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History Questions "Right of Return"

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More than any other issue, including settlements and Jerusalem's future, the Palestinian refugee issue is the core obstacle preventing resolution of the Israeli-Palestinian conflict. Which Palestinian claims are valid? Should return or compensation be granted?

The manner in which the refugee issue is resolved determines whether Israel remains a majority Jewish state.

Palestinians predicate their right of return primarily on United Nations General Assembly resolutions.

Paragraph 9 of a December 1948 resolution, reads: "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...should be made good by the Governments or authorities responsible."

The resolution was passed before Israel's independence war ended and before Israel was accepted into the United Nations. It did not expressly stipulate a right of return and placed the onus of responsibility on an amorphous body.

In November 1974, UN General Assembly Resolution 3236 stipulated the "inalienable right of the Palestinians to return to their homes and property from which they have been displaced and uprooted."

The following year, the General Assembly equated Zionism with racism, a resolution later revoked. In those years, UN support of the Palestinian Liberation Organization and condemnation of Israel were regular and rock solid.

Today, the term "right of return" is used by Israel and Palestinian officials alike without much thought given to the origin or evolution of the phrase. Moreover, the assumption made is that every Palestinian who left Palestine or currently possesses a title deed, tax receipt, cultivation

agreement or other document from the British Mandate or period of Ottoman rule that preceded it has bona fide claim to return or compensation.

Dr. Nabil Shaath, the urbane and articulate Minister of Planning for the Palestinian Authority, told a group in Washington in September, "There are 435,000 title deeds residing with Palestinians."

For whatever reason, there is no doubt that Palestinians fled areas that later became the state of Israel; they left land and property behind. It also should be noted that half of the land area of Palestine was not owned by anyone and was not registered.

My own research causes me to doubt the accuracy and implications of Shaath's numerical claims. I told him so during a coffee break after his September remarks. If compensation is to be provided or return granted, the questions are: how many Palestinians and which land or property?

For more than a quarter-century I have poured over documents of the Palestinian Lands and Land Registry Departments, archives of individual villages purchased by the Jewish National Fund, Jewish Agency Political Department files and the Palestine Arab press. I found unpublished British accounts of how Arabs sold significant but not large amounts of land to Jews in the 1930s, and especially in the 1940s. Some of those findings are in my book, "The Land Question in Palestine, 1917-1939" (Chapel Hill, 1985).

Simply put, the very existence of a title deed or other written evidence does not automatically substantiate a claim of ownership. A title deed may exist in the hands of a refugee, his family or descendants, but that land or immovable property might have been sold and never registered in the Palestine Land Registry Department.

A peasant farmer could have a legitimate tax record receipt or a statement that he and his family lived in a village where the land was cultivated or owned individually or collectively, but that land could have been sold at a later date over his head to an Arab broker or Jewish buyer.

This was frequently done when the peasant exchanged tenant or ownership rights for absolution of accumulated debts. Sometimes the buyers of sellers of land paid compensation to the Arab owners or tenants to leave the land before it was transferred to Jewish ownership. Hence, a title deed or other document about land ownership or use, issued either in Ottoman or British times, does not necessarily constitute

an irreversible claim to compensation or a bona fide claim to repatriation.

For more than half a century, Palestinians have kept alive their dream to go back to Palestine/Israel. However, if the Palestinian people and their leadership are truly committed to end the conflict with Israel, then the refugee issue will neither linger with language of diplomatic ambiguity nor be left open indefinitely.

PLO Chairman Yasser Arafat reportedly told an Arab League meeting in 1999 that the Palestinians' right "to return to their homeland is our conviction and one which we will never compromise." Lacking a military option at present, Palestinian refugee return can be the demographic means to make Israel a minority Jewish enclave or canton, established eventually in a majority Arab state. Any door opened and not closed with finality to refugee claims will, through attrition, time, and natural population increase, compromise Israel's demographic majority.

If a bi-national state is what the Israeli people and what their leaders and negotiators want, they can make that happen sooner rather than later. That is, however, not what Herzl, Nordau, Weizmann, Ben-Gurion, Sharett, Meir, Dayan, Begin, Rabin, other Zionists and supporters of Israel had or have in mind.

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