



The Hague Process  
on Refugees and Migration

## Foundation

# The Hague Process on Refugees and Migration

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**in cooperation with**

**the ARAB THOUGHT FORUM**



This summary is made to report on an interactive 3-day working conference entitled '*Advancing the Refugee and Migration Agenda in the Middle East*'.

The working conference took place in *Hotel Le Meridien Amman, Jordan* on Saturday 23<sup>rd</sup>, Sunday 24<sup>th</sup> and Monday 25<sup>th</sup> April 2005.

We wanted to make this working conference different from many by making use of a specific working method which we used successfully during The Hague Process so far.

The personal experience, wisdom and ideas of all participants were used to arrive at valuable recommendations which we hope will pave the way for new responses to the refugee and migration issue in the Middle East region within a global context. The issues we concentrated on were three major themes:

1. Refugees in the Middle East;
2. Migration from the Middle East to Europe;
3. Potential of The Hague Process on Refugees and Migration as catalyst for change

Working languages were English and Arabic. The working conference followed the so called 'Chatham House Rules'. Chatham House is the home of the Royal Institute of International Affairs in London, UK. The "Chatham House Rules" try to guarantee openness and freedom of expression in a meeting, and state that no comments or statements by any participant will be cited outside the meeting in such a way as to identify the speaker.

## Summary Day 1 – Saturday 23 April 2005

A final record of the THP/ATF Seminar will be presented in a few weeks after the meeting. In the final report nothing will be lost. On the first day of the seminar, ten main themes emerged:

1. The need for greater international awareness was stressed, through accurate objective information, of the nature and complexity of the refugee and migration situation in the Middle East, respecting the differences between the issues in the Middle East as compared to North Africa. The role of academics and scholars and researchers is key to this.
2. The need for greater understanding of the legal protection and humanitarian status of refugees in countries of asylum, both Palestinians and other groups, was emphasized including a focus on gaps in the refugee law regime in Middle East countries.
3. The meeting called for a better analysis of the root causes of refugees and migratory movements, and raised some reflections on the impact of certain economic models which may lead to unemployment and poverty; some participants identified the abuses caused by corruption.
4. Participants underlined the need to focus on *sustainable* development and *durable* solutions to refugee problems, especially the protracted Palestinian problems including issues relating to: the right to return; compensation policy; the international legal obligations on states and other actors; long term protection requirements, and the role (including the failures) of the international community and the UN system to resolve the problems.
5. Participants raised an important discussion on the rights and obligations of refugees and migrants in host countries; the value of positive, welcoming policies of integration and social inclusion; the recognition of skills and qualifications for employment. In this context the meeting looked for policies and activities which empower refugees and migrants so as to ensure that *their* human needs and aspirations are at the heart of our concerns.
6. The need for new and strengthened political leadership was stressed both in the region and globally to break the paralysis of political will to address fundamental issues of justice, equity, respect for human rights. In this regard the meeting noted the importance of strategies to engage the mass media and other opinion formers.
7. Participants pointed to the role of major international agencies concerned with socio-economic development, notably the EU, which may assist states in the region towards sustainable development, thereby potentially reducing migratory flows, and diminishing the social tensions that can lead to conflict and refugees movements.
8. The role to be played by civil society organizations was highlighted in supporting the implementation of international and national law and standards and in pressuring governments in the region, in Europe and elsewhere to adopt policies to better manage migration and respond to refugee and humanitarian crises.
9. Regarding the discourse currently used in the refugee and migration field, participants argued that we need to turn the present vicious circle (based on a 'victim orientation') into a virtuous circle, promoting the refugee and migrants' positive contribution, and emphasizing respect for human rights principles and good governance. Such an approach may lead to a more positive and hopeful political discourse.
10. Everyone at this conference are impatient with fine words but too little actions. All want to proceed along the dual path of 'principle' on the one hand and 'realism' on the other; of compliance with international law relating to refugees and migrants together with practical action; of going beyond a shopping list of ideal demands to the hard work of implementation on the ground and of burden sharing. Finally participants posed the good question: what impact and added value can The Hague Process have in future?

## Feedback from Round Tables

The following are the issues reported from the Round Tables. Participants were invited to look at the full range of refugee and migration issues in the Middle East region:

1. Several of the Round Tables reported passionate and complex discussions on the position of Palestinian refugees. It was felt that the International Community (notably the ‘Quartet’) needs to be far more active and engaged in persuading the Israeli authorities to accept the harm and injustice suffered by the Palestinian refugees and to take its responsibility for finding solutions. Powerful detailed analyses of the problems were received; the ‘*prognosis*’ was clear and widely shared: the issue facing all participants is what ‘*treatment*’ is necessary, strategic and possible under present and foreseeable conditions.
2. Participants raised the question of how much we actually know of the wishes and intentions of the refugees themselves and their representatives regarding not just the right to return but their actual intention to do so after so many decades. As would be expected, and is common in other refugee situations, the older refugees feel an intense need to return to their homes, the younger generations often less so. Some participants wanted more exploration of ‘pragmatic’ approaches to seek an end to the human misery involved.
3. Participants saw real value in looking at other refugee situations in the world which may throw some light on the political and practical issues relating to return. Mention was made of the post World War II German-Poland situation, Southern Africa, Rwanda, Croatia as examples where an end to hostilities saw programs of reconciliation, repatriation and reconstruction. Each of these seemed unique to those involved at the time but in fact they shared many characteristics, including a human rights based approach and a significant input from civil society.
4. One group proposed the Hague Process and Arab Thought Forum could consider preparing a ‘Guideline Document’, an instrument which would reassert the international framework of human rights and humanitarian law relating to the Palestinian refugee situation, document the relevant economic and social data and all this in an easy accessible and readable form to a large public readership. The group also argued for identifying overlapping interests and responsibilities between all parties involved, and the stressed also the cultural dimensions.
5. One Round Table suggested The Hague Process explore whether the International Court of Justice could issue an Advisory Opinion on the current Israeli response to its judgments; however, the meeting was advised that in international law only a Member State or the UN itself can request such an opinion, and not an NGO or special interest group. An NGO can, of course, act as *amicus curiae* at the court
6. Other Round Tables looked into other movements of people in the region, noting that some states are countries of immigration, transit and emigration at the same time. Attention was drawn to the implementation of the 2002 Declaration of Tunis<sup>1</sup> which involved cooperation between states on both sides of the Mediterranean sea.
7. It was noted that greater attention needs to be paid to a range of refugee groups in the countries of the region (Kurdish, Iraqi, Sudanese and others) which raise very important protection and assistance concerns and highlight the strengths and weaknesses of the current legal rights regime for refugees in a number of countries .
8. One Round Table argued for a greater research capacity in the region on migration issues, the training of a new generation of researchers, the strengthening of a regional network which could better analyze and predict migratory movements in future. Such an effort of course has serious resource implications.

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<sup>1</sup> MINISTERIAL CONFERENCE ON MIGRATION IN THE WESTERN MEDITERRANEAN, 16 – 17 October 2002, Tunis

9. In the spirit of learning from each other, one participant reported on an innovative program in Moscow which brought together government, the mayor's office and faith based groups in providing legal and employment services to migrants.
10. Finally, the suggestion was made that, given the large range of important issues raised, some thought should be given to focusing on a cluster of key issues (research/education; awareness building; legal rights; relations with the EU and the role of the corporate business sector in migration and refugee affairs)

## Summary Day 2 and 3 – Sunday 24 and Monday 25 April 2005

### Short presentations:

Short individual presentations were made to the meeting to stimulate discussion in Round Tables. The specific issues were 'Refugees in the Middle East' and 'Migration from the Middle East to Europe'. Some of these presentations provided detailed information about refugees in the region (especially Palestinians), the specific situation in Jerusalem, and the demographic basis of Palestinian return; mobility in and between the Middle East and Europe; the role and position of the EU with regard to the issue of 'Migration from the Middle East to Europe'; others offered ideas and perspectives for debate. Among the points for discussion made were the following:

1. Every refugee situation in the world is unique, though they share common characteristics in terms of human suffering, loss and the will of the refugees to return home where possible and resume their interrupted life. Lessons can usefully be learned from the resolution of other apparently intractable problem situations.
2. As well as focusing on *human rights* (a vital political and legal construction) it is essential to put *human need* at the top of the agenda. Sometimes political concerns come ahead of the human need. The situations in Kosovo, South Africa, even Rwanda were eventually resolved when the primacy of human need was recognized.
3. The Palestinian refugee situation has the distinct characteristic that the refugees mostly do not benefit from the protection of UNHCR, as enshrined in the 1951 Geneva Convention related to the Status of Refugees and the 1967 New York Protocol, but fall within UNRWA's mandate. Exceptions to this were reported by UNHCR, although they constitute a small proportion of the total number concerned.
4. Some critical issues affect attitudes in the Middle East to refugees:
  - The Palestinian (Arab)-Israeli conflict serves to create a climate of war in the wider region and the world especially as Palestinians become more skeptical of a resolution of their issues; a just peace in the conflict will lead to a normalization of attitudes to refugees;
  - There is a tendency to return to pre-modern, pre-secular, pre-nation- state thinking where often religion is seen as a cause of war, not a factor in peace;
  - Arab oil resources are not distributed for just development but are spent on Western products or placed in Western banks, thereby causing poverty and hopelessness among many;
  - There remain human rights violations, and absence of freedom, oppression and corruption within the region, although there are welcome signs of movement towards democratization;
  - There is unfair foreign intervention based on selfishness and double standards vis-a-vis Israel rather than a dialogue of equals.
5. As well as the Palestinian population there are reckoned to be some 500,000 refugees in the region who are of concern to UNHCR. Most Arab states (except Egypt and Yemen) have not signed the 1951 Geneva Convention related to the Status of Refugees and the 1967 New York Protocol leaving refugees very vulnerable in terms of labour and social rights. This vulnerability in turn leads to onward migration, and increasingly migrants/refugees falling into the hands of smugglers and traffickers.

These states might wish to review their present policies as an element in a peace process in the region.

6. The meeting's analysis of the full range of issues in the region should also take note of the significant numbers of Internally Displaced Persons (IDPs), the protection gaps that exists, and the importance not only of the 1951 Geneva Convention related to the Status of Refugees and the 1967 New York Protocol but also of the OAU Convention which contains a more comprehensive definition of the grounds on which a refugee may legitimately claim international protection.
7. The international community possesses great power to facilitate the negotiations for peace if the political will were there.

### **Feed Back from Round Tables**

The meeting was invited to reflect on priorities in the refugee field in the light of Saturday's discussion and the input of the speakers in the first session on Sunday. Participants were particularly asked to focus on "*Awareness and understanding*", "*Durable solutions and sustainable development*", and "*Leadership and roles*", and to look for innovative approaches. Their proposals were to look equally at responsibilities both of the region and of the wider world to resolve the refugee issues.

1. The feedback related to a number of the 21 Principles of The Hague Declaration, especially 1 on *The Responsibility of States*, 19 on *Leadership, Education and Information*, and 20 on *Implementation of Legal Instruments*. It was stressed that while everyone recognizes the need for new thinking, there are important elements in the historical agenda that remain critically important since they have not yet been implemented. Regarding the Palestinian refugee issue, the opinion was expressed from one roundtable that the current 'peace process' was in fact a disaster on the ground and was leading towards greater injustice than away from it.
2. Many of the participants' proposals take as their starting points a) the enforcement, or failure of enforcement, of fundamental principles and decisions of International Law, and b) the use we can and should make of the moral authority we possess to approach the main stakeholders, with the objective of finding durable solutions for *all* the refugees in the region in a zone of peace.
3. On raising awareness and consciousness, some Round Tables emphasized the need to counter the negative perceptions, misunderstandings and myths common in Europe and North America about the real situation facing Palestinian refugees. Participants advocated a key role for civil society through public awareness campaigns, pressure on European and North American leaders, parliamentarians and decision makers. The need to present facts accurately was emphasized, backed up by independent research of the experience of the refugees both inside and outside the camps. Campaigns should include representatives from Israel and from the Palestinian refugees, with special reference to the experience of women (See Declaration of The Hague Principle 16). The financial resources needed for such information campaigns should be sought from EU sources or North American foundations. A greater focus was suggested that could be placed on the Palestinian refugee issue on the annual UN Refugee Day on the 20<sup>th</sup> June every year.
4. As regards one of the main stakeholders, the UN itself, participants advised that they strongly support UNRWAs continuing activity on behalf of Palestinian refugees with the financial and human resources that are necessary. It was noted that UNWRA does not possess a protection mandate, that there is currently no other agency to provide it. It was suggested that there be an alternative international mechanism to ensure protection either through the extension of the UNHCR mandate or through some other mechanism.
5. All participants emphasized the importance of all states adhering to the growing body of international human rights law. Several of the Round Tables recommended that all

the states of the Middle East adhere as soon as possible to the 1951 Geneva Convention relating to the Status of Refugees and its 1967 Protocol, followed by a process of implementation aimed at ensuring the protection and self reliance of refugees and asylum seekers throughout the region. It was noted that these states are not bound by the OAU Convention or other regional protection instruments. As well as international law, states need to develop national laws relating to asylum and migrants.

6. Great potential was seen in the important and growing engagement of the European Union in the issues of concern to this seminar, particularly through the EUs arrangements with third countries on migration, protection and border control. In particular the EU's program of support for building assistance and protection capacity through its so-called 'Aeneas' program was mentioned.
7. Greater dialogue was advocated through the Barcelona process in which all EU and Mediterranean states are involved including Israel and Palestine and which deals increasingly with issues relating to refugees and migration.
8. Other specific ideas were put to the seminar
  - One Round Table proposed a Truth and Reconciliation Commission for the Israeli-Palestinian conflict along the lines of the South African experience;
  - The issue of compensation for Palestinian refugees could be illuminated by making use of Michael Fishback's recently published book 'Records of Dispossession', Salman Abu Sitta's impressive Atlas, and the Jerusalem Documentation Project, established by HRH Prince El Hassan bin Talal in the Royal Scientific Society Amman jointly with Harvard University and the Welfare Organisation;
  - A seminar could be organized on the anniversary of the judgment of the International Court of Justice to focus on the issue on noncompliance of Israel with international law. The involvement of a European peace institute or human rights Centre could ensure this meeting would have the necessary level of participation, status and profile;
  - Active consideration should be given to the development of National Councils for Refugees and Migrants in the states of the MENA region with the participation of governments, NGOs and representatives of refugee and migrants organizations. Some European organization models might usefully be studied to see where lessons can be learned. The Under Secretary of the Arab League for Refugee and Migrant Affairs might coordinate their work on a regional level.
9. The Hague Process and Arab Thought Forum should actively consider taking forward a number of the proposals coming from the discussions through smaller focused working groups. The Arab Thought Forum and the meeting of the Club of The Hague in November were urged to act on these proposals.
10. on MECA (Middle East Citizen Assembly initiative): attention was drawn to the potential of the MECA initiative fostered by HRH Prince El Hassan bin Talal.

## **CONCLUDING REMARKS FROM THE CHAIR<sup>2</sup>**

### **Quote-**

1. The process is not yet finished, we still have to analyse and distil the outcomes of the Round Tables and plenary sessions and generate a report which fairly identifies the key issues we have addressed, our shared analysis and the next steps we propose. That report should come in the next few weeks; it will be for the ATF and the Hague process to act upon its propositions.
2. We have tried to look at ways we can try to advance the agenda on refugees and migration. We have done this with particular reference, first, to migrants and refugees in the region of the Middle East and North Africa and, second, to migrations of all

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<sup>2</sup> Philip Rudge served as chair of the Working Conference. Philip Rudge also was member of a small Steering Group for the Conference existing of Siham Mas'ad, Humam Ghassib, Frans Bouwen, Chris Parkin and Philip Rudge

kinds towards Europe. On day 1 we identified many of the political, social and legal issues involved; on day 2 we focused on refugees; on day 3 we focused on migration issues, and then tried to bring everything together. We have spent most of our time in intense discussions in working groups, and then have reported back to each other in plenary sessions. We have not always agreed but have been open about our disagreements. We have tried to focus our thoughts under three general headings: *Awareness and Understanding; Durable Solutions and Sustainable Development, Leadership and Roles.*

3. Thanks to the invitations from the ATF and The Hague Process, we are a heterogeneous group of people with a wide range of experience in political life, in academic research, in governmental, intergovernmental and NGO organizations. Regarding refugees, between us we have witnessed many refugee and humanitarian crises, we have seen the strengths and weaknesses of the international community's response to these crises and grave violations of international law; we are appalled at the capacity of human beings to destroy other human beings or to persecute and force them to leave their homes; we celebrate progress in the development of the international refugee protection regime, but realize that we have a long way to go first, to sign up all countries of the world to make the world safe for refugees; second, to ensure the reality of the right of return or another durable solution of choice for all refugees; third to promote peaceful co-existence and the resolution of conflict, and fourth, to advance concepts of human need and human dignity as well as human rights, and to ensure that human rights are understood as indivisible and belonging to everyone by virtue of being human, whether they are citizens, refugees or migrants, male or female, adult or child. Regarding migration, it has been a characteristic of all human history in many parts of the world, but in an increasingly globalising world, modern migrations pose new challenges in the 21<sup>st</sup> century. We have had expert presentations on the likely trends and major issues that arise with migration, the changing demographic realities in the world, the need for legalisation and better management of migration in the interests of both states and migrants alike, not least to counter the growing business in human smuggling and trafficking which flourishes in the absence of legal channels in which to move. We know of the great advantages that can accrue to individuals, their families and other societies from migration, but we also noted the great risks of creating a pool of exploited workers with few rights and a marginal existence. We noted too the economic importance of private remittances. We heard about the growing harmonising of policies in the 25 member states of the European Union. We began to describe a world where migration is a mutually advantageous especially between the North and South, where a migrant should be free to exercise his/her rational option to seek a better life but not be forced to do so in order to survive. We rejected the simple assumption that human rights concerns only belong to the refugee; and argued that an internationally accepted regime of rights for the migrant is also an important objective which is far from reality for many.
4. This issue of the Palestinian refugees was of course a major priority of our conference. We received detailed presentations on the issue, one of the most massive and protracted refugee causes of our time. We were reminded of the profound sense of betrayal, and grave anxieties about the future of the peace process. When we were discussing the issue of return and the associated issues of compensation we were reminded by many participants; a quotation from one of them: (quote) "the right of return is a political and human right for Palestinian refugees to their homes and properties which is not satisfied by any compensation. It is the right of individuals based on human rights principles, and of the collective based on the right to self determination. Yet they are still ineligible to compensation for property damage and their suffering in the diaspora"(unquote)
5. We have tried to be practical and realistic in our suggestions for follow up actions. Some of our agenda must remain the old and current one because it is unfinished business; some of our agenda is new. We have avoided the temptation of just asking

somebody else to do something and have accepted that we each as individuals have a role, a function, perhaps a point of influence we can exercise, or we know somebody who does. These specific recommendations will be in the report to be completed shortly.

6. In our workshops and in many personal conversations we have also shared emotions. Those of us who don't live here in the region have heard the expression of great passion, outrage, pain and dismay at the failures to resolve the Palestinian refugee issue in all its complexity. Some of us are shocked and saddened by what we have heard in this seminar. We will carry those thoughts and feelings back to other parts of the world where too often there is indifference, lack of concern, double standards regarding this part of the world, and we shall ask ourselves very searching questions about how we can best help those individuals and organisations working for peace and justice here whose ultimate responsibility it will be to find solutions for this region. At least we cannot hide behind the excuse that we do not know what is really happening or we do not have the facts.

Finally, our exchanges have been very rich on a professional and personal level. Many of our participants have said that we have come a long way in this conference. Despite the difficulties and the stresses, we believe that the ethic of human solidarity is alive and well.

**-Unquote**

Club of The Hague member HRH Prince El Hassan bin Talal addressed the seminar in its closing session.

***Enclosed is a List of Participants and the Programme of the Working Conference***