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THE PEACE PROCESS AND THE "RIGHT OF RETURN"

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Roots of the Longing for "Return" / Reactions to the Other Community's "Right of Return" / The Peace Process and the Longing to Return / Precedents in International Law / The Peace Process and the Outlook for Handling Claims to "Return"

"Within five years we will have six to seven million Arabs living on the West Bank and Jerusalem. All Palestinian Arabs will be welcomed by us. If the Jews can import all kinds of Ethiopians, Russians, Uzbekians, and Ukrainians as Jews, we can import all kinds of Arabs. We plan to eliminate the State of Israel and establish a Palestinian state. We will make life unbearable for Jews by psychological warfare and population explosion. Jews will not want to live among Arabs." (Reported statement of Yasser Arafat to a closed meeting of Arab ambassadors in Stockholm, January 30, 1996)¹

Roots of the Longing for "Return"

Israelis and Palestinians are both committed to bringing "home" millions of their brethren who live abroad. Zionism, the movement to bring about the return of the Jewish people to their homeland, has always been part of Judaism. Observant Jews repeat their desire and intention to return to Israel in prayer three times daily, in the blessing after meals, in the wedding ceremony, and on all holi-

days. The tenet of *aliyah* (literally, ascension), of return to the Land of Israel, has been at the core of the modern Zionist enterprise since its advent more than a century ago. *Aliyah* was seen as imperative because populating the land with Jews would stake the Jewish claim. Moreover, the creation of a modern Jewish state would be virtually inconceivable if Arabs outnumbered Jews.

The urgency to make the dream of *aliyah* a reality increased during the British Mandate when desperate Jewish refugees, whom no country would admit, were refused entry into Palestine despite the near certainty that they would be murdered by the Nazis if they returned to Europe. In light of this history, it is not surprising that one of the Knesset's first enactments after the founding of the state was the Law of Return (1950), declaring: "Every Jew has the right to come and settle in Israel." This statute encourages and facilitates Jewish immigration from all parts of the world, whether from countries in distress or from the affluent societies in the West. Thus far, over 2,500,000 Jews have "returned" to Israel since the founding

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of the state.

Since the 1950s, Palestinians have campaigned to reverse the demographic catastrophe they suffered as a result of the flight of some 600,000 to 800,000 Palestinians during and after the 1948 Arab-Israeli War. Their fate was considered by many, especially prior to the 1967 War, to be the most crucial aspect of the Arab-Israeli conflict. The misery and poverty of these refugees in Jordan, Egypt, and Lebanon became the unifying and formative experience of Palestinian nationalism during the following decades. The return or resettlement of the refugees was, from the Arab perspective, the dominant issue during the first two decades of the Arab-Israeli conflict. The Palestine Liberation Organization (PLO), as is explained in its National Covenant, has as its original objective the return of the Palestinian refugees of the 1948 War.

Many of these refugees and their offspring aspire to return to their former homes and land inside Israel, not to the Palestinian self-governing entity. Although he has frequently claimed, "I am a refugee, for I was banished and dispossessed of my homeland," PLO Chairman Yasser Arafat was actually born in Cairo of Palestinian parents who left during the 1920s. His only personal contact with Palestine was from 1933 to 1937 when he was sent by his newly widowed father to live with relatives in Jerusalem. As Arafat's biographer Thomas Kiernan wrote:

In the Arab tradition generally, and more specifically in the tradition of the Palestine liberation movement, fact is often a malleable commodity, at least from the Western point of view. Whether for benevolent or malevolent purposes, the twisting of fact — indeed the complete transforming of fact — to suit a particular need is an everyday occurrence. Equally malleable is fiction.... A fiction might arise out of or be invented by a common Arab consciousness in order to mask or replace an unpalatable fact. Or it might be manufactured to fill in an actual absence of desired fact. Either way, when important enough to a sufficient number of people, a fiction will take on the dimensions of fact and in time become fact itself.²

Regardless of the historical veracity of their claims, most of the PLO's leaders consider themselves refugees from the period of the 1948 War, which in geographic terms means from Israel within its pre-1967 frontiers.

The goal of return was *the* act of faith which, since then, has unified the diverse factions of the Palestinian movement. The Palestinian refugee problem was further exacerbated as a result of subsequent armed con-

flicts including the 1967 Six-Day War (those who fled from the West Bank to East Jordan in 1967 were technically not refugees but displaced Jordanian citizens), the 1970 civil war in Jordan, the Lebanese civil war including the 1982 Israeli invasion, and the 1991 Gulf War. Significantly, in the aftermath of the Gulf War, Kuwait forced out 250,000 Palestinians, some 32,000 of whom were admitted by Israel to the West Bank and Gaza. These upheavals have only served to heighten the refugee mentality of Palestinian nationalism. Although the precise methods for determining refugee status vary (i.e., whether a refugee's spouse or offspring should be included in the count and whether acquisition of another citizenship, i.e., Jordanian, precludes considering someone a Palestinian refugee), several million people today define themselves, with or without justification, as Palestinian refugees. Some of them are third and fourth generation descendants of the original refugees, and have never even visited what was Palestine.

Reactions to the Other Community's "Right of Return"

Successive Israeli governments have contested proposals for the repatriation of Palestinian refugees. For many years, Israeli policy-makers and academics subscribed to the view that the Palestinian exodus was either voluntary or largely instigated by the neighboring Arab countries. To the extent that Israel was willing to consider Palestinian claims, it sought to simultaneously be reciprocally compensated for the property left behind by the hundreds of thousands of Jewish refugees who were expelled from Arab countries during the 1940s and 1950s. One study estimated the value of Jewish property in Arab states at five times that of the abandoned Palestinian Arab property.

Contemporary historical accounts demonstrate that during 1947 and 1948 most of Palestine's Arabs left their homes either because of general fear and confusion or because they were urged to do so by the Arab leaders. Instances of Jewish leaders who attempted to persuade Arabs to stay put were also recorded. In recent years revisionist historians have challenged the prevailing version of the Palestinian exodus. They posit a degree of Israeli responsibility for the flight of the Palestinians, at least from certain locales. For example, Benny Morris has written about the expulsion of 60,000 Arab residents from the towns of Lydda and Ramle. Morris acknowledges, however, the context of this expulsion: the two towns sat astride the Jerusalem-Tel Aviv highway and their residents had regularly inter-

dicted Jewish traffic. Moreover, the armed residents of these towns, augmented by elements of the Jordanian Arab Legion, constituted a springboard from which the Arabs could attack nearby Tel Aviv. Finally, the unit of the Israel Defense Forces that captured Lydda numbered only several hundred. Surrounded by tens of thousands of Arabs, the unit was itself in a precarious position as long as the Arab townspeople stayed in their homes, many of which were being used as sniping positions.

The ways in which Israel has sought to address its responsibility toward the Palestinian refugees who pose both a security and demographic threat, clearly negate any acquiescence to comprehensive claims of a Palestinian right to "return." Fearful of being inundated with Palestinians, Israeli immigration and nationality legislation has served to thwart any possibility of mass return to Israel by the Palestinian refugees. Israeli governments have favored a solution involving the permanent settlement of the refugees in neighboring Arab countries together with compensation for their property losses. Yet, despite its fears, Israel has readmitted some 110,000 refugees for purposes of family reunification and as a humanitarian measure.

Overall, the Palestinian leadership has not found Israel's efforts as regards the refugees to be satisfactory. There has been almost no recognition of the fact that Israel has tried to alleviate some of the major problems confronting the refugees and, despite the peace process that began with the Declaration of Principles and the ensuing interim agreements, the official PLO line about resettlement has at times been openly antagonistic. Professor Bernard Lewis has astutely observed:

[T]he intractability of the Palestinian refugee problem is a consequence, not a cause, of the political problem. That the problem was not solved, like others elsewhere in our brutal century, by a combination of resettlement and some repatriation, was due to an act of will on the part of the Palestinian leadership and of the Arab states. It was indeed a considerable feat to have preserved the refugee camps and their unhappy inhabitants for so long, and prevented their absorption into the expanding economies of the oil-rich Arab states, at a time when these were attracting and employing millions of guest workers from Egypt and Yemen, from Africa, from India and Pakistan and Sri Lanka, and even from as far away as Korea and the Philippines.³

While criticizing Israel for not being more open to Palestinian refugees, Palestinian opposition to Jewish immigration persists and has taken various forms over the decades. Alternately, the Palestinians have denied the historical authenticity of the Jewish claim to the land, isolated and condemned Israel at the United Nations, pressured governments to prevent their citizens from emigrating to Israel, staged terrorist attacks against immigrants en route to Israel, and most recently, in February 1995, issued a position paper entitled, "Jewish Immigration to Palestine and its Devastating Effects on the Peace Process." It is significant that this paper, written long after the Declaration of Principles and Gaza-Jericho agreements were signed, was issued by the Palestinian Authority's Ministry of Information. Structured around the new organizing idiom of protecting the peace process, the paper repeats the old canard: "This task [*aliyah*] cannot be accomplished without the confiscation of more Palestinian land in the West Bank and Gaza." Thus it appears that, despite the peace process, Palestinian hostility towards Jewish immigration has simply undergone a metamorphosis to bring its rhetoric up to date.

The Peace Process and the Longing to Return

The Israeli-Palestinian conflict entered a new era on September 13, 1993, when the late Israeli Prime Minister Yitzhak Rabin and PLO Chairman Yasser Arafat exchanged hesitant glances and gave each other the "historic handshake" at the signing of the Declaration of Principles in the White House rose garden. The current peace process promises the beginning of a new era in the history of the Middle East. Both Israelis and Palestinians are reassessing the concepts of return that have been central to their struggles for self-determination. Some Israelis believe that Zionism must be rethought and redefined in light of the peace process. They argue that the "new Zionism" or "post-Zionism" should emphasize the current challenges faced by the state, and question whether the movement should persist in its historical pursuit of maintaining a substantial Jewish demographic majority. However, others have responded that without a majority, the state would lose much of its *raison d'être* and that it would no longer serve as a vessel in which the tiny, scattered, and frequently persecuted Jewish people could survive future threats.

The Palestinian leadership's views are also divergent on questions relating to immigration to the territory under Palestinian control. Nabil Shaath, who lived in

Tunis with Arafat and represents the official position of the Palestinian Authority, has taken a very assertive position regarding the immediacy, necessity, and extent of the influx. In contrast, Bir Zeit University Professors Hanan Ashrawi and Salim Tamari have expressed more modest expectations regarding the "return" of the Palestinian diaspora. Perhaps this approach is attributable to recognition of the Palestinian Authority's limited economic absorptive capacity. This view may be due to their being long time residents of the West Bank rather than, like Shaath and the exile leadership, new arrivals. On the other end of the political spectrum are the views of the rejectionist factions of the PLO, which have condemned Arafat for selling out the Palestinian refugees. They seem to share the views of the Palestinian-American Professor Edward Said, who recently denounced Arafat for relegating the diaspora Palestinians to "permanent exile or refugee status."

Precedents in International Law

International law has developed standards on the subject of return and repatriation of persons dislocated from their country or land of origin. The PLO has repeatedly claimed a right of repatriation under international law for the Palestinian refugees, to which Israel has objected. This claim has been supported by references to international law and to specific resolutions of the United Nations General Assembly.

Several international instruments recognize what may be termed a general right of return. The 1948 Universal Declaration of Human Rights at Article 13(1) states, "Everyone has the right to leave any country, including his own, and to return to his country." Similarly it is established by Article 12(4) of the 1966 UN Covenant on Civil and Political Rights that, "No one shall be arbitrarily deprived of the right to enter his own country." However, since most international law instruments are premised on state sovereignty, problems may arise in applying these criteria to the emerging Palestinian entity. Indeed, the above declarations suggest that there must be a *country* of origin of which the refugees were once citizens and to which they may return. This is not the case of the Palestinian refugees seeking to return either to Israel or the West Bank and Gaza Strip.

The Palestinians have also frequently cited a variety of UN General Assembly resolutions that specifically address the subject of the Palestinian refugees and purport to establish a Palestinian right of return. The major UN General Assembly resolution that relates to the Palestinian refugees, Resolution 194, adopted on

December 11, 1948, affirms:

The General Assembly...resolves that the [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. It is doubtful, however, whether resolutions of the General Assembly constitute binding authority over sovereign states. Moreover, as Hebrew University law professor Ruth Lapidoth has stated, the language of Resolution 194 does not recognize any right for the Palestinians to return, "but recommends that the refugees 'should' be 'permitted' to return." Furthermore, "that permission is subject to two conditions — that the refugee wishes to return, and that he wishes to 'live at peace with his neighbors.'" In other words, even if one ignores the non-binding nature of General Assembly resolutions, Resolution 194 is not some blanket statement that gives every Palestinian refugee the right simply to return to his former home and take possession of it. Rather, there is a built-in prerequisite to the return, namely, that the refugee wishes to live peacefully with his neighbors.

The particular language of this and numerous other pro-Palestinian refugee resolutions notwithstanding, it is interesting to note that most independent observer discount the United Nations' assessments of matter involving Israel. They question whether clearly political UN resolutions should be given legal credibility. The Security Council, the General Assembly, and many United Nations agencies have maintained a blatant hostile attitude toward Israel for more than two decades. Even after the repeal of the earlier resolution professing "that Zionism is a form of racism and racial discrimination," the UN has yet to demonstrate a fully objective attitude towards Israel.

The Peace Process and the Outlook for Handling Claims to "Return"

Both Israelis and Palestinians see immigration more vital than simply an issue that can strengthen or weaken their bargaining position in the final stage of peace talks: the course of immigration could ultimately affect the demographic balance between Jews and Arabs in various parts of Israel and the Palestinian entity. While the topic of return does appear in the DOP, Cairo Agreement and the Oslo II Agreement, it did

emerge as a focal point in the negotiation of any of the five interim agreements. The DOP, however, provides that talks on the subject of the 1948 refugees are to be postponed until the permanent status negotiations. Regarding the 1967 refugees, the Oslo II Agreement declares that pursuant to the invitation Israel and the PLO have extended to the governments of Jordan and Egypt to "participate in establishing further liaison and cooperation arrangements," a Continuing Committee has been constituted "to decide by agreement on the modalities of admission of persons displaced from the West Bank and Gaza Strip in 1967...." This Committee's several meetings have been marked by acrimony regarding all the issues that were on the agenda, i.e., the definition of "displaced persons," determining the number of displaced persons, the modalities for their admission, and the deadline for their return.

Thus, international law and the interim agreements embody complex and unclear questions that will significantly influence the political latitude of Israel and the Palestinian Authority in implementing their policies with regard to "return." Two of these are particularly pressing, even during the interim period, and will become more so with the commencement of negotiations on the final peace arrangements. First, to what extent does Israel, as the military power controlling the points of entry (i.e., border crossings), remain responsible for immigration policy in the parts of the West Bank that it still administers? Furthermore, does that responsibility extend to areas under the local control of the Palestinian Authority? Second, should the Palestinian Authority be permitted under international law to implement its own immigration policies as would a sovereign state. If its status and prerogatives are deemed to be akin to those of a sovereign entity, the Palestinian Authority might attempt to repatriate hundreds of thousands or possibly millions of Palestinians, even during the transitional stage of the peace process. While it is difficult to ascertain the number that would actually be enticed to return, certainly Palestinian communities in distress (i.e., in Libya, Lebanon and Kuwait) would be tempted. This possibility is suggested strongly by a recent Palestinian Council publication entitled, "Palestinian Refugees and the Right of Return." In this connection, the Palestinian Authority might, if not during the interim stage then perhaps later in the peace process, attempt to prevent additional Israelis from moving to or living in the Jewish settlements.

Although immigration during the peace process should be a fundamental concern for all parties, it has

not yet emerged as a central issue. However, the numerous questions that have arisen on the subject are likely to present some of the most intellectually challenging and divisive hurdles to be addressed when the final status peace talks commence in May 1996. Moreover, the outcome of the "return" issue will cut across a whole range of other issues such as water needs, election results, land usage, city planning, job creation, budgets, ecological impact, political stability, and, of course, security.

The United States has yet to take an active role in addressing these issues, except in its confused stance on UN Security Council Resolution 194. United States policy since the establishment of the Palestinian Authority has focused largely on the transfer of economic aid to the Palestinians, facilitating the negotiations on Israeli troop withdrawals, pressing Yasser Arafat to crack down on Hamas terrorism, and encouraging the Palestinian elections. Yet the United States has an indispensable role to play in establishing the immigration expectations of the parties. Both at the United Nations and in its diplomacy in the region, the United States' voice is often the most prevalent. The State Department and White House will likely be called upon to address immigration issues as they arise. It would obviously be better to anticipate and, where possible, plan for this contingency.

The essential prerequisites for the furtherance of the Israeli-Palestinian peace process are widely understood to be security, political independence, and economic development. Scant attention, however, has been given to the critical issue of immigration or, as both the Israelis and Palestinians call it, "return." It would be ironic if the political breakthrough between Israel and the PLO were to disintegrate over this neglected problem.

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Notes

1. Reported in the Norwegian daily newspaper *Dagen*, February 16, 1996. The report was denied by Arafat's office in Gaza, but was confirmed by Israel Television's Arab Affairs correspondent Ehud Ya'ari. Regardless of its accuracy, both its content and strident rhetoric increased Israeli apprehensions about the direction of the peace process.

2. Thomas Kiernan, *Yassir Arafat: The Man and the Myth* (London: Abacus, 1976), p. 25.

3. Bernard Lewis, *Semites and Anti-Semites* (New York: Norton, 1986), pp. 237-238.

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With this issue (SAA44) we bring to an end the separate publication of the quarterly *Survey of Arab Affairs*. The Jerusalem Center for Public Affairs will continue to cover these issues in our *Jerusalem Letter* and *Jerusalem Letter/Viewpoints* series, which appears twice monthly (24 issues per year).