PALESTINIAN REFUGEES UNDER INTERNATIONAL LAW: OPPORTUNITIES AND CONSTRAINTS

by

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Abstract

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The Palestinian refugee question has captured the interest of the world community in trying to find new solutions to the decades old problem. The circumstances that led to the creation of the problem were somehow unique. The state of Israel was established in a land previously populated with no regard to the existing population. As a result of the establishment of the state and the hostilities that occurred, millions of Palestinians were displaced and scattered around the world. In spite of the resolutions asking the state of Israel to allow the return of the refugees, Israel has refused this return claiming that it would threaten its security and the demographic balance in the country, hence the Jewish character.

This work studies the international law aspect of the problem by beginning with a general overview covering international law and its principles pertaining to refugees in general and the right of return. Next it gives a historical background of the situation by introducing the ideological and political precedents of the problem. This background really helps understand the way circumstances unfolded and affected the resolution of the issue. It also shows how parties perceive the problem and the way this perception prevented any resolution. The last part of the work deals with international law and how it was applied in the case of the Palestinians in terms of its general principles and the UN forum. An attempt is made to find the failure of international law in solving the problem and in what way it did help. Hence, with the starting of
the peace process in the 1990s, parties have undergone different calculations with respect to their positions and policies.
To the memory of my grandmother,
and to my parents, brother, and the
closest to my heart
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Contents

I-Introduction.................................................................................................................1

II-The Refugee under International Law.................................................................6

   A-Law of Nationality

   B-Humanitarian Law

   C-Human Rights Law

   D-Refugee Law

III-Ideological and Political Precedents of the Problem:
   Historical Overview..................................................................................................14

IV- Dimensions of the Problem....................................................................................23

   A- The Exodus

   B- The Birth of the Refugee Problem

       1- Old Refugees/ New Refugees

       2- Internally Displaced Palestinians

V- International Law Contribution to Palestinian Refugees.................................38

   A- UN Resolutions

   B- The Impact of UN Resolutions on the Refugee Issue

VI- The Right of Return in International Law:
   Its Evolution.............................................................................................................52

   A- Israel’s Refusal of the Right of Return

   B- Practical Limitations

   C- The Peace Process and the Right of Return

VII- Conclusion..............................................................................................................64

Bibliography..................................................................................................................70
Chapter 1

Introduction

Israel celebrates its sixtieth anniversary this year, a symbol of its victory over the ‘holocaust’ realized by establishing a home for the Jewish people, whilst for Palestinians, it’s a painful memory of ‘al-nakba’- the catastrophe- whereby thousands of Palestinians were displaced from their homes. The Palestinians’ state of being is characterized by exile. According to Edward Said, “To write of Palestine is to write of exile” (Bowker, Robert, 2003, p.35). The Palestinian refugee issue is considered a unique situation because any attempt at finding a resolution has been doomed to failure. It cannot be considered an exclusive issue but one related to the context of the overall Arab-Israeli conflict. Hence, any attempt at finding a solution to the problem has always been linked to Arab-Israeli negotiations.

The Palestinian question has dominated the political landscape of the Near East for decades and occupied an important role in world politics. Attempts at finding a resolution for this question have been incessant, but have been marred by the motives of the interested parties. The ongoing US effort is an illustration of this flawed approach; the motives of the US mediator being more focused on US domestic policy and the irrevocable support of Jewish claims in Palestine. Indeed, it is difficult to find any major differences in the views of the ‘mediator’ and the Jewish delegation.

The sensitivity and complexity of the problem has increased over time, thus transforming the issue into a worldwide concern. In no more than an overnight, Palestinians found themselves without a homeland; the land that they had become attached to was being taken away from them. Since then, and with a lot of self-determination, they have struggled to regain their homeland.
This commitment has been manifested in many ways ranging from complete rejection of the state of Israel and calling for absolute return, to accepting the *fait accompli* and finding a compromise that would guarantee the rights of both Jews and Palestinians.

The dilemma of the Palestinian refugees is a very complex one. A refugee is “someone in flight, who seeks to escape conditions or personal circumstances found to be intolerable. The destination of the person fleeing is not relevant; the flight is to freedom, to safety” (Goodwin-Gill, Guy, S., 1996, p.3). Usually, the reasons behind this escape are poverty, war, deprivation… According to international law, these persons must be accorded protection and assistance.

Simpson points out that the essential quality of a refugee is that he has left his country as a result of political events found to be intolerable. The individual must face some kind of threat or danger to his life or liberty that prevents him from returning to his country (Madsen-Grahl, Atle, 1966, p.74).

Another characteristic concerning refugees is the lack of national protection by the country of origin. This factor dates back to the period of the two World Wars and was a criterion for refugeehood. In the case of Palestinians, they were under the British mandate and had the diplomatic protection of the mandate power. However, this protection terminated with the end of the mandate period (Takkenberg, Lex, 1998, p.53).

Refugee status is usually determined by the nature of the relationship between a state and individuals. These individuals are either nationals of that State or residing in it. An essential characteristic is that these individuals must be outside the territory of that state (UN, 1951, p.3). In addition to the lack of protection that a refugee receives from the state to which he belongs to, he is also deprived of support from his fellow-citizens. A refugee is an alien and even though he
is granted some kind of protection from societies and governments of the country of asylum, he
is still a foreigner and most of the times faces hostility (UN, 1951, p.40).

One cannot refer to refugees without mentioning the element of nationality. A refugee
ceases to be a refugee when he acquires a new nationality (UN, 1951, p.4). Here comes the issue
of statelessness. Statelessness is not an essential quality of a refugee. A stateless person is “one
who is not considered a national by any State under the operation of its law” (Madsen-Grahl,
p.77). According to Simpson, “not all stateless people are refugees, nor are all refugees
technically stateless. Statelessness is not the essential quality of a refugee, though many refugees
are in fact stateless people” (Madsen-Grahl, p.77). Therefore, a refugee is not necessarily a
stateless person since he might still have his nationality. In the case of Palestinians, however,
Israel has denied citizenship to the minority of Palestinians. This was also the case in some Arab
countries (with the exception of Jordan) that refused to grant them citizenship. According to
international law, these persons are considered stateless (Goodwin-Gill, p.244).

This study tackles the International Law aspect of the Palestinian refugees and what it
offered in terms of solutions. International Law embodies many principles that affirm the
inalienable rights of individual to their homeland and country of origin. In addition to that, the
right of return was a natural right practiced by states in everyday life. International law did not
contribute explicitly to the issue of Palestinian refugees. It affirms general principles that protect
human rights and hence, condemns any violation to these rights. Operating within the context of
international law and under its guiding principles, the United Nations came up with many
resolutions pertaining to the Palestinian refugees’ issue affirming the right of return and calling
for its application by the international community. Thus, international law was applied to the
Palestinian question through the UN by deriving resolutions pertaining to its principles. Many
obstacles prevented the proper application of these resolutions especially the interests of the parties involved bearing in mind that the UN General Assembly resolutions are mere recommendations and have a non-binding character. Other factors are the increasing practical limitations arising from the complexity and duration of the problem. Moreover, ever since the problem started one could not find any real effort on the part of the international community to protect Palestinian rights. The parties involved perceive of the situation differently and this prevents any real solution. With the launching of the peace process, the right of return evolved and Palestinians sought self-determination even if it was at the expense of sacrificing absolute return. The role of the UN became restricted to humanitarian assistance and solutions under political compromise dominated over the application and respect of international Law.

The later stage of the conflict witnessed an important shift in the international way of thinking of the Palestinian problem. Palestinians were no longer considered as a group of ‘faceless’ refugees but as a separate Arab people who have the right to self-determination (Armanazi, Ghayth, 1974, p.92). This was a long process of Palestinian suffering and resistance that affected the resolution of the conflict and made it pass through different stages.

Chapter two of the study talks about the refugee under international law and the basic principles applying to the refugee. Chapter three introduces the ideological and political precedents of the problem; a historical overview of the situation. In chapter four, the dimensions of the problem is shown starting with the exodus process and moving toward the birth of the refugee problem. It also talks about the parties involved in the conflict, their perception of the problem and how this perception affected their evolving positions. Chapter five deals with international law and how it was applied to the Palestinian refugees’ case through the UN forum where resolutions were formulated in an attempt to resolve the issue. In chapter
six, the right of return is studied and evaluated in the context of the evolution of circumstances that affected its application. Lastly, chapter six ends the work with concluding remarks, assessing the whole situation and seeing to what extent the application of international law was manifested.
Chapter II

The Refugee under International Law

The international community has faced many cases before the Palestinian problem and protected the rights of minority groups when new states were formed. An essential factor here is nationality. The law of nationality has always protected inhabitants from being evicted and made sure that they can return to their homeland. These nationality rights are practiced in a routine way. The situation changes when populations are displaced, territories become controlled by others and when a state tries to extinguish the unwanted group. In this case, the principle of nationality becomes essential (Quigley, John, 1998).

Many cases in history involved external intervention to a large extent. These cases can be compared to the Palestinian refugees’ problem. Their similarity lies in that the political settlement involved the international community, there was desire on the part of refugees to return, host countries were involved in the settlement, a large role of the external agencies was seen and a similarity in the demographic profile.

The 1970s witnessed the conflict between Guatemala and El Salvador where there was social and political upheaval. 72% of the land was owned by the indigenous minority and there was inequality in land ownership. Power was also in the hand of operative military and the private sector. 20% of the population was displaced and went to Mexico. In 1985, the process of return started and an agreement was signed between Guatemala, the UNHCR and Mexico for the arrangements of returning refugees. There was a large involvement of the international community through government and non-governmental organizations (Dumper, Mick, 2003, p.5).
Another case was the Bosnia/Herzegovina case. Bosnia/Herzegovina was part of Yugoslavia. With the collapse of the communist system in Easter Europe, Yugoslavia disintegrated and a war broke out between the mixed populations of Bosnia/Herzegovina and led to the expulsion of Muslim and Croat Bosnians (around 95% of population). In 1994, the signing of the Washington Agreement took place establishing the Bosnia-Muslim-Croat Federation (Dumper, Mick, p.6). The fighting between the Serbs and Bosnians continued and resulted in the collapse of the economy and the destruction of houses. Europe witnessed the biggest movement of refugees since WWII. In 1995, around 4.4 million people were displaced. Individuals either fled or were forcefully evicted. Houses were also damaged and laws were enacted concerning abandoned property for their confiscation (PreHitore, Paul, 2006, p.180).

The ‘General Framework Agreement for Peace in Bosnia and Herzegovina’ was signed in December, 1995 (also known as the Dayton Peace Agreement). This agreement ended the conflict and established two entities: the Federation of Bosnia and Herzegovina and the ‘Republika of Srpska’ (PreHitore, p.181). The UNHCR and other international organizations played an important role in the repatriation plan that took place (Dumper, p.7). International organizations had a firm position in the administration of Bosnia and Herzegovina and paved the way for strong enforcement mechanisms. Besides the UN Security Council Resolutions adopted during the conflict, a large part of international involvement was dedicated to property issues like the Organization for Security and Cooperation in Europe (OSCE), the UN mission, the UNHCR… (PreHitore, p.195).

The above cases show similarity in the complexity of the situations and the involvement of the international community in the resolution of the issues. Of course, each situation is unique but one can draw similarities and try to apply them in other cases.
Before looking at what international law provided for the issue of Palestinian refugees, it is important to mention its scope of protection to refugees in general. Under international law, all individuals have a right to return to their homes if they are displaced from them due to circumstances beyond their control. This right is an inherent human right that all individuals possess. Sometimes states and governments prevent the exercise and implementation of that right. Since the right of return is inherent in international law, governmental refusal of that right is a violation of international law (Boling, Gail, J., January 2001, p.5).

Civilian populations who are displaced forcefully during any military conflict have the right to return to their country after the cessation of hostilities. This is affirmed by Hersch Lauterpacht: “After the end of hostilities, there is full room for the application of the principle that no rights and benefits can accrue to the aggressor from his unlawful act” (Nuseibeh, Hazem, Zaki, 1981, p.54).

There are four separate bodies of international law that deal with the right of return and consist of customary norms that are binding upon states. They are binding in the sense that states apply these norms as a routine in their everyday practices.

A- The Law of Nationality:

One of the bodies of international law that embodies the right of return is the Law of Nationality. The Law of Nationality is a subset of the ‘law of nations’ that regulates state-to-state obligations (Boling, p.15). It is also influenced by the law of state succession which is also one of the subsets of the ‘law of nations’. Even though states regulate their own nationality status, international law interferes when the actions of states do not comply with international law. The law of state succession also applies when a territory undergoes a change of
sovereignty. Inhabitants under the sovereignty of the succession state must be offered its nationality (Boling, p.17). Other than the law of state succession, the law of nationality affirms the right of return as an obligation to states to readmit their own nationals. It must allow them to exercise the right of return. Refusing to do so would make other states (host states) obligated to receive them (Boling, p.24).

B- Humanitarian Law:

The second body of international law encompassing the right of return is Humanitarian Law and it governs the way states should act in case of war (Boling, p.28). The 4th Geneva Convention is an instrument under Humanitarian Law that affirms the right of return. Palestinians left their country as a result of warfare. Therefore, there are certain standards and norms which protect civilians in the time of war. This is found in the Geneva Convention No. IV (Radley, Kurt, Rene, 1978, p.595). The 4th Geneva Convention does not apply to the events taking place in 1947-48 but its provisions are important concerning the right of return of uprooted civilians. The Convention dealt with the subject of return where it not only affirmed this right but went further to the roots of the problem and the issue of population transfers and deportation (Al-Qasem, Anis, 1999, p.129). According to article 49(1) of the Convention

> Individual or mass forcible transfers, as well as deportation of protected persons from occupied territory to the territory of the Occupying power or to that of any other country, occupied or not, are prohibited, regardless of their motive” (Al-Qasem, p.129).

This points to the illegality of forcible transfers or deportations. By that, the occupying power would be denying the right of return. This convention, therefore, protects the right of individuals to continue residing in their homes and country even under occupation. This right existed even before the Convention; they were recognized by international law (Al-Qasem, p.130).
C- Human Rights Law:

The right of return is also affirmed in Human Rights Law where it is a right conferred upon individuals directly and imposes obligations on states to implement it (Boling, p.36). The Universal Declaration of Human Rights affirms the right of individuals to enter their country. It establishes that “everyone has the right to leave any country, including his own, and to return to his country” (Mallison, Thomas, W. and Mallison, Sally, V., 1986, p.176). The mass expulsions of populations in the two World Wars have led to the affirmation of the right of return to one’s country as a fundamental right in the Universal Declaration of Human Rights. According to the declaration, the exercise of this right is not subject to any law established by the state; it is absolute and only the individual decides to exercise it (Al-Qasem, p.125). The declaration goes on to say that no state is allowed to prejudice this right and destroy it.

The International Covenant on Civil and Political Rights also stress on the right to enter a country of origin. One of the provisions states that “no one shall be arbitrarily deprived of the right to enter his own country” (Mallison, p.176). It is considered one of the most fundamental instruments that dealt with the right of return (Takkenberg, p.235).

D- Refugee Law:

Lastly, there is the Refugee Law that has its origin in state practice. It entails the existence of ‘opinio juris’ which means a sense of legal obligation upon states to allow displaced individuals and refugees to exercise their right to return to their homes (Boling, p.43). Two basic instruments have contributed to the issue of refugees and are considered the basis for conventions and UN resolutions on the question of Palestinian refugees. These are the 1951 Refugee Convention and the Statute of the United Nations High Commissioner for Refugees
(UNHCR) (Akram, Susan, M., 2002, p.36). Three contributions were made by the Refugee Convention to the refugees. The first was that the convention dealt with refugees on an individual basis rather than a group or category. Another element was the shift from the stress on return to the place of origin to options of resettlement. Finally, the convention stipulates that solving the refugee problem is not limited to the parties concerned but to the whole world (Akram, p.36).

The Refugee Convention has come up with a refugee definition that is accepted universally. It defines a refugee as:

[Al]ny person who... as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it (Akram, p.37).

The Refugee Convention is an instrument for guaranteeing refugee protection and forms the international regime to provide mechanisms to ensure compliance and implement solutions. The UNHCR is the mechanism responsible for this task even though it was established before the Refugee Convention (Akram, p.37).

The UNHCR was established by the General Assembly in December, 1950 to provide refugees with international protection and seek permanent solutions for them. It promotes international agreements to protect refugees and then ensure compliance with these agreements. It also assists governments and non-governmental organizations in the voluntary repatriation of refugees or their resettlement in other countries. Another function has to do with assisting those
refugees in protecting their properties in their countries of origin. So the basic function of the UNHCR can be divided into two segments: the first dealing with the protection of human rights on a daily basis, and the second deals with finding durable solutions for these refugees and implementing them (Akram, p.37). The agency has a non-political character and stresses on the social and political aspect of assistance (Goodwin-Gill, p.6). The UNHCR stresses on voluntary repatriation as the best solution for the refugee problem. It stipulates further on that “refugees in principle have a right to return to their country of origin” and this should be one of the underlying general principles of international refugee law (Takkenberg, p.233).

For the purpose of international law, a refugee receiving the assistance of UNHCR should subscribe to a certain category. This category provides that:

Refugees within the mandate of UNHCR, and therefore eligible for protection and assistance by the international community, include not only those who can, on a case-by-case basis, be determined to have a well-founded fear of persecution on certain grounds (so-called ‘statutory refugees’); but also other often large groups of persons who can be determined or presumed to be without, or unable to avail themselves of, the protection of the government of their state of origin (now often referred to as ‘displaced persons’ or ‘persons of concern’)(Goodwin-Gill, p.29)

The flight should be as a result of conflict or other tough circumstances in the country such as radical political, social or economic changes.

The responsibilities of the UNHCR are complemented with the obligation of states parties to the 1951 Convention/ 1967 Protocol. It has been given a functional role and responsibility by the international community. However, it is dependent on the resources and political wills of states and their commitment to solve problems of protection, assistance and solutions. UN
General Assembly resolutions may impose obligations on UNHCR (subsidiary organ) but cannot impose obligations on states.

The right of return is mentioned in the universal Declaration of Human rights (1948) which stipulates that “everyone has the right to freedom of movement and residence within the borders of each state, and everyone has the right to leave any country including his won, and to return to it” (Said, Edward, 1992, p.46). This right is also mentioned in the UN Commission on Human Rights and according to this commission:

a) everyone is entitled, without distinction of any kind,… to return to his country.

b) No one shall be arbitrarily deprived of his nationality or forced to renounce his nationality as a means of diverting him of the right to return to his country...(Said, p.48).

According to international law, countries of refugee have no responsibility regarding refugees apart from the humanitarian assistance it provides them with. They are not responsible for their return and cannot argue on their behalf or facilitate their return unless they were involved in the conflict that created the refugees. International agencies such as the UNHCR and the Red Cross protect refugee rights. Protection is more towards basic needs rather than physical protection (Jamal, Amal, 2005, p.135).

In conclusion to this discussion, states are obligated to respect the right of return as part of a customary norm of international law. These norms are usually binding upon states. The discussed instruments of international law show that the right of return existed and has a customary status in international law even before 1948 and the birth of the Palestinian refugee problem. It is obvious that even though Israel is a party to some of those instruments, it has not abided by the norms.
Chapter III

Ideological and Political Precedents of the Problem: Historical Overview

A survey of the ideological underpinnings of the Jewish program for Palestine will facilitate the understanding of subsequent actions by Jewish leaders and the Jewish state vis-à-vis the refugees’ issue and relations and conflict with Arab states. The roots of the problem date back to the Basel Program of 1897 whose aim was to establish an exclusive home for the Jews in Palestine. This is clearly illustrated by the famous motto “a land without a people for a people without a land”. It would be naïve to assume that Europeans in general, and Jews in particular, were unaware of the fact that Palestine was populated. But for the motto to become true the land needed to be depopulated and made ready for the influx of Jewish settlers. It is important to note that in his pamphlet “The Jewish State”, Herzl makes no mention of the Palestinians and his entire concern was to reassure Europeans that the departure of Jews will have no ill effect on European economies! In the only reference to local issues in Palestine he states:

Palestine is our ever-memorable historic home. The very name of Palestine would attract our people with a force of marvelous potency. If His Majesty the Sultan were to give us Palestine, we could in return undertake to regulate the whole finances of Turkey. We should there form a portion of a rampart of Europe against Asia, an outpost of civilization as opposed to barbarism. We should as a neutral State remain in contact with all Europe, which would have to guarantee our existence. The sanctuaries of Christendom would be safeguarded by assigning to them an extra-territorial status such as is well-known to the law of nations. We should form a guard of honor about these sanctuaries, answering for the fulfillment of this duty with our existence. This guard of honor would be the great symbol of the Jewish Question after eighteen centuries of Jewish suffering (Herzl, Theodore, 1946, p.96).
This sets the ideological direction of lack of interest in the fate of the inhabitants of Palestine; an ideology based on territorial colonial ambitions while disregarding the indigenous people of the land.

This is the ideological genesis of the problem. It was based on the Zionist ideology and the religious state. Zionism was the movement to free the Jews and solve the problem of anti-Semitism in the West. The leader of this Zionist movement was Theodor Herzl (1860-1904) who tried to seek a solution to the problems that Jewish communities were facing in Europe, and who proposed the creation of a Jewish state. As the focus of the movement was to find a homeland for the Jews, and only the Jews, a solution for the exclusive ownership of Palestine needed to be devised. This process therefore was a determined effort and began in the late 19th century at the time of the Ottoman Empire. Palestine at that time did not represent a defined political, demographic, cultural or territorial entity. It was part of the Ottoman Empire and referred to as ‘Southern Syria’. The Northern part was part of the Village of Beirut and generally, it was considered part of Syria (Stone, Julius, 1981, p.1). Palestinians at that time had no coherent political infrastructure and they were mainly a tribal society. They inherited the land system from the Turks. Palestine was considered a conquered territory by the Ottomans and hence, ownership of land was vested in the state (Hadawi, Sami, 1988, p.3).

The Zionist movement’s aim was to assert Jewish national identity. The international European Jewish political movement (World Zionist Organization) met in Basel and put forth a program to establish a Jewish state on Palestinian Arab soil (Khalidi, Walid, 1992, p.17). The claim on the land was based on their previous occupation of parts of Palestine during the late biblical period and the continuous link between the Diaspora and Jews in Palestine. According to them, “religious law” contains provisions that make the Jews the claimants of this land (that it
is theirs religiously). This is based on the exclusive concept of a covenant between them and
their God that originally blessed their conquest of the land from the Canaanites and will
recurrently bless their conquest from all subsequent inhabitants.

The Zionists conceived of their state as a religious state where citizenship and hence
residency are all based on Jewishness. This is a major precept of Zionism that has been espoused
by all Zionist factions and parties.

The problem that Zionists faced was that Palestine was an inhabited land by the Arabs, and
at the time of the formulation of the Basel program, the Jewish community constituted less than
7% of the total population (Khalidi, Walid, p.2). When first the Jews started to immigrate to
Palestine, the Arabs did not consider their motives nationalistic or political. There was no
opposition but sympathy because of what happened in Russia and Christian Europe. Arab
inhabitants felt secure in their homes. The picture started to become clearer when the real Jewish
motives surfaced. In the 1930s, Jewish immigration started to increase and Jews started
acquiring more lands, hence, Arab anxiety arose (Wright, Quincy, 1969, p.6). Arabs realized
that the Jews intended to make Palestine an exclusive home for them and this started with the
acquisition of land (Hadawi, p.6). All this was before the launching of the Basel Program and
before WWI. The real opposition began after the Balfour Declaration. A campaign of purchase
of Arab land was launched. Some of the wealthy landowners were tempted by the price; others
were forced to sell because they were unable to pay taxes... (Hadawi, p.7).

The initial attempts of Jews to settle Palestine in the late 19th century and early 20th century
were mediocre efforts doomed to failure. With the dissolution of the Ottoman Empire and its
defeat in the First World War, a new phase in the Jewish effort was started coinciding with the
establishment of the British mandate and its facilitatory role. The real turning point is WWI. During Ottoman rule, Arabs enjoyed complete political independence and equality. They had sovereignty over many territories. However, they wished for an independent Arab state like the Balkan states which gained independence from the Turks. Great Britain promised to help on the condition that the Arabs would aid in the war. Britain started negotiations with Sherif Hussein and signed the MacMahon agreement of 1915. Instead of helping Arabs with independence, they promised the French part of the Arab territory and the other part became under their rule through the Sykes-Picot Agreement (Wright, p.5). Arabs realized that after hundreds of years under foreign domination, a new form of colonialism was under way.

Britain declared its support for a national homeland for the Jewish people in the famous Balfour Declaration. The Declaration was a unilateral public law announcement of the British Cabinet but it has been agreed upon by member states of the League of Nations and was supported by the United States. What the British aimed for in this agreement was to win the war and to maximize power through peace settlement. After the increasing success of the German Submarine War in 1917, Britain was seeking support from all sides. The Zionists offered this support in return for a public law declaration of support for Zionist nationalism. That also included territorial objectives in Palestine (Mallison, p.25).

Zionist demands were hindered by two factors: first, Palestine was an inhabited country and the number of Jews during WWI was a small fraction of the population. The second factor was that any support from the British was connected with its imperial interests and hence, nothing could be achieved unless it coincided with these interests (Mallison, p.29). Leonard Stein, an English lawyer and leading Zionist, talked about the history of negotiations leading to the agreement and summed up the situation as follows:
The Declaration [sought by Zionists] itself presupposed that the Jewish people counted for something in the world and that the ideas bound up with the connection between the Jews and Palestine had not lost their property. But the war years were not a time for sentimental gestures. The British governments' business was to win the war and to safeguard British interests in the post-war settlement. Fully realizing that these must in the end be the decisive tests, Weizmann was never under the illusion that the Zionists could rely on appeal 'ad misericordiam'. Zionist aspirations must be shown to accord with British strategic political interests (Mallison, p.29).

In the first clause of the Balfour Declaration, Britain supported the establishment of a 'Jewish national home' and recognized the right of all those who called themselves 'Jews' to Palestine- a land they had never seen. This recognition was against the inhabitants of Palestine and contrary to the principles of citizenship in the world (where a person can claim this right through birth or residence under specific conditions) (Hadawi, p.15).

The Declaration ensured that “nothing shall be done to prejudice the civil and religious rights of the existing non-Jewish communities” (Hadawi, p.16). Even though the inhabitants constituted 92% of the population in 1917, Palestinians were referred to as 'existing non-Jewish communities'. This phrase in itself robs them of their right to their country of birth. On the other hand, the Declaration protected the right of Jews in other countries as well (gave them a homeland of another people while safeguarding their rights in their countries of origin).

The declaration was criticized as being a document whereby one nation promised a second nation the country of a third (Hadawi, p.16). Great Britain at that time was a mandated power over the country and not occupying it; it had no control over it.

Whether a colonial power has the right to make a gift of what it does not legally own is a matter that did not bother Western Ethics! The influx of Jews to Palestine naturally led to
repetitive clashes between the new settlers and the original inhabitants. With the situation gaining complexity, the mandatory power found itself constantly facing resistance and recriminations from both contenders in the conflict.

Throughout the mandate years (1922-1948), the British government tried to maintain Palestinian rights and help establish the Zionist ‘national home’. The contradiction in Britain’s policy was obvious: a “commitment to fostering Jewish self-determination while trying to protect Palestinian rights” (Morris, Benny, 2004, p.4). This resulted in an inevitable conflict between Zionist immigrants and Palestinian inhabitants who saw that their rights are being destroyed. Arabs manifested their displeasure in the form of strikes and violence that eventually led to the uprising in 1936 (Rowland, Robert, C. and Frank, David, A. 2002, p.84). Britain could not cope with the situation and hence, decided in 1937 that the mandate did not work. Instead, it recommended that the country be partitioned into two states: one Jewish and one Arab (Mallison, p.408). The Arabs were against this recommendation, it being contrary to the principles of Western democracy (right of people to self-determination, freedom) (Hadawi, p.79).

Without the assistance of Britain, Jewish immigrants would not have entered in large numbers to enable them to overwhelm the Arabs in their country (Nuseibeh, p.18). And it was under British protection and with the support of British military ‘might’ that the demographic, economic, military and organizational infrastructure of the Jewish state was laid. The balance of power started to shift in favor of Jews (Khalidi, Walid, p.4).

After the Second World War, and due to extended pressure and terrorist campaigns of the Jews, Britain decided to hand over the mandate to the United Nations. The UN assumed responsibility of the Palestine issue and hence the General Assembly recommended in November
1947 a resolution to partition Palestine into two states, Jewish and Arab. The distribution was as follows: Jewish state occupying 56% of total land and the Arab state 42.88% of land. Jerusalem and the area around it would become an international zone (0.65%). This gave the Jewish minority the larger portion (Hadawi, p.80). These two states were to be linked by economic union. The plan also tried to guarantee the rights of the minorities and established that the political structure of the state and law was to be democratic. Therefore the states must respect human rights, freedom of speech, religious and ethnic rights ... (UN, 1970, p.31). Arabs opposed the partition plan on the ground that it was contrary to the principles of Western democracy that affirm the rights of people to self-determination and freedom. It was also against law and justice (Hadawi, p.79).

By establishing the resolution, the UN not only tried to partition Palestine but also made itself responsible for the fate of Palestinians. It should have protected the rights and properties of the Arab population but failed to do so (Pappe, Ilan, 2005, p.245). There was no effort on the part of the UN to implement the resolution and protect the rights of the Palestinians. The situation deteriorated and the British power moved out on May 14, 1948. The UN established a commission to take over the administration of Palestine when Britain leaves. However, things did not work out as planned. There was vacuum in the country and fighting broke out between the two communities with the Jewish community attempting to take as much land as possible. Palestinians naturally resisted the Jewish attempts to acquire land but were hampered in their efforts by lack of consistent centralized organization and adequate support.

During the British mandate, each community strived for self-government. Zionists won because they had the basic components of a state. They had the institutions and means to govern themselves. Their victory was the result of a stronger economy and a better military and
administrative organization. As a result of the Holocaust that urged them to establish a safe place, a home, they were able to establish institutional tools for achieving their state (Morris, p.14). The Jewish Agency became the government receiving aid from Jewish communities of the Diaspora. Moreover, the support from the international community could not be ignored and especially the West which saw in Zionism the perpetuation of reason, idealism and liberation (Said, p.38).

Arabs, on the other hand, had no aid from neighboring Arab states and the Muslim world. By 1947 they felt abandoned. When Jews were committed to their idea of statehood, the Arabs had basically a vague idea of ‘national purpose’ and statehood (Said, p.17). They were only concerned with Jewish aims of their displacement and trying to find ways to get rid of them. Palestinians were not yet ready for demands of nationalism that started surfacing in 1936-1938 and specifically later on in 1947-1948. Answering to the demands of nationalism requires a clear concept of national belonging which Palestinian Arabs lacked at the time (they were still caught up in a village-centered political outlook). They had no clear-cut cultural identity apart from Arabs in the rest of the Arab world (Said, p.18). Palestinian society was poor and based on agriculture with lack of education. It was unorganized and deeply divided (between Husseinis and Nashashibis, Muslims and Christians, Beduin and settled communities) (Morris, p.16). This began to change in the mandate years with the widespread of communication and spread of education, literacy and presence of Zionism. It was, however, a slow process and could not keep up with the demands of the real situation (Said, p.18). Palestinians had a divided leadership with no central authority and no reliable allies and were facing an organized enemy with centralized institutions and a strong motivation (Khalidi, Rashid, 1997, p.190). They expected aid and support from Arab countries but this assistance was late in coming (Gelber, Yoav, 2001, p.31).
In some way or another, the Palestinians have failed and even the Arab world has criticized them for not fighting hard enough and selling their lands (Khalidi, Rashid, p.191). One should not forget the fact that Palestinians were under Ottoman rule and then became mandated by the British. So when the British withdrew from the country, they were left with no administration capable of taking over the mandatory government (Gelber, p.85).

The state of Israel was declared in 1948 on the day of the official termination of the British mandate. The military confrontations escalated and a war broke out between Israel and the Arab armies from Egypt, Jordan, Syria, Lebanon, Iraq... The Arab effort was fragmented and aimed at the interests of the individual states rather than the interests of the Palestinians. Further, significant support for the Jewish effort was readily forthcoming from the West. As a result, Israel occupied 75% of the country. Jordan annexed the West Bank, including East Jerusalem (supposed to be part of the Arab state). Israel took the North (Galilee) and the South (Negev) which were supposed to be part of the Arab state. In addition to that, Israel destroyed towns and villages, seized land and created refugees (Khalidi, Walid, p.6).
Chapter IV

Dimensions of the Problem

A- The exodus:

The aftermath of the 1948 war was characterized by the expulsion and departure of Palestinians. This displacement was carried out in two ways: spontaneously where, as part of any similar military conflict, some civilians voluntarily left their homes, sold their lands and sought refuge elsewhere. The inhabitants of Western Jerusalem found themselves defenseless and decided to flee and go after self-preservation (Nuseibeh, p.24). Usually, such displacement is restricted to areas of intense fighting. However, in the case of Palestinians, it was widespread.

In fact, the exodus started first in 1947 after the UN partition decision where many wealthy Arabs in Jerusalem, Haifa and Jaffa departed for neighboring countries avoiding trouble. They left behind their homes with expensive furniture, shops, warehouses, financial assets... They expected Arab victory and thought that their departure was only temporary (Fischback, Michael, R. 2003, p.2). Also at the beginning of clashes before the 1948 war, there was fear which also led to escape.

Another kind of displacement is forced expulsion in which Israeli forces instituted systematic and planned evacuations of civilian population by direct forceful means. Israel started to drive out Palestinians first to the borders and then out of the country. Many groups went to Egypt, Jordan, West Bank, Gaza... Some tried to return but were prevented from doing so (Masalha, Nur, 2005, p.24). In their effort to gain more land and get rid of the Palestinians, Israelis tried to exercise the policy of transfer which meant the exchange of populations. This was not acceptable since the number of Arabs to be transferred from the Jewish state was 40
times more than that of Jews from the Arab state. However, the exercise of persuasion and terror on the part of the Israelis diminished the number of Arabs (Morris, p.40). What Israel was concerned with was clearing the borders of Arabs. Some were transferred inland, to Israeli villages and others were forced outside the border. Having Arab villages across the border would be a base for hostilities and would facilitate the reentry of refugees. The main aim was to have as few Arabs as possible and more land to house new Jewish immigrants (Morris, p.505). In fact, the idea of transfer was brought forward by Theodore Herzl where he wrote in his diary on June 12, 1895:

We must expropriate gently... We shall try to spirit the penniless population across the border by procuring employment for it in the transit countries, while denying it any employment in our country... Both the process of expropriation and the removal of the poor must be carried out discretely and circumspectly (Morris, p.41).

Weizman, in 1930, began to promote the idea of transfer privately and in secret discussions with British officials. For instance, they submitted a proposal to transfer Arab peasants to Transjordan. When the proposal was rejected, Weizman tried to convince the officials that there was nothing ‘immoral’ about the idea of transfer and gave the example of the transfer of Greek and Turkish populations in the 1920s (Prior, Michael, 2001, p.42). Of utmost importance in the policy of transfer were the issues of demography and land. Jews were a minority and they wanted a state based on Jewishness and to be able to establish that state they needed more and more land (Prior, p.43).
When Israel was attempting to gather as much land as possible, it tried to bribe the Arabs by offering high prices for their lands. Part of its plan materialized peacefully when many agreed on selling. The other part was planned by forceful means and acts of panic and terrorism.

To what extent did Israel deliberately expel Palestinians has always been a controversy. Many historians thought that there was a master plan of ethnic cleansing. No matter what was the case, expulsions did occur even before the fighting started. Zionist leaders were definitely planning the ‘transfer’ of Palestinians outside the country (Fischback, p.4). Besides the exercise of expulsion, Israel used the method of terrorizing civilians in order to leave their homes. The massacre of Deir Yassine was a clear illustration; it was a large scale operation which resulted in the cleansing of a large number of civilians. As a result, Palestinians in other areas were terrified and fled to escape the fate of Deir Yassine inhabitants.

Jews were not only concerned with expropriating land but also came up with a plan for the post-evacuation period. The main aim was to secure territories. So plan ‘Dalet’ (Plan D) aimed for destroying villages that could not be held permanently. It was a master plan for the expulsion of Palestinians (Masalha, 2001, p.43). Jews were instructed to take over Arab villages in a way that when faced with Arab resistance, they should expel residents beyond the border and when there was no resistance residents were allowed to stay under military rule (Gelber, p.98).

Palestine was not divided according to UN resolution 181 but along _de facto_ lines of the Armistice agreement of 1949 (Landau, Jacob, 1993, p.6). The Armistice Agreement was signed in 1949. Israel occupied territory consisted of 20,526,000 dunums (77.94% of land). The West Bank constituted around 5,450,000 dunums (20.74%) and Gaza around 347000 dunums (1.32%). Both fell under Transjordan and Egyptian administration respectively. The agreement also
stipulated the establishment of ‘demilitarized zones’ in northern and southern regions of the
country and of a ‘no-man’s land’ in the central sector (Jerusalem as an international zone)
(Hadawi, p.81). Article 8 deals with Jerusalem and calls for a special committee to direct its
attention to free the movement of traffic on vital roads, return Arab citizens of West Jerusalem to
their homes and restore public services in exchange of free access to Holy places and cultural
institutions and use of cemetery on the Mount of Olives (Nuseibeh, p.88). Transjordan annexed
the West Bank and became known as Jordan.

The main purpose of the expulsion of Palestinians was to restrict land and property for the
Jewish communities only and limit, as much as possible, Arab presence. Israel undertook
policies of distinction, military rule expropriation of property... An important aspect of the
history of Israel is the use of military methods to achieve territorial expansion. When acquiring
land by legitimate means presented a failure, new means were devised to control Arab land. The
job was easy when Arabs were dispersed after the 1948 war. Laws were enacted to seize and
confiscate ‘absentee’ Arab land and property. This affected refugees as well as Arabs who
remained in Israel. They changed residence because of the war and were considered absentee. A
central law in this case was the 1950 Absentee Property Law. This law considered as absentee
“someone who left such residence for a part of Palestine under hostile control or, prior to
September 1948, to a place outside Palestine” (Fischback, p.23). According to this law, the
properties of refugees were transformed to a ‘custodian’ who would negotiate with the
government concerning land. Later on, in 1953, a ‘Development Authority’ took ownership of
the property turning it gradually to state ownership for accommodation of Jewish immigrants
(Fischback, p.119). So a person might be an ‘absentee’ under the law even though he is inside
Israel when his property became ‘absentee’ property. This law applied to refugees outside Jewish-occupied territory as well as Palestinian citizens of Israel (Masalha, 2005, p.34).

On the other hand, and also in the 1950s, the Knesset passed the Law of Return, hence, granting exclusive citizenship rights to all members of the Jewish communities throughout the world (Nuseibeh, p.32). The first article stipulates that “every Jew has the right to immigrate to this country”. Moreover, article 3(a) says: “A Jew who comes to Israel and subsequently expresses his desire to settle may, whilst still in Israel, receive an immigrant’s certificate” (Al-Qasem, p.132). This means that only Jews, even if they had not lived in Palestine before the creation of Israel, have the right to immigrate and settle there. The case was not applied to Palestinians who already had land and property there. This comes as a contradiction to the UN Partition plan, the Universal Declaration of Human Rights and the Fourth Geneva convention.

According to Ben-Gurion:

It [Israel] is not a state for its citizens alone, but for the whole Jewish people, for every Jew whoever he be, who chooses to live in his homeland, who chooses Israeli independence in preference to life in the Diaspora… The Law of return establishes that it is not the State that confers upon the Jew abroad the right to settle in Israel, this right being inherent in his being a Jew, if he only has the desire to join the population of the State (Chapman, Colin, 1993, p.75).

This view is consistent with the ideological program of Zionism and a constant of Jewish policy.

Israel refused to allow any refugees to return and practiced violent military retribution for any border violations. Large numbers of Palestinians found themselves destitute and dispossessed. Not all Arab states were ready to incorporate the Palestinians into their political systems. Their approach to the refugees was motivated by their local political issues.
Palestinian Arabs were naturalized in Jordan and were granted citizenship and treated as citizens. Problems of naturalization arose in Syria and Lebanon because their presence was perceived as a threat to the political balance of power within those states. Arab states had to cope with this refugee problem and they were in no way capable of doing so due to their weak economy, complicated internal politics and administrative machinery (Chapman, p.72).

There was insufficient international pressure to hinder Israel’s process of expulsion. Zionism was a world movement and opposing it in the West meant aligning oneself with anti-Semitism. There was identification between Zionism and the West. The West saw in Zionism the triumph of its own values and the remnants of its colonial views (Said, p.38).

The events of the 1948 war consolidated in Palestinians the element of self-definition and identity that was basically dormant before. Palestinians became closer (Khalidi, Rashid, 1997, p.22).

The 1948 war was only the beginning of the hostilities between Israel and the Palestinians. The Palestinians were committed to resist Israeli expansion and were determined to get their land back. Continuous clashes occurred especially when the Palestine Liberation Organization (PLO) was created in the 1960s. This organization started its guerilla operations against the Jewish state. One of the basic premises of the organization’s charter is to include armed struggle as the only means of total liberation of the homeland.

The region was characterized by hostilities; Israelis feared that any concession on their part might lead to their extinction and likewise, the Arabs considered the establishment of the state of Israel an ‘imperialist occupation’ of their homeland. Palestinian refugees, a consequence of this occupation, made it impossible for Palestinians to accept the state of Israel (Yost, Charles,
W., 1968, p.304). The hostilities between Israel and the Arab states resumed in 1956 (against Egypt) and again in 1967 against Egypt, Jordan and Syria. In both periods, Israel faced raids to its territory and blockade in the Strait of Tiran against the country. Clashes intensified in 1967 on the Syrian-Israeli front and Israel considered the Egyptian blockade was illegal; a blockade of an international passageway (Yost, p.318). Nasser was granted full Arab support and solidarity and concluded a defense pact with the U.A.R. It was insinuated that none of the parties involved really intended to wage a war in 1967. Syria increased the raids over Israel, Israel retaliated, and Nasser could not stand aside ignoring his responsibilities and ambitions in the Arab world (Yost, p.319). Things simply got out of control. The Arab states lost and Israel occupied the West Bank, Sinai Peninsula, Golan Heights and the Gaza Strip. The UN issued Resolution 242 where it emphasized the “inadmissibility of the acquisition territories by force” and demanded the withdrawal of Israeli forces (Chapman, p.8). The Israelis refused to withdraw and, instead, started building settlements on the West Bank, Golan Heights and Gaza. This increased Arab determination to take a stand on negotiations and the recognition of the state of Israel. Areas occupied in 1967 witnessed immediate departure of Arab inhabitants. This was the second wave of Palestinian refugees after 1948. Those included both native population and Palestinian refugees who were driven out in 1948-49 (Masalha, 2001, p.61).

The lot of the Palestinians under Israeli occupation in the West Bank and Gaza was dire. The constant subjudication to Israeli military oppression led to a guerilla civilian uprising: an “intifada”. It took place in 1987 and it was a very large operation that was triggered by an incident in which an Israeli army tank transporter collided with a line of cars filled with Palestinian workers at the checkpoint at the north end of the Gaza Strip and in which four workers were killed (Gerner, Deborah, 1994, p.95). The ‘intifada’ marked the beginning of real
Palestinian resistance in their national land on a large scale and more harsh measures by the Israelis.

Major political events in the country and the region affected Palestinian refugees and the entire Middle East. The Palestinian issue was no longer confined to Palestinians and Jews alone but to the whole of the Middle East. An important outcome of the major conflicts was the development and evolution of the Palestinian national identity and the role it played in the conflicts. A large part of the problem was as a result of those identities that were dormant until it was too late to prevent the inevitable outcome. When the real intentions of Jews surfaced and with the atrocities that they performed, Palestinian identity became more consolidated. The rise of the PLO as the sole representative of the Palestinian people achieved a lot but even then Palestinians felt the absence of a coherent entity. They have always strived for self-determination and a secure base and authority in which they could solve their dilemma. This was also a flaw in the PLO where it did not have a base or a native territory to be able to operate (Said, p.134). It was a liberation movement in exile and ultimately it was going to be involved in clashes with sovereign states where it was operating like what happened in Jordan and later on in Lebanon.

B- The Birth of the Refugee Problem:

1- Old refugees/ New refugees:

Refugees could be classified as ‘old’ and ‘new’ refugees. Palestinian Arab refugees who were victims of the 1947-48 war are the old refugees and they amount to around 1,344,576 refugees registered under UNRWA. They are distributed as 722,687 in Jordan, 316,776 in Gaza, 160,723 in Lebanon and 144,390 in Syria (Tohmeh, George, G., 1969, p. 3). . The rest of the
refugees were the ‘new’ refugees and those had never left their homes before 1967 (Dodd, Peter and Barakat, Halim, 1968, p.35). According to United Nations Relief and Work Agency (UNRWA) and in a recent statistics (31 December 2007), the total number of registered refugees is 4,562,820 distributed as follows: Jordan, 1,903,490, Lebanon, 413,962, Syria, 451,467, West Bank, 745,776 and Gaza Strip, 1,048,125 (www.unrwa.org). Many of the old refugees were part of the 1967 exodus and hence they became refugees for a second time.

After the 1967 war, a large number of refugees crossed the Jordan River and sought refuge on its Eastern Bank (more than 200,000 refugees). The 1967 exodus differed from that of 1948. There was difference in the time period where the first exodus lasted over a year and the 1967 exodus was swift. Palestinians have learned from the experience of the 1948 refugees and knew that if they left they would not return. This should have acted as a deterrent for their flight. However, they could not prevent the exodus from taking place and were overridden by panic (Dodd and Barakat, p.3). Many Palestinians left because others were doing so. Basically the causes of the exodus pivoted around fear, psychological pressures of Israeli occupation, Destruction of villages and economic pressure (Dodd and Barakat, p.45).

2- Internally Displaced Palestinians:

The ‘guiding principles’ published by the UN regarding internally displaced Palestinians define them as: “[I]nternally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human made disasters, and who have not crossed
internationally recognized state border” (Jamal, p.135). What distinguishes this category of persons from refugees is the territorial factor.

One of the important characteristics of internally displaced Palestinians is that they lack national and international protection. Those inside Israel lack the protection that the state can but is not willing to give. Those in the West Bank simply don’t have a state to offer them protection. Israel is an occupying power but it refuses to abide by the 4th Geneva Convention and protect the civilian population. International protection is also absent since the international community has ignored the needs of this group of refugees (Rempel, Terry, M., November 2002).

These Palestinians are those who remained inside Israel during the displacement. They were displaced from their homes but remained within the boundaries of the state of Israel. They do not have a collective view as to their identity. Between 1948 and 1967 they became shocked at becoming a minority and tried to modernize and accept the state of Israel (Landau, p.162). This changed after the 1967 war when they sympathize with Arabs in the Israeli-held territories and thought to redefine their relations with the state of Israel. So it became difficult to be part of the state and at the same time support Arabism. This minority was influenced by Palestinians in the occupied territories (Landau, p.165). When the Intifada broke, Israeli Arabs supported it by expressing solidarity without participating effectively, contrary to the expectations of Arabs in the occupied territories. This factor heightened tensions in identity (Landau, p.169). Arabs in Israel responded to the uprising by sending material assistance to Palestinians under occupation and also by creating demonstrations to show their support (Rouhana, Nadim, 1997, p.74). The tension in the relationship between internal refugees and Palestinians outside Israel was sometimes tense. Those inside Israel chose not to leave and become external refugees and they had to accept to become a small margin among the Palestinian community. They were blamed
for not resisting Jewish domination. This had a great effect on the construction of their national identity since Palestinian nationality has reemerged on the basis of refugee identity (Pappe, 2005, p.247).

Economically, Arabs depended on Jews since they dominated economic positions and tried to integrate the Arabs (Landau, p.12). There was both deprivation and discrimination especially in wages. Besides, Jews had monopoly over the marketing of Arab agricultural produce (Lustick, Ian, 1980, p.15). Also Arab agricultural sector declined as a result of land expropriation by Jews (Landau, p.14). Land expropriation caused tensions in the relations between Arabs and Jews as Jews would sometimes come up with laws and reasons to expropriate more land for the purpose of public use and building of Jewish settlements (Landau, p.19). Arab peasants felt bitterness toward the government for confiscation of agricultural land. This was clearly expressed in a letter addressed to “The People of Israel and the Authorities of the State”.

In spite of the fact that many inhabitants of our village fled—we decided to remain under the protection of a righteous and democratic state which bears the standard of freedom and equality. But suddenly members of Kibbutz Shachan came and seized our level and productive lands, the lands from which our community supports itself. All that remains to us are mountainous lands from which even weeds have difficulty growing. We begged and pleaded but to no avail, and we now ask this question: We are lawful Israeli citizens—why do you deny us our rights to our lands that have now been declared abandoned lands? Is this equality, is this democracy? (Lustick, p. 13).

Arabs also wander in the villages sometimes without a job and in front of them lie their lands which they are unable to cultivate. This naturally led to more and more antagonism.
Both languages, Hebrew and Arabic, are official languages; they are employed in schools, courts, money, radio, television… However, Hebrew takes precedence over Arabic in many aspects of daily life (Landau, p.85).

A contradiction arises between the elements of democracy and Jewishness along which the principles of the state of Israel are built. When Israel accepted resolution 181, it accepted to guarantee equal rights to all persons. Democratically, Arabs should be equal to Israeli citizens. However, Israel practiced a discriminatory policy against Arabs (Rouhana, p.44).

An essential factor confronting this minority group is the absence of a national leadership able to defend the Arabs and stand in the face of Jewish maltreatment. Before the 1948 war, large powerful families represented the national movement and stood in the face of Zionism. But when these families left in 1948, there was no political elite to replace them (Lustick, p.48).

C- Parties’ Perspectives:

Until the 1990s, Israel has ignored the existence of the Palestine problem. According to Israel, there was a refugee problem that could be solved by resettlement (Hawary, Mohammad, 2001, p.39). The Israeli official position regarding the refugee issue revolved around the fact that Israel was not responsible for creating the refugee problem (Hallaj, Mohammad, 1994, p.11). They argued that the Arabs had left voluntarily and were asked to do so by Palestinian and Arab authorities (Takkenberg, p.15). New Israeli historians like Morris and Pappe have challenged this idea and established that the founding of the state of Israel was not merely a miraculous victory (Takkenberg, p.15).
Israel has always been trying to convince the Arabs, the Palestinians and the world at large that the refugee problem could be solved by resettlement. They wanted to apply the European experience when millions of refugees of defeated powers after WWI were settled elsewhere and began a new life. Germany, for example, has absorbed refugees from Czechoslovakia and Silesia. Israel wanted to apply similar examples to the Middle East case ignoring the historical difference in the experience (Gelber, p.301).

Israelis do not acknowledge responsibility for creating the refugee problem. According to Shamir, Arabs do exist in Judea, Samaria and the Gaza district but there are no Palestinian people. There are “residents in refugee camps” he says. In general, he presumes that there’s no Palestinian territory and even the West Bank and Gaza Strip are not Palestinian territory. This brings him to the conclusion that there’s no Palestinian Diaspora and hence no Palestinian problem (Khalidi, Walid, p.179).

Israel has always followed the same approach with dealing with the refugee issue. It stressed that the refugee issue could only be solved within the context of a general peace settlement. This policy was first established by David Ben Gurion in 1948 where he stated:

When the Arab states are ready to conclude a peace treaty with Israel this question [of refugees] will come up for constructive solution as part of a general settlement, and with due regard to our counter-claims in respect of the destruction of Jewish lives and property, the long-term interests of the Jewish and Arab populations, the stability of the State of Israel and the durability of the peace between it and its neighbors, the actual fate and position of the Jewish communities in the Arab countries, the responsibility for repatriation, will all be relevant in the question whether, to what extent, and under what conditions, the former Arab residents of the territory of Israel should be allowed to return (Bowker, p.101).
For Palestinians and the Arab world, the question of refugees is a political and not a humanitarian question. It does have a humanitarian aspect but it is national and political to a greater extent. Another element in Arab thinking is that the question of refugees does not involve only those receiving UNRWA assistance but rather the whole of Palestinians who were displaced in the Arab-Israeli conflicts. Another position taken regarding the problem is that any solution has to be made in the context of international law and UN resolutions, particularly resolution 194 that affirms the right of return and the right to compensation (Hallaj, p.11). This is basically the general position of Palestinians and Arabs regarding the refugee issue.

Arabs and Palestinians rejected Israel’s way of solving the refugee issue. According to them Israel was responsible for creating the refugee problem and it was not the Arabs who have to solve the issue (Gelber, p.301). For Palestinians, acknowledging the right of return is a fundamental matter even though this right might not be exercised. The Palestinians, however, have no clear defined notion as what constitutes the right of return; whether it means the return of all the Palestinians to their homes or some of them to a limited part of Palestine (Bowker, p.98).

Opting for a peaceful resolution of the conflict based on resolutions 181, 242 and 338, the PLO could not think of exercising the right of self-determination inside the state of Israel (Bowker, p.99). This awakening to the right to self-determination was the fruit of years of suffering that built inside Palestinians the need to assert their identity. Perhaps the most important phase of the evolution of the identity was the ‘intifada’ in which the world realized the extent of Palestinians’ hurt.
Moving to the leadership of Palestinians, the commitment to the right of return has clearly waned. Arafat’s addressing the UN General assembly in 1974 differed from that of 1988 after the acceptance of resolution 242. In the 1970s, he was affirming the right to self-determination and right of return to the homeland. Later on he addressed the issue of refugees in accordance with UN resolutions while seeking a comprehensive settlement with Israel based on resolutions 242 and 338 (Bowker, p.100).

It is clear that Palestinians and Jews not only differ in their views about the solution of the problem but about the facts that created the problem, each party assessing the circumstances that led to the refugee issue differently (Quigley, John, 1998).
Chapter V

International Law Contribution to Palestinian Refugees

In a comparative study on refugee repatriation, Michael Dumper highlights the major factors that rendered the Palestinian refugee case a unique and sensitive one. The uniqueness of the issue lies first in the longevity of the problem in which Dumper refers to it as a "multigenerational case" (Dumper, Michael, 2006, p.5). The issue dates back to 1948 and has passed through many phases over the years that changed its character. Besides, the element of demography plays a great part here where the number of refugees have multiplied. Two other important factors affecting the case of Palestinian refugees were the nature of displacement and the lack of sovereignty that the Palestinians had over the historic territory. These factors are interrelated. The nature of displacement was characterized by the practice of expulsion. Israel was established as a state exclusively for the Jewish people and any return of the Palestinian population would undermine its ‘raison d’être’ (Dumper, 2006, p.7). The lack of sovereignty over historic Palestine has added another element of complexity to the problem. There were many cases of occupation in the world referred to also as ‘secessionist conflicts’ such as in Cambodia. Repatriation has taken place while nation-building was being established. In the Palestinian case, leadership is limited to the West Bank and Gaza and any return would basically be one to a new state and not to where the refugees have originally came from (Dumper, 2006, p.8).

The Palestinian case was considered a unique case that needs special attention from the UN. When the UNHCR statute and the Refugee Convention were drafted, Palestinian refugees were discussed and their case seemed to demand special attention. Palestinians were persecuted
and they were considered under the definition of refugees in the Refugee Convention. Theirs was a unique situation because "the obstacle to their repatriation was not dissatisfaction with their homeland, but the fact that a Member of the United Nations was preventing their return" (Akram, p.40). Since the reason is not dissatisfaction, which is required by Article 1 of the Refugee convention, it is considered a special case. Because of the uniqueness of their situation, Palestinian refugees and stateless persons were excluded from the mentioned instruments and the UN decided to establish a special regime for them (Akram, p.40).

A state usually grants protection to its nationals and demands repatriation from the violating state. Arab host countries could not demand repatriation and protest against Israel for its actions against Palestinians because they were not their nationals but Palestinian nationals (Wright, p.19). These states could rather protest at the humanitarian level or human rights level. The UN affirms the right of refugees under general principles of international law dealing with human rights (Wright, p.20).

As was mentioned above, the case of Palestinians is a special case and for that, a separate regime was created to assume responsibility of the problem. This special regime consists of basic provisions of the 1951 Refugee Convention and the statute of UNHCR and two special agencies created by the UN to protect the refugees. These agencies are the United Nations Conciliation Commission on Palestine (UNCCP) and the United Nations Relief and Works Agency for Palestine Refugees (UNRWA) which will be discussed later on. The regime is also based on the UN resolutions regarding Palestinian refugees (Akram, p.38). As an important international forum for the application of international law with the basic rights it entails, the UN contributed a lot to the problem of refugees with the numerous resolutions throughout the years.
A- UN resolutions:

The General Assembly facilitates the making of international law. States in the world community can formulate legal rules and principles through multilateral conferences. Provisions in the UN Charter operate in the context of international law. So the General Assembly has always been used as an instrument to solve international legal issues (Mallison, p.145).

The international community and every party concerned (with the exception of Israel) agree that the 1948 Palestinian refugees should enjoy the right of return and they have urged Israel to recognize this right (Quigley, p.151). The General Assembly of the UN has passed many resolutions affirming this right. A question arises on whether these resolutions are considered as law making or not. According to Hersch Lauterpacht, “decisions of the General Assembly... are not legally binding upon the Members of the UN”. They “refer to recommendations... whose legal effect, although not altogether absent,... appears to be no more than a moral obligation” (Stone, p.29).

The right of return is considered by some as part of customary international law. It is such a common practice that people leave and return to their homes in their everyday life. Hence, little attention was given to the legal concept of this right (Takkenberg, p.232).

With the UN failure with resolution 181, it tried to make up for this failure by affirming the rights of the Palestinians displaced to return to their homes. The first effort to resolve the situation was made by Count Bernadotte, the UN mediator for the Palestine conflict. He focused on the need for repatriation of the large number of displaced Palestinians. He considered this an urgent matter and urged Israeli authorities to repatriate (Quigley, p.153). He also called for the reconsideration of resolution 181 which divided territories between Jews and Arabs. One day
before his assassination, he submitted a Progress Report in which he dealt with the question of refugees under the heading of “Right of Repatriation”. In his report he mentions that “the right of innocent people, uprooted from their homes by present terror and ravages of war, to return to their homes, should be affirmed and made effective with assurance of adequate compensation for the property of those who may choose not to return” (Al-Qasem, p.133). According to Bernadotte, the right of return should be affirmed and not established as it is an old right based on state practice and was considered an established part of customary international law (Mallison, p.177). He made specific recommendations to the UN regarding the subject and affirmed that:

> The right of the Arab Refugees to return to their homes in Jewish-controlled territory at the earliest possible date should be affirmed by the UN, and their repatriation, resettlement and economic and social rehabilitation, and payment of adequate compensation for the property of those choosing not to return, should be supervised and assisted by the UN Conciliation Commission…” (Mallison, p.177).

Count Bernadotte’s mission ended on 17 September, 1948 when he was assassinated by Israeli terrorists. On the basis of the report submitted by Bernadotte, the UN General Assembly adopted Resolution 194(III) on 11 December, 1948 which asserts the right of Palestinian refugees to repatriate. The resolution consisted of 15 paragraphs and it established a Conciliation Commission for Palestine composed of three member states of the UN (France, Turkey and the U.S.). This commission was part of the international regime to protect the refugees and was instructed to continue the work entrusted previously to the UN Mediator and assist the governments and authorities involved in the conflict to achieve and facilitate a peaceful settlement between the parties (Mallison, p.178).
In paragraph 11 of the resolution, on the question of refugees, 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 the 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 (Mallison, p.178).

The General Assembly also “instructs the Conciliation Commission to facilitate the repatriation, resettlement and economic and social rehabilitation of refugees” (Mallison, p.178). It assumed that the government of Israel would cooperate with the conciliation commission. However, this was not the case. The resolution divided refugees into categories: those wishing to return and those choosing not to return. Therefore, the choice was left for refugees. The stress was also on ‘their homes’ indicating that the refugees have the right to return to their previous homes whether this home is in the Jewish-controlled area or outside it. The resolution also specified that refugees returning must be willing to live at peace with their neighbors. There is also the element of time where, according to the resolution, this return must be at the ‘earliest practicable date’ which means that this date has not yet arrived. The General Assembly assumed that return would be achieved by diplomatic means through the conciliation commission and any return would require a period of time to implement (Quigley, John, 1998). Lastly there’s the issue of compensation which is given by the government responsible for the damages, in this case Israel (Al-Qasem, p.134). A controversy arose concerning the right to compensation wondering whether only non-returning refugees are entitled to compensation only. The UNCCP interpreted the resolution covering compensation as applicable to both returning and non-returning refugees (Fischback, p.84). This would later on also bring about controversy among
parties as to who is entitled to compensation. Moreover, the principles in the resolution must be applied to Arabs who had left their homes from Israeli controlled territories and also to Jews who fled from Arab occupied territories. The conciliation commission regarded compensation an integral part in the refugee issue whether the choice was for repatriation or resettlement. The conciliation commission considered compensation to be a matter that can be postponed to a later stage after repatriation. The commission thought that it was a simple matter. However, later on it realized the realities of the problem especially when many of the properties were demolished or taken over by Jewish immigrants (UN, 1970, p.42).

All these factors and their application are shaped by how Israel perceives the situation bearing in mind that it has not yet acknowledged responsibility for the refugees’ problem.

The Conciliation Commission for Palestine has interpreted the resolution as such:

The General Assembly had laid down the principle of the right of the refugees to exercise a free choice between returning to their homes and being compensated for the loss or damage to their property on the one hand, or, on the other, of not returning to their homes and being adequately compensated for the value of the property abandoned by them (Mallison, p.180).

What was basically reflected to in paragraph 11 of the resolution is the assumption that the government of Israel would cooperate in ‘good faith’ with the Conciliation Commission and take all possible steps to assist in the implementation of the resolution (Mallison, p.179). This is shown in the use of conciliatory wording of the resolution. The assumption, however, was misplaced and Israel did not respond. Hence, the efforts of the Conciliation Commission to implement the resolution were doomed to failure. Nevertheless, the General Assembly continued to affirm the right of return and called for Israel to facilitate that return. The resolution

43
has remained operative and became the basis for all subsequent resolutions adopted by the General Assembly.

The second agency created by the UN to protect refugees was UNRWA. Palestinian refugees received assistance from the United Nations Relief and Works Agency (UNRWA). This agency is a subsidiary organ of the UN established by the G.A. in 1949. (Goodwin-Gill, p.91). It was established as a result of resolution 302 (IV) upon the recommendation of the Economic Survey Mission. The basic purpose for its establishment was to deal with matters of relief, resettlement and rehabilitation for refugees who left the territory under the British Mandate for Palestine regardless of nationality (UN, 1970, p.50). UNRWA defined Palestinian refugees as “persons whose normal place of residence was Palestine between June 1946 and May 1948, who lost both their homes and means of livelihood as a result of the 1948 Arab-Israeli conflict” (UNRWA, www.un.org). This definition defines the nature of the assistance to the refugees. The assistance is limited to refugees who are in need and is different from the definitions in the Refugee Convention and the UNHCR statute. Its mandate stipulates that assistance was to be in the form of food, shelter and clothing and does not extend to protecting human rights and freedoms that are guaranteed by the 1951 Refugee convention and UNHCR statute (Akram, p.39).

The difference in dealing with the Palestinian refugees as needing special treatment was indicated in Article 1D of the 1951 Refugee Convention:

This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.

When such protection or assistance has ceased for any reason, without the position of such persons being definitely settled in
accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall *ipsos facto* be entitled to the benefits of this Convention (Akram, p. 39).

This means that the UNHCR does not protect Palestinian refugees in areas where UNRWA operates.

UNRWA’s task is not to find a comprehensive solution to the Arab-Israeli conflict; it is the responsibility of the parties to the conflict and other actors (UNRWA, www.unrwa.org., January 2007). It was not given clear guidelines regarding the search for political solutions to the refugee issue (Bowker, p. 125). Its operations began in 1950 and the UN has repeatedly renewed its mandate since there was no solution to the refugee problem. It is financed by voluntary contributions from governments. One way or another, UNRWA guaranteed basic rights for the Palestinian refugees. Besides the routine assistance offered to refugees in the fields of education, health and relief programmes, it tried to integrate Palestinians locally wherever they were as an alternative to repatriation. Its basic efforts remained in facilitating the bad conditions of the refugees until their situation is solved. It should have been intended to function until the refugees are able to exercise the right of return. The operations of the agency evolved over time to meet needs and new changing circumstances (UNRWA, www.unrwa.org., Jan. 2007). UNRWA’s function later on shifted by helping refugees’ integration in the host countries (Bowker, p. 126). Its role was not only restricted to assistance but also to international protection (Takkenberg, p. 280).

UNRWA’s assistance took on a political dimension that affected Palestinians’ nation-building process. This change was due to change in circumstances in which UNRWA operated where it was coupled with the rise of the Palestinian national movement (Al-Husseini, Jalal,
Winter 200, p.51). The rehabilitation of Palestinian society took place and this had a sociopolitical impact. The status of UNRWA prevented any interference from host governments and so it became a forum for Palestinian activism and action (Ex.: Fatah and other organizations). Members of the nationalist parties started securing positions in the agency. Because of the education that UNRWA helped provide, there was increase in political awareness and modernization among Palestinians. This assistance contributed indirectly to Palestinian political consciousness and awareness leading to political activism and the right of return, self-determination and nationhood. So, UNRWA was considered a “quasi-political representative for the Palestinians on the international stage” (Al-Husseini, p.53).

UNRWA faced confrontations with the occupying authority. After the 1967 war, it was faced with security operations in the occupied territories. When Israel started to demolish houses and shelters, UNRWA protested by referring to the Fourth Geneva convention that prohibits collective punishment and destruction of civilian property. However, the demolitions continued and UNRWA was faced with the nature of its presence between both the refugees and the authorities of the occupying power (Takkenberg, p.281).

There’s a ‘protection gap’ in areas in the Middle East where UNRWA operates. Palestinians in Arab states (except in Jordan) have very few benefits that are considered as ‘right’. These benefits are ‘privileges’ and can be terminated at any time especially when UNRWA Arab states are not signatories to the Refugee convention. Even in states not under UNRWA protection, most are also not signatories of the Refugee Convention nor of conventions protecting stateless persons. This makes the situation of Palestinian refugees precarious. In general, their legal positions depend on the administrative policies of host states that may change at any time (Akram, p.44).
After the failure of Resolution 194(III), the General Assembly adopted resolution 513(IV) in 1952 in which it establishes that its provisions were “without prejudice to the repatriation provisions of resolution 194, paragraph 11” (Mallison, p.180). Resettlement was added as an alternative to repatriation. Israel urged the Arab states to accept the refugees and the UN somehow turned to this approach in the 50s and 60s. One would have assumed that resettlement was chosen over repatriation, hence diminishing the value of the right of return. Western observers along with Count Bernadotte himself have somehow realized from the beginning that Israel would not allow the return of refugees and that many refugees are not willing to return and succumb to Jewish rule. They understood that resettlement was to be the practical solution but this option was not addressed previously in Resolution 194 (Morris, p.549).

The hostilities of June 1967 brought to the UN a greater challenge in attempting to solve the refugee issue especially with the wave of the new refugees. The issue of return has broadened in scope especially when many 1948 refugees became refugees for the second time (Takkenberg, p.246). Resolution 237 was adopted and called upon the government of Israel to “facilitate the return of the inhabitants who have fled the areas since the outbreak of hostilities” (Mallison, p.188). The 1967 war led to the famous Security Council Resolution 242. The resolution did not affirm the right of return per se (Al-Qasem, p.141). It only called for the “just settlement of the refugee problem” (Quigley, p.165). The resolution did not refer in details to the refugee problem but only called for its just settlement.

Since the problem now involved 1948 as well as 1967 refugees, the General Assembly adopted resolution 2452 with its two sections. Section B went in line with resolutions 194 and 513. In this resolution the General Assembly,
Notes with deep regret that repatriation or compensation of the refugees as provided for in paragraph 11 of G.A. resolution 194(III) has not been effected, that no substantial progress has been made in the programme endorsed in paragraph 2 of resolution 513(IV) for the reintegration of refugees either by repatriation or resettlement and that, therefore, the situation of the refugees continues to be a matter of serious concern (Mallison, p.181).

In the same resolution the UN requests the conciliation commission to continue its work and effort in trying to implement resolution 194(III).

The General Assembly after that adopted resolution 2452A by recalling Security Council Resolution 237 and dealing with the refugees. It emphasizes on refugees’ “speedy return to their homes and to the camps which they had formerly occupied” (Mallison, p.182). The General Assembly went further to address the government of Israel directly instead of the conciliation commission. It “calls upon the Government of Israel to take effective and immediate steps for the return without delay of those inhabitants who fled the areas since the outbreak of hostilities” (Tohme, p.24). The resolution also calls upon the Secretary General to follow and report upon the implementation of the resolution.

Resolution 2535A was adopted in 1969 concerning the 1948 refugees and recalling resolutions 194, 513 and 2452. It shows regret that the 1948 refugees have not yet been repatriated or resettled. Similarly, resolution 2535B deals with the 1967 refugees and also calls for the implementation of previous resolutions regarding those refugees and affirms “the inalienable rights of the people of Palestine” (Mallison, p.183).

After the October 1973 war, Resolution 3089 was established and it dealt with the 1948 refugees, 1967 refugees and those displaced from the Gaza Strip and other areas as a result of the
war. It also affirms the right of return (Mallison, p.184). The resolution shows increasing international support for Palestinian rights. In this resolution, the right of Palestinians to self-determination and their right of return became linked together. The right of return became a condition for the exercise of self-determination (Armanazi, p.93). Section D of the resolution deals with this issue: the General Assembly

*Declarations* that full respect for and realization of the inalienable rights of the people of Palestine, particularly its right to self-determination, are indispensable for the establishment of a just and lasting peace in the Middle East, and that the enjoyment by the Palestine Arab refugees of their right to return to their homes and property, recognized by the General Assembly in resolution 194(III) of 11 December 1948, which has been repeatedly reaffirmed by the General Assembly since that date, is indispensable for the achievement of a just settlement of the refugee problem and for the exercise by the people of Palestine of its right to self-determination (Armanazi, p.93).

One of the most fundamental resolutions adopted by the General Assembly is Resolution 3236 of November 1974 in which it stressed on the ‘inalienable rights’ of the Palestinian people insinuating that this right cannot be terminated. The General Assembly “reaffirms also the inalienable rights of the Palestinians to return to their homes and property from which they have been displaced and uprooted, and calls for their return” (Mallison, p.185). The right of return is characterized here as ‘inalienable’ and the stress on ‘their homes and property’ mean the areas in the state of Israel (included in the partition resolution 181) and the other areas in the occupied territories since 1967. Therefore, Resolution 3236 complements resolution 181 affirming the principle of two national states in Palestine (Mallison, p.188). Another basic feature of the resolution was that it stressed on the right of Palestinians as a people who have been denied national rights and not a problem of refugees; it did not use the term ‘refugee’ (Takkenberg,
The resolution, in general, stipulates that Palestinian refugees have an absolute right to return and return to pursue their separate nationalist identity (Radley, p.607).

B- The Impact of UN Resolutions on the Refugee Issue:

Ever since the emergence of the refugee problem in 1948, the UN has had an increasing role in solving the issue. Resolution 194 remains the basis for any right of return and for subsequent UN resolutions. The General Assembly establishes that every refugee is ‘ipso fact’ entitled to return to his home and those choosing not to return should be compensated. The UN Charter and the authority that the Security Council enjoys must have seen to the accordance of human rights protected under the Geneva Convention of 1949. If this violation continued then Chapter 7 of the UN Charter would be considered the basis of forceful interference to terminate this violation. The veto power prevented any interference on the part of the S.C. (Nuseibeh, p.51). Unfortunately, the Security Council til now is unable to enforce the implementation of its resolutions and the 4th Geneva Convention. One of the precepts of the Convention is the protection of the status quo in territories under occupation. It is considered binding under international law and hence under General Assembly and Security Council resolutions (Nuseibeh, p.33). Although Israel’s membership to the UN was conditional upon its acceptance and implementation of UN resolutions dealing with repatriation of refugees, it did not abide by the condition. Resolution 273 came out with regard to this issue where Israel was asked to ‘respect unreservedly UN resolutions pertaining to the Arab-Israeli conflict’ (Aruri, Naseer, H., 2001, p.261). Israel declared that it “unreservedly accepts the obligations of the United Nations Charter and undertakes to honor them from the day when it becomes a Member of the United Nations” (Tohmeh, p.12). Israel was admitted to the UN without abiding by the resolution, thus diminishing the value of UN resolutions and prolonging the refugee crisis (Aruri, p.261). Things
became complicated more so with the different factors and parties involved in the problem that deviated efforts from the UN to political compromise and hence, diminishing the value of the resolutions.
Chapter VI

The Right of Return in International Law: Its Evolution

The right of return remains a fundamental aspect of the Palestinian refugees. It derives from basic principles established by international conventions and treaties that bind states signatories to it, even Israel (Akram, p.41).

A- Israel’s Refusal of the Right of Return:

The idea of return has always plagued Israelis with the fear that such return to any part of Palestine would threaten the legitimacy and permanency of the Zionist enterprise and Arab-Jewish demographic balance (Khalidi, Rashid, I., 1992, p.29). *Tikkun*, in an interview with Benny Morris, asked the historian about the right of return and how it undermines the Jewish character of the state. He said that the state of Israel was planned by the founders of Zionism and is composed of a majority of Jews. If millions of Palestinians were to return, there would almost be a balanced population and hence no longer a Jewish state (Tikkun, Mar/Apr 2001). Morris also mentions the element of physical danger. According to him, Palestinians returning to Israel would be filled with anger for the way they had been treated and for the destruction of their homes and villages. Thus, Jews would be facing physical danger and governing the country would become impossible. This still seems the position of the Israeli government up to this day. In an interview with Olmert in the New York Times, he absolutely rejects any right to return to Israel. He says: “I would not allow a single Palestinian refugee to return to what is now Israel” (Erlanger, Steven, 2007, March 31). He blames the refugees’ problem on Arab nations’ attack on Israel and therefore, he ignores any responsibility toward their plight.
Israel has continuously argued that the return of refugees would threaten its national security and destroy the Jewish character of the state (Hawary, Mohammad 2001, p.37). Israel did not want to repatriate refugees for fear that they would be hostile to her. Any return to areas within the state of Israel would have implied a change in the ‘Jewish character’ of the state of Israel. This matter was considered by the Israeli Defense Minister Dayan after the hostilities of 1967. He was asked about Israel’s ability to absorb Arabs in the occupied territories and he replied by saying that:

Economically we can; but I think that is not in accord with our aims in the future. It would turn Israel into either a binational or poly-Arab-Jewish state instead of the Jewish State, and we want to have a Jewish state. We can absorb them, but then it won’t be the same country (Mallison, p.186).

Stressing on the ‘Jewish character’ of the state is discriminatory and violates the Human Rights provisions of the partition resolution. In a study on the right of return, Salman Abu-Sitta quoted the words of a jurist: “the Jewish character is really a euphemism for the Zionist discriminatory statutes of the State of Israel which violate the human rights provisions... the UN is under no more of legal obligation to maintain Zionism in Israel than it is to maintain apartheid in the Republic of South Africa” (Abu-Sitta, Salman, 2001, p.202). This is both immoral and illegal. Many international law bodies like the Human Rights Committee, the Committee on the Elimination of Racial Discrimination,... have condemned Israeli behavior and practice toward Palestinians. Hence, the international community could not accept the premise of the ‘Jewish character’ as a basis for denying the right of return (Abu-Sitta, p.202).

Israel opposed the right of return by first, passing a series of laws transforming Arab-owned lands into absentee property which makes it easier for it to expropriate by the Jewish
national fund. Second, by passing the “Law of Return” where any Jew born anywhere has the right to reside in is and acquire automatic citizenship (Said, p.49).

Then, Israel followed an anti-repatriation policy first by demolishing villages in order to change the status quo and make return and impractical possibility. Even though the UN continued to affirm the right of return it was not willing to confront Israel. In addition, being a supporter of Israel, the U.S. no longer supported the right of return as it did before (Pappe, p.246).

B- Practical Limitations:

An important consideration when talking about the right of return is that of the nature of the status quo and how it has evolved over the past years to make it difficult or even prevent that return. Many refugees, when given the choice, would not want to return to live under Jewish rule. The economic, demographic and social conditions in Palestine have evolved. Jews always express this fact by pointing out that “…the wheel of history cannot be turned back… Israel cannot in the name of humanitarianism be driven to commit suicide” (Morris, p.560).

The Director General of the Foreign Ministry, Eytan, wrote to Claude de Boisanger, the French chairman of the PCC and expressed this belief by saying:

The war that was fought in Palestine was bitter and destructive, and it would be doing the refugees a disservice to let them persist in the belief that if they returned, they would find their homes or shops or fields intact. In certain cases, it would be difficult for them even to identify the sites upon which their villages once stood (Morris, p.255).
General Eytan also talked about the Jewish immigrants who entered the country in large numbers and went on to say that their absorption

...might have been impossible altogether if the houses abandoned by the Arabs had not stood empty. As it was, the government took advantage of this vacant accommodation... Generally, it can be said that any Arab house that survived the impact of the war... now shelters a Jewish family. There can be no return to the status quo ante (Morris, p.255).

Salman Abu-Sitta argues against this idea and believes that return is possible. He came up with a scheme to divide Israel into three parts and divide the populations accordingly. He goes on and criticizes Israel by pointing out that there is so much land that Israel is selling Australian and American Jews to come and live in Israel (Abu-Sitta, p.200).

Resettlement became a practical alternative but with the Arab countries refusing to absorb the refugees. The UN favored the option of resettlement in its resolutions in the 1950s and 1960s. One would assume that resettlement became acceptable as repatriation (Quigley, p.163). The UN, however, did not abandon its effort to gain repatriation. The PCC pointed that not all refugees would want to go back to their homes and thus, Arab states should resettle those refugees who decide not to return (Quigley, p.165).

The UN later on goes to the question of financial burden and in one of the resolution adopted in the 1950s, the General Assembly

Considers that, without prejudice to the provisions of paragraph 11 of G.A. Resolution 194 (III) of 11 December 1948, the reintegration of the refugees into the economic life of the Near East, either by repatriation or resettlement, is essential for the time when international assistance is no longer available, and for the realization of conditions of peace and stability in the area (Quigley, p.165).
Another matter affected by the evolution of the status quo is that of compensation. It is the second most important provisions of UN General Assembly resolutions after the right of return. The passage of time has also made it difficult to identify and evaluate abandoned property. The value of properties has also changed since 1948. Other questions affecting compensation have to do with who is entitled to compensation and who will fund for it... (Peretz, Don, 1994, p.17).

Most of the property was transformed and absorbed into Israeli economy. This matter also depends, to a large extent, on the final settlement and what would happen to Palestinians, where they would settle, the boundaries of the future entities... (Takkenberg, p.341).

It is interesting to point out that Germany has entered into negotiations with Jews for the payment of compensation after the ‘holocaust’. Germany, without any external pressure, has paid substantial amounts to Jews persecuted by Nazi Germany. This matter continued where in the 1990s, Israel entered into new negotiations with European powers concerning the question of compensation for the Jews (Finkelstein, Norman, G. 2001, p.272).

When comparing the Palestinian case with that of Bosnia and Herzegovina, some lessons may be derived because of the similarity in the cases. Both cases involved the displacement of a large number of people and confiscation of property through establishing laws. However, the major difference lies in the duration of the problem. The Palestinian case has evolved and after this lapse of time many Palestinians would be reluctant to return for many practical reasons and the other problem has to do with the allocation of resources for plans of resettlement and compensation (PreHitore, p.181).
If one wants to draw any lessons from the case of Bosnia and Herzegovina, one realizes that there are certain circumstances that hinder the return of all refugees. In the case of Bosnia and Herzegovina, only 50% of civilians returned to their original places and many did not want to go back to the countryside. They had previously fled to urban areas that gave them economic opportunities and security (Klein, Menachem, 2006, p.103). After 60 years have passed in the Palestinian case, the physical and social conditions have changed and many 1948 refugees are integrated in their host countries.

C- The Peace Process and the Right of Return:

Many historians criticize resolution 242 and see that “the acceptance of Resolution 242 in the [Israeli-PLO] accords seems to reject a general right of return and repossession” (Quigley, p.165). The Palestine National Council met in Algiers in 1988 and accepted both resolutions 242 and 338 and the partition plan of 1947. Inherent in the partition plan was the legitimacy of both the Palestinian and Israeli state. By accepting the partition plan, Palestinians not only accepted Israel but accepted its legitimacy as well (Khalidi, Walid, p.218).

It also became obvious that since the 1970s, when Palestinians started affirming the right to ‘self determination’, this right seemed to overshadow the right of return that has been advocated for years as a leading principle of the Palestinian cause. Until 1974, the issue of return was always part of liberating the whole of Palestine. Since 1968, return was conceived as being a natural outcome of total liberation. In fact, the mention of the right of return was absent in many official Palestinian statements. It was not even defined by Palestinians and the PLO has never explained how this right is to be realized (Klein, Menachim, 2001, p.52). In addressing the UN in 1988, Arafat only mentions the right to self-determination, independence and sovereignty. The right of return was a sensitive subject that threatened the process of its ‘coalition-building’
(Klein, 2001, p.49). However, the major shift was in the PNC’s 12th session when the PLO seemed to sacrifice major beliefs. Whereas before a stress was on total liberation of Palestine on which a Palestinian state would be established, the shift became more toward establishing a state on any liberated territory (Suleiman, Jaber, 2001, p.92). The right of return was not overlooked by the PNC in its meeting but, on the contrary, it was the first time that it was discussed separately from liberation (Suleiman, p.94). The meeting affirmed the right of return within the context of UN resolutions.

The Madrid Peace conference was launched on 31 October 1991 and adopted, as a basis, resolutions 242 and 338. In Madrid at the peace conference, no clear mention of the Palestinian refugees. Even when UN passed many resolutions regarding the subject condemning the practices of states as illegal, the US considered the settlements as “an obstacle to peace” (Said, p.239). The Refugee Working Group (RWG) headed by Canada was established to address the issue of refugees. The Palestinian delegations, in their meetings, the issue of return was to be discussed within the framework of resolution 194 (Suleiman, p.97). According to the Palestinians, there could never be a settlement of the issue if there were no recognition of the right of return.

Secret negotiations were under way along with the Madrid talks and they took place in Oslo in 1993. The ‘Declaration of Principles’ was signed between the parties and they agreed on ‘final status’ talks where resolutions 242 and 338 would be implemented.

When Arafat and Rabin attended the ceremony in the White house in 1993 celebrating the beginning of a new era in the relationships between Arabs and Jews, it seemed that peace was under way. According to Arafat, the signing of the accords was very important for the
Palestinians. The PLO which represented national identity for the Palestinians was recognized as the sole representative of the Palestinian people (Rowland, Robert, C. and Frank, David, A., 2002, p.12). Not all Palestinians believed in this victory; to some, Arafat was a traitor. The PLO achieved its objective by becoming the sole representative of the Palestinian people and central player in the Palestine question but it was also the first party that signed an agreement denying refugees their rights that were recognized internationally. By assuming to protect the inalienable and political rights of Palestinians, it has ‘signed away’ the right of return for practical reasons (Aruri, p.262). Palestinians in the Diaspora and refugees outside the occupied territories found themselves without leadership and without identifiable goals. The major catalyst for this thinking was the 1988 Declaration of Independence that took place in Algiers by the PNC. Until that time, the PLO aimed for a Palestinian state in all of Palestine (pre-1948) (Massad, Joseph, 2001, p.105). The defeat of the PLO in the 1982 Israeli invasion and their exile to Tunis not only weakened the PLO but also the Diaspora in general. The ‘intifada’ erupted to stop Israeli oppression but was hijacked by the PLO for fear that a separate Palestinian leadership would be born in the occupied territories. The ‘intifada’ strengthened the West Bank and Gaza Palestinians and hence, the PNC declared the Palestinian state in the West Bank and Gaza as a sign of triumph against Israel (Massad, p.106).

According to Azmi Bisharah, a member of the Israeli Knesset, Israel accepted the PLO in the Oslo Accords but it did not accept Palestinians’ right to self-rule. So the mutual recognition was not based on equality. He goes on to talk about autonomy and how it diminishes the essence of Palestinian nationalism concentrating rather on the question of territory. By accepting autonomy, Palestinians would become a minority under Israeli rule (Fraser, Abigail and Shabat, Avi (2003), p.17). Bisharah opposes the concept of autonomy for ‘non-citizens’ and regards it as
a way of continuing Israeli rule. Palestinians should stress on sovereignty and self-rule. The pre-Oslo period witnessed the rise of PLO nationalism but after signing the DOP the Palestinian problem became confined to refugees of the West Bank and the Gaza Strip (Fraser and Shabat, p.18). Pioneers of the peace process have always excluded the issue of refugees from the agenda. The refugees were mentioned as part of a later stage of negotiations. Israel allowed for the mention of the subject after it made sure from the parties concerned that the issue would not be discussed within the framework of the ‘Right of Return’ (Pappe, p.246). After the issue of sovereignty is resolved the issue of refugees will be dealt with later on. The fact that the refugee issue was at the heart of the Arab-Israeli conflict was overlooked.

The DOP also ignored the role of international law and UN resolutions by ignoring the national rights of the Palestinians, specifically the right of return (Suleiman, p.98). According to Elia Zureik, by accepting the Madrid principles which exclude the UN as an instrument for solving the refugee issue, Palestinians would be weakening their demand for the implementation of the right of return (Bowker, p.159).

Another matter overlooked by the Declaration of Principles was that any solution to the problem was not confined to Israelis and Palestinians alone but to the other parties involved in the conflict like the host countries, Arab neighbors, donor countries, the UN and other international organizations (Takkenberg, p.333).

In general, under international law, refugees have the right to return to their homes and be offered compensation. Perhaps one of the setbacks of resolution 194 was that Arabs should be willing to live in peace with their neighbors. This right, in practice is limited by other factors that may hinder its implementation (Khalidi, Rashid, 1994, p.23).
Palestinians see that there could no peace if Israel does not recognize its responsibility in creating the refugee problem; it could not overlook the dispossession of Palestinians and the 1948 ethnic cleansing (Masalha, 2005, p.4). The injustice done could not be denied if there were to be peace between the two parties. This is what Rashid Khalidi affirms in convening a solution to the refugee problem. Israel must accept the fact that the “deliberate actions of the state’s founding fathers played the major role in making more than half of the Palestinian people refugees between 1947 and 1949” (Khalidi, Rashid, 1994, p.22). This would be a hard thing for Israelis to do since they would be confessing to the injustice they have done. This admission of the injustice would entail the return of the refugees and hence the ‘dissolution’ of the favorable demographic balance characterizing the essence of the state of Israel (Khalidi, Rashid, 1994, p.22). When talking about recognition of responsibility, Prime Minister Barak briefed his cabinet prior to the Camp David summit of 2000 and talked about the red lines and the position of the government of Israel in the negotiations. One of the red lines deals with the issue of recognition of responsibility where he states: “No Israeli recognition of legal or moral responsibility for creating the refugee problem” (MFA, 2000). Also in a previous speech to the Knesset, Barak ‘regrets’ the suffering caused to the Palestinians but does not accept guilt (Badil Resource Center, 1999, October 14).

It is very important, according to Rashid Khalidi, to acknowledge the right of return since by doing that, Palestinians would be accepted as a people with national rights encompassing the right to live in their homeland. Rejecting this right means rejecting Palestinians’ ‘peoplehood’ (Khalidi, Rashid, 1., 1992, p.31).

Rashid Khalidi offers elements of a solution to the refugee problem the most important of which is symbolic recognition by Israel of the wrong done to the Palestinians. In principle, the
right of return must be accepted even if there was a ‘force majeure’ preventing its exercise (destruction of houses, villages,...). Other elements have to do with compensation, right to live in a Palestinian state-to-be,... (Khalidi, Rashid, 1994, p.24). Khalidi summarizes the situation by saying that complete justice could not be attained but the concept of justice within the limits of the possible could be achieved (Khalidi, Rashid, 1994, p.21).

Even if some kind of settlement would work out for the refugees, a group of refugees would definitely be excluded from any settlement and would not likely receive international protection: the internal refugees inside Israel (Pappe, p.246). In 1952, Israeli government took the responsibility of the IDPs from UNRWA and hence, their predicament became an internal issue and ceased to be a refugee problem (Jamal, p.142). International law and international agencies have not contributed to the issue of internally displaced Palestinians. Similarly, their predicament is further marginalized by the peace process.

In the face of the new Palestinian state that was declared in 1988, and in the face of the peace process that definitely overshadowed the right of return, the question arises as to whether the right of return has vanished or not. Most of the Palestinians outside the occupied territories still hold to this right of return. Many left their homes and did not go far hoping to return. It is true that many would not want to return but this does not mean that the right of return would dissolve. The right of return is a universal human right that cannot be discarded by the PLO in an attempt at reaching a settlement (Bowker, p.160).

Salman Abu-Sitta writes in this regard and considers that the right of return is sacred to the Palestinian people to the extent that an Israeli writer wrote: “every people in the world lives in a place, except the Palestinians. The place lives in them” (Abu-Sitta, p.195). Many refugees
remained within close proximity to their homes and refused any schemes of resettlement. Abu-Sitta goes on to stress on the legality of the right of return. This right was affirmed by general principles of international law and the UN. All the major events that took place compromising around this right were not able to demolish it (Abu-Sitta, p.197).

According to the Israeli position on the right of return, Israel considers a return to Israeli territory as a ‘red line’. Moreover, it still reaffirms the idea that Palestinians should be rehabilitated where they are currently residing. Rejecting responsibility for creating their problem means also rejecting accountability for a future settlement. Regarding the issue of compensation, Israel says that the international community will bear the financing of refugee compensation. In general, the Israeli position rejects the role of international law and practice. It also overlooks the UN resolutions passed over the years for the Palestinian case (Badil Resource Center, 1999, October 14).

Palestinians today seem to face a juridical challenge where they are legally paralyzed. Basic UN resolutions and international law provisions have protected the right of these refugees and are considered a jurisprudence for the issue. With the peace process, this jurisprudence has been marginalized (Aruri, p.265).

Stress should be made on the inclusion of Palestinian refugees as a focal point in any peace process. The main focus of the Palestinian political elite seems on preserving power and neglecting major refugee communities (Klein, 2006, p.103).
Chapter VII

Conclusion

It is true that the Palestine question and particularly the refugee issue is a unique situation, unlike refugee situations in history. The passages of time, evolving interest of the parties and their influence over the application of law have increased the uniqueness of the situation, rendering it almost impossible to resolve. It is clear that the experience of the Jews made them triumph in the face of the Palestinians who were already inhabitants of the land of Palestine. It was this strong motivation that allowed them to establish their state especially when the area was already populated. Jews have ignored this fact and perhaps this is the first injustice done to the Palestinians and astonishingly ignored by the international community at that time. One should not forget the support of the Western powers and also the United Nations given to Jews in establishing their homeland. Perhaps the UN was responsible to a certain extent for the creation of the refugee problem by deciding to partition the state in Resolution 181 and then later by affirming the legality of the state of Israel in Resolution 194.

Attempts at solving the refugee issue have started with the application of the rule of law through the UN organs and switched later on to political compromise starting with the Madrid process in 1991. One would wonder that if the application of the rule of law did not work in the case of Palestinians then how would other efforts work when the rule of international law is basically stronger. The rules of international law concerning the right of return date back to the pre-1948 era and were practiced in many cases especially after the two World Wars. They are considered customary international law norms that are binding to states by nature of state practice.
In the last century there’s a tendency to shift toward negotiations and political compromise with the US dominating the international arena. Naturally, any settlement would most likely favor US interests that overlap with those of Zionism.

The position of the great powers in the UN and their influence over it through the veto power did not allow the UN to exercise its authority regarding the application of the innumerable resolutions pertaining to the Palestinian refugees. These resolutions have a non-binding character but as members of the UN, states should respect the decisions of the UN especially when many are parties to the resolutions.

Perhaps the basic failure of the UN lay at not preventing the events that led to the creation of the refugees’ problem. Later on it tried to make up for this failure by protecting the refugees and affirming their right to return to their homes from which they were displaced. One could not ignore the effort that was done in this regard but perhaps it was not enough; none of the resolutions were applied. Instead, resolutions 242 and 338 were adopted as a basis for resolving the overall conflict.

This leads one to evaluate the value of the right of return when the Palestinians let go of the absolute right of return for the sake of establishing a state with limited territory. The Palestinians were regarded as having signed away the right of return with the signing of the Declaration of Principles. Evaluating the role of international law in the case of refugees leads to the conclusion that it was basically restricted to humanitarian assistance through UNRWA and other bodies since it was unable to provide a political solution to the problem.

Clearly, the plight of the Palestinian refugees reflects the convergence of several failures that were predictable and not altogether avoidable. These failures involved both parties, in
addition to the UN and the international community as a whole. First, there was the failure of the Palestinians themselves during most of the first half of the twentieth century to establish a credible resistance to the colonial encroachment by the British Mandate and the Zionist movement. The political institutions of the Palestinians remained subject to the whims of urban notables and clergy who failed to organize and execute a credible resistance movement. This failure was predictable as the systematic well organized Zionist program was faced with erratic, haphazard and altogether arbitrary responses from the Palestinians.

The failure of the Palestinians also prevailed during the second half of the twentieth century to establish a credible forum for the protection of their rights of return and for humane treatment, and a credible national liberation movement, particularly after June 1967. This failure was also predictable for the absence within the Palestinian body politics, and the overwhelming determination of the Jewish State to abort any potential of a national liberation movement within the occupied West Bank and Gaza.

Oslo also witnessed the failure of the Palestinians in recognizing that the asymmetrical power conditions are not conducive to a resolution favorable to their rights in an independent state and in any accommodation for the refugees’ problem. This was predictable from the history and strategy of the Jewish State evident in both its activities on the ground and the proclamations of its leaders. The Palestinian leadership was blinded by the futile rewards of pomp for a limited leadership and the fiction of a historical breakthrough.

The setbacks in resolving the Palestinian issue are also a result of the failure of the Jewish State to recognize that unless it addresses the implications of its existence on the surrounding states and on the Palestinians, its survival will always be challenged and will perpetually depend
on the maintenance of a superior military force. The apparent accommodations that states such as Egypt and Jordan offer the Jewish State are always reversible, hence ephemeral. Further, asymmetrical warfare as exemplified in the July 2006 war with Lebanon may tax and thwart the assumed military superiority of the Jewish State. Nuclear deterrence notwithstanding, there will always exist an undercurrent of opposition to the existence of the Jewish State in Palestine.

The failure of Jews lies also in not recognizing that a Jewish State is an anachronistic creation. Ethno-religious purity is by definition anti-humanitarian and xenophobic and represents moral failure. It is not a Jewish State in Palestine that will prevent pogroms in Eastern Europe or a new holocaust in Western Europe. The waves of new immigrants to the Jewish State are the result of economic duress rather than seeking haven from religious persecution. This also predictable as the vision of the state has become more and more dominated by religious visions or a ‘Promised Land’ by an ethnically specific deity.

One could not forego the involvement of the UN in the resolution of the Palestinian refugee issue. However, the UN has also failed in many aspects. With its organs, councils, organizations and subsidiaries, the UN has failed to adhere to its mission in the face of obstacles. The prolonged periods of silence of the UN in the intervals between conflagrations (such as between 1948 and 1967, and between 1973 and 1991) attest to the impotence of the UN in supporting its rules and applying international law in the face of opposition by the Jewish State and US hegemony. This is also a predictable failure as laws and resolutions without the power to enforce them remain meaningless. When UN resolutions are discordant with the position of a major power, these resolutions tend to have a quick demise no matter what the rhetoric of minor nations.
Finally comes the role of the international community and its failure to recognize the fact that the atonement of one massive and dramatic holocaust cannot morally be done by the silence in the face of the perpetuation of another slow and silent holocaust. This is expected to oppose the victims of that holocaust. This includes nations who were silent during that initial holocaust. And as long as nations find no self interest in a cause, they will not participate in that cause.

Societies and governments neighboring Palestine have also failed to recognize that it is altogether inhumane to subject the fate of the Palestinian refugees to the idiosyncrasies of their internal conflicts. The artificial nature of the states surrounding Palestine meant that these invented states had no moral standing to consider the Palestinians as foreigners as their so called foreignness is the result of the arbitrary will of colonial powers that determined where Lebanon ended and Palestine started among the hills of Galilee. To deprive the refugees of most civil rights and in many cases human rights was the tool by which these invented states protected the precarious balance of their internal political conflicts.

In the final analysis, Palestinian refugees face objective conditions on the ground that appear immutable. They have no unified organization in the diaspora independent of the decision making institutions in the occupied West Bank and Gaza, hence their unique needs and status may not be supported adequately during negotiation. They have no inherent power to influence negotiations or a powerful advocate to do it in their stead. The Jewish State is determined to safeguard its ethno-religious character and will unabashedly resist any solution that infringes on that character. Since Oslo, the Palestinians in the diaspora have been eclipsed and marginalized on the international scene and their rights under international law have become entangled with those of their compatriots under occupation. Further, the likelihood of the emergence of an independent Palestinian state that is sovereign and viable to which they may
want to return is becoming remote. Finally, the potential for resettlement within surrounding countries remains inflammatory and difficult.

It is the tragic fate of the Palestinian refugees to remain dispossessed, their estrangement from their land perpetual and their spread in the world even more wide and irreversible.
BIBLIOGRAPHY

Books:


Al-Qasem, Anis. “The Right of Return in International Law.” 

Aruri, Naseer, H. “Towards Convening a Congress of Return and Self-Determination.” 


Dodd, Peter and Halim Barakat. \textit{A Study of the Exodus of the 1967 Palestinian Arab Refugees}. 
Beirut: The Institute of Palestine Studies, 1968.


**Articles in Periodicals:**


**Articles in Magazines:**


**Electronic Publications:**


