The Palestinian Refugee Problem

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A. Introduction

The Palestinian refugee problem is one of the core issues of the Arab-Israeli conflict and any settlement between the parties should address this core issue. There are conflicting positions by the parties regarding the Palestinian refugees’ and the solutions for their problem.

The dispute about the responsibility for the Palestinian refugee problem has deep roots in the narratives of each side. The Israeli side based its narrative on the War of Independence; meanwhile the Palestinian narrative is rooted deep in the Palestinian Nakba.¹

A good illustration of the narratives can be taken from two statements related to the war in Kosovo in 1999. On one hand, Prof. Edward Said’s famous statement was that the ethnic cleansing that took place in Palestine in 1948 is similar to the one in Kosovo in 1999 but without the press coverage.² This statement reflects the Palestinian narrative that views the Palestinian refugees as victims which has been abandoned by the international community. On the other hand, the then Israeli Foreign Minister, Mr. Ariel Sharon stated, when he announced the Israeli assistance to the Albanian refugees that "Israel is always prepared to extend humanitarian aid to innocent refugees. This is the

¹ Nakba means catastrophe in Arabic.
² The Full text is “The pretext this time is, of course, the persecution, ethnic cleansing and continued oppression of Albanians in the province of Kosovo by the Serbian forces of Slobodan Milosevic. For Palestinians, 1948 was like this minus cnn: at that time 780,000 were evicted from their houses and property by Zionist forces. They remain a nation in exile fifty-one years later”. Edward Said, Protecting the Kosovars?, New Left Review (March–April 1999). Available at http://www.newleftreview.org/?view=1986
moral responsibility of the State of Israel and ‘the Jewish people’. Thus have we acted in
the past in this region and in many places around the world, and thus are we acting
today”.3 This statement reflects the Israeli narrative that views the creation of the Jewish
state as a moral result and blames the Arabs, including the Palestinians, for the result of
the war and blames them for not being ‘innocent refugees’.

Based on this contradiction in the responsibility for the Palestinian refugee
problem, the solutions provided by both parties for this problem are in deep contradiction
and seem like a zero sum game. The official Israeli position opposes any refugees’ from
returning to their homes, meanwhile the official Palestinian position provides that every
refugee and their descendants have the right to return to their homes and/or
compensation.4 5

Although the Palestinian refugee problem is well known there is no international
definition for who is considered a Palestinian refugee.6 The only definition is the one
adopted by the United Nations Relief and Work Agency (UNRWA).7 UNRWA has
defined a Palestinian refugee as any person whose "normal place of residence was
Palestine during the period 1 June 1946 to 15 May 1948 and who lost both home and

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3 Israeli Ministry of Foreign Affairs, Aid to Kosovo Refugees, 3 Apr. 1999. Available at http://www.mfa.gov.il/MFA/About%20the%20Ministry/MFA%20Spokesman/1999/Aid%20to%20Kosovo%20Refugees
7 The United Nations established the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) under UN General Assembly Resolution 302 (IV), of 8 December, 1949, as a subsidiary organ of the United Nations. UNRWA provides education, health, relief and social services to Palestinian refugees in Jordan, Lebanon, Syria, the West Bank and the Gaza Strip.
means of livelihood as a result of the 1948 conflict." This definition is a strict definition since the UNRWA definition applies to the Agency’s area of operation (Jordan, Syria, Lebanon, the Gaza Strip and the West Bank) meanwhile there are refugees in other places, primarily in the rest of the Arab World, Europe and the Americas. Moreover, there are refugees in UNRWA’s area of operation that are not entitled to register as refugees.9 Today there are 4,618,141 registered refugees under the UNRWA.10

The Palestinian refugees were specifically and intentionally excluded from the international refugee law regime established by the 1951 Convention relating to the Status of Refugees and the 1967 Protocol, as long as the Palestine refugees receive assistance from UNRWA.11 In addition, the vast majority of Palestinian refugees were excluded from the Convention on the Reduction of Statelessness from the same reason.12

According to the Palestinians, there are several groups of refugees and displaced persons:

A. Palestinians displaced and/or expelled from their places of origin in 1948. This happened before, during and after the official war. This includes Palestinian refugees who receive international assistance from the UNRWA (the registered refugees); and Palestinian refugees not eligible for international assistance.

B. Palestinian refugees displaced for the first time from their places of origin in the West Bank, Eastern Jerusalem, and the Gaza Strip in 1967.

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9 Id.
11 United Nations Convention relating to the Status of Refugees of 1951, 189 UNTS 150. The Convention states that “This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance”. Available at http://www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf.
C. Palestinian refugees who are neither 1948 or 1967 refugees and have been outside the Palestinian territories occupied by Israel since 1967 and unable due to revocation of residency, denial of family reunification, deportation, or unwilling to return there owing to well founded fear of persecution.

D. Internally displaced Palestinians who remained in the area that became the state of Israel in 1948.

E. Internally displaced Palestinians in the West Bank, Eastern Jerusalem, and the Gaza Strip.

This paper will mainly focus, on the first group, the group of Palestinians displaced and/or expelled from their places of origin in 1948 before, during and after the official war, even though the paper will discuss other groups of refugees and displaced persons.

The Palestinian refugee problem solutions have three pillars: the actual return of the refugees to their homes, the refugees’ resettlement in their current locations or other locations; and compensation. This paper will mainly focus on the pillar of the actual return.

Finally, this paper deals with the Palestinian refugee problem based on the two states solution that provide the Israel and Palestine will live side by side in peace and security, when the Palestinian state will be established in the pre-1967 occupied

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14 For instance the compensation pillar involves difficult aspect of the refugee problem including: responsibility for payment, identification of property and non material items to be covered (movable and immovable property), the value of material and non material items to be covered, who is to be compensated, the form and the source of the payment, and counterclaims that Israel is likely to represent. See Don Peterz, Refugees Compensation: responsibility, Recipients, and Form and Sources, in The Palestinian Refugees, Old Problem – New Solutions 88, 88 (Joseph Giant and Edward J. Perkins ed., 2001).
territories of the West Bank, including East Jerusalem, and the Gaza Strip. Out of this paper’s scope is the question of the one state solution and the Palestinian refugee problem.

First, the paper will provide a short background about the creation of the Palestinian refugee Problem; second, the paper will provide some of the measures taken by Israel to prevent the return of the Palestinian refugees and will survey the Palestinian and the Israeli arguments about the refugee problem in regard to the creation of the problem and the solutions for the problem; third, the paper will discuss how the international community and international organizations, mainly the UN, dealt and deal with the Palestinian refugee problem; fourth, the paper will explore and evaluate the peace process and two suggested solutions for the Palestinian refugee problem; and finally, the paper will conclude that the solutions suggested for the Palestinian refugee problem are far away from any limit the Palestinian people can accept.

B. Background About the Creation of the Palestinian Refugee Problem

The Palestinian refugee problem is rooted in the 1948 War and the creation of the state of Israel. However, one cannot understand the full picture without understanding the events that took place in Palestine in the late 19th century and the first half of the 20th century. In this period, there was a flood of Jewish immigration into Palestine, especially in six waves.15 The Balfour Declaration of the British Government that declared support

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15 The first wave of Zionists amounted to 25000 persons who entered Palestine as illegal immigrants from Eastern Europe between 1882 to 1903; the second wave of Zionists amounted to 40000 persons who entered Palestine as illegal immigrants between 1904 to 1914. This immigration increased the Jewish percentage to 6% of the total population. The third wave of Zionists amounted to 35000 persons who entered Palestine between 1919 -1923, raising their percentage in Palestine to 12%, with land ownership at 3%; the fourth wave of Zionist immigrants amounted to 67000, half of them from Poland, who entered Palestine between 1924-1928 and increased the Jewish percentage to 16%, with land ownership up to 4.2 % in 1928; the fifth wave of Zionist immigrants amounted to 250000 persons who entered Palestine between 1929 to 1939 and raised their percentage to 30% and their land ownership to 5.7 %; the Sixth wave of
towards the establishment of a Jewish state in Palestine;\textsuperscript{16} the reaction of the British Mandate to the tension between the indigenous Palestinian people and the new Zionist settlers, the Palestinian Revolt in 1936, and other events. This part of the paper will provide the major events that occurred before the 1948 war.

On 29 November 1947, the UN General Assembly (UNGA) decided to approve the Partition Plan of Palestine as a solution to the tension on the ground between the Zionists and the Palestinians.\textsuperscript{17} The plan divided Palestine to two states: a Jewish State (56.5 \% of the land) and an Arab state (43 \% of the land) meanwhile Jerusalem and Bethlehem stayed under international control.\textsuperscript{18} The Zionist Movement accepted the plan.\textsuperscript{19} The Palestinian and the Arab states rejected the plan since the Partition Plan provided the Jewish state with 56.5 \% of the land when the land owned by Jews was only 7\% of Palestine.\textsuperscript{20} On 14 May 1948, the Zionist Movement, led by David Ben-Gurion, declared the independence of the Jewish state.\textsuperscript{21} After the declaration, a war ignited between the Zionists and the Palestinians and other Arab states. Israel won the war and

\textsuperscript{18} Id.
\textsuperscript{19} Palestine-Net, Chronology of Palestinian History. Available at: http://www.palestine-net.com/history/bhist.html
\textsuperscript{20} Id.
more than 750,000 Palestinians became refugees amounting to 82% of the Palestinian population of what became Israel (78 % of historic Palestine).  

The refugees and their descendants are estimated today to be 7 million refugees, the vast majority of whom are in the Gaza Strip and the West Bank (1,825,000 amounting 25%), Jordan (2,359,000 amounting 50%), Syria (465,000 amounting 8%), and Lebanon (438,000 amounting 7%). The other refugees are distributed all over the Diaspora, primarily in the rest of the Arab World, Europe and the Americas (700,000 amounting 10%). None of those refugees have been allowed to return to their homes.

C. The Palestinian and the Israeli Arguments about the Refugee Problem and Measures Taken by Israel

1. The Creation of the Problem:

According to the Palestinian argument, Israel forcibly expelled many Palestinian Arabs from their homes in 1948, making them refugees. Therefore, these refugees and their descendants have the right to return to their previous homes in Israel and accept compensation for it; Israel should acknowledge its moral responsibility for the injustice against these refugees. The Palestinian argue that the ethnic cleansing of Palestine took

22 Badil Resource Center for Palestinian Residency and Refugees’ Rights, Palestinian Refugees. Available at http://www.badil.org/Refugees/refugees.htm
24 Id.
25 There is small number of refugees who managed to return to what became Israel, by endangering and exposing themselves to death when they passed the borders. However, others who tried to get inside were killed by the Israeli army. For great literature that dealt with these refugees’ experience sees Emile Habiby’s novel The Secret Life of Saeed, the Ill-Fated Pessoptimist.
place months before the official war between Israel and the Arab states and months after the war came to an end.  

Israel, by contrast, has rejected any responsibility for the Palestinian refugee problem and has denied their “right of return”. It has continued to put the blame on the Arabs, including the Palestinians, who had repudiated the creation of Israel and declared war upon it in 1948.

A group of Israeli historians usually referred to as the “new historians”, who have been permitted access to the official Israeli archives found that the official Israeli documentation supports the Palestinian arguments. The new historians found that the mass wave of refugees was a direct consequence of expulsion combined with the fear tactics of the Zionist militias and later Israel. All of this is in contrast to the official Israeli history of the events that took place in 1947-1949. This group also found that the official Israeli documents contradict the official Israeli history about other issues related to the creation of Israel.

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27 Ilan Pappe, *The Ethnic Cleansing of Palestine*. Oxford 2006. For the ethnic cleansing before the official 1948’s war see Chapters 4 and 5 (39-126); for the ethnic cleansing during the 1948’s war see Chapters 6 and 7 (127-178); and for the ethnic cleansing after the official 1948’s war see Chapter 8 (179-198).


29 The new historians are: Benny Morris; Ilan Pappé; Avi Shlaim; Tom Segev; Hillel Cohen; Simha Flapan; and others.


32 For instance the new historians found that: The official version said that Britain tried to prevent the establishment of a Jewish state meanwhile its tried to prevent the establishment of a Palestinian state; The official version said that the balance of power was in favor of the Arabs meanwhile Israel had the advantage both in manpower and in arms; the official version said that the Arabs had a coordinated plan to destroy Israel meanwhile the Arabs were divided; the official version said that Arab intransigence prevented peace meanwhile Israel is primarily to blame for the dead end. For instance, see Benny Morris, *The Birth of the Palestinian Refugee Problem, 1947-1949*. Cambridge University Press (1987).
Those historians have been blamed by Israeli scholars and the Israeli mainstream of being politically motivated and ignoring part of the history. However, an interesting answer to these accusations was given by one of those historians, Mr. Benny Morris, in an interview to the daily Israeli newspaper Haaretz in 2004. Morris argued that the Zionist Movement, and later the State of Israel, committed ethnic cleansing between the years 1947-1949. Moreover, when Morris has been asked about his personal views he provided justification for this ethnic cleansing.

2. Measures taken by Israel:

In the years after the creation of Israel the state several measures to prevent any Palestinian refugees from returning to their homes. Measures included activities of destruction and depopulation of 418 Palestinian villages and homes in the cities, and the enactment of laws by the Israeli Knesset.

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34 To the question what was the situation in 1948 Morris answered that “A Jewish state would not have come into being without the uprooting of 700,000 Palestinians. Therefore it was necessary to uproot them. There was no choice but to expel that population. It was necessary to cleanse the hinterland and cleanse the border areas and cleanse the main roads. It was necessary to cleanse the villages from which our convoys and our settlements were fired on”. Later in the interview, when Morris had been asked if the Zionist leader Ben Gurion erred in expelling too few Arabs he answered “If he was already engaged in expulsion, maybe he should have done a complete job. I know that this stuns the Arabs and the liberals and the politically correct types. But my feeling is that this place would be quieter and know less suffering if the matter had been resolved once and for all. If Ben-Gurion had carried out a large expulsion and cleansed the whole country - the whole Land of Israel, as far as the Jordan River. It may yet turn out that this was his fatal mistake. If he had carried out a full expulsion - rather than a partial one - he would have stabilized the State of Israel for generations”. Available at [http://www.logosjournal.com/morris.htm](http://www.logosjournal.com/morris.htm).

The Knesset enacted the Absentees’ Property Law of 1950.\textsuperscript{36} Under this law Israel built a mechanism to seize the property of the Palestinian refugees and the internally displaced persons inside Israel.\textsuperscript{37} Later Israel enacted the Israel Basic Land Law of 1960. As a result, 93\% of the land in Israel, the majority of which had been seized by the Absentees’ Property Law, became under State control and forbidden from being sold to individuals.\textsuperscript{38}

The Knesset then enacted the Law of Return of 1950.\textsuperscript{39} This law granted every Jew in the world potential Israeli citizenship and enabled any Jew with desire to immigrate to Israel and settle there affording every immigrant financial help to do so.\textsuperscript{40} In fact most of the Jews who have immigrated to Israel have been given the land and the homes of Palestinian refugees.

In 1952, the Knesset enacted the Israeli Nationality Law.\textsuperscript{41} This law denationalized the Palestinian refugees, who became stateless. Another law was the Prevention of Infiltration (Offences and Jurisdiction) Law of 1954.\textsuperscript{42} This law was enacted to criminalize any attempt of return by refugees and exposed them to prison if they tried to return to their homes. The law used the term “infiltrators” for describe the Palestinian refugees.

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\textsuperscript{36} The Absentees’ Property Law, 5710-1950 of March 14, 1950. Available at \url{http://www.geocities.com/savepalestinenow/israellaws/fulltext/absenteepropertylaw.htm}
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\textsuperscript{38} Israel Basic Land Law of 19 July 1960. Available at \url{http://www.mfa.gov.il/MFA/MFAArchive/1960_1969/Basic+Law+-+Israel+Lands.htm}
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\textsuperscript{40} For more information visit the Jewish Agency for Israel website. Available at \url{http://www.jewishagency.org/JewishAgency/English/Aliyah/Aliyah+Info}
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\textsuperscript{41} The Israeli Nationality Law of April 1. 1952. Available at \url{http://www.geocities.com/savepalestinenow/israellaws/fulltext/nationalitylaw.htm}
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\textsuperscript{42} The Prevention of Infiltration (Offences and Jurisdiction) Law of Aug. 16, 1954. Available at: \url{http://www.geocities.com/savepalestinenow/israellaws/fulltext/preventioninfiltrationlaw.htm}
\end{flushright}
The Israeli policy was so strict as to block any Palestinian refugee from returning to his home. A good illustration of this policy was the case of Kafr Bir’im village. This village was located in northern Palestine. In mid-November 1948, two weeks after Israeli forces occupied the village; residents were ordered to leave with a promise from Israeli officials that they would be able to return to their homes within two weeks. After several attempts to secure their return, the displaced persons brought their case to the Israeli Supreme Court. In July 1951, the Israeli Supreme Court ruled that the displaced should be allowed to return to Kafr Bir’im, but they were still prevented from returning. In October of the same year the Court ordered the government to explain why it continued to prevent the displaced from returning to their village and land. Israeli military forces subsequently declared the area a closed military zone and in 1953 destroyed the village.

3. Arguments Rejecting and Supporting the Right of Return:

In this part, the paper will provide the legal arguments of each side. In the next step, the paper will provide the Israeli arguments of the rejection to any refugee to return and the Palestinian counter-argument to each Israeli argument.

The basic legal instrument the Palestinians used is the UN General Assembly Resolution 194 of 11 December 1948, in particular paragraph 11 of the Resolution which states:

43 This Palestinian Christian village was located 4 km south of the Lebanese-Israel/Palestine border.
45 Id.
“Resolves that the refugees wishing to return to their homes and live at peace with their neighbors should be permitted to do so at the earliest practicable date, and that 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;”

According to the Palestinians, this resolution affirms that Palestinian refugees, including those internally displaced within Israel, have a right to return to their homes of origin. Refugees not choosing to exercise their right of return are entitled to resettlement assistance.\(^{47}\) This Resolution has been reaffirmed each year in the UN General Assembly.\(^{48}\) Even thought resolutions of the UNGA are not enforceable under chapter 7 of the UN Charter this Resolution is enforceable due to its humanitarian priority and the rule of international law. Moreover, the Palestinians argues that UNGA Resolution 237 of May 11, 1949 that admitted Israel as a member of the UN under the admission conditions that Israel would accept and implement Resolution 194.\(^{49}\) In this case, Israel will not consider a member of the UN because its admission was under UNGA resolution which is not binding under international law. The Palestinians also base the right of return on other international legal instruments such the Geneva Conventions; the Universal Declaration of Human Rights; the International Covenant on Civil and Political


\(^{48}\) Badil Resource Center for Palestinian Residency and Refugees’ Rights. Available at: [http://www.badil.org/Solutions/solutions.htm](http://www.badil.org/Solutions/solutions.htm). Also visit the United Nation Information System on the Question of Palestine (UNISPAL) website, which have all the resolution reaffirming resolution 194. For instance see UNGA resolution A/RES/62/83 of 21 January 2008: [http://domino.un.org/UNISPAL.NSF/a06f2943e226015c85256c40005d359c/a3188fech31aff868525740200571514$OpenDocument](http://domino.un.org/UNISPAL.NSF/a06f2943e226015c85256c40005d359c/a3188fech31aff868525740200571514$OpenDocument).

This paper will focus on UNGA Resolution 194 and other Israeli arguments against the right of return.

Israel, however, has a different interpretation of UNGA Resolution 194. Israel alleges that UN General Assembly Resolution 194 did not provide the right of return to the Palestinian refugees. The Israeli arguments alleged the historical assumption that the UN was “angry” at Israel for having allowed the assassination of UN mediator Count Folke Bernadotte by Jewish extremists on September 17, 1948 (to be discussed in the next part of the paper). The Israeli argument goes further, mentioning the fact that a "right of return" was not mentioned, and that the Resolution provides reference to "refugees," rather than "Arab refugees" and "governments," rather than the government of Israel. This implies that the framers had in mind the rights of Jewish refugees in Palestine as well, and would also be applicable to Jewish refugees forced to flee Arab countries as a result of the conflict. Israel also alleged that the fact that the Arab states voted against the Resolution, therefore the conclusion should be that the Resolution did not establish a “right of return. Another Israeli argument is that the UN General Assembly’s Resolutions are not binding in international law, and therefore Resolution 194 does not establish any principle of international law.

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50 Id. at 20-21.
52 Id.
53 Id.
54 Id.
This part of the paper will discuss other general Israeli arguments that incorporate the arguments above against the Palestinian refugees’ right of return and the counter-arguments provided to refute these arguments:

First, Israel argued that the Arabs alone caused the problem of the refugees and that the responsibility for resolving the problem rests with them alone, when the immediate cause of the problem was the Arabs' rejection of UN General Assembly Resolution 181 in 1947. As discussed above, this argument has been refuted not only by the Palestinians but also by Israeli historians.

Second, Israel argues that instead of helping the refugees, the Arab governments have deliberately used the refugees as political pawns to gain political ends. They pressured them into opposing settlements in the Arab world, mainly in Jordan, Syria and Lebanon, thereby keeping the refugee issue alive to employ it as a weapon against Israel. In the same line, Israel adds that the Arab world was and remains sufficiently large and wealthy enough to sustain the absorption of all refugees.

This Israeli argument is problematic; the argument assumes that the Arab states have a responsibility to absorb the Palestinian refugees without any basis. This argument also deals with the Arab states as one block without distinguishing between them. The Israeli argument ignores that each Arab country that hosts the Palestinian refugees (mainly Jordan, Syria and Lebanon) has its own considerations and problems.

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56 Id.
57 Id.
with resettling the Palestinian refugees inside their borders and more than once the Palestinian refugees have paid the price for such a political situation.

For instance, early in the 1990’s, a few years after the PLO expulsion from Lebanon, the later expelled thousands of Palestinian refugees into Jordan. Moreover, in Lebanon, there is a fear that a resettlement of the Palestinian refugees with the Muslim Sunni majority would completely destroy Lebanon’s sectarian balance.59 Other examples of the problem faced by the refugees in the Arab world can be found when the Libyan Government expelled hundreds of Palestinian refugees as a means of demonstrating its political control in 1995, and earlier in the Black September events in Jordan in 1970.60 Nowadays more than three thousand Palestinian refugees escaped from the violence in Iraq are located in three refugees’ camps on the Iraqi-Syrian border in an inhuman conditions.61 Most importantly, this Israeli argument deliberately ignores the Palestinian national aspiration to live as a people in their own land and ignore the fact that each Palestinian refugee has the individual right to return to his home.62 Finally, Israel blames the Arab states “for keeping the refugee problem alive”. In fact, this is the duty of every one to keep such a humanitarian problem alive, until there is a solution for the problem.

60 Id. at 41-42.
Third, Israel argues that it was unable to accept repatriation because of the lack of space, the continued existence of a state of war with the Arabs, and the serious social, political, and security consequences that would arise if repatriation were implemented.  

This argument contradicts how Israel views itself. Israel, under the law of return mentioned above, declared that any Jews can immigrate and become Israeli citizen. This law has no restriction due to a lack of space and potentially there is space for 12 million Jews, who live outside of Israel. In fact, approximately 1 million Jews from the former Soviet Union states have immigrated to Israel in the 1990’s. Moreover, this Israeli argument raises questions about the Jewish character of the state. Why every Jew around the world could immigrant to Israel because of alleged historical link between the Jews and Palestine 3000 years ago meanwhile refugees, who have been expelled sixty years ago and still keeping their keys cannot return to their homes? How Israel deals with the contradiction of being Jewish and democratic state in the same time? And why, whenever these conflicted characters clashed the Jewish character prevailed.

Israel has mentioned that the refugees’ return will endanger its security. This argument ignores the fact that Resolution 194 conditions any right to return with the acceptance to live in peace with Israel. Israel mentioned that the right of return is dangerous with the continued existence of a state of war with the Arabs. This argument ignores the fact that a solution for the refugees is the key for a comprehensive and lasting peace between Israel and the Palestinians and the Arab world. Moreover, Israel and Jordan signed a peace treaty in 1994, but Israel has not allowed the return of the Palestinian refugees in Jordan.

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Fourth, Israel argues that allowing the Palestinian refugees to return to Israel will undermine the Jewish character of the state.\textsuperscript{64} This Israeli argument assumes that all the Palestinian refugees want to return to Israel without any basis for this argument. This argument also ignores the fact that the refugees’ right of return to their home is an individual right under international law and that the Jewish character of the state cannot be a reason to prevent each refugee from exercising this right.\textsuperscript{65} Finally, Israel cannot argue that it wants to keep the Jewish character of the state while it is conquering the Occupied Palestinian Territories (OPT) and continuing in the colonization project preventing the establishment of a Palestinian state, which could be the home of some of the Palestinian refugees. This colonization project reached the peak in the erection of the Apartheid Wall in the West Bank in purpose to confiscate more land from the Palestinians for Israel and the illegal settlement in the OPT. The International Court of Justice (ICJ) ruled that wall erection and the settlement project is illegal under international law.\textsuperscript{66} Until this day Israel continue to ignore this ruling and continue in the colonization project including the erection of the Apartheid wall.

Fifth, Israel argues that unlike the culture of the Middle East, where the pattern that war refugees return to their homes when hostilities end and do not resettle elsewhere, it has a western culture. Under this Western culture, the repatriation of people after the war only concerns the victorious nationals. Meanwhile, refugees or deportees of the


\textsuperscript{66} ICJ, \textit{Legal Consequences of the Construction of the Wall in the Occupied Palestinian Territory}, 43 ILM 1009 (2004).
defeated belligerents should resettle to begin a new life elsewhere. This argument has been rejected by the international community in every resolution. For instance UNSC Resolution 242 states the need for just a solution to the refugees’ problem. In addition, the international practice such in Bosnia, East Timor, Kosovo, and Rwanda proved that the refugees have had their right of return honored. In Kosovo, the right of return was considered a “non-negotiable” issue. The Palestinian refugees should not be an exception to this practice and their right of return should be secured.

Sixth, Israel has alleged that there were exchanges with alleged Jewish refugees from the Arab world. According to this argument, the fate of the Palestinian refugees stands in sharp contrast to that of the many Jews who were forced to flee Arab countries in the wake of the establishment of the State of Israel, leaving behind a great deal of property for which they were not compensated. There were at least an equal number of Jewish refugees who left Arab countries as Palestinian refugees who fled Israel.

This argument is untrue. In fact, the immigration of the Jews from parts of the Arab world did not take place in the same period of time and there is no historical link between the Palestinian refugees and the Jewish immigrants from the Arab world. For

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instance the Jews who immigrated from North Africa, amounting half of alleged Jewish refugees, did that in the late 1950’s and not in 1948. The Jewish immigration from the Arab world was voluntary and under the encouragement of Israel, which sometimes used terrorist acts to force the Jewish community to leave the Arab world such as the bombing in the locations of the Jewish community in Iraq. But even if one assumes that there are Jewish refugees, this argument ignores the huge differences between the two groups, in which the Palestinian refugees have insisted for more than sixty years on the right of return to their homes. There are no similar demands from the Jewish refugees to return to the Arab States. In addition, Israel never used this argument as an independent demand, but as a counter argument to the Palestinian refugees’ right of return.

Finally, Israel argues that in the course of the peace process, the Israelis and Palestinians themselves have agreed that the question of refugees, along with other issues, could be considered as part of a permanent settlement between the parties. As the paper will explain later, the peace process marginalized the issue of the Palestinian refugees, when part of the Palestinian leadership fell into the trap of the Oslo Accords, what the Palestinian people called the peace industry, rather than the peace process.

D. The International Community and The Palestinian Refugees’ Problem

This part will survey who the international community dealt with the Palestinian refugee problem.

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72 Id.
Immediately after the 1948 war, the UN mediator Count Folke Bernadotte recommended a UN resolution that stated “the right of the Arab refugees to return to their homes in Jewish-controlled territory at the earliest possible date… and their repatriation, resettlement and economic and social rehabilitation, and payment of adequate compensation for the property of those choosing not to return”. Following this report, and one day before the report’s submission to the UN, Bernadotte was assassinated by Jewish extremist.

A short time after the assassination, the UNGA adopted Resolution 194, discussed above; Resolution 194 did not adopt the same language of the Bernadotte’s report.

In November 1948, the United Nations established the United Nations Relief for Palestine Refugees (UNRPR) to extend aid and relief to Palestinian refugees and coordinate the efforts of NGOs and other UN bodies such as the United Nations International Children’s Emergency Fund (UNICEF), World Health Organization (WHO) and Food and Agriculture Organization (FAO) and the International Refugee Organization.

In November 1949 the United Nations established the UNRWA as a subsidiary organ of the United Nations. UNRWA's mandate has been renewed every three years since 1949, and is expected to continue to be renewed pending a just settlement to the refugee problem. UNRWA began its field operations on 1 May 1950. The current

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75 The murderer, Yehoash Cohen, has never brought to Justice, in fact he became a close friend of the Israeli Prime Minster David Ben-Gurion. Later Cohen became a symbol of an Israeli patriotism. Each year there is a symposium called after his name in one of the Israeli agricultural schools. Available in Hebrew http://www.boker.org.il/meida/bsadeh/40years/yomiyyun.htm.

76 Badil Resource Center for Palestinian Residency and Refugees’ Rights. Available at http://www.badil.org/Assistance/Assistance.htm
mandate runs until 30 June, 2011.\textsuperscript{77} The UNRWA is not involved in the political discussions on the future of the refugees. The question of UNRWA economic crisis and how it effects the Palestinian refugees is out of this paper’s scope.

In the next three years after the war, the UN Palestine Conciliation Commission (PCC) tried to solve the problem of the Palestinian refugees. The PCC was established by Resolution 194 mentioned above. The PCC was the primary international body mandated to provide protection to the majority of Palestinian refugees. The PCC was composed of representatives of the United States, France and Turkey.\textsuperscript{78}

The General Assembly authorized the Commission to provide protection and facilitate durable solutions for persons displaced as a result of the 1947-1948 conflict and war in Palestine. The early activity included: preparation of a draft refugee definition;\textsuperscript{79} intervention with Israeli authorities to permit the return of certain categories of refugees; investigation and recommendation of immediate measures to safeguard the rights and property of the refugees; intervention with Israeli authorities to abrogate discriminatory property laws; and; facilitation of refugee access to blocked savings accounts and assets in banks inside Israel. One of the successful things the PCC did was the establishment of the most comprehensive database documenting the Palestinian refugee property in Israel. However, the Commission reached the conclusion that it was unable to fulfill its mandate due to the lack of international political will to ensure the return of those refugees and displaced persons wishing to go back to their homes and villages.\textsuperscript{80}

\textsuperscript{77} UNRWA, Overview. Available at http://www.un.org/unrwa/overview/qa.html#a
\textsuperscript{78} Badil Resource Center for Palestinian Residency and Refugees’ Rights, Palestinian Refugees Protection. Available at http://www.badil.org/Protection/UNCCP.htm.
\textsuperscript{79} The refugees’ definition draft is available at Badil Resource Center for Palestinian Residency and Refugees’ Rights website: http://www.badil.org/Documents/Protection/UNCCP/Refugee-Definition.htm
\textsuperscript{80} Badil Resource Center for Palestinian Residency and Refugees’ Rights, Palestinian Refugees Protection. Available at http://www.badil.org/Protection/UNCCP.htm.
In the time that Israel rejected any kind of Palestinian refugees’ return to their homes and therefore blocked any possibility that the PCC would solve the problem, the US under the Truman Administration, attempted to solve the Arab-Israeli conflict by settling Palestinian refugees in Syria (especially under the rule of Adib Shishakli). At the height of the US-Syrian negotiation during the summer of 1952, the US contemplated paying the Syrian government $400 million in exchange for settling up to 500,000 Palestinians in northern Syria. This attempt failed because of internal opposition in Syria and the Egyptian revolution of July 23, 1952.  

In the next few years, until the 1967 war, the issue of the Palestinian refugees has been ignored in the international community. Only the establishment of the PLO in 1964, and especially the 1967 war with the new wave of refugees (estimated to be more than 200,000 people) has brought the problem to the attention of the international community again. After the 1967 War the UNSC adopted Resolution 242 and other resolution that called for a just solution to the refugee problem.

However, the international community has not taken any steps to move towards any solution to the Palestinian refugee problem. For instance, the European Union has never recognized the Palestinian refugees’ right to return.

After the initiation of the Peace process, the international community left the issue of the refugees to be discussed and solved by the parties. As we will see in the next part,
the peace process did not promote any solution to the refugee problem. In fact, the opposite has occurred; the peace process has marginalized the Palestinian refugees.

E. The Peace Process and Suggested Solutions for the Palestinian Refugee Problem

This part of the paper will be divided to two sub-parts. The first part will survey how the peace process has dealt with the Palestinian refugee problem. The second part will discuss two solutions that are considered “pragmatic” for solving the refugee problem.

1. The Peace Process:

The peace process between Israel and the Palestinians (And the Arabs excluding Egypt which had a peace treaty with Israel earlier) officially begins in the Madrid Peace Conference in 1991. In this Conference, the Palestinians participated as a part of the Jordanian delegation and any Palestinians who were affiliated with the PLO has been excluded from being part of the delegation. In regard to the Palestinian refugees, a multilateral committee was established (called the Refugees Working Group) dealing with an optional solutions to the refugee problem. This committee did not provide any solution for the refugee problem.

Two years later, Israel and the PLO, after secret negotiations held in Oslo, reached an agreement. This agreement established the Palestinian National Authority (PNA) and set a timetable for reaching a lasting and comprehensive peace between both sides. The Oslo Accords (meaning the two agreements signed between the Parties in

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1993 and 1995), did not include specific provisions for the future of the Palestinian refugees. In fact, reference to the refugees was limited to two references: A. Paper V of the Declaration of Principles states that negotiations on the remaining issues including refugees, settlements, Jerusalem, and security arrangements, will start as soon as possible, but no later that the beginning of the third year of the interim period; and B. Paper XII: provides for the establishment of continuing committee with Jordan and Egypt to agree on the modalities of admission of persons displaced from the West Bank and the Gaza Strip in 1967.86 Once again, the parties did not reach a stage to discuss the refugee problem.

After stagnation or derogation in the Peace process following the election of Binyamin Netanyahu in Israel in 1996, Ehud Barak was elected in Israel in 1999. The Clinton Administration and Israel tried to enforce a peace agreement on the Palestinians at the Camp David Peace Summit in 2000. In this Summit, President Clinton offered the Palestinians a final solution in a “take it or leave it” way without offering any solutions for the Palestinian refugees since Israel refused to discuss the issue of the Palestinian refugees.87 However, Israel emphasized the “generous” proposal offered to the Palestinians and the lack of “partner” on the Palestinian side, which prevented a peace agreement.88 However, there was no possibility that any Palestinian leader could accept the terms, without a comprehensive solution to the Palestinian refugee problem.89

In 2002, the Arab League adopted the Arab Peace proposal for a lasting and comprehensive peace between the Arab world and Israel. This Arab proposal was rejected by Israel. This proposal provided general and ambiguous language to deal with the refugee problem, stating that it should be “a just solution to the Palestinian refugee problem”. Another interesting article in regard to the refugees rejects any solution to the Palestinian refugee problem that conflicts with the special circumstances of the Arab host states.

The Arab Peace Initiative was endorsed again in 2007 in the Riyadh Summit. In July 2007, the Arab League sent a mission, consisting of the Jordanian and Egyptian foreign ministers, to Israel to promote the initiative. Later, Israel rejected the proposal.

In the majority of its existence, the peace process has not achieved any progress. However, there were some attempts to revive the peace process. In all these attempts the Palestinian refugee question with the other difficult issues, has been postponed to the final stages of the negotiation again. Meanwhile, several conditions have been imposed upon the Palestinians to reach the next stage of the negotiations.

A good illustration of this failure was the road map initiative of April 30, 2003. The road map initiative declared that: “The issue of refugees will be discussed only in phase II after the stop of all violence and terror against Israel; and a comprehensive

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90 Available at [http://www.al-bab.com/arab/docs/league/peace02.htm](http://www.al-bab.com/arab/docs/league/peace02.htm)
91 Article 2(b) of the Arab Peace proposal: “Achievement of a just solution to the Palestinian Refugees problem to be agreed in upon in accordance with UN General Assembly Resolution 194”.
92 Article 2(b) of the Arab Peace proposal: “Assure the rejection of all forms of Palestinian patriation which conflict with special circumstances of the Arab host countries”.
political reform in the Palestinian National Authority”. And that “The issue of the refugees will be settled only in the Phase III during the Second International conference in 2005“. Even though this proposal did not address the core issues of the conflict, the PLO accepted the proposal. However, Israel submitted a reaction to the road map with fourteen caveats and prerequisites, among them the waiver of any right of return of Palestinian refugees to Israel. In addition, the PLO accepted the roadmap even though it did not mention Resolution 194. In 2004, then Israeli Prime Minister Sharon proclaimed that he had an agreement with President Bush, which, among others, declared “the total refusal of allowing Palestinian refugees to return to Israel”. 

In fact, the peace process between both sides has never reached the final stage to discuss the core issue between the parties, among them the refugee question. As a result, the Palestinian refugees have been marginalized. Fewer than half of the Palestinian people live in the OPT, the Peace process focuses on them, at the expense of the majority of the people, who live either in exile or inside Israel and whose interests and rights the peace process have entirely ignored.

Another problematic issue in this peace process is the absence of the refugees’ representation to take part in the decisions about their own future.

In regard to the peace process in general, the refugees’ problem is one of hard questions preventing a peace agreement. However, this problem is interrelated to the

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99 Id. at 82.
100 Badil Resource Center for Palestinian Residency and Refugees’ Rights. Available at [http://www.badil.org/Refugees/text04.htm](http://www.badil.org/Refugees/text04.htm)
other core problems that have been postponed to the final status of the negotiations. To illustrate this point, the paper will choose several core issues and discuss how it is interrelated to the refugee problem.

The question of the final border between Israel and the future Palestinian state will draw the territory of the Palestinian state. In this future state, there is already, high percentage of refugees. Then there is a question about the capability of the future Palestinian state to absorb large number of refugees. Another core issue, which has become important in this situation, is the future of the Israeli settlements in the OPT (which had been built and continue to expand in violation of international law). Will these settlements, or at least the bigger settlements, be annexed to Israel or will they be evacuated and become the home of the refugees who decide to exercise their right to return to the future Palestinian state?

Another question is the relation of the final status of Jerusalem and the refugee problem. It is a well known policy, even though it is not written or codified in law, that Israel keeps a demographical balance in Jerusalem to have a ratio of 72% Jewish and 28% Arabs. One option is that East Jerusalem will become the Palestinian state Capital. Therefore, it will be one of the locations that the refugees will return to. If East Jerusalem or part of it will stay under Israeli control, there is another question of what to

do with the Palestinian residents of Jerusalem, which have the status of Israeli residents but not citizenship.  

2. Suggested Solutions to solve the Refugee problem:

This paper’s scope is to deal with questions of the right to return leaving aside the right to compensation and restitution, which should be combined with each of the solutions. In this regard there are three possible solutions for the Palestinian refugees: first, the return to the homes in what became Israel in 1948; second, to return to the future Palestinian state; and third, to resettle in the current location or in other third party states. Usually the suggested solutions combine all of the possibilities in different numbers.

In this part, the paper will discuss two of the “pragmatic” solutions suggested and evaluate them. The first solution of the Geneva Initiative is considered the limit that Israel can accept in regard to the Palestinian refugees. The second solution of Rashid Khalidi is considered one of the most “pragmatic” solutions suggested by Palestinian scholars.

1. The Geneva Initiative:

The Geneva Initiative is a permanent status model agreement between the State of Israel and the State of Palestine, which was suggested in 2003 by Israeli and Palestinian policymakers after they left their official jobs.  

Article 7 of the initiative deals with refugee problem. The Article provides for the permanent and complete resolution of the Palestinian refugee problem, under which

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refugees will be entitled to compensation for their refugee status and for loss of property, and will have the right to return to the State of Palestine. The refugees could also elect to remain in their present host countries, or relocate to third countries, among them Israel, at the sovereign discretion of third countries.

This initiative is unacceptable for the Palestinians for several reasons. First, the initiative did not meet the Palestinians’ demand that Israel will acknowledge its responsibility for the refugee problem as a in principle; second, Israel is described as a third party country that has sovereign discretion to accept or reject any refugees; third, the term used is that the refugees can “relocate” in Israel as a third party state and not to return to their homes, fulfilling their rights under international law; fourth, this initiative does not take in account that the economic and social burden on the Palestinian state might be very heavy due to its limited absorptive capacity and fragile economy; and fifth, this initiative focused on the resettlement of the refugees or the return to the future Palestinian state ignoring the demands of the refugees to return to their homes.

2. Rashid Khalidi’s proposal: 106

Khalidi’s proposal is based on several points: First, Israel acknowledges its moral accountability for the creation of the Palestinian refugee problem, including the means of socializing this recognition to the younger generation of Israelis; Second, Israel accepts, in principle, the right of Palestinians and their descendants to return to their homes. The Palestinians, in return, will recognize that the right cannot be literally exercised inside 1948 Israel, and will have to exercise it in the State of Palestine. Israel should take into

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its domain several tens of thousands of refugees, particularly those that have family members living inside Israel; third, a distinction should be made between reparation (for those who will not be allowed to return) and compensation (for those who lost property in 1948); and fourth, the refugees can choose between the right to return to the Palestinian state or remain in current locations with full citizenship or permanent residency respectively.

With some modifications Khalidi’s proposal could be the basis for an arrangement that the Palestinians can accept. The modifications should increase the number of Palestinians who will return to what became Israel, and that such an agreement should be approved not only by the Palestinian leadership but also by the majority of the Palestinian refugees since the right of return is an individual right of each refugee. Therefore, any refugee who wants to return to Israel should be entitled to exercise this right.\footnote{Even though the right of return is an individual right for each refugee the PLO historically consider this right as a collective right connected to the liberation of Palestine. The word “Return” mentioned only twice in the Palestinian National Charter (Articles 9 and 26) and not as a separate right. See the charter in Arabic. Available at \url{http://www.aljazeera.net/NR/exeres/FF2E5CDF-37B4-41B8-A934-5B94493BEB0B.htm}.} This proposal should be supported by the international community to enable the future Palestinian state to absorb a large number of refugees. In addition, this proposal should secure that the Palestinian refugees, who will decide to resettle in the host countries, in particular, Syria and Lebanon and Jordan will not face the threat of de-Palestinization and well be entitled to equal rights under local national law.

**F. Conclusion**

The Palestinian refugee problem is still one of the main obstacles for reaching a lasting and comprehensive peace agreement between Israel and the Palestinians. The gaps between the parties are enormous both in the responsibility for the creation of the
The problem and the solutions suggested. Israel took several measures, both by law enactment and by depopulation or destruction of the Palestinian villages and cities to prevent any possibility that the Palestinian refugees will return to their homes.

The peace process failed to promote any solution to the Palestinian refugee problem. In fact, the peace process marginalized the refugees. The other “pragmatic” solutions suggested in the academia do not meet the limit that Palestinians can accept by achieving any kind of justice. As described thoroughly in the paper, the responsibility for the creation of the problem has been laid on the shoulders of the Zionist Movement and later Israel, which still works with the false slogan of “land without people for a people without land”.

The Palestinians refugees have the legal right to return to their homes. The Israeli arguments against the right of return do not hold water when they are refuted one after the other and collectively as a set of arguments.

Since, the geo-political situation is on Israel’s, and especially the fact that the US is serving as the mediator between the parties, the possibility of reaching a just settlement in general and for the Palestinian refugee problem in particular is low.

The Israeli slogan that “the fathers will die and the sons will forget” has proved to be wrong. The Palestinian refugees and their descendants insist on exercising their legal and legitimate right of return to their homes. Therefore, Israel should choose if it wants to live with the Palestinians and the Arab world, or against them. If Israel chooses to live with the Arabs, including the Palestinians, it should accept a solution that the Palestinians feel can meet a sense of justice, even though not absolute justice.
According to this solution, Israel should admit its responsibility for the creation of the Palestinian refugee problem. Israel should also accept, in principle, the right of Palestinians and their descendants to return to their homes. Any Palestinian refugee or their descendants who choose to exercise his or her right to return to Israel will be entitled to do so. The others will return to the future Palestinian states or resettle in the current locations or third states with full rights of Palestinian citizenship.

The international community should take its responsibility to solve the Palestinian refugee problem. This problem has been pending more than sixty years and the international community and international law has not tackled it promptly to solve it. Therefore, the international community should prove its ability to solve one of the oldest and most problematic matters in the world.

It is time for the international community, led by the West, to break the shameful “tacit agreement” in which Israel, allegedly on behalf of all the Jews, forgives the West for the persecution of Jews that reached its peak in the Nazi Holocaust, and the West, on its part, allowed Israel to be created on the expanse of the Palestinian people and allowing Israel to continue to oppress and humiliate the Palestinian people until the present day.