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The Right of Return – An Analysis of Recent Debate in the Israeli Press

This Bulletin aims to provide a brief overview of issues related to Palestinian Refugee Rights

The Palestinian position presented at final status negotiations from Camp David II (July 2000) to Taba (December 2000) elicited for the first time since the beginning of the Oslo process, a degree of substantive discussion and debate among Israeli journalists, academics, and political figures about solutions to the Palestinian refugee issue, and in particular, the right of return. The debate ranged from a complete rejection of the right of return to more nuanced approaches that purported to “recognize” the right of return but to limit its implementation through a variety of restrictions or disincentives. The broad objective of these arguments is inherently discriminatory – i.e., to maintain a clear Jewish demographic majority in Israel. While a small minority of Israeli Jews recognize and support full implementation of the right of return of Palestinian refugees, their voices have yet to penetrate mainstream public debate in Israel.

The collapse of the Oslo negotiation process and the move away from a final peace treaty towards indefinite “interim arrangements” under the new Israeli government of Ariel Sharon has meant that the refugee issue has once again faded from the front pages of the Israeli press. Public debate in Israel on the right of return was further hindered when former Justice Minister Yossi Beilin rejected requests in late 2000 to open files in state and IDF archives relating to the displacement/expulsion of Palestinians in 1948 based on claims by senior archivists that the contents of the 50-year-old files would damage Israel’s foreign relations.

This bulletin examines in brief some of the Israeli arguments raised in the Israeli and international media against the right of return in order to advance the debate on a durable solution for Palestinian refugees that is consistent with international law as affirmed in United Nations resolutions (i.e., UNGA 194, 1948). The analysis is not exhaustive. References to newspaper articles examined below are listed at the end of the bulletin.

(1) The Right of Return of Refugees in International Law

Numerous Israeli writers argue that there is no right of return in international law. In fact, however, four separate bodies of international law ground the right of return: the law of nationality (as applied upon state succession), humanitarian law, human rights law, and refugee law. (For a detailed analysis, see BADIL Brief No. 8, “Palestinian Refugees and the Right of Return: An International Law Analysis.”)

In practice, the right of return has been affirmed in many international peace treaties, including peace agreements in the former Yugoslavia (the 1995 Dayton Agreement being the most prominent), Rwanda, Mozambique, Guatemala, and Cambodia among others. Numerous UN resolutions, moreover, have called for and affirmed the right of refugees to return to their homes, from Algeria and Rwanda in the 1960s (GA Res. 1672, 18 December 1961; GA Res. 1743, 27 February 1962) to Bosnia-Herzegovina (e.g., SC Res. 820, 17 April 1993), Georgia (SC Res. 876, 19 October 1993) and Kosovo (SC Res. 1199, 23 September 1998) in the 1990s, among others.

Some Israeli writers acknowledge the existence of an individual right of return in international law but claim that it does not apply to refugees in cases of mass exodus. Despite this assertion, the obligation of states to respect human rights law is not dependent on the number of individuals choosing to exercise a particular human right. As noted in BADIL Brief No. 8,

several international human rights treaties (e.g., Convention on Civil and Political Rights, Convention on the Elimination of All Forms of Discrimination) affirm the right of refugees to return to their homes. UN committees that monitor compliance with these treaties have explicitly affirmed the right of Palestinian refugees to return to their homes of origin inside Israel. Numerous peace agreements, such as those in Rwanda and Georgia, explicitly base the right of return for masses of refugees within the context of international human rights law.

(2) The Right of Return and UNGA Resolution 194 (1948)

Several Israeli writers have argued that UN General Assembly Resolution 194 of 1948 does not establish a "right" of return for Palestinian refugees. In fact, UNGAR 194 did not establish a new right; the Resolution merely *re-affirms* a principle of international law (i.e., the right of return) already considered to be binding upon states in 1948. During the drafting process of UN Resolution 194, for example, the delegation of the United States also acknowledged that paragraph 11 (relating to refugees) simply "endorsed a generally recognized principle." (For more analysis, see BADIL Brief No. 8.)

Other commentators argue that Resolution 194 does not prescribe a particular solution for the plight of Palestinian refugees. In fact, however, Resolution 194 is quite explicit. The first sentence of paragraph 11 affirms three rights that define the appropriate durable solution for Palestinian refugees - i.e., return, restitution (through the express language "return to their homes"), and compensation. The Resolution further states that the implementation of these rights is linked to the choice of each individual refugee. The second sentence of paragraph 11 *instructs* the UN Conciliation Commission for Palestine (UNCCP) to facilitate the implementation of this recommended solution leading to the following tasks: repatriation, resettlement (only if based on the fully voluntary choice of a refugee not to return), compensation, and economic and social rehabilitation.

Since 1948, UN Resolution 194 has acquired even greater binding weight under international law, not only because it affirmed then-binding principles of customary international law, but also because the rights affirmed in paragraph 11 have remained consistent with developments in international law over the past five decades. Furthermore, the resolution has been reaffirmed annually by the UN General Assembly ever since.

(3) The Right of Return as a Right Subject to Negotiation

Several articles in the Israeli press have emphasized that the right of return should be subject to negotiations between Israel and the PLO, the results of which would be interpreted as the implementation of UN Resolution 194. Numerous restrictions and disincentives are proposed in order to limit implementation of the right of return, thereby ensuring the majority status of the Jewish population in Israel. These include limiting the right of return to elderly first-generation refugees (who may not wish to return without their families) and applying an annual quota restriction consisting of a set fraction of annual Jewish immigration to Israel.

A number of writers have also argued that the right of return of Palestinian refugees to Israel is inconsistent with a two-state solution to the Palestinian-Israeli conflict. According to this argument, Palestinian refugees should "return" to a future Palestinian state which would have a "law of return" similar to Israel's 1950 Law of Return. Some commentators have proposed that Palestinian refugees should be resettled on a portion of land transferred from Israel to the future Palestinian state in exchange for permanent Israeli control of Jewish settlements in the 1967 occupied territories.

In contrast to these suggested approaches, the applicability of the right of return to the Palestinian refugee case, as with other rights recognized in international law, is not subject to negotiation. The right of return is a universal, unqualified right in international law (as mentioned above) and applies to all refugees, regardless of their ethnic, religious or national origins. UN Resolution 194 also sets forth an explicit rights-based framework for a durable solution for Palestinian refugees. The objective of any peace negotiation process, rather,

should be to *re-affirm* the rights of refugees and to establish mechanisms and guarantees for the implementation of their rights.

A negotiated agreement, moreover, must provide guarantees that all Palestinian refugees will be permitted to make a free, voluntary, and implementable choice to exercise their right of return. Arbitrary and discriminatory restrictions and disincentives violate the principle of refugee choice. (For more on refugee choice see BADIL Bulletin No. 4.) In the case of refugees choosing to exercise their right to return to their places of origin inside Israel (rather than to an arbitrary plot of land transferred to a future Palestinian state), reform of Israeli citizenship/nationality and land laws will almost certainly be necessary, as has been the case in countries such as Georgia and Bosnia. Several UN committees that monitor implementation of human rights treaties have concluded that Israel should reform its citizenship and land laws in order to facilitate the return of Palestinian refugees.

(4) The “Practicality” of the Right of Return

Numerous articles in the Israeli press have argued that the return of Palestinian refugees is simply not practical because Palestinian refugee villages were destroyed and new Jewish settlements were established directly upon refugee lands. Several writers have argued that the return of refugees would simply consign them to new refugee camps inside Israel. Others are more apocalyptic, suggesting that the return of Palestinian refugees would require the destruction of Jewish towns and cities, thereby creating another cycle of displacement (i.e., it would “push the Jews into the sea”).

Despite these “doomsday” scenarios, recent research clearly demonstrates that there is sufficient space to facilitate the return of Palestinian refugees choosing to return to their places of origin. Seventy-eight percent of the Jewish population resides in some fifteen percent of the land area of Israel. The return of Palestinian refugees would not lead to the displacement of Jewish residents of Israel. In cases where refugees wish to return to homes that were not demolished in 1948, restitution procedures based on international law (housing rights law in particular) -- such as have been applied in places such as Kosovo and Tajikistan -- would protect the rights of both Palestinian returnees and Jewish residents on a non-discriminatory basis. Application of international law principles regarding the human right to adequate housing would also ensure that refugees would not return to a life in new refugee camps inside Israel.

(5) The Right of Return and the Jewish State

Finally, the vast majority of Israeli writers who have written against the right of return consider the return of Palestinian refugees as a “demographic nightmare” and a “dark cloud” that threatens the existence of Israel. Jews would no longer comprise the majority of the population in Israel and would therefore not be able to claim the special rights and privileges currently reserved only for Jews in Israel. The desire to have an exclusively Jewish state, which many writers argue is based upon UN Resolution 181 (Partition Plan), has revived discussion in some Israeli circles on ways to transfer the Palestinian population out of the area, while other commentators have called for emergency measures and even “dictatorship.”

In fact, however, UN General Assembly Resolution 181, which recommended the partition of Palestine into Jewish and Arab states, contained clear provisions for non-discrimination and the protection of minority and religious rights. Moreover, in the proposed Jewish state there would have been basic demographic parity between the Jewish and Palestinian Arab populations in that territory. Regardless of the return of Palestinian refugees, international, Palestinian, and Israeli researchers have all concluded that the Palestinian Arab population in Israel and the 1967 occupied territories will exceed the Jewish population in several decades. Israel’s denial of the right of Palestinian refugees to return to their homes and lands of origin in order to maintain a Jewish demographic majority is based on arbitrary and discriminatory criteria which violate international law and basic moral principles. Such arguments would be equivalent, for example, to discriminatory measures that would aim to maintain a white majority in the United States.

Conclusion

Israeli writers who argue that the right of return does not apply to Palestinian refugees have declared that their position is a special red line that Israel will not cross. In early January 2001, then-Justice Minister Yossi Beilin stated that Israel could never allow Palestinian refugees to return to their homes and places of origin because it would mean that Israel would “be an ordinary state, and not a state as we want it to be.” Others set Israel’s opposition in even starker terms, stating that violent confrontation would be preferable to the return of refugees.

The right of return is a common demand and a universal right grounded in international law, of all refugees who have been involuntarily displaced from their homes and places of origin. In Rwanda and Mozambique, for example, refugees waited for as long as three decades to exercise their right of return. Hundreds of thousands of persons displaced from the southern Caucasus in the 1940s have begun to return to their homelands under a comprehensive process facilitated by the United Nations. In Guatemala, refugees established their own representative body in the late 1980s (Comisiones Permanentes) that negotiated the terms of repatriation directly with the government of Guatemala. In Bosnia-Herzegovina, refugees from different ethnic groups banded together (Coalition for Return) to lobby for the right of return. The implementation of the right of return for Palestinian refugees, like refugees in all other parts of the world, will be central to a just and durable solution of the Palestinian/Arab – Israeli conflict.

Sample References:

The Israeli Public Debate on the Palestinian Right of Return

(1) The Right of Return of Refugees in International Law

“The very existence of a natural right to the overall return of war refugees to the areas from which they were driven out, fled or were removed, is controversial in international law and it is hard to find consistent support for it even in international treaties.” (Dani Rubinstein, journalist, Ha’aretz, 4 January 2001)

The right of return is “*neither demanded nor granted to other refugees.*” (Mark Heller, researcher, Tel Aviv University Jaffe Centre for Strategic Studies, Globe & Mail, 14 July 2000)

The right of return in human rights law “*was intended to apply to individuals asserting an individual right and not to masses of people who have left as a byproduct of war.*” (Ruth Lapidoth, professor of international law, Hebrew University, Globe & Mail, 16 January 2001)

(2) The Right of Return and UNGA Resolution 194 (1948)

“[R]esolution [194] does not establish a ‘right’ at all, let alone an eternal and unconditional ‘right.’ As opposed to UN Security Council resolutions, the General Assembly resolutions have no binding international standing. They are merely recommendations.” (Shlomo Gazit, retired Israeli general, Jerusalem Post, 6 February 2001)

“Resolution 194 does not prescribe any particular solution nor dictate any particular time frame for carrying out its recommended returns.” (Ruth Lapidoth, professor of international law, Hebrew University, Globe & Mail, 16 January 2001)

“[Yossi] Beilin [former Justice Minister] argues that Resolution 194 never mentions the word ‘Israel.’ It does not blame Israel for creating the refugee problem, nor does it hold Israel responsible for solving it. UN Resolution 194 also does not mention the ‘nationality’ of the refugees.” (Aluf Benn, journalist, Ha’aretz, 25 December 2000)

(3) The Right of Return as a Right Subject to Negotiation

“Israel should emphasize that the negotiations will result in the refugees having specific mutually agreed upon rights.” (Jerome Segal, University of Maryland, distributed by the Israel-Palestine Center for Research and Information-IPCRI and reprinted in Ha’aretz)

“[The] idea is to offer the refugees a menu of alternative options sufficiently attractive so as to avoid any need to restrict implementation. Ideally then it would just work out that 95% of the refugees would just decide to accept compensation and resettlement elsewhere rather than returning to Israel.” (Jerome Segal, University of Maryland, distributed by the Israel-Palestine Center for Research and Information-IPCRI and reprinted in Ha’aretz)

“Israelis might suggest that the rate of return be limited to a certain percentage of the annual immigration under the Law of Return for Jews. Thus, if in the previous year 50,000 Jews immigrated under the Law of Return, then 1/5 of that number of Palestinians might be allowed to return in the following year ... Those who didn’t fall in the annual quota would have to wait in a queue, and the longer the queue got the longer they wait and thus refugees would be less inclined to return to Israel and choose other options.” (Jerome Segal, University of Maryland, distributed by the Israel-Palestine Center for Research and Information-IPCRI and reprinted in Ha’aretz)

“[T]he Beilin Abu Mazen document [proposes] Israel could transfer the Halutza Sands area in the Negev to the Palestinians to resettle the refugees and implement the right of return.” (Dan Margalit, Ha’aretz, 17 July 2000)

“[A]fter Israel and the PLO agreed to partition Palestine into two states – one Jewish and one Palestinian – the Palestinians cannot continue to argue that the Jewish state is the Palestinian’s own country and that they are therefore entitled to return to it.” (Joel Singer, former legal advisor to the Israeli Ministry of Foreign Affairs and a chief negotiator of the Oslo Agreements for the Rabin-Peres government, “No Palestinian ‘Return’ to Israel,” American Bar Association Journal, January 2001)

“[] Palestinians clearly have a right to a law of return, such as we have, in the Palestinian state and we would assume and hope that the refugee issue would be resolved within the confines of the Palestinian state, with the possibility of some family reunifications for refugees in Israel.” (Peace Now, excerpts from IMRA interview by Aaron Lerner, 29 August 2000)

(4) The “Practicality” of the Right of Return

“When the UN Resolution [194] was adopted, the Palestinian homes and property were still existent. Since then the homes were destroyed and a new and completely different system of settlements established.” *“While the principle of ‘return to their original houses’ was fitting and possible in 1948, it has not been a realistic option for years. Implementing it today would mean dismantling and destroying the new infrastructure built in the last 50 years.”* (Shlomo Gazit, retired Israeli General, Jerusalem Post, 6 February 2001)

“One wonders why the PA would perpetuate the refugees’ misery by moving them from refugee camps in Lebanon or Gaza to refugee camps in Israel, as most of them would be unable to return to their original houses, even if Israel agrees to accept them within its borders.” (Zvi Bar’el, Ha’aretz, 31 December 2000)

(5) The Right of Return and the Jewish State

“The Jewish majority’s explicit desire to retain its numerical superiority is almost embarrassingly transparent in recent days.” *“Such an aspiration is neither jingoistic nor racist, [] it beats in the hearts of every nation.”* *“It is important to remind of the fact that Israel is the only country established by a decision of the United Nations [UN Resolution 181 of 1947].”* (David Grossman, author, Norwegian press, January 2001)

"Israel's demographic future is, in its own right, enveloped in dark clouds." (Avraham Tal, Ha'aretz, 28 December 2000).

"The Palestinian family reunification tree will go back as far as the Prophet Mohammed and will put an end to the Jewish state." (Dan Margalit, Ha'aretz, 17 July 2000)

"In the face of the promise to return to Acre and Jaffa, nurtured by Palestinians for more than 50 years, Israel has decided it will not commit suicide." (Uzi Benziman, Ha'aretz, 31 December 2000)

"I am convinced that this is not the only red line, but it is a special red line, because the moment Israel loses its Jewish majority, it will lose its national character. It will not be able to exist with the same contents of its creation, since it will be an ordinary state, and not a state as we want it to be." (Yossi Beilin, Al-Quds, 5 January 2001, via FBIS/WNC)

"If Israel must choose between making concessions on [the right of return] and going to war, it would be preferable to risk the possibility of a violent confrontation." (Ze'ev Shiff, Ha'aretz, 3 January 2001)

"I have heard and read carefully the predictions of demographers, and I see the writing on the wall. In the current process, if Israel does not take the necessary steps, it will cease to exist as a Jewish state, as a state with a clear and guaranteed Jewish majority." "[We need] to acknowledge the existence of the danger, the vital and urgent need to view it as an existential threat, and the necessity to place that danger as a supreme national priority that is subject to emergency policy." (Shlomo Gazit, major-general (res.) and former chief of Military Intelligence; Jerusalem Post, 28 March 2001)