

BADIL POSITION PAPER

TRUMP'S SO-CALLED VISION/DEAL OF THE CENTURY:

A MOVE TO END THE PALESTINIAN REFUGEE ISSUE

THROUGH SERIOUS BREACHES OF INTERNATIONAL LAW

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BADIL Resource Center for Palestinian Residency and Refugee Rights is an independent, non-profit human rights organization working to defend and promote the rights of Palestinian refugees and Internally Displaced Persons (IDPs). Our vision, mission, programs and relationships are defined by our Palestinian identity and the principles of international humanitarian and human rights law. We seek to advance the individual and collective rights of the Palestinian people on this basis.

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1. INTRODUCTION:

CONTEXTUALIZING THE VISION AND THE PALESTINIAN REFUGEE ISSUE

On 28 January 2020, US President Donald Trump held a live press conference at the White House with Israeli Prime Minister Benjamin Netanyahu to announce the “Deal of the Century”. A corresponding 181-page document referring to the plan as “Peace to Prosperity: A Vision to Improve the Lives of the Palestinian and Israeli People” (hereinafter, the Vision) reveals how the creation of a so-called self-governing Palestinian state would manifest in a non-contiguous, capitulated Palestinian entity, with Israeli-regulated borders, and connected by Israeli-controlled bridges, tunnels, and roads.¹ The plan attempts to legitimize the annexation of east Jerusalem, the Jordan Valley, and Israel’s colonies in the West Bank.² It further contemplates a land swap proposition of the Triangle region – home to 260,000 Palestinian with Israeli citizenship whom have often been referenced as a demographic threat by Israeli politicians.³ The governance of the Triangle region would supposedly be transferred to the proposed Palestinian ‘state’ in order to allow Israel to preserve its Jewish character.⁴ Lastly, the Vision denies Palestinian refugees and internally displaced persons (IDPs) their right to durable solutions and indivisible reparations, namely the right of return to their homes, property restitution, and compensation.⁵

Notably, the issue of displaced Palestinians is important both to displaced Palestinians as individuals and to the collective Palestinian cause. Of the 13.05 million Palestinians worldwide, 7.94 million of them are refugees – amounting to 60.8 percent of the Palestinian people.⁶ An additional 760,000, or 5.9 percent of the Palestinian population, consists of internally displaced persons (IDPs). Similar to refugees, IDPs as persons who have been subjected

1 See White House, *Peace to Prosperity: A Vision to Improve the Lives of the Palestinian and Israeli People*, announced on 28 January 2020, available at: www.whitehouse.gov/peacetoprospersity [hereinafter White House, Peace to Prosperity] [accessed 10 May 2020]

2 *Id.*, p. 12-17; Appendix 2A: Security Considerations.

3 Gideon Alon and Aluf Benn, *Netanyahu: Israel's Arabs Are the Real Demographic Threat*, Haaretz, 18 December 2019, available at www.haaretz.com/4802 [accessed 10 May 2020].

4 White House, *Peace to Prosperity*, *supra* note 1, p. 13.

5 *Id.*, p. 9; p. 31-33.

6 See BADIL Resource Center for Palestinian Residency and Refugee Rights [hereinafter BADIL], *Survey of Palestinian Refugees and Internally Displaced Persons 2016-2018*, Volume IX, 2019, p. 21, available at: www.badil.org/publications/survey2016-2018-eng.pdf [hereinafter BADIL, Survey 2016-2018].

to forcible displacement, are entitled to the right to reparations, including the right of return to their place of origin/residence, property restitution, and compensation.⁷ In case of refugee displacement, the right of return as the basic form of reparation is reinforced by the Law of State Responsibility, international humanitarian law (IHL), and international human rights law (IHRL).⁸ The Pinheiro Principles also explicitly recognize that IDPs have a right to return, property restitution, and compensation for harms suffered.⁹

The Palestinian displaced population referenced here is comprised of the total estimated number of Palestinians and their descendants who have been forcibly displaced from their homes and properties in Mandatory Palestine.¹⁰ Most Palestinian refugees and IDPs were displaced in five major waves: during the British Mandate between 1922-1948, during the *Nakba* between 1947-1949, during the military rule imposed upon Palestinians who remained in what became Israel between 1949-1966, during the war of 1967, and between 1967 until the present day.¹¹ Today, Palestinian refugees continue to constitute the largest and longest-standing unresolved refugee group in the world, while the rights of Palestinian IDPs are constantly undermined by Israel.¹²

Of particular interest is the Vision's proclaimed "pragmatic" approach which assumes supremacy over international standards, laws, and United Nations (UN) resolutions.¹³ This approach does not only threaten the international legal system and constructs it as a framework detached from reality, but it

7 UN General Assembly, 60/147, *Basic Principles on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, A/RES/60/147, 16 December 2005, available at: www.ohchr.org/en/remedyandrepairation.aspx [accessed 10 May 2020]; See BADIL, Survey 2016-2018, *supra* note 7, p. 116 - 119.

8 See BADIL, *Forced Population Transfer: The Case of Palestine – Denial of Reparations*, October 2018, available at: <http://www.badil.org/phocadownloadpap/badil-new/publications/research/working-papers/WP22-Reparations-of-Reparations.pdf>, p. 19-21 [hereinafter BADIL, Denial of Reparations].

9 Although the Pinheiro Principles, or the Principles on Housing and Property Restitution for Refugees and Displaced Persons, are not legally binding *per se*, they reflect widely accepted principles of IHRL, IHL, and the Law of Nationality; Paulo Sérgio Pinheiro (UN Special Rapporteur on Housing and Property Restitution in the Context of the Return of Refugees and Internally Displaced Persons), *Housing and Property Restitution in the Context of the Return of Refugees and Internally Displaced Persons*, E/CN.4/Sub.2/2005/17, 28 June 2005, available at: <https://undocs.org/E/CN.4/Sub.2/2005/17> [accessed 10 May 2020].

10 *Id.*, p. 22.

11 See BADIL, *Closing Protection Gaps: Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, Second Edition, 2015, p. 7-9, available at: <http://www.badil.org/phocadownloadpap/badil-new/publications/Handbook-art1d/Art1D-2015Handbook.pdf>.

12 *Id.*, p. 6.

13 *Id.*, p. 5.

also denies the Palestinian people their inalienable rights.¹⁴ In fact, the Vision constitutes the US administration's most recent attempt to legitimize Israel's systematic policies of annexation, colonization, forcible transfer, and apartheid. Throughout the Vision, it appears that the aim of the US is to entrench these Israeli policies and exempt Israel from its responsibilities; this aim is most apparent when considering the Vision's proposed 'solution' for Palestinian refugees.

Critically, the Vision's proposal denies the rights of both Palestinian refugees and IDPs, including 415,876 Palestinian IDPs living inside what is today Israel today.¹⁵ Hypothetically, it could have been realistic to grant this group of IDPs their rights as they already have Israeli citizenship, and as such, granting them their rights would not alter Israel's demographic composition or prompt an unrealistic burden on Israel (the two reasons most commonly cited by Israeli negotiators against granting displaced Palestinians their rights). As the Vision fails to propose such an initiative, it becomes almost evident that the solution is not catalyzed by a concern for rights, but strategically-prioritized political interests. Considering these notions, the following position paper will critically analyze how the Vision addresses the issue of Palestinian refugees and IDPs as compared to the rights guaranteed to all displaced Palestinians under international law. The Vision neglects recognizing Palestinian IDPs' rights or even acknowledging their existence, revealing an unquestionable deficiency in the approach from the outset. Indeed, this reflects a theme that will be elaborated upon throughout this paper: the Vision does not seem as concerned with providing a practical solution as it claims to be, but is rather intent on denying the rights of displaced Palestinians altogether and preventing them from acquiring their guaranteed right to reparations. Naturally, as the Vision only discusses Palestinian refugees, a majority of the points will address refugee rights, but this does not in any way imply that IDPs are not entitled to the same set of rights.

14 UNGA Resolution 3236 reaffirms the "inalienable rights of the Palestinians to return to their homes and property from which they have been displaced and uprooted." See, UN General Assembly, 3236, *Question of Palestine*, A/RES/3236, 22 November 1974, available at: <https://www.refworld.org/docid/3b00f0468.html> [accessed 10 May 2020].

15 See BADIL, Survey 2016 - 2018, *supra* note 7, p. 47.

2. ESTABLISHED US POLICY: MARGINALIZING PALESTINIAN RIGHTS AND ALIGNMENT WITH ISRAELI GOALS

The current protractive nature of the Palestinian refugee issue is due to the international community's failure to fulfill its responsibilities and implement durable solutions as stipulated in international law and embodied in United Nations General Assembly (UNGA) Resolution 194 (III) of 1948 and United Nations Security Council (UNSC) Resolution 237 of 1967.¹⁶ Under international refugee law (IRL), refugees have a right to avail themselves of one of the three durable solutions available to them — voluntary repatriation, third-state resettlement, or host country integration — with voluntary repatriation as not only the preferred solution, but the only one of the three that constitutes a right.¹⁷ Importantly, refugees are entitled to freely and informatively choose one of the three durable solutions, and the imposition of only one option does not constitute an adequate implementation of this right. Israel and the international community, nonetheless, have prevented Palestinian refugees from exercising their right to freely choose one of these solutions. Within the international community, the US has particularly perpetuated Israel's denial of the Palestinian refugees' right to durable solutions and reparations — a tendency that manifested during different phases of the Israeli-Palestinian 'peace' negotiations.

During the Oslo negotiations, Israeli and Palestinian representatives deferred specific issues to final status negotiations, among them the refugee issue.¹⁸ Following fruitless bilateral Israeli-Palestinian negotiations, the Camp David Summit of 2000 was organized to address these issues. While Palestinian negotiators advocated for Palestinian refugees' right of return and their right to real property restitution, Israel continued denying the right of return and instead presented subjective obstacles for granting Palestinian refugees their

16 UN General Assembly, *194 (III). Palestine – Progress Report of the United Nations Mediator*, A/RES/194 (III), 11 December 1948, available at: www.unispal.un.org/DPA/DPR/unispal [hereinafter UN General Assembly Resolution 194 (III)] [accessed 10 May 2020]; UN Security Council, *Security Council Resolution 237, S/RES/237*, 14 June 1967, para. 1., available at: www.unispal.un.org/DPR/unispal [accessed 10 May 2020];

17 UN General Assembly, *Convention Relating to the Status of Refugees*, 189 UNTS 150, 28 July 1951, available at: <https://www.unhcr.org/3b66c2aa10> [accessed 10 May 2020].

18 The Oslo negotiations led to the Declaration of Principles and subsequent agreements that allowed for the establishment of the Palestinian Authority as an interim governing body until final status issues were agreed upon and a final governing body is established (which is yet to happen). See Negotiations Affairs Department, *Declaration of Principles on Interim Self-Government Arrangements*, signed 13 September 1993, available at: www.nad.ps/en/resources/agreements/declaration-principles-interim-self-government-arrangements [accessed 10 May 2020]. See BADIL, "Palestinian Refugees - Five years after Oslo", *Article 74*, Issue no. 25, September 1998, available at: www.badil.org/Article_74/1998.

property rights.¹⁹ Moreover, Israel's official position encompassed absorbing less than one percent of refugees under a family reunification scheme in order to preserve a solid Israeli-Jewish demographic majority.²⁰

A year later at the Taba Summit, Former US President Clinton proposed that Palestinian refugees would be granted the right of return, but only to a future Palestinian state, rather than to their homes in Mandatory Palestine. Under this scheme, Palestinians who choose not to return to the 'state' of Palestine would be entitled to rehabilitation or relocation in other states. Israel would also contribute to the international mechanisms established to facilitate refugees' third-state integration and resettlement. Former President Clinton further stipulated that Israel has the sole sovereign discretion to facilitate reunification of Palestinian refugees with family members that had Israeli citizenship, but not to necessarily grant them their right of return to their homes.²¹ While expressed under the guise of return, this proposition constituted a tacit denial of the Palestinian refugee right of return as admittance to a future Palestinian state would not have amounted to the legitimate exercise of this right. Ultimately, this American proposal was rejected by Palestinian negotiators as it was deemed a mere re-articulation of Israel's resolve to deny Palestinian refugees their rights.²²

Since then, the US has remained supportive of Israel's denial of refugee rights, both directly and indirectly. A recent culmination of these efforts is seen in the Trump administration's budget cuts to the United Nations Relief and Works Agency for Palestinian Refugees in the Near East (UNRWA), aimed at entrenching UNRWA's financial crisis and crippling its ability to service Palestinian refugees.²³ In fact, the Trump administration has proved that its desire is not only to align its position to Israel's, but to also take a direct role in helping Israel fulfill a myriad of its Zionist goals.

19 See BADIL, "Interview with Dianna Battu, PLO Negotiations Support Unit", *al-Majdal: The Threat of Disengagement*, Issue no. 22, Summer 2004, available at: www.badil.org/en/interview-with-diana-buttu.

20 See BADIL, "The EU (Moratinos) Paper on the Israeli-Palestinian Negotiations at Taba", January 2001, available at: www.badil.org/negotiations-at-taba-2001.

21 Jacob Tov, "Negotiating the Palestinian refugees", *Middle East Quarterly*, Spring 2003, p. 44-45, available at: <https://www.meforum.org/543/negotiating-the-palestinian-refugees> [accessed 10 May 2020].

22 New York Times, "Remarks and questions from the Palestinian negotiating team regarding the United States Proposal", 2 January 2001, available at: www.nytimes.com/2001/01/02/world/remarks-and-questions-from-the-palestinian-negotiating-team [accessed 10 May 2020].

23 Founded in 1949, UNRWA's mandate aims to provide humanitarian assistance to Palestinian refugees through carrying out direct relief and works programs for Palestinian refugees. UNRWA, *Who We Are*, n.d., available at: www.unrwa.org/who-we-are [accessed 10 May, 2020]; BADIL, *Understanding the Political Underpinnings of UNRWA's Chronic Funding Crisis*, Bulletin 27, June 2018, available at: http://www.badil.org/phocadownloadpap/Badil_docs/bulletins-and-briefs/bulletin-no27-unrwa-financial-crisis.pdf [hereinafter BADIL, UNRWA's Chronic Funding Crisis].

3. EXCLUSIONARY REFUGEE DEFINITION AND NON-COMPLIANCE WITH INTERNATIONAL LAW

The Vision's proposal for the Palestinian refugee issue attempts to exempt both Israel and the international community from bearing responsibility towards Palestinian refugees by transferring this responsibility to host countries and packaging third-state integration and resettlement as the primary "solutions". Accordingly, this Trumpian proposition is solely the newest political addition to previous American efforts to erode Palestinian refugee rights and to service Israel's strategy. The Vision tries to accomplish this goal in two ways: (1) it limits the number of Palestinian refugees able to access their rights by providing a non-representative definition of Palestinian refugees and (2) it supports options that violate the refugees' rights to just and durable solutions.

3.1. The Vision's criteria for defining Palestinian refugees: Restricting rights holders

"To be eligible for any refugee rights under the Israeli-Palestinian Peace Agreement, individuals must be in Registered Refugee status by UNRWA, as of the date of release of this Vision ... [I]ndividuals who have already resettled in a permanent location (to be further defined in the Israeli-Palestinian peace agreement) will not be eligible for resettlement, and will be eligible only for compensation as described below."²⁴

The Vision's criteria for defining Palestinian refugees and determining their eligibility for any refugee rights is both restrictive and inconsistent. It is neither grounded in concrete legal foundations nor is it established upon any legitimate rights for Palestinian refugees. It instead embodies a transparent effort to prevent a large number of Palestinian refugees from accessing the rights guaranteed to them under the international legal reparations framework. This contraction of Palestinian refugee right-holders and the intended subsequent depletion of their rights materializes on several levels and is thus deficient in a number of ways.

3.1.1. The utilization of UNRWA's definition to reduce Palestinian refugee claimants

The Vision's use of UNRWA's definition and registration statistics for

²⁴ White House, Peace to Prosperity, *supra* note 1, p. 32.

determining eligibility for refugee rights denies a significant number of Palestinian refugees from their right to durable solutions. The number of Registered Refugees is roughly 5.6 million, which neglects the 2.3 million unregistered Palestinian refugees.²⁵ In order to be a 1948 registered refugee with UNRWA, an individual has to fulfill UNRWA's definition, which states that Palestinian refugees are "persons whose normal residence was Palestine during the period 1 June 1946 to 15 May 1948, and who lost both home and means of livelihood as a result of the 1948 conflict."²⁶ As per this definition, being an UNRWA registered refugee is based on need, place of residence; and only establishes the criteria for receiving assistance. However, the global refugee definition provided by Article 1A(2) of the 1951 Convention Related to the Status of Refugees (hereinafter 1951 Refugee Convention), defines refugee status according to the well-founded fear of persecution that entails the mass forcible displacement based on nationality, which defines the case of Palestinian refugees.²⁷ Hence, those Palestinian refugees not registered with UNRWA would not be defined as refugees according to the Vision and therefore would be denied their rights.²⁸

Importantly, UNRWA itself notes that its definition "was not meant to be exhaustive in a political sense but rather to define eligibility for the Agency's services."²⁹ To further clarify, UNRWA's refugee registration statistics are collected for its own internal management purposes and to facilitate certification

25 See BADIL, Survey 2016-2018, *supra* note 7, p. 46.

26 UNRWA, *Palestine refugees*, n.d., available at: www.unrwa.org/palestine-refugees [accessed 10 May 2020].

27 Article 1(2) defines refugees as persons 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". Furthermore: The 1951 Convention, as a post-Second World War instrument, was originally limited in scope to persons fleeing events occurring before 1 January 1951 and within Europe. The 1967 Protocol removed these limitations and thus gave the Convention universal coverage. UN General Assembly, *Convention Relating to the Status of Refugees*, 189 UNTS 150, 28 July 1951, available at: <https://www.unhcr.org/3b66c2aa10> [accessed 10 May 2020].

28 There are several reasons as to why some Palestinian refugees are not registered with UNRWA, including (1) refugees displaced in 1948 who: failed to meet UNRWA's definition of "Palestine refugee", were outside UNRWA's areas of operation, were dropped from the records owing to UNRWA's financial constraints limiting the number of relief recipients, area descendants of refugee mothers and non-refugee fathers, had an independent income or property, and/or improved their economic situation to the extent that they no longer met eligibility criteria, (2) refugees displaced after 1948, (3) Palestinians registered in UNHCR records but not in UNRWA's, and (4) IDPs in Israel and the oPt. See BADIL, *Survey of Palestinian Refugees and Internally Displaced Persons 2010-2012*, Volume VII, 2012, p. 25, available at: http://www.badil.org/phocadownloadpap/Badil_docs/publications/Survey2012.pdf.

29 UNRWA, *UNRWA and the Transitional Period: A Five-Year Perspective on the Role of the Agency and its Financial Requirements*, January 1995, Vienna: UNRWA Headquarters, p. 3.

of refugee eligibility for receiving education, health, relief and social services. This definition cannot be used alone as the foundation for determining eligibility for refugees' political rights, and in particular, their right to durable solutions. Considering both that UNRWA's demographic data is incomprehensive and that its mandate is need-based and temporally restricted to 1948, the working definition that the United Nations Conciliation Commission for Palestine (UNCCP) had prepared during its active years provides a more comprehensive and legally aligned classification of Palestinian refugees.³⁰

In December 1948, the UNCCP was mandated to find durable solutions for the Palestinian refugee question, and articulated a specific definition for the purpose of determining eligibility for repatriation and compensation as provided in UNGA Resolution 194 (III).³¹ According to this definition, Palestinian refugees are "persons of Arab origin who, after 29 November 1947, left territory at present under the control of the Israel authorities and who were Palestinian citizens at that date... [and] persons of Arab origin who left the said territory between 6 August 1924 and before 29 November 1947..."³² Although this definition was never adopted, it remains relevant as it aligns with the 1951 Refugee Convention's definition. Accordingly, it emphasizes that Palestinian refugees were displaced because of their nationality which is recognized as a form of persecution under Article 1A(2) of the 1951 Refugee Convention.

Using the UNCCP's definition, with its predicated legitimacy in international law, generates a number of 7.94 million Palestinian refugees who are entitled to durable solutions. In addition to the 1948 UNRWA registered refugees, this includes: approximately one million 1948 refugees who have never registered with UNRWA, refugees displaced outside UNRWA's area of operation, refugees displaced before and after 1948, as well as refugees who have not inherited registered refugee status due to only a maternal refugee connection.³³ The Vision's utilization of UNRWA's definition would prohibit all these aforementioned groups from being acknowledged as refugees and deny those rights inherent to this status. Consequently, the Vision's approach

30 The UN founded the United Nations Conciliation Commission on Palestine (UNCCP) in 1948. Its mandate included providing protection for Palestinian refugees and finding durable solutions. By the mid-1950s, however, it effectively ceased its functions largely due to Israel's refusal to cooperate and the international community's unwillingness to support it in fulfilling its mandate. As a result, it has been unable to provide Palestinian refugees with their rightful protection. *See* BADIL, Denial of Reparations, *supra* note 9, p. 55-56;

31 UN General Assembly Resolution 194 (III), *supra* note 14.

32 UNISPAL, *Definition of the term "refugee" under G.A Resolution 194 - Working paper*, April 1951, available at: www.un.org/unispal/refugee-definition [accessed 10 May 2020].

33 *See* BADIL, Survey 2016-2018, *supra* note 7, p. 21.

is intentionally selective as it does not encompass all displaced Palestinians and ignores UNRWA's reservations that the number of 1948 Registered Refugees is not comprehensive. Further and most importantly, it contradicts internationally recognized definitions of refugees and well-established best practices of the United Nations High Commissioner for Refugees (UNHCR) and states. There is a rich body of precedent and authority stemming from state practice reflecting the existence of *opinio juris* (a sense of legal obligation) on the part of states where they are obligated under customary international law to allow displaced individuals, including refugees, to exercise their right of voluntary return to their homes of origin.³⁴

3.1.2. Palestinian refugees resettled in permanent locations: Vagueness for exclusionary purposes

In addition to limiting the sphere of Palestinian refugee claimants to only those registered with UNRWA, the Vision proposes even more restrictive parameters that "...individuals who have already resettled in a permanent location (to be further defined in the Israeli-Palestinian peace agreement) will not be eligible for resettlement..."³⁵ The use of "resettled in a permanent location" as ambiguous criteria is deliberate and constructed for exclusionary purposes. When durable solutions for refugees are at hand, the *permanent location* of refugees is relevant, but not as an alternative to internationally recognized and coded rights set out in the refugee protection regime. In other words, the current location, where a displaced person has settled, must not be considered a determining element for the displaced person's eligibility to practice his/her right to voluntary return, integration or resettlement. Both this constructive ambiguity and the Vision's note that a definition for permanent location will be agreed upon at a later stage in the peace agreement, demonstrate how it has the potential to be interpreted broadly. Further, this definition will be dependent on Israel's whims which hold ultimate sway and influence with the Trump administration. It could, for example, mean that the mere existence of a Palestinian refugee in a location for a prolonged period of time amounts to their presence in a permanent location, therefore making them ineligible. Through this, the Vision provides an illusion of permanency, irrespective of the refugee's legal documentation or their prior ability, or lack thereof, to avail themselves of one of the three durable solutions. Similarly, the word "resettle" is misleading as its use tends to spark thoughts of permanent resettlement, but

34 See Gail J. Boling, The 1948 Palestinian Refugees and the Individual Right of Return: An International Law Analysis, BADIL, 2007, p. 77-82 (Available at: http://www.badil.org/phocadownloadpap/Badil_docs/publications/individualROR-en.pdf [hereinafter Boling, Individual Right of Return]).

35 White House, Peace to Prosperity, *supra* note 1, p. 32.

the construction of the phrase - *resettled in a permanent location* - reveals that it differs significantly from the refugee solution of permanent resettlement, which must be based on the free and well-informed choice of the refugee. Therefore, the interpretation of this language in the Vision could potentially even exclude the UNRWA registered refugees because they have already existed in their respective host countries for a protracted period of time. This phrasing would thus imply that a very minimal number of refugees could actually be allowed to access durable solutions.

Critically, refugees and their descendants retain their status as refugees vis-a-vis the state of origin, as long as they have not been provided the opportunity to *freely* and *informatively* choose one of the three above mentioned durable solutions. Accordingly, even Palestinian refugees who have acquired third-state nationality remain entitled to the right to reparations from the state of origin, which is Israel in the Palestine refugee context.³⁶ As recognized by the UNHCR, the attainment of third-state nationality necessarily results in the cessation of the benefits of the 1951 Refugee Convention under Article 1C. This acquisition, however, does not prejudice the right to reparations that Palestinian refugees are entitled to as enshrined in other instruments of international law.³⁷ The right to reparations is not only recognized under IRL, but is also a standalone human right that applies to Palestinian refugees themselves as victims of human rights violations and crimes by the state of Israel.³⁸ Accordingly, although individuals may no longer have refugee status or benefits under IRL once they have acquired third-state nationality, they remain entitled to reparations under human rights law as right holders. The right of return as a human right is also a norm of customary law stated in several international conventions, including the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).³⁹ Similarly, the right to reparations is also a human right notably embodied in the Law of State Responsibility,

36 See BADIL, Survey 2016-2018, *supra* note 7, p. 113-119.

37 UNHCR, *Guidelines on International Protection No. 13: Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees*, HCR/GIP/16/12, December 2017, para. 31, available at: www.refworld.org/docid/5a1836804.html [accessed 10 May 2020].

38 See BADIL, Survey 2016-2018, *supra* note 7, p. 113-114.

39 UN General Assembly, *Universal Declaration of Human Rights (UDHR)*, A/RES/3/217A, 10 December 1948, art. 13(2), available at: www.un.org/en/universal-declaration-human-rights [accessed 10 May 2020]; *International Covenant on Civil and Political Rights (ICCPR)*, art. 12(4), 16 December 1966, 999 UNTS 171, available at: www.un-documents.net/iccpr [accessed 10 May 2020]; *International Convention on the Elimination of All Forms of Racial Discrimination*, art. 5(d)(ii), 660 UNTS 195, 21 December 1965, available at: www.refworld.org/docid/3ae6b3940.html [accessed 10 May 2020].

amongst others.⁴⁰ Considering this, Palestinian refugees' right to reparations persists until they have the genuine option to return to their homes in Mandatory Palestine and be offered reparations, regardless of their status or otherwise as refugees and irrespective of their acquisition of nationality in a third state.⁴¹ In other words, even if their refugee status does cease to exist, their right to reparations, including repatriation, property restitution, and compensation, remains concretely guaranteed under human rights law – legally binding elements that the Vision overlooks.

Lastly, the Vision's resolve to cap registration at those who were UNRWA registered refugees prior to its release, 28 January 2020, is also conspicuously trying to minimize the number of Palestinian refugees entitled to any rights⁴² This temporal condition implies that persons born to registered Palestinian refugees after the aforementioned date are not entitled to their rights. Under international law and the principle of family unity, however, all descendants of refugees are considered refugees until the choice between the three durable solutions is provided.⁴³ Thus, all Palestinian refugees born after this date remain entitled to their refugee status and rights, and any attempt to erode this entitlement is a direct violation of the international protection regime afforded to refugees. Additionally, the Vision argues that UNRWA's multigenerational mandate has exacerbated the Palestinian refugee crisis.⁴⁴ Such narratives are erroneous and distracting from the main reason for the protracted Palestinian refugee situation: the absence of a solution for underlying political issues and durable solutions for refugees. UNRWA is not responsible for perpetuating the Palestinian refugee crisis as it is a functional agency that carries out the parameters of its mandate. The protracted state of Palestinian refugees lies with the absence of political will among powerful western states, mainly the US, to properly implement international law and best practices. This political will is necessary to solve the refugee issue, and should not be utilized to bring about UNRWA's termination.⁴⁵

As highlighted above, the Vision's criteria for who constitutes a Palestinian

40 International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries*, November 2001, Supplement No. 10 (A/56/10), chp.IV.E.1, available at: http://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf, art. 31 [accessed 10 May 2020].

41 See BADIL, Survey 2016-2018, *supra* note 7, p. 120.

42 White House, Peace to Prosperity, *supra* note 1, p. 32.

43 UNRWA, *Who we are: Frequently asked questions*, n.d., available at: www.unrwa.org/who-we-are/frequently-asked-questions [accessed 10 May 2020].

44 White House, Peace to Prosperity, *supra* note 1, p. 32.

45 See BADIL, UNRWA's Chronic Funding Crisis, *supra* note 22.

refugee is inconsistent with Palestinian refugees' individual and collective rights, as well as the international refugee regime as a whole. This criteria does not depict any compelling, fundamental, or legally-grounded reasoning. Rather, it solely represents an effort to shrink the number of Palestinian refugees eligible to access their rights. Further, it is an attempt to revoke the refugee status conferred on displaced Palestinians in accordance with international law and UN resolutions – a strategy consistent with the US administration's persistent efforts to discontinue UNRWA's mandate and to deepen its funding crisis.

3.2. Erasure of Palestinian refugees right to durable and just solutions

“There shall be no right of return by, or absorption of, any Palestinian refugee into the State of Israel ... This plan envisions three options for Palestinian refugees seeking a permanent place of residence: (1) Absorption into the State of Palestine ... ; (2) Local integration in current host countries ... ; (3) The acceptance of 5,000 refugees each year, for up to ten years ... in individual Organization of Islamic Cooperation member countries who agree to participate in Palestinian refugee resettlement ...”⁴⁶

In addition to the mass exclusion of Palestinian refugees and IDPs from accessing their rights by constricting who qualifies as a refugee and IDP, the Trump administration's plan further fortifies such denial through a proposition that deviates from the refugees' right to durable and just solutions. Although the focus below will be on refugees rights, it is important to recall that IDPs are entitled to the same rights, which have been completely ignored by the Vision, as they are not even mentioned.

As per UN General Assembly Resolution 194(III), the primary durable solution for Palestinian refugees is return, real property restitution, and compensation for the loss of or damage to property.⁴⁷ The resolution specifically enshrines “the right of refugees to return to their homes.”⁴⁸ Affirming the principle of individual refugee choice, Palestinian refugees who choose not to exercise the rights set forth in paragraph 11(a) and freely opt for local integration in host states or resettlement in third countries instead, remain entitled to

46 See White House, *Peace to Prosperity*, *supra* note 1, p. 32.

47 UN General Assembly Resolution 194 (III), *supra* note 21, para. 11.

48 *Ibid.*

real property restitution and compensation.⁴⁹ President Trump’s proposal, however, runs contrary to these rights. It circumvents Israel’s responsibilities to ensure Palestinian refugees rights, as enshrined in IHL, IRL, and the Law of Nationality as applicable to state succession.⁵⁰ Moreover, the Vision’s “options” do not embody the Palestinian refugees’ right to reparations; they instead present compulsory absorption, integration, and resettlement in the absence of rights and under the guise of pragmatism.

3.2.1. Exempting Israel from its responsibilities towards Palestinian refugees’ right of return to their homes

By claiming that Palestinian refugees will only return to the proposed Palestinian entity, the Vision delineates a clear measure to eliminate Israel’s obligation to implement the refugees’ internationally guaranteed right of return to their homes. By virtue of the obvious and simple fact that no other state geographically contains the homes of Palestinian refugees, Israel has an absolute and unqualified obligation to repatriate Palestinian refugees.⁵¹ Under the Law of Nationality as applicable to state succession, the newly emerged successor state is under the binding customary obligation to allow all habitual residents to return to their homes of origin from which they were displaced during the succession process.⁵² Thus, the state responsible for ensuring and implementing the right of return in the Palestinian refugee case is legally Israel, as the successor state responsible for creating the refugee issue.⁵³ Israel, and no other state, has an obligation to allow for all habitual residents to return to their homes – an obligation also reaffirmed in IHL and IRL.⁵⁴

Therefore, the drafters’ narration that “[t]he Palestinians have been collectively and cynically held in limbo to keep the conflict alive” and how

49 See Gail J. Boling, *The 1948 Palestinian Refugees and the Individual Right of Return: An International Law Analysis*, BADIL, 2007, p. 20, available at: http://www.badil.org/phocadownloadpap/Badil_docs/publications/individualROR-en.pdf [hereinafter Boling, Individual Right of Return].

50 See BADIL, Denial of Reparations, *supra* note 9.

51 See Boling, Individual Right of Return, *supra* note 49, p. 10.

52 *Id.*, p. 28-30.

53 Susan M. Akram and Terry Rempel, *Temporary Protection for Palestinian Refugees: A Proposal*, BADIL (ed.), 2004, p. 19, available at: http://www.badil.org/phocadownloadpap/Badil_docs/Working_Papers/WP-E-05.pdf [hereinafter Akram and Rempel, Temporary Protection].

54 United Nations General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, A/RES/60/147, 21 March 2006, Principle 21, available at: <https://www.ohchr.org/en/professionalinterest/pages/remedyandrepairation.aspx> [accessed 10 May 2020]; See BADIL, Denial of Reparations, *supra* note 9 p. 22-25.

“[t]heir Arab brothers have the moral responsibility to integrate them into their countries”⁵⁵ is distorted. By assigning moral responsibility to third-state parties – specifically Arab states - that were not responsible for creating nor sustaining the Palestinian refugee issue, the Vision attempts to negate Israel’s legal obligations and responsibilities. This is not a case where moral obligations ought to be asserted because legal responsibilities do exist, and these responsibilities belong to Israel. Importantly, out of the three durable solutions available to refugees, return to their homes is the only one that constitutes a right. The other two options – local integration and resettlement – are subject to states’ consent and discretion.⁵⁶ In other words, the perpetrator state, Israel, has a legal responsibility to uphold the right of return, while other states are not obliged to offer other remedies.

Moreover, public international law prescribes that a state is under responsibility to not burden other states by its wrongdoings. With the Vision’s claim that Arab states have a moral responsibility towards Palestinian refugees, the US assumes that it has the authority to impose its will and transfer Israel’s responsibilities to other states. Both of these propositions negate the principle of not burdening other states.⁵⁷ Accordingly, asserting that Arab states integrate Palestinian refugees in their countries is a meager attempt to conceal legal rights by appealing to arbitrary moral obligations. The Vision thus aims to transfer responsibility to states that were not responsible for the perpetration of wrongdoings, and to actually keep Palestinian refugees in limbo as moral obligations are not enforceable and the substantial legal responsibility falls on Israel.

Similarly, the Vision seeks to construct absorption into the state of Palestine as “return”, but such construction is bogus. The Vision’s proposed Palestinian state is not the refugees’ home of origin, considering that those externally displaced, including the 42 percent of Palestinian refugees in the occupied Palestinian Territories (oPt), were expelled from what came to be known as Israel, and not anywhere else.⁵⁸ Moreover, the Vision’s use of ambiguous words in the options, such as “absorption”, are not founded in rights discourse, and are thus not a fulfillment of the Palestinian refugees’ right of return to their homes. In the same vein, the options are presented as if they are grounded in rights by referencing that claimants will receive “refugee rights”. However, none of the

55 White House, Peace to Prosperity, *supra* note 1, p. 31.

56 See Boling, Individual Right of Return, *supra* note 49, p. 25.

57 *Id.*, p. 41.

58 See BADIL, Survey 2016-2018, *supra* note 7, p. 27.

options provided in the Vision align with the rights guaranteed to Palestinian refugees, specifically return, property restitution, and compensation.

3.2.2. Overlooking the Palestinian refugees' right to property restitution

Apart from the right of return, an indivisible part of the right to reparations guaranteed to Palestinian refugees includes their right to property restitution. The Vision, however, disregards the right to property restitution and is in direct violation of UNGA resolutions 194 (III) and 3236.⁵⁹

UNGA Resolution 3236 reaffirms the “inalienable rights of the Palestinians to return to their homes and property from which they have been displaced and uprooted.”⁶⁰ Importantly, this right has legal underpinning in IHL, IRL, and the Law of Nationality.⁶¹ In this framework, property restitution constitutes both a free-standing autonomous right and a corollary of the right of return when return is realized.⁶² As such, the right to property restitution is not affected by the choice of a refugee to opt out of repatriation — every individual Palestinian refugee (and IDP) remains entitled to property restitution, irrespective of repatriation or not.

Under IRL, refugee and IDP properties also ought to be protected “against destruction and arbitrary and illegal appropriation, occupation, or use” until durable solutions are implemented.⁶³ In this regard, UNGA Resolution 36/146C recognizes that Palestinian refugees are entitled to their property and to the incomes derived from that property in conformity with the principles of justice and equity. Most notably, it requests the Secretary-General to take “all appropriate steps” for the protection and administration of Palestinian property, assets, and property rights on their behalf.⁶⁴ This resolution has

59 The right of Palestinian refugees and IDPs to restitution had also been affirmed by the UN in numerous other General Assembly resolutions. See e.g. UN General Assembly, Question of Palestine, 22 November 1974, A/RES/3236, available at: <http://www.refworld.org/docid/3b00f0468.html> [accessed 10 May 2020]; UN General Assembly, General Assembly Resolution 34/146, A/RES/36/146, 16 December 1981, available at: <https://www.refworld.org/docid/3b00f24834.html> [accessed 10 May 2020].

60 UN General Assembly, 3236, *Question of Palestine*, A/RES/3236, 22 November 1974, available at: <https://www.refworld.org/docid/3b00f0468.html> [accessed 10 May 2020].

61 See BADIL, Denial of Reparations, *supra* note 9, p. 40-43

62 *Id.*, p. 41.

63 UNHCR Guiding Principles, Principle 21. *A fortiori*, this principle has to be regarded as effective also for refugees.

64 UN General Assembly, *Resolution 36/146 United Nations Relief and Works Agency for Palestine Refugees in the Near East*, A/RES/36/146(A-H), 16 December 1981, available at: www.unispal.un.org/DPA/DPR/unispal.nsf [accessed 10 May 2020].

been reaffirmed by the General Assembly in every annual session, and goes so far as to request the establishment of a fund for such purposes, but the fund has never been created and Israel has steadfastly rejected the resolution's implementation.⁶⁵

Despite these entitlements, Trump's Vision noticeably makes no mention to refugee property. This type of denial is analogous to domestic Israeli laws, such as the Absentee Property Law, that intend to render this property, which belongs to Palestinian refugees and IDPs, inaccessible.⁶⁶ One of the most recent and critical additions to these laws is the 2009 Israel Land Administration Law (Amendment No. 7). This law allows for the transfer of land controlled by the Israeli custodian to private hands, including many properties that belong to Palestinian refugees and which were, prior to this law, held by the Custodian of Absentees' Property and the Development Authority.⁶⁷ Through these laws, Israel has authorized the internationally unlawful confiscation and privatization of Palestinian refugees' properties. The privatization of these properties directly thwarts the right of Palestinian refugees to property restitution. With the Vision denying the Palestinian refugees' right to property restitution, the Trump administration is in essence rewarding Israel's illegal actions by granting them dubious legitimacy within the proposed Vision.

3.2.3. Formulating compensation as non-absolute and as the foundation for illegal rights exchange

In relation to the Palestinian refugees' third indivisible right to compensation, the Vision contends that "funds will have a far greater impact on the [new] State of Palestine's economic and social viability and on the refugees themselves if used to implement the Trump Economic Plan."⁶⁸ It also professes that the US

65 See United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), *Palestine refugees' properties and their revenues*, A/72/334, 14 August 2017, available at: www.undocs.org/A/72/334 [accessed 10 May 2020].

66 After 1948, the property of all forcibly displaced Palestinians was declared 'absentee property' and was transferred to a Custodian, based on the Emergency Regulations for Absentees' Property of December 1948 that later became the 1950 Absentee Property Law. The stated objective of the Absentee Property Law is to safeguard absentee property until the status of Palestinian refugees is resolved. However, once the properties were acquired by the Custodianship Council for Absentee's Property, which was, in theory, not allowed to sell the property, Israel was able to utilize and privatize the land through a roll-out of additional laws in partnership with government and non-government agencies. See BADIL, Denial of Reparations, *supra* note 14, p. 45-47.

67 See Suhad Bishara, *From Plunder to Plunder: Israel and the Property of Palestinian Refugees*, Adalah Newsletter, Volume 64, September 2009, available at: www.adalah.org/features/land/Suhad_Plunder [accessed 10 May 2020].

68 White House, Peace to Prosperity, *supra* note 1, p. 32.

will “endeavor to raise a fund to provide *some* compensation to Palestinian refugees [emphasis added].”⁶⁹

Through this formulation, the Vision inadequately addresses compensation on two levels. Firstly, attaching refugee compensation to the Trump Economic Plan fails to acknowledge that compensation is an individual right, which cannot be remedied through a collective economic plan. According to Resolution 194 (III) and binding customary law, the purpose of the right to compensation is to compensate individuals for material and non-material losses that they have experienced as a result of their displacement.⁷⁰ Consequently, the amount of compensation can vary depending on the harm that each individual suffered and as determined by an independent, impartial tribunal.⁷¹ Pumping money into Palestine’s economy, therefore, does not serve this purpose as none of the money supply -which would probably will take the form of aid and loans- would go directly to individual Palestinian refugees. Instead, it would be employed to maintain both Israel’s and other states’ domination over Palestine, its economy, as well as its political options as a whole. Secondly, the Vision reveals that providing compensation for Palestinian refugees under this agreement is neither absolute nor guaranteed. A vague endeavor such as this is not sufficient because it does not identify any credible sources of funding. It fails to recognize that full compensation is an absolute and guaranteed right and cannot be treated as a component that can be fulfilled on a voluntary basis by cooperating states.

In addition to this ambiguity towards the Palestinian refugees’ right to compensation, the Vision seems to more readily support compensation for Arab-Jewish refugees as it decisively states that “the Jewish refugee issue, including compensation for lost assets, must [...] be addressed.”⁷² Similar to an Israeli campaign carried out in 2011, the reference to Arab-Jewish refugees seeks to make the protection and fulfillment of Palestinian refugees’ rights dependent on the realization of the former group’s claim.⁷³ This conditionality, however, is flawed. The rights afforded to refugees are universal, and no particular group of refugees should be favored over another and no particular group’s claims

69 *Id.*, p. 33.

70 See BADIL, Denial of Reparations, *supra* note 9, p. 50-51.

71 *Ibid.*

72 White House, Peace to Prosperity, *supra* note 1, p. 31.

73 See BADIL, *Preliminary Position Paper on Arab-Jewish Refugees*, October 2012, available at: http://www.badil.org/phocadownloadpap/Badil_docs/postions/badil-position-paper-arab-jewish-refugees.pdf.

should be conditional on the realization of another.⁷⁴ Rights held by one group are identical to those held by another, and it is imperative that all such groups have their rights upheld. As such, Arab Jews claiming refugee status by virtue of having fled their home states in the face of persecution should direct their claims to those respective Arab states, not the Palestinians. Palestinian refugee rights should not be tied to or exchanged with Arab-Jewish refugee rights. If Arab countries are responsible for creating Jewish refugees, then each state in question must be held accountable for their respective actions. By incorporating the Arab-Jewish refugee issue in the Vision, the drafters have created a false equivalence between the responsibilities of the Arab states as the alleged offenders towards Arab Jews and the Palestinian refugees for whom Israel bears primary responsibility.⁷⁵ While the Vision is formulating this false comparison with the aim of bringing the whole issue of Palestinian refugees' rights to a futile bargaining level, it should be emphasized that rights, and in particular individual rights, are not subject to exchange under international law.

74 See BADIL, Denial of Reparations, *supra* note 9, p. 49.

75 *Id.*, p. 50.

4. CONCLUSION: A MOVE TO END THE PALESTINIAN REFUGEE ISSUE THROUGH SERIOUS BREACHES OF INTERNATIONAL LAW

The Vision clearly sets out to deny Palestinian refugees' and IDPs' their right of return, property restitution, and compensation — all of which constitute serious breaches of international law. Instead of aligning with the durable and just solutions entitled to Palestinian refugees, the Vision completely neglects the rights of IDPs, reduces the number of eligible refugees and presents options that have vague, ambiguous, and arbitrary – not to mention illegal - foundations. With this type of formulation, it becomes clear that the Vision is more concerned with catering to Israel's strategy than to either holding Israel accountable for its perpetuation of the Palestinian refugee ongoing plight or to providing justice to displaced Palestinians.

The Vision also states that “[u]pon the signing of the Israeli-Palestinian Peace Agreement, Palestinian refugee status will cease to exist, and UNWRA will be terminated and its responsibilities transitioned to the relevant governments.”⁷⁶ This statement is particularly consequential as it reveals the entire goal of the Vision's refugee 'solution': to terminate the Palestinian refugee question and to bar Palestinian refugees from making any rights claims. Through this, the Vision also annuls the international community's obligations and responsibilities to implement durable solutions for Palestinian refugees and IDPs. Put bluntly, this proposal's non-solution for the Palestinian refugee issue is designed to erase Israel's responsibility for its wrongdoings towards Palestinian refugees. It further provides Israel with blanket impunity for its ongoing crimes towards the Palestinian people. Moreover, the Vision's allusion to rights exchange between Jewish refugees and Palestinian refugees uses refugees as a form of political capital in a deeply cynical attempt to achieve wider strategic and political aims. Such an approach is harmful to both the individual refugees concerned and to the treatment of international refugee populations as a whole.

In light of this, it is critical for the international community to refrain from treating a unilateral American proposal that packages pragmatism and political realism as a win-win situation. Importantly, the Palestinian struggle for freedom and self-determination is not exceptional and should not be constructed as unrealistic, impractical, and unachievable by biased third-party state actors.

⁷⁶ White House, *Peace to Prosperity*, *supra* note 1, p. 33.

As such, the international community must adopt a rights-based approach and solution for the Palestinian refugee issue specifically and Palestinian self-determination collectively.⁷⁷ Additionally, it is essential to reaffirm that the right of return is the most practical solution for Palestinian refugees and IDPs, as it constitutes the only durable solution that is a right and the foundation of a real and just peace. Conclusively, the Palestinian refugee plight to return is neither exceptional nor impractical as other refugee flows have desired to return to their homes and have had the opportunity to do so with the aid of the international community. For Palestinian refugees to exercise the same opportunity to access their rights constitutes not only a practical and viable solution but a just solution, as enshrined in international law.

⁷⁷ See BADIL, Denial of Reparations, *supra* note 9, p. 68-69.



The plan attempts to legitimize the annexation of east Jerusalem, the Jordan Valley, and Israel's colonies in the West Bank. It further contemplates a land swap proposition of the Triangle region – home to 260,000 Palestinian with Israeli citizenship whom have often been referenced as a demographic threat by Israeli politicians. The governance of the Triangle region would supposedly be transferred to the proposed Palestinian 'state' in order to allow Israel to preserve its Jewish character. Lastly, the Vision denies Palestinian refugees and internally displaced persons (IDPs) their right to durable solutions and indivisible reparations, namely the right of return to their homes, property restitution, and compensation.

