
The Atkin Paper Series

The Intractable Issue:
*Palestinian Refugees and
the Israeli-Palestinian Peace
Negotiations*

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Thanks to the generosity of the *Atkin Foundation*, the *International Centre for the Study of Radicalisation and Political Violence (ICSR)* offers young leaders from Israel and the Arab world the opportunity to come to London for a period of four months. The purpose of the fellowship is to provide young leaders from Israel and the Arab world with an opportunity to develop their ideas on how to further peace and understanding in the Middle East through research, debate and constructive dialogue in a neutral political environment. The end result is a policy paper that will provide a deeper understanding and a new perspective on a specific topic or event.

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Introduction

The most durable vestige of the 1948 War – which Israelis dub the War of Independence and Palestinians call the *Nakba* - is the Palestinian refugee issue, which continues to plague the Middle East. For over sixty years the international community has treated it primarily as a political issue, binding it to the Middle East peace process between Israel and the Palestinians. Today, most observers categorise the refugee issue as one of several 'core' issues on the negotiating table, alongside borders, security and the political future of Jerusalem. In this paper I will argue that this attitude has gravely harmed the refugees. Not only has it failed to solve the problem, but it stands little chance of doing so in the foreseeable future.

The refugee problem is not disappearing, as many in Israel and the West fancifully hope, but is actually worsening with the passage of time. As refugees grow poorer, more desperate and more hopeless with regards to their future, extremism proliferates and thrives.¹ Time and again, refugee camps have exploded in violent anger: for example, in September 1970 (Black September), when Jordanian troops quashed Palestinian militants; in May 2007, when Lebanese forces stormed and demolished the Nahar al-Bared refugee camp, clashing with the armed members of Fatah al-Islam; and most recently in the recurrent violence emanating from the Gaza Strip, where refugees comprise a majority of the population.

In 1950, some 750,000 refugees were registered with UNRWA; today, that number has climbed to nearly 5 million, and 1.4 million Palestinians still live, impoverished, in 58 recognized refugee camps across the Middle East.² As the number of refugees rises, their international funding is running out. The amount of money received by each refugee has been cut nearly in half since 1975: from about \$200 annually in 1975 to around \$110 today.³ This situation is unsustainable even in the medium term. With the division of the Palestinian Territories into two distinct political entities since the Hamas takeover of the Gaza Strip in June 2007, and considering the standstill of the peace negotiations which ensued, Palestinian refugees can scarcely afford to tie their future to the prospect of a negotiated settlement between Israel and the Palestinian Authority.

In this paper I will not eschew the legal debate surrounding Israel's obligation to repatriate Palestinians according to UN General Assembly Resolution 194 nor will I delve into the contentious history of the refugee issue and the role of UNRWA within it. Instead, I will explain why mass repatriation of Palestinian refugees in Israel is impossible *today* for both practical and principled reasons and why their resettlement in a future Palestinian State cannot be an exclusive solution.

- 1 Recent research has pointed to radicalisation among descendants of Palestinian refugees; see for instance Post (2005), 624, and Post, et al. (2003), 175. I thank Sagit Yehoshua for these references.
- 2 <http://www.unrwa.org/etemplate.php?id=85>
- 3 <http://www.unrwa.org/etemplate.php?id=1134>

The international arena *From an imposed to a 'just' and 'agreed upon' solution*

A gradual shift in attitude can be noticed over the years with regards to the Palestinian refugee issue. Formerly opting to impose a solution on Israel, the international community now uses the language of morality and accord in its attempt to reach Israeli and Palestinian common ground. However, all attempts at reaching a negotiated solution to the refugee issue have ended in miserable failure, only highlighting how deep the gulf is between the positions of both sides.

The most widely cited point of reference on the refugee issue is UN General Assembly Resolution 194 of 11 December 1948. Article 11 of the resolution, which outlines the post-war arrangements, deals with refugees, stating 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.*⁴

The Palestinians have consistently understood this clause as unequivocally ordering Israel to repatriate and compensate Palestinian refugees wishing to return to Israel. Israel has never acknowledged a Palestinian 'right of return' but only 'claims of return'. It argues that Article 11 postpones this return to an indefinite 'earliest practicable date' and that it limits any return to those refugees wishing to 'live at peace with their neighbors'. Moreover, Israel argues that General Assembly Resolutions, unlike Security Council Resolutions, are not legally binding.

As opposed to Resolution 194, UN General Assembly Resolution 3236 of November 1974 is unambiguous on the refugee question. Article 2 of the Resolution reaffirms 'the inalienable right of the Palestinians to return to their homes and property from which they have been displaced and uprooted, and calls for their return'.⁵ Unlike Resolution 194, Resolution 3236 explicitly acknowledges a Palestinian *right* to return to their homes and property.

4 <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/043/65/IMG/NR004365.pdf?OpenElement>

5 <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/738/38/IMG/NR073838.pdf?OpenElement>

As time passed and Israel began engaging the Arab world, new peace initiatives emerged that acknowledged that it was unrealistic to expect Israel to accept a sweeping return of refugees. UN Security Council Resolution 242 of 22 November 1967 avoided the technicalities of solving the refugee issue. For the first time, it introduced the notion of justice into the equation: Article 2(b) affirms the necessity for 'achieving a just settlement of the refugee problem'.⁶ The Arab Peace Initiative, proposed by Saudi Arabia in 2002 and ratified by the Arab League in 2007, adopted the spirit of Resolution 242, stating that the objective was to 'attain a just solution to the problem of Palestinian refugees to be agreed upon in accordance with the UN General Assembly Resolution No. 194'.⁷ Gone was the unequivocal demand of Israel to allow Palestinians to return to their 'homes and property'. Unlike the issue of borders and Jerusalem, which were dealt with in very concrete and specific terms, a new, markedly vague language advocating 'agreed upon' and 'just' solutions prevailed with regards to the Palestinian refugees. Former Jordanian Foreign Minister Marwan Muasher claimed that the Arab League's decision to use the term 'agreed upon' in the Arab Initiative was adopted in order to abate Israel's fear of being overrun by refugees.⁸

These two terms, 'just' and 'agreed upon', have become fixtures of the international debate on Palestinian refugees ever since. US President George Bush used them in a letter to Israeli Prime Minister Ariel Sharon in 2004, reiterating Clinton's vision of settling Palestinian refugees in a Palestinian state rather than in Israel, through 'an agreed, just, fair and realistic framework'.⁹ The Deputy Secretary-General of the UN paid tribute to justice and agreement in his recent remarks on the International Day of Solidarity with the Palestinian People, when he said that 'a just and agreed solution must be found for millions of Palestinian refugees scattered around the region'.¹⁰ And finally, a variation on this theme was made by UNRWA's Commissioner-General, who similarly argued that the refugee question could only end 'when a specific political solution, just and durable, is agreed upon by the parties'.¹¹

But such aphorisms only blur the practical issues at hand, making the refugee problem even more intractable. For who can serve as arbiter between Israel and the Palestinians on the question of 'justice'? And how can the two sides agree upon a solution when their historical narratives and negotiation positions are diametrically opposed? Hollow references to justice and agreement only solidify the problem, postponing solution to an indefinite future.

6 <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/240/94/IMG/NR024094.pdf?OpenElement>

7 http://news.bbc.co.uk/2/hi/world/monitoring/media_reports/1899395.stm

8 Muasher (2008b). Muasher claims that Syria and Lebanon demanded an explicit mention of the right of return in the Arab Initiative. Muasher (2008a), 119.

9 <http://www.mfa.gov.il/MFA/Peace+Process/Reference+Documents/Exchange+of+letters+Sharon-Bush+14-Apr-2004.htm>

10 http://www.un.org/apps/news/infocus/speeches/search_full.asp?statID=1396

11 <http://www.unrwa.org/etemplate.php?id=1162>

Refugee return from the Israeli point of view

From Israel's point of view, the mass repatriation of Palestinian refugees and their descendants, known as 'voluntary repatriation', is a non-starter. The reasons for this can roughly be divided into three categories: legal, practical and moral. Some of these barriers can be removed; for instance, laws can be amended or annulled. But the practical and especially the moral aspects are a constant, granting justification to the existing laws. Accordingly, more weight will be given in this chapter to the practical and principled dimensions of the right of return.

The legal aspect

Following the end of the 1948 War, a peace conference was held in Lausanne, Switzerland, in which the refugee issue was discussed. The Arab states conditioned their participation in the conference on Israel's acceptance of a massive return of refugees to their homes. During the conference, in July 1949, Israel agreed to absorb 100,000 refugees, including some 65,000 who had already managed to cross the borders back into Israel, on condition that the Arab states settle the rest of the refugees in their own territories. The Israelis refused an American offer to absorb 250,000 refugees and the Arabs dismissed the Israeli proposal out of hand. Thus, the Lausanne conference came to nothing.¹²

Israel soon used legislation to close the door on refugees who clandestinely continued trickling back into the country. On 16 August 1954, the Knesset passed the Infiltration Prevention Law, which set a five-year prison term for Arab nationals illegally crossing the border into Israel. But it was not the infiltration of citizens from neighbouring countries such as Syria or Egypt which worried Israeli legislators at the time: of much more concern were the thousands of Palestinians who, during the first years following the War of 1948, attempted to cross the borders back into Israel and reach their abandoned homes. Article 3 of the Infiltration Prevention Law includes 'citizens or residents of the Land of Israel (*Eretz Israel*) ... who left their regular homes in the territory that became a part of Israel to a place outside Israel since that period (November 29, 1947)'.¹³ This date, when the UN passed a resolution partitioning Palestine, also marks the start of Arab hostilities towards the land's Jewish residents, which evolved into Israel's War of Independence.

On 1 January 2001, the Israeli Knesset passed legislation conditioning the return of Palestinian refugees from the wars of 1948 and 1967 on a parliamentary majority. (These were the wars that resulted in the most significant number of

12 Morris (2010), 450.

13 http://www.nevo.co.il/Law_word/law01/247_001.doc (Hebrew)

Palestinian refugees.) The Denial of the Right of Return Enforcement Law,¹⁴ as it explicitly states in Article 4 and in its explanatory passage, was drafted to make it virtually impossible for the government to sign peace agreements that would entail the return of Palestinian refugees to Israel. Likud Knesset Member Israel Katz tabled the bill soon after Prime Minister Ehud Barak returned from the United States, having tried (and failed) to reach a final peace agreement with Yasser Arafat at Camp David in July 2000. The aforementioned laws can only be viewed as an expression of Israeli fears regarding the practical implications of the mass emigration of Palestinians to the country.

The practical aspect

Practical considerations are key in the cost-benefit analysis of the right of return. Many Palestinians imagine a return to their former villages or towns, but a large number of these villages have been demolished by the Israeli army during and after the war and no longer exist. In other cases, the homes were taken over by the Israeli government and sold or given to Jewish immigrants, who have now been living in them for over six decades. The reality on the ground has changed beyond recognition, making actual Palestinian return to the original locales a pipe dream. The wording of UN Resolution 194 of December 1948 stating that ‘refugees wishing to return to their homes ... should be permitted to do so’ is no longer realistic today.

Assuming that Palestinians were to emigrate en masse to Israel, they would have to cope with the difficulties of integrating into a society whose dominant culture is dramatically different than theirs and whose language they do not speak.¹⁵ Badil, a Palestinian NGO advocating the right of return, recommended in a recent report¹⁶ that refugee children learn Hebrew and study the political and economic systems in Israel in order to improve their prospects of integration. However, it is doubtful whether such rudimentary education would suffice for integration. To demonstrate, the integration of Ethiopian Jews who immigrated to Israel in the 1980s and 1990s remains a major challenge, considering the cultural and educational gap between the immigrants and mainstream Israeli society.

The principled aspect

As shown in the previous chapter, the international community has come to demand a ‘just’ solution to the Palestinian refugee issue. Since justice is a matter of subjective moral judgment, it is appropriate to explain the Israeli objection to Palestinian return on principled grounds.

Israeli society, by and large, adamantly opposes the mass return of Palestinians to the State of Israel. Israelis believe that it is Arab countries and Palestinian society who bear primary responsibility for the creation of the refugee problem. Arab states consistently refused to recognize any form of Jewish sovereignty in the Middle East

14 <http://www.knesset.gov.il/laws/heb/FileD.asp?Type=1&LawNum=1772&SubNum=2> (Hebrew)

15 Muasher (2008a), 204.

16 Badil (2007), 36.

prior to the creation of Israel and militarily invaded the nascent country on the very day of its inception. The refugee problem, contend most Israelis, is the direct result of a war which the Arabs initiated and lost. Therefore, it is the Arab world which should bear most responsibility for the suffering of Palestinian refugees and undertake their rehabilitation.

The UN partition plan of 1947 envisioned the creation of two nation-states west of the Jordan River, each with its own clear national majority. Allowing the immigration of hundreds of thousands of Palestinians to Israel could potentially change the demographic makeup of the country and undermine its character as a predominantly Jewish state.

Political philosopher Chaim Gans argues that although it would be appropriate for Israel to recognize its responsibility for the refugee problem and even allow a limited number of Palestinians to return to Israel proper, the massive return of Palestinians would be immoral. Actual return would harm not only Israel’s right to self-determination, but also the individual rights of Israelis born in Israel, who will suffer or even be uprooted from their homes as a result. Gans claims that even opponents of Zionism should object to Palestinian return on these grounds.¹⁷ The prospective harm to Israelis seems even more unjustified considering that the vast majority of the 5 million registered refugees have never themselves lived in Israel or suffered the pain of being uprooted.

Israeli legalists Yaffa Zilbershats and Nimra Goren-Amitai take a more conservative approach than Gans, arguing that Israel should exclude the refugee issue from the ‘rights discourse’ and not even recognize a Palestinian ‘right’ of return. Israel is not legally obligated to recognize such a right, they argue, the acceptance of which could later incur demands for compensation or repatriation.¹⁸ Israeli law professor Ruth Lapidot points out that UN Resolution 194 specifically avoided using the word ‘right’ when referring to the Palestinian return, stipulating instead that Palestinians ‘should be permitted to return’. This permission, she notes, is subject to the condition that the returnees wish to live in peace with their neighbors. According to Lapidot, ‘the violence that erupted in September 2000 forecloses any hope for a peaceful co-existence between Israelis and masses of returning refugees. The use of the term “should”’, she concludes, ‘underlines that this is only a recommendation’.¹⁹

All recent Israeli-Palestinian peace initiatives have effectively canceled the mass return of Palestinians to Israel. The Ayalon-Nusseibeh peace initiative of 2003 (the People’s Voice) limits the return of Palestinian refugees to the Palestinian state and denies return to Israel.²⁰ The Geneva Initiative of 2003, probably the most liberal and publically debated proposal, allows for the automatic return of refugees to a Palestinian state only, placing Israel in the category of ‘third countries’ which may

17 Gans (2008), 84-86.

18 Zilbershats and Goren-Amitai (2010), 9.

19 Lapidot (2002).

20 <http://www.jewishvirtuallibrary.org/jsourc/Peace/peoplesvoiceplan.html>

use their sovereign discretion in accepting refugees.²¹ Klein states that the Geneva Initiative intentionally makes no reference to a Palestinian right of return, mentioning only that Palestinian emigration to Israel must be done with the latter's consent.²² The most recent drive, dubbed the Israeli Peace Initiative and framed as Israel's answer to the Arab Peace Initiative of 2002, advocates 'the return [of refugees] to Palestinian territory only (with symbolic and agreed upon exceptions)'.²³ These initiatives all express the principled objection of Israelis, even those on the left, to a mass return of Palestinians to Israel.

However, on the fringes of Israeli society there are organizations that endorse the right of return and advocate its acceptance. The Israeli NGO Zochrot (Hebrew for 'Remembering') 'seeks to raise public awareness of the Palestinian Nakba, especially among Jews in Israel, who bear a special responsibility to remember and amend the legacy of 1948'.²⁴ Zochrot conducts tours of abandoned Palestinian villages in Israel and collects oral testimonies and photographs from displaced Palestinians. It has recently conducted a 'counter-mapping' workshop examining the feasibility of return, using the abandoned village of Miska near Tulkarm as a case study.²⁵

In summary, Israel refuses the Palestinian right of return on both practical and principled grounds. As will be demonstrated in the following chapter, Palestinians wishing to return to Israel have shown no inclination to integrate politically or culturally into Israeli society, strengthening Israeli fears that the true intention behind the political endorsement of 'return' is the undoing of Israel as a sovereign Jewish state.

21 <http://www.geneva-accord.org/mainmenu/summary>

22 Klein (2006), 39.

23 <http://israelipeaceinitiative.com/israeli-peace-initiative-english/summary/>

24 <http://www.zochrot.org/en/top/%D7%A9%D7%99%D7%91%D7%94>

25 <http://www.zochrot.org/en/content/counter-mapping-return>

Refugee return from the Palestinian point of view

"Our demand is not merely the recognition of a right of return, but allowing deportees the possibility to practically return to their land,"

Member of Knesset Jamal Zahalqa
(Al-Jazeera TV report, April 27, 2012)

"We are only guests on Palestinian Authority Soil"

Amjad, 40, a Palestinian refugee living in the Askar Refugee Camp, near Nablus
(Telephone interview, December 25, 2011)

The Palestinian position on the return of refugees can also be analyzed through the three prisms examined in the Israeli case: namely, the legal, practical and moral perspectives.

The legal aspect

Just like Israel, Palestinian institutions have also passed laws and resolutions tying the hands of the leadership and disabling any negotiated compromise on the effective return of Palestinian refugees.

The 2008 Right of Return of Palestinian Refugees Law²⁶ passed by the Palestinian Legislative Council states that the right of Palestinian refugees to return to their homes and belongings and receive compensation for their suffering is a 'permanent and holy right which is inalienable and non-negotiable'. In Article 3, the law defines this right as 'individual and collective ... passing down from father to son and not dissipating with the passage of time or the signing of any agreement'. Article 5 of the law bans the 'repatriation' or 'deportation' of Palestinians as an alternative to the right of return, while Article 6 defines any violation of the law as 'grand treason'. This position is echoed by the Negotiations Affairs Department of the PLO, which places the right of return as an 'inalienable and national right' alongside the right to Palestinian self-determination.²⁷

The practical aspect

In many debates on the issue, it is argued that Israel's recognition of the principle of Palestinian return would not necessarily entail the actual return of masses of Palestinian refugees. This claim, however, has little to base itself on in reality. Firstly, no comprehensive research has been done in recent years to gauge the willingness of Palestinians to stay or return to their host countries. The most recent Palestinian

26 http://www.dft.gov.ps/index.php?option=com_dataentry&pid=8&Itemid=27&des_id=1063 (Arabic)

27 http://www.nad-plo.org/userfiles/file/FAQ/Refugees_FAQ_Fact%20Sheet_May2011.pdf

research on the matter was carried out in 2002, and only questioned a sample of UNRWA-registered refugees. It did not address the 1.5 million estimated refugees not registered with UNRWA (including those living in countries outside UNRWA's scope of activity) nor the estimated 350,000 internally displaced refugees inside Israel.

The United Nations maintains two agencies that deal with refugees, both established in 1950: UNHCR and UNRWA. The United Nations High Commissioner for Refugees (UNHCR) deals with the world's refugee population of 10.5 million, with the exclusion of Palestinian refugees. By de-emphasizing the political identity of refugees, UNHCR strives to eliminate their refugee status on a humanitarian basis through repatriation (where possible), local integration in host countries, or resettlement in third countries.

The role of the United Nations Relief and Works Agency (UNRWA), mandated to deal exclusively with Palestinian refugees, is markedly different. Palestinian refugees were intentionally excluded from the 1951 Convention relating to the Status of Refugees in order to politicize their plight.²⁸ UNRWA does not seek to repatriate or integrate Palestinian refugees, but merely provides them with basic services usually provided by the state: education, health, employment, infrastructures and financial assistance. By doing so, UNRWA indefinitely perpetuates their refugee status, exempting the host countries (including the Palestinian Authority, in charge of refugee camps in the West Bank) from responsibility for their wellbeing. By maintaining the Palestinian refugees on the verge of existence and refusing to advocate a permanent solution to their plight, UNRWA's mission, I argue, is manifestly an anti-humanitarian one. To use a trite image, while UNHCR strives to give its refugees fishing rods, UNRWA is busy distributing fish.

The treatment of UNRWA-registered Palestinian refugees varies greatly from one host country to another. The Arab League's Protocol on the Treatment of Palestinian Refugees (the Casablanca Protocol)²⁹ of 1965 remains the sole official document regulating the treatment of Palestinian refugees in Arab countries. The signatories of the Casablanca Protocol committed to providing employment and travel documents to refugees residing in their territory. However, as Bitar points out, host countries often fail to provide basic rights to Palestinian refugees within their territory. 'The discrepancy between ... the Protocol and the actual practice of host states is striking', he writes.³⁰ In the following, I will briefly outline the status of refugees in the five fields of UNRWA's operation.

Jordan

With the largest population of Palestinian refugees of all host countries, Jordan has best integrated its refugee population. Palestinians have risen to positions of prominence in business and politics: former Foreign Minister Marwan al-Muasher is the son of a refugee from Jaffa and Queen Rania is a Palestinian whose family

28 Bitar (2008), 13.

29 <http://unispal.un.org/UNISPAL.NSF/0/E373EB5C166347AE85256E36006948BA>

30 Bitar (2008), 17.

originates from Tulkarm, to mention but two names. Jordan extended its citizenship to local Palestinians with the annexation of the West Bank in 1950. With the exception of 140,000 Gazan Palestinians who reside in Jordan, all of Jordan's more than 2 million registered refugees are full Jordanian citizens. Seventeen percent, or 346,000 refugees, still live in ten official and three unofficial refugee camps, where UNRWA runs 172 schools educating 120,000 pupils. It also operates twenty-four primary health care centers providing medical services to over 2.3 million patients a year. Fears of Jordan becoming 'the Palestinian State' have caused the Jordanian government to limit the citizenship of West Bank Palestinians living in Jordan and even revoke their citizenship if they fail to supply proof of their continuous ties to the West Bank.³¹

Syria

Palestinian refugees in Syria number 496,000, living in nine official and three unofficial refugee camps. Palestinians have not received Syrian citizenship, but according to UNRWA they enjoy the same rights and privileges as Syrian citizens.³² Palestinians living in Syria can travel to and from the country using Syrian travel documents (laissez-passer). They do not require work permits, they may work in government, and they must undertake compulsory military service. However, Palestinians are not allowed to own farmland in the country and up until 1968 they were not allowed to own any property at all.³³ The bombardment of the A-Ramel refugee camp in Latakia by the Syrian Army in August 2011 during the popular uprising against the regime of Bashar Assad caused the flight of at least 5,000 inhabitants.³⁴ Although it is unclear whether Palestinians were singled out in the attack, this event demonstrates the precarious condition of Palestinian refugees, often worst affected by political upheavals.

Lebanon

The situation of Palestinians in Lebanon is considerably worse than that of their counterparts in other host countries. Lebanon has never extended citizenship to its 455,000 registered Palestinian refugees, who live in twelve refugee camps and comprise 10 per cent of the country's population. Palestinians in Lebanon are denied access to almost all public services including health care, education and the job market. Lebanon's Employment Law was amended in 2010 to allow Palestinians more access to the job market, but they still cannot work as engineers, doctors, lawyers, or accountants and are denied the right to fixed-term contracts.³⁵ Palestinians living in Lebanon are therefore entirely dependent on

31 Miller (2010).

32 <http://www.unrwa.org/etemplate.php?id=55>

33 <http://www.forcedmigration.org/research-resources/expert-guides/palestinian-refugees-in-syria/fmo017.pdf>

34 'Syria Assault on Latakia drives 5,000 Palestinians from Refugee Camp', *The Guardian*, 15 August 2011 <http://www.guardian.co.uk/world/2011/aug/15/syria-palestinians-latakia-assault>

35 Alabaster (2011).

UNRWA for their basic needs. As Marwan Al-Muasher notes, Lebanon understands Resolution 194 to mean the full return to Israel of all Palestinian refugees in Lebanon, since Lebanese argue that the refugees would disrupt the delicate sectarian balance in the country.³⁶ This view was recently reiterated by Palestinian Social Affairs Minister Majeda Al-Masri, who told a leading Lebanese daily that Palestinian refugees 'are only temporarily in Lebanon, and they will definitely return to their homeland'.³⁷

Gaza

Out of a total population of 1.5 million, 1.1 million Gazans are registered refugees. The Gaza Strip contains eight refugee camps, and with 11,000 employees UNRWA is a major employer in the poverty-stricken Strip. UNRWA's liberal school curriculum coupled by recent cuts in funding have hardened local attitudes towards UNRWA. UNRWA schools, once renowned for their excellent educational standard, reported a sharp decline in academic achievements in Gaza in 2007.³⁸ In 2010, Israel authorized the issuing of four submachine guns to UNRWA's Gaza office at the behest of director John Ging, who said that the handguns used by his security team were insufficient for protection against Hamas militants.³⁹ UNRWA was forced to shut down its Gaza offices in July 2011 after local residents blockaded the entrance to its building, protesting budgetary cuts. A grassroots group calling itself UNRWA Watch was created in Gaza in August 2011 to monitor the organization's work and protest service reductions.⁴⁰

The West Bank/Palestinian Authority

Approximately one-quarter of the 770,000 registered refugees in the West Bank live in refugee camps. Out of nineteen refugee camps in the West Bank, thirteen are under the exclusive control of the Palestinian Authority. The treatment of refugees in PA territories is particularly illuminating, as these territories are destined to become the core of the Palestinian state in a future peace agreement with Israel. The Palestinian Authority did not settle for a limited Palestinian State (established, as they stress, on only 22 per cent of 'historic Palestine') as the unique national homeland of the Palestinian people in the same way that Israel views itself as a national homeland for the Jews. Palestinians still view all of mandatory Palestine, including areas which were allocated to Israel, as their homeland.

This position was articulated by the Palestinian leadership in its rejection of the aforementioned Clinton Parameters of December 2000. When rejecting the Parameters, the Palestinians told Clinton that they could not define Israel as 'the homeland of the Jewish people' just as they could not accept the definition of the Palestinian state as 'a homeland for the Palestinian people'.⁴¹ In his meeting

36 Muasher (2008a), 122.

37 Slemrod (2011b).

38 Lindsay (2009), 6.

39 Levinson (2011).

40 Miller (2011).

41 Qurie (2008), 290.

with Clinton on 2 January 2001, Arafat rejected limiting the return of refugees to the Palestinian State, with symbolic exceptions in Israel. Clinton, who wanted the Palestinians to forgo their maximalist demand on refugees in return for sovereignty in Jerusalem's Temple Mount, was deeply disappointed with Arafat's intransigence.⁴²

The creation of the Palestinian Authority in 1995 did not significantly change the lives of refugees living in the West Bank or Gaza. Refugee camps were not dismantled and UNRWA was left to care for registered refugees, to the financial benefit of both Israel and the nascent PA. The municipality of Nablus, for instance, does not want to provide electricity to the Balata refugee camp, the largest in the West Bank, even though it is located within its municipal borders. Residents of refugee camps in the West Bank cannot take part in municipal elections.⁴³ In short, refugees living within the Palestinian Territories are still considered outsiders, often relegated to the status of second-class citizens.

Not only will the future Palestinian state not grant citizenship to emigrating Palestinians from the Diaspora, stated the Palestinian representative in Lebanon in a recent interview, but it will not extend it even to refugees who have already been living in the West Bank for over sixty years.⁴⁴ Meanwhile, the Department of Refugee Affairs of the PLO, the official international representative of the Palestinian people, continues to insist that the issue of the Palestinian refugees is undivided 'both within the homeland and the Diaspora', a reference to the fact that refugees in Palestine are viewed by the PLO no differently than their counterparts elsewhere in the world.⁴⁵

According to the Palestinian Negotiations Affairs Department, the actual number of Palestinian refugees today is more than 7 million, much higher than the UNRWA figure of 5 million.⁴⁶ Palestinians are well aware of the significant difficulties in repatriating millions of refugees in Israel. They therefore exert significant academic and research efforts in finding practical solutions for repatriation.

A plethora of NGOs and research centers were established before and especially during the Oslo process years in order to keep the refugee issue alive on the international agenda. The Palestinian NGO Badil, founded in 1988 in Bethlehem, supplies the main body of information and advocacy on refugee issues within the Palestinian Territories. The organization issues a quarterly magazine in English, *Al-Majdal*, and an Arabic publication titled *Haq Al-Awda* (the right of return). In its 2005 Autumn edition titled 'Restitution: Making Return a Reality', *Al-Majdal* offers a series of articles dealing with the practicalities of return. Its introduction begins thus:

When Palestinian refugees and internally displaced talk about the right of return they speak about return to a specific place – a village, a piece of land and a

42 Bregman (2005), 146.

43 Hanafi (2005), 193.

44 Slemrod (2011a).

45 'Document of Return', a million-signature campaign initiated by the PLO Department of Refugee Affairs: <http://lajea.plord.ps/index.php> (Arabic)

46 PLO Negotiations Affairs Department, *Palestinian Refugees*: http://www.nad-plo.org/userfiles/file/FAQ/Refugees_FAQ_Fact%20Sheet_May2011.pdf

home. No one really knows how many refugees would choose to return if given the chance to do so. There are simply too many factors to consider. But like refugees from Guatemala, Bosnia, Kosovo and elsewhere, displaced Palestinians that wish to return to homes, lands and properties should be allowed to do so.⁴⁷

A host of pro-return NGOs are active in the Palestinian territories, Israel, Europe and the United States, continuing to perpetuate return as a right and a realistic option. One such organization, the Nazareth-based Association to Defend the Rights of Refugees, demonstrated this year that the question of return was shared by Palestinian citizens of Israel, as well as their brethren in exile. On Israel's 64th Independence Day in 2012, the NGO organized an annual march to the abandoned Palestinian villages of Umqa and Kweikat near the Israeli city of Akko (Acre). Thousands of Palestinian Israelis marched to the ruined villages carrying Palestinian flags and chanting slogans such as 'our revolution is the revolution of man, the refugee will not be denigrated' and 'the right of return will not be lost, even if a baby cries'.⁴⁸ Awni Touma, a member of the Follow-Up Committee for Arab Citizens of Israel, declared at the event that 'the return of the refugees is the heart of the Palestinian question, and Palestine will not know calm unless they return to their homes'. Ahmad Sheikh Muhammad, chairman of the NGO's board, said that his organization was planning to move from 'fighting to fortify a national identity' to 'actual fighting on the ground to return internally displaced 1948 refugees to their villages destroyed since the Nakba'.⁴⁹

To summarize, far from a theoretical question of historic rights, the question of Palestinian refugee return to Israel is treated by many Palestinians as a practical issue with practical solutions. Claims that Palestinians are willing to relegate return to the realm of theory, accept a limited rather than absolute return, or forgo the issue completely, have little evidence in current Palestinian discourse.

The principled aspect

The Palestinian view of the refugee issue is, to a great extent, the mirror image of the Israeli one. For most Palestinians, the flight of refugees in 1948 was caused by a premeditated, forced expulsion of civilians by the Israeli military as part of a strategy of ethnically cleansing the land of its Palestinian inhabitants. It is therefore Israel, not the Arab states, that is solely culpable for the refugees' plight and hence solely responsible for their repatriation and compensation.⁵⁰

For refugees, returning to their homes is more about rectifying a historic wrong than integrating into Israeli society. According to a survey conducted in 2003 by Dr.

47 <http://www.badil.org/en/al-majdal/itemlist/category/34-issue27>

48 Awawdeh, Wadi. "1948 Palestinians commemorate Nakba and insist on return," *Al-Jazeera*, April 27, 2012 (Arabic) <http://www.aljazeera.net/news/pages/3b52966c-20f0-4af0-a3fb-3f3ca565f2dd?GoogleStatID=21>

49 *Ibid.*

50 Badil, Q&A: *What you need to know about Palestinian refugees and internally displaced persons* <http://www.badil.org/en/documents/category/35-publications?download=883%3Aq-a-en>

Khalil Shikaki of the Palestinian Center for Policy and Survey Research (PSR) among refugees in Lebanon, Jordan and the Palestinian Territories, only a limited proportion of refugees wish to actually emigrate to Israel. The most comprehensive poll of Palestinian refugee opinions conducted in recent years, the poll shows that only 10 per cent of the 4,500 refugees questioned wish to return to Israel proper, with or without receiving Israeli citizenship. However, approximately 80 per cent of the respondents said that 'under no circumstances' would they accept 'to live in peace, security and reconciliation' with Israeli Jews, as prescribed by UN Resolution 194. Of the refugees who opted to return to Israel, only 1-3 per cent (depending on their host country) said they would take Israeli citizenship. A majority of those who chose Israel as their preferred option said they would refuse to return if Israeli citizenship were imposed on them.⁵¹ Interestingly, approximately two-thirds of the sample group agreed 'to postpone the refugee issue for several years' if they would be allowed to inhabit evacuated settler homes in the West Bank, and 68.5 per cent of refugees in the West Bank and Gaza said the refugee issue could be postponed if homes and infrastructures in the camps would be refurbished.

Amjad Rfaie, a 40-year-old resident of the Askar refugee camp near Nablus, justifies the non-participation of refugees in municipal elections by saying that despite being Palestinian by nationality, refugees are 'guests' on PA soil.⁵² According to Rfaie, the refusal to settle into the PA stems primarily from the refugees themselves. He argues that residents of his camp would refuse the building of a PA-run school since that would be considered *tawtin* (naturalisation) which they refuse to undergo. He added that any attempt to relocate the refugee camp or build permanent dwellings for refugees would run up against adamant opposition by residents.⁵³

Palestinian voices renouncing the right of return are few and far between. Using moral argumentation, Palestinian politician and academic Sari Nusseibeh frames the dilemma as a clash between personal rights and the public good. He claims that the collective benefit of Palestinians – manifested in an independent Palestinian State – negates and overrides the individual right of Palestinians to return. Nusseibeh recognises that a full implementation of the right of return would preclude a negotiated and agreed-upon two-state solution, which would in turn prevent even a 'partial, watered down' actual return from materialising. A Palestinian political unit, he argues, means de-emphasising the individual Palestinian's right to return to Israel.⁵⁴ Fatah members Kadourah Fares and Muhammad Khurani proposed in 2003 that Israel allocate additional territory beyond the land swap between Israel and the Palestinians as compensation for the Palestinian need to forgo the right of return.⁵⁵

51 PSR Polls among Palestinian Refugees, January-June 2003: <http://www.pcpsr.org/survey/polls/2003/reftable1.html>

52 Telephone conversation with Amjad Rfaie, 25 December 2011.

53 *Ibid.*

54 Nusseibeh (2011), 141.

55 Klein (2006), 53.

End of conflict, no finality of claims

Given the analysis presented above, it is difficult to envisage a political compromise that can bridge the gap between Israel and the Palestinians on the refugee question. In its negotiations, Israel has always insisted on receiving two guarantees from its partners as part of a permanent status agreement: finality of claims (FOC) and end of conflict.⁵⁶ Finality of claims means addressing all outstanding issues within the agreement, whereby no further claims (beyond those included in the agreement itself) are raised at a later stage. End of conflict is a more ambiguous term, referring to the elimination of hostilities between Israel and the Palestinians, defined in the Oslo Accord's Declaration of Principles of September 1993 as a 'state of conflict'.⁵⁷ In the Camp David summit of 2000, Israeli Prime Minister Ehud Barak conditioned the signing of a permanent status agreement on Palestinian finality of claims.⁵⁸

But as was shown above, Israel will not be able to attain finality to the Palestinian claim of return (as Israel dubs it) as long as the right is not implemented in practice. In a rare public statement, former head of Israel's internal intelligence service Shabak, Yuval Diskin, said he did not believe Israel could realize a complete end of conflict with the Palestinians. But this, he added, does not preclude the possibility of a deal with the Palestinian leadership:

*As to those who think we can reach peace with a complete end of conflict for the next 1000-2000 years – I believe they're living in dream-land. I don't believe it. If this is the attitude towards the Israeli-Palestinian conflict, it has no solution ... there is no such thing as 'end of conflict,' certainly not a conflict so deep between people, between religions ... therefore I suggest erasing the term from our lexicon, and saying 'we do not live in a perfect world, let's try – within the confines and through realpolitik – to reach the best deal we can' ... the State of Israel should aspire to a multi-year settlement on the basis of two states for two peoples with maximum security for the State of Israel in the long-run, but with no illusions about end of conflict.*⁵⁹

Although Diskin's statements did not deal directly with the refugee issue, they did reflect a growing perception among the Israeli leadership that the underlying animosity between Israel and the Palestinians cannot be solved at the negotiating table. Diskin did acknowledge, however, that the sides can reach a long-lasting agreement even without solving all outstanding issues. Former American ambassador

56 <http://reut-institute.org/Publication.aspx?PublicationId=533>

57 <http://reut-institute.org/en/Publication.aspx?PublicationId=1983>

58 *Ibid.*

59 http://www.youtube.com/watch?v=iMs__05sNoo&feature=player_embedded (Hebrew)

to Israel Daniel Kurtzer noted the paradox in the Palestinian refugee issue: it is both a central issue and an intractable one. 'The refugees hold the key to this conflict's settlement', Kurtzer told *The Independent*, 'and nobody knows what to do with them'.⁶⁰

The Reut Institute, an Israeli think tank, has made the distinction between the Oslo paradigm, which it dubbed 'the package approach', and its own strategy, which it called 'the fragmentation and dilution approach'. The former views all contested issues and their solution as one package, whereas the latter proposes separating the issues into manageable 'packages', dealing with each individually through separate bi-lateral agreements and thereby diluting their historic potency. Reut essentially acknowledges the refugee issue as distinct from the borders issue, proposing to separate the two and create a Palestinian state with no Israeli commitment to a right of return.⁶¹

While realizing there can be no realistic 'finality of claims', both sides can aspire, at least in the short and medium term, to 'end of conflict'. Issues such as land, water, security and even the fate of Jerusalem may be solved through negotiations, granting the Palestinians a sovereign state of their own. This paper suggests separating the Israeli 'Siamese twins' of 'finality of claims' and 'end of conflict' by forgoing the former for the sake of the latter. The international community should, therefore, substitute its empty demand for a 'just and agreed upon' resolution with a diplomatic drive to remove the issue from the negotiating table and focus on the solvable issues that remain.

60 Miller and Samuels (2009).

61 Reut Institute, Fragmentation and Dilution Approach: <http://reut-institute.org/Publication.aspx?PublicationId=352>

Conclusion

The refugee issue differs from other issues on the negotiating table. Firstly, it is the sole issue on the table that dates to the creation of Israel and the War of 1948, not the results of the 1967 War. As such, it touches on the very core of each nation's self-definition: how it envisions its own future and how it views the neighbour across the fence. American diplomat Dennis Ross has defined the Palestinian right of return as 'the animating belief of the Palestine Liberation Organization (PLO) and the Palestinian Diaspora throughout their history'.⁶² This is no exaggeration.

Most Western observers view the two-state solution as a somewhat symmetric expression of the national aspirations of Jewish Israelis and Palestinian Arabs. However, the notion of nationality is far from symmetric on the Israeli and Palestinian sides. The insistence of the Palestinians on a right of return to Israel proper casts doubt on the purpose of the Palestinian state. Israel, like many countries around the world, encourages the immigration of its ethnic and religious diaspora (namely, the Jews). The Palestinian Authority and the PLO have explicitly stated that the Palestinian state would not be the answer to the refugee issue, effectively discouraging them from returning to the Palestinian state. This attitude undermines the entire premise of the peace talks held between the sides since the early 1990s, the outcome of which was expected to be two nation-states living side by side in peace and security. However, the fact that Israelis and Palestinians view nationalism differently must not doom them to stay entangled forever.

The Palestinians can and should achieve their own nation-state, on part of the land they claim as their own. Israel and the international community must support the efforts to establish such a state, with the hope that it may become a viable destination for Palestinian refugees and their descendants. Such an outcome would be positive for both sides: it would grant Palestinians the pride of self-rule and allow them to govern their matters and express their culture autonomously, free of Israeli control. Israel, for its part, would be relieved of the political, economic and moral burden of maintaining a prolonged occupation and return to the fold of dignified Western nations.

62 Ross (2004), 4.

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