



## THE PALESTINIAN RIGHT OF RETURN



Photo by Khaled Zighari

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The American-Arab Anti-Discrimination Committee (ADC) is a civil rights organization committed to defending the rights of Arab Americans and promoting their heritage. ADC, which is non-partisan and non-sectarian, is the largest Arab-American grassroots organization in the United States. It was founded in 1980 by former U.S. Senator James G. Abourezk in response to stereotyping, defamation, and discrimination directed against Americans of Arab origin.

ADC serves its nationwide membership through direct advocacy in cases of defamation and through legal action in cases of discrimination.

The ADC Research Institute publishes information on issues of concern to Arab Americans; sponsors internships for college students; and provides educational materials on Arab history and culture as well as the ethnic experience of Arabs in America.

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### INTRODUCTION

This brief issue paper lays out the case for the right of Palestinian refugees to return to their original homes and land in what is now the state of Israel. We examine the background to the refugee problem and the historical and legal circumstances under which the refugees lay claim to the right to go back to their homes and homeland. A contrast between western reactions to the right of return in Kosovo and Palestine provides a useful indication of the international climate on refugee rights and widespread moral inconsistencies in responses to the rights of Kosovar and Palestinian refugees. As a necessary element in making the case for the right of return, we also identify and respond to the standard arguments against the right of return for Palestinians. The issue paper concludes with a note on the right of return in international law.

The purpose of this study is to present the case for the Palestinian right of return in its most fundamental aspects. It is intended as a guide and handbook for those who advocate on behalf of these refugees and their rights. The attention placed on arguments against the right of return and effective responses to those arguments is intended to provide a set of tools to the activist and advocate to respond to opposition and objections. The note on international law similarly is intended to ground arguments for the right of return in their proper legal context and to provide activists with a thumbnail sketch of what aspects of international law guarantee the right of return, and why and how they do so. It is up to everyone who wants to make use of this study and these arguments to identify whatever they find most useful in any given circumstance and use it accordingly. It is our hope that this issue paper will provide the tools that will make the urgent task of promoting and defending the Palestinian right of return easier and more effective.

**Ali Abunimah and Hussein Ibish**

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### BACKGROUND ON THE REFUGEES AND THEIR RIGHT OF RETURN

Palestinians are the largest and most long-suffering refugee population in the world today. There are more than 3.7 million Palestinians registered as refugees by United Nations Relief and Works Agency, UNRWA, the UN agency responsible for them. Palestinian refugees live in many countries, but over 1.2 million of them remain confined to refugee camps. In the Israeli-occupied West Bank, 30 percent of the population are registered refugees from other parts of Palestine, and in the occupied Gaza Strip this number is 78 percent, which explains why Gaza has one of the highest population densities on earth with almost 3,000 residents per square kilometer (UNRWA In Figures).

Palestinian refugees, like all refugees, have an internationally recognized right to return to their homes. The right of return is guaranteed to refugees by the Universal Declaration of Human Rights which, in Article 13, states that “Everyone has the right to leave any country, including his own, and return to his country,” and by the Fourth Geneva Convention among many other basic human rights instruments [for a more detailed discussion of the right of return in international law, see appendix, pg. 20]. Following their expulsion in 1948, it was specifically applied to the Palestinian refugees through UN Resolution 194, which demands that “the refugees wishing to return to their homes and live at peace with their neighbors should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property....” The Resolution is explicit in leaving it up to individual refugees to choose whether they wish to return to their homes or accept compensation instead. The United States voted in favor of Resolution 194 every year until 1993 and this Resolution has been reaffirmed every year at the United Nations with near unanimity.

Count Folke Bernadotte, a Swedish diplomat and the UN mediator to the 1948 war in Palestine, said of the Palestinian refugees that “it

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would be an offence against the principles of elemental justice if these innocent victims of the conflict were denied the right to return to their homes, while Jewish immigrants flow into Palestine and, what's more threatening to permanently replace the dispossessed Arab refugees who have been here for centuries." As a result of his outspoken advocacy on behalf of the refugees' rights, among other factors, Bernadotte was assassinated in Jerusalem on September 17, 1948, by the Zionist group Lehi, also known as "The Stern Gang," led by future Israeli prime minister Yitzhak Shamir.

As a condition of being admitted as a member state of the United Nations, Israel agreed to implement the right of return laid out in UN Resolution 194. Resolution 273, which grants Israel membership is explicit about this requirement. Despite this commitment, Israel has consistently denied the right of return and passed laws in the late 1940s and early 1950s forbidding the return of refugees and expropriating their property. Israel also routinely killed in cold blood Palestinians who attempted to cross its borders in order to return to their homes. [For information, see Morris, Benny. Israel's Border Wars, 1949-1956: Arab Infiltration, Israeli Retaliation, and the Countdown to the Suez War. Oxford: Clarendon Press, 1993.]

For Palestinians the recognition of the right of return is an essential element of a reconciliation with Israel and a just resolution to the conflict. However, the parameters for an Israeli-Palestinian agreement presented by President Clinton in December 2000, in conjunction with proposals from Israeli Prime Minister Barak at the Camp David talks that July, demand that Palestinians renounce the right of return. Barak said that Israel would never recognize the right of return in "any shape or form." His successor is not likely to be more amenable.

In exchange for this renunciation, Israel said it would make a partial withdrawal from the territories occupied in 1967 and allow the creation of a Palestinian "state" that lacks contiguity, control of its own

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borders and natural resources, and is subject to unprecedented restrictions on its sovereignty, especially with regard to military and diplomatic matters.

Such a renunciation, if it were made, would be null and void with regard to refugee rights. As a human right, the right of return is inherent and belongs to individual refugees. No state or authority has the right to bargain it away, any more than it could bargain away its people's other human rights. Palestinians around the world have made it quite clear that they have not given anybody a mandate to negotiate away their right of return. Nor would they be bound by any agreement purporting to have abrogated it. Indeed, the Fourth Geneva Convention prohibits the renunciation of rights that Israel and the U.S. are trying to force the Palestinians to accept. Drafted in the aftermath of World War II, the Convention recognizes that a conqueror is often able to force a subjugated people to sign away their rights. Therefore, Article 8 forbids any renunciation, in whole or in part, of any of the rights it guarantees, including the right of return.

### **THE RIGHT OF RETURN IN KOSOVO AND PALESTINE**

Even the mere suggestion of bargaining away basic human rights smacks of the most breathtaking hypocrisy and double standards on the part of the international community as led by the United States. In 1999, the United States led NATO into a brutal war against Yugoslavia in the name of the right of return for Kosovo Albanian refugees. At the height of the attack on Yugoslavia, President Clinton declared:

“We cannot say, well, ‘we’ll just take all these folks and forget about their rights to go home.’ The refugees belong in their own homes on their own land. Our immediate goal is to provide relief. Our long-term goal is to give them their right to return” (Clinton 1999).

Such sentiments were widely echoed in the media. During the

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Kosovo crisis, *The Washington Post* championed refugee rights and was outraged by the notion that, with the passage of time, the rights of some refugees might seem diminished. *The Post* wrote:

“The events in Kosovo are refreshing our sense of outrage about what such ‘cleansing’ really means, but how long will the indignation last? For an indication, take a look elsewhere in the Balkans, where the business of driving people out of their homes because of their ethnic identity is just far enough in the past now to be something of a historical event.”

*The Post* was aghast that “that there appeared to be little chance...that displaced people with roots often stretching back hundreds of years would get their property back.” *The Post* also strongly condemned any notion that ethnic cleansing in the Balkans “brought a welcome peace,” because “as the people still pleading and petitioning to go back to their villages know well, ‘ethnic cleansing’ is no harsh but ultimately benign historical process. It is a violation of basic tenets of civilized society. It means that one family’s house is taken away and given to another. To make it stick, the perpetrators will kill, rape, beat, rob and intimidate the rightful owners. This isn’t ‘cleansing,’ nor do ‘population transfer,’ ‘displacement,’ ‘dislocation,’ ‘mass migration’ or any of the other impersonal terms often used to describe it quite suffice. Better to call it what it was and still is: murder, rapine, pillage, aggression and plunder” (“Another Word on ‘Cleansing’”).

Nobel Peace Prize winner Elie Wiesel, a leading advocate of the Kosovo war, in a much publicized report to President Clinton, explained that “most refugees manage to go on with their lives in spite of their constant longing for home. Their main problem is getting up in the morning to begin the routine of another day, another week, perhaps another year: uncertainty has always been the refugees’ worst nightmare. ‘How long will we be here?’ they kept on asking us. ‘When can we go back home?’” “And to think that, not long ago,” Wiesel

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implored his readers, “these people dwelled in their own houses, cultivated their own gardens, walked freely to the woods and villages of their own land, attended weddings and reunions.” As a result of his observations, Wiesel recommended that “Priority should be given to the return of refugees to Kosovo - even if it means to the ruins of their homes” (Wiesel Report to President Clinton).

The United States has also championed the right of return and property restitution for European Jews and others whose property was confiscated by Nazis and Communist regimes, and has wholly rejected the idea that the rights of refugees and property owners diminish with time. Under the Clinton Administration, a special office of the Treasury Department headed by Stuart Eizenstat aggressively supported claims for restitution and even set out specific guidelines about how to deal with houses and other property that had someone else living in them or using them. In March 1999, Eizenstat declared that the willingness of east European countries to correct the injustices of the past by restoring property to its rightful owners is “a measure of the extent to which they have successfully adopted democratic institutions, [and] the rule of law with respect to property rights” (Eizenstat).

Palestinian refugees could well have been forgiven for feeling that few had made their case as passionately as Bill Clinton, Stuart Eizenstat, *The Washington Post*, and Elie Wiesel and that in them they had found staunch friends and allies. They would therefore have been astonished and disappointed to find that none of them supported the right of return for Palestinians at all. Instead, as *The Washington Post* put it, “the Palestinians would have to give up on any real implementation of the right of return” as a requirement of peace (“Middle East Replay”).

How do those who staunchly supported refugee and property rights for Kosovo Albanians and European Jews, but wholly rejected them for the Palestinians, justify such an astonishing *volte face*?

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There are two types of arguments that Zionists offer for why the right of return should be denied to Palestinians, retrospective (or historical) arguments on the one hand, and prospective arguments on the other. The retrospective arguments propose that, because of some details of history, Israel is excused from its responsibility towards the refugees. The prospective arguments propose that if the right of return is implemented future disaster will ensue.

### **RETROSPECTIVE ARGUMENTS AGAINST THE RIGHT OF RETURN**

The first retrospective argument is that Israel is not responsible for the fact that Palestinians became refugees in 1948 because Palestinians were ordered to leave by Arab leaders.

This argument depends on the wholesale falsification of history and the denial that Palestinians were forcibly expelled as a direct result of Zionist military actions. While there is still a lively debate about whether and to what extent the expulsions were the result of a coordinated and calculated plan of ethnic cleansing on the part of Israelis, there is no doubt that significant acts of expulsion of Palestinians took place throughout the conflict. [For two credible accounts of the creation of the Palestinian refugees in 1948 which come to differing conclusions, see Morris, Benny. The Birth of the Palestinian Refugee Problem, 1947-1949. Cambridge: Cambridge University Press, 1987; and Masalha, Nur. Expulsion of the Palestinians: The Concept of 'Transfer' in Zionist Political Thought, 1882-1948. Washington, DC: Institute for Palestine Studies, 1992. While Morris maintains that the record demonstrates that while Israeli military actions directly and indirectly caused much of the refugee crisis but that there was no coordinated plan for this, Masalha insists that the removal of the Palestinians was intended and planned for considerably in advance of the outbreak of hostilities in 1947.] Indeed, one of the most notorious of these incidents, the cleansing of the cities of Lydda and Ramle, was detailed in

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memoirs of the officer who ordered the expulsions, future Israeli Prime Minister Lt. Colonel Yitzhak Rabin, but removed by Israeli censors. The account was published instead in *The New York Times* (Shipler).

The spurious and thoroughly discredited “broadcasts myth” (as the canard about Arab leaders instructing Palestinians to vacate during the conflict is often called) was repeated most recently by Elie Wiesel in his now infamous January, 2001 op-ed in *The New York Times*, in which he claimed that “incited by their leaders, 600,000 Palestinians left the country convinced that, once Israel was vanquished, they would be able to return home” (Wiesel 2001). Wiesel, like many others who repeat such long-debunked fabrications, knows them to be false. But it is not necessary to argue here about the well-documented expulsion of the Palestinians, which Israeli historians among others have done so much to throw light on in recent years. Suffice it to say that no credible instruction or urging of this nature from any “Arab leader” has ever been produced, and almost certainly none exists. Indeed, the late Israeli journalist Simha Flapan traced the origins of this myth to the need for some explanation which the Jewish Agency Executive’s (and later Israel’s first) Foreign Minister, Moshe Sha’aret, could provide to the UN meeting at Lake Success in April 1948 for the existence of such vast numbers of Palestinian refugees (Flapan 85-6). Note that there were already so many Palestinian refugees in April 1948, one month before the British withdrawal and the intervention of several Arab states in the war in Palestine, that the Israelis-to-be were forced to concoct elaborate lies to explain why they were not responsible.

But even if they were not an utter fabrication, such orders would do nothing to invalidate the right of return. The reason a refugee left his or her home is simply irrelevant to his or her rights. No matter why you leave your home, whether in fear, because you were studying abroad, someone urged you to flee, or you were forcibly expelled, your rights are the same. No one has argued that Kosovo refugees who left in fear or because they might have been urged to leave by the KLA

should not go home. And even though Israel did not forcibly expel all the Palestinians in 1947 and 1948, it deliberately excluded and dispossessed them when it banned them from returning, expropriated their land and property and refused to implement UN Resolution 194.

A second major retrospective argument is that there is a Palestinian refugee problem only because the Arab states deliberately kept the refugees in camps in order to put political pressure on Israel. By now, this argument runs, the refugees could have been comfortably resettled and there would be no problem.

This argument attempts to treat the fate of the refugees as solely a humanitarian issue and not a political issue. It is certainly true that some Arab states have badly mistreated Palestinian refugees. But the fact is that, by and large, Palestinians did not want to be assimilated, fearing correctly that assimilation would be used as a substitute for their legitimate national and individual rights. They had been quite content living with their own identity in their own land and understandably did not want to simply disappear into some broader Arab milieu as Zionists and their supporters had hoped. This expectation was succinctly expressed by John Foster Dulles, who, when asked about the fate of Palestinian refugees, replied that “the parents will die and the children will forget.”

This argument presupposes that the Palestinians and other Arabs had a moral obligation to complete the process of Palestinian dispossession and denationalization by permanently resettling the refugees outside of Israel, rather than struggling to assert their human and national rights. In essence, it expects them to become Zionists, and finish the work of transforming an Arab country (Palestine) into a Jewish state (Israel). But the problem of the Palestinians is not simply a humanitarian issue, since quest for justice and human rights is an inherently political one. The Zionist argument that the Palestinians would have contentedly disappeared if they had simply received enough humanitarian

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and rehabilitative relief is another way of denying their national identity and rights. It is also an argument that conveniently ignores the fact that Israel has done more than any country to make life in the refugee camps of the West Bank and Gaza Strip as miserable as possible throughout its 33 year occupation of those territories.

The final retrospective argument suggests that the right of return for Palestinians is invalidated because in 1948 and afterwards hundreds of thousands of Jews moved or were expelled from Arab countries and settled in Israel. This is described as a “exchange of populations” and is supposed to legitimize the ethnic cleansing and permanent exclusion of the Palestinians from Israel. This argument makes a mockery of the principles of refugee rights enshrined in human rights law, and conceives of people not as individuals with rights inherent to their status as human beings but as members of collectivities to be gathered together in exclusivist ethno-national enclaves. Furthermore, in accordance with the ideals of Zionism, it sees the presence of Jews from the Arab world in Israel as natural and desirable, and the presence of Palestinians in their original homes and villages in Israel as a “demographic threat.”

The logic of ethno-nationalism was commonly accepted until the end of World War II, and still survives in the thinking of many. But by adopting the United Nations Charter, the Universal Declaration of Human Rights, the Conventions on Genocide and on the Elimination of All Forms of Racial Discrimination, the Fourth Geneva Convention and many other instruments, the international community has explicitly rejected moral imperatives which place the needs of ethno-national constituencies for dominance and power over the rights of individuals, especially those in minority and refugee communities. Instead, the human family has committed itself to defining the rights inherent in all individuals and insisting that these rights are inviolable and not subject to being overruled by ethno-national ambitions.

The barefaced racism in the disparity between Israel’s Law of

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Return and its opposition to the Palestinian right of return stands in stark opposition to these principles. Since its founding, through the Law of Return, Israel has opened its borders, and those of the territories it has occupied since 1967, to anyone it considers Jewish, but has steadfastly refused to allow Palestinians to return to their own homes and lands simply on the grounds that they are not Jewish. The “exchange of populations” slogan is meant to rationalize, legitimate and mystify this raw ethnic discrimination.

What is never acknowledged in the disingenuous arguments about an “exchange of populations” is that this so-called “exchange” was a key to the realization of Zionism but a calamity for Palestinian national and political, as well as individual, interests. Thus, what is presented as an equal “exchange” has been solely to the benefit of one party to the conflict which is politically satisfied with the outcome. It is no doubt true that some, perhaps many, Israeli Jews with origins in the Arab world could be classified as refugees and have legitimate claims on property and return. While some interest in property recovery has been expressed, there is no movement for these communities to return, for the reasons outlined above. Indeed, Israel has never fought for Jews to remain in their homelands, rather it has consistently campaigned to bring them to Israel. Nevertheless, supporters of international law and refugee rights must uphold all Jewish claims to exercise these rights as much as they do for Palestinians or any other set of refugees. However, what may well have been at times unjust behavior on the part of some Arab states towards Jewish citizens cannot obviate the right of Palestinian refugees any more than unjust behavior by Israel towards Palestinians negates the rights of Jewish refugees in Europe.

Furthermore, the fact that one group of refugees prefers to assimilate in a new country cannot force the same option on another group, some of whom may wish to exercise the right to return. Their choice can only be on their own behalf, not on behalf of others.

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### PROSPECTIVE ARGUMENTS AGAINST THE RIGHT OF RETURN

The first of these holds that the mass return of three to four million refugees would immediately destroy Israel, since the return of any sizeable number of refugees would threaten the so-called “Jewish character” of the state. This argument is commonly deployed by Israeli officials and Zionists and was apparently entirely accepted by President Clinton.

What Palestinians expect is a recognition of the right of return by Israel and that the choice be given to refugees as required by resolution 194. It is likely that hundreds of thousands might well choose to return, especially Palestinian refugees in Lebanon. But some, perhaps many, Palestinians would likely accept compensation for the simple reason that the homes and villages they may wish to return to no longer exist. Others might hesitate to decide to live as Arabs in an Israeli state. Once Israel accepts the right of return, Palestinians and Israelis would then have to negotiate modalities for the orderly administration of a return program. This could include limits on the number of refugees returning each year, although not a cap on the total who would have the right to return, among many other administrative options. However, fundamental elements of a just settlement must include full recognition of the right of return, a real choice for refugees between return and adequate compensation and restitution, and modalities to ensure that return occurs at a rate that refugees can be absorbed into Israel with priority given to those refugees most in need of return.

Another argument against the Palestinian right of return is that Israel could not possibly allow hostile and hate-filled Palestinian refugees to return, since this would place the state and its Jewish citizens in peril.

Behind this argument is the assumption that Palestinian feelings towards Israel arise from an immutable and innate hatred and not from

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a sense of deep injustice that could possibly be redressed. It ignores the point that Resolution 194 requires returning refugees who wish to “to live in peace with their neighbors.” *De jure* and *de facto*, return for Palestinians means being willing to live as Arabs in an established, internationally recognized Israeli state. The very act of return under such circumstances is, in itself, a demonstration of reconciliation and acceptance. There are already one million Palestinians living in Israel as citizens. Some Israeli Jews see them as a kind of “fifth column.” But many Israelis recognize that, despite second-class status, political and economic exclusion and Israel’s conflict with their brethren, Palestinian citizens of Israel have been loyal and productive citizens. How much more constructive would their role be if their countrymen and women in exile were accorded the same right to return that Israel gives to Jews anywhere in the world? Surely, returning refugees could be equally productive members of the same society. Furthermore, apocalyptic rhetoric about the displacement of Israelis entailed in any Palestinian return is highly exaggerated. A substantial number of Palestinian refugees could, for example, return to their homes in Galilee, already largely populated by Palestinians, without the large-scale dislocations that Israeli Jews “fear.”

So, what about the so-called “Jewish character” of the state? This is a very vague phrase and it is hard to know what those who use it actually mean. Is it a state where Jews have special rights and privileges over non-Jews, which are enshrined in law and policy? Is it a state run by Jewish clerics? Is it a state where people live a “Jewish lifestyle,” in the phrase used by some religious Israeli Jews to criticize other Israelis who wish to secularize the state while maintaining that it is nevertheless “Jewish?” Or, is it simply a state where a majority of the population is deemed Jewish by ethnicity or religion, and where this majority status will be maintained by any and all means necessary?

What is clear is that Israel today is a state which accords special rights to those who meet its definition of who qualifies as Jewish and

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systematically discriminates against those it defines as “non-Jews,” which in practice means Palestinian Muslims and Christians. Of course, this is hardly a unique situation. Almost every country, including the United States, has minority groups who are subjected to legal or illegal forms of discrimination. But it is easier to sustain and perpetuate such discrimination if the privileged group is a majority or at least a plurality of the population. When the privileged group is a minority, as was the case in apartheid South Africa, the system of ethnic privilege becomes much harder to sustain or justify and may eventually collapse, forcing the privileged few to either leave, as in the case of French settlers in Algeria, or accept majority rule as in South Africa. Once the disenfranchised minority becomes too numerous, a state can no longer claim to be, on the one hand, ethno-nationally defined and on the other hand, equitable and democratic. This is what lies at the root of Israel’s fear of an influx of “non-Jews” and its tireless efforts to import Jews from the former Soviet Union and around the world. Apartheid is one way of dealing with such a situation, but it is unjust, tenuous and ultimately unsustainable. Another might be to move away from ethno-national chauvinism and towards democracy and equal protection for all people regardless of their ethnicity.

Staving off the day when Israel will be forced to confront the choice between nominal democracy and formal apartheid is really what is meant by protecting “the Jewish character” of Israel, since demographic trends suggest that Israel will at some point have to face this dilemma even if the right of return continues to be denied. Israel is already in the midst of a deep conflict over what it means to be a “Jewish state.” More than one million Palestinian citizens of Israel have made it quite clear that they will no longer accept second-class status. Israel will face the conundrum even if not a single Palestinian refugee returns. Within only a few generations the Palestinian minority within Israel will grow substantially and may soon reach parity with Jews due to the much higher Palestinian birth rate. By rejecting the right of return, Israel can most likely protect its “Jewish majority” for

only a limited period. But it will ensure that exiled Palestinians continue their struggle for justice for many generations to come.

Perhaps the cleverest of the prospective arguments is that the creation of a Palestinian state obviates the need for the right of return. This is embodied in President Clinton's proposal which seeks to replace the right of return to actual homes and properties with a Zionist-like attitude which would see "return" as being satisfied by physical presence in any part of historic Palestine. Clinton explained to the Israel Policy Forum, "you cannot expect Israel to acknowledge an unlimited right of return to present day Israel, and, at the same time, to give up Gaza and the West Bank and have the settlement blocks as compact as possible, because of where a lot of these refugees came from. We cannot expect Israel to make a decision that would threaten the very foundations of the state of Israel" (Clinton 2001). Instead of return to their homes, Clinton would "allow them to return to a Palestinian state that will provide all Palestinians with a place they can safely and proudly call home." As Clinton's chief Middle East peace negotiator Dennis Ross told *The Jerusalem Post*, "The fact of the matter is there should be a right of return to the new state of Palestine. There should be no right of return to Israel" (Ross). At the same time, Clinton expected the Palestinians to accept that at least eighty percent of Israeli settlers in the occupied territories would remain where they are.

But this argument, while politically deft, is no less a betrayal of fundamental human rights than any of the others. It would be the equivalent of asking Kosovo Albanians to be satisfied with a "return" to Albania and renounce the need to go back to their homes in Kosovo. The heartfelt appeals that they return to their homes and villages would have been replaced with the callous notion that their "return" could be satisfied by permanent settlement in teeming and miserable refugee camps on either side of the Albanian border. Would we be swayed if Poland argued that the creation of Israel canceled its duty to restore Jewish property and respect refugee rights?

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If we are ever to resolve this conflict we must reject the line of argument that the refugees “are an obstacle to peace” who, with their stubborn demands for their rights, are spoilers at everyone else’s party. The essence of peace is minimal justice, and the essence of justice for the Palestinians is justice for the refugees. Israeli concerns and questions about the right of return are understandable and must be addressed, but Israel’s absolute rejection of the rights of refugees cannot be the final word.

We have to start the discussion from a point that can lead to a settlement with which both Israelis and Palestinians can live, that meets the requirements of justice and respects refugees’ human rights. We believe we have set out some ideas for this here. If the right of return is permanently abrogated, however, it is not just the Palestinian refugees who would suffer. Humanity in general would be deeply impoverished if we start renouncing and repudiating rights long since upheld as inviolable, and our slow and painful quest to build a world that provides equal protection to all human beings will be dealt a crippling blow.

*APPENDIX*

**THE RIGHT OF RETURN IN INTERNATIONAL LAW**

The right of refugees to return to their homes is deeply embedded in customary international law and the most fundamental human rights instruments. As Mallison and Mallison note, “Historically, the right of return was so universally accepted and practiced that it was not deemed necessary to prescribe or codify it in a formal manner” (W.T. Mallison and S.V. Mallison 28). Perhaps the most basic expression of the right, however, is contained in the Universal Declaration of Human Rights (1948), Article 13, which states that “Everyone has the right to leave any country, including his own, and to return to his country.” It is generally recognized that, when sovereignty or political control over an area changes hands, there is a concurrent transfer of responsibility for the population of that territory. Therefore, it cannot be argued that Palestinians who were expelled or fled from what became Israel during a period of conflict no longer had any rights with regard to the country in which they had lived simply because of a change in the nature of the state or government in that territory. Moreover, where expulsion or prevention of return results in denationalization and statelessness, Article 15 of the Declaration, which stipulates that “Everyone has the right to a nationality,” becomes a further relevant protection of the right of return. And certainly, where a population has been forcibly expelled, “the right of return derives from the illegality of the expulsion itself,” since “those expelled clearly have the right to reverse an illegal act, that is to return to their homeland” ( Takkenberg 234).

The four Geneva Conventions are fine examples of documents that assume the right of return in numerous articles and provisions. For example, all four Conventions provide that any formal denunciation of one state by another for violating provisions of the Conventions “shall not take place until peace has been concluded, and until after operations connected with the release, repatriation and re-establishment of the persons protected by the present Convention have been terminated.”

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(Convention I, Article 63; Convention II, Article 62; Convention III, Article 142; Convention IV, Article 158). The underlying assumption of these provisions, and the numerous prohibitions against involuntary repatriation under conditions of danger in international law can only be that of an absolute and universally accepted right of return.

The right of return is also expressed in the International Covenant on Civil and Political Rights (1976), Article 12; Protocol No. 4 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), Article 3; the American Convention on Human Rights (1969), Article 22; the International Convention on the Elimination of All Forms of Racial Discrimination (1969), Article 5; and the African Charter on Human and Peoples' Rights (1986), Article 12.

UN Resolution 194 (1948) specifically applies the right of return to the Palestinian refugees:

“11. Resolves that the refugees wishing to return to their homes and live at peace with their neighbors should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible; Instructs the Conciliation Commission to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation, and to maintain close relations with the Director of the United Nations Relief for Palestine Refugees and, through him, with the appropriate organs and agencies of the United Nations...”

It is sometimes argued by opponents of the right of return that,

since 194 is a General Assembly resolution, rather than a Security Council resolution, it is “non-binding.” The general principle of when and if a General Assembly resolution can be “binding” need not be debated to invalidate this argument. Israel’s admittance to the UN as a member state, through Resolution 273, was conditioned on acceptance and implementation of Resolution 194. Therefore Israel is bound, as a condition of membership in the UN, to implement 194 and facilitate the return of the Palestinian refugees.

194 is particularly noteworthy in that it provides for the return of the refugees not simply to “their country” or homeland, but to “their homes.” In his Progress Report of 16 September, 1948, submitted the day before he was murdered by the Stern Gang, the UN Mediator for Palestine Count Folke Bernadotte recommended that “the right of the Arab refugees to return to their homes in Jewish controlled territory at the earliest possible date should be affirmed by the United Nations ...”. His Report was the basis for much of the text of 194 and, as Takkenberg points out, “It should be noted that the UN Mediator recommended that the right to return be *affirmed* rather than be *established*. Although the issue is not explicitly addressed in the report, Count Bernadotte was apparently of the opinion that the right of refugees to return already formed part of existing international law” (emphasis in the original, Takkenberg 242-3).

These assumptions - that the right of refugees to return is an established and universally accepted principle of international law and that this right is linked to homes and property, not just to a country or homeland - formed the basis for much of the discourse of the United States, NATO and the UN during the Kosovo conflict in 1999. Indeed, this conflict appears to have been a massive reaffirmation of the right of return as a general principle of international law, and even a valid *casus belli* for “humanitarian intervention” in the internal affairs of sovereign states, as well as being inextricably linked to specific homes and property rights.

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As noted in the text of this Issue Paper, during the Kosovo crisis in 1999 President Clinton declared, “We cannot say, well, ‘we’ll just take all these folks and forget about their rights to go home.’ The refugees belong in their own homes on their own land. Our immediate goal is to provide relief. Our long-term goal is to give them their right to return” (Clinton 1999). Similar sentiments were expressed by British Prime Minister Tony Blair who said that “These people have been driven from their homes and their homeland....Our mission is very simple and very clear. It is to make sure that they return and are able to live in peace and security as should be the right of any civilized human being.” He added that “When I see these children, when I see this camp, I know why we are taking this action....Our promise is that you should return in peace to the land that is yours” (Blair 1999).

NATO spokesman Jamie Shea told reporters at an April 24, 1999, briefing that “what is absolutely clear are our key preconditions which we are not going to negotiate on, which is the right to the return of refugees, access to humanitarian organizations, withdrawal of Serb forces, deployment of a very robust international force, and a political process” (Shea, CNN). On April 5, Shea told the press that “The most important thing is that at the end of the day...that those people should be able to exercise their right to return...” (Shea 5 April 1999).

United Nations humanitarian officials agreed with NATO political and military leaders that the right of return was a fundamental aspect of international human rights law as demonstrated by the crisis in Kosovo. During April, 1999, Dennis McNamara, Director of Protection at the Office of the United Nations High Commissioner for Refugees (UNHCR) said of the Kosovo conflict “Human rights were at the heart of the exodus - the right to asylum was critical to saving thousands of lives, and the right to return would have to be honored for any lasting solution to be achieved” (McNamara).

The absolute principle of the right of return was also expressed in

the context of other recent conflicts. With regard to the conflict in and around the former Soviet republic of Georgia, the UN Security Council in Resolution 1255 (1999) “reaffirms the unacceptability of the demographic changes resulting from the conflict and the imprescriptible right of all refugees and displaced persons affected by the conflict to return to their homes in secure conditions in accordance with international law and as set out in the Quadripartite Agreement of 4 April 1994 on the voluntary return of refugees and displaced persons (S/1994/397, annex II), and calls upon the parties to address this issue urgently by agreeing and implementing effective measures to guarantee the security of those who exercise their unconditional right to return.” The discourse and debate in the Security Council surrounding the impact of this conflict on refugees referred repeatedly to the precedent set in the international reaction to the Kosovo crisis, which implicitly constituted a significant precedent regarding the right of return.

Finally, the work of the Clinton Administration’s Deputy Treasury Secretary Stuart Eizenstat with regard to the property rights of refugees and other victims of the Nazi holocaust in Europe has great significance for the property rights of Palestinian refugees. Moreover, since the right of return is so intimately linked to property rights and original homes, the principles laid out by Eizenstat have profound implications for the right of return as well as property rights. Eizenstat’s testimony before the Commission on Security and Cooperation in Europe in March 1999 is of particular relevance. He told the Commission that “the basic principle that wrongfully expropriated property should be restituted (or compensation paid) applies to them all [every country in eastern and central Europe], and their implementation of this principle is a measure of the extent to which they have successfully adopted democratic institutions, [and] the rule of law with respect to property rights.” Eizenstat said, “Since this hearing is addressing restitution of both communal and private property, there is a longer list of principles and best practices we would like to see adopted.” Among these principles were:

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- ❑ “Owners or their heirs should be eligible to claim personal property on a non discriminatory basis, without citizenship or residence requirements. “
- ❑ “...Governments should make provisions for the present occupants of restituted property. In most cases, those using the property now had no hand in the expropriation. If no compensation or alternative accommodations are found for the occupants, the restitution tends to be delayed, sometimes indefinitely.”
- ❑ “Restitution of property should result in a clear title to the property, generally including the right of resale, not simply the right to use property, which could be revoked at a later time.”
- ❑ “Generally, communal property should be eligible for restitution or compensation without regard to whether it had a religious or secular use.”

Eizenstat concluded by stating, “... we feel strongly that these principles should be adopted now. Moreover, countries that have embarked on this difficult task should not allow the process to languish, but should press on to bring it to an honorable conclusion. Justice will not become easier as time passes; we have already seen too often that justice delayed can be justice denied” (Eizenstat).

These principles for the return of and compensation for refugee property obviously must be applicable generally and not confined to the largely Jewish holocaust assets claims to which Eizenstat is specifically referring. Obviously, if the property rights of Jewish Europeans survive after more than 56 years following expropriation, those of Palestinian refugees must similarly survive after 53 years or less. Moreover, if such property rights survive after so many years and pass from one generation to the next, surely the more fundamental right of return and residence in one’s own home and country cannot more easily expire.

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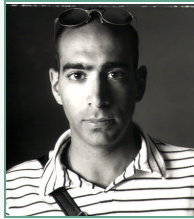
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Abunimah and Ibish are coauthors of an essay on the Right of Return in *Human Rights Brief* published by Washington College of Law and an essay on media coverage of the 2000-2001 Palestinian Intifada in a volume forthcoming from Verso.

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