

Palestinian "Right of Return"

In the media and in interviews with Palestinian leaders, we often hear and read statements asserting that the [Palestinian Refugees](#) have a right to return to Israel. As will be shown, these statements are based on an erroneous reading of the relevant texts. We will discuss the subject from three points of view: general international law, the most relevant UN resolutions, and various agreements between Israel and her neighbors.

General International Law

Several international human rights treaties deal with the freedom of movement, including the right of return.¹ The most universal provision is included in the 1966 International Covenant on Civil and Political Rights, which says: "No one shall be arbitrarily deprived of the right to enter his own country."²

The question arises, who has the right of return, or: what kind of relationship must exist between the State and the person who wishes to return? A comparison of the various texts and a look at the discussions which took place before the adoption of these texts lead to the conclusion that the right of return is probably reserved for nationals of the State.³

Even the right of nationals is not an absolute one, but it may be limited on condition that the reasons for the denial or limitation are not arbitrary.

Moreover, according to Stig Jagerskiold, the right of return or the right to enter one's country in the 1966 International Covenant "is intended to apply to individuals asserting an individual right. There was no intention here to address the claims of masses of people who have been displaced as a by-product of war or by political transfers of territory or population, such as the relocation of ethnic Germans from Eastern Europe during and after the Second World War, the flight of the Palestinians from what became Israel, or the movement of Jews from the Arab countries."⁴

Relevant UN Resolutions

The first major UN Resolution that refers to the refugees is [Resolution 194](#) (III) of 11 December 1948, adopted by the [General Assembly](#).⁵ This Resolution established a Conciliation Commission for Palestine and instructed it to "take steps to assist the Governments, and authorities concerned to achieve a final settlement of all questions outstanding between them." Paragraph 11 deals with the refugees: "The General Assembly ... resolves that the refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible."

Though the Arab States originally rejected the Resolution, they later relied on it heavily and have considered it as a recognition of a wholesale right of repatriation.

This interpretation, however, does not seem warranted: the paragraph does not recognize any "right", but recommends that the refugees "should" be "permitted" to return. Moreover, that permission is subject to two conditions - that the refugee wishes to return, and that he wishes to live at peace with his neighbours. The violence that erupted in September 2000 forecloses any hope for a peaceful co-existence between Israelis and masses of returning refugees. The return should take place only "at the earliest practicable date." The use of the term "should" with regard to the permission to return underlines that this is only a recommendation.

One should also remember that under the [UN Charter](#) the General Assembly is not authorized to adopt binding resolutions, except in budgetary matters and with regard to its own internal rules and regulations.

Finally, the reference to principles of international law or equity applies only to compensation and does not seem to refer to the permission to return.

It should also be borne in mind that the provision concerning the refugees is but one element of the Resolution that foresaw "a final settlement of all questions outstanding between" the parties, whereas the Arab States have always insisted on its implementation (in accordance with the interpretation favourable to them) independently of all other matters.

As a result of the [Six-Day War](#) in 1967, there were a great number of Palestinian displaced persons (i.e. persons who had to leave their home and move to another place in the same State). These were dealt with by the [Security Council Resolution 237](#) of 4 June 1967,⁶ which called upon the government of Israel "to facilitate the return of those inhabitants [of the areas where military operations have taken place] who have fled the areas since the outbreak of hostilities". The Resolution does not speak of a "right" of return and, like most Security Council resolutions, it is in the nature of a recommendation. Nevertheless, Israel has agreed to their return in various agreements, to be studied later.

Of great importance in the Arab-Israel peace process is [Security Council Resolution 242](#) of 22 November 1967.⁷ In its second paragraph, The Council "Affirms further the necessity ... (b) for achieving a just settlement of the refugee problem." The Council did not propose a specific solution, nor did it limit the provision to Arab refugees, probably because the right to compensation of Jewish refugees from Arab lands also deserves a "just settlement". There is no basis for the Arab claim that Resolution 242 incorporates the solution recommended by General Assembly Resolution 194 of 1948 analyzed above.

Agreements between Israel and Her Neighbours

Already in the [Framework for Peace in the Middle East](#) agreed at [Camp David](#) in 1978 by Egypt and Israel the refugee problem was tackled: it was agreed that a "continuing committee" including representatives of Egypt, Israel, Jordan and the Palestinians should "decide by agreement on the modalities of admission of persons displaced from the West Bank and Gaza in 1967" (Article A,3).⁸ Similarly, it was agreed that "Egypt and Israel will work with each other and with other interested parties to establish agreed procedures for a prompt, just and permanent implementation of the resolution of the refugee problem" (Article A,4).

In the [Declaration of Principles on Interim Self-Government Arrangements](#) of 1993 between Israel and the Palestinians, again it was agreed that the modalities of admission of persons displaced in 1967 should be decided by agreement in a "continuing committee" (Article XII).⁹ The issue of refugees should be negotiated in the framework of the permanent status negotiations (Article V,3). The 1995 [Israeli-Palestinian Interim](#)

[Agreement](#) on the West Bank and the Gaza Strip adopted similar provisions (Articles XXXVII,2 and XXXI,5).¹⁰

Somewhat more detailed is the relevant provision (Article 8) in the [Treaty of Peace between Israel and Jordan](#) of 1994.¹¹ As to the displaced persons, they are the object of a text similar to the above ones. As to the refugees, the Peace Treaty mentions the need to solve their problem both in the framework of the [Multilateral Working Group on Refugees](#) established after the 1991 [Madrid Peace Conference](#), and in conjunction with the permanent status negotiations. The Treaty also mentions "United Nations programmes and other agreed international economic programmes concerning refugees and displaced persons, including assistance to their settlement."¹²

None of the agreements between Israel and Egypt, the Palestinians and Jordan grants the refugees a right of return into Israel.

Conclusions

This short survey has shown that neither under the international conventions, nor under the major UN resolutions, nor under the relevant agreements between the parties, do the Palestinian refugees have a right to return to Israel. According to Palestinian sources, there are about 3.5 million Palestinian refugees nowadays registered with UNRWA.¹³ If Israel were to allow all of them to return to her territory, this would be an act of suicide on her part, and no state can be expected to destroy itself.

Great efforts should be made by all those involved, and with the help of friendly outside powers, to find a reasonable, viable and fair solution to the refugee problem.¹⁴

Footnotes

- 1) The 1948 Universal Declaration of Human Rights, Article 13(2); The 1966 International Covenant on Civil and Political Rights, Article 12(4); The 1963 Protocol IV to the European Convention on Human Rights, Article 3(2); The 1969 American Convention on Human Rights, Article 22(5); The 1981 Banjul Charter on Human and Peoples' Rights, Article 12(2) - see Sir Ian Brownlie, ed., *Basic Documents on Human Rights*, 3rd edition, Oxford 1992, pp. 21, 125, 347, 495, 551. For additional examples, see Paul Sieghart, *The International Law of Human Rights*, 1985, pp. 174-78.
- 2) Article 12(4).
- 3) Some experts are of the opinion that the right of return applies also to "permanent legal residents" - see e.g. the discussion that took place in the sub-commission on Prevention of Discrimination and Protection of Minorities, as reported in the Report by Chairman Rapporteur Mr. Asbjorn Eide, UN Doc. E/CN.4/Sub.2/1991/45, of 28 August 1991, at p.5. The Human Rights Committee established under the International Covenant on Civil and Political Rights has adopted an interpretation according to which the right of return belongs also to a person who has "close and enduring connections" to a certain country - UN Doc. CCPR/C/21/Rev.I/Add.9, 2 November 1999, at pp. 5-6.
- 4) Stig Jagerskiold, "The Freedom of Movement", in Louis Henkin, ed., *The International Bill of Rights*, New York, 1981, pp. 166-184 at p. 180.
- 5) General Assembly Official Records, 3rd session, part 1, 1948, Resolutions, pp. 21-24.
- 6) Security Council Official Records, 22nd year, Resolutions and Decisions, 1967, p. 5.
- 7) *Ibid.*, pp. 8-9.
- 8) UN Treaty Series, vol. 1138, (1987), no. 17853, pp. 39-45.
- 9) International Legal Materials, vol. 32, 1993, pp. 1525-44.
- 10) The full text was published by the Ministry of Foreign Affairs of Israel, and in *Kitvei Amana*, vol. 33, No. 1071, pp. 1-400 (Israel's publication of treaties). For excerpts, see International Legal Materials, vol. 36, 1997, pp. 551-647.
- 11) International Legal Materials, vol. 34, 1995, pp. 43-66.
- 12) Article 8, para. 2(c), at 49-50.
- 13) According to various estimates, the number of refugees in 1948 was between 538,000 (Israeli sources), 720,000 (UN estimates) and 850,000 (Palestinian sources). The enormous growth in the number for UNRWA purposes is the result of the fact that UNRWA has adopted a very broad definition of Palestinian refugees, which is much broader than the one adopted in the generally recognized 1951-1967 Convention Relating to the Status of Refugees. For the UNRWA definition, see Don Peretz, *Palestinians, Refugees, and the Middle East Peace Process*, Washington, 1993, pp. 11-12. For the definition adopted by the international conventions, see UN Treaty Series, vol. 189, (1954, No. 2545, pp. 137-221, at pp. 152-156.
- 14) See e.g. Donna E. Arzt, *Refugees Into Citizens: Palestinians and the end of the Arab-Israeli Conflict*, New York, 1997; Joseph Alpher and Khalil Shikaki, *The Palestinian Refugee Problem and the Right of Return*, Harvard University, 1998.

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