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**A Lasting Peace in The Holy Land Must Include the Right of Return**  
**For Palestinian Refugees**

Reaching a just solution concerning the right of return for Palestinian refugees is integral to the achievement of a lasting peace in the Holy Land. The right of return is a personal and inalienable right guaranteed by international law to the millions of Palestinian refugees living in exile around the world. In previous peace negotiations Israel has refused to negotiate on the right of return or has inferred that it is a right that should be earned then granted to the Palestinians. Fundamental and alienable rights are inherent to all people. “The right of return of Palestinians refugees to their place of origins is enshrined in four separate bodies of international law: humanitarian, human rights, the law of nationality as applied to state succession and refugee law.” (Sari Hanafi, Why A ‘Right of Return’ Is Necessary, UN Security Council, Global policy Forum, September 25, 2004, at 1.) The right of return is one of the most important and emotional issues for Palestinian civil society concerning the achievement of a peace settlement. Yet, it is often over looked or left to be discussed in the final stages of peace negotiations.

“ The Palestinian nation and Palestinian Nationalism as it exists today was born following the expulsion of over half the Palestinian population from their land in 1948...(therefore) one of the fundamental aspects of Palestinian society is “refugeehood”...There is no solution to the land issue without coupling it with the refugee issue. This May be the reason why the Oslo accords failed.” (Sari Hanafi, Why A ‘Right of Return’ Is Necessary, UN Security Council, Global policy Forum, September 25, 2004, at 1.)

As expounded by the late Edward Said, the right of return has a deeper and more significant meaning than just the reiteration and application of international law. To understand the importance of this right to Palestinians and its significance in the resolution of this conflict, one must break the Palestine/Israel conflict down to its root cause. This root cause led to certain colonial practices that need to be acknowledged and accepted by Israel and the world in order for reconciliation and peace to last. Palestinians cannot be viewed and treated as if they are infantile. They must be granted the rights and dignities of all nations. The application of international law and specifically the issue of refugees cannot be considered secondarily. (Sari Hanafi, Why A 'Right of Return' Is Necessary, UN Security Council, Global policy Forum, September 25, 2004, at 3.) The issue of refugees must be resolved as a prerequisite to any peace negotiations, not as a reward given to Palestine by Israel and the United States for following stipulations placed upon them.

The right of return derives from the illegality of act of expulsion. One who is unlawfully driven from their land has the right to return and the right to receive just compensation for damaged property under the criteria of international law. Palestinians were unlawfully driven from their land because of conflict and confiscation. This unlawful expulsion, which resulted in millions of Palestinians becoming refugees, has vested them with the right of return. This right is enshrined in several sources of international law that will subsequently be discussed. Five suggestions or proposals for the facilitation of peace will also be concurrently discussed in relation to their applicable international law.

First, parties to the conflict need to recognize the refugee problem and the need for its just resolution in accordance with existing international law. This is integral to the facilitation of a peace process. Second, Israel needs to recognize their moral and legal responsibility for

the displacement of refugees and confiscation of land in 1948 and post conflicts. Third, Palestinians need to recognize that an unconditional acceptance of the right of return is impracticable and could create problems for their society and the peace process in general. It is unrealistic to believe that Israel will allow millions of Palestinian refugees inside their borders. The right of return should be conditioned on the refugees returning in a phased approach to their state (which now consists of the West Bank and Gaza). It should also be taken into consideration that in almost all prior cases across the world the number of those that return is less than those who choose other solutions. (Sari Hanafi, Why A 'Right of Return' Is Necessary, UN Security Council, Global policy Forum, September 25, 2004, at 2.)

Fourth, Palestinians need to recognize and adhere to international law, as they request for Israel to do. Specifically, the Palestinian insurgency needs to adhere to the Geneva Conventions and refrain from attacks targeting unarmed civilians (particularly women and children). Fifth, settlements and other Israeli infrastructure inside the occupied Territories that has been deemed unlawful by the United Nations and ICJ, could be left intact when Israel withdraws to the lawful and agreed upon 1967 borders. This infrastructure could serve as reparation. Much needed resources could also be shared by Israel with Palestine as further compensation. Finally, the needs of each society that will be recognized and met through the resolution of the refugee problem will be considered.

Resolving the issue of refugees through the use of existing international law will allow Palestinians to gain faith in the peace process and feel that they are being respected and acknowledged in the eyes of the international community. Hopefully this would encourage rebellion through lawful and diplomatic means. Israelis adherence to international law could help heal the wounds of the past and prove to the world their commitment to establishing a

justice peace in accordance with international law and abiding by the request of the United Nations. A major obstacle in the peace process will then be eliminated and trust between the parties will be restored, ideally leading to a final peace settlement.

### **Brief History of Palestinian Refugees, Israel, the UN and International law:**

Palestine was a part of the Ottoman Empire, which was entrusted to Great Britain by the League of Nations at the End of WWI, becoming a British Mandate. The International Court of Criminal Justice, when considering the purpose and principles of mandates has stated that, “ two principles were considered to be of paramount importance: the principle of non annexation and the principle of the well being and development.” (1950 I.C.J. 132.) The Eastern boarder of Palestine came to be modernly defined as a result of the Anglo Trans-Jordanian Treaty of February 1928. This treaty effectively severed Trans-Jordan from Palestine making the Jordan River and Dead Sea the eastern boarder. In 1947, the U.N. Special Committee for Palestine, UNSCOP created a partition Plan, which would eventually become General Assembly Resolution 181. This plan would create two states. “On forty-two percent of the land, 818,000 Palestinians were to have a state that included 10,000 Jews, while the State for the Jews was to stretch over almost fifty-six percent of the land which 499,000 Jews were to share with 438,000 Palestinians, the third part was a small enclave around the city of Jerusalem which was to be internationally governed”. (Ilan Pappé, The Ethnic Cleansing of Palestine 35 (2008.)

One must remember that Palestinian society has traditionally been composed of Christians, Jews, and Muslims who all considered themselves Arabs. The Zionist movement, which created the State of Israel, was primarily composed of Foreign Diaspora Jews, the

majority of which had recently immigrated to Palestine. As stated by Walid Khalidi (a past research fellow at Harvard Center for International Affairs) the partition plan “ ‘was a hasty act of granting half of Palestine to an ideological movement that declared only already in the 1930s its wish to de-Arabise Palestine’ ”. (Ilan Pappé, The Ethnic Cleansing of Palestine 35 (2008).) Israel became a Jewish Democracy. Therefore, if the Arab population were to outnumber the Jewish Israeli population, the Arabs would theoretically be able to ascend to power changing the character and control of the government. The Israeli Central Bureau of Statistics reports that the Jewish Israeli population within the states of Israel is 5,542,000 and the Arab population within Israel stands at 1,477,00.

Palestinians’ tumultuous history of intra-state conflict and Arab-Israeli wars has caused millions to flee their homes. For over sixty years some Palestinians have not been able to return to their homeland. “Palestinians are the largest and most long-suffering refugee population in the world.” (Hussein Ibish and Ali Abunimah, Palestinians’ Right of Return, UN Security Council Global Policy Forum, winter 2001 at 2.) On the 30<sup>th</sup> of June 2008 UNRWA had registered 4,618,141 Palestinians who were currently living as refugees. (UNRWA Publications and Statistics, <http://www.un.org/unrwa/publications/index.html>, Nov.1, 2008.) In the Arab World the war of 1948 is referred to as the Nakba, which means catastrophe in Arabic. As argued by Israeli historian, Ilan Pappé, the war of 1948 constituted the first acts in an attempt to expel the native Arab population from their land, allowing for the creation of an Israeli Democratic State. Since the War of 1948 Israelis policies of settlements, home evictions, land and resources distribution, obstacles placed on the freedom of movement, arrests, security measures and the ongoing conflicts have driven Arabs from their land (Ilan Pappé, The Ethnic Cleansing of Palestine 10 (2008).) Desmond Tutu at “The

Apartheid Paradigm in Palestine-Israel" conference in October 2007, has equated these policies to the System of Apartheid in South Africa.

Palestinians' "future and the right of return has become one of the most contentious issues in the efforts to find a lasting peace." Hussein Ibish and Ali Abunimah, Palestinians' Right of Return, UN Security Council Global Policy Forum, winter 2001 at 1.)

"The right of return to their homes is embedded deeply in customary international law and the most fundamental human rights instruments. According to prominent legal scholars Mallison and Mallison, 'historically, the right of return was so universally accepted and practiced that it was not deemed necessary to prescribe or codify it in a formal manner.'" (Hussein Ibish and Ali Abunimah, Palestinians' Right of Return, UN Security Council Global Policy Forum, winter 2001 at 2.) Another custom of international law is that when the government that political controls an area changes, the responsibility for the population of that area is transferred to the new sovereign. Thus, the establishment of a new government in a territory does not eliminate the rights of the population living in that territory, even if they have fled or left their traditional lands. One could then logically conclude the formation of the State of Israel would not negate the pre-existing rights of the Arab population, which resided on that land. Hussein Ibish and Ali Abunimah, Palestinians' Right of Return, UN Security Council Global Policy Forum, winter 2001 at 2.)

On November 29<sup>th</sup>, 1948 Israel represented by foreign minister Moshe Shertok signed *Israel's Declaration of Acceptance of Charter Obligations* when being admitted into the U.N. In this declaration the newly founded State of Israel declared that it, "unreservedly accepts the obligations of the United Nations Charter and undertake to honor them from the day when it becomes a member of the United Nations". Israel's Declaration of Acceptance of Charter Obligations, Israel-UN, Nov. 29, 1948, Pal/38.) The United Nations Preamble asserts, "to establish conditions under which justice and respect for the obligations arising

from treaties and other sources of international law”. (U.N. Charter preamble para 3.) Security council resolutions are sources of international law and are extremely relevant to members of the U.N. The U.N. Charter continues for nineteen chapters laying out the obligations of its members and the request that they adhere to international law and the will of the U.N.

During the Oslo Accords the problem or question of refugees was an issue in the Declaration Of Principles (DOP) that was going to be discussed in the negotiation of permanent status at Camp David. The signing of the final Palestinian-Israel peace agreement would depend on finding solutions to these issues. It was only at this final stage that the United States lead by President Clinton and Israel lead by Yitzhak Rabin “would negotiate on the permanent status” issue which would “lead to the implementation of (U.N.) Security council resolution 242 and 338” (Declaration of Principles, Israel- Palestine, art. I, Sept. 9, 1993.), which Israel had been obligated to implement since it was passed.

As stipulated in Security Council Resolution 242 a “just solution should be reached for the problem of refugees.” (S.C. Res 242 ¶ 2 U.N. DocS/RES/242(Nov. 22, 1967).) At Camp David when Arafat demanded the recognition of the Nakba and the Right of return, “the Israeli...Knesset, lost no time formulating a wall to wall consensus: no Israeli negotiator would be allowed even to discuss the Right of Return of the Palestinian refugees to the homes that had been theirs before 1948. The Knesset swiftly pass a law to this effect, with Barak publicly committing himself to uphold it as he climbed the steps of the plane that was taking him to Camp David.” ( Ilan Pappé, The Ethnic Cleansing of Palestine 244 (2008).) Ehud Barak became Prime Minister of Israel following the 1995 assassination of Yitzhak Rabin by a right wing Israel after the signing of the Oslo accords. Although international law

demands a right of return, Israel and the US would not extend this fundamental right to the Palestinians.

In June of 2002, Gorge W. Bush took his turn at middle eastern diplomacy with some advice form the United Nations, European Union and Russia when creating the Road Map To Peace. Much like the Oslo processes, this peace plan was a phased approach to reaching a final solution for just and lasting peace. Once again, as put forth by the Israel delegation at Camp David, the view of Israel was that “the Palestinians are trying to undermine the very existence of the State of Israel in their demand that Palestinian refugees be allowed the right to return to their original dwellings before 1948, a goal they are trying to achieve through terror.” (Tanya Rinehart, The Road Map To Nowhere: Israel/ Palestine Since 2003, 108 (2006).) In addition the Road Map had an absence of any territorial dimensions. Demands were made that the Palestinians create a democracy as defined by the US, security forces which had to be defined by and acceptable to Israel and crush terror. At this point the occupation would miraculously end. There was little said about the state of refugees. (Tanya Rinehart, The Road Map To Nowhere: Israel/ Palestine Since 2003, 11 (2006).) The November 27<sup>th</sup> 2007 Annapolis Conference once again set in motion the Road Map with no discourse on the right of return or the problem of refugees in general.

The May 2000 Mitchell Report that is referenced in Security Council Resolution 1397 of March 12, 2002, states that Palestinians are unwilling to negotiate because of “Israeli control over Palestinian natural resources, airspace and borders, and the return of fewer than 1% of refugees to their homes.” The Palestinians expressed “frustration with the impasse over refugees” in the Oslo process and at the Madrid conference. The Israelis felt that the Palestinian Liberation Organization has continued to incite violence and has not stopped

terrorism. (Sharm el-Sheikh Summit Fact Finding Committee Report, (US presidential Committee) May. 21, 2000.)

The issue of refugees seems to be a deal breaker in all of the recent Palestinian/ Israel peace negotiations. Israel refuses to recognize the right of return or adhere to international law that demands the right of return. Palestinians appear to be unwilling to compromise this right, which they feel is fundamental. The inability to discuss this problem creates a situation in which compromise and peace are not attainable. Even if the phased approaches to a peace settlement move towards a final agreement, lasting peace cannot be achieved until this issue is discussed and a compromise is reached. The problem of refugees seems to be a thorn in the side of the peace process which causes negotiations to deteriorate, which in turn causes frustration, anger and hatred on both sides. This frustration is often and unacceptably voiced through violence aimed at Israeli civilians or greater oppression, security measures and land confiscation within the Occupied Territories. If existing international law that grants an inalienable right of return to Palestinians was recognized with stipulations by Israelis and the Palestinians were willing to make some compromises, (not to the right but, to the application of the right) then one of the major issues hampering peace could be resolved before a phases approach to peace takes place. This would make the final negotiations for settlement much more likely to be achieved.

As stated by Lex Takkenberg, Chief of Field Relief and Social Services for UNRWA, “the right of return derives from the illegality of the expulsion itself” because the unlawfully expelled refugees have the right to reverse an unlawful act.” Hussein Ibish and Ali Abunimah, Palestinians’ Right of Return, UN Security Council Global Policy Forum, winter 2001 at 4.) The confiscation of land through unjust warfare is an unlawful

act as defined by the UN Security Council resolution 242, which has become a cornerstone of Middle Eastern diplomatic efforts, was adopted on November 22, 1967 following the Six-Day War. The Security Council first emphasizes the “inadmissibility of the acquisition of territory by war”. (S.C. Res. 242 ¶ 2, U.N. Doc.S/RES/242 (1967). During the Six-Day War Israel occupied the West Bank (including Jerusalem), Gaza, Sinai peninsula, and the Golan heights. 242 further emphasized the necessity of Member states to act in accordance with the Charter of the U.N., specifically Article II. When assessing the right of return one must also assess the manner in which refugees were expelled from their land. International law, which demands the right of return and stipulates the illegality of expulsion, will now be discussed.

### **Sources of Law:**

#### **Universal Declaration of Human Rights:**

As codified in the Universal Declaration of Human Rights, which was adopted by the General Assembly of the U.N. on December 10<sup>th</sup>, 1948, the right of return is a fundamental and inalienable right of all people. This declaration is “essential to promote the development friendly relations between nation” and is “the foundation of freedom, justice and peace in the world” ( preamble). The “Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms. ” Article 9 states that, “No one shall be subject to arbitrary arrest, detention or exile.” This means that arbitrary exile is unlawful. If you have been unlawfully exiled you maintain the return to the place from which you were exiled.

Article 13 Section 1, states, “Everyone has the right to freedom of movement and residence within the borders of each state”. Followed by Article 13 section 2, which states, “everyone has the right to leave any country, including his own, and return to his country.” Article 17 Section 2, states that, “no one shall be arbitrarily deprived of his property”. The Palestinian Arab population has been deprived of their property during the many conflicts and continuing occupation. Article 28 states, “ Everyone is entitled to a social and international order in which the rights and freedoms set forth in this declaration can be fully realized.” Therefore, Palestinians not only have the right to return to their land, but they also are entitled to the help of the international community and U.N. Member States to realize this right. (GA Res. 217A (III), U.N. Doc. A/810 at 71 (1948).)

### **The United Nations International Covenant on Civil and Political Rights:**

The preamble of this covenant, in accordance with the obligation defined in the Charter of the United Nations, declares that states that are a party to the Charter have the “responsibility to strive for the promotion and observance of the rights recognized in this present covenant.” This language seems to mean that a country that is a member of the U.N. should do all in its power to follow this covenant and afford those under its control or affected by its policies, the basic rights that have been recognized by Members States when joining the U.N.

Article 12, Section 4, specifically grants the right of return to those who have left their country by stating that, “No one shall be arbitrarily deprived of the right to enter his country.” If Israel is not considered the country of Palestinians’ refugees, Palestinian

territories, which include the West Bank and Gaza, surely are. Once again, international law gives Palestinian refugees an inalienable right to return to their place of origin.

The right of refugees to return is included in several documents that define the principles of the United Nations. Israel is a member of the United Nations and should act in accordance with these documents. If these documents are disregarded or only applied when convenient to member states than the power of international law is greatly diminished. In Israel's nascent stages it depended on the United Nations for protection and recognition. They should now at least respect the fundamental values of the organization that fostered their creation. (GA Res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966).)

### **Geneva Convention:**

The UN Security Council declared in resolutions 237, 271, 446, 605, 607, 681 and 799 that the Geneva Convention is applicable to Israeli occupation of Palestinian Territories. Also, the high contracting Parties are to follow the Geneva Conventions as the rule of warfare. Israel has ratified the Geneva Convention in 12<sup>th</sup> of August 1949. Jordan and Lebanon have also has signed the treaty. Three high contracting Parties of the Geneva Convention were a party to the War of 1948 and subsequent Arab-Israeli conflicts, making the convention applicable. Palestine has also made a requested to accede to the Geneva Convention, which has not yet been accepted. (International Humanitarian Law, Applicability of (articles 86-110), [iww.goocities.com](http://iww.goocities.com), 2006.)

*Convention (IV) relative to the Protection of Civilian Persons in Time of War.*

*Geneva, 12 August 1949*, outlines when the Convention is applicable. Article 2 states:

“The present convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them. The convention shall also apply to all cases of partial or total occupation of the high contracting party... Although one of the powers in the conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound”. (Convention (IV) relative to the Protection of Civilian Persons in Time of War. Art. 2, Aug. 12, 1949, 6 U.S.T. 3316, &5 .N.T.S.135.)

Article 3 goes on to state that, “in the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each party to the conflict shall be bound”. (Convention (IV) relative to the Protection of Civilian Persons in Time of War. Art. 3, Aug. 12, 1949, 6 U.S.T. 3316, 75 .N.T.S.135.) Since Israel is a High Contracting Party and considered an occupying power by the U.N., they are bound by this document. As discussed before, Lebanon and Jordan are also bound by this document, which in turn allows the Convention to pertain to conflicts among these three states.

Palestinians have the right to rebel against an occupying power they should refrain from actions targeting civilians. If they would like Israel to be bound by the Convention, they should also follow the convention. Every time a Palestinian group or group operating from Palestine attacks a civilian target, they are giving the Israeli government justification for using security as a reason for not adhering to the convention. *Convention (IV) Relating to the Protection of Civilians Persons In the Time of War* as well as the two additional protocols to the Convention relating to victims of international and non- international armed conflicts, clearly states that it is always unacceptable to target civilians. Chapter III Article 52, Sections 2, of *The Protocol Relating to Victims of International Armed Conflict* specifically states, “Attacks shall be strictly limited to military objectives”.

*Convention (IV) respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War On Land*, Article 3 states, “A belligerent party which violates the provisions of the said regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces.” (Convention (IV) Respecting the Laws and Customs of War On Land and Its Annex: Regulations concerning the Laws and Customs of War On Land, Art. 3, Aug. 12, 1949, 6 U.S.T. 3316, & 5 N.T.S.135.) Therefore, the Government of Israel is held responsible even if acts of individual soldiers, officers, or agents of their government forced or scared Palestinians from their land, in any of conflicts. They would also be responsible for compensating those affected. The Israel government is therefore liable for villages, cities and towns like Dier Yassin, Hafia, Safad, Acre, Baysan, Jaffa, Sirin, Ayn al-Zaytun, Tantura, and the sixteen villages of upper Galilee seized in a single day in October of 1948; to name a few of the hundreds of towns that were either taken, destroyed, or partially re-settled by the Israel Army in 1948. Whether the actions which resulted in the expulsion of the indigenous Arab population were calculated plans by Ben Gouring or other leading military and government officials, such as alleged Plan Dalet, Operation Hiram, or Operation Dekel, or simple the horrific acts of individuals, the government of Israel is liable for compensation. They would also be liable for any of the subsequent conflicts they were a party to after the War of 1948.

Article 23 states that, “in addition to the prohibitions provided by special Conventions, it is especially forbidden.... (g) To destroy or seize enemy’s property, unless such destruction or seizure be imperatively demanded by the necessities of war”. (Convention (IV) Respecting the Laws and Customs of War On Land and Its Annex:

Regulations concerning the Laws and Customs of War On Land, Art. 23, Aug. 12, 1949, 6 U.S.T. 3316, & 5 N.T.S.135.) The destruction of hundreds of towns that have now been replaced with Jewish towns or national parks can hardly be seen as a necessity of war. There is little evidence that the Arab resistance was ever at the capacity that would warrant the complete destruction of a town. The War of 1948 was primarily fought in the months of June and July before several truces and cease-fires were agreed upon which eventually led to an Armistice Agreement in 1949. The destruction of massive amounts of property or entire cities could appear reasonable in a long conflict in which both sides were well armed and trained. But not in a war that lasted for a month. For instance the destruction of Stalingrad during WWII would seem reasonable and for a military purpose. Two of the world's largest armies met and fought for almost a year, in one single town. Opposed to the Arab-Israeli War of 1948 where in a matter of weeks the Israelis had occupied the entire country. Also, expansion of settlements and the Israeli infrastructure in the West Bank and Gaza, which have subsequently driven Palestinians from their land, is not a necessity of war.

*Geneva Convention Section III: Military Authority Over the Territory of the Hostile* discusses the obligation of an occupying power. The UN has stipulated in Security Council resolutions 237, 242, 252, 271, 446, 468, 469, 065, 607, 608, 681, 638, 726, 799 that they either recognize or condemn Israel as occupiers of Palestinian territories. Article 46 of this convention states that private property must be respected. Article 55 and 56 make it clear that an occupying power shall be regarded only as administrators of the hostile state's lands and real estate. Also, property of municipalities, religions, and charities or education, should be regarded as private property, which should not be seized or destroyed. If this property is seized or destroyed they should be subject to legal proceedings. This would entail the Israeli

government to pay significant reparations for land they have taken or destroyed through warfare. This compensation could then be used to rebuild the infrastructure of Palestine in order to accommodate the return of refugees. Also, all unlawfully seized land should be returned, which would increase the land actually controlled by the Palestinian Authorities, thus increasing the land available for returning refugees. The land seized since the Peace agreement of 1967 should be returned. (Geneva Convention Section III: Military Authority Over the Territory of the Hostile, Aug. 12, 1949, 6 U.S.T. 3316, &5 .N.T.S.135.)

The additional protocol to the Geneva Convention, relating to the *Protection of Victims of Non-international Armed Conflict (Protocol II)*, 8 June 1977, relates to the refugees who have left their homes as a result of Palestine/Israel interstate conflict. Article 17 prohibits the forced movement of civilians when stating that, “The displacement of the civilian population shall not be ordered for reasons related to conflict unless security of the civilians involved or imperative military reason so demands.” ( *Protection of Victims of Non-international Armed Conflict (Protocol II)*, Art.17, Jun. 8, 1977, 6 U.S.T. 3316, &5 .N.T.S.135.) Section 2 goes on to state, “civilians shall not be compelled to leave their own territory for reasons connected to the conflict.”. (*Protection of Victims of Non-international Armed Conflict (Protocol II)*, SS 2, Jun. 8, 1977, 6 U.S.T. 3316, &5 .N.T.S.135. ) This language is quite broad. One can think of many reasons related to conflict such as, to escape violence, find employment, lack of food or resources, or the impossibility to maintain a reasonable and dignified life that would cause a person to flee. If Israel were to claim an initial reason for civilians to be forced from their homes was for the purpose of security or imperative military reasons, one would assume that their

return would be allowed after these reasons had subsided. Currently, there is not a hot conflict or state of war. If Israel's reason for the expulsion of Palestinians were imperative military needs during a time of war, they would then be allowed to return during times of peace. Israel could still deny them entry to Israel if they posed a security risk. It is harder to argue that there is an imperative military reason to not allow them back into the Occupied Territories. If the refugees voluntarily left their land, as some have claimed, then they would have not been expelled for an imperative military reason. If this military reason was not present in a time of war and expulsion, it would be a less likely to be present in a time of peace.

The protocol additional to the Geneva Convention, *Relating to the Protection of Victims of International Armed Conflicts (protocol I)*, 8 June 1977, is definitively relevant to the wars in which Israel fought against its surrounding Arab neighbors, in which Palestine lands were fought over. Also, after Rabin recognized the State of Palestine in the Oslo process one could make an argument that Palestine has been recognized as an independent nation by Israel making their conflict international in nature. Article 74 states that, "High Contracting Parties and the Parties to the conflict shall facilitate in every possible way the reunion of families dispersed as a result of armed conflict". (*Relating to the Protection of Victims of International Armed Conflicts (protocol I)*, Art. 74, Jun. 8, 1977, 6 U.S.T. 3316, &5 .N.T.S.135.) This would mean that the many Palestinians driven from their villages who have been placed in refugee camps inside of the Occupied Territories or neighboring countries should be allowed to reunite with their families who are still living in Israel or the Occupied Territories. Many Palestinian refugees who live in the Occupied Territories are denied access to Israel, where over a million Palestinians still live. Conversely, Israeli Arabs

have trouble traveling to the Occupied Territories. The system of checkpoints and restrictions on travel in general inside the Occupied Territories, also hampers the re-unification of families within the territories. Lastly, Palestinians who fled to neighboring countries are not allowed to re-enter Palestine to reunite with their families.

Article 78, Section 1 states that, “No Party to the conflict shall arrange for the evacuation of children, other than its own nationals, to a foreign country except for temporary evacuation where compelling reasons for health or medical treatment of the children, or except in occupied territories, if their safety so required.” (*Relating to the Protection of Victims of International Armed Conflicts (protocol I)*, Art. 78, Jun. 8, 1977, 6 U.S.T. 3316, & 5 N.T.S.135.) In towns such as Elaboun, women and children were driven on a forced march to cross the border to Lebanon; many of which have never been able to return. It is claimed that women and children were often forced to leave Palestinian villages as the men who were deemed old enough to be possible combatants were detained. (Hisham Zreiq, Sons of Elaboun, 2007) Section 3 states that, “facilitating the return to their families and country” (*Relating to the Protection of Victims of International Armed Conflicts (protocol I)*, Art. 74, Jun. 8, 1977, 6 U.S.T. 3316, & 5 N.T.S.135.) identification cards should be produced making the return to their homes and families easier and more efficient. This seems to show the intent for children who were forced to leave their homes to someday return. If it was not the intention of the drafters for these refugee children to return home they would not have gone to the effort to detail a process to record their identities and place of origin.

*Convention (IV) Relative to the Protection of Civilians Persons in Time of War. Geneva, 12 August 1949*, also discussed the rights of refugees to return to their country of origin. Section III, Article 47 states that persons in occupied territories should not be deprived of the rights of

protected persons under the Convention. It goes on to state that even if the territory is annexed or any agreement is made between the said territory and the occupying power the inhabitants should not be deprived of the benefits of the Convention. This section of the Convention explains how the right of return cannot be negotiated away or compromised by state officials. (Convention (IV) Relative to the Protection of Civilians Persons in Time of War. Geneva, art. 47, Aug. 12, 1949, 6 U.S.T. 3316, &5 .N.T.S.135.) Therefore, a Palestinian negotiator can never negotiate away their peoples right of return. If a peace deal was negotiated that did not grant the right of return this right would still be ingrained in international law and held by individual Palestinians. When and how they return could be negotiated. But, the personal right of return cannot be taken away.

Article 49 states that forcible transfer and deportation of persons from occupied territories is forbidden no matter the motive. Occupying power may displace people for security reasons, but they may not be moved outside of the occupied territories and “shall be transferred back to their homes as soon as hostilities in question have ceased”. (Convention (IV) Relative to the Protection of Civilians Persons in Time of War. Geneva, art. 49, Aug. 12, 1949, 6 U.S.T. 3316, &5 .N.T.S.135.) Those who have been transferred or fled their homes during occupation, not war, also have the right to return. Article 49 continues stating, “the occupying power shall not deport or transfer parts of its own civilian population into territories it occupies.” (*idd.*) The Israeli settlements and the systems of Israeli-only roads within the West Bank are in defiance of the Convention and are therefore unlawful. The settlements and the system of roads that to connect them, divide the area of the West Bank into many non-cohesive plots of land. This hampers the movement of people, goods and the over all function of society. These settlements and Israeli only roads in conjunction with the

security fence and wall have confiscated large portions of land and resources from the Palestinians. With the return of this land and the right to use their resources, refugees would have much more land and resources to utilize. International law seems to help remedy the problem of lack of land and resources available to refugees upon return. If Israel abided by existing international law there would not be such a concern within Palestinian society about accommodating the needs of returning refugees.

Article 53 states that the occupied forces are not allowed to destroy public or private property unless absolutely necessary for military operations. Thus, property illegally destroyed would warrant compensation being paid to the owner. The settlements could be used as reparation for property destroyed and could provide living space for refugees whose land and villages lay within the borders of Israel, decreasing the amount of compensation owed by Israel.

### **United Nations Declaration on the Rights of Indigenous Peoples:**

General Assembly Resolution 61/295 adopted this declaration on 13 September 2007. It was adopted by the General Assembly and is consequentially non-binding, but does lay out guided lines for the treatment of indigenous people who have suffered injustices as a result of dispossession of their land and territories. States are also encouraged to effectively implement this convention. The Arab population of Palestine is the indigenous populations. Article 10 states, “ Indigenous people should not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation, where possible, the right of return.” Article 28 also discusses the necessity of compensation for land

taken. This is another piece of soft law that should be at least considered when debating the existence of the right of return in a possible a peace settlement. It is almost inconceivable that over 4 million people voluntarily left the land their ancestors lived on, fought for, and farmed for thousands of years. If they did not voluntarily leave one would conclude that they were forcibly removed.

### **United Nations Security Council Resolutions:**

Security Council resolutions are binding law on all states a party to the UN. As discussed before, Israel is a member of the UN. Security Council Resolution 242 is a corner stone of Middle Eastern foreign policy. In this resolution the Security Council demands the “withdrawal of Israeli forces from territories occupied in the recent conflict” and the “termination of all claims or states of belligerency and respect for and acknowledgement of the sovereignty, territorial integrity and political independence of every State in the area and their right to live in peace within secure recognized boundaries free from threats and acts of force.” They then affirm the necessity “for achieving a just settlement to the refugee problem.” (S.C. Res. 242, U.N. Doc.S/RES/242 (1967). This resolution relates to territory seized in the Six-Day War. If the Israelis would have followed this resolution and withdrew from Gaza, the West Bank, Jerusalem, the Sinai Peninsula and the Golan heights, terminated their claim to the land, and acknowledged the territorial sovereignty, political independence, and borders of Palestine; it is possible the refugees would have returned to the State of Palestine. Those who had been expelled in the recent conflict or previous years could have returned to a state, which had national sovereignty and would have wanted to reunite its people. At that time the number of refugees returning would have been less making it easier

for them to settle in Gaza and the West Bank. Since 1967 land has consistently been confiscated, pushing people off their land as the refugee population continually increases. Population growth being exponential, greatly affects the ability of refugees to return home. Each year Israel denies the right of refugees to return to their homeland the refugee problem literally grows larger, as the number of persons maintaining the right of return increases.

Security Council Resolution 89 of November 1950, recalls Resolution 73, which is the Armistice agreement between the parties to the first Arab-Israeli conflict. Section 4 of Resolution 89 states that in the opinion of the Commission, Arabs are entitled to return home. Section 6 of Resolution 89 forbids the transfer of persons across international lines, thus condemning any policy that increases the number of refugees fleeing or being forced to leave Palestine. (S.C. res. 89, U.N. Doc. S/RES/ 89 (1950).)

Security Council Resolution 237 of June 1967, considers the fact that inalienable rights should be respected even during the “vicissitudes of war”. As previously discussed the right of return is an inalienable right. In Section 1 of Resolution 237 the Security Council calls upon the Government of Israel to “facilitate the return of those inhabitants who have fled since the outbreak of hostilities”. Section 2 of resolution 237 also recommends that they follow the Geneva Convention. (S.C. res. 237, U.N. Doc. S/RES/237 (1967).)

Security Council Resolution 338 was passed after the Yom Kippur War in which Israel fended off Syria’s attempt to reclaim the Golan Heights and Israel established a bridgehead on the Egyptian side of the Suez Canal. This resolution called for a cessation of the hostilities and “the implementation of Security Council Resolution 242 (1967) in all of its parts”. (S.C. Res. 338, U.N. Doc.S/RES/242 Oct. 22 (1973).) As stipulated in 242 all land acquired by Israel through force in the Arab-Israeli War of 1967 was to be returned and

Israeli forces were to withdraw from these areas. This clearly never took place. That is displayed by Syria taking up arms to regain their lost territory and by Israel extending the control of Sinai to the Egyptian side of the Suez Canal. Israel never relinquishing control of these territories prevented the return of refugee's expelled from these territories and causing more civilians to flee the hardships of occupation.

Security Council Resolution 469, recalls the Fourth Geneva Convention of 1949; in particular Article 1 and 49 that forbids the transfer or deportation of civilians from their homeland and asks for Israel to respect their obligations under this convention. In Article 1 of this resolution the Security Council, “*strongly deplores* the failure of the Government of Israel to implement Security Council resolution 468 (1980)”, (S.C. Res. 469, U.N. Doc.S/RES/242 May, 20 (1980), which made a similar request to Security Council Resolution 496 (1980). In Section 2 they demand that the Israel Government “Facilitate the immediate return of the expelled Palestine leaders,” referring to officials from Hebron who were expelled. (*idd.*)

Security Council Resolution 608 reaffirms “resolution 607(1988) Of January 1988.” In Section 1 of this resolution the Security Council “Calls upon Israel to rescind the order to deport Palestinian civilians and to ensure the safe and immediate return to the occupied Palestinian territories of those already deported.” (S.C. res. 608, U.N. Doc. S/RES/608 Jan 14 (1988).) This resolution seems to affirm the right of refugees to return to the Occupied Territories and not to Israel. As will later be discussed, it is unrealistic to believe that refugees would be allowed to return to Israel where their lands have been redeveloped and resettled. Israel is recognized under the UN and has been given the right to the land within its borders. In the eyes of Israel there is also a huge security risk in allowing millions of

Palestinians inside of their borders. Allowing the Arab population to outnumber the Jewish Israeli population would threaten their control over their Jewish democracy which in turn would threaten their very existence. But, as stated in this resolution the refugees need to be allowed to return to Palestinian territories. This compromise could drastically help the peace process and the right of return to be granted.

Resolution 636 also reaffirms resolution 607 and resolution 608 once again condemning the deportation of Palestinians and stipulating that the Israeli government ensures “the safe and immediate to the occupied territories of those deported.” (S.C. res. 636, U.N. Doc. S/RES/636 Jul. 6 (1989).

Security Council Resolution 681 reaffirms the need of Israel to adhere to the Geneva Convention and past Security Council resolutions concerning the right of return. It also reaffirms the inadmissibility of territory acquired by war. (S.C. res. 681, U.N. Doc. S/RES/681 Dec. 20 (1990).

Security Council Resolution 799 begins by recalling the obligations of Member States under the UN Charter. It then reaffirms resolutions 607, 608, 636, 641, 681, 694 and 726 before condemning the deportation of Palestinians from territories occupied in 1967. Section 1 expresses the Security Councils opposition to the deportation of Palestinian civilians. Section 4 “demands Israel, the occupying power, ensure the safe and immediate return to the occupied territories of all those deported.” (S.C. res. 799, U.N. Doc. S/RES/799 Dec. 18 (1992).

On January 6<sup>th</sup> of 1992 the Security Council passed resolution 726, which recalled resolutions 607, 608, 636, 641 and 694. This resolution similarly expressed the right of return as stipulated in Resolution 799. (S.C. res. 726, U.N. Doc. S/RES/726 Jan. 6(1992).

One also must remember that these are just the resolutions that have passed the vetoing power of Israel's greatest ally, largest financial supporter and Security Council member, the US. From 1972-2006 the US vetoed at least 42 Security Council resolutions critical of Israel according to the Jewish Virtual Library. (<http://www.jewishvirtuallibrary.org/jsource/UN/usvetoes.html>, Oct. 15, 2008.)

### **United Nations General Assembly Resolutions:**

The General Assembly has passed countless measures, held numerous committees and forums and issued many reports on the situation in Palestine and the inalienable rights of Palestinians. These pieces of soft law are too numerous to be discussed at length in this essay. They are also non-binding law, which diminishes their importance in the spectrum of international law. They generally hold the weight of advisory opinions. Several key resolutions and committees will be discussed. Also, several typical piece of legislation passed by the General Assembly will be discussed to expound the general sentiment of the Assembly concerning the right of return.

After the first Arab-Israeli War on December 11<sup>th</sup>, 1948 the U.N. General Assembly stated in Resolution 194, Article 11, "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 compensations should be paid for the property of those choosing not to return and for loss or damages to property which, under principles of international law in equity should be made good by the government or authorities responsible." This resolution was adopted with near unanimity. General Assembly resolutions are non-binding, but one could say that they represent the sentiments and desires of the international community. The General

Assembly originally had 51 members and today has 192 members (including developing nations). This broader body can be seen as encompassing the views of the developed and developing world, those with power and those who are powerless. Thus, making this body vote more democratically representative of the nations and people of the world. The Security Council conversely, is composed of 5 permanent members (China, Russia, UK, France, USA) and up to 10 additional rotating members. A veto by any single member can stop a resolution from being passed.

It can be argued Resolution 194 (1948) holds greater weight than just an advisory opinion because, “ Israel’s admittance to the UN as a member state, through Resolution 273, was conditioned on acceptance and implementation of Resolution 194.” (Hussein Ibish and Ali Abunimah, Palestinians’ Right of Return, UN Security Council Global Policy Forum, winter 2001 at 2.) Count Folke Bernadotte who was designated by the UN Security Council as the mediator for the Arab-Jewish conflict recommended in a progress report on September 16, 1948 that the “ ‘right of Arab refugees to return to their homes in Jewish controlled territories at the earliest possible date should be affirmed by the United Nations. His report was the basis for much of the text of Resolution 194’ (*idd.*) He recommended that the right of return should be affirmed rather than established, although the Count was under the impression that the right of return was already ingrained in existing international law (*idd.*). The next day Bernadotte was assassinated in Jerusalem by the Stern Group, which was a radical Zionist organization. It follows that an argument could be made that the legislative intent of the document was for right of return to be a right not a possibility.

From the Israeli perspective Resolution 194 does not create an absolute right of return. The resolution speaks of those who wish to live in peace with their neighbors. Israel, since their inception has argued that the Arab world does not wish to live in peace with them. The Israeli government has expressed fear that the Arab world would like to push them into the sea, erasing their nation from the map. This fear can be actualized in the minds of many by such documents as the pledge made by Arab states in Khartoum, Sudan in 1967 following the second Arab-Israeli War, in which the Arab nations stated that there will no recognition, peace or negotiations with Israel. (Since this pledge several Arab states have recognized Israel.) One should be mindful that Palestine is an Arab country, but is also an independent society, which should not have the convictions of its neighboring countries, imposed upon its society. This resolution states that refugees “should” be allowed to return; but not that they must to return home. Israel could easily argue that they should be allowed to return home, but Israelis should be allowed to live in peace. One can be seen as a contingency to the other. Palestinians feel that their society and national sovereignty is being threatened and depleted by the expulsion of their countrymen and unwillingness of Israeli to let those who fled the hostilities to return home.

Following the signing of the Declaration of Principles which began the Oslo process, Yasser Arafat wrote Yitzhak Rabin a letter on September 9<sup>th</sup>, 1993 in which he recognized Israel’s right to exist in peace and security. He also recanted the hostility towards Israel in the Palestinian Covenant and reaffirmed his commitment to peace. The same day Rabin responded with a letter recognizing the Palestinian Liberation Organization (PLO) and the right of Palestine to exist. This was seen as an unprecedented move on the part of Arafat. He

became one of the first and most important leaders in the Arab World to recognize the right of Israel to exist. Rabin, on the other hand recognized Palestine as a nation, (i.e. the West Bank and Gaza) and the PLO as a legitimate government. Unfortunately, this good will did not last. These declarations of each other's right to exist and live in peace would soon be tarnished in the wake of the Second Intifada. Arafat's letter can still be seen as alleviating some of Israel's fears that the return of refugees would mean the destruction of their state.

In November of 1974 the question of Palestine was reintroduced in the Assemblies agenda. Resolution 3236 reaffirmed the right of Palestinians to return to their homes and property. On November 10, 1975 General Assembly Resolution 3376 was passed creating the mandate of the UN Commission On the Exercise Of the Inalienable Rights of the Palestinian People and The Division for Palestinian Rights. Both of these UN entities aim to ensure that the Palestinian people will be granted their fundamental and inalienable rights, such as the right of return. This committee first submitted a report to the Security Council in June of 1979. They reaffirmed that lasting peace in the Middle East could not be established without "the achievement of a just solution of the problem of Palestine on the attainment of the inalienable rights of the Palestinian people." (G.A. Res. 3376, U.N. Doc. A/RES/3376 (Nov. 10 1974).) In 1991 at the Madrid Conference this committee once again reaffirmed the necessity of the attainment of the inalienable rights for Palestinians. In all subsequent peace negotiations this committee has re-affirmed the need of the Palestinians to achieve their fundamental rights if a peace agreement was going to be reached.

General Assembly Resolution 3236(XXIX), states in Section 2 that the Assembly, "Reaffirms also the inalienable right of the Palestinian to return to their homes and property from which they have been displaced and uprooted, and calls for their return". (G.A. Res.

3236, UN Doc. A/RES/3236 (XXIX) (Nov. 22 1974).) General Assembly Resolution 38/58 Question of Palestine, also call for an international peace conference, which will endorse “the attainment by the Palestinian people, its legitimate inalienable rights, including the right of return.”(G.A. Res. 38/58 UN Doc.¶ C (3)(a) A/Res/38/58(Dec.13 1983). These are two examples of the many resolutions passed by the General Assembly recommending that Israel afford Palestinian refugees their right of return. These resolutions do express the convictions of a much broader world community than the Security Council and serve to show that the right of return is commonly accepted in the eyes of the world leaders and governments.

The United Nations High Commission for Refugees has also issued countless reports affirming the right of return for Palestinian refugees such as: the UN committee on the Elimination of Racial Discrimination: concluding on Israel, Palestinian Territory Occupied: Palestinian Refugees and the Politics of Peace making, Palestinian Refugees Properties and Their Revenues: Report of Secretary General. Countless other reports on the rights of Palestinian refugees can be found on the UNHCR website database. ( <http://www.unhcr.org/cgi-bin/teaxis/vtx/refworld/rwmain>, Oct. 15<sup>th</sup>, 2008). Although, these reports are not binding law they express the norms and accepted practices of international law; and explain the need and importance of solving the refugee problem in the context of the Israeli/Palestinian peace.

The United Nations also has held many conferences and forums on the issue of Palestine that have discussed the need of the refugees to return to their country and the need of Israel to adhere to international law. The United Nations International Meeting On The Question Of Palestine is almost a yearly occurrence with the aim of advancing the peace process. Most recently this meeting was held in Qwara, Malta in June 2008. At this meeting Israel was once again recommended to abide by the many Security Council resolutions and

ICJ opinions condemning their human rights violations and their unwillingness to grant the Palestinians their rights. They were also asked to abide by the Geneva Convention, which as discussed before grants the right of return to refugees.

The General assembly regularly issues reports, such as *The Situation in The Middle East: Report of the Secretary General in December of 1987*. Chapter 4 of this report entitled “Palestine Refugee Problem,” once again articulates the right of return and reiterates the many resolutions they have passed recommending that Israel grant the right of return to Palestinian refugees. The October 10<sup>th</sup>, 1983 General Assembly Geneva Declaration on Palestine and Programme of Action for the Achievement of Palestinian Rights, seeks to effectuate ways in which Palestine can exercise their inalienable rights as stipulated in previous General Assembly resolutions. They communicate the belief that peace will not be achieved without Palestinians gaining all fundamental rights. (GA 33/34 UN Doc. A/38/ 497 S/16038 (Oct. 101983).)

### **Case Studies:**

If we compare the Israeli-Palestinian refugee problem to other modern conflicts, a disparity in the treatment of Palestine to other refugee communities can be observed. In August of 1999, “The United Nations High Commissioner for Refugees, Sadako Ogata, says that nearly ninety-five percent of the hundreds-of-thousands who fled Kosovo during the recent conflict have now returned.” (World: Europe 95% of Kosovo Refugees Return- UNHCR.BBC online, August, 1999.)

On October 14<sup>th</sup> 2004, “The first of some 100,000 Liberians, who fled 14 years of war, have come home a year after the fighting end.”(Liberian Refugees Return Home, BBC

online October. 1 2004.) Their return was facilitated by UNHCR and it was reported that many had been allowed to return on their own accord prior to the intervention of the UNHCR.

The Japanese governmental state in their Emergency Aid For The Return Of Refugee To Rwanda that:

“As a result of the large-scale civil war and genocide in Rwanda in 1994, more than 1.8 million refugees escaped mainly to the territory of an adjacent country, the Democratic Republic of the Congo. Since the autumn of 1996, these refugees started to return to their homeland and most of them are back in Rwanda by now. Their resettlement and reintegration into society are, however, yet to be finished, which poses a serious problem.” (Contribution to the UNDP Trust Fund For Rwanda, Japan Gov., March 16<sup>th</sup> 2001)

This bill exemplifies several things. First, it demonstrates that with in a 2-year period refugees were allowed to return to areas they fled in one of the worlds most violent and deadly conflicts. Second, the right of return was so important that they were allowed to return even though they dramatically burdened their country. Third, the Japanese committed resources to ensure the re-assimilation of refugees. The international community supported their return and assimilation.

In March of 1999, Clinton Administration Treasury Secretary Stuart Eizenstat commented on the property rights of victims who fled the Nazis in Europe; when testifying before the Commission on Security and Cooperating in Europe stating, “Owners or their heirs should be eligible to claim personal property on a non-discriminatory basis, without citizenship or residence requirements.” (Hussein Ibish and Ali Abunimah, Palestinians’ Right of Return, UN Security Council Global Policy Forum, winter 2001 at 2.). This means that in 1999 Jewish Israelis who immigrated to Israel during WWII, who had no intent of returning to Europe, could claim a right to personal

property they had left 56 years prior. When Arafat demanded Palestinians be afforded their right to return home or be compensated for their property they had lost, at most 53 years ago, the Clinton administration felt that he was making unreasonable demands in order to break the Oslo Peace deal. This statement also shows that a member of the Clinton administration recognized that the right of return is vested in the ancestors of refugees. These case studies give insight into the application of the right of return in recent intra-state and state conflict. Generally, once a country is stable the refugee population is allowed to return.

International law seems to establish the Right of Return for Palestinian refugees. An unconditional right of return would pose problems for Palestinian and Israeli society. There are several problems with an Unconditional Return of Refugees that should be discussed in order to facilitate the right and allow the burden of the returning refugees on Palestinian society to be lessened.

The return of millions of refugees could disturb the current power balance within Israel. Many Arab villages have been destroyed, vacant lands have been resettled, and the general character of the land has changed over the past sixty-one years. If all refugees were to return to original homes in Israel, the people currently living on their land would consequentially be forced out of their homes. If it were agreed that the refugees would only be allowed to return to the West Bank and Gaza, they would impose a significant burden on the fledgling Palestinians' governments. Overcrowding would also be a problem. The amount of land under Palestinian control has steadily diminished in the years following the 1947 Partition Plan. This fact coupled with the expansion of Israeli settlements, their support systems and the diminishing size of the West Bank due to the construction of the security

fence and wall, leaves Palestinians with a fraction of the land that constituted the pre-partition State of Palestine.

It is also unreasonable to think that Israel would let millions of possibly hostile refugees into their nation. Refugees who have been living abroad for an extended period of time, some as long as sixty years, would be returning to a country which has changed drastically. Hebrew is now the official language of Israel, the nation is predominately Jewish by population and character, and drastic redevelopment and modernization have taken place. The physical make up of the land has changed over 60 years. Villages have given way to forests, towns have been rebuilding, and urban sprawl has consumed what used to be rural lands. Large cities such as Tel Aviv are already experiencing problems with over crowding. Arab refugees returning to this country would naturally have a hard time adapting. The present animosity and a disparity of wealth between the Arab and Jewish population causes tension in Israeli society which would drastically increase with the arrival of millions of refugees. Refugees who have for years dreamed of returning to their homeland, could be very disappointed and have trouble making a life in this new country which has little resemblance to the land they left. The Arabs could possibly be the majority, but would be dominate economically to the Jewish population (even if they were the minority). This could cause tensions and possible violence that would negatively impact an already volatile situation. In the article *Globalization and Ethnic Hatred*, William Esterly explains how countries like the Filipinos, where there is a Chinese minority is seen as foreign and economically dominates the native population, violent backlash often occurs. Animosity grows under the surface of society, until the majority violently rebels against this exploitation. In the already fragile

situation in the Holy Land another complication is not needed if peace is ever going to be achieved.

The land is now recognized as the State of Israel, which is a Jewish democracy. If the Arabs became the majority the Jewish Israelis theoretically lose power. They could then be subjugated and their state would be lost. There is also the concern of security. The Palestinians have carried out gruesome attacks on civilian targets and some Palestinian groups still call for the destruction of Israel. Bitter refugees who have been expelled from their home and often times lived hard lives as refugees could be seen as likely terrorist.

The Palestinians on the other hand want to be treated as equals. They feel that the West has constitutently had one set of laws that pertain to the Arab World and another that pertains to the West and their allies. This sentiment is echoed throughout the Arab world. The West sanctions Iran for possibly creating nuclear weapons, but yet allows Israel to maintain a nuclear arsenal and to be the only Middle Eastern nation to not sign the Nuclear Proliferation Treaty. The West demands democracy in Palestine, while supporting dictators like Perez Mushariff in Pakistan; and when fair and free democratic elections are carried out in Palestine, but the victors are not who Israel and the West wants, democracy is disregarded. The US goes to war with Iraq for invading Kuwait, but refuses to reprimand Israel for invading Syria and Lebanon. This same feeling carries over to the issue of refugees. Israel demands that Palestine follow international law and stop acts of terror, as they refuse to recognize international law that demands the right of return. Palestinians are consistently blamed for destroying peace deals, although Israel continues to expand settlements, build the wall, injure civilians and defy international law.

Israel should abide by international law and recognize the right of return and Palestine on the other hand should comprise and allow refugees to only enter their territory. Settlements and the Israel infrastructure in the West Bank could be given to the Palestinians as compensation for property lost, instead of being destroyed as was the case when the settlers were moved from Gaza. Israel could also agree to share some a portion of their natural resources with Palestine's as further compensation. This would create dialogue and possibly trust between the nations. Palestine will also need resources, especially water, if they ever do achieve complete sovereignty. The right of return would not be negotiated way, but instead recognized with practical conditions to alleviate the stresses and fears of both Israeli and Palestinian societies. Refugees would be allowed to return in phases. In the Oslo Accords the Palestinians were given ultimatums or orders that had to be fulfilled in order for Israel to discuss the right of return which had already been granted to them through international law. By granting them the right of return prior to negotiations they would then feel as if they were being granted, not earning a right that is supposed to be fundamental to all humans. The right of return is a personal right that can be exercised when and if Palestinians choose to implement it. Some may opt to remain in their country of residence. Those that choose to return to Palestine, would return to their country, which is now made up of the West Bank and Gaza.

By assessing the human needs of the Palestinian and Israeli population in relation to refugees, a suitable compromise can be achieved. Physiological needs or the need of food and nutrition does not directly relate to the refugee problem, although is applicable to the situation. The Palestinian government must consider if they would be able to supply the dietary needs of millions of refugees who could possibly return. This is why a phased

approach would be more suitable and realistic. Also, with a phase approach Israel would feel less unsecured by knowing that if they ever felt their security was being jeopardized they could close the borders. Since they currently control the borders they know they maintain this capability.

Secondly, is the need for safety. Israel feels that a massive immigration of refugees would create a threat to their safety. The threat would be lessened if the refugees were only allowed to return to Palestinian territories. The threat of attacks inside of Israel on civilian targets would be alleviated because the refugees would only be entering Palestinian territories and Israel has professed how wonderful the wall has worked in the prevention of suicide attacks. By allowing refugees to return the Palestinian population would achieve a sense of safety because they would feel that Israel was finally recognizing international law and looking at them as equals in the eyes of international law. Ideally, the less suicide attacks, the less Israeli incursions, and an over all decrease in casualties. The Palestinians would also feel safer because many Arabs feel that Israel is trying to ethnically cleanse the Holy Land. By allowing Arab refugees to return and repopulate the Holy Land Israel would be debunking this theory.

Thirdly, is the need of esteem. The esteem of Palestinian society would rise significantly if refugees were allowed to return. They often feel as if the world does not care about their plight. By allowing their families, loved ones and neighbors of the past to return they would once again feel whole as a community and country at large; much like the regrouping of the Jewish Diaspora in Israel. Palestinians feel that their society has been almost lost and scattered to the corners of the earth. By allowing the right of return they would feel as if their nation was being rebuilt and their future would see much more certain.

Israelis who oppose their government policies and have courageously fought to stop the abuses against Palestinians would have a new found faith and love for their country. The Arab world as a whole would look at Israel in a more favorable light, which would allow Israeli society to be more confident in their future and the possibility of reconciliation with their neighbors. By allowing refugees to return home Israel would also be relieving their neighbors of a tremendous burden of caring for millions of refugees. This could also help relations.

Fourthly, is the need for self-actualization. As discussed before Palestine would feel as if their nation was being accepted and their rights recognized by Israel and the world community, who would most likely help facilitate a deal concerning the return of refugees. They are less likely to commit outrageous acts to gain the attention of the world if they feel like the world is listening to them. This would allow for Israelis to have greater peace, less need to control Palestine and less need to fight a seemingly never ending war in turn creating a society that is closer to the society Theodor Herzl described in *The Jewish State*. No society likes being called or looked at as inhumane or oppressive. Palestinians do not want to be seen as terrorists and Israelis do not want to be seen as barbarous colonials. Solving the refugee problem would get rid of a dark cloud looming over the peace process and help lead each society on a path to redemption.

Another issue closely connected to the right of return is the issue of the Nakba. The alleged ethnic cleansing of the Nakba is an issue that resonates in the hearts of Palestinians much like the Holocaust resonates in the hearts of Jews. If a truth and reconciliation commission much like the one that took place in South Africa or Rwanda could take place after the refugees have begun to return to Palestine, both societies would have a chance to

reconcile major issue hampering peace. The Palestinians on the other hand could reconcile terrorist acts committed on civilians. Both sides have committed awful acts, which took the lives of innocent civilians and by recognizing this, and seeing the pain of ones supposed enemy can make people look at each other in a very humanistic light. At the Ghetto fights Kibitz in Israel, where the world's first holocaust museum sits, a reconciliation program has been instituted for Arab and Israeli youths, which has had great results. Programs like these should be expanded. Also organizations like Combatants for Peace where former Palestinian fighters and Israeli soldiers meet, reconcile and discuss peace have had great results and should be implemented on a large scale. In the end without a solution to the refugee problem peace talks will continue in the halls of government, as hostility continues in the streets of both societies. If the problem of refugees is ignored, never solved, and international law is continually deified, the citizens of Palestine and Israel who long for peace will never have a chance to reconcile with one another.