

THE PALESTINIAN REFUGEES ON THE DAY AFTER “INDEPENDENCE”

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- » The gap between Israel and the Palestinians on the refugee question cannot be reconciled. The Palestinians demand a “just peace,” which implies recognition of the right of return according to their interpretation, and rejects any compromise on the issue.
- » The Palestinian position, which receives support from Palestinian and even some Israeli human rights organizations, looks to UN resolutions that uphold the right of return as a “private right” of every refugee. This means that the representatives of the Palestinian people (as well as the Arab League and the United Nations) have no authority to waive this right in the name of the refugees.
- » According to the Palestinian consensus, non-implementation of the right of return will leave open the gates of the conflict with Israel. This implies justification for the continued armed struggle against Israel even following the establishment of a Palestinian state.
- » By rejecting “patriation” or the resettlement of the refugees in any Arab state, the Arab Peace Initiative essentially leaves each refugee with no choice but to go to Israel itself. The Arab states rejected any solution that involves “resettling [of the Palestinians] outside of their homes.” The Arab Peace Initiative does not envision the Palestinian refugees being resettled in a West Bank and Gaza Palestinian state.
- » The transfer of border crossings to Palestinian control and/or the establishment of a Palestinian state is likely to bring about a wave of immigration, combined with a mass expulsion of Palestinians (primarily from Lebanon, Syria and Jordan) toward the Palestinian territory even without a political agreement on the refugee issue. This could lead to the infiltration by Palestinians into Israeli territory, as well as legal claims by refugees at the International Court in The Hague for the right of return, restitution of property, and compensation.
- » Since the Israeli consensus holds that the mass return of Palestinian refugees to Israel means national suicide, Israel will require robust international support in negotiations on a final status agreement to reach an accord on the basis of defensible borders, and to find a permanent solution to the refugee problem based primarily on the Palestinian refugees receiving citizenship in their host countries or their absorption in a Palestinian state.

On September 2, 2010, Israel and the PLO relaunched negotiations for a political settlement to resolve their conflict, with America providing sponsorship, pressure, and go-between services, and with Egypt and Jordan providing political backing. Among the core issues to be resolved, one of the toughest is the Palestinian refugee problem. Yet the Palestinian consensus does not leave Palestinian leaders with any room for maneuver whatsoever regarding the right of return.

THE PLO POSITION ON THE “RIGHT OF RETURN”: THE PRIVATE RIGHT OF EVERY REFUGEE IS NOT SUBJECT TO NEGOTIATION

The PLO, the internationally recognized representative of the Palestinian people, and the Palestinian Authority that derives its authority from the PLO, religiously adhere to the historical, fundamental position of the right of return for all Palestinian refugees and their descendents, wherever they may be (their number is estimated at over 5,000,000 people), to their original dwelling places that are currently located within the territory of the State of Israel. The Negotiation Department of the PLO, responsible for conducting diplomatic negotiations with Israel, views UN General Assembly Resolution 194 and the decisions of international institutions as the source of legal authority for the Palestinian demand. The Internet site of the Negotiation Department states: The right of return is enshrined in international law:

UN Resolution 194 - (passed on 11 December 1948 and reaffirmed every year since 1948):

“[Palestinian] 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.”

Universal Declaration of Human Rights:

“Everyone has the right to leave any country, including his own, and to return to his country.” (Article 13(2))

International Convention on the Elimination of All Forms of Racial Discrimination:

“State Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of...the right to leave any country, including one’s own, and to return to one’s country.” (Article 5(d)(ii))

International Covenant on Civil and Political Rights:

“No one shall be arbitrarily deprived of the right to enter his own country.” (Article 12(4))

International Practice:

In Bosnia, East Timor, Kosovo, and Rwanda refugees have had their right of return honored. In Kosovo, the right of return was considered a “non-negotiable” issue.¹

On this basis, the Negotiation Department details the official Palestinian position on the refugee issue as:

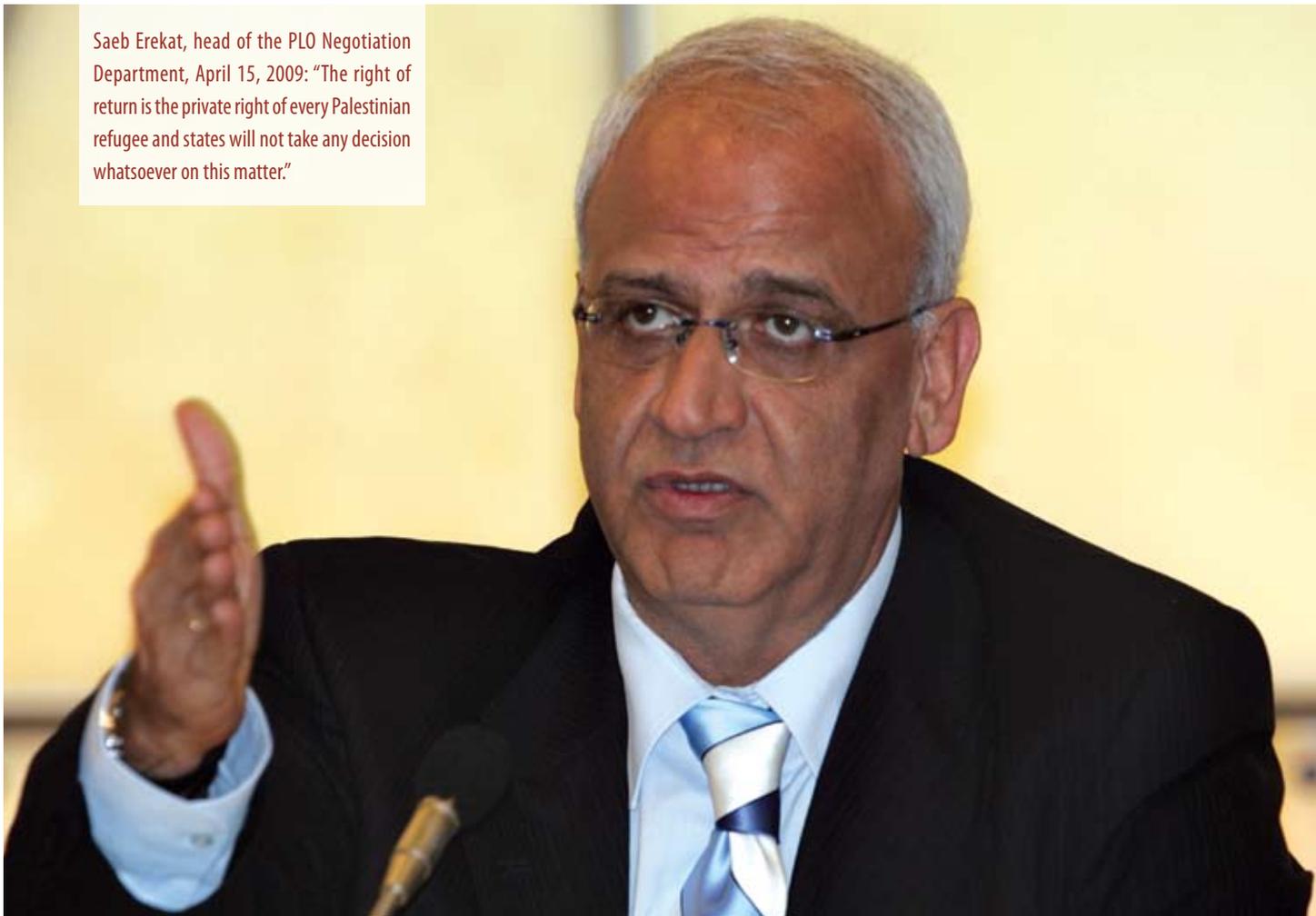
Palestinian refugees must be given the option to exercise their right of return (as well as receive compensation for their losses arising from their dispossession and displacement), though refugees may prefer other options such as: (i) resettlement in third countries, (ii) resettlement in a newly independent Palestine (even though they originate from that part of Palestine which became Israel), or (iii) normalization of their legal status in the host country where they currently reside. What is important is that individual refugees decide for themselves which option they prefer – a decision must not be imposed upon them.²

The Palestinians, who demand the implementation of all UN resolutions regarding the refugees, also find support in UN General Assembly Resolution 3236 of November 22, 1974, that “Reaffirms also the inalienable right of the Palestinians to return to their homes and property from which they have been displaced and uprooted, and calls for their return.”³

Therefore, from the PLO’s perspective, the right of return is not an issue that is up for discussion in negotiations between leaders or states, but the private right sanctified by international law of every Palestinian defined as a “refugee.” Accordingly, every refugee has the option of returning to his place of residence in the territory on which the State of Israel has been established.

Saeb Erekat, the head of the PLO Negotiation Department, stated at a meeting of Fatah activists in the Hebron region on April 15, 2009: “The right of return is the private right of every Palestinian refugee and states will not take any decision whatsoever on this matter. The historical obligation rests upon Israel’s shoulders for the suffering of these Palestinian refugees and [for granting] indemnity for the injury caused them and compensation to the state that hosts them.”⁴ At another Fatah meeting in Jericho on November 10, 2009, Erekat stated, “The right of return is a private right and there is no regime in the world that can compensate for it.”⁵

Saeb Erekat, head of the PLO Negotiation Department, April 15, 2009: “The right of return is the private right of every Palestinian refugee and states will not take any decision whatsoever on this matter.”



At the same time, Erekat defended PA Chairman Mahmoud Abbas against criticism over what had been perceived as a retreat in his position on the right of return:

It seems that the message of President Abbas in his last speech was not properly understood. There is nothing constituting surrender or frustration, for the president will not bargain over anything concerning the fundamental principles and rights. Our struggle focuses on realizing the fundamental principles that find expression in establishing the independent state in the 1967 boundaries with its capital in East Jerusalem, the return of the refugees, the release of the prisoners, the dismantlement of the settlements, our right to water, the dismantlement of the racist separation fence, and all the rights and fundamental principles which the Palestinian people agree to. These were the points that were cited in the last speech by the president and they themselves are the heart of the political plan of the Fatah movement and its Sixth Congress that took place in August....There is no lower ceiling than these rights, and they constitute the ceiling [of the positions of the] PLO on whose behalf the Palestinian Authority was established and is the very purpose on whose behalf all the [Palestinian] wings and organizations exist.⁶

In a letter sent on October 28, 2010, to Robert Seri, the UN special representative to the Middle East, Erekat expressed his disappointment over the words of Andrew Whitley, director of the New York office of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), and his call to the refugees to stop living under the illusion of realizing the right of return and to Arab states to discuss their resettlement in their territory. In his letter, Erekat praised UNRWA's official disassociation from this position and noted that "the right of return of the Palestinian refugees to their homes and lands is one of the most important Palestinian rights." He wrote that the "Palestinians never waived this right ever since Palestine was witness to its disaster in the year 1948, when Israel expelled over 700,000 Palestinian refugees, and they will never forgo this right." Erekat added, "Despite Israel's insistence on denying the right of Palestinians to return to their homes and lands, the right of return is a legitimate right that has been upheld by international law and ratified by UN resolutions, and first and foremost by Resolution 194."⁷

MAHMOUD ABBAS' POSITION ON THE RIGHT OF RETURN – INSISTENCE ON A "JUST PEACE"

Erekat's statements regarding the Palestinian position dovetail with the declared positions of the PLO and Palestinian Authority Chairman Abbas, who has never publicly deviated from the PLO's fundamental position on this matter. Abbas' attitude is totally identical to that of Yasser Arafat, the founder of the PLO. Like Arafat, Abbas emphasizes "justice" as the cornerstone, and as a material condition for resolving the conflict. At the September 2010 summit meeting in Washington that launched the renewed political negotiations with Israel, Abbas reiterated three times in his short address the importance of establishing a "just peace," and said that the Palestinian people "need more than anything else, security, justice, and peace."⁸

The word "compromise" was never mentioned, and it does not appear at all in his reference to a future agreement with Israel and particularly regarding the refugee problem. "Justice" totally negates compromise, according to Abbas' concept, as he views Resolution 194 as expressing justice according to the Palestinian interpretation; that is to say, it awards legal legitimacy to the demand for return by the Palestinian refugees. Abbas' public comments reflect this concept:

On November 20, 2009, in an address commemorating the death of Arafat, Abbas said:

We take the initiative in our hands in the sense that we do not leave an opportunity in the hands of the occupying state to control the rules of conflict management and the rules of managing the diplomatic process. This is in order to reach a comprehensive and balanced political solution to the conflict that will provide security and stability to all peoples and countries of the region, and first and foremost via a Palestinian state with its eternal capital in Jerusalem, and will guarantee the rights of the Palestinian refugees to return to their homes in accordance with the legitimate international decisions and first and foremost Resolution 194.⁹

On September 24, 2009, in a speech before the UN General Assembly marking 60 years since the establishment of UNRWA, Abbas said:

The suffering of the Palestinian refugees, whose number currently totals 4.7 million people and constitutes more than half of the Palestinian people throughout the world, is still the heading of the Palestinian people's disaster and the solid foundation of the Palestinian historical narrative and the search for justice and peace....[The refugees] to this very day are looking for a just solution to their suffering on the basis of UN General Assembly Resolution 194 that was adopted on December 11, 1948, and which emphasized in an unambiguous fashion the refugees' right to return to their homes and to live in peace with their neighbors and receive just compensation in accordance with international law....

A just solution to the problem of the Palestinian refugees on the basis of Resolution 194 is still one of the issues heading the order of priorities pertaining to Palestine and accordingly in all the international initiatives and agreements that were signed with the Israeli side. This issue is one of the substantial issues in the final agreement to the conflict which is based on the principle of land for peace and realizing the rights of the Palestinian people that cannot be denied, including the right to self-determination and establishing our independent Palestinian state whose capital is East Jerusalem....

The time has arrived for Israel to assent to the wish of the international community in order to realize the just and comprehensive peace and the realization of historic reconciliation between the two peoples in the holy and tormented country. At this opportunity I will reiterate what I said on previous occasions: Israeli security is contingent upon our independence and our security and that leaving the occupation in place and the continuation of the *nakba* will not provide security for anyone.¹⁰

On May 14, 2009, in a speech commemorating the *nakba*, Abbas said:

I repeat to you the oath, according to which we adhere to our fundamental national principles [embodied] in the establishment of our independent state whose capital is noble Jerusalem, and the rights of our refugees to return in the framework of a just and agreed-upon solution in accordance with Resolution 194. These are fundamental principles over which there will be no wavering or haggling, and these were rights that were ratified by UN decisions and all the international initiatives from the Roadmap program and up to the Annapolis [Conference], and likewise they are the basis for the Arab Peace Initiative, which we stick to and we demand that all sides should adopt and implement.¹¹

On May 15, 2008, in a speech marking *Nakba* Day, Abbas stated:

We reiterate our steadfastness behind our fundamental principles for peace, a peace that will bring about the termination of the occupation of all Palestinian lands conquered since '67 with noble Jerusalem at their heart, and finding a just and agreed-upon solution to the problem of the Palestinian refugees in accordance with Resolution 194....Oh, the new generations who grew up in the shadow of the *nakba*, the expulsion and occupation, on your behalf and together with you we will perform this important deed of peace based on justice, liberty, independence, and return.¹²

On December 16, 2006, Abbas declared:

We have fundamental principles on whose behalf we are always struggling and they are: an independent Palestinian state in the 1967 borders that will exist alongside the State of Israel, and its capital Jerusalem. Jerusalem is ours, the settlements are illegal – all settlements are illegal, and as noted in the Arab initiative, a just solution to the problem of the refugees in accordance with Resolution 194 which fixes compensation for anyone who does not want to return, and I accept this. Whoever does not want to exercise a return has the right to compensation and he who wants to return enjoys the right.¹³

On November 2006, in a speech marking Arafat's death, Abbas said:

Yasser Arafat cleaved to the permanent national rights that cannot be diminished [and they are:] noble Jerusalem, the sacred places to Islam and Christianity, and an agreed-upon solution to the refugee problem on the basis of Resolution 194....We state today, we will not deviate one iota from the principles of Yasser Arafat and his objectives, for the desired-for peace, the peace on which Yasser Arafat signed, the peace of the brave, the peace that will restore us our rights. Oh sisters, oh brothers, I am turning to you in the name of the people who stand strong against occupation, aggression, settlements, and the fence on the homeland's soil. [I am turning] to our people, the refugees in the camps, in the diaspora and throughout the world, to say to them that the Palestinian refugees have a right to return to their homeland. This is a right that is anchored in international legitimacy, and the refugee problem is an issue of the homeland and identity and for this reason we refused and we will continue to reject today all the plans for settlement [of the refugees].¹⁴

Abbas establishes a link between security and peace and the realization of all Palestinian rights, and first and foremost the right of return. In other words, without the establishment of a “just peace” according to the Palestinian conception, there will not be any security in the region and the basis for the conflict and for violence will continue to exist. The use that Abbas makes of the formula “a just and agreed-upon solution to the refugee problem on the basis of Resolution 194” is not a sign of pragmatism, and does not convey his readiness for compromise on this matter. His interpretation of the meaning of Resolution 194 is unequivocal and requires Israeli recognition of the Palestinian right of return. “Agreed-upon” in this context means by coercion if Israel will not agree to recognize the right of return voluntarily. In any case, Abbas admits that he has no authority to take any binding decision on the issue of the right of return, and he declared on September 26, 2007, that the results of the negotiations with Israel taking place in the name of the PLO will be submitted for ratification in a public referendum.¹⁵

PRIME MINISTER SALAM FAYYAD'S POSITION ON THE RIGHT OF RETURN: A COMMITMENT TO ARAFAT'S LEGACY

The formula of “a just and agreed-upon solution to the refugee problem” serves the Palestinian leadership in messages targeted at Israel that are intended to create an impression of apparent pragmatism. In an interview with Akiva Eldar from *Ha'aretz* on July 19, 2007, Palestinian Prime Minister Salam Fayyad responded to the question: “How does one solve the right of return and the mention of Resolution 194 in the Arab League initiative?” Fayyad said: “Have those who spoke about the right of return read the League declaration? They wrote there that the accord and the solution must be agreed upon. Agreed upon with whom? With Israel, of course. This means that the agreement will not exist without the other party.”¹⁶

Similar to Abbas, Fayyad does not speak about compromise as a basis for “a just and agreed-upon solution” with Israel, and he, too, believes that Israel must recognize Palestinian justice voluntarily or by coercion. In a speech before the donor conference to the Nahr el-Bared refugee camp in northern Lebanon on June 23, 2008, Fayyad said that one must “obligate Israel to accept the sources of authority [on the refugee issue]...including the Arab Peace Initiative, which provided an historic opportunity to reach a just, permanent and comprehensive peace that the peoples of the region require...as well as to arrive at a just and agreed-upon solution to the refugee problem in accordance with Resolution 194 as incorporated in the Arab Peace Initiative.”¹⁷

Fayyad concedes that his loyalty is to the ideological legacy of Arafat, who never gave up demanding the return of Palestinian refugees to the territory of Israel. In an address before students in Nablus on July 30, 2009, Fayyad said:

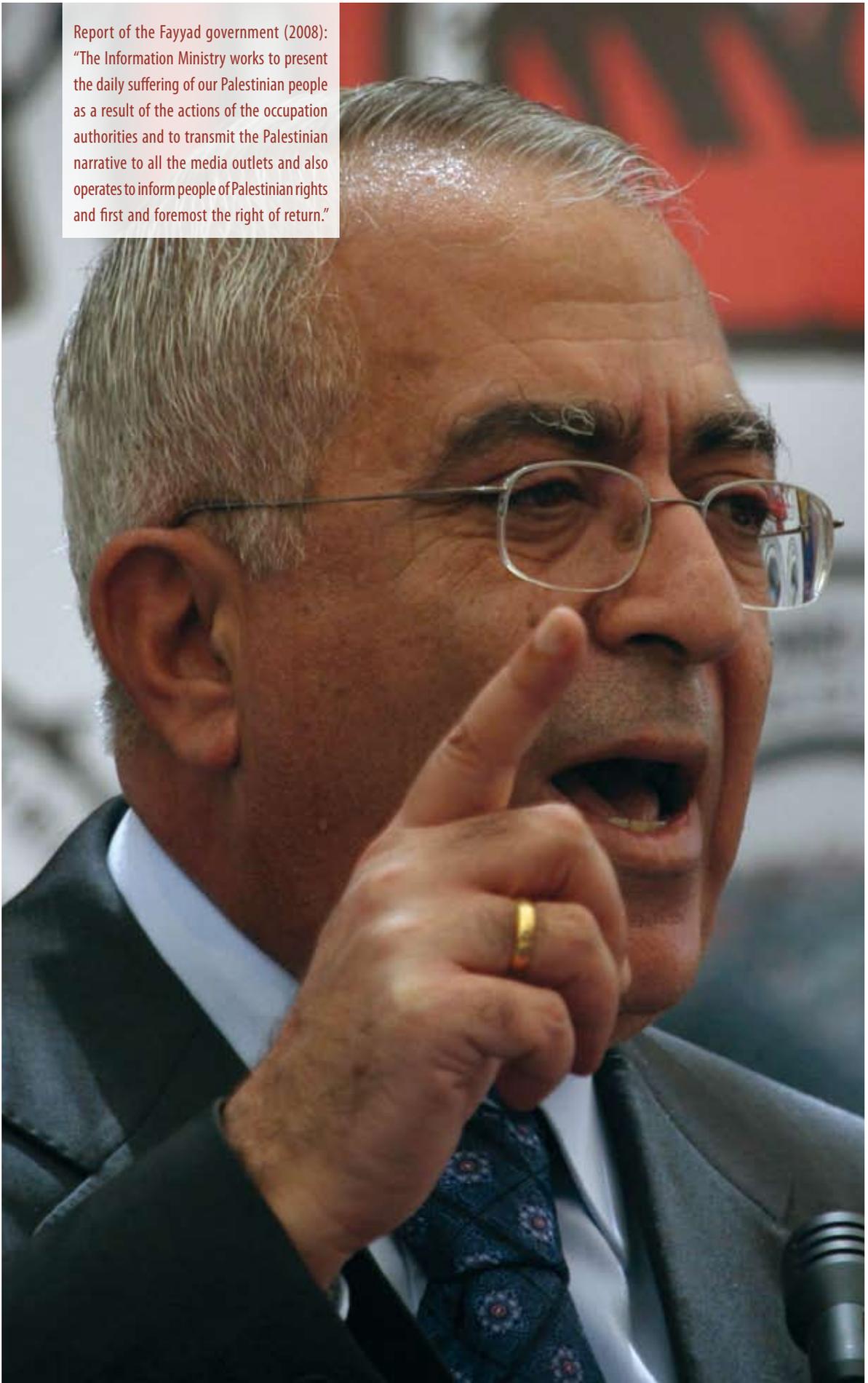
Loyalty to the eternal President Yasser Arafat, and his renewing memory within us all, finds expression in rallying around the national program....This is our obligation to President Abu Amar and all the *shahid*-martyrs....This is our obligation to our people and our refugees and our expellees to persevere in steadfastly maintaining national rights as they are recognized by international legitimacy without the derogation of any one of them, and in a manner that will guarantee the end of the occupation and the discovery of a just solution to the refugee problem in accordance with Resolution 194, and as approved by the Arab Peace Initiative.¹⁸

To remove any doubt, Fayyad said in an interview to *Al-Arabiya* television on January 2, 2008, in response to the question: Did the Palestinian Authority forgo the right of return at the Annapolis Conference? “By no means, in no way whatsoever; it is impossible in any way whatsoever.”¹⁹

Fayyad's position supporting the demand for the return of Palestinian refugees already appeared in an address he delivered upon assuming the office of prime minister in 2007 when he presented his objectives for the coming years:

One should work for the end of the occupation and the establishment of an independent state, with its capital in noble Jerusalem, on all the Palestinian territories conquered in 1967, relying on the principles and conditions that were set in the Declaration of Independence

Report of the Fayyad government (2008):
“The Information Ministry works to present the daily suffering of our Palestinian people as a result of the actions of the occupation authorities and to transmit the Palestinian narrative to all the media outlets and also operates to inform people of Palestinian rights and first and foremost the right of return.”



from 1988, finding a just and agreed-upon solution to the problem of the Palestinian refugees on the basis of Resolution 194, the aspiration to put an end to settlement and the separation fence, and removing all the material and political obstacles that constitute an impediment to obtaining these objectives.²⁰

The issue of the right of return again appears in a report of the Fayyad government summing up the first quarter of the government's second year (June 16, 2008-September 16, 2008). In the framework of surveying the government's achievements it is written, "The Information Ministry works to present the daily suffering of our Palestinian people as a result of the actions of the occupation authorities and to transmit the Palestinian narrative to all the media outlets and also operates to inform people of Palestinian rights and first and foremost the right of return, self-determination, and the establishment of a Palestinian state whose capital is noble Jerusalem, alongside buttressing the legitimacy of the national authority."²¹

Fayyad's plan to establish a Palestinian state that was published in August 2009 clarifies in an unambiguous manner that the realization of Palestinian "justice" on the refugee issue is a substantive condition for peace and, by inference, for regional stability and security. "Despite the fact that the refugee issue will be discussed in the negotiations on the permanent agreement, the Palestinians, of course, will not accept any diplomatic agreement that will not be based on justice and an agreed-upon solution to the main issue in accordance with international decisions including UN General Assembly Resolution 194."²²

In another speech that he delivered at the Kalandia refugee camp north of Jerusalem, Fayyad made it clear that "a lasting peace will not be established without finding a solution to the refugee problem in accordance with the legitimate international decisions and especially Resolution 194."²³ At another occasion, Fayyad said: "The refugee problem is the heart of the Palestinian problem and the solution of the problem and the implementation of a just peace constitutes the heart of the PLO national program and the diplomatic struggle the PLO is waging in the name of all members of the Palestinian people in the homeland and in the diaspora countries on the way to realizing all the legitimate rights embodied in the return, liberty, and self-determination of an independent Palestinian state within all the 1967 borders."²⁴

At an event in Ramallah marking 61 years since the *nakba* (May 14, 2009), Fayyad said: "The time that has passed does not cancel our right to return and our people persevere in their struggle until they realize their freedom to return."²⁵ A similar message formed the foundation of Fayyad's address to mark *Nakba* Day in 2008: "We say that the commitment to the suffering of the refugees and their rights as it pertains to us means reinforcing the steadfast stance and holding on tight against expulsion and uprooting...and this means continuing the struggle to end the occupation, realizing independence, and guaranteeing a just solution to the refugee problem reached in accordance with legitimacy and international law and the Arab Peace Initiative."²⁶

A PALESTINIAN CONSENSUS: THE GATES OF THE STRUGGLE REMAIN OPEN IF THE RIGHT OF RETURN IS NOT IMPLEMENTED

According to the Palestinian conception, without the realization of the right of return, the conflict with Israel will continue until “justice” is obtained. Uthman Abu Gharbiyya, who was chosen to fill the important post of Secretary of the Sixth Fatah Congress and previously headed the national guidance apparatus of the Palestinian Authority, explained the Palestinian stance regarding the realization of the right of return soon after the convening of the Camp David conference and on the eve of the outbreak of the Second Intifada in 2000. In a lecture before the officers of the security apparatuses, Abu Gharbiyya said: “The gates of violence will not be closed from an historical standpoint, except with the establishment of an independent Palestinian state whose capital was Jerusalem and the return of the refugees....We fought and we sacrificed blood and dead in order to obtain liberty, honor, and independence. We will not forgo this in any way. The gates of struggle are open.”²⁷

A position justifying the continuation of the armed struggle as long as Palestinian refugees and their descendents have not realized the “right of return” received additional sanction at the convening of the Sixth Fatah Congress in 2009 that updated the movement’s ideological platform for the first time since its previous convening in 1989. In the framework of the diplomatic program that was ratified, Fatah determined that one of its fundamental principles was what was defined as “a right to resistance”: “The Fatah Movement cleaves to the right of the Palestinian people to oppose occupation with all legitimate means including its right to realize the armed struggle, that is approved by international law, as long as the occupation and settlement continue and the Palestinian people are deprived of their full rights. The continuation of the struggle for the liberation of the homeland to establish an independent Palestinian state and the return of the refugees requires the activation and unification of our fighting movement and realizing Palestinian national unity.”²⁸

The Palestinian leadership, that is not conceding one iota on the demand for the return of the refugees, is also constrained by the decisions of its official institutions that clearly defined the Palestinian stand on this issue:

- A. *The PNC* – The Palestinian National Council published an announcement marking *Nakba* Day in 2009 which said, we “emphasize at this opportunity the steadfastness behind it [Resolution 194] and we will not accept any solution whatsoever that will derogate from the right of this [Palestinian] people to return to the homes from which they were expelled and to dwell in them honorably, just like other nations of the world.”²⁹
- B. *The PLO* – The PLO Executive Committee on May 15, 2010, published a declaration announcing the organization’s steadfastness behind “the right of the Palestinian people to return to its dwelling places from which they were expelled by the Zionist gangs 62 years ago,” relying on international legitimacy to realize this right.³⁰ Dr. Zakaria al-Agha, a member of the PLO Executive Committee and head of the organization’s Refugee Department, documented the demands that were transmitted to Israel in the political negotiations of 2000, prior to the Camp David Conference. The Palestinian position, according to Al-Agha’s version, included the following points:
 - » Israeli recognition for a “just” agreement on the refugee problem.
 - » Israel will recognize its moral and legal responsibility for the “forcible transfer” of Palestinian residents from their homes during the 1948 war and preventing the return of the refugees to their homes in accordance with Resolution 194.

- » All the refugees will be entitled to exercise the right of return and the Palestinians residing in Lebanon could exercise it within two years from the signing of the agreement with Israel.
- » The process of absorbing refugees would take place on a graduated basis and each year Israel would obligate itself to absorb an agreed-upon number of refugees.
- » Decision on return or waiver of the right of return would be a personal decision of each refugee and the realization of the right of return would be implemented in a manner that would guarantee the integrity of the family.
- » Immediately upon their return to Israel, the refugees would receive Israeli citizenship and at that time their status as refugees would conclude.
- » The refugees or their heirs would receive the lands that they owned.
- » Israel will indemnify the refugees for death, wounding, transfer costs, psychological injury and loss of property.
- » Israel would provide assistance to every refugee for the purpose of his absorption and acculturation in the state.
- » Israel would compensate the PLO for public Palestinian assets within the State of Israel.
- » Palestinians electing not to return to the territory of the State of Israel would receive compensation for waiving the right of return.³¹

C. *Fatah* – The political platform of the Fatah movement as ratified at its Sixth Congress in Bethlehem in September 2009 determined that as a fundamental principle Fatah adheres to

dedicated activity for realizing the rights of the refugees to return, compensation and restoration of property, and the unity of the refugee problem without reference to their place of location, including the refugees in the 1948 lands. The movement views it a necessity to preserve the [refugee] camp as the fundamental political testimony of the refugees who were denied the right to return to their homes until a solution to their problem [is found]. And it is essential to cleave to UNRWA as the international address for recognition of the refugee problem until their return to their houses and villages, coupled with activity to ameliorate the conditions of refugees in camps with the emphasis that the PLO is the source of political authority for the Palestinian refugees.

It was further noted in the list of fundamental principles that the Fatah movement “opposes the principle of forcible settlement or the call for an alternative homeland in Lebanon and opposes an alternative homeland in Jordan.”³²

D. *The Palestinian Authority* – An official document (August 2009) clarifies that it will not assent to any political agreement whatsoever that will not be predicated on justice and on UN decisions including Resolution 194; that is to say, the right of return.³³

The Foreign Ministry of the Palestinian Authority officially bases its diplomatic positions on the PLO concept, inter alia, of “steadfastness behind the rights of the refugees in accordance with Resolution 194 awarding them the right of return and compensation.”³⁴

Paragraph 9 in the National Accord document from 2006 expressing the position of the major Palestinian organizations (Fatah, Hamas, Islamic Jihad, the Popular Front, and the Democratic Front) notes “the necessity of the activity and redoubling the effort to assist, support, and display concern for the refugees and protecting their rights, and working to convene a popular representative

committee of the refugees that will be a monitoring body, and the role of the committee will be to emphasize the right of return and the steadfastness to it and call upon the international community to implement Resolution 194 with regard to the right of return of the refugees and the granting of compensation to them.”³⁵

In August 2008, these organizations and others signed a letter to the chairman of the PLO and the Palestinian Authority, Mahmoud Abbas, in which they detailed their position with regard to the right of return:

- A. The right of the Palestinian refugees to return, the restitution of property, and compensation is a permanent right in accordance with international law and the relevant international decisions and first and foremost Resolution 194 and UN Security Council Resolution 237. These are rights that are nonnegotiable in their essence without any connection to the means adopted to realize them.
- B. The right of return to the original houses is a private right of every Palestinian refugee and passes on from the previous generation to the succeeding one, and there is no statute of limitations and it relies on the free choice of every person; it cannot be transferred to someone else and is not canceled by any bilateral, multilateral, and/or international political agreement whatsoever.
- C. The right of return of the Palestinian refugees is a collective right that is not restricted to this group or another...The right of self-determination will not be complete as long as refugees will not succeed in realizing their right of return to their original homes.³⁶

THE “PRAGMATIC” PALESTINIAN VIEWPOINT DOES NOT DEVIATE FROM FUNDAMENTAL PALESTINIAN PRINCIPLES

The positions of prominent Palestinian personalities, considered by the West as belonging to the moderate political current, do not deviate from the consensus with regard to the right of return. Marwan Barghouti, head of Fatah in the West Bank who is serving a life prison sentence for the murder of Israeli civilians, said in an interview with the newspaper *Al Hayat* on September 28, 2007, that negotiations with the Israeli government prior to its commitment to principles [including the right of return] are “useless.” Barghouti added that it would be erroneous to conduct negotiations with Israel “without it [Israel] obligating itself to the legitimate international decisions, the principle of concluding the occupation, withdrawal to the ‘67 boundaries including from east Jerusalem, the right of return of the refugees in accordance with Resolution 194, the establishment of an independent Palestinian state with full sovereignty, and the release of all the prisoners.” According to Barghouti, the Palestinians were striving for an agreement in the framework of which “refugees would realize their right to return in accordance with Resolution 194.”³⁷ Hussam Khader, a Fatah leader in Nablus, clarified, “Any [Palestinian] president who will sign in the name of the refugees on a waiver of the right of return...we will be obligated to kill him or rebel against him.”³⁸

Hanan Ashrawi, another prominent representative of what is depicted as the “pragmatic” stream, presents positions similar to the Palestinian consensus and emphasizes that the right of return is a private right of every refugee. In other words, representatives of the Palestinian people have no authority to waive it. In an interview with the Hebrew paper *Zman Yerushalayim* on September 25,



PLO Executive Committee member Hanan Ashrawi, Sept. 25, 2007: "There is not a single Palestinian who will forgo the rights of the refugees."

2007, Ashrawi – currently the head of the nonprofit Miftah organization for promoting democracy and human rights in the Palestinian Authority, a member of the PLO Executive Committee, and a member of the Palestinian Parliament – says: "One must recognize rights according to international law and Resolution 194 of the United Nations. There is not a single Palestinian who will forgo the rights of the refugees. A leader who will tell you he will do this in order to propitiate you will lose credibility among his own people." Referring to a way to solve the refugee problem, Ashrawi said: "The options will be diverse and will provide various solutions, according to law. The most important aspect is the right to choose. They will choose like any human being who wants the best for his children....The moment that you thaw out and recognize the iniquity, they will be free to make decisions. One should try this, but the moment that they can choose – and many choices exist according to law – then we will see what option they will select."³⁹

Dr. Samir Abdallah signed the Geneva Initiative in 2003 that aroused criticism in the Palestinian arena over passages that were implicitly interpreted as a compromise on the right of return. When he served as Minister of Labor and Planning in the Palestinian Authority, Abdallah addressed the issue in a newspaper interview on April 12, 2008. In response to a question: Do you still stick to the right of return? he said: "Of course, we will never forgo it. This is a collective and private right and the return of the refugees is the most important card from this standpoint in the negotiations, and its value pertaining to the Palestinian people is higher from a diplomatic and material standpoint than all the other topics."⁴⁰ Additional Palestinian personages (including Iyad Sarraj, Nabil Kasis and Fayha Abd-el Hadi) who signed the Geneva Initiative were parties to the dispatch of a public letter to Abbas in 2010 in which they expressed their vigorous opposition to renewing negotiations with Israel without a prior agreement on the source of authority for the discussions that were to have included, according to them, the guarantee of the right of return.⁴¹

PREPARATION FOR ABSORBING REFUGEES IN A PALESTINIAN STATE WITHOUT WAIVING THE RIGHT OF RETURN

The PLO and Palestinian Authority leadership, based on the fundamental positions presented above, vigorously negate any agreement that will include the settlements and granting of citizenship to the Palestinian refugees in other countries or in the future state of Palestine, due to fear that this will be considered a waiver of the implementation of the right of return. At a press conference in Ramallah at the close of the Sixth Fatah Congress on August 13, 2009, Abbas said, “We are talking about our objective to bring about the end of the occupation and the establishment of an independent Palestinian state. I emphasize that Fatah totally opposes plans for a temporary state and plans for settlement and the alternative homeland.”⁴²

In an interview with the newspaper *Al Hayat* on February 27, 2008, Abbas said,

We will never accept a solution that will lead to the granting of citizenship to the thousands [of Palestinians] in Lebanon. We will not accept a solution that will lead to a demographic change in Lebanon. This is unacceptable; it is not realistic and is not on the agenda. We will never accept a solution that will compel Lebanon to grant citizenship to even a single Palestinian. We will find a solution that will satisfy the desire of both the Palestinians in Lebanon and Lebanon. The issue of citizenship for even one Palestinian in Lebanon is unacceptable and is not on the agenda.⁴³

In a later interview with *Al Hayat*, Abbas sought once again to broadcast a soothing message to the Lebanese government which at the time was discussing the status of Palestinians in its territory, saying: “The important issue for the Lebanese which I have emphasized on more than one occasion is that we are working so that not a single refugee will remain in Lebanon, and, in other words, that



Mahmoud Abbas (2009): “The important issue for the Lebanese which I have emphasized on more than one occasion is that we are working so that not a single refugee will remain in Lebanon, and, in other words, that the problem will be solved.”

the problem will be solved. It is possible that some of the Palestinians will return to Israel and some of them to the homeland, and some others will carry Palestinian citizenship and they will not be a burden upon Lebanon.”⁴⁴

Beyond this soothing message, in a (successful) attempt to persuade the Lebanese government to alleviate some of the restrictions imposed on Palestinians in that country, Abbas’ words conveyed the prevalent evaluation that the establishment of a Palestinian state with sovereignty over the border crossings, even without a permanent, comprehensive arrangement with Israel, would open the gates to the arrival of many Palestinians, including those defined as refugees, to live in the area of the new state. This evaluation is based, inter alia, on the experience of the Palestinian Authority which, since its establishment in 1994, absorbed in its territory over 400,000 Palestinians from abroad. In his address at the Sixth Fatah Congress, Abbas said: “In practice we have returned 350,000 Palestinians to the areas of the Palestinian Authority, and we have a passport recognized by all the countries in the world. Likewise, we managed to obtain Palestinian ID cards for 55,000 families who were stuck (illegal residents, or apparently after they arrived as tourists) in the territory of the homeland under the heading of violating the law.”⁴⁵

Prime Minister Salam Fayyad, who is heading up the plan to establish the institutions of a Palestinian state, said in an interview with *Ha’aretz* on April 2, 2007, “We are preparing the infrastructure for absorbing the refugees. The Palestinians will have the right to live within the Palestinian state.”⁴⁶ Fayyad’s words dovetail with the official work plan of his government, which includes the chapter, “Guidelines Connected with the Refugees”:

The Palestinian leadership is striving for a just solution to the Palestinian refugee problem in a manner that will coincide with international legitimacy on this matter and first and foremost the directives of Resolution 194 of the UN General Assembly. The interests cited in this decision reflect the major important interests upon which the refugee problem is predicated and which should be integrated in the various initiatives that have been undertaken for establishing a Palestinian state, and in a way that will not deprive or influence the diplomatic and legal rights of the refugees. It is necessary to pay attention to the need to provide the required foundations for absorbing a large amount of refugees who want to live in the Palestinian state, and this includes beginning to delineate a policy and legislation that will guarantee this.”⁴⁷

From the Palestinian perspective, the absorption of refugees does not mean a waiver of the right of return. In his weekly radio address on June 30, 2010, Salam Fayyad referred to the role of the existing refugee camps in the Palestinian Authority by saying,

The role of the popular committees in the [refugee] camps that finds expression in delineating development plans and programs for ameliorating living conditions in the camps does not mean settlement [of the refugees in permanent locations] or a waiver of the right of return, but guarantees the refugees an honorable life until a radical solution will be found for this suffering, in accordance with legitimate international decisions and the rules that were set by international law in a manner that will spare our people and the peoples of the region the disasters involved in continuing the conflict and the expulsion of millions of refugees.⁴⁸

Aside from these isolated, general recommendations to prepare for the absorption of refugees following the establishment of a Palestinian state without impairing the right of return and support for ameliorating the conditions in the refugee camps, the Palestinian Authority does not engage at all in the resettlement of refugees outside of the existing camps. It remains steadfast in its position mandating the continuing role of UNRWA until the refugee problem is resolved.⁴⁹ UNRWA, which began operating on May 1, 1950, provides services in the fields of education, health, food, employment, and development (including repair and construction of houses and paving roads) for 4.7 million Palestinians who are defined as refugees in the Gaza Strip, the West Bank, Jordan and Syria.⁵⁰

From the PLO and the Palestinian Authority perspective, the very existence of UNRWA exemplifies and gives weight to their position that views the refugee camps as a place of only temporary residence, even after 62 years have elapsed since the 1948 war. On the basis of this position, the residents of the refugee camps in the Palestinian Authority are not entitled to participate in elections to the local authorities, lest their participation convey a message of reconciliation with the existing situation and a waiver of the right of return.⁵¹ In June 2010, Prime Minister Fayyad emphasized in his weekly radio address that ameliorating the living conditions of the refugees in the camps does not mean permanent settlement or a waiver of the right of return, noting the urgency for the international community to bear its responsibility and allow UNRWA to continue to fulfill its obligations towards the refugees.⁵²

The political demand for the right of return dovetails with the more fundamental positions of the Palestinian public toward eventually reaching peace with Israel. A November 2010 survey of the Palestinian public, conducted by Greenberg Quinlan Rosner Research and distributed by The Israel Project, revealed 60 percent support by Palestinians of the proposition that “The real goal should be to start with two states but then to move to it all being one Palestinian state.”⁵³

There is even stronger support of 66 percent for the proposition that Palestinians must work “to get back all the land for a Palestinian state.”⁵⁴ The right of return may be viewed as an instrument by Palestinian elites to realize these two popularly supported goals.

Regarding the question of the actual implementation of the right of return, the Palestinian historian and researcher Dr. Salman Abu-Sitta, who heads the Palestine Land Society, deals with the issue in detail. Abu-Sitta, in analyzing the demographic dispersion in the State of Israel, argues that Israel could absorb 4.6 million Palestinian refugees in the rural regions, and this at the cost of transferring a mere 154,000 residents to the Jewish central region.⁵⁵ Human rights organizations in the Palestinian Authority and even some in Israel (such as Adalah and Mossawa) support the implementation of the right of return, but do not present a detailed program for its implementation in practice similar to Abu-Sitta. Attorney Yael Stein, head of the research department of the B'tselem organization, noted in June 2001 in an interview with the newspaper *Al-Majdal* (published by the Badil organization that has made the promotion of the right of return its main objective), that B'tselem discussed during the years 2000-2001 ways to implement the right of return in practice in view of the clash of rights between Palestinians who want to return to their homes and Israelis who live in those same homes or territories. In her opinion, the leaders of Israel and the Palestinians have no authority to agree to a waiver of the realization of the right of return of millions of Palestinian refugees to Israeli territory, but rather that the question of return to Israel must be in the hands of the refugees themselves. She defines the Palestinian documents dealing with the subject as “good,” but she expressed sorrow that they do not deal with the question of the actual implementation of the right of return.⁵⁶

THE ATTITUDE OF THE ARAB PEACE INITIATIVE TO THE RIGHT OF RETURN ISSUE

The Arab Peace Initiative, which was ratified at the summit of Arab leaders in Beirut in March 2002, presented principles for an agreement in the Israeli-Arab conflict, and included reference to the Palestinian refugee problem. The relevant passage in its decisions on this matter determined: “To accept to find an agreed, just solution to the problem of Palestinian refugees in conformity with Resolution 194,” and “the rejection of all forms of Palestinian patriation which conflict with the special circumstances of the Arab host countries.”⁵⁷

By rejecting “patriation” (*tawtin* in Arabic) or the resettlement of the refugees in any Arab state, the Arab Peace Initiative essentially leaves each refugee with no choice but to go to Israel itself.⁵⁸ The Arab states used even more explicit language on this point in a Final Statement that accompanied their initiative. It rejected any solution that involves “resettling [of the Palestinians] outside of their homes.”⁵⁹ What this means is that the Arab Peace Initiative opposes keeping any Palestinian refugee population in Lebanon, Syria, or Jordan; it also does not envision the Palestinian refugees being resettled in a West Bank and Gaza Palestinian state.

Why did the Arab Peace Initiative adopt such a hard-line stance? Marwan Muasher, the former Foreign Minister of Jordan, describes in his book, *The Arab Center: The Promise of Moderation*, the behind-the-scenes developments at the Beirut summit that preceded the adoption of the Arab initiative. According to Muasher, Bashar Assad, the Syrian president, expressed reservations over the proposed wording and insisted that the right of return be noted explicitly. He also expressed his vigorous opposition to the settlement of any Palestinians whatsoever on Lebanese territory because he was afraid that the ethnic balance in this country would be disturbed. Muasher contended that the Palestinian representatives at the summit recognized that the return of all the refugees could not be implemented, but wanted to preserve the principle of the right of return alongside the demand for the return of some thousands of Palestinians to Israeli territory. Lebanon, noted Muasher, understood Resolution 194 as instructing the full return of all the refugees from Lebanon and, in its viewpoint, all the refugees who were staying in Lebanon would leave the country, including those who would opt for compensation.

In the decision that declares that “achievement of a just solution to the Palestinian refugee problem is to be agreed upon in accordance with UN General Assembly Resolution 194, according to Muasher, the words “to be agreed upon” express the desire to propitiate all the parties. That is to say, these words will guarantee to Israel that the number of refugees that will return to its territory will not influence the demographic identity of the state, while noting that Resolution 194 satisfies the Arab side.⁶⁰ In an article in *Ha'aretz* on August 13, 2008, Muasher wrote, in referring to this decision by the Arab summit, that this was “the first time that the Arab world committed itself to an agreed-upon solution of the refugee problem, while responding to Israel’s fears that it would be flooded with refugees.”⁶¹

Syria’s President Bashar Assad, who on a permanent basis emphasized his commitment to the Palestinian right of return,⁶² also referred to the position of the Arab world with reference to this issue as it found expression in the adoption of the Arab initiative by the Beirut summit. In an address before the People’s Council on May 10, 2007, Assad made it clear that the right of return is a private right

of every refugee and is not a matter that is subject to the authority of any government whatsoever or even in the hands of a Palestinian who was not a refugee, and therefore the decisions of the Beirut summit could not impair the right of return in the least:

On the Palestinian issue, let me dwell on one point and that is the issue of the refugees. This is because for a few years various discussions have taken place in the media and at private meetings between leaders, and we asked ourselves the question: Can one implement this decision [of the United Nations regarding the return of the refugees]?

There were those who proposed forgoing it. Prior to the Arab summit [March 2002] there was an extensive discussion on the issue of dropping this passage from the Arab initiative. The decision by the Arab summit was of course vociferous in leaving this passage intact. However, the very discussion is a mistake due to a simple reason, for the right [regarding the return of the refugees] is not bestowed upon us as governments; in other words, we have no right to discuss it at an Arab summit or a meeting of Arab foreign ministers. This is the right of the refugee.

I have heard rational, logical, and legal arguments from a number of Palestinian brothers to the effect that it [the right of return] is not even the right of a Palestinian who was not a refugee. This is the right of the refugees. And even now, we know that the refugees will not forego this right, and as long as they have not forgone it, there is no power in the world capable of annulling this right, and we must defend it by force as long as the refugee wants to cleave to this right.⁶³



ANALYSIS AND ASSESSMENT

The right of return is considered sacrosanct among the Palestinian people and there is no one who disputes it. The representatives of the Palestinian people, including the PLO and Palestinian Authority, base their position on the question of resolving the conflict on “justice” rather than on “compromise.” The meaning of “justice,” from the Palestinian perspective, is the realization of the rights of the Palestinian refugees in accordance with all the decisions of the international institutions, the foremost being UN Resolution 194 that they see as sanctifying the right of the refugees to return and receive compensation.

The formula of “a just and agreed-upon solution in accordance with Resolution 194” does not convey an implied readiness for any hypothetical Palestinian compromise regarding the right of return. “Agreed” means that one should coerce Israel to agree to implement the Palestinian demands for “justice.” The PLO and the Palestinian Authority continue to nurture in Palestinian society the idea of the return of the refugees. They prevent any option of resettlement of refugees outside the camps and preserve the role of UNRWA as a symbolic and practical expression of the demand for return.

The Palestinian concept, that receives support from Palestinian and even some Israeli human rights organizations, views the right of return as a private right of every single refugee, and this means that the Palestinian people’s representatives (as well as the United Nations) have no authority whatsoever to forgo this right in the name of the refugees.

Any Palestinian leader who would dare challenge the consensus and waive the right of return in negotiations with Israel will in the best case find himself blacklisted and removed from the stage, or in the worst case he will be executed.

According to the Palestinian consensus, the non-implementation of the right of return will leave the gates of the conflict with Israel open, and this implies justification for a continued armed struggle against Israel even following the establishment of a Palestinian state.

The future Palestinian state to which Palestinian Authority Chairman Mahmoud Abbas and Prime Minister Salam Fayyad aspire is prepared to absorb Palestinians, including refugees, within its boundaries, with the reservation that this will not be considered in any shape or form as a waiver of the right of return.

Once the Palestinian entity receives control over the international border crossings, irrespective of whether it is recognized as a state with full sovereignty or not, the gates will be opened for the transit of Palestinians, including those defined as refugees, to areas under Palestinian control. The Palestinian entity will not be able to prevent the entry/return of Palestinians to its borders, something that would be considered national treason and contravene Palestinian basic law and the Palestinian consensus.

All the Arab states where the Palestinians defined as refugees reside support the right of return unreservedly. Syria and Lebanon have traditionally adopted a policy that clarifies unambiguously that the refugee camps in their territory are only temporary and the refugees must return to Palestine when the conditions for this mature. It is plausible to assume that the two countries will have an interest in promoting the transfer of their Palestinian populations to the areas of “Palestine” both for internal demographic reasons and also to influence by this measure the creation of a demographic reversal in the area of historic Palestine, to influence the Palestinian regime and make use of the Palestinians in the framework of the continued struggle against Israel.

The Jordanian regime detached itself from the West Bank in 1988 and provided Jordanian passports to the refugees, but announced that following the establishment of the Palestinian state, the refugees will have to decide whether they choose to be Jordanian citizens or return to Palestine. The massive eviction of a Palestinian population has occurred a few times over the last three decades. Kuwait expelled 400,000 Palestinians after the First Gulf War due to PLO support for Iraq. Libya ordered the expulsion of 30,000 Palestinians (and later on agreed to accept them) following the establishment of the Palestinian Authority. Iraq expelled scores of thousands of Palestinians following the overthrow of the Saddam Hussein regime in 2003.

The refugee problem that was a bubbling lava for scores of years could erupt after an Israeli withdrawal to the 1967 lines and the establishment of a Palestinian state, and find expression in many areas: The infiltration of Palestinians into Israeli territory, and legal claims by refugees in Israel and in the international court in The Hague to provide the right of return, the restitution of property, and compensation. Focusing the Palestinian armed struggle on the right of return (a refugee intifada) could escalate the struggle in the international arena to coerce Israel into agreeing to the right of return (to avoid the boycott and anti-apartheid campaign).

The widespread phenomenon of Palestinians illegally residing in Israel and the infiltration of scores of thousands from African countries via the Egyptian border into Israeli territory exemplify the dimensions of the challenge that Israel will be forced to contend with in the form of a similar and much larger phenomenon in scope from the area of the West Bank. Likewise, Israel can expect to face challenges in the international and legal arenas, given the position of the human rights organizations in this context. Israel will find it difficult to prevent infiltration via its long border with the West Bank. Additionally, the expected economic distress in the Palestinian state, given the massive arrival of refugees, could invite international pressure upon Israel to absorb a larger number of refugees within its territory.

In the final analysis, the refugee problem is at the very heart of the Israeli-Palestinian dispute and is considered by the Palestinians as a trump card, via which they can weaken the State of Israel. After the establishment of a Palestinian state, the Palestinians will be able to overcome Israel via demography, transforming the country in the long term into an entity that will be submerged in a Palestinian state stretching from the Mediterranean Sea to the Jordan River. Since the Israeli consensus holds that the mass return of Palestinian refugees to Israel means national suicide, Israel will require robust international support in negotiations for a final status agreement, in order to reach an accord on the basis of defensible borders, and to find a permanent solution to the refugee problem based primarily on the Palestinian refugees receiving citizenship in their host countries or their absorption in a Palestinian state.

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