

# The Palestinian Right of Return in International Law – The Israeli Perspective

Matthew Kalman\*

The United Nations resolution of November 29, 1947 in favor of the partition of Palestine into two states, one Jewish and one Palestinian Arab, set the stage for a coordinated military attack on the Jewish community in Palestine by the combined armies of the neighboring Arab states.

The ensuing war and establishment of the State of Israel in May 1948 – known to Israelis as the War of Independence and as the ‘Naqba’ or Catastrophe to the Palestinians, led to the creation of hundreds of thousands of refugees.

By the time a ceasefire was declared in 1949, at least half a million Palestinians had left their homes in what became known as the State of Israel, and a similar number of Jews in the West Bank and surrounding Arab countries had left their homes to seek refuge in this newly created Jewish state.

The reasons why these Palestinian and Jewish refugees left their place of

residence have become a matter of intense historical debate. The participants themselves and subsequent scholars have failed to agree on whether they left on their own accord, were encouraged to leave by their own leaders, were forced out by the actions of the other side or a combination of all these factors.

The U.N. responded to the crisis by establishing United Nations Relief for Palestine Refugees (U.N.R.P.R.) in November of 1948.<sup>1</sup> The United Nations Relief and Works Agency succeeded this body for Palestine Refugees in the Near East (U.N.R.W.A.P.R.N.E., subsequently known as U.N.R.W.A.). The agency began operations on May 1, 1950, and its mandate has been repeatedly renewed, with the most recent extending to June 30 2005.<sup>2</sup>

The fate of the Palestinian refugees and the solution of what came to be known as the “refugee problem” has become a central issue in the Israeli-Palestinian dispute.

---

\* Matthew Kalman is a freelance journalist based in Jerusalem where he has been correspondent for the London Sunday Times, Toronto Globe & Mail and USA Today.

## NEXUS

Israeli and Arab leaders have been at loggerheads for decades over the best solution to this “refugee problem.”

The official Palestinian position, which has evolved over time, is that the refugees have a right to return to their original homes, to be compensated for any loss or damage to their property and to be paid damages for their suffering over the past half century. The Palestinians believe that the refugee issue should be solved irrespective of the final determination of the Arab-Israeli conflict.<sup>3</sup>

The official Israeli position, which has remained virtually unchanged since the 1949 ceasefire, is that a limited number of refugees could return to Israel, though not necessarily to their original physical homes because in many cases they have been destroyed or now have new residents. Moreover, the remaining refugees should “return” to areas under Palestinian control or be resettled in their present countries of residence, and that compensation be paid to all refugees, Jewish and Arab, who lost property in both Israel and Arab countries as a result of the 1948 war. Israel believes the refugee issue should be solved as part of a permanent settlement of the Arab-Israeli conflict.<sup>4</sup>

The earliest U.N. resolution on the issue, General Assembly Resolution 194, adopted in December of 1948, set out the alternatives for the Palestinian refugees:

“the refugees wishing to return to their homes and live at peace with their neighbors should be permitted to do so at the earliest practical date... compensation should be paid for the property of those choosing not to return and for loss of or damage to property.”<sup>5</sup>

The political context and legal status of Resolution 194 is discussed at length below, but from the text it is evident that the specific phrase “right of return” does

not appear. Nor is the right of return for Palestinian refugees specifically mentioned in the most important U.N. Security Council resolutions on the Israeli-Palestinian conflict, 242 and 338. Additionally, it is not mentioned in the 1978 Camp David Peace Accord agreement between Israel and Egypt, nor in the various agreements signed between Israel and the PLO since 1993, which have become known as the Oslo Accords, nor in the 1994 peace treaty between Israel and Jordan.

However, Israel has agreed in its treaties with Egypt and Jordan and in the Oslo Accords, to negotiate the refugee issue as part of its talks on “final status” issues. The wording of the peace agreements signed since 1978 between Israel and its neighbors suggests a compromise solution can be found for the Palestinian refugees.

In this context, Israel agreed to the establishment of a multi-lateral Refugee Working Group at the 1991 Madrid Peace Conference chaired by Canada, whose purpose is to alleviate the hardship of Palestinian refugees until a long-term solution is found.

While Israeli leaders and legal experts acknowledge that the issue of the Palestinian refugees and its resolution is central to a permanent settlement of the Israeli-Palestinian conflict, they do not believe that the “right of return” for Palestinian refugees has any basis in international law.

Ruth Lapidoth, Professor Emeritus of International Law at the Hebrew University of Jerusalem, sums up the Israeli legal view when she states that “neither under the general international conventions, nor under the major U.N. resolutions, nor under the relevant agreements between the parties, do the Palestinian

## *Matthew Kalman*

refugees have a right to return to Israel.”<sup>6</sup>

### **Number and Conditions of Refugees**

From the very beginning, there was uncertainty over the number of refugees, particularly on the Palestinian side. Israel put the number at 590,000.<sup>7</sup> The United Nations, which began assisting refugees from 1948, at first estimated their number at somewhere between 700,000 to 800,000,<sup>8</sup> growing to 914,221 by June of 1950.<sup>9</sup> The actual number of people classed as refugees by May of 1950 was over 950,000,<sup>10</sup> but even at this early stage, it was clear to U.N. officials that the numbers of refugees were being inflated in order to gain access to relief offered by the world body. A report to the U.N. General Assembly in October of 1950 noted that many fraudulent cases have been discovered.

An accurate statement of the number of genuine refugees resulting from the war in Palestine is unlikely to be provided now or in the future... There is reason to believe that births are always registered for ration purposes, but deaths are often, if not usually, concealed so that the family may continue to collect rations for the deceased.

Only an exhaustive and expensive census, now under way, although ardently opposed by those concerned, will divide worthy from false claimants.

The former Trans-Jordan and the portion of Palestine remaining in Arab hands and now annexed to the Hashimite Kingdom of the Jordan received the greatest influx of refugees of any of the countries adjacent to Israel, which probably consists of more than half of all the refugees. For various reasons, the largest numbers of fictitious names on the ration lists pertain to refugees in this area. All earlier attempts at a close census of those entitled to relief have been frustrated, but a comprehensive survey, now under way, is

achieving worthwhile results in casting up names of dead people for which rations are still drawn, fraudulent claims regarding numbers of dependents (it is alleged that it is a common practice for refugees to hire children from other families at census time) and in eliminating duplications where families have two or more ration cards. The census, though stubbornly resisted, will eliminate many thousands from the lists of refugees now in receipt of rations.<sup>11</sup>

At the same time, as the Palestinian refugees left their homes, approximately 800,000 Jewish refugees left or were forced from their homes in the West Bank and Arab countries. Israeli leaders regarded this as an unfortunate but necessary consequence of Israel's founding and a political balance to the Palestinian refugee problem. Israel's U.N. Ambassador Yehuda Blum said that “a Jewish refugee problem, in addition to the Arab refugee problem, was created by Arab aggression in 1948 and, in effect, an exchange of populations has taken place.”<sup>12</sup>

When U.N.R.W.A. was established, 17,000 Jews and 31,000 Arabs in Israel were registered as refugees, but they were quickly absorbed into Israeli society.

In Israel, the Agency has provided relief to two types of refugees, Jews, who fled inside the borders of Israel during the fighting, and Arabs, in most instances, displaced from one area in Palestine to another. Jewish refugees at first numbered 17,000 but, during the current summer, all but 3,000 of these have been absorbed into the economic life of the new Israeli State. Arabs on relief were first numbered at 31,000, but many have been placed in circumstances in which they are self-supporting so that it was possible to reduce the number to 24,000 at the end of August in 1950.

Recent discussions with the Israeli Government indicate that the idea of relief distribution is repugnant to it, and the Agency was informed that already many

## NEXUS

of the 24,000 remaining refugees were employed. Additionally, all able-bodied refugees desiring employment could be absorbed on works projects if they would register at the government registry offices for that purpose. It was stated that they all have status as citizens of Israel and are entitled to treatment as such.<sup>13</sup>

The Jewish refugees from Arab countries were never offered, nor received, compensation for the property confiscated or left behind in the countries where they previously had lived. As the years passed without any sign of a comprehensive solution to the Arab-Israeli conflict, successive Israeli leaders expressed the hope that the refugee issue might be considered settled by this mutual suffering of exile and loss of property. In 1965, Israeli Prime Minister Levi Eshkol said that in a natural national environment, Israel has absorbed Jewish refugees from Arab countries to a total not less than the number of Arab refugees who left our territory, and, from the legal point of view, it has thus perhaps already fulfilled its obligation.<sup>14</sup>

Eshkol urged a solution to the refugee problem through the "re-settlement and absorption of the Arab refugees in their natural national environment, namely in the Arab States, with their extensive territories and wealth of water, but sorely in need of development. Eshkol also insisted on the refugees need to take part in that development, since they are brothers and sisters in nationality, language and customs, in outlook and faith."<sup>15</sup>

Israel is prepared to help financially, to the best of its ability, and with the aid of the Great Powers, in this work of settlement and rehabilitation. Let it be remembered that the flight of the Arabs from Israel was devised by a leadership which had planted in their hearts the hope that they would return after we had been destroyed by the invading armies.

Nevertheless, Israel has never ignored the human needs of those who uprooted themselves from their former abodes, whatever their motives might have been. The settlement of the refugees in the Arab States is the only solution consistent with their true interest, as well as ours.<sup>16</sup>

But with the exception of a small minority who found permanent homes elsewhere, most of the Palestinian refugees remained in camps established by the United Nations in the West Bank, Gaza Strip, Jordan, Lebanon and Syria.

With time, the number of refugees grew as they had children and grandchildren. By June 2002, the number of Palestinian refugees and their descendants registered with the U.N.R.W.A. had reached 3,973,360. Just less than half of all registered Palestinian refugees were in Jordan totaling 1.7 million refugees.. Another 1.5 million refugees were in the West Bank and Gaza Strip. There were some 400,000 in each of Syria and Lebanon.<sup>17</sup>

In 1951, the United Nations adopted the convention relating to the Status of Refugees. Palestinian refugees registered with the U.N.R.W.A. were specifically excluded from this convention under intense Arab pressure.<sup>18</sup>

As a result of the 1967 Six Day War, more than 300,000 Palestinian left their homes in the West Bank, mainly for Jordan. About half of them were already registered with the U.N.R.W.A. as refugees. The remainders were classified legally as "displaced persons."<sup>19</sup>

The 1948 refugees were first housed in tents. As the dispute dragged on and the camps became more permanent, cinder-block houses and some infrastructure for water were built, and electricity and drainage installed. Conditions varied greatly from camp to camp. The frustrations and miserable conditions of the refugees were recently summarized by

## *Matthew Kalman*

Professor Edward Said, a former member of the P.L.O. Executive.

Along with [the original displacement of the 1948 war] went the scandalously poor treatment of the refugees themselves. It is still the case, for example, that the 40,000 to 50,000 Palestinian refugees resident in Egypt must report to a local police station every month; vocational, educational, and social opportunities are curtailed; and a general sense of not belonging adheres to them, despite their Arab nationality and language.

In Lebanon the situation is even direr. Almost 400,000 Palestinian refugees have had to endure not only the massacres of Sabra, Shatila, Tel al-Za'atar, Dbayyeh and elsewhere, but have remained confined in hideous quarantine for almost two generations. They have no legal right to work in at least 60 occupations; they are not adequately covered by medical insurance; they cannot travel and return; they are the objects of suspicion and dislike. In part, they have inherited the mantle of opprobrium draped round them by the P.L.O.'s presence and its unlamented absence there since 1982, and thus, they remain in the eyes of many ordinary Lebanese as a sort of house enemy to be warded off and/or punished from time to time.

A similar situation exists in kind, if not in degree, in Syria. As for Jordan, although it was, to its credit, the only country where Palestinians were given naturalized status, a visible fault line exists between the disadvantaged majority of that very large community and the Jordanian establishment for reasons that scarcely need to be spelled out. I might add, however, that for most of these situations where Palestinian refugees exist in large groups within one or another Arab country - all of them the direct consequence of 1948 - no simple, much less elegant or just solution exists in the foreseeable future. It is also worth mentioning, or rather asking, why it is that a destiny of confinement and isolation has been imposed on a people who quite naturally fled to neighboring countries, when driven from their own countries, that everyone believed would welcome and sustain them. More or less, the opposite occurred,

except in Jordan, that no welcome was given them - another unpleasant consequence of the original dispossession.<sup>20</sup>

### **The Political Context**

Within months of Israel's Declaration of Independence, the Israeli government offered to re-absorb 100,000 Palestinian refugees and pay compensation to the remainder as part of a permanent settlement of the Israeli-Arab conflict. The United Nations Conciliation Commission rejected this offer as "unsatisfactory." The Arab states also rejected the offer, insisting the refugee problem be solved separate from the overall conflict.<sup>21</sup> At that time, the Arab states refused to consider any arrangement that might imply recognition of the right of Israel to exist; a policy continued well into the 1970s. This rejectionist policy was only abandoned in 1977, with President Anwar Sadat's ground-breaking visit to Jerusalem.

Even after Israel and Egypt signed the Camp David accords and the subsequent peace treaty, the rest of the Arab world remained defiant in its rejection of Israel's right to exist.

With the passage of time, the condition of the Palestinian refugees worsened in most countries, with the notable exception of Jordan, the only country where they were offered equal rights and full citizenship. In this context, many observers interpreted the Arab world's continuing refusal to resettle the Palestinian refugees as a political decision and part of the continuing Arab effort to wipe Israel off the map. It was pointed out that the 20<sup>th</sup> Century had produced numerous wars and accompanying refugee problems which in most other places had been solved even under extremely violent circumstances with the acceptance by both sides that a population exchange

## *NEXUS*

had occurred. Such exchanges took place between Turkey and Bulgaria in 1913, and between Turkey and Greece in 1923, when more than 1.5 million people migrated to the neighboring country. As Bernard Lewis observes:

In 1947, while Britain was disengaging from Palestine, it was also withdrawing from India, leading to the birth of independent Pakistani and Indian states. Whereas the Arab-Israeli conflict created hundreds of thousands of refugees, the Indians and Pakistanis wisely agreed to transfer millions of their people across the border in order to defuse ethnic and religious tensions. India sent Muslims to Pakistan, which in turn sent Hindus to India. Both states granted citizenship to these refugees.

The much smaller - and perhaps even more easily solvable - problem of Arab refugees is a sad paradox, in that it has cost the Western world so many billions of dollars in humanitarian aid that only perpetuates the refugees' plight, and has monopolized its media attention for over half a century, when alternatives in refugee transfers such as the one between India and Pakistan have proven effective.<sup>22</sup>

As time passed, the political representation of the Palestinians underwent several radical transformations. In 1964 the Palestine Liberation Organization (PLO) was established and the Palestinians began to develop an independent political leadership with their own representatives at the United Nations and other international bodies.

In 1964, the PLO adopted the Palestinian National Charter (sometimes also called the Palestinian National Covenant), which was updated in 1968. The Charter denied recognition of the "Zionist entity," rejected any connection of Jews to Israel as "incompatible with the facts of history," called for the liberation of the "entire homeland" through "armed struggle" and the establishment there of a "national Palestinian state." The Char-

ter explicitly stated that Jewish immigrants to Palestine would be expelled.<sup>23</sup>

The Palestinian National Charter repeatedly refers to the necessity of armed struggle and the liberation of Palestine, but mentions "return" only once, and does not assert any right of return.

Armed struggle is the only way to liberate Palestine. This it is the overall strategy, not merely a tactical phase. The Palestinian Arab people assert their absolute determination and firm resolution to continue their armed struggle and to work for an armed popular revolution for the liberation of their country and their return to it.<sup>24</sup>

In June 1974, the PLO adopted a Ten-Point Program at a national council convened in Cairo. Until this meeting, the PLO had flatly rejected any partial solution to the Palestine question, demanding the establishment of a state in all of Palestine.<sup>25</sup>

In Cairo, the PLO agreed for the first time to accept the establishment of a Palestinian "authority on every part of Palestinian land to be liberated"<sup>26</sup> but emphasized that this "national authority" would continue to "struggle... for the sake of completing the liberation of all Palestinian soil."<sup>27</sup>

Article 3 of the Ten-Point Program explicitly rejected the idea of a compromise or partial solution and in that context demanded the refugees' right of return. "The PLO will struggle against any plan for the establishment of a Palestinian entity the price of which is recognition, conciliation, secure borders, renunciation of the national right, and our people's deprivation of their right to return and their right to determine their fate on the national soil."<sup>28</sup>

Israeli negotiators have long acknowledged the need to resolve the Palestinian refugee problem, but given the

## *Matthew Kalman*

context of these early expressions of Palestinian aspirations, it is not surprising that they regard the claim of a right of return as a coded rejection of peace with Israel. Palestinian leaders made it quite clear that the return of the refugees was part of the Palestinian strategy to replace Israel with a “democratic state of Palestine.”

“The Israelis have two choices: to let all Palestinians return to their land and have the democratic state we propose, or to live in this so-called state of Israel without letting the Palestinians return. If they choose the latter, they will surely die and we will surely win.”<sup>29</sup>

When Israeli and Palestinian representatives finally engaged in formal negotiations in and around Oslo in 1993, the Palestinian side declared their willingness to recognize the State of Israel and agree to a compromise on territorial issues. Likewise, Israeli negotiators believed the Palestinians had also given up the commitment to the right of return.

Israeli leaders continued to suspect that the PLO’s formal recognition of Israel in 1993 was a tactical maneuver, part of a frequently stated plan to liberate the whole of Palestine in stages. Israel sought the deletion or amendment of those sections of the Charter which called - explicitly or implicitly - for the destruction of Israel. One section of PLO Chairman Yasser Arafat’s letter to Israeli Prime Minister Yitzhak Rabin in September 1993 dealt directly with this issue. Arafat stated that those clauses of the Charter inconsistent with the Oslo Process were no longer valid.

In view of the promise of a new era and the signing of the Declaration of Principles and based on Palestinian acceptance of Security Council Resolutions 242 and 338, the PLO affirms that those articles of the Palestinian Covenant which deny Israel’s right to exist, and the provisions of

the Covenant which are inconsistent with the commitments of this letter are now inoperative and no longer valid. Consequently, the PLO undertakes to submit to the Palestinian National Council for formal approval the necessary changes in regard to the Palestinian Covenant.<sup>30</sup>

In 1996, the 669-member Palestinian National Council – the ultimate decision-making body and legislative authority of the PLO – met in Gaza and voted by 504 to 54, with 14 abstentions, to amend the Charter.

1. The Palestinian National Charter is hereby amended by canceling the articles that are contrary to the letters exchanged between the P.L.O. and the Government of Israel 9 to 10 September 1993.
2. Assigns its legal committee with the task of redrafting the Palestinian National Charter in order to present it to the first session of the Palestinian central council.”<sup>31</sup>

On January 22, 1996, the State Department press secretary, James Rubin, published a letter handed to President Clinton that day by Arafat. The letter said:

[F]rom time to time, questions have been raised about the effect of the Palestinian National Council’s action, particularly concerning which of the 33 articles of the Palestinian covenant have been changed. We would like to put to rest these concerns. The Palestinian National Council’s resolution, in accordance with Article 33 of the covenant, is a comprehensive amendment of the covenant. All of the provisions of the covenant which are inconsistent with the PLO commitment to recognize and live in peace side by side with Israel are no longer in effect. As a result, Articles 6 through 10, 15, 19 through 23 and 30 have been nullified. And the parts in Articles 1 through 5, 11

## NEXUS

through 14, 16 through 18, 25 through 27 and 29 that are inconsistent with the above-mentioned commitments have also been nullified. These changes will be reflected in any official publication of the charter.<sup>32</sup>

However, no revised version of the Charter was ever published. This problem was addressed once more in the Wye River Memorandum in 1998.<sup>33</sup> On December 14, 1998, the Palestinian National Council, in accordance with the Wye Memorandum, convened in Gaza together with other Palestinian notables in the presence of U.S. President Bill Clinton. Yasser Arafat addressed the gathering, and in the course of his speech asked the crowd to raise their hands to show their approval of the actions and decisions taken so far by the leadership. The crowd raised their hands, and President Clinton accepted that as a formal confirmation of the letter he had received the previous January.

But the legal validity of that show of hands on December 14, 1998, remained highly questionable. It was not a formal vote; there was no written text of a resolution; and no roll-call of members of the Palestine National Council present was taken.<sup>34</sup> More than four years later, no amended version of the Palestinian National Charter has ever been published by the PLO. Given the PLO's failure to publish a new version of the Charter, it is not surprising that Israelis remain highly suspicious of the continued Palestinian insistence on the right of return.

Joel Singer, who drafted the 1993 Oslo Accords as legal counsel in the Israeli Ministry of Foreign Affairs, says the claim to a right of return has no place in Israeli-Palestinian peace talks. "When supporters of the Palestinians speak of implementing their 'right of return' to Israel, they are not speaking of peaceful accommodation with Israel; rather, they

are using a well-understood code phrase for the destruction of Israel."<sup>35</sup>

This view is also shared by some Palestinian leaders, most prominent among them professor Sari Nusseibeh. However, most Palestinian representatives and external supporters of the Palestinian cause continue to argue that the refugees' "right of return" is guaranteed by international law and must be included in a permanent peace treaty between Israel and the Palestinians.

The right of return (Al-Awda) has become a powerful slogan and rallying-cry for Palestinians and their supporters. Several organizations and institutions identified with the Palestinian cause have adopted the name "Al-Awda" in recognition of its central role in contemporary Palestinian political philosophy.

The refugee problem is at the core of the Palestinian problem. In the course of the establishment of Israel, roughly 800,000 Palestinians became refugees and their fate is more or less what the Palestinian-Israeli conflict is about. Two-thirds of Palestinians are refugees, meaning that the fate of the refugees engages the hearts and minds of most of the Palestinian public.<sup>36</sup>

In recent years, Palestinian representatives engaged in closed-door negotiations have reportedly expressed a readiness to compromise on the issue of return; but the public expressions of Palestinian policy have hardened with time, and an explicit reference to the "right of return" has become a central motif in Palestinian statements.

We absolutely do not accept or recognize any outcome of negotiations which may lead to an agreement that forfeits any part of the right of return of the refugees and the uprooted to their homes from where they were expelled in 1948, or their due compensation, and we do not accept compensation as a substitute for return.<sup>37</sup>



## *Matthew Kalman*

On the Israeli side, a broad spectrum of political opinion (including the most ardent advocates for the establishment of a Palestinian state and an Israeli withdrawal from the West Bank and Gaza Strip) have rejected the idea of a blanket right of return for Palestinian refugees. Yossi Beilin (a main architect of the 1993 Oslo Accords, former Israeli justice minister and lead Israeli negotiator at the Taba peace talks in January 2001) said that he entered negotiations believing the Palestinians would not insist on the right of return. He even reached an understanding on the issue with PLO Secretary General Mahmoud Abbas (Abu Mazen) in 1995.

It was clear to many Palestinians and to the Israelis that even if the Palestinians insisted upon the principle of the "Right of Return," this right would be applicable to those who would return to the Palestinian state, rather than to any person wishing to live in Israel, and that if a "Right of Return to Israel" was granted to the refugees, it would be tantamount to abolishing the Jewish majority in Israel, practically overnight.

Until the commencement of the talks with the Palestinian leadership concerning the permanent agreement, there was an understanding that the solution of the refugee problem would be found by rehabilitating them in their current place of residence, relocating them in the Palestinian State, relocating them in countries which would agree to absorb them, and paying them compensation. A small number of refugees would be permitted to enter Israel, under a family reunification plan and special humanitarian cases. This was also the nature of the understandings reached between Abu Mazen and myself in 1995.<sup>38</sup>

Shortly before he left office, President Bill Clinton, who spent the last months of his presidency desperately trying to push the Israelis and Palestinians towards a treaty, endorsed Beilin's

view that Israel could not be expected to accept the right of return.

[Y]ou cannot expect Israel to acknowledge an unlimited right of return to present day Israel, and at the same time, to give up Gaza and the West Bank and have the settlement blocks as compact as possible, because of where a lot of these refugees came from. We cannot expect Israel to make a decision that would threaten the very foundations of the state of Israel, and would undermine the whole logic of peace. And it shouldn't be done.<sup>39</sup>

Yossi Beilin, former Israeli minister of justice and peace negotiator, says that during US-sponsored peace talks in 2000, and then at Taba in January 2001, Israeli and Palestinian representatives made progress towards a formula. The theoretical right of the Palestinian refugees to return was recognized, but Israel was granted the right to limit the actual numbers allowed to return each year in order to preserve the Jewish character of the State of Israel.

The Clinton Plan, dated December 2000, made a determination in this matter and that was agreed upon, in principle, by the two parties. A solution to the refugee problem would be devised in which the Israelis would acknowledge the suffering of the refugees, but Israel would not assume the sole responsibility for their suffering. A committee would be set up headed by the United States to handle the problem from the economic aspects; it would be determined that Israel could not accept the Right of Return within the boundaries of the State of Israel, but that there would be a Right of Return to the Palestinian State and to areas which Israel would transfer to the Palestinian State under a land exchange agreement. It would be determined that the refugees could be accepted in third countries; that Israel would agree to receive a certain number of refugees in accordance with its sovereign decision; that priority would be given to solving the refugee problem in Lebanon; and that the agreement would be deemed to be the implementation of Resolution 194.

## NEXUS

The Taba talks were based on the Clinton Plan, and indeed it was easy to reach various understandings at the Taba talks, based on this plan. At Taba, agreements were reached concerning the nature of personal compensation, compensation for assets, options of rehabilitation and absorption in third countries, and compensation for the host countries. Above all, we were very close to an agreement concerning the story of the creation of the refugee problem, which described the Israeli approach and the Palestinian approach to the issue, and their common denominator. Specific sums of money were not agreed on, nor was the actual number of refugees which would be permitted to come to Israel. However, the distance under dispute between the parties was narrowed substantially, and the Palestinian side agreed that the number of refugees must be such that it would not damage Israel's character as a Jewish country.<sup>40</sup>

We have our positions which we adhere to and history has proven that we have always adhered to them. When we went to Camp David, we had a vision. This vision is still with us. We would like to have back all the territories occupied in 1967 in accordance with Security Council Resolutions 242 and 338. We also would like to have back Arab East Jerusalem, to make Israel admit its responsibility for the plight of refugees and to give them the right of return... the proof is the Arab initiative adopted in Beirut (in March 2002) which spoke

about a just, clear and agreed solution to the refugee issue on the basis of Resolution 194.<sup>41</sup>

All mention of the right of return was excluded from the entire Oslo process and the Israelis apparently believed the claim had been abandoned by the Palestinians. While Israel continued to insist that the Palestinians could never be granted the right of return, however, Palestinian representatives gave increasing prominence to the issue. By 2001, Edward Said noted, it had become one of the main stumbling-blocks in the peace negotiations.

The by now notorious peace process has finally come down to the one issue that has been at the core of Palestinian deprivations since 1948: the fate of the refugees. That the Palestinians have endured decades of dispossession and raw agonies rarely endured by other peoples - particularly because these agonies have either been ignored or denied, and even more poignantly, because the perpetrators of this tragedy are celebrated for social and political achievements that make no mention at all of where those achievements actually began - is of course the locus of "the Palestinian problem," but it has been pushed very far down the agenda of negotiations until finally now, it has popped up to the surface.<sup>42</sup>

In 2001, Professor Sari Nusseibeh, president of Al-Quds University, was appointed to the Jerusalem Portfolio of the PLO Executive Committee. In a series of public statements, Nusseibeh declared that the demand for the right of return for Palestinian refugees was incompatible with the stated PLO policy of support for a two-state solution to the Israeli-Palestinian conflict.

The idea of the establishment of a Palestinian state along the 1967 borders is one that is or should be understood to mean that it is primarily within the borders of this state that the problem of resettling the refugees will be addressed. This un-

## *Matthew Kalman*

derstanding is in no way inconsistent with United Nations Resolution 194, although of course that resolution does not necessarily imply such an understanding...

A resolution of the Israeli-Palestinian conflict on the basis of a two-state solution, involving as it does a national ceding of part of the Palestinian homeland to Israel, clearly presumes that the Israeli part of the homeland will be Israeli, and not Palestinian.

...Acceptance of this compromise, and a full realization of its political implication by the Palestinian people and/or the leadership at this point is clearly painful. Therefore, the demand for a Palestinian state, while upholding one basic principle concerning self-determination and freedom, clearly involves a painful compromise concerning the wholesale return of Palestinians and their descendants to their original homes.<sup>43</sup>

Nusseibeh also points out that the Palestinian attempt to demand both a two-state solution and the right of return effectively destroys the Palestinians' ability to negotiate peace with Israel.

I have heard it argued that these two strategies are compatible, not contradictory. If the aim is to dissolve Israel as a state, then this is indeed true. But if so, we cannot expect Israel to be a peace-partner in any negotiations aiming to achieve that end. Therefore, to espouse those two strategies simultaneously is to opt out of the peace process in which we have been engaged for the past decade...

...While the right of return to individuals is indeed sacrosanct, so is the national right to freedom from occupation and independence. If upholding the right of independence detracts from the right of return, upholding the latter equally detracts from the former. We therefore have a case of two sacrosanct rights from which we are compelled to choose by our political circumstance.<sup>44</sup>

Nusseibeh was widely condemned by Palestinians for this analysis. In 2002, he

was effectively demoted from his position as the PLO representative in Jerusalem. No other senior Palestinian official or official document has ever endorsed a retreat from the demand for the full and unconditional right of return for Palestinian refugees.

The chasm which remains between official Israeli and Palestinian policy on the right of return – an issue which both sides acknowledge is central to any future agreement – and the fierce rejection by the Palestinian public of Nusseibeh's approach, suggests that a permanent peace treaty between the two sides is still some way off.

### **The Right of Return in International Law**

The first text that explicitly refers to the right of return for refugees from the Israeli-Palestinian conflict is U.N. Resolution 194 (III), adopted by the U.N. General Assembly on December 11, 1948. This resolution established a Conciliation Commission for Palestine and instructed it to "carry out the specific functions and directives given to it by the present resolution and such additional functions and directives as may be given to it by the General Assembly or by the Security Council."<sup>45</sup> Resolution 194 refers specifically to the refugees in Paragraph 11, where the General Assembly

Resolves that the refugees wishing to return to their homes and live at peace with their neighbors 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;

Instructs the Conciliation Commission to facilitate the repatriation, resettlement

## NEXUS

and economic and social rehabilitation of the refugees and the payment of compensation, and to maintain close relations with the Director of the United Nations Relief for Palestine Refugees and, through him, with the appropriate organs and agencies of the United Nations.<sup>46</sup>

Palestinians and their supporters regard Paragraph 11 as the bedrock of the legal basis of the right of return.

Resolution 194 restated and reaffirmed a well-established norm in international law and practice, namely the right of return. This norm is reiterated in several international law instruments such as Article 13 of the Universal Declaration of Human Rights which states that: "everyone has the right to... return to his country..."

The universal recognition of the right of refugees to return to their homes is not only legal and moral in character. It also responds to practical necessities and considerations. The return of refugees is an essential component of generating public confidence in peace: it plays an essential part in validating and stabilizing the post-conflict political order. The return of refugees is an essential part of the transition to peace, rather than simply a result of it. The end of a conflict is inconceivable without bringing closure to refugee problems.<sup>47</sup>

Political groups supporting the Palestinian cause also cite Resolution 194 as the legal basis for the demand that the refugees must be allowed back to their homes. One example was a statement by the Palestine Right to Return Coalition in August 2000 calling for the

...implementation of the right of Palestinian refugees to return to the homes and lands from which they were expelled. ... The right of refugees to return to their homes is enshrined in the Universal Declaration of Human Rights, the Geneva Conventions, International law, and in U.N.G.A. 194 (*sic*).<sup>48</sup>

But Israeli lawyers challenge this interpretation of Resolution 194 for a number of reasons, chief among them the fact that the phrase "right of return" does not appear, nor can it directly be inferred, from the wording of the resolution.

The text of paragraph 11 provides no support for the claim that there is a "right" to return under international law. The paragraph does not mention the word "right"; it simply states that the refugees "should be permitted" to return. The phrase "should be permitted" clearly does not carry the force of "must be permitted", while the reference to "permission" is hard to square with the claim that return is a right.<sup>49</sup>

Resolution 194 was adopted before Israel became a member of the United Nations. Israel was therefore unable to participate in the General Assembly vote. However, all the Arab nations, including those where U.N.R.W.A. had established refugee camps, were able to vote on the resolution, and all of them voted unanimously against it.

Resolution 194 also had a clear context, which was the establishment of a Conciliation Commission for Palestine intended to "assist the Governments and authorities concerned to achieve a final settlement of all questions outstanding between them."<sup>50</sup>

Paragraph 11 was clearly a directive to the Conciliation Commission, which was created "to carry out the specific functions and directives given to it by the present resolution."<sup>51</sup> There appears to be no basis for the argument that the wording of Paragraph 11, or the remainder of Resolution 194, has any legal status for any body other than the Conciliation Commission itself.

Paragraph 11, like the remainder of the resolution, was a proposal for action to be taken by the Conciliation Commission in an effort to achieve "a final set-

## *Matthew Kalman*

tlement.” But the Conciliation Commission never came close to achieving such a settlement. The entire text of Resolution 194, rejected in any case by the Arab states, was rendered moot by the fact that the Conciliation Commission charged with carrying out its proposals was rendered obsolete by events on the ground.

In the years following the adoption of Resolution 194, it was clear from the discussions of the U.N. Conciliation Commission that the Arab states did not expect all the refugees to return to Palestine. In August 1949, the Arab delegations said, they “favored compensation in kind for the refugees who might not return to their homes.”<sup>52</sup> The same month, they said they

would be ready to study the implementation of that part of the declaration proposed by the Commission according to which the solution of the refugee problem should be sought in the repatriation of refugees in Israeli-controlled territory and in the resettlement of those not repatriated in Arab countries or in the zone of Palestine not under Israeli control.<sup>53</sup>

Palestinian officials have been notably inconsistent in their attitude to Resolution 194. Early Palestinian delegates to the United Nations, in stark contrast to official Palestinian policymakers today, openly repudiated Resolution 194. In 1966, Mr. Al-Ghouri, chairman of the Palestinian Arab delegation, told the Special Political Committee of the U.N. General Assembly that his delegation rejected Resolution 194 and specifically rejected paragraph 11. He said he:

wished to make clear the views of the Palestine Arab delegation on the implementation of paragraph 11 of General Assembly Resolution 194 (III) of 11 December 1948. It considered the implementation of that paragraph tantamount to an acceptance of the partition resolution 181 (II)

and the liquidation of the Palestinian problem, which it had always rejected.<sup>54</sup>

Such political questions notwithstanding, there are fundamental legal questions concerning the status of Resolution 194 in international law. The most basic is that General Assembly resolutions are not legally binding. Chapter IV of the U.N. Charter states that “the General Assembly... may make recommendations” but does not confer the power to legislate.<sup>55</sup>

Like all resolutions of the General Assembly, Resolution 194 has the status of a recommendation only, and is incapable of binding states or creating legal rights.<sup>56</sup>

Under the U.N. 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.<sup>57</sup>

Moreover, the wording of Paragraph 11 is inconsistent with the language of a statute that could be considered legally binding. The resolution does not mention any “right” but says the refugees “should” be “permitted” to return. Such permission, according to Paragraph 11, is conditional on two factors – the refugee wishes to return and is willing to “live at peace with their neighbors.”

The reference to principles of international law or equity refers only to compensation for property and does not seem to refer to permission to return.<sup>58</sup>

50 years ago, U.N. officials went even further, suggesting “it is doubtful that claims by returning refugees for loss or damage to property fall within the scope of international law.”<sup>59</sup>

At that time, neither the Arab delegates to the United Nations nor the U.N. officials themselves described the return of the refugees as a “right.” One contem-

## *NEXUS*

porary working paper drafted by the secretariat describes it as a “recommendation.”

The most important principle of the General Assembly’s resolution of 11 December 1948 is the recommendation that the refugees should return to their homes in Palestine... The Jewish authorities should be urged by the Commission to accept that principle and to implement immediately such recommendation.<sup>60</sup>

The issue of compensation also divides the parties. The wording of Resolution 194 clearly presents two alternatives for the refugees: return or compensation. Those returning to their homes would be reinstated to their former condition, but they would not be entitled to compensation as well. This idea also was the understanding of U.N. officials half a century ago.

The underlying principle of paragraph 11, sub-paragraph 1, of the resolution of the General Assembly of 19 December 1948, is that the Palestine refugees shall be permitted either to return to their homes and be reinstated in the possession of the property which they previously held or that they shall be paid adequate compensation for their property.<sup>61</sup>

The official policy of the PLO at the time of this writing is that the refugees must be allowed to fulfill their right of return and in addition receive compensation. The PLO Negotiations Affairs Department, the body charged with drafting official Palestinian positions regarding the peace process, says that “Palestinian refugees are entitled to compensation whether or not they choose to exercise their right to return.”

In order to bring the Palestinian-Israeli conflict to an end, and so as to reach a peace settlement that is indeed “just and lasting,” the refugee problem has to be definitively resolved. To that end, Israel must recognize its responsibility for the

forced displacement and dispossession of the Palestinian people and for the subsequent prevention of their return to their homes. Besides its symbolic significance, such recognition entails Israeli responsibility for the eventual resolution of the problem.

Israel must recognize the right of the Palestinian refugees to return to their homes. Every refugee should be permitted to return if he or she chooses to do so. This should be done pursuant to a detailed repatriation plan that includes the modalities, timetables and numbers for a phased return of the refugees. This plan must ensure the safety and dignity of return in accordance with international human rights norms.

In addition to enabling their return, Israel must compensate the refugees for the damages inflicted upon them as a result of their dispossession and displacement. Refugees are entitled to compensation for loss of or damage to property, personal injury, mental pain and anguish, and any other damage arising as a result of their displacement and dispossession. Palestinian refugees are entitled to compensation whether or not they choose to exercise their right to return.

Moreover, real property owned by the refugees at the time of their expulsion should be restored to its lawful Palestinian owners or their successors.<sup>62</sup>

Whether or not Resolution 194 is binding in international law, Israeli jurists argue that it has become obsolete. The PLO Negotiations Affairs Department says that “[t]o date, General Assembly Resolution 194 remains the only internationally agreed basis for a just settlement of the Palestinian refugee problem.”<sup>63</sup> However, Israeli experts disagree.

Subsequent U.N. resolutions on the Middle East do not suggest that the return of the refugees is in any way guaranteed, or even emphasized. Instead, equal weight is given to “repatriation” (return) and “resettlement.”

## *Matthew Kalman*

General Assembly Resolution 393, adopted December 2, 1950, recommended:

...without prejudice to the provisions of paragraph 11 of General Assembly resolution 194...the reintegration of the refugees into the economic life of the Near East, either by repatriation or resettlement is essential...for the realization of conditions of peace and stability in the area.<sup>64</sup>

General Assembly Resolution 394, adopted December 14, 1950 called upon:

...the Governments concerned to undertake measures to ensure that refugees, whether repatriated or resettled, will be treated without any discrimination either in law or in fact.<sup>65</sup>

And General Assembly Resolution 513 of January 26, 1952, speaks of "reintegration either by repatriation or resettlement."<sup>66</sup>

Successive General Assembly resolutions approving the annual report of the U.N.R.W.A. director speak of "repatriation or compensation of the refugees" and "the reintegration of refugees either by repatriation or resettlement."<sup>67</sup>

The central U.N. resolutions subsequently adopted by the Security Council on the Israeli-Palestinian conflict move even further away from the idea of the return of refugees, and certainly do not mention the "right" of return absent from Resolution 194 itself and Resolutions 393, 394 and 513 cited above.

U.N. Security Council Resolution 242, adopted after the Six Day War, on November 22, 1967, affirms "the necessity...for achieving a just settlement of the refugee problem."<sup>68</sup> U.N. Security Council Resolution 338, adopted on November 22, 1973, does not mention refugees at all.<sup>69</sup>

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.<sup>70</sup>

The refugee issue was directly addressed in the first peace treaty between Israel and an Arab state--the Framework for Peace in the Middle East signed between Israel and Egypt at Camp David in 1978 (the Camp David Accords). This agreement tackled the refugee issue head-on and said, "the solution from the negotiations must also recognize the legitimate right of the Palestinian peoples and their just requirements." The agreement stated that "negotiations shall be based on all the provisions and principles of U.N. Security Council Resolution 242," but it did not mention Resolution 194, nor did it refer to the return of refugees.<sup>71</sup>

With regard to the Palestinians displaced by the 1967 Six Day War, it was agreed that a "continuing committee" with 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."<sup>72</sup>

As to the original 1948 refugees, the 1978 Framework for Peace was even more vague on the question of solutions, stating only 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."<sup>73</sup>

At the Madrid Peace Conference in 1991, the participants--with Israeli agreement--established a Multi-Lateral Refugee Working Group to alleviate the

## NEXUS

suffering of Palestinian refugees and to facilitate the reunification of refugee families divided by the years of conflict. However, the peace conference invitation did not refer to the right of return, only to U.N. Resolutions 242 and 338.<sup>74</sup>

The Oslo Accords, beginning with the Declaration of Principles (DOP) signed by Israel and the PLO in September, 1993, also do not mention the right of return, nor do they mention Resolution 194. In the DOP, Israel and the PLO cite U.N. Security Council Resolutions 242 and 338, and resolve to work for “the realization of the legitimate rights of the Palestinian people and their just requirements.”<sup>75</sup> Further, the two sides agreed that the resolution of the refugee issue be resolved within the framework of the permanent status negotiations.

It is understood that these negotiations shall cover remaining issues, including: Jerusalem, refugees, settlements, security arrangements, border, relations and cooperation with their neighbors, and other issues of common interest.<sup>76</sup>

Joel Singer, the Israeli Ministry of Foreign Affairs legal counsel who drafted the DOP, says, “A continued Palestinian insistence on a ‘right of return’ to Israel, apart from being built on originally questionable legal foundations, also is inconsistent with these very fundamental premises of the Oslo Agreements.”<sup>77</sup>

Some Palestinian commentators, apparently aware of the flimsy legal foundations of the right of return, have argued that this right is embodied in more general international law, including the Universal Declaration of Human Rights and other instruments. But Singer rejects this view with an argument that echoes Nusseibeh’s analysis.

Palestinians sometimes assert that a Palestinian “right of return” exists independently of U.N. resolutions, pointing to a se-

ries of human rights conventions, such as the 1966 International Covenant on Civil and Political Rights, Article 12(4), which states: “No one shall be arbitrarily deprived of the right to enter into his own country.” The fundamental flaw of this argument is that, after Israel and the PLO agreed to partition Palestine into two states—one Jewish and one Palestinian—the Palestinians cannot continue to argue that the Jewish state is the Palestinians’ “own country” and that they therefore are entitled to return to it.<sup>78</sup>

## Conclusion

Israel continues to offer to solve the refugee issue through a negotiated compromise. Israeli legal experts have concluded that the Palestinian right of return to their former homes in what is now Israel is not enshrined in international law. This legal objection is matched by the strong political objection that the return of three or four million Palestinian refugees and their descendants will by definition destroy the Jewish nature of the State of Israel. This objection is shared by the most ardent Israeli advocates of compromise in an effort to achieve peace.

Israel remains convinced that a compromise solution is possible, based on a partial return, compensation, and a recognition of the suffering and losses of Jewish refugees from Arab countries.

## NOTES

1 G.A. Res. 212, U.N. GAOR, 3rd Sess., U.N. Doc. A/RES/212(III) (1948).

2 G.A. Res. 302, U.N. GAOR, 4th Sess., U.N. Doc. A/RES/302(IV) (1949).

3 PLO Negotiations Affairs Department, *Permanent Status Issues: Refugees*.

4 Oded Eran, Statement at the Opening Session to the Negotiations on the Framework Agreement on Permanent Status, Ramallah, (1999), available at <http://www.mfa.gov.il/mfa/go.asp?MFAH0g3g0>



## Matthew Kalman

5 G.A. Res. 194, U.N. GAOR, 3rd Sess., ¶ 11, U.N. Doc. A/RES/194(III) (1948).

6 Ruth Lapidoth, *Some Legal Aspects of the Palestinian Refugee Question*, (on file with Jerusalem Viewpoints, (Sept. 1, 2002)). See also 'Israel and the Palestinians: Some Legal Issues,' *Die Friedens-Warte Journal of International Peace and Organization*, 76:2-3 (2001), pp at 211-240 (2001).

7 Moshe Dayan, Statement to the United Nations General Assembly (Oct. 10, 1977).

8 'The Refugee Problem in Concrete Terms,' United Nations Conciliation Commission for Palestine, UN General Assembly W/3 (Mar. 17, 1949).

9 UNRWA, 'Number of Registered Refugees as at 30 June Each Year', available at <http://www.un.org/unrwa/refugees/reg-02.pdf>

10 G.A. Res. 1451, U.N. Doc. A/1451/Rev.1, (1950).

11 *Id.*

12 Yehuda Blum, Statement in the UN General Assembly (Jul. 23, 1980).

13 G.A. Res. 1451, *supra*.

14 Levi Eshkol, The Israeli Peace Plan, Statement to the Knesset (May 17, 1965).

15 *Id.*

16 *Id.*

17 UNRWA, available at <http://www.un.org/unrwa/refugees/reg-02.pdf>

18 Convention Relating to the Status of Refugees, Article 1D (Jul. 28, 1951).

19 G.A. Res. 2452, U.N. GAOR, 23rd Sess., U.N. Doc. A/RES/2452(XXIII) (1968).

20 Edward Said, Introduction, *Palestinian Refugees: The Right of Return* (Naseer Aruri ed., 2001).

21 U.N. GAOR, *Fourth Progress Report*, U.N. Conciliation Commission for Palestine, U.N. Doc A/2890 (1949).

22 BERNARD LEWIS, *THE ARABS IN HISTORY* (Harper Torchbooks 1966).

23 PALESTINIAN NATIONAL CHARTER, Basic Political Documents of the Armed Palestinian Resistance Movement 137-41. (Leila S. Kadi trans., Palestine Research Centre, Beirut 1969), available at

[http://www.palestineaffairsCouncil.org/the\\_palestinian\\_charter.htm](http://www.palestineaffairsCouncil.org/the_palestinian_charter.htm).

24 PALESTINIAN NATIONAL CHARTER Art. 9.

25 See PALESTINIAN NATIONAL COUNCIL, ELEVENTH COUNCIL, POLITICAL PROGRAM OF THE PLO, (JANUARY 1973) which undertook, "To militate against the compromising mentality and the plans it spawns which are either contrary to our people's cause of national liberation, or aim to liquidate this cause through 'proposed Palestinian entities' or through a Palestinian state on part of the Palestinian national soil. Also to oppose these plans

through armed struggle and political struggle of the masses connected to it," cited in YEHOSHAFAT HARKABI, *ARAB STRATEGIES AND ISRAEL'S RESPONSE* (Free Press 1977).

26 PALESTINIAN NATIONAL COUNCIL, TEN-POINT PROGRAM, art. 2 (Cairo, June 1974), available at [http://www.palestineaffairsCouncil.org/the\\_palestinian\\_charter.htm](http://www.palestineaffairsCouncil.org/the_palestinian_charter.htm).

27 *Id.* at art. 8.

28 *Id.* at art. 3.

29 Farouk Kaddoumi, *Head of the PLO Political Department*, NEWSWEEK, January 5, 1976, at 30.

30 Yasser Arafat to Yitzhak Rabin, September 9, 1983 available at <http://mideastweb.org/osloletters.htm>.

31 PALESTINE NATIONAL COUNCIL (Gaza, April 24, 1996); see *Conflict over Hebron*, CANADIAN JEWISH NEWS, May 9, 1996, at 1.

32 State Department Daily Press Briefing, (January 22, 1998) available at <http://zeus.hri.org/news/usa/std/1998/98-01-22.std.html>.

33 *Arafat, Clinton preside over PNC's removal of anti-Israeli clauses from charter*, BBC SUMMARY OF WORLD BROADCASTS, Dec. 16, 1998, at Part 4.

34 *Id.*

35 Joel Singer, *No Palestinian "Return" to Israel*, AMERICAN BAR ASSOCIATION JOURNAL (January 2001).

36 Ghassan Khattib, *Refugees and the Right of Return*, BITTER LEMONS (Dec. 31, 2001) at <http://www.bitterlemons.org>.

37 *Affirmation of the Palestinian Right of Return*, 462 AL-AHRAM (March 9-15, 2000) (declaration signed by 100 prominent Palestinians including Haider Abdel-Shafi, Palestinian chief negotiator at the Madrid Peace Conference, 1991) available at <http://weekly.ahram.org.eg/2000/472/focus2.htm> and

<http://www.globalpolicy.org/security/issues/israel-palestine/return/2001/0808dclr.htm>.

38 Yossi Beilin, *Solving the refugee problem*, BITTER LEMONS (Dec. 31, 2001) at <http://www.bitterlemons.org>.

39 President Bill Clinton, Israel Policy Forum, January 8, 2001.

40 Beilin, *supra* note 35.

41 Mahmoud Abbas (*Abu Mazen*) Interview, Asharq al-Aswat, (London), Dec. 10, 2002, translation available at <http://www.nadplo.org/eye/news51.html>.

42 Said, *supra* note 19.

43 Sari Nusseibeh, *Freedom and Return: a Conflict Between Two Rights?* Dec. 31, 2001, at <http://www.bitterlemons.org/search.html>.

44 *Id.*

45 G.A. Res. 194 (III) ¶ 2, U.N. Doc. A/810 (1948).

## NEXUS

- 46 *Id.* at ¶ 11.
- 47 Palestinian Liberation Organization Negotiations Affairs Department, Permanent Status Issues: Refugees, at <http://www.nad-plo.org/permanent/refugees.html>.
- 48 Press Release, Palestine Right to Return Coalition, Rallies in London and Washington, D.C. Demand the Right to Return for Palestinian Refugees (August 24, 2000), at <http://www.al-awda.org/media/press.html>.
- 49 Daniel Taub, *Legal Aspects of UN GA Resolution 194 (III): The Palestinian "Right to Return,"* IAJLJ Newsletter (Int'l Assoc. of Jewish Lawyers and Jurists, Tel-Aviv, Israel), 6, 1992.
- 50 G.A. Res. 194 (III), *supra* note 42, ¶ 6.
- 51 *Id.* ¶ 2(b).
- 52 U.N. Conciliation Commission for Palestine, 4<sup>th</sup> Report, ¶ 10, U.N. Doc. A/992 (1949).
- 53 *Id.* ¶ 12.
- 54 U.N. GAOR, 501<sup>st</sup> mtg., U.N. Doc. A/SPC/SR.501 (1966).
- 55 U.N. Charter, art. 10.
- 56 I Taub, *supra* note 46.
- 57 Lapidoth, *supra* note 6.
- 58 *Id.*
- 59 'Legal Aspects of the Problem of Compensation to Palestine Refugees,' Gordon R. Clapp, Chairman, UN Economic-Survey Mission for the Middle East, 22 November 1949.
- 60 *The Question of Compensation for Palestine Refugees*, U.N. GAOR, 5th Sess., U.N. Doc. W/33 (1950).
- 61 *Historical Precedents for Restitution of Property or Payment of Compensation to Refugees*, Conciliation Commis. for Palestine, U.N. GAOR, 5th Sess., U.N. Doc. W/41 (1950).
- 62 PLO Negotiations Affairs Department, *Final Status Issues: Refugees*.
- 63 *Id.*
- 64 G.A. Res. 393, U.N. GAOR, 5th Sess., Supp. No. 20, at 22-23, U.N. Doc. A/RES/393(V) (1950).
- 65 G.A. Res. 394, U.N. GAOR, 5th Sess., Supp. No. 20, at 24, U.N. Doc. A/RES/394(V) (1950).
- 66 G.A. Res. 513, U.N. GAOR, 6th Sess., Supp. No. 20, at 12-13, U.N. Doc. A/RES/513(VI) (1952).
- 67 *See, e.g.*, G.A. Res. 2154, U.N. GAOR, 21st Sess., Supp. No. 16, at 19-20, U.N. Doc. A/RES/2154(XXI), (1966).
- 68 S.C. Res. 242, U.N. SCOR, 22d Sess., 1382d mtg. (1967).
- 69 S.C. Res. 338, U.N. SCOR, 28th Sess., 1747th mtg. (1973).
- 70 Lapidoth, *supra* note 6.
- 71 The Framework for Peace in the Middle East (Camp David Accords), Sept. 17, 1978, Isr.-Egypt, art. A, 17 I.L.M. 1463, 1468.
- 72 *Id.*
- 73 *Id.*
- 74 Invitation to the Madrid Peace Conference, October 1991.
- 75 Agreement between Israel and the Palestine Liberation Organization (Declaration of Principles), Sept. 13, 1993, Isr.-P.L.O., art. III, 32 I.L.M. 1525, 1527.
- 76 *Id.*
- 77 Singer, *supra* note 32.
- 78 *Id.* For a detailed discussion and rebuttal of the general claim that Palestinian refugees can claim a right of repatriation under existing international law, see Justus R. Weiner, *The Palestinian Refugees' "Right to Return" and the Peace Process*, B.C. INT'L & COMP. L. REV., XX, 1 (1997).