilities are even partially functional. The two major hospitals in south Gaza

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² Dr. Ralf Roßkopf is a professor of law in the Faculty Applied Social Sciences at the Technical University of Applied Sciences Würzburg-Schweinfurt, Germany.

are operating at three times their bed capacity and are running out of basic supplies and fuel. They are also sheltering thousands of displaced persons. Under these circumstances, more people will die untreated in the coming days and weeks.

Nowhere is safe in Gaza. [...]

WE are facing a severe risk of collapse of the humanitarian system. The situation is fast deteriorating into a catastrophe with potentially irreversible implications for Palestinians as a whole and for peace and security in the region. Such an outcome must be avoided at all costs.” (Guterres, 2023)

Whether avoidance is still realistic remains doubtful. The trigger has already been pulled. How could the international community be so ignorant to a conflict protracted for 75 years? One could sense how the conflict was fuelled and heated up to boiling over the last years. Now that it exploded and threatens to devour the whole region and more, one can only hope that both parties take their finger off the trigger as soon as possible.

2 Consequences for the Palestinian Refugee Status

This is neither the place nor an attempt to explore the complex and cursed Middle East conflict as such or the current atrocities and sufferings in general. Instead, and within the scope of this journal this comment is to stress that yet another trigger – a legal one – has been pulled. The international community should be aware of it and accompanying legal and factual consequences.

The quoted summary by the UN-Secretary General of the devastating conditions in Gaza proves - in the terms of the European Court of Justice (ECJ) – a situation

“where it becomes evident, based on an assessment, on an individual basis, of all the relevant evidence, that the personal safety of the stateless person of Palestinian origin concerned is at serious risk and that it is impossible for UNRWA, whose assistance was requested by that person, to guarantee that the living conditions of that individual would be compatible with its mission, and that person is forced to leave the UNRWA area of operations owing to circumstances beyond his control.” (ECJ, Judgement of 13/1/2021, XT, No. C-507/19, para. 51).

While in general, Palestinian refugees had been excluded from the scope of the 1951 Convention relating to the Status of Refugees (CRSR) as they were seen under the protection and assistance of UNRWA (Art. 1 D cl. 1 CRSR), they are automatically (“ipso facto”) entitled to its benefits,

“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” (Art. 1 D cl. 2 CRSR).

The author has argued that this trigger had been pulled long before (Rofskopf 2021: MN 857-89; 2022: 201-210). In the light of the current developments, there is no way to deny it anymore regarding Palestinian Refugees in the Gaza Strip. Once they depart from the UNRWA area of operations (Gaza Strip, Westbank, Jordan, Lebanon, Syria), the Parties to the 1951 Convention

“must take account of the objective of Article 1D of the Geneva Convention [...] namely to ensure that Palestinian refugees continue to receive protection, as Palestinian refugees, until their position has been definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations.

In the light of that objective, a Palestinian refugee must be regarded as having been forced to leave UNRWA's area of operations if his personal safety is at serious risk and if it is impossible for that agency to guarantee that his living conditions in that area will be commensurate with the mission entrusted to that agency" (ECJ, Mostafa Abed El Karem El Kott, paras. 59, 62-63; confirmed in *Serin Alheto*, para. 86).

In such a case, and when they cannot avail themselves to the protection of UNRWA in one of its other areas of operation, they are to be seen as refugees without any further examination of the regular criteria set up in Art. 1 A para. 2 CRSR. As Jordan, not having signed the 1951 Refugee Convention, has categorically ruled out to take in any further refugees from the warzone, Syria and Lebanon will neither volunteer to do so nor be safe, and a transfer to the Westbank is illusory, Palestinian refugees can seek protection from any Party State of the Convention once within the scope of its jurisdiction. Egypt, Party to the Convention, itself, has declined to accept any refugees from the conflict zone, too. Thus, it is noteworthy, that from now on the responsibility to protect, accommodate and assist those Palestinian refugees might materialize also for Party States distant from the conflict zone and UNRWA's areas of operation. This responsibility might not be limited to the Palestinian refugee population from the Gaza Strip. Symmetrically with the conflict, it could easily spread to the one in the West Bank and the neighbouring States.

3 Conclusion and Recommendation

Hence, if not already for plain humanitarian reasons, in sheer self-interest, the international community should take any effort to reach a cease fire, stop the spreading of the conflict to the Westbank and find a definite settlement "in accordance with the relevant resolutions adopted by the General Assembly".

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