

**Palestinians' Right Of Return**  
**Ellis Boal**  
National Lawyers Guild – May 15, 2004

On April 14 of this year President Bush wrote Israeli Prime Minister Ariel Sharon formally rejecting Palestinians' right to return to their homes in historic Palestine:

It seems clear that an agreed, just, fair, and realistic framework for a solution to the Palestinian refugee issue as part of any final status agreement will need to be found through the establishment of a Palestinian state, and the settling of Palestinian refugees there, rather than in Israel.

Bipartisan resolutions in the House and Senate endorsed the letter overwhelmingly on June 23.

But it violates international law.

**UN General Assembly Resolution 194**

In December 1948 the UN General Assembly declared that (a) Palestinian refugees who want to "return to their homes and live at peace with their neighbors should be permitted to do so at the earliest practicable date," (b) compensation should be paid for loss of or damage to property, and (c) those who choose not to return should be compensated.

The UN thus reaffirmed international legal principles arising from nationality law, humanitarian law, human rights law, and refugee law. In the recorded debates leading to Resolution 194, the US representative agreed it "endorsed a generally recognized principle and provided a means for implementing that principle."

The resolution means several things. The right of return is individual. The site of return is to one's home, not homeland. It inheres equally in the descendants of refugees. A returned refugee is subject to Israel's laws and regulations, including trial if personally accused of a crime or atrocity. And, the PLO can negotiate to implement the resolution, but being an individual right the PLO cannot trade it away.

## **Brief History**

The resolution makes sense when viewed in light of the history of Arab-Jewish relations up to the founding of Israel in May 1948.

In 1917 Britain issued what has become known as the Balfour Declaration, in a letter to Zionist leader Lionel Rothschild. The letter favored the establishment in Palestine of a "national home for the Jewish people" ... [without prejudice to] the civil and religious rights of existing non-Jewish communities in Palestine...."

In its 1919 covenant the League of Nations provisionally recognized Palestine as an independent nation, subject to the assistance of foreign powers and the wishes of its people until it could stand alone. In 1922 the Mandate was entrusted to Britain.

The Balfour Declaration proved unworkable. As World Zionist Organization founder Theodore Herzl had explained in his diary in 1895, the removal of Arabs bodily from Palestine was part of the plan to

try to spirit the penniless population across the border by procuring employment for it in the transit countries, while denying it employment in our country. Both the process of expropriation and the removal of the poor must be carried out discreetly and circumspectly.

In the ensuing decades Jewish immigration increased. Tension between the groups occasionally broke into revolt.

In November 1947 the United Nations recommended a partition plan, dividing Palestine non-contiguously into Jewish and Arab states. The plan gave the Jewish state a majority of the land, far out of proportion to its relative numbers in the country. Arab leaders decided to oppose it, and irregular forces entered the country in January 1948.

But in the following twelve months, over 700,000 Arabs fled or were ejected from the country. David Ben-Gurion, Israel's first prime minister, had set

the tone in 1938, saying famously "I support compulsory [Palestinian Arab population] transfer. I do not see in it anything immoral."

The initial refugees -- some ten percent of the total -- tended to be more well-to-do. Terrorist tactics of extreme Zionist groups were a major factor in their departures, though not the only factor.

But after the massacre of 254 villagers at Deir Yassin near Jerusalem on April 9 (the body count was the killers' own), it became a rout. Menachem Begin, later a prime minister of Israel, explained in his book:

The legend in Deir Yassin helped us in particular in the saving of Tiberias and the conquest of Haifa.... All the Jewish forces proceeded to advance through Haifa like a knife through butter. The Arabs began fleeing in panic, shouting Deir Yassin.... Arabs throughout the country ... were seized by limitless panic and started to flee for their lives.

In May, Britain formally pulled out of Palestine. Israel declared itself a state. Several Arab governments sent in regular but poorly-armed forces. In June the Israeli cabinet barred return of the refugees. By the end of the year Israel had defeated the Arab armies.

Speaking in April 2004, distinguished Zionist historian Benny Morris said of the war:

Ethnic cleansing has a bad name, and rightly so, but in 1948 it was justified because the 650,000 Jews who lived here were under existential threat. It was the only way to win that war. [But Israeli leaders at the time should have resolved to] do it properly. Don't leave 20 percent of the Arabs still in Israel [creating] a time bomb for the future.

In September 1948 UN mediator Folke Bernadotte thought just the opposite. After months of shuttle diplomacy, and twice getting the warring parties to stop for truces, he summed up his findings in a report. It spoke of (1) large-scale looting, pillaging, plundering, and destruction of villages without apparent military necessity, (2) the resettlement of Jewish immigrants in buildings left standing, and (3) Israel's obligation to restore and indemnify

Arab owners of private property irrespective of claims it may have against Arab states.

The next day members of the extreme Zionist Stern group -- headed by Yitzhak Shamir -- killed Bernadotte. One of the actual killers was pardoned and elected to the Knesset in 1950. Shamir later served as Israel's foreign minister and prime minister.

But the UN General Assembly took Bernadotte's recommendations seriously. To implement them, it voted Resolution 194 in December 1948.

As part of the same resolution it created a UN Conciliation Commission for Palestine. Israel continued to stonewall repatriation. Mark Ethridge, the US delegate to the UNCCP, termed Israel's position "morally reprehensible." But the US did nothing to follow up.

Unable to accomplish more, the UNCCP turned its attention to compensation. After exhaustive investigation, by 1962 it had identified the May 1948 owner of every Arab-owned individual plot and determined the plot's value. Though the figures were never publicized, they are available and have been examined by researcher Michael Fischbach.

In 1961-62 at US behest the UNCCP sent special representative Joseph Johnson to the region to explore practical steps to secure compensation. Johnson was a past president of the Carnegie Endowment. His final proposal was that the refugees be given an election, via questionnaire, between repatriation in Palestine or resettlement elsewhere, with each to be compensated regardless of the choice. The compensation, by Israel, was to cover real and movable property, including communal and public property, and other allowances for interest, currency depreciation, and "reintegration."

Fischbach reports that according to American diplomats, Israel reacted "violently" when Johnson presented his plan to its UN delegation. Israeli foreign minister Golda Meir personally raised the issue with Secretary of State Dean Rusk and President John Kennedy. In the end the US refused to support the plan. Johnson resigned bitterly.

Each year since 1948, the General Assembly has reaffirmed Resolution 194.

## NLG Resolutions

At the 1948 Chicago convention, the Lawyers Guild supported the Zionist pro-partition position.

But after a two-year organization-wide investigation and discussion, in 1977 we endorsed Resolution 194. We "recognize[d] the right of return or compensation for all Palestinians displaced or dispossessed in the creation of Israel in 1948." The Guild reaffirmed the resolution in 1988, 2000, and 2003.

Shortly after Bush's letter this year, at the recommendation of the Middle East Sub-Committee, the Guild signed onto a statement initiated by the Al-Awda/Palestine Right-To-Return Coalition. The statement says in part:

We, the undersigned affirm the full individual and collective inalienable Right to Return of the Palestinian Arab People to their homes, property and land of origin. We assert in no uncertain terms that such a fundamental right is inviolable as it is based on the unbreakable natural belonging of a people to their property and place of origin, as enshrined in international law. Accordingly, we hold that the Palestinian Right to Return is an indispensable obligatory prerequisite for the achievement of any justice and peace.

Palestinians are the largest refugee population in the world. They and their descendants number over five million. Unlike the refugees of Bosnia, Guatamala, Mozambique, Rwanda, Burundi, Tajikistan, and Georgia, they are the only ones whose right to return is even questioned.

It is time they were given a choice. It is time they were allowed home.

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Ellis Boal represented the NLG at a BADIL seminar, *Closing the Gaps: from Protection to Durable Solutions for Palestinian Refugees*, in Cairo,

March 5-8, 2004.

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