

Papers of
Palestinian Youth Conference
RIGHT OF RETURN: TOWARDS A PRACTICAL APPROACH



بديل
المركز الفلسطيني
لحقوق المولدين واللاجئين



BADIL
Resource Center
for Palestinian Residency and Refugee Rights

BADIL has consultative status with UN ECOSOC

September 2019

English copyedit: Lubnah Shomali, Sarah el-Alam, Ahmad Hammash

Design and Layout: Atallah Salem

ISBN: 978-9950-339-61-3



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September 2019

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BADIL Resource Center for Palestinian Residency and Refugee Rights is independent, human rights non-profit organization working to defend and promote the rights of Palestinian refugees and Internally Displaced Persons (IDPs). Our vision, mission, programs and relationships are defined by our Palestinian identity and the principles of international humanitarian and human rights law. We seek to advance the individual and collective rights of the Palestinian people on this basis.

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Palestinian Youth Conference: Right of Return: Towards a Practical Approach

Introduction



The issue of Palestinian refugees and internally displaced persons (IDPs) remains at the core of the Palestinian struggle, being the most protracted and largest refugee case in the world. After seventy years of continuous displacement, the situation remains at a stalemate. On the Palestinian level, the right to return exists in slogans and political speeches: an improbable aspiration that is not conceived of as a realistic expectation. On the international level, it is not understood or addressed as the basis from which to root out conflict, and

is seen as an obstacle rather than a solution to the current impasse.

Recent years have seen unprecedented public attacks on the inalienable rights of Palestinian People, seeking to erase them. These attacks are manifested in the campaign led by the United States of America (USA) and Israel to eliminate the Palestinian refugee issue through the systematic targeting of the United Nations Relief and Works Agency for Palestine Refugees (UNRWA), efforts to revoke the status of Palestinian

refugees through attempts to redefine who is a Palestinian refugee, and to impose forcible integration and/or resettlement on Palestinian refugees, contrary to international law.

This has coincided with increased overt international support for Israel, particularly from the USA, evidenced by: the tacit support to expand the colonization (settlement) and annexation enterprise in the West Bank, including Jerusalem; recognition of Jerusalem as the capital of Israel; and the transfer of embassies from Tel Aviv to Jerusalem. This, in turn, bolsters the intensification of Israel's displacement policies towards the Palestinian population, and the enactment of racist and colonial laws, such as the Settlements Regularization Law (February 2017), the Nation State Law (July 2018), and Kaminitz Law (April 2019 Amendment No. 116 to the Planning and Building Law, 1965).

On the other hand, the Palestinian response in the face of these Israeli policies has been weak. This is particularly evident in the ongoing absence of a unified national political strategy that is inclusive of all Palestinians. At the international level, this is seen in the persistent avoidance of any efforts to address the root cause of the conflict, namely Israel's enterprise of colonization, forcible displacement of Palestinians and apartheid. Hence, the situation

of Palestinian people, especially refugees and IDPs, continues to deteriorate.

Moreover, the international bias towards Israel has become clearer, matched by a commensurate decline in the performance of UN institutions and official Arab support for the Palestinian struggle. This, in turn, has resulted in the deterioration of Palestinian rights and perpetuation of Israel's ongoing policies of displacement and annexation in Area C which is further reflected in the decline of Palestinians' ability both to confront and resist these colonial and apartheid policies.

The severity of the Israeli repression, western support for Israel, the absence of political will, and the lack of vision have impacted negatively on the capacity of refugees and IDPs to defend and assert their fundamental human rights. Without doubt, this has been compounded by the failure to link Palestinian rights with practical perspectives and mechanisms for their assertion and implementation. Consequently, the lack of vital discussion on and the development of practical prospects for a lasting and just peace have become perpetuating factors of the ongoing conflict.

In an effort to rectify this, BADIL's conference, entitled 'Palestinian Youth Conference: Right of Return: Towards a Practical Approach' aimed to explore and promote

practical understandings of the implementation of the right of return among Palestinian youth. The conference was implemented within a wider youth empowerment program, designed to highlight, address and engage with the right of return in a practical and feasible manner. The intended result is that this approach will transform the cycle of theorizing and rhetoric on the right of return into a practical and viable vehicle to a just and durable peace. Such an approach could constitute a basis for fruitful contribution towards resolving the case of Palestinian refugees and IDPs, based on available data from 70 years of displacement, the law and best practices from other countries, from the perspective of Palestinian youth.

Within this conference, return was framed as a right to be implemented - not just an aspirational dream - and concepts and scenarios were presented that could contribute to the reconstruction of a Palestinian national strategy; one that unifies the Palestinian people and is grounded in a rights-based approach. This publication, contains the concepts and scenarios as presented in the conference by a wide variety of Palestinian and international experts.

The conference concluded with a working group session, for the approximately 80 Palestinian youth participants from Mandatory

Palestine (both sides of the Green Line). The working group session served as a platform for open and vibrant discussion on possibilities, difficulties, risks, opportunities and benefits of putting return into practice. The outcome of this session, youth opinions on Palestinian return, are presented in the final section of this publication.

Return is our Right and our Will

The Rights-Based Solution

By Nidal al-Azza



Introduction

Apart from the Balfour Declaration, British Mandate, and League of Nations resolutions/interventions, the ‘Question of Palestine’ has remained visible on the agenda of the United Nations, since it was established. Arguably, this visibility has been more complex over time not only due to the extended number of relevant resolutions, but also because of the multiple themes the question of Palestine entails. Several international organizations and commissions are

also assigned to follow up on this increasingly complex issue. At the level of international organizations, the visibility and complexity of the question of Palestine undoubtedly has many connotations. Most notably, it is recognized as a matter of permanent political interest at the level of states and international actors. It is also an outstanding issue, which has not yet been resolved or settled.

Since it is the oldest internationally visible issue, why has the international community not

managed, either as organizations or as states, to resolve the question of Palestine? As acknowledged by states and international organizations themselves, the question of Palestine continues to pose a threat to international peace and security. Without downplaying the importance of subjective factors, many objective reasons can be listed for this case of “no solution”. Overall, these reasons are historically associated with the balance of power relations between the East and West during the cold war era, balance of power relations between axes and states during the period of unipolar domination (following the collapse of the Eastern Bloc), or recent balances of power relations between multiple axes. This article does not investigate subjective or objective causes, which continue to produce the case of ‘no solution’. Rather, it examines approaches to dealing with the Palestinian issue or ‘Question of Palestine’ as framed on the agenda of international organizations. Approaches to dealing with the question of Palestine are a mere reflection of the form, content, objective and mechanisms of international intervention, which fall in the context of “addressing the conflict” together with relevant political, legal and humanitarian issues. Hence, a single approach can involve detailed interventions, which are not discussed in this article. Rather, focus is placed on the essence and feasibility of each approach. For

example, a presentation of an approach that attempts to impose a political solution to the question of Palestine, relevant material interventions are not investigated; e.g. international resolutions and initiatives, political projects, conferences, mediations, negotiations, understandings, and bilateral or multilateral agreements. Instead, emphasis is put on the approach in terms of its respective context, effectiveness, and feasibility.

The whole world realizes that tackling the conflict or question of Palestine must be politically oriented and address human rights issues, peace, security, stability, etc. However, this article unveils the shortfalls of current approaches to intervention. It provides some analysis of two main approaches, which have been used until this very moment in dealing with the question of Palestine: (1) political management of the conflict based on balances of power relations, and (2) humanitarian interventions/approaches. The article also sheds light on the rights-based solution as the optimal approach to resolving the conflict once and for all. It argues that various parties directly engaged, active or concerned with the conflict, including states, international organizations and the Palestinian political movement, have not managed to develop a human rights-based approach to addressing the question of Palestine. Whether this is a result of the parties’ failure, weakness, or a deliberate policy, it is one contributing

factor to the ongoing conflict. The article concludes by proposing the foundations for a human rights-based approach to addressing and finding a fundamental solution to the conflict. These foundations are premised on the historical facts of the evolution and developments of the conflict as well as on the current reality. They attempt to illuminate the path leading to conditions for a just and lasting peace.

Roots and symptoms of conflict

It is quite obvious that human rights violations are associated with different types of conflicts. Large-scale and grave abuses are interlinked with the nature, intensity and tools of conflict. Although different types of conflict overlap, conflicts arising from wars of liberation, independence and self-determination or racial, religious and ethnic conflicts have a different path, scale and gravity from class struggle or political conflicts in democratic systems. Hence, there are multiple approaches to handling conflicts. This multiplicity stems from the variety of conflicts and the specific nature of each. Conflict resolution definitely requires the root causes of conflict to be addressed.

In general, it can be argued that all conflicts reflect the existence of human rights violations. However, some abuses constitute root causes,

which give rise to conflict. Others arise from conflict itself: “There is a general consensus that human rights violations are both symptoms and causes of violent conflict.”¹ It is understood that determining whether violations are symptoms or root causes of conflict holds special significance for resolving and putting an end to conflict.

Although it differs from one case to another, conflict resolution can be defined as a solution that ensures rights, justice and stability by removing the causes of conflict. On the other hand, if they are limited to partial interventions, remedies merely reflect management or alleviation of conflict. Partial interventions can be in the form of emergency interventions that alleviate the consequences of conflict and the suffering of victims, restrict the possibility of expanding conflict, or address the direct, rather than deep-seated, causes of conflict. Such interventions can be governed by temporary or interim agreements and declarations, and perhaps under international auspices. Despite the fact that they are required as a key temporary or interim mechanism to reach a solution, partial interventions fall short of establishing rights, justice and stability. They are, therefore, in danger of collapse and pose a threat of renewed conflict at a later stage, be it short or long.

Hence, a distinction should be drawn

between conflict management and conflict resolution. According to Professor Michelle Parlevliet, “by the term ‘conflict management’ I therefore mean addressing, containing, and limiting conflict in such a way that its escalation into a more violent mode is avoided. By ‘conflict resolution’ I therefore mean addressing the causes of a particular conflict and resolving these so that the conflict comes to an end.”²

Approach to political conflict management

Without indulging in historical details, it can be said that international forces, whether individual states or axes, have played a key role in creating the so-called question of Palestine, and consequent evolution and continuity of conflict. This role has taken, and continues to take, two main forms through direct interventions by states and axes, or through influence on UN agencies. For example, victorious countries in WWI decided to share the legacy of the Ottoman Empire, including Palestine. By their influence, these countries transformed the British occupation of Palestine into a mandate, including Britain’s promise to deliver on the Balfour Declaration (namely, establishing a national home for the Jews in Palestine).³ Subsequently, victor states in WWII breached their obligations towards the Palestinian people and Palestinian

right to self-determination. They resolved to partition Palestine⁴ and create Israel.⁵ The influence of these states on UN agencies and their effective intervention in the question of Palestine is still evident in the disruption of any action to put an end to ongoing Israeli violations, crimes, and impunity.

This approach is grounded in actual balances of power, rather than rights and international law. Dozens of UN resolutions have been issued on the inalienable right of the Palestinian people to self-determination and the return of Palestinian refugees and IDPs to their homes and properties.⁶ Historically, however, all draft resolutions which involved actionable measures were vetoed.⁷ Otherwise, political pressure was exercised before reaching a stage, where a veto was even needed.⁸ It is, therefore, no wonder that this international issue, which has long been viewed as a permanent threat of international peace and security, has not been addressed by any resolutions relating to measures under Chapter VII, or even binding procedural resolutions under Chapter VI of the UN Charter.

This approach is not only impaired by a lack of political will to resolve the question of Palestine in accordance with international law and recognized rights. Influential States have further used their political will to legalize

inherently illegal consequences of the conflict. In addition to the unlawful inclusion of the Balfour Declaration in the Mandate for Palestine and illegal partition of Palestine, it can be argued that a number of resolutions of international legitimacy have featured an implicit or explicit shift in wording and content, effectively legalizing what was already denounced or rejected under previous resolutions. For instance, Israeli measures across the Palestinian territory occupied in 1967, including settlement activity, were viewed as colonial actions, which are absolutely prohibited under international law. Resolutions used to provided for state intervention to bring an end to these measures.⁹ Now, by contrast, these actions are subject to negotiation on the basis of the land for peace principle and to direct agreement between the parties.¹⁰ While it was inalienable,¹¹ according to the Roadmap, refugees' right of return is negotiable and subject to agreement between the parties. It is no longer governed by international law or relevant UN resolutions. The Oslo Accords, their annexes, and relevant understandings are a glaring example of encroachment on the Palestinian people's recognized rights. Actual balances of power have produced a reality that legitimizes Israel's colonization and renders all Palestinian rights negotiable in line with agreements, that have gained an international legitimacy.¹²

Humanitarian intervention approach

Humanitarian interventions are actions meant to preserve human life, alleviate suffering, maintain and protect human dignity during or after human-induced or natural crises, and scale up preparations to confront such crises.¹³ Although humanitarian interventions are deeply rooted in human history and state practice, and despite the fact that the UN has tackled humanitarian relief and interventions in many resolutions,¹⁴ UN General Assembly (UNGA) Resolution 46/182 of 1991 cannot be considered as the norm which governs this approach.¹⁵ This resolution was informed by the experience of the Office of the United Nations Disaster Relief Coordinator. Marking a significant development, it has set the grounds for a UN system to coordinate humanitarian affairs and interventions.¹⁶ It has also laid the foundation for UN guiding principles on humanitarian interventions and assistance. The latter have been adopted as a framework for operations of different UN and international organizations. Since it was issued, the resolution has been consistently reviewed and upgraded by UN agencies.¹⁷

At operational/field levels, four key international organizations/programmes undertake humanitarian

intervention tasks: United Nations Development Programme (UNDP); United Nations High Commissioner for Refugees (UNHCR); United Nations Children's Fund (UNICEF); and World Food Programme (WFP). Other than UN agencies, a long list of international governmental and nongovernmental organizations carry out relief work, humanitarian interventions, and development initiatives.¹⁸ The United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA) is tasked with coordinating humanitarian interventions at both international and local levels. Although it has not engaged directly in assistance delivery to affected people (victims of disasters and crises), since it was established, UNOCHA plays a leading coordinating role in managing the UN humanitarian intervention system.¹⁹

This approach is characterised as one of limited emergency interventions based on urgent human needs not on rights. It does not look into or aim at addressing the root causes of crises and violations. Therefore, this approach does not provide a mechanism with a long-term impact. Rather, it is limited to temporary emergency interventions to alleviate the suffering of victims. It does not grant appropriate redress to, or find permanent solutions for the issues of, victims.

In addition to a wide array of international government and nongovernmental institutions, many international organizations and UN relief programmes operate in Palestine. In dealing with the question of Palestine, temporary and emergency humanitarian relief interventions continue to comprise the dominant approach used by UN agencies and programmes working in Palestine.²⁰ Despite the relevance of aid delivery to persons affected by the conflict which has been going on for more than 70 years, this approach has not brought an end to grave violations, provided reparations and redress to victims, or laid the ground for durable solutions. While it contributes to alleviating humanitarian suffering of the Palestinian people, particularly victims immediately affected by Israeli policies, this approach has not put an end to settler colonial policies, ongoing displacement of the Palestinian people, and apartheid. All the more so, it can be argued that this relief system has served as one component of conflict perpetuation and management, relieving Israel of its responsibilities towards the colonized people.

The rights-based solution

In the context of a process initiated to reform UN programmes since 1997, UN Secretary General requested that all UN agencies adopt a human rights-based

approach in relevant programmes and operations.²¹ Following a series of ad hoc workshops, in 2003, the United Nations Development Group (UNDG) issued the Statement of Common Understanding on a Human Rights Based Approach (UN Common Understanding).²² The principles of this approach require that all UN agencies further the realization of human rights as laid down in international human rights instruments. Human rights standards should provide guiding principles for the operations and goals of UN agencies. These standards should also contribute to the development of the capacities of 'duty-bearers' to meet their obligations and/or of 'rights-holders' to claim their rights.²³

The human rights-based approach has been associated with the work of actors, who deliver humanitarian, relief and development assistance. International and non-international organizations have incorporated the UN Common Understanding in their respective strategies. Regardless of the content and practical application, every development or relief agencies or organization has developed its own operational approach.²⁴ It can, therefore, be confirmed that the UN Common Understanding allows every agency and organization to develop an approach in consistent with its own mission, the situation in every country, or subject of intervention.

It is worth noting that the human rights-based approach does not cover key international agencies, such as the UN Security Council (UNSC) and UNGA, which handle critical issues of a political nature, which are well beyond the scope of relief and development. Undoubtedly, this is just a reflection of the will of powerful states, which desire to keep an adequate space for conflict management, preserving their own interests as well as those of their allies. Had the UNSC adopted a human rights-based approach to intervention, extensive and decades-long tragedies and conflicts would have not been witnessed in all four corners of the earth.

It is in this context that the question of Palestine emerges. Neither the UNSC nor other international organizations have provided a human rights-based intervention in this issue. despite recognition of many rights of the Palestinian people and a backlog of reports highlighting Israeli violations and crimes against Palestinians, a human rights-based approach to intervention has not been put in place. On the contrary, UN interventions continue to be restricted to humanitarian relief and assistance, or based on effective balances of power and political interests of the stronger party(s).

Towards a rights-based solution for Palestine

Humanitarian interventions in Palestine are not only needed, but should also be promoted. Addressing the question of Palestine necessarily requires political action by the parties to the conflict and the international community. However, neither approaches can achieve peace, stability and justice without addressing the root causes of the conflict, fulfilling human rights, and providing humanitarian assistance, including efforts tailored to create development within a framework for advocating victims' rights. Political interventions, including so-called peace efforts or processes, just offer conflict management and surface treatment at best. Hence, a rights-based approach is required to resolve the conflict, ensuring that the root causes are handled, namely, settler colonialism, ongoing displacement, and apartheid. Beyond a doubt, for this approach to be operative, it must embrace rights as both a theoretical and a practical framework. In this sense, the rights-based approach should take into account the protracted conflict, facts on the ground, and specificities of the situation on the ground. It should further keep an eye on the effective realization of rights without prejudice to due access to justice. In other words, in the Palestinian context, it is the

rights-based approach that addresses the root causes and symptoms of the conflict, enforces rights, and ensures maximum possible justice to everyone. This approach extends beyond handling symptoms through temporary material interventions and unveils how unproductive the conflict management approach is. It requires interventions/actions aimed at deconstructing the colonial regime in its entirety and laying the foundation for a rights- and justice-based system.

Elements of the rights-based solution²⁵

As every case requires an approach of its own, in the Palestinian context, the rights-based approach necessarily requires the provision of the following elements:

(1) Root causes of the conflict, namely, settler colonialism, forced displacement and apartheid, should be recognized as the driving forces of the conflict as well as other ongoing violations and crimes. Hence, it is not proper to address policies of home demolition, land grab, oppression, etc. separately from tackling or providing remedies to root causes. A disregard of colonization and settlement activity in Palestine, displacement of over two thirds of the Palestinian people, and restriction of conflict resolution efforts to the Palestinian

territory occupied in 1967 or relevant Israeli policies will not lead to a resolution of the issue of refugees and IDPs, (who represent more than 66 percent of the Palestinian people). The same is true of turning a blind eye to Israel's institutionalised discriminatory regime, which functions under the disguise of an illusory balance between democracy and the Jewish state.

(2) Fundamental rights, and the right to struggle/resist to realize these rights, should be recognized. A just solution of the question of Palestine can only be achieved by recognising the rights of refugees and IDPs, including their uncompromised right of return to their original homes and properties and their right to self-determination. In other words, partial remedies and other patterns of abusing Palestinian rights are inconsistent with the rights-based approach. These remedies include, *inter alia*, addressing the denial of family reunification, illegal alternatives (e.g. imposition of resettlement on refugees), erosion of sovereignty of the future Palestinian state, or recognition of certain rights in the absence of others, such as refugees' right to compensation, apart from return.

Recognition of the right to resistance in all its lawful forms also falls within this meaning. It is inconceivable that the institutionalised and racist

colonial regime can be deconstructed by depriving the Palestinian people of their right to resistance. Resisting the colonial regime does not imply that a genocide or extermination of Israeli colonizers is permissible. It only means that the colonial regime, including its political, legal and ideological tenets, be dismantled.

(3) Human rights of everyone should be safeguarded and honored. Recognition of the rights of Palestinians (the indigenous population), both collectively and individually, does not entail a denial of those rights gained by others, namely, the current Israeli colonizers. This requires an approach to dealing with the outcomes of more than 70 years of settler-colonialism. For example, in line with the rights-based approach, ensuring the refugees' right to voluntary return to their original homes may not cause new waves of displacement or dispossess the colonizers of their human rights. Providing redress for victims necessarily requires community stabilization and reconciliation.

(4) Participation in laying the foundations for future justice and equality should be established and maintained in the context of the libertarian act. The rights-based solution requires active engagement by stakeholders, especially right-holders. Participation is not prospective; rather, it should be

visible and active during the process of liberation (decolonization). Only this can ensure laying the grounds for the future. Questions that address the state and the nature of its political and socioeconomic system, identity, relationship to religion or various groups and individuals, relations with states and nations, and type of the desired society, must be raised in the context of an education and

sensitisation campaign during the liberation process. The rights-based solution does not leave people at the mercy of wishes or good intentions. On the contrary, it puts in place mechanisms for establishing the state, justice, as well as ethnic, religious and racial diversity. If left unattended, these and other issues will result in renewed conflict in the future.

Nidal al-Azza: Director of BADIL Resource Center

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The Right of Return in the Shifting Intellectual and Political Discourse of the Palestine Liberation Organization: A Historical Perspective

By Jaber Suleiman



Introduction

For Palestinian refugees, the idea of return has provided the driving force for contemporary Palestinian national struggle over the decades that followed the Nakba. Symbolic inconsistency between the idea of return and the refugee status has taken root in the Palestinian political discourse and popular consciousness. All the more so, the Palestinian National Council (PNA) (Jerusalem, 1964) resolved to replace the term “refugees” with “returnees” in reference of those

Palestinians, who were displaced from their homeland.

This paper provides an overview of changes and shifts in the perception of the right of return in the Palestinian intellectual and political discourse and in the political practice of the Palestine Liberation Organization (PLO). These transformations are examined starting from the establishment of the PLO in 1964, subsequent developments of the PLO engagement in the so-called “peace process” of Madrid (1991) and Oslo (1993), and ending with the Deal of the Century.

1. PLO and the issue of refugees towards the Oslo Accords (1964-1994)

The PLO position towards the issue of refugees and return has witnessed critical shifts since the first PNC convened in Jerusalem in 1964 to the present day. Accordingly, the key status of refugees in contemporary Palestinian struggle has come under strain. This transformation occurred in the context of PLO attempts to adapt to, and cope with, Arab, regional and international requirements for the peace process. As shown below, these shifts were both gradual and progressive.¹

1.1 From establishment towards the Interim Programme (1964-1974)

Articles 1-3 of the Palestinian National Charter confirm that Palestine is “the homeland of the Arab Palestinian people” who “possess the legal right to their homeland with the boundaries it had during the British Mandate.” The Charter also asserts that the “Palestinian people have the right to liberate and return to their homeland... and to exercise their right to self-determination and sovereignty over it.” Additionally, Article 9 of the Charter emphasises that “[a]rmed struggle is the only way to liberate Palestine.”

Since the PLO was established, the issue of return had been inseparable from the goal of liberating all of Mandatory Palestine. However, in its 12th Session (1-8 June 1974), the PNC adopted the so-called Interim/Ten-Point/Palestinian Authority (PA) Programme, which marked a decisive turning point in shifting PLO political thought in relation to the issue of refugees.

1.2 From the Interim Programme towards the Declaration of Independence (1974-1988)

In the aftermath of the Arab-Israeli war of October 1973, the PLO sought to identify with subsequent Arab and international conditions and developments. At the time, the Interim Programme adopted by the PLO provided a crucial turning point in the Palestinian political thought. The shift affected the relationship between strategic goals of contemporary Palestinian national movement, intermediate tactical objectives, how to manage the conflict with Israel and Zionism, and the nature of conflict tools.

In the context of these developments, the 1974 Interim Programme (also known as the Ten Point Program) rejected UN Security Council Resolution 242. After the PLO had categorically refused it because it was based on the “land for peace”

formula and recognition of Israel, the Interim Programme then rejected Resolution 242 on the grounds that it “obliterates the national rights of our people and deals the cause of our people as a problem of refugees.” Along this vein, Point 1 of the Interim Programme resolves that the “Council therefore refuses to have anything to do with this resolution at any level, Arab or international, including the Geneva Conference.” However, refusal was conditional on the word “therefore” mentioned above.

Held in Algiers on 15 November 1988, the 19th PNC Session convened in a climate tinged with the first Intifada, which had erupted in late 1987. PNC resolutions reflected the mainstream position within the PLO, which sought to establish a “national authority” or a “Palestinian state” in the West Bank and Gaza Strip. The political momentum of the Intifada would, thus, be invested to reach a regional settlement of the conflict. The settlement would be based on Israel’s withdrawal from the West Bank and Gaza Strip.

Two key documents were issued by the 19th PNC Session, namely, a Political Statement and a Declaration of Independence. Both documents highlighted the right of return and resolution of the issue of refugees in line with UN resolutions. Emphasis is more pronounced in the Declaration

of Independence, which links the right to return to national rights of the Palestinian people, including the right to independence and sovereignty over their homeland. In addition, the Declaration of Independence asserts the Palestinian people’s right to statehood based on Resolution 181 of 1947, which continues to provide the “conditions of international legitimacy that ensure the right of the Palestinian Arab people to sovereignty.” Earlier, the PLO had long rejected that resolution. Interestingly, neither document cites, explicitly or implicitly, Resolution 194 as a legal basis for the right of return.

1.3 From Madrid towards Oslo

Since the 19th PNC Session convened, mainstream circles within the PLO resolved to invest the Intifada in the settlement process and were convinced that the Intifada provided a driving force to implement the Interim Programme, which envisaged the establishment of an independent Palestinian state. The Intifada had already managed to transfer the center of the Palestinian struggle from abroad to Palestine, subsequently luring the PLO into engagement in the Madrid and Oslo peace processes.

The Madrid Conference was grounded in Resolutions 242 and 338, both addressing the consequences of the

1967 and 1973 wars. Resolution 242 calls for achieving a just settlement for the problem of refugees. However, because it does not identify who these refugees were, Resolution 242 gave rise to two interpretations: while Israel's perception confines them to the 1967 refugees, the Arab understanding includes refugees of both 1948 and 1967 territories.

That is how the PLO entered into the Madrid negotiations, from which it later withdrew in favor of the Oslo Accords. The latter were premised on the absence of resolutions of international legitimacy, which duly recognize the inalienable national rights of the Palestinian people (right of return and right to self-determination), including Resolution 194 (1948) and Resolution 181 (1947). Also adopted in the Declaration of Independence, the PLO was of the view that Resolution 181 lent international legitimacy to the Palestinian people's right to national sovereignty and independence. In addition, Resolution 3236 (1974) promotes the individual right of return to the status of the collective right to self-determination for the entire Palestinian people. It further used the terms "Palestinian people" in place of "Palestinian refugees".

Letters of mutual recognition between Yasser Arafat and Yitzhak Rabin were signed on 9 September 1993, just four days ahead of the conclusion of

the Declaration of Principles (DOP) in Oslo (13 September 1993). It is common knowledge that the DOP was an outcome of secret negotiations, in which the Palestinian side approved what Palestinian negotiators had declined in the Washington talks that led to the Madrid Conference. In terms of their substance, these letters were no less dangerous than the Oslo Accords because they abandoned national rights of the Palestinian people. In Arafat's letter to Rabin, the PLO recognized Resolutions 242 and 338 as well as "Israel's right to live in peace and security". However, the letter made no mention of the Palestinian people's right to self-determination. On the other hand, according to Rabin's letter to Arafat, recognition of the PLO was conditional on the pledges pronounced in the previous letter of Arafat. Most seriously, the PLO undertook to consider that the articles of the Palestinian National Charter, which ran counter to the said pledges, as "ineffective and invalid".

According to Article 1 of the DOP, "the negotiations on the permanent status will lead to the implementation of Security Council Resolutions 242 and 338." Hence, the DOP neglected the sources of the Palestinian people's national rights under international law and relevant UN resolutions: first and foremost the right of return in the context of exercising the right to self-determination. Without a link to any legal terms of reference, Article

5(3) of the DOP postponed resolution of the issue of refugees to the permanent status negotiations. Even more so, the DOP drew a dividing line between refugees of the 1948 and 1967 territories. Aligning with Israel's interpretation of Resolution 242, refugees of the 1967 territory have been known in the discourse of negotiations as "internally displaced persons (IDPs)".

It is worth noting that, while they were absolutely clear about the Israeli side, the DOP, its four annexes and letters of mutual recognition were both vague and obscure regarding overall Palestinian national rights. Needless to say, uncertainty always favors the stronger party, which tends to interpret provisions in line with power standards.

These documents granted Israel rights in a manner that was inconsistent with the principles of international law and UN resolutions. Accordingly, negotiations themselves served as a terms of reference for Palestinian national rights, not the other way around.

2. The right of return following the Oslo Accords

Since the Oslo Accords were signed, a number of official and semi-official initiatives, understandings

and positions were proposed. These reflected shifts or changes, which affected the discourse of return, which had been in circulation earlier. In political practice and in implementation of the DOP, the PLO identified with all these propositions, despite the fact that it did not officially adopt some of them. This transformation has jeopardized the key status of the right of return in the Palestinian political thought, effectively undermining its legal framework and sources under international law, including relevant UN resolutions.² Combined, these initiatives, understandings and positions attempt to draw a distinction between principle and application, and separate the right of return from the notion of "absolute justice" and principles of natural justice.

Below is a brief chronological review of the most important of these initiatives, understandings and positions.

2.1 Beilin-Abu Mazen Agreement (13 October 1995)

Albeit unofficial, this framework agreement was part of Israel-PA arrangements to create a framework for the permanent status issues in line with the DOP. The Beilin-Abu Mazen Agreement was part of the final status arrangements (Oslo II Accord) and served as an important

pillar of the second Camp David talks (July-August 2000). Following the failure of these talks and outbreak of Al-Aqsa Intifada, the full text of the document was leaked to the media.

In light of changing facts on the ground since the Nakba, Article 7(1) of the Beilin-Abu Mazen Agreement obliges the Palestinian side to reconsider Palestinian refugee rights, as recognized by the rules of international law: “Whereas the Palestinian side considers that the right of the Palestinian refugees to return to their homes is enshrined in international law and natural justice, it recognizes that the prerequisites of the new era of peace and coexistence, as well as the realities that have been created on the ground since 1948, have rendered the implementation of this right impracticable. The Palestinian side, thus, declares its readiness to accept and implement policies and measures that will ensure, insofar as this is possible, the welfare and well-being of these refugees.”

According to Article 7(2), whereas the Israeli side acknowledges the moral and material “suffering” caused to the Palestinian people as a result of the war of 1947-1949, Israel absolves itself of any ethical or moral responsibility for this “suffering”. Rather, Israel places this responsibility on the Palestinian

people or PA under the Oslo I Accord.

The Beilin-Abu Mazen Agreement further acknowledges the Palestinian refugees’ right of return to the Palestinian state. It provides that the parties agree on the establishment of an International Commission for Palestinian Refugees (ICPR). To be in charge of the refugee rights to compensation and restitution, the ICPR will be tasked to prepare and develop rehabilitation and absorption programmes.

A review of developments associated with the issue of refugees shows that many aspects of the Beilin - Abu Mazen Agreement were replicated in subsequent talks and understandings, starting with the Taba Talks all the way through to the Geneva Initiative/ Understandings.

2.2 Clinton Parameters (December 2000)

Following failure of the Camp David Summit (2000) and eruption of the second Intifada, US President Clinton proposed these parameters, which provided “guiding principles” to resume negotiations on final status issues, including refugees and their right of return. The Clinton Parameters did not break away from the essence of the US stand, which adopted the Israeli position towards

the issue of refugees and the right of return.

2.3 Arab Peace Initiative (March 2002)

Originally an initiative taken by the then Saudi Crown Prince Abdullah, the Arab Peace Initiative was proposed and adopted at the 14th Session of the Arab Summit Conference in Beirut (27-28 March 2002).

The Arab Peace Initiative calls for full Israeli withdrawal from all the Arab territories occupied since June 1967, in implementation of Security Council Resolutions 242 and 338. It also calls on Israel to accept an independent Palestinian state, with East Jerusalem as its capital, in return for the establishment of normal relations in the context of a comprehensive peace with Israel.

In relation to the issue of refugees and right of return, Article 2(2) of the Arab Peace Initiative provides for the “[a]chievement of a just solution to the Palestinian Refugee problem to be agreed upon in accordance with UN General Assembly Resolution 194.”

According to some interpretations, this article does not call for implementing Resolution 194 on the right of return. Rather, it calls

for negotiations in order to reach a solution that is “agreed upon” between both sides on the basis of the said resolution.³

As mentioned previously, the outcome of negotiations is always in favor of the stronger party, which imposes its own interpretation of provisions in line with the balance of powers.

2.4 Nusseibeh-Ayalon Initiative (July 2002)

This initiative is premised on a “transparent negotiation” method, as put by Sari Nusseibeh. Accordingly, the bare minimum of claims should be announced and maintained at all costs. Transparent negotiation substitutes negotiating chips, where a previously approved concession is only disclosed after a concession is obtained in return.

The Nusseibeh-Ayalon Initiative, or “Declaration of Intentions” as it was called by Nusseibeh, proposes two states for two peoples, where “Palestine is the only state of the Palestinian people and Israel is the only state of the Jewish people.” Permanent borders between the two states will be agreed upon on the basis of the 4 June 1967 lines, UN resolutions, and the Arab Peace Initiative (known as the Saudi Initiative).

Regarding the right of return,

Article 4 of the Nusseibeh-Ayalon Initiative provides as follows: “Recognizing the suffering and the plight of the Palestinian refugees, the international community, Israel, and the Palestinian State will initiate and contribute to an international fund to compensate them.

Palestinian refugees will return only to the State of Palestine; Jews will return only to the State of Israel.

The international community will offer to compensate toward bettering the lot of those refugees willing to remain in their present country of residence, or who wish to immigrate to third-party countries.”

Hence, the Nusseibeh - Ayalon Initiative waives the right of return under Resolution 194, which is never cited in any article thereunder. It further relieves Israel of the moral and political responsibility for the Nakba and creation of the problem of refugees. It only symbolically recognizes suffering and displacement, both a stark reality. However, it does not hold Israel responsible for providing reparation. Rather, this responsibility is assigned to the international community.

The initiative reduces Palestinian refugees’ right to compensation and restitution, as enshrined in international law, to a mere humanitarian approach to alleviate their living conditions in

their current places of residence or new places of resettlement.

Like previous and subsequent initiatives, the Nusseibeh-Ayalon document includes an item on ending the conflict. According to Article 6 of the initiative, “[u]pon the full implementation of these principles, all claims on both sides and the Israeli-Palestinian conflict will end.” What a happy ending!

2.5 The Roadmap (30 April 2003)

The Roadmap is premised on the so-called “Bush’s vision” of establishing a Palestinian state side by side with Israel. The Roadmap seeks to achieve “a final and comprehensive settlement of the Israel-Palestinian conflict by 2005.” The settlement will “result in the emergence of an independent, democratic, and viable Palestinian state living side by side in peace and security with Israel.” The Roadmap features a timeline and three phases to be implemented under the auspices of the Quartet (the United States, European Union, United Nations, and Russia). According to the Roadmap, this solution can only be reached “when the Palestinian people have a leadership acting decisively against terror.”

Like the Oslo Accords, the Roadmap puts off the issue of Palestinian refugees to the final phase, leaving

it to the so-called permanent status issues. In particular, the Roadmap incorporates the issue of refugees into Phase III (2004-2005). To be convened by the Quartet, an international conference will endorse permanent status issues (borders, Jerusalem, refugees, settlements, and peace between Israel and other Arab countries) in relation to establishing the state in 2005.

It was well known that US President Bush rendered the Roadmap meaningless when he promised Prime Minister Sharon, during the latter's visit to the White House on 14 April 2004, to circumvent the right of return under Resolution 194. In addition to legitimizing settlement activity and occupation, Bush announced that the 4 June 1967 border should not be restored under the pretext of dealing with the facts created on the ground by Israel since 1948.

Bush effectively gave up the Roadmap when he referred to it at the Annapolis Conference (2007): he declared that 2005 was no longer a realistic deadline to implement the Roadmap.

2.6 Geneva Initiative (1 December 2003)

The Geneva Initiative was formulated in the context of the same efforts exerted to reach a solution

for the question of Palestine and the issue of refugees at the expense of the indelible and inalienable rights of the Palestinian people. It was the outcome of two years of negotiations between a team of Israeli academics and members of Knesset led by Yossi Beilin on one hand, and a Palestinian team led by Yasser Abed Rabbo, then member of the Palestinian Legislative Council and former PA minister.

In view of its nonbinding legal effect to signatories, the Geneva Initiative does not reflect an official document from the perspective of international law. However, the risk lies in the content and political context of the initiative. The Geneva Initiative was presented as a model of a final, negotiated peace agreement that is accepted by relevant parties to have a priority over international law. It was premised on the "transparent negotiation" method, postulated earlier by Sari Nusseibeh. In other words, Palestinian concessions are presented all at once before negotiations begin. These are considered as a bare minimum, which cannot be conceded later. The Geneva Initiative was received by relevant international actors, including the Quartet, as a mechanism to rejuvenate and resurrect the already dead Roadmap.

Under the Geneva Initiative, apart from eliminating the right of return,

Palestinian concessions also include recognition of the Jewish character of the State of Israel, consecration of the status quo in Jerusalem, legitimisation of settlements, and acceptance of a fractured, sub-sovereign and disarmed Palestinian entity. The Geneva Initiative allows further fragmenting and subjecting the Palestinian people to Israeli control.

According to the Geneva “model agreement”, the issue of refugees carries significant weight. Article 7 addresses this issue in 13 items (a total of six pages).

The Geneva Initiative calls for “an agreed resolution of the refugee problem” on the basis of “UNGAR 194, UNSC Resolution 242, and the Arab Peace Initiative (Article 2.ii.)”. It also provides for establishing an “International Fund” to provide compensation to refugees for their refugeehood and loss of property, based on an estimation by an International Commission (Article 7(3)(9)(10)(11)).

The term “right of return” is never mentioned under the Geneva Initiative. Rather, it is replaced by a purely technical term, namely “Choice of Permanent Place of Residence (PPR)”. PPR options from which the refugees may choose shall be as follows: (i) The state of Palestine; (ii) the areas in Israel being transferred to Palestine in the

land swap; (iii) third countries; (iv) the state of Israel; and (v) present host countries.” Option iv, which concerns the return of refugees to their homeland in the so-called “Israel”, shall be at the sovereign discretion of Israel (Article 7(4)(v)). Hence, contrary to Resolution 194, the Geneva Initiative grants Israel a veto over the return of any refugee to his/her home, from which he/she was displaced in 1948. Resolution 194 is cited as a basis for an “agreed resolution”, rather than to force Israel to implement it.

The Geneva Initiative claims that the process by which Palestinian refugees express their PPR choice shall be on the basis of a free and informed decision (Article 7(5)). However, it does not take long for the initiative to restrict this choice by means of the composition of a relevant International Commission. According to Article 7(11), various technical committees will be established, including the Permanent Place of Residence Committee (PPR Committee). The latter will receive applications from refugees regarding PPR. The applications will be received no later than two years after the start of the International Commission’s operations. Most dangerous of all its powers, which were also endorsed by the Palestinian side, is that the PPR Committee determines the PPR of the applicants, taking into account individual

preferences and maintenance of family unity. Applicants who do not avail themselves of the Committee's PPR determination will lose their refugee status. Furthermore, the Geneva Initiative is of the view that Palestinian refugee status will be terminated upon the realization of an individual refugee's permanent place of residence as determined by the International Commission (Article 7(6)). So what has remained of the principle of free choice? What is the role of international law and UN resolutions, which guarantee Palestinian refugee status until they return to their homeland?

The Geneva Initiative also provides that the UNRWA should cease to exist five years after the start of the Commission's operations (Article 7(11)). UNRWA functions will be transferred to host states according to a fixed timeframe. Keeping in mind that the presence and continued operation of UNRWA does reflect the international community's recognition of the legal and moral responsibility for creating the problem of Palestinian refugees.

Like previous agreements and initiatives, the Geneva Initiative is presented as a permanent and complete resolution of the Palestinian refugee problem. Accordingly, "[n]o claims may be raised except for those related to the implementation of this

agreement" (Article 7(7)). The first and last articles (1 and 17) entail the same provisions regarding the end of the conflict and claims. Article 17 further elaborates that a final clause will be included, providing for a UNSC/UNGA resolutions endorsing the agreement and superseding the previous UN resolutions in relation to the question of Palestine and the Arab-Israeli conflict.

2.7 Annapolis Conference (27 November 2007)

The Annapolis Conference was convened against the background of the long-standing stalemate, which the Bush administration had experienced on the regional level. Relevant parties, including the Palestinians, yielded to US political requirements and hastened to attend the conference without hesitation. In reality, the meeting was purposefully designed to suggest that Bush's vision of establishing the promised Palestinian state still provided a valid ground for continued negotiations between the Israeli and Palestinian sides and to advance peace on this track.

Ahead of the Annapolis Conference, Israeli Prime Minister Ehud Olmert voiced his expectation that the Palestinian state should finally recognize the existence of Israel as a Jewish state. Along this vein, Bush publicly announced that "the United

States will keep its commitment to the security of Israel as a Jewish state and homeland for the Jewish people.” On the other hand, Palestinian President Mahmoud Abbas turned down the idea of the Jewish state: “Historically, there are two states, namely, Israel and Palestine. In Israel, there are Jews and others who live there. This is what we would like to recognize, and nothing else.”⁴

Issued on behalf of relevant parties, the joint understanding of the Annapolis Conference stated: “We agree to engage in vigorous, ongoing and continuous negotiations, and shall make every effort to conclude an agreement before the end of 2008.” Parties agreed to follow up the negotiations and develop a joint work plan to implement their respective obligations under the performance-based road map and under the supervision of a steering committee, led jointly by the head of the delegation of each party. The parties also agreed to form an American, Palestinian and Israeli mechanism to follow up on the implementation of the Road map. Abbas and Olmert would continue to meet on a bi-weekly basis to follow up the negotiations.⁵

Then 2008 came to an end, Prime Minister Olmert was removed from office by Netanyahu (March 2009), and the peace process fell into a new vicious circle.

3. Conclusion: Putting the horse before the cart

Since mainstream circles within the PLO adopted the Interim Programme, Declaration of Independence, Oslo Accords and subsequent concessions, the Palestinian national movement has consistently retreated from its strategic objectives as it set its sights on the two-state solution by means of negotiations only. Today, the Oslo peace process has come to its inevitable end and the two-state solution has reached a dead end. As evident in foregoing initiatives and understandings, all concessions made by the Palestinian negotiators, mainly trading off the right of return to establishing a promised state, were in vein.

Some believe that the negotiations-based two-state solution was doomed after the Camp David Summit collapsed in 2000 or, at more recently, following Trump’s relocation of the US embassy to, and recognition of, Jerusalem as the unified capital of the State of Israel. In fact, the two-state solution was stillborn. Neither the Palestinian nor the Arab situation compels Israel to establish a Palestinian state unless the occupation of the West Bank and Gaza Strip becomes costly. By managing daily affairs of the majority of the Palestinian population and serving as a hub of foreign aid, the

PA reduces, or rather eliminates, the cost of the occupation. Combined, these conditions stimulate the appetite of Israel to proceed with settler colonial activity and enforce apartheid against the Palestinian land and people. Laying a wager on Israel's acceptance of the two-state solution through negotiations is an illusion. Israel uses the concept of "administrative self-government", on which the Oslo Accords is premised, to refer to arrangements that fall far short of independence and statehood with full sovereignty over land, population, and natural resources. In practice, Israel applies the concept of "self-government" of the population, rather than of the land and resources.

National reconciliation efforts have failed to bring an end to the sharp internal Palestinian political divide. Also unsuccessful have been the efforts made to rebuild the PLO on inclusive, democratic national grounds. Against this backdrop, not only has the right of return been jeopardised, but also the Palestinian national struggle itself. Particularly affecting the issue of refugees and right of return, threats and challenges to the Palestinian national struggle have been on the rise. As far as the Palestinians are concerned, the so-called "Deal of the Century" proposed by the Trump administration imposes, *inter alia*, solutions for the issue of Palestinian refugees, which effectively turn a blind eye to international law

and relevant UN resolutions. In this context, the US campaign is focused on three interconnected themes: (1) drying up the financial resources of UNRWA; (2) redefining refugees; and (3) imposing resettlement. Combined, these are tailor made to liquidate the question of Palestinian and the right of return.

These challenges and risks require that the right of return is placed at the heart of the Palestinian national struggle. The dichotomy of return and liberation should be rehabilitated, obliging active forces of the Palestinian national movement to embrace a clear and firm "discourse of return". This should address the root causes of the problem back in 1948, rather than its consequences, namely, occupation of the West Bank and Gaza Strip in 1967. Adopting a rights-based approach, the starting point of this discourse will be the Palestinian narrative of the conflict in the face of the false Zionist narrative.

Revalidation of the pivotal status of the issue of refugees and right of return in contemporary Palestinian national struggle requires a serious critical review of the Oslo experience. This should be aimed at building a new and comprehensive Palestinian strategy, which does not abandon any form of struggle enshrined in international law. It will offer a way forward to adopt a path that is substantially different from the hopeless Oslo negotiations. The

strategy will also focus on changing the balance of power, fostering unity of the Palestinian people both in Palestine and in exile, and consolidating Palestinian existence and perseverance on the land of Palestine itself. It will give priority to struggle with a view to dismantling the occupation, which thrives on the

ruins of an occupied sub-sovereign state. However, this does not mean downplaying the importance of diplomatic struggle in the United Nations and international fora.

Only in that manner, can we put the horse before the cart, not the other way around.

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Endnotes

- 1 The author provides a detailed account of the shifting PLO position towards Palestinian refugees and right of return during this period in Suleiman, Jaber. "The Palestinian Liberation Organization From the Right of Return to Bantustan", in Naseer Aruri (editor), *Palestinian Refugees: Right of Return* (London: Pluto Press, 2001), pp. 92-100.
- 2 In addition to the nationality law, John Quigley identifies two main sources of the right of return under international law, namely, International Human Rights Law and International Humanitarian Law. See John Quigley. "Displaced Palestinians and the Right of Return", *Harvard International Law Journal*, Vol 39, No, 1 (winter 1998), pp. 139-198.
- 3 Israel's interpretation does not admit that Resolution 194 ensures the return of refugees to their homes, from which they were expelled in 1948. On the other hand, many international lawyers argue that Resolution 194 entails three interrelated rights: return, compensation, and restitution, each having its own independent and solid basis and precedents under international law. These practitioners also believe that the return of refugees exclusively involves their return to their homes and properties, from which they were expelled in 1948. This is in line with the operative part of the resolution, namely, "to their homes".
- 4 For the statements by George Bush, Ehud Olmert and Mahmoud Abbas at the Annapolis Conference, see www.pij.org/documents/php.
- 5 For the full text of the joint understanding, see *Palestine-Israel Journal*, Volume 14, No.4, 2007, pp. 120-121.

Israel's Position towards Return of Palestinian Refugees

By Johnny Mansour



Introduction

Israel has officially and publicly announced its refusal to comply with the United Nations Resolution 194 of 1948, which calls for the return of Palestinians to their homeland. Seventy years after the Nakba, successive Israeli governments have persisted in the unequivocal rejection of return. Although in certain instances where Israeli politicians reveal the prospects for allowing the partial return of several thousand Palestinians, no practical initiatives have been made to this effect.¹

In fact, since the beginning of its presence in Palestine, the Zionist project sought, and continues to seek to Judaize the place, and namely, the land. To this end, it has used all tools of oppression, terrorism, population transfer, and seizure of Palestinian land on both sides of the Green Line.

Combined, these practices have been designed to settle as many Jewish colonizers as possible on Palestinian land and to Judaize the whole character of the place, which includes the obliteration of the Palestinian place that would then be replaced

by a Jewish one. The Palestinian people, who have lived in the place in which the Jewish national home and state were established, must then leave. Israel has no room for two nationalities. This position has been recently consolidated by the Israeli Nation State Law, which deprives Palestinians of their right to self-determination, effectively restricting this right only to Jewish people.²

For the Zionist project, the return of Palestinian refugees to their homes and land does not only pose a danger, but also puts an end to the project itself, namely, the Zionist state. At its inception, Israel was created with the aim of transferring and displacing Palestinians from their homeland and preventing their return at all costs.

In this case, return is not just an idea, but an action that must be carried through. If implemented, return will impact the Jewish demographic structure in Palestine. In Israel, demography is exceptionally critical for leaders of the state, and for large segments of the population, who are instilled with the fear of the growth of the Palestinian population, at the expense of the Jews. Hence, Israel has drawn a link between demography and geography; In other words, Palestinian land must be brought under Israeli control as quickly as possible. In both form and content, Palestine would be transformed to benefit the Zionist/Israeli project,

preventing Palestinians from using their land. Palestinians will not be capable of expansion because they do not own land. In this way, demographic concerns would be addressed.

With a particular focus on successive Israeli governments, this paper explores the background of Israel's opposition to the right of return for Palestinian refugees and provides a brief review of Israeli politicians' and academics' positions and views. The paper investigates if and to what extent Israel is of the view that return is possible, how they dealt with return in the Oslo Accords, and the status of return from the Israeli perspective in light of regional and international political developments.

Timeline and legal framework of the Resolution on Return

Essentially, Resolution 194 on the return of Palestinian refugees is premised on so-called "international legitimacy". It is also grounded in international law, which handles cases of population transfer, displacement and eviction.³ The international community reflects an almost unanimous view that Israel's rejection of Resolution 194 is not based on any measurable legitimacy under international law or on any other legitimate claim.

As is well known, over the past few decades the issue of Palestinian refugees has been a matter of contention between political and intellectual views and positions between Israel and the Palestinians. Israel's attitudes are based on the denial of the right of return, ostensibly because it denies responsibility for the events of 1948. On the contrary, Israel holds the Arab states liable for resettling Palestinians who took refuge in their territories during the war. Israel's belief was that they defended their right to exist in that particular war. A significant number of politicians in Israel continue to hold the Arab leadership responsible for the 'immigration' of Palestinians in 1948 and that they called on Palestinians to leave their homeland. As a matter of fact, this allegation has been disproved.⁴ Furthermore, Israeli documents divulge details of Plan Dalet, which was devised by the Haganah commanders with the aim of carrying out ethnic cleansing against Palestinians.⁵ The issue of Palestinian refugees needs no further demonstration to prove that the military operations launched by Zionist militias leading up to 1948 and after comprised primarily of ethnic cleansing, both in theory and practice. If it were not for these criminal and terrorist operations, Palestinians would have never fled their homeland in the first place.

The denial rule

In the context of establishing a Jewish state in Palestine, Zionism and its Zionist project have persistently denied the existence of Palestinians. Denial was reflected in the Balfour Declaration of 1917, which dealt with Palestinians on the grounds of their sectarian affiliations. Upholding the mythical claim that Palestine was "a land without a people for a people without a land",⁶ the Balfour Declaration maintained that the Palestinians did not have any political or national rights, and that they only enjoyed civil and religious rights. What Zionism had to do was to bring these two parts together: the land without a people for the people without a land.

Persisting for a prolonged period, denial has been supported by research, studies and treaties, which hypothesise that Palestinians were not a people. Originating from the Arab Peninsula and other areas in the region, Palestinians were Bedouins who had moved to Palestine for temporary residence and that they had neither a religious nor a spiritual connection to Palestine. All of these are claims are false, and are tailor-made to fabricate a different reality, to alienate Palestinians from their land and homes, and create an old-new reality, in which only the Jews have the right to the land.⁷

This process of denial, which accompanied the Zionist movement, also continues to be embraced by subsequent Israeli governments. It comprises a set of mutually reinforced ideas, approaches and positions towards preventing any gap that would give a rise to Palestinian national rights.

Immigration and assimilation are two cornerstones of the Jewish state

In the aftermath of the 1948 war and Palestinian Nakba, Jewish immigration was key to providing Israel with the greatest number of people in order to seize control of and dominate the largest portion of Palestine. Israel was also aware that in order to complete its colonial project, the success of the immigration initiative would wholly depend on the Jews assimilation into Israeli society. Assimilation could only take place through the control of Palestinian land. The Law of Return of 1950 linked the Zionist movement with the Jewish religion, affirming that this land is promised to the Jewish people, who have the eternal right to it.⁸ Palestine serves as a path to redemption for the Jews.

Immigration and assimilation were not limited to Jewish immigration only, but was also accompanied

by the expulsion of the indigenous Palestinian population. It is evident that immigration, integration and settlement activity are tools of displacement and eviction. The indigenous population are viewed as an obstacle to the development, growth, and expansion of the colonial project.

Positions of the Israeli political parties

The majority of Zionist left-wing and right-wing religious parties are in agreement that immigration is a key component of the present and future of the State of Israel. Immigration and settler-colonialism in Palestine is one of the foundations of Israel. This means that land, which belonged to non-Jews (Palestinians) will be entirely Judaized in form by means of different names, agricultural systems, road networks, etc. Essentially, land will be emptied of its indigenous population to create a purely Jewish space.⁹

In an attempt to divide and forcibly transfer Palestinian in Israel, Palestinian communities were also deprived of benefiting from Israel's economic, cultural, and social resources and services. In the context of confronting Palestinian demography, the considerations cited by left and right-wing parties were premised on opposition to the right of return for Palestinians, so that

Israel would not shift from a Jewish to a binational state. This in itself is an attitude that entails the idea or doctrine of “ethnic purity”.

Israel faces this demographic problem in the Galilee and the Naqab, where population density is in favor of the Palestinians. To drastically reduce these significant numbers in both areas, Israel resolved to intensify the process of Judaizing the place through confiscation of the land and concentration of the Palestinian population in ghettos, separating them from Jewish communities.

Consequently, Palestinians challenged the displacement policies implemented in the context of the Galilee Development Plan, which was launched in the 1970s, but formally came to an end on Land Day.¹⁰ The Naqab Development Plan was also designed to eliminate the long-standing and natural presence of, and evict the Palestinian Bedouins from their land to the benefit of Zionist settlement activity.

All these fall under one category - seizing control of more Palestinian land. As is with the case of the Galilee and Naqab, increases in the Palestinian population would also be eliminated by confining them to ghettos.¹¹

These, and countless other plans, come under the overarching structure

of maintaining Jewish control and domination, ensuring that Israel continues to be Jewish and unfettered by Palestinian residents, whom they view as a demographic threat.

Left and right-wing parties are in agreement on major principles, most notably increasing Jewish immigration, highlighting the Jewish character of the state, and stressing the need to maintain the Jewish majority and dominant Jewish community within the state.¹²

These calls are made by Israeli parties of different orientations. Not only do these parties seem to demand that Palestinians come up with solutions for their own refugee status, but also that the Palestinians recognize / acknowledge the occupation as a status quo in their homeland and land from which they were forcibly displaced, through the use of excessive force that amounted to ethnic cleansing. At the moment, all Israeli political parties agree that Palestinian refugees should not be granted the right of return (even if some Israeli intellectuals/parties admit that Israel was responsible for creating this problem in the first place). Still, these do not go as far as accepting the return of refugees. In other words, despite non-official and indirect recognition on the issue of refugees, the solution cannot be a return to their homeland.

Return denies the existence of the Jewish state project

Zionism derives its actual existence from maintaining control over the land and securing the largest number of Jews for its settlement. In other words, the Palestinians, who are the rightful owners of the land, would be disposed of. Therefore, preventing the return of Palestinian refugees and displaced persons affected by the conditions prevailing in 1948 and 1967¹³ is one of the actions implemented to ensure the continuation of the colonial project.

As a result, Israel has forcefully sought to effectively rule out the right of return officially. From the perspective of Israeli politicians and academics, a mere approval of return would eliminate the existence of Israel. The Zionist project cannot abolish itself by allowing for the right of return, which is something it has fought, and continues to fight, in full force. Investigating the issue in greater depth, arguably the acceptance of return, means that Israel would have to acknowledge what it did to the Palestinian people in 1948. However, Israel refuses to recognize the Nakba or the fact that it caused this catastrophe in the first place.

Denial continues to serve as Israel's strongest weapon in the face of any

international condemnation or to any other calls for action that support the right of return and hinder the Zionist project. Israel denies return because it would imply a recognition of the refugee problem and on the grounds that it is the driving force behind it, but deals with Resolution 194 in a different way. By rejecting return, Israel asserts that the solution for refugees is that they seek settlement in different locations other than in Israel.¹⁴

In essence, the right of return is an individual and collective right that is not subject to a statute of limitations. Given that it is enshrined in international laws and treaties, Israel's denial runs completely counter to both the right of return and international legitimacy. The requirement for Israel to be admitted as a member state of the United Nations was conditioned on its acceptance of the right of return, including Resolution 194.

Israeli positions and views on return

David Ben-Gurion, the first Israeli Prime Minister (1949) proposed for the return of 100,000 Palestinian refugees. However, the Arabs turned this proposal down on the grounds of demanding the return of all refugees.

Moshe Sharett (Shertok), Foreign Minister in the first ten

years of government following the proclamation of Israel, called on the Israeli government to respond to the United States' request for the return of 100,000 Palestinian refugees, which they rejected. This return was based on the proposal that financial support would be provided to those refugees at the expense of Germany's compensations for Israel and the Jews.¹⁵

Martin Buber, a Jewish scholar and philosopher, believed that Israel's refusal to apply the right of return practically reflected a moral bankruptcy of the Zionist project just like the expulsion of Palestinians did.

Reiter, Director General of the Labor Party's Beit Berl Foundation and self-proclaimed leftist, is of the opinion that the solution of the refugee problem must be framed within an international framework. This framework should be forward-looking, rather than past-oriented. In other words, the right of return should be eliminated and replaced by a "reunification" process on humanitarian grounds.

Established by Israeli Prime Minister Eshkol after the 1967 war, the **Professors Committee** was mandated to eliminate the question of Palestine, and the issue of refugees in particular. The committee was tasked to develop a plan to resettle and prepare refugees for a new reality.

Abba Eban, Israeli Foreign Minister (1968) called on the United Nations to adopt a comprehensive project to resolve the conflict. The proposal envisioned the integration of refugees into the societies of their host countries.

Raanan Weiss, Immigration Officer at the Jewish Agency (1967) proposed to resettle the residents of refugee camps in the Gaza Strip and West Bank.

Mordechai Ben-Porat (1982) proposed that refugee camps in Lebanon, which had the highest Palestine refugee density, be liquidated and rooted out, hence reducing the space for claiming return.

Yossi Beilin, Minister of Justice admitted that once it approved the return of refugees, Israel would act as a normal state. However if this did occur, then Israel would not be a state of the Jews as its founders envisioned it to be.

Shlomo Gazit, an Israeli army colonel, opted for a military option to coerce Palestinians to abandon the right of return. From his point of view, return reflected an outdated right in a new reality. Since 1948, Palestinian villages and homes were destroyed and settlements were constructed in their place, in order to establish a situation in which history cannot be turned back. Gazit went as

far as explaining that Resolution 194 was nothing but a recommendation, rather than an obligation. According to Gazit, the demographic issue indicated a danger and threat to the existence of Israel.

Shimon Peres, leader of the Labor Party, Minister, Prime Minister and President of State, claimed that Israel was not behind the exodus of the Palestinians; it was the Arab leadership.¹⁶ Peres demanded that the Palestinians abandon their right of return. Once accepted, the 194 Resolution meant that the Zionist project would be transformed from a Jewish majority into a minority. Peres believed that any government of Israel would not agree to accept this.

Netanyahu, the current Israeli Prime Minister, holds the Arab states responsible for refugees. According to Netanyahu, they (the Arab states) thwart any solution to this problem (namely, to settle Palestinian refugees in the places where they currently reside) in order to end the conflict with Israel. Netanyahu views refugee camps as a hub for growing Palestinian terrorism and instilling hatred towards the Jews. He calls on political and military Arab leaders to revoke Resolution 194 and to pursue 'peace' (bilateral settlements) between and with Arab states.

Ehud Barak, former Israeli Prime Minister, could only afford the return

of a few thousand Palestinians to the territory of the Palestinian Authority, where the future Palestinian state was supposed to be created (based on the two state solution), not to Israel.

According to the **Nusseibeh-Ayalon Agreement (2002)**, two states for two peoples will be established, each assimilating its own people. Palestinian refugees will be accommodated by the Palestinian state.

The **Beilin-Abed Rabbo Document** states that return will be determined in accordance with Resolutions 242 and 338 and not Resolution 194 and provides for the possibility of compensation for refugees.

In a study on the Palestinian right of return, researcher **Ruth Lapidot** claims that Resolution 194 grants an individual, rather than a collective, right. According to Lapidot, agreements between Israel, Egypt, Palestinians and Jordan do not provide for granting refugees the right of return to Israel. Lapidot is of the view that any agreed right implies the return of thousands of refugees; and that this is suicide, or rather, would lead to the erasure of Israel.

In short, Israel, with its various political components, rejects the return of Palestinian refugees and treats the refugee issue as a

humanitarian, social and economic issue, not as a political and human rights issue. Israel also sees the acceptance of the return of Palestinian refugees as the end of its colonial project based on denying the existence of the other and seeking to preserve the demographic superiority of the Jews over Palestinians.

Why does Israel reject return?

Israel has unrelentingly worked towards rescinding Resolution 194. In parallel, Israel holds the Arab states responsible for the issue of refugees. In other words, the Arab states are required to solve this issue of Palestinians residing within their own borders.

In the face of Israel's refusal to implement Resolution 194, neither the United Nations nor the superpowers have forced Israel to put it to effect. Even more so, the balance of power that favors Israel has contributed to sustaining Israel's positions in rejecting Resolution 194.

Here we need to examine the United States (US) position, which has rejected Resolution 194 since the mid-1950s and imposed liability on Arab states. In the past, White House administrations have further turned a blind eye to Resolution 194.¹⁷ All the more so, the Trump administration has exerted effort and influence to get

rid of the question of Palestine to the benefit of Israel. To this end, the US recognized Jerusalem as the capital of Israel and moved its embassy to the city, despite the fact that it is still under occupation. The US also placed pressure on countries around the world to take a similar step and seeks to dissolve the United Nations Relief and Works Agency (UNRWA) by suspending financial support.

Israel's Approach

In concise terms, Israel denies the right of return to Palestinian refugees. Over a number of decades and through several talks with Egypt, Jordan and the Palestinians, Israel sought to put off this issue to the final stage of negotiations. In the meantime, Israel undermined and ruled out the right of return, and sought to convince the world, and Palestinians in particular, that it will never be realized.

Israel recognizes that its hegemony in the region, its refusal to allow the return of Palestinian refugees, its continued adherence to the idea of the "Jewishness of the state" and its refusal to recognize the existence of the Palestinian people, are issues that are not sustainable as time goes on.

Israeli politicians deal with return and other aspects of the question of Palestine in accordance with the principle of step-by-step "conflict

management". All the while, Israel fabricates crises and splits among the Palestinian themselves, and among the Arab states. This in itself is the principle of "disintegration and fragmentation", as is the case in the region. Until another crisis looms on the horizon, Israel will deal with the Palestinian context by further restrictions, sieges, persecution, incarcerations and isolation so that the Palestinian people will eventually give up.

Linking Palestinian return to the compensation of Jews from the Arab states

Israel has sought to present Palestinian refugees as a low priority on the agenda of displacement and return. To this effect, Israel links this issue to an invented case of Jewish displacement or expulsion from Arab countries. They also claim that they are eligible for compensation for Jewish properties in Arab countries that they were forced to abandon. However, these two cases are incomparable. There is no Jewish case of forcible expulsion from Arab countries nor was there a case of Jewish refugees. This link is immoral, illogical, and false. It attempts to draw the world's attention to Jewish victims everywhere and detract from the Palestinian refugee narrative.¹⁸

How Israel has challenged the right of return

- Destroying villages, homes and livelihoods during the military operations conducted in 1948 and 1967, which it continues to do today.
- Settling of Jewish colonizers, whilst continually denying Palestinians to the right of return.
- Launching propaganda campaigns in Israel and around the world against the realization of the right of return.
- Urging Arab countries to adopt and resettle Palestinian refugees in their host countries.
- Promoting the idea that the political and living conditions today are different from those prior to 1948 and therefore not suitable for receiving Palestinian refugees.
- Building bilateral relations with neighbouring and other countries on the grounds that the question of Palestine in general, and the issue of Palestinian refugees in particular, are not an obstacle to normalisation.

Recommendations and reflections

- Resume comprehensive international and Palestinian awareness raising campaigns to

uphold rights in general, and in particular, the Palestinian right of return.

- Launch global sensitization campaigns on the right of return.
- Mobilise international actors to support the right of return.
- Hold Israel fully responsible for the past and present persecution, displacement and oppression of the Palestinian people.¹⁹
- Urge the international community to effectively maintain and uphold the right of return for Palestinians.
- In addition to thwarting denial of the right of return, urge Arab states to reject any form of normalization with Israel.
- As a people and leadership, Palestinians need to present the issue of refugees as one of an occupied homeland, displaced nation, and a combination of political, legal and humanitarian rights.

Dr. Johnny Mansour, a Palestinian historian and academic from Haifa, specializes in Arab, Middle Eastern and Israeli history.

Endnotes

- 1 For a formal discussion and data, see a research paper published by the Knesset Research and Information Center in 2009, https://fs.knesset.gov.il/globaldocs/MMM/14bb8d55-f7f7-e411-80c8-00155d010977/2_14bb8d55-f7f7-e411-80c8-00155d010977_11_6946.pdf
- 2 Basic Law: Israel as the Nation-State of the Jewish People, <https://knesset.gov.il/laws/special/eng/BasicLawNationState.pdf>
- 3 United Nations General Assembly Resolution 194, A/RES/194 (III), 11 December 1948, available at <https://www.unrwa.org/content/resolution-194>
- 4 Al-Khalidi, Walid. "A look back on the Fall of Haifa", in *Journal of Palestine Studies*, Issue 96, Autumn 2013.
- 5 Plan Dalet was the first in a series of military plans devised by Zionist leaders implemented by Zionist militias, such as the Haganah, with the ultimate aim of ethnically cleansing Palestine of its indigenous population. See Al-Khalidi, Walid. "Plan Dalet Once Again", in *Journal of Palestine Studies*, Issue 96, Autumn 2013; and Pappe, Ilan. *The Ethnic Cleansing of Palestine*. Oxford: Oneworld, 2006; Morris, Benny. *The Birth of the Palestinian Refugee Problem Revisited*. Cambridge: Cambridge University Press, 2004.
- 6 Nur Masalha. *More Land, Less Arabs*, Beirut: Institute for Palestine Studies, 1997.
- 7 For more information, see Herzl, Theodor. *Old New Land: Altneuland*. New York: M. Wiener Pub, 1987.
- 8 Israel Ministry of Foreign Affairs, *Law of Return*, 5710, 5 July 1950, available at: <https://mfa.gov.il/mfa/mfa-archiv/1950-1959/pages/law%20of%20return%205710-1950.aspx>
- 9 Benkof, David. "History and the Right of Return in Israel-Palestine", in *Foreign Policy in Focus*, 23 January 2014, <https://fpif.org/history-right-return-israel-palestine/>
- 10 Oren Yiftachel states that land confiscations and expansion of Jewish settlements in the northern Galilee formed a part of the government's continuing strategy, which aimed at the Judaization of the Galilee. This in itself constituted both a response to and a catalyst for Palestinian resistance, culminating in the events of Land Day. For more information, see Oren Yiftachel, *Ethnocracy: land and identity politics in Israel/Palestine*, University of Pennsylvania Press, 2006, p. 69.

- 11 Ghanim, Honaida, and Azar Dakwar. Israel and the Apartheid. Ramallah: The Palestinian Forum for Israeli Studies (MADAR), 2008.
- 12 Hajjaj, Mohammed Tareq. "Positions of Various Israeli Parties towards the Question of Palestine", in *Al-Hewar al-Mutamaddin*, Issue 3786, 24 June 2010, <http://www.ahewar.org/debat/show.art.asp?aid=313033&r=0>
- 13 In the wars of 1948 and 1967, hundreds of thousands of Palestinians were forcibly exiled from their homes and became displaced, both internally and externally, to make way for the Zionist colonial project that culminated in the creation of the state of Israel. To date, there are approximately 8.7 million Palestinian refugees in the world. See BADIL Resource Center for Palestinian Residency & Refugee Rights, *Survey of Palestinian Refugees and Internally Displaced Persons 2016-2018*, Volume IX, 2019. Israel to this day prevents Palestinians from fulfilling their Right to Return which allows them to continue to consolidate their presence on the lands of Mandate Palestine.
- 14 Published by the Resource Center for Palestinian Residency and Refugee Rights (BADIL), *Haq al-Awda* features relevant informed articles and follow-ups. See: <https://www.badil.org/ar/publications-ar/periodicals-ar/haqelawda-ar.html>
- 15 Abu Amer, Adnan. *The Israeli Position towards the Issue of Refugees*. Damascus: Palestinian Return Gathering, 2007.
- 16 Not only did Peres claim that Ben Gurion never gave an order to expel people during the 1948 war and that the number of Palestinian refugees resulting from the war has been about 600,000, he also rejected any responsibility for the Palestinian refugee problem, stating "Israel won the war and the local inhabitants were left outside. Should Israel be held responsible for the fact that Arab countries did not absorb their Arab refugees in the same spirit of self-sacrifice and brotherhood that Israel displayed toward Jewish refugees?" For more on this, see Shimon Peres, *The New Middle East*, New York: Henry Holt, 1993, p. 186-187.
- 17 Muheisen, Tayseer, "A Treatise on Palestinian Refugee Resettlement Projects: An Analytical View", in *Haq al-Awda*, Issue 43, Bethlehem: BADIL.
- 18 MADAR, *The True Purposes of Incorporating the Issue of Jewish Refugees from Arab Countries within Permanent Solution Issues*, Special Report, 20 September 2012. Ramallah: MADAR, 2008, <https://bit.ly/2XwoTdo>
- 19 Abu Hussein, Hussein. "Israel's Responsibility towards Palestinian Refugees and Palestinian Responsibility for Sustaining Claims of the Right of Return", in *Haq al-Awda*, Issue 16, Bethlehem: BADIL.

Refugees between the Two States and One State in Historic Palestine¹

By Awad Abdul Fattah



Many Palestinians were deeply shocked by the announcement of the Oslo Accords 25 years ago. Palestinians viewed the Accords as a serious compromise to the rights of the majority of the Palestinian people, particularly refugees and Palestinians of the 1948 territory,² who were then forced to take on the colonizer's (Israeli) citizenship, after surviving expulsion and ethnic cleansing.

The overall Palestinian, Arab and international situation in the early 1990's was impacted by unfolding political degradation.

These conditions produced a sense of despair and utter defeat. It also developed a situation where adaptation to the new *fait accompli* was inevitable, accompanied by the illusion that an independent state would be created in the West Bank and Gaza on at least 22 percent of the land of Historic Palestine. From its onset, the Oslo process was rarely perceived as a real surrender of those who crafted the Oslo process (very few people recognized that Oslo would eventually fail). The Oslo Accords marked yet another victory for Zionism, amongst a number of

others, and was more dangerous than the Zionist's first triumph of 1948 (*Nakba*).³ The Accords recognized the legitimacy of the Zionist movement and its ideological foundations, and the colonial realities it imposed on the ground in Palestine. It was only a minuscule fraction that persistently criticised and unrelentingly challenged the consequences of the Oslo Accords on Palestinian life and the national liberation struggle.

It was the outbreak of the *Intifada*⁴ that revealed the real consequences of Oslo. Those who were in favor of the Accords came to realize the truth and joined forces with the original critics of Oslo. Perhaps in their worst dreams, the majority did not anticipate that, a few years later, the idea of an independent state in the West Bank and Gaza Strip would become an illusion. Instead, the entire national liberation project resulted in geographical, national, political and social fragmentation, and that some Palestinians would be compelled to redefine this project, and find a way out of this impasse.

As time passed, the extent of damage caused by the Oslo Accords to the Palestinian people became more apparent. Damage is seen at all levels: internally within Arab and their international relations (with friendly states who became allies with Israel after Oslo); and the struggle for the Palestinian project of national

liberation to release itself from the clutches of the settler-colonial and apartheid regime. This damage is ongoing and extensive.

In the late 1960s, the project of national liberation was upgraded and given a humane democratic dimension. Entitled "A Secular Democratic State in Historic Palestine",⁵ the project accepted to live with Jewish settlers in an egalitarian state on the ruins of colonization and apartheid. The idea of a two state solution which led to Oslo being formulated and signed, stems from the Interim Solution which was adopted in 1974,⁶ or the "return-liberation" narrative that formed the backbone of the Palestinian national project and the Charter of the Palestine Liberation Organization (PLO).

This national and humanitarian project, that would do justice to the entire Palestinian people, particularly refugees, held water for just a few years. The Palestinian leadership soon abandoned this project due to mounting international pressure and the unjust and arbitrary balance of power. There is nothing inherently wrong with the leaders of the liberation movements resorting to political realism and creating mechanisms and tactics to allow them to accumulate a number of interim achievements. However, what was happening was a progressive relinquishment of the

strategic vision in favor of tactics and legitimisation of the colonial reality, bringing us to the current abyss we find ourselves in.

The entire Palestinian people have lost both the project and the vision. In such a situation, Palestinians become engrossed and occupied by the concerns of daily life and their individual salvation, leaving management of public affairs to those who were responsible for creating this deplorable condition to begin with. The bigger danger currently is the transition of the US-Zionist alliance, led by Trump and Netanyahu, which has shifted the question of Palestine to a state where both Israel and the US (as well as some Arab regimes) are now engaged in negotiations that will effectively erase Palestine from existence, without fear of retribution.

The situation has come to a head with the announcement of the Trump plan, touted as the 'Deal of the Century', which will purportedly resolve the Israel/Palestine conflict. Although the Palestinian Authority (PA) announced its rejection of the 'Deal', it continues to maintain security coordination and avoids confronting the ultimate goal of Trump's plan: the elimination of the question of Palestine on the ground. Implementation of the 'Deal' is well underway, starting with the relocation of the US embassy to Jerusalem, dissolution of the UNRWA and

settlement expansion, amongst other hostile and aggressive steps taken. In addition to the destructive impact of the internal Palestinian political divide, the Deal of the Century has empowered Israel to continue consolidating its colonial project with much ease.

The very idea of two states marginalizes refugees

Even before the five-year interim period had expired, the Oslo process and its developments unveiled the Zionist's true intentions. In the Camp David negotiations that were imposed on Yasser Arafat, Palestinian leaders realized that their calculations and assumptions were a failure. These were formulated in a moment of weakness and disillusionment. Arafat was held responsible for the failed negotiations because he refused the US-Israeli plan for a settlement that would eliminate the question of Palestine. In seeking an independent state, Arafat had already made far-reaching compromises and ultimately walked into a trap.

In fact, refugees and the post-Oslo committees they established in Palestine and abroad were more aware of, and sensitive to the risk posed by the Oslo Accords on their right of return. Refugee committees aimed at exerting pressure on the Palestinian leadership to prevent

them from compromising wholly or partly on their right of return.

The failure of the Camp David negotiations led to the outbreak of the second *Intifada* in Palestine. Since 1948, the second *Intifada* was unprecedented in terms of its scope, intensity, and show of resistance. Notwithstanding its disastrous management, the *Intifada* restored the Palestinian people's willingness to pay the ultimate price for their freedom. The second *Intifada* was not only triggered by Israel's refusal to recognize and implement the right of return, but also any other Palestinian claims as well. Although the Accords indicated to some extent that it would grant autonomy to the Palestinians, Israel insisted on seizing full control of the West Bank and Gaza Strip. In other words, there would be no independent state, right of return, or full equality for Palestinians of the 1948 territory, who initially also joined the second *Intifada*. Despite the fact that they were unarmed, these Palestinians were met with a violent onslaught, leaving 13 Palestinians from the 1948 territory dead and hundreds of others injured. Thus, after eight days, Palestinians⁸ from 48 gave up in their participation in the *Intifada*.

For those under the illusion that the Oslo Accords provided a solution to the question of Palestine, it became evident that the denial of the two-

state idea was intrinsic in the Accords themselves and a part of the Israeli strategy. Evidence was not only revealed by a public statement made by Israeli Prime Minister Yitzhak Rabin in a government session shortly after the announcement of Oslo, but was also displayed through the intense pace of continuous settlement activity both after the Oslo Accords had been signed and throughout the interim period. After the suppression of the second *Intifada*, the reoccupation of Area A (which in accordance with the Oslo Accords, was the Area that was designated to be controlled by the Palestinian Authority) and the assassination of the Palestinian revolutionary leader Yasser Arafat, the colonial project continued unabated and the apartheid regime became consolidated. The idea of two states had at this point become a farce.

In the meantime, the Palestinian leadership adopted a stronger discourse on the pursuit of statehood over the right of return. All the more so, they were careful not to show any insistence for the return of refugees to the area from which they were expelled. The Palestinian leadership thought that this would lure the Israelis into accepting a trade-off of the right of return for a state in the West Bank and Gaza Strip.

The outcome of this approach was catastrophic. The swap of a partial

right to statehood, for the integral right of return, (which was the essence of the Palestinian cause), did not only compromise on the question of Palestine, but also reflected futile thinking and understanding of the management of negotiations with a dangerous adversary. Twenty five years after the Oslo approach, the Palestinian people find themselves under a settler-colonial and apartheid regime, which expresses unequivocally that Palestine in its entirety belongs to Israel and that the Palestinians are not entitled to Palestine and to self-determination. More seriously, this approach has ripped the Palestinian homeland and people apart, dismantled the national movement, and undermined the PLO, which had lifted the Palestinians out of the *Nakba*. For over three decades, the PLO had been united and formed the national character of Palestine and lead the Palestinian struggle. In other words, the Oslo approach disintegrated the revolutionary tools built by the Palestinians since the *Nakba* of 1948.

Refugees support one state in Palestine

As mentioned above, refugees did not wait for the two-state illusion to come to an end. Those more well informed leaders immediately took the initiative to create frameworks for the right of return. The PLO

- the official leadership and all-encompassing national entity of the Palestinian people from across the spectrum - was confined by a formal agreement with Israel and therefore was not in a position to create such initiatives. Committees for return proliferated across Palestine and in the diaspora with the aim of re-instilling the right of return into the consciousness of both the leadership and the people. Since the time of the second *Intifada*, periodic conferences on return have been held, bringing together many Palestinians in Europe and across the world. In one of the most recent and interesting developments, on 30 March 2018, Palestinian refugees began the Great Return March demonstrations, which set out from the Gaza Strip to their depopulated historic homeland, as a symbolic realization and exercise of return. The platforms of these initiatives and conferences unanimously share the principle that no solution is politically or morally legitimate, without recognising and realizing the people's right of return to Palestine.

On the other hand, in response to the second Palestinian *Intifada*, the brutal Israeli invasion of the controlled territory of the Palestinian Authority (PA) brought the idea of one secular democratic state in Historic Palestine back to the surface, but this time, on a larger scale. The idea proliferated within

known small community groups, as well as academics, intellectuals and activists across Historic Palestine and places of refuge. Mainstream media no longer had reservations in publishing news about that re-emerging idea and conducting interviews with people who believed and adopted it. At the heart of the one-state solution lies the return of the refugees to their homeland, the State of Palestine, which was supposed to be proclaimed before 1948 on the entire land of Historic Palestine. Reflecting a brutal apartheid policy, the Zionist movement and Israel displaced more than half of the Palestinian people living in Historic Palestine. Comprising the majority of the Palestinian people inside and outside Palestine, these refugees are citizens who await the return to their homeland to live with full equality in a democratic state. Displacement, expulsion and denial of the return of refugees constitutes a war crime and a crime against humanity.

In response, the United Nations issued Resolution 194 on the right of return⁹ in the immediate aftermath of this Zionist crime. In 1974, Resolution 3236¹⁰ was issued, reaffirming and drawing a close link between the right of return and the right to self-determination for the Palestinian people.

The focus then becomes on the acknowledgment that the

Palestinians' right of return is a human and moral right. When addressed in the context of the human conscience, it reflects a universal value by which people have the right to live safely in their homeland. The right of return also entails an inclusive national dimension which is a contributing factor to uniting the Palestinian people, particularly under the circumstances of fragmentation and the outcome of national action on the Palestinian stage. Therefore, it is of no coincidence that the committees who support the right to return opt for the one-state solution (albeit indirectly), rather than the two-state solution.

Reassembling/rebuilding the Palestinian historical narrative

While it is not possible to achieve absolute justice in Palestine, the two-state scenario should not be viewed as a partial justice solution. Before it was dismantled by Israel, the two-state solution was already inherently unjust, racist, and tyrannical. It does not provide reparations for the majority of the Palestinian people, first and foremost, refugees. The interim solution approved by the Palestinian National Council in 1974¹¹ shifted to a two-state solution in the Algiers Declaration of 1988.¹² After Oslo, it was reduced to the

currently established Bantustan system, dealing a severe blow to the Palestinian national project. It has prolonged the suffering of our people, not only because of Israel's crimes, but also due to the internal divide and long lasting consequences of this disintegration.

This downward trajectory resulted in a large-scale distortion of Palestinian national awareness. Principles and values of the national liberation movement have changed drastically. New generations have grown up in a state of political limbo without any positive role models nor an example in the form of an honest and qualified leadership, an inclusive liberation institution, or a future vision to be embraced by this generation.

This was not a coincidence. The enemies, notably American imperialism – the ultimate ally of Zionism – has exploited the vulnerable status and defeatist mentality of those who shaped Oslo and its supporters in order to cement this transformation, rendering it incapable of returning to the previous state of affairs. The doctrine of security agencies was changed from confronting the occupation to opposing and preventing resistance of the people. To this avail, security agencies were trained by US General and CIA officer, Keith Dayton.¹³ Financial aid given by European countries was not designed to build

an independent and productive economy, but to fund security agencies and support civil society organizations which weakened and debilitated direct political action.

Under Oslo, Israel is no longer an enemy. Instead, it is now a neighbour, with whom negotiations over 'disputed borders' are taking place. The Oslo-based PA is now more authoritarian, centralised in the hands of a president and a small group. This model of authoritarian rule is known in political science as an oligarchy: rule of the minority that takes control of all government functions, without reference to other government institutions.

There is a pressing need to challenge all these distorted and misleading perceptions, which do not characterise the true nature of the conflict as a struggle of colonized people against a racist and settler-colonial enterprise. It is both necessary and urgent to restore the language of the struggle to liberation, which places confrontation between the Palestinian people and the Israeli regime in the right historical context. To begin with, Israel should be defined as the embodiment of colonial Zionism and an ongoing racist, settler-colonial system.

Israel is the result of a European invasion, which took place in the context of European settler-colonialism in different parts of the

world. Therefore, it is misleading to label the Israeli presence in the West Bank, Jerusalem and Gaza Strip as an occupation. According to international customary practice, occupation is perceived as a temporary presence of the occupying power. However, regardless of the ruling political party, Israel has never had the intention of ending the occupation. As evidence, settlement activity has continued, even under the Zionist left-wing government, which signed the Oslo Accords.

Hence, like the case of the 1948 territory, the Zionist presence in the West Bank and Jerusalem reflects a settler-colonial enterprise that is intended to be permanent. This reality is not changed by the Likud-led government's refusal of right-wing calls to annex the West Bank to Israel. The Likud instead implements selective annexation of land and resources in the West Bank, while segregating and isolating the Palestinian people. This selective annexation will allow Israel to avoid confrontation with the international community. They are also seeking to avoid facing the option of granting citizenship to Palestinians to maintain their demographic superiority in Historic Palestine.,

The issue of Palestinian refugees must take root not only in political party platforms, but also in education curricula and the media. Return

initiatives must be intensified and transformed into an organic component of the daily culture of every Palestinian. The issue of Palestinian displacement is a key point of engagement with Zionism and its inhumane, displacement-oriented project. This issue has an inclusive, universal, moral and national dimension. Further action can be built on the existing initiatives, associations, committees and persons who work with refugee organizations as well as disseminating the culture of return.

The one-state solution: towards return, liberation and justice

The democratic one-state initiative is not a political solution in the short or medium term nor is it a solution to be negotiated with the colonizer, even if it answers the question of the presence of the Jewish people in Palestine. Rather, it is a unifying project that seeks to bring the conflict back to its roots and reshape the Palestinian consciousness as a prerequisite to begin changing the balance of power. Geographic, demographic, political and social fragmentation is part of the colonizer's divisive strategy, which aims at perpetuating vulnerability and facilitating control over the land and its people. Hence, this strategic power should be redeemed; namely, the unity of the people, the narrative,

the homeland, and the cause, must be restored.

The one-state solution derives its strength from the struggle and moral power from the history of the Palestinian people and their fight for liberation. These are replete with sacrifices, demonstrations, sit-in protests, and the boycott of the Zionist colonizer's products dating back to the 1920s. The one-state solution is also inspired by the PLO-endorsed human rights based approach for liberation: to accept to live in an egalitarian democratic state with the Israeli Jews after their racist colonial hegemony is abolished. South Africa presents a model of triumph and success in dismantling the colonial apartheid regime and establishing a democratic political system. This model managed to put an end to centuries of confrontations between the indigenous population and European colonizers. Compared to the colonial apartheid regime in Palestine, citing the South African model, particularly on the international stage, is lethal towards the targeting of lies, forgery and misrepresentation that Israel has built on the international stage, when presenting itself as the only democracy in the Arab region.

Additionally, in spite of significant differences and continued economic apartheid, the South African model continues to be an inspiration for Palestine. However, this model should not be literally embraced. Discretion should be exercised to find answers to differences and subsequent shortfalls in the course of applying the South African model so that they are not repeated in the Palestinian context.

The Palestinian people cannot continue to live in a state of limbo and uncertainty under colonial domination. The Israeli colonial power seizes land, takes over and controls resources, and subjects Palestinians to inhumane living conditions. Therefore, it is necessary to invest time to develop a comprehensive moral and humane liberation discourse and vision, which mobilises the entire Palestinian people. This discourse should capture the imagination of the world and segments of the settler-colonizer community, that will push the colonial regime into a corner. This is the best way to raise future Palestinian generations and informed leaders, who seek justice and freedom to empower them to liberate Palestine.

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Endnotes

- 1 Historic or Mandatory Palestine refers to the whole land area of Palestine prior to 1948 and the establishment of Israel.
- 2 The territory of Mandatory Palestine that was taken by the Zionist militias and eventually called Israel.
- 3 Nakba, the Arabic word for catastrophe, refers to the 1948 Arab-Israeli, in which over 750,000 Palestinians became refugees and approximately another 60,000 became internally displaced persons inside what came to be called Israel.
- 4 The Intifadas, (the first being from 1987 to 1993 and the second being from 2000 to 2005), were Palestinian uprisings, involving mass protests, boycotts and demonstrations that were met with violent and deadly force. The second one marked the end of the negotiating period between Israelis and Palestinians and was the deadliest of the two, with 1000 Israelis and 3200 Palestinians killed.
- 5 Ghada Karmi, *A Secular Democratic State in Historic Palestine: An Idea Whose Time Has Come?*, Miftah, 10 January 2003, available at <http://www.miftah.org/Display.cfm?DocId=1690&CategoryId=8>, [accessed 20 September 2019].
- 6 Palestinian Liberation Organization (PLO), *The Interim Political Program of the PLO*, Cairo, 1974, available in Arabic at https://www.palestine-studies.org/sites/default/files/Interim_political_program.pdf
- 8 Palestinians with Israeli citizenship.
- 9 UN General Assembly, 194 (III), Palestine – *Progress Report of the United Nations Mediator*, 11 December 1948, A/RES/194, available at <https://www.refworld.org/docid/4fe2e5672.html>, [accessed 20 September 2019].
- 10 UN General Assembly, 3236 (XXIX), Question of Palestine, 22 November 1974, A/RES/3236 (XXIX), available at <https://www.refworld.org/docid/3b00f0468.html>, [accessed 20 September 2019]
- 11 Palestinian Liberation Organization (PLO), *The Interim Political Program of the PLO*, supra note 5.
- 12 Algiers Declaration, *Palestinian Declaration of Independence*, Algiers, 15 November 1988, available at http://www.jmcc.org/documents/Palestinian_Declaration_of_Independence.pdf.
- 13 Ian Cobain, CIA Working with Palestinian Security Agents, *The Guardian*, 18 December 2009, available at <https://www.theguardian.com/world/2009/dec/17/cia-palestinian-security-agents>, [accessed 20 September 2019].

Land Restitution and Distribution: The Case of South Africa

By Bothwell Mheta



Abstract

Since the advent of democracy in South Africa (1994), the country has embarked on programs to dismantle past injustices and the legacy of colonial rule. The first by order of priority and the most contested one has been the land redistribution plan. Political discourse surrounding land reform has been riddled with the misconceptions about the objectives, process of expropriation, and the beneficiaries of the redistribution (Cousins 2016:12). In addition, the widespread use of historical narratives of land dispossession and oppression of indigenous people has carried a powerful political charge used by politicians and opposition parties to mobilise support.

This article will in the first instance, attempt to define key words attached to land reform. It will then discuss land restitution, distribution, and compensation in the South African context. Under land redistribution, the study will discuss how South Africa is going about distributing the land.

Key words: Restitution, Expropriation, Distribution, Compensation, Land Reform.

1. Introduction

The South African government's initial purpose for land reform was the development of programs to change racial disparities in land ownership and assist formerly excluded people in acquiring land ownership and rights but progress has been exceedingly slow. This has given rise to a harmful form of populism (Cousins 2016: 2) where political rhetoric is centered on race often leading to the radicalized use of land reform for retribution rather than redressing structural imbalances (Jankielsohn & Duvenhage 2018: 3). Hall et al (2011) details how land's nature as a commodity its value is derived from access, which leads to profits. Exclusion is consequently central to land access. Various mechanisms such regulation, force, legitimation and the market are employed to justify exclusions. In their study on land redistribution in South Africa, Kepe & Hall (2018) indicated that the post-apartheid land reform has not been central to the objectives of the state. The authors attributed the failure of land reform on the commodification of land, and focusing mainly on its productive capabilities. South Africa's freedom at the end of apartheid was therefore a façade in what they term the "colonial present". Decolonization efforts should be the process of dismembering the economic and political structures of colonialism

and facilitating access to land through land reform (Kepe & Hall 2018: 128-132). The crises faced by South Africa's land reform can also be attributed to the alteration of objectives by the state. Initially, land access and securing land rights were central to the priorities of land reform. Intentions, however, have shifted from affording beneficiaries' ownership, to lease holding where the state is the land owner and overseer of land usage. The targeted beneficiaries have also shifted to strategic business partners and agribusiness (Hall & Kepe 2017: 1-7). Moyo (2004:4) however interprets the current prominence of neoliberal analyses of the land question as the source of confusion. The state's current focus on production and land rights, rather than social justice, is fundamental to the stalled progress in reform. The following part will attempt to define the word restitution.

2. Defining the words "Restitution, Expropriation, and Compensation"

"Restitution"

The Merriam Webster dictionary defines the word "Restitution" an "an act of restoring or a condition of being restored: such as (a). a restoration of something to its rightful owner. (b): a making good of or giving an equivalent for some injury.

“Expropriation”

The same dictionary (Merriam Webster) defines the word “expropriation” as “to deprive of possession or proprietary rights”.

“Compensation”

The word “compensation” is defined as “money that is paid to someone in exchange for (what?)”.

3. Land Reform Regime in South Africa

As noted by Thomas (2003), some similarities in relation to the land question in Zimbabwe and South Africa are indeed striking. Both countries suffer comparable historical land inequalities. As in Zimbabwe, by 2000 less than 2% of land had been transferred from white to black Africans in South Africa against a target of the 30% that the ANC had set for itself (Thomas 2003). It is in this context that Hendricks et al. (2013: 1) argues that the ‘transition from apartheid to democracy has not translated into a thoroughgoing process of decolonization’. In both countries (in Zimbabwe only between 1980 and 1997), only those wishing to sell their land did so, following the willing seller - willing buyer principle – with the state providing financial support. Both the Zimbabwean and the South African post-colonial and post-apartheid governments (respectively) believed that there would be sufficient

funds to purchase the land to satisfy the land hungry black majority. The understanding was that those who held the land would also willingly bring land to the market as a sign of reconciliation (Mngxitama 2000). In both cases, the process to be pursued for the resolution of the land issue was predetermined when the majority governments came into power. The former minority governments had demanded guarantees during negotiations that land would not be arbitrarily redistributed without permission from the land owner and compensation should be market related, hence the inclusion of the willing seller - willing buyer principle for both countries (Mngxitama 2000). In addition, global capital backed up the white minority and oppressive governments in order to maintain the status quo (Terreblanche 2012).

At present, the South African government is obliged by the Constitution to implement land reform processes. In order to ‘operationalise’ the dictates of the Constitution, the Department of Land Affairs developed a White Paper on Land Reform in 1997, which begins by acknowledging that land ownership in South Africa had long been a source of conflict and that the history of conquest and dispossession, of forced removals and a racially imbalanced distribution of land resources, has left the country with a complex legacy (Department of Land Affairs, 1997). The Constitution

includes clauses that are to be pivotal in the process of transforming the land ownership structure in the country. These clauses state: A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property, or to equitable redress. The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis. As with the Constitution, the White Paper (1997) envisages a four-fold purpose for the land reform programme:

1. to redress the injustices of apartheid;
2. to foster national reconciliation and stability;
3. to underpin economic growth; and
4. to improve household welfare and alleviate poverty (Weideman 2004).

In order to achieve the purpose outlined in the White Paper, land reform and the transformation of land ownership patterns use a quadruple approach. These four pillars are:

1. the programme of restitution where the state is to restore or return land or provide comparable compensation to people whose

land had been appropriated by law since 1913 when the Land Act was passed.

2. the state is to secure the rights of citizens whose tenure on the land they occupy is insecure, or to provide comparable redress through land tenure reform by modernising land tenure rules.
3. to implement a programme of redistribution, transferring more land to the previously disadvantaged (black) farmers (which is meant to benefit the majority of the landless).
4. for the state to provide funding and other resources to support the emergence of [black] African farmers (Hall 2003 and CDE 2008). These are discussed in more detail below.

3. a. Restitution

This is an important pillar of the land reform programme, because it concentrates on restoring cultural land to the people who were the original owners/occupiers. By 2000, 63,455 claims had been lodged since 1994, and only 4925 had been settled, with the majority of the settlements being cash payments, and with only 162 involving restoration of land (Mngxitama 2000). By 2006, according to the Center for Development Enterprise (CDE) (2008), validated land claims for restitution numbered nearly 80,000, with most of them being urban land (81%) (CDE 2008). The government had imposed

on itself a 2008 deadline to finalise all the land restitution claims. Even though most of this land was urban land that could easily be settled with cash payments, the government still failed to meet this deadline because of legal processes where current owners would take the government to the Land Claims Court for determination. Any prolonged challenge to a claim not only disadvantages the prospective owners of the land, but also the current owner. He/she is not able to access financial resources to utilise the land. From available statistics (as shown in documents such as the CDE report quoted above), it would seem as if the country has done reasonably well in the aspect of restitution, even though this pillar, by its very nature, is not able to redistribute land to many landless people. Since most of the claimed land is now part of urban centers, it is likely that the claimants will be compensated in the form of money, leaving them as landless people who still want to be resettled.

3. b. Redistribution

As Moyo (2013) observes, the process of land redistribution in South Africa has been very slow. By 2007, only 4.2 million hectares (4.7%) of commercial agricultural land had been redistributed through all government programmes, a far cry from the 30% that the government had hoped to have redistributed by 2014. White owned commercial farmland

in South Africa comprises 82 million hectares, and the transfer target is 24.6 million hectares. The reasons given for this slow pace are high land prices and the lack of willing sellers (CDE 2008). The White Paper (Department of Land Affairs 1997) commits the government to approaching the issue of land redistribution using the willing seller - willing buyer principle. It also states that government will not be an active buyer per se, but will avail grants and services to assist the needy with the purchase of land from whomsoever is selling. In ensuring equitable land redistribution, the government has to navigate difficult terrain, because it has to fulfil the expectations of the landless but also respect the dictates of the law.

There is a belief among some in the ruling political party that the principle of willing buyer-willing seller is delaying land reform in the sense that, because it is market driven, land owners will be more willing either to sell land to the highest bidder, or to charge high prices for the land when selling to the state, making it difficult to purchase large amounts of land for redistribution to the landless. This belief was clear in the recommendations passed by the ANC in its 2007 conference, resolving that there should be a review of market-orientated land reform processes so as to accelerate equitable distribution of land (ANC 2007). The delays are comparable to what happened to the Zimbabwean process which also

followed the same principle of willing buyer-willing seller (Moyo 2013), as already stated.

In contrast, the CDE (2008: 17) believes that land redistribution is hampered not by the high prices or lack of willing sellers, but by inexperienced government officials, poor relationships and stalled restitution which prevent market transfers. The CDE suggests that land prices are being pushed up by farmers willing to sell in order to have disposable money to purchase another piece of land (CDE 2008). If this is happening, it could be explained as collusion by land owners or construed as a frustration to the land redistribution process.

4. Conclusion

South Africa can learn from the land reform process in Zimbabwe in terms of what worked and what should be avoided. Moyo (2013) highlights important implications of the Zimbabwean experience to South Africa's land reform. Market orientated land redistribution processes can still be employed in a fast track reform programme. The state also needs to ensure that those who have been given land are assisted and guided until they are clear on what they need to do with the land they have gained. Although

the land question for South Africa appears similar to that of Zimbabwe from a historical sense, it might very well be that the current contexts require different sets of interventions. The critical issue relates to policy – I have made this argument in relation to other developmental endeavours in South Africa, particularly in relation to social and economic policies (see Gumede 2013).

It is important that a land reform programme is informed by clear policy. It should be unequivocal as to what is intended with a programme such as a land reform programme – for South Africa, arguably, the land reform programme is an important instrument for redressing the legacy of apartheid colonialism. It would seem that the post-1994 land reform processes in South Africa were influenced by a multitude of policy options, understandably informed by multiple objectives, and not a clear policy direction aimed at addressing the legacy of apartheid colonialism. As argued, the policy direction has to be informed by, among other things, the kind of farming that South Africa yearns for. In addition, as Murisa (2013: 209) puts it in case of land and agrarian reform in Southern Africa, 'policy reform should be driven and informed by the needs of affected communities'.

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The Many Forms and Practices of Return: Legal, Physical and Political A Brief Commentary¹

By Terry Rempel



In November 1951, following the collapse of the UN-led efforts to secure a political solution to the struggle over Palestine, the United Nations Conciliation Commission for Palestine (UNCCP), the body set up to facilitate the implementation of Resolution 194, issued its tenth progress report. In trying to explain why the rights affirmed in paragraph 11 remained unfulfilled, the Commission observed that “when, in 1948, the General Assembly first resolved that the refugees should be permitted to return to their homes [...]

all that would have been necessary was for those refugees who wished to do so to undertake the journey of return and resume their uninterrupted lives, perhaps with a little financial assistance from the international community”.² It was not without reason that the Commission reached this conclusion. The timetable for the return of Palestinian refugees to their homes and places of origin inside the newly-established state of Israel was the subject of considerable debate during the latter stages of the drafting of paragraph 11. A small number of

states, Israel included, insisted that a solution to the refugee issue would have to wait “the proclamation of peace between the contending parties”.³ Concerned that a political settlement might take some time to reach, the majority of states, including the resolution’s British and American “co-sponsors” rejected the above amendment. The Commission itself concluded from its review of the drafting history of the paragraph that “[i]t would appear indisputable that such conditions [for return] were established by the signing of the four Armistice Agreements” between Israel and the Arab states that had taken part in the 1948 war.⁴

The reasons behind the UNCCP’s lack of success in facilitating the return of Palestinian refugees, however, were arguably more complex than its three member states—United States, France, Turkey—appeared willing to concede in their report to the General Assembly. It was true, as Commission members pointed out, that “physical conditions” in the refugees’ villages and towns of origin had “chang[ed] considerably since 1948”.⁵ While the status of the refugees under Israeli law had yet to be determined, the adoption of the Law of Return in 1950 facilitated the influx of hundreds of thousands of Jewish immigrants many of whom were settled on refugee lands and in homes that remained. The Absentees’ Properties and Development Authority laws,

adopted several months earlier, enabled the expropriation of refugee property and its transfer to the state and the Jewish National Fund where it became the inalienable property of the Jewish people. A further set of laws incorporated and invested Jewish national institutions—e.g., Jewish Agency, World Zionist Organization, Jewish National Fund—with government functions whereby they continued to privilege Jewish immigration and citizenship, ownership and use of the land and overall development of the state. The formalization of military government, meanwhile, created a second regime for the administration, surveillance and control of Palestinians who remained within the *de facto* borders of the Jewish state following the signing of armistice agreements between Israel and neighbouring Arab states. It was such measures that transformed the Palestinian people, whether inside or outside their historic homeland, into what Janet Abu-Lughod described as “exiles at home and abroad”.⁶

While the above measures surely complicated UNCCP efforts to facilitate the return of Palestinian refugees to their homes, Zionist/Israeli efforts to pre-determine the outcome of a political settlement through policies and practices which they described as “retro-active transfer” were well underway long before the Commission’s

establishment under Resolution 194. British and American “co-sponsors” of the resolution were keenly aware of these efforts months before they exchanged their own drafts of what would become the General Assembly’s second “peace plan” for Palestine. Reassessing their positions and policies after the collapse of Resolution 181, the Assembly’s first peace plan, officials in London and Washington occasionally mused about the possibility of a population exchange in the summer of 1948, but in the end they rejected the idea resolving instead that “refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date”.⁷ Having considered Israel’s arguments—political, military and economic—against the return of refugees in advance of a political settlement, the American State Department emphasized that the United Nations should continue to “induce” Israel to allow refugees to return to their homes beginning with a small-scale operation that would expand over time. Mindful of the challenges ahead, states taking part in the drafting of Resolution 194 concurred that the right to return was not only a generally recognized principle, it was also a practical and realistic solution to the refugee crisis. It was only when it became clear that Israel’s offer to discuss the return of refugees in the context of a political settlement

was little more than a ruse that states altered their position holding that it was neither realistic nor practical after all for the refugees to return.

Israel’s rejection of the principle of return, as the UNCCP further noted in its tenth Progress Report, was yet another obvious reason why the refugee situation proved so difficult to resolve. According to the Commission’s 1951 report, this was partly due to the fact that acceptance of “the right of the refugees to return [...] might involve [the Jewish state] in a repatriation operation of unknown extent”.⁸ As noted above, neither the Americans nor their British counterparts found this argument at first entirely convincing with the UN Mediator similarly noting that there was a certain anomaly in the fact that Israel was capable of absorbing hundreds of thousands of Jewish immigrants while claiming to be incapable of reintegrating the hundreds of thousands of Palestinian refugees that it had created. Israel’s above-mentioned arguments against return, however, were cyphers for a much more fundamental reason underlying its opposition to the repatriation of Palestinian refugees, namely, the state’s evolving Jewish identity exemplified by the above-mentioned Law of Return, its land regime and the governmental role accorded to its non-governmental Jewish institutions.⁹ As the Commission’s Secretariat explained

in its first working paper, “Israel was not prepared to accept the principle of the right of return of refugees if they wished [because] [i]t held that the refugee problem should be dealt with as a problem concerning the *collective* interests of groups of people rather than *individuals*”.¹⁰ [emphasis added] Addressing the General Assembly’s *Ad Hoc* Political Committee in 1950, where representatives of member states debated the refugee issue each year, Abba Eban, the country’s ambassador, thus stated that Israel “could not agree to give any special legal validity to paragraph 11”.¹¹

The Commission’s discussion of the refugee issue in its 1951 report reveals three inter-related reasons why its members thought that the return of refugees remained illusive. To begin, Israel held that a solution to the Palestinian refugee situation “could [only] be envisaged [within] the framework of an over-all [political] settlement” and not “as a result of [its] unconditional acceptance [...] of the right of refugees to be repatriated”.¹² This interpretation of paragraph 11 of Resolution 194 obviously complicated what might be described here as the *legal* return of refugees to their homes and places of origin, that is to say, acceptance by the state of Israel of their right to do so. It is also what the above-mentioned retro-active transfer committee had in mind when it called for the adoption

of legislative measures to prevent refugees from going back to their homes within the Jewish state. That refugees had a *right* to return seems evident from the drafting debate with the *right to return* bantered about freely and frequently and the American delegation describing it as a “generally recognized principle” of international law.¹³ In his September Progress Report, which comprised the foundation for the Assembly’s second peace plan, the UN Mediator explicitly called upon the United Nations in one of eleven specific conclusions to affirm the *right* of refugees to return to their homes and recommended the establishment of a Conciliation Commission to facilitate its implementation. With paragraph 11 focused on the Assembly’s “resolve” and Israel’s obligation to “permit” the refugees to return, reference to the Mediator’s above-mentioned conclusion in a related preamble was ultimately removed in order to resolve fundamental disagreements among Committee members about his broader set of conclusions.¹⁴

Turning to more practical issues, the need to clarify and affirm the *right* to return is of more recent vintage with countries of origin generally willing though not without exception to allow their displaced citizens and habitual residents to return.¹⁵ It is primarily due to political and ethical controversies in the decades that

followed the end of the Cold War that it became increasingly necessary to clarify the right to return under international law.¹⁶ This included, for example, a General Recommendation by the UN Committee on the Elimination of Racial Discrimination which clarified that under article 5 of the related Convention refugees and displaced persons have a right to return to their homes of origin.¹⁷ It was also during this period that a growing number of General Assembly and Security Council resolutions, peace agreements and concluding observations of human rights treaty body committees relating to compliance of signatory states affirmed the right to return.¹⁸ To help the Conciliation Commission “maintain a sound position” during negotiations its Secretariat sought to determine the exact meaning of paragraph 11 by examining its drafting history.¹⁹ Addressing allegations that refugees were not entitled to return, the Commission concluded that “[a]mong the *rights* conferred on refugees, one of the most important is undoubtedly the return to their homes of refugees who desire it”.²⁰ Not unlike the American delegation’s view cited above, the Commission held that among the rights codified in paragraph 11 of Resolution 194, return was a principle which “deriv[ed] from general rules of law”.²¹

Since then much has been done

to clarify and affirm the right of Palestinian refugees to return to their homes under international law. With initial analysis undertaken after the 1967 war, a second body of legal research was published in the late 1970s and early 1980s with a third group of studies issued since the late 1990s.²² The General Assembly has affirmed the right to return on an annual basis with human rights treaty bodies calling upon Israel to bring domestic laws in compliance with international obligations so that refugees wishing to do so may exercise their right to return.²³ While much of the research to date has focused on the right to return under four major bodies of international law, clarifying the crime of forced displacement under international criminal law and securing its affirmation is one area where work remains to be done.²⁴ As others have shown, ethical arguments employing normative beliefs about “what is right and good to do to others” have played a significant role in bringing about change in world politics.²⁵ Clarification of the crime of forced displacement and its association with other major crimes from (settler) colonialism and apartheid to genocide, moreover, may in turn help to build a common political vision and the political movement necessary to carry it forward to fruition.²⁶ It is these latter two, namely, a political vision and related movement, moreover, as other struggles for

justice, liberation and freedom have shown that are critical in facilitating the implementation of relevant principles of international law.²⁷

The second reason why the Conciliation Commission seemed to suggest in its 1951 report that return was illusive because the mass influx and settlement of Jewish immigrants during and after the 1948 war meant that “[t]he areas from which the refugees came [were] no longer vacant”.²⁸ While subsequent research suggests that the Commission’s assessment overstated the problem of secondary occupation by Jewish immigrants, the policies and practices associated with Israel’s retro-active transfer plan had obviously complicated the *physical* return of refugees to their homes, villages and towns of origin.²⁹ This is, indeed, what Israel’s retro-active transfer committee and its promotion of *fait accomplis* had intended all along. If one accepts the interpretation of paragraph 11 of Resolution 194 advanced by the Conciliation Commission, the states taking part in the drafting of the Assembly’s second peace plan appear to have understood the repatriation of Palestinian refugees uprooted by the 1948 war almost solely in terms of their physical return. As the Commission itself observed in its above-mentioned 1951 report, all that was needed was for the refugees to make the journey back home.

This also seems evident in the UN Mediator’s specific conclusion and the Assembly’s related “resolve” that refugees wishing to do so should be permitted to *return to their homes*.³⁰

Physical return raises a host of issues which need to be addressed in order to facilitate the movement of refugees from their countries of refuge or asylum (and in some cases third countries of resettlement) to their country of origin. Examples include information campaigns to assist refugees in deciding whether to return, go-and-see visits which allow them to gather information about the viability of return which can then be shared more widely with other refugees, internationally supervised mechanisms for determining refugee choices, provision of necessary papers including personal IDs, travel documents and transit visas, organization of physical transportation and distribution of basic supplies for the journey home, and, the establishment of transit and reception centers to facilitate the initial process of reintegration the country of origin.³¹ In its brief effort to facilitate the return of Palestinian refugees after the 1948 war, the Conciliation Commission considered a number of similar measures including the holding of a plebiscite as a way to determine the number of refugees wishing to return to their homes, a survey of their homes to determine whether

they were occupied or inhabitable, the establishment of transit camps to facilitate the movement to and reception of refugees in the state of Israel, and the establishment of mobile units to facilitate the distribution and other basics necessary for the initial re-establishment of the refugees.³²

Until recent decades, little practical work had been done on the physical return of Palestinian refugees to their homes inside the state of Israel. It was the prospect of so-called final status negotiations between Israel and the Palestine Liberation Organization in the late 1990s and early 2000s that appeared to inform the first substantive studies of physical return. While donor states and international organizations focused largely on the return of displaced persons (1967 refugees) and resettlement of (1948) refugees to a future Palestinian state, non-governmental and community-based organizations tended to examine the return of refugees to their homes, villages and towns of origin inside the state of Israel.³³ Building on the work that has already been done, analysis of the crime of forced displacement and its association with the broader set of international crimes listed above may help to identify in a more systemic (and systematic) way the practical issues that will need to be addressed to facilitate the physical return of Palestinian refugees to their homes, villages and towns of

origin.³⁴ Such analysis could then be correlated with the list of practical activities gleaned from the above-mentioned handbooks providing guidelines for the organized return of refugees elsewhere. An evaluation of work that has been done to date and a summary of findings may also be useful in order to avoid duplication given limited resources. Together, this would enable work on the practices of return to be done by a broad range of actors on a decentralized basis according to their respective interests and resources.

Finally, the Commission also appeared to suggest that return was illusive for a third reason, namely, because the dissolution of Mandate Palestine and the establishment of a Jewish state, as the Commission further noted, raised a host of questions about “possibilities of the integration of the returning refugees into the *national* life of Israel”.³⁵ [emphasis added] It was this change involving questions of identity and collective belonging that made the *political* return of Palestinian refugees to the newly-established state of Israel equally if not more problematic. As the Israeli government itself acknowledged, it was the national identity of the country which prioritized the collective interests of Jews as a group that made the integration of Palestinians as equal citizens a practical impossibility. In contrast to the physical return of Palestinian refugees, it appears that

the UN Mediator and the drafters of Resolution 194 paid little attention to their political return notwithstanding concerns expressed repeatedly by Palestinian and Arab representatives that paragraph 11 should address not only the return of refugees to their *homes* but also their return to their *homeland*. It was only in 1951 when faced with the collapse of its third and final effort to facilitate refugee return that the Conciliation Commission appeared to belatedly acknowledge in its progress report that the primary challenge revolved around questions related to national identity and a sense of collective belonging.³⁶

Political return brings to fore another set of practical issues which need to be addressed to facilitate the reintegration of refugees in their homeland and the concomitant restoration of their national protection. With the adoption of legislative measures relating to the (re) acquisition of citizenship central to a narrow definition of political return, more expansive definitions would include strengthening institutional protections of basic rights and fundamental freedoms and the establishment of transitional justice mechanisms from prosecution and reparations (material and non-material) to various types of truth-telling initiatives.³⁷ Equally, if not more important, are what others have described as the social, political, cultural, and symbolic

practices of “making citizens” which is especially critical in situations where meaningful citizenship was already absent before or as a result of exile.³⁸ A final point to note about the political return of refugees is that in contrast to the other forms of return mentioned above, it is this latter aspect, namely, the making of citizens, that renders political return especially difficult to achieve.³⁹ While neither the UN Mediator nor the drafters of Resolution 194 appeared to give significant attention to the political return of refugees, the Conciliation Commission nevertheless undertook a number of measures similar to those described above before the Assembly decided to devolve responsibility to the parties themselves. In the absence of a citizenship law it reviewed the legal status of potential returnees in order to determine responsibility for their compensation and it sought to ensure the protection of Palestinians inside the Jewish state through the promotion of guarantees for minority and religious rights with its most substantive engagement revolving around the documentation and valuation of property losses arising from the 1948 war.⁴⁰

Comparatively little practical work has been done on the political return of Palestinian refugees relative to the other forms of return discussed above. While this may stem from the fact that the concept has not been

well-elaborated and the limitations that international law places on the involvement of external actors in the domestic affairs of states, it might also be attributed to the lack of consensus on a political vision along with a fragmented movement that is unable to carry a vision forward. Here again, analysis of the crime of forced displacement and its association with other crimes, from (settler) colonialism and apartheid to genocide, may provide opportunities for the “making of citizenship” referred to above that is central to the political return of refugees. Practical efforts like the discussion and drafting of legislation, from citizenship to the protection of human and minority rights, along with discussion and establishment of unofficial or community-led measures to effect a transition in Palestine may similarly facilitate the (re)making of citizenship in ways that ultimately facilitate the return of refugees wishing to do so.⁴¹ The idea of participatory constitution-building, moreover, may provide a useful mechanism and remedy for the limitations of transitional justice with its primary focus on civil rights in offering a plausible account of the root cause of injustice in Palestine in light of the major paradigms mentioned above.⁴²

If above reading of the Palestinian refugee situation is correct, the fundamental challenge in thinking

practically about return is not about finding ways to secure Israel’s recognition of the right of displaced Palestinians to return to their homes under international law.⁴³ Nor does the primary obstacle to return appear to lie in the physical return of refugees to their homes and places of origin inside the state of Israel. This is not to say that these are unimportant nor is it to suggest that issues relating to the legal and physical return of Palestinian refugees are easy to resolve. What it does suggest is that the fundamental challenge seems to revolve around questions relating to national identity and collective belonging associated with the political return of Palestinian refugees to a state that defines itself exclusively as the homeland of the Jewish people.⁴⁴ All three forms of return—legal, physical and political— informed by a rich body of principle, practice and precedent derived from refugee situations elsewhere provide ample opportunity for thinking practically about return in Palestine/ Israel. In considering ways to unlock what has become the largest and most protracted refugee situation in the world today, however, recognition of the right to return and the physical return of Palestinian refugees to their homes and places of origin may well lie in the success of efforts to address unresolved questions relating to national identity and collective belonging that are central to the political return of refugees to their homes and to their homeland. In

so doing may also lie the hope that Palestinians will no longer be, in the words of Janet Abu Lughod, “exiles at home and abroad”.

In an essay compiled from a series of lectures on his book, *A Rift in Time: Walks with My Ottoman Uncle*, Raja Shehadeh observes that “[w]e must first begin to imagine a different reality before it becomes possible.”⁴⁵ That seems to be about as an appropriate place as any to start thinking about the different forms and related practices of Palestinian refugee return today. With the legal and physical return of refugees arguably dependent on addressing their political return, Shehadeh’s suggestion that “it might be possible to emerge from the political despair that has become our lot by going back into the past and reimagining our region, concentrating on the Rift Valley and its physical integrity, and thinking about how that continuity might one day return to reflect the political wholeness that the region once had”, moreover, appears to provide a potential starting point.⁴⁶ As Michelle Campos explains in *Ottoman Brothers: Muslims, Jews*

and Christians in Early Twentieth Century Palestine, “from Salonica to Jerusalem to Baghdad, [ordinary Ottomans] exercised new political rights and responsibilities, tackled the challenges of ethnic and religious diversity within the body politic, and debated the future of the empire and their role within it. Among the questions that preoccupied them were: Who was an “Ottoman” and what bound the “Ottoman nation” together? What would political liberty, reform, and enfranchisement look like? What did being a “citizen” entail, and how would rights and duties be distributed equally? What role would religion and ethnicity have in the body politic and in the practice of politics in this multiethnic, multi-religious, multilingual Islamic empire?”⁴⁷ These types of questions seem no less relevant today. In thinking about potential answers, moreover, Shehadeh provides one last important guideline, noting in reference to the physical borders that distinguish Ottoman Palestine from today, that “the only borders that we [really] make are the one’s in our own minds”.⁴⁸

Endnotes

- 1 The distinction between physical and political return in the chapter is from Katy Long, *The Point of No Return: Refugees, Rights, and Repatriation*, Oxford: Oxford University Press, 2013. Application of this distinction to the situation of Palestinian refugees, unless otherwise cited, is that of the chapter's author. Discussion of the drafting history of Resolution 194 in the chapter draws from the author's manuscript (working title) in preparation on *The Right to Return: Drafting Paragraph 11 of Resolution 194*.
- 2 UNCCP, *Progress Report of the United Nations Conciliation Commission for Palestine*, Covering the period from 23 January to 19 December 1951, UN GAOR, 6th Sess., Supp. No. 18, UN Doc. A/1985, Nov. 20, 1951, 4-5. The report followed the collapse of the Paris peace conference and rejection of the Commission's "Comprehensive Pattern of Proposals" for a solution to the Palestine question.
- 3 UN GAOR, 3rd Sess., First Committee, U.N. Doc. A/C.1/398, Nov. 24, 1948.
- 4 UNCCP, *Analysis of Paragraph 11 of the General Assembly's Resolution of 11 December 1948*, Working Paper Prepared by the Secretariat, UN Doc. A/AC.25/W.45, May 15, 1950, 7.
- 5 UNCCP, *supra* n. 1, 5.
- 6 Janet Abu Lughod, "Palestinians: Exiles at Home and Abroad", *Current Sociology* 26/2 (1988), 61-9.
- 7 G.A. Res. 194, UN Doc. A/RES/194, Dec. 11, 1948, para. 11.
- 8 UNCCP, *supra* n. 1, 5.
- 9 Described by David Ben Gurion as the country's "foremost basic law" and its "foundation stone", the Law of Return exemplifies three elements of Israel's self-definition as a Jewish state elaborated decades later by members of its Supreme Court in *Ben Shalom v. Central Elections Commission*, namely, a permanent Jewish majority, privileged treatment of Jews and the special relationship with the Jewish diaspora. The ruling led to the first codification in domestic law of Israel's self-definition as a Jewish and democratic state.
- 10 UNCCP, *Stand Taken by the Governments of the Arab States and the Government of Israel with Regard to the Task Entrusted to the Conciliation Commission by the General Assembly*, Working Paper Prepared by the Secretariat, UN Doc. A/AC.25/W.1, Mar. 1, 1949, 4.
- 11 UN GAOR, Ad Hoc Political Committee, 36th Mtg., UN Doc. A/AC.38/SR.36, Nov. 7, 1950, 216.
- 12 UNCCP, *supra* n. 1, 5. Israeli officials subsequently argued that the refugees were neither entitled to return nor was their return should the state allow without pre-conditions, namely, that returnees would have to live in peace with their neighbours and that any possible return could only take place, as noted earlier, at the earliest practicable date.
- 13 A number of drafters expressed doubts on occasion about how many refugees might wish to return, but none questioned that the refugees had a right to return. A jurist and a scholar besides being a diplomat, Philip Jessup's characterization of the principle of return appeared to be consistent with the customary status of the norm under the law of nationality and state succession, international humanitarian law and as an element of state practice. See, further, Gail J. Boling, *The 1948 Palestinian Refugees and the Individual Right to Return, An International Law Analysis*, Bethlehem: BADIL Resource Center for Palestinian Residency & Refugee Rights, 2007. It was also consistent with widespread support for a Lebanese amendment which incorporated the right to return in the final draft of the Universal Declaration of Human Rights.
- 14 Members of the General Assembly's First Committee disagreed about whether Resolution 181 or the Mediator's Progress Report should comprise the starting point for a peaceful adjustment of the situation of Palestine. Unable to resolve this dispute, members agreed to remove all references to Resolution 181 and the Mediator's report from Resolution 194. It is important to note, moreover, that in the years and decades that followed the 1948 war, General Assembly resolutions in other refugee situations used similar language, that is to say, calling for the return of refugees to their homes without explicitly referring to their right to do so.
- 15 An overview of practice can be found in, Katy Long, *The Point of No Return: Refugees, Rights, and Repatriation*, Oxford: Oxford University Press, 2013. It has also been suggested that little attention was given to the issue by researchers because of the 'outbound' focus in the literature, that is to say, the right to leave one's country of origin, and because so many people exercise the right to return

- every day it has received “relative little fanfare”. Megan Bradley, “Liberal Democracies’ Divergent Interpretations of the Right of Return: Implications for Free Movement”, in Willem Maas (ed.), *Democratic Citizenship and the Free Movement of People*, Leiden: Martinus Nijhoff, 2013, 195-216, 195.
- 16 Long, *ibid.*, 4. See, e.g., Bill Frelick, “The Right of Return”, *International Journal of Refugee Law* 2/3 (1990), 442-47; and, Marcus Cox, “The Right to Return Home: International Intervention and Ethnic Cleansing in Bosnia and Herzegovina”, *International & Comparative Law Quarterly* 47 (1998), 599-631.
 - 17 CERD, General Recommendation 22 on Refugees and Displaced Persons – Article 5 (1996). Conclusions adopted by UNHCR’s executive committee which referred to the right to return similarly helped to further clarify international refugee law. UNCHR, *A Thematic Compilation of Executive Committee Conclusions*, 7th edition. Geneva: United Nations High Commissioner for Refugees, 2014.
 - 18 See, e.g., UNHCR, *Thematic Compilation of General Assembly and Economic & Social Council Resolutions*, 3rd ed., Geneva: United Nations High Commissioner for Refugees, 2013; Sanjule Weerasinghe and Elizabeth Ferris, *Security Council, Internal Displacement and Protection: Recommendations for Strengthening Action through Resolutions*, Washington, DC and London: The Brookings Institution – London School of Economics Project on Internal Displacement, 2011; Nicole Campion and Melanie Nakagaw (eds.), *Refugee Return: Peace Agreement Drafter’s Handbook*, Washington, DC: Public International Law & Policy Group, 2005; and, human rights treaty body conclusions archived on the OHCHR website <<https://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx>> (accessed August 16, 2019).
 - 19 UNCCP, Summary Record, 155th mtg., UN Doc. A/AC.25/SR.155, May 16, 1950. The Commission’s Secretariat also drafted working papers on legal issues associated with restitution and compensation. In the context of reparations for refugees choosing to return, the Secretariat also examined the legal status of the refugees under Israeli law, in particular, whether they should be considered citizens.
 - 20 UNCCP, *Memorandum on the Relations between the United Nations Relief and Works Agency for Palestine Refugees and the Conciliation Commission*, Working Paper Prepared by the Secretariat, UN Doc. A/AC.25/W.42, Mar. 30, 1950, 2.
 - 21 *Ibid.* It also clarified many of the above-mentioned provisos. In resolving that refugees wishing to return should be permitted to do so, the Assembly recognized the right of refugees to exercise a free choice. While those choosing to return were obligated to live in peace, the state of Israel was obligated to allow refugees to return and protect them from elements seeking to disturb the peace. Finally, it was the signing of armistice agreements rather than the proclamation of peace as noted earlier that triggered the practical conditions for their return. UNCCP, *supra* n. 3.
 - 22 An overview and analysis of research can be found in, Terry Rempel, “The Right of Palestinian Refugees to Return to their Homes in Theory and in Practice”, in Huwaida Arraf & Adam Shapiro (eds.), *International Conference on Palestinian Refugees, Conditions and Recent Developments*, Jerusalem: al-Quds University, 2009. The publication of major studies correlates with major periods of negotiations to resolve the struggle over Palestine with research often characterized during each period by the publication of arguments followed by new publications laying out counter arguments on the right to return.
 - 23 In contrast to the situation of refugees elsewhere, with the exception of Security Council resolutions affirming the return of Palestinians expelled by Israel from demilitarized zones in the early 1950s and a small body of resolutions addressing proximate causes of displacement, for example, deportation in which the right to return is implicit, the Security Council has yet to affirm the inalienable right of Palestinians to return to their homes and properties due to the United States wielding its veto power. In the 1990s, moreover, the US unsuccessfully attempt to secure support to rescind General Assembly Resolution 194. The agreements between Israel and the PLO in the 1990s, moreover, were anomalies with respect to language on refugee return with most agreements during the period affirming in varying terms that refugees had a right to return to their countries of origin.
 - 24 As Luke Lee has written, “[m]aking a person a ‘refugee [...] does not violate merely the above movement-related rights. It also violates any rights, whatever their legal sources, that depend to any extent for their full and effective enjoyment on a person’s ability to live in his own country.

- Such a total violation suggests that the act of generating refugees might qualify as an “international crime”, which would put it on par with slavery, genocide and apartheid”. Luke Lee, “The Right to Compensation: Refugees and Countries of Asylum”, *The American Journal of International Law* 80/3 (1986), 532-67, 538-9. A useful overview can be found in, Federico Andreu-Guzmán, “Criminal Justice and Forced Displacement: International and National Perspectives”, in Roger Duthie (ed.), *Transitional Justice and Forced Displacement*, New York: Social Science Research Council, 2012, 233-78.
- 25 Neta C. Crawford, *Argument and Change in World Politics: Ethics, Decolonization and Humanitarian Intervention*, Cambridge: Cambridge University Press, 2004. See also, Jonathon Graubart and Arturo Jimenez-Bacardi, “David in Goliath’s Citadel: Mobilizing the Security Council’s Normative Power for Palestine”, *European Journal of International Relations* 22/1 (2015), 24-48.
- 26 For a useful discussion about the applicability of these paradigms to the situation in Palestine see, e.g., Caroline Elkins and Susan Pedersen, “Settler Colonialism: A Concept and its Uses”, in *ibid* (eds.), *Settler Colonialism in the Twentieth Century: Projects, Practices, Legacies*, London: Routledge, 2005, 1-20; Lorenzo Veracini, “The Other Shift: Settler Colonialism, Israel, and the Occupation”, *Journal of Palestine Studies* 42/2 (2013), 26-42; John Quigley, “Apartheid Outside Africa: The Case of Israel”, *Indiana International & Comparative Law Review* 2 (1991-92), 221-51; Richard Falk and Virginia Tilley, *Israeli Practices Towards the Palestinian People and the Question of Apartheid*, Beirut: Economic and Social Commission for West Asia, 2017; and, Martin Shaw, “Palestine in an International Historical Perspective on Genocide”, *Holy Land Studies* 9/1 (2010), 1-24. On the lack of and need for a common political vision see, e.g., Nadia Hijab and Ingrid Jaradat Gassner, *Talking Palestine: What Frame of Analysis? Which Goals and Messages?* Shabaka Policy Brief, Ramallah, 2017.
- 27 Noura Erekat, *Justice for Some: Law and the Question of Palestine*, Stanford, CA: Stanford University Press, 2019; and, Lori Allen, *The Rise and Fall of Human Rights: Cynicism and Politics in Occupied Palestine*, Stanford, CA: Stanford University Press, 2013. More broadly see, Balakrishnan Rajagopal, *International Law from Below: Development, Social Movements and Third World Resistance*, Cambridge: Cambridge University Press, 2003.
- 28 UNCCP, *supra* n. 1, 5.
- 29 A discussion of the use of refugee properties can be found in, Walid Khalidi (ed.), *All That Remains: The Palestinian Villages Occupied and Depopulated by Israel in 1948*, Washington, DC: Institute for Palestine Studies, 1992; and, Salman Abu Sitta, *The Atlas of Palestine, 1917-1966*, London: Palestine Land Society, 2010.
- 30 The Mediator’s progress report nevertheless contains more than a hint that refugees also possessed more than an individual claim and an associated sense of collective belonging. This is evident, in part, by the use of the term “repatriation” which suggests an acknowledgement that refugees would be returning to their *patria* or homeland with the Mediator’s further acknowledgement that the refugees had been “rooted in the land for centuries” and that it would be an “elemental injustice” if they were denied the right to return while Jewish immigrants were being settled in their place.
- 31 UNHCR handbooks and guidelines on refugee repatriation and reintegration provide useful “checklists” of measures to be undertaken to facilitate the return of refugees to their homes and countries of origin. See, e.g., UNHCR, *Handbook: International Protection – Voluntary Repatriation*, Geneva: United Nations High Commissioner for Refugees, 1996; and, UNHCR, *Handbook for Repatriation and Reintegration Activities*, Geneva: United Nations High Commissioner for Refugees, 2004. Evaluations of the organized return of refugees elsewhere also provide a useful starting point in thinking about the practice of physical return and its application to Palestine. See, e.g., evaluations archived on the UNHCR website <<https://www.unhcr.org/evaluation-and-research.html>> (accessed Aug. 26, 2019). These provide a useful starting point to brainstorm, identify relevant practices of return, develop a systemic approach and prioritize resources in working towards the return of Palestinian refugees. Far from a simple or straight forward process, the physical return of refugees to their country of origin may be further complicated when forced displacement has been accompanied by widespread destruction, the lack of adequate national and international resources for reconstruction and by the passage of time in situations of protracted displacement.
- 32 See, e.g., UNCCP, *The Refugee Problem in Concrete Terms*, Working Paper Prepared by the Secretariat,

- UN Doc. A/AC.25/W.3, Mar. 17, 1949; and, UNCCP, *Observations of Some of the Problems Relating to Palestine Refugees*, Working Paper Prepared by the Secretariat, UN Doc. A/AC.25/W.7, Mar. 28, 1949.
- 33 On return of displaced persons and resettlement in a future Palestinian state see, e.g., Rex Brynen and Roula el-Rifai (eds.), *Palestinian Refugees: Challenges of Repatriation and Development*, London: I.B. Taurus, 2007. On return to homes, villages and towns of origin inside Israel see, e.g., Salman Abu Sitta, *The End of the Palestinian-Israeli Conflict: From Refugees to Citizens at Home*, London: Palestinian Return Center, 2001.
- 34 Much of the comparative work that has been done, for example, on the practice of physical return has relied in large part on the return of refugees to countries emerging from ethnic conflict after the end of the Cold War. While these cases provide a range of useful lessons, the context also differs in important ways from that in Palestine if one accepts the applicability of the above-mentioned paradigms, that is to say, (settler) colonialism, apartheid and also in varying ways genocide. Application of such paradigms, however, must also be cognizant of differences between the situation in Palestine and other cases of (settler) colonialism, apartheid and genocide.
- 35 UNCCP, *supra* n. 1, 5.
- 36 The Mediator's progress report, as noted above, contains more than a hint that return involved aspects of national identity and collective belonging. Noting that it was the refugees' unconditional right to make a free choice about their future, the Mediator nevertheless acknowledged that their return to the state of Israel "presented an economic and social problem of special complexity". The Mediator, moreover, was well aware of Israel's position that a solution to the refugee situation should prioritize the collective interests of groups of people rather than the rights of individual refugees.
- 37 Megan Bradley, "Back to Basics: The Conditions of Just Refugee Returns", *Journal of Refugee Studies* 21/3 (2008), 285-304. See also, Duthie, *supra* n. 22.
- 38 Lauren E. Banko, "The Invention of Citizenship in Palestine", in Engin F. Isin and Peter Nyers (eds.), *Routledge Handbook of Global Citizenship Studies*, London: Routledge, 2014, 317-24, 317. See also, the discussion in Long, *supra* n. 4, 29.
- 39 The facilitation of political return is arguably more difficult than physical return for at least two reasons. First, in addition to the restoration of individual citizenship and the protection of basic rights and fundamental freedoms that it affords, political return as Katy Long points out also involves a collective return to citizenship, that is to say, membership in the political community. This is particularly complicated in situations where a merger of 'nation' and 'citizen' results in exclusionary claims to membership in the political community along ethnic and/or religious lines. Second, the political nature of return means that international humanitarian institutions mandated to facilitate and promote refugee repatriation are limited in the role they can play in restoration of national protection. Marjoleine Zieck, "Voluntary Repatriation: Paradigm, Pitfalls, Progress", *Refugee Survey Quarterly* 23/3 (2004), 33-54. The principle of self-determination and its corollary of non-interference in the domestic affairs of states likewise places limits on the role that other states can play.
- 40 The UN Mediator arguably limited possibilities for addressing political return once he decided to recognize the existence of the state of Israel in his progress report. This effectively enabled Israel to deploy the corollary of self-determination, namely, non-intervention in the internal affairs of states, as a defense against reform of its emerging constitutional structure that militated against refugee return. Redefining the refugees as immigrants, it also enabled the state to argue against their "entry" with immigration falling within the domestic jurisdiction of states. As significant, perhaps, recognition of Jewish self-determination effectively masked the settler colonial origins of the state and related reasons for the mass displacement and dispossession of its indigenous population. On the latter see, Dan Freeman-Maloy, "The International Politics of Settler Self-Governance: Reflections on Zionism and 'Dominion' Status within the British Empire", *Settler Colonial Studies* 8/1 (2018), 80-95.
- 41 The distinction between 'patriotism', that is to say, a feeling of allegiance to a state, and national identity, the sense of membership in a national group, may be useful in thinking about a sense of collective belonging in a multinational state. See, the discussion in Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights*, Oxford: Oxford University Press, 1996. On the challenges of addressing minority rights in the Arab region see, Eva Pfostl & Will Kymlicka, "Minority

- Politics in the Middle East and North Africa: The Prospects for Transformative Change”, *Ethnic and Racial Studies*, 38/14 (2015), 2489-2498. See also, the discussion in, Leila Farsakh, “A Common State in Israel-Palestine: Historical Origins and Lingered Challenges”, *Ethnopolitics* 15/4 (2016), 380-92.
- 42 This includes socio-economic and distributive justice and the parallel need for both political and economic transition from (settler) colonialism and apartheid with their inherent inequalities to democracy. A useful discussion of participatory constitution building as a form of or supplement to transitional justice can be found in, Derek Powell, “The Role of Constitution Making and Institution Building in Furthering Peace, Justice and Development: South Africa’s Democratic Transition”, *The International Journal of Transitional Justice* 4/2 (2010), 230-50. Of the four choices often made in transitions to democracy, namely, the political institutions to preside over it, the political institutions for future dispensation, the distribution of economic wealth and resources, and, culpability for past violations, forms of redress, measures for prevention, transitional justice deals primarily with the latter choice.
- 43 Though not elaborated as such, each of the three forms of return, namely, legal, physical, political, have been in practice throughout the struggle over Palestine. See, the discussion in, Sophie Richter-Devroe, “‘Like Something Sacred’: Palestinian Refugees’ Narratives on the Right of Return”, *Refugee Survey Quarterly* 32/3 (2013), 92-115.
- 44 The adoption of the Basic Law: Israel—The Nation State of the Jewish People in 2018 made this explicit stating that “[t]he exercise of the right to national self-determination in the State of Israel is unique to the Jewish People”. The remainder of the law identifies other ways—material and cultural—in which national self-determination privileges Jewish persons including those who reside outside the state. Adalah, *Proposed Basic Law: Israel – The Nation State of the Jewish People*, Position Paper, July 16, 2018. The paper concludes that “[a] colonial regime is expressed in this Basic Law by the imposition of a constitutional identity of Jewish ethnic supremacy and control, without consent and cooperation, which denies the connection between the Palestinian natives (citizens and residents) with their homeland.⁷ This colonial regime is the kind that falls within the bounds of absolute prohibitions under the International Convention on the Suppression and Punishment of the Crime of Apartheid, which proclaims practices of apartheid, including legislation, as a crime against humanity”.
- 45 Raja Shehadeh, “In Pursuit of My Ottoman Uncle: Reimagining the Middle East as One”, *Journal of Palestine Studies* 40/4 (2011), 82-93, 92. This is not to ignore, as both Shehadeh and Campos rightly point out the empire’s faults and its terrible excesses. See also, Pfostl & Kymlicka, *supra* n. 39.
- 46 Shehadeh, *ibid*.
- 47 Michelle U. Campos, *Ottoman Brothers: Muslims, Christians, and Jews in Early Twentieth Century Palestine*, Stanford: Stanford University Press, 2011, 4. Campos examines the slogans “liberty, equality, fraternity, justice”, slogans that are not entirely different from those associated with calls for boycott, divestment and sanctions, namely, freedom (from occupation), justice (for the refugees), and equality (for Palestinian citizens of Israel).
- 48 Shehadeh, *supra* n. 43.

Participants Views and Working Group Discussions



This part of the conference aims to explore the views of young people on the implementation of the right of return for Palestinian refugees and displaced persons. Conceptualizing the right of return with practical parameters forms the basis for implementing a just and viable return. Additionally, such initiatives serve to reactivate and mobilize Palestinian civil society, which is an important part of the liberation process. Although the perceptions presented do not constitute an integrated approach, they do constitute a

practical basis on which to develop an integrated action strategy. The perceptions presented below are the conclusions drawn by the youth that participated in the working session of the conference.

This session is not intended to be a referendum on the right of return, but to identify the extent of the youth's belief in the possibility of implementing this right, especially after more than seventy years of displacement, and the changing political, social and economic conditions on the ground.

Neither this working session or its results which are presented here aim to establish mechanisms or a methodology for the implementation of the return or the development of best practices, but rather, to provide a platform for discussion on the right of return and how to deal with it in the practical and viable sense – not just as a sacrosanct right utilized in Palestinian slogans and speeches.

The target group for participation in the conference and to provide input via the working groups on practical return is Palestinian youth, between 18-29 years old, from both sides of the Green Line. After participating in the panel discussions of the previous day, the youth were divided into 8 working groups, where each group consisted of 10 participants. Female participation was approximately 50 percent from a total of eighty youth that attended the conference and participated in the working group session.

The groups were presented with the same thematic sets of questions, divided into three parts. After discussion and deliberation, each group formulated and determined their responses, which were then presented within the last session of the conference. The views presented below are the views of the youth groups and/or the majority of the youth participants as presented within the working session.

Section 1: The belief in the feasibility of return and perceived obstacles

The questions in this section aim at identifying the opinion of the youth groups on the possibility of applying return in the Palestinian context, away from theoretical slogans and speeches. These questions aimed to elicit the ideas and attitudes of Palestinian youth on the viability of return, and its potential for implementation including foreseen obstacles.

The questions posed within this section asked the youth to identify the reasons that prevented and continue to impede the implementation of return, and how they assess the role of key actors, namely the PLO, Arab states, and international bodies such as the United Nations and the United Nations Relief and Works Agency (UNRWA) on the issue of return.

All 8 youth groups affirmed their belief in the applicability and feasibility of the right of return to various degrees, despite the protracted nature of the displacement. Further, the groups articulated the existence of a set of obstacles and dilemmas that prevented and continues to prevent the application of this right. The most prominent obstacles identified by the youth, with variations in priority among the 8 groups, are: the absence of a

clear vision to implement the right of return and the prevalent approach that this right will be implemented as a result of liberation and not as an act of liberation; the fragmentation of the Palestinian people is a direct result of the absence of a unified vision; the deterioration of the role of the PLO; and finally, the marginalization of role of youth and the absence of their participation in decision-making.

Although it is one of the central issues that forms the root cause of the conflict, there has always been a lack of a clear Palestinian vision on the implementation of the right of return. The PLO and political factions have dealt with the issue of return as a result or outcome of the liberation process rather than a liberation or means to liberation.

The lack of a clear vision has deepened with the changes in the Palestinian Liberation Organization (PLO) program, which has transitioned from liberation to state-building. The issue of return is no longer the central issue in the Palestinian struggle, which was evident in the Oslo agreements, that postponed the refugee issue to final negotiations. Further the issue of Palestinian refugees is utilized as a pawn in the negotiations.

The youth highlighted that in order to deal with return in a practical way, not just as slogans utilized in national speeches, a program and vision must

be developed that prioritizes return and seeks to create the psychological, economic and social conditions necessary to implement this right.

The significance of this program and vision must be two-fold. First, that it addresses the roots of the conflict by establishing concrete mechanisms and practices of return. Second, that it disrupts the obstacles and narrative that the Zionist movement and Israel have established for over seven decades, which is to depict return as highly improbable if not impossible. Moreover, the Zionist movement succeeded in shaping the Palestinian consciousness in a manner dominated by fear and hesitancy in implementing this right. Therefore, an alternative approach must be formed that will reshape the Palestinian consciousness to adopt and implement practical return. The return vision must strengthen the link between Palestinians, particularly the youth, and the issue of return, and to address the traditional framework that approaches this right from a purely legal and theoretical perspective and discourse.

Working groups also indicated that the division among the Palestinian people is one of the most important factors preventing the return of Palestinian refugees and displaced persons. The youth's discussions highlighted that the fragmentation of the Palestinian people is underpinned

by the lack of a clear unifying vision on return which in turn is underpinned by the absence of a national strategy. Or in other words, a unifying national strategy would challenge if not rectify the current fragmentation and divisions.

Further, in addressing the fragmentation (with a unifying national strategy), it is understood that this includes all Palestinians regardless of where they reside as a result of Israeli policies and practices. Therefore, unifying the Palestinian ranks is the first step in confronting Israeli policies of annexation, population transfer, colonialism and apartheid. Second, to confront these policies, it is necessary to formulate practical approaches and actions to achieve the return of Palestinian refugees and displaced persons.

Since the signing of the Oslo Accords, the role and significance of the PLO has been replaced by the Palestinian Authority (PA) and its institutions. The situation reflects the shift from a liberation approach to a state-building approach. The PA has and continues to prioritize state-building and in turn, de-prioritized the issue of Palestinian refugees and IDPs and more importantly, their right to return.

The deterioration of the PLO and its institutions, accompanied by the shift in approaches, not only impacted

Palestinians, but also transformed the position of Arab countries on the Palestinian issue. This is manifested in increased normalization of Arab-Israeli relations (such as official bilateral meetings), as well as the absence of the issue of refugees, IDPs and their return in mediation efforts.

For example, the Arab Peace Initiative (2002), adopted by the League of Arab States, called upon Israel for a just solution for the problem of refugees “to be agreed upon” in accordance with UNGA Resolution 194.

Such broad wording and a cautious reference to the right of return articulate the altered positions of Arab states. Further, these positions proffer the issue of Palestinian refugees as a negotiated political issue, not a human rights and justice issue.

Although Palestinian society is predominately comprised of youth, the Palestinian political scene lacks a youth presence, in terms of both representation and political participation. Therefore, the youth groups suggested the need to establish a Palestinian youth body that highlights the issue of Palestinian refugees and their right to return. Naturally, the body would include Palestinian youth from both sides of the Green Line and in exile to avoid replicating the existing fragmentation.

Section 2: Youth perceptions of the best political framework for the application of return

This section elicited the opinion of youth groups on the political solutions envisaged for the implementation of the right of return, and where this right can be implemented. Again this is not a referendum to select or promote a particular political framework, but to elicit the opinion of young people on the application of return.

The questions posed in this section included: How do you see post-return Palestine and what is the political scenario? Will it be one state or two? What are the general characteristics of this political framework in terms of identity, political system, economic system, and what is the responsibility of the state(s) to ensure social stability? How will the issue of Palestinian refugees and IDPs be addressed? Where would they return to?

Seven of the eight working groups preferred the political framework of establishing a single Palestinian state for all its citizens, on the entire territory of Palestine within its mandated borders. These groups reasoned that there was no point in establishing a Palestinian state on the 1967 borders, because this option is no longer viable due to Israeli policies and practices. Further, the establishment of a Palestinian state on the 1967 borders

alongside an Israeli state was viewed as no more than an administration or management of the conflict, and not a durable and just solution.

The youth selecting the one-state framework noted that it would only be possible after the dismantling the Zionist colonial and apartheid system, which is based on granting Israeli Jews (the current colonizers) privileges at the expense of the rights of the Palestinian people. Only in this case will Israeli Jews - no longer in a position of superiority and privilege - and Palestinians, both as equal citizens of the state, would enjoy their rights and live in peace and dignity.

The group noted that the future state should be based on social justice principles and the equality of all citizens, including to guarantee religious and ethnic rights for all. This state, with a secular democratic political system based on law and justice, must be the guarantor of economic, social and political stability in the light of religious, ethnic and national diversity.

Three of the youth groups determined that a socialist economy is the best model to emulate, while two of them supported an economic system that combines capitalism and socialism. This response is reflection of the youth's knowledge of the South Africa (SA) experience after the transition to democracy, which led to the dismantling of the political and

legal system of apartheid. However, the economic system maintained the dominance of the white minority over the black majority in SA.

Therefore, in order to benefit from this SA experience, the future state must be able to ensure economic empowerment of the Palestinian returnees, and the provision of the necessary infrastructure for their sustainable return, including social and economic development and enhancement. This would include the development of a program of redistribution of resources, especially land, commensurate with the achievement of social justice on the one hand and the guarantee of economic stability and enhancement on the other. It was clear that the youth associated property restitution and equitable redistribution as important components of establishing not only justice but economic viability and stability.

Section 3: Application of the best human rights framework

This section seeks the perceptions of the youth groups on the optimal human rights framework to ensure human rights in general, and the rights of the displaced in particular. The groups have been asked to address this question from different aspects, as the optimal framework would appear in the responses to the following questions: how will return

happen, for example, all at once, in stages, random or organized? How will property, land and housing be handled? Describe the relationship between the existing populations and returnees.

The 8 youth groups agreed that return should take place in an orderly and gradual manner, as part of a political program that includes the representation and engagement of refugees and IDPs. This political program should include clear mechanisms and policies for how people return, the creation of conducive economic and social conditions, as well as the establishment of the necessary infrastructure.

With regard to dealing with land and property, the groups identified several complexities resulting from over 70 years of protracted displacement. The most important of these complexities is the basis for proof of land ownership, and inheritance issues or other potential disputes resulting from the absence or lack of official documents establishing title, descendants and other essential information. Second, many refugee properties either have been completely destroyed or converted to other types of properties (such as public service infrastructures and institutions). Third, the youth discussed the future of (Israeli) colonizers in the Palestinian state.

The working groups concluded that it might be better if the land would revert to state ownership, in which case the state would be responsible for redistributing land, in a manner that would ensure justice and economic empowerment, without abolishing individual property rights. Property restitution and redistribution would achieve justice and treat return as a step towards the future, not a return to the past. It is also possible to benefit from the experiences of other countries that have witnessed similar cases, and to adopt the best practices of states.

The youth groups concurred that regardless of the current ownership status of the properties, priority should be given to the restitution of the properties to the original owners (refugees and IDPs).

In the post-return period, the majority of participants in the youth groups emphasized that the relationship between the state and its nationals would be, non-discriminatory and based on the rule of law. The status of the colonizer (now a resident of the new state) would be dismantled in accordance with the dismantling of the apartheid system. Further, the youth highlighted the need for acknowledgement and accountability for the crimes committed against the Palestinian people from 1948 onwards, by the Israeli regime.

In this context, all citizens (Palestinians and former colonizers, Israeli-Jews) would live in peace, where the relationship of the society is based on justice, law and equality, without distinction based on race, religion, color, gender or sex.

ISBN 978-9950-339-61-3



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