Palestinian Refugees and the Continuous Debate on the Right of Return

By

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Abstract

The Israeli-Palestinian conflict has been riddled with many intractable challenges whose solutions have eluded both sides for more than 60 years. However, none has been as politically and emotionally charged as the Palestinian right of return to the land they inhabited and lived prior to the war of 1948. For six decades the Palestine refugees and their descendants have suffered dispossession, exile, conflict and poverty. Many thousands have lived their lives in concrete shanties where opportunities are few and despair can be endemic. Their plight is unique in its longevity and intractability and so, in turn, a unique organization has catered for their needs. The United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) came into being in December 1949 and has been with the refugees as they faced conflicts and crises, periods of hope as well as long years of disillusionment. It is a relationship unparalleled in the annals of humanitarian and development assistance. In 1965, the Arab League advised its members that, while it is necessary to grant Palestinian refugees full economic and social rights, they must not be allowed to become citizens, so as to maintain their refugee status. The Oslo Accords in 1993-94 and subsequent Israel-Palestinian agreement notwithstanding, the Palestine Liberation Organization (PLO) continued to insist on the implementation of the right of return in all international forums to keep the plight of the refugees alive. Israeli efforts over the years to change the status of the refugee camps in the occupied territories have been vehemently resisted by the Palestinians, who fear that any change in the refugees’ status would undermine their basic right of return.

Key words: Israel, Palestine, refugees, Accord, Rights of Return


Introduction

By the end of the war in 1949 and the conclusion of the Armistice agreements with the Arab governments (separately with Jordan, Egypt and Syria), 20,418,000 dunums\(^1\) of land were controlled by Israel; 5,555,000 dunums by Jordan; and 350,000 dunums in Egypt. Moreover, hundreds of Palestinians villages, towns, cities and neighbourhoods were emptied of their native residents and taken over by the Israelis. Don Peretz, contended that the Arabs left whole cities, including Jaffa, Acre, Lydda, Ramle, Beisan and al-Majdal; 388 towns and villages; and large parts of 94 other cities and towns; containing almost a quarter of all buildings then in Israel. Tens of thousands of shops, businesses and stores were left in Jewish hands.\(^2\)

Furthermore, the office for the identification and Valuation of the Arab Refugee Property, which worked from 1954, to 1964 under the authority of the UN Conciliation Committee for Palestine (UNCCP) to identify and evaluate these properties, indicated that, of the 20,418,000 dunums of land that fell under Israeli control, 7,482,000 were owned by Arabs; 1,476,000 were owned by Jews; 105,000 owned by others; and 11,355,000 dunums were considered public and Beersheba sub-district property.

Aside from the foregoing, and regardless of how sensitive these issues may be for the Palestinians, the existence of Israel as the home for the Jews, in the view of an overwhelming majority of Israelis, rests entirely on securing a sustainable Jewish majority within the state. Critically speaking, it is important to understand that this is not a question of right or wrong rather it is what has been established on the ground and is not subject to change, short of catastrophic event. However, the Palestinians do have a right in their homeland, but this right must be addressed justly, primarily through resettlement in the future Palestinian state and through financial assistance and concerted humanitarian efforts from Israel and the international community.

Note however, as the Israelis and Palestinians prepare for new American engagement with an administration adamant about pursuing the peace
process, they will soon find themselves once again confronting the same old dilemma unless they are able to find feasible and realistic solutions to a problem politically and psychologically embedded in both peoples’ narrative history. In other words, for most Palestinians the symbolic value of the right of return transcends the actual return. The crux of this dilemma are the collective memory, history as well as national identity of the Palestinian people. Also the right of return has remained a reverberating factor in Arab narratives since what the Arabs term Al-Nakba (the catastrophe) sixty years ago. Undoubtedly as such, it has evolved into a highly political issue, preventing many Arab leaders from showing any flexibility on the matter, for fear of public condemnation, the problem of the refugees has often been at the top of the Arab states’ agenda and to prove this, they have insisted that the refugee camps remain intact to ensure their temporary status, and to find a solution only through the right of return. Infact this is exactly why the Arab media and intellectuals treat the right of return as a non-negotiable issue.

The main theme of this paper is to show how politically driven negotiations and the right of return was central in those negotiations which ended acrimoniously with no agreement. Also this explains why Israel has refused and will continue to refuse to take any direct responsibility for the Palestinian exodus, specifically because it also blames the Arab States for perpetuating the problem. Moreso, Israel rejects, in principle and in real terms, the Palestinian right of return on a number of grounds and it does not accept responsibility for the plight of the refugees. However, the Israeli stance is generally predicated on the fact that, in times of war, many people end up being displaced as well as history is replete with instances of refugees settling elsewhere, particularly when the conditions in their country of origin have changed so dramatically. In another genre, the Israelis argue that Resolution 194 is not legally binding, which is the case for all General Assembly resolutions. Besides, the Oslo Accords, which were signed in September 1993 at the White House, stipulated that the
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The Palestinian refugee problem would be discussed as a part of talks on a permanent settlement, without making any reference to the right of return. Moreover, Israeli officials have argued over the years that even the principle of acceptance of the right of return could haunt the Israelis indefinitely. There will always exist some extremist Arab groups that could potentially use the Israeli acceptance to make new demands on Israel about Palestinian rights.

Ehud Barak recalls that when Yasser Arafat was told at Camp David in the summer of 2000 that the peace agreement being negotiated is final and would settle all outstanding issues between Israel and the Palestinians, Arafat categorically rejected the concept. He insisted that he had no authority to sign such an agreement on behalf of the next generation of Palestinians.

**Labyrinth of Political Negotiations: The Debate Continues On the Right of Return**

The Palestinian refugee issue touches on a number of socio-political elements that embody deep-rooted Israeli fears, both past and future-oriented. Also, while the basic framework for the peace process is predicated on concluding the historical conflict between Jews and Palestinians, the refuge issue is the only core issue that relates directly to the events of 1948, rather than to those of 1967. The demand for right of return places the Israeli leadership negotiating the agreement in a difficult predicament vis-à-vis the Israeli public, as this element touches on two traditional collective standpoints: (i) the rationale that as it was the Palestinians started the war, Israel cannot be expected to take responsibility for its consequences; and (ii) a lack of conceptual and emotional distinction made between the events of the war itself and the creation of the state of Israel, i.e., the idea of taking some responsibility for the creation of the problem is immediately associated not with the events of the war, but with the very presence of a Jewish community in this area, a presence that has yet to be accepted by the Arabs. This view may be summed up as: “We
cannot apologize for existing”\(^3\). At this juncture we shall assess the various politically driven negotiations towards resolving Israeli and Palestinian refugee issue.

The first assembly of negotiations with respect to the return of the Palestinians displaced in the context of Israel’s establishment as well as the Palestinian Nakba of 1948 to their homes and properties began in 1949 and ended in 1952. Further negotiations were at the auspices of the United Nations Conciliation Commission for Palestine (UNCCP) and were based on the UN General Assembly Resolution 194 (111). Although two UNCCP-facilitated peace conferences in Lausanne (1949) and Paris (1951) designed to achieve a permanent solution on all issues of disagreement between Israel and the Arab states. However, the issue of Palestinian refugees was emphasized prominently in these negotiations, but Palestinians claimed they did not enjoy direct representation.

At the Lausanne conference of 1949, Arab delegates maintained that Israel’s recognition of the right of Palestinian refugees to return to their homes and receive compensation, as provided for in resolution 194, was a condition for comprehensive peace negotiations.\(^4\) The UNCCP considered that it had a specific mandate to resolve the refugee question and was willing to press Israel to accept the principles laid out in Resolution 194.\(^5\) Israel, however, refused to accept these principles (the right of return in particular) and insisted that the question of refugees should be addressed only as part of the negotiations concerning an overall peace settlement.\(^6\) According to the UNCCP, Israel’s position was a result of its “unwillingness to relinquish the land that belonged to the refugees.

At the second peace conference, convened in Paris in 1951, Israel argued that security, political and economic concerns made the return of refugees impossible, and that “the integration of the refugees in the national life of Israel was incompatible with present realities”.\(^8\) Arab states maintained
that “there could be no limitation on the return of the refugees” and linked
Israel’s recognition of the right of return of Palestinian refugees to the
prospects for peace in the Middle East. The UNCCP continued to envisage
both repatriation of refugees to Israel and integration in Arab countries as
components of a solution to the refugee question. By the end of 1951, the
UNCCP concluded that it had “been unable to make substantial progress
in the task given to it by the General Assembly of assisting the parties to
the Palestine dispute towards a final settlement of all questions outstanding
between them.

However, the International Committee of the Red Cross, in August, 1967,
expedited negotiations between Israel and Jordan about the return to the
over 400,000 Palestinians forcibly displaced in the 1967 war as well as
subsequent Israeli occupation of West Bank and the Gaza Strip. An
agreement was reached by the two parties to a process in which refugees
are allowed to submit applications for return to their places of origin in the
Occupied Palestine Territories (OPT), although only a few were allowed by
Israel to return as well as re-establish residence in the circumstance.

The issue of the 1967 Palestinian refugees, more than a decade later,
resuscitated in the context of the 1978 Camp David Agreement between
Israel and Egypt. The agreement included provisions for a “Continuing
Committee” composed of representatives of Egypt, Israel, Jordan and the
Palestinians to discuss the “modalities of admission of persons displaced
from the West Bank and Gaza in 1967. However, the Committee was never
establishment at any point in time.

Between 1991 and 2001, the second major assembly of negotiations about
the Palestinian refugee question took place. The Palestinians, this time
enjoyed direct representation, although the process was sponsored by the
United States outside the arrangement of the UN, International Law and
UN resolutions. Two separate tracks was set up by the Madrid-Oslo process
to address the refugee issue: a political bilateral track as well as a more technical multilateral track. Under Article V the Declaration of Principles (OSLO Accords), bilateral negotiations on the 1948 refugee issue were to be part of the negotiations concerning a final peace agreement between Israel and the Palestine Liberation Organization (PLO) that were to begin no later than three years after the beginning of the interim period.  

In 1992, the technical multilateral track was formed to address regional issues such as water, regional economic development, arm control and refugees. Indeed, the multilateral Refugee Working Group (RWG) was established with a mandate to; (1) improve the living conditions of Palestinian refugees and displaced persons without prejudicing final status deliberations on the refugee issue; (2) ease and extend access to family reunification; and (3) support the process of achieving a viable and comprehensive solution to the refugee question. Some, albeit temporary, improvements of Israel’s family reunification mechanism were achieved and some resources were mobilized for the improvement of refugee living conditions, date collection and research (primarily on living conditions), but the multilateral talks ground to a halt in 1996, when Israel’s Likud government-Led, by Benjamin Netanyahu-triggered a political crisis and the first round of armed conflict between the Palestine authority and Israel.

The “Continuing Committee” of the 1978 Camp David talks finally materialized under the terms of the 1994 Agreement on the Gaza Strip and Jericho Area, with a mandate to “decide by agreement on the modalities of admission of persons displaced from the West Bank and the Gaza Strip in 1967, together with necessary measures to prevent disruption and disorder.

Israel did not appear eager to resolve the issue of 1967 refugees through the Continuing Committee, basically due to concerns about setting a
precedent for the negotiations on the 1948 Palestinian refugees slated to follow later. For instance, Israel as well as the rest of the committee members could not agree on a definition of “displaced persons” and consequently on the number of returnees.

In December 2000, President Bill Clinton, advanced a substantive bridging proposal. Before the end of his presidential term, the “Clinton Parameters” were initiated as guidelines for accelerated peace negotiations to be reached. With regard to Palestinian refugees, the parameters stated that the Palestinian state will be the focal point for Palestinians who choose to return to the area, without ruling out that Israel will accept some of these refugees. The proposed agreement would “make clear that the return to the West Bank, the Gaza Strip, and the areas acquired in the land swap would be a right to all Palestinian refugees; while rehabilitation in host countries, resettlement in third countries and absorption into Israel will depend upon the policies of those countries” Hence, while a general right of return to historic Palestine would be recognized, the right of refugees to return to their homes in Israel would not be recognized, and would be subject to “Israel’s sovereign decision”. The PLO insisted that “the essence of the right of return is choice: Palestinians should be given the option to choose where they wish to settle, including return to the homes from which they were driven.” According to the PLO, “the United States” proposal reflected a wholesale adoption of the Israeli position that the implementation of the right of return be subject entirely to Israel’s discretion”. They also argued that the parameters in fact constituted a setback compared to the principles acknowledged in previous negotiations. However, it is significant to state that the Clinton parameters failed to bring about agreement among the parties and consequently the PLO felt that the initiative was not pursued by the subsequent administration of George W. Bush.

There was also the Taba Conference in January 2001, the PLO initiated an exchange of “non-papers” with the Israel delegation. The PLO presented a
schematic framework for durable solutions for Palestinian refugees”, which was generally consistent with international law, the terms of UN General Assembly Resolution 194 (111), and best practice concerning durable solutions for refugees. Israel’s “private response” confirmed that a just settlement would necessarily lead to the implementation of UN Resolution 194, but did not recognise a right of return. It laid out a primarily politically driven framework, which provided for the implementation of a “wish to return… in a manner consistent with the existence of the state of Israel as the homeland for the Jewish people”, components which were inconsistent with Resolution 194 (111) as well as international law and practice. Although the Taba negotiations ended inconclusively, and peace negotiations came to a deadlock in 2001 with the election of Ariel Sharon as Israel’s new prime minister as well as the subsequent endeavour to crush the second Palestinian insurrection by military design.

Erstwhile attempt to resolve the Palestinian refugee issue have been largely “politically driven”. In this respect more emphasis was laid on the national interests of states, the balance of power between states and the give-and-take of an open-ended bargaining process. Infact, Israel has persistently jettisoned impartial third-party monitoring as well as international peace conferences under the aegis of the UN, insisting instead on “direct negotiations among the parties”. Israel’s approach to the Palestinian refugee question with particular respect to her national interest was the overriding factor and her position was adopted by the western powers.

Conclusion
Note that based on realistic developments and a change in Arab sentiment regarding the right of return, it appears that a growing number of Arab officials appreciate that Israel could not accept the right of return and that the solution lies in the refugees’ resettlement and or compensation. Infact many Palestinian intellectuals and officials have suggested that the right of return must mean a return to the homeland, to the West Bank and Gaza
strip and not a return to the 1948 homes and if insisted on, will create public pressure that could torpedo whatever negotiations on this issue.

Sari Nusseibeh, the president of Al-Quds University in Jerusalem, has called for the renunciation of the right of return in order to achieve a settlement of the conflict. He argues that the Palestinian cannot simply ask Israel to return all the territories captured in 1967 and then demand that the Palestinian refugees return to their original homes, in what is today Israel, and thereby obliterate Israel as we know it. In the same genre, the Middle East scholar Rashid Khalidi distinguishes between what he terms “attainable” rather than “absolute” justice. We want to conclude this paper based on his suggestion that while “[i] it must be accepted that all Palestinian refugees and their descendants have a right to return to their homes in principle... [it must be] equally accepted that in practice force majeure will prevent most of them from being able to exercise this right”.24

Endnotes
A dunum equals 1,000 square meters or ¼ acre.
The work of Prof. Don Peretz on Palestinian Losses was presented in information paper number 3 of the Centre for Policy Analysis on Palestine, Published in Washington 1995 under the Title “Palestine Refugee Compensation”.


Camp David Accord, 17 September 1978, Section A, para (e).


Agreement on the Gaza Strip and Jericho Area, May 1994, Article XVI, Paras. 1, 2 and 4.


The Clinton Parameters, 23 December 2000, refugee section.

Ibid
Ibid

Ibid
