

THE RIGHT OF RETURN REVISITED

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This article traces the historical, political, and legal events that have had the greatest impact on the plight of the former citizens of the British mandate of Palestine, resulting in the largest and longest running refugee crisis of the 20th century. Anti-Semitism, Zionism, mass immigration, colonialism, the holocaust, western imperialism, war, and military occupation all played their part. In fact, the events that led to the mass displacement of the citizens of the British mandate of Palestine are still very relevant today even though the events that led to their eviction were over half a century ago. If there is ever to be peace and justice in the Middle East the Palestinian refugee question cannot be ignored.

1. Introduction

1.1 *Who are the Palestinian refugees?*

Refugees, and the internally displaced persons of Palestinian origin, were the citizens of the British mandate of Palestine who were displaced from their homes as a result of war and military occupation, and who have been prevented from returning to their homes in what is now Israel, the West Bank and Gaza.¹ It is estimated that there are currently more than 7 million Palestinian refugees and displaced persons. This figure includes Palestinian refugees displaced in 1948 and registered for assistance with the United

¹ See the Palestinian Citizenship Order, 1925. This can be viewed in Robert Harry Drayton, *The Laws of Palestine* Vol. III p.t. 2 pp 2640 – 2658.

Nations Relief and Works Agency for the Near East (*hereinafter* 'UNRWA') (3.97 million); Palestinian refugees displaced in 1948 but not registered for assistance (1.54 million); Palestinian refugees displaced for the first time in 1967 (753, 000); Palestinians internally displaced in 1948 (150, 000); and Palestinians internally displaced in 1967 (150, 000). In total, the Palestinian refugee and displaced population comprise nearly three-quarters of the entire Palestinian population worldwide (9.3 million).²

The majority of Palestinian refugees reside in Jordan, followed by the West Bank and Gaza, Syria, and Lebanon. A smaller number of Palestinian refugees reside in Egypt, Libya, the Gulf and elsewhere. The legal status of Palestinian refugees varies from country to country. For example, the majority of Palestinian refugees in Jordan have been granted Jordanian citizenship.³ However the majority of Palestinian refugees in the West Bank and Gaza, Lebanon, Syria, and Egypt have not been granted citizenship and are therefore stateless persons.⁴ A stateless person is defined as 'a person who is not considered a national by any state under the operation of its law.'⁵ Israel does not recognize the former citizens of the British mandate of Palestine as its citizens (except the few that remained in the state of Israel between May 14, 1948 and July 14, 1952⁶); and as no Palestinian state has been established they continue to be stateless persons.

This article covers the major historical, political and legal events that led to the demise of the British mandate of Palestine and the creation of the state of Israel. As a result of these events, the former citizens of the British mandate of Palestine of predominantly Arab origin became stateless persons and refugees.

² See 'Population and Demographic Profile' in *Survey of Palestinian Refugees and Internally Displaced Persons 2002* (Badil Resource Center for Palestinian Residency and Refugee Rights: Bethlehem 2003) pp 32-46. See also *Palestinians at the End of the Year 2002* (Ramallah: Palestinian Central Bureau of Statistics, December 2002).

³ See Law No. 6, Jordanian Nationality Law 1952. This can be viewed in English on the web site of the United Nations High Commissioner for Refugees at www.unhcr.ch

⁴ For more on the legal status of Palestinian refugees in the Arab countries see Lex Takkenberg *The Status of Palestinian Refugees in International Law* pp 153 – 175.

⁵ Article 1, 1954 U.N. Convention relating to the Status of Stateless Persons: 360 UNTS 117.

2. Zionism and the establishment of a Jewish state in Palestine

2.1 *Zionism and the British mandate of Palestine*

The end of the 19th century saw the development of Zionism as a political movement. The advent of Zionism was primarily a reaction to the years of anti-Semitic abuse which the Jewish people had endured throughout their history. The central tenet of Zionism was the creation of a Jewish homeland, where Jews would be safe – a place where Jews from all around the world could seek shelter in times of peril. For this reason the Austro-Hungarian journalist and the father of political Zionism, Dr. Theodor Herzl, established the World Zionist Organization (*hereafter 'the Zionists'*) in Basle in 1897 at the First Zionist Congress. In order to carry out the task of establishing a Jewish homeland, the Jewish National Fund, the Jewish Colonial Trust, and its subsidiary the Anglo-Palestine bank were established. In the early 20th century under the skilful leadership of Dr. Chaim Weizmann, the Zionists greatly influenced British policy from the moment the British captured Palestine from the Turks at the end of the First World War.⁷ On the 2nd November 1917, Sir Arthur Balfour, despite the protests of Mr. Edwin Montagu, the only Jew in the Cabinet, issued his Declaration that favoured the creation of a homeland for the Jewish people in Palestine.⁸ It was contained in a letter to Lord Rothschild:

*“Foreign Office,
November 2nd, 1917,*

Dear Lord Rothschild,

I have much pleasure in conveying to you, on behalf of His Majesty's Government, the following declaration of sympathy with Jewish Zionist aspirations which has been submitted to, and approved by, the Cabinet

⁶ See Israel's 1952 Nationality Law, 6 P.D. 897, 901. For an English translation see Joseph Badi (ed.) *Fundamental Laws of the State of Israel* pp 254 – 258.

⁷ See Tom Segev, *'One Palestine, Complete'* p 41.

⁸ See Dov S. Zakheim *'The British Reaction to Zionism: 1895 to the 1990s'*, 350 *The Round Table* 1999, p 321 – 332.

"His Majesty's Government view with favour the establishment in Palestine of a national home for the Jewish people, and will use their best endeavours to facilitate the achievement of this object, it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine, or the rights and political status enjoyed by Jews in any other country."

I should be grateful if you would bring this declaration to the knowledge of the Zionist Federation.

*Yours
Arthur Balfour."*⁹

The British made this commitment and kept it despite their own census carried out five years later in 1922 which showed that Jews only accounted for 15% of the population of Palestine.¹⁰ The Zionists purchased land from the Arabs, established settlements like Tel Aviv and Petah Tiqwa and were instrumental in ensuring that Hebrew became a national language. The British adhered to the Zionists demands to include Hebrew along with Arabic and English on Palestine's currency, stamps and signposts despite the fact that very few people in Palestine at the beginning of the 20th century spoke Hebrew.¹¹ The Zionists also established the Hebrew University to encourage, promote and disseminate Zionist ideals and to pass these on to the coming generations. Under the leadership of Weizmann, the Zionists persuaded the British Government that a national home for the Jewish people in Palestine was in the British

⁹ Reproduced in John Norton Moore (ed.) *The Arab-Israeli Conflict Reading and Documents* p 885.

¹⁰ There were 486 177 Muslims, 83 790 Jews and 71 646 Christians registered as living in Palestine according to the first census carried out by the British in 1922. See *A Survey of Palestine, Prepared in December 1945 and January 1946 for the information of the Anglo-American Committee of Inquiry* (Reprinted by the Institute for Palestine Studies, Washington D.C. 1991) p 141.

¹¹ Article 22 of the Palestine Mandate of the 24th July 1922 states: '*English, Arabic and Hebrew shall be the official languages of Palestine. Any statement or inscription in Arabic on stamps or money in Palestine shall be repeated in Hebrew and any statement or inscription in Hebrew shall be reprinted in Arabic.*'

national interest, even though this was not the case, since Palestine at that time was of no strategic value whatsoever.¹² In fact, the Zionists claim that the return of the Jewish people from exile after 2000 years to their homeland greatly appealed to the Protestant notions of the British educated elite.¹³ This, and the British administration's belief in the anti-Semitic notion that the Jews controlled the world, persuaded them that catering to the concerns of the Zionist leadership was in Britain's interest. Weizmann was clearly aware of this and manipulated this belief by referring in his private correspondence with the Colonial Office, to 'our friends in America', which only furthered this impression.¹⁴ The Zionists were instrumental in lobbying the European powers at the San Remo Conference in 1920 to include the Balfour declaration in any mandate that was established over Palestine.¹⁵ As a result, the Palestine mandate as set up by the Council of the League of Nations on July 24th 1922 included the Balfour declaration. The mandate also gave recognition 'to the historical connection of the Jewish people with Palestine and to the grounds for reconstituting their national home in that country.'

2.2 *Early waves of Jewish emigration to Palestine (aliyah)*

Throughout the 1920s and 1930s as more Jewish immigrants made *aliyah* to Palestine, relations between the Arabs and the Jews rapidly deteriorated. Outbreaks of violence often occurred between the two communities, in particular in Jerusalem during the Nabi Musa pilgrimage in 1920 and during the riots in Jaffa in 1921. For the Arabs however, the problem was not the Jews, but Zionism. They were convinced that the Zionists wanted to get rid of the Arabs and establish a Jewish state in Palestine. The Arabs had demanded independence ever since they had fought side by side with the British

¹² See Segev, *Supra* Note 7 at p 147 & 198.

¹³ In this regard see Arthur Balfour M.P. British Foreign Secretary's introduction to Nahum Sokolows's seminal work *The History of Zionism 1600-1918* and Chapter VII entitled 'Christian writers on the restoration' pp 40 - 47.

¹⁴ This reference was to Supreme Court Justice Louis Brandeis and to Professor Felix Frankfurter. See Samuel Landman, *Great Britain the Jews and Palestine* p 4.

¹⁵ See Segev *Supra* at 7 p 142.

and the French against the Turks during the First World War.¹⁶ So there were two movements in Palestine: a Zionist colonial movement and an Arab national movement demanding a State on the same piece of territory with the British between them.

The British were persistent in their colonial commitment to establishing a home for the Jewish people even though the majority of Palestine's inhabitants were Arab. Palestine's first High Commissioner, Herbert Samuel, was a Jew and a Zionist. His appointment was not by chance.¹⁷ The findings of the King Crane Commission (sent to Palestine by President Wilson) that favoured 'democracy, the education of the common people and the development of the natural spirit' were anathema to the Zionists who wanted to establish a Jewish state. They included the following recommendations:

"[s]erious modification of the extreme Zionist programme for Palestine of unlimited immigration of Jews, looking finally to making Palestine distinctly a Jewish state. For a national home for the Jewish people is not equivalent to making Palestine into a Jewish state; nor can the erection of such a Jewish state be accomplished without the gravest trespass upon the civil and religious rights of existing non-Jewish communities in Palestine. The fact came out repeatedly in the Commission's conferences with Jewish representatives, that the Zionists looked forward to practically complete dispossession of the present non-Jewish inhabitants of Palestine, by various forms of purchase. For the initial claim, often submitted by Zionist representatives, that they have a 'right' to Palestine, based on an occupation of 2, 000 years ago, can hardly be seriously considered ... With the best possible intentions, it may be

¹⁶ See the McMahon Correspondence, the Anglo-Franco-Russian (Sykes-Picot) Agreement that carved up the former Ottoman Empire between the great powers of the day. See also the recommendations of the King-Crane Commission and on Arab nationalism see George Antonius, *The Arab Awakening*.

¹⁷ The first proposal to conquer Palestine and establish a Jewish state appeared before the Cabinet as a memorandum in January 1915. Herbert Samuel was its author.

*doubted whether the Jews could possibly seem to either Christians or Moslems proper guardians of the holy places, or custodians of the Holy Land as a whole.”*¹⁸

The Zionists greatly feared majority rule or any notion of ‘American-style democracy’ that would have placed power in the hands of Palestine’s Arab people, and consequently the recommendations of the King Crane Commission were never implemented. After all, the Arabs were the majority and their presence would diminish the Zionists dream of establishing a Jewish state. It was therefore inevitable that there would be a clash between the interests of the Zionists and the interests of the Arabs. Further, it was clear that the establishment of a Jewish state would conflict with the principle of the self-determination of peoples, as set out in President Wilson’s fourteen points. According to President Wilson:

*“Peoples are not to be handed about from one sovereignty to another by an international conference or an understanding between rivals and antagonists. National aspirations must be respected; peoples may now be dominated and governed only by their own consent. ‘Self-determination’ is not a mere phrase. It is an imperative principle of action, which statesmen will henceforth ignore at their peril. We cannot have general peace for the asking, or by the mere arrangements of a peace conference. It cannot be pieced together out of individual understandings between powerful states.”*¹⁹

The sympathy accorded to the Zionists by the British government of the day was clearly at odds with the principle of the self-determination of peoples; and their pro-Zionist stance would come to haunt them when the Zionists declared all out war on the British two decades later.

¹⁸ Extracts from the Recommendations of the King-Crane Commission with Regard to Syria-Palestine and Iraq, August 28th 1919. Reprinted in Antionius, *Supra* Note. 16, p 443-458.

¹⁹ U.S. Department of State, *Papers Relating to the Foreign Relations of the United States* [1981], I (Washington D.C. 1933) Suppl. 1, 16.

2.3 *The Arab revolt*

The Arabs were clearly aware that the British were in league with the Zionists since many Jewish immigrants were entering the country, some of them even smuggling arms into Palestine in preparation for a military struggle with the British and the Arabs. In Jerusalem, Jews and Christians received higher wages than their Muslim counterparts for the same work. Overall, there was a general feeling of discontent. Then, in April 1936, the Arabs went on strike – a strike that was to last six months. The Arabs were protesting at the immigration of Jews and the loss of land through sales. They were angered by the collaboration between the British authorities and the Zionists regarding the smuggling of arms into the country. Fuelled by nationalism, the Arabs revolted. Although there were attacks by Arab gangs and counter-attacks by Jewish militias that increased the cycle of hatred between the communities, the Arabs' anger was mainly directed at the British authorities.²⁰ The Arab revolt, however, was disorganized. Different community leaders presented different demands, and the British authorities responded with brutal force. The methods the British used against the Arabs, according to Nevill Barbour writing in the 1940s, included:

“[f]ines of up to £2000 inflicted upon villages, and collected in kind and in cash. The houses of suspects were dynamited by administrative order and their families rendered homeless. In one case at least this form of vengeance was taken on the relatives of a man who had already expiated his crime by his death. In other cases the best houses in villages near which the crime had occurred were destroyed without regard to the character of their owners. Wholesale arrests of notables and commons were made by administrative order, and soon the concentration camps housed six or seven hundred untried prisoners.”²¹

²⁰ For further reading on the Arab revolt see Baruch Kimmerling & Joel S. Migdal *Palestinians the Making of a People* pp 98-123.

²¹ See Nevill Barbour, *Nisi Dominus: A survey of the Palestine Controversy* p 192.

In essence, the majority of the Arabs and especially the peasants, who provided the backbone of the revolt, were simple people who lacked the intellect, sophistication, financial resources and connections with outside powers. The peasants could see that they were getting a raw deal and they resented the British, the Jews and the Arab merchant class. To the Jewish immigrants who had come from major European cities and were used to a European lifestyle, the Arab peasants appeared to them as savages.

2.4 Jewish emigration to Palestine during the Second World War

According to Jon and David Kimche, the Nazi leadership in the late 1930s was considering a number of ways to rid themselves of the 'Jewish problem.' One of the methods that was being considered was the emigration of Jews from Germany to Palestine.

*"Hitler was pressing for faster emigration of Jews from Germany. He was anxious also that they should not settle on Germany's borders, in Switzerland, France, Sweden and Czechoslovakia; he wanted them forced out of Europe. It was decided therefore by the Ministers involved to ask Hitler for a final ruling. Hitler, in turn, asked Rosenberg for a special report. After he had studied this document from his racial expert, Hitler's decision was communicated by the Foreign Affairs Office of the Nazi party to all Ministries concerned. They were told that the Fuehrer had decided again that 'Jewish emigration from Germany shall continue to be promoted by all available means. Any question which might have existed up to now as to whether in the Fuehrer's opinion such emigration is to be directed primarily to Palestine has thereby been answered in the affirmative.'"*²²

As more Jewish immigrants began fleeing to Palestine, as the doors to Britain and the USA were closed to them, relations soured even further between the two communities. By the early 1940s matters deteriorated to such an extent that the Mufti of Jerusalem appealed to the governments under Nazi occupation to put an end

²² See Jon & David Kimche *The Secret Roads, The 'Illegal' Migration of a People 1938-1948* p 30.

to Jewish immigration to Palestine. In a letter from Rome dated 28th June 1943 to the Minister for Foreign Affairs for Hungary, the Mufti wrote:

*"[I] ask your Excellency to permit me to draw your attention to the necessity of preventing the Jews from leaving your country for Palestine; and if there are reasons which make their removal necessary, it would be indispensable and infinitely preferable to send them to other countries where they would find themselves under active control, for example, in Poland, in order thereby to protect yourself from their menace and avoid the consequent damage."*²³

According to Philip Mattar, no hard evidence has been produced from an examination of the thousands of captured German documents to show that the Mufti had participated in atrocities in Nazi Germany beyond his attempt at stopping Jewish immigration to Palestine to avert the displacement or eviction of his own people.²⁴

However, as the horrors of the concentration camps were revealed, support surged for the establishment of a Jewish state, which many Jews saw as an antidote to the years of persecution that they had suffered, mainly in Europe. As a consequence, battle hardened Jewish troops from Europe arrived in Palestine to support the Irgun, Stern and Haganah militias.

2.5 The plan to partition territory

It was during the Arab revolt which started in May 1936, that the Colonial Secretary announced in the House of Commons the intention of the British government to establish a royal commission of enquiry to investigate the causes of the disturbances (*hereafter 'Peel Commission'*). The Peel Commission arrived in Palestine on 11th November 1936 and stayed until the end of January of the following year.²⁵ The Peel Commission recommended partitioning

²³ Cited in Lord Russell of Liverpool, *The Trial of Adolf Eichmann* p 38.

²⁴ See Philip Mattar, *The Mufti of Jerusalem: Al - Hajj al - Husayni and the Palestinian National Movement* pp 99 -107.

²⁵ See Itzhak Galnoor, *The Partition of Palestine Decision Crossroad in the Zionist Movement*.

Palestine between Arab and Jewish states. This was not well received by the Arabs who were adamantly against partition. As a result the revolt continued into the summer of 1939. It was therefore somewhat unsurprising that when the U.N. Special Committee on Palestine (*hereafter* 'UNSCOP') also proposed to partition Palestine some 10 years after the Peel commission had recommended partition, violence erupted again between Jewish and Palestinian paramilitary forces. According to Walid Khalidi:

*"In gross terms, the partition resolution awarded 55.5% of the total area of Palestine to the Jews (most of whom were recent immigrants) who constituted less than a third of the population and who owned less than 7% of the land. The Palestinians, on the other hand, who made up over two thirds of the population and who owned the vast bulk of the land, were awarded 45.5% of the country of which they had enjoyed continuous possession for centuries."*²⁶

The majority of Palestinian Arabs not surprisingly rejected the partition resolution. According to Israeli historian Avi Shlaim, the Arab Higher Committee was adamantly against the proposals to partition territory. They insisted on boycotting UNSCOP on the grounds that the case of the Palestine Arabs was clear and should not be subject to a new investigation. They were of the opinion that the United Nations (*hereafter* 'U.N.') had no jurisdiction in the matter, and that the end of the British mandate could be followed by nothing except the granting of full independence to Palestine.²⁷

On the 29th November 1947, despite the objections of the Arab Higher Committee, the U.N. General Assembly Resolution 181 (II) concerning the future government of Palestine proposed to partition the British mandate of Palestine into an Arab State and a Jewish State, with the City of Jerusalem established as a *corpus separatum* under a special international regime administered by the U.N. According to Henry Cattan who was representing the Arab Higher Committee in the General Assembly, the U.N. had no jurisdiction in

²⁶ See Walid Khalidi, 'Revisiting the UNGA Partition Resolution' 27 (1) *Journal of Palestine Studies* (autumn 1997) p 11.

²⁷ See Avi Shlaim, *The Politics of Partition* pp 80-81.

the matter as the plan to partition the British mandate had no basis in international law:

“[n]ot only did the U.N. possess no sovereignty over Palestine but they did not even possess any power to administer the country. The League of Nations had assumed the power to supervise the administration of mandates established after the First World War in accordance with Article 22 of the Covenant. With the dissolution of the League of Nations the power of supervision, which it possessed over mandates, came to an end. Such a result was recognized by the resolution adopted at the last meeting of the League of Nations held on April 18 1946. The resolution stated that ‘on the termination of the League’s existence, its functions with respect to the mandated territory will come to an end’ ... Not possessing any sovereignty or any other right whatsoever over Palestine, the U.N. could not legally determine, as they sought to do in 1947, the future government of Palestine by recommending the partition of the country between Arab and Jewish states. Such action completely lacked any juridical basis ... In particular, the General Assembly did not possess the power to decide, impose or recommend the future form of Government of the country or to decide its partition between its original inhabitants and foreign immigrants, or otherwise to interfere with the sovereignty of its inhabitants.”²⁸

Nathan Feinberg²⁹ rejects this argument claiming that:

“Cattan – like certain other jurists – resorts to this argument that the Assembly exceeded its powers, for, already in 1950, the International Court of Justice, in its advisory opinion on South West Africa, unanimously held that ‘the competence to determine and modify the international status ... [of a Mandatory territory] rests with the

²⁸ See Henry Cattan, *Palestine, The Arabs and Israel* pp 242-275.

²⁹ See Nathan Feinberg, ‘The Question of Sovereignty over Palestine’ in *On An Arab Jurist’s Approach to Zionism and the State of Israel* pp 7 –34.

Mandatory, acting with the consent of the United Nations Assembly."

Whilst the International Court of Justice (*hereafter 'ICJ'*) in its Advisory Opinion on South West Africa (11 July 1950) concluded that the 'powers of supervision now belong to the General Assembly of the U.N.'. It did concede that 'the supervisory functions of the League with regard to mandated territories not placed under the new trusteeship system were neither expressly transferred to the U.N., nor expressly assumed by that Organization.' These powers of supervision, according to the ICJ were derived from Article 10 of the U.N. Charter, 'which authorizes the General Assembly to discuss any questions or any matters within the scope of the Charter and to make recommendations on these questions or matters to the members of the U.N.' The ICJ held that the power of the Assembly to supervise former mandate territories was only a power to make recommendations.³⁰ According to Ian Brownlie,³¹ the U.N. could not convey title because the organization cannot assume the role of territorial sovereign. In spite of the principle of implied powers, the organization is not a state and only the General Assembly has the power of recommendation. Thus, he argues 'the resolution of 1947 containing a partition plan for Palestine was probably *ultra vires*, and, if it was not, was not binding on member states in any case.' Were the ICJ to have given an Advisory Opinion on the proposed partition of Palestine in 1947 it may have come to a different conclusion.³² In any event the cases of Palestine and South West Africa are not analogous. Whilst Palestine, in the words of Article 22 of the Covenant of the League of Nations, was at a stage of development where its 'existence as an independent nation' was provisionally recognized, South West Africa was not. Furthermore,

³⁰ See John Quigley *Palestine and Israel A Challenge to Justice* pp 47 – 53.

³¹ See Ian Brownlie, *Principles of Public International Law* p 169.

³² The Arab states requested the International Court of Justice, under Article 96 of the Charter and Charter IV of its statute, to give a legal opinion on the legality of partitioning Palestine for the creation of a Jewish sovereign state, against the wishes of the majority of the Palestine population. See Syrian Draft Resolution, Doc. A/C. 1/405 30 November 1948. The resolution failed to pass as there was a tie: 20 votes for and 20 votes against, with 8 abstentions.

the U.N. was not proposing to partition the territory of South West Africa itself nor was it deciding on the future status of a mandate territory against the wishes of its inhabitants. The partition resolution as adopted by the General Assembly was against the express wishes of the majority of Palestine's inhabitants and therefore it violated the Palestine Arabs right to self-determination.

In his book, 'On an Arab Jurists Approach to Zionism and the state of Israel', Feinberg quotes Professor Bastid in support of his argument, who argues that the International Court of Justice recognized the Assembly's power to modify the international status of a Mandatory Territory and that, '[t]his includes the power to change the status of a mandated territory by setting up two states.' Feinberg then gives the example of 'the mandate for Syria and Lebanon of 1922 that expressly provided, on its termination, that two separate states would be set up – not a single unitary state.'

The mandate for Syria and Lebanon is however a separate issue and not relevant to the case of Palestine. Whilst the mandate for Syria and Lebanon mentions that, '[t]he Mandatory shall further enact measures to facilitate the progressive development of Syria and the Lebanon as independent States' the Palestine mandate of the 24th July 1922 makes no provision for partitioning territory into two separate states. Instead it merely incorporates the Balfour declaration into its preamble and states in Article 2 that the Mandatory:

“will secure the establishment of a Jewish national home, as laid down in the preamble, and the development of self-governing institutions, and also for safeguarding the civil and religious rights of all the inhabitants of Palestine, irrespective of race and religion.”

If it were the intention of the League of Nations in its mandate for Palestine to provide for the establishment of a Jewish *state*, then surely the mandate would have made specific reference to that.³³

³³ Lord Curzon had replaced Balfour as Foreign Secretary in 1919. He was present at the San Remo conference in April 1920 and was involved in the struggle over the wording of the Mandate. He vetoed the word 'commonwealth' on the grounds that it was 'a euphemism for a Jewish state.' Public Records office, Foreign Office 371/5199, cited in Doreen Ingrams, *Palestine Papers, 1917-1922: Seeds of Conflict* pp 96-97.

But it didn't. Instead, it adopted the language of the Balfour declaration mandating the establishment of a Jewish *home*. The word 'home' is not synonymous with the word 'state'.

2.6 *The U.S. Proposed Trusteeship Agreement for Palestine*

On the 20th April 1948, the United States (*hereafter U.S.*) submitted a working paper entitled 'draft trusteeship agreement for Palestine' to the U.N. Security Council and the subcommittees of the General Assembly.³⁴ This working paper would have established a trusteeship in the territory of the British mandate of Palestine.³⁵ The U.N. acting through a trusteeship council would be the administering authority for Palestine.³⁶ The trusteeship council would have had full powers of administration, legislation and jurisdiction over Palestine, which would have been exercised through the agency of the Government of Palestine.³⁷ The U.N. acting through the trusteeship council would administer Palestine in such a way as to achieve the basic objectives of the international trusteeship system laid down in Article 76 of the Charter of the U.N.³⁸ Article 9 of the trusteeship agreement was entitled 'Fundamental Human Rights and Freedoms' and among other things it explicitly provided that '[n]o discrimination of any kind on grounds of race, religion, language or sex shall be made against any person in Palestine.'

The U.S. proposed trusteeship agreement would have established a secular, democratic trusteeship government comprised of a senate and a house of representatives.³⁹ It would have also established an independent judiciary and a supreme court.⁴⁰ Under the trusteeship, citizenship would have been based on residency rather than religion and ethnicity.⁴¹ The U.S. proposed trusteeship agreement was highly

³⁴ See U.N. Doc. A/C.1/277 20 April 1948 which can be viewed at the UNISPAL website. (Hereafter '*Trusteeship Agreement*').

³⁵ Article 1 Trusteeship Agreement.

³⁶ Article 2 Trusteeship Agreement.

³⁷ Article 3 Trusteeship Agreement.

³⁸ Article 4 Trusteeship Agreement.

³⁹ Articles 20, 21, 22, 23, 24, 25 and 26 Trusteeship Agreement.

⁴⁰ Articles 27 and 28 Trusteeship Agreement.

⁴¹ See Article 8 Trusteeship Agreement.

significant, as it would have established a single, democratic state where everyone was equal before the law. Furthermore, it could have prevented the chain of events which led to the longest running refugee crisis of the 20th century.⁴²

3. The Palestinians become refugees

3.1 *The Palestinian refugees of 1948*

After the Arab countries rejected the U.N. Partition Plan of the 29th November 1947, matters quickly deteriorated, and sporadic fighting broke out culminating in the first full scale Arab-Israeli war of 1948. For the Jews this was their war of independence, and for the Arabs their *nakba* or 'catastrophe'.⁴³ It was through war that the State of Israel was created; and as a direct result of the war up to 753 000 Palestinians⁴⁴ fled or were expelled from their homes from what is present day Israel to the West bank, Gaza, Lebanon, Syria, Egypt and Jordan.⁴⁵ Of the remaining 150 000 Palestinians who remained in the new state, approximately 25% were displaced from their homes and villages and became internally displaced persons.⁴⁶ To this day it is still disputed between Israelis and Palestinians as to whether or not the Palestinians fled or were expelled from their homes in 1948.⁴⁷ Count Folke Bernadotte, U.N.

⁴² See Gail J. Boling, 'The U.S. Proposed "Trusteeship Agreement" for Palestine: The U.N.-Styled plan that could have avoided the forcible displacement of the Palestinian refugees in 1948.' 21.2 *Refuge* (April 2003) pp 70 –88.

⁴³ For more on this see Michael Palumbo, *The Palestinian Catastrophe the 1948 Expulsion of a People from their Homeland*; Nur Masalha *Expulsion of the Palestinians the Concept of 'Transfer' in Zionist Political Thought 1882 – 1948*; Ilan Pappé *The Making of the Arab-Israeli Conflict 1947-1951*; Benny Morris *The Birth of the Palestinian Refugee Problem*.

⁴⁴ I will use the term 'Palestinians' to refer to anyone resident in Palestine during the British Mandate.

⁴⁵ For more on the war of 1948 see Eugene Rogan and Avi Shlaim (Eds.) *The War for Palestine, Rewriting the History of 1948*.

⁴⁶ For further information see Adalah, The Legal Center for Arab Minority Rights in Israel at www.adalah.org

⁴⁷ See the 'Debate on the 1948 Exodus', which includes contributions from Norman Finkelstein, Nur Masalha and Benny Morris in 21 (1) *The Journal of Palestine*

Mediator for Palestine was of the opinion that '[t]he exodus of Palestinian Arabs resulted from panic created by fighting in their communities, by rumours concerning real or alleged acts of terrorism, or expulsion.'⁴⁸ Bernadotte told of: '[n]umerous reports from reliable sources of large scale looting, pillaging and plundering, and of instances of destruction of villages without apparent military necessity.'⁴⁹ Declassified British intelligence reports support these claims mentioning that in Jerusalem there was a campaign by the Jewish militias to rid the areas that came under their control of their Arab inhabitants.⁵⁰ As a result many neighbourhoods in West Jerusalem were cleared of their Arab inhabitants.⁵¹ In an appearance before the Mapai council, David Ben-Gurion reported:

*"From your entry into Jerusalem, through Lifta, Romeima ... there are no Arabs. One hundred percent Jews. Since Jerusalem was destroyed by the Romans, it has not been so Jewish as it is now. In many Arab neighbourhoods in the west one sees not a single Arab. I do not assume this will change ... What has happened in Jerusalem ... is likely to happen in many parts of the country ... in the six, eight or ten months of the campaign there will certainly be great changes in the composition of the population of the country."*⁵²

According to Sabri Jiryis:

"[e]ven after the partition of Palestine in 1947, the creation of Israel in 1948 and the departure of the British, Zionist

Studies (Autumn 1991) p 66 – 114. See also Ilan Pappé 'Were They Expelled? The History, Historiography and Relevance of the Palestinian Refugee Problem' in Kharmi & Cotran (eds.) *The Palestinian Exodus 1948-1998* pp 37-61.

⁴⁸ Progress Report of the U.N. Mediator for Palestine, GAOR, 3rd Session, Supp.11, U.N. Doc. A/648.

⁴⁹ *ibid.*

⁵⁰ See the Galili Papers, 'Protocol of the meeting on Arab Affairs, 1-2 January 1948' pp. 12-23, cited in Morris *Supra* at 42 p 50.

See Nathan Krystall, 'The Fall of the New City 1947 – 1950' in Salim Tamari (ed.) *Jerusalem 1948 The Arab Neighbourhoods and their Fate in the War* p 92.

⁵² Ben-Gurion, War Diary, Vol. 1, entry dated 7th February 1948, cited in Masalha, *Expulsion of the Palestinians, Supra* 42, p 180.

terrorism continued in an attempt to induce the Arabs living in the country to leave their homes."⁵³

According to the relevant rules of international law concerning the freedom of movement, there is no need for the Palestinian refugees to show the immediate causes or motivations of their flight, and therefore it is immaterial as to whether or not these reports are accurate. Where the accuracy of these reports may be relevant is in the determination of whether the Palestinian exodus of 1948 amounted to deliberate 'mass expulsion' or 'population transfer' prohibited by international law.⁵⁴ Whatever the case may be, it is clear that the arguments as to whether the Palestinian exodus of 1948 was deliberate 'mass expulsion' or 'population transfer' is a separate issue and does not affect the Palestinians claims under U.N. General Assembly Resolution 194 (III) of the 11th December 1948:

"[r]esolves that the refugees wishing to return to their homes and live at peace with their neighbours 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." [Emphasis added]

U.N. General Assembly Resolution 194 (III) was based on the last progress report submitted by Count Bernadotte.⁵⁵ On 17 September 1948, the day after Count Bernadotte submitted his last progress report, he was assassinated by the Stern gang.⁵⁶ As a result of his premature demise much has been made of Bernadotte's last report, especially as to whether or not the Palestinian refugees right

⁵³ Sabri Jiryis *The Arabs in Israel* p 138.

⁵⁴ See Guy S. Goodwin-Gill 'The Limits of the Power of Expulsion in Public International Law' 47 *British Yearbook of International Law* (1974-1975) pp 55 – 156.

⁵⁵ *Supra* Note. 46.

⁵⁶ For an account of the assassination see *Folke Bernadotte, To Jerusalem*, translated from Swedish by Joan Bulman, Appendix I, p 269.

of return forms a customary norm of international law.⁵⁷ Unfortunately, Bernadotte was not very clear on the issue. At one point in his report he states that he held the firm view that 'taking into consideration all the circumstances, the right of these refugees to return to their homes at the earliest practicable date should be *established*'. [Emphasis added] In a later paragraph, in response to a letter from the Provisional Government of Israel, Bernadotte stated that it was his firm view that 'the right of the refugees to return to their homes at the earliest practical date should be *affirmed*'. [Emphasis added] Some jurists have argued that this affirmation by Bernadotte in his last progress is evidence that Bernadotte was of the opinion that the refugee's right to return to their homes formed a part of customary international law as no new rights were created.⁵⁸ It is, however, difficult to ascertain what Bernadotte meant, as 'establishing' a right is clearly not the same as 'affirming' a right.

According to Yoram Dinstein, Israel, having admitted back tens of thousands of Arab refugees on the basis of a reunion of families project, and having agreed in principle to the admission of others has always emphasized that:

"[O]n the whole, the solution to the problem lies in resettlement rather than repatriation. Israel has pointed out that the Arab refugees, far from willing to live at peace with their Jewish neighbours, have been subjected to a continuous propaganda campaign based on hatred for Israel, and have always been regarded by the Arab States

⁵⁷ See Kathleen Lawand 'The Right of Return of Palestinians in International Law' 8 *International Journal of Refugee Law* (1996) pp 532 – 568; John Quigley 'Displaced Palestinians and a Right of Return' 39 *Harvard International Law Journal* (1998) pp 173 – 229; Ruth Lapidot 'The Right of Return in International Law. With Special Reference to the Palestinian Refugees.' 16 *Israel Yearbook on Human Rights* (1986) pp 103 – 125.

⁵⁸ See Gail J. Boling, 'The 1948 Palestinian Refugees and the Individual Right of Return An International Law Analysis' (2001), which can be viewed at Badil Resource Center at www.badil.org; W. Thomas Mallison and Sally V. Mallison 'The Right of Return' 9 (3) *Journal of Palestine Studies* (Spring 1980) pp 125 – 136; and the *Historical Survey of Efforts of the U.N. Conciliation Commission for Palestine to Secure the Implementation of paragraph 11 of G.A. Resolution 194 (III)*, para. 38. U.N. doc. A/AC.25/W.811/Rev.2, pp. 20-21.

*as a means to bring about the disintegration of Israel from within ... Israel has always expressed its readiness to contribute to the payment of compensation for Arab property abandoned in Israel, though it has also drawn attention to the seizure of Jewish property, in Iraq and elsewhere in the Arab world, and indicated that a set-off is in order.*⁵⁹

Bernadotte, however, considered that the Provisional Government of Israel was liable for restoration of private property to its Arab owners and for indemnification to those whose property was wantonly destroyed irrespective of any indemnities which the Provisional Government might claim from the Arab states.⁶⁰ Bernadotte was also of the opinion that:

*“It would be an offence against the principles of elemental justice if these innocent victims of the conflict were denied the right to return to their homes while Jewish immigrants flow into Palestine, and, indeed, at least offer the threat of permanent replacement of the Arab refugees who have been rooted in the land for centuries.”*⁶¹

3.2 Israel's application for membership to the U.N.

Israel first applied for membership of the U.N. on the 29th November 1948 but was rejected by the Security Council because the question of boundaries, settlements and refugees had not been settled.⁶² Israel applied again and was admitted to U.N. membership on 11th May 1949 by U.N. General Assembly Resolution 273 (III) subject to the declarations and explanations that it had made to the General Assembly before its admission. The preamble to U.N. General Assembly Resolution 273 (III) confirms Israel's obligation to the international community:

⁵⁹ Yoram Dinstein, 'The United Nations and the Arab-Israel conflict' in 15 *Encyclopedia Judaica* (1971) p 1543.

⁶⁰ *Supra* Note. 46.

⁶¹ *Ibid.*

⁶² Henry Cattan 'The Palestine Question' pp 86 -89.

“Noting furthermore the declaration by the State of Israel that it ‘unreservedly accepts the obligations of the United Nations Charter and undertakes to honour them from the day when it becomes a Member of the United Nations’, recalling its resolutions of 29 November 1947 and 11 December 1948 and taking note of the declarations and explanations made by the representative of the Government of Israel before the Ad Hoc Committee in respect of the implementation of the said resolutions.”

Israel’s membership of the United Nations was conditional on its implementation of these two resolutions, the first referring to the partition resolution of the 29th November 1947. This called on both the Israelis and the Palestinians to draft a democratic constitution in each state that would guarantee to all persons equal and non-discriminatory rights in civil, political, economic and religious matters and the enjoyment of human rights and fundamental freedoms, including freedom of religion, language, speech and publication, education, assembly and association.⁶³ The resolution of 11 December 1948 referred to U.N. General Assembly resolution 194 (III) that affirmed the right of Palestinian refugees to return, restitution and compensation.

3.3 The relief effort

Count Bernadotte, as United Nations Mediator for Palestine, was involved in the first major relief effort, the so-called U.N. Disaster Relief Project, before he was assassinated. After his death a number of voluntary organizations were involved in the initial relief effort that in due course would turn over responsibility for the overall relief effort to the U.N. The General Assembly, which had been complicit in the refugee’s plight because of its failed partition plan that had led to the war, and to the refugee’s eviction, created an umbrella structure called the U.N. Relief for Palestine Refugees, (*hereafter ‘UNRPR’*) that replaced the Disaster Relief Fund and took

⁶³ See B 10. (d) of U.N. General Assembly resolution 181 (II), 2 U.N. GAOR, Resolutions Sept. 16 – Nov. 29, 1947, at 131-32, U.N. Doc. A/519 (Jan. 8, 1948).

⁶⁴ Benjamin Schiff, *Refugees unto the Third Generation* p 3.

over the immediate relief efforts pertaining to the Palestinian refugees.⁶⁴ Three weeks later, the U.N. Conciliation Commission for Palestine (*hereafter* 'UNCCP') was set up and on the 23rd August 1949 the UNCCP established an Economic Survey Mission (*hereafter* 'ESM'). The ESM was established for the purpose of overcoming the economic dislocations created by the hostilities and to facilitate the repatriation, resettlement, and the economic and social rehabilitation of the refugees, and the payment of compensation as set out in U.N. General Assembly Resolution 194 (III). The ESM recommended that an agency should be established to direct a 'programme of public works, calculated to improve the productivity of the areas in which the refugees resided.'

On December 8th 1949 the U.N. in General Assembly Resolution 302 established the UNRWA. The main activities of the UNRWA were to carry out in collaboration with local governments, the direct relief and works programmes as recommended by the Economic Survey Mission, and to consult with the relevant Arab governments regarding measures to be taken by them preparatory to the time when international assistance for relief and works projects would no longer be available.

As a result of the establishment of the UNRWA, Palestinian refugees were not included in the protection offered by the 1951 Convention Relating to the Status of Refugees (*hereafter* '1951 Convention') or the 1954 Convention relating to the Status of Stateless Persons (*hereafter* '1954 Convention'). According to the *travaux préparatoires* of the 1951 Convention, the Statute of the U.N. High Commissioner for Refugees (*hereafter* the 'UNHCR') and the *Ad Hoc* Committee on Statelessness and Related Problems, this was a deliberate measure due to the peculiar political circumstances surrounding the predicament of the Palestinian refugees. The Arab States wanted the Palestinian refugees to remain the responsibility of special U.N. attention because it was the U.N. plan to partition the territory of the British mandate for Palestine that had led to the war and to the eviction of up to 753 000 people from their homes. According to Elia Zureik,⁶⁵ three principles have shaped Arab state policies toward Palestinian refugees:

⁶⁵ Elia Zureik, *Palestinian Refugees and the Peace Process* (Institute for Palestine Studies, Washington D.C. 1996) p 30.

“First, in order to highlight the plight of the refugees and to put pressure on Israel to admit responsibility for them, Arab countries (except Jordan) have denied citizenship rights to the Palestinians in their midst; in so doing, they claimed they were serving the interests of the Palestinians and supporting their right of return. Second, on paper at least, Arab countries of first refuge adopted, as early as 1952, through the Council of Ministers of the Arab League, a series of resolutions granting Palestinian refugees residency rights and the right to work on an equal footing with citizens of member states of the League. However, the application of these legal resolutions has been uneven, to say the least. Finally, uncertainties in the status of Palestinians in the Arab countries were also a function of the PLO’s attitude to the refugee question. For example, the PLO originally rejected any attempts by refugee organizations, including the UNHCR, to assist in settling Palestinian refugees in third countries (whether in the West or in Arab countries) and did not press for their rights to be normalized in the host countries for fear that this would lead to their resettlement and the loss of their collective right of return.”

The UNRWA’s definition of a Palestinian refugee covered not only Arabs but also Jews displaced as result of their war of independence. Indeed the UNRWA dealt with thousands of Palestinian Jewish refugees who were quickly absorbed into the economic life of Israel, and needed no further assistance from the U.N.⁶⁶

3.4 The Palestinian refugees of 1967

In 1967 there was another major war between Israel and the Arab States. This war is commonly referred to by Israelis as the ‘six day war’ and by Arabs as the ‘war of June 1967’.⁶⁷ Many of the

⁶⁶ See Dinstein, *Supra* Note 57.

⁶⁷ Michael B. Oren, *Six Days of War – June 1967 and the Making of the Modern Middle East*.

Palestinians displaced in this war were refugees who were displaced for the second time in their lives: having been displaced from their original homes inside Israel in 1948, they were again displaced from the areas that Israel captured in the war of 1967, which included East Jerusalem, the West Bank, the Gaza Strip, the Golan Heights and the Sinai Peninsula. Although Israel permitted the refugees to return to their homes – only 14 000 availed themselves of this opportunity as the borders were only open for thirteen days, from the 18 August until 31 August 1967.⁶⁸ The International Committee for the Red Cross (*hereafter* 'ICRC') appealed to the Israeli Government requesting it to extend the time limit to enable all those wishing to return to their homes to do so, but the Israeli Government rejected this appeal.⁶⁹ In Quneitra, the Israeli Government refused practically all permission for repatriation, whether on the grounds of the reuniting of families or of 'hardship cases'.

Israel's policy was to refuse the absorption of the Arab inhabitants that came under its control after the war. This was highlighted in the response of the Israeli Defence Minister, Moshe Dayan, to a reporter's question about Israel's ability to absorb the Arab population in the then recently occupied territories:

*"Economically we can; but I think that is not in accord with our aims in the future. It would turn Israel into either a binational or poly-Arab-Jewish state instead of the Jewish State, and we want to have a Jewish state. We can absorb them, but then it won't be the same country."*⁷⁰

The international community has never recognized Israel's annexation of East Jerusalem and the Golan Heights (and the *de facto* annexation of the West Bank and Gaza).⁷¹ As a result of Israel's military occupation of the West Bank and Gaza, the Palestinians are protected by international humanitarian law under the Hague

⁶⁸ See ICRC Annual Report 1967 (Geneva) p 10 – 11.

⁶⁹ *Ibid.*

⁷⁰ Quoted by I.F. Stone, 'For a New Approach to the Israeli-Arab Conflict' in Garry V. Smith (ed.) *Zionism – The Dream and the Reality: A Jewish Critique* pp 209-210.

⁷¹ See Peter Malanczuk, 'Israel, Status, Territory and Occupied Territories' 11 *Encyclopedia of Public International Law* (1995) pp 1468-1508.

Convention Respecting the Laws and Customs of War on Land (18 October 1907). The Israeli High Court has recognised this as customary international law and therefore, forming part of Israeli internal law.⁷² The international community considers that the Geneva Convention Relative to the Protection of Civilian Persons in Time of War (12 August 1949) as also applicable to the West Bank and the Gaza Strip even though Israel does not consider itself bound by it.⁷³

4. Conclusion

4.1 *The centrality of the Palestinian refugee question*

The Palestinian refugee question is very emotive and is central to an understanding of the origins and causes of the present conflict. It was the creation of the state of Israel that saw the displacement of up to 753 000 of Palestine's original inhabitants: Muslims, Christians and Jews. Whilst displaced Jews were quickly reintegrated into the life of new state, it was the fate of the vast majority of Palestinian Arabs to spend the rest of their lives in refugee camps, perhaps never to return home. The salvation of one people became a tragedy for another.

It has been over half a century since the majority of Palestine's original inhabitants were displaced through war, fear and military occupation. For the Palestinians and the Arab states that have hosted the majority of the refugees, the right of return is paramount to bringing a final closure to the Arab-Israeli conflict. The Palestinians base their arguments in support of a right of return in international

⁷² See II. H.C. 606/78, Ayub, *Et Al* v. Minister of Defence, *Et Al* (*The Beth El Case*); H.C. 610/78, Matawa, *Et Al* v. minister of Defence, *Et Al* (*The Bekaot Case*) 33 (2) *Piskei Din* 113. Reproduced in Marco Sassòli & Antoine A. Bouvier *How Does Law Protect in War?* pp 812 –816.

⁷³ See A. Roberts, 'Prolonged Military Occupation: The Israeli-Occupied Territories 1967 – 1988 in Emma Playfair (ed.) *International Law and the Administration of Occupied Territories* pp 25 – 85 and Hans-Peter Gasser 'The Geneva Conventions and the Autonomous Territories in the Middle East' in Stephen Bowen (ed.) *Human Rights, Self-Determination and Political Change in the Occupied Palestinian Territories* pp 291 – 300.

law and U.N. General Assembly Resolution 194 (III) which has been reaffirmed annually in the General Assembly since 1948. Furthermore, Israel's membership of the U.N. was conditional upon acceptance of U.N. General Assembly Resolution 194 (III), and it applies to Palestinian refugees regardless of whether these former citizens of Palestine were forcibly displaced or whether they left of their own volition – in order to escape the violence that had swept their communities. According to Israel's 'new historians', Simha Flapan, Benny Morris, Ilan Pappé and Avi Shlaim, it was the Haganah (that would later become the Israel Defence Force) that directly and decisively contributed to the birth of the Palestinian refugee problem. It is vital therefore that Israel accept responsibility for these events as a prelude to real and constructive peace efforts. Today, it is universally accepted that the forced removal of a civilian population for ethnic reasons is a gross violation of both international human rights law and international humanitarian law.⁷⁴

Although U.N. General Assembly resolutions are generally only recommendatory, the language of this resolution, in particular the words '*under principles of international law or in equity*', emphasise that the Palestinian refugee question is a legal one, and therein lies the crux of the matter. To Israel, the right of return is synonymous with the destruction of the Jewish state. For Israel the issue is a political one and not a legal one. The argument put forward by Israel is that if the Palestinian refugees were to return to their homes inside Israel, then Israel would cease to exist as a Jewish state, as there would no longer be a Jewish majority in the country. For Israel it is all about demographics: in order to preserve the Jewish character of the state there must be a clear Jewish majority in the country,

⁷⁴ In human rights law see Article 13 (2) Universal Declaration of Human Rights; Article 12 (4) International Covenant on Civil and Political Rights; Article 5 (d) (ii) Convention on the Elimination of All Forms of Discrimination; Article 22 (5) American Convention on Human Rights; Article 12 (2) African (Banjul) Charter; and Article 3 (2) European Convention for the Protection of Human Rights and Fundamental Freedoms. In international humanitarian law see Article 46 (1) of the Hague Regulations and 2 Trial of the Major War Criminals before the International Military Tribunal, Nuremberg, 1945 – 46, at 49 (42 vols. 1947-49); and Articles 45 and 49 of the Fourth Geneva Convention. See also the Rome Statute of the International Criminal Court, in particular Articles 7 1 (d) which lists deportation or forcible transfer of population as a 'crime against humanity'.

hence their outright rejection of the right of return of the Palestinian refugees, which is the very issue that lies at the heart of the Arab-Israeli conflict.

The Palestinian refugee question is unique in the annals of history. A solution to this question has eluded the international community for over 55 years. Compliance with Resolution 194 (III) would go a long way towards achieving this. This would give Palestinian refugees who are willing to live at peace with Israel a choice between returning to their homeland or, if they so choose, compensation for loss of their homes and property. Whether the refugees are eventually resettled in the state of Israel or in one or other of the Arab states, it was the opinion of Count Bernadotte that 'their unconditional right to make a *free choice* should be fully respected.' [Emphasis added].

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