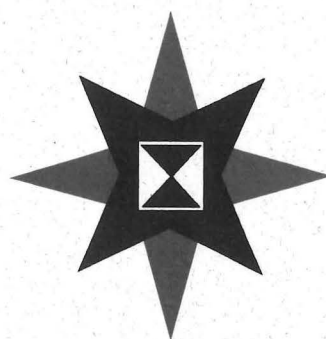




Palestinian Refugees: A Discussion Paper



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American Friends Service Committee**

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Preface

Refugees was one of the final status issues to be discussed and decided on by September 13, 2000. Like the other issues deferred to final status negotiations by the 1993 Declaration of Principles, the fate of the Palestinian refugees remains unresolved and has not been agreed upon by the Palestinian and Israeli negotiators. Like the other final status issues, negotiating a just and lasting solution to this issue has proven to be very difficult and may in fact be more difficult and divisive than the more well known issues of Jerusalem, borders, and Jewish settlements.

United Nations resolutions specific to Palestinian refugees, as well as human rights and international law pertaining to the rights and protections of all refugees, must form the basis for negotiations on this issue.

The negotiations will not be easy, but unless the two peoples, especially Palestinian refugees feel that justice has been done in the solution of this issue, there can be no lasting peace between Palestinians and Israelis and the seeds of future conflict in the Middle East will be sown.

Earlier this year the Middle East Programs of the American Friends Service Committee (AFSC) published an information brief, *Israeli Settlements and the Palestinian/Israeli Conflict*. In 1995, AFSC together with the Friends Committee on

National Legislation (FCNL) released a statement, *Jerusalem: Barrier or Gateway to Peace*. In order to contribute to the dialogue on Palestinian refugees, it was felt that a discussion paper on Palestinian refugees would assist us with our work inside the organization as well as our work with other non-governmental organizations (NGOs).

This is a discussion paper. It is not an AFSC position paper and because it represents alternative views it does not reflect consensus within the organization. It is hoped that the paper, which we commissioned Dr. Jan Abu Shakrah to write in consultation with AFSC staff and committee members, will draw responses from a wide variety of readers both inside and outside the organization in order to deepen and broaden the dialogue on this issue. We encourage you to respond to this paper in order to continue the dialogue. Please send all responses and inquiries to:

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Prologue

This discussion paper presents an overview of the Palestinian refugee issue - its origins, the current state of the refugees, proposals for a resolution of the issue, and current governmental and non-governmental efforts on behalf of the refugees. Because the issue is so vast - and writing about it so extensive - the paper focuses on providing information essential for an understanding of the most crucial issues. The endnotes indicate resources for further exploration. Most of these resources should be easily accessible on the Internet, in local libraries, or from organizations.

This paper is not a position statement, but it is hoped that the discussion of issues serves as a resource for articulating a position and formulating an action plan with respect to the Palestinian refugee issue. Positions, campaigns, and various governmental and non-governmental initiatives are explained and summarized, not to advocate for them, but rather to inform the reader of the current state of debate and policy with respect to Palestinian refugees. Principles and assumptions of varying approaches and positions are articulated, and reference is provided for those seeking further discussion and clarification.

Introduction

There is an international consensus that the issue of Palestinian refugees lies at the heart of the Arab-Israeli and Palestinian-Israeli conflict. The Middle East Peace Process, initiated in Madrid in 1991, acknowledged refugees as one issue that must be addressed on both the regional (Arab-Israeli) and bilateral (Palestinian-Israeli) levels. Consideration of the issue - together with other issues central to the conflict, including borders, Jewish settlements in the Occupied Territories, Jerusalem, and water - was relegated to "final status" talks that were to have concluded within five years of the 1993 Oslo Accords (the Declaration of Principles). Subsequent delays in implementing the accords postponed final status talks. The refugee problem - affecting over half of the seven million Palestinians worldwide - has not been a prominent focus of attention in the current political process. Nonetheless, it is clear to all parties that no resolution of the conflict or lasting peace is possible without addressing it.

The Sharm El-Sheikh Agreement of September 13, 1999, formally revived final status negotiations. According to the agreed timeline, all final status issues are to be concluded within one year of that date. No one, however, is assuming that the refugee issue can truly be "resolved" by

then, and there remain serious questions about whether crucial aspects of the refugee issue can be appropriately addressed in the context of political negotiations between the state of Israel and the Palestinian Authority.¹

Aspects of the refugee issue have been addressed in the Multilateral Peace Talks, in bilateral talks between Israel and the Palestinians, and in the Jordanian-Israeli Treaty of 1994. Yet the central question of what will become of the refugees and their rights has not been confronted in any meaningful way to date. What has happened to the refugees in more than 50 years since their diaspora? What are their current living conditions, needs, and desires? What are their rights as individual refugees and as a people, and how are these rights - of return and restitution particularly - to be realized in the context of current Middle East realities and the "new world order" at the turn of the millennium? What role in this process, if any, is there for peace and justice organizations like the American Friends Service Committee (AFSC), and what principles should guide their efforts? The information provided by this paper should provide a basis upon which such questions can be answered.

The Creation of the Palestinian Refugee Problem

Identifying Palestinian refugees

In general terms, a refugee is any Palestinian who fled, was expelled, or forced into exile from his/her home in the historic area of Palestine and/or was refused reentry. This general definition corresponds roughly with the international meaning of refugee and fits the definition used in the 1950 Statute of the Office of the United Nations High Commissioner for Refugees (UNHCR), the 1951 Refugee Convention, and the 1967 United Nations Refugee Protocol. The definition includes the major categories of Palestinian refugees or displaced persons from the 1947-48 war and the 1949 Rhodes Conference, as well as those forced into exile for the first or second time due to the 1967 war and subsequent military occupation policy in the West Bank and Gaza.

At the core of this definition is the reality that the Palestinian people were dispossessed of most of their land, homes, and property. Most Palestinians who were living within the 1949 armistice line - about 750,000 of the 900,000 - were forced into exile and then forcibly prevented from returning to their homes or regaining their property.

To grasp the dimensions of the current refugee problem, it is necessary to understand that this definition of Palestinian refugees and their experience of dispossession and exile has been denied and disputed in official Israeli history. The official Israeli position - one until recently accepted by almost all Israelis - has been that the Palestinians themselves and Arab governments

were solely responsible for their flight from Palestine and that they are also responsible for failing to be absorbed into their host countries, thereby resolving the issue.

The Israeli government has also argued that Israel itself absorbed nearly 600,000 Jews from Arab countries following the 1948 war, and that the absorption expenses and Jewish property losses have effectively canceled Palestinian claims.² What occurred, in other words, was simply a "population exchange."

Throughout the 1980s and 90s, however, and based on newly released official documents, the "new Israeli historians" have debunked earlier myths either denying the existence of a Palestinian people at all, or claiming that they left voluntarily or at the behest of Arab leaders.³

Now the following facts are generally accepted by Israeli officials, military leaders, scholars, and the public, and are reflected in the revised Israeli school curriculum:

- At least 70 percent of 1948 refugees were forced from their homes by war efforts or terror.
- The refugees who returned or attempted to return were forcibly prohibited from staying and driven out again.
- The majority of refugees remained for many years on land close to their original village as "internal refugees," or just across the border, eventually in refugee camps.
- The Israeli government took possession of refugee and "displaced person" property, declaring it "absentee property," for exclusive Jewish use.⁴

In other words, there is no longer any question or dispute about the creation of the refugees and their dispossession. Most Israeli political and military leaders now acknowledge what the United Nations noted in its admission of Israel to that body - that the process by which the state of Israel was established precipitated the refugee problem. Palestinian civilian exodus from areas of armed conflict and Israeli military actions, expulsions, land seizure and confiscation during and after the war, dramatically changed the population and land ownership in historic Palestine. At the time of the 1947 UN Partition Plan, which granted 55 percent of the land area of Palestine to Jews, Arabs constituted 67 percent of the population (1,300,000) and Jews 33 percent (640,298). Jews owned only 7 percent of the land. By the 1949 cease-fire agreement, 418 Palestinian villages and settlements had been depopulated and razed, and only about 7 percent of the land within the 1949 armistice line was accessible to Palestinian owners. The Arab areas - what is now the West Bank and Gaza - constitute only 23 percent of the historic area of Palestine. Approximately 750,000 became refugees, leaving only 150,000 Palestinians inside the armistice lines, including about 32,000 internal refugees. The 1967 war - which displaced over 320,000 first and second-time refugees from the West Bank and Gaza - and subsequent occupation policies of expulsion, land expropriation, house demolition, denial of residency rights, and other human rights violations, exacerbated the problem. In many ways, the refugee problem continues to be created.

Dealing with the consequences of this reality, on the other hand, is a matter of great controversy. The picture becomes particularly complicated within the context of the Middle East Peace Process, in which precise identification of categories of current refugees and determination of their rights of return and restitution are subject to political negotiation.⁹

Counting Palestinian refugees

One way to determine the current number of refugees is to count only those refugees registered to receive the services of the United Nations Relief and Works Agency (UNRWA). Registered refugees include original refugees of the 1948 and 1967 wars and their immediate descendents who live in the area of UNRWA operations (West Bank and Gaza, Syria, Lebanon, and Jordan) and are eligible for UNRWA services. In November 1999, Registered Refugees totaled 3,677,882, approximately half of the estimated worldwide Palestinian population today.⁶ Approximately half of Palestinians in the diaspora do not have UNRWA refugee status. Many Palestinians - including most Palestinians in Jordan and many in Europe and the Americas - have acquired citizenship in another country, and thus may not be considered refugees. As discussed below, however, both categories *do* fit the international definition of refugees and need to be considered in discussions of return, restitution, and compensation.

Table 1. UNRWA Registered Refugees, November 30, 1999

Country/ Location	Official Camps	Registered Refugees in Camps	Registered Refugees
Jordan	10	277,555	1,541,405
Lebanon	12	208,223	373,440
Syria	10	110,427	378,382
West Bank	19	155,365	576,160
Gaza Strip	8	442,942	808,495
Total	59	1,194,512	3,677,882

Source: UNRWA web site: www.unrwa.org

Even UNRWA uses a broader definition of refugees by extending services to all affected Palestinians during periods of crisis. Examples

include the extension of human rights monitoring and services in the West Bank and Gaza since the 1987 *intifada* and during the Gulf War curfew in 1991, and assistance to the 350,000 Palestinians expelled from Kuwait and other Gulf countries into UNRWA operation areas in Jordan, the West Bank, and Gaza.

Palestinians living in exile and not registered with UNRWA, who would fit the international definition of political refugees, include the following:

- Palestinians forced into exile in 1948 or 1967, dispossessed of their homes and property, and prohibited from returning, but who are not registered with UNRWA. They are not included in UNRWA registry either because they had economic means or ended up in places outside UNRWA's area of operations, for example, in Egypt, other North African countries, Iraq, or the Gulf region;
- Internally displaced Palestinians who remained within the area that became Israel;
- Individuals expelled from the West Bank and Gaza by Israeli occupation authorities after 1967;
- The so-called "late-comers," who left the occupied territories to study, visit relatives, work, or get married, and who failed to renew their Israeli residency permits or were prevented by Israel from returning; and
- Palestinians who were outside British Mandatory Palestine in 1948 or outside the West Bank and Gaza in 1967.

Elia Zureik notes that inclusion of these Palestinians as refugees corresponds to the Israeli definition of "absentees," which is "a category of Palestinians meant to be stripped of its most elementary human and civil rights" under Israeli sovereignty. Zureik and the Palestinian delegation in the Multilateral Refugee Working Group include these Palestinians in their definition of refugees because "At the core of their status is land alienation and the denial of return to their country."⁷

Including these Palestinians in the current count of refugees would increase the total number to just over 5,000,000, or about 70 percent of the worldwide Palestinian population.

The following table presents 1998 data on the global distribution of the Palestinian refugee and non-refugee population, according to one estimate, which puts the total number of refugees at close to 7.8 million. Note that the refugee category in this table corresponds to the expanded definition of refugee and is not confined to UNRWA registration. The data are also over a year older than the official UNRWA data in Table 1, which leads to some discrepancies. Nonetheless, the Table

Table 2. Global Distribution of the Palestinian Refugee and Non-Refugee Population, 1998

Place of Refuge	Population	Of Which Refugees
Israel	953,497	200,000 (internal refugees)
Gaza Strip	1,004,498	766,124
West Bank	1,596,554	652,855
Jordan	2,328,308	1,741,796
Lebanon	430,183	408,008
Syria	465,662	444,921
Egypt	48,784	40,468
Saudi Arabia	274,762	274,762
Kuwait	37,696	34,370
Other Gulf countries	105,578	105,578
Iraq, Libya	74,284	74,284
Other Arab countries	5,544	5,544
The Americas	203,588	173,050
Other countries	259,248	220,361
Total	7,788,186	4,942,121

Source: Salman Abu-Sitta, *Palestine 1948: 50 Years After Al Nakba*. Map distributed by PRC Crown House, North Circular Rd., London, England, 1998.⁸

is the best available to indicate where Palestinians live today.

Within the context of the Middle East Peace Process, different categories of refugees are handled by different committees and according to different standards. The major distinction of relevance in the peace process is that of "refugees" - Palestinians exiled in 1948 and their descendants - and "displaced persons" - Palestinians exiled in 1967 and after. Issues particular to each category will be discussed below under Proposals.

Current location and living conditions of the refugees

By any measure, whether the 3.6 million registered refugees or the 5 million who fit the international definition of a refugee, the number of Palestinian refugees is large and of central significance to a resolution of the Palestinian-Israeli and Arab-Israeli conflicts.

In most cases, Palestinians who immigrate to countries outside the Arab world are able to establish residency and eventual citizenship. The acquisition of citizenship, however, does not necessarily compromise the right of return, since the obstacle to return is the refusal of Israel to allow return or reentry, and not the choice of the refugee.

The refugees experience a range of legal statuses, discrimination, and living conditions throughout the Arab world. Only in Jordan do Palestinians originally from the West Bank have citizenship, and there are distinctions among those Palestinians who carry Jordanian passports, depending upon their residence, as well as the date and manner of entry to the country. Even Palestinians who do not consider themselves

refugees experience discrimination and problems traveling outside of their current country of residence; lacking passports, they confront the need to travel on a *laissez passer* and apply for visas to travel to third countries.

The current situation of the Palestinian refugees must be viewed in the context of post-Madrid, post-Oslo/Cairo agreements. Particularly refugees living in the Arab world experience a heightened insecurity and are disturbed by the attempt to resolve the issue without reference to UN resolutions and rights.

The focus on current discussions in the Middle East Peace Process has been on resettlement and absorption, including plans rumored to be promoted by the United States, Israel, and some host countries. Issues of major concern reported by refugee organizations include:

- The fragmentation of the Palestinian people;
- The depoliticization of the refugee question, in the context of discussions about resettlement and absorption into host or third countries;
- The threat to eliminate UNRWA before resolution of the issue to refugee satisfaction; and
- The exclusion of popular refugee representation in the negotiation process, and a resulting failure to address their genuine needs and demands.

These concerns, including resettlement plans, will be discussed further under Proposals. All reports on the status and living conditions of the majority of Palestinian refugees concur that their situation is intolerable and cannot be sustained without dire consequences both for the refugees and for the prospects of regional peace and security.

Following is a brief sketch of the distribution of Palestinian refugees in Arab countries, their legal statuses, and their living conditions.

Lebanon

According to UNRWA, there were 373,440 registered refugees in Lebanon in November 1999. A few thousand others live outside the camps and do not receive UNRWA services. The majority of registered refugees, about 55 percent, reside in 12 camps throughout the country, in deteriorating conditions. Palestinians are not granted citizenship and are classified as foreigners, with few civil and political rights. For most of their years in exile, they have also been denied basic social and economic rights. They are not allowed to work, and are excluded from public services, including health care, education, and social security. All but a small minority (mostly Christians), who have managed to obtain Lebanese citizenship, are barred from working in professional and skilled labor, and most who have employment work as manual laborers or in petty commerce in the camps. According to one survey, 94 percent of wage-earning Palestinian families in Lebanon live below the poverty line.⁹

From 1995 to 1999, the Lebanese government imposed visa restrictions that stranded thousands of Palestinians working in other countries, and deterred thousands of others from leaving for work abroad. Those restrictions were eased somewhat in January 1999.

Five camps were destroyed in the fighting of the early 1980s, and those still standing are in dire need of rehabilitation. The Lebanese government prohibits redevelopment and building in the camps, and many refugee homes are being demolished for roads and other redevelopment of war-ravaged Lebanon. Refugees are being evicted from illegal accommodations, and existing camp space is insufficient, with lack of public electricity, overcrowding, sewage seepage, and polluted drinking water.

While the Lebanese authorities are imposing these restrictions on the refugees, Palestinians are faced with reductions of UNRWA services, a decrease in international program support, a decline in remittances from work abroad, and the cessation of the Palestine Liberation Organization (PLO) payments and services of the Palestine Red Crescent Society and other Palestinian institutions in health, education, and other social services. Education has always been the Palestinian route to success, but today Palestinians in Lebanon face declining school enrollments, overcrowded classes, restrictions on secondary and tertiary education, and high rates of adult illiteracy.¹⁰

Palestinian refugees in Lebanon view their restrictive and adverse living conditions as part of a deliberate strategy to discourage them from remaining there. As discussed below, no proposal for resolution of the refugee problem assumes that the majority of the refugees now living in Lebanon can remain there under current conditions.¹¹ An additional factor affecting the refugees in Lebanon is that most of them originate from the Galilee and the northern coastal cities in Israel proper. Return to their original homes under the current peace process appears to be an increasingly remote prospect.¹²

Syria

The 378,382 registered refugees in Syria are integrated into the society in all but formal citizenship, enjoying full rights to employment and access to government services, while experiencing some restrictions on property ownership. Only about 30 percent live in Syria's ten camps. As with all persons living in Syria, there are restrictions on all political activity. Like refugees in Lebanon, Palestinians in Syria experience restricted mobility due to their dependence on refugee documents for travel.

Jordan

Only about 18 percent of the 1,541,405 registered refugees live in the 10 camps in Jordan. Most refugees (95 percent) hold Jordanian citizenship, and Palestinians fully participate in the political and economic life of the country. There are few differences in the average living conditions of Palestinian and non-Palestinian Jordanians, although conditions in the camps are significantly below national averages.¹³

West Bank and Gaza

The 1,384,655 registered refugees in the West Bank and Gaza are the only refugees who live in the area of historic Palestine, except for the approximately 250,000 internally displaced persons living in Israel. About 27 percent of the 576,160 in the West Bank live in 19 camps, and

about 55 percent of the 808,495 in Gaza live in 8 camps. Almost all Palestinians in the West Bank and Gaza now live in areas of full (Gaza and Area "A" of the West Bank) or partial (Area "B" of the West Bank) control of the Palestinian Authority. They are thus entitled to PA-issued passports, but their mobility continues to be severely restricted by Israel through area closures, checkpoints, and "security"-justified travel bans. Camp residents are typically worse off economically than non-camp residents, but because of UNRWA health and welfare services, their infant mortality rates and other quality of life indicators are roughly comparable to those of non-refugees. Overall, Palestinians in the West Bank and Gaza have experienced a marked decline in living standards and employment opportunities since the Oslo Agreement.¹⁴

Principles: The International Legal Framework

The legal status and rights of Palestinian refugees correspond to the international refugee standard, but certain characteristics distinguish Palestinians from other refugees. First, the Palestinian refugee problem was created in a process involving United Nations actions - specifically the Partition Plan and the admission of Israel to the United Nations - whereas most refugee situations result from a violation of the United Nations Charter. Second, Palestinian refugee demands have focused on repatriation, rather than asylum and non-refoulement. This second distinction, however, is dissolving as political refugees in recent history have increasingly demanded repatriation, and the international community has supported that demand. The particular history and status of Palestinian refugees require relating both to international refugee law and to specific international legal bases regarding Palestinian refugees. The latter are almost exclusively UN Security Council and General Assembly resolutions. We will first examine the Palestinian case in international law and then look at international refugee law and consider the unique aspects of the Palestinian case.

United Nations Resolutions specific to Palestinian refugees

1. The primary basis for Palestinian refugee claims is UN General Assembly Resolution 194 (III) of December 1948, paragraph 11, which reads:

[The General Assembly]

Resolves that the refugees wishing to return to their homes and live at peace with their neighbors should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for 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 General of the United Nations Relief for Palestinian Refugees and, through him, with the appropriate organs and agencies of the United Nations.

Since 1949, the General Assembly has issued annual resolutions affirming the right of return and reaffirming UNGA 194, along with UNSC242 and 338.¹⁵

It is important to note that UNGA 194 raises the question of compensation, not as an alternative to return, but rather as part of a recognition of the right of return for all refugees, based on principles of international law and equity.

2. The right of return, grounded in UNGA 194, was later **linked to the right of self-determination**. UNGA 3089D (XXVIII) of December 7, 1973, specifically linked the two rights by reaffirming UNGA 194 and framing the right of return as a *national*, and not simply an individual or humanitarian right. This resolution also makes

it clear the General Assembly's understanding that the refugees in UNGA 194 are the Palestinian Arabs:

[The General Assembly]

(1) Reaffirms that the people of Palestine is entitled to equal rights and self-determination in accordance with the Charter of the United Nations;

(2) Expresses once more its concern that the people of Palestine has been prevented by Israel from enjoying its inalienable rights and from exercising its right to self-determination;

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

3. A third basis for refugee rights is UN Security Council Resolution 242 (November 22, 1967) and UNSC 338 (October 22, 1973), which call for the implementation of UNSC 242 "to start immediately after the ceasefire" from the October (Ramadan) War. The legal basis of UNSC 242 is the UN Charter principle of the inadmissibility of territorial acquisition by force. Among other provisions, it "Affirms further the necessity for achieving a just settlement of the refugee problem." Both UNSC 242 and 338 are mentioned as "bases" for the "peace process" initiated in Madrid, but neither resolution has been specified in any accords or agreements.

4. At least 24 UN Security Council and several more General Assembly resolutions call upon the government of Israel to respect human rights and specifically to apply the **Fourth Geneva Convention of 1949 in the Occupied Territories.**

The following two Security Council resolutions refer specifically to refugees:

UNSC 237 (June 14, 1967) "Calls upon the Government of Israel to ensure the safety, welfare and security of the inhabitants of the areas where military operations have taken place and to facilitate the return of those inhabitants who have fled the areas since the outbreak of hostilities."

UNSC 681 (December 20, 1990) "Urges the Government of Israel to accept the de jure applicability of the Fourth Geneva Convention, of 1949, to all the territories occupied by Israel since 1967 and to abide scrupulously by the provisions of the said Convention."

5. The specific circumstances of the creation of the Palestinian refugee problem are referenced in UNGA 273 (May 11, 1949), which sets the condition for **Israel's admission to the United Nations** as acceptance of the UN Partition Plan of 1947 (UNGA 181), which also asserts the principle of self-determination, and the return of the refugees (UNGA 194). The General Assembly based its admission decision on the declaration of the State of Israel that it "unreservedly accepts the obligations of the United Nations Charter and undertakes to honor them from the day it becomes a Member of the United Nations," and recalls "its resolution of 29 November 1947 (181) and of 11 November 1948 (194)", "taking note of the declarations and explanations made by the representative of the Government of Israel and before the Ad Hoc Political Committee in respect of the implementation of the said resolutions."

Special status of Palestinian refugees in international law

The rights of refugees and displaced persons are based on the Universal Declaration of Human Rights (UDHR), Article 13, which reads: "(1) Everyone has the right to freedom of movement and residence within the borders of each

State. (2) Everyone has the right to leave any country, including his own, and to return to his country." The right of nationality is also relevant, particularly in the Palestinian case. According to Article 15 of the UDHR: "(1) Everyone has the right to a nationality. (2) No one shall be arbitrarily deprived of his nationality." The elaboration of the specific rights of refugees is codified in the UNHCR Statute, the 1951 Convention Relating to the Status of Refugees, and the 1967 Refugee Protocol.¹⁶

Palestinians meet the definition of a refugee under the terms of paragraph 6 of the UNHCR Statute:

Any person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, or political opinion, is outside the country of his nationality and is unable or, owing to such fear or for reasons other than personal convenience, 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, is unable or, owing to such fears or for reasons other than personal convenience, is unwilling to return to it.

The Convention Relating to the Status of Refugees of 1951 (supplemented in 1967 by the UN Refugee Protocol, which essentially extends the definition of refugees to include those made refugees as a result of events after 1951) provides a general and universal definition of the term "refugee" that would also apply to Palestinians and lays down minimum standards for the treatment of refugees. There are five essential elements in the definition of a "convention refugee":

- (1) being alienated from one's home and property
- (2) being genuinely at risk
- (3) being motivated by fear of persecution perpetrated, condoned, or tolerated by the state and from which the state cannot protect

- (4) based on civil or political status
- (5) having a genuine need for and legitimate claim to protection, with the following exceptions:
 - (a) The cessation clause excludes a person from refugee status if it is possible to return or the person has "enduring protection," e.g., through a new nationality. Palestinians without a new nationality are excluded because of their assistance from UNRWA.
 - (b) The exclusion clause denies refugee status and protection to violators of human rights and criminals.¹⁷

Paragraph 7 of the Statute, like Article 1D of the Convention, excludes a person "who continues to receive from other organs and agencies of the United Nations protection or assistance." The other agencies referred to include UNRWA, which provides assistance, and the UN Conciliation Commission for Palestine (UNCCP), which was established by UNGA 194 to provide protection.

Three member states of the UN were mandated to continue the efforts of the UN Mediator on Palestine and to assist the governments and authorities concerned to achieve a final settlement that would include repatriation and compensation. Since Israel refused to permit any repatriation, and the Arab states insisted on full repatriation, the UNCCP was unable to fulfill its mandate. As Susan Akram summarizes the result, "within four years of its formation, the UNCCP devolved from an agency charged with the 'protection of the rights, property and interests of the refugees' to little more than a symbol of UN concern for the unresolved aspects of the Arab-Israeli conflict."¹⁸

Since no agency has authority or a viable mandate to represent Palestinian refugees in any international forum, to protect them, or to negotiate on their behalf, the terms of both the Convention and the Statute call for those functions to be transferred to the UNHCR.

At the time the Convention on Refugees and the Statute were established, the status of Palestinian refugees and their focus on repatriation, rather than asylum and non-refoulement, were unique. With the passage of fifty years, however, and the subsequent experience of new refugees, the demand for repatriation is no longer unique to Palestinian refugees.¹⁹

Challenges to the international legal framework

• Challenges to UNGA Resolution 194

Arab states and Palestinian leaders have always viewed UNGA Resolution 194 as inadequate by itself, since it does not explicitly articulate Palestinian national rights. This concern was addressed in UNGA 3089D (1973), which reaffirmed the right of return and linked it to the national right of self-determination. Arab states' cooperated with the Conciliation Commission established to implement UNGA 194, which dissolved in deadlock over Israel's refusal to repatriate the refugees and the Arab states' insistence on full repatriation.

From 1948 through 1950, Israel came under intense international pressure to compensate the refugees for their property, and, in fact, Israel's admission to the UN was dependent upon its acceptance of Resolution 194. Israel showed no signs of complying with the resolution or of arranging for property compensation. On the contrary, properties seized from refugees were declared state properties in 1950 and placed under the control of the Custodian of Absentee Property for the exclusive use of Jews. In response to a 1951 Iraqi law freezing the outflow of private capital, Foreign Minister Moshe Sharett declared before the Knesset on March 19, 1951:

“By expropriating the asset of tens of thousands of Jews who immigrated to Israel, the Iraqi

government has incurred a debt to the state of Israel. Such a debt already exists between Israel and the Arab world, and that is the debt of compensation to those Arabs who left Israeli territory and abandoned their property...The action now taken by the Iraqi kingdom...compels us to link the two debts...The value of the Iraqi Jewish assets that were expropriated will be taken into consideration when calculating the compensation we committed to pay Arabs who abandoned their property in Israel.”

The refusal to implement the provisions of Resolution 194 and the linkage to Arab Jewish immigrant properties to the issue of compensation to Palestinian refugees, has continued to dominate official Israeli policy. According to Michael McGuire in an article *Barak has plans on refugee compensation* in the *Chicago Tribune*, July 13, 2000, Joseph Alpher, an advisor to Barak, says that: “a new mechanism would replace the authority of UNRWA, on any compensation issue, and also deal with land and property claims by Jews forced to flee Arab countries. I am saying very specifically: We reject the right-of-return. If we are rejecting it, then, by implication, there can be return to the Palestinian state that emerges from these negotiations.”

A more significant challenge to UNGA 194 is the lack of any reference to this and other UN resolutions in the Madrid Conference, the Oslo-Cairo Agreements, and Jordanian-Israeli Treaty.²⁰ As a result, the Multilateral Refugee Working Group, the only context in the Middle East Peace Process in which refugees have been the subject of discussion and negotiations at all, did not adopt UNGA 194 as a basis for its negotiations. As a tactical issue to advance discussion of important humanitarian issues, like family reunification, what were dubbed “issues of principle” were deferred to all of the bilateral negotiations, without specifying the identity of the “refugees.” As Leila Zachariah, past Executive Director of Association

Najdeh in Beirut, points out, this tactical maneuver has had the effect of transforming "the refugee question into a regional Arab-Israeli issue, encompassing all regional refugee questions."²¹ The Jordanian-Israeli Treaty, for example, refers to refugees as a humanitarian problem "for both sides."

A third challenge to Palestinian refugee rights has been the threat of eliminating UNRWA, together with a drastic decline in international financial support for its basic refugee services, and a preference for funding the Peace Implementation Project. For example, although the UN authorized a \$322 million budget for 1999, only \$251.5 million was spent, due to a funding shortfall from voluntary contributors.²²

A fourth challenge has come from the waver- ing support of the U.S. government, which had always upheld UNGA 194, but abstained on an annual reaffirmation of the resolution for the first time in 1995, and continues to do so.²³

• Questions on the applicability of the Fourth Geneva Convention

Israel has never acknowledged the *de jure* applicability of the Fourth Geneva Convention, although it allows the International Committee of the Red Cross to operate and maintains that it respects its "humanitarian provisions" in practice, without specifying what those provisions are. Israel and the United States opposed plans for an unprecedented meeting of the Convention Signatories in July 1999, and the Palestinian Authority eventually gave in to pressure to adjourn the meeting and to "suspend" any discussion in order to advance the peace process.²⁴

• Challenges to the protection of Palestinian refugees under the UNHCR

As noted above, the unique situation of Palestinian refugees has been interpreted as exclud- ing them from the Refugee Convention and the UNHCR Statute, and thus from the protection of

the UN High Commissioner on Refugees. The protection regime established by UNGA 194, the UN Conciliation Commission for Palestine, lacks a viable mandate, and thus the exclusion clause for protection under the Convention and the Statute is negated. As recommended by Akram and oth- ers, an accurate interpretation of the Refugee Convention, the UNHCR Statute, the UNCCP Resolution, and UNRWA Regulations compels "the conclusion that a heightened protection regime was intended - and, indeed, established - for Palestinian refugees. This challenge to Palestinian refugee protection could be rectified by the UNHCR extending full representation and protection to the Palestinian refugees, or by the refugees authorizing an alternative protection agency.

• The Population Exchange Argument

As noted above, the official Israeli position has maintained that the Palestinian refugee issue is not a one-sided displacement, but should rather be viewed as a "population exchange." Approximately 750,000 Palestinians who "fled" from Israel are balanced by some 600,000 Jews from Arab coun- tries being absorbed into Israel, primarily during the 1950s. Don Peretz notes that the issue of Palestinian compensation "became entangled with Jewish demands for compensation from Iraq and, later, other Arab countries," as early as 1951.²⁵

There are several problems with this con- structed balance. First, Jews living in Arab coun- tries were not displaced by the 1948 war itself. Nonetheless, the social and political position of Jews in Arab countries became uncomfortable after the way some governments acted against Zionist activity, which they viewed as compromis- ing their sovereignty.

There is evidence, at least in Iraq, that Zionists induced Jews to leave through a terror campaign that included attacks on Jewish property and even synagogues.²⁶ Second, Jews who did

immigrate to Israel became full citizens and were often given "absentee" property that had been owned by Palestinian refugees. Third, the Jewish claims cannot legally be considered counterclaims to those of the Palestinians. Their claims against Arab states did not arise out of the same occurrence as the Palestinian claims, and they are not between the same parties.

The position of the Palestinian negotiating team in the Refugee Working Group was that the issue of Jewish property losses in Arab countries should be left to bilateral negotiations between Israel and those countries. Arab states that have hosted refugees could make their claims against Israel for compensation and Arab Jews could make any legitimate counterclaims within the same fora. As expressed by Salim Tamari, a member of the delegation:

Israeli claims for compensating, or repatriating, Jewish refugees from the Arab countries should be negotiated bilaterally with the respective Arab states concerned. The Palestinian negotiators should not get involved in a package deal based on the notion of 'exchanged population'.²⁷

In recent years, the World Organization of Jews from Arab Countries (WOJAC) has organized a concerted effort to identify and evaluate Jewish properties as part of a campaign to neutralize Palestinian refugee claims. If WOJAC does not authorize Israel to represent these individual Jewish claims, however, Israel could not then raise the issue even in direct negotiations with Arab states, let alone in the context of Israeli-Palestinian negotiations. Of interest is the fact that the Camp David Accords do have a provision allowing Egyptian Jews to make their compensation claims. To date, however, not one claim has been made.²⁸

Proposals for Resolution of the Refugee Problem

The refugees in the context of the Middle East Peace Process

Within the Madrid-Oslo "peace process," the refugee issue is being addressed in several contexts. The following section briefly describes these contexts and the accomplishments to date.

1. **The Refugee Working Group (RWG)** is one of five multilateral working groups adopted following the Madrid Conference in 1991 to address regional issues with the participation of regional parties together with the support of international resources and expertise. Like the other multilateral groups, the RWG operates by consensus, facilitated by a "gavel holder," in this case Canada. Syria and Lebanon boycotted the RWG (as well as other multilateral activities), and Israel boycotted one of the plenary meetings (May 1992), and walked out of the November 1992 meeting over family reunification. There were five more meetings, the last in December 1995 in Geneva. Although some of its activities have continued, the Arab League voted in March 1997 to suspend Arab participation in the working group due to increased settlement activity in the Occupied Territories. The RWG made progress in defining the scope of the refugee problem, collecting data, assessing needs, and conducting an inventory of ongoing assistance problems. It has provided a forum for dialogue on some contentious issues, although most of its recommendations and agreements on family reunification have yet to be implemented. Finally, the RWG has worked to mobilize resources for the refugees (in coordination with UNRWA's Peace

Implementation Plan (PIP)), and reunited Palestinian families living in the Rafah area of Egypt (Canada Camp) with their relatives in Tel El Sultan in Gaza. Despite its focus on limited humanitarian issues, the RWG failed to achieve significant progress because of monumental structural, financial, and political obstacles.²⁹

2. Under the **Declaration of Principles** (DoP or Oslo Agreement) of September 1993, the refugees are considered a "final status issue" to be dealt with on a bilateral basis between Israel and the Palestinians. The term "refugees" in this context refers primarily to the 1948 refugees. In addition, Article XII of the Oslo Agreement set the terms for the formation of a continuing ("quadrupartite") committee - composed of Egypt, Israel, Jordan, and the Palestinian Authority - charged with the issue of "displaced persons," meaning the refugees resulting from the 1967 war. The DoP, the Gaza-Jericho agreement of May 1994 (Cairo), and the Palestinian-Israeli Interim Agreement of September 1995 (Oslo II) significantly altered the way in which the refugee issue was addressed. With the establishment of interim self-government in Gaza and parts of the West Bank, the Palestinian Authority could for the first time issue travel documents/passports to West Bank and Gaza residents, and was given some powers to register previously unregistered Palestinians in the Occupied Territories as residents. Between 50,000 and 100,000 Palestinians returned to Gaza and the West Bank between 1994 and 1997, primarily to assume political, military, and bureaucratic functions for the Palestinian Authority.³⁰

The Quadripartite Committee, which first met in Amman in March 1995, has made little progress and has floundered over the definition of "displaced persons." Israel maintains that the term should apply only to the 200,000 persons actually displaced by the fighting in 1967. The Arab parties, on the other hand, pressed for a broader definition to include around 1,100,000 persons, adding those trapped outside the West Bank and Gaza by the outbreak of the war, those who left after 1967 but were refused re-entry by Israel, those deported by Israel, and their descendants.

Final status negotiations were formally opened on May 6, 1996, but substantive discussions were repeatedly postponed, until the Wye River Memorandum. The Sharm el-Sheikh Memorandum (September 4, 1999) revised the Wye River Memorandum, and called for a "determined effort to conclude a Framework Agreement on all Permanent Status issues in five months from the resumption of the Permanent Status negotiations" and conclusion of "a comprehensive agreement on all Permanent Status issues within one year from the resumption of the Permanent Status negotiations," which began on September 13, 1999.

3. The third context in which the refugee issue is addressed is the **Jordanian-Israeli Peace Treaty** of October 1994. The Treaty essentially reconfirms the Madrid and Oslo frameworks, but Article VIII.2.ii leaves open the possibility of bilateral (Jordanian-Israeli) negotiations concerning the refugees, a provision Palestinian refugees view as a threat to their right of self-determination.

Proposed solutions and principles espoused by Israelis and Palestinians

It is clear that there has not been much progress on the refugee issue so far in the Middle East Peace Process. Moreover, there is little basis for hope that the refugee issue will be satisfactorily resolved within the one-year timeline specified in the Sharm al-Sheikh Agreement. Nonetheless, it is important for non-governmental organizations (NGOs) that want to play a positive role in advancing peace and justice to examine the proposals put forth by various parties and to assess them in light of the principles outlined above. What has been missing on the refugee question is a straightforward discussion of issues, an assessment of them in terms of how they might contribute to both peace and justice, and an assessment of how a resolution might in fact be implemented. A fresh assessment has been initiated both on the Israeli and on the Palestinian side, primarily within non-governmental circles or at least as unofficial proposals or explorations by Israeli government and Palestinian Authority officials. The following section seeks to summarize the major points of these proposals, in order to give a sense of the range of serious proposals as well as the deep disparity between most "expert" proposals and the demands of the refugees themselves. Official Israeli and Palestinian Authority/PLO positions are distinguished from unofficial positions. It is important to realize, however, as the Oslo Accords demonstrated, that unofficial positions can quickly transform into official positions.

The following discussion organizes the complex maze of demands, proposals, and challenges concerning the resolution of the refugee issue under the topics of return, statehood, compensation, and resettlement.

The fundamental demand of Palestinian refugees is two-fold: return and restitution. The

refugees envision the fulfillment of these rights in the context of Palestinian national self-determination in the form of statehood. Finally, Palestinian refugees have always rejected resettlement within current host or other third countries. This refugee position stands in sharp contrast to both official and unofficial Israeli positions. In addition, some Palestinian proposals, while adhering to Palestinian refugee rights in principle, have indicated a willingness to negotiate on implementation of those rights.

Return

Official Israeli positions

Israel's official position on the issue of the return of the refugees has to date been based on Israel's claim that it bears no moral or legal responsibility for the "flight" of the Palestinians in 1948. According to Israel, what occurred in 1948 was a de facto population exchange as Israel absorbed Jewish refugees from the Arab world in the 1950s. An additional argument for not allowing the return of even a symbolic number of refugees (as advocated by some Israelis) is that Israel cannot upset its "demographic balance" or compromise its "demographic security". In other words, Israel must remain a "Jewish state" with a "Jewish majority." Shimon Peres, for example, characterizes the "right of return" as "a maximalist claim; if accepted, it would wipe out the national character of the State of Israel, making the Jewish majority into a minority. Consequently, there is no chance that it will be accepted, either now or in the future." Peres opines, however, that Israel might consider individual cases of family reunification as a goodwill gesture once a settlement is reached. Shlomo Gazit, former Israeli military coordinator of the West Bank and Gaza, former director of Military Intelligence, and advisor to the Labor government on the refugee issue, holds an opinion almost identical to that of Peres: "Israel denies the legality of the Palestinian claim. If it recognizes the 'right' of return it would also be admitting responsibility,

and perhaps even culpability for creating the problem. But Israel categorically denies any responsibility for the War of 1948. Israel also rejects 'return' for material reasons. There is no possibility of allowing the refugees to return to their original homes and lands without completely undermining the fabric of Israeli society."³¹

This official Israeli position, however, shows some signs of erosion, particularly in light of the research of the new historians. Some Israelis are willing to recognize the principle of the right of return as long as it is not interpreted as an admission of moral guilt, particularly if someone else pays restitution and the majority of refugees are settled in a future Palestinian state or in third countries. In an article *Israel will pay, but deny responsibility for refugees*, in *Ha'aretz*, July 14, 2000, Aluf Benn says that, "Barak will stress that Israel refuses to recognize the Palestinians' right of return, and will not accept legal or moral responsibility for creating the refugee problem, beyond expressing sorrow for their suffering."

On the other hand, many other Israeli politicians or officials, like Ariel Sharon, former Israeli Representative to the UN Dore Gold, and a large percentage of the Israeli public, oppose even the return of refugees to a future Palestinian state in the West Bank and Gaza. Their argument is that refugees absorbed into a mini-Palestinian state would also create a "demographic" instability in the area and engender pressure for return to their original homes, a development that would threaten Israel's security.

Israeli peace camp and Israeli-Palestinian partners

Palestinian-Israeli Partners: Israeli and Palestinian partners have formulated positions similar to those of Peres and Gazit. Mark Heller explored the refugee issue in *A Palestinian State* (1983), and devoted one chapter to the issue in the book co-authored with Palestinian Sari Nusseibeh, *No Trumpets, No Drums* (1991). Of

greater political import was the so-called Beilin-Abu Mazen Plan. This plan - which was never published but only "reported" in the Israeli and Palestinian press - was based on informal discussions in 1996 between Labor MK Yossi Beilin (now Justice Minister in the Barak government) and senior PLO official Abu Mazen. It reportedly included only this brief statement of principle on the return of the refugees: "It is agreed that the Palestinian state will not be limited in absorbing refugees within its area, and in return, the Palestinians will commit to forego the right of return of the refugees to the area within the Green Line."³²

Position of Peace Now: Following President Clinton's statement that Palestinians should be able to live wherever they want, Mossy Raz, General Secretary of Peace Now, clarified the organization's position on the issue:

The right of return exists. They [Palestinians] have the right of return. But they don't have the right to realize that right. Basically, those who want to return to Jaffa are exactly like the Jew who wants to return to Hebron. Both the Jew who wishes to return to Hebron and the Palestinian who wants to return to Jaffa are extremists who will have to forego their desires.³³

Position of Gush Shalom: The Peace Bloc (Gush Shalom) represents the most radical of all Israeli peace groups, with the exception of anti-Zionists.³⁴ On August 13, 1999, the group issued a statement about the right of return, which reads in part:

The 100-year old Israeli-Palestinian conflict will not come to an end without the resolution of the refugee problem. An agreement with a half of the Palestinian people, that will leave the other half outside the range of peace, will not bring real and lasting peace. There is no solution without agreement in principle by the Government of Israel to the Right of Return-a right anchored in human morality and international law. In this respect, there is no difference between a refugee uprooted by the events of the war itself and a refugee

actually evicted by the Israeli forces, between a refugee of 1948 and a refugee of 1967, between the refugees themselves and their descendants. All of them have been prevented from returning. The right of return assures every Palestinian refugee free choice between repatriation to Palestine and compensation.

The statement, however, goes on to describe the terms for repatriation, which Gush Shalom sees as occurring only to "the State of Palestine with the assistance of the international fund for Palestinian refugees." Only as "a symbolic act, and in order to heal the historic wound" would the State of Israel allow for the return of "a number of refugees" to Israeli territory, a number that would be "subject to negotiations." Those symbolic few Palestinians allowed to enter Israel would be "resettled like new citizens," and would not be allowed to return to their original homes and land, because "a refugee problem cannot be solved by creating another one."³⁵

In sum, there are some signs in Israel of a willingness to accept the *principle* of the right of return. However, there appears to be no support for actual return of refugees to their original homes and property.

Palestinian positions

To date, the Palestinian Authority (PA) and the PLO have not wavered in the long-standing Palestinian position of the Palestinian right of return and restitution. As several commentators have noted, however, the official Palestinian position is "unnuanced." This is illustrated in Arafat's recent statement at an Arab League meeting following the reopening of final status negotiations, reiterating the right of Palestinian refugees to return "home," without elaborating on where that "home" would be.³⁶ The reason for this seems to be two-fold. First, the PA and the PLO must satisfy their constituencies, primarily the refugees, who have been largely ignored in the current "peace process." Second, the PA has focused exclusively on the establishment of its authority

and issues of immediate concern in the West Bank and Gaza, while the PLO has done close to nothing for the refugees since the Madrid Conference of 1991. As noted above, PLO services and remittances to refugees have essentially ceased, although offices and representatives have been maintained in the camps and Fatah forces recently established an expanded presence in the Lebanon camps. PLO and PA offices charged with refugee affairs have, however, lent at least verbal support for the Campaign for Defense of Refugee Rights, discussed below.

As indicated by the Beilin-Abu Mazen plan, some Palestinians have articulated pragmatic positions at least concerning the actual implementation of the Palestinian right of return. Rashid Khalidi, for example, calls for "attainable justice."³⁷ Ziad Abu Zayyad, PLC member from Jerusalem, has adopted the position of Peace Now and Gush Shalom. Salim Tamari and Abbas Shiblak (editor of Shaml Newsletter), both of whom served on the Refugee Working Group, have developed more principled positions, which nonetheless represent major pragmatic concessions on implementation.

Most Palestinian intellectuals and officials seem to concur on the following formula. In exchange for Israel's recognition of the principle of the right of return, Palestinians will forego the realization of that right in Israel and will instead absorb a small number refugees into a Palestinian state in the West Bank and Gaza, with the remainder resettled in third countries.

Tamari and Shiblak also advocate a compromise on implementation, but one that does not view the return of refugees to the West Bank and Gaza as a substitute for the right of return to areas within Israel. Salim Tamari speaks favorably of Rashid Khalidi's plan for resolving the claims of refugees, specifically the five conditions:

- (1) That Israel acknowledges its moral accountability for the creation of the Palestine refugee problem;
- (2) That Israel accepts in principle, the right of Palestinians and their descendants to return to their homes; [In exchange, Palestinians recognize that this right cannot be literally exercised inside 1948 Israel, and will have to be realized in the state of Palestine.]
- (3) That a distinction be made between reparations - for those not allowed to return - and compensation - for those who lost property in 1948;
- (4) That Palestinian exiles would have the right to return to the future Palestinian state; and
- (5) That refugees in Jordan and Lebanon be offered choices of repatriation, citizenship (in Jordan), or permanent residency (in Lebanon).³⁸

Tamari counters that "Right of return to the areas of the Palestinian National Authority should not be conditional, or even linked, on the realization of claims to compensation or repatriation. It should be a separate act of sovereignty. In particular, Palestinians should not enter into negotiations with Israel where the right of return to a mini-Palestine would be bartered off with the right of return to Israel itself."³⁹

Similarly, Shiblak acknowledges that the right of return will be basically realized in a future Palestinian state, but concurs with Tamari that, "Return to Palestinian National Authority areas is not a substitute to the right of return of the refugees of 1948."⁴⁰

In contrast, organizations representing Palestinian refugees, including the Campaign for Defense of Palestinian Refugee Rights, continue to advocate for the right of return and restitution, based on international law, UN resolutions, and principles of equity and justice.

Abu-Sitta's Proposal: Salman Abu-Sitta, a Palestinian researcher based in Kuwait, has conducted a significant study of the refugee problem and the right of return.⁴¹ Abu Sitta's proposal is based on the inviolability of the rights of refugees: "The right of private ownership cannot be invalidated by occupation and the dominance of one state, nor can it be extinguished by treaties and agreements between groups or countries. The right of refugees to their properties is primary, irrespective of the success or failure of Oslo and whether or not a Palestinian state is declared at the end of the Oslo process." Noting that the right of return for Palestinian refugees is guaranteed by UNGA 194, which has been reaffirmed more than 110 times, he proceeds to describe how return is both legally operative and practically feasible.

Abu-Sitta's proposal is supported by two points of research, demonstrating that (1) Palestinian land and property ownership is well documented; and (2) demographic studies in Israel confirm the feasibility of Palestinian return to their properties in the area inside Israel.

(1) *Palestinian Land and Properties are Documented.* The table below represents the basic land areas in question:

Table 3. Land Area of Palestine

Land Area	Size
Surface area of Palestine (1948)	26,320 square kilometers
Current area of Israel (1967 borders)	20,325 square kilometers
Palestinian land inside Israel (in 1948)	18,643 square kilometers (92% of the current area of Israel)

Israel took control of Palestinian land⁴² in 1948 and then proceeded to "legalize" the seizure under the Absentees' Property Law of 1950, which transferred the land to an Israeli custodian. Israel then set up a development authority to develop, rent, and sell the land only to Jewish foundations. In 1960, lands administered by the state and the Jewish National Fund were declared "Lands of the State," under a Basic Law, and put under the management of the Israel Lands Administration (ILA). The ILA in turn rented the properties to kibbutzim and moshavim. In 1997, Israel began to sell some of the agricultural lands to contractors for development. Recognizing the danger in refugee land being transferred to private ownership, the Arab League adopted a resolution in September 1998, demanding that the UN appoint a guardian of refugee properties, and send a fact-finding delegation both to examine the status of the properties and to acquire maps and records relating to them. The UN General Assembly adopted Resolution 53/51 on December 3, 1998, supporting the Arab League position and requesting the Secretary General to protect the property.⁴³

(2) *Demographic studies confirm that return is feasible.*

According to Abu-Sitta, the demographic distribution of the Jewish population in the 41 natural regions or administrative divisions in Israel compared with the share of Palestinian returnees according to original locations indicates that the concept of return is at least physically feasible. Abu-Sitta divides Israel into three major areas and calculates returning Palestinians, the Jewish population, and the resulting population density. According to this plan, 78 percent of the Jewish population is concentrated in Areas 1 and 2 (the center of the country around Haifa and the adjacent areas), which comprise only 15 percent of the state's land area. The remaining 85 percent of the land "is equal to in its surface area and location to the area and location of Palestinian refugee lands." Of the 22 percent of the Jewish population living

in Area 3, 19 percent live in urban areas. Only 3 percent (around 160,000) live in rural areas. The return of refugees from Lebanon and Gaza would be primarily to the rural parts of Area 3, without having a significant impact on Israel's overall population density. As Abu-Sitta points out, the impact would be about equivalent to that of new Jewish immigrants since 1989, primarily from the Soviet Union.

Based on this analysis, Abu-Sitta proposes the establishment of a Palestinian Land Commission to document Palestinian properties, to advocate for their recovery, and to act as guardian of private properties until return and of public lands indefinitely. The identification of properties and owners would be facilitated by the extensive documentation already available (through the UN Conciliation Commission for Palestine) and by the original village/family structure maintained by the refugees in exile. The independent commission would be composed of 1,500 representatives democratically elected to proportionately represent the 530 villages and cities whose inhabitants were forced to leave in 1948.⁴⁴

Abu-Sitta's proposal provides an intriguing framework for reconsidering ways to implement the rights of return and restitution. The political implications and practical feasibility of such a plan require further research and exploration, as well as a willingness to adopt new ways of thinking about future relations between Israelis and Palestinians. The political acceptability of the plan to Israelis is highly questionable at present.

BADIL has pointed to one potential benefit of the proposal, namely, that a large-scale return of refugees to their original homes or properties would greatly alleviate the costs of compensation.⁴⁵

Statehood

All of the serious proposals for resolution of the refugee problem posit the establishment of a Palestinian state in some portion of the West Bank and Gaza. As noted, most of the proposals assume that the vast majority of refugees choosing to return would do so within that Palestinian state. Aside from questions of principle, such a prospect presents severe difficulties for the Palestinian Authority unable to muster development funds for the Palestinians already resident in the West Bank and Gaza and confronted with major obstacles to exercising effective sovereignty with Israeli presence and control mechanisms still in place.

Salim Tamari articulates the dominant official and unofficial Palestinian position that the return of Palestinian refugees should not be viewed as a bargaining chip or substitute for return to their original properties, but rather as an act of sovereignty, unrelated to the resolution of "the refugee problem."

Moreover, a compromised right of return only to a Palestinian mini-state does not receive support from Palestinian refugees themselves. A survey of Palestinian reaction in the West Bank and Gaza to the Beilin-Abu Mazen plan on refugee return only to a future Palestinian state indicates that 54.4 percent supported or strongly supported the proposal. It is important to note, however, that even this bare majority represents both refugee and non-refugee Palestinians and only Palestinians in the West Bank and Gaza. Refugees in Lebanon, for example, would not be expected to show even that amount of support.⁴⁶

Most observers note that international refugee experience supports the assumption that a majority of refugees would not choose repatriation. In Lebanon, one-fourth of third generation Palestinians has one Lebanese parent. Less than one percent of refugees in Lebanon and Syria are

from the West Bank and Gaza, although 40 percent of refugees in Jordan are from the West Bank or Gaza. Economic pushes and pulls are also likely to discourage refugee repatriation to the West Bank and Gaza.

There is general agreement on the necessity of a Palestinian State, although it is recognized that the establishment of a Palestinian State will not of itself solve the refugee problem.

Compensation

There are many practical and principled aspects to the question of compensation. Major issues of contention include: the legal and moral basis, eligibility, calculation, administration, and identifying resources for payment. In its usual meaning, compensation refers to payment to individuals for material or non-material losses. If those individuals authorize a state or other organization to represent them, collective payment could be made to that representative for purposes that would benefit those who have suffered losses. In some cases, compensation could refer to reparation, or payment between states for damage incurred during war.⁴⁷

1. *The legal and moral basis for compensation:*

There is general agreement that international law holds states responsible for their actions and that refugees have a right to restitution or compensation. In the Palestinian case, UNGA Resolution 194 specifically asserts the right to compensation in the context of the right of return. International law on refugee compensation has predominantly focused on the claims of one state on behalf of its nationals against another state, but there are recent precedents for claims by stateless persons. Theo Van Boven's report on Restitution for Gross Human Rights Violations also makes a clear case for individual claims against state or state-sanctioned actions.⁴⁸ One issue that concerns Israel is the reluctance to admit fault. There is a broad

agreement that the payment of compensation recognizes "objective responsibility" for the seizure or destruction of property, but does not require an admission of moral blame. Under this formulation, it would be possible for Israel to accept that compensation should be paid because property was seized and refugees barred from returning, regardless of how blame is apportioned for the events of 1947, 1948, and after. On the other hand, acknowledgment of Israel's responsibility may be very important for the refugees.

Palestinian refugees like other victims of gross human rights violations view an acknowledgment and an apology as a crucial first step toward reconciliation, as has been illustrated by the South African Truth and Reconciliation Commission and other truth commissions in recent history.

2. *Who should receive compensation:*

Compensation amounts are usually linked to the adjusted monetary value of properties seized (restitution). Claims might also be made for pain, suffering, and other non-material losses (indemnification). Under these terms, all Palestinian refugees and their descendents, whether or not they were property owners, would be eligible for compensation. If an agreement is reached between the Palestinian Authority and the government of Israel, it is possible that a lump-sum payment could be made with a portion going to individual refugee compensation and a portion going for the costs of refugee repatriation and resettlement. It is important to reiterate, however, that a collective agreement between Israel and Palestine on refugee compensation would not extinguish the individual refugee right to compensation. Dissatisfied refugees could press individual claims against Israel or Israelis, although national courts would be likely to interpret any such claims in light of the peace agreement. This remains, nonetheless, an important issue to consider. Palestinian refugee organizations are already assuming that their rights will not be satisfied in an agreement under the current peace process. While they may have problems

later pressing their claims through national courts, failure to satisfy refugee claims would not bode well for a lasting peace.⁴⁹

3. *How to calculate compensation and on what basis:* There is wide disparity among the major calculations of compensation based on the estimated value of material losses alone. This is indicated in the following table, comparing the 1951 UN Palestine Conciliation Commission study, Yusef Sayigh's 1996 study, and Atif Kubursi's 1996 study, all in 1998 U.S. Dollars.

Table 4. Compensation Estimates Based on Palestinian Refugee Property Losses

Value Basis	UN PCC (1951)	Sayigh (1996)	Kubursi (1996)
1998 USD\$ (adjusted for inflation & 4% real rate of return)	\$23,95 million	\$150,975 million	\$148,203 million

Kubursi estimates the losses at \$235,769 million if human capital losses are included.

Previous proposals, by both Israelis and Palestinians, have set the figure arbitrarily much lower. These include Rashid Khalidi, who suggested \$20,000 per refugee for 2 million refugees, or \$40 billion total; Joseph Alpher and Khalil Shikaki, who settle on a figure of \$15 to \$20 billion; and Shlomo Gazit, who suggests a feasible figure of \$7 to \$10 billion.

A major issue involved in the calculation is the basis and procedure for documenting claims. It is true that much land is not accurately registered, that the process of sorting through claims would be complicated and expensive, and that there are many complexities (including usufructory rights to communal village lands and the identification of descendants and potential claimants to three gen-

erations). Nonetheless, an extraordinary amount of documentation does exist (including 2.5 million land records, maps, and photographic evidence), and the village/family structure of Palestinian refugee society would greatly facilitate such a process.

Almost all discussion and proposals in this regard focus on monetary compensation, based on formulas for calculating property losses. The proposal of Abu-Sitta, adopted by the Campaign for Defense of Refugee Rights, frames the issue in the broader context of what they call restitution, meaning the three components of the right of return, return of properties, and compensation for material and non-material losses.

Abu-Sitta summarizes this refugee viewpoint in the section of his proposal on compensation for damages:

The Commission would demand compensation for the exploitation of lands and properties and for a half century of psychological suffering due to the dispersal of the Palestinian people, taking as an example compensation that has been awarded to Jews for suffering under the Nazis and compensation from Switzerland. Compensation does not include the price of land and buildings as the homeland is not for sale.

The return of the refugees to their homes would reduce the level of resources needed for compensation. As with most cases of refugee compensation, the actual amount paid would be based on negotiation and political willingness, rather than specific calculations. It should also be noted that neighboring countries have incurred significant financial costs from hosting Palestinian refugees for more than 50 years, and these countries - Jordan, Syria, and Lebanon - could claim compensation as well.

The Petition Campaign for the Palestinian Right to Restitution, which has been endorsed by

major Palestinian figures and refugee leaders, most succinctly expresses the refugee position on compensation.⁵⁰

PETITION CAMPAIGN FOR THE PALESTINIAN RIGHT TO RESTITUTION

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RESTITUTION: A BASIC HUMAN RIGHT

More than fifty years after the holocaust, Jews around the world continue to fight for and receive restitution for material and non-material losses inflicted by the Nazi regime throughout Europe. More than fifty years after the Palestinian people were displaced and dispossessed by an exclusive Jewish state established in Palestine in the aftermath of Nazi atrocities in Europe, Palestinians are still being dispossessed, dispersed, and denied any kind of restitution. Restitution is a universal human right. Persons now fighting for restitution are therefore to be supported.

We, the undersigned, believe that Palestinians, of whom two-thirds are refugees, also have the right of restitution, including the return of the rightful owners to their property as well as restitution for other material and non-material losses. Resolution 194, which recognizes the right of refugees to restitution, has been reaffirmed one hundred and ten times by the United Nations. Further, as recently as November 1998, the UN General Assembly reaffirmed in Resolution 52/644 the principle, based on the Universal Declaration of Human Rights and international law, that Palestinian refugees are entitled to all revenues from their property.

We appeal to all fair-minded people, governments, parliamentarians, human rights groups and particularly Jewish organizations, to recognize, support and call for restitution of Palestinians through the restoration of homes and properties to their rightful owners as well as restitution for other material and non-material losses. While restitution can never fully make amends for all losses, suffering, and crimes against humanity, restitution establishes a precedent which should prevent the repetition of such catastrophes in the future.

4. Administration and Contribution to

Payment: Most proposals assume that an interna-

tional fund for refugee compensation would have to be established, to which Israel would be only one contributor. On the other hand, most observers are not optimistic about the international community's ability or political will to adequately finance such a fund. International donors, especially those currently contributing to UNRWA, are more likely to finance repatriation and developmental aspects of a refugee agreement than to contribute to individual cash payments.

Other sources for compensation could include restitution of refugee property to its original owners (politically unlikely in Israel), Israeli capital stock in the form of roads and settlements in the West Bank and Gaza, a "peace dividend" in the form of economic development to benefit refugees, and so on. It has also been proposed that some kind of post-UNRWA UN refugee organization should be established to facilitate a transition once a settlement is reached and to insure that international funding remains constant.

Proposed compensation schemes differ in terms four factors: claimants, formula, mechanism, and process.⁵¹ To summarize these complex proposals, two major models capture the major positions on the compensation issue.

The first model, favored by the refugees themselves, is to establish a Palestinian national fund or land commission, which would oversee large-scale property restitution and utilize a claims-based system for other elements of compensation. This is essentially the Abu-Sitta proposal.

The second model, favored more by the experts and politicians, would be either flat or modified per capita payments to all refugees and subsequent generations, together with collective compensation paid to refugee institutions, possibly including the Palestinian state. UNRWA or a successor organization would administer the plan. Both models have international precedents.

Resettlement

Resettlement is the solution favored by the Israeli government and most Israeli politicians and experts. The majority of proposals envision a major portion of the refugee population being resettled in current host countries or in third countries, despite opposition to such plans both from the refugees and from the host countries. Any resettlement would have to deal with these political realities, guarantee basic civil and political rights for the refugees, and insure economic development for the refugees. Host countries would have to be compensated in some way.

Most plans assume that there will have to be some provision for at least a portion of the refugees to be resettled. With the exception of Jordan, where a large portion of the refugee population has or could obtain citizenship, it is not likely that other host countries would agree to absorbing large numbers of Palestinian refugees as full citizens. Without full citizenship rights, however, the economic and political security of Palestinians would remain in jeopardy. One proposal is that those Palestinians who choose resettlement would achieve the political and economic rights of residency in the host country, but have formal citizenship in the Palestinian state. A related proposal is to urge the Arab League to reconsider its policy against dual citizenship.

It would be hard to overestimate how disturbing reports of resettlement plans are to the refugees. There have been several reports in the Arab press on various plans. A U.S. proposal, reported in detail in *Al-Sharq al-Awsat* on January 17, 1999, specifies how some 5 million Palestinian refugees would be distributed primarily among Arab states, with some absorption in North America and Europe.⁵² The scheme includes a formula for Arab states to compensate the Palestinian refugees with Israel paying "compensation" to Jews who emigrated from Arab countries. U.S. Secretary of State Madeleine Albright also presented a plan to the Lebanese government under which some refugees would be settled in southern Lebanon in return for financial aid from the United States.⁵³ Another recurrent report suggests that Iraq would absorb a few million refugees, in exchange for easing of sanctions.

Efforts should be made to lift the veil of secrecy surrounding these proposals. Such plans - in their secrecy, questionable dealing with human beings, and massive scope - resurrect the specter of "population transfer." Such proposals might take on an entirely different character if refugees themselves would choose to negotiate resettlement and were represented as equal parties and on terms that respected refugee right of choice.

Work for non-governmental organizations (NGOs)

1. Awareness-building and advocacy work

Refugee representatives at conferences over the past few years, particularly the UN North American NGO Symposium on the Question of Palestine in 1996 that focused on the refugee issue, concur on several NGO activities they consider helpful in the struggle for their rights.

1. A priority for the refugees is that NGOs promote awareness of and adherence to the UN resolutions protecting refugee rights. In particular, they note the importance of developing an awareness that the current Middle East Peace Process has suspended or ignored this foundation of the international legitimacy of Palestinian rights of return and restitution. They also note the importance of mobilizing Palestinian and Arab communities in the diaspora and their media around the right of choice for refugees.

2. A second refugee concern is what they perceive as the undermining of UNRWA and a threat to its continued existence and level of support for increasingly impoverished refugees. Contributing governments need to be lobbied to extend their financial support and to insure that UNRWA is dissolved only after the rights of return and restitution have been realized.

3. A third activity for NGOs would be to organize information task forces to visit refugee communities throughout the region. Refugees in Lebanon and Syria in particular tend to be ignored and do not have an adequate voice in discussions and negotiations. Such information task forces

could serve both to inform the international community about the situation and concerns of the refugees, and also provide the refugees with the opportunity to speak in their own voice on their own behalf.

4. International NGOs can assist refugee organizations in organizing and coordinating their efforts. Rosemary Sayigh, in particular noted that despite the existence of a coordinating group in Lebanon, NGOs tend to cluster their work in areas like kindergartens, rather than health services, for example. She also notes the need for an effective human rights NGO organized by and for the refugees in Lebanon.

5. A final suggestion is for peace and justice organizations to sponsor youth volunteers and work-study tours to work in the refugee camps on development projects, in children's summer camps, or in teaching English or other skills.

2. Humanitarian assistance and development

In the process of choosing partners and approaches and developing any assistance or development projects, it is important to consider essential aspects of the Palestinian experience, which have formed the current refugee population and its needs. Addressing these issues will be critical to the long-term stability of the region and to ending the cycle of violence. A 1995 report to the European Commission on policies of assistance to Palestinian refugees raised several important considerations for NGOs contemplating or already

involved in humanitarian and development work.⁵⁴

1. The "relief model" of humanitarian assistance programs promotes the "marginalization" of refugees. The report stressed the importance of involving refugees in decision-making and control over projects, creating a sense of independence and agency.

2. Uncertainty, instability, and intimate experience with violence define the socio-psychological status of refugees. Promoting refugee involvement in decision making and program implementation helps, as does addressing these issues directly and openly within the refugee communities.

3. Palestinian refugees have been isolated from the societies of their host countries. This isolation has perpetuated insecurity and instability, and enabled the demonization and dehumanization of the Palestinians. The report proposes integrating refugees into the surrounding societies.

3. Solidarity with right of return and restitution

Palestinian refugees stand by their right to return and restitution. International law, UN resolutions, and principles of justice/equity support those rights. In contrast, most politicians and experts advocate for a more pragmatic package (right of return to a Palestinian state, limited compensation, and large-scale resettlement) viewed as realistic goals in the current political climate.

Some current NGO initiatives and campaigns have begun to organize in solidarity with refugee rights. They recognize that compromise may be necessary in the end, and that Palestinian refugees will have to settle for less than perfect justice. At the same time, they recognize the important role of advocacy and support for refugee voices to be heard and basic principles articulated.

• Petition campaigns

Three petition campaigns on refugee rights seek to promote awareness and commitment to Palestinian rights of return and restitution—the BADIL/Palestine (cited above), the Council for Palestinian Restitution and Repatriation (CPRR), and the IOPA/Switzerland. The CPRR petition is conducted exclusively via its Internet site (<http://rightofreturn.org>). It reads: "I affirm that every Palestinian has a legitimate, individual right to return to his or her original home and to absolute restitution of his or her property." By the end of February, after only a month of circulation, the petition had been endorsed by more than 150 organizations and 15,000 Palestinians and their supporters around the world.

BADIL recently called for immediate consultation about how to unite these efforts and develop a joint plan of action on how to use the petitions. It also emphasized that an efficient advocacy campaign for Palestinian refugee rights must be built on active participation of the refugee community, and clarification of strategic questions as well as a sound examination of the legal and political implications of advocacy strategy.⁵⁵

• North American NGO initiatives

Two NGO initiatives with links or activities in North America offer possibilities for coordinated peace and justice work related to Palestinian refugees.

1. The Trans-Arab Research Institute (TARI) is an independent research institute formed to facilitate cooperative efforts among Palestinian refugee NGOs and other organizations in Palestine, in other Arab countries, and in North America, to verify Palestinian determination to maintain their right of return and restitution. TARI assumes that most refugees will remain committed to their right of return and restitution regardless of the outcome of the final status negotiations. TARI also assumes that final status negotiations will not satisfy the Palestinian refugee

rights. The organization hosted a one-day conference on April 8, 2000, at Boston University: "The Right of Return: Palestinian Refugees and Prospects for a Durable Peace."⁵⁶

2. BADIL Resource Center, in coordination with Palestinian activists and refugee organizations in the West Bank and Gaza Strip, launched a Campaign for the Defense of Palestinian Refugee Rights, which includes a US-Canada Campaign. Initiated in 1995 through a series of refugee con-

ferences, the Campaign added an international dimension in 1999. So far, the Campaign includes a European Campaign, circulation of the Petition for the Palestinian Right to Restitution, and distribution of the information packet "Towards a Palestinian-International Campaign for the Defense of Refugee Rights." Most recently BADIL has published a series of Briefs to provide legal and strategic background information on the right of return and restitution.⁵⁷

Conclusion

This discussion paper has sought to provide a framework and information as a basis for reflection on Palestinian refugees. It has examined how the refugee problem was created, who the refugees are, where and how they are living today, what international principles define their rights, what approaches have been proposed for resolving the

refugee problem, and what current and possible roles exist for action by non-governmental organizations.

The first step toward action is understanding. It is hoped that the first step has been taken and will be followed by the next.

Chronology of Significant Events in History of Palestinian Refugees

DATE/EVENT	SIGNIFICANCE
11/47 UN Partition Plan	Jews (then 33% of population with ownership of 7% of land) granted 55% of area.
1948 war to 1949 cease-fire agreement	418 Palestinian villages depopulated/erased by Israeli military activities, expulsion orders, and exodus of Palestinian civilians (780,000)
12/48 UNGA 194	Right of return
1949 armistice	Arab areas now 23% of Palestine (West Bank/Gaza) and only 7% of land within 1949 armistice line accessible to Arabs
5/49 UNGA 273	Conditions of Israel's admission to UN: acceptance of 194.
11/49 4th Geneva Convention	Protection of civilians in war & occupation
12/49 UNGA 302	UNRWA established
5/50 UNRWA begins field operations	Establishment of camps and aid programs (housing, education, food, healthcare)
UN Conciliation Commission on Palestine	Established as protection regime for Palestinian refugees
1951 UN Convention Relating to Status of Refugees	Establishes heightened protection for Palestinian refugees
6/67 Six-Day War	200-400,000 first or second-time refugees, called "displaced persons"
1967 to present: Military occupation of West Bank and Gaza	Ongoing expulsions, land confiscation, house demolitions, denial of residency rights, and other "depopulating" and refugee-creating measures
11/67 UNSC 242	Calls for resolution of refugee problem; cited as basis of "peace process" in Madrid Conference
10/73 UNSC 338	Calls for resolution of refugee problem; cited as basis of "peace process" in Madrid Conference
12/73 UNGA 3089D	Links right of return (UNGA 194) to right of self-determination
Lebanon in 1980s	War, Sabra & Shatilla massacre, PLO leaves
10/91 Madrid Peace Conference	242 and 338 bases for peace process, refugees addressed in multilateral and bilateral talks
9/93 Oslo Accords (Declaration of Principles)	Refugees a final status issue
May 6, 1996	Original date for Final Status Talks to begin
1997 Israeli Law allows sale of absentee property	Compromises right of refugees to return and restitution
September 13, 1999	Final Status Talks resume
September 13, 2000	Final Status Issues projected to be solved

Endnotes:

1 Under international law, governments or agreements between states cannot compromise refugee rights, like other human rights. Moreover, the rights of return and restitution reside in individual refugees and their descendents, and are not the rights of a state or authority, although a government may be involved in protecting refugees and insuring their return and restitution. As John Quigley notes in his paper, "Compensation for Palestinian Refugees: Initial Comments" (Compensation as Part of a Comprehensive Solution to the Palestinian Refugee Problem, Ottawa, July 14-15, 1999): "The rights of displaced persons are rights adhering to them as individuals. Each displaced person is entitled to decide individually about being repatriated, and each is entitled to decide individually about acceptance of compensation. The right of repatriation/compensation, being an individual right, cannot be overridden by inter-governmental agreement. Neither Israel nor Palestine, nor the two in concert, have the legal capacity to extinguish claims of individuals. If a Palestine-Israel agreement makes inadequate provision for repatriation and compensation, the claims of individuals will survive."

2 See Prime Minister's Office (Israel), *Background Paper: The Refugee Issue*, online at <http://www.pmo.gov.il/english/policy/bp-refugees.html>, and the Israeli statement on refugees at the opening session of the multilateral track of the Middle East Peace Process, Moscow, January 27, 1992. The implications of this position in the final status negotiations are discussed below under the Population Exchange argument.

3 Some significant works of the new historians about the creation of the state of Israel and the creation of the Palestinian refugee problem include: Benny Morris, *The Birth of the Palestine Refugee Problem, 1947-1949* (Cambridge: Cambridge University Press, 1985) and *1948 and After* (New York: Oxford University Press, 1990); Simha Flapan, *The Birth of Israel: Myths and Realities* (New York: Pantheon, 1987); and Baruch Kimmerling, *Zionism and Territory* (Berkeley: Institute of International Studies University of California, 1983). Articles and books by Tom Segev and Ilan Pappé are also relevant.

4 In addition to the new historians, see Ze'ev Schiff, "The IDF's new take on the refugee problem," *Ha'aretz* (November 5, 1999). See also, "What's New about the Israeli Position on the Palestinian Refugee Question?" BADIL Resource Center, October 14, 1999.

5 Elia Zureik, *Palestinian Refugees and the Peace Process* (Washington DC: Institute for Palestine Studies, 1996).

6 Using Palestinian Central Bureau of Statistics for Palestinians in the West Bank and Gaza and other countries (<http://www.pcbs.org/english/>) and Israeli Central Bureau of Statistics estimates of Palestinians in Israel (<http://www.cbs.gov.il/>), Rex Brynen estimates a worldwide Palestinian population of 7,395,000, based on mid-1996 figures.

7 Elia Zureik, *Palestinian Refugees and the Peace Process*, p. 8.

8 As reproduced in Elia Zureik, "Palestinian Refugees and the Middle East Peace Process," presented on October 23, 1998, at a Conference Organized by the University of Quebec in Montreal on the Middle East Peace Process, October 22-23, 1998. Available online at PRRN website.

9 Leila Zakharia and Samia Tabari, "Palestinian Women in Lebanon: Health, Work, Opportunities, and Attitudes," a paper presented to the CLS/RSP conference on "The Palestinians in Lebanon," Oxford, September 1996, as quoted by Rex Brynen.

10 See particularly articles by Rosemary Sayigh, including "Dis/Solving the 'Refugee Problem'," *Middle East Report* (Summer 1998); and "Palestinian Refugees," UN North American NGO Symposium on the Question of Palestine, June 24-26, 1996.

11 There have been many reports on the situation of Palestinian refugees in Lebanon. The most recent was a report in *Al-Ahram Weekly* (September 9-15, 1999), which reiterated the Lebanese government position, but noted that U.S. Secretary of State Madeleine Albright proposed withdrawal of Israeli forces and resettlement of Palestinian refugees in southern Lebanon. See also "Trapped on All Sides: The Marginalization of Palestinian Refugees in Lebanon," U.S. Committee for Refugees, 1999. Available on line at <http://www.refugees.org>.

12 Much of the information in this section is from the 1999 report of the U.S. Committee for Refugees, "Trapped on All Sides: The Marginalization of Palestinian Refugees in Lebanon," which is accessible at www.refugees.org.

13 FAFO Report 237, "Living Conditions Among Palestinian Refugees and Displaced in Jordan," by Marie Arneberg (Oslo: FAFO, 1997), provides a detailed description of the living conditions of Palestinian refugees in Jordan.

14 Documentation of living standards and the work of UNRWA can be found in reports on the UNRWA website at: www.unrwa.org.

15 See the United Nations website at <http://www.un.org/> for the complete text of all General Assembly and Security Council resolutions.

16 John Quigley maintains that the Palestinians displaced in 1948 do not fit the definition of refugee found in the UN Convention on Refugees, because they seek repatriation rather than asylum. As illustrated in the following discussion of the "suspended inclusion" of Palestinians with regard to the Convention, this position does not seem to coincide with that of the framers of the Convention.

17 James Hathaway, *The Law of Refugee Status* (Toronto: Butterworths, 1990).

18 Susan Akram, "Reinterpreting Palestinian Refugee Rights under International Law, and a Framework for Durable Solutions," BADIL Brief No. 1. Also available at www.salam.org/return2000/index.html

19 The PRRN Workshop on Compensation as Part of a Comprehensive Solution to the Palestinian Refugee Problem (Ottawa, July 14-15, 1999) compiled an Annotated Bibliography of selected cases and source materials. While the focus of the conference was on compensation, many of the cited cases involved return as well as restitution. These include: Cambodia; Abkhazia; Hutus repatriated to Rwanda; Muslims, Croats, and Serbs repatriated to Bosnia under the 1995 Dayton agreement; Serbs repatriated to Croatia; Kosovars repatriated to Kosovo under NATO auspices; Guatemalans repatriated after the civil war; and the right of repatriation of Greek Cypriots in northern Cyprus affirmed by the European Court of Human Rights.

20 The letter of invitation to the Madrid Conference cites UN Security Council Resolutions 242 and 338 as the basis for a just, lasting, and comprehensive peace settlement. The PLO agreed to accept 242 and 338 in a letter considered part of the agreement. Other than these two references, the body of UN resolutions related to the Israeli-Palestinian conflict has not been cited in any agreement or meetings of the process.

21 Leila Zachariah, "The Situation of the Refugees," in the UN North American NGO Symposium on the Question of Palestine (June 19-21, 1995).

22 See details at UNRWA web site: www.unrwa.org.

23 See Salim Tamari, "Palestinian refugees and displaced persons in the final status negotiations," UN North American NGO Symposium, New York, June 24-26, 1996, and UN General Assembly Resolutions in the UN website at <http://www.un.org/>

24 Palestinian NGOs like LAW, al-Haq, and the Palestinian Center of Human Rights issued background papers and extensive reports in preparation for the meeting. *Shaml Newsletter's* May 1999 special issue reported on plans for the meeting from the refugee perspective. See it on-line at <http://www.shaml.org/>.

25 Don Peretz, "The Question of Compensation," in *Palestinian Refugees: Their Problem and Future* (Center for Policy Analysis on Palestine, 1994).

26 See Special Correspondent, "How the Iraqi Jews Came to Israel," *Middle East International* (January 1973), pp. 18-20, 34. *Haolam Haze* also published accounts of the terror campaign on May 29, 1966, in Israel. See also Elmer Berger, *Who Knows Better Must Say So!*, El-Kodsy and Lobel, *The Arab World and Israel*, and Abbas Shiblak, *The Lure of Zion: The Case of the Iraqi Jews*.

27 Salim Tamari, "Palestinian refugees and displaced persons in the final status negotiations," UN North American NGO Symposium on the Question of Palestine, 24-26 June 1996. Tamari states this as a point of difference with Rashid Khalidi's "Toward a Solution," in *Palestinian Refugees: Their Problem and Future* (Center for Policy Analysis on Palestine, 1994).

28 Personal communication from Susan M. Akram, Associate Professor, Boston University School of Law.

29 For a detailed, insider account of the RWG, see Salim Tamari, *Palestinian Refugee Negotiations: From Madrid to Oslo II*. (Washington DC: Institute for Palestine Studies, 1996), available online at <http://www.ipsjps.org/>.

30 The Oslo II Agreement of September 1995 also referred to residency rights of returnees from the Gulf War aftermath.

31 Shlomo Gazit, *The Palestinian Refugee Problem*, Final Status Issues Study No 2 (Tel Aviv: Jaffee Center, 1995) pp. 7-8.

32 "Central Points of Beilin-Abu Mazen Plan," a report archived at <http://join.virtual.co.il/cgi-win/imra.exe/9701301>

33 Mossy Raz, General Secretary of Peace Now, on Clinton's Comments, in an interview with Aaron Lerner of IMRA, July 2, 1999.

34 Gush Shalom has, for example, advocated a boycott of products from Jewish settlements in the Occupied Territories and supports the establishment of a Palestinian State.

35 "The Right of Return," Gush Shalom's Weekly, *Statement in Ariga*, <http://www.ariga.com/gush.htm>, August 13, 1999.

36 Statement by Arafat to the Arab League, September 1999.

37 Rashid Khalidi, "Toward a Solution," in *Palestinian Refugees: Their Problem and Future* (Center for Policy Analysis on Palestine, 1994).

38 Positions regarding reparations and compensation will be discussed below.

39 Salim Tamari, "Palestinians refugees and displaced persons in the final status negotiations," United Nations North American NGO Symposium on the Question of Palestine, 24-26 June 1996, p. 4.

40 "Commentary," *Shaml Newsletter* 3 (June 1996), p. 4. See the Shaml website at <http://www.shaml.org>

41 Abu-Sitta's study was originally published in *al-Hayat* Newspaper (London) on November 9, 1998. It appears in English translation in *News From Within*, vol. XV, No. 7, July 1999, as "The Right of Return: Sacred, Legal, & Possible. A Call to Establish a Palestine Land Commission," pp. 20-27.

42 The land included property that Palestinians were forced to leave, as well as land that could not be used because of Israeli declarations of "closed" or "security areas."

43 The resolution, which can be viewed on the UN website (<http://www.un.org/>), was adopted by a vote of 156 for, 2 against, with one abstention.

44 See English translation of Salman Abu-Sitta's proposal, "The Right of Return: Sacred, Legal and Possible," in *News From Within*, vol. XV, no. 7, July 1999, p. 20-27. Check also the BADIL website (<http://www.badil.org/>) for updates of the plan and related campaign. Abu-Sitta's proposals on restitution and compensation are discussed below.

45 BADIL, "The Impact of Return on Compensation for Palestinian Refugees," presented at the PRRN Workshop on Compensation as part of a Comprehensive Solution to the Palestinian Refugee Problem (Ottawa, July 14-15, 1999).

46 Center for Palestine Research and Studies, "Public Opinion Poll #27," April 1997. View online at <http://www.cprsr-palestine.org/>

47 Palestinian Refugee ResearchNet (PRRN) and the International Development and Research Council of Canada (IDRC) co-sponsored a workshop in Ottawa, July 14-15, 1999, on "Compensation as Part of a Comprehensive Solution to the Refugee Problem." Readers of this discussion paper could examine the papers presented at the conference, or at least review the Draft Workshop Report, all of which are available online at:
<http://www.arts.mcgill.ca/MEPP/PRRN/prcomp.html>

48 Theo van Boven, Special Rapporteur, "Study Concerning the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms," UN Commission on Human Rights. Preliminary Report (1990).

49 BADIL Brief No. 2, "Fora Available for Palestinian Refugee Restitution, Compensation and Related Claims," by Susan M. Akram (February 2000) discusses the venues available for Palestinian refugees to bring individual restitution and compensation claims.

50 See the BADIL website for information on the petition campaign and a list of the original signatories, at <http://www.badil.org/>.

51 See the workshop papers, documents, and summaries of the Workshop on Compensation as Part of a Comprehensive Solution to the Palestinian Refugee Problem, July 14-15, 1999 (Ottawa), on the Palestinian Refugee ResearchNet website, at

<http://www.arts.mcgill.ca/MEPP/PRRN/prcomp.html>. The major combinations of these four factors are listed in the Workshop Summary. These elements are included here to give the reader an idea of the complexities involved in various concrete proposals for compensation:

Claimants: individual property owners and heirs, extended families or villages, all refugees regardless of property ownership, the Palestinian state as a collective claimant for all refugees, and host governments for the previous costs of hosting refugees.

Formula: a claims-based system, in which compensation is based on the value of lost property; a modified claims-based system, in which claimants are slotted into categories and receive standardized payments; a per capita payment system, in which all refugees receive equal payments; and a modified per capita payment system, in which some classes of claimants receive different levels of compensation (e.g., returnees vs. non-returnees).

Mechanism: cash payments to individuals, services/vouchers/entitlements for individuals and families, investment in community development, and equity (refugee ownership of investment or development corporation or similar collective entity).

Process: payment of lump sum to Palestinian state to be subsequently distributed to individuals, a bilateral commission (Palestine and Israel), a trilateral commission (Palestine, Israel, other), an international commission, a UN commission, UNRWA or UNRWA successor agency, and determination of amounts, modalities, and mechanisms left to future Palestinian-Israeli negotiations.

52 "Report from Amman: A U.S. Scheme to Settle 5 Million Palestinian Refugees in the Region and the World," London, *Al-Sharq al-Awsat* (January 17, 1999).

53 Zeina Khodr, "Controversial statements," *Al-Ahram Weekly* (9-15 September 1999).

54 Louise Weighill, "The Future of Assistance to Palestinian Refugees," *Asian Affairs* (October 1995), p. 259-271.

55 See BADIL Resource Center, Memo to Friends and Partners/Campaign for the Defense of Palestinian Refugee Rights, released February 15, 2000.

56 The website for the conference, including briefing papers, is: www.salam.org/return2000/index.html

57 Information on the Campaign, the Petition, and the information packet, together with press releases and background documents, are available on BADIL's website: <http://www.badil.org/>. BADIL can also be contacted at: PO Box 728, Bethlehem, West Bank; tel/fax: 02-2747346, or 052-360769; e-mail: info@badil.org.