Repatriation of the Displaced Arabs of Palestine and the Meaning of Security Council Resolution 242

John Quigley*

1 INTRODUCTION

In any scenario for a settlement of the Israeli–Palestinian conflict, a central place is occupied by the issue of the Palestinian Arabs displaced in 1948. Approximately three-quarters of a million were displaced to locations outside the control of Israel and have been prevented by the Government of Israel from re-entering Israeli territory to occupy their homes. That the issue should be the subject of negotiation is itself controversial. The position of the major powers, and of the UN, heretofore, has been that repatriation is a matter of individual right, which Israel is obligated to implement.

Today four to five million Palestinian Arabs, those displaced and their descendants, live in a diaspora. Many are in neighbouring countries, within a journey of only several hours from the homes they are forbidden to occupy. Others have moved further afield to other continents.

By a quirk of late 20th-century technological development, the displaced Palestinian Arabs have established contact with each other that allows them to collaborate in asserting a right to be repatriated. Internet and electronic mail communication, as it developed in the 1990s, spawned a communication network among the displaced. Their communication was aimed at influencing the negotiations that commenced in 1999 between the Palestine Liberation Organization and Israel. Their communication was aimed primarily at the PLO, as a grassroots effort to make clear any PLO–Israel peace agreement must provide for repatriation.¹

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* President’s Club Professor in Law, Ohio State University; LLB, MA 1966, Harvard Law School. The author is grateful to Marwan Jaber, Ohio State University J.D. 2007, for research that proved essential to the completion of this article. He is grateful as well to reactions from colleagues who listened to presentations of portions of this research at the Scottish Friends of Palestine in Edinburgh, Scotland (2005), the School for Oriental and Asian Studies at the University of London (2005), and the Washington College of Law of the American University (2007).

In negotiations in July 2000 at Camp David, Maryland, the PLO did insist that a right to repatriation be recognised by Israel. The Israeli Government headed by Ehud Barak made no serious offer on repatriation, however. Barak’s position was that the 1948 displacement is water over the historical dam, and that it is unrealistic to reverse it.

Barak’s predecessor as Prime Minister, Benjamin Netanyahu, took an even harder anti-repatriation position. Netanyahu said that the displaced Palestine Arabs should not be permitted to live even in an anticipated Palestine state, as he viewed such an influx as a threat to Israel.

In coming to terms with the Palestine Liberation Organization in 1993, Israel agreed to resolve key outstanding issues on the basis of UN Security Council Resolution 242, adopted in the aftermath of the 1967 Middle East war. Resolution 242 was devoted primarily to territorial issues, because Israel had just occupied additional Arab territory, but it also dealt with the displaced Arabs of Palestine, calling for “a just settlement of the refugee problem”.

The Security Council’s statement is not definitive in a legal sense. The Council in adopting Resolution 242 did not act under UN Charter Chapter VII, which gives it the power to deal with threats to the peace and to make determinations binding on states. Rather, it acted under UN Charter Chapter VI, which gives it the power to make recommendations for resolving disputes.

Nonetheless, the Council’s pronouncement carries weight as reflecting the view of that body as to what is legally required. The Security Council is normally cognisant of legal requirements when it proposes solutions to conflict situations. Moreover, Resolution 242 carries additional weight for Israel and the PLO, since, as indicated, they have agreed to follow it.

The issue of the displaced has been viewed by the international community as one that should be resolved on the basis of legal principle. As will be suggested below, there is no discrepancy between what is legally required and what Resolution 242 contemplates. By Resolution 242, the Security Council:

1. Affirm[ed] that the fulfillment of Charter principles requires the establishment of a just and lasting peace in the Middle East which should include the application of both the following principles:

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3 Agha and Malley, supra n.2, p. 62 (stating that Israel proposed only a “satisfactory solution” of the refugee problem).
4 Keinon, H., “Peace talks resume today”, Jerusalem Post, 16 January 2001 at 1 (noting Ehud Barak statement on Al Jazeera television that Israel would never accept a right of return of Palestinian refugees to Israel).
5 Silver, E., “Netanyahu hits first crisis over cabinet line-up”, Independent, 19 June 1996, at p. 10 (quoting Prime Minister Benjamin Netanyahu stating that his new government would oppose “the right of return of Arab populations to any part of the Land of Israel west of the Jordan River”); see also Fletcher, E.R., “Peace talks will hinge on Israeli elections: Likud party would try to impose more controls on Palestinians”, San Francisco Examiner, 5 May 1996, at A-15 (describing Likud position as opposition to return of displaced Palestinians to Israel, to West Bank, and to Gaza Strip).