

Human Rights Brief

Volume 8 | Issue 2

Article 3

2001

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Recommended Citation

Singer, Joel. "Counterpoint: No Palestinian 'Return' to Israel ." Human Rights Brief 8, no. 2 (2001): 5, 8.

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COUNTERPOINT

No Palestinian 'Return' to Israel *

by Joel Singer **

The argument that the only way to resolve the Palestinian refugee problem pursuant to international law is by allowing the refugees to exercise their purported “right of return” into Israel is fundamentally flawed both legally and factually. International law is not on the Palestinians’ side. The Palestinian refugee problem is rooted in the 1948–1949 Arab-Israeli War. In 1947, realizing that the Jewish and Arab communities of Palestine could not live together in one state, the UN General Assembly adopted Resolution 181 (II), which recommended partitioning Palestine into two states—one Jewish and one Arab.

While the Jews accepted this plan, the Arabs rejected it, claiming that all of Palestine belonged to them. When Israel declared its independence in 1948, all Arab states attacked it in an attempt to prevent its creation. In the wake of this war, hundreds of thousands of Jewish refugees fled from Arab countries to Israel, and, at about the same time, between 600,000 and 750,000 Palestinians fled to Arab states from the portion of Palestine that is now Israel.

This population exchange mirrored far larger population movements following the end of World War II, which involved millions of Hindus and Muslims in India and Pakistan, as well as Poles, Germans, and other nationalities in Central and East Europe. These population exchanges were resolved through the integration of all refugees into the host states. While Israel absorbed the Jewish refugees, the Arab states refused to allow such resettlement and integration of their Palestinian brethren, preferring instead to exploit the Palestinian refugees to serve their own political agendas.

Palestinians often refer to the UN General Assembly’s 1948 Resolution 194(III), which called for permitting refugees to return to their “homes,” as legal support for an alleged “right of return” to the Jewish state. Contrary to this assertion, however, Resolution 194(III), like all other UN General Assembly resolutions, is nonbinding and not part of international law. Moreover, it was specifically rejected not only by Israel, but also by all Arab states, which voted against it (because they found it insufficiently anti-Israeli).

In fact, the Palestinian insistence on a “right of return” to the Jewish state has always been intertwined with the rejection of Palestine’s partition into two states and the continued Palestinian aspiration to destroy Israel.

Additionally, Resolution 194(III) emphasized that refugees should be permitted back only if they wished to “live at peace with their neighbors.” In fact, the Palestinian insistence on a “right of return” to the Jewish state has always been intertwined with the rejection of Palestine’s partition into two states and the continued Palestinian aspiration to destroy Israel. Thus, the infamous PLO’s Palestinian Covenant of 1968, which adopted the destruction of the state of Israel and the liquidation of the “Zionist presence” in Palestine as its main goals, stated in its

Article 9: “[a]rmed struggle is the only way to liberate Palestine. Thus it is the overall strategy, not merely a tactical phase. The Palestinian Arab people assert their absolute determination and firm resolution to continue their armed struggle and to work for an armed popular revolution for the liberation of their country and their return to it.”

This fundamental point should be understood clearly and without illusion: When supporters of the Palestinians speak of implementing their “right of return” to Israel, they are not speaking of peaceful accommodation with Israel; rather, they are using a well-understood code phrase for the destruction of Israel. Indeed, the several hundred thousand Palestinian refugees who actually left the area that is now Israel have multiplied into more than 3.5 million people, most of whom are not refugees, but second- and third-generation descendants of the original refugees.

The fact is that there are currently 23 Arab states and only one Jewish state, which now consists of five million Jews and one million Israeli Arabs. If Israel opened its gates to an additional 3.5 million Palestinians, who account for more than half of the Palestinian people, it would quickly disappear and be transformed into the 24th Arab state.

During the decades that followed the adoption of the Covenant, the Palestinians continued to insist that any solution of the Palestinian problem must involve the destruction of Israel, validating former Israeli Foreign Minister Abba Eban’s observation that the “Palestinians have never missed an opportunity to miss an opportunity.” In 1993, however, the Palestinian

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Point/Counterpoint is an occasional feature of the *Human Rights Brief*. The purpose of Point/Counterpoint is to encourage meaningful, intellectual discussion on contemporary issues in human rights and humanitarian law through the presentation of two diverse, though not necessarily opposing, opinions on the subject at hand. Opinions for Point/Counterpoint are generally solicited by the *Brief*; the Editorial Board, however, welcomes all submissions, comments, and suggestions. Point/Counterpoint does not allow authors to review the opposing opinion prior to publication.

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Liberation Organization (PLO), acting as the representative of the Palestinian people, agreed in Oslo, in the context

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of the Israeli-Palestinian Mutual Recognition Agreement, to provide several commitments to Israel.

These commitments include: a PLO recognition of “the right of the State of Israel to exist in peace and security,” a PLO acceptance of UN Security Council Resolution 242 and its companion Resolution 338, and a PLO undertaking to annul the Palestinian Covenant’s provisions quoted above, together with all other similar provisions calling for Israel’s destruction.

Accordingly, a continued Palestinian insistence on a “right of return” to Israel, apart from being built on originally questionable legal foundations, also is inconsistent with these very fundamental premises of the Oslo Agreements.

First, the PLO agreed to relinquish its assertion that the Palestinians have the exclusive right to the historic Palestine and agreed to divide Palestine into two states—one Jewish and one Palestinian. For the Palestinians to now revive the demand that more than half of the Palestinian people have the right to immigrate to the Jewish state repudiates the spirit, if not the letter, of the Oslo Agreements.

Second, UN Resolutions 242 and 338, which the PLO accepted, are the only UN resolutions referenced in the Oslo Agreements. As such, these resolutions—but not UN General Assembly Resolution 194(III)—are the single existing, agreed-upon basis for the Israeli-Palestinian permanent status

negotiations (which cover, among other issues, the refugee problem). UN Resolution 242 affirms the necessity for “achieving a just settlement of the refugee problem,” but, importantly, does not mention a “right of return” or any other specific solution as the mandated or preferred way to settle that problem.

Third, in 1998, after years of delays, and in the presence of the president of the United States, the PLO finally amended the Palestinian Covenant and formally annulled its articulated goal of destroying Israel through armed struggle and the implementation of a “right of return” to the Jewish state. A revived demand to return to Israel certainly casts doubt on the veracity of the PLO’s annulment of the Palestinian Covenant.

Alternatively, Palestinians sometimes assert that a Palestinian “right of return” exists independently of UN resolutions, pointing to a series of human rights conventions, such as Article 12(4) of the 1966 International Covenant on Civil and Political Rights, which states: “[n]o one shall be arbitrarily deprived of the right to enter into his own country.” The fundamental flaw of this argument is that, after Israel and the PLO agreed to partition Palestine into two states—one Jewish and one Palestinian—the Palestinians cannot continue to argue that the Jewish state is the Palestinians’ “own country” and that they, therefore, are entitled to return to it.

It is doubtful whether that aspect of the Oslo Agreements has been effectively communicated to the Palestinian people and really accepted by all of its leadership. Regrettably, the evidence strongly indicates that this illusion of seeking to destroy Israel in stages, culminating in its elimination by flooding it with millions of Palestinians, remains a goal of large segments of the Palestinian people.

At this critical time in the evolving relationship between Israel and the Palestinians, it is important that everyone understand the commitments and trade-offs undertaken by the two sides in Oslo.

There is one viable solution to the Palestinian refugee problem that is consistent with the two-state approach of the Oslo Agreements, provides a just resolution of the Palestinian refugee problem, and does so without destroying the Jewish state. This is a plan by which Palestinian refugees who wish to resettle in Palestine would do so in the Palestinian state to be created side-by-side with the Jewish state. This plan would

require a major international financial effort, in which Israel will participate, to help Palestinian refugees settle permanently either in the Palestinian state or in the countries in which they currently reside, as well as to support such host countries in their rehabilitation efforts.

Most Israelis already have accepted the necessity of making far-reaching

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concessions to conclude an agreement with the Palestinians. When the Palestinians also come to terms with this necessity by finally accepting the commitments undertaken by the PLO on their behalf, and especially by abandoning their dream of destroying the Jewish state by having it overrun by millions of Palestinians, the Palestinian-Israeli dispute can be resolved. 🌍

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Correction

In Volume 7, Issue 3, the Profile of Gabrielle Kirk McDonald, former President of the ICTY, mistakenly lists Gabrielle Kirk McDonald as having been president of both the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda (ICTR). In fact, Ms. McDonald was not president of the ICTR, just the ICTY.